

**THE PRACTICE OF ADDITIONAL MONEY LENDING IN ISLAMIC
LAW PERSPECTIVE**

(Study On Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan)

Thesis

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SHARIA BUSINESS LAW DEPARTMENT

SHARIA FACULTY

**UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM
MALANG**

2017

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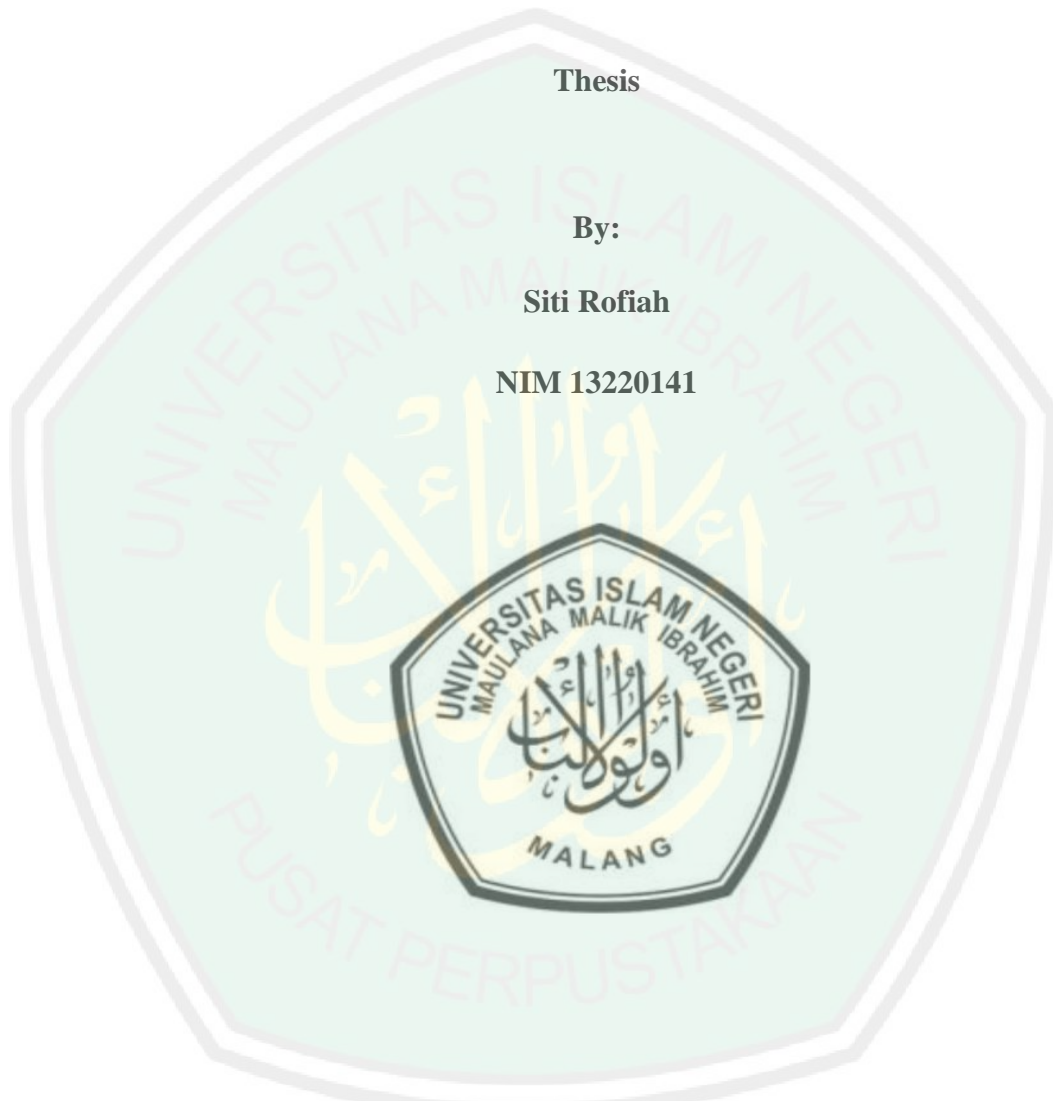
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MALANG**

2017

STATEMENT OF THE AUNTENTICITY

In the name of Allah,

With consciousness and responsibility towards the development of science, the author declares that the thesis entitled:

**THE PRACTICE OF ADDITIONAL MONEY LENDING IN ISLAMIC
LAW PERSPECTIVE**

(Study On Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan)

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Author,



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LAW PERSPECTIVE
(Study On Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan)**

The supervisor states that this thesis has met the scientific requirements to be proposed and to be tested by the Thesis Board of Examiners.

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1	Monday, 27 February 2017	Proposal Review	1.	
2	Thursday, 04 Mei 2017	Chapter I		2.
3	Monday, 08 Mei 2017	Chapter I and II	3.	
4	Tuesday, 30 Mei 2017	Chapter II and III		4.
5	Tuesday, 06 June 2017	Chapter II, III, IV	5.	
6	Wednesday, 07 June	Abstract		6.
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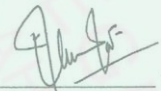
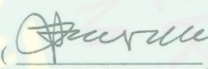
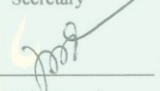
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**THE PRACTICE OF ADDITIONAL MONEY LENDING IN ISLAMIC
LAW PERSPECTIVE**

(Study On Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan)

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MOTTO

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

مَنْ ذَا الَّذِي يُقْرِضُ اللَّهَ قَرْضًا حَسَنًا فَيُضَاعِفَهُ لَهُ وَلَهُ أَجْرٌ كَرِيمٌ

*Who is it that would loan Allah a goodly loan so He will multiply it
for him and he will have a noble reward*

QS. AL-Hadid "57:11"

ACKNOWLEDGMENT

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الحمد لله الذي فضل بني آدم بالعلم والعمل على جميع العالم، و الصلاة والسلام على محمد

سيد العرب والعجم، و على آله و أصحابه ينابيع العلوم و الحكم

All praise due to Allah (SWT), the Cherisher and Sustainer of all the worlds. There is neither might nor power but with Allah the Great, the Exalted. With only His Garce and Gidance, this thesis entitled "**The Practice of Additional Money Lending In Islamic Law Perspective (Study on Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan)**" could be completed, and also with His benevolence and love, peace and tarnquallity of the soul. Peace be upon the Prophet Muhammad (saw) who had brought us from the darkness into the brightness, in this life. May we be together with those who believe and receive interaction from Him in the day of Judgment. Amin.

With all support and help, discussion, and guidance and directions from all parties involved during the process of completing this thesis, the author wishes to express his utmost gratitude to the following :

1. Prof. Dr. H. Mudjia Rahardjo, M.Si, as Rector of TheState Islamic University of Maulana Malik Ibrahim of Malang.

2. Dr. H. Roibin, M.HI, as Dean of The Sharia Faculty of The State Islamic University of Maulana Malik Ibrahim of Malang.
3. Dr. H. Mohamad Nur Yasin, S.H, M. Ag, as head of the Sharia Business Law Department of The Sharia Faculty of The State Islamic University of Maulana Malik Ibrahim of Malang. All at once as the thesis supervisor. The author expresses his gratitude for guidance and directional motivation given in the course of completing this thesis. May Allah (swt) shower him and his family with His blessings.
4. The examiners of thesis Dra. Jundiani, S.H., M.Hum as the main examiner, Iffaty Nasyi'ah, M.H as the chairman and Dr. H. Mohamad Nur Yasin, S.H., M.Ag. as the secretary who had been pass my thesis test.
5. Dr. Fakhruddin, M.HI, as academic advisor during the author's course of study in the Sharia Business Law Department of The Sharia Faculty of The State Islamic University of Maulana Malik Ibrahim of Malang.
6. The HBS lecturer of the Faculty of Sharia which has given their knowledge to us, guide and direct us in absorbing the science that w teach. May Allah (swt) shower them with His blessings.
7. Staff of The Sharia Faculty of The State Islamic University of Maulana Malik Ibrahim of Malang. The author expresses gratitude for all their support and co-operation during the course of completing this thesis.
8. The informants who have taken the time to the author to provide information about the Additional Money Lending happened and help the author in the research in there

9. My beloved father and mother and also my brothers and my sister who always giving supporting, motivation, inspiration, and praying to the author so that it can be finished in time.
10. My friend in International Class Program (ICP) of Sharia Business Law Department 2013 who always give the author support, knowledge and discussion that have helped and accompanied during their education at Sharia Business Law Department.

Hopefully, by imparting what has been learned during the course of study in The Faculty of Sharia of The State Islamic University of Maulana Malik Ibrahim of Malang, the benefit will be gotten all readers and the author himself. Realizing the fact that error and weakness is impartial to being human, and that this thesis is still far the improvement and betterment of this thesis.

Malang, 08 June 2017

Author,

Siti Rofiah

13220141

TRANSLITERATION GUIDENCE

A. General

The transliteration guide which is used by the Sharia Faculty of State Islamic University, Maulana Malik Ibrahim Malang, is the EYD plus. This usage is based on the Consensus Directive (SKB) from the Religious' Ministry, Education Ministry and Culture Ministry of the Republic of Indonesia, dated 22 January 1998, No. 158/1987 and 0543. b/U/1987, which is also found in the Arabic Transliteration Guide book, INIS Fellow 1992.

B. Consonants

ا = a	ض = dl
ب = b	ط = th
ت = t	ظ = dh
ث = ts	ع = ' (comma facing upwards)
ج = j	غ = gh
ح = h)	ف = f
خ = kh	ق = q
د = d	ك = k
ذ = dz	ل = l
ر = r	م = m

ز = z

ن = n

س = s

و = w

ش = sy

ه = h

ص = sh

ي = y

The hamzah (ء) which is usually represented by and *alif*, when it is at the beginning of a word, henceforth it is transliterated following its vocal pronouncing and not represented in writing. However, when it is in the middle or end of a word, it is represented by a coma facing upwards ('), as oppose to a comma (‘) which replaces the “ع”.

C. Long Vowel and Diftong

In every written Arabic text in the *latin* form, its vowels *fathah* is written with “a”, *kasrah* with “i”, and *dlommah* with “u”, whereas elongated vowels are written as such:

Elongated (a) vowel = â example قال becomes *qâla*

Elongated (i) vowel = î example قبيل becomes *qîla*

Elongated (u) vowel = û example دون becomes *dûna*

Specially for the pronouncing of *ya' nisbat* (in association), it cannot represented by “i”, unless it is written as “iy” so as to represent the *ya' nisbat* at the end. The same goes for sound of a diftong, *wawu* and *ya'* after *fathah* it is written as “aw” da “ay”. Study the following examples:

Diftong (aw) = و example قول becomes *qawlun*

Diftong (ay) = ي example خير becomes *khayrun*

D. Ta' Marbûthah (ة)

Ta' marbûthah is transliterated as “t” if it is in the middle of word, but if it is *Ta' marbûthah* at the end, then it is transliterated as “h”. For example:

الرسالة للمدرسة will be *al-risalat li al-mudarrisah*, or if it happens to be in the middle of a phrase which constitutes *mudlaf and mudlafilayh*, then the transliteration will be using “t” which is enjoined with the previous word, for example فى رحمة الله becomes *fî rahmatillah*.

E. Definite Article

Arabic has only one article, “al” (ال) and it written in small letters, unless at the beginning of a word, while “al” in the phrase of *lafadhjalalah* (speaking of God) which is in the middle of a sentence and supported by and (*idhafah*), then it is not written. Study the following:

1. Al-Imâm al-Bukhâriy said ...
2. Al-Bukhâriy explains, in the prologue of his book ...
3. *MasyâAllâhkânawamâ lam yasya' lam yakun.*
4. *Billâhi 'azzawajalla.*

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ABSTRAK

Siti Rofiah, 13220141, *Praktek Penambahan Uang Pinjaman Dalam Perspektif Hukum Islam (Studi Di Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan)*. Jurusan Hukum Bisnis Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang, Pembimbing Dr. H. Mohamad Nur Yasin, S.H M.Ag.

Kata Kunci: Pinjam-Meminjam, Tambahan, Hukum Islam

Pinjam meminjam merupakan salah satu bentuk bermuamalah yang sering terjadi pada aktifitas masyarakat sehari-hari. Di Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan, kegiatan ini disebut *Qard* atau utang piutang. Sedangkan dikalangan masyarakat Desa Serabi Timur sendiri dikenal dengan sebutan pinjam meminjam. Dalam praktek peminjaman ini terdapat tambahan ketika pengembalian, sedangkan praktek peminjaman tersebut bertentangan dan tidak sesuai dengan apa yang telah disebutkan dalam KHES (Kompilasi Hukum Ekonomi Syariah).

Ada dua rumusan masalah dalam penelitian ini. *Pertama*, bagaimana praktek penambahan uang pinjaman di Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan?. *Kedua*, bagaimana praktek penambahan uang pinjaman dalam perspektif hukum Islam?.

Penelitian ini termasuk penelitian hukum empiris dan pendekatan yuridis sosiologis. Metode pengumpulan data dalam penelitian ini adalah; observasi, wawancara, dan dokumentasi. Adapun tahapan analisis data dalam penelitian ini adalah; *editing* (memeriksa data), klasifikasi data (*classifying*), verifikasi (*verifying*), analisis data (*analyzing*) dan terakhir kesimpulan (*concluding*).

Dalam penelitian ini dapat diambil kesimpulan: Bahwa praktek penambahan uang pinjaman yang terjadi dikalangan masyarakat Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan merupakan praktek pinjam meminjam dengan adanya tambahan ketika pengembalian uang pinjaman yang sering dilakukan oleh masyarakat, dan praktek tersebut hukumnya tidak boleh sebab dalam KHES (Kompilasi Hukum Ekonomi Syariah) tidak memperbolehkannya adanya tambahan dalam pengembalian uang pinjaman kecuali dengan sukarela tanpa adanya paksaan.

ABSTRACT

Siti Rofiah, 13220141, *The Practice of Additional Money Lending in Islamic Law Perspective (Study On Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan)*. Thesis, Sharia Business Law Department, Sharia Faculty, The State Islamic University of Maulana Malik Ibrahim of Malang, Supervisor Dr. H. Mohamad Nur Yasin, S.H., M.Ag.

Keywords: Loan Borrowing, Additional, Islamic Law

Loan borrowing is one of the muamalah common in daily activities of the community. In Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan, this activity is called by *Qard* or debts. While among the community of Desa Serabi Timur known as loan borrowing. In practice, there are additional loans when repayment of the loan, while the practice of conflicting and incompatible with what has been mentioned in KHES (Kompilasi Hukum Ekonomi Syariah).

In this research, there is two problems formulation. *First*, how does the practice of additional money lending in Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan? *Second*, how does the practice of additional money lending in Islamic law perspective?

This research includes the empirical law research. The kind of approach is use socio-legal research. The technique of data collection is observation, interview, and documentation. In this research, the data analysis technique is editing (*check the data*), classifying (*classification*), verifying (*verification*), analysis and the last concluding (*conclusion*).

In this study the conclusion to be drawn: that the practice of additional money lending that occurs among community of Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan is the practice of loan borrowing by the presence of an additional loan refund when it is often done by the community, and that it law practice should not cause in KHES (Kompilasi Hukum Ekonomi Syariah) does not allow the existence of the additional refund loans except in voluntary without any compulsion.

ملخص البحث

ستي رفيعة، 13220141، الممارسة إضافة المال الإقراض في منظور الشريعة الإسلامية (دراسة في قرية سراي تيمور منطقة مودونج من بنكلان) قانون الأعمال. مسيرة الإسلامية، كلية الشريعة، الجامعة الإسلامية في نيجري مولانا مالك إبراهيم مالانج، مستشار الدكتور الحاج . محمد نور ياسين، S.H M.Ag.

كلمات البحث: الإعارة، الملحق، القانون الإسلامي

الاقتراض هو واحد النشاط في معاملة النموذج الذي غالبا ما يحدث في حياة الناس اليومية. في قرية سراي تيمور منطقة مودونج من بنكلان ، ويسمى هذا النشاط القرض أو الدين. في حين بين أهالي القرية من سراي تيمور نفسها كما هو معروف الاقتراض. وفي الممارسة العملية ، هناك قروض اضافيه عند سداد القرض ، في حين ان الممارسة المتضاربة والمتعارضة مع ما سبق ذكره في القانون الاقتصادي الشرعي.

هناك نوعان من صياغة المشكلة في هذه الدراسة. أولا، كيفية ممارسة اقتراض المال الإضافي في قرية سراي تيمور منطقة مودونج من بنكلان؟. ثانيا، كيفية ممارسة اقتراض المال الإضافي في منظور الشريعة الإسلامية؟.

وكان هذا البحث التجريبي والنهج قانوني اجتماعي. طرق جمع البيانات في هذه الدراسة هي؛ الملاحظة والمقابلات والوثائق. مراحل تحليل البيانات في هذه الدراسة. تحرير (فحص البيانات)، وتصنيف البيانات (تصنيفها)، التحقق (التحقق)، وتحليل البيانات (التحقيقية) والنتيجة النهائية (الختامية).

في هذه الدراسة يمكن الاستنتاج: أن ممارسة مضيء الأموال المقترضة تحدث بين سكان قرية سراي تيمور المنطقة مودونج بنكلان هو ممارسه القرض اقترضت من وجود قرض اضافيه عندما يتم ذلك في كثير من الأحيان من قبل المجتمع ، وان ممارسته القانونية لا ينبغي ان تسبب في الخلع (تجميع القانون الاقتصادي الشرعي) لا تسمح بوجود القروض الاضافيه المستردة الا في طوعا دون اي إكراه



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CHAPTER I
INTRODUCTION

A. Background of Research

Almost Indonesian people are Muslim in every activity must be used sharia rules to be prospered for own self and other. Islam was obligated for Muslim to work harder get the rightful (halal) *rizki* in order to bless and do not falling down to the destitution, it will bring the bad situation or danger for human. So, it must work harder to get what are we need in life.¹

¹Abdurrahman Qadir, *Zakat (Dalam Dimensi Mahdah Dan Sosial)*, Ed.1.Cet.2 (Jakarta:Raja Grafindo Persada, 2001), hlm 24

The human are social being who can't live alone without social interaction each other. Allah (swt) has created the human on earth as social being, because the human can't fulfill their own needs without interacting with others such as fulfillment of clothing and foods. It has been *sunnatullah* if the human being must become community and helping each other, in *muamalah* based on the Qur'an surat al-Maidah verse 2:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

The meaning: And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, Allah is severe in penalty.²

On that verse was concluded to fulfill the human needs, there were helping from other human to fulfill their needs to interchange, to trade, lease, loan borrowing, It was not leaving, cause human are social being that always looking for justice as a group, living together and helping each other.

The truth can't deny and abandon, interaction is a way to help make it easier to achieve all of their needs and further tighten of brotherhood, its transaction in Islamic law is *muamalah*. Study of Islamic law *muamalah* is broadly related by two things. *The first* related on the living needs is related by material and it was called by economic. *The second*, related on the social living is attributed by the interest of morality, humanity, and it was called by socially.³ According to Hendi Suhendi, the scopes of *muamalah* are divided into *adabiyah* and *madiyah*. *Adabiyah* are *ijab* and *qabul*, consenting, one of

² QS. al-Maidah (5): 2

³ Abdul Zakki, *Ekonomi Dalam Perspektif Islam*, (Bandung: Pustaka Setia, 2002). Hlm 16

the parti's nothing perforce, rights and obligations, the honest trader, deception, adulteration, and hoarding. *Madiyah* are selling (*al-bai'al-tijarah*), pawning, warranting and dependents (*kafalah* and *dlaman*), transferring of debt (*hiwalah*), bankrupting (*taflis*), limiting of act (*al-hajru*), company or partnership (*al-syirkah*), company's wealth and effort (*al-mudharabah*), leasing (*al-ijarah*), granting of rights to use (*al-'ariyah*), entrusting of goods (*al-wadlit'ah*), finding of goods (*al-luqathah*), arable land (*al-mujara'ah*), leasing of land (*al-mukhabarah*), salary (*ujrat al-'amal*), lawsuit (*al-syufah*), competition (*al-ji'alah*), division of joint property (*al-qismah*), granting (*al-hibah*), liberation (*al-ibra*), peaceful (*al-shulhu*) and some problem of *mu'ashirah* (*mahaditsah*) such as interest, insurance, credit.⁴

In *muamalah* should know that the human must tolerant to human rights and do not harming other even used violence and oppression, as Allah's saying in surah an-Nisa verse 29:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

The meaning: O who have believed, do not consume one other's wealth unjustly but only (in lawful) business by mutual consent. And do not kill yourselves (or one other). Indeed, Allah is to you ever Merciful.⁵

The relation of *muamalah*, Islam has making a rule of all the behavior of the human being in interaction with each other to fulfill their needs in live

⁴ Hendi Suhendi, *Fiqh Muamalah "Membahas Ekonomi Islam, Kedudukan Harta, Hak Milik, Jual Beli, Bunga Bank dan Riba, Musyarakah, Ijarah, Mudayanah, Koperasi, Asuransi, Etika Bisnis dan lain-lain"* (Jakarta:PT Raja Grafindo Persada, 2013), hlm 5

⁵QS. an-Nisa (4) : 29

on. The scope of the other *muamalah* is practice of loan borrowing that happened in society and their daily activities. Actually, is there an urgent needed for individuals, thus requiring of loan borrowing to fulfill the urgent needed.

Loan borrowing is needed by all people and Islam suggested fulfilling based on ethic not by law. Islam explained giving of loan for people needed as worship (*ibadah*).⁶

Hopefully, it transaction aims to make it easier for human affair also give solution for people who in trouble of economic. So, by Islamic law must be anticipated the wrong rules which created by sharia in practice of loan borrowing is not relevance with sharia.

Loan borrowing in *muamalah* is *qard*, because it is loan borrowing here was borrowing other people's money for a certain time and when it has come must repayment. In KHES (Kompilasi Hukum Ekonomi Syariah) in interpret as the provision of funds or the bill between sharia financial institutions with borrowers who require that the borrower to make payments in cash or in installments within a certain period.⁷

Just as happen in a village in Madura Island exactly on Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan. The majority livelihood in Serabi Timur subjects are farmer, breeder, and immigrant. In that village many

⁶Anwar Iqbal Qureshi, *Islam Dan Teori Pembungaan Uang*, terj. M. Chalil B (Jakarta: Tintamas Indonesia, 1985). Hlm 19

⁷Kompilasi hukum Ekonomi Syariah, *Tentang Akad*

kinds of economy transactions, which one of in loan borrowing. The practiced of loan borrowing had been doing by subject of Serabi Timur, it loans used by capital of agriculture, daily needs, pay for school, open new business. Example on Serabi Timur most of the people there are farmers, if the people don't have money to finance their agriculture when harvest has come, they should loan to other people closed shortage of capital for their agriculture but when they loan money they repayment with a lot of money before, and the time specify by borrower to return.

Example A (as borrower) loan money to B (as lender) is Rp. 10.000.000,- in agreement within year, when the loan is return A must give it back the money at first is Rp. 10.000.000,- become Rp. 14.000.000,- that must pay by A to B. This village became place of research because those village are transaction of loan borrowed with a lot of repayment before, this practice has become behavior of Serabi Timur's people, and happen again.⁸

The existence of loan borrowing, it have social effect for Serabi Timur's people to helping each other because the people who are in problems of money or capital for their business directly obtained of help to fulfill it. Also, have negative effects are make people difficult to repayment their loan for people who in problem of economy.

So, by those problems author will be research of that problem which happened on Desa Searabi Timur Kecamatan Modung Kabupaten

⁸ Maisurah, *wawancara*, (Serabi Timur, 3 Januari 2017)

Bangkala. How does the practice of transaction, real condition and in Islamic perspective on its practice, need a deep research. How do the rules of loan borrowing in Islamic be used as reference by Muslims (followers of Islam) in practice of loan borrowing. By this review, the researcher thought that it is important to make research that is related to that problem, and to know the legal consequences of the existence of additional money lending and the rule of this practice.

B. Problem Formulation

1. How Does The Practice Of Additional Money Lending in Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan?
2. How Does The Practice Of Additional Money Lending In Islamic Law Perspective?

C. Objective of Research

1. To Describe The Practice Of Additional Money Lending On Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan
2. To Describe The Practice Of Additional Money Lending In Islamic Law Perspective

D. Benefits of Research

Hopefully this research benefits are theoretically and practically:

1. Theoretically

- a. This research may be useful for written to knowledge about loan borrowing especially on sets legal status from practice of adding money lending.
- b. To offer the new theory that concerned with specific aspect.
- c. To giving though for people who loan borrowing on Searabi Timur village about rules in *muamalah* that relevance with sharia.

2. Practically

- a. This research useful as materials for consideration and guidance material both are communicative, informative, or educative, especially for people who doing loan borrowing at Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan
- b. This research useful for qualify to achieve the Master of Islamic Law degree.
- c. This research useful for the academician also can utilizing it to arrange the material studies or writing a journal.

Especially for Sharia Business Law student can utilizing it is as manual or comparison material to do the research that related with this topic.

E. Operational Definition

1. Additional of Money Lending

The grant of adding money for people whose borrowing money to other people then the borrower received amount money from lender will be repayment more than before. The use of word "lending" is for personal loans.

2. Islamic Law

It's an Indonesian term, as meaning of *al-fiqh al-Islami* or in certain contexts from *as-syariah al-Islami*. This term in legal experts West discourse called *Islamic Law*.⁹ So Islamic law is “a set of rules based on the revelation of Allah the Sunnah of Rasul about human behavior of mukallaf that recognized and believed to be valid and binding for all of people whom following of Islam religion.”¹⁰

But Islamic law here according to researcher used KHES (Kompilasi Hukum Ekonomi Syariah), is a collection of rules about the Islamic economy accounted for, as the effects of the birth of Act No. 3 of 2006 about the changes of the Act No. 7 of 1998 concerning religious court have brought changes to the position and the existence of the religious court in Indonesia.¹¹

⁹ Zainuddin Ali, *Hukum Islam “Pengantar Ilmu Hukum Islam di Indonesia”*, (Jakarta: Sinar Grafika, 2006), hlm 1

¹⁰ Mardani, *Hukum Islam “Kumpulan Peraturan Tentang Hukum Islam di Indonesia”*, (Jakarta: Kencana, 2013), hlm 10

¹¹ Kompilasi Hukum Ekonomi; Sejarah Singkat Penyusunan Kompilasi Hukum Ekonomi Syariah Mahkamah Agung RI

The adding money lending in Serabi Timur village is borrowing money with a specific time period and when time comes to return must be paid more than before, it was addition specified by loaner.

The spirit in KHES (Kompilasi Hukum Ekonomi Syariah) aims to find out legal consequences of that transaction, if in accordance with sharia or not.

F. Discussion Structure

Chapter I Introduction

There was basic element of this research, is background of problem that describe about title had chosen, statement of problem it specifies of research will be, objective research that reached in research, significant of research explain of useful of research, and systematic of discussion.

Chapter II Review of Related Literature

This chapter there was previous research and theoretical framework. If the previous research was giving information about research they have been done before are related with this research. Then theoretical framework should helping in this research under title "The Practice of Adding Money Lending in Islamic Law Perspective" in order to help the obtained of data analysis.

Chapter III Research Method

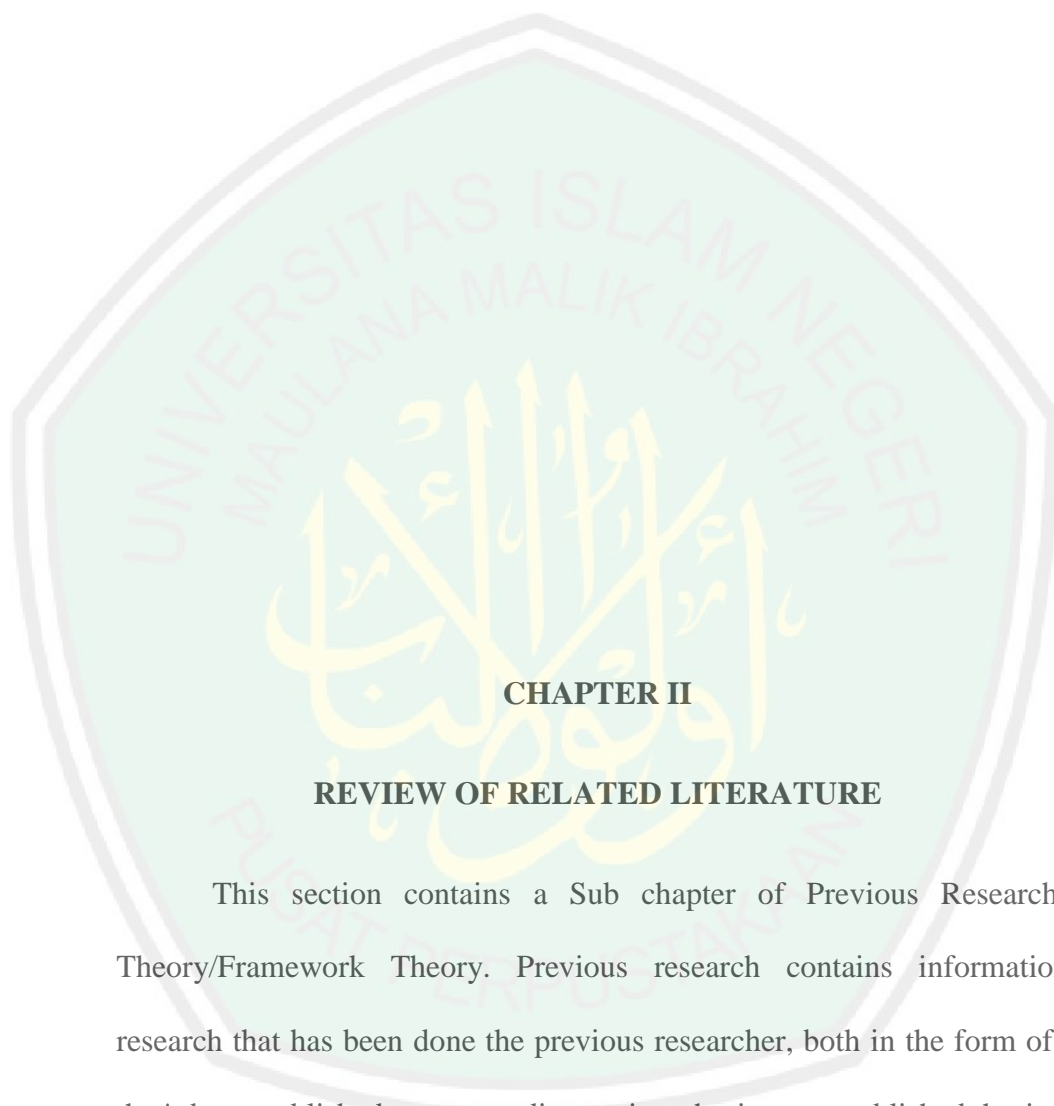
This chapter was explained of research method. In this chapter explain how the way to use in research, consist of type research that used empirical research, then custom with chosen title, source data custom with type of research, location of research, data collecting technique how to obtain data in research, and data analysis technique to find out the answer in research done.

Chapter IV Findings and Discussion

This chapter there was analysis data about analysis toward the practice of additional money lending on Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan and analysis in islamic law toward akad additional money lending it was there.

Chapter V Conclusions And Suggestions

This chapter explain the outlines briefly the answer from the problems researcher raised, then suggestions/advice for academic as well as for researcher to further improvements in the future.



CHAPTER II

REVIEW OF RELATED LITERATURE

This section contains a Sub chapter of Previous Research and Theory/Framework Theory. Previous research contains information on research that has been done the previous researcher, both in the form of book that's been published nor was a dissertation, thesis, or unpublished thesis.

A. Previous Research

From previous research studies or below can be known that research will be discussed by the researchers is not a repetition of previous research or review existing ones. So researchers will describe similarities and differences

from the existing research with the research that will be examined by the researchers.

1. Thesis by Mar'atus Sholikha

The thesis written by Mar'atus Sholikha, graduated 2012, from Sharia Faculty, Muamalah Department, State Islamic University Of Sunan Ampel Surabaya, with the title "Pandangan Hukum Islam Terhadap Hutang Uang Dengan Pengembalian Seharga Sapi Di Desa Prijekngablak Kecamatan Karanggeneng Kabupaten Lamongan". This type of research is field research. This research focused on the problems of refund loans for cows, which in practice is a debt receivable cash in return for a cow with one-year period, according to the lender of the money which he had lend should be developed, so the way to it is by using a cow as an alternative thereto because cow is considered to have a high value.¹²

There are similarities and differences between Mar'atus Sholikha with this research. The similarity is the existence of the refund loans, while the difference is in the refund loan rates with a cow as the refund loans. While on research researchers lack the equation in refund loan.

2. Thesis by Nurhidayati

The thesis written by Nurhidayati, graduated 2012, from Sharia and Legal Science Faculty, State Islamic University Of Sayarif Kasim Pekan Baru

¹²Mar'atus Sholikha, *Pandangan Hukum Islam Terhadap Hutang Uang Dengan Pengembalian Seharga Sapi Di Desa Prijekngablak Kecamatan Karenggeneng Kabupaten Lamongan*, Jurusan Muamalah, Fakultas Syariah UIN Sunan Ampel Surabaya, 2012

Riau, with the title "Pelaksanaan Transaksi Pinjaman Uang Kepada Rentenir Di Desa Karya Indah Kecamatan Tapung Menurut Tinjauan Ekonomi Islam". This research is field research, the research focused on lending returns with a period for 10 to 15 days, with interest of up to 20% to 50% are to be paid back, the maximum and minimum credit conditions can be fickle, so returns are late in payments when be replaced with objects moving and not moving as replacement when it could not pay.¹³

There are similarities and differences between Nurhidayati with this research. The similarity is equally researched about the existence of additional money when payouts. While the difference is in the replacement loan payment that is already overdue with other objects may move or not move to pay for borrowed money, while researchers study the lack of payment of money in replacement of loans that have been overdue but renewing the akad/new contract.

3. Thesis by Dian Parmana Putra

Thesis written by Dian Parmana Putra, graduated 2015, from Economic and Islamic Business Faculty, State Islamic University Of Raden Fatah Palembang, with the title "Pelaksanaan Pinjam Meminjam Uang Melalui Koperasi Usaha Mandiri di MtsN Baturaja Kabupaten OKU Di Tinjau Dari Persepektif Ekonomi Islam". This type of research is field research, this research focused on the systems and procedures in the practice of lending of

¹³Nurhidayati, *Pelaksanaan Transaksi Pinjaman Uang Kepad Rentenir Di Desa Karya Indah Kecatan Tapung Menurut Tinjauan Ekonomi Islam*, Fakultas Syariah dan Hukum, Universitas Islam Negeri Sultan Syarif Kasim Riau Pekanbaru, 2012

borrowed money, as well as lifting the aspects of Islamic law on the implementation of the cooperative.¹⁴

Study by Dian Parmana Putra with this research there are similarities and differences. The similarity is equally there is the existence of a process and special conditions that must be met before borrow, and researcher conducted by researchers lack special terms in the loan.

4. Thesis by Garizah Purnatiara Syarifah

Thesis written by Garizah Purnatiara Syarifah, graduated 2014, from Faculty of Sharia, Department of Sharia Business Law, State Islamic University of Maulana Malik Ibrahim Malang, under title "Praktek Utang-Piutang Menggunakan Sistem Tempaan Di Desa Kolor Kec. Kota Sumenep Kab. Sumenep Tinjauan Kompilasi Hukum Ekonomi Syariah". This type of research is field research, this research focused on the agreement system with targets of debts, which is how to pay for it was determined by the amount of money borrowed synchronized with the price of rice perkwintal at the time of harvest, and the owner of money give the price under the existing market prices and is done after the harvest season and analyzing it with Kompilasi Hukum Ekonomi Syariah (KHES).¹⁵

¹⁴Dian Parmana Putra, *Pelaksanaan Pinjam Meminjam Uang Melalui Koperasi Usaha Mandiri di MtsN Baturaja Kabupaten OKU Di Tinjau Dari Pespektif Ekonomi Islam*, Fakultas Ekonomi dan Bisnis Islam, Universitas Islam Negeri Raden Fatah Palembang, 2015

¹⁵Garizah Purnatiara Syarifah, *Prektek Utang-Piutang Menggunakan Sistem Tempaan Di Desa Kolor Kec. Kota Sumenep Kab. Sumenep Tinjauan Kompilasi Hukum Ekonomi Syariah*, Jurusan Hukum Bisnis Syariah, Fakultas Syariah, UIN Maliki Malang, 2014

Study by Garizah Purnatiara Syarifah with this research there are similarities and differences. The similar is equally analyzed by Kompilasi Hukum Ekonomi Syariah, while the difference is in the refund loans valued at a price of rice perkwintal, and pricing provided by lenders is debt below market price.

5. Thesis by Ainun Ainia

Thesis written by Ainun Ainia graduated 2014, from Faculty of Sharia, Department of Sharia Business Law, State Islamic University of Maulana Malik Ibrahim Malang, under title "Tinjauan Hukum Islam Terhadap Bunga Utang-Piutang Dalam Kegiatan Simpan Pinjam Untuk Kelompok Perempuan (Studi di PNPM Mandiri Pedesaan Desa Minggir Kecamatan Winongan Kabupaten Pasuruan)". This type of research is the empirical research, these research focus on the granting of capital for the group of women that have save loan or business activities of the economy, and in return the party owed a fee service administration, and should not be celebrated by a debtor in individuals but must have a minimum of 5 members and maximum of 20 people then can get a loan and the interest rate in the loan payment.¹⁶

Study by Ainun Ainia with this research there are similarities and differences. The similar is in terms of extra money in loan payment, while the

¹⁶Ainun Ainia, *Tinjauan Hukum Islam Terhadap Bunga Utang-Piutang Dalam Kegiatan Simpan Pinjam Untuk Kelompok Perempuan (Studo di PNPM Mandiri Pedesaan Desa Minggir Kecamatan Winongan Kabupaten Pasuruan*, Jurusan Hukum Bisnis Syariah, Fakultas Syarian, UIN Maliki Malang, 2014

difference is in the giving of the debt should be individuals but should be team up.

1.1. Table The Similarities and Differences of Previous Research

No	Name/Year	Title	Similarities	Differences
1.	Mar'atus Sholikha State /Islamic University Of Sunan Ampel Surabaya/ 2012	Pandangan Hukum Islam Terhadap Hutang Uang Dengan Pengembalian Seharga Sapi Di Desa Prijekngablak Kecamatan Karanggeneng Kabupaten Lamongan	The existence of the refund loans. The existence of refund deadline	Lack of similarity that made reference to as refund loans
2.	Nurhidayati/ State Islamic University Of Syarif Kasim Pekanbaru/2012	Pelaksanaan Transaksi Peminjaman Uang Kepada Rentenir Di Desa Karya Indah Kecamatan Tapung Menurut Tinjauan Ekonomi Islam	The existence of a certain period for payment. The existence of extra money	There is no of guarantees in time late of payment. Create a new contract
3.	Dian Parmana Putra/ State Islamic University Of Raden Fatah Palembang/2015	Pelaksanaan Pinjam Meminjam Uang Melalui Koperasi Usaha Mandiri Di MtsN Baturaja Kabupaten OKU Di Tinjau Dari Perspektif Ekonomi Islam	The existence of refund loans	There is no systems or procedures in performing loans
4.	Garizah Purnatiara Syarifah/State Islamic University of Maulana Malik Ibrahim Malang/2014	Praktek Utang-Piutang Menggunakan Sistem Tempaan Di Desa Kolor Kec. Kota Sumenep Kab. Sumenep Tinjauan	equally analyzed by Kompilasi Hukum Ekonomi Syariah	The pricing provided by lenders is debt below market price. The refund loans valued

		Kompilasi Hukum Ekonomi Syariah		at a price of rice perkwintal
5.	Ainun Ainia State Islamic University of Maulana Malik Ibrahim Malang/2014	Tinjauan Hukum Islam Terhadap Bunga Utang- Piutang Dalam Kegiatan Simpan Pinjam Untuk Kelompok Perempuan (Studi di PNPM Mandiri Pedesaan Desa Minggir Kecamatan Winongan Kabupaten Pasuruan)	Terms of extra money in loan payment	The giving of the debt should be individuals but should be team up.

B. Theoretical Framework

The theoretical framework contains about theory and/or juridical concepts as a theoretical foundation for the study and analysis of the problem.

The foundation of theory and/or concepts that were later used in analyzing any problems that will be discussed in this study.

1. Qard

a. Definition

Qard language means *Qaradha* is a synonym of *Qatha'a* meaning cut, is from the cut because the people who give the debt cut in half from a portion of his wealth to be given to people who receive wages (*muqtarith*).¹⁷

Qard or loans is granting to others who may be charged back or otherwise granting without reward.¹⁸ The definition of loan borrowed in the

¹⁷Ahmad Wardi Muslich, *Fiqh Muamalat*, (Jakarta: Amzah, 2010), hlm 273

KUHPer (Kitab Undang-undang Hukum Pedata) is mentioned in the article 1754: "An agreement by which one party gives to the other a certain number of goods that was due to the use, on condition that the latter would restore some money with the same type and the same quality".¹⁹

In KHES (Kompilasi Hukum Ekonomi Syariah) *qard* is defined as follows: "provision of funds or bill between sharia financial institutions with borrowers who require that borrower to make payments in cash or in installments within a certain period". (KHES Chapter I General provisions article 20).²⁰

While the understanding of the *Qard* in terms of there is some difference of opinion:

1) Hanafiyah

القرضُ هُوَ مَا تُعْطِيهِ مِنْ مَالٍ مِثْلِيٍّ لِتَتَقَاضَاهُ، أَوْ بِعِبَارَةٍ أُخْرَى هُوَ عَقْدٌ مُخْصُوصٌ يَرُدُّ عَلَى دَفْعِ مَالٍ مِثْلِيٍّ لِأَخْرَاجِهِ مِثْلَهُ

Meaning: *Qard* is a submission (owner) *al-mistliyat* property to others to ask to be asked back, or in the sense of "a contract to surrender the property to the other party for *mistliyat* returned with similar".²¹

2) Malikiyah

The surrender of the property of other without being accompanied by rewards and extra when returned.²²

¹⁸R. Daeng Naja, *Akad Bank Syariah*, (Yogyakarta: Pustaka Yustisia, 2011), hlm 55

¹⁹ Pasal 1754 KUHPer (Kitab Undang-undang Hukum Perdata)

²⁰ Pasal 20 Kompilasi Hukum Ekonomi Syariah

²¹ Ghufron A. Masadi, *Fiqh Muamalah Kontekstual*, (Jakarta: PT Raja Grafindo Persada, 2002), hlm 170-171

3) Syafi'iyah

Surrender something for returned with something in common and appropriate.

4) Hanabilah

Delivery of property to someone to take advantage and he should return with the same property as a replacement.

If follow *nash* who allowed a loan, can see how far the influence of duties to the borrower and the lender. Borrowers would feel happy because they get goodness so they do not seek loans to other that the grounded his loan with *riba*, because want to make use of that suffering. Provides loans for borrowers are the *sunnah*. Because islam has allowed for his followers to always assist in goodness based on Qur'an surah al-Maiddah verse 2:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

The meaning: And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, Allah is severe in penalty.²³

In surah al-Baqarah verse 280 Allah SWT also mentioned:

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ

The meaning: And if someone is in hardship, then (let there be) postponement until (a time of) ease. But if you give (from your right as) charity, then it is better for you, if you only knew".²⁴

²² Azharudin Lathif, *Fiqh Muamalah*, (Jakarta: UIN Jakarta Press, 2005, hlm 150

²³ QS. al-Maidah (5): 2

²⁴ QS. al-Baqarah (2): 280

From the explanation of the *qard* above, be drawn the conclusion that the *qard* is giving the property to another person (providing loans to people who need help on need). *Qard* is a form of *muamalah* in daily life, the loans must be returned when it was time to pay up and restored in accordance with the treasure that is already on loan.

b. Legal Source of *Qard*

The law of loan is *sunnah* because of kindness, it is because help each who were having problems. Lend his law will be compulsory when it is really in trouble, and also gave a loan can also be unlawful if used to commit sin, gambling, and murder. The ruling was *makruh* when used for something which is *makruh*. Loans (*al-qardhu*) against *muqridh* (borrowers) based on evidence the Qur'an surah al-Hadid verse 11 which says:

مَنْ ذَا الَّذِي يُقْرِضُ اللَّهَ قَرْضًا حَسَنًا فَيُضْعِفَهُ لَهُ، وَلَهُ أَجْرٌ كَرِيمٌ

The meaning: "Who is it that would loan Allah a goodly loan so He will multiply it for him and he will have a noble reward".²⁵

In addition to the above verses also mentioned in the hadith of Prophet Muhammad SAW, in order his followers always provide loans against fellow who need help, the hadith, among others:

عَنْ ابْنِ مَسْعُودٍ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: مَا مِنْ مُسْلِمٍ يُقْرِضُ مُسْلِمًا قَرْضًا مَرَّتَيْنِ إِلَّا كَانَ كَصَدَقَةٍ مَرَّةً (رواه ابن ماجه وابن حبان)

²⁵ QS. al-Hadid (5 c7) :11

Meaning "from Ibn Mas'ud, indeed the Messenger of Allah said: every muslim who gave loans to fellow Muslims twice, then he was like the guy who is one time gifts".²⁶

The Prophet said: "whoever has disappeared right one of the difficulties of his brother Allah SWT will eliminate of the difficulties for him in the last day".

Loans (*al-qardhu*) is allowed to the borrower (*muqtarith*), because the Prophet borrowed a camel to Abu Bakar, r.a, and he returned with a camel that is better than ever.

Beside the scholars agreed and allowed the *qard*, because the habit of humans who can't live without the help of others, because there is no one that has all the stuff he needed to meet what is needed by them. So that way, loan borrowing became a part of life in this world. And islam is a religion that is very mindful of all the needs of its follower.²⁷

The purpose and wisdom allowed loan borrowing it is the member's convenience to people who, because of the difficulties between human beings that exist are inadequate and there is a lack in terms of financial.

c. Pillars and Terms

Islam recommended and love the people who lend, and allow for the person who granted the loan, and not take it as a given that it was *makruh*, because he received the property to be utilized in an effort to fulfill the needed of life, and the borrower returns the property as they are. Thus, in order for the

²⁶Muhammad Nashiruddin al-Albani, *Shahih Sunan Ibnu Majah*, No 2421 , Penerjemah Ahmad Taufiq Abdurrahman, (Jakarta: Pustaka Azzam, 2007), hlm 414

²⁷Ismail Nawawi, *Fikih Muamalah Klasik dan Kontemporer "Hukum Perjanjian, Ekonomi, Bisnis dan Sosial"*, (Bogor:Penerbit Ghalia Indonesia, 2012), hlm 178

contract to be valid then the *qard* tenets and terms of debt receivable (*al-qardhu*), along *qard* is as follows:

1. Lender (*Muqridh*)

Muqridh must have the right or proficiency in using his property ultimately according to Islamic view. *Muqridh* in providing loans rather than in the circumstance, i.e. should be based on his own will no pressure from other parties or the intervention of a third party. As mentioned in article 21 KHES which reads "The contract is done based on the principle of voluntary, i.e./*ikhtiyari* every contract is done at the will of the parties, to perforce avoid due to pressure of one side or the other".²⁸

2. Borrowers (*Muqtaridh*)

Muqridh already reaching puberty, healthy, sensible and not *mahjur* (not the one by the sharia is not allowed to set up his own because certain factors). So as small child or a crazy person who commits not valid loan and did not qualify. Also, described in KHES article 2, namely: "Someone is seen to have prowess to do justice in the case has reached the lowest age of 18 (eighteen) years or ever married".²⁹

3. Goods or Objects on Loan Contract (*Qard*)

The object of the contract according to the scholar Syafi'iyah, Malikiyah, and Hanabilah hold that allowed (*al-qard*) over all the objects that can be used as a object of the contract, whether the goods are ditakar and weighed like gold, silver, and food as well as *qimmiyat* such as merchandise,

²⁸Pasal 21 Kompilasi Hukum Ekonomi Syariah,

²⁹Pasal 2 Kompilasi Hukum Ekonomi Syariah

animals and goods sold units. Because something can be made of the object owned by greeting and selling contract and identified by their very nature, so that it can be used as the object of the contract (*al-qard*) as well as items are exchangeable and weighed.

In KHES article 24 is the object of the contracts are:

- a. *Amwal* or permitted services required by each party
- b. Object of contract should be holy, useful, courtesy title, and can be perfect.³⁰

The majority of scholars allow *qard* on every object that can be bought and bought, except human being. They also prohibit the *qard* benefits, like someone on this day inhabit a friend's house and the next day a friend inhabit the house, but Ibn Taimiyah allowing it.³¹

4. Submission (*Ijab* and *Qabul*)

Ijab is first-party statement about the desired agreement while the second party statement *qabul* to accept it. the submission will be revealed through *ijab* and *qabul* as follows:

- a. The purpose of the contract must be clear and comprehensible
- b. Between *ijab* and *qabul* there should be compliance
- c. Statement of *ijab* and *qabul* must comply with the will of each one, and there should be no doubt.³²

³⁰Pasal 24 Kompilasi Hukum Ekonomi Syariah

³¹Rachmat Syafe'I, *Fiqh Muamalah*, (Bandung: CV Pustaka Setia. 2001), hlm 154-155

³²M. Ali Hasan, *Berbagai Msacam Transaksi Dalam Islam*, (Jakarta: PT Raja Grafindo Pesada, 2002), hlm 104

Qard terms are as follows:

- a. The magnitude of the loans (*al-qardhu*) have to know the scales measure or number
- b. The nature of the loans (*al-qardhu*) comes from decent people asked for a loan. So it is not valid if it comes from people who do not have something that can be borrowed or whatever is not normal

Please note that the terms that are in the contract according to its validity is divided to three parts, namely:³³

1. Shahih, terms that match substance through the contract, supporting and strengthening substances was approved and justified by sharia, according to the customs of the society (*'urf*)
2. Fasid, is a condition that does not comply with any of the existing criteria in terms of shahih, or the terms of which all its pillars are met there is a requirement that is not met. The consequence *mauquf* ruling (stop and halted for a while). So has not happened displacement of goods from the seller to the buyer and the transfer price (money) from the buyer to the seller, prior to an attempt to supplement these terms
3. Bathil, is a condition that has no shahih terms and criteria do not value member benefits for one party or another, but could pose a negative impact.

The Qur'an and the Hadith set some conditions about debt (*al-qard*) among other things recommended by written agreement concerning any

³³Abu Bakar Jabir al-Jazairi, *Ensiklopedia Muslim Edisi Revisi*, (Jakarta: Kencana, 2009), hlm 546

provision or *akad* that occur in a transaction especially regarding grace period are clear in terms of return. So that's not the case that the name dispute among parties, as the word of Allah SWT in surah al-Baqarah verse 282:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ ۚ وَلْيَكْتُب بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ

"O you who have believed, when you contract a debt for a specified terms, write it down. And let a scribe write (it) between you in justice".³⁴

It should also be witnessed, in the Qur'an surah al-Baqarah verse 282 says:

...وَأَسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ ۖ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّن تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكَّرَ إِحْدَاهُمَا الْأُخْرَىٰ...

"...and bring to witness two witnesses from among your men. And if there are not two men (available), then a man and two women from those whom you accept as witness – so that if one of the women errs, then the other can remind her...".³⁵

d. Implementation of The Qard

Qard is applicable when the goods is allowed by the sharia, the *qard* also applies after the *ijab* and *qabul* such as on selling.³⁶

e. Excess in payments/refunds

Overdo of payment/refund of the amount that has been given by the lender is as follows:³⁷

³⁴ QS. al-Baqarah (2): 282

³⁵ QS. al-Baqarah (2): 282

³⁶ Rachmat Syafe'I, *Fikih Muamalah*, (Bandung: CV Pustaka Setia, 2001), hlm 153

³⁷ Chairuman Pasaribu dan Suhrawardi K. Lubis, *Hukum Perjanjian Dalam Islam*, (Jakarta: Sinar Grafika), hlm 137-138

1. The excess without enforced by

If the excess payment is made by the borrower in the absence of the agreement of contract before, then it is possible for the lender, therefore it is to be a kindness to the borrower. Allowed for the *muqridh* (the lender) to pick up the item for what he had lend when the time comes and not mentioned on the previous contract, solely because it is the desire of the borrower, it is based on the Hadith of the Prophet which says:

عن عبد الله بن أبي ربيعة رضي الله عنه قال: استقرض مني النبي صلى الله عليه وسلم أربعين ألفاً فجاءه مالٌ فدفعه إلي وقال: بَارَكَ اللهُ فِي أَهْلِكَ وَمَالِكَ إِنَّمَا جَزَاءُ السَّلْفِ الْحَمْدُ وَالْأَدَاءُ (رواه النساء)

"From Abdullah bin Abu Rabi'ah r.a. he said: Rasulullah ever owe me as many as four thousand (dinar or dirham) when he arrived, he was paying him. Then he said to him, "hopefully Allah give you a great family and possessions your property, because actually it is simply paying off debt payments and Alhamdulillah (thank you)".

2. The Advantages of The Exchanged

Excess due to the agreement made by the borrower to the lender based on the existence of the agreement then it is not allowed, and prohibited for lenders. The addition of excess or loan payments that had previously been exchanged in a contract agreement is allowed, since the over payment is *riba*.³⁸ This provision is based on the hadith of Prophet Muhammad as follows:

كُلُّ قَرْضٍ جَرٌّ نَفْعًا فَهُوَ رِبَاٌ

³⁸Tim Kajian Keislaman Nurul Ilmi, *Buku Induk Terlengkap Agama Islam*, Cet. 1 (Yogyakarta: Citra Risalah, 2012), hlm 290

It means: "Each loan is yielding benefits is riba".³⁹

When one is able to pay the debts then hurry up paid his debts, because it is based on the hadith of Prophet Muhammad as follows:

عن أبي هريرة رضي الله عنه عن النبي صلى الله عليه وسلم قال: مظل الغني ظلم (رواه البخارى ومسلم)

"From Abu Huraira r.a. from Prophet Muhammad said: "the wealthy who ignore its obligations to pay the debts, he had done by terrors".

2. Riba

a. Definition

Understanding of riba in the terms there is some understanding:

1. Additional (الزيادة) that is requesting the addition of something debt.

Ziyadah (addition) of capital, be it a little or a lot

2. Growing, interest (النَّامُ), because of the riba is interest of money or property more which is lent.

3. Excessive or distended the meaning of the word is based on the word of Allah SWT in surah al-Haj verse 5:

اهْتَزَّتْ وَرَبَّتْ

"it quivers and it swells"⁴⁰

Meanwhile, according to Al-Mali is:⁴¹

³⁹Al-Hafizh Zaki Al-Din Abd Al-Azhim Al-Mundziri, *Ringkasan Shahih Muslim*, Penerjemah Syinqithy Djamauluddin dan Mochtar Zoerni, (Bandung: Mizan, 2002), No 958, 518

⁴⁰QS. al-Haj (22): 5

⁴¹Hendi Suhendi, *Fiqh Muamalah*, hlm 57-58

عَقْدٌ وَقَعَ عَلَى عَوَضٍ مَخْصُوصٍ غَيْرِ مَعْلُومِ التَّمَاثِيلِ فِي مَعْيَارِ الشَّرْعِ حَالَةَ الْعَقْدِ أَوْ مَعَ تَأْخِيرٍ فِي الْبَدَلَيْنِ أَوْ أَحَدِهِمَا

It means "contract the occurred over the exchange of certain items of unknown reasoning according to the size of syara', when contracting or by delaying link both sides or one of the two".

Understanding riba in the terms or terminology, the scholars of fiqh defines as follows:

a) According to the Scholars of Hanabilah

أَلزِيَادَةُ فِي أَشْيَاءَ مَخْصُوصٍ

Riba is "The addition of anything devoted".⁴²

b) According to the Scholars of Hafiyah

فَصْلٌ مَالٍ بِالْعَوَضِ فِي مُعَاوَضَةِ مَالٍ بِمَالٍ

Riba is "Extra on the replacement property in an exchange of property with a treasure".⁴³

According to Abdul Rahman al-Jaziri: riba is a contract that goes with a particular exchange, the unknown or whether the same according to syariah or late one.⁴⁴ So, based on the above explanation concerning riba, then it could be drawn the conclusion that riba is an additional property that is leased to others mentioned the beginning of contract or the occurrence of the delay from one of them.

⁴²Rachmat Syafe'I, *Fiqh Muamalah*, hlm 259-260

⁴³Rachmat Syafe'I, *Fiqh Muamalah*, hlm 259-260

⁴⁴Ismail Nawawi, *Fikih Muamalah Klasik dan Kontemporer*, hlm 69

b. Legal Source of Riba

Do lazy someone makes riba to do business or endeavor, if riba has become habit then the riba will be made a livelihood or employment. Therefore that's why riba was prohibited and is *haram* according the word of Allah SWT and the Prophet narrated.⁴⁵

Al-Qur'an surah al-Baqarah verse 275 that says:

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ

The meaning: "Those who consume interest cannot stand (on the Day of Resurrection) except as one stands who is being beaten bay Setan into insanity. That is because they say "Trade is (just) like interest." But Allah has permitted trade and has forbidden interest. So whoever has received an admonition from his Lord and desist may have what is past, and his affair rests with Allah. But whoever returns to (dealing in interest or usury) – those are the companions on the Fire; they will abide eternally therein".⁴⁶

In surah ar-Rum verse 39 also mentioned:

وَمَا آتَيْتُمْ مِنْ رَبِّ لِيَرْبُوَ فِي أَمْوَالِ النَّاسِ فَلَا يَرْبُو عِنْدَ اللَّهِ وَمَا آتَيْتُمْ مِنْ زَكَاةٍ تُرِيدُونَ وَجْهَ اللَّهِ فَأُولَئِكَ هُمُ الْمُضْعِفُونَ

The meaning: "And whatever you give for interest to increase within the wealth of people will not increase with Allah. But what you give in zakah, desiring the countenance of Allah – those are the multipliers".⁴⁷

Also mentioned in surah an-Nisa verse 161:

وَأَخَذَهُمُ الرِّبَا وَقَدْ نُهُوا عَنْهُ وَأَكْلِهِمْ أَمْوَالَ النَّاسِ بِالْبَاطِلِ ۗ وَأَعْتَدْنَا لِلْكَافِرِينَ مِنْهُمْ عَذَابًا أَلِيمًا

⁴⁵Soharni Sahrani dan Ru'fah Abdullah, *Fikih Muamalah*, hlm 57

⁴⁶ QS. al-Baqarah (2) :275

⁴⁷ QS. ar-Rum (30) :39

"And (for) their taking of usury while they had been forbidden from it, and their consuming if the people's wealth unjustly. And we have prepare for the disbelievers among them a painful punishment."⁴⁸

In the hadith of Prophet Muhammad also mentioned about riba, which are:

عَنْ عَوْنِ بْنِ أَبِي حُحَيْفَةَ، قَالَ رَأَيْتُ أَبِي فَقَالَ إِنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ ثَمَنِ الدَّمِّ، وَثَمَنِ الْكَلْبِ، وَآكِلِ الرِّبَا وَمُوكِلِهِ، وَالْوَأْشِمَةَ وَالْمُسْتَوْشِمَةَ.

The meaning: "narrated Abu Juhaifa: The prophet forbade the use of the price of blood and the price of a dog, the one who takes (eats) usury the one who gives usury, the woman who practices tattooing and the woman who gets herself tattooed".⁴⁹

عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ " اجْتَنِبُوا السَّبْعَ الْمُؤْبِقَاتِ " . قِيلَ يَا رَسُولَ اللَّهِ وَمَا هُنَّ قَالَ " الشِّرْكُ بِاللَّهِ وَالسَّحَرُ وَقَتْلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَأَكْلُ الرِّبَا وَأَكْلُ مَالِ الْيَتِيمِ وَالتَّوَلَّى يَوْمَ الزَّحْفِ وَقَذْفُ الْمُحْصَنَاتِ الْعَافِيَاتِ الْمُؤْمِنَاتِ " . قَالَ أَبُو دَاوُدَ أَبُو الْعَيْثِ سَأَلْتُ مَوْلَى ابْنِ مُطِيعٍ.

The meaning: narrated Abu Huraira: Rasulullah (peace be upon him) as saying: Refrain from seven (characteristics) which cause destruction. He was asked: What are they, Messenger of Allah? He replied: (1) To assign partner to Allah, (2) magic, (3) to kill a soul (man) which is prohibited by Allah except for which is due, (4) to take usury, (5) to consume the property of an orphan, (6) retreat on the day of the battle, (7) and to slander chaste woman, indiscreet but believing.⁵⁰

عَنْ ابْنِ عُمَرَ — رَضِيَ اللَّهُ عَنْهُمَا — قَالَ خَطَبَ عُمَرُ عَلَى مِنْبَرِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ إِنَّهُ قَدْ نَزَلَ تَحْرِيمُ الْخَمْرِ، وَهِيَ مِنْ خَمْسَةِ أَشْيَاءِ الْعَنْبِ وَالتَّمْرِ وَالْحِنْطَةِ وَالشَّعِيرِ وَالْعَسَلِ، وَالْخَمْرُ مَا خَامَرَ الْعَقْلَ، وَثَلَاثٌ وَدِدْتُ أَنْ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَمْ

⁴⁸ QS. an-Nisa (4) :161

⁴⁹(Sahih Bukhari (English) reverence vol. 7, Book 72, Hadith 829; Arabic reverence: Book 77, Hadith 6009)

⁵⁰Grade: Sahih (Al-Bani) صحيح (الألباني) (Reference: Sunan Abi Daud 2874; English Translation: Book 17, Hadith 2868)

يُفَارِقُنَا حَتَّى يَعْهَدَ إِلَيْنَا عَهْدًا الْجَدُّ وَالْكَالَالَةُ وَأَبْوَابٌ مِنْ أَبْوَابِ الرَّبَا. قَالَ قُلْتُ يَا أَبَا عَمْرٍو فَشَيْءٌ يُصْنَعُ بِالسِّنْدِ مِنَ الرَّزِّ. قَالَ ذَلِكَ لَمْ يَكُنْ عَلَيَّ عَهْدُ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَوْ قَالَ عَلَيَّ عَهْدِ عُمَرَ. وَقَالَ حَجَّاجٌ عَنْ حَمَّادٍ عَنْ أَبِي حَيَّانَ مَكَانَ الْعَنْبِ الزَّبِيبِ.

The meaning: narrated Ibn 'Umar: Umar delivered a sermon on the pulpit of Allah's apostle, saying "Alcoholic drinks were prohibited by Divine Order, and these drinks used to be prepared from live things, such as grapes, dates, wheat, barley and honey. Alcoholic drink is that, that disturbs the mind". Umar added "I wish Allah's Apostle had not left us before he had given us definite verdicts concerning three matters, such as how much a grandfather may inherit (of his grandson), the inheritance of Al-Kalala (the deceased person among whose heirs there is no father or son), and various types of Riba(1) (usury)".⁵¹

عن ابن مسعود، قَالَ : لَعَنَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَكِلَ الرَّبَا وَمُوكِلَهُ وَشَاهِدَيْهِ وَكَاتِبَهُ (رواه الترمذي)

It means "from Ibn Mas'ud said: the Prophet cursed the person who consuming riba, who ordered a meal, two witnesses and authorship".⁵²

c. Kinds of Riba

About kinds of riba the majority of scholars divide it in four parts:

1) Riba Fadhl (Riba of Exchange)

According to the scholars of Hanafi riba fadhl is:

زِيَادَةُ عَيْنِ مَالٍ فِي عَقْدِ بَيْعٍ عَلَى الْمَعْيَارِ الشَّرْعِيِّ عِنْدَ اتِّحَادِ الْجِنْسِ

This means that "the additional substances and selling contract on the property being measured and the like".⁵³

Selling the additional replacement with the accompaniment of other people, in order to words, i.e. the last replacement. The meaning is the

⁵¹(Sahih Bukhari English), Reference: Vol 7, Book 69, Hadith 493; Arabic Reference: Book 74, Hadith 5647)

⁵²Sunan at-Tirmidzy, *Kitab Jual Beli, Bab Sebab Datangnya Riba No 1206 Jilid3*, Penerjemah Abu Isa Muhammad ibn Isa Ibn (Beirut, Dar al-Fikr), hlm 512

⁵³Ibn Rusyd, *Bidayah Al-Mujtahid wa Nihayah Al-Miqtashid*, Juz II, Hlm 129

difference in goods in one of two exchange-trade goods of the same type. Include in this is the kind of riba, riba qard is taking loans of a member to make use of the loan.⁵⁴ Ibn Ziyad said "he who gives riba fadhli because forced to, if he did not give examples of riba, so he didn't get any debt, so he remained in the position of sinner, because he still has a solution that is merely granting it. Therefore, if the transaction buying and selling similar goods between, shouldn't one of preferential treatment to avoid riba."⁵⁵

According to Rawwas Qal'ahji, is selling goods that one kind of riba and there are advantages to each other. The base is still forbidden riba, as this is the hadith of the Prophet: "gold with gold and silver with silver, wheat with wheat, *jawawut* with *jawawut*, dates with dates, salt with salt (and selling this items) its weighty must be the same between each other, as well as submission and acceptance should be that time (should not be suspended). Anyone who adds or request additional then he had committed riba, which takes a member and its value is the same".⁵⁶

There are also allowing riba fadhli, if in an emergency or *hajah* (emergency or necessity),⁵⁷ based on the rules of fiqh:

الضَّرُورَةُ تُبِيحُ الْمَحْظُورَاتِ

"Emergency (urgent need) could allow something previously forbidden".⁵⁸

⁵⁴Zainuddin bin Abdul Aziz al-Malibari, *Fat-hul Mu'in*, Terj, Abul Hiyadh, (Surabaya: Al-Hidayah), hlm 211

⁵⁵Rachmat Syafe'I, *Fiqh Muamalah*, hlm 262-264

⁵⁶Muhammad Rawwas Qal'ahji, *Ensiklopedia Fiqh Umar bin Khattab ra*, (Jakarta: PT Raja Grafindo Persada, 1999), hlm 468

⁵⁷ Sebagaimana dikutip Oleh Masjfuk Zuhdi Dalam Bukunya Abdurrahman Isa, *Al-Muamalat al-Haitsah wa Akhamuh*, Cairo, Mathaba'ah Mukhaimir, s.a., hlm 15-16

The rule above, it is understood that the State of emergency (urgent need) it can allow something forbidden, but what is possible because of an emergency that must be estimated levels of his needs and provided quality *mahzurat* (ban) it would have to lower the value of its *emergency*.

2) Riba Nasi'ah

Riba nasi'ah is excess over a given receivable people who owed to the owners of capital when the agreed time to maturity

According the scholars of Hanafi, riba nasi'ah is:

فَضْلُ الْحُلُولِ عَلَى الْأَجَلِ وَفَضْلُ الْعَيْنِ عَلَى الدَّيْنِ فِي الْمَكِيلَيْنِ أَوِ الْمَوْزُونَيْنِ عِنْدَ اخْتِلَافِ الْجِنْسِ أَوْ غَيْرِ الْمَكِيلَيْنِ أَوِ الْمَوْزُونَيْنِ عِنْدَ اتِّحَادِ الْجِنْسِ.

"The granting of advantages against payment is delayed, the granting of advantages against the object rather than the object scales of different types of debt, or the same type".⁵⁹

Riba nasi'ah also interpreted as selling and buying or exchange of goods of the same or not with one of the items required a replacement depending on the shipment.

لَا رَبَا إِلَّا فِي النَّسِيئَةِ

It means "there is no riba except riba nasi'ah".⁶⁰

Riba nasi'ah banned because circumstances, the existence of a delay of payment. Riba is only allowed in an emergency (forced).⁶¹

⁵⁸ Abbas Arfan, *99 Kaidah Fiqh Muamalah Kulliyah "Tipologi dan Penerapannya dalam Ekonomi Island an Perbankan Syariah"*, (Malang: UIN-MALIKI Press, 2013), hlm 161

⁵⁹ Nasroen Haroen, *Fiqh Mu'amalah*, (Jakarta: Gaya Media Pratama, 2000), hlm 183

⁶⁰ Tim Kajian Keislaman Nurul Ilmi, *Buku Induk Terlengkap Agama Islam*, Cet. 1, hlm 286

⁶¹ Masjfuk Zuhdi, *Masail Fiqiyah "Kapita Selektia Hukum Islam"*, Ed.II, Cet.8 (Jakarta: Haji Masagung, 1994), hlm 105

3) Riba Yad

Selling with the expiry of the delivery (*al-qalbu*), namely the break between the two sides that contract accepted before, such as completing and selling wheat for *sya'ir* (grains) without the send and received on the spot. If one of the sellers and buyers decided the agreement before it is sent and received.⁶² More simple again understanding about riba yad is riba done in buying and selling are not yet the handover but the buyer already sold again to anyone else.

4) Riba Qardi

Loan borrowing transactions (debt) by the terms harness for the lender, or providing a loan to another person provided that the person who borrowing, if the time came he had to add a payment or benefits. Can also mean a form of debt receivable or a loan with terms' presence or additional benefits for the member's loan.

d. Advantages of Loan Payments

Loan payments by taking benefits without any additional specific requirement between borrower and lender is allowed. As well as know in islamic society now facing one of the problems in the economy that is of interest or riba.

Currently, the interest rate can not be separated with the economy because based on capital strength, capital loan borrowing using interest as the character of economic life today.

⁶² Zainuddin bin Abdul Aziz al-Malibari, *Fat-hul Mu'in*, Terj, Abul Hiyadh, hlm 211

Nassu William Senior as quote by Qureshi assumes that interest rate is the amount of money provided to others who have done the "abstinence" the meaning is a person's limited actions of the act that are not helpful and do something that can take advantage or result for him, especially in the future.⁶³

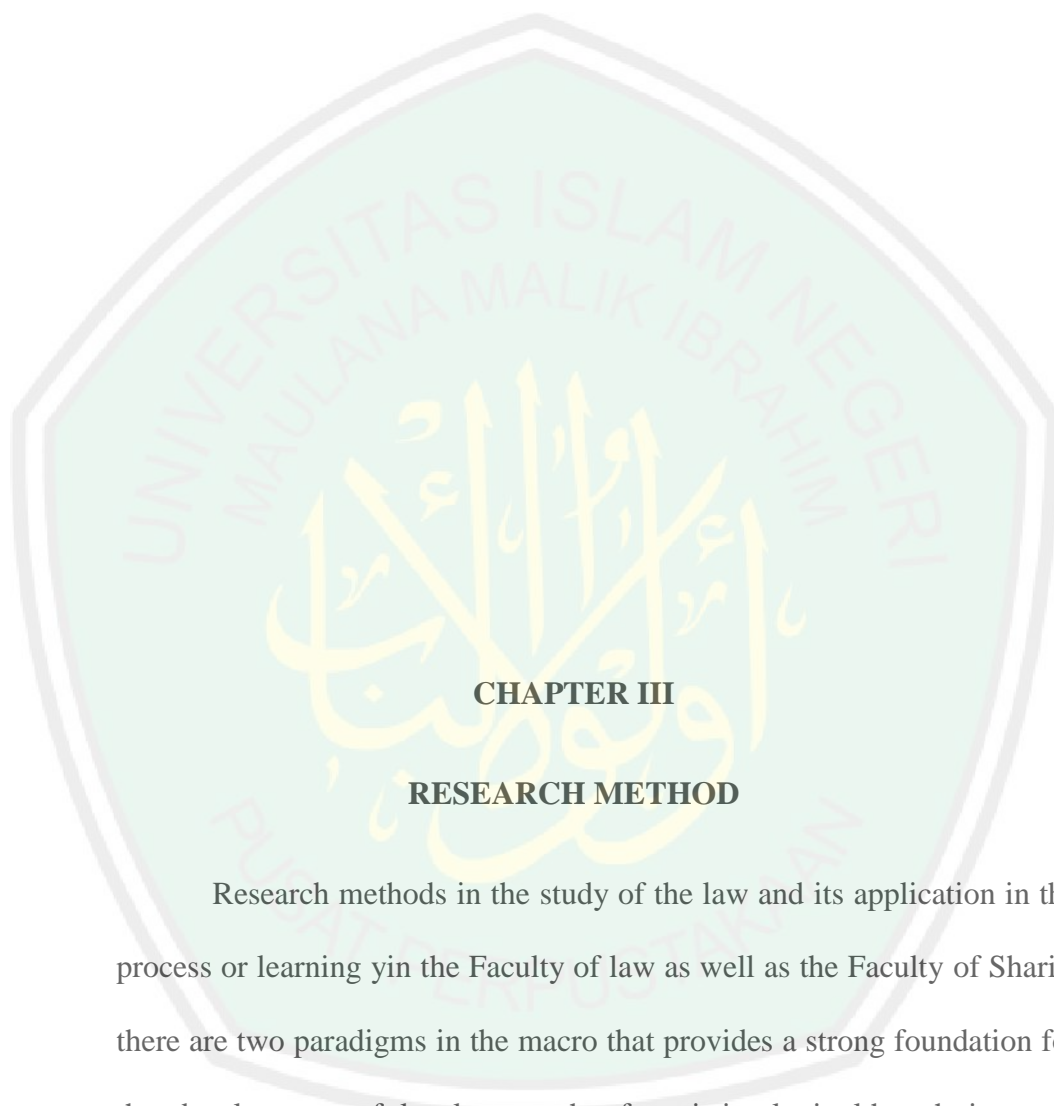
Riba in view of the jurist that is additional to replace one of the two items are the same without any change from him. Not all additions are considered riba, sometimes a result in a trade and there is no riba therein merely an extra, is "riba" and the Qur'an came with a ban that is extra because of the length of time.⁶⁴

The view of the majority of scholar of the law of riba, there are two groups namely:

1. The first group, prohibits riba that folding the duplicate (*ad'afan mudha'afa*), because in the al-Qur'an forbid about riba which only folding the duplicate, that is riba nasi'ah, because based on hadith "no riba except riba nasi'ah", therefore, in the addition to the riba nasi'ah allowed
2. The second group, forbidding riba, be it large riba or small riba, riba has been prohibited in islam, whether large or small, folding the duplicate or not, riba that folded it substance banned because duplicate, while small riba is forbidden because of the approaching to the largest riba(*haramun lisyadudzari'ah*).

⁶³ Anwar Iqbal Qureshi, *Islam Dan Teori Pembungaan Uang*, (Jakarta: Tintamas Indonesia, 1985), hlm 53

⁶⁴ Abdul Aziz Muhammad Azim, *Fiqh Muamalat*, (Jakarta: Amzah, 2010), hlm 217



CHAPTER III

RESEARCH METHOD

Research methods in the study of the law and its application in the process or learning in the Faculty of Law as well as the Faculty of Sharia, there are two paradigms in the macro that provides a strong foundation for the development of legal research of epistemology although in some places there are changes or modifications that are not significant.⁶⁵

The research method is a way of doing things by using the mind carefully to reach a destination by searching, recording, formulate, and

⁶⁵Saifullah, *Tipologi Penelitian Hukum (Kajian Sejarah, Paradigma, dan Pemikiran Toko)*, (Malang: Intelegensia, 2015).

analyze to complete the report.⁶⁶ The method of research conducted include: types of research, research approaches, research location, data sources, data collection methods, methods of data processing. With the following explanation:

A. Types of Research

This type of research is intended to describe the type or kind of research used in this study.⁶⁷ This research is a kind of empirical law research. Empirical research means research see law society phenomenon or social facts found in the community.⁶⁸ Empirical law i.e. the approach to see the actual state of affairs in the community, social law approach is used to look at the legal aspects in social interaction in the community.⁶⁹ This research review of legal phenomena in a transaction directly loan borrowing and how to practice adding money lending in the community of the village Serabi Timur Kecamatan Modung Kabupaten Bangkalan.

B. Research Approach

This research used socio-legal approach, i.e. by means of identifying and conceived of the law as social institution that is real and functional in the real life. Soejono Soekanto explained that the juridical sociological approach is an approach to research that emphasizes research that aims to produce

⁶⁶Cholid Narbuko dan Abu Achmadi, *Metodologi Penelitian*, (Jakarta: Bumi Askara, 2003), hlm 1.

⁶⁷Tim Penyusun , *pedoman Penulisan Karya Ilmiah Fakultas Syariah*, (Malang: UIN Press, 2012), hlm 39

⁶⁸Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, (Bandung: Mandar Maju, 2008), hlm 124.

⁶⁹Zainuddin Ali, *Metode Penelitian Hukum*, (Bandung: Mandar Maju, 2008) juridical, hlm126

empirically legal knowledge by way of observation,⁷⁰ i.e. observing directly the object of research directly to observe state or issue about the addition of money lending with Islamic law i.e. KHES (Komilasi Hukum Ekonomi Syariah) about the loan to borrow to get the end result.

C. Location of Research

This research was conducted in the village Serabi Timur Kecamatan Modung Kabupaten Bangkalan, Madura Island, province of East Java, Indonesia. Research take the village as a place of research due to the practice of adding additional loans with the money in the refund had already been going on for a long time and it becomes a habit of village Serabi Timur community.

D. Data Sources

There are two sources of data used in this research are:

1. Primary data is directly retrieved from the speakers through interviews, observation or report is in the form of an unofficial document that had been prepared by the researcher.⁷¹ The collection of data obtained through interviews with villagers of Serabi Timur who was directly involved with the transaction of loan borrowing community lenders and the village of Serabi Timur.

⁷⁰Soejono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: Universitas Indonesia Press, 1986), hlm 51

⁷¹Zainuddin Ali, *Metode Penelitian Hukum*, hlm 106

2. Secondary data as information obtained through the books, documents, articles, journals relating to the object of this research,⁷² or through legal books written by legal experts, articles, journal or encyclopedia-related research.⁷³

E. Data Collection Technique

Researcher can obtain accurate data because it is done with collection of data from a data source, either primary or secondary data sources. Primary data collection techniques and secondary data use are:

1. Observation

The observation is done to find a hypothesis by studying and understanding the habits of the community law which can be observed with the eye of the head.⁷⁴ In the collection of data, the authors find the actual occurrence of a subject which made observations of researchers.⁷⁵ This observation in the data or the truth of the events detailed actions, habits, and maybe all the interactions between individuals and the process of the rule of law became part of human custom is observed.

2. Interview

The interview is the situation the role between private face to face, when a person i.e. the interviewer ask statements designed to elicit answers

⁷² Soejono Soekanto, *Pengantar Penelitian Hukum*, hlm 12

⁷³ Dyah Ochtorina Susansti dan A'an Efendi, *Penelitian Hukum "Legal Research"*, (Jakarta: Sinar Grafika, 2014), hlm 52

⁷⁴ Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, hlm 169

⁷⁵ Burhan Ashofa, *Metode Penelitian Hukum*, (Jakarta: PT Rineka Cipta: 2004)), hlm 26

that are relevant to the research problems to respondents.⁷⁶ The interview is directly intended to get the real information with the borrower and lender, was also councilor and scholars about matter.

3. Documentation

Technique of data collection with the writing of data using the analysis of the contents, such as techniques to take the conclusions by identifying objective message special characters, systematic, and leveler.⁷⁷ It is associated with the process of loan approval to borrow additional money lending with which occurred in the village Serabi Timur Kecamatan Modung Kabupaten Bangkalan.

F. Data Analysis Technique

Data analysis technique is data that's already done through the collection of data in the field that are ready to be used for analysis.⁷⁸ And exposes the data in the form of a sentence, in a row, logical, not overlap and effectively to facilitate the understanding and interpretation of the data. In this study using the data analysis technique through several stages:

1. Editing (*Check the Data*)

Editing is checking the return data records obtained from interviews as well as documentations, whether these data are good enough and can be

⁷⁶ Amiruddin, *Pengantar Metode Penelitian Hukum*, (Jakarta: Raja Grafindo Persada, 2006), hlm 82

⁷⁷ Masruhan, *Metode Penelitian Hukum*, (Surabaya: Hilal Pustaka, 2013), hlm 208

⁷⁸ Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, (Jakarta: Sinar Grafika, 2002), hlm 72

immediately prepared for the next process.⁷⁹ From that researchers edit the clarity of the answers or the relevance of answers from multiple objects to examine the returned records and the data retrieved from the data collection.

At this stage the data obtained through interviews with borrowers and providing a loan or in the form of documentation data as well as a library of materials related to the theme of this research, that borrowing money with additional trimmings will be viewed so that it can facilitate the subsequent processes to process data.

2. Classifying (*Classification*)

Classification is an attempt to classify the answers to respondents from interviews or divided from observation.⁸⁰ Data classification aims to classify data by reference to the questions of the researcher and the elements contained in the focus of researchers.⁸¹

In this study, the data obtained directly from his interviewees through interviews with the parties involved in the practice of the addition of borrowed money in the village of Serabi Timur Kecamatan Modung Kabupaten Bangkalan will on its own and a separated group with the data obtained from the secondary parties in the form of a reference book or document relating to the addition of borrowed money, the data in the group in accordance with the outline of the problem in this research.

⁷⁹Burhan Ashofa, *Metode Penelitian Hukum*, hlm 61

⁸⁰Burhan Ashofa, *Metode Penelitian Hukum*, hlm 66

⁸¹ Amiruddin dan Zainal Asikin, *Pengantar Penelitian Hukum*, (Jakarta: Raja Grafindo Persada, 2005), hlm 76

3. Verifying (*Verification*)

Verification is proof of the truth of the data to ensure the validity of data that has been collecting, verification is done in a way to meet the data source (the information) and give him the interview results, with an objective to respond whether such data in accordance with what is informed by the informant.⁸²

4. Analysis

Analysis is the process of preparing, categorize the data, looking for patterns, or understand its meaning. The research on the start with it in doing the examination of data collected. Data derived from primary and secondary data resource comes from the books and writings as well as legistimation, data obtained in the analysis with qualitative methods so that it can pull in conclusion this way and expect to answer the problem in this research and understand how the practice of adding borrowed money which occurred in the village of Serabi Timur Kecamatan Modung Kabupaten Bangkalan.

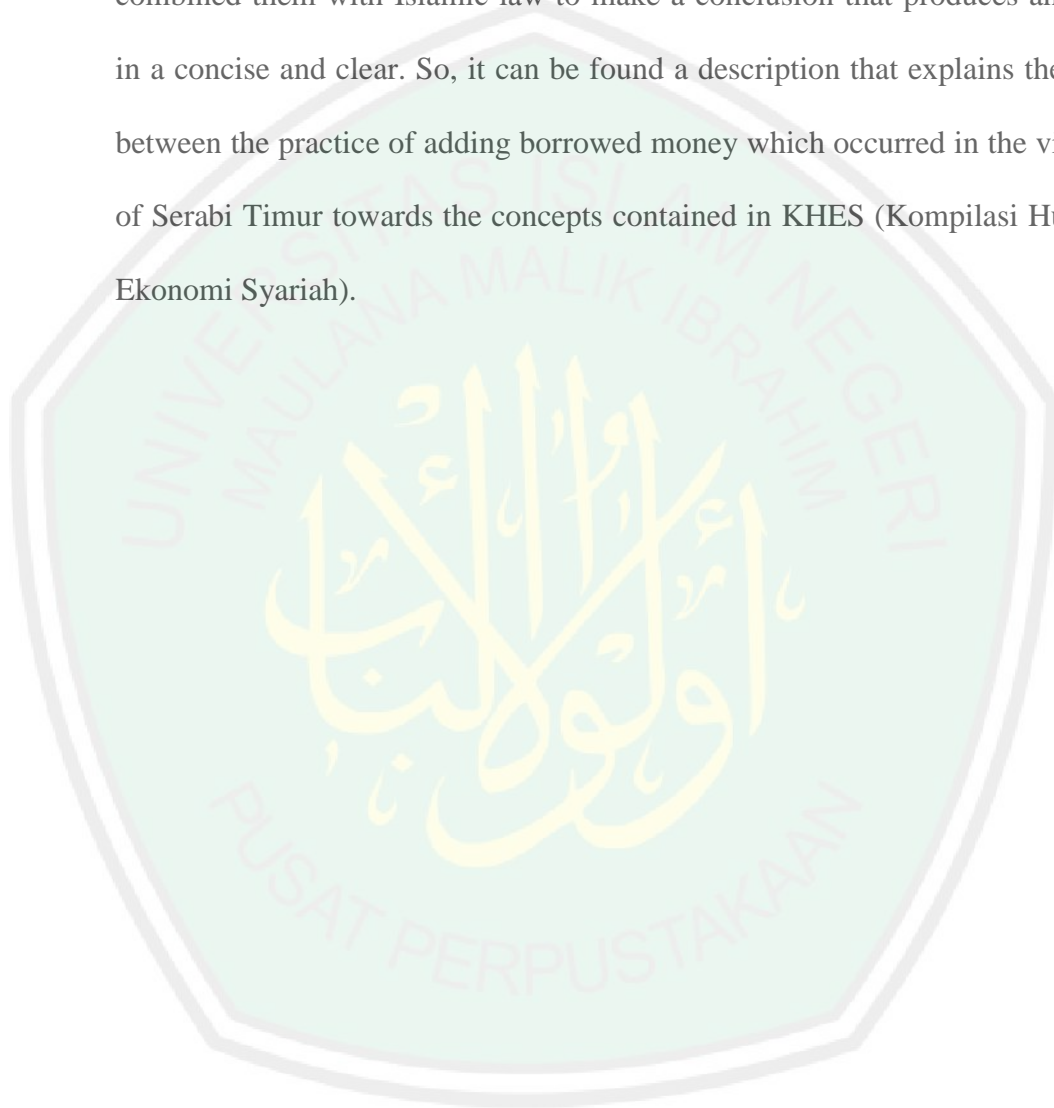
5. Concluding (*Conclusion*)

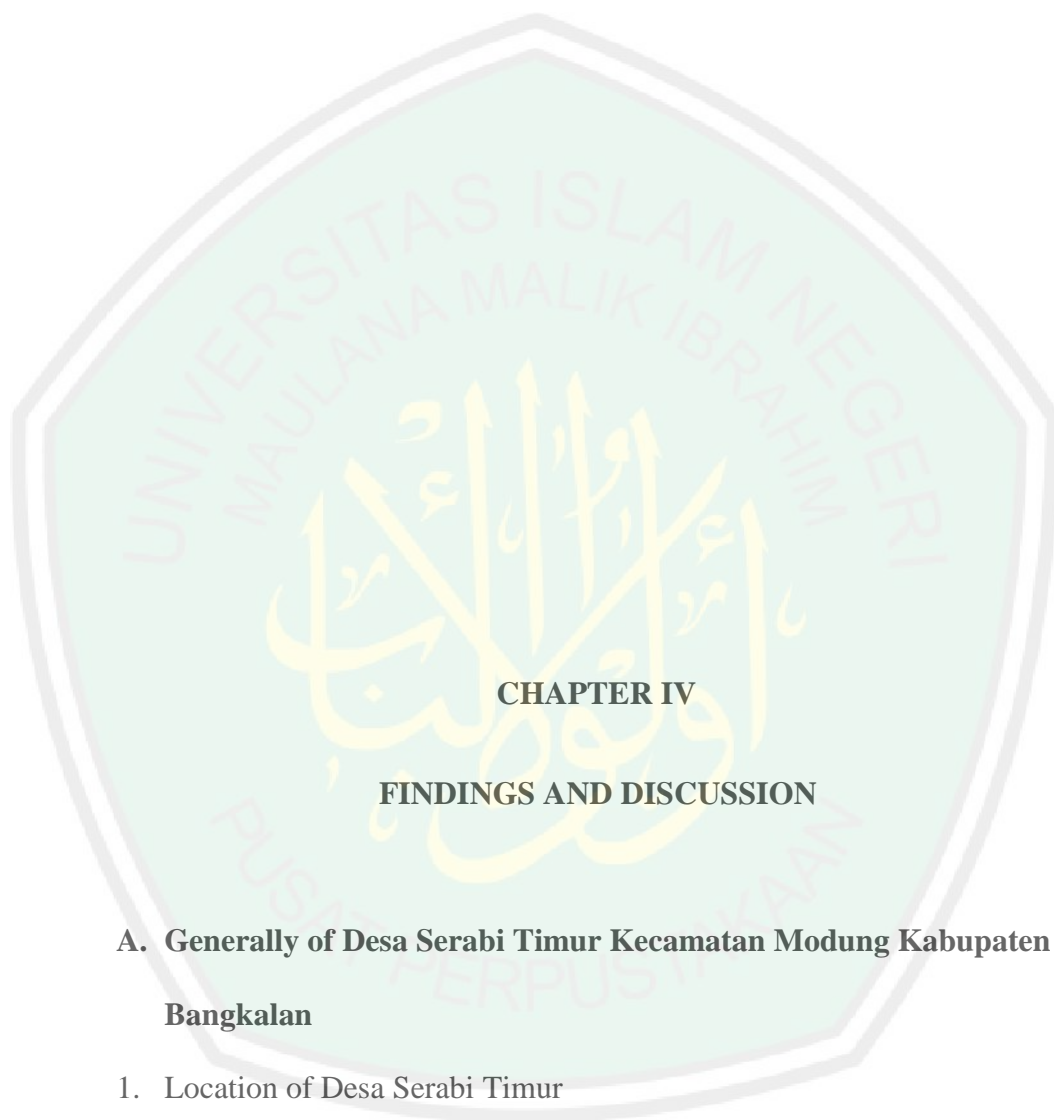
Taking the conclusions of the data obtained after the analysis to provide an answer to the reader upon the disquiet from what is mentioned above on the background of the problem.⁸³

⁸² Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenade Media Group, 2005), hlm 84

⁸³ Amiruddin dan Zainal Asikin, *Pengantar Penelitian Hukum*, hlm 67

After all stages were done so with the use of data analysis as these researcher developed a study of data-data obtained from both the interview and the lending practices of data that already exist then the researcher combined them with Islamic law to make a conclusion that produces an idea in a concise and clear. So, it can be found a description that explains the link between the practice of adding borrowed money which occurred in the village of Serabi Timur towards the concepts contained in KHES (Kompilasi Hukum Ekonomi Syariah).





CHAPTER IV

FINDINGS AND DISCUSSION

A. Generally of Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan

1. Location of Desa Serabi Timur

Desa Serabi Timur is a village located in Kecamatan Modung Kabupaten Bangkalan that was in the most southern town of Bangkalan city, located in Madura Island, East Java Indonesia. Desa Serabi Timur is one of the 17 village in Kecamatan Modung located 12 km towards the East of the

city. Desa Serabi Timur has an area 544.70 Hectares, with total population of 2. 509 population consists of 1. 251 of male and 1.258of female.⁸⁴

2. Governance Structure of the Village

The structure of the governance Desa Serabi Timur consists of the head of village, the village secretary, treasurer of the village, and the head of the dusun, each one man who served as village officials.

3. Condition of the Religious Social

The condition of religion in society is very important, because religion is absolutely a must-have and appreciate it as a synod or the guidelines for the community in behave and social interaction every day, here the social interact with the community. So, is the case with villagers of Serabi Timur Kecamatan Modung Kabupaten Bangkalan, religious activities carried out by the villagers of Serabi Timur among other every Thursday held *diba'an* or *shalawatan* for women in the mosque or *mushalla*, whereas for men, namely *tahlilan* every society who gets a turn at home every night Friday, because the whole community Desa Serabi Timur is Muslim.⁸⁵Each month of fasting held awarding people for the people of Desa Serabi Timur.

4. Education

In terms of community education Desa Serabi Timur is very concerned with education, especially in the religious, but 65% of community Desa Serabi

⁸⁴Djumadi Kepala Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan, Wawancara 2 Mei 2017

⁸⁵Djumadi Kepala Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan, Wawancara, Serabi Timur 2 Mei 2017

Timur just send their children to secondary of Madrasah Aliyah, not up to the level of collage due to the limited cost in send up to the level of higher education.

5. Condition of Health

In Desa Serabi Timur health conduct among others: the service of KB, pregnant women, immunization, and service for mother who give birth. Also, conduct Posyandu weighing a toddler, toddler immunization, administering of vitamin.

6. Economic Situation

Economy activity filmed villagers working in the agricultural of Desa Serabi Timur, as the main livelihood for Desa Serabi Timur community. with the potential in the form of rice plant and the corn as a community that most are managed by the community. in addition to the agriculture in Desa Serabi Timur community there is also field with the type of plantation crops such as sweet potato, cassava, and beans. There are some communities that wandered out the area of the Madura Island.⁸⁶

B. The Practice of Additional Money Lending in Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan

The practice of additional money lending in Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan is the practice of loan borrowing money by having an additional refund loans, in which borrowers return the

⁸⁶DjumadiKepala Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan, *Wawancara*, Serabi Timur, 2 Mei 2017

money borrowed with the addition that in proposing by lenders and approved by borrowers with a certain period in accordance with the request of the borrower, and usually people who make loans is certain people, as the economy is good and can be seen by the community to provide assistance to them, and by the existence of a practice loan borrowing is very helpful community of Desa Serabi Timur in fulfill their needs. The authors ask directly about those practices to the parties who are directly involved with the process of the occurrence of the practice loan borrowing money by the presence of an extra.

According to Ahmad, the practice of loan borrowing money by having extra in loan repayment with a specific time period, and the period specified by the borrower and the lender submits the requirement for additional presence in its return with additional percentage determined by the lender, according to Ahmad, a transaction that took place in Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan already happened a long time ago, the villagers are familiar with the practice.⁸⁷

As delivered by Suparman as one of transactors of loan borrowing by existence of the loan repayment:

“Kule menjem obeng ka bapak Mawardi sebennyak Rp. 10.000.000,00 (sapolo juta rupiah) delem bektoh sa taon bhekal e pabelieh, mare nekah bapak Mawardi bhekal marengah obeng sebennyak Rp. 10.000.000,00 (sapolo juta rupiah) dhek dhen kauleh kalaben syarat bedenah tambahan sebennyak Rp. 4.000.000,00 (pak juta rupiah) delem bektoh sa taon derih obeng se'e enjem gellek. Deddi total se

⁸⁷Ahmad Peminjam, *Wawancara*, (Serabi Timur, 4 Mei 2017)

koduh e pabelih sareng kuleh nekah bennyak'en Rp. 14.000.000,00 (pak belles juta rupiah)".⁸⁸

In practice the additional money lending in Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan occur between two people who are doing the transaction, that is Suparman (*muqtaridh*) as borrower and Mawardi (*muqridh*) as lender is the parties who have money. *Muqtaridh* party must return the money that was borrowed to *muqridh* with an extra percentage proposed by *muqridh* and agreed by both parties that transaction or akad. Duration one year proposed by *muqtaridh*. The object of the contract is money, which is money that his loan of IDR 10.000.000,00 (ten million dollars), the money is use for advancing capital.

In Kompilasi Hukum Ekonomi Syariah (KHES) there are pillars and terms of the contract are:

1. The parties that berakad
2. Object of the contract
3. The purpose of the contract subject matter, and
4. The deal.⁸⁹

Process transactions made by *muqtaridh* and *muqridh* carried out at *muqtaridh*, Imam says that people who went to the house of *muqridh* to borrow and expressed his desire to borrow the money to *muqridh*, in a transaction that there are only two sides there are no others who bear witness of any transaction or agreement as evidence of the loan if one day there are unwanted incident in loan borrowing because the transaction is based upon

⁸⁸Suparman Peminjam, *Wawancara*, (Serabi Timur, 4 Mei 2017)

⁸⁹Pasal 22Kompilasi Hukum Ekonomi Syariah

mutual trust between both sides of the transaction. Period of repayment in accordance with the request of the borrower.

“Delem enjeman ka'dintoh tadek sakseh se aropah tolesan obeh sakseh se e kagebey bukteh, polanah delem enjem maenjem gellek e desareh saleng partajeh”.⁹⁰

From the data obtained and the interview above, *ijab* and *qabul* process conducted by *muqtaridh* and *muqridh* done at home of *muqridh* orally and not on writing, and then there was the transfer of proprietary rights between *muqridh* with *muqtaridh*.

In the loan there is no limit to how much nominal money to be borrowed, as lenders themselves do not provide limitations in giving the loan, so borrowers may borrow money in accordance with the purposes they need as long as the lender can give you loan. As it has been presented by Suparman:

“E delem pemenjeman obeng tadek betesen berempah obeng se koduh e enjem, amargeh manabih kauleh minjem obeng tak e sebbutagih berempah obeng se koduh kuleh penjem, orengah coman adebu berempah obeng se enjemah bik kuleh ben berempah obeng se koduh e bapabelih sareng kuleh”.⁹¹

When it was time to pay and the borrower can't pay it with the agreed period, then lenders will not give sanctions to change the payment in exchange for the late, but make a new contract or akad, such as that delivered by Ali Wafa:

“Bileh bektionah mejer otang deteng ben pihak oreng se menjem gitak bisa mejer otangah gellek, maka kauleh bekal merriah perjenjian anyar pole ben kuleh tak bekal merrinah dindeh dek oreng se tellat mejer

⁹⁰Imam Peminjam, *Wawancara*, (Serabi Timur, 7 Mei 2017)

⁹¹Suparman Peminjam, *wawancara*, (Serabi Timur, 4 Mei 2017)

otabah gitak bisa mejer otangah gellek. Bik bedenah perjenjien anyar gellek ben e sepakateh bik se aotang makah kuleh bekal merrinah sepadenah bik se e pentah oreng se aotang, mesallah mentah bektok sataon pole gebey melonasi otangah maka kauleh setuju bik bektok se e ajuagin, ben tambahan deri obeng se e otang jugen atambah kyah, deddi bileh memperlanjeng sa taoh se asallah gellek sa taon pas deddih du taon, maka tamba'an obeng se enjem gellek deddi se sataoh Rp. 4.000.000,00 (pak juta rupiah) mon bileh du taoh deddi Rp. 8.000.000,00 (bellung juta rupiah)".⁹²

In late payments in article 610 of Kompilasi Hukum Ekonomi Syariah (KHES) mentioned that: if the client is unable to restore some or all of its obligations in the agreed time and lenders/ Islamic Finance Institutions have ensured the frustrating, then the lender can:

- a. Extend the repayment period or
- b. Delete/ *write off* some or all of its obligations.⁹³

The practice of loan borrowing activity according to their needs, because they do not need to be struggled for borrowing to banks, because according to them borrowing to bank is difficult to get loans because there are some procedures that have to be passed by the community. According to community of Desa Serabi Timur they easier to get a loan of money in such manner, due to the lack of a system or a complicated procedure to get loans and not have to pay extra every month but in accordance with agreed time period. As delivered by Sriwahyuni:

“Delem bedenah parktek enjem amemjem gellek onggu cek sangat abentoh dhek dhen kauleh sebab kauleh tak osa repot-repot entar ka bank ben pole e bank panekah cek onggunah sulet mon terro olleah enjeman koduh oreng se andik berung se olle aenjem”.⁹⁴

⁹²Ali Wafa Pemberi Pinjaman, *Wawancara*, (Serabi Timur, 9 Mei 2017)

⁹³Pasal 610 KHES

⁹⁴Sriwahyuni Peminjam, *wawancara*, (Serabi Timur, 13 Mei 2017)

C. The Practice of Additional Money Lending in Islamic Law Perspective

Loan borrowing agreement with the presence of an additional payment when that happened in the community of Desa Serabi Timur has become the habit of the village community, that is, to borrow a sum of money to the person deemed able to provide assistance or loans to them.

Communities do these loans because of the urgent need to immediately met, and by doing the loan borrowed by the presence of the additional perceived easily and quickly to cover the most urgent needs are also community profession as farmers and ranchers. In addition, because it has become a custom of community Desa Serabi Timur, most of community Desa Serabi Timur do not have certificates and a good enough effort to do loan at a bank, due process and the requirements to be met for obtaining a loan. As presented by Syarif:

“Abedih enjeman e bank koduh orang se andik usaha saja, mon bileh jeregen sapeh otabel jeregen mbek bik bank e anggep musiman polanah mon jeregen sapeh bik mbek mon e juel e delem areh-areh tertentoh, mela deri nekah bank gellek tak bisa aberrik enjeman bileh tadek usaha dalam bentuk toko, otabel bileh toko gellek sekedar ajual chiki otabel permen nekah bekal e berrinah enjeman. Mela deri nekah orang tanah masuk dek se ekamaksot gellek”.⁹⁵

Therefore, the community chose to do loan borrowing with an additional payment bay certain time when, as mentioned in Kompilasi Hukum Ekonomi Syariah (KHES) article 20 No. 36 which reads "*qard* is the provision

⁹⁵Syarif, Sekretaris Desa Serabi Timur, *wawancara*, (Serabi Timur, 2 Mei 2017)

of funds or the bill between Sharia Financial Institutions with borrowers who require that borrow to make payment is cash or in certain period".⁹⁶

The agreement made by borrowers (*muqtaridh*) and lender (*muqridh*) is not made in writing, and the absence of the witness in the process of the transaction but in doing orally and on the basis of mutual trust, for which borrowing is a community of Desa Serabi Timur and known by lender. Although in Kompilasi Hukum Ekonomi Syariah (KHES) already mentioned in article 21 Letter M which uses the principle of *Al-Kitabah* (written).⁹⁷ For when disputes occur later or violations committed by one party then the written evidence could be used as evidence in the future.

In terms of the actual loan refund shouldn't be unless before give the borrowing lender must use *ijab nadzar*. As delivered by Abd Rahman, he says:

“Enjeman gellek panekah termasuk riba sebab caranah nekah se sala sa onggunah se aberrik enjeman gellek koduh ngangguy *ijeb nadzar*, sepertenah nekah kauleh andhik obeng sapolo jutah sampean mon mabelieh koduh anadzar dhek kaulah mon sampean bisa majereh obeng nekah sampean kodhu majer dhek kauleh setiap sejutah seket ebuh deddi mon sapoloh jutah berarti lema ratos ebuh ben bulenah sanggup njek sampean, nah dengan acara panekah lok pa'apah polanah nyamanah *nadzar*”.⁹⁸

Based on the statement delivered by Abd Rahman was simply that the practice of loan borrowing in addition riba, for additional that deal in the beginning. The addition of excess or loan payments that had previously been exchanged in a contract agreement is not allowed, since the over payment is

⁹⁶Pasal 20 No. 26, Kompilasi Hukum Ekonomi Syariah

⁹⁷Pasal 21 Huruf M, Kompilasi Hukum Ekonomi Syariah

⁹⁸Kyai Abdur Rahman, Tokoh Masyarakat Desa Serabi Timur, wawancara, (Serabi Timur, 16 Mei 2017)

riba.⁹⁹ This provision is based on the hadits of Prophet Muhammad SAW as follows:

كُلُّ قَرْضٍ حَرٌّ نَفْعًا فَهُوَ رِبَاٌ

It means: "each loan is yielding benefits is riba".¹⁰⁰

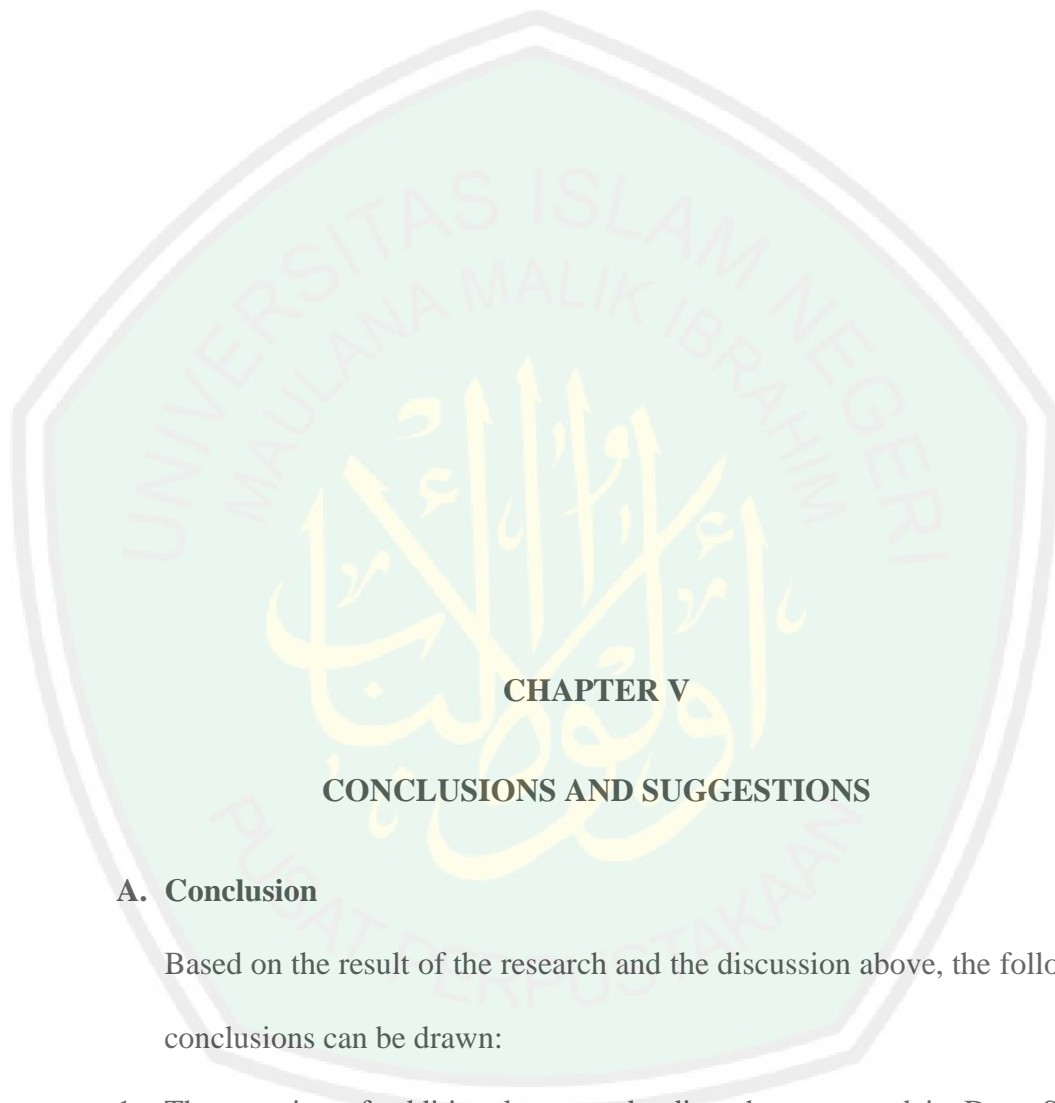
In the hadits above it is clear that each loan is yielding benefits is riba, as well as in the practice of additional money lending with no additional terms when previously without any refund of the pronouncement of the vows of the borrower in advance agreements for refunds with the additions. In Kompilasi Hukum Ekonomi Syariah (KHES) is also mentioned in article 609: "The customer could provide additional/voluntary donations to the lenders for not exchanged in the transaction."¹⁰¹

In the article above, it is clear that the advantages in loans when enforce by the beginning of the agreement then must not unless the excess is not exchanged at the beginning, the excess on the initiative or borrowers over the thankfulness for having provided aid to him.

⁹⁹Tim Kajian Keislaman Nurul Ilmi, *Buku Induk Terlengkap Agama Islam*, hlm 290

¹⁰⁰Al-Hafizh Zaki Al-Din Abd Al-Azhim Al-Mundziri, *Ringkasan Shahih Muslim*, Penerjemah Syinqithy Djamauluddin dan Mochtar Zoerni, (Bandung: Mizan, 2002), No 958, 518

¹⁰¹Pasal 609 KHES



CHAPTER V

CONCLUSIONS AND SUGGESTIONS

A. Conclusion

Based on the result of the research and the discussion above, the following conclusions can be drawn:

1. The practice of additional money lending that occurred in Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan is a village community in the habits of daily life especially in *muamalah* . the existence of such transactions the community feel greatly helped in meeting the needs of their life, because community do not need to prepare a special conditions

when it wants to borrow not like borrowing at the Bank that process or terms necessary so complicated and long.

2. That the practice of additional money lending that occurs among community of Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan is the practice of loan borrowing by the presence of an additional loan refund when it is often done by the community, and that it law practice should not cause in KHES (Kompilasi Hukum Ekonomi Syariah) does not allow the existence of the additional refund loans except in voluntary without any compulsion.

B. Suggestion

Based on the above research limitations then things may be suggested as follows:

1. To the community of Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan to pay more attention to regulations that have been taught by the Islamic jurisprudence in *muamalah* because there are already mentioned and explained clearly ho the setting in *muamalah* and accordance with Islamic jurisprudence
2. For the community leaders to occasionally provide guidance in matter of *muamalah* especially in loan borrowing either in mosque or other places, so that community understand and know how the right *muamalah* in Islam, as in the loan borrowing
3. This thesis referable in carrying out transactions and loan borrowing in order to avoid fraud and take the chance element in passing.

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APPENDIXES

INTERVIEW

Questions

1. How does the practice of additional money lending in Desa Serabi Timur?
2. What does in borrowing there is certain terms that must fulfill?
3. What does in loan borrowing there is certain akad?
4. What does in loan borrowing transaction there is witness?
5. What does the existence of loan borrowing can help?
6. How does the period to payment of loan borrowing?
7. How does the addition of each nominal that been given?
8. When the period is come to payment there is sanction when late?
9. What does the practice of loan borrowing is habits of community Desa Serabi Timur?
10. What does in borrowing there is limit of nominal that must borrow?









**PEMERINTAH KABUPATEN BANGKALAN
KECAMATAN MODUNG
DESA SERABI TIMUR**

Jl. Raya Serabi Timur Modung Kode Pos 69166

Nomor : 03/433.416.6/V/2017
Lampiran : 1 lembar
Perihal : Surat Keterangan

Kepada Yth.
Dekan Fakultas Syariah
Di
Universitas Islam Negeri
Maulana Ibrahim Malang

Assalamualaikum wa Rahmatullah wa Barakatur

Yang bertanda tangan di bawah ini Kepala Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan :

Nama : **H. ACH JUMADI**
Jabatan : Kepala Desa Serabi Timur
Alamat : Desa Serabi Timur Kecamatan Modung

Dengan ini menerangkan bahwa :

Nama : SITI ROFIAH
NIM : 13220141
Fakultas : SYARIAH
Jurusan : HUKUM BISNIS SYARIAH

Dengan ini menerangkan bahwa orang tersebut diatas sudah melaksanakan penelitian di Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan. Dengan judul **Praktik Penambahan Uang Pinjaman Persepektif Hukum Islam** sebagaimana proposal skripsi terlampir adalah tugas akhir, semoga apa yang diperoleh dari penelitian tersebut di Desa Serabi Timur Kecamatan Modung Kabupaten Bangkalan menjadi manfaat. Amin

Demikian Surat Keterangan ini kami buat, untuk dipergunakan sebagaimana mestinya.

Wassalamualaikum wa Rahmatullah wa Barakatur

Serabi Timur, 15 Mei 2017
Kepala Desa Serabi Timur



H. Ach Jumadi
H. ACH JUMADI

CURRICULUM VITAE



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 Sigura-gura, Malang
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Email rofiahnew@gmail.com
Religion Islam

Education

Period			Education
2000	-	2006	SDN 01 Serabi Timur
2000	-	2006	MID Miftahul Khair Serabi Timur
2006	-	2009	MTS Al-Miftah Modung
2009	-	2012	MA Al-Miftah Modung
2012	-	2013	D1 Program Pendidikan Bahasa Inggris Genta Pare Kediri
2013	-	2017	Universitas Islam Negeri Maulana Malik Ibrahim Malang

Organization

Period			Organization
2014	-	2015	HMI as Member
2015	-	2016	HMI as Secretary of Bidang Pemberdayaan Perempuan (PP)
2014	-	2015	FORMATA as Member
2015	-	2016	FORMATA as Bagian External