

IMPLEMENTATION OF GOOD FAITH PRINCIPLES IN TRADE CONTRACTS IN INDONESIA

**Alpian Mega Nugraha, Fathan Dhony Fadil, Talitha Khumairoh, Diky Dikrurahman,
Deni Yusup Permana**

*Universitas Swadaya Gunung Jati, Cirebon, Indonesia
egaalpian@gmail.com, fathandhony21@gmail.com, talithakhumairoh013@gmail.com,
diky.dikrurahman@ugj.ac.id, deni.yusup@ugj.ac.id*

ABSTRACT

The principle of good faith is a fundamental basis for establishing contractual relationships, including trade contracts in Indonesia. The application of this principle is important to create a conducive, fair and transparent business climate. The purpose of this study is to examine the application of the principle of good faith in trade contracts in Indonesia. This research uses qualitative research methods by collecting data using literature review techniques. then after the data is collected, it is analyzed using steps such as selecting data, presenting data and finally making conclusions. The research findings show that the implementation of the principle of good faith in trade contracts in Indonesia is regulated in Article 1338 paragraph (3) of the Civil Code, which emphasizes the importance of the principle of good faith and fair dealing in the entire contract process, starting from negotiation, contract arrangement, contract implementation, to dissolution. contract. In Indonesian law, good faith is applied not only during contract implementation but also in the pre-contract stage, namely before the contract is signed. This is important to protect the parties involved in the transaction from losses. The use of the good faith principle in commercial contracts in Indonesia has also been applied in several judicial cases, such as in life insurance contracts, where the court ensured that the good faith principle was applied to protect the rights of the parties involved. Apart from that, the principle of good faith is also applied in the choice of law for foreign direct investment contracts Indonesia.

Keywords: *Good Faith, Trade Contracts, Indonesia*

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INTRODUCTION

The principle of good faith is essentially concerned with "honesty" in trade or transactions. This includes honesty in presenting facts and respecting standards of fair trade and honest dealing (Cindawati, 2014). The principle of good faith as stated in Article 1338 paragraph (3) of the Civil Code refers to the implementation of the agreement in good faith, which means that in implementing the agreement, the integrity of conscience must be maintained. Understanding the substance of good faith must not be limited grammatically which implies that good faith is only relevant during the contract implementation stage. Instead, good faith must cover the entire contracting process, from the pre-contracting stage, to the contracting stage, to the execution of the contract (Ardiansyah & Winanti, 2023).

A good application of the principle of earnestness in a business context is crucial to creating a supportive, fair and clear working atmosphere. This principle ensures that each party involved in the agreement operates with integrity and honesty throughout the business process, from the negotiation stage to when the contract is executed. By making the principle of good faith the basis of business relationships, the risk of disputes or conflicts can be minimized because every step is based on openness and honesty between all parties involved. This not only increases trust between the parties, but also strengthens legal certainty in protecting their respective rights and obligations. The principle of good faith not only

maintains fairness in business transactions, but also builds a stable and sustainable foundation for economic growth and investment.

Previous research by (Dyastuti, 2023) this shows that the principle of good faith is a natural part of humans as social beings who depend on cooperation, although each country has a different legal system in managing it. In the context of conflicts and disputes in International Investment, Indonesian law, based on Law No. 25/2007 on Investment, stipulates that dispute resolution is conducted through international arbitration. However, it is possible to use any other arbitral institution agreed by both parties. In the event of a dispute and the parties do not specify a choice of law or do not record it in the agreement, the arbitral institutions already mentioned may be used in accordance with their agreement.

Another research by (Cahyaningtyas & Wibowo, 2024) it was found that cooperation between companies from different countries often does not follow the principle of "good faith" after signing the contract, which can lead to disputes. In addition, it is often the case that the chosen legal action is not fully implemented in accordance with the agreement, even though settlement has been agreed in an agreement using the Indonesian National Arbitration Board (BANI). There are indications that the choice of settlement through BANI is not always voluntary, but rather because in international contracts, BANI is usually the default option. As a result, one party may feel disadvantaged.

The research results add to the academic literature on the application of the good faith principle in Indonesia, providing a more in-depth and comprehensive view of how this principle is applied in practice. The findings of this research can be used as a basis for comparative studies with legal systems in other countries that also apply the principle of good faith. The benefit of this research lies in its ability to offer practical insights for businesses and legal practitioners, enabling them to better navigate and manage cross-border agreements while minimizing potential disputes. The purpose of this study is to contribute to a broader understanding of how the principle of good faith can be effectively implemented to foster trust and cooperation in international business transactions, ultimately supporting the development of a more equitable and transparent global trade environment.

METHOD

This research utilizes qualitative research methods, an approach used to understand social or human phenomena in a natural context. This approach emphasizes the interpretation of meaning, experiences and views of research subjects (Kusumastuti & Khoiron, 2019). Data collection in this study was carried out by tracing relevant literature studies or often called literature studies. The literature study includes collecting data from various written sources such as books, scientific articles, research reports, official documents, and other sources relevant to the research topic. This method aims to gain a deep understanding of the issue being researched, identify previous findings, and collect existing theories and concepts. After the data is collected, it is analyzed through steps such as selecting data, presenting data and making conclusions. This process begins with simplifying the collected data, then displaying relevant information, and finally drawing conclusions based on the analysis that has been done.

RESULTS AND DISCUSSION

Humans as social beings are characterized by interacting with others, and one form of this interaction is through business transactions. The business transaction process usually begins with correspondence between the parties which is then followed by negotiations, either face-to-face or through media such as telephone, Skype, or Zoom which form an agreement (Sani, 2020). Fundamentally, agreements or contracts arise because of the differences in interests between the parties involved. As such, the formation of a contractual relationship begins through a negotiation process between them. After reaching an agreement on the intention to form a contract, a pre-contractual process is usually carried out (Darma & Saputra, 2024). The points of agreement that have been reached by both parties are then summarized in a written document called a trade contract. This mutual agreement is often referred to as "Agreement in Principle" which forms the basis for both parties to carry out the points of the agreement and fulfill their rights and obligations. This agreement is also the basis if unexpected things happen such as default or trade disputes (Sani, 2020).

In an agreement, a contract is needed to ensure that both parties comply with the agreed terms and do not commit violations that harm one of the parties. Trade contracts serve as a binding tool in cooperation agreements between companies. This contract regulates various aspects of the business relationship, including obligations, rights, responsibilities, and other relevant legal aspects during the cooperation period. A trade contract serves as a legal basis that binds both parties in the exercise of their rights and obligations. In law, there is a rule that states: "agreements are law for those who make them." This means that contracts have legal force that binds the parties involved, and they can be sanctioned if they fail to fulfill the terms of the contract (Sani, 2018). In addition, contracts provide legal protection for both parties if their rights are not fulfilled. To better understand how trade contracts function as a coercive tool in the realization of transactions, it is important to study the process that occurs from the beginning until the fulfillment of the rights and obligations of both parties, which includes all stages from negotiation, signing, to contract execution, as well as the mechanisms that exist to enforce the rights and obligations stipulated in the contract.

In the ever-changing and complex business world, trade contracts are essential to maintain order and provide certainty in carrying out business relationships (Zulkifli, 2022). In addition, to carry out trade contracts effectively, it is necessary to have control based on moral values and conscience, which is often referred to as good faith. According to the Big Indonesian Dictionary, "good faith" means trust, firm belief, intention, and good will (Riyanto, 2016). According to (Arifin, 2020), the principle of good faith has a meaning that is divided into:

1. Good faith in an objective sense

This definition highlights that agreements should be made taking into account the prevailing moral and ethical requirements. This means that it shows all actions taken in the implementation of the agreement must be fair and must not harm either party. With good faith, this includes the responsibility to perform the contract honestly and ethically, and in accordance with applicable moral standards. The aim is to ensure that both parties are treated fairly and that no one is disadvantaged by the performance of the agreement.

2. Good faith in a subjective sense

This definition relates to the inner attitude or intention of the individuals involved in the agreement. According to the common law, subjective good faith can often be described as

honest intention or sincere intention. This thought emphasizes that individuals must have honest intentions and integrity when participating in an agreement. This means that they must act in good faith, without any intention to deceive or harm the other party. This honesty and integrity of individuals is important to ensure that agreements are implemented correctly and fairly.

Thus, the principle of good faith confirms that in making an agreement, parties must act with honesty and reasonable consideration. According to this principle, agreements should be made with the goodwill and integrity of all parties involved, with a view to achieving mutual benefit. In addition, the execution of the agreement must comply with prevailing social norms, which reflect what is considered appropriate and suitable in society. This principle is a must that must be present in every agreement. Even if both parties agree to ignore this principle, the principle of good faith remains immutable (Priyono, 2017). This principle ensures that every agreement is made and implemented with integrity, honesty, and propriety, maintaining fairness and trust in business and social relationships.

The application of the principle of good faith in trade contracts in Indonesia is important for several reasons. First, this principle helps maintain the integrity of the contract by encouraging both parties to act honestly and in good faith. This ensures that contracts are valid and legally enforceable. The principle of good faith is a crucial foundation that guarantees the validity and viability of a contract (Siregar, 2021). Second, the principle of good faith also helps balance the interests of the parties involved in the contract. In the business world, there are often differences in power and bargaining position between the parties. Applying the principle of good faith helps to a fair agreement and avoid exploitation of one party (Siregar, 2021). Thus, this principle serves as a tool to ensure a balanced and fair distribution of benefits in trade contracts.

Furthermore, the application of the principle of good faith can also create a more stable business environment (Farhan & Kafi, 2023). By creating legal certainty and fairness in contracts, this principle provides a solid foundation for long-term business relationships. The application of the principle of good faith can increase trust and legal certainty in trade activities, thus encouraging business actors to conduct transactions more boldly and safely. This is in line with the spirit of Article 1338 of the Civil Code. Then, in terms of dispute resolution, the principle of good faith acts as a bridge to a fair and peaceful settlement. Parties to a dispute can refer to this principle as a basis for finding a solution that considers the interests of all parties. Therefore, the principle of good faith can be an important foundation in mediation and arbitration processes to reach a fair solution. The principle of good faith allows the disputing parties to engage in constructive dialog in good faith to find a mutually beneficial solution. In the mediation process, the mediator can use this principle as a guide to guide the parties to reach an agreement that is acceptable to all parties. Mediation based on the principle of good faith encourages open communication, mutual understanding and cooperation between the parties, thereby reducing the likelihood of conflict and accelerating the peace process (Farhan & Kafi, 2023).

The importance of the principle of good faith is also found in its role in supporting national economic growth. Creating a conducive and stable business climate, this principle can increase legal certainty and trust in business activities (Nugraha et al., 2024). Thus providing a positive impetus for businesses to invest, develop innovations, and conduct transactions with

more confidence. The overall impact can help accelerate economic growth and create more jobs. The implementation of the principle of good faith in trade contracts in Indonesia is regulated in positive law, for example in the Civil Code (KUHPerdata), specifically in Article 1338. Article 1338 of the Civil Code states that all valid agreements are legally binding on the parties. This emphasizes that all parties involved in a contract must act in good faith in implementing the agreement they have made.

According to the article, emphasizes that the implementation of an agreement must be in accordance with prevailing moral and ethical values. This means that in executing a contract, the parties involved must act in good faith, in accordance with moral and ethical principles that are widely accepted in society. These norms of propriety and decency serve as guidelines to ensure that the implementation of the contract runs correctly and does not violate morally recognized values (Riyanto, 2016). This article emphasizes the need for the principle of good faith and fair treatment in all phases of a contract, from negotiation to dissolution. This principle demands that each party act honestly, fairly, and comply with the moral standards prevailing in society. The aim is to ensure that contracts are executed with integrity and do not cause unfair disadvantage to any party.

The principle of good faith in trade contracts in the continental legal system emphasizes the importance of the parties' obligation to act in good faith throughout the entire contract process, not only at the time of signing the contract but also before the contract is formed (Cindawati, 2014). The application of the principle of good faith in trade contracts includes:

1. Pre-contract stage

All parties involved are required to provide comprehensive, accurate, and honest information regarding their identity, the object promised, and all relevant related conditions. In addition, negotiations should be conducted in good faith, where both parties respect each other and seek to reach a fair and mutually beneficial agreement.

2. Contract execution stage

Parties are required to comply with their obligations as agreed in the contract. This includes the obligation to do things on time, produce with sufficient quality, and demonstrate performance in accordance with the terms of the agreement. Good cooperation and effective communication between the parties are also emphasized to handle potential problems that arise during contract execution.

3. Post-contract stage

In the event of a dispute between the parties after the contract has expired, settlement of the dispute shall be prioritized through mediation or arbitration. This approach aims to reach an amicable and fair settlement, prioritizing constructive dialogue and the good faith of both parties.

Based on this, the principle of good faith not only underlies moral integrity in every stage of a trade contract, but also becomes an important legal foundation for maintaining a sustainable and mutually beneficial relationship between the parties involved. However, a breach of the principle of good faith in a trade contract can have significant legal consequences for the breaching party, including firstly the declaration of the agreement to be void. If it is proven that one of the parties acted in bad faith, the agreement can be declared null and void. This can happen if there is evidence of abuse of circumstances, which is one indication that there was no good faith in the contract (Arifin, 2020). Second, parties who suffer losses due to

violations of the principle of good faith have the right to claim compensation from the offending party. This claim for compensation reflects an effort to recover the losses suffered due to actions that are not in accordance with good faith (Alaysia & Muttaqin, 2023). In addition, a breach of the principle of good faith can negatively impact the reputation and credibility of the breaching party in the eyes of other parties. This can disrupt future business relationships and affect perceptions of the integrity and reliability of the parties involved.

Currently, the principle of good faith in trade contracts in Indonesia has been applied in various situations, including in court such as in the case of life insurance contracts. In this context, the court ensured that the principle of good faith was used to protect the rights of all parties involved, in accordance with the provisions contained in Article 246 of the Kitab Undang-Undang Hukum Dagang (KUHD). This article stipulates that insurance is an agreement in which the insuring party promises to compensate the insured for losses that may be experienced due to an uncertain event. The principle of good faith requires that the insured must provide comprehensive and honest information regarding all important facts related to the insured object. Conversely, the insurer has an obligation to clearly explain all risks covered or excluded, as well as the terms and conditions of the insurance policy (Santri, 2017).

The principle of good faith is also applied in the law selection process for foreign direct investment contracts in Indonesia, not only in the context of insurance contracts (Dyastuti, 2023). That is, when a foreign company makes a direct investment in Indonesia, both parties (the investor and the Indonesian party) must behave in good faith during the process of negotiating, signing, and executing the investment contract. This includes the obligation to disclose relevant information, act honestly, and not take actions that unfairly disadvantage the other party. Apply the principle of good faith to foreign direct investment contracts aims to create a transparent and fair business environment, which in turn can increase trust between foreign investors and local parties in Indonesia, and support a positive and sustainable investment climate. Indirectly, this means that this principle not only serves as a foundation for maintaining contractual integrity in insurance, but is also relevant in the context of foreign investment to ensure fair and honest treatment between the parties involved.

Based on these findings, it can be concluded that the application of the principle of good faith in trade contracts in Indonesia is not only important to ensure compliance with the law and create fairness, but also to promote economic growth and public welfare. The implications are significant, as not adhering to this principle can result in serious repercussions for the parties involved in the contract, both in legal and economic terms.

CONCLUSION

Implementation of the principle of good faith in trade contracts in Indonesia Article 1338 paragraph (3) of the Civil Code regulates the application of the principle of good faith in trade contracts in Indonesia. This principle emphasizes the importance of being honest and transparent in all stages of the contract, from negotiation, drafting, execution, to contract dissolution. Good faith applies not only when the contract is being executed, but also from the pre-contract stage, i.e. before the contract is signed. The application of the principle of good faith in commercial contracts in Indonesia has important significance in protecting the parties involved from potential losses. This principle has been tested in several judicial cases, including in life insurance contracts, where the courts ensured that good faith was upheld to

safeguard the rights of the parties involved. In addition, the principle of good faith is also applied in the choice of law for foreign direct investment contracts in Indonesia.

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