

THE IMPLEMENTATION OF THE GOOD FAITH PRINCIPLE IN UNBALANCED BANKING CREDIT AGREEMENTS BASED ON SUBSTANTIVE JUSTICE

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Abstract

Contracts as legal instruments, play a vital role in business activities, which can be viewed not only from a normative aspect but also through philosophical and economic dimensions. Ideally, the formation of contractual relationships is based on fundamental principles to ensure the realization of fairness and equity for all parties involved. One of the primary principles determining the quality of justice in a contract is good faith, which serves as a guideline for the interpretation and execution of agreements. This research aims to analyze the regulation of good faith in national contract law, examine its application in bank credit agreements which often exhibit an imbalance in the parties' positions and formulate a regulatory model oriented toward substantive justice. The research method employed is normative legal research. The approaches used include statutory, conceptual, and case-based approaches. The results indicate that the principle of good faith in Indonesian contract law (the Civil Code) possesses both juridical and philosophical meanings aligned with John Rawls' theory of justice and the values of Pancasila. Good faith must be interpreted by judges in their rulings *in concreto* and systematically to ensure clarity of meaning through "judge-made law." This aligns with positivist schools of thought and the teachings of sociological jurisprudence. In judicial practice, judges tend to apply the principle of good faith contextually, particularly in resolving disputes involving imbalanced contracts, by considering the sense of justice, propriety, and the social conditions of the parties. Furthermore, judges play an active role in legal discovery (*rechtsvinding*) through progressive interpretation. Legal interpretation by judges may utilize legal hermeneutics that an incisive, profound, and holistic method of interpretation within the framework of unity between the text and its context. This research recommends the strengthening of normative regulations regarding good faith, specifically in bank credit agreements, as well as consistency in its application through jurisprudence and judicial guidelines to avoid disparity in court rulings.

Keywords: *Principle of Good Faith, Bank Credit Agreements, Legal Hermeneutic Interpretation*

1. INTRODUCTION

As a nation governed by the *rule of law*, Indonesia places interpersonal relationships, particularly in the capacity of *homo economicus* as the foundation for legal acts in the form of contracts, which continuously evolve. Obligations in social life are concretely dominated by types of obligations arising from agreements or contracts, which are profit-oriented.¹ A valid agreement or contract must satisfy the provisions of Article 1320 of the Indonesian Civil Code, encompassing both subjective and objective requirements: consensus, the legal capacity of the parties, a specific subject matter, and a lawful cause (*causa*). Given that contracts serve three functions, there are philosophical, juridical, and economic, their execution must be grounded in the principle of good faith to ensure a fair relationship. While breach of contract (*wanprestasi*) is generally associated with a lack of good faith, a more

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¹ H. Moch Isnaeni, *Seberkas Diorama Hukum Kontrak* (Surabaya: PT Revka Petra Media, 2017), 3–8.

specialized and in-depth study is required to determine the extent to which such violations truly stem from the aspect of good faith.

Good faith is closely related to ethics in contract law, encompassing both written and unwritten legal norms. According to R. Wirjono Prodjodikoro, good faith consists of two types: 1) Good faith at the commencement of a legal relationship, where the requirements for initiating the legal relationship have been fulfilled. The law provides protection to parties acting in good faith; conversely, parties acting in bad faith must be held accountable and bear the risks. 2) Good faith during the performance of rights and obligations within that legal relationship, which is objective and dynamic in nature. The emphasis is placed on the actions to be taken by both parties namely, the act of performing a specific matter.²

Contracts are a vital component of business activities, serving as an ideal process for the fair and equitable exchange of interests between parties. The contract negotiation process is an embodiment of the application of the *principle of proportionality* in the formation of a contract.³ The purpose of establishing a contract is to protect the parties in the event of future disputes, maintain order, and serve as a basis for dispute resolution or legal certainty, thereby ensuring justice for all parties involved.⁴

An agreement is founded upon a specific goal or purpose, namely that which has been agreed upon by the parties in the form of promises. However, an imbalance may arise within an agreement as a result of the parties' own conduct or as a consequence of the agreement's execution. The term 'balanced' (*evenwicht*) refers to a state where the distribution of burdens between both parties is in equilibrium.⁵ Reflecting on John Rawls' theory of Justice as Fairness, one form of such justice perceives the various parties in the initial situation as rational and equally neutral. A sound concept of justice must be contractual in nature; therefore, any concept of justice not based on a contract must be set aside for the sake of said justice.⁶ If an imbalance occurs between the rights and obligations of the parties binding themselves in an agreement, it creates an opportunity for undue influence (abuse of circumstances) by the stronger party. Therefore, good faith is required from the credit analysis stage through to the post-agreement stage to realize justice for the weaker party.

From a positivist perspective combined with the teachings of sociological jurisprudence, law is understood as something decided by judges in concrete cases (*in concreto*) and subsequently systematized as judge-made law, oriented toward behavioral and sociological aspects. This approach employs both doctrinal and non-doctrinal methods through inductive reasoning to examine judicial behavior (*court behavior*).⁷

² Muhammad Syaifuddin, *Hukum Kontrak: Memahami Kontrak dalam Perspektif Filsafat, Teori, Dogmatik dan Praktik Hukum* (Bandung: Mandar Maju, 2012), 93–96.

³ Agus Yudha Hernoko, *Hukum Perjanjian: Asas Proporsionalitas dalam Kontrak Komersial* (Yogyakarta: Laksbang Mediatama, 2008), 127–128.

⁴ Niru Anita Sinaga and Tiberius Zaluchu, "Peranan Asas Keseimbangan dalam Mewujudkan Tujuan Perjanjian," *Jurnal Ilmiah Hukum Dirgantara* 8, no. 1 (September 2017): 38–39.

⁵ Herlien Boediono, *Asas Keseimbangan bagi Hukum Perjanjian Indonesia: Hukum Perjanjian Berlandaskan Asas-Asas Wigati Indonesia* (Bandung: Citra Aditya Bakti, 2006), 26.

⁶ John Rawls, *Teori Keadilan: Dasar-dasar Filsafat Politik untuk Mewujudkan Kesejahteraan Sosial dalam Negara* (Yogyakarta: Pustaka Pelajar, 2019), 12–19.

⁷ Teguh Prasetyo and Abdul Halim Barkatullah, *Filsafat, Teori & Ilmu Hukum: Pemikiran Menuju Masyarakat yang Berkeadilan dan Bermartabat* (Jakarta: RajaGrafindo Persada, 2014), 118–120.

Consequently, judicial decisions regarding the application of good faith in contracts that reflect justice can evolve into jurisprudence (case law). Data obtained from the Supreme Court of the Republic of Indonesia's Case Directory indicates a high volume of rulings related to breaches of contract since 2013. This condition prompts a further examination of how the execution of agreements is reflected in judicial practice. While a breach is typically linked to a lack of good faith, specialized research is necessary to uncover the extent to which breach-of-contract cases are genuinely based on the application of the good faith principle.

Table 1. Number of Breach of Contract Cases (2013–2022)

Year	Number of Decisions
2013	183.255
2014	223.565
2015	248.350
2016	325.410
2017	320.527
2018	305.643
2019	440.417
2020	337.583
2021	227.512
2022	41.991

Source: Processed from the Supreme Court of the Republic of Indonesia's Case Directory (*Direktori Putusan Mahkamah Agung RI*), <https://putusan3.mahkamahagung.go.id/search.html>

Hermeneutic interpretation is utilized as the foundation for formulating contract law to explore and reflect the application of the principle of good faith. This approach perceives a contract as an autonomous entity that must be understood profoundly and holistically by positioning the text within its complete contextual framework. This research examines the regulation of the principle of good faith within Indonesian contract law, as well as its implementation by judges in credit agreement disputes that exhibit an imbalance in the parties' positions. The objective is to formulate an ideal regulatory framework to serve as a guideline for applying the principle of good faith in asymmetrical credit agreements.

2. RESEARCH METHODS

This research is normative legal research. The approaches employed include the statute approach, case approach, and conceptual approach, which involve examining statutory regulations and court decisions (jurisprudence) alongside the application of the principle of good faith in judicial deliberations leading to a verdict. This serves to provide a reference for constructing arguments to resolve legal issues.

The research data consists of secondary data supported by interviews as primary data. The secondary data encompasses primary, secondary, and tertiary legal materials. Primary

legal materials include: (1) The 1945 Constitution of the Republic of Indonesia; (2) The Indonesian Civil Code; (3) The Indonesian Commercial Code; (4) Jurisprudence; (5) relevant implementing regulations; and (6) pertinent court decisions. Secondary legal materials consist of legal and non-legal literature, dissertations, and journal articles concerning agreements/contracts, including those that are the objects of this research. Meanwhile, tertiary legal materials include the Black's Law Dictionary, in both printed and online formats.

3. ANALYSIS AND DISCUSSION

3.1. The Principle of Good Faith in Indonesian Contract Law

The principle of good faith, as stipulated in Article 1338 paragraph (3) of the Civil Code, does not yet provide a definitive formulation regarding the meaning, standards, or functions of good faith within agreements/contracts. Article 1338 of the Civil Code contains several principles; among them, as explained by H. Moch. Isnaeni, good faith aligns with the business ethics consistently upheld by market participants. The principle of good faith must be present and contained within every stage of contract formation: namely in the pre-contractual stage, the closing of the contract, and the execution of the contract. The nuances of cooperation or *gotong royong* (mutual cooperation) throughout the business relationship will manifest clearly when the parties are equipped with the principle of good faith.

Meanwhile, Article 1339 of the Civil Code asserts that a contract is binding not only to what is explicitly agreed upon but also to everything which, by its nature, is required by equity (*kepatutan*), custom, and the law. In contract law, the principle of good faith serves three primary functions: first, the interpretive function, meaning every agreement must be construed in accordance with the principle of good faith; second, the supplementary function, where a judge may augment the contents of an agreement based on relevant statutory provisions; and third, the restrictive and preclusive function, whereby a judge may set aside contractual provisions or legal rules if a change in circumstances renders their execution unjust.

Good faith represents the standards of propriety and justice within society. As society is dynamic, the interpretation of good faith also undergoes evolution. Philosophically, good faith is distinguished into subjective and objective good faith, each relating to the stage of forming a legal relationship and the execution of the parties' rights and obligations, respectively. Thus, the concept of good faith possesses not only juridical value but also touches upon moral and ethical dimensions.⁸

Contracts serve as the primary vehicle in business activities, connecting the rights and obligations of business actors to create legal certainty in achieving commercial objectives. As the legal instrument underlying the exchange of rights and obligations, a contract is expected to be executed fairly, with certainty, and efficiently in accordance with the parties' agreement. Such an exchange fundamentally falls within the authority

⁸ Raden Juli Moertiono, "Ketentuan Hukum terhadap Pelaksanaan Iktikad Baik dalam Kerjasama," in *Prosiding Seminar Nasional & Expo II Hasil Penelitian dan Pengabdian Masyarakat* (2019), 1433–1435.

of parties possessing legal capacity, except to the extent there is intervention from mandatory statutory provisions or legal institutions, namely the judiciary. From the perspective of sociological jurisprudence influenced by positivism, judicial intervention is viewed as a mechanism to ensure that the process of exchanging rights and obligations remains fair, certain, and efficient.

3.2. Legal Analysis of the Good Faith Principle in Banking Credit Agreements

Banking credit agreements must fulfill the requirements regulated under the Banking Law, and both parties, debtor and creditor must act in good faith starting from the pre-agreement stage, through the execution of the credit agreement, and the post-agreement stage. In submitting a credit application, both individuals and business entities go through certain stages, namely: 1) the credit application stage by the prospective debtor to the bank; and 2) the credit analysis stage. The credit application to the bank shall be made in writing, at minimum stating the amount of credit requested, the occupation or business/goods to be financed, as well as the collateral or guarantees to be provided. Credit analysis (as regulated under the provisions of Article 8 paragraph (1) of Law No. 10 of 1998 concerning the Amendment to Law No. 7 of 1992 concerning Banking) stipulates that in granting credit or financing based on sharia principles, a commercial bank must have the conviction based on an in-depth analysis of the good faith, capability, and willingness of the debtor customer to repay their debt or return the said financing as agreed upon.⁹

The principles of credit analysis are conducted by considering the form, format, and depth, tailored to the amount and type of credit. The credit assessment reflects the concept of the total credit application relationship. Analysis must be complete, accurate, and objective. Furthermore, attention must be paid to the 3Rs and 4Ps. The 3Rs consist of: a) Return (Fund Recovery); b) Repayment (Settlement); and c) Risk Taking (Risk Factors). The 4Ps consist of: a) Personality; b) Purpose; c) Prospect; d) Payment.¹⁰

If the parties exercise good faith in a banking credit agreement from the pre-agreement stage through to the post-agreement stage, contractual disputes can be prevented. Should a contractual dispute arise, the aggrieved party may file a lawsuit through the courts to seek justice for their case. Judges may apply the principle of good faith in resolving the cases brought before them.

In exercising judicial functions and authority, judges possess autonomous freedom to: (1) interpret laws and regulations; (2) explore and discover legal principles and foundations; (3) create new law in the event of a regulatory vacuum; (4) apply *contra legem* when statutory provisions conflict with the public interest; and (5) independently follow or develop jurisprudence. Considering that the principle of good faith regulated in Article 1338 paragraph (3) of the Civil Code does not yet provide a firm formulation regarding the meaning, standards, or functions of good faith in agreements, including

⁹ Rudy Haposan Siahaan, *Perjanjian Kredit Perbankan: Aspek Hukum dalam Teori dan Praktik* (Medan: USU Press, 2023), 115–119.

¹⁰ *Ibid.*, 115.

banking credit. This is evident in the court decisions analyzed by the author; some judges have not yet applied the principle of good faith in dispute resolution, while others have applied it with varying interpretations in their legal considerations for banking credit agreement cases. The weakness in the regulation of the good faith principle within the Civil Code results in the ineffective implementation of the Good Faith Principle in agreements. This is evident in the court decisions analyzed by the author.

One example of a decision that applies good faith in a credit agreement case is the Supreme Court Jurisprudence Number 3431K/Pdt/1985 in the case of *Sri Setyaningsih vs. Mrs. Boesono and R. Boesono*. In the case, there was an *undue influence* (or *abuse of circumstances*) evidenced by an imbalance in the bargaining positions of the parties, wherein the creditor held a stronger standing than the debtor due to socio-economic factors. The assessment of the *unconscionability of performance* served as the basis for the judge to reduce contractual obligations, thereby ensuring that the performance to be fulfilled became more rational and fair.¹¹ Considering that Article 5 paragraph (1) of Law No. 48 of 2009 stipulates that judges are obliged to explore, follow, and understand the legal values and the sense of justice prevailing in society. Therefore, the judges must possess a fair sense of meaning and standards in adjudicating cases when applying the principle of good faith. The judicial ruling in said Jurisprudence in contrast to the judicial reasoning in the decisions analyzed by the author below.

Table 2. Legal Considerations in Several Court Decisions

No.	Case Number	Case (Lawsuit)	Legal Reasoning (Ratio Decidendi)
1	Decision Number 16 K/Pdt/2023 PT Bank Negara Indonesia (Persero) Tbk, Kupang Branch Office as the Petitioner for Cassation, formerly the Defendant/Appellant; v. Hajah Suriani as the Respondent for Cassation, formerly the Plaintiff/Appellee.	Credit Agreement Number: 2014/229 (BNI GRIYA MULTIGUNA Consumer Credit) . Since June 27, 2014, with an obligation to repay in installments over a period of 120 months. The total credit facility amounted to Rp 2,890,000,000.- with a fixed interest rate of 12% per annum , such that the initial monthly installment payments were only applicable from June 27, 2014, until June 30, 2015 (1 year).	The Panel of Judges considered the core of the breach of contract (<i>wanprestasi</i>) within the credit agreement, specifically regarding the consequences of the Creditor's lack of good faith—namely, acting in an improper manner concerning the Bank's negligence in fulfilling the agreement. This negligence manifested as an untimely or improper execution of obligations, specifically the failure to provide written

¹¹ Ridwan Khairandy, *Itikad Baik dalam Kontrak di Berbagai Sistem Hukum* (Yogyakarta: FH UII Press, 2017), 313–319.

		<p>From July 31, 2015, until the filing of this lawsuit, the Defendant increased the interest rate from 12% to 14% [per annum], without providing written notice to or obtaining the consent of the Plaintiff. This action, spanning from July 31, 2015, to September 2021, constitutes a violation of the agreed-upon credit agreement.</p> <p>Pursuant to Article 5, paragraph (2) of Credit Agreement Number: 2014/229, there is a provision stipulating that the Bank is permitted to review the credit interest rate, provided that it gives written notice to the credit recipient before such changes are implemented. The Creditor (Bank) is declared to be in breach of contract (<i>wanprestasi</i>) due to negligence in fulfilling the agreement, specifically by performing an obligation in an untimely or improper manner—namely, the failure to provide written notification to the Plaintiff (Debtor) regarding the change in interest rates.</p>	<p>notification to the Plaintiff (Debtor) regarding the interest rate changes. Consequently, good faith is interpreted as that which is "reasonable" (<i>layak</i>); specifically, it is reasonable that any interest rate adjustment by the Creditor should only be applied after providing written notice to the Debtor.</p>
2	<p>Decision Number: 1/Pdt.G.S/2021/PN Krs</p> <p>PT Bank Perkreditan Rakyat Angga Perkasa as the Plaintiff; v.</p>	<p>This passage transitions from the formal legal setup of a loan to a tragic personal defense. Here is the translation into formal legal English:</p> <p>Credit Agreement Number:</p>	<p>The Court judgement in this matter waives the Debtor's obligation to pay interest and late fees, based on considerations of humanitarian grounds. The Judge sought to explore the legal values and the sense of justice prevailing in society, pursuant to Article</p>

	<p>Mala Hayati as the Defendant.</p>	<p>940/ADK/0101/X/2019 dated October 11, 2019, executed as a private deed (<i>di bawah tangan</i>) for a fixed loan facility in the amount of Rp50,000,000 (Fifty Million Rupiah), legalized by Notary Eny Puri Rahayu, SH, M.Kn. under No. 762/L/X/2019 dated October 11, 2019.</p> <p>Fiduciary Security Certificate Number: W15.01107097.AH.05.01 Year 2019 and Fiduciary Security Deed Number: 26 dated October 28, 2019.</p> <p>The Debtor acknowledges being in default (<i>wanprestasi</i>) to the Creditor (Bank), citing as the cause a fire disaster at her place of business—a "pom mini" (small fueling station) and a clothing boutique—which resulted in the deaths of her husband, son-in-law, and biological child.</p>	<p>5, paragraph (1) of Law No. 48 of 2009 concerning Judicial Power. The Judge partially granted the Plaintiff's claim, ruling that the Debtor is ordered to repay the principal debt to the Plaintiff without the obligation to pay interest or fines. The Judge took into account the Defendant's (Debtor's) response, which stated that they maintained good faith and that the default was not a result of intentionality or negligence, but rather due to a catastrophic disaster.</p>
3	<p>Decision Number: 825/PDT/2021/PT SBY</p> <p>Suardy Yodo as the Appellant, formerly the Plaintiff;</p> <p>v.</p> <ol style="list-style-type: none"> 1. PT Bank Danamon Indonesia, Tbk., domiciled in Jakarta, through its Branch Office in Surabaya, as the Appellee, formerly the Defendant; 2. Head of the Sidoarjo Regency Land Office, 	<p>Credit Agreement Deed No. 124 dated November 25, 2016, executed before Notary Agnes Ninik Mutiara Widjaja, S.H. in Surabaya, for a total amount of Rp10,000,000,000 (Ten Billion Rupiah), consisting of:</p> <ol style="list-style-type: none"> 1. Overdraft Facility (<i>Kredit Rekening Koran/KRK</i>) in the amount of Rp9,000,000,000 (Nine Billion Rupiah) with a term of 12 (twelve) 	<p>The Judge considers that the Plaintiff (Debtor) has failed to prove the merits of their claim, and it is not proven that Defendant I (Creditor) acted in bad faith (<i>itikad tidak baik</i>); therefore, the Plaintiff (Debtor) remains obligated to fulfill their duties as stipulated in the agreement. The High Court decision affirms (<i>mengukatkan</i>) the ruling of the Surabaya District Court</p>

	<p>as Co-Appellee I, formerly Co-Defendant I;</p> <p>3. Financial Services Authority (OJK), as Co-Appellee II, formerly Co-Defendant II.</p>	<p>months, maturing on November 25, 2017;</p> <p>2. Term Installment Loan (<i>Kredit Angsuran Berjangka/KAB</i>) in the amount of Rp1,000,000,000 (One Billion Rupiah) with a term of 36 (thirty-six) months, with monthly installments of Rp32,620,453 (Thirty-two million six hundred twenty thousand four hundred fifty-three rupiah), maturing on November 25, 2019.</p> <p>The Debtor has provided collateral to the Defendant in the form of 6 (six) parcels of Freehold Title (<i>Hak Milik</i>) land encumbered by Mortgages (<i>Hak Tanggungan</i>); the total mortgage value over the 6 (six) parcels of land amounts to Rp12,150,705,000 (Twelve billion one hundred fifty million seven hundred five thousand rupiah).</p> <p>The Debtor is experiencing financial difficulties that have directly affected the Plaintiff's ability to fulfill their obligations, with a total overdue balance amounting to Rp9.6 Billion.</p>	<p>Panel of Judges Number 65/Pdt.G/2020/PN Sby.</p> <p>Regarding the collateral—consisting of 6 (six) parcels of land evidenced by Freehold Title Certificates (<i>Sertifikat Hak Milik</i>) in the name of the Debtor, as well as the corresponding Mortgage Certificates (<i>Sertifikat Hak Tanggungan</i>) for each—the Judge considers that the imposition of the Mortgages (<i>pemasangan Hak Tanggungan</i>) did not constitute bad faith. This is because the Debtor had agreed to the terms at the initial stage, specifically providing those 6 (six) parcels of land as collateral for the loan/credit facility.</p>
4	<p>Decision Number: 29/Pdt/2018/PT SMG</p> <p>Siti Setyowati Imroniyah as the Appellant, formerly the PLAINTIFF;</p> <p>v.</p>	<p>The PLAINTIFF and DEFENDANT I entered into the following agreements:</p> <p>1. Notarized Overdraft Credit Agreement (<i>Kredit Pinjaman Rekening Koran</i>) executed before and by</p>	<p>The Panel of Judges, in this instance, defines good faith in the execution of the agreement between the Creditor and the Debtor by considering the legal facts from both parties, namely by considering the legal</p>

	<p>1. PT Bank Rakyat Indonesia Agroniaga Tbk. Jakarta Head Office, <i>in casu</i> (Cq.) PT Bank Rakyat Indonesia Agroniaga Tbk. Semarang Branch;</p> <p>2. National Land Agency of the Republic of Indonesia (<i>Badan Pertanahan Nasional</i>), <i>in casu</i> (Cq.) Demak Land Office;</p> <p>as the Appellees, formerly Defendant I and Defendant II / The Defendants.</p>	<p>Notary Aristyo, S.H. in Semarang, under Credit Agreement Deed Number: 168, dated January 25, 2013, with a Credit Principal of Rp225,000,000 (two hundred twenty-five million rupiah) and a Credit Term of 12 (twelve) months.</p> <p>2. Investment Credit (Kredit Investasi) under Credit Agreement Deed Number: 170, dated January 25, 2013, with a Credit Principal of Rp125,000,000 (one hundred twenty-five million rupiah) and a Credit Term of 60 (sixty) months.</p> <p>Collateral: A parcel of residential land (<i>tanah pekarangan</i>) with a permanent house standing thereon, held under Freehold Title Certificate (Sertifikat Hak Milik) Number 00035/Gebang, measuring approximately $\pm 2,250$ m², located in Gebang Wetan I Village, Gebang Subdistrict, Bonang District, Demak Regency, Central Java Province, in the name of Siti Setyowati Imroniyah.</p>	<p>consequences of the Debtor's breach of contract (<i>wanprestasi</i>). Consequently, regarding the execution of the auction (lelang) of the collateral—the land and building under SHM No. 035 in the name of Siti Setyowati Imroniyah—the Judge finds that good faith has not yet been applied. Therefore, the application of good faith on the part of the Debtor is required in terms of the obligation to fulfill their performance (settling the debt).</p>
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From the author's analysis of the aforementioned judicial decisions, it is observed that while some judges have applied the principle of good faith in their legal deliberations and rulings, others have yet to do so within the context of bank credit agreement cases. Judges who apply the principle interpret "good faith" as being reasonable, equitable, fair, honest, and fulfilling one's performance (*prestasi*), utilizing the method of legal hermeneutics. However, it is evident that judges do not yet share a uniform standard, meaning, or function of good faith. Consequently, there is a pressing

need for judicial guidelines regarding the standards, definitions, and functions of good faith specifically tailored for bank credit agreement disputes.

The author analyses two concepts of justice: those according to John Rawls and those found in Pancasila values. This entails analyzing judicial considerations in reaching decisions that achieve justice for the litigating parties by observing morality, rationality, and propriety. Justice as Fairness is the primary virtue of social institutions, much as truth is to systems of thought. Justice as fairness expresses the idea that principles of justice are agreed upon in an ideal, fair situation. The notion of the contract can be extended to the choice of an entire ethical system—that is, to a system encompassing the principles of all virtues and not merely justice. In scrutinizing the benefits of justice, one finds: 1) Autonomy and objectivity; 2) Happiness and dominant ends; 3) Unity of the self; and 4) Goodness and the sense of justice. A sense of justice is an effective desire to apply and act upon the principles of justice and from the standpoint of justice. In a well-ordered society, satisfying the principles of justice is collectively rational from the perspective of the original position; from the individual's viewpoint, the desire to affirm the public conception of justice regulates one's life plan in accordance with the principles of rational choice.¹² When related to the Social Justice of the Fifth Sila (Principle) of Pancasila, justice must be linked to social relations that hold humanitarian value (Second Sila). This is framed by the recognition of Pancasila as the source of all laws and regulations and the fundamental source of morality.

3.3. Equitable Regulations as the Basis for the Implementation of the Good Faith Principle in Banking Credit Agreements

Following up on the author's analysis, there is a need for a definition, standard, and function of 'just' good faith that can serve as a guideline for judges in examining and adjudicating banking credit agreement cases. According to **Black's Law Dictionary**, the formulation is provided as:

“Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage, and an individual's personal good faith is concept of his own mind and inner spirit and, therefore, may not conclusively be determined by his protestations alone.”

In common usage this term is ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud and generally speaking, means being faithful to one's duty or obligation.

Beyond the fulfillment of the legal requirements for a valid agreement, the existence of the principle of balance and the principle of good faith plays a fundamental role in the formation and execution of contracts. Nevertheless, the application of these two principles in practice does not necessarily guarantee optimal protection for the parties, particularly in realizing justice and legal certainty. In its execution, an agreement must

¹² Rawls, *Teori Keadilan*, 3, 14, 19.

refer to the provisions of Article 1343 of the Indonesian Civil Code, which governs the interpretation of contractual wording by emphasizing the intent of the parties at the time of formation as the basis for interpretation and implementation.

The principle of good faith, as the foundation of the pre-contractual stage, is rooted in both legal principles and moral values. The legal and ethical dimensions of pre-contractual promises include: (1) morality as a substance inherent in the law; (2) ethics as the basis for compliance with legal norms; and (3) the application of good faith in the process of forming pre-contractual promises. In the context of bank credit agreements, these principles are reflected from the signing of the deed and the performance of the parties' obligations to the settlement of debt and the return or release of collateral. Good faith is defined as being reasonable, equitable, fair, honest, and fulfilling performance for both parties bound by the agreement.

In contract law, according to Ridwan Khairandy, Good Faith serves three (3) functions: 1) All contracts must be interpreted in accordance with good faith; 2) The Supplementing Function, whereby a Judge may supplement the contents of an agreement or the wording of the laws and regulations related to said agreement; 3) The Limiting and Negating Function, whereby a Judge may set aside the contents of an agreement or the laws and regulations related to the agreement in the event of a change in circumstances. Such a change in circumstances results in the execution of the agreement's provisions—or the related laws—becoming unjust. In the author's view, Judges can employ these functions of good faith when adjudicating banking credit agreement cases.

In resolving contractual disputes, the process of legal discovery (*rechtsvinding*) by judges relies on techniques of interpretation and legal construction, including the legal hermeneutic approach. The hermeneutic approach serves to extract and enrich the authentic meaning of a normative text, ensuring it is not limited to mere grammatical interpretation. Within this framework, judges base their deliberations on various legal sources, including statutory regulations, customary law, jurisprudence, international treaties, and expert doctrine. Interpretation is required when existing norms contain ambiguity, vagueness, conflicts between provisions, or cause legal uncertainty. This can be realized in the form of an official elucidation of Article 1338, Paragraph (3) of the Civil Code or by incorporating it into the Draft Law on Obligations (*RUU Perikatan*).

The sociological school within the field of legal science views law as a social reality rather than merely a set of norms, utilizing both the sociology of law and sociological jurisprudence. It is behaviorally and sociologically oriented, employing both doctrinal and non-doctrinal methods through inductive logic to examine court behaviors. Consequently, judges are encouraged to explore both the text and the context of banking credit agreements, moving beyond purely legalistic dispute resolution. Thus, the method of legal hermeneutics is recognized as a tool for judges to apply the principle of 'just' good faith when adjudicating banking credit agreement cases. The national legal paradigm, in this case, contract law, is an embodiment of the legal ideals (*cita-hukum*) embraced by a society rooted in Pancasila. Therefore, the principle of 'just' good faith is not only based on Justice as Fairness (according to John Rawls) but also on a principle

of good faith that is inherently just according to the values of the 5th and 2nd precepts of Pancasila. Based on this legal paradigm, the equitable regulations underlying the application of the good faith principle in banking credit agreements must be rooted in Pancasila by exploring the text and context of the agreement, specifically within the scope of banking credit cases.

4. CONCLUSION

In keeping with the dynamic nature of society, the concept of good faith, as a reflection of justice and equity has undergone its own evolution. Philosophically, good faith is divided into two dimensions: subjective good faith and objective good faith. Both possess distinct characteristics, applicable at the inception of a legal relationship as well as during the execution of the resulting rights and obligations. Beyond the fulfillment of the legal requirements for a valid agreement, the principle of balance and the principle of good faith constitute the fundamental pillars of contractual relationships. Nevertheless, their implementation in practice does not necessarily guarantee optimal protection for the parties, particularly in ensuring justice and legal certainty.

It is at this juncture that the role of the judge is required. As creators of judge-made law, judges are expected to possess a comprehensive understanding of the meaning, parameters, and functions of the principle of good faith in contractual relations. In the context of credit agreements, the existence of jurisprudence becomes essential as a foundation to ensure the realization of justice for disputing parties. Based on this reasoning, more explicit regulations are needed to ensure the implementation of the principle of good faith within the Civil Code for every agreement or contract.

Ideally, the execution of a contract should refer to the provisions of Article 1343 of the Civil Code, which emphasizes that the interpretation of contractual clauses is based on the intent of the parties at the time the contract was formed. In a pre-contractual context, the principle of good faith is rooted in both legal principles and moral values. These dimensions encompass: (1) morality as the substance of the law; (2) ethics as the basis for compliance with norms; and (3) the application of good faith in the formation of pre-contractual promises. In credit agreements, this principle is reflected from the signing stage and the performance of obligations to the settlement of debt and the release of collateral.

In the context of banking credit agreements, the ethics of the contract are reflected from the signing of the deed and the performance of the parties' obligations, through to the settlement of the debt and the return or release of collateral. Good faith is defined as being reasonable, appropriate, just, honest, and fulfilling one's performance (*prestasi*) for both parties bound by the agreement. Judges may employ the functions of good faith when adjudicating banking credit agreement cases, namely: 1) Interpretive Function: All contracts must be interpreted in accordance with good faith; 2) Supplementing Function: A Judge may supplement the contents of the agreement and the wording of the laws and regulations related to said agreement; 3) Limiting and Negating Function: A Judge may set aside the contents of the agreement or the laws and regulations related to the agreement in the event of a change in circumstances.

REFERENCES

- Budiono, Herlien. *Asas Keseimbangan Bagi Hukum Perjanjian Indonesia: Hukum Perjanjian Berlandaskan Asas-Asas Wigati Indonesia*. Bandung: Citra Aditya Bakti, 2006.
- Hernoko, Agus Yudha. *Hukum Perjanjian: Asas Proporsionalitas dalam Kontrak Komersial*. Yogyakarta: Laksbang Mediatama, 2008.
- Indonesian Civil Code*.
- Isnaeni, Moch. *Seberkas Diorama Hukum Kontrak*. Surabaya: Revka Petra Media, 2018.
- Khairandy, Ridwan. *Iktikad Baik dalam Kontrak di Berbagai Sistem Hukum*. Yogyakarta: FH UII Press, 2017.
- Law Number 48 of 2009 on Judicial Power.
- Law Number 10 of 1998 on Banking.
- Prasetyo, Teguh, and Abdul Halim Barkatullah. *Filsafat, Teori & Ilmu Hukum: Pemikiran Menuju Masyarakat yang Berkeadilan dan Bermartabat*. Jakarta: RajaGrafindo Persada, 2014.
- Rawls, John. *Teori Keadilan: Dasar-Dasar Filsafat Politik untuk Mewujudkan Kesejahteraan Sosial dalam Negara*. Yogyakarta: Pustaka Pelajar, 2019.
- Siahaan, Rudy Haposan. *Perjanjian Kredit Perbankan: Aspek Hukum dalam Teori dan Praktik*. 4th ed. Medan: USU Press, 2023.
- Syaifuddin, Muhammad. *Hukum Kontrak: Memahami Kontrak dalam Perspektif Filsafat, Teori, Dogmatik dan Praktik Hukum*. Bandung: Mandar Maju, 2012.
- Sinaga, Niru Anita, and Tiberius Zaluchu. "Peranan Asas Keseimbangan dalam Mewujudkan Tujuan Perjanjian." *Jurnal Ilmiah Hukum Dirgantara* 8, no. 1 (2017). <https://journal.universitassuryadarma.ac.id/index.php/jihd/article/view/137>.
- Moertiono, Raden Juli. "Ketentuan Hukum terhadap Pelaksanaan Iktikad Baik dalam Kerjasama." In *Prosiding Seminar Nasional & Expo II Hasil Penelitian dan Pengabdian Masyarakat 2019*, 2019.