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# THE ROLE OF GOOD FAITH IN COMMERCIAL TRANSACTIONS: A NORMATIVE ANALYSIS OF ITS INTERPRETATION AND ENFORCEMENT IN INDONESIAN BUSINESS LAW

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***ABSTRACT***

*This study analyzes the role of good faith (itikad baik) in commercial transactions within the framework of Indonesian business law using a normative juridical approach. Good faith, as a fundamental principle of contract law, is recognized in the Indonesian Civil Code (KUHPerdata), particularly Articles 1338 and 1339, which emphasize that contracts must be executed in good faith and in line with propriety. Despite its doctrinal importance, the interpretation and enforcement of good faith in Indonesia remain inconsistent. Judicial practice shows variations between a subjective approach—focusing on honesty of intention—and an objective approach—emphasizing fairness, reasonableness, and protection of counterpart interests. This inconsistency creates legal uncertainty and weakens business confidence. Comparative analysis with German, Dutch, and international frameworks such as the UNIDROIT Principles and CISG highlights the importance of codifying and applying good faith uniformly to promote fairness and predictability. The findings recommend clearer legislative guidelines, the adoption of objective standards, judicial consistency, and alignment with international practices to strengthen contractual stability and Indonesia's competitiveness in global trade.*

**Keywords:** *Good Faith, Commercial Transactions, Indonesian Business Law, Contract Law, Normative Legal Analysis*

## INTRODUCTION

In commercial transactions, the principle of good faith (itikad baik) serves as a moral and legal foundation that ensures fairness, honesty, and transparency in contractual relationships. In Indonesia, it is formally recognized in the Civil Code (KUHPerdata), particularly Articles 1338 and 1339, which state that contracts must be executed in good faith and bind the parties as law. Despite this recognition, its interpretation and enforcement remain debated, reflecting tensions between doctrine and judicial practice. Article 1338 paragraph (3) emphasizes that good faith applies at all stages of a contract, from negotiation to dissolution, protecting parties from losses and safeguarding rights in cases such as life insurance (Nugraha et al., 2024). Challenges arise from the lack of detailed provisions in standard agreements, leading to disputes (O'Byrne, 1995), and the absence of clear benchmarks contributes to legal uncertainty (Nugrahenti & Hernawan, 2024). In business contracts, the principle of uberrimae fidei strengthens trust, reduces disputes, and ensures legal certainty (Sibarani, 2024), also serving as a benchmark for contract feasibility (Sibarani, 2024). Although not explicitly regulated, pre-contractual good faith is vital as parties often rely on trust before formal agreements, requiring its dynamic application throughout the contractual process (Kusmiati, 2020).

The ambiguity in defining good faith often results in inconsistent application by courts, creating challenges in achieving legal certainty for business actors, as some judicial decisions emphasize subjective honesty while others highlight objective standards of fairness and reasonableness, leading to unpredictability in dispute resolution and potentially undermining investor confidence as well as the stability of contractual agreements. In Indonesia, the Civil Code lacks a clear definition and benchmarks for good faith, which causes varied interpretations among judges and business actors, affecting legal certainty (Nugrahenti & Hernawan, 2024). Good faith is frequently viewed as a subjective concept centered on honesty, yet it also encompasses objective standards such as fairness and reasonableness that are not applied consistently (Jan, 2020). The absence of a clear framework for good faith can disadvantage parties acting in good faith, disrupt market integrity, and weaken investor confidence in contractual stability (Banaba et al., 2024; Maniruzzaman, 2012). These issues become increasingly critical in the context of globalization and the growing complexity of business transactions, which demand clearer legal frameworks to ensure Indonesia's competitiveness in regional and international trade. Thus, there is a pressing need to establish a clear definition and benchmarks for good faith covering all stages of contractual agreements to foster transparency and trust in business relationships (Nugrahenti & Hernawan, 2024), with comparative studies on international practices and sector-specific applications offering valuable insights for building a stronger and more reliable legal framework in Indonesia (Banaba et al., 2024).

This study is motivated by the need to critically examine the role of good faith in Indonesian commercial transactions, focusing on its doctrinal foundations, statutory regulation, and practical enforcement. By employing a normative legal analysis, this research aims to provide clarity on how good faith should be interpreted and applied in order to strengthen both legal certainty and justice. The findings are expected to contribute to the ongoing discourse on harmonizing the principle of good faith with the dynamic needs of the business sector, while offering recommendations for legislative refinement and consistent judicial practice.

## LITERATURE REVIEW

### 1. Concept of Good Faith in Contract Law

The principle of good faith in contract law serves as a fundamental doctrine guiding the formation, performance, and termination of agreements, often divided into subjective good faith, which involves honesty and sincerity of intention, and objective good faith, which pertains to fairness and adherence to social norms, a duality that has sparked debates regarding its scope and application in commercial transactions. Subjective good faith requires that a party believes their conduct is proper with an honest moral basis, even if not entirely reasonable (Jan, 2020), while objective good faith emphasizes adherence to reasonable standards of fair dealing and equity to ensure fairness in agreements (Jan, 2020). In civil law systems such as Germany and the Netherlands, good faith is a central principle promoting trust and fairness in business contracts, reducing disputes, and enhancing legal certainty, with the doctrine of uberrimae fidei serving as a benchmark for contract feasibility (Sibarani, 2024). From an international perspective, the UNIDROIT Principles of International Commercial Contracts (UPICCS) stress good faith and fair dealing to harmonize international trade law and fill legal gaps, thereby fostering honest transactions across borders (Sentosa & Badriyah, 2023). Philosophically, good faith is viewed as an abstract concept without a precise legislative definition, encompassing sincere belief and the absence of malice, yet remaining a fundamental tenet across most legal systems that requires parties to act in good faith throughout contractual relations (Dany, n.d.).

### 2. Good Faith in Indonesian Legal Framework

The principle of good faith in Indonesian contract law, primarily derived from Article 1338(3) of the Civil Code, serves as a crucial mechanism to ensure fairness and balance in contractual relationships; however, the absence of a clear definition and benchmarks has led to varied judicial interpretations and inconsistent applications in commercial disputes. The Civil Code, influenced by Dutch law, mandates contracts to be executed in good faith but fails to provide precise criteria, resulting in judicial unpredictability (Nugrahenti & Hernawan, 2024). Good faith is expected to guide all stages of a contract, from negotiation to execution and termination, yet its application remains unclear, especially in pre-contractual phases (Banaba et al., 2024; Nugraha et al., 2024). Courts have invoked this principle in cases such as life insurance contracts to safeguard rights, but the lack of detailed guidelines often produces divergent interpretations (Nugraha et al., 2024), while standard agreements, notably in real estate, frequently neglect elements of good faith due to insufficient detail and fairness (O'Byrne, 1995). To address these issues, scholars recommend explicitly defining and establishing benchmarks for good faith that emphasize honesty, decency, and fairness across contractual processes (Nugrahenti & Hernawan, 2024), with comparative studies and the integration of international practices further enhancing its application to foster equitable and transparent business practices in Indonesia (Banaba et al., 2024; Kusmiati, 2020).

### 3. Judicial Interpretation of Good Faith in Indonesia

The principle of good faith in Indonesian contract law is marked by inconsistency, reflecting a tension between a narrow interpretation focused solely on honesty at the stage of contract formation and a broader, more objective interpretation that encompasses fairness and propriety throughout the entire contractual relationship. The narrow view risks disadvantaging parties who act transparently during negotiations (Banaba et al., 2024), while the broader interpretation, supported by scholars, extends good faith from pre-agreement to post-agreement stages to promote trust and transparency (Nugraha et al., 2024; Nugrahenti & Hernawan, 2024). These divergent views are compounded by judicial inconsistencies, as seen in cases such as life insurance contracts where the obligation of good faith should be mutual but is often interpreted unevenly (Huda, 2017), and in trade contracts where the principle is emphasized across stages but applied variably, thereby affecting parties' protections (Nugraha et al., 2024). The lack of a clear definition and benchmarks in the Civil Code contributes to uncertainty, with differing opinions among judges and business actors undermining legal certainty and market integrity (Nugrahenti & Hernawan, 2024; O'Byrne, 1995), while the prevalence of standard agreements lacking detail further complicates the consistent application of fairness and reasonableness (O'Byrne, 1995).

### 4. Research Gap and Contribution

Existing literature acknowledges the importance of good faith but often stops short of reconciling doctrinal theory with judicial practice in Indonesia. Furthermore, there is limited discussion on how good faith should evolve in response to the increasing complexity of modern business transactions and Indonesia's participation in international trade regimes. This study seeks to fill this gap by offering a normative legal analysis that synthesizes statutory provisions, academic perspectives, and comparative insights, while also proposing recommendations for consistent judicial application and legislative development.

## RESEARCH METHODS

### 1. Research Approach

This study employs a normative juridical approach (yuridis normatif), focusing on the analysis of legal norms, statutory provisions, judicial decisions, and scholarly doctrines related to the principle of good faith in commercial transactions. The normative juridical method is appropriate because the research does not involve empirical fieldwork but instead examines law as a normative system to evaluate its interpretation and enforcement in Indonesian business law.

### 2. Nature of Research

The nature of this research is prescriptive and analytical. It is prescriptive in that it seeks to provide recommendations for the consistent application of good faith in Indonesian commercial law, while analytical in that it systematically examines legal sources and doctrines to uncover the conceptual and practical dimensions of good faith.

### 3. Sources of Legal Materials

This research relies on three categories of legal materials, namely primary, secondary, and tertiary sources. Primary legal materials include the Indonesian Civil Code (KUHPerdata), particularly Articles 1338 and 1339, relevant commercial law provisions regulating contracts and business transactions, judicial decisions from Indonesian courts concerning the application of good faith, as well as international instruments such as the UNIDROIT Principles and CISG for comparative analysis. Secondary legal materials consist of legal doctrines and scholarly writings by Indonesian and international jurists, along with commentaries, journals, and textbooks on contract law, business law, and the principle of good faith, including legal interpretations and opinions published by academics and practitioners. Tertiary legal materials comprise legal dictionaries, encyclopedias, and other supporting reference works used to clarify terminology and legal concepts.

### 4. Method of Data Collection

The collection of legal materials is conducted through library research (studi kepustakaan). This includes a review of statutory texts, court decisions, legal commentaries, and academic publications. Online databases and legal journals are also used to obtain up-to-date interpretations and scholarly debates regarding good faith.

### 5. Method of Analysis

The analysis in this research is carried out using qualitative juridical methods, where the collected legal materials are systematically reviewed, classified, and interpreted to assess the role of good faith in commercial transactions. This process includes statutory interpretation to understand the meaning of good faith within the Civil Code, doctrinal analysis to examine scholarly debates on subjective versus objective good faith, comparative analysis to evaluate how other jurisdictions and international instruments regulate good faith, and prescriptive reasoning to formulate recommendations aimed at improving the consistency of judicial practice and enhancing legislative clarity in Indonesia.

## RESULT AND DISCUSSION

### 1. Doctrinal Foundation of Good Faith in Indonesian Law

The principle of good faith (itikad baik) in Indonesian law is primarily rooted in the Civil Code (KUHPerdata), particularly Article 1338(3), which requires contracts to be executed in good faith, and Article 1339, which extends the binding force of contracts to customary norms and principles of propriety, signifying that contractual freedom is not absolute but subject to fairness and justice. Scholars such as Subekti and Mariam Darus Badrulzaman emphasize its role as a corrective mechanism to ensure contractual rights are exercised without violating moral standards or causing harm, aligning with the civil law tradition inherited from Dutch law, where good faith serves as both a legal and ethical principle. In practice, good faith is crucial in contractual agreements, ensuring reasonableness and equity, yet standard contracts such as in housing often lack detail, leading to inequitable terms (O'Byrne, 1995), while in trade contracts it applies across all stages to protect parties from losses and promote fairness (Nugraha et al., 2024). Nonetheless, challenges in implementation arise, as seen in the Jiwasraya insurance case where misleading information violated good faith and caused major financial losses, underscoring the need for transparency and honesty (Waliyani & Tohir, n.d.), while the absence of clear definitions in the Civil Code leads to varied judicial interpretations and enforcement difficulties (Khalid, 2023). In financial agreements such as loan contracts, good faith is equally vital to prevent disputes and defaults, ensuring obligations are honored and legal certainty is maintained (Suryani & Ginting, 2024).

**2. Judicial Application and Challenges**

Indonesian court practice reveals diverse and sometimes inconsistent interpretations of good faith, with some decisions adopting a subjective approach that emphasizes the honesty of intention at the time of contract formation and limits good faith to the absence of fraud, deceit, or misrepresentation (Nugrahenti & Hernawan, 2024), while others apply an objective standard requiring parties to act reasonably, respect legitimate interests, and maintain contractual balance (Khairandy, 2009). This inconsistency, rooted in the lack of a clear definition and benchmarks for good faith in the Civil Code, has led to varied judicial outcomes, as seen in life insurance cases where courts fail to share a unified interpretation (Huda, 2017). The absence of uniform reasoning creates legal uncertainty, particularly in commercial disputes where predictability is vital, making it difficult for business actors to anticipate whether courts will prioritize subjective honesty or objective fairness, thereby weakening contractual stability and potentially deterring investment (Nugraha et al., 2024; Nugrahenti & Hernawan, 2024). To address this, scholars argue for clearer legal doctrines and amendments to the Civil Code to explicitly define and benchmark good faith across all stages of contractual agreements (Banaba et al., 2024), as establishing a robust legal framework would enhance transparency, fairness, and trust in business relationships while minimizing disputes and fostering a more conducive business climate (Nugraha et al., 2024).

**3. Comparative Insights from International Frameworks**

Comparative legal analysis shows that Indonesia's challenges in applying good faith are not unique and can benefit from lessons abroad. The German Civil Code (BGB) through Section 242 explicitly codifies good faith, requiring obligations to be performed in accordance with good faith and customary practices, thereby providing clarity and consistency that allow courts to apply the principle uniformly (Sattari, 2013). Similarly, Dutch law integrates good faith as a general principle governing all contractual relationships, enabling courts to adjust contractual terms when they conflict with fairness, a practice that could benefit Indonesian law (Miarsa et al., 2024). At the international level, instruments such as the UNIDROIT Principles of International Commercial Contracts (PICC) and the United Nations Convention on Contracts for the International Sale of Goods (CISG) recognize good faith as a mandatory standard of conduct in both contract formation and performance, promoting fairness and predictability in trade (Sattari, 2013). These examples highlight that good faith functions not only as a moral ideal but also as a practical mechanism to ensure stability and trust in commerce.

In contrast, Indonesia's legal system, although influenced by Dutch law, lacks a clear definition and benchmarks for good faith, leading to inconsistent judicial interpretations and challenges for business actors in contract disputes (Miarsa et al., 2024; Nugrahenti & Hernawan, 2024). The absence of a definitive framework has weakened legal certainty and contractual stability, underscoring the need for reforms to establish clear guidelines that emphasize fairness and honesty throughout the contractual process (Nugrahenti & Hernawan, 2024). Lessons from Dutch and German law, with their structured approaches to codifying good faith, offer valuable insights for Indonesian legal reform, while international instruments like the UNIDROIT Principles and CISG illustrate how adopting a more explicit and mandatory standard of good faith could strengthen Indonesia's competitiveness in international trade by fostering transparency, fairness, and predictability in contractual relationships (Sattari, 2013; Thamrin, 2016).

**4. Normative Implications for Indonesian Business Law**

The doctrinal and comparative findings highlight significant implications for Indonesian law. First, the absence of a unified definition of good faith in statutory provisions has led to divergent judicial practices. This suggests the urgent need for legislative refinement, either through amendments to the Civil Code or the adoption of specific commercial law provisions that clarify the scope of good faith. Clearer regulation would provide guidance to both judges and business actors, reducing uncertainty.

Second, the judiciary should develop consistent jurisprudential standards, leaning toward an objective interpretation of good faith. Such an approach would strengthen contractual fairness by ensuring that parties are not only honest but also act reasonably in fulfilling their obligations. Objective good faith better reflects the realities of modern commerce, where complex transactions require trust and equitable conduct.

Third, aligning Indonesian practice with international frameworks would enhance Indonesia’s competitiveness in global trade. By harmonizing domestic legal standards with instruments such as the UNIDROIT Principles and CISG, Indonesia can foster greater legal certainty and attract foreign investment. This is particularly important given Indonesia’s growing role in the ASEAN Economic Community and global markets.

**5. Recommendations for Strengthening Enforcement**

To address current challenges, this study proposes several normative recommendations, including the codification of good faith through explicit statutory provisions that define and regulate its role in commercial transactions, drawing from comparative models such as the German BGB and UNIDROIT Principles; the enhancement of judicial capacity through training and the development of Supreme Court guidelines or jurisprudential standards to ensure consistent interpretation and application; the advancement of doctrinal development by encouraging academic discourse that reconciles subjective and objective approaches to provide theoretical clarity for practice; and the integration of good faith into business practices by promoting awareness among business actors to ensure that contracts are drafted and performed with due regard for fairness and reasonableness.

## CONCLUSION AND RECOMMENDATIONS

The principle of good faith serves as both a legal and moral foundation for commercial transactions in Indonesia. Although the Civil Code acknowledges its importance, the absence of a clear and unified definition has resulted in inconsistent judicial application, creating uncertainty for business actors. Some courts emphasize subjective honesty limited to the intention at contract formation, while others adopt an objective standard of fairness and reasonableness, leading to unpredictability in contractual enforcement. A normative legal analysis suggests that good faith should not only measure honesty but also serve as a broader standard of fairness throughout the entire lifecycle of a contract. Comparative insights from German and Dutch law, as well as international instruments like the UNIDROIT Principles and CISG, demonstrate that codification and consistent application of good faith can strengthen both legal certainty and commercial trust.

To improve the effectiveness of good faith in Indonesian business law, several measures are necessary. First, codification through clearer legislative provisions would provide certainty and benchmarks for its application. Second, judicial consistency must be reinforced with guidelines and training to ensure uniform interpretation. Third, doctrinal development should reconcile subjective and objective approaches, offering theoretical clarity to guide practice. Finally, harmonization with international standards is essential to align Indonesian law with global trade practices. Together, these reforms would ensure that good faith operates as a reliable principle, balancing contractual freedom with justice, while enhancing Indonesia’s business environment through greater fairness, stability, and legal certainty.

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