

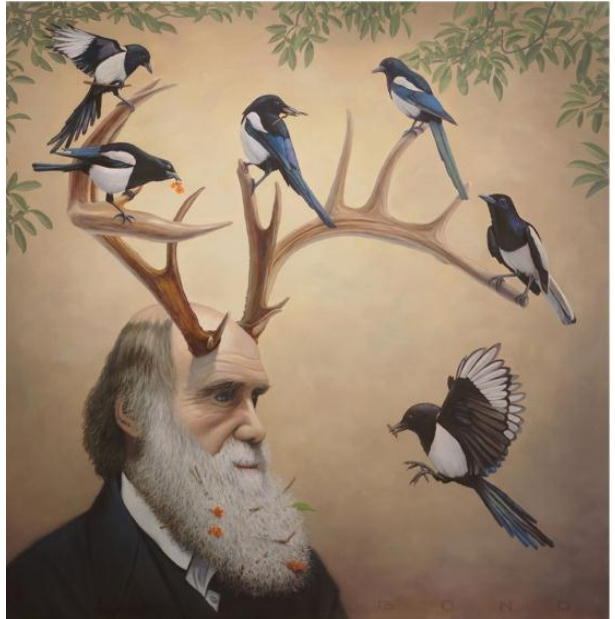
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# **The practice of land pawn in Aceh Besar customary law**

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## **Abstract**

The aim of the study is to investigate the practice of land Pawn in Aceh Besar Customary Law. This research was juridical and empirical research, with a descriptive-analytical approach. The research results show that land pawn is still practiced in Aceh Besar district, and it is an identity which has been preserved in the customary law. In conclusion, this traditional pawn thrives because of the complicated procedure of taking a loan in official financial institutions, the need for fast money, lender factor, the land without certificate of ownership, the system of loan payment, fear of losing a land and etc.

**Keywords:** Pawn, Land, Customary, Law, Practice.

# La práctica del peón de la tierra en el derecho consuetudinario de Aceh Besar

## Resumen

El objetivo del estudio es investigar la práctica del peón de la tierra en el derecho consuetudinario de Aceh Besar. Esta investigación fue investigación jurídica y empírica, con un enfoque descriptivo-analítico. Los resultados de la investigación muestran que el peón de la tierra todavía se practica en el distrito de Aceh Besar, y es una identidad que se ha conservado en el derecho consuetudinario. En conclusión, este peón tradicional prospera debido al procedimiento complicado de obtener un préstamo en instituciones financieras oficiales, la necesidad de dinero rápido, el factor prestamista, la tierra sin certificado de propiedad, el sistema de pago de préstamos, el temor de perder una tierra y etc.

**Palabras clave:** Peón, Tierra, Consuetudinario, Derecho, Práctica.

## 1. INTRODUCTION

Article 18B, paragraph (2) of the 1945 Constitution reads the State recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law. The Article 18B of the 1945 Constitution provides a place for and gives respect to people who implement customary law which has persisted for generations. However, those people are not entitled to form their own government although the customary laws are different between one place and another.

Regarding the implementation of Law No. 11 of 2006 about the governing of Aceh with the principle of unlimited autonomy, the Aceh Government had opportunity to explore and implement social structure based on custom and traditions in the community. In addition to Law of the Governing of Aceh, the implementation of customary law is also recognized by Law No. 44 of 1999 regarding the implementation of the specialty of Aceh. The Articles 6 and 7 of the law state that the province shall be allowed to make policies for empowerment, conservation, and development of customary law and institutions in Aceh based on the Islamic Sharia.

Pawning is also covered in regulations in Indonesia, i.e. Law No. 5 of 1960 regarding basic agrarian principle and it is emphasized in Law No. 56 Prp of 1960 regarding the establishment of agricultural land area. However, there are some differences between regulations in those laws and the customary law in Aceh Besar district. Article 7 in Law No. 56 Prp of 1960 explains the time limit for the redemption in pawning

(1) Those who have pawned agricultural land which has not been redeemed for at least seven years when this regulation is stipulated must return the land to the owner within one month of harvest without requesting the redemption.

(2) For the pawned agricultural land which is less than seven years when this regulation is issued, the landowners shall be given right to request the return of their land after harvest by

paying the redemption as much as given by the formula  $\frac{(7+1/2)^{\text{time of pawning}}}{7}$  x the amount borrowed, and when the time of pawning has reached seven years, the land shall be returned to the original owner without any redemption no later than one month after harvest.

However, people in Aceh Besar District do not comply with the regulations which limit the time for the land pawn as regulated in the law of basic agrarian principles and other regulations. Therefore, one of the aspects to be discussed is the existence of pawn practice in Aceh Besar District. Therefore, the factors which cause people to still practice the land pawn in Aceh Besar District need to be researched.

## **2. RESEARCH METHOD**

This research was judicial and empirical research because it observes the law implementation in the community. The approach used for this study was a descriptive analytical approach, where the purpose of the research was to systematically and accurately describe facts and their relationships. The phenomena to be described are the factors which make the land pawn still practiced based on the customary law in Aceh Besar district, and the people even violate the prevailing laws and regulations. Furthermore, the facts obtained in the field are described comprehensively (MULIADI, 2009).

The field research was conducted by interviewing respondents and informants about the implementation of land pawn. The respondents include the people who borrow money and those who lend it, five persons for each subdistrict, and five subdistricts were selected in Aceh Besar. Subdistrict official, village heads, and public figures in some districts were used as the sample, selected using a purposive sampling technique (KAYACAN, 2018: POLEVOY, 2018).

### **3. RESULTS AND DISCUSSION**

The majority of Indonesian people earn their living by farming; hence, the land is the most important asset for them. Therefore, the land is one of the factors which determine their living. This is in line with Article 33, paragraph (3) of the 1945 Constitution, which reads the land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people (RASOOLI & ABEDINI, 2017: KVET & MATIASKO, 2018).

Generally, land (right to land) can be transferred to other parties, so that it can be used as an object of the transaction. The transfer of right includes selling, renting, production sharing, annual sell, and land pawn. The transfer of right to land or the transaction related to land as described above is the transaction commonly practiced in the community, especially agricultural land pawn. The agricultural land pawn is a transaction for land which is used as collateral for a loan between the landowner and the lender, so the owner can get capital

without having to sell his land. The landowner shall have the right to redeem his land and get his land back from the lender (SUDIYAT, 1981).

Pawn is defined as a transaction in which land is handed to other people for cash which will be redeemed to get it back. The pawn system in Aceh Besar district is started with the landowner giving the right to the land for another person for a certain amount of cash, and the lender has right to the land before the owner redeems it. The harvest obtained by the lender from the land is considered as the payment for the help of lending money to the landowner. Sociologically, the transaction in land pawn conducted based on the customary law in Aceh, particularly in Aceh Besar district, is aimed at helping one another. In religion point of view, the practice of land pawn is intended to help people in need of cash in order not to borrow money from a creditor in order to avoid usury.

### *3.1. The complicated procedure of taking a loan in official financial institutions*

The procedure of taking a loan from a financial institution such as a bank, which is complicated, makes the people in Aceh Besar district to pawn their lands. Actually, a loan from banks is one of the solutions when one needs a significant amount of money within a short period of time for investment, business capital, consumption, and other needs. However, banks have policies and procedures in giving a loan to

their customers. The general requirements for proposing a loan from banks are listed in the following (YAMIN, 2003).

- a. Request for a loan, signed with duty stamp
- b. National Identity Card of wife and husband, with a copy of each.
- c. Marriage certificate and its copy
- d. Family Card and its copy
- e. Photograph of husband and wife
- f. Bank passbook and its copy
- g. Salary proof validated by the head of the institution
- h. Collateral, either mobile or stationary such as the right to land.
- i. Letter of ownership for the collateral. If the collateral is a land, the land needs to have a certificate of ownership.
- j. Administration fees such as a fee for collateral attachment, insurance, and certificate of mortgage right
- k. Fee for duty stamp



Most people do not know the procedure of taking a loan from a bank. The bank loan process is completely different from the transaction in land pawn, practiced based on the customary law, which does not require many documents, and even without a document at all. There is no administration procedure which needs to be considered, and no fee is involved. The transaction can be made between two parties who trust each other (SOERJONO, 1998).

The land pawn transaction is often made without involving village officials. Pawn is made between the two parties who respect their agreement. However, such transaction can potentially result in conflict and dispute. Therefore, sometimes people make pawn agreement signed by the landowner and the lender, with or without a signature from the village head. Land pawn practiced traditionally by people in Aceh Besar is almost similar to what is practiced in other parts of Aceh. In this case, the landowner borrows some money from another person by handing his land as collateral for his loan. The lender gives some money (mostly in the form of gold) to the landowner as a loan.

People in Aceh Besar district usually pawn their lands because they need cash immediately such as for medical expenses if one of the family members gets sick, for house reconstruction or renovation, for the marriage ceremony of their sons or daughters, or other expenses. When they do not have enough cash, they need to find immediate cash, and one of the ways is by land pawn, that is to get a loan by temporarily

trading their lands to be redeemed when they can afford them. This is in line with the agreement between the landowner and the lender.

If the loan is in the form of gold, the gold is usually at the purity level of 99% or 24 karats. The amount of gold borrowed by the landowner depends on the amount they need and based on the agreement between the two parties. Generally, if the land is a paddy field, the amount of gold borrowed is based on the width of the land or based on the amount of paddy seed required for the land. If the amount of seed required is 1 naleh (32 liters) or the width of the land is a quarter hectare (2500 m<sup>2</sup>), the amount of gold borrowed usually 25 to 35 manyam (83 to 116 grams). These are the consideration or reference in doing land pawn in Aceh Besar district by both the landowner and the lender. This reference can be different, depending on the agreement between the two parties.

### *3.2. The need for fast money*

People in Aceh Besar pawn their land because they urgently need fast money. People in Aceh Besar usually have savings in the form of cash. They invest their money in the form of gold, land, building, cattle, agricultural land, and plantation. For daily spending, they rely on cattle, and farm. Meanwhile, for a bigger amount of money they sell their gold. People who do not have any gold saving should borrow from others who have it by trading their rights for land as the collateral.

If they take a loan from a financial institution such as a bank or finance, they need to wait for the long process initiated by the bank which can take one week or more. In addition, the bank might not approve the request for a loan. In some cases, after people waited, the requests were rejected by the bank; therefore, people decided not to rely on banks. Document check in the bank requires an extended period of time because the bank needs to verify each document submitted by the customers. After the verification, the bank needs approval from the bank director through his signature. Afterward, the customers receive the information from the bank regarding the status of the request, whether it is accepted or rejected.

### *3.3. Lender factor*

People in Aceh Besar district pawn their lands because many lenders hesitate to lend some money without collateral. Experience on debt is often inconvenient for many people. It is not easy to claim the debt without any collateral. Therefore, such problems make the people pawn their land for the need of cash. Nowadays, fewer people agree to lend their money in big amount for a long period of time without any collateral and profit. This is in line with what Mr. Saleh described that nowadays almost all people think about business, meaning that even the smallest amount of money they spend, they expect some profit from it. Therefore, it is impossible for anyone to lend a big amount of money for a long period of time without any terms because all people have a

plan with their money. The only way to obtain a loan is by land pawn to people who agree to lend their money.

### *3.4. The land without a certificate of ownership*

A certificate is often used as a collateral to get a loan. In addition to official financial institutions, there are also unofficial ones. Unofficial institutions can usually provide a big amount of money quickly if the loaners can provide their land certificate of ownership. However, not all lands in Aceh Besar have the certificate. People in Aceh Besar have inherited lands, but the lands do not have the certificates. The inheritance shares are usually not even recorded in documents although other people know that the lands were inherited from their ancestors.

In this case, Ahmad says that because his land does not have any certificate, and he was in an urgent need for a big amount of money, he preferred to pawn his land to other people who could give him a loan. In the process of land pawn, a land certificate is not required, which is completely different from taking a loan from a financial institution, which requires the collateral with its certificate of ownership. Therefore, he chose to pawn his certificateless land. The same issue was raised by M. Amin. He knew that if he had requested a loan from a bank, he would have needed to provide collateral, and if the collateral was land, the land needed to have a certificate of ownership. If he requested a loan from a bank, he was certain that the bank would reject

it. Therefore, we can conclude that the absence of a certificate of ownership makes people choose to pawn his land over requesting a loan from a bank.

### *3.5. The system of loan payment*

Lan pawn is still practiced by people in Aceh Besar because they need to pay their debt. People in Aceh Besar usually pay their debt after the harvest of their rice field, which can be twice a year or less. Therefore, they will not be able to request a loan from an institution with such a system of payment, except land pawn system. Financial institutions require a monthly installment for some years. People cannot afford to pay such installment.

In this case, M. Saleh states that the factor which caused him to pawn his land over making a loan from the bank is the payment system. In a bank, he needs to pay an installment every month for a certain number of months. However, by land pawn, he may pay whenever she has the money because there was no time limitation. In addition, M. Saleh chose to pawn his land because he would need to pay an administration fee for a loan in a bank.

### *3.6. Fear of losing a land*

The fact that people fear of losing their lands is one of the factors which cause them to practice land pawn in Aceh Besar. In this case, people are afraid of losing their lands if they take loans from other financial institutions such as a bank. When they request a loan from one of the financial institutions, they were asked to sign an agreement, which includes an agreement to have their lands taken if they are not able to pay the installment.

Some lands owned by the people in Aceh Besar are inherited from their parents so that they need to ensure that they are not taken away from them. If they request a loan from banks, and if there is a problem in the installment, although the bank does not immediately seize their lands, the time given by the bank is usually too short for people with a financial problem. Meanwhile, in the practice of land pawn, the time limit is usually flexible. If the lenders need the payment immediately, the pawn can be even transferred to other people. The pawn transfer is the transfer of pawned lands to other people who are able to pay the loan made by the landowner. Therefore, the pawned land is transferred to the new lender.

### *3.7. The factor of avoiding usury*

Another factor which makes people in Aceh Besar practice land pawn is usury avoidance. To make a big loan, people can request it to a financial institution such as a bank. In Islam, bank interest is usury,

which is a big serious sin. In addition, the land pawn in customary law has a value of generosity.

### *3.8. The factor of loan payment system*

Another factor which makes people in Aceh Besar practice land pawn is because the debt payment cannot be scheduled, and this condition is only possible in land pawn based on the customary law. Although other financial institutions can give a loan, the land pawn system is still a good alternative in solving financial problems.

When requesting a loan from a bank, the loaners are entitled to pay the installment every month with the predetermined amount of money until all the money is fully paid. When they want to pay in full because they already have enough money, banks generally take interest for the loan until the predetermined due date, which disadvantages the loaners. Meanwhile, in the agreement of land pawn based on the customary law in Aceh Besar, the landowners not entitled to pay any interest for the money they borrow, and the amount to be paid is the same amount they borrow.

### *3.9. The culture factors*

Culture is one of the factors which motivate people in Aceh Besar to practice land pawn. This land pawn tradition is one of the

economic procedures in Aceh Besar in solving a financial problem. Whenever they have financial problems, they can rely on this land pawn system, and there is no easier way to get the money they immediately need. With this facility, people do not need to worry about the due date, and nobody will force them to pay their loan because the loan can be paid whenever the landowners have enough money to redeem their lands. In this case, there will not be any urgency to redeem the land because the lender is advantaged by this land pawn system.

Although the lender is financially advantaged because they can use the land and harvest its product, and the owner cannot take any advantage of their own land, this tradition is convenient for both parties. Land pawn practiced by people in Aceh Besar is one of the cultural transactions. They have been doing the land pawn transaction for generations. They consider land pawn as a tradition which cannot be separated from their social life. Therefore, it is not unexpected that people practice land pawn for financial urgency.

#### **4. CONCLUSION**

Based on the discussion above, it can be concluded that pawn land is still practiced in Aceh Besar, and people retain this concept in their village community in Aceh Besar. The existence of land pawn is caused by several factors, i.e. the complicated procedure of taking a loan in official financial institutions, the need for fast money, lender factor, the land without certificate of ownership, the system of loan



payment, fear of losing a land, the factor of avoiding usury, the factor of loan payment system, and the culture factor in retaining the ownership of land.

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