

INTEGRATING SHARIA BUSINESS CONTRACTS: ENHANCING INHERITANCE MANAGEMENT AMONG THE SIMALUNGUN BATAK TRIBE'S MUSLIM COMMUNITY

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Abstract: *This research was conducted to find sharia contracts that could be empowered in utilizing inherited assets in the Simalungun Batak Muslim community. This research was field research. The data collection techniques were through interviews and observations and utilizing literature using classical and contemporary fiqh books. The research method was a historical qualitative approach, while the analysis technique used a qualitative descriptive method. The results of the study show that various models of sharia contracts in the utilization of inherited assets can be carried out by the community, such as profit sharing (mudharabah), cooperation (musyarakah), leasing (ijarah), entrusted (wadiyah) and waqf. These various sharia contracts can be carried out both between heirs and heirs with other parties. In order to strengthen the implementation of this sharia contract, it is necessary to implement a written contract to strengthen the contract realization process and assist the interests of all parties and for their benefit. The application of this contract can be implemented based on various principles: economic, maqashid, contract, and customary inheritance law principles.*

المخلص: تم إجراء هذا البحث للعثور على عقود الشريعة المختلفة التي يمكن تمكينها في استخدام الأصول الموروثة في مجتمع سمالغون باتك المسلم. هذا البحث هو نوع

من البحث الميداني الذي يتم إجراؤه باستخدام طرق جمع البيانات من خلال المقابلات والملاحظات وباستخدام الأدب باستخدام كتب الفقه الكلاسيكية والمعاصرة. طريقة البحث المستخدمة هي منهج نوعي تاريخي، بينما أسلوب التحليل يستخدم منهجاً وصفيًا نوعيًا. تظهر نتائج الدراسة أن نماذج مختلفة من العقود الشرعية في استخدام الأصول الموروثة يمكن أن يقوم بها المجتمع مثل تقاسم الأرباح / المضاربة، التعاون / المسيرقة، التأجير / الإجارة، الوديعة / الوديعة، الوقف. يمكن تنفيذ هذه العقود الشرعية المختلفة بين الورثة والأطراف مع أطراف أخرى. من أجل تعزيز تنفيذ هذا العقد الشرعي، من الضروري أن يكون لديك تنفيذ مكتوب للعقد لتعزيز عملية تحقيق العقد ومساعدة مصالح جميع الأطراف ولصالحهم. يمكن تنفيذ تطبيق هذا العقد على أساس مبادئ مختلفة، سواء المبادئ الاقتصادية، المقاصد، مبادئ العقد ومبادئ قانون الإرث العرفي.

Abstrak: *Penelitian ini dilakukan untuk menemukan berbagai akad syariah yang bisa diberdayakan dalam kegiatan pemanfaatan harta warisan di klangan masyarakat Muslim Suku Batak Simalungun. Penelitian ini merupakan penelitian jenis lapangan yang dilakukan dengan metode pengumpulan data melalui wawancara dan obserpasi serta dengan memanfaatkan literatur menggunakan buku fikih baik klasik maupun kontemporer. Metode penelitian yang digunakan adalah pendekatan kualitatif sejarah, adapun teknik analisisnya menggunakan metode deskriptif kualitatif. Hasil penelitian menunjukkan berbagai model akad syariah pada pemanfaatan harta warisan dapat dilakukan oleh masyarakat seperti bagi hasil/mudharabah, kerjasama/musarakah, menyewa/Ijarah, wadiah/titipan dan wakaf. berbagai-akad syariah ini dapat dilakukan baik antar para ahli waris maupun ahli waris dengan pihak lainnya. Demi memperkuat pelaksanaan akad syariah ini, diperlukan adanya pelaksanaan akad secara tertulis untuk menguatkan proses realisasi akad dan membantu kepentingan semua pihak dan demi kemaslahatan mereka. Penerapan akad ini dapat diimplementasikan dengan didasari berbagai asas, baik asas prinsip ekonomi, maqashid, asas-asas akad maupun asas hukum waris adat.*

Keywords: akad, sharia, utilization, property, inheritance.

INTRODUCTION

The issues surrounding contracts are typically discussed at *muamalah* sessions. It is impossible to separate the contract to indicate the intention behind a goal when carrying out the numerous everyday *muamalah* exchanges. Contracts play an essential role in human existence because they are one of the components that make anything legitimate for people. For instance, a marriage is a contract pronounced by a man with the parents of the lady he envisions as his ideal spouse constitutes a marriage that authorizes the existence of a husband and wife pair.¹

However, in practice, many parties who enter into contracts (agreements) still do not fully understand the rights and obligations they have to do. As a result, the values contained in the contract concept have not been fully fulfilled, even though they use a contract agreement system based on Islamic law. If we take the example of a rental agreement for a piece of land or a building, for instance, the parties to the contract are obligated to strictly comply with and carry out the terms of the contract to prevent unfavourable things in the future.²

When it comes to the use of inherited land, not a few of the heirs appear to care less about the distribution of what they get. As a result, their inheritance is then processed by other heirs without being preceded by a contract, which in the end, frequently leads to disputes between relatives or heirs. In order to reduce the likelihood of future disagreements, there ought to be a requirement acceptable to all parties. In the process of the distribution of this inheritance, this contract constitutes the collective stipulation of multiple contract participants.³

In this research, the locus of scientific study is in the field of *muamalah iqtishadiyah* and *ahwal al-syakhshiyah* as well as

¹ Nurhadi Nurhadi, "Woman Searching for Family Nafkah in Islamic Economic Views," *Al-Tahrir: Jurnal Pemikiran Islam* 19, no. 2 (November 28, 2019): 299–321, <https://doi.org/10.21154/altahrir.v19i2.1713>.

² Imam Bonjol Jauhari, "Agama Sebagai Kesadaran Ideologis: Refleksi Perubahan Sosial Ali Syari'ati," *Al-Tahrir: Jurnal Pemikiran Islam* 16, no. 1 (June 24, 2016): 1–20, <https://doi.org/10.21154/al-tahrir.v16i1.315>.

³ Thohir Yuli Kusmanto, "Gerakan Sosial Ekonomi Islam Di Pedesaan: Studi Kasus Peran Baitul Maal Wat Tamwil Di Kabupaten Sragen," *Al-Tahrir: Jurnal Pemikiran Islam* 16, no. 1 (June 24, 2016): 223–45, <https://doi.org/10.21154/al-tahrir.v16i1.354>.

anthropology of Islamic law with an *'urf* or eastern cultural custom approach.

This research was field research. Interviews, observations, and the review of literature, including traditional and modern works of fiqh, were the data collection technique used to obtain the data. The research method utilized was a qualitative historical approach, and the technique utilized for the analysis was a qualitative descriptive method. Tebing Tinggi, which is located in the Serdang Bedagai and Simalungun Regency of North Sumatra, is where the research was carried out on the Muslim population that is a part of the Simalungun Tribe.

SIMALUNGUN MUSLIM COMMUNITY

The establishment of Islam in the Simalungun region far before the year 1900 A.D. was proof that traders from both outside and within the region were responsible for the spread of Islam in Simalungun. The rapid development of Islam in Simalungun can be attributed to Raja Siantar and Sang Naualuh Damanik, who made significant contributions to the expansion of Islam in Simalungun. After Sang Naualuh Damanik, King of Siantar, converted to Islam in 1901, the religion of Islam started to spread in the Simalungun region after he entered the area. Sang Naualuh Damanik became an Islamic spreader in the Simalungun region. This event is considered the beginning of the spread of Islam in Simalungun.

Because this region was a part of the territory ruled over by the kingdom of Siantar, which was ruled by Raja Sang Naualuh Damanik, the Islamic religion started to make its way into the Sidamanik sub-district, specifically through Tigaras, Raya, and from Siantar. Because the Sidamanik sub-district has an influence in the domains of culture, politics, government legislation, education, and the arts, the development of the Islamic faith in the Sidamanik sub-district increased every year. Animism and dynamism were the predominant religions practised by the local population in the Sidamanik subdistrict before the arrival of Islam. This is demonstrated by the fact that there were gifts and distributions made to spirits and other realms that cannot be seen.⁴

⁴ Andres M. Ginting and Ahmad Fakhri Hutaaruk, "Islam Berkembang di Sidamanik-Simalungun (1901-2017)," *Historis: Jurnal Kajian, Penelitian dan*

CONTRACT AND REALITY OF UTILIZATION OF INHERITANCE OF THE MUSLIM COMMUNITY OF THE SIMALUNGUN BATAK TRIBE

A real and significant connection between two or more parties is known as an akad. This connection might originate from either party. According to the Sharia Economic Law Compilation, a contract is an agreement in an agreement between two or more parties to perform and/or not to execute specified legal actions. This definition can apply to both positive and negative commitments.⁵

In the theory of transfer of property rights (*tamlikat*) there are 5 (five) objectives (*maqashid sharia*) in determining whether the contract is valid or not. These five *maqashid* are distribution (*rawaj*), clear (*wudhuh*), maintained (*hifdz*), stable (*tsabat*) and fair ('*fair*).⁶

Based on an interview with Mr. Bahtiaruddin Saragih,⁷ it was decided not to immediately distribute the property that had become the inheritance of the parents in the family out of the concern that if it was divided and then sold by the heirs due to various needs, it might result in the loss of ownership of the property from the hands of the heirs. The property had become the inheritance of the parents in the family. In addition, if the inheritance needs to be sold in order to fulfill the implementation of the distribution of the inheritance (in the form of funds or rupiah), then the majority of the assets in the form of land are eventually sold and separated from the ownership of the heirs before the distribution is carried out. This occurs even if the distribution of the inheritance is to be carried out in the form of funds or rupiah. This legacy has been maintained jointly by all of the heirs for many decades, and there has never been any official distribution based on *faraid* or other criteria. Some of the land is rented out to other outside entities as part of its management. However, there is less transparency in its implementation because the person responsible exclusively relies on word of mouth.

The reason for not directly dividing the inheritance is that they are worried that the object of inheritance that will be sold cannot be

Pengembangan Pendidikan Sejarah 5, no. 1 (June 30, 2020): 53–68, <https://doi.org/10.31764/historis.v5i1.2454>.

⁵ Kompilasi Hukum Ekonomi Syariah, Pasal 20

⁶ Oni Sahroni and Adiwarmanto A. Karim, *Maqashid Bisnis Dan Keuangan Islam* (Jakarta: Raja Grafindo, 2015), 71.

⁷ Interview with Bahtiaruddin Saragih on June, 2, 2021.

considered far-fetched because it is an area if a lot of land is sold. Then, in the end, the ethnic tribes in the area will slowly be evicted and move to other areas. It is due to relatively large capital owners and/or immigrants who own the land, so the prevailing culture in an area will eventually slowly disappear and change. Customs and culture must be preserved and developed so that descendants will still know the culture and customs of their ancestors.

The family of Bahtiaruddin Saragih made the decision early on to jointly nurture their inheritance. On the other hand, after jointly managing the inheritance for around ten years without first dividing it, they eventually came to an agreement to do so in accordance with Islamic law. The portion of the inheritance that is given to males is two times as great as the proportion that is given to daughters. Following a discussion with all of the heirs, they came to this conclusion, with the eldest brother serving as the leader. Following the division of this inheritance, one of the heirs, the third son, left a portion of his property to his younger sister so that it might be administered by her and utilized to provide for their day-to-day needs. His oldest brother is also responsible for managing a portion of his inheritance. It is done because he is still considered to be well-established in the field of economics, and that he possesses a personal business that his nuclear family runs.

In addition, as explained by Ikhwal Purba,⁸ there are also Batak Simalungun Muslims who use the inheritance to construct a house of worship to serve as a place of worship for the Muslims in the nearby area. On the other hand, it is authorization for use as a prayer room without a documented contract or agreement. Problems arise in the end, either when it is converted into a mosque or transferred to a better suitable location.

In addition, there are other inheritances that are regarded to be waqf because they are located in areas that are used for social institutions or as burial grounds and are passed down through families. However, it is not unusual for a comparable form of waqf to produce disagreements in the future between the inheritors of the property. According to Mr. Taufan Purba, who stated that there was a family land of the Simalungun Batak Muslim community that was originally waqf to the heirs, but later on one of the heirs sued the

⁸ Interview on June, 2, 2021 in Sipispis, Serdang, Bedagai.

court and later won, so the land that was originally used as waqf turned back into the ownership of the heirs even though it had been used for waqf in the past.

Yusuf Sinaga explained that the tradition that was upheld in his family's group, which was the Muslim community of the Simalungun tribe located in the region of Sipispis Serdang Bedagai, did not involve the direct passing on of an inheritance. However, the heirs are reluctant to sell the land because it is the aim of their inheritance and the heirs handle it. In other words, the process of dividing the inheritance will be delayed for the time being. In addition, the process of distributing an inheritance does not often take place until after both of the heir's parents have passed away. It was not unusual for there to be shared management of the legacy before either of them passed away, even if only one of them had passed away.⁹

In the Sidamanik area, Simalungun Regency, it was also found that few assets were left in such a way due to inadequate land empowerment through procedures according to religious guidelines, so it seemed that the lands were not being used optimally. In addition, in another place that is still a Regency, it was found that one of the heirs entrusted his inheritance land to other parties (the heirs as well as other parties) to be protected. Still, due to a lack of adequate understanding of the urgency of Sharia business contracts, the land is also not managed optimally.

Regarding the implementation of the distribution and utilization of inheritance among the Muslim community, they do so with simple provisions and actions without empowering the various existing Sharia contracts. In addition, this activity was carried out without being recorded, thereby reducing the validity of the activity, which could become a new problem in the future. In this study, efforts will be made to describe the application of the Sharia contract model that the community can use to distribute and manage inherited land.

SHARIA CONTRACT MODEL IN THE UTILIZATION OF INHERITANCE.

Several models of sharia contracts can be empowered in the management of inheritance by Muslim families. Some of these contracts have been widely discussed in various contemporary fiqh

⁹ Interview on September, 25, 2020.

books, so the guidelines related to these contracts can be said to be real and applicable in several fields, including the utilization or management of inheritance.

1. Mudharabah Contract

Mudharabah is the term used by the Iraqi population, while the Hijaz population uses the term *qiradh* or also *al-muqaradhah*. There is no term that we need to state more correctly here, it's just that the term *mudharabah* is more popular in contemporary times than the term *qiradh*.¹⁰

The word *mudharabah* comes from the word *al-dharb*, which means hitting or throwing. According to the scholars, the origin of taking this name is because, in the *mudharabah* contract, each party (the funder and the manager) equally throws one share (contributions and proceeds) for themselves.¹¹

The term *qiradh* comes from the word *al-qardh* which means to cut. According to the scholars, the origin of taking this name is because in the *mudharabah* contract, the owner of the fund cuts off part of his property to be handed over to the manager. He also cuts a portion of the profit for himself.¹²

Scholars put forward various terms regarding *mudharabah*, but what is quoted here is Ibn Qudamah's definition, namely that *mudharabah* is an activity in which the owner of capital gives up his property to the person who trades (businesses) his property by taking part in the profits earned.¹³

Mudharabah is a contract that involves two groups: the owner of the capital (*shahibul maal*/creditor) and the manager (*mudharib*/debtor). To enter into a business cooperation agreement between the two parties, where the first party (*shahib al-mal*/creditor) provides all the capital, while the other party (*mudharib*/debtor) runs the capital for a productive business activity and the business profits are divided based on the profit sharing proportion that has been agreed between the two parties as stated in the contract.

¹⁰ Muhammad Ayub, *Understanding Islamic Finance: A-Z Keuangan Syariah* (Jakarta: Gramedia Pustaka Utama, 2009), 491.

¹¹ Ash-Shawi, *Problematika Investasi Pada Bank Islam: Solusi Ekonomi Islam* (Jakarta: Migunani, 2008), 11.

¹² Ash-Shawi, 12.

¹³ Ash-Shawi, 13.

This contract has the potential to be empowered in the Muslim community, where members are hesitant to sell inherited land and prefer to cooperatively administer it rather than selling it to parties who are not heirs to the property. This contract only delegates the management of assets to one of the heirs without being accompanied by the application of a profit-sharing contract in its management. As a result, the contract does not fully implement itself because it dismisses and avoids various realities frequently found in its management that do not fully implement the contract.

In utilising inherited property, applying this *mudharabah* contract can be carried out to maintain the existence of inheritance which can be managed jointly between the heirs. This contract can be empowered among people who usually inherit land as an object of inheritance. Some of the land is managed as rice fields, fields, and others.

As a result of this contract, heirs who live a significant distance away from the area of their inheritance land and do not have the opportunity or capability to manage the property (either because of this distance or for other reasons) will still be able to get capital because they continue to manage the property through other parties. Because of the existence of this contract, any confusion over the status of the land that has ever occurred, such as that which has been in a lawsuit in the Religious Courts, will be avoided. The status of the land, as well as the managers and management financiers involved, will be visible through a written contract. It will ensure transparency.

If the operation is on a big size, the cash that provides funding for land management can be gathered from multiple heirs, and then an agreement can be reached regarding the portion of earnings that can be distributed after harvesting the crop.

2. *Musharakah* Contract

The term *syirkah/musharakah* in Indonesian can be categorized as business entities with sharia principles, such as companies and cooperatives.¹⁴ Etymologically, *syirkah* is a mixture, namely the mixing of one of the two assets with the other, not with each other.¹⁵

¹⁴ Mardani, *Aspek Hukum Lembaga Keuangan Syariah*, 224.

¹⁵ Rozalinda, *Fikih Ekonomi Syariah* (Depok: Raja Grafindo Persada, 2016), 191.

A blend or collaboration of numerous partners or companies is referred to as a *syirkah* in Arabic. A member of a *syirkah* is someone who works alongside other people in a corporation to complete a task or run a business such that the entire group functions as a single entity. Mixing or interacting is what the Arabic word *syirkah* refers to. It may also refer to the practice of something being split between two or more people following the norm that exists.

Syafiyah contends that *syirkah* refers to the right to an item that is fixed for two or more individuals to use together.¹⁶ In the meantime, the scholars of Malikiyah define *syirkah* as the license to perform *tasharuf* for the two persons who are in association with their property along with the unwavering *tasharuf* rights for each of them.¹⁷

According to KHES, a *syirkah* is a partnership between two or more people in terms of capital, abilities, and/or trust in a specific business, with profit sharing depending on a ratio agreed upon by the bound parties. This type of collaboration can take place in a variety of commercial settings.¹⁸ Therefore, it is clear that the concept of *syirkah* refers to the collaboration between two or more people in managing a commercial enterprise, in which both the profits and the losses are divided among the participants.

In the book *Encyclopedia of Fiqh Muamalah*, written by Abdullah bin Muhammad al-Thayyar,¹⁹ after he compared several studies of Imam Madzhab it can be concluded that the best *syirkah* is divided into 4 types, namely:

- 1) *Syirkah amwal* (wealth) is *syirkah* that was founded on the idea of shared ownership of the capital among its members.
- 2) *Syirkah amal* or body (work) is *syirkah* established based on the principle of physical labor to carry out a job, production, or others.
- 3) *Syirkah wujuh* (good name) is *syirkah* was founded by putting one's faith (or one's good name) in the other members of the *syirkah*. They are not working and do not have any capital. The

¹⁶ Rozalinda.

¹⁷ Mardani, *Aspek Hukum Lembaga Keuangan Syariah Di Indonesia*, 226. See also M. Zaidi Abbad, *Lembaga Perekonomian Umat di Dunia Islam* (Bandung: Angkasa, 2003), 98.

¹⁸ Pasal 20 ayat (3) Kompilasi Hukum Ekonomi Syariah.

¹⁹ Abdullah al-Thayyar, *Ensiklopedi Fiqh Muamalah* (Yogyakarta: Maktabah al-Hanif, 2009), 274.

forementioned three divisions are further subdivided into two categories, which are referred to as *mufawadhah* and *'inan*.

- 4) *Syirkah mudharabah* (profit sharing) is *syirkah* established based on the principle of ownership of capital and labor to carry out work simultaneously.

In Article 134 of the Compilation of Sharia Economic Law, there are 3 types of *syirkah*, namely *syirkah amwal*, *syirkah abdan*, and *syirkah wujud*.

When using *musyarakah* as a type of financing, one of the inheritors can contribute a fraction of the total money required to manage the assets, such as land. Participation in the equity might be arranged in line with the portion agreed upon with the landowner's heirs. For instance, the capital for the business comes from the financier's heirs to the tune of seventy per cent, while the landowner's capital accounts for the remaining thirty per cent. It is not required that the distribution of profits be calculated according to the portion of issued capital; rather, it must be calculated according to the initial agreement, such as allocating sixty per cent of profits to landowners and forty per cent of profits to investors. The implementation of this *musharaka* contract is a type of *syirkah 'inan*, which means that it can be enforced following the requirements that the fiqh experts have established.

Other *musharaka* contracts can be applied by applying the *syirkah mudharabah* contract. In this scenario, one of the heirs has the opportunity to become the sole financier of the cash required to manage the land he has inherited. The descendants of the person who previously had this capital are referred to as *shahib al-mal*. Then, the other heirs do not contribute any capital to this partnership and instead act solely in the capacity of managers of land management (beginning with seeding, continuing with maintaining, and culminating with harvesting), a process known as *mudharib*. In putting this contract into effect, *mudharib* can also come from parties who are not heirs, such as third parties who have adequate experience in plant management.²⁰

²⁰ Bustami Bustami and Muhammad Lutfi Hakim, "Strategy of Cash Waqf Development on Gerakan Wakaf Produktif at Baitulmaal Munzalan Indonesia Foundations in Digital Era," *Al-Tahrir: Jurnal Pemikiran Islam* 20, no. 1 (May 13, 2020): 97–119, <https://doi.org/10.21154/altahrir.v20i1.1934>.

The main goal is that the empowerment of inherited land can be carried out optimally, and many people can share the land that is the object of inheritance, and there is no sale of the inherited land object, which could eliminate local memories and culture due to the transfer of ownership to another party. Regarding the management of inheritance, the heirs who manage the inherited land can also involve parties other than the heirs, so that management can be carried out more optimally. Of course, the agreement on the portion of the profits to be achieved must be stated in the contract before starting the inheritance management work project.

These two contracts (read: *mudharabah* and *musyarakah*) are forms of investment which are one of the goals that Allah has set and must be achieved in the assets owned by everyone. This goal is based on unlimited arguments, including *istiqla'*, which is the basis for *mujtahids* in *ijtihad*. Scholars have agreed that asset investment is obligatory for every individual (who has the ability) or group.

Manhaj syar'i has been very good at regulating this, which can be seen in the following provisions;

- 1) According to Islamic law, performing work related to the law is required to accomplish *maqashid sharia 'an hifz al-mal min janib al-manifest* (protecting assets from the aspect of providing assets). Working hard will lead to financial gains as a direct result of the work that has been put in.
- 2) After he has made a profit, he has the right to use it and distribute it under the provisions of sharia without having to pay *isyraf* or *tabdzir*.
- 3) A *mukallaf*, regardless of how much profit he has, must use part of it to fulfill his legal needs, and the excess must be saved.

Suppose there is some property left over after it has been used up and paid for some requirements. If this is the case, the surplus fund should not be allowed to sit idle because doing so constitutes a form of hoarding that is forbidden by the Qur'an and hadith and is also in opposition to *maqashid sharia*, which stipulates that one is obligated to develop one's assets to achieve an increase in production to fulfill the goal. Allah is fortifying His ummah with power so that it may contend with those who oppose Islam.²¹

²¹ Sahroni and Karim, *Maqashid Bisnis Dan Keuangan Islam*, 71.

3. *Ijarah* contract

Ijarah comes from the word *al-ajr*, which means *al-‘iwadh* (wages or compensation). The word *ijarah*, according to the language, is *bai’ al-manfa’ah* which means buying and selling benefits. Meanwhile, the definition of *ijarah*, according to the term, is an ordinary contract for a benefit at a certain time and price.²²

The objects of *ijarah* in the form of the benefits of an object or human labor is divided into two, namely:

- 1) *Ijarah ain* is *ijarah* related to the rental of objects that aim to take advantage of the object without transferring ownership. The objects are movable objects, such as renting a vehicle or immovable objects, such as renting a house.
- 2) Charity *ijarah* is *ijarah* to human actions or labor, termed wages. The *ijarah* is used to obtain services from someone by paying wages or services for his work.

In the Islamic legal theory known as *ijarah*, the term “benefits” can refer to various things, including compensation for specific employment or rewards for the advantages of a particular property. *Ijarah*, then, is a transaction in which the benefits of an item are exchanged for a reward; this kind of deal is also known as a lease. *Ijarah* also refers to the exchange of goods and services for a specific job, namely the payment of a reward, also called wages.²³

In this context, the heirs who have handled the inherited objects have the opportunity to engage into an *ijarah* arrangement with other heirs or other parties by leasing the inheritance object in the form of land that can be utilized for rice fields or other fields or houses.

Charity *ijarah*, also known as *ijarah* to deeds or human labor/wages, is a type of *ijarah* that allows heirs who control an object of inheritance to remunerate the management of land that is an object of inheritance to other parties or to other heirs who have the required competencies. This type of *ijarah* is only available to heirs who control an object of inheritance. On the other hand, the manager will benefit from the assistance of someone who has hired him for his work.

²² Muhammad Ali Jumu’ah, *Mausu’ah Fatawa*, 19.

²³ Rozalinda, *Fikih Ekonomi Syariah*, 130.

As mention earlier, the B. Saragih family has already carried out the terms of this contract. Thus, the implementation of this agreement can proceed as planned. By sustaining the qualities of honesty and trustworthiness, it has the potential to serve as the foundation for all of the heirs involved. The fact of the matter is that this contract was not effectively handled, and as a result, the two heirs were unaware that their oldest brother had rented out the land object. It is the unfortunate reality that has befallen his family. Even though it does not bring the matter before the court, it does cause the heirs to have suspicions.

It is possible to apply a rental system to various lands that were not sold by the heirs and were found to be abandoned. It will ensure that the inherited land continues to be productive and delivers results many people may use.

The abandoned inheritance lands frequently discovered in several regions inhabited by the Simalungun Muslim community can, of course, be managed in the form of this contract to ensure that the land continues to be productive and beneficial to the general public. It includes the heir community itself as well as third parties. People who rent land or obtain wages for services done in land management can enjoy the benefits of the land's productivity and the benefits of others who rent the land from them.

It is aligned with Mr. Luddin Purba's management of some of the inherited land under his control through the use of wages. It is one of the reasons why this decision was made. Nevertheless, the application of the proper *ijarah* contract has not been made in order to carry out the implementation of this service lease or wages. When interviewed to the person concerned, according to him, this should be carried out in accordance with the standards of sharia to protect the diverse interests of all parties involved. According to him, the Muslim population of the Simalungun Batak Tribe that lives near him and manages the inherited land they received from their ancestors has a limited understanding of the management system in this context.

The outdated practices that have been followed up to this point have earned the right to be updated from a legal standpoint with a more effective system to accommodate the conditions and times that are continually changing. In terms of location, it would appear that the Muslim community that is a part of the Simalungun Batak Tribe

deserves to have this contract and the other connected formats put into practice. Owing to the availability of educated young people who are available for employment and who are capable of assisting in the implementation of this sharia contract within the parameters of the *muamalah* fiqh guideline.

4. *Wadiah* contract

According to the language, *wadiah* means *adah taraka* (leaving), which refers to something handed over (entrusted) to another person by its original owner to be kept.²⁴ In an article published in *Ahkam Adliyah Magazine*, Ali Haidar claimed that according to the terms of the *fugaha*, *wadiah* is defined as the transfer of particular things to specific individuals with the intention of them being preserved.²⁵ It is possible to conclude that *wadiah* is a contract between two individuals in which the first party gives the second party the authority and responsibilities necessary to maintain the first party's property.

It is permissible, known as *jaiz*, to accept or be entrusted with a legal deposit. The law, on the other hand, requires circumspection for individuals confident in their ability to keep hold of the deposited property. If the *wadi*, the person to whom the commodities were committed, is in desperate need, then the person who is the only one who is judged capable of accepting the mandate to receive a deposit must do so. Receiving a deposit can become obligatory in this scenario. When a person can maintain the mandated commodities but does not believe in themselves, the law of accepting a mandate is seen to be broken for that individual. It is possible that in the future, he will violate the instructions that were given to him. People who cannot adequately look after the items entrusted to them run the risk of breaking the law if they do so.

Nowadays, when globalization is so prevalent, the use of written contracts, particularly *wadiah* contracts, is seen to be more legitimate than oral contracts. The application of the contract in writing connected to the safety of inheritance can serve as the foundation for proof for both parties, emphasizing the need to carry

²⁴ Wahbah Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*, Vol. 4 (Damaskus: Dar al Fikr, 2004), 37.

²⁵ Ali Haidar, *Syarh Majallah Al-Ahkam al-'Adliyyah* (Beirut: Mansurat Maktabah Al-Nahdhah, t.th).

out the contract's terms. If this contract is carried out, it will reduce the number of disputes around inheritance for many different groups of individuals. Both the trustee of the assets and the person who has been entrusted with the responsibility of safely storing the goods are unmistakably identifiable.

The heirs can also entrust the inheritance that belongs to them to other parties, both fellow heirs and others so that their inherited land can be protected and cared for in the appropriate manner. It is an option available to heirs who live a significant distance from the location of the inheritance object. Even if they cannot use the inheritance for themselves, it can still be used in farming activities that will be to their caregivers' profit. Naturally, this can be done if the owner gives their permission and consent. The execution of this contract is meant to serve multiple purposes, one of which is to protect the numerous inherited lands that have been bequeathed to their heirs who live in distant locations from potential damage because it is not uncommon for the inheritance that is left behind to be utilized by irresponsible parties to be utilized as a site of disobedience and crime because no party is obligated to care for and safeguard the land, the inheritance that is left behind.

Even with an agreement written in the implementation of this contract, the party who is entrusted with the care can report to the authorities when the inherited land property is misused by another party in the form of disobedience or crime, which with this letter confirms the position of the reporter and can accelerate the security apparatus take action decisions against these immoral and criminal acts.

With the implementation of this contract and carried out with a written record of this contract, all parties will continue to try to manage the inherited land, and the benefit of each party can be maintained. In the perspective of inheritance management, for example, the existence of a contract allows heirs who have ownership rights to assets leased to other parties to use a written contract as a guide and guide for each to pay attention to the portion of funds obtained from the act of leasing the object of inheritance.

Likewise, with a written contract, the work wage system (service rental) will avoid various forms of betrayal and fraud in management,

which may occur due to various reasons, both from the landowner and the workers.

5. *Waqf Contract*

Waqf comes from the word *waqf*, which is linguistically masdar from the verb *waqafa al-syai'*, which means something stops. Same meaning with the words *habasa* and *sabbala*. Waqf has become a synonym in Indonesian with the term *waqf*.²⁶ Waqf is the detention of property that allows it to be utilized along with the preservation of the substance of the object by deciding (cutting) *tasharuf* (its classification) in its care or *mushrif* (manager) which is allowed to exist, according to Muhammad al-Syarbini al-Khatib, who was quoted by Mardani. Waqf is defined as the detention of property that allows it to be utilized. According to the Compilation of Islamic Law, waqf is the act of a person, group of people, or legal entity that sets aside a portion of his property and institutionalizes it for the benefit of worship or other public purposes that are in accordance with Islamic teachings. It can be done for an indefinite period of time.²⁷

In Law No. 41 of 2004, waqf is defined as the legal act of *wakif* (person who is waqf) to separate and or surrender part of his property, to be used forever or for a certain period of time according to his interests for the purposes of worship and or public welfare according to sharia.

Waqf is not explicitly explained in the Qur'an, however, there are general instructions about waqf. As Allah says, The parable of those who spend their wealth in the way of Allah is that of a seed that grows seven ears, in each ear a hundred grains. Allah multiplies (rewards) for whom He wills. And Allah is Extensive (His Bounty) and All-Knowing (QS. al-Baqarah: 261).

While from the hadith of which is a narration from Ibn Umar r.a, "It was narrated from Ibn Umar r.a. he said that Umar got a piece of land in Khaibar, then he went to Rasulullah Saw. and said: I got a piece of land that I have never got the treasure that I love the most before from that treasure. What will the Prophet instruct me? The Messenger of Allah replied: If you want to hold on to the substance

²⁶ Bustami and Hakim, "Strategy of Cash Waqf Development on Gerakan Wakaf Produktif at Baitulmaal Munzalan Indonesia Foundations in Digital Era," 97-119.

²⁷ Kompilasi Hukum Islam Pasal 215 ayat (1).

of the object and give alms as a result. Then Umar gave charity and (ordered) so that it was not sold, donated, and inherited while the benefits of the object were given to *fuqara*, relatives, slaves, guests, and travellers. It is not a sin for individuals who are in charge of the property to eat properly or provide food for their friends even if they did not intend to do so.²⁸

Along with the times, related to waqf in the realm or inheritance, the urgency of benefit and accountability is carried out. In order to maintain the general benefit, especially safeguarding waqf assets and preventing disputes arising from the withdrawal of waqf property that has been given, it is deemed necessary to implement a better and optimal contract by prioritizing the elements of benefit and accountability, including the waqf property originating from family inheritance.

Moreover, the type of waqf *khairiy* is widely felt by the community. Nowadays, it is not uncommon to find waqf assets which are then donated, with the aim that waqf administrators can well maintain these assets and are sustainable, of course, in various ways that are in accordance with fiqh guidelines.

Referring to KHES article 21,²⁹ these contracts can be applied in the process of utilizing inherited assets. The principle of *ikhhtiyari* (volunteer) shows that every contract is carried out at the will of the parties, avoiding coercion due to pressure from one party or another. So in applying these various contracts to the utilization (profit sharing, lease or deposit) of inherited assets, each party involved has the option to perform or not perform this contract.

The principle of trust or keeping promises. In this case, this contract must be carried out by the parties in accordance with the agreement in the agreed contract so that it can avoid various things that can cause a breach of contract. Because the dominance of the mandate required in this contract is relatively large, then of course the mandate must really be able to show indications before the agreed contract is implemented.

²⁸ Syaparuddin Syaparuddin, "Construction of Buginese Local Wisdom on the Paradigm of Sharia Banking Development in South Sulawesi," *Al-Tahrir: Jurnal Pemikiran Islam* 19, no. 1 (May 4, 2019): 155–74, <https://doi.org/10.21154/altahrir.v19i1.1574>.

²⁹ Komplikasi Hukum Ekonomi Syariah.

The application of the principle of *ikhtiyati* (prudence) can be carried out with careful consideration and carried out appropriately and carefully after pre-management agreements. The form of the promised wages and the form of work to be performed must be clearly stated in this contract.

From the point of view of the principle of *luzum* or unchanged, this contract must be carried out with a concrete purpose, careful calculations, and binding on both parties. A related rule states:³⁰

الأصل في العقد اللزوم.

To strengthen the implementation of this sharia contract, it is necessary to have a written contract implementation in order to strengthen the process of contract realization and assist the interests of each party and for their benefit. Of course, the application of this contract can be carried out based on various principles; economic, *maqashid*, contract, and customary inheritance law principles.

The foundation of a contract is customary and obligates both parties to abide by its terms. This contract must also be able to produce benefits for all parties by implementing the contract through the fulfillment of the various interests of the parties in order to prevent manipulation and harm to one of the parties to the agreement.

The existence of the *taswiyah* (equality) principle will create an equal position for each party, both the owner of the inheritance object (land and others) and the party who gets wages from the management of the inheritance object. Likewise, transparency in this contract must be able to realize the accountability of the parties openly. Everything related to the contract must be completely open and uphold transparency. The contract is carried out in accordance with the adequate competence of the various parties involved, so that it does not become an excessive burden for only one party.³¹

Refers to the principle of *taisir* or convenience, this contract must be carried out in a way that makes it easy for each of the parties involved to carry it out in accordance with the agreement. Especially regarding wages in the management of inheritance objects (*ijarah*

³⁰ Syihabuddin Abu Abbas Ahmad bin Idris Abdurrahman al-Sanhaji al-Qarafi, *Al-Furuq* (Beirut: Alim al-Maktab, t.th), 31.

³¹ Bustami and Hakim, "Strategy of Cash Waqf Development on Gerakan Wakaf Produktif at Baitulmaal Munzalan Indonesia Foundations in Digital Era," 97–119.

amal), for example, it must be realized according to the hadith regarding worker wages. The wages can be given before the sweat dries up the workers who have provided their services in the work.

In order to protect the interests of all of the parties involved, every provision of the contract must be based on honest intentions. The agreement must be safeguarded from everything including snares and other unethical practices. Any kind of labor or commercial activity carried out must be for a lawful reason that does not run counter to the law, is not expressly forbidden by the law, and is not illegal. The work that is done must not violate any laws. In addition, the use of leases cannot be connected to anything forbidden by religious beliefs or by the laws of the state where the property is located.

As in other contracts, the principle of *al-hurriyah* (freedom of contract) must be strictly ensured. There must not be an element of compulsion in carrying out this contract, which could injure the contract itself. The last is the principle of *al-kitabah* (written). It is very important to realize this contract to maintain the benefit of all parties and also part of the evidence and accountability for the *ijarah* contract agreed upon between all parties involved. This principle is often ignored, even though it is a form of religious practice in recording various transactions.³²

Referring to the *maqashid sharia*, the application of these contracts to inherited property through these principles is part of the protection of religion, reason, offspring, and property. Protection of religion is due to religious teachings instructing humans to fulfill the agreed contract. The preservation of reason is due to the existence of transactional contract activities and the management of inheritance, which requires the parties to use and sharpen their minds to manage assets legally. Meanwhile, property protection emphasizes the obligation to protect other people's property from various ways of taking property in a vanity manner. The existence of this contract makes the position of the owner of the property clear as well as the position of the tenant or worker who provides services for the processing of assets. Judging from the objectives of *maqashid sharia*

³² Saifuddin Alif Nurdianto, Hermanu Joebagio, and Djono Djono, "Pesantren Tegalsari: Islamic Synergy with Local Wisdom in Cultural Acculturation," *Al-Tahrir: Jurnal Pemikiran Islam* 19, no. 1 (May 30, 2019): 29–52, <https://doi.org/10.21154/altahrir.v19i1.1571>.

related to the theory of 5 (five) property rights transfer contracts (*tamlikat*), then the distribution (*rawaj*) of property based on these contracts will be carried out properly and optimally, clearly (*wudhuh*), and the continuity of assets in the owner will be looked after (*hifdz*). In addition, fulfilling rights and obligations among contract actors will create stability as well as (*tsabat*) and justice (*fair*) for all parties involved.

In addition, in the perspective of benefit and accountability as well, the Deed of Pledge of Waqf (AIW), which is an elaboration of *shighat*, seems to be able to be used as a separate pillar as a representation of the recording of waqf coordinated by the office of Ministry of Religious Affairs. Just like the urgency of registering a marriage, even though a *shighat* or a statement of will has been spoken between a husband and wife, the recording is still important and can be categorized as a pillar in marriage. The existence of this waqf pledge confirms the continuity of the contract to minimize new problems that may arise in the future.

If we look at the reality of waqf in Indonesia, especially in North Sumatra, what comes from inheritance is the absence of recording these waqf assets, so there is also less concern for maintaining and caring for these waqf assets. If you look at small examples, for example waqf assets in mosques such as mosque embankments that are no longer used in them because there is a new waqf. It will be found that many unused waqf assets are placed carelessly, resulting in neglect of community waqf assets.

If the legal acts of waqf can be carried out properly and optimally, then of course, the inherited assets that have been waqfed by the heirs can be maintained and preserved properly. There is no longer a dispute over waqf originating from the inheritance which is being sued by one of the heirs or even one of the substitute heirs, so the events that have occurred are as stated by Mr. Taufan Purba in the Serdang Bedagai-Tebing Tinggi area involving the Muslim Batak Simalungun tribal community.³³

Therefore, it is important that this can be prevented by strengthening the foundation of the contract and its implementation, which was made before entering into the contract and the application

³³ Ginting and Hutauruk, "Islam Berkembang di Sidamanik-Simalungun (1901-2017)," 53–68.

of its contents after the contract, including in the waqf of property originating from the object of inheritance, for the benefit of all parties by upholding the values of accountability. For this reason, in the transfer of inheritance to waqf property, it is necessary to make a contract by the heir of the waqif to the *nazir* who manages the waqf property so that from the beginning, it is clear the position of the object being waqf from the inheritance. After the handover of this waqf inheritance, it means that the position of the heirs of the beneficiary has been separated from the object of inheritance and has transferred its management to the Nazirites. This transfer of rights should also be carried out at the Office of Religious Affairs in various parts of the Republic of Indonesia through the Waqf Pledge Deed.

CONCLUSION

There are several models of sharia contracts in the management of inheritance. Some contracts can be carried out, such as *mudharabah*, *musharakah*, *ijarah*, *muzara'ah*, *mukhabrah* and *musaqah*, *rahn*/ pawn, and endowments. These various Sharia contracts can be carried out both between the heirs and the heirs with other parties.

These contracts should be carried out in written form in order to strengthen and emphasize the implementation of these sharia contracts, as well as strengthen the process of contract realization and assist the interests of each party and for their benefit. Of course, the application of this contract can be carried out based on various principles, both economic, *maqashid*, contract, and customary inheritance law principles.

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