

ARRANGEMENT OF AGRICULTURAL LAND PRODUCTION SHARING AGREEMENTS IN THE DEVELOPMENT OF ENVIRONMENTALLY FRIENDLY AGROTOURISM

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Abstract. One model of tourism development that is in line with alternative tourism is community-based tourism as a pattern that is believed to provide economic benefits and equity, environmental preservation, local culture preservation, social empowerment, community empowerment. Community-based tourism is a tourism development with a high level of local community involvement and can be accounted for from the socio-cultural and environmental aspects. So far, there are no clear rules that explicitly regulate the arrangement of profit sharing, especially in the field of agro-tourism. According to Article 1320 of the KUHPerdata, an agreement is valid if it meets the following four conditions: Agree of those who bind themselves, The ability to make an engagement, a certain thing, a lawful cause—referring to the Legal Principles of Agreement as contained in the KUHPerdata (KUHPerdata), namely Personality Principles (Article 1315 jo 1340 KUHPerdata), Consensualotas Principles (Article 1320 KUHPerdata), Freedom of Contract Principles (Article 1338 paragraph (1) KUHPerdata). In the current reformation era, the legal development strategy is directed towards responsive law characterized by the large role of judicial institutions and the broad participation of social groups or the participation of individuals in society to determine the direction of legal development, resulting in the formation of clear legislation. Furthermore, provide legal certainty in making agreements for agricultural land products related to agro-tourism with environmental insight.

Keywords: production sharing agreement; agricultural land; agro-tourism.

INTRODUCTION

Indonesia is an agricultural country because most of the population lives from farming. Before the Basic Agrarian Law (UUPA) came into effect in Indonesia, there were still two kinds of land law: customary law and western law. This dualism in land law often creates various difficulties besides being not by the ideals of national unity. As the ruler of the people, the government is obliged to protect the weak economy from the pressure of the strong economic group. So that the elements of extortion can be avoided and even eliminated, and a just and prosperous society can be created (Dewi, 2015).

The scope of the earth, according to the UUPA, is the surface of the earth, the body of the earth under it, and what is underwater. The earth's surface as part of the earth is also called land. The land referred to here does not regulate land in all its aspects but only regulates one of its aspects, namely, land in a juridical sense called land tenure rights. According to Article 33 paragraph 3 of the 1945 Constitution State That:

"The land and water and natural resources contained therein shall be controlled by the State and used for the greatest prosperity of the people."

Before the limitation on agricultural land ownership, there was an imbalance in agricultural land ownership; that is, there were those who owned land very much. Some have only a little land, and some even have no land, even though the land is necessary for survival. The function of land is very important for the life and

livelihood of the agrarian Indonesian people, where there are many transactions related to land. At this time, many kinds of agreements were made in the community, one of which was the Production Sharing Agreement (Berlianty, Hetharie, & Saija, 2022).

According To Jenny's Opinion, quoted by A.M.P.A Scheltema, the following states: *"Production sharing in agriculture is a form of land use, in Where is the distribution of results against the two elements of production, namely working capital, implemented according to a certain ratio of the gross yield of the land and also in natural form with the development of farming."*

A production sharing agreement, in general, can be interpreted as an agreement in which a landowner allows or allows other people, in this case, the cultivator, to cultivate his land by agreeing that at harvest time, the results of the plant will be divided according to the agreement that has been made (Gisev, Bell, & Chen, 2013).

The agreement thus binds the parties legally to obtain rights or carry out the obligations stipulated in the agreement. The agreement provides certainty for dispute resolution, and the agreement is intended to clarify the legal relationship. The agreement is made orally and can be done in writing. Oral agreements are usually carried out in indigenous peoples for simple legal ties, for example, the "kadasan cattle" agreement, the "nyakap Tanah" agreement, etc. Meanwhile, written agreements, usually carried out in relatively modern societies, deal with businesses whose legal relationships are

complex. A written agreement for a business relationship is commonly known as a contract.

However, not all written agreements must be given a contract title, but it depends on the parties' agreement, the nature, the material of the agreement, and the custom in using the term for the agreement ([Artadi & Putra, 2017](#)).

The agreements regulated/known in the KUHP data are as follows: Sale and Purchase Agreement, exchange, lease, work, civil partnership, association, grant, safekeeping of goods, borrow-to-use, fixed and perpetual interest, profit and profit, gift power, debt, and peace. In legal theory, the above agreements are called nominate agreements. However, some agreements have not been regulated. Such a covenant is called an anonymous agreement (innominate). Anonymous agreements have not been specifically regulated in the law because they are not regulated in the KUHP data and the Commercial Code (KUHD). The birth of this practice agreement is based on the principle of freedom of contract. To enter into an autonomy agreement or party, one of the anonymous agreements is a "production sharing agreement" ([Polanin & Terzian, 2019](#)).

According to researchers, the profit-sharing agreement is not regulated explicitly in the KUHP data or the Commercial Code (KUHD). Meanwhile, the production sharing agreement has existed since independence, especially in rural areas. However, it does not rule out that agreements on production sharing will often be promised to be found in big cities, considering that Indonesia is not

immune from global developments in the world. Moreover, based on these problems, the agreement in the field, as a prospective notary public, is certainly needed to examine more deeply the "Agricultural Land Production Sharing Agreement in the Development of Environmentally Friendly Agro-tourism." So that in making a legal construction for the parties who enter into a notarized production sharing agreement, it does not conflict with the applicable regulations in Indonesia. Which in this case relates to the authority of the Notary, as stated in Article 15 paragraph 1 of Law Number 2 of 2014 (UUJN).

METHODS

This research was a normative juridical study, known as doctrinal research, that analyzes law teaching based on the premise that law is the norm that governs people's lives.

This research was a deductive study that analyzes the abuse of circumstances towards the standardized contract agreement. The legal materials obtained in this study were analyzed qualitatively with descriptive-analytical models. So the results can be described comprehensively and systematically.

Sources of legal materials used in normative legal research included primary legal materials, including laws and regulations relating to production sharing agreements, secondary legal materials included: scientific articles, journals, books related to production sharing agreements, and tertiary legal materials include: Indonesian Dictionary,

Legal Dictionary, Foreign Language Dictionary, and Encyclopedia. The technique of studying and collecting the three legal materials used documentary studies. The documents, laws, and regulations relating to the production sharing agreement were in this case. In normative research, the data analysis used is descriptive. According to Pasek Diantha, *"descriptive research is a description which means the description/description of what is to a condition or position of legal or non-legal propositions."*

The approach to the problem used in this study included: The statutory approach (Statute Approach) is an approach that is carried out by examining all laws and regulations related to the problem (legal issues) being discussed. The conceptual approach departs from the views and doctrines that develop in legal science. This is important because of understanding the views/doctrines that develop in legal science when solving the legal problem under study. Analytical Approach (Analytical Approach) main objective of analyzing legal materials is to conduct a conceptual examination of the meaning contained in the terms used in-laws and regulations and how it is applied in legal practice and decisions ([Schulte](#), 2017).

RESULTS AND DISCUSSION

Arrangement of Agricultural Land Production Sharing Agreements in the Development of Environmentally Friendly Agrotourism.

The development of eco-friendly

agro-tourism is one of the business ventures in the agricultural sector by emphasizing the sale of services to tourists through agricultural tourism objects with environmentally friendly management. Tourism comes from the Sanskrit language. *Pari* means many, many times, circling or complete. Meanwhile, the word *tourism* means to travel and to travel. So, according to syllables, tourism can be interpreted as a trip that is carried out many times or in circles from one place to another. Tourism is the process of temporary travel from a person or more to another place outside of their place of residence ([Schulte](#), 2017).

Meanwhile, according to law number 10 to 2009 concerning tourism states that: *"a tourist object is anything that has uniqueness, beauty, and value in the form of a diversity of natural, cultural, and artificial wealth which is the target or purpose of tourist visits"*.

Furthermore, in law number 32 of 2009 concerning Environmental Protection and Management, what is meant by environmental carrying capacity is:

"The ability of the environment to support human life and other living creatures and the balance of both. Natural resources conversion is the management of natural resources for use. Wisely and the continuity of its availability while maintaining and increasing the quality of its values and diversity."

In terms of conversion, of course, it is not easy, it is constrained if the landowner cannot develop his agricultural land, but the farmers have to

find investors or simply speak their language. As stated in the provincial regulation Number 2 of 2012 concerning Bali Cultural Tourism, it is stated that: "*Bali Cultural Tourism, is tourism based on Balinese culture which is imbued with Hindu religious teachings and Tri Hita Karana philosophy as the main potential by using tourism as a vehicle, actualization, to create a dynamic reciprocal relationship between tourism and tourism, a culture that makes them develop synergistically, harmoniously and sustainably to realize people's welfare, cultural and environmental preservation.*"

In Article 1, letter b, "owner, is a person or legal entity Based on something, the right to control the land. "

Article 1 letter e, "*a farmer is a person who either owns or has land whose main livelihood is cultivating land for agriculture.*"

Examp Land products are referred to in article 1 letter d of Law Number of 1960 concerning production sharing agreements, namely the results of agricultural businesses carried out by the cultivators referred to in number 1, after deducting the costs for planting and harvesting. The share of land yields, namely the share of lad products which are the rights of the cultivator and owner for each Level II Self-reliant Region, is determined by the Regent / Head of the Level II Region concerned, with due observance of the type of plant, land condition, population density, zakat set aside before distribution and economic factors and local customary provisions.

The amount of the share of the produce of the land is 1 (one) part for

the cultivator and 1 (one) part for the owner for the rice plants planted in the fields. 2/3 (two-thirds) of the portion for the cultivator and 1/3 (one-third) of the share for the owner for secondary crops in paddy fields and those planted on dry land. The shared results are the net results, namely the gross yield after deducting the costs that must be shared, such as seeds, fertilizers, livestock labor, planting costs, harvest costs, and zakat. The yield above the average is 80% (eighty percent) for the cultivator and 20% (twenty percent) for the owner. This is related to soil fertility which is considered to have special value, according to the management of the cultivator where the yield exceeds the average. In implementing Law Number 2 of 1960, subdistrict heads and the village head are assisted by the Production Sharing Agreement Advisory Committee. Article 1319 of the KUHPerdata states that all agreements, whether they have a special name or those not known with a specific name, are subject to general regulations, which are contained in this and other chapters. The form of profit-sharing agreement, in general, is that in the KUHPerdata, especially in Book III, an agreement can 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 ([Qi & Zhang, 2018](#)).

According to R. Subekti, namely: "*In contract law, a principle of consensuality applies. This saying comes from the Latin consensus, which means agree. The principle of consensuality is meaningless*

for an agreement is required, or it is also called an agreement between two parties regarding something" ([Nahrowi & Masyrofah](#), 2021).

By agreeing, it means that the parties who agree must agree on the main points of the agreement being made. What one party wants, the other also wants. The ways of expressing this will vary. It can be done expressly or secretly, in writing (through authentic deed or underhand, or with a sign. Furthermore, according to Article 1321 of the KUHPerdata, the consensus must be given because there is no coercion, fraud, or error. There is an element of coercion or fraud. The agreement is canceled, while the mistake does not result in the cancellation of the agreement unless the mistake is about the nature of the goods which are the subject of the agreement. The second element is the ability to make an engagement unless he is declared inadequate, for that matter. According to Article 1330 of the KUHPerdata, there are three groups of people who are unable to agree, namely:

1. An immature child
2. People who are under interdiction, and
3. A married woman.

After the issuance of the Supreme Court Edara Number 3 / 1963 and after the enactment of the Marriage Law Number 1/1974, only two groups were incapable of engaging, namely minors and people under interdiction (curette).

A certain thing means that the object of the agreement must be certain; at least, it must be determined. In the case of agricultural land production sharing,

the land that will be the object of the agreement must be clear, whether the ownership, area, things on the land, or anything else related to the agreement. The fourth element is "a lawful cause." The definition of "lawful cause" is not what causes the agreement but the content of the agreement itself. The agreement must not conflict with the law, decency, or public order (Article 1337) (Djaja S. Meliala, 2014).

A production sharing agreement through an approach with contractual principles, if the agreement exists, namely the "principle of freedom of contract," is the widest possible freedom by law given to the public to agree on anything, as long as it does not conflict with statutory regulations invitation. Article 1338 of the KUHPerdata states that all agreements made legally are valid as laws for those who make them.

The word "all" implies agreements, both those whose names are known or those not recognized by the law. The principle of freedom of contract relates to the agreement's contents, namely determining "what" and with "whom" the agreement was made. This statement is also closely related to the Pacta sunservanda principle.

This principle emphasizes that the obligation to respect and implement the provisions of this contract is absolute because the agreement is essentially binding on them and applies just like the law. An agreement cannot be withdrawn other than by the agreement of both parties or for reasons on dry land. The shared results are the net results, namely the gross yield after deducting the costs

that must be shared, such as seeds, fertilizers, livestock labor, planting costs, harvest costs, and zakat. The yield above the average is 80% (eighty percent) for the cultivator and 20% (twenty percent) for the owner. This is related to soil fertility which is considered to have special value, according to the management of the cultivator where the yield exceeds the average. In implementing Law Number 2 of 1960, the subdistrict head and the village head are assisted by the Production Sharing Agreement Advisory Committee. According to R. Subekti, namely: "*In contract law, a principle of consensuality applies. This saying comes from the Latin consensus, which means agree. The principle of consensuality is meaningless for an agreement is required, or it is also called an agreement between two parties regarding something* (Godoy et al., 2020)".

The above consensuality is concluded based on Article 1320 KUHperdata. By agreeing, it means that the parties who agree must agree on the main points of the agreement being made. What one party wants, the other also wants. The ways of expressing this will vary. It can be done expressly or secretly, in writing (through authentic deed or underhand, or with a sign. Furthermore, according to Article 1321 of the 13, the consensus must be given because there is no coercion, fraud, or error. There is an element of coercion or fraud; the agreement is canceled, while the mistake does not result in the cancellation of the agreement unless the mistake is about the nature of the goods

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The word "all" implies covering all agreements, both those whose names are known or those not recognized by the law. The principle of freedom of contract relates to the agreement's contents, namely determining "what" and with "whom" the agreement was made. This statement is also closely related to the Pacta sunservanda principle. This principle emphasizes that the obligation to respect and implement the provisions of this contract is absolute because the agreement is essentially binding on them and applies just like the law. An agreement cannot be withdrawn other than by the agreement of both parties or for reasons stated by law enough for that. This sentence is closely related to the consensuality principle, previously described in paragraph 3 of Article 1338, that an agreement must be carried out in good faith. This principle must be presumed to exist during negotiations, contract execution, and dispute resolution. This principle is important because only this principle is the trust needed in an agreement ([Meliala](#), 2014).

The agreement is a condition for the production sharing agreement in determining the rights and obligations and the proportion of the results to be shared. According to the research results, the implementation of the profit-sharing agreement is still based on customary law / local customs orally based on agreement and trust to help each other/help to help and cooperation. In

addition, according to the research results, the implementation of this profit-sharing agreement is only done verbally. It does not require the testimony of other people or local Village officials or State Officials such as Notaries. So, in this case, it is not following the provisions in the Act on Production Sharing Agreement, namely in Article 3, which requires the agreement to be made in writing in the presence of an authorized official.

Legal Reform of Agricultural Land Production Sharing Agreements in the Development of Environmentally Friendly Agrotourism.

Every independent and sovereign state must have a national law both in the criminal and civil sector, which reflects its people's soul and outlook of life. According to H. Abdurrahman, legal development is a comprehensive and integrated effort to deal with the law in Indonesia in all aspects. One aspect of fostering national law is building a legal conception developed ([Morgera](#), 2016).

The law that must be developed aims to end a social order that is unjust and oppresses human rights. Indonesian legal politics must be oriented towards the ideals of the rule of law based on democracy and social justice principles in a united Indonesian society as set out in the Preamble to the 1945 Constitution ([Habermas](#), 2018).

To achieve prosperity for a just and equitable society is certainly not easy. It takes active participation from the community and the quality of the community environment that supports the implementation of eco-friendly

agrotourism. One of them is in shape cooperation from the community itself both with the government and investors who will organize agro-tourism areas in certain areas. So that in this case, a National law reform aims to create a government system that is better, more transparent, and responsive to the role of the public in decisions or policymaking. As outlined in Law Number 25 of 2000 concerning the National Development Program (Propenas), the national development agenda has formulated a vision for the future of the Indonesian nation and twelve missions that are development targets. Missions concerning the law are contained in the fifth mission The realization of a national legal system that guarantees the upholding of the rule of law and human rights-based on justice and truth. This mission is related to the tenth mission, which reads, "*The realization of a state apparatus that serves the public, is professional, efficient, productive, transparent, and free from corruption, collusion, and nepotism*".

Government legal bureaus are an important part of the public service bureaucracy system in which almost all government departments or agencies have them. The law firm must be able to make a positive contribution in terms of regulatory drafting, law enforcement, transparency in public policy processes, and legal planning according to the institution's needs. Therefore, efforts to increase the role of law firms are very urgent and in line with the national reform agenda in the development of the legal sector. According to Article 2 of Law

number 2 of 2009, the protection and management of the environment are carried out based on the principle of "*good governance*".

To ensure the implementation of development sustainable, local governments facilitate the creation of good environmental governance, which is characterized by the following seven golden rules:

- 1) Local governments must proactively translate and implement environmental laws and regulations, whether issued by the central or provincial governments, through the making and implementation of regional regulations.
 - 2) In carrying out development to achieve P.A.D. Targets, local governments must be aware of the limited and sustainable carrying capacity of ecosystems;
 - 3) The government must ensure community empowerment both in regional regulations and in making decisions related to environmental and natural resource management to ensure sustainable development. For this purpose, the government must ensure public participation and access to information;
 - 4) Community empowerment can be carried out through transparency in making decisions about environmental management;
 - 5) The regional government must guarantee the rights of indigenous and local communities in their actions to manage natural resources;
 - 6) The local government must guarantee and coordinate the
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harmonization of interests between one sector and another;

- 7) The local government must proactively enforce the law and local regulations relating to environmental management.

It has been argued that the statutory regulations are neither clear nor complete. Therefore, the law must be found by explaining, interpreting, or completing the statutory regulations. If the legal regulations have been found, then the legal regulations are then applied to the legal events. Suppose there are various possible qualifications or juridical translations of the concrete event, then apply the legal regulations. In that case, there are also various possible constructions to consider which one to choose. When formulating regulations, the formation of laws has considered various interests and finally made choices. In the provisions of law, it has been determined which interests have value in the eyes of the legislators. The discovery of the law must weigh all the factors that influence the final verdict. He must be aware that the verdict in a positive sense can set a precedent for many relationships in the future. The function of law is to protect human interests. In a legal discovery that is problem-oriented, the interests of justice (seekers of justice are preferred).

Legal formation (*rechtsvorming*) in the legal system is determined by the legal concept adopted by the community and by the quality of its formation. Because people will always change according to conditions, and their

constituents' quality also changes with changes in political power. The policy for future law formation is directed at: First, the formation of law is directed at creating legal certainty to achieve order, order, peace, justice, and benefit in the life of the community, nation, and state.

Second, the formation of law, whether in statutory regulations or other formal aspects, must be based on moral values, religion, decency, decency, customs, and other social norms as values that develop in society (the living law). Third, the affirmation of the living law in society and local wisdom that comes from customs or values that live and develop in society as a source of law.

The National Law Development Program is carried out in the following steps:

1. Legal planning aims to create a common perception and all development actors, especially in the field of law, in dealing with various strategic and global issues that need to be quickly anticipated so that law enforcement and certainty can continue in a sustainable manner
 2. formation of law which functions to create various sets of laws and regulations and jurisprudence which will become the legal basis for behaving in an orderly manner in the context of carrying out the life of the community, nation, and state
 3. , improving the performance of judicial institutions and other law enforcement agencies, namely aimed at strengthening judicial institutions and law enforcement agencies through integrated criminal justice
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systems

4. improving the quality of the legal profession, which aims to improve the professionalism of law enforcement officers
5. , increasing awareness of the law and human rights, which aims to develop and increase the level of legal awareness of human rights of the community, including state administrators, so that they are not only aware of and aware of their rights and obligations but are also able to behave following the rules of law and respect human rights.

The direction of national law policy is to improve the substance (material) of law, structure (institutional), law, and culture (culture) of law, with the following efforts:

1. Rearranging the substance of the law through review and restructuring of statutory regulations to create orderly legislation by observing general principles and legal hierarchy, and respecting and strengthening local wisdom and customary law to enrich the legal and regulatory system through empowering jurisprudence as part and efforts to reform the material of national law.
2. Reforming the legal structure through institutional strengthening by increasing the professionalism of judges and judicial staff and the quality of an open and transparent judicial system; simplifying the justice system, increasing transparency so that the public can access the

judiciary, and ensuring that the law is applied fairly and in favor of the truth; strengthening local wisdom and customary law to enrich the legal and statutory system through empowering jurisprudence as part of efforts to reform national legal materials.

3. Improving the legal culture, among others, through education and dissemination of various laws and regulations and exemplary behavior by the head of state and his staff in obeying and obeying the law and upholding the rule of law.

The political objectives of the national law are the creation of a national legal system that is just, consistent, and non-discriminatory (including non-discrimination against women or gender bias); guaranteeing the consistency of all laws and regulations at the central and regional levels, and not contradicting with higher laws and regulations; judicial and law enforcement institutions that are authoritative, clean, and professional to restore legal confidence in society as a whole.

In legal reform, it should be carried out by considering the laws that develop in society. Namely, the law in society, according to Philippe Nonet and Philip Selznick, there are 3 (three) legal conditions:

Repressive law, namely law, which is a tool of repressive power, Autonomous Law, namely as an institution capable of taming repression, protecting its integrity, and Responsive Law, namely law, which is a means of responding to

the needs and aspirations of society. (Ishaq; 2014)

The most prominent factor of this type of responsive law is the shifting of emphasis from rules to legal principles and objectives, prioritizing the existence of the people, both as a legal goal and a way to achieve it. Responsive law tries to overcome the narrowness in societal morality and encourages an integrated problem-oriented approach (Setiaji, 2017).

CONCLUSIONS

From the explanation above, it can be concluded that

1. To formulate and construct an agreement, in this case, a production sharing agreement, based on the provisions of the statutory regulations, namely Law No.2 of 1960 concerning the Agricultural Land Production Sharing Agreement, which also refers to the provisions of the KUHPerdata, concerning Agreements so that it does not contradict the law, morals and public order.
2. In legal reform, it should be carried out by considering the laws that develop in society. Namely, the law in society, Repressive law, and Responsive Law, namely law which is a means of responding to the needs and aspirations of society.

In this case, the government can guarantee and protect the community, By establishing statutory regulations governing agricultural land yield sharing agreements related to eco-friendly agro-

tourism. So that the creation of a united Indonesian society as stated in the Preamble of the 1945 Constitution of the Republic of Indonesia.

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