

# **Contract of *al-Muzara'ah*: Concept and Application in Islamic Banking.**

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## *Abstract*

*The Islamic law (fiqh) concerns all aspects of religious, social and economics life. Besides religious observances (Ibadat), this legal law seeks to regulate the institutions of family, marriage, inheritance, property relations, economic contracts and obligations as well as land tenure system. The problem of land tenure system and land development has been discussed copiously in the early fiqh literary sources. This article tries to analyze one of the contracts of agriculture in Islamic Commercial law namely al-Muzara'ah as well as the application of this contract for the financing arrangement in Islamic banks. The methodology for this research is through document analysis and interviews with relevant officers of Islamic banks as well as observance of various financing products in agriculture offered by Islamic banks in Malaysia.*

**Keywords:** *Al-Muzara'ah, Bay' Bithaman Ajil, Bay' al-Innah, Islamic Banks.*

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## **Introduction.**

The land tenure system and land development method in Islam are considered as one of the many ways to increase food supply and food production for the benefit of Muslim society at large. Yet, the accurate implementation of this method and contract will ensure positive effects to the social aspect in the peasant-landlord relationship as well as in the economic side by increasing *halal* source of earning to the Muslim community through the land development and agriculture attempts. Islam has mandated methods for the working of land in order to ensure that land is fully used rather than remains idle or uncultivated. As such, there are number of questions need to be solved such as what is the precise method or contract that should be used by Muslim in order to develop their land and what are the opportunities given to them by the Islamic banks in order for them to pursue their agro projects? All these questions will be analyzed and answered in this article based on views given by Muslim jurists and *fiqh* scholars from the perspective of Islamic Commercial law as well as data and information given by officers of selected Islamic Banks in Malaysia.

### **1. Contracts of *al-Muzara'ah*.**

#### 1.1 Definition.

*Al-Muzara'ah* (partnership in agriculture) literally means planting of something, from the root word of “*zara'a*”<sup>1</sup>. From the *fiqh* terminology, *al-Muzara'ah*

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<sup>1</sup> Ibn Manzur. 2003. *Lisan al-'Arab*. Riyad: Dar Alim al-Kutub, Vol.5, p.3.

refers to an agricultural compact between land possessor and cultivator<sup>2</sup>. This contract also means cede of land and seed to the cultivator while produce of the orchard is divided for both parties in the contract (landlord and cultivator)<sup>3</sup>.

Yet, *‘ulama* from Maliki school of Islamic law define *al-Muzara’ah* as contract of sharing in agriculture<sup>4</sup>. Imam al-Shafi’i defines this contract as a compact between landlord others in planting and taking care of crop, whereby the landlord provides the seeds and the fruit produce will be divided between them at agreed ratio<sup>5</sup>. Moreover, jurists from Hanbali school refer *al-Muzara’ah* as a contract of submitting land to the cultivator and both parties are involved in the plantation project<sup>6</sup>.

According to *Majallah al-Ahkam al-‘Adliyyah*, contract of *al-Muzara’ah* refers to a kind of partnership, where the land comes from one, and the work from the other, *i.e.* a partnership to cultivate, and divide the crops<sup>7</sup>.

Some of the *fuqaha* have named *al-Muzara’ah* as *al-Mukhabarah* (loosening soil) or *al-Muhaqalah*. Resident of Iraq has named it as *al-Qard*<sup>8</sup>. In addition, *‘ulama*

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<sup>2</sup> Al-Kasani. 1974. *Bada’i’ al-Sana’i’*. Beirut: Dar al-Kitab al-‘Arabi, Vol.6, p.175; Ibn Abidin. 1979. *Hashiyah Radd al-Muhtar*. Beirut: Dar al-Fikr, Vol.5, p.193; ‘Abd al-Rahman al-Jaziri. n.d. *Kitab al-Fiqh ‘ala al-Madhahib al-Arba’ah*. Riyadh: Dar al-Irshad, Vol.3, p.2.

<sup>3</sup> Ibn Qudamah. 1972. *al-Mughni*. Beirut: Dar al-Kitab al-‘Arabi, Vol.5, p.581; Abu al-Naja al-Hajjawi. 1999. *al-Iqna’ litalib al-Intifa’*. Riyadh: Dar Alim al-Kutub, p.475; Charles Hamilton. 1982. *The Hedaya*. Lahore: Premier Book House, p.579.

<sup>4</sup> Ibn Juzayy. 1976. *al-Qawanin al-Fiqhiyyah*. Beirut: Dar al-Qalam, p.280; ‘Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.3.

<sup>5</sup> Mustafa al-Khinn *et.al.* 1992. *al-Fiqh al-Manhaji ‘ala Madhhab al-Imam al-Shafi’i*, Damshiq: Dar al-Qalam, Vol.3, p.33; ‘Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.4; Imran Umrani. 2002. *al-Bayan fi Fiqh al-Imam al-Shafi’i*. Beirut: Dar al-Kutub al-‘Ilmiyyah, Vol.7, p.241.

<sup>6</sup> Ibn Qudamah. *op.cit.*, Vol.5, p.382; al-Buhuti. 2003. *Kashaf al-Qina’*. Riyadh: Dar Alim al-Kutub, Vol.3, p.523; ‘Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.3.

<sup>7</sup> *The Mejelle*. 2001. C.R.Tyser, B.A.L., trans., Kuala Lumpur: The Other Press, Article: 1431, p.237.

<sup>8</sup> Ibn Abidin. *op.cit.*, Vol.6, p.274; Ibn Qudamah. *op.cit.*, Vol.5, p.583; Wahbah al-Zuhaili. 2004. *al-Fiqh al-Islami wa Adilatuh*. Damshiq: Dar al-Fikr, Vol.6, p.4684. According to the *fuqaha*, *al-Mukhabarah* or *Khybr* and *al-Muhaqalah* or *Haql* were the pre-Islamic forms of customary tenure, which generally constituted a system of precarious landholdings. The *fuqaha* differ as to the actual

from Shafi'i school have differentiated between the term of *al-Muzara'ah* and *al-Mukhabarah*. The word *al-Muzara'ah* means sharing project between landlord and cultivator whilst seeds are provided by the landlord. Comparatively, *al-Mukhabarah* means sharing of agriculture project while seeds are provided by the cultivator<sup>9</sup>.

## 1.2 The Legality of *al-Muzara'ah* Contract.

Most of the 'ulama permit the contract of *al-Muzara'ah*<sup>10</sup>. Nonetheless, Abu Hanifah of the opinion that this type of contract is invalid. In other words, the contract of *al-Muzara'ah* with distribution ratio of 30 to 70 or 25 to 75 is unlawful<sup>11</sup>. This view is justified by a *hadith* narrated by Jabir Bin 'Abd Allah. Prophet Muhammad (s.a.w.) said<sup>12</sup>:

“Prophet Muhammad (s.a.w.) had forbidden *al-Muhaqalah*, *al-Muzabanah* and *al-Mukhabarah*”.

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meaning of these terms and the nature of tenancy forms involved. The term *al-Muhaqalah* is used in two different senses. It denotes a deal involving lease of land against corn or buying of a crop still in growth when grain is in the ear, in exchange of corn. See Ziaul Haque. 1977. *Landlord and Peasant in Early Islam*. Pakistan: Islamic Research Institute, pp.14-15.

<sup>9</sup> Mustafa al-Khinn *et.al. op.cit.*, Vol.3, p.33; al-Sharbini al-Khatib. 1958. *Mughni al-Muhtaj*. Qahirah: Matba'ah Mustafa al-Babi al-Halabi. Vol.2, p.323; al-Shawkani. 2003. *Nayl al-Awtar*. Riyad: Dar Alim al-Kutub, Vol.3, p.9. Besides, the forbidden type of *al-Mukhabarah* is that the contract stipulates the landlord to cultivate together with the cultivator. See Ibn Taymiyyah. n.d. *Majmu' al-Fatawa*. Maghribi: Maktabah al-Ma'arif, Vol.30, p.116.

<sup>10</sup> Ibn Qudamah. *op.cit.*, Vol.5, p.581; 'Abd al-Rahman al-Jaziri, *op.cit.*, Vol.3, p.2; Abu Yusuf. *op.cit.*, p.96; al-Shawkani. *op.cit.*, Vol.3, p.9. The legality of the contract of *al-Muzara'ah* was approved by Umar (r.a.), Ali (r.a.), Ibn Abas, Ibn Mas'ud and Sa'ad Bin Malik. See Hasan Ayub. 2006. *Fiqh al-Mu'amalat al-Maliyyah fi al-Islam*. Qahirah: Dar al-Salam, p.262.

<sup>11</sup> See for instance 'Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.2; Charles Hamilton. *op.cit.*, p.579; Hasan Ayub. *op.cit.*, p.262.

<sup>12</sup> *Sahih al-Bukhari*. 1999. “Kitab al-Musaqat”, Hadith No: 2381, p.383; *Sahih Muslim*. 1999. “Kitab al-Buyu”, Hadith No: 3908, p.681.

The term *al-Mukhabarah* here, which in the dialect of Madinah has the same significant as *al-Muzara'ah*<sup>13</sup>. Nevertheless, Imam Shafi'i has permitted this contract as an outcome of management effort and this type of contract is truly needed. Therefore, the sharing of crop along with management effort and relevant jobs is regarded as valid<sup>14</sup>.

The strongest view in this school has stipulated that the contract of *al-Muzara'ah* should not be separated between two contracts (contract of cultivation and contract of management) and, the management effort must always leads the cultivation effort. Besides, jurists from Shafi'i school do not permit *al-Muzara'ah* contract when the seeds are provided by the cultivator since there was no *shari'ah* proof on it<sup>15</sup>. According to Hanbali school, the contract of *al-Muzara'ah* is valid when the seeds are provided by the owner or the cultivator. But, if the seeds are provided by the cultivator, the legality of this contract is much more validated<sup>16</sup>.

Yet, Abu Hanifah and Shafi'i have forbidden the contract of *al-Muzara'ah* when seeds are provided by the cultivator based on a *hadith* of Prophet Muhammad (*s.a.w.*) narrated by Jabir Bin 'Abd Allah<sup>17</sup>. He (*s.a.w.*) said to the effect<sup>18</sup>:

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<sup>13</sup> Ibn Abidin. *op.cit.*, Vol.6, p.274; Ibn Qudamah. *op.cit.*, Vol.5, p.583; Wahbah al-Zuhaili. *op.cit.*, Vol.6, p.4684; Charles Hamilton. *op.cit.*, p.579.

<sup>14</sup> Imam al-Shafi'i. 1961. *al-Umm*. Qahirah: Maktabah al-Kuliyyat al-Azhariyyat, Vol.4, pp.12-13; Mustafa al-Khinn *et.al.*, *op.cit.*, Vol.3, p.33.

<sup>15</sup> Al-Sharbini al-Khatib. *op.cit.*, Vol.2, p.324; al-Shirazi. *op.cit.*, Vol.1, p.349; Hasan Ayub. *op.cit.*, p.263. Al-Shafi'i of the view that when the seeds are provided by the landlord, the contract is called *al-Muzara'ah*. Conversely, when the seeds are provided by the cultivator, the contract is called *al-Mukhabarah*. See 'Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.4.

<sup>16</sup> Ibn Taymiyyah. *op.cit.*, Vol.30, pp.103-104.

<sup>17</sup> Al-Kasani. *op.cit.*, Vol.6, p.175; Imam al-Shafi'i. *op.cit.*, Vol.4, p.13; Imran 'Umrani. *op.cit.*, Vol.7, p.242. They forbid this kind of contract because the existence of element of uncertainty (*gharar*) and ignorance (*al-Jahalah*). See al-Shawkani. *op.cit.*, Vol.3, p.11.

<sup>18</sup> *Sahih al-Bukhari. op.cit.*, "Kitab al-Harth wa al-Muzara'ah", Hadith No: 2344, p.376; *Sahih Muslim. op.cit.*, "Kitab al-Buyu", Hadith No: 3915, p.672.

“Prophet Muhammad (s.a.w.) has forbidden rental for sharecropping”.

Now that the remuneration for the sharing does not exist when the contract is agreed or the rate of produce is unknown then, it may produce nothing. In short, every matter that is unclear and unknown automatically will revoke the contract of *al-Muzara'ah*<sup>19</sup>.

Concerning of dealing (*Mu'amalah*) between Prophet Muhammad (s.a.w.) and the resident of Khaybar, the compact is regarded as *Kharaj al-Muqasamah*<sup>20</sup> such as one third or one fourth of the land produce is divided between both parties based on the friendship agreement, whereby this kind of contract is permissible<sup>21</sup>.

### 1.3 The Essence of *al-Muzara'ah* Contract.

According to jurists from Hanafi school of Islamic law, the essence for the contract of *al-Muzara'ah* is proposal (*Ijab*) and acceptance (*Qabul*)<sup>22</sup>. Landlord offers to the cultivator by saying “I submit this land to you for sharing project”. The cultivator replies by saying “I accept your proposal” or “I like with your offer” or any other words that show an acceptance for the compact. When these two essences exist, the contract is effective<sup>23</sup>.

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<sup>19</sup> ‘Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.4; Charles Hamilton. *op.cit.*, p.579.

<sup>20</sup> *Al-Kharaj* can be divided by two kinds. Firstly, working distribution tax (*Kharaj al-Wazifah*) namely the tax distribution is based on the broadness of land. Secondly, produce distribution tax (*Kharaj al-Muqasamah*) whereby the tax distribution is based upon crops produce like 50 to 50. See for instance, al-Mawardi. 1973. *al-Ahkam al-Sultaniyyah wa al-Wilayah al-Diniyyah*. Misr: Mustafa al-Babi al-Halabi, pp.161-171.

<sup>21</sup> Wahbah al-Zuhaili. *op.cit.*, Vol.6, p.4683. See also Ibn Hajar al-‘Asqalani. 1956. *Fath al-Bari*. Riyad: Maktabah al-Riyad al-Hadithah, Vol.5, p.14.

<sup>22</sup> *The Mejelle*. *op.cit.*, Article: 1432, p.237.

<sup>23</sup> Al-Kasani. *op.cit.*, Vol.6, p.176; ‘Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.5.

Similarly, if the owner of the land, says to the worker, *i.e.*, to the cultivator, “I have given you this land by way of *al-Muzara’ah* on the terms that you take such a share of the crops,” and the cultivator says “I have accepted” or “I have taken the land” or if he says something evidencing his assent, or the cultivator says to the owner of land “I will work by way of *al-Muzara’ah* in your land”, and he assents, the contract of *al-Muzara’ah* is a concluded contract<sup>24</sup>.

According to this school, contract of *al-Muzara’ah* is a form of contract that begins with hiring contract and ends with partnership. In the case when the seeds are provided by the cultivator hence, the benefit will be returned to the land and the landlord will pay for the *Kharaj*. Conversely, if seeds are provided by the landlord, the benefit will be returned to the cultivator and he will pay for the *Kharaj*<sup>25</sup>.

Yet, *‘ulama* from Hanbali school view that the contract of *al-Muzara’ah* does not requires any acceptance in the form of word expression but it is enough by the starting of relevant work by the cultivator as in the case of representative (*al-Wakalah*) contract and, it is valid with the word expression of hiring contract. Besides, this school also pointed out that the contract of *al-Muzara’ah* is not a binding contract as similar to other type of partnership contract<sup>26</sup>.

In addition, scholars from Maliki school of *fiqh* view that the contract of *al-Muzara’ah* is a binding contract in terms of seeds availability and other matters that related to the cultivation efforts such as seeding and planting tree for crops which are

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<sup>24</sup> *The Mejelle. op.cit.*, Article: 1432, p.237.

<sup>25</sup> Al-Kasani. *op.cit.*, Vol.6, p.176; ‘Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.5.

<sup>26</sup> Al-Buhuti. *op.cit.*, Vol.3, p.528; ‘Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.15; Ibn Taymiyyah. *op.cit.*, Vol.30, p.111.

not using seeds for growing like onion. The strongest view among the *'ulama* of Maliki pointed out that all kinds of partnership contracts with respect of property are bound with the contents of the contract<sup>27</sup>.

#### 1.4 Conditions for *al-Muzara'ah* Contract.

Abu Yusuf and Muhammad from Hanafi school of Islamic jurisprudence stipulate condition for *al-Muzara'ah* contract as follows:

i) Condition for Parties in the Contract.

There are two general conditions for both parties in the contract. Firstly, person who signs the contract should have sound mind. Hence, contract made by insane or child are regarded as nullify because the state of sound mind is a stipulation for managing property. Nevertheless, the age of puberty is not a condition for this kind of contract therefore, a child who gets permission from his parent or guardian is allowed to participate in this type of contract<sup>28</sup>.

Secondly, the person who signs the contract is not an apostate (*Murtad*). However, this view is solely given by Abu Hanifah whereby most of the jurists from Hanafi school permit the participation of apostate in the contract of *al-Muzara'ah*<sup>29</sup>.

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<sup>27</sup> Al-Dardir. *op.cit.*, Vol.3, p.492. Besides, some of the Maliki's jurists opine that the contract of *al-Muzara'ah* is not a binding contract by the word of expression. See 'Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.11.

<sup>28</sup> Al-Kasani. *op.cit.*, Vol.6, p.176; Ibn Abidin. *op.cit.*, Vol.6, p.282; 'Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.5; Charles Hamilton. *op.cit.*, p.579; *The Mejelle. op.cit.*, Article: 1433, p.237.

<sup>29</sup> Al-Kasani. *op.cit.*, Vol.6, p.177; Ibn al-Hummam. *op.cit.*, Vol.8, pp.34-35.

ii) Condition for Crop.

The type of crop is well known by both parties since different kind of crop needs different way of treatment and cultivation style. It should specify by whom the seed is to be supplied in the contract in order that the ground of the compact may be known. In other words, in order that it may be known whether it is founded on the use of the labor, or on the use of land, and that no source of dispute may remain<sup>30</sup>.

Nevertheless, based on juristic preference (*al-Istihsan*), the determination of crop is not a condition because it is based upon the skills of the cultivator. Thus, the most important condition for the type of crop is that the crop is able to be cultivated<sup>31</sup>.

iii) Condition for Crop Produce.

Firstly, type of crop produce should be clarified in the contract since the incoherent of the type of crop will nullify the *al-Muzara'ah* contract. Secondly, the crop produce should be shared between both parties in this contract. If one party only gets the entire crop produce so, the contract will be invalidated. Thirdly, the rate of crop distribution should be cleared such as 50 to 50 or 60 to 40 or 75 to 25 because in the absence of this ratio will cause an argument by both parties in the contract later on<sup>32</sup>.

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<sup>30</sup> Charles Hamilton. *op.cit.*, p.579; Ibn al-Hummam. *op.cit.*, Vol.8, pp.34-35.

<sup>31</sup> Ibn Abidin. *op.cit.*, Vol.6, p.280; al-Kasani. *op.cit.*, Vol.6, p.177; Charles Hamilton. *op.cit.*, p.579; *The Mejelle. op.cit.*, Article: 1434, p.237; Ibn al-Hummam. *op.cit.*, Vol.8, p.35.

<sup>32</sup> 'Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, pp.5-6; al-Kasani. *op.cit.*, Vol.6, p.178; Charles Hamilton. *op.cit.*, p.579; *The Mejelle. op.cit.*, Article: 1435, p.237.

Fourthly, the calculation for the crop produce should be included for the entire project. In the case when one party stipulates extra conditions in the contract such as calculating the produce in terms of seeds with specific measurement, this contract will also be nullified because there is a tendency that the seeds will not producing as planed and hoped<sup>33</sup>.

Similarly, the contract is invalid when the crop produce is given on rotation basis because there is likelihood that different rotation will give different crop produce then, the crop distribution will not be equal whereby there is a possibility that one party will receive his portion much lower than the other one<sup>34</sup>.

#### iv) Condition for Land.

Conditions for the land uses in the contract of *al-Muzara'ah* are:

- a) The land should be suitable for the plantation purpose, whereby the cultivation on salty and swampy land are not permitted because in this contract, the crop produce becomes the remuneration for one party in the contract and the remuneration cannot be given to him if the tree not producing anything<sup>35</sup>.

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<sup>33</sup> Ibn Abidin, *op.cit.*, Vol.6, pp.280-283; al-Kasani. *op.cit.*, Vol.6, p.178; Ibn al-Hummam. *op.cit.*, Vol.8, pp.34-35.

<sup>34</sup> *Ibid.*

<sup>35</sup> 'Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.6; Ibn Abidin. *op.cit.*, Vol.6, pp.279-280; al-Kasani. *op.cit.*, Vol.6, p.178; Ibn al-Hummam. *op.cit.*, Vol.8, pp.34-35.

- b) The land should be well known. In the case when the land is not known in terms of its location, broadness and condition, the contract is regarded as invalid because it may cause of misunderstanding<sup>36</sup>.
  
- c) The land should be fully submitted to the cultivator for the plantation purpose. If the landlord stipulates a sort of interference in the agriculture jobs, the contract becomes invalid<sup>37</sup>.

v) Condition in the Content of the Contract.

It is stipulated that the content of the contract is based on the normal practices by the society. In other words, the content of the contract must clarify who is going to provide the seed this kind of contract is almost akin to hiring land contract. If both parties are shared in providing seed or in cultivating, the contract is invalid since this contract is no longer *al-Muzara'ah* contract<sup>38</sup>.

vi) Condition for Agriculture Tools.

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

<sup>37</sup> *Ibid.*, Cf. Charles Hamilton. *op.cit.*, pp.579-580.

<sup>38</sup> 'Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, pp.5-9; al-Kasani. *op.cit.*, Vol.6, pp.178-179; Ibn al-Hummam. *op.cit.*, Vol.8, pp.34-35.

The agriculture tools should be stated clearly in the contract either by using animal or machine and these tools couldn't be the main purpose of the contract. If so, the contract will nullify<sup>39</sup>.

vii) Condition for Agriculture Period.

The period of the contract should be obvious. The period should be understood and agreed by both parties in the contract. Yet, the period must be reasonable for the cultivator to carry out his duty. Nonetheless, the strongest opinion in Hanafi school permits in making contract without specifying the period and it is considered effective starting from the first time the job is done<sup>40</sup>.

Meanwhile, according to jurists from Maliki school of *fiqh*, the conditions for *al-Muzara'ah* contract are as below:

i) The partnership in this contract does not involve with the renting of land contract in order to avoid any payment for seed exchange. Landlord and cultivator have to provide the seed together. If the seed is provided by only one party in this contract and another party provides land, the contract is nullified<sup>41</sup>.

ii) Distribution of crop produce should be equal in terms of cost and produce.

In other words, the rate of rental is similar to the jobs done by the cultivator and crop

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<sup>39</sup> 'Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.7; al-Kasani. *op.cit.*, Vol.6, p.180; Ibn Abidin. *op.cit.*, Vol.6, p.278; Ibn al-Hummam. *op.cit.*, Vol.8, pp.34-35.

<sup>40</sup> Ibn Abidin. *op.cit.*, Vol.6, p.282; 'Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.7; al-Kasani. *op.cit.*, Vol.6, p.180.

<sup>41</sup> Al-Dardir. *op.cit.*, Vol.3, p.372; Ibn Juzayy. *op.cit.*, p.280; 'Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.11; Malik Bin Anas. 1991. *al-Muwatta*. Aisha Abdurrahman Bewley. trans. Scotland: Madinah Press Inverness, p.288.

produce is divided equally namely 50 to 50. Nevertheless, any party is permitted to donate a portion of his profit to other party after the partnership is over<sup>42</sup>.

iii) Both parties are required to provide seed in the same type and sum such as wheat, barley and nut. In the case when one party provides seeds that are lower quality than the other one, this contract will nullify<sup>43</sup>.

In addition, jurists from Shafi'i school of Islamic law do not impose any condition in this contract as they place it in the *al-Musaqat* contract. The distribution of crop produce is not necessarily 50 to 50, it may also be divided as 75 to 25 or 60 to 40 or etc. The jurists of the opinion that as this contract is a work contract related to the land therefore, the seed should be provided by the landlord<sup>44</sup>.

Furthermore, scholars from Hanbali school permit the contract of *al-Muzara'ah* with the distribution of crop produce in any portion. They do not stipulate that the distribution of crop produce be limited to only 50 to 50 ratios. Additionally, they impose three extra conditions for *al-Muzara'ah* contract as follows<sup>45</sup>:

- i) The seed must inevitably be provided by the landlord. Still, there is a room for the cultivator to provide the seed in some circumstances. In other words, the seeds may be provided by the owner or the cultivator. In this kind of contract, the seeds are not necessarily be

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<sup>42</sup> Malik Bin Anas. 1991. *op.cit.*, p.289; 'Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.11.

<sup>43</sup> 'Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.12.

<sup>44</sup> Imam al-Shafi'i. *op.cit.*, Vol.4, pp.12-13; al-Sharbini al-Khatib. *op.cit.*, Vol.2, pp.323-325; Mustafa al-Khinn *et.al.* *op.cit.*, Vol.3, p.34; 'Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.16.

<sup>45</sup> Ibn Qudamah. *op.cit.*, Vol.5, pp.382-388; al-Buhuti. *op.cit.*, Vol.3, p.533; 'Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.15.

provided by the owner since there are jurists who view that the seeds must be provided by the owner as they use analogy (*qiyas*) upon *al-Mudarabah* contract namely only one party provides the work and another party provides property. This kind of analogy with regards of *al-Muzara'ah* contract is void (*fasid*) because the property in the *al-Mudarabah* contract will be returned to the owner (*Sahib al-Mal*) and the profit will be divided to the both parties. Conversely, the seeds in the contract of *al-Muzara'ah* will not be returned to the owner as the seeds will be disappeared<sup>46</sup>.

- ii) The rate of distribution should be determined as early as possible such as 50 to 50, 60 to 40, 75 to 25 or etc.
- iii) Type and sum of seed should be determined and agreed by both parties before the cultivation's job is started.

### 1.5 Form of *al-Muzara'ah* Contract.

According to Abu Yusuf and Muhammad of Hanafi school, the contract of *al-Muzara'ah* has four types or forms, namely three forms are valid and one form is not valid as below<sup>47</sup>:

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<sup>46</sup> Ibn Taymiyyah, *op.cit.*, Vol.30, p.112.

<sup>47</sup> Al-Kasani. *op.cit.*, Vol.6, pp.179-181; Ibn Abidin. *op.cit.*, Vol.6, pp.280-283; Charles Hamilton. *op.cit.*, p.580.

- i) Land and seed are provided by one party, whereas job and tools are provided by another party. This form of *al-Muzara'ah* contract is lawful because this form of contract satisfies the status of landlord and seed provider as an employer and cultivator as a hired person.
- ii) Land is provided by one party, whereas tools, seed and work by another party. This form of contract is also lawful since it satisfies the status of cultivator as a person who will receive his remuneration based on the crop produce.
- iii) Land, tools and seed are provided by one party, whereas job is provided by the other party. This form of contract is also lawful since the status for landlord here is as an employer and his remuneration is based upon the crop produce.
- iv) Land and tools are provided by one party, whereas job and seed are provided by another party. This form of contract is regarded as unlawful. If the contract stipulates that the tools must be provided by the landlord so, this contract will nullify since creating tools for the portion of land.

## 1.6 Termination of *al-Muzara'ah* Contract.

The contract of *al-Muzara'ah* may be terminated either by the completion of the project or it may be terminated before the completion of the project as below:

### i) The Expiry of Period.

Contract of *al-Muzara'ah* will be terminated when the period of the contract ended. The ending of the contract happens when all the crop produce be divided corresponds with the agreement and the agreed conditions by both parties<sup>48</sup>.

In the case when the period of the contract ended but the aim of the project still unattained (the tree still green and bears no fruit), the period of the contract should be prolonged until the tree bears fruit and ripe. This attempt tries to celebrate and satisfy both parties in the contract as much as it can be<sup>49</sup>.

However, the cultivator should be imposed by the payment of land rental derived from the crop produce of the project, and it is calculated from the expiry date of the contract until the project produces crop. Nevertheless, all costs of plantation, taking care of and renting of the tree after the contract ends is being responsibility of both parties, based on agreed ratio. The reason is that the expiry of the contract not by itself will terminate the joint obligation of both parties since the contract is considered as a sharing property contract<sup>50</sup>.

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<sup>48</sup> Al-Kasani. *op.cit.*, Vol.6, p.184; Ibn Abidin. *op.cit.*, Vol.6, p.282; 'Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.11; Charles Hamilton. *op.cit.*, p.582.

<sup>49</sup> *Ibid.*; Charles Hamilton. *op.cit.*, p.583.

<sup>50</sup> *Ibid.*

ii) One of the Parties in the Contract Has Deceased.

The contract of *al-Muzara'ah* will be terminated when one of the parties in the contract was dead even though the cultivation job has been started or not, or the project has borne fruit or not<sup>51</sup>. In the case when the dead person was the landlord and the project is not yet producing anything thus, the cultivator or his heir still obliged to carry on with the job they has agreed. This is because the contract has placed the responsibility upon the cultivator to complete his duty from the beginning until the end of the contract<sup>52</sup>.

The contract of *al-Muzara'ah* will be continued despite the fact that one of them was dead is based on the juristic preference concept. The tree that has been grown should be allowed to be grown since the contract is not yet accomplished and the cultivator is not obliged in this manner to pay for the renting of the land<sup>53</sup>.

Yet, if the owner of the land dies, when the crop has appeared, the contract is dissolved at the end of that year. In the case when a man give away a piece of land to another person for a term of three years and in the first year, the crop has begun to grow but still unfit for reaping, the man die, the land in this case remains in the hand

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<sup>51</sup> This view has been given by jurists from Hanafi and Hanbali schools. Nonetheless, according to Shafi'i and Maliki schools, the contract of *al-Muzara'ah* will not terminate by the dead of one person in the contract. See al-Kasani. *op.cit.*, Vol.6, p.184; Ibn Abidin. *op.cit.*, Vol.6, p.282; Ibn Qudamah. *op.cit.*, Vol.5, p.568; Charles Hamilton. *op.cit.*, p.582.

<sup>52</sup> Al-Kasani. *op.cit.*, Vol.6, p.184; Ibn Abidin. *op.cit.*, Vol.6, p.282; Ibn Qudamah. *op.cit.*, Vol.5, p.568; Charles Hamilton. *op.cit.*, p.582; *The Mejelle. op.cit.*, Article: 1440, p.238.

<sup>53</sup> *Ibid.*

of the cultivator until the crop be fitted for reaping, and the produce is then divided according to the conditions of the compact<sup>54</sup>.

This contract of *al-Muzara'ah* is dissolved with respect to the remaining two years of the term since the analogy would suggest that it will not continue even for the first year as the duration of the compact depends on the duration of the parties. It is continued throughout the first year in order to preserve the rights of both parties because if it were to discontinue, the cultivator would sustain harm. With regards to the second and third years of discontinuity in the contract, no harm is sustained by the cultivator and accordingly, the compact is dissolved for these years, parallel with the analogy<sup>55</sup>.

When the owner of the land dies after the cultivator has ploughed the land and dug rivulets for watering it, previous to the crop appearing, the compact is dissolved since in such case the dissolution of it is not injurious to the cultivator's property. Conversely, if the owner of the land dies after the crop has begun to grow and appears like grass, in this case the contract is not dissolved as the cultivator would then be injured in his property by the dissolution of it. In this regards, the cultivator is not entitled to any thing for his labor because the use of a person's service cannot be appreciated when the contract becomes null, whereby the estimation of the service no longer remains<sup>56</sup>.

### iii) Termination by Proof.

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<sup>54</sup> Charles Hamilton. *op.cit.*, p.582.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

In the case when there is an annulment of the contract before the project even started hence, the contract will be terminated. 'Ulama from Hanafi school view that the availability of one party to provide seed does not mean that he will be participated in the joint project<sup>57</sup>. According to Maliki's jurists, the contract of *al-Muzara'ah* is not binding unless the relevant jobs have been started. Therefore, contract that is not yet been started can be cancelled<sup>58</sup>.

Yet, 'ulama from Hanafi school of *fiqh* pointed out that the contract that is being run could be cancelled by the existence of proof either from the cultivator side or from the landlord<sup>59</sup>. Among those proofs that can be accepted are as follows<sup>60</sup>:

i) The landlord is incurred huge amount of debt whereby he must sell the land in order to settle his debt without having other sources of income. In this respect, the landlord is permitted to sell his land and then cancel the contract with this reasonable proof. Otherwise, if this contract is allowed to be continued, it may bring harm to the landlord. The method of canceling the contract is by selling the land and afterwards cancels the contract<sup>61</sup>.

The best way for the annulment of this contract is before the project is started, or after the tree bears fruit, or when the harvesting period is due. If the tree still green and bears no fruit or the harvesting period is still not due, this contract cannot be cancelled and the land cannot be sold. In other words, the annulment is only possible to be done after the crop reach at maturity and fully grown. The reason is that the sale

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<sup>57</sup> 'Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.11.

<sup>58</sup> *Ibid.* p.15.

<sup>59</sup> *Ibid.* p.12.

<sup>60</sup> Al-Kasani. *op.cit.*, Vol.6, p.183; Ibn Abidin. *op.cit.*, Vol.6, p.284.

<sup>61</sup> Charles Hamilton. *op.cit.*, p.583.

of land will terminate cultivator's entitlement and the expecting time until the period of harvesting is an entitlement of the creditor. Thus, the deferment of the sale is for fulfilling both parties' interest<sup>62</sup>.

Furthermore, scholars from Hanafi school added to this matter that in order to avoid the cultivator from incurring any further losses by the selling of the land, there are two situations that should be considered by both parties in the contract. Firstly, if the annulment is done after the land has been cleared and cultivated thus, the cultivator is not entitled to get anything as a replacement for it since all jobs done are not meant anything for the landlord. The contract is only significant when the partnership gives something in return that can be expected from the produce<sup>63</sup>.

Secondly, if the project has been started in the half way, the landlord should not sell his land until the harvesting period is due. In this case, sale of land means canceling of cultivator's entitlement whereby it is preferable to be adjourned because of the deferment of debt is more lighten in terms of its danger than cancellation of entitlement<sup>64</sup>.

ii) The cultivator has specific proof such as bad illness that may hinder him from continuing the project or he is forced to go abroad for some unavoidable reasons or he has to find another job for his survival. For all these reasons, the annulment of the contract is permissible without any interference by the court and in the absent of both parties consent.

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<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

## 2. Application in Islamic Banking.

For the time being, there is no application of the contract of *al-Muzara'ah* in Islamic Banking for financing agro project. Example of the modus operandi for *al-Muzara'ah* contract is showed in Figure 1 below. Nonetheless, this figure has excluded the participation of the Islamic Banks since the bank usually will not manage the land provided by the land provider because they have no expertise in managing them and they are more incline in managing cash term.

If they are going to participate in the contract of *al-Muzara'ah*, the Islamic banks need to find out third party, who are capable of purchasing and storing the fruits or produces before any profit can be distributed to each party in the contract. Now that the difficulty to find the suitable party who are willing and promise to buy all the produces before they existed make this contract not practically to be applied in the modern Islamic banking arrangement at least for the time being<sup>65</sup>.

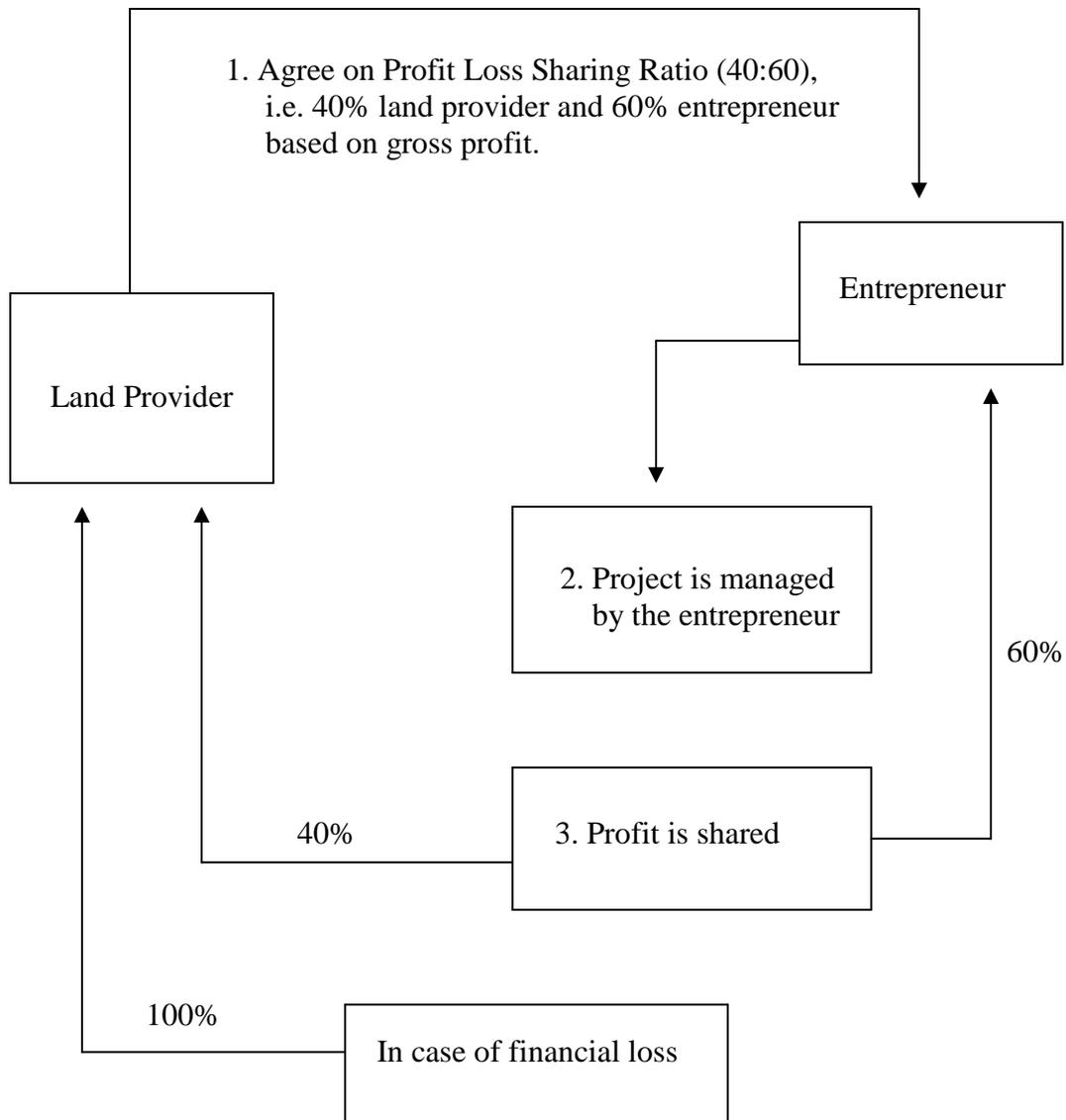
The contract of *al-Muzara'ah* can only be applied in the modern Islamic banking facility if there is a suitable third party who willing to jointly participate in the contract or else the contract of *al-Muzara'ah* can be applied in parallel with other type of contract in *mu'amalat* such as contract of *Bay' al-Salam*<sup>66</sup>.

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<sup>65</sup> Interviewed with Associate Professor Datin Dr. Paizah Binti Ismail on 26<sup>th</sup> March 2009 at 10.10 a.m. to 10.45 a.m. at her office in Gombak. Her expertise is in the field of *fiqh* and *usul* as well as in Islamic transactions. She is also a Shariah Advisor for Agro Bank since 2005.

<sup>66</sup> *Ibid.*

**Figure 1**  
**Modus Operandi of *al-MuzÉraÑah* Financing**



Source: Based on self interpretation on several *fiqh* literatures such as Mustafa al-Khinn *et.al.* 1992. *al-Fiqh Manhaji 'ala Madhhab al-Imam al-Shafi'i*. Damshiq: Dar al-Qalam, Vol.3, pp.33-35; al-Kasani. 1974. *Bada'i' al-Sana'i'*. Beirut: Dar al-Kitab al-'Arabi, Vol.6, p.175; Ibn Qudamah. 1972. *Al-Mughni*. Beirut: Dar al-Kitab al-'Arabi, Vol.5, p.581; "Islamic Modes of Financing", <http://www.islamic-financing.org/>, 30<sup>th</sup> November 2008.

For instance, Agro Bank, where the establishment of this bank is to stimulate and promote the development of agriculture sector in Malaysia, this bank has provided two types of funds for financing agro projects namely commercial funds, where the source of fund comes from the depositors of the bank and secondly, special funds established by Malaysia government that can be regarded as an added incentives to promote expansion activities as well as investments in agriculture sector. Examples of these funds are Agro Cash-i and Fund for Food respectively<sup>67</sup>.

All these funds are utilized *shari'ah* contract of *Bay' Bithaman Ajil* (BBA) and *Bay' al-Innah*. The validity of BBA and *Bay' al-Innah* contract is obvious since it uses the sale concept as mentioned in the *fiqh mu'amalat*. Through this kind of contract, the customer will not borrowing any money from the bank, instead the bank will buy the desired asset by the customer and the bank will sell it back to the customer at mark-up sales price. The relationship between customer and bank is similar to the relationship between buyer and seller in the sale contract and not as in loan contract, whereby the connection is between borrower and lender as being practiced by the conventional bank<sup>68</sup>.

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<sup>67</sup> Interviews carried out with Agro Bank officers: Ismail Tuan Ali, Executive 1, Islamic Banking, Special Projects Department, Agro Bank Head Office, Kuala Lumpur on 14<sup>th</sup> January 2009 at 3.15 p.m. to 4.00 p.m.; Siti Norngaisah Binti Aziz, Executive 11, Financing Department, Agro Bank, Shah Alam Branch on 12<sup>th</sup> February 2009 at 4.00 p.m. to 4.35 p.m.; Suhaimi Bin Yacob, Executive 2, Financing Department, Agro Bank, Kota Bharu Branch on 14<sup>th</sup> December 2008 at 11.15 a.m. to 11.50 a.m.; *Agro Bank Pamphlet*. 2008. "Financing Facilities"; Agro Bank, <http://www.agrobank.com.my>, 15<sup>th</sup> December 2008.

<sup>68</sup> Mustafa al-Khinn *et.al. op.cit.*, Vol.3, pp.37-38; Mohammad Hashim Kamali. 2002. *Islamic Commercial Law: An Analysis of Futures and Options*. Petaling Jaya: Ilmiah Publishers, pp.132-133; Norazlina Abd. Wahab. 2005. "Al-Bay' Bithaman Ajil: Suatu Alternatif Kepada Pinjaman Berasaskan Riba", in Abdullah Alwi Hj. Hassan *et.al.* (eds.), *Teori dan Aplikasi Kontemporari Sistem Ekonomi Islam di Malaysia*. Kuala Lumpur: Utusan Publications & Distributors Sdn. Bhd., pp.90-91.

## **Conclusion.**

Although the contract of *al-Muzara'ah* cannot fully be utilized for the purpose of financing agro projects, but the advantages of this contract can be used by the *Shari'ah* scholars and Islamic banks in order to find out the most accurate method that can be used to finance and assist agro entrepreneur with their projects that eventually bring a lot of other benefits not only for themselves, but also to the Muslim *ummah* as a whole. The combination of different contracts in *mu'amalat* is seemed to be a good method for implementing the contract of *al-Muzara'ah* for financing agriculture sector that finally will benefit all parties, entrepreneur and Islamic banks, and the most important thing is the suitability of the arrangement with the *shari'ah* requirements and rules.

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