

**THE PRACTICE OF THE *PENDEM* SYSTEM OF AGRICULTURAL
LAND LEASE AGREEMENTS IN THE REVIEW OF ISLAMIC LAW
AND INDONESIAN CIVIL CODE**

(CASE STUDY IN KESILIR, BANYUWANGI)

THESIS

By :

Veny Widayanti

SIN 18220104



SHARIA ECONOMIC LAW DEPARTMENT

SYARI'AH FACULTY

THE STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM

MALANG

2022

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MALANG

2022

STATEMENT OF THE AUNTENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

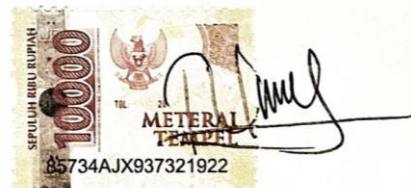
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(CASE STUDY IN KESILIR, BANYUWANGI)

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Malang, August 01st, 2022

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**THE PRACTICE OF THE *PENDEM* SYSTEM OF AGRICULTURAL
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(CASE STUDY IN KESILIR, BANYUWANGI)

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MOTTO

وَالْأَصْلُ فِي الْعُقُودِ وَالْمَعَامَلَاتِ الصَّحَّةُ حَتَّى يَفُومَ دَلِيلٌ عَلَى الْبَطْلَانِ وَالْتَّحْرِيمِ

*Hukum asal dalam berbagai perjanjian dan muamalat adalah sah sampai adanya
dalil yang menunjukkan kebatilan dan keharamannya.*

(اعلام الموقعين ١/١٠٧)

Stop comparing yourself with others

Because all you see is the result without seeing the process

Just keep trying and do the best version of you

Not everyone has to run to get the goal

Optimistic, tough, and patient is the main key

The most important things are keep moving and never stop trying

Know your value, upgrade your quality, and love yourself

-Veny Widayanti-

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May shalawat and greetings always be given to our prophet, Rasulullah Muhammad SAW who brought us from the age of ignorance to the era of clarity, namely, *Addinul Islam*.

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Thus, with the completion of this thesis, the author hopes that the knowledge that has been obtained while studying at the Maulana Malik Ibrahim state islamic university of Malang campus can be useful and a blessing as a provision for life in the world until the hereafter. There are still many shortcomings in the preparation of this thesis. It is hoped that the author can get criticism and suggestions as improvements so that this thesis can be useful for readers.

Malang, August 01st, 2022

Writer,

A handwritten signature in black ink, appearing to read 'Veny Widayanti', with a horizontal line underneath.

Veny Widayanti

NIM. 18220104

TRANSLITERATION GUIDENCE

The Latin Arabic Transliteration Guidelines which are the result of a joint decision decision (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia. Number: 158 of 1987 and Number: 0543b/U/1987.

A. Consonants

A list of Arabic letters and their transliteration into Latin letters can be seen on the following page:

Arab Letters	Name	Latin Letters	Name
ا	Alif	Not Symbolized	Not Symbolized
ب	Ba	B	Be
ت	Ta	T	Te
ث	S/a	S/	Es (with the dot above)
ج	Jim	J	Je
ح	H[a	H[Ha (with thw dot above)
خ	Kha	Kh	Ka and Ha
د	Dal	D	De
ذ	Z/al	Z/	Zet (with the dot above)

ر	Ra	R	Er
ز	Zai	Z	Zet
س	Sin	S	Es
ش	Syin	Sy	Es and Ye
ص	S[ad	S[Es (with the dot above)
ض	D[ad	D[De (with the dot above)
ط	T[a	T[Te (with the dot above)
ظ	Z[a	Z[Zet (with the dot above)
ع	'Ain	'	Apostrof backwards
غ	Gain	G	Ge
ف	Fa	F	Ef
ق	Qof	Q	Qi
ك	Kaf	K	Ka
ل	Lam	L	El
م	Mim	M	Em
ن	Nun	N	En
و	Wau	W	We
هـ	Ha	H	Ha

ء / إ	Hamzah	‘	Apostrof
ي	Ya	Y	Ye

Hamzah (ء) which is located at the beginning of the word follows the vowel without any marking. If it is in the middle or at the end, it is written with a sign (‘).

B. Vocal

Arabic vowels, like Indonesian vowels, consist of a single vowel or monophonic and multi vowels or dhipthongs. The Arabic single vowel whose symbol is a sign or vowel, the transliteration is as follows:

Sign	Name	Latin Letters	Name
أ	Fath[ah	A	A
إ	Kasrah	I	I
و	D[ammah	U	U

Arabic double vowel whose symbol is a combination of vowels and letters, the transliteration is a combination of letters, namely:

Sign	Name	Latin Letters	Name
ي & أ	Fath[ah and ya	Ai	A and I
و & أ	Fath[ah and wau	Au	A and U

Example:

كَيْفَ : *kaifa*

حَوْلَ : *haula*

C. Maddah

Maddah or long vowels whose symbols are vowels and letters, transliteration in the form of letters and signs, namely:

Harakat and Letters	Name	Letters and Sign	Name
اَ & اِ / ي	Fath[ah and <i>alif</i> or <i>ya</i>	a>	a and the line above
ي & يِ	<i>Kasrah</i> and <i>ya</i>	i>	i and the line above
و & وِ	D[ammah and <i>wau</i>	u>	u and the line above

Example:

مَاتَ : *mata*

رَامَ : *rama*

قِيلَ : *qila*

يَمُوتُ : *yamutu*

D. Ta' Marbutah

There are two transliterations for *ta' marbutah*, namely *ta'* *marbutah* when it follows the letters *fathah*, *kasrah*, and *d[ammah*, the

transliteration is [t]. While *ta' marbutah* who dies or get a sukun harakat, the transliteration is [h].

If the word ending with *ta' marbutah* is followed by a word that uses the article *al-* and the reading of the word is separate, then *ta' marbutah* is transliterated with [h].

المَدِينَةُ : *al-madinah*

E. Syaddah (Tasydid)

Syaddah or *tasydid* which in the Arabic writing system is denoted by a *tasydid* sign (ّ), in this transliteration it is symbolized by a repetition letters (double consonants) marked with a *syaddah*. Example:

رَبَّنَا : *rabbana*

الْحَقُّ : *al-haqq*

If latter i there is *tasydid* at the end of a word and preceded by the letter *kasrah*, then it is transliterated like the letter *maddah* (i).

Example:

عَلِيٌّ : 'Ali (not 'Aliyy or 'Aly)

عَرَبِيٌّ : 'Arabi (not 'Arabiyy or 'Araby)

F. Sandang Word

Sandang word in the Arabic writing system are denoted by letters (alif lam ma'arifah). In this transliteration giude, the article is transliterated as usual, *al-*, both when is is followed by letter *syamsiah* and the letter

qamariah. The article does not follow the sound of the direct letter that follows it. The article is written separately from the word that follows it and is connected by a horizontal line (-). Example:

الشَّمْسُ : *al-syamsu* (not *asy-syamsu*)

الزَّلْزَلَةُ : *al-zalزالah* (not *az-zalزالah*)

الفَلْسَفَةُ : *al-falsafah*

الْبِلَادُ : *al-biladu*

G. Hamzah

The rule for transliterating the letter hamzah into an apostrophe (‘) only applies to hamzah which is located in the middle and end of the word. However, if hamzah is at the beginning of a word, it is not symbolized, because in Arabic it is an alif. Example:

تَأْمُرُونَ : *ta’ muruuna*

سَيِّئٌ : *syai’un*

أُمِرْتُ : *umirtu*

H. Writing Arabic words commonly used in Indonesian

Transliterated Arabic words, terms or sentences are words, terms or sentences that have not been standardized in Indonesian. Words, terms or sentences that are commonplace and become part of the Indonesian vocabulary, or have often been written in Indonesian writing, are no longer written according to the transliteration method above. For example the

word Al-Qur'an (from the Qur'an), *Sunnah*, *specific* and *general*. However, if these words are part of a series of Arabic texts, then they must be transliterated in their entirety. Example:

Fizila al-Qur'an

Al-Sunnah qabl al-tadwin

Al-'Ibarat bi 'umum al-lafz bi khusus al-sabab

1. Lafz al-Jalalah

The word Allah which is preceded by a particle such as the letter *jarr* and other letters or is located as a *mudlaf ilaih* (nominal phrase), is transliterated without the letter hamzah. As for the *ta' marbutah* at the end of the word that is attributed to *al-jalalah*, it is transliterated with the letter [t]. Example:

دِينُ اللَّهِ : *dinullah*

رَحْمَةِ اللَّهِ : *rahmatillah*

2. Capital

Although the Arabic writing system does not recognize capital letters (All Caps), in its transliteration these letters are subject to provisions regarding the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the first letter of a personal name is preceded by an article (al-), then what is written in capital letters remains the initial letter of the personal name, not the initial letter of the article. If it is located at the beginning of the sentence, then the letter A of the article uses a

capital letter (Al-). The same provisions also apply to the initial letter of the reference title preceded by the article al-, both when it is written in the text and in the reference notes (CK, DP, CKD, and DR). Example:

وما محمد إلا رسول	: Wa maâ Muhammadun illâ Rasûl
إن أول بيت وضع للدرس	: Inna Awwala baitin wudli'a linnâsi
شَهْرُ رَمَضَانَ الَّذِي أُنزِلَ فِيهِ الْقُرْآنُ	: 'Syahru Ramadan al-lazliunzila fih al-Qur'an

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ABSTRACT

Veny Widayanti, 18220104, **The Practice of The *Pendem* System of Agricultural Land Lease Agreements In The Review of Islamic Law And Indonesian Civil Code (Case Study In Kesilir, Banyuwangi)**, Thesis, Sharia Economic Law Department, Sharia Faculty, State Islamic University Maulana Malik Ibrahim Malang, Supervisor Dr. Burhanuddin Susanto, S.HI, M. Hum

Keywords: *Pendem* System; Islamic law; Land Lease Agreement

The practice of leasing agricultural land is often carried out by the community, especially in rural areas. Meanwhile, in Kesilir, Banyuwangi, there is a recognized and applicable land rental system, namely the *pendem* system. This system is a land lease with a period of more than two consecutive years, with a shrinking payment system, namely the land rent price in the first year is normally valued, then for the following year there is depreciation. Payment of rental fees can be made at the beginning, in the middle, or at the end of the rental period according to the agreement of the parties. However, payments made in the middle and at the end of the lease period include additional charges to the lessee that were not stated at the beginning of the agreement.

This research uses a type of empirical legal research using a sociological juridical approach. Sources of data used are primary data sources and secondary data. The data collection techniques were carried out by interviews and documentation. Regarding the data processing method in this study by *editing, classifying, verifying, analyzing* and *concluding*.

The results showed that the *pendem* because of the interests of both parties, the land owner was not able to work his land but did not want to sell it, while the tenant needed land for planting. Regarding the conditions for the validity of the agreement in the Indonesian Civil Code and the pillars of *ijarah* in the practice of this *pendem* system land lease agreement, it is in accordance with Islamic law. However, the terms of *ijarah* related to the clarity of the rental fee have not been fulfilled, due to additional fees charged to the lessee in the payment in the middle or at the end of the lease period which was not stated at the beginning of the agreement. The addition includes the element of usury *nasi'ah*, which is an addition that is mentioned in the agreement for the exchange of goods in exchange for the delay in payment. If there is an additional charge to the tenant that is not stated at the beginning of the agreement, the law becomes invalid.

ABSTRAK

Veny Widayanti, 18220104, **Tinjauan Hukum Islam Pada Praktik Perjanjian Sewa Menyewa Tanah Sistem *Pendem* Dan KUHPerdara Indoensia (Studi Di Desa Kesilir, Banyuwangi)**, Skripsi, Program Studi Hukum Ekonomi Syariah, Fakultas Syariah, Universitas Islam Negeri (UIN) Maulana Malik Ibrahim Malang, Pembimbing Dr. Burhanuddin Susanto, S.HI, M. Hum

Kata Kunci: Sistem *Pendem*; Hukum Islam; Perjanjian Sewa Tanah

Praktik sewa menyewa tanah pertanian sering dilakukan oleh masyarakat, khususnya daerah pedesaan. Adapaun di Desa Kesilir, Banyuwangi terdapat sistem sewa menyewa tanah yang diakui dan berlaku yaitu system *pendem*. Sistem ini merupakan sewa tanah dengan kurun waktu lebih dari dua tahun secara berurut-turut, dengan sistem pembayaran menyusut, yakni harga sewa tanah pada tahun pertama dihargai normal, kemudian untuk tahun selanjutnya terdapat penyusutan. Pembayaran biaya sewa dapat dilakukan di awal, di tengah, atau di akhir masa sewa sesuai kesepakatan para pihak. Namun, pembayaran yang dilakukan di tengah dan di akhir masa sewa terdapat adanya tambahan yang dibebankan kepada penyewa yang tidak disebutkan pada awal perjanjian.

Penelitian ini menggunakan jenis penelitian hukum empiris dengan menggunakan jenis pendekatan yuridis sosiologis. Sumber data yang digunakan adalah sumber data primer dan data sekunder. Adapun teknik pengumpulan data dilakukan dengan wawancara dan dokumentasi. Terkait metode pengolahan data dalam penelitian ini dengan cara *editing, classifying, verifying, analysing* dan *concluding*.

Hasil penelitian menunjukkan bahwa dilakukannya sewa menyewa sistem *pendem* karena kepentingan kedua belah pihak, pemilik tanah tidak mampu menggarap tanahnya tetapi tidak ingin menjualnya, sedangkan penyewa membutuhkan lahan untuk ditanami. Terkait syarat sahnya perjanjian dalam KUHPerdara Indoensia dan rukun *ijarah* pada praktik perjanjian sewa menyewa tanah sistem *pendem* ini telah sesuai dengan hukum islam. Namun, pada syarat *ijarah* terkait kejelasan biaya sewanya belum terpenuhi, karena adanya tambahan biaya yang dibebankan kepada penyewa pada pembayaran di tengah atau di akhir masa sewa yang tidak disebutkan pada awal perjanjian. Tambahan tersebut termasuk mengandung unsur riba nasi'ah yaitu tambahan yang disebutkan dalam perjanjian penukaran barang sebagai imbalan atas ditundanya pembayaran. Adanya tambahan yang dibebankan kepada penyewa dengan tidak disebutkan pada awal perjanjian maka hukumnya menjadi batal/tidak sah.

مستخلص البحث

فني وداينتي، 18220104، مراجعة للشرعية الإسلامية بشأن ممارسة اتفاقيات تأجير الأراضي بنظام البندم والقانون المدني الإندونيسي (دراسة في قرية كاسيلير، بانيووانجي)، بحث الرسالة، قسم القانون الاقتصادي الشرعي (المعاملة)، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج، الدكتور برهان الدين سوسمتو الماجستير.

الكلمات الرئيسية: نظام البندم؛ الشرعية الإسلامية؛ اتفاقية إيجار الأرض.

غالبًا ما يتم تنفيذ ممارسة تأجير الأراضي الزراعية من قبل المجتمع، وخاصة في المناطق الريفية. وفي الوقت نفسه، هذا النظام عبارة عن عقد إيجار للأرض لمدة تزيد عن عامين متتاليين، مع نظام دفع متقصد، أي أن سعر إيجار الأرض في السنة الأولى يتم تقييمه بشكل طبيعي، ثم في العام التالي هناك انخفاض في القيمة. يمكن دفع رسوم الإيجار في بداية فترة الإيجار أو في وسطها أو في نهايتها وفقًا لاتفاق الطرفين. ومع ذلك، فإن المدفوعات التي تتم في منتصف ونهاية فترة الإيجار تتضمن رسومًا إضافية للمستأجر لم يتم ذكرها في بداية الاتفاقية.

يستخدم هذا البحث نوعًا من البحث القانوني التجريبي باستخدام نهج قانوني اجتماعي. مصادر البيانات المستخدمة هي مصادر البيانات الأولية والبيانات الثانوية. تم تنفيذ تقنيات جمع البيانات من خلال الملاحظة والمقابلات والتوثيق. فيما يتعلق بطريقة معالجة البيانات في هذه الدراسة من خلال التحرير والتصنيف والتحقق والتحليل والاستنتاج.

تظهر نتائج الدراسة أن عقد الإيجار بنظام البندم يتم بسبب مصالح الطرفين، حيث لا يستطيع مالك الأرض العمل على أرضه ولكنه لا يريد بيعها، بينما يحتاج المستأجر إلى الأرض لزراعتها. فيما يتعلق بشروط سريان الاتفاقية في القانون المدني الإندونيسي وأركان الإجارة في ممارسة اتفاقية تأجير الأراضي لنظام البندم، فهي متوافقة مع الشرعية الإسلامية. ومع ذلك، فإن شروط الإجارة المتعلقة بوضوح رسوم الإيجار لم يتم الوفاء بها، بسبب الرسوم الإضافية المفروضة على المستأجر في السداد في منتصف أو في نهاية فترة الإيجار والتي لم يتم ذكرها في بداية العقد. اتفاق. وتشمل الإضافة عنصر ربا النسبة، وهو الإضافة المنصوص عليها في اتفاقية تبادل البضائع مقابل التأخير في الدفع. إذا كانت هناك رسوم إضافية على المستأجر لم يتم ذكرها في بداية الاتفاقية، يصبح القانون باطلاً / غير شرعي.

CHAPTER I

INTRODUCTION

A. Research Background

In Islam, it is highly recommended to help each other and cooperate with others to benefit. The thing that can be done is with mu'amalah. Mu'amalah activities are very diverse, such as buying and selling, *syirkah*, *murabahah*, *ijarah* (lease) and debts and receivables. All kinds of activities are always found in everyday life because convenience is needed to fulfill the needs of life.

Mu'amalah activities that have been mentioned above, leasing is also a common transaction carried out by the community. The definition of *ijarah* (lease) in fiqh terms is a contract of transfer of usufructuary rights to goods or services, through payment of rental wages, without any change of ownership of the goods.¹ In terms of the object, *ijarah* is divided into two types, namely *ijarah* for benefits and *ijarah* for services. An example of *ijarah* is for the benefits of renting land, buildings, and goods, while *ijarah* for services, for example, is using the services of another person to do a job. As stated in the word of Allah SWT.

قَلْتُ إِحْدَاهُمَا يَأْبَتِ اسْتَأْجَرُهُ إِنَّ خَيْرَ مَنْ اسْتَأْجَرْتَ الْقَوِيُّ الْأَمِينُ

¹ Wahab Afif, Kamil Husein, *Mengenai Sistem Ekonomi Islam*, (Banten: Ed. Ubaidillah) 62-63

“One of the two women said, O my father! Take him as a person who works (for us), because indeed the best person you take to work (for us) is a strong and trustworthy person.” (Surat al-Qashash: 26).

The verse above explains that the Shari'a allows *ijarah*, that is to employ another person and give him a reward for the services he has performed in accordance with the terms of the time and benefits that have been received.

The practice of leasing that is often carried out by the community, especially in rural areas, is leasing of agricultural land, fields, and plantations. The purpose of leasing land is to comply the needs which is temporary or long-term, it can be for daily, monthly, or yearly. Basically, the existence of renting agricultural land is because it is to fulfill the economic needs of farmers and workers who do not have land to cultivate crops, as well as make it easier for land owners to make profits by not working on their agricultural land but still getting money from leasing land. In addition, there are land owners who cannot manage theirs because they have other jobs so that the land is not used. Furthermore, there are also land owners who need money in sudden but they do not want to sell their land, so renting out land can be the solution.

In a lease there are pillars and conditions that must be met, including the following: (a) People who have contract (aqid) namely mu'jir (people who rent out and musta'jir (tenants), (b) *Shighat* is the sentence for the handover of

the object of *Ijarah*, (c) Ujrah (rent or compensation), (d) Object for rent, (e) The benefits of a rented item or service and the labor of the people who work.²

There are several other conditions which is set by the majority of scholars that must be met for the party entering into the lease agreement, including the following: (a) The contract made by the parties must be with the intention of the heart and there is no coercion from any party, (b) Both parties must be open, namely the use of the object being leased must be notified so that there will be no conflict in the future, (c) When making a land lease contract, the purpose must be stated, namely to cultivate and plant or build buildings, (d) Know the benefits, (e) The benefits are not prohibited, (f) The cost of the lease should be clear.³

There is a case of the practice of renting land for 10 years which will be used for cafes and car washes, the rent has been paid in full in advance worth 150 million rupiah. In the agreement the tenant is prohibited from leasing the land to other people and is prohibited from inviting other parties to use the leased land without the permission of the land owner, but in the fifth year the land tenant disappeared, never paid the property taxes, so that the village government charged the owner, the land was also used as a place for traders, street vendors and controlled by other parties claiming to be land managers. In

² Wahbah Az-juhaili, *Al-Fiqih Al-Islami Wa Adilatuhu*. (Jakarta: Gema Insani, 2011), jilid V, cet. Ke 10, 387.

³ Ismail Nawawi, *Fikih Muamalah Klasik dan Kontemporer*, (Bogor: Ghalia Indonesia, 2012), 186

this case the tenant has defaulted on the contents of the agreement, did not fulfill his obligations and did not use the land as stated in the agreement.⁴

Kesilir is a village that is located in Siliragung District, Banyuwangi Regency where the majority of the population works as farmers, the plants that are often planted include: Dragon fruit, rice, oranges, corn, chili and so on. Banyuwangi Regency is listed as the largest producer of dragon fruit in Indonesia. Data from the Banyuwangi Agriculture and Food Service noted that the area of dragon fruit plants in the local district is currently around 3,786 hectares with production reaching 82,544 tons per year. The areas where dragon fruit is cultivated include the Districts of Purwoharjo, Tegaldlimo, Pesanggaran, Siliragung, Cluring, Srono, Bangorejo, and Sempu. In the large number of results from dragon fruit cultivation, Banyuwangi Regent IpuK Fiestiandani and exporters held a meeting to discuss the export of dragon fruit agricultural products to foreign countries which was carried out on March 24, 2022 with an initial export volume of around 8 to 12 tons.⁵

Not all residents of Kesilir have land to cultivate crops, so for those who do not have land in the form of rice fields, they plant vegetables and fruit (dragon fruit) in the remaining yards of their homes. However, when the price soars and the fruit is good, the money earned from the harvest will be very

⁴ <https://www.jawapos.com/surabaya/17/07/2021/disewakan-10-tahun-penyewa-menghilang-kini-lahan-dikuasai-orang-lain/?page=2> , diakses tanggal 1 juni 2022

⁵ <https://jatim.jpnn.com/jatim-terkini/12708/membanggakkan-daerah-penghasil-buah-naga-terbesar-di-indonesia-ini-mulai-ekspor>, diakses tanggal 12 April 2022

large. This is one of the reasons for renting agricultural land, with the aim of generating more profits, which also does not rule out the possibility of very large losses in the event of crop failure.

In the practice of renting agricultural land in Kesilir, there is a rental system that is known and recognized by the community, namely land rent with a *pendem* system, the word *pendem* comes from the Javanese language which means to harbor, land rent with a *pendem* system is where land is rented for a longer period of time than two years in a row, with a depreciation payment system, land rents in the first year are priced normally, then for the next year there is depreciation. Let's say the rental price of a hectare land for one year is Rp. 4.000.000,-. When renting the land for 4 years using a land lease with a *pendem system*, every year the rental price decreases, not the same as the first year price. The depreciation of the price each year may be Rp. 500.000, - or it could be Rp. 250.000,- depending on the location of the land. The location of land that is far from irrigation, shady and close to residential areas, the depreciation of the price each year uses more, which may be Rp. 500.000, - and for strategic land locations, the depreciation of the price every year is less, namely Rp. 250.000,- depending generally.

In the prevailing practice in the community, this rental of *pendem* system is inconsistent with the theory described above. The difference in practice carried out by the parties is in the form of depreciation with additions not stated at the beginning of the agreement. This happens because of the

underlying factor, it can be at the time of payment where in this system payments can be made at three times, such as at the beginning, in the middle, and at the end of the rental period. Payments made in the middle and at the end of the lease term are subject to additional fees charged to the lessee.

Based on the description of the problem above and there has been no similar research with this problem, the author is interested in conducting research on land renting with a *pendem* to farmers who use this system in Kesilir, Siliragung, Banyuwangi. Furthermore, Furthermore, it reinforces the law by using a review of Islamic law.. So the author puts it in the research title **“The Practice of The *Pendem* System of Agricultural Land Lease Agreements In The Review of Islamic Law And Indonesian Civil Code (Case Study In Kesilir, Banyuwangi)”**

B. Problem Formulation

Based on the explanation of the background above, it can then be drawn the core of the problem which is used as the formulation of the problem, including the following:

1. How is the practice of the *pendem* system of agricultural land lease agreement in Kesilir, Banyuwangi?
2. How is the practice of the *pendem* system of agricultural land lease agreements in the review of islamic law and Indonesian Civil Code in Kesilir, Banyuwangi?

C. Research Objectives

Referring to the formulation of the problem, the research conducted by this researcher has the following objectives.

1. To know and understand the practice of agricultural land lease agreements with a *pendem* in Kesilir, Banyuwangi
2. To analyze the review of Islamic law and indoensian Civil Code regarding the lease agreement for agricultural land with a *pendem* system that is commonly practiced by the community in Kesilir, Banyuwangi.

D. Benefits of Research

The results of this study can be used by readers to broaden scientific knowledge. Furthermore, the benefits expected by researchers are as follows.

1. Theoretical Benefits

The results of this research is expected to help develop insight and knowledge about mu'amalah fiqh which is related to land leasing from the point of view of Islamic law.

2. Practical Benefits

- a. The local community

The researcher hopes for the general public is to be able to provide views and understanding about land leases according to Islamic law. Especially for the people of Kesilir, Banyuwangi as the parties who carry out the practice of leasing the land *pendem* system is hoped that

they can gain a deep understanding of the practice from the point of view of Islamic law and Indonesian Civil Code.

b. Further research.

The results of this study can be used as an additional reference for those who need it for further research related to the object in the discussion of this research.

E. Operational Definition

The existence of an operational definition aims to avoid misunderstanding the meaning of the title taken by the researcher. The operational definition of this research is as follows.

1. Islamic Law

Islamic law comes from two basic words, those are law and Islam. In the Big Indonesian Dictionary, the word law means regulations or customs that are officially considered binding, laws or regulations that regulate the way of life in society. Meanwhile, Islam is the religion of Allah in the form of the basics and the Shari'a which was preached by the Prophet Muhammad to all humans. Islamic law is a set of norms or rules that are sourced from Allah swt. and the Prophet Muhammad. to regulate human behavior in society. In this study is Islamic law that discusses *ijarah*.

2. Indonesian Civil Code

The Civil Code (Burgerlijk Wetboek) is a material private law, all basic laws that regulate individual interests. If it is violated, the person (the

injured party) can file a lawsuit. The Civil Code is a rule of law made by the Dutch East Indies government which is intended for non-native citizens, namely Europeans, Chinese and foreigners. Its validity is still carried out in Indonesia today, on the basis of avoiding a legal vacuum (*recht vacuum*) through Article I of the Transitional Rules of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) which reads "All existing laws and regulations are still valid. valid as long as a new one has not been made according to this Constitution".

3. Agreement

Agreement is an act between one or more people who bind themselves to one or more other people to carry out an achievement. In this case the land owner and tenant are the subject.

4. Lease Rent land

Leasing in *fiqh muamalah* is called *ijarah* which means a contract to transfer the benefits of an item from the owner of the item to the tenant in return for rent without being followed by a transfer of ownership of the item. In leasing land here, the object of the lease is the benefits that can be taken from the land, which can be used as land for farming or for other things. So, only the benefits are not the goods (ownership of the land).

5. *Pendem* System

Pendem system is one of the systems known and commonly used by the people of Kesilir, Banyuwangi in the practice of leasing land. The difference

between this *pendem* system land lease and ordinary land lease is the payment system. In this system there is a depreciation of payments each year and an addition to payments that are paid by deadlines.

F. Systematics Discussion

The research entitled “The practice of the *pendem* system of agricultural land lease agreements in the review of islamic law and Indoensian Civil Code (case study in Kesilir, Banyuwangi) is systematically arranged into five chapters, each of which contains sub-chapters that are interrelated with one another. This is intended so that this research becomes more structured and makes it easier to find the discussions in it. The systematic arrangement of this research is as follows.

CHAPTER I INTRODUCTION which is the basis of research, in this chapter contains the background of this research, the formulation of the problem which contains questions about the things to be discussed, the purpose of the research which is the purpose of this research, the benefits of the research expected by the researcher for the reader, definitions operational, namely the explanation of the research variables, and systematic discussion.

CHAPTER II LITERATURE REVIEW which contains two sub-chapters, namely previous research and theoretical framework. In previous research, the results of research that have been carried out previously, can be in the form of a thesis, thesis, or dissertation that has not been published or has been published into a book. This is intended to avoid plagiarism. Furthermore,

the theoretical framework contains a description of the theories used in research to analyze the formulation of the problem.⁶

CHAPTER III RESEARCH METHOD is a step or method used to collect information and data related to the preparation of research. The research methods include: type of research, research approach, research location, types and sources of data, data collection techniques, data analysis.

CHAPTER IV RESEARCH RESULTS AND DISCUSSION which contains a description of the research results that have been obtained by researchers from data sources that are useful for answering the stated problem formulations.

CHAPTER V CLOSING which is the last chapter which contains conclusions and suggestions from the research results. The conclusion contains a summary of the discussion which is the core of the discussion contained in the previous chapter. Meanwhile, suggestions contain recommendations intended for the parties concerned and can be suggestions for further research.

⁶ Farida Nugrahani, *Metode penelitian kualitatif dalam penelitian pendidikan Bahasa*, (Solo: Cakra books, 2014), 208.

CHAPTER II

LITERATURE REVIEW

A. Previous Research

1. Inayaturohmah Sa'idah, *Rice Field Rental with Harvest Season Pay System Review of Sharia Economic Law Compilation (KHES) (Study in Latek Village, Sekaran District, Lamongan Regency)*, Maulana Malik Ibrahim State Islamic University Malang, 2018).⁷ In this research located in the Latek Village, Sekaran District, Lamongan Regency, the type of research used is empirical juridical with a sociological juridical approach. Furthermore, the data collected by the researchers came from primary data sources obtained in the field directly through the observations of researchers by means of interviews with residents of the surrounding community. While the secondary data sources are obtained from the literature, namely books.

From the results of this study, it can be concluded that the practice of renting rice fields in Latek Village, Sekaran District, Lamongan Regency with a pay system in the harvest season according to the Sharia Economic Law Compilation (KHES) review is not contradictory and has fulfilled the pillars and requirements. however, the lessee who pays the rent exceeding

⁷ Inayaturohmah Sa'idah, *Sewa Menyewa Sawah Dengan Sistem Bayar Musim Panen Tinjauan Kompilasi Hukum Ekonomi Syariah (KHES) (Studi di Desa Latek Kecamatan Sekaran Kabupaten Lamongan)*, (Undergraduate Thesis, Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2018)

the time limit that has been determined according to article 36 of the KHES is an act of default.

The inclusion of research that has been done by previous researchers with research that is being carried out by researchers now is a way to find similarities and differences from a study. The similarities are regarding the agreement that is used is an oral agreement, the lease of land used for agriculture and the approach used is sociological juridical. While the difference is in the rental payment system during the harvest season and the addition of harvest yields for thanks and reviews used, namely in previous studies using a review of the Sharia Economic Law Compilation (KHES), while in this study using a review of Islamic law and The Indonesian Civil Code.

2. Iman Suryaman, *Analysis of Islamic Law Regarding the Practice of Leasing Agricultural Land with the "Emplong" System (Case Study in Kauripan Village, Padang Ratu District, Central Lampung Regency)*, Raden Intan State Islamic University Lampung, 2018.⁸ This research uses empirical research, which is descriptive qualitative research. The data sources are obtained from primary data sources and secondary data sources. Primary data sources are carried out by directly conducting interviews with the

⁸ Iman Suryaman, *Analisis Hukum Islam Tentang Praktik Sewa Menyewa Lahan Pertanian Dengan Sistem "Emplong" (Studi Kasus Di Kampung Kauripan Kecamatan Padang Ratu Kabupaten Lampung Tengah)*, (undergraduate Thesis, Universitas Islam Negeri Raden Intan Lampung, 2018)

parties who are parties to the lease agreement. While secondary data sources are collected from books, articles, journals and so on.

According to the analysis of Islamic law related to leasing contracts using the *emplong* on agricultural land located in Kauripan Village, Padang Ratu District, Central Lampung Regency, it is not legal and inappropriate. The reason for the invalidity of the contract was because the land owner was harmed when the tenant worked the land in the dry season which was different from the agreed contract.

Based on the results of the study, conclusions can be drawn regarding the similarities with the research being carried out by the researchers, the similarities are regarding the object of the lease, namely agricultural land and the review used both using Islamic law. Meanwhile, the difference is in the use of agricultural land, namely during the rainy season and after the rainy season (*gadu*), while this study discusses the rental payment system and the rental system used, previous studies discuss the *emplong* system, while this study uses a *pendem* system.

3. Nina Anggraini, *Review of Sharia Economic Law on the Practice of Leasing Rice Fields on an Annual System and Oyotan (Case Study of Nunggalrejo Village, Punggur District)*, Metro Lampung State Islamic Institute, 2018.⁹

The research, which is located in Nunggalrejo Village, Punggur District,

⁹ Nina Anggraini, *Tinjauan Hukum Ekonomi Syariah Terhadap Praktek Sewa Menyewa Tanah Sawah Sistem Tahunan Dan Oyotan (Studi Kasus Desa Nunggalrejo Kecamatan Punggur)*, (Undergraduate Thesis, Institut Agama Islam Negeri Metro Lampung, 2018)

Central Lampung Regency uses this type of field research. The sources of data used come from primary data sources, namely the parties who make lease transactions. While the secondary data sources were obtained from fiqh muamalah books.

Based on the results of research from the practice of leasing rice fields with an annual system and oyotan according to the provisions of the Sharia Economic Law Compilation (KHES) regarding the pillars of the lease terms, which are appropriate. However, in this practice the land cultivator is not the party who rents it and in the annual system the time is not clear, but this is not a problem because both parties are willing and do not feel disadvantaged.

Based on the results of the research that has been described, it can be seen the difference between the previous research and this research. Previous research discusses the rental period of the land, namely 1 year or 3 planting times and the distribution of the harvest because it uses a muzaraah contract, while this study discusses the depreciation of rental costs with additional fees charged to the tenant in the middle and at the end of the lease. The second difference is that the review used in previous research uses a review of Islamic economic law, while this study uses a review of Islamic Law and the Indonesian Civil Code. Furthermore, related to the rental system used. Previous research discusses the annual system and oyotan, while this study discusses the *pendem* system. The similarities are

that the agreement used is an oral agreement and the object that is used as a rental item, namely agricultural land.

4. Fadlilah Rahmawati, *Perspective of Islamic Law on Land Leasing for Night Flower Farming in Citrosono Village, Grabag District*, Muhammadiyah University of Magelang, 2020.¹⁰ In this research, the type of research used is the type of field research. The research location is in Citrosono Village, Grabag District. According to the results of the study, it can be understood that the lease of land used for tuberose flower farming in Citrosono Village based on the view of Islamic law is not yet eligible. This is because there is no written agreement as proof of the lease agreement made between the two parties and in Islam the lease agreement must be written in detail. The goal is to avoid default.

It can be concluded from the results of the research related to the similarities and differences between the previous research and the current research. The similarity is that the lease agreement uses an oral agreement and the object to be leased is in the form of agricultural land. While the difference is in the rental payment system is at the end of the rental period, while in this study the payment of rent can be made at the beginning, in the middle, or at the end of the rental period. The next difference is in the use

¹⁰ Fadlilah Rahmawati, *Perspektif Hukum Islam Terhadap Sewa Menyewa Tanah Untuk Pertanian Bunga Sedap Malam Di Desa Citrosono Kecamatan Grabag*, (Undergraduate Thesis, Universitas Muhammadiyah Magelang, 2020)

of land rent, the previous researchers used the rented land for tuberose flower farming, while this study used it for agricultural land.

5. Aisah, *Fiqh Muamalah Review on the Practice of Leasing Land Using a Harvest Payment System (Case Study in Sudimampir Village, Balongan District, Indramayu Regency)*, Surakarta Islamic Institute of Religion, 2020.¹¹ The type of research used in this thesis is field research and the approach used is a qualitative descriptive approach. Data collection techniques in this study were interviews and documentation. Based on the results of the study, it can be seen that according to the analysis of the pillars and conditions of the practice of renting land in the village of Sudimampir which uses the harvest payment system, it is in accordance with Islamic law. The total rental payment from the harvest obtained is 30% of the total yield. The problem lies in the time of crop failure, because the rent given is not enough to pay for it. In this case, it means that the tenant has a debt to the land owner, therefore the lessee has the responsibility to provide the remaining outstanding payments to the land owner.

The differences and similarities between previous research and this research include: the similarities lie in the object being leased in the form of agricultural land. While the difference is that the payment system uses 30%

¹¹ Aisah, *Tinjauan Fiqh Muamalah Tentang Praktik Sewa Menyewa Tanah Dengan Sistem Pembayaran Hasil Panen (Studi Kasus Di Desa Sudimampir Kecamatan Balongan Kabupaten Indramayu)*, (Undergraduate Thesis, Institut Agama Islam Surakarta, 2020)

dry rice in the first harvest, while this study uses money and the review used is Fiqh Muamalah, while this study uses a review of Islamic Law and the Indonesian Civil Code. The next difference is if the previous researchers discussed the payment of rent (ujrah), while the researchers in this study discussed the rental agreement.

Table 2. 1 Differences and Similarities with Previous Research

No	Researcher	Research title	Similarity	Diversity
1.	Inayatur Rohmah Sa'idah, UIN Maulana Malik Ibrahim Malang, 2018	Rice Field Rental with Harvest Season Pay System Review of Sharia Economic Law Compilation (KHES) (Study in Latek Village, Sekaran District, Lamongan Regency)	The similarity between previous research and this study is the agreement uses a verbal agreement, the object of leasing, and the use of a sociological juridical approach	The difference in research is that previous studies discuss about The system of paying rent during the harvest season and the addition of harvest yields to repay the kindness of the landowner and the previous research used the Compilation Review of Islamic Economic Law (KHES), while this study used the Islamic Law and Indonesian Civil Code.
2.	Iman Suryaman, Universitas Islam	Analysis of Islamic Law Regarding the Practice of	The similarity of the research is on the object of leasing, that	The difference in research is that previous research

	Negeri Raden Intan Lampung, 2018	Leasing Agricultural Land with the "Emplong" System (Case Study in Kauripan Village, Padang Ratu District, Central Lampung Regency)	is agricultural land and the use of Islamic law	discusses the utilization on agricultural land in the rainy season and after the rainy season (<i>gadu</i>) and the system that previous research used the <i>emplong</i> system, while this study discusses land rent with a <i>pendem</i> system
3.	Nina Anggraini, Institut Agama Islam Negeri Metro Lampung, 2018	A Review of Sharia Economic Law on the Practice of Leasing Rice Fields on an Annual and Oyotan System (Case Study in Nunggalrejo Village, Punggur District)	The similarity of the research is on the object of the lease and the agreement using a verbal agreement	The difference between previous research and this research is The lease period for land is 1 year or 3 planting times and the distribution of the harvest because it uses a <i>muzaraah</i> contract, the previous research uses a review of Islamic Economic Law and discusses the annual and oyotan system, while this study uses a review of Islamic law and discusses

				the land lease <i>pendem</i> system
4.	Fadlilah Rahmawati, Universitas Muhammad iyah Magelang, 2020	Islamic Law Perspective on Land Leasing for Flower Farming in Citrosono Village, Grabag District	Similarities of research are found in the agreement used in the lease is a verbal agreement, objects used as rental items, and the use of the Islamic law reviews	Previous research discusses the rental payment system is at the end of the lease period and the land renting for Bunga Sedap Malam farming, while in this study the payment system can be made at the beginning, in the middle or at the end of the rental period and the land rent with a <i>pendem</i> system.
5.	Aisah, Institut Agama Islam Surakarta, 2020	An overview of Fiqh Muamalah Regarding the Practice of Leasing Land Using a Harvest Payment System (Case Study in Sudimampir Village, Balongan District, Indramayu Regency)	the similarity is the agreement used is a verbal agreement and the object for rent is agricultural land	The previous research discusses the payment of rent that is the payment system uses 30% dry rice yields in the first harvest and the use of muamalah fiqh reviews, while this study uses a review of Islamic law and Indonesian Civil Code and discusses the lease agreement with

				depreciation of rental costs.
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B. Theoretical Framework

1. Lease Agreements

Stated in article 1313 of the Civil Code regarding an agreement which is a legal relationship between two or more people who bind themselves to each other with the aim of reaching an agreement to mutually carry out the rights and obligations arising from the agreement.¹²

Article 1548 BW defines that a lease is an agreement between one party and another that is mutually binding, in which one party provides an item to be enjoyed and utilized by another party for a specified time and with compensation paid to the owner of the goods. Lease is a *consensual* where the agreement is valid and binding on both parties when an agreement is reached regarding the main elements, namely the goods and the specified price.

a. The Parties to The Agreement

Subject of the agreement is the parties who are bound to each other because of an agreement. These parties in the Civil Code are regulated sporadically in Article 1315, Article 1340, Article 1317, and Article 1318 and are divided into three groups, including: The parties to the

¹² Article 1313 of the Civil Code

agreement, the heirs of the parties and those who are entitled to receive it, and the third parties.¹³

b. Legal Basis of Agreement Validity

In the agreement there are elements that must be met, including the following.

- 1) There are contract law rules, which are divided into two. *First*, the legal rules of written contracts are those commonly found in legislation, treaties, and jurisprudence. *Second*, the law of unwritten contracts is the rule of law that comes from the customs of the community.
- 2) Legal subjects are parties who must fulfill rights and obligations, these parties are referred to as creditors, namely people who give debts, and debtors are people who owe.
- 3) Achievement, which is something that is agreed upon which contains the rights of the creditor and the obligations of the debtor to fulfill, do, and not do something.
- 4) The agreement between the parties, which has been regulated in Article 1320 of the Civil Code.
- 5) The legal consequence is something that binds the parties to the agreement to fulfill an achievement in the form of rights and obligations, otherwise it can be prosecuted.¹⁴

¹³ Mariam Darus Badruzaman, dkk. *Kompilasi Hukum Perikatan*, (Bandung: PT. Citra Aditya Bakti, 2001), 70.

¹⁴ Lukman Santoso Az, *Aspek Hukum Perjanjian Kajian Komprehensif Teori dan Perkembangannya*, (Yogyakarta: Penebar Media Pustaka, 2019), 49-50.

c. Forms of Agreements

Agreements in terms of their form can be divided into two types, namely: oral and written agreements. An oral agreement is an agreement made by the parties that results in an oral agreement, while a written agreement is the result of an agreement between the parties who make an agreement made in writing. Written agreements can be divided into three forms, including.¹⁵

- 1) An underhand agreement that binds the parties to the agreement, but does not have the power to bind a third party, because it is only approved and signed by the party concerned. If there is a third party who denies the agreement, then both parties or only one of them must submit proof that the third party's denial is unfounded.
- 2) Agreement with a notary witness to legalize the signatures of the parties. The notary's testimony does not affect the legal force of the contents of the agreement. Denial from one party may occur, but must be accompanied by strong evidence.
- 3) An agreement made before and by a notary in the form of a notarial deed which is prima facie evidence of a fact, an agreement made by a public official authorized to testify, make and legalize an agreement fact. If in a court there is a denial, the court must respect and acknowledge the contents of the deed, because a notarial deed

¹⁵ Salim HS, *Pengantar Hukum Perdata Tertulis (BW)*, (Jakarta: Sinar Grafika, 2002), 166-167.

can be denied if it can prove that part of the deed has been replaced or it is not what the parties agree on.

In the rental agreement between written and verbal, according to the law, the difference in consequences is stated. The termination of the written lease agreement i.e. by law or automatically when the time has expired and there is no notification for the termination of the agreement. Meanwhile, the lease agreement which is made verbally, ends with a notification to the lessee that the owner will terminate the lease on the condition that it must be in accordance with the required period according to local custom.

d. Legal Terms of Agreement

From a legal point of view, in entering into an agreement, the conditions must be considered so that it can be considered valid. In article 1320 of the Civil Code the conditions for a valid agreement are as follows.¹⁶

1) Agreement between the two parties

¹⁶ Wawan Muhwan Hariri, *Hukum Perikatan Dilengkapi Hukum Perikatan dalam Islam*, (Bandung: Pustaka Seria, 2011), 123.

The definition of an agreement is the agreement of two or more parties who want each other to do or not do something, where the will of both parties is the same or in accordance.

2) Capable to take action

In this case, what is meant by being competent is to be able to carry out legal actions, not people who are still under the age according to the law, namely under 21 and are not married and are not under guardianship.

3) A certain thing

In the agreement there must be a certain thing or what can be called the object of an agreement, which means the obligation of the person who is in debt or the person who is owed.¹⁷ Hereinafter the obligation is called achievement. Achievement consists of positive and negative actions, which include three things, namely giving something, doing something and not doing something.

4) The existence of a halal

Halal causes is not explained in detail in the Civil Code, while what is meant by the cause in the agreement is the content of the agreement itself. While halal can be interpreted that an

¹⁷ Retna Gumanti, "Syarat Sahnya Perjanjian (Ditinjau dari KUHPerdara)", *Jurnal pelangi Ilmu* Vol.05, no.(2012): 8. <https://ejurnal.ung.ac.id/index.php/JPI/article/view/900/840>

agreement does not conflict with what has been regulated in the law, morality and public order. So it can be concluded that the cause of halal is an agreement that must not conflict with the law, decency, and public order.¹⁸

In addition to the legal terms of the agreement mentioned above, the Civil Code also regulates the general conditions in the agreement which are called subjective legal conditions and objective legal conditions. Subjective legal requirements are related to the ability of the parties to act to carry out legal actions, these provisions include: People who are of sufficient age, are not under guardianship, and are not prohibited from carrying out certain legal actions by law. if these conditions are not met then the agreement "can be canceled". While the objective legal requirements are conditions related to certain things in the agreement, thus the object of certain things that are agreed upon may not be intended for things that are not justified and contrary to law. if these conditions are violated, it will lead to legal consequences, namely "null and void".¹⁹

2. Lease Agreement in Islamic Law

¹⁸ Rsdalina Bukido, *Urgensi perjanjian dalam Hubungan Keperdataan*, Diakses 11 Januari 2022, <https://media.neliti.com/media/publications/240244-urgensi-perjanjian-dalam-hubungan-keperd-8eeedd36.pdf>

¹⁹ Nanda Amalia, *Hukum Perikatan*, (Nanggroe Aceh Darussalam: Unimal Press, 2013), 23. <https://repository.unimal.ac.id/1148/1/%5BNanda%20Amalia%5D%20Hukum%20Perikatan.pdf>

a. Definition of *Ijarah*

In Arabic the lease is called *أَجْر* (*Ijarah*). The word has several words in common, including the following. First, *أَكْرَى* which means to rent. Second, *أَعْطَاهُ* means that he gives him wages. Third, *أَبَى* which means giving him a reward. *Ijarah* has the following meanings: wages, rent, services or rewards. Leasing activities, contracting, selling services are muamalah activities that are often carried out in daily life.²⁰

The definition *ijarah* in terms can be interpreted as the use of an item that may be carried out with clear provisions for the item and within a certain period of time, or it can also be interpreted as an agreement to perform a job in exchange for a predetermined and known amount.²¹

The scholars of the four madhhabs differ in their definition of leasing or *ijarah*. The definition put forward by Hanafiah "*Ijarah is a contract for benefits in exchange for property.*" Malikiyah provides a definition, namely: "*Ijarah is a contract that provides the benefits of an item that is permissible (permissible) for a certain time in return for or wages that are not derived from benefits*". Furthermore, Hanabilah defines *ijarah* as: "*Ijarah is a contract for legal benefits with lafah *ijarah* and *kara* and the like.*" Moreover, according to Syafi'iyah the definition of *ijarah* is: *Finally allowed with certain rewards.*

²⁰ M. Ali Hasan, *Berbagai Macam Transaksi dalam Islam*, (Jakarta: PT. RajaGrafindo Persada, 2004), 227.

²¹ Abdullah Bin Muhammad Ath-Thayyar, dkk, *Ensiklopedi Fiqh Muamalah Dalam Pandangan 4 Madzhab*, (Yogyakarta: Maktabah Al-Hanif, 2009), 311.

The main points of the opinions of the scholars above can be drawn a common thread related to the definition of *ijarah* or leasing, namely a contract made by two or more parties to utilize the goods according to a predetermined time in return (wages).²²

In a sale and purchase transaction with a lease, there are similarities, namely they both use rewards. Meanwhile, the difference between the two is in terms of the object. The object of sale and purchase is an object accompanied by a transfer of ownership, while in a lease the object is in the form of benefits from the object that is not accompanied by a transfer of ownership.

b. Legal Basis of *Ijarah*

Based on the agreement of scholars, *ijarah* is a contract whose law may be carried out by syara' in accordance with the provisions based on the Qur'an, hadith, and ijma ulema.²³ According to Ibn Rushd's opinion, although at the time of the implementation of the *ijarah* contract, the benefits that are used as objects do not yet exist, but these benefits will be created when *musta'jir* use them.²⁴

The legal basis comes from the Qur'an, Sunnah, and ijma'. The following is the basis for the permissibility of the *ijarah* contract.

²² Ahmad Wardi Muslich, *Fiqh Muamalat*, (Jakarta: Amzah, 2010), 317.

²³ Wahbah al-Juhaili, *al-fiqh al-Islami Wa adilatuhu*, (Damaskus: Dar al-Fiqr al-Mua'sshim, 2005), Jilid V, cet. ke-8. 3801-3802.

²⁴ Ahmad Wardi Muslich, *Fiqh Muamalat*, 320.

فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ

"Then if they nurse your (children) for you, then give them their wages." (Surat Ath-Thalaq (65) verse 6).

وَعَنِ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا قَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ :

أَعْطُوا الْأَجِيرَ أَجْرَهُ قَبْلَ أَنْ يَجِفَّ عَرْقُهُ.

"From Ibn Umar he said: The Messenger of Allah. said: Give the worker his wages before his sweat dries up.

Ijma' is also the legal basis for *ijarah* because in social life this contract is needed to meet the necessities of life derived from the benefits obtained from other people's property or other people's labor. In the concept of *ijarah*, benefits have a broad definition including the reward of benefits for the benefits of an object or wages for a job.²⁵ In this case, an example can be taken, namely in rural areas whose source of income is from farming, they must own land. But not all of the people have land to cultivate, they have to rent land to other people who own the land but don't use it. Thus, in this case, *ijarah* can be the solution.

c. Pillars and Conditions of *Ijarah*

²⁵ Panji Adam, *Fikih Muamalah Maliyah (Konsep, Regulasi, dan Implementasi)*, (Bandung: PT. Refika Aditama, 2017), 204.

The pillars of *ijarah* according to Hanafiyah is *ijab qabul* that is made by the parties in the lease at the time of handing over the goods. The sentences used such as: *al-ijarah*, *al-isti'jar*, *al-iktira'*, and *al-kira'*.

On the other hand, there are four pillars of *ijarah* according to the majority of scholars, namely those who carry out *ijarah* transactions, *shighat*, wages and benefits.²⁶ The explanation of the four pillars are as follows.

- 1) *'Aqid* or people who perform the contract are *mu'jir* (the owner who rents out the goods) and *musta'jir* (the tenant of the goods). To become *mu'jir* and *musta'jir*, the conditions must be fulfilled, such as: being reasonable, mature, able to carry out rights and obligations (*tasharuf*), and mutual pleasure.
- 2) *Shighat* or *ijab qabul* in the form of a statement on the submission of receipt of the object of *ijarah*, which can be done verbally or in writing. The requirement of the *shighat* contract *ijarah* is that there must be a mention of a specified period of time.²⁷
- 3) *Ujrah* or wages are rewards for services that have been performed by others. In the practice of *ijarah* there are several conditions for *ujrah* or wages given:

²⁶ Abdul Aziz Dahlan Dkk, *Ensiklopedi Hukum Islam cet. ke-1, jilid 2*, (Jakarta: PT. Ichtar Baru Van Hoeve, 1997), 660.

²⁷ Syaifullah Aziz, *Fiqh Islam Lengkap*, (Surabaya: Ass-syifa, 2005), 378.

- a. The amount of the fee is clear and has been known and agreed by both parties.
 - b. Special employees whose salaries have been borne by the government may not take wages from their work.
 - c. The handover between wages and goods for rent must be given simultaneously.²⁸
- 4) Benefits are advantages that can be taken from something. In this case the transactions made on the object of *ijarah* must have a purpose for useful things.²⁹ For instance, renting land to plant rice. Scholars agree that *ijarah* is prohibited for things that lead to sin. For example, renting land to grow marijuana. To avoid disputes in the future, when the *ijarah* is carried out, the benefits that can be taken from the object must be known. Furthermore, in order for the *ijarah* be valid, it must meet the following requirements. The requirements are:
- a. According to Imam Shafi'i and Imam Hambali, the condition for the parties to the contract is *aqil baligh*, if these conditions are not fulfilled, then the law of the *ijarah* is invalid. While the

²⁸ Muhammad Rawwas Qal Ahji, *Ensiklopedi Fiqh Umar bin Khatttab*, (Jakarta: PT Raja Grafindo Persada, 1999), 178.

²⁹ Diky Faqih Maulana, "Analisis Terhadap Kontrak Ijarah Dalam Praktik Perbankan Syariah", *Jurnal Muslim Heritage* Vol. 6 no.1(2021), 189.

Hanafi and Maliki priests require that the person who performs the *ijarah* does not have to be of age. For children who are *mumayyiz*, they are allowed to perform an *ijarah*, but this must be accompanied by their guardian if it is related to their property and themselves.

- b. In carrying out *ijarah*, both parties, namely ' and *musta'jir* must be equally pleased and there is no coercion from any party.
- c. To avoid conflicts that may arise, the object of *ijarah* must be known to provide benefits.
- d. The conditions for the object *ijarah* are halal and not prohibited by *syara'*.
- e. It is not an *ijarah* carried out to fulfill *musta'jir* obligations. For example, *musta'jir* hire people to perform Hajj for himself.
- f. The object *ijarah* is required to be something that can be rented and can provide benefits.
- g. The amount of *ujrah* or wages in *ijarah* must be determined, clearly and in the form of assets.³⁰

³⁰ Syaikh dkk, *Fikih Muamalah Memahami Konsep dan Dialektika Kontemporer*, (Yogyakarta: Penerbit K-Media, 2020), 139-141.

In the Supreme Court Regulation Number 2 of 2008 concerning the Compilation of Sharia Economic Law, there are several pillars and conditions for the validity of *ijarah*. The pillars of *ijarah* are contained in Article 251. The pillars of *ijarah* are:³¹ The renting party, the party who rents out, leasing object, and contract. Provisions related to the conditions that must be met in the pillars of *ijarah* according to Perma No. 2 of 2008 concerning the Compilation of Sharia Economic Law, including the following.³²

- a. The parties who carry out the agreement (*Mu'jir and Musta'jir*)

In the implementation of *ijarah*, the parties who carry out the agreement must be mature and reasonable. This provision is contained in Article 257 of Perma No. 2 of 2008 concerning the Compilation of Sharia Economic Law which explains that to complete an *ijarah* contract process, the parties who make the contract must have the ability to carry out legal actions.

- b. Object (*Ma'jur*)
 - 1) The party who leases the object must be the owner, his representative, or the custodian (Article 259).

³¹ Article 251 Supreme Court Regulation No. 2 of 2008 The Compilation of Sharia Economic Law

³² Supreme Court Regulation No. 2 of 2008 The Compilation of Sharia Economic Law

- 2) The use of *ijarah* objects must be included in the *ijarah* contract (Article 260 paragraph (1). If the use of *ijarah* objects is not clearly stated in the contract, then the *ijarah* objects are used based on general rules and habits (Article 260 paragraph (1)).
- 3) The lessee can use the object of *ijarah* freely if the *ijarah* contract is executed absolutely (Article 256 paragraph (1)). The lessee can only use certain *ijarah* objects if the *ijarah* contract is carried out on a limited basis (Article 256 paragraph (2)).
- 4) The object that becomes the object of *ijarah* must be halal or permissible (Article 274 paragraph (1)). Objects that are *ijarah* must be used for things that are justified according to the Shari'ah (Article 274 paragraph (2)). Every object that can be used as an object of sale and purchase can be used as an object of *ijarah*. (Article 274 paragraph (3)).

c. Akad

Provisions regarding the contract made on *ijarah* in Supreme Court Regulation No. 2 of 2008 concerning of Sharia Economic Law are as follows.³³

³³ Supreme Court Regulation No. 2 of 2008 The Compilation of Sharia Economic Law

- 1) The *ijarah* contract can be done face-to-face or remotely (Article 258).
- 2) The beginning of the time of *ijarah* is determined in the contract or on the basis of custom. (Article 272 Paragraph (1)).
The time of *ijarah* can be changed based on the agreement of the parties (Article 272 Paragraph (2)).
- 3) *Shigat ijarah* contract must use clear sentences (Article 252 Paragraph (1)). The *ijarah* contract can be made verbally, in writing, and/or gestures (Article 252 Paragraph (2)).
- 4) The *ijarah* contract can be changed, extended, and/or canceled based on an agreement (Article 253).
- 5) The agreed *ijarah* contract cannot be canceled because there is a higher offer from a third party (Article 255).
- 6) The *ijarah* contract can be enforced for the future (Article 254 Paragraph (1)). The parties to the *ijarah* contract may not cancel it just because the contract is not yet valid (Article 254 Paragraph (2)).
- 7) If one of the conditions in the *ijarah* contract does not exist, then the contract is void (Article 261).

d. Rent money

- 1) Rental services can be in the form of money, securities, and or other objects based on an agreement (Article 263 Paragraph (1)). Rental services can be paid with or without a down payment, advance payment, payment after the *ijarah* object has been used, or payable based on an agreement (Article 263 Paragraph (2)).
- 2) The value or price of the *ijarah* is determined, among others, based on the unit of time (Article 271 Paragraph (1)). The units of time referred to in paragraph (1) are minutes, hours, days, months, and or years (Article 271 Paragraph (2)).
- 3) *Ijarah* money does not have to be paid if the *ijarah* contract is canceled (Article 262 Paragraph (1)). A reasonable *ijarah* price/*ujrah al-mitsli* is the *ijarah* price determined by experienced and honest experts (Article 262 Paragraph (2)).
- 4) *Ijarah* money must be paid by the lessee even though the object being *ijarah* is not used (Article 267).

In the Fatwa NO: 112/DSN-MUI/IX/2017 concerning the *Ijarah* Agreement, there are several conditions that must be met in order for *ijarah* to be carried out by the parties to be valid, including the following.³⁴

³⁴ DSN-MUI NO: 112/DSN-MUI/IX/2017 About The *Ijarah* Contract

- a. Provisions related to *Mu'jir*, *Musta'jir* and *Ajir*
- 1) The *Ijarah* contract may be carried out by a person (*Syakhshiyah thabi'iyah/ natuurlijke persoon*) as well as a person who is a legal entity or an unincorporated person based on the prevailing laws and regulations.
 - 2) *Mu'jir*, *Musta'jir*, and *Ajir* are required to be legally proficient in accordance with sharia and applicable laws and regulations.
 - 3) *Mu'jir* must have the authority (region) to perform the *ijarah* contract, both *ashliyyah* and *niyabiyyah*.
 - 4) *Mu'jir* must have the ability to deliver benefits.
 - 5) *Musta'jir* must have the ability to pay *ujrah*.
 - 6) *Ajir* must have the ability to provide services or carry out legal actions that are imposed on him.
- b. Provisions related to *shighat ijarah* contract
- 1) The *Ijarah* contract must be stated explicitly and clearly and understood by the *Mu'jir/Ajir* and *Musta'jir*.
 - 2) *Ijarah* contracts may be made verbally, in writing, gestures, and deeds/actions, and can be carried out electronically in accordance with sharia and applicable laws and regulations.

- c. Provisions regarding *Mahall al-Manfa'at* in *Ijarah'ala al-A'yan*
- 1) Leasing for the benefit of goods must be in accordance with or not prohibited by sharia
 - 2) The lease for the benefit of the goods in item must be able to be handed over at the time of the contract execution or at the time agreed upon in the *ijarah maushufah fil dzimmah*.
- d. Provisions regarding benefits and rental time
- 1) Benefits must be in the form of benefits that are justified (not prohibited) by sharia (*mutaqawwam*).
 - 2) Benefits must be clear so that it is known by *Mu'jir* and *Musta'jir*.
 - 3) The procedure for using the leased goods and the rental period must be agreed upon by *Mu'jir* and *Musta'jir*.
 - 4) *Musta'jir* in the *ijarah contract 'ala al-a'yan*, may lease it back (*al-ijarah min al-bathin*) to another party, unless it is not permitted (forbidden) by *Mu'jir*.
 - 5) *Musta'jir* in the *ijarah contract 'ala al-a'yan*, is not obliged to bear the risk of losses arising from utilization, except for *al-ta'addi*, *al-taqshir*, or *mukhalafat al-syuruth*.

e. Provisions regarding charity performed by *Ajir*

- 1) Charity (work or service) carried out by *Ajir* must be in the form of work that is permitted according to sharia and the applicable laws and regulations.
- 2) The charity that *Ajir* must be known about the type, specifications and size of his work as well as the duration of his work.
- 3) *Ajir* deeds must be in accordance with the purpose of the contract.
- 4) *Musta'jir* in the *ijarah contract 'ala al-a'mal*, may rent it back to another party, unless it is not permitted (forbidden) by *Ajir* or the legislation.
- 5) *Ajir* is not obliged to bear the risk of losses arising from his actions, except because of *al-ta'addi*, *al-taqshir*, or *mukhalafat al-syuruth*.

f. Provisions related to *Ujrah*

- 1) *Ujrah* may be in the form of money, benefits of goods, services, or goods that can be used according to sharia (*mutaqawwam*) and applicable laws and regulations.

- 2) The quantity and/or quality of *ujrah* must be clear, either in the form of a nominal number, a certain percentage, or a formula that is agreed upon and known by the parties making the contract.
- 3) *Ujrah* may be paid in cash, in stages/installments, and respite based on an agreement in accordance with sharia and/or applicable laws and regulations.
- 4) *Ujrah* the agreed

d. Types of *Ijarah*

Ijarah is divided into two kinds, including:

- 1) *Ijarah* for benefits, which is commonly referred to as rent. The object of the *ijarah* for benefits is the benefit of the object being leased. Utilization of goods that have been rented must also be in accordance with the Shari'a and not be used for things related to immorality.
- 2) *Ijarah* for services or work, this *ijarah* is generally known as wage wages.³⁵ In practice *ijarah* for this service is work done by a person, then as a reward for the services that have been provided, the person is entitled to receive wages from the person who

³⁵ Akhmad farroh Hasan, *Fiqih Muamalah dari Klasik hingga Kontemporer*, (Malang: UIN Maliki Press, 2018), 86.

employs him. The terms of the work carried out must be clear and not prohibited by the Shari'ah.

e. Expiration of *Ijarah*

An *ijarah contract* may be canceled and terminated if the following events occur.

- 1) There is a defect in the object in the hands of the lessee
- 2) Damaged rental goods, such as the collapse of the rented building
- 3) Damage to goods that are paid for, for example the material of clothes that are paid for sewing
- 4) The contracted benefits have been fulfilled and have been in accordance with the agreed period in a job
- 5) According to Hanafi, one of the parties to the contract can cancel the *ijarah* if there are extraordinary events, such as burning buildings, stolen merchandise, and running out of capital.³⁶

Some of the reasons for the expiration of the *ijarah* contract according to Al-Khasani in his book (Abdul Rahman Ghazali et al: 2010), include the following.

³⁶ Sayyid Sabiq, *Fiqh al-Sunnah* Jilid III, Cet. ke-4, (Beirut: Dar al-Fikr. 1983), 199-200

- 1) Loss or destruction of the object of *ijarah*. For example, a shop for rent caught fire
- 2) The time for the use of the object of *ijarah* has ended according to the agreement. If an item is rented, it must be returned to the owner. Meanwhile, if the object is in the form of services, then the person is entitled to receive his wages.
- 3) One of the people who made the contract passes away
- 4) The rental period has ended, unless there is an *excuse*. For example, renting land for planting, but when the lease period has expired, the plants cannot be harvested. In this case the *ijarah* considered unfinished.³⁷

³⁷ Abdul Rahman Ghazali dkk. *Fiqh Muamalah*, (Jakarta: Kencana Premada Media Group. 2010), 283

CHAPTER III

RESEARCH METHODS

A. Types of Research

Researcher uses the type of *empirical legal research* (*empirical legal research*) or field research (*field research*). This type of research emphasizes that the law does not only act as a view and applied, but as a reality that occurs and applies in society.³⁸ This research was carried out by going directly to the field to obtain data from sources as parties who fully understand the problems being studied. This makes it easier for researchers to understand all aspects of the object under study.

B. Research Approach

Researcher uses a sociological juridical in this study. Definition The sociological juridical approach is an approach used to assess the ability to implement legal products in society.³⁹ The selection of the research approach is based on the typology of legal research that has been determined, in this study the researcher determines the typology of empirical legal research, therefore the approach used is sociological juridical. The research approach has

³⁸ Depri Liber Sonata, *Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas dari Metode Penelitian Hukum*, Flat Justisia Jurnal Ilmu Hukum Vol. 8, no.1(2014), 29. <https://jurnal.fh.unila.ac.id>

³⁹ Rachmad Syafaat, *Ambivalensi Pendekatan Yuridis Normatif dan Yuridis Sosiologis dalam Menelaah sistem kearifan local masyarakat adat dalam pengelolaan sumber daya alam*. Lex journalica Vol. 10 no.1(2013), 56. <https://ejurnal.esaunggul.ac.id/index.php/Lex/article/view/353>

a function as a limitation on the search for the conceptual basis used to examine the object of research.⁴⁰

C. Data Sources

The collection of empirical legal research data sources was obtained from two sources, namely primary data sources and secondary data sources. The full explanation is as follows.

1. Primary Data

Sources Primary data sources are the main data sources obtained from sources directly. In empirical legal research, primary data sources are obtained by going directly to the field to obtain information and data from sources who are experts in the field.

The primary data in this study were obtained from interviews of the parties who practice leasing land under pendem systems. Researchers conducted interviews with the land owner (Mu'jir) and the tenant (Musta'jir). The speakers from the land owner were Mr. Boiman and Mr. Teguh, and Mr. Tumirin while the speakers from the tenants were Mr. Priswanto and Mr. Samiyo, and Mr. Supri.

2. Secondary Data

Sources Secondary data sources are complementary data sources that can be obtained from library materials related to the research topic being

⁴⁰ Bachtiar, *Metode Penelitian Hukum*, (Banten: Unpam Press, 2019), 123-124.
http://eprints.unpam.ac.id/8557/2/MIH02306_MODUL%20UTUH_METODE%20PENELITIAN%20HUKUM.pdf

conducted. Various secondary data sources include: books, articles, journals, notes and so on related to research.⁴¹

The secondary data sources used are books on fiqh muamalah, contract law, the Civil Code, leasing in Islamic law, and other sources related to research.

D. Data Collection Techniques

Monitoring of data collection is an important thing to do so that the validity and reliability of data acquisition is maintained. There are three methods for data collection, namely: observation, interviews, and documentation.

1. Interviews

Interviews were conducted to achieve the goal of obtaining information from the informants by means of direct question and answer, then the answers obtained were recorded in a book or recorded by electronic means.

Interviews with resource persons can be carried out directly or indirectly. The data needed in the research can be obtained from the sources by direct interviews. Meanwhile, information related to the condition of the person whose data the researcher wants to know can be done through indirect interviews with other people.⁴²

⁴¹ Sugiyono, *Metode Penelitian Kuantitatif Kualitatif R & D*, (Bandung: Alfabeta, 2008), 137.

⁴² Mohamad Mustari dan M. Taufiq Rahman, *Pengantar Metode Penelitian*, (Yogyakarta: LaksBang Pressindo, 2012), 55.

Interviews were conducted by researchers with the parties, namely the land owner (Mu'jit) and the tenant (Musta'jir) who practiced the land lease agreement with the *pendem* system. The interview techniques used in the study were divided into three types, namely: structured, semi-structured, and unstructured. In this study, the interview technique used by the researcher is using a semi-structured interview technique. Semi-structured interview is a semi-structured interview is an interview in which the respondent must answer questions that have been prepared by the interviewer. Prior to conducting the interview, an interview guide has been prepared in the form of a list of questions or schematic and structured topics that will be explored by the interviewer. This interview guide is useful to keep the interview focused, serve as a guide, and to ensure the interview goes as expected. The questions compiled are the main questions which will then be supported by several follow-up questions related to the main question.⁴³

The resource persons in this study were the natives of the village of Kesilir Bayuwangi who were involved in the practice of the *pendem* system of leasing agreements. Interviews were conducted directly with the land owners, namely Mr. Boiman and Mr. Teguh, while the tenants of the land were Mr. Samiyo and Mr. Priswanto.

2. Documentation

⁴³ Indra Bastian, Rijadh Djatu Winardi, dan Dewi Fatmawati, *Metoda Wawancara*, Dosen Universitas Gadjah Mada, 2018.

The documentation method is no less important than other methods, this method is done by collecting variables in the form of books, magazines, newspapers, notes, and so on.⁴⁴ The data obtained from the documentation method can be studied to obtain additional information related to the research topic.

The researcher asked for data from the Kesilir apparatus regarding the village profile to be used as documentation, besides that documentation was also obtained from interviews with land owners and land tenants. This is done so that the information obtained is clearly sourced and can be justified by the parties concerned.

E. Technique of Data Processing

The method used in data processing aims to show the steps taken to process and analyze data in accordance with the approach used in the study. Several stages used for data processing include: checking data (*editing*), data grouping (*classifying*), verification (*verifying*), analysis (*analysing*) and conclusions (*concluding*).⁴⁵ The explanation of the data processing method mentioned above is as follows.

1. Data checking (*Editing*)

At the data checking stage, the researcher re-checked the data that had been collected from the field. Some aspects that must be checked include:

⁴⁴ Sandu Siyoto dan Ali Sodik, *Dasar Metodologi Penelitian*, (Yogyakarta: Literasi Media Publishing, 2015), 77-78.

⁴⁵ Pedoman Penulisan Skripsi, Fakultas Syari'ah, Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2019, 26.

answers from sources, writings must be legible, meaning obtained from sources answers must be clear and in accordance with questions, answers obtained must be in accordance with each other, answers obtained must be relevant.⁴⁶

At the *editing* researcher checked the contents of the data that had been obtained from primary and secondary data related to the practice of the *pendem* in Kesilir, Banyuwangi.

2. Data grouping (*Classifying*)

Classifying is the activity of grouping data according to the categories that are close to or have similarities. It aims to make it easier for researchers to review and compile research results.⁴⁷

At the data grouping stage, the researchers grouped the information data obtained from land owners and land tenants separately and then analyzed according to their categories.

3. Data Verification (*Verifying*)

Verification is a review activity of the data that has been collected by researchers to avoid errors. This is done to maintain the validity of the research data.⁴⁸

⁴⁶ Rifa'I Abubakar, *Pengantar Metodologi Penelitian*, (Yogyakarta: Suka Press UIN Sunan Kalijaga, 2021), 122. <https://digilib.uinsuka.ac.id/id/eprint/42716/1/PENGANTAR%20METODOLOGI%20PENELITIAN.pdf>

⁴⁷ Anak Agung Putu Agung dan Anik Yuesti, *Metodologi Penelitian Kuantitatif dan Kualitatif*, (Yogyakarta: AB Publisher, 2017), 100. <https://library.unmas.ac.id/repository/EBK-00002.pdf>

⁴⁸ Nana Saudjana dan Ahwal Kususma, *Proposal Penelitian perguruan tinggi*, (Bandung: Sinar Baru Argasindo, 2002), 84.

This verification stage is carried out by researcher to avoid data errors that have been grouped in the pervious stage. In this case, the researcher reviewed the primary daya and secondary data obtained from the field.

4. Analysis (*Analyzing*)

Analysis is carried out concurrently with interpretation. Analysis is a description of data processing which is broken down into more detailed categories to find discussion points that match the theme.⁴⁹

5. Conclusion (*Concluding*)

The last stage of data processing is drawing conclusions. This is done to be able to answer the problem formulation that has been set from the start. Conclusions can be categorized as credible if the data collected by researchers from the field is valid and consistent from one stage to the next.⁵⁰

⁴⁹ Conny R. Semiawan, *Metode Penelitian Kualitatif Jenis, Karakteristik dan Keunggulannya*, (Jakarta : PT. Grasindo, 2020), 121.

⁵⁰ Sirajuddin Saleh, *Analisis Data Kualitatif*, (Bandung: Pustaka Ramadan, 2017), 93.
<http://eprints.unm.ac.id/14856/1/ANALISIS%20DATA%20KUALITATIF.pdf>

CHAPTER IV

RESEARCH RESULTS AND DISCUSSION

A. The Practice of Land Lease Agreements *Pendem* System in Kesilir, Banyuwangi

Kesilir is a village located in the Siliragung sub-district, Banyuwangi district, which is located at an altitude of 100.00 m above sea level, the distance between Kesilir Village and the sub-district capital is 5 Km, which can be reached by motorized vehicle for approximately 0.08 hours. Kesilir Village is directly adjacent to several villages as follows.

- a) North side : Sukerojo Village
- b) South side : Siliragung Village
- c) East : Seneporejo Village
- d) West : Baru River

The population density of the Kesilir village reaches 1,047.70 per km. The total area is 1,086.00 ha, which consists of lowlands and highlands/mountains with varying levels of soil fertility. Good soil fertility, so it is used by local people for agricultural land. The people of Kesilir have a variety of livelihoods. Based on data taken from the profile of Kesilir, it shows that the majority of the population earns a living as farmers and farm laborers, namely 4,323 people as farmers and 5,741 people as agricultural laborers out of a total population of 10,607 people.

Table 4. 1 The Livelihood of Kesilir Village Residents

Type of work	Man	Woman
Farmer	3459 people	864 people
Farm workers	458 people	1160 people
Migrant Workers	12 people	63 people
Government employees	102 people	71 people
Breeder	197 people	0 people
Mechanic	20 people	0 people
Private Doctor	1 people	2 people
Private Nurse	1 people	3 people
Private Midwife	3 people	0 people
Alternative Medicine Expert	2 people	0 people
Private Lecturer	3 people	0 people
Mobile Merchant	9 people	7 people
Carpenter	15 people	0 people
Bricklayer	10 people	0 people
Household servant	0 people	15 people
Traditional Shaman	0 people	5 people
Architecture/designer	2 orang	0 orang
Total Population	1.602 people	

Source: Kesilir Village profile in 2019

In connection with the large number of people who make a living as farmers and farm laborers, some grow food crops and some grow fruits. The total number of families who cultivate their land with food crops is 3,283 families and 2,526 families cultivate their land with fruit. This can be seen in the following table.

Table 4. 2 Ownership of land for food crops

Number of families owning agricultural land	1.320 family
Have no land	1.963 family
Owning less than 10 ha	1.288 family
Owens 10 – 50 ha	22 family
Owens 50 – 100 ha	7 family
have more than 100 ha	3 family
Total number of farming families	3.283 family

Source: Kesilir Village profile in 2019

Based on the number of 3,283 farming families, 1,963 families do not own land to grow food. So they grow food on the land they rent.

Table 4. 3 Land ownership of fruit crops

Number of families owning plantation land	320 family
Have no land	2.196 family
Owens less than 10 ha	29 family
Owens 10 – 50 ha	3 family

Total number of plantation families	2.526 family
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Source: Kesilir Village profile in 2019

Related to the total 2,526 families owning plantation estates, only 320 families owning plantation land, while the number of families without plantation land is more than 2,196 families. In the explanation above, it can be seen that the villagers of Kesilir, Banyuwangi use their land for farming. Based on the information the author obtained from the secretary of the Kesilir, namely Mr. Imam Syafi'I, there are still many discrepancies in the figures because the village profile data has not been updated, which is still using the Kesilir village profile in 2019.

The results of the interviews obtained from the parties related to the practice of the Pendem system rental agreement in Kesilir Village, Banyuwangi Regency, one of which was from the chief of the village, Mr. Supriyono⁵¹

“Sewo tanah mendem dikenal masyarakat Desa Kesilir, Banyuwangi iki wes kawit jaman biyen, ngertine sewo tanah mendem iki yo teko mbah-mbahe mbiyen, terus dadi turun temurun. Bedone sewo tanah mendem karo seng biasah yoiku ng pembayarane seng nyusut tiap tahune, tapi mbayare yo ora pertahun dadi disesuaine aro kesepakatan rong pihak. Neng Deso Kesilir, Banyuwangi iki kiro-kiro enek wong 6 (Pak Priswanto, Pak Samiyo, Pak Supri, Pak Siswanto, Pak Solikin karo Pak Santoso) seng nyewo tanah mendem, terus seng nyewakne tanah mendem neng kene sekitar wong 4 (Pak Boiman, Pak Teguh, Pak Tumirin, Pak Slamet), kui seng sak erohku yo. Soale nyewo tanah lak kesepakatanane gur gawe omong-omongan ancen ora enek catetane.”

⁵¹ Supriyono, Wawancara, (September, 09 2022)

“The land lease with the pendem system has been known for a long time by the people of Kesilir Village, Banyuwangi. This land lease system is known from the ancestors then became hereditary. The difference between the pendem system land lease and the regular land lease is in the payment system which shrinks every year, but the payment is adjusted by agreement of the parties, so it is not done once a year. There are approximately 6 tenants who practice the pendem system of land leases in Kesilir Village, Banyuwangi (Pak Priswanto, Pak Samiyo, Pak Supri, Pak Siswanto, Pak Solikin karo Pak Santoso), while the landowners who rent out their land under the system There are about 4 pendem here (Pak Boiman, Pak Teguh, Pak Tumirin, Pak Slamet). This amount is according to my knowledge because the land lease transaction was carried out using only a verbal agreement, there was no record of his name.

The practice of renting land under a pendem system in Kesilir Village, Banyuwangi has been carried out by the community for a long time. It was introduced by the ancestors. The existence of the land lease system continues to this day. This pendem land lease system differs from ordinary land leases in that the rental fee shrinks every year with payment in full at the beginning, or can be paid in installments in the middle and at the end of the lease term. The land lease period for the pendem system can be said to be very long, but for the people of Kesilir Village, Banyuwangi, using an oral agreement is considered sufficient because they trust each other. For people who are aware of the law they use a written agreement with a stamp duty to protect the rights of each party. According to the village chief of Kesilir, Banyuwangi has 6 tenants of land under the pendem system, namely Mr. Priswanto, Mr. Samiyo, Mr. Supri, Mr. Siswanto, Mr. Solikin and Mr. Santoso, while the land owner who rented out his land under the pendem system was approximately 4 people, namely Mr. Boiman Mr. Teguh, Mr. Tumirin, Mr. Slamet.

The description of the analysis related to the results of interviews associated with the Rukun *Ijarah* or leasing is as follows:

1. The owners and tenants who are parties to the land lease agreement (*Mu'jir and Musta'jir*)

The majority of the people of Kesilir Village, Banyuwangi Regency work as farmers, but not all of them own land or only have a little land to cultivate crops. This is the reason for the occurrence of land lease transactions. system land lease *Pendem* system in Kesilir, Banyuwangi Regency are the rice field owners and tenants.

Some parties who are aware of the law on this land lease practice use the form of a written agreement, but there are still many who use an oral agreement on the grounds of mutual trust. This is evidenced by the statement from the tenant of the land as follows:

- 1) Mr. Samiyo⁵²

“Aku wes ping bolak balik nyewo sawah mendem, enek seng gur sediluk yo enek seng borongan (suwi banget). Aku pernah nyewo ora gawe perjanjian megro gur 3 tahun, tapi kui wes mbiyen. Saiki iki aku sek garap sawah seng tak sewo borongan suwene 10 tahun, sakjane wayae wes mbalek tapi wes diperpanjang 3 tahun maneh sampek 2027. Lha lek nyewone suwi ngene iki gawe surat perjanjian bermatreraai.”

“I have rented land many times with a pendem system, some for a short time and some for a very long time. I once rented without using a written agreement because it was only for 3 years, but that's been a long time. Now I am still working on the rice fields that I have rented for 10 years, actually it is time to return to the owner, but it has been extended for another 3 years until 2027. If the lease term is long, then use a stamped agreement letter.”

⁵² Mr. Samiyo, *Interview*, (Kesilir, March 28th, 2022)

In practice, the *pendem* agreements uses verbal and written agreements. In practice, in general, the parties to a land lease only use an oral agreement on the basis of mutual trust. In this case, Mr. Samiyo as a land tenant (*Musta'jir*) rents land with a *pendem* system using a stamped agreement because the lease period is very long. This is done to avoid disputes between the two parties in the event of negligence. The expiry of the lease period can be extended by agreement of both parties.

2) Mr. Priswanto⁵³

“Aku nyewo sawah mendem suwene 2 tahun gur gawe perjanjian lisan. Ombone sawah ¼ hektar regane 4 juta. Pertamane aku nyewo gur setaun tapi pas teko pertengahan tahun tak delok tanduranku apik dadi aku ngenyang neng seng duwe tanah, tak tambahi sewane 1 tahun maneh, pas kui wonge pas butuh duwet pisan dadine oleh tak perpanjang. Lek sewo mendem iki asline tahun ngarep e nyusut 500 ewu dadine 3.5 juta tapi wonge jaluk tambahan 200 ewu dadi aku kudu bayar 3.7 juta. Sakjane aku yo rodok ra lilo tapi tanduranku sek apik dadi tak wei ae.”

“I rented the land with a pendem system for 2 years, using a verbal agreement. The land area is hectare with a price of Rp. 4,000,000,-. Initially I only rented for 1 year but in the middle of the rental period, the plant growth was very good, so I offered to the land owner to extend it for another year. At that time the owner of the land was in need of money, so he agreed. In this pendem system land lease, the depreciation in the next year is Rp. 500,000,-. Then the price to be paid is Rp. 3,500,000,-, but the owner asked to add Rp.200,000,-. So I have to pay Rp. 3.700.000,-. Actually at first I was not willing but because my plants are good so I just give it.”

⁵³ Mr. Priswanto, *Interview*, (Kesilir, March 28th, 2022)

The practice of renting land with a *pendem* system in the village of Kesilir, Banyuwangi, the payment is using a depreciation system every year. In this case, Mr. Priswanto as a land tenant (*Musta'jir*) in the middle of the lease period bargained with the land owner (*Mu'jir*) to extend the lease period for another year and the payment was paid off directly. However, the land owner asked for an additional fee other than the provision for *pendem* of Rp. 200,000,-. Mr. Priswanto couldn't help but have to pay for it because the quality of the plants was considered very good.

3) Mr. Supri⁵⁴

“Aku nyewo sawah ¼ hektar gene wong Pesanggaran mendem 10 tahun tak tanduri jeruk, pas nyewo tanah iki gur omong-omongan terus gawe oret-oretan ben ora lali tanggale, rego sewane Rp. 4.000.000,- wes jalan 9 taun. Dadi 1 taun engkas mbalik wisan. Pas taun wingi jerukku jan uapik woh e gembel. Bariku tak parani seng due tanahe tak tembung menowo oleh diperpanjang mendem 3 taun dan yo akhire oleh, tapi wonge jaluk tambah duet Rp. 500.000,- dan dibayar secepatete sakwise perpanjangan kui. Menurotku jalukan tambahane yo lumayan okeh tapi yowes tak iyoni ae wong asile jerukku lak panen yo luweh okeh.”

“I rented ¼ hectare land belonging to Pesanggaran people with a pendem system for 10 years for me to grow oranges, I rented this land using a verbal agreement and only wrote the date so as not to forget, the rental price was Rp. 4,000,000, - and has been running for 9 years. So, in 1 year the land will return to its owner. Last year the quality of my citrus plants was very good. After that I came to his house and offered to extend the rental period for 3 years and he agreed on the condition that he asked for an additional Rp. 500,000, - and he asked to be paid as soon as possible. I think the additional amount of rent is quite a lot but because I think my crop yields will be more profitable so I agree to it.”

⁵⁴ Mr. Supri, *Interview*, (Kesilir, 09 September 2022)

Leasing land is very helpful for farmers who do not have land to cultivate crops. In the practice of renting land with a *pendem* system in Kesilir Village, Banyuwangi, many use verbal agreements, when an extension of the lease period occurs, there are several cases where there are additional payments requested by the land owner to the tenant. The nominal required varies depending on the location and condition of the land and the owner can take advantage of the opportunity by looking at the quality of the tenant's plants. This is actually not in accordance with the agreement where there is no mention of additional money in the future. Even though they feel a little objectionable, the tenants still pay for it because they see the potential of their plants which they feel will generate more profit.

The reason for doing the *pendem* system rental agreement can be seen from the statement explained by the lessee, including the following:

a. Agricultural land needs

In Kesilir, Banyuwangi, the majority of whom work as farmers absolutely need agricultural land, but many of them do not own land, therefore renting land is a solution to meet their living needs.

b. The payment can be paid in instalments

Many land tenants are interested in renting land with *Pendem* system because the payment can be paid in instalments. It can be

be paid at the beginning, in the middle, or at the end of the lease period according to the agreement of both parties. This certainly makes it easier for the tenant to work on the land even though he has not paid the land rent payment at the beginning of the agreement and can be repaid if the tenant has benefited from his harvest.

c. Long lease period

By renting land with the *Pendem* system tenant does not have to worry about finding another land lease because of the length of the lease period. The number of farmers who do not own land makes *pendem* system much in demand by the people of Kesilir, Banyuwangi because the lease period is long so there is no need to look for another land lease. In addition, the rental price increases every year.

Furthermore, based on the land owner's point of view, they also have various reasons for carrying out the practice of leasing the *pendem* system, including:

1) Mr. Boiman⁵⁵

“Aku nyewakne sawahku mergo aku wes gak kuat garap sawah akeh-akeh soale umurku yo wes tuwo. Pas aku butuh duwet akeh tak tawakne ben disewo pendem, seng nyewo gelem mergo yo butuh garapan, duwet sewo ne yo langsung dilunasi pas waktu iku. Suwi banget nyewone kui, soale pas wes entek tempone pas tandurane sek apik makane wonge jaluk memperpanjang neh. sakjane lak disewakne mendem iku yo akeh rugine mergo nyusut mben tahun tapi timbangane tak dol malah entek sawahku.”

⁵⁵ Mr. Boiman, *Interview*, (Kesilir, Mrch 29th, 2022)

“I rented out land because I couldn't handle a lot of land, because I was old. I offered a pendem system lease when I needed money, the tenant also accepted my offer because he also needed land and the lease term was very long with the payment being repaid at the beginning of the lease term. When the lease expires, the tenant bargains to extend the lease because the plants are good. Actually, this pendem system rents a lot of losses because it shrinks every year, but instead of selling it after a long time my land runs out.”

Land owners have various reasons for renting out their land with the *pendem* system, Mr. Boiman as the land owner (*Mu'jir*) rents out his land with the *pendem* system because he is old, so he is not strong enough to work on the land he owns. Mr. Boiman offered his land to be rented with a *pendem* system due to an urgent need for money, but did not want to sell the land. So he asked for the payment to be repaid at the beginning of the lease term with depreciation every year.

2) Mr. Teguh⁵⁶

“Sawahku tak sewakne mendem mergo aku lungo neng Sorong suwi, anak-anakku yo sekolah ng kono, timbangane nganggur ganek seng garap makane tak sewakne gene dulurku seng neng omah. Tak kongkon nguwei duwet 10 juta gawe sewo mendem 7 tahun soale aku yo pas ape bayari anakku sekolah, sawahe ombone 1/8 hektar rego sewone 2 juta. Tapi wonge gak iso langsung bayar kabeh, tapi jaluk diangsur bayar neng pertengahan wektu nyewo.”

“I rented out the land with a pendem system because I would be living in Sorong for a long time, my children also studied there, rather than the land no one was managing, so I rented it out to relatives who were at home. For my child's school fees, I asked for a land area of 1/8 hectare, the annual rent is Rp. 2,000,000,- rented

⁵⁶ Mr. Teguh, *Interview*, (Kesilir, March 29th, 2022)

for 7 years with the rental price of the Pendem system being Rp. 10,000,000,-. But he couldn't pay for everything directly. So, he offered to pay in installments in the middle of the rental period.”

The land owner chose to lease his land with a *pendem* system because no one worked on the land, which was left to Sorong for a long time. In this case, Mr. Teguh offered his land to his brother for rent under a *pendem* because he needed money for his son's school fees. But his brother offered to pay in installments in the middle of the lease because the money was not enough to pay all the rent for the 7 years at the beginning of the agreement.

3) Mr. Tumirin⁵⁷

“Tanahku ¼ hektar disewo mendem 8 tahun mergo garapanku wes akeh temenan, lokasine strategis cedek pengairan yo cedek dalam, tak sewakne rego Rp. 4.200.000,- akad e sewo mendem iki gawe perjanjian tertulis, mergo nyewo tanaha suwe tenan, tapi isine ya gur nengeri ng tanggalan wayah mulaine lan wajah mbalike tanah kui mau karo tanda tangan gawe materai. Wonge mbayare yo ora langsung lunas, awale kae dibayar Rp. 10.000.000,- terus wonge nyemayani lak wes panen bakal di lunasi kurange yoiku Rp. 16.700.000,- Tapi aku jaluk tambahan Rp. 300.000,- mergo dekne bayare tempo, sakjane tak kongkon bayar ng awal ae tapi wonge ora mampu dadi wonge bayar Rp. 17.000.000,- pas wayah panen.. Susute duet sewantanah iki per tahune gur Rp. 250.000,- soale terah panggonane penak.”

“I have 2 hectares of land is rented under a pendem system for 8 years because I have worked a lot on other lands. The location of the land is strategic and close to road access. I set the rental price at Rp. 4.200.000,- with a written agreement because the lease period is very long, the contents of the agreement are only the date on which the land was originally leased and the date the land will be returned to me then signed with a stamp duty by both parties. At the beginning of the land lease agreement, the lessee does not directly pay in full, he only pays Rp. 10,000,000, - and he promised to pay off the lack

⁵⁷ Tumirin, *Interview* (Kesilir, March 29th 2022)

of rent amounting to Rp. 16.700.000,- but I asked for additional rent of Rp. 300.000,- because he asked for the time to pay it off, actually I asked to be paid in full at the beginning of the agreement but he couldn't afford it. So, he paid Rp. 17,000,000,- when it is harvested. On my land, the depreciation of the rental fee is Rp. 250.000, - because the location is strategic.”

In the practice of land lease agreements with the *pendem* system in Kesilir Village, Banyuwangi, the majority use oral agreements in their contracts, although some use written agreements because the period of time is very long. In addition, the payment of rental fees requires a lot of time, because the amount of money owned by the tenant is not sufficient to be paid in full at the beginning of the lease agreement and in practice landowners often ask for additional rent because this is the next payment, namely payments in the middle and at the end of the lease. This transaction will continue if both parties agree to each other.

Based on interviews with land owners, the background of the lease of land under the *Pendem* system include:

a. Urgent need but do not want to sell land

A sudden and urgent need is also the reason landowners lease their land with a *pendem* system, because the owner can quickly get the money he needs without selling his land. However, payments do not always have to be made at the beginning of the lease agreement, but can be made in the middle or at the end of

the lease term. This is adjusted to the condition of the tenant with the consent of the land owner.

b. Unable to work on the land

The land owner who rents it out with a *pendem* system argues that he is unable to work his large amount of land because he is old. The land owner rents out the land with a *pendem* system because he does not intend to sell his land. For the owners, renting out with this system is actually a loss because of the depreciation of the rent each year. However, this kind of rental system is widely used by the people of Kesilir, Banyuwangi to rent land for a long time.

2. Agricultural land as an object of *Ijarah (Ma'jur)*

The land that is used as the object for renting by the *pendem* system can be used to plant anything by the tenant. This must be in accordance with the rental time limit that has been determined and agreed upon by both parties, considering that in this *pendem* system lease, many people use verbal agreements.

3. *Ijab Qobul*

Ijab qobul on the lease of the *Pendem* system in Kesilir, Banyuwangi is held after an agreement between the land owner and the tenant has been made and approved. Furthermore, the parties hold an

ijarah agreement to prove the occurrence of land leases under the *pendem* system. The community carries out the delivery of their objects based on mutual trust with only verbal agreements, but for some people who are aware of the law on the implementation of the *pendem* rental system which is recognized in Kesilir, Banyuwangi, they use a written agreement. In the verbal agreement, the *ijab qobul* sentence used is in colloquial language by using Javanese that is clear and can be understood by both parties. Based on the information that has been obtained from interviews with the tenants who use a land lease agreement with the *pendem* system in Kesilir Village, Banyuwangi, from 3 respondents, 2 people (Mr. Priswanto and Mr. Supri) used an verbal agreement and 1 person (Mr. Samiyo) used an agreement. written agreement. Likewise, from the land owner side of the 3 respondents, 2 people (Mr. Boiman and Mr. Teguh) used a verbal agreement and 1 person (Mr. Tumirin) used a written agreement.

4. The payment of Rent Fees

Regarding the payment of rent on land leases with the *pendem* system that known in Kesilir, Banyuwangi, it can be said to be quite flexible because the tenant can pay the rent at the beginning, in the middle, or at the end of the rental period. This is of course done with the agreement of both parties.

The rental price is determined at the time the contract is executed. rental system *pendem* , there is a depreciation of the rental price every year. Generally, the depreciation of the annual rental fee is Rp. 500,000,-. The calculation of depreciation is based on the location of the land, which depends on how close it is to residential areas and the fertility of the soil and the light obtained by plants. Land which is located in the middle of rice fields, close to residential areas, lacks sunlight and is far from irrigation, the depreciation price used is Rp. 250.000,-.

In the practice of leasing with the *pendem* system , which has a very long lease term, the depreciation of the rental fee is not always based on the nominal above, but uses a bargaining system between the two parties at the price used in general in the community. So, before making this transaction, both parties must seek information from land owners who have rented out for a very long period of time with *Pendem* regarding the rental price. Furthermore, the tenant can pay the agreed price. This is in accordance with the statement of Mr. Samiyo⁵⁸

“Aku nyewo sawah mendem iki suwi ne 10 tahun, tapi regone langsung towo-towo an gawe rego umume. Waktu iku regone 30 juta selama 10 tahun. Dadi lek diitung pertahune nyusut 500 ewu selama 5 tahun hasile 15 juta, terus 5 tahun e maneh diitung rego sewo awal neh terus disusut 500 ewu sampek 5 tahun hasile 15 juta. Soale lak gawe penyusutan koyok biasaha regone yo tambah murah, mergone regane iso sampek 500 ewu ning tahun ke-8, krono kui terlalu murah seng duwe yo gak gelem mergo akeh rugine. Makane itung-itungan penyusutane digawe selama 5 tahunan, bar kui 5 tahun berikute penyusutane mbalik teko awal neh.”

⁵⁸ Mr. Samiyo, *Interview*, (Kesilir, March 28th, 2022)

“I rented a rice field with a pendem system for 10 years, but the rental price was done by bargaining using the commonly used price. At that time it cost 30 million for 10 years. So, if it is calculated annually, it shrinks by 500 thousand for the first 5 years and the result is 15 million, then the next 5 years the initial rental price is calculated and then it is reduced to the second 5 years and the result is 15 million. If you use depreciation as usual, the price will automatically become very cheap, because the price can only be 500 thousand in the 8th year. If you use a depreciation system like that, the owner will lose a lot because it is considered too cheap. Therefore, the calculation of the depreciation of the rental fee uses the system per 5 years, then the next 5 years the depreciation of the rental fee starts from the beginning again. ”

The practice of leasing land with a *pendem* system for a very long time uses prices commonly used in the community on the grounds that land owners will lose a lot if they pay with depreciation every year. In practice that happens in the implementation of the *pendem* system land lease agreement in the village of Kesilir Banyuwangi is not always based on price reductions every year, but is adjusted to the agreement made by both parties. In the practice of a *pendem* system land lease agreement in Kesilir Village, Banyuwangi for a very long period of time, both parties, namely the land owner and the tenant, negotiate the rental price. According to the customs of the people who rent a *pendem* system for a very long period of time, the depreciation of the rental fee is divided into several times during the rental period, every 5 years the depreciation of the rental fee starts from the beginning again and so on. The rental price of a hectare land is Rp. 4,000,000,- when this land is rented under a *pendem* system for a long time, the first 5 years the rent payment will decrease by Rp. 250.000,- up to Rp- 500,000.- depending

on the condition and location of the land, then for the next 5 years the new feature starts again and continues until the agreed rental period expires. This is to ensure that neither party loses.

The payment system for the pendem system of land leases has three types of time options used by the people of Kesilir Village, Banyuwangi which are adjusted to the interests and agreements of the parties. Based on interviews that have been conducted with 3 tenants out of 6 people and 3 land owners out of 4 people who practice the pendem system in Kesilir Village, Banyuwangi, there is an additional rental fee whose payment is made in the middle or at the end of the rental period. This was not stated at the beginning of the agreement. The tenants who asked for additional rental fees were 2 out of 3 respondents, while the landowners who asked for additional rental fees were 1 person out of 3 respondents.

B. Review of Islamic Law on lease agreements to lease land in the Pendem system in Kesilir, Banyuwangi

The lease agreement in Article 1548 of the Civil Code is an agreement that made by one party for the use of a movable or immovable object to another party at a certain time in return for payment.⁵⁹ Land leases are mostly carried out by rural communities whose sources of livelihood are obtained from

⁵⁹ Claudia Soleman, Perjanjian Sewa Menyewa Sebagai “Perjanjian Bernama Berdasarkan Kitab Undang-Undang Hukum Perdata”, *Lex Privatum* Vol. VI/No.5/Juli/2018, 13.

farming. The practice of leasing in each area has various systems that apply and are recognized by the local community. The underlying factors for renting land, namely because they do not have land to cultivate crops or the land owned is still insufficient for planting other types of crops.

In Kesilir, Banyuwangi, there are various types of agricultural land rental systems that are known and recognized, one of which is the *Pendem* system. This system is widely used by farmers who rent land for a long period of time.

Land lease *Pendem* system that applies in Kesilir, Banyuwangi Regency involves two parties who have a contract, namely the first party or land owner (*Mu'jir*), the second party or tenant (*Musta'jir*). Article 1320 of the Civil Code states that the conditions for the validity of the agreement, include:⁶⁰

1. An agreement between the two parties

Agreement is two or more parties who want each other to do or not do something. This land lease agreement occurs after the parties make an agreement to mutually implement the agreement to fulfill their rights and obligations. In practice, landowners offer to tenants who do not own land and are able to lease their land for a long period of time without any coercion. This is motivated by land owners who are in need of money or cannot cultivate their own agricultural land or because they will be left behind for a long time.

⁶⁰ Article 1320 of The Indonesian Civil Code

2. Capable to take action

Capable to take action means able to take legal actions, not under the age according to the law, namely under 21 and not married and not under guardianship. The parties who carry out the practice of land lease agreements with *pendem* are adults who are married, they are also people who understand and know about the practice of renting land.

3. A certain thing

A certain thing is called the object of an agreement, which means it is the obligation of the person who is in debt or the person who is owed. Obligations are called achievements which include three things, namely giving something, doing something and not doing something.

In the practice of making a land lease agreement with a *pendem*, the parties carry out the handover of the object of *ijarah* in the form of agricultural land and the tenant makes payments for the goods. In terms of settlement of payments depends on the agreement of both parties.

4. The existence of a halal

Halal cause is an agreement that cannot be contrary to law, decency, and public order. Lease land with the *pendem* system in the village of Kesilir, Banyuwangi is an agreement for the use of agricultural land with an oral or written agreement. The agreement does not contain anything that is contrary to the law, morality and public order.

Lease in Islamic law is called *Ijarah* which means services, wages, rent or reward. *Ijarah* is a form of muamalah activities in the form of renting, selling services, contracting activities and so on.⁶¹

The practice of leasing land under the *pendem* system that is recognized and applied in Kesilir, Banyuwangi has a purpose to use the land to be planted and taken advantage of to fulfill the needs of life with a lease period of more than 2 years using a declining payment system where there are three payment periods, these are in the beginning, in the middle, and at the end of the rental period in accordance with the agreement.

There are several conditions and pillars *ijarah* that must be met in the implementation of the practice of renting a *pendem* system in accordance with Islamic law. Pillars that must be met include: '*aqid* (people who doing the contract), *shighat* (ijab qobul), *ujrah* (rent money), goods rented, and benefits. While the conditions that must be fulfilled in the *ijarah* contract include: Conditions for the occurrence of the contract, conditions for the continuity of the contract (*Nafadz*), Conditions for the legality *ijarah*, Conditions for binding the *ijarah* (Luzum Conditions).⁶²

The results of research analysis on the implementation of the practice of renting a *pendem* system in Kesilir, Banyuwangi reviewed from Islamic law are as follows.

1. Terms of the contract

⁶¹ Ali Hasan, *Berbagai Maca Transaksi Dalam Islam (Fiqh Muamalat)*, (Jakarta: PT Raja Grafindo Persada, 2004), 227

⁶² Ahmad Wardi Muslich, *Fiqh Muamalat*, (Jakarta: Amzah, 2013), 321.

The parties who make the contract in the lease agreement are called *Mu'jir* (Owner) and *Musta'jir* (Tenant). One of the terms of *'aqid* in *ijarah* is a person who is capable of doing an act, so that he can be held accountable legally. In Article 1320 of the Civil Code, one of the legal requirements for the agreement is to be able to perform legal acts, they are not a minor, not married and not currently in amnesty.⁶³

Provisions related to the parties who make the lease are explained in Fatwa NO: 1 1 2/DSN-MUYIX/2017 Regarding the *ijarah* contract:⁶⁴

The provisions related to the parties conducting the lease are explained in the Fatwa NO: 1 1 2/DSN-MUYIX/2017 Regarding the *ijarah* contract:

"The *Ijarah* contract may be carried out by a person or equal to a person, whether it is a legal entity or not a legal entity based on the applicable laws and regulations".

The main requirement for the parties who perform *ijarah* is a clear-headed and able to distinguish between good deeds and bad deeds. Therefore, insane people and small children who have not been *mumayyiz* are not allowed to perform *ijarah*.⁶⁵ This is in accordance with Article 257 of Perma No. 2 of 2008 on the Compilation of Sharia Economic Law, it is explained that:⁶⁶

"To complete an *ijarah* contract process, the parties to the contract must have the competence to perform legal acts"

⁶³ Article 1320 of the Indonesian Civil Code

⁶⁴ DSN-MUI NO: 112/DSN-MUI/IX/2017 about The *Ijarah* Contract

⁶⁵ Helmi Karim, *Fiqh Muamalah*, (Jakarta: PT. RajaGrafindo Persada,1997), 35

⁶⁶ Article 257 Supreme Court Regulation No. 2 of 2008 The Compilation of Sharia Economic Law

The parties who carry out the lease rent the *pendem* system in Kesilir, Banyuwangi, the majority of whom are men who work as farmers. Although their educational background is on average relatively low but they are very knowledgeable in terms of the calculation of rent in the field of agricultural land. They know this because of the habits that are often done in the scope of their work.

Furthermore, the person who made the contract or the parties in the *ijarah* must be '*An'taradin*', that is the agreement made by both parties is based on their own will without any coercion from any party so that they are pleased with each other. In this rental system parties who are bound by the majority agreement already know each other closely, because they come from the local area, and even from the parties interviewed, there are those who have family relationship.

2. Terms of contract continuity

In the implementation of the *ijarah*, object is required to be fully owned and in the control of the *mu'jir* (the renting party). The *ijarah* contract becomes void when in the *ijarah* contract the object handed over does not become the property of the lessor.

This is in accordance with Article 259 of Perma No. 2 of 2008 Regarding KHES, that:⁶⁷

"The party who rents the property must be the owner, representative, or the custodian"

⁶⁷ Article 259 Supreme Court Regulation No. 2 of 2008 The Compilation of Sharia Economic Law

In the practice of leasing land *pendem* system in the village of Kesilir, Banyuwangi, the party who rents the land has full ownership and control over the land. This is reinforced by the statement of Mr. Teguh⁶⁸

"Sawahku tak sewakne mergo aku butuh duwet lumayan akeh tapi aku eman-eman lek sawahe ape tak dol, mergo sawah iki lek nguwei mbokku"

"I rented out the rice fields because I needed a lot of money but I couldn't bear to sell the land because this rice field was a gift from my mother"

In the statement, Mr. Teguh clearly stated that the land was his. Based on the information obtained when the researchers conducted the interviews, the parties who rented the land said that the land they rented was private property, not the property of the owner's parents or family members.

In the implementation of the land lease agreement, the *Mu'jir* landowner) and the tenant (*Musta'jir*) enter into a contract by meeting directly, either the tenant meets the landowner or vice versa with an verbal or written agreement if the lease period is very long and the contract uses local language namely the Javanese language. This has been in accordance with Perma no. 2 of 2008 on the compilation of sharia economic law and Fatwa NO: 112/DSN-MUI/IX/2017 on the Ijarah Contract, as follows.

⁶⁸ Mr. Teguh, *Interview*, (Kesilir, March 29th, 2022)

a. Article 258⁶⁹

Ijarah contract can be done face to face or long distance

b. Article 252⁷⁰

(1) *Shigat* akad *ijarah* must use a clear sentence

(2) The *ijarah* contract can be done verbally, in writing, and or by gesture

In Fatwa NO: 112/DSN-MUI/IX/2017 on the *Ijarah* Contract, it is also explained about the conditions on the *ijarah* contract, namely:⁷¹

1) Akad *Ijarah* must be stated firmly and clearly and understood by *Mu'jir/Ajir* and *Musta'jir*.

2) *Ijarah* contract can be done verbally, in writing, gestures, and deeds/actions, and can be done electronically in accordance with sharia and applicable laws and regulations.

Related to the rental period in the pendem system land lease agreement is determined by agreement of both parties. When the initial agreement lease has expired then it can be extended with the same system.

In practice, the extension of the rental period was done by Mr. Samiyo⁷²

“Saiki aku sek garap sawah seng wes tak sewo 10 tahun, asline wes wayae mbalek tapi wes diperpanjang 3 tahun maneh dadi sampek 2027”

“Now I'm working on a rice field that I haven't rented for 10 years, in fact it's time to return to the owner, but it has been extended for another 3 years until 2027 ”

⁶⁹ Article 258 Supreme Court Regulation No. 2 of 2008 The Compilation of Sharia Economic Law

⁷⁰ Article 252 Supreme Court Regulation No. 2 of 2008 The Compilation of Sharia Economic Law

⁷¹ DSN-MUI NO: 112/DSN-MUI/IX/2017 about The *Ijarah* Contract

⁷² Mr. Samiyo, *Interview*, (Kesilir March 28th, 2022)

The length of the land lease is determined by the agreement of both parties when executing the contract and can be extended according to the agreement of the parties. This has been in accordance with Perma No. 2 of 2008 on the Compilation of Sharia Economic Law, namely:

a. Article 272⁷³

(1) The beginning of the *ijarah* time is set in the contract or on the basis of custom.

(2) The time of *ijarah* can be changed based on the agreement of the parties.

b. Article 253⁷⁴

The *ijarah* contract may be amended, extended, and or canceled based on an agreement

3. Terms for the validity of the *ijarah*

a. The parties to the contract must be willing to each other without any compulsion. This becomes very important because it affects the law of the transaction itself. If this condition is not met then the law becomes invalid or void.

b. The benefits of the object in the *ijarah* and its use must be in accordance with the rules of sharia. In this case, the land leased with the *pendem* system in the village of Kesilir, Banyuwangi is used for agricultural activities.

⁷³ Article 272 Supreme Court Regulation No. 2 of 2008 The Compilation of Sharia Economic Law

⁷⁴ Article 253 Supreme Court Regulation No. 2 of 2008 The Compilation of Sharia Economic Law

In Fatwa NO: 112/DSN-MUI/IX/2017 Regarding the Ijarah Contract, there are provisions on the object of *ijarah*, including:⁷⁵

- 1) Benefits must be in the form of benefits that are justified (not prohibited) by sharia (*mutaqawwam*).
- 2) The benefits must be clear so that it is known by *Mu'jir* and *Musta'jir*.
- 3) Procedures for the use of rental goods and the rental period must be agreed by *Mu'jir* and *Musta'jir*.
- 4) *Musta'jir* in the *ijarah* contract '*ala al-a'yan*, can rent back (*al-ijarah min al-bathin*) to another party, unless not permitted (prohibited) by *Mu'jir*.
- 5) *Musta'jir* in the *ijarah* contract '*ala al-a'yan*, is not obliged to bear the risk of losses arising due to utilization, except because of *al-ta'addi*, *al-taqshir*, or *mukhalafat al-syuruth*.

Provisions related to the use of *ijarah* objects are explained in article 260 paragraphs 1 and 2 of Perma No. 2 of 2008 on the Compilation of Sharia Economic Law, including the following.⁷⁶

- (1) The use of *ijarah* objects must be included in the *ijarah* contract.
- (2) If the use of *ijarah* objects is not specified in the contract, then *ijarah* objects are used based on general rules and customs.

⁷⁵ DSN-MUI NO: 112/DSN-MUI/IX/2017 about The Ijarah Contract

⁷⁶ Article 260 Supreme Court Regulation No. 2 of 2008 The Compilation of Sharia Economic Law

Utilization of *ijarah* in the practice of renting pendem system land in Kesilir, Banyuwangi is not mentioned in detail in the agreement on the type of crops to be planted on the land, but the tenants have utilized in accordance with its function, namely as agricultural land. This has been in accordance with Article 256 of Perma No. 2 of 2008 on the Compilation of Sharia Economic Law.⁷⁷

- (1) The tenant can use the *ijarah* object freely if the *ijarah* contract is done absolutely.
- (2) The tenant can only use the *ijarah* object in a certain way if the *ijarah* contract is done in a limited way.

In practice, the contract executed by the parties there are no requirements or provisions regarding the object of *ijarah*. Therefore, the tenant (*Musta'jir*) is free to use his rented land.

- c. The object of *ijarah* must be able to be fulfilled, both essentially and syar'i. In this provision, renting something that is difficult to submit in essence and cannot be fulfilled in accordance with the law is not valid.

The provisions contained in Fatwa NO: 112/DSN-MUI/IX/2017 Regarding the *Ijarah* Contract are explained that:⁷⁸

- (1) Rent for the benefit of goods must be in accordance or not prohibited by sharia

⁷⁷ Article 256 Supreme Court Regulation No. 2 of 2008 The Compilation of Sharia Economic Law

⁷⁸ DSN-MUI NO: 112/DSN-MUI/IX/2017 about The Ijarah Contract

- (2) Rent for the benefit of goods in number 1, must be handed over at the time of the execution of the contract or at the time that has been agreed in the contract *ijarah maushufah fil dzimmah*

The rental object of the *pendem* system in Kesilir Banyuwangi is clear and can be handed over for acceptance at the time of the implementation of the *ijarah* between the landowner (*Mu'jir*) and the land tenant (*Musta'jir*). The benefits that can be taken from the object of *ijarah* in the form of land can be used as agricultural land. So far as about the handover of *ijarah* on land lease rent *pendem* has been met.

- d. The utilization of the object of *ijarah* must be appropriate and allowed by the syara'. The object of *ijarah* in the practice of lease agreement is to lease the land of the *pendem* system in Kesilir, Banyuwangi in the form of land used as agricultural land because its location is in a rice field. Objects *ijarah* has been in accordance with Article 274 Perma No. 2 of 2008 on the Compilation of Sharia Economic Law⁷⁹

- (1) The object that is the object of *ijarah* must be a halal or mubah object.
- (2) The object that is *ijarah* must be used for things that are justified according to the Shari'ah.
- (3) Every object that can be used as an object of sale and purchase can be used as an object of *ijarah*.

⁷⁹ Article 274 Supreme Court Regulation No. 2 of 2008 The Compilation of Sharia Economic Law

- e. The benefits obtained from the object of *ijarah* must be in accordance with the purpose *ijarah* which is generally valid. The law is invalid when it does not suit the purpose of *ijarah*.

On the object of *ijarah* in the practice of lease agreement to lease the land of the *pendem* system in Kesilir, Banyuwangi is used as land for farming. The land tenants are farmers who do not own land so they rent to landowners who intend to lease their land. The leased land is paddy land, so its use for agriculture.

- f. When carrying out the *ijarah* contract, the amount of payment of wages must be agreed. Wages are a reward that must be handed over by the tenant to the owner of the goods, the purpose of which is as a substitute for the benefits derived from the goods. There are several conditions that must be met related to wages in the *ijarah* contract, including the following.
- a. Wages must be in the form of things that are known, valuable or can be valued in money or in accordance with local customs,

وَعَنْ أَبِي سَعِيدٍ رَضِيَ اللَّهُ عَنْهُ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ : مَنْ اسْتَأْجَرَ أَجِيرًا
فَلْيُسِّمَ لَهُ أَجْرَتَهُ

“From Abi Sa'id ra that the Prophet (peace and blessings of Allaah be upon him) said: Whoever hires labor, let him mention his share of wages.”

In Article 263 Perma No. 2 of 2008 on the Compilation of Sharia Economic Law is explained that:⁸⁰

⁸⁰ Article 263 Supreme Court Regulation No. 2 of 2008 The Compilation of Sharia Economic Law

- (1) Rental services can be in the form of money, securities, and or other items based on an agreement.
- (2) Rental services can be paid with or without a down payment, advance payment, payment after the *ijarah* object is used, or owed by agreement.

Payment of rental fees in the practice of lease agreement to lease land *pendem* system in Kesilir Banyuwangi using money that can be paid directly at the beginning of the agreement and can also be paid in the middle or end of the lease period according to the agreement.

In Fatwa NO: 112/DSN-MUI/IX/2017 on *Ijarah* Contract, it is also mentioned about the provisions related to wages/*ujrah* namely:⁸¹

- 1) *Ujrah* can be in the form of money, benefits of goods, services, or goods that can be used according to sharia (*mutaqawwam*) and applicable laws and regulations.
- 2) The quantity and/or quality of *ujrah* must be clear, either in the form of a nominal number, a certain percentage, or a formula agreed upon and known by the parties to the contract.

⁸¹ DSN-MUI NO: 112/DSN-MUI/IX/2017 about The *Ijarah* Contract

- 3) *Ujrah* can be paid in cash, in installments, and in installments based on an agreement in accordance with sharia and/or applicable laws.
- 4) The *Ujrah* that has been agreed upon can be reviewed on the benefits that have not been received by Musta'jir in accordance with the agreement.

Based on the provisions contained in Perma No. 2 of 2008 Concerning the Compilation of Sharia Economic Law and Fatwa NO: 112/DSN-MUI/IX/2017 Concerning the *Ijarah* Agreement for payment of fees/wages in the practice of lease agreements to lease land *pendem* system in Kesilir Banyuwangi is in accordance with the regulations that applies.

- b. Wages are not allowed to be the same as the type of goods contracted, the implementation of *ijab qabul* must be in accordance between the object of the contract and the time limit.

Explained in Article 271 Perma No. 2 of 2008 on the Compilation of Sharia Economic Law on the provisions of the price and period of *ijarah*, including:⁸²

- (1) The value or price of *ijarah*, among others, is determined based on a unit of time.

⁸² Article 271 Supreme Court Regulation No. 2 of 2008 The Compilation of Sharia Economic Law

(2) The unit of time referred to in paragraph (1) is minutes, hours, days, months, and or years.

Land lease with a *pendem* system is a land lease with a lease term of more than two years in one payment agreement, with a depreciation payment system. The decline in rental prices is generally Rp. 250.000,- up to Rp. 500,000,- annually, depending on the location of the land. In practice, the rental price of land is Rp. 4,000,000,- per year. In this system, the rent paid annually is paid once or can be paid in installments according to the agreement of the parties. The payment of rent can be made at three times, these are at the beginning, in the middle, and at the end of the rental period according to the agreement of both parties. However, there are additional payments that are paid in the middle and end of the lease term, the amount determined by the landowner due to the large number of people who intend to rent land for agriculture and the rental price that rises every year. The additions requested by the owner at the time of payment were not actually agreed upon at the beginning of the agreement. In this case, the tenant will not want to have to pay the extra money for various reasons. In practice tenants want to pay the extra money because the quality of plants on the land has a good quality. Even though the land owner asks for additional fees due to payment of rental fees with a tempo that is in the middle or at the end of the rental period. This is juridically not in accordance

with the provisions of Islamic law because it contains elements of usury in the transaction but the tenant has a pragmatic reason by continuing to pay it because of the quality of the plant which has the potential to generate large profits than the additional rental fees he gives to the land owner.

Additional money charged to the tenant contains an element of usury. Riba etymologically means additional. While according to the terminology, it means the advantages contained in the exchange transaction of exchanging similar goods without any compensation conditions in the agreement.⁸³ Allah has forbidden usury, as for the evidence in the Qur'an:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ

إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ صُلِيَ هُمْ فِيهَا خَالِدُونَ (٢٧٥) يَمْحَقُ اللَّهُ الرِّبَا

وَيُرِيهِ الصَّدَقَاتِ فلي وَاللَّهُ لَا يُحِبُّ كُلَّ كَفَّارٍ أَثِيمٍ (٢٧٦)

"Allah has permitted trading and forbidden usury. Those to whom the prohibition of their Lord has reached, and then ceases, for him is what he used to take. and his affairs are to Allah. Those who return, then those are the inmates of hell; they abide therein; God destroys usury and enriches almsgiving. And Allah does not like everyone who commits disbelief, and always sins." (QS. Al-Baqarah (2): 275-276)

In addition, the prohibition of eating usury is also contained in the hadith narrated by Abdullah Ibn Mas'ud, namely:

⁸³ Ahmad Wardi Muslich, *Fiqh Muamalat*, (Jakarta: Amzah, 2013), 259

عَنِ ابْنِ مَسْعُودٍ قَالَ : لَعَنَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَكِلَ الرِّبَا وَمُؤَكِّلَهُ

وَشَاهِدَهُ وَكَاتِبَهُ

"From Ibn Mas'ud he said: The Messenger of Allah cursed the one who eats usury, the person who represents it, the witness, and the person who writes it." (HR. At-Tirmidhi)⁸⁴

The element of riba contained in the rental transaction of renting the *pendem* system in the village of Kesilir, Banyuwangi is included in the type of riba nasi'ah. Riba nasi'ah is an addition mentioned in the barter agreement in return for the delay in payment. The law of riba nasi'ah is haram because all the basic elements of riba have been fulfilled such as the addition of capital and tempo which leads to the addition. This is an advantage of the conditions contained in the contract, namely as property that produces property due to the tempo.⁸⁵

4. Conditions for binding an *ijarah* contract

There are two conditions for *ijarah* for the contract to be binding:

- a. There are no defects in the rented goods, so that the goods can be utilized properly. If there is a defect in the goods then the tenant can choose to proceed with the reduction of the rental price or cancel the transaction. In the practice of renting the *pendem* system Kesilir

⁸⁴ Abu Isa At-Tirmidzi, Sunan At-Tirmidzi, Juz 3 Nomor hadis 1206, CD Room, Maktabah Kutub Al-Mutun, Silsilah Al-'IlmAn-Nafi', Seri 4, Al-Ishdar Al-Awwal, 1426H, 512

⁸⁵ Abdul Aziz Muhammad Azzam, *Fiqh Muamalat Sistem Transaksi Dalam Fiqh Islam*, (Jakarta: Amzah, 2010), 222

Banyuwangi, the rental object is land which is used as agricultural land. The condition of the soil is fertile and ready to be planted. In this case the leased land has no defects at all.

- b. There is no (*udzur*) reason that can cancel the *ijarah contract*. According to Hanafiah if there is *udzur* on one of the '*aqid* (the person who made the contract) or on the rented goods, then in this kind of transaction one of the parties can cancel it. Meanwhile, according to the majority of scholars, *udzur* cannot be a reason for the cancellation of the *ijarah contract*, as long as the benefits of the *ijarah* are not lost at all. In the practice of renting a *pendem* system in the village of Kesilir, Banyuwangi, the leased land can be fully utilized, that is, used as agricultural land and can be planted various kinds of crops according to the interests of the tenants.

CHAPTER V

CLOSING

A. Conclusion

Based on the results of the research from the discussion that has been described in the previous chapter regarding the practice of land lease agreements with the *pendem* in the village of Kesilir Banyuwangi, the following conclusions can be drawn.

1. Land lease agreements with *pendem* system in the village of Kesilir Banyuwangi are the land owners (*mu'jir*) and the tenants (*musta'jir*). The background to the occurrence of the lease agreement is because the land owner has an urgent need but does not want to sell the land or the land owner is unable to work on his land anymore because he is old. For tenants, they need agricultural land because they do not own land, the rent can be paid in installments, and the lease period is long so there is no need to look for other land to rent. Most of the Ijab qobul between the two parties are carried out verbally on the basis of mutual trust, but for people who are aware of the law they make a written agreement. Regarding the cost of renting land *pendem* uses a shrinking payment system. The depreciation is between Rp. 250.000,- up to Rp. 500,000,- depending on the location of the land (far or close to residential areas).system lease agreement *pendem* can be made at three times, namely at the beginning, in the middle, and at the end of the lease term depending on the agreement of both parties. In practice in the

field, for payments made in the middle and at the end of the lease term, there are additions that were not included in the initial agreement. This is due to the fact that there are more and more enthusiasts for renting land and the price of land rent is increasing every year. The land owner who asked for additional payments in installments in the middle or at the end of the rental period was 1 person out of 3 respondents, while the tenants who were asked to pay additional rental fees because they paid in the middle or at the end of the rental period were 2 out of 3 respondents.

2. There is no coercion between the two parties in making an agreement, the parties in the *pendem* system lease agreement are legally capable, a certain thing that is done is a land lease agreement, and the contents of the *pendem* system land lease agreement do not conflict with the law, decency and public order. So that according to the Civil Code the conditions for the validity of the agreement in this leasing practice have been fulfilled. Furthermore, based on a review of Islamic law on the practice of the *pendem* system of land lease agreements in the village of Kesilir Banyuwangi, the pillars and conditions have been met except for the payment system. In practice, additional fees charged to the lessee if making payments in the middle and at the end of the lease period are not in accordance with Islamic law, because this was not contained at the beginning of the agreement. The excess requested by the land owner to the tenant of the land contains an element of usury, which is included in the type of usury *nasiah*, namely the addition stated in the agreement for the exchange of goods in exchange for

the delay in payment. While the prohibition of usury has been regulated in Islamic law. Therefore, with an additional rental fee charged to the tenant which is not stated by the land owner at the beginning of the agreement regarding the settlement of payments made in the middle or at the end of the lease term, according to Islamic law, the law of leasing land becomes invalid/void.

B. Suggestions

Land lease agreements *pendem* system in the village of Kesilir Banyuwangi, there are several suggestions that the author will convey, including the following.

1. For land owners and tenants (*mu'jir and musta'jir*)

The parties to the lease agreement rent a *pendem* system should understand the rules related to leasing in accordance with Islamic law, Indonesian Civil Code and other regulations related to leasing agreements. In the execution of the contract, the goods, time and wages to be paid must be clear. In addition, the content and implementation of the agreement must be appropriate and implemented. So that no party feels cheated or harmed, so that the law of renting it is considered valid.

2. For the people of Kesilir Banyuwangi village

Land lease agreement in *pendem* system should understand and implement the appropriate rules so as not to violate the applicable law. Either Islamic

law or other regulations. This is to avoid disputes between each other and maintain social harmony.

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APPENDIXES

A. Interview Questions List

1. When was the *pendem* system known and applied in Kesilir, Banyuwangi?
2. What is the reason for the local people choosing to use the *pendem* system land rent?
3. Is there any dispute between the parties in the lease of the *pendem* sistem?
4. Does the *pendem* system land lease have to be paid at the beginning of the agreement or can it be paid in two or three installements?
5. What is the reason and how much is the rental fee with the *pendem* system?
6. Is this *pendem* system mutually beneficial to both parties?
7. Who offers land lease using this *pendem* system?
8. How much land is rented using this *pendem* system?
9. How about the agreement used in this *pendem* system lease, do you use a verbal or written agreement? And is there witness when this agreement is made?
10. Are there any disadvantages when yo as the owner of the land rent out using this *pendem* system?
11. How much land do you rent?
12. Hs it ever been that after once contract has been finished, an extention of the rental period is carried out with a *pendem* sistem again?
13. Have you as a land tenant ever been offerd by a landowner to rent with this *pendem* system but you have obstacle like having no money?

B. Interview Documentation



Photo documentation front view of the Kesilir Village Headman Office, Banyuwangi Regency



Photo documentation map layout Kesilir Village, Banyuwangi Regency



The organizational structure of the working system of the village government of Kesilir, Banyuwangi



Photo documentation for research on Kesilir Village profile with Mrs. Titin as an employee of the village headman office



Photo documentation with Mr. Imam Syafi'i as the secretary at the Kesilir village headman office



Photo documentation with Mr. Priyono the village chief Silirsari, Kesilir, banyuwangi



Photo documentation with Mr. Priswanto as the tenant



Photo documentation with Mr. Boiman as the landowner



Photo documentation with Mr. Teguh as the landowner



Photo documentation with Mr. Samiyo as the tenant

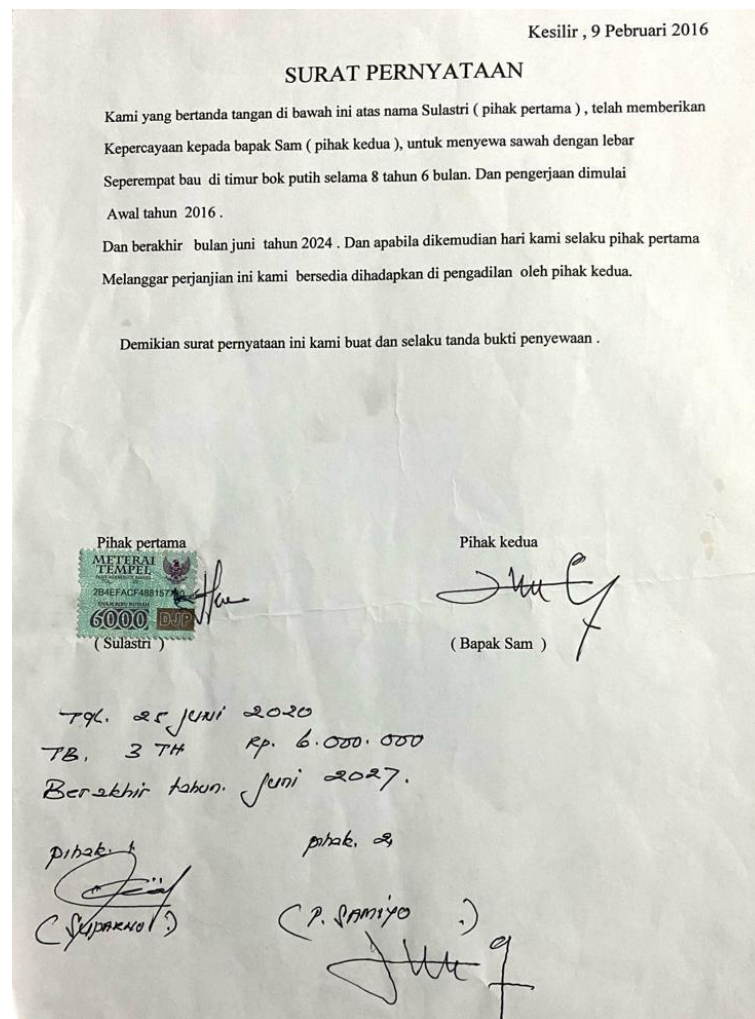


Photo documentation of the land lease agreement with the *pendem* system



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Nomor : B- 2599 /F.Sy.1/TL.01/03/2022
Hal : **Permohonan Izin Penelitian**

Malang, 30 Maret 2022

Kepada Yth.
Kepala Desa Kesilir Kantor Desa Kesilir

F465+XVP, Dusun Sumbersuko, Kesilir, Kec. Siliragung, Kabupaten Banyuwangi, Jawa Timur 68488

Assalamualaikum wa Rahmatullah wa Barakatuh

Dalam rangka menyelesaikan tugas akhir/skripsi mahasiswa kami:

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Demikian, atas perhatian dan perkenan Bapak/Ibu disampaikan terima kasih.

Wassalamualaikum wa Rahmatullah wa Barakatuh

Scan Untuk Verifikasi



Research Application Letter



**PEMERINTAH KABUPATEN BANYUWANGI
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Bahwa nama diatas telah dinyatakan **Selesai** melaksanakan Tugas Penelitian dengan judul **"Tinjauan Hukum Islam Pada Praktik Perjanjian Sewa Menyewa Tanah Sistem Pandem"** tercatat sejak surat ini diterbitkan.

Demikian surat keterangan ini dibuat agar dapat dipergunakan sebagaimana mestinya.

Kesilir, 09 Mei 2022
Kepala Desa Kesilir

SUPRIYANTO

Research Certificate

CURRICULUM VITAE



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