

Application of the Principle of Good Faith in Consumer Financing Agreements



Ery Agus Priyono, Budiharto, Asri Hayyunniarizka Wulandari

Abstract: *Increasingly diverse community mobility now results in an increase in the need for transportation equipment, both in terms of quantity and quality, however, on the other hand the available public transportation facilities are far from what is expected. This encourages to be encouraged to have a private facility. Today the development of motorized vehicle use is increasing rapidly. This is because motorized vehicles have advantages compared to public transportation, for example in terms of comfort and safety when on the road. The increase in transportation needs also boosted the growth of Consumer Financing Institutions perceived by consumers as a simpler procedure compared to bank financing institutions. The agreement signed between consumers and the Consumer Financing Institution is a standard agreement, in which consumers have no right to determine the contents of the agreement. This leads to the frequent occurrence of defaults on the part of consumers, because consumers do not understand the contents of the agreement properly. Good faith is an agreement principle that can control the occurrence of agreements that tend to incriminate parties. This paper aims to reveal the role of the principle of good faith in the establishment and implementation of the Consumer Financing Agreement. The study method used is a normative and philosophical study method based on secondary data.*

Keywords: *good faith, consumer financing, civil agreement.*

I. INTRODUCTION

One of the dominant needs of human life today is the need for transportation equipment. Increasingly diverse community mobility now results in an increase in the need for transportation, both in terms of quantity and quality. However, on the other hand the available public transportation facilities are far from what is expected. Today the development of motorized vehicle use is increasing rapidly. This is because motorized vehicles have advantages compared to public transportation, for example in terms of comfort and safety when on the road. In addition, by having a motorized vehicle, someone is considered to have a decent

enough life and can facilitate activities.

This is what encourages people to have personal transportation to support their daily activities, but there are times when the desire to have personal transportation is not supported by the availability of funds so that to overcome these problems, someone needs funding from a financial institution to purchase personal transportation equipment, in this case motorized vehicles. Financing institutions are business entities that carry out financing activities in the form of providing funds or capital goods by not withdrawing funds directly from the community (Simatupang, 1995). Business financing institutions include leasing, factoring, venture capital, credit cards, consumer financing, and project financing, from the various business activities of these financial institutions that are developing today in the community are consumer financing activities. Consumer financing is a business sector that carries out its activities in the form of providing funds for consumers. Consumer financing is a form of money financing carried out by financial companies. In addition to activities such as leasing, factoring, and credit cards.

The Consumer Financing Agreement is one example of a standard agreement or contract that continues to controversy. The standard contract, its presence was filled with unending controversy, many experts opposed its presence in the business law, but the support was not small. The facts show that despite the controversial conditions. In plain view, we can see almost evenly in our lives, this standard contract always appears in various types of contracts made by the parties (Patrik, 1995).

The controversy brought about by the contract in the form of a standard contract is related to "violation" of a principle that is highly upheld in the world of contracts, namely the Principle of Freedom Contracting (partij autonomie, freedom of contract). This principle is the source of the rapid development of contract law, not only in Indonesia, as well as at regional and international levels (Fauvarque-Cosson & Mazeaud, 2009). This principle also underlies the enactment of contracts in India (Bath, 2009), Japan (t'Hooft, 2005), and China (Zhang, 2006).

The standard contract which in its development "removes" the principle of freedom of contract, needs to be controlled by a controller based on moral values, a conscience commonly known as good faith. Good faith in the implementation of the contract is a legal institution (rechtsfiguur) originating from Roman law which was then absorbed by the Civil Law.

Manuscript published on November 30, 2019.

* Correspondence Author

Ery Agus Priyono*, Diponegoro University, Jl. Prof.H.Soedarto S.H, Tembalang, Kec. Tembalang, Kota Semarang, Central Java 50275

Budiharto, Diponegoro University, Jl. Prof.H.Soedarto S.H, Tembalang, Kec. Tembalang, Kota Semarang, Central Java 50275X

Asri Hayyunniarizka Wulandari, Diponegoro University, Jl. Prof.H.Soedarto S.H, Tembalang, Kec. Tembalang, Kota Semarang, Central Java 50275

© The Authors. Published by Blue Eyes Intelligence Engineering and Sciences Publication (BEIESP). This is an [open access](https://creativecommons.org/licenses/by-nc-nd/4.0/) article under the CC-BY-NC-ND license <http://creativecommons.org/licenses/by-nc-nd/4.0/>

Application of the Principle of Good Faith in Consumer Financing Agreements

Later, this principle also accepted contract law in countries that embrace Common Law, such as the United States, Australia, and Canada (Sewu, 2019). Even this principle has also been accepted by international law such as Article 1.7 Unidroit and Article 1.7 Convention Sales of Goods (Histock, 1996; Khairandy, 2009). This principle is placed as the super eminent principle in the contract (Mason, 2000).

It becomes a fundamental provision in contract law, and binds the parties to the contract (Judd, 1998). This paper seeks to present the results of a review of the agreement law regarding the application of the Good Faith Principle in the form of a Consumer Financing Agreement.

II. RESEARCH METHODS

This paper is structured based on secondary data, both in the form of primary legal material and secondary legal material in the frame of study or normative legal research. In the context of Normative legal research, the analysis of laws and agreements and principles of agreement is a measuring instrument (das Sollen) while the object studied is measured (Das Sein) is a contract document in the Consumer Financing Agreement.

III. RESULTS AND DISCUSSION

The implementation of the agreement must be based on good faith (in good faith, *te goeder trouw*). The good intention referred to in Article 1338 paragraph (3) of the Civil Code is that the implementation of the agreement must be carried out by heeding the norms of decency and decency. That is, the implementation of the agreement must be on the right track, namely having to heed the norms of decency and decency. The law does not provide a formula for the purpose of decency and decency. Therefore, there is no accuracy in understanding the term. However, if individuals see the meaning, the propriety means decency; appropriateness; suitability; compatibility; whereas decency means modesty; civilization. Based on the meaning of the word, presumably decency and decency can be described as appropriate values; appropriate; feasible; corresponding; suitable; polite and civilized, as both parties wish to do. In implementing good faith agreements, it is also necessary to pay attention to "habits" as stipulated in Article 1339 of the Civil Code. The principle of good faith can be concluded from the provisions of Article 1338 paragraph (3) of the Civil Code, which reads: "An agreement must be carried out in good faith. The good faith according to the Article is that the implementation of the agreement must be carried out with due regard to the norms of decency and decency (Muhammad, 1990). Regarding what is meant by propriety and decency, the law does not provide its formulation. Therefore, there is no accuracy, limitation regarding the definition of the term. However, if you see the meaning, the propriety means decency; appropriateness; suitability; compatibility. While decency means politeness; civilization. Based on the meaning of these two words, it is possible to describe decency and decency as appropriate values; appropriate; feasible; corresponding; suitable; polite and civilized, as both parties want to make the agreement.

The inclusion of good faith in the implementation of the agreement also means that we must interpret the agreement

based on justice and propriety. In the Provisional Civil Code (principle of decency) set forth in Article 1339 of the Civil Code which states that the agreement is not only binding on matters expressly stated in it, but also for everything according to propriety, custom or law (Patrik, 1994).

In general, good faith (Article 1338 paragraph (3) Civil Code) and propriety (Article 1339) The Civil Code is mentioned in a proper manner and Hoge Raad (HR) in the decision of January 11, 1924 agreed that if the judge after examining the appropriateness of an agreement cannot be implemented it means that the agreement is contrary to public order and decency. Thus, in the implementation of the agreement there is a close relationship between justice, propriety and decency in good faith.

Based on Article 1338 paragraph (3) of the Civil Code, if there is a difference of opinion regarding the implementation of the agreement in good faith (propriety and decency), the judge is authorized by law to oversee and assess the implementation of the agreement, whether there is a violation of the norms of decency and decency. This means that the judge is authorized to deviate from the contents of the agreement according to his words, if the implementation of the agreement according to his words will be in conflict with good faith (if the implementation according to the norms of decency and decency is deemed fair). This can be understood because the purpose of the law is: guaranteeing certainty (order) and creating justice (Subekti, 1987).

Justice in law requires certainty, namely what is promised must be fulfilled because the promise is binding as a law (Article 1338 paragraph (1) of the Civil Code). While that must be fulfilled in accordance with decency and decency (Article 1338 paragraph (3) of the Civil Code, the principle of justice). The judge has the authority to prevent an unfair agreement, which is not in accordance with decency and decency. In the Netherlands, that judge using good faith reasons can reduce or add to the obligations contained in an agreement, is something that has been accepted by Hoge Raad. However, according to the Supreme Court in the Netherlands, judges cannot completely eliminate or abolish obligations that are expressly agreed upon in an agreement (Subekti, 1987).

The establishment of the narrow Hoge Raad was evident in the decision of January 8, 1986 (magazine "Nederlandse Jurisprudentie" 1926, 203) in which a weaving factory owner in Germany was sentenced to have abandoned a textile party, even after the agreement was delayed for several years due to the outbreak of war the first world where conditions have changed so much that due to the increase in production costs, the implementation of the law brought enormous losses to the owners of the weaving factory. The consideration of the Hoge Raad decision is, as follows:

"... that the rules that determine expansions and additions to agreements arising from an agreement, up to outside the environment of explicitly written provisions, do not aim otherwise, namely to eliminate the power of what is expressly stipulated and thereby abolish the agreement. agreements arising from the agreement ... "

Furthermore, the decision of Hoge Raad which is closely related to the application of the principle of good faith that can be presented here is the Case of Sarong Arrest relating to the decline in the value of German money after the First World War. The Sarong Arrest case began in 1918 a Dutch firm ordered a number of sarongs from German businessmen at a price of f 100,000.

Because the situation is temporary, the seller cannot deliver the order at any given time. After the forced situation ends, the buyer demands fulfillment of the achievement. But since the agreement was made the situation has changed a lot and the seller is willing to fulfill the performance but at a higher price, because if the price stays the same he will suffer losses, which based on goodwill between the parties cannot be prosecuted from him (Salim 2003).

The defense which he (the seller) submitted on the basis of Article 1338 paragraph (3) of the Civil Code was ruled out by Hoge Raad in the arrest. According to the decision of the Hoge Raad, it is impossible for one party from an agreement on the basis of changes in circumstances regardless of its nature, has the right to refer to good faith to break its promises which clearly stated that Hoge Raad still gives hope about this by formulating, changing the core of the agreement or putting aside overall. Can a lighter decision be expected, if it is not a core change or overall exclusion. This Hoge Raad decision always refers to when the contract is made by the parties. If the ordering of sarong is as much as ordered, the seller must carry out the contents of the agreement, because it is based on the agreement must be carried out in good faith.

In Indonesia, we can refer to the Decision of the Supreme Court of the Republic of Indonesia on 11 May 1955. This decision is a decision that we can be proud of as a very good decision in the use of "good faith" in the implementation of an agreement. In the decision, the Supreme Court considered that it was appropriate and in accordance with the sense of justice if in the case of land pawning the two parties should bear half of the risk of the possible change in the price of the rupiah, measured by the difference in gold when redeeming the land. The paddy fields that were pawned with Rp. 50, - by the Supreme Court, had to be redeemed with 15 x Rp. 50, - or Rp. 750, - because the price of gold had risen to 30 times (Subekti, 1987).

In implementing the agreement in good faith, it should be noted also "habits". This is determined in Article 1339 of the Civil Code, which reads:

An agreement is not only binding on matters that are expressly stated in it, but also for all those who according to the nature of the agreement, are required by propriety, custom or law.

Thus, each agreement is equipped with statutory rules and customs in a place besides propriety. On the basis of this Article, the custom is designated as a source of law in addition to the law. Therefore, the habit also determines the rights and obligations of the parties to the agreement. However, custom may not deviate or get rid of the law.

IV. CONCLUSION

The application of the principle of good faith and compliance in the making of this agreement is based more on

the interests of strong business parties to be able to obtain maximum profits, rather than legal considerations and justice. This means that strong parties dare to take risks by overly imposing their will in an agreement. An agreement that in writing will give a very large profit and a little responsibility to the strong party, but in practice it is difficult to be carried out by other parties, so that the planned benefits cannot be achieved precisely because the arrangement of the agreement weighs heavily on the party the law is weaker. Good faith should be the cause of the balance of interests of the parties.

REFERENCES

1. Abdulkadir, M. (1990). Hukum Perikatan. Bandung: PT. Citra Aditya Bakti.
2. Bath, S. (2009). Basis For Contract Law dalam Law and Business Contracts in India. Saiga Publications India.
3. Fauvarque-Cosson, B., & Mazeaud, D. (2009). European contract law: materials for a common frame of reference: terminology, guiding principles, model rules. Walter de Gruyter.
4. Hiscock, M. E. (1995). The Keeper of the Flame: Good Faith and Fair Dealing in International Trade. *Loy. LAL Rev.*, 29, 1059.
5. Judd, J. M. (1987). The Implied Covenant of Good Faith and Fair Dealing: Examining Employees' Good Faith Duties. *Hastings LJ*, 39, 483.
6. Khairandy, R. (2009). Makna, Tolok Ukur, Pemahaman, dan Sikap Pengadilan di Indonesia terhadap Iktikad Baik dalam Pelaksanaan Kontrak. *Ius Quia Iustum Law Journal*, 16.
7. Mason, A. (2000). Contract, good faith and equitable standards in fair dealing. *The Law Quarterly Review*, 116.
8. Patrik, P. (1994). Dasar-dasar hukum perikatan:(perikatan yang lahir dari perjanjian dan dari undang-undang). Mandar Maju.
9. Patrik, P. (1995). Standard Agreement and Terms of Exoneration. paper presented in the Upgrading of Civil Law Lecturers in All Indonesian Universities Faculty of Law UNTAG Semarang, date, 18.
10. Salim, H. S. (2003). Hukum kontrak: Teori dan teknik penyusunan kontrak. Sinar Grafika.
11. Sewu, P. L. S. (2019). Good faith as a key principle of business ethics to franchise agreement and development in Indonesia. *Journal of Legal, Ethical and Regulatory Issues*, 22(1), 1-7.
12. Simatupang, R. B. (2003). Aspek Hukum Dalam Bisnis. Rineka Cipta.
13. Subekti. (1987). Hukum Perjanjian. Jakarta: PT. Intermasa.
14. t'Hooft, W. V. (2003). Japanese contract and anti-trust law: a sociological and comparative study. Routledge.
15. Zhang, M. (2006). Chinese contract law: theory and practice. Brill.