

Implementation of the Principle of Good Faith in Contract Performance

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ABSTRACT – The principle of good faith is a fundamental principle in treaty law that plays an important role in ensuring fair and ethical implementation of contracts. This research aims to examine the application of the principle of good faith in the implementation of agreements using a legal literature approach. The background of this research is based on the existence of default cases arising from violations of the principle of good faith, thus creating legal uncertainty in the settlement of contract disputes. With a focus on Indonesian civil law regulations and international practices, this research explores the effectiveness of the principle of good faith in overcoming complex legal issues in contract implementation. The results show that the application of the principle of good faith in Indonesia still faces challenges in the form of a lack of clear definitions and operational guidelines. This study highlights the importance of integrating the principle of good faith in the pre-contractual stage up to dispute resolution to create substantive justice in contractual relationships. The study concludes with a recommendation to develop a more structured guideline for the implementation of the principle of good faith to reduce potential disputes and increase the parties' confidence in the execution of contracts.

Keywords: good faith, agreement law, default, regulation, civil law, common law, dispute resolution.

A. INTRODUCTION

The principle of good faith is a fundamental principle in agreement law that plays an important role in maintaining the balance of rights and obligations of the parties. This principle is explicitly regulated in Article 1338 of the Civil Code, which emphasizes that every agreement made legally shall apply as law to the parties. However, the application of this principle does not always run smoothly. Problems often arise when one party acts in bad faith, both in the implementation and dispute resolution stages.

In Indonesian legal practice, the application of the principle of good faith is often debated. Examples of cases often occur in lease or sale and purchase agreements, where one party fails to fulfill its obligations without justifiable reasons. This creates imbalance and legal uncertainty (William, 2021). In cross-border transactions, parties who do not understand the principle of good faith often suffer losses due to breach of contract (Aji et al., 2024).

Internationally, the principle of good faith is also a concern in the regulation of treaty law. According to Abdullah et al. (2023), this principle is applied differently in common law and civil law legal systems, indicating the need for harmonization in global contract law practice. This difference in approach can complicate law enforcement in international contracts involving parties from different countries.

In Indonesia, the challenge of applying this principle is exacerbated by the lack of public understanding of the nature of good faith in contracts. Based on research by Farhan and Kafi (2023), many parties only focus on one-sided interests without considering the obligations that must be fulfilled in accordance with the agreement. This ignorance often leads to protracted disputes in court.

Another problem is related to regulatory consistency. Article 1339 of the Civil Code emphasizes that agreements must be made in good faith, but does not explain clear limitations and indicators. According to Yuanitasari (2020), this vagueness is often abused by the more dominant party in the contract. This shows the need for legal reforms that are more assertive in defining and enforcing the principle of good faith.

Meanwhile, in increasingly widespread digital transactions, the application of the principle of good faith is becoming increasingly complex. Rafni et al. (2018) emphasize that many online transactions do not meet the standards of good

faith, for example through privacy violations or information manipulation. This condition demands attention regarding modern technology-based agreements.

In terms of implementation, judges have an important role in assessing the good faith of the parties. Various interpretations by judges often result in inconsistent decisions. This is a challenge in realizing justice and legal certainty for the parties in dispute.

The influence of local culture is also a factor that affects the application of this principle. According to Harahap (2024), the culture of a society that tends to prioritize compromise can weaken the strict application of the principle of good faith. Meanwhile, in international business contracts, differences in cultural values often lead to a misunderstanding of the duty of good faith (Pasaribu & Zainuddin, 2024).

In the construction sector, Abdullah et al. (2023) noted that a lack of good faith often leads to disputes over the quality of work and project completion. This suggests that violations of this principle do not only occur in simple agreements, but also in high-value contracts involving multiple parties.

Research on the principle of good faith is important to provide solutions to these problems. This study aims to explore the role of the principle of good faith in the implementation of contracts in Indonesia, using a normative juridical approach that focuses on literature analysis.

Although the principle of good faith has been regulated in the Civil Code, its implementation in Indonesian legal practice still faces various challenges. Previous studies, such as those conducted by Yuanitasari (2020) and Abdullah et al. (2023), only highlighted certain aspects without providing a comprehensive overview of its application in various contract sectors.

This research provides a new approach by analyzing the principle of good faith through various contract perspectives, both domestic and international, as well as its relevance regarding digitalization and modern transactions. This research aims to analyze the application of the principle of good faith in the implementation of agreements in Indonesia, identify challenges that arise, and propose relevant solutions to strengthen the application of this principle in various types of contracts, both domestic and international.

B. METHOD

This research uses a normative juridical approach, which focuses on analyzing library materials (library research). This method aims to explore the principles of the principle of good faith in the implementation of agreements based on applicable regulations, legal doctrine, and previous academic research. This approach is relevant to deeply understand how the principle is implemented in various types of contracts and legal systems.

The type of data used in this research is secondary data, consisting of primary, secondary, and tertiary legal materials. Primary legal materials include the Civil Code and related laws and regulations. Secondary legal materials include scientific journals, law books, and dissertations relevant to the research topic. Tertiary legal materials include legal dictionaries and encyclopedias that support the understanding of legal terms used.

Data collection was conducted through a structured literature review, involving the review of academic literature relevant to the topic of the principle of good faith. Legal sources were collected from national and international law journals, legal textbooks, as well as official regulatory documents issued by the Indonesian government. Analysis was conducted systematically to ensure the accuracy and relevance of the data.

Data validity was ensured through source triangulation, by comparing various opinions in the literature and relevant legal regulations. This technique ensures that the analysis is based on credible and up-to-date sources. Validation is done by evaluating interpretations of legal doctrines and court decisions related to the principle of good faith.

The data analysis technique used is descriptive-analytical. The collected data is classified based on the topic of discussion, then analyzed to find patterns, problems, and potential solutions in the application of the principle of good faith. This approach allows a systematic and in-depth presentation of the research results, while still paying attention to a clear legal basis.

This research also pays special attention to technological developments and globalization that affect the application of the principle of good faith, especially in digital contracts and international transactions. International regulations and comparative legal principles from the common law and civil law systems are also analyzed to enrich the perspective.

C. RESULTS AND DISCUSSION

Application of the Principle of Good Faith in the Execution of Agreements

The principle of good faith is one of the fundamental principles in civil law that plays an important role in the implementation of agreements. This principle is explicitly stated in Article 1338 paragraph (3) of the Civil Code, which states that agreements must be carried out in good faith. Based on research, good faith is not only a legal norm, but also has a moral dimension that must be internalized by the parties to the agreement (Kusmiati, 2020).

In practice, the application of the principle of good faith is often tested in agreement disputes that involve favoritism to the rights of one of the parties. For example, in lease cases, tenants often feel aggrieved by additional terms that are not stipulated in the initial contract. William (2021) points out that such disputes can be resolved by referring to the principle of good faith, which requires parties to respect each other's agreed rights and obligations.

Electronic or digital agreements present new challenges to the application of this principle. In online transactions, good faith plays a crucial role in overcoming information imbalances between sellers and buyers. Harun et al. (2018) highlighted the importance of transparency in online transactions, such as disclosure of product specifications, as a form of good faith implementation. This creates legal protection for consumers without reducing freedom of contract.

The application of the principle of good faith in civil law and common law legal systems does have different nuances, a difference rooted in the history and legal philosophy of each system. Abdullah et al. (2023) explain that in the common law system, this principle tends to be more flexible and developed through jurisprudence. This means that its application in concrete cases relies heavily on previous judicial decisions, creating a more case-by-case approach. This reflects the more practice-oriented nature of the common law and its evolution through court decisions.

In contrast, in civil law systems, including Indonesia, the principle of good faith has a stronger normative foundation. The Civil Code, for example, explicitly regulates the obligation to act in good faith in the performance of an agreement. However, despite the clear legal basis, the application of this principle in practice is often still relative and dependent on the

interpretation of judges. This flexibility of interpretation is necessary to accommodate a wide variety of complex and dynamic cases, but on the other hand also poses challenges in achieving legal certainty.

This difference in approach has significant implications for legal protection for the parties to an agreement. In the common law system, legal protection tends to depend more on the strength of the legal arguments put forward by the parties, while in the civil law system, legal protection is more oriented towards established legal norms. However, in practice, these two legal systems often influence and interact with each other so that the boundaries between the two become increasingly blurred.

In Indonesia, as a country that adheres to a civil law legal system with a strong influence from customary law, the application of the principle of good faith becomes even more complex. Indonesia has a relatively clear legal basis, but on the other hand it is also necessary to consider the values of justice and propriety that live in society. Therefore, in applying the principle of good faith, judges in Indonesia are required to not only refer to the provisions of written law, but also consider the prevailing social, cultural and economic perspectives.

To improve legal certainty and the effectiveness of the application of the principle of good faith in Indonesia, it is necessary to strengthen legal education, develop consistent jurisprudence, harmonize written law and the values of justice, and increase access to justice. Thus, the application of the principle of good faith in Indonesia is a dynamic and evolving process. Through joint efforts, a more just and equitable legal system will be created for all.

Challenges and Constraints in the Application of the Principle of Good Faith

The application of the principle of good faith in Indonesia faces various obstacles. One of the main problems is the lack of standardized standards in determining whether an action meets the criteria of good faith. Sinaga et al. (2024) underline that this lack of clarity often becomes a legal loophole that is utilized by irresponsible parties to avoid their contractual obligations.

The influence of globalization also affects the application of the principle of good faith in international business contracts. Pasaribu and Zainuddin (2024) point out that differences in interpretation of good faith between countries

often lead to cross-border legal disputes. In many cases, the standard of good faith applied in Indonesia is different from that applied in other countries, creating legal uncertainty for parties to international contracts.

Meanwhile, in domestic transactions, inconsistent legal policies are also a challenge. Farhan and Kafi (2023) highlight that contracts involving government parties often do not reflect the principle of good faith optimally, due to a lack of transparency in the contract drafting process. This suggests the need for improved regulation to improve the quality of the application of the principle.

The application of the principle of good faith in the digital era has undergone a significant transformation due to the rapid development of information technology. Digital contracts, such as software license agreements, e-commerce, and platform-based contracts, present new challenges in the application of the principle of good faith. This is due to the imbalance of information between consumers and service providers, the use of standardized contractual standards, and the rapid development of technology.

As emphasized by Khan et al. (2019), contractual standards in the digital era must be flexible while still prioritizing the principle of good faith. Flexibility is needed to accommodate rapid technological developments, while the principle of good faith remains an important foundation to maintain a balance of interests between the parties.

In digital contracts, important issues that need to be considered are information transparency, fairness in contract clauses, balance of interests between consumers and service providers, and consumer protection. To overcome these challenges, it is necessary to develop adaptive regulations, increase public legal awareness, strengthen the role of consumer protection institutions, and cooperation between various related parties.

In Indonesia, the application of the principle of good faith in digital contracts is still evolving. Although the Civil Code has provided a fairly strong legal basis, further efforts are still needed to adapt the rule of law to the rapid development of technology. Thus, the application of the principle of good faith in digital contracts is a very relevant issue and requires serious attention from all parties.

Technological developments not only bring challenges, but also new opportunities in the

application of the principle of good faith. Technology can be used to increase transparency and accountability in digital transactions, as well as facilitate dispute resolution.

Strategies to Optimize the Application of the Principle of Good Faith

One strategy to optimize the application of the principle of good faith is through harmonization of national regulations with international standards. Abdullah et al. (2023) emphasized the importance of updating the Civil Code to be in line with the principles applied in the international legal system. This is important to improve the competitiveness of Indonesian law in the face of globalization.

Legal education to the public is also a strategic step. Yuanitasari (2020) highlights the importance of understanding good faith since the pre-contractual stage, to prevent potential disputes in the future. This socialization can be carried out through training programs or seminars involving various parties, including the government, academics, and legal practitioners.

Technology can also be utilized to support the application of the principle of good faith. Harun et al. (2018) propose the use of blockchain technology in making digital contracts, which can increase the transparency and accountability of the parties. Blockchain allows the permanent recording of all activities in the contract, creating a legal environment that is more conducive to the application of this principle.

Strengthening the role of courts in enforcing the principle of good faith is a crucial step, especially in the digital era. Specialized training for judges is key to improving their ability to handle contract disputes involving the principle of good faith. This training should not only provide theoretical understanding, but also equip judges with practical skills in analyzing the substance of contracts, assessing moral implications, and applying the principle of good faith concretely.

In addition to training, the development of consistent jurisprudence, collaboration with experts, and improved access to information are also important steps to strengthen the role of the courts. Courts as judicial institutions have the authority to provide fair decisions and protect the rights of the parties. Thus, the court acts as the guardian of justice and legal certainty in society.

Courts can also act as law makers through their decisions. On the principle of good faith, courts can establish new standards in commercial legal relations, especially in the digital era.

However, strengthening the role of courts in upholding the principle of good faith is not an easy task. The challenges faced include the increasing complexity of cases, limited resources, and social pressure. Therefore, sustained efforts are required from all relevant parties to support the role of the courts in upholding justice. With these measures, the application of the principle of good faith in the execution of agreements in Indonesia can be improved so as to create justice for all parties involved.

D. CONCLUSIONS

The study provides some key conclusions on the Based on the discussion that has been carried out, the application of the principle of good faith in the implementation of agreements is a fundamental principle underlying contractual justice in Indonesia. This principle has a strong foundation in Article 1338 paragraph (3) of the Civil Code, which provides room for interpretation in accordance with the times and the needs of society. In practice, the application of the principle of good faith is often a determining factor in resolving contractual disputes, especially in dealing with issues that are not regulated in detail in written contracts. However, the implementation of this principle in Indonesia still faces challenges, such as the lack of clarity of standard standards, inconsistency of legal policies, and the influence of globalization that brings different interpretations between countries.

Strategies to improve the application of the principle of good faith include harmonizing national regulations with international standards, legal education to the public, utilization of technology such as blockchain, and strengthening the capacity of courts in handling contract disputes. With these measures, the principle of good faith can become a more effective tool in creating fairness and balance in contractual relationships in Indonesia.

To improve the effectiveness of the application of the principle of good faith in the execution of agreements, a number of strategic steps are needed. First, the government needs to update relevant regulations, including the Civil Code, to better suit the needs of society and international legal standards. Second, legal education on the

principle of good faith needs to be improved, especially to business actors, so that they understand the importance of this principle from the pre-contractual stage. Third, the use of technology, such as blockchain, should be encouraged to increase transparency and accountability in contract enforcement. Finally, specialized training for judges and legal practitioners should be conducted to strengthen their ability to assess and enforce the principle of good faith in various types of contracts.

With these measures, the application of the principle of good faith in the execution of agreements can be optimized, support contractual fairness, and make a significant contribution to the development of contract law in Indonesia.

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