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CONTRA PERCEPTIONS OF THE FREEDOM OF CONTRACT PRINCIPLE IN LAW NO. 2 OF 1998 CONCERNING AGRI-CULTURAL PRODUCTS HANDLING WITH THE COMMUNITY LAW SYSTEM IN THE BANGSAJATI ENVIRONMENT

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ABSTRACT

Buying and selling is an activity that takes place and is inherent in every society in the state of Indonesia. Therefore, there are many laws that regulate the matter of buying and selling in Indonesia. Agreements made by the community in terms of buying and selling must be clear and take a legal basis because every agreement that is an agreement is bound by law, as stated in article 1338 of the Civil Code (KUHPerdata). Buying and selling

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**CONTRA PERCEPTIONS OF THE FREEDOM OF CONTRACT PRINCIPLE IN
LAW NO. 2 OF 1960 CONCERNING AGRICULTURAL PRODUCTS SHARING
WITH THE COMMUNITY IJON SYSTEM IN THE BONEBEACH ENVIRONMENT**

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ABSTRACT

Buying and selling is an activity that takes place and is inherent in every society in the State of Indonesia. Therefore, there are many rules that regulate the matter of buying and selling in Indonesia. Agreements made by the community in terms of buying and selling must be clear and have a legal basis because every agreement born of an agreement is bound by law, as stated in article 1338 of the Civil Code (KUHPPerdt). Buying and selling also has its own way, including buying and selling in the ijon or ngijon system, namely selling fruit that has not been seen. This research is categorized into the type of empirical normative legal research, it is based on the issues and or themes raised as research topics. Empirical normative legal research uses case studies in the form of products of legal behavior, for example reviewing laws and their application in society.

Keywords : Sale, Purchase, Ijon, Customary Law

INTRODUCTION

The 1945 Constitution in Article 18B paragraph two (2) which reads that the State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the 1945 Constitution of the Republic of Indonesia. Constitution.¹

Buying and selling is an activity that takes place and is inherent in every society in the State of Indonesia. Therefore, there are many rules that regulate the matter of buying and selling in Indonesia. Agreements made by the community in terms of buying and selling must be clear and have a legal basis because every agreement born of an agreement is bound by law, as stated in article 1338 of the Civil Code (KUHPPerdt), which reads: "All agreements legally made by two or more people, applies as law for those who make it".²

In civil law, there is a consensual principle which means agreement. Legitimate buying and selling activities must reach an agreement, as emphasized in article 1458 of the Civil Code, which reads: "The sale and purchase is considered to have occurred between the two parties immediately after they agreed on the goods and the price, even though the goods were has not been submitted nor the price has not been paid".³

The provisions used as the legal basis for the use of standard contracts in Indonesia are Article 1338 clause (1) of the Civil Code which stipulates: "all agreements made legally valid as law for those who make them" from the word all can be interpreted that every legal subject can make agreement with any content, there is freedom of legal subjects to determine the form of the agreement. In other words, through the principle of freedom of contract, legal subjects have the freedom to make agreements, including opening up opportunities for legal subjects to make new agreements that have not been regulated in the Civil Code so that they can follow the needs of the community due to the times.

Apart from that, buying and selling also has its own way, including buying and selling in the ijon or ngijon system, namely selling fruit that has not been seen, this is strictly prohibited in the eyes of the law because in the ijon trading system it is very unclear because that is what it is a form of blackmail that can harm other people. The ijon sale-purchase system has also been emphasized in Article 8 paragraph 3 of Law No.

¹ The 1945 Constitution, (<http://Id.m.wikisource.org>) accessed at April 7th 2022

² Subekti, *Aneka perjanjian*, (Bandung: PT citra aditya bakti, 1989), p.4

³ *Ibid*, p.2

2 of 1960 concerning profit-sharing agreements, which reads: "payments by anyone, including owners and cultivators, to cultivators or owners in any form whatsoever have ijon elements, it is prohibited".⁴

In Law No. 2 of 1960, it is stated that a profit sharing agreement is an agreement with whatever name is entered into between the owner on the one hand and a person or legal entity on the other, which in this Law is called a cultivator based on an agreement where the cultivator is allowed to by the owner to carry out an agricultural business on the owner's land with the distribution of the results between the two parties (Article 1 letter c).

In article 15 of law number 2 of 1960 concerning profit-sharing agreements, which reads: "Whoever violates this prohibition can be punished with a fine of up to IDR. 10,000,⁵ it is very clear that all forms of buying and selling that have elements of ijon are strictly prohibited because there will be many impacts that will occur by the seller or the buyer because they do not have clarity for that.

For example, in Bone Beach, Bone Bolango Regency, Gorontalo Province. The problem is the contract in the sale and purchase of ijon, for example, the owner of the ijon agrees on 10 major harvests but the price of this purchase remains the same throughout the year until the contract is completed and will only be based on the main harvest. And if the harvest is small, it will not be included in the calculation by the ijon buyer, and will be handed over to the tree owner completely. Therefore, it is important to resolve buying and selling disputes in the perspective of customary law because the ijon system has become a habit in buying and selling agricultural commodities.

METHOD

This research is categorized into the type of empirical normative legal research, it is based on the issues and or themes raised as research topics. Empirical normative legal research uses case studies in the form of products of legal behavior, for example reviewing laws and their application in society.⁶ The focus of this legal study becomes a unified legal problem, namely with regard to the sale and purchase with ijon system and in the perspective of dispute resolution according to customary law.

RESULTS AND DISCUSSION

Disputes Settlement on the Sale and Purchase of Cloves on the Ijon System in Customary Law

In principle, the ijon sale and purchase agreement is based on customary law, especially in the Bone Pantai District, Bone Bolango Regency, the agreement creates a legal relationship between the seller and the buyer in the form of rights and obligations. The principle of Magical-Religious is the basis of the ijon clove agreement, where both parties are afraid to violate the agreement because it is related to ancestral beliefs that will punish one party who commits a fraudulent act. That is why in a customary agreement, the parties have a bond with their ancestors that must be maintained. If the ancestral spirit feels disturbed, it must be chosen to create balance in some taboo ceremonies or *ritis*.⁷

From the results of the author's observations at the research location for several days, it can be emphasized that what is meant by the farming community, the head of the sub-district/customary leader, two witnesses and the buyer and seller are:

1. Farming community are a group of people in a certain area that own clove trees;
2. The head of the sub-district to decide to arbitrate case at the sub-district level;
3. Witness is a person who directly hears, sees and feels the process of sale-purchasing cloves in the area;
4. The seller and buyer are people who are directly involved in the sale and purchase agreement of cloves with ijon system.

On this basis, the ijon agreement is implemented. Sub-district government usually only carry out supervision and guidance to the parties who involved in the clove bond agreement. According to Joyodiguno, the strength of customary law laid on supervision from traditional heads who are given power. Customary heads function as a government whose job is to express a sense of justice if there are parties who do harm or harm in a self-interested relationship.⁸ The author argues that based on the author's direct observations during research activities in the area, supported by statements from community leaders in the area, it can be concluded that the implementation of buying and selling cloves with a bonded system in Bone Pantai District, Bone Bolango Regency, can be done in the following ways:

1. It is carried out by the parties (the seller) and the buyer by mutual agreement;
2. It is carried out by the sellers and buyers in the presence of witnesses; and

⁴ Wirjono Prodjodikoro, *Hukum perdata tentang hak atas benda*, (Jakarta: PT intermasa, 1986) p.176

⁵ Ibid., p.177

⁶ Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*. Cet. 1. Bandung: PT. Citra Aditya Bakti, 2004. p.52

⁷ Bushar Muhammad, *Asas-asas Hukum Adat*, (Jakarta, Pramudya Paramitha, 1986) p.45

⁸ Djojodigono, M.M, *Asas-asas Hukum Adat*, (Yogyakarta, JBP Gadjah Mada, 1958)

3. It is carried out by the sellers and buyers in front of the head of the sub-district/traditional leader

Apart from that, there are several things in the ijon sale and purchase agreement that cannot be contested by the buyer or seller, in this case the author describes several conditions that cannot be contested and conditions that can be sued in the bonded sale and purchase system, as follows :

1. Circumstances that cannot be contested in the sale and purchase of cloves tree with ijon system are:
 - a. Forest fire,
 - b. Landslide,
 - c. Tree not bearing fruit, and
 - d. Dead tree because of pest
2. Circumstances that cannot be contested in the sale and purchase of cloves with ijon system are:
 - a. The seller has bad intention,
 - b. The seller picks the fruit that have been ijon previously, and
 - c. The seller cancels the sale and purchase of cloves for no apparent reason even though the agreement has been running for a long time.

Factors Affecting the Continuing Sale and Purchase of Ijon in Bone Beach, Bone Bolango Regency

From the results of the author's research directly in the Bone Pantai District, Bone Bolango Regency, for a few days it can be said that one of the factors that influence the sale and purchase of clove fruit with the bonded system in the area is environmental factors, almost all people in the area carry out buying and selling transactions. with this bonded system so that it becomes one of the diseases that is difficult to get rid of.

From the author's observations at the research location for several days, it can be said that environmental factors are a very strong factor in effect so that the sale and purchase of this bonded system occurs because people communicate with one another about buying and selling with the green system. This is very influential on the farming community who do not usually use the bonded trading system because when they get information from their relatives about the bonded sale and purchase, they are easily tempted because the process is easy and quick to get money.

CONCLUSIONS

From the problems that have been formulated in this paper, in this concluding chapter the author draws the following conclusions::

1. Settlement of disputes over the sale and purchase of cloves with a ijon system according to positive law and customary law, that the sale and purchase agreement of cloves must be made in writing between the seller and the buyer in front of the Village Head/Customary Head, in order to have the legal power to sue or sue if something happens. -things you don't want in the future.
2. Factors that influence the sale and purchase of the ijon system in the sub-district of Bone Pantai, Bone Bolango Regency, which is influenced by environmental factors of people who are accustomed to the Ijon system.

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