Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial Islam **P-ISSN: 2614-4018**
DOI: 10.30868/am.v10i01.2402 **E-ISSN: 2614-8846**

A Building Ideal Concept Of Application Principles Good Faith in Agreement Law

Bambang Fitrianto

University Pembangunan Panca Budi Medan, North Sumatera
Indonesia

ABSTRACT

Suitable faith arrangements should be formulated as "the attitude or behavior of holding fast to the agreement to give the opponent what is his right and not looking for loopholes to break away from what has been agreed based on propriety and rationality. Standards used in objective good faith are objective standards that refer to an objective norm. The parties' behavior towards the agreement must be tested based on unwritten objective norms that develop in society. The norm is said to be objective because the behavior is based on the parties' assumptions. However, the behavior must be by the general assumption of good faith. The third function of good faith is the function of limiting and eliminating. Some pre-war legal experts argued that good faith also served this function. They teach that a specific agreement or a statutory provision regarding the contract can be set aside if, since the contract was made, the situation has changed so that the contract implementation creates injustice. Under such circumstances, contractual obligations can be limited or eliminated based on good faith. This study uses a normative juridical method. Namely, the provisions of the legislation must be carried out by what is stated in the legislation. This normative juridical method refers to research that leads to the philosophical basis of the contract, especially the philosophical basis of the existence of the doctrine of good faith.

Keywords: Legal Principles, Good Faith, Covenant Law.

A. INTRODUCTION.

The contractual relationship carried out in every sale and purchase transaction cannot be separated from the rights and obligations between each transacting party. *A contract* is a forum that brings together the interests of one party with another, especially in making a sale and purchase agreement of movable objects. Therefore, the existence of a contract in every sale and purchase transaction makes the initial condition for an agreement between the seller and the buyer to prove the existence of good faith between them. Regarding the question of what good faith is, the law does not regulate it. It is just that many say that good faith means the honesty of someone who acts. People with good intentions will put their trust in the opposing party, who is considered honest and does not hide anything terrible so that later on, it can cause difficulties.

The principle of good faith is, of course, the main thing in every agreement. Article 1338 of the Civil Code states that an agreement must be carried out in good faith by the parties agreeing. It does not matter whom they are dealing with or what the character of the side they are dealing with is. Because good faith must always be considered to be on each side of the position holder. If article 1338 of the Civil Code instructs the parties to have good intentions, this is intended so that there is no bad faith or things that are inappropriate and arbitrary in terms of implementing the agreement. So that the parties do not feel aggrieved by the impropriety.

Meanwhile, the notion of good faith, in this case, is dynamic. In carrying out this act, honesty must go hand in hand with the heart of a human being. So it is necessary to understand that humans as members of society must be far from harmful to others. In other words, using cunning, coercion, or deception when agreeing is not allowed. Both parties must pay attention to these things and must not use the negligence of others to benefit themselves. However, it is possible that in implementing the movable object sale and purchase agreement, lousy faith arises from the two parties who agree.

I do not know whether the bad faith arose from the beginning, before the agreement was made between the two parties or after the agreement had been agreed. Of course, this is very detrimental to both parties, mainly if the bad faith is carried out by the seller as a better of the objects being traded. The Civil Code protects buyers who have good intentions when there is bad faith that occurs without the knowledge of the buyer. The buyer has the right to file a lawsuit to claim compensation. And it is allowed to apply for the invalidation of all actions that are not required by the debtor/seller, for whatever reason it can harm the buyer as long as it is proven for the act.

Moreover, the seller is obliged to return all costs that have been incurred by the buyer. So, even though it has been agreed that the seller will not bear anything, the seller will still be responsible for the consequences of his actions. Moreover, of course, as a result of the

agreement made on the sale and purchase, if it is not based on good faith, it is considered that the agreement has no force and is declared null and void.

Freedom of contract is the "spirit" or "breath" of an agreement, which is based on the awareness that only the parties who know the need to do contractual relationship or agreement. In a trade (business) contract, there is always the possibility of conflict or dispute arising due to a conflict of interest or negligence of one of the parties in fulfilling the contents of the agreement. more and the breadth of trading activities, the higher the frequency of disputes. This means more and more disputes to be resolved. According to Ali Achmad, a dispute is a conflict between two or more parties that originates from perception differences regarding ownership or property rights that can lead to legal consequences between the two parties.[5]

An *agreement* is an agreement made by the parties who agree. The parties agree to bind themselves to each other both for give something, do something, or not do something. This agreement will give birth to rights and obligations between the parties.6The contract, as regulated in Article 1313 of the Civil Code, that an agreement or agreement is a legal act in which a person or more binds himself to someone or more. Alternatively, it can also be interpreted as an event where someone promises to someone else or where 2 (two) people promise each other to do something.

The essence of contract law is basically to meet the legal needs of business actors, namely between: Angkring Jogja Management entrepreneurs and investors, in the sense of not only regulating but also giving business people complete flexibility and freedom to determine their needs. This is because business people are more aware of the ins and outs of various needs in their business activities.

B. METHOD

Method Research.

This research is juridical law research sociological. Empirical legal research with the sociological juridical model has an object. The behavior of the community being studied is behavior that arises as a result of interacting with the existing system of norms. This interaction emerged as a form of public reaction above determined by a positive law and can also be seen in the behavior of the community as a form of action to influencing establishment of a legal provision positive.

This research location is needed for legal research, especially research empirical law. This research was carried out in Indonesian Consumers Foundation (YLKI) Limboto District, Regency Gorontalo. This location is very supportive researchers in conducting research with The goal is that the scope of the problem will be investigated more closely. Technique data collection used by researchers, both primary data and data secondary. Then the data analysis will used, processed, and analyzed descriptive.

In line with the above understanding, Sutrisno Hadi defines the word "research" as an attempt to find, develop and test the truth of

knowledge. These efforts were carried out. By using scientific methods.

Meanwhile, Soeryono Soekanto explained the meaning of research is a scientific activity related to analysis and construction carried out methodological, systematic and consistent. From some of these understandings, it can be concluded that in order to achieve a good result, better than a study requires a method.

Legal research is a scientific activity based on certain methods, systematics and thoughts that aim to study one or more legal phenomena Certain way of analyzing it. Apart from that, an in-depth examination of the legal facts is also held. to then seek a solution On the problems that arise in the symptoms in question For this research to achieve its objectives while still referring to the scientific standards of research work, the authors use various existing methods as a reference in carrying out research.

Type of Research

This research is normative juridical in which the author examines the principles and doctrines related to the subject matter in depth. Normative juridical research in legal research conducted by tracing, reviewing, and researching secondary data (library) related to the material Study. The normative juridical approach is the direct approach because the starting point of this research is to reveal normative methods from both documented sources and information from the bank in the credit agreement. The principles involved in this theory are the principles of good faith and freedom of contract. While the doctrine used is the opinion of Treitel, which includes the freedom of the parties to determine the content of the agreement they want to make. The second general principle is that generally, a person, according to the law, cannot be forced to agree.

The type of data used in this research is secondary data. Secondary data consists of legal materials, which include primary legal materials and legal materials. Secondary law. In research, data sources are divided into 2 (two): data sources obtained directly from the community, from now on referred to as primary data, and data obtained from library materials, which are then referred to as secondary data. Legal research by examining library materials or secondary data is called normative legal research or research Library law. Library materials can be grouped into 3 (three): Primary legal materials. Primary legal materials are

Data Collection

MethodThis research is included in Library research, which is a Research that aims to obtain secondary data by reviewing the Legislation, literature, legal works, and other written materials related to research.

In normative legal research, data collection tools are carried out by conducting studies. Bibliography of primary, secondary, and tertiary legal materials. The data collection tool to obtain the required data is done by conducting a document study to get a general picture of matters relating to the problem under study.

Data obtained from further library research analyzed qualitatively. The collected data are then grouped and sorted, looking for relevant and representative ones related to the problem, researched and studied in depth, analyzed and presented descriptively, then conclusions are made and It is hoped that this will answer the problems discussed.

C. ANALYZED AND RESULT.

Characteristics of the Principle of Good Faith in Building the Ideal Concept of Application of the Principle of Good Faith in Covenant Law

The study of good faith can be found in various legal kinds of literature. However, until now, no law or doctrine provides clear boundaries regarding the meaning of good faith as a legal norm/rule and its relationship with good faith as a legal principle. From the results of the study, it was found that there was a tendency for studies to mix up the notion of good faith as a rule of law and good faith as a legal principle. For example, in the discussion of good faith contained in Article 1338 paragraph (3), BW is defined as a legal principle Contract so that it gives birth to the conclusion that good faith only exists in the execution of the contract. In other words, until now, there has not been a clear distinction between the meaning and function of good faith as a rule of law and good faith as the principle of contract law. Understanding good faith as a rule of law and good faith as a principle of contract law is essential to answer.

The relationship between rules and principles is problematic. There is an opinion to make gradual distinctions. For example, the distinction between the two is sought in the character of legal principles, which tend to be more abstract than rules. Dworkin16propose two differentiating criteria, namely, firstly, the most important thing is the degree of concretization, and the second is related to the issue of whether the existing rules apply or do not apply; the existing rules must have the character of valid or not so that there is no place to consider a middle way.

If the existing legal rules cannot determine what the law is or Solving the problem will require the assistance of legal principles to give meaning to the existing legal rules. Every case (law) must be solved, which means that every. the time our will need Interpretation as a kind of complement.

According to Leite, the principle of law must be "struggled not at the level of rational human judgment, but at the level of morality differences of opinion related to the obligation of good faith at the pre-contract stage.

The relationship between rules and principles is problematic. There is an opinion to make gradual distinctions, for example the distinction between the two is sought in the character of legal principles which tend to be more abstract than rules. Dworkin16 proposes two differentiating criteria, namely, firstly, the most important thing is the degree of concretization and the second is related to the issue of whether the existing rules apply or do not apply; the existing rules must have the

character of valid or not, so that there is no place to consider a middle way.17

In the event that the existing legal rules cannot determine what the law is or Solving the problem will require the assistance of legal principles to give meaning to the existing legal rules. Every case (law) must be solved and this means every times we will need interpretation as a kind of complement.

According to Leijte, the principle of law must be "struggled not at the level of human rational judgment, but at the level of morality. The legal principle is not just a contract, it should be distinguished into; good faith as the rule of contract law and good faith as the principle of contract law. As a concrete legal rule, it is included in the dogmatic level of law, while as a legal principle it is included in the level of legal philosophy. Thus, good faith as a concrete legal rule if interpreted grammatically18 implies that it only exists at the stage of contract execution. In contrast to good faith, it is interpreted as a principle of contract law whose area of application is not limited to contract implementation but at all stages of the contract, namely the pre-contract stage, contract implementation and dispute resolution.

Good faith as a principle of contract law is essentially honesty and propriety/fairness which implies trust, transparency, autonomy, compliance with norms, without coercion and without deceit. Honesty is concreted into the rules of positive law, among others, are; Articles 530, 531, 533 and 548 BW concerning beziter in good faith, Article 1963; 1966 and 1977 BW on holdings related to expiration; Article 1320 BW in particular the terms of agreement and a lawful cause.

Property/justice is concretized into the rule of law Articles 1321, 1323, 1328 BW concerning mistakes, coercion and fraud in contract making; Article 1348 BW concerning payments with intentions. The cancellation of a contract is one of the most important parts to be sued by the creditor (plaintiff) in his lawsuit, apart from demands for fees, compensation and interest. The meaning of the cancellation of a contract in this case must first be confirmed. Is the cancellation meant for the entire existence of the contract such that it is as if the contract never existed from the beginning, or the termination (cancellation) of all legal consequences from the implementation of the contract in the future as a result of the occurrence of wan performance actions. This understanding will be very related to the claim for reimbursement of costs that will be filed as a result of the cancellation of the contract.

This means that good faith is a universal social force regulating social relations. That is, every citizen must act in good faith towards all citizens. In Canon law, the obligation of good faith becomes a universal moral norm individually determined by one's honesty and duty to God. Each individual must hold fast or must keep his promise. Canon law scholars associate good faith with good conscience.

They incorporate the meaning of religious faith into good faith in the legal sense. The concept of faith in Canon law uses

subjective moral standards based on individual honesty. This concept differs from good faith in Greek and Roman law, which views good faith as a universal social force. Good faith in the pre-contract phase is also known as subjective good faith. Then the good faith in the contract implementation phase is called objective good faith.

1. Good faith in the sense of objective, that a

The agreement made must be carried out by heeding the norms of decency decency which means that the agreement It must be carried out so that it does not harm either party.

2. Good faith in a subjective sense, namely the notion of good faith, which lies in one's inner attitude. In the law of good faith, this is usually interpreted as honesty.

The standard or benchmark for good faith in the performance of the contract is an objective standard. In contract law, the notion of acting in good faith refers to: Adherence to reasonable commercial standards of fair dealing, which Dutch legislators say is acting by redelijkheid en billijkheid (reasonableness and equity).

Good faith has become a fundamental principle in law. This principle has been accepted in various legal systems. This principle has an essential function in contract law. In doctrine and jurisprudence in Netherlands, the principle of deep faith The development has Some functions as described.

3.2. How to apply the principle of good faith in Building the Ideal Concept Application of the Principle of Iktikad Good in Law Agreement.

Previously, the principles of decency and justice were described as one of the principles that can be used as a benchmark for good faith in agreements. However, in the end, propriety and justice also require further practice interpretation by judges.

Who has the authority to make decisions? Because propriety is very relative, the assessment depends on society's perspective. Justice is the same, from the theories of Aristotle and Plato to the modern theory of justice from John Rawls. Bentham has also been unable to provide sufficient clarity on fairness and justice. The. Good faith is closely related with life Society because it will involve the legal awareness of the community that requires guidance and regulation (Djaja S. Melilla, 1987: 1).21 In legal traffic, it is hoped that the community will always act in good faith to support efforts to create a just and prosperous society. Djaja S. Meliala, 1987:1).

In the legal system (Tatang Amirin, 1986, p. 4), 22 agreements are built based on legal principles (Henry Campbell Black, 1991: 828).23 Legal principles serve as a foundation that provides direction, goals, and fundamental judgments and contains values and ethical demands. Mariam Darius argues that the legal system is a collection of integrated legal principles upon which order is built.

law (Mariam Darus Badruzzaman, 1990:5).24 This view shows the meaning of the legal system from a substantive perspective. From a substantive point of view, the principle of contract law is a fundamental thought about the truth to support legal norms and become a juridical element of a legal system. agreement. In a good system, there should be no conflict or clash between the parts and there should also be no duplication or overlap.

Misuse of circumstances is one indication of the lack of good faith in a contract, abuse of circumstances in the common law system is a doctrine that determines the cancellation of an agreement made based on improper pressure, but is not included in the category of duress. Misuse of circumstances is an act that is motivated by an imbalance between the parties in an agreement, and in conditions that Thus the strong party takes advantage of the position of the weak party. Weak parties do not have the opportunity to discuss everything that is their rights and obligations in an agreement. Misuse of circumstances occurs when a person in an agreement is influenced by something that prevents it from making a judgment that is free from other parties, so that it cannot take a decision that independent. Abuse of this situation according to Van.

The latest legislative products related to good faith are contained in Article 6.248.1 BW (New) Dutch. According to Hartkamp, the legislators have distinguished good faith in the sense of obedience to reasonable commercial standards of fair dealing from good faith in the sense of honesty. in fact. To prevent the possibility of confusion, the Dutch legislators used the term good faith in the first sense where good faith was then characterized as reasonableness (redelijkheid) and equity (billijkheid).

Arrangements regarding engagements arising from agreements can be found in Chapter III of the Civil Code regarding engagements born from contracts or agreements. The Civil Code translates the word overeenkomst written in it with the word approval but inside everyday life for overeenkomst commonly referred to by the word agreement or contract. Basically the term is a translation of the Dutch language which comes from the verb overeenkomst which means to agree or agree.

Article 1313 of the Civil Code himself has defined an agreement which states that "An agreement is an act by which one or more persons bind themselves to one or more other persons. The definition of an agreement according to the Civil Code is incomplete and too broad.32 It is said to be incomplete because of the definition only provides an understanding of a unilateral agreement where only one party has the obligation to carry out achievements, while the other party is not required to perform. This can be seen from the words "one or more people bind themselves to one or more other people" which seems to give an understanding that on the one hand there are only obligations and on the other hand there are only rights. The meaning of agreement in the Civil Code is not only

An agreement is a legal relationship between two or more parties who bind themselves based on an agreement to cause because of law. In its development, the agreement is no longer seen as an act, but is a two-sided legal act, meaning that in an agreement there is a legal act that has two sides.

The first side is supply while the second side is reception. Offers and each other's acceptance
have legal consequences. Based on this, an agreement is defined as a legal relationship between two or more parties based on an agreement to cause legal consequences. This definition explains that for an agreement to occur there must be an agreement or consensus between the parties. The word of agreement can be given orally, in writing or can even be given secretly or in sign language.

With the birth of the agreement, it will lead to a relationship between two people called engagement. The term engagement is used as a translation of verbintenis. M. Yahya Harahap translates verbintenis as an agreement, what is meant by an agreement by M. Yahya Harahap is bonding (verbintenis). He argues that the agreement contains an understanding that gives one party the right to obtain achievements and at the same time obliges the other party to fulfill the achievements.

Mariam Darus Badrulzaman classifying the standard contract into 2 (two) group. First, the general standard agreement is an agreement whose form and content have been prepared in advance by the creditor and then presented to the debtor. Second, a special standard agreement, namely this agreement is determined by the government unilaterally and is enforced for the parties. Living standard agreement and Growing up in people's lives are very many types and numbers

D. CONCLUSION.

1. Standards that can be used To determine an agreement has fulfilled the principle of good faith, it is seen from 2 (two) aspects, namely subjective and objective aspects. The subjective aspect where the parties openly provide true information about who they are by provide evidence in the form of documents about himself (e.g. budget documents basis if the Party to the agreement is a legal entity PT). The objective aspect, namely at the time of implementation of the agreement must be in accordance with propriety or justice. Appropriateness in this case is seen from the implementation in accordance with the contents of the existing agreement. While justice can be seen from whether the implementation of the agreement harms one party or not in accordance with the terms of the agreement. When it harms one of the parties, then the implementation is unfair (outside of the contents of the agreement).

2. The application of the principle of good faith in the lease agreement is seen from before and after the agreement occurs. Even the application of the principle of faith well before the agreement, the PT. in Indonesia have implemented the principle.

DAFTAR PUSTAKA

Abdul Kadir Muhamad, *Perjanjian Baku Dalam Praktek Perusahaan Perdagangan*, Citra Aditya Bakti, Bandung, 1992.

Achmad Roestandi, *Etika dan Kesadaran Hukum*, Jelajah Nusa, Pamulang Timur.

Ade maman, *Aspek Hukum Dalam Ekonomi Global*, Ghalia Indonesia, 2001.

Agus YudhaHernoke, *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial*, Yogyakarta: LaksBang Mediatama, 2008.

Agus Yudha Hernoko, *Hukum Perjanjian: Asas Proporsionalitas dalam Kontra Komersial* laksBang Mediatama, Yogyakarta.

Dawkins, C. E. (2014). The principle of good faith: Toward substantive stakeholder engagement. Journal of Business Ethics, 121(2), 283-295

Fauzi, A., & Zarzani, T. R. THE DEVELOPMENT OF CHILD SEX EXPLOITATION COMMERCIAL (CSEC)"RESPONSE MODEL IN MEDAN CITY". Journal of Community Research and Service, 1(2), 83-91.

Ghinayani[1], F. F., & Farhana, K. H. The Urgency of Public Awareness and Law Enforcement Officials in Resolving Cases of Sexual Violence Against Minors.

Houh, E. (2005). The doctrine of good faith in contract law: a (nearly) empty vessel. *Utah L. Rev.*, 1.

Peden, E. (2001). Incorporating terms of good faith in contract law in Australia. Sydney Law Review, The, 23(2), 222-238.

Permatasari, E. (2016). Perlindungan Terhadap Anak Korban Eksploitasi Seksual dalam Perspektif Yuridis-Normatif dan Psikologis (Studi Kasus Wilayah Hukum Polres Lampung Timur). Al-'Adalah, 13(2), 215-226.

Reinhold, S. (2013). Good faith in international law. UCLJLJ, 2, 40.

Rahayu, D., & Fatoni, S. (2019). Commercial Sexual Exploitation of Children: An Effort of Handling and Legal Protection. *Yustisia Jurnal Hukum*, *8*(2), 330-353.

Summers, R. S. (1968). Good faith in general contract law and the sales provisions of the uniform commercial code. *Va. L. Rev.*, *54*, 195.

Samuel, B. (2022, April). Analysis of Legal Protection and Responsibilities of Notary Officials for Authentic Deeds Made. In 3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021) (pp. 733-739). Atlantis Press.

Susanty, E., & Fatimaningsih, E. (2013). PERANAN LEMBAGA ADVOKASI ANAK (LADA) DALAM MENDAMPINGI KORBAN EKSPLOITASI SEKSUAL KOMERSIAL ANAK DI BANDAR LAMPUNG. SOCIOLOGIE, 1(3).

Taylor, V. L. (1997). Contracts with the lot: Franchises, good faith and contract regulation. NZL Rev., 459.

Tarigan, I. J., Alamsyah, B., Aryza, S., Siahaan, A. P. U., & Isa Indrawan, M. (2018). Crime aspect of telemedicine on health technology. *International Journal of Civil Engineering and Technology*, *9*(10), 480-490.

Tarigan, I. J., Zarzani, T. R., & Fatmawati, I. (2019). Enhancement Technology in the Prevention Systems of Narcotics Circulation in Correctional Facility Indonesia. International Journal of Civil Engineering and Technology, 10(03).

T. Eddy, Alamsyah, B., Aryza, S., & Siahaan, A. P. U. (2018). An effect phenomena circle living field in Secanggang Langkat. Int. J. Civ. Eng. Technol, 9(7), 1575-1580.

Yee, W. P. (2001). Protecting parties' reasonable expectations: A general principle of good faith. *Oxford University Commonwealth Law Journal*, *1*(2), 195-229.

Zarzani, T. R., Medaline, O., & Dartimnov, D. (2021). A Legal Responsibility of a Notary for Actions Performed by Parties in the Making an Authentic Ded. Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences, 4(3), 4286-4294.