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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
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:
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عن عمرن شعيب: لا يحل سلف وبيع ولا شرطان في بيع ولا بيع ما لم تضمن ولا بيع ما ليس عندك (رواه: أبو داود)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 محكمة (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 بالظواهرهوانه بنوال السرائن (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


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 Maktubah Syamialah, 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 لأجل

“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

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

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, contracts\(^10\), and agreements\(^11\). In terminology, *fiqh* scholars defined contract with two meanings, namely in general and in particular. Contracts in general are:

\[
\text{كل ما عزم المرء على فعله، سواء صدر بإرادة منفردة كلوقف والإبراء والطلاق واليمين، أم احتاج إلى إرادتين في إنشائه كلبيع والإيجار والتوكيل والرهن}
\]

\(^12\)

“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 Hanafiyyah school of *fiqh* expert said that:

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\(^12\) Wahbah al-Zuhaili, *Al-Fiqh al-Islami Wa Adillatuh* (Damsyiq: Dar Al-Fikr, 1985), 4, 80.
"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 المتع دالا على توجه إرادتهما الباطنة لإنشاء العقد وابرامه

“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 are:

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:

الأصل في العقود رضا المتعاقدين

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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 عبارة في العقود للمقصود والمعاني لا للأسلوب والمباني 17 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 قبول 19

“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 qabul22. Marriage is also related to the issue of faith in justifying dealing with the wife so that the contract

17Ibid., 39.
18Sabiq, Fiqh As-Sunah, 3, 128.
21al-Zuhaili, Al-Fiqh al-Islami Wa Adillatuh, 4, 100.
22Ibid., 4, 101.; Al-Syarbaiini 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 marriage.

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). 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 it.

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 directly. 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 (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. 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-’ariyah (union in capital and also called al-mudharabah), and al-Rahn (debt guarantee). This is following the rules of fiqh compiled by fiqh scholars which read:
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30 (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 are:

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 mauqif, because the consequence of the sale and purchase agreement is the transfer of ownership. So regarding the object of this contract, scholars require: 1) The existence of things, 2) The object is in the form of matquman 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:

30 al-Zahaili, Al-Fiqh al-Islami Wa Adillatuhi, 4, 103.


33 Ibid., 1, 357–58.
الحال التي يكون فيها المتعاقدان مشتغلين فيه بالتعاقد. وعبارة أخرى: اتحاد
الكلام في موضوع التعاقد

“(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 place.35

h. The purpose of the contract is clear and recognized by syara’. This is about موضوع
المعقد 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 مشروعا 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

34 al-Zuhaili, Al-Fiqh al-Islami Wa Adillatuh, 4, 106.
36 Ibid., 1, 234.
37 Ibid.
contain the same essence, which is invalid and the contract does not result in any law.\textsuperscript{38}

In terms of *tasmiyah* (naming), the contract is divided into two types, namely\textsuperscript{39}:

a. *Al-'uqd 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-'uqd 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, namely\textsuperscript{40}:

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 (debits) 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‘awadhat*, 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. *Taqvidadat*, 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


\textsuperscript{39} Ibid., 242.

\textsuperscript{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-taṣṣūqāt, 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. Isytirāk, which is a contract to share in business and profit, as contained in musyarakah contracts. Among them, mudharabah, muzara’ah and muqabarah.

g. Al-hifż, 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 ʿainiyah and not is divided into two types41, namely:

a. Akad al-ʿāini, 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’ān letter al-Baqarah verse 283 regarding the pledge agreement, which reads in full:

وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَقْبُوضَةٌ

(البقرة: 283)

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

b. Ghair al-ʿāini 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 ʿainiyah 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.
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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 are:

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 forms:

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

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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:

> لحن نحكم بالظواهر والله يتولى السرائر ۴۵ (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 ‘āqd 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:

> لا عن عمربن شعيب: لا يحل سلف وبيع ولا شرطان في بيع ولا ربح ما لم تضمن ولا بيع ما ليس عندك (رواه: أبوداؤد) ۴۶

“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-’uqad al-musammah, namely contracts whose names and laws are determined by syara’. Therefore, the sale and purchase contract of the

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45 Abu Daud, “Sunan Abu Daud,” hadith no. 1064.
46 Ibid., 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:

الأمر بالتصرف في ملك الغير 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

\[\text{Djazuli, Kaidah-Kaidah Fikih, 235.}\]
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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: العدة 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 بالظواهروالله 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 legal 51 with anything that indicates representation in the form of words or actions. The requirements are laid out on each of the three components 52, 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.

48 Ibid.
49 al-Syhari, Idhah Al-Qawa‘id al-Fiqhiyyah, 45.
50 Abu Daud, “Sunan Abu Daud,” hadith no. 1064.
51 Ibid.
52 Sabiq, Fiqh As-Sunah, 226.
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’ law\(^{54}\). ‘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 maslahah 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’iyyah 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 community. 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.

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 provisions. 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 money. By definition, the sale and purchase of greetings are:

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55 Haroen, *Fiqh Muamalah*, 393.
“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:

من أسـلَف في شَيْءٍ، فَفي كَيْلٍ مَعْلُومٍ، وَوَزْنٍ مَعْلُومٍ، إِلَى أَجَلٍ مَعْلُومٍ

(رواه:البخاري)

“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.

58 Haroen, Fiqh Muamalah, 146.
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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Bukhari, Muhammad bin Ismail Abu Abdillah al-. “Shahih Al-Bukhari.” In CD-Room Maktabah Syamilah, n.d.


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3. Book

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