

# The Implementation of the Horizontal Partition Principle in Buying and Selling Rights for Housing and Land in the Province of Aceh, Indonesia

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This article aims to study the implementation of the horizontal partition principle in buying and selling right on the land and house on the land in the Province of Aceh. The horizontal partition principle derives from Adat-law which becomes the legal basis of Indonesian Land Law as explicitly mandated in Article 5 UUPA (the Basic Agrarian Law Act). This study is a legal normative study, which uses secondary data as the main data, and primary data as supporting data. The data collection technique is library research and interviews that are additional data. The data is analysed qualitatively to answer the issue prescriptively. The application of the horizontal partition principle in buying and selling right on the land or a house on the land is only applied to traditional houses in Aceh and houses built from wood; buying and selling has been done for a long time, from generation to generation by the Acehnese community, which is buying the right of the land which is partitioned from the house on the land. However, on the progress, buying and selling right of the land which is implemented based on PPAT (Notary or Head of District as Official Issuing Land Certificate) is including the house on the land. Therefore, it does not mean that Indonesian Land Law neglects horizontal partition principles and changes it with adhesions, law. The implementation of the horizontal partition principle is adjusted with the development of community need in order to achieve justice for all parties in terms of land or house ownership between the owner of the land and the owner of the house on the land.

**Key words:** *Horizontal Partition Principle, Buying and Selling, Land, House, Aceh.*

## Background of the Problem

This study discusses the implementation of the horizontal partition principle in buying and selling right of the land or a house on the land in the province of Aceh. National Land Law is established upon on Adat-law of the Land. The statement of Adat-law in Law Number 5 Year 1960 about Basic Agrarian Law Act (UUPA) can be found in Article 5, that states that Agrarian Law which is applicable on earth, water, airspace, is Adat-law, as long as it does not go against national interest, which is based on national unity, Indonesian socialism as well as the Act mandated in Basic Agrarian Law Acts and other Acts. (Boedi, 2008) The application of Adat-law as the basic national agrarian law is not only on norms of law but also on conception, principles, institutions, and the legal system. (Joesoef, 2018) The conception, principles, institutions and the system in Adat-law is also applicable in Indonesian Land Law.

According to principles contemplated in Article 5 UUPA (Basic Agrarian Law Acts), National Land Law is based on Adat-law, therefore the stipulation on rights of the land is based on the system of Adat-law (Putri, 2017). Adat-law intended is Adat-law that has been perfected, not the Adat-law that cannot be applicable regionally, but the Adat-law that is applicable nationally based on the Ideology of Pancasila (foundational philosophical theory of the Indonesian State) and the 1945 Indonesian Constitution.

Boedi and Harsono state that buying and selling right of land is legal action that hands over the land permanently by the seller to the buyer and concurrently the buyer stipulates the price to the seller. (Boedi, 2008) Buying and selling is separated action or buying and selling applying the horizontal partition principle is buying and selling of land that does not include the whole building and plants on the land. (Boue, 2018) It is based on the Indonesian Land Law Principle that adopts horizontal partition, which separates land from the properties on the land.

The implementation of the horizontal partition principle in buying and selling right of land or house on the land built from wood is still recognised and applied by almost all communities in many areas (Supriadi, 2015) in Indonesia, including the community in Aceh Province. Buying and selling of a house which is separated from the land has been conducted by Acehnese community for a long time from generation to generation. However, in actual practice, in general the community sells their land along with their houses on the land. Community perception of a house (paradigm about house ownership) still concludes that a house has to be bounded with land, and there only some people who can accept that the house is separated from the land (Horizontal partition principle). (Martin, 2018) In accordance with the issue, this study examines the implementation of the horizontal partition principle in terms of buying and selling right on the land or a house on the land in Aceh Province.

## Research Methodology

This research is a legal normative study. It uses secondary data as the main data and primary data as supporting data. The data collecting technique is conducted based on library research and the interviewee as additional data. The data is analysed qualitatively by establishing argument (legal reasoning) based on legal philosophy and legal theories. It is done to answer the issues formulated in this research, and then the result of the research is described prescriptively. Kamsilaniah, ET, al, explain that the horizontal partition principle, property uniting with the land according to law, is not part of the land. So, every legal action on the land does not automatically include the object on the land. A stilt house is fiduciary object because it functions as the asset of the owner, and has economic value that can be measured with money so that the house can be used as debt warrant. The horizontal partition principle can be implemented to a fiduciary stilt house warrant with a fiduciary warrant mechanism, that the house is a debt agreement between the owner of the house as the debtor and the bank as the creditor. (Kamsilaniah, 2018)

Rubiati, et al, in their study discuss the possession of a flat house, which has implemented the horizontal partition principle; it is found that a flat house can be built on the land of other people, however certificate ownership of the flat house that unites the ownership of the flat house with land, shows that is still influenced by the adhesion principle. (Rubiati, 2015)

Celine Boue, et, al, express about the relationship between the buying and selling transaction of land by formalising the right on the land in Malagsi context, exploring local procedure in order to secure a land transaction by issuing a private deed sale as the payment evidence and legally property displacement, which is legalised by the local authority. (Celine, 2018)

Dyah Devina examines the criteria of the horizontal partition principle on land or building possession as a legal basis to gain legal protection to the related party, in terms of National Land Laws well as civil law; it does not yet provide the certain ordinance of horizontal partition criteria in possessing land and property on the land. (Dyah, 2017)

Iwan Erar Joesoef, explains that the implementation of two different legal concepts that the concept of Adat-law such as clearness, real, cash, and the horizontal partition principle based on the Western legal concept, agrees with the accessie principle on the land and building unity concurrently, with land transactions in Indonesia, becoming the issue for the buyer and seller who are doing the transaction on the land. (Joesoef, 2018)

Daryono states that many legal experts and development experts assume that right on the land bounded (accessie) is the requirements for development, and the ownership system on

compound land (horizontal partition) is the main source of uncertainty and insecurity in legal property development. (Darmono, 2015)

Betty Rubiati, et, al, explains that the ownership of a flat house bounded with the right of land, however, on recent development, it has regulated a flat house which separates the building of the flat house from the right of the land based on the horizontal partition principle, which is the unity of a flat house that is built on government land and waqf in the lease system. (Betty, 2017)

Urip Santoso states that for the owner to build the property, he can use the right of land ownership individually. Land ownership can also be used by other people in accordance with the owner agreement to build property by giving the right or by the lease system. (Urip, 2018)

According to the previous studies discussed, therefore it indicates the differences of the article with the title “The application of horizontal partition principle in term of buying and selling the land or house on the land in province of Aceh”. The difference from other studies is that the horizontal partition principle in other related articles that has been discussed above is the implementation on a flat house, fiduciary warrant, dependant right, and a lease right on State-owned land.

## **Discussion**

### ***The Horizontal Partition Principle According to the Adat-law of Aceh***

Adat-law embraces the horizontal partition principle which is in the Dutch language called: horizontale scheidig, whereas the right of the land is not concurrent and includes the ownership of a building and plants on the land. According to Adat-law, someone can become the owner of the trees and houses on the land owned by another person.

Aceh is a community which settles at the tip of Sumatera Island, Indonesia. The majority of Acehnese population is devout Moslem. Besides, Aceh is well-known as the first region of Islamic emergence in Southeast Asia. (Muhammad and Khadijah, 2016) Aceh has history, culture, ethnic, and unique Islamic tradition which is different from other provinces in Indonesia, (Makin, 2016) thus it establishes a strong ethno-religious identity. (Hasnil, 2009) Adat-law in Aceh is the mixture between tradition and Islamic law which becomes the guideline for people in life in the Province of Aceh.

Aceh is the province which is a legal community unit given special rights to govern governmental affairs and community interests. Act Number 11 Year 2006 of Acehnese Government Article 213 Law Number 11 Year 2006, about Acehnese Government,

explicitly mandates: “The Government of Aceh authorises to manage and arrange allotment, utilisation, and legal relationship regarding the right on the land by recognising, respecting, and protecting the rights that have been existing including the Adat rights based on the norms, standard, and procedure that are applied nationally”.

The customs in the Acehenese community are the issues that are still upheld, (Yulia, 2012) including the horizontal partition principle which is still applied in the present day; one of the examples of the implementation of the horizontal partition principle in the Acehenese community is building the house on the land owned by another person (right to lodge).

Buying and selling of land or a house in the Acehnese community still maintains the values of Adat-law. Before the house or land is sold to the buyer, it has to be offered to the adjacent neighbour or the brother in the village where the land to be sold is located; if the neighbour or brother does not buy the land or the house, it will be offered to other people in the village where the land to be sold is located, and lastly, it will be offered to people who are from outside of the village where the land or house is located. (Jabir, 2018) This tradition is still applied in the Aceh community in any transaction of buying and selling the land or the house.

Regarding the horizontal partition principle in terms of buying and selling the house on the land owned by other people, before the house is sold, it has to be offered first to the owner of the land where the house is located. (Samsuar, 2018) This ordinance in Adat-law of Aceh is known as hak langgeh (previous right). The ordinance of Islamic law is still applied by the Acehnese community, which is *ijab* and *qabul* (formula speech in Islam/*Ijab* meaning “offering” and *Qabul* meaning “acceptance”) between the buyer and seller at the time of transaction of buying and selling of land or house. (Sulaiman, 2018) Thus, in the transaction of buying and selling the right of the land or house on the land in Acehnese community the ordinance stated in Islamic law and the horizontal partition principle in buying and selling of house or land only is applied.

### ***The Horizontal Partition Principle in Buying and Selling the Right of the Land in Aceh***

According to Adat-law, buying and selling of land is the action of replacing the right of the land which is clear and in cash. Clearness means the action of transferring the right has to be done in front of the head of the gampong (village), called *keuchik*. *Keuchik* (the head of village) acts as the official who is responsible for the ordinance and the legality of action of transferring the right of the sold land, therefore, that action is acknowledged by the community. (Adrian, 2014) The responsibility of the head of the gampong leads to buying and selling which is guaranteed legally (legally clear), because it is acknowledged by the community publicly.

The process of buying and selling of land in Aceh happened after the parties or potential buyer and potential seller agreed on buying and selling the right of the land, and the parties will meet keuchik (the head of the village) to explain their purpose. It is what is called the clear statement principle (Redha, 2018). The transaction of buying and selling right on land in Aceh is done with the Islamic law system in anakad (Islamic term for agreement), Further, the document or stamped sale deed is made which states that it is solemnly true that the seller (the owner of the land) has sold and handed over the land permanently to the buyer, and the buyer has accepted the price of the land fully.

Furthermore, buying and selling occurs in Gampong Jawa, Lhokseumawe city, where the house owned by another person is located on the land to be sold; the house on the land is dismantled. The purchase of land is conducted based on the acknowledgement of PPAT (The Officials Issuing the Land Certificate) Lhokseumawe city (Iskandar, 2018). The house is dismantled because the buyer does not want to buy the house owned by other party, which has a different ownership between the land and the house. By dismantling the house on the land to be sold, it indicates the implementation of the horizontal partition principle on the transaction of the land sale.

### ***The Horizontal Partition Principle in Buying and Selling a House in Aceh***

According to Adat-law, a person can build a house on land owned by another person, with permission of the owner of the land. If the owner of the house moves out, the house still belongs to the owner of the house; it does not belong to the owner of the land. In practice, if a person builds the house on the land owned by another person and is a wall house, when the owner of house moves out, the house can be offered initially to the owner of land.

In Aceh, all houses are considered as unanimated properties. All pegs are too small for the hole, so it has to be added with bigger wedges (bajoe in Acehnese term). The person who comprehends the construction of an Acehnese traditional house, dismantling and rebuilding the house in other place is an easy matter. (Snouck, 1996) So, if Acehnese people sell the house, the buyer will move the house to his settlement and rebuild the house in the same shape prior to being dismantled.

The dismantling and relocating the house to the buyer's settlement is categorised as the implementation of the horizontal partition principle. The practice is applicable and conducted by most of the community in the Province of Aceh. The implementation of the horizontal partition principle is found in the transaction of buying and selling a traditional house of Aceh and houses built from wood in some areas in Aceh Province.

The transaction on buying and selling a traditional house of Aceh occurred in the 1980s in Gampong Krueng Dhoe Sigli; the payment was done with gold. The transaction of buying and selling a traditional house of Aceh was conducted according to Adat-law, only between the buyer and seller; it was witnessed by the surrounding community, and acknowledged by the Keuchik (the head of the village). As the transaction evidence of the house purchase, the document of buying and selling the right of ownership was made namely “Surat Jual Beli Hak Milik Adat” (Adat document of Buying and Selling Right/Unregistered Sale Deed) which is signed by the parties, two witnesses and acknowledged by the keuchik (the head of village) (Fauzi, 2018). It was found that the purchase of Acehnese traditional house in the 80s, that the process was applied in the Adat way by the acknowledgement of the Keuchik and witnesses, and gold was the tool for payment.

The intervention of the Keuchik as the head of the Gampong has meaning as the way to resolve or to prevent the legal disputes, in other words, it gives a guarantee that the transaction is done with legality (Syahriyal, 2018). Consequently, the intervention of the Keuchik is a legal stipulation to guarantee legal certainty for the parties in the buying and selling transaction in order to prevent a potential dispute in the future.

The witnesses are the people attending the transaction of buying and selling the house. In general, the witnesses consist of the head of the gampong, the land owner, the heir from each party, and other people invited intentionally to testify the transaction. The function of witnesses in terms of the buying and selling transaction of the house aims to prevent a dispute after the transaction occurs. (Syahriyal, 2018) Thus, the function of testimonials in the buying and selling transaction of a house in Aceh is also to prevent the dispute in the future on buying and selling the house.

In Gampong Cot Seurani, besides a shelter house, there are other types of aid houses built by NGO from the Netherlands. Permanent Aid House type 42 are 19 (nineteen) units which are built on the land owned by the Government of North Aceh located in Gampong Cot Seurani. However, in terms of an aid house, the party just receives the house, meanwhile the land is owned by Government of North Aceh. The Aid House from the Dutch NGO is dismantled or diverted to another party (sold or rented) but can be only sold to the community of Gampong Cot Seurani. (Sabri, 2018) So, a shelter house built on the land owned by the government of North Aceh, which can be rebought and resold by community, is only the house, but the land is still owned by the government.

The process of buying and selling the aid shelter house from the German and Dutch NGO is located in Gampong Cot Seurani which is unknown by the village apparatus (the Keuchik and the head of the hamlet). The transaction just happens between the buyer and the seller and is unregistered, and they only use a stamped receipt for evidence (Indonesian: Kwitansi). The

village apparatus just acknowledges when the aid house has been handed over to another party from the conversation of the villagers. (Teuku, 2018)

A house shelter in Gampong Cot Seuranis is owned by Marzuki, which is sold to M. Ridwan; the process is that the house is dismantled and removed to the place of the buyer of the house. The house sold is in broken condition and the owner of the house needs money to purchase a motorcycle. (Marzuki, 2018) Furthermore, the house shelter is also sold which Mulidin owns and it is sold to Safrizal. The house is sold due to the place of the house being in an inappropriate condition and very close to the house of another family. The location of the house is crowded and has poor sanitation because drainage is not available. (Mulidin, 2018)

In addition, the transaction of buying and selling the shelter house also happens in Gampong Peukan Bada, Aceh Besar, Banda Aceh which is owned by Umi Kalsum; the house is sold to Hasan, and is translocated and rebuilt in Gampong Peukan Bada on the land owned by Hasan, that is not far from the previous location of that house. (Umi Kalsum, 2018) Furthermore, the house shelter owned by Kurnia Fitri in Gampong Peukan Bada Aceh Besar is sold to Boy Haki. The house is removed to Gampong Dayah Lhoksukon Aceh Utara; the transaction of buying and selling the house is just acknowledged by the buyer and the seller; the document regarding the buying and selling the house is not issued by the parties and it is not acknowledged by the Keuchik of the Gampong where the house is located. (Boy Haki, 2018) It indicates that in the transaction of buying and selling the shelter house mentioned above, that only the house is sold, and it is not acknowledged by the Keuchik of the Gampong.

The result of this research reveals that the implementation of the horizontal partition principle in the Province of Aceh in terms of buying and selling the right of the land or a house on the land, to the right of ownership of the land or the house on the land, is done by the community just for buying and selling the right on the land or house on the land which is built from wood; the process of buying and selling happens in the adat way being unregistered. Meanwhile, buying and selling the right of the land or house on the land happens by acknowledgement of PPAT (the Official Issuing Land Certificate) in the Province of Aceh and it does not happen either buying the house only or just buying the land due to the right of ownership. The PPAT in the province of Aceh never issues a sale deed (AJB) that has a different ownership between the land and the house on the land. (Sukr and Ali, 2018) It is also stated by other officials of PPAT, (Syahriar and Cendri, 2018) regarding the issue of buying and selling the land, which has different ownership from the house on the land. (Dian and Henni, 2018)

It once happened that the parties intended to sell the land with the house on the land owned by another person, therefore, PPAT had to have the permission or agreement from both parties, from the owner of the house and the owner of the land. However, the agreement

between the owner of the land and the owner of the house was not reached, (Cut, 2018) so the transaction of buying and selling the land and house was cancelled.

The horizontal partition principle in practice in the Province of Aceh regarding buying and selling the land or house on the land, which is implemented by the community is just to buy and sell the land or house on the land that is built from wood; the process of buying and selling is in the Adat way or unregistered. Meanwhile, buying and selling the right of the land or house on the land which is done and acknowledged by PPAT, is buying and selling the right on the land along with the house on the land, and buying and selling of the house in the status of Right to Build Title (“Hak Guna Bangunan” or “HGB”).

Buying and selling the right of the land along with the house on the land is possibly conducted as administrated in Indonesian Land Law. However, it does not indicate that Indonesian Land Law embraces the Horizontal Partition Principle, neglecting that principle and replacing it with the vertical principle. The purpose mandated in the horizontal partition principle that is embraced by Indonesian Land Law, is that the house has not to be always bounded with the land; the owner of the land may be different from the owner of the house on the land. The implementation of the horizontal partition principle in terms of buying and selling the right of the land or house on the land cannot be implemented absolutely; however, it is based on the Adat law, which is in accordance with the development era and the needs of the community. The implementation of the horizontal partition principle has to be adjusted with the development era and the need of community to meet justice for all parties in term of ownership and power of right on the land between the owner of the land and the owner of the properties on the land.

## **Conclusion**

The implementation of the horizontal partition principle in Aceh Province in terms of buying and selling the land or the house on the land, is that the community just implements the buying and selling right on the land or house on the land built from wood; the process of buying and selling is done in the Adat way or unregistered. Meanwhile, buying and selling the right on the land or house on the land which is acknowledged by PPAT is buying and selling the right on the land along with the house on the land, and buying and selling of a house that has the status of a Right to Build Title (HGB).

Buying and selling a traditional house of Aceh and the house is made from wood that is dismantled and relocated to another place, have been done in Aceh from generation to generation. Meanwhile, buying and selling a house along with land is the current idea of Acehnese community that the house has to be bounded with the land. It is possibly



implemented in Indonesian Land Law, as long as the house physically is united with the land, and the owner of the land owns the house.

Therefore, buying and selling the right of the land along with the house on the land, does not mean that Indonesian Land Law embraces the Horizontal partition principle; it neglects that principle and replaces it with the vertical principle.

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