**IMPLEMENTATION OF AGRICULTURAL LAND PRODUCTION SHARING AGREEMENT (STUDY AT PT BNIL AND COMMUNITY IN TULANG BAWANG REGENCY)**

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**ABSTRCT**

Based on the agreement made between PT BNIL and the community in Tulang Bawang Regency, PT BNIL manages a land area of ​​5,100 HA and local residents handle a plasma area of ​​1,500 HA, so the specific objective of this research is to get a bright spot on the Agricultural land production sharing agreement between the community and PT BNIL in Tulang Bawang Regency. The community, PT.BNIL and the provincial government will get clear information on legal or illegal agreements.

The research method used the case study method with various data collection techniques such as observation, historical tracing, key informant interviews. This research uses a qualitative approach.

The production sharing agreement law also regulates the rights and obligations of the parties. However, in practice it turns out that it is out of balance, the land cultivator is known as the weak party. Non-litigation legal efforts have been carried out by two parties but apparently did not get a win-win solution.

The limitation to this research is only about the sharing agreement based on regulations. The contribution of this research is beneficial for the science of making agreements on agricultural land in accordance with the prevailing laws and regulations in Indonesia. In the context of such scientific development, this research will also enrich scientific publications in the field of law

Keywords: the Agricultural land production sharing agreement, rights and obligations, PT BNIL

**1. INTRODUCTION**

For the Indonesian people, land occupies an important position in daily life. Especially for residents who live in rural areas, the majority of whom are farmers and farming. The role of land becomes increasingly important in line with the increasing number of people who needs land for shelter. Production Sharing Agreement is a form of agreement between a person entitled to a plot of agricultural land from another person called a cultivator, based on an agreement wherein the cultivator is allowed to cultivate the land concerned by sharing the results between the cultivator and the person entitled to the land according to a mutually agreed balance.

The land reform aspect is the rearrangement of the structure of land tenure and ownership. This is in line with products produced during the reform period in the context of Agrarian Reform, namely MPR Decree No. IX / MPR / 2001. This stipulation clearly provides a mandate to carry out the restructuring of control, ownership, usage and use of land (land reform) in a fair manner.

The determination of the area of ​​agricultural land through the limitation of maximum and minimum area, has an important meaning for the Indonesian nation, which was once known as an agricultural country with most of the population living as farmers. However, population growth and various government policies that are less oriented towards agriculture have resulted in a significant decrease in ownership and control of agricultural land by farmers. Conversion of agricultural land is rife in almost all regions and land conflicts are unavoidable. In Indonesia, the Law on Production Sharing Agreements was ratified and promulgated on January 7th, 1960 published in State Gazette of 1960 Number 2, with a memory of the explanation in the additional State Gazette. With the existence of Law Number 2 of 1960 concerning Production Sharing Agreements, the implementation of the production sharing agreement must be carried out on a fair distribution, the rights and obligations of both parties and guaranteed legal standing. This not only affects the increase in production output but also affects the fulfillment of people's needs for food and clothing. However, in practice Law No. 2/1960 on Production Sharing Agreements was not fully implemented by the parties in the agricultural production sharing agreement.

The form of production sharing agreement generally exists in the Civil Code, especially in Book III, that an agreement can only be said to be an agreement in written or oral form except in customary communities in general only in the form of formality or by agreement between two parties. The reasoning behind so that the agreement in general can take the form of oral, because it is based on the nature of consensuality in the agreement.

A problem arises regarding the agreement made by the land owner around the PT BNIL company in Tulang Bawang Regency. Where the community felt that they had never entered into an agreement with PT BNIL but in the 1990s the community was asked to leave their agricultural land because PT BNIL had obtained the HGU from the local government of Lampung Province. This process has been running until now and has not found a common ground, so it has the potential for conflicts of interest to occur.

Based on the background described, the problems to be resolved in this study are:

1. How is the implementation of the sharing agreement between agricultural land owners and community members around PT BNIL's plantation land?
2. What are the rights and obligations of the parties?
3. What are the legal remedies made by the party who did the default?

**II. RESEARCH METHOD**

The research method used the case study method with various data collection techniques such as observation, historical tracing, key informant interviews. This research uses a qualitative approach. Strauss and Corbin (2013) define qualitative research as a research method where the findings are not obtained through statistical procedures or other forms of calculation. Data analysis used qualitative analysis (Bungin, 2010). Operationally, qualitative research data analysis is the process of compiling data (classifying it into themes or categories) so that it can be interpreted. Data collection and analysis activities in this study are not separate from one another.

This research was conducted within 6 months and will result in the identification of dynamic capability variables that have been and have the potential to be carried out by the parties in making agricultural land agreements by PT BNIL and residents of the surrounding community. Dissemination of research results is very important, so that parties and the general public will know the position of the agricultural land agreement claimed by these parties.

**III. DISCUSSION**

**1. Implementation of Agricultural Land Production Sharing Agreements**

**Stages in the Testament Based on the New Theory**

The implementation of the profit sharing agreement is based on 3 stages in the agreement based on the new theory, namely:

1. Pre-contractual stage;
2. Contractual stage;
3. Post Contractual stage.
4. Pre-Contractual Stage

At this stage both parties negotiate or offer and accept. Although the agreement for the sharing of agricultural land is carried out orally, the legal requirements of an agreement based on article 1320 have been fulfilled, namely:

1. There is consensus for those who commit themselves.

The parties, namely PT. BNIL and the village community around the PT BNIL land have agreed to this profit sharing agreement based on a sense of trust, even though this agreement was not stated in a written agreement.

1. The ability of the parties to make an engagement.

Parties from PT. BNIL and Masyaraka villages in Tulang Bawang Regency have fulfilled the element of legal competence so that in the pre-contractual process the profit sharing agreement was made consciously without any pressure from certain parties.

1. A Certain Thing.

The object in this production sharing agreement is very clear, namely 3400 hectares of land.

1. Halal Causes

Is related to the contents of the agreement, a cause is declared contrary to the law, if the term in the agreement concerned is contrary to the applicable Law.

b. Contractual Stage

The contractual stage is the stage of conforming to the statement of intention between the parties. Usually the contractual stage is marked by the signing of a written contract signed by both parties. The agreement for the sharing of agricultural land between PT BNIL and the village community around the PT BNIL area was carried out verbally so that the contractual stage was marked by an agreement between the two parties.

c. Post Contractual Stage

The post contractual stage is the stage of implementing the agreement that has been agreed by both parties. The agreement will end at the post contractual stage. The termination of the agreement can be done in two ways, the agreement is completed according to the time specified in the agreement or the agreement is not completed because one of the parties is in default.

**2. Rights and Obligations of Parties in the Production Sharing Agreement**

As explained in Article 1 letter c of Law No.2 of 1960 Regarding production sharing agreements, it is stated that the definition of a production sharing agreement is an agreement with whatever name is entered into between the owner on one party and someone or another legal entity party under the law. -This law is called a cultivator based on an agreement where the cultivator is allowed by the owner to carry out agricultural business on the owner's land, with the distribution of the results between the two parties.

In the agreement, there are two parties concerned, where the agreement issues an agreement between the two people who make it, in which one party is obliged to do an achievement and the other party has the right to demand the fulfillment of that achievement. In this case the production sharing agreement is a legal act of two parties, because in the agreement it is carried out by two parties, namely the Land Owner and Cultivator which creates rights and obligations for both parties.

Article 2 of Law Number 2 of 1960 states that those who are entitled or may become cultivators in the production sharing agreement are peasants, whose land either belongs to themselves or that they have obtained. by leasing with a production sharing agreement or otherwise, it should not be more than 3 (three) hectares. Who can become a cultivator must be a farmer, so basically any legal entity is also prohibited from becoming a cultivator except for public interests or village interests, such as farmer cooperatives can be allowed to become cultivators.

The rights of Cultivators and Land Owners, namely each have the right to receive a share of the products of the land concerned in accordance with the predetermined balance. As mentioned regarding the obligations of ownership and cultivator according to the Act on Production Sharing Agreement in Article 8, That:

“(1) The payment of money or the giving of any object to the owner intended to obtain the right to exploit the owner with a production sharing agreement is prohibited. (2) The violation of the prohibition referred to in paragraph 1 of this article results in that the money paid or the price of the object given is deducted on the owner's share of the land products referred to in article 7. (3) Payment by anyone, including the owner and cultivator, to the cultivator or Owners in any form that have bonded elements, are prohibited. (4) Without prejudice to the criminal provisions in Article 15, what is paid as referred to in paragraph 3 above cannot be prosecuted in any form.”

In Article 9 of the Production Sharing Agreement Law, that:

“The obligation to pay taxes regarding the land concerned is prohibited from being passed on to the cultivator, unless the cultivator is the real owner of the land.”

In Article 10 of the Production Sharing Agreement Law, that:

“At the end of the production sharing agreement, either because of the expiration of the agreement period or because of one of the reasons mentioned in Article 6, the cultivator is obliged to return the land concerned to the owner in good condition.”[[1]](#footnote-1)

What is the obligation of the cultivator, as described above, is also a joint obligation between the owner and the cultivator, for that the cultivator is also obliged to: a. Cultivate the land properly, b. Submit part of the proceeds which are the right of the owner, c. Fulfills the expenses that are borne, d. Hand over the land to the owner in good condition when the time is over, e. Not transferring or handing over control of the land in question to another party.

* 1. Rights and Obligations of Owners and Cultivators

The production sharing agreement is binding on both parties and creates rights and obligations for the parties, both the cultivator and the owner.

The obligations of the land owner include:

* + 1. Submit the land concerned to be cultivated by the cultivator (Article 1 letter c Law Number 2 of 1960).
    2. Paying the Land Tax.

This obligation can be transferred to the cultivator, if the land being worked on is land owned by the cultivator himself, or in other words, the cultivator is the real land owner (Article 9 of Law Number 2 of 1960).

* + 1. Fulfill all matters that are borne in accordance with the contents of the agreement (Elucidation of Article 1 letter d of Law Number 2 of 1960).

Meanwhile, owner rights are:

1. Obtaining a portion of the land products that are shared according to a predetermined balance (Article 1 letter c Law Number 2 of 1960).
2. Have the right to demand that the previous production sharing agreement be terminated in the event that the cultivator does not fulfill the matters that have been agreed in the agreement (Article 6 paragraph 1 letter b of Law Number 2 Year 1960).

The obligations of cultivators are:

1. Make the best of cultivated land (Article 1 letter c Law Number 2 Year 1960).
2. Submit a part of the land products which are the right of the owner (Article 1 letter c Law Number 2 Year 1960).
3. Fulfill all matters that are borne in accordance with the contents of the agreement (Elucidation of Article 1 letter d Law Number 2 of 1960).
4. If the term of the agreement expires, he is obliged to hand over the cultivated land to the land owner in good condition, in the sense that the condition does not harm the owner in accordance with local conditions and measurements.
5. Not transferring the cultivated land in any form to other parties without the permission of the land owner. This is because the production sharing agreement, the relationship between the owner and the tenant is a relationship based on trust. However, if the cultivator dies, the obligation of the land cultivator can be transferred to his heirs, because this is a special guarantee for the cultivator (Article 6 paragraph (1) letter b of Law Number 2 of 1960).

The rights of the land cultivator include:

1. The right to cultivate the land concerned (Article 1 letter c Law Number 2 of 1960).
2. The right to receive a portion of the land products, in accordance with the distribution of the results determined for the region (Article 1 letter c Law Number 2 of 1960).

The rights and obligations of these parties must be carried out in a balanced manner, so that neither party feels disadvantaged.

**3. Settlement Efforts**

An agreement can be said to be binding when both parties agree to the agreement they have made and agree to bind themselves without coercion. The agreement, of course, regulates the sanctions for the parties who violate it. When one of the parties violates or defaults, there are two solutions that can be taken, namely litigation and non-litigation.

**A. Litigation Settlement**

There are several general ways that can be carried out or taken by the parties in terms of dispute resolution efforts written in Article 1 Number 10 of Law Number 30 Year 1999, these methods include: consultation, negotiation and mediation.

PT. BNIL and Village Communities in Tulang Bawang Regency can also resolve this dispute by litigation, by looking at Article 14 of Law of the Republic of Indonesia Number 2 of 1960 concerning Production Sharing Agreements.

Although PT. BNIL and the Village Community around PT BNIl have made a profit sharing agreement but the Village Community does not accept their rights as a whole. Like PT. BNIL, which controls all of the residents' land covering an area of ​​10,000 (ten thousand) hectares by involving the Garuda Hitam Korem to force residents to sign the Official Report on Land Release and Compensation for plasma quota, each covering an area of ​​1 (one) hectare. In this case, the people of Tulang Bawang Village felt that they were harmed both materially and immaterial. Based on Article 1365 of the Civil Code which states that "every act that violates the law and brings harm to others, obliges the person who incurs the loss due to his mistake to compensate for the loss."

Based on the explanation of several articles above, it can be seen that this dispute arose because PT BNIL had taken over the land to carry out plantation business activities, this business activity also caused losses because the people of Tulang Bawang Village were initially able to cultivate the land for their daily needs but at the beginning of the year 1993 The people of Tulang Bawang Village were forced to surrender their land to PT BNIL and were given compensation of Rp. 100,000 (one hundred thousand rupiah). The victim also received considerable material and immaterial losses because he could not use part of his land in full and was also blocked when the victim wanted to fight for his rights again.

**B. Non-Litigation Settlement**

Both parties, namely PT. BNIL and the Tulang Bawang Village Community can also take non-litigation or solve problems outside the court. This peaceful dispute resolution is carried out by means of deliberation which has the aim of resolving existing disputes properly. Deliberation and consensus usually involve the village head, where both the community and the parties generally obey the results of the deliberation and consensus. The way of deliberation is taken on the grounds that the parties already know each other and are even tied to family relations before entering into a profit sharing agreement. The peaceful settlement of the problem is carried out by parties in good faith that produce a written apology for causing harm to the other party and then signed by the parties involved, so that the profit sharing agreement can be implemented again as before..

**IV. CONCLUSION**

Based on the results of research and discussion conducted by researchers, it can be concluded that :

1. The implementation of the profit sharing agreement is based on three stages, namely the pre-contractual, contractual and post-contractual stages.

Pre-contractual begins with the negotiation stage between the parties. After getting an agreement, it enters the contractual stage. The post contractual is the stage of the end an agreement.

1. The rights and obligations of the parties under the production sharing agreement are equal rights and obligations between the land owner (PT BNIL) and the land cultivator (the village community around PT BNIL). However, in practice it turns out that it is not balanced, the land cultivator is the weak party.
2. Legal remedies that can be taken if one of the parties is in default is to use two methods, non-litigation and litigation. Non-litigation by deliberation to reach consensus, litigation through court channels. Non-litigation was carried out by two parties but apparently did not get a win-win solution, so the village side brought it to the court.

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1. Undang-Undang Nomor 2 Tahun 1960 tentang Perjanjian Bagi Hasil. [↑](#footnote-ref-1)