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An analysis of proportionality principles in profit-sharing investment agreement between BUMDes (Village-Owned Enterprises) Tirta Mandiri and Villagers as investor in Ponggok Village Polanharjo district Klaten regency

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Abstract
The principle of proportionality requires a balance between the rights and obligations of the parties bound in an agreement or contract, where the nature of the contract is to realize the fairness of the exchange of rights and obligations so that the imbalance of results can be accepted as fair if the process of exchanging rights and obligations take place proportionally. In the profit-sharing investment agreement between BUMDes Tirta Mandiri and villagers as an investor in Ponggok Village, it is important to know how the mechanism of profit and loss sharing to make each party can receive it fairly so that it can be felt fair to maintain the continuity of the contract or agreement they made. Based on this case, the author would like to examine and analyze more in-depth concerning the principle of proportionality, whether it has worked well or animates in each article in the Investment Cooperation Agreement that applies the profit-sharing system. This study used a Normative Legal Research. The type of study when viewed from the perspective of its purpose was Legal Principles Research. Based on the result of study, it can be concluded that the principle of proportionality has tried to be done well in the profit-sharing investment cooperation agreement between BUMDes Tirta Mandiri and villagers as investor in Ponggok Village, Polanharjo District, Klaten Regency, especially in the phases or stages of contract formation, implementation of the contract and also in the event of a contract failure or a contract dispute, however, the principle of proportionality cannot work at all or is not carried out properly in the pre-contract phase or stage.

Keywords: proportionality principles, agreement, investment, profit-sharing

1. Introduction

The principle of proportionality is a principle that underlies or underpins the exchange of rights and obligations of the parties based on their proportions or share in the entire contractual process. The principle of proportionality presupposes that the distribution of rights and obligations is realized in all contractual processes and relationships, both in the pre-contractual phase, contract formation and contract implementation. The principle of proportionality is very oriented to the context, relationships, and interests of the parties [1]

In compiling an agreement or contract, the principle of proportionality is known, this principle rests on justice. Peter Mahmud Marzuki stated that the principle of proportionality is termed the *equitability contract* with elements of *justice and fairness*. The meaning shows an equal relationship (equality), impartial and fair, this means that the contractual relationship takes place proportionally and naturally. By pointing to the principle of *pre-stationary equity* is a principle that requires a guarantee of balance and the teachings of *justum pretium* are the appropriateness based on the law [2].

According to Article 1313 of the Civil Code, agreement is an act in which one or more people commit themselves to one or more other people. An agreement is an event in which someone promises to someone else or two people promise to do something. From this event, then arises a relationship between the two people who made it. In its form, the agreement is in the form of a series of words containing promises or abilities that are spoken or written [3].

In Article 1338 of the Civil Code stated that all approvals or agreements made are based on the applicable laws and regulations, then the agreement applies as a law for those who made it, besides, the approvals or agreement cannot be withdrawn other than the agreement of both parties or for reasons determined by law and the approvals or agreement must be carried out in good faith. Here, the principle of *pacta sunt servanda* is enforced, in which the agreement is legally made, the agreement will act as a law for the parties that made it. Subsequently, applying the principle of good faith, it means that the parties involved in the agreement must carry out the substance or content of the agreement with honest, open and trusting each other.

Investment can be interpreted as an activity that aims to develop assets. Additionally, investment is also a commitment to several funds or other resources carried out at present to obtain some benefits in the future. Investment begins at the expense of current consumption activities to obtain greater benefits in the future. Investment can be interpreted as an activity carried out by both natural person and judicial person to increase and or maintain its capital value, both in the form of cash, equipment, immovable assets, intellectual property rights, and expertise [4].

Profit-sharing system is a collaboration between two parties in running a business. The first party is the entrepreneur who contributes to the expertise, tool/facility skills and time to manage the business. While the second party is the investor who has a stake in funding the business so that it can run well, both in working capital and overall capital. For each of these shares, both parties are entitled to the results of the work that they do because no one can be sure how much profit. Besides, the distribution of business results is determined in the form of a percentage of the results obtained, not on the number of funds invested. Profit-sharing is usually done in one business cycle, for those whose business is continuous and difficult to determine, the profit-sharing will be done by the agreement, for example, every month or every year. In a profit-sharing system, because profits are shared, the losses will also be borne together as well. Investor has the risk of losing some or all of their capital if their business is losing money. While employers bear the loss in the form of work and time that is not paid [5].

The establishment of Village-Owned Enterprises (BUMDes) is based on Law Number 32 of 2004 concerning Regional Government; Article 213 Paragraph (1) stated that "villages can establish village-owned enterprises based on the needs and potential of villages". Then, in Government Regulation No. 72/2005 concerning Villages, Article 78 Paragraph (1) stated that "in improving the income of the community and the village, the Village Government can establish a Village-Owned Enterprises based on the needs and potential of villages". In Article 78 Paragraph (3) also stated that "the form of Village-Owned Enterprises as referred to in Paragraph (1) must be incorporated." Furthermore, Article 79 which regulates BUMDes Capital in Paragraph (2) point e mentioned that "the inclusion of other parties capital or profit-sharing cooperation is based on mutual benefit".

The regulation of village is regulated in Law Number 6 of 2014 concerning Villages which came into force on January 15, 2014, the Regulation of Village-Owned Enterprises (BUMDes) is contained in Chapter X, articles 87 to 93, some of them stated that BUMDes is managed with the spirit of family and mutual cooperation and can run a business in the field of economy and or public services based on the applicable laws and regulations.

One of the BUMDes that is quite successful in developing the village economy is the BUMDes Tirta Mandiri in Ponggok Village, Polanharjo District, Klaten Regency, Central Java, armed with a list of potential inventories and a map of village assets, the Ponggok Village Deliberation Forum has agreed on the idea of managing and utilizing village assets by establishing BUMDes Tirta Mandiri on December 15, 2009, which is further regulated in Ponggok Village Regulation Number 6 of 2009 concerning BUMDes.

BUMDes Tirta Mandiri in Ponggok Village has been named as the best BUMDes at the national level since it was initiated by BUMDes each year, it has been able to contribute billions of rupiahs in revenue to the treasures of Ponggok Village. Initially, BUMDes Tirta Mandiri Ponggok was pioneered as a fish market trading business and capital loans for the community, then it was developed into the Umbul Ponggok tourism sector as a recreational vehicle. With a strong spirit and determination, this BUMDes continued to develop itself by building new business units. Currently, BUMDes Tirta Mandiri Ponggok already has 11 (eleven) business units, 6 (six) of them are already in the form of PT (Limited Liability Company) which contributes sufficient income great for Ponggok Village. In 2017, the income of BUMDes Tirta Mandiri Ponggok reached IDR.14,2 billion with deposits to the village treasury of around IDR.1,2 billion. Before the BUMDes Tirta Mandiri, Ponggok Village was included in the village of the red or poor zone, but now thanks to the BUMDes Tirta Mandiri to make this village become a village with a fairly advanced economic level and almost every KK (Head of the Family) in Ponggok Village, has shared in the amount of IRD.5 million from one business unit, the Umbul Ponggok business unit, and even the Ponggok Village are made as a pilot village for other villages in Indonesia [6].

In order to manage and develop the BUMDes Tirta Mandiri Ponggok business, one of the ways is by collecting funds from the villagers in Ponggok Village, Polanharjo District, Klaten Regency. The citizens in Ponggok Village can openly participate in investing in BUMDes Tirta Mandiri in the form of money with IDR. 5 (five) million rupiahs, where the agreement on investment is stated in an Investment Cooperation Agreement that adopts a profit-sharing system. In an agreement or contract with a commercial revenue-sharing system such as in an investment cooperation agreement between BUMDes Tirta Mandiri and the villagers in Ponggok Village, the principle of proportionality becomes very important because this principle can be used as a basis for reference or guidelines for the implementation of an agreement or the contract to be able to run properly based on the wishes of the parties in a fair and profitable, and balanced by the proportions or their respective parts by taking into account all rights and obligations so that the agreement or contract can last for a long time or until the term of the contract or agreement expires.

The principle of proportionality in an agreement or contract is defined as the principle that underlies the exchange of rights and obligations of each party based on their respective proportions or parts, where proportionality in the distribution of rights and obligations is realized in the entire contractual relationship process, both in the pre-contractual phase, contract formation phase or contract implementation phase. Therefore, it is necessary if, in an agreement or an inventory cooperation contract between BUMDes Tirta Mandiri and the villagers in Ponggok Village who adhere to the profit-sharing system, they will be examined in more in-depth whether they have fulfilled the principle of proportionality at each stage of the contract phase they are making.

The principle of proportionality requires a balance between the rights and obligations of the parties bound in an agreement or contract, where the nature of the contract is to realize the fairness of the exchange of rights and obligations so that the imbalance of results can be accepted as fair if the process of exchanging rights and obligations takes place proportionally. In a profit-sharing investment agreement between BUMDes Tirta Mandiri and villagers as an investor in Ponggok Village, of course, each party has its rights and obligations that affect the profit-sharing on profits and losses as a result of managing the business they run together. This needs to be known how to know the mechanism of profit and loss sharing to make each party can receive it fairly so that it can be felt fair to maintain the continuity of the contract or agreement they made.

Based on the above problem, the author would like to examine and analyze in more in-depth the principle of proportionality, whether it has worked well or animates in each article in the Investment Cooperation Agreement that implements a profit-sharing system between BUMDes Tirta Mandiri and the villagers in Ponggok Village, Polanharjo

District, Klaten Regency, Central Java.

2. Research Methods

The method used in this study was a Normative Legal Research. Normative legal research is also called doctrinal law research. In legal research is often conceptualized as what is written in the legislation (law in books) or the law is conceptualized as a rule or norm which is a benchmark of human behavior that is considered appropriate.

Additionally, the type of study when viewed from the perspective of its purpose was Legal Principles Research with activities including the selecting articles containing legal norms which were the object of research, classifying them, analyzing them using existing legal principles, and constructing them with provisions covering legal material that was examined, consistent, aesthetic and simple in its formulation [7].

3. Literature Review

The principle as a basic thought or an abstract legal principle has a very important function for the formation of concrete laws as well as for the formation, creation, and regulation of agreements. This principle can also be used to find out whether an applicable legal regulation is based on the legal taste in a community, has been considered fair or has an ethical value based on what is desired by the wider community so that the principle is a manifestation and will of the community and it can also serve as a basis for interpretation of the law in force in a society including in an agreement made by the parties.

According to Smith [8], a legal principle also has a function including:

1. The legal principle has a function to maintain the intertwining of scattered legal rules.
2. The legal principle has the function as the basis for solving new and emerging problems.
3. The legal principle has the function as the basis for the formation of new legal teachings that can be used as a basis for solving new problems.

Concerning the binding law, the legal principles also have functioned as a benchmark or guideline as well as the guidelines and restrictions in forming and regulating the agreement to be made so that it will eventually become an agreement that applies to the parties and can be enforced either by its implementation or fulfillment [9].

The meaning of the principle of proportionality is a principle that regulates the exchange of rights and obligations of the parties based on their proportions or parts, which covers the entire contract process, both at the pre-contractual stage, contract formation stage or contract implementation stage. The function of the principle of proportionality in commercial contracts is: in the pre-contract stage, which guarantees the realization of a fair contract negotiation process, in the formation of a contract that guarantees equality of rights and freedom in determining the contents of the contract, while in the implementation of the contract, namely ensuring the distribution of the exchange of rights and obligations according to the proportion [10]

According to Article 1313 of the Civil Code, the definition of the agreement is an act in which one or more people commit themselves to one or more other people. While the terms of the validity of the agreement according to Article 1320 of the Civil Code are, namely, the existence of an agreement that binds them, the ability of the parties agreeing, the existence of a certain matter, and for a reason that is not prohibited. The first and second conditions are subjective conditions that must be fulfilled by the parties as legal subjects in the agreement; the third and fourth conditions are objective because they regulate the object of an agreement.

Investment is an activity to place funds in a certain period in the hope that the use of these funds can generate profits and or increase the value of the investment. The objectives of the investment are to get a fixed income in the form of royalties or profits, to enlarge the business, to obtain a guarantee of doing business, and to reduce competition. While the benefits of investing in a business are to increase assets, to meet future needs, to save a lifestyle and to avoid getting into debt [11].

Profit-sharing is a form of cooperation agreement between investors and capital managers (entrepreneur) by running economic business activities, where both of them will be bound by a contract that in the business if they get profit will be shared by both parties based on the ratio (portion) of the agreement at the beginning of the agreement and likewise if the business suffers a loss will be borne together based on their respective portions. Profit-sharing is a form of the return of an investment contract from time to time, uncertain and not permanent, the size of the recovery depends on the results of the business that actually happened [12].

Village-Owned Enterprises (BUMDes) is a business institution that is managed by the community and the Village Government to strengthen the village economy formed based on the potential needs of the village in the context of increasing Village Original Income (PADesa). The establishment and regulation of BUMDes is intended to improve the economic standard of living of rural communities while at the same time reducing the role of middlemen and helping to meet the needs of productive and consumptive rural communities, which are expected to be able to grow economic activities in rural areas that are more useful and can move the economy of rural communities based on the needs and potential of the village[13].

4. Research Results and Discussion

The profit-sharing investment agreement between BUMDes (Village-Owned Enterprises) Tirta Mandiri and the villagers as investors in Ponggok Village, Polanharjo District, Klaten Regency is made in writing and outlined in a document entitled Investment Cooperation Agreement Letter and completed with a letter-number, while the FIRST PARTY is the Director of BUMDes Tirta Mandiri and the SECOND PARTY is an investor. Investors, in this case, are citizens in Ponggok Village who invest their capital in BUMDes Tirta Mandiri. The above investment agreement is not made before a notary public so it is not a real memorandum not only signed by both parties.

The investment cooperation agreement using the profit-sharing system between BUMDes Tirta Mandiri and the villagers as an investor in Ponggok Village has been prepared by BUMDes so that villagers who are interested in becoming investors just need to learn, understand and then sign as a manifestation of an agreement. It means that the two parties have mutually agreed, agreed upon what is stated in the agreement with all the consequences, namely carrying out all the rights and obligations of each party based on what has been regulated and stipulated in the agreement. With such conditions above, it can be said that the principle of proportionality cannot work well in the pre-contract phase because it does not open up negotiation opportunities for both parties to express what exactly they want to achieve through the contract they made free so that it can exchange their rights and obligations fairly.

The definition of cooperation referred to this agreement is the cooperation in terms of investments paid up by the SECOND PARTY, i.e., the citizens in Ponggok Village to the FIRST PARTY, i.e., BUMDes Tirta Mandiri. It means that the SECOND PARTY acts as an investor and the FIRST PARTY acts as the recipient of the investment. The form of cooperation of the agreement is that the SECOND PARTY is deposited funds to the FIRST PARTY with IDR.5,000,000.00 (five million rupiahs), then the FIRST PARTY manages the investment deposit funds which are used to increase business capital. As for the general provisions in this agreement is all businesses carried out by the FIRST PARTY must not be contrary to applicable laws and ethics and accepted by the community. The SECOND PARTY is not responsible and is free from all claims for damages caused by the businesses of the FIRST PARTY. The SECOND PARTY is not responsible and is free from all claims related to all the businesses made by the FIRST PARTY. Then, all businesses are made by the FIRST PARTY with supervision from the Supervisory Agency.

Based on the aforementioned provisions, it can be said that the principle of proportionality seeks to work well in the sense that contracts or agreements are formed with their respective consequences based on their position in the agreement which also affects the limits of responsibility of each party. Where the SECOND PARTY is limited to including capital only with the consequence that they are not responsible and free from all claims for damages or all claims relating to all business carried out by the FIRST PARTY. On the other hand, the FIRST PARTY as the recipient of capital has the consequences and responsibility to carry out all of its business based on the laws and ethics that apply in social life by receiving supervision from the Supervisory Agency. It can be seen that the position and responsibilities of the parties are adjusted according to their respective proportions, even though the FIRST PARTY runs all businesses, they are still limited by applicable laws and ethics and even overseen by the supervisory board so that it is expected that they will not be applied arbitrarily in managing the SECOND PARTY funds. It appears that each party is protected by boundaries that are felt to be close to feeling fair based on their respective proportions or parts.

The investment scheme in this agreement is the SECOND PARTY deposits funds as investment capital (share capital) to the FIRST PARTY so that the SECOND PARTY is entitled to receive profit-sharing based on what is obtained by the FIRST PARTY every 15th of the following month. Where the profit-sharing is net income from all business units managed by the FIRST PARTY. The percentage of net income received by the SECOND PARTY is proportional to the capital that has been deposited. If the business of the FIRST PARTY suffers a loss, then it does not affect the investment capital deposited by the SECOND PARTY, but the SECOND PARTY does not obtain profit sharing for the month.

From the foregoing, it can be said that the principle of proportionality that requires an exchange process between rights and obligations in a contract can take place properly based on the proportions or their respective parts, where the difference in yield does not become a matter of debate over the distribution of rights and the obligation has been carried out proportionally and fairly based on the principle of proportionality which is basically an embodiment of the doctrine of contractual justice. In this case, it can be said that the principle of proportionality can work well because the distribution of results to the FIRST and SECOND PARTY is clearly different, but both parties can accept it well.

The term of the cooperation agreement is the FIRST PARTY will manage the investment of the SECOND PARTY for 2 (two) years from the signing of the cooperation agreement, whereby the period of this cooperation may change if it is deemed to be lacking by the FIRST PARTY, but it must be with the approval of the SECOND PARTY so that the FIRST PARTY is obliged to return all funds deposited by the SECOND PARTY at the time the cooperation period ends. Here, it can be said that the principle of proportionality can still function or work properly, especially in the phases or stages of contract formation, i.e., ensuring equal rights and freedom in determining the contents of the contract, where the FIRST PARTY and SECOND PARTY have the freedom to determine the contents of the contract including in determining the period of the contract the ongoing contract of cooperation. Meanwhile, in order to guarantee contract equality, it can be seen that in terms of changing the period of cooperation, the FIRST PARTY must obtain prior approval from the SECOND PARTY, so it cannot be done unilaterally because the parties must have an equal position based on what the proportionality principle wants.

The obligation of the FIRST PARTY is to manage and develop existing businesses, then present the financial statements in the form of a balance sheet and income statement if requested by the SECOND PARTY, and the FIRST PARTY is obliged to answer all questions regarding the procedure for presenting the financial statements requested by the SECOND PARTY. Additionally, the obligation of SECOND PARTY is to deposit investment funds, monitor financial reports presented by the FIRST PARTY comprehensively, then pay PPH (Income Tax) deposited through the FIRST PARTY to be paid to the tax office. In the phase or stage of contract implementation, the principle of proportionality functions to ensure the realization of the distribution of the exchange of rights and obligations according to the proportions agreed upon or charged to the parties. This appears that the principle of proportionality strives to work well because what is the obligations of the parties has been agreed by their respective proportions by both parties so that the realization of the distribution of the exchange of rights and obligations can be guaranteed and can take place properly and based on what as desired by the principle of proportionality.

Other provisions in this agreement contain the matters that have not been regulated in the agreement will be regulated later together in an addendum or supplement provided that changes or additions to this agreement only apply if stated in an addendum or supplementary agreement signed by both parties and forms an integral part of this agreement. The original letter of this agreement is made in duplicate of 2 (two), each of them is sufficiently sealed and has been signed by both parties so that each party has the same legal force and each party obtains 1 (one) copy.

Therefore, the statement mentioned above is also one of the ways to anticipate that if there is a failure in the implementation of the contract, it must be assessed proportionally so that there is no misuse by one of the parties in utilizing the contract failure clause solely for the benefit of one party to the detriment of other parties, and all changes and additions to this cooperation agreement must be signed by both parties.

In the concluding part of this agreement states that the agreement is signed by both parties, in the event of a dispute in the future, both parties agree to settle it by way of peace and deliberation and if a dispute arises between the FIRST PARTY with the SECOND PARTY regarding this agreement which is not can be resolved peacefully and deliberately, then both parties choose the District Court base on what they agreed together to resolve the dispute. In the event of a contract dispute, the principle of proportionality emphasizes that the proportion of the burden of proof on the parties must be divided according to fair considerations, this case means that the District Court as a court of law is expected to be able to provide justice that can fulfill a sense of justice in society based on the doctrine of justice contract that wants to be realized through the principle of proportionality

5. Closing

5.1 Conclusion

Based on the result of the study, the author concludes that the principle of proportionality has tried to be done well in the investment sharing agreement between BUMDes Tirta Mandiri and villagers as investors in Ponggok Village, Polanharjo District, Klaten Regency, especially in the phase or stages of contract formation, implementation of the contract and also in the event of a contract failure or the event of a contract dispute, however, the principle of proportionality cannot work at all or is not carried out properly in the pre-contract phase or stage.

5.1 Suggestions

It is expected that in the future if a new contract or agreement is made, it must involve the community members who become investors so that they can better accommodate what they want to obtain or achieve through this investment partnership.

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