

The Principle of Good Faith In Transactional Agreements In The Community of West Seram Regency

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Abstract

Introduction: In the western Seram Regency, in some contracts made by the people of Wasia and Rumahkay villages, there is an imbalance in the implementation of contracts where contracts that occur most often are oral contracts in addition to written contracts, where each contract made often does not fulfill the elements of Article 1338 of the Civil Code which contains the principle of good faith.

Purposes of the Research: to find out how The Principle Of Good Faith In Transactional Agreements In The Community Of West Seram Regency.

Methods of the Research: This Study Case uses sociolegal research, which is a combination research method between doctrinal legal research methods and empirical legal research methods.

Results of the Research: The consequences of the existence of the principle of bad faith in the agreement being canceled because it did not fulfill the subjective requirements in the agreement. The solution is the need for encouragement for the Village Government as a Transactional Agreement Deed Facilitator as a preventive measure to reduce the inequality of agreements. In addition, there is a need for a standardized agreement format provided by the village government to meet the transactional needs of the community.

Keywords: The Principle Of Good Faith; Transactional Agreements; Community Of West Seram Regency.

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INTRODUCTION

As a Subject of Law, humans can't be separated from all legal actions. one of the most common legal actions is to make an agreement or contract in order to fulfill the needs and survival or in order to benefit. Contracts or agreements made both in writing and verbally are concrete events that can be observed and experienced in everyday life in society. Agreement according to Article 1313 of the Civil Code is an act in which one or more people bind themselves to one or more other people. Based on this definition, the agreement is interpreted as a relationship or agreement of the parties who mutually agree on a matter that has been determined together. This contract or agreement is a legal event where a person promises to do or not do something.¹

In each agreement with the intention that in every agreement that has been made and agreed upon by the parties must be carried out in good faith, as specified in Article 1338

¹ Ahmadi Miru, S, "Hukum Kontrak dan Perancangan Kontrak", Jakarta, 2016, Raja Gravindo, p.2.

paragraph (3) of the Civil Code which states that all agreements must be made in good faith. According to this article, it can be concluded that good faith is the basis for implementing the agreement. The parties in drafting and executing the agreement must pay attention to the principle of good faith, that in implementing the agreement must heed the norms of compliance and decency. Concerning the implementation of the principle of good faith which is closely related to propriety, it is also explained in Article 1339 of the Civil Code which states that an agreement is not only binding for matters expressly stated in an agreement, but also binding for everything that according to the nature of the agreement is required by propriety, custom and law.²

The regulation of Article 1338 paragraph (3) of the Civil Code is an implementation of the legal principle in an engagement, namely the principle of good faith in freedom of contract. Legal principles according to Satjipto Rahardjo as cited by Fence M. Wantu who argues that "legal principles are not legal regulations, but there is no law that can be understood without knowing the legal principles that exist in it",³ Then as well as in an agreement so it can be understandable and mutually comprehended, it is important to know that the principle of good faith which is also regulated in 1338 Civil Code is an important step in making contracts to be implemented in the future.

In general, the common people are not familiar with the rules in implementing agreements, especially regarding legal principles, so often transactional agreements are carried out full of "intrigue" or "deceit" as if the agreement made has fulfilled a sense of trust, balance, and so on between the parties, especially if the agreement is made between ordinary people with parties who are legally capable, or in some cases recorded unbalanced agreements often occur between villagers and outsiders who want to exploit the natural resources of a village. In the western Seram Regency, several contracts carried out by the villagers of Wasia and Rumahkay occur inequality in the application of contracts where the contracts that occur most often are verbal contracts in addition to written contracts, where each contract made often does not fulfill the elements of Article 1338 of the Civil Code which contains the principle of good faith. Article 1320 of the Civil Code determines the terms of a valid agreement to be executed by both parties, such as: 1) Agreement of those who bind themselves in the agreement; 2) Capacity to make an agreement; 3) A certain thing (Object); 4) A lawful cause.

Based on the article stated above, it can be seen that the elements of the validity of an agreement are not only bound by Article 1320 but must also be bound by Article 1338 of the Civil Code, which requires a good agreement to fulfill the principle of good faith in order to make a balanced and fair contract to be carried out. The implementation of the principle of good faith is very important as the basic principle of the validity of an agreement because it is carried out with the agreement of both parties which is balanced and proportional without harming or only benefiting one of the parties. Because agreement is the determinant of the occurrence or birth of an agreement, this means that if there is no agreement, there will be no contract between them. Although there is an agreement between the parties that gave rise to the agreement, there is a possibility that the agreement that has been reached has a defect or what is commonly called a defect of will or a defect of agreement due to the

² Abdul Kadir Muhammad, "Hukum Perikatan", Bandung :Citra Aditya Bakti, 2006, p. 238.

³ Dr. Fence M. Wantu., S. M, "Buku Ajar Pengantar Ilmu Hukum" Jakarta: Reviva Cendikia, 2015. p.25.

occurrence of things including: Mistakes or errors that occur due to the deliberate intent of one of the parties regarding a matter that is wrong but left unchecked without any good faith to correct it, Fraud committed by one of the parties in influencing to give or give up a certain thing or relinquish a certain right, Coercion and Abuse of circumstances which are usually carried out by one party who has power or a higher position to pressure the other party to make the intended agreement.⁴ Based on the description above, the title of this legal research is " The Principle Of Good Faith In Transactional Agreements In The Community Of West Seram Regency".

METHOD

The research method used is sociolegal research, which is a combination research method between doctrinal legal research methods and empirical legal research methods.⁵ Doctrinal research is intended to conduct library research by identifying laws and regulations and collecting other data related to the problem being studied.⁶ Empirical research is intended to identify the application of the principle of good faith in agreements in the western seram district, namely by selecting a sample population, specifically Wasia Village Elpaputih Subdistrict and Rumahkay Village Amalatu Subdistrict with the consideration that in these locations there are many legal actions of the community that make transactional agreements.

RESULTS AND DISCUSSION

A. Implementation of the Principle of Good Faith in Transactional Agreements of the Community of West Seram Regency

An agreement can be interpreted as a promise made and carried out by the party who promises to the party who accepts the promise. Agreement when viewed from its definition in the legislation is found in Article 1313 of the Civil Code which states that: "an agreement is an act by which one or more persons bind themselves to one or more other persons".⁷ Then Abdulkadir Muhammad, gave an opinion about the agreement in a narrow sense, namely: "An agreement is an agreement by which two or more parties mutually bind themselves to carry out a matter of a material nature in the field of property."⁸ The agreement in Article 1313 of the Civil Code contains an element of binding as in the words "binding themselves to one or more other people". Agreement is basically the basis for creating an obligation as clearly stated in Article 1233 of the Civil Code, which states "Every obligation is born either by agreement, either by law." An obligation that is born due to an agreement, then the emergence of an obligation is preceded by an agreement made by the parties which further creates an obligation relationship with legal consequences that arise in the implementation of the agreement. The definition of an engagement refers to Subekti's view that an engagement is "a legal relationship between two people or two parties, based

⁴ Dr. Ahmadi Miru, S, "Hukum Kontrak dan Perancangan Kontrak", Jakarta, 2016, PT. Raja Grafindo, p.17.

⁵ Irianto, "Memperkenalkan Studi Sosiolegal dan Implementasi Metodologisnya", Jakarta, 2018, Metode Penelitian Hukum Konstelasi dan Refleksi, p.32.

⁶ Ronny Hanitijo Soemitro, "Metodologi Penelitian Hukum Dan Jurimetri" Jakarta: Ghalia Indonesia, 1990, p.13.

⁷ Niru Anita Sinaga, "Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian", *Jurnal Binamulia Hukum*, 2018, p. 111.

⁸ Abdulkadir Muhammad, "Hukum Perdata Indonesia", Bandung: Citra Aditya Bakti, 2010, p. 290

on which one party is entitled to demand something from the other party, and the other party is obliged to fulfill the demand".⁹ The rights and obligations of the parties in the legal relationship of the agreement are as described in the forms of the agreement in Article 1234 of the Civil Code which states "every obligation is to give something, to do something, or not to do something." The actions in the agreement are an obligation for one party and as a right for the other party who receives something as based on the agreement of the parties. Reviewing the definition of the agreement as mentioned in Article 1313 of the Civil Code, in the views of several legal experts regarding the definition of the agreement, starting from Subekti's view that the agreement is "an event in which one person promises to another or in which the two people promise each other to carry out something".

Based on theory, in an agreement there are 5 (five) principles known according to civil law. The five principles, among others are: the principle of freedom of contract, the principle of consensualism, the principle of legal certainty (*pacta sunt servanda*), the principle of personality, and the principle of good faith.¹⁰ These five principles are important in agreements, especially the Principle of Good Faith. This principle of good faith is an incarnation of Article 1338 of the Civil Code which means that in carrying out an agreement, namely an agreement must prioritize good intentions so that the agreement can take place fairly and equally for the parties.

The principle of good faith has two meanings, which is: 1) Good faith in an objective sense, that an agreement made must be implemented with due regard to the norms of decency and morality which means that the agreement must be implemented in such a way that it does not harm one of the parties. The consequence is that the judge may conduct a review of the contents of the agreement made by the parties if the implementation of this agreement will be contrary to good faith; 2) Good faith in a subjective sense, namely the notion of good faith that lies in a person's inner attitude. In the law of objects, this good faith is usually interpreted as honesty.¹¹

This principle is the principle that the parties, that is, the creditor and the debtor must carry out the substance of the contract based on trust or firm belief and good will of the parties. In doing things or actions in the pre-contractual stage, even though the parties have not made or signed an agreement, the parties must still uphold good faith. If one party does not uphold good faith in the pre-contractual stage, it is very likely to cause harm to the other party.¹² In the West Seram Regency, especially in Rumahkay Village and Wasia Village, the people often make agreements as part of their life activities. The most common agreements are coconut tree leasing agreements and material agreements between communities and companies, as well as other agreements between fellow communities in utilizing land products in the village.

This transactional agreement is then found in fact that the agreement is made in a written and oral agreement, which then these agreements have legal consequences and the extent

⁹ Subekti, "Hukum Perjanjian", Jakarta: Intermedia, 2010, p.1.

¹⁰ M. Muhtarom, "Asas-Asas Hukum Perjanjian: Suatu Landasan Dalam Pembuatan Kontrak", *Jurnal SUHUF*, 2014, p. 50.

¹¹ Miftah Arifin, "Membangun Konsep Ideal Penerapan Asas Iktikad Baik Dalam Hukum Perjanjian", *Jurnal Ius Constituendum*, 2020, p.68.

¹² Deviana Yuanitasari, "Pengembangan Hukum Perjanjian Dalam Pelaksanaan Asas Itikad Baik Pada Tahap Pra Kontraktual", *ACTA DJURNAL*, 2020, p.298.

of the implications for the parties who bind themselves. This written agreement was also found to be not in good condition where it was found that each letter was not affixed with the signatures of the parties, and there were no witnesses, only containing the terms of the agreement, so there were many opportunities for the parties not to recognize the existence and strength of the agreement. Furthermore, the oral agreement is also very difficult to be used as a guide for the parties where if one party does not recognize the agreement, it will be difficult to prove the extent to which the performance is carried out. Recalling the existence of an unwritten agreement if it is connected to this principle of good faith, basically an unwritten agreement is all clauses agreed upon orally. This oral agreement is certainly easy to be denied by one of the parties so that there are problems that result in the inability to carry out the rights and obligations as it should. Therefore, the principle of good faith is needed in the implementation of agreements both in writing and unwritten so that the implementation of the agreement as agreed can be carried out properly.¹³

Rumahkay Village, Amalatu Sub-district, West Seram Regency.

Based on interviews conducted with the Secretary of RumahKay Village on March 02, 2023, agreements made by the community consist of written agreements and most of them are unwritten agreements. Even these unwritten agreements are known by the village government when problems arise. And for agreements that are made in writing, but when examined further, the agreement is made improvised which is far from the elements of a valid agreement so that it does not provide legal certainty and does not provide an equal position for both parties in the community.

In this transactional agreement, both written and oral, factors were found that did not apply the principle of good faith in the transactional agreement, including First, the invalidity of the agreement element where none of the letter documents were signed by the parties. Second, the existence of the phrase "inviolable" as a matter that weakens the party leasing the coconut tree land. These two factors are indicative of the community's weak legal knowledge of the legal position, namely regarding the rights and obligations of the residents of the western part of Seram. As an example of the facts in the Coconut Hamlet Lease Letter in Rumahkay, that is:

Table 1.

No	Number of Letter	Agreement Object	Type of Agreement	Covenant condition analysis
1	207/SSMDK/PNR/VIII/2022	Coconut Rent	Written	Agreement is not signed There is the phrase "Inviolable"
2	975/SSMDK/PNR/XII/2020	Coconut Rent	Written	Agreement is not signed

¹³ I Wayan Agus Vijayantera, "Kajian Hukum Perdata Terhadap Penggunaan Perjanjian Tidak Tertulis Dalam Kegiatan bisnis". *Jurnal Komunikasi Hukum (JKH)*, 2020, p. 121.

				There is the phrase "Inviolable"
3	40/SSMDK/PNR/II/202	Coconut Rent	Written	Agreement is not signed There is the phrase "Inviolable"
4	-	Culvert Construction	Unwritten	The agreed amount is not appropriate
5	-	Retrieval of stone and sand materials	Unwritten	The realization of the agreement was not carried out in Negeri RumahKay but in another village.

The five sample agreements above were found to be weak agreements which became the point of finding indications of "bad faith" in each agreement, that is, the written agreement was found to be in an imperfect state, including First, the agreement was not signed by the parties. Second, the agreement was explained in front of village officials but also not signed. Third, there were no witnesses in the document. And Fourth, the type of agreement was not in accordance with the circumstances of the agreement. So it can be seen that the weakness of the agreement reflects the existence of "bad faith" committed by the parties who are benefited in the implementation of the agreement.

Afterward, the question is who is the benefited and harmed party? Then, as the agreement Number 40/SSMDK/PNR/II/2021 states that the agreement agreed upon by the parties for 50 coconut trees is valued at Rp. 3,600,000 for a period of 3 years and the amount agreed upon in this agreement is inviolable. The phrase "inviolable" is actually enforceable if so agreed. However, the issue is whether the importance of the phrase "inviolable" is something that should be done considering that a period of 3 years is a long time and the price of coconuts may undergo changes that could benefit the renting party but because of the phrase "inviolable", the renting party cannot receive more than what has been agreed upon from the beginning. Of course, this is beneficial for the renter and detrimental for the renter. However, this agreement is still practiced by the community due to urgent economic factors so that people who rent out land for coconut trees and others simply accept the terms proposed by the tenant.

Wasia Village, Elpaputih Sub-District, West Seram Regency.

Based on interviews conducted with the Head of Wasia Village and the Head of Wasia Youth on March 03, 2023, it was found that the State of the Agreement and the implementation of transactional agreements in Wasia Village are almost completely the

same as in Rumahkay Village where in essence there is no written agreement but only verbally agreed upon. One of these agreements and its problems is a coconut lease agreement made between communities with a period of 2 years. The renting party complained to the village head because the payment for the coconut lease had not been realized, while when confirmed to the renting party, it was found that the renting party had not worked on the land so that no results had been reported. This problem was then resolved through mediation by the village head by making a statement letter. Based on information from the Wasia village chief, the community has been educated to report every transactional they report, but because the village head also does not have an agreement format that can be used as a model for community transactions, so that the community carries out agreement actions without reporting to the village head so that the Wasia village head only knows the community's transactional when they face a problem. As an example of an agreement found in Wasia Village:

Table 2.

NO	Name of Community	Agreement Object	Agreement		Agreement subject	Profit sharing system
			Written	Unwritten		
1	Wempi Warayane	Coconut rent agreement		√	Individual	Average quotient
2	Yunus Wasilaine	Coconut&cloves rent agreement		√	Individual / group	For coconut leases, the proceeds are divided according to the price of the coconut/kopra, for cloves, the proceeds are divided in half but with cupa instead of money.
3	Otniel Rumahmury	Coconut rent agreement		√	Individual	Average quotient
4	Enos Tanamal	Coconut rent agreement		√	Individual	Average quotient
5	Oscar Tumpao	Coconut rent agreement		√	Individual / group	The result sharing system is : Make people count per tree - - Make a split person counted per fruit
6	James Rumahloine	Coconut rent agreement		√	Individual	Average quotient
7	Nathaniel Kuahati	Coconut rent agreement		√	Individual / group	The quotient of three is : - Coconut climbers are paid per tree - Group split - - Owner

B. Legal Consequences in the Application of Transactional Agreements that are not based on Good Faith

As previously discussed, in fact, it is known that both written and oral agreements can be seen that there are indications of "bad faith" in each agreement. And then the party who is harmed is the renting party in this case the village community. It is known that the principle of good faith in an objective sense means that no one party should be disadvantaged. Therefore, the legal consequence of an agreement that is not in good faith is that it can be canceled, but before that it is necessary to analyze the position of the agreement that has been applied in the western Seram community in this case the Village of Rumah Kay and Wasia as the sample population of this study.

In the implementation of the agreement in Rumah Kay Village, it was found that there was a written agreement but it was not perfect, therefore the written letter must be considered never existed because there was no evidence of the subject or the parties who signed the letter, but in fact the provisions of the contents of the letter were carried out by the parties, so the provisions must be declared as a verbal agreement where the parties in fact carried out the transaction of the coconut tree lease agreement.

Section 1320 of the Civil Code specifies the terms of a valid agreement to be executed by both parties, among others: 1) Agreement of those who bind themselves in the agreement; 2) Capacity to make an agreement; 3) A certain thing (Object); 4) A halal cause.¹⁴ In the terms of the validity of the agreement, the subjective requirement, namely the "agreement of the parties", the oral agreement carried out by the people of Rumahkay Village and Wasiah Village must be carried out in accordance with Article 1321 of the Criminal Code, namely "No agreement has any force if it is given by mistake or obtained by force or fraud",¹⁵ then as previously discussed and described, the existence of indications of bad faith is about the existence of coercion by circumstances and the existence of indications of deception by the tenant, causing this subjective requirement to be able to make legal efforts for the cancellation and request the loss of the renting party to the tenant against the proceeds of profit during the transactional lease in order to create a sense of justice for the people of Rumahkay Village and Wasia Village.

C. Solutions in Resolving Transactional Agreement Conflicts in the West Seram Regency Community

Preventive Measures

As it is known that actually one example of the agreement is often done in transactional leasing of coconut trees, then the Lease agreement is not the right agreement, but the right one is the "Coconut Fruit Management Partnership" agreement. The principle of leasing as stipulated in article 1548 of the KUHPdt is "an agreement by which one party binds himself to give the other party the enjoyment of an item during a certain time and with payment", then another definition states "a lease agreement is an agreement for the temporary use of an object, both movable and immovable, with payment and a certain price",¹⁶ So that the

¹⁴ Luh Nila Winarni, "Asas Itikad Baik Sebagai Upaya Perlindungan Konsumen Dalam Perjanjian Pembiayaan", *DIH Jurnal*, 2015, p.3.

¹⁵ Hanifudin Sujana, "Kajian Hukum Asas Itikad Baik Dalam Perjanjian Jual-Beli Benda Bergerak", *Repository Universitas Jember*, 2013, p. 3.

¹⁶ Salim H.S, (2003). *Hukum Kongtrak Teori & Teknik penyusunan Kontrak*. Jakarta: Sinar Grafika, 2003.

definition of renting a coconut tree with the intention of taking fruit from the coconut tree is not the right definition if it is interpreted as renting when there are fruit products that continue to be managed and utilized as a result which of course these results are of economic value. Based on this, there should be a legal awareness movement and start by forming the Village Government to be encouraged to become a facilitator of making agreement deeds with a standard format that protects the people of West Seram Regency. This needs to be implemented in order to minimize problems that arise in the future and also maintain the welfare of the community for the natural potential of the West Seram Population.

Represif Measures

Considering the social facts of the implementation of Transactional agreements that tend to harm the people of West Seram, Legal Advocacy assistance for the economic potential rights of Coconut Trees and Materials can be carried out by evaluating the agreement and / or legal efforts in the form of canceling the agreement.

CONCLUSION

Transactional Agreements in West Seram Regency, especially in Rumahkay Village, Amalatu Subdistrict and Wasia Village, Elpaputih Subdistrict, there are many transactional agreements without written agreements and even written agreements but not in accordance with good deed making procedures and are considered as oral agreements, so that in these transactional agreements it is clear that there is no principle of good faith in every agreement transaction carried out. The consequences of the existence of the principle of bad faith in the agreement between two villages in Seram Barat Regency resulted in the agreement being canceled because it did not fulfill the subjective requirements in the agreement, namely the agreement between the two parties. The solution for the Community of West Seram Regency is the need for encouragement for the Village Government as a Transactional Agreement Deed Facilitator as a preventive measure to reduce the inequality of agreements that have an impact on the economic income of the community and the need for community advocacy assistance in terms of evaluating balanced agreements that bring community economic welfare. In addition, there is a need for a standardized agreement format provided by the village government to meet the transactional needs of the community

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