



Default in The Profit Sharing Agreement Between the State Government and Petuanan Areas

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Article Info	Abstract
<p>Keywords: <i>Profit Sharing Agreement; Ngase System; Default.</i></p> <p>DOI: 10.47268/sasi.v27i4.685</p>	<p><i>In Eti Village, which is located in West Seram District, West Seram Regency, an agreement for marine and plantation products sharing is still being carried out between the Petuanan Region and the Eti Village Government as the parent country. The petuanan area or territory is a village or hamlet that is in the territory of the customary village. The agreement for the sharing of marine products and plantations between the Petuanan area and the State Government of Eti Village was agreed to share the profits of marine products and plantations by 40% which would belong to the Eti State Government and 60% to belong to the Petuanan area. This agreement for marine products and plantations is made based on the ngase system. The Ngase system is a form of cooperation between land owners and workers which is carried out at harvest time. However, in practice, this agreement for marine and plantation products does not go according to what has been agreed. The parent country does not get the pre-agreed profit sharing. Petuanan countries do not carry out their obligations to the detriment of the parent country. This study aims to determine the consequences of default in this profit-sharing agreement as well as to examine the settlement of disputes between the Eti Government and the Petuanan area. The type of research used is sociolegal research, which is a combination research method between doctrinal law research methods and empirical legal research methods. The accountability carried out by the petuanan area is the fulfillment of achievements. Settlement of disputes between the petuanan area and the government of Negeri Eti is through non-litigation and litigation channels.</i></p>

A. INTRODUCTION

Indonesia is a country that has enormous natural potential. According to the Food and Agricultural Organization (FAO), the sustainable potential of Indonesia's marine capture fisheries resources reaches around 6.5 million tons per year with a utilization rate of 5.71 tons per year.¹ In addition, the agricultural and plantation sectors also have great potential.

¹ Kompas.com, Potensi Sumber Daya Alam Lautan, <https://www.kompas.com/skola/read/2020/05/29/090000069/potensi-sumber-daya-alam-lautan>. accessed on 24

Indonesian agricultural and plantation commodities have good potential. In fact, some are worth almost Rp. 1000 trillion in production.² All of this potential, if utilized and managed properly, will bring great benefits to the community, including indigenous peoples in Indonesia.

In Eti Village, which is located in West Seram District, West Seram Regency, an agreement for marine and plantation products sharing is still being carried out between the Petuanan Region and the Eti Village Government as the parent country. The petuanan area or territory is a village or hamlet that is in the territory of the customary village. The hamlets that become the petuanan areas of Negeri Eti as the Parent Country are Osi Island Hamlet, Osi Island Resettlement Hamlet, Upper Kotania Hamlet, Lower Kotania Hamlet, Jaya Bhakti Hamlet, Pelita Jaya Hamlet, Loun Hamlet, Translok Mata Empat Hamlet. The Profit Sharing Agreement with the aim of improving the economic welfare of the people of Eti Country has been implemented from 1979 to 2021.

The agreement for the sharing of marine products and plantations between the Petuanan area and the State Government of Eti Village was agreed to share the profits of marine products and plantations by 40% which would belong to the Eti State Government and 60% to belong to the Petuanan area. This agreement for marine products and plantations is made based on the ngase system. The Ngase system is a form of cooperation between land owners and workers which is carried out at harvest time.

The distribution of the results referred to as the object of the Ngase System is like annual crops such as cloves, nutmeg, besides that the Ngase system also includes fishery products such as fish cages. In this ngase system, petuanan areas provide land to be cultivated or managed by the Eti State government. The results from the harvest in the fisheries and plantation sectors are divided between the petuanan area and the Eti State government with a percentage of 60% for the petuanan area and 40% belonging to the Eti State government.

This ngase system agreement begins when the owner hands over his land to the cultivator and makes an agreement on the owner's land, which is a sign that they have made the agreement. After the harvest of the produce carried out by the workers is complete, then it does not mean that the agreement has been declared terminated, but the profit sharing is still carried out between the owner and the cultivator, the ngase system agreement is declared to have ended which has been carried out by both parties.

Negotiation is a process of trying to reach an agreement with other parties³. What is meant by an agreement is a statement of will between one or more people and another party. What is appropriate is a statement because the will cannot be seen / known to others. Agree which is one of the most important conditions that can be marked by an offer and acceptance in writing, verbally, secretly, and certain symbols⁴. Thus the parties have agreed to bind themselves to the ngase system. As for the qualification requirements, the parties involved in this agreement are representatives from each of the petuanan areas and the government of the State of Eti who are competent to carry out legal actions.

However, in practice, this agreement for marine and plantation products does not go according to what has been agreed. The parent country does not get the pre-agreed profit sharing. Petuanan countries do not carry out their obligations to the detriment of the parent country. Therefore, the authors raise the following issues: 1). What is the form of default in the profit-

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² CNBC Indonesia, Ada Harta Karun DI Kebun RI nilainya hampir 1000 T, <https://www.cnbcindonesia.com/market/20210929145345-17-280126/ada-harta-karun-di-kebun-ri-nilainya-hampir-rp-1000t> accessed on 24 Oktober 2021

³ Sopamena, R. F. (2021). Kekuatan Hukum MoU Dari Segi Hukum Perjanjian. *Batulis Civil Law Review*, 2(1), 1-15.

⁴ Hetharie, Y. (2019). Perjanjian Nominee sebagai Sarana Penguasaan Hak Milik atas Tanah oleh Warga Negara Asing (WNA) Menurut Kitab Undang-Undang Hukum Perdata. *Sasi*, 25(1), 27-36.

sharing agreement between the Eti State Government and the petuanan areas. 2). How to solve the default problem.

B. RESEARCH METHODS

In accordance with the problems and objectives of this research, the type of research used is sociolegal research, which is a combination research method between doctrinal law research methods and empirical legal research methods. Doctrinal research is intended to conduct library research by identifying laws and regulations and collecting other data related to the problem under study. The empirical research is intended to identify the default in the profit-sharing agreement between the Petuanan Region and the Parent Country.

C. RESULTS AND DISCUSSION

1. Legal Consequences of Default

According to R Subekti, in general, the rights and obligations born of the engagement are fulfilled by the parties, both the debtor and the creditor, but in practice sometimes the creditor does not fulfill his obligations and this is what is called "default", the word default. Derived from the Dutch language which means "bad performance" besides that, default is often also said to be negligent or negligent, breaking a promise, or breaking an agreement, if the debtor does or does something that should not be done.⁵

In the implementation of an agreement, the principle of binding force is sometimes difficult to implement if there is a change in circumstances, and these changes greatly affect the ability of the parties bound in the agreement to fulfill their achievements⁶. If one of the parties does not carry out what was agreed upon, or more clearly what is the obligation according to the agreement they made, it is said that the party is in default.⁷

The forms of default are divided into three, namely:

- 1) Fulfilling the achievement but not on time, in other words, late for the achievement, meaning that even if the achievement is carried out or given, but it is not in accordance with the time of submission in the engagement, such an achievement is also called negligence
- 2) Not meeting the achievement, meaning that the achievement is not only late but also can no longer be carried out, this kind of thing is caused because:
 - a) Fulfillment of achievements is no longer possible because the goods have been destroyed.
 - b) Achievements are then useless, because the time of submission has a very important meaning. For example, making a payment for a Production Sharing Agreement, if it does not pay before what was agreed, then the delivery then has no meaning anymore.
 - c) Fulfilling Achievements but not fully, meaning that achievements are given, but not as they should be, for example achievements regarding the delivery of contract payments, but not according to what was agreed upon.
 - d) carry out but not as promised.

The consequences of default are divided into 4, namely:

- 1) The creditor remains entitled to the fulfillment of the engagement if that right is still possible.

⁵ Setiawan, I. K. O. (2016). *Hukum Perikatan*. Jakarta: Sinar Grafika, p. 19.

⁶ Tjoanda, M., Hetharie, Y., Pariela, M. V. G., & Sopamena, R. F. (2021). Covid-19 sebagai Bentuk Overmacht dan Akibat Hukumnya Terhadap Pelaksanaan Perjanjian Kredit. *SASI*, 27(1), 93-101.

⁷ Pariela, M. V. G. (2017). Wanprestasi dalam Perjanjian Waralaba. *Sasi*, 23(1), 35-45.

- 2) Creditors also have the right to compensation, both simultaneously with the fulfillment of achievements and in return for the fulfillment of achievements.
- 3) There is a default, then Overmacht does not have the power to release the debtor.
- 4) In an engagement that is born from a reciprocal contract, the default of the first party gives the other party the right to request the cancellation of the contract by the judge, so that the plaintiff is released from his obligations, in this contract cancellation lawsuit, compensation can also be requested.

The occurrence of a default causes the other party (the debtor) to be harmed, thus the claims that can be made by the aggrieved party are cancellation and or fulfillment of the contract. If the possibilities of the two points are described further, then the possible claims are:⁸

- 1) Contract cancellation only.
- 2) The cancellation of the contract is accompanied by a claim for compensation.
- 3) Contract fulfillment only
- 4) Fulfillment of the contract accompanied by a claim for compensation.

2. Settlement of Default Disputes in Profit Sharing Agreements According to Positive Law

According to Article 6 paragraph (1) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it is stated that civil disputes or differences of opinion can be resolved by the parties through alternative dispute resolutions based on good faith with the exclusion of litigation in the District Court. In Indonesian law, it is known that there are 2 ways of resolving disputes, default, namely through non-litigation and litigation. Dispute resolution through non-litigation is the settlement of legal cases carried out outside the court. Meanwhile, dispute resolution through litigation is an effort to resolve disputes through the courts. Dispute resolution efforts that are more often used in resolving default disputes are settlement efforts through non-litigation channels, namely by deliberation and consensus. Deliberation for consensus is a discussion carried out by the parties together to reach an agreed decision.

Mediation is intervention in a dispute by a third party (mediator) that is acceptable, impartial and neutral and helps the disputing parties reach an agreement voluntarily on the issues in dispute. According to Rachmadi Usman, mediation is a way of resolving disputes outside the court through negotiations involving a third party (mediator) who is neutral and does not take sides with the disputing parties and their presence is accepted by the disputing parties.⁹

The mediator acts as a facilitator. This shows that the task of the mediator is only to assist the disputing parties in solving problems and does not have the authority to make decisions. The mediator is domiciled to assist the parties to reach an agreement that can only be decided by the disputing parties. The mediator does not have the power to coerce, but is obliged to bring the disputing parties together. The mediator must be able to create conducive conditions that can guarantee the creation of a compromise between the disputing parties to obtain mutually beneficial results.

Based on the results of the study, it is known that the form of default carried out by the Petuanan area, such as experiencing late payments and not fulfilling achievements, will give a warning letter in the form of a summons to the people of the Petuanan area, but if the warning letter is ignored and the Petuanan area does not have good faith in solving the problem. then the Government of the State of Eti seeks to resolve the problem by deliberation and consensus

⁸ Miru, A., & Yodo, S. (2011). *Hukum Perlindungan Konsumen*. Jakarta: Raja Grafindo Persada, p. 74-75

⁹ <https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-artikel/13628/Arbitrase-Dan-Alternatif-Penyelesaian-Sengketa.html>

with the petuanan area.¹⁰

If the mediation step does not produce results, then the Eti State government can take legal steps through a claim for compensation on the basis of default at the District Court. When one of the parties has made a Default, it is possible for a loss to occur in the event, as explained in Article 1243 of the Civil Code which details the loss (in a broad sense) into three categories as follows:

- 1) fee,
- 2) loss (in the narrow sense), and
- 3) interest.

What is meant by cost is any cost that must be incurred in real terms by the aggrieved party, in this case as a result of an act of default¹¹. The costs referred to here are costs that have been clearly incurred by the parent country due to default on the part of the petuanan. Meanwhile, what is meant by "loss" (in a narrow sense) is a state of decline or decrease in the value of the creditor's wealth as a result of a default by the debtor. In other words, loss (in a narrow sense) is the value of the parent country's wealth that is reduced due to default.

While the last one is interest, which is a profit that should be obtained but cannot be obtained by the parent country due to default on the part of the debtor. Thus, the meaning of interest in Article 1243 becomes broader and is not only meant as interest in the everyday sense, which is only determined by determining the percentage of the principal debt.

Losses are divided into two forms, namely material losses and immaterial losses. Material losses are losses that can be measured or valued in money. In contrast to immaterial losses that cannot be measured in exact amounts. The law only regulates compensation for material losses. The possibility occurs that the loss causes immaterial, intangible, moral, ideal, cannot be valued in money, uneconomical losses, namely in the form of bodily pain, mental suffering, fear, and so on.

3. Settlement of Default Disputes in Profit Sharing Agreements according to the Eti State Customary Court

Whether or not state or national law recognizes customary justice, in fact the existence of customary courts in Indonesia has been going on for a long time, maintained for generations by local communities and or indigenous peoples. Law and society, have been united, rooted, and not easily separated since before the republic was born. Facts in the field are often found that the jurisdiction of customary courts has its own character that distinguishes it from national courts, because customary courts can include public, private, and or a combination of both in one trial. In practice, it can take place very informally, with just a mediation mechanism, with the possibility of room for negotiation over the process. That's because, defining or even determining the jurisdiction of customary courts, especially regarding whether private or public affairs, is not just an easy matter, or even impossible or dangerous in the sense of being able to bury the existence of the customary court itself. Customary courts, which utilize the law and or the customary law system, actually have their own system logic and principles.

One of the fundamental elements that can be found in this study is the question of the "source of authority" in the administration of customary justice, which can have three variants:

- 1) The source of authority for administering customary justice comes from the local customary law system, in the sense that there is affirmation from and by the authoritative structure at the indigenous community level;

¹⁰ Interview with Iknesius Nunuela as Head of Badan Perencanaan Daerah

¹¹ Fuady, M. (1999). *Hukum Kontrak, Dari Sudut Pandang Hukum Bisnis*, Bandung: Citra Aditya Bakti, p. 138.

- 2) The source of authority for administering customary justice comes from non-local customary law systems, which can come from local governments (Governor, Regent, Village Head, etc.).
- 3) It is possible that the source of authority comes from a combination of the two, through a certain dialogue space that gives birth to an agreement on the administration of certain customary courts.

The last two sources of authority are unavoidable, because of the consequences of Indonesia, which has a historical relationship between national law and customary law, which also brings together formal and informal political structures. These relations are bound in a 'political contract', which is called the constitution of a country. In fact, the constitution has also experienced a number of dynamics of change, so that in seeing how the relationship between the state legal system and the local legal system or customary law is, it is also necessary to understand how the constitution of a country actually regulates or determines this relationship. The constitution as the basic norm that forms the basis of law and policy to what extent these relationships are regulated, so that the study can get a better picture of the context of the right norm.

The Eti State customary court resolves problems that occur between the community and the community or the community and the government through mediation or deliberation. The Eti District Court in deciding a rule of law must look at the social dynamics of the people of the State. In that case, the legal protection for the government of the State of Eti to the petuanan areas in dealing with the consequences of default losses, among others:

- 1) Giving a verbal or written warning to a petuanan area that has defaulted, the state government can issue a verbal or written warning to a petuanan area, paving the way for both parties to agree on the agreement that has been implemented.
- 2) Conducting deliberation to the petuanan area in customary law is one way to do it if there is a problem, then the effort or method taken is to conduct deliberation. This is based on a customary law that has occurred in customary law communities. Deliberation is one of the alternative ways that land owners can do in preventing losses due to default, this is based on deliberation so that both parties, land owners and cultivators can sit together in solving problems. With the deliberation carried out, the parties can make an agreement regarding the agreement they have agreed upon. The deliberation held by both parties brought together the village head, witnesses and the sub-district head to jointly look at the problem of default between the State Government and the petuanan area.

D. CONCLUSION

Default committed by the local government against the Eti State Government resulted in losses for the Eti State Government. The accountability carried out by the petuanan area is the fulfillment of achievements. The settlement of disputes between the petuanan area and the government of Negeri Eti is through non-litigation channels. Mediation is carried out for default actions by way of deliberation to reach consensus, but when the litigation route does not reach consensus, litigation will be taken through the courts.

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