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Perspective of public law in rearrangement of profit sharing system agricultural land in Indonesia

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Abstract. Review of the Shared Revenue Act for better regulatory system is an important issue as a more realistic and highly feasible agrarian reform policy. The rearrangement of agricultural land tenure systems is difficult to implement because it must be done simultaneously and thoroughly plus the support of large economic and political cost allocations; Instead, allowing the use of land in market mechanisms violating the principles of fairness on profit sharing. So it needs agrarian policies that are gradual and more realistic, such as revision of Act on profit sharing. In the previous research, the characteristics of the land sharing system in Indonesia are: (1) The Revenue Sharing Agreement is seen as a personal relationship subject to the private of law, not public rules; (2) found character of unequal Patron-client relationship between landowner and farmer; (3) Different revenue sharing systems and tend to position smallholders as weak and defeated. This study aims to discuss the State's 'interference' in changing the profit sharing system by limiting individual freedom on the basis of a 'new' perspective of profit sharing as a relative legal relation. In the future, the profit-sharing system should be able to provide legal protection for farmers, as well as landowners.

1. Introduction

Agrarian reform (agrarian reform) is a continuous process of reorganizing the control, ownership, use and utilization of agrarian resources - in order to ensure legal certainty and protection and justice for all Indonesians[1]. The Government of Indonesia is committed to developing and implementing 5 (five) priority programs as a Step of Acceleration of Agrarian Reform as stated in Government Regulation no. 45 year 2016 covering: First, Strengthening of Framework Regulation and Settlement of Agrarian Conflict; Second, Structuring of Land Ownership and Ownership; Third, Legal Certainty and Legalization of Land Rights; Fourth, Community Empowerment in Utilization, Utilization and Production of Land Object of Agrarian Reform; and Fifth, Institutional Implementation of Central and Regional Agrarian Reform. The manuscript will go through a double blind review process, which means that both the reviewer and author identities are concealed from the reviewers, and vice versa, throughout the review process. Thus, the author is required to submit the manuscript without the authors’ names and affiliation. Authors' names and affiliations will be included once the manuscript has been accepted.

Signs to protect and empower farmers as the main actors of agricultural business, in fact has begun regulated in Law No. 19 of 2013. According to this Act, the protection and empowerment of farmers are: (1) to realize sovereignty and independence of farmers in order to improve welfare, quality and better life; (2) To provide facilities and infrastructure needed for the development of farming; (3)
Provide clarity and certainty of farming business; (4) Protecting farmers and price fluctuations, high-cost economic practices, and crop failures; (5) Improving the capacity, capacity and institution of farmers in conducting productive farming; (6) Growing institutional financing (venture mode) to serve the interests of farming[2].

The association of agricultural land-sharing in almost all regions of the archipelago is a working relationship between landowners and farmers as the main actors of agriculture. In historical development from the Dutch colonial era, to the post-1945 independence era until 1998 reforms, the practice of profit sharing between landless farmers and peasants and peasants took place under different names and schemes across the country, such as Practice Ceblokan, Kedokan, Mrapat, Mertelu, Maro. The term used adapts to each place, for example: 'thesad-tawadua' in South Sulawesi; 'Nandu', 'telon', four-speed 'and' five-five 'on the island of Bali; 'Maparo' in West Java; 'Mampaduokan', 'mampatigoi' in West Sumatra; and 'meudua profit' in Aceh Darussalam. The best known terms of sharing in the regions of Central Java and East Java are the 'Maro', 'Mertelu', 'Mrapat', 'Merlimo' and 'Kedokan' or 'Ceblokan' systems which can be up to 1/5 or 1/6.

In several previous studies, four (4) characteristics of profit sharing systems are widely applicable in Indonesia: First, the Revenue Sharing Agreement is seen as a personal relationship subject to civil law, not considered a matter of public law. Thus, neither the central government nor the local government intervened in the crop-sharing agreements between landowners and smallholders; Second, the ongoing sharing of relationships is a patron-client relationship that tends to be unbalanced. Patron-client relationship is an unequal relationship between two intimate and highly personal parties. It is seen as commonplace when a client hands over more Patron's share of the proceeds. Typically, landowners (Patrons) are rich farmers (landlords) that have large land. While the cultivator (Client) is a farmer who is economically lacking or inadequate because it has no land of its own; Third, there are multiple profit-sharing systems and tend to position smallholders as weak and defeated. Fourthly, the attitude of the conformity of the peasants to the practice of the profit-sharing system with an unbalanced division pattern, as it considers the landowner farmer to be kind (altruistic) to himself. Farmers perceive profit-sharing relationships with landowners, rather than exploitative forms of working relationships.

The disadvantages of an unbalanced and long-lasting shareholder relationship system can be demonstrated, among others: (1) Farmers as active economic actors are less aware of how little appreciation is received from landowners. If agreed upon Maro profit sharing system, the farmers receive only half of the net proceeds, after deducting the cost of seeds, labor, fertilizers, and pesticides etc. If Mertelu, it means he only gets one third (one third) of the net result. Mrapat or Merlimo is the next phase which means one fourth and one fifth. In practice, the part of the landowner is always greater than the shareholder; (2) Landowners should not neglect the land. Every inch of the land must be beneficial and have a social function. The true peasant farmer is the creditor who helps the landowner to work on 'abandoned' land. Should be in the eyes of the government of the State, they (peasants) who have more share - though not the owner of the land; (3) Farmers rely on yield-sharing if the harvest is successful, while labor costs, seeds, fertilizers and pesticides are borne by the farmers. Profit sharing is calculated from the net proceeds (delwinning), after deducting the costs incurred by farmers. What if the harvest fails? In addition to having to bear the loss of not receiving revenue share, Farmers also bear the costs of production. While the Landlord does not lose or bear the cost of any loss because the land is not lost or decreased altogether. It is only fair that the profit-sharing agreement refers to the gross proceeds (deelbouw). That is, if the harvest fails, the loss of production costs not only borne by farmers, but divided between the landowner farmers and farmers; (4) There is a tendency that the practice of agricultural product sharing is detrimental to the peasants because the land owned and the village cash (bengkok) are controlled by the village government, leased and or transferred by auction. Rental and auction systems use market mechanism approaches that are subject to 'laws' of demand and supply, whereby tenants and winning bidders are wealthy and have plenty of money. It does not seem to
matter whether the winner is a villager of origin or not at all, whether he or she is a farmer or even just looking for profits by transferring lease or auction rights to another party.

2. Methodology
This assessment focuses more on normative legal research. However, it also uses empirical research data although it only serves as supporting data. With the normative juridical method intended to explain how the change of legal perspective can take place from the agreement on the agricultural production sharing that originally existed in the realm of private law, shifted into the general share-sharing regulation into the realm of public law. Besides pointing out the reasons that support the shift, it also uses exposure to socio-juridical approaches regarding the practices, characteristic and weaknesses of the profit-sharing system that has been taking place. In the end, normative results obtained from the evaluation and / or improvement of agricultural production sharing system, which is expected to be better, fair and able to improve the standard of living and improve the welfare of farmers and landless farm workers.

3. Results and Discussion
The implementation of land-reform in various countries of its essence is the relation of the reflective experience of the national personality and ideology of each country. The state must intervene in various areas of public life. The state has primary obligations: realizing prosperity, creating jobs, reducing poverty and ensuring food security.

Improving the profit-sharing system is part of Tenurial activities or the control and management of agricultural land within the framework of the Agrarian Reform. Tenure Rights are a set of rights that include access rights and use rights to manage, exclude and transfer land to another party[3]. The right of access refers to the right to enter and manage certain areas of land. Land management is the right to regulate patterns of self-use or divert resources[4]. The manager's authority to make decisions, including: (1) rule-making, (2) determining how to monitor and enforce compliance (sanctions), and (3) resolve disputes. Exclusion Rights is the right to determine who may use the resources and who is forbidden to use[5]; While the right of transfer of land is understood as selling, diverting (menyakap / working with the distribution of results) and lease land. In the research conducted by Almeida and Hatcher identified 32 (thirty two) Tenurial categories in 15 countries observed in relation to delegation of transfer rights, namely: (1) Right to lease land, (2) Right to use it as collateral debt (collateral), and (3) Right to sell the land.

Tenurial rights are the right to social and institutional relationships to regulate access and use of land and available resources[6]. The Tenurial Institution, as well as the profit-sharing system, is of particular interest due to: (1) The key tenure arrangements for compensation and land-sharing schemes, and (2) Typically, the poorest members of the community and women are often disadvantaged by tenure[7]. In the agrarian reform agenda in Indonesia, the review is aimed at: (1) Renewal of Land ownership arrangement with Land Tenure reform, and (2) Renewal of land area management, law of mastery, cultivation pattern etc. (Land operation reform).

For the Indonesian nation, the agricultural production sharing system between landowners and peasants is a reflection of the form of working relationships that contain the values of Pancasila's personality and ideology. Thus the arrangement of the system for agricultural crops harvest, in the future can be directed as a means of realizing the form of Pancasila tenurial working relationship, or can be given a new title: Pancasila Share Relations / Historical Relationship Pancasila (HTP). Land as the object of the relationship for results concerns the life of the community much, and must prioritize its social function. In HBHP / HTP, an intensive State intervenes in which public law as a policy instrument enters into share-sharing between the owner and the cultivator, originally considered to be a personal domain (the domain of civil law). There are 3 parties involved in HTP: (1) Landowners, (2) Farmers, and (3) Government, which is bound and involved in the production process of agricultural products, which has grown and developed above the human personality and culture of Indonesia. That
is, HTP as a socio-economic relation should be guided by the principle of kinship and ideology of the nation (Pancasila). Thus, it is hoped that harmony can be achieved between farmers and landowners.

There are several reasons for changing the perspective of sharing arrangements from the domain of Private Law to the domain of Public Law:

1. The government's new view that the state plays an active role in conducting public welfare (Bestuurszorg). Indonesia is a State of Welfare (welfare state), which should prioritize the equity of welfare in public life. Thus, as a State of modern law, the Government should not dispose of its hands and surrender the affairs entirely to society[8];

2. Individual freedom needs to be limited. A profit-sharing arrangement system between the parties, positioning the treaty norms in civil law and the Profit Sharing Law (Act No. 2 of 1960) as a complement (aanvulend recht). In fact, in some cases the 'freedom' of the parties must be limited and redefined. This restrictive rule must be forcing in order that there will be balance and fairness in the practice of profit sharing[9];

3. The change of Civil Law towards Public Law, as a result of the change of human thought. The rule of law is the product of human thinking along and in line with the rapid development of science and technology. The law can also be seen as a means of serving relationships among peers in society in order to achieve certainty in the relationship. Understandably, changes that occur in society will also cause changes in the rule of law in serving the community[10].

4. Legal Relation in the Profit Sharing System is as a relative unity. The cooperative relationship between the landowner and the peasants cannot be viewed as an absolute civil law relationship, closing the possibility of a public relations form. Article 23 Algemeene Bepalingen van wetgeving (AB) determines that there is not any agreement concerning public order and public interest, which can obviate the power of the law. The protection of the weak will get the expected result if it is done by forceful rule[9].

Tenurial Relation Pancasila should minimize the practice of exploitation between strong and powerful parties against weak and powerless parties in access to land use and utilization in the agricultural business sector. Law Number 2 Year 1960 concerning the Agreement on Agricultural Land Sharing, needs to be improved and evaluated thoroughly because here and there still contain unequivocal, unclear provisions and / or tolerate patron-client unilateral practices, and in turn are unable to protect the interests of peasant farmers / landless peasants, rather than to improve their standard of living and welfare. Based on the preceding description, it can be stated that the normative formulation of tenure relationships (profit sharing) that entered into the realm of public law, in addition to reflecting the realization of the basic values of Pancasila and the 1945 Constitution of the Republic of Indonesia, as well as entry into the updated Revenue Sharing Law are as follows: The profit-sharing calculation agreement between the Landlord and the Peasants / Peasants shall be based on the gross proceeds (deelbouw), not on the deelwinning;

1. Profit sharing received by the Cultivators / Settlers, at least half (1/2) of the gross proceeds;
2. Village Cash Land and or crooked land under the control of the village government, its utilization and utilization shall prioritize the origin and subsequent villagers to the adjacent villagers;
3. Village Cash Land and or Crooked Land under the control of the Village Government, designated as productive agricultural land, given its social function, is prohibited (should not) be contracted by way of Auction and or lease to any person;
4. Village Cash Land and / or Crooked Land for productive agriculture under the control of the Village Government, considering its social function, at least 25% of the utilization of profit sharing is preferred for landless Farmers, who are still active for at least 3 (three) years as farm laborers in the village of origin;
5. Groundless farm laborers and non-commercial farmers shall take precedence over the Working Capital Subsidy and / or other Rice / Plant production means to improve tarap life and / or improve the welfare concerned;
(6) Regent / Mayor has the authority to stipulate the proportion of profit sharing and determination of landless farmers preferably in the utilization of agricultural land in their

4. Conclusion
Regulatory reform of agricultural land-sharing system between land-owning farmers and farmers, from the civil law domain and shifting into the relevant public legal sphere: Minimum profit-sharing proportion, calculation basis of net yield, rental prohibition and agricultural land auction in perspective of Administrative Law The State (Public Law) may be justified on the grounds that the Government should not be disengaged and entirely hand over the matter of public order and public interest. Therefore, the freedom of the parties (especially the strong parties) should be limited. In the Tenurial Pancasila (HTP) relationship it is believed that protection against strong party exploitation of the weak will get the expected result if it is done by forceful rule (public law).

The Government's sincerity to pay attention to new norms in the relationship between the landowners' farmers and the peasants and the peasants, in turn is able to improve level of life while improving the welfare of farmers and landless peasants.

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