

The Application of the Principle of Good Faith in Business Contracts: A Civil Law Perspective

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ABSTRACT

This research aims to analyze how the principle of good faith is applied in the making of business contracts, from its interpretation to its effectiveness from a civil law perspective. This research will analyze two main issues of this study, namely how the principle of good faith is recognized and applied in the formation, execution, and interpretation of business contracts, and how its application in the context of business contracts helps promote the creation of justice and legal certainty in the contracts made. This research demonstrates the role of the principle good faith based of the principle of utmost good faith or *uberrimae fidei*, which enhances trust and fairness the parties and reduces the occurrence of disputes between the parties during the contract period and prioritize legal certainty. Therefore, this research suggests the application of the principle of good faith as the main principle in the formation and execution of business contracts. The principle of good faith can serf as a benchmark for the wether of the contract is feasible or not to be executed

1. INTRODUCTION

Humans, in fulfilling their needs, make agreements with other parties based on the principle of personality in civil law, where a person enters into an agreement solely for their own benefit as implied in Articles 1315 and 1350 of the Civil Code. This presents a unique challenge in applying equality of rights and obligations in a contract made to achieve justice and avoid potential conflicts between the parties. In an increasingly complex and global business world, contracts play a vital role as legal instruments that govern the relationships between the parties. One of the fundamental principles that underpins contract law is the principle of good faith. This principle not only serves as a moral foundation but also has significant legal implications in the perspective of civil law. (Priyono, 2016). The application of the principle of good faith in business contracts has become a crucial topic for in-depth study, considering its vital role in creating a healthy and sustainable business climate. This principle is not only relevant at the time of contract formation but also has a lasting impact during execution and even in the interpretation of the contract when disputes arise between the parties (Atmoko, 2022); (Nainggolan, 2022).

In the context of civil law, it is important to understand how the principle of good faith is recognized and applied in various stages of business contracts, considering the progress and development of civilization today, accompanied by changes in the increasingly evolving execution of contracts, the principle of good faith is needed to help guarantee and meet the needs of the parties, especially in business contracts. (Dalam & Konstitusionalisme, 2023). Starting from the negotiation and formation stage of the contract, where the parties are expected to negotiate honestly and openly, to the contract execution stage which requires the parties to fulfill their obligations in good faith. Furthermore, this principle also plays a crucial role in the interpretation of contracts when there is ambiguity or uncertainty in the contract clauses. The application of the principle of good faith in a business context not only aims to protect the interests of the contracting parties but also has a broader dimension. This principle can act as a catalyst in promoting justice and legal certainty in contractual relationships. By applying the principle of good faith, it is hoped that a balance between the interests of the parties can be achieved, reducing the potential for disputes, and ultimately creating a more stable and predictable business climate. (Firlana et al., 2015).

This article aims to comprehensively examine the application of the principle of good faith in business contracts from a civil law perspective. The discussion will focus on two main aspects: first, how the principle of good faith is recognized and applied in the formation, execution, and interpretation of business contracts, and second, how the application of this principle in the business context can help promote justice and legal certainty in contractual relationships (William, 2021). Through an in-depth analysis of these two aspects, it is hoped that this article can provide a more comprehensive understanding of the role and significance of the principle of good faith in business contracts, as well as its implications for legal and business practices in Indonesia.

2. METHOD

The writing of this scientific article uses the normative legal research method based on written regulations and other sources that discuss the theory, structure, interpretation, and legal explanations related and continuous with this research. The secondary data included in the presentation of this article were collected through literature studies, such as books, journals, articles, and websites that can support the analysis conducted.

3. RESULT AND DISCUSSION

3.1. The application of the principle of Good Faith in Business Contracts

The principle of good faith is one of the fundamental principles in international business contract law that highlights the importance of honesty and ethical behavior among the parties involved in the agreement. Someone who acts in good faith places full trust in the other party, believing them to be honest and not hiding anything that might cause problems in the future. The principle of good faith has two concepts: (1) Objective good faith, which requires that every

agreement must be carried out with regard to moral and ethical norms, so that the agreement does not harm one of the parties. (2) Subjective good faith, which relates to a person's inner attitude. In the context of civil law, this good faith can be interpreted as honesty. (Arifin, 2020). The principle of good faith can also be interpreted as each party in the agreement being obligated to provide complete information that may influence the other party's decision to agree to the contract or not. (Aji et al., 2024).

Whenever every agreement must be made in good faith, as stated in Article 1338 paragraph (13) of the Civil Code, which addresses the principle of good faith that states, "Agreements must be made in good faith," whether in the execution of business contracts that have been carried out using electronic means, it must be done in good faith so that the entire series of business contract processes run smoothly and do not harm either party, where good faith must be applied both before the agreement is reached and during the contract execution stage.

At the stage of forming a business contract, the principle of good faith requires the parties to negotiate honestly and openly. This is in line with the principle of *uberrimae fidei* or the principle of utmost good faith. The application of this principle can be seen from several aspects: (1) The parties are obliged to provide relevant and accurate information related to the object of the contract. (2) No party shall exploit a dominant position to impose their will. (3) The parties are expected to negotiate fairly and not take actions that could harm the other party. Thus, there are 3 (three) elements of the principle of good faith and honest transactions, namely: First, good faith and honest transactions as the fundamental principles underlying the contract; Second, the principle of good faith and honest transactions in UPICCS (UNIDROIT Principles of International Commercial Contracts) is uniformly emphasized in international trade practices; Third, the principle of good faith and honest transactions is mandatory (Cindawati, 2020); (Effendi et al., 2023).

During the execution of the contract, the principle of good faith requires the parties to fulfill their obligations in accordance with the terms of the contract and not to take actions that could harm the other party. In Article 1234 of the Civil Code, it explains about performance in an agreement, namely; giving something, doing something, not doing something. Several important aspects in the application of this principle include: (1) The parties must fulfill their obligations as agreed. (2) The parties are expected to cooperate to achieve the contract's objectives. (3) In the event of changes in circumstances, the parties are expected to make reasonable adjustments.

The principle of good faith also plays an important role in the interpretation of contracts, especially when there is ambiguity or uncertainty in the contract clauses. Several important aspects in the application of this principle include: (1) Interpretation in accordance with the parties' intentions. The contract must be interpreted according to the intentions and purposes of the parties at the time of making the contract. (2) Fair and just interpretation. The interpretation of the contract

must be carried out fairly and justly, considering the interests of all parties.(3) The use of business customs. In interpreting a contract, the applicable business practices may be considered.

The Impact of the Application of the Principle of Good Faith on Justice and Legal Certainty. The principle of good faith contributes to the creation of justice in business contracts through: (1) Balance of obligations and rights. This principle encourages the creation of a balance between the rights and obligations of the parties. (2) Protection of the weaker party. The principle of good faith can protect the party with a weaker bargaining position from exploitation by the stronger party. (3) Prevention of abuse of rights. This principle prevents parties from abusing their rights in a way that could harm other parties.

The application of the principle of good faith also contributes to increased legal certainty in business contracts: (1) Predictability. With the principle of good faith, the parties can better predict how the contract will be interpreted and executed. (2) Consistency in interpretation. This principle helps create consistency in contract interpretation, reducing ambiguity and uncertainty. (3) Conflict prevention. The application of the principle of good faith can reduce the potential for conflict between the parties, thereby increasing legal certainty.

Subekti explains that good faith according to Article 1338 paragraph (3) of the Civil Code is one of the most important pillars of contract law, which gives judges the authority to oversee the execution of a contract to ensure it does not violate propriety and justice. This means that judges are authorized to deviate from the contract if the execution of the contract violates the sense of justice (*recht gevoel*) of one of the two parties. If Article 1338 paragraph (1) of the Civil Code demands legal certainty, in the sense that the conditions and concrete and individual legal norms (*artikelen*) in the contract must be, Article 1338 paragraph (3) of the Civil Code is dynamic, encompassing the entire process. (Agus, 2023).

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The application of the principle of good faith also contributes to the enhancement of legal certainty in business contracts: (1) Predictability. With the principle of good faith, the parties can better predict how the contract will be interpreted and executed. (2) Consistency in interpretation. This principle greatly helps create consistency in contract interpretation, reducing ambiguity and uncertainty.(3) Conflict prevention. The application of the principle of good faith can reduce the potential for conflict between the parties, thereby increasing legal certainty.

3.2. Challenges in the Implementation of the Principle of Good Faith

The concept of good faith is often subjective and can be interpreted differently by each party. This can create difficulties in its consistent application. With the specific limitations on good faith, judges have criteria to assess whether there is bad intent from the party opposing the clause in the business contract. It is hoped that in the effort to resolve disputes, law enforcement can make the right decisions that apply legal certainty and also justice. (Gusti & Muliarta, 2022)

Article 1338 Paragraph 3 of the Indonesian Civil Code recognizes two forms of good faith regulated within it; first, subjective good faith or referred to as "goeder trouw" (honesty of inner attitude), where the principle of subjective good faith can be seen from the provisions of Article 531 of the Civil Code which states: "The position with good faith, if the holder acquires the object with ownership rights, in which case he does not know the defects contained therein." Furthermore, Article 533 of the Civil Code states: good faith must always be considered to exist in every holder of a position, anyone who accuses him of bad faith must prove his accusation. Second, objective good faith is referred to as reasonableness and equity (Kunci, 2023), where there is a difference in the nature of good faith at the time a legal relationship is established (subjective) and good faith in the execution of rights and obligations within a legal relationship (objective). The first type of good faith lies in the state of a person's mind at a given time, namely at the time the legal relationship is established. This is different from good faith in the execution of rights and obligations within a legal relationship. Objective here refers to the fact that the behavior of the parties must align with the general assumptions regarding good faith and not solely based on the parties' own opinions. (Akbar et al., 2024).

In some cases, the application of the principle of good faith can be considered to limit the freedom of contract of the parties, especially if it is used to change or cancel the clauses that have been agreed upon. (Samsithawrati et al., 2024). Based on the Principle of Freedom of Contract, a person may choose to enter into a contract or not. The parties who have agreed to make a contract are free to determine what can and cannot be included in the contract. The agreement reached by the parties binds them as law. (Pasal 1338 KUH Perdata). The application of this principle provides an important place for the enactment of the consensual principle, which indicates a balance of interests, a balance in the distribution of risk burdens, and a balance of bargaining positions (Mahaputra & Saputra, 2021). However, the freedom granted to the parties in making agreements is not an unrestricted freedom. Article 1320 of the Civil Code, Article 1337 of the Civil Code, Article 1338 of the Civil Code, and Article 1339 of the Civil Code are concrete evidence of those limitations, in other words, that within the Principle of Freedom to Contract lies "Responsibility," especially in a country whose ideological foundation is Pancasila (Hutahaeen et al., 2024); (Silaen & Br. Sembiring, 2024). Not all legal systems give the same recognition and emphasis to the principle of good faith. This can cause difficulties in international business contracts. The absence of clear boundaries regarding the meaning of good faith can lead to differing interpretations and legal uncertainty (Mahaputra &

Saputra, 2021). A legal system that does not provide detailed and clear explanations regarding the principle of good faith will result in ambiguity, legal uncertainty, and complicate the application of the principle of good faith that upholds equality and justice for the parties involved.

3.3.Implications of the Principle of Good Faith on Business Practices in Indonesia

The application of the principle of good faith can enhance trust among business actors to drive economic growth and investment. Trust encourages business actors to be more active and open in establishing cooperation and conducting transactions. This will increase the frequency and volume of business transactions, which in turn will drive economic growth; both domestic and foreign investors tend to choose countries with a healthy and transparent business climate. The application of the principle of good faith sends a positive signal to investors that Indonesia is a safe and profitable place to invest; the trust built among business actors will create a healthy and conducive competitive climate. This will encourage innovation and the improvement of product and service quality, thereby strengthening Indonesia's competitiveness in the global market.

With good faith, the potential for disputes can be reduced, thereby lowering the costs associated with dispute resolution and litigation. Dispute resolution through litigation takes a long time and incurs significant costs (Murowi, 2022). By prioritizing good faith, the dispute resolution process can be conducted more efficiently and cost-effectively; Prolonged business disputes can damage the company's reputation and brand image in the eyes of the public. The application of the principle of good faith can help avoid unnecessary reputational damage; Disputes can harm good relationships between business actors. By prioritizing good faith, parties can resolve disputes without sacrificing the established business relationships. (Situmeang et al., 2023).

The consistent application of the principle of good faith can enhance Indonesia's reputation as a reliable business destination in the eyes of international investors; Foreign investors will feel more confident and secure in investing in a country with a healthy and ethical business climate; The application of the principle of good faith serves as concrete evidence that Indonesia has a strong commitment to creating a conducive business climate. The increase in foreign investment will drive Indonesia's economic growth through job creation, increased national income, and technology transfer; A good reputation will strengthen Indonesia's position in the global market. Indonesian products and services will be increasingly trusted and sought after by international consumers.

In the Continental Law System, this principle approach is based on the philosophy of contracts that emphasize the relationship between the parties. This relationship requires the obligation of good faith not only when the contract is signed but also before the contract is concluded. For example, in the Belgian Civil Code, this country requires all contracts to be executed in good faith and their interpretation (contractual) must also be accompanied by customary practices (Setyo Widodo, 2022). The application of this principle in the continental legal system is based on the

contract philosophy that emphasizes the relationship between the parties. This interaction highlights the importance of upholding ethical standards before and after the contract is signed. For example, under the Belgian Civil Code, the agreement must be performed in good faith, and any interpretation or application of the law must take into account local norms. (Elpina, 2024).

Specifically in England, the negotiation process does not bind the parties to the principle of good faith. According to English Law, entering into negotiations does not automatically create an obligation of good faith. Under English Law, as long as the contract has not been signed, the parties are not bound to each other and do not have any obligations towards each other until the contract is signed.

Like the law in the United States (US), it is also argued that good faith only exists after the contract is signed. In the Common Law System, the meaning of good faith is nothing other than "Honesty" in behavior or honesty in business transactions, which includes honesty in facts and respect for fair trade standards and honest business transactions. (Kalmyrza & Alaeva, 2024). Commercial contracts in countries that adopt them will be recognized if the contracts adhere to values and responsibilities in compliance with good ethical principles. "The parties cannot exclude or limit their obligations" and "each party must act in accordance with good faith and fair dealing in international trade" are stated in Article 1.7 UNIDROIT. (The international institute for the unification of law). The rules that are generally presented in that article are then explained in more detail in the form of clarifications supported by several examples.

This is known as restatement. Here are some implications of the principle of good faith in arbitration-based dispute resolution, which is important in strengthening the relationship between the parties in the arbitration procedure, simplifying the enforcement procedure of the arbitration award because it is expected that the parties will comply with the award willingly, and reducing the likelihood of annulment of the arbitration award since dishonest behavior can be a reason to annul the award.

4. CONCLUSION

The principle of good faith plays a very important role in executing business contracts from the formation stage to the execution stage. Based on the research and analysis conducted, it can be concluded on two main aspects that are the focus of this study, namely: (1) The principle of good faith is recognized as a fundamental element in business contract law, emphasizing the importance of honesty, transparency, and ethical attitudes among the parties. In the formation of the contract, this principle is manifested through openness of information and equality of bargaining position, thus avoiding the exploitation of one party. During the execution of the contract, good faith encourages the parties to fulfill their obligations fairly and cooperatively. At the stage of contract interpretation, this principle is used to resolve ambiguities or uncertainties in contract clauses in a fair and reasonable manner. (2) The application of the principle of good faith significantly helps create a

balance between the rights and obligations of the parties, protects the weaker party, and prevents the abuse of rights/power. With the existence of this principle, legal certainty in business contracts is also enhanced because contracts become more predictable and can be interpreted consistently. In addition, the potential for conflict can be minimized to encourage the creation of a more stable and equitable business environment and provide legal certainty for the parties involved.

5. REFERENCES

- Agus, E. (2023). Peranan Asas Itikad Baik Dalam Kontrak Baku (Upaya Menjaga Keseimbangan Bagi Para Pihak). *Diponegoro Private Law Review*, Vol. 1, No, 13–22.
- Aji, M. N. N., Apriliani, U. D., & Siagian, C. O. (2024). Penerapan Asas Itikad Baik (Good Faith) Dalam Perjanjian Jasa Titip Luar Negeri. *Jurnal Ilmu Hukum: ALETHEA*, 7(1), 67–78. <https://doi.org/10.24246/alethea.vol7.no1.p67-78>
- Akbar, R. A., Akbar, M., Anggraini, B., Ramadhan, R., Reska R, U. R., & Amin, M. N. (2024). Penerapan Prinsip Itikad Baik Dalam Kontrak Baku. *Consensus: Jurnal Ilmu Hukum*, 2(3), 95–104. <https://doi.org/10.46839/consensus.v2i1.70>
- Arifin, M. (2020). Membangun Konsep Ideal Penerapan Asas Iktikad Baik Dalam Hukum Perjanjian. *Jurnal Ius Constituendum*, 5(1), 66. <https://doi.org/10.26623/jic.v5i1.2218>
- Atmoko, D. (2022). Penerapan Asas Kebebasan Berkontrak Dalam Suatu Perjanjian Baku. *Binamulia Hukum*, 11(1), 81–92. <https://doi.org/10.37893/jbh.v11i1.683>
- Azhar, M. K., Aurel, N., & Syahputri, N. (2024). Tinjauan Hukum terhadap Persekongkolan Tender dalam Pengadaan Barang dan Jasa Pemerintah. 4.
- Cindawati, M. (2020). Prinsip Good Faith (Itikad Baik) Dalam Hukum Kontrak Bisnis Internasional. *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 26(2), 181. <https://doi.org/10.22146/jmh.16038>
- Dalam, K., & Konstitusionalisme, P. (2023). *UNES Journal of Swara Justisia*. Pdfs.Semanticscholar. Org, 284–293. <https://pdfs.semanticscholar.org/2700/9ff818d0f18da9a695ec69414c37>
- Effendi, K. N., Kalep Simarmata, M., Patricius, P. T., Tundjung, &, & Sitabuana, H. (2023). Itikad Baik Atau Kecakapan Hukum Perikatan. *Jurnal Serina Sosial Humaniora*, 1(1), 239–249. <https://doi.org/10.24912/jssh.v1i1.24548>.
- Elpina. (2024). Management Strategies for Legal Compliance and Ethical Enforcement in SMEs Elpina. *Jurnal Ekonomi*, 3(3), 1011–1018.
- Firlana, H., Dani, P., & Wibowo, K. (2015). Indonesian Law Journal the Future of Intellectual Property Protection: Issues Againts the Metaverse and Non-Fungible Tokens (NFTs). *Indonesian Law Journal*, 16(2), 2023.
- Gusti, I., & Muliarta, N. (2022). Community Service Journal of Law the Principle of Good Faith in the Sale and Purchase Agreement of Rights Made Before a Notary the Principle of Good Faith in the Sale and Purchase Agreement of Rights Made Before a Notary. 1(1), 44–48.
- Hutahaean, R. M., Oktavia, A., Saroh, M., Maulana, F. R., Siswajanty, F., Pakuan, U., & Internasional, K. B. (2024). Implementasi prinsip good faith dalam penyelesaian sengketa kontrak bisnis internasional melalui arbitrase. 11(3), 75–90.
- Kalmyrza, G. M., & Alaeva, G. T. (2024). Issues of legal protection of intellectual property rights. *Eurasian Scientific Journal of Law*, 4(1 (6)), 15–20. <https://doi.org/10.46914/2959-4197-2024-1-1-15-20>
- Kunci, K. (2023). Pengaktualisasian Itikad Baik Dalam Mencapai Hukum Kontrak Yang Progresif Di Indonesia. 1, 1–9.
- Mahaputra, M. R., & Saputra, F. (2021). Application of Business Ethics and Business Law on Economic Democracy that Impacts Business Sustainability. *Journal of Law, Politic and Humanities*, 1(3), 115–125.
- Murowi, D. K. Al. (2022). Intellectual Property Rights Legal Protection Towards Copyrights of New Creation Dance Choreography in Lampung. *Indonesia Private Law Review*, 3(1), 1–12. <https://doi.org/10.25041/iplr.v3i1.2311>

- Nainggolan, B. (2022). Enforcement of Intellectual Property Law in Indonesia. *IJLR: International Journal of Law Reconstruction*, 6(2), 317–330. <https://dx.doi.org/10.26532/ijlr.v6i2.35991>
- Pratiwi, A. C., Pertiwi, N. R. L., & Baihaqi, A. H. Al. (2022). The Importance of Understanding Intellectual Property Rights from a Legal Perspective and Its Benefits for Society. *Proceedings of Islamic Economics, Business, and Philanthropy*, 2(2), 100–120. <https://jurnalfebi.iainkediri.ac.id/index.php/proceedings/article/view/1124>
- Priyono, E. A. (2016). Asas Itikad Baik dan Kepatutan Dalam Perjanjian. *HUMANI (Hukum Dan Masyarakat Madani)*, 6, 21.
- Samsithawrati, N. P. A., Kurniawan, I. G. A., & Dharmawan, N. K. S. (2024). Legal Protection for Intellectual Property Holders in Business Activities in The Era of The Industrial Revolution 4.0. *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum*, 11(1), 74–81.
- Setyo Widodo, D. (2022). Application of Business Law: Business Monopoly, Rule Violation and Environmental Damage. *Journal of Law, Politic and Humanities*, 1(3), 135–143. <https://doi.org/10.38035/jlph.v1i3.62>
- Silaen, R. N., & Br. Sembiring, T. (2024). Legal Protection of Intellectual Property Rights in the Digital Era. *Ipso Jure*, 1(4), 1–8. <https://doi.org/10.62872/9hn74238>
- Situmeang, A., Silviani, N. Z., & Tan, D. (2023). the Solving Indonesian Intellectual Property Rights Transfer Issue. *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, 23(1), 59–74. <https://doi.org/10.30631/alrisalah.v23i1.1341>
- William. (2021). Penerapan Asas Itikad Baik Dalam Perjanjian Sewa-Menyewa Ditinjau Berdasarkan Pasal 1338 Kitab Undang-Undang Hukum Perdata. *Jurnal Rectum*, 3(2), 405–414.