

An Overview of Islamic Law Against Buy and Sell Sand of *Kebon* with a Liberation System in Mount Wurung, Mojokerto Regency

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Abstract: The research is a field research where primary data were obtained from direct interviews using descriptive analysis techniques with inductive mindset. The research focused on an overview of the practice of buying and selling sand garden using slash system. Results show that the practice of buying and selling with the blow system are found in rural areas, one of them is in the Mount Wurung Mojokerto district, i.e. buying and selling blow sand garden. The price is based on the area of land to be cleared. For example, land with an area of 1400 m², was agreed by both parties at a price of Rp. 40 million. No provision for the period of sand mining until mining is completed, it can reach 2 to 3 years. Both landowners and buyer do not know the content of sand in the soil of the *kebon*, which means to buy and sell the sand there is a potential *gharar* (lack of clarity on both sides) that allows each of them suffered a loss or gain. It is evident that sand trading *kebon* with the system is not in accordance with Islamic law because the seller or buyer cannot estimate the content and quality of sand in the plot. According to Madhab Hanafi Imam the sale and purchase that contained a little *gharar* and *jizaf*, and according to Madhab the Shafi'i Imam it was not permitted because there was potential *gharar* which allowed each of them has a loss or profit.

Keywords: Islamic law, buy and sell sand of *kebon*, freedom system.

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1. INTRODUCTION

God makes each human being to worship others so that they can help, exchange in all matters aimed at the common good. In this way people's lives become orderly and fertile, and one relationship with another becomes solid. Buying and selling in terms of fiqh is called al-bay ' which means selling, replacing, and exchanging something with something else. Recitation of al-bay ' in Arabic is sometimes used for the understanding of his opponent, namely the word (buy). Thus, the word al-bay ' means selling, but at the same time also means buying.

In terms of terminology, there are several definitions of buying and selling proposed by Islamic jurisprudents, even though the substance and purpose of each

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definition are the same. *Hanafiyah Ulama* defines buying and selling by "exchanging assets with assets in a certain way".¹ The purpose of *mu'amalah* is the creation of a harmonious relationship between humans. Thus creating peace and tranquility. Allah SWT said in (QS. Al-Maidah:2) as follows which means: "And please help you in (doing) virtue and piety, and do not help in sinning and hostility and fear Allah, verily God is very hard on His torment." ²

Buying and selling is proof that humans are social creatures (zoon politicon), beings who need other creatures to fulfill their survival. Without buying and selling human beings cannot fulfill their own needs, buying and selling an activity carried out in human life, in order to maintain their lives in the midst of society, Allah SWT says in (Surah al-Baqarah: 275) which means:

"Their situation is like that, because they say (arguing), Indeed, buying and selling is the same as usury, even though Allah has justified buying and selling and prohibiting usury." ³

Buying and selling as a means to get goods easily, one can exchange money with goods he needs the seller. Of course with the value agreed upon by both parties. The law of buying and selling is basically permissible, meaning that every Muslim in earning a living can by means of buying and selling. The law of buying and selling can be compulsory if the only way to sustain life is (i.e. buying and selling) that someone can possibly carry out. Allah SWT says in (Surah an-Nisa ': 29) as follows which means:

"O ye who believe, do not eat each other's treasures with the heart. Except by commercial means that apply with the likes of you. And do not kill yourself. Verily, Allah is the Most Merciful to you." ⁴

This verse gives us a lesson that to obtain *rizki* may not be in a vanity way, which is contrary to Islamic law and buying and selling must be based on volunteering, not cheating, no may lie, and may not harm the public interest. In its development there have been ways to buy and sell in the community. One of them is buying and selling based on scales or doses that can be estimated and proven directly or indirectly by the buyer, there is also buying and selling by way of slash which occurs in Mount Wurung, Mojokerto Regency.

Wurung Mountain is 20 km south of Mojokerto City. Mount Wurung is located between the borders of the Bangsal, Dlanggu and Kutorejo sub-districts. This mountain has a wealth of abundant sand, so many people or contractors who take material goods from the mountain for the construction of houses or buildings. Farming communities who have orchards on the upper slopes of Mount Wurung, garden that can be planted

¹ Nasrun Haroen, *Fiqh Muamalah*, (Jakarta: Gaya Media Pratama, 2000), 111.

² Departemen Agama RI, *Al-Qur'an dan Terjemahannya*, (Bandung: Diponegoro, 2010) 106.

³ Ibid., 47.

⁴ Ibid., 83.

just one crop only, namely corn. So that farmers cannot grow other types of crops, because *kebon* land is a land of parcels (unproductive). So the owner of *kebon* wants to mine land to become productive land. However, farmers cannot afford to mine sand, because of constraints that are incapable of licensing and costs.⁵ Mining is very costly, therefore farmers prefer the *kebon* to be sold slash to other people to mine the sand so that it becomes productive land.

In the Mojokerto area there are people who carry out buying and selling transactions by way of slashing against the sand that is inland *Kebon*. Prospective buyers will do the estimates on the content of sand in the garden that will be mined sand. After a price agreement, both parties hold a sale and purchase agreement. Case in Kuto Porong Village, Bangsal District, Mojokerto Regency. The owner of the land was *Kebon* named Somo Joyo. He has garden a terraced area of 1400 m². sand containing in the *kebon* He sold to Supono for IDR 40,000,000.00. On July 4, 2011, Supono paid a down payment of Rp.5,000,000.00. On December 27, 2011, Supono paid an installment of Rp.7,000,000.00. On January 22, 2012, Supono paid an installment of Rp.8,000,000.00. After four months in April 13, 2012, Supono paid in full at a price of Rp. 20,000,000.00. The agreement or agreement was carried out at the Kuto Porong Village witnessed by community leaders and village officials as witnesses.

In the agreement the owner *kebon* provides a depth range to the slicer to mine no more than the river water level. After mining, the owner of the *kebon* asked the *penebas* to flatten the mining land and there was no time period for the sand mining settlement, until the mining was completed.⁶ The facts above show that in the practice of buying sand *kebon* in Gunung Wurung, Mojokerto Regency, it is possible that the sellers and *penebas* both do not know the content of sand in the soil of the *kebon*. Means to buy and sell the sand there is a potential *gharar* (lack of clarity on both sides) that allows each of them suffered a loss or gain. If this is the case, then the fact about buying and sellings and *kebon* in Mount Wurung, Mojokerto Regency has the potential not to harmonize with the following hadith of the Prophet, which means:

"Narrated by Abu Hurairah, he said:" The Messenger of Allah forbade buying and selling by throwing crickets and prohibiting the sale and purchase of elements of fraud ". (Narrated by Muslim).⁷

This is what attracts the attention of researchers to analyze the perspective of Islamic law about buying and selling sand *kebon* with a system *slash* of case study in Mount Wurung, Mojokerto Regency so that what actually happens can be carefully described with the views of Islamic law.

⁵ Somo Joyo, *Wawancara*, Mojokerto, 29 April 2014.

⁶ Supono, *Wawancara*, Mojokerto, 29 April 2014.

⁷ Imam al-Mundziri, *Mukhtasar Shahih Muslim*, (Bandung: PT Jabal,2012), hlm. 363.

2. METHODS

The research method used in this study is qualitative-descriptive research. This method is used because this study aims to provide an explanation of the perspective of Islamic law concerning buying and selling of sand *kebon* with a system of *slash* case study in Gunung Wurung, Mojokerto district through a literature study approach obtained from interviews with perpetrators directly.

Creswell (2015: 471) explains that qualitative research is an "interpretative" research that with that research researchers can make personal assessments as descriptions that are appropriate to the situation or theme that raises the main categories of information. Interpretations made by researchers on a transcript, for example, are different from the interpretations made by others. This does not mean that the researchers' interpretation is better or more accurate; this only means that the researcher brings a perspective to his interpretation.

The technique of collecting data through interviews is a conversation with the aim of obtaining data between interviewers and interviewees.⁸ This technique is used to collect data about the seller's knowledge of the level and quality of the sand contained in the plot of the *kebon* he owns. Data about the buyer's knowledge of the level and quality of the sand contained in the plot of the *kebon* he bought. Data is about the duration of sand mining. The second is the documentation study, is a way of collecting data through written relics mainly in the form of archives and includes books on opinions, arguments related to research problems.⁹ In this study, it was used to collect data on receipts for sale and purchase of land for excavation.

3. RESULTS AND DISCUSSION

3.1. Three Cases in the Field

From the results of field studies that have been carried out, most of the landowners sell their land or *kebon* to buyers to be excavated, but in this case the data can be described through 3 cases:

- 1). There is a case in Kuto Porong Village, Bangsal District Mojokerto. The owner of the land was Kebon named Somo Joyo. He has a piece *kebon* 1- covering an area of 1400 m². Before he sold the *kebon*, he did not know in estimating the level and quality of the sand that was in the plot of that he could not know *kebon* because it based on the sale and purchase of slash regarding sand in the content *kebon*. The later the sand content in the *kebon* he sold to Supono for Rp. 40,000,000.00. Supono is a person who has a profession as a contractor in buying and selling building materials. When purchasing *kebon* Somo Joyo's (land), he was able to estimate the volume of sand in the *kebon*, from which there was a price determination in the sale and purchase. Based on 15 years of experience in buying and selling with a system slash or by buying and selling with a free system. On July 4, 2011, Supono paid with

⁸ Lexy J Moleong, *Metodologi Penelitian Kualitatif Edisi Revisi*,...,186.

⁹ *Ibid.*, 219.

an advance of Rp.5,000,000.00, and the remaining payment in installments, occurred on December 27, 2011, Supono paid installments of Rp.7,000,000.00, On January 22, 2012, Supono paid installments of Rp.8,000,000.00. After four months on April 13, 2012, Supono paid in full at a price of Rp. 20,000,000.00. In the execution of the sale and purchase Supono can estimate the number of fleet (trucks) that will collect sand in mining/ quarrying in the range of 1,200 trucks in one plot garden of sand that he bought to Somo Joyo. In each truck, heavy sand loads range from 7 to 8 tons and each load of sand in a truck costs Rp. 550,000.00, which previously only cost Rp. 350,000.00. From the sale and purchase process between Somo Joyo and Supono, it took place at the Kuto Porong village office. They make payment transactions using receipts given to both parties as authentic evidence. And the sale and purchase agreement involved village officials as witnesses.

- 2). The case between Gimán and Supono. Gimán is a man who has a profession as a farmer, he has been involved in the profession since 1985. He has three blocks of kebon in the Gunung Wurung area of Kuto Porang village which he previously worked on to grow crops. In 2007 he has bought and sold gardener his to someone with a system slash (rent), he sold onep lot garden at a price of Rp. 27,000,000.00, in the buying and selling of sand kebon the mining settlement lasts 3 years. Increasingly increasing years. Gimán resumed buying and selling garden with a named Supono in November 5, 2013. He sold two plots measuring 2830^{m²} garden Supono hers at a price of Rp. 95,000,000.00, they use buying and selling with a slash (rental) system. Before making a transaction, they had negotiations in the selling price of the *kebon*.¹⁰ In the implementation of the sale and purchase Supono was able to estimate the number of fleets (trucks) that would take sand in the mining/ excavation which ranged from 2,400 trucks in 2 plots block sand- he bought to Gimán. From the sale and purchase process between Gimán and Supono, it took place in the village office. They make payment transactions using the model cash, the evidence uses receipts which are given to both parties as authentic evidence. And the sale and purchase agreement involved village officials as witnesses.
- 3). Tisan is a man who has a profession as a farmer and owns a shop business in his house located in the Sidoarjo area, he has 1.5 plots measuring 2115 m² kebon on Mount Wurung consisting of three belonging to his brother, Tisan is a brother the oldest. They did not make into plantations because the land was very barren (parcels) only just left until the *alang-alang* plants filled the surface of the kebon was.

3.2. The Nature of Buy and Sell

Humanism increasingly progresses, so that at this time people can exchange goods with money and even exchange valuable paper with money and fellow valuable paper which is usually managed by the Bank of Trade and others, so that exchanges occur more and more smoothly. Since its inception, Islam has regulated trade traffic

¹⁰ Gimán, *Wawancara*, Mojokerto, 13 Januari 2015.

called *al-bay 'as syirai* which means buying and selling.¹¹ The laws concerning *muamalah* have been explained by Allah in the Qur'an and also explained by the Messenger of Allah in the holy as-Sunnah.¹² The word buying and selling comes from the word *al-bay'u* which means sale, opposite from the word *istara* which means to exchange, or buy.¹³ Then the two words become words parallel of two words that are basically opposite. In the editors of classical books use the word *al-bay'u* to show the meaning of buying and selling.¹⁴

Buying and selling can be defined as a transfer of ownership of an item from a party (seller) to another party (the buyer) in return for another item or money. Or in other words, buying and selling is *ijab* and *qabul*, which is a process of surrender and acceptance in transactions of goods or services. Islam requires the existence of mutual relations between the two parties who transact. The narrators of Ibn Hibban and Ibn Majah explained this, which means: "Indeed, buying and selling must be like each other like it."

Because willingness is a hidden matter, legal dependence on buying and selling is seen in visible ways (*dahir*) who shows likes and dislikes, such as the submission and acceptance.¹⁵ In Islamic law, buying and selling is the exchange of certain assets with other assets based on the pleasure between the two or in other terms based on ownership rights with other property rights based on material calculation agreement.¹⁶

In this case they emphasize the word "property and ownership", because there are also exchanges of property that do not have to be owned, such as leasing rents (*ijarah*). According to *jumhur ulama* said *al-Mal* is material and benefits. Therefore, the benefits of an object according to them can be sold. Whereas according to the Hanafiyah Ulama, it means *al-Mal* with a material that has value.⁷ Abu Sura'i Abdul Hadi, in his book "Bunga Bank Dalam Islam" suggests, basically buying and selling is halal. That buying and selling is one form of transaction that is justified as long as it runs on the correct principle according to the conditions set by religion.¹⁷

From the definition of buying and selling above it can be concluded that buying and selling is an event in which a seller hands over his goods to another person (buyer) after there is agreement between them regarding the goods and the price. Then the item is received by the buyer in exchange for the goods that the seller has given forever and all of them are carried out on the basis of mutual likes and mutual willingness. Thus the sale and purchase will involve two parties, namely the buyer submits the goods or

¹¹ Al-Hafidh Ibnu Hajar Asqalany, *Bulughul Maram I*, Terjemah Kahar Masyhur, (Jakarta: Rineka Cipta, 1992), 406.

¹² Saleh al-Fauzan, *Fiqh Sehari-Hari*, (Jakarta: Gema Insani, 2006), 264.

¹³ Ahmad Warson Munawir, *al-Munawir*. cet ke-14 (Surabaya: Pustaka Progresif, 1997), 124.

¹⁴ As-Sayyid Sabiq, *Fiqh as-Sunnah* (Beirut: Dar al-Fikr, 1983), III : 126.

¹⁵ Muhammad Wasito, "Memahami rukum dan syarat sahnya jual beli." Dalam <http://abufawaz.wordpress.com> (22 Juli 2014).

¹⁶ Sayyid Sabiq, *Fiqh Sunnah*, Jilid 4, (Jakarta: Pena Pundi Aksara, 2006), 120-121.

¹⁷ Abu Sura'i Abdul Hadi, *Bunga Bank Dalam Islam*, (Surabaya: Al-Ikhlash, 1993), 193.

money as the surrender of the goods received and the seller hands over the goods to the buyer in exchange for the money received.

3.3. Legal Basis of Buying and Selling

The *ulama* took a rule that all forms of buying and selling legal origin could be except for buying and selling which is prohibited by Allah and His Messenger. Namely every sale and purchase transaction that does not meet its legal requirements or there is a prohibition in the element of the sale and purchase.¹⁸

Buying and selling is an action or transaction that has been stated in the sense that there is a clear law in Islam. Which is related to law *taklifi*. The law is permissible, this skill can be found and the Qur'an, the Hadith of the Prophet and the Islamic scholars. Al-Quran Surat al-Baqarah verse 275 which means: "Allah has justified buying and selling and prohibiting usury. . . ."¹⁹. Surah al-Baqarah verse 282 which means:

" . . . and witness if you are buying and selling; and don't let writers and witnesses find each other difficult. If you do (that way), then indeed it is wickedness in you. And fear Allah; God taught you; and God knows everything "²⁰

Surat an-Nisa 'verse 29 which means:

"O ye who believe, do not eat each other's wealth in a way that is vanity, except by the way of commerce that applies with the likes of you. . . ."²¹

As-Sunnah, Hadith from Rifa'ah Ibn Rafi 'which means:

" Rifa'ah bin Rafi' recounts, that the Prophet SAW was once asked by the person "What is the best effort?" He replied: "A person's efforts with his own hands and every halal sale and purchase ". (Narrated by Bazzar and Al-Hakim).¹³

Hadiths narrated by Al-Baihaqi, Ibnu Majjah and Ibnu Hibban mean:

"Reported to us Abbas Ibn Al-Walidi Dimasyqiyy, Marwan Ibn Muhammad, Abdul Aziz Ibn Muhammad from Dawud Ibn Salih al-Madini from His

¹⁸Muhammad Wasitho, "Memahami rukun dan syarat sahnya jual beli." <http://abufawaz.wordpress.com> (22 Juli 2014).

¹⁹ Departemen Agama RI, *Al-Quran dan Terjemahannya*, (Surabaya: Penerbit Mekar Surabaya, Edisi Baru, 2002), 141.

²⁰ *Ibid.*, 59.

²¹ *Ibid.*, 107.

father said I heard Aba Said al-Khudriyyi say the Prophet said: that actually buying and selling was based on liking.²²

Based on the verses and hadiths mentioned above, it can be understood that buying and selling is a lawful and noble job. If the culprit is honest, then his position in the hereafter will be equivalent to that of the Prophet, Martyr, and Sadiqin. The scholars and all Muslims agree on the possibility of buying and selling, because this is very much needed by humans in general. In the reality of everyday life not everyone has what they need. By way of buying and selling, people help each other to fulfill their needs. Thus, the wheels of economic life will run positively because what they do will benefit both parts of the reward.²³

The verses and hadith above give the impression that property belongs to all humans together and God divides it between them fairly according to His wisdom and through legal and ethical stipulations, so that the efforts to obtain and use it do not cause disputes and destruction, also give the impression that rights and truth must be between them, so that the whole must not be withdrawn by the first party so that all of them belong to them, not to the second party. Profit and loss in principle must be jointly shared or suffered together.²⁴

Based on scholars' *ijma'*, buying and selling is permissible and has been practiced since the time of Rasulallah SAW up to the present.²⁵ Ulama have agreed that buying and selling is allowed on the grounds that humans will not be able to meet their needs, without the help of others. However, assistance or other people's goods that they need, must be replaced with other appropriate items. From the content of the verses of Allah and the sayings of the Prophet above, the fiqh scholars say that the original law of buying and selling is *mubah* (possible). However, in certain situations according to Faith Ash-Syatibi, the Maliki fiqh expert, the law may be obligatory. Imam Ash-Syatibi gave an example when there was a practice of *ihthikar* (stockpiling of goods so that stock was lost from the market and prices soared). If someone does *ihthikar* and causes the price of goods to be hoarded and stored to increase, according to him, the government may force the trader to sell the item according to the price before the price surge occurs.²⁶

The rules or laws of buying and selling in Islam are stipulated as follows:

1. It is justified that the sale and purchase is not in the form of usury.
2. In buying and selling there must be *ijab qabul* which is spoken or spoken, and allowed in the heart of each.

²² Muhammad Nasirudin al-Albani, *Sunan Ibn Majjah*, Penerjemah Ahmad Taufiq Abdurrahman, jilid 2, (Jakarta: Pustaka Azzam, 2007) 737.

²³ Ahmad Wardi Muslich, *Fiqh Muamalah*, (Jakarta: Amzah, 2010), 177-178.

²⁴ Tim Penyusun Studi IAIN Sunan Ampel, *Pengantar Studi Islam*, (Surabaya: IAIN Sunan Ampel Press, 2005), 214.

²⁵ Sayyid Sabiq, *Fiqh Sunnah*, Jilid 4, (Jakarta: Pena Pundi Aksara, 2006), 121.

²⁶ Nasrun Haroen, *Fiqh Muamalah*, (Jakarta: Gaya Media Pratama, 2000), 114.

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3. It is prohibited to trade blood, carcasses, thefts, endowments, public property, liquor, pigs, goods that are of no price, and items that have no owner.¹⁹

The principles that must be considered in buying and selling are as follows:

1. The principle of freedom of transaction, this principle is based on the thoughts of the jurists' who argue that the origin of buying and selling is permissible, and strengthened by hadith which means:

"Transacting fellow Muslims is permissible, except transactions that prohibit the lawful, or justify the forbidden. Muslim people must fulfill the conditions unless the conditions prohibit the lawful or justify the forbidden."²⁷

2. The principle of willingness, this principle is in accordance with the Qur'an surat an-Nisa' verse 29 meaning:

"O ye who believe, do not eat each other's wealth in a vanity way, except by trade that applies to like the likes of you. and do not kill yourself..."²⁸

3. The Principle of Allowed a Contract (Mubah), this principle is in accordance with the Qur'an surat al-Baqarah verse 275 which means: "Allah has justified buying and selling and prohibiting usury"²⁹

4. The principle of Balance of Transaction requires there is a balance between obligations and rights, in accordance with the Qur'an surat al-Maidah verse 1 which means:

"O ye who believe, fill the aqad-aqad. It is permissible for you cattle, except those that will be read to you. (that is so) by not justifying hunting when you are doing the Hajj. Verily, Allah sets forth the laws according to His will."³⁰

5. The principle of justice is in accordance with the Qur'an surat ar-Rahman verse 9 which means: "And uphold the scales fairly and do not reduce the balance sheet".³¹

3.4. Position and Function of the Contract of Sale and Purchase

Position and function of the contract is the most important tool in legitimate or not, and becomes the ultimate goal of *muamalah*. In Arabic, the contract comes from

²⁷ Az-Zuhaili, *alfiqh al Islami*, IV: 3049. Hadist riwayat Abu Daud, Ibnu Majjah dan at-tirmidi, dari Umar bin Auf. Hadist disahihkan at-Tirmidzi.

²⁸ An-Nisa' (4) : 29

²⁹ Al-Baqarah(2) : 275

³⁰ Al-Maidah (5) : 1

³¹ Al-Rahman (55) : 9

the word '*aqada - ya'qudu - aqdan*, plural to '*uqud* which means bond.³² A Contract is an agreement between *ijab and qabul* in a way justified by syara 'which is establishes the legal consequences of the object. *Ijab* is the first party statement regarding the contents of the desired agreement, while *qabul* is the statement of the second party to accept it.³³ In the case of *ijab and qabul* there is no obligation to use special words because the legal provisions are in the contract with purpose and meaning, not with words and the form of the word itself. What is needed in the case of *ijab and qabul* is mutual (*ridha*), between the two parties, which is realized in the form of taking and giving or other means that can make pleasure and based on the meaning of ownership and ownership. From this understanding, the contract takes place between two parties who are equally willing, and give rise to obligations on each of them reciprocally. In addition, the contract can also cover all people who are carried out with strong intentions and desires in the heart. In order for the contract to be strong, let it be written in the implementation and witnesses, especially for long-term contracts, and debt contracts. The aim is that the rights of each party are guaranteed and avoid mistakes. As explained in the word of Allah SWT which means: "O ye who believe, if you believe (owe the promises set by the time, let you write it."³⁴

Thus, the position of the contract is a legitimate condition of buying and selling, while its function is to move property from one party (the seller) to the other party (the buyer). In the sale and purchase agreement, if there is a handover, then the contract is canceled, then each party must return what has been received, the buyer returns the item, the selling returns assets (money), but if there is no return, for example, the assets (money) have run out or the goods have been damaged, then the cancellation of the sale and purchase contract cannot be held³⁵

3.5. Types and Selling Shares Buy

Can be reviewed in several ways. In terms of law, there are two types of sale, legal sale and legal repatriation, in terms of buy and sell objects. Selling is a form of alliance which contains elements that are the subject of sale and purchase. These are the elements that determine the form of the sale and purchase. In this case there are several kinds of sale and purchase from various aspects. But here are some kinds of forms and the form of sale and purchase of the legal or not to be three forms, namely:

- a. Sale of a *shahih*, a sale is said to be a sale and purchase of a *shahih* when the sale and purchase are prescribed, fulfilling the rules and conditions specified, not the property of others, irrespective of the right *hiyar*. Then such a sale is said to be a sale of *shahih*.
- b. Sale and Purchase Cancellation, the sale is said to be canceled if one or all of the pillars are not met, or the sale is on the basis and its nature is not prescribed, such as

³² Mahmud Yunus, *Kamus Arab Indonesia*, cet ke- 8. (Jakarta: PT. Hdakarya Agung, 1990), 274.

³³ Ahmad Azhar Basyir, *Asas-asas Hukum Muamalat*, 65.

³⁴ Al-Baqaroh (2): 282

³⁵ T.M. Hasbi Ash-Shidieqy, *Pengantar Fiqh Muamalah*, 91.

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sale of children, crazy people, or goods sold for goods -blocks prohibited', such as *bagh*, blood, pig, and *khamar*.

- c. Buying the *fasid*, ulama Hanafiyah distinguishes *fasid* sale with canceled sale. If the damage to the sale and purchase is related to the goods sold, then the law is null, such as trading the hamsters (*khamr*, pigs and blood). If the damage to the sale and purchase is related to the price of the goods and can be repaired then the sale and purchase is called the sale *fasid*.³⁶

Observed in terms of objects that are used as objects of sale and purchase can be suggested Imam Taqiyuddin that the sale is divided into three forms namely, 1) sale of things that appear, 2) the sale of the mentioned properties in the promise, and 3) sale of things which does not exist. Buying a visible item is at the time of the sale and purchase of goods or goods sold in the presence of sellers and buyers, such as buying rice in the market.

As for the sale and purchase of the properties mentioned in the agreement is the purchase of greeting (order). Whereas the sale and purchase of objects that are not there and can not be seen is the sale and purchase that is prohibited by Islam because the goods are uncertain or still dark so fears that the goods are obtained from stolen goods or goods that consequently can cause loss of one party. Considered by the actor (subject), the sale is divided into three parts: oral, intermediary, and act. The sale and purchase contract is done by most people. For the silent person is replaced by a signal, because the signal is a natural bearing in revealing the will. The things seen in the contract are intentions or wills and excerpts, not talks and statements.

Sale and purchase by messenger, intermediary, writing, or correspondence as well as *ijab qabul* with speech, such as via post and demand. This sale is made between a seller and a non-dealing buyer in an agreement of the contract, but by post and demand, this kind of sale is permissible according to *syara'*. In the understanding of some scholars, this form is almost identical to with the purchase of greeting, only selling greeting between sellers and buyers together in one assembly contract, while the purchase by mail and demand between sellers and buyers are not in a council contract.

Buy it by act (giving each other) or known by the term *mut'atah* that is taking and delivering goods without leave such as someone taking a cigarette that has been labeled its price tag, sold by the seller and then given the payment seller. The sale and purchase of such done without the goods is consent of the seller and the buyer, according to part of Syafi'iyah this is forbidden because he / she is part of the sale and purchase. But other Syafi'iyah, such as Imam Nawawi allows for the sale of daily necessities in that way, the name is *ijab qobul*.

While the Imam Hanafi divided the category of buying and selling based on *syariat* law into three.³⁷

³⁶ Nasrun Haroen, *Fiqh Muamalah*, (Jakarta: Gaya media Pertama, 2000), 121-125.

³⁷ Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu*, Abdul Hayyie al-Kattani, V, (Depok: Gema Insani, 2011), 91-92.

- a. Buying and selling legitimate, sanctioned purchase is either fact or nature and has nothing to do with the rights of others. This sale and purchase law can affect directly. That is, there is a change in the right of ownership of goods and prices. The goods belong to the buyer, while the seller's property price is the same as *ijab qobul*.
- b. Buying and selling avoid, is the buying and selling of unfulfilled peace and its object, whether or not legalized the fact and nature. That is to say, the perpetrator or the object of the transaction is considered lawful to do transactions. The transaction law is that religion does not consider it happening and does not create ownership rights.

The types of include:

1. Sell something that does not exist (misconduct Bay 'Ma'dum). Bay '*ma'dum* (sale and purchase of the goods does not exist) in which there is an element of uncertainty is falsehood. The scholars of fiqh agree to declare such a sale as invalid. For example, buying a fruit that his bud has not yet appeared on the tree or the calf that has not been there, even in his mother's stomach already exists.
2. The sale of the goods which can not be handed over to the buyer (bay '*ma'jus taslim*) four *madzhab* agreed to establish that in fact there is no sale and purchase of *ma'jus at-tasliim* when the body, the property or thing or thing is his own, such as trading birds flying from their owners. Although it can bring things at the expense of the contract, it is still not considered possible, because there are elements of falsehood. Canceling the contract may also occur when the price (substitute) is available, then the merchandise will be the property. Evidence: because the Prophet SAW prohibits the sale of possessions (the sale of goods where the buyer uses the pebbles in his buying and selling), the sale of *gharar* (sale and purchase of unknown items and their nature). And it shows uncertainty. From Abi Sa'id al-Qur'di ra The Messenger of Allah (PBUH) prohibited the buying and selling of slaves, buying and selling cattle that are still in the womb until birth, and selling their milk, and prohibiting the sale of goats until they are divided. Scholars Hanafiah argued that even though his immediate assignment was in the assembly (the place of the contract), it was still not allowed, because there was the element of falsehood.
3. Sale of debt (Bay 'Dain), the debt is like a substitute (price) of goods sold, showing loans, and dowries. in lieu of the costs of gains earned, and recommended against penalties and fines that are detrimental, and *khulu'* and can not be disputed. Discrimination of the sale and purchase of debt sometimes at the time of contract or *nasyi'ah* (owing first). The sale and purchase of *nasyi'ah* (in the first case) is a sale and purchase of credit with credit or debt with debt. The time is' (credit) is its ending, this dhal is forbidden and falsely according to ijma ', because there is a

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element of *riba*, as the hadith which Daruqutni ordered from Ibn' Umar: "The Messenger of Allah (may peace be upon him) prohibited by credit". In that provision it shows the *fasid* something prohibited (sale and purchase) even though the transaction is the person who owes or is not the person who owes it. Like selling lost items or selling pasta and flying in the air. This law is agreed upon by the entire fiqh scholar and is included in the category of '*al-gharar*' (fraudulent sale). The reason is the hadith of Ahmad ibn Hambal, Muslim, Abu Daud, and at-Tirmizi as follows: "Do not buy fish in the water, because this kind of sale is a deceptive sale".

4. Selling buy that contains the deceptive element, which at birth is good, but it turns out there are some trick elements, as in the words of the Prophet Muhammad SAW about trading fish in the water.

5. Selling Buy Najas and Mutanajas

The scholars agree on the absence of sale and purchase contracts for *khomer*, pigs, carcasses and blood. Because they are not included. He said the Messenger of Allah (SAW): "Verily, Allah and His Messenger have forbidden the sale of *khamer*, carcass, pork and idol". Jumhur ulama (other than Hanafiah) also include dogs in this sale and purchase order. Based on the hadith of Abu Mas'ud Al Anshory: The Prophet SAW prohibited the making of a dog as a *tsaman*. "Jumhur also abolished the sale and purchase of unclean goods, which can not be purified, such as oil, honey and *samin* in which there is a stool, when it is purified, like cloth. It is also not permissible for the *jumhur* to sell goods which are originally unclean as herbivore fertilizer (animal waste) according to Malikiyah. While according to Syafi'iyah and Hanabilah the stool (stool) and the bone of the carcass and its skin. Malikiyah allows for sale of cattle, goats, camels and the like. for the purpose of cultivating land or the other which includes benefits.

6. Advance Purchase Bay 'Urbun/ DP Advance is someone who buys something then handed over to the seller part of the price of the item in dirhams or the like with the note if the sale and purchase proceed, the down payment is calculated as part of the overall price, whereas if the sale is not resumed, the advance is given to the seller, in other words, if the sale and purchase transaction continues, the down payment as part of the price of the goods, whereas if the sale and purchase transaction does not continue, the advance is the gift from the buyer to the seller. The law of sale and purchase with advance payments (*ba'i al-urbun*) there are two conflicting groups, the groups that claim to be illegitimate and the group expressing legitimate.

Jumhur ulama argued that buying and selling system is a prohibited and illegal sale, the Ulama Hanafiah included in the *fasid* sale category, whereas Syafi'iyah and Malikiyah have sold the sale and canceled based on the hadith of Rasulullah SAW. "The Messenger of Allah (PBUH) prohibits the purchase of *urbun* (the advance payment system)." The sale of this kind also includes *gharar* sale, forbidden and including the eating of others property in a falsehood, other than that in the sale and purchase of the system contains two conditions that are the conditions of grant

(payment of the advance) and the condition of returning the merchandise with the estimation of one of the disadvantaged parties. The Hanabilah scholar was able to admit the sale and purchase with no advances (may) based on the history of Abd al-Razaq in his *Mushhaf* from the hadith of Zaid bin Aslam that the Prophet (peace be upon him) said. "Asked about the down payment and he allowed it." And also the narration of Nafi bin al-Harits had bought a prison building for Umar from Shafwan bin Umayyah with four thousand dirhams, (with provisions) when Umar liked the goods sold for him, if Umar does not like, four thousand dirhams for Shafwan

7. Selling Water Buy (Bay 'Maa')
8. Water is sometimes *mubah* or *ghoiru mubah*. *Mubah* is the water that is owned by all humans and they benefit from it, such as: sea water and common rivers. Word of the Prophet "Muslims are in the three: water, grass and fire."
9. *Ghoiru mubah* or owned is water belonging to special ownership, individual or congregation. And water that contains specialization of ownership such as residents of a particular village and water maintained in vessels (packed).
10. The law of selling the purchase is possible, except in a state of emergency (danger). As: a thirst that can cause death, it is obligatory to give him water, if it still hinders it, then it is as if he kills him.
11. Jumhur allows the sale and purchase of water that is *mubah*, such as: well water, springs, and packed. Aligned with wood allowed by Rasulullah SAW in selling his *beleq*.
12. Madzhab Dhohiriyah does not justify the sale and purchase of water absolutely, because the Prophet SAW prohibited the sale and purchase of water.
13. Prohibition of selling it also occurs in special circumstances such as: if the sale and purchase of water is intended to fertilize the grass in the vicinity (wells) because the shepherd will need water for the pasture.

3.6. Analysis of Islamic Law Against Pasir Sell Kebon With System Tebasan In Gunung Wurung Mojokerto Regency

From the results of the implementation of the sale of sands garden with the system *tebasan* at Gunung Wurung Mojokerto Regency has been presented three cases as previously described. For the analysis of Islamic law in this chapter shall be made to the case selectively namely:

1) Analysis of Islamic Law Against First Case

The first case is the implementation of buying and selling sand garden with the slash between Somo Joyo with Supono, Somo Joyo has a garden a plot measuring 1400 m². Before he sold garden, he does not know in estimating the rate and quality of the sand that was in plot garden because by selling the blow concerned about sand content

material garden her is not known. The then sand content in the garden he sells to Supono for Rp.40.000.000,00 ,. Supono is someone who has a profession as a contractor in the sale of material buildings. At the time of purchase farms (land) owned Somo Joyo, it can estimate the Content of sand in the garden, of the existence of pricing in the sale. Based on the experience of 15 years in the trade with system the blow or the buying and selling with free system.

From this view the problem is that farmers (sellers) do not know the content and quality of the sand contained in garden his or her own, only the area kebon garden the size of the becomes a measure in determining the price. So the first case there gharar because the seller does not know the content and the quality of sand garden and sellers can not estimate the price based on the rate and quality of sand garden. its While the buyer does not have *gharar* because it knows and can predict the content of sand in the garden he will buy, from that there is a pricing in the sale and purchase. Based on the experience of 15 years in the trade with system the blow or the buying and selling with free system.

From the sale of the first case there is an inadequate buy and sell item that is in terms of objects or goods purchased (the rate and quality of the sand in the garden) that have not looked good with quality and quantity that affects the price. From the knowledge of the owner of the garden can not assess the content of sand that is in the plot garden that he sells. while the other *rukun* has been fulfilled whether it is the people who are engaged (seller and buyer), the existence of *sigha*> t, and the exchange rate of substitute goods.

2) Analysis of Islamic Law Against the Second Case

The second case was the implementation of buying and selling sand *kebon* with a system slash that occurred between Gimán and Supono, Gimán had three blocks of *kebon* in the Gunung Wurung area of Kuto Porang Village which he had previously worked on for farming. In 2007, he once bought and sold sand *kebon* to someone with a slash (rental) system. He sold one pieces of *kebon* at a price of Rp. 27,000,000.00, in the buying and selling of sand *kebon* the mining settlement lasts 3 years. In 2013 Gimán resumed buying and selling garden with a named Supono on November 5, 2013. He sold two plots garden measuring 2830 m² Supono at a price of Rp. 95,000,000.00, they use buying and selling with a slash (rental) system.³⁸

From this explanation, it is explained that the farmer (seller) knows the level and quality of the sand and also from the width of the sand of *kebon* he can determine the selling price of his *kebon* sand. Then the second case there is no *gharar* because sellers know the level and the quality of his garden sand and sellers can estimate the price based on the levels and quality of the sand and extensive orchards. his From here, buying and selling is in accordance with Islamic law because. From the second sale and purchase case, there are inadequate pillars of buying and selling, namely in terms of the object or item purchased (the level and quality of the sand in the *kebon*) which does not

³⁸ Gimán, *Wawancara*, Mojokerto, 13 Januari 2015.

appear to be good in quality and quantity that affects the price. From the knowledge of owners, they can estimate the sand content in the plot of *kebon* that he sells. While the other pillars have been fulfilled, either the presence of people who are mindful (seller and buyer), the existence of *shighat*, and the exchange rate of substitute for goods.

3) Analysis of Islamic Law Against the Third Case

The third case is the implementation of buying and selling sand *kebon* with a system of slash which occurred between Tisan and Supono, Tisan had one half plot of *kebon* on Mount Wurung consisting of three belonging to his brother. He sold the *kebon* with a slash (rental) system. So *kebon* he sold to Supono, there was a negotiation between him and Supono in determining the price, and they agreed sand *kebon* to sell to Supono at a price of Rp. 80,000,000.00, in cash. From this exposure explains that farmers (sellers) can estimate the sand content and the type of material contained in garden, his based on knowledge of sand garden the neighbor's has been mined.

Then there is a third case because *gharar* both sides sellers and buyers can estimate levels and the quality of sand garden sand in purchasing. From here, buying and selling is in accordance with Islamic law. From the third sale and purchase case there are pillars of inadequate buying and selling, namely object or item purchased (the level and quality of the sand in the *kebon*) which has not looked good in quality and quantity that has an effect on the price. From the knowledge of owners, they can estimate the sand content in the plot of *kebon* that he sells. while the other pillars have been fulfilled, either the presence of people who are mindful (seller and buyer), the existence of *shighat*, and the exchange rate of substitute for goods.

From the first, second, and third cases, they have met the conditions contained in buying and selling, including the contractor's requirements (having the ability to choose, not crazy, *baligh*, and not drunk), contract goods requirements (sacred, beneficial, belonging to people who carry out contracts, capable of being handed over by the contract agent, knowing the status of goods, quality, quantity, and type, goods can be delivered) Based on the explanation of the above case, the first case of buying and selling is *gharar* because in the sale and purchase of *kebon* sand with the system of slash, the seller (farmer) does not know the level and quality of the sand in determining the price, only determines the price based on the width of the *kebon* he sells. It is not in accordance with Islamic law. In the second and third cases sellers and buyers make buying and selling sand garden with system slash complies with Islamic law because the seller and the buyer can determine the levels and quality of sand, garden his and bought. In addition, sellers and buyers can estimate prices based on the area, content, and quality of sand of the *kebon*. Then the sale and purchase is in accordance with Islamic law. Madhab Imam Hanafi allows the sale and purchase which contains a little *gharar* because the sale and purchase has been estimated based on experience that is close to the truth, and buying and selling is said to be buying and selling *jizaf* (buying and selling exceptions), whereas according to the Shafi'i Imam is not permitted because there is a potential for *gharar* that allows each of them to experience a loss or profit.

4. CONSLUSION

Based on the discussion about the practice of buying and selling blow sand gardener at Mount Wurung Mojokerto along with analysis of Islamic law has been stated in the previous chapter, thus it can be concluded that this thesis:

That the reason most people sell sand garden with the system blow because farmers can not afford to in mining sand, because of constraints unable in licensing and costs. Mining is very costly, therefore farmers prefer the *kebon* to be sold slash to other people to mine the sand so that it becomes productive land, the owners of *kebon* want the *kebon* or the land to become productive land so that the *kebon* can be used as plantation or animal husbandry. There are two types of systems used in buying and selling sand of the *kebon*, namely by buying and selling freely and buying and selling slash or rent. In buying and selling with system slash this, there is proof of payment using down payment (DP), installments, and payments cash (cash) given by the buyer (*penebas*) to the seller (owner of *kebon*), proof of payment in the form of receipts given by both parties between owners of *kebon* and slicer to know each other after payment has taken place. The practice of buying and selling sand of the *kebon* with the system slash takes place with the following mode.

- a. The sand sold by the owner is in a plot of land of *kebon* which is $\pm 1400 \text{ m}^2$.
- b. Buyers dig sand in the soil of *kebon* within 2-3 years per plot.
- c. After the excavation was completed, the buyer redistributed the land and handed it to the owner.

So it was revealed that the buying and selling of sand of *kebon* with the system of slash in Gunung Wurung, Mojokerto Regency. Two of the three cases of sand garden with system of slashes are studied in accordance with Islamic law because both sellers and buyers assess the levels of early quality of sand contained in the terraced garden while one case is not in harmony with Islamic law. Madhab Imam Hanafi allows buying and selling that contains a little *gharar* because buying and selling has been estimated based on experience that is close to the truth, and buying and selling is said to be buying and selling *jizaf* (buying and selling exceptions), whereas according to Madhab Imam Shafi'i is not allowed because potential *gharar* that allows each of them to experience losses or profits.

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