



## SELLING PROHIBITION OF TANAH SOKO UNDER 'URF *ṢAḤĪḤ* IN KAMPAR

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### **Abstract**

This study examines the customary prohibition on selling Tanah Soko in Kualu Village, Kampar, Riau, and analyzes its conformity with Islamic law. This qualitative field study used a normative Islamic-law approach and collected data through semi-structured interviews with six purposively selected informants, consisting of *ninik mamak* and community members involved in Tanah Soko management. Data were validated through source, method, and theoretical triangulation. The findings show that Tanah Soko is divided into Soko Tinggi, communal ancestral land that cannot be alienated, and Soko Rendah, individual inherited land that may be transferred. The prohibition on selling Soko Tinggi is enforced through multilevel customary deliberation. In Islamic law, the prohibition is valid because individuals do not possess full ownership (*al-milk al-tām*), while the custom meets the criteria of '*urf ṣaḥīḥ*' and *maṣlaḥah mursalah*. Thus, the prohibition demonstrates harmonious integration between customary law and Islamic law.

**Keywords:** Customary Law; Islamic Law; Tanah Soko; '*Urf Ṣaḥīḥ*'.



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## INTRODUCTION

Land, as a legal object, does not have only an economic dimension; it also carries social, cultural, and religious values attached to particular communities. In the context of indigenous communities in Indonesia, land is often treated as communal property, not fully subject to an individual ownership regime (Lubis et al., 2025). In several customary communities, land is understood as ancestral inheritance that must be maintained and protected so that its benefits can continue to be enjoyed by subsequent generations (Hamid & Suryana, 2024). One concrete form of this arrangement is Tanah Soko, which is known in the community of Kualu Village, Tambang District, Kampar Regency, Riau Province.

Under customary law, Tanah Soko is prohibited from sale because it is viewed as ancestral property, communal in nature, and serves to preserve lineage continuity and clan identity (Yesi et al., 2023). This norm is enforced through customary deliberation led by Ninik Mamak, who holds dominant authority in resolving disputes and establishing customary rules within the community (Mustafid et al., 2024). The philosophy of “Adat basandi syara’, syara’ basandi Kitabullah” affirms that custom is grounded in Islamic law and Islamic law is grounded in the Qur’an. Therefore, custom and Islamic law are not understood as two contradictory systems, but as mutually reinforcing and complementary normative orders (Sari, 2024). Nevertheless, this prohibition is often questioned in the context of Islamic law, since sale and purchase are, in principle, permissible contracts provided that their conditions are met. On the one hand, customary law places Tanah Soko as collective property of the clan, the use of which is restricted for the benefit of future generations. On the other hand, Islamic jurisprudence in muamalah recognizes an individual’s right to transfer property through a sale contract. This condition raises fundamental questions about the ownership status of Tanah Soko and the legitimacy of the prohibition on selling it under Islamic law.

Several previous studies have discussed the relationship between customary law and Islamic law in the context of land and inheritance. Firmanda examined the settlement of the Tanah Soko disputes through Islamic-colored customary mechanisms, but did not specifically analyze the prohibition on the sale of the (Firmanda, 2018). Anwari et al. discussed the Tanah Soko property as a dzurri waqf from the perspective of maqāṣid al-sharī’ah but did not employ a field research approach (IchsanAnwari et al., 2025). Ilyas et al. examined the accommodation of customary law

into Islamic law in inheritance distribution in Aceh (Ilyas et al., 2023), while Alhusni et al. analyzed the interaction between customary law and Islamic law in Malaysia (Alhusni et al., 2025). These studies share a common concern with the relationship between customary law and Islamic law. However, no study has specifically examined the prohibition on selling Tanah Soko through field research combined with a systematic fiqh analysis based on the concepts of al-milk, 'urf, and maṣlaḥah mursalah. This is the novelty and research gap addressed by the present article.

Within the framework of Islamic law, this study uses three main concepts as its analytical foundation. First, the concept of ownership (al-milk), which distinguishes full ownership (al-milk al-tām) from imperfect ownership (al-milk al-nāqīṣ). Wahbah al-Zuhaylī explains that full ownership includes control over both the object's corpus and its benefits, thereby giving the owner full authority to transfer ownership (W. az-Zuhailī, 1997). Second, the concept of 'urf as a custom that is known, practiced, and accepted by society and used as a guideline in social interaction as long as it does not contradict a shar'ī text. Scholars distinguish 'urf into 'urf ṣaḥīḥ, which is consistent with Islamic law, and 'urf fāsid, which is inconsistent with Islamic law (Khallaf, 1978). Third, the concept of maṣlaḥah mursalah as a public interest that is not explicitly recognized by a textual proof but is also not contrary to it. (Khallaf, 1978) This concept is strengthened by fiqh maxims such as al-'ādah muḥakkamah and dar' al-mafāsid muqaddam 'alā jalb al-maṣāliḥ (Burnu, 1996). In this context, ḥifẓ al-māl and ḥifẓ al-nasl are identified as objectives of Islamic law that are realized through prohibition.

The research framework begins with the lived experience of the prohibition on selling Tanah Soko in the customary community of Kualu Village. First, the position of Tanah Soko within the Kampar customary system is examined. Second, the customary legal basis supporting the prohibition is analyzed. Third, the prohibition is tested against Islamic-law principles in stages: beginning with the general maxim of muamalah, continuing with an examination of the Qur'an and hadith, strengthened by the concepts of 'urf and maṣlaḥah mursalah, and further clarified through fiqh maxims before a conclusion is drawn.

This study aims to: (1) explain the customary legal basis underlying the prohibition on selling Tanah Soko in Kualu Village; and (2) analyze the conformity of that prohibition with the principles of Islamic law. Theoretically, this study is expected to contribute to the development of Islamic law studies on customary legal practices, particularly regarding the prohibition on the sale

of communal inherited property. In practice, the findings are expected to inform communities, customary leaders, and policymakers in understanding Islamic law's position on the prohibition of selling Tanah Soko.

## **METHOD**

This study uses a qualitative approach, combining field research with normative and sociological perspectives. The normative approach refers to the main sources of Islamic law, such as the Qur'an, hadith, and the views of classical and contemporary scholars, particularly in muamalah jurisprudence and the concept of 'urf. The sociological approach is used to understand how the norm prohibiting the sale of Tanah Soko lives, operates, and is enforced in the social reality of the customary community of Kualu Village (Hasni & Kambali, 2023).

The fiqh analysis was conducted systematically through six stages: (1) identifying field facts concerning the status and management of Tanah Soko; (2) classifying the problem within the category of muamalah jurisprudence; (3) analyzing the concept of ownership (al-milk) and its relevance to the object of contract; (4) testing the criteria of 'urf ṣaḥīḥ; (5) analyzing maṣlaḥah mursalah and fiqh maxims; and (6) drawing a legal conclusion.

Primary data were obtained through semi-structured, in-depth interviews with six key informants selected through purposive sampling (Creswell & Creswell, 2022). The selection criteria included a deep understanding of Tanah Soko custom, direct involvement in the management of Tanah Soko or in disputes concerning it, and mastery of Islamic values. The profile of the informants is presented in Table 1.

**Table 1.** Research Informant Profile

| No | Name                            | Age | Ethnicity/Position |
|----|---------------------------------|-----|--------------------|
| 1  | Syamsurijal Dt. Palimo Tunggang | 54  | Domo               |
| 2  | Jasar Dt. Paduko Sinaro         | 69  | Domo Kunagho       |
| 3  | H. Amir                         | 67  | Melayu             |
| 4  | Iwan Dt. Ulak                   | 47  | Piliang            |
| 5  | Trisno Dt. Antiko Mudo          | 32  | Melayu             |
| 6  | H. Sibi Dt. Sanggo              | 67  | Melayu             |

*Source: Primary data, 2025*

Secondary data were obtained from classical and contemporary fiqh books, customary-law books, scholarly journals, customary archives, and official documents of Kualu Village in 2025. The customary-law books used include Buku Adat Andiko 44, Buku Adat Jati Kabupaten Kampar, and Buku Profil Adat Kabupaten Kampar. These three sources were used to strengthen the understanding of customary institutions, the leadership pattern of Ninik Mamak, and customary norms related to the management and protection of ancestral property, including Tanah Soko. Data validity was ensured through source triangulation by comparing information across informants, method triangulation by combining interviews, observations, and documentation, and theoretical triangulation by testing the data against customary law theory and fiqh principles. Data analysis followed the Miles and Huberman model, consisting of data condensation, data display, and conclusion drawing (Miles et al., 2013).

## **RESULT AND DISCUSSION**

### **Result**

#### **Characteristics of Tanah Soko in Kualu Village**

Based on interviews and an examination of customary documents, Tanah Soko in Kualu Village is divided into two categories with different legal consequences. Soko Tinggi is an ancestral land inherited from forebears, communal in nature, and transmitted through the maternal line (matrilineal). This land is considered a symbol of clan honor and identity and therefore cannot be sold. In contrast, Soko Rendah is inherited land that has been converted into individual rights and may be sold as needed (Firdaus et al., 2015).

According to Kampar customary thought, Tanah Soko is an ancestral trust that must be guarded and maintained. Selling or mortgaging it is regarded as a violation of customary dignity. A customary proverb states, “Tanah Soko tempat berpijak, adat soko tempat berdiri,” which means that Tanah Soko is the ground on which the social and moral order of the community stands. Violations of this customary rule may result in social sanctions, such as exclusion, loss of standing within the clan, and being regarded as a person who no longer upholds custom (Lestari & Sukisno, 2021).

**Table 2.** Comparison between Soko Tinggi and Soko Rendah

| No | Aspect            | Soko Tinggi                                                   | Soko Rendah                                       |
|----|-------------------|---------------------------------------------------------------|---------------------------------------------------|
| 1  | Origin            | Ancestral inheritance from forebears (old ancestral property) | Inheritance from parents (new ancestral property) |
| 2  | Ownership         | Communal/collective property of the clan                      | Individual/can become private property            |
| 3  | Sale and purchase | Absolutely prohibited                                         | Permitted                                         |
| 4  | Transfer          | Only through the matrilineal line                             | Can be transferred to anyone                      |
| 5  | Manager           | Ninik mamak on behalf of the clan                             | Individual owner                                  |

*Source: Primary and secondary data analysis, 2025*

### **Informants' Views on the Prohibition of Selling Tanah Soko**

The prohibition on selling Tanah Soko in the Kualu Village custom applies to the Soko Tinggi category. Jasar Dt. Paduko Sinaro emphasized that every customary decision concerning Tanah Soko is always taken through deliberation among ninik mamak, customary figures, and anak kemenakan. According to him, this rule has been agreed upon across generations and cannot be changed without the customary institution's consent (Interview, September 26, 2025). H. Amir added that Tanah Soko is not owned by an individual but by the clan as a whole. Selling Tanah Soko violates communal rights and betrays the ancestors' trust (Interview, September 26, 2025). Iwan Dt. Ulak explained that the settlement mechanism for violations is conducted in stages. Ninik mamak first summons the disputing parties for mediation. If no agreement is reached, customary sanctions are imposed in the form of social exclusion until the offender acknowledges wrongdoing before the community. If the dispute is not settled at the tribal level, it is escalated to the ninik mamak nagoghi, the head of the customary polity, for a final decision (Interview, September 26, 2025).

H. Sibi Dt. Sanggo affirmed that the customary philosophy of Kualu Village is based on the principle “Adat basandi syara’, syara’ basandi Kitabullah,” meaning that customary values do not contradict Islamic teachings but rather strengthen them (Interview, September 26, 2025). Trisno Dt. Antiko Mudo explained that amid modernization, the best way to maintain customary values is to prioritize mutual consideration, as expressed in the proverb “Anak dipangku, kamanakan dibimbing, urang kampuong dipatenggangkan” (Interview, September 26, 2025). Syamsurijal Dt. Palimo Tunggang also emphasized that Tanah Soko is not merely an economic asset but an ancestral trust that underpins the community’s social and moral order (Interview, 2025).

## **Discussion**

### **The Prohibition of Selling Tanah Soko from the Perspective of Customary Law**

Based on the research findings, the prohibition on selling Tanah Soko in Kualu Village is a logical consequence of the communal ownership system inherent in Kampar customary law. Rights over Soko Tinggi are clearly distinguished between individual use rights, or rights to benefit, and collective ownership rights. Individuals possess only the first type of right, while the authority to manage and decide on transfer lies with Ninik Mamak as representatives of the clan. This distinction reflects the worldview of Kampar customary society, which positions land as an ancestral trust rather than merely as a commodity (Firmanda, 2018).

This is consistent with the concept of customary law as living law, as proposed by Eugen Ehrlich, who argues that genuine law grows out of social practices and values that operate within society, rather than solely from written state law (Ehrlich, 2002). The existence of customary law is constitutionally recognized through Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that the state recognizes and respects indigenous legal communities and their traditional rights as long as they still exist, develop, and remain consistent with the principles of the Unitary State of the Republic of Indonesia and statutory regulations (Sempo, 2024). In addition, the Tali Tigo Sapilin system, which integrates the leadership of ninik mamak, religious scholars, and the government, provides the basis for governance of Tanah Soko and ensures that every decision encompasses customary, religious, and governmental dimensions (Bello, 2024).

The prohibition also serves as a mechanism to prevent conflict. By prohibiting the sale of Tanah Soko, the potential for disputes among anak kemenakan over the distribution of ancestral property can be minimized. The mechanism of dispute resolution through staged customary deliberation is restorative in nature and aligns with Van Vollenhoven's concept of customary reaction, which aims to restore social relations rather than merely punish (Mamahit et al., 2026). This finding is consistent with Firmanda (2018), who showed that Tanah Soko disputes in Kampar are settled through Islamic-colored customary mechanisms. The present study complements that finding by explaining why the prohibition on sale is also valid from a fiqh perspective.

### **Analysis of the Concept of Milk and the Validity Requirements of Sale**

In Islamic law, the maxim *al-aşlu fı al-mu'āmalāt al-ibāḥah* applies, meaning that the original ruling for all transactions is permissibility until there is evidence to the contrary (M. M. az-Zuḥailī, 2006). Qur'an Surah al-Baqarah [2]: 275 affirms the lawfulness of sale. However, this permissibility is not absolute because the validity of a sale contract requires lawful ownership of the object of the contract. Qur'an Surah an-Nisā' [4]: 29 prohibits consuming property unjustly, which is understood as a prohibition on transactions that do not satisfy valid ownership requirements.

The jurists divide ownership (al-milk) into two categories: full ownership (al-milk al-tām), which includes control over both the corpus (*raqabah*) and its benefits; and imperfect ownership (al-milk al-nāqış), which includes only the right of benefit without absolute authority to transfer ownership (W. az-Zuḥailī, 1997). Based on field findings, individuals within the clan have only use rights over Soko Tinggi, while ownership of its *raqabah* is collective. Therefore, Tanah Soko does not fulfill the criteria of al-milk al-tām, and individuals are not authorized to sell it. This is reinforced by the prophetic hadith "*Lā tabi' mā laysa 'indaka*," meaning "Do not sell what you do not own" (Ibn Ḥanbal, 1996).

Through *qiyās*, the prohibition on selling Tanah Soko can be analogized to the prohibition on selling jointly owned property (al-milk al-mushtarak) without the permission of all entitled parties. In muamalah jurisprudence, the sale of shared property without the consent of all owners is considered invalid because the effective legal cause is defective ownership (Al-Shāfi'ī, 1990). Soko Tinggi also resembles family waqf property, in which the corpus is retained while only its benefits are used. For this reason, scholars are very cautious in allowing the sale of the corpus of such property.

### **Qualification of the Prohibition as 'Urf Şahih**

Scholars require four conditions for a custom to be used as a legal basis: (1) it must operate continuously and be well established; (2) it must be known and practiced by the majority of the community; (3) it must not contradict a definitive textual proof; and (4) it must not eliminate rights established by a scriptural text (Zuḥaylī, 1995). The majority of fiqh schools accept 'urf as one of the considerations in legal determination as long as it does not contradict a textual proof (Zuḥaylī, 1986).

The prohibition on selling Tanah Soko in Kualu Village satisfies all these conditions. First, this custom has been practiced across generations and collectively obeyed by all tribes in Kualu Village long before the presence of positive law. Second, there is no textual proof that specifically regulates matrilineal communal ancestral land of this kind, so 'urf becomes a valid consideration. Third, the prohibition does not render unlawful lawful, nor does it nullify any shar'ī obligation; instead, it strengthens the principle of valid ownership in contracts. Fourth, customary deliberation consistently affirms the prohibition.

In terms of classification, this prohibition is 'urf 'amali, because it is a practical custom, and 'urf khāṣṣ, because it applies specifically within the Kampar customary community (al-Zarqa, 1978). In terms of legal validity, it is classified as 'urf ṣaḥīḥ because it contains no element of injustice, does not legalize what is unlawful, does not nullify a religious obligation, and serves a protective function for the interests of the clan.

### ***Maṣlaḥah Mursalah and the Reinforcement of Fiqh Maxims***

Maṣlaḥah mursalah is a public interest that lacks explicit textual recognition but does not contradict the text. Usul fiqh scholars establish three strict conditions: the interest must be real rather than speculative; it must be general, affecting the interests of the wider community; and it must not contradict a definitive textual proof, (Zahrah, 1958)

The prohibition on selling Tanah Soko fulfills all three conditions. First, the benefits are real: the preservation of communal clan assets, the continuity of lineage, and the prevention of disputes among anak kemenakan. Second, the benefit is general because it affects all members of the clan. Third, there is no textual proof that prohibits a customary rule of this kind. The prohibition is also consistent with the basic objectives of Islamic law, particularly *ḥifẓ al-māl*, namely protecting communal property from being lost to outsiders, and *ḥifẓ al-nasl*, namely preserving lineage continuity.

Two main fiqh maxims reinforce this legitimacy. The first is *al-'ādah muḥakkamah*, which affirms that custom can serve as a legal basis. Tanah Soko, especially Soko Tinggi, can be understood as communal clan property that falls outside the category of individual ownership. The custom prohibiting the transfer of ownership of this land by sale is a form of 'urf ṣaḥīḥ that serves to preserve social order and the continuity of ancestral property.

The second is *dar' al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ*, meaning that preventing harm takes precedence over obtaining benefit. Selling Tanah Soko to outsiders has the potential to cause serious harm: the permanent loss of shared assets, disputes among anak kemenakan, and the collapse of a social structure that rests on Tanah Soko ownership. This long-term social harm outweighs the short-term economic benefit of the sale. The maxim is also reflected in the distinction between Soko Tinggi and Soko Rendah: as long as the effective legal cause of communal property remains attached to the land, the prohibition on sale remains applicable; when the land becomes private property, its legal ruling changes accordingly.

### Comparison between Customary Law and Islamic Law

**Table 3.** Prohibition of Selling Tanah Soko from the Perspectives  
of Customary Law and Islamic Law

| No | Aspect                 | Customary Law of Kualu Village                              | Islamic Law                                                 |
|----|------------------------|-------------------------------------------------------------|-------------------------------------------------------------|
| 1  | Legal basis            | Rules of ancestral property and deliberation by ninik mamak | Qur'an, hadith, fiqh maxims, and the theory of milk         |
| 2  | Status of Tanah Soko   | Soko Tinggi, communal property of the clan                  | Collective property that does not fulfill al-milk al-tām    |
| 3  | Concept of ownership   | Communal/collective ownership                               | Milk nāqīṣ for individuals, not milk tām                    |
| 4  | Right to transfer      | Individuals are not authorized to sell                      | Invalid to sell communal property individually              |
| 5  | Nature of prohibition  | Absolute for Soko Tinggi                                    | Invalid because the contract requirements are not fulfilled |
| 6  | Purpose of prohibition | Preserving clan integrity and preventing conflict           | Maṣlaḥah mursalah, ḥifẓ al-māl, and ḥifẓ al-nasl            |
| 7  | Legitimacy             | Customary sanctions and social condemnation                 | 'Urf ṣaḥīḥ and fiqh maxims                                  |

*Source: Researcher's analysis, 2025*

Based on the comparison above, there is strong normative convergence between customary law and Islamic law. The difference lies only in the source of legitimacy: customary law is based on communal structures and the authority of ninik mamak. In contrast, Islamic law emphasizes valid ownership requirements and the prevention of harm. Both systems, however, arrive at the same conclusion: the prohibition on selling Tanah Soko is valid and has a strong legal foundation.

The following figure presents a concise overview of the research findings on the prohibition of selling *Tanah Soko* in Kualu Village. It summarizes the discussion through five main subthemes: customary law, Islamic ownership and sale validity, the qualification of the prohibition

as '*urf ṣaḥīḥ*', *maṣlaḥah mursalah* and fiqh maxims, and the convergence between customary law and Islamic law.

**Figure 1.** Overview of the Prohibition of Selling *Tanah Soko* from the Perspectives of Customary Law and Islamic Law



## CONCLUSION

This study concludes that the prohibition on selling inherited *Tanah Soko* in Kualu Village is rooted in the Kampar customary-law system, which regards *Soko Tinggi* as non-alienable communal ancestral property. Individual rights are limited to use rights, while collective ownership is managed by *Ninik Mamak* through staged customary deliberation and restorative social sanctions. This prohibition functions to maintain clan stability, prevent disputes, and preserve collective inheritance. From an Islamic legal perspective, the prohibition is also legally justified. *Tanah Soko* does not fulfill the requirements of *al-milk al-tam*, so individuals are not authorized to sell it. The rule is supported by the hadith prohibiting the sale of what one does not own, fulfills the criteria of '*urf ṣaḥīḥ*', and reflects *maṣlaḥah mursalah* by protecting *hifz al-mal* and *hifz al-nasl*. It

is further strengthened by the fiqh maxims *al-'ādah muḥakkamah* and *dar' al-mafāsid muqaddam 'alā jalb al-maṣāliḥ*. Thus, the prohibition reflects a genuine harmonization between customary law and Islamic law in Kuala Village. However, because this study is limited to one village, its findings cannot be generalized to all customary communities in Kampar. Future research should examine the impact of modernization and the possible integration of this prohibition with national agrarian law.

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