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## **PROFIT SHARING INSTITUTIONS FROM AN ISLAMIC LEGAL PERSPECTIVE AND CUSTOMARY LAW IN INDONESIA**

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### **ABSTRACT**

Humans are creatures who like to socialize, they like to socialize with each other, and are called social creatures. In life, humans as social creatures are citizens of a living unit, acting as members of indigenous communities and citizens. Each individual must be willing to sacrifice personal rights for the sake of the common good, including in implementing profit sharing institutions. The problem is, how are profit sharing institutions implemented in Indonesia, viewed from Islamic Law and Customary Law? The aim of the research is to get an overview of the implementation of profit sharing institutions in Indonesia and viewed from Islamic Law and culture. This research uses a normative juridical approach, namely by researching and testing library materials or what is called secondary data with the aim of studying and analyzing the Profit Sharing institutions. The analytical method is research carried out based on statutory regulations which apply as positive legal rules and is presented without using formulas or numbers. The results of the research show that the implementation of profit sharing institutions in Indonesia has various and universal methods, one of which is in activities Syariah banking. Meanwhile, profit sharing institutions are reviewed from Islamic law, and indigenous communities are used in cultivating land, as a form of profit sharing agreement. The advice given is that the implementation of profit sharing institutions in Indonesia is still not yet balanced, it is necessary to apply the principle of justice. This is imbalanced, unbalanced and not in accordance with the size (proportional).

**Keywords:** profit sharing; islamic law; indigenous peoples

### **INTRODUCTION**

One of the legal institutions that can be used as a model to be studied and developed as a universal traditional concept and institution to support globalization in the economic sector, is an agreement using "profit sharing".<sup>1</sup> Profit sharing is a traditional concept and institution that has been used by Indonesian society, since before the arrival of the Dutch. In fact, in various regions of Indonesia different terms and revenue sharing techniques are

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<sup>1</sup> Ety Mulyati et.al., (1999), *Aspek-aspek Hukum Pemberdayaan Pranata Bagi Hasil sebagai Model Pengembangan Pranata Universal di Bidang Bisnis*, Bandung, Lembaga Penelitian-Unpad, p. 4 and p. 6. Sunaryati Hartono, (1999), *Hukum Ekonomi Pembangunan Indonesia*, BPHN, Jakarta, Cetakan Ketiga, CV. Trimitra Mandiri, p. 21 and Sumantoro, (1988), *Hukum Ekonomi*, Jakarta, UI Press, p. 17.

used. The universal nature of the profit sharing pattern in both the continents of Asia, Africa, Europe and America, also uses the concept and institutions of profit sharing, as well as variations to suit sociological conditions.

Profit Sharing institutions are not the only legal institutions that can be developed as universal institutions in realizing legal harmonization, because there are still many legal institutions that can be explored and developed for the same purpose, such as partnership, kinship, solidarity, deliberation, mutual cooperation. cooperation and so on. The terms used are not rigid, because different terms are used in various regions and fields.<sup>2</sup> Even though the terms are different, you can quickly understand the legal construction. The flexibility of the name is very important, in other legal institutions, there is even debate about the term and its literal definition.

In religious law, especially Islamic law, the use of human and natural resources to support business and the welfare of the people, both long and short term, is by helping each other, capital owners and workers. This financial strategy includes the elimination of usury, speculation (gharar) and gambling (maisir) in all transactions, increasing wealth and equal distribution of income as well as achieving a prosperous society under the protection of Allah SWT. The principles of business transactions include the principle of profit sharing, the principle of buying and selling, the principle of trust, the principle of rent and the principle of benevolence. The principle of profit sharing (Profit Sharing) includes musyarakah, mudharabah, muzara'ah and musaqah. Musaqah is the principle of profit sharing in Islamic law, different from the principle of profit sharing in customary law.

The various customary laws that apply in Indonesia certainly have various principles of profit sharing in accordance with the customary laws that apply in their respective regions. Agreements on the principle of profit sharing according to customary law are regulated according to local customary law. In general, according to customary law in Indonesia, the balance of distribution of profits is determined by the agreement of both parties, namely the landowner and the land cultivator, which is generally not profitable for the land cultivator. Production sharing agreements between the landowner and the cultivator are usually made verbally, relying on the principle of good faith. good faith as the basis of trust between owner and cultivator. However, this production sharing agreement is often carried out without clear terms and conditions between the landowner and the cultivator. This creates ambiguity between the rights and obligations between the landowner and the cultivator. This can cause losses not only for one party, but for both parties.

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<sup>2</sup> Etty Mulyati at.al. Loccit. Jurnal Ilmu-ilmu Sosial dan Humaniora Padjadjaran, *Sosiohumaniora*, Vol.1 No. 1, Juni 1999, p. 18.

Humans are creatures who like to socialize, they like to socialize with each other, and are called social creatures. In life, humans as social creatures are citizens of a living unit, acting as members of indigenous communities and citizens. Each individual must be willing to sacrifice personal rights for the sake of the common good. In the framework of this society, noble deeds are developed which reflect the attitude and atmosphere of family and mutual cooperation which is taught from a young age to cultivate this kind of character, including implementing the institution of profit sharing. This profit sharing is a customary legal institution which was initially more social economics which aims to help fellow citizens and cannot always be considered a business venture like other countries. The positive element of profit sharing is that the balance is based on justice and ensuring a proper legal position for the cultivator by emphasizing the rights and obligations of both the cultivator/manager and the owner. The problem is, how is the implementation of profit sharing institutions in sharia economics from the perspective of Islamic Law and Customary Law in Indonesia?

This research aims to obtain an overview of the application of profit-sharing institutions in sharia economics from the perspective of Islamic Law and Customary Law in Indonesia.

## RESEARCH METHODS

This research uses a normative juridical approach, namely by researching and testing library materials or what is called secondary data with the aim of studying and analyzing the Profit Sharing institutions. Apart from that, normative juridical, is legal research carried out by researching and reviewing library materials or what are called secondary materials, which include primary, secondary and tertiary legal materials.<sup>3</sup> In this research, a normative juridical approach method is used, namely legal research carried out by researching and testing library materials called secondary data, aimed at studying and examining the Profit Sharing institutions applied to indigenous communities in Indonesia according to applicable legislation. <sup>4</sup> This research was also carried out by taking an inventory of positive law, then through a study of legal history to find out general profit sharing regulations, especially their application to indigenous communities in Indonesia.

The research specifications used are analytical descriptive. Furthermore, the data obtained will be analyzed qualitatively juridically. The analytical method is research carried out based on statutory regulations which apply as positive legal rules and is

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<sup>3</sup> Soerjono Soekanto, (2006), *Pengantar Penelitian Hukum*, Jakarta, Penerbit UI-Press, p. 52.

<sup>4</sup> Ronny Hanitijo Soemitro, (1988). *Metode Penelitian Hukum dan Jurimetri*, Jakarta, Ghalia Indonesia. p. 11.  
Bagir Manan, (1996), *Pembangunan Hukum Nasional*, Makalah, FH-Unpad, p. 4.

presented without using formulas or numbers. Descriptive because it aims to provide a complete picture and systematic regarding the implementation of production sharing agreements in terms of Islamic Law and Customary Law. Analytical, namely analyzing the statutory provisions that apply in production sharing agreement activities in indigenous communities. This research describes systematically, factually and accurately, all the facts and problems studied are linked to legal theories and practice.<sup>5</sup>

## DISCUSSION

The Profit Sharing Institution is not the only legal institution that can be developed as a universal institution in realizing legal harmonization, because there are still many legal institutions that can be explored and developed for the same purpose, such as partnership, kinship, solidarity, deliberation, mutual cooperation and others. other. The terms used are not rigid, because in various regions and various fields different terms are used.<sup>6</sup> Even though the terms are different, people quickly understand the legal construction. The flexibility of this name is very important, because in other legal institutions, there is usually a lot of debate about terms and their literal definitions.

The word "institution" in the Big Indonesian Dictionary can be interpreted as an official system of social behavior and customs and norms that regulate that behavior and all its equipment for various human complexes in society.<sup>7</sup> Institutions are a set of norms that regulate all types of community needs.<sup>8</sup> Some examples include: Social Institutions, Political Institutions, Religious Institutions, Economic Institutions, and so on. Institutions are binding and relatively long-term and have certain characteristics, namely symbols, values, game rules, goals, completeness and age.<sup>9</sup> These institutions have positive and negative sides. The positive side is that society is orderly and can develop in a better direction, while the negative side is that individual life is shackled by common rules.<sup>10</sup>

According to the meaning of Law Number 2 of 1960 concerning Production Sharing Agreements (Agricultural Land) stated in Article 1 point c, that:

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<sup>5</sup> Huala Adolf, (2010), *Dasar-Dasar Hukum Kontrak Internasional*, Bandung, PT. Refika Aditama, p. 10.

<sup>6</sup> Etty Mulyati et.al., *Loc. Cit.* Istilah yang dipergunakan: "deelbouw" (Belanda), pacht auf Teilbau" (Jerman), "metaire" atau "bail a la colonage" (Perancis), "masseria,colonia" (Italia), "share tenancy" (Inggris), memperduai (Minangkabau), toyo (Minahasa), tesang (Sulawesi Selatan), maro (1 : 1), mertelu (1 : 2) (Jawa Tengah), nengah (1 : 1), jejuron (1 : 2) (Priangan). Etty Mulyati et.al. *Ibid*, pp. 7-13.

<sup>7</sup> Departemen Pendidikan Nasional, (2016), *Kamus Besar Bahasa Indonesia*, Jakarta, Edisi IV, p. 18.

<sup>8</sup> Deni Kusdiansyah, Pranata Sosial, <http://denikusdiansyah.wordpress.com/2020/07/23/pranata-sosial>.

<sup>9</sup> Wikipedia, Pranata, <http://id.wikipedia.org/wiki/Pranata>, accessed 15 October 2022. Wikipedia, Pranata, <http://id.wikipedia.org/wiki/Pranata>, accessed 15 October 2022.

<sup>10</sup> Deni Kusdiansyah, Pranata Sosial, <http://denikusdiansyah.wordpress.com/2008/07/23/pranata-sosial>, accessed 15 November 2022.

"A production sharing agreement is an agreement with whatever name that is entered into between the owner on one party and a person or legal entity on the other party, which in this law is called a "cultivator", based on the agreement where the cultivator is permitted by the owner to carry out an agricultural business in on the owner's land with the distribution of the proceeds between the two parties".

The term "profit sharing" is not something new in Indonesian society, because it is already known in the customary law system.<sup>11</sup> The term used during the Dutch East Indies was "deelbouw", German "pacht auf Teilbau", French "metaire" or "bail a la colonage", Italian "masseria, colonia", English "share tenancy", meduai (Minangkabau), toyo (Minahasa), tesang (South Sulawesi), maro (1 : 1), mertelu (1 : 2 ) (Central Java), nengah (1 : 1), jejuron (1 : 2) (Priangan). In the Big Indonesian Dictionary (hereinafter written KBBI).<sup>12</sup> "profit sharing" is defined as "the division of agricultural products between land owners and cultivators".<sup>13</sup>

Currently, the "profit sharing" institution is considered the most profitable and practical agreement both in customary law (land), religious law (Islam) and in the economic field, especially in the Sharia Bank Financial Industry system (hereinafter written as IKBS). Apart from that, this profit sharing apparently does not conflict with religious rules and the parties to the agreement agree to use profit sharing in their cooperation. The provisions of Law Number 21 of 2008 concerning Sharia Banking (hereinafter written UUPS) do not provide a definition of "profit sharing", Article 1 figure (25) only states:

"Financing is the provision of funds or bills equivalent to that in the form of; a. profit sharing transactions in the form of mudharabah and musyarakah;...and so on"

Elucidation of Article 19 paragraph (1) Letter (c), states:

"Mudharabah contract" in financing is a business cooperation agreement between the first party (Malik, Shahibul Mal, or Sharia Bank) who provides all the capital and the second party ('amil, mudharib, or customer) who acts as fund manager by sharing business profits. in accordance with the agreement outlined in the

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<sup>11</sup> AMPA Scheltema, "Deelbouw in Nederlandsch-Indie" Desertasi, 1931, p. 2. cited from: research team, *Op. Cit*, p. 4 and p. 6 take a look Sunaryati Hartono, *Hukum Ekonomi Pembangunan Indonesia*, BPHN- CV. Trimitra Mandiri, Cetakan Ketiga, Jakarta, 1999, p. 21 and Sumantoro, "Hukum Ekonomi", UI Press, Jakarta, 1988, p. 17.

<sup>12</sup> Depdikbud, *Op. Cit*, p. 74.

<sup>13</sup> Renny Supiyatni, "Perjanjian Bagi Hasil dalam Pembiayaan Syariah yang Berkeadilan sebagai Salah Satu Upaya Pengembangan Bank Syariah", Lembaga Penelitian, Unpad, Bandung, 2010, *Jurnal Ilmu-ilmu Sosial dan Humaniora Padjadjaran, Sosiohumaniora*, Vol.12 No. 3, Nopember, 2010, p. 257. Renny Supiyatni B., (2018), *Sistim Bagi Hasil dengan Mekanisme Pembagian Untung dan Rugi (Profit and Loss Sharing Mechanisem) Dapat Memberi Keadilan bagi Nasabah & Bank Syariah*, Unpad Press, Bandung, pp. 91 & 93.

Contract, while losses are fully borne by the Sharia Bank unless the second party makes an intentional mistake, is negligent or violates the agreement.

"Musyarakah contract" is a cooperation agreement between two or more parties for a particular business in which each party provides a portion of funds with the stipulation that profits will be shared according to the agreement, while losses will be borne according to their respective portions of funds."

Based on the description above, the definition of profit sharing is "a business cooperation agreement between parties to share profits and losses, each receiving a share of the results of the business according to the balance and time period previously agreed, and set out in the form of a written agreement".

In Islamic Law, cooperation in the business sector that is recommended is cooperation using the principle of profit sharing. Regarding transaction procedures and conditions for the validity of a contract according to Islamic law, it is stated in the Qur'an, namely:<sup>14</sup>

- a. You have to be willing and willing,
- b. fair,
- c. mutually beneficial, and
- d. beneficial

Tafsir from the Qur'an, some of which mean:

"O you who believe, do not devour each other's wealth in a false way, except by means of commerce which is carried out according to the mutual consent of you" (Q.S. 4: 29);

"O you who believe, if you do not trade in cash for a specified time, you should write it down (the aqads) (Q.S. 2: 282);

"O you who believe, fulfill the aqads (Q.S. 5: 1)

Based on the interpretation of these verses of the Qur'an.<sup>15</sup> it is clear that humans are permitted to carry out business as long as it is done voluntarily and all obligations are fulfilled. The commerce in question is various types of commercial transactions and is not limited to buying and selling or trading, including transactions that are not in cash and can have the effect of financing from one party to another party. If the business is not carried out in cash, a written agreement/contract (aqad) must be made, and the parties entering into the aqad have a legal and moral obligation to fulfill the agreement/contract.

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<sup>14</sup>M. Amin Suma, *Ekonomi Syariah Sebagai Alternatif Sistem Ekonomi Konvensional*, *Jurnal Hukum Bisnis* Volume 20, Edisi Agustus-September 2002, p. 18.

<sup>15</sup>Iwan P. Pontjowinoto, "Lembaga keuangan dalam Perspektif Syariah", Makalah, ISEGFE-Unpad, Bandung, 2001, p. 2. Gemala Dewi et.al., (2005), *Bank dan Asuransi Islam di Indonesia*, Jakarta: Badan Penerbit FH-UI. Gemala Dewi et. al., (2006), *Hukum Perikatan Islam di Indonesia*, Cet. Ke 2, Jakarta, Kencana, pp. 30-38.

Furthermore, profit sharing, there are several things that must be understood so that its implementation does not raise doubts for the customer community who will use sharia banking services, namely:<sup>16</sup>

1. Banks that use a profit sharing system are banks that in their operations completely and totally avoid the possibility of usury (interest);
2. To avoid the possibility of usury, there are 4 principles that must be applied:
  - a. Not determining in advance a definite amount of compensation for business results; (QS. Luqman verse 34 which means: ".....and no one can know (with certainty) what he will try tomorrow."
  - b. Not trading/renting goods with payment in the form of the same and similar goods (such as rupiah currency for rupiah currency) by obtaining advantages, both quality and quantity). In the barter economy at the time of the Prophet Muhammad. It is not permitted to borrow one bushel of wheat to be repaid with one and a half bushels of wheat (riba), unless the repayment is with a different commodity, for example, rice.
  - c. Do not ask for any compensation for the principal of the debt, unless the additional amount is given by the debtor on a voluntary basis at maturity and is not previously conditional;
  - d. Capital owners and capital users agree to share the profits that will be obtained after working for a certain period of time. Fuqaha has agreed that profit sharing (mudharabah)<sup>17</sup> is permissible (jaiz). Rasulullah saw. before his apostolic duties he had done mudharabah with Khadijah r.a. Rasulullah Saw. himself exemplifies the concept of profit sharing in business. At that time, he obtained/traded the capital entrusted to him from Siti Khadijah. Then he went to trade in Syria. Trading profits are shared according to agreement.

This is a trading business called Profit Sharing, as stated in the following scheme:<sup>18</sup>

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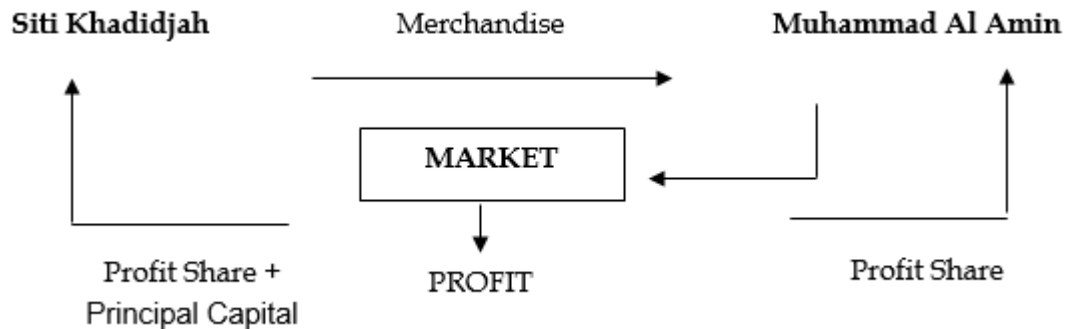
<sup>16</sup> Usman Hidayat, "Sepenggal Konsep Perbankan Bagi Hasil", *Tabloid "Hikmah"* Nomor 6 Edisi Mei 1995, p. 6. Sobhi Mahmassani, Ahmad Sudjono (Penerjemah), (1976) *"Filsafat Hukum dalam Islam"*, Bandung, Al Ma'arif, p. 31.

<sup>17</sup> Dikutip dari, Depag. R.I., (2002) *"Islam untuk Disiplin Ilmu Hukum"*, Jakarta, Direktorat Jenderal Kelembagaan Agama Islam, p. 244. Al Mudharabah, yaitu perjanjian antara pemilik untuk membiayai sepenuhnya suatu proyek dengan pembagian keuntungan berdasarkan persetujuan bersama. Mudharabah berasal dari kata *adhadhardabu fil'ardhi* artinya bepergian untuk urusan dagang. Hukumnya Jaiz (boleh) dengan Ijma Rcsullulloh pernah melakukan mudharabah dengan Siti Khadizah Al Kubro, dengan modal yang berasal dari Khadizah Beliau pergi ke Syam dengan membawa modal tersebut untuk diperdagangkan. Ini terjadi sebelum beliau diangkat menjadi rasul.

<sup>18</sup> Renny Supriyatni B., Renny Supriyatni B., (2010), *Sistim Bagi Hasil dengan Mekanisme Pembagian Untung dan Rugi (Profit and Loss Sharing Mechanisem) Dapat Memberi Keadilan bagi Nasabah & Bank Syariah*, Bandung, Unpad Press. p. 89. Renny Supriyatni B., *Kamus Hukum Perbankan Syariah*, (2018), Jakarta, Mitra Wacana Media. Renny Supriyatni, B., *Op. Cit*, pp. 34-36. dikutip dari Hamzah Ya'qub, *Kode Etik Dagang Menurut Islam (Pola Pembinaan Hidup dalam Berekonomi)*, Dipenogoro, Bandung, 1999, p. 265. *Loc. Cit.* take a look, Gemala Dewi at.al., *Bank adn Asuransi Islam di Indonesia*, Badan Penerbit FH-UI, Jakarta, 2005, p. 17-18.

## Mudharabah Scheme

### Muhammad Al Amin and Siti Khadidjah



3. Profit sharing is the core business of sharia banks, and the spirit of partnership that animates this system is considered ideal in a family economic structure, as mandated by the 1945 Constitution (Article 33). In general, the profit sharing system in sharia banking can be carried out in four main contracts, namely al-mudharabah, al-musyarakah, al-muza'raah and al-musaqah. The principles most widely used are al-mudharabah and al-musyarakah, while al-muzara'ah and al-musaqah are used specifically for plantation financing or agricultural financing by several sharia banks (bankIslam). Meanwhile, the basic concept of Sharia Banking is:<sup>19</sup>
4. You are not allowed to enjoy bank interest, neither the bank nor the customer are allowed to receive bank interest. However, if there are results (profits), then these profits will be shared between the bank and the customer;
5. In accordance with the principles of Islamic Law, every contract/contract/cooperation agreement between the bank and the customer applies Islamic teachings relating to the field of Muamalat.

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Sistem mudharabah sebagai sistem penitipan modal yang dikelola Nabi tatkala beliau dipercaya membawa sebagian barang dagangan Siti Khadidjah r.a. dari Mekkah ke negeri Syam. Boleh dikatakan sebagai modal usaha, karena oleh Nabi dijual dan hasilnya dibelikan barang dagangan lainnya untuk dijual lagi di pasar Bushra. Nabi melakukan perjalanan (dharb) untuk mencari sebagian karunia Allah. Harta semula dikembalikan kepada yang empunya, sedang selisihnya antara yang empunya harta (rabbul maal) dengan yang mengelola (mudharib) sesuai dengan kesepakatan semula. Sebelum Nabi berangkat ke negeri Syam, Siti Khadidjah menjanjikan bagian keuntungan kepada beliau dua kali lebih banyak dari yang biasa diberikan kepada orang Quraisy lainnya.

<sup>19</sup> Muhammad Syafi'i Antonio, (2001), *Bank Syariah dari Teori ke Praktik*, Jakarta, Tazkia Cendekia p. 137.

Based on this description, what is meant by production sharing institutions are all the norms that regulate the needs of production sharing agreements in community life. This means that profit sharing institutions are included in the form of Economic Institutions, namely a system of norms or rules that regulate the behavior of individuals in society in order to meet the needs for goods and services.<sup>20</sup> Societies wherever they exist will have economic institutions, only they differ in the nature and method of implementation.<sup>21</sup> Profit sharing institutions have advantages, including:<sup>22</sup>

1. The legal construction is simple;

The legal construction is simple, namely cooperation between two or more parties, each party has different capital but is interdependent so they need to work together to realize a result by sharing the results for the parties.

2. Productive capital;

This profit sharing institution can produce capital if a situation occurs where the parties have different capital and are interdependent. Collaboration based on profit sharing will make their capital productive, for example:

- a. Capital owners who cannot afford it can order people who have capital (funds, labor, fertilizer and seeds) to do work on a profit-sharing basis;
- b. Entrepreneurs (SMEs) who want to carry out business activities but do not have capital can collaborate with sharia banks to obtain funds/financing based on a profit sharing agreement.

3. Comparative Advantage;

The use of a profit sharing pattern apparently produces a comparative advantage, namely an advantage over other alternatives. In the financial sector, entrepreneurs who believe that interest is usury, when compared with conventional credit patterns, profit sharing patterns have advantages, including: objectives, concept, supply >< demand, asset ownership, risk, investment, revenue sharing, agreement period and others. -other.

4. Proportional Justice (Equality);

The distribution of results in this pattern is not rigid, but is proportional or comparable based on factors that influence the quantity of results, type of land, amount of investment, level of difficulty and so on.

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<sup>20</sup>Petrus Haryo Sabtono, *Pranata Sosial*, <http://abelpetrus.wordpress.com/socio-logy/pranata-sosial>, accessed 21 September 2023.

<sup>21</sup>Epon Ningrum, *Bentuk-bentuk Pranata Sosial*, [http://file.upi.edu/Direktori/DUAL-MODES/TEMPAT\\_RUANG\\_DAN\\_SISTEM\\_SOSIAL/BBM\\_10.pdf](http://file.upi.edu/Direktori/DUAL-MODES/TEMPAT_RUANG_DAN_SISTEM_SOSIAL/BBM_10.pdf), accessed 15 November 2020.

<sup>22</sup>Etty Mulyati et. al. *Ibid*, p. 7-13.

5. Flexible or Flexible;

In standard agreements, both in the agricultural and financial sectors, only the basic provisions are included. Meanwhile, detailed matters are added in the attachment to the agreement, so that the parties can determine the terms and composition of profit sharing which are adjusted to the factors that influence the quantity of production.

6. Neutral.

Agreements using a profit sharing pattern are not based on a particular legal system, for example the Continental European or Anglo Saxon legal system, but are based on the general principle, namely freedom of contract with a universal pattern.<sup>23</sup> Apart from that, the profit sharing pattern is not related to a particular view, in this case the profit sharing does not conflict with the rules of decency, decency or even religious rules, as evidenced by the regulation of this profit sharing pattern in the Holy Qur'an and also the Hadith.

In the view of Islamic law, all forms of cooperation are permissible, as long as the cooperation brings good benefits to themselves and society at large. Likewise, the use of human and natural resources to support business and the welfare of the people, both long and short term, by helping each other, capital owners and workers. This financial strategy includes the elimination of usury, speculation (gharar) and gambling (maisir) in all transactions, increasing wealth and equal distribution of income as well as achieving a prosperous society under the protection of Allah SWT. These business transactions include the principles of profit sharing, buying and selling, trust, rent and beneficence. Profit sharing (Profit Sharing) includes musyarakah, mudharabah, muzara'ah and musaqah. This can be used by the community as a legal basis in the field of muamalah intended to maintain the benefit of the community and prevent them from suffering hardship.<sup>24</sup>

## CONCLUSION

In religious law, especially Islamic law, the use of human and natural resources to support business and the welfare of the people, both long and short term, is by helping each other, capital owners and workers. This financial strategy includes the elimination of usury, speculation (gharar) and gambling (maisir) in all transactions, increasing wealth and equal distribution of income as well as achieving a prosperous society under

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<sup>23</sup> Cited from research results Etty Mulyati et. al. *Ibid*, pp. 13-16. Prinsip-prinsip pengembangan Kaidah Universal yang sebaiknya menjadi pertimbangan adalah: 1. Prinsip Modernisasi; 2. Prinsip Minimalisasi; 3. Prinsip Maksimalisasi; 4. Prinsip Keseimbangan; 5. Prinsip Efisiensi.

<sup>24</sup> Hasbi ash-Shiddeqy, (1975), *Filsafat Hukum*, Bulan Bintang, Jakarta, p. 477.

the protection of Allah SWT. The principles of business transactions include the principle of profit sharing, the principle of buying and selling, the principle of trust, the principle of rent and the principle of benevolence. The principle of profit sharing (Profit Sharing) includes musyarakah, mudharabah, muzara'ah and musaqah. Musaqah is the principle of profit sharing in Islamic law, different from the principle of profit sharing in customary law.

The application of profit sharing institutions to indigenous communities in Indonesia has various and universal methods. Meanwhile, the use of contracts in cultivating land in practice takes the form of production sharing agreements. The profit sharing institution is reviewed from Islamic Law and Customary Law which is applied in production sharing agreements when cultivating land in Indonesia. Meanwhile, the advice given is that the implementation of profit sharing institutions in Indonesia is still not balanced, it is necessary to apply the principle of justice. Profit sharing institutions in cultivating land according to Islamic law need to pay attention to the terms and conditions of the agreement. In indigenous communities, written agreements are required, not just based on agreements. The advice given is that the implementation of profit sharing institutions in Indonesia is still not balanced, it is necessary to apply the principles of justice and profit sharing institutions in cultivating land according to Islamic law need to pay attention to the terms and conditions of the contract. In indigenous communities, a written agreement is required, not just based on an agreement.

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