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*by Rizal02 Fahlevi02*

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## Utilization of Agricultural Land During the Planting Break in Jorong Mandahiling Nagari Pagaruyung, West Sumatra: Sharia and Legal-Formal Economic Perspectives

Rizal Fablefi, Alimin, and Indah Fitrah Nauri

Institut Agama Islam Negeri Batusangkar Sumatera

E-mail: [rizalfablefi@iainbatusangkar.ac.id](mailto:rizalfablefi@iainbatusangkar.ac.id)

**Abstract:** The study aims to explain the pattern and legal perspective of the practice of agricultural land use cooperation during the planting break in Jorong Mandahiling, Tanah Datar Regency, West Sumatra Province. This research uses a case study method which is analyzed qualitatively. The research subjects consisted of 21 land owners and 21 land cultivators. The results showed that there are three patterns of land use cooperation during the planting break in Jorong Mandahiling. Based on three patterns of cooperation, there are three types of contracts that apply from the point of view of sharia economic law, namely: *first*, leasing on land (*kirā' al-ardh*); *second*, profit sharing system (*mudhārabah*); and *third*, combination of profit sharing system and joint venture (*mudhārabah musytarakah*) with a profit sharing system which does not fulfill the principle of fairness in transactions. Viewed from the perspective of sharia economic law and existing legal-formal, the practice of profit sharing in land use cooperation during the planting break is not fully in accordance with existing provisions, especially in the principle of fairness in transactions, because, two of the three contracts that are practiced are more profitable for land owners and unfair for cultivators.

**Keywords:** *profit sharing; sharia economic law; planting break; legal-formal; agricultural.*

**Abstrak:** Penelitian ini bertujuan untuk menjelaskan pola dan tinjauan hukum terhadap praktik kerja sama pemanfaatan lahan pertanian selama masa jeda tanam di Jorong Mandahiling, Kabupaten Tanah Datar, Provinsi Sumatera Barat. Penelitian menggunakan metode studi kasus yang dianalisis secara kualitatif. Subjek penelitian terdiri dari 21 orang pemilik lahan dan 21 orang penggarap lahan. Hasil penelitian menunjukkan bahwa terdapat tiga pola kerja sama pemanfaatan lahan pada masa jeda tanam di Jorong Mandahiling. Dari tiga pola kerja sama tersebut, terdapat tiga jenis akad yang berlaku dari sudut pandang hukum ekonomi syariah, yaitu: *pertama*, sewa atas tanah (*kirā' al-ardh*); *kedua*, sistem bagi hasil (*mudhārabah*); dan *ketiga*, perpaduan sistem bagi hasil dan kongsi (*mudhārabah musytarakah*) dengan sistem bagi hasil yang tidak memenuhi prinsip keadilan bertransaksi. Ditinjau dari perspektif hukum ekonomi syariah dan legal-formal yang ada, praktik bagi hasil dalam kerja sama

pemanfaatan lahan pada masa jeda tanam tersebut belum sepenuhnya sesuai dengan ketentuan yang ada, khususnya dalam prinsip keadilan bertransaksi, karena dua dari tiga akad yang dipraktikkan lebih menguntungkan bagi pemilik lahan dan tidak adil bagi penggarap lahan.

**Kata kunci:** *bagi hasil; hukum ekonomi syariah; jeda tanam; legal-formal; pertanian.*

## Introduction

Human beings are by nature as a social creature, to interact with other. A reciprocal relationship arises from this social interaction that will achieve a complex life order, thus requiring a law that regulates this relationship (*mu'āmalah*)<sup>1</sup>. Also, Islam regulates humans in cooperative relationships to fulfill all their needs and desires because humans are created in a weak and deprived state, so they need the help of others. It is because people have the skills, powers, and opportunities but do not have the capital. However, some people also have the capital but do not have the skills, powers, and opportunities. In cooperative efforts, all the weaknesses and strengths will complement each other, creating an atmosphere of productivity. Thus, the purpose of the cooperation agreement for agricultural land use in Jorong Mandahiling Nagari Pagaruyung, Tanah Datar Regency, West Sumatra Province, is within an example of mutually beneficial relationship efforts.

Nagari is a government unit at the village or sub-district level in West Sumatra. Nagari Pagaruyung is located in Tanjung Emas District, Tanah Datar Regency. Nagari Pagaruyung has seven jorongs, one of which is Jorong Mandahiling. The people of Jorong Mandahiling Nagari Pagaruyung generally make a living as farmers and farm laborers. According to the Agricultural Extension Center/*Balai Penyuluh Pertanian* (BPP)<sup>2</sup>, the area of agricultural land in Jorong is 55 ha, divided into two, namely the Pancaroba farmer group covering 25 Banda Roge farmer group covering 30 ha.

<sup>1</sup> Ahmad Azhar Basyir, *Asas-asas Hukum Muamalat (Hukum Perdata Islam)* (Yogyakarta: UII Press, 2004), hlm. 11-12.

<sup>2</sup> Balai Penyuluh Pertanian (BPP) Kecamatan Tanjung Emas Kab. Tanah Datar, *Data Kegiatan Pertanian Nagari Pagaruyung Kecamatan Tanjung Emas Kabupaten Tanah Datar* (2019).

The people of Jorong Mandahiling Nagari Pagaruyung have a habit of utilizing agricultural land during the rice planting period by planting various plants types such as watermelon, cucumber, tomato, or other crops. The rice planting break lasts approximately two months, meaning that land use during the planting break does not interfere with the regular farming season. This practice has been carried out by the people of Jorong Mandahiling Nagari Pagaruyung since 2005 until now. Its action combines several contracts (multi-contract) and can be classified as a new contract (*'uqûd mustajiddah*), because in the classical *mu'āmalah fiqh* literature, this kind of contract structure is absent.

In the cooperation agreement for agricultural land use during the planting break by the Jorong Mandahiling community, there are various transaction patterns and general rules. There will be analyzed, especially related to transaction justice element connected with the possibility of the spirit of the law of economic sharia and legal-formal. The amount of profit-sharing from land-use between landowners and cultivators/farmers is sometimes not determined at the beginning of the agreement, while sales of crops by cultivators can reach millions of rupiah. A common form of compensation for landowners is the return of land to the owner in a ready-to-plant condition. It means as a form of compensation for the landowner, and the cultivator/farmers is in charge of land processing until the land is ready to be planted and plowed. Thus, when the rice planting season begins, landowners no longer need to pay for plowing the fields because plowing the fields is already the cultivator's responsibility and duty.

Although many researchers have carried out many studies on the practice of profit-sharing in land use cooperation, however, the authors have not found cases of the sharing practice of the results of agricultural land use during the planting break, especially in the case concerning Jorong Mandahiling Nagari Pagaruyung, Tanah Datar Regency.

Several previous studies investigated only agricultural land production sharing, for-instance a study on the review of Islamic and national law on agricultural land production sharing<sup>3</sup>, a review of

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<sup>3</sup> Muhammad Ruslan Abdullah, "19 i Hasil Tanah Pertanian (Muzara'ah) (Analisis Syariah dan Hukum Nasional)", *Al-Ammal: Journal of Islamic Economic Law*,

Islamic law on the use of vacant land<sup>4</sup>, local community traditions in agricultural production sharing<sup>5</sup>, the implementation of agricultural production sharing agreements in society<sup>6</sup>, Islamic and financial values in agricultural production sharing<sup>7</sup>, the relationship of socio-economic between farmers and agricultural landowners<sup>8</sup>, and the influence factors for the selection of agricultural land-sharing models<sup>9</sup>. Therefore, based on the previous studies, no research explores the profit-sharing system in agricultural land use during the planting break.

Cooperation in the use of agricultural land during the planting break is not commonly<sup>12</sup> practiced in the community. However, in some areas, especially in Jorong Mandahiling Nagari Pagaruyung, Tanjung Emas District, Tanah Datar Regency, West Sumatra, this practice has been ongoing for quite a long time and is being preserved until now.

During the regular planting period, the practice of business cooperation is generally carried out with a profit-sharing contract model on agricultural land (*muzāra'ah* and *mukhābarah*) as contained

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Vol. 2, No. 2, 2017, hlm. 148-172; Jannahar Saddam Ash Shidiqie, "Bagi Hasil Pertanian Ditinjau dari Undang-Undang dan Hukum Islam", *Jurnal Ekonomi Syariah Indonesia*, Vol. 7, No. 1, 2017, hlm. 22-31; Muhammad Rafly, Muhammad Natsir, & Siti Sahara, "Muzara'ah (Perjanjian Bercocok Tanam) Lahan Pertanian Menurut Kajian Hukum Islam", *Jurnal Hukum Samudra Keadilan*, Vol. 2, No. 2, 2016, hlm. 220-228.

<sup>4</sup> Amrul Muzan & Titin Suprihatin, "Pemanfaatan lahan kosong perspektif ekonomi Islam", *Hukum Islam*, Vol. 16, No. 2, 2016, hlm. 161-169.

<sup>5</sup> Vendra Irawan, "Tradisi Mampaduo dalam Perjanjian Bagi Hasil Sawah di Nagari Gunung Medan", *Jurisdiction: Jurnal Hukum dan Syariah*, Vol. 9, No. 1, 2018, hlm. 55-71.

<sup>6</sup> Unggul Priyadi & Jannahar Saddam Ash Shidiqie, "Pelaksanaan Perjanjian Bagi Hasil Pertanian Lahan Sawah: Studi di Kecamatan Gamping, Kabupaten Sleman Yogyakarta", *Millab*, Vol. 15, No. 1, 2015, hlm. 101-115.

<sup>7</sup> Novi Puspitasari, Selvi Rias Bela, & Susanti Prasetyaningtias, "Muzara'ah pada Usaha Pertanian Padi: Analisis Nilai-nilai Islami dan Keuangan (Studi di Kecamatan Bangsalsari Kabupaten Jember)", *Bisma: Jurnal Bisnis Dan Manajemen*, Vol. 14, No. 1, 2020, hlm. 70-81.

<sup>8</sup> Rasiem. "Relasi Sosio-Ekonomi Petani dengan Pemilik Lahan Melalui Konsep Mukhabarah dan Muzara'ah di Desa Arang Limbung Kecamatan Sungai Raya Kabupaten Kubu Raya", *Al-Maslahah*, Vol. 12, No. 2, 2016, hlm. 425-446.

<sup>9</sup> Suyoto Arief & Adib Susilo, "Faktor-Faktor yang Mempengaruhi Pemilihan Model Bagi Hasil Pada Sektor Pertanian di Wilayah Karesidenan Madiun", *Falah: Jurnal Ekonomi Syariah*, Vol. 4, No. 2, 2019, hlm. 202-213.

in mu'āmalah fiqh rules which in West Sumatra are called *pasiduoan* (*paroan*) contracts. Landowners hand over the land to be managed to the cultivator with the stipulation that the business results in the harvest form will be divided between the two parties according to a mutually agreed percentage, generally 50:50. The contract is almost the same as *muzāra'ab* and *mukbābarab* contracts contained in *mu'āmalah fiqh*. A similar practice also occurs in other areas in Indonesia.

The main difference between the two collaborative practices (during the planting break with the regular planting period) is that in the first cooperation model, the crops grown are not rice but short-lived secondary crops, the rewards or results being shared are not only from the harvest. There are many types of contracts, such as a lease contract (*ijārah*) in the form of land ready for planting, a profit sharing contract (*mudbārabab*), the landowner bears both land and all management costs. At the same time, the cultivator only manages, even in the form of a combination contract for results and joint venture contracts (*mudbārabab musytarakab*) where there is a capital contribution from both parties while the management is only by one party. Therefore, it is essential to research the collaborative practice of using agricultural land during the planting break.

The research method used is a case study which is analyzed qualitatively. The data sources are 42 land owners and sharecroppers consisting of 21 land owners and 21 sharecroppers who collaborated on land use during the planting break in Jorong Mandahiling Nagari Pagaruyung in 2019:

**Table 1:** Data on Land Owners and Cultivators/Farmers

No	Land Owners	Cultivators/Farmers	Plants
1	DC	AT	Watermelon
2	IF	IN	Watermelon
3	AM	ML	Watermelon
4	AM	PY	Watermelon
5	ET	BN	Watermelon
6	MW	MM	Watermelon
7	NL	DD	Watermelon

8	MJ	MM	Watermelon
9	NN	RF	Watermelon
10	IR	RF	Watermelon
11	IJ	RM	Watermelon
12	BH	YH	Corn
13	SL	SLS	Corn
14	ML	IN	Cucumber
15	SB	AT	Cucumber
16	SH	NW	Cucumber
17	ND	ET	Asparagus bean
18	WS	AD	Chilli
19	IB	DD	Chilli
20	SR	YM	Tomato
21	ND	JD	Tomato

10

Data collection techniques were carried out by interview, observation, and documentation. Data analysis was in several steps: data reduction, data display, data verification, and concluding. Examination of the validity of the research data was carried out by triangulation and extending the participation of researchers in the research set within a time that was considered sufficient.

The research purpose is to analyze cooperation motives in agricultural land use, the process of cooperation, the pattern of profit-sharing in the use of agricultural land during the planting break, and a review of the sharia legal-formal economics to the collaborative practice.

### Transaction and Justice

All human transactions are carried out based on cooperation, starting from buying and selling, ordering contracts (*salam*), leasing (*ijārah*), sharing (*syirkah*), profit sharing (*mudhārabah*), and others. If all cooperation is carried out based on mutual help and mutual benefit, then the activity changes into the category of helping in goodness (*ta'āwun fi al-birr wa at-taqwā*). However, if it contains elements of injustice, deception, and exploitation that will lead to hostility, it will

trap into the category of helping to help in sin and enmity (*ta'āwun fi al-itsm wa al-'udwān*). This view is in line with the guidance of the Quran in Surah al-Maidah verse 2.

Helping each other is included in the most crucial goal of the Shari'a (*maqāshid syari'ah*) because it aims to create unity and brotherhood between humans and prevent the breakup of friendship is a major sin<sup>10</sup>. Therefore, for every contract (*akad*) that will eventually lead to disputes, controversy, enmity, and hatred, then the law of the contract is included in the unlawful act. Ibn 'Abidin asserted that the prohibition against contracts that contain doubts (*gharar*) is because there is doubt and ambiguity (*jahālah*) in the contract, and *jahālah* itself is not a problem because everything must have its *jahālah*, but *jahālah* that makes the law unlawful is because it will result in dispute and hostility<sup>11</sup>.

Likewise, not all economic cooperation will result in mutually beneficial and mutually satisfying results, and some have even reached the stage of extortion/blackmail. One of the state's goals is to create justice for all people, so whatever community life activity takes, it should fulfill the purpose of justice. Ibn Manzhur explained that linguistically fair means equality or balance.<sup>12</sup> In detail, Rasyid Rida explained that justice is the opposite of tyranny realized by seeking the truth without taking sides with an opposing party, and justice demands that the perpetrator be objective or moderate between not exaggerating or understating.<sup>13</sup> Justice is also the primary content of *maqāshid syari'ah*. Therefore, Ibn Taymiyyah stated, "Allah likes state of justice even though it is a disbeliever (*kafir*), but does not like an unjust state even though it is a believer, and the world will be able to

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<sup>10</sup> Ahmad Raisuni, *Nazhariyyah al-Maqāshid 'inda al-Imām al-Syātibiy* (Riyadh: al-Dār al-'Alāmiyyah li al-Kitāb al-Islāmiy, 1992), hlm. 326.

<sup>11</sup> Ibnu 'Abidin, *Hāsyiyah Ibnu 'Abidīn Al-Radd al-Mukbtār 'ala al-Durr al-Mukbtār Syarb Tanwīr al-Abshār*, jilid 24 (Kairo: Mushthafa al-Halabiy, 1386H), hlm: 285.

<sup>12</sup> Ibnu Manzhur, *Lisān al-'Arab* (Beirut: Dar al-Shādir, 1990), hlm. 43.

<sup>13</sup> Rasyid Ridha, *Tafsīr al-Manār*, jilid 9 (Kairo: al-Hai'ah al-Mishriyyah al-'Ammah li al-Kitāb, 1990), hlm. 572; Al-Jurjani, *Al-Ta'rīfāt* (Beirut: Dār al-Kitāb al-'Arabiy, 1405H), hlm. 152.

survive with justice even though it does not believe, and will not survive injustice even though it is Islam."<sup>14</sup>

The notion of fairness in sharia economic law is included in general justice or the opposite of injustice, but justice in transactions is more specifically about the prohibition of exploitation. It can be analyzed on the causes of forbidden contracts in Islam. Violence in the matter of sharia economic law implies in the contract, there is the exploitation of the vital party against the weak party, and conversely, the exploitation of the weakness of the weak party is equated with tyranny. Justice, in *mudharabah* contract, is when the business loses money, the investor bears the total capital with no negligence from the manager side (*mudhārib*). Also, usury is forbidden to realize justice and prohibit injustice because, in the practice of usury, the creditor exploits the weaknesses of the debtor.<sup>15</sup> Thus, fairness in transactions means that there is no injustice, the realization of a balance of transactions between the parties, and the avoidance of exploitation (taking advantage of the opposing party's weaknesses) in the contract/*akad*.

State Law Number 5 of 1960<sup>16</sup> concerning Basic Regulations on Agrarian Principles (*Peraturan Dasar Pokok-pokok Agraria*) is popularly referred to as UUPA (*Undang-Undang Pokok Agraria*)/The fundamental law of Agrarian. The law explains that every person or legal entity that owns agricultural land is in principle required to work on or actively cultivate it independently by preventing extortion methods. However, cooperation is still allowed with clear rules and does not contain exploitation through pawning, profit sharing, riding, and renting agricultural land (Articles 16 and 53 of UUPA). The UUPA is very natural to sound the words "extortion" in the field of

<sup>14</sup> Taqiyuddin Ahmad ibn Abdussalam ibn Abdullah ibn Taimiyah, *Al-Hisbab fi al-Islām*, tahkik Said Muhammad ibn Abi Sa'dah (Kuwait: Maktabah Dār al-Arqām, 1983), hlm. 94.

<sup>15</sup> Hikmat Abdurrauf Hasan Mushlih, "Muqāranah bain al-Salm wa al-Riba fi al-Fiqh al-Islāmi (Dirāsah Fiqhiyyah Muqāranah)", *Tesis*, Universitas An-Najah al-Wathaniyyah, Palestina, 2007, hlm. 11; Iyad Muhammad Ismail Abu Rabi', "Dhawābith al-Mubādalat al-Māliyyah fi al-Iqtishād al-Islāmi", *Tesis*, Universitas An-Najah al-Wathaniyyah, Palestina, 2008, hal. 194.

<sup>16</sup> LN. 1960/No. 104, TLN No. 2043, LL SETNEG: 17 HLM, Undang-undang (UU) tentang Peraturan Dasar Pokok-Pokok Agraria diundangkan pada 24 September 1960, tersedia: <https://peraturan.bpk.go.id/Home/Details/51310/uu-no-5-tahun-1960>.

agricultural cooperation business because it is related to farm labor which is so valuable, while as an agricultural country, most of the citizens are farmers.

Similar to state law, the primary basis of sharia economic law in prohibiting various contracts is because it contains injustice, extortion, and exploitation of the weaknesses of other parties. It is explicitly written in the Qur'an when Allah SWT forbids Muslims to practice usury because its action is an act of injustice (Al-Baqarah, verse 279), as confirmed by al-Qurtubi<sup>17</sup>. There is also found in verse 188 in Surah Al-Baqarah, and verse 29 in Surah An-Nisa' concerning the prohibition of taking other people's property in a vanity way, and the word vanity contains the meaning of all forms of untruth, injustice, and violation<sup>18</sup>. The commentators or interpreters argue that the expression "And do not eat up your property among yourselves for vanities" contains a very general meaning, where it includes the prohibition of consuming one's property or the others in a vanity way.<sup>19</sup> Wahbah al-Zuhaili emphasized that not all forms of mutual consent are recognized by syara', but what is recognized is a willingness within the limits of the provisions of syara' law.<sup>20</sup>

Ibn Taimiyah stated that the legal basis of all transaction rules is the realization of justice. When religion forbids usury and gambling, it is because there is injustice in it, then these two practices are the same as consuming human property in a vanity way."<sup>21</sup> This statement is in line with the hadith of the Prophet, "It is forbidden for fellow Muslims to be unjust to blood, property, and wealth and other

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<sup>17</sup> Abul Abbas Ahmad bin Umar Al-Anshāri Al-Qurthubi, *Al Muḥim limā Aṣkala min Talkhīṣ Shabīb Muslim*, jilid. 4 (Beirut: Dar Kalim al-Thayyib, 1996), hlm. 362.

<sup>18</sup> Ibrāhīm ibn Musa al-Lakhāmiy al-Syāthibiy, *Al-Muwāfaqāt fi 'Ushūl al-Abkām*, jilid 3, tahkik Abu 'Ubaidah Masyhūr (Kairo: Dār Ibnu 'Affān, 1997), hlm. 28.

<sup>19</sup> Ibn al-Hasan Al-Thabarsiy, *Majma' al-Bayān fi Tafsīr al-Qurān* (t.tp.: Dār al-Ma'rifah, t.th.), hlm. 1045.

<sup>20</sup> Wahbah al-Zuhailiy, *Al-Tafsīr al-Munīr* (Beirut: Dār al-Fikr, 1991), hlm. 31. Lihat juga: Abi al-Fadhil Syihab al-Dīn Al-Saidi, *Rub al-Ma'āni*, jilid 4 (Beirut: Dar al-Fikr, 1993), hlm. 22; Ibn Katsir, *Tafsīr Ibn Katsīr*, jilid 1 (Kairo: al-Maktabat al-Qayyimah, 1993), hlm. 454.

<sup>21</sup> Taqiyuddin Ahmad ibn Abdussalam ibn Abdullah ibn Taimiyah, *Majmū' Fatāwa Ibnu Taimiyah*, jilid 20 (Beirut: Dār al-Wafā', 2005), hlm. 510.

Muslim honors” (Narrated by Muslim and Ahmad from Abu Hurairah).<sup>22</sup>

All *muamalah fiqh* outputs are intended to realize justice, such as Islam forbids significant expensive prices (*ghubn*) because it is unfair. There is no match between the money given by the buyer and the goods received. Likewise, *wadh 'al-jawaih* law or the occurrence of force majeure in the contract is due to the realization of transaction justice. The prohibition of traders buying goods from producers who do not know the market price (*talāqi rukebān*) maintains a balance of information between producers and market prices.

### Agricultural Profit-Sharing Agreement

In terms of transaction theory contained in shari'ah economics, there are many types of agricultural production sharing contracts, namely, profit sharing on agricultural land (*muzāra'ah* and *mukhābarah*), profit sharing for plant maintenance services (*musāqah*), profit sharing on trees that planted (*mughārasah*), and the rent of agricultural land or a certain amount of crops (*kirā' al-ardh*).<sup>23</sup> However, cooperation contracts of the agricultural sector can be *mudharabah* and *musyarakah* terms, depending on the pattern of contract implementation. In general, in UUPA Number 2 of 1960 (article 1 paragraph 3), it is stated that "a profit-sharing agreement is an agreement with whatever name is entered into between the owner on one side and a person or legal entity on the other."

*Muzāra'ah* and *mukhābarah* are both cooperations between landowners and sharecroppers. Linguistically speaking, *muzāra'ah* means *tharḥu al-zur'ah* (throwing a plant), meaning capital. *Muzāra'ah* is agricultural processing cooperation between landowners and cultivators, in which the landowner provides agricultural land and seeds to the cultivator to be planted and maintained in exchange for a certain share (percentage) of agricultural produce. According to Syafi'iyah scholars, *muzāra'ah* is working on other people's land, such as rice fields or specific fields, in return for part of the results (half,

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16

<sup>22</sup> Ahmad ibn Hanbal, *Musnad*, jilid. 5 (Beirut: Dār al-Fikr. t.th.), hlm. 277.

<sup>23</sup> Muhammad 'Imarah, *Qāmūs al-Mushthalabāt al-Iqtishādiyyah fi al-Hadhārah al-Islāmiyah* (Kairo: Dār al-Syuruq, 1993), hlm. 479.

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third, or quarter), and the owner bears the seeds<sup>24</sup>. Meanwhile, *mukhābarah*, the owner, only hands over the land, then the cultivator manages the land in exchange for a portion of the results (half, one-third, or a quarter), and the cultivator bears the capital (the cost of processing and seeds).<sup>25</sup>

*Al-Muzāra'ah* is not allowed according to the opinion of the Shafi'i school (unless there is vacant land in *muzāra'ah* area), Abu Hanifa, and Zufar because of the Prophet's prohibition and because the produce of the land was not available at the contract time or was unclear according to uncertain crops and sometimes failed altogether. At the same time, the hadith about the inhabitants of Khaibar, they interpret as a gift or peace with non-Muslims. As for the explanation of Abu Yusuf, Muhammad ash-Syaibani, Imam Malik, Ahmad, and Daud az-Zhahiri, it was permissible because the Prophet had *muzāra'ah* with the residents of Khaibar and it was a cooperative transaction like *mudharabah*, and also because of human needs related to this kind of contract.<sup>26</sup>

Following the National Sharia Council Fatwa of Indonesian Council of Ulama/*Dewan Syariah Nasional – Majelis Ulama Indonesia* (DSN-MUI), a fatwa stipulated in Indonesia has no provisions regarding *muzāra'ah*, *mukhābarah*, and *musāqah* agricultural contracts. However, there are listed in the syndicated financing fatwa No. 91/DSN-MUI/IV/2014 is about an agricultural business cooperation agreement between the landowner and the manager, where the plant seeds come from the landowner, agricultural products are divided between the owner and the cultivator under the agreement ratio. A similar definition is also found in *Compilation of Sharia Economic Law/ Kompilasi Hukum Ekonomi Syariah* (KHES), Book II, Chapter I, Article 20, paragraph 5. The *musāqah* contract is to hand over the tree to someone else who will take care of it with a profit-sharing system.<sup>27</sup> From the definition described, it is clear that research discussion is not related to *musāqah*.

<sup>24</sup> Iza Hanifuddin, *Hukum Tanab dan Fikih* (Batusangkar: STAIN Batusangkar Press, 2012), hlm. 80.

<sup>25</sup> Hendi Suhendi, *Fiqih Muamalah* (Jakarta: PT Raja Grafindo Persada, 2010), hlm. 155.

<sup>26</sup> Kementerian Perwakafan Kuwait, *Al-Mausū'ah al-Fiqhiyyah al-Kuwaitiyyah*, cet. 1 (Kuwait: Kementerian Perwakafan, 2006), hlm. 229.

<sup>27</sup> *Ibid*, hlm. 112.

*Mudharabah* contract is a contract the capital owner hands over assets to the manager (*mudhārib*) to arrange the property, while the profits derived from the business results are based on *nisbah* (ratio) agreed by both parties.<sup>28</sup> If the business loses, then the owner of capital will lose the reduced capital, while the manager loses with the work, though, and time into it.<sup>29</sup>

### Cooperation Motives in the Use of Agricultural Land during the Planting Break: Social Portraits

During the planting break in Jorong Mandahiling Nagari Pagaruyung, cooperation in agricultural land use has been going on for years. Based on local government data, this cooperation has been carried out since 2005. The initiative to use land during the planting break arises from cultivators who do not own land. The cultivators collaborate with landowners to utilize the vacant land during the planting break period by planting various short-lived fruit and vegetable crops. The landowners welcome this, and they are willing to lend their land to work so that the land becomes productive.

Humans are social creatures who always need the help of others. From the collaborative practice of Jorong Mandahiling Nagari Pagaruyung, it appears that they have a reasonably high attitude of mutual assistance because cooperation implementation in the use of agricultural land occurs based on the element of mutual assistance which strengthens the ties of brotherhood between landowners and cultivators. The principle on the land has a social function that is still inherent among the people of Jorong Mandahiling Nagari Pagaruyung.

There are several reasons for the cooperation in the use of agricultural land during this planting break. Landowners are willing to lend their land because they have large enough land to be unable to work on it by themselves; have many other jobs, and provide opportunities to other people who do not own land on a mutual assistance basis. Meanwhile, the reason for implementing this cooperation agreement from the cultivator's point of view is that they

<sup>28</sup> Wahbah Al-Zuhailiy, *Al-Fiqh al-Islāmīy wa Adillatuh*, jilid 4, cet. 12 (Beirut: Dār al-Fikr, 2010), hlm. 836.

<sup>29</sup> Muhammad Rawas Qal`ahjiy, *Al-Mu`āmalat al-Māliyah al-Mu`āshirah fi Dhau' al-Fiqh al-Islāmīy* (Beirut: Dār al-Nafā'is, 1999), hlm. 145.

do not have arable land, so they have to wait for the planting break if they want to grow crops; owns the land but is very limited so that the available time is not utilized optimally, and because of the desire to earn additional income.

### **The Practice of Cooperation in the Use of Agricultural Land during the Planting Break Period**

Cooperation in agricultural land use during the planting break period has been commonly practiced by the people of Jorong Mandahiling Nagari Pagaruyung. There is begun with a meeting between landowners and prospective cultivators. The cooperation agreement between the two parties is not written formally but only verbally, provided that the time limit for land use is during the planting break and does not interfere with the planting season for landowners.

Based on data obtained from landowners and cultivators, it can be seen that the people of Jorong Mandahiling Nagari Pagaruyung cooperate in land use only based on verbal approval and trust. Mutual trust is the valuable keyword in the cooperation agreement in the manner of the Jorong Mandahiling Nagari Pagaruyung community, so they do not put into a written contract. Mutual trust and mutual assistance are used to continue cooperation tradition, like its predecessors, according to local customs. Harmony, tolerance, and kinship in social life in Jorong Mandahiling Nagari Pagaruyung have supported the emergence of an attitude of mutual help towards residents who do not have land to cultivate.

From the interview results, it was found that the form of the cooperation agreement for the use of agricultural land during the planting break in Jorong Mandahiling Nagari Pagaruyung contained the following three patterns, namely:

1. The land is from the owner, while costs (such as seeds, fertilizers, medicines) and management are by the cultivators. In this cooperation agreement, the owner hands over the land to the cultivator, while the cultivator bears the costs and management. In terms of the source of the cost of cultivation, some cultivators use their costs for cultivating the land, while some other cultivators obtain land cultivation costs from bank loans. The loan made by the cultivator is for approximately two months, and

after harvesting, the cultivator pays the loan. In this case, the cultivator plays an active role in managing the land until it is harvested.

2. The land and various agricultural land management costs are borne by the landowner, while the cultivators only carry out land management. The agreement of cooperation is provided the agricultural land to the cultivator, while the landowner bears the total costs needed for cultivating the land. Also, the cultivator is obliged to manage the land until harvest.
3. Land and management are carried out by the owner, while all management costs are borne by the collectors (*toke*) who will buy the crops. In this case, costs are borne by the collectors (*toke*) as providers of capital, such as providing seeds, fertilizers, medicines, and other necessities, while the landowner also acts as a cultivator of the land. The cost of cultivating land originating from collectors (*toke*) has its provisions, namely all costs of cultivating the land until harvest is borne by collectors (*toke*), then the harvest will be sold to the collectors (*toke*) at a price following the current market price.

From the aspect of the profit-sharing system, cooperation in the use of agricultural land during the planting break carried out by the community in Jorong Mandahiling Nagari Pagaruyung uses the three patterns, namely:

1. If the land belongs to the owner, while total costs (seeds, fertilizers, medicines) and management are by the cultivator, the profit is entirely for the cultivator without sharing profits on land use benefits. In this case, the cultivator gets a significant advantage because there is no need to share the profits with the landowner. The form of compensation for landowners for the use of their land during the planting period is, when the planting season arrives, the cultivator returns the agricultural land to the landowner in a condition that the land is ready for planting (the land has been plowed), whether the cultivator makes a profit or not. As a matter of gratitude, the cultivators give gifts in crops and goods to landowners, such as watermelons, cucumbers, and tomatoes. Some of the cultivators also gave a small amount of financial assistance to landowners to buy pesticides or wages to grow rice, but not profit sharing.

2. Suppose the landowner provides the land and costs while the cultivator only manages the land so that the profit-sharing after total capital is issued under the agreement. In addition, cultivators still have to provide land that is ready for planting (plowed).
3. If the owner carries out the land and management while costs by the collector (*toke*) with a profit-sharing contract (*mudhārabah*), then the profit-sharing after all capital is issued according to the agreement. Besides that, the cultivator is not the landowner, so it is possible to provide land ready for planting (already plowed) to the landowner.

However, only one general pattern commonly practiced by the community in Jorong Mandahiling Nagari Pagaruyung that is the first pattern from the three patterns. Namely, the land comes from the owner. At the same time, the cultivators carry out the costs and management, the full benefit is for the cultivators, and as a form of compensation for land use, the land is returned to the owner in a condition ready to plant (the land has been plowed).

#### **Utilization of Agricultural Land during the Planting Interval: Sharia Economic Perspective and Legal Formal**

Community cooperation in Jorong Mandahiling is undoubtedly excellent and benefits all parties because landowners can save on land processing costs. Of course, a contract can be accepted from a proper transaction perspective. However, this investment pattern or capital flow and the profit-sharing system are developing, and the implementation pattern is quite diverse, for instance, the existence of management capital originating from collectors (*toke*) and the profit-sharing system.<sup>30</sup> Therefore, all the capital or costs must be returned first by the cultivator to the investor, which creates problems for many parties, especially the cultivators or farmers who cultivate the land.

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<sup>30</sup> *Profit sharing* adalah sistem pembagian laba setelah dikeluarkan semua biaya-biaya sehingga yang dibagikan adalah laba bersih. *Profit sharing* adalah lawan dari *revenue sharing*, yaitu pembagian laba berdasarkan hasil uang yang diterima oleh perusahaan dari penjualan barang atau jasa yang dihasilkan, ataupun uang yang diterima pemerintah dari hasil pajak. Lihat: Collins, *Kamus Lengkap Ekonomi* (Jakarta: Erlangga, 1994), hlm. 583.

In terms of formal rules, the cooperation agreement should be made in writing to avoid disputes. Article 21 of the Compilation of Sharia Economic Law explains 13 principles of contracts, one of which is a *kitabab* (written) book. Law Number 2 of 1960 concerning Revenue Sharing Agreement Article 3 also explains that the land owner and cultivator must agree in writing before the Village Head witnessed by two witnesses, each from the landowner and cultivator. Meanwhile, the land use cooperation agreement in Jorong Mandahiling Nagari Pagaruyung is only carried out verbally based on mutual trust and mutual help.

If the pattern of the first contract is analyzed, it appears that this contract is a service contract (*ijārah*) and not profit-sharing because no profit-sharing ratio is made, even though there is cooperation that will produce an agricultural output. As an *ijārah* contract, the reward (*ujrah*) of this contract is the availability of land suitable for planting, so here we can conclude a pattern that the cultivator rents the land to the landowner by giving compensation in the land ready for planting. This contract can also be called a land lease contract (*kirā' al-ardh*) allowed by many scholars.<sup>31</sup>

According to the Compilation of Sharia Economic Law Article 258, "the cultivator is obliged to provide benefits to the landowner if the management does produce a profit"<sup>32</sup> and it does not occur in this agreement pattern. This contract is not a profit-sharing contract, both in terms of sharia economic law and from a legal-formal point of view. Ibn Taimiyah emphasized that the *muzāra'ah* contract is a profit-sharing cooperation contract. A *muzāra'ah* contract with all production sharing contracts in agriculture is the closest contract to a profit-sharing contract (*mudhārabah*) or in a group of cooperation or joint venture contracts (*musyarakah*) so it is not in accordance with a rental contract (*ijārah*). Therefore, Ibn Taymiyya said that if an activity is based on balance, whether it is an exchange or an association, it is well known that *musaqah*, *muzāra'ah*, and included in the type of union business cooperation, not pure

<sup>31</sup> Atia Adlan, "Al-Muzāra'ah Hukmuhā wa adh-Dhawābith al-Munazhzhimah Lahā wa Atsāruha al-Iqtishādiyyah", *Siirt University Journal Of Divinity Faculty*, Vol. 5, No. 2, 2018, hlm. 206

<sup>32</sup> Perpustakaan Mahkamah Agung RI, *Kompilasi Hukum Ekonomi Syariah*, Buku II, Pasal 258, BAB IX tentang Muzara'ah dan Musaqah, hlm. 70, tersedia: <https://perpustakaan.mahkamahagung.go.id/assets/resource/ebook/02.pdf>.

exchange contracts. It means *ijārah* contract is an exchange contract, namely the exchange of services.<sup>33</sup>

In this first contract pattern, gifts or souvenirs in the form of harvests are given by cultivators to landowners, such as watermelons, cucumbers, or money. It can be considered an act of kindness (*ihsān*) in transactions as a suggestion in Islam. The gift is not included in the act of usury because it is no agreement at the beginning of the cooperation. As the Messenger of Allah said, "The best among you is the one who is best at paying his obligations."<sup>34</sup> The hadith to debts is where if a debtor gives an excess or an addition to the creditor when paying his debt, it is commendable as long as it was not agreed upon initially when owed the debt. Although the hadith is related to debt-receivable matters, the scholars used it as an argument in prohibiting the provision of fixed profits in matters of *mudhārah* and *musyarakah* union contracts because it would be the same as usury.<sup>35</sup> Thus, the first pattern contract is included in the lease contract (*ijārah*) on land, where the reward (*ujrah*) is a service to provide land ready for planting by the cultivator. Sometimes, it also is added with a gift as a tradition not required or not agreed upon in the beginning of cooperation.

The land and costs are from the landowner in the second contract pattern, while the management is by the cultivator. Then both parties share the results after all of the owner's capital is returned. In addition, the manager must provide land ready for planting to the landowner as *ujrah* (retribution for land use). From the business cooperation contract, it appears that the pattern of this contract is not the same as the *muzārah* contract where only the cost of the seed comes from the landowner while the other costs are borne by the cultivator, so this contract is closer to the *mudharabah* pattern because 100% of the capital comes from the landowner. However, there is a fixed profit in this cooperation agreement in the form of a fixed *ujrah* for the cultivator, namely land ready for planting. Ad-Dubyan argued that the scholars forbade the provision of fixed

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<sup>33</sup> Taqiyuddin Ahmad ibn Abdussalam ibn Abdullah ibn Taimiyah, *Majmū' Fatāwa Ibnu Taimiyah*, jilid 29..., hlm. 99.

<sup>34</sup> Muslim Al-Naisaburiy, *Shabīh Muslim*, jilid 3, tahkik Muhammad Fuad Abdul Baqi (Beirut: Dar Ihya' at-Turats al-'Arabiyyah, 1991), hlm. 1125.

<sup>35</sup> Ibn Muhammad ad-Dubyan, *Al-Mu'āmalat al-Māliyyah Ashbālah wa Mu'āsharah*, jilid 14 (Riyadh: Maktabah al-Malik Fahd al-Wathaniyyah, 1432 H), hlm. 135.

profits in *mudhārabah* and *musyārahah* union contracts because it would be tantamount to usury.<sup>36</sup> There has been a combination (association) between the profit-sharing ratio and *ujrah* (*al-jam' baina al-nisbah wa al-ujrah*), which is prohibited by most scholars but is allowed in an opinion that is advanced in the Hanbali School as stated in the fatwa islamweb.net number 58979.<sup>37</sup>

From a shari'ah economic point of view, this contract does not fulfill the aspect of justice because, in addition to the obligation to hand over land that is suitable for planting, the farmer is also obliged to return all of the land owner's capital even though the efforts made by the farmer suffer losses. The landowner will be very lucky in this contract, while the manager is in a less favorable condition, especially when the results obtained are the same as the capital spent so that he does not get any results from his hard work. On the other hand, the type of agricultural business differs from the trading business, most commonly in *mudhārabah* contracts. It is because the business in agriculture uses more energy, and naturally, the One who grows the plant is Allah SWT; while in the trade sector, they use expertise in business and capital strength, and even managers (*mudhārib*) usually can also take operational costs from the capital.

From the aspect of the profit-sharing system, the *mudhārabah* contract contained in this second pattern uses a revenue-sharing system in the agricultural production-sharing contract. This pattern will be more detrimental to the cultivator when the business suffers a loss because the farmer must return all the land owner's capital first as *mudhārabah* contract character. From the aspect of sharia economic law, basically, there are no standard rules regarding the obligation to implement a revenue-sharing system in agricultural production sharing contracts. Meanwhile, in terms of state law, Law Number 2 of 1960 concerning Revenue Sharing Agreement Article 1 explains that profit sharing is between the two parties, the owner and the cultivator. The article further explains<sup>38</sup> is the result of agricultural business carried out by the cultivator after deducting costs for seeds, fertilizers, and other costs, including costs for planting and harvesting.

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<sup>36</sup> *Ibid.*

<sup>37</sup> *Hukm al-'Amal Muqābil Rātib Syabriy wa Nisbah min al-Ribh*, tersedia: <https://www.islamweb.net/ar/fatwa/58979/>; Sesuai dengan kutipan fatwa tersebut dapat dilihat juga dalam Ibnu Qudamah, *al-Mughni*, jilid 5 (Kairo: Maktabah al-Qāhirah, 1968), hlm. 9.

It means that the law adheres to the principle of profit-sharing, not revenue sharing. Furthermore, in this second contract pattern, other costs, including costs for planting and harvesting, are not calculated, so that the cultivators are increasingly in a disadvantaged position.

The third contract pattern, where the land and management is by the owner while the fees are from the collector (*toke*), then this contract is classified as a combination of *mudhārabah* and *musyārahah* contracts (*mudhārabah musyārahah*), because the manager also has a contribution in this contract, namely in the form of land, and land is a factor of production. The *mudhārabah* side can be seen from only one party who manages it, and this is according to Nurhayati & Wasilah<sup>38</sup>, who stated that *mudharabah* is a contract between the capital owner and the land manager to carry out business activities, profits are divided based on profit sharing ratio according to the agreement. The unfairness of the transaction is seen in this contract because all capital must be handed over to the token, then the remaining profits can be shared between the two parties, while the cultivator (manager) also contributes capital (shares). *Musyārahah* is not visible in business distribution, although there is already an element of the *musyārahah* contract in terms of capital mix.

Meanwhile, from the legal-formal aspect, based on Law no. 2 of 1960 concerning Production Sharing Agreement Article 1, namely that the profit-sharing is between the two parties, the owner and the cultivator, and that the intended result is the result of agricultural business carried out by the cultivator, after deducting 'costs for seeds, fertilizers and other costs include costs for planting and harvesting' or means the principle of profit-sharing. Then, it is the same as the second pattern contract. In this third contract pattern, other costs are not calculated, including costs for planting and harvesting. Hence, cultivators are increasingly at a disadvantage.

Based on the previous analysis, the first contract pattern is acceptable and follows the justice values in the transaction because the cultivator only should provide land ready for planting. The second and third contract patterns contain the values of injustice (exploitation) for the cultivators because, in addition to the profit-sharing system that does not show justice, the farmers must also

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<sup>38</sup> Sri Nurhayati & Wasilah, *Akuntansi Syariah di Indonesia* (Jakarta: Salemba Empat, 2008), hlm. 112.

provide land that is ready for planting. There are two main contracts in the second and third pattern contracts: profit-sharing contracts (*mudhārabah* and *mudhārabah musytarakah*) and a land rental contract (*ijārah*), the form of providing land ready for planting.

Based on the explanation of the profit-sharing system in Jorong Mandahiling Nagari P<sup>4</sup> aruyung, it can be concluded that one of the three contract patterns is in accordance with sharia and existing legal-formal provisions while two of the three contract patterns are not. In the first contract pattern, the *muzāra'ah* contract does not occur because the profit-sharing system does not exist, so that the landowner does not get profit-sharing at all, except for a fixed profit for the landowner in the form of providing land that is ready for planting, whether the cultivator gets a profit in his business or loss. It is what causes some scholars to disagree with the land lease agreement for agriculture (*kirā' al-ardh*) based on the Prophet's hadith about *kirā' al-ardh*. In fact, it will be the same as usury, as emphasized by Muhammad Akram Khan.<sup>39</sup> Rent compensation (*ujrah*) received by landowners in the contract in the form of returning their land in a condition that is ready for planting (has been plowed) we can accept following the opinion of the scholars who allow it, namely the majority ulama group (*jumbur*)<sup>40</sup> because there are also hadiths which allow it.<sup>41</sup> However, if explored more deeply, they (*jumbur*) also differ widely on what kind of compensation or compensation (*ujrah*) is allowed from land use.<sup>42</sup> According to the author, any form of compensation (*ujrah*) from land rent will not have any effect, because literally, these hadiths (the prohibition of *kirā' al-ardh*)<sup>43</sup> do look

<sup>39</sup> Muhammad Akram Khan, *Ma Huwa al-Khalāl fi al-Iqtishād al-Islāmiy: Tablīl al-Halab ar-Rābinah wa al-Mukhabthathāt al-Mustaqbaliyyah* (Beirut: Markaz Nama' li al-Buhuts wa ad-Dirasat, 2019), hlm. 316.

<sup>40</sup> Abu Umar Dubyan, *Al-Mu'āmalah al-Māliyyah Ashālatan wa Mu'āsharatan*, jilid 9 (Riyadh: Maktabah al-Malik Fahd al-Wathaniyyah, 1432 H), hlm. 313.

<sup>41</sup> Abu Abdirrahman Al-Tamimiy, *Taudbīb al-Abkām min Bulūgh al-Maram*, jilid 5 (Mekah: Maktabah al-Asadi, 2003), hlm. 42.

<sup>42</sup> Wahbah Al-Zuhailiy, *Al-Fiqh al-Islāmiy wa Adillatuh*, jilid 7..., hlm. 5028.

<sup>2</sup> Diantara hadits yang melarang *kirā' al-ardh* adalah hadits riwayat Abu Daud: Dari Sa'id bin Musayyib dan Sa'ad bin Abi Waqqash, dia berkata: "Kami menyewakan tanah dengan tanaman yang keluar darinya (maksudnya harga sewa adalah hasil dari tanah tertentu dari tanah yang disewakan) dan dengan bagian yang dialiri air (maksudnya harga sewa adalah hasil dari tanah yang dialiri air). Maka Rasulullah SAW melarang kami untuk melakukan hal itu dan beliau memerintahkan

contradictory as is the case with the law of the *muzāra'ah* contract itself, nevertheless, according to the conditions or space surrounding the emergence of the hadith, as said by Imam Ahmad.<sup>44</sup>

In the end, every Muslim is allowed to make rules in *mu'amalah* relations (the principle of freedom of contract in Islam). However, it also must pay attention to which rules are lawful and which rules are unlawful, as the Prophet said: "Muslims must obey the terms of agreements they make unless the conditions or agreements make lawful what is unlawful or forbid what is lawful.", and in the narration of Bukhariy it is stated: "Muslims must comply with the agreement or conditions they made."<sup>45</sup>

### Conclusions

Based on the sharia economic law and legal-formal approaches, the practice of cooperation in agricultural land use during the planting break in Jorong Mandahiling Nagari Pagaruyung does not entirely follow existing laws' provisions, especially from the principle of fairness in transactions (there is an element of exploitation). From these three patterns of land use cooperation, three types of contracts apply from the point of view of sharia economic law, namely: 1) lease/rent contract (*ijārah*) on land or *kirā' al-ardh* where there is a "fixed profit" for the landowner in the form of availability of land or the land that is ready for planting, 2) with a profit-sharing system (*mudhārabah*) coupled with an *ijārah* contract, and 3) *mudhārabah musytarakah* with a profit-sharing system coupled with an *ijārah* contract that does not fulfill the aspect of justice.

From the legal-formal aspect, two things are not appropriate, namely 1) the three contracts should be made in writing to avoid disputes, 2) the second and third contract patterns do not meet the rules for sharing business results where costs include costs for planting and harvesting. The harvest issued by the cultivator is not

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kepada kami untuk menyewakananya dengan emas atau perak" (HR Abu Dawud). Lihat: Abu Dawud, *Sunan Abū Dāwūd*, jilid. 5 (Beirut: Dar ar-Risalah, 2009), hlm. 272.

<sup>44</sup> Abdul 'Azim Al-Mundziriy, *Mukhtashar Shabīh Muslim ...*, hlm. 458.

<sup>45</sup> Abu Abdillah Muhammad ibn Ismail Al-Bukhariy, *Shabīh al-Bukhāriy* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1998), hlm. 60; Lihat juga Muhammad Al-Shan'ani, *Subul al-Salām* (Kairo: Maktabah Zahran, t.th.), hlm. 59.

taken into account by the second party (landowner or *toke*), more than that, the cultivator must provide land suitable for planting to the landowner in the second contract pattern. Thus, although the pattern of the second and third contracts is based on mutual trust and mutual assistance, the format and substance of the contract predominantly do not reflect the nature of fairness in transactions because the position of the cultivator is in a position that is less favorable/disadvantaged.

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