

The Principle of Freedom of Contract in Agricultural Product Sharing based on Islamic Law

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Abstract

Islamic financial scheme in practice is still causing problems in the wider community due to differences in perceptions that exist in the community. The principle of freedom of contract in Law of the Republic of Indonesia Number 2 of 1960 concerning Production Sharing Agreements and Islamic law, especially related to agricultural product sharing and Article 1338 paragraph (1) of the Indonesian Civil law which stipulates that a legally made Agreement will apply like a law for the maker (Pacta Sunt Servanda principle), the word "all" means that every legal subject can make an agreement whose contents are about anything, legal subjects have the freedom to determine the form of the agreement. As only in the farming community in Bone Bolango Regency, especially in the district of Bone when implementing the revenue sharing system did not get a fair share, this was due to the fact that at the time of the contract, farmers were in a weak position due to the need for money for children's education and other emergency needs, especially during the Covid-19 pandemic. The owner of the land has the right to obtain part of the crop on the farm managed by the cultivator and receive back the return of the land upon completion of the agreement. However, in fact the tenant default, precisely tenants perform their achievements but not as what was promised before, therefore the tenant default, IE tenants who provide part of the crop but not in accordance balance must be responsible.

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1. Introduction

Agricultural Law was not originally rooted in civil law and was more related to the regulation of Public Law, but contemporary Agricultural Law has its roots partly in private law and partly in public law. Thus, both the relationship between independent subjects is regulated and the relationship between public subjects and subordinated subjects. The essence of Agricultural Law deals with agricultural activities and is regulated in private (civil) law; while public law establishes the objectives and conditions for the implementation of agricultural activities.¹

Similarly, liability for dangerous items can be established on civil law alone. Farmers and company owners are able to participate in agriculture and build civil connections thanks to the civil law standards that help promote economic growth and make business more liberal. Stakeholders are individuals or groups who have an interest in the agricultural and food markets and who interact with these markets.²

An agreement, whether oral or written, creates a legally enforceable relationship between the parties to the agreement. All parties to the agreement will be bound by its terms as though they were subject to a legal or similar legal code. That's why signatories to an agreement must follow through with its implementation if they expect to be held to it.³

Additionally expanding, the transaction is typically outlined in a written contract. It's safe to say that wherever there's a business, there's bound to be contracts of some sort.⁴ Fundamental to the enforcement of *pacta sunt servanda* is the obligation of the parties to carry out the terms of the approved agreement. Hugo de Grotius, a Dutch jurist, initially articulated this notion, and his work served as an inspiration for the application of this principle in BW. All valid contracts are binding upon the parties to them, in accordance with the idea of *pacta sunt servanda*. The parties' obligations to

¹ Mikołajczyk, J. (2016). Integration of Agricultural Production in Polish Constitutional System. *Studia Iuridica*, 66, 237–50.

² Lichorowicz, A. (2009). Legal Regulation of the Turnover of Agricultural Land – Assessment of the Present State, de lege ferenda Postulates. *Przegląd Legislacyjny*, 1(2), 11–22.

³ Sardjono, A. (2008). Prinsip-Prinsip Hukum Kontrak Dalam Cross Border Transaction: Antara Norma Dan Fakta. *Jurnal Hukum Bisnis*, 27(4).

⁴ Fuady, M. (2008). *Hukum Bisnis Dalam Teori dan Praktek Buku Ketiga* (Vol. 3). Citra Aditya Bakti, 3.

abide by and carry out the terms of the agreement and to comply with all applicable laws are implicit in this article.⁵

The source of freedom of contract is the freedom of the individual so that the starting point is the interests of the individual. Thus, it is understood that the freedom of the individual gives him the freedom to contract. The enactment of the principle of consensualism according to Indonesian treaty law establishes the principle of freedom of contract. Without the consent of one of the parties to the agreement, the concluded agreement may be canceled.⁶ Considering how crucial it is for a contract to originate from a relationship based on mutual respect and free will, it stands to reason that no contract should ever be made through the use of coercion or the taking advantage of one person by another.⁷

In Indonesia, the Revenue Sharing Agreement law was passed and legislated on January 7, 1960, published in the State Gazette of 1960 Number 2, with explanatory memory in the supplement to the State Gazette. With the existence of Law of the Republic of Indonesia Number 2 of 1960 concerning Production Sharing Agreements (Law No. 2 of 1960), the implementation of the production sharing agreement must be carried out on a fair distribution, the rights and obligations of both parties and the guarantee of their legal position. This not only affects the increase in production but also affects the fulfillment of people's needs for food and clothing.⁸

Article 1 point c of Law No. 2 of 1960 defines a Production Sharing Agreement (farmland) as "an agreement with any name entered into between the owner on the one hand and a person or legal entity on the other hand, which in this law is called the "tenant"), based on which the tenant is allowed by the owner to conduct agricultural business on the owner's land, with the distribution of the proceeds of such business being determined by the terms of the agreement."

⁵ Sjaiful, M. (2015). Karakteristik Asas Kebebasan Berkontrak dalam Perjanjian Berbasis Syariah. *Perspektif Hukum*, 15(1), 68–84. <https://doi.org/10.30649/ph.v15i1.28>

⁶ Anand, G. (2011). Prinsip Kebebasan Berkontrak dalam Penyusunan Kontrak. *Yuridika*, 26(2), 91–101. <https://doi.org/10.20473/ydk.v26i2.265>

⁷ Hernoko, A. Y. (2019). *Hukum Perjanjian*. Prenada Media, 177.

⁸ Alif, M. (1960). Perjanjian Bagi Hasil Tanah Pertanian Menurut Undang-Undang Nomor 2 Tahun Di Kecamatan Soyo Jaya Kabupaten Morowali (Studi Kasus di Desa Bau). *Jurnal Ilmu Hukum Legal Opinion, Edisi*, 2.

With an Islamic legal lens, the arrangement is known as *Mozara'ah*, and it stipulates that the landowner will allow the farmer (*Amel*) to cultivate the land in exchange for a certain percentage of the profits. To be more specific, it is a legal agreement in which one party leases land to another for a set amount of time so that both can cultivate it and share in the profits.⁹

Prohibition of payment or receipt and a fixed rate of return were the original foundations of Islamic financial plans. There are still issues in the community as a whole as a result of these perception gaps. This is evident in the fact that Law No. 2 of 1960 on agricultural product sharing and Islamic law, particularly in regards to agricultural product sharing, have different perspectives on arrangements based on the concept of freedom of contract. In the Bone Bolango subdistrict of the regency, for instance, many farming communities did not receive a fair distribution of production sharing when it was first offered. This was because, at the time of the distribution contract, farmers were in a precarious financial position due to the rising cost of sending children to school and meeting other urgent needs, particularly in the wake of the Covid-19 pandemic.

2. Problem Statement

The research aims to answer questions about the legal ramifications of violating the concept of freedom of contract in agricultural product sharing from the viewpoints of Islamic law and Law No. 2 of 1960.

3. Methods

Based on the specific topics and/or themes that serve as the basis for the study's topic, this investigation is classified as either descriptive or prescriptive normative legal research. A philosophical and analytic methodology was employed, meaning that the study emphasized the use of reasoned perspectives, critical, and philosophical analysis, and culminated in a conclusion that sought to generate new results as a response to the primary research question.¹⁰ We will use a descriptive

⁹ Hakimi, M., & Ajeerah, A. (2013). Farmers' Practices in Developing Agricultural Land in Malaysia: Is there an Islamic Microfinance Solution? *Tazkia Islamic Finance and Business Review*, 8(2), Article 2. <https://doi.org/10.30993/tifbr.v8i2.67>

¹⁰ Ishaq. (2017). *Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, serta Disertasi*. Alfabeta, 45.

analytical approach, detailing relevant legal theory and best practices in law enforcement, to examine the issue at hand.¹¹

4. Discussion

4.1. Perspective of Islamic Law and Law of the Republic of Indonesia Number 2 of 1960 concerning Production Sharing Agreements

Islam places limits on how one can think about land ownership and human interactions with it, which is reflected in its agrarian law, which governs the relationships between farm laborers, sharecroppers, and farmers and demonstrates how one can own land and employ farmers to maximize agricultural output.¹²

Muhammad ﷺ recommended Imam Ali ('a). He said:¹³

O Ali, the peasants must not be oppressed before you, the established land tax must not be increased, and the Muslims (wage earners) must not be exploited. Imam al-Sadiq ('a) reported that Imam Ali ('a) wrote to his Governor: "do not exploit the Muslims (the wage earners) and whoever asks you for anything other than his share, of course violates, then do not give it to him.

It is narrated that Imam Ja'far bin Muhammad at-Sadiq ('a) said: "Indeed ﷻ the Great and Mighty chose the planting and planting of his prophets so that they would not hate a drop of rain in front of the sky.". "Great alchemy (treasure) (Kimya') is farming.". "The Sower is the treasury of men, they plant (things) that are good issued by ﷻ, The Great and the Almighty. And on the day of resurrection, they will be the best of all people in position and the closest or all of them in their place; they will be called the blessed ones."¹⁴

This excellent collection of Islamic texts shows us the Islamic opinion about the land, agriculture, cultivation, Islam's love for Agriculture, its care, its encouragement to cultivate the land and make use of its agricultural wealth, because agriculture is the source of foodstuffs, and it is the basis of life, so it is the treasury of life. There are several kinds of terms in agricultural cooperation, including *musaqah*, *muzaraah* and *mukhobaroh*.

¹¹ Marzuki, P. M. (2014). *Penelitian Hukum*. Kencana, 22.

¹² Mukhamedova, N., & Pomfret, R. (2019). Why does sharecropping survive? Agrarian institutions and contract choice in Kazakhstan and Uzbekistan. *EconStor Open Access Articles and Book Chapters*, 576–97.

¹³ Kulīnī, M. I.-Y. al-. (n.d.). *Al-Kāfī: Al-Furū' min al-Kāfī* (Vol. 5). Dār al-Kutub al-Islāmīya, 284.

¹⁴ *Ibid.*, 261.

Musaqah According to origins, it's a way to water plants. Similarly, in Islamic language, *musaqah* refers to a contract whereby landowners hand over trees to farmers in exchange for a share of the profits. According to Shafi'i, *Al-musaqah* entails entrusting the care of one's tamar and grape trees to another party in exchange for a share of the harvest. As described by Alis Maulana in his book "Complete Worship Guide," *musaqah* is an enterprise in which a garden's proprietor contracts out the care of his garden to a group of laborers, who then process the harvest and divide the proceeds in accordance with a predetermined agreement.

The basis of *Musaqah* law is established based on the Sunnah. The scholars of jurisprudence agreed to the *musaqah* because it was necessary, except Abu Hanifa. The majority of scholars argue regarding its completion with the following postulates:

- 1) According to a Muslim tradition attributed to Ibn Umar, the Prophet (peace be upon him) hired the residents of Khaibar and guaranteed them a portion of the harvest in exchange for their labor.¹⁵
- 2) Abu Ja'far Muhammad ibn Ali Ibn Husayn ibn Ali ibn Abu Talib r.a. that the Prophet has made the people of Khaibar as cultivators and custodians on the basis of profit sharing. This Hali was continued by Abu Bakr, Umar, Ali, and their families to this day with ratio 3/4 and 1/4.¹⁶

Principles and Requirements The pillars and criteria of *musaqah* are as follows, as declared by a majority of scholars:

- 1) Two reasonable people are required to be puberty and common sense.¹⁷
- 2) the object of *musaqah* must be clear about the type of plant and its condition. Hanafiyah scholars stated that the plants used as the object of the contract are plants that can live one year or more. Meanwhile, Malikiyah stated that the object of the contract is old plants and young plants (crops).
- 3) for the fruit of the tree that is kept, it is required that the result is for two persons of understanding.

¹⁵ Sabiq, S. (2009). *Fikih Sunnah 5*. Cakrawala Publishing, 395.

¹⁶ Antonio, M. S. (2001). *Bank Syariah Dari Teori ke Praktik*. Gema Insani, 91.

¹⁷ Zuhaili, W. (2010). *Fiqih Imam Syafi'i*. Almahira, 291.

- 4) The Division of crop yields should be clear when contracting, such as one-second, one-third and so on.¹⁸

There are two types of time constraints in *musaqah*: the first is the time necessary for the contract to be permissible; the second is the time which is a requirement of the legality of the contract and is limited in time. Nasrun Haroen, citing the companions' agreement that *musaqah* was permissible before the fruit was appropriate, claims that the duration needed for the contract to be approved is three months. He also cited Hanafiyah school scholars on the subject of *musaqah's* conclusion "The expiration of the time agreed upon by both parties. The death of one of the berakad canceling, either by speech or obviously by the existence of a cause."¹⁹

In terms of the distribution of agricultural profits, *Muzaraah* and *Mukhabarah* are essentially interchangeable terms. The act of sowing seeds distinguishes *Muzaraah* from *Mukhabarah*. In the case of rice, *Mukhabarah* refers to collaboration between the owner of the field and the manager, whereas *Muzaraah* refers to cooperation with the seed.

In his work titled Islamic Bank Financing Management, Binti Nur Aisyah lays forth the pillars and terminology *muzaraah* that are central to the Islamic banking system "Landowner's farmers/cultivators object of al-Muzaraah Ijab and Qobul, both verbally or can also be a direct action of the tenant."²⁰

In context of this, the legal repercussions of a contract that satisfies the pillars and requirements set forth in *akad muzaraah* include:

- 1) Farmers are responsible for seed costs and maintenance of the farm.
- 2) Agricultural Costs such as fertilizer, aquatic costs, as well as crop cleaning costs are borne by farmers and landowners according to the presentation of their respective parts.
- 3) The crop is divided according to the collective agreement.
- 4) Irrigation is carried out in accordance with the mutual agreement and if and if

¹⁸ Rasjid, S. (2006). *Fiqh Islam*. Sinar Baru Algesindo, 301.

¹⁹ Haroen, N. (2007). *Fiqh Muamalah*. Gaya Media Pratama, 289.

²⁰ Aisyah, B. N. (2015). *Manajemen Pembiayaan Bank Syariah*. Kalimedia, 201.

there is no agreement, the customs of each place apply.

- 5) If one of them dies before the harvest, the contract remains valid until the harvest and the deceased is represented by his heirs. Further, the contract may be considered by the heirs, whether it will be passed on or not.

Community agricultural output can be increased with the use of *Muzaraah* and *Mukhabarah*. There are communal benefits for both processors and landowners with this partnership.

4.2. Law of the Republic of Indonesia Number 2 of 1960 concerning Production Sharing Agreements

Agriculture has a significant role in the political and economic structure of any nation. It's linked to things like a country's freedom, security, stability, and ability to safeguard its natural environment, as well as its economic prosperity. Law No. 2 of 1960 is the civil law that governs revenue sharing, according to Abdul Ghofur Anshori's *The Principles of Islamic contract law in Indonesia*. The Revenue Sharing Act provides in Article 3 that:

The production sharing agreement must be made in writing before the village head authorized by the Sub-District Head, and according to Article 4 of the production sharing agreement for rice fields for at least three years and dry land for at least five years, then Article 8 states that it is prohibited to pay money or give any objects to the land.

According to the aforementioned Article 3 of the Law No. 2 of 1960, it is clear that in order for an agreement between two or more people to be considered genuine, certain procedures must be followed, and certain conditions must be met. under these circumstances:

- 1) The agreement must be drawn up by the parties themselves.
- 2) It must be written in front of the village head.
- 3) Must be witnessed by 2 people, each from both parties.
- 4) Must be witnessed by the local Sub-District.

If the four elements listed above have been met, then the income sharing agreement is legitimate. Consequently, it may be deduced that the failure to carry out the

implementation of these conditions may lead the revenue sharing agreement to be invalid or unrecognized.

The author believes that the provisions of the law based on full justice for all parties are more likely to be effective if these four conditions are stipulated. It makes sense to base the implementation of the Production Sharing Agreement and the assurance of legal certainty for the farming communities of all socioeconomic levels on Article 3 of Law No. 2 of 1960.

To secure the formation of a life based on the equal enjoyment of agricultural land products among all farming communities, it is particularly important to have measures that highlight the components of justice and legal certainty as defined in Article 3, as indicated above. After all, that's how you make your life better for everyone.

That every profit-sharing agreement must be put in writing and more rests on a foundation of other ideas, which is presumably taken into account, is evidence of the existence of anything actual. As a result, it is more credible as a legal act because it is grounded in reality. It's a sign of signs, and that's a sign of signs, and that's a sign of signs, and that's a sign of signs, and that's a sign of signs, and that's a sign of signs, and that's a sign of signs. This is crucial because faith in a legal act can only be established if there is something tangible to use as proof that the act actually occurred.²¹

By increasing people's confidence through the use of a written format, disagreements over misunderstandings are less likely to arise. Because the rights and obligations of the parties to the revenue sharing agreement have been affirmed in the form and are apparent to both parties, having the agreement in writing is preferable. It would also be an endorsement of the parties' understanding of the terms of any other agreements that are subsequently formalized.

4.3. Legal Implications of Violations of The Principle of Freedom of Contract in Agricultural Products

Freedom of contract, a universal principle in favor of free competition, became widely accepted in the 19th century under the influence of the doctrine of laissez-faire

²¹ Hakimi, M., & Ajeerah, A. (2013). *Op.cit.*, 44.

economic thought. Consent is an act between two or more parties that binds them to another party, as described in Article 1313 of the Civil Code (hence referred to as Indonesian Civil Law). According to Article 1320 of the Criminal Code, the approval is null and void unless it satisfies the following conditions:

- 1) Agreed those who tied himself;
- 2) Ability to make an engagement;
- 3) A certain thing;
- 4) A lawful cause.

The principle of freedom of contract is another broad principle in Civil Law that governs the establishment of agreements, especially agreements based on terms. *Pacta Sunt Servanda* is embodied in Article 1338 paragraph (1) Indonesian Civil Law, which states that the law of the maker shall be the law of the agreement (principle *pacta sunt servanda*). The word "all" means that any subject of law may enter into an agreement regarding any subject matter, and that the subject of law may choose the form of the agreement.²² Providing it is done so in good faith, which the Hoge Raad defines as acting reasonably and ethically.²³

In the revenue sharing agreement, the form of land product distribution is regulated in Article 7 Paragraph (1 and 2) of Law No. 2 of 1960 on the agreement for the production of agricultural land, namely;

The size of the share of land-products that are the rights of tenants and owners for each Level II Swatantara region is determined by the Regent/head of the relevant Level II Swatantara region, taking into account the type of crop, soil conditions, population density, zakat set aside before being divided and economic factors as well as local customary provisions

The decree of the Minister of Home Affairs and the Minister of Agriculture No. 211/1980 and No. 714/Kpts/Um/9 / 1980 has held has explained the form of the balance for land that is the right of the owner and the tenant, and it is clear that the interests of both parties are fairly represented in the distribution of agricultural land. The freedom of contract principle guarantees that individuals have the legal right to

²² Budhayati, C. T. (2009). Asas Kebebasan Berkontrak Dalam Hukum Perjanjian Indonesia. *Widya Sari*, 10(3), 232–47.

²³ Khairandy, R. (2017). *Iktikad Baik Dalam Kontrak Di Berbagai Sistem Hukum* Ridwan Khairand. UII Press, 9.

enter into binding contracts with one another, regardless of who they choose to deal with.

Things should be written in an agricultural product sharing agreement that are indeed an agreement of the parties, but this minimum price restriction can arise due to law that causes restrictions that cause freedom for the parties to determine the transaction price, so it can cause them to choose not to include the actual transaction price, only to not violate the rules, and if this happens, it will be to their own detriment because when they do include the actual transaction price, they violate the rules.

As was said before, the position of farmers in regards to the distribution of agricultural products is a significant obstacle for farmers. Reasons for this include social crisis and economic pressures (paying for school children, treatment, or other urgent needs). So, people agree on a wide range of issues that have little to do with the principle of contract freedom.

This is due to the fact that unrestricted freedom of contract is the natural outcome of contract freedom. Yet there were major changes and improvements to the underlying principles. This change is attributable to three factors: first, the proliferation of standard forms of contracts; second, the resulting watering down of the significance of individual agency and mutual consent; and third, the introduction of the consumer as a full participant in contractual exchanges.²⁴

Some of a person's rights in a contract may be waived if the contract takes the form of a conventional contract, which is a consequence of the first factor.

Because Article 1338 of the Civil Code states that the principle of *pacta sunt servanda* is the principle by which judges or third parties are obliged to respect the contents of an agreement, if these things happen, the agreement will be interpreted as having been made in bad faith by the parties, including any foreigners who may have been involved:

²⁴ Weber, D. P. (2013). Restricting the Freedom of Contract: A Fundamental Prohibition. *Yale Human Rights and Development Law Journal*, 16, 1-57.

- 1) The payment of any money or encumbrance to the owner for the purpose of obtaining the right to cultivate the owner's land under a sharecropping agreement is prohibited. Violation of the prohibition in Paragraph (1) of this article results in that money has been paid or the price of the given object is deducted on the part of the owner from the proceeds of the land section included in Article 7.
- 2) Payment by anyone including by the owner and the tenant, to the tenant or the owner in any form that has the elements of the agreement is prohibited
- 3) Without prejudice to the criminal provisions in Article 15, then what is paid in paragraph (3) mentioned above cannot be prosecuted again in any form.
- 4) Violation of this article 8 paragraph (1) then results in the money paid or the price of the given object being deducted on the part of the owner of the land product referred to in Article 7. 5. Article 8 paragraph (4) without prejudice to the criminal provisions in Article 15, then what is paid in paragraph (3) mentioned above cannot be prosecuted again in any form

Following the fulfillment of the agreement, the landowner should be entitled to a return of the land as well as a share of the yam harvest. In addition to providing a portion of the harvest in accordance with the balance and returning the land to the owner at the end of the lease term, the tenant of the land is also obligated to properly pursue agricultural activities and provide capital costs, such as drugs, fertilizers, seeds, in order to ensure the landowner's enjoyment of his or her rights.

However, the defaulting tenant, specifically the tenant who fulfills his achievements but not as what was previously promised, must be held accountable. This includes the tenant who contributes some of the crop but not the rest. The harmed property owner has several options when dealing with a defaulting tenant: he can bring criminal charges against the tenant, he can ask the tenant to implement the agreement even if it's too late, or he can simply demand compensation for his losses as a result of the tenant's failure to do so.

5. Conclusion

An agreement, whether oral or written, creates a legally enforceable relationship between the parties to the agreement. Additionally on the basis of contractual

autonomy. It makes sense to base the implementation of the Production Sharing Agreement and the assurance of legal certainty for the farming communities of all socioeconomic levels on Article 3 of Law No.2 of 1960. Agriculture is the source of foodstuffs and the foundation of life, so it is the treasury of life; this excellent collection of Islamic texts shows us the Islamic perspective on the land, agriculture, cultivation, Islam's love for Agriculture, its care, and its encouragement to cultivate the land and make use of its agricultural wealth. There are various different types of terminology used in agricultural cooperation. These include *musaqah*, *muzaraah*, and *mukhobaroh*.

Freedom of contract, a universal principle in favor of free competition, became widely accepted in the 19th century under the influence of the doctrine of laissez-faire economic thought. When there are no legal constraints on contracts, freedom of contract flourishes. Yet there were major changes and improvements to the underlying principles. Three factors have contributed to this change: first, the expansion of the contract's standard form; second, the dilution of the meaning of the parties' freedom of choice and will as a result of the expansion; and third, the introduction of the consumer as a contracting party. A person's rights in a contract agreement are limited by the first element since the standard form of contract is a prerequisite of entering into a contract. The position of farmers in regards to the distribution of agricultural goods is a significant issue for farmers. Reasons for this include social crisis and economic pressures (paying for school children, treatment, or other urgent needs). So, people agree on a wide range of issues that have little to do with the principle of contract freedom.

To ensure that the rights and obligations of the parties to an agreement, particularly in the field of agriculture, are not jeopardized by the application of the system for the results of anything, it is necessary to formulate a legal system that is adapted to the development and needs of law and society today.

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