



The Principle of Good Faith in the Sale and Purchase Agreement of Rights Made Before a Notary

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ABSTRACT

In an agreement, good faith plays an important role, because with the good faith shown by the parties in making an agreement, the parties will feel protected. In the land sale and purchase agreement made before a notary, the seller has an obligation to provide honest information about the condition of the land to be sold and nothing is covered up. Likewise, the buyer must check the location of the land to be purchased carefully, to find out in advance whether the purchased land can be built or not. This study will examine and analyze the principle of good faith in legal provisions, especially in contract law. Good faith is still often a matter of debate, because there are still many parties who enter into an agreement who are dragged into legal problems in court, including those with good intentions. Good faith must exist from the pre-contract where the parties start negotiating until reaching an agreement until the contract implementation phase. The objectives of this study is to know what is the good faith in the sale and purchase agreement of land rights made before a Notary obliged to accommodate the principles of rationality and propriety. This research uses normative legal research, namely by using primary legal materials and secondary legal materials, then the approach used is the approach to legislation, concepts and philosophy, legal history and comparative law approach. The findings in this study are good faith in a sale and purchase agreement of land rights based on the contents of the agreement containing the principles of rationality and propriety. The context of good faith in Article 1338 paragraph (3) of the Civil Code is based on rationality and propriety. The standard used in assessing good faith in the implementation of the contract is an objective standard. With this standard, the behavior of the parties in carrying out the contract and the assessment of the contents of the contract are based on the principles of rationality and propriety. Good faith has a very important role in making an agreement, including in the sale and purchase agreement of land rights made before a notary in order to minimize the possibility of fraudulent practices in the sale and purchase transaction.

Keywords: Good faith, sale and purchase agreement of land rights, before a notary.

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1. INTRODUCTION

According to the provisions of Article 1313 of the Civil Code, an agreement is an act by which one or more people bind themselves to one or more other people. From the formulation of the article, it can be concluded that what is meant by the agreement in the article is an agreement that gives rise to an engagement (*verbintenisscheppende overeenkomst*) or an obligatory agreement.

An agreement is something that is very important in the business world, so before entering the world it is necessary to understand the important things related to an agreement, including: what is an agreement, the terms of a valid agreement, the principles of the agreement, the object of the agreement, the term of the agreement, the form of the agreement, the parties involved, the rights and obligations of the parties, the structure and anatomy of the making of the agreement, the settlement of disputes and the termination of the agreement (Niru Anita Sinaga, 2018). One of the conditions in the agreement is the existence of good faith that must be fulfilled.

The conditions for the validity of an agreement are regulated in Article 1320 of the Civil Code, namely:

1. Agree on those who bind themselves,
2. The ability to make an engagement,
3. A certain thing,
4. A lawful cause.

Good faith is an abstract meaning and is difficult to formulate, so that more people formulate it through events in court. Good faith in the implementation of the agreement is related to the issue of decency and appropriateness. The principle of good faith can be distinguished into subjective good faith and objective good faith (Moertiono, 2019). Good faith is very much needed in the implementation of the agreement, both related to the agreement required in the legal provisions in the field of civil law and in the field of sale and purchase agreements of land rights related to agrarian law.

Good faith in an agreement must exist since an agreement will be agreed. In other words, that good faith existed at the time of pre-agreement negotiations to make and/or draft an agreement. Ridwan Khairandy stated that "Good faith actually has to exist from the time of the negotiation process and contract preparation to the execution of the contract" (Khairandy, 2004).

In the provisions of Article 1338 paragraph (3) of the Civil Code it is stated that an agreement must be carried out in good faith. This good faith arrangement in contract law is minimal. There is no further explanation about what is meant by good faith, therefore there needs to be more concrete legal certainty related to good faith to provide clarity and avoid hesitation in implementing what is meant as good faith. In addition, in the laws and regulations relating to good faith, there is no uniformity so that it does not provide legal certainty and justice.

Because it is undeniable that no law is perfect or complete and there are bound to be flaws or weaknesses. In general, it can be stated that there are two main potential weaknesses in the legislation. First, in terms of formulation, it is sometimes incomplete, clear and concrete. Second, from the aspect of the material content, it is sometimes irrelevant (again) with social reality (Sudirman, 2007).

This principle of good faith must provide or reflect the principle of benefit (beneficence) which is translated as the necessity to do good (*bona fidel*), that living together must bring benefits (benefit) and should never harm others. Everyone is obliged to help others or cooperate in meeting the demands of their needs as a legal subject (Sudirman, 2007).

This is because it is closely related to the principle of justice which is translated as the principle of mutual benefit. This principle of justice demands that everyone be treated equally in accordance with fair rules and according to objective criteria, and can be accounted for (Ariyanto, 2016). In general, good faith must exist at every stage of the agreement so that the interests of one party are always considered by the other party.

The principle of good faith is an important principle in contract law, but as mentioned above, the regulation of good faith in contract law is minimal. Article 1338 of the Civil Code is intended that every agreement is binding on both parties and it can be concluded that people are free to make any agreement as long as it does not violate public order and morality. In other words, that both parties must have good faith in entering into an agreement so as not to harm each other, as explained in Article 1338 of the Civil Code paragraph (3), namely: "An agreement must be carried out in good faith".

Good faith has three functions, namely the first function teaches that the entire contract must be interpreted in good faith, the second function is the function of adding (*aanfullende werking van de goede trouw*). The third function is the function of limiting and eliminating (*beperkende en derogerende werking van de goede trouw*) (H.G. van der Werf dalam Ridwan Khairandy, 2017).

Studies that correlate with good faith in the sale and purchase agreement are very lacking, especially in the case of land sale and purchase agreements, while in practice the implementation of the sale and purchase agreement there are various lameness caused by the existence of parties who have bad intentions in the agreement only to benefit personal interests. thereby causing losses to other parties who have good intentions.

In practice, it is often found that the sale and purchase agreement of land rights made before a Notary, a dispute occurs in court, because there are frauds committed by the land owner without providing clear or honest information related to the condition or condition of the land, where the land is what was sold turned out to be not as expected by the buyer, such as the land being sold was located in the radius of the green line (green open space), the radius of the sanctity of temples and other restrictions that could not be built. If the buyer is not careful and not careful and does not check in the field, then it is possible to cause losses for the buyer or investor who invests their capital in good faith. The objectives of this study is to know what Is the good faith in the sale and purchase agreement of land rights made before a Notary obliged to accommodate the principles of rationality and propriety.

Based on the description above, the author wants to examine in depth related to the principle of good faith in the sale and purchase agreement of land rights made by the parties before a notary as the legal provisions in Indonesia, including the provisions in the Civil Code and Agrarian Law in particular in the Sale and Purchase Agreement of land rights.

Based on the above background, the problem can be formulated as follows: Is the good faith in the sale and purchase agreement of land rights made before a Notary obliged to accommodate the principles of rationality and propriety?

2. METHOD

This research is a normative legal research which is a scientific research method to find the truth based on the logic of legal scholarship from the normative side. In this case, the law is a positive norm that applies at a certain time which is made as a product of certain political powers that have legitimacy. The approach used is a statutory approach, concepts and philosophy, legal history and comparative law approach. Sources of legal materials used are 1. Primary legal materials consist of legislation, official records or minutes in the making of legislation and judges' decisions, 2. Secondary legal materials include textbooks, legal dictionaries, legal journals, and comments on court decisions, 3. Non-legal materials in the form of good books on political science, economics, sociology, agriculture, culture, non-legal research results, non-law journals, website and other relevant documents. The technique of collecting legal materials in this study was carried out by literature studies, and the technique of analyzing legal materials using descriptive analytical techniques through a qualitative approach to legal materials by abstracting the existing laws and regulations.

3. DISCUSSION

3.1 Good Faith Principle

According to Subekti, good faith is one of the most important joints in contract law (Subekti, 1997). The term good faith can actually be found in various legal literature. However, until now there is no law or doctrine that provides clear boundaries regarding the meaning of good faith as a legal norm/rule and its relationship with good faith as a legal principle.

Every rule of law or norm has a philosophical foundation. Agus Yudha Hernoko said a rule or norm actually has a philosophical foundation and a principle or principle as its spirit (Agus Yudha Hernoko, 2014). Principles according to Black's Law Dictionary are "fundamental truths or doctrines, as laws; comprehensive doctrinal rules that provide a basis or origin for others" (Henry Campbell Black, 1990) which essentially means, principles are teachings or truths that are fundamental to the formation of comprehensive legal rules.

The principle of good faith is one of the principles known in contract law. This provision regarding good faith is regulated in Article 1338 paragraph (3) of the Civil Code that "agreements must be carried out in good faith." Whereas in the Netherlands the highest role of good faith at the pre-agreement stage is even the agreement is placed under the principle of good faith, no longer on the theory of will (Raden Juli Moertiono, 2019). According to the provisions of Article 1338 paragraph (3) of the Civil Code, the parties are bound not only to matters stipulated in the agreement, but also to matters outside the agreement, namely the values that live in society, such as customs and propriety/legal culture.

The principle of good faith can also be interpreted that each party in making an agreement has an obligation to provide complete information or information that can influence the decision of the other party in terms of agreeing to an agreement or not. Actually, the principle of good faith is the honest behavior of the parties in conducting a transaction, so that the existence of good faith can prevent losses to the parties bound by the agreement.

The principle of good faith contained in Article 1338 paragraph (3) of the Civil Code is divided into 2 (two), namely:

1. Subjective Good Faith

The principle of subjective good faith can be seen from the provisions of Article 531 of the Civil Code which reads: "The position is in good faith, when the person holding it obtains the object by obtaining property rights, in which he does not know the defects contained therein" further Article 533 of the KUH The civil law reads: good faith must always be considered to exist in every position holder, whoever accuses him of bad faith must prove the accusation.

Subjective good faith is an inner attitude or a state of mind (*psychische gestelheid*) (P.L. Werry, 1990). Buyers who have good intentions or vice versa, as opposed to people with bad intentions are good faith with subjective elements. Buyers of goods are people who have good intentions who buy goods with full confidence that the seller really owns the goods they buy. The buyer does not really know if he is buying from someone who is not entitled, which is why he is called an honest buyer. In this case, will means honesty or cleanness. This subjective good faith can be seen from the start of the legal relationship, because of the assumptions from the buyer that the conditions needed for the start of the legal relationship have been met. The validity of the good faith starts from the pre-contract stage, namely the negotiation of the price and the goods, the contract stage, namely the agreement between the seller and the buyer, and the contract

implementation stage, which is the implementation of the agreement by the parties in the agreement. In this case the law will provide protection to parties with good intentions, while parties with bad intentions must be responsible for all the risks, considering that good faith here is subjective and static.

2. Good Faith Objective

There is a difference in the nature of good faith at the entry into force of a legal relationship and good faith in terms of the implementation of rights and obligations in a legal relationship. The first good faith lies in the state of the soul of a human being at a time, namely at the time the legal relationship comes into force. It is different with good faith in the implementation of rights and obligations in legal relations. Here too good faith can be seen in the actions that will be taken by both parties, especially actions as the implementation of the agreement.

In carrying out this action, good faith must run in one's heart in the form of always remembering that humans as part of a society must be far from harmful to other parties by using blindly the words used when people form an agreement. Both parties must always pay attention to this and must not use the negligence of the other party to benefit themselves. In other words, good faith in carrying out rights and obligations in legal relations is more dynamic. Meanwhile, the nature of honesty at the time the legal relationship comes into force is more static.

This principle of good faith actually comes from Roman law. In Roman law, this principle is called the principle of *Bonafides*. In Roman law, good faith is a universal social norm that regulates social interrelationships, that is, every citizen has an obligation to act in good faith towards all citizens. This is an objective concept that is universally applied to all transactions (Ridwan Khairandy, 2017).

Furthermore, in carrying out an agreement, the good behavior of the debtor and creditor parties must be tested on the basis of unwritten objective norms. Therefore, good faith in Article 1338 paragraph (3) BW is called good faith in an objective sense. Purpose here refers to the fact that the behavior of the parties must be in accordance with the general assumptions of good faith and not solely based on the opinions of the parties themselves (P.L. Wery, 1990).

Honesty (good faith) in Article 1338 paragraph (3) BW, does not lie in the state of the human soul, but lies in the actions taken by both parties in keeping promises, so honesty here is dynamic, honesty in the sense of dynamics or appropriateness is rooted in the nature of the role. law in general, namely an effort to balance the various interests that exist in society. In a legal system, basically the interests of others should not be suppressed or completely ignored. Society must be a balance that stands upright in a state of balance. Good faith in the implementation of the agreement is guided by good faith that is objective. And regarding the standards used in good faith, objective is to use objective standards that refer to objective norms. The behavior of the parties, be it sellers or buyers, must be tested on the basis of unwritten objective norms that develop in society. Therefore, this objective good faith refers to unwritten norms that have become legal norms in society. The assessment of objective actions is judged from the general assumption of society about the existence of good deeds themselves.

3.2 The Principle of Good Faith in the Sale and Purchase Agreement of Land Rights

A sale and purchase agreement is an agreement made by two parties, namely the seller and the buyer. Where the seller promises to deliver the goods to the buyer, while the buyer will pay the price of the goods in accordance with the price that has been mutually agreed upon between the seller and the buyer. From the definition of sale and purchase given by Article 1457 BW, the sale and purchase agreement also imposes two obligations: a. The obligation of the seller to deliver the goods sold to the buyer. b. The obligation of the buyer to pay the price of the goods purchased to the seller.

According to customary law, buying and selling is done openly and in cash. Light means that the sale and purchase is carried out in the presence of an authorized official and cash means that the buyer has paid for the goods he bought.

Good faith applies to all types of agreements, including the sale and purchase agreement of land rights made before a notary. People who sell their land to someone or an investor will result in the community losing their rights forever, because the transfer of land rights through buying and selling implies a legal act of transferring rights forever from the seller to the buyer. In the process of transferring the rights, a dispute often occurs, because it turns out that the land purchased by the investor cannot be built because it is located in the green belt area (green open space). And this problem occurs because the seller did not notify the buyer from the start and so the buyer did not do a careful research on the land he bought.

Good faith has three functions, namely the first function teaches that the entire contract must be interpreted in good faith, the second function is the function of adding (*aanfullende werking van de goede*

trouw). The third function is the function of limiting and eliminating (beperkende en derogerende werking van de goede trouw) (H.G. van der Werf dalam Ridwan Khairandy, 2017).

Good faith as a legal principle is a natural element in the contract which is included in the nature of the contract (nature) so that it is secretly attached to the contract. Its function is to complete the contract in the form of filling legal voids, completing/adding and deleting the contents of the contract.

The good faith contained in a person's personality can be directly felt by the person concerned, as well as by those who feel someone's act of good faith towards him. When the sense of good faith is felt, actually good faith is carrying out its function (Anita D.A. Kolopaking, 2013).

When the functions of good faith have been carried out according to their functions, then the perpetrator and the opponent of the perpetrator can feel the function of good faith. So that the understanding of the function of good faith becomes a part that needs to be known to measure the work or failure of the good faith (Anita D.A. Kolopaking, 2013).

Good faith is a good deed which is basically a condition for the validity of the agreement in the case of a lawful cause as regulated in Article 1320 paragraph (4) of the Civil Code, because *halal* is a good deed, considering that if the agreement was made by the parties or If one of the parties does not act in a good manner (not in good faith), the agreement is actually not valid (Anita D.A. Kolopaking, 2013). In this case, the implementation of an agreement must be based on the principle of propriety.

Because good faith is a very important principle in contract law, then as stipulated in Article 1338 paragraph (3) of the Civil Code, a land sale and purchase agreement made before a notary must accommodate the principles of rationality and propriety, because the essence of the principle of good faith in its implementation is rationality and propriety which implies trust, transparency, autonomy, obedience, without coercion and without deceit.

4. CONCLUSION

Good faith is a very important principle in contract law, and the realization of the principle of good faith in the sale and purchase agreement of land rights made before a Notary refers to two principles, namely the principle of subjectivity which means good faith leads to honesty and the principle of objectivity which implies good faith. as rationality and propriety. Each content of the agreement must accommodate the principles of rationality and propriety, because good faith in the context of Article 1338 paragraph (3) of the Civil Code must be based on rationality and propriety or justice. The standard used in assessing good faith in the performance of the contract is the objective standard. With this standard, the behavior of the parties in carrying out the contract and the assessment of the contents of the contract are based on the principles of rationality and propriety.

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