

PRINCIPLES OF HONESTY IN GOOD FAITH BUYING LAND

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Abstract

The land sale and purchase agreement does not rule out the possibility of a third party claiming that the land is his. Land issues often lead to long-term conflicts between communities and between communities and legal entities. Controversy about this land seems to be endless and always happens in this world, because human demand for land always increases along with population growth. In this study the author is interested in researching about how the application of the principle of good faith in the sale and purchase agreement of land? The type of research used is normative juridical and empirical juridical. The results of the study stated that the application of the principle of good faith in the sale and purchase agreement of an agreement. The parties who make the sale and purchase should adhere to the principle of good faith because the principle of good faith is very important in anticipating and minimizing buying and selling disputes. Because in this house sale there is a preliminary agreement that precedes the actual Sale and Purchase Agreement, then the PPJB still has binding power based on honesty.

Keywords : principles, good faith, buying and selling land

INTRODUCTION

Indonesia is one of the developing countries. With the increase in population, the need for land will continue to increase, as will the economic growth of the community. Understandably, one of the functions of land is to grow crops, build a house or a place to live, because one of the first human needs is to have a house. In addition, the need for land is also for the development of the country's economy.

Efforts to get the land can be done in various ways, one of which is by buying. Through a sale and purchase agreement, the right to land ownership is transferred from the seller to the buyer. The sale and purchase agreement is a real agreement, meaning that the delivery of the agreed upon goods is an absolute requirement for the existence of an agreement. The sale and purchase agreement does not cause legal defects and must meet the legal requirements of the agreement as regulated in Article 1320 of the Civil Code. The terms of a sale and purchase agreement can be divided into two (two) parts, namely subjective conditions which include agreement, skills and objective conditions in the form of a thing, and valid reasons. All of these conditions must be met in the agreement. If the subjective conditions are not met, the agreement can be canceled; if the objective conditions are not met, the agreement is invalid. Based on this, in a sale and purchase agreement there is a process where property in the form of land is transferred from the seller to the buyer.

The land sale and purchase agreement does not rule out the possibility of a third party claiming that the land is his. Land issues often lead to long-term conflicts between communities and between communities and legal entities. Controversy about this land seems to be endless and always happens in this world, because human demand for land always increases along with population growth.

Buying and selling is one of the main activities in the local economy. Therefore, buying and selling in the community often causes problems in all transactions. Because the transactions carried out by the parties in the sale and purchase will indirectly cause legal consequences in it.

In a sale and purchase transaction, there must be an object of sale and purchase. The object of buying and selling here is nothing but an object. Article 499 of the Civil Code defines the object itself. From the point of view of the state of law there is an understanding, namely "the object is every item and every right that can be controlled with property rights".

By making a sale and purchase transaction, the buyer will get the goods from the seller. The seller will get the price from the buyer. By law, the buyer will take ownership of the goods purchased from the seller. Therefore, the ideal seller is one who can offer the title. Or in other words, the seller is the owner of the goods being traded.

Every community activity, especially business, is always preceded by an agreement. Once the contents are agreed upon, this agreement is binding on both parties. This means that both parties must carry out the agreement they have made and write it down into the agreement, because the agreement between them creates a legal relationship between the two.

However, mutually agreed and binding agreements between the parties often cause problems and obstacles in the future. Therefore, it is very important for the parties to understand and understand the substance or content of the agreement before agreeing or agreeing to the agreement. Theoretically, according to Van Dunn, the agreement preparation stage can be divided into three stages, namely the agreement preparation stage (pre-contract stage), the implementation stage of the agreement content (contract stage), and the post-contract stage (post-contract stage).¹

One of the disputes regarding land ownership, for example, is a land sale and purchase dispute because there is a legal defect carried out by a seller who is not the original owner by selling a plot of land to a buyer with good intentions. Then came the decision stating that the buyer was in good faith. Theoretically, the dispute over the sale and purchase of land between the original owner and the buyer with good intentions can be assumed as a dispute between the doctrine of "nemo plus iuris transferre (ad alium) potest quam ipse habet" (one cannot transfer something more than what one owns) which defends the original owner's lawsuit, dealing with the principle of "bona fides" (good faith) which protects buyers in good faith. The legal position does seem to be a dilemma, because it puts both parties who are basically innocent to face each other in court and ask to be won, due to the actions of another party (the seller) who may have bad intentions. If the buyer's argument is accepted, then he will be considered as the (new) owner, even though the sale is made by a (supposedly)

¹ Ridwan Khairandy, 2003, Good Faith in Freedom of Contract, Postgraduate Faculty of Law, University of Indonesia, Jakarta, p.190

unauthorized party, while if the argument cannot be justified, then the transfer of rights will be considered invalid and the original owner will remain the legal owner.²

Article 1338 paragraph (3) of the Civil Code states: "An agreement must be carried out in good faith". This article means that the agreement that has been agreed upon by the parties must be carried out in accordance with propriety and justice.

Theoretically, the principle of good faith can be divided into two:

- 1) Subjective good faith, that is, before the agreement is executed, the parties must show honesty. Usually subjective good faith exists at the negotiation stage, where the parties openly provide true information about who they are by providing evidence in the form of documents about themselves (for example, the Articles of Association document if the party to the agreement is a legal entity PT) and other parties must check carefully.
- 2) Good faith is objective, that is, at the time of implementing the agreement, it must be in accordance with propriety or justice.

In the Indonesian legal system, the principle of good faith is mainly developed in the real estate business, as many real estate developers are currently making offers through brochures. If the consumer is interested in a house, then there is a personal agreement between the parties before the sale and purchase agreement is legally required to be made using a notarial deed in the form of a sale and purchase deed (AJB). This agreement is known as the Initial Sale and Purchase Agreement (PPJB). During a pre-sale agreement, negotiations are held to then be incorporated into the actual sale and purchase agreement. However, in reality, it is very possible that the contents of the agreement that were agreed upon during the negotiation (pre-signing stage) were not included or implemented in the execution of the contract.

RESEARCH METHOD

The type of research used is normative juridical and empirical juridical. Normative legal research is legal research that puts the law as a building system of norms. The system of norms in question is about principles, norms, rules of laws and regulations, agreements and doctrines (teachings).³ This research was conducted on secondary data such as legislation, scientific journals, legal books related to the law of cooperation and agency agreements. While empirical juridical research is research that has an object of study on community behavior.

To obtain the data and research materials, the data will be obtained by conducting field research through interviews with informants and library research, namely research that examines various literatures and laws and regulations. Data collection techniques in normative juridical law research will be obtained through document studies and empirical juridical law research in this study will be obtained through interviews. Document studies are collecting documents and data needed in research problems and then examining them intensely so that they can support and add to the belief and proof of an incident.

RESULTS AND DISCUSSION

An agreement legally made by the parties binds the person who made it legally binding, meaning an agreement legally made by the parties will bind them like the law. Therefore, a third party may suffer a loss for his actions, and a third party will not benefit from his actions, unless the agreement is stated in the agreement with the third party. This principle in the agreement is intended to provide legal certainty to the parties entering into the agreement.⁴

The sale and purchase agreement is an agreement with a name, and this sale and purchase agreement is most widely used by the public, both by business and non-commercial circles. One of the buying and selling agreements that are often carried out by the community is the sale and purchase of land parcels. Although this sale and purchase agreement is most widely used by the community, only a few libraries are steeped in buying and selling land.

In practice, land sale and purchase agreements often lead to disputes, conflicts and cases when the agreement is signed and at the time of implementation of the agreement. The most basic reason for the occurrence of cases of buying and selling land is that buyers and sellers have vile behavior in buying and selling land and/or buyers and sellers of land do not act in good faith.

² Regards, S. Good Faith Buyer, 2016, Jakarta. Leip.or.id/wp-content/uploads/2016/05/Slide-Restatement-Perdata.pdf

³ Soesilo and Pramudji, *BW Civil Code*, Rhedbook: Publisher, 2008, pp. 325-326

⁴ Celina Tri Siwi Kristiyanti, *Fulfillment of Good Faith Principles in Law Enforcement in Information Technology-Based Trading*, 2017 National Seminar on Information Systems, 14 September 2017, p. 33

The term buying and selling in Indonesian Covenant Law was adopted from the term *koop en verkoop* in Dutch. Dutch law also follows the concept of *emptio vendito* which comes from Roman law. In Roman law, the term for buying and selling is *emptio vendito*. *Emptio* means to buy, then *venditio* means a seller. From this term, it can be seen that there is a reciprocal relationship between two parties who carry out different legal actions, one party takes legal action to sell, and the other party takes action to buy.

In Indonesia, based on Article 1457 *Burgerlijk Wetboek* which is translated by the term Civil Code (hereinafter referred to as the Civil Code), buying and selling is an agreement or agreement that binds the seller and the buyer, the buyer binds himself to deliver an item that is mutually agreed upon, and the buyer commits himself to paying the agreed price for the goods (*koop en verkoop is eene overeenkomst waarbij de eene zich verbindt om eene zaak te leveren e andere om daar voor den bedogen prijs te betalen*).

Based on Article 1338 of the Civil Code, the agreement is executed in good faith (*zij moeten te goeder trouw worden ten uitvoer verklaart*). This provision is very abstract. There is no understanding and benchmark of good faith in the Civil Code. Therefore, it is necessary to find and explore the meaning and benchmarks of good faith which can be explained through existing legal theories.

According to Ridwan Khairandy, the benchmark of good faith in the implementation of buying and selling can be distinguished at the pre-agreement stage and the implementation of the agreement. Good faith at the pre-agreement stage is an obligation to notify or explain and examine facts for the parties relating to the subject being negotiated with the subject being negotiated.

In this regard, the decisions of the Hoge Raad state that the negotiating parties (the seller and the buyer) each have an obligation of good faith, namely the obligation to research (*onderzoekplicht*) and the obligation to inform or explain (*mededelingsplicht*).

In the context of buying and selling land, the principle of good faith pre-contract becomes important. For example, in the sale and purchase of land rights, the person who buys land rights must examine: (1) the sale and purchase agreement of land rights (2) the owner of land rights (3) the type of land rights whether land rights are land rights in the long term certain time, (4) guaranteed land rights, (5) whether the holders of land rights fulfill their obligations as holders of land rights, namely the use of land rights. Land is granted in accordance with the provisions of the UUPA Articles 6, 10 and 15 as well as the TUN's decision to grant its rights (6) The obligation to maintain boundary markings, including the obligation to maintain boundary markings as regulated in Article 17(3) PP 24 of 1997 concerning land registration, due to land cases potential often arise from disputes over land boundaries.

If the research as described above is not carried out, even if the transaction continues even though later it turns out that the land has a legal problem, then such a buyer is a buyer with bad intentions and will not be protected by law.

In addition, on the other hand, the seller is obliged to explain all information that is known and important to the buyer as well as the rights and obligations attached to the land rights which are the subject of the agreement. According to Ridwan Khairandy, if the seller has clearly stated all the information and there is no alleged violation of the law, the buyer can trust the statement and the buyer does not need to do further research. Judges should consider this obligation in good faith to one another.

In addition, in several contract law systems such as German treaty law and Dutch contract law, good faith is divided into subjective good faith and objective good faith in the sense of good faith in carrying out an agreement. Subjective good intentions (*subjective goede trouw*) are based on an inherent attitude or obligation (*pyschische gestelheid*), namely being aware or aware that their actions are contradictory or unfriendly.

Good faith contract implementation refers to objective good faith. The standard used in good faith is an objective standard which refers to an objective norm. The provisions of good faith refer to unwritten norms that have become legal norms as a separate source of law. These norms are said to be objective because behavior is not based on the assumptions of the parties themselves, but behavior must be in accordance with general assumptions about the good faith. Violation of the principle of good faith in an agreement results in the non-fulfillment of the subjective and objective conditions of the validity of an agreement as stipulated in Article 1320 of the Civil Code, therefore an agreement must be declared non-binding and null and void.

With regard to good faith (in good faith, *te goeder trouw*). Good faith referred to in Article 1338 paragraph (3) of the Civil Code is that the implementation of the agreement must be carried out by heeding the norms of decency and decency.⁵

Integrity standards or tests for performing agreements are, of course, objective standards. Refers to objective normative standards. The behavior of the parties to the agreement must be tested on the basis of objective norms. These norms are said to be objective because behavior is not based on the assumptions of the person himself, but rather behavior must be in accordance with general assumptions about good intentions. The simplest execution of objectives can be seen from whether the parties carry out the contents of the agreement in accordance with the agreed contents.

In a broader view of contract law, objective good faith refers to adherence to reasonable commercial standards of fair dealing, which according to Dutch legislators is called acting in accordance with *redelijkheid en billijkheid* (reasonableness and equity). this is absolutely objective standards. if a party must not act in an inappropriate and inappropriate manner it will not be a good defense to say that honestly believed his conduct to be reasonable and inequitable.

In society, buying and selling often occurs which causes various kinds of problems, especially in buying and selling land, including buying and selling land belonging to other people, where the land is not the owner of the seller or maybe the seller is in default. Default comes from the original term in Dutch. namely *wanprestie*, which means not fulfilling the obligations that have been stipulated in the engagement, both engagements arising from agreements and engagements arising from law.⁶

The parties to the agreement are the people or parties who bind themselves in an agreement. Basically, a person cannot enter into an engagement or agreement other than for himself (Article 1315 of the Civil Code). However, a person may assume a third party and promise that this third party will do something, but this does not reduce the claim for compensation against the person who made the promise if the third party refuses to fulfill it (Article 1316 of the Civil Code).⁷

The will of the parties embodied in an agreement is the basis for binding an agreement in French contract law. As is well known, the French civil code influenced the Dutch *Burgerlijk Wetboek* (BW), which based on the principle of concordance, was adopted by the Civil Code. Based on the principle of freedom of contract contained in Article 1338 of the Civil Code, an agreement made legally, binding on the parties who made it, but Article 1338 paragraph (3) of the Civil Code states that every agreement must be carried out in good faith. In exercising their rights, a creditor must pay attention to the interests of the debtor in certain situations. If the creditor claims his rights at the time of the debtor, it can be said that the creditor is considered to have carried out the contract not in good faith.

The application of the principle of good faith in business contracts must be considered, especially when entering into pre-contract agreements or negotiations, because good faith is only recognized when the agreement has fulfilled the conditions for the validity of the agreement or after negotiations have been carried out. Regarding the possibility of harm to the implementation of the principle of good faith, Law Number 8 of 1999 on Consumer Protection has implicitly acknowledged that good faith must exist before signing the agreement, so that pre-contract promises can be held accountable in the form of compensation, if the promise is broken. . The nature of good faith can be subjective, because the act when entering into a legal relationship or carrying out an agreement is a person's mental attitude. Many Indonesian legal writers consider good faith to be subjective. the principles of contract law, states that Dutch legal experts, including Hofmann and Vollmar, consider that in addition to the subjective notion of good faith, there is also objective good faith.

Article 1338 paragraph (3) if the implementation of an agreement violates propriety and justice, the judge is given the power to supervise the implementation of an agreement. According to Subekti, if the implementation of the agreement according to the letter will actually lead to injustice, therefore the judge has the authority to deviate from the contents of the agreement according to the letter.⁷² Implementation of an agreement that creates a sense of justice or imbalance, the judge has the right to make adjustments to the rights and obligations imposed by the agreement. stated in the contract. In practice, based on the principle of good faith, the judge uses his authority to interfere with the contents of the agreement that occurs between the parties, so it seems that the principle of good faith must not only be at the time of execution of the agreement, but also at the time an agreement is made and signed.

⁵ Muhammad Syaifuddin. *Contract Law, Understanding Contracts from the Perspective of Philosophy, Theory, Dogmatics and Legal Practice*, (Bandung: Mandar Maju, 2012), p. 94

⁶ Abdulkadir Muhammad, *Law of Engagement*, 3rd Edition. Bandung: Citra Aditya Bakti, 1992, p 99

⁷ Fajar Sugianto, *Contract Design & Analysis*, Surabaya: R.A.De.Rozarie, 2017, p.14

The application of the principle of good faith must not conflict with the principles of contract law and applicable laws and regulations. The principle of good faith plays a very important role in the conclusion of a contract. The performance of a good faith contract refers to the integrity of the objective. Standards used in good faith are objective standards, which refer to objective norms. A bona fide clause refers to an unwritten norm that has become a legal norm as a separate source of law. These norms are said to be objective because behavior is not based on the assumptions of the person himself, but rather behavior must be in accordance with general assumptions about good intentions.⁸

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The inclusion of good faith in the implementation of the agreement also means that we must interpret the agreement on the basis of justice and propriety. The Civil Code of propriety (principle of propriety) is stated in Article 1339 of the Civil Code which states that agreements are not only binding on things that are expressly stated therein, but also for everything according to propriety, custom or law.⁹

CONCLUSION

Application of the principle of good faith in the sale and purchase agreement of an agreement. The parties who make the sale and purchase should adhere to the principle of good faith because the principle of good faith is very important in anticipating and minimizing buying and selling disputes. Because in this house sale there is a preliminary agreement that precedes the actual Sale and Purchase Agreement, then the PPJB still has binding power based on honesty.

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⁸ Gunawan Djajaputra, Legal Protection for Buyers with Good Intentions (Case Study: Supreme Court Decision Number 1696k/Pdt/2016), Adigama Legal Journal, 2017, p. 8

⁹Purwahid Patrik, Basic Laws of Engagement (Engagements born from the Agreement and from the Act), (Bandung: Mandar Maju, 1994), p. 6