
Application of the Principle of Good Faith in the Performance of Commercial Contracts Based on Article 1338 of the Indonesian Civil Code

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ABSTRACT: The principle of good faith is a fundamental principle in contract law, serving to maintain a balance of interests, trust, and legal certainty for the parties in a commercial contract. This study aims to analyze the application of the principle of good faith in the implementation of commercial contracts, the factors influencing its application, and the legal impacts that arise if this principle is violated. The research method used is normative legal research with a statutory approach. This descriptive study utilizes secondary data consisting of primary, secondary, and tertiary legal materials. The legal materials were collected through literature review. The research results show that the principle of good faith serves as a guideline for the parties' behavior as well as a preventive instrument in preventing contractual disputes. Its implementation is influenced by the level of legal understanding and awareness, the provisions of the Civil Code, law enforcement practices, the quality and clarity of contracts, as well as organizational culture and business ethics. Violations of the principle of good faith can lead to disputes, cancellation or invalidity of agreements, claims for compensation, material and immaterial losses, loss of trust, and disruption to the continuity of business relationships. Therefore, consistent application of the principle of good faith is necessary to ensure legal certainty, protection of the parties, and the continuity of commercial contracts.

KEYWORDS: Principle of Good Faith, Commercial Contracts, Civil Law

I. INTRODUCTION

Civil law is the branch of law that governs relationships between individuals or legal entities regarding their private interests. It encompasses the rules and principles regulating individual rights and obligations, legal liability, property ownership, contracts, agreements, inheritance, and various disputes between the parties involved. The primary objectives of civil law are to protect individual rights, facilitate dispute resolution, and uphold justice in interactions between individuals. In Indonesia, civil law is divided into several sections regulated by the Civil Code. According to Sudikno Mertokusumo, civil law is the law governing relationships between individuals, regulating the rights and obligations of one person toward another within family relationships and social interactions.¹ In civil law, a contract is considered a valid agreement between two or more parties who mutually promise to perform or refrain from performing a specific act. A contract encompasses the agreement reached by the parties, the rights and obligations of each party, and the mechanisms for resolving disputes should any arise.

Contract law is a cornerstone of the civil law system, serving as the foundation for regulating legal relationships between legal subjects across various aspects of life, particularly in the economic and business sectors. In Indonesia, contract law is governed by the Civil Code (Kitab Undang-Undang Hukum Perdata of 1847), which was adopted from the Dutch Burgerlijk Wetboek (BW) drafted during the Dutch East Indies colonial era. Despite being over a century old, the substance of the Civil Code remains the primary reference for the formation and execution of agreements.

Contract law under the Indonesian Civil Code is governed by Article 1313, which defines an agreement as an act whereby one or more persons bind themselves to one or more other persons. Furthermore, Article 1233 states that obligations and agreements arise either from an agreement or by operation of law, meaning that any obligation or legal duty may originate from either a mutually agreed contract or applicable statutory regulations.

Legal principles are fundamental concepts found within and underlying the legal system each formulated in statutory rules and judicial decisions that can be viewed as elaborations of specific provisions and individual rulings.² Meanwhile, J.J.H.

¹ Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, Yogyakarta: Liberty, 1986, page. 108.

² Paul Scholten, *Asas-Asas Umum Hukum Perdata*, Terjemahan, Jakarta, 1996, page. 119–120.

Application of the Principle of Good Faith in the Performance of Commercial Contracts Based on Article 1338 of the Indonesian Civil Code

Bruggink states that a legal principle is a type of meta-norm concerning norms of conduct. Legal principles embody value standards or criteria that serve to realize those values within positive legal norms and their application.³

One of the principles of contract law is the principle of good faith, as enshrined in Article 1338, paragraph (3) of the Indonesian Civil Code, which mandates that parties perform contracts in good faith. Evolving interpretations have expanded the scope of this provision, establishing that good faith applies not only during the performance stage but also at the stages of signing and pre-conclusion of the agreement. Thus, a contract is a process leading to the fulfillment of the parties' rights and obligations, comprising various stages that must each be grounded in the principle of good faith.⁴

Good faith serves as the foundation for the performance of a contract. Parties must observe the principle of good faith meaning they must adhere to norms of propriety and morality both when entering into and when performing the contract. The application of the good faith principle, particularly its close relationship with propriety, is further elucidated in Article 1339 of the Indonesian Civil Code; this article stipulates that a contract is binding not only regarding matters expressly stated therein but also regarding all obligations required by propriety, custom, and the law, in accordance with the nature of the contract.⁵

Good faith in contract performance signifies adherence specifically, an assessment of a party's conduct in fulfilling their promises aimed at preventing improper or arbitrary behavior by either party. The concept refers to a standard of reasonable conduct, implying that individuals must honor their promises or words in all circumstances, or engage in actions that reflect societal standards of fairness and compliance in respect of legal objectives. This notion of good faith extends beyond the parties' own intentions; it must also align with values evolving within society, as good faith is an integral part of the social fabric.

II. RESEARCH METHODS

This study is a normative legal research project employing a statutory approach and is descriptive in nature. It utilizes secondary data sources comprising primary, secondary, and tertiary legal materials. Data collection was conducted through a literature review, examining various publications and legal documents relevant to the research subject. The gathered legal materials were then analyzed descriptively to illustrate the relationships and interconnections between them, thereby providing a comprehensive overview of the issue under study. Subsequently, the legal materials underwent qualitative analysis using legal interpretation methods to derive an understanding and conclusions aligned with the research problem.

III. RESULT AND DISCUSSION

Application of the Principle of Good Faith in the Performance of Commercial Contracts

Business contracts are a crucial element of the economic activities undertaken by businesspeople. These contracts can span long periods, potentially reaching up to 30 years if they are ongoing.⁶ The principle of good faith applies to business contracts. This principle is not exclusive to Indonesia; it also serves as a foundation for contract performance under both Chinese law and common law. The obligation to apply the principle of good faith is established globally in laws governing corporations, making adherence to this principle a legal obligation that serves the company's interests.⁷ Good faith is a fundamental principle in civil law that requires parties to a contract to act with honesty, transparency, and mutual respect. Within the context of Indonesian civil law, this principle is enshrined in the Civil Code and serves as a guideline for evaluating the conduct of contracting parties. Article 1338, Paragraph (3) of the Civil Code articulates the principle of good faith, stating: "Agreements must be performed in good faith."

The principle of good faith plays a crucial role in the execution of business contracts. It fosters efforts to build and maintain trust among the parties involved. In business relationships, trust serves as the foundation for sustainable cooperation. By implementing the principle of good faith, parties to a contract are expected to refrain from actions that could cause loss to the other party such as fraud or the withholding of information. Good faith also contributes to dispute resolution; in many instances, judges prioritize this principle when rendering decisions, thereby upholding justice for the aggrieved party. Applying good faith is essential throughout every stage of dispute resolution from preparation and negotiation to the implementation of the agreement with a particular emphasis on commitment and the active participation of the parties in mediation as indicators of good faith.⁸

³ J.J.H. Bruggink, *Refleksi tentang Hukum: Pengertian-Pengertian Dasar dalam Teori Hukum*, diterjemahkan oleh B. Arief Sidharta, Bandung: Citra Aditya Bakti, 1996, page 121.

⁴ Sogar Simamora, "Fungsi Etikad Baik dalam Kontrak (Suatu Orientasi dengan Metode Pendekatan Sistem)," *Jurnal Hukum*, Vol. 6, No. 3, 2001, page 200.

⁵ Abdulkadir Muhammad, *Hukum Perikatan*, Bandung: Citra Aditya Bakti, 2000, page. 238.

⁶ Igor Ilin et al., "Life-Cycle Contract as an Innovative Business Model for High-Tech Medical Organizations," *Journal of Open Innovation: Technology, Market, and Complexity* 8, no. 4 (2022): 207

⁷ Daniel Attenborough, "Misreading the Directors' Fiduciary Duty of Good Faith," *Journal of Corporate Law Studies* 20, no. 1 (2020): 73–98. Page 73.

⁸ Leilani Hapsari and Anang Setiyawan, "Penerapan Asas Etikad Baik Dalam Penyelesaian Sengketa Perdata," *Zaaken 4*,

Application of the Principle of Good Faith in the Performance of Commercial Contracts Based on Article 1338 of the Indonesian Civil Code

In practice, the application of the principle of good faith encompasses both proper observance and instances of violation. In Indonesia, the implementation of the good faith principle in commercial contracts is enshrined in Article 1338, paragraph (3) of the Civil Code, which emphasizes the necessity of good faith and fair dealing throughout the entire contractual process from negotiations and drafting to performance and termination. Under Indonesian law, the application of good faith is not limited to the performance stage of the contract but extends to the pre-contractual phase prior to the actual signing. This aspect is crucial for protecting the parties involved in a transaction and preventing financial loss. The application of the good faith principle in commercial business contracts in Indonesia is evident in various sectors, such as life insurance, where courts ensure that adherence to good faith safeguards the rights of the parties involved. Furthermore, the principle of good faith has been successfully implemented in contracts involving foreign investment in Indonesia, particularly regarding the choice of law.⁹

Violations of the principle of good faith in contracts can occur across various business sectors. The practice of "miss-selling" in the insurance industry serves as a prime example of such a violation, causing financial loss to policyholders and eroding public trust in the insurance sector. Breaches of the good faith principle also frequently occur in online sales transactions.

Violations of the principle of good faith by business operators in online commercial activities can occur at any stage, from pre-transaction to post-transaction. One example is the provision of dishonest information to consumers resulting in a "defect of information" that causes consumer loss. Misrepresentation of a product is classified as a breach of contract and constitutes an unlawful act. Another form of breach in online commerce arises when a consumer has made the required payment, yet the seller fails to ship the product within the agreed timeframe. Failure by a business operator to exercise good faith in the trade of goods or failure to deliver as promised constitutes a violation.¹⁰ A violation of the principle of good faith can result in both material and immaterial losses for the aggrieved party.

Factors Influencing the Implementation of the Principle of Good Faith in Commercial Contracts

Various factors influence the execution of business contracts based on the principle of good faith. These factors often cause the parties involved to waver in upholding this principle. Therefore, a thorough understanding of these factors is essential for business practitioners to apply the principle of good faith more effectively, namely:

1. Understanding of and Awareness Regarding the Law

Legal awareness among business actors is a primary factor influencing the application of the principle of good faith in business contracts. Business actors who possess a deep understanding of the good faith principle and its implications are better positioned to uphold it, thereby fostering sound business relationships. Conversely, a lack of legal awareness regarding civil law and the principle of good faith often leads to breaches of contract. There is a need to cultivate and regulate public legal awareness in Indonesia to ensure that contract enforcement upholds good faith thereby supporting adherence to shared objectives as agreed upon and remaining consistent with the expectations of the counterparty.¹¹

2. Provisions of the Indonesian Civil Code

The Indonesian Civil Code contains provisions that serve as the basis for applying the principle of good faith. Articles mandating conduct in accordance with good faith act as guidelines for business practitioners during the drafting and execution of contracts. A party's awareness and understanding of the Civil Code provisions governing this principle in business contracts will influence their conduct during contract performance. The legal basis for contracts is found in Article 1338 of the Civil Code, which takes into account the good faith of the counterparty in an agreement or contract.¹²

3. Law Enforcement Practices

Cases involving violations of the principle of good faith in business contracts are frequently encountered and adjudicated by law enforcement and judicial bodies in Indonesia. The stance taken by law enforcement agencies and the courts when assessing these cases significantly influences the implementation of the good faith principle within the country. If courts deliver justice and demonstrate consistency in upholding the principle of good faith in their rulings, business actors are more likely to comply with this principle. Conversely, weak enforcement emboldens business actors, making them unafraid to engage in detrimental

no. 3 (2023): page 436–454.

⁹ Alpian Mega Nugraha et al., "Implementation of Good Faith Principles in Trade Contracts in Indonesia," *Journal of Social Research* 3, no. 9 (2024): Page 1–7

¹⁰ Amila Desiani, Muhamad Amirulloh, and Agus Suwandono, "Implementasi Asas Itikad Baik Dalam Perlindungan Konsumen Atas Pembatalan Transaksi Yang Dilakukan Oleh Situs Belanja Elektronik," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan dan ke-PPAT-an* 2, no. 1 (2019): page 56-70.

¹¹ Maria Acynta Christy, "Penyimpangan Asas Itikad Baik Dalam Perjanjian Sewa Menyewa Kendaraan Dalam Perspektif Hukum Pidana Dan Perdata," *Jurnal Ilmiah Dunia Hukum* 7, no. 1 (2022): page 1-21

¹² Margaretha Donda Daniella, William Tandy Putra, and Erich Kurniawan Widjaja, "Asas Itikad Baik Dalam Memorandum Of Understanding Sebagai Dasar Pembuatan Kontrak," *Notaire* 2, no. 2 (2019): 231-253. page 233.

Application of the Principle of Good Faith in the Performance of Commercial Contracts Based on Article 1338 of the Indonesian Civil Code

practices. Decisive action by authorities such as blacklisting parties proven to have harmed consumers in online business transactions can serve as an effective deterrent

4. Quality and Clarity Of The Contract

Drafting contracts that are well structured, clear, and free from ambiguity facilitates the optimal implementation of the principle of good faith. Such clarity and certainty help mitigate risks that may arise during the contract's execution. Conversely, ambiguous contracts can trigger disputes and suspicion, potentially leading to a violation of the good faith principle. Therefore, it is crucial to formulate high quality, clear business contracts; this ensures that the involved parties fully understand the clauses, thereby minimizing the risk of misinterpretation and conflicts arising from the business collaboration.¹³ Business contracts may also be executed in electronic form, provided the terms are clear. Clarity thus serves as the fundamental basis for the performance of the contract, enabling the involved parties to place open trust in one another.

5. Organizational culture

In a work environment, organizational culture and business ethics can influence individual behavior when parties are involved in business contracts. A company that upholds high standards of business ethics prioritizes the importance of good faith, thereby encouraging all parties to adhere to this principle; conversely, a company with a culture that is permissive regarding ethical practices may foster violations of the principle of good faith. An organizational culture oriented toward ethical behavior encourages employees to act with good intentions and avoid misconduct.

The Impact of Violating the Principle of Good Faith on the Sustainability of Commercial Contracts

A violation of the principle of good faith in the performance of a business contract under civil law inevitably entails serious consequences for both the contract's validity and its continuity. Regarding validity, such a violation gives rise to legal disputes among the parties involved; a party feeling aggrieved or dissatisfied may file a lawsuit, potentially leading to the contract being declared void or unilaterally terminated, thereby rendering it invalid. For instance, in a case involving PT Asuransi Bumi Putra and a consumer, a violation of clauses stipulated in the Consumer Protection Law occurred. The contract could be rendered void or subject to cancellation because Article 18 prohibits the inclusion of standard clauses that could disadvantage the consumer such as terms that are difficult to identify, illegible, or contrary to applicable law.¹⁴ The presence of irregular elements in the contract constitutes a violation that can compromise the contract's validity.

Civil law stipulates that if a party is proven to have violated the principle of good faith, the other party may seek to have the contract annulled. Failure to apply the principle of good faith in an agreement can render that agreement void. For instance, if a contract is signed through fraud, forgery, or similar means, the business contract tainted by such a violation of good faith is deemed invalid. Fraud involves an unlawful act intended for personal gain such as the use of a false identity and may also carry criminal liability. Under the Civil Code, business contracts executed without good faith may also be rendered legally unenforceable; this means the contract may lack binding legal force, thereby creating uncertainty for the parties involved.

Violating the principle of good faith also impacts contract continuity, as it can damage the relationship between the parties involved in the business. Once lost, this trust is difficult to restore, thereby affecting future collaborations and even subsequent contracts. Typically, such a violation damages the business relationship, causing the aggrieved party to become reluctant to negotiate, continue business operations, or enter into future agreements. It is also noted that contractual violations such as breaches of the good faith principle and acts of fraud resulting in loss can lead to the termination of the business relationship between the parties.¹⁵ This inevitably halts business processes that were intended to generate profit. A violation of the principle of good faith such as in a dispute over breach of contract can render the contract void and lead to claims for damages. The disputing parties suffer financial losses and reputational damage, alongside disruptions to their business operations. Consequently, a violation of the principle of good faith bodes ill for both the continuity of the existing contract and the prospect of future contracts. Contractual violations can result in reputational damage. Business entities that violate the principle of good faith will suffer reputational damage, making it difficult for them to attract new business partners. Trust among customers and stakeholders also declines when this principle is breached.¹⁶

¹³ Stella et al., "Aspek Hukum Tanggung Jawab Pihak Perantara Kepada Konsumen Dalam E-Commerce (Legal Aspects Of The Liability Of The Intermediate Parties To Consumers In E-Commerce)," *Acta Law Journal* 1, no. 9 (2022): 1–15. page 13.

¹⁴ Devy Widya Arum and Hudi Yusuf, "Analisis Perlindungan Konsumen Terhadap Dicantumkan Klausula Baku Dalam Perjanjian Analysis of Consumer Protection Regarding the Inclusion of Standard Clauses in Agreements," *JICN: Jurnal Intelek dan Cendekiawan Nusantara* (2024) page 1405.

¹⁵ Felisitas Palan Lamamere et al., "Pertanggungjawaban Pidana Penggelapan Dalam Perjanjian Kredit," *Jaksa: Jurnal Kajian Ilmu Hukum dan Politik* 2, no. 2 (2024): page 113–125.

¹⁶ S. P. Z. Nasution et al., "Penyelesaian Sengketa Wanprestasi Perjanjian Waralaba Melalui Mediasi," *Unes Law Review* 6, no. 1 (2023): 2555– 2561. page 2555.

Application of the Principle of Good Faith in the Performance of Commercial Contracts Based on Article 1338 of the Indonesian Civil Code

Dispute resolution involving mediation or arbitration is also influenced by violations of this principle. Consequently, the resolution process must be conducted fairly and with a commitment to good faith, ensuring that the outcome supports the continuity of the business relationship. Violations of the good faith principle can also result in legal sanctions, such as compensation for damages or fines; legal literature indicates that if a loss is incurred, compensation may be sought on the grounds of the unlawful act committed.¹⁷

Business decisions must indeed be made in good faith. Upholding good faith is crucial as a preventive measure against future disputes. Courts play a role in protecting both parties; consequently, a thorough assessment is required to determine whether a party is acting in good faith or bad faith. This aspect is vital for upholding legal certainty in Indonesia. Therefore, business actors must ensure compliance with business contracts by acting in good faith to avoid facing adverse legal consequences.

IV. CONCLUSION

The principle of good faith is a fundamental tenet of civil law that plays a crucial role in ensuring that contractual relationships are conducted honestly, transparently, fairly, and with mutual respect. Under Indonesian law, this principle is explicitly enshrined in Article 1338, paragraph (3) of the Civil Code, which mandates that every agreement be performed in good faith. Its application is not limited to the contract performance stage but extends from the pre-contractual phase encompassing negotiation and drafting through to performance and eventual termination. Thus, the principle of good faith serves not only as a guide for the parties' conduct but also as a preventive instrument against disputes and losses in business relationships.

The implementation of the principle of good faith in commercial contracts is influenced by several factors: the parties' legal understanding and awareness, provisions within the Civil Code, law enforcement practices, the quality and clarity of the contract, and organizational culture and business ethics. These factors are interconnected in shaping the parties' conduct throughout the contractual relationship. Contracts that are clearly drafted supported by sound legal awareness, an ethical organizational culture, and consistent law enforcement can strengthen the application of the good faith principle and minimize the potential for breaches.

A breach of the principle of good faith can have consequences for the validity and continuity of commercial contracts. Such a breach may trigger disputes, contract annulment or unenforceability, and claims for damages, resulting in both material and immaterial losses. Beyond legal repercussions, a breach can also erode trust, damage a business entity's reputation, and hinder the continuity of the business relationship between the parties. Therefore, the consistent application of the principle of good faith is crucial for establishing legal certainty, protecting the parties' interests, preventing disputes, and maintaining the continuity of contractual relationships in commercial activities.

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Application of the Principle of Good Faith in the Performance of Commercial Contracts Based on Article 1338 of the Indonesian Civil Code

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