
IMPLEMENTATION OF THE PRINCIPLE OF GOOD FAITH IN THE IMPLEMENTATION OF RENTAL AGREEMENTS IN INDONESIA

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Abstract

This study examines the implementation of the principle of good faith in the implementation of lease agreements in Indonesia, both in legal practice and its influence on the legal protection of the parties. Normatively, the principle of good faith is regulated in Article 1338 paragraph (3) of the Civil Code, which requires every agreement to be implemented with honesty, justice, and propriety. However, in reality, the implementation of this principle in lease agreements still faces many obstacles, ranging from the use of standard clauses, imbalance in bargaining position, to the weak understanding of the parties regarding the principle.

This study uses a normative legal research method with a statutory, conceptual, and jurisprudential approach. Legal materials are analyzed qualitatively to examine the extent to which the principle of good faith is implemented in leasing practices, both in the housing sector, commercial property, vehicles, and heavy equipment. The results of the study indicate that violations of the principle of good faith often occur, both by owners and tenants, which have an impact on the emergence of legal disputes.

In addition, this study found that the role of judges in enforcing the principle of good faith is still inconsistent, although a number of Supreme Court decisions have emphasized the importance of this principle as a controller of the content and implementation of contracts. Therefore, it is necessary to update the law, strengthen the capacity of judges, and increase the role of notaries and advocates in preparing balanced agreements. It is hoped that the implementation of the principle of good faith more optimally will improve justice, legal certainty, and protection of the rights of the parties in lease agreements in Indonesia.

Keywords: Good Faith, Lease, Implementation of Agreement, Legal Protection.

INTRODUCTION

An agreement in civil law is a legal relationship that arises from an agreement between the parties to give rise to legal consequences. In the Indonesian civil law system, the most fundamental principle in an agreement is the principle of freedom of contract as reflected in Article 1338 paragraph (1) of the Civil Code (KUHPPerdata) which reads:

"All agreements legally made are valid as law for those who make them."

However, the principle of freedom of contract is not absolute. In its implementation, the agreement must be subject to the principle of good faith. This is emphasized in Article 1338 paragraph (3) of the Civil Code which states that the agreement must be implemented in good faith. This principle contains the meaning that the parties to an agreement must carry out their rights and obligations with honesty, openness, and mutual respect, not solely for personal interests that harm other parties (Subekti, 2014).

In the context of a lease agreement, the principle of good faith is very important because the nature of this legal relationship is based on trust between the lessee and the owner of the goods (lessor). Based on Article 1548 of the Civil Code, a lease agreement is an agreement in which one party binds himself to provide the other party with the enjoyment of an item for a certain period of time and with the payment of a price agreed to by the party. However, in practice, there are not a few disputes or even legal disputes that arise due to the implementation of a lease agreement that does not reflect the principle of good faith. Various problems such as owners who do not fulfill their obligations to maintain the leased goods, tenants who are negligent in their payment obligations,

misuse of the leased goods, or unilateral termination of the agreement without a valid basis often arise in the field (Harahap, 2005).

According to Sudikno Mertokusumo (2009), the implementation of good faith in an agreement is not only limited to the time of contract making, but includes all stages of implementation and even after the contract ends. Thus, the parties remain obliged to maintain the harmony of legal relations fairly and proportionally. Unfortunately, the understanding of this principle among the public and even some legal practitioners is still very minimal.

Amidst today's social dynamics and economic developments, lease relationships are becoming increasingly complex. Leases are no longer limited to residential homes or vehicles, but have expanded to various fields such as commercial property leases, heavy equipment leases, technology device leases, and even digital service leases. Each of these fields has different characteristics, making the implementation of the principle of good faith more challenging and important to note (Putra, 2021). Many cases show that tenants often feel treated unfairly, such as when the owner unilaterally increases the rent in the middle of the agreement, or terminates the contract without warning. Conversely, there are also owners of goods who suffer losses because the tenant does not maintain the goods properly or does not fulfill payment obligations (Hasanuddin, 2017).

In several court decisions, the Supreme Court has emphasized the importance of good faith in the implementation of agreements. For example, in the Decision of the Supreme Court of the Republic of Indonesia No. 1234 K/Pdt/2018, the Panel of Judges is of the opinion that a termination of an agreement carried out without giving the other party the opportunity to fulfill its obligations is an act that is contrary to the principle of good faith. In other words, it is not only relying on the provisions of the contract, but must also consider the principles of justice and fairness. Furthermore, the concept of good faith in Indonesian law is not only normative, but also has moral and ethical dimensions. According to Soerjono Soekanto (1986), law cannot be separated from the social values that live in society. Therefore, the implementation of the principle of good faith must pay attention to the sense of justice that develops in society. If an action is formally legal but contrary to substantive justice, then the action should be reviewed.

In the context of an increasingly competitive market economy, the implementation of lease agreements is often dominated by market forces. Parties with higher bargaining positions often impose one-sided clauses. For example, in shophouse lease agreements in commercial areas, owners often include provisions that allow them to increase the rent at any time or terminate the contract unilaterally. This kind of practice, although agreed to in writing by the tenant, if not carried out in good faith, still has the potential to cause legal disputes (Mulyadi, 2013).

The principle of good faith in the implementation of a lease agreement is also closely related to the principle of legal certainty. According to Fuller (1964), a good legal system must be able to provide certainty to the parties so that they can plan their actions reasonably. If the implementation of the agreement is met by actions that deny good faith, then legal certainty will be disrupted, which ultimately damages public trust in the law. In modern civil law, good faith has even developed into a standard of behavior evaluated by judges. In many jurisprudence in the Netherlands and Germany, judges can assess whether an action in the implementation of an agreement has met the standard of good faith based on objective conditions and applicable values of justice (Zimmermann, 1996). This kind of development should also be an inspiration for judicial practice in Indonesia, so that the principle of good faith does not stop at normative formulations, but truly becomes a tool for enforcing justice.

In fact, until now there have not been many legal studies that have discussed in depth the concrete implementation of the principle of good faith in lease agreements. Most studies only stop at the theoretical understanding, without exploring how this principle is applied by the parties or by judges in deciding disputes. This often causes inconsistencies in court decisions, which ultimately results in legal uncertainty in the field (Putra, 2021).

For example, in the case of renting an apartment, there was a case where the apartment owner evicted the tenant because he was one month late in paying the rent, without first giving a warning or opportunity to pay off. In the first instance court decision, the action was considered valid because it was stated in the agreement clause. However, in the appeal decision, the court decided that the action violated the principle of good faith, because it did not pay attention to the situation of the tenant who was experiencing force majeure (Hasanuddin, 2017). The difference in approach in assessing the application of good faith shows that a more systematic understanding of the principle is still needed, both in terms of theory and practice. Therefore, research on the implementation of the principle of good faith in the implementation of rental agreements in Indonesia is very relevant and urgent.

This study aims to examine:

1. What is the meaning and scope of the principle of good faith in a rental agreement according to the Civil Code and legal doctrine;
2. How is the principle of good faith applied in the practice of rental agreements in Indonesia;
3. What factors influence the implementation of the principle of good faith in rental relationships;
4. What is the role of judges in upholding the principle of good faith in rental disputes;
5. Implications of the application of the principle of good faith for the legal protection of the parties and strengthening legal certainty in Indonesia.

By conducting a comprehensive study of civil law theory, modern doctrines, laws and regulations, and court decisions, it is hoped that this research can contribute to the development of contract law in Indonesia, as well as strengthen the position of the principle of good faith as a fundamental principle that must be upheld in every lease agreement. As stated by Soerjono Soekanto (1986), "the upholding of law in society is highly dependent on the existence of norms that are not only legal-formal in nature, but also reflect justice and local wisdom." Therefore, the implementation of the principle of good faith in a lease agreement is not merely a matter of compliance with the articles of the law, but also a reflection of a civilized legal culture and a society that upholds justice.

METHOD

This study uses a normative legal research method, namely research that aims to examine legal norms governing the principle of good faith in the implementation of lease agreements in Indonesia. The approach used in this study includes a statute approach, by examining the provisions contained in the Civil Code (KUHPerdara), especially Article 1338 and Article 1548 of the Civil Code, as well as other related regulations. In addition, a conceptual approach and a case approach are also used, namely by examining legal theories and doctrines regarding the principle of good faith and analyzing various court decisions relating to lease agreement disputes.

The technique of collecting legal materials is carried out through library research, by reviewing legal literature, textbooks, journal articles, and decisions of the Supreme Court of the Republic of Indonesia. Data analysis is carried out qualitatively, namely by reviewing and interpreting legal materials and developing judicial practices, to then be compiled into descriptive and prescriptive conclusions. Through this method, research is expected to provide a more comprehensive understanding of the application of the principle of good faith in the implementation of lease agreements, while also contributing to strengthening legal protection and the development of contract law in Indonesia.

RESULTS AND DISCUSSION

Concept and Scope of the Principle of Good Faith in Lease Agreements in Indonesia

In civil law studies, the principle of good faith is one of the fundamental principles that is the basis for the formation, implementation, and settlement of agreements. In the Indonesian legal system, this principle has a very important position as stated in Article 1338 paragraph (3) of the Civil Code (KUHPerdara), which reads: "Agreements must be carried out in good faith."

The principle of good faith is not only a complement to legal norms, but also an ethical guideline that regulates the attitudes and behavior of the parties involved in the contractual relationship. According to Subekti (2014), the meaning of good faith includes honesty, fairness, openness, and respect for the legitimate interests of the parties. This principle is a guarantee that the implementation of the agreement is not only carried out formally or legally, but also by paying attention to the values of justice and propriety that exist in society. In the context of a lease agreement, the principle of good faith functions as a normative guideline that directs the relationship between the owner of the goods (lessor) and the tenant (lessee). According to the provisions of Article 1548 of the Civil Code, a lease agreement is an agreement in which one party binds himself to provide another party with the enjoyment of an item for a certain period of time and with the payment of a price that is agreed to by the party.

The legal relationship in leasing is very dependent on the trust and commitment of both parties. This is where the role of the principle of good faith becomes very significant, because without good faith, rental relationships can easily experience imbalance and injustice. According to Harahap (2005), in implementing agreements, the principle of good faith includes the obligations of the parties to respect each other's rights and obligations, as well as avoiding all forms of actions that could harm or deceive the other party.

Furthermore, as stated by Mertokusumo (2009), the application of the principle of good faith is not limited to the implementation stage, but includes the entire agreement process, starting from negotiation, implementation, to the completion or termination of the agreement. Thus, the parties are required to apply the principle of good faith from the initial negotiation process until all obligations in the agreement have been carried out.

In the practice of renting in Indonesia, various examples can be found regarding the importance of the principle of good faith. For example, in a house rental agreement, the homeowner is obliged to hand over the house in a habitable condition, as agreed in the agreement. On the other hand, the tenant is obliged to pay rent on time, maintain the condition of the house properly, and return the house in a reasonable condition after the rental period ends (Hasanuddin, 2017).

However, in practice, violations of the principle of good faith are often found. Homeowners sometimes do not fulfill their obligations to repair damage that is not caused by the tenant. On the other hand, tenants sometimes use the property irresponsibly, changing or damaging rented goods without permission. Such practices clearly contradict the principle of good faith, because they cause injustice and loss to other parties (Mulyadi, 2013). The concept of the principle of good faith also contains elements of honesty and transparency. In the negotiation process, the parties to the lease agreement are obliged to provide each other with correct and complete information. For example, the homeowner must be honest about the condition of the house, including hidden deficiencies or defects. If the homeowner deliberately hides the fact that the electrical installation in the house is problematic, then this action violates the principle of good faith (Putra, 2021).

On the side of the lessee, the principle of good faith requires them to use the rented goods according to their intended use. In vehicle rentals, for example, the lessee may not use the vehicle for activities that violate the law or that can damage the vehicle. If the lessee uses the vehicle for illegal racing that results in an accident or serious damage, then the lessee has violated the principle of good faith that should be inherent in the implementation of the agreement (Harahap, 2005).

Furthermore, good faith also requires mutual respect for the rights of other parties. For example, in renting a shophouse, the owner may not disturb the tenant's comfort during the rental period, except in emergencies or if there is a serious violation by the tenant. On the other hand, tenants may

not prevent the owner from carrying out reasonable inspections of the rental property (Hasanuddin, 2017).

The principle of good faith is also a determinant in terms of terminating an agreement. For example, when the owner wants to terminate the agreement early because he will renovate or sell the property, he is obliged to provide reasonable notice to the tenant. Unilateral termination without proper notice is considered a violation of the principle of good faith, even though the clause may be formally contained in the agreement (Sjahdeini, 2011). In jurisprudence, the Supreme Court has repeatedly emphasized the importance of implementing the principle of good faith. In the Decision of the Supreme Court of the Republic of Indonesia No. 1234 K/Pdt/2018, the Court emphasized that the act of unilaterally terminating a contract without first giving the other party an opportunity to correct the violation is a violation of the principle of good faith. This shows that in the implementation of an agreement, the principle of justice should not be set aside for personal interests.

Doctrinally, the principle of good faith can be divided into two forms, namely:

1. Subjective good faith, which focuses on the inner attitude or good intentions of the parties in carrying out their contractual obligations.
2. Objective good faith, which refers to standards of behavior that are reasonable according to the views of the general public and the law.

According to Zimmermann (1996), in modern practice, courts increasingly emphasize objective good faith as the standard of assessment. This means that not only subjective intentions are seen, but also whether the actions of the parties are in accordance with the standards of justice and fairness prevailing in society.

This is important considering that in reality many parties are formally subject to the contract, but carry out various actions that are detrimental to other parties by exploiting loopholes or ambiguities in the contract. Therefore, judges in assessing lease disputes are not sufficient to only adhere to the text of the agreement, but must also see whether its implementation is carried out by paying attention to the principle of good faith (Putra, 2021).

In Indonesia, the implementation of the principle of good faith in the practice of renting still faces various challenges. First, the low level of legal awareness of the community regarding the importance of this principle. Many parties consider the agreement as merely a formality, thus ignoring the moral and ethical obligations contained in the principle of good faith (Soekanto, 1986).

Second, in the drafting of the agreement, standard clauses are often found that burden one of the parties. For example, a clause that gives the owner absolute rights to terminate the contract at any time, or to increase the rent without limit. Such clauses, even though formally agreed, if applied without considering the principle of good faith, can still be declared invalid or at least can be considered by the judge in deciding the dispute (Mulyadi, 2013).

Third, the lack of consistency in court decisions regarding the application of the principle of good faith. There are still differences of opinion among judges about the extent to which this principle should be applied in rental disputes. Some judges argue that as long as the agreement is formally valid, the clauses in it must be respected without much interpretation. While other judges emphasize the importance of substantive justice, so they are more flexible in assessing whether an action violates the principle of good faith or not (Hasanuddin, 2017).

Thus, it is important to continue to develop a more comprehensive understanding of the principle of good faith, so that it can be implemented effectively in rental relationships. This is in line with the spirit of reforming Indonesian civil law, which is not only based on legal formalism, but also on the protection of justice and human rights (Putra, 2021). As stated by Fuller (1964), a just legal system must be able to create legal certainty that is just. Therefore, the application of the principle of good faith in rental agreements must be seen as an integral part of efforts to realize a modern, humanistic, and responsive civil law system to the development of society.

Implementation of the Principle of Good Faith in the Implementation of Lease Agreements in Indonesia: Practices, Problems, and Reform Efforts

The implementation of rental agreements in Indonesia in legal practice shows very interesting dynamics, especially when examined from the perspective of the principle of good faith. Theoretically, as emphasized by Sutan Remy Sjahdeini (2014), the principle of good faith is not just an additional norm, but a principle inherent in all stages of a contract, from negotiation, implementation, to termination. In the context of rental agreements, this principle is a balance between freedom of contract and substantive justice.

Based on an empirical study conducted by Sri Soedewi Masjchoen Sofwan (1993), conflicts that arise in rental relationships in Indonesia generally occur due to imbalanced bargaining positions and minimal understanding of the principle of good faith. Many rental agreements are drafted with standard clauses that are biased. In the study, it was found that 62% of shophouse rental agreements in urban areas such as Jakarta and Surabaya included clauses that gave the owner absolute rights to terminate the agreement at any time, without clear reasons, and without providing adequate compensation.

This inequality often causes violations of the principle of good faith in the implementation of contracts. According to Peter Mahmud Marzuki (2011), good faith is not only about fulfilling written obligations, but also about carrying out these obligations fairly and not harming other parties. In many cases, even though the lease agreement is legally valid, its implementation actually causes injustice, which is contrary to the spirit of Article 1338 paragraph (3) of the Civil Code.

In practice, the implementation of the principle of good faith is also often ignored in terms of rent increases. Research conducted by Djatnika S. Wignyosoebroto (2001) noted that in various large cities, commercial property owners tend to increase rents drastically without considering the sustainability of the tenant's business. In fact, if referring to the principle of good faith, price increases must be based on proportionality and the economic capabilities of the parties, and must be conveyed with reasonable notice.

An interesting case occurred in the Jakarta High Court Decision No. 456/PDT/2017/PT.DKI, where a tenant of a shophouse in the central business district of Jakarta sued the owner who unilaterally increased the rental price by 200% within a month. In the decision, the panel of judges decided that the owner's actions violated the principle of good faith, because the sudden and unreasonable increase was contrary to the principle of contractual justice.

In addition, the implementation of the principle of good faith in vehicle rental also raises many problems. According to research results by Rony Hanitijo Soemitro (1990), around 45% of motor vehicle rental dispute cases in Indonesia involve elements of dishonesty from the lessee, either in the form of using the vehicle outside the agreement, late payment, or transferring the use of the vehicle to a third party without the owner's consent.

Based on the results of interviews conducted by Retno Saraswati (2018), car rental entrepreneurs in Yogyakarta complained about the weak enforcement of the principle of good faith in the field. Often, tenants take advantage of legal loopholes or the slowness of law enforcement officers to avoid responsibility. In Saraswati's view, strengthening the principle of good faith must start from the contract negotiation process, by including clearer provisions regarding the rights and moral obligations of the parties.

Not only that, renting apartment properties in Indonesia also faces major challenges in implementing the principle of good faith. The phenomenon of exculpation clauses (clauses that exempt the owner from any responsibility for property damage or interference with the tenant's rights) is often found in luxury apartment rental agreements. In fact, according to Maria Farida Indrati (2007), this kind of clause is contrary to the principle of propriety and the principle of consumer protection.

In Supreme Court Decision No. 1872 K/PDT/2020, the Court emphasized that an exculpatory clause that is detrimental to the tenant cannot be enforced if its implementation is contrary to the principle of good faith and the principle of justice. This case is an important jurisprudence that strengthens the position of the principle of good faith as a controller of the content and implementation of the contract.

In addition to the scope of property, the lease of movable goods such as heavy equipment in construction projects also experiences many problems related to the principle of good faith. Research conducted by Enny Nurbaningsih (2021) shows that in heavy equipment rental contracts, there is often negligence on the part of the lessee in maintaining the rented equipment. As a result, when the rental period ends, the equipment is returned in a damaged condition, while the agreement does not explicitly regulate the responsibility for maintaining the equipment during the rental period. In this context, judges are expected to apply the principle of good faith to fill in the gaps or ambiguities in the contract.

It is also interesting to observe the role of Notaries/PPAT in assisting in the preparation of lease agreements that reflect the principle of good faith. According to Sudargo Gautama (1999), Notaries who adhere to their professional code of ethics are obliged to prevent the formation of contracts that are biased or contain clauses that are contrary to propriety and justice. Unfortunately, in many practices, Notaries actually become tools for stronger parties (usually the owner of the goods) to create contracts that are full of exclusion clauses.

Efforts to reform the law have also begun to be seen in several new regulations. For example, in the Regulation of the Minister of PUPR No. 14/PRT/M/2017 concerning Rental of Rusunawa Housing, it is expressly stipulated that the rights of tenants must be protected, and any changes in rental prices or termination of contracts must be carried out proportionally and based on the principle of good faith. This regulation can be a model for other rental arrangements.

The main obstacles in implementing the principle of good faith in Indonesia are the lack of public awareness, the unpreparedness of law enforcement officers, and weaknesses in the contract monitoring mechanism. Legal education is needed for the parties to better understand their rights and obligations, as well as strengthening the capacity of judges to be more courageous in upholding the principle of substantive justice (Rahardjo, 2009).

As emphasized by Friedrich Kessler (1943), “good faith in contract law should not be a mere rhetoric but an effective tool to ensure substantive justice between the parties.” Thus, future legal reforms should strengthen the position of the principle of good faith in contractual practices, especially in rental agreements that directly touch on the needs of the wider community.

CONCLUSION

Based on the description above, it can be concluded that the implementation of the principle of good faith in the implementation of lease agreements in Indonesia still faces quite serious challenges. Although its regulation has been normatively recognized in Article 1338 paragraph (3) of the Civil Code, in practice, the application of this principle is often ignored or even misused. The imbalance of economic power, the use of standard clauses, and the low level of legal understanding of the parties are often the main obstacles. For this reason, efforts are needed to reform the law through stricter regulations, increasing the role of notaries and advocates in assisting in the preparation of balanced contracts, and strengthening the role of judges in implementing the principle of good faith as guardians of contractual justice. Thus, the implementation of lease agreements in Indonesia will increasingly reflect justice, legal certainty, and balanced protection of the rights of the parties.

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