

Good faith principle in Indonesian contract law: How to set the definition and its benchmarks

Meydora Cahya Nugraheni^{1,2,*}, Ari Hernawan¹

¹ Faculty of Law, Gadjah Mada University, Yogyakarta 55281, Indonesia

² Faculty of Social and Political Sciences, Tidar University, Magelang 56116, Indonesia

* **Corresponding author:** Meydora Cahya Nugraheni, meydoracahanugraheni@mail.ugm.ac.id

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Abstract: As an essential principle in contract law, Indonesia has regulated good faith in the Indonesian Civil Code (the Dutch Civil Code that the Indonesian government uses based on the principle of concordance). However, the definition and benchmarks are not yet clear. There are no further provisions regarding the meaning and concept of this principle in the Indonesian Civil Code or other regulations. This absence of a single understanding of good faith principle in contract causes different opinions and legal certainty, whether from the business actor who signs the agreement or the judge as the third party who resolves contract disputes between parties. Therefore, future Indonesian contract law needs to regulate the definition and benchmarks for good faith principle. In order to find out the meaning and clear benchmarks for the good faith principle, the authors use a normative juridical method with a statute and conceptual approach. This research finds that the definition and benchmarks for the good faith principle is possible to be developed and regulated in Indonesian contract law. It shall set that good faith principle is based on honesty, decency, and fairness, which covers every agreement stage, from pre-agreement, agreement implementation, and after the agreement is completed.

Keywords: good faith principle; Indonesia contract law; definition; benchmarks

1. Introduction

A contract is a legal action between parties that is commonly carried out in business interactions between humans or legal entities. Contracts are something that cannot be avoided. No business activities that bring interests between business actors that are not based on an engagement that originates from a contract. Contracts become an essential instrument that strings legal relations between business people and serves to secure business transactions (Syaifuddin, 2012).

Juridically, a contract is regulated in Article 1313 of the Indonesian Civil Code (ICC). A contract is an act where one or more people bind themselves to one or more other people. It is legally valid when it fulfilled the four conditions stipulated in Article 1320 of ICC, including the agreement of the parties that bind themselves, the parties' ability to agree, some particular subject matter, and a legal cause (Soimin, 2008).

Indonesian law stipulates the legal consequences of a valid contract in Article 1338 of ICC. A contract enforces the parties who made it like the law, cannot be withdrawn except by both parties' agreement or for reasons determined by the law, and carried out in good faith (Soimin, 2008). In ICC articles that regulate contract law, there are essential principles contained therein like the freedom of contract principle, consensual principle, pacta sunt servanda principle, and the good faith principle.

Good faith is a super-eminent principle. This principle first emerged and developed in the Roman legal tradition and was later absorbed by Civil Law. In its

development, academics, legislation, and courts in countries that adhere to Common Law have also accepted this principle. International law has accepted its existence as a universal principle in treaties, although there is still a debate about the definition of good faith to this day. It is due to the absence of a single understanding of good faith in contract implementation (Khairandy, 2017).

In Indonesia, good faith in contract implementation has become an essential principle and is regulated in Article 1338 of ICC. However, the definition and benchmarks are not yet clear. There are no further provisions regarding the meaning and concept of this principle, both in the ICC and other laws or regulations (Khairandy, 2013).

There were still controversies or problems regarding good faith principle. First, the notion of good faith is not universal. Second, the benchmark used by judges in assessing the presence or absence of good faith in the agreement. Third, the non-uniform understanding and attitude of the court relating to the function of good faith in the contract implementation (Khairandy, 2013).

Courts in Indonesia interpret the good faith principle differently. In some case decided by the court, judges interpreted good faith in a non-uniform way as follows (Khairandy, 2013):

- a) In the case between NV Jaya Autombiel Import Maatschappij and Wong See Hwa (Surabaya High Court Decision No.262/1951 Pdt), good faith was interpreted as honesty.
- b) In the case of Mrs. Lie Lian Joun against Arthur Tutuarima, Bandung High Court interpreted the meaning of good faith as the proper and fair implementation of the agreement. Supreme Court Decision No. 268K/Sip/1971 did not blame this interpretation but stated that the case should have been decided referring to the halal cause in the agreement, not the application of good faith.
- c) In the case between Ida Ayu Surjani and I Nyoman Sudirdja (Supreme Court Decision No. 289K/Sip/1972), the contract agreed by the parties was considered by the judge to be binding on both of them as law (*pacta sunt servanda*). Therefore, it is not necessary to pay attention to the contents or achievements in the agreement whether it is rational and appropriate or not.
- d) In the case of Tjan Thiam Song against Tjia Khun Tjai (Supreme Court Decision No. 791K/Sip/1972), it was stated that the *judex factie* stance that limited the obligations of the agreement based on the teachings of good faith in terms of propriety was inappropriate.
- e) In the case of Zainal Abidin against Mohammad Zainuddin cs (Supreme Court Decision No. 1253K/Sip/1973), the judge believed that good faith is under propriety. The propriety is related to the situation and condition of the surrounding community.

The position of principle or doctrine in the law is the essential element and the broadest basis for creating a legal regulation. The law principle or doctrine contains values and ethical demands for law. The law principle or doctrine serves as a bridge between the rule of law and social and ethical ideals views of society. Therefore, every regulation can always be returned to legal principles (Harisa, 2018).

A business person who makes a contract should understand the principles that apply in an agreement (Muhtarom, 2014). One of them includes the good faith

principle as the super-eminent principle. It is crucial to do so that the contract can be achieved according to both parties' aspirations and carried out by them with full responsibility.

Unfortunately, many agreements are ultimately not implemented in good faith by the parties who make them. There are breaches of contract and avoidance of the agreed obligations. Supreme Court has decided thousands of claims for breach of contract that arise from an agreement. In October 2022, the Supreme Court gave decisions on the breach of contract lawsuits in as many as 1577 cases (Direktori Putusan Mahkamah Agung Republik Indonesia, n.d.). This number does not include lawsuits for unlawful acts arising from a contract in all Indonesian districts and high courts whose decisions are not submitted for appeal. It shows that the parties who initially agreed to fulfil each other's promises, in the end, did not have good intentions to carry out the agreement, causing the other party to sue in court.

Not only breach of contract or unlawful act towards a contract, but a bad faith not to carry out the agreement also occurs in other forms. For example, a request for annulment of an arbitration award submitted to a district court by reasons outside the provisions as stipulated in Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Disputes Resolution (Arbitration Law and ADR). For example, there were 64 of 642 cases decided by the BANI Arbitration Center were filed for annulment during the period 2012 to 2018. One contracting party to the arbitration agreement who did not accept the arbitration awards usually takes advantage of the rules for arbitral awards annulment to delay the implementation of the arbitral award. Those party file for the annulment of the arbitral award by reasons outside the provisions and using arguments that take advantage of legal loopholes (Kartasasmita, 2021). This action is certainly not following the initial commitment of the parties who have agreed to an arbitration agreement, where both agree to choose arbitration as a method of resolving disputes outside the court and are willing to execute to the award of arbitration chosen by them. The party who deliberately delays the implementation of the arbitral award has had a bad intention to strictly comply with and implement the arbitration agreement.

The Arbitration and ADR Law have included the good faith principle in Article 6 paragraph (1), Article 6 paragraph (7), and Article 21, however, there is no clear definition and benchmark for this principle. The law also does not include the good faith principle in the implementation of an arbitration agreement. There is no explanation of the meaning and limitations of the good faith principle that needs to be applied by the parties in the arbitration agreement implementation (Harisa, 2018).

The unclear definition and benchmarks regarding the good faith principle in Indonesian contract law creates legal uncertainty and provides a gap for parties with bad intentions not to fulfill the agreement. The judge will also see the good faith application in the agreement differently. This problem certainly needs a solution and therefore the authors are interested in examining how the definition and benchmarks of the good faith principle in Indonesian contract law can be more clearly regulated. The regulation can serve as guidelines in Indonesia for the making of agreement, agreements implementation, and after the agreement is completed.

Based on the background above, the problem formulation to be studied in this paper is what are the definitions and benchmarks for the good faith principle that can

be stipulated in Indonesian contract law? The authors aim to find the position of the good faith principle in contract law and its development, and the definitions and benchmarks for this principle that can be stipulated in the future Indonesian contract law.

2. Materials and methods

In order to find out the meaning and clear benchmarks for the good faith principle in Indonesian contract law, the authors use a normative juridical method. Normative legal research is a scientific activity that includes inventorying, exposing, interpreting, systematizing, and evaluating the general laws (authoritative texts) that apply in certain societies. This activity uses concepts (understandings), categories, theories, classifications, and methods specially formed and developed to conduct all these activities to find juridical solutions to legal problems in society (Sidharta, 2011). The authors use a statutory approach and a conceptual approach in this research. The authors take a statutory approach by examining other laws and regulations (Marzuki, 2010) related to the principle of good faith. The authors take a conceptual approach based on the views and doctrines that develop in the science of law (Marzuki, 2008). The authors review the opinions of legal experts regarding the principle of good faith in several journal articles and books. The authors collect data utilizing library research and describe the data by descriptive analysis method. The authors searched the literature on good faith principles, presented the available data, and then analysed it concerning the basics of juridical knowledge (Soekanto, 1985). The researchers then provide arguments about how, according to the law, all the collected data results should be.

3. Results and discussion

3.1. The position of the good faith principle and its development

The good faith principle is one of the main principles in trade law. This principle is the essential pillar in carrying out the obligations of an agreement. The parties are required to conduct business relations based on this principle. The good faith principle was born from the civil law contract legal system that originated in Roman law (Kolopaking, 2013). This principle is rooted in Roman social ethics of a comprehensive obligation to obedience and faith that applies to society (Khairandy, 2013).

The development of good faith principle in Roman law is related to the evolution of covenant law. Initially, Roman law only recognized agreements that were born from acts according to the law referring to *ius civile*, meaning that if a judge faced an agreement case, he had to decide it strictly and formally under the law. The judge is obliged by the provisions that are regulated in the agreement. Furthermore, legal actions based on *iudicia bonae fidae* have developed that require the parties to make and implement the agreement based on good faith (Khairandy, 2013). Good faith in Roman contract law has 3 (three) forms that refer to the behavior of the parties, namely (Khairandy, 2015):

- a) The parties must adhere to their promises and words.

- b) The parties must not take advantage of actions that mislead one of the parties.
- c) The parties comply with their obligations and behave as honorable and honest persons, even though these obligations are not expressly in the contract.

The Roman legal tradition influences the good faith principle in civil law countries. However, each civil law country formulates the obligations of good faith differently (Khairandy, 2013). In Germany, the good faith principle is absorbed into all civil law systems after going through various interpretations and expansions of meaning. Article 242 of the *Bürgerliches Gesetzbuch* (BGB) stipulates the terms of good faith in carrying out the agreement and places it as the essential principle in contract law (Khairandy, 2004). In addition, Article 157 of the BGB stipulates that each agreement shall be interpreted in good faith. The German Supreme Court in 1914 even completed good faith as the general principle applied in all spectrums of civil law (Khairandy, 2013).

France also carries out a broader interpretation of the good faith principle. Courts in France believe that the parties must carry out the agreement by basing it on good faith in the contract and abuse of rights (Khairandy, 2004). France regulates the obligation to state good faith principle in the contract in Article 1134 paragraph (3) of the French Civil Code. Each contract has to be carried out with the good faith principle, with the general meaning refers to a rational standard of behaviour, where each person must fulfill the promise in all circumstances (Khairandy, 2013).

The Dutch are also very concerned about the good faith principle and behave similarly. The good faith principle has been absorbed into all Dutch civil law systems. The good faith principle in the contract implementation that was regulated before in Article 1374 paragraph (3) of the old *Burgerlijk Wetboek* (BW) has been expanded and interpreted by courts in their decisions. The jurisprudence was lately adopted and outlined in Article 6.248.1 of the new *Burgerlijk Wetboek* (BW) (Khairandy, 2004).

Article 1374 paragraph (3) of old BW states that the parties must carry out the agreement in good faith. The meaning of good faith in this article is still the same as *bona fides* in Roman law, namely that the parties are obliged to treat each other without deceit, without trickery, without disturbing the other party, and always look at the interests of the other party other than their own interests. The court then interpreted and expanded the provisions of good faith by stating that the parties must carry out the contract under common sense and proper, which is tested based on unwritten objective norms and refers to behaviour under the general view of good faith. The good faith principle was characterized as reasonableness and equity in Article 6.248.1 of new BW. It means that the contracting parties are obliged by the promises they agreed to and also constrained by reasonableness and equity. Good faith is considered a provision based on justice as propriety (Khairandy, 2013).

In its development, good faith as an essential law principle has a crucial function in contract law. In the Netherlands, the doctrine and jurisprudence have developed and made the good faith principle have some functions as follows (Khairandy, 2013):

- a) The function teaches that the agreement must be interpreted according to good faith. It means the contract must be interpreted properly and fairly.
- b) A function to add (*aanvullende werking van de goede trouw*). According to this function, the judge can add the content or provision of the contract based on the good faith principle. It can be applied where there are any rights and obligations

between the parties that arise but are not yet expressly stated in the contract. The decision of the Hoge Raad dated 10 February 1921, applied this function in a case concerning an ally of a firm management that established another company which was competed with the previous firm. The allies thought it was not forbidden since there was no provision regarding such competition in the laws and the contract. Hoge Raad terminated such establishment against good faith and added the contract.

- c) A function to limit or eliminate (beperkende en dero gerende werking van de geode trouw). It can be applied when a provision in the contract or law can be set aside because changing circumstances cause injustice in contract implementation. The contractual obligations can be limited or even eliminated based on good faith. Hoge Raad decided so with a decision dated 29 April 1983 in the Sperry Rand case that terminated the lease of the building before the one-year stipulated by law, after languishing in negotiations with the building owner for a very long time. The Hoge Raad decided that long-term lease termination negotiations were against good faith.

In contrast to Civil Law, the good faith principle in contract law is not recognized in the traditional Common Law legal system. Nevertheless, the United States lately became a country that accepted this principle into its contract law (Kolopaking, 2013). Under the influence of German contract law, the United States accepted the general obligation of good faith in contracts and requires them in the Uniform Commercial Code (UCC) and the Restatement of Contract (second). Courts in the United States have equally accepted the general obligation of good faith in contracts. Since the late 1970s and early 1980s, the good faith principle has even been able to shift the long-existed unconscionability doctrine in the Common Law system (Khairandy, 2004).

Not all Common Law legal system countries accept the good faith principle. England is a country that does not accept this principle. Even England judges had consented to reject the good faith principle in the 1960s. However, England has gradually developed a solution to legal problems that respond to the existence of contract non-compliance (Khairandy, 2017).

In Australian contract law, the position and existence of good faith principle are unclear (Jibril et al., 2022). Some legal scholars in Australia also oppose the good faith principle. According to Paul Pinn, justice does not belong exclusively to the good faith principle. Furthermore, HK Lucke, who agrees with Paul Pinn, stated that it is unreasonable to place hope on the good faith principle to have a significant and beneficial effect on Australian civil law. However, in its current development, the good faith principle has been absorbed by Australian case law (Khairandy, 2017). Yet, the Middle Court and the High Court have different perspectives in providing the definition and scope of the good faith principle. The Australian High Court and the Australian legislature have not even provided any clarification on the good faith principle (Purwanto, 2009).

Regardless of different recognition towards this principle, the position of the good faith principle is recognized universally by international society. The United Nations (UN) determines that every member state of the UN is bound to carry out its obligations as a consequence of membership and is entitled to receive its rights. Article 2 of the UN Charter stipulates that every member of the UN must carry out its

obligations based on the good faith principle.

The good faith principle in contracts is internationally recognized and also stated in the 1969 Vienna Convention on the Law of Treaties (1969 Vienna Convention). The convention introduction mentioned that the principles of free consent, the good faith principle, and the *pacta sunt servanda* rule are universally recognized (United Nations, 1969). The convention stipulates that the arrangement of treaty law considers and acknowledges the good faith principle which is recognized universally as customary international law.

The good faith principle is regulated explicitly in several articles of Vienna Convention 1969. Article 31 verse (1) of 1969 Vienna Convention states that a contract must be interpreted in good faith following the usual meaning given to the terms of the contract in its context, and the light of object and purpose. Furthermore, Article 69 verse (1) of 1969 Vienna Convention stipulates that an agreement that is not valid according to the convention is null and void, where all of its provisions have no legal force. In the second verse, it stipulates that if an act in good faith is carried out before the agreement is declared invalid, then it is not considered an act that violates the law simply because of the agreement invalidity (United Nations, 1969).

Based on the articles above, the good faith principle seems to be contained and used by the 1969 Vienna Convention as the basis for the contract implementation. In public international law, treaties are interpreted as defined in Article 31 of 1969 Vienna Convention which reflects customary international law. It means that the good faith principle applies to all agreements, whether the countries are signatories to the convention or not signatories to the convention. Good faith as a universally recognized principle animates and underlies the treaty arrangements in the 1969 Vienna Convention.

3.2. The position of the good faith principle in Indonesian contract law

Indonesian laws and regulations have also accommodated the good faith principle in agreements (Kolopaking, 2013). Book III of the ICC regulates the good faith principle in Article 1338 verse (3) as follows “All agreements made under the law shall apply as law for those who make them. It cannot be withdrawn other than by agreement of both parties or for reasons determined by law. Approval must be carried out in good faith”.

Article 1338 of ICC regulates the good faith principle in the contract. However, it does not describe clearly and unequivocally the definition and the benchmarks of the good faith principle. The meaning of the good faith principle in the contract is then linked to Article 1339 of ICC. It states that an agreement is not only binding on things that are expressly written in it, but also for everything which according to the nature of the contract is required by propriety, custom or law. It seems that the normative rules regarding good faith in Article 1338–1339 of ICC stipulate that the contract implementation is not only based on what is expressly agreed in the contract but also must pay attention to properness. Harahap emphasizes that if a contract is carried out properly, then the parties carry out their obligations harmoniously and properly. It means that the parties implement the obligation appropriately, as determined and agreed upon by them in the contract (Novran, 2018).

Article 1338 verse (3) of ICC defines good faith as dynamic. Honesty seems to be a moving sidewalk in the heart of a human being when acting. The parties to the contract must remember that as human beings and community members, they shall avoid any characters or actions that can cause harm to the other parties. The parties must always notice this matter and are prohibited from using the other party's negligence as an opportunity to gain an advantage of themselves (Werry, 1990).

Furthermore, according to Subekti, good faith as stipulated in Article 1338 paragraph (3) of ICC is one of the essential elements of contract law. With this good faith, the law gives power to the judge to supervise the agreement implementation so as not to violate propriety and justice. This power means that the judge is authorized to deviate from the agreement if its performance violates one of the parties' feelings of justice (*recht gevoel*). There is a requirement regarding legal certainty that the agreement implementation must not violate the norms of propriety and the values of justice (Arifin, 2020).

The good faith principle is also found in Book II of the ICC. Article 531 of ICC stipulates that one party is deemed to have good faith when he obtains ownership rights to an object without knowing there is a defect in that object. On the other hand, Article 532 of ICC stipulates that a party can be declared in bad faith if he knows that the object does not belong to him. Furthermore, Article 533 of ICC states that either the seller or the buyer as a person with position power must always be considered to have good intentions as long as otherwise cannot be proven. With good faith, the parties will realize their obligations arising from the agreed sale and purchase agreement (Arifin, 2020).

In a sale and purchase agreement, a person is considered to have good faith in the procedure for obtaining rights of ownership, and also when there are no known legal defects in ownership rights. Theoretically, the buyer is declared in good faith if he is not aware of a defect in an object. However, the buyer's lack of knowledge of the status of an object does not necessarily mean that the seller has bad faith. It applies as long as the element of ignorance about the object and buying and selling activities is legal (Faisal, 2015).

In addition to ICC, the good faith principle is found in other laws and regulations that contain honesty. These regulations are Law Number 8 of 1999 concerning Consumer Protection (Consumer Protection Law) and Law Number 8 of 1995 concerning the Capital Market (Capital Market Law) (Arifin, 2020).

From the position of the good faith principle in Indonesian contract law, there are two understanding dimensions of this principle. The first is the subjective dimension, which means that good faith leads to the meaning of honesty. The second is the objective dimension, which means that good faith is determined by appropriateness and propriety (Khairandy, 2015).

Good faith in the subjective dimension means good faith notion belongs to one's inner attitude. In the law of things, this good faith is interpreted as honesty (Subekti, 1983). The contracting parties have to inform openly and truthfully about themselves with evidence in the form of valid and authentic documents. For example, if the contracting parties are individuals, they show their identity cards. If the contracting parties are legal entities in the form of limited liability companies, it shows the articles of association. Regulations on good faith with subjective meaning are Article 531–533

of ICC and other regulations that contain honesty, such as Consumer Protection Law and Capital Market Law (Arifin, 2020).

Good faith in the objective dimension is good faith referred to Article 1338 verse (3) of ICC. The objective standard becomes the standard of good faith in the contract implementation. With these standards, the parties must assess the contents of the contract and behave based on the principles of appropriateness and propriety in carrying out the contract. The parties not only see the contract from what is expressly agreed upon but also must pay attention to external factors that can affect the contract's implementation (Khairandy, 2015).

From the objective aspect, the fulfillment of the good faith principle is assessed when the parties implement the contract. The contract fulfills this principle if the parties carry out the contract by propriety or justice. Appropriateness is assessed when the parties implement the contract under its contents. Justice is achieved when the parties carry out the agreement without harming the other parties or if the parties fulfill the contract according to its contents. When the agreement is implemented to the detriment of another parties, or is carried out with provisions outside the contents of it, then the contract implementation is unfair and does not fulfill the good faith principle (Arifin, 2020).

The good faith principle is the doctrine in which the parties, both creditors and debtors, are obliged to carry out the contents of the agreement based on firm trust or confidence, and goodwill from the parties. With the two dimensions of objective and subjective aspects above, some standards can be used in assessing whether an agreement has fulfilled the good faith principle or not (Arifin, 2020). In absolute good faith, the judgment lies in common sense and fairness, and an objective measure is made to assess the situation (impartial judgment) according to objective norms. In relative good faith, a person pays attention to the real attitude and behavior of the subject (Muhtarom, 2014).

The contract has several stages which are the preparation, the manufacture, and the implementation of the agreement. These stages become very important for a high-value or risk contract. The first stage is when the parties bind themselves at the pre-agreement stage. In this stage, the parties generally carry out a bargaining process where one party offers something while the other party accepts it when the terms proposed are accepted. This stage is commonly referred to as the negotiation process to realize an agreement (mutual consent). The second stage is the stage where there is conformity in the statement of will between the parties which results in a legal obligation in good faith to be signed (the obligation to exercise due diligence). The last stage is the stage of contract implementation. All stages in the contract must be carried out in good faith by the parties who made it (Yuanitasari et al., 2020).

During the pre-agreement stage until the agreement implementation, good faith has a dominant position. Therefore, this principle has an essential role in the agreement. However, the good faith principle at the pre-agreement has not been regulated in the ICC and there is no legal certainty about it. In fact, at the pre-agreement stage, the parties agree on an offer and acceptance based on trust and expectations. The good faith principle contained in Article 1338 verse (3) of ICC has been expanded in its interpretation so that good faith must exist not only when the agreement is implemented but also throughout all stages of the agreement. Thus, good faith in 1338

verse (3) of ICC can function dynamically (Kusmiati, 2020).

Concerning subjective and objective good faith in the agreement stages above, Prodjodikoro who defines good faith with the term “honestly” divides it into two types, namely good faith at the commencement of a legal relationship and good faith at the time of the implementation of legal relationship rights and obligations. Good faith at the beginning of a legal relationship is usually in the form of an estimation or a person’s assumption that the conditions have been met. The law protects those who have good intentions. For parties with bad intentions (*te kwader trouw*), the law requires them to be responsible and take risks. Such good faith is regulated in Articles 1963 and Article 1977 of ICC, where both articles stipulate the conditions for obtaining ownership rights to goods through expiration. In this stage, subjective and static good faith is used. Good faith during the implementation of rights and obligations in legal relations is regulated in Article 1338 verse (3) of ICC. The emphasis of good faith here lies in the parties’ actions, as an act of implementing something. In this stage, objective and dynamic good faith is used under the situation surrounding the legal action (Syaifuddin, 2012).

In Civil Law System countries, good faith has two dimensions: subjective and objective. As we can see from the above explanations, both dimensions can be found in the ICC. The subjective good faith, which lies in a person’s inner attitude, is in the pre-contract phase (Innaka, 2012). In ICC regarding *bezit* (possession law), good faith is defined as honesty and concretized in Articles 530, 531, 533, and 534 of ICC concerning *beziters* (owners or possessors) with good faith. It is also mentioned in Articles 1963, 1966, and 1977 of the ICC concerning ownership expiration. Furthermore, it is contained in Article 1320 of the ICC, especially in terms of agreement and *halal* causes (Arifin, 2020). Meanwhile, objective good faith is in the contract implementation phase (Innaka, 2012), which means that an agreement must be made by observing the norms of appropriateness and morality. Agreements must be implemented in such a way that they are fair and do not harm either party. This propriety and fairness are concretized in Articles 1321, 1323, and 1328 ICC concerning error, coercion, and fraud in making contracts, as well as Article 1348 ICC concerning payments in good faith (Arifin, 2020).

4. Discussion

The existence and position of good faith principle are regulated in ICC and several other regulations. Contracts in Indonesia must be implemented in good faith by the parties who made them. The rule of the good faith principle with a deductive (top-down) approach to the Civil Law system in Indonesia has so far been considered to have been able to provide greater legal certainty than the bottom-up approach to the Common Law legal system, such as in Australia. However, the ICC still unable to give complete legal guarantees because the clauses in a codification are often abstracted. There is no clear definition and scope of good faith in Indonesia (Jibril and Ekadhani, 2022). It gives rise to different understandings of the good faith principle from the perspective of people, places, and times. No single meaning of good faith principle in the contract raises problems regarding the benchmarks and functions of good faith. All this time, the meaning, the benchmark, and the function of the good faith principle

often depend on the attitude or views of judges on a case-by-case basis.

This condition causes legal uncertainty about the definition and benchmarks of the good faith principle. Consequently, the purpose of making legal agreements based on the good faith principle can not be achieved. It becomes irrelevant according to Gustav Radbruch's theory that states the law has three objectives, which are certainty, justice, and expediency (Santoso, 2021).

Legal certainty can not only be created in articles of statutory regulation. It is also reached by providing consistency in different court decisions in similar cases (Marzuki, 2008). The court decision consistency does not mean a homogeneous decision but is interpreted as a common understanding in viewing a legal problem or question (Fachreza, 2017).

A legal system is a unit built on elements that interact and work together to create that unity. These elements cannot work properly if one of them does not work. Lawrence M. Friedman divides the legal system elements that affect the operation of the law into three, namely (Rahayu, 2005):

- a) Legal structure. This element is like a machine that runs the law, for example, the executive, legislative and judicial institutions.
- b) Legal substance. This element is in the form of things that are done and produced by the machine (legal structure), such as norms, regulations, and laws.
- c) Legal culture. This element is what and who determines to turn on, turn off and make decisions on how the machine (legal structure) is used. Legal culture consists of the views, habits, or behavior of the community regarding the values and expectations of the applicable legal system.

Statutory regulation is one of the factors and benchmarks for the effectiveness of legal regulation. Soekanto argues that the law's effectiveness is determined by five factors as follows (Yanuari and Kusuma, 2020).

- a) Legal factors, namely the factors of legislation.
- b) Law enforcement factors, namely the factors of the parties that form and apply the law.
- c) Facilities factors, namely facilities factors which support an enforced law.
- d) Community factors, namely environmental factors where the law is enforced.
- e) Cultural factors, namely work, creativity, and taste based on a human initiative in social life.

Every contract is carried out in good faith by the parties who create it. However, in reality, it is often violated. If a dispute arises, the parties who seek justice usually wish that it can be settled fairly. Therefore, the court as the law enforcer must be able to decide on it with the applicable laws. The court must also pay attention to the legal terms of the contract and the principles of contract law. Applying the good faith principle for the parties in a balanced manner is one of the ways to make the law applied ideally and according to the parties' wishes (Sinaga, 2018).

Thus, in the research problems of this paper, the clarity of legal regulations regarding the definition and benchmarks of good faith principle will provide legal certainty for the parties. Furthermore, judges can use that clear definitions and benchmarks in adjudicating contract disputes. Therefore, the existing legal arrangements for contracts need to be updated and developed to provide legal certainty in the practice of Indonesian contracts and the good faith principle's effectiveness. It

is important because good faith principle is one of the basic principles in the business world, in addition to the principles of fair dealing, fairness, and propriety (Khairandy, 2015).

The forms and principles of the contract law itself develop and are closely influenced by factors namely (Syaifuddin, 2012):

- a) Internal factors. Internal factors that influence the forms and principles of contract law are government policy factors in seeking the prosperity of the state and people by intervening in the economic field.
- b) External factors. The external factor that influences the forms and principles of contract law is the globalization of the world economy from abroad which has resulted in the national economy becoming more open so that many foreign elements then affect the national legal system.

Frequency and various forms of business activities. The increasing frequency and various forms of business activities have resulted in the intensity of contract-making activities becoming more intense. It is because all legal relationships that arise are always stated and reflected in a written agreement.

Here, as an internal factor, the government can develop and form the principle of good faith in contract law by establishing laws and regulations that more clearly regulate the definition and benchmarks of good faith principle. The government's intervention in shaping policies in the economic sector is an action to realize the prosperity of the people and the state.

Developing and forming arrangements regarding the definition and benchmarks of good faith principle should relate it to the ideal of good faith itself. The ideality of this principle is always associated with ethical principles such as honesty, loyalty, and fulfillment of commitments. These principles are the embodiment of the ideal Roman law principle regarding the wise human (Khairandy, 2015).

Not only that, changes and improvements to the Indonesian contract law must emphasize how good faith and the fair agreement principle between the parties must be the legal basis of an agreement. Each party must uphold both principles in all stages of the contract. Not only from the negotiation stage, determining the rules, and implementing the agreement, but until the contract is decided or terminated (Kusmiati, 2020).

Therefore, contract law must stipulate the definition and benchmark of good faith principle in all stages of the agreement. First, good faith is regulated and needed since the negotiations on making an agreement where both parties are facing each other with a particular relationship that is controlled by this principle. That relationship will have the consequence that the parties must act with the reasonable interests of the other party in mind. Each party has to investigate the other party within reasonable limits before they sign the agreement. On the other hand, the parties must also carry out the contract in good faith (Miru, 2018).

The rules regarding the definition and benchmarks of good faith principle in contract law are also determined in the agreement implementation. Good faith in the agreement implementation is regulated as an act of the parties who hold fast to the agreement to provide what achievements are the rights of the opposing party. Based on propriety and rationality, the parties must not look for loopholes or opportunities to avoid obligations or release themselves from what they agreed (Harisa, 2018).

Clear rules regarding the definition and benchmarks of good faith principle in the agreement implementation can result in the establishment of a contract that is carried out in good faith by the parties who make it and is respected by the judge as a third party. If one of the parties in a consensual agreement implements the contract without basing it on good faith and defaults, then the other party can immediately sue that party in court based on violating the good faith obligation (Khairandy, 2008).

Due to the conceptual approach of this research, the authors use the literature to define and benchmark the good faith principle. In addition to the legislative approach, the conceptual method used by the authors draws from expert views and doctrines in legal science. By examining these perspectives, the authors identified ideas that inform the legal concepts and principles pertinent to their study. This understanding forms the basis of constructing legal arguments to address these issues (Wiwoho, 2017). The conceptual approach is applied when the definition and parameters of good faith are absent from the legal regulations (Marzuki, 2010).

Legal institutions are founded on the principles, theories, and traditions that are essential for developing genuine legal systems. Effective law creation requires the knowledge of theories and principles explaining legal evolution and the need for continuous adaptation to social realities. Jurisprudence and legal doctrine, considered indirect sources of law, influence regulations within normative acts (Ciongaru, 2020). Doctrine is one of the sources of law in the Indonesian legal system (Damang and Nusa, 2017), and is usually analyzed in the literature (Ciongaru, 2020).

Based on the above literature, regulations regarding the definition and benchmarks of the good faith principle will be set by rational, proper, and honest standards of behavior. Therefore, the definition and benchmarks of the good faith principle in future Indonesian contract law can be determined as follows:

- a) In the pre-agreement stage (contract making):
 - To complete the legal conditions of the agreement, the parties must inform openly and truthfully everything about themselves as required according to the contract law.
 - The parties must not be committing all forms of deceit and other wrongful deeds that may interfere with the other party at a later date during the execution of the agreement to benefit themselves.
 - Whether there is a gap in the negligence of the other party or not, each party must prevent the other party from all possible losses that may arise in the agreement implementation and always see the other party's interests as important as theirs.
- b) In the contract implementation:
 - The parties must adhere to their promises and words in all circumstances and carry out their obligations as agreed in the agreement.
 - The parties are not only bound by the promises agreed in the contract. Whenever rights and obligations arise at a later time yet it has not been explicitly regulated in the agreement, the parties must always behave respectfully and honestly in complying with and implementing them, under common sense and proper justice, and referring to the norms and behavior as following the general view.

- Additional provisions of the agreement on rights and obligations that arise between the parties at a later time can only be completed if it is based on good faith under common sense and proper justice and refers to norms and behavior under the general view.
- Provisions in the contract can be set aside or abolished if their implementation is proven to cause injustice due to changed circumstances, based on common sense and proper justice, as well as referring to norms and behavior as following the general view.
- The parties must fulfill the promise under its contents and not do actions outside of the contract contents that can harm the other party.
- A party who does not carry out the contract provisions and harms the other party will be declared to have bad intentions and have violated justice.

Considering that the contract stage includes three phases, namely the pre-contractual phase, contractual implementation phase, and post-contractual phase (Khairandy, 2004), the authors also formulate the definitions and benchmarks of the good faith principle in the post-contractual phase. The recognition of good faith in the post-contractual phase contributes to a more coherent and just legal framework, ensuring that parties act with honesty, fairness, and fidelity to contractual purposes (Brisov, 2020).

The post-contractual phase covers the dispute resolution stage (if a dispute arises from the implementation and interpretation of the agreement). The dispute resolution stage occurs when the parties experience a dispute that arises between them and then agree on a method to resolve it (Sidik, 2006). Good faith at this stage is achieved by maintaining the good faith of the parties from the time the dispute arises, until it is successfully resolved. Therefore, the definition and benchmarks of the good faith principle in the post-contractual phase of future Indonesian contract law can be determined as follows (Kolopaking, 2013):

- The parties choose the dispute resolution method that is best and beneficial for both parties.
- The parties are serious about resolving disputes in a good manner and following dispute resolution procedures in an orderly manner.
- The parties maintain good faith until the dispute ends by voluntarily implementing the decision without any unnecessary delays.

5. Conclusion

In contract law, the good faith principle results from the freedom of contract principle. When a party agrees to be bound by a promise, he must carry out the obligations. This sincerity is a manifestation of the good faith in him. Article 1338 verse (3) of ICC stipulates the good faith principle, but its unclear definition and benchmarks have created legal uncertainty. Multiple interpretations raise problems regarding the difficulty of measuring the parties' good faith in the agreement. Morally, good faith must exist in the human soul. As one of the essential principles in contract law, it is not enough to only regulate the good faith principle and state that an agreement must be carried out with good faith. This principle needs clear definitions

and benchmarks to provide fair parameters for the contracting parties, and also for the third parties (judges) when there are attempts by parties who have bad faith to not truly carry out the contract.

In the future, it is necessary to regulate the definition and benchmarks for the good faith principle in a comprehensive contract law. It is to prevent business actors from being unclear when constructing and implementing contracts based on the good faith principle. In the renewal of the good faith principle in the contract law, regulating the definition and benchmarks of this principle must be applied at every stage, including the pre-agreement stage, during the contract implementation stage, and the stage after the contract is completed. The parties are required to have good faith based on honesty. Parties must state everything that is needed truthfully. There is no hidden defect from the beginning until the time after the agreement is fulfilled. In addition, contracts must be carried out in good faith based on fairness, decency, norms, and common behaviour.

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