

Application of The Principle of Good Faith In Selling Disputes of Selling Buying Using Pre Project Selling

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ABSTRACT

Selling and buying land is a legal act that gives birth to rights and obligations for sellers and buyers. In carrying out the sale and purchase of land, it is mandatory to be guided by the legal provisions regarding the legal procedures to be followed, and must prioritize the principle of good faith in the bargaining stage up to the payment and sale and purchase agreement. In practice, lawsuits are often found on the attitude of one party that does not reflect the principle of good faith in buying and selling, of course this is against the rule of law and can be detrimental to other parties. This research is expected to be a means for legal scholars to understand the context of the land sale and purchase agreement. This research method used a normative juridical method with a conceptual approach, legislation and a case approach. The conclusion of this study is that in making an agreement, it is necessary to pay attention to fulfilling the elements of Article 1230 BW in the form of a valid condition of an agreement, as well as prioritizing the principle of good faith as the basis for making a land sale and purchase agreement, it should be done before the PPAT, if the land has not been certified, it can be done before the village head. . The process of buying and selling land in accordance with procedures and without any elements of forgery will reduce the level of legal risk in the future, besides the benefits of using the principle of good faith for the buyer, namely the rights of the buyer which are protected by law.

Keywords: Good Faith, Buying And Selling, Land

1. INTRODUCTION

Along with the development of an increasingly modern era, a place to live is not only a house unit. Current residences can be in the form of housing complexes, up to flat units. Where currently there are apartment units that are equipped with good and elite facilities, which are often known as apartments (Putra, 2019). Apartments and housing are basic human needs that are closely related to land and buildings. Along with population growth in Indonesia, the need for housing will increase and more land is needed. Fulfilling the need for houses and apartments has made many companies (developers) develop their businesses. In other words, nowadays it is often used as a job opportunity called the property world. The property business is always associated with business land for people who want to carry out investment business activities (Saputri et al., 2019). However, the developer must also pay attention to the very tight level of competition to demand that developers always try to improve competitiveness through many aspects that can be offered to the public. One of them is through marketing activities (Dewi, 2020).

Marketing is an activity that is always carried out for developers of company parties to carry out promotional activities where one of them is designing prices and distributing goods that are considered to be able to satisfy desires and achieve company goals. Good marketing can affect consumer interest coupled with the physical form in the form of how the concepts are offered such



as building design, space layout, quality of building materials used, land area and building area, views offered, accessibility, and facilities, strategic location, small down payment costs to low annual installments (Saraswita, 2019). That way people are easily attracted to take one unit offered from the company. As currently, people are no stranger to offering pre-project selling or selling property buildings. Where in the offer, if the buyer agrees to the product being offered, an agreement has been reached in which an agreement will arise between the buyer and the property company, with the things that have been agreed upon (Fahirah, 2011).

In the agreement the buyer is promised things that make the buyer interested, the things promised by the company are very interesting, so that people are very interested in having a decent dwelling and filled with the required facilities. Such as the building will be finished in a short time, complete and adequate facilities, and other things that are more attractive to buyers to buy the property. However, things that are promised by the property company sometimes do not end up as expected. Currently, apartment development actors often use pre-project selling sales strategies through the media and face-to-face to attract consumers' attention, but they often still cause problems (Roesli et al., 2017). As for the obstacles that occurred in the construction so that the promised things could not be fulfilled by the property company. If the property company cannot fulfill the promise, the property company has defaulted, namely where the first party, namely the property company, does not fulfill its promise to the second party, namely the buyer, therefore this can lead to disputes, which are often dispute resolutions are always carried out. according to Indonesian law or positive law. But actually it can also be resolved in a familial way by prioritizing good faith, if both parties agree to resolve the dispute without entering the judicial process. Based on the description of the background above, in the thesis entitled Application of the Principle of Good Faith in Settlement of Sale and Purchase Disputes Using Pre Project Selling, the problems to be studied are as follows:

1. What are the characteristics of good faith based on Indonesian law?
2. What is the meaning and function of the principle of good faith in the settlement of buying and selling disputes using pre project selling?

2. RESEARCH METHODS

This research is a normative research, which means that this research examines the side of the legislation itself, not examining social phenomena due to existing legislation. The approach method used in this research is the statutory approach. This approach is used because the discussion in this study will refer to the Act. Legal materials used in this paper, among others, can be divided into primary legal materials and secondary legal materials. Primary legal materials are

materials in the form of laws and regulations that regulate and relate to the problems discussed in this study. While secondary legal materials are legal materials used to clarify primary legal materials. The Primary Legal Materials used in this study are:

1. The 1945 Constitution of the Republic of Indonesia;
2. Burgerlijk Wetboek
3. Law No.20 of 2011 concerning Flats (State Gazette of the Republic of Indonesia of 2011 number 108, Supplement to the State Gazette of the Republic of Indonesia Number 5252)

Secondary legal materials Secondary legal materials are obtained from literature, scientific texts, especially on the principle of Good Faith and Pre Project Selling, legal writings in the form of articles and books, journals and papers, as well as legal research to find out actual legal issues, which the author considers to be still closely related to the subject matter of this research. Legal Material Collection Methods. There are several ways to obtain data that is carried out in this paper, including primary legal materials being collected, inventoried, and interpreted, to be further categorized systematically and then analyzed in order to answer the existing problems. Secondary legal materials are used to support primary legal materials. From the collection of legal materials, processing and analysis are carried out, and the results are presented in an argumentative manner. Analysis of Legal Materials The analysis used by the author is deductive analysis, this analysis is based on norms, legal principles and values that have been recognized, then interpreted in a separate legal system to be associated with the problems in this research.

3. RESULTS AND DISCUSSION

Characteristics of Good Faith Based On The Law In Indonesia

The principle of good faith can be concluded from article 1338 paragraph (3) BW. Article 1338 paragraph (3) BW reads that the agreement must be carried out in good faith. The principle of good faith is the principle that the parties, namely the creditor and debtor, must carry out the substance of the contract based on firm trust or confidence or good will from the parties. The principle of good faith is divided into two types, namely relative good faith and absolute good faith. In relative good faith, people pay attention to the real attitude and behavior of the subject. In absolute faith, the judgment lies in common sense and fairness, an objective measure is made to assess the situation (impartial assessment) according to objective norms (Salim, 2021).

Civil law originally came from the Romans, which was around 50 BC during the reign of Julius Caesar in power in Western Europe, which since then Roman law has been enforced in France, although mixed with the original law that existed before the Romans controlled Galis (France). This situation continued until the reign of Louis XV, namely with the beginning of efforts

towards legal unity which later resulted in a codification which was named "Code Civil Des Francais" on March 21, 1804 which was later re-enacted in 1807 as "Code Napoleon" (Hariyanto , 2009). Good faith means that both parties must treat each other without deceit, without trickery, without disturbing the other party, not only looking at their own interests, but also the interests of the other party. The Netherlands regulates good faith in Article 1374 paragraph (3) of the Dutch BW (version 1838) which states that the agreement must be carried out in good faith. Therefore, the judge's decision from case to case which becomes jurisprudence is very much needed by the community as a guide in which direction the understanding of the principle of good faith has developed in accordance with the community's sense of justice. According to (Wéry et al., 2003), the meaning of implementation in good faith (*uitvoering te goeder trouw*) in Article 1374 paragraph (3) above is still the same as the meaning of *bona fides* in Roman law several centuries ago (Khairandy, 2015), Freedom Contracting and Pacta Sunt Servanda Versus Good Faith: Attitudes Courts Should Take: 2016). This agreement strongly adheres to using good faith as a settlement that ends in justice, the insurance agreement is determined as an agreement based on "utmost good faith" or perfect honesty, meaning that the insured in negotiating with the insurance company (the insurer), before signing the agreement, has an obligation to reveal all material facts (Chumaida, 2014).

In the realm of law, it is also known that there is good faith which is also often used as an alternative to resolve disputes. So it needs to be studied again whether good faith can also be said as a principle. So it is necessary to understand in depth how the existence of good faith in Indonesia and the principle of good faith can be used in what time. If good faith is considered to be able to solve a problem, then good faith can be said to be the principle on which to think or act, and a medium to seek justice. In general, the values of justice must be a reflection of the characteristic life attitude of the Indonesian nation as stated in Pancasila and the 45 Constitution, namely based on proportional values, balance values, propriety values, good faith, and protection.

Human values are based on the second principle of Pancasila, namely just and civilized humanity. Thus, all parties respect and protect each other in realizing common goals. However, in the making and implementation of the agreement, it often does not go well, even causes conflict, it does not reflect justice for the parties, especially in standard agreements. This is certainly contrary to the purpose of making the agreement. This kind of thing requires legal means to solve it. The existence of law is very necessary to be respected and the principles of law are upheld. Given the principles in the law serves as the protection of the interests of the community. Expectations to obey the law in practice should go well.³³ Good faith as a principle, (Good Faith Principle), is a fundamental principle in the world of covenants. Good faith is well known for principles such as

honesty, loyalty, and fulfillment of obligations and responsibilities. This is a very basic principle in Roman law that humans must always have good faith in an agreement, where good faith remains the main basis used for all kinds of things in the agreement. The existence of legal principles in the rule of law is more accurately analogous to the existence of the "brain" in the human body. Legal principles also have a very vital function for the rule of law, namely the center of the legal system of thought that regulates emotions (legal spirit) and the pulse of law (legal responsibility), as well as coordinating the flow and flow of law, so that the need to maintain a balance in the rule of law is responsive to needs. Good faith is referred to as "honestly" or "honestly". Furthermore, R. Wirjono Prodjodikoro explained that there are two kinds of good faith, namely: 38 1. Good faith at the time a legal relationship comes into force, which is usually in the form of a person's thoughts or assumptions that the conditions for starting a legal relationship have been fulfilled. The law provides protection to those who have good intentions, while those who do not have good intentions (te kwader trouw) must be responsible and bear the risk; 2. Good faith at the time of the implementation of the rights and obligations in the legal relationship, as regulated in Article 1338 (3) BW, which is objective and dynamic in nature following the situation surrounding the legal action and the emphasis is on the actions to be taken by the two parties. parties, namely the action as the implementation of a thing.

The nature and principle of good faith as described above, it can be understood that this principle can also be used as an important matter in dispute resolution, whether in terms of an agreement or not. Considering that as a principle, from the point of view of positive law, these principles are interpreted as applying juridical objectives in answering legal issues related to conflict resolution. This opinion indicates that the legal principles in their application, both theoretical and practical, require explanations, explanations related to the function of legal principles in line with their usefulness. Usually in practice, dispute resolution is mostly done through alternative dispute resolution institutions (negotiation, mediation, conciliation, and other methods chosen by the parties in accordance with the applicable law), because the procedure is single, non-bureaucratic, fast, and low-cost, based on deliberation for benefits, and certainty that can be accepted by all parties to the dispute. In this case, the role of good faith is very much needed, with good faith to solve the problem, then the two parties do not need to enter into the judicial process which requires expensive fees. However, even though the dispute eventually enters the realm of the judiciary, the principle of good faith must still be used and upheld, as evidence that the parties are cooperative in solving problems and seeking justice as best as possible according to existing rules.

Meaning And Function of The Principle of Good Faith In Settlement of Selling Disputes Using Pre Project Selling

In civil procedural law, civil disputes can be broadly divided into two types, namely Default or breach of contract and unlawful acts (PMH). here Default is explained from the source of the occurrence of an engagement arising out of an agreement where when the parties have promised and fulfilled their rights and obligations, if one of the parties violates these rights or obligations, it can be said that one of the parties breaks a promise or defaults on achievements that are not fulfilled by one of the parties. one party, and this is according to the terms of the validity of the agreement Article 1320-1337 BW, where the final result of this Default is the implementation of achievements or compensation (Roesli et al., 2017).

Unlawful acts are legal obligations, or violate the subjective rights of others, or violate decency or violate propriety, thoroughness, and prudence, and in this PMH there is no need for a warning or warning in the form of a subpoena. Once there is a loss due to PMH, the right to claim compensation immediately arises and the final result of this PMH is restoration to its original state or compensation (Salim, 2021). Default is the implementation of obligations that are not fulfilled or broken promises or negligence carried out by the debtor either because he does not carry out what has been agreed or even does something that according to the agreement should not be done. This default is stated in Article 1320-1327 BW. There are also explained that there are four kinds of defaults, namely:

- Permanent engagement, in which the creditor can still sue the debtor for the performance of the performance, if he is late in fulfilling the achievement. In addition, creditors have the right to claim compensation due to delays in carrying out their achievements. This is because the creditor will benefit if the debtor performs the performance on time.
- The debtor must pay compensation to the creditor (Article 1234 BW)
- The risk burden is transferred to the debtor's loss, if the obstacle arises after the debtor defaults, unless there is an intentional or major mistake on the part of the creditor. Therefore, the debtor is not justified in adhering to coercive circumstances.

If the engagement is born from a reciprocal agreement, the creditor can absolve himself of his obligation to provide a counter-achievement by using Article 1266 BW. There are three categories of unlawful acts, which are as follows:

- Intentional unlawful acts'
- Unlawful acts (without intentional or negligent elements
-) · Unlawful acts due to negligence.

Problems or conflicts related to legal relations individual or private, often the matter is brought to court, it will always take a long time and the cost is very expensive and the results cannot be expected or confirmed even though one of the disputing parties has brought strong evidence. the court and its decision already have permanent or definite force, the decision may not necessarily be implemented immediately considering that there is a possibility for a review of the decision and there is resistance from the executed party. alternatively without going through the judicial system where there are ways of negotiation, mediation, conciliation and arbitration, with these four ways it can be taken with the litigants which is the fastest way to resolve the dispute by deliberation and of course based on good faith by both parties or more case in it. The four ways or mechanisms by using alternative solutions.

If one of the parties does not want to settle the case in an amicable way, it is necessary to have an alternative route that is carried out and with the help of mediators to refer so that the problem does not go to court, where the alternative path consists of negotiation, mediation, conciliation, and arbitration, with the following explanation Negotiation in everyday language we often hear the word negotiation in general with the term "negotiating" or "consulting", in general negotiation can be interpreted as an effort to resolve the dispute of the parties without going through a judicial process, in which there is a process:

1. The process of bargaining by negotiating to give or take in order to reach an agreement.
2. Peaceful settlement of disputes through negotiations between the disputing parties, where negotiations involve two or more parties, the parties must require the involvement of each other, each party must assume that it is possible to persuade the other party.

Mediation is intervention in a dispute or negotiation by an acceptable, impartial and neutral third party who does not have the authority to make decisions in assisting the disputing parties in an effort to reach a voluntary agreement in resolving the disputed issues. Conciliation is an attempt to resolve a dispute by submitting it to a commission of persons tasked with expounding the facts and usually after hearing the parties and seeking peace. Arbitration according to Law no. 30 of 1999, where arbitration is a way of settling a civil case outside a general court based on an arbitration agreement made in writing by the disputing parties, in some senses there are similarities in which this arbitration will be decided by a third party or with several people. referee.

Pre Project Selling is a sales system before the project is built where the property being sold is just an image or concept. This marketing concept is indeed very profitable for developers because it relatively helps the developer's funds/money turnover. The current state of the market is also certain so that the element of speculation becomes smaller. The buying and selling system using Pre Project Selling is in great demand today, where the offer will be upgraded every year by

following business developments (Geumala et al., 2018). Here the developer will offer a very tempting offer for the creditor, basically this pre project selling system will make it easier for creditors to make payments and property rights that will become the property of creditors (Yudhantaka, 2017). There are several keywords in the purchase of pre project selling, namely:

- a. Check the legality of the project, such as a certificate or deed of sale and purchase of land, a permit to designate the use of land, a building permit, and others;
- b. The house for own dwelling must be in a location that most supports activities;
- c. The price offered by the pre-project selling property must be cheaper than the finished house;
- d. Try to make sure you get a home or apartment loan before paying the down payment;
- e. Calculate the method of completing the project on a regular basis or installments;
- f. Pay attention to the points of the binding sale and purchase agreement, do not let the articles only benefit the developer.

In this case, by using Pre Project Selling, of course, it must be observed in detail how the agreement made by the developer is not only the developer who benefits but the consumer or the debtor.

4. CONCLUSIONS

Whereas the preliminary agreement used in the process of buying and selling a house or apartment is carried out to fulfill the principle of legal certainty for the act of buying and selling, in general, the developer first sells the floor plan of the prospective housing unit to the consumer. In practice, consumers give a NUP sign in the form of payment of a predetermined and agreed amount of funds.

In the process of implementing the agreement implementation process, the developer is required to fulfill his obligations in the form of carrying out development according to the agreed time. In practice, there is often abuse of pre project selling by way of delaying the implementation of development or not doing development which results in disputes between developers and buyers. To avoid a prolonged dispute, the developer must have good intentions to resolve the issue, so as not to proceed to another legal process.

Suggestions

1. It is mandatory to check the legality of the land and the housing/unit permit before making a purchase, so as not to be deceived by irresponsible developers. Checking the land can be done through a means of checking the local Land Office and the copyright office to see the RTRW of the land

2. that a buyer with good intentions must be protected by law, if he feels aggrieved by the developer's actions that commit fraud, he can report it to the party who authorities as a means of requesting legal protection. The government should appeal to the public regarding the modus operandi that developers often commit in the form of fraud to buyers of housing units or apartments.

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