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**Conception of Implementing the Law of Selling in Aceh  
(Research Study in Lhokseumawe City and Central Aceh)**

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# **Conception of Implementing the Law of Selling In Aceh (Research Study in Lhokseumawe City and Central Aceh)**

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## **Abstract**

The use of concepts of Islamic law, customary law and civil law in Aceh in sale and purchase agreements is still used. The process of consent and consent is carried out by the people of Aceh with the belief that the concept of buying and selling is legal under state law as well as legal under religious law. In reality on the ground the people of Aceh are predominantly Muslim and rich in culture, but in buying and selling transactions of land and house objects they still combine these three legal concepts. The concept of Islamic law and customary law is in accordance with the form of autonomy given especially in the field of religion and custom, so the opportunity to produce legal products such as Qanuns that regulate mua'malah is widely practiced in the midst of Acehnese society. The value system embodied in the concepts of Islamic law and customary law has a great opportunity to produce legal products in the form of Qanuns by the provincial, district and city governments within the jurisdiction of the province of Aceh. The formation of qanuns in the field of buying and selling must also be colored by the three legal concepts that already exist in Acehnese society. So the formation of Qanun accommodates all legal concepts that live in Aceh both Islamic law, customary law and civil law.

## **Keywords**

Concept of implementing the law, Selling in Aceh.

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## **1. Introduction**

In a society, the social system is formed from the interrelationships and interactions carried out by individuals. Society is a social system that has a certain level of freedom in meeting its needs. Absolute degree of freedom is impossible to achieve, because it is contrary to its nature as a sub-system related to its environment. The freedom referred to is marked by existence stability regarding the exchange relationship with its environment and the ability to control the exchange, to meet the needs of the community itself (Ronny Hanitiyo Soemitro 1982).

In Acehnese society, the concept of a sale and purchase agreement applies to Islamic law, customary law and civil law, so that in practice these three concepts are carried out either simultaneously or separately according to their needs. This study looks at how important the concept of implementing the sale and purchase law in Aceh is. An analytical study was conducted on the legal culture of the people of Aceh in Lhokseumawe City and the People of Central Aceh District, in buying and selling transactions of land and house objects, which still use the concepts of Islamic law, customary law and western civil law. Then the concepts of the three legal systems are still used by the community in buying and selling transactions of land

and house objects. This study uses a qualitative methodology. Qualitative analysis is used in this study with the aim of sharpening, enriching and developing the qualitative data itself.

Sampling was determined by purposive sampling in which Lhokseumawe City was represented by four villages in two sub-districts, while Central Aceh District was represented by one sub-district and two villages. The data collection process was carried out by conducting in-depth interviews with informants and respondents. This interview was conducted in an unstructured manner. The number of sale and purchase transactions in the two areas from 2018 to 2021 amounted to 502 sale and purchase transactions. The number of cases used as a sample was 100 buying and selling transactions, with details of 50 transactions using the concepts of Islamic law and customary law and 50 transactions using the concept of Western civil law.

## **2. Methodology**

This article is written based on the legal method where we use a qualitative approach. Our data is based on the responses given by many experts in showing their reactions to the emergence of various contemporary laws and regulations and comparing them with the history of the system of government and the application of applicable laws in the past (Budi Harianto 2016). We collect some opinions from legal experts and Islamic experts in other fields of science, diligently and thoroughly, and then we match them with legal trends in society (Rahman, A Survey of Modernization of Muslim Family Law 1980). We also use the in-depth observation method to see the legal phenomenon in Acehese society where many failures to apply Islamic law in Aceh are discussed by many groups. We have gathered responses from various mass media as well as views on various social media to see the problem of the position of the ulama which has been systematically and tragically marginalized.

## **3. Discussion**

### **3.1 The Conception Of The Implementation Of Islamic And Custom Law In The Purchase Agreements In Aceh**

The social system is formed from the interrelation and interaction carried out by individuals. Society is a social system that has a certain level of freedom in meeting its needs. Absolute degree of freedom is impossible to achieve, because it is contrary to its nature as a sub-system related to its environment. This freedom is characterized by stability regarding the exchange relationship with its environment and the ability to control the exchange to meet the needs of the community itself (Ronny Hanitiyo Soemitro 1982).

Talcott Parsons tried to compile a theory regarding the overall framework of society which starts from the actions of individuals with all their broad connections that occur in society. According to Talcott Parsons' theory, action is not seen as biological behavior but as behavior that has social meaning. Individual behavior can always be given a place in a particular social relationship, so this means that the behavior is a structured action. So that individual action always gets a place within the framework of a social system which is divided into subsystems (Ronny Hanitiyo Soemitro 1982).

Therefore, according to Talcott Parsons, the broad social system includes the subsystem of individual actions in the cultural field, the subsystem of individual actions in the social field, the subsystem of individual actions in the field of personality, and the subsystem of individual actions in behavioral organisms (Ronny Hanitiyo Soemitro 1982). In relation to Talcott Parsons' opinion related to a number of actions that give birth to trust relationships from various subsystems, including

the subsystem of fulfilling various ownership needs obtained through buying and selling transactions such as land and houses.

Buying and selling transactions of land and house objects, as well as buying and selling transactions of other objects which are also carried out by the community, is a necessity of life in a society that is always developing. Society is a system built on a set of common values that are interrelated by its members in a process of socialization. Through this socialization process, an individual learns about how he must act in accordance with the norms that apply in his social environment, how he must provide action and reaction to the rules and values that apply in his environment, all of that is part of mental formation process (Adam Podgorecki dan Cristop J. Whelen (ed) 1987).

As for the sale and purchase transactions to be examined in this study, they are only limited to land and house objects. The object limitation is to see in the sale and purchase transaction carried out by the people of Lhokseumawe City and Central Aceh District, who still use elements of Islamic law such as consent and consent and other elements such as when you want to sell land and house objects, especially must be notified in advance to the neighbors, which consist of neighbors in front, back, right and left. Because the two objects are in the category of high nominal value, there should be an agreement and consent in the implementation of a sale and purchase transaction, causing a binding legal relationship between the seller and the buyer which is called a contract. If a sale and purchase transaction is carried out for land and house objects, what must be considered for the validity of a contract is the existence of pillars and conditions as elements in the contract. Islamic law agreement. One of the elements in the sale and purchase contract according to Islamic law is consent and qabul.

According to Imam Hanafi, the main pillars in the buying and selling contract (agreement) are consent and qabul, namely expressions or statements of surrendering property rights on one side and expressions or statements of acceptance on the other. The existence of consent and qabul in this transaction is an indication of the mutual consent of the parties conducting the transaction. Ijab and qabul are one form of a convincing indication of the existence of consensual feelings. If at this time other ways are found that can be placed as indications such as nodding to each other or signing a document to each other, then that has fulfilled the elements of a transaction. For example, in a sale and purchase transaction at a supermarket, the buyer has handed over the money and the seller, through the clerk at the counter, has provided a receipt, then the sale and purchase is valid.

The scholars agreed to exclude the obligation of consent and qabul for objects of sale and purchase of small value which usually occur in fulfilling daily life, such as buying and selling a pack of cigarettes. For this purpose it is considered, if the seller has shown his goods and the buyer has shown his money. This method is called mu'atah. For example, buying a can of fresh drink in an automatic machine where the buyer has entered the coins provided and the seller through the machine has handed out a can of fresh drink according to what was ordered.

According to the jumhur ulama, the pillars of buying and selling are: muaqidain (seller and buyer), sigat (pronunciation of consent and qabul), there are goods being traded, and Tsaman (price) (Amir Syarifuddin n.d.).

1. Requirements for people who are in contract, fiqh scholars agree that the person who enters into a sale and purchase agreement must meet the requirements;
  - a. Reasonable and baliqh. Thus, buying and selling carried out by young children and crazy people who have not reached the age of maturity is not legal. According to Imam Hanafi, if the contract he makes brings benefits to him, such as receiving grants, wills, and alms, then

the contract is valid. If the contract brings losses to himself, such as lending property to other people, donating or granting it is not justified according to law. According to the majority of scholars, the person who enters into a sale and purchase contract must be akil, mature and reasonable. If the person having the contract is still mumayyiz, then the sale and purchase contract is not valid, even if he gets permission from his guardian.

- b. The person who made the contract is a different person, that is, one cannot act as buyer and seller at the same time.
  - c. Mukhtar, meaning not under pressure and coercion by other parties.
2. The fiqh scholars agree that the main thing in buying and selling is the willingness of both parties. This willingness can be seen at the time the contract took place. Ijab and qabul must be clearly stated in transactions that are binding on both parties, such as sale and purchase contracts and leasing contracts. If the consent and qabul have been said in the sale and purchase contract, then the ownership of goods and money has changed hands. Ijab and qabul in a sale and purchase contract are one of the elements of Islamic law that must be carried out in a sale and purchase transaction.

Fiqh scholars state that the conditions for consent and consent are;

- a. The person who pronounces it has reached puberty and has reason (jumhur ulama) or has reason (ulama of the Hanafi school of thought).
- b. Accept according to consent. For example "I sold this computer for one million", then the buyer replied; "I bought this computer for one million".
- c. Ijab and qabul are done in one assembly. This means that both the seller and the buyer who entered into the sale and purchase agreement were present and discussed the same problem.
- d. Between consent and acceptance continued. That is, there is compatibility between consent and qabul, both mujib and qabil do not show attitudes or actions that show rejection.

If the seller says consent, then the buyer moves before saying kabul or the buyer carries out other activities that have nothing to do with the sale and purchase, then he says consent, then according to the agreement of the fiqh scholars the sale and purchase is not valid, even if they are of the opinion that consent does not have to be answered immediately accepted. Scholars of the Shafi'i school and the Hanbali school of thought, that the distance between consent and qabul is not too long, because it can lead to suspicions that the object of the sale and purchase discussion has changed, while according to the Hanafi school of thought and the Maliki school of thought have another view, that consent and qabul are permissible. intermediary by time, with the assumption that the buyer has the opportunity to think.

Some scholars, namely Hanafiyah, Malikiyah and Hambali stated that there are two forms of sale and purchase contracts, namely words and deeds (Muhammad Abduh n.d.). Forms of speech such as the words of the seller "I sell this item to you", and the buyer accepts by saying "I bought this item from you or I received it". While the form of action is known as "mu'athah". The form is like the buyer simply puts in money and the seller hands over the goods.

Mu'athah transactions are commonly found in transactions in markets, supermarkets and malls.

Mu'athah transactions can be in three forms (Muhammad Abduh n.d.):

1. The seller says "I'm selling", and the buyer just takes the item and hands over the money.
2. The buyer says "I bought", and the seller hands over the goods and receives the money.
3. The seller and the buyer don't say anything, the buyer just hands over the money and the seller hands over the goods.

Syafi'iyah scholars prohibit the form of action in consent and qabul. They reasoned that actions do not show any 'iwadh or reciprocity. So that this kind of mu'athah sale and purchase according to Syafi'iyah scholars is not valid. The strongest opinion in this case is that consent and consent is permissible and legal with actions for the following reasons: First, Allah allows buying and selling and does not limit it to certain forms of contracts. Allah Ta'ala says, "Even though Allah has justified buying and selling and forbidding usury" (QS. Al Baqarah: 275). Second, according to 'urf (custom) with the buyer receiving goods and the seller taking money, then that already shows the pleasure of both. If words are considered ridha, then actions can be considered as well. Allah Ta'ala says, "O you who believe, do not eat each other's wealth in a vanity way, except by way of trade that applies mutually to each other (mutual pleasure) between you" (QS. An Nisa' : 29). (See An Niyat, 2: 59-60). So regarding buying and selling that takes place in markets, supermarkets and malls without any words, it is enough to be pleased with each other with the seller handing over the goods and the buyer handing over the money, then that is considered valid.

Regarding the pillars and conditions of buying and selling, the scholars differed. According to Hanafiyah scholars, the pillars of buying and selling are consent and qabul. shows the exchange of goods in good faith, both by word and deed (Ibnu 'Abidin n.d.).

According to jumhur ulama, there are four pillars of buying and selling, viz (Wahbah alZuhaili 2005).

- a. Aqid (seller and buyer)
- b. Sighat (consent and consent)
- c. Purchased items
- d. Goods replacement exchange rate.

Of the four pillars, according to the majority of scholars, there are several conditions that must be met so that the sale and purchase carried out is valid according to syara'.

1. Requirements relating to the perpetrators of buying and selling practices, both sellers nor the buyer, ie (Chairuman Pasaribu 2004).
  - a. Reasonable, and able to distinguish (choose) which one is best for him and if one is not intelligent then the buying and selling that is done is not valid.
  - b. Balig or adult, adult in Islamic law is when you are 15 years old, or have had a dream (for boys) and have menstruated (for girls).
  - c. The person doing the contract is a different person, meaning that someone cannot act at the same time as both seller and buyer.
  - d. Both parties are competent in carrying out buying and selling practices, namely he is a mulatto and rasyid (has the ability to manage money).
  - e. Both parties should buy and sell willingly and voluntarily, without any coercion.
2. Requirements related to sighat (consent and consent). Sighat as a symbol of a willingness in buying and selling activities between sellers and buyers so that making a sale and purchase is legal or not (Hendi Suhendi 2002). The fiqh scholars argue that the terms of consent and acceptance are as follows:
  - a. Qabul must also be in accordance with the consent. For example, the seller says "I am selling this object for Rp. 15,000" then the buyer answers "I bought it for Rp. 15,000".
  - b. Do not be interspersed with other words between consent and qabul.
  - c. Ijab and qabul are done in one majlis. This means that both parties who enter into the sale and purchase contract are present and discuss the same topic.
  - d. Not dita'likkan that is associated or hung with other things.

- e. Ijab and qabul are not limited by time, for example I sell this item for one month (Abdul Rahman Gazali 2010).
3. Requirements related to ma'qud 'alaih or objects of goods being traded, the conditions are:
- a. The object of sale and purchase (whether in the form of the goods being sold or the price) is a holy and useful item, not unclean or haraam goods, because goods which are illegal in substance are forbidden to be traded.
  - b. The object of buying and selling is fully owned, a person can sell goods that do not belong to him if he gets permission from the owner of the goods.
  - c. The object of sale and purchase can be handed over, so it is not legal to sell birds that fly in the air and the like.
  - d. The object of sale and purchase and the amount of payment are clearly known by both parties. Elements of Islamic law, such as the existence of consent and consent in buying and selling transactions for land and house objects, are used as legal guidelines, are a legal cultural property of the Acehnese people in the field of muamalah which must be maintained as a form of support for the implementation of Islamic law in a kaffah manner in all matters. aspects based on the Special Law Number 11 of 2006 concerning the Government of Aceh, Law Number 44 of 1999 concerning the

Implementation of the Privileges of the Special Province of Aceh and Regional Regulation of the Province of the Special Region of Aceh Number 5 of 2000 concerning the Implementation of Islamic Sharia. Provincial Regulation of the Special Region of Aceh Number 5 of 2000 Concerning the Implementation of Islamic Sharia, in Article 5 paragraph (1) and paragraph (2) it states:

- 1) In order to realize the Privileges of Aceh in the field of organizing religious life, every person or legal entity domiciled in the region is obliged to uphold the implementation of Islamic law in his life;
- 2) (The implementation of Islamic law as referred to in paragraph (1) includes:
  - a. Aqidah;
  - b. Worship;
  - c. Mu'amalah;
  - d. Morals;
  - e. Islamic education and da'wah/amar ma'aruf nahi mungkar;
  - f. Treasury;
  - g. Community;
  - h. Islamic Broadcasting;
  - i. Defense of Islam;
  - j. qada;
  - k. Jinayat;
  - l. Munakahat;
  - m. Mawaris.

Sale and purchase transactions of land and house objects that contain elements of Islamic law, are carried out by the people of Aceh in Lhokseumawe City and Central Aceh District. In addition, in buying and selling transactions, elements of customary law are known as the legal cultural wealth of the Acehnese people. Laws that grow and develop in a certain area are the result of a process of community interaction. This law is intended to regulate people's lives in order to achieve peace and tranquility. Furthermore, laws that grow and develop in a certain area are based on social values, cultural aspects and structural factors of society. An example of customary law is a law formed based on the social values of a particular society (Yusrizal 2012).

Regarding property rights according to customary law, Imam Soetiknyo explained as follows: Land owned according to custom is whatever the term is, without proof of ownership rights and not registered anywhere, but the community knows and recognizes the location of the land as valid. Even though according to Article II paragraph (1) of the Conversion Provisions, these rights have been converted into the property rights referred to in Article 20 paragraph (1), however this has not been widely implemented in the regions (Imam Soetiknyo 1987).

In customary law, "sale and purchase of land" is not a legal act which is what is called an "obligatory agreement". Sale and purchase of land in Customary law is a legal act of transferring rights with cash payments. That is, the mutually agreed price is paid in full at the time the sale and purchase in question is carried out. In customary law there is no sense of juridical surrender as the fulfillment of the seller's legal obligations, because what is called "land sale and purchase" is the transfer of land rights sold to the buyer who at the same time pays the seller in full for the price that has been mutually agreed upon. Based on the system and procedure for buying and selling according to customary law, it can be concluded that the legal conditions for a legal act of buying and selling land according to customary law are the existence of an object rather than buying and selling in the form of land and money (price), the existence of an agreement between the parties (seller and buyer). and there were witnesses who witnessed the legal act of buying and selling

The system of buying and selling land in customary law adheres to a cash, concrete, clear and real system, meaning that every relationship must be visible. This is because indigenous peoples are still very simple, so that in a land sale transaction it is only binding if the transaction is seen concretely and has actually occurred, namely evidenced by an exchange, in the form of handing over land as an object and at the same time handing over money in cash as payment.

In connection with the above, Imam Soetiknyo gave the meaning of "bright" which explained that the transfer of rights to land according to custom, must be with the support (medewerking) of the Head of the Tribe/Legal/Village Community so that the act is clear and legal (rechtsgeldigheid) borne by the Head of the Tribe, the community village law. Apart from that, the customary head must also guarantee that the rights of the heirs, neighbors (buren recht) and the rights of fellow tribesmen are not violated if the customary land rights are to be released or contract sold.

Regarding the above, J Kartini Soedjindro stated that if the legal action of buying and selling customary land is carried out, then the conditions that must be met are:

- a. There must be agreement from the heirs. If the relationship between the heirs is still strong, maybe they will buy the land forever, for one season or for a certain time.
- b. Neighboring rights (buren recht) and matters of fellow members of the tribe/customary law community (naasting recht) must also be considered. If the legal action mentioned above is to be carried out, except for the heirs, the neighbors whose land borders must be given priority to buy the land to be sold. And if the prospective buyer is not a member of the tribe/community/village, then the members of the tribe/community/village must first be given the opportunity to buy the land to be sold.
- c. If the heirs, neighbors or fellow tribesmen are not willing to buy, then it is possible for nontribal/community/village members to buy the land. For this, a village decision is required and based on that, the tribal/community/village head who acts out on behalf of the tribe/legal community/village to grant permission to non-members. But they have to pay land rent regularly and provide witness money (J. Kartini Soedjindro 2001).



The provisions of the above transactions will not be carried out without the support of the gampong apparatus, in this case the keuchik and other apparatus, if the legal action is carried out it is unclear, invalid and does not apply to third parties. In Aceh Province, including Lhokseumawe City and Central Aceh District, community groups that fulfill the requirements as customary law communities are mukim. Mukim is a customary law community unit in Aceh province which consists of several gampongs. In this legal alliance called the customary law community, each member feels a bond and behaves and acts as a unit, this is ingrained in their lives. This opinion can be accepted by almost everyone, because it already is The nature of humans to always live in groups, whether due to genealogical or territorial factors or both. To maintain group life there are rules even though they are very simple. There is a leader, in this case the keuchik as the village leader or the one who regulates it and of course there is material and immaterial wealth (Dahlan 2001).

### **3.2 Western Civil Law Implementation Conception In Aceh Purchase And Sale Agreements**

The people of Lhokseumawe City and Central Aceh District know that in order to have legal certainty regarding the sale and purchase transaction of land objects, there must be a sale and purchase deed, as stipulated in the provisions of Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, which states that every transfer land rights through buying and selling, grants, income in companies and other legal actions for transferring rights, can only be registered if it can be proven by a deed made by the Land Deed Making Officer (PPAT). "The UUPA also stipulates that every transfer, abolition and encumbrance with other rights must be registered according to the provisions of Article 19 paragraph (1) of the UUPA which is strong evidence regarding the abolition of property rights and the legality of the transfer and encumbrance of consumer rights from the community.

In the sale and purchase agreement, delivery or levering must be carried out legally. In civil law there are various kinds of objects, so that the types of objects are adjusted according to the way they are handed over. The form of surrender of objects known in western civil law in buying and selling transactions carried out by the parties is known as movable objects, immovable objects. moves and receivables on behalf of. There are three types of submission methods that are often carried out by the parties, namely:

1. The delivery of movable property is carried out by means of actual delivery or surrender of authority over the goods. This is in accordance with the provisions contained in Article 612 of the Civil Code.
2. The delivery of immovable property, in the case of land after the enactment of the UUPA, is carried out by making a sale and purchase deed with a PPAT deed, the implementation of which is adjusted to PP No. 24 of 1997 concerning land registration. The transition changed after changing the name of the land office.
3. Submission of receivables on behalf of, is carried out by making a deed which is notified to the debtor, in this case it is called a cession deed, contained in Article 613 of the Civil Code.

A sale and purchase agreement can be referred to as a consensual agreement, meaning that a sale and purchase has taken place between the two parties when they have reached an agreement on the goods and price, even though the goods have not been delivered or the price has not been paid. One of the important characteristics of buying and selling according to the system in civil law is buying and selling that is obligatory, meaning that buying and selling has not transferred property rights, he has

just given rights and placed obligations on both parties, namely giving the buyer the right to demand the surrender of ownership rights to goods sold.

**4. Concluding** In the case of buying and selling of land and house objects in Lhokseumawe City and Central Aceh District, the legal rules governing buying and selling in general still rely on the three legal systems such as Islamic law, customary law and civil law that are generally accepted in Indonesia. However, the use of the rules of Islamic law and customary law as elements in buying and selling transactions is still alive in the midst of society, this is proven if there is a buying and selling transaction between the Acehnese people and the Acehnese people, the Acehnese people and the migrant community there is a contract in the form of an agreement and consent. As elements in Islamic law, besides that, there are also elements of customary law. Land buying and selling transactions based on customary elements, in which the land owner as the seller surrenders his plot of land to another person as the buyer forever with payment of a sum of money in cash or in installments, is known as free sale. In the past, most of the offshore sales took place in private writing, with or without testimony from gampong officials. Where now freelance sales have to be with gampong devices. The nature of this freelance sale is clear and cash, meaning that it is clear that neighbors and relatives know it and make payments. Things like this are known in the people of Aceh as langgeh rights, meaning rights attached to neighbors, if you want to sell land objects and house objects, you must first notify the neighbors. In addition, there are other rights that still exist in the midst of society, such as rights in buying and selling transactions in the form of land objects and house objects, the knowledge of gampong officials must be known to maintain order and comfort in the gampong, if one day there is another motive attached to it. land objects and house objects in the future which will be the responsibility of the gampong apparatus to complete them.

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