

IMPLEMENTATION OF PROFIT SHARING AGREEMENT FOR INLAND FISHERY PRODUCT BETWEEN PONDS OWNERS AND CULTIVATORS

Irmawati¹, Andi Purnawati²

¹Faculty of law, Univesity Muhammadiyah Palu. Email : irmawatiambo70@gmail.com

²Faculty of law, Univesity Muhammadiyah Palu. Email : andipurnawati0967@gmail.com

Abstract : South Banawa District is one of the sub-districts in the Donggala Regency which has aquaculture land, although only a small part of the land is technically managed but has produced thousands of tons of shrimp and milkfish every year, this can happen because South Banawa District is a an area that has an area consisting of mountains, rice fields, aquaculture and the sea. The occurrence of an agreement for land fishery products sharing, in Banawa District, because on the one hand the pond owners do not have time to manage their ponds, there are even pond owners who do not have expertise in the field of ponds and on the other hand there are cultivators who do not have ponds, but they have expertise in that field. This is indeed quite reasonable, because it has become an undeniable reality that not all cultivators have land to manage in order to meet the needs of living with their families. In fact, many of the farmers had no land or ponds to cultivate at all. Considering that the fisheries business is complex, the overall regulatory effort will have a positive impact on the development of the fishery business itself.

Keywords: Profit sharing agreement, Inland Fishery Products, Ponds, and Cultivators.

I. Introduction

After this archipelago was united into a great nation consisting of various ethnic cultures, it was deemed necessary to formulate a law that was in accordance with the values that developed in society as a culture according to the personality of the Indonesian nation. This is in line with Article 33 of the 1945 Constitution which stipulates that the earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people. This provision is a constitutional basis and at the same time a direction for setting up a land fishery product sharing agreement. In this regard, one of the national development goals of our country is National Development which is carried out in a directed and planned manner with the aim of realizing a just and prosperous society both materially and spiritually. One of the efforts to achieve a just and prosperous society, especially in fishing communities, is done by increasing income and standard of living, as well as by advancing the quality of life of people in coastal areas. One of the

fisheries sub-sectors is inland fisheries¹. Article 12 of the UUPA (Basic Agrarian Law) stipulates that all joint efforts in the agrarian field, including inland fishery businesses, must be based on the common interests of all participating parties, namely both pond owners and cultivators who donate their energy, so that they each receive fair share of the proceeds of the business.

Fishery development aims to increase fish production and at the same time improve the standard of living of the cultivators. Therefore, to anticipate elements that are considered to contain extortion, the enactment of Law Number 16 of 1964 concerning Fishery Product Sharing. The above-mentioned law aims to ensure a proper legal position for cultivators, by affirming the rights and obligations of both cultivators and land owners and that the distribution of fishery products between landowners and cultivators is carried out on the basis of the aforementioned Law. The arrangement of profit-sharing agreements reduces the influence of customary law, because it is a legal development in the opposite direction which is a problem in the field of law and society. The social process and the economic process go through two paths. One of these pathways is used to build a fast-growing economy through the relevant modern institutions and bureaucracies that remain within the boundaries and principles of customary law².

As one of the efforts to create a sense of peace and guaranteed survival, especially for the fishing community, is to improve the standard of living of the working fishermen, it is necessary to have a profit-sharing agreement made by the owners of the ponds and the cultivators of the ponds. Of course, the agreement that was born must be based on Law NO. 16 of 1964 concerning land fishery production sharing agreements. The fact shows that Law No. 16/1964 concerning fishery product sharing which has been running for 56 years has not been properly implemented by fishermen, this is because the cultural values of the fishing community inherited by their ancestors are so dominant. , among others, the existence of a family and communal nature, mutual trust and using methods that are considered practical in pond management.

Production sharing agreements, especially for inland fishery products based on customary law, do not yet have uniformity regarding proper procedures according to positive regulations that apply in Indonesia, sometimes the cultivators get an improper share in accordance with the effort given. This is indeed quite reasonable, because it has become an undeniable reality that not all smallholders have land to manage in order to meet the needs of living with their families. In fact, no less among the farmers did not have any land or ponds to cultivate. Considering that the fishery

¹ Joko Tribawono. (2002). *Hukum Perikanan Indonesia*. Bandung. PT Citra aditaya Bakti, p. 58

² Hilman Hadikusuma. (1982). *Hukum Perjanjian adat*. Bandung. Bandung. PT Citra Aditya Bakti, p.122

business is so complex in nature, the overall regulatory effort will have a positive impact on the development of the fishery business itself South Banawa District is one of the sub-districts in the Donggala Regency which has aquaculture land, although only a small part of the land is technically managed but has produced thousands of tons of shrimp and milkfish every year, this can happen because South Banawa District is an area that has an area consisting of mountains, rice fields, aquaculture and the sea.

The occurrence of an agreement for inland fishery products, in Banawa District, because on the one hand the pond owners do not have time to manage their ponds, there are even pond owners who do not have expertise in the field of ponds and on the other hand there are cultivators who do not have ponds, but have expertise in that field. This is indeed quite reasonable, because it has become an undeniable reality that not all smallholders have land to manage in order to meet the needs of living with their families. In fact, no less among the farmers did not have any land or ponds to cultivate. Considering that the fishery business is so complex, the overall regulatory effort will have a positive impact on the development of the fishery business itself.

The profit-sharing agreement reduces the influence of customary law, because it is a legal development in the opposite direction which is a problem in the field of law and society. The social process and the economic process go through two paths. One of these pathways is used to build a fast-growing economy through the relevant modern institutions and bureaucracies that remain within the boundaries and principles of customary law.

In connection with the profit sharing, South Banawa District is an area that allows the development of inland fisheries, because part of the area is a coastal area. This is an attraction for residents from outside the area to participate in developing inland fisheries in the area, not inferior to agriculture, in the field of land fisheries, the practice of profit sharing agreements is very common in the context of its management.

The frequent practice of profit sharing agreements is due to several underlying factors, these factors are:

1. There is a landowner who owns a very large land so that he cannot do it himself,
2. The existence of land owners who own agricultural land and ponds simultaneously so that one of them must be left to the cultivator because not all of them can be done.
3. There are pond owners who do not work as farmers, this happens because of inheritance whose heirs are no longer farmers.

However, the profit sharing agreement made in South Banawa Subdistrict was carried out only based on the interests of both parties, so there was no uniformity in the form of profit sharing. The

government's hope with Law No. 2/1960 on Agricultural Land Production Sharing Agreements and Law No. 16/1964 on Fishery Production Sharing is to want a uniform form of profit-sharing. This has not been fully implemented by the aquaculture farmers, because this law has not been socialized to its full potential. In addition, the local government's attention and involvement has never been there. Likewise, customary law has no clear effect on profit-sharing agreements.

II. METHOD

This paper uses the type of empirical normative research or also often called sociological (non-doctrinal) legal research. The use of this type of research is based on the formulation of the problem proposed as a logical consequence of the legal issues of research in the background of the problem. This type of research is used in accordance with the formulation of the problem posed. In addition to the type of research, it is also necessary to determine the nature of the research that will be applied to the focus of the research object. The nature of research is a research characteristic that describes the division of objectives or classifications. The object of research that will be used by researchers to carry out research. Because this study looks at the compatibility between theory and practice (case studies), the research determines the nature of explanatory research (explanatory case studies) to answer the formulation of the problem. Based on the description in the background, the problem in this study is how is the implementation of the inland fishery production sharing agreement in the South Banawa sub-district?

III. DISCUSSION

The implementation of the Inland Fishery Production Sharing Agreement in South Banawa District is carried out from generation to generation or according to local customary law. Therefore, because the agreement is carried out according to customary law, it is only made orally. The verbal agreement was made based on the mutual trust of both parties because: "The owner of the pond feels ashamed to deny the agreement that has been made even though the agreement is only in agreement or verbally".

This is very reasonable because it is supported by the commitment of the parties to carry out the agreement they made. There are even some cultivators who still have a relationship between the child and the father and the landowner. In addition, there are several factors that cause profit-sharing agreements to be made orally.

a. Internal factors in the form of :

1. The level of education is relatively low and some are even illiterate or attend basic education but do not complete it. :
2. The way of thinking is still very simple where they are less aware or do not realize the benefits if the agreement is made in writing.

b. External factors, in the form of :

1. They are reluctant to deal with the authorities because they go through a complicated bureaucratic process.
2. They do not understand the process of profit-sharing agreements and are considered time-consuming.
3. The possibility of illegal levies if they make an agreement in front of the village head.

As for the comparison of the profit-sharing agreement, it is very diverse. The profit sharing comparison is:

1. Cultivators get 7 of the net proceeds
2. Cultivators get 15 of the net proceeds
3. Cultivators get 20 of the net proceeds
4. Divide by 7 (the landowner gets 6 shares and the cultivator gets 1 share of the net proceeds)
5. Divide by 5 (the owner gets 4 shares and the cultivator gets 1 share from the net proceeds)

The variation in the part of the cultivator is due to several factors:

1. Pond land condition
2. People's Habits

The condition of the pond land really determines the profit sharing procedure, the pond land which is still a pond building, the cultivator gets a bigger share. The reason is because the work assigned to the cultivators is very heavy. This is because the pond land requires repairs that must be done by the cultivator. Therefore, on a pond like this, the cultivator gets 20 percent of the net yield. But if the land for the pond is no longer in the form of a pond building, then the share of the cultivators is smaller. The reason is because the work done by the cultivators is lighter. Cultivators only do the distribution of nener. Water replacement and maintenance. Therefore, cultivators are termed pond workers or pond guards. Cultivators like this usually get 7 percent.

This is very contrary to Article 3 (1) number 2 of Law No. 16 of 1964 concerning fishery product sharing, which contains:

- a. Regarding the fish yield, a minimum of 40 percent of the net yield
- b. Regarding the yield of wild fish, a minimum of 60 percent of the gross yield.

From the article above, it can be concluded that the Fishery Product Sharing Law is not effective. This happened because the pond owners and cultivators were not aware of the existence of this law. Besides that, the distribution of the results carried out by the owners of the ponds is considered fair by the cultivators, because the distribution is in accordance with the feelings of justice of the local community. Meanwhile, the distribution according to Law No. 16 of 1964 concerning Fishery Revenue Sharing is difficult to implement because the share of cultivators is higher. The reason for the high share of pond owners is that the risk borne by pond owners is much greater

than that of smallholders, therefore Law No. 16 of 1964 concerning Fishery Revenue Sharing is not effective. Although socialized to the community of pond farmers.

Furthermore, Article 4 (2) of Law No. 16 of 1964 regulates the burdens borne by land owners and cultivators. If it is related to the research results, then there are similarities. However, at the research location, the distribution of the burden on each party is determined according to custom or according to local customary law, not based on law. The position of the cultivator is not equal to the land owner. Cultivators are equated with employees, who have rights and obligations. Cultivators must carry out their obligations and then demand their rights. Meanwhile, the owner of the pond has the right to unilaterally terminate the cultivators if they violate the agreed agreement.

This shows that the position of the owner of the pond is stronger than the cultivator. Cultivators are in a weak position in the agreement. However, the results showed that the violation of the agreement was caused because the cultivator was not aware of carrying out the mandate assigned to him. The owners of the ponds enter into profit-sharing agreements aimed at helping each other, because there is excess land or ponds to work on, and they are unable to work on their own.

The implementation of profit-sharing agreements for the people in South Banawa is still carried out according to local customs. The area of the pond that is cultivated depends on the ability of the cultivator to cultivate it. Cultivation is carried out individually and there is no legal entity that cultivates ponds by means of profit sharing. This profit-sharing agreement has long been known by the farming community and has been passed down from generation to generation.

The profit-sharing agreement which is passed down from generation to generation is not something that happens by chance, but because of a legal action that occurs intentionally based on certain reasons. These reasons were given by landowners and sharecroppers because they were unable to do the work and did not have time to work on their own and to help others. The reason stated by the owner of the pond is a natural thing if he is not able to work on his pond, because his main job is not as a pond farmer, but as a rice farmer, civil servant, trader, then the shooting location is far from where he lives and there are owners who are unable working on the pond because they are old and some of their children are continuing their education in the City.

From the description above, we can see that the reason pond owners and sharecroppers enter into profit sharing agreements is because the owners want their ponds to continue to earn or produce. Meanwhile, the reason that smallholders enter into profit-sharing agreements is that they do not own a pond and the only capital is unproductive labor if they do not work on other ponds.

The above shows that both owners and cultivators need each other, so there is a cooperation agreement in the field of inland fisheries, namely a profit sharing agreement. The form of profit sharing agreement is carried out from generation to generation and is carried out orally, and is mostly carried out without the knowledge of the Village Head as the competent authority in the area. This is because in addition to their lack of knowledge about the rules of law, also because the

oral culture, mutual trust and familial relationships between the owners and cultivators of the ponds are already rooted in the community.

The time period is not determined, at least once the harvest and if it is no longer suitable the relationship is decided, while if it is felt appropriate, the relationship can last for generations. Here it can be proven that in fact they did not know Law No. 16 of 1964 concerning Fishery Revenue Sharing. From the above facts it is evident that the Fishery Product Sharing Law is ineffective.

IV. CONCLUSION

The profit-sharing agreement carried out between the pond owner and the cultivator in South Banawa District has guaranteed legal certainty because in the implementation of the profit-sharing agreement it runs according to the expectations of the parties, both the pond owner and the cultivator themselves. Factors that influence the implementation of the inland fishery product sharing agreement can be resolved peacefully through a family settlement. The obstacles that occur in the inland fishery production sharing agreement are considered very light, so that these obstacles are considered not a serious problem that must be resolved by the Village Head or Court. This has become a habit in local customary law. In this way, misunderstandings can be resolved and the profit-sharing agreement can be resumed.

REFERENCES

- Abd Kadir Muhamad, 1993, *Hukum Perdata Indonesia*, Bandar Lampung.
- Abd Kadir Muhamad. 1990. *Hukum Perdata indonesia*, PT citra Aditya Bakti Bandung.
- A, R, Mustara. 1993. *Perjanjian Bagi Hasil atau Tesang di Sulawesi Selatan*. Lembaga Percetakan& Universitas Muslim Indonesia Ujung Pandang.
- A.P. Parlindungan. 1994. *Bunga Rampai hukum Agraria, serta Landreform*, Mandar maju, Bandung.
- Bushar Muhamad. 2001. *Pokok-pokok Hukum Adat*;: Paranaditya. Jakarta
- Hilman Hadikusuma, 2003, *Pengantar Ilmu Hukum Adat indonesia*, Mandar Maju.
- Hilman Hadikusuma,1982, *Hukum Perjanjian adat*, PT Citra Aditya Bakti Bandung.
- Joko Tribawono, *Hukum Perikanan Indonesia*, 2002 PT Citra aditaya Bakti Bandung.
- K, Wantjik Saleh, Hak Anda Atas Tanah, 1982 Ghalia Indonesia Jakarta.
- _____ 1989. *Undang-Undang Bagi Hasil Indonesia (suatu studi koomperatif*, Mandar maju Medan.
- _____1994 *Bunga Rampai hukum agraria Serta landreform*, mandar maju Bandung.
- Soerjono Soekamto. 2001 *Hukum Adat Indonesia*; Pt Raja Grapindo Persada
- Surojo Wignodipuro, 1982. *Pengantar dan Asas-Asas Hukum Adat*. PT Gunung Agung Jakarta.



Omnibus Law Journal

Volume 1 Issue, 1 June 2021

Faculty of Law Muhammadiyah University Of Palu

Terhaar, 1982, *Hukum Perjanjian Adat*, Alumni Bandung.

Hilman Hadikusuma. 1982. *Hukum Perjanjian Adat..* PT. Citra Aditya Bakti Bandung