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# Legal Protection for Parties with Good Faith in the Amendment of Farmland Production Sharing Agreement

(Study in Mujur Village, East Praya Sub-district, Central Lombok District)

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## ABSTRACT

This study examines legal protection for parties acting in good faith to amend farmland production sharing agreements, with a case study in Mujur Village, East Praya Sub-district, Central Lombok District. In practice, it was found that the tenant farmer unilaterally and secretly altered the original profit-sharing agreement into a lease agreement without the landowner's knowledge, resulting in injustice and legal violations. The research employs a normative-empirical legal method with a conceptual and statutory approach, referring to Law Number 2 of 1960 concerning Production Sharing Agreements. The findings reveal that Indonesian positive law regulates the requirements and mechanisms for valid production sharing contracts and provides two types of legal protection for aggrieved parties: preventive and repressive legal protection. These legal protections aim to uphold justice, legal certainty, and a balanced relationship of rights and obligations between landowners and tenant farmers. Therefore, any amendment to an agreement must be conducted lawfully and with mutual good faith, as stipulated in Articles 1338 and 1320 of the Indonesian Civil Code.

## KEYWORDS

Legal Protection;  
Production  
Sharing  
Agreement; Good  
Faith; Agrarian  
Law; Mujur  
Village



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## INTRODUCTION

Humans, as social creatures, cannot live alone but depend on other humans; as social creatures, humans are always in contact with each other. Human beings cannot provide and procure their needs without involving other people.<sup>1</sup> One of the efforts humans can make to help each other is buying, selling, and cooperating.<sup>2</sup> Cooperation, in this case, is by agreeing. In general, an agreement is an event in which one person promises another person or two people to promise each other to carry out a certain thing. The law of the agreement can regulate all activities and provisions so that the agreement can run smoothly, orderly, and safely so that no party is harmed as a result of the agreement activity.<sup>3</sup>

A contract or agreement must fulfill the conditions for the validity of an agreement, namely the agreement of the parties, the ability to agree, certain matters, and a halal cause, as regulated in Article 1320 of the Civil Code. With the fulfillment of the four conditions for the validity of the agreement, an agreement becomes valid and legally binding.<sup>4</sup> In practice, the cultivator changes the written agreement secretly for personal gain without the knowledge of the landowner. However, in practice, the agreement that occurred in Mujur Village, East Praya Subdistrict, Central Lombok Regency, there was fraud committed by the cultivator against the landowner, in this case the cultivator committed unlawful acts against the owner of the agricultural land by changing the agreement which initially used a profit-sharing agreement then changed it to a lease, in this case the party who owned the agricultural land did not know about the change in the agreement.

For the sake of launching his business, the tenant secretly changed the agreement with the landowner, but the landowner did not take long enough to find out the bad faith made by the tenant. With the information received by the landowner both from the community and employees who work on the farm, also reinforced by a third party, namely the village government where the cultivator leases the agricultural land, the agreement that has been made from the beginning is canceled. In connection with the landowner's knowledge of the change in the agreement, the landowner felt disappointed with the tenant who had acted in bad faith towards him.

However, the landowner did not take any legal action to sanction the cultivator because he wanted to allow the cultivator to improve his bad faith. Therefore, the author wants to examine the legal protection of people who are in good faith in changing agricultural land-sharing agreements. Article 1338 paragraph (3) stipulates that "every agreement must be made in good faith". The implementation of an agreement in good faith refers to objective good faith. The standard of good faith used is the standard that refers to objective norms. The provision of good faith refers to written norms that have become legal norms as a separate source of law. The norm is said to be objective because behavior is not based on the party's own

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<sup>1</sup> Widodo Dwi Putro, *Filsafat Hukum: Pergulatan Filsafat Barat, Filsafat Timur, Filsafat Islam, Pemikiran Hukum Indonesia hingga Metajuridika di Metaverse* (Jakarta: Kencana Prenada Media Group, 2024).

<sup>2</sup> M Ali Hasan, *Berbagai Macam Transaksi dalam Islam* (Jakarta: Raja Grafindo Persada, 2003).

<sup>3</sup> Syahmin, *Hukum Perjanjian Internasional* (Jakarta: Raja Grafindo Persada, 2006).

<sup>4</sup> Suharnoko, *Hukum Perjanjian, Teori dan Analisa Kasus* (Jakarta: Kencana Prenada Media Group, 2007).



opinion but on behavior that must conform to general assumptions about good faith. In its application, parties who are honest or in good faith must be protected, and conversely, parties who are dishonest or not in good faith must feel the consequences of their dishonesty.<sup>5</sup>

By paying attention to the matters mentioned above, it is hoped that the purpose of agreeing, namely, the creation of justice, order, and legal certainty, can be realized. The agreement contains the meaning of a promise that must be kept where the promise is a debt. With the agreement, it is expected that each party will keep its promise and carry it out properly. The agreement is expected that the parties involved can make a business by the agreement that has been agreed upon, do it in good faith, and as a basis for problem solving if problems arise in the future. A profit-sharing agreement, according to Law Number 2 of 1960, is an agreement between the landowner and the cultivator to divide the harvest.

An agreement that fulfills the validity has binding force for the parties, and the legal effect of the agreement is that the parties are bound by the contents of the agreement and also based on propriety, custom, and law (Articles 1338, 1339, and 1340 of KUHPer). The agreement must be made in good faith as stipulated in Article 1338, paragraph 3 of the Civil Code, namely, the creditor can request the cancellation of the debtor's actions that harm the creditor (*actio pauliana*) as stipulated in Article 1341 of the Civil Code. Several legal principles form the basis of contract law. The main principles or principles that are considered as the pillars of the law of the agreement provide an overview of the background of the way of thinking that is the basis of contract law. One way or another, due to the fundamental nature of these things, the main principles are also said to be the basic principles of contract law.<sup>6</sup>

One of the most fundamental principles in contract law is the principle of protection for the parties, especially the injured party. Based on this principle, or the principle of protection of the injured party, in the event of a default on an agreement, various rights are given to the other party. Although one party has defaulted, their interests must also be protected to maintain balance. In practice, the cultivator does not give good faith with the first agreement between the landowner and the cultivator using a profit-sharing agreement, but in reality, the cultivator changes the agreement secretly without the consent of the landowner by using a lease agreement.

## METHOD

The type of research used in this research is normative-empirical legal research, which is an understanding of law in the sense of norms (rules) and the implementation of legal rules in real behavior as a result of the enactment of legal norms. This behavior can be observed clearly and is evidence of whether citizens have behaved by the provisions of normative law (laws and regulations and other written documents). Normative-empirical (applied) legal research is research that

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<sup>5</sup> Ridwan Khairandy, *I'tikad Baik dalam Kontrak di Berbagai Sistem Hukum* (Jakarta: FH UII Press, 2017).

<sup>6</sup> Ana Fauzia, Deva Gama Rizky Octavia & Fathul Hamdani, "The Conflict of the Norms in the Execution of Secured Objects Which are Enforced by Liability Rights When the Debtor is Bankrupt" (2022) 4:1 Progress Law Rev 1-9.



examines the implementation of positive legal provisions (legislation) and written documents in action (factual) in every specific legal event that occurs in society. The study aims to ascertain whether the results of the application of law to legal events in concreto are by the provisions of the legislation. In other words, whether the provisions of the legislation have been implemented properly, so that the interested parties achieve their goals or not.<sup>7</sup>

The approaches used are conceptual and statutory. The conceptual approach is an approach that is carried out by examining the views and opinions of scholars, books of scientific works that are relevant to the problem under study used to understand the concepts in profit sharing and its arrangements in Indonesia. The statutory approach is carried out by examining all laws and regulations related to the legal issues being addressed, namely Law Number 2 of 1960 concerning production sharing agreements.

## RESULT & DISCUSSION

### I. Basic Concept of Legal Protection

The principle of legal protection rests on and stems from the concept of the recognition and protection of human rights. The birth of the concepts of recognition and protection of human rights is directed at limiting and placing obligations on society and government.<sup>8</sup> The government is obliged and responsible to respect, protect, uphold, and promote human rights as stipulated in the Law, other laws and regulations, and international human rights law accepted by the Republic of Indonesia.<sup>9</sup>

Article 29, paragraph 1 of Law Number 39 of 1999 concerning Human Rights explains that everyone has the right to protection of self, family, honor, dignity, and property rights. Furthermore, Article 36, paragraphs 1 and 2 of Law Number 39 of 1999 concerning Human Rights explain that everyone has the right to own property, either alone or together with others, for the development of himself, family, nation, and society in a way that does not violate the law. And no one shall be deprived of his property arbitrarily and unlawfully. From the provisions in Law No. 39/1999 above, it can be seen that the obligation to protect land rights holders lies with the State or government as an organization of people's power. To obtain legal protection, a means is needed to achieve it.

According to Setiono, Legal Protection is an action or effort to protect the public from arbitrary actions by authorities that are not by the rule of law, to create order and peace to enable humans to enjoy their dignity as human beings.<sup>10</sup> The legal protection in question is to protect human rights that are harmed by others and this protection is given to the community so that they can enjoy all the rights provided by law or in other words legal protection is various legal efforts that must

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<sup>7</sup> Abdulkadir Muhammad, *Hukum dan Penelitian Hukum* (Bandung: PT Citra Aditya Bakti, 2004).

<sup>8</sup> Ana Fauzia & Fathul Hamdani, "Aktualisasi nilai-nilai pancasila dan konstitusi melalui pelokalan kebijakan Hak Asasi Manusia (HAM) di daerah" (2021) 2:2 J Indones Berdaya 157-166.

<sup>9</sup> Ana Fauzia, Fathul Hamdani & Deva Gama Rizky Octavia, "The Revitalization of the Indonesian Legal System in the Order of Realizing the Ideal State Law" (2021) 3:1 Progress Law Rev 12-25.

<sup>10</sup> Evi Purnama Wati, "Perlindungan dan Pengelolaan Lingkungan Hidup dalam Pembangunan yang Berkelanjutan" (2018) 3:1 Bina Huk Lingkung 119-126.



be provided by law enforcement officials to provide a sense of security, both in mind and physically from disturbances and various threats from any party.<sup>11</sup>

According to Philipus M. Hadjon, legal protection is an action to protect or provide assistance to legal subjects using legal instruments.<sup>12</sup> Based on Article 28D paragraph (1) of the 1945 Constitution, which states that all people have the right to be recognized and guaranteed equal protection of the law in the eyes of the law, to obtain legal protection, a person can report all forms of criminal acts or actions that are detrimental to the police. This is as stated in Article 5 paragraph (1) of the Police Law which explains that the Indonesian National Police is a State instrument that plays a role in maintaining public security and order, enforcing the law, and providing protection, protection, and services to the public in the context of maintaining domestic security.

According to Muchsin, Legal Protection is an activity to protect individuals by harmonizing the relationship of values or rules that manifest in attitudes and actions in creating order in the association of life between fellow human beings. Legal Protection is all efforts to fulfill rights and provide assistance to provide security to witnesses and/or victims. Legal protection of crime victims as part of community protection can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance.

In carrying out and providing legal protection, a place or container is needed in its implementation, which is often referred to as a means of legal protection. The means of legal protection are divided into two types, which can be understood as follows:

1. Preventive Legal Protection is protection provided by the government to prevent violations before they occur. Preventive legal protection is very meaningful for government actions based on freedom of action because of legal protection. This is contained in the legislation to prevent a violation and provide signs or limits in carrying out an obligation.
2. Repressive Legal Protection is a legal protection effort that serves to resolve disputes that have arisen due to violations of the law. This protection is the end in the form of sanctions such as fines, imprisonment, and additional penalties given if a dispute has occurred or a violation has been committed.

Based on this understanding, it can be seen that legal protection not only protects individuals as a form of fulfillment of rights and obligations but also to the rights and obligations of society as a whole, or in other words, legal protection provides guarantees from the law for humans to fulfill their interests for themselves and their relationships with other parties. Legal protection also provides solutions to legal problems and maintains legal certainty so that order and regularity can be created.<sup>13</sup>

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<sup>11</sup> Sukoharjo, "Pengertian Perlindungan Hukum dan Cara Memperolehnya", online: <<https://jdih.sukoharjokab.go.id/informasi/detail/90>>.

<sup>12</sup> Philipus M Hadjon & Sri Soemantri Martosoewignjo, *Pengantar Hukum Administrasi Indonesia* (Yogyakarta: Gadjah Mada University Press, 1993).

<sup>13</sup> Dyah Permata Budi Asri, "Perlindungan Hukum Preventif Terhadap Ekspresi Budaya Tradisional Di Daerah Istimewa Yogyakarta Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta" (2018) 1:1 J Intellect Prop Rights 13-23, online: <<https://journal.uii.ac.id/JIPRO/article/view/11142>>.



## II. Principles of Legal Protection for Landowners Under Indonesian Positive Law

Several regulations have been issued to guide the implementation of Law No. 2/1960 on Agricultural Land Production Sharing Agreements, including:

1. Decree of the Minister of ATR/BPN No. Sk. 322/Ka/1960 on the Implementation of Law No. 2 of 1960;
2. Regulation of the Minister of Agriculture and Agrarian Affairs No. 4/1964 on the Determination of Special Offsets in the Implementation of Production Sharing Agreements;
3. Regulation of the Minister of Agrarian Affairs No. 4/1964 on the Guidelines for the Implementation of Production Sharing Agreements;
4. Presidential Instruction of the Republic of Indonesia Number 13 of 1980 concerning Guidelines for the Implementation of Law Number 2 of 1960 concerning Production Sharing Agreements;
5. Joint Decree of the Minister of Home Affairs and the Minister of Agriculture Number 211 of 1980, Number 714/Kpts/ Um/9/1980 on the Implementation Guidance of Presidential Instruction Number 13 of 1980 on the Implementation of the Law on Production Sharing Agreements.

The Law on Production Sharing Agreements is the juridical basis for determining production sharing agreements. Of course, this strengthens the position of both parties and can minimize the potential for conflict in the production sharing agreement. However, based on empirical facts, conflicts between land rights holders and tenant farmers still occur frequently. Article 3 of the Law on Production Sharing Agreements states that, "a production sharing agreement on a piece of land agreed between one or more people can only be considered valid if it is carried out in a certain manner with several conditions, including that the agreement must be made and signed by the parties, must be made in written form in front of the Village Head, witnessed by at least 2 (two) witnesses from both parties and must be witnessed by the local sub-district head.

To avoid the imbalance of agreements that lead to elements of extortion, the law on production sharing agreements is present to strengthen the bargaining position of each party with arrangements that are by the social values of society. However, the Law on Production Sharing Agreements is still not perfect to answer the challenges of the development of an increasingly progressive society that sometimes causes conflicts or disputes between landowners and tenant farmers.<sup>14</sup>

1. Parties to a Production Sharing Agreement
  - a. The landowner, the party who gives up his land to be managed;
  - b. The cultivator, the party who will cultivate the land.
2. Conditions of a Production Sharing Agreement

The conditions for the validity of an agreement for production sharing of agricultural land according to Law Number 2 of 1960 concerning Production Sharing Agreements are as follows:

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<sup>14</sup> Komang Agus Sujana, Ketut Sudiarmaka & Ni Ketut Sari Adnyani, "Efektivitas Pelaksanaan Undang Undang Nomor 2 Tahun 1960 tentang Perjanjian Bagi Hasil terhadap Tanah Pertanian di Desa Umejero Kecamatan Busungbiu Kabupaten Buleleng" (2020) 3:2 J Komunitas Yust 114–123, online: <<https://ejournal.undiksha.ac.id/index.php/jatayu/article/view/28841>>.



- a. Article 3 Paragraph (1) of Law No. 2/1960 on Production Sharing Agreements stipulates that all production sharing agreements must be made by the owner and the cultivator themselves in writing before the head of the village where the land concerned is located, witnessed by two persons, one from each side of the owner and the cultivator. The purpose of this provision is:
  - 1) To avoid doubts in the future, which may lead to disputes regarding matters related to the agreement (the terms of the agreement, the rights and obligations of the owner, and so on).
  - 2) so that preventive supervision may be exercised so that the provisions of Law No. 2 of 1960 Concerning Production Sharing Agreements are duly observed.
- b. If the landowner is a minor, he shall be represented by his guardian, who shall act for and on his behalf. If the landowner is so old or sick that he cannot personally come to the village head to sign the agreement, he shall be permitted to appoint a proxy to sign on his behalf. In such a case, the reason why the owner is unable to sign it himself shall be recorded in the agreement letter.
- c. The relevant village head should explain to the owner and cultivator at the time of the agreement the provisions of Law No. 2/1960 on Production Sharing Agreements as well as the stipulations mentioned in the agreement letter, especially regarding their respective rights and obligations. If the owner and cultivator make conditions that are not allowed or contradict the stipulation of the regional head regarding the balance of the division of the land's produce, then they should also be informed to be eliminated or replaced with other conditions;
- d. It should also be checked by the village head whether the owner is authorized to enter into a production sharing agreement concerning the land in question. Whether the cultivator fulfills the conditions mentioned in Article 2, namely that he must be a farmer;
- e. Legal entities are prohibited from becoming tenants in a production sharing agreement, except with the permission of the young minister of agrarian affairs or an official appointed by him. In the elucidation of Law No. 2 of 1960 concerning Production Sharing Agreements, it is stated that in principle any legal entity is also prohibited from becoming a tenant, because in this production sharing agreement the tenant must be a farmer, but there are times when, precisely for the public interest or the interests of the village, a legal entity needs to be permitted to become a tenant on abandoned land in the villages. In determining whether or not a legal entity is permitted to become a tenant, an assessment must be made from the point of view of the interests of the village or the public interest;
- f. Production sharing agreements shall be made in triplicate, with the original affixed with a stamp duty and kept by the owner or the tenant as a derivative;
- g. The letters of agreement signed by the owner, the cultivator, the witnesses, and the village head shall as soon as possible be submitted to the sub-district head for ratification;
- h. The letters of agreement received by the Camat are recorded in the register book;



- i. Agreements that have been approved by the camat are announced by the village head in the next village or adat meeting. The aim is to ensure that the profit-sharing between the landowner and the cultivator is fair and the legal position is guaranteed.

### 3. Rights and Obligations in a Production Sharing Agreement

Law No. 2 of 1960 on Agricultural Land Production Sharing Agreements is intended to regulate land exploitation agreements with production sharing, so that the distribution of land products between owners and cultivators is carried out on a fair basis and to ensure a proper legal position for the cultivators, by emphasizing the rights and obligations of both cultivators and landowners. The landowner is entitled to a share of the produce of the land determined based on an agreement between the two parties and has the right to demand the termination of the production sharing relationship if it turns out that his interests have been harmed by the cultivator, namely things that are contrary to the obligations of a good and honest cultivator, not cultivating the land as it should be, not fulfilling the obligation to give part of the agreed produce of the land to the owner, not fulfilling the burdens that are his responsibility, without the permission of the landowner handing over the exploitation of his land to another party.

The landowner must hand over the cultivated land to the cultivator and pay taxes on the cultivated land concerned. The cultivator, as long as the Production Sharing Agreement lasts, is entitled to cultivate the land in question and to receive a share of the produce of the land by the balance determined based on an agreement by both parties. The obligations of the cultivator are to cultivate the land properly, to hand over the share of the produce to which the landowner is entitled, to fulfill the burdens that are his responsibility, and to hand back the cultivated land to the landowner in good condition after the expiry of the period of the Production Sharing Agreement.

### 4. Period of Expiration of the Production Sharing Agreement

The term of the production sharing agreement is regulated in Article 4 of Law Number 2 Year 1960. Article 4 stipulates that:

- a. The profit-sharing agreement shall be made for the time stated in the letter of agreement in Article 3, provided that for paddy fields, the time shall be at least 3 (three) years and for dry land at least 5 (five) years;
- b. In special cases to be further stipulated by the Minister of Agrarian Affairs, the subdistrict head is permitted to enter into a production sharing agreement for a period of less than that stipulated in paragraph (1) above for land which is normally cultivated by the owner himself;
- c. If at the time of the expiry of the production sharing agreement on the land concerned, there are still crops that have not yet been harvested, the agreement shall continue in force until the crops have been harvested, but the extension of time shall not exceed one year;
- d. If there is any doubt as to whether the land concerned is paddy land or dry land, the village head shall decide.<sup>15</sup>

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<sup>15</sup> B Ter Haar, *Asas-asas dan Susunan Hukum Adat* (Jakarta: Pradnya Paramita, 1960).



Based on the General Elucidation of Law Number 2 Year 1960 on Production Sharing Agreements, it is explained that: **First**, although not called by the same name, land tenure agreements with profit sharing are commonly found in Indonesia. In such agreements, whose laws apply as unwritten provisions of customary law, a person entitled to a piece of land, who for some reason is unable to cultivate it himself, but wishes to continue to receive its produce, allows another person to conduct agricultural business on the land, the produce of which is divided between the two of them according to a predetermined balance.

The person who is entitled to enter into such an agreement according to the current law is not only limited to the owner of the land itself, but also other persons who have a certain legal relationship with the land concerned, for example, pawn holders, tenants, even a cultivator, namely the second party entering into a profit-sharing agreement within certain limits, is also entitled to do so. **Secondly**, there is no uniformity regarding the amount of land to which each party is entitled because it depends on the amount of land available, the number of cultivators who want it, the fertility of the land, the strength of the owner's position in the local/regional community, and others.

Because there is generally not much land available, while the number of people who want to become cultivators is very large, it is often necessary for the cultivator to accept the terms of the agreement which entitles him to a share which is very incompatible with the energy and costs he has used to cultivate the land concerned. Other than that, such agreements are generally only valid for one year, after which, by agreement of both parties, they can be resumed or renewed. But the continuation of the agreement generally depends solely on the willingness of the landowner, so that for the tenant, there is no guarantee of getting arable land for a reasonable time. This, apart from affecting the maintenance of the fertility of the land, is also the reason why cultivators are often willing to accept harsh and unfair conditions. Finally, because it is rare for production-sharing agreements to be in writing, and there is no legal requirement for them to be made in front of local customary officials, there is often uncertainty, which leads to disputes between the owner and the cultivator.

**Thirdly**, to protect the economically weaker classes against practices that are highly detrimental to them from the stronger classes, as is the case with the production sharing agreement described above, this Act was enacted in the agrarian sector to regulate such production sharing agreements with the following intentions:

- a. That the division of the produce of the land between the owner and the cultivator be done on a fair basis;
- b. To emphasize the rights and obligations of the owner and the cultivator, to ensure a proper legal position for the cultivators, who are usually in a disadvantaged position in a production sharing agreement, namely because generally there is not much land available, while the number of people who want to become cultivators is very large;
- c. The implementation of what is mentioned in a and b above will increase the joy of working for the tenants, which will have a good effect on the way they maintain the fertility and cultivate their land. This will certainly have a good effect on the production of the land concerned, which means that a step



forward in implementing the program will complete the “clothing” of the people.

With the enactment of this regulation, the profit-sharing institution, which in the current structure of our agricultural society is still alive and has social and economic aspects that cannot be replaced and eliminated at once, can be used and carried out by its function in society because it will be able to end and prevent abuse in its implementation.

### **CONCLUSION**

The change in the farmland profit-sharing agreement in Mujur Village, East Praya Subdistrict, Central Lombok Regency between the parties is carried out by the cultivator re-renting agricultural land that does not belong to him to another party without the knowledge of the landowner, whose initial agreement between the landowner and the cultivator was an oral profit-sharing agreement. The factor that encourages this is that the cultivator is in a poor economic condition. Then, the response of the landowner is to dismiss the cultivator to manage the land, and to continue managing this land, the landowner asks for land rent by the agreement that has been made between the cultivator and the *BUMDES*.

Legal Protection for Landowners Who Give Good Faith in Changing Agricultural Land Sharing Agreements, namely there are 2 preventive legal protection and repressive legal protection. The Civil Code does not allow changing or canceling the agreement unilaterally. The unilateral cancellation of an agreement is considered an unlawful act because an agreement that has been made by the parties by fulfilling the requirements of Article 1320 of the Civil Code applies as a law to those who make it. The agreement cannot be revoked other than by agreement of both parties. Then, for the sanctions given, it can be in the form of fines or compensation if a violation occurs.

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