

## Production Sharing Agreement for Agricultural Land Encumbered with Liens in Southeast Sulawesi Indonesia

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### Abstract

The aim of the research is to attempt to analyze the form of production sharing agreement for agricultural land which is encumbered with liens which is widely applied by agricultural communities so that a model of production sharing agreement can be identified that is in accordance with the characteristics of agricultural communities in Southeast Sulawesi, Indonesia. The method used is a qualitative descriptive research type with an empirical normative approach and using secondary data. The research results show that the form of agricultural land production sharing agreement which is burdened with liens which is widely applied by the agricultural community of Southeast Sulawesi is mostly done orally between the parties based on customary law. Understanding of agreements made following the traditions, beliefs and customs of the local community which include the use of agricultural or cultivated land, distribution of results, time and duration of the agreement, obligations and responsibilities of the parties, dispute resolution, and protection of honor and customs. The ideal form of an agricultural land production sharing agreement which is encumbered with a lien is to protect the interests of the parties, the form of the agreement should be in writing before and ratified by an authorized official and the contents of the agreement should include a mechanism for sharing the results or profits from the agricultural business, the time period includes the period during which the agricultural business will take place. and production sharing agreement, payment of profit sharing, responsibility of the parties, settlement if one party does not fulfill its obligations, and termination of the agreement.

**Keywords:** Agreement, Agricultural Land, Pawn.

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### INTRODUCTION

Utilizing land for the greatest prosperity of the people is one of the sine quanon conditions (absolute requirements) for the state to be declared successful in achieving its state goals. In order to achieve this goal, government intervention is required as confirmed in Article 33 paragraph (3) of the 1945 Constitution that land is controlled by the state and is intended for the welfare of the community.

As various regulations are made by the government regarding the management and use of land, the role of land becomes increasingly important in line with the increasing demand for land. The need for land is not only related to land management but also related to the benefits that can be obtained from control in the form of land ownership. It has become a phenomenon that land often becomes an asset used by interested parties who, in

urgent situations, are trying to get large amounts of money quickly.

In communities whose economies are classified as middle to lower class, it is still difficult to obtain loans from banking institutions which are small, consumerist and fast. This difficulty is caused by banking institutions strictly applying the prudential principle in disbursing credit using procedures that are quite complicated, requiring time and guaranteeing certain goods. The above causes indigenous people, especially the lower middle class, to continue lending funds to individuals by mortgaging their land to the money borrower. Apart from that, the method of mortgaging the land was chosen to obtain loan funds because there was no certainty regarding the time for repayment of the loan money.

One of the provisions for land pawning in society is that the land as the object of the pawn will be

returned to the owner after the pawn loan is completed (paid off) or the pawnbroker gets his money back. It is not uncommon for this to take a long time to be resolved if the pawning party does not have other assets that can be used to pay off the pawned debt. Juridically, the provisions regarding the obligation to return the mortgaged land to the pawnbroker without any ransom after 7 (seven) years of possession by the pawnholder have been regulated in the provisions of Article 7 paragraph (1) of Law Number 56 Prp of 1960. Philosophically the determination this time on the grounds that if the land worked on by the pawnbroker has enjoyed a lot of results that exceed the amount of receivables given to the pledgor. However, in reality, the practice of land pawning which has been going on for years is still common in society.

Community groups who pawn after using the money from the land pawn have difficulty returning the money to the pawnbroker because it is not uncommon for the land that has been pawned to be the only land they own, so that after the land is pawned they no longer have a source of livelihood, especially for who depend on farming for their living. Finally, there are those who then become farmers or laborers working on their own land (which has been controlled by the pawn holder). The relationship that exists is realized in the form of an agreement to share the results of agricultural land.

The basic idea of a production sharing agreement is that the land owner wants to collect profits from his land or wants to use his land, but the land owner does not want or cannot work on the land himself [1]. Agricultural land production sharing agreements are acts of legal relations regulated by customary law. Production Sharing Agreement is a form of agreement between a person who has the right to a plot of agricultural land from another person called a cultivator, based on the agreement where the cultivator is allowed to cultivate the land in question with the distribution of the results between the cultivator and those entitled to the land according to a mutually agreed balance [2]. The contents of the agreement which includes the rights and obligations of each party are also determined by themselves and the proceeds from the land exploitation will later be divided according to the agreement that has been mutually agreed upon, the distribution is half each for the cultivator and for the land owner [3].

<sup>1</sup> [http://id.wikipedia.org/wiki/Hak\\_atas\\_tanah](http://id.wikipedia.org/wiki/Hak_atas_tanah), Akses Tanggal 20 April 2023.

<sup>2</sup> Boedi Harsono, 1997, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaaan*, Jakarta: Djambatan, Hlm. 116.

<sup>3</sup> R. Van Djik, 2006, *Pengantar Hukum Adat Indonesia*, Bandung: Mandar Maju, Hlm. 52.

<sup>4</sup> Surya Adra, Agus Sudaryanto, 2011, *Gadai Tanah Pertanian Setelah Berlakunya UU Nomor 56/Prp/1960 di Nagari Tujuh Koto Talago Kabupaten Lima Puluh Kota*, Tesis, Fakultas Hukum Universitas Gadjah Mada,

Research on agricultural land production sharing agreements which are encumbered with liens has been carried out, among others, by Surya Adra entitled *Pawning of Agricultural Land After the Enactment of Law Number 56/Prp/1960 in Nagari Tujuh Koto Talago, Limapuluh Kota Regency*, 2011. The aim of the research is to determine the implementation of liens. tribal agricultural land in Nagari Tujuh Koto Talago, Limapuluh Kota Regency in accordance with the enactment of Article 7 of Law Number 56/Prp/1960. The results of research on the implementation of a written pawn with the approval of members of the jurai, headman and witnesses are limited to pawning land within the same tribal area, provided that the pawn is redeemed in full for the original payment. New pawn redemptions may be made for a minimum period of two years. This happens because pawning of people's agricultural land is not in accordance with the rules of Article 7 of Law Number 56/Prp/1960 due to people's ignorance of these rules [4]. Then research from Yultiar Rahmat Yunus and friends entitled *Implementation of the Law Regarding Pawn Agreements on Agricultural Land in Pilohayanga Village, Telaga District, Gorontalo Regency*, 2023. The aim of this research is to examine the implementation of pawn agreements in Pilohayanga Village, Telaga District, Gorontalo Regency and the legal consequences of the agreement pledging agricultural land after the pawning period ends based on Law Number 56 of 1960 as well as obstacles in implementing agricultural land pawning agreements in Pilohayanga Village, Telaga District, Gorontalo Regency. The results of the research are the consequences or legal consequences that arise if the agreement to pawn agricultural land for more than 7 years in Pilohayanga Village continues until the land can be redeemed, but there are also some people who sell part of their agricultural land to redeem their debts [5]. When compared with the two studies above, the research that the author conducted is also related to agricultural pawning by referring to applicable regulations but has a difference, namely that the author's research focuses more on production sharing agreements on mortgaged agricultural land.

The practice of agricultural land production sharing agreements is also carried out by people in various regions of Southeast Sulawesi, especially those engaged in the agricultural and trade sectors. The need

Jogjakarta, <https://etd.repository.ugm.ac.id/penelitian/detail/53734>., akses tanggal 9 Oktober 2023.

<sup>5</sup> Yultiar Rahmat Yunus, Nirwan Junus, Julius T. Mandjo, 2023, *Implementasi Hukum Tentang Perjanjian Gadai Tanah Pertanian Di Desa Pilohayanga Kecamatan Telaga Kabupaten Gorontalo*, *Jurnal Ilmu Sosial, Humaniora dan Seni (JISHS)* Vol. 1 No. 2 Januari - Juni 2023, Hlm. 204, <https://doi.org/10.47233/jishs.v1i2.711>., akses tanggal 14 Oktober 2023.

for funds often results in land pledging and production sharing agreements with the pledgor. The condition of the community, where the majority of their livelihoods are in the agricultural sector, has developed a model of pawning agricultural land with a profit sharing system in agricultural communities in Southeast Sulawesi. Therefore, it raises a question as to what the actual form of agricultural land production sharing agreement which is burdened with liens is, which is widely developed and implemented by agricultural communities in Southeast Sulawesi. The presence of various capital institutions in the regions has not dampened people's interest in using this land pawning model before every agricultural crop planting activity due to the need for capital. For this reason, researchers want to examine the implementation of agricultural land production sharing agreements between land owners and pledgors on land that has been encumbered by lien rights in Southeast Sulawesi. The research was carried out normatively which emphasizes statutory regulations to study, analyze, regarding models of agricultural land production sharing agreements which are encumbered with liens using secondary data in the form of statutory regulations and customary laws that apply in society which will then be analyzed descriptively qualitatively.

### Research Problem

1. What form of agricultural land production sharing agreement is burdened with liens that is widely applied by agricultural communities ?
2. What is the ideal form of an agricultural land production sharing agreement that is burdened with lien rights to protect the interests of the parties ?

### Purpose of Research

1. To find out the form of agricultural land production sharing agreement which is burdened with liens which is widely applied by agricultural communities.
2. To analyze the ideal form of agricultural land production sharing agreement which is burdened with lien rights to protect the interests of the parties.

## LITERATUR REVIEW

### 1. Profit Sharing Agreement

Land exploitation agreements with profit sharing are generally regulated in customary law which is based on an agreement between the land owner and the sharecropper in exchange for the results previously agreed upon by both parties. Regions in Indonesia have different terms for production sharing agreements such

as Perdui (Minangkabau), Toyo (Minahasa), Tesang (South Sulawesi), Maro (1:1), Mertelu (1:2), (Central Java) and Mandu (Bali) [6].

According to traditional law experts, production sharing agreements have various meanings, namely :

- 1) A production sharing agreement (Deelbouw Overeenkomst) according to Djaren Saragih is a legal relationship between a person who has the right to land and another (second) party, where this second party is allowed to cultivate the land in question provided that the proceeds from processing the land are divided in half between the people who are entitled to it. land and those who cultivate that land [7].
- 2) According to Hilman Hadikusuma, production sharing agreements are a general principle in customary law. If someone cultivates someone else's land with or without approval, they are obliged to hand over part of the proceeds of the land to the land owner. This principle applies not only to empty land, field land, garden land, or rice fields, but also to water land, fisheries and livestock [8].
- 3) Production sharing agreement according to Boedi Harsono is a form of agreement between a person who has the right to a plot of agricultural land and another person called a cultivator, based on the agreement the cultivator is allowed to cultivate the land by dividing the results between the cultivators and is entitled to the land according to the balance that has been determined. mutually agreed, for example each gets a half (maro) or the cultivator gets a third (mertelu) [9].

### 2. Agricultural Land

Law Number 56 Prp of 1960 concerning Determining the Area of Agricultural Land does not provide an explanation of what is meant by agricultural land. The definition of agricultural land is contained in the Joint Instruction of the Minister of Home Affairs and Regional Autonomy with the Minister of Agrarian Affairs dated January 5 1961 Number Secretariat 9/1/12 concerning the Definition of Agricultural Land that agricultural land is also all plantation land, ponds for fisheries, land for grazing livestock, land thickets of former fields and forests which are a place of livelihood for those who are entitled to it.

In general, agricultural land is all land that people have rights to, apart from land for housing and companies. If a house stands on a piece of land where

<sup>6</sup> Ishak, 2021, *Dinamika Hukum Adat (Perjanjian Bagi Hasil Usaha Tanah Pertanian)*, Hlm. 1, <https://rp2u.usk.ac.id/index.php/welcome/prosesDownload/2558/2>, akses tanggal 9 Oktober 2023.

<sup>7</sup> Djaren Saragih, 1984, *Pengantar Hukum Adat Indonesia*, Bandung:Tersito, Hlm. 97.

<sup>8</sup> Hilman Hadikusuma, 1990, *Hukum Perjanjian Adat*, Bandung:Citra Aditya Bakti, Hlm. 142.

<sup>9</sup> Boedi Harsono, 1997, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaan*, Jakarta:Djambatan, Hlm. 118.

someone lives, then local opinion determines how much is considered a house yard and how much is agricultural land [10].

### 1. Lien Rights

Land lien rights are one of the temporary land rights as regulated in Article 53 of Law Number 5 of 1960 concerning Basic Agrarian Principles. According to Boedi Harsono, pawning is a legal relationship between a person and land belonging to another person, who has received pawn money from him. As long as the pledge money has not been returned, the land is controlled by the pawn holder. During that time, all land rights become the rights of the pawn holder. The return of the mortgage money, or what is commonly called redemption, depends on the willingness and ability of the land owner who mortgaged it. Many mortgages last for years, even decades because the land owner has not been able to make redemption [11].

## RESULTS AND DISCUSSION

### Form of Production Sharing Agreement for Agricultural Land Encumbered with Liens, Which is Widely Implemented by the Agricultural Community of Southeast Sulawesi

According to statistical data for 2022, the potential for productive agricultural land in Southeast Sulawesi is 2,858,277 ha, consisting of functional rice fields of 117 ha and non-rice fields (fields/dry land) of 734,267 ha, which are used for food crops and plantations [12]. These lands are cultivated by the land owners themselves and some also use laborers. In its development, it is not uncommon for land owners to experience economic difficulties in being able to cultivate their land, so they enter into an agreement to share the results of agricultural land with other parties who will lend capital to the land owner.

According to K. Wantjik Saleh, production sharing agreements were initially subject to customary law provisions. The rights and obligations of each party, namely the land owner and the cultivator, are determined on the basis of an agreement between the two of them, and are never regulated in writing, there is no need to make them in front of traditional officials (heads of legal associations). This can give rise to legal doubts and disputes between land owners and tenants. Profit sharing itself comes from customary law, which is usually also called the right to cultivate, namely the right of a person to cultivate agriculture on land belonging to another person with an agreement that the results will be shared between the two parties based on agreement, with the consideration that the distribution of the results of the land between the owners and cultivating is carried out on

a fair basis and so that a proper legal position is guaranteed for the cultivator by emphasizing the rights and obligations of both the cultivator and the owner [13].

So far, production sharing agreements have mostly been made verbally between the parties based on customary law. Understanding of agreements made following the traditions, beliefs and customs of the local community which include, among others:

1. Regarding land use, customary law communities have a communal system in the ownership and management of agricultural land. The production sharing agreement will regulate who has the right to use the land, how to use the land, and when is the right time to farm.
2. Regarding the distribution of results, the agreement will determine how the agricultural results will be divided between the land owner and the farmer/cultivator. Profit sharing can be fixed or based on certain harvest results.
3. Regarding the time and duration of the agreement, the agreement will state the validity period of the agreement, for example one planting season, several years, or it will last indefinitely as long as certain conditions are met.
4. Regarding the obligations and responsibilities of the parties, the agreement will determine the responsibilities of each party regarding maintenance of land, seeds, fertilizer and other work related to agriculture.
5. Regarding dispute resolution, the agreement will include a dispute resolution mechanism if there is a disagreement or dispute between the parties involved in the agreement.
6. Regarding the protection of honor and customs. Customary law tends to contain strong elements of honor and ethics, so that agricultural land production sharing agreements can also reflect the social and cultural values that are highly upheld in that society.

Apart from being based on customary law, the Indonesian Civil Code also regulates production sharing agreements which are classified as rental contracts or production sharing contracts which include:

1. Rental Contract (Cultivation) regulated in Articles 1224 to Article 1243 of the Civil Code. In a rental contract, the land owner (cultivator) rents out his land to another party (tenant or user) to cultivate or plant in exchange for compensation in the form of money or certain agricultural products. Other things regulated in

<sup>10</sup> Op.Cit, Boedi Harsono, Hlm. 372.

<sup>11</sup> Boedi Harsono, 2002, Hukum Agraria Indonesia, Jilid 1, Jakarta:Djambatan, Hlm. 394.

<sup>12</sup> JGS, 2022, Gubernur Ali Mazi Bersama Menteri Pertanian RI Penanaman Padi Serentak di Konsel,

<https://sgj10.com/gubernur-ali-mazi-bersama-menteri-pertanian-ri-penanaman-padi-serentak-di-konsel>, akses tanggal 20 Juni 2023.

<sup>13</sup> K. Wantjik Saleh, 1987, Hak anda Atas Tanah, Jakarta:Ghalia Indonesia, Hlm. 51.

the rental contract are an agreement regarding the rental period, an agreement regarding the amount and method of rent payment, the tenant's rights and obligations regarding land maintenance, and the land owner's rights regarding the use of agricultural products or compensation in other forms.

2. Production Sharing Contracts regulated in Articles 1244 to 1254 of the Civil Code. In a production sharing contract, the land owner and another party (usually a farmer or cultivator) agree to share the results of the farm or garden planted on the land. The amount of output that will be received by each party has been determined, which is usually accompanied by adjustments to the condition of the agricultural produce.

However, in some areas in Indonesia, especially in rural areas or communities that apply customary law, there may also be agricultural land production sharing agreements that refer more to local customary law rules and practices.

According to Ter Haar, the nature or characteristics of agricultural land production sharing agreements are:

- a) For the production sharing agreement to be valid, it does not require assistance from the village head;
- b) To form this production sharing agreement, a deed is also not required;
- c) Production sharing agreements according to customary law can be made by land owners, pawn buyers, annual buyers, relatives' land users, and office land holders;
- d) There are no restrictions regarding who can be a profit sharer or can be a cultivator [14].

Apart from ordinary production sharing agreements, some production sharing agreements also have lien rights attached to the agricultural land on which the production will be shared. A production sharing agreement for agricultural land which is encumbered with a lien is an agreement between the owner of the agricultural land (first party/pledger) and a second party who provides a loan or capital for an agricultural business using agricultural land as collateral (second party/pawnholder). In this agreement, the second party has a lien on the agricultural land as collateral for the loan provided.

Agricultural land production sharing agreements that are encumbered with lien rights in Indonesia usually involve two parties, namely the land owner (first party) and the party providing the loan using

the first party's land as collateral (second party). Making this agreement is the same as making an agricultural land production sharing agreement, the only difference being that there is a pawnbroker's land which is the object of the cultivated land. In a production sharing agreement that is burdened with a lien, usually the second party will receive a portion of the crop or profits in lieu of a loan or interest given on the mortgaged land. The second party must also maintain and protect the lien and be responsible for its security.

### **Ideal Form of Production Sharing Agreement for Agricultural Land Encumbered with Liens to Protect the Interests of the Parties**

Many agricultural land production sharing agreements are carried out in agricultural communities for the main reason that the need for funds must be met quickly. Based on customary law rules, the balance of the distribution of the results is determined by agreement of both parties, which is generally not profitable for the cultivator [15], especially if the land to be worked on, the proceeds of which will be shared, is land belonging to the cultivator who is mortgaged to the pawnbroker and the cultivator who will later work on it himself. In short, the cultivator works on his own land which has been mortgaged where the proceeds will be divided according to the agreement with the pawnbroker.

Law Number 2 of 1960 in Article 2 paragraph (1) states that those who are permitted to become cultivators in a production-sharing agreement are only farmers, whose land they cultivate, whether they own it or obtain it by renting, by a production-sharing agreement or otherwise. Others, will not be more than about 3 ha. The form of production sharing agreement which is burdened with lien rights is often done verbally due to familial factors or the relationship between the parties which is considered trustworthy. However, to protect the parties, it should be in writing as regulated in Article 3 of Law Number 2 of 1960 that the production sharing agreement must be made by the owner and cultivator themselves in writing before the Head of the Village where the land in question is located witnessed by two witnesses from each party (owner and cultivator). The agreement that has been made is then ratified by the sub-district head.

Production sharing agreements should be well formatted in a form that can provide protection without harming just one party, namely:

1. The form of the agreement must be in writing before and ratified by an authorized official.
2. The contents of the agreement must include: 1) a mechanism for sharing results or profits from agricultural businesses between the first party

<sup>14</sup> B. Ter Haar, 1960, *Asas-Asas dan Susunan Hukum Adat*, Jakarta: Pradnya Pamarmita, Hlm. 37-38.

<sup>15</sup> Rizka Nurmadani, 2016, *Pelaksanaan Perjanjian Bagi Hasil Tanah Pertanian Antara Pemilik Tanah dan*

*Penggarap di Kabupaten Sleman*, Fakultas Hukum Universitas Atmajaya, Hlm. 3

and the second party. Agricultural products will be divided according to the agreement and the second party will receive a portion of the results or profits in return for the loan provided; 2) The time period includes the period during which the agricultural business and the production sharing agreement will take place; 3) Profit sharing payments which are usually made periodically according to agricultural output; 4) The responsibilities of the parties are that the first party as the land owner will manage and care for the plants well and the second party will provide loans to the first party and maintain and protect the lien rights on agricultural land as collateral for the loans provided; 5) Agricultural products can be successful and often fail, so the agreement must also regulate provisions if one party fails to fulfill its obligations using a consensus resolution mechanism; and 6) The agreement ends if the specified time period has been reached or one of the parties violates the contents of the agreement.

An ideal agricultural land production sharing agreement must be designed carefully and fairly so as not to harm either party, especially the farmer or land owner as the party in the weakest position. The principle that needs to be considered in the agreement so that it is fairer and more profitable for the farmer or land owner is that the agreement must be transparent and clear in describing all matters related to the distribution of results, time period, obligations and rights of both parties. All information must be available and properly understood by the parties before signing the agreement.

By taking into account these principles, agricultural land production sharing agreements can be designed to be fairer and more profitable for farmers or land owners. This will help create a sustainable and mutually beneficial cooperative relationship between both parties.

## Closing

## CONCLUSION

1. The form of agricultural land production sharing agreement which is encumbered with lien rights which is widely applied by the agricultural community of Southeast Sulawesi is mostly carried out orally between the parties based on customary law. Understanding of agreements made following the traditions, beliefs and customs of the local community which include the use of agricultural or cultivated land, distribution of results, time and duration of the agreement, obligations and responsibilities of the parties, dispute resolution, and protection of honor and customs.
2. The ideal form of a production sharing agreement for agricultural land which is

encumbered with a lien is to protect the interests of the parties, so the production sharing agreement should be well formatted with a model that can provide protection without harming just one party, namely the form of the agreement should be in writing before and ratified by an authorized official. and the contents of the agreement must include the mechanism for sharing results or profits from the agricultural business, the time period including the period for which the agricultural business will run and the production sharing agreement, payment of profit sharing, responsibilities of the parties, settlement if one party does not fulfill its obligations, and the end of the agreement.

## Recommendation

Efforts should be made to increase understanding and legal knowledge of the agricultural community regarding agricultural land production sharing agreements which are encumbered with liens because this will determine the fulfillment of a sense of justice in binding oneself in the agreement and provide benefits to the parties, especially the continuation of the next agreement.

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