

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

Fauzi

Fakultas Ushuluddin dan Filsafat UIN Ar-Raniry
Jl. Ar-Raniry Kopelma Darussalam, Banda Aceh, 23111
e-mail: fauzisaleh@gmail.com; fauzisaleh@ar-raniry.ac.id

Abstract: This article attempts to explain the position of the practice of *gala* in Acehnese society perspective in light of *‘ādat* and Islamic law perspective. Theories of *‘ādat* 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‘’s school. Research showed that the practice of *gala* (mortgage) in Aceh has contradicted the *‘ādat* (customary law) and Islamic law in several points.

Abstrak: Artikel ini mencoba menjelaskan posisi praktik *gala* dalam masyarakat Aceh dengan perspektif *‘ādat* dan hukum Islam. Teori *‘ādat* menunjukkan bahwa ada beberapa pilar *gala* yang harus dipenuhi; kontrak dilakukan di depan *keuchik* (kepala desa) dan tokoh desa lainnya sebagai saksi tambahan. Setelah pembayaran hutang, *murtahin* (yang berpiutang) harus mengembalikan barang gadaian ke *râhin* (yang berutang) sesuai dengan pepatah lokal berbunyi “ngui pulang utang bayeu” berarti barang gadaian harus dikembalikan, hutang harus dibayar. Selain itu, *marhûn* (barang gadaian) tidak dapat dieksploitasi oleh *murtahin* karena semata-mata sebagai jaminan hutang. Persyaratan ini telah sangat relevan dengan hukum Islam terutama mazhab Syâfi‘. Penelitian menunjukkan bahwa praktik *gala* di Aceh tidak lagi sejalan dengan hukum *‘ādat* dan hukum Islam dalam beberapa hal.

Keywords: *gala*, *marhûn*, *‘ādat*, 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 *‘ibâdah* (worship) and *mu’amalah* (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, Syâfi‘î 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 Syâfi‘î school to date. The observation showed that *gala* was practiced based on multi-madhhab perception, called *talfiq of madzhab*. 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 exclusivism, inclusivism 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 *‘âdat* (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 *imâm mujtahid* and follow his methodology but there is no obligation to any Muslim to follow one of them. Muḥammad Salâm Madkur, *al-Madhkhal li al-Fiqh al-Islâmî: Târîkhuh wa Mashâdiruh wa Nadhariyyat al-‘Âmmah* (Kairo: Dâr al-Nahdhah al-‘Arabiyyah, 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 *hadhânah* 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 fi 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 Panggunharjo, 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.

⁴ Fauzi, “The Interactions of *Madzhabs* In Aceh: The Tripolar Typology”, in *MIQOT: Jurnal Ilmu-ilmu Keislaman*, Vol. 41, No. 1, 2017, p. 17.

⁵ Fauzi Saleh, “Problematika Talfiq Madzhab dalam Penemuan Hukum Islam”, in *Journal Islamica*, Vol. 6, No. 1, 2011, p. 66; Mhd. Syahnhan, *Modernization of Islamic Law of Contract* (Jakarta: Badan Litbang & Diklat Departemen Agama RI, 2009); “The Image of the Prophet and the Systematization of *Ushul al-Fiqh*: A Study of al-Shafi’î’s *Risalah*”, in *Miqot*, Vol. 103, p. 44-50.

emergency situation, or as the last option.⁶ 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 mortgager (*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.⁷

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.⁸

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.⁹

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 Provinsi 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 *rukun* (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.¹⁰

⁶ Moehammad Husein, *Adat Atjeh* (Banda Aceh: Dinas Pendidikan dan Kebudayaan Provinsi Daerah Istimewa Aceh, 1970), p. 168.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Safrizal, “Praktek *Gala Umong* (Gadai Sawah) dalam Perspektif Syari’ah (Studi Kasus di Desa Gampong Dayah Syarif Kecamatan Mutiara Kabupaten Pidie Provinsi Aceh),” in *Jurnal Ilmiah Islam Futura*, Vol. 15, No. 2, 2016, p. 231.

Expiry period in the case of the debt is not approved in Acehnese *'adat*. 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.¹¹

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 *'adat* and Islamic law. To analyze this issue, the researcher used the theory of social change, *'adat* 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 *'adat* 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 *rahin*. *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 *rahin* 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).¹²

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.*

¹² Ahmad ibn 'Alî Abu Bakr al-Râzi al-Jashshash al-Hanafi, *Syarh Mukhtashar al-Thahâwî*, Vol. 3 (Saudi: Dâr al-Basyâ'ir al-Islâmiyyah wa Dâr al-Sirâj, 2010), p. 149.

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 *rahin*.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.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.¹⁵ In Jahiliyah era, the mortgager kept the mortgaged item and it would be his in case the mortgaggee does not return the item at the agreed time.¹⁶

According to Sayyid Sâbiq, mortgage is a kind of document in the condition of unfulfilment or incapability to pay.¹⁷ According to al-Syâfi'î 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.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 government officers.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.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'an. Money lenders at

¹³ Hossam Eldin Ibrahiem, "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.

¹⁴ Al-Bayhaqî, *al-Sunan al-Kubrâ*, Vol. 6 (Beirut: Dâr Ihyâ' al-Turâts al-'Arabî), p. 88.

¹⁵ Ahmad ibn Muhammad ibn Hanbal ibn Hilâl ibn Asad al-Syaybâni, *Musnad al-Imâm Ahmad*, Vol. 2, p. 472.

¹⁶ *Ibid.*

¹⁷ Sayyid Sâbiq, *Fiqh al-Sunnah*, Vol. 3 (Lebanon: Dâr al-Fikr, 1983), p. 298.

¹⁸ Fauzi Saleh, "Syariahkan Gadai Kita", *Serambi Indonesia*, 12 April 2014, p.6.

¹⁹ Selamah Maamor and Abdul Ghafar Ismail (Eds.), *Ar-Rahnu Islamic Pawnbroking* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2013), p. 38.

²⁰ *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-ḥasan*).²¹

The mortgaged (*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-ḥasan*, *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 Ḥanafî, Mâliki and Hanbalî, 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 Hanafî and Hanbalî added that the right of *murtahin* (holder of pawning) 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 *murtahin*. According to Mâliki madhhab, if *râhin* utilized *marhûn* without the permission of *murtahin*, this could make *rahn* (mortgage) invalid. This means that *murtahin* 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 *murtahin* 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 *murtahin*. This idea was confirmed by many of ulemas (scholars) stating that it is not permissible for *murtahin* to utilize the item (*marhûn*) because it is included in the category of: *kull qardh jarra fih manfa'at fahuwa ribâ*.²⁵ According to Hanafî school, *murtahin* could not utilize *marhûn* such as riding vehicle, occupying the house, reading the book except by permission of *rahn* as *murtahin* has just right to *ḥabs* (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.

²³ Nik Norzrul Thani, Mohamed Ridza Abdullah and Megat Hizaini Hassan, *Law and Practice of Islamic Banking and Finance* (Petaling Jaya: Sweet & Maxwell Asia, 2010), p. 80.

²⁴ Hailani Mujir and sanep Ahmad, *Aplikasi Fiqh Muamalat dalam Sistem Kewangan Islam* (Malaysia; Pusat Penerbitan Universiti (UPENA) Univesiti Teknologi MARA, 2009), p. 277.

²⁵ Kamarulzaman Sulaiman, *Konsep dan Kaedah al-Rahn di Malaysia* (Malaysia: University Teknologi MARA, 2013), p. 32

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 *marhûn* by *râhin*, scholars of Hanafi Madhhab have different opinions. First, it is allowed to be utilized. Secondly, he/she cannot utilize it as it is categorized as *ribâ* (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 *râhin* (mortgager). According to Mâliki school, *murtahin* can utilize the item if it is permitted by *râhin* or the condition which *râhin* 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 *râhin* permits him/her to do so. That is because it is considered as *riba*.²⁶

Meanwhile, The Syâfi'î school stated that *murtahin* was not allowed to harness and utilize the *marhûn* based on the hadith recorded by al-Syâfi'î²⁷ 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 *râhin* in contract such as harnessing *marhûn*, 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 *râhin* 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 *marhûn* (goods) until all the debt of *râhin* (who handed over the goods) is paid off. *Marhûn* and its benefits remain the property of *râhin*. In principle, *marhûn* should not be exploited by *Murtahin* except with the permission of *râhin*, by not reducing the value of *marhûn* and its utilization is just a substitute for maintenance and maintenance costs. Maintenance and storage of *marhûn* is essentially an obligation of *râhin*, but can

²⁶ *Ibid.*, p. 34; Lihat juga Mhd. Syahnan, "Modern Qur'anic Exegesis and Commercial Contracts: A Comparative Study of Rashid Ridha's and Sayyid Qutb's Interpretation of Some Riba Verses," in *Miqot*, November-December 1997, p. 15-23; Also by the same author "Larangan Spekulasi (Gharar) Dalam Kode Sipil Negara-Negara Arab: Suatu Analisa Sejarah Sosial Ekonomi," in *Analytica Islamica*, Vol. 2, No. 2, Nopember 2000, p. 168-180.

²⁷ Muḥammad ibn Idrîs ibn al-'Abbâs ibn Utsmân ibn Syâfi' ibn 'Abd al-Muththalib ibn 'Abd Manâf al-Muthalibî al-Qursyî al-Makkî, *Musnad al-Imâm al-Syâfi'î*, Vol. 3 (Kuwait: Syirkat al-Gharrâs, 2004), p. 214.

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*.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 Hanbalî 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.³⁰

Fuqahâ stated that payment for keeping the mortgaged will be the responsibility of the mortgager. Scholars of Mâliki, Syâfi'î and Hanbalî 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 Mâliki, 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.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.³² Hanbalî 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, Hanafî 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.³³ The school of Mâliki and Syâfi'î argued that *murtahin* was not allowed to benefit anything from *marhûn*.

²⁹ Fatwa DSN MUI No 25 Tahun 2002: Muḥammad ibn Idrîs ibn al-'Abbâs ibn Utsmân ibn Syâfi'î ibn 'Abd al-Muththalib ibn 'Abd Manâf al-Muthalibî al-Qursyî al-Makkî, *Musnad al-Imâm al-Syâfi'î*, Vol. 3 (Kuwait: Syirkat al-Gharrâs, 2004), p. 214.

³⁰ Kamarulzaman Sulaiman, *Konsep dan Kaedah*, p. 36.

³¹ *Ibid.*, p. 37.

³² *Ibid.*

³³ *Ibid.*

***Gala* in the Perspective of Acehness Figure**

According to Ridhwan Johan, the Chief of UPTD PPQ Aceh Province,³⁴ *gala* that is applied today in Aceh is in accordance with Syari'ah law. The underlying basis of this practice is the concept of *ta'âwun* (cooperation) with each other for the sake of doing good deeds. The main principle, according to him, is *tarâdhin* (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 Acehness *âdat* concerning when the debt should be paid. Second, the harvest should be given to *murtahin* (the owner of money). The third, the harvest cannot reduce the owed debt. The fourth, there is no regulation to sell the *marhûn* 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. *Marhûn* (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 *murtahin* (the owner of money) in Acehness *âdat* can rent the *marhûn* 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 *murtahin* 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 *marhûn* will be authorized by *râhin*. Then, *râhin* can use *marhûn* for unlimited period while the amount of debt will not be reduced for this kind of exploitation of *marhûn*.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 *madîn* 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

Râhin who kept *marhûn* (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 *madîn* and *dâ'in* had almost reached the deadline or if the *dâ'in* (*râhin*) 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.

³⁵ Muhammad Thaib, interview in Banda Aceh, April 3, 2016.

³⁶ Tgk Jailani, interview in Aceh Besar, 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 *marhûn* 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 *âdat* 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 immovable 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 *âdat* 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'âwun* (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

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Moehammad Husein, *Adat Atjeh*, p. 169.

⁴² M. Saleh, interview in Aceh Jaya, May 5, 2015.

In the aforementioned case, *‘ādat* 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 *‘ādat*, 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 *Syarĕah* 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-fadhli*”.

The third, giving the harvest to *murtahin* is not compatible with Islamic law as well as *‘ādat* 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 fih 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, Acehese *'adat* 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 *dâ'in* (owner of money). Second, the model that causes losses for *madin* (poor people who owe). Third, the model is based on the duration of *marhûn* 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 *dâ'in* (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, *dâ'in* (the owner of money) feels disadvantaged.

The other model happened in normal condition. It means that the *marhûn* 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 (*marhûn*). In fact, it should be considered when the borrower should pay the money. It means that utilizing the *marhûn* 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.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 Acehese in general, based on the following aspects:

First, Syâfi'î forbids muslims to exploit the *marhûn* because it cause the poor (mortgager) to be in even more difficult condition. According to Syâfi'î, *marhûn* should belong to the owner. There is no reason to move the *marhûn* to other. Again, *marhûn* 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, Shafii is very stricted with literal hadith related to the case. Mâliki, for example, tolerated exploiting *marhûn* as much as the fee which is used by *murtahin* to preserve *marhûn*.

Second, some *marhûn* have been exploited by *murtahin* for long time and got the

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 made 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.

Madhhab Syâfi'î wanted to keep *maslahah* (public interest) in order to help the poor in their daily life. Therefore, this madhhab is very strict and it does not give any opportunity for exploiting the property of the poor. It is certainly relevant with *maqâsid al-shari'ah* in helping the poor. This is the principle that had been conducted in previous era in Aceh. Today, *Ādat* 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 gobnya geu bayee sewa sesuai yang berlaku. Si rante sewa jih 20 kaleng, menyoe 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 consensus 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 an agreement and *Ādat* 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 Ushulddin, Adab dan Da'wah, IAIN Langsa, said the process of *gala* today runs based on the local 'adat. This 'adat law could not be overruled by any other authority. According to him, practice of *gala* in Aceh could not be considered as 'adat 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-tasyri'*. It is because 'adat in Aceh should be based on *Syar'*. The adagium of *Syar'*: 'adat ngon syariat lagee zaat ngon sifeut (customs and *Syar'*ât 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.

⁵⁰ Lukman Hakim, interview in Banda Aceh, Auguts 3, 2018.

Conclusion

Gala is the pawn contract practiced by Acehnesse since long time ago. According to 'ādat 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 *murtahin* (the mortgagee), but it is in the hand of *râhin* (the mortgager). Both parties should mention the maturity of debt. The practice of 'ādat today has contradicted the 'ādat in that it does not mention the duration of debt (maturity), for which reason the *murtahin* could exploit the *marhûn* for unlimited time. This point also contradicted the Islamic law. It is because the only responsibility and authority of the *murtahin* 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 *Syarī'ah*. This is intended to benefit the community in the *mu'āmalah*. 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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