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THE LEGITIMACY OF THE SALE AND PURCHASE CONTRACT OF SACRIFICIAL ANIMALS IN CURUP COMMUNITY

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Abstract

This research is triggered from the qurban committee in Curup community to collect funds from the qurban participants by fixing the price of animals. The payment can be all at once and can also be paid in installments every month. This means buying and selling, even though the animals do not exist yet. After the money was collected and it was close to the sacrifice day, the committee went looking for an animal and then bought it. The role of the committee that made the sale and purchase contract was not the owner of the money. There is also buying and selling through brokers, who are not animal owners. Therefore, the main issue in this research concerns the validity of the contract for the sale and purchase of that qurban animals. This is a field research with qualitative approach. This study concluded that the implementation of the contract in *muamalah* transactions is elastic, especially in the oral form of *al-ahwal*. This is strongly influenced by the local community customs based on the rule of *al-'adah muhakkamah*.

Keywords: Qurban; Contract; Buying and Selling; Committee

الملخص

خلفية هذا البحث هي عمل لجنة الأضحية في مجتمع Curup لجمع الأموال من المشاركين في الأضحية من خلال تحديد أسعار الحيوانات. يمكن أن يكون الدفع دفعة واحدة ويمكن أيضاً سداًه على أقساط كل شهر. هذا يعني البيع والشراء ، على الرغم من عدم وجود الحيوانات بعد. بعد أن تم جمع المال وقرب يوم الأضحية ، ذهبت اللجنة للبحث عن حيوان ثم اشترته. لم يكن دور اللجنة التي أبرمت عقد البيع والشراء هو صاحب المال. هناك أيضاً بيع وشراء من خلال سماسرة ليسوا من أصحاب الحيوانات. المشكلة الرئيسية في هذا البحث هي حول صحة عقد بيع وشراء حيوانات القربان. هذا البحث هو بحث ميداني بنهج نوعي. خلصت هذه الدراسة إلى أن تنفيذ العقد في معاملات المعامله مرن ، لا سيما في

الشكل الشفهي للأحول. هذا متأثر بشدة بعادات المجتمع المحلي كصوت قواعد
محاكمة العدة.

الكلمات المفتاحية: الأضحية; عقد; بيع وشراء; لجنة

Abstrak

Latar belakang penelitian ini adalah tindakan panitia qurban di Curup, Bengkulu memungut dana dari peserta qurban dengan mematok harga hewan. Pembayaranannya boleh sekaligus dan juga boleh dicicil setiap bulan. Ini berarti jual beli, padahal hewannya belum ada. Setelah uang terkumpul dan mendekati masa pelaksanaan qurban, panitia pergi mencari hewan kemudian membelinya. Peran panitia yang melakukan akad jual beli itu menjadi masalah, karena mereka bukanlah pemilik uang tersebut. Ada juga jual beli dengan perantara toke atau calo, yang jelas mereka bukan pemilik hewan. Masalah pokok yang hendak dijawab dalam penelitian ini yaitu tentang keabsahan akad jual beli hewan qurban, dengan cara tersebut. Penelitian ini merupakan penelitian lapangan (*field reseach*) dengan pendekatan kualitatif. Penelitian ini berkesimpulan bahwa implementasi akad pada transaksi muamalah bersifat elastis, terutama dalam bentuk *lisan al-ahwal*. Hal ini sangat dipengaruhi oleh kebiasaan masyarakat setempat sebagaimana bunyi kaidah *al-'adah muhakkamah*.

Kata Kunci: Qurban; Akad; Jual Beli; Panitia

A. Introduction

The practice of buying and selling sacrificial animals by the community of Curup needs to be reviewed. First, the committee that collects funds from the qurban participants has set the price for the qurban animal. One goat Rp. 2,000,000, for a cow as many as seven people, each Rp. 2,000,000. Payment can be all at once or in installments. Hence, it is not burdensome. The problem is that the committee seemed to have sold the sacrificial animals at such a price, even though the animals are not yet available. This is contrary to the hadith of the Prophet Muhammad which forbids selling goods that are not owned, as the hadith reads:

عن عمر بن شعيب: لا يحل سلف وبيع ولا شرطان في بيع ولا ربح ما لم تضمن ولا
بيع ما ليس عندك (رواه: أبوداؤد)¹

“It is not *halal* (lawful) to combine a loan agreement and a sale and purchase and it is not (*halal*) two conditions in buying and selling and not (*halal*) the profit of goods that are not under your guarantee, and not (*halal*) goods that are not by your side.” (narrated by Abu Dawud)

Second, after the money was collected and the time for the sacrifice was approaching, the committee then found the sacrificial animal and bought it. The problem is that the committee that carries out the sale and purchase contract plays a role, which is not the owner of the money. By law, it is not permissible to carry out *muamalah* transactions against other people’s property, as the *fiqh* rule:² الأمر بالتصرف

في ملك الغير باطل (any orders to take legal action against other people’s property rights are null and void). New buying and selling transactions are allowed if someone has obtained permission from the owner of the property. If so, did the committee not get permission from the *qurban* participants when they handed over the money so that the committee was considered as the representative of the *qurban* participants? In addition, in the rules of *fiqh*, it is also stated that the customs of a society can be considered as law, the full rule, العدة محكمة³ (the tradition can be considered as law). The problem is not that easy. The statement of representation cannot be based on mere conjecture, but there must be unequivocal indications for that because the law only sees and evaluates the outer while the inner affairs belong to Allah SWT as the rule, نحن نحكم بالظواهر والله يتولى السرائر (we only punish the *zahir* while Allah is in control of the inner affairs)⁴.

Indeed, some rules justify the customs of the community that can be considered as legal considerations, but that custom must be valid, not an imperfect (*fasid*) one. If

¹Sulaiman al-Sijistani Abu Daud, “Sunan Abu Daud,” in *CD-Room Maktabah Syamilah*, n.d., hadith no. 3504.

²A. Djazuli, *Kaidah-Kaidah Fikih; Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis* (Bandung: Kencana Prenada Media Group, 2011), 235.

³Al-Syaikh ‘Abdullah bin Sa’id Muhammad ‘Ibadi al-Lahji al-Hudharami al-Syhari, *Idhah Al-Qawa’id al-Fiqhiyyah* (al-Haramain, n.d.), 45.

⁴ This rule was put forward by Muhammad Fawaid ‘Abd al-Baqi when explaining (sharh) Muslim hadith No. 1064. See Abu Husain Muslim bin al-Hajjaj al-Naisaburi, “Shahih Muslim,” in *CD-Room Maktabah Syamilah*, n.d..

these customs collide with the texts, of course, these customs cannot be considered because they are considered imperfect (*fasid*) customs and must be abandoned. Doing a sale and purchase contract against someone's property is contrary to the texts, and so is buying and selling goods that are not owned.

In addition, some people come to the committee selling sacrificial animals intending to get a profit on the difference in price from the seller and the committee. In essence, people like this are only brokers, not animal owners. In principle, a broker or *samsarah* is allowed if it follows the existing provisions⁵. He must get permission from the owner of the animal; otherwise, the contract will be canceled because he sells goods that are not owned or are treasuring of other people's property.

The sale and purchase transaction of the sacrificial animal, if it is categorized in a *salam* contract (buying and selling orders), is not appropriate because it does not fulfill the elements of a *salam* contract. Namely, not explaining the shape details, size and characteristics of the animal ordered, and not paying off the initial payment. These two things characterize the sale and purchase of *salam*, as the majority of scholars say:

بيع أجل بعاجل أو بيع شيء موصوف في الذمة أي أنه يتقدم فيه رأس المال
ويتاخر المثمن لأجل⁶

“Selling an item whose delivery is delayed, or selling a (goods) whose characteristics are clear with an early payment of capital, while the goods are delivered at a later date.”

The practice of buying and selling sacrificial animals in the community needs serious attention by practitioners of Islamic law because it concerns the issue of worship that will be offered to God⁷. Therefore, it is deemed necessary to research and resolve this case in order the problem is clear, and the people are free from things that are *subhat*, let alone things that are *haram*. How is the contract for the sale and purchase of sacrificial animals in the community of Curup? What is the view of the contract theory regarding the sale and purchase of sacrificial animals by the community?

The study of this sacrifice has been carried out in *fiqh* books from various schools of thought, books, articles, newspapers, and others. There was also Syarial

⁵ Khairullah Zikri, “Deconstructing Animal Sacrifice (Qurban) In Idul Adha,” *ESENSIA: Jurnal Ilmu-Ilmu Ushuluddin* 12, no. 2 (July 22, 2011): 235–54, doi:10.14421/esensia.v12i2.711.

⁶ Nasrun Haroen, *Fiqh Muamalah* (Jakarta: Gaya Media Pratama, 2000), 146.

⁷ B. Hariyanto, “Dinamika Ibadah Kurban Dalam Perkembangan Hukum Islam Modern,” *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, Dan Keagamaan* 5, no. 2 (2018): 151–58, doi:10.29300/mzn.v5i2.1443.

Dedi's research on the Law of Regular Social Gathering of *Qurban*⁸. All of these manuscripts, books, or writings only made descriptions of *qurban* without criticizing the existence of the sale and purchase contract of sacrificial animals. They were also just a narrative description of *qurban* worship, without in-depth analysis.⁹ Likewise, previous researches only mention the law of the *qurban* gathering, not the validity of the sale and purchase contract of *qurban* animals. Meanwhile, this research focuses on conducting a critical analysis of the practice of buying and selling sacrificial animals by the Curup community. Here is the novelty of this research.

This research is a field research with a qualitative approach. It used primary data which was collected by using unstructured interview. Sampling was conducted using purposive sampling and snowball sampling. The analysis is described with an inductive thinking system.

B. 'Aqad Theory and Its Problematique

The term *al-'aqd* is Arabic, from the word *'aqada*, and its plural form is *'uqud* which means concluding, binding, entering into agreements, contracts¹⁰, and agreements¹¹. In terminology, *fiqh* scholars defined contract with two meanings, namely in general and in particular. Contracts in general are:

كل ما عزم المرء على فعله, سواء صدر بإرادة منفردة كلوقف والإبراء والطلاق
واليمين, أم احتاج إلى إرادتين في إنشائه كبيع والإيجار والتوكيل والرهن¹²

“Everything that has been determined by someone to do it, whether it arises from a spontaneous desire such as waqf, liberation, divorce, and oath, or a determination that arises from the desire of two people to make it happen, such as buying and selling, renting, representation and pawning.”

While the contract specifically, as stated by Ibn Abidin, the Hanafiyah school of *fiqh* expert said that:

⁸ Syarial Dedi, “The Arisan of Qurban in Islamic Economic Perspective,” *AL-FALAH: Journal of Islamic Economics* 6, no. 1 (2021): 85–104, doi:10.29240/alfalah.v6i1.2282.

⁹ Aan Awaludin, “Program Pengabdian kepada Masyarakat Teknik Handling dan Penjualan Hewan Qurban,” *Jurnal Pengabdian Masyarakat Peternakan* 2, no. 2 (2017), doi:10.35726/jpmp.v2i2.209.

¹⁰ A.W. Munawwir, *Kamus Al-Munawwir Arab-Indonesia Terlengkap* (Surabaya: Progressif, 1997), 953.

¹¹ Sayid Sabiq, *Fiqh As-Sunah* (Beirut: Dar Al-Fikr, 1997), 3, 127.

¹² Wahbah al-Zuhaili, *Al-Fiqh al-Islami Wa Adillatuh* (Damsyiq: Dar Al-Fikr, 1985), 4, 80.

ارتباط إيجاب بقبول على وجه مشروع يثبت أثره في محله¹³

“The *ijab* and *qabul* bonds are based on shari’a provisions that affect the object of the engagement.”

Ijab is a statement of binding, such as the expression, “I sell you this book for Rp. 50.000,-”. Meanwhile *qabul* is a statement of acceptance of the bond, as someone said, “I bought”. Therefore at that time, there was an agreement between consent and *qabul* which was termed a contract. The contract will only take effect if it is following the will or the provisions of the *Shari’ah*. If it is shari’a, such as usury transactions, coercion, fraud, and so on, then the contract has no impact on the object of the contract.

1. Pillars of ‘*Aqad*

The most important pillar of the ‘*aqad* is *shighat al-’aqad* which is in the form of consent and *qabul*. It is through this statement that the intention of each party performing the contract is known. *Shighat al-’aqad* is:

ما صدر من المتعاقين دالا على توجه إرادتهما الباطنة لإنشاء العقد وإبرامه¹⁴

“Something that arises from two people who have a contract as an indicator of the form of their heart’s desire to do the engagement or to let go.”

Indicators that tell the existence of consent and *qabul* must meet the requirements that have been determined by the scholars. They are¹⁵:

- a. The occurrence of consent and *qabul* in one place (*al-majlis*) without being separated by talks that damage the contract. An assembly here can be understood with one atmosphere, for example, a long-distance contract by telephone and the like.
- b. There is a match between consent and *qabul*, such as goods and prices.
- c. The statement of consent and *qabul* refers to the will of each party with certainty, without hesitation. However, the scholars did not require special expression (*lafaz*), but enough with what shows a willingness to exchange about ‘*urf*’ or local customs, because the origin of the contract is *ridha* based on Surah *an-Nisa*’ verse 29. This is reinforced by the following fiqh rules: (The basis ¹⁶الأصل في العقود رضا المتعاقدين

¹³Ibid., 4, 81.; Ibn ‘Abidin, *Radd Al-Muhtar ‘ala al-Dur al-Mukhtar* (Egypt: al-Amiriyah, n.d.), 2, 255.

¹⁴Ibn ‘Abidin, *Radd Al-Muhtar ‘ala al-Dur al-Mukhtar*, 2, 94.

¹⁵Sabiq, *Fiqh As-Sunah*, 3, 128.

¹⁶Djazuli, *Kaidah-Kaidah Fikih*, 131.

of the contract is the willingness of both parties). The consideration is the intent and purpose of the contract, not the words and expressions, as the following rules sound: (What is considered in the العبرة في العقود للمقاصد والمعاني لا للألفاظ والمباني¹⁷ contract is the intent and meaning, not the words and expressions).

Indicators of the contract occurrence can be in the form of *lafaz* (speech), actions, signs, or writing. Through writing is also allowed based on the rules of *fiqh*: الكتاب كالخطاب (writing is the same as a verbal expression). However, the scholars require; each party is far apart, or one of the contract actors is unable to speak, for example mute, and for the perfection of the contract, it is required to read the writing when it is received¹⁸.

Contracts with deeds or actions are:

التعاقد بالمبادلة الفعلية الدلة على التراضي دون تلفظ بإيجاب أو قبول¹⁹

“The engagement is exchanging actions that show their will without the words of consent or *qabul*.”

This contract is also called *al-mu'athah*, *al-ta'athi*, or *al-murawadhah*. This kind of contract is widely practiced in supermarkets²⁰. The act of someone taking the item he wants to buy and handing it over to the cashier an amount of money according to the price listed on the item without any talk or signal, whether buying in small parties or large parties²¹. However, scholars agree that the marriage contract is not contracted by deeds, such as giving a dowry. Because marriage is a sacred desire and has a permanent effect on women, it needs to be done carefully to maintain the dignity of women. In addition, the marriage contract requires witnesses, and witnesses do not know the contract except by hearing the words of consent and *qabul*²². Marriage is also related to the issue of faith in justifying dealing with the wife so that the contract

¹⁷Ibid., 39.

¹⁸ Sabiq, *Fiqh As-Sunah*, 3, 128.

¹⁹al-Zuhaili, *Al-Fiqh al-Islami Wa Adillatuh*, 4, 99.

²⁰ Hardivizon and Muhammad Sholihin, “Hybrid Rationality behind Customers’ Choices of the Islamic Banks : An Experience of Bengkulu, Indonesia,” *Journal of Islamic Thought and Civilization* 11, no. 1 (June 23, 2021): 175–200, doi:10.32350/jitc.111.10.

²¹ al-Zuhaili, *Al-Fiqh al-Islami Wa Adillatuh*, 4, 100.

²² Ibid., 4, 101.; Al-Syarbaini al-Khatib, *Mughni Al-Muhtaj* (Beirut: Dar Al-Fikr, 1978), 2, 3.

requires a *lafaz* that can distinguish the relationship between men and women without marriage²³.

Another form of action that is considered a contract is *lisan al-hal*, an indication that refers to an action. For example, a member of the congregation puts his belongings in front of the congregation, the congregation automatically becomes the person who receives the deposit. That is, by action, there has been a *wadi'ah* contract (deposit)²⁴. If one leaves the place, then the other must take care of his friend's belongings. And if he leaves the item then the item is lost, legally he must be responsible for replacing it because there has been negligence in taking care of it²⁵.

A sign that clearly shows the will of the parties to the contract is also called a contract. It means that the signal is the same position as an explanation through the mouth of a person who can speak directly²⁶. For example, a sign is shown by a mute who cannot read and write. In this regard, the *fiqh* scholars also make a rule, that is *الإشارات المعهودة للأخرس كالبيان بالسان*²⁷ (clear cues from a mute person are the same as verbal explanations).

A contract is considered perfect and the law is determined by merely looking at the consent and *qabul*²⁸. However, certain contracts are only perfected after the handover of the object of the contract (*taslim al-'ain*). Such contracts are called *al-'uqud al-'ainiyyah*, specifically *al-hibah*, *al-'ariyah* (borrowing), *al-wadi'ah*, *al-qiradh* (union in capital and also called *al-mudharabah*), and *al-Rahn* (debt guarantee)²⁹. This is following the rules of *fiqh* compiled by *fiqh* scholars which read: لا يتم التبرع إلا

²³ Mustafa Ahmad al-Zarqa', *Al-Madkhal al-Fiqhi al-'Am al-Islami Fi Tsaubih al-Jadid* (Beirut: Dar Al-Fikr, 1968), 1, 391.

²⁴ Amirullah Amirullah, Andi Achruh AB Pasinringi, and Rahmawansyah Sahib, "The Transformation of the Muamalah Fiqh Akad at Saga Abepura-Papua Mall During The Covid 19 Pandemic," *Jurnal Adabiyah* 20, no. 2 (2020): 320–36, doi:10.24252/jad.v20i2a6.

²⁵ al-Zarqa', *Al-Madkhal al-Fiqhi al-'Am al-Islami Fi Tsaubih al-Jadid*, 1, 393.

²⁶ Muhammad Sholihin, Nurus Shalihin, and Apria Putra, "Paper Money in Sheikh Ahmad Khatib Al-Minangkabawi's Thought: A Comparative and Critical Commentary," *Islamic Economic Studies* 29, no. 1 (January 1, 2021): 67–83, doi:10.1108/IES-10-2020-0043.

²⁷ al-Zuhaili, *Al-Fiqh al-Islami Wa Adillatuh*, 4, 103.

²⁸ Agus Moh Najib, "Reestablishing Indonesian Madhhab: 'Urf and the Contribution of Intellectualism," *Al-Jami'ah: Journal of Islamic Studies* 58, no. 1 (July 31, 2020): 171–208, doi:10.14421/ajis.2020.581.171-208.

²⁹ al-Zarqa', *Al-Madkhal al-Fiqhi al-'Am al-Islami Fi Tsaubih al-Jadid*, 1, 394.

بالقبض³⁰ (a helpful transaction, is not perfect unless the object of the transaction has been submitted and controlled by the party receiving it).

Ijab and *qabul* need to be disclosed in transactions that are binding on both parties, such as buying and selling contracts, *ijarah* contracts, and marriage contracts. For transactions that are binding on one party, such as wills, grants, and *waqf*, there is no need to *qabul*. It is enough with an *ijab*. In fact, according to Ibn Taimiyyah, a Hanbali *fiqh* scholar, consent is not required in the case of *waqf*³¹.

2. General Conditions of a Contract.

The contract has two conditions, namely general conditions and special conditions. General conditions are requirements that must be met by all contracts, while special conditions are additional conditions specified in certain contracts that are not charged to other contracts, such as sale and purchase contracts, *al-wadi'ah*, *al-hibah*, *al-ijarah* (lease), and so on.

The general conditions of a contract are³²:

- a. Contractor. The parties to the contract are required to be reasonable and *mumayiz*. That is, the perpetrators of the contract must be *mukallaf* (capable of acting legally).
- b. The object of the contract is recognized by *syara'*. Transactions are not valid for something that is not considered property according to *Sharia*, such as a carcass. Or selling objects that are *mauquf*, because the consequence of the sale and purchase agreement is the transfer of ownership. So regarding the object of this contract, scholars require³³: 1) The existence of things, 2) The object is in the form of *matqumam* property. The point is that the trading commodity is something that is seen as property and is permitted by the *syara'* to store and use it, 3) The object is owned by the seller, 4) The object of the contract can be submitted during the contract.
- c. The contract is not prohibited by texts (verses or hadiths).
- d. The contract fulfills the specific and general requirements associated with it.
- e. The contract is useful.
- f. Perpetuate a valid statement of the consent until *qabul* occurs.
- g. One contract assembly, they are the contract is:

³⁰al-Zuhaili, *Al-Fiqh al-Islami Wa Adillatuh*, 4, 103.

³¹Mustafa Ahmad al-Zarqa', *Al-'Uqud al-Musammah* (Damaskus: Dar al-Kitab, 1968), 43.

³²al-Zarqa', *Al-Madkhal al-Fiqhi al-'Am al-Islami Fi Tsaubih al-Jadid*, 1, 425–33.

³³Ibid., 1, 357–58.

الحال التي يكون فيها المتعاقدان مشتغلين فيه بالتعاقد. وبعبارة أخرى: اتحاد

الكلام في موضوع التعاقد³⁴

“(A condition in which two parties are busy with the contract. or in another way: a talk about the object of the contract).”

The contract assembly can take the form of a place where the contract is held and can also take the form of conditions during the contract process, even if it is not in one place³⁵.

- h. The purpose of the contract is clear and recognized by *syara'*. This is about موضوع العقد that is, the main purpose of the contract is prescribed.

3. Types of Contracts

The contracts are divided into several forms with different terms; the contracts from the point of view of shari'ah recognition, in terms of the condition of the *musamah* contract or not, in terms of intent and purpose, from the state of the *'aini* contract or not, and in terms of the relationship between the contract and the legal consequences it causes.

The contract from the point of view of shari'ah recognition based on the provisions of the pillars and conditions, are divided into two types, namely³⁶:

- a. *Al-'aqd al-shahih*, is a contract that has fulfilled the pillars and conditions. The law of this authentic contract is the application of all the legal consequences it causes and is binding on the parties to the contract, so the Hanafiyyah scholars commented on this contract: ما كان مشروعاً بأصله ووصفه (something that is prescribed in harmony and conditions)³⁷.
- b. *Ghair al-shahih* contract, which is a contract in which there are deficiencies in the pillars or conditions so that all legal consequences of the contract are invalid and do not bind the parties to the contract. Hanafiyyah scholars divide this contract into two types: 1) *Batil*, which is a contract that does not fulfill one of the pillars or objects (conditions) or there is a direct prohibition from *syara'*, 2) *Fasid*, which is a contract that is harmoniously prescribed (fulfilled), but has no conditions. However, the majority of fiqh scholars state that a false contract and a *fasid* contract

³⁴al-Zuhaili, *Al-Fiqh al-Islami Wa Adillatuh*, 4, 106.

³⁵ al-Zarqa', *Al-Madkhal al-Fiqhi al-'Am al-Islami Fi Tsaubih al-Jadid*, 1, 407.

³⁶ Ibid., 1, 234.

³⁷ Ibid.

contain the same essence, which is invalid and the contract does not result in any law³⁸.

In terms of *tasmiyah* (naming), the contract is divided into two types, namely³⁹:

- a. *Al-'uqud al-musammah*, is a contract whose names are determined by *syara'* and explained by their legal consequences, such as buying and selling, *ijarah*, union, grant, *kafalah*, *hiwalah* (factoring), *wakalah*, *rahn*, *qardh* (debt), *shuluh*, marriage, will, and so on.
- b. *Al-'uqud ghair al-musammah*, is a contract whose names are not explained by *syara'*, nor are the legal provisions specifically, but carried out by the community according to their needs throughout time and place, such as *al-istishna'* (spill), *bai' al-wafa'* (sell with a desire to buy in the future), and others.

The contract, which is seen from the point of view of its purpose and intent, divided into seven types, namely⁴⁰:

- a. *Tamalikat* (ownership), is a contract that means to own something; either in substance or in benefits. If the ownership is obtained by *'iwadh* (reward/exchange between the two parties), then it is called an *al-mu'awadhat* contract, such as buying and selling, *ijarah*, *al-sharf* (foreign exchange), *al-shuluh*, *al-istishna'*, *al-muzara'ah*, *al-musaqah*, marriage and the like. If there is ownership that is *mujazi* without any reward, it is called an *al-tabaru'at* (help) contract, such as grants, *shadaqah*, *waqf*, *i'arah*, and *hiwalah*. But there is a contract at the end of it is taboo 'but in the end, it is *mu'awadhah*, like a *qardh* contract (debts) that demands repayment at the end.
- b. *Al-isqathat* (abortion), which is a contract to abort rights, either with or without compensation. If the abortion is without compensation at all, it is called *al-isqath al-mahdh* (pure abortion), such as *thalaq*, forgiving from *qishash* punishment, giving up debt, and giving up *syuf'ah* rights (right to buy). If the relinquishment of rights must exist in exchange for it, it is called *isqath al-mu'awadhah*, such as forgiving the *qishash* punishment with the obligation to pay *diyat* (fines).
- c. *Al-ithlaqat* (delegation), is giving authority to other people to take legal action, for example, *wakalah*, guardianship, or *'sha'*, that is a person's promise to another person to be a guardian of his children after his death.
- d. *Taqyidat*, which prohibits a person from *tasyaruf* (transactions), due to loss of power, such as *nazhir al-waqaf* (waqf manager), must act following the purpose of

³⁸ al-Zuhaili, *Al-Fiqh al-Islami Wa Adillatuh*, 235.

³⁹ Ibid., 242.

⁴⁰ Ibid., 244–45.

the *waqif*, as well as *al-aushiya* (beneficiary) and *al-wakala* (representative). Or prohibit someone from transacting to avoid damage caused by being crazy, sick, stupid, or still small.

- e. *Al-tausiqat*, which is a contract that aims to provide security or guarantees, such as bearing the debts of friends and providing guarantees for their debts. This contract is found in *kafalah*, *hiwalah*, and *rahn* transactions.
- f. *Isytirak*, which is a contract to share in business and profit, as contained in *musyarakah* contracts. Among them, *mudharabah*, *muzara'ah* and *muqabarah*.
- g. *Al-hifdz*, is a contract that aims to maintain the property of the owner such as the *al-wadi'ah* contract and some kinds of *wakalah*.

The contract that is seen from the point of view of *'ainiyah* and not is divided into two types⁴¹, namely:

- a. *Akad al-'aini*, which is a contract that must be in it for perfection and affects the object by surrendering the object of the contract in substance. There are five contracts, they are grant, *i'arah*, *wadi'ah*, *rahn*, and *qardh*. This is exemplified in the Qur'an letter al-Baqarah verse 283 regarding the pledge agreement, which reads in full:

وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَّقْبُوضَةٌ... (البقرة:283)

If you are on a journey and do not find a scribe, then give collateral... (2:283)

- b. *Ghair al-'aini* contract, which is a perfect contract with only *shighat* that is safe from defects and causes legal consequences for the object without the need to accept the object. This contract includes all contracts other than the five contracts above. The opposite of the *'ainiyah* contract.

The contractual relationship with the object or its legal consequences is divided into two forms, they are⁴²:

- a. *Al-munjiz* contract (certain), which is something that arises due to the mere nature of the contract without any connection to the conditions and is not based on the future. The law affects the contract on the object at that time as long as the pillars and conditions of the contract are fulfilled. For example, someone said, "I sell this garden to you like that". The buyer accepts it, then there will be legal consequences on the object of the contract at that time, namely the transfer of ownership with a reward. The original law of the *tanjiz* contract is *faur* (immediately), except for the will and *al-isha'* contracts, because this contract can only be implemented by nature after the death of the testator and the death of the child's guardian.

⁴¹ Ibid., 245–46.

⁴² Ibid., 246–49.

- b. *Akad al-mudhaf liilmustaqbal*, which is something that arises because of the contract that is based on the consent of the age to come. For example, someone says, “I rent to you this house next month”, or a husband says to his wife, “you are divorced tomorrow”. The law of this contract was contracted at that time, but the legal consequences occurred at a predetermined time.

Hanafiyyah scholars viewed the contract from the *idhafah* side in four forms, they are⁴³:

- a. Contracts that must be *idhafah* in nature, they are wills and *isha*’.
- b. Contracts that do not accept *idhafah*, that is *tamlikiyat ‘ainan* (ownership of objects) contracts, such as buying and selling, grants, *shuluh*, and *ibra*’ (release) from debt. Likewise, marriage contracts, *syirkah*, *qismah*, *ruju*’, because of the demands of the *shari’ah* which determines its effect at the time of the matter (at that time), and if it is based on the legal consequences in the *mustaqbal* period (to come), then the basic law of laying the contract is rejected by the *shari’ah*.
- c. A valid contract is *munjizah* and *mudhafah* for *mustaqbal*. The contract is:
 - 1) Contracts that mean benefits, such as *ijarah*, *i’arah*, *muzara’ah*, and *musaqah* contracts.
 - 2) *Iltizam* and *tautsiqat*, such as *kafalah* and *hiwalah* contracts.
 - 3) *Ithlaqat*, such as *wakalah* contract,
 - 4) *Isqathat*, such as divorce, *khulu*’ and *waqf*.
- d. Contracts that are *mu’allaq* on conditions, namely contracts that are associated with conditions, for example, someone said, “if I go, then you are my representative”. The difference between the *mu’allaq* contract and the *mustaqbal mudhaf* is that the *mu’allaq* contract is not signed except when conditions are attached to it, while the *mudhafah* contract is contracted at that time, but the legal consequences are based on the *mustaqbal* period.

Hanafiyyah scholars divided the contract from the side of this *mu’allaq* into three forms⁴⁴:

- a. Contracts that do not accept *ta’liq*
- b. Contracts that may be hung with various conditions starting (corresponding) or *ghair mulaim* (incompatible)
- c. A valid contract is suspended only with initial conditions, such as *kafalah*, *hiwalah*, and permission for children to trade. The starting conditions are the requirements that are following the will of the contract, ‘*urf* or *syara*’, for example, someone said, if you want to lend the so and so, then I am the guarantor. As for the conditions that

⁴³ Ibid., 247–48.

⁴⁴ Ibid., 248–49.

do not start, for example, someone said, if the bird comes I guarantee so and so, if my son succeeds in this test, then I guarantee you, and some requirements that are not useful or whose meaning is not clear are between motivating, joking or playing.

C. Implementation of the Sale and Purchase of Sacrificial Animals by the Curup Community

Interviews were carried out with several *qurban* organizing committees to find out how to carry out the sale and purchase contract of sacrificial animals in the Curup community. From the interviews that the author has conducted, several understandings can be drawn: 1) it concerned the perpetrators of the sale and purchase of sacrificial animals, namely, the committee as the buyer, and the breeder as the seller. It was also indirectly understood that there is a practice of buying and selling sacrificial animals through brokers; 2) the place of the contract was carried out at the place of the livestock seller, and indirectly also informed in the market and sometimes at the place where brokers are found who will sell the sacrificial animals. Here, brokers were actively looking for buyers of *qurban* animals; 3) there were a price difference between buying directly from farmers and through brokers.

Although there were brokering practices in buying and selling sacrificial animals, but for now, based on the results of interviews, it was no longer found. In general, the mosque or *mushallah* where the *qurban* was held, already has subscriptions to their respective *qurban* animal breeders. They no longer need the brokers, but directly meet their respective customers.

Based on data from several interviews, it can be concluded that the perpetrators of the sale and purchase contract of sacrificial animals were the committee as buyers, farmers as sellers, and brokers. The place of contract is the location of livestock sellers, markets, and sometimes places where brokers were found. The price or medium of exchange (money) came from the *qurban* participants that have been collected by the committee. While the selling price, there was a price difference between buying directly from farmers and through brokers or *toke*. In general, mosques or prayer rooms that organize *qurban*, already had subscriptions to their respective *qurban* animal breeders. Animals were usually delivered on the day of the sacrifice according to the agreement.

D. The view of the contract theory on the sale and purchase of sacrificial animals by the Curup community

The practice of buying and selling sacrificial animals by the Curup community can be grouped into several forms:

First, the committee that collected funds from the *qurban* participants has set a price for the *qurban* animal, such as one goat at Rp. 2.000.000,-, for a cow as many as seven people, each Rp. 2.000.000,- or Rp. 2.500.000,- according to the committee's policy in their respective places. The payment could be all at once and could also be paid in installments every month, so it was not burdensome. On the one hand, this was

indeed very helpful for people who want to sacrifice. Having a savings book that would be filled in for one year was very helpful and not burdensome. The ease of the payment system provided a great opportunity for the community to perform qurban. However, what the committee has done looked like a sale and purchase agreement that was paid in installments (credit). The committee had sold the sacrificial animals at this price, even though the animals were not yet available. Although the committee denied having made a sale and purchase contract, such an action was considered a sale and purchase agreement. Buying and selling like this were considered invalid because it did not meet the pillars and conditions, so there are no legal consequences. Saying that fixing the price and agreeing to the payment was considered a sale and purchase contract, as the following fiqh rules read: نحن نحكم بالظواهر والله يتولى السرائر⁴⁵ (we only punish the *zahir* while Allah is in control of the inner affairs).

From the perspective of *Shari'ah*, the contract in this case was said to be *'aqd ghair shahih* (illegitimate contract). It is because this contract violates the pillars and conditions, namely concerning the object of the contract. The committee has sold animals that were not owned yet. It is contrary to the hadith of the Prophet Muhammad which is forbidden selling goods that were not owned, as the hadith reads:

عن عمر بن شعيب: لا يحل سلف وبيع ولا شرطان في بيع ولا ربح ما لم تضمن ولا
بيع ما ليس عندك (رواه: أبوداؤد)⁴⁶

"It is not lawful to combine a loan agreement and a sale and purchase and it is not (halal) two conditions in buying and selling and not (halal) the profit of goods that are not under your guarantee, and not (halal) goods that are not by your side." (Narrated by Abu Dawud)

Thus, selling something that was not owned destroys the pillars and conditions of the sale and purchase contract, which was related to the object of the contract. The sacrificial animals that were traded were not owned by the qurban committee. The object of the contract was not recognized by *syara'* and was even prohibited by the *shari'ah*. Judging from the *shari'ah* acknowledgment, this contract was categorized as a *ghair al-shahih* (invalid) contract because there was damage to the pillars and conditions, namely the object of the contract. The consequence was that it did not result in any law.

Judging from the naming side of the sale and purchase contract of this sacrificial animal, it was categorized in *al-'uqud al-musammah*, namely contracts whose names and laws are determined by *syara'*. Therefore, the sale and purchase contract of the

⁴⁵Abu Daud, "Sunan Abu Daud," hadith no. 1064.

⁴⁶Ibid., hadith no. 3504.

sacrificial animal was included in the *al-bai'* (buying and selling) contract. It must be subject to the provisions of the pillars and the terms of sale and purchase. In addition, this contract could also be included in the *ainiyah* contract, a contract in which for its perfection there must be objects. The sale and purchase of sacrificial animals must have animals.

Judging from the point of view and purpose, the sale and purchase contract of sacrificial animals is grouped in the *tamlikat* (ownership) contract both in substance and benefits, but the owner of this sacrificial animal is by submitting a price, so it is called *tamlikat bi al-'iwadh* (ownership with a reward).

Viewed from the side of the contractual relationship with the object, the contract for the sale and purchase of sacrificial animals was called the *al-munjiz* contract. It was something that arises with *shighat* without being related to conditions and also not relying on the future. The law affects the contract on the object at that time as long as the pillars and conditions demanded were fulfilled.

Therefore, the proposed solution for the first case is that the committee needs to explain the budget for the cost of sacrificial animals collected from the participants or the public in the form of an estimate or not a price determination. The money collected is in the form of savings, not in the form of buying and selling. It is the concrete form of sacrificial animal savings.

Second, after the money was collected and the time for the qurban was approaching, the committee went to find the qurban animal and then bought it. Practices like this in the theory review of buying and selling contracts cannot be justified, because the committee who carries out the buying and selling contract is not the owner of the money that has been collected. Thus, legally it is not permissible to carry out *mu'amalah* transactions against other people's property, as the fiqh rules:⁴⁷ الأمر بالغير باطل (every order to take legal action against other people's property rights is null and void).

Contracts or buying and selling transactions are only allowed if someone has obtained permission from the owner of the property. This kind of buying and selling according to contract theory includes *al-mawquf*, which is a contract made by someone capable of acting legally, but he does not have the power to carry out the contract. This contract is only perfectly valid and has legal consequences if it is approved by *shahib al-sya'ni* (the owner of the contract/guardian). However, in the view of Syafiiyah and Hanabilah, the *mawquf* contract was void.

To obtain such permission and approval, a person must act as a guardian or representative. To become a guardian or representative, it must be determined beforehand, not just a one-sided confession or determined later. For example, someone

⁴⁷Djazuli, *Kaidah-Kaidah Fikih*, 235.

who becomes the guardian of an orphan, is determined based on the provisions of the Shari'ah regarding guardianship, or becomes a marriage guardian, and so on.

Likewise, to become a representative of someone, there is a provision in advance such as a representative contract. Then, it is considered and recognized as a representative. If the position as a representative has not been determined, then legal action is not justified. It is because the Shari'ah prohibits transactions against other people's assets as stated in the fiqh rules above.

The person, who is in the position of guardian or representative, is given the authority to act legally, but the contract remains the *mawquf* of the person who is the guardian or the person he represents. The validity of the contract depends on the permission of the party being represented or trusted. This is the sound of the following fiqh rules: *لا يجوز لأحد أن تصرف في ملك غيره بلا إذنه*⁴⁸ (it is not permissible for a person to take legal action against another person's property except with his permission).

If it was said, did the committee not get permission from the qurban participants when they handed over the money so that the committee was considered a representative of the qurban participants? In addition, in the rules of fiqh, it is also stated that the customs of a society that can be considered as law, the full rule: *العادة محكمة*⁴⁹ (adat can be considered as law).

The problem is not that easy. The statement of representation cannot be based on mere conjecture, however there must be unequivocal indications because the law only sees and evaluates the outer, while the inner affairs belong to Allah SWT as the rules say: *نحن نحكم بالظواهر والله يتولى السرائر*⁵⁰ (we only punish with *zahir* while Allah is in control of inner affairs). The provisions regarding representation are determined by the Shari'ah. It is not valid unless it fulfills the pillars in the form of consent and *qabul*. This is the opinion of Hanfiyah scholars. *Ijab* comes from a *muwakil* (person who represents), while *qabul* comes from a representative (recipient of a representative). Although it does not require certain words, it is legal⁵¹ with anything that indicates representation in the form of words or actions. The requirements are laid out on each of the three components⁵², namely *al-muwakil* (who represents), *al-representative* (who becomes a representative), and *al-muwakil fih* (representative object). Plus one more by the number of scholars, namely *shighah*⁵³.

⁴⁸Ibid.

⁴⁹al-Syhari, *Idhah Al-Qawa'id al-Fiqhiyyah*, 45.

⁵⁰Abu Daud, "Sunan Abu Daud," hadith no. 1064.

⁵¹ Ibid.

⁵² Sabiq, *Fiqh As-Sunah*, 226.

⁵³ al-Zuhaili, *Al-Fiqh al-Islami Wa Adillatuh*.

In addition, some rules justify the customs of the local community that can be considered as legal considerations, which are termed 'urf. However, the scholars of *ushul al-fiqh* agreed that '*urf ash-shahih*, namely '*urf* that does not conflict with the *syara*', both concerning '*urf al-'am* and '*urf al-khash*, as well as relating to '*urf al-lafzhi* and '*urf al-'amali*, can be used as evidence in establishing *Sharia*' law⁵⁴. '*Urf* can be used as a basis in establishing the law. Nevertheless, '*urf* is not a stand-alone proposition. '*Urf* becomes a proof because there is a support, or there is a place to rely on. Usually '*urf* is included from maintaining *masalah mursalah*. '*Urf* is valid and accepted by many people because it contains benefits. All parties agree to take something that is of benefit, even though no text directly supports it. If these customs collide with the texts, of course, these customs cannot be considered because they are considered as *fasid* customs and must be abandoned. It is clear that buying and selling unowned items is contrary to the texts, and so does a sale and purchase agreement on one's property.

Thus, the action of the committee set the price of Rp. 2.000.000, - or Rp. 2.500.000, - per person for the price of cows on a concession as many as seven people, and set at Rp. 2.000.000, - for one goat, cannot be said to be a sale and purchase contract. It is because the committee is not the owner of the animal. It is also very clearly at odds with the contract theory both in harmony and terms. Strictly say that this kind of habit ('*urf*) is classified as '*urf fasid* which cannot be a legal consideration. The Messenger of Allah (SAW) has clearly stated through the hadith of 'Umr bin Shu'aib, narrated by Abu Dawud, that it is forbidden to sell goods that are not owned.

Likewise, the actions of the qurban committee who immediately bought animals after the money was collected without first asking for approval from members means to be tolerant of other people's property. This kind of habit cannot be justified because it is contrary to the rules of *fiqh* which prohibits taking legal action against other people's property. Contracts or buying and selling transactions are only allowed if someone has obtained permission from the owner of the property. This kind of buying and selling according to contract theory includes *al-mawquf*. Its validity depends on the approval of the *sahib al-sya'ni* (the owner of the contract/guardian). However, the Syafi'iyah and Hanabilah scholars still consider the *mawquf* contract null and void.

Therefore, the way out to straighten this contract is to clarify the status of the committee on the qurban money that has been collected. The committee must convey to the qurban participants that the money has been collected and the time for the qurban is near, then who will buy the qurban animal or represent the committee. If the committee has the status as a representative of the qurban participants, then the committee has the authority to perform the contract so that the contract made does not become *mauquf*. This statement as a representative must be not an assumption.

⁵⁴ Nasrun Haroen, *Ushul Fiqh* (Jakarta: Logos Wacana Ilmu, 2001), 1, 142.

As for the actions of the community of qurban participants who hand over money either in cash or in installments to the qurban committee, it can be seen as a wakalah contract, but not a sale and purchase contract. This is an indicator related to the act, as the act can be considered a contract called *لسان الحال*. For example, one member of the congregation puts his belongings in front of the congregation, the congregation automatically becomes the person who receives the deposit. That is, by deed, there has been a *wadi'ah* contract (deposit). If one leaves the place, then the other must take care of his friend's belongings. If he leaves the item, which means the item disappears, then legally he must be responsible for replacing it because there has been negligence in taking care of it. Judging that the act is categorized as a contract or not is very much determined by the customs of the local community⁵⁵. Therefore, the committee's act of buying qurban animals from the collected qurban participants' money can be considered a legitimate sale and purchase. The committee's position here is as a representative of the qurban participants. This has become a habit during the Curup community and others, according to the rules of fiqh *العدة محكمة* (customs can be considered as law).

Third, some people come to the committee for selling sacrificial animals and intending to make a profit on the price difference between the seller and the committee. These perpetrators are referred to by the public as *toke* or brokers. Although this practice has been abandoned a lot because in general, mosques or prayer rooms that organize qurban, already have subscriptions to their respective qurban animal breeders. However, this practice has existed and is carried out by the community. In essence, people (*toke* or brokers) like this are only brokers, not animal owners. Brokers or *samsarah* in fiqh terms, in principle, are allowed if they follow the existing provisions⁵⁶. He must get permission from the owner of the animal, otherwise, the contract will be void because he sells goods that are not owned by him or pay homage to other people's property. This is very contrary to the existing texts and fiqh rules.

The sale and purchase transaction of the sacrificial animal, if categorized in a salam contract (buying and selling orders), is also inappropriate because it does not fulfill the elements of the sale and purchase of *salam*. *As-salam* or *as-salaf* is also called *ba'i al-muhawij*, namely buying and selling the unseen due to the need for each party; those who have money need goods while those who have wealth want money⁵⁷. By definition, the sale and purchase of greetings are:

⁵⁵ Haroen, *Fiqh Muamalah*, 393.

⁵⁶ Reni Noviati, "Praktik Kurban Online Dalam Perspektif Islam Tebar Hewan Kurban THK Di Dompot Dhuafa," *Jurnal Syarikah: Jurnal Ekonomi Islam* 3, no. 1 (2017): 343–57, doi:10.30997/jsei.v3i1.716.

⁵⁷ Sabiq, *Fiqh As-Sunah*, 171.

بيع أجل بعاجل أو بيع شيء موصوف في الذمة أي أنه يتقدم فيه رأس المال
ويتاخر المثلثن لأجل⁵⁸

“Selling an item whose delivery is delayed, or selling a (goods) whose characteristics are clear with an early payment of capital, while the goods are delivered at a later date.”

Based on the definition above, the sale and purchase of *salam* is a sale and purchase by explaining the characteristics and properties of the object of sale and purchase with an upfront payment. Transactions like this are justified by the Shari’ah as the following hadith from Ibn Abbas reads:

مَنْ أَسْلَفَ فِي شَيْءٍ، فَفِي كَيْلٍ مَعْلُومٍ، وَوَزْنٍ مَعْلُومٍ، إِلَى أَجَلٍ مَعْلُومٍ
(رواه: البخاري)⁵⁹

“Whoever does the sale and purchase of greetings on something, then do it in a certain size, certain scales, and a certain time.” (Narrated by al-Bukhari)

The mistake of buying and selling sacrificial animals is equated with a *salam* contract because it does not fulfill the elements of the sale and purchase of *salam*. It does not explain the shape details, size, and characteristics of the animal order, and does not pay off the initial payment. These are the two things that characterize the sale and purchase of greetings, as the majority of scholars say.

Based on the explanation above, it can be understood that the sale and purchase contract of sacrificial animals in the Curup community carried out by the qurban committee with the animal owner can be considered valid according to the contract theory because the pillars and conditions have been fulfilled. However, the sale and purchase of sacrificial animals between the committee and toke or brokers are only considered valid if the toke or broker is in the position of *samsarah*. Meanwhile, the committee’s words that set the price of the sacrificial animal are seen as an invalid sale and purchase contract, because the committee does not have any sacrificial animals. Buying and selling are indeed considered a form of ownership transfer that is justified in Islam. However, it is legitimate buying and selling that has legal consequences. The indicator of a legitimate sale and purchase is the fulfillment of the pillars and conditions.

⁵⁸Haroen, *Fiqh Muamalah*, 146.

⁵⁹Muhammad bin Ismail Abu Abdillah al-Bukhari, “Shahih Al-Bukhari,” in *CD-Room Maktabah Syamilah*, n.d., hadith no. 2240.

E. Conclusion

This study concludes that the implementation of the pillars and terms of the contract in *muamalah* transactions is elastic which is in tune with the times, especially in the form of *lisan al-ahwal*. The application of this form of contract is strongly influenced by the local community customs, as seen in the Curup community in the implementation of *qurban*. This is accommodated by the sound of the rule *al-'adah muhakkamah*.

Responding to the problem of buying and selling sacrificial animals in the Curup community, an understanding of contract theory is highly demanded because it is a valid contract that has legal force especially regarding matters of worship such as *qurban*. The committee must explain at the opening of registration for *qurban* participants (participating in *qurban*): 1) Regarding the fees charged to participants or the community, it must be in the form of an estimate or not a determination of the sale and purchase price of animals in order to avoid selling something that is not owned. 2). The committee has the status as a representative of the *qurban* participants, so it has the authority to carry out the contract, and the contract does not become *mauquf*. 3). The act of the *qurban* participants by handing over money either in cash or in installments to the committee can be seen as a *wakalah* contract in the form of a *lisan al-hal* contract. This form of contract is colored by local culture. 4). Transacting with brokers must ensure that they already have sacrificial animals, or they are brokers (*samsarah*) who have permission from the animal owners in order to avoid buying and selling unowned goods or sharing other people's assets without permission.

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²Norman Daniel, *Islam and the West* (Oxford: One World Publications, 1991), h. 190.

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