



Legal Construction of a Sale and Purchase Agreement in the Property Industry Based on the Good Faith Principle

Puji Setyowati

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Ketingan, Jl. Ir Sutami No.36, Kec. Jebres, Kota Surakarta, Jawa Tengah, Indonesia 57126
pujisetwawati784@gmail.com

I Gusti Ayu Ketut Rachmi Handayani

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Ketingan, Jl. Ir Sutami No.36, Kec. Jebres, Kota Surakarta, Jawa Tengah, Indonesia 57126
ayu_igk@staff.uns.ac.id

Hartiwiningsih Hartiwiningsih

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Ketingan, Jl. Ir Sutami No.36, Kec. Jebres, Kota Surakarta, Jawa Tengah, Indonesia 57126
hartiwiningsih@staff.uns.ac.id

Abstract- The agreements required to be executed in the real estate sector relate to land and buildings. Along with the modernization of building models and the division of land functions, the laws governing property industry contracts have also changed within the industry. A legal sale or debt arrangement is the payment system used to administer a land title agreement, which is governed by a process involving multiple parties and multiple payment systems. A frequent case of legal smuggling is the simultaneous execution of two contracts, particularly a sale and purchase agreement where the land serves as collateral and the underlying contract establishes a debt relationship. The disguised second agreement hardly reveals the intentions of the parties. Although the consequences of the original agreement do not concern them, they still have an interest in the outcome of the second disguised agreement. This is referred to as a "simulation agreement", and the existence of such an agreement gives rise to complications in the form of disputes and conflicts. As a result, the creditor is authorized to ignore the debtor's circumstances under the terms of the debt and credit agreement. To ascertain whether contractual good faith is an important component in the legal interpretation of sale and purchase agreements in the real estate industry, this study utilizes doctrinal legal research. To create legal certainty and prevent multiple interpretations, contracts that are grammatical article by article must demonstrate good faith.

Keywords- Legal Construction; Agreement; Property Industry.

I. INTRODUCTION

The property sector is undergoing a transformation that affects not only design and technology, but also the repayment and transfer of ownership mechanisms. A range of payment mechanisms are provided, including cash, credit, and development cooperation, to ensure the transfer of ownership rights. The appropriate legal instrument to reconcile the legal requirements of both parties—developers and consumers—is an agreement. The parties' agreement represents an effort to achieve legal certainty concerning the accomplishment of business objectives and the acquisition of property.

A land and building-related agreement is the type of agreement that will be executed within the real estate sector. Land rights agreements are governed by a procedure involving multiple parties and various payment systems, which are, in accordance with legal principles, sale and purchase or debt and credit arrangements. Land rights can be transmitted to third parties through various means, including but not limited to sale and purchase, exchange, grants, division of land parcels, customary gifts, incorporation into a company (inbreng), and bequests (legal).[1]

In addition to its transferability, land may also be pledged as security for debt and credit. In contrast to the aforementioned, property ownership arranged on credit typically commences with a debt and credit agreement designed to satisfy property requirements. A security law principle states that creditors are not permitted to enter into agreements to own collateralized objects in exchange for debtor debts owed to creditors; the creditor is not permitted to own the collateralized object. The provision governing this is Article 12 of Law Number 4 of 1996 on Mortgage Rights on Land and Objects Related to Land (henceforth referred to as UUHT). This article declares void any commitment authorizing the holder of a mortgage right to possess said right in the event that the debtor defaults.[2]

Therefore, to circumvent this prohibition, a considerable number of individuals enter into sale and purchase agreements with the stipulation that the land rights will be returned to the purchaser upon repayment of the debt, or what is commonly referred to as "sale and purchase with the right to buy back" agreements. The practice of PPJB is prevalent in the community; it entails the parties entering into a debt and credit agreement in person, with the debtor offering collateral in the form of a certificate of land or house rights, signed before a notary along with the Power of

Sale. Nevertheless, an issue emerged when the creditor covertly intended to reclaim ownership and control of the collateral object for sale and purchase by reversing the certificate's name at the National Taxi Registry. Undoubtedly, this deviates from the intentions and terms established at the outset of the agreement.

PPJB is an agreement between prospective sellers and purchasers that serves as a foundation for a preliminary agreement prior to the execution of the sale and purchase.[3] Three functions of the PPJB are to ensure each party's legal trust and mitigate risk. The sale and purchase binding agreement is established on the legal foundation provided in Article 1320 of the Civil Code.

It is not uncommon for legal smuggling to occur in the realm of property through the simultaneous execution of two agreements—a sale and purchase agreement and a credit and debt relationship involving land as collateral—in order to circumvent land issues. The intentions of the involved parties are inferred from the concealed second agreement. In contrast, the publicly accessible first agreement comprises declarations of the parties that do not align with their true intentions. The parties did not intend for the consequences of the concealed second agreement to result from the first agreement. The arrangement is referred to as a "simulation agreement," and its presence gives rise to complications in the shape of disagreements or conflicts.

Legal certainty is a significant issue in property industry contracts involving land rights objects. The legal certainty at issue extends beyond the agreement's validity; in order for an agreement to be deemed valid, it must satisfy the requirements outlined in Article 1320 of the Civil Code. Furthermore, it is imperative to establish legal certainty concerning the system utilized in the sale and purchase procedure, which is initiated by a debt and credit agreement. It guarantees that the building and land rights that constitute the subject of the agreement are in the possession of the legitimate party, which is the housing purchaser in this instance.[4]

Both parties are required to execute an agreement in good faith. There are instances in which despite the complete practice and observance of good faith, the implementation of the agreement remains mired in impasse. This is the juncture where compliance must be considered in order to resolve an event satisfactorily. The parties contribute to the agreement's formulation and rely on good faith and decorum; therefore, the agreement's content is also determined by good faith and decency. Even though Article 1338 of the Civil Code emphasizes that the agreement must be executed in good faith, it is difficult to express good faith in article after article.[5]

II. LITERATURE REVIEW

A. *Definition of Agreement*

The meaning of the agreement itself is regulated in Book III (three) and Chapter II (two) of the Civil Code. Article 1313 of the Civil Code states: "An agreement (agreement) is an act by which one or more people bind themselves to one or more people." An agreement is an event where one person promises to another, or two or more people promise each other to do something. An agreement is a legal act/action that is formed by reaching a deal, which is a statement of the free will of two or more people (parties), where the achievement of the agreement depends on the parties, which gives rise to legal consequences for the benefit of one party and at the expense of the other party. Other or reciprocal by paying attention to statutory provisions. In short, an agreement is a legal act that gives rise to changes, elimination of rights, or a legal relationship, and in this way, the deal gives rise to legal consequences, which is the parties' aim. If a legal act is an agreement, the people who carry out the legal action are called parties.

B. *Explanation Of The Principle Of Good Faith*

Good faith is one of the most crucial elements of contract law, as stated in Article 1338, paragraph (3) of the Civil Code. This allows the court to oversee the execution of a contract to ensure that decency and justice are upheld. This means that if the execution of the contract goes against the two parties' sense of fairness (*recht gevoel*), the judge has the power to alter the terms of the agreement. Propriety and justice are required by the good faith principle, meaning that the requirement for legal certainty in contract implementation cannot conflict with the standards of decency and fairness. Implementing the doctrine of good faith in every mutually agreed-upon contract is crucial, even though challenging. With this background in mind, the authors explored the concept of good faith in contract law further by taking up the issue of "Developing an Ideal Concept for Implementing the Principle of Good Faith in Contract Law." *Further Arrangements Regarding Violation in MSMEs Partnerships*

III. METHOD

The approach used in conducting this research is the normative juridical method, namely legal analysis, which prioritizes research on norms or rules and literature studies. It is supported by field studies regarding Sale and Purchase Agreements in the Property Industry Based on the Principle of Good Faith. This research can be carried out primarily on primary and secondary legal materials as long as these materials contain legal principles. This research was also carried out using descriptive-analytical research specifications, clearly explaining the applicable laws and regulations related to legal theories in practice regarding the problems studied.

IV. RESULT AND DISCUSSION

Determining the precise meaning of the phrase "good faith" in each article of the agreement proves challenging. Difficulties with the legal capacity of the engagement being legitimate due to the contract's good faith requirement and the defaulting seller's liability. By implementing a contract in good faith, the parties to the contract are obligated to refrain from engaging in illogical conduct that does not violate standards of propriety and decency. This ensures that the contract is fair to both parties and does not cause harm to one of them. Furthermore, particularly in the realm of property, which is frequently preceded by other contracts such as debt and credit agreements, the principle of good faith, which resides in an individual's interior disposition, is critical for averting defaults by the contracting parties.[6]

Additionally, the principle of good faith may stipulate that each party to a future agreement is obligated to provide comprehensive or relevant information that could sway the other party's decision regarding whether or not to accept the agreement. The functional relationship between principles and legal provisions (*rechtsgels*) is described by Nieuwenhuis as follows. Legal principles serve as the foundation of systems. They not only exert an impact on positive law, but also establish a system in numerous ways. A system can't exist devoid of principles. Interdependently, the principles form a system of checks and balances. These principles frequently operate in opposition to one another, which would pose a challenge to the implementation of legal provisions. The principles mutually constrain one another through their contrasting orientations, thereby establishing equilibrium.[7]

It is erroneous to conclude that good faith, as defined in Article 1338 paragraph 3 BW, is a contract law principle. The concept of good faith, as defined in Article 1338 paragraph (3) BW, is a tangible legal principle. Regarding contract law, good faith should be differentiated between good faith as a principle and good faith as a norm. It is classified as a legal principle rather than a legal dogmatic rule, which places it within the domain of legal philosophy. Therefore, a grammatical interpretation of good faith as a tangible legal principle would suggest that it is present solely during the contract implementation phase. On the contrary, good faith is understood as a contract law principle whose applicability extends beyond contract implementation to encompass all phases of the agreement, including pre-contract, contract implementation, and dispute resolution. As a contract law principle, good faith is fundamentally integrity and propriety/fairness, which entails confidence, openness, independence, adherence to standards, and the absence of coercion and deceit. Articles 530, 531, 533, and 548 BW concerning good faith *beziter*; Articles 1963; 1966 and 1977 BW concerning ownership in relation to expiration; and Article 1320 BW, which specifies the requirements of an agreement and a lawful cause of action, are examples of positive law rules that concretize honesty. Articles 1321, 1323, and 1328 BW pertain to negligence, coercion, and fraud in contract formation; Article 1348 BW concerns payment in good faith; Article 1337 BW addresses prohibited causes; and Articles 1338 and 1339 BW define decency and fairness in the legal system. As a contract law principle, good faith serves three purposes in the performance of agreements.[8]

Good faith serves as a supplement to the terms of the agreement; it does not affect the validity of the agreement itself. The operation of the agreement is restricted by good faith (*derogorende werking van de goede trouw*); and The purpose of good faith is to prevent the agreement from being implemented. As a legal principle, good faith is an intrinsic component of the contract, constituting a tacit attachment to the contract itself. Its purpose is to fulfill the contractual obligations by addressing legal ambiguities, supplementing the contract's contents, and rescinding any provisions that may be absent.[9]

In deciding the case, the judge's authority complements, adds, and negates. The judge puts the legal principle of good faith into practice by rendering a decision. It can be deduced from this comprehension that the principle of good faith serves as a foundation for legal rules rather than law. The correlation between good faith and endeavors to establish legal certainty is strong. Obligatory and emergency circumstances, a legal void in the agreement, or the multitude of occurrences that transpire during the course of an agreement are all obstacles to obtaining legal

certainty. Good faith functions as a guiding principle and factor to consider when striving to achieve and effectively execute a consensus. A more concrete development of good faith is how explicit interpretations of good faith can be found in article after article of the agreement. It is frequent to find agreements in place to prohibit actions that violate the principle of good faith. Such actions may include fraudulent activities, taking advantage of legal opportunities for personal gain, or providing housing conditions that deviate from the initial offer. In the real estate sector, the regulation of good faith in contracts should be supplemented by provisions governing the legal repercussions of breaches of the principle of good faith in legally binding purchase and sale agreements. The party acting in poor faith concerning the property sale and purchase agreement may face legal repercussions, including civil prosecution and potential criminal prosecution. Good faith is demonstrated when both parties provide transparent explanations of their respective conditions at the outset of the agreement's development. Transparently, property sellers provide consumers with as much information as feasible regarding the condition of the property being traded. The consumer has the right to be fully informed about the PPJB and must rely on the property owner's good faith to ensure that it is fully implemented.[10]

V. CONCLUSION

By being codified in a written agreement, the arrangement of good faith will be able to provide legal certainty and prevent actions that would be detrimental to the parties' good faith. Good faith has been concretized article by article in the agreement, in addition to existing in theory as an abstract principle, through its explicit mention in the document. In the real estate sector, the regulation of good faith in contracts should be supplemented by provisions governing the legal repercussions of breaches of the principle of good faith in legally binding purchase and sale agreements. The party acting in poor faith concerning the property sale and purchase agreement may face legal repercussions, including civil prosecution and potential criminal prosecution

VI. REFERENCES

- [1] D. Ekawati, D. K. Wardhani, D. E. Prastiwi, S. Prayitno, and A. Purwanto, "Prosedur Peralihan Kepemilikan Hak Atas Tanah Di Indonesia," *J. Abdi Masy.*, vol. 2, no. 1, 2021.
- [2] G. Teubner, "Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergencies," *Mod. Law Rev.*, vol. 61, no. 1, pp. 11–32, 1998, doi: 10.1111/1468-2230.00125.
- [3] Moh. Saleh and Rochmad Bayu Setyo Waluyo, "Application of The Principle of Good Faith In Selling Disputes of Selling Buying Using Pre Project Selling," *YURISDIKSI J. Wacana Huk. dan Sains*, vol. 18, no. 2, pp. 210–219, 2022, doi: 10.55173/yurisdiksi.v18i2.143.
- [4] H. Budiono, *Ajaran Umum Hukum Perjanjian Dan Penerapannya Di Bidang Kenotariatan*. Bandung: PT Citra Aditya Bakti, 2014.
- [5] N. Abdullah, O. T. Chin, and N. A. Nasir, "Good Faith in Construction Contract: A Common Law Perspective," *Int. J. Sustain. Constr. Eng. Technol.*, vol. 14, no. 2, pp. 88–95, 2023, doi: 10.30880/ijscet.2023.14.02.009.
- [6] C. G. Putri, Y. Pujiwati, and B. Rubiati, "Legal Protection For Final Consumers For Buying Flats From Initial Consumers Related To Binding Agreements Of Sale And Buying In Paid Based On The Principle Of Good Faith," *J. Poros Huk. Padjajaran*, vol. 4, no. 2, pp. 325–337, 2023.
- [7] H. P. Panggabean, *Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) Sebagai Alasan (Baru) Untuk Pembatalan Perjanjian (Berbagai Perkembangan Hukum Di Belanda)*. Yogyakarta: Liberty, 2010.
- [8] V. Schwartz and C. E. Appel, "Common-sense construction of unfair claims settlement statutes: Restoring the good faith in bad faith," *Am. Univ. Law Rev.*, vol. 58, no. 6, pp. 1477–1531, 2011,
- [9] S. Mertokusumo, "Bab-Bab Tentang Penemuan Hukum," Bandung: Citra Aditya Bakti, 1993, p. 22.
- [10] R. Khairandy, *Iktikad Baik Dalam Kontrak : Di Berbagai Sistem Hukum*. Yogyakarta: FH UII Press, 2017.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

