

THE PRACTICE OF *JUAL SEADANYA* IN THE BANJAR COMMUNITY: Between Islamic Legal Culture and Consumer Protection in Modern Transactions

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Abstract

Modern buying and selling transactions demand extreme caution from both sellers and buyers, as many problems stem from a lack of caution. This caution has long been practiced by the Banjar community in the form of the expression "jual seadanya", however previous studies have interpreted "jual seadanya" as a way for sellers to abdicate responsibility, requiring buyers to exercise caution. Therefore, this study aims to correct this misunderstanding by demonstrating that "jual seadanya" in Banjar community embodies noble Islamic values and can serve as a model for consumer protection in modern transactions. This research is an empirical legal study with a legal anthropology approach, in which several informants were interviewed in depth. The analysis utilizes muamalah jurisprudence, maqashid sharia, and consumer protection theory. The findings reveal that in Banjar community, "jual seadanya" signifies mutual caution between sellers and buyers, consistent with the development of the doctrine from caveat emptor to caveat venditor. This practice reflects Islamic legal culture, particularly the application of fiqh muamalah which emphasizes honest and fair

transactions, as well as the application of the concept of kebiyar which is in line with maqasid al-shariah. This research contributes to providing an interpretation of prudence based on fiqh muamalah and maqasid al-shariah, as the saying "jual seadanya." The explicit inclusion of the principle of prudence in Article 2 of Law No. 8 of 1999 concerning Consumer Protection is very relevant and useful, especially in the era of modern transactions.

Transaksi jual beli modern sangat menuntut kehati-hatian penjual dan pembeli, karena banyak permasalahan disebabkan kurangnya kehati-hatian. Kehati-hatian ini sudah lama dipraktikkan masyarakat Banjar dalam bentuk ucapan "jual seadanya", namun studi sebelumnya telah menafsirkan "jual seadanya" sebagai cara penjual untuk melepaskan tanggung jawab, sehingga pembeli harus berhati-hati. Penelitian ini bertujuan meluruskan kesalahpahaman tersebut dengan menunjukkan "jual seadanya" dalam masyarakat Banjar merupakan perwujudan nilai-nilai luhur Islam dan dapat menjadi model perlindungan konsumen dalam transaksi modern. Penelitian ini merupakan studi hukum empiris dengan pendekatan antropologi hukum, data diperoleh melalui wawancara secara mendalam beberapa informan. Analisis menggunakan fikih muamalah, maqasid syariah dan teori perlindungan konsumen. Temuan mengungkapkan bahwa dalam masyarakat Banjar, "jual seadanya" menandakan adanya kehati-hatian bersama antara penjual dan pembeli yang sesuai dengan perkembangan doktrin dari caveat emptor menjadi caveat venditor. Praktik ini mencerminkan budaya hukum Islam, khususnya penerapan fiqh muamalah yang menekankan transaksi jujur dan adil, serta penerapan konsep kebiyar yang selaras dengan maqasid al-shariah. Penelitian ini berkontribusi memberikan interpretasi kehati-hatian berdasarkan fiqh muamalah dan maqasid al-shariah, sebagaimana ucapan "jual seadanya." Pencantuman prinsip kehati-hatian secara eksplisit dalam pasal 2 Undang-Undang No. 8 Tahun 1999 tentang Perlindungan Konsumen sangat relevan dan bermanfaat, terutama di era transaksi modern.

Keywords: *jual seadanya, Banjar community, caveat emptor, caveat venditor, principle of prudence*

Introduction

Buying and selling transactions have experienced rapid development, transitioning from traditional market transaction models to modern market transaction models, and from offline to online transactions. In traditional markets, transactions occur directly between the seller and buyer, involving

bargaining. In contrast, in modern markets such as malls, buyers tend to be more independent, selecting the displayed items themselves, and there is no bargaining process since the prices are already fixed. Furthermore, online transactions have grown significantly, where sellers only display photos and descriptions of the goods they are selling, while buyers are unable to physically inspect the items they wish to purchase. In online transactions, many buyers fall victim to false information or misleading advertisements, defective products, counterfeit goods, unsafe products, payment issues, security and privacy concerns, one-sided contracts, and other issues.¹ The development of these transactions demands a high level of caution from both sellers and, especially, buyers, as many problems arise from a lack of vigilance. This modern transaction landscape makes caution a crucial element; however, Law No. 8 of 1999 on Consumer Protection does not explicitly include the principle of caution in Article 2. Article 2 of Law No. 8 of 1999 on Consumer Protection states that: "Consumer protection is based on the principles of benefit, fairness, balance, safety, and legal certainty."

The practice of caution in buying and selling transactions has long been observed in the Banjar community in the form of the phrase *jual seadanya* (sold as is). When conducting a sale and purchase agreement, especially in traditional markets, the Banjar people recite the *ijab* and *qabul* (offer and acceptance) using the words "juallah" or "jual seadanya" by the seller, and "tukarlah" (exchange) by the buyer. This practice is rooted in the fact that the majority of the Banjar people are Muslims following the Shafi'i school of thought², and their trading customs are strongly adhered to the teachings of the Shafi'i fiqh.³ They consider a sale and purchase transaction invalid if the agreement is not conducted properly⁴ and demand clear

¹ Aishwarya Pandey, "Consumer Protection in the Era of E-Commerce: Issues and Challenges," *International Journal of Legal Science and Innovation* 4, no. 1 (2022): 632, <https://www.ijlsi.com/wp-content/uploads/Consumer-Protection-in-the-Era-of-E-Commerce.pdf>.

² Gt Muhammad Irhamna Husin, "Equality And Gender Justice In Religious Rituals In Banjar Communities," *INTEGRASI: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 1, no. 01 (2023): 1.

³ Indriana Ertanti and Mahfud Fahrizi, "Praktik Ijab-Kabul (Akad) Dalam Transaksi Jual Beli Oleh Masyarakat Banjar Ditinjau Dari Prespektif Hukum Ekonomi Islam," *Diversi: Jurnal Hukum* 8, no. 2 (2022): 361.

⁴ Ahmadi Hasan, "Prospek Pengembangan Ekonomi Syariah Di Masyarakat Banjar Kalimantan Selatan," *AHKAM: Jurnal Ilmu Syariah* 14, no. 2 (2014): 229, <https://www.academia.edu/download/106346115/1147.pdf>.

consent between the parties involved in the transaction.⁵ The practice of *jual seadanya*, which signifies caution, is part of Islamic legal culture, specifically the application of *fiqh muamalah* (Islamic commercial law) concerning buying and selling, and aligns with the *maqasid al-shariah* (objectives of Islamic law). However, in some studies, *jual seadanya* is seen as a form of seller's disclaimer of responsibility, similar to the doctrine of caveat emptor, which places the burden of caution on the buyer before completing the purchase.⁶ In fact, *jual seadanya* in the Banjar community calls for caution from both the seller and the buyer, aligning with the evolution of the doctrine from caveat emptor to caveat venditor, as adopted by Law No. 8 of 1999 on Consumer Protection.

The existing body of research on *jual seadanya* can be broadly categorized into three strands: anthropological studies, those connecting the practice to Islamic teachings, and those analyzing it through the doctrine of *caveat emptor*. The first group, represented by scholars like Nasrullah, interprets *jual seadanya* as a verbal contract that binds both parties to mutual acceptance, serving not only to fulfill religious requirements but also to reinforce social cohesion⁷. It is described as an expressive act of joy, signaling the completion of a transaction⁸, and as a cultural manifestation of faith in Allah⁹. The second group includes studies such as Arsyadi's, which highlight the legal-religious dimensions of the practice by affirming that the utterance of *ṣighat* is indispensable for the validity of sales contracts in Banjar tradition¹⁰. The third group analyzes *jual seadanya* within the framework of caveat emptor, or "let the buyer beware,"¹¹ a legal doctrine that absolves sellers from the obligation to disclose defects and protects

⁵ Badruddin Ibad, "Buying and Selling System at the Honesty Canteen in Banjarmasin City from the Syafi'i Madzhab Perspective," *Sharia Oikonomia Law Journal* 2, no. 1 (2024): 37.

⁶ Terry L. Fox, "Caveat Emptor VS Seller Disclosure in Residential Real Property Conveyances," *Practical Lawyer*, 2021, 47, <https://cdn.nwe.io/files/x/a8/e8/c9c4d920253054f112cd31e2228c.pdf>.

⁷ Nasrullah, *Jual Seadanya (Telah Antropologis Terhadap Implementasi Ajaran Islam Dalam Akad Jual Beli Pada Orang Banjar)*, 2016.

⁸ Radiansyah Jumadi, "Tindak Tutur Dalam Transaksi Jual-Beli Di Pasar Terapung Lok Baintan Martapura (Speech Acts on Trading Transaction At Floating Market of Lok Baintan Martapura)," *Jurnal Bahasa, Sastra Dan Pembelajarannya* 3, no. 1 (n.d.): 141–50.

⁹ Yusuf Al Arief, "Culture of Banjarese Represented in Their Language," *International Journal of Southeast Asian Studies (IJSAS)* 2, no. 1 (2022): 23–29.

¹⁰ Muhammad Arsyadi, "Tinjauan Antropologi Hukum Islam Terhadap Praktik Ijab-Kabul Dalam Transaksi Jual Beli Di Pasar Terapung Banjarmasin," *Diversi: Jurnal Hukum* 4, no. 1 (2018): 1–27.

¹¹ Atishay Agarwal, "Caveat Emptor and Its Exceptions," *Jurisperitus: The Law Journal* 5, no. 02 (2022): 82.

them from subsequent claims¹². When applied rigidly, this doctrine risks leaving buyers without protection in cases involving hidden defects¹³. Thus, existing studies have largely examined *jual seadanya* from anthropological, religious, or buyer-beware perspectives. However, no prior research has comprehensively integrated both the *caveat emptor* and *caveat venditor* doctrines in a balanced manner—an integration that is crucial for understanding the practice's relevance in contemporary commercial transactions.

Unlike earlier studies, this research aims to clarify the concept of *jual seadanya* in Banjar society, situating it within the framework of Islamic legal culture and demonstrating its relevance to consumer protection in modern commerce. By providing a comprehensive account, this study shows that *jual seadanya* is not an outdated remnant but a form of local wisdom that remains highly pertinent to the dynamics of contemporary transactions. This approach offers new insights into how cultural traditions can function as models that contribute to consumer protection.

The study is grounded in the argument that superficial or misguided interpretations of *jual seadanya* may erode the profound values embedded in this cultural practice. Rooted in Islamic legal traditions, these values reflect prudence in trade, ensuring compliance with Islamic law. Moreover, the Qur'an and Hadith emphasize honesty and fairness in transactions, thereby safeguarding against fraud and injustice.¹⁴ Islamic law also prohibits concealing product defects or failing to disclose their extent¹⁵. When a transaction is conducted under the seller's declaration of *jual seadanya* and the goods are later found to be defective, the buyer may invoke the *hak khiyar*, the right to choose whether to affirm or rescind the contract¹⁶. This right provides legal protection for buyers who lack adequate knowledge of the goods they acquire¹⁷. Misinterpreting *jual seadanya* solely as an absolute waiver of the seller's responsibility, without regard to its cultural context and

¹² Terry L. Fox, "Caveat Emptor VS Seller Disclosure in Residential Real Property Conveyances," 47.

¹³ Terry L. Fox, "Caveat Emptor VS Seller Disclosure in Residential Real Property Conveyances," 45.

¹⁴ Manuel Enrique Lopez-Brenes and Roberto Marin-Guzman, "Commercial Regulations of Islam with Special Reference to the Prophetic Traditions," *Islamic Studies* 58, no. 1 (2019): 88.

¹⁵ Ibnu Taimiyah, *Al Ikhtiyarat al Fiqhiyah*, Cet. 3 (Dar Atha'at al Ilmi, 2019), 455.

¹⁶ Dafiqah Hasanah et al., "Konsep Khiyar Pada Jual Beli Pre Order Online Shop Dalam Perspektif Hukum Islam," *Iqtisboduna: Jurnal Ekonomi Islam* 8, no. 2 (2019): 250.

¹⁷ Parviz Bagheri and Kamal Halili Hassan, "The Application of the Khiyar Al-'Aib (Option of Defect) Principle in on-Line Contracts and Consumer Rights," *Eur J Law Econ*, 2012, 567.

meaning, risks eroding the profound values embedded in this tradition. This study therefore contends that the prudential aspect of *jual seadanya* should be recognized as a legal principle consistent with Indonesia's Law No. 8 of 1999 on Consumer Protection. Incorporating such a principle of prudence is especially relevant in the context of modern commerce, where it can serve to strengthen and complement the existing legal framework.

Research Methods

This research employs an empirical legal methodology¹⁸, utilizing primary data obtained directly from informants¹⁹. It adopts a legal anthropology approach, which examines legal phenomena within the cultural context of society and treats law as an integral part of cultural systems²⁰. Legal anthropology is a specialization within cultural anthropology, which originally consisted of three main branches: linguistic anthropology (ethnolinguistics), prehistory, and ethnology-the comparative study of ethnic groups and their cultures. Since the 1930s, cultural anthropology has expanded into various subfields, including economic anthropology, development anthropology, educational anthropology, medical anthropology, demographic anthropology, political anthropology, and notably, legal anthropology²¹.

The study focuses on the Banjar community, selected for its customary use of the phrase *jual seadanya* in sales transactions. Informants were chosen based on the criterion that they routinely use this expression in commercial exchanges. The study involved five informants: a fish vendor, a grocery seller, a vendor of fruits and kitchen spices, a fruit vendor, and a bakery cashier. Data were collected through in-depth interviews, guided by a flexible interview protocol that allowed for dynamic question development during each session. The data were analyzed using the interactive model proposed by Miles and Huberman (1994), which consists of three core components: data reduction, data display, and conclusion drawing with

¹⁸ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (PT RajaGrafindo Persada, 2006), 14.

¹⁹ Mukti Fajar Nur Dewata and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris*, Cet. 1 (Pustaka Pelajar, 2010), 192.

²⁰ Zulfadli Barus, "Analisis Antropologi Hukum Tentang Pengaruh Nilai-Nilai Budaya Terhadap Budaya Hukum Masyarakat Batak-Toba Terkait Dengan Batas Usia Kawin Menurut Undang-Undang Nomor 1 Tahun 1974," *Yustisia* 3, no. 2 (2014): 137, <https://jurnal.uns.ac.id/yustisia/article/view/11110>.

²¹ Hilman Hadikusuma, *Pengantar Antropologi Hukum*, Cet. 2 (PT. Citra Aditya Bakti, 2004), 1–2.

verification. Data reduction refers to the process of distilling relevant information from the raw data; data display involves structuring the information coherently; and conclusion drawing is the interpretative stage in which meaning is derived from the organized data.²² The analysis of data in this study draws upon fiqh muamalah, specifically the principles of trade and maqashid sharia—alongside consumer protection theories such as caveat emptor, caveat venditor, and Indonesia's consumer protection law.

Discussion

The Practice of *Jual Seadanya* in the Banjar Community

In Banjar community, a variety of expressions are used to formalize sales contracts²³. Some sellers consistently articulate the phrase *jual seadanya* during transactions is a vendor of fruits and kitchens spices, while others use it only occasionally is a fish vendor, a grocery seller, a fruit vendor, and a bakery cashier. In some cases, the phrase appears in printed form on sales receipts, sometimes accompanied by a spoken statement is a bakery cashier. This evolution from oral declaration to written documentation, illustrates a shift in how the practice is implemented. According to Nasrullah, this development reflects a practical innovation by Banjar merchants, particularly in circumstances where transactions occur at a distance (outside a shared physical setting) or when buyers engage solely with a cashier managing multiple customers. In such instances, the inclusion of *jual seadanya* on the receipt serves to ensure that the contractual agreement remains valid in accordance with Islamic principles²⁴.

Some informants reported that they occasionally say *jual seadanya* depending on the situation²⁵. When customer traffic is high, they often do not have time to say the full phrase and instead use the shorter "juallah". However, during quieter periods, they include the full expression. One informant explained that they use *jual seadanya* when selling an entire basket of fruit with mixed quality, without counting the individual items, even though a basket typically contains 100 oranges by customary standards²⁶.

²² Dila Erlianti et al., *Metodologi Penelitian : Teori dan Perkembangannya* (PT. Sonpedia Publishing Indonesia, 2024), 61.

²³ Erla Sharfina Permata Noor et al., "Akad Dan Tradisi Jual Beli Masyarakat Banjar Perspektif Hukum Ekonomi Syariah," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 2 (2024): 948.

²⁴ Nasrullah, *Jual Seadanya (Telah Antropologis Terhadap Implementasi Ajaran Islam Dalam Akad Jual Beli Pada Orang Banjar)*, 10–11.

²⁵ Fish Vendor, "interview transcript," Desember 2022.

²⁶ Fruit Vendor, "interview transcript," Desember 2022.

Other informants indicated that they use the phrase sporadically and without a consistent pattern is a grocery seller and a bakery cashier.²⁷

Informant a vendor of fruits and kitchen spices indicated that the use of the phrase *jual seadanya* during sales transactions is a tradition that has been passed down for generations²⁸. Similarly, a fruit vendor affirmed that the practice is deeply rooted in local custom²⁹. A grocery seller explained that their parents taught them to say *jual seadanya* when selling goods³⁰, while a fish vendor stated that they adopted the phrase based on the teachings of a religious leader (tuan guru)³¹. Informant a bakery cashier, on the other hand, reported using the phrase because it was mandated by the store owner³². Taken together, these responses indicate that the practice of saying *jual seadanya* has become a longstanding tradition, transmitted either through parental guidance or religious instruction.

Informant a fish vendor, explained that he uses the phrase *jual seadanya* during transactions because the items he sells are sold by weight, which makes precise measurements nearly impossible, unlike pre-packaged goods. He believes it is appropriate to use the phrase, a practice he adopted after consulting with tuan guru³³. Informant a grocery seller whose products are mostly pre-packaged, stated that he uses *jual seadanya* to ensure the transaction is considered religiously valid, particularly in cases where a product might have defects or if there are unintentional errors in the product description³⁴. Informant a vendor of fruits and kitchen spices, consistently uses the phrase out of concern that the items may be overpriced³⁵. Informant a fruit vendor, only uses *jual seadanya* when selling baskets of mixed-quality fruit, with larger fruits placed on top and smaller ones at the bottom. Although each basket is customarily assumed to contain 100 pieces, the quantity is not counted but estimated³⁶. Informant a bakery cashier and store employee, explained that they use the phrase because it is part of Banjar tradition and because they were instructed by the store owner

²⁷ Grocery Seller, "interview transcript", Desember 2022; A bakery cashier "interview transcript," November 12, 2022.

²⁸ A vendor of fruits and kitchen spices, "interview transcript," Desember 2022.

²⁹ Fruit Vendor, "interview transcript," Desember 2022.

³⁰ Grocery Seller, "interview transcript," Desember 2022.

³¹ Fish Vendor, "interview transcript," Desember 2022.

³² Kasir Toko Roti, "interview transcript" November 12, 2022.

³³ Fish Vendor, "interview transcript," Desember 2022.

³⁴ Grocery Seller, "interview transcript," Desember 2022.

³⁵ A vendor of fruits and kitchen spices, "interview transcript," Desember 2022.

³⁶ Fruit Vendor, "interview transcript," Desember 2022.

to do so. The store owner also includes the phrase *jual seadanya* on printed receipts³⁷.

The findings demonstrate that sellers employ the phrase *jual seadanya* in sales transactions for various precautionary reasons. All five informants use it to address potential issues such as imprecise measurements, product defects, miscommunication, or inflated pricing. However, one informant a fruit vendor uses the phrase specifically when the quality and quantity of the product are uncertain. The quality is unclear due to the assortment of fruit sizes in a basket larger fruits are placed on top and smaller ones at the bottom. The quantity is ambiguous because the fruits are not counted, despite the customary assumption that a full basket contains 100 pieces. In such instances, the phrase *jual seadanya* serves to request the buyer's consent in the event of a shortfall and, conversely, to signal the seller's willingness to forgo any excess if the quantity exceeds 100.

This phenomenon suggests that the underlying motive for using the phrase *jual seadanya* among all informants is rooted in a sense of prudence. This finding is consistent with Nasrullah's research, which interprets *jual seadanya* as representing the essential substance of a contract-mutual consent³⁸. In Banjar trading practices, arriving at a contractual agreement is a considered and deliberate process. According to Nasrullah, the contract itself serves as the bridge to establishing consensus in a sales transaction³⁹. The term "seadanya" thus functions to bind both parties in a relationship of mutual willingness, which is the core principle of the contract⁴⁰. In his anthropological analysis, Nasrullah further explains that the transactional behavior preceding the formal sales agreement not only fulfills religious duties for the Banjar people but also carries significant social implications⁴¹. Jumadi adds that *jual seadanya* can be seen as an expressive speech act that conveys joy upon the sale of goods⁴².

³⁷ A bakery cashier, "interview transcript," November 12, 2022.

³⁸ Nasrullah, *Jual Seadanya (Telah Antropologis Terhadap Implementasi Ajaran Islam Dalam Akad Jual Beli Pada Orang Banjar)*, 18.

³⁹ Nasrullah, *Jual Seadanya (Telah Antropologis Terhadap Implementasi Ajaran Islam Dalam Akad Jual Beli Pada Orang Banjar)*, 17.

⁴⁰ Nasrullah, *Jual Seadanya (Telah Antropologis Terhadap Implementasi Ajaran Islam Dalam Akad Jual Beli Pada Orang Banjar)*, 18.

⁴¹ Nasrullah, *Jual Seadanya (Telah Antropologis Terhadap Implementasi Ajaran Islam Dalam Akad Jual Beli Pada Orang Banjar)*, 1.

⁴² Jumadi, "Tindak Tutar Dalam Transaksi Jual-Beli Di Pasar Terapung Lok Baintan Martapura (Speech Acts on Trading Transaction At Floating Market of Lok Baintan Martapura)," 148.

***Jual Seadanya* as Islamic Legal Culture in the Banjar Community**

Islam is deeply embedded in the identity of Banjar community, with the majority of the population adhering to the Islamic faith. Historically, this relationship stems from the establishment of an Islamic kingdom, the enactment of the Sultan Adam Code marking the formalization of Islamic law and the influential figure of Sheikh Muhammad Arsyad al-Banjari, who transformed the Banjar region into a major center of Islamic scholarship. These developments have solidified the local expression, “Banjar is Islam.”⁴³ Mary Hawkins similarly notes that in South Kalimantan, identifying as Banjar is not based on language or occupation, but rather on religious affiliation⁴⁴. Islam plays a central role in Banjar life and is regarded as a powerful unifying force that connects South Kalimantan’s people both with one another and with the broader Indonesian nation and global Muslim community⁴⁵. In the modern era, amid rising concerns over moral decline, there has been a renewed embrace of this Islamic identity within Banjar community⁴⁶. This has given rise to movements aimed at formalizing Islamic law as a reaffirmation of local identity, particularly during the era of regional autonomy. As a result, Sharia-inspired local regulations have emerged as expressions of this effort to reinforce Islamic values within the community⁴⁷.

Nevertheless, Islam is not the only belief system present within Banjar community. The community’s belief structures can be categorized into three types: first, beliefs rooted in Islamic teachings; second, those possibly linked to the social organization of historical Banjar community; and third, beliefs shaped by interpretations of the surrounding natural environment.⁴⁸ This diversity of influences means that not all Banjar cultural traditions originate from Islam. However, Islamic teachings continue to shape and inform the cultural fabric of Banjar community. As Kuntowijoyo observed, Islamic culture has had such a strong influence in Indonesia that

⁴³ Irfan Noor, “Islam Dan Representasi Identitas Banjar Pasca Orde Baru DI Kalimantan Selatan,” *Al-Banjari: Jurnal Ilmiah Ilmu-Ilmu Keislaman* 11, no. 2 (2012): 152.

⁴⁴ Mary Hawkins, “Becoming Banjar: Identity and Ethnicity in South Kalimantan, Indonesia,” *The Asia Pacific Journal of Anthropology* 1, no. 1 (2000): 29.

⁴⁵ Hawkins, “Becoming Banjar,” 32.

⁴⁶ Noor, “Islam Dan Representasi Identitas Banjar Pasca Orde Baru DI Kalimantan Selatan,” 155.

⁴⁷ Noor, “Islam Dan Representasi Identitas Banjar Pasca Orde Baru DI Kalimantan Selatan,” 140.

⁴⁸ Alfani Daud, *Islam Dan Masyarakat Banjar: Deskripsi Dan Analisa Kebudayaan Banjar*, 1st ed., Cet. 1 (PT. RajaGrafindo Persada, 1997), 5–9.

Indonesian popular culture may well be characterized as Islamic in nature⁴⁹. Cultural expressions that stem from religious teachings are referred to as religious culture—forms of behavior and motivation guided by religious doctrine⁵⁰. In a similar vein, Faisal Ismail defines religious culture as the cultural framework produced by a religious community, rooted in its teachings and values⁵¹.

Islamic religious culture has profoundly shaped numerous aspects of Banjar community, including traditional architecture. Mentayani notes that Banjar houses are strongly influenced by Islamic teachings, although they also incorporate elements from Hinduism and other belief systems⁵². Likewise, Bani Noor Muchamad explains that the Banjar architectural tradition reflects a synthesis of Islamic law, historical beliefs from the Banjar sultanate, and mythologies related to the supernatural⁵³. As a result, every Banjar home features elements tied to religious philosophy, ranging from the spatial layout to decorative motifs such as carvings symbolizing brotherhood, unity, and fertility, along with Arabic calligraphy inscribed with the shahada, names of caliphs, *salawat* (blessings upon the Prophet), and selected verses from the Qur'an⁵⁴. According to Kamrani, this Islamic-based cultural expression is not only visible in physical forms but also manifests in spiritual practices. These include life-cycle rituals such as the seven-month pregnancy blessing (*tujuh bulan*), *batampung tawar* (prayers offered during birth and naming), *batumbang* (the celebration of a child's first steps), and *baayun anak* (a ceremonial cradle-rocking ritual). In agriculture, Banjar farmers perform a ritual known as *merabun*, in which seeds are passed over incense smoke accompanied by prayers. When placing seeds in water to germinate, they begin by reciting Surah al-Fatihah once, followed by three invocations of blessings for the Prophet Muhammad. The final act of

⁴⁹ Kuntowijoyo, *Paradigma Islam: Interpretasi Untuk Aksi*, Cet. 8 (Mizan, 1998), 230–37.

⁵⁰ Amelia Rahmaniah, *Budaya Agama Dalam Transaksi Jual Beli Intan Melalui Pengempit Di Martapura Kalimantan Selatan*, Cet. 1 (Mirra Buana Media, 2021), 31–32.

⁵¹ Faisal Ismail, *Paradigma Kebudayaan Islam: Studi Kritis Analisis Historis* (Ombak, 2016), 11.

⁵² Ira Mentayani, "Analisis Asal Mula Arsitektur Banjar Studi Kasus: Arsitektur Tradisional Rumah Bubungan Tinggi," *Jurnal Teknik Sipil Dan Perencanaan* 10, no. 1 (2008): 12.

⁵³ Bani Noor Muchamad and Arya Ronald, *Arsitektur Melayu Banjar: Ajaran Islam Dalam Budaya Melayu Banjar Berkaitan Dengan Konsep Arsitekturnya*, 2010, 116.

⁵⁴ Wafirul Aqli, "Anatomi Bubungan Tinggi Sebagai Rumah Tradisional Utama Dalam Kelompok Rumah Banjar," *NALARs* 10, no. 1 (2011): 75–76.

planting the sprouts into the soil is accompanied by various supplications for divine favor⁵⁵.

Islamic teachings have also exerted a significant influence on the economic life of the Banjar people. Historically engaged in international trade, the Banjar have developed a cosmopolitan economic character marked by openness, high mobility, adaptability, and flexibility—through their interactions with diverse cultures. Alongside this, ethical principles and values rooted in Islam have helped drive economic modernization and development within Banjar community. These values, shaped by the Islamic worldview embraced by the Banjar, have been reinforced by the teachings of Sufi scholars or religious leaders (*tuan guru*), who have contributed to the dynamism of local economic life. One of the core teachings is *zuhud*, or asceticism, which affirms the legitimacy of wealth accumulation while encouraging entrepreneurial freedom. This, in turn, cultivates a work ethic centered on diligence, perseverance, and endurance⁵⁶. Banjar commercial practices are heavily influenced by Islamic teachings, particularly those of the Shafi'i school, and their understanding of sharia economics aligns closely with long-standing local trading customs⁵⁷.

According to Arief, Banjar community tends to incorporate Islamic terms and expressions into everyday life, reflecting the deep assimilation of Islamic and Banjar cultures. This is evident in buying and selling practices, where transactions are formalized through explicit contracts (*akad*). In such exchanges, the seller says *jual* (I sell this item) or *jual seadanya* (I sell this item as is), while the buyer responds with *tukar* (I buy this item). Arief interprets *jual seadanya* as a cultural expression that embodies the Banjar people's faith in Allah SWT.⁵⁸

Uncertainty regarding both the quality and quantity of goods-as found in the case of informant a fruit vendor is classified in Islamic jurisprudence as *gharar*. Linguistically, *gharar* denotes risk or hazard, while *taghrir* means exposing oneself to uncertainty⁵⁹. According to al-Shirazi of the

⁵⁵ Kamrani Buseri, "Spiritual Culture of Banjar Sultanate (Historical, Hermeneutic and Educational Approach)," *Jurnal Ilmiah Peuradeum* 5, no. 3 (2017): 304-307.

⁵⁶ Alfisyah Alfisyah, "Etika Dagang 'Urang Banjar,'" *Jurnal Kebudayaan Kandil-Melintas Tradisi* 16 (2012): 23.

⁵⁷ Ahmadi Hasan, "Adat Dagang Orang Banjar dan Prospek Ekonomi Syariah," *Kandil* 15 (November 2007): 32.

⁵⁸ Al Arief, "Culture of Banjarese Represented in Their Language," 25–26.

⁵⁹ Johar Johar and Maghfirah Maghfirah, "Re-Interpretation of Islamic Transaction Principles in Economic Activities," *MADANLA: Jurnal Kajian Keislaman* 27, no. 1 (2023): 27, 1, <https://doi.org/10.29300/madania.v27i1.3385>.

Shafi'i school, *gharar* refers to anything unknown or concealed from one of the parties⁶⁰. The Prophet Muhammad (peace be upon him) stated: "The Messenger of Allah forbade the sale of *hashat*-a method where a buyer throws a stone to determine how much land to purchase-and transactions involving *gharar*" (narrated by Muslim). The prohibition refers specifically to significant *gharar* that is distinguishable from minor or unavoidable uncertainty. Transactions involving minor or inherent ambiguity such as buying a house without viewing its foundation or purchasing a cheese-filled bread where the cheese isn't visible are permissible⁶¹. Islamic law promotes transparency in commerce, encouraging clear descriptions of a product's type, measure, and quality⁶². According to the companions of Imam Nawawi, it is sufficient that the type, size, and characteristics of an item are known; full knowledge from every angle is not required⁶³. Therefore, the observed instances involve only minor *gharar* and are legally valid.

Furthermore, the study found that sellers who use the phrase *jual seadanya* do not include any additional statements during the transaction, making it difficult to ascertain their intent from the contract itself⁶⁴. Imam al-Shafi'i ruled that contracts are evaluated based on their outward expression and remain valid regardless of any undisclosed intentions, provided the explicit terms are sound⁶⁵. Even if a hidden motive exists that could compromise the transaction, it has no bearing unless it is openly expressed. Legal assessment is based solely on what is apparent. Thus, motives only factor into the legal validity of a contract when explicitly stated. If unspoken, they are not considered⁶⁶. Consequently, even if *jual seadanya* carries potentially negative implications, the contract remains valid as long as such meanings are not articulated in the formal agreement.

⁶⁰ Tuti Anggraini and Ade Khadijatul Z. Hrp, "Terms and Conditions Applicability Muamalat," *International Journal of Economics (IJECE)* 2, no. 1 (2023): 166.

⁶¹ Abu Zakaria Muhyiddin bin Syaraf an Nawawi, *Kitab al Majmu': Syarah al Mubazhaf Li Ayy Syairazi*, Juz 9 (Maktabah al Irsyad, t.th), 311.

⁶² Abd Hafid et al., "The Application of Khiyar Principles to E-Commerce Transaction: The Islamic Economy Perspective," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (2024): 407, 1, <https://doi.org/10.22373/sjhk.v8i1.20890>.

⁶³ an Nawawi, *Kitab al Majmu': Syarah al Mubazhaf Li Ayy Syairazi*, Juz 9, 346.

⁶⁴ Muhammad bin Idris asy Syafi'i, *Al Umm*, Jilid 4, Cet. 1 (Dar al Wafa, 2021), 152.

⁶⁵ Muhammad bin Idris asy Syafi'i, *Ar Risalah*, Cet. 1 (Musthofa al Babi al Halabi wa Auladuhu, 1938), 481–82.

⁶⁶ Neni Hardiati et al., "Kedudukan Akad Dalam Perspektif Ekonomi Islam," *Madani: Jurnal Ilmiah Multidisiplin* 2, no. 3 (2024): 230, <https://jurnal.penerbitdaarullhuda.my.id/index.php/MAJIM/article/view/1977>.

Imam an-Nawawi asserted that a valid sale must be accompanied by a verbal expression of *ijab qabul* (offer and acceptance). Accordingly, he ruled that *mu'athab* a transaction conducted without any spoken declaration is invalid, regardless of whether it involves a small or large amount. The exception is the opinion of Ibn Suraij, a scholar of the Shafi'i school, who permitted *mu'athab*⁶⁷. Imam an-Nawawi identified two perspectives on *ijab qabul*: one places emphasis on the actual verbal expression, while the other prioritizes the underlying intent. If articulating the exact phrase proves difficult, then the intended meaning behind *ijab qabul* may be accepted⁶⁸. This suggests an evolution within the Shafi'i tradition, where some jurists began to consider intent as a relevant factor in contractual agreements.

Islamic economic teachings, more broadly, prohibit a wide range of unethical practices including *maisir* (gambling), *gharar* (excessive uncertainty), *riba* (usury), *ihtikar* (hoarding), *najasy* (deceptive bidding), *tadlis* (concealing defects), *taghrir* (misrepresentation), *bai' al-ma'dum* (selling nonexistent goods), fraudulent weighing, environmental exploitation, wastefulness, and greed⁶⁹. The Qur'an and Hadith emphasize honesty and fairness in commercial dealings, and explicitly prohibit deceit and injustice⁷⁰. It is also impermissible to conceal defects or fail to adequately disclose them⁷¹. In cases where a seller uses the phrase *jual seadanya* and the product later proves to be defective, Islamic law grants the buyer the right of *khiyār* the option to either affirm or annul the sale⁷². This right is a legal safeguard for buyers who may not fully understand the quality of what they are purchasing⁷³. *Khiyār* serves two key purposes: to cancel the contract if defects are found, or to proceed if the item is in satisfactory condition⁷⁴. Hence, even though *jual seadanya* may imply limited liability, the transaction remains valid;

⁶⁷ an Nawawi, *Kitab al Majmu': Syarah al Muhazhaf Li Asy Syairazi*, Juz 9, 190.

⁶⁸ an Nawawi, *Kitab al Majmu': Syarah al Muhazhaf Li Asy Syairazi*, Juz 9, 203.

⁶⁹ Irena Dwi Fetraningtyas and Yunanto Yunanto, "Application of The Properties of Naqli And Aqli in Positive Law with Respect to Islamic Contract Law," *Syariah: Jurnal Hukum Dan Pemikiran* 21, no. 1 (2021): 60, <https://doi.org/10.18592/sjhp.v21i1.4140>.

⁷⁰ Lopez-Brenes and Marin-Guzman, "Commercial Regulations of Islam with Special Reference to the Prophetic Traditions," 88.

⁷¹ Taimiyah, *Al Iktiyarat al Fiqhiyah*, 455.

⁷² Hasanah et al., "Konsep Khiyar Pada Jual Beli Pre Order Online Shop Dalam Perspektif Hukum Islam," 250.

⁷³ Bagheri and Hassan, "The Application of the Khiyar Al-'Aib (Option of Defect) Principle in on-Line Contracts and Consumer Rights," 567.

⁷⁴ Pauzi Muhammad et al., "Actualizing Islamic Economic Law in the Digital Era: A Study of the Application of Khiyar al-Majlis in Electronic Contracts," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 2 (2024): 206, <https://doi.org/10.31958/juris.v23i2.11573>.

however, the buyer retains the right to cancel the purchase upon discovery of any previously unknown defects. This is consistent with Wahbah's view that ambiguity concerning an item's type, variety, or quantity may render a sale invalid⁷⁵.

In the modern era, offer and acceptance (*ijab* and *kabul*) are not always delivered verbally; they may also be conveyed through conduct—for example, selecting goods and paying at the cashier. This method is widely practiced in modern marketplaces such as supermarkets and mini markets. Many scholars allow such transactions if they are based on prevailing customs and mutual agreement⁷⁶. Critical aspects of a valid *ijab* and *kabul* include clarity, mutual correspondence between offer and acceptance, voluntary consent, and occurrence within an acknowledged encounter, even if not face-to-face⁷⁷. Hasanah observes that among the Banjar community, it has long been customary to explicitly pronounce *ijab* and *kabul* in sales transactions. They consider a transaction invalid unless both parties clearly state the contract (*ṣarih*). The sales contract is viewed as a fundamental component, expressed through a mutually acknowledged verbal formula (*ṣighāt al-‘aqd*). This practice has become a unique cultural trait of the Banjar people⁷⁸. It represents a practical embodiment of Islamic law within their daily lives—particularly in the realm of trade and stands as a preserved form of local wisdom⁷⁹. Failure to articulate this formula renders the transaction invalid, as it is grounded in the Banjar community's commitment to honesty, transparency, and mutual respect⁸⁰. Scholars who insist on a specific verbal declaration typically adhere to the Shāfi‘ī school and its qauli methodology. Others who allow for more flexible expressions follow the manhaj approach, while non-Shāfi‘ī scholars generally do not require any verbal

⁷⁵ Wahbah az Zuhaili, *Fiqh Islam Wa Adillatuhu*, Jilid 5, Cet. 1 (Gema Insani, 2011), 55.

⁷⁶ Ridha Mulyani et al., "Phenomenology of Buying and Selling Practices in Islamic Societies: How Is It Implemented," *Samara: Journal of Islamic Law and Family Studies* 1, no. 1 (2023): 30.

⁷⁷ Ihsan Helmi Lubis, "The Pillars and Conditions of A Contract in Muamalat Transactions," *Mu'amalah: Jurnal Hukum Ekonomi Syariah* 2, no. 1 (2023): 22.

⁷⁸ Ikhwatun Hasanah and Dewi Safitri, "Researching Local Wisdom 'Ba'i Sighat Al Aqd' Aqd Murabahah in City of Thousand River's: Menelisik Kearifan Lokal 'Ba'i Sighat Al Aqd' Akad Murabahah Di Kota Seribu Sungai," *Tawazuna* 1, no. 1 (2021): 27.

⁷⁹ Hasanah and Safitri, "Researching Local Wisdom 'Ba'i Sighat Al Aqd' Aqd Murabahah in City of Thousand River's," 33.

⁸⁰ Arsyadi, "Tinjauan Antropologi Hukum Islam Terhadap Praktik Ijab-Kabul Dalam Transaksi Jual Beli Di Pasar Terapung Banjarmasin," 1.

formula⁸¹. Thus, the commonly used phrase *jual seadanya* in Banjar community has evolved into a deeply embedded tradition, qualifying as *‘urf*. In Islamic jurisprudence, *‘urf ṣaḥīḥ*-valid and wise customary practice-is a recognized source of law, alongside the Qur’an, Sunnah, *ijmā’*, *qiyās*, *istiḥsān*, and *maṣlaḥah mursalah*⁸². Linguistically, *‘urf* denotes what is good, familiar, and established. It refers to practices that are widely accepted across the community-both in speech and behavior-not merely individual acts⁸³. The Shāfi’ī school recognizes *‘urf* as authoritative provided it does not conflict with the Qur’an or Hadith and is not overridden by clear textual rulings⁸⁴. Accordingly, the practice of stating *jual seadanya* in Banjar commercial transactions constitutes a religiously grounded cultural tradition rooted in Islamic principles.

Analyzing *Jual Seadanya* in Modern Commercial Transactions: A Consumer Protection and Maqashid Sharia Perspective

Modern commercial transactions have undergone significant transformations, particularly in the methods of exchange. Payment systems have shifted from cash to digital platforms, and traditional in-store shopping is increasingly being replaced by online transactions. Within the Banjar community, the expression of *jual seadanya* has also evolved from a spoken declaration at the point of sale to being printed on receipts. These shifts in modern commerce carry both benefits and challenges for sellers and buyers alike.

In commercial interactions, buyers frequently occupy a position of relative disadvantage. Their limited bargaining power necessitates additional protections to ensure fair treatment. According to the theory of unequal

⁸¹ Hj Rusdiah et al., “Sighat Ijab Kabul Transaksi Jual Beli: Perspektif Ulama Kalimantan Selatan (Analisis Praktik Bermazhab Di Kalimantan Selatan),” *AL-BANJARI* 14, no. 2 (2015): 209.

⁸² Reza Octavia Kusumaningtyas et al., “Reduction of Digitalization Policy in Indonesian MSMEs and Implications for Sharia Economic Development,” *JURIS (Jurnal Ilmiah Syariah)* 21, no. 2 (2022): 160.

⁸³ Siti Nur Azizah and Muhfiatun Muhfiatun, “Pengembangan Ekonomi Kreatif Berbasis Kearifan Lokal Pandanus Handicraft Dalam Menghadapi Pasar Modern Perspektif Ekonomi Syariah (Study Case Di Pandanus Nusa Sambisari Yogyakarta),” *Aplikasia: Jurnal Aplikasi Ilmu-Ilmu Agama* 17, no. 2 (2017): 68, 2, <https://doi.org/10.14421/aplikasia.v17i2.1273>.

⁸⁴ Sulfan Wandu Sulfan Wandu, “Eksistensi Urf Dan Adat Kebiasaan Sebagai Dalil Fiqh,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 1 (2018): 189.

bargaining power, buyers are economically weaker than sellers⁸⁵. They often lack comprehensive information about the products they intend to purchase. In online transactions, buyers are particularly vulnerable to deceptive advertisements, counterfeit goods, hidden defects, unsafe products, issues with payment and data security, unilateral contract terms, and more⁸⁶. Consequently, consumer protection has become a vital issue in the era of e-commerce⁸⁷.

A strict interpretation of the *caveat emptor* doctrine (let the buyer beware) can leave buyers unprotected when goods are found to have latent defects⁸⁸. In digital transactions, where direct inspection of goods and personal interaction with sellers are absent, this doctrine places the onus entirely on buyers. They are expected to mitigate risks by reading product descriptions carefully, communicating with sellers when needed, and documenting deliveries through photographs or videos upon receipt⁸⁹.

The doctrine of *caveat emptor* bears notable resemblance to the traditional practice of *jual seadanya* in Banjar community. Originating from the Latin expression meaning "Let the buyer beware,"⁹⁰ the *caveat emptor* principle was first established in 16th-century England. It was adopted in judicial contexts to resolve disputes between buyers and sellers and served as a strategy to reduce the frequency of consumer lawsuits. By the 19th century, the doctrine had spread to the United States, where it remained prevalent until the mid-20th century⁹¹. Eventually, *caveat emptor* began to give way to the *caveat venditor* doctrine, which enhanced consumer protection by placing greater obligations on sellers. This doctrinal shift introduced a more equitable framework, wherein sellers are required to disclose accurate product information and buyers are expected to conduct reasonable inspections⁹². *Caveat venditor* is now a key component of product liability law,

⁸⁵ Neelam Chawla and Basanta Kumar, "E-Commerce and Consumer Protection in India: The Emerging Trend," *Journal of Business Ethics* 180, no. 2 (2022): 586, <https://doi.org/10.1007/s10551-021-04884-3>.

⁸⁶ Pandey, "Consumer Protection in the Era of E-Commerce," 632.

⁸⁷ Chawla and Kumar, "E-Commerce and Consumer Protection in India," 581.

⁸⁸ Terry L. Fox, "Caveat Emptor VS Seller Disclosure in Residential Real Property Conveyances," 45.

⁸⁹ Farhanin Abdullah Asuhaimi et al., "Sale by the Description in Today's Online Contracts: Issues and Challenges," *Malaysian Journal of Consumer and Family Economics* 27 (2021): 188.

⁹⁰ Agarwal, "Caveat Emptor and Its Exceptions," 82.

⁹¹ Muhammad Hafiz Mohd Shukri et al., "The Application of Caveat Emptor and Caveat Venditor Doctrines from Civil and Islamic Perspectives," *Jurnal Undang-Undang Dan Masyarakat* 28 (2021): 93.

⁹² Agarwal, "Caveat Emptor and Its Exceptions," 93.

which emphasizes ethical conduct among sellers and producers, protects vulnerable consumers, and promotes quality over low-cost, high-risk goods⁹³.

Terry explains that within the framework of *caveat emptor*, “as is” clauses compel buyers to exercise due diligence before finalizing a purchase. These clauses relieve the seller from the duty of disclosing defects and protect them from potential claims. Such clauses are commonly used in both standard transactions and those involving misrepresentation or concealed facts⁹⁴. This perspective aligns with Agarwal’s observation that the phrase “sold as is” places the responsibility on buyers to accept the risk of defects⁹⁵. Buyers are thus encouraged to verify not only the condition of the product but also its ownership before completing a transaction⁹⁶.

In contrast to the *caveat emptor* doctrine, *jual seadanya* as expressed by Banjar sellers represents a fair-trade principle grounded in the seller’s responsibility and caution regarding potential shortcomings in the transaction. It does not serve as a means for sellers to escape liability, unlike the core idea of *caveat emptor*, which implies selling without warranty and shifting all risk to the buyer. Under *caveat emptor*, buyers are held fully accountable for evaluating the quality and appropriateness of the product before purchase⁹⁷. In the practice of *jual seadanya*, however, both parties buyer and seller are expected to be vigilant, reflecting a more balanced approach akin to the *caveat venditor* doctrine⁹⁸. This perspective is aligned with Indonesia’s Law No. 8 of 1999 on Consumer Protection, which mandates that business actors conduct their activities responsibly, ensuring they do not harm consumers either physically or financially. Article 2 of this law affirms that consumer protection is grounded in principles of benefit, fairness, balance, security, and legal certainty. Notably, Article 2 of Indonesia’s Law No. 8 of 1999 on Consumer Protection stating that “Consumer protection is

⁹³ Shukri et al., “The Application of Caveat Emptor and Caveat Venditor Doctrines from Civil and Islamic Perspectives,” 97.

⁹⁴ Terry L. Fox, “Caveat Emptor VS Seller Disclosure in Residential Real Property Conveyances,” 47.

⁹⁵ Agarwal, “Caveat Emptor and Its Exceptions,” 82.

⁹⁶ Ohenewaa Boateng Newman and Bobby Banson, “The Conundrum of Balance Under Ghana’s Legal System: The Protection of a Buyer in Good Faith and the Principle of Caveat Emptor,” *African Journal of International and Comparative Law* 30, no. 2 (2022): 197, <https://doi.org/10.3366/ajicl.2022.0404>.

⁹⁷ Agarwal, “Caveat Emptor and Its Exceptions,” 84.

⁹⁸ Rifkiyati Bachri and Permata Cinta Gudam Fadhevi, “Penerapan Asas Caveat Venditor Terhadap Pemberian Pembuktian Barang Rusak Dalam Berbelanja Online,” *Jurnal Legal Reasoning* 7, no. 1 (2024): 55.

grounded in the principles of benefit, justice, balance, consumer security and safety, and legal certainty” does not explicitly recognize prudence as a guiding principle.

Bachri, referencing Adrian Sutedi (2008), explains that *caveat venditor* calls on business actors to act with due care-specifically, to operate their businesses in ways that do not inflict harm on consumers⁹⁹. Further, he notes that Article 23 of the Consumer Protection Law, “Entrepreneurs who refuse and/or do not respond and/or do not provide compensation to the consumers’ claim as intended by Article 19 Section 1, Section 2 Section 3, and Section 4 above, can be sued through the Consumer Disputes Settlement Agency or brought to court at the domicile of the consumers,” adopts an absolute liability framework¹⁰⁰. This framework is based on two foundations: first, Article 19 “(1) Entrepreneurs are obligated to give compensation for the damage, taint and/or losses the consumers suffer as a result of using or consuming the goods and/or services produced or traded by the entrepreneurs. (2) Compensation as untended by Section 1 above can be in the form of refund or goods and/or services of the same type or has equal value, or in the form of health care and/or insurance coverage in accord with the prevailing law. (3) Compensation shall be given within the period of 7 (seven) days after the date of transaction. (4) Compensation as intended by Section 1 and Section 2 above shall not exclude the possibility of a criminal charge based on further evidence of the existence of a fault. (5) The provisions as intended by Section 1 and Section 2 above shall not be valid if the entrepreneurs can prove that the consumer is at fault,” assumes fault unless proven otherwise¹⁰¹, and second, Article 28 “The giving of evidence of faults in the compensation claims as referred to by Articles 19, 22 and 23 shall be the burden and responsibility of the entrepreneurs,”¹⁰² requires that liability be assessed based on the best available evidence¹⁰³.

⁹⁹ Bachri and Fadhevi, “Penerapan Asas Caveat Vendor Terhadap Pemberian Pembuktian Barang Rusak Dalam Berbelanja Online,” 61.

¹⁰⁰ Ahmadi Miru and Sutarman Yodo, *Hukum Perlindungan Konsumen* (PT RajaGrafindo Persada, 2008), 155.

¹⁰¹ Ahmadi Miru and Sutarman Yodo, *Hukum Perlindungan Konsumen*, 125.

¹⁰² Ahmadi Miru and Sutarman Yodo, *Hukum Perlindungan Konsumen*, 167.

¹⁰³ Bachri and Fadhevi, “Penerapan Asas Caveat Vendor Terhadap Pemberian Pembuktian Barang Rusak Dalam Berbelanja Online,” 58–59.

Consumers are thus afforded both judicial and non-judicial avenues to safeguard their rights under the law.¹⁰⁴

Law No. 8 of 1999 on Consumer Protection aims to guarantee legal certainty and prevent arbitrary actions against both consumers and business actors¹⁰⁵. As outlined in Article 1(1), “Consumer protection encompasses all efforts to ensure legal certainty in providing safeguards for consumers.” The law establishes a balanced framework of rights and obligations for both parties, outlines prohibited practices, and defines business liability. According to Deviana, this legal structure reflects the principle of *caveat venditor*¹⁰⁶. Nevertheless, she observes that business compliance remains low in Indonesia, as evidenced by persistent issues such as the falsification of halal certifications and the frequent use of standard agreements that violate consumer protection regulations¹⁰⁷.

Beyond its legal consistency, *jual seadanya* embodies a religiously grounded business ethic¹⁰⁸. It implies that the seller discloses the true condition of the goods and refrains from fraudulent practices or deception (*ghisy*). The items are offered free of hidden defects or misrepresentation in quality or specification. This expression conveys the ethical commitment embedded in Banjar commercial culture and represents a local application of Islamic legal principles—specifically the obligation to pronounce a clear contract (*ijab kabul*) as taught by Sheikh Muhammad Arsyad al-Banjari¹⁰⁹ in his seminal work *Sabilal Muhtadin*¹¹⁰.

Within Banjar society, *jual seadanya* is not merely a moral injunction but a tangible expression of *maqashid sharia*. This principle ensures that

¹⁰⁴ Sigit Licardi et al., “Pertanggungjawaban Hukum Terhadap Produk Cacat Yang Merugikan Konsumen Ditinjau Dari Undang-Undang No. 8 Tahun 1999,” *Jurnal Kewarganegaraan* 7, no. 2 (2023): 2255.

¹⁰⁵ Ahmadi Miru and Sutarman Yodo, *Hukum Perlindungan Konsumen*, 1.

¹⁰⁶ Deviana Yunitasari, “Implikasi Prinsip Caveat Venditor Terhadap Perkembangan Hukum Perlindungan Konsumen Di Indonesia,” *Arena Hukum* 10, no. 3 (2017): 438.

¹⁰⁷ Yunitasari, “Implikasi Prinsip Caveat Venditor Terhadap Perkembangan Hukum Perlindungan Konsumen Di Indonesia,” 438.

¹⁰⁸ Noor et al., “Akad Dan Tradisi Jual Beli Masyarakat Banjar Perspektif Hukum Ekonomi Syariah,” 949–50.

¹⁰⁹ Nama lengkap dari Syekh Muhammad Arsyad al-Banjari adalah Syekh Muhammad Arsyad bin Abdullah bin Abdur Rahman al-Banjari, lahir di Martapura pada 17 Maret 1710 dan meninggal di Martapura pada 3 Oktober 1812 dalam usia 102 tahun Ahmad Suriadi, “Syekh Muhammad Arsyad Al-Banjari Dalam Dinamika Politik Kerajaan Banjar Abad XIX,” *Pusat Penelitian Dan Penerbitan LP2M LAIN Antasari*, 2014, 28.

¹¹⁰ Ertanti and Fahrizi, “Praktik Ijab-Kabul (Akad) Dalam Transaksi Jual Beli Oleh Masyarakat Banjar Ditinjau Dari Perspektif Hukum Ekonomi Islam,” 359.

contracts are not only formally valid but also genuinely advance human welfare and safeguard all facets of life in line with the objectives of Islamic law¹¹¹. Imam al-Shatibi classified *maqashid sharia* into three hierarchical categories: *dharuriyyat* (essentials), *hajiyyat* (complementary needs), and *tahsiniyyat* (refinements). *Dharuriyyat* constitutes the most fundamental objectives, indispensable for human existence; their neglect would lead to social and moral collapse. These encompass five core aims: preservation of religion (hifz al-din), life (hifz al-nafs), intellect (hifz al-‘aql), lineage (hifz al-nasl), and property (hifz al-mal). *Hajiyyat* aims to facilitate life and relieve hardship; its neglect generates difficulty and suffering. *Tahsiniyyat* aspires to cultivate refinement, moral excellence, and social decorum; while its absence may not cause hardship, its presence enriches human life with dignity and civility.¹¹²

In Banjar society, *jual seadanya* reflects the principle of prudence and is firmly aligned with the objectives of *maqashid sharia*. First, it preserves religion (hifz al-din), as cautious conduct in trade embodies obedience to divine injunctions that command justice, honesty, and the avoidance of fraud and injustice. Second, it protects life (hifz al-nafs), since fair and transparent transactions foster trust and a sense of security, thereby preventing disputes that could generate psychological strain and disrupt social harmony. Third, it safeguards intellect (hifz al-‘aql), by promoting rational decision-making based on accurate information and rejecting speculative practices such as *maisir* and *gharar*. Fourth, it secures lineage (hifz al-nasl), as prudence in transactions cultivates a culture of justice and integrity that influences future generations and is transmitted as a social legacy. Fifth, it protects property (hifz al-mal), directly shielding the wealth of both buyers and sellers from loss or damage. For sellers, prudence entails honesty and transparency in disclosing product conditions; for buyers, it encourages attentiveness and restraint in making purchasing decisions, thereby avoiding financial harm. Taken together, these dimensions demonstrate that the substance of *jual seadanya* in Banjar society is in full harmony with the objectives of *maqashid sharia*.

¹¹¹ Zaydan Muhammad et al., “The Explanation Of Maqashid Sharia On Drive Thru Service In Islamic Business Ethics,” *International Conference on Law, Technology, Spirituality and Society (ICOLESS)* 3 (2023): 476, <https://conferences.uin-malang.ac.id/index.php/ICOLESS/article/view/2663>.

¹¹² Ahmad Jalili, “Teori Maqashid Syariah Dalam Hukum Islam,” *Teraju* 3, no. 02 (2021): 74–76.

The long-standing practice of *jual seadanya* in Banjar community embodies a balanced implementation of both *caveat emptor* and *caveat venditor*, making it a highly relevant principle in modern commercial transactions. It ensures protection for both parties—seller and buyer. The Islamic legal concept of *kehiyar*, as applied within the Banjar community, demonstrates that even when *jual seadanya* is expressed, buyers are still granted the opportunity to either rescind or proceed with the transaction if discrepancies arise. For instance, a common reassurance given by sellers is: “*mun kada sedang hurupakan ja/bulikakan ja*” (if the size is unsuitable, feel free to exchange or return it)¹¹³. This indicates a clear intersection between *caveat emptor* and the Islamic *kehiyar* doctrine¹¹⁴.

Despite these similarities, important differences remain. While *caveat emptor* permits buyers to examine goods before purchasing, it does not impose an obligation on sellers to disclose all defects unless specifically asked, although concealment is still prohibited. In contrast, the *kehiyar* principle requires sellers to proactively disclose any known defects, even if not inquired about, and to provide a form of guarantee¹¹⁵. The *caveat venditor* doctrine also finds strong resonance in Islamic principles, particularly regarding justice in commercial dealings. These include the duty to provide accurate and honest information¹¹⁶ even if it conflicts with the seller's interests¹¹⁷. This ethical obligation is consistent with the hadith reported by Tirmidhi: “The honest and trustworthy merchant will be with the prophets, the truthful, and the martyrs.”¹¹⁸

The continued relevance of the *jual seadanya* tradition in Banjar community within modern transactions aligns closely with the shift from *caveat emptor* to *caveat venditor*—emphasizing that both consumers and sellers must act with due diligence. The rise of consumer protection in the 21st century, marked by legislation and the formation of consumer advocacy

¹¹³ Noor et al., “Akad Dan Tradisi Jual Beli Masyarakat Banjar Perspektif Hukum Ekonomi Syariah,” 952.

¹¹⁴ Shukri et al., “The Application of Caveat Emptor and Caveat Venditor Doctrines from Civil and Islamic Perspectives,” 94.

¹¹⁵ Ziad Esa Yazid et al., “E-Commerce via Mobile Banking: Contemporary Shariah Issues and Ways to Address Them,” *International Journal of Professional Business Review: Int. J. Prof. Bus. Rev.* 8, no. 1 (2023): 8.

¹¹⁶ Shukri et al., “The Application of Caveat Emptor and Caveat Venditor Doctrines from Civil and Islamic Perspectives,” 99.

¹¹⁷ Williams C. Iheme, “Rethinking the Effectiveness of Consumer Protection Policies and Measures in the Financial Marketplace,” *Juridicas* 19, no. 2 (2022): 165.

¹¹⁸ az Zuhaili, *Fiqih Islam Wa Adillatuhu*, Jilid 5, 27.

institutions, illustrates a more balanced relationship of rights and responsibilities between buyers and sellers. Instilling a shared sense of accountability encouraging each party to claim their rights while fulfilling their duties is a central objective of consumer protection law¹¹⁹. However, the current legal framework requires reform to remain aligned with evolving social and technological conditions, particularly to address the growing complexity of online transactions¹²⁰.

Numerous studies affirm that online consumers must receive protections comparable to those granted offline. The most pressing concerns for online shoppers include the anonymity of sellers, lack of access to product inspection and labeling, and inadequate dispute resolution mechanisms¹²¹. Further challenges include the safeguarding of personal data, financial assets, and overall consumer privacy. While Law No. 8 of 1999 on Consumer Protection provides a legal basis for consumer rights, it remains inadequate in overseeing and enforcing protections in digital commerce¹²². This situation underscores the need for explicit and enforceable regulations specific to online transactions including clear complaint procedures, effective dispute resolution channels¹²³, and the standardization of practices across digital marketplaces in Indonesia¹²⁴. The existence of such comprehensive and consistent regulations would significantly enhance consumer safety. When observed properly, legal frameworks can foster trust and provide security across all aspects of business operations¹²⁵.

The Banjar practice of *jual seadanya*, embodying a balanced prudence shared by both sellers and buyers, offers a valuable model for integration into Indonesia's national consumer protection law. Beyond the explicit

¹¹⁹ Shyamali Mukherjee Bhattacharya, "Consumer Protection Law: A Paradigm Shift from Caveat Emptor to Caveat Vendor," *Supremo Amicus* 33 (2023): 6.

¹²⁰ Pandey, "Consumer Protection in the Era of E-Commerce," 632.

¹²¹ H. Matnuh, "Rectifying Consumer Protection Law and Establishing of a Consumer Court in Indonesia," *Journal of Consumer Policy* 44, no. 3 (2021): 485, <https://doi.org/10.1007/s10603-021-09487-z>.

¹²² Tasya Safiranita Ramli et al., "Inovasi Standardisasi Marketplace Dalam Merespon E-Commerce Sebagai Upaya Menuju Caveat Vendor (Standardization Marketplace Innovation In Responding To E-Commerce Effort Towards Caveat Vendor Condition)," *Jurnal Legislasi Indonesia* 18, no. 2 (2021): 275.

¹²³ Matnuh, "Rectifying Consumer Protection Law and Establishing of a Consumer Court in Indonesia," 484.

¹²⁴ Ramli et al., "Inovasi Standardisasi Marketplace Dalam Merespon E-Commerce Sebagai Upaya Menuju Caveat Vendor (Standardization Marketplace Innovation In Responding To E-Commerce Effort Towards Caveat Vendor Condition)," 276.

¹²⁵ Chawla and Kumar, "E-Commerce and Consumer Protection in India," 588.

recognition of prudence as a legal principle in Law No. 8 of 1999 on Consumer Protection, prudence should be understood as conducting trade in accordance with the norms of *fiqh muamalah*-emphasizing honesty, fairness, and the application of *khiyar*-there by ensuring conformity with the objectives of *maqashid sharia*. This conception of prudence aligns with the broader doctrinal shift from *caveat emptor* to *caveat venditor* in modern consumer protection. In this way, consumer protection law may progress beyond the mere imposition of sanctions toward the cultivation of an ethical and sustainable business ecosystem, where both consumers and businesses are encouraged to transact with responsibility and integrity.

Conclusion

This study reveals that the long-standing practice of *jual seadanya* in Banjar society embodies the principle of prudence. Rooted in Islamic legal culture, it represents the application of *fiqh muamalah* in harmony with the objectives of *maqashid sharia*. Although superficially similar to the doctrine of *caveat emptor*, which places the burden of caution on the buyer, *jual seadanya* entails a balanced allocation of responsibility between buyer and seller, thereby anticipating the contemporary doctrine of *caveat venditor*. In modern commerce, such mutual prudence is indispensable. Explicitly incorporating prudence into Article 2 of Indonesia's Law No. 8 of 1999 on Consumer Protection is therefore both timely and beneficial. Moreover, prudence should be interpreted in the sense embodied by *jual seadanya*: conducting trade in accordance with the principles of *fiqh muamalah*-honesty, fairness, and the application of *khiyar*, so as to remain consistent with *maqashid sharia*. This conception of prudence aligns with the doctrinal shift from *caveat emptor* to *caveat venditor* in contemporary consumer protection. Accordingly, the explicit affirmation of the prudence principle in consumer protection law makes it no longer just a general principle, but a vital legal foundation for dealing with the complexities of the modern market. This study was limited to involving only sellers as informants; research involving buyers as informants would allow for new findings.

A recommendation for future research is to conduct an in-depth analysis of the application of the precautionary principle within the digital era to ensure the protection of both sellers and buyers. This is paramount given the prevalence of digital transactions. The ultimate objective of this research is to furnish recommendations for improving Indonesian consumer protection laws (or consumer protection legislation in Indonesia) to ensure their alignment with contemporary developments.

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