



## RE-ORGANIZE THE COMPANY IN AGRICULTURAL PRODUCT MANAGEMENT BASED ON SHIRKAH WUJUH COOPERATION AS AN ALTERNATIVE TO ESTABLISH BALANCE

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### Abstracts

*On the muamalah side, Islamic law has changed due to social changes. Muamalah activities that consist of cooperation in experiencing changes in line with the needs of the time and place where it was inhabited by a group of humans. In cooperation, especially in the form of syirkah wujud, from the beginning the main capital in this cooperation consists of "trust" as stated in Article 140 paragraph (1) compilation of Sharia Economic Law (KHES). In the development of parties that include Trust Capital there is a tendency to dominate other parties that include capital assets or goods. For this reason, it modifies by repositioning parties that include "Trust" Capital with the aim of realizing justice, namely balance in terms of profits and losses. This research method is in the form of Juridical-normative which emphasizes literature review (lebrari research) with a legislative and conceptual approach. The results of this study concluded that the party with the Capital "Trust" is positioned as a guarantor of cooperation dalam management of agricultural products. The repositioning is allowed in muamalah activities in accordance with the rules of jurisprudence made by fuqaha: "the change of fatwa due to changes in time, place, circumstances (intention) and Customs." By repositioning, Islamic law becomes dynamic within the scope of muamalah, and is able to adapt, so that Islamic law is op tu date in accordance with the Times and needs of the community.*

**Keywords:** *Re- Organize, Agricultural Product Management, Shirkah Wujud, Establish Balance*

### Introduction

Shirkah agreement is an agreement between the parties in a cooperative venture, where they agree to contribute capital together and agree to bear the risk and share the profits in accordance with the agreement<sup>1</sup>. With the word "cooperation", then in principle and operationally, the parties/ companies involved in the syirkah agreement have the same position. Each party / company becomes a representative for the party/ company when cooperating with other parties or third parties, they also have the same right to benefit, so that in such cooperation there is a balance for each party/ company in matters of rights and obligations. Syirkah contract specifications are divided into five parts, namely: syirkah Inan, syirkah abdan, syirkah mufawadah, syirkah wujud and syirkah mudlarabah.

The specialization in the division is based on the capital included by the parties/ companies in the syirkah agreement. In general, capital consists of goods/ property, skill and expertise. based on the included capital, the naming of the syirkah contract becomes specific. Furthermore, the distribution of profits and risk-bearing cooperation generally pay attention to the capital included, the goal is to realize mutual justice in the proportion of capital to profit. In this section, we will explain one part of several parts of the shirkah contract, namely shirkah wujud. In relation to syirkah wujud, this syirkah is a cooperation carried out by two or more people, where

<sup>1</sup> Rozalinda, *Fikih Ekonomi Syariah: Prinsip dan Implementasinya Pada Sektor Keuangan Syariah* (Jakarta, Rajawali Pers, 2017), h. 192

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both parties do not include capital assets or goods, but they include capital of good name or expertise<sup>2</sup>. In Article 140 paragraph (1) KHES: “*cooperation can be done between the owner of the object with the merchant because of mutual trust*”<sup>3</sup>. This article describes the cooperation between a person who has capital assets / goods with someone who has the skills to market and / or sell goods, in this case traders. The article seems to provide justification for the practice of cooperation whose capital is not balanced, but in the issue of rights and obligations must be distributed in a balanced manner, this is reflected in the meaning of the word “cooperation” which in its operational techniques aligns between parties/ companies that include capital assets/ goods with parties that include capital expertise. If cooperation occurs, then there is a tendency in the cooperation to occur injustice.

In relation to cooperation that reflects this injustice, there is cooperation between farmers and traders in terms of agricultural product management based on shirkah wujud. This cooperation seems to align farmers and traders in profit negotiations, where in the issue of capital participation and risk there is a significant difference. In fact, what often happens in the practice of this cooperation, farmers lose bargaining power to determine profits, whereas farmers are the ones who include agricultural capital, while traders include expertise only, so farmers are more at risk in the event of losses. Starting from this rationale, it is necessary to offer a new breakthrough to change the character of agricultural product cooperation related to Article 140 paragraph (1) KHES with the form of legal research title: What are the characteristics of syirkah wujud on agricultural product management cooperation?

The methodology applied in this study is the method of library research. This method focuses on theoretical-analysis as well as referring to various scientific literature. The approach used in this study is juridical normative approach. The steps in this literature research include systematic identification and analysis of documents relevant to the issue under study. Thus, this study is expected to provide a new contribution to the understanding and implementation in the field of muamalah, especially in the agricultural product management cooperation. The results are also expected to be a reference for business practitioners in agriculture, academia and subsequent research in the face of changing times followed by legal dynamics, especially in the field of muamalah.

### **Theoretical Framework and Conceptual Framework Understanding Islamic Law**

Islamic law is two words used as a name in the study of law. Linguistically “law” is a derivative of the word hakama-yahkumu-hukman-hukumatan which means to lead, rule, establish, and decide<sup>4</sup>. In other dictionaries, “law” means law, rule, government, administration, management, direction of Control, Authority, consideration, decision, and decree<sup>5</sup>. Together with the etymological sense (language) that best suits the meaning in this discussion, law is defined as establishing, deciding, ruling, authority. Defined as “establish” because the legal function establishes events that have not been determined by law; defined as “decide” because the legal function decides disputes that occur in two people or more; defined as “authority” because legal

<sup>2</sup> Aye Sudarto. Muhammad Busri Mustofa, Fathul Mu’in, *Aqad Syirkah: Dalam Kompilasi Hukum Ekonomi Syariah dan Mazhab Maliki*, ASAS Jurnal Hukum Ekonomi Syariah, Vol. 14, No. 1, Juli 2022, h. 25-33

<sup>3</sup> Bunyi pasal 140 *Kompilasi Hukum Ekonomi Syariah*. (Jakarta: Mahkamah Agung Republik Indonesia, 2008), h. 50

<sup>4</sup> A.W Munawwir, *Kamus Al- Munawwir: Arab- Indonesia Terlengkap*, (Surabaya: Pustaka Progresif, 1997), Cet- 14, h. 286

<sup>5</sup> Kamus Arab- Indonesia Online almany, diunduh tanggal 29 Juli 2024 pada alamat: <https://www.almany.com/id/dict/ar-id/%D8%AD%D9%83%D9%85/>



decisions have authority; and “rules” because the law is used as a rule to carry out the act with the aim that the act is carried out neatly, well and does not interfere with the rights of others<sup>6</sup>.

The form of law can be written as legislation, or unwritten as customary law and the law that lives and develops in society (the living law). While Islam means surrender, salvation, or welfare. That is, a person who follows Islam will obtain security and peace in the hereafter<sup>7</sup>. If the word "law" and "Islam" are combined into one as a name, namely Islamic law, then it can be interpreted as a law revealed by Allah SWT. Through His Messenger to be disseminated and used as a guide for mankind to achieve salvation in this world and the hereafter.

In the discussion of Shari'ah law (another designation of Islamic law), the law has the meaning : syari ' demands (Allah or His Messenger) relating to all the actions and behavior of the mukallaf (people whose actions have been burdened with the law, the meaning is simply legally capable), whether consisting of mandatory demands, optional (may choose between doing or not), or related to certain conditions<sup>8</sup>. Amir Syarifuddin said, Islamic law is a set of rules based on the revelation of Allah and the Prophet about human behavior mukallaf recognized and believed to be valid and binding for all Muslims<sup>9</sup>. Taufiq Adnan Amal mentioned, Islamic law is a set of religious rules that regulate the behavior of the lives of Muslims in all its aspects, both individually and collectively<sup>10</sup>.

M. Thahir Azhary views that Islamic law has five basic properties, namely; dimensional, fair, individualistic and social, comprehensive, and dynamic<sup>11</sup>. According To T. M. Hasbi Ash-Shiddieqy in his book Dyah Ochotona Susanti<sup>12</sup>, Islamic law is defined as a collection of Jurists ' efforts to apply Shari'ah to the needs of society. In relation to the definitions above, there are several things that are contained in Islamic law, including: *First*, Islamic law comes directly from Allah and His Messenger, in this section it means that Islamic law is theocentric in the form of dogmas that sometimes do not touch problems that occur in people's lives<sup>13</sup>, and do not change with the changing times and times because the product is directly from Allah and His Messenger so that there is no intervention of human thought. In this sense, Islamic law is interpreted as Shari'ah. *Second*, Islamic law is dynamic, in this section there is Islamic law that must be able to adapt to changes in time and place, and communicate with social problems that occur in people's lives. In this regard, Islamic law is required to be able to respond to legal events that have not been answered by the Qur'an and Hadith, so it needs to be addressed through the process of extracting the law (istinbath al - ahkam whose results do not come out or are contrary to the provisions of Sharia.

*Third*, Islamic law is concerned with the actions of a person who is capable of law (mukallaf). A juridical person in the view of Islamic law must fulfill two provisions, namely being reasonable (aqil) and reaching a certain limit where his actions are considered legal actions (baligh). If one of these conditions is not met, then the person is considered legally incompetent. The word “deed” implicitly means a tangible act (concrete), and explicitly excludes things that are abstract, such as belief and/ or creed.

<sup>6</sup> Didiek R. Mawardi, *Fungsi Hukum dalam Kehidupan Masyarakat*, Jurnal Masalah-masalah Hukum, Vol. 44 No. 3, 2015, h. 278

<sup>7</sup> Achmad Irwan Hamzani, *Hukum Islam dalam Sistem Hukum di Indonesia*, (Jakarta: Kencana, 2020), h. 15-16

<sup>8</sup> Abdul Wahhab Khalaf, *Ilmu Ushul Fiqh* (Kairo: Dar al-Falah: 1978), h. 100

<sup>9</sup> Muhammad Faisol, *Hukum Islam dan Perubahan Sosial*. Jurnal Ilmiah Syariah, Vol. 18, No. 1, Januari-Juni 2019, h. 35

<sup>10</sup> *Ibid.* 35

<sup>11</sup> *Ibid.* 35

<sup>12</sup> Dyah Ochotona Susanti, *Hukum Islam: Sejarah dan Perkembangannya di Indonesia*, (Bogor: Pustaka Amma Alamia, 2018), h. 5

<sup>13</sup> Achmad Faisol Haq, *Pemikiran Teologi Teosentris Menuju Antroposentris Hassan Hanafi*, Jurnal Pemikiran Keislaman dan Tasawwuf, Vol. 6 No. 2, 2020, h. 160

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*Fourth*, cover all aspects of life. In this section contains the understanding that Islamic law is in contact with or related to all human actions that are included in the legal action section. This aspect consists of two things, namely the divine aspect (human relationship with God) or known as the implementation of worship, at the level of operational techniques, this part of worship emphasizes a person's personality because it does something related to belief in his religion, and at the same time worship practices that have been set directly in religious teachings. In this section apply something dogmatic. Furthermore, the human aspect (human relations with others), this part is known as the implementation of muamalah. In relation to this Section, more emphasis is placed on the social side because the orientation is related to business procedures to meet each other's needs.

**Scope of Islamic law**

Related to the discussion of Islamic law there is a very important part, which is related to the scope of Islamic law. Broadly speaking, it consists of two groups, namely: 1) laws relating to issues of worship, and 2) laws relating to social problems<sup>14</sup>. Related to the law of worship is the law that regulates the conduct of human relations with his Lord, namely about faith, prayer, zakat, fasting, and pilgrimage. In this part, it is a very subjective area, concerning one's personal importance because it concerns the obligations of each person that are personal. His command came from God., and technical implementation exemplified by Rasulullah SAW. So in this part of being constant, the human mind has no opportunity for modifying intervention.

In the second part of the discussion of Islamic law relating to social-society. this section discusses human relations with other humans, such as about muamalah (transactions), munakahat (marriage), and ukubat (sanctions). In the muamalah section (transactions) the object of regulation is related to property, including: rights, obligations, contracts, such as Sale and purchase, rental, purchase, loan, deposit, transfer of debt, trading companies, and others. Setting munakahat (marriage) object related to marriage and divorce and the consequences caused, such as iddah<sup>15</sup>, lineage, maintenance, inheritance and others. This discussion of munakahat is also known as the discussion of family law. While the ukubat (sanctions) regulate the criminal, such as stealing, adultery, drunkenness, accused of adultery, murder and its consequences<sup>16</sup>. Taking into account the scope of Islamic law above, the discussion related to shirkah in general and shirkah wujud specifically is in the muamalah section because the discussion of shirkah is related to a contract or cooperation made by a person with his neighbor or an institution with other institutions whose agreement begins by using the form of agreement (akad).

**Shirkah (cooperation) and the like**

Shirkah (cooperation) in the discussion of muamalah has the meaning of capital mixing cooperation in business (business) that aims to find and develop profits. Shirkah is an agreement between the parties involved in a particular business, in which they agree to deposit capital together and also agree that the risks and benefits will be borne in accordance with the agreement that has been made<sup>17</sup>. According to Taqiyuddin an-Nabhani in the article Humaeroh<sup>18</sup>, shirkah is

<sup>14</sup> Muhammad Kurniawan BW, *Hukum Islam dan Ruang Lingkupnya*, Jurnal Mamba'ul 'Ulum, Vol. 16 No. 2, Oktober 2020, h. 162 7

<sup>15</sup> *Iddah* in Islam is the waiting period for a woman who has been divorced from her husband, either because of the death of her husband or divorce while the husband is still alive. This period aims to wait and refrain from marrying another man, so that the blood relationship with her ex-husband is maintained, making iddah as a form of self-servitude to Allah SWT, and a period of contemplation to continue thalak or reconcile again. Ahmad bin Umar Asy- Syatiri, *Al- Yaqutu an- Nafis*, (Beirut: Dar ats- Tsaqafah al- Islamiyah, 1949), h. 165

<sup>16</sup> *Ibid*, h. 162

<sup>17</sup> Aye Sudarto, Muhamad Bisri Mustofa, Fathul Mu'in, *Aqah Syirkah dalam Kompilasi Hukum Ekonomi Syariah (KHES) dan Mazhab Maliki*, Jurnal ASAS: Jurnal Hukum Ekonomi Syariah, Vol. 14 No. 1, Juli 2022, h. 26



defined as a transaction between two or more parties, each of which agrees to carry out work of a financial nature with the aim of making a profit. From the various definitions that have been presented, it can be concluded that shirkah is a form of business organization that has elements: (1) partnership of two or more parties; (2) activities with the aim of obtaining material benefits; (3) proportional distribution of profits or losses in accordance with the agreement; (4) does not deviate from the teachings of Islam. Various kinds of shirkah consist of: *First*, shirkah'inan, is a cooperation carried out by two or more people by combining property or capital whose amount is not always the same<sup>19</sup>; *Second*, shirkah al-mufawadlah is a form of engagement between two or more people based on the same point, starting from the capital included and the form of cooperation, both in terms of quality or quantity must be the same; *Third*, shirkah abdan<sup>20</sup>, is a form of Union whose main capital is skill in work. This union is created by two or more people with the aim of accepting a job, such as a blacksmith, porters, tailors, weavers, electronic service workers and so on. *Fourth*, shirkah mudlarabah<sup>21</sup>, which is a form of agreement agreed by the owner of the capital (shahib al-mal) with workers or capital managers (mudlarib) to manage the money Capital obtained, where the Capital Management is related to trading businesses. If the partnership benefits, the distribution is based on mutual agreement. If there is a loss, then only the owner of the capital bears the loss, while the worker or manager does not benefit at all from the work done.

*Fifth*, Shirkah wujud<sup>22</sup>. Shirkah wujud is a union or cooperation carried out by two or more people without including capital consisting of property. In relation to the contract of cooperation with this form of syirkah wujud, can be described, for example, there are two or more people make purchases of goods without including capital, they only rely on the good name and trust of traders against them. The good name and trust are held by the merchants to hand over the goods they have. This union contains responsibility because one of the parties does not include capital goods and also does not work. This means that two or more people make purchases of goods to merchants by credit and resell them at cash prices and the profits are shared jointly. This kind of Union, for the present time is similar to the term realtor.

Shirkah wujud which only includes a capital of good name or belief, in its jurisdiction raises differences among Islamic jurists (ulama). According to Shafiiyah, malikiyah, Zahiriyah and Shi'ah Imamiyah stated that the form of cooperation with the model of syirkah wujud the law is false and unclear, according to the views of those who are called syirkah there must be capital and/ or a clear job. Meanwhile, according to Hanafiyah, Hanabilah and Zaidiyah, syirkah wujud law is included in the category of cooperation agreements that are allowed because in practice it is still in the form of work and each party can act as a representative for the other party. In addition to this argument, syirkah wujud is widely done by Muslims. With regard to differences in views in syirkah wujud, there are two views on capital that must be set forth in the capital. The first view says that the capital included must consist of something concrete, namely in the form of capital assets or goods and/ or work that is real. While the second view says that capital can consist of something abstract and has the potential to be concretized in an act.

<sup>18</sup> Humaeroh, *Eksistensi Syirkah Ta'awuniyah dalam Perspektif Hukum Islam*, Muamalatuna: Jurnal Hukum Ekonomi Syariah, Vol. 9 No. 2, Juli-Desember 2017, h. 22

<sup>19</sup> *Ibid*, h. 27

<sup>20</sup> Wahbah Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*, (Damaskus: Maktabah al-Asad, 2008), 598

<sup>21</sup> Muhammad Usman Syabir, *al-Muamalth al-Maliyah al-Mu'ashirath fi al-Fiqh al-Islami*, (Yordania: Dar an-Nafais: 1996), h. 300

<sup>22</sup> Wahbah Zuhaili, *Op Cit*, h. 597

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The definition of "muamalah" in terms consists of several opinions. *First*, muamalah is defined as an expression that is desired to explain the laws of Shari'ah (Islam) that govern cooperation between humans in the world, both with regard to property and women or wives<sup>23</sup>. According to Ibn Abidin<sup>24</sup>, the discussion of muamalah includes five things, namely related to the exchange of property, marriage, disputes, trust (mandate) and inheritance (inheritance).

*Second*, according to Masduha Abdurrahman as quoted by Hariman Surya Siregar et al<sup>25</sup>, stating that muamalah is part of the law that has the understanding of "the laws relating to the actions and relationships of human beings in matters of material and material rights and how to resolve their disputes. *Third*, according to Ali Fikri<sup>26</sup>, the scope of the muamalah discussion is only limited to the regulation of human interaction related to the exchange of property with property or benefits with benefits carried out by means of transactions or something that has the consequences of bonding. Considering the three discussions defined by muamalah, for the current conditions, the third definition is more appropriate. This is to avoid confusion in the discussion of the scope of muamalah. So with the third definition, the scope of muamalah becomes focused on the issue of property or finance.

The discussion related to muamalah, at the level of its implementation there are several principles that must be considered. Broadly speaking, there are two principles, namely general principles and special principles. In general<sup>27</sup>, the principle of muamalah is: first, the ability to do everything that enters the aspect of muamalah, both buying and selling, renting other things. The basis of this principle is the rule that states "the basic principle of muamalah is permissible unless there is a proposition that prohibits it", and also the rule that says: "basically muamalah is free as long as nothing is found that prevents it"<sup>28</sup>. Secondly, muamalah is done on the basis of the consideration that in it there is goodness (maslahat) for mankind and in the same case to reject various damages (dar Al mafasid wa jalb al mashalih). The content of the general principle emphasizes two things, namely: legally there is no proposition prohibiting and in it must contain elements of goodness (maslahat).

**Principles Of Justice**

The word "asas" "comes from Arabic," "asasun" which means base, base, foundation. When connected with the system of thinking, What is meant by the principle is a very basic foundation of thinking. A.W. Munawir states that the principle is the same as "ussu" or "al-ussu" and "asasu" or "al-asasu", the plural of ussu is isaasu. Asas means the beginning of the building "muftadau kullu saiin" (every beginning of something), al-qaaid and is interpreted as the base, foundation, fundamen, Foundation. If the word principle is associated with law, what is meant by principle is the truth that is used as a foundation for thinking and reason for opinion, especially in the enforcement and implementation of law<sup>29</sup>. Based on the Indonesian dictionary, the meaning of the word "principle" as: (1)"root, base, Base, Foundation, Foundation, fundamen, nature, Law,

<sup>23</sup> Muhammad Usman Syabir, *al- Muamalah al- Maliyath al- Muashirath*, (Kuwait: Dar an- Nafais, 1996), Cet: 1, h. 10

<sup>24</sup> Syeikh Muhamman Amin (Ibnu Abidin), *Roddul Mukhtar ala Durru al- Mukhtar*, (Riyadl: Dar Alam al- Kutub, 2003) Cet 1. h. 79

<sup>25</sup> Hariman Surya Siregar dan Koko Khoerudin, *Fikih Muamalah: Teori dan Implementasi*, (Bandung: PT Remaja Rosdakarya, 2019), Cet 1. h. 6

<sup>26</sup> Ali Fikri, *Muamalah al-Maddiyah wa al- Adabiyah*, (Kairo: Muthafa al- Bab al- Halabi, 1998) Jilid 1, Cet. 1, h. 7

<sup>27</sup> St. Salelia Madjid, *Prinsip-prinsip (Asas- asas) Muamalah*, Jurnal Hukum Ekonomi Syariah (J-HES), Volume 2, No. 1, Januari- Juni 2018, h. 17-20

<sup>28</sup> Mundzumath al- Mu'tamir al- Islami bi Jiddath, *Majalah Majma' al- Fiqh al- Islami*, (<http://www.ahlalhdeeth.com>) Juz 7, h. 1494

<sup>29</sup> Munawir A.W., *Kamus Al-Munawwir Arab-Indonesia Terlengkap*, (Surabaya: Pustaka Progressif 1997), h. 44.



Foundation, keel, base, handle, pillar, principal, principle, pillar, backrest, joint, terrace, pole, Pillar; (2) law, rule, code of conduct, norm, benchmark, guideline, footing, procedure"<sup>30</sup>.

Justice in language comes from the basic word fair in KBBI V: 2018<sup>31</sup> means equally weighty, impartial, impartial. While according to the meaning of the term an expression that is always done in the right way and keep away from everything that is forbidden according to religion. In addition, there are different definitions, fair is to apply everything proportionally regarding the place, time, aspects and provisions and there is nothing excessive, negligence, preceding or ending<sup>32</sup>. Ridwan Halim argues as quoted by Mahir Amin states that justice is the harmony between legal certainty and legal comparability<sup>33</sup>. The meaning of justice comes from the word masdar (the third derivative word in Arabic) of the verb adala - ya'dilu - adlan - adalatan, meaning equal, straight, just and Justice. The law of righteousness is the law of righteousness. So it is said that a Just person is someone who walks straight and his attitude always uses the same measure, not double. So that the equation which then makes the meaning of justice as something that negates alignments to any party that is in dispute. Justice only stands for what is right. With a non-partisan attitude so that everything will be appropriate and not arbitrary will without justice<sup>34</sup>. John Rawls<sup>35</sup> argued that justice is essentially a rational policy principle applied to the general concept of the well-being of all groups in society. In order to achieve justice, it makes perfect sense for a person to force his desires to be fulfilled according to the principle of usefulness, since this increases the net profit from the satisfaction that members of his society get.

### Character of *Syirkah Wujud*

*Shirkah wujud*, namely a cooperation agreement in which one party provides capital and the other party has a reliable reputation. Profit sharing adjusts the agreement of the parties. If there is a loss, the owner of the capital bears the loss of money or property, while the owner of the reputation bears the risk of loss of trust and good name owned<sup>36</sup>. According to Article 140 paragraph (1) compilation of Sharia Economic Law (KHES), implied *shirkah wujud* is a cooperation between the owner of the goods deng traders because of mutual trust. The application of the practice of *shirkah wujud* is described in Article 140 paragraph (2), namely that the merchant may sell objects belonging to other parties without submitting an advance payment or guarantee in the form of objects or other securities. Regarding the benefits based on the agreement of those who perform the contract of cooperation in *syirkah wujud*.

Related to the character of *syirkah wujud* can be determined based on the definition that is merupakan cooperation conducted without capital or money, akn but based on mutual trust. The trust is given by the owner of the goods to the merchant to sell the goods owned without making a previous payment. The advantage of this cooperation is that parties who do not have enough or do not have capital assets can cooperate to benefit as long as they have integrity in trade. The behavior of these parties can be trusted and can also be accounted for. While the weakness of the cooperation, from the word "cooperation" as if aligning the parties who deposit assets as capital with parties who are limited to include "trust" as capital cooperation. When placed on an equal footing it will imply the authority and responsibility of the parties. In this condition (aligning) then for the owner of capital goods there is a tendency to be harmed because the authority can be

<sup>30</sup> Ali Muhammad, *Kamus Lengkap Bahasa Indonesia Modern*, (Jakarta: Pustaka Amani, 1980), h. 64.

<sup>31</sup> *Op Cit*, Badan Pengembangan dan Pembinaan Bahasa Kementerian Pendidikan dan Kebudayaan, h. 12

<sup>32</sup> Al-Dararu al-Sunnayat, [https://www.dorar.net/akhlak/905/makna adil secara Bahasa dan Istilah](https://www.dorar.net/akhlak/905/makna%20adil%20secara%20Bahasa%20dan%20Istilah)

<sup>33</sup> Mahir Amin, *Konsep Keadilan dalam Perspektif Filsafat Hukum Islam*, Jurnal Hukum dan Perundangan Islam, Al-Daulah, Volume 4, Nomor 2, Oktober 2014, ISSN 2089-0109

<sup>34</sup> M. Quraish Shihab, *Wawasan al- Qur'an* (Bandung: Mizan, 2003), h. 44

<sup>35</sup> Dikutip dari rangkuman dalam jurnal yang ditulis oleh Muhammadiyah Helmi, *Konsep Keadilan dalam Filsafat Hukum dan Filsafat Hukum Islam*, Mazahib; Jurnal Pemikiran Hukum Islam, Vol. XIV No. 2 (Desember 2015), h. 138

<sup>36</sup> *Ibid*, h. 50-51

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donated by traders. From here it is necessary to modify by repositioning the parties in the agreement on cooperation management of results based on shirkah wujud to be more equitable and contain humanitarian values (maslahah).

**Syarik repositioning as a new characteristic of Syirkah Wujud on Agricultural Management.**

The management of agricultural products that have been running in practice is done by cooperation between farmers who have the capacity as owners of capital with traders who have the skills (in Article 140 KHES, traders who have the skills can be called with the word “trader” only) in marketing and or sales. Traders sell agricultural products owned by farmers to the company because the trader has access to sales. Sales through such merchants can get above-average sales prices (general prices). If there is a loss, then the loss will not be too severe than sold by farmers themselves. The practice is allowed as the rules contained in the compilation of Sharia Economic Law (KHES) whose complete rules are contained in Article 139 and Article 140<sup>37</sup>. The weak point of this rule is the alignment between the owners of goods or objects, in this case farmers and traders. The parallel can be seen from the word “cooperation” contained in Article 139 Paragraph (1) and Article 140 Paragraph (1). With the word “cooperation”, then the position of all parties have the same rights and obligations in investing, getting benefits and bear the risk of losses that will occur. In fact, in the cooperation there is one party that only includes capital skills or good name, and when there is a financial loss that most bear the risk is the farmer as the owner of the object or property.

In connection with the situation, it is necessary to modify the contract of cooperation (shirkah) by repositioning one of the parties in it, the repositioning is more precisely done on “traders who have skills”, where the original position as part of the Sharik (one of the partners in cooperation), then placed as a guarantor between farmers (owners of objects or goods) with prospective buyers and/ or companies, so that a new concept called guarantor cooperation (shirkah-dlamin) is born. Cooperation is carried out between the owner of the object or goods with potential buyers and or companies, while the “skilled trader” is positioned as a guarantor between the two.

The position of the trader as a guarantor has a two-way relationship. *First*, the relationship with the owner of the object or goods as a guarantor of the price. This means that the owner of the object or item will get a price above the average general price if the sale of the item through a guarantor. *Second*, the relationship with potential buyers and or company. This means that the company will get quality goods according to the quality desired by the company if the

<sup>37</sup> Pasal 139 ayat (1) KHES:

“Kerja sama dapat dilakukan antara pemilik modal dengan pihak yang mempunyai keterampilan untuk menjalankan usaha”.

Pasal 140 (1) KHES:

“Kerja sama dapat dilakukan antara pihak pemilik benda dengan pihak pedagang karena saling percaya”

Pasal 140 (2) KHES:

“Dalam kerja sama sebagaimana dimaksud pada Ayat (1) di atas, pihak pedagang boleh menjual benda milik pihak lain tanpa menyerahkan uang muka atau jaminan berupa benda atau surat berharga lainnya”

Pasal 140 (3) KHES:

“Pembagian keuntungan dalam syirkah al-wujud ditentukan berdasarkan kesepakatan”

Pasal 140 (4) KHES:

“Benda yang tidak laku dijual, dikembalikan kepada pemilik”

Pasal 140 (5) KHES:

“Apabila barang yang diniagakan rusak karena kelalaian pihak pedagang, maka pihak pedagang wajib mengganti kerusakan tersebut”





purchase of these goods through a guarantor. So the guarantor has two responsibilities, namely to guarantee the price of goods and guarantee the quality of goods.

This form of modification is legally permissible in Islam as long as there is no *nash Syar'i* (explanation of the Qur'an and Hadith) that prohibits it. It is in accordance with the rules of *ushuliyah* which explains the principle of *muamalah*, namely:

"basically everything related to *muamalah* is permissible as long as there is no evidence that violates it/ forbids it/ forbids it"<sup>38</sup>.

With regard to the law of modification by repositioning one of the *Shari'a* in *syirkah wujuh* on the management of agricultural products, the law is allowed to be done, because there is no *nash* that prohibits it. It is also necessary to understand that the modified form aims to disseminate and adjust economic activities according to the demands of Social Reality, time and place based on *Sharia*, has the aim of preserving and maintaining property (*hifdz al-mal*), and then avoiding something that causes damage and danger that will occur (*Dar'u al-mafasid*). Thus, a full-fledged economic activity is achieved with *maslahah* (goodness). Modifications to the application of agricultural product management cooperation based on *syirkah wujuh* is a form of gradual improvement in conventional economic activities that have the potential for periodic losses to one party, and efforts to eliminate inequality in business, as well as eliminate injustice that often occurs in the business world. At the same time, this proves that Islamic law is built on the joints of establishing equal justice for all mankind (*tahqiq al-is*), maintaining and realizing the common good for mankind (*ri'ayath mashalih al-ummah*), and reducing the burden and eliminating difficulties (*qillat al-taklif, nafyu al-haraj wa ra'u al-masyaqqah*), and giving the burden gradually or gradually (*tadarruj al-tasyri'*), especially *syirkah wujuh* on agricultural product management cooperation.

Another benefit of repositioning one of the parties / *syarik* in *syirkah wujuh* is to avoid middlemen behavior that can harm farmers. Namely, the cooperation of farmers with traders without repositioning traders as guarantors, the position of farmers is very weak to negotiate the selling price of goods (agricultural products), determine profits and determine weighing during the process of sending goods to sellers or companies. With the repositioning, the farmer gets the certainty of the selling price of the goods he has, gets the certainty of the scales on the weight of the goods he sends, without cuts made arbitrarily, and has a bargaining position in determining the profits shared between himself and Partners (merchant-guarantor).

With the form of repositioning traders as guarantor traders, three things that often occur, namely profit sharing, price certainty, and certainty of scales are implicitly included in the responsibility of the trader-guarantor and will affect their profits. The better and more transparent these three things, the more profits will be obtained by the guarantor trader.

## Conclusion

Agricultural product management cooperation agreement based on *syirkah wujuh* by repositioning one of the parties / *syarik* legally does not violate the rules, both *sharia* rules and legislation. According to the rules of *Shari'a*, the contract of cooperation is included in the category of *muamalat* which has a dynamic nature, can change according to the conditions of time and place as long as the change does not contradict the *Shari'a*, as the rule of *ushuliyah*: "basically everything related to *muamalah* is allowed as long as there is no evidence that violates. Meanwhile, according to the rules of law, this cooperation agreement falls into the category of private law whose arrangement is also soft, which will be this cooperation can be based on the agreement of both parties, as long as the agreement does not conflict with existing legislation, contains benefits, and does not harm any party, as stated in Article 1338 paragraph (1) of KUHPerdata.

<sup>38</sup> Ibrahim Muhammad Mahmud al- Hariri, *Al- Madkhal ila al- Qawaid al- Kulliyah*, Amman: Dar Amaar, 1998, h. 169

**RE-ORGANIZE THE COMPANY IN AGRICULTURAL PRODUCT MANAGEMENT BASED ON SHIRKAH WUJUH COOPERATION AS AN ALTERNATIVE TO ESTABLISH BALANCE**

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In relation to the benefits of this cooperation, this cooperation provides open opportunities for cooperation for someone who does not have capital assets or goods, but they still have the skills or expertise to develop a business in a cooperation. This benefit can be felt by a trader who only has skills and/ or expertise. In addition, the benefits for the owner of the goods, namely farmers can avoid the behavior of middlemen who can harm, get certainty scales in accordance with the amount of goods he has, and get certainty the price of goods owned higher than the average price (market)

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