

# Implementation of the Principle of Good Faith in the Making and Execution of Agreements

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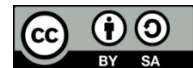
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## ABSTRACT

Based on Article 1338 paragraph (3) of the Civil Code, agreements must be implemented based on good faith. These guidelines must be met so that the interests of the parties can be protected and there is no risk of loss to the parties as subjects of civil law who make them. An agreement cannot be canceled by one of the parties but must be with the agreement of the parties to the agreement. The purpose of this study is to examine the difficulties that the parties have when drafting and carrying out the agreement. This study makes use of secondary data and normative legal procedures. Deductive inductive reasoning is employed. Both main and secondary legal documents are utilized. Legal tools are primary legal resources. Journal articles and other study findings are examples of secondary legal sources. qualitative approaches for data analysis. The study's findings can be used to draw conclusions about what constitutes good faith from moral and ethical perspectives in order to deal with issues that may arise if the agreement does not use good faith.

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## 1. INTRODUCTION

The responsibility generated from an agreement is expressly regulated in Book III of the Civil Code (KUHPdata). Article 1313 defines an agreement as an act by which one or more persons tie themselves to one or more other people. This definition is governed by the Civil Code. The principle of good faith must be the foundation upon which an agreement is formed. Article 1320 of the Civil Code does not require the principle of good faith to be a prerequisite for the legality of an agreement; nonetheless, Article 1338 of the

Civil Code explicitly stipulates that the agreement must be executed in good faith.

A fundamental tenet of civil law is the good faith standard, which mandates that all parties to an agreement act honestly, fairly, and in good faith when entering into and carrying out agreements. All facets of human existence should be conducted in good faith, according to the moral precept of good faith, which is not limited to agreements. In actuality, the good faith concept seeks to sustain trust between the parties to the agreement and establish mutually advantageous legal relationships. Often in the implementation process, certain obstacles

arise, both in terms of understanding, intention and behavior of the parties involved.

Jasmaniar (2024) in his research argues that the application of the basis of good faith in the agreement requires the parties to uphold their commitment as a moral obligation, ensuring voluntary compliance with the terms of the agreement, thereby providing legal protection and fostering trust. An agreement born from an agreement which in essence is binding, as a result, it is certainly an agreement that must be implemented in good faith so that the objectives of each party can be achieved. Faris (2024) in his research argues that the principle of good faith can be analogized to the existence of the brain in the human body, namely as the center of the spirit of the agreement. The first obstacle that is often faced in the making and implementation of an agreement is the difference in interpretation of what is meant by good faith in the context of an agreement.

Parties involved in transactions often have different views regarding their obligations and rights which can lead to a mismatch in the intention and purpose of making and executing agreements. In addition, ignorance or lack of understanding of the legal consequences of their actions can also be one of the obstacles in applying this principle. Inability or inaction in the implementation of the agreement is also often an obstacle. The aggrieved party may feel that the application of the principle of good faith is not being fulfilled by the other party, leading to conflicts and even legal disputes. In this context, communication difficulties, abuse of power in negotiations or unwillingness to fulfill obligations can also affect the implementation or fulfillment of achievements in an agreement.

Another important obstacle is the tendency to ignore this principle in favor of personal or group benefits. In civil, business, and employment contracts, it is often the case that the party that is economically stronger or in a stronger position tries to regulate the terms of the agreement to the detriment of the weaker party or the party that does not have

a bargaining position. This undoubtedly lessens the efficacy of the good faith concept, which seeks to establish equitable and just interactions.

In light of these challenges, efforts must be made to reduce barriers to the application of the good faith principle so that all parties to the agreement can appreciate its significance as it applies to the pre-contractual phase, the agreement's implementation phase, and the conclusion of an agreement in a fair and basic manner. It is crucial to do research on obstacles and initiatives to reduce them in order to find practical answers that may be used to produce agreements that are more open, equitable, and advantageous to all parties.

## 2. LITERATURE REVIEW

Humans as *zoon politicon* indicate that humans will always interact with other humans to help meet their needs. In a relationship between humans, law is needed to be able to regulate the behavior of each individual or group of people or society as legal subjects. Sudikno, in his book states that it is not important how many people there are to be called a society. In order to achieve goals and fulfill their needs, conflicts or conflicts of human interest often arise, so the law is needed to be present in it. The many aspects of human life cause many fields of law that regulate matters specifically, one of which is the field of civil law. An obligation resulting from an agreement is one of the private interactions governed by the realm of civil law. Relationships are expressly governed by Book III of the Civil Code. The need that the agreement be established and carried out in good faith is one component of the legal protection for legal subjects in an obligation resulting from an agreement.

The concept of good faith is known as "*bonafids*" in Roman law. The Big Indonesian Dictionary (KBBI) defines "*itikad*" as having excellent intentions, resolve, and faith. The word "good" according to the KBBI has the meaning of appropriate, favorable, not evil, honest and kindness. Principle is

generally defined as the basis, guideline and a truth that becomes a foundation in thought and opinion. Regarding legal principles, J.J.H Bruggink states that legal principles are related to rules of behavior, legal principles can fulfill the same function as rules of behavior which contain measures or value criteria. Wirjono Prodjodikoro in his book mentions "good faith" with the term "honesty" and distinguishes it from "propriety". Professor of the Faculty of Law UGM, Prof. Dr. Siti Ismijati Jenie, S.H., C.N in her speech said that honesty or good faith does not lie in the state of the human soul, but in the actions taken by both parties in carrying out the promise.

Indonesia currently still uses the Civil Code or Burgerlijk Wetboek which is a Dutch heritage law used as a legal basis in the field of civil law. Referring to the Decision of the Dutch Supreme Court (Hoge Raad) dated February 9, 1923 which formulates that agreements must be implemented based on the terms of reasonableness (Redelijkheid) and propriety (Bilijkheid). The Hoge Raad decision states that agreements must be implemented with fairness and propriety (volgens de eisen van redelijkheid en bilijkheid) that live in society. Khalid (2023) in his research states that with regard to good faith until now there has been no law or doctrine that provides clear and firm limits on the principle of good faith.

In his study, Miftah clarified that the good faith concept may be interpreted in two ways: objectively and subjectively. While good faith in a subjective meaning refers to an individual's inner attitude, in an objective sense it indicates that an agreement must be carried out with proper consideration to the standards of morality and decency in a way that does not injure one of the parties. Whether or whether an agreement is legally legitimate is not affected by the ambiguity of the definition of good faith. The rules of Article 1320 of the Civil Code govern the validity of agreements. These clauses state that good faith is not an objective nor a subjective need for an agreement to be enforceable, which might put legal subjects or

agreement parties at danger of financial loss. In this instance, a number of guiding principles are required to support the creation and execution of an agreement.



Source: Khalid Mustafa's PPT on Contracts

There are principles of freedom of contract, consensualism, legal certainty in an agreement, but the principle of good faith is the principle that initiates the making of an agreement and the implementation until the end of an agreement. The principle of good faith has an important position and role in an agreement. Referring to the expert opinion above, it is important to analyze more deeply the obstacles faced by the parties in applying the principle of good faith in making and implementing agreements and efforts to reduce the risk of loss for parties with weaker bargaining positions in an agreement.

### 3. METHODS

#### 3.1 Nature and Type of Research

This type of research is known as normative juridical research. This form of inquiry is called library research. Normative juridical legal research is a type of legal study that primarily examines secondary evidence. One way to obtain secondary data is through literature reviews. achieved by compiling, examining, or locating books and other items that could provide the necessary knowledge.

#### 3.2 Research Materials

Secondary data was employed as the research material in this study. Data gathered through a literature review of legal documents pertaining to research issues is

known as secondary data. The following legal resources were consulted in this study:

Legal resources that are authoritative—that is, have authority—are considered primary legal materials. This authoritative legal content has legal force behind it. Laws and regulations, official documents or minutes used in the legislative process, and court rulings are examples of fundamental legal resources that are legally binding. The following are the main legal resources used in this study:

1. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
2. Decision of the Hoge Raad dated February 9, 1923
3. Kitab Undang-Undang Hukum Perdata (KUHPerdata)

### 3.3 Secondary legal materials

Secondary legal materials are legal materials that provide explanations of primary legal materials, such as draft laws, research results, works from legal circles and so on. Secondary legal materials used in this research are:

- 1) Books on introductory law
- 2) Books on legal principles
- 3) Books on agreements
- 4) Books on the principle of good faith
- 5) Research results related to agreements and the application of the principle of good faith
- 6) Legal articles and websites related to the issues studied

### 3.4 Tertiary legal materials

Tertiary legal publications, such as dictionaries, encyclopedias, cumulative indexes, and the like, offer guidance and clarifications for primary and secondary legal texts. Black's Law Dictionary and the Big Indonesian Dictionary (KBBI) are the tertiary legal resources used in this study.

The literature study approach and the utilization of literature were used to obtain data for this study. Following the utilization of literature and the literature research approach, the data was subjected to qualitative analysis. Among other methods, classification based on the issues examined

and the information gathered is used in qualitative analysis. The data analysis technique used is "content analysis" or content study. The content analysis technique is an integrative and more conceptual analysis technique to find, identify, classify data and analyze documents to understand their meaning.

## 4. RESULTS AND DISCUSSION

### 4.1 Obstacles faced by the parties in applying the principle of good faith in the making and execution of agreements

The guidelines outlined in the Civil Code (KUHPerdata) govern civil law in Indonesia. One of the fundamental ideas of contract and agreement law that is governed by the Civil Code as a matter of public policy is the good faith standard. "The entirety of legal rules governing legal relations between two or more parties based on an agreement to cause legal consequences" is how Salim H.S. defines contract law. One of the key elements in the formation of an agreement is the parties' agreement. An agreement's validity is determined by four primary factors, as stated in Article 1320 of the Civil Code: the parties' agreement, their ability to carry out legal actions, the agreement's purpose, and the presence of a *halal causa* (agreements made must not conflict with laws and regulations, public order, and decency). According to the "*pacta sunt servanda*" concept, which states that legally binding agreements apply to the parties who create them, a valid agreement has a binding character for its originator. This demonstrates how important it is for the parties to an agreement to adhere to the good faith concept. In his study, Miftah (2020) clarified that the good faith concept may be interpreted in two ways: objectively and subjectively. While good faith in a subjective sense (*subjectieve goede trouw*) refers to an individual's inner attitude, good faith in an objective sense (*objectieve goede trouw*) means that an agreement reached by the parties must be implemented with due regard to the norms of decency and morality so that it does not risk harming one of the parties.

This idea is a crucial cornerstone for fulfilling the responsibilities or accomplishments of the parties to an agreement. According to Indra's (2013) study, the concept of good faith has its roots in Roman social ethics with all-encompassing duties to obey and societally accepted views. This view is corroborated by Sinaga (2021), who claims in his research that the good faith concept is crucial for establishing justice, order, and legal certainty. It is anticipated that the parties will fulfill their obligations and act in conformity with the terms of the agreement. The parties' differing interpretations of what constitutes "good faith," both for themselves and in the case of a future dispute, are one of the primary barriers to the application of the good faith principle. Parties to an agreement frequently hold divergent opinions about what constitutes an honorable and moral deed. For instance, what one party considers to be a fair and transparent course of action may not be equally balanced in terms of the other party's "sense of justice." Different cultural factors, backgrounds, or goals could be the cause of this. It is frequently difficult to consistently interpret and apply the good faith principle in dispute resolution. This is because the law doesn't define "good faith" precisely.

In addition to differences in the interpretation of good faith, parties to an agreement often have different interests that can influence their intentions and actions in making and executing agreements. The motivation to gain greater personal benefit may arise before a person enters into an agreement with another party. Based on data processed by Harun R. S., et al (2019) in their research on online buying and selling agreements, there are 123 cases of default of online buying and selling agreements in Gorontalo Regency.

**Table of Online Buying and Selling Consumer Complaints in Gorontalo Regency to the Indonesian Consumers Foundation 2016-2018.**

Years	Reported Incidence Rate
2016	25 Cases
2017	45 Cases

2018	53 Cases
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Yayasan Lembaga Konsumen Indonesia (YLKI) recorded 25 cases of default in 2016, 45 cases of default in 2017 and 53 cases of default in 2018 in Limboto District, Gorontalo Regency. Not only that, the latest data of YLKI 2024, as many as 1,675 consumer complaints have been recorded in YLKI data collection.

**Table of Percentage of Consumer Complaints in Indonesia related to Financial Services at the Indonesian Consumer Institute Foundation in 2024.**

Complaint Type	Percentage
Banking	33 %
Online Loans	28 %
Online Shopping	25%
Electronic Money	7%
Insurance	5%
LKNB	1%

Consumer complaints about banking services include fraud, requests for leniency, transaction systems, auctions, and account freezing. Online loan consumer complaints include billing methods that are not written in the agreement, requests for debtor relief, and defaults. Meanwhile, online shopping consumer complaints include complaints about refunds or returns of goods, unsuitable goods, inaccurate shipping estimates, fraud, break-ins, goods not delivered, and unilateral cancellation of transactions. Manipulative actions or avoidance of obligations are very likely to occur, which is certainly contrary to the principle of good faith.

Unbalanced economic interests between the parties can also lead to exploitation of weaker or less empowered parties. Inequality of information or unbalanced bargaining power in this case also has the effect of becoming an obstacle in the application of the principle of good faith in the making and execution of agreements.

The application of the principle of good faith in the implementation of agreements also often faces obstacles related to the uncertainty of the other party's behavior. In many situations, a party who

has acted in good faith may not be able to predict or control how the other party will behave, especially if the party does not have good faith in relation to the principle of freedom of contract. It is also closely related to the moral and ethical principles of every human being who has different degrees. Maria J. Wantah defines morality as something that is closely related to the ability to determine the value of right or wrong and good or bad behavior inherent in every individual living in society.

A concrete example is in agreements involving payment obligations or delivery of goods, where one party may renege or delay the performance of its obligations for no apparent reason, even though the other party has fulfilled their obligations in good faith. Another example is that in a bank loan agreement, it has been unilaterally determined by the bank regarding the contents of the agreement. By providing the debtor with the chance to review the terms of the credit agreement, the bank proves that the parties have accepted its terms. The agreement's terms must be responsibly fulfilled by the parties. This demonstrates the presence of moral and ethical standards.

A further barrier to the implementation of the good faith principle is the absence of adequate oversight or enforcement. Studies reveal that enforcement of the good faith principle is not always straightforward in certain legal systems, particularly when the violation is significant and hard to prove. The principle of good faith is often applied in contexts that rely heavily on evidence of the intentions and feelings of the parties involved, which are often not objectively measurable. At the agreement-making stage, differences in bargaining positions between the parties can lead to unfairness in the negotiation process. Weaker parties may feel forced to accept agreements that are not entirely fair to them. An example is the fixed-term employment agreement (PKWT), which sometimes tends to disadvantage labor rights, especially women workers. Tazkia (2023) in her research found the fact that there are still

many employment contracts in several companies that require women to resign voluntarily when the worker is pregnant. In commercial contracts, it is likewise crucial to apply the good faith concept while creating and carrying out agreements.

For example, in a franchise business, prospective franchisees or franchisees may sign the franchise agreement in bad faith. A franchise agreement without a non-competition clause could risk harming the original owner of the business. The prospective franchisee or franchisee signs the franchise agreement but has the bad intention of obtaining the knowledge, concepts and experience of the franchisor or franchisor, then after the agreement expires, there is plagiarism or similar business competition.

The lack of in-depth understanding of ethics and social responsibility causes the application of the principle of good faith to be constrained. It is also an obstacle to the application of the principle of good faith in the making and execution of agreements. Differences in interpretation, conflicting motivations, uncertainty of the other party's behavior and difficulties in law enforcement are factors that often prevent the effective realization of the principle of good faith. Based on this, greater efforts are needed to strengthen the understanding of the principle of good faith, both among legal professionals and the wider community. To guarantee that the good faith concept may be applied more effectively in legal practice, more law enforcement as well as better corporate ethics education and training are also required.

#### ***4.2 Efforts that can be made to minimize these obstacles***

Article 1338 paragraph (3) of the Civil Code stipulates that contracts/agreements must be executed in good faith. According to Black's Law Dictionary, good faith means: in good faith, honestly, openly and sincerely, without deceit or fraud, in fact and without deceit or pretense. The principle of good faith is very important, but its application often does not run smoothly due to differences in

interpretation, the existence of hidden / bad intentions of the parties, inequality of bargaining positions and difficulties in assessing good faith objectively. In order to minimize these obstacles, several efforts can be made based on the legal principles contained in the Civil Code:

#### **4.2.1 Increased Understanding and Socialization of the Principle of Good Faith**

One of the main efforts is to increase understanding of the principle of good faith, both among the general public, business actors, and legal practitioners. The Civil Code does not provide an explicit definition of what is meant by "good faith", but a broad and systematic interpretation can be drawn from legal practice and jurisprudence. According to the good faith concept, when creating and carrying out agreements, the parties must be truthful, open, and careful not to hurt one another. This can be achieved through:

- a. Legal education: Improving the understanding of this principle in legal education, both at the academic level and in the form of training for legal practitioners and business people.
- b. Legal socialization: Educators, experts, and the Ministry of Law and Human Rights can be more active in conducting legal socialization related to the application of the principle of good faith, both in research journals, writing articles, laws and regulations and in court decisions.

#### **4.2.2 Respect for Moral and Ethical Principles.**

An obstacle that often arises in the application of the principle of good faith is the inequality of bargaining positions in the agreement. This can lead to coercion or pressure on the weaker party. In this case, the Civil Code provides a way to deal with this imbalance through provisions governing the validity of an agreement, namely related to agreement. Agreement must not be obtained due to undue influence, coercion (*dwang*) and fraud (*bedrog*). This can be achieved through:

- a. Increased supervision in negotiations, requiring the active role of a third party, such as a mediator or

lawyer, to ensure that agreements do not only benefit one party and prevent coercion or duress.

- b. Further regulation of unfair clauses: for example, if there is an unfair clause in the agreement, the aggrieved party can file a lawsuit to cancel or amend the clause in accordance with the principles of fairness and good faith before the court.

#### **4.2.3 Improved Monitoring and Law Enforcement Functions**

One of the major obstacles in the application of the principle of good faith is the lack of effective law enforcement in dealing with violations of this principle. In this case, efforts to minimize this obstacle can be done by strengthening the functions of supervision and law enforcement, both in the judicial field and outside the court:

- a. Role of the Judiciary: courts need to be more consistent and firm in applying the principle of good faith in every case involving agreements. Law enforcers must be able to identify if there are elements of fraud, abuse of position or dishonesty in the implementation of the agreement.
- b. Increasing the role of mediation institutions: mediation or arbitration institutions can be used to resolve disputes arising from violations of the principle of good faith outside the court. This can reduce the burden on the judiciary and accelerate dispute resolution.
- c. Application of strict sanctions: The Civil Code provides room for the injured party to cancel the agreement or request compensation for violations that occur. The court must impose strict sanctions on violations of the principle of good faith to provide a deterrent effect and uphold justice.

#### 4.2.4 Use of Clear and Precise Agreement Standards

Another obstacle is the lack of clarity or vagueness in the clauses in the agreement which can lead to different interpretations between the parties. Agreements made must be clear, detailed and not contain elements of uncertainty that could potentially harm one of the parties. This is intended so that the principle of good faith can be applied effectively. This can be achieved through:

- a. Good drafting: the use of clear and precise language in drafting agreements will help prevent disputes arising from ambiguity. It is important to ensure that the rights and obligations of each party are clearly and fairly stated.
- b. Regulation of standard clauses: in the case of agreements involving standard form contracts, for example in business or commercial transactions, it is necessary to further regulate the supervision of clauses that are unfair or disadvantageous to the weaker party.

#### 4.2.5 Government's Role in Accommodating Community Needs

The establishment of a legislative framework that facilitates the application of the good faith concept is a significant responsibility of the government. This can be done through regulatory reform and the application of social justice principles in contracts. Efforts that can be made:

- a. Drafting regulations governing the protection of consumers and weaker parties. In some types of agreements, the government can introduce regulations that provide more protection to consumers and workers or parties with a bargaining position.
- b. Supervision of harmful agreement practices: the government and supervisory agencies can be more proactive in supervising agreement practices that have the potential to harm consumers or weaker parties, for example through consumer protection

agencies or the Business Competition Supervisory Commission (KPPU).

### 5. CONCLUSION

Based on the research results, it can be concluded that:

To make sure that agreements can result in just and advantageous legal relationships, it is crucial to apply the good faith concept while creating and carrying out agreements. Various obstacles that exist, such as differences in interpretation, the existence of hidden or bad intentions of the parties, inequality of bargaining positions and difficulties in law enforcement and supervision, can be minimized by efforts to increase legal understanding related to the application of the principle of good faith in the making and execution of agreements, stricter law enforcement and supervision and the preparation of clear and fair agreements for the parties. In addition, the government, courts and related institutions must work together to create a legal system that supports the application of the principle of good faith more effectively.

Efforts to overcome obstacles to the application of the principle of good faith in the making and implementation of agreements can be carried out through several strategic steps. First, it is important to increase understanding and socialization of this principle through legal education, training and the active role of legal institutions. Second, respecting moral and ethical principles in agreements to prevent inequality of bargaining position that harms weaker parties. Third, bolstering the role of law enforcement and monitoring by expanding the role of courts and mediation organizations and enforcing severe penalties for transgressions of the good faith standard. Fourth, ensuring that agreements are drafted clearly and precisely, avoiding vague or unfair clauses. Finally, the government has an important role in designing regulations that protect consumers and weaker parties and oversee potentially harmful practices.

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- Hoge Raad Decision dated 9 February 1923
- Civil Code

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