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Reconceptualization of Gala Agreement (Custom Pledge) in Aceh Society Based on Sharia

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Abstract

The purpose of this research is to analyze and re-conceptualize the Gala agreement form on the Sharia-based customary law community in Aceh. This research is an empirical juridical research with a socio-legal approach. Utilization of collateral goods that has been practiced so far in the gala agreement, it is of course a mismatch of the use and control in the concept of Sharia pledge. Most of the scholars do not allow any utilization of gala objects in the absence of a time limit. Gala object utilization is permitted if the parties agree to implement the three contract of Gala agreement using the Al-Qardhul Hassan, Al-Mudharabah or Bai 'Al-Muqoyyadah agreements to avoid

the elements of scam (*gharar*) and usury (*riba*). One of the reconciliation forms in a sharia-based gala agreement is applying one of these contracts and the profits obtained from the gala object utilization by the pledgee (gala recipient) is used to recover the pledger's (gala provider) debt.

Keywords: Practice, Gala, Law, Custom, Sharia.

Reconceptualización Del Acuerdo De Gala (Compromiso Personalizado) En Aceh Society Basado En Sharia

Resumen

El propósito de esta investigación es analizar y volver a conceptualizar el formulario de acuerdo de Gala sobre la comunidad de derecho consuetudinario con sede en la Sharia en Aceh. Esta investigación es una investigación jurídica empírica con un enfoque socio-legal. La utilización de bienes colaterales que se han practicado hasta ahora en el acuerdo de gala, es, por supuesto, una falta de coincidencia en el uso y el control en el concepto de promesa de Sharia. La mayoría de los estudiosos no permiten la utilización de objetos de gala en ausencia de un límite de tiempo. La utilización del objeto Gala está permitida si las partes acuerdan implementar los tres contratos del acuerdo Gala utilizando los acuerdos Al-Qardhul Hassan, Al-Mudharabah o Bai 'Al-Muqoyyadah para evitar los elementos de estafa (*gharar*) y usura (*riba*). Una de las formas de reconciliación en un acuerdo de gala basado en la sharia es la aplicación de uno de estos contratos y las ganancias obtenidas de la utilización del objeto de gala por parte del preendedor (receptor de gala) se utilizan para recuperar la deuda del proveedor (proveedor de gala).

Palabras clave: práctica, gala, derecho, costumbre, sharia.

1. INTRODUCTION

The Aceh society still upholds and maintains the values of customs in their daily lives. This form of rapid economic development did not merely make them abandon the old economic patterns as it had been developed by their ancestors for a long time. One form of custom economy still used in the life of Aceh's society is gala (custom pledge).

The birth of the gala agreement concept in the Aceh society was based on the Prophet's actions who pledged his armor as contained in Surah Al-Baqarah verse 283:

وَإِنْ كُنْتُمْ عَلَىٰ سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَّقْبُوضَةٌ

“And if you are on a journey [in a bargain not in cash] and cannot find a scribe, then a security deposit [should be] taken [by the indebted person].”

Gala custom was already in the life of Aceh's society in the 17th century. Gala in Aceh's society is not only a form of economy, gala has the concept values and reflections of fellowship and mutual assistance in social life (*habluminannas*) with the purpose of wishing pleasure from Allah (*wa habluminallah*) (Taqwaddin Husen, 2103).

The practice of gala in Acehnese society is known as one of the forms of loan-lending agreement between pledgee (gala recipients) and pledger (gala provider) which is based on mutual assistance to wish for rewards and blessings from Allah SWT. In an urgent situation to meet the large financial needs of a person who has a valuable asset (*boinah*), pledgee prefers to use it as a gala object because by doing so, pledgee

who has financial difficulties can regain it when he has redeemed his debt to the pledger.

If the parties have agreed to do the gala agreement, the pledger gives up the usage rights on the gala object as guarantee to the pledgee, while the pledgee submits the amount of money promised between the two parties in cash to the pledger. In the gala system, the pledger (owner of object) grants and surrenders the usage rights on the gala object to the pledgee to use the confiscated assets as guarantee until the pledger has not yet redeemed the gala object (expired). The profits obtained by the pledgee for the use of the gala object are considered as remuneration for the money lent (Azahrsyah Ibrahim, 2012).

Considering the implementation of gala agreement in the life of the Acehnese society, the agreement ends with no statute of limitations other than when the gala object redeemed, it will certainly burden the pledger because the gala object that used as a means of earning a living to redeem it, has become the usage right for the pledgee. While on the other hand, the pledgee continues to gain the profits of the gala object without reducing the redeemed value for the pledger.

In the context of Islamic economics, the pledged object is used merely to ensure trust in the pledger's party. Islam does not justify the utilization of the gala object if it causes pernicious to the pledger. Most scholars' notion that utilization is only allowed at the expense of the pledgee on the object, for example, the pledgee may gain pledged cow milk for as much food provided for the cow (A. Ghofur Anshori, 2006).

Mismatch implementation of the gala agreement with sharia provisions will certainly conflict with the Article 2 paragraph (2) of Qanun provisions Number 9 of 2008 concerning Customs, stating that the guidance, development, preservation and protection of customs must include and be guided by Islamic values. The absence of a time limit or uncertainty will also ensure plunge the deed into a scam (*gharar*). *Gharar* deed is an act in Islamic law.

Seeing the problem, the writer is interested in conducting research with Reconceptualization of the Gala Agreement (custom pledge) in Aceh society based on sharia as a theme. The birth of this paper is based on the author awareness of several problems, especially in the implementation of the gala agreement which exist in Aceh while contradicting to the provisions of Islamic Sharia, then the writer will re-conceptualize the gala agreement in accordance with the rules and provisions of Islamic sharia'.

2. RESEARCH METHODOLOGY

This research used empirical juridical research aimed to find the form of the gala agreement that lives in Aceh's society. This approach did not stop to the law in the legislation provisions, but also within the conception of law that lives in society (Soetandyo Wignjosobroto, 2012). The data used in this study consists of primary data obtained from field research, secondary data obtained through references and

tertiary data obtained on materials that provide information related to research.

Data analysis method used in this study is a qualitative data analysis method. It is a way of research that produces analytical data, that was stated by respondents in writing, verbally and also their behavior were researched and studied as something whole. Data validation used the source triangulation technique (use data comparisons and sources to systematize differences and similarities of views based on source qualifications and situations with documents) and methods (check through data collection techniques, participatory observation, and in-depth interviews).

The research specification is Socio-legal research, carried out by combined knowledge, expertise, and experience from two or several disciplines (interdisciplinary) to answer a legal problem. In this case, legal problems were resolved by combined legal and sociological-anthropological studies, specifically legal pluralism (Reza Banakar and Max Travers, 2003).

3. RESULTS AND DISCUSSION

Gala is a loan agreement for money or gold by making estate or other items that are considered valuable as gala objects. The gala agreement has existed and lived in Aceh's society since the 17th century and it still continues today. According to Badruzzaman, at the beginning of its development, the gala agreement in Aceh's society

was usually done verbally or unwritten, assuming what was promised by both parties had been agreed upon and both parties were considered to understand about their rights and obligations between them, so based on mutual trust between each other this becomes a characteristic in the gala agreement according to customary law in Aceh.

Over time the gala agreement continues to grow that its development is influenced by external cultures due to technological advances and changes in the people mindset. These influences bring positive and negative changes to some community activities in the economic field. In the implementation, if the parties agreed to the gala agreement, its result will be contained in the gala agreement letter, generally only containing the title (letter statement), opening statement, identity and address of the pledger and the pledgee, the location of the pledged object, the object information and closing statement accompanied by signatures from both party who made the agreement, the head of village (*keuchik gampong*) and several witnesses signature, then followed by the handover from both parties where the pledger hands over the estate or valuable asset as the gala object (guarantee) to the pledgee in the form of usage rights, while the pledgee hands over the agreed sum of money as the agreement between the two in cash.

In the implementation of the gala agreement, the owner of the property or referred to as the pledger gives the usage rights and control over the gala object to the person who gives the loan or commonly called the pledgee to use the gala object as long as the owner has not yet redeemed it.

The termination of a gala agreement in the Acehese society is when the gala object has been redeemed, in the Aceh customary law there is a saying " *lheuh ngui payah ta pulang, miseu utang payah ta bayeu, akhe dari janji gala ngon teuboh* ". This means that a new gala agreement is considered over if the gala object has been returned. As well as a new debt agreement will be considered over when it has been paid and the new gala agreement is considered finished (ended) if the gala object has been redeemed.

During the gala agreement the object are guaranteed to be in the possession of the pledgee, as long as the gala object has not been redeemed by the pledger, the pledgee has the right to gain the profits of the gala object because the utilization of the gala object is a form of remuneration from the pledger for money or gold loaned by the pledgee. Based on the assumption of a remuneration form, that is why the gala agreement does not mention the redeemed deadline clause.

3.1. The concept of the Gala Agreement and Sharia Pledge

Sharia pledge is often identified with *rahn* which means in terms of making an object that has assets value in the perspective of *syara'* into guarantee of a debt, making it possible to take all or a portion of the debt from that object. The scholars have agreed that the gala agreement (*rahn*) is legal and not mandatory because the nature of the gala object is only a guarantee if both parties do not trust each other. However, if both parties trust one another, then guarantees may not be needed. This is reflected in the following words of Allah: "And if one

of you entrusts another, then let him who is entrusted discharge his trust [faithfully]" (Surah Al-Baqarah: 283). This verse also provides an interpretation that guarantees are only required if there are no scribes among those who transact.

The gala agreement in the Aceh society is a loan agreement that can be likened to a pledge which is considered as an act based on the values of mutual assistance (*ta'awun*) among human beings which is also based on fellowship. For Aceh society exist an assumption of helping others which become a very noble act in the eyes of Allah and also humans.

In an economic system in Islam there are several foundations which become the basic concepts as follows:

- 1) The prohibition of uncertainty or scam (*gharar*);
- 2) The prohibition of usury (*riba*);
- 3) The prohibition of gambling (*maisir*);
- 4) The prohibition of fraud (*tadlis*);
- 5) The prohibition of unclean trade (not *halal/haram*);
- 6) The use of profit sharing principles.

According to Faisal Ali, the gala agreement is classified as a gratuitous (*tabbaru'*) 'meaning that it is one of the transactions that is not intended to make a profit (non-profit transaction) with a pure assumption because it arises the intention of mutual assistance. Based on the implementation of the gala agreement, the absence of time limit certainly can give the effects of seizure (oppression) for the pledger. In the basic concept of the Islamic economic system it prohibits the element of time uncertainty or scam (Purbayu Budi Santosa, 2015).

Syaikhul Islam Ibnu Taimiyyah stated, scam is the result of which is unclear. Meanwhile, according to Shaykh As-Sa'di, scam is wagering (*mukhatharah*) and uncertainty (*al-jahalalah*). This included in the category of gambling (Abdurrahman bin Nashir As-Sa'di, 1992). The scam related with a gala agreement that developed in the life of the Acehese society is that there is no time limit in the agreement. In Islamic sharia, these scam transactions are forbidden because in the scam trading system exist an element of plundering other's property unjustly.

In Surah Al-Baqarah verse 188

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا
فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

Which means:

"And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]".

In the An-Nisa verse verse 29:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ
مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Which means:

"O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not

kill yourselves [or one another]. Indeed, Allah is to you ever Merciful."
".

From Abu Hurairah, from the Prophet Muhammad, he said:
"Rasullah S.A.W prohibited the *hashah* and *gharar* sale".

The gharar ban in the Islamic economics concept aims to ensure that there is no uncertainty that will impact within the trade. In a basic context of Islamic economics, the gala object can only be used as a guarantee for the pledger trust to redeem the pledgee so for this reason, the pledgee does not hesitate to lent money or gold to the pledger because there is a guarantee. However, if the parties have trusted each other, the agreement will also be allowed without guarantee.

Utilization and authorization in the gala agreement on the gala objects usage by the pledgee with the assumption to gain profits, interest and other things that are not allowed in accordance with the Islamic economy concept because if there is a profit-seeking principle it can lead to usury. Islam teaches to uphold the values of the benefit of the public interest (*ummah*) which will bring benefits and leave unjust deeds (*mudharat*).

Utilization and authorization based on benefit with the aim of mutual assistance is certainly permissible if the pledgee and the pledger of the gala agreement agreed to implement 3 (three) contract of agreements, including:

- 1) Debt agreement with the gala in the form of *Al-Qardhul Hassan*.

The contract usually carried out on a party who want to pledge the goods for consumptive purposes, therefore the pledger is charged

in the form of fees or costs to the pledgee for maintaining the gala object (guarantee).

2) Debt agreement with gala in the form of *Al-Mudharabah*

The contract conducted by the pledger whose pledge their goods to increase business funding or financial productivity. With this contract the pledger will provide profit-sharing based on the benefits obtained by the pledger to the pledgee in accordance with the agreement, until the borrowed funding has been redeemed.

3) Debt agreement with pledge in the form of *Bai 'Al-Muqayyadah*.

The contract conducted if the pledger wants to pledge their goods for productive purposes such as the purchase of equipment for work funding. To obtain a loan the pledger must surrender their usable goods as guarantee, both by pledger (*rahin*) and pledgee (*murtahin*). In this case the pledger can provide benefits on price setting of goods purchased by the pledgee.

3.2. Forms of Reconceptualization of Gala Agreements Based on Sharia

The end of a gala agreement on Aceh society is after the pledger redeems its assets to the pledgee. Based on these conclusions it can be said that within the society, the agreement does not have a certain time limit, but only when the gala object has been redeemed.

Based on the opinion of *ulama*, the utilization of gala objects is not permitted if it does not reduce the pledger's debt. It is only allowed

if it can reduce the pledger's debt and meets certain requirements. According to Faisal Ali to fulfill the requirements of the gala object utilization, the pledger and the pledgee must agree to make a profit-sharing (*mudharabah*) agreement.

According to most *ulama*, *mudharabah* is a contract (agreement) between the pledger and pledgee profits from the cooperation will be divided according to the agreement of both parties (Muhammad, 2001). Furthermore, Faisal Ali also stated that the application of the *mudharabah* contract in the gala agreement was permitted because it aims for mutual assistance for those who needed funding in this case was the pledger with those who had funds or the pledgee.

The application of the *mudharabah* agreement in the gala agreement is carried out after both parties has an agreement accompanied by a form of handover between them, where the pledger submits the gala object to the pledgee and on the other hand the pledgee submits the funds or gold to be loaned by the pledger. After the agreement, both parties will begin the profit sharing (*mudharabah*) agreement on the gala object (guarantee). When the parties start the *mudharabah* agreement there must be a stipulation of the ratio (profit sharing) in which the determination of the amount (profit) must be agreed by both parties.

So with the application of the *mudharabah* contract in a gala agreement as explained above, the pledgee will automatically be allowed to use the gala object entrusted as guarantee by the pledger. The implementation of *mudharabah* agreement certainly will not

eliminate the values and concepts of mutual assistance, and with it the benefits obtained from the gala object can be shared and gain by both parties as previously agreed, and on the other hand, the pledger will also find it resourceful as it will not reduce much of their income, while it will also cover debts from the distribution of profits to the pledgee.

4. CONCLUSION

A gala agreement is a form of pledge to lend money or gold by turning estate or other valuable assets as gala objects. It only is used if the pledger required a large sum of money in a financially urgent situation. In its mechanism, if the parties have agreed to do a gala agreement then an exchange can be done with the estate or valuable assets as gala object from the pledger to the pledgee in the form of usage rights, while on the pledgee handover the money with an agreement that has been fulfilled as agreed between the two in cash. In the Acehnese society, the agreement ends only when the gala object has been redeemed. During the gala agreement the goods are guaranteed to be in the possession of the pledgee, so long as the gala object has not been redeemed by the pledger, the pledgee has the right to gain the profits of the gala object (guarantee) because utilization of the gala object is a form of compensation from the pledger for the money or gold loaned by the pledgee.

Pledge in the society define the gala agreement as an act based on *muammalah* values in the form of a loan agreement that can be referred as pledge agreement in which the rights obtained by the pledger for a movable object, which is handed over to him by the pledgee or by another person on his behalf and who gives authorization to the creditor to take repayment of the goods in advance of the creditors. From the practice of gala agreements developing in Aceh's society, there are problems regarding the setting of time limits and the use of gala objects. Most of the scholars do not allow utilization of gala objects in the absence of a time limit which it will cause uncertainty and unjust treatments for the pledger and the profits from the gala objects usage can lead to an act of usury for the pledgee.

Utilization and authorization of the gala object based on benefit with the aim of mutual assistance is certainly permissible if both parties agree to implement use one of the 3 (three) contractual agreements in the form of *Al-Qardhul Hassan*, *Al-Mudharabah* or *Bai 'Al-Muqayyadah*.

Gala agreement that prevails in the Acehnese society is certainly contain mismatch between the implementation and the contents of the provisions of Article 2 paragraph (2) of Qanun Number 9 of 2008 concerning the Development of Customary and Indigenous Life stating that: "Guidance, development, preservation, and protection of customs in Aceh's society must be guided by Islamic values ". To readjust the gala agreement in the society, stipulation of the *mudharabah* agreement are needed in the implementation of the gala agreement, with the hope that the implementation of a *mudharabah* agreement

will eliminate the element of seizure (oppression) among others where resulted from utilization of the gala object were considered a form of service compensation from the pledger to the pledgee, and with the application of the *mudharabah* concept, the profits gained from the gala object by the pledgee can recover the pledger's debt.

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