

The Essence and Implementation of Profit Sharing Agreement of Agricultural Land in South Sulawesi, Indonesia

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Abstract:- The essence and implementation of profit sharing agreement of agricultural land in South Sulawesi Province (supervised by Sufirman Rahman, Hamza Baharuddin and Abdul Qahar). The present study aimed to: (1) determine the essence of the implementation of agricultural land profit sharing agreement in South Sulawesi Province, (2) determine the implementation of agricultural land profit sharing between land owner and cultivator, (3) determine and understand factors affecting the profit sharing agreement between land owner and cultivator. The present study used regulatory approach and judicial sociological approach using primary data and secondary data. Primary data is data collected from research location using several research instruments, i.e. legal material documentation guideline to collect all legal materials related to the formulations of the problems. Secondary data is data collected from field using documentation from related agencies which can provide illustration on the implementation of profit sharing agreement of agricultural land in South Sulawesi Province. The research result showed that: (1) The profit sharing agreement between owner and cultivator essentially poorly reflects legal certainty because the profit sharing agreement of agricultural land in South Sulawesi Province still uses customs (Customary Law). (2) The implementation of profit sharing agreement of agricultural land between cultivator and land owner isn't effective because it doesn't use Law No. 2 of 1960 (3) The factors affecting the owner and cultivator are legal structure, legal substance and legal culture. Research recommendations: (1) The implementation of profit sharing agreement between the owner and cultivator of agricultural land should pay attention to a share which can provide certainty and justice as expected by Law No. 2 of 1960. (2) Legislation (Law No. 2 of 1960) should be reconstructed because it's no longer consistent with the current condition of the problem. (3) The formulation of profit sharing laws should note customs in the society, not only profit sharing agreements (*teseng* in Buginese language), but also Rice Field Pawn.

Keywords:- Agreement, share, profit, rice field, land, agriculture.

I. INTRODUCTION

South Sulawesi is a province in Sulawesi which has a massive agricultural potential. This is due to the geographic condition and soil fertility level which are suitable for various types of plants, so that the agricultural sector grows rapidly along with the growth of other sectors.

Therefore, the government makes efforts to enhance the agricultural field for public interest. One of the realizations of the efforts is issuing a national legal product, i.e. Law No. 2 of 1960 on Profit Sharing Agreement of Agricultural Land. The purpose of issuing the law is so that profit sharing between land owner and cultivator, including profit sharing of agricultural land, can be performed fairly by enforcing the rights and obligations of all parties. It's also expected to guarantee the legal position of cultivator, who in profit sharing agreement is usually in a weaker position.

Based on the purposes above, it's clear that Law No. 2 of 1960 is one of the supports in job distribution and providing proper livelihood for humanity, as stated in Article 27 clause (1) of 1945 Constitution.

As a follow-up of the implementation of the Law, the government has released Presidential Instruction No. 13 of 1980 on Guideline for the Implementation of Law No. 2 of 1960 on Profit Sharing Agreement (*teseng* in Buginese language) of Agricultural Land. The Presidential Instruction is issued to help the implementation of Law No. 2 of 1960 in the public.

Law No. 2 of 1960 is one of the products of National Law which is prepared consistent with the values which live and is maintained in the society. It means the rule is consistent with the soul of all layers of the society. It's consistent with the words of Allah SWT in Q.S. An-Nisaa' verse (135), the translation is :

“O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents and relatives. Whether one is rich or poor, Allah is more worthy of both. So follow not [personal] inclination, lest you not be just. And if you

distort [your testimony] or refuse [to give it], then indeed Allah is ever, with what you do, Acquainted.”.

The rules should apply across the Republic of Indonesia, however, in reality, some regions still use local stipulations or customs, such as in South Sulawesi, in performing profit sharing between agricultural land owner and cultivator.

The essence of land plays a vital role the life and livelihood of people as supporters of a country. Active land cultivation, especially agricultural lands, is the obligation of every citizen. An agrarian country expects no agricultural land is uncultivated or abandoned. Meanwhile, some parties have a lot of land, while there are farmers with small lands or even no land at all.

For some reason, some land owners have no knowledge or interest in cultivating agricultural lands or plantations inherited from their parents which they don't sell. This drives them to look for people to cultivate the lands. Sometimes for one reason or another, they change occupations, abandoning their agricultural lands but refusing to transfer them to others, so they let other people who don't own land to cultivate them.

This situation is found in rural areas, even urban areas. People buy lands at low price to let farmers without land work on them with unfair profit sharing conditions. In land cultivation, land owners occasionally extort cultivators who live from their lands.

However, this land cultivation continues along with the development and life demands of people. Land cultivation continues in the forms of land pawn, land rental and profit sharing system. Profit sharing, especially profit sharing of agricultural land has been known in Indonesia for a long time, from the colonial era to the independence era. There are some harming aspects in this agreement, even aspects which point to extortion. It's related to the fact where traditional cultivation and agreement still happen in the society.

In agrarian affairs, agrarian law develops along with the development of the society to provide answers for emerging problems. Considering agrarian issues are important, the government pays a lot of to agrarian affairs. It's evident in the issuance of Basic Law in agrarian affairs in 1960 (UUPA) which was a new chapter in Agrarian Law.

Meanwhile, traditional land cultivation, such as profit sharing system, is acts as social engineering so that legal role can determine legal purpose or ideal. Therefore, law is expected to give direction in controlling land, in this case order in land cultivation with profit sharing system. Agreement between parties in profit sharing are generally unwritten, so that there are often doubts which lead to legal uncertainty, disputes between land owner and cultivator. They're expected to end, especially after the issuance of Law No. 2 of 1960 on Profit Sharing Agreement.

From the description above, the authors were interested in exploring this issue which by UUPA, due to its harmful content, is established to be temporary right. It means Profit Sharing Institution will be removed one day as the Law of Profit Sharing has been in effect since 1960. The authors present a dissertation titled “The Essence of Law Number 2 of 1960 on Profit Sharing Agreement of Agricultural Land in South Sulawesi”. Below are statements from figures of mortgage theories:

➤ *Meyer*

Ranneft and Heunder argue that profit sharing is mortgage after analyzing wage which is partially from harvest wage. They also state that they only emphasize that profit sharing covers elements of work agreement and mortgage agreement.

➤ *Rerolle*

Seeing as some supporters still put aside necessary limits, it proves that they consider profit sharing a mixed agreement.

➤ *Scheltema*

Opines that profit sharing contains elements of lease contract.

Profit Sharing Agreement According to Customs (Customary Law). Profit sharing agreement between rice field owner and cultivator doesn't have to have clear transfer and doesn't require legalization from village or sub-district official, traditional agreement emphasizes family aspects.¹

Based on the sense of family, an agreement is made between parties, so the parties involved in the profit sharing agreement has familial relation because customary law aims to create order and security in community life.

Agreement by customary law is very different from the agreement described before. It's because the societies where the laws are created are very different. The Codes of Civil Law comes from France in an individualistic society, while customary law is created in a society with mutual cooperation and together.

Mutual help, harmony and familial relation are the essence of customary law agreement. While agreement according to western law creates bond, in customary law, an agreement is binding if there is a binder. Agreement according to customary law also doesn't only concern legal relation of properties, e.g. good deed.²

¹ Imam Sudiyat. *Hukum Adat Sketza Azas*. Liberty Yogyakarta.1981. P.40.

² Hilman HadiKusuma. *Pengantar Hukum Adat Indonesia*. Mandar maju.Medan. 2003. Hal. 218 .

In customary law community, if a member of the community requires help, other members will help. This is referred to as good deed.

II. RESEARCH METHOD

This was a judicial sociological study to describe the implementation of profit sharing agreement of agricultural land in South Sulawesi, Indonesia. It aims to systematically, factually and actually describes a population or region in terms of certain characteristics or factors. The present study tried to get data which could provide information on the customs of the society in profit sharing agreement of agricultural land in South Sulawesi, Indonesia.

III. DISCUSSION

A. Cultivators' reasons to make profit sharing agreement of agricultural land

Owners of agricultural lands gave a part of the entire agricultural lands to families which had no agricultural land or occupation for them to manage the land by profit sharing system. This was meant to help each other and aid families which need jobs. Moreover, some respondents stated that the owners the agricultural land owners couldn't cultivate their lands because they didn't the skills and only owned the lands due to inheritance.

The reasons why cultivators made profit sharing agreements (*teseng* in Buginese language) of agricultural lands are shown in table 1 below:

No	Description	Respondent (People)					Total (People)	(%)
		Owner	Cultivator	Village Head	Public Figure	PPL		
1	Increasing income	-	5	-	-	-	5	9.62
2	Not owning rice field	-	11	-	-	-	11	21.15
3	As livelihood by working on someone else's rice field	-	36	-	-	-	36	69.23
Total		-	52	-	-	-	52	100

Table 1:- The reasons why cultivators made profit sharing agreements of agricultural lands
Source : Primary Data in 2018.

The table above shows that 5 respondents or 9.62% of cultivators wanted to increase their income, 11 respondents or 21.15 % didn't have any rice field and 36 respondents or 69.23 % used it as a livelihood.

Most cultivator respondents did it because they had no other job beside cultivating other people's lands, to this was their livelihood.

Profit sharing agreement is a part of engagement law because by executing the agreement, it will lead to legal effects. Government's involvement in the agreement can reinforce it. Therefore, profit sharing law demands all profit sharing agreements to be made in writing before village heads. This is to act as evidence in case of default in the future. Similarly, witnesses from both parties are essentially preventative.

B. Implementation of Profit Sharing Agreement of Agricultural Land between Land Owner and Cultivator

In the explanation of the 1945 of RI, customary laws are recognized in this country despite not being written clearly. It also explains the laws in effect in the Republic of Indonesia, i.e.: the Constitution of a country is only a part of the basic laws of the country. Constitution is a written basic law. Beside the Constitution, there are unwritten basic laws, i.e. basic

rules which emerge and are maintained in governance, although not written.

The research found that customary agreements also include intangible agreements, e.g. good deeds, debt of gratitude, etc.

Custom is a law which grows in the society for centuries, before the country is united. One of the institution in our customary laws is Profit Sharing. In the customs of the people of South Sulawesi, Indonesia this is an agreement related to land. Land is not the object of the agreement, but the agreement is related to land. The objects are labor and plants. So, village head isn't required to validate the agreement and certificates on these agreements are rarely made.

In South Sulawesi, profit sharing is known as "Bagi assele". In practice, the profit sharing agreement is performed orally and depends on the fertility of the land, seed provision, plant type, etc.. If the land is rice field, while the rice seeds are provided by the land owner, the yield is split between the land owner and cultivator without calculating the values of seeds and fertilizers. This is called: *Nibage Rua asselena*".

The research results are described below:

➤ *Profit Sharing*

According to the study, most profit sharing was one to one. In other words, the cultivator and land owner each received half of the net outcome. This profit sharing generally happens in rice fields which get technical irrigation and are cultivated twice a year. Meanwhile, profit sharing where cultivators received 2/3 and land owner 1/3 of net outcome happened in villages where the rice fields were rainfed or didn't receive technical irrigation, e.g. Tellang-Tellang, Kulo and Arawa and some parts of Sereang Village (Rijang Ledeng).

In fact, in Tellang-Tellang and Kulo Villages, to date *amung* rice fields (rice fields which have been abandoned for a long time) were permitted by the owners to be cultivated for free for two to three years by interested cultivators. It meant cultivators could cultivate the rice fields for two or three years without giving any profit to the land owners, as long as the cultivators pay the property tax of the rice fields.

➤ *Obstacle in implementing Law No. 2 of 1960*

The obstacles in implementing Law No. 2 of 1960. Generally, farmers in Pinrang Regency didn't implement Law No. 2 of 1960 because they didn't know and weren't informed about it. The farmers' ignorance of the existence of Law No. 2 of 1960 indicates that socialization in Pinrang Regency was very poor.

Furthermore, to make things more difficult for farmers, both cultivators and land owners, there is no guaranteed quick service from village heads, since they had other activities and are often away, e.g. visiting other locations, going to hospitals, etc.. So, farmers often returned home in disappointment and annoyance because they had wasted time and money for nothing.

Profit sharing agreement is executed orally without writing. This was supported by the field research which showed that nearly 100% of them were performed orally because generally the respondents didn't sign any paper and weren't witnessed by anyone. For item "How did the profit sharing agreement of agricultural land happen?" the respondents replied that the agreements were between the owners and cultivators without any witness.

So, the agreements were oral and therefore not in line with Law No.2 of 1960 on Profit Sharing Agreement Profit sharing agreement generally happens due to the inability of land owners to cultivate their rice fields due to several things, including:

- The rice field owner wasn't a farmer, e.g. a merchant.
- The rice field was located far from their home, therefore difficult to manage.
- The rice field was bigger than the labor they had, if they were a farmer.
- The rice field was in the same region as their home, but far from home, etc.

However, the land owners wanted the rice fields to be productive. So, rice fields were useless production factors if not cultivated by other cultivators. Conversely, many cultivators were farmers with no rice field. They only had labor which was non-productive if they didn't work in rice fields. Therefore, rice field owners required cultivators called cultivators. Meanwhile, cultivators needed rice fields to work. In other words, rice field owners and labors needed each other, so that at one point, tribes and races met to produce a cooperation agreement in agriculture, called profit sharing.

Based on the research in South Sulawesi, profit-sharing agreement survives in the society, especially among agricultural community cultivators. In fact, profit-sharing agreement customary land is deeply rooted in Pinrang society, especially the farmers, until today. The obligation of cultivator to land owner was cultivating rice field well. It wasn't only haphazardly cultivating land, but also irrigating, plowing, planting, and caring for the rice.

If a cultivator came to a land/rice field owner to help them work at the rice field, it wasn't an obligation. It was a sign that they had a mental born which was strengthened by mutual aids beside working on the rice field.

These attitudes are deeply ingrained in farmers in Pinrang, creating harmony between cultivators and rice field owners. This made Pinrang Regency the National Food Granary.

- Expended costs

The common costs were:

- Cost of seed purchase.
- Cost of planting.
- Cost of fertilizer purchase
- Cost of medicine purchase
- Cost of tractor usage
- Property tax payment

Implementing the agreement is considered an obligation, called *to* in fact (*tongeng* in Buginese language). It means that human must fulfill their promises, otherwise they will not be trusted by others and if trust is

lost, no one will communicate with them and they'll be isolated from the society as a social sanction.

The table below shows that 120 respondents of 120 respondents or 100% claimed that seed purchase was borne by land owners.

No	Description	Respondent (People)			Total (People)	(%)
		Owner	Cultivator	Owner and cultivator		
1	Seed Purchase	120	-	-	120	100
Total		120	-	-	120	100

Table 2:- Cost of Seed
Source: Primary Data in 2018

Property tax was borne by the agricultural land owner and the table below shows that 120 respondents of 120 respondents of 100% stated that property tax was borne by land owners. See table 2.

IV. CONCLUSION AND SUGGESTION

➤ Conclusion

Based on the research result and analysis above, the following conclusions are drawn:

- The essence and implementation of profit sharing agreement of agricultural land in South Sulawesi according to Law No. 2 of 1960 on profit sharing agreement of agricultural land didn't reflect legal certainty and justice. In reality, the research showed that profit sharing agreement (*teseng* in Buginese language) of agricultural land in South Sulawesi used oral tradition (customary law)
- The implementation of profit sharing agreement of agricultural land between land owner and cultivator wasn't effective because it didn't use Law No. 2 of 1960 as a reference of profit sharing agreement (*teseng* of agricultural land which could provide legal protection for land owner and cultivator).
- Factors influencing the implementation of profit sharing agreement of agricultural are:

- *Legal structure,*

Related institution, in this case the Department of Agriculture, never gave socialization to farmers about Law No. 2 of 1960 on profit sharing agreement of agricultural land.

- *Legal substance,*

Law No. 2 of 1960 on profit sharing agreement of agricultural land wasn't implemented by all respondents in the research location because they were unaware of the law.

- *Legal culture,*

The respondents' unawareness of Law No. 2 of 1960 on profit sharing agreement of agricultural land and strong traditional (customary) profit sharing system in the local community made it difficult for the farmers to accept a change.

➤ Suggestion

In making profit sharing agreement of agricultural land, land owner and cultivator should share in a way that gives legal certainty and justice.

- Law No. 2 of 1960 on Profit Sharing Agreement of Agricultural Land seems to ignore traditional profit sharing system in the society and should be reconstructed because it's no longer in line with the condition of the South Sulawesi people today.
- In formulating law of profit sharing agreement, the government should not customs in the society. The authors suggest including agreement system, pawning in South Sulawesi, which haven't been regulated in the law of profit sharing agreement.

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