

# Effectivity of Act No.2/1960 Concerning Agricultural Profit Land Sharing Agreement (Case Study in Leuwidamar District, Lebak-Banten)

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## ABSTRACT

Agricultural profit land-sharing agreement is one of customary law which still exist and widely implemented among the village community in Indonesia. Majority people of Leuwidamar, Bojongmenteng and Cisimeut village are engaged in farming and many of them use profit land-sharing system to carry out farming activities. The government obliged the implementation of this agreement has to be written through Act No. 2/1960 for purpose of cultivators justice. In fact, the implementation of the agreement is done with verbal based on customary law. The government needs to give socialization periodically to villagers regarding the obligation of law to held agricultural profit land sharing in writing. Low educational level and lack of economic prosperity lead to the existence of agricultural profit land-sharing agreement consistently evolve the village.

**Keywords:** Profit Land Sharing Agreement

## 1. INTRODUCTION

Today, many farmers are engaged in farming activities but do not own the land independently, so that the existence of production sharing agreements is starting to gain a stage in the community, especially for those who are engaged in farming. For Indonesians, especially those who live in rural areas, sharing arrangements for agricultural land is a practice that has been carried out from generation to generation in communities long before the existence of written law. Production sharing agreements for agricultural land are a customary law practice that is still valid today among Indonesians. The land, water and natural resources contained in the country of Indonesia have provided many benefits to every level of society so that the state is obliged to carry out full utilization and management with the hope of creating people's prosperity as also mandated in Article 33 paragraph 3 of the 1945 Constitution which is decreasing as a result of development is not proportional to the increasing demand for land, this has created a new phenomenon, namely the transition of professions carried out by farmers.

The implementation of the production sharing agreement which was carried out orally based on customary law began to receive attention from the government because it did not provide legal protection for farmers who were a weak group compared to landowners so that the

government issued Act No. 2 of 1960 regarding the Production Sharing Agreement with the aim of providing legal protection due to the provisions that require the production sharing agreement to be in writing and for a certain period of time. In customary act, the production sharing agreement is carried out orally based on the trust principle of the parties with the term of the agreement depending on the willingness of the landowner so that it does not guarantee legal certainty for the cultivator. This situation gave rise to injustice and contained extortion methods so that the government tried to provide legal protection with the issuance of Act No. 2 of 1960 regarding the production sharing agreement which requires the agreement to be made in writing. Based on the results of the preliminary investigation, it is known that the people in the villages of Leuwidamar, Cisimeut and Bojongmenteng still use the practice of sharing the results orally and without a certain period of time. This paper focuses on the effectiveness of the implementation of production sharing agreements for agricultural land based on existing laws and regulations with facts found in the community.

### 1.1. *Our Contribution*

This paper aims to determine how the effectiveness of the application of Act No. 2 of 1960 regarding the sharing of agricultural land which has been valid for 60 years since it

was legalized in the community. It is known that in its application, the existence of an agreement for agricultural land production is still carried out orally based on the customary law of the local community

## 1.2. Paper Structure

The rest of the paper is organized as follows. Section 2 introduces the preliminaries used in this paper, Section 3 presents the research method based on the effectivity issue on profit land-sharing agreement in Section 4. Section 5 develops a prototype tool for the framework, and Finally, Section 5 concludes the paper and presents direction for future research.

## 2. BACKGROUND

### 2.1. Profit Land Sharing Agreement

A production sharing agreement on agricultural land is an agreement made with the landowner and the tenant where the cultivator is allowed to carry out agricultural business on the land owned by sharing the profits as the final result to be obtained by the parties. [1] The agreement for the production of agricultural land is one of the customary laws that are still in force in the community where the agreement is made orally in exchange for a previously agreed upon by the parties. There are several terms of production sharing agreements in Indonesia, including *maro* (Java), *nengah* (Priangan), *tesang* (South Sulawesi), *toyo* (Minahasa), and *perduwa* (Sumatra). [2] The village community practices profit-sharing agreements due to the high social tolerance to help others who are experiencing difficulties. The attitude of mutual cooperation which is still closely applicable in the life of rural communities has made the existence of production sharing agreements to this day still frequently encountered using local customary laws. Under Article 10 Agraria Act, each individual is required to carry out maximum exploitation of the land so that the land can be prevented from damage and prevent control of the land by extortion and fulfil a sense of justice in the community (*exploitation de l'home par l'home*). Departing from this reason, the government made the formation of Act No. 2 of 1960 which aims to provide more definite legal protection for the implementation of agricultural land yield sharing agreements. The application of Act No.2 of 1960 in practice has not been maximally implemented because there are still many results sharing agreements that are carried out orally. [3] This has an impact on the absence of legal certainty in the contents of the agreement which includes the rights and obligations of each party, the results of land exploitation, as well as the time limit for the production sharing agreement. Generally,

the production sharing agreement will end when the harvest season arrives because of the nature of the production sharing agreement which is made orally or not in writing.

### 2.2 Indonesia Agrarian Law

Articles 16 & 53 of Agrarian Law regulate the rights granted by the state where these rights contain the authority to use the land. The rights include:

- a. Right of ownership
- b. Cultivation Rights
- c. Building rights
- d. Usage rights
- e. Lease rights
- f. The right to open land
- g. The right to collect forest products
- h. Other rights of a temporary nature such as pawning, production sharing, hitchhiking and leasing agricultural land (Article 53)

Religious communalistic is the nature of land in Indonesia need strategic steps in solving various problems related to land by paying attention to legal principles, principles of welfare, and principles of humanity so that these problems do not cause unrest for the community.[4] Policies made by especially in the agrarian sector are oriented towards economic growth which has an impact in the form of a shift in thinking about the function of the land. This condition is supported by changes in land policy that should support and protect the people to become pro-capital.

Various phenomena that support these constants include [5] :

- a. Land functions as a capital accumulation mechanism which results in the marginalization of the rights of agricultural landowners;
- b. Along with the development of capitalism, the value of land as seen based on its economic value (land as a commodity), economic values are neglected;
- c. Changing the function of land as one of the main production factors has become a means of investment and a means of capital speculation/accounting; and
- d. Economic globalization encourages land policies that are adaptive to market mechanisms, but this has not been followed by strengthening access of the people and customary/traditional law communities to land acquisition and use.

Based on these matters, it is known that land is not counted as part of a development strategy but is used as an

object in development activities. This has an impact on land scarcity and deteriorating quality of the land itself and conflicts over control and use of natural resources, both structural and horizontal.

### 3. METHODS

This paper uses an empirical legal research method that is intended to obtain direct data from the field that comes from interviews and observations. [6] This research is an analytical descriptive study which links the prevailing laws and regulations and is associated with legal theory and the practice of implementing positive law in society. The approach used in this research is qualitative which aims to understand the social phenomena found in society found in primary data [7]. The research location is located in 3 villages in Leuwidamar District, Lebak Regency, Banten, namely Cisimeut Village, Bojongmenteng Village, and Leuwidamar Village.

### 4. FINDINGS AND DISCUSSIONS

#### *4.1 Effectivity Act No. 2/1960 Concerning Agricultural Profit Sharing Agreement*

Multiculturalism in Indonesia is an ancestral heritage which is still used as a rule in the social life of the Indonesian nation. Multiculturalism is used as a unifying ideology for the nation which in its implementation uses cultural differences in social life [8]. The development of society at this time is due to the existence of social relations that occur in society as a result of the existence of relationships that are standard, certain interests, demonstrable rational values, religion, and modernization in the social environment. Customary law in Indonesia is a form of legal pluralism that develops following the times and social systems that exist in society. The cosmish participant mindset used by indigenous peoples makes them always maintain the balance of the universe so that there are still many traditional activities or ceremonies which are the realization of the meaning of balance. Indigenous peoples apply sanctions in the hope of having a deterrent effect on those who violate the balance of the universe [9]. The traditionalist mindset that is still strong in Indonesian society proves that the existence of customary law provides the fulfilment of a sense of justice for the community.

Customary law is an unwritten legal rule covering all fields of law. Customary law is an original product of the thoughts of the Indonesian people so that the legal ideals contained in it uphold the values of Indonesian culture.

The values contained in customary law contain universal humanity because customary law is seen as an abstract thing but in an empirical reality [10]. The provisions contained in customary law are very dependent on the soul of the people so that the legal awareness of a community depends on what is stated by legal experts [11] Village communities generally still adhere to the customary laws that exist in their area where in the past the community tried to build harmony with the surrounding environment resulting in a legacy of knowledge of living in harmony with nature [12]. Customary law communities adopt a pattern of adaptation to the environment without neglecting their values and ancestral heritage by using local wisdom which is used as a combination to deal with life's turmoil [13].

Customary law plays a role in the management of natural resources in Indonesia, while some customs are currently used as a basis for various groups of people in Indonesia, including pranoto mangso, mountain yangbuk, great buyut, pikukuh, etc. The legal substance contained in every society is different so that the components that become the measure of success of law are the social attitudes and behaviour of a society. The effectiveness of law in society can be seen from the habits, culture, traditions and norms adopted by a society. Customary law is a living law side by side with the Indonesian national legal system. The pluralism of legal awareness as a result of legal pluralism in Indonesia requires socialization and legal counselling as an effort to create legal certainty and protection and increase public awareness [14].

Indeed, since the enactment of Act no. 2/1960 concerning Profit Sharing Efforts, it is no longer justified to use a system of verbal production sharing agreements. It has been explained previously that the oral profit-sharing agreement is part of customary law / customary law, but there are laws and regulations that require the production sharing agreement to be made in writing so that there is a contradiction between law in book and law in action. The purpose of the written production sharing agreement is to prevent extortion in order to create social justice and legal certainty for the parties. The people of Bojongmenteng Village, Leuwidamar Village, Cisimeut Village make an agreement for the sharing of agricultural land products in an oral form according to the customary law of the local community. Based on the results of observations and interviews, it is known that the local village officials are actually aware of a provision requiring that profit-sharing agreement is made in writing in front of the village head. The reason they do not implement the implementation of the written agreement is that they maintain the customary law in their area and the community considers that the practice of sharing the agreement is not an urgent matter which requires them to do so in writing.

The low level of legal awareness in a society results in a lack of obedience to the law. Legal awareness is manifested in the form of real action so that it places the law not as a norm or principle, but as behaviour [15]. Legal awareness that is owned by the community is the connecting rope between the existing regulations and social behaviour [16]. The diverse culture in society is one of the things that makes it difficult to achieve compliance with the law. Some of the people of Bojongmenteng, Cisimeut, and Leuwidamar Villages are actually aware of the importance of implementing a profit-sharing agreement in writing but this awareness is not manifested in life practice. The legal awareness possessed by the people of Bojongmenteng Village, Cisimeut Village, and Leuwidamar Village is not as big as the influence of the mindset which allows them to get greater benefits if they do not obey the law.

Legal awareness that exists in the soul of Indonesian society is a form of traditional legal awareness which is proven by the community's obedience to the law, not because of their beliefs but as a result of being forced or asked by leaders, religious orders, or beliefs. Indirectly, the legal awareness possessed by the Indonesian people is aimed at obeying the ruler, religion, belief, or certain other interests. These things create a legal awareness crisis in society. The people of Bojongmenteng Village, Cisimeut Village, and Leuwidamar Village are actually aware of the importance of entering into a written production sharing agreement in accordance with the mandate contained in the law but choose to take advantage of certain opportunities to get benefits. For example, the implementation of profit-sharing agreements is carried out on the basis of a desire to help residents of communities who are experiencing economic difficulties where those who offer assistance are from economically strong groups who have abandoned land. The landowner takes the opportunity to order the person who is in trouble to cultivate his land with a production sharing system and the portion of the cultivator is smaller than the landowner.

Cultivators can't do much to refuse because of economic pressure so that they accept offers from landowners that actually harm the cultivators. In addition to methods of indirect extortion in the practice of production sharing agreements, there is legal uncertainty and social justice is not created because the agreement is made orally based on existing customary law and overrides statutory regulations which oblige the production sharing agreement to be in writing in front of the village head and for a predetermined period of time. The high level of tolerance within the community makes the people of Bojongmenteng, Cisimeut, and Leuwidamar Villages still practice a verbal profit-sharing agreement with the aim of helping others

who are in trouble. Cultivators get new profits when the harvest season arrives. The net profit that will be obtained by the cultivator is after deducting the operational costs and the cost of fertilizer so that the portion that is obtained by the cultivator is actually far from fair considering that the cultivator is fully responsible to the landowner.

The case mentioned above shows that there is a kind of neglect by government officials in the regions, in this case, located in Leuwidamar District, Lebak Regency, Banten Province to Bojongmenteng Village, Leuwidamar Village, and Cisimeut Village, where landowners have found abuse of conditions against smallholders who are visible eyes continue to occur for decades.

Production sharing agreements in Indonesia have a variety of names that are paid for customary or customary practices that exist within the territory of Indonesia. Based on Act Number 2/1960 concerning Production Sharing Agreements (Act 2/60), it is known that the objective of the promulgation of agricultural production sharing agreements is so that the agreements applicable to parties are carried out fairly. In fact, the Indonesian people make an agreement for the production of agricultural land to ignore the provisions in Act 2/60 [17]. The people of Leuwidamar Subdistrict in implementing agreements for agricultural products still strictly adhere to the provisions that apply in their respective areas because it has become a habit for the local community to conduct production sharing agreements by verbal means, some of them see that there is a provision that requires sharing of agricultural land to be written in front of the village head. This custom that has developed in society over the years is the basis for implementing agricultural production sharing agreements.

In fact, the law in Indonesia recognizes the implementation of oral profit sharing. Oral practices are commonly found in everyday life such as doing simple buying and selling activities. An agreement made in oral form is valid as long as it fulfils the validity of the agreement contained in Article 1320 of the Criminal Code and as long as there is no statutory provision requiring the agreement to be made in writing. The area of the agreement for agricultural production that takes place in a community that has a relationship because in customary law it is known as this to build a sense of security in community life. There are no universally applicable provisions regarding the amount of yield received by each party because the results received depend on the amount of land, the number of cultivators, the fertility of the land and the owner in the local area. Cultivators are often disadvantaged by the terms of the agreement that give him rights that are incompatible with the energy and costs used to cultivate the land in question. Production sharing agreements that depend entirely on the

willingness of the landowner so that the cultivator does not have legal certainty in it [18].

The production sharing agreement for agricultural land is a personal relationship between the owner and the cultivator and is not included in the realm of public law even though the central government and local governments intervene in the sharing agreement. The position of the owner and tenant in this case is not balanced because the land owner has a higher economic status than the tenant. Revenue sharing between owners and tenants tends to put the tenants in a weak position, but rural communities feel comfortable with the sharing of agricultural land yield agreements because they think the landowners have a good intention to help the community because they open up land for work to do cultivation. The cultivators do not see the exploitative side of the working relationship created between the owner and the cultivator in the sharing agreement for agricultural land.

There are many vacant lands that are not cultivated considering the fact that it is found that the people in Leuwidamar District have the habit of buying land continuously without paying attention and thinking about how to increase the productivity of the land. As a result of this habit, there are many idle lands, which is a condition where the land is not cultivated by the owner. The exploitation of agricultural land using a production sharing system is a form of social engineering so that the role of law can be determined proportionally. The community has high expectations of the law in regulating the exploitation of agricultural land using a production sharing system. There are several vulnerable parts in agricultural land yield sharing agreements that need to be highlighted including the implementation of agricultural land yield sharing agreements in practice, which is still carried out according to local customs and habits [19].

The land position in the agricultural land yield sharing agreement made in Leuwidamar, Bojongmenteng and Cisimeut Villages have lasted for several generations and has a communal character. The agricultural land yield sharing agreement made in the three villages upholds the principle of trust between the owner and the cultivator. The trust principle is stated in the form of an agreement made orally within an indefinite period of time. Landowners entrust their land to be cultivated by cultivators without having to periodically monitor the land that is being worked on by the cultivators. Generally, the cultivated plants are seasonal crops such as corn. In the area of Bojongmenteng Village, Cisimeut Village, Leuwidamar Village, the planting activities that were encountered were in the form of gardening, these villages rarely planted rice. The cultivators generally come from neighbouring villages. Cultivators have a different position

from agricultural labourers. The area of land ownership owned by the community in Bojongmenteng Village, Leuwidamar Village, Cisimeut Village reaches a maximum area of 7 hectares. The land is owned independently. Most of the cultivators come from Kanekes Village. Cultivators are those who cultivate agricultural land until the harvest season. Cultivators only benefit when the harvest time arrives.

Cultivators choose to stay in the area where they carry out cultivation activities until the harvest season arrives then they return to their respective domiciles. Cultivators in cultivating a saung accompaniment in the middle of a plantation which functions as a place for them to rest during their cultivation activities (*ngehuma*). Several terms of the profit-sharing agreement that apply to the people of Bojongmenteng Village, Leuwidamar Village, Cisimeut Village are:

- a. *Ngala tengahan / ditengahin*
- b. *Babat*
- c. *Gacong*

The production sharing agreement that took place in Bojongmenteng Village, Leuwidamar Village, Cisimeut Village placed the cultivator in a smaller proportion of the landowner. The terms of the share obtained by the owner and the cultivator are different. In Bojongmenteng & Leuwidamar Villages, the custom that applies in the production sharing agreement system is that the owners and cultivators get the results according to the agreement of the parties. In Cisimeut Village, it was found that the standard balance of results received by the owner and cultivator were:

- a. *Gacong* has a 7: 1 or 6: 1 division portion. *Gacong* activities include cultivating and providing fertilizer.
- b. *Ngepak* has 5: 1 or 4: 1 division portions (5: 1 majority). Packing activities include *babat* (pulling rice) and harvesting
- c. *Ngala tengahan* of the portion is 50:50. This means that the cost of fertilizer will be reduced by the yield of the crop and the yield will be halved.

In practice, the number of shares received by cultivators does not fulfil a sense of justice because the portion of the cultivator is only one, while those who take full control of the land. The government should be able to provide protection for rights guaranteed by law. Protection of justice requires that there is an element of benefit to each individual who receives it. The justice context that is envisioned in Act 2/60 cannot be realized based on the size of the benefits as found in the implementation of the agreement for agricultural land products in

Bojongmenteng Village, Cisimeut Village and Leuwidamar Village.

The production sharing agreement that took place in Bojongmenteng Village, Cisimeut Village and Leuwidamar Village, although it was done verbally, there was never any conflict in the community. The high tolerance between people (*guyub*) causes the practice of production sharing agreements to be found in the Leuwidamar District area. In fact, the local village officials are aware that there are provisions regarding the implementation of the production sharing agreement that must be done in writing and for a certain period of time, but the community prefers to follow local customary laws that have been in effect from generation to generation.

Implementation of the production sharing agreement which is carried out orally actually gives prosperity to people who are already established and they are deprived of a share of the profits from those who are in a weak economic condition. In the practice of production sharing agreements made based on customary law, it is found that the implementation of economic principles takes precedence over personal needs so that humans have the position of means. Benefits contained in the production sharing agreement according to customary law seem to create mutual welfare, but in fact, individuals who are in a weak position will lose their self-respect and lose their goal of realizing common interests. In practice, the community considers this practice to be normal, but they do not realize that not doing the equality will achieve prosperity in social life.

Community groups have aspirations to achieve happiness and prosperity at the highest level, but this does not mean that humans can be used as goals in the social structure. In the practice of sharing agreements for agricultural land, it is found that the purpose of the implementation of this practice is to create a sense of help in social life, but on the other hand, there are sacrifices for the rights of those who are weakly positioned for the happiness of those with strong economies. The state through the formation of Act 2/60 provides a way out for the oppression of the weak in the implementation of a production sharing agreement system with a customary law system. Act 2/60 requires that the agreement be made in writing and for a certain period of time so that it is hoped that each community will receive an equal share. The consequence of the application of Act 2/60 is that in practice the welfare sharing agreement for agricultural land must be enjoyed by all communities.

The law actually does not only act as a maintainer of order but is required to educate the public to create a decent living. Justice in society is centered on a legal system that is inseparable from the general substance of society. The

effectiveness of an existing regulation focuses on the subject and sanctions. The subject contained in Act 2/60 is an agreement for agricultural land production to be made in writing for a certain period of time. Law can be effective if it can create social control that results in balance and harmony in social relations. Law as a means of renewal aims to change the traditional mindset to a rational direction so that in measuring whether a rule is effective it can be seen from the extent of people's knowledge of the law. The practice of sharing agreements for agricultural land is carried out verbally and only in front of the parties. The community in making an agreement for agricultural land production still uses the provisions of customary law and customary law that apply to their respective regions even though Act 2/60 has been 60 years old until now since its issuance.

## 5. CONCLUSIONS

Village officials are aware of a provision requiring a sharing agreement to be made in writing, but the mindset and culture of the community choosing to do something instantaneous make the implementation of Act no. 2/1960. It is necessary to conduct a review of the laws and regulations related to the current state of society so that the implementation and ideals of Act No. 2/1960 can be effective in society.

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