

EXCHANGING MASLAHAH BETWEEN

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Submission date: 03-Apr-2023 02:42PM (UTC+0800)

Submission ID: 2054381238

File name: 03_SINTA-2_JURISDICTIE_48257-1-PB_1.pdf (341.66K)

Word count: 7183

Character count: 37031

EXCHANGING MASLAHAH BETWEEN LANDOWNERS AND LAND TENANTS: The Practice of Sandak-Tanggep in Pringgasela District

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Received: Jan 6, 2022; Reviewed: Feb 17, 2022; Accepted: June 5, 2022;

Published: July 30, 2022.

Abstract

Sandak-tanggep is an agreement between penyandak (landowner/Rahin) by binding himself to hand over the benefits of the land to the penanggep (land tenant/Murtahin) for certain period followed by cash payment as a reward. Penyandak still has the right to redeem the land from the Penanggep. Sandak-tanggep does not always work smoothly. One party could transfer the lease to another within contract period. This study presents the practice of sandak-tanggep that is commonly done in managing the rice fields and gardens in Pringgasela District, which is not implemented on any other items. The study employs qualitative descriptive method by directly interviewing the people who do sandak-tanggep and doing observation. The secondary data are from the documents and writings related to the current topic. Both are in the form of books and articles. The results show, many people practice this tradition using verbal agreements, that often causes violations of rights and obligations from both parties. This practice is significantly similar with pawn and customary law. The difference lies in the economic conditions between penyandak and penanggep that are inversely proportional to the pawn. This article is very useful in formulating legal policy, especially its application to muamalah practice.

Sandak-tanggep adalah suatu perjanjian antara Penyandak (Rahin) dengan mengikatkan dirinya untuk menyerahkan manfaat tanah kepada Penanggep (Murtahin) selama waktu tertentu diikuti pembayaran tunai sebagai imbalannya. Penyandak tetap berhak untuk menebus kembali tanah tersebut dari pihak Penanggep.

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Jurisdictie: Jurnal Hukum dan Syariah Vol. 13 No.1 Tahun 2022

Praktik sandak-tanggep yang terjadi tidak selalu berjalan sebagaimana mestinya, bisa saja salah satu pihak mengalihkan hak guna sewa kepada pihak lain ketika akad masih berlangsung. Penelitian ini bertujuan menyajikan model praktik yang umum sering dilakukan di Kecamatan Pringgasela terhadap tanah sawah maupun kebun ialah praktik sandak-tanggep bahkan tidak dilakukan pada barang lainnya. Metode deskriptif kualitatif dilakukan melalui wawancara dan observasi secara langsung kepada masyarakat yang melakukan praktik sandak-tanggep. Data sekunder berasal dari dokumen maupun tulisan berkaitan dengan topik penelitian, baik berupa buku maupun artikel. Hasil penelitian menunjukkan jika masih banyak masyarakat yang melaksanakan praktik ini dengan perjanjian secara lisan, sehingga menyebabkan pelanggaran hak dan kewajiban dari kedua belah pihak. Praktik ini mempunyai kemiripan signifikan dengan gadai dan hukum adat, perbedaannya terletak pada kondisi ekonomi antara penanggep dan penyandak berbanding terbalik dengan gadai. Article ini sangat bermanfaat dalam merumuskan kebijakan hukum, terutama pengaplikasiannya pada praktik muamalah.

Keywords: sandak-tanggep, Islamic law, landowner, masalah

Introduction

In classifying the aspects of Islamic law, the Fuqaha limit the discussion of *muamalah* law in civil matters concerning material relations. *Muamalah* law discussed the definition of objects as well as their types, property relations, revocation of property rights, certain agreements such as buying and selling, debts and rents, and so on.¹ In providing rules in *muamalah*, Islamic law is considered loose in order to provide opportunities for the development of human life in the future.² Islamic law provides a stipulation, which is basically the door to *muamalah* development. However, it must be preserved so that the development will not narrow the life of a party because of pressures.³

One practice of *muamalah* that does not exist in the Quran and sunnah but exists in the society of Pringgasela District is *Sandak-Tanggep*. In Islam, the practice that is similar to *sandak* is called *rahn*. The origin of *sandak-tanggep* tradition is not precisely known, thus, indicating that the tradition has been going on for a long time and has been passed down from generation to generation. It will probably be preserved in the future as well. The practice of *sandak-tanggep* is done by giving

1 Zainil Ghulam, "Relasi Fiqh Muamalat Dengan Ekonomi Islam," *Iqtisoduna* 8, no. 2 (2016): 128–148.

2 M. Harisudin, "Rekonstruksi Fiqh Dalam Merespon Perubahan Sosial," *Ayy-Syir'ah Jurnal Ilmu Syari'ah Dan Hukum* Vol.50, no. No.1 (2016): 81–107.

3 Mohammad Nuri Misbach, Ryandono Muhammad Nafik Hadi, and Ari Prasetyo, "An Overview of Islamic Law Against Buy and Sell Sand of Kebon with a Liberation System in Mount Wurung, Mojokerto Regency," *CENDEKIA* 13, no. 1 (2019): 33–52.

the rights of land owned by *penyandak* (land owners) to *penanggep* (land tenants). In this practice, *penanggep* will give money to *penyandak*, the amount given is as agreed by both parties. If, in the future, *penyandak* wants to take back his land, he must return the money to the *penanggep*.⁴

In extracting Islamic law from the Quran and sunnah, *Mujtahid* uses various methods such as *ijma'*, *qiyas*, *'urf*, *istihsan* and so on. Another method accepted by the Islamic jurists is *Maslahah* although it is still debatable among fiqh scholars. The concept of *maslahah* has been widely used in various regions because it directly emphasizes on the aspects. The aspects are in direct contact with the society so the legal products are in line with the community's expectations.

The majority of *penyandak* is those in middle and upper class, economic wise. Even, some of them are considered rich (people who own many lands as property). Meanwhile, *penanggep* is those in middle to lower classes, or the poor.⁵ In the practice, the one who initiates the transaction could be either *penyandak* or *penanggep*. However, in most situation, the one who initiates the transaction is usually the *penanggep* because they need the land for their daily needs. Meanwhile, the *penyandak* initiates the transaction due to certain economic behaviors, such as buying expensive goods like motorcycles, cars, goats, cows, even purchasing more lands, or sometimes to pay children's school fees.⁶

In agricultural activities, sometimes farmers have to lease their land to expand their agricultural activities and sometimes it happens because they do not have their own land.⁷ *Sandak* is renting the land for a long period of time and the money is paid prior to the agreement. As an agricultural district, East Lombok is blessed with an abundance of natural resources, which causes a large number of its population working in agricultural sectors. Rice field (*sawah*) is one of Lombok Island types of farmland.

According to the customary law, *sandak-tanggep* is based on the principle of mutual benefits, trust and action of helping each other (*ta'awun*). The land, which originally belongs to *penyandak*, is handed over as a collateral. Based on the reality occurred in Sasak society, there are extortion and oppression. If the *Penyandak* could not redeem the land although it has been controlled and managed by the *Penanggep* for decades, one is not allowed to take it back.⁸ Many *sandak* (the

4 Musawar, "Analisis Fiqh Kontemporer Terhadap Nyandak Masyarakat Sasak," *Schemata* 7, no. 1 (2018): 1–24.

5 Sahwan, "Tinjauan Hukum Islam Terhadap Praktik Sandak Sawah Di Desa Suwangi Kecamatan Sakra Kabupaten Lombok Timur," *Avesina* 13, no. 1 (2019): 50–57.

6 B. Ter Haar Bzn, *Asas-Asas dan Tatahan Hukum Adat*, (Bandung: Mandar Maju, 2011), 87.

7 *Ibid.*

8 Habibillah, Salim Hs, and Lalu Parman, "Implementation of Pawn Land and Legal Problems After the

pawned objects) are acquired by *Penanggep* as the purchased lands. This usually happens when the real owner or *Penyandak* has passed away and there was no deed of agreement stating clearly that the land is just rented, not purchased.⁹

Research found that *sandak* in the tradition of Sasak community is a part of the contract, such as selling, renting, loaning, etc. When *sandak* is investigated from the perspective of Islamic scholars thoroughly, *al-Rahn* (mortgage) and *al-Qardl* (loan), it is found that some aspects are debatable and forbidden considering most of Sasak society follows Shafi'i *mazhab* (Islamic school of thought). Other Sasak societies follow Hanafi *mazhab* which is accommodative to legalize *sandak* practice. Therefore, *sandak* is usually executed in two models. The first, *sandak* is executed with the permission to use the rice field or land as a contract claimed by Hanafi *mazhab*. The second is *Ba'y al-Wafa* concept that aims to fulfill its need with argumentation "*al-hajat tanzil manzila al-dlarura 'ammah wa khashshah* (When in *hajat* (in need), the condition can be categorized as an emergency either general or particular type)".

The practice of re-pawning (the land is pawned again) in Sungai Tering Village has fulfilled the principle of pawning in certain condition. The contract made by *rabin* (the pawnbroker) and *murtabin* in the agreement is in accordance with Islamic law. However, there is a condition that is not fulfilled where the *rabin* remortgages his land without a permission given by the *murtabin* considering the terms of the land has no correlation with others' rights although the rights of the first *murtabin* exists. As for the practice of pawning back pawned lands, it is not justified in Islamic law. It is because the pawnbroker (*rabin*) does not have the permission from the *murtabin*. The practice of pawning lands in Sungai Tering Village, Nipah Sub-district is in accordance with Islamic law, but there is an aspect which deviates from Islamic law; it is the moment when *rabin* remortgages the land or collateral to someone else.¹⁰

Sandak is an agreement that causes the land owner hands over his land to receive cash payment with the agreement that he/she could take his land back by giving money as much as the amount owed. As long as the loan has not been paid off or redeemed, the land entirely belongs to the pawnbroker who treats this

Enactment of Article 7 of Law No. 56 Prp Year 1960 (Study in East Lombok District)," *International Journal of Humanities, Religion and Social Science* 2, no. 5 (2018): 238–53; Ihsan Rois, M Huzaini, and Universitas Mataram, "Praktik Gadai Lahan Dan Dampaknya Terhadap Kesejahteraan Al-Rahin Di Kecamatan Lingsar Kabupaten Lombok Barat," *EKONOBIS* 3, no. 1 (2017): 15–20.

9 Musawar, "Analisis Fiqh Kontemporer Terhadap Nyandak Masyarakat Sasak."

10 Surahman, Zainal Abidin, and Haeran, "Implementasi Sistem Gadai Tanah Kebun Dalam Perspektif Hukum Islam (Studi Di Desa Sungai Tering Kecamatan Nipah Panjang Kabupaten Tanjung Jabung Timur)," *JIEI: Jurnal Ilmiah Ekonomi Islam* 7, no. 03 (2021): 1524–29.

as interest of the debt. The determination of the time redemption is on the land owner so he/she is not allowed to make the redemption before harvest. If the land owner breaks the agreement, he/she must compensate the land tenant as agreed, usually by replacing the cost that has been incurred related to the object of *sandak* such as the purchase of fertilizer and seeds.¹¹

Sandak practices in Pringgasela District, East Lombok are seen as mutually beneficial. There, *penandak* can quickly get money to meet their needs, while the *penanggep* can invest the excess money for more productive purposes. However, the process of pawning the land has an impact on injustice, especially for those who pawn theirs. This can be seen from the loss of opportunity for the land owner to use his land before he can return the money he borrowed from the land tenant indefinitely.

The implication of this condition is that *al-Murtahin* (*penanggep*) can use the land with multiple advantages, even more than the amount of money he got from this *sandak* practice. The demand of urgent needs is the reason for Sasak people to pawn their lands. Besides, they also have various reasons to pawn the lands, such as to meet urgent needs, to pay for their children's school fees, to increase business capital or run a new business which is more profitable, to buy another land that is cheaper, and so on.

The research conducted by Sahwan¹² showed that *sandak-tanggep* practice in Suwangi Village was included in the category of *'urf*. It was not in conformity with Islamic law because the person who carried out this pawn contract did not set time limit and the benefits were controlled by the land tenant (*penanggep*). It violates *sandak* contract. In addition, the research carried out by Irfan¹³ suggested that there are different patterns in *sandak* tradition, which make it difficult to find the form of the law source. Within that law, there is a system of borrowing in which its collateral is similar to *rahn*. There is also the use of loan item which is agreed with the land owner. The gap between this research and those previous researches is lies in the *masalah* obtained by both parties from the object of transaction.

Based on the stated background, the author is eager to find out the root of the problem, the differences, the relevant opinion, as well as the solutions to solve the problem. However, people do not seem to feel guilty for not obeying Islamic

11 Yulia Hafizah, "Praktek Jual Sanda Dalam Masyarakat Petani Di Hulu Sungai Tengah," *Al-Banjari: Jurnal Ilmiah Ilmu-Ilmu Keislaman* 11, no. 1 (2015): 93–106, <https://doi.org/10.18592/al-banjari.v11i1.418>.

12 Sahwan, "Tinjauan Hukum Islam Terhadap Praktik Sandak Sawah Di Desa Suwangi Kecamatan Sakra Kabupaten Lombok Timur," *Avesina* 13, no. 1 (2019): 50–57.

13 Matla'ul Irfan, "Tradisi Sandak di Masyarakat Sasak Dalam Perspektif Hukum Islam," *Ta'dib* 18, no. 1 (2020): 63–72.

provisions. This is caused by the fact that they believe that what they are doing is still in line with *maqashid shari'a* (the goal of Islamic law called *maslahah* or virtue) and are staying away from *mafsadah* (badness). Thus, this paper presents an overview of the implementation of *sandak-tanggep* among Sasak society in the contextualization of Islamic law.

Research Methods

This research was conducted in Pringgasela, East Lombok. Descriptive qualitative method was applied in this research to solve the research problems, and semi-structured interview was conducted.¹⁴ The researcher interviewed *Penyandak* and *Penanggep* regarding the practice of *sandak-tanggep*. The data source were secondary data collected from documents related to the research topic such as books, articles, journals and others. Furthermore, the data were analyzed using the model of qualitative data analysis proposed by Miles, Huberman and Saldana.

Qualitative analysis was done to preserve the chronological flow, assess local causality, and obtain fruitful explanations researchers. Hence, the researcher did some steps regarding the analysis, (a) data reduction is the selection, abstraction, and transformation of the data found in the field observation which were originally in the forms of field notes and transcripts; (b) data display is providing an organized and compressed assembly of information that enable to draw conclusion and to take action. In qualitative research, the data display is usually in the form of narrative text; (c) conclusion and verification. After doing analytical activities after obtaining the data, the conclusion can be drawn. After that, the conclusion must be verified to check its validity. To do this, the researcher will double check the conclusion with theory and previous studies. This way, the so-called triangulation is also done.¹⁵

Discussion

The Definition of Sandak-Tanggep

Pringgasela society can be grouped into two categories; those who work as farmers and those who work as farm laborers. Apart from being farmers, some of them also work concurrently as sellers, civil servants, lecturers, teachers and other professions. Farmers who own large areas of land usually employ laborers to work on their lands¹⁶. They are indigenous people of Pringgasela who are

14 Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, (Bandung: Remaja Rosdakarya, 2015), 177.

15 Milles, Matthew B., A. Michael Huberman & Johnny Saldana. *Qualitative Data Analysis A Methods Soursesbook*. (Los Angeles-London: Sage, 2014), 10.

16 Selamat Muliadi, "SAS App : Mewujudkan Umkm Berbasis Digital Dalam Rangka Pemberdayaan

generally from the lower to middle economic class. In addition, the workers are also from the middle to upper economic class who are always used to work hard, but the number of these workers is very small. These workers are not only from indigenous people and migrant society who later settle in the village, but also consists of people outside the village¹⁷. The proceeds from cultivating the land should be divided in half after deducting the management costs.

There are also people in Pringgasela who migrate abroad to become Indonesian migrant workers. After returning to their hometown, they then take care of the lands of the former workers. In addition, there are also people who use it for other businesses such as running a small shop or a workshop. Among the sellers who are occupied, some of them are considered to be successful and the rest are not. Those who fail usually switch to receive rice fields or gardens.

Tanggep/nanggep is an attempt to obtain the rights to use an object (rice field/land) to cultivate by giving some amount of money to the *penyandak* (land owner) according to a mutual agreement. Previously, the amount of compensation given was relatively small, but in the current practice it reaches a quarter of the rice field price, which rarely happens. Meanwhile, *sandak/nyandak* is the handover of the rights to use the land that is passed on to the land owner to be worked on by getting some amount of money based on the agreement. In this *sandak-tanggep* practice, there is no time limit set by the *penyandak* to get his rice field/land back. If he/she wants to get his land back, he/she must hand over the similar amount of money to the *penanggep* as the beginning of the transaction.

Terms, Conditions, and Pillars of Sandak-Tanggep

The condition that must be met for the *Penyandak* is that the land must be his. Even an adult can do that under his parent's permission, but the legal relationship still applies to both *Penanggep* and *Penyandak*. In *sandak-tanggep* transaction, some use written evidence in the form of receipt but the rest do not; they only rely on the mutual trust. If the rice field is taken by someone outside Pringgasela, alongside the receipt obtained as the evidence, usually the farmers of the adjacent lands become the witnesses.

Witnesses cannot be children, and there is no gender requirement for becoming the witnesses. In some cases, witnesses can be the people who accompany the *Penanggep* at the time of the transaction, for example the *Penyandak's* neighbors, parents, or other people who have no relationship with the *Penyandak* or the

Ekonomi Masyarakat Pringgasela Lombok Timur" *JMM (Jurnal Masyarakat Mandiri)* 5, no. 4 (2021): 1877–1885.

17 Kabupaten Lombok Timur BPS, *Kecamatan Pringgasela Dalam Angka 2019*, 2019.

Penanggep's neighbor, parents, or other people who have no relationship with the *Penanggep*. Then the *Penanggep* have enough money to pay the *Penyandak*, married or unmarried, and have the skills to work in the land. There is no written evidence regarding the conditions, but it is based on the story passed on from generation to generation.¹⁸ The pillars of *sandak-tanggep* are, (a) *Penyandak* and *Penanggep*; (b) *Ijab* and *Qabul*; (c) object; and (d) money.

The Process of Sandak-Tanggep

Based on the interview, the *sandak-tanggep* process is divided into two. First, the practice of *sandak-tanggep* is started by *Penyandak* who comes to *Penanggep*. At that time, *Penyandak* determines the price that must be paid by the *Penanggep* to get the land. If the *Penanggep* does not have enough money as determined, then the negotiation happens. Second, the *Penyandak* initially comes to *Penanggep* to offer his land, but he can also ask *Penanggep* to promote the rice field/land for rent. The amount of money is still determined by the *Penyandak*. Negotiation is also possible. The terms must be clear for both parties to initiate the transaction, either the *Penyandak* or the *Penanggep*, depending on who need it first. The practice continues until today and it is still done in the same way.

The right of the *Penanggep* is to use the land for cultivation such as plant agricultural crops if the land is a rice field. In addition, he can change the land into a rice field as the land owner gives his permission, and vice versa. However, when the *Penanggep* wants to return the land to the *Penyandak*, the *Penanggep* has to change the rice field used as the original form of land, unless it is impossible to change it because of certain things that would probably damage the land.

Penanggep has to maintain the trees belonging to *Penyandak* that have existed in the land, such as coconut trees, areca nut, guava or others. The *Penanggep* is not allowed to cut down the tree but he is only allowed to pick the fruit, depending on the land owner's permission. All crops from the rice field or land belong to the *Penanggep*.

Analysis of Islamic Law (Maslahah Approach)

Etymologically, the word *maslahah* is formed from *masdar* and *ism* derived from the word *salaha-yasluhu* which means something that is appropriate, good and useful.¹⁹ According to Wahbah al-Zuhaili, *maslahah* is a character which is in line with sharia determination and its objectives, but there is no specific argument

¹⁸ Asy'ari (A Religious Leader), Interview Result, October 21, 2021.

¹⁹ Hendra Hermawan Adinugraha and Mashudi, "Al-Maslahah Al Mursalah Dalam Penentuan Hukum Islam," *JIEI (Jurnal Ilmiah Ekonomi Islam)* 4, no. 1 (2018): 63–75.

expressing or rejecting it, with the projections of realizing benefit and eliminating *mafsadah* (damage).²⁰ Wahbah al-Zuhaili stated that there are several conditions to use *maslahah mursalah*; (a) *maslahah* must be in accordance with the sharia objectives, does not contradict to the principles of sharia as well as the texts or propositions that are *qath'I*; (b) *maslahah* must be accepted because it contains certain benefits, not only in the form of allegations, and weak accusations. It means that the application of the benefits must bring the benefit for real and avoid danger; (c) the product of *maslahah* must be accepted by all human beings, not only for certain people or group of people since the Sharia law applies to all human being.²¹

If the term *maslahah* is narrowed, it indicates that the public interest has not been regulated by the Lawgiver because there is no textual authority whose validity can be found, or vice versa. Al Ghazali defined *maslahah* as a consideration that guarantees benefits or prevents harm, but it is in line with the aims and objectives of sharia. These objectives consist of five essential values, namely religion, reason, soul, lineage, and property.²² *Maslahah* can also be interpreted as a form of state, both material and non-material, which can improve the position of human beings as the most noble beings.²³ *Maslahah* is all forms of goodness both in the dimensions of the world and the hereafter, material and spiritual as well as individuals and groups of people. Furthermore, it must meet three elements, those are sharia compliance (halal), beneficial, and goodness (*thoyib*) in all aspects as a whole that does not cause harm.²⁴

In terms of its goal, *maslahah* is divided into two, the first is bringing benefits to mankind, both in this world and in the hereafter; the second is avoiding danger in human life, both in this world and in the hereafter.²⁵ In addition, there are several divisions of *maslahah*. The first is *Maslahah Dharuriyah*, which is acquired by maintaining the life survival aspect. It cannot be obtained except by applying Islamic law. The second is *Maslahah Hajiyyah*, which is obtained by humans under a condition related to the lightness (*rukhsah*) given by Allah the Almighty. The third is *Maslahah Tahsiniiyah*, which is obtained by human after

20 Wahbah al-Zuhaili, *Ushul al-Fiqh al-Islami*, Juz II, (Damascus: Dar al-Fikri, 1986), 799.

21 *Ibid.*

22 Elvan Syaputra et al., "Maslahah as an Islamic Source and Its Application in Financial Transactions," *Quest: Journal of Research in Humanities and Social Science* 2, no. 5 (2014): 66–71.

23 P3EI, *Ekonomi Islam*, (Jakarta: Raja Grafindo Persada, 2008), 5.

24 Ahmad Itham Sholihin, *Buku Pintar Ekonomi Syariah*, (Jakarta: Gramedia Pustaka Utama, 2010), 498.

25 Rozalinda, *Ekonomi Islam: Teori dan Aplikasinya pada Aktivitas Ekonomi*, (Jakarta: Raja Grafindo Persada, 2014), 97.

implementing law related to nature, moral and behaviors.

The scholars set the limit on the scope of *maslahah mursalah* application, that only applies to the problems other than areas of worship, such as *muamalah* and *adat* (tradition). In the matter of worship (in a special sense), *maslahah* cannot be used as a whole. It is based on the consideration of thought about the badness of a problem, while thought cannot do that for the problem related to worship. *Maslahah mursalah* is one of the methods of legal *istinbath* that is used as an argument. Based on the example of the problems set by the law with *mursalah maslahah*, it appears that the law established by that method is more economical and better in realizing the objectives of sharia. This is also where the effectiveness of the *mursalah maslahah* in determining the law of *syara'* appears. The method of establishing the law with *maslahah mursalah* and its relation to the renewal of Islamic law has a close and very effective relationship. The renewal of Islamic law aims at realizing and maintaining the benefit of mankind as much as possible, which is known as *maqashid syariah*. By looking at so many advantages a system has such as economic and business systems, it can be concluded that the system has many benefits.²⁶

Land pawning, as found in Indonesian tradition, is not specifically discussed in *Fiqh* (Islamic law). On the one hand, land pawning is similar to sale and purchase. In this case, customary law calls it the sale of a pawn. On the other hand, it is similar to *rahn*. In this case, a sale and purchase activity occurs because the right to control the pawned property is completely handed over to the pawnbroker, including the use and utilization of the object, even within a specified time. That resemblance to *rahn* (collateral) is shown by how the pawnbroker has the right to redeem the pawned property.²⁷ In Hanafi *mazhab*, there is a discussion of the two forms of *muamalah* known as *Bai' al-Wafa'*. It is a sale and purchase activity carried out by two people where the contract requires the seller to have the rights to the goods he sells if the sale price is returned to the buyer himself at a mutually agreed time. In *Bai' al-Wafa'*, the goods sold can be said as a collateral for the money received by the seller. The buyer has the rights to use the goods and take the proceeds as long as the loan or purchase money has not been returned.

Mahmud Syaltut, a *Fiqh* scholar from Egypt, states in the Encyclopedia of Islamic Law that, if we face two alternatives, between debt and collateral in the form of land which all the proceeds are taken by the pawnbroker using relatively small interest in accordance with the applicable laws, then we must choose debt

26 Abdul Hadi and Hadi Peristiwo, "Konsep al-Maslahah al Mursalah Dalam Perspektif Ekonomi Pada Era Revolusi Industri 4.0," *Al-Ahkam* 15, no. 2 (2019): 59–69.

27 Rahman Ritonga dkk, *Ensiklopedia Hukum Islam*, (Jakarta: PT. Intermedia, 2001), 387.

with interest because of its small risks. According to *Mazhab* Hanafi, *rahn* recipient can use the items used as collaterals if it is allowed by the owners. It is because the owner's item can give permission to whoever he wants to use his property, including utilizing his item. This, based on their opinion, is not *riba* because the items utilization is under the permission of the owners.

The practice of *sandak-tanggep* could not be found in Arab, so this practice is not found in the Quran and Sunnah. However, it exists in Pringgasela, East Lombok and it can be carried out based on the statement of Ibnu Qayyim al-Jauziyah:

“In principle, everything is permissible until an argument is found that forbids it.”

According to the abovementioned rule, the practice of *sandak-tanggep* can be considered in line with Islamic law. However, what needs to be considered is it does not violate the principles of sharia, such as the high risk of causing uncertainty (*gharar*), usury and speculation (*zhalim*). Based on this rule, *sandak-tanggep* practice occurred in Pringgasela is a legal and lawful practice. Allah The Almighty has revealed in Q.S. al-Baqarah (283). The verse is actually about sale and purchase where the buyer does not have cash to pay but he has goods that are equivalent or more, which can be used as a collateral and it is referred to *rihanun*. This collateral is a form of commitment to prove seriousness so that if something unexpected happens, the seller can sell the collateral that has been given by the buyer in exchange for the buyer's debt.

In the aforementioned verse, the researcher did not find any explanation regarding the position of the seller and the buyer. It is about whether the buyer is a person who is physically unable to travel or stay at his place so that he uses the goods to pay for an item or the buyer is actually a person who is able to pay in cash but at that time he was on a trip and was not carrying cash. Because there is no explanation regarding this matter, the content of the verse applies generally to buyers who can or cannot afford it.

However, we can look at the fact happened to the Prophet in the past where he pawned his armor just to get wheat as mentioned in the Sahih al-Bukhari: *Kitab ar-Rahn, Bab fi ar-Rahmi fi al-Hadari*, Hadith No. 2508.²⁸ The hadith explains that one of the forms of mutual help is giving loan. The one who has more funds gives loan to the one in need by handing over an item as collateral. In this case, there is the so-called *fidusia* i.e. the ownership transfers of an item based on trust, on the condition that the item still belongs to the original owner.

From the hadith, it is clear that the position of a pawnbroker illustrates

28 Abi 'Abdillāh Muhammad Ibn Ismā'il Al-Bukhari, *Sahih al-Bukhari, Kitab ar-Rahn: Bab fi ar-Rahmi fi al-Hadari*, (Beirut: Dar Ibnu Kasir, 2002), 608.

a poor person, therefore it is reasonable that another hadith states an example that the recipient of the pawn only has the right to take milk from livestock in exchange for its maintenance. This is the sociological aspect which, according to the researcher, led to the release (*asbabun nuzul*) of the hadith. Regarding the practice that occurs in Indonesian society involving the customary law, most of them refer to the practice of *sandak-tanggep* as a pawn regardless of the similarities and differences in practice occurred in each region, not pawning (*rahn*) as regulated in Islamic law.

Sandak-tanggep is not a pledge because basically the object of collateral in a pawn cannot be used except with the permission of the owner. This opinion is issued by the Mazhab Hanafis. Meanwhile, in *sandak-tanggep* practice, whether rice fields or lands are handed over to the *Penanggep*, the researcher calls it *sandaan* instead of collateral since its meaning and use are different in which the item will never belong to the *Penanggep*. Second, the *sandaan* land may be used by the *Penanggep*. It considers as the exchange of benefits between *Penyandak's* land and *Penanggep's* money. When we see it from the economic conditions between *Penyandak* and *Penanggep* in *sandak-tanggep* practice, it is inversely proportional to what happened to pawns and pawn recipients at the prophet era, where the *penyandak* is in upper-middle economic class while the *penanggep* is in lower-middle economic class.

Function wise, *sandak-tanggep* has an element of mutual help (*ta'awun*) between *Penyandak* and *Penanggep* where *Penanggep* who are mostly from middle to lower economic class can be helped by utilizing rice fields or lands for daily needs. Then, *Penyandak* can also use the money to meet their needs. Allah in Q.S. al-Maidah (2):

“... Help you one another in *al-Birr* and *at-Taqwa* (virtue, righteousness, and piety); but do not help one another in sin and transgression...”

The verse above commands us to help each other in goodness. In this *sandak-tanggep* practice, there is no element of violence, but it has the element of helping and willing. Through the tradition, a strong and loving bond of brotherhood is formed among *Penyandak*, *Penanggep*, the village society in general, and people outside Pringgasela. This can be illustrated as, before the practice of *sandak-tanggep*, *Penyandak* and *Penanggep* rarely greet one another. After the agreement, both parties often meet, make a visit, and exchange thoughts on how to plant properly. They also share common information such as market price, marketing strategy. If they become closer, asking about private matters are also allowed such as asking health of family members of one another i.e., spouse and children. They can help

each other outside their *sandak-tanggep* agreement; one party can ask another if they need something. This interaction bonds their emotional relation. If this is practiced by many people in the village, the bonds of society will be tighter and it will last even after the agreement is over. On the other hand, through *sandak-tanggep*, the internal solidarity of the society becomes intertwined. According to the author, this is the purpose of pawning practice carried out in the Prophet era as written in the Sunnah. Therefore, whatever practice it is, if the goal is good deed, then it should be preserved. That is why the Prophet was sent to the earth to become *Rahmatan li al-'Alamin*.

In the practice of *sandak-tanggep*, we cannot use *qiyas* because there are conditions that are not met. Those are *al-Aslu* (origin) both in the Quran and Sunnah. If the conditions are not fulfilled, then this practice cannot be legally determined. This kind of thing is called null and void. If you use a pawn or *Bai' al-Wafa* as the origin, it is actually a big mistake because the position of *sandak-tanggep* and pawn is similar, that is their branches. Making analogy of a branch with a branch is not justified in the *qiyas* rules. The only way is to look at the case based on the *maslahah* conceived and the harm removed because that was the purpose of sending the Prophet. The *maslahah* that exists in the practice of *sandak-tanggep* as mentioned above is not only one-sided, but both parties *penandak* and *penanggep*, even society in general, are involved.

Actually, according to the researcher, the requirement in every *muamalah* transaction is intended for the common virtue so that injustice does not occur from one person to another, from one group to another, and so on. An example in Islamic sale and purchase transactions, it is required that the goods sold are the sellers' possessions and obtained in a lawful manner, not from theft or fraud, or belong to others after obtaining permission from the owner. About the buyer, the money used is halal. If these conditions are violated, then the sale and purchase becomes illegal although the pillars are legal.

In general, the Imam of the four *mazhab* (Syafi'i, Hanbali, Hanafi, and Abu Hanifah) require the individuals executing the transaction to be mature in the sense of "fathom", which refers to know and understand what one is doing. Related to this, in the practice of *sandak-tanggep*, it is known that both *Penyandak* and *Penanggep* have reached maturity, even more stringent than transactions executed in Islam in general. Regarding to goods, in this case are *sandan/tanggepan*, the land is required to be their real possession. *Sandak-tanggep* does not allow to encroach on other people's land except for a child with the permission given by and supervision of his parents; the legal relationship still even applies to the

parents of the child.

Related to the principle of willingness, *sandak-tanggep* has no element of mutual coercion among the two parties. As the author mentioned, there is no element of violence. The practice is carried out on a consensual basis. Related to the use of *sandaan* conducted by *penanggep*, it is not a coercion by *penyandak*, not *riba* (usury), nor an injustice. However, it is an act of voluntary between the two parties, in which both *penyandak* and *penanggep* get no harm.

Logically, the practice of usury occurred at the Prophet era regarding a debt loan was an injustice imposed by the rich to the poor. It considers to be impossible that the poor will lend something to the rich. If we lend money to other people and that person cannot give our money back, but we are concerned about the condition of that person, so we give up the debt; then, that person's debt becomes void based on the Islamic view. Our willingness to give up the debt is not on the basis of compulsion, even the basis of concern and helps reduce the burden of the person's mind, thus it is beneficial for the debtor. It is what happened to *sandak-tanggep* practice as described above. This information was found in the Quran Q.S. al-Baqarah (280). The verse suggests the act to ease people who owe someone if they are unable to pay their debts, and letting go of the debt. Of course, if you are a logical person, you will choose the best from the good things.

Conclusion

The implementation of *sandak-tanggep* agreement in Pringgasela district is mostly done verbally, with an agreement made between the *Penyandak* (landowner) and the *Penanggep* (land tenant). However, there is also a written method signed by both parties accompanied by witnesses. The practice of *sandak-tanggep* has significant similarities with the practice of pawning in customary law but there is a fundamental difference, where the object of collateral (in customary law) or in Pringgasela known as *sandaan/tanggepan* may not be shared by the *Penanggep* to another person. However, customary law allows pawning to be carried out as long as the land owner (a pawnbroker) gives the permission. In addition, the majority of people who are underprivileged or needy, as seen from the economic perspective, includes people who are in the upper middle class economy category. There is no *Penanggep* who is richer than the *Penyandak*. We definitely find this in the pawn of customary law, but we also often find the opposite. The practice of *sandak-tanggep* in Pringgasela society is legal and lawful according to the objectives of the terms and *syara'*. *Sandak-tanggep* practice in Pringgasela aims at helping each other (mutual help or *ta'awun*). People who are

more wealthy, *Penyandak*, help those who are below them in term of economic level, *Penanggep*. As for the land, the compilers call it an exchange of benefits between *Penyandak*'s land and *Penanggep*'s money.

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