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Breach of Contract Settlement of Quasi Equity Agreement Between Investor With Indigenous People Soa Nacikit Migodo at Buru Island

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Abstract
Indigenous lands belonging to indigenous peoples are regulated by their respective customary laws. Land is seen as something very valuable and must be defended by the indigenous people. Customary land is land belonging to the customary law community unit. Under the system of land ownership according to customary law, indigenous people can gain ownership over a piece of land by clearing forests, inheriting land, receiving land as a gift, exchanging or granting land with or to another, or expiry/verjaring. This research is a sociological legal research, a legal research method that uses empirical facts taken from human behavior, both verbal behavior obtained from interviews and real behavior through direct observation. Empirical research is also used to observe the results of human behavior in the form of physical and archives. In the profit-sharing agreement between PT. Panbers Jaya and the Soa Nacikit indigenous people, PT. Panbers Jaya was in default because it did not carry out its obligations according to the agreement. After deliberation between the parties, the agreed-upon settlement is that PT. Panbers Jaya will give the agreed rights within the new timeframe.
Keywords: Settlement; Default; Agreement; Profit Sharing.

Introduction

Customary lands that belong to indigenous peoples are regulated by their respective customary laws. Land is greatly valued by indigenous people and must be maintained and cared for.[1] *Customary land* is land belonging to a customary law community unit.[2] According to customary law, indigenous people can gain

[1] Agus Suhariono and others, 'Sistem Publikasi Pendaftaran Tanah (Kajian Sistem Publikasi Negatif Bertendensi Positif)' (2022) 5 Notaire [17].

[2] Mochamad Kevin Romadhona, Bambang Sugeng Ariadi Subagyono and Dwi Agustin, 'Examining Sustainability Dimension in Corporate Social Responsibility of ExxonMobil Cepu: An Overview of Socio-Cultural and Economic Aspects' (2022) 3 Journal of Social Development Studies.[130].

ownership over a piece of land by clearing forests, inheriting land, receiving land as a gift, exchanging or granting land with or to another, or expiry/verjaring.[3] There are two factors that cause land to be very important in customary law, namely, (1) because of its nature as a relatively fixed asset, it is the only asset that, despite possible changes in its condition, is likely to remain valuable and sometimes become more profitable.[4]

Land governed by customary law is land that is common property or by law (beschikkingsrecht).[5] In this case, each member can make the land able to work by clearing the land first and if they work on the land continuously then the land can become individual property rights.[6] In the view of customary law, according to Herman Soesang Obeng, land and humans have a close relationship, and within this framework of thought, the relationship between humans and land is a master relationship which more or less contains elements of magical (mystical) powers).[7]

The Soa Nacikit (Migodo) Indigenous Peoples own customary land with an area of 249.5 ha, located in the Waefata–Wabolen location, Waigeren Village, Lolong Guba sub-district, Buru Regency, and non-eucalyptus land with an area of approximately 33.9 ha, which is filled with primarily with native plants and large cocoa trees that can be harvested for lumber. In December 2013, right in the hamlet of Migodo, Wigeren Village, Lolong Guba District, a consultation with the community agreed to approve the application of PT. Panbers Jaya, a corporation which had previously been engaged with other plots of customary land, in order to build a rubber plantation business. The Soa Nacikit Indigenous People (Migodo), as the customary land owners, and the Director of PT. Panber Jaya entered into a contract regarding the ownership of their customary land and its use and development.

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[3] Iman Sudiyat, *Hukum Adat Sketsa Asas* (Liberty 1981).[9].

[4] Bambang Sugeng Ariadi Subagyono, Zahry Vandawati Chumaida and Mochamad Kevin Romadhona, 'Enforcement of Consumer Rights Through Dispute Settlement Resolution Agency to Improve the Consumer Satisfaction Index In Indonesia' (2022) 37 Yuridika.[673].

[5] Suhariono and others (n 1).

[6] Tampil Anshari Siregar, *Pendaftaran Tanah: Kepastian Hak* (Fakultas Hukum, Universitas Sumatera Utara 2007).[1].

[7] Moch Koesnoe, *Prinsip-Prinsip Hukum Adat Tentang Tanah* (Ubhara Pers 2000).[37].

Some of the key clauses agreed to within the contract between the parties are as follows:

1. The Soa Nacikit (the first party) state that they currently hold customary rights to the customary land located in the Waefata–Wabolen location, Lolong Guba sub-district, Buru Regency, covering an area of 249.5 ha.
2. The Soa Nacikit hereby transfers the rights to the designated customary land to PT. Panbers Jaya (the second party), and the second party hereby declares that it accepts the designated parcel of customary land, to be used as a rubber plantation area.
3. Both parties will have an interest in the rubber plantation business which will be implemented on the first party's customary land, to be divided according to a nucleus–plasma pattern, with each party's rights to be as follows:
   a. Eighty percent of the total land area owned by the first party, equal to 199.6 ha, will be used as the nucleus plantation belonging to the second party.
   b. Twenty percent of total land area owned by first party, or the remainder of the 249.5 ha, equal to 49.9 ha, will become part of the plasma plantation owned by the first party.
4. The first party also gives approval and permission to the second party to apply to the National Land Agency for a Cultivation Right (HGU) certificate on their 199.6 ha of customary land, with the stipulation that after the HGU period expires, the land will be returned to the first party.
5. The parties also require that the tenure of the customary land is 30 years and can be extended based on a mutual agreement, or that at a minimum the tenure of this customary land agreement is the same as the term of the HGU as stipulated in the provisions of the applicable law.

In carrying out the act until the production period is more than 2 years, the company has not realized the obligations in the agreement if the agreement has proven that the company has broken its promise or defaulted and has bad intentions towards the renter and has infringed the law (onrechtmatigdaad) for not paying the rent for the company. results so that the party who rents out feels very loss. Based on the above background, the formulation of the problem in this study is: How is the problem of default by PT. Panbers Jaya against the Soa Nacikit (Migodo) Indigenous People solved in a profit-sharing agreement.

This research is what is called sociological legal research, which is a legal research method that uses empirical facts taken from human behavior, including both verbal statements and observed behaviors during interviews and real-life behavior obtained through direct observation. Empirical research is also used to

observe the results of human behavior in the form of physical and archives.[8]

Default

The word 'default' comes from the Dutch language, which means bad faith. According to the legal dictionary, default is defined as loss, negligence, breach of contract, or not fulfilling one's obligations as set out in the agreement.[9] In other words, default is a condition where, due to negligence or error, the debtor cannot fulfill the contractual duties they agreed to in the contract.[10] Default usually occurs in one of three forms: (1) the party does not carry out their promises at all, (2) the party is late in carrying out their promises, or (3) the party complies with their agreement, but their performance is either poorly done or below standard.[11]

Default has been defined legally in various ways. Marhainis Abdulhay states that a default can occur if the parties who want to excel do not fulfill their obligations.[12] R. Subekti states that default is negligence or non-performance, which can take the form of one of four types: (a) not doing what has been agreed to, (b) carrying out what has been promised, but not in the manner that was agreed to, (c) performing as promised, but after the deadline or too late, or (d) doing something that was prohibited according to the agreement.[13] Yahya Harahap defines a default as an obligation that is not fulfilled in a timely manner or carried out not in accordance with the agreement. So it is a must for the debtor to provide or pay compensation (schadever going), or in the presence of a default by one party, the other party can claim the agreement.[14]

We can also look at two relevant parts of the Civil Code regarding default. Under Article 1238 of the Civil Code, 'the debtor is declared negligent by a warrant, or by a

[8] Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Pustaka Pelajar 2010).[280].
[9] Sudarsono, *Kamus Hukum* (Rineka Cipta 1992).[578].
[10] Nindyo Pramono, *Hukum Komersil* (Pusat Penerbitan UT 2003).[2].
[11] Wirjono Prodjodikoro, *Azas-Azas Hukum Perjanjian* (Sumur Bandung 1973).[44].
[12] Marhainis Abdul Hay, *Hukum Perdata Material* (Pradnya Paramita 2021).[53].
[13] Subekti, *Pokok-Pokok Hukum Perdata* (Intermasa 2002).[36].
[14] M Yahya Harahap, *Segi-Segi Hukum Perjanjian* (Penerbit Alumni 1982).[60].

similar deed, or based on the strength of the engagement itself, i.e., if this engagement results in the debtor being deemed negligent by the passage of the specified time'.[15] Additionally, in Article 1243 of the Civil Code states that 'reimbursement of costs, losses and interest due to the fulfillment of an engagement begins to be mandatory, if the debtor, even though it has been declared negligent, still fails to fulfill the engagement, or something that must be given or can only be given or within the time given that exceeds the time limit, which have been specified'.[16]

In the assessment of the terms of an agreement, simply achieving the agreed-upon goals does not rule out the possibility of discrepancies when compared with the results set out in the initial agreement. The forms of such discrepancies can be classified into three groups:

a. Does not meet the contractual obligations. In this case, the debtor who does not carry out her duties under the contract has not completed her side of the contract.
b. Meets his contractual obligations, but with some minor defect or issue. If the debtor can still be expected to improve their performance to the level required by the contract, then the debtor can be considered to have fulfilled their obligations, but not on time.
c. Meets her contractual obligations, but has made errors or mistakes that cannot be corrected. Debtors who meet their obligations, but have done work incorrectly that cannot be corrected; the debtor is said to not have fulfilled their obligations at all.[17]

Meanwhile, according to Subekti, there are four types of default: (a) not doing what has been agreed to, (b) carrying out what has been promised, but not in the manner that was agreed to, (c) performing as promised, but after the deadline or too late, or (d) doing something that was prohibited according to the agreement.[18]

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[15] *ibid*.
[16] Article 1243 part IV in book III of the Civil Code Alliance.
[17] Rachmat Setiawan, *Pokok-Pokok Hukum Perikatan* (Putra A Bardin 1999).[1].
[18] Subekti (n 13).[45].

There are additionally two distinct types of default, which take the debtor's intentions into consideration. A default can either be intentional, which occurs when the debtor willfully and knowingly does not perform their contractual obligations, or negligent, which occurs when the debtor ignores or fails to prevent actions or attitudes taken by him that will cause harm, and should have known to avoid or prevent such actions or failures.

Form of Profit-Sharing Agreement Between PT. Panbers Jaya and the Soa Nacikit Indigenous People

A profit-sharing agreement concerning a piece of land is an agreement entered into between the land owner and the tenant based on a mutual understanding and expectations. With this agreement, the cultivator, or tenant, is allowed by the owner to carry out a business on the owner's land; the object of the agreement is not land itself, but something that will be used from or on the land.[19]

The profit-sharing agreement between PT. Panbers Jaya and the Soa Nacikit is what is referred to as land lease agreement with profit sharing using the nucleus–plasma pattern. The nucleus–plasma pattern is a type of land-use cooperation method whereby a larger plantation (the 'nucleus') provides centralized services, such as processing or marketing, for a number of smaller parties (the 'plasma') which are usually around the nucleus. In this agreement, the land being used by PT. Panbers Jaya, or about 80% of the total land area of the Soa Nakacit's customary land (an area equal to 199.6 ha) was to be developed as nucleus plantations; the remaining 20% of the total land area owned by Soa Nakacit, or 49.9 ha, was to be developed into plasma plantations belonging to the Soa Nacikit indigenous community as the land owner.[20]

The author conducted an interview with Mr. Isaiahs Nacikit, the head of the Migodo village, regarding profit sharing agreement. He stated:

[19] Dina Sunyowati and others, 'Can Big Data Achieve Environmental Justice?' (2022) 19 Indonesian Journal of International Law.[6].

[20] 'Soa Migodo Head Interview Muhmad Nacikit November 21' (2021).

> Regarding the land lease with our company, we have ordered that the profit-sharing system is 20% to 80%. We as owners of customary land or land cooperate with companies where we will only provide land/land and the tenants cultivate the land according to what business is planted and the results will be divided by 20% to us land owners and 80% to the tenants.[21]

Mr. Yesayas Nacikit also explained that he made the agreement because there was an offer from the tenants, who had previously come to the family and convinced them of the benefits of the process, including compensation costs for plants, cultivation, absorption of labor and profit sharing. Thus, the family decided they must make an agreement with the company so that their land could be managed and produce better results. In addition to Mr. Muhammad Nacikit and Mr. Yesayas Nacikit, the researcher also interviewed Mr. Husen Nacikit, the heir to the customary land, about the profit-sharing agreement between the Soa Nacikit indigenous people and the tenants. Mr. Husen Nacikit stated:

> We have a very large customary land, but we can't use it because we have other kings and economic limitations, for that we fill the land with plants such as durian trees and others. However, at that time in 2006 the tenants came to socialize and asked to rent the land to build a rubber plantation with an agreement or agreement that later when the harvest was finished, we would share 20% of the land with us and 80% to cultivators. In addition, there is also an agreement that the company will pay compensation for plants that have been produced on the land to be leased, provide scholarships to children who study at the high school and college level and 30% of the workers in the company from the local community. The agreement was made orally and in writing, with the agreement we consulted with the family to make it made.

With this agreement, Mr. Husen Nacikit and his family handed over the land to the company so that they would manage the land owned by the Nacikit family and divide the results 20–80 between the two parties once the rubber harvest finally began. The purpose of this type of contract is that a person or business entity rents another person's land in order to manage the land, with the agreement that the harvest will be divided according to the contract agreed to by both parties.

The contract agreement between the Soa Nacikit indigenous people and the company PT. Panbers Jaya also included the duration of the contract, and that

[21] *ibid*.

agreements between the parties must be settled both orally and in writing. In addition to Mr. Muhammad Nacikit and Mr. Yesayas Nacikit, the author also interviewed Mr. Husen Nacikit (the heir of customary land) about the profit-sharing agreement between the Nacikit indigenous people and the tenants.

In the profit-sharing agreement, it was clear that once PT. Panbers Jaya had finished cultivating the land and had started production, the company would be obliged to share 20% of the profits with the Soa Nacikit. The company has been processing since 2011 and started harvesting in 2016. However, from 2016 until 2021, the company was not carrying out its obligations to share the resulting profits with land owners. Feeling that the company was not carrying out its contractual obligations, the land owner held a meeting with the company, and additionally had issued three separate warnings in the form of a prohibition against further production, but the company did not comply with the profit sharing, nor did it halt production.

The company explained that it did not share the resulting profits with the land owner because, instead of following the original land division set out in the agreement, all 249.5 ha of the land belonging to the indigenous peoples had been handed over to the company to be used as nucleus plantations; subsequently the profit-sharing model they had agreed upon, the nucleus–plasma pattern, could not occur because there was no local regulation as a rule for implementing the realization of the agreement.[22]

Default Settlement in the Profit Sharing Agreement

In a cooperation agreement, it is possible that the results achieved are inconsistent with the initial plan set out in the agreement. The discrepancy between the initial agreement and the objectives that have been achieved is a type of default. As stated above, Article 1234 of the Civil Code explains that the form of default in a cooperation agreement can be classified as one of three forms: (1) not meeting obligations, (2) fulfilling obligations but not on time, or (3) fulfilling obligations but incorrectly or not satisfactorily.

[22] *ibid*.

Defaults that occurred between the indigenous peoples of Soa Nacikit Migodo regarding the profit-sharing agreement were resolved by the parties themselves according to customary provisions decided by the traditional leaders. The parties reached a settlement through negotiation, meaning that the problems with the profit-sharing have been addressed with a new agreement.[23] Two common options for reaching a new agreement include: rescheduling, which provides an opportunity for the debtor have a new timeline to meet their obligations, or possibly to find a more appropriate settlement that can be carried out properly and fairly; and changing the requirements of the agreement. One example is interest capitalization, or using interest as principal debt, while another is delaying certain interest payments, meaning that interest payments can be postponed while the loan principal must still be paid.

As explained by Mr. Yesayas Nacikit, he took the path of settlement because both parties could resolve their issues peacefully. Initially, when the Soa Nacikit asked the company to pay the 20% of the production profits for the years already passed, the company initially rejected this request, because the land division was not in accordance with what had been set out in the agreement regarding the intended nucleus–plasma pattern. Despite this difference, however, though the company had been producing rubber crops for more than five years without profit sharing. The two parties finally reached a settlement agreement, as Mr. Yesayas explains:

> We resolved the problem in a meeting of the parties. Initially, the company did not agree with the request because they thought that the community's request was not basic because there were no regulations regarding the profit-sharing system for the plasma nucleus pattern. But when we made an effort to reclaim the land, the company finally came for a meeting with the whole community and traditional leaders. And to solve the problem the company PT. Panbers Jaya was given the opportunity by the indigenous people of Soa Nacikit to prepare the realization process no later than four months.

Mr. Isaiahs also explained that the company also pursued amicable ways with the land owners, including sending a warning to the company three times

[23] *ibid*.

and making complaints to the DPRD regarding the unfulfilled 20–80 profit-sharing agreement.[24] During the fourth meeting held with the company, the Soa Nacikit emphasized that if the company could not give 20% of the profits, as agreed, then all of the company's rights to the leased land would be withdrawn in full. Given such a demand, the company is currently preparing matters in order to comply with the agreement according to the community's request. Both parties hope that the entire work process surrounding the agreement and the plantations will run more smoothly. To ensure the continued progress towards the settlement agreement, the company will work together with the Soa Nacikit indigenous peoples; additionally, they will visit the site together to discuss all technical matters in the field.

Conclusion

Based on the descriptions contained in the previous chapters, this research can be concluded as follows: in the case of this customary land yield agreement between the Soa Nacikit as creditor and PT. Panbers Jaya as the debtor, PT. Panbers Jaya defaulted on their part of the agreement. There were various forms of default: first, the company did comply with their obligations, but not in the manner that had been agreed to, and the second, to do an act which according to the agreement could not be carried out, while in the case that occurred the debtor did not give 20% rights to the debtor. the first party according to the agreed agreement. In this case of default, the settlement was reached through deliberation between both parties, and they agreed that within a maximum period of four months, the company must provide 20% of the harvested results to the Soa Nacikit. However, if within that period the company has still not met this new obligation, the land and all its contents will revert entirely to become the property of the Soa Nacikit, and the agreement will be terminated.

[24] *ibid*.

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