

f._2019._Ade_May_Charly_MKn-
KW-1103-3125-1-PB.pdf

by

Submission date: 19-May-2021 09:33AM (UTC+0800)

Submission ID: 1589189731

File name: f._2019._Ade_May_Charly_MKn-KW-1103-3125-1-PB.pdf (428.22K)

Word count: 3810

Character count: 19686



Profit Sharing Agreement of Agriculture Land Using Pusako Land in Nagari Durian River Padang Pariaman District

Ade Mai Charly; Kurnia Warman; Zefrizal Nurdin

Faculty of Law, Andalas University, Padang, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v6i5.1103>

Abstract

The agreement for profit sharing carried out in Nagari Sungai Durian, Padang Pariaman district is to implement a profit sharing agreement in verbal form based on agreement between landowners and cultivators, and trust between landowners and cultivators. based on Production Sharing Agreements rules in Indonesia, form of agreement for profit sharing must be in written form. the form of the agreement made in Nagari Sungai Durian Padang Pariaman Regency is in the form of oral because the production sharing agreement made verbally has been done hereditary and has become a habit by the people in Nagari. The right of the landowner is to accept the distribution of land yields in accordance with the agreement of the parties, while the obligation of the landowner is to surrender the land to the cultivator, and the right of the cultivator is to accept the distribution of land according to the agreement. the land he cultivated well for the landowner. Production sharing agreements made orally in Nagari Sungai, Padang Pariaman Regency are invalid because the agreement does not meet the nature of customary law, which is concrete and does not fulfill Law Number 2 of 1960 concerning production sharing agreements contained in article 3 paragraph (1) which states, the profit sharing agreement must be in written form and there must be two witnesses between the two parties.

Keywords: Profit Sharing Agreement; Verbal Agreement; Land Rights

Background of Research

Land is the surface of the earth or the layer of the earth that is above or on the earth, the place above or the surface of the earth that has a boundary or on a limited surface of the earth which is occupied by a country governed by a State to be a State area or earth materials or color materials. According to Wantjik Saleh stated that:

The amount of land that can be controlled by humans is very limited, while the number of people dealing with land is always increasing. In addition to increasing the number of people who need land for housing, development and the economy, social culture and technology also requires a lot

of land for plantations, livestock, factories, offices, entertainment venues and roads for transportation¹.

Therefore, as time goes by it seems as if the land becomes narrow, becomes small, while demand is always increasing, so it is not surprising that the value of the land has increased. The imbalance between the land supply and the need for the land, has caused various problems with many aspects. According to Rosnida Sembiring stated that:

Land is a necessity, where every human always tries to own it, it is a reality even though there are those who have never owned land. Land can be owned by anyone, individuals, communities as a group, or legal entity. Once the land becomes an inheritance or company asset, even a sacred object.²

This is because land has economic value; the more demand and demand for land, the higher the land value. Therefore the higher the land conflict in the community. There are two things that cause land to have a very important position in customary law, namely because of the nature and factors of the land itself.

When viewed from its nature, land is the only asset that no matter what the circumstances, it still remains as it was in its original state, not even rare because certain natural occurrences of the land provide better benefits than the original condition, such as being hit by flooding, the land after receding water become more fertile. If the soil with the object above it is burned or burned after the fire has extinguished, the soil will return to normal. That is what makes land in customary law have a very important meaning. Likewise, if we look at the facts, the land is a place to live and give life and a place for the members of the community to be buried later after he dies. In the Minangkabau community also has a close relationship with the land owned by the people or commonly called ulayat land.

People in the West Sumatra area understand and appreciate the inheritance. Heritage property is all tangible wealth (material), which is inherited later to the nephew. As for that including the heritage here is:: rice fields, fish ponds, gadang houses, pandam burial grounds, ulayat lands, halls, mosques or langgar surau, utensils or equipment itself. According to Edison MS and Nasrun stated that, heirlooms are divided into two, namely high heirlooms and low heirlooms. In the Minangkabau community also has a close relationship with the land owned by the people or commonly called ulayat land.

Talking about land issues in Minangkabau means also talking about Minangkabau customary law issues. This is because land issues are an inseparable part of the Minangkabau customary law itself. The relationship between the two is a relationship that cannot be separated, because land is one of the factors that unites the Minangkabau people. Because of the close relationship, so that if customary law communities change, the land law also changes, in those changes they also tend to make land-related transactions. Among the transactions related to the land is the production sharing agreement or also known as *memperduai* in Minang Kabau.

In Boedi Harsono's opinion the profit-sharing agreement is:

a form of agreement between a person entitled to an area of agricultural land and another person and another person called a cultivator, based on an agreement where the cultivator is allowed to work on the relevant land by sharing the results between the cultivator and those entitled to the

¹ Wantjik Saleh, 1997, *Your Right to Land*, Ghalia Indonesia, Jakarta

² Rosnidar Sembiring, 2017, *Customary Land Law*, PT RajaGrafindo Persada, Depok.

land according to a balance that has been mutually agreed upon, for example, each gets one half of the "maro" or tenants get a third share, those who are entitled to the land get two-thirds "mertelu". Therefore, what will be received by each party depends on the size of the relevant land.³

According to Article 1 letter c of Law Number 2 of 1960 states:

"Production sharing agreements are agreements with whatever is entered into between the owner of one party and a person or legal entity on another party - what in this Law is called" cultivator "- based on the agreement where the cultivator permitted the owner to carry out agricultural business on land the owner, by sharing the results with both parties "

According to the provisions of Article 1313 of the Civil Code, the Agreement is defined as an act by which one or more persons commit themselves to one or more persons. The production sharing agreement was originally governed according to local Customary Law. Customary law regulates the balance of the result sharing determined by the agreement of both parties, which is generally not beneficial for both parties to the cultivators. That is because the land available for distribution is not balanced with the number of farmers who need arable land. In order to protect the weak economy farmers from strong groups, which contain elements of "exploitation", the issuance of Law Number 2 of 1960 concerning Production Sharing Agreements.

Regarding the issue of profit sharing agreements, it is also regulated in national law, according to Article 3 paragraph (1) of Law Number 2 of 1960, the form of profit sharing agreement states:

"All profit-sharing agreements must be made by the owner and cultivator in writing in front of the head of the village or regional level at that level where the relevant land is located - hereinafter referred to as the" Village Head "witnessed by two people, each from the owner and tenants ".

Production sharing agreements are governed by customary law and are governed by national law, the two rules are not the same and not synchronized. According to customary law in Nagari Sungai Durian, Padang Pariaman Regency, the production sharing agreement made orally while according to national law, the production sharing agreement must be in writing. If in Nagari Sungai Durian, Padang Pariaman Regency, the production sharing agreement is done in writing, they will get legal protection if there is a mismatch in the contents of the agreement or also called *Wanprestasi*.

Research Methods

Approach to the problem carried out by the research method is sociological juridical sociological juridical is a study conducted on the real state of society or the community environment with the intent and purpose of finding fact-finding facts, which then leads to the identification of problem-identification and ultimately to the solution of problem problems -solution relating to and linking it to reality in the implementation of agricultural land-sharing agreements in the utilization of pusako land in Nagari Sungai Durian, Padang Pariaman Regency. The research conducted by the author is analytical descriptive in

³ Boedi Harsono, 2008, Indonesian Agrarian Law, Djambat, Jakarta.

nature, this research is a study that describes, examines, explains and analyzes problems in the implementation of agreements for agricultural land yields in the use of pusako land in Nagari Sungai Durian, Padang Pariaman Regency.

Research Results and Discussion

The land which is the object of this agreement is the communal land of the people. The customary land inheritance is owned by people who are in a certain tribe and shared for generations. The customary land of the people who are the object of this research has been divided among its members (*lung / jurai*), both for agriculture (rice fields / fields) and as a place to live, because the people have so large a number of jurists that they need to split the inheritance. the division of communal land is called the ground *Ganggam bautuak*. This division is not to be owned (individualized), but only to be used or processed and utilized for the survival of its members.

The understanding of *Ganggam bautuak* can be seen in the Regional Regulation of the Province of West Sumatra Number 6 of 2008 concerning *Ulayat Land and Its Utilization*, Article 1 number 18 states that:

"*Ganggam Bautuak* is the allotment of communal land by inheritance head to *mamak* clan members are *hirakis* matrilineal for the cultivation of plants, housing and other businesses where *mamak* head start the next of kin of the land use".

One type of land rights according to customary law whose conversion is confirmed by the Agrarian Basic Laws the *ganggam bauntuak* rights, which in West Sumatra as the origin region of the term is known as *ganggam bauntuak*.⁴ The affirmation can be seen in Article VI of the Agrarian Basic Laws Conversion Provisions, as follows. Land rights which give authority as or similar to the rights referred to in Article 41 paragraph (1) as referred to by the name below, are at the time this Law comes into force, namely:

Rights *vruchtgebruik, gebruik, grant controleur, bruikleen, ganggam bautuak, anggadu, bengkok, lungguh, pituwas* and other rights of whatever name which will be further affirmed by the Minister of Agrarian, since the entry into force of this Law becomes the use rights in Article 41 Paragraph (1), which gives the authorities and obligations as possessed by the right holder at the entry into force of this law, does not contradict the spirit and provisions of the Law.

Kurnia Warman stated that:

To realize the mandate of the provisions of the conversion of the Agrarian Basic Laws, specifically regarding Indonesia's rights to land, the Minister of Agriculture and Agrarian Regulation (PMPA) No. 51 was issued. 2 of 1962 concerning Affirmation of Conversion and Registration of the Former Indonesian Rights to Land. Article 1 of the PMPA states that upon the request of the parties concerned, the conversion of the rights mentioned in Articles II and VI of the provisions on the conversion of the Agrarian Basic Laws to property rights, building rights, business use rights or usufructuary rights can be confirmed according to the provisions of this

⁴ Kurnia Warma, 2006, *Ganggam Bautuak Becomes Property Rights: Irregularities in Conversion of Land Rights in West Sumatra*, Andalas University Press, Padang

regulation and registered according to the provisions of Government Regulation (PP) No. 10 of 1961 concerning Land Registration.⁵

With regard to the rights stated in Article VI of the Agrarian Basic Laws Conversion Provisions, including the right of *ganggam bautuak*, Article 6 paragraph (2) of the PMPA confirms that the rights mentioned in Article VI of the Agrarian Basic Laws Conversion Provisions are affirmed and registered, to those entitled to given certificate (temporary certificate).

Based on the study authors, that in fact in Nagari Sungai Durian Padang Pariaman regency conversion of land rights *ganggam bautuak* not be a right to use, but be proprietary. So in practice there is a deviation from the provisions contained in the Agrarian Basic Laws Conversion Provisions. And the Land and Building Tax for the divided land, ie rice fields, residential land or court land, is borne by *lung / jurai* members. It shows that the existence of *Ganggam bautuak* is very strong and the property of the people is getting thinner or non-existent, and it will be more easily converted into property rights.

Ganggam Bautuak rights are part of the land belonging to the people or communal property, often also referred to as "high heirloom land" which, according to the agreement of all members, is intended for families of matrilineal tribes who live permanently on land owned by the people concerned. Families or *jurai* who receive the *ganggam bautuak* have the right to live (build houses) and process and get the results from the processed products.

Production sharing agreement is an agreement under whatever name that is entered into between the land owner and the cultivator with an agreement, that the cultivator is permitted by the owner to run an agricultural business on owned land, with the sharing of the results between the two parties Act Number 2 of 1960. In the system the production sharing agreement according to Law Number 2 of 1960 must be made in writing by the land owner and tenants, in the presence of the Village Head witnessed by 2 (two) witnesses each from the land owner and cultivator and requires authorization by the Camat and the Village Head announce all profit sharing agreements that are held so that it is known to the wider community.

In the Nagari area of Sungai Durian, Padang Pariaman Regency still has many agreements or agricultural production sharing agreements which are mainly paddy fields, because the people in Nagari Sungai Durian, Padang Pariaman Regency, most of the people earn a livelihood from farmers. The community entered into a production sharing agreement according to local customary law or has been carried out since the past even has been passed down for generations.

Based on the results of the study, in reality the people in Nagari Sungai Durian, Padang Pariaman Regency carried out a production sharing agreement based on customary rules established by the indigenous community itself which had been carried down from generation to generation, namely carrying out a production sharing agreement in verbal form where the agreement was made based on agreement between the land owner and the tenants, as well as the trust between the land owner and the tenants. The people in Nagari Sungai Durian, Padang Pariaman Regency did not make a production sharing agreement in front of the village head and were not witnessed by 2 (two) witnesses from each party.⁶

The people in Nagari Sungai Durian, Padang Pariaman District, offer tenants of their land to their neighbors in the nagari area, and there are also cultivator who ask the land owner to work on the land owner's fields. Because the implementation of the production sharing agreement is based on mutual trust

⁵ *ibid*

⁶ Results of an Interview with Wewen Hadi Putra as Chair of the Nagari Indigenous Density, on September 13, 2019.

between the land owner and the tenants, it is the basis of mutual trust and help to help be the basis for continuing the agreement as carried out according to local customary law.

The people in Nagari Sungai Durian, Padang Pariaman Regency believe that if there is fraud in the production sharing agreement, there will be a reward later for the cheating people because of the land they obtained from previous people. Although Law No. 2/1960 regulates production sharing agreements, Law No. 2/1960 concerning revenue sharing agreements has not been implemented by the Nagari Sungai Durian community, Padang Pariaman Regency, due to the lack of public knowledge in Nagari. Sungai Durian Padang Pariaman Regency regarding the regulation of Law Number 2 of 1960 concerning the production sharing agreement, and the community thinks that the Law on production sharing agreements is too complicated, the people of Nagari Sungai Durian Kabupaten Padang Pariaman say that they feel comfortable entering into an agreement profit sharing according to local customary law, even though the main purpose of the Act is to provide legal protection for tenants and landowners in the event of fraud in the implementation of the production sharing agreement.

The term of the production sharing agreement according to Law Number 2 of 1960 concerning production sharing agreements in Article 4 paragraph (1) states "the production sharing agreement is held for the time stated in the agreement letter in Article 3, with the stipulation that for the time paddy fields is at least 3 (three) years and for dry land is at least 5 (five) years ". While the production sharing agreement made by the people of Nagari Sungai Durian, Padang Pariaman Regency does not set a time limit because if the land owner is satisfied with the work of the cultivator, the land owner will instruct the cultivator to work on his land until the cultivator is no longer able to work.

Based on the results of the study that the number of production sharing agreements made in oral form by the community in Nagari Sungai Durian, Padang Pariaman Regency is as follows:

Profit Sharing Agreement in Nagari Sungai Durian Kabupaten Padang Pariaman	
2017	50 Agreement
2018	60 Agreement
2019	73 Agreement

1.1 Table Profit Sharing Agreement in Nagari Sungai Durian Kabupaten Padang Pariaman

In Law Number 2 of 1960 concerning production sharing agreements, it is not explicitly stipulated the distribution of profit sharing or balance which is the right of land owners and tenants. It is explained in Article 7 of Law Number 2 of 1960 that the amount of land yields which is the right of owners and tenants for each region is determined by the Regent / Head of the District of Districts II concerned by taking into account the types of plants, soil conditions, population density, zakat which are set aside before sharing and economic factors and local customary provisions.

According to the study, the division carried out by the community in Nagari Sungai Durian Padang Pariaman Regency according to an agreement between the land owner and the cultivator, the division is as follows: In Nagari Sungai Durian Kabupaten Padang Pariaman in paying the seeds or fertilizer according to the distribution of yield, if the distribution of the results $\frac{1}{2}$ for the owner land and $\frac{1}{2}$ for the cultivator, the cost of seeds and fertilizer is borne by the land owner and the cultivator while the

yield sharing is 1/3 for the land owner and 2/3 for the cultivator, the cost of seed and fertilizer is borne by the cultivator.

The validity of the Profit Sharing Agreement made verbally in Nagari Sungai Durian, Padang Pariaman Regency is invalid according to customary law and according to Law Number 2 of 1960, because it appears open and is not carried out according to one of the characteristics of customary law, namely the concrete nature seen by the people in The Nagari. The community only entered into an agreement between the two parties without witnesses from both parties. Whereas according to Law Number 2 of 1960 in Article 3 paragraph (1) the production sharing agreement must be made in writing with witnesses from each party, but the people in Nagari Sungai Durian in Padang Pariaman Regency make an oral revenue-sharing agreement.

Conclusion

The validity of the Profit Sharing Agreement made verbally in Nagari Sungai Durian, Padang Pariaman Regency is invalid according to customary law and according to Law Number 2 of 1960, but in reality it is still mostly done by community, and the amount of profit sharing depends on who is the provider of seeds and fertilizer

Reference

Books

- Boedi Harsono, 2008, Indonesian Agrarian Law, Djambat, Jakarta.
- Edison MS and Nasrun, 2010, Tambo Minangkabau Culture and Traditional Minangkabau, Kristal Multimedia, Bukittinggi.
- Helmy Panuh, 2012, Management of Nagari's Ulayat Land in the Era of Decentralization of Government in West Sumatra, PT Raja Grafindo Persada, Jakarta.
- Kurnia Warma, 2006, Ganggam Bautuak Becomes Property Rights: Irregularities in Conversion of Land Rights in West Sumatra, Andalas University Press, Padang.
- Rosnidar Sembiring, 2017, Customary Land Law, PT RajaGrafindo Persada, Depok.
- Wantjik Saleh, 1997, Your Right to Land, Ghalia Indonesia, Jakarta

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).

ORIGINALITY REPORT

17 %

SIMILARITY INDEX

17 %

INTERNET SOURCES

0 %

PUBLICATIONS

3 %

STUDENT PAPERS

MATCH ALL SOURCES (ONLY SELECTED SOURCE PRINTED)

14%

★ doaj.org

Internet Source

Exclude quotes On

Exclude matches < 3%

Exclude bibliography On