

Model Harmonization Of Islamic Law, Customary Law And Western Civil Law In Purchase Agreement

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Abstract. In Aceh, it is important in purchase agreement to make a model harmonization of Islamic law, customary law and Western civil law. The process of *ijab* and *qabul* is done by the people of Aceh in the belief that transactions have to be legal both under the laws of the country and under Islamic law. Despite the fact that majority of Acehnese people are Muslims and enriched by the culture, but in buying and selling land and houses, they are still combining the three systems of law those are, Islamic law, customary law and Western civil law. Based on special autonomy granted to Aceh, specifically in the field of religion and custom, the opportunity to bring forth regulation like *Qanun* governing the field of *mua'malah* is widely practiced in Aceh. Value system contained in elements of Islamic law and customary law got a great chance of being born in the form of Provincial regulation (*Qanun Aceh*), district and city regulation (*Qanun Kabupaten/Kota*). *Qanun* formation in the field of buying and selling even this must be colored three legal systems that are already living in Acehnese society. The legislation process of purchase transaction should accommodate all elements of Islamic law, customary law and Western civil law, which have influenced legal harmonization in the field in Lhokseumawe.

Keywords: *Model Harmonization, Islamic Law, Customary Law, Western Civil Law, Purchase Agreement, AcehBackground*

Model Harmonization of legislation is an attempt or process to realize the harmony of principles and the legal system to produce regulatory and legal systems in harmony. The development of legal substance in is a never-ending process because legislation is one of the major foundation of the national system. In fact, there are still a lot of problems concerning legislation products, whether in substance, processes and procedures, or the aspects of its legal drafting. In Aceh, Islamic law, customary law and Western civil law are applied in purchase transaction. Therefore, the making of *qanun* in this field should combine all this three legal systems. This study is aimed to show the importance of harmonization in the implementation of a purchase agreement in Aceh. Analysis study was conducted to the legal culture of the Acehnese people in Lhokseumawe and Central Aceh in land and houses purchase transactions. They still insert the elements of Islamic law, customary law and Western civil law. The three elements of the legal system are still used in harmony by the community in buying and selling land and home objects. The study used a qualitative methodology, in order to sharpen, enrich and develop all of the qualitative data. Samples are determined by purposive sampling method, where Lhokseumawe represented by four villages in two districts and the Central Aceh was represented by a district and two villages. The process of collecting data was done through in-depth interviews with informants and respondents. The amount of transactions contained in two regions, from 2011 to 2015, are 502 transactions. The samples are 100 transactions, with details of 50 transactions adapted elements of Islamic law and customary law, and 50 transactions used Western civil law.

I. PURCHASE AGREEMENT IN ISLAMIC LAW, CUSTOMARY LAW, AND WESTERN CIVIL LAW

Basically, the purchase agreement in Aceh is based on the law of the purchase agreement stipulated in Islamic law, common law and Western civil law. An agreement between two or more parties in Islamic law is called *akad* (transaction). Based on terminology, *akad* means bonding (*al-rabthu*), association (*al-'aqdah*) or promises (*al-'ahdu*).⁴ Bond (*al-rabthu*) means to collect or gather the two ends of the rope and tied one to the

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⁴ Aiyub Ahmad, *Transaksi Ekonomi Perspektif Hukum Perdata dan Hukum Islam*, Cet. I, (Banda Aceh: Kiswah, 2004) .hlm. xxix.

other until the two continued and became like one rope.⁵ Word *al-aqdu* refers to the occurrence of two or more agreements, that is if someone has an agreement then there are others who approve the agreement and that agreement relating to the first one, there was a contract or *akad*.⁶ In the Qur'an, the word of *al-aqdu* mentioned in Surah Al-Maidah verse 1: "that man is asked to meet the contract". *Al ahdu* refers to the statement of someone to do something or not do something and had nothing to do with anyone else. Agreement made by the two parties does not require the approval of the other party; either agree or not, does not affect the promise made by the two parties. The word *Al ahdu* found in the Qur'an Surah Ali Imran verse 76, which means: (Not so) Actually, who keep their promises (made) and his devoted, then verily, Allah loves those who fear Him. Aiyub Ahmad said that the Arabic language of *aqd* is consent between a person or persons with a person or some other persons to perform a certain act.

Transaction occurs between two parties or more with the voluntary and incurs obligations on each party mutually. Islamic jurists (*ulama jumhur*), gives the definition of the contract as a linkage between consent and granted justified by *syara'*, that gives the legal consequences to the object.⁷ From the above definitions, there are three important elements contained in the contract, as follows:⁸

1. Relation between *ijab* and *qabul*

Ijab and *qabul* basically is a treaty or agreement between a man with other man about an issue containing legal effect. But now *ijab* and *qabul* is not only agreement among men but also between man and woman, between women and between the corporation and a person. So, *ijab* is a statement by the will of one party (*Mujib*) to do something or not do something. *Qabul* is a statement of acceptance or approval of *Mujib's* will of the other party (*qaabli*). This *ijab* and *qabul* must be met in executing a contract.

2. Justified by *syara'*

Commitments made by both parties in the form of *ijab* and *qabul* should be in accordance with Islamic law. If the created contract conflicts with Islamic law then the contract is not valid and does not give obligation to any legal consequences.

3. Have the legal effect to the object.

Contract is one of the legal actions (*tasharruf*). This legal action would result in rights and obligations. The existence of an agreed contract will be legal consequences for the parties who made the agreement. In Islamic law, legal consequences is not only to the parties who made the agreement but also to his heirs if he dies before paying off its obligations.

a. Principles and Terms of Contract

In carrying out the contract, there are some principles and requirements to be met. This is done so that the contract is lawful. Principles must be fulfilled for the validity of a contract,⁹ while the terms are provisions (regulations, directives) which should be adhered and done.¹⁰ In terms of Islamic law, principles and terms are equally as determining the validity of a transaction. Principle is an element that is an integral part of an act or agency that determines whether something is legal or not. While the term is something that depends on Shariah existence and it is beyond the law itself, that its absence causes no law at all.¹¹

Although the principles and conditions or terms will determine the legitimacy of a contract but the Fiqh scholars have differences between each other. Principles are the nature of its existence depends on the law and it was included in the law itself, while requirements are the nature of its existence depends on the law, but it is beyond the law itself.¹² There are varied opinions expressed by jurists concerning principles and terms of contract.

⁵ Ghufroon A. Mas'adi, *Fiqh Muamalah Kontekstual*, Cet. I, (Jakarta: Raja Grafindo Persada, 2002), hlm. 75.

⁶ Aiyub Ahmad. *Op. Cit.* hlm. xxix

⁷ *Ibid*, hlm. 76.

⁸ Gemala Dewi, Widyaningsih dan Yeni Salma Barlinti, *Hukum Perikatan Islam di Indonesia*, (Jakarta: Prenada Media, 2005). hlm. 48.

⁹ Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia*, (Jakarta: Balai Pustaka, 2002), hlm. 966.

¹⁰ *Ibid*, hlm. 1114.

¹¹ Abdul Azis Dahlan, ed. *Ensiklopedi Hukum Islam*, Jilid 5, (Jakarta: Ichdir Baru van Voeve, 1996), hlm. 1510.

¹² Gemala Dewi, Widyaningsih dan Yeni Salman Barlinti, *Op.Cit.* hlm. 50.

According to the Hanafi school, they argue that the contract principle is only *sighat al-'aqd*, that are *ijab* and *qabul*. While the contract terms are *al-'aqidain* (contract subject) and *mahallul' aqd* (contract object) because *al-'aqidain* and *mahallul' aqd* are not parts of *tasharruf aqad* (legal action). Both of these actions are out of contract. While the Shafi including Imam Ghazali and the Maliki school included Sihab al Karikhi believe that *al-'aqidain* and *mahallul' aqd* are parts of contract principles because both of these are the main pillars in upholding the contract.¹³ *Jumhur* scholars argue that the principles of the contract are *al 'aqidain*, *mahallul' aqd*, and *sighat al aqd*. While Mustafa Az Zarqa, in addition to *al 'aqidain*, *mahallul' aqd* and *sighat al aqd* also added with *maudhu'ul* (contract goals), citing as *muqawimat 'aqd* (elements of contract enforcement). According to T.M. Hasbi Ash Shiddiqy, these four components must be met for the formation of a contract.¹⁴ It is used as the basis for the city of Lhokseumawe and Central Aceh district in executing land and houses purchase contract.

b. The Moment of Contract.

In the national civil law book (*Burgerlijk Weetboek*), the rights and obligations arise when there has been exchange of something, instead of in the event of a rapprochement between the will of the parties. For example, in a banking credit, rights and obligations arise when borrowers received money. According to Islamic law, an agreement or contract has occurred and binding on both parties at the time of *akad*/contract pronounced. Will rapprochement between the two sides in the contract should be pronounced. Pronunciation is the proof that they have reached a rapprochement will of the goods and the price in the agreement.¹⁵ After the agreement is achieved, it will automatically give rise to rights and obligations of the parties in the contract. This *akad* shall be witnessed by at least two witnesses from both sides. Form of rapprochement could be in *sighat aqd*, in the form of *ijab* or submission by one party come with *kabul* (acceptance) by the other party, which made orally, in writing, gesture or act. When saying this statement then both parties are bound by rights and obligations of the contract. The statement contained a commitment to establish a contract which means it requires one party to deliver the goods and the right to receive the amount of money, as well as the other party is obliged to submit the money and is entitled to the goods as counter performance.

According to Islamic law, the basis of the existence of the agreement is the spoken statements and contains the promises between two parties to carry out a specific legal act. After the realization of a promise, binding legal relationship then arises; each party shall be obliged to implement them, as the statement that has been uttered together. This is because in Islam obliges the Muslims to fulfill every promise they have made voluntarily, as mentioned in the Qur'an Surah Al-Maidah (5) of paragraph 1, which means "O you who believe, fulfill your promises". Other than that, any words spoken by a muslim must be in the grasp, this is in accordance with the guidelines mandated by the Prophet Muhammad: "there are signs of a hypocrite are three, namely when he speaks lies, when he promises deny it, and if he believed treason" (HR. Bukhari, Muslim). While Imam Malik said that the purchase agreement has occurred and binding on both parties if it is still in a gathering or a place, unless there is a reason for it. Meanwhile, according to Imam Shafi'i, common economic transaction has occurred with *kinayah* words (satire).¹⁶

Ibn Rushd states that *ijab* and *qabul* affecting the sale and purchase agreement. One party shall not later than the other. A seller said the intention to sell, but the buyer did not say anything and did not accept purchase so that both parties come apart, then the buyer said "I accept", the words are not binding on the seller.¹⁷ After *ijab* was answered with *qabul* in the contract forum, then there was a contract and the parties can not cancel the contract without the consent of the other party. In this case the contract was binding.

Abdoerraoef suggests that the occurrence of an engagement (*al-aqdu*) through three stages, namely:¹⁸

- 1) *Al 'Ahdu* (agreement), which is the statement of a person to do something or not do something and do not have anything to do with the wishes of others. This promise is binding the person who says to his promise, as spoken by Allah in the Qur'an. Ali Imran (3) verse 76: "(not so), who actually occupy the promise (he made) and pious, then surely Allah loves the righteous."

¹³ Ghufron A. Mas'adi, *Op. Cit.* hlm. 79.

¹⁴ Gemala Dewi, Widyaningsih dan Yeni Salma Barlinti, *Op. Cit.* hlm 51.

¹⁵ Aiyub Ahmad, *Op. Cit.* hlm. 25.

¹⁶ Aiyub Ahmad, *Op. cit.* hlm. 45.

¹⁷ Ibnu Rusyd, Badayah al-Mujtahid, Dalam Aiyub Ahmad, *Transaksi Ekonomi Perspektif Hukum Perdata dan Hukum Islam*, (Banda Aceh: Kiswah, 2004), hlm. 47.

¹⁸ Abdoerraoef, *Al Qur'an dan Ilmu Hukum: Comparative Study*, (Jakarta: Bulan Bintang, 1970), hlm. 122- 123.

- 2) Approval, which is the agreement of both parties to do something or not do something in response to the promise expressed by the first party. Such approval must be in accordance with the promise of the first.
- 3) If two appointments held by the intention of the parties, then there is what is called '*akdu*' by the Quran contained in QS. Al Maidah (5) of paragraph 1: "O you who believe fulfill the contract agreement ...". Then the binding each party after execution of the agreement or the agreement is no longer '*ahdu*', but '*akdu*'. In Islamic contract law, the starting point of most sets it apart is the significance of the pledge (*ijab* and *qabul*) in each transaction. If two promises between the parties agreed and continued with the vows (*ijab* and *qabul*) then there '*akdu*' (engagement).

From the research results can be explained that, basically, legal culture of the people of Central Aceh and Lhokseumawe to the rule of law against the sale and purchase agreement is governed by Islamic law and customary law and largely still applied in the transaction, especially regarding land and houses objects. In addition to the application of Islamic law and customary law in the sale and purchase agreement of land and house, it is also known the national civil law (Western civil law) and they still apply it in the sale and purchase of land and home objects. In this study, the focus of analysis is the implementation of Islamic law and customary law elements in land and houses transactions by the people of Aceh. This is because the people of Aceh were largely Moslem and in carrying out the implementation of Islamic law comprehensively (*kaffah*) as regulated in Act No. 11 of 2006 on Government of Aceh and Law No. 44 of 1999 on the Implementation of special province of Aceh. In Law No. 44 Year 1999 Article 3 paragraph (2) described: "the Implementation of privilege include:

- a. Implementation of religious life;
- b. Implementation of indigenous life;
- c. Implementation of education, and
- d. the role of *ulama* in determination of regional policy.

Based on these references, the people of Aceh should apply Islamic law completely, in particular in terms of aspects *muamalah*. In fact, there are some factors affect the implementation of the sale and purchase by using Islamic law and customary law, among others:

- (a) *Lack of understanding of Islamic law.*

Understanding of Islamic law, which is referred to in this paper only concerning *muamalah*. From interviews with academics, they explained that, understanding of shari'ah Islam is still vaguely understood by the people of Aceh and general public. Most of the women understand the shari'ah Islam was only about wearing a hijab, the youth understand it is a ban on gambling and liquor. More over, particularly the academics and liberal Islamic sects understood the extent of the rule of man with God per-se, meaning that the application of the Islamic law does not have to involve the state, because of God with human affairs is a subjective affair set in a private area so it does not need to use the power of the application.

Actually, shari'ah rules the comprehensive set of life, either individually or in public areas, as well as man's relationship with God, man and man even humans with the universe. Judging deeper, the emphasis on three aspects, shari'ah mainly focused on man's relationship with man. It is essentially runs most of the functions of the human relationship with humans. Something that is governed by God to humankind as laws that govern the lives of individuals in interacting neighbors, so that they gain happiness in the world also in the hereafter.¹⁹

When the understanding of shari'ah Islam as the above phenomena, it will be even worse about people's understanding of the Islamic religion. Islam in the eyes of the people of Aceh in particular and for the Indonesian people generally means *fiqh*. It is better understood as a science which deals with rituals and ordinances of worship as such, apart from the values of pure divinity (*Rububiyyah*) and human values. This is seen, for example, they are more fun to spend time to pray and study, while ignorance, poverty and misery that befell her neighbors are not be his concern at all. They feel guilty over not making *dhikr* after prayers or eating pork from the lying, cheating and corruption. At the very least, this error is because the *fiqh* of worship are understood only about relation between man and God alone. People understand the *fiqh* as limited to understanding and memorization legal requirements, a mandatory requirement, and other pillars rather than the effects of worship itself for humans being, such as people pray to prevent the shameful and unjust deeds, fasting and tithing to rise compassion for the weak and increase social solidarity, especially hajj, it is a social worship *an-sich*. When we review early Muslim community's understanding of Islam, the Islamic era in the progress of the process, *fiqh* issues include monotheism and morality as found in the book of *al-Fiqh al-Akbar* by Imam Abu Hanifa or *Ihya Ulumiddin* by Imam Ghazali. The public of Aceh less understands of the law governing *muamalah*, particularly buying and selling transactions.²⁰

¹⁹ Muslim Ibrahim, *Implementasi Syariat Islam dan Kearifan Lokal di Aceh*, Makalah disampaikan pada acara: Seminar Islam Internasional Samudera Pasai Islamic Centre, Kota Lhokseumawe, pada tanggal 16-17 Maret 2013, hlm. 1

²⁰ Saifuddin Zuhri, Lc., M.Ag, Dosen Sekolah Tinggi Agama Islam Malikussaleh, *Wawancara*, Tanggal 8 Juli 2011.

Subsequently, the history of the people of Aceh is Islam and used as guidelines for life. Islam has become a part of them with all the advantages and disadvantages. Acehnese people obey the teachings of Islam and their devout and concerned to the scholars thought (*fatwa*) because *ulama* who became Prophet's heirs. Appreciation to the teachings of Islam that spawned Acehnese culture that is reflected in customary life. Custom was resulted from the contemplation of the scholars, then practiced, developed and preserved, then concluded to be “*Adat bak Poteumeureuhom, Hukom bak Syiah Kuala, Qanun bak Putra Phang, Reusam bak Laksamana*”, which can be translated into: "customary law in the hands of the government and is in the hands of Islamic law scholars". These words are a reflection of the manifestation of Islamic Shari'a in the practice of daily life for Aceh. If Islamic law is not understood as well as the regulation of the sale and purchase agreement in the jurisprudence law, this is one of the shift factors to the elements of the purchase agreement in Aceh.²¹ Furthermore, according to scholars, neglect factors of the elements of Islamic law that occurred in Aceh society is because the lack of understanding of *muamalah* law. Although the majority of the people of Aceh follow Syafi'ie school, but in the practice of sale and purchase agreement was not fully implemented elements of Islamic law. Then people are also not aware of any effect in the future if the rules of Islamic law are ignored. This phenomenon has been a lot going on in Aceh.²²

The process of buying and selling among majority of the people of Aceh highly depends on the willingness of both parties (seller and buyer), both in highly value goods and low value goods. There are a few people in Aceh using *ijab* and *qabul* on highly value items. Most people in Aceh assume that *ijab* and *qabul* are not obligations. The more important is that the willingness of both parties (seller and buyer). The seller would hand over the goods and the buyer would give money according to the item purchased. This is a common thing in Acehnese society. This is the neglect in implementing elements of Islamic law in the sale and purchase agreement as the legal culture of the Acehnese people.²³ In addition to a lack of understanding of *muamalah* law, particularly in terms of buying and selling, cultural factors also influence in the lives of the people of Aceh to the implementation of elements of Islamic law.

(b) *Cultural Factor*

Satjipto Rahardjo,²⁴ sees culture as a basis for the implementation of a positive law in society, due to the implementation of positive law is determined by the attitudes, beliefs and values. Therefore, the legal culture to modern society with an open system will be different from the legal culture to traditional society with a closed system. As for the people who experience improvement, he refers it as personal legal culture as a manifestation of the tendency to treat the law and its institution in an easy way and according to personal wishes. Legal culture is one of the components to understand the workings of the legal system as a process, in which the legal culture serves as a gasoline engine of justice. Thus without the support of conducive legal culture, a rule or law cannot be realized as expected either by the law makers and the community as a target of the law. According to anthropologists, the culture does not just mean a collection of forms of behavior and thinking that are separated. Nevertheless, culture is defined as a social category that included the overall social value associated with the law. These attitudes affect attitudes operation of law, including respect or no respect for the law, the willingness of people to choose informal ways to resolve a dispute. It also includes in the culture of the law is the attitudes and demands of the law proposed by the ethnic groups, race, religion, employment and social classes different.²⁵

Assessing the legal culture in a positive law perspective that it needs the harmonization of legal elements in the form of laws and regulations that guides the way of law formulated, organized and subsequently implemented. Legal culture is defined as the values and attitudes of the people associated with the law, has a very important role for the successful operation of law in the community. Legal culture is an element of the law, which is accurate and commensurate with the objective to address the effectiveness of the law in order to study law and society, than the conventional method that only examines the historical aspect of the law.²⁶ Series of values,

²¹ Drs. Tgk.H. Asnawi Abdullah, M.Ag, Ketua Majelis Permusyawaratan Ulama Kota Lhokseumawe, *Wawancara*, Tanggal 2 Mei 2011

²² Tgk. Rahmad, S.Ag, Anggota Majelis Permusyawaratan Ulama Kabupaten Aceh Tengah, *Wawancara*, Tanggal 23 Juli 2011

²³ Tgk. Fauzan, S.Ag, Tokoh Masyarakat Kecamatan Bebesen Kabupaten Aceh Tengah, *Wawancara*, Tanggal 25 Juli 2011.

²⁴ Satjipto Rahardjo, *Hukum dan Masyarakat*, (Bandung: PT.Angkasa, 1980), hlm.85.

²⁵ Lawrence M.Friedman, 1969:27-30) dikutip oleh Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, (Jakarta: Ghalia Indonesia), hlm.10

²⁶ Lawrence M.Friedman & Stewart Macaulay, *Law and behavioral Science*, The Bobbs- Memill, (New York, Company Inc, 1977), hlm 1028-1031.

habits, and behaviors can indicate how the legal principles is perceived (logically rational) by the people (both targets and implementing rules). This kind of study is a social reality and not appropriate or commensurate with normative principles in the formulation of the rule of law.²⁷ Law as an institution works in society is supposed to have at least three perspectives of functions (functions of Law).²⁸ *First*, law from the perspective of social control, which is one of the concepts that are usually the most widely used in social studies. In this perspective, the primary function of a legal system is integrative because it is intended to regulate and maintain social regularity in a social system. Therefore, precisely Berger suggests no society without social control lasting life of the law. In order to carry out the control function, there are four functional prerequisites of a legal system, namely: (1) the basic issues concerning the legitimacy of the ideology which is the basis for structuring the rule of law; (2) the issues and liabilities of targeted community and its legal process; (3) the issue of sanctions and the institutions that implement it; (4) the problem of law enforcement authorities.²⁹

Second, the perspective of social engineering is a review of the most widely used by the officials (the officials perspective of the law) to explore the sources of power that can be mobilized using the law as a mechanism. By quoting the proponents of social-engineer perspective by law, Satjipto Rahardjo suggests there are four main requirements that must be met as an engineer, namely: (1) a good representation of the situation at hand, (2) analysis of assessment and determine the level of values, (3) verification of hypotheses, (4) the measurement of the effects of laws and regulations.³⁰ *Third*, people's participation to the law perspective (the bottom up view of the law). In this perspective, law includes many studies, such as the ability of law as a means of reservoir aspirations, legal culture, legal awareness, law enforcement, and other else. With regard to the legal function, especially social engineering function, then today is expected to make efforts to move people, to behave in accordance with new ways to achieve a state of society as aspired. To achieve that purpose, public awareness is needed. It contains the values, views and attitudes that affect the working of the law. Lawrence M Friedman called it as the legal culture.³¹ Buying and selling contract is stipulated in Islamic law, customary law and Western civil law. It is generally applicable and serves as the legal guidelines for the people of Aceh. But it was found in Aceh society that the practice of buying and selling transactions are not based on Islamic law, even though the community believes that Islamic law and customary law is the legal culture of the people of Aceh in general. The impact of neglect to the elements of Islamic law and customary law, buying and selling transactions to land and houses have become business objects in Lhokseumawe and Central Aceh. Various groups of various ethnic communities, residence, professions and religions, use these opportunities. It is thus that causes very high potential for cultural impact. Moreover, the people of Aceh do not understand the concepts of buying and selling based on Islamic law and customary law comprehensively. It is as stated by *keuchik* of Uteun Baby village. Strangely, after the parties make land and houses purchase transactions, then both parties had mutually perform its obligations as the buyer handed over the money for the price of land and the seller receives the deed of sale of land handed made from the sub-district office, both parties ignore the *ijab* and *qabul*. This is because they think that state law has recognized this kind of transaction.³² This social culture seriously affects the customary law, mainly if the transaction is done with the immigrant community, who only just met the terms specified in the positive law.

(c) *Legal factors*

According to Soerjono Soekanto, there are five factors that affect a law those:

1. Substance of law;
2. Law enforcement;
3. Facility to support the implementation of the law;
4. Society where the law applied;
5. Cultural factors, as a result of the work, creativity and a sense of social life based on the intention.³³

²⁷ *Ibid*, hlm. 858.

²⁸ AAG.Peters dalam Ronny Hanitjo Soemitro, *Study Hukum Dalam Masyarakat*, (Alumni, Bandung 1985), hlm.10.

²⁹ *Ibid*, hlm.98.

³⁰ Satjipto Rahardjo, *Pemanfaatan Ilmu Sosial Bagi Pembangunan Ilmu Hukum*, (Bandung: Alumni, 1977), hlm. 10.

³¹ Esmi Warassih Pujirahayu, *Hukum Dalam Perspektif Sosial*, (Bandung: Alumni, 1981), hlm.124.

³² Agus Salim, *Keuchik Gampong Uteun Bayi Kecamatan Banda Sakti Kota Lhokseumawe, wawancara*, tanggal 11 April 2011

³³ Soerjono Soekanto. *Faktor-faktor yang Mempengaruhi Penegak Hukum*. (Jakarta: Rajawali,1999), hlm. 19.

All are the factors that encourage or support the law and also impede the law at the same time. Legal awareness and compliance with the law determine the successful implementation of a law. It is therefore necessary to have an understanding of the indicators of the legal issues. As indicators of the legal issues are:

1. Knowledge of rules of law (Law awareness)
2. Regulations concerning the contents of law rules (Law acquaintance)
3. Attitudes toward the legal regulations (Legal Attitude)
4. Patterns of legal behavior.³⁴

All those issues are not enough, but also still necessary to compliance with the law itself. According Bierstedt, the basics of obedience to the law are:

- a. indoctrination
- b. habituation
- c. Utility
- d. Group identification.³⁵

II. THE HARMONIZATION ON LAW IMPLEMENTATION IN THE SALE AND PURCHASE AGREEMENT IN ACEH

Aceh as in the history has been implementing sharia at the relatively very flexible adjustment to local culture. Having been received at the implementation of sharia (jurisprudence) in the frame of the nation state, the scholars would have to prepare the fiqh in the form of regulation legislation and put it in the framework of the hierarchy of legislation in Indonesia now. More pointedly formal juridical, shari'ah Islam in Aceh is executed through *Qanun* Aceh, which by law are set directly under the law (act). In other words, the implementation of sharia in Aceh at present is within the framework of the implementation of the 1945 Constitution, the hierarchical laws of Indonesia. It is not solely because of the commandment of God or religious orders. Thus, the Qur'an and Sunnah are as the argument of *shara'* and the *ijtihad* of the scholars as the basis and foundation of *qanun* writing. Furthermore should also be mentioned, as it follows the orderly hierarchy of laws and regulations in Indonesia, the Aceh *Qanun* containing sharia Islam can be made for judicial review by the Supreme Court. The Supreme Court may invalidate the contents of a *qanun* if only considered against the legislation that was higher, law or government regulation.³⁶

Legal substance or legislation process in Indonesia is ongoing process (never-ending process) because the legislation is one of the major pillars of the national system. However, it is still found problematic legislation in substance, processes and procedures, as well as aspects of its legal drafting. There are at least three major problems in this field, namely: (a) overlap and inconsistencies legislation; (b) the formulation of legislation is less clear; (c) implementation of the law held back the implementation regulations.³⁷

Harmonization of legislation is defined as an attempt or process to realize the harmony of principles and legal system so as to produce harmonic regulatory/legal systems. National Law Development Agency (BPHN) gives the sense that the harmonization of laws is scientific activities towards harmonization process of written law, which refers to the philosophical, sociological, economical, and juridical values. In reality, harmonization activity is a comprehensive assessment against a draft legislation, in order to review whether the draft regulation has been reflected in various aspects of harmony or conformity with other national legislations, the unwritten laws that live in the community or conventions and international agreements, both bilateral and multilateral, which has been ratified by the Government of the Republic of Indonesia.³⁸

Legal harmonization can be achieved at different levels with at least three (3) ways.³⁹

- a. Influence of the existing apparatus that cause to the approach between the two legal systems through agreements made or issued a decision in which the two different legal systems can be run together;
- b. The increasing tendency of national legislation that was made more or less spontaneously bring one legal system to another based on a comparative analysis;

³⁴ Soerjono Soekanto dan Soleman B. Taneko, *Hukum Adat Indonesia*, (Jakarta: Rajawali, 1986), hlm. 348.

³⁵ *Ibid*, hlm. 351.

³⁶ *Ibid*

³⁷ Ahmad M. Ramli, *Koordinasi dan Harmonisasi Peraturan Perundang-Undangan*, Makalah Disampaikan Pada Semiloka Keselamatan dan Kesehatan Kerja 2008 diselenggarakan oleh Dewan Keselamatan dan Kesehatan Kerja Nasional, Jakarta Tgl. 11-13 Maret 2008, hlm. 1

³⁸ *Ibid*, hlm. 4-5.

³⁹ Arthur Hartkamp (ed.), *Toward an European Civil Code*, (London: Kluwer Law Internasional, 1998), hlm. 173-174.

c. Harmonization can also be achieved by having one national law and regulation that effectively brings together material from two (2) different legal systems.

Based on the forms of harmonization as mentioned above, it is possible to make the legal product in form of *qanun* in Aceh, to hold the same legal matters with the three legal systems (Islamic law system, customary law system, and Western civil law system) in the case of *muamalah* in Aceh.

III. CONCLUSION

It is important to harmonize the use of Islamic law, customary law and Western civil law in purchase agreement in Aceh. The process of *ijab* and *qabul* applied by the people of Aceh in the belief that the transaction should be legal under both Islamic and national law. In fact, even though Acehness people are moslems in majority and enriched by culture, they are still combining the three systems of law, namely Islamic law, customary law and Western civil law in land and houses purchase contract. The people of Aceh still rely upon these three systems of law in the sale and purchase transactions. The majority of people of Lhokseumawe and Central Aceh are Muslim and have cultural value. It is highly recommended to bring the religious and traditional values in written form as a legal product (*Qanun Aceh*). This is supported by the enactment of Law No. 11 of 2006 on Government of Aceh. Particular form of autonomy granted in the field of religion and custom. This is the opportunity to bring forth products like *Qanun* to regulate the field of *mua'malah*, which is widely practiced amongst the people of Aceh and also supported by philosophical, sociological and legal studies.

DAFTAR PUSTAKA

- [1] AAG.Peters dalam Ronny Hanitijo Soemitro, *Study Hukum Dalam Masyarakat*, (Alumni, Bandung 1985).
- [2] Abdoerraoef, *Al Qur'an dan Ilmu Hukum: Comparative Study*, (Jakarta: Bulan Bintang, 1970).
- [3] Abdul Azis Dahlan, ed. *Ensiklopedi Hukum Islam*, Jilid 5, (Jakarta: Ichtir Baru van Voeve, 1996).
- [4] Agus Salim, Keuchik Gampong Uteun Bayi Kecamatan Banda Sakti Kota Lhokseumawe, *wawancara*, tanggal 11 April 2011
- [5] Ahmad M. Ramli, *Koordinasi dan Harmonisasi Peraturan Perundang-Undangan*, Makalah Disampaikan Pada Semiloka Keselamatan dan Kesehatan Kerja 2008 diselenggarakan oleh Dewan Keselamatan dan Kesehatan Kerja Nasional, Jakarta Tgl. 11-13 Maret 2008.
- [6] Aiyub Ahmad, *Transaksi Ekonomi Perspektif Hukum Perdata dan Hukum Islam*, Cet. I, (Banda Aceh: Kiswah, 2004)
- [7] Arthur Hartkamp (ed.), *Toward an European Civil Code*, (London: Kluwer Law Internasional, 1998).
- [8] Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia*, (Jakarta: Balai Pustaka, 2002).
- [9] Esmi Warassih Pujirahayu, *Hukum Dalam Perspektif Sosial*, (Bandung: Alumni, 1981).
- [10] Gemala Dewi, Widyarningsih dan Yeni Salma Barlinti, *Hukum Perikatan Islam di Indonesia*, (Jakarta: Prenada Media, 2005).
- [11] Ghufron A. Mas'adi, *Fiqh Muamalah Kontekstual*, Cet. I, (Jakarta: Raja Grafindo Persada, 2002).
- [12] Ibnu Rusyd, Badayah al-Mujtahid, Dalam Aiyub Ahmad, *Transaksi Ekonomi Perspektif Hukum Perdata dan Hukum Islam*, (Banda Aceh: Kiswah, 2004).
- [13] Lawrence M.Friedman & Stewart Macaulay, *Law and behavioral Science*, The Bobbs- Memill, (New York, Company Inc, 1977).
- [14] Lawrence M.Friedman, 1969:27-30) dikutip oleh Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, (Jakarta: Ghalia Indonesia).
- [15] Muslim Ibrahim, *Implementasi Syariat Islam dan Kearifan Lokal di Aceh*, Makalah disampaikan pada acara: Seminar Islam Internasional Samudera Pasai Islamic Centre, Kota Lhokseumawe, pada tanggal 16-17 Maret 2013.Drs. Tgk.H. Asnawi Abdullah, M.Ag, Ketua Majelis Permusyawaratan Ulama Kota Lhokseumawe, *Wawancara*, Tanggal 2 Mei 2011.
- [16] Saifuddin Zuhri, Lc.,M.Ag, Dosen Sekolah Tinggi Agama Islam Malikussaleh, *Wawancara*, Tanggal 8 Juli 2011.
- [17] Satjipto Rahardjo, *Hukum dan Masyarakat*, (Bandung: PT.Angkasa, 1980).
- [18] Satjipto Rahardjo, *Pemanfaatan Ilmu Sosial Bagi Pembangunan Ilmu Hukum*, (Bandung: Alumni, 1977).
- [19] Soerjono Soekanto dan Soleman B. Taneko, *Hukum Adat Indonesia*, (Jakarta: Rajawali, 1986).
- [20] Soerjono Soekanto. *Faktor-faktor yang Mempengaruhi Penegak Hukum*. (Jakarta: Rajawali,1999).