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**25794 Characters**

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**11 Pages**

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**198.0KB**

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## THE PRINCIPLE OF THE 'TEMPORARY NATURE' OF PRODUCT-SHARING BUSINESS RIGHTS IN THE PRINCIPAL AGRARIAN LAW: A LEGAL UTILITY PERSPECTIVE ON LOCAL WISDOM

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### Keyword:

Profit-sharing,  
Temporary in nature,  
Elements of Coercion,  
Legal Utility.

**Abstract:** *The profit-sharing agreement is one of the rights derived from customary legal practices recognized in the Basic Agrarian Law, albeit categorized as a temporary right due to its perceived elements of coercion. This research aims to assess the extent to which the Basic Agrarian Law maintains its regulations in this temporary form while acknowledging the often detrimental practices to farmers. Additionally, this study seeks to determine how much the concept of local wisdom in the implementation of a profit-sharing based agricultural system can be considered to meet the elements of legal utility. The research method employed is normative legal research, with data analyzed normatively through the interpretation and discussion of research materials based on laws, legal norms, theories, and legal doctrines related to the core issues. The findings of this research are descriptive, utilizing both primary and secondary data. The research results indicate that, normatively, the Basic Agrarian Law has not undergone revision, thus still regulating temporary business rights, even though, in practice, the temporary basis still involves elements of coercion. Another outcome reveals that the concept of local wisdom in profit-sharing systems must fulfill elements of legal utility. However, in practice, especially concerning the three main factors required by the law, such as a written agreement, profit distribution, and duration of the agreement, it is concluded that they do not meet the principle of legal utility.*

**Article Information:** Accepted: 15-01-2024, Approved: 27-01-2024, Published: 06-02-2024

### Introduction

The production-sharing agreements for agricultural land represent a customary law practice, leading them to be categorized as land rights under customary law in discussions about land rights. These rights were incorporated into the national land rights framework through the Basic Agrarian Law (UUPA), specifically in the form of temporary rights outlined in Article 56 of the UUPA, rather than being designated as main rights under Article 16.

The UUPA, established on September 24, 1960, served as the national agrarian law, superseding all land regulations in the Civil Code (Burgerlijk Wetboek) with the exception of mortgages and credit verbands (which were later revoked as well). Aimed at reforming the agrarian legislation inherited from the Dutch East Indies colonial era, this law leverages the traditional practices of indigenous communities, rooted in mutual cooperation and fostering

high social solidarity. Consequently, it accommodates forms of land rights aligned with customary traditions within the national agrarian legal order.

This tradition, acting as an integral part of local wisdom, has persisted and thrived in society. The longevity of these regulations is grounded in their practical utility, as they continue to be relevant in Indonesian society.

Another driving factor behind this tradition is the prevalent inequality in land ownership, particularly in rice fields, where a majority of land cultivators lack ownership.

1 Production sharing agreements, governed by customary law, are often informal and verbal, lacking documentation or the involvement of witnesses or village authorities.

Farmers' inclination towards cultivating land under a profit-sharing system stems from its perceived feasibility. Many farmers receive only a small portion of the produce from their labor, perpetuating their poverty. The Basic Agrarian Law (UUPA) incorporates profit-sharing provisions due to the often imbalanced patron-client relationships between landowners and cultivators, marked by elements of coercion. This domination by landowners can lead to unequal agreements or violations concerning distribution amounts, agreement duration, and the form of unwritten agreements. This is the reason why such rights are categorized as temporary in the UUPA, implying their eventual removal or prohibition, although immediate elimination is impractical due to the concerning state of land ownership in Indonesia at the time.

Despite these challenges, the practice of production-sharing agreements persists as a manifestation of local wisdom in agricultural practices passed down through generations. Simultaneously, the extortion tendencies implied by the UUPA continue.

The research aims to address two key questions: 1) To what extent does the UUPA maintain its regulations in this temporary form, despite ongoing practices that often harm farming communities? 2) To what extent can the concept of local wisdom in carrying out profit-sharing system farming habits be seen as fulfilling the legal utility element?

The study seeks to elucidate the UUPA's persistence in maintaining the temporary nature of production-sharing agreements amid practices detrimental to farmers. Additionally, it aims to demonstrate that the concept of local wisdom can be viewed as meeting the element of legal utility. This research endeavors to analyze agreements based on customs that influence the position of temporary profit-sharing business rights, emphasizing their continued temporary nature due to the community's adherence to local wisdom. Utility, as a legal goal alongside justice and legal certainty, can serve as the foundation for implementing laws for the benefit of the nation and society.

## Materials And Method

This research employs a form of normative legal research. The data collection process involves library research, where information is gathered from the studied objects through the examination of existing literature. The obtained data undergoes normative analysis, utilizing methods such as interpretation and discussion of research materials based on law, legal norms, legal theories, and relevant legal doctrines related to the subject matter. Additionally, a review of previous research relevant to the research theme is conducted.

The outcomes of the normative analysis are then utilized as material for evaluating the relevance of the primary legislation to the developed concepts. This research is characterized as descriptive, relying on both primary and secondary data sources.

## Result

Profit Sharing Business Rights as Temporary Rights According to the Basic Agrarian Law The Basic Agrarian Law (UUPA) serves as the cornerstone of national agrarian law, establishing the framework upon which all agrarian law regulations in Indonesia must be based.

The UUPA underscores the principle that, to ensure the happiness and welfare of a just society, legal objectives must be fulfilled, with one such objective being legal benefits. One of the primary objectives of the UUPA is to regulate legal relationships between land and the individuals (legal subjects) who will own and/or control that land. These legal relationships manifest in the determination of land rights, as outlined in two key articles: Article 16 and Article 53 of the UUPA.

The affirmation of land rights as articulated in Article 16 of the UUPA amalgamates several types of land rights that were in existence in Indonesia before the enactment of the UUPA, during a period of agrarian legal dualism. This dualism gave rise to inter-group law (intergentiel recht) in Indonesia, wherein a "Principle of Equality" dictated that all legal systems hold equal value. Scholars such as Van den Berg, Andre de la Porte, and Nederburgh adhered to this principle within the realm of inter-group law in Indonesia.

Agrarian legal dualism, particularly in determining types of land rights, emerged during a time when society was divided into European, Foreign Eastern, and indigenous (inlander) groups. Each group had its own land law systems, especially concerning the types of land rights they owned or controlled. The term Legal Pluralism is commonly used in Indonesia, referring not only to customary law and European law but also to land law, exemplified in the form of the Sultan Grant created by Swapraja Governments. Swapraja governments, including those in Yogyakarta, Surakarta, and East Sumatra, introduced new forms of land ownership.

The dualism in agrarian law ceased with the birth of the UUPA, marking the unification of agrarian law. The land rights specified in Article 16 of the UUPA represent a fusion of various land rights previously recognized under community regulations. The dualistic nature of land law was replaced by unified land law following the enactment of the UUPA, enforcing a single type of land law – national land law.

This aligns with one of the UUPA's objectives: to establish unity and simplicity in land law. Unity in land law entails the application of a single type of land law (legal unification) for all land in Indonesia. Consequently, after the enactment of the UUPA, there exists only one type of land rights: those regulated by the UUPA. Land rights classified according to customary law communities and Western law before the UUPA must be converted into land rights in accordance with the UUPA.

The establishment of the UUPA has paved the way for the existence of profit-sharing business rights. Land rights, as outlined in Article 16 of the UUPA, encompass:

1. Property Rights,
2. Business Use Rights,
3. Building Use Rights,
4. Usage Rights,
5. Rental Rights,
6. Right to Open Land,
7. Right to Collect Forest Products,
8. Other rights not explicitly mentioned above, which will be determined by law, including temporary rights as specified in Article 53.

Article 53 of the UUPA acknowledges the existence of temporary rights, including Lien Rights (in accordance with Customary Law, not in the form of pawns as per the Civil Code model), Profit Sharing Business Rights, Hitchhiking Rights, and Agricultural Land Rental Rights. These four rights are subject to regulation to limit their nature, which contradicts the UUPA, and efforts will be undertaken to phase out these rights in a short period.

The temporary nature of these rights emerged due to the vulnerable condition of the farming community at that time, facing the risk of impoverishment if production-sharing agreements were not implemented. Many farmers either did not own land or had insufficient land to generate an income supporting their livelihoods. This led to a power dynamic favoring landowners. Recognizing the human tendency to secure as many rights as possible, it became essential to highlight the rights and obligations of both cultivators and landowners to provide legal certainty for farmers working the land.

Among the four designated temporary rights, one is the Production Sharing Business Right, known as "Maro" and "Mertelu" in Java, and "Teseng" in Bugis-Makassar. Profit-sharing business rights are widely practiced by farmers in villages (also prevalent among fishermen). The UUPA's explanation justifies the continued need for the possibility of agricultural land usage by non-owners, emphasizing practices like profit-sharing. However, all such activities must align with statutory provisions and regulations to prevent legal relationships that exploit the weak by the strong.

Despite recognizing these practices, the UUPA mandates the state to formulate societal practices in a way that prevents the continuation of patron-client relationships, ensures justice, and prevents exploitative methods ("exploitation de l'homme par l'homme"). Additional regulations, such as Law No. 2 of 1960 concerning Production Sharing Agreements (UUBH), have been enacted to further guide the implementation of these principles.

### **Production Sharing Agreement According to Law no. 2 of 1960**

This law stipulates that a profit-sharing agreement must be formalized in writing by the landowner and cultivator themselves, in the presence of the Head of the Village or an equivalent authority overseeing the land location. Two witnesses, one each from the owner and the cultivator, are required, and the agreement necessitates approval from the sub-district head.

The written agreement outlines provisions related to the duration agreed upon by the landowner and the cultivator. For paddy land, the minimum duration is 3 (three) years, while for dry land, it is a minimum of 5 (five) years. In special cases, agreements for a shorter period may be permitted, particularly for land typically cultivated independently by the owner. If, at the agreement's conclusion, there are still plants that cannot be harvested, the agreement remains valid until the harvest is complete, with the extension not exceeding one year. The profit-sharing agreement persists even in the event of the transfer of ownership rights to another person, and in case of the cultivator's death, the agreement is continued by heirs, transferring all associated rights and obligations to the new owner.

The government, through UUBH, aims to curb potential dominance by landowners and restricts community practices that historically positioned sharecroppers as landless.

Termination of a profit-sharing agreement can occur with the consent of both parties, reported to the Village Head. With the Village Head's permission, the owner may demand termination if the cultivator fails to cultivate the land properly, neglects obligations to hand over the agreed-upon portion of the produce, or fails to fulfill material responsibilities as

outlined in the agreement letter. The Village Head grants permission based on considerations of both parties, following unsuccessful reconciliation efforts.

The amount of profit-sharing is determined by societal customs, but to address potential imbalances, UUBH grants authority to the level II Swatantra Region, determined by the Regent/Head, considering various factors. The Regent/Head notifies their decision regarding land distribution to the central government.

A common difficulty for cultivators involves the prior gifts they must make when proposing to become a cultivator. This is limited by UUBH, prohibiting payments or gifts to obtain cultivation rights under a profit-sharing agreement. Violations result in deductions from the owner's share of the land proceeds. UUBH further prohibits payments with elements of debt bondage, regardless of whether made by owners or cultivators. To safeguard the landowner's rights at the end of a production sharing agreement, the cultivator is obliged to return the land in good condition, whether due to agreement expiration or other reasons.

### Measuring the Utility of Law and Local Wisdom in the Implementation of Production Sharing Agreements

Looking at the legal implementation of UUPA and UUPBH in relation to profit-sharing practices, it is evident that the majority of people continue to engage in profit-sharing agreements due to the challenges of obtaining farming income, especially with small or no land ownership. The utilization of traditional patterns and wisdom in farming practices is a common and normal occurrence in communities, provided it doesn't involve elements conflicting with that wisdom. To maintain the positive flow of positivism, justice, certainty, and benefits for the farming community, it becomes essential to eliminate conflicting practices, such as extortionate demands for upfront payments or gifts in kind (e.g., garden produce like bananas, coconuts).

In Central Java, the practice of requesting payment as a preliminary requirement is termed "Srama," while acknowledging the cultivator's role on someone else's land through a gift is called "Mesi." Alternately, the agreed-upon results may not be immediately handed over to the cultivator but calculated as payments towards the cultivator's debt to the landowner, done in installments during the production sharing agreement. In Bali, this is known as "Plais," and in South Sulawesi, it is called "Balango."

This research aims to explore the legal utility of rules derived from customary law that promote local wisdom, emphasizing the aspect of justice, the highest ideal of law. While ensuring benefits and legal certainty, it is crucial not to abandon justice, leading to a utilitarian



perspective that prioritizes benefits and legal certainty as integral components of law enforcement in Indonesia.

Research conducted in Sidenreng Rappang Regency indicates that production sharing agreements in the community are still conducted orally, without the presence of the village head, based solely on agreements between the parties, and lacking witnesses. The agreed distribution of results is often based on a 1:1 or 1:2 system, depending on the quality of irrigation. Fertile, irrigated rice fields may be divided into two, while riskier rain-fed fields may be divided into three. The distribution system is determined by considering the profitability of risk, ensuring a fair sharing between the landowner and the cultivator.

In the production sharing agreement between the land owner and the cultivator in Sidenreng Rappang Regency, the things agreed upon are:

1. Is the distribution system 1:1 or 1:2
2. The term of the agreement is usually 1 year (calculating 2 x harvests)
3. which covers fertilizer, medicine, grass poison, tractor costs

In some locations, such as around Lake Sidenreng, there are practices that deviate significantly from the provisions confirmed in national legislation. This deviation is influenced by the high level of risk, particularly the tendency for the lake to overflow when the rice fields are ready for harvest, resulting in the failure of the harvest. In such areas, cultivators hold a dominant position and are willing to adopt a distribution system, such as 1:5 or 1:6, where the cultivator receives a larger share than the landowner. In this scenario, not only do these practices not adhere to the 1:1 or 1:2 distribution provisions, but the cultivator also holds a dominant position in determining the conditions for sharing the results. The reluctance of tenants to engage in production sharing agreements around Lake Sidenreng poses challenges for landowners who may not be farmers themselves.

The informant highlighted that other common breaches of agreements involve aspects such as fertilization, medicines, grass poison, and tractor costs. These are typically shared responsibilities between the landowner and the cultivator, but the cultivator often handles these expenses initially, which are then accounted for after the harvest. When calculating the results after harvesting, the gross results must be determined, taking into account the costs incurred by the cultivator, and then divided based on the agreed balance. In practice, many landowners prefer an immediate sharing of results, placing the burden of expenses for fertilizers, medicines, and other items solely on the cultivator.



## Discussion

The government's efforts through UUBH to curb the potential dominance of landowners by regulating community habits, especially those that previously positioned sharecroppers as landless, are commendable. This aligns with the beneficial aspects of the law on production sharing rights, which can assist individuals with limited or no land in earning agricultural income through cultivation in a production sharing agreement on other people's land. From this standpoint, the law functions as a tool of social control, aiming to maintain social order. However, for comprehensive effectiveness, it also needs to serve as a tool of social engineering, entailing regulations that uphold the essence of local wisdom for the overall benefit of the law, without compromising justice and legal certainty.

The application of the law's function as a tool of social engineering aims to refine traditional practices that are no longer deemed suitable. This transformation will naturally undergo social control processes, gradually fading out certain practices to elevate the reputation of local wisdom while fostering mutual assistance.

### Answering the research question shows that:

In reality, the UUPA still maintains its regulations in this temporary form due to a lack of legislative reform, especially considering the 62-year-old UUPA, even though practices persist that often harm farming communities through forms of extortion. While the farming community faced difficulties in the past due to limited land or lack of ownership in the 1960s, the current era offers more opportunities for alternative employment, given the developed infrastructure.

Despite profit-sharing business rights being outlined in a separate article (Article 53 UUPA) rather than in the main rights article (Article 16 UUPA), the UUPA references Law no. 1 of 1960 (UUBH) for implementation. This indicates the need to halt potential extortion elements. Without UUPA reform, all provisions regarding profit-sharing, including their continuation in practice, are assumed to persist, despite the anticipation of eventual revocation.

Addressing the next research question, the concept of local wisdom in implementing profit-sharing farming practices can be seen as fulfilling the legal utility element concerning the existence of UUPA regulations on profit-sharing business rights. However, practical implementation in the field necessitates attention to three main factors: the written form of the agreement, clear result distribution, and an agreement length providing cultivators with a sense of security to work on the land as long as desired. If profit-sharing practices, as local wisdom stemming from customary agreements, fail to adhere to principles of justice without extortion

(in terms of result-sharing methods and agreement length), it can be argued that such practices do not fulfill the principle of legal utility. The ultimate goal is to implement a fair profit-sharing agreement without dominating elements between landowners and cultivators.

## Conclusion

1. The UUPA normatively still characterizes the arena of land law in Indonesia as a basic law in which there are regulations regarding profit-sharing business rights which are placed in articles that have a temporary character which will one day be abolished, but the existence of profit-sharing business rights is still maintained even though its temporary basis (i.e. containing elements of extortion) still persists in practice.
2. Whereas the concept of local wisdom in carrying out agricultural customs with a profit sharing system is ideally seen as fulfilling the legal utility element, but looking at its implementation in practice regarding the application of the 3 (three) main factors required by UUBH (form of agreement that must be written, clear distribution of results , and the length of the agreement) is not carried out according to the principle of justice without extortion (from harming the way the results are distributed, harming the length of the agreement) then this practice does not fulfill the principle of legal utility.

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