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CONTRACT FARMING IN INDONESIA: IMPLEMENTATION OF THE BALANCE PRINCIPLE IN REALIZING EQUITABLE AGRIBUSINESS SYSTEM

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ABSTRACT

Contract farming is an alternative agricultural development based on a partnership principle of mutual need, mutual reinforcement and mutual benefit. Contract farming implementation using the standard form of an agreement often contains an imbalance of rights and obligations that leads to injustice. The State plays a role in protecting farmers by regulating and supervising contract farming implementation.

INTRODUCTION

Indonesia is an agricultural country with a major population making a living in the agricultural sector. This is supported by a tremendous agricultural potential in Indonesian land territory stretching from Sabang to Merauke. The expanse of rice fields, plantations and forests as well as the tropical climate are the main assets in agricultural development in Indonesia. Agriculture can increase economic growth and state prosperity; hence, the agricultural sector plays a critical role in supporting Indonesian economy.

In a broad sense, agriculture is not limited to field farming but also includes livestock, fisheries and forestry. Agricultural activities were initially carried out traditionally to fulfil familial needs. In its development, however, in line with the high rate of population growth and the collective need for food availability, the agricultural sector is developing towards profit-oriented, namely to seek economic benefit. In addition, agricultural activities, which

were initially small-scaled and managed individually has begun to be developed on a large scale and managed collectively, such as by members of farmer groups, joint business groups and breeder groups.

In its development, agricultural activities do not only involve farmers or farmer groups but also involve external institutions such as industries or companies with a contract farming partnership model. In the 20th century, contract farming becoming more essential in the agricultural and agribusiness of the industrialized and emergent nations.

In general, contract farming can explain as a collaboration in the middle of farmers and processing/marketing companies to produce or supply agricultural products bound by an agreement that contains terms and conditions related to price and production, for example in terms of providing inputs, technological assistance, product quantity and product quality. Contract farming can be mention as a method for agricultural products production and supplies under a futures contract; the point of the contract is a perform to provide agricultural commodities of a category, at a certain time and price, as well as in a certain amount.

Agricultural activities with the contract farming model have become one of the patterns in agricultural activities implemented in various countries in the world, including in South Korea, Japan and China. In Indonesia, contract farming has also been implemented in several areas such as East Java, Lombok, West Nusa Tenggara, Bali and West Java. In general, contract farming has both advantages and disadvantages for farmers or breeders. The advantages of contract farming in marketing for small farmers include minimized price risk and price fluctuations, also, this contract system can reduce transportation costs and other costs during the marketing process. In addition, contract farming can provide benefits to farmers in terms of technology transfer. However, contract farming also has the potential to cause financial losses for farmers and breeders. It is potential that contract farming creates an unbalanced cooperative relationship between farmers and companies. In addition, monopsony may occur due to product rejection by companies, transparency in pricing, and oligopoly due to contract imbalance.

One of the factors causing rights and obligations imbalance in contract farming is the use of standard agreements. A standard contract is a contract in which almost all of the clauses have been systematize by the user and the other parties do not have the chance to arrange or ask for changes. The reasonableness of standard clause of contract is no longer something to be debated because it has become a business prerequisite in term of order and effectual. The aspect of problems in the standard clause of contract is in the unbalance position

Contract farming in agricultural activities is an alternative mechanism to improve the livelihoods of small farmers. With this mechanism, agricultural sector cooperation between large and medium business and farmers or small businesses will be established. However, in practice, contract farming is not as bright as expected by farmers. One of the findings of the research shows that

breeders feel dissatisfied with the rights and obligations stipulated on the contract farming partnership and suggested fairer contract improvements.

The issue of contract farming has also received special attention from the Commission for the Business Competition Supervisory of the Republic of Indonesia. As stated by the Commissioner, Saidah Sakwan, partnerships in the poultry sector are unhealthy because most of the cooperation applied a **main-partner** mechanism and it does not have a written agreement, or even if it is written, the content is imbalanced. So far, the contents of the agreement have tended to be carried out unilaterally by the **main** i.e., the company. To date, the company determines and the breeders accept the quality, price as well as other contents of the cooperation agreement. Companies and breeders should have their rights accordingly. Studies related to contract farming have been focused on economic aspects as well as aspects of agriculture and animal husbandry. From the results of the aforementioned research on contract farming and the supervision carried out by the Business Competition Supervisory Commission, it can be seen that issues related to the legal aspects of the agreement have not received special attention related to the problems of rights and obligations imbalances in contract farming. The motivation of this article is to understand and analyze contract farming that occurs in the community, especially farmers and to provide protection to farmers through balanced and fair contract farming.

RESEARCH METHOD

This study applies juridical normative research method that includes research on positive legal inventory, legal principles and legal in-concreto; legal systematic; legal history; and comparative law. This study is descriptive-analytical as it makes systematic interpretation of the facts, including describing the applicable regulations. This study uses secondary data obtained by literature and internet studies. In addition, a field study was also conducted to obtain primary data. The collected data are then classified and sorted for analysis using qualitative juridical methods.

FINDINGS AND DISCUSSION

Legal Aspect of Contract Farming

Contract farming is a model for developing agricultural business partnerships that involve small and medium enterprises (farmers) with companies. Contract farming can be explained such a medium-scale production and marketing system, in which there is a sharing of production and marketing risks among companies and farmers, breeders and small fishermen, all of which are carried out with the aim of reducing transaction costs. A partnership principle is basically a form of collaboration between small and medium enterprises or large businesses that involves fostering and development by medium or large businesses by observing the principles of mutual need and mutual reinforcement. The partnership agreement aims to obtain mutual benefits. Contract farming can be expound as “a contract between farmers and supply of agricultural products under forward contracts, frequently at predetermined prices”

An agricultural business partnership is one type of partnership agreement in the agricultural sector. It is a business partnership between partner companies and partner farmer groups in agricultural business sector. In general, it aims to increase income, business sustainability, improve the partner group resources quality, increase business scale, as well as to grow and improve the capacity and skills of independent partner groups. Contract farming has been regulated in several laws and regulations in Indonesia. One of the regulations is Government Regulation Number 44 of 1997 on Partnership, although it uses the term 'partnership', instead of contract farming. Partnership can be understood as a business collaboration between Small and Medium Enterprises and/or Large Enterprises that includes fostering and development by Medium or Large Enterprises by observing the principles of mutual need, mutual reinforcement and mutual benefit. Contract farming can impact local economies by improving the health of rural households. Some authors found that farmers' incomes are growth by involvement in contract farming. With contract farming, farm manufacture is sold beforehand with the aid of a company in trade for definite offerings, including prefinancing of load.

Specifically, regulations related to agricultural partnerships are regulated in the Decree of the Minister of Agriculture Number 940/Kpts/OT.210/10/97 on Guidelines for Agricultural Business Partnerships. An agricultural business partnership is a collaboration between partner companies and a group of partners in the agricultural business sector.

A partnership agreement aims to achieve mutual benefits with the principle of mutual need and growth, hence, both small and large businesses will be able to achieve the desired goals in the sustainable mission. This principle will make small businesses strong, independent and competitive, while large-scale businesses will become even more successful. The partnership pattern that is often used by farmers and companies in agricultural business partnerships is the **main-partner** pattern. The main-partner pattern is basically a pattern in which large and medium enterprises as the main that foster and develop small businesses i.e, the partner in several ways, including provision and preparation of land, provision of production facilities, provision of technical guidance for business and production management, acquisition, control and improvement, provision of necessary technology, financing and other assistance required to enhance business efficiency and productivity.

Essentially, contract farming is subject to the supplying stipulated in the Civil Code. This is based on Article 1319 of the Civil Code stating that all contracts, whether they have a specific name/title (named/titled agreement) or those that are unknown or without a certain name (anonymous agreement) are subject to the general regulations with regards to the agreement. Hence, derived from the provisions of Article 1319 of the Civil Code, the contract farming partnership model must also refer to the contract law regulated in the Civil Code.

The Indonesian Civil Code has set out the legal principles and rules of law related to a contract. Article 1338 paragraph (3) of the CivilCode stipulates that all contracts have to executed in good faith. Good faith emphasizes that a

strong creditor's position is balanced by an obligation to focus more on good faith, thus, the creditor's and debtor's position is equal. In addition, based on the concept of freedom of contract regulated in Article 1338 paragraph (1) of the Civil Code, fundamentally, everyone has the right to enter into an agreement but is limited by Article 1337 of the Civil Law that the agreement must not be against decency norm, public order and law.

Contract Farming in Indonesia

In contract farming implementation, the contents of several agreements are similar to "loan agreement". This can be seen in the background (premise) and contents of the contract farming agreement. In contract farming, it is explained that the farmers need capital assistance, thus, the company provides assistance in the form of business capital. The scope of contract farming can be in the form of providing seeds, medicines and fertilizers using a credit sale and purchase mechanism so that all costs that have been provided by the company to farmers are the farmer's debt to the company. As long as the contract runs and the farmer's debt to the company have not been paid, the production facilities provided by the company still belong to the company. The farmer's obligation is to pay all debts to the company as a result of utilising the agricultural production facilities provided by the company.

To pay the agricultural production facilities to the companies, the farmers are obliged to sell all of the crops to the company to be marketed and sold by the company based on the price agreed by the parties. The price is calculated to repay the farmers' debt to the company. If selling all crops is still insufficient, it remains the responsibility (debt) of the farmer to the company. In contract farming, the company can demand collateral in the form of materials owned by the farmers to ensure that the farmers will fulfil their obligations to the company. To ensure the fulfilment of these obligations, companies are usually authorized to sell and manage in any way and take advantage of the objects that become the collateral. Furthermore, in the event that the farmer is unable to fulfil the obligation within 30 (thirty) days to the company, the company have the right to sell the collateral without any permission from the farmer, with a price and conditions determined according to the price situation at that time, in order to pay off the debts of the farmers to the company.

Based on the terms of the agreement specified above, contract farming, as a matter of fact, is similar to a loan agreement due to several elemental similarities. However, it cannot be said that the agricultural business partnership agreement is a loan agreement because it does not fulfil all loan elements, such as interest and the loan provider institutions are not banks.

In the application of contract farming, the company, as the party that will buy the crops from the farmers, has determined certain terms and standards for the production. The company will only receive the farmers' crops as long as it meets the standards set by the company. Hence, in the event that the farmers' production does not comply with the company standards, the products will be rejected by the company. This can be detrimental to farmers since their only option is to sell the products to other parties at a lower price.

Fundamentally, in all contract farming, both farmers and the companies desire success and profit. In the performance of the contract, however, there are possibilities of a failure in the production process resulting in crop failure. This crop failure can occur due to mistakes on the part of either farmers or companies. Harvest failure can also occur beyond the fault of the parties, including natural factors and disease/pathogen outbreaks. In contract farming, it is found that in the case of production or crop failure, whether caused by disease outbreaks or any cause, the losses arising from the failure of production and the purchase of production facilities are the full responsibility of the farmers. This can certainly be detrimental to the farmers.

With regards to agreement termination, the company is given the right to terminate or end the agreement in the event of a production loss. Concerning the farmers' obligations to the company, the farmers are obliged to pay their debts to the company within 30 (thirty) days. This provision is deemed unfair to farmers because at the time a production fails, the partnership is terminated and they are obliged to pay off debts to the company. This is not in line with the goals and principles of partnership where the company must carry out guidance and development with due observance of mutual need, mutual strengthening and mutual benefit principles.

In its implementation, contract farming was found to be inconsistent with the partnership concept as stipulated in the acts and regulations. Contract farming must be carried out on the principle of mutual need, mutual reinforcement, and mutual benefit. The parties must orient themselves to the principles of partnership, hence the objectives of the partnership can be achieved and in accordance with the provisions with regards to the partnership principles.

The Principle of Balance in Contract Farming from Contract Law Perspective

The partnership pattern of main-partner is predominantly a pattern where large and medium enterprises, as the '**main**', foster and develop small businesses that become the '**partner**' in several ways, including the provision and preparation of land, provision of production facilities, technical guidance on business and production management, mastery and improvement of the necessary technology, financing as well as provision of other assistance needed to increase business efficiency and productivity.

Resources offered by the company are generally capital or sometimes brand and market guarantees, while the resources offered by farmers are generally land and labour. In some cases, farmers only offer labour. The making of contract farming should apply the principle of balance where each party benefit from the other.

Paul Scholten, as quoted by Sudikno Mertokusumo, states that the principle of law is a tendency required by a moral view on the law; it is common traits with its limitations as a common trait, but it is mandatory to exist. In an agreement, the balance of interests between the parties is critical,

even the central point from the start, that is, starting from the pre-contractual stage (the offering stage), then at the time the parties agree to form an agreement (the contractual stage), until the stage of implementing the agreement that binds the parties. This balance demands an equal position between the rights and obligations of the parties in an agreement with the same terms and conditions, and neither party dominates or exerts pressure on the other party.

The state has an obligation to realize equality in livestock business partnerships by providing guidance as stated in Article 12 of the Regulation of the Minister of Agriculture of the Republic of Indonesia Number 13/PERMENTAN/PK.240/5/2017 on Animal Husbandry Business Partnerships, namely the Development of Animal Husbandry Business Partnerships to improve equality where all parties mutually need, reinforce, benefit, respect, be responsible, and depend on the development of livestock businesses.

The laws and regulations in Indonesia with regards to Contract Farming have essentially reflected the principle of balance. However, in the current implementation of agricultural business partnerships, it can be said that it does not reflect the balance of rights and obligations of the parties. One of the reasons is because commodity prices do not have a standard, hence, profits from production are still controlled by market prices and demands. There is no standard in agricultural business partnership agreement so that the contents of the agreement are made between the parties and sometimes causes losses for the farmer.

In the application of contract farming, the company as the party that will buy the crops from farmers has determined certain terms and standards for the production. The company will only buy the crops if it is in accordance with the standards set by the company, thus, in the event that the production does not comply with the company standards, it is likely that not all of the products will be accepted by the company. This, definitely, is detrimental to farmers since farmers are left with a possibility of selling their products at a lower price to other parties.

From contract farming, both farmers and companies desire success and profit. However, in the implementation, there is a possibility of a failure in the production process that leads to crop failure. This crop failure can occur due to mistakes on the part of both farmers and companies. Furthermore, it can also occur beyond the fault of both parties, including natural factors such as pathogen outbreaks. In contract farming, it is stated that in the case of production or crop failure, whether caused by disease outbreaks or any other causes, the losses arising from the failure of production and the purchase of production facilities are the full responsibility of the farmer.

Production failure caused by natural factors is essentially a factor beyond the fault of the parties, thus, the responsibility cannot be given to either party alone. This matter could have been regulated in the contract law with regards to risk. Risk is basically an obligation to bear losses caused by an event

beyond the fault of the parties. This risk problem can be overcome if the agreement is closed with insurance. In a contract farming agreement, in the event of a production loss, the company is given the right to terminate or end the agreement. With regards to the obligations of farmers to the company, the farmers are required to pay their debts to the company within 30 (thirty) days. This provision is deemed unfair to the farmers because at the time a production failure occurs, the partnership is terminated and the farmers are obliged to pay off debts to the company, meanwhile, they are also suffering losses of the production failure.

This is not in accordance with the objectives and principles of partnership where the company must carry out coaching and development with due observance of the principles of mutual need, mutual reinforcement, and mutual benefit. In all agreement, including contract farming, the principle of balance must be reflected in equal rights and obligations of the parties in the agreement. The creditor has the right to demand performance from the debtor but the creditor also bears the burden of carrying out the agreement in good faith. It can be seen here that a strong creditor position is balanced with the obligation to enter into the agreement in good faith, hence, the position is balanced.

Article 1338 paragraph (3) of the Civil Code stipulates that an agreement must be carried out in good faith. The principle of good faith in the agreement is in an objective sense of propriety. According to P. L. Wery, the implementation of the agreement in good faith means that both parties must act without deceit, without dishonesty, without intrigue, without troubling another party, and not focusing only on self-interest but also the interests of another party. Furthermore, according to Aser Rutten, as cited in Siti Ismijati Jenie, carrying out the agreement in good faith means that the creditors, in exercising their rights, and the debtors, in fulfilling their obligations, must commit to the requirements of *Redelijkheid en billijkheid*, meaning that both parties must carry out the agreement as it should be conducted by civilized people.

Based on the aforementioned description, contract farming is an effort that can be taken to increase agricultural development. However, the implementation of contract farming must also reflect fairness. Fairness indicates equal positions, thus, neither party has a higher nor lower position in terms of social class, level of intellectual, capability, power, etc; hence people can make contracts with other parties fairly and in a balanced manner.

The Role of the State in Contract Farming to Realize Farmers Protection

Agricultural development is a system problem that can be effective when all the necessary conditions are interrelated with one another. Halcrow states that an agricultural system includes the government (research, counselling, policies and regulations), procurement industries and distribution of production facilities (fertilizers, pesticides, capital, equipment), farming, processing industries, as well as product marketing industries (post-harvest handling, processing, marketing). The role of the government, in this case, is in terms of regulation and supervision. Agricultural development in the context of

contract farming is a system, i.e., a setting or unit consisting of interrelated parts or elements, interacting with one another, organized and working together to achieve a unified goal. Law is not merely a set of autonomous regulation but interrelated parts of a system.

Fundamentally, contract farming is a law that is regulated in private law, namely an agreement. However, in its development, contract farming is not a matter of agreement that is left to the parties but it includes state interference. The state intervention is required for the agribusiness transactions system to function by establishing rules and regulations to complement the rules and clauses determined by the parties involved in the agribusiness system. In this sense, the State only intervenes when private rules are not sufficient to make the system work efficiently.

In general, contract farming that has been implemented applies a standard agreement. The use of standard agreements in contract farming is essentially a form of freedom of contract. The principle of freedom of contract allows the parties to enter into a contract with anyone and to determine the content of the agreement. The use of this standard agreement is principally not prohibited but must take into account the interests of the parties to the agreement. To provide protection for farmers, the state should be able to regulate by determining the form and content as guidelines for the preparation and development of contract farming in order to reflect fairness and stability of rights and obligations of the parties.

In contract farming, it is necessary to formulate the scope of the agricultural business partnership agreement. In addition to realizing fairness and balance of rights and obligations in contract farming, it is manifested in the development of agreement clauses that include rights and obligations, defaults, *overmacht* (force majeure), risks, guarantees, and dispute resolution.

The scope of contract farming needs to be structured as a partnership agreement, instead of as a loan agreement. This needs to be done considering that contract farming is not a loan agreement. The production facilities handed over to the farmers are not liabilities but a partnership from a partner company. This has a different legal consequence, if the provision of capital or production facilities is considered a loan, farmers must return their capital and provide agricultural production facilities in a profit or loss situation. In contrast, if the provision of capital and production facilities is partnership cooperation, it is possible to share risks for the parties.

Default in contract farming can occur if the production results are not in accordance with the standards set by the company. In practice, the company will not buy farmers' products. The partner company could be able to market the farmers' crops at a price below the standard set by the company. In this context, the company should not just cancel the agreement or claim compensation. Instead, the company must be able to provide assistance and guidance in order to overcome problems in production process. Risk management is always associated with an *overmacht* (force majeure). Risk management in contract farming is not borne by the farmer alone but also by

the company. In the event of production failure, the loss is taken by both the farmer and the company. There needs to be a separation with regards to the obligation to bear losses caused by an *overmacht*. The problem regarding this risk can actually be overcome by an obligation for insurance. Costs for insurance can be shared to both parties, i.e., farmers and companies. However, it is possible that this insurance is provided by the government as a form of protection for farmers.

The requirement for insurance is also an effort to protect the company. However, the provisions on insurance in contract farming can certainly hinder farmers and small businesses from implementing partnerships with companies. The government can formulate an insurance concept with strict conditions to overcome that problem.

With regards to disputes settlement process that occur in contract farming, deliberation is always the preferred mechanism. It is also possible to have an institution appointed to resolve disputes that occur between farmers and companies. The composition of dispute settlement institution should come from the government, farmers and companies. The appointment of a dispute settlement institution is needed to resolve disputes in the agricultural business sector that require resolution from competent individuals and special institutions.

Essentially, contract farming cannot be seen only in the implementation aspect but must also be viewed in the context of the agribusiness system. The agribusiness system is an activity starting from the acquisition and distribution of production facilities to the marketing of crops produced by farming and agro-industry that are interrelated with one another. Therefore, in the formulation of contract farming, it is necessary to have an arrangement that includes the procurement process of production facilities as well as production and marketing processes. This agribusiness system needs to be supported by the role of stakeholders, i.e., the role of government, business actors and farming communities, therefore the involvement of these three roles must be coordinated both horizontally and vertically. Contract farming is an agreement in the agricultural sector made by the government, business actors and farming communities. Contract farming needs to be made harmoniously and sustainably that is binding from end-to-end for all parties in the agricultural sector.

CONCLUSION

Contract farming as a form of partnership agreement is subject to the law on agreement and generally to the rules and regulation determined by the state. The current implementation of contract farming is not in accordance with the partnership principle as stipulated in statutory regulations, namely the principle of mutual need, mutual reinforcement and mutual benefit. The principle of balance in contract farming has not been reflected because contract farming applies standard forms of agreement. Contract farming clauses must reflect a balance of rights and obligations of the parties based on good faith principles. The State plays an important role in contract farming in

realizing the balance of rights and obligations of the parties through regulation and supervision of contract farming.

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