



THE JURIDICAL REVIEW OF FLUCTUATIONS LAND LEASE PRICES OF THE PENDEM SYSTEM IN KESILIR VILLAGE BANYUWANGI

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Abstract

The pendem system is a land lease with a period of more than two consecutive years with depreciation payments, in the first year the rental price is normal, then for the next year, there is a depreciation of rental costs. 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, there is an additional rental fee in the payment in the middle or at the end of the rental period which was not stated at the beginning of the agreement. The purpose of this study is to find out the legal validity of land leases with a pendem system based on Islamic law and the Indonesian Civil Code. This research is field research with a sociological juridical approach. The primary data were obtained from interviews with the parties, while the secondary data was obtained from books and journals that discussed land renting. The results of this study indicate that the terms of ijarah related to the clarity of the rental fee have not been fulfilled, because there are additional costs for payments in the middle or at the end of the lease period that were not stated at the beginning of the agreement. The addition contains an 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. The existence of these additional fees makes the transaction law invalid.

Keywords: *Islamic law; Indonesian Civil Code; Land Lease Agreement; Pendem System.*

Abstrak

Sistem pendem adalah sewa tanah dengan jangka waktu lebih dari dua tahun berturut-turut dengan pembayaran penyusutan, pada tahun pertama harga sewa normal, kemudian untuk tahun berikutnya terjadi penyusutan biaya sewa. Pembayaran biaya sewa dapat dilakukan di awal, di tengah, atau di akhir masa sewa sesuai kesepakatan para pihak. namun terdapat tambahan biaya sewa dalam pembayaran di tengah atau di akhir masa sewa yang tidak disebutkan di awal perjanjian. Tujuan dari penelitian ini adalah untuk mengetahui keabsahan hukum sewa tanah dengan sistem pendem berdasarkan hukum Islam dan Kitab Undang-Undang Hukum Perdata Indonesia. Penelitian ini merupakan penelitian lapangan dengan pendekatan yuridis sosiologis. Data primer diperoleh dari hasil wawancara dengan para pihak, sedangkan data sekunder diperoleh dari buku dan jurnal yang membahas tentang persewaan tanah. Hasil penelitian ini menunjukkan bahwa syarat ijarah terkait kejelasan biaya sewa belum terpenuhi, karena terdapat biaya tambahan untuk pembayaran di tengah atau di akhir masa

sewa yang tidak disebutkan di awal masa sewa. persetujuan. Tambahan itu mengandung unsur riba nasi'ah, yaitu tambahan yang disebutkan dalam perjanjian penukaran barang dengan imbalan keterlambatan pembayaran. Adanya biaya tambahan tersebut membuat hukum transaksi menjadi tidak sah.

Kata Kunci: Hukum Islam; KUH Perdata; Perjanjian sewa tanah; Sistem *Pendem*.

INTRODUCTION

Islam is highly recommended to help and cooperate with others to gain benefits. Muamalah activities, which are commonly known as economic practices in everyday life, are already familiar. Indonesia, which is a Muslim-majority country has long implemented the concept of Islamic economics in all of its activities. Starting from the practice of buying and selling, leasing, and cooperation contracts in economic activities, the Islamic economy is something that needs attention and becomes an interesting thing to continue to discuss. Islam has established principles that need to be guided by muamalah activities.

There are at least eight principles that must be considered, namely: 1) Looking for lawful sustenance, both in terms of substance and how to get it; 2) Not oppressing and not being wrong; 3) Fair distribution of welfare; 4) transactions are carried out based on pleasure; 5) There is no element of usury; 6) there is no element of *maisyir* (gambling); 7) There is no element of *gharar* (obscurity); 8) There are no elements of harm (Zainuddin, 2017: 134). One of the activities that can be done is doing mu'amalah. The muamalah activities have various forms, one of them is *ijarah* or renting. The definition of *ijarah* (lease) in *fiqh* is the contract of transferring the right to use goods or services with the rental fees, without transferring the ownership of the goods.

The implementation of the lease must fulfill the conditions and principles to be legitimate according to the applicable law. Some of the pillars that must be fulfilled include (1) People who have a contract (*aqid*) that is *mu'jir* (landowner) and *musta'jir* (tenant), (2) *Shighat* that is *ijab qabul*, (3) *Ujrah* (rent money or reward), (4) Goods that are rented and the benefits of a rented item or the services and energy of people who work (Az-Zuhaili, 2011: 387) In an *ijarah* contract, the parties must fulfill the requirements to do an agreement in general.

It is important to note that both parties are capable of acting within the law. It means they can differentiate between good and evil. Furthermore, the terms of the *ijarah* contract must fulfill the applicable provisions, namely: (1) The rental subject must be a sensible person, (2) the Willingness of both parties, (3) The object of the lease is fulfilled, (4) The object of the lease is a *halal* item, (5) The payment of the rent must be valuable and clear. In addition, several conditions must be met for the

ijarah contract to be valid, including:1) Conditions for the occurrence of the contract, (2) Conditions for the continuation of the contract (Nafadz), (3) Conditions for the validity of ijarah, (4) Conditions for binding the ijarah (Luzum Conditions) (Hastuti et al., 2022: 127).

The majority of the people of Kesilir Village, Banyuwangi work as farmers. However, not all people have agricultural land. Therefore, they often rent land. Land leases that are known and recognized by the people of Kesilir Village, Banyuwangi are one of them is the pendem system land lease, the word pendem comes from the Javanese language which means to the harbor, land lease with the pendem system is where land is rented for a period of more than two years successively, with a shrinking payment system, That is the rental price of land in the first year is normally valued, then for the following year there is depreciation. The payment system can be paid at the beginning, in the middle, or at the end of the rental period according to the agreement of the parties. Payments paid in the middle and at the end of the lease period include additional fees charged to the lessee that were not stated at the beginning of the agreement.

The research written by Inayaturohmah Sa'idah explained that the land lease agreement was executed verbally without any written evidence and the rent payment was made at the first harvest season arrived and there was an addition given by the tenant to the owner as an expression of gratitude for being allowed to manage the rice fields. This is allowed because it includes authentic *urf* (Sa'idah, 2018: 135) Previous research written by Aisah used dry grain for land rent payments with a percentage of 30% of the harvest obtained. In renting land by using the harvest payment system written by Aisah in the village of Sudimampir, Balongan District, Indramayu Regency, the problem lies in the payment of land rent caused by the tenant not being able to pay the rent fully due to the factor of crop failure within a period of one year or during the rental period.

Rent payments that are made at the end of the rental period or rent that is paid with the harvest are very susceptible to default due to many unknown things that can happen in the future, that is the quality of the harvest (Aisah, 2020: 34). Thus, different from the previous two types of research, the focus of this article is on the decrease in rental fees that occur in the pendem system due to the length of the rental period, which is more than two years in a row where the payment can be made at the beginning, in the middle, or at the end of the rental period and the existence of excess costs that must be paid by the tenant to the owner when paying rent in the middle or at the end of the rental period. Furthermore, this case is interesting to study using the review of Islamic Law and the Indonesian Civil Code (Sakurai, 2022: 35). It Examines land leases by farmers in

China. The results of his research state that farmers usually pay off loans from the land they lease after it is deemed that the land cannot be used for farming for an unspecified period of time (Saleem, 2016: 25). Researched agriculture in Pakistan. The results of his research state that using ijarah can bridge the poor so they don't experience bottlenecks in managing agriculture (Fitri, 2017: 72). In his research stated that the termination of land lease contracts that occurred in the land resulted in a loss to one party so that in fiqh studies it is called urffasid or bad things and is prohibited in Islam.

Based on the facts that occur in the field and the support from previous research, the focus of this paper is on the depreciation of rental costs that occur on land leases carried out with a pendem system resulting from the length of the lease period, which is more than two consecutive years. Payments on the pendem system can be made at the beginning, in the middle, or at the end of the rental period. There is an excess of costs that must be paid by the tenant to the owner if the payment of the rent is made at the middle or end of the lease period. Thus, this case becomes interesting for research using the study of Islamic Law and the Civil Code.

RESEARCH METHODS

This type of research is empirical juridical with a sociological juridical approach which means that law does not only act as a view and application but can be made following what happens and applies in society (Sonata, 2014: 27). Primary data is a source of data collected directly by researchers using a questionnaire (Supriyanto & Ekowati, 2019: 16). The source of data collected is in the form of primary data obtained from interviews with tenants and landowners in Kesilir Village, Banyuwangi, who carry out land leasing with the pendem system. Furthermore, secondary data is data obtained by researchers using intermediary media (Supriyanto & Ekowati, 2019: 57).

Secondary data was obtained from books and journals that discuss land leasing. The data collection techniques used were interviews, and documentation (Sugiyono, 2009: 68). Interviews were conducted directly with tenants and land owners with a pendem system. While documentation in the form of photos taken during the interview meeting. Data processing is carried out in several steps: editing, classifying, verifying, analyzing, and concluding. Kesilir Village, Banyuwangi was chosen as the research location because of its origin and recognition of the practice of renting land with a pendem.

DISCUSSION

The Practice of The *Pendem* System Land Lease Agreements in Kesilir Village Banyuwangi

An agreement is the activity of two or more parties, who promise each other to bind themselves to do something. (Noer dan Muchyidin, 2020: 4) According to R. Subekti, an agreement is an event where one person promises to another person or where two people promise each other to carry out something. This agreement creates a relationship between the two parties who agree. In its form, this agreement is in the form of a spoken or written commitment and is in the form of a series of agreements containing promises (Subekti, 2005: 1).

A lease is an agreement or agreement in which the lessee must pay and provide compensation or benefits from the object or goods owned by the owners of the goods being leased. This is legally allowed (Djufri, 2014: 56). All scholars stipulate that legal *ijarah* may be based on the arguments of the Qur'an, including QS. AL-Baqarah (2): 233, QS. Az-Zukhruf (43).32, QS. At-Thalaq (65), QS. Al-Qasas (28): 26 and Sunnah. Some DSN MUI fatwas specifically for *Ijarah* have been issued, including DSN MUI Fatwa No. 09 of 2000 concerning *Ijarah* Financing, No. 27 concerning *Ijarah* Mutahiyah bit Tamlik, No. 56 concerning *Ujrah* Studies, No. 101 and 102 regarding *Ijarah* Maushufah fi Dzimmah, and 107 concerning *Ijarah* contracts (Soemitra, 2019: 27).

Meanwhile, the *pendem* lease is a land lease with a period of more than two consecutive years, with a shrinking payment system, that is the land rental price in the first year is normally valued, then for the following year, there is depreciation. The payment system can be made at the beginning, in the middle, or at the end of the rental period according to the agreement of the parties. Payments made in the middle and at the end of the lease period include additional fees charged to the lessee that were not stated at the beginning of the agreement.

The practice of renting land *pendem* 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. Land lease with the *pendem* system differs from ordinary land leases. The *pendem* system land lease rental fee shrinks every year with fully paid 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 is done protractedly, but for the people of Kesilir Village, Banyuwangi, using a verbal agreement is considered sufficient because they trust each other. People who are aware of the law, use a written agreement with stamp duty to protect the rights of each party. A verbal agreement is an agreement that is made by the parties simply by verbal or by agreement of the parties (Harefa, 2016: 117). Meanwhile, a written agreement means an

agreement designed by the parties written on paper. (Handriani dan Mulyanto, 2021: 2).

Based on the analysis of the results of interviews related to the *ijarah* or leasing arrangements, the majority of the people of Kesilir Village, Banyuwangi Regency work as farmers, but not all of them have land for farming or only have a little land to cultivate crops. This is the reason for the occurrence of land lease transactions. The parties who agreed in the *pendem* in Kesilir Village, Banyuwangi Regency are the rice field owners and tenants.

According to the parties, namely the tenant (*mustajir*) and the land owner (*mu'jir*), system *pendem*, including: (1) Land tenants who need agricultural land where the majority of the population is Kesilir Village, Banyuwangi Regency. Working as farmers, of course, they need agricultural land, but many of them do not own land, therefore renting land is a solution to meet their living needs. (2) Payments that can be paid in installments are one of the reasons why many land tenants are interested in renting land with *pendem* because the payments can be paid in installments, these are 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 they have not paid the land rent payment at the beginning of the agreement and can be repaid if the tenant has benefited from his harvest. (3) The long tenure of land makes the tenants interested in renting land with this *pendem* system because the tenants do not have to worry about finding another land lease because of the length of the lease period they have. The number of farmers who do not own land makes this *pendem* system land lease much in demand by the people of Kesilir Village, Banyuwangi Regency because the lease period is long so there is no need to look for another land lease. In addition, the price of land rent increases every year.

Based on interviews with landowners, the background of the landowners renting out their land with a *pendem*, including (1) A sudden and urgent need but the land owner does not want to sell his land is the reason the land owner rents out his land with the *pendem* system because the owner obtains money quickly they needed without selling their land. However, payments do not always have to be paid at the beginning of the lease agreement, but they can be paid 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 landowner. (2) The landowner is not able to cultivate the land. This is the reason the land owner rents out his land with a *pendem* system because they are already old age so their energy is not capable to work on his land. The land owner rents out the land with the *pendem* system because they don't intend to sell his land. For landowners, renting out with this system is 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 Village for land rentals for a long time.

The pendem system land lease in Kesilir Village, Banyuwangi Regency is held after an agreement between the land owner and the tenant has been made and approved. Furthermore, the parties hold an *ijarah* contract to prove the occurrence of land leases under a pendem system. The community carries out the delivery of objects based on mutual trust with only verbal agreements, but some people who are aware of the law on the implementation of the pendem rental system which is recognized in Kesilir Village, Banyuwangi Regency, use a written agreement.

In the verbal agreement, the *ijab qobul* sentence used is colloquial language, that is by using the Javanese language 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 the pendem system land lease agreement in Kesilir Village, Banyuwangi, from 3 sources, namely 2 people (Mr. Priswanto and Mr. Supri) using a verbal agreement and 1 person (Mr. Samiyo) using a written agreement. Likewise, from the land owner's side, 3 resource persons, namely 2 people (Mr. Boiman and Mr. Teguh) used a verbal agreement and 1 person (Mr. Tumirin) used a written agreement.

Regarding the payment of rent on land leases with the pendem system known in Kesilir Village, 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 certainly done with the agreement of both parties. Payment of rental fee nominal rental price is determined at the time the contract is executed. In the pendem system land lease, 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 installment payments, there are additional fees charged to owners who make payments in the middle or at the end of the lease term.

The payment system for the pendem system land lease has three kinds of options, at the beginning of the middle or at the end of the lease period known to 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 no 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.

The Review of Islamic Law and The Indonesian Civil Code Regarding The *Pendem* System Land Lease Agreement in Kesilir Village Banyuwangi

The implementation of the *pendem* system land lease that applies in Kesilir Village, Banyuwangi Regency in terms of Islamic Law which is sharia which means the rules made by Allah for His people brought by a Prophet SAW, both laws related to belief (*aqidah*) and laws related to *amaliyah* (deeds) carried out by all Muslims. (Iryani, 2017: 24) The Civil Code according to Sri Soedewi Mahsjhoen Sofwan the definition is what is meant by civil law is the law that regulates the interests of one individual citizen with another individual citizen. (Sofyan, 1975: 1) In article 1320 of the Civil Code it is stated that the conditions for a valid agreement are (1) Agreement between the two parties (2) Capable of taking action (3) A certain thing (4) There is a *halal* cause.

An agreement between the two parties is the agreement of two or more parties who want each other to do or not do something. (Gumanti, 2012) This land lease agreement occurs after the parties agree to mutually implement the agreement to fulfill their rights and obligations. In practice, landowners offer landless tenants and those who can afford to rent their land for a long period without any coercion. This is motivated by landowners who need money or cannot cultivate their agricultural land or because they will be left behind for a long time.

Capable means being able to take legal actions, not being in custody, not under the age of law according to the law, are who under 21 years of age, and unmarried. In general, according to the provisions of Article 330 of the Civil Code, the minimum age limit for adults is 21 years and has never been married, although several other laws and regulations specify a different age limit in determining the minimum limit for a child to be considered an adult. If the marriage is dissolved before they are twenty-one years old, then they will not return to their minor status. (Kholis, 2017: 77) Legal actions carried out by minors or people who are not yet capable of carrying out legal actions can be canceled or requested for cancellation and canceled automatically. This means that immature children will affect every legal act that is carried out where the legal action has no legal consequences. For example, if a child who is under 21 years of age and unmarried, enters into a sale and purchase agreement without the consent of his guardian, it can be canceled, even though in principle the sale and purchase is legal, but the legal act of buying and selling does not have legal consequences so that the sale and purchase can be canceled

through his guardian or cancel automatically. (Harahap, 2020: 33) The parties who carry out the practice of land lease agreements with the pendem system are adults who are married, they are also people who understand and know about the practice of renting land.

A certain thing means that what is agreed in an agreement must be a thing or an item that is quite clear or certain. This condition is necessary to be able to determine the obligations of the debtor in the event of a dispute. The type of goods intended in the agreement must at least be determined (Kumalasari dan Ningsih, 2018: 6). The form of a certain thing is 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 system, 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.

The halal cause is that an agreement must not contradict the law, decency, and public order. The agreement on the pendem system land lease in the Kesilir Village, Banyuwangi is an agreement for the use of agricultural land with a verbal or written agreement. The agreement does not contain anything contrary to the law, morality, and public order. In the practice of leasing the pendem system of land in Kesilir Village, Banyuwangi, the legal requirements have been fulfilled following the article.

According to Islamic law, there are several conditions and pillars of ijarah that must be met in the implementation of the pendem system of leasing practices to comply with Islamic law. The pillars that must be fulfilled include: 'aqid (people who hold the contract), shighat (ijab qabul), ujarah (rent money), rented goods, and benefits. While the conditions that must be fulfilled in the ijarah contract include: (1) The conditions for the occurrence of the contract, (2) The conditions for the continuity of the contract (Nafadz), (3) The conditions for the validity of the ijarah, (4) The conditions for binding the ijarah (Luzum Conditions) (Muslich, 2013: 321).

Based on research analysis on the implementation of the practice of renting with the pendem system in Kesilir Village Banyuwangi in terms of Islamic law are as follows. The condition for the occurrence of the contract is that there are parties who make the contract in the lease 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 and mumayyiz so that it can be legally accounted for (Syafei, 2001: 125). The parties who carry out the pendem system land lease in Kesilir Village, Banyuwangi are mostly men who work as farmers. Although their educational background is on

average low, they are knowledgeable in calculating rent in the agricultural land sector. They understand this system is from the habits that are often done in the scope of their work.

The condition for the continuity of the contract is that in the implementation of the *ijarah*, the object being leased is required to be fully owned and under the control of the *mu'jir* (the party who rents out). (Muslich, 2013: 322) The *ijarah* contract becomes void if the object being handed over is not the property of the lessor. This is under Article 259 of Perma No. 2 of 2008 concerning KHES, that: "The party who rents out the object must be the owner, his representative, or the custodian."

In the practice of leasing the land with the *pendem* system in the Kesilir Village, Banyuwangi the party who leases the land has full ownership and control over the land. About the rental period in the land lease agreement, the *pendem* system is determined by the agreement of both parties. This is reinforced by the statement of Mr. Teguh that the land belongs to him. Based on the information obtained during the interview, the parties who rented out the land said that the land they leased was private property, not the property of the owner's parents or family members.

In the implementation of the land lease agreement with the *pendem* system, the land owner (*mu'jir*) and the tenant (*musta'jir*) enter into the contract by meeting in person, either the tenant meets the land owner or vice versa with a verbal or written agreement if the lease period is very long and the contract uses the colloquial language, namely the Javanese language. This is under Perma No. 2 of 2008 concerning the compilation of Sharia Economic Law and Fatwa No: 112/DSN-MUI/IX/2017 concerning the *Ijarah* Agreement, which is as follows.

In Article 258 it is stated that "The *ijarah* contract can be carried out face-to-face or remotely" and in Article 252 it is stated that:

1. *Shigat* contract *ijarah* must use clear sentences.
2. The *ijarah* contract can be made verbally, in writing, and/or through gestures.

In Fatwa No: 112/DSN-MUI/IX/2017 concerning the *Ijarah* Agreement, it is also explained about the conditions for the *ijarah* contract, namely:

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 orally, in writing, through gestures, and deeds/actions, and can be carried out electronically under sharia and applicable laws and regulations.

Regarding the conditions for the validity of the *ijarah*, several things must be fulfilled, including: (1) The parties to the contract must be mutually willing without any coercion. This becomes very important

because it affects the law of the transaction itself. If these conditions are not met, then the law becomes invalid or void. (2) The benefit of the object in the ijarah and its utilization must be under the *syara* rules. In this case, the land leased with the pendem system in the Kesilir Village Banyuwangi is used for agricultural activities. The tenant has used it according to its function, that is as agricultural land. (3) The ijarah object must be fulfilled both intrinsic and *syar'i*. In this provision, renting out something difficult to be submitted essentially and cannot be fulfilled according to *syar'i* is not legal. The object of renting the pendem system in Kesilir Village, Banyuwangi is clear and can be handed over at the time of the ijarah between the land owner (*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 that the handover of the object of the ijarah pendem system has been fulfilled. (4) The use of the object of ijarah must be appropriate and permitted by *syara*. The object of ijarah in the practice of the pendem system land lease agreement in Kesilir Village, Banyuwangi is the land used as agricultural land because its location is in the rice fields. (5) The benefits derived from the object of ijarah must be under the generally accepted purpose of the ijarah. The law is invalid if it is not under the purpose of the ijarah. The object of ijarah is the practice of the pendem system of land lease agreements in Kesilir Village, Banyuwangi, it is used as land for farming. The tenants of the land are farmers who do not own the land so they rent it to the land owner who intends to lease the land. The land that is rented out is paddy fields, so it is used for agriculture. (6) At the time of performing the ijarah contract, the number of wages paid must be agreed upon (Jazil, 2014: 129).

Wages must be something that is known, something of value or can be valued in money or according to local customs. This is under the hadith of the Prophet SAW.

"From Abi Sa'id ra that the Prophet Muhammad SAW said: Whoever hires labor, let him mention his share of wages."

Payment of rental fees in the practice of the pendem system of land lease agreements in Kesilir Village, Banyuwangi uses 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 concerning the Ijarah Agreement, it is also stated that provisions related to wages/*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 under sharia and/or applicable laws and regulations.
4. The agreed ujrah may be reviewed for benefits that have not been received by musta'jir according to 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 the payment of fees/wages in the practice of the pendem system land lease agreement in Kesilir Village, Banyuwangi, under applicable regulations.

Wages are not allowed to be the same as the type of goods contracted, the implementation of the *ijab qabul* must match the object of the contract and the time limit. It is described in Article 271 of Perma No. 2 of 2008 concerning the Compilation of Sharia Economic Law regarding the terms of the price and period of *ijarah*, including:

1. The value or price of the *ijarah* is determined, among others, based on the unit of time.
2. The units of time referred to in paragraph (1) are minutes, hours, days, months, and or years.

A 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 shrinking payment system. Depreciation of rental prices in general is Rp. 250.000, - up to Rp. 500,000,- annually, depending on the location of the land. In practice in the field, 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. Payment of rent can be made three times, those are at the beginning, in the middle, and at the end of the rental period according to the agreement of both parties. However, payments made at the middle and end of the lease are additional rental fees whose amount is determined by the landowner. This is due to the large number of people who intend to rent land for agriculture and the rental price increases every year.

The additional amount requested by the landowner at the time of settlement of the payment was not agreed upon at the beginning of the agreement. In this case, the tenant inevitably has to pay the additional money for various reasons. In practice in the field, the tenants are willing to pay the additional money because the quality of the plants on the land is still good. Even though the land owner asks for additional fees due to paying off the rental fee within a period, namely in the middle or at the end of the lease term. This is juridically not under the provisions of Islamic law because it contains elements of usury in the transaction but the tenant has a pragmatic reason for continuing to pay it because of the quality of the plant which has the potential to generate large profits than the additional rental fees they give to the landowner. Additional money

charged to the lessee due to the payment due in the middle or at the end of the lease period contains an element of usury. Riba is an additional taking in a certain transaction contract where the additional taking is not accompanied by a certain balance (Ghofur, 2016: 6).

"Allah has permitted trading and forbidden usury. Those who have reached to him the prohibition from his Lord, and then continue to stop, then for him what he had taken first; and matters to Allah. People who return, then that person is the inhabitants of hell; they abide in it; Allah destroys usury and enriches alms. And Allah does not like anyone who practices disbelief, and always commits sins." (Surat 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:

"From Ibn Mas'ud he said: The Messenger of Allah cursed those who eat usury, the person who represented it, the witness, and the person who wrote it." (HR. At-Tirmidhi) (At-Tirmidzi, 1426H: 512)

The element of usury contained in the *pendem* system rental transaction in the village of Kesilir Banyuwangi is included in the type of usury nasi'ah. Riba nasi'ah is an addition that is mentioned in the agreement for the exchange of goods in exchange for the delay in payment. The law of usury nasi'ah is haram because all the basic elements of usury have been fulfilled such as the addition of capital and tempo which causes an additional. This is an advantage of the conditions contained in the contract, namely as assets that produce assets because of the period. (Azzam, 2010: 222) These additional fees contain elements of usury that cause the legal lease transactions to be invalid.

The conditions for binding the ijarah contract that must be fulfilled include: (1) There is no defect in the goods being leased so that the goods can be used properly. If there is a defect in the item, the lessee can choose to continue with a reduced rental price or cancel the transaction. (Aladip, 2012: 460) In the practice of renting a *pendem* Kesilir Village, Banyuwangi, the object of the lease is land that is used as agricultural land. The condition of land is fertile and ready to be planted. In this case, the leased land has no defects at all. (2) no (*udzur*) reason can cancel the ijarah contract. according to the majority of scholars, *udzur* cannot be the reason for the cancellation ijarah contract, as long as the benefits of the object of ijarah are not completely lost. (Muslich, 2013: 327) In the practice of leasing the *pendem* in the Kesilir Village, Banyuwangi, the land that is rented can be fully utilized, that is, it is used as agricultural land and can be planted with various kinds of plants according to the interests of the tenants.

CONCLUSION

Based on the results and discussion, the practice of land lease agreements using the pendem system carried out in KesilirBanyuwangi Village in terms of the law of the Civil Code is valid, because it has been fulfilled, that is the person who receives the lease has paid the rent at three times, namely at the beginning of the rental period, in the middle and at the end of the rental period. The payment is at the beginning of the rental period under the agreement. Meanwhile, payments made at the middle and the end of the rental period are charged an additional fee.

The practice of leasing in the village of KesilirBanyuwangi in terms of Islamic law is prohibited because there is an additional payment made at the middle and the end of the rental period. In Islam, everything that is added without any prior agreement is called Riba. The additional fee requested by the land owner to the land tenant contains elements of usury, which is included in the type of usury nasiah, namely the addition mentioned in the exchange agreement as compensation for delayed payment. Therefore, with the addition being charged to the lessee which the land owner did not mention at the beginning of the agreement regarding the settlement of payments made in the middle or the end of the lease term, the lease law becomes invalid/canceled because it is not under Islamic law.

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