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RESEARCH ARTICLE

THE VALIDITY OF VERBAL AGREEMENT ON THE PLANTATION PROFIT SHARING AGREEMENT IN THE VILLAGE OF NALAHIA, CENTRAL MALUKU

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Abstract

This study aims to examine and analyze the legal position of the plantation profit sharing agreement in the form of an oral agreement and the validity of the oral agreement on the plantation production sharing agreement in the village of Nalahia, Central Maluku. This research is a sociological research, which is a combination research method between doctrinal law research methods and empirical legal research methods. This research was conducted in the village of Nalahia, NusalautSubdistrict, Central Maluku. This type of research data is primary data and secondary data obtained through literature study and interview techniques with respondents. Based on the results of the study, the plantation production sharing agreement in the village of Nalahia, NusalautSubdistrict, Central Maluku Regency met the legal requirements of the agreement as stated in Article 1320 of the Civil Code and was carried out in good faith. Therefore, this agreement is still considered valid and binding on both parties, namely the plantation owner and the sharecropper.

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Introduction:-

Human as God's most perfect creature is also as a social creature; that cannot live alone because human needs another human being to still meet his needs. Between human is always creating interaction and reciprocal relationships, it could be social relationships or legal relationships. In every legal relationship which is created by law has always has two aspects which is contents on one side have rights and on the other hand an obligation attached.¹ Both rights and obligations are created through various interactions between humans in the society because there are various interests of need among each other so that such interactions arise. One form of the interaction which is carried out in the community is through an agreement.

An agreement is a form of legal action that is often carried out in everyday life that gives the rights to one party and the obligations to other party. The definition of the agreement can be found in Article 1313 of the Civil Code which states that an agreement is an act by which one or more person binds themselves to one or more other people.

¹Ari Hernawan, (2012). "Balance of Rights and Obligations of Workers and Employers in Strike," Pulpit Law-Faculty of Law Universitas Gadjah Mada 24, No. 3: 418–30.

Subekti defines that a covenant is an event in which one person promises to another or in which two people promise each other to do something. While KRMTTirtodiningrat gives a definition that an agreement is a legal act which is done based on the word agree between two or more people to cause legal consequences by law.²

The definition of the treaty was also conveyed by Salim HS, that the agreement was a legal relationship between one subject and another in the field of wealth, where the subject of one law is entitled to achievement and so is the subject of the law of the other obliged to carry out his achievements in accordance with what he has agreed.³

From the definition of the agreement either under Article 1313 of the Civil Code or according to some of the above experts, the agreements made by the parties are binding on the parties who make it to obtain the rights or perform the obligations mutually agreed in the agreement⁴. This is also in line with the principle of freedom of contract described through the formulation of Article 1338 of the Civil Code mentions that all agreements made legally, apply as a law to those who make it and in paragraph (3) mentioned agreements must be implemented ethically. This understanding is related to the principle of *pactasuntservanda* which means that the agreement is a law for the parties who make it, and resulted in the emergence of a relationship between two people or two parties called an alliance⁵, So that the agreement must be implemented."⁶

Through the agreement, the community is greatly assisted in carrying out all activities related to business. Be it buying and selling, renting, borrowing, employment agreements, revenue sharing, and other business ventures that require agreements.⁷ Agreements can be done in two ways, namely verbal and written agreements. Verbal Agreements occur in simple community association, immediately often not realized but there has been an agreement, for example in shopping in stores, in markets for daily needs. The verbal agreement becomes completed by the delivery and receipt of an item⁸. This means that an agreement made orally will become valid if the rights and obligations of the parties to the agreement have been fulfilled. While written agreements are usually done in a society that is much more understanding about the law. In other words, agreements in writing are usually implemented by modern society, relating to businesses whose legal relationships are more complex, and usually use authentic deeds or deeds under the hands, and use the title of the agreement⁹. Therefore, in a written agreement, it is very easy to prove if one of the parties is in default because the written agreement uses an authentic deed and a private deed.

One form of verbally made agreement that is the subject of study in this writing is the profit sharing agreement. Profit sharing agreements are usually carried out in the community by entrepreneurs in various fields with other parties as cultivators or communities of agricultural land owners / plantations with farmers who are domiciled as cultivators. As did the people of the Village of NalahiaNusalaut District of Central Maluku Regency.

Plantation profit sharing agreement is an act of legal relationship stipulated in customary law. A plantation profit sharing agreement according to customary law is basically an agreement that arises in indigenous law communities between plantation land owners and other parties who are willing to harvest the plantation products. In general, the procedure or rules of the profit sharing agreement on the management of gardens in customary law are carried out by oral means between the owner of the plantation land and the harvester.

²AgusYudhaHernoko, (2010), Law of Agreement on The Principle of Proportionality in Commercial Contracts, Jakarta: PT. Kharisma Putra Utama, p. 14

³Salim HS, (2008), Contract Law, Theory & TechnicalPreparation of Contracts, Jakarta: SinarGrafika, p. 27.

⁴ I WayanWiryawan and I KetutArtadi, (2010), Out-of-Court Dispute Resolution, Denpasar-Bali: Udayana University Press, p. 47.

⁵Novina Sri Indiraharti, (2014), Aspects of The Validity of The Agreement in Contract Law (A Comparison Between Indonesia and South Korea), Prioris Legal Journal, Vol. 4 No. 1, p. 18.

⁶AanHandriani, (2018), Validity of Verbal Buying and Selling Agreements Based on Civil Law, Rechtsregel Journal of Legal Sciences Vol. 1 No. 2, p. 280.

⁷FajarSahatRidoliSitompul, I GstAyuAgungAriani, (2014), Binding Power of Agreements Made Verbally.KerthaSemaya, Journal of Legal Sciences, Vol. 02 No. 05, p. 218.

⁸I KetutArtadi and I DewaNyomanRai Asmara Putra, (2010), Implementation of The Provisions of The Agreement Law Into Contract Design, Denpasar: Udayana University Press, p. 52.

⁹Ibid., p. 51.

The right of business to share is one of the rights to land that is temporary that is regulated based on the customary laws of each local area. One of the disadvantages of profit sharing agreements that use customary law is that the agreement is not done in writing but based on the agreement of the parties so as not to provide certainty about the size of the share and the rights and obligations of the parties¹⁰. In the profit sharing agreement, land is not the main goal, but agricultural products or plantation products on the land are the main objectives of the implementation of this agreement. However, agricultural products or plantations have a relationship or are a unity with the land.¹¹

In the people of the Village of Nalahia Central Maluku, cooperation on profit sharing agreements is usually carried out for clove, nutmeg, and coconut plantations or also for other plantation products cultivated by the people of the Village of Nalahia. This profit sharing agreement by the people of the Village of Nalahia is known as *asmaano* (plantation profit sharing).

Based on the description above, we are interested in conducting legal research with the title "The Validity of the Verbal Agreement on the Plantation Profit Sharing Agreement in the Village of Nalahia, Central Maluku

Research Methods:-

In this study, the type of research used is sociolegal research¹², namely a combination research method between doctrinal law research methods and empirical law research methods to identify the implementation of plantation production sharing agreements and the legal force of oral agreements in plantation profit sharing agreements in the village of Nalahia, Central Maluku. This type of research data is primary data and secondary data. The data collection techniques used are literature studies and interview techniques that are studied and analyzed in depth so that a complete and in-depth conclusion is obtained descriptively analytically.

Discussion:-

Position of Plantation Profit Sharing Agreement as Verbal Agreement

In general, when talking about the treaty, then the legal basis is the **The obligations originating from the agreement is regulated in title II (Article 1313 to 1351) and title V s / d XVIII (article 1457 to / d. 1864) Book III of the Civil Code.**

Article 1313 of the Civil Code states that a treaty is a legal act with which one or more persons commit themselves to one or more other persons. From the meaning of Article 1313 of the Civil Code means that there is an agreement created between the parties who are subject to the agreement.

Referring to the Article 1313 of this Civil Code, then, in an agreement there are at least two people as parties. In that case, the two parties are the subject of the agreement. The meaning of the word deed refers to an achievement that must be fulfilled either to give up something, to do something, or not to do something.

The covenant publishes an alliance between two persons who make it, in the form of a covenant can be a series of words containing promises or capabilities spoken or written¹³. Thus, the agreement can be pronounced in writing in the form of letters / deeds and verbal.

With respect to the form of the agreement, "the Civil Code does not mention systematically about the form of the agreement. Each party to the treaty has the freedom to make a covenant, in the sense of being free to make a covenant verbal or in writing"¹⁴. Therefore, it is called contract-freedom. The principle of freedom here means to give freedom to those who make the agreement. Freedom for each party in the following respects:¹⁵

¹⁰RizkaNurmadany, (2016). Implementation of Agricultural Land Profit Sharing Agreement in Sleman Regency, Thesis, Yogyakarta: Atmajaya University, p. 2.

¹¹SuryamanMustariPide, (2014), Customary Law, Past, Present and Future, First Edition, Jakarta: Prenada Media Group, p. 148.

¹²SulistiyowatiIrianto, (2009), Legal Practice:Sociolegal Perspective, Jakarta: Obor Foundation, Jakarta, 2009, pp. 308.

¹³R. Subekti. (1996). Law of Agreement, Jakarta: Intermedia, p. 1.

¹⁴Salim H.S., (2003), Contract Law, Jakarta: SinarGrafika, p.9.

¹⁵Ibid.

1. Make or not make an agreement;
2. Enter into an agreement with anyone;
3. Determine the contents of the agreement, its implementation, and terms; and
4. Determine the form of the agreement, i.e. written or verbal

The principle of freedom of contracting above is also in line with the regulatory system used in treaty law is the "open system." It means that everyone is free to enter into agreements, both those that are already regulated and those that have not been set out in law."

A verbal agreement is an agreement made on the basis of an agreement. The parties have agreed to bind themselves to the other party to be a party to a treaty.¹⁶

Verbal agreements are found in many people's lives, and often not realized but there has been an agreement, for example in shopping in stores, in markets for daily needs, debts with friends, and so on. It can be said that verbal agreements are often found in simple agreements, in the sense of agreements that are not complicated legal relationships and also do not cause major losses to the parties in the event of default.¹⁷

The rules of covenant law according to Peter Mahmud Marzuki are the incarnation of the philosophical foundations contained in the principles of law that are very general and become the basis of thinking or ideological basis. The principle of law as the basis of norms becomes a test tool for existing legal norms, in the sense that legal norms must finally be restored to the principle that animates them.¹⁸

The form of agreements both written agreements and verbal agreements is not required in the implementation of an agreement. This is related to the legal principle of the agreement, namely the principle of freedom of contract (to goedetrouw).

Based on this principle of contract freedom, the parties are given the freedom to carry out agreements with anyone, and also in any form either in writing or verbal. But this freedom of contract has some restrictions. Article 1338 of the Civil Code paragraph (1) states that:¹⁹

"all agreements made legally apply as law to those who make them."(allemettiglijk gemaakte overeenkomsten strekkend en genen die dezelve hebben aangegaan tot et).

Accordingly, any person is free to enter into an agreement with anyone of any kind including verbal (unwritten) as long as it meets the following conditions:

1. Meet the legal requirements of the agreement in Article 1320 of the Civil Code;
2. Not prohibited by law;
3. In accordance with applicable habits;
4. As long as the contract is executed in good faith.

Speaking of profit sharing agreements is generally regulated in Law No. 2 of 1960 on Agricultural Land Profit Sharing Agreements. In the above-mentioned law, it regulates the specifics of agricultural land management and utilization agreements. With a system of cooperation in the form of a profit sharing agreement between land-owning farmers and farmers. This aims so that the process of sharing agricultural land products can be carried out fairly and decently for both land owners and farmers in a balanced manner.

A profit-sharing agreement is a form of agreement between a person entitled to a plot of agricultural land (plantation) and another party referred to as a cultivator, based on an agreement by which the cultivator is allowed to cultivate the land concerned with the division of the proceeds between the cultivator and who is entitled to the land

¹⁶Putu Nugraha Widiarta, I Wayan Novy Purwanto, (2017), Validity of Verbal Agreement in Buying and Selling Cars in Badung Regency Adikarya Motor Rides, Kerta Semaya Vol. 6 Journal No. 1, p. 2.

¹⁷Abdulkadir, Muhammad., (1990), Law of Obligations. Bandung: Citra Aditya Bakti, pp. 44.

¹⁸Peter Mahmud Marzuki, (2003), Boundaries in Contract Freedom, Journal of Yuridika Vol. 18 No. 3, p. 196.

¹⁹Ridwan Khairandy, (2004), Good Faith in Freedom of Contract, Graduate Program of the Faculty of Law, University of Indonesia, p. 84.

according to the balance that has been agreed jointly by both parties, for example, each gets a second or the cultivator gets a share of one-third of the result.²⁰

Meanwhile, according to the Ministry of Information and director general of Agrarian Affairs (Depdagri), the profit sharing agreement is a legal act in which the land owner for a reason so that he cannot do the land himself but on the other hand expect the results of the land. Therefore, the owner of this land makes an agreement with other parties in this case, namely the initiator with an agreement on the balance of the amount of profit share that they will equally receive.²¹

From the understanding of the revenue sharing agreement above, it can generally be said that the agreement created between the two parties, namely land owners and cultivators about the amount of division that will be fully accepted is in the agreement of both parties.

In The village of Nalahia District Nusalaut Central Maluku Regency is also often implemented agreements for plantation profit. Plantation products that are the object of agreement by the community consist of various kinds of plantation products such as Sago, Clove, Nutmeg, Coconut, king of fruits and even various tanamang (plants) both short-lived and long-lived plants.

There is a reason that causes both parties in this case, namely plantation land owners (hamlets) and farmers to agree on the distribution of this profit share. The main thing that is the reason is because the owner of the plantation land (hamlet) can not work or harvest the plantation itself on the grounds that the land owner is no longer young to harvest the tanamang (plant) of plantation products is no longer possible. In addition, because family or children, grandchildren, and other relatives also do not live with them in the land of Nalahia. So to harvest the results of the plantation requires the energy and help of others. In addition, there are plantation owners who are indeed widowed women who have been left by their husbands, so for the process of harvesting plantation products it also requires the energy of others.

In the position as parties to the plantation profit sharing agreement by the village of Nalahia Community, usually the owners of plantations (hamlets) are those who are indeed the original people of the village of Nalahia who own the land (hamlet) in the State of Nalahia. While the farmers are farmers who are called by the people of the village of Nalahia called "orang dagang (trader)". Orang dagang This means that those who are not natives of the village of Nalahia, do not have land (hamlets) in the Nalahia land, but live and settle in the territory of Nalahia because they are married to the people of Nalahia or because of the arrival of deliberately to make a revenue-sharing agreement in the Land of Nalahia when the harvest season arrives. However, in its implementation, there are also indigenous peoples of the village of Nalahia who at the time of the harvest season arrives, the results of their plantations do not provide results, so they harvest the plantations belonging to other Nalahia residents with a profit-sharing system.

The plantation profit sharing agreement that occurs in the village of Nalahia Nusalaut District of Central Maluku Regency, is not based on the provisions of the agricultural land profit sharing agreement as stipulated in Law No. 2 of 1960 above. On the contrary, the implementation of plantation profit sharing agreements by the people of the village of Nalahia is subject to customary laws or customs that have been done since the ancestors. If in Law No. 2 of 1960 requires that the profit sharing agreement should be ratified by the competent general officials and made in writing, but the profit sharing agreement in the village of Nalahia is otherwise quite agreed by both parties, namely plantation land owners and farmers orally even without involving witnesses.

If studied further about the above, of course, there will be various legal problems in the future with the practice of implementing profit sharing agreements in the people of Nalahia as such. But based on the results of the research conducted, the authors found that until now, there has been absolutely no single legal problem that occurs as a result of the implementation of this verbal plantation profit sharing agreement.

²⁰BoediHarsono, (2008), Indonesian Agrarian Law History of The Establishment of Agrarian Principal Law, Content and Implementation, Jakarta: Djambatan, p. 244.

²¹UripSantoso, (2009), Agrarian Law and Land Rights, Jakarta: PT. Interpretama Offset Dawn, p. 129.

This leads to that, although the profit-sharing agreement implemented by the people of the village of Nalahia is only sufficiently done orally, but so much legal awareness among the parties to submit and obey the contents of the agreement they have agreed it becomes a very good and exemplary thing to be exemplified.

The plantation profit sharing agreement in the village of Nalahia Maluku Tengah which is carried out verbal (not written) is still subject to the provisions regarding the law of the agreement in Book III of the Civil Code, both regarding the legal terms of the agreement and other provisions related to the obligations comes from the agreement.

Validity of Verbal Agreements on Plantation Profit Sharing Agreements

Every provision of the law must be governing so that it can be laid out guidelines and the basis of a legal action as in an agreement, then the provisions of the law must be considered in the case of the legal terms of an agreement. Customary law does not recognize the terms of the validity of an agreement as stipulated in the Civil Code. Because for indigenous peoples it is not important the subjective and objective elements of a treaty but what is important is how an agreement on the agreement of both parties can be implemented. Article 1320 of the Civil Code states that the legal conditions of an agreement are:

1. Agree on those who bind themselves;
2. The ability to make a covenant;
3. A certain thing;
4. A good reason;

The element of agreement is important to determine whether or not a treaty is legal. Generally, an agreement determines when an agreement comes into effect. In addition, it is known to be a skill (adult) in doing legal deeds. In Article 1329 of the Civil Code that everyone is capable of making alliances, unless by law declared incompetent.

Customary law has its own way of determining a person is mature and capable of acting. Usually people are considered adults after marriage or leaving the family home and starting to live independently. Adult boundaries are often measured according to existing circumstances and are factual in nature.

According to subekti, the person who makes a covenant must be capable according to the law. Basically everyone is an adult or *akilbaliq* and healthy mind is capable according to the law. The criteria that a person considers to be an adult is when he is able to work alone, meaning it is enough to do all the association in public life and account for everything himself and enough to take care of his property and other needs.

Thus the profit sharing agreement of agriculture can occur only by the agreement of the landowner and the cultivator, that the cultivator manages the farm land and will hand over some of the proceeds to the landowner. Likewise, the large division is also only based on the agreement of both parties.

The agreement becomes one of the most important sources of engagement other than legislation²². Based on the provisions regarding the legal terms of the agreement in Article 1320 of the Civil Code as described in the previous points above that there is no single condition in Article 1320 of the Civil Code that requires that an agreement must be signed in written form. In other words, an agreement made by the parties verbally under the law of the treaty is also considered valid.

In accordance with the above description, then in the agreement for the profit sharing of plantations in the Village of Nalahia Central Maluku which in fact is carried out verbally (not written) in the law of the agreement is still considered valid as long as it meets the legal terms of the agreement in Article 1320 of the Civil Code, and is carried out in good faith among the parties.

Conclusion:-

The profit sharing agreement is generally regulated in Law No. 2 of 1960 on Agricultural Land Profit Sharing Agreements. But in the implementation of plantation profit sharing agreements in the Village of Nalahia Central Maluku is not in accordance with the provisions as mentioned in the law. The implementation of plantation profit sharing agreements in the Village of Nalahia Central Maluku is carried out in accordance with the habits that are hereditary carried out by the ancestors which between plantation owners and farmers agree on agreements for the

²²AanHandriani, Op.Cit.

sharing of plantation products verbally (unwritten) without any witnesses. Although implemented in writing, but in terms of treaty law, it is still considered valid because it meets the legal requirements of the agreement in Article 1320 of the Civil Code and is carried out in good faith.

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