THE CONVERGENCE OF ‘ÂDAT AND ISLAMIC LAW:
The Practice of Gala in Aceh

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Abstract: This article attempts to explain the position of the practice of gala in Acehnese society perspective in light of ‘âdat and Islamic law perspective. Theories of ‘âdat show that there are some pillars of gala that should be fulfilled; contract is done in front of chief of village and other village figures additional witnesses. Soon after the debt payment, murtahin (mortgager) must return the mortgaged to râhin (mortgagee) as the local saying goes “ngui pulang utang bayeu” means after use, the goods returned, the debt must be paid. In addition, marhûn cannot be exploited by murtahin as it is solely as security of the debt. These requirements have drawn closer to the Islamic law especially Syâfi‘î’s school. Research showed that the practice of gala (mortgage) in Aceh has contradicted the ‘âdat (customary law) and Islamic law in several points.


Keywords: gala, marhûn, ‘âdat, Islamic law, Aceh
Introduction

Aceh is famous for its designation as “The Veranda of Mecca” as Islamic sharia has been applied for many years in the region ever since the Kingdom and Sultan of Aceh existed. After Islam has spread there, all of the 'ibādah (worship) and mu'amalāt (reciprocal social dealings) should be in line with the teaching of Al-Qur'an and Sunnah. Later, it was further interpreted into certain school of thought called madhhab.¹ In Aceh, Syāfi’ī was a famous school since the present of Islam in the region which was dominantly propagated by this school.

It appears that the implementation of gala in Aceh² is not wholly relevant with Syāfi’ī school to date. The observation showed that gala was practiced based on multi-madhhab perception, called talfiq of madhhab. Emotionally, those people here are banned to do it restrictly. In reality, gala, as far as the researcher intial review, was kind of this practice.³ Here, the dynamic interactions of Islam in Aceh have been shown towards the typology of the madhab interactions in Aceh which are exclusivisim, inclusivisim and pluralism.⁴ This notion of flexibility that Islamic law enjoys by arguing that flexibility is a quality that Islamic law should have for it to survive.⁵

Gala is a kind of transaction that is allowed by ‘ādat (customary law) in Aceh even though the society generally feel reluctant to do so. As a result, gala is employed solely in

¹ The present of madhhab is referred to imām mujtahid and follow his methodology but there is no obligation to any Muslim to follow one of them. Muḥammad Śalām Madkur, al-Madhkhal li al-Fiqh al-Islāmī: Tārikhuh wa Mashādiruh wa Nadharīyyat al-ʿAmmah (Kairo: Dār al-Nahdah al-Arabiyah, 1960), p. 1103.
² Gala is one of the interesting studies to be investigated. Previously, a number of studies in Aceh were also carried out among those related to hadhānah and patah titi. These three problems are actually still in the realm of Islamic and social community studies that are unique in Aceh. Fauzi, “Shuwar al-Hadhânah ba ‘da al-Thalâq fî Aceh al-Wusthâ”, in Journal Studia Islamika, Vol. 24, No. 1, 2017; Fauzi, “the Concept of Patah Titi: the Problem of Inheritance and Its Solution in Aceh Tengah,” in Studia Islamika, Vol. 26, No. 1, 2019.
³ Practice of pawning (gala in Acehnese) is actually very dynamic and varied. Therefore, research is needed that looks at how relevant it is to norms both legal norms and customary norms. A number of studies discuss the dynamics of applying pawning in society such as Bagus Hermawan, “Tinjauan Hukum Islam terhadap Penggunaan Barang Gadai di Ikhsan Rent Krapyak Kulon Panggungharjo, Sewon, Bantul,” in Az-Zarqa’, Vol. 7, No. 2, 2015; Alfisyahri, Naida Nur and Dodik Siswantoro, “Praktik Dan Karakteristik Gadai Syariah di Indonesia”, in Journal of Islamic Economics and Finance, Vol. 1. No. 2, 2012.
emergency situation, or as the last option. The practice of gala of things inherited by father, such as gold and diamond, was rarely done and under certain conditions. Upon the mortgage contract, the authority of those goods will be on the morgager (murtahin). Therefore, the ‘ādat recommended to make sort of agreement so that if the owner of the goods ever need (to use it), he/she can use it appropriately. If the owner does not accept such way, the contract cannot be done.

In such condition, the receiver of gala (murtahin) was not allowed to lend the goods, make other gala contract or sell it to other party. Submission of the goods to the original owner would be done when the debt is redeemed or paid while the condition of the goods was as same as when it was handed in by the owner when the contract happened.

To make gala contract of immovable property such as rice field and the others, it is usually conducted in front of the witness such as keuchick (head of village) where the property are located. There is no requirement that the goods should be in the hand of the murtahin (the receiver of gala) other than social consideration. ‘ādat allowed the goods to be in the hand of the owner. As for the property and its harvest, it requires an agreement among the parties. Moreover, the debt should be paid as it is, not exceeding the original amount. Related to this, Acehnese has the following philosophy, namely “ngui pulang utang bayeu” meaning that things that have been used should be returned, and the debt should be paid or redeemed.

A number of studies have been carried out in relation to pawning both theoretically and practically. Safrizal for example conducted a research about “Praktek Gala Umong (Gadai Sawah) dalam Perspektif Syari’ah (Studi Kasus di Desa Gampong Dayah Syarif Kecamatan Mutiara Kabupaten Pidie Provisi Aceh). He stated that pawning is one mu’āmalah practice of Acehnese be it in the urban (city) or rural areas. According to his research, the practice of pawning didn’t fulfill the rukn (pillars) of the transaction, namely no specified deadline (maturity) for the debt payment by rāhin and it could lead to conflict. In addition, the exploitation of the productive rice field by murtahin can cause disadvantages to the poor. He wrote that it was unclear statement of the returning deadline that should be conducted by user in order to avoid misunderstanding and hostility between the two parties. Other thing shows that the harvest should be belongs to murtahin. Over all, according to Safrizal, practice of pawn at this village is contradict with Shariah law.

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7 Ibid.

8 Ibid.

9 Ibid.

Expiry period in the case of the debt is not approved in Acehnese ‘ādat. The exploitation and exertion were mostly not done by the murtahin in Aceh because of social consideration. Besides, many of murtahin did not want to accept any benefit from this contract. The people who did so were usually the ones who deeply understand the feeling of a believer.  

Methodology

This is a qualitative research in which the researcher collected the data from two kinds of resources. The data was partly derived from documentation and the others were obtained through field research. Documentation was needed especially to obtain the data in research problem, theories, definitions of terms used and so on. In addition, the data of field research were used to find the fact of the cases happened in the Acehnese society.

Also, data was collected through interview with several eminent people in society, chief of board, Islamic scholars and practitioners. They were expectedly able to provide important issues related to the topics. However, their statements could be classified related to how gala was applied nowadays, whether or not it is compatible with ‘ādat and Islamic law. To analyze this issue, the researcher used the theory of social change, ‘ādat and Shariah law. These theories could result in how the society implements gala today in comparison to the previous era in Aceh. If there was such jumping condition, it should be seen through the social change. Then, the observed change should be analyzed with theories of ‘ādat and Syar‘ah law.

Theory of Rahn in Fiqh Schools

Abu Jakfar said that the recipient of the pawning (murtahin) must not rent marhûn (pawned goods), because the marhûn is still in authority of rahiin. Marhûn rental itself will reduce the authority of its rightful owner. This can cancel the rahn process. If marhûn is in the form of an animal, it is not permissible to drive it. This is if its use causes the loss of rahn authority. Murtahin cannot use marhûn because the use of marhun is not included in the Rahn Contract element. Rahn does not have consequences for the ownership of benefits. Some scholars interpret that the pawned animal can be squeezed milk. Given that in a hadith it is stated that the rahn was squeezed (milk) and ridden (the animal).  

The Hanafi school’s definition focuses on the keeping of the money as a qualification of the mortgage and that is the qualification of the mortgager and the act of the mortgager

\[11\] Ibid.

is expressed with the act of the mortgage. Meanwhile Madzhab Maliki said that murtahin is not allowed to use marhun eventhought with the permission of rahn.\textsuperscript{13}

Legality of mortgage was mentioned in Q.S. al-Baqarah/2: 283. In addition, it was also confirmed by hadith fi’liyyah (Prophetic acts) whereby prophet had mortgaged his armor to the Jew in return for a debt that he owed.\textsuperscript{14} Also, it was cited in hadith qawliyyah (prophetic saying) in which the messenger said that a (back) passenger rides with his fee, if he is mortgaged and milk is drunk with its fee, if it is mortgaged.\textsuperscript{15} In Jahiliyah era, the mortgager kept the mortgaged item and it would be his in case the mortgagee does not return the item at the agreed time.\textsuperscript{16}

According to Sayyid Sâbïq, mortgage is a kind of document in the condition of unfulfilment or incapability to pay.\textsuperscript{17} According to al-Syâfi’i school, murtahin was not allowed to benefit from marhûn (the goods). Jumhur except al-Hanbalî argument that murtahin was not allowed to benefit from marhûn in any forms. Benefit would be allowed for murtahin only if it equals with the function he did for the goods. For example, murtahin could take the milk from a cow as much as the grass that he/she has fed it. Meanwhile, Hanafi school allowed murtahin to benefit from marhûn if it was the cattle/ livestock. This madhhab elaborated that murtahin was not allowed to use, ride, live, and read or anything else without the permission of the owner.\textsuperscript{18}

Rahn in Islam is an institution to help the economically-disadvantaged people. So, it is one of the Islamic credit institutions that provides interest–free loans which requires pledged asset. The institution is usually intended for lower-income households and private workers as well as the goverment officers.\textsuperscript{19} Rahn operations and services should focus on the poor and lower-income groups. These groups usually have valuable assets which can be used as pledged assets.\textsuperscript{20}

Based on this, many institution in helping the poor have referred to this theory. In fact, pawnbroking institution have been around since 1000 AD in Italy which had a religious affiliation with social character. The conventional models charged interest rates on the loans given which is strictly in contrast with the tenets of the Qur’ân. Money lenders at

\textsuperscript{13} Hossam Eldin Ibrahim, “Daman al-Mithl in the Contract of Ijarah and al-Rahn; a Comparative Jurisprudential Study” (Ph.D. Dissertation, Department of Shariah and Economics Academy of Islamic Studies University Malaya, 2002), p. 203.

\textsuperscript{14} Al-Bayhaqi, \textit{al-Sunan al-Kubrâ}, Vol. 6 (Beirut: Dâr Ïhyâ’ al-Turâts al-‘Arabî), p. 88.

\textsuperscript{15} Ahmad ibn Muhammad ibn Hanbal ibn Hilâl ibn Asad al-Syâybâni, \textit{Musnad al-Imâm Ahmad}, Vol. 2, p. 472.

\textsuperscript{16}ibid.


\textsuperscript{18} Fauzi Saleh, “Syariahkan Gadaï Kita”, \textit{Serambi Indonesia}, 12 April 2014, p.6.

\textsuperscript{19} Selamah Maamor and Abdul Ghafer Ismail (Eds.), \textit{Ar-Rahnin Islamic Pawnbroking} (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2013), p. 38.

\textsuperscript{20} \textit{Ibid}. p. xiii.
that time often belonged to non-Christian religious groups (particularly Jews). To avoid interest, transactions were secretly done behind safe-custody arrangements (yad damânah) or benevolent loan (qardh al-hasan).\(^{21}\)

The mortaged (marhûn) should be returned in good condition to the owner (debtor) after he/she pays the debt. Based on this consequence, the mortgage institution would demand the cost for keeping the items of marhûn. If the owner allows, the institution can use the mortgaged, however, it should be returned when the debtor pays the debt.\(^{22}\) If the pledged item is immovable property, expenses incurred in preserving or improving its use would fall on the pledgor. A consequence of making a pledge is that it has a right to its possession until the redemption of the pledge. And if the pledgor dies, the pledgee can take full payment of the debt from the pledge.\(^{23}\)

In order to ensure the validity, the rahn should be based on several principles: qardh al-hasan, al-wadi‘ah and al-kafâlah. This renders the rahn more practical, legally accepted in Islamic law and causing no burden to any parties.\(^{24}\) Regarding the utility of marhûn, madhhab of Hanafi, Mâlikî and Hanbali, mentioned that râhin has no authority to use it based on the understanding that benefits and other benefit under the condition of gadai. Habs (hold) the marhûn according to Hanafi and Hanbalî added that the right of murtahîn (holder of pawnable) continuously. If râhin used the item and consumed it up, he should pay the price of it as part of marhûn. If râhin utilized ghayr mustahlik (not vanished) items such as occupying the house, he should be expelled then surrender its possession to murtahîn. According to Mâlikî madhhab, if râhin used marhûn without the permission of murtahîn, this could make rahn (mortgage) invalid. This means that murtahîn no longer cares about right of mortgage so far. Unlike Syâfi‘î, according to him, râhin is the real owner of its benefit. However marhûn should be in the hand of murtahîn and is not allowed to be taken except when râhin wants to use it. Here, râhin may utilize the item as long as it does not decrease the value of marhûn such as house, vehicle, even though without the permission of murtahîn. This idea was confirmed by many of ulemas (scholars) stating that it is not permissible for murtahîn to utilize the item (marhûn) because it is included in the category of: kull qardh jarrâ fîh manfa‘at fahuwa ribâ.\(^{25}\) According to Hanafi school, murtahîn could not utilize marhûn such as riding vehicle, occupying the house, reading the book except by permission of rahn as murtahîn has just right to habs (keep) the marhûn, no relationship

\(^{21}\) Ibid., p. 39-40.
\(^{22}\) Hailani Mujir and Sanep Ahmad, *Aplikasi Fiqh Muamalat dalam Sistem Kewangan Islam* (Malaysia; Pusat Penerbitan Universiti (UPENA) Univesiti Teknologi MARA, 2009), p. 278.
\(^{24}\) Hailani Mujir and sanep Ahmad, *Aplikasi Fiqh Muamalat dalam Sistem Kewangan Islam* (Malaysia; Pusat Penerbitan Universiti (UPENA) Univesiti Teknologi MARA, 2009), p. 277.
with utilizing it. So, if mortgagee (murtahin) used the item and broken, he/she would be held responsible for it.

With regard to the utility of marhūn by rāhin, scholars of Ḥanafī Madhab have different opinions. First, it is allowed to be utilized. Secondly, he/she cannot utilize it as it is categorized as ribā (usury) or anything similar with it. Third, if there is a requirement in contract that murtahin could utilize it, then it is forbidden as the contract here should be tabarru of rāhin (mortgager). According to Mālikī school, murtahin can utilize the item if it is permitted by rāhin or the condition which rāhin required it in the contract on things that are not related to debt such as renting or trading. If the contract is related to loans, murtahin is not allowed to utilize the item at all even though rāhin permits him/her to do so. That is because it is considered as riba.26

Meanwhile, The Syāfi’ī school stated that murtahin was not allowed to harness and utilize the marhūn based on the hadith recorded by al-Syāfi’ī27 that the pawn should not be blocked by the owner, he benefits, he also bears the risk.

Again, if murtahin required things that put a burden on rāhin in contract such as harnessing marhūn, consequently the requirement is invalid as it contradicted with the aim of contract itself. If the benefit of the mortgaged item can be valued in certain price, then it requires rahn in a trade. Here, the mortgagee can harness the mortgaged item or property. It is because it serves as the combination between trade and rent in a contract. For example, when A says to B: I sell the car to you for IDR 20 million on condition that you should mortgage me your house and I will live there for a year. Here, the rāhin can calculate the cost of the rented house when he wants to pay the price of car as a compensation.28

According to Fatwa DSN of MUI No. 25 Tahun 2002, there are several provisions that must be fulfilled in sharia pawn in general. Murtahin (the recipient of goods) has the right to keep marhūn (goods) until all the debt of rāhin (who handed over the goods) is paid off. Marhūn and its benefits remain the property of rāhin. In principle, marhūn should not be exploited by Murtahin except with the permission of rāhin, by not reducing the value of marhūn and its utilization is just a substitute for maintenance and maintenance costs. Maintenance and storage of marhūn is essentially an obligation of rāhin, but can


28 Kamarulzaman Sulaiman, Konsep dan Kaedah, p. 35.
also be done by murtahin, while the cost and maintenance of storage remains a duty of râhin.\textsuperscript{29}

According to Islamic scholars, mortgager has no authority to control over the mortgaged item such as to sell etc. except by the permission of the mortgagee. That is because it is still related to the right of the mortgaged (marhûn). If he does so, the authority should be referred to mortgagee, so it will be invalid. At this point, Syâfi‘î and Hanbali mentioned that the mortgagee is not allowed to control over the mortgaged without the permission of mortgager as it does not belong to him. If he/she does so without permission, it will be considered invalid. If mortgager permitted him, it would be rendered valid in contract such as renting or lending, not in changing the ownership.\textsuperscript{30}

Fuqahâ stated that payment for keeping the mortgaged will be the responsibility of the mortgager. Scholars of Mâlikî, Syâfi‘î and Hanbali stated that all payment required to keep, serve, care, repair, cure etc will be charged to the mortgager. If the mortgager does not want to do it, according to Mâlikî, the mortgagee should do it instead, such as funding for feeding the cattle etc. and he/she claims the mortgager as the debt that should be paid. This is not related to the mortgaged property. But mortgager has a responsibility to do it toward mortgagee.\textsuperscript{31}

Syâfi‘î school said it should be filed as the problem to qâdhi (judge) if the mortgagee forces the mortgager to pay all the needs of the mortgaged. If the mortgager has no capacity to pay because of being broke or not being at home, so the mortgagee can use the property of mortgager to pay it. If mortgager has no property, the judge can ask the mortgagee to sell part of the mortgaged to pay the debt. Then, mortgagee can complain the mortgager to return this payment as his/her debt.\textsuperscript{32} Hanbali school added that if mortgagee does not ask permission of mortgager for this need, it is considered as sort of charity of him and there would be no complaint here.

Meanwhile, Hanafi school has different opinion regarding choosing between keeping for sustainability of the mortgaged and its preservation. The sustainability should be on the mortgager as the owner and the preservation will be on the mortgagee. Here, the mortgager should pay the importance of food and beverage for cattle, keeper of the garden etc.\textsuperscript{33} The school of Mâlikî and Syâfi‘î argued that murtahin was not allowed to benefit anything from marhûn.

\textsuperscript{30} Kamarulzaman Sulaiman, Konsep dan Kaedah, p. 36.
\textsuperscript{31} Ibid., p. 37.
\textsuperscript{32} Ibid.
\textsuperscript{33} Ibid..
Gala in the Perspective of Acehnese Figure

According to Ridhwan Johan, the Chief of UPTD PPQ Aceh Province, gala that is applied today in Aceh is in accordance with Syar'i'ah law. The underlying basis of this practice is the concept of ta'āwuṣ (cooperation) with each other for the sake of doing good deeds. The main principle, according to him, is tarāḍhīn (pleasing each other). There is no party forcing the other one to do so. According to Muhammad Thaib, member of Majelis Permusyawaratan Ulama Aceh Besar, gala has specific terms namely, first, there is no regulation in Acehnese ‘ādat concerning when the debt should be paid. Second, the harvest should be given to murtaḥīn (the owner of money). The third, the harvest cannot reduce the owed debt. The fourth, there is no regulation to sell the marḥūn for the party who are incapable of redeeming the debt.35

According to Drs. Tgk. Jailani Mahmud, the figure of Aceh Besar, gala is related to debt. Marḥūn (the mortgaged) can be moveable properties such as car and motorcycle or immovable such as the land and the rice field and so forth. So murtaḥīn (the owner of money) in Acehnese ‘ādat can rent the marḥūn to the others if the owner of the property would not accept. In the case of the rice field, for example, after gala, it will automatically be used by murtaḥīn as the authorized part.36

Damanhuri Basyir, Former Dean of Ushuluddin Faculty, UIN Ar-Raniry, also commented on the gala in which he argued that there is kind of practice of gala in Aceh that contradicted with Shariah law. After the contract of debt was done, so the marḥūn will be authorized by rāḥīn. Then, rāḥīn can use marḥūn for unlimited period while the amount of debt will not be reduced for this kind of exploitation of marḥūn.37 During the period of the Dutch Government, there were some parties who asked for the additional money for the things had been used for the practice of gala. That way, it would not be too hard for the mādīn to pay for the debt that he had borrowed. If there was any additional payment, it would be possible that he/she could not pay in the next.38

Rāḥīn who kept marḥūn (the goods) either movable or immovable things was not allowed to sell them or make gala with another contract, because they did not belong to them. If the agreement between mādīn and dā'īn had almost reached the deadline or if the dā'īn (rāḥīn) needed the money, the goods could be sold to the other party and usually the debt should be paid first. The goods under contract of gala could not be sold without

34 Ridhwan Johan, the head of PPQ (Quranic Learning Development), Syariat Islam Department, interview in Banda Aceh, April 13, 2016.
37 Damanhuri Basyir, the dean of Faculty Ushuluddin and Philosophy, April 13, 2016.
38 Moehammad Husein, Adat Atjeh, p. 169.
the permission of the râhin. Usually, the marhân that would be sold should be redeemed first. So, the goods that would be sold might be freed from any transactions.\(^{39}\)

**Gala and Its Practice**

The ‘adat specified that the transaction of gala should be done in front of keuchik, functioning as a witness, and it is possible to include another party such as Teungku Meunasah (the Islamic scholar in the village) and the others.\(^{40}\) Gala in Aceh was rarely practiced because the folk would always strive to avoid transaction that involves the debt. For them, the debt was considered as neuraka donya (the hell of the world). If someone wanted to do gala or sell the immoveable property such as rice field, farm or anything else, he/she should make an offer to his/her family first.

If the family around him does not want to accept the pawn / buy it, then he may offer to the owner of the garden around the land. If no one is willing to accept a pawn, then he can look for people outside his village. From the above conditions, there are some outsiders who have owned land in Aceh since ancient Dutch times. The Dutch government then made regulations related to agricultural land.

The ‘adat prohibited if the goods was not redeemed yet in a certain duration so râhin owned it. Such attitude can be considered as exploitation of other rights. Certainly it does not reflect the principle of ta’âwin (cooperation with each other) especially with madîn. Madîn, who is in the disadvantaged position, should ideally be helped as long as someone could do it.\(^{41}\)

There are small differences in the practice of gala between one place and another in Aceh. Here, the researcher observed a practice of gala at Ujong Sudeun, Aceh Jaya. A resident named M. Saleh had practiced gala few years ago. At that time, he had three mayam (9 grams) of gold. Someone lent him money in exchange for his gold. The person and he agreed to make contract of debt with gala. At that time, the person had a piece of clove farm, located at Ujong Sudeun, Aceh Jaya. On the same day, the gold was handed in by M. Saleh as the murtahin to the person as râhin. Meanwhile, the person turned in the possession of the clove farm to him. After that, the clove farm would be benefited by M. Saleh for unlimited time till the person could pay or return the gold that had been borrowed. M. Saleh benefited from the harvest of the clove. However, the harvest could reduce the amount of debt. In the end, the person should pay the debt completely in the same amount of that which he had taken.\(^{42}\)

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\(^{39}\) *Ibid.*

\(^{40}\) *Ibid.*


\(^{42}\) M. Saleh, interview in Aceh Jaya, May 5, 2015.
In the aforementioned case, ‘âdat’ which had been practiced today in this district included: first, marhûn should be in the hand of murtahin whether it is moveable or not. Second, murtahin, as stipulated by this sub-local ‘âdat, is authorized to exploit the marhûn without time limit. The third, all harvest of the marhûn should belong to murtahin. The fourth, the exploitation of the harvest cannot reduce any amount of the debt. The fifth, the râhin should pay the debt completely as much as the amount that he had taken from râhin.

In Syari’ah perspective, marhûn should be in the hand of murtahin if it is moveable for keeping, not exploiting. This was referred to the tradition of previous era when there was no important document that could be held. Today when the property should be written in the state document, murtahin is not obligated to hold the marhûn, but it is documentation. This is a method to prevent râhin from selling marhûn by keeping the ownership documentation in the hand of murtahin. The second thing is related to the duration of debt. The Quran explicitly mentioned that debt within limited time should be written in a document. It would lead both parties (mortgager and mortgagee) to agree about the duration (interval) of debt payment. Without mentioning the duration, it would lead to earning ribâ (usury) out of the practice of mortgage. It means that the more time râhin makes, the more usury will be earned by murtahin. This practice was extremely banned in Islam which is called ribâ by Abbas. This model was the famous one during the time. Abbas said that anyone could bring his money (debt) anywhere and return back after due time, any additional day should be recompensed for each day. This model is called “ribâ al-fadhl”.

The third, giving the harvest to murtahin is not compatible with Islamic law as well as ‘âdat in Aceh, as Islamic law recommends muslim to help the poor, not to exploit them. Unfortunately, this condition has been practiced in Aceh. According to M. Amin Chuzaini, today, gala is considered by some money owner as the means to make more money or other benefits. This kind of perception of gala today leads some who have money to look for ‘consumer’ to lend them such amount of money, and thus gala is considered as kind of contract for getting job.43

The principle concept of gala is exactly as consequence of dayn (debt). The debt in Islam is a form of cooperation and part of social contract. It is different from trade, rent, mudhârabah, murâbahah etc. which are called commercial contract. So, talking about gala is relating to debt. It means gala should be considered as social contract, commercial one as well as debt. If it is considered as commercial one, it should be riba (usury) as the messenger of Allah (PBUH) said: kull qard jarr fîh manfa‘at fa huwa ribâ, meaning that any debt that produces the benefit, it will be usury.

If someone thinks that the gala is a way to get some money or profit, then he has actually been mistaken in using the term gala. Gala is basically just a guarantee, nothing more than that. It is a complete mistake when someone considers it as a means to earn

43 M. Amin Chuzaini, interview in East Aceh, October 10, 2016.
money. More than that, Acehnese ‘ādat considered debt as neuraka donya (the hell of the world hell). The debt is not preferred to debt but it is kind of emergency.

Views of Community and Religious Leaders of Gala Practice

In this case, the gala that has been practiced so far here is not in line with the prevailing conditions in Aceh. In addition, this practice is also not in accordance with Sharia law. According to the Grand Imam of the Baiturrahman Grand Mosque in Banda Aceh, the gala applied in Aceh can at least be divided into three models. First, the model that causes harm to dā‘īn (owner of money). Second, the model that causes losses for madīn (poor people who owe). Third, the model is based on the duration of marhūn use. According to him, the first and second models usually occur when there is a fluctuation in currency rates. It happened when Japan and the Netherlands colonized Aceh. That’s because when dā‘īn (money owner) lends money, the rupiah exchange rate is in certain conditions, but when the money is returned, it turns out that the exchange rate is in another condition. That is, if the currency exchange rate falls lower than before when madin was about to repay its debt, then madin (people owe) will lose. Conversely, if the currency exchange rate strengthens, dā‘īn (the owner of money) feels disadvantaged.

The other model happened in normal condition. It means that the marhūn was used for long time by the owner of the money. When the borrower should pay the debt, he paid as much as the amount that he lent. In this case, the borrower has considerable loss of the thing (marhūn). In fact, it should be considered when the borrower should pay the money. It means that utilizing the marhūn could reduce the amount of debt. The third, both parties made a consensus about the duration of utility period by the owner and after that it should be returned to the borrower of the money.\textsuperscript{44} Gala in Aceh hopefully will be a contract to help the society solve the daily life problems in line with guidance of the Islamic teachings. Infact, the practice of gala in Aceh also contradicted Syâfi‘î madhhab which is followed by Acehnese in general, based on the following aspetc:

First, Syâfi‘î forbids muslims to exploit the marhūn because it cause the poor (mortgager) to be in even more difficult condition. According to Syâfi‘î, marhūn should belong to the owner. There is no reason to move the marhūn to other. Again, marhūn is exactly not a must but a recommended way to make sure that the râhin will pay the debt on due time. So that, different from other madhhab, Shafi‘i is very stricted with literal hadith related to the case. Mâliki, for example, tolerated exploiting marhūn as much as the fee which is used by murtahīn to preserve marhūn.

Second, some marhūn have been exploited by murtahīn for long time and got the

\textsuperscript{44} Azman Ismail, Imam Besar of Masjid Raya Baiturrahman, interview in Banda Aceh, May 3, 2016.
harvest more than the amount of the borrowed debts. These practices cause the poor the loss of their farm, land, garden etc. The practice has make the poor in hard condition and hardly meet their daily needs. It is because they should rent other farm land or garden for to be planted.

Madhab Syâfi'i wanted to keep maslahah (public interest) in order to help the poor in their daily life. Therefore, this madhab is very strict and it does not give any opportunity for exploiting the property of the poor. It is certainly relevant with maqāsid al-shari'ah in helping the poor. This is the principle that had been conducted in previous era in Aceh. Today, 'adat related to gala is different from what had been practiced by former generation.

According to M. Iqbal, the practice of gala today in Aceh Timur is obviously seen as more and more people are going to pegadaian institution spread in the province. M. Iqbal found no more cases related to gala as a local wisdom values. Today, society around where he lives feel easier to get money from the financial institutions such banks, pawnbroking etc.

Unlike Zaini, he said that the practice of gala in East Aceh is done in more personal way and not intervened by other parties such geuchik or teungku. It is merely a consensus between two parties; the mortgager and the mortgagee. If they agree for such this contract, they would do it directly and make agreement among them.45

Lon na teurimong gala 7,5 rante blang. Kemudian ureung po keneuk meugo, maka gobrya geu bayee sewa sesuai yang berlaku. Si rante sewa jih 20 kaleng, menyo 7,5 rante, maka ureung po tanoh geubayeu keu lon tip goe blang 150 kaleng.46

(I am the mortgagee for 7,5 ‘rante’47 of rice field. Then, the owner (mortgager) wants to exploit by himself. So, he should rent from me based on society concessus here. For one rante, he should pay 20 can of paddy, so he should pay me 150 cans of paddy).

According to M. Zaini, it is kind of a agreement and ‘adat gampong practiced today that marhûn 'belongs' to murtahin as the owner of money. If not, he/she will not lend the money. Recalling his experiences, M. Zaini said he once lent some money to his mates, but they avoided and did not want to redeem the debt. Morality factors that led to the capitalism also developed here.48

During his childhood, M. Zaini found out that his father had a piece of rice field. When he verified his encounter with his father, he said that the land was mortgaged by someone who could not pay back the debt. So, his father still exploited the farm till Mr. Zaini would be 15 years old. He said that marhûn looked as if murtahin’s belonging. In East Aceh, he said, no body knows if someone has made gala contract because it does not

45 M. Zaini, interview in Idie, East Aceh, October 11, 2016.
46 ibid.
47 One rante is 400 m2 in Aceh measures.
48 M. Zaini, interview in Idie, East Aceh, October 11, 2016.
need any witness. So, the marhûn will be a problem if there is a claim from râhin’s family that it does not belong to him. The underlying principle here is the honesty of both parties. So, the contract is done without any written document and witnesses. If the conflict happened, both parties can refer to nothing of supporting documents. M. Zaini said that the practice of gala and other mu‘âmalah transaction is different from one region to another in Aceh.

Ramli Yusuf, Dean of Faculty of Ushuluddin, Adab dan Da’wah, IAIN Langsa, said the process of gala today runs based on the local ‘âdat. This ‘âdat law could not be overruled by any other authority. According to him, practice of gala in Aceh could not be considered as ‘âdat that run in this province. It is more a violated practice from the correct rule as mentioned in Alquran and sunnah. He himself tried to change the condition of this when he made a contract of gala. After his explanation to the other parties about the position of gala should be practiced in Islam, they agreed to perform based on the Islamic principles.49

Ramli seems convince the practice today in Aceh is far from the Islamic Law. It is because the points contract implemented in contract is not revelant with basic of mashlahah as asâs al-tasyrî. It is because ‘âdat in Aceh should be based on Syarî. The adagium of Syarî: ‘âdat ngon syariat lagee zaat ngon sifeut (customs and Syari‘at are like substances with properties).

According to Lukman Hakim, the former Dean of Ushuluddin and Philosophy Faculty, people who do gala is actually in a difficult situation. While the person receiving the gala is always reasonable to help the other. In fact, the recipient of the gala always gets the results of the mortgaged goods. Because of that, so his father did not want to tilt. Because according to him, the gala should decrease after getting the annual result. There is a gala term over a gala, meaning the poor usually ask for more money on the previous amount of money due to a very urgent need. Another model is gala transfer. This means that someone owes someone another money to pay before and then transfers the gala goods. Utilization of plunder goods that do not reduce the principal of debt makes people owe no longer able to pay for it while saying:

Neu tamah bacut teuk peng, umongnya neucok keudron (add a little more money, then the rice fields (marhûn) will be yours (the person who owes).50

Gala in Aceh looks has changes from model to other one. Community leaders and religious leaders assume that the practice so far is no longer in line with the context of the prevailing traditional rules. Therefore, local wisdom needs to be applied to solve problems that are contradictory to Islamic values and customs.

49 Ramli Yusuf, interview in Idie East Aceh, October 11, 2016.
Conclusion

_Gala_ is the pawn contract practiced by Acehnese since long time ago. According to ‘âdat of Aceh, _gala_ should be held in front of _geuchik_ (head of village) and other additional witnesses. Then, _marhûn_ (the mortgaged) is allowed to be exploited by _murtahîn_ (the mortgagee), but it is in the hand of _râhin_ (the mortgager). Both parties should mention the maturity of debt. The practice of ‘âdat today has contradicted the ‘âdat in that it does not mention the duration of debt (maturity), for which reason the _murtahîn_ could exploit the _marhûn_ for unlimited time. This point also contradicted the Islamic law. It is because the only responsibility and authority of the _murtahîn_ is to keep _marhûn_ (the mortgaged) and have trust for the debt repayment, not to gain any profit out of the _marhûn_ as it is purely a social contract.

This practice according to traditional leaders and Islamic law must be returned to the rules that are in line with the _Syarî’ah_. This is intended to benefit the community in the _mu’âmalah_. In relation to _gala_, two things need to be emphasized, first, the _rahn_ referred to debt guarantee that is more of a social transaction, not a commercial one. Second, the debt must be paid in accordance with the agreed time and _marhûn_ can be sold to pay off the debt while the rest is returned to _râhin_. The above-mentioned practice implies the dynamic interactions of Islam in Aceh reflecting the typology of the madhab interactions which is flexible, a quality that Islamic law should have for it to survive.

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