

## **THE LEGAL IMPLEMENTATION ON BUYING AND SELLING IN ACEH (Research in Lhokseumawe)**

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**Abstract:** *The concept of Islamic law, customary law, and civil law in Aceh in sales agreement is still being used. The process of ijab and qabul have been practiced by the people of Aceh in the belief that the concept of buying and selling is legal under both state law and religious law. In fact, even though the people of Aceh are Muslim in majority and enriched with culture, however in buying and selling land and houses, they are still combining the three concepts of law. The concept of Islamic law and customary law in accordance with the particular form of autonomy granted in the field of religion and custom, the opportunity to bring forth regulations like Qanun, which regulates in the field of mua'malah (financial transaction) widely practiced amongst the people of Aceh. Value system contained in the concept of Islamic law and customary law got a great chance to create regulation in form of Qanun by the Provincial Government, district and city within the jurisdiction of the Aceh province. The formation of Qanun must combine the three legal concepts that have been living in Acehnese society, namely Islamic law, customary law, and civil law.*

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### **I. Introduction**

Social system in a society is formed by interrelation and interaction between individual. Community is a social system, which has certain level of freedom in accomplishing its needs. The absolute level of freedom is impossible to accomplish because it is against the fundamental nature as one sub-system connected to the environment. The freedom is indicated by the stability of exchange relationship with the environment and the capability to control the exchange itself, in order to accomplish the needs of society.<sup>4</sup>

In Aceh society, the concept of buying and selling agreement is conducted under Islamic law, customary law, and civil law. The three legal concepts are applied, either at the same time or at the way around, depends on the necessity.

This study is aimed to look at the important of law implementation concept on buying and selling in Aceh. Analytical study was executed concerning Aceh society's legal culture on buying and selling transaction of land and houses in Lhokseumawe, which still applies the concept of Islamic law, customary law, and (western) civil law. This is qualitative research, which is meant to shape, enrich and develop the data. The sample is determined purposively, where in Lhokseumawe be represented by four villages in two districts, and in Central Aceh be represented by two villages in one district. The process of collecting data was conducted through in-depth interview with data sources in non-structural interview. The amount of buying and selling transactions in those two regencies from 2006-2010 are 502 transactions. The sample cases are 100 cases, which 50 cases applying Islamic and customary law, and 50 cases applying (western) civil law.

### **Concept on Implementation of Islamic law and Customary Law on Buying and Selling Agreement in Aceh**

Talcott Parsons made up a theory of society framework comprehensively, which composed from individual action with wide relationship, happens in society. According to Talcott Parsons theory, action is not seen as biological behavior but social behavior. Individual behavior most of the time gets space in a social relationship, which means that behavior is a structural action. So, this individual action always gets into the social system framework, which divided into sub-systems.<sup>5</sup> Social system widely comprises of individual action on cultural, social, private, and behavior organism sub-systems.<sup>6</sup> Some actions create trusted relationship from other subsystems, such as accomplishment of property needs that achieved from buying and selling transaction, specifically land and houses.

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<sup>5</sup> *supra*.

<sup>6</sup> *supra* p. 69.

Proprietary sale transactions and other buying and selling transactions are the needs of life in society, which develop constantly. Society is a system that composed by a group of common principles, which are inter-related by the members of the group in a process of socialization. An individual learns through this process how to act and behave in accordance with social environment norms, how to act and give reaction to the rules and demanded value in his environment, and all of those things are parts of mental building process.<sup>7</sup>

This research is limited to buying and selling transactions, which land and houses are the object of transactions. This limitation is aimed to see the common behavior of people in Lhokseumawe and Central Aceh, whether they apply Islamic law principles or not, such as *ijab*, *qabul*, and the preference rights of neighbors to get the offer. Land and houses are highly price objects, so the *ijab and qabul* (offer) and *Qabul* (acceptance) should be applied in the transactions and thus bring into effect relations between the seller and the buyer, called by *akad* (agreement or contract). The validity of *akad* is determined by the existence of *rukun* (essential principles) and prerequisites of Islamic law. According to Islamic law, *ijab* and *Qabul* are the essential principles of buying and selling transaction.

The main essential principles in sales agreement according to Imam Hanafi are *ijab* and *Qabul*. *Ijab* and *Qabul* are the expression or the pronouncement of proprietary rights transfer on the one hand and the acceptance on the other hand. The existence of *ijab* and *Qabul* in a transaction indicates that the parties agree to make a deal. They could express their agreement in other ways, such as nodding of head or signing a document. For example, the transaction in supermarket, the buyer has given the money and the seller, through the counter staff, has given the the receipt, then the transaction is valid.

The scholars of Islam agree to exclude the obligation of *ijab* and *qabul* to less valued object of transactions, such as buying a pack of cigarettes. The agreement is considered valid if the buyer has given the money and the seller has given the cigarettes. This kind of transaction is called *mu'atah*. The other example of *mu'atah* transaction is buying a bottle of soft drink from a vending machine. The transaction is valid if the buyer has inserted the money into machine and machine has brought out the bottle with appropriate taste or kind.<sup>8</sup>

According to Islamic scholars (*ulama'*), essential principles of buying and selling are *muaqidain* (the buyer and the seller), *sigat* (pronunciation of *ijab* and *Qabul*), the object of transaction, and *Tsaman* (price).

Consistent with *ulama's* opinion, the pre-requirements to be a buyer or a seller are: *firstly*, reasonable and mature person, thus a transaction executed by underage person or crazy person is not legitimate. Imam Hanafi said that if the transaction is beneficial to underage or crazy person, such as *hibah* (grant), *wasiat* (legacy), and *sedekah* (alms), then the transaction is legitimate. However, if the transaction causes a financial loss to them, then the transaction is illegitimate. *Secondly*, the buyer is absolutely different to the seller, which means that a person can not be the buyer and the seller at the same time. *Thirdly*, *mukhtar* which means a party is not under pressure or compulsion of other party.

Regarding the pre-requirement of *ijab* and *Qabul*, the scholars have the same opinion that the main principle in buying and selling transaction is the consent of both parties. The consent of the parties could be perceived when the transaction takes place. *Ijab* and *qabul* should be express clearly on the transaction, which bind both parties, such as buying and selling transaction or renting transaction. If *ijab* and *qabul* have been pronounced on buying and selling transaction, accordingly the owner of goods and money has been transferred.

Based on Hanafi's opinion, the pre-requisites of *ijab* and *qabul* are: *first*, *ijab* and *qabul* are stated by reasonable (*aqil*) and mature (*baligh*) person. *Second*, *ijab* and *qabul* have to be relevant. i.e. the seller says, "I sell this computer for one hundred dollars." Then the buyer answers, "I buy this computer for one hundred dollars." *Third*, *ijab* and *qabul* have to be executed in the same forum. This means that both parties are attending and discussing the same object of transaction<sup>9</sup>. And last, between *ijab* and *qabul* should be prolonged. This implies that there should be a match between *ijab* and *qabul*, both *Mujib* (person who says *ijab*) and *Qabil* (person who says *qabul*) did not show attitude or actions that indicate rejection.

When sellers say *ijab* (the final offer), then the buyer went before saying *qabul* (acceptance) or buyers holding other activities that are not related to the purchase, and then he articulated *qabul*, then according to the *ulamas*, the transaction is not valid, even if they be of the same opinion, that *ijab* does not have to be answered directly with *qabul*. Scholars Shafi'i and Hambali thought, that the distance between *ijab* and *qabul* is not too long, because it can lead to misgiving that the object of buying and selling has been changed. Whereas the Hanafi and Maliki's thought has a different view, that *ijab* and *qabul* may be granted in between the time, with the belief that the buyer has the opportunity to think about the transaction.

<sup>7</sup> Adam Podgorecki & Cristopher J. Whelen (ed), *Pendekatan Sosiologi Terhadap Hukum*, (Jakarta: PT. Bina Aksara, 1987), p. 112.

<sup>8</sup> Amir Syarifuddin, *Garis-Garis Besar Fiqih*, p. 195.

<sup>9</sup> Syamsul Anwar, *Hukum Perjanjian Syariah Studi Tentang Teori Akad Dalam Fikih Muamalat*, (Jakarta: PT. Raja Grafindo Persada, 2007), pp.96-97.

Most scholars such as Hanafiyah, Malikiyah and Hambali claimed that there are two forms of sale and purchase agreement, the words and deeds.<sup>10</sup> Kind of words such as seller says, "I sell this stuff to you", and the buyer receives by, "I bought this item from you or I received". While the form of action known as "*mu'athah*". The act is like the buyers put the money and sellers hand over the goods. *Mu'athah* transaction is commonly found in market transactions, supermarkets, and shopping malls. *Mu'athah* transaction can be in three forms:<sup>11</sup>

1. The seller says, "I sell", and the buyer just takes the stuff and gives the money.
2. The buyer says, "I buy", and the seller gives the stuff and accepts the money.
3. The buyer and the seller do not say anything, the buyer just gives the money and the seller only hands over the goods.

Syafi'iyah scholars prohibit action in *ijab* and *qabul*. They reasoned that the deed did not indicate any *'iwadh* or reciprocal. This *mu'athah* transaction is not valid according to Syafi'iyah scholars. Strongest opinion in this case is that *ijab* and *qabul* by action are permissible and lawful on the grounds: *Firstly*, God allows buying and selling transaction and does not limit it to a particular form of contract. Allah *Ta'ala* says, "And Allah has permitted buying and selling and forbidden usury" (*Al-Baqarah*: 275). *Secondly*, based on *'urf* (custom) that the buyer receives the goods and the seller take the money, this is already showing the consent of both parties. If the words are considered as a willingness, then the act could be considered a willingness as well. Allah *Ta'ala* says, "O ye who believe, do not each of you take your neighbor's property by way of vanity, except with the commerce that goes with the same consent (another blessing) among you" (*An-Nisa*': 29). (See *An Niyat*, 2: 59-60). So that buying and selling in the market, supermarkets, and shopping malls without saying anything, the consent is sufficient by the seller delivers and the buyer hands over the money. This transaction is considered valid.

Concerning the principles and pre-requirements of buying and selling, the *ulamas* have different opinions. According to Hanafiyah, the principles of buying and selling are *ijab* and *qabul*, which show the exchange of goods willingly, both with words and deeds.<sup>12</sup>

According to majority of *ulamas*, the essential principles of buying and selling are four, namely:<sup>13</sup>

- a. *Aqid* (seller and buyer)
- b. *Sighat* (*ijab* and *qabul*)
- c. The goods
- d. The exchanged value of goods

From these four principles, some pre-requirements have to be fulfilled to make the transaction valid based on Islamic law.

1. The requirements relating to the subjects of transaction, the buyers and the sellers, those are:<sup>14</sup>
  - a. Intelligent or rational and can distinguish (choose) what is best for him and if one party is lack of rational then the buying and selling transaction is unlawful.
  - b. Adult, adult in Islamic law is if turning 15 years old, or have shag dreamed (for boys) and have menstruation (for girls).
  - c. Persons that make a contract is a different person, means a person can not act in the same time as a seller as well as a buyer.<sup>15</sup>
  - d. Both parties are competent in doing transaction, whose *mukhallaf* and *Rashid* (has capability in financial management)
  - e. Both parties have to be willingful in making transaction, without any pressure.
2. Requirements relating to *sighat* (*ijab* and *qabul*). *Sighat* as a symbol of a willingness in buying and selling activities between the seller and the buyer. This determines whether a transaction is legitimate or not.<sup>16</sup> The fiqh scholars argued that the requirements of *ijab* and *qabul* are as follows:
  - a. *Qabul* should be relevant to *ijab*. For instance, the seller says, "I sell this stuff for 100 dollars," then the buyer answers, "I buy this stuff for 100 dollars."
  - b. Do not intervene by other words, between *ijab* and *qabul*.<sup>17</sup>

<sup>10</sup> Muhammad Abduh, *Aturan Jual Beli, Jual Beli Tanpa Ucapan*, <http://hukumonline.com>, di akses tanggal 13 Februari 2014

<sup>11</sup> *Supra*.

<sup>12</sup> Ibnu 'Abidin, *Radd al-Mukhtar 'ala ad-Durr al-Mukhtar*, juz IV (Beirut: Dar al-Fikr, t.t), p.5.

<sup>13</sup> Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuh*, jilid V, 8<sup>th</sup> Ed. (Damaskus: Dar al-Fikr al-Mu'ashir, 2005), 3309

<sup>14</sup> Chairuman Pasaribu, et al, *Hukum Perjanjian dalam Islam* (Jakarta: Sinar Grafika Offset, 2004), p. 33.

<sup>15</sup> Nasrun Haroen, *supra*, p. 116.

<sup>16</sup> Hendi Suhendi, *Fiqh Muamalah* (Jakarta: PT Raja Grafindo Persada, 2002), p. 71.

<sup>17</sup> Nasrun Haroen, *supra.*, *Fiqh Muamalah*, p.116

- c. *Ijab* and *qabul* are done in one forum. This means that both parties be presented at that time and discussing the same object of transaction.
- d. It is not attached (*taqli*) by any other things.
- e. *Ijab* and *qabul* can not be limited by the time, for example, "I sell this stuff for one year."
3. Requirements relating to *ma'qud 'alaih* or selling objects, the terms are:
  - a. Object of transaction (either in form of goods or in the price) is a pure and useful goods, not profane goods or forbidden goods, because goods that are forbidden in material (*haram*) are prohibited to be traded.
  - b. Object of transaction is a full ownership of the seller. a person can not sell other's goods unless he gets permission from the owner of the goods.
  - c. Object can be handed over. It is not legally sell the birds that fly in the sky, or other things that cannot be handed over.
  - d. Object of sale and the amount of payment is known clearly by both parties.
  - e. Moreover, one must not conceal defects or disgrace of buying and selling goods.<sup>18</sup>

The elements of Islamic law serve as legal guidance on proprietary buying and selling transactions. This is a potential legal culture of Acehnese society in the field of *muamalah* (financial transaction) that must be maintained, which supports the implementation of Islamic law in all aspects (*kaffah*). It is regulated by Act Number 11 of 2006 on the Governance of Aceh, Law Number 44 of 1999 on Implementation of Privileges on Aceh Special Region, and Aceh Provincial Regulation Number 5 of 2000 on the Implementation of Islamic Shariah. Aceh Provincial Regulation Number 5 of 2000 on the Implementation of Islamic Law, in Article 5, paragraph (1) and paragraph (2) states:

- (1) to realize the privileges of Aceh in the field of religious activities, each person or legal entity who lives in the area, shall uphold the implementation of Islamic law in his life;
- (2) Implementation of Islamic law as referred to in paragraph (1) shall include:
  - a. *aqidah*;
  - b. worship;
  - c. *mu'amalah*;
  - d. morals;
  - e. Education and Islamic missionary endeavor/*Amar ma'ruf nahi munkar*;
  - f. treasury;
  - g. community;
  - h. Symbols of Islam;
  - i. Defense of Islam;
  - j. *Qadha*;
  - k. *Jinayah*;
  - l. *Munakahat*;
  - m. *Mawaris*.

Proprietary transaction on land and houses that hold elements of Islamic law made by Acehnese in Lhokseumawe and Central Aceh District. In addition, the transaction also recognized the existence of the elements of customary law as the enriched legal culture in Aceh. Law that grows and thrives in a particular region is the result of the interaction process. This law is intended to regulate people's lives in order to achieve peace and tranquility. This law is based on social value, cultural aspects, and social structures. In examples is customary law which is the law that is formed by the social values of a particular society.<sup>19</sup>

Imam Soetiknyo explained about property rights under customary law as follows: according to customary law, the ownership of land is acknowledged as long as the site of the land is known and recognized by the public legitimacy, in spite of that the land has no proof of ownership and is not registered anywhere. Even though according to Article II paragraph (1) Conversion Provisions, such rights are supposed to be converted into the proprietary rights of Article 20 paragraph (1), but this still has not been implemented in many areas.<sup>20</sup>

In customary law, "Buying and selling land" is not a legal called "obligatoir agreement". Buying and selling land in customary law is a legal act of rights transfer with cash payment, which means that a mutually agreed price is paid in full at time of transaction. In customary law, there is no definition of legal deliverance as the fulfillment of seller legal obligation, because the so-called "land transfer" means the transfer of rights to the land that was sold to buyer who's at the same time pay the full agreed price to the seller.<sup>21</sup> Based on the system and procedure for the buying and selling transaction under customary law can be concluded that the validity of a

<sup>18</sup> Abdul Rahman Gazali, et al, *Fiqh Muamalat* (Jakarta: Prenada Media Group, 2010), p. 77.

<sup>19</sup> Yusrizal, *Kapita Selekta Hukum Pidana dan Kriminologi*, (Jakarta: PT.Sofmedia, 2012), p. 207.

<sup>20</sup> Imam Soetiknyo, *Politik Agraria Nasional*, (Yogyakarta: Gajah Mada University Press, 1987) p. 67

<sup>21</sup> Boedi Harsono, *supra*. p. 29.

transaction is determined by the object of transactions (land and money), the consent of the parties (the seller and the buyer) and the presence of witnesses who witnessed the transaction.

System of buying and selling land in customary law adopts cash system, concrete, real and *terang* (transparent), which means every relationship should be obvious. This is because indigenous people are still very simple, so that the land sale transaction is legal binding if the transaction looks in a concrete way and tangible has happened. This is proved by the exchange between the seller and the buyer, whereas the seller hands over the land and at the same time the buyer pay the money in cash.

In relation to the above condition, Imam Soetiknyo gives the meaning of "*terang* (transparent)" which explains that the transfer of land according to customary law, should be supported (*medewerking*) by the chief of ethnic group or legal society or village, so that the action is transparent and the validity (*rechtsgeldigheid*) of the transaction will be guaranteed by the chief. In addition, the chief also must ensure that the rights of heirs, the neighbors (*buren recht*) and fellow tribal rights are not violated when the owner of customary rights would sell the land.<sup>22</sup>

Furthermore, J Kartini Soedjindro proposed that if the owner wants to sale the customary rights land, the conditions that must be met are:

- a. Must have the approval of the heirs if the heirs relationship is still strong. This is to give opportunity to the heirs if they want to buy the land for ever, for a season or for a certain time.
- b. The rights of neighbors (*buren recht*) and fellow members of the tribe/ indigenous people (*naasting recht*) must be considered as well. If the above legal action will be held, then the neighbor whose land borders should be given priority to purchase the land. If potential buyer is not a member of the tribe/community/village, then the members of the tribe/community/village must be given the first opportunity to purchase the land.
- c. If no one of the heirs, neighbors, or fellow members of the tribe wants to buy, then it is possible for non-members clan/community/village to buy the land. This chief has to make a decision on that and act out representing tribe/community/village to confer permission to non-members. However, they have to pay land tax regularly and money to the witnesses.<sup>23</sup>

Provisions of the above transaction will not be done without the support of the village apparatus, in this case *keuchik* (the chief) and other apparatuses. If the transaction was made without their supports, then the transaction is considered as not bright, not valid and could not be applied to third parties. In Aceh province, including Lhokseumawe and Central Aceh district, community group that is qualified as legal customary group or indigenous people is *mukim*. *Mukim* is the unity of indigenous people in Aceh province, which consists of several villages. In this community group called *masyarakat hukum adat* (the indigenous people), every member feels there is a bond and behave and act as a single entity. It is embedded in their lives. This opinion can be accepted by almost everyone, because it is the nature of humans to always live in groups, whether because of the genealogical or territorial or both. To maintain the life of the group there are rules even though it is very simple. There is a leader, in this case *keuchik* as village leader and there is definitely wealth of the group, both materially and immaterially.<sup>24</sup>

### The Conception of Western Civil Law on Buying and Selling Agreement in Aceh

The community of Lhokseumawe district know that for legal certainty to the proprietary transaction they must have official document (the deed of sale), as set forth in the provisions of Article 37 paragraph (1) of Government Regulation No. 24 of 1997 on Land Registration. This article mentions that any rights transition of the land through sale, grant, revenue in the company and any other legal action, can only be registered if it can be proved by a deed made by the Land Deed Making Officials, known as *Pejabat Pembuat Akta Tanah* (PPAT). "In the Basic Agrarian Law Act (BAL/UUPA) also specifies that each transition, abolishment, and the assignment with other rights shall be registered in accordance with the provisions of Article 19 paragraph (1) BAL, which is strong evidence regarding the abolishment of property rights and the legitimacy of the transition and the imposition of the rights of consumers.<sup>25</sup>

In buying and selling agreement must be made legally delivery, handover, transfer, or *levering*. In civil law there is an assortment of objects, so it is adjusted the various objects by way of delivery. In the western civil law, there are three different ways that the delivery is often carried out by the parties:

<sup>22</sup> *supra*, p. 61.

<sup>23</sup> J.Kartini Soedjindro, *Perjanjian Peralihan Hak atas Tanah yang Berpotensi Konflik*, (Yogyakarta: Kanisius, 2001) p. 50

<sup>24</sup> Dahlan, *Hak Masyarakat Hukum Adat Atas Tanah di Provinsi Daerah Istimewa Aceh*, (Banda Aceh: Kanun Jurnal Ilmu Hukum, No.28/X/ April, 2001), p. 5.

<sup>25</sup> Budi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan UUPA, isi dan Pelaksanaannya*, (Jakarta: Djambatan, 1982), p. 117

1. Delivery of goods (tangible and movable objects) is done with an actual submission or transfer of authority over the goods. This is in accordance with the provisions contained in Article 612 Civil Code.
2. After the enactment of the BAL, the delivery of immovable objects, in terms of land, is made by the deed of sale and adapted to Government Regulation No. 24 of 1997 on Land Registration.
3. Submission of claim is done by making a deed that notified to the debtor, in this case called cession deed, contained in Article 613 Civil Code.

Buying and selling agreement can be termed as a consensual agreement that means the transaction has been going on between the two sides when they have reached agreement on goods and prices, even though the goods have not been delivered and the price has not been paid, yet. One of the most important characteristics of the buying and selling according to the civil law system is obligatory transaction, which means that the buying and selling transaction have not transferred the rights and obligations yet, but only laid the rights and obligations on both sides.

## II. Conclusion

In case of land and houses sales transaction in Lhokseumawe district, the rule of law governing the transaction generally still relies on the three legal systems, Islamic law, customary law and Western civil law. The implementation of Islamic law and customary law as elements in the transaction is still alive amongst the people. It could be seen in case of transaction among the Acehnese people and between the Acehnese people with the outsider. They still practice *ijab* and *qabul* as elements of Islamic law. In addition, they also consider the elements of customary law. Buying and selling of land based on customary law, in which the owner of the land as the seller handed over the land areas to other as a buyer forever with the payment of a sum of money in cash or by installments, which are known *jual lepas* (to sell off). In the past, most of *jual lepas* was applied under unofficial writing documents, with or without the testimony of the village apparatus. But now it needs approval from the chief of the group/tribe/village. The transaction should be real, transparent, and cash.

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