

# LAW ENFORCEMENT THROUGH THE PRINCIPLE OF GOOD FAITH IN THE PRE-CONTRACT PHASE ACCORDING TO INDONESIAN CIVIL LAW

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**Abstract:** *Faith Good is something abstract and difficult meaning For formulated , deep implementation agreement faith Good become something principle related with problem propriety and appropriateness . obscurity principle faith Good Already felt important confirm Good in circles academics nor practitioner including the judges who decide dispute civil proceedings in court . Moreover in law sourced Indonesian civil law from the Civil Code No explain more detail When commencement principle faith Good in something agreement is it in phase implementation contract or principle faith Good can started since phase pre contract . With development law contract moment this , in phase pre contract sometimes Already happen event law that causes loss party in that will carry out agreement . this writing discuss about position principle faith Good in phase pre linked contract with system enforcement law in effort upright function upright norms law in a manner real as guidelines behavior in connection law . Analysis results from wrote this, system enforcement law This can reviewed from corner subjective and angular objective . As public as subject law from beginning in preprocessing \_ contract has can apply principle obedience and honesty to what already \_ become agreement early, though That Not yet poured in agreement written . Where did it happen dispute Civilization in pre- era contract , then here demanded the role of the Judge in give evaluation application principle faith Good as position strategic in realize enforcement law agreement i.e. through development understanding faith Good in activity invention impact law \_ to system enforcement law . Development law Indonesian civil law , regulation principle faith Good it turns out Already enter in a number of design regulation legislation, for example in script Academic Contract Law Bill, manuscript Academic Bill of Civil Procedure Law, manuscript academic Bill on Commercial Law, Land Bill and so on*

**Keywords:** *Law Enforcement , Principles faith ok , phase Pre Contract*

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## Introduction

The term legal agreement or contract is a translation from English, namely *contract law*, whereas in Dutch it is called *overeenscomsrecht* (Salim HS : 2004). Contract is event giving rise to law something connection between these two people in agreed engagement. \_ Contract own important role \_ in every connection civil. Contract is step beginning in fulfil interest every man in various place and time with various type events.

In progress, contract or agreement become need fundamental For fulfil achievement certainty law in every activity life man moment this. Development technology moment This should happening changes and adjustments design contract. With technology change paradigm public For create connection law in law executed contract \_ between nation with utilise digitization technology moment this.

In general the Contract is an agreement between the parties on something that gives birth to a legal agreement/relationship, creates rights and obligations, if it is not carried out as promised there will be sanctions. Engagement is a legal relationship between two people or two parties based on which one party has the right to demand something from the other party and the other party is obliged to fulfill that claim (R. Subekti : 2005). In Book the three Civil Codes (hereinafter \_ called the Civil Code) term agreement or contract called with "approval" where in Article 1313 of the Civil Code state that something agreed is something deed Where one person or more tie self to one other person or more. Even in provision chapter This load principle freedom in matter make agreement (*beginsel order contract vrijheid*), Which intended by chapter That is statement that every agreement is tie second split party, with own that meaning every person free make agreement whatever as exists throughout No violate order general or decency (Ida Nadirah, Ishmael Koto. 2022)

Contract law no limited by rules law which is general written in regulation legislation course, however every regulation born law No Can regardless from principle law, because principle law is base main in formation law, so principle law become point reject in formation and interpretation birth law (Achmad Ali : 2007). The principles of contracting absolutely must be fulfilled if the parties agree to be bound in carrying out legal actions. A sas known in civil law are: the principle of freedom of contract, the principle of consensualism, the principle of legal certainty, the principle of good faith, and the principle of personality (M. Muhtarom : 2014). Principle tie Good is fundamental principle \_ as guidelines behavior in Then cross connection law that happened in contract. Principle tie Good clear listed in Article 1338 paragraph (3) of the Civil Code reads "agreement must held with tie good." Provision This No state When commencement principle tie Good in carry out agreement, whether principle faith Good Already is in phase pre-contract or after he poured agreement agreement in a manner written.

In public sometimes without aware has carry out agreement agreement made on oral. this \_ Actually Already enter in room scope beginning implementation agreement, however Not yet poured in form written. When to condition legitimate The agreement in Article 1320 of the Civil Code states four conditions for the validity of an agreement, namely: the agreement of those who bind themselves, the ability to make an agreement, a certain thing, a lawful reason. Therefore, with the "agreement" of the parties, the agreement Already happened. Problems will happen when it comes to agreement beginning or phase pre contract the, one party said in a manner oral No forward agreement beginning the.

So in this paper will discussed about position principle tie Good in phase pre contract , as well room scope enforcement law in effort operate principle tie Good law Indonesian civil law in particular law agreement .

## Literature review

### Method Study

Deep study study This is study law with approach normative law that uses material law main with attach it theories , concepts , principles law as well as regulation related legislation with study this . Data used is secondary data obtained from literature form regulation legislation, books and literature other. All secondary data collected Then grouped and analyzed in a manner qualitative For obtain answer on problem already set. The results of data analysis are described and elaborated in a manner descriptive based on phenomenon .

### A sas faith Good in law civil law in Indonesia

In The Indonesian dictionary says " *Itikad* " is interpreted as trust , firm conviction , purpose, good will understanding tie Good This characteristic subjective and dynamic , because located in conscience and always move guided by variety factor including desire human . Good faith is an abstract notion and difficult to formulate, so people formulate it more through events in court. Good faith in the implementation of the agreement is related to the issue of decency and appropriateness (Niru Anita Sinaga : 2018). The principle of good faith is a universal principle that must be applied in making agreements.

According to Wirjono Prodjodioro , Article 1338 paragraph (3) of the Civil Code This implies that both parties are not only bound by what is stated in the agreement , in the sense that they are not only carrying out what has been agreed upon in the agreement , but must also pay attention to laws, customs and customary customs (Wirjono Prodjodikoro : 2020). understanding this is also firm mentioned in Article 1339 of the Civil Code , that " an agreement No only tie For things with firm stated in it, but also for all something according \_ characteristic agreement, required by decency, custom, or law." concluded that faith Good divided become two kind , ie faith Good relative and faith Good absolute . In the first intention , someone notice attitude and behavior real behavior from subject. In the second intention, assessment lies in reason health and justice , as well made objective measure \_ For evaluate condition (assessment No take sides) according objective norms (Kunarso1, A Djoko Sumaryanto : 2020). The principle of good faith is a principle whereby the parties to the contract must carry out the substance of the contract based on trust or firm belief or the good will of the parties.

The principle of good faith has two meanings, namely:

- a) Good faith in an objective sense, that an agreement made must be carried out by observing the norms of decency and decency which means that the agreement must be carried out in such a way as not to harm either party.
- b) Good faith in a subjective sense, namely the notion of good faith that lies in one's inner attitude. In the law of objects, good faith can be interpreted as honesty (Subekti : 1983).

According to Ridwan Khairandy , good faith must exist since the pre phase where contract the parties began to negotiate until reaching an agreement and the contract implementation phase (Ridwan Khairandy : 2003). This become matter important must understand , remember in system law in Indonesia that adheres to Civil Law does not in a manner firm consequence law still agreement in phase pre contract . There are times phase loss \_ pre contract Can just happen

between the parties, of course just lawsuit loss or lack of achievement Not yet Of course can won by the judges with reason on phase pre contract Not yet happen agreement.

Good faith in contracts is a legal institution originating from Roman law which was then absorbed by *Civil Law* (Raden Juli Moertiono : 2019). *Civil Law* is system laws based on rules legislation, jurisprudence and custom, so that the country adheres to system law *Civil Law* put constitution on the order highest in hierarchy regulation legislation.

*Civil law* legal system recognizes the division of public law and private law. Private law in this legal system is more aimed at legal principles regarding property rights, law about persons, contract law and about deed oppose law. Influence teachings *civil law* in development law in Indonesia enough thick, This influential to implementation in principle faith Good in agreement. Due to influence said, implementation agreement agreement more put forward agreement that has been poured in form marked writing \_ handled by the parties in agreement.. So that when agreement No run with faith well, and raises loss for one party in agreement. So based on agreement written the will more Certain For prove has happen default in implementation agreement.

The Netherlands also adheres to civil law system, giving understanding that the principle of good faith refers to rationality and propriety (*redelijkeheid en billijkeheid*) who live in society (PL Wery : 1990). This principle of decency and rationality has replaced the principle of good faith (*te goede trouw*). In Burgerlijke \_ The new Wetboek (New BW) has been replaced with phase "*refelijkeheid en billijkeheid*", which was stated in provisions Article 6.248.1 BW, which was formulated "*een overeenkomst heft niet allen de door partijen overeengomen rechtsvolgen, maar die ook die welke, naar de aard van de overeenkomst, uit de wet, gewonde of de eisen van redelijkheid en billijkheid voortvloeiën*" (an agreement No only follow For matters agreed upon by the parties, but also against what do you think characteristic agreement, law custom, or rationality and propriety) (Niru anita Sinaga : 2018).

Development law civil law, especially on obscurity principle faith Good Already felt important confirm Good in circles academics nor practitioner including the judges who decide dispute civil. Development law Indonesian civil law, regulation principle faith Good it turns out Already enter in a number of design regulation legislation, for example in the text academic draft of the Contract Law Bill, academic text of the Civil Procedure Law Bill, academic text of the Commercial Law Bill, Land Bill and so on (Muhammad Faisal : 2023).

In the academic text of the Contract Law Bill, good faith is seen as a principle that must exist both at the pre contract stage up to its implementation. Developments related to good faith that were tried to be carried out in the Contract Law Bill were to concretize the principle of good faith in contract law as was done by the Netherlands in the NBW, but in academic texts the concretization was carried out by reviewing it from the perspective of Pancasila. Based on that, good faith is then interpreted as one of the principles that lays the foundation of morality in civil agreements (as moral values that arise because of human vertical responsibility to the Creator and horizontally to each other) (Bayu Seto Hardjowahono, et. al., : 2022).

### **Phase Pre Contract in Agreement**

Every subject binding law himself in something contract hope agreed things \_ run by parties in agreement. For That good contract need the stages (phases) are planning, preparation, and implementation content contract. On valuable contracts tall or own risk tall in implementation

, then must through phase pre contract, so parties in agreement in do analysis risk that will happen in agreement the. Phase the including :

- a) Phase Pre contract , that is, the parties will tie self in contracts in general bidding process bid (*bargaining process*). one party give offer ( *offer* ) currently the other party will give reception (*acceptance*) when He accept terms put forward by the parties first . This process is also common called as a negotiation process For going to the creation of an agreement (*mutual consent*) (Niewenhuis , JH : 1985) . Negotiation means talk between two or more people with the intention of reaching a compromise or agreement. Other terms that are often used in this process such as: bidding , bargaining bargaining, bargaining, brokering, or bartering. Negotiation is a process of trying to reach an agreement with another party .
- b) Phase Contract , that is exists agreement statement will between the parties . At stages this is also available obligation law on faith well that will normal signature \_ called "*the obligation to exercise due diligence*" (Kartini Muljadi , 1994)
- c) Phase Implementation Contracts , that is implementation agreement

In phase pre contract or contract introduction happen stage purposeful negotiations \_ explore various possibility Good gains and losses implemented something contract . So in phase This raises hope from the parties For he continued phase pre contract This become agreed contract , This be marked with a number of action such as : handing down money as down payment payment in a manner cash as price from object transaction . At stage This Actually Already happen agreement or conformity will between the parties who will carry out contract . Agreements that occur in phases pre contract , also gave birth performance for each party For continue to phase contract to be poured in form contract in a manner written .

With the consensus of the parties, then the agreement creates the power to bind the agreement as appropriate to the law (*pacta edit servanda*). What someone says in a legal relations become law for them (*cum nexum facietmancipiumque, uti lingua mancuoassit, ita jus esto*). This is the principle become the binding force of the agreement ( Fred BG Tumbuan : 1988) .

At a rate certain , the parties will carry out agreement has anticipate happening default or deed oppose law in implementation agreement in form agreement understanding initial poured in *Memorandum of Understanding* or more known with terms of the MoU. MoU is form agreement containing a memorandum of understanding characteristic beginning \_ common by both split parties , where the parties agreed will continue agreement the form more contracts \_ specific . Practice making agreement beginning in the form of the MoU has been Lots implemented by the community especially for companies or institution or agency government nor private . MoU aims as step beginning in the negotiated process in form written , which contains the agreements addressed party For interests of the parties involved . \_ \_

Making the MoU classified in stage pre contractual , because the MoU was made by the parties before make something agreement . Creation of the MoU intended by the parties as stage the beginning , the next day will be dealt with continue with making agreement ( Deviana Yuanitasari and Hazar Kusmayanti : 2020).

Inside various regulation legislation No We find special provisions \_ arrange regarding the MoU, incl in law civil law in Indonesia. So that in a manner theoretical the use of the MoU is not tie in a manner law , because in order to be tie in a manner law must followed up with agreement (Surya Darma , et al: 2016) . However in the practice there is an MoU whose

contents Already load something obligations for the parties and stated in a manner firm in that MoU position of the MoU tie in a manner law . With thereby not quite enough moral responsibility will attached to the parties in the MoU for implement the memorandum of understanding early, responsibility answer is exists walk principle faith ok .

### **Scope System Law Enforcement in Indonesia**

Enforcement law is the center of all legal "life activities" starting from legal planning, formation law , enforcement law and evaluation law . Law enforcement is essentially an interaction between various human behaviors that represent different interests within the framework rules that have agreed together (Zudan Wise Fakrulloh. 2005). The essence of enforcement law in a manner conceptual lies in harmonizing activities connection the values described inside solid rules and attitudes follow as Suite explanation mark stage end , for create, maintain and maintain peace association live ( Soerjono Soekanto . 2019) . According to Jimmy Asshiddiqie , enforcement law is the process of doing it effort For upright or its functioning norms law in a manner real as guidelines behavior in Then cross or relationships \_ law in life community and state ( Jimly Ashidique : 2020).

Scope system enforcement law This can reviewed from corner subjective and angular objective. Corner subjective , enforcement law performed by the subject law or Who course that run and base himself to the norm rule applicable law. kindly narrow subject enforcement law carried out by officials enforcer law that has duties and responsibilities answer For run it objective law with ok. Corner objective reviewed from facet laws , values justice in formal law or values living justice \_ in society .

Enforcement law in the country is done in a manner preventive and repressive ( Teguh Prasetyo and Abdul Halim Barkatullah : 2005). Enforcement law That Can characteristic preventive as well as repressive. Preventive law enforcement is a series of action efforts intended as a deterrent happen violation or deviation existing provisions . \_ Enforcement law preventive This can done with give stock understanding and awareness nagi society , as well related parties ( Monalisa Tjhoeng , H Moch \_ Ardi , Rosdiana : 2019). Enforcement \_ law repressive carried out , if there has been a violation of the law. Meaning from enforcement law repressive No as effort prevention offence , but For cope if There is problem law , especially If There is violation ( Victorianus MH Randa Puang : 2015).

There are five influencing factors law enforcement . Factors \_ \_ the is , as following ( Suryono Sukanto , 1983) :

- a) Legal Materials , that content existing regulations \_ Already side to upright
- b) Enforcer law , that the parties involved in upright law is party competent in enforcement law
- c) Means, that support facility in system processes enforcement law
- d) Existence an engaged and supportive community the course of the enforcement process law
- e) Buddha society , form life public in operate habit life in accordance with applicable rules

These factors have a neutral meaning, so the impact is positive or negative lies in content factors (Monalisa Tjhoeng , 2019).

### **Position principle of good faith on Phase Pre Contract as System Contract Law Enforcement**

Enforcement law is part from system purpose law For create order and certainty law in society . Level pattern in demand public to law will influence system enforcement law , hence public moderate in nature rational must involved in create order law It means No solely deliver system enforcement law on officials enforcer law like police , prosecutors , judges, or advocate .

Man as mover public For do relationships birth law \_ rights and obligations . The law regulates How method maintain and implement rights and obligations it . Civil law governing rights and obligations in life socialize called " aw" . material civil law", meanwhile law governing law How method carry out maintain rights and obligations called " law" . formal civil law " ( Soetandyo Wignjosoebroto, 2006). So law civil material will determine and regulate who is meant with people as supporters rights and obligations it .

In condition legitimate loaded agreement in Article 1320 of the Civil Code , the word " agreed " is principle fundamental law as sign has appearance the wishes of the parties For continue contract on phase implementation contract . Plus Again when contract to be poured in agreement written , usually of course started with deals beginning as form negotiation between phase pre contract . Should the parties in this process has uphold tall faith ok . one \_ form violation principle faith Good in pro contract phase for example , one party do cancellation unilateral agreement early already agreed , moreover when party other has give advance \_ as sign has he agreed agreement early. Cancellation agreement start to the detriment of one party , show that No applied principle faith ok .

Society as as mover law role in system enforcement law . In phase pre contract of the parties has apply principle obedience and honesty to what already become agreement early , though That Not yet poured in agreement written . Principle faith Good is form attitude mind , ethics , and morality man in Act he did with man other .

In system enforcement law, apparatus enforcer law also has role important For put principle faith Good as principle attached to law contract especially in phase pre contractual . The role of the Judge in settlement case civil law at the Court Institution will help in give evaluation application principle faith Good as position strategic in realize enforcement law agreement . Through development understanding principle faith well its not limited to contracts written course , however come to an agreement the parties first carried out in a manner verbal, make position principle faith Good as means For realize system enforcement law agreement. The Judge's decision will affect dynamics law civil and guaranteed certainty law in implementation agreement .

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knowledge knowledge and technology . Hopefully Almighty God \_ One always bless intention Good We all .

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