

**THE PRACTICE OF AGRICULTURE PROFIT SHARING IN KISIK
VILLAGE BUNGAH SUBDISTRICT GRESIK REGENCY BASED ON
FIQH AND CONSTITUTION IN INDONESIA PERSPECTIVE**

THESIS

By:

Nuris Sirrul Laily

Student ID Number 15220114



SHARIA BUSINESS LAW DEPARTEMENT

SHARIA FACULTY

STATE ISLAMIC UNIVERSITY OF MAULANA MALIK IBRAHIM

MALANG

2019

STATEMENT OF AUNTENTICITY

In the name of Allah (SWT),

With consciousness and responsibility towards the development of science, the author declare that the theses entitled:

**THE PRACTICE OF AGRICULTURE PROFIT SHARING IN KISIK
VILLAGE BUNGAH SUBDISTRICT GRESIK REGENCY BASED ON
FIQH AND CONSTITUTION IN NDONESIA PERSPECTIVE**

It is truly the author's original work. It does not incorporate any material previously written or published by another person. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action will be deemed legally invalid.

Malang, 9th of May 2019

Author,



[Signature]
Nuris Sirrul Laily
NIM 15220114

APPROVAL SHEET

After examining and verifying the thesis of Nuris Sirrul Laily, NIM 15220114,
Sharia Business Law Department, Department of the Sharia faculty of State
Islamic University, Maulana Malik Ibrahim of Malang entitled:

THE PRACTICE OF AGRICULTURE PROFIT SHARING IN KISIK VILLAGE BUNGAH SUBDISTRICT GRESIK REGENCY BASED ON FIQH AND CONSTITUTION IN NDONESIA PERSPECTIVE

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

Malang, 9th of May 2019

Acknowledged by,

The Head of
Sharia Business Law
Department



Dr. H. Fakhruddin, M.HI.
NIP. 197408192000031002

Supervisor

Dr. H. Abbas Arfan, Lc., M.H.
NIP. 197212122006041004

LEGITIMATION SHEET

The thesis board of examiners state that Nuris Sirrul Laily, NIM 15220114, student of Sharia Business Law Department, Sharia Faculty, State Islamic University Maulana Malik Ibrahim of Malang, her thesis entitled:

THE PRACTICE OF AGRICULTURE PROFIT SHARING IN KISIK VILLAGE BUNGAH SUBDISTRICT GRESIK REGENCY BASED ON FIQH AND CONSTITUTION IN NDONESIA PERSPECTIVE

Has passed and certified with grade A

Board of Examiners:

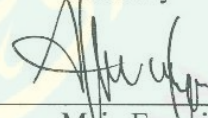
1. Iffaty Nasyi'ah, S.H., M.H.
NIP. 197606082009012007


Chairman

2. Dr. H. Abbas Arfan, Lc., M.H.
NIP. 197212122006041004


Secretary

3. H. Ali Hamdan, MA., Ph.D
NIP. 197601012011011004


Main Examiner

Malang, 28th of May 2019



By: H. Saifullah, S.H. M.Hum
NIP. 19631205200031001



KEMENTERIAN AGAMA
UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG
FAKULTAS SYARIAH

Terakreditasi "A" SK BAN-PT Depdiknas Nomor : 157/BAN-PT/Ak-XVI/S/VI/2013 (Al Ahwal Al Syakhshiyah)
Terakreditasi "B" SK BAN-PT Nomor : 021/BAN-PT/Ak-XIV/S1/VIII/2011 (Hukum Bisnis Syariah)
Jl. Gajayana 50 Malang 65144 Telepon (0341) 559399, Faksimile (0341) 559399
Website: <http://syariah.uin-malang.ac.id/>

CONSULTATION PROOF

Name : Nuris Sirrul Laily
Student Number : 15220114
Department : Sharia Business Law
Supervisor : Dr. H. Abbas Arfan, Lc., M.H.
Thesis Title : THE PRACTICE OF AGRICULTURE PROFIT SHARING IN KISIK VILLAGE BUNGAH SUBDISTRICT GRESIK REGENCY BASED ON FIQH AND CONSTITUTION IN NDONESIA PERSPECTIVE

No	Day/Date	Subject of Consultation	Signature
1	18 th October 2018	Proposal	
2	08 th November 2018	Proposal	
3	19 th November 2018	Review Proposal	
4	06 th February 2019	Chapter 1 and 2	
5	20 th February 2019	Chapter 1 and 2	
6	13 th March 2019	Review Chapter 1 and 2	
7	10 th April 2019	Chapter 3,4 and 5	
8	30 th April 2019	Chapter 3,4 and 5	
9	08 th May 2019	Review Chapter 3,4 and 5	
10	09 th May 2019	Review All Chapter	

Malang, 9th May 2019

Acknowledged by:

o.b. Dean

Head of Sharia Business Law

Department



Dr. Fakhruddin, M.H.I.

NIP.197408192000031002

MOTTO

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ ۚ وَلَا

تَقْتُلُوا أَنْفُسَكُمْ ۚ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Artinya: “*Hai orang-orang yang beriman, janganlah kamu saling memakan harta sesamamu dengan jalan yang batil, kecuali dengan jalan perniagaan yang berlaku dengan suka sama-suka di antara kamu. Dan janganlah kamu membunuh dirimu; sesungguhnya Allah adalah Maha Penyayang kepadamu.*”

(QS. An-Nisa’ (4): 29)¹

¹Departemen RI, Al-Quran dan Terjemahannya (Bandung: Diponegoro, 2005), 47

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 = unsigned	ض = dl
ب = B	ط = th
ت = T	ظ = dh
ث = Ta	ع = ‘ (comma facing upward)
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. Vocal, long 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 such as:

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

Elongated (i) vowel = Î example قيل becomes *qîla*

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

Specially for the pronouncing of *ya’ nisbat* (in association), it can not 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” and “ay”. Study the following examples:

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

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

D. Ta’ Marbûthah(ة)

Ta’ marbûthah(ة) 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* become *fi rahmatillâh*.

E. Definite Article

Arabic has only one article, “al” (ال) and it written in small letters, unless at the beginning of word while “al” in the phrase of *lafadh jalalah* (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. *Masyâ’Allahkânâwamâlamyasyâ lam yakun*
4. *Billâh ‘azzawajalla*.

ACKNOWLEDGMENT

All praise 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 Grace and Guidance, this thesis entitled “The Practice Of Agriculture Profit Sharing In Kisik Village Bungah Subdistrict Gresik Regency Based On Fiqh And Constitution In Indonesia Perspective“ could be completed, and also with His benevolence and love, peace and tranquility of the soul. Peace be upon the Prophet Muhammad (saw) who had brought us from the darkness into the light, in this life. May we be together with those who believe and receive intercession from him in the day of Judgment. Amin.

With all the 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. Abdul Haris, M.Ag, as the Rector of the State Islamic University Maulana Malik Ibrahim Malang
2. Dr. Saifullah, S.H, Hum., as the Dean of the Sharia Faculty oh the State Islamic University Maulana Malik Ibrahim Malang.
3. Dr. Faruddin, M.HI., as the head of Sharia Business Law Department of the Sharia Faculty of State Islamic University Maulana Maik Ibrahim Malang.
4. Dr. H. Abbas Arfan, M.H., as the thesis supervisor. The author expresses his gratitude of the guidance and directional motivation given in the course of completing this thesis. May Allah (swt) shower him and his family with his blessings.

5. H. Alamul Huda, M.A., (Alm) and Ali Hamdan, M.A., Ph.D as supervisor lecturer of the writer during his study at Sharia Business Law Department of the Sharia Faculty of State Islamic University Maulana Malik Ibrahim of Malang. The writer thanks for his motivation and supervision.
6. All my teachers of Sharia Faculty of State Islamic University Maulana Malik Ibrahim of Malang for their flowing knowledge and valuable experiences.
7. Dr. KH. Isroqunnajah, M.Ag., and Ummah Hj. Ismatud Diniyah, as my second parents in Malang. The writer thanks for his motivation and supervision.
8. My beloved Father and Mother, “Drs. Abd. Karim and Dra. Asmaroh” who have given me chance to get adequate education, love, material, and spiritual support, also endless praying until I am able to complete my study excellently.
9. To my beloved sister and brother, “Fithroh Wahidah, M.pd. and Abdillah Hakam Hamdani” thankful for your praying and the support to your beloved sister.
10. Thanks a lot for my beloved Sharia Business Law Department’s friends of 2015 especially my classmate, International Class Program of 2015 Yumna, Izzah, Afra, Karisma, Ulfa, Sika, Nina, Putri, Amrom, Evi, Nisa’, Indah, Laila, Kamal, Siroj, Ilham, Rio, and Hadi who have study together. Hopefull that we can keep our togetherness and still compact in everything.
11. To my best Friend Nuron Najahah, Andhika Tiara, Barirotul Musta’inah, Salsabil Firdausi wishing the best for our future. I hope we will success and be a best woman for our family.

12. All of the great family of CSS MoRA UIN Maulana Malik Ibrahim Malang especially Mahir Family, PBSB of 2015 as first family in this university. Thanks for the togetherness for memorize holy Qur'an, study, praying and the support. Wish you all be success person at other day.
13. Thanks for the great family of Ma'had Al-Jami'ah Center or Ma'had Sunan Ampel Al-'Aly, State Islamic University Maulana Maik Ibrahim Malang that has made me find a new family and become a house for 3 years. To All Advisor, staff, murobbi murobbiyah, musyrif musyrifah, and all mahasantri thanks for giving me life lessons.
14. All my roommate at Ummu Salamah '56 dormitory, room 62, Kak Dina, Kak Lela, Kak Indri, Kak Lathifah, Kak Mufi, Kak Mbet, Kak Prima. Thanks for always beside me in the first year in Malang.
15. All my roommate at Asma' Binti Abi Bakar '67 dormitory, Teletubies family 32. Uni Nishfi, Uni nilna, Uni Shofi, Uni Hafida, Uni Fariha, Uni Cicol, Uni Robi'. You are the unique findings in my life, thanks a lot for many experience.
16. All member of BTQ '78 dormitory, thanks for the togetherness for memorize holy Qur'an, praying and the support. Wish you all be success person at other day.
17. All my friend in PPTQ Nurul Huda Joyo Suko Metro, thanks for the togetherness for memorize holy Qur'an, praying and the support. Wish you all be success person at other day.

Hopefully, by imparting what has been learned during the course of study in the Sharia Faculty of State Islamic University Maulana Malik Ibrahim of Malang, it

the author appreciates constructive critics and suggestion for the improvement and betterment of this thesis.

Malang, 09th of May 2019

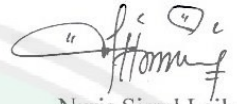

Nuris Sirrul Laily



TABLE OF CONTENT

FRONT COVER

TITLE SHEET	i
STATEMENT OF AUNTENTICITY	ii
APPROVAL SHEET	iii
LEGITIMATION SHEET	iv
CONSULTATION PROOF	v
MOTTO	vi
TRANSLITERATION GUIDENCE	vii
ACKNOWLEDGMENT	x
TABLE OF CONTENT	xiv
ABSTRAK	xvii
ABSTRACT.....	xviii
مستخلص البحث.....	xix

CHAPTER I INTRODUCTION

A. Background of Research	1
B. Scope and Limitation	6
C. Formulation of the Problem	7
D. Objective of Research	7
E. Significance of Research.....	8
F. Operational Definition	8
G. Discussion Structure	9

CHAPTER II LITERATURE REVIEW

A. Previous research	12
----------------------------	----

B. Theoretical Framework	17
1. Understanding of <i>Muzâra'ah</i> and <i>Mukhâbarah</i>	17
2. Legal of Contract <i>Muzâra'ah</i> and <i>Mukhâbarah</i>	20
3. The Pillars of <i>Muzâra'ah</i> and <i>Mukhâbarah</i>	25
4. The Terms of <i>Muzâra'ah</i> and <i>Mukhâbarah</i>	27
5. Consequence of <i>Muzâra'ah</i> and <i>Mukhâbarah</i>	30
6. Termination of <i>Muzâra'ah</i> and <i>Mukhâbarah</i>	31
7. Legal of Legitimate <i>Muzâra'ah</i> and Legal of Invalid <i>Muzâra'ah</i> ..	32
8. Overview of Agreement for Agricultural Profit Sharing according to Law No. 2 of 1960 Concerning Agreement of Agricultural Profit Sharing	38
CHAPTER III RESEARCH METHODS	
A. Type of Research	48
B. Research Approach	49
C. Location of Research	50
D. Types and Data Sources of Research	50
E. Data Collecting Technique	51
F. Data Processing Method	52
G. Data Validity Technique	54
CHAPTER IV FINDING AND DISCUSSION	
A. Profile and Overview of Research Objects	56
B. Practice of Agricultural Profit Sharing in Kisik Village Bungah Subdistrict Gresik Regency	58

C. Practice of Agricultural Profit Sharing in Kisik Village Bungah Subdistrict Gresik Regency Based on <i>Fiqh</i> in View of Syafi'i and Hanafiyah Madzhab Perspective.....	75
D. Practice of Agricultural Profit Sharing in Kisik Village Bungah Subdistrict Gresik Regency Based on Constitution in Indonesia Perspective	83
CHAPTER V CONCLUSION AND SUGESTION	
A. Conclusion	89
B. Suggestion.....	90
BIBILIIOGRAPHY.....	92
APPENDIXES	96

ABSTRAK

Laily, NurisSirrul, 15220114, 2015. *PraktikBagi Hasil Pertanian di Desa Kisik Kecamatan Bungah Kabupaten Gresik Prespektif Fiqh Dan Perundang-Undangan Di Indonesia*. Skripsi. Jurusan Hukum Bisnis Syariah, Fakultas Syariah, Universitas Islam Negeri (UIN) Maulana Malik Ibrahim Malang, Pembimbing: Dr. H. Abbas Arfan, M.H.

Kata Kunci: Praktik, Bagi Hasil, Pertanian, *Fiqh*, dan Undang-Undang

Kerjasama dalam mengelola sawah di Desa Kisik Kecamatan Bungah Kabupaten Gresik ini melibatkan 2 pihak, yaitu pihak pemilik tanah dan pihak pengelola sawah, Para pemilik tanah menggarapkan tanahnya kepada orang lain (pihak penggarap sawah) dengan akad *muzâra'ah* dan *mukhâbarah*. Adapun akad yang dilakukan antara pemilik tanah dan penggarap sawah adalah secara lisan dan tanpa ada saksi, hal ini tidak sesuai dengan pasal 3 ayat (1) UU No. 2 Tahun 1960 tentang perjanjian bagi hasil pertanian, sehingga dalam perjanjian kerjasama bagi hasil pertanian tersebut tidak mempunyai kekuatan hukum apabila dikemudian hari terdapat permasalahan atau kesenjangan antara pemilik tanah dan penggarap sawah.

Penelitian ini bertujuan untuk mengetahui dan mendeskripsikan bagaimana praktik bagi hasil pertanian di Desa Kisik Kecamatan Bungah Kabupaten Gresik berdasarkan prespektif *fiqh* dalam pandangan madzhab Syafi'iyah dan Hanafiyah serta perundang-undangan di Indonesia. Fokus utama dari penelitian ini adalah permasalahan akad *muzâra'ah* dan *mukhâbarah*. Penelitian ini merupakan jenis penelitian empiris dengan pendekatan yuridis sosiologis. Sumber data yang digunakan adalah sumber data primer berupa wawancara dan dokumentasi, sedangkan sumber data sekunder dalam bentuk bahan pustaka dari buku-buku tentang *fiqh* yang bermadzhab Syafi'i dan hanafi serta Undang-undang No. 2 Tahun 1960 Tentang Perjanjian Bagi Hasil Pertanian. Adapun dalam analisis data peneliti menggunakan teknik analisis deskriptif.

Hasil penelitian menunjukkan bahwa praktik bagi hasil pertanian di Desa Kisik Kecamatan Bungah Kabupaten Gresik menggunakan akad *muzâra'ah* dan *mukhâbarah*. Jika dianalisis secara *fiqh* dalam pandangan madzhab Syafi'i dan Hanafiyah bahwa praktik kerjasama lahan pertanian dengan sistem bagi hasil di Desa Kisik sesuai atau diperbolehkan menurut madzhab Hanafi karena akadnya telah memenuhi rukun dan syarat sah muzara'ah dan mukhabarah. Akan tetapi, menurut madzhab Syafi'i akad tersebut tidak diperbolehkan, karena dalam pandangan madzhab Syafi'i diperbolehkan menggunakan akad muzara'ah yang dibarengkan dengan akad *musâqah*. Sedangkan dalam praktik kerjasama bagi hasil pertanian di Desa Kisik tidak menggunakan akad *musâqah*. Adapun berdasarkan Undang-Undang yang berlaku di Indonesia yaitu UU No. 2 Tahun 1960 Tentang Perjanjian bagi hasil Pertanian bahwa praktik bagi hasil pertanian di desa Kisik banyak yang tidak sesuai dengan peraturan undang-undang tersebut. Adapun hambatan dalam melaksanakan peraturan tersebut karena tidak adanya sosialisasi dari pihak manapun terkait UU No. 2 Tahun 1960 Tentang perjanjian Bagi Hasil Pertanian.

ABSTRACT

Laily, Nuris Sirrul, 15220114, 2015. *The Practice of Agriculture Profit Sharing in Kisik Village Bungah Sub-district Gresik Regency Based on Fiqh and Constitution in Indonesia*. Thesis Department of Sharia Business Law, Faculty of Sharia, State Islamic University (UIN) Maulana Malik Ibrahim Malang, Advisor: Dr. H. Abbas Arfan, MH.

Keywords: Practices, Profit Sharing, Agriculture, *Fiqh*, and Constitution

The cooperation in managing rice fields in Kisik Village Bungah, Gresik Regency involved two parties, namely the land owner and the manager of the field. The landowners expected their land to other people (the cultivators) with contract of *muzâra'ah* and *mukhâbarah*. The contract made between landowners and cultivators of rice fields is verbally and without witnesses, this is not in accordance with article 3 paragraph (1) of Law No. 2 of year 1960 concerning agricultural profit sharing agreements, so that in the agreement on agricultural production sharing does not have legal force if in the future there are problems or gaps between land owners and cultivators of rice fields.

This study aims to find out and describe how the practices of agricultural profit sharing in Kisik Village, Bungah Subdistrict, Gresik Regency are based on *fiqh* perspectives in the view of the Syafi'i and Hanafi mazhab and legislation in Indonesia. The main focus of this research is the problem of the contract of *muzâra'ah* and *mukhâbarah*. This research is a type of empirical research with a sociological juridical approach. The data used is primary data source in the form of interviews and documentation, while the source of the data secondary in the form of library from books about *fiqh* Syafi'i and Hanafi, as well as Law No. 2 of year 1960 concerning Agreement of Agricultural Profit Sharing. As for the data analysis researchers used descriptive analysis techniques.

The results of the study showed that the practice of agricultural profit sharing in the Kisik Village, Bungah Subdistrict, Gresik Regency used the contract of *muzâra'ah* dan *mukhâbarah*. If analyzed based on *fiqh* in view of Syafi'i and Hanafi madzhab that the practice of cooperation of agricultural land with profit sharing system in Kisik Village is permitted according Hanafiyah madzhab because the contract has fulfilled pillars and terms of *muzâra'ah* and *mukhâbarah*. However, according to the Syafi'i madzhab that the contract is not permitted, because in the view of the Syafi'i madzhab permissible to use contract of *muzâra'ah* which is accompanied by the contract of *musâqah*. Whereas in the practice of cooperation in the profit sharing of agricultural in the Kisik Village it does not use the contract of *musâqah*. As for the Act that applies in Indonesia, namely Law No. 2 of year 1960 concerning Agreement of Agricultural Profit Sharing that many practices of agricultural profit sharing in Kisik village are not in accordance with the regulations of the law. The obstacles to implementing the regulation are the absence of any information from the parties regarding Law No. 2 of year 1960 concerning Agricultural Production Sharing agreements.

مستخلص البحث

ليلى، نور السر، ١٥٢٢٠١١٤، ٢٠١٥. ممارسة تقاسم الأرباح الزراعية في قرية كيسيك منطقة بونغاه بمحافظة غراسيك عند الفقه والقانون بإندونيسيا. البحث العلمي. قسمحكم التجارة الشرعية، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانق، المشرف: الدكتور الحاج عباس أرفان.

الكلمات المفتاحية: الممارسة، تقاسم الأرباح، الزراعة، الفقه والقانون

يعتبر التعاون في رعاية المزرعة في قرية كيسيك منطقة بونغاه بمحافظة غراسيك تعاون طرفين فيها، بما فيهما صاحب المزرعة وعامل المزرعة، حيث استأجر صاحب المزرعة إلى الناس (عامل المزرعة) لإدارتها بعقد المزارعة والمخابرة. وأما العقد ما بين صاحب المزرعة وعاملها عقد لساني بلا شهادة الناس، وهذا لا يتناسب مع الفصل الثالث (٣) الآية الأولى (١) رقم الثاني (٢) سنة ١٩٦٠ عن التعاقد في تقاسم الأرباح الزراعية، حتى لم يكن في تعاونها قوة قانونية إذا كان في الزمان المقبل مشكلة بين صاحب المزرعة وعاملها.

يهدف هذا البحث العلمي إلى معرفة كيفية الممارسة في تقاسم الأرباح الزراعية ووصفها في قرية كيسيك منطقة بونغاه بمحافظة غراسيك عند الفقه والقانون من خلال مذهب الشافعية والحنفية مع القوانين بإندونيسيا. والتركيز الرئيسي في هذا البحث مشكلة عقد المزارعة والمخابرة. و نوع هذا البحث تجريبي بالمدخل القانوني الاجتماعي. وأما مصادر البيانات المستخدمة فيه مصدر رئيسي وهو يتمثل في الحوارات والوثائق، ومصدر ثانوي وهو يتمثل في كتب الفقه على مذهب الشافعية والحنفية مع قرار القانون في الرقم الثاني (٢) سنة ١٩٦٠ عن التعاقد في توزيع الأرباح الزراعية. وأما التحليل استخدمه الباحث هو تحليل وصفي.

حصل البحث عن ممارسة تقاسم الأرباح الزراعية في قرية كيسيك منطقة بونغاه بمحافظة غراسيك باستخدام عقد المزارعة والمخابرة على النتيجة القائلة، إذا حللناها على سبيل الفقه فيما ذهب عليه الشافعية والحنفية، بأن التعاون الزراعي بنظام تقاسم الأرباح الزراعية في قرية كيسيك مناسبة ومباحة عند مذهب الحنفية لما استوفرت الأركان والشروط على صحة المزارعة والمخابرة. و رأيت الشافعية على عدم صحتها لما أن المزارعة في مذهب الشافعية لا بد أن تكون متماشية مع المساقاة. وأما في ممارسة التعاون في تقاسم الأرباح الزراعية لم تكن من خلالها مساقاة. واعتمادا على القوانين بإندونيسيا هو القانون في الرقم الثاني (٢) سنة ١٩٦٠ عن تعاقد تقاسم الأرباح الزراعية في قرية كيسيك لم يكن مناسباً. ومن عراقيل القانون عند التطبيق عدم التنشئة الاجتماعية من قبل جميع الأطراف تجاه القانون في الرقم الثاني (٢) سنة ١٩٦٠ عن التعاقد في تقاسم الأرباح الزراعية.



CHAPTER I

INTRODUCTION

A. Background of Research

Humans are social beings who cannot live alone, as social beings in their lives humans need other humans to live together in society.² So that between one and the other human beings must be mutually exclusive, need-need and from that raises awareness to help each other-help and help and need cooperation among others. It is impossible for someone to survive alone without the help of others. In this case, Islam has clearly regulated the provisions of all matters relating to humans, one of which is contained in the rules of *fiqh muamalah*, which includes all the rules of human life, both individuals and society. It has become a

² Ahmad Azhar Basyir, *Asas-asas Hukum Muamalah* (Hukum Perdata Islam), (Yogyakarta: UII, 2000), 11.

sunnatullah that humans must socialize and helping each other between them in making a decision based on the Qur'an Surah Al-Maidah verse 2:

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

"And help you in (doing) the virtues of piety, and do not help in committing sins and transgressions. And fear Allah, verily Allah is severe in punishment."

Cooperation must be done with the principle of justice.³

Geographically, Indonesia is an archipelagic country that has the enormous natural potential not only in the marine sector but also in agricultural processing. It can be seen that the territory of Indonesia which has a land area of one-third of the total area passed by the world mountain ranges. This has caused Indonesia's land area to be very fertile. In addition, natural conditions provide opportunities for most Indonesian people to conduct business activities in agriculture as well as those related to agriculture. So that Indonesia's high agricultural potential makes Indonesia known as an agricultural country where most of the population of Indonesia has a livelihood in agriculture or farming.

Collaboration by means of profit sharing is one of the *muamalah* activities that often occur among Indonesian people, especially in agriculture. Collaboration on profit sharing and leasing is permissible in Islam both for movable and non-movable goods such as land.⁴

Cooperation in terms of agriculture has several types of cooperation, one of which is the cultivation of other people's fields and the results are divided by landowners and cultivators of rice fields. The agricultural production sharing

³ Departemen Agama RI, *Al-Qur'an Terjemah Indonesia*, (Jakarta: Sari Agung, 2002), 192.

⁴ Sayyid Sabiq, *Fiqh Sunnah, Juz III*, (Jakarta: PT. Pundi Aksana, 2009), 2-7.

agreement is regulated by Law No. 2 of 1960 concerning Agricultural Production Sharing Agreements. While in Arabic farm called by *muzâra'ah* dan *mukhâbarah*. Taqiyyuddin stated that *muzâra'ah* and *mukhâbarah* one understanding. But at the same time both have two meanings, the first means *tharh az-zurrah* (throwing plants), the second is *al-hadr* (capital). Even so, there are still many scholars' who interpret them as having different meanings. While the term *muzâra'ah* and *mukhâbarah* by Sheikh Ibrahim Al-Banjuri that *mukhâbarah* is landowners cede their land to workers and capital from the manager. Whereas *muzâra'ah* means workers only manage land and capital from landowners.⁵ *Muzâra'ah* (working on someone else's land by obtaining a portion of the produce of the land), while the seeds (seeds) are planted from the landowner, then it is not permitted, because it is illegitimate to rent land with the results obtained therefrom. That is the case in madhab Shafi'i before the Syafi'iyah scholars' allowed the same as *Musâqah* (hired person).⁶

From the above definition, there are similarities and differences between *muzâra'ah* and *mukhâbarah*, similarities of them are landowners cede their land to others to be managed, while the difference is related to the capital, when the capital of the manager or serf then called *mukhâbarah*, when the capital of the landowner then called *muzâra'ah*.⁷

⁵ Ismail Nawawi, *Fikih Muamalah Klasik dan Kontemporer Hukum Perjanjian, Ekonomi, Bisnis, dan Sosial*, (Bogor: Ghalia Indonesia, 2012), 161.

⁶ Muhammad Teungku Hasbi As-Shiddieqy, *Hukum-Hukum Fiqh Islam*, (Semarang: Pustaka Rizki Putra, 1997), 125.

⁷ Ismail Nawawi, *Fikih Muamalah Klasik dan Kontemporer Hukum Perjanjian, Ekonomi, Bisnis, dan Sosial*, 162.

The legal basis used by scholars' to establish *muzâra'ah* and *mukhâbarah* is a hadith narrated by Bukhari and Muslim from Ibn Abbas RA, as quoted by Suhendi in his book:⁸

إن النبي ص.م لم يحرم المزارعة ولكن أمر بنعش بقوله من كانت له أرض فليزرعها أوليمنحها أخاه
فإن أبي فليمسك أرضه. (رواه البخاري)

"Indeed, the Prophet does not forbid do muzara'ah even he told him so that some of them loved some others." In another editor, "whoever owns the land should be planted or given benefits to his brother, if he does not want it, then the land may be detained." (History of Bukhori).

The profit sharing system is important when people have labor but do not have land, while others have land but do not have capital and labor. Based on conditions such as mutual assistance and cooperation, only the profit sharing system is an effective way to produce more land that can be processed to benefit both parties.⁹

Kisik is a village that is part of Bungah District, Gresik Regency, in the Village has many economic activities such as farmers and construction workers. But the majority of the people in the village work as farmers and farm laborers. However, not all communities have rice fields, so many people collaborate in managing community-owned rice fields. Which is the rural language the system is called *digarapke*.

⁸ Hendi Suhendi, *Fiqh Muamalah*, (Jakarta: Rajawali Pers, 2010), 156.

⁹ Fazlur Rohman, *Doktrin Ekonomi Islam, Jilid II*, (Yogyakarta: P.T Dana Bakti Wakaf, 1995), 279.

Collaboration in managing rice fields in Kisik Village involves two parties, namely the landowner and the manager of the paddy field. The landowners expect the land to be provided to other people (cultivators of the fields) with a period not determined at the beginning of the agreement. The results obtained from the land were divided equally between landowners and cultivators of the fields, where the distribution of yields was also unclear at the beginning of the agreement. In addition, the seeds to be planted are from the cultivators of the fields and the landowners do not know directly the seeds to be planted. So that landowner only received clean results from all of his crops. So from the distribution of the results as above, it is not yet known that the profits and losses of each landowner and cultivator of the rice fields will not be known.

In addition, in the initial agreement, the agreement between the landowner and the cultivator of the rice fields only carried out the handover of fields or fields to be worked on. Then among them carry out their respective rights and obligations. The contract made between landowners and cultivators of rice fields is verbally and without witnesses, this is not in accordance with article 3 paragraph (1) of Law No. 2 of 1960 concerning agricultural product sharing agreements, so that in the agreement on agricultural production sharing does not have legal force if in the future there are problems or gaps between landowners and cultivators of rice fields.

Therefore, if we look at the system carried out by the community in carrying out such cooperation, sometimes they do not pay attention to the Sharia and the legal consequences of an agreement, which among them the most important is profit.

The authors' knowledge, no studies have discussed the practice for agricultural products in the *fiqh* perspective view Syafi'iyah and Hanafiyah scholars' and law in Indonesia. Why are the compilers more interested in choosing Kisik Village, Bungah Sub-district, Gresik Regency as the object of research, because the constituents observe problems like this that occur a lot in other communities or villages but the compilers prefer to research in Kisik Village because the place and term are closer and easier for research. Which is the majority of the people of Kisik Village, Bungah Sub-district, Gresik Regency, in terms of *muqalah fiqh*, adhere to the Syafi'i and Hanafi schools. In addition, the extent to which the community in practicing agricultural profit-sharing practices has not implemented legislation that has been implemented in Indonesia.

However, to find out how the practice of its implementation and the actual condition of the views of *fiqh* in the Shafi'iyah and Hanafiyah scholars' and the laws in Indonesia that applied to them, requires further research. Therefore, it is necessary to do research related to these practices in terms of *fiqh* and legislation in Indonesia.

Based on the above description, it is very important to conduct a research entitled *"The Practice of Agricultural Profit Sharing in Kisik Village, Bungah Sub-district, Gresik Regency, Based on Fiqh and Legislation in Indonesia"*

B. Scope and Limitation

Based on the description of the background above, the researcher needs to identify the problem boundaries that are the scope of this research. This study focused on contract issues *muzâra'ah* and *mukhâbarah* on practices for agricultural produce in the village of the District Kisik Bungah Gresik in the

schools of *fiqh* perspective Syafi'i and Hanafi with legislation applicable in Indonesia, so there will need to be investigated to the field to find out the actual contract and to be analyzed clearly on the problems to be discussed in this study.

C. Formulation of the Problem

From the description of the background above, the formulation of the problem can be drawn as follows:

1. How to practice of agricultural profit sharing in the Kisik Village, Bungah Sub-district, Gresik Regency?
2. How to practice of agricultural profit sharing in the Kisik Village, Bungah Sub-district, Gresik Regency, in the perspective of *fiqh* in the view of the Shafi'i and Hanafi scholars'?
3. How to practice of agricultural profit sharing in the Kisik Village, Bungah Subdistrict, Gresik Regency, in the perspective legislation in Indonesia?

D. Objective of Research

Based on the problems formulated above, the research objectives to be achieved in this study are:

1. To explain and describe how the practice of agricultural profit sharing in Kisik Village, Bungah Sub-district, Gresik Regency.
2. To explain the practice of agricultural profit sharing in Kisik Village, Bungah Sub-district, Gresik Regency, the perspective of *fiqh* in the Syafi'iyah and Hanafiyah scholars'.
3. To explain the practice of agricultural profit sharing in Kisik Village, Bungah Sub-district, Gresik Regency, the perspective of legislation in Indonesia.

E. Significance of Research

1. Scientifically, this research is expected to be able to contribute ideas for the development of Islamic sciences in general and muamalah in particular.
2. Practically, this research is expected to broaden the knowledge horizons for constituents in particular and society in general and can be used as a reference for actors in agricultural production sharing practices, especially the Kisik Village, Bungah Sub-district, Gresik District regarding the implementation of cooperation in cultivating agricultural land.

F. Operational Definition

Based on the research focus of the title, the substance of the problem can be described in the operational definition. Therefore the authors provide operational definitions as follows:

1. The practice is a way of doing what is called in theory.¹⁰
2. Profit Sharing is the income earned divided by the agreement of both parties, if there are results obtained by the cultivator, the results are divided according to the agreement.¹¹
3. Agriculture is about farming (cultivating land by planting).¹²
4. *Fiqh* is the knowledge of the laws of the *shara'* which is the way of taking them through *ijtihad*.¹³

¹⁰Departemen Pendidikan dan Kebudayaan RI, *Kamus Besar Bahasa Indonesia*, (Jakarta: Balai Pustaka, 1990), 909.

¹¹ Charuman Pasaribu dan Suhrawardi K. Lubis, *Hukum Perjanjian Dalam Islam*, (Jakarta: Sinar Grafika, 1990, 61.

¹²Departemen Pendidikan dan Kebudayaan RI, *Kamus Besar Bahasa Indonesia*, 1446.

¹³ M. Kholid Afandi, dkk, *Dari Teori Ushul Menuju Fiqh*, (Kediri: Santri Salaf Press, 2013), 6.

5. Legislation in Indonesia is a written regulation established by a state institution or an authorized and generally binding official.
6. *Muzâra'ah* is to work the land (others) such as rice fields in exchange for part of the proceeds (one-half, one third or one quarter). While the cost of work and seeds borne by the landowner.¹⁴
7. *Mukhâbarah* is working on the ground (work the fields or fields) to take some of the results, while the seeds of the worker.¹⁵
8. Madzhab Syafi'i is a fiqh madhab which was initiated by Muhammad Bin Idris Ash-Syafi'i or better known as Shafi'i Imam.¹⁶
9. Madzhab Hanafi is a fiqh madhab which was triggered by An-Nu'man bin Tsabit ibn Zutha bin Mahmuli Taymillah bin Tsalabah or better known as Imam Abu Hanifah.¹⁷

G. Discussion Structure

Structure of this discussion is a series of sequences of several descriptions in a system of discussion in a scientific essay. In order for the discussion in this study to be well structured and the reader can understand easily, the report of this study refers to the systems that already exist in the Research Guidance Report of the Faculty of Sharia, Islamic State University of Maulana Malik Ibrahim, Malang. In relation to this research systematic in its reporting is covering five chapters as a whole consisting of the introduction, literature review, research methods, results of research and discussion and conclusions.

¹⁴ H. Sulaiman Rasjid, *Fiqh Islam*, (Bandung: CV Sinar Biru, 1986), 302.

¹⁵ Hendi Suhendi, *Fiqh Muamalah*, (Jakarta: Rajawali Pers, 2014), 154.

¹⁶ H. Sulaiman Rasjid, *Fiqh Islam*, 8.

¹⁷ H. Sulaiman Rasjid, *Fiqh Islam*, 9.

Chapter I is an introductory chapter because this chapter will generally describe the overall content and purpose of this research, which consists of Background, Problem Formulation, Research Objectives, Research Benefits, Operational Definitions, Prior Research and Systematic of Discussion.

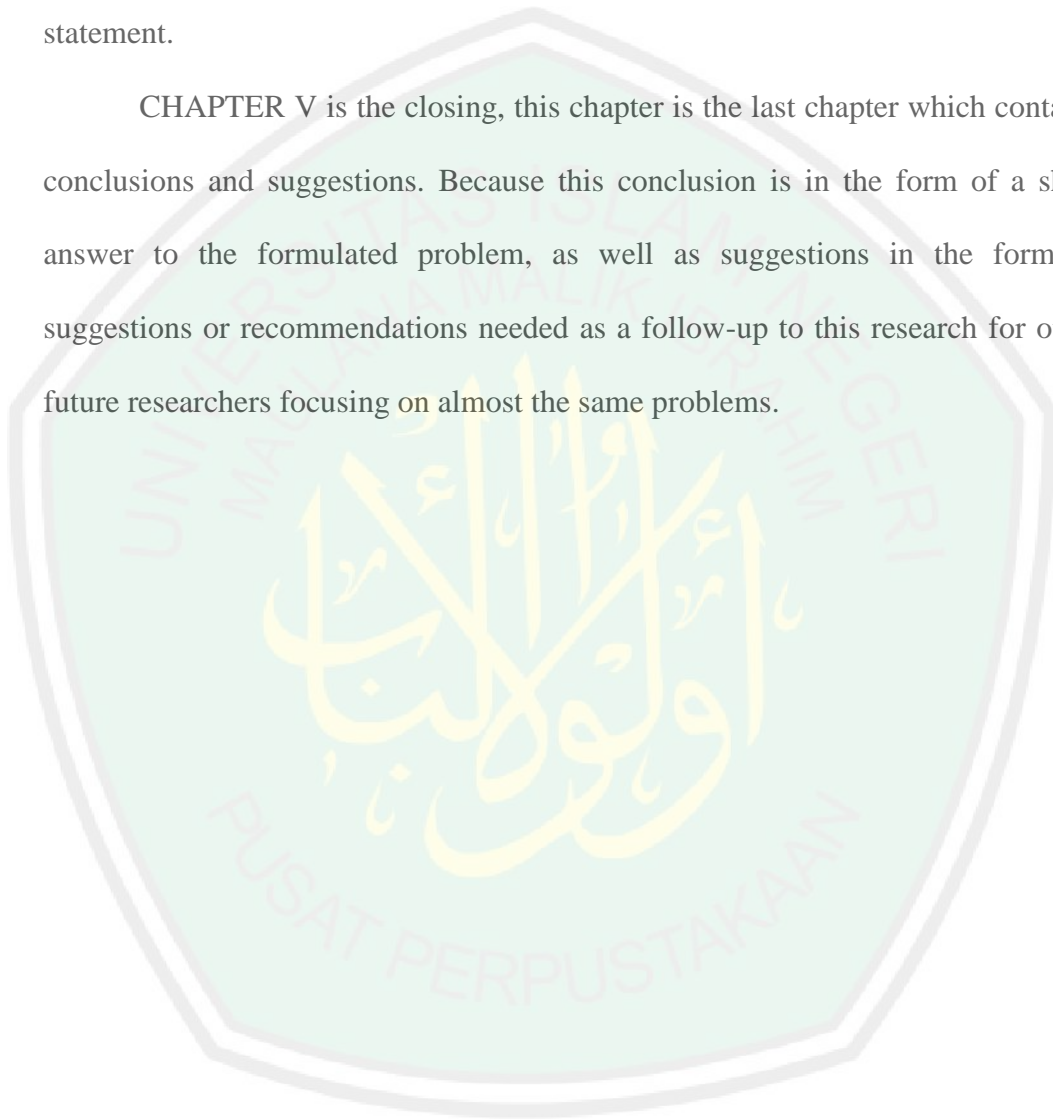
Chapter II is a chapter specifically discussing the theoretical framework, which deals with themes raised by researchers. Because the function of the study of theory is to see and determine a reality of the problem that must be understood first and continued with synchronization of the theory so that after the theory is known. Then it will be known whether this reality is a problem or not. This is actually called the orientation of research that is connecting between theory and social reality.

Chapter III is a research method chapter, in this chapter describes the steps used to discuss problems in research. Because this chapter will explain the types of research used by researchers, namely empirical juridical, sociological juridical research approach, research location in Kisik Village, Bungah Sub-district, Gresik Regency, types and sources of data consisting of primary data obtained through interviews with agricultural production practices and also local officials, secondary data obtained through literature books, methods of collecting data through interviews and documentation, methods of processing data through the stages of editing, classifying, verifying, analyzing, concluding, and data validity testing techniques using source triangulation techniques.

Chapter IV contains the results of research and discussion, this chapter is the core of research, because in this chapter data will be elaborated obtained from the results of research activities and discussion of the results of research in the

field. The results of processing data from the research are linked or will be reviewed with concepts that have been described in the previous chapter. The data that has been analyzed with this concept is used to answer the formulated problem statement.

CHAPTER V is the closing, this chapter is the last chapter which contains conclusions and suggestions. Because this conclusion is in the form of a short answer to the formulated problem, as well as suggestions in the form of suggestions or recommendations needed as a follow-up to this research for other future researchers focusing on almost the same problems.





CHAPTER II

LITERATURE REVIEW

A. Previous research

Before this research was conducted, there were several previous studies that had a background theme that was almost the same as the research that the researchers did. However, some of the previous studies also had differences in the research described as follows:

1. The research entitled “Tinjauan Hukum Islam Terhadap Praktik Kerjasama Lahan Pertanian Dengan Sistem Paron Di Desa Sidodadi Kecamatan Sukosewu Kabupaten Bojonegoro”. Researcher: Dewi Ayu Lestari, Faculty of Sharia State Islamic University of Sunan Ampel Surabaya, 2018. This study aims to answer the question: What is the mechanism of agricultural land cooperation with the *Paron* system in Sidodadi Village, Sukosewu District, Bojonegoro Regency? and What is the view of Islamic law on the practice of cooperation in agricultural land with the *Paron* system in Sidodadi

Village, Sukosewu District, Bojonegoro Regency? The method used in this thesis research is descriptive qualitative method, namely (*field research*) in Sidodadi Village, Sukosewu District, Bojonegoro Regency. In this study it was concluded that, the first agricultural land collaboration with the *paron* system in Sidodadi village, Bojonegoro between the owners of rice fields and cultivators namely in carrying out the agreement did not do it in writing, but instead used a familial way with mutual trust between rice field owners and cultivators and during the harvest will be divided according to the agreement, in this case the seeds, fertilizers, and all costs of cultivating the fields are borne by the cultivator, then also does not specify the period of implementation of cooperation and also does not determine the distribution of the results. Both co-operation has met the requirements and pillars of *mukhâbarah* namely the implementation of cooperation such as seeds, fertilizers, and all costs for the care of rice fields borne by the cultivator, and have become customary practices that do not conflict with the *syara'* argument and fulfill the conditions so that the use of the *paron* system is permitted and includes '*Urf Shahih*'.¹⁸

The similarity in this study is to jointly examine the practice of sharing the results of agricultural land cooperation, besides that it also includes empirical research. Whereas, the difference in this study is that this study discusses how the practices of agricultural profit sharing in Kisik Village, Bungah Sub-

¹⁸ Dewi Ayu Lestari, *Tinjauan Hukum Islam Terhadap Praktik Kerjasama Lahan Pertanian Dengan Sistem Paron Di Desa Sidodadi Kecamatan Sukosewu Kabupaten Bojonegoro*, (Surabaya: Fakultas Syariah UIN Sunan Ampel Surabaya, 2018)

district are reviewed based on *fiqh* in the view of the Shafi'i and Hanafi madzhab and the constitution in Indonesia.

2. The research entitled "Comparison of Agricultural cooperation Concept (*Muzâra'ah* dan *Musâqah* Perspective Imam Madzhab". Researcher: Nala Tartila, Faculty of Shariah, State Islamic University of Maulana Malik Ibrahim Malang, 2017. This study is a type of normative legal research using a comparison approach (comparison approach). In this research, there are two formulation problems, there are: How is the concept of agricultural cooperation (*Muzâra'ah* and *Musâqah*) perspective of Imam Madzhab? How does the concept of *Muzâra'ah* and *Musâqah* according to the Compilation of Shariah Economic Law? This study is a type of normative legal research using a comparison approach (comparison approach). The data analysis method used is descriptive qualitative data analysis. The results of this study indicate that according to the existence of different concepts so as to affect the opinion about the validity of the validity of *muzâra'ah* contract according to Imam Madzhab. Imam Hanafi firmly declared the contract to be invalid. Meanwhile, Imam Maliki and Imam Hambali stated that the *muzâra'ah* covenant is lawful. Different things revealed by Imam Syafi'i that the concept of *muzâra'ah* should be followed by *musâqah*. Another case with *musâqah* where all the *Imam Madzhab* agreed on the legitimacy of *musâqah* contract. In this research explain about how the differences *muzâra'ah* dan *musâqah* between Imam Madzhab and Compilation of Sharia Economic Law.¹⁹

¹⁹ Nala Tartila, *Comparison of Agricultural Cooperation Concept (Muzâra'ah dan Musâqah Perspective Imam Madzhab)*, (Malang: Fakultas Syari'ah, UIN Maulana Malik Ibrahim Malang, 2017)

The similarity in this study is to discuss the cooperation of agricultural land which is seen based on the concepts of Syafi'i and Hanafi madzhab. Whereas, the difference in this research is that the previous research is normative research and this research is an empirical research, in addition previous research examined how the concepts of *muzâra'ah* dan *musâqahin* the perspective of *Imam Madzhab*, while in this study examined how the practices of agricultural profit sharing in the village Kisik Sub-district Bungah which is reviewed based on *fiqh* in the view of the Syafi'i and Hanafi madzhab and constitution in Indonesia.

3. The research entitled “Analisis Penerapan Bagi Hasil Pada Akad *Muzâra'ah* di Desa Pondowan Kecamatan Tayu Kabupaten Pati dalm Prespektif Ekonomi Islam”. Researcher: Muhammad Kudlori, Faculty of Shariah, Islamic State University of Walisongo Semarang, 2013. This study is a field (*Field Research*) with a qualitative approach. The problem of this research is How application of contract *muzâra'ah* that occurred in the Pandowan Village Tayu District Pati Regency? And how application of the results sharing occur in Pondowan Village Tayu District Pati Regency? The results of this study indicate that what is done by Pondowan village farmers in these activities if it is associated with an Islamic economic perspective, the contract of sharing the results of *muzâra'ah* that occurs in Pondowan Village is largely in accordance with existing Islamic economic principles, namely: principles of volunteerism, principles of justice, the principle of mutual benefit, and principles please help. And also in accordance with the principles of Islamic

economics (the principle of monotheism and brotherhood, working principles and productivity, the principle of fair distribution of wealth).²⁰

The similarity in this study is both empirical research, and discusses the profit sharing of agricultural land. Meanwhile, the difference in previous studies only use contract *muzâra'ah* in practice for the results of agricultural land in the village Pandowan and analyzed based on the perspective of Islamic economics. While in this study using contract *muzâra'ah* and *mukhâbarah* in the implementation of practices for agricultural products in the village Kisik were then analyzed based on the perspective of *fiqh* in view of the Shafi'i madzhab and Hanafi madzhab and Constitution in Indonesia.

Table 1.1

List of Previous Research

NO	NAME	TITLE	SIMILARITY	DIFFERENCE
1	Dewi Ayu Lestari, 2018, Faculty of Sharia and Law, Islamic State University of Sunan Ampel Surabaya	" <i>Tinjauan Hukum Islam Terhadap Praktik Kerjasama Lahan Pertanian Dengan Sistem Paron Di Desa Sidodadi Kecamatan Sukosewu Kabupaten Bojonegoro</i> "	Both of them researching about the profit sharing of agricultural land and is empirical research.	The practice of pertaian land cooperation uses a <i>paron</i> system and is only reviewed based on Islamic law
2	Nala Tartila, 2017, Faculty of Sharia, Islamic State University of Maulana Malik	" <i>The Comparison of the Agricultural Cooperation Concept (Muzâra'ah and Musâqah</i>	Related to cooperation in agricultural land, and using Imam Syafi'i perspective	This research is a normative research and focuses more on the concepts of <i>muzâra'ah</i> and

²⁰ Muhammad Kudlori, *Analisis Penerapan Bagi Hasil Pada Akad Muzâra'ah di Desa Pondowan Kecamatan Tayu Kabupaten Pati Dalam Prespektif Ekonomi Islam*, (Semarang: Fakultas Syari'ah dan Ekonomi Islam, IAIN Walisongo, 2013)

	Ibrahim Malang	<i>Perspective of the Imam Madzhab</i>		<i>musâqah</i> which are reviewed based on the perspective of <i>Imam Madhab</i>
3	Muhammad Kudlori, 2013, Sharia Faculty and Islamic Economics, Islamic State University of Walisongo Semarang	<i>“Analisis Penerapan Bagi Hasil Pada Akad Muzâra'ah di Desa Pondowan Kecamatan Tayu Kabupaten Pati dalm Prespektif Ekonomi Islam”</i>	Both of them researching about the profit sharing of agricultural land	This study uses the <i>muzâra'ah</i> contract and is examined in the perspective of Islamic Economics

B. Theoretical Framework

1) Understanding of *Muzâra'ah* and *Mukhâbarah*

Muzâra'ah is cooperation in agricultural processing between landowners and cultivators, where landowners give the cultivator land to be planted and maintained in exchange for a certain portion (*percentage*) of the harvest.²¹ *Muzara'ah* often identified with *mukhâbarah*. Between of both there is little difference as follows: *muzâra'ah*: the seed of the land owner, while *mukhâbarah*: the seed of tenants.²²

Etymologically, *muzâra'ah* means cooperation in agriculture between land owners and sharecroppers. Whereas in the terminology of *fiqh* there are several definitions of *muzâra'ah* the *fiqh* cleric stated.

According to Hanafiyah Scholars:

²¹ Sayyid Sabiq, *Fiqh Sunnah*, Vol III, (Kairo: Maktabah al-Khidmat al-Haditsah, 1407 H, 1986 M), 173.

²² Wahbah az-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, Vol VI, (Damascus: Darul-Fikr, 1997), 563.

عَقْدٌ عَلَى الزَّرْعِ بَعْضُ الْخَارِجِ²³

A contract for processing and planting (land) for a portion of the yield.

According to Malikiyah Scholars:

الشَّرَكَةُ فِي الزُّرْعِ²⁴

Meaning: Alliance in agriculture.

According to Hanabilah Scholars that *muzâra'ah* is:

دَفْعُ الْأَرْضِ إِلَى مَنْ يَزْرَعُهَا أَوْ يَعْمَلُ عَلَيْهَا وَالزَّرْعُ بَيْنَهُمَا²⁵

Meaning: Submission of land to people (farm laborers) who manage and grow it, while the yield of the crops is shared between the two of them (landowners and processors).

According to Syafiiyah Scholarship that means of *muzâra'ah*, Etymologically, is plant (*zar'u*), and in terminology *muzâra'ah* is a contract of cooperation between landowners (*maalik*) and workers (*amil*) to grow crops, with seeds originating from the land owner, and with a profit sharing system in accordance with the agreement.

Imam Ash-Shafi'i define *mukhâbarah* with:

عَمَلًا لَأَرْضٍ بِبَعْضِ مَا يَخْرُجُ مِنْهَا وَالْبَذَرُ مِنَ الْعَامِلِ²⁶

Meaning: working on a land with a wage of part of the proceeds, while the seeds are from the workers.

²³Ibnu 'Abidin, *Radd al-Muhtar 'ala ad-Durr al-Mukhtar*, Vol V, (Beirut: Dâr al-Fikr, 1990), 193.

²⁴Ad-Dardir, *Hasyiyat al-Dasuqi 'ala al-Syarh al-Kabir*, Vol III, 372.

²⁵Al-Bahuti, *Kasysyaf al-Qina*, Vol III, (Beirut: Dar al-Fikr, 1402), 523.

²⁶Asy-Syirbini al-Khathib, *Mughni al-Muhtaj*, Vol II, (Beirut: Dar al-Fikr, 1978), 323.

Etymologically *mukhâbarah* is the loose soil (*khibar*). In terms of is, the cooperation contract between the land owner (*maalik*) and the worker (*amil*) to grow crops, with seeds originating from the land owner, and with the profit sharing system according to the agreement. While the terminology is *mukhâbarah* cooperation contracts *muzâra'ah*, it's just the seed comes from the workers.²⁷

Imam Taqiyuddin in the book "Kifayatul Ahyar" mentions that *muzâra'ah* is:

لِيُزْرَعَ الْأَرْضُ بِبَعْضِ مَا يَخْرُجُ مِنْهَا²⁸ أَكْتَرَاءَ الْعَامِلِ

Meaning: "Renting someone worker to plant land with a wage in part from the results that come out of him".

And *Mukharabah* is:

الْمُعَامَلَةُ عَلَى الْأَرْضِ بِبَعْضِ مَا يَخْرُجُ مِنْهَا²⁹

Meaning: "The earth processing transaction with a wage is partly the result that comes out of it".

From the two above meanings given by Imam Taqiyuddin there seems to be a difference in meaning between *muzâra'ah* dan *mukhâbarah*. *Muzâra'ah* is a contract for leasing workers to manage or work on land for a portion of the proceeds from it. Here workers (managers) are only responsible for management or cultivation and are not responsible for removing seeds or plant seeds. In this case, those responsible for removing seeds or plant seeds are the owners of capital

²⁷Mustofa al-Khin, Mustofa al-Bugho and Ali al-Syarbaji, *al-Fiqh al-Manhaji 'Ala mazhab al-Imam al-Syafi'I*, Vol III, (Damsyik: Darul Qalam, 2003). 197.

²⁸Imam Taqiyuddin, *Kifayatul Ahyar*, Vol I, Surabaya Indonesia; Dar al -Ihya'.t.th, 314.

²⁹ Imam Taqiyuddin, *Kifayatul Ahyar*, 314.

or landowners. While *mukhâbarah* is an earth processing transactions with the (wage) most results out of him. In this case management or cultivators are not only responsible for managing or working on field, but also responsible for removing seeds or plant seeds.³⁰

Mawardi stated that *mukhâbarah* same with *muzâra'ah* namely renting land in exchange for a portion of the harvest. Only differ on the origin of the word *mukhâbarah*, namely 1) associated with such practices in Khaibar, 2) comes from the word خبيرة meaning part.³¹

If the meaning of *muzâra'ah* and *mukhâbarah* is renting land to be planted with wages from the portion of the land, then there are two types, namely the type agreed upon by the cleric about illegitimacy and also the type that is still at odds with the provisions of the law.

2) Legal of Contract *Muzâra'ah* and *Mukhâbarah*

By law, contract *muzâra'ah* and *mukhâbarah* disputed scholars. There are at least three opinions on legalitas contract law *muzâra'ah* and *mukhâbarah*

a. Canceled, well *muzâra'ah* and well *mukhâbarah*

This opinion was taken from among friends, Abdullah bin Umar, Jabir bin Abdullah, and Rafi 'Ibn Khudaij, from Tabi'in, and Sa'id bin Jubair, and Ikrimah, and from among fuqoha, Ash-Syafi'i, Malik and Abu Hanifah.

b. Valid, both *muzâra'ah* and *mukhâbarah*

³⁰ Imam Taqiyuddin, *Kifayatul Ahyar*, 319.

³¹ Abi Ali Hasan Ali bin Muhammad bin Habib Al Mawardi al-Basri, *al Khawil Kabir: Fiqh Mazhab Imam syafi'i* Juz VII, (Beirut Libanon: Dar al Kutb Al Ilmiyati, 1994), 451.

This opinion is taken from circle of shahabat, Ali ibn Abi Tholib, Amar bin Yasir, Abdullah bin Mas'ud, Sa'ad Ibn Abi Waqqash, and Mu'ad bin Jabal, from Tabi'in, Sa'id bin Musayyab, Muhammad Ibn sirrin, and Abdurrahman bin Abi Laila, and from fuqoha, Sufyan Ats-Tsauri, Abu Yusuf, Muhammad, Ibn Mundzir, Annawawi, and Assubki.

In the book *fathul mu'in* described are both canceled if prevented and As - Subki choose as other scholars neighbor skill both the contract and take the proposition of actions sayyidina umar and Medina residents.³²

Furthermore, in the book of Fath al Qarib is explained when one submits the earth to a person so that he/she (as a rice, pen.) and promises to him will give a clear part of the outcome, then such submission Law is not allowed. But Imam Nawawi followed Ibn Mundzir's opinion, choosing that *mukhâbarah* is permissible.

- c. If a person rents the earth to a person using gold or silver, or the man promises to Amil by give food that can be known in the dependents of Malik, then the law may be. As for if Malik handed over to the people (Amil) a field of Earth that many plants land or a little, then it is better to be very confusing for the plant, and to be able to get to the amil of the Earth, then this *muzâra'ah* because Follow to *Musâqah*.³³

- d. Canceled if *mukhâbarah* and legitimate if *muzâra'ah*

This opinion was followed by Ahmad bin Hanbal and Ishaq bin Rahawaih.

If the notion of *mukhâbarah* or *muzâra'ah* is to lease land to be planted with wages from a portion of the proceeds of the land, then there are two types,

³² Zainuddin Al-Malibari, *Fathul Mu'in*, Vol 3, (Beirut: Daar al-Kutub, 1996), 149.

³³ Al-Alammah Muhammad bin Qasim Al-Ghazi, *Fathul Qarib*, (Surabaya: Nurul Huda, tt), 38.

namely the type agreed upon by the cleric about its illegitimacy and also the type which is still disputed by its legal provisions.

The first type that is agreed to is invalid is if the part to be obtained by each party is different (sorted out) from the part of his friend. *Like* the land owner's statement: "I have transacted (*muzâra'ah*) with you that what you plant (one type plant) is my part later, and what you plant (one other plant) will be your part. Or say that the plants affected by rain water are your part while the ones watered themselves are my part. Then *muzâra'ah* like this the law is illegal (invalid).

The second type which is still disputed by scholars is someone who employs other people to cultivate the land with seeds from both of them or from one of them by requiring that the results be divided together based on agreements such as half, third or quarter. The worker gets his share in exchange for his / her work and the land owner gets his share because he owns the land. This practice is called *mukhâbarah* and *muzâra'ah* skill that is still disputed by scholars.³⁴

They are divided into three groups:³⁵

- 1) Madzhab Imam Shafi'i, Abu Hanifah and Imam Malik

The argue that the practice is illegal, both on the condition that the seeds are from the workers and from the landowners. The friends whose opinions were

³⁴ An-Nawawi, Imam Abi Zakariya, *Al Majmu'Syarah Al Muhadzab*, Vol 16 (Bairut: Darul Fakir, tth), 123.

³⁵ Abi Ali Hasan Ali bin Muhammad bin Habib Al Mawardi al-Basri, *al Khawil Kabir: Fiqh Mazhab Imam syafi'I* Juz VII. 451.

the same as him were Abdullah bin Umar, Jabir bin Abdullah, Rafi 'bin Khudaij. Among the tabiins was Said bin Jabir, Ikrimah.

2) Madzhab Imam al-Tsauri, Abu Yusuf and Muhammad

They argue that the transaction is permissible, both on condition that the seeds are from the workers and from the landowners.

It can also be if the land, agricultural equipment and seeds are all borne by the land owner while only the workers are charged to the farmer, then the land owner must be determined to get a certain share of the yield. Or if both of them agree on land, agricultural equipment, seeds and labor and determine their respective parts obtained from the results.

3) Imam Hanbali and Ishaq bin Ruwaihah

They argue that if it is required that the seeds come from the land owner, then this transaction is not valid. But if the seed is required by the workers, the transaction is legal.

The Scholars legalizing contract *muzâra'ah* and *mukhâbarah*, bertendensih on amaliah umar friend and resident of Medina, as well as a number of hadith, Among them:

عَنِ ابْنِ عُمَرَ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : عَا مَلَ خَيْبَرَ بِشَطْرِ مَا يَخْرُجُ مِنْهَا مِنْ تَمَرٍ أَوْ زَرْعٍ

"From Ibn Umar the Prophet actually was. Employing khaibar residents with wages in the form of part of the fruit or plants produced. " (Narrated by Al-bukhari)

And the scholars who said canceling the contract *muzâra'ah* and *mukhâbarah*, bertendensih with a number of hadith, among them;

رَوَى يَعْلَى بْنُ حَكِيمٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ أَنَّ رَافِعَ بْنَ خَدِيجٍ قَالَ: كُنَّا نُخَابِرُ إِلَى أَنْ قَالَ صَلِّعُ:

مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرِعْهَا أَوْ لِيَزْرِعْهَا أَخَاهُ وَلَا يُكَارِبْهَا بِثُلْثٍ وَلَا رُبْعٍ وَلَا طَعَامٍ مُسَمًّى

Ya'la bin judge narrated from sulaiman bin yasar, that Rafi 'bin khudaij say, we entered into a contract mukhâbarah..... prophet of Allah. Say, whoever owns the land, then plant it (alone) or let it be planted by his brother, and do not rent it for a third, a quarter, or in the form of food that is trained . (HR. Ahmad)

وَرَوَى أَبُو خَيْثَمٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ : سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ : مَنْ

لَمْ يَدَعْ الْمَخَابِرَةَ فَلْيُؤَدَّنْ بِحَرْبٍ مِنَ اللَّهِ وَرَسُولِهِ (رواه البيهقي)

"Abu Khanitsam from Abu Azzubair from Jabir said, I heard the Messenger of Allah. Said, whoever did not leave contract mukhâbarah, then be prepared in behavior of Allah and the Messenger. " (HR. Albaihaqi)

Philosophical reasons (*ma'na*) on the prohibition of agreement *muzâra'ah* and *mukhâbarah* in the hadiths above are, because in cooperation with both the contract there is a speculative load (*gharar*), the nominal gain is not clear, while this is still speculation can be avoided by *ijârah* cooperation. Unlike the *musâqah* contract, although the nominal profit is also speculative, it is still legalized, because the pressure of *Hajah* and it is not possible to avoid it through the *ijârah* contract.

As a consequence of the *canceled muzâra'ah* contract, the entire crop becomes the land owner's right (*malik*), because it is a development or productivity result (*nama'*) from the seed that ownership follows the owner, and the worker (*'amil*) has the right to a standard wage (*ujrah mitsl*) for its performance from the aliens, because its work motivation is commercial (*tham'an li al-ujrah*). While the consequences *mukhabârah* contract null and void, then the entire harvest into the right collector, for the development or productivity gains from seeds belonged to him, and the parties of *malik* are entitled get *ujrah mitsl* from the parties of *amil* for benefit of his land.³⁶

3) The Pillars of *Muzâra'ah* and *Mukhâbarah*

Scholars, which allows the *muzâra'ah* and *mukhâbarah* contract, put forward in harmony and requirements that must be met so that the contract is considered valid. Rukun *muzâra'ah* and *mukhâbarah* according to them is:

- a. Land owner,
- b. Cultivators,
- c. Object *muzâra'ah* and *mukhâbarah*, namely between the benefits of land with the work of farmers,
- d. Ijab (an expression of the surrender of land from landowners) and qabul (statement of receiving land for cultivation from farmers). Examples of the qabul permit are; "I hand over my farm to you to work on, and the results will be shared by both of us". Then the sharecroppers answered: "I accept this farm to be cultivated in return for the results divided in two". If this has been

³⁶ Sulaiman al- Bujairimi, *Bujairimi 'ala al-Khatib*, Vol III, (Bairut: Dar al-fikr, tt), 229.

done, then the contract has been valid and binding. However, scholars say that the reception Hanabilah (qabul) contract *muzâra'ah* and *mukhâbarah* do not need to with the phrase, but may also by action, namely the farmers work the land directly.

The pillars of *muzâra'ah* according to the Hanafiyah scholars is, ijab and qabul. Namely the landowner said to the tenants, "I leave this land to you as *muzâra'ah* with wages. "Then the tenants say," I accept, "or" I agree, "or statements that indicate that he accepts and approves it. If the consent and qabul have taken place, then the *muzâra'ah* contract will take place and *mukhâbarah* between them.³⁷

While the elements of the *muzâra'ah* contract there are three, namely: landowners, cultivators, and the third is the contract object which has two possibilities, namely land use or employment of the cultivator (the first means the tenant rents the land, while the second means the landowner employs or hires him to cultivate the land. These two things in *fiqh* are called *ijârah* contract, according to Hanafiyah scholars, contract of *muzâra'ah* and *mukhâbarah* at first is a form of contract, whereas in the end beupa syirkah (cooperation, joint ventures, joinan). If the seeds are from the cultivator, then the object of the contract means land use. Whereas if the seed is from the land owner, then the object of the contract means the benefit (read: work) of the cultivator.³⁸

Meanwhile, Hanabilah scholars say that the *muzâra'ah* contract and *musâqah* is not necessary to qabul verbally, but qabul is enough with the

³⁷Alaa al-Din al-Kaasaani, *Al-Badaai' al-Sanaai fi tartib al-Sharaa'i*, Vol VI (Cairo: Al-Matba'a al-Jamaaliyya, 1910), 176.

³⁸Wahbah Zuhaili, *Al-Fiqh Al-Islami wa Adillatuhu* Juz 6, 565.

cultivator starting to work on and cultivate the land or care for and water the plants, just like the representatives.³⁹

4) The Terms of *Muzâra'ah* and *Mukhâbarah*

The terms for *muzâra'ah* and *mukhâbarah*, according to scholarly, there were about people who do contract, seeds for planting, the soil is done the results will be harvested, and which concerns the term of the contract.⁴⁰

For people who do contract, it is required that both must be bald and intelligent people, because these two conditions make a person considered capable of acting law. Another opinion from the scholars of Hanafiyah added that one or both of them were not apostates (out of Islam), because the legal action of an apostate was considered *mauff* (had no legal effect, until he converted to Islam).⁴¹

However, Abu Yusuf and Muhammad ibn al-Hasan ash-Syaibani did not agree to these additional conditions, because, according to them, the *muzâra'ah* contract and *mukhâbarah* may be done between Muslims and non-Muslims; including apostates.⁴²

The requirements regarding the seeds to be planted must be clear, so that they are in accordance with the land's habits, namely the seeds planted are clear and will produce. While the conditions concerning agricultural land are:

- a. According to adat among farmers, the land may be cultivated and produced.

If the land is barren and dry land, so that it is not possible to be used as

³⁹ Al-Bahuti, *Kasysyaf al-Qina*, Vol III, 528.

⁴⁰ Al-Bahuti, *Kasysyaf al-Qina*, Vol III, 528.

⁴¹ Alaa al-Din al-Kaasaani, *Al-Badaai' al-Sanaai fi tartib al-Sharaa'i*, Vol VI, 176.

⁴² Alaa al-Din al-Kaasaani, *Al-Badaai' al-Sanaai fi tartib al-Sharaa'i*, Vol VI, 176.

agricultural land, then the contract of *muzâra'ah* and *mukhâbarah* and is not valid.

- b. The land boundaries are clear.
- c. The land was left entirely to farmers to work on. If it is required that the landowner participate in processing the farm, then the contract of *muzâra'ah* and *mukhâbarah* not legitimate.⁴³

The conditions relating to the yield are as follows:

- a. The distribution of yields for each party must be clear;
- b. The results really belong to people who are mindful, without any specialization;
- c. The distribution of the harvest is determined to be half, one third, or one quarter from the beginning of the contract, so that there are no future disputes, and the determination may not be based on an absolute number, such as one quintal for workers, or one sack; because the possibility of all crop yields being far below that amount or can also far exceed that amount.⁴⁴

The requirements regarding the period of time must also be explained in the contract from the beginning, because of the contract of *muzâra'ah* contains the meaning of contract *ijârah* (rent or wage rent) in return for part of the harvest. Therefore, the time period must be clear. For the determination of this period, it is usually adjusted to local customs.

For the object of the contract, which allows scholarly *muzâra'ah*, requires also to be clear, both in the form of services farmers, so the seeds will be planted the arrival and landowners, as well as land-use, so that the seeds from farmers.

⁴³Ibnu 'Abidin, *Radd al-Muhtar 'ala ad-Durr al-Mukhtar*, Vol V, 193.

⁴⁴Wahbah, az-Zuhaili, *al-Fiqh al-Islami wa 'Adilatuh*, Jilid V, 617-618.

Abu Yusuf and Muhammad ibn al-Hasan ash-Syaibahi stated that in terms of the validity or absence of the *muzâra'ah* contract, there are four forms of *al-muzâra'ah*, namely:⁴⁵

- a. If the land and seeds of the owner of the land, work and tools of the farmer, so that the object becomes the *muzâra'ah* is a farmer's service, the law is legal.
- b. If the land owner only provides land, while the farmer provides seeds, tools, and work, so that the object becomes the object of *muzâra'ah* is the benefit of land, then the contract of *muzâra'ah* also legitimate.
- c. If land, tools, and seeds from the land owner and work from the farmer, so that the object becomes the *muzâra'ah* is the service of farmers, then contract *muzâra'ah* also legitimate.
- d. If agricultural land and tools are provided by landowners and seedlings as well as work from farmers, then this contract is not valid. According to Abu Yusuf and Muhammad ibn al-Hasan ash-Syaibani, determining agricultural equipment from landowners made this contract damaged, because agricultural equipment should not follow the land. According to them, the benefits of agricultural tools are not the same as the benefits of land, because land is to produce plants and fruit, while the benefits of the tool are only to cultivate the land. Agricultural equipment, according to them, must follow farmers, not landowners.

⁴⁵ Alaa al-Din al-Kaasaani, *Al-Badaai' al-Sanaai fi tartib al-Sharaa'i*, Vol VI, 179.

5) Consequence of *Muzâra'ah* and *Mukhâbarah*

According to jumhur ulama who allow the contract of *muzâra'ah* and *mukhâbarah*, if the contract is in compliance with the pillars and the terms, then the result statute are as follows:⁴⁶

- a. Farmers are responsible for issuing seed costs and maintenance costs for the farm.
- b. Agricultural costs, such as fertilizer, harvesting costs, and the cost of cleaning plants, are borne by farmers and landowners in accordance with the percentage of each part.
- c. The yield is divided according to the agreement of both parties.
- d. Irrigation is carried out in accordance with the agreement of both parties.

If there is no agreement, apply the customs in their respective places. If the habit of the land is irrigated with rainwater, then each party may not be forced to irrigate the land through irrigation. If the agricultural land is usually irrigated through irrigation, while the contract is agreed to be a responsibility answer the farmer, the farmer is responsible responsible for irrigating the farm.

- e. If one person dies before the harvest, the contract remains valid until harvest, and the deceased is represented by his heir, because the number of ulama believes that the wage contract to pay (*ijârah*) is binding on both parties and may be inherited. Therefore, according to them, the death of one of the faithful parties does not cancel this contract.

⁴⁶Ibnu 'Abidin, *Radd al-Muhtar 'ala ad-Durr al-Mukhtar*, Vol V, 199.

6) Termination of *Muzâra'ah* and *Mukhâbarah*

The *fiqh* scholars who allow the *muzâra'ah* and *mukhâbarah* say that this contract will be terminated if:⁴⁷

- a. The agreed time period ends. However, if the time period has expired, while the agricultural produce is not yet worth harvesting, then the contract is not canceled until the harvest and the results are divided according to the collective agreement at the time of the contract. Therefore, in waiting for the harvest, according to the scholars, the farmer has the right to receive wages in accordance with the minimum wage that applies to local farmers. Furthermore, in waiting for the harvest period, the costs of plants, such as fertilizer, maintenance costs, and irrigation are the joint responsibility of the landowners and farmers, according to the percentage of each division.⁴⁸
- b. According to scholars Hanafiyah and Hanabilah, if one of the do a contract died, then the contract *muzâra'ah* ended, because they argued that the *al-ijârah* contract should not be inherited.⁴⁹ However, Malikiyah scholars and Syafi'iyah scholars argued that the *muzâra'ah* contract it can be inherited. Therefore, the contract does not end with the death of one of the faithful parties.
- c. There is an *age* of one of the parties, both the landowner and the farmer who causes them not to continue the contract of *muzâra'ah* that. *Uzur* referred to include:⁵⁰

⁴⁷Wahbah Zuhaili, *Al-Fiqh Al-Islami wa Adillatuhu* Juz 6, 565.

⁴⁸Ibnu 'Abidin, *Radd al-Muhtar 'ala ad-Durr al-Mukhtar*, Vol V, 196.

⁴⁹Ibnu 'Abidin, *Radd al-Muhtar 'ala ad-Durr al-Mukhtar*, Vol V, 198.

⁵⁰Ibnu 'Abidin, *Radd al-Muhtar 'ala ad-Durr al-Mukhtar*, Vol V, 196.

- (1) The owner of the land is in debt, so he must sell the farm, because there are no other assets that can pay off the debt. This cancellation must be carried out through a judge's intervention. However, if the plants have been fruitful, but have not been harvested properly, then the land may not be sold until harvest.
- (2) The existence of a farmer's *age*, such as being sick or having to make a trip out of town, so that he is unable to carry out his work.

7) Legal of Legitimate *Muzâra'ah* and Legal of Invalid *Muzâra'ah*

a. Legal of Legitimate *Muzâra'ah* According Hanafiyah Scholars

Muzâra'ah what is legitimate according to the Hanafiyah scholars has a number of legal consequences as follows:⁵¹

- 1) Everything that is needed in processing and cultivating land, such as the cost of sowing seeds and responsibility for safeguards, is a burden on the cultivator, because of the *muzâra'ah* contract automatically includes these provisions,
- 2) Everything that is needed by plants such as fertilizers, cleaning wild grass, harvesting and harvesting, is to be responsible for both parties according to the level of the parts that will be obtained by each of the crops.
- 3) The yield obtained is shared between the two parties in accordance with the levels that have been determined and agreed upon. This is based on the hadiths Muslims must keep the terms and conditions they have made and agreed. Therefore, if it turns out that the land produces nothing (crop failure, crop failure), then both parties get nothing and no party is burdened to

⁵¹Ibnu 'Abidin, *Radd al-Muhtar 'ala ad-Durr al-Mukhtar*, Vol V, 199.

compensate the other party. As for why the cultivators also get nothing, because he is a person who is hired to work the land for a part of the wages of the land crops that he worked on, while it turns out the land plant produces nothing.

This is different from *muzâra'ah* damaged and illegitimate, because in the damaged and illegitimate *muzâra'ah*, the cultivator has the right to get a monthly salary (standard wage) if the land plant he cultivates does not produce anything. The point of difference is that in the *legitimate* contract of *muzâra'ah*, the part which is the right of the cultivating party is what is stated and stipulated in the contract, which is a part of the yield of the cultivated land. If it turns out that the land plant that he worked on did not produce anything, then it means he gets nothing. Whereas in *muzâra'ah* the damaged and illegitimate ones, then the right is the wages of the mitsl taken from the produce of the cultivated land. Even though the plant does not produce anything, it still has no effect on the rights that are in the responsibility of the landowner who works it.

- 4) As explained in the previous section, the contract of *muzâra'ah* according to the scholars of Hanafiyah said, that the contract of *muzâra'ah* is a contract that is not binding for those who issue seed capital, but remember for other parties (such as seed capital is from the cultivator for example, then the contract of *muzâra'ah* the status is not binding on him, in the sense that he can cancel it unilaterally, but it is binding on the land owner), and he cannot cancel it unless there is an acceptable obstacle or reason. So, therefore, if the party issuing seed capital is not willing to do its job or in other words cannot continue the contract, then he may not be forced. But if the person who is not

willing to do his job is another party who does not issue seed capital, the judge can force him to do his job, because he does not suffer any loss. While the contract is binding on him, because his status is like an *ijârah* contract unless there is *udzur* or an excuse that can be used as a basis for canceling the *ijaarah* contract, so that the contract of *muzâra'ah* can also be canceled in the presence of *udzur* or that reason.

- 5) The problem of responsibility for land piracy and irrigation, if previously there was an agreement that the one responsible was one of the parties, then it meant he was responsible for the problem of piracy and pengariran it and he was obliged to fulfill and implement it. But if it turns out that in the contract, it is not mentioned, then the party that must be responsible for the problem of piracy and irrigation is adjusted to the customs and the applicable restrictions. So, therefore, if the land is irrigated with rain water (rainfed land), then there is no party who is forced to do irrigation. However, if the land is not rainfed land, then who is responsible for irrigation problems is adjusted to the prevailing habits and irregularities.

In the contract *muzâra'ah* legitimate, if the tenants negligence and negligence in the conduct of irrigation, resulting in damaged crops, so he was fined, because it aadalah obligations. And the differentiation here is the provision of trust assets because of negligent and careless actions. Because the existence of the land occurred in an *illegal muzâra'ah* contract, he was not fined.

- 6) May ask for added or willingness to reduce the part of the level that has been determined and agreed on from the crop. The rule is, as long as it allows it to be used as an object of contract, it allows for addition. But if not, then it can't.

But if what happens is the willingness to reduce parts, the contract may be in both circumstances.

If one party dies before the existing plants reach the harvest period, then it remains allowed to apply until the harvest period, and there is no obligation on the stuffy party, because here the *ijârah* contract is still valid because the time is still left.

b. Legal of *Muzâra'ah* According to Ulama Syafi'iyah

We already know that *muzâra'ah* (the seed of the land owners) according to scholars Shafi'ites is not allowed except his status following the agreement *musâqah*. While *mukhâbarah* (seeds of the tenants) are not allowed even though his status followed the *musâqah*.

So therefore, if in case *muzâra'ah* on a piece of land separately (not followed *musâqah*), then the crops are for landowners, because the result is the development and the increase that occurred in something of hers. However, he was obliged to give the cultivator the mitsl wages (standard wages) for the work he had done and the cost of medical equipment for animals and equipment he used in cultivating and processing the land.

There are two ways or solutions that can be taken so that the existing crop yield is for both parties and no party needs to pay to the other party, namely:

- 1) The owner employs the cultivator with a wage in the form of a portion of the overall seed in general *syuyu'*, without which part of the seed is determined, which is important part of the whole seed) such as half or a quarter for example, employing him to plant half the other seeds (owner land), and at the

same time the owner of land loaned him half of the total land area (*asy syuyu'*, without which half of the land was determined). In essence, half the seeds for landowners and half seeds for cultivators as wages, while for the land, half for landowners and half for cultivators as loans. But here it must be done in the form of *asy syuyu'*, in the sense that it is not determined by half the seed and half the land which is for the land owner, half the seed and half the land for the cultivator. Then the tenants do the work, then the results are divided between the two of them according to the percentage of the seeds each (in the example case above is half). This is form *ijârah* (hiring with wages) and *i'aarah* (loans).

- 2) The landowner employs cultivators with wages in the form of half of the total seeds and half of all available land uses, employing them to plant half the other seeds in half of the existing land. In other words, the point is half the seeds and half the land for the cultivators as their wages, while the other half the seeds and half the land for the landowners.

So that, both parties become shariik (partners) of existing plants with their respective parts are half. And each of them does not bear a fee for the other party, because each has received a share, namely the cultivator has the right to benefit the land according to the level of the part of the existing plant. Likewise, the landowner has the right to use the land according to the level of the part of the plant that is also available. This is the form of history (hiring with wages).⁵²

⁵²Asy-Syirbini al-Khathib, *Mughni al-Muhtaj*, Vol II, 325.

If the seed is from the cultivator, if the method or solution is, the cultivator rents a certain portion of the entire land such as half, for example, with rental costs in half of the entire seed and with the benefits of the planting work carried out on the other half of the land. Or the tenant rents half of the existing land with a rental fee in the form of half of the existing seeds, and he donates to plant half the seeds that the landowner is entitled to as the cost of renting land on the other half of land that he does not rent. So that next, each party gets a share of the results in accordance with the percentage of seeds and benefits of the land owned by each.

c. Legal of *Muzâra'ah* that Damaged and Invalid According to Hanafiyah Scholars

Muzâra'ah defective and invalid also has a number of legal consequences as follows:⁵³

- (1) The tillers not obliged to do anything in the land management and land management work. Because rent must be based on contract, while the contract is not valid.
- (2) The results of all land crops are for those who issue seed capital, whether it is the landowner or the landlord. Because the crop's result is his right because the yield of the plant is the growth and development of something of his seed. In this case, namely that if the *mzara'ah* contract is not valid, then the existing plant is for the seed owner.
- (3) If it turns out that the planted seed belongs to the landowner (the party who issued the seed capital is the owner of the land), then the tenant has the right

⁵³ Ibnu 'Abidin, *Radd al-Muhtar 'ala ad-Durr al-Mukhtar*, Vol V, 196.

to get a monthly salary (standard wage) for the work he has done. But if the party issuing seed capital is the cultivator, then he is obliged to pay the cost of renting the land to the owner of the land. Because the contract in these two cases is an agreement (for the first case, the owner of the land means working with the cultivator. As for the second case, the owner must rent the land to the owner).

- (4) In the damaged and invalid *muzâra'ah*, *ajrul mitsl*'s obligation (standard wage or standard land rent) applies, even though the existing land does not produce anything, if the cultivator has indeed used and worked on the land. Because *muzâra'ah* is one form of *ijârah* contract (rent, including the lease of the benefit of an item, and the lease of the benefit of a job or labor, or what is known as hiring someone with wages).
- (5) *Ajru mitsl* in the damaged and illegitimate *muzâra'ah* adjusted to the level of the part mentioned when the contract according to Imam Abu Hanifah and Abu Yusuf. Because that level was previously agreed upon by both parties and in order to accommodate the interests of both parties to the extent possible.

8. Overview of Agreement for Agricultural Profit Sharing According to Act No. 2 of the year 1960 Concerning Agreement of Agricultural Profit Sharing

In the division for the results *muzâra'ah* and *mukhâbarah*, Islam does not explain in detail about the percentage is only mentioned that the division of the results according to the agreement. It means that it is unclear the division between

landowners and cultivators on the method of distribution and the size of each part of both parties.

Act No. 2 of year 1960 concerning Agreement of Agricultural Profit Sharing is intended to regulate land concession agreements with profit sharing, so that the distribution of land yields between owners and cultivators is carried out on a fair basis and to ensure a proper legal position for the cultivators, by asserting rights and obligations both from cultivation and owner. The following is a further description of the Act.

The owner (person/legal entity) and farmer are the subject of the agreement in the profit sharing of agreement, with the following explanation:⁵⁴

a. Owner

The owner referred to by the owner in Act No. 2 of the year 1960 is a person or legal entity based on the rights to control the land. Furthermore, the land referred to in Act No. 2 of the year 1960 is land that is usually used for planting food ingredients. Beyond that is not bound by the Act. For example, land which is usually used for livestock or for fisheries.

In Act No. 2 of the year 1960 Article 2 paragraph (1) business entities are limited only as owners, are not allowed to become cultivators. However, after the issuance of the Decree of the Minister of Agrarian Affairs Number SK 322/Ka/1960, a legal entity in the form of a farmer cooperative or village cooperative is possible to become a cultivator with the permission of the Regent/Head of the Level II Region.⁵⁵

b. Farmer

⁵⁴Act No. 2 of year 1960 concerning Agreement of Agricultural Profit Sharing

⁵⁵Act No. 2 of year 1960 concerning Agreement of Agricultural Profit Sharing

Farmers are people whose basic livelihood is cultivating land for agriculture, both those who have and do not own land. If referring to the discussion of the agreement for results in Act No. 2 of the year 1960, farmers who enter into profit sharing agreements exceeding three hectares, are still permitted to become cultivators if they get permission from the Deputy Minister of Agrarian Affairs or an official appointed by him. In the Decree of the Deputy Minister of Agrarian Affairs Number SK 322/Ka/1960, the Sub-District Head was. This limitation is an effort to prevent a person or legal entity whose economy will act as a cultivator and reduce the opportunity of small farmers to acquire cultivated land.⁵⁶

c. Object of Agreement on Agricultural Profit Sharing

The object in the agreement for agricultural land products is labor and plants. The labor force is an agricultural farmer who cultivates agricultural land. The plants in question are short-lived plants such as rice, sugar cane, corn. In explanation of Act No. 2 of year 1960 plants can also be cotton, rosella, and sugarcane, planted in the soil as long as it usually dita nami foodstuffs and short-lived.

d. Form of Agreement on Agricultural Profit Sharing

Based on Article 3 paragraph (1) all profit sharing agreements must be made by the owner and cultivator himself in writing faced by the Village Head or the same level as that which is the area of land agreed in the profit sharing agreement witnessed by two witnesses from the owner and cultivator. Furthermore, it requires approval from the Head of District/Head of District and is

⁵⁶Act No. 2 of year 1960 concerning Agreement of Agricultural Profit Sharing

announced in a village meeting by the Village Head. After that it is entered in the register to be reported to the Regent/Head of the Level II Region that is included in the promised land area.⁵⁷

In accordance with Minister of Agrarian Regulation Number 4 of 1964 concerning the Guidelines for Implementing Profit Sharing Agreements, the profit sharing agreement between the owner and cultivator of land must be recorded in the list of books in the Village Head, then the Village Head gives a certificate to the owner and cultivator of the agreement. Every month the Village Head submits the list book to the District Head. Subdistrict head every three months at the end of the quarterly assisted by the Committee *Landreform* the District to report to the Land Reform Committee Darerah Level II.⁵⁸

Written agreements are intended to avoid doubts, and preventive efforts on things that might cause disputes regarding the rights and obligations of both parties, the length of the agreement period, and others that have been included in the agreement for the results.

Article 13 paragraph (1) and (2) of Act No. 2 of the year 1960 explains that if the owner and/cultivator do not fulfill or violate the provisions in the agreement for profit sharing, then either the District Head / Village Head for a complaint from one of the authorities orders to fulfill it / obeyed the intended

⁵⁷Act No. 2 of year 1960 concerning Agreement of Agricultural Profit Sharing

⁵⁸Minister of Agrarian Regulation Number 4 of 1964 concerning the Guidelines for Implementing Profit Sharing Agreements

provisions. If the order is not heeded, then the Sub-District Head is authorized to issue a decision binding on both parties.⁵⁹

e. The Duration of Agreement for Agricultural Profit Sharing

The duration of the agreement for profit sharing based on Act No. 2 of the year 1960 Article 4 is at least three years for rice fields and five years for dry land. The year referred to in this article is not "calendar year", but "plant year". With such a minimum limit, it is considered appropriate for cultivators to cultivate the agricultural land. Rice fields if using green manure eat the power of this fertilizer can be affected until the third year. The dry soil has a minimum length of time because in general the situation is not as good as paddy fields. Sometimes it still needs to be emptied and can only be tried. Therefore, the minimum time limit is longer than the rice fields.⁶⁰

In special cases, the period can be less than the provision if the land is usually cultivated by the owner himself with the permission of the Camat. This particular case, for example, the owner who is usually managed by himself, then wants to enter into an agreement for profit sharing, but has planned needs (for example next year of Hajj) and urgent needs (conditions are sick) so that the land yield agreement is less than the minimum because the next year I want to work myself again. If the time for the profit sharing agreement ends and there are still plants that have not been harvested, then the agreement is valid until the time the plant is finished harvesting with the provision of the extension not to be more than one year and notified to the relevant Village Head without the need for a new agreement.

⁵⁹Act No. 2 of year 1960 concerning Agreement of Agricultural Profit Sharing

⁶⁰Act No. 2 of year 1960 concerning Agreement of Agricultural Profit Sharing

If there are doubts regarding the land promised is rice fields or dry land, the Head of the Defender gives the decision. This is related to the need or not for irrigation in cultivating land or not.⁶¹

f. Transition and End of Agreement for Agricultural Profit Sharing

Article 5 of Act No. 2 of the year 1960 explains that the profit sharing agreement is not interrupted due to the transfer of ownership rights to the land concerned to another person. All rights and obligations of the owner based on the profit sharing agreement are transferred to the new owner. If the cultivator dies, the rights and obligations in the profit sharing agreement are continued by his heirs.

Termination of the profit sharing agreement before the expiration of the agreement period is only possible in terms and conditions based on article 6 of Act No. 2 of the year 1960, namely, with the agreement of both owners and cultivators and reported to the Village Head or with the Village Head's permission for the owner's demands because the cultivator does not work as it should, does not fulfill materials that are borne by the cultivator, or without the permission of the owner to surrender the control of the land concerned to another person. In this case, the Village Head plays a role in peace efforts first, then the Village Chief takes the decision. If the owner and cultivator do not agree with the decision of the Village Head, they can submit it to the Head of District. The Camat regularly reports to the District Head / Regional Head level II for all decisions made.⁶²

g. Distribution of Agricultural Land Products

⁶¹Act No. 2 of year 1960 concerning Agreement of Agricultural Profit Sharing

⁶²Act No. 2 of year 1960 concerning Agreement of Agricultural Profit Sharing

Land products in Act No. 2 of the year 1960 are the results of agricultural business organized by cultivators after deducting costs for seeds, fertilizers, livestock and costs for planting and harvesting. In other words, the results of the soil is the net result, ie the gross proceeds after deducting the cost of seeds, fertilizers, animal and plant costs (*nandur*) and harvest. The fee is returned to the party who incurred the costs both from the owner and the cultivator. In other words, these costs become a burden on both parties. Whereas the tax is charged to the actual landowners. For Muslims, zakat in the agreement for profit sharing is set aside from gross proceeds that have reached Nisab, which is 14 quintals. If less than 14 quintals are not subject to zakat.⁶³

In Act No. 2 of the year 1960 there is no clear mention of the balance in the profit sharing agreement for owners and cultivators. This is based on consideration of conditions (especially soil fertility), population density and other economic factors which in concrete terms determine the size of the share of owners and cultivators in each region not the same. On the basis of these considerations in article 7 of Act No. 2 of the year 1960, it is better to see the owner and cultivator part of each region through the Regent / Head of the Level II Region based on local economic conditions and conditions.

In addition, the process of development in rural communities is still ongoing in social relations. However, Act No. 2 of the year 1960 in the explanation section provides a balance guide between owners and cultivators 1: 1

⁶³Act No. 2 of year 1960 concerning Agreement of Agricultural Profit Sharing

(one on one) for rice planted in rice fields. For palawijo plants in the rice fields 2/3 of the cultivators and 1/3 of the owners.⁶⁴

In the Joint Decree of the Minister of Domestic and Minister of Agriculture No. 211 of 1980, the second part contains the balance of profit sharing in the agreement on the yield of paddy fields (paddy) as follows:⁶⁵

1. Based on the proposals and considerations of the Head of District / Head of the District and the agencies whose tasks are related to food production business activities and Management of Farmers Organizations in the Region to the Regent / Mayor by first hearing the recommendations and considerations of the Village Head or Village Head with Community Resilience Institutions The village.
2. The amount for seeds, production facilities, livestock power, harvest power is expressed in the form of the yield of grain rice Natura at a maximum of 25% of gross yield which is below or equal to the average production yield in the relevant Level II/District Region, in the form of a formula as follows :

$$Z = \frac{1}{4} X$$

Z = costs for seeds, production facilities, livestock power, farm and harvest power.

X = Gross Result.

Furthermore, after the gross proceeds are reduced by the aforementioned costs, the net proceeds are divided equally between the cultivator and the owner, using the formula:

⁶⁴ Act No. 2 of year 1960 concerning Agreement of Agricultural Profit Sharing

⁶⁵ Joint Decree of the Minister of Domestic and Minister of Agriculture No. 211 of 1980

$$(X - Z) / 2 = (X - \frac{1}{4} X) / 2 \text{ [Rumus I]}$$

3. If the results achieved by the cultivator are above the average production yield of the level II/Subdistrict concerned, then the gross yield up to the average production yield is divided according to formula I, the remaining yield divided by the average divided between the cultivator and the owner with a balance of four part of the cultivator and one part for the owner, with the form of a formula [called Formula II]:

$$\text{Cultivation rights} = (Y - Z) / 2 + 4 (X - Y) / 5 = (Y - \frac{1}{4} X) / 2 + 4 (X - Y) / 5$$

$$\text{Owner Rights} = (YZ) / 2 + 1 (XY) / 5 = (Y - \frac{1}{4} X) / 2 + (XY) / 5$$

Where, Y = Results of average production

4. If in a region the part that becomes a cultivator is in fact greater than what is specified in formulas I and II above, then this balance is still needed to be more profitable for the cultivator.

h. Obligations of Owners and Cultivators

In Chapter VI of Act No.2 of year 1960 contains the Obligations of Owners and Cultivators, among others:⁶⁶

1. Payment of money or the giving of any object to the owner which is intended to obtain the right to cultivate the land of the owner with a profit sharing agreement is prohibited. If done, the payment / gift is deducted from the land.
2. Payments including owners and cultivators to owners or cultivators conducted long before harvest and / or with interest that is very high in fulfilling the criteria of "bonded labor" are therefore prohibited.

⁶⁶Act No. 2 of year 1960 concerning Agreement of Agricultural Profit Sharing

3. The obligation to pay taxes on the land in question is prohibited from being charged to the cultivator unless the cultivator is the real land owner.
4. At the end of the agreement for profit sharing the cultivator is obliged to surrender the land concerned to the owner in good condition The good condition in question is at least the land is submitted in a situation that does not harm the owner.
5. If during the profit sharing of agreement natural disasters occur and / or pest disturbances that cause damage to the land and or plants, then according to the nature of the profit sharing of agreement, the loss or risk becomes a burden on both parties.
6. The owner and cultivator are obliged to make a written agreement and comply with and carry out the contents of the revenue sharing agreement, especially regarding the matter of distributing land.

CHAPTER III

RESEARCH METHODS

In a study, the method is an important factor. Success and failure of a study depends on whether the method is used or not. In each study, the research method is a sequence of how research is conducted. This must be in accordance with the procedures set by the research method experts, in order to achieve concrete research results and truthfulness.⁶⁷ Therefore, so that the results of the study do not deviate, the authors use methods that are in accordance with the existing provisions, including:

A. Type of Research

The type of research method used by the researcher is the type of Field Research (*law in action*) research, or it can be called an empirical type of research, namely research conducted by researchers in a direct way to society that aims to determine the extent of the law in society.⁶⁸ In this study, researchers went directly to the community of Kisik Village, Bungah District, Gresik Regency. Where researchers are looking for information regarding how the practice of sharing agricultural products in Kisik Village Bungah Sub-district Gresik

⁶⁷ Moh. Nazir, *Metode Penelitian*, (Jakarta: Ghali Indonesia, 1998), 51.

⁶⁸ Bahder Johan Nasution, *metode Penelitian Hukum*, (Bandung: Mendar Maju, 2008, 2008), 123.

Regency, which will then be analyzed with existing theories, especially reviews of *fiqh* in the view of Shafi'i and Hanafi *madzhab* and legislation in Indonesia.

B. Research Approach

The research method is basically a scientific way to get data with specific purposes and uses.⁶⁹ In this legal research using qualitative-descriptive methods through a sociological juridical approach. Sugiyono expressed his opinion on qualitative research methods as follows: "Leatherative research methods are research methods based on postpositivism philosophy, used to examine natural object conditions, (as opposed to experiments) where researchers are key instruments, sampling data sources is done purposive and snowbal, collection techniques with triangulation (combined), data analysis is inductive/qualitative, and the results of qualitative research emphasize the meaning rather than generalization."⁷⁰

While Saryono put forward different things, namely as follows: "Qualitative research is research that is used to investigate, find, describe, and explain the quality or features of social influences that cannot be explained, measured or described through a quantitative approach."⁷¹

Using this qualitative research method is expected to find hidden meanings behind the object or subject to be studied.

C. Location of Research

⁶⁹Sugiyono, *Metode Penelitian Kuantitatif Kualitatif*, (Bandung: CV Alfabeta, 2011), 2.

⁷⁰Sugiyono, *Metode Penelitian Kuantitatif Kualitatif*, 15.

⁷¹Sudaryat, S, *Hak Kekayaan Intelektual, (Memahami Prinsip Dasar, Cakupan, Dan Undang-Undang yang Berlaku). Cet 1.* (Bandung: Oase Media, 2010), 1.

Research on "The Practice of Agricultural Profit Sharing in Kisik Village, Bungah Subdistrict, Gresik District, Based on *Fiqh* and Constitution in Indonesia Perspective" will be conducted in Kisik Village, Bungah Sub-District, Gresik Regency. The choice of location is based on the consideration that the problems raised in this study can be obtained if the answer is done in the area concerned. So that in this study researchers can meet directly with the object in question and conduct research there.

D. Types and Data Sources of Research

According to Moleong "Data sources are the subject from which data is obtained, retrieved, and collected."⁷²The main data sources in qualitative research are words and actions, the rest are additional data such as documents, and others. The data of this study can be obtained from various sources as follows:

a. Primary Data Source

Primary data is data obtained directly from the first source, by going directly to the object of research. Sources of data taken directly by researchers through interviews and documentation.⁷³Primary data in this study is in the form of interviews about the practice of sharing of agricultural products. Whereas the informants or informants are the actors of pact for agricultural products, namely from farmers both as cultivators and owners of agricultural land and local officials to find out the extent to which the community applies the legislation that already applies in Indonesia.

b. Secondary Data Sources

⁷²Moleong, Lexy J, *Metodologi Penelitian Kualitatif. Edisi Revisi. Cet.21.* (Bandung: Remaja Rosda Karya, 2005), 157.

⁷³ Amiruddin, Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta; Rajawali Pers, 2006),23.

Secondary data is data collected, processed and presented by other parties. Secondary data includes official documents, books, research results in the form of reports, and so on.⁷⁴ So that the secondary data is in the form of writings or articles relating to research material. In this study, secondary data was obtained from books on *fiqh muamalah* which had syafi'i and Hanafi madzhab and Law No. 2 of 1960 concerning Agreement of Agricultural Profit Sharing.

E. Data Collecting Technique

In the process of obtaining the required data, in this study the researcher used the data collection method as follows:

a) Interview

Interview method is a process of oral questioning between two or more people who face each other physically with the provision that one can see the other face, also can listen with his own ears.⁷⁵ With the interview method aims as an approach to get information from someone with a communication.

In this study researchers conducted interviews with the perpetrators of the practice of agricultural products, namely from farmers both as cultivators and owners of agricultural land and local officials, then used as primary data which is then reprocessed and combined with existing theories.

b) Documentation

Documentation is looking for data about things or variables in the form of notes, notes, books, newspapers, photos, magazines, inscriptions, minutes of

⁷⁴ Asikin, *Pengantar Metode Penelitian Hukum*, 30

⁷⁵ Sutrisno Hadi, *Metodologi Research*, (Yogyakarta: Fak Psikologi UGM), 192.

meetings, agendas, and so on.⁷⁶ The author uses this documentation method to obtain data and information obtained based on data from the local village device. In this documentation method, researchers used personal notes, cellphone recordings and photographs during interviews.

F. Data Processing Method

Data processing methods explain the procedure for processing and analyzing data according to the approach taken. Because this study uses qualitative etod, the method of data processing is done by deciphering the data in the form of regular sentences, collections, logical, not overlapping, and effective so as to facilitate the understanding and interpretation of data. Among them through stages: checking data (*editing*), classification (*classifying*), verification (*verifying*), analysis (*analyzing*), and making conclusions (*concluding*).

1. Data Check (*Editing*)

Examination of data is to examine the data that has been obtained, especially from the completeness of the answers, readability of the writing, clarity of meaning, suitability and relevance to other data.⁷⁷ In this study, researchers conducted an editing process on the results of interviews with informants from the practitioners of agricultural product sharing practices and officials in the Kisik Village, Bungah District, Gresik District, as well as several references that researchers used in conducting this study.

2. Classification (*Classifying*)

⁷⁶ Suharsimi Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktik*, (Jakarta: Rineka Cipta, 2006), 231.

⁷⁷ Abu Achmadi dan Colid Narkubo, *Metode Penelitian*, (Jakarta: PT. Bumi Aksara, 2005), 55.

Classification is the process of grouping all data from the results of interviews with the subject of research, observation and recording directly in the field or observation. All data obtained is read and studied in depth, then classified according to needs.⁷⁸ This is done so that the data obtained is easy to read and understand, and provides objective information needed by the researcher. Then the data is selected in sections that have similarities based on data obtained at the interview and data obtained through reference.

3. Verification (*Verifying*)

Verification is the process of checking data and information that has been obtained from the field so that data validity can be recognized and used in research.⁷⁹ Next is to reconfirm by submitting the data that has been obtained to the research subjects, in this case the actors of agricultural profit sharing both the owner of the farm and the cultivator as well as local officials in Kisik Village, Bungah District, Gresik Regency. This is done to ensure that the data obtained is truly valid and there is no manipulation.

4. Data Analysis (*Analyzing*)

The next step is to analyze the data that has been collected and then link between the data that has been collected and then link between the data that has been collected from the process of data collection, namely through interviews and observation with data sources such as Encyclopedia books, Laws, Journals, etc. to obtain results that are more efficient and perfect according to what the researchers expect. The method of analysis that describes the state or status of phenomena

⁷⁸Moleong, Lexy J, *Metodologi Penelitian Kualitatif. Edisi Revisi. Cet.21*, 104-105.

⁷⁹ Saidjana, Nana, dan Ahwal Kusuma, *Proposal Penelitian di Perguruan Tinggi*, (Bandung: Sinar Baru Argasindo, 2002), 84.

with words or sentences, then separated according to categories to obtain conclusions,⁸⁰ or called data analysis techniques.

In analyzing data, researchers used descriptive analysis techniques. This means that researchers are trying to describe how the practices of the sharing of agricultural products in the Kisik Village, Bungah District, Gresik Regency were then analyzed based on *fiqh* perspectives in the Syafiiyah and Hanafiyah schools and laws that apply in Indonesia, namely Law No. 2 of 1960 concerning agreements on agricultural product sharing

5. Conclusion (*Concluding*)

Next is the conclusion, which is the last step in the data processing. This conclusion will later become a data related to the research object of the researcher. This is called concluding, the conclusion of the data processing process which consists of four previous processes: *editing, classifying, verifying, analyzing*.

G. Data Validity Technique

Qualitative research must reveal objective truth, because the validity of data in qualitative research is very important. Through validity and credibility (trust) qualitative can be trusted.

The validity of the data is that each situation must be able to demonstrate the correct value, provide a basis for it to be applied, and allow external decisions that can be made about the consistency of the procedure and the neutrality of the theme and its decisions.⁸¹

In this study, researchers will use data validity testing techniques using triangulation techniques, namely checking data from various sources in various

⁸⁰Moleong, Lexy J, *Metodologi Penelitian Kualitatif*, 6.

⁸¹Moleong, Lexy J, *Metodologi Penelitian Kualitatif*, 320.

ways and various times.⁸² Triangulation consists of several types, among them are triangulation of sources, data, experts, and time.

As for this study, researchers used source triangulation, which uses a method of comparing a person's situation and perspective by comparing it with the contents of a related document, namely various books and other literature.



⁸² Sugiyono, *Metode Penelitian Pendidikan Pendekatan Kuantitatif, Kualitatif, R&D*, (Bandung: Alfabeta, 2008), 372.



CHAPTER IV

FINDING AND DISCUSSION

A. Profile and Overview of Research Objects

Kisik Village is one of several villages in Bungah District, Gresik Regency, East Java Province. Geographically, this village is located between plantations and rice fields. The area of Kisik village is 234,565 hectares. Population density has reached 1,803 more inhabitants. This village counts as an agrarian village because the majority of indigenous people rely on agriculture and fisheries as a livelihood. The daily lives of Kisik villagers are farming, fish farming, Holti farming, farm laborers, construction workers and other laborers and some people also have professions as employees in various industries in the district of Gresik.

The geographical location of Kisik village is in the area north Gresik Regency and Bungah District. The distance to the Capital District is as far as 3.5 Kilo meters and to the Regency Capital as far as 10 kilometers. The transportation

used is easily obtained by using Rural Transportation, but must travel a distance of one kilometer of the highway because the Transport has not been accessed into the Village. Mr. Idad as the village secretary explained that the borders of Kisik Village are as follows:⁸³

- a. North Side : Gumeng Village / Solo River
- b. South Side : Bungah Village
- c. West Side : Abar-Abir Village
- d. East Side : Indrodelik Village

Kisik Village, Bungah Sub-district, Gresik Regency consists of 9 RT and 4 RW, all of which are directly led by the Head Village with the following details:

- a. RW 1 : RT. 1, and RT. 2
- b. RW 2 : RT. 3, and RT. 4
- c. RW 3 : RT. 5, and RT. 6
- d. RW 4 : RT. 7, RT. 8, and RT. 9

Regarding the basic livelihoods of the residents of Kisik Village, the majority of the population is livelihoods for food crops and fisheries.

Activities economic of Village have been dominated by the agricultural sector. Considering that the Kisik village area is only 30% of rice fields, 40% are fisheries and the rest are moor / land which partially changes function and is stopped by Holti. Holti plants develop in the Kisik village area. Whereas from agriculture, fisheries in the village of Kisik have not fully produced optimal

⁸³Idad, *interview*, (Kisik: 29th March 2019)

results. This is due to the low level of knowledge and lack of supporting funds, and the low level of youth interest in agriculture. Even though in terms of marketing results, many traders are transacting in this region. Most of the people of Kisik Village are many construction workers, farm laborers, breeders and migrant workers and other jobs.

The level of income of the community is not fully sufficient for the necessities of life because the price of goods is not comparable to the income they receive and there is still a lack of provision of education, small wages of laborers and still high prices of basic necessities. This does not only happen in the Kisik Village, but also in other areas.

B. Practice of Agricultural Profit Sharing in Kisik Village, Bungah Subdistrict, Gresik Regency

In his life, the people in Kisik Village, Bungah Sub-District, Gresik Regency did farming activities, this was because the majority of the population worked as farmers and farm laborers. As farmers they cultivate paddy fields for planting, this is an agricultural activity commonly carried out by Kisik villagers both men and women and even husband and wife. The practice of agricultural profit sharing or cooperation in cultivating this agricultural land is one model of cooperation that is mostly carried out by the Kisik Village community, because there are people who have a lot of land but do not have enough labor to cultivate the land, there are also people who have agricultural land but Other work that must be done every day, there are also people who have workforce but they do not have agricultural land that can be cultivated, from that there arises

cooperation in agricultural land or the practice of agricultural profit sharing between rice field owners and cultivators.

Cooperation in managing rice fields in Kisik village involved two parties, namely the owner of the paddy field and the cultivator of the paddy fields, where in practice there were all costs borne by the cultivators of the rice fields, but there were also all costs borne by the owners of the rice fields so that the tenants only managed it. Harvests that occur in general are three times the rice harvest in one year, but sometimes also only harvest rice in one year, depending on weather conditions and the condition of the rice fields. When making an agreement, the owner of the rice field makes an agreement with the cultivator that the yield of each harvest is divided into half the cultivator and 1/2 part of the owner, if all costs are borne by the owner of the field, and if the costs are divided by 2/3 cultivator and 1/3 part of the owner. This is as expressed by Mr. Nur Fadhili as the device of the Kisik Village, he said that a:

“Kerjasama lahan pertanian atau praktik bagi hasil pertanian ini biasa dilakukan di Desa Kisik yaitu kerjasama penggarapan sawah yang dilakukan oleh pemilik sawah dan penggarap karena mungkin pemilik sawah memiliki banyak sawah namun tidak memiliki cukup tenaga untuk menggarapnya, atau bagi penggarap sawah yang memang mereka tidak mempunyai lahan untuk digarap sehingga mereka melakukan kerjasama. Untuk perjanjiannya rata-rata mereka menggunakan lisan tanpa ada saksi, istilahnya “omong-omongan” saja yang penting mereka saling percaya satu sama lain. Kalau pembagiannya biasanya tergantung modalnya dari siapa? Kalau dari penggarap biasanya “mertelu” 2/3 bagian penggarap dan 1/3 bagian pemilik sawah. Tapi kalau modalnya dari pemilik sawah biasanya pembagiannya separo yaitu 1/2 bagian penggarap dan 1/2 bagian pemilik.”⁸⁴

⁸⁴ Nur Fadhili, *Interview*, (Kisik: 10th February 2019)

(“Collaboration on agricultural land or the practice of sharing of agricultural products is usually done in Kisik Village, namely the collaboration of cultivating rice fields by paddy owners and cultivators because maybe the paddy owners have many fields but do not have enough labor to work on them, or cultivators who do not have land to work on so that they collaborate. For the agreement, on average they use oral without any witnesses, the term "talk" is all that matters is that they trust each other. If the distribution usually depends on the capital from whom? The cultivators are usually "mertelu" 2/3 of the cultivators and 1/3 of the owners of the rice fields. But if the capital from the owner of the paddy field is usually divided in half, that is ½ part of the cultivator and ½ part of the owner”).

However, in practice there are still people between the land owners and rice cultivators divide the results obtained from the cultivation of the rice fields. Which is the distribution of results from agriculture is not clear at the beginning of the agreement. In addition, the seeds that will be planted come from the owner of the rice fields and there are also those from the cultivators of the fields.

Some of the interviewees we interviewed, among others, are sutras as owners of rice fields, she is narrated about the background of cooperation in sharing the result of agriculture. Mrs. Sutatik said:

“Kerjasama lahan pertanian atau praktik bagi hasil pertanian ini sudah lama dilakukan yaitu kerjasama penggarapan sawah yang dilakukan oleh pemilik sawah dan penggarap karena mungkin pemilik sawah memiliki banyak sawah namun tidak memiliki cukup tenaga untuk menggarapnya, Lahan yang saya miliki ini subur dan cocok untuk ditanami padi. Sayangnya, saya dan anak-anak tidak bisa menggarapnya.”⁸⁵

(“Collaboration on agricultural land or agricultural profit sharing practices has long been carried out, namely cooperation in cultivating paddy fields by paddy owners and cultivators because maybe the paddy owners have lots of rice fields but do not have enough labor to cultivate them. Unfortunately, I and the children cannot work on it”).

⁸⁵ Sutatik, *Interview*, (Kisik: 16th February 2019)

It means that the level of soil fertility for rice farming is very fertile so that by planting rice it will produce good rice, landowners do not work on their own land because since her husband died, no one is able to work on it and they choose to work with cultivators to manage it expressed by Mrs. Sutatik as follows:

“Saya melakukan praktik kerjasama lahan pertanian ini sejak suami saya meninggal dunia, karena tidak ada lagi yang sanggup untuk mengelola sawah yang saya miliki. Anak-anak saya juga kerjanya diluar semua mbak, sehingga menuntut saya untuk bekerja sama dengan penggarap sehingga lahan saya tidak tidur.”⁸⁶

(“I have been practicing this agricultural land collaboration since my husband died, because no one else is able to manage the rice fields that I have. My children also worked outside of all the women, so I demanded that I work with cultivators so that my land would not sleep”).

The relationship between sharecroppers and land managers is kinship and neighbors who are well known by the land owner as expressed by Mrs. Sutatik:

“Hubungan saya dengan pengelola lahan saya adalah tetangga, ia sudah saya percaya untuk mengolah lahan saya karena ia jujur dan tidak neko-neko.”⁸⁷

(“My relationship with my land manager is a neighbor, I have trusted him to cultivate my land because he is honest and not adventurous”).

Another opinion from Mr. H. Kastolan as landowners who did not work on their own land was because they had other jobs that could not be abandoned so he did not have time to do it and he chose to work with cultivators to be managed, said H. Kastolan:

“Saya melakukan praktik kerjasama lahan pertanian ini karena saya ada kesibukan lain yaitu sebagai pedagang tetapi saya

⁸⁶ Sutatik, *Interview*, (Kisik: 16th February 2019)

⁸⁷ Sutatik, *Interview*, (Kisik: 16th February 2019)

memiliki banyak sawah dan tidak memiliki cukup waktu untuk menggarap sawahnya, oleh karena itu saya melakukan kerjasama lahan pertanian dengan sistem bagi hasil ini. Dalam hal ini tidak hanya bekerjasama dengan satu orang penggarap akan tetapi dengan beberapa orang penggarap, dimana ada yang seluruh biaya ditanggung oleh penggarap ada yang saya tanggung semua tergantung kemampuan materi dari penggarap sawah tersebut.”⁸⁸

(“I am practicing this agricultural land because I have another busy life, namely as a trader, but I have a lot of rice fields and do not have enough time to work on the fields, so I collaborated on agricultural land with this profit sharing system. In this case, not only working with one cultivator, but with some cultivators, where all the costs borne by the cultivator there are all that I bear depending on the material ability of the cultivator of the field”).

In addition to the above speakers, we also interviewed the cultivators of the fields from the perpetrators of agricultural production practices to express the background of cooperation between land owners and cultivators, namely Mrs. Kholifah, who until now has worked on several people's fields to meet their daily needs. This was revealed by Mrs. Kholifah, she said:

“Saya dan suami saya menggarap sawahnya orang ini kurang lebih 12 tahun, karena tidak memiliki sawah dan berprofesi sebagai petani sekaligus buruh tani untuk memenuhi kebutuhan sehari-hari. Menurut saya bagi hasil pertanian merupakan kerjasama penggarapan sawah oleh pemilik sawah dengan penggarap dengan ketentuan mulai bibit, pupuk, obat, biaya penanaman, biaya perawatan, biaya panen semuanya ditanggung oleh penggarap dan untuk pembagian hasil tergantung kesepakatan. kami tidak hanya menggarap sawahnya 1 orang saja, ada sekitar 4 orang yang sawahnya saya garap sama suami saya selama ini tapi untuk sekarang saya hanya bekerjasama dengan 2 orang saja.”⁸⁹

(“My husband and I worked on this man's paddy field for approximately 12 years, because they did not have rice fields and work as farmers and farm laborers to fulfill their daily needs. In my opinion, the share of agricultural products is a

⁸⁸H. Kastolan, *Interview*, (Kisik: 9th March 2019)

⁸⁹ Kholifah, *Interview*, (Kisik: 17th February 2019)

collaboration of cultivating rice fields by the owners of rice fields with cultivators with provisions starting from seedlings, fertilizers, medicines, planting costs, maintenance fees, all harvest costs borne by the cultivators and for the distribution of results depending on the agreement. we not only work on one field, there are around 4 people whose fields I have worked with my husband all this time but for now I only work with 2 people”).

Another opinion from Mrs. Suji'ah as a cultivator of rice fields where he has also worked on a number of fields owned by others for a long time because indeed he does not have rice fields. However, in collaborating with the owner of the fields one another is different in terms of the agreement. This was revealed by Ms. Suji'ah, she said:

“Kerjasama lahan pertanian ini sudah lama saya lakukan sejak suami saya masih hidup sampai sekarang sudah meninggal dan sekarang dibantu oleh anak dan menantu saya kira-kira selama 20 tahun, karena tidak memiliki sawah dan berprofesi sebagai petani sekaligus buruh tani untuk memenuhi kebutuhan sehari-hari. Praktik bagi hasil lahan pertanian adalah kerjasama penggarapan sawah oleh pemilik sawah dengan penggarap dengan ketentuan mulai dari bibit, pupuk, obat, biaya penanaman, biaya perawatan, biaya panen semuanya ada yang ditanggung oleh penggarap dan ada yang ditanggung oleh pemilik sawah tergantung kesepakatan. Karena saya tidak hanya melakukan kerjasama dengan seorang saja. Kalau saya menggarap sawahnya Mr. Na'in semua biaya saya tanggung. Akan tetapi kalau saya menggarap sawahnya Mr. Ishaq semua biaya ditanggung beliau.”⁹⁰

(“I have been working on this agricultural land for a long time since my husband was still alive and has now died and is now assisted by my son and daughter-in-law for about 20 years, because he does not have rice fields and works as a farmer and farmer to meet his daily needs. . The practice of profit sharing of agricultural land is the cooperation of cultivating rice fields with the owners of rice fields with cultivators with provisions ranging from seedlings, fertilizers, planting costs, maintenance costs, all harvest costs borne by the cultivators and some borne by the owner of the rice fields depending on the agreement. Because I

⁹⁰ Suji'ah, *Interview*, (Kisik: 24th February 2019)

don't only collaborate with one person. If I work on the rice fields, Mr. All costs are my responsibility. But if I work on his rice fields, Mr. Ishaq all the costs borne by him").

Furthermore, for the mechanism of agricultural land cooperation in the Kisik Village, Bungah Subdistrict, Gresik Regency, it varies because it is in accordance with the agreement of the parties from the cultivators and the owners of the rice fields.

The agreement between the owners of the rice fields and the cultivators described by Ms. Kolifah as cultivators of the fields is:⁹¹

- a. The agreement was carried out as was customary in the Kisik Village from the past until now. At first the owners of the rice fields who could not work on their fields or other activities came to the farmers who are usually considered clever in managing agricultural land, both farmers who have rice fields or farmers who do not have rice fields, then the owners of rice fields offer farmers to cultivate their fields with profit sharing systems between rice field owners and cultivators.
- b. If the cultivator agrees then this is considered an agreement according to the Kisik Village community, the agreement was made verbally, without writing, and there were no witnesses because of the habits they carried out in such a way by holding the principle of mutual trust between paddy owners and cultivators.

This is the same as expressed by Ms. Suji'ah:

"Kalau perjanjiannya ya lewat omongan saja mbak, yang penting sama-sama sepakat dan saling percaya. Kalau pakek

⁹¹ Kholifah, *Interview*, (Kisik: 17th February 2019)

surat tertulis khawatirnya malah timbul rasa tidak percaya antara satu sama lain."⁹²

("If the agreement is just through talk, bro, the important thing is to agree and trust each other. If you use a written letter you are worried that you might even feel a sense of distrust between one another").

- c. For a period of time it is not limited by the owner of the rice fields with the meaning that it is up to the cultivators to manage the fields until when. In other words, because the agreement is not restricted, the agreement can also end at any time, even though one of the parties does not want to end the agreement. If there is one party that wants to end the agreement then it must notify the other party in advance.

Like the phrase Sutatik's mother, she said:

*"Kalau sawah saya itu saya pasrahkan sepenuhnya mbak ke penggarapnya, pokoknya digarap dengan baik sampai kapanpun. Daripada tidak digarap dan tidak ada hasilnya. Saya cuma berpesan ke pihak penggarap yang penting sawah ini jangan sampai dijual ataupun digadaikan."*⁹³

("If the agreement is through talk, ma'am, what is important is that they are equally quiet." If I leave my rice field, I will leave the cultivator fully, the principal will be worked well until whenever. Instead of not working and no results. I just told the cultivators that it was important that the paddy fields not be sold or mortgaged").

The phrase from Mrs. Suji'ah, she said:

*"Saya pernah dihentikan menggarap sawah milik Mr. R karena mendadak sawahnya dijual padahal waktu itu belum selesai masa panennya, mau nggak mau ya saya kembalikan sawahnya tapi saya dikasih ganti rugi modal penanaman tersebut."*⁹⁴

("I was stopped working on Mr. rice fields. R because suddenly the rice fields were sold even though the harvest period had not yet finished, I couldn't help but return the fields but I was given compensation for the planting capital").

⁹² Suji'ah, *Interview*, (Kisik: 24th February 2019)

⁹³ Sutatik, *Interview*, (Kisik: 2nd March 2019)

⁹⁴ Suji'ah, *Interview*, (Kisik: 24th February 2019)

- d. The owner of the rice field agreed that all the costs of cultivating rice fields were borne by the cultivators, starting from planting, purchasing fertilizers, purchasing drugs, to the harvesting process, and all management costs borne by the cultivators. And when the harvest time comes, the harvest is divided into two-thirds of the cultivator and 1/3 of the owner of the rice field

The process of planting rice was revealed by Mr Nadzir as a cultivator of rice fields and opinions from other communities, namely through several stages as follows:⁹⁵

- a. Land Opening, namely the process of cleaning agricultural land to be planted by cultivators by removing or cutting existing grass. Usually the cultivator uses a hoe to hoe the soil so that later the soil is not hard when it will be planted, this is done before the rainy season comes.
- b. Seed Preparation, after it is felt that the rain water is enough to wet the fields so that it is easy to plant, the cultivators prepare seeds or seeds. Usually the cultivator buys it from a farm shop, or for cultivators who do not have capital can owe the seed to the farm shop owner and will be paid after harvest.
- c. Seed Planting, after the seeds are ready to be planted, the cultivators sprinkle seeds into a small plot of rice fields that have been hoeed and filled with water, after which the seeds will be allowed to grow until they are 30 days old or until the small rice can stand alone and not collapse when exposed to wind

⁹⁵ Nadzir, *Interview*, (Kisik: 10th March 2019)

- d. Planting rice, the next process after the rice is ready to be planted is the extraction of rice from the small soil and then the cultivator hires farm laborers to plant rice in all the rice fields that are cultivated.
- e. Fertilization, after planting 30 days of paddy, will be given fertilizer by cultivators, and 30 days after the first fertilizer of rice must also be fertilized again so that the rice is fast and so that the rice is protected from pests, people usually use drugs. If the cultivator does not have the cost to buy medicine, the cultivator usually owes the medicine from the farm shop and will be paid when the harvest arrives.
- f. Paddy Care, aside from being given fertilizer and rice medicine, it must also be treated well so that the harvest is fast, usually the cultivators employ farm laborers to pluck the weeds that grow around the paddy so that the grass does not inhibit the process of growing rice.
- g. Harvest, after rice grows well and bears fruit, rice will be ready for harvest. It usually takes 3 months from planting rice to rice ready to be harvested. Cultivators will employ farm laborers to harvest the paddy.

Furthermore, in the implementation of profit sharing, in general the implementation of the profit sharing of the Kisik Village community is carried out by determining the profit sharing at the beginning, which depends on the agreement between the owner of the rice field and the cultivator. This form of profit sharing cooperation is mostly carried out by the majority of the residents of Kisik Village for the yield of rice plants. The number of seeds provided must be adjust to the cultivated land. For example for the land area of 1/2 hectare requires seeds of approximately 40 kg of seeds.

The types of seeds to be planted are entirely handed over to the cultivating parties, if all capital comes from cultivators. In addition, there are those from the owner of the rice fields, if all the capital comes from the owner of the rice fields. This is as expressed by Mr. Kastolan, he said:

“Kalau benih/bibit tergantung modalnya dari siapa mbak, kalau modalnya dari saya ya saya sediakan bibit padi yang mau ditanam, kalau modalnya dari penggarap ya saya serahkan sepenuhnya mau ditanami bibit apa saja, yang penting nanti hasilnya dibagi sama saya.”⁹⁶

(“f the seed / seed depends on the capital from whom, bro, if I am from the capital, I will provide paddy seeds to be planted, if I give the capital from the cultivator, I will fully plant any seeds”).

Costs in production facilities or working capital are borne by the cultivator fully, as explained by Mrs. Kholifah as the cultivator of the fields, including:⁹⁷

- a. Seeds : IDR 10,000 per Kg requires 40 Kg
(40 x Rp. 10,000 = Rp. 120,000)
- b. Fertilizer : Rp. 130,000 per sack requires 4 sak
(4 x 130,000 = Rp.520,000)
- c. Organic medicine : IDR 50,000 per bottle requires 2 bottles
(2 x Rp.50,000 = Rp.100,000)
- d. Rice Mill : Rp.450,000
- e. Farmer Labor Wages : Rp. 30,000 per person needs 12 people
(12 x 30,000 = Rp.360,000)

Furthermore, the researchers also interviewed how many kinds of cooperation were carried out by the Kisik villagers in the agricultural sector and

⁹⁶ Kastolan, *Interview*, (Kisik: 9th March 2019)

⁹⁷ Kholifah, *Interview*, (Kisik: 17th February 2019)

whether it was in accordance with *fiqh*, this was revealed by Ibu Suji'ah as a cultivator of rice fields, she said:

“Kurang tahu mbak, yang saya tahu kerja sama yang saya lakukan ini pupuk, bibit dan biaya operasional yang menanggung pemilik lahan, ada juga biaya operasional, pupuk dan bibit biayanya paroan, ada juga semua biaya ditanggung oleh penggarap, sehingga pemilik lahan terima hasil. Gitu saja, kalau istilahnya apa itu kurang tahu. Kalau ditanya apa sudah sesuai fiqh, saya juga kurang tau, karena minimnya pengetahuan tentang fiqh saya, selama ini saya melakukan praktik bagi hasil selalu ada rasa saling percaya antara kedua belah pihak dan selama ini juga belum pernah mengalami kerugian. Jadi saya fikir ini sudah sesuai ajaran Islam mbak”⁹⁸

(“I don't know, Ms., who I know is the collaboration that I do, fertilizer, seeds and operational costs that bear the landowners, there are also operational costs, fertilizers and seeds costing partially. Just like that, if the term does not know. If asked what is in accordance with *fiqh*, I also don't know, because of the lack of knowledge about my *fiqh*, so far I have practiced profit sharing, there has always been mutual trust between the two parties and so far I have never experienced a loss. So I think this is in accordance with Islamic teachings, Ms”).

Another expression from one of the Kisik Village devices, Mr. Nur

Fadhili, who is also a community figure in Kisik Village, he said:

“Kalau untuk masyarakat desa Kisik sendiri setahu saya kalau dalam muamalah ya banyak menggunakan madzhab Syafi'i dan Hanafi. Tapi untuk teori-teorinya mungkin mereka masih kurang faham karena hanya sedikit yang alumni dari pesantren, sehingga untuk menerapkan teori yang digunakan dalam praktik bagi hasil pertanian ini masih mengambang. Mereka hanya mengandalkan rasa saling percaya dan keadilan antara kedua belah pihak”⁹⁹

(“As for the Kisik village community, as far as I know, in muamalah there are a lot of Syafi'i and Hanafi schools. But for his theories, maybe they still don't understand because there are only a few alumni from the pesantren, so to apply the theory used in the practice of profit-sharing this farm is still floating.

⁹⁸ Suji'ah, *Interview*, (Kisik: 24th February 2019)

⁹⁹ Nur fadhili, *Interview*, (Kisik: 10th February 2019)

They only rely on mutual trust and justice between the two parties”).

Furthermore, to the core of the question of cooperation such as what is used in the practice of sharing agricultural products, Ms. Kholifah said:

“Saya kurang tahu mbak istilahnya, yang saya tahu kerja sama yang saya lakukan pupuk, bibit dan biaya operasional yang menanggung saya semua”¹⁰⁰

(“I don't know what the term is, which I know is the collaboration that I do with fertilizers, seeds and operational costs that bear me all”).

Almost the same as other informants, they don't know much about the term *muzâra'ah* dan *mukhâbarah*. It's just based on the capital from whom later it will be used as a reference in the distribution of results between rice field owners and cultivators of rice fields.

Furthermore on the magnitude of the results obtained between land owners to the managers (of ratio / portion), Mr. Kastolan as land owners say:

“Oh tentang porsi bagi hasil yang diterima tergantung hitungan biaya yang dikeluarkan masing-masing mbak, contohnya kerjasama yang saya lakukan ini ada yang seluruh biaya saya tanggung maka saya membuat kesepakatan dengan penggarap porsinya yaitu 30% untuk penggarap dan 70% untuk saya, tapi kalau seluruh biaya ditanggung oleh penggarap saya membuat kesepakatan dengan penggarap porsinya yaitu 50% untuk penggarap dan 50% untuk saya.”¹⁰¹

(“Oh, about the portion of the profit received depends on the cost of each one, for example, the collaboration that I have done is all of my costs, so I made an agreement with the cultivator, 30% for the cultivator and 70% for me, but if all The fee is borne by the cultivator, I made a deal with the cultivator, namely 50% for the cultivator and 50% for me”).

¹⁰⁰ Kholifah, *Interview*, (Kisik: 17th February 2019)

¹⁰¹ H. Kastolan, *Interview*, (Kisik: 9th March 2019)

Unlike the other informants, namely Mrs. Kholifah as a cultivator of rice fields, she said:

“Kalau untuk porsi/besaran bagi hasil yang saya dapat itu 2/3 untuk saya dan 1/3 untuk pemilik sawah, Karena semua biaya saya yang menanggung. Untuk pemberian bagi hasil ini saya kasihkan pertahunnya mbak, soalnya pemilik sawah meminta untuk setoran pertahun saja. jadi kalau setahun saya panen tiga kali ya saya hitung semua, hasilnya terus saya bagi.”¹⁰²

(“For the portion / amount of profit sharing that I got, it was 2/3 for me and 1/3 for the owner of the paddy field, because all of my expenses were borne. For giving this profit sharing, I would like to thank you for the year, because the owner of the rice field asks for a deposit every year. So if I harvest three times a year, I count all, the results will continue to be shared”).

Next, interview the researcher with the managing farmer or cultivator to reveal the agreement of the cooperation carried out, with the core question Who provides the seeds, and other tools, Ms. Kholifah said:

”Yang menyediakan bibit, dan pupuk ada kalanya penggarap dan adakalanya pemilik lahan, ada juga yang menyediakan pupuk bibit dan lain-lain penggarap atau sebaliknya yaitu pemilik lahan dan nanti bagi hasil sesuai dengan kesepakatan.”¹⁰³

(“There are times when those who provide seeds, and fertilizers, are cultivators and sometimes landowners, there are also those who provide seed fertilizer and others who are cultivators or vice versa namely land owners and later share the results according to the agreement”).

Whereas if the arable land is affected by a problem so that it can lead to a threat of crop failure, then in this case the responsibility is shared, as Mrs. Sutatik said as the owner of the rice field:

“Biaya-biaya yang dikeluarkan entah itu dari pemilik lahan atau penggarap apabila sawah mengalami gagal panen maka seluruh biaya kerugian kita tanggung bersama, artinya kalau misalnya biaya semuanya dikeluarkan oleh penggarap ya

¹⁰² Kholifah, *Interview*, (Kisik: 17th February 2019)

¹⁰³ Kholifah, *Interview*, (Kisik: 17th February 2019)

berarti kita merelakan untuk tidak mendapatkan hasil bagian dari penggarapan sawah itu."¹⁰⁴

("The costs incurred either from the landowner or the cultivator if the rice field fails to harvest, then all of the costs of our losses are shared, meaning that for example the costs are all spent by cultivators, it means we are willing to not get the share of cultivating the fields").

Almost the same as Mrs. Kholifah as the cultivator of the fields who said

that:

*"Alhamdulillah, selama ini masih belum pernah mengalami gagal total dalam panen. Tapi untuk pendapatan hasil panen itu tidak pasti kalau bagus ya dapatnya banyak, tapi terkadang jelek ya dapatnya cuma sedikit. Jika lahan garapan terkena masalah yang mengakibatkan gagal panen, saya membuat kesepakatan dengan pihak pemilik sawah untuk tidak memberikan hasil kalau memang benar-benar gagal total dalam panen tersebut."*¹⁰⁵

("Alhamdulillah, all this time I have never experienced a total failure in the harvest. But for harvest income it is uncertain if it is good, it can get a lot, but sometimes it is bad, so it can only be small. If the arable land is affected by problems that result in crop failure, I made an agreement with the owner of the paddy field to not produce results if it really failed miserably in the harvest").

Regarding the benefits of interviewing researchers with landowners, interviews were obtained with the core questions. How many times the harvest and profits in a year, Mrs. Kholifah said:

*"Dalam setahun saya panen 2-3 kali, seringnya ya 3 kali mbak. Untuk panennya selalu panen padi karena memang ditanami padi. Hasil panen padi untuk sekali panen penghasilan bersih saya rata-rata untuk satu bahu lahan Rp. 5.500.000 kalau setahun ya berarti dikali 3 mencapai Rp. 16.500.000"*¹⁰⁶

("Within a year I harvest 2-3 times, often 3 times mbak. The harvest always harvests rice because it is planted with rice. The rice yield for one harvest of my net income on average for one shoulder of land is Rp. 5,500,000 if one year means 3 times to reach Rp. 16,500,000").

¹⁰⁴ Sutatik, *Interview*, (Kisik: 16th February 2019)

¹⁰⁵ Kholifah, *Interview*, (Kisik: 17th February 2019)

¹⁰⁶ Kholifah, *Interview*, (Kisik: 17th February 2019)

Furthermore, the researchers interviewed the speakers both from the perpetrators of agricultural product sharing practices and from the government of the Kisik Village regarding the existence of the Law governing the Agricultural Production Sharing Agreement, namely Law No.2 of 1960 concerning Agreement of Agricultural Profit Sharing that are still valid until now. All informants of the practice of sharing the results of agricultural land cooperation said that they were not aware of the existence of Law No.2 of 1960 concerning Agreement of Agricultural Profit Sharing. This was revealed by Ms. Kholifah as a cultivator of rice fields, she said

“Saya tidak tau kalau ada Undang-Undangnya mbak, tidak pernah ada sosialisasi di desa. Saya melakukan kerjasama ini tanpa sepengetahuan Kepala Desa, karena saya pikir saya cuma menggarap sawahnya orang bukan menyewa. Kalau nyewa ya biasanya pakai surat perjanjian tertulis kalau nggarap ya cukup omong-omongan atau serah terima antara kedua belah pihak yang terpenting kami sepakat dengan perjanjian tersebut.”¹⁰⁷

(“I do not know if there are laws and regulations, bro, there has never been socialization in the village. I did this collaboration without the knowledge of the Village Head, because I thought I was only working on the fields of people not renting. If you rent it, you usually use a written agreement if you hope that it is enough talk or handover between the two most important parties we agree with the agreement”).

Likewise with Mrs. Sutatik as the owner of a rice field, she said:

“Saya tidak tahu sama sekali tentang UU No.2 Tahun 1960 Tentang Perjanjian Bagi Hasil Pertanian, karena dari dulu ya sistemnya sama saja mbak. Pemilik sawah menyerahkan sawahnya ke penggarap langsung tanpa melapor ke Kepala Desa. Selama ini juga tidak pernah ada teguran dari pihak pemerintah desa jadi ya saya pikir ini semua sudah menjadi tradisi dari masyarakat Desa.”¹⁰⁸

¹⁰⁷ Kholifah, *Interview*, (Kisik: 17th February 2019)

¹⁰⁸ Sutatik, *Interview*, (Kisik: 2nd March 2019)

(“I did not know at all about Law No.2 of 1960 concerning Agricultural Production Sharing Agreements, because the system had been the same as Ms. The owner of the rice field handed over his fields to the cultivator directly without reporting to the Village Head. During this time there has also been no warning from the village government so yes I think this has all become a tradition of the village community”).

In addition, in response to the Kisik Village government revealed by Mr Ali Ishaq as the head of Kisik Village, he said:

“Saya pernah mendengarkan tentang Undang-Undang No. 2 Tahun 1960 Tentang Perjanjian Bagi Hasil Pertanian itu, akan tetapi mungkin belum bisa diterapkan di masyarakat desa karena kebanyakan mereka lebih mengutamakan adat kebiasaan mereka yang sudah dari dulu terjadi. Selain itu kami juga selama ini belum pernah ada sosialisasi dari pihak atas seperti kecamatan maupun kabupaten yang membahas mengenai peraturan perjanjian kerjasama bagi hasil pertanian. Saya kira hal ini wajar karena merupakan hal yang sederhana hanya saja membutuhkan sikap saling percaya satu sama lain dan keadilan dalam bagi hasil antara pemilik sawah dan pihak penggarap sawah.”¹⁰⁹

(“I have heard about Law No. 2 of 1960 concerning the Agricultural Production Sharing Agreement, but it may not be applicable in the village community because most of them prioritize their customary practices. In addition, we have also never had socialization from top parties such as sub-districts and regencies discussing regulations on cooperation agreements for agricultural products. I think this is reasonable because it is a simple matter, it only requires mutual trust and profit sharing justice between the rice field owners and the rice cultivators”).

From the results of interviews that researchers conducted with the parties who did the practice of sharing agricultural products, it had long been carried out that the collaboration of agricultural land or the practice of sharing of agricultural products in Kisik Village involved two parties, namely rice field owners and cultivators. Owners of rice fields offer farmers who are considered clever to

¹⁰⁹ Ali Ishaq, *interview*, (Kisik: 29th March 2019)

cultivate fields to cultivate their fields because the owners of rice fields have other activities or are not very good at working on rice fields, if the cultivator agrees then an agreement between rice field owners and cultivators is taking place. In carrying out the agreement they did not do it in writing, but instead used a familial way with mutual trust between the owners of the fields and cultivators for the obligations they must fulfill in the collaboration of agricultural land with the profit sharing system. The owner of the paddy field has the obligation to hand over the paddy fields to be cultivated by the cultivator, and the cultivator has an obligation to share the harvest with the owner of the paddy according to the agreement. In this case there are some communities in which the entire capital (seed, fertilizer, and the entire cost of cultivation of paddy) borne by rice cultivators, in *fiqh* known as *mukhâbarah* and there are all of the costs borne by the land owners in *fiqh* known as *muzâra'ah*.

C. Practice of Agricultural Profit Sharing in Kisik Village Bungah Subdistrict Gresik Regency Based on *Fiqh* in View of Syafi'iyah and Hanafiyah Madzhab Perspective

In the science of *fiqh*, the regulation on the sharing of agricultural products or what is called *muzâra'ah* and *mukhâbarah* has been described, such as contract, profit-sharing and the obligation to pay zakat. Below the author will try to do an analysis of the practice of sharing agricultural products what was done by the people of Kisik Village, Bungah Subdistrict, Gresik Regency was reviewed *fiqh* in the view of the Syafi'iyah and Hanafiyah schools.

1. Contract

Muzâra'ah and *mukhâbarah* is a form of cooperation in the fields of agricultural land according to Islam. *Muzâra'ah* is an agricultural management collaboration between land owners and cultivators, namely the landowner gives the farmer the land to be planted and maintained in return for certain parts of the crop. In this collaboration there are two parties as the owner of capital, while on the other hand as the executor of the business. Both have an agreement for cooperation, then the results will be divided according to the agreement. *Mukhâboil* nor is it much different from *muzâra'ah*, it's just that if *muzâra'ah* seeds from landowners.

Such as opinion of Syafi'iyah scholars that *muzâra'ah* is a cooperation contract between landowners (maalik) and workers (amil) to grow crops, with seeds originating from the land owner, and with a profit sharing system as agreed. While the terminology *mukhâbarah* is cooperation contracts *muzâra'ah*, it's just the seed comes from the workers.¹¹⁰ As for the ulama hanafiyah *muzâra'ah* is a contract for processing and planting (land) for a portion of the proceeds. While *mukhâbarah* is an earth processing transactions with the (wage) most results out of him. In this case management or cultivators are not only responsible for managing or working on field, but also responsible for removing seeds or plant seeds.¹¹¹

Based on the interview results from the informants above, there are two forms of contract in the implementation of cooperation in the practice of sharing the results of agricultural land in the Kisik Village, Bungah District, Gresik

¹¹⁰Mustofa al-Khin, Mustofa al-Bugho and Ali al-Syarbaji, *al-Fiqh al-Manhaji 'Ala mazhab al-Imam al-Syafi'I*, Vol III. 197.

¹¹¹ Imam Taqiyuddin, *Kifayatul Ahyar*, 319.

Regency, namely *muzâra'ah* and *mukhâbarah*. Where both are a form of cooperation contract for the cultivation of agricultural land, but there are differences in terms of capital. In practicing *muzâra'ah* and *mukhâbarah* there must be land owners and farmers. Besides that, there must also be an agreement agreement and handover of rice fields or agricultural land that are objects of *muzâra'ah* and *mukhâbarah* and no agreement on seeds and agricultural equipment as well as sharing agreement for the harvest.

The Syafi'iyah Ulama argue that the *muzâra'ah* contract invalid, except when *muzâra'ah* follow on contract *musâqah* (cooperation between garden owners and farmers in managing the trees in the garden, the results of which will be divided according to mutual agreement). For example, if there is cooperation in processing plantations, then there is empty land that can be used for *muzâra'ah* (agriculture), then, according to the scholars of Syafi'iyah, *akad muzâra'ah* can be done. This contract does not stand alone, but by the contract *musâqah*.¹¹²

Meanwhile, *mukhâbarah* (*muzâra'ah* the seed from the worker) according to the Syafi'iyah cleric, the law may not even though the status follows the *musâqah* contract, because there is no proposition that shows its compliance.¹¹³

And explained in the book of Fath al Qarib is explained when one submits the earth to a person so that he/she (as a rice, pen.) and promises to him will give a clear part of the outcome, then such submission Law is not allowed. But, Imam Nawawi followed Ibn Mundzir's opinion, choosing that Mukhabarah is permissible.

¹¹² Sairazi, *al-Muhazzab*, Juz 1, (Mesir: Isa Babi al-Halabi, tth), 394.

¹¹³ Sairazi, *al-Muhazzab*, Juz 1, 394.

If a person rents the earth to a person using gold or silver, or the man promises to Amil by Membei food that can be known in the dependents of Malik, then the law may be. As for if Malik handed over to the people (Amil) a field of Earth that many plants land or a little, then it is better to be very confusing for the plant, and to be able to get to the amil of the Earth, then this *muzâra'ah* because Follow to *Musâqah*.¹¹⁴

As explained in the previous chapter, the terms of *muzâra'ah* and *mukhâbarah* according to Hanafiyah scholars is, consent and qabul. Namely the landowner said to the tenants, "I leave this land to you as *muzâra'ah* and *mukhâbarah* with wages so. "Then the tenants said, "I accept, "or" I agree, "or word which shows that he receives and approves it. If the consent and qabul have happened, then the *muzâra'ah* contract will apply and *mukhâbarah* between them.¹¹⁵

While the elements of the *muzâra'ah* contract and *mukhâbarah* there are three, namely: land owners, tenants, and the third is the object of the contract which has two possibilities, namely expediency land or jobs tiller (the first meaning the tenants renting land, while the latter means the land owners hired or hired him to work on the land). Both of these in *fiqh* are called *ijârah* contracts. According to the scholars of Hanafiyah, akad *muzâra'ah* in the beginning it was a form of *ijârah* contract, whereas in the end it was syirkah (cooperation, joint venture, joinan). If the seeds are from the cultivator, then the object of the contract

¹¹⁴ Al-Alammah Muhammad bin Qasim Al-Ghazi, *Fathul Qarib*, 38.

¹¹⁵ Alaa al-Din al-Kaasaani, *Al-Badaai' al-Sanaai fi tartib al-Sharaa'i*, Vol VI (Cairo: Al-Matba'a al-Jamaaliyya, 1910), 176.

means land use. Whereas if the seed is from the land owner, then the object of the contract means the benefit (read: work) of the cultivator.¹¹⁶

For the object of the contract, the number of scholars who allow *muzâra'ah* and, requires also to be clear, both in the form of farmer services, so that the seeds that will be planted come from the landowners, as well as the use of land, so that the seeds are from farmers.

Abu Yusuf and Muhammad ibn al-Hasan ash-Syaibahi stated that in terms of whether the *muzâra'ah* law is valid or not, there are four forms of *muzâra'ah*, namely:¹¹⁷

- a) If the land and seeds of the owner of the land, work and equipment of the farmer, so that the object of the *muzâra'ah* is the service of the farmer, then the law is valid.
- b) If the land owner only provides land, while the farmer provides seeds, tools and work, so that the object of *muzâra'ah* is the benefit of the land, then the contract of *muzâra'ah* is also valid.
- c) If the land, tools, and seeds of the land owner and the work of the farmer, so that the object of *muzâra'ah* is the service of the farmer, then the contract of *muzâra'ah* is also valid.
- d) If agricultural land and tools are provided by landowners and seedlings as well as work from farmers, then this contract is not valid. According to Abu Yusuf and Muhammad ibn al-Hasan ash-Syaibani, determining agricultural equipment from landowners made this contract damaged, because agricultural equipment should not follow the land. According to them, the benefits of

¹¹⁶ Wahbah Zuhaili, *Al-Fiqh Al-Islami wa Adillatuhu* Juz 6, 565.

¹¹⁷ Alaa al-Din al-Kaasaani, *Al-Badaai' al-Sanaai fi tartib al-Sharaa'i*, Vol VI, 179.

agricultural tools are not the same as the benefits of land, because land is to produce plants and fruit, while the benefits of the tool are only to cultivate the land. Agricultural equipment, according to them, must follow farmers, not landowners.

People who carry out contracts ('aqiidain) in Islam are required to be capable adults in doing their deeds and understanding. In addition, the contract intended is the purpose and purpose. The contract carried out by the Kisik Village community was verbally without written evidence and witnesses were not present. Nevertheless, in the view of *fiqh*, it is still valid because in the contract there is a principle of obedience.

The Kisik village community at the time of the contract was clearly stated, namely to provide benefits for the land (landowners) and offer their labor (sharecroppers), with proof that one of them came to each other. See Kisik village community who do contract *muzâra'ah* and *mukhâbarah* are actually people who are already mature and rational, then the contract is done Kisik Village community is already qualified in *fiqh* and in accordance with the view Hanafiyah schools. However, in the view of the Syafi'iyah schools of thought it is still not appropriate because in the practice of *muzâra'ah* Kisik Village economic did not follow the contract *musâqah*.

2. Capital

It is in the contract practice *muzâra'ah* and *mukhâbarah* one of which is the capital. Capital in practice *muzâra'ah* and *mukhâbarah* is in the form of the land from the owners of rice fields, seeds for planting and power tillers. In Islam the ownership of a capital must be clear that the capital is truly its ownership.

Seeing this, the existing capital in practice *muzâra'ah* and *mukhâbarah* in Kisik Village it is truly owned by landowners and sharecroppers. Just as the land to be planted is clearly the boundaries and the land can be planted.

In connection with the capital, Imam Abu Yusuf and Muhammad bin Hasan ash-Syaibani states that if the assets in the form of land or the fields provided by pemilik land while the seeds, agricultural tools and power provided by sharecroppers then contract *muzâra'ah* and *mukhâbarah* are legitimate.¹¹⁸

In practice *muzâra'ah* and *mukhâbarah* both parties (*'aqidain*) can be said to be involved, because landowners are people who have fields or agricultural land that will be worked on, then the owner of the land is a land investor. While the smallholders are said to be investors because the seeds to be planted and maintenance costs during the cultivation process are borne by the cultivating farmers, so in this case the sharecroppers as seed investors.

Practice for the results *muzâra'ah* and *mukhâbarah* performed by villagers in Kisik is that the seeds, farming tools and actions of workers and cost of paddy cultivation is entirely derived from the peasants, being land or paddy is from the land owner. Seeing the reality *muzâra'ah* and *mukhâbarah* conducted by Kisik Village community in terms of capital can be said according to the *jurisprudence* in view Hanafiyah schools.

3. Profit Sharing of Agricultural

Things become ends in cooperation *muzâra'ah* and *mukhâbarah* is a division of the rice fields. For results in *muzâra'ah* and *mukhâbarah* is a form of profit sharing between the land owners and tenant farmers from the processing of

¹¹⁸: Alaa al-Din al-Kaasaani, *Al-Badaai' al-Sanaai fi tartib al-Sharaa'i*, Vol VI, 179.

rice fields, where the division is predetermined percentage at the beginning of the contract.

In the *fiqh* teachings it is not explained in detail about the percentage of agricultural products sharing, only it is stated that in the distribution of crops must be in accordance with the contract agreed upon between the landowner and the cultivator. The conditions that must be fulfilled in the distribution of harvests is that the distribution of yields must be clear according to the agreement of the parties, and the harvest results really belong to people who are mindful. This means that the harvest is divided is actually the result of a land which is the object *muzâra'ah* and *mukhâbarah* and should not be reduced before there is a division, and there should be no specialization, as well as prioritizing a few percent for sharecroppers or for land owners.

In the results *muzâra'ah* and *mukhâbarah* there are elements that are a staple of the outcome, namely the owners of the fields, the peasants and their fields or fields that will be worked. The distribution of agricultural products is inseparable from capital, which will determine the percentage of the harvest. The distribution of harvests made by the Kisik Village community is carried out with several types of systems:

- a. If the capital or all cultivation costs come from the owner of the rice field, then the distribution is by *paro* system (in Javanese), ie the yield is divided equally (50: 50) between the owner and the cultivator.
- b. If the capital or all cultivation costs come from cultivators of the rice fields, then the distribution is with the *mertelu* system (in Javanese), which is 2/3 for cultivators and 1/3 for the owners of rice fields.

- c. If the capital or all cultivation costs come from the owner of the rice field, then the system will be divided into 30% for cultivators and 70% for the owners of rice fields.
- d. If the capital or all cultivation costs come from cultivators of the rice fields, the distribution will be divided into *paron* systems (in Javanese), the yield will be divided equally (50: 50) between owners and cultivators.

For what is often done or the majority of the people of Kisik Village who practice cooperation in the sharing of agricultural products, namely points a and b for points c and d only certain people do.

See description above, the authors conclude that the practice of sharing *muzâra'ah* and *mukhâbarah* performed by villagers of Kisik in *fiqh* remain valid, because the principle of muamalah is mutual willingly, profitable each other and trust each other.

D. Practice of Agricultural Profit Sharing in Kisik Village Bungah Subdistrict Gresik Regency Based on Constitution in Indonesia Perspective

Based on the interviews of several informants above, the researchers found that the reasons for the practices of agricultural profit sharing in Kisik Village, Bungah Subdistrict, Gresik Regency, both paddy cultivators and rice field owners stated that they were not aware of Law No.2 of 1960 concerning Agreement of Agricultural Profit Sharing. This is because there has never been socialization from the government of Kisik Village related to Law No. 2 of 1960 concerning Agreement of Agricultural Profit Sharing. The practice of sharing the results of

the Kisik Village community is mostly based on habits that have been handed down from time to time and the system has not undergone much change.

1. The subject of the agreement for profit sharing

The subject of the profit sharing agreement is the owner and cultivator. In Article 1 it is determined that the definition of land owner is a person or legal entity based on a right to control the land. Whereas in Article 2 it is determined that those who are allowed to become cultivators are farmers whose land is not more than 3 hectares. If more than 3 hectares have to be asked for permission from the young Minister of Agrarian Affairs. Legal entities are not permitted to become cultivators unless they get permission from the Young Agrarian Minister.¹¹⁹ Based on primary data and secondary data, this is in accordance with Law Number 2 of 1960, because the parties consist of land owners who are not more than 3 hectares and are not legal entities.

2. Knowledge of Law No. 2 of 1960

All actors in the practice of profit sharing of agricultural land were not aware of the existence of Law No. 2 of 1960. The Kisik village government official also said that the lack of socialization related to Law No. 2 of 1960, the implementation of the production sharing agreement still uses community customary law.

¹¹⁹ Act No. 2 of 1960 concerning Production Sharing Agreements

3. Form of agreement

The form of the agreement carried out by the owner and cultivator is not done in writing but verbally. In Article 3 it is determined that the agreement for profit sharing must be carried out in writing. This is not in accordance with Law No. 2 of 1960. The speakers said that the lack of socialization and knowledge of the law, the implementation of the production sharing agreement uses customary law and was carried out unwritten.

4. Process sharing agreement

The process of profit-sharing agreements carried out is only based on an agreement between the parties which begins with the landowner who offers the cultivator to work on the farm. In Article 3 it is determined that the process of agreement for the results of the implementation must be in the presence of the village head, attended by two witnesses who witnessed the agreement and approved by the sub-district head and announced the density of each village. This is not in accordance with Law No. 2 of 1960. All informants said that only based on an agreement between the two parties that they were able to implement the agreement for profit sharing and not necessarily before the village head.

5. Duration of the agreement

Regarding the period of agreement carried out by the parties, it is not determined how long it must be carried out. In Article 4 it is determined that for paddy land at least three years while for dry land at least five years.¹²⁰ This is also

¹²⁰ Act No. 2 of 1960 concerning Production Sharing Agreements

not in accordance with Law No. 2 of 1960. All informants said that it was only based on mutual trust between the two parties. So that regarding the profit sharing agreement it is not determined how long the profit sharing agreement is carried out by the cultivator because it is only based on the ability of the cultivators.

6. Distribution of agricultural products

Distribution of land yields is only based on an agreement between the two parties. In Article 7 of Act No. 2 of 1960 which stipulates that the amount of land yields which are the right of the owner and cultivator to the regency area are stipulated by the regent or head of the relevant regency with regard to plant species, land conditions, population density, zakat set aside before divided and other economic factors. This is not in accordance with Law No. 2 of 1960. The speakers said that the distribution was only based on an agreement between the two parties using the maro or merteelu system. If the owner of the rice field bears the costs of production, seed costs and fertilizer costs, the yield of the harvest is divided in two (maro). If in one harvest it can produce 10 sacks (one sack has a size of 50kg) then from the 10 sacks the owner and cultivator each get five sacks of the harvest. The "*mertelu*" system is a system where the cultivator bears all costs (production costs, seed costs and fertilizer costs) gets a larger share with a ratio of 25:75. There were several informants stating that the rewards for happiness were using the mertelu system because the owners did not pay any fees at all. In addition, one of the village officials or Kisik Village government officials said that there was no socialization from the top parties, namely the sub-district and the regency regarding the size of the land which was the right of the owners

and cultivators, so that they also have no follow-up in determining the amount of profit sharing cooperation in cultivating agricultural land, all of which is left to the people who practice the profit sharing.

7. Rights and Obligations

The parties, both landowners and land tenants, have their respective rights and obligations. The rights and obligations of the owners and cultivators in Kisik Kecamatan Bungah Village, Gresik Regency include:

a) Seigniorage:

- 1) Receiving the distribution of land yields in accordance with the agreement on the balance of profit sharing by the parties and added to compensation for the costs of seeds, fertilizers, etc;
- 2) Receiving the fields again is in good condition.

b) Obligations of landowners:

- 1) Hand over the land to cultivators to work on;
- 2) Issue production costs, including seed costs, fertilizer costs and cultivation costs in accordance with the agreement of the parties.

c) Cultivation rights:

- 1) Receiving the distribution of land yields in accordance with the agreement on profit sharing by the parties and in added to the payment of land tax, the party that bears the payment of land tax is the landowner (100%). In Article 9 of Law Number 2 of 1960 concerning Production Sharing Agreements it is determined that "the obligation to

pay taxes on the land concerned is prohibited from being borne by the cultivator, unless the cultivator is the actual land owner".¹²¹

8. End of Agreement

The end of the agreement for the sharing of agricultural land in the Kisik Village, Bungah Subdistrict, Gresik Regency between landowners and land tenants can occur due to the expiration of the period and can also occur before the expiration of the period. Some informants stated the reason for the end of the production sharing agreement because the cultivators were unable to work on the land they were working on so that the land was returned to the land owner. work on it. In Article 6 it is determined that the end of the agreement must be based on the agreement of the parties and reported by the village head.¹²² This is also not in accordance with Law No. 2 of 1960. The speakers said that the covenant process which was not before the village head then regarding the end of the agreement did not need to be reported by the village head.

¹²¹ Act No. 2 of 1960 concerning Production Sharing Agreements

¹²² Act No. 2 of 1960 concerning Production Sharing Agreements

CHAPTER V

CONCLUSION AND SUGESTION

A. Conclusion

From the discussion described in the previous chapters, regarding the practice of collaborating agricultural land with the paron system in Kisik Village, Bungah Sub-District, Gresik Regency, some conclusions can be drawn, namely:

1. Cooperation of agricultural land with a profit sharing system in Kisik Village involving two parties, namely the owner of the rice field and the cultivator. In carrying out the agreement they did not do it in writing, but instead used a familial way with mutual trust between the owner of the rice field and the cultivator and when the yield was harvested it would be divided according to the agreement. In this case the seeds, fertilizers, and all costs of cultivation field there are borne by tenants and something is covered by owner rice fields.

2. Analyzed based on *fiqh* in the view of the Syafi'iyah and Hanafiyah madzhab that the practice of cooperating agricultural land with a profit sharing system in Kisik Village, Bungah Sub-District, Gresik Regency was agree permitted according to Hanafiyah schools because the agreement had fulfilled the pillars and the legal conditions of *muzâra'ah* and *mukhâbarah*. However, according to the Syafi'iyah scholars that the contract is not permitted. Because based on view of Syafi'iyah scholars are allowed to use the contract of *muzâra'ah* which are timed with contract of *musâqah*. While in practice ecooperation for results agriculture in Kisik Village Bungah sub-district Gresik Regency does not use contract of *musâqah*.
3. Analyzed according to the legislation in force in Indonesia, namely Law No.2 of 1960 concerning Agreement of Agricultural Profit Sharing that many practices for the sharing of agricultural products in the Kisik Village, Bungah Subdistrict, Gresik Regency are many that are not in accordance with the regulations of the law. The obstacles in implementing Law No.2 of 1960 in the practice of collaborating on agricultural land because of the absence of socialization from any party related to Law No.2 of 1960 concerning Agreement of Agricultural Profit Sharing.

B. Suggestion

By looking at the practice of agricultural land cooperation with the profit sharing system in Kisik Village, Bungah Subdistrict, Gresik Regency, some confusion in the cooperation agreement can be suggested which can be considered and used as a reference for the next steps, namely:

1. For farmers and farm workers who practice the paron system in Kisik Village, Bungah District, Gresik Regency, when entering into a cooperation agreement, they are expected to enter into a written agreement with black and white. And it is expected that when making an agreement the distribution of the results will be determined and the period of cooperation will be determined. It is feared that there is one party that is harmed when there is negligence in carrying out the rights and obligations of both the tenants and the owners of the fields.
2. For the next researcher, it is expected that the next researchers who will examine the cooperation of agricultural land so that they can examine it based on Customary Law, because most of the Village communities that up to now do this in accordance with the habits that apply from generation to generation.

BIBLIOGRAPHY

Books:

- 'Abidin, Ibnu, *Radd al-Muhtar 'ala ad-Durr al-Mukhtar*, Vol V, Beirut: Dâr al-Fikr, 1990.
- Abi Zakariya, An Nawawi, Imam, *Al Majmu'Syarah Al Muhadzab*, Vol 16, Bairut: Darul Fakir, tth.
- Ad-Dardir, *Hasyiyat al-Dasuqi 'ala al-Syarh al-Kabir*, Vol III.
- Afandi, M. Kholid dkk, *Dari Teori Ushul Menuju Fiqh*, Kediri: Santri Salaf Press, 2013.
- Al-Bahuti, *Kasysyaf al-Qina*, Vol III, Beirut: Dar al-Fikr, 1402.
- Al- Bujairimi, Sulaiman, *Bujairimi 'ala al-Khatib*, Vol III, Bairut: Dar al-fikr, ttt.
- Al-Kaasani, 'Alaa al-Din, *Al-Badaai' al-Sanaai fi tartib al-Sharaa'i*, Vol VI, Cairo: Al-Matba'a al-Jamaaliyya, 1910.
- Al-Basri, Abi Ali Hasan Ali bin Muhammad bin Habib Al Mawardi, *al Khawil Kabir: Fiqh Mazhab Imam syafi'I* Juz VII, Beirut Libanon: Dar al Kutb Al Ilmiyati, 1994.
- Al-Ghazi, Al-Alammah Muhammad bin Qasim, *Fathul Qarib*, Surabaya: Nurul Huda, ttt.
- Al-Khathib, Asy-Syirbini, *Mughni al-Muhtaj*, Vol II, Beirut: Dar al-Fikr, 1978.
- Al-Khin, Mustofa, Mustofa al-Bugho and Ali al-Syarbaji, *al-Fiqh al-Manhaji 'Ala mazhab al-Imam al-Syafi'I*, Vol III, Damsyik: Darul Qalam, 2003.
- Arikunto, Suharsimi, *Prosedur Penelitian Suatu Pendekatan Praktik*, Jakarta: Rineka Cipta, 2006.

- Asikin, Amiruddin, Zainal, *Pengantar Metode Penelitian Hukum*, Jakarta; Rajawali Pers, 2006.
- As-Shiddieqy, Muhammad Teungku Hasbi, *Hukum-Hukum Fiqh Islam*, Semarang: Pustaka Rizki Putra, 1997.
- Az-Zuhaili, Wahbah, *al-Fiqh al-Islami wa Adillatuhu*, Vol VI, Damascus: Darul-Fikr, 1997.
- Basyir, Ahmad Azhar, *Asas-asas Hukum Muamalah* (Hukum Perdata Islam), Yogyakarta: UII, 2000.
- Departemen Agama RI, *Al-Qur'an Terjemah Indonesia*, Jakarta: Sari Agung, 2002.
- Departemen Pendidikan dan Kebudayaan RI, *Kamus Besar Bahasa Indonesia*, Jakarta: Balai Pustaka, 1990.
- Hadi, Sutrisno, *Metodologi Research*, Yogyakarta: Fak Psikologi UGM.
- Kusuma, Saidjana, Nana, dan Ahwal, *Proposal Penelitian di Perguruan Tinggi*, Bandung: Sinar Baru Argasindo, 2002.
- Lexy J, Moleong, *Metodologi Penelitian Kualitatif. Edisi Revisi. Cet.21*, Bandung: Remaja Rosda Karya, 2005.
- Moh. Nazir, *Metode Penelitian*, Jakarta: Ghali Indonesia, 1998.
- Narkubo, Abu Achmadi dan Colid, *Metode Penelitian*, Jakarta: PT. Bumi Aksara, 2005.
- Nasution, Bahder Johan, *metode Penelitian Hukum*, Bandung: Mendar Maju, 2008.
- Nawawi, Ismail, *Fikih Muamalah Klasik dan Kontemporer Hukum Perjanjian, Ekonomi, Bisnis, dan Sosial*, Bogor: Ghalia Indonesia, 2012.

Pasaribu, Charuman dan Suhrawardi K. Lubis, *Hukum Perjanjian Dalam Islam*, Jakarta: Sinar Grafika, 1990.

Rasjid, H. Sulaiman, *Fiqh Islam*, Bandung: CV Sinar Biru, 1986.

Rohman, Fazlur, *Doktrin Ekonomi Islam, Vol II*, Yogyakarta: P.T Dana Bakti Wakaf, 1995.

Sabiq, Sayyid, *Fiqh Sunnah, Vol III*, Jakarta: PT. Pundi Aksana, 2009.

Sabiq, Sayyid, *Fiqh Sunnah, Vol III*, Kairo: Maktabah al-Khidmat al-Haditsah, 1407 H, 1986 M.

Sudaryat, S, *Hak Kekayaan Intelektual, Memahami Prinsip Dasar, Cakupan, Dan Undang-Undang yang Berlaku*. Vol 1. Bandung: Oase Media, 2010.

Sugiyono, *Metode Penelitian Kuantitatif Kualitatif*, Bandung: CV Alfabeta, 2011.

Suhendi, Hendi, *Fiqh Muamalah*, (Jakarta: Rajawali Pers, 2010.

Taqiyuddin, Imam, *Kifayatul Ahyar*, Vol I, Surabaya Indonesia; Dar al –Ihya' t.th.

Zainuddin, *Fathul Mu'in*, Vol 3, Beirut: Daar al-Kutub, 1996.

Thesis:

Lestari, Dewi Ayu, *Tinjauan Hukum Islam Terhadap PraktikKerjasama Lahan Pertanian Dengan Sistem Paron Di Desa Sidodadi Kecamatan Sukosewu Kabupaten Bojonegoro*, (Surabaya: Fakultas Syariah UIN Sunan Ampel Surabaya, 2018)

Tartila, Nala, *Comparison of Agricultural Cooperation Concept (Muzâra'ah dan Musâqah Perspective Imam Madzhab*, (Malang: Fakultas Syari'ah, UIN Maulana Malik Ibrahim Malang, 2017)

Kudlori, Muhammad, *Analisis Penerapan Bagi Hasil Pada Akad Muzâra'ah di Desa Pondowan Kecamatan Tayu Kabupaten Pati Dalam Prespektif Ekonomi Islam*, (Semarang: Fakultas Syari'ah dan Ekonomi Islam, IAIN Walisongo, 2013)

Regulation:

Act Number 2 of year 1960 concerning Agreement of Agricultural Profit Sharing

Minister of Agrarian Regulation Number 4 of 1964 concerning the Guidelines for Implementing Profit Sharing Agreements

Joint Decree of the Minister of Domestic and Minister of Agriculture No. 211 of 1980

Interviews:

Ali Ishaq, *interview*, (Kisik: 29th March 2019)

H. Kastolan, *Interview*, (Kisik: 9th March 2019)

Idad, *interview*, (Kisik: 29th March 2019)

Kholifah, *Interview*, (Kisik: 17th February 2019)

Nadzir, *Interview*, (Kisik: 10th March 2019)

Nur Fadhili, *Interview*, (Kisik: 10th February 2019)

Suji'ah, *Interview*, (Kisik: 24th February 2019)

Sutatik, *Interview*, (Kisik: 16th February 2019)

APPENDIXES





Interview with Mrs. Kholifah as the cultivator of the fields.



Interview with Mr. Ali Ishaq as the head of Kisik Village.



Interview with Mrs. Suji'ah as the cultivator of the fields.



Interview with Mr. Nur Fadhili as the device of the Kisik Village.



The field that cultivated by Mrs. Kholifah

CURRICULUM VITAE



Personal Data

Name : Nuris Sirrul Laily
 Place, Data of Birth : Gresik, 1st April 1997
 Address : Raya Kisik Village Street Number 37 RT/RW 01/01
 Kisik, Bungah, Gresik, East Java
 Phone : 0895396102262
 E-mail : nurisslaily@gmail.com

Formal Education

2002-2004 : TK Dharma Wanita Persatuan Kisik
 2004-2009 : MI Hidayatul Ulum Kisik
 2009-2012 : MTs Al-Hidayat Indrodelik
 2012-2015 : MA Ma'arif NU Assa'adah Bungah
 2015-2019 : Universitas Islam Negeri Maulana Malik Ibrahim Malang

Organization

2015-2016 : Muharrikah Al-Qur'an Division at Pusat Ma'had Al-Jami'ah Islamic State University Maulana Malik Ibrahim Malang
 2016-2018 : Musyrifah at Pusat Ma'had Al-Jami'ah Islamic State University Maulana Malik Ibrahim Malang
 2015-2019 : Member of CSS MoRA Islamic State University Maulana Malik Ibrahim Malang
 2017-2018 : Musa'idah Mudarosah Division at Hai'ah Tahfidzul Qur'an Islamic State University Maulana Malik Ibrahim Malang