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Legal Consequences of Agreements that have been Agreed and Not Implemented in Good Faith

[1] **Maulana Syamsid Alriza,** [2] **M Khoidin,** [3] **Fendi Setyawan**
[1, 2, 3] Master of Notary, Faculty of Law, University of Jember, Indonesia

Corresponding Author: **Maulana Syamsid Alriza**

Abstract
According to Article 1338 of the Civil Code paragraph (3), namely: "An agreement must be carried out in good faith". The definition of good faith itself is an abstract meaning and difficult to formulate, so that it causes ambiguity regarding the meaning of the article. To what extent is the meaning contained in the principle and the legal consequences that arise if good faith is not implemented in the agreed agreement and the application of good faith in an agreement provides justice, legal certainty and benefits to the parties. The first problem, what is the meaning of good faith in the provisions of Article 1338 paragraph (3) of the Civil Code? Second, what are the legal consequences of an agreement that has been agreed upon and is not implemented in good faith? The research method used in this thesis research is to use a normative legal research type with a problem approach, namely a statutory, conceptual and case approach. The results of this thesis research are that the meaning of good faith according to Article 1338 paragraph (3) of the Civil Code is not explicitly explained therein. But overall the meaning explained by the experts, the meaning of good faith is about propriety and morality. The legal consequences of an agreement that has been agreed upon and not carried out in good faith is because it does not meet the valid requirements of an agreement in article 1320 of the Civil Code regarding "a matter prohibited by law" the requirement is an objective requirement then the legal consequence is that the agreement is null and void.

Keywords: Legal Consequences, Agreements, Good Faith

Introduction

Indonesia Agreements are inseparable from the issue of justice, because in every act of agreement there must be a goal for the sake of justice of the parties. The legal objectives of agreements are inseparable from the general objectives of law, namely: justice, benefit, and legal certainty. Theo Huijbers outlines three legal objectives: ***First***, to maintain public interests in society. ***Second***, to maintain human rights. ***Third***, to realize justice in living together.[1]

An agreement according to the provisions of Article 1313 of the Civil Code (hereinafter referred to as the Civil Code) is an act carried out by one or more persons to bind themselves to one or more other persons. This means that an agreement gives rise to rights and obligations between the parties who make it.[2] According to Subekti, an agreement is an event where someone promises to someone else or where two people bind each other to promise to carry out something. Making an agreement should not be done carelessly, but must also understand the conditions so that the agreement is valid. [3] The conditions for the validity of an agreement are regulated in 1320 of the Civil Code, there are at least 4 conditions for the validity of the agreement, first there is an agreement, second, the capacity to carry out legal acts, third there is an object that is agreed upon and fourth there is a halal clause.

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[1] Theo Huijbers, *Filsafat Hukum Dalam Lintasan Sejarah*, (Yogyakarta: Kanisius, 1982), h. 289.
[2] Subekti, *Aspek-Aspek Hukum Perikatan Nasional*, PT. Citra Aditya Bakti, 1992, Bandung h.17.
[3] R. Subekti dan R. Tjitrosudibio, (ed.), *Kitab Undang-Undang Hukum Perdata: Burgerlijk Wetboek, Cetakan 8*, (Jakarta: Pradnya Paramita, 1976), hlm. 338.

The implementation of the agreement must also pay attention to the principles of the agreement.[4] Starting from the principles of freedom of contract, pacta sun servanda, good faith, etc. If an analysis of the principles in the agreement is carried out, it must start from the philosophy of justice in the agreement. We often hear about justice, but the correct understanding is actually complicated and even abstract, especially when it is linked to various complex interests.[5] In the agreement, there is a meaning of "promises must be kept" or "promises are debts". An agreement is a bridge that will bring the parties to realize what is the purpose of making the agreement, namely achieving protection and justice for the parties.[6] With an agreement, it is expected that each individual will keep their promises and carry them out.[7]

Article 1338 of the Civil Code explains that every agreement binds both parties and it can be concluded that people are free to make any agreement as long as it does not violate public order and morality. In other words, both parties must have good intentions in making an agreement so as not to harm each other, as explained in Article 1338 of the Civil Code paragraph (3), namely: "An agreement must be carried out in good faith."

The definition of good faith itself is an abstract meaning and difficult to formulate, so people formulate it more through events in court. Good faith in the implementation of an agreement is related to the issue of propriety and appropriateness. The principle of good faith can be distinguished between subjective good faith and objective good faith.

Good faith in the subjective sense can be interpreted as a person's honesty in carrying out an agreement, namely what lies in a person's inner attitude when an agreement is made. While good faith in the objective sense is intended to be the implementation of an agreement that must be based on norms of propriety or what is felt to be appropriate in a society. Good faith subjectively refers to the inner attitude or elements that exist within the parties who make it, while good faith in the objective sense is more about things outside the perpetrator.[8]

Regarding the understanding of good faith subjectively and objectively, it is stated by Muhamad Faiz. that subjective good faith, namely whether the person concerned himself realizes that his actions are contrary to good faith, while objective good faith is if public opinion considers such actions to be contrary to good faith. Good faith in an agreement must exist since an agreement will be agreed upon. In other words, that good faith has existed at the time of pre-agreement negotiations to make and/or draft an agreement. Ridwana Khairandy stated that "Good faith must exist since the pre-contract phase where the parties begin to negotiate until reaching an agreement and the contract implementation phase".[9]

Studies related to good faith in sales and purchase agreements are considered very lacking, especially in land sales and purchase agreements, while in practice, various irregularities often arise due to parties who have bad intentions in the agreement only to benefit personal interests, thus causing losses for other parties who have good intentions.[10]

The researcher took two cases in court decisions as an example, the first in decision Number 402/PDT/2019/PT.MKS which has a case of PT. Nusa Sembada Bangunindo as a Contractor, a housing developer whose land and buildings in the form of houses have been sold to Ir.H. Rahmah Ahmad, Aisyah Ahmad and Abbas Palembang in 2005. The three transactions as detailed have been paid off for Rahmah and Aisyah, and Abbas is still in the installment process. The three transactions that have been paid off have given rise to a legal relationship between the seller and the buyer and the house is occupied by each buyer after the renovation is complete. However, until 2018 the Developer has never fulfilled its promise to provide electricity, water, complex roads and other public facilities. In addition, the homeowners were surprised by the arrival of the Bailiff of the Class I.A Makassar District Court who asked the three of them to carry out the execution of the eviction of the land and houses at the location. It is suspected that the land is in dispute and during the transaction process the buyer did not know about it.

The second case is in decision Number 104/PDT2019/PT.BNA where the position is that there is land inherited from the deceased. Cut Rohita, who has no children and has a husband named Said Djakfar. Apart from her late husband. Cut Rohita also left behind another heir, namely Drs. Marakarma (deceased) and Hikmatullah (biological brother). The assets left behind were two plots of land which Yusuf managed to plant rice and pay land rent to the owner of Cut Rohita during his lifetime. Since Cut Rohita died, Yusuf continued to control the land by planting rice and never paid land rent again. Subpoenas were sent several times to Yusuf but he ignored them. On Friday, May 4, 2018, Yusuf unlawfully sold ½ (one half) of the land based on Deed of Sale and Purchase Number 1.348/JNP/2018 dated May 4, 2018 with an area of 2030 M2 located in Gampong Seuleumbah, Jeumpa District, Bireuen Regency.

In both cases, the researcher will examine the agreement that has been implemented in the form of a Deed of Sale and Purchase (hereinafter referred to as AJB) which was not implemented in good faith. Good faith is one of the classic principles in contract law contained in the Civil Code. This

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[4] Khafid Setiawan, et.al., *Notaris Dalam Pembuatan Akta Kontrak Yang Berlandaskan Prinsip Kehati-hatian,* Jurnal Ilmu Kenotariatan, Vol. 2, No. 2, 2021, h. 47.

[5] Fauzie Yusuf Hasibuan, "*Harmonization of The UNIDROIT Principles into the Indonesia Legal System to Achieve Justice of Factoring Contracts,"* Disertasi, (Jakarta: Program Doktor Ilmu Hukum Universitas Jayabaya, 2015) h. 216.

[6] Milinia Mutiara Yusshinta Dewi & Bayu Indra Permana. *Keabsahan Akta Yang Dibuat Oleh Calon Notaris Yang Sedang Magang Di Kantor Notaris*, Jurnal Ilmu Kenotariatan, Vol. 3, No. 2, (2022), h. 76-83.

[7] Raymond Wacks, *Jurisprudence*, (London: Blackstone's Press Limited, 1995), h. 191

[8] Bhim Prakoso, *Pendaftaran Tanah Sistematis Lengkap Sebagai Dasar Perubahan Sistem Publikasi Pendaftaran Tanah*, Journal of Private and Economic Law, Vol. 1, No. 1, 2021, h. 66.

[9] Ridwan Khairandy, *Itikad Baik dalam Kebebasan Berkontrak,* Jakarta: Pasca Sarjana Fakultas Hukum Universitas Indonesia, hal 10.

[10] Ashar Sinilele, *Tinjauan Hukum terhadap Itikad Baik Dalam Perjanjian Jual Beli Tanah,* Jurnal Jurisprudentie, Vol. 4, No. 2, 2017, h.76.

principle is derived from the concept of bona fides in Roman contract law. The modern contract law theory that emphasizes the principle of good faith states that the implementation of the principle of good faith is not only implemented after the agreement is signed, the author tries to identify the problem based on the background above, first, what is the meaning of good faith in the provisions of Article 1338 paragraph (3) of the Civil Code? Second, what are the legal consequences of an agreement that has been agreed upon and not implemented in good faith?

Methodology

Methodology is used to help find legal truth in carrying out an action to get concrete results. This research uses a normative juridical research type (legal research). The approach methods used in this research are the Statute Approach, Conceptual Approach and Case Approach.

Discussion

I. The Meaning of Good Faith According to Article 1338 Paragraph (3) of the Civil Code

According to Subekti, an agreement is an event where someone promises to another person or where two people promise each other to do something. While an obligation is a legal relationship between two people or two parties, based on which one party has the right to demand something from the other party, and the other party is obliged to fulfill the demand. [11] According to Article 1313 of the Civil Code, it states: "An agreement is an act by which one or more people bind themselves to one or more other people.[12]

Black's Law Dictionary defines a contract as follows: "an agreement between two or more persons which creates an obligation, to do or not to do a particular thing". It is defined as an agreement between 2 (two) or more persons which creates an obligation to do or not to do a particular act".[13] To regulate everything related to contracts, a law is needed, called contract law.

Lawrence M. Friedman defines contract law as: "A legal system that regulates only certain aspects of the market and regulates certain types of agreements."[14] Salim H.S, said that contract law is: "The whole of the legal rules that regulate the legal relationship between two or more parties based on an agreement to give rise to legal consequences". According to Munir Fuady, contract law is a set of legal rules (including its enforcement) that regulates the procedures for implementing trade, industry or financial affairs or activities related to the production or exchange of goods or services by placing money from entrepreneurs at certain risks with certain businesses with the motive (of the entrepreneur) is to gain profit.[15]

From the definition above, it can be stated that an agreement is an agreement between parties regarding something that gives rise to a legal obligation/relationship, gives rise to rights and obligations, if it is not carried out as agreed there will be sanctions.[16] An agreement in the form of a contract is essentially binding, even in accordance with Article 1338 paragraph 1 of the Civil Code, this agreement has binding force as a law for the parties who make it.[17] In addition to being binding, an agreement must prioritize the elements that must be owned in an agreement. Elements of an Agreement if explained, an agreement has the following elements: [18]

a. Essentialia, "this element must absolutely exist for the agreement to be valid, it is a requirement for the validity of the agreement. The essentialia element in an agreement represents provisions in the form of achievements that must be carried out by one or more parties, which reflect the nature of the agreement, which distinguishes it in principle from other types of agreements. This essentialia element is generally used in providing a formulation, definition, or understanding of an agreement."
b. Naturalia, is "an element that is not specifically agreed upon in the agreement is tacitly considered to exist in the agreement because it is inherent or inherent in the agreement. The naturalia element must exist in a particular agreement, namely in the form of an obligation from "the seller to guarantee the goods sold from hidden defects. In this regard, the provisions of Article 1339 of the Civil Code apply, which states that. Agreements are not only binding for matters expressly stated therein, but also for anything that according to the nature of the agreement is required by propriety, custom, or law."
c. Accidentalia, is "a complementary element in an agreement, which is a provision that can be regulated deviantly by the parties according to the will of the parties, is a special requirement determined jointly by the parties. Thus, this element is essentially not a form of achievement that must be implemented or fulfilled by the parties."

Article 1338 of the Civil Code explains that every agreement binds both parties and it can be concluded that people are free to make any agreement as long as it does not violate public order and morality. In other words, both parties must have good faith in making an agreement so as not to harm each other, as explained in Article 1338 of the Civil Code paragraph (3), namely: "An agreement must be carried out in good faith". The meaning of good faith (goeder trow/good faith) in this article is the application of an agreement, either from an oral or written agreement, either in the form of an authentic deed or underhand.

German philosopher Immanuel Kant (1724-1804) considered that something absolute and unconditional about good is good faith, while other things that are commercially

[11] R.Subekti, *Hukum Perjanjian*, (Jakarta: Intermasa, 2005) h. 1

[12] KUHPerdata, (*Burgelijk Wetboek*), diterjemahkan oleh R. Soebekti dan R. Tjitrisadibio (Jakarta: Pradya Paramita, cetakan 8, 1976) h. 338

[13] Henry Campbell Black, *Black Law Dictionary,* Sixth Edition, (West Publishing Co, St. Paul Minn, 1990) h. 322.

[14] Lawrence M. Friedman, *American Law An Introduction*, (Jakarta: Tata Nusa, 2001) h. 196

[15] Munir Fuady, *Pengantar Hukum Kontrak (Menata Bisnis Moderndi Era Global), Edisi Revisi*, (Bandung: PT.Citra Aditya Bakti, 2005) h. 2.

[16] R.Subekti, *Hukum Perjanjian*, (Jakarta: Intermasa, 2005) h. 1

[17] Huala Adolf, *Dasar-dasar Hukum Kontrak Internasiona*l, (Bandung: Refika Aditama, 2006) h. 15.

[18] Ahyuni Yunus, *Aspek Keadilan Perjanjian Baku (Standard Contract) Dalam Perjanjian Kredit Perbankan*, Maleo Law Journal, Vol. 3, No. 7, 2017. h. 112.

said to be good (such as being rich or healthy) are good only to the extent that they are used to achieve good results. Clearly, this leads us to the question of how to identify good faith. Kant's answer is that there is a "pre-existing moral law", where humans are rational and have free will, can identify by using their reason and what needs to be identified in an effort to find out how to carry out their free will. The important thing for Kant is that morals exist as they are, from human intellectual efforts to reflect them. In other words, humans do not create morals. Morals are universal, absolute, unconditional and must be obeyed. [19]

Based on article 1338 of the Civil Code, it reads; "all agreements made legally apply as laws for those who make them. An agreement cannot be revoked except by agreement of both parties, or for reasons which the law states are sufficient for that purpose. An agreement must be carried out in good faith."[20]

The term good faith comes from the translation of the word in Roman law, namely bona fides (bonus = pious, fides = trust), so that the meaning of the term bona fides means acting based on good understanding, honesty and uprightness, so that if it is linked to an agreement, the parties who wish to bind themselves in an agreement should do something good, honest and upright.[21]

According to the Big Indonesian Dictionary (KBBI), good faith means trust, firm belief, intention or will (which is good). The principle of good faith is divided into two types, namely relative good faith and absolute good faith. Relative good faith shows attitudes and behavior that are clearly visible from the parties and absolute good faith is found in common sense and justice, an objective measure in meeting the circumstances.[22]

According to the Fockema Andrea Legal Dictionary, it is explained that "geode trouw" is the spirit that inspires humans in a legal act or is involved in a legal relationship.[23]

The element of good faith in an agreement is an important principle (super eminent principle) and is very fundamental in an agreement. [24] Good faith is one of the principles of an agreement, and this is determined in Article 1338 paragraph (3) of the Civil Code, namely that the agreement is carried out in good faith. Studies on good faith are found in various legal literature, however, until now there has been no law or doctrine that provides clear and firm limitations on good faith. Therefore, Article 1338 paragraph (3) of the Civil Code only determines that the agreement is carried out in good faith, without providing limitations on said good faith. As a result, it gives rise to various interpretations of the principle of good faith from legal experts.

According to Paul Scholten, "the principle of law is the basic idea contained in and behind each legal system, formulated in statutory regulations and legal decisions concerning provisions and individual decisions can be seen as their elaboration." [25] J.J.H. Bruggink, stated that "*the principle of law as a kind of meta-rule concerning the rules of behavior, while the principle of law can also fulfill the same function as the rules of behavior. Because, the meta-rule contains the measure or criteria of value (waarderingsnormen). The function of the principle of law is to realize the measure of value as much as possible in the rules of positive law and its application*".

Black's Law Dictianory explains that good faith is: "A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage".[26]

Sutan Remy Sjahdeini generally describes good faith as "the intention of one party in an agreement not to harm the other party to the agreement or the public interest".[27] Muhammad Faiz stated that Good Faith is an abstract concept and difficult to formulate, so people generally formulate it through events in Court. Good faith in the implementation of an agreement is related to the issue of propriety and appropriateness.[28]

Subekti defines good faith in two senses, namely in the context of making an agreement (formation of contract) good faith is interpreted as "honesty" of one party in making it, this is because the parties place full trust in the other party who is considered honest and does not hide anything bad that can later cause difficulties and in the context of implementing an agreement (performance of contract), good faith is understood as propriety which is interpreted as a good assessment of the actions of a party in carrying out what is agreed upon. Article 1338 paragraph (3) of the Civil Code stipulates that all agreements must be carried out in good faith (tegoeder trouw/in good faith).[29]

So that Article 1388 paragraph (3) of the Civil Code stipulates that "agreements must be carried out in good faith" which according to Prof. Subekti, good faith in the second sense contains a parallel meaning with the active position of the parties to the agreement to always act properly and not arbitrarily, so the emphasis is placed on the elements of honesty and propriety (reasonableness).[30]

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[19] Bayu Indra Permana, et.al., *Legal Certainty of Income Tax Exemption on the Transfer of Rights to Land in the Sharing of Collective Integration Rights, International Journal of Social Science and Education Research Studies*, Vol. 2. No. 11, 2022, h. 13.

[20] R. Subekti dan R. Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata*, (Pradnya Paramita:Jakarta, 2004) h. 342

[21] Chaimur Arrasjid, *Dasar-Dasar Ilmu Hukum,* (Surabaya:Rajawali Pers, 2005) h.38

[22] Syamsuddin, *Pokok-Pokok Hukum Perjanjian Beserta Perkembangannya,* (Yogyakarta:Liberty, 1985) h. 134

[23] Agus Yudah, *Hukum Perjanjian Asas Proposionalitas Dalam Kontrak Komersial,* (Bandung: Rajawali, 2010) h. 16

[24] Lintang Cahyani Andira & Iswi Hariyani, *Keabsahan Kontrak Elektronik Dalam Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi*, Jurnal Ilmu Kenotariatan, Vol. 1, No. 2, (2020), h. 34-54.

[25] Paul Scholten, *Refleksi Tentang Hukum,* (Cipta Aditya Bakti:Bandung, 1996) h. 119-120.

[26] Bryan A. Garner, *Black's Law Dictianory*, Tenth Edition, (West Publishing Company, USA). h. 808.

[27] Sutan Remy Sjahdeini, *Kebebasan Berkontrak dan Perlindungan Seimbang Bagi Para Pihak Dalam Perjanjian Kredit di Indonesia*. (Jakarta: Institut Bankir Indonesia, 1993) h. 112

[28] Muhammad Faiz, "*Kemungkinan Diajukan Perkara dengan Klausula Arbitrase ke Muka Pengadilan*. www.panmuhammadfaiz.co.id. Diakses pada tanggal 20 Mei 2024

[29] Subekti, *Hukum Perjanjian*. (Jakarta: Intermasa, 1996) h. 41

[30] Subekti, *Aspek-Aspek Hukum Perikatan Nasional,* (Alumni, Bandung, 1976) h, 26-27

Likewise, Wirjono Prodjodikoro calls good faith with the term "Honesty" and distinguishes it from "Property". The principle of good faith is one of the legal instruments to limit the freedom of contract and the binding power of the agreement. This principle of good faith is interpreted in two senses:

1. Good faith in the objective sense, that an agreement made must be implemented with due regard to the norms of propriety and morality, which means that the agreement must be implemented in such a way that it does not harm either party.
2. Good faith in the subjective sense, namely the understanding of good faith that lies in a person's inner attitude. In property law, this good faith can be interpreted as honesty. Honesty (good faith) in Article 1338 paragraph (3) of the Civil Code, does not lie in the state of the human soul, but lies in the actions taken by both parties in carrying out the promise, so honesty here is dynamic, honesty in the dynamic sense or propriety is rooted in the nature of the role of law in general, namely the effort to create a balance of various interests that exist in society. In a legal system, in essence, it is not allowed for the interests of others to be completely suppressed or ignored. Society must be a balance that stands upright in a balanced state.[31]

Mariam Darus, Professor of the Faculty of Law, University of North Sumatra, in a speech entitled "The Development of the Principle of Good Faith as a General Principle in Indonesian Law" stated that good faith is in the field of civil law, especially property. The principle of good faith was born in the Roman Era. At that time, good faith was reflected in the agreement as bonafides, which means a person's actions are carried out reasonably and properly. So an act is carried out without deception, without disturbing other parties and the parties are trusted. Good faith is regulated in Article 1338 paragraph (3) of the Civil Code. In addition, Mariam Darus referred to the Decision of the Supreme Court of the Netherlands (Hoge Read) dated February 9, 1923 which formulated or clarified the meaning of good faith. According to the Hoge Read Decision, the agreement must be implemented based on the requirements of fairness (Redelijkheid) and propriety (*bilijkheid*). Article 1338 paragraph (3) of the Civil Code refers to an unwritten norm called objective, because its essence is not fairness and propriety according to each party without being in accordance with public opinion. In addition, subjective good faith is also known which lies in the realm of property law. The meaning of subjective good faith is honesty concerning a person's inner attitude.[32]

Ismijati Jenie, Professor of the Faculty of Law, Gadjah Mada University. In his inauguration as Professor with the title of his scientific oration "Good Faith as a Legal Principle", stated that the principle of good faith comes from Roman law. In Roman law this principle is called Bonafides. The Civil Code uses the principle of good faith in two senses, namely subjective good faith and objective good faith. Subjective good faith is called honesty in this case contained in Article 530 of the Civil Code which regulates the position of power (bezit). While objective good faith means propriety and this is formulated in Article 1330 paragraph (3) of the Civil Code.[33]

Salim HS divides two types of good faith principles, namely relative good faith and absolute good faith. In relative good faith, people pay attention to the real attitude and behavior of the subject. While in absolute good faith, the assessor lies from common sense and justice, an objective measure is made to assess the situation (impartial assessment) according to objective norms.[34]

Dutch legal expert Prof. Mr. P.L Wery expressed his opinion regarding the meaning of good faith in an agreement, namely "That both parties must treat each other as is proper between polite people, without trickery, without guile, without tricks, without disturbing the other party, not only by looking at their own interests but also looking at the interests of outside parties".[35]

Based on the opinions of legal experts, it shows various interpretations of the meaning of good faith as a legal principle of agreements. One thing that can be stated is that good faith describes an attitude or behavior of honesty and propriety.[36] Reviewed from the elements of the agreement, good faith is included in the category of natural elements, because good faith is a principle that must be implemented specifically in the agreement and is attached to the agreement. This creates a sense of responsibility for the parties who make the agreement by implementing good faith.

According to Hans Kelsen's theory, the theory of legal responsibility states that: "a person is legally responsible for a certain act or that he bears legal responsibility, the subject means he is responsible for a sanction in the event of a conflicting act.[37]

a. Based on Fault.
b. Absolut Responsibility.
c. Individual Responsibility.
d. Collective Responsibility.

The regulatory model in the Civil Code regarding unlawful acts, then the responsibility model is divided into: responsibility with an element of fault (intentional and negligent), responsibility with an element of fault, especially an element of negligence, absolute responsibility (without fault) in a very limited sense.[38] Responsibility requires an element of fault, meaning that a person must be guilty (liability based on fault), which is based on the principle that

[31] Wirjono Prodjodikoro, *Asas-Asas Hukum Perjanjian*. (Bandung: Mandar Maju, 2011) h.102

[32] Professor Fakultas Hukum Universitas Sumatera Utara Bedah Definisi Asas Itikad Baik. https://HukumOnline. Diakses pada tanggal 20 Mei 2024

[33] Afif Khalid, *Analisis Itikad Baik sebagai asas hukum perjannjian*, Jurnal Legal Reasoning, 2023, Vol. 5 No.2. h 117

[34] Salim HS. *Hukum Kontrak: Teori dan Teknik Penyusunan Kontrak*. (Jakarta: Sinar Grafika, 2010) h. 11

[35] Samuel Hutabarat, *Prinsip Itikad Baik dalam Berbagai Hukum Kontrak,* Gloria Juris, 2004, Vol. 4 No.3. h 225

[36] Misbah Imam Soleh Hadi & Bayu Indra Permana, *Konstruksi Hukum Pembebasan Pajak Penghasilan Terhadap Peralihan Hak Atas Tanah Dalam Pembagian Hak Bersama Waris*, Jurnal Ilmu Kenotariatan, Vol. 3, No. 1, (2022), h. 1-13.

[37] Jimly Asshiddiqie & M. Ali Safa'at, *Teori Hans Kelsen Tentang Hukum*, (Jakarta: Konstitusi Press, 2006), h. 61-63.

[38] Munir Fuady, *Perbuatan Melawan Hukum Pendekatan Kontemporer*, (Bandung: Citra Aditya Bakti, 2017), h. 3.

there is no responsibility if there is no fault. Absolute or no-fault liability (strict liability, absolute liability) is a legal responsibility imposed on the perpetrator of a legal act. This responsibility is without looking at whether the person concerned in carrying out the act has an element of fault or not. In this case, the perpetrator can be held legally responsible, even though in carrying out the act it was not intentional and did not contain elements of negligence, carelessness, or impropriety.[39]

In general, the principles of responsibility in law can be distinguished as follows:[40]

a. The principle of liability based on fault, a person can only be held legally responsible when there is an element of fault that he/she has committed, and four main elements must be met, namely the existence of an act, the existence of an element of fault, the existence of losses suffered and the existence of a causal relationship
b. The principle of presumption of liability, a person is always considered responsible until he/she can prove that he/she is not guilty. Thus, the reverse burden of proof (omkering van bewijslas) is accepted in this principle.
c. The principle of presumption of nonliability, the opposite of the second principle, meaning that a person is not always considered responsible.
d. The principle of absolute liability, this principle is often identified with the principle of absolute liability. However, there are also experts who distinguish between the two, strict liability determines that fault is not a determining factor, there are exceptions that allow for exemption from responsibility, such as force majeure. On the other hand, absolute liability determines responsibility without fault and there are no exceptions.
e. The principle of limitation of liability principle allows for the inclusion of an exoneration clause in the standard agreement that is made.

Responsibility is an attitude of accepting all consequences of all actions that have been carried out.[41] The responsibility that every individual has is the attitude of accepting all the consequences of every action taken, including a Notary who requires him to be fully responsible for the authority he has.

If associated with the theory above with good faith, that in terms of meaning contained in Article 1338 paragraph (3) of the Civil Code is not explicitly explained about the meaning of good faith, but only explained that the agreement must be carried out in good faith. The implementation of good faith is something that every party has in carrying out the agreement, therefore the author relates it to the theory of responsibility from Hans Kelsen because good faith is honest and proper behavior that must be possessed by the party who wants to carry out the agreement. The implementation of the agreement gives rise to legal responsibility for the parties so that they can carry out the agreement properly.

Judging from the elements of the agreement, good faith falls into the category of natural elements, because good faith is a principle that must be implemented specifically in the agreement and is attached to the agreement. Good faith contained in Article 1338 paragraph (3) of the Civil Code contains the understanding that the implementation of the agreement must proceed by observing the norms of propriety and morality. The first good faith contains a subjective element, while the second contains an objective element. With this principle, the parties must carry out the substance of the contract based on strong trust or belief. The agreement that has been agreed upon by the parties must be implemented according to propriety and justice. an act is carried out without trickery, without disturbing other parties and the parties are trusted.

II. Legal Consequences of Agreements Not Executed in Good Faith

An agreement in principle consists of a series of words agreed upon by both parties. The function of an agreement is to provide legal certainty to the parties. For an agreement to be valid, it must meet the requirements stipulated in Article 1320 of the Civil Code, namely agreement, capability, certain things and lawful reasons. In addition, the agreement must also comply with the legal principles that have been determined, including the principle of good faith as stated in Article 1338 paragraph (3) of the Civil Code.

The application of the principle of good faith as a complement to the principle of freedom of contract is very important, because fraudulent acts in the business sector, especially those related to freedom of contract on the one hand and unlawful acts on the other, are generally included as clauses in agreements that occur between parties who are not in equal positions, either economically, socially, intellectually or politically.[42]

An agreement has conditions that form the basis for the agreement to be valid and binding. The conditions for the validity of an agreement are regulated in Article 1320 of the Civil Code. This is very important to understand in order to create a valid agreement. In Article 1320 of the Civil Code, there are four conditions for an agreement to be considered valid, namely:

a. Agreement

There is an agreement from those who bind themselves, the agreement in question means that there must be a match between the will and statements of the parties. The agreement becomes unfulfilled if based on Article 1321 of the Civil Code, due to coercion (dwang), error (dwaling), and fraud (bedrog) as mentioned in. If the agreement arises due to coercion, error or error, the agreement can be canceled, thus this agreement is one of the subjective requirements for the validity of an agreement.[43]

b. Acting Skills

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[39] Andria Luhur Prakoso, *Prinsip Pertanggung jawaban Perdata dalam Perspektif Kitab Undang-Undang Hukum Perdata dan Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup, Prosiding Seminar Naional "Tanggung Jawab Pelaku Bisnis dalam Pengelolaan Lingkungan Hidup*", h. 215.

[40] Fransiska Novita Eleanora, *Prinsip Tanggung Jawab Mutlak Pelaku Usaha Terhadap Ketentuan Pasal 27 UU No. 8 Tahun 1999 Tentang Perlindungan Konsumen*, Jurnal Krtha Bhayangkara, Vol. 12, No. 2, 2018, h. 216

[41] Hans Kelsen, *Teori Umum Tentang Hukum dan Negara*, (Bandung: Nusa Media, 2015), h. 300

[42] Sumarryatai Hartono, *Politik Hukum Menuju Suatu Sistem Hukum Nasional,* (Bandung:Alumni, 2005), h. 125

[43] Hetty Hassanah, *Aspek Hukum Perdata di Indonesia*, (Yogyakarta: Deepublish, 2014), h. 66

Competence is a general requirement for parties to be able to carry out valid legal actions. Every person is competent to make agreements, unless by law he is declared incompetent (Article 1329 of the Civil Code). According to Article 1330 of the Civil Code, those who are not competent to make an agreement:

1) Minors;
2) Those who are placed under guardianship;
3) Women in cases stipulated by law, and all persons to whom the law has prohibited them from making certain agreements. The legal consequence of this incapacity is that the agreement that has been made can be cancelled through a court decision.

c. A Certain Thing

A certain thing means related to the object of the agreement that must be clear and can be determined, namely an object that can be traded based on Article 1332 of the Civil Code. According to Article 1333 of the Civil Code, the object that is the object of an agreement must be certain or at least its type must be determined. The certain object can be an object, which now exists and will exist in the future, except for inherited objects as regulated in Article 1334 of the Civil Code. The agreement in its object violates the applicable provisions, as an objective requirement for the validity of an agreement, then the agreement is null and void by law, meaning that from the beginning the agreement is considered never to have existed so that there is no basis for mutual suing.[44]

d. For the halal reason

A lawful cause is also an objective requirement for the validity of an agreement. The word "cause" in Latin is called causa, this is related to the contents of the agreement that do not conflict with public order, morality, and law (Article 1337 of the Civil Code). This provision does not care about what causes a person to enter into an agreement on the condition that it does not violate Article 1337 of the Civil Code, what needs to be considered is the contents of the agreement that describe the objectives to be achieved. According to Article 1335 of the Civil Code, an agreement without a cause or that has been made for a prohibited reason has no legal force.

At the stage of implementing the agreement, the parties must carry out what has been promised or what has become their obligation in the agreement. The obligation to fulfill what is promised in good faith is what is called achievement.[45]

The performance consists of giving, doing or not doing. This is regulated in Article 1234 of the Civil Code, each obligation is to give something, to do something or not to do something. So, based on the provisions of Article 1234 of the Civil Code, the performance can be divided into 3 (three) types, namely:

1. Giving something
2. Doing something
3. Not doing something. [46]

For the validity of an agreement related to performance, it must meet the following requirements:

1. The performance must be able to be determined,
2. The performance must not be contrary to the law, public order and good morals.
3. It cannot be implied that the performance can be carried out or fulfilled.
4. It cannot be implied that the performance must be able to be valued in money.[47]

According to Gustav Radbruch, "there are two kinds of understanding of legal certainty, namely legal certainty because of the law" and "legal certainty in or from the law": Law that successfully guarantees a lot of legal certainty in society is a useful law, for example, the parties promise each other to realize the desired achievement. "Legal certainty because of the law" gives two other legal tasks, namely guaranteeing legal justice and the law must remain useful; while "legal certainty in law" is achieved if the law is as much as possible a law. In the law there are no contradictory provisions (laws based on a logical and practical system). Laws are made based on rechtwerkelijkheid (a real legal situation) and in the law there are no terms that can be interpreted differently.[48]

Fulfillment of performance is the essence of an obligation, while an obligation is a form of giving something, doing something or not doing something. Performance is an obligation of the parties to give something, to do something. Doing something or not doing something must be accompanied by full responsibility.

This responsibility can be interpreted that the debtor risks his assets as collateral for the fulfillment of his debt to the creditor, this shows full responsibility to fulfill his obligations or can be said as a guarantee to strengthen his performance responsibility. Obligations arising from agreements or obligations arising from laws, failure to fulfill obligations has two possible reasons, namely:

1. Due to the debtor's fault, either intentionally or negligently.
2. Due to force majeure beyond the debtor's ability, the debtor is not guilty".[49]

According to Subekti, "it is a legal relationship between two people or two parties based on which one party has the right to demand something from the other party and the other party is obliged to fulfill that demand".[50] A contract is a legal relationship that occurs either because of an agreement or because of the law. A legal relationship is a relationship that gives rise to legal consequences, namely the existence of rights and obligations (duty/obligation).[51] An agreement that meets the validity has binding force for the parties, and

[44] *Ibid*. h.68.

[45] Ahmad Miru, *Hukum Kontrak dan Perancangan Kontrak,* (Jakarta: PT. Raja Grafindo Persada, 2010) h. 67)

[46] I Ketut Oka, *Hukum Perikatan,* (Jakarta:Sinar Grafika, 2016) h. 16

[47] Maryam Darus, *KUHPerdata Buku III Hukum Perikatan dengan Penjelasan,* (Bandung: Alumni, 2002) h. 45

[48] E. Utrecht dalam Sudirman Sidabuke, *Kepastian Hukum Perolehan Hak Atas Tanah Bagi Investor*, Disertasi, Program Pascasarjana Universitas Brawijaya, Malang, 2007

[49] Abdul Kadir Muhammad, *Hukum Perjanjian*, (Alumni:Bandung, 1980,) h. 20.

[50] Johannes Ibrahim & Lindawaty Sewu, *Hukum Bisnis Dalam Persepsi Manusia Modern*, (Bandung: PT. Refika Aditama, Cetakan kedua, 2007), hal. 80

[51] Johannes Ibrahim & Lindawaty Sewu, *Hukum Bisnis Dalam Persepsi Manusia Modern*, (Bandung: PT. Refika Aditama, Cetakan kedua, 2007), hal. 80

the legal consequences of the existence of the agreement are:

a. The parties are bound by the contents of the agreement and also based on propriety, custom and law (Articles 1338, 1339 and 1340 of the Civil Code)
b. The agreement must be carried out in good faith as regulated in Article 1338 paragraph 3 of the Civil Code.
c. The creditor can request the cancellation of the debtor's actions that are detrimental to the creditor (actio pauliana) as regulated in Article 1341 of the Civil Code.

If an agreement has been made based on Article 1320 of the Civil Code, then the consequence is that the agreement applies as a law for the parties as stated in Article 1338 paragraph (1) of the Civil Code. If one party does not carry out the performance in accordance with what was agreed upon, it is called a breach of contract. Agreements made by two parties, sometimes a time limit is determined, often not determined by the parties who made the agreement. If in a performance there is a determination of a time limit for its fulfillment, for example one week, but the debtor does not fulfill his obligations at the specified time, then this can be said to be one of the causes of a breach of contract.[52]

Default comes from Dutch which means poor performance. Default is not fulfilling or neglecting to carry out obligations as stipulated in the agreement between the creditor and the debtor. To determine whether a debtor has committed a default, it must first be proven whether there is an element of good faith or not from the debtor. A legally made agreement is an agreement that is not made due to error, not due to fraud or not due to any element of coercion, the debtor who commits a default can be legally forced to fulfill all of his obligations, as desired by the law itself, because the law is clearly regulatory and coercive.

Default is: "The implementation of an agreement that is not on time or is not carried out properly or is not carried out at all." In general, default is: "A situation where a debtor at the stage before the agreement, the formation of the agreement or its implementation. Article 1313 of the Civil Code states: "An agreement is an act by which one or more people bind themselves to one or more other people." (debtor) does not fulfill or carry out the performance as stipulated in an agreement".

The legal basis for default is regulated in Article 1243 of the Civil Code which reads as follows: Compensation for costs, losses and interest due to failure to fulfill an obligation begins to be required if the debtor, even though he has been declared negligent, continues to be negligent in fulfilling the obligation, or if something that must be given or done can only be given or done within a time that exceeds the time that has been determined.

The meaning of default in this article can be said to be a default if:

a. Not doing what he said he would do
b. Carry out what he promised, but not as promised;
c. Did what was promised but was late;
d. Do something that according to the agreement you are not allowed to do.

The elements of default include: The existence of a valid agreement (1320), the existence of an error (due to negligence and intent), the existence of a loss, the existence of sanctions, which can be in the form of compensation, resulting in the cancellation of the agreement, transfer of risk, and paying court costs (if the problem is brought to court). Default is a term that refers to the failure to carry out the performance by the debtor. The occurrence of default results in the other party (the opponent of the defaulting party) being harmed. Because of the loss by the other party, the party who has committed default must bear the consequences of the demands of the opposing party which can be in the form of: Cancellation of the agreement; cancellation of the agreement accompanied by a claim for compensation; fulfillment of the agreement and fulfillment of the agreement accompanied by a claim for compensation.

However, the debtor cannot be immediately accused of default. There must be proof for this. The party accused of default must also be given the opportunity to submit objections or self-defense, including:

1. Failure to fulfill the agreement (default) occurs due to force majeure
2. Failure to fulfill the agreement (default) occurs because the other party is also in default.
3. Failure to fulfill the agreement (default) occurs because the opposing party has waived its right to fulfill the performance.[53]

However, sometimes in certain circumstances to prove the existence of a debtor's default, a statement of negligence is no longer required, namely in the case of: A fatal grace period applies to the fulfillment of the performance; the debtor refuses to fulfill; the debtor admits his negligence; fulfillment of the performance is impossible (outside of over macht); fulfillment is no longer meaningful, and the debtor does not perform the performance as it should.

According to M. Yahya Harahap: "Banprestai is the implementation of obligations that are not on time or are not carried out properly". According to R. Soebekti: "Banprestasi means if the debtor does not do what he promised, then he is said to have committed a breach of contract. He is negligent or also breaks his promise or he also violates the agreement if he does or does something that he is not allowed to do". [54] According to the Legal Dictionary, default means negligence, negligence, breach of promise, not fulfilling one's obligations in an agreement.[55]

What is meant by default is a condition that due to negligence or error, the debtor cannot fulfill the performance as stipulated in the agreement and is not in a state of force majeure. Marhainis stated that default is not fulfilling or neglecting to carry out obligations as stipulated in the agreement made between the creditor and the debtor, resulting in legal consequences.

Legal consequences are the consequences of an action taken to obtain a result desired by the perpetrator and regulated by law. The action taken is a legal action, namely an action taken to obtain a result desired by law.[56]

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[52] Salim H.S., *Hukum Kontrak Teori dan Teknik Penyusunan Kontrak*, (Sinar Grafika:Jakarta, 2003), h. 98.

[53] M. Yahya Harahap, *Segi-Segi Hukum Perjanjian*, (Alumni:Bandung, 1986), h. 60

[54] Subekti, *Loc.Cit*.

[55] Sudarsono, *Kamus Hukum*. (Rineka CIpta:Jakarta, 2007), h. 578

[56] R. Soeroso, *Pengantar Ilmu Hukum*, (Sinar Grafika:Jakarta, 2013) h 295.

It is even clearer that legal consequences are all consequences that occur from all legal acts carried out by legal subjects against legal objects or other consequences caused by certain events that have been determined or considered as legal consequences by the law in question.[57] Cancellation of an agreement can be requested by one of the parties in the agreement who feels aggrieved. An agreement can be requested to be canceled if:

1. An agreement made that violates the subjective requirements for the validity of an agreement as regulated in Article 1320 Paragraphs 1 and 2 of the Civil Code, namely that the agreement was born due to a defect in will (wilsgebreke) including due to error, coercion or fraud, or due to the incompetence of the parties to the agreement (ombekwaamheid), resulting in the agreement being void (vernietigbaar).
2. An agreement made that violates the objective requirements for the validity of an agreement as regulated in Article 1320 paragraphs 3 and 4, the agreement made does not meet certain object requirements or has a cause that is not permitted such as being contrary to law, public order, and morality, resulting in the agreement being void by law (nietig).

The first example of a case decision is in decision Number 402/PDT/2019/PT.MKS that regarding the case that has a position case around 2005, PT. Nusasembada Bangunindo as a Developer (hereinafter referred to as the Defendant) of housing that has carried out promotions both through print media (Fajar Newspaper, Tribun Timur Newspaper and Berita Kota Newspaper etc.), electronic media (Radio FM and TVRI Sulsel) and the Defendant's company marketing carried out in the Mall in the Makassar City area with promotions to build and sell land and type 36, type 45 and type 60 houses at the Pesona Khayangan housing location, located in Minasa Upa Village, Makassar City. Then due to the promotion, Ir.H. Rahmah Ahmad (hereinafter referred to as Plaintiff I), Drg. Hj. Aisyah Ahmad (hereinafter referred to as Plaintiff II) and Abbas Palembang (hereinafter referred to as Plaintiff III) came to the Defendant's office to purchase land and a house in the Pesona Khayangan housing complex, where at that time the Defendant had prepared a Sale and Purchase Agreement with standard clauses and the Defendant asked Plaintiff I, Plaintiff II, and Plaintiff III to make payments in installments, until the price of the land and house in the location was paid off as follows:

1. Plaintiff I bought and paid for land and house type 45 Block D-1 with land area of 193.2 M2 and type 36 Block D-17 with land area of 147M2. and signed the Sale and Purchase Agreement on April 18, 2006.
2. Plaintiff II bought and paid for land and house type 45 Block C-16 with land area of 140M2. And signed the Sale and Purchase Agreement on April 19, 2006.
3. Plaintiff III bought and paid for land and house type 45 Block C-1 with land area of 140M2. And signed the Sale and Purchase Agreement on July 18, 2005.

That since the signing of the Sale and Purchase Agreement above, before Plaintiff I, Plaintiff II, and Plaintiff III occupied the land and house, the three of them first built and renovated the house. After occupying the land and house, Plaintiff I, Plaintiff II, and Plaintiff III have paid off and controlled and occupied the land and house for 12 years. The Defendant has never fulfilled his promises to provide electricity, water, PAM, complex roads and other public facilities in the Pesona Khayangan Housing complex. Ironically, suddenly on Wednesday, September 13, 2017, Plaintiff I, Plaintiff II, and Plaintiff III were surprised by the arrival of the Makassar District Court Bailiff who asked Plaintiff I, Plaintiff II, and Plaintiff III to vacate the land and house that they controlled and occupied, because the Makassar District Court will carry out an Execution of Vacating the land and house at the Housing location.[58]

This means that in the above case, Plaintiff I, Plaintiff II, and Plaintiff III did not know that the land and house were in dispute. The Defendant deliberately covered up the act. According to Article 1321 of the Civil Code, due to coercion (dwang), error (dwaling), and fraud (bedrog). The above case is included in the act of fraud (bedrog) by not carrying out good faith in the agreement. Article 1328 of the Civil Code "Fraud is a reason to cancel an agreement, if the fraud used by one party is such that it is clear that the other party would not have entered into the agreement without the trickery. Fraud cannot only be assumed, but must be proven". The Sale and Purchase Agreement between Plaintiff I, Plaintiff II, and Plaintiff III and the Defendant does not meet the requirements for a valid agreement in Article 1320 of the Civil Code.

The condition in question is a reason that is prohibited by law, because the Sale and Purchase Agreement is fraudulent and not based on good faith, therefore according to Article 1254 of the Civil Code "All conditions that aim to do something that is impossible to do, something that is contrary to good morality, or something that is prohibited by law are void and result in the agreement that is dependent on it being invalid."

It can be proven that the requirements: a) First, there is an agreement between those who bind themselves in the agreement, in the preliminary agreement between the buyer (Plaintiff I, Plaintiff II, and Plaintiff III) with the developer (Defendant) there has been an agreement to enter into a legal relationship of sale and purchase. The agreement between the parties is marked by the signing of the agreement. b) Second, the requirement of competence in making an agreement can be shown by the fact that both Plaintiff I, Plaintiff II, and Plaintiff III as well as the Defendant are competent to carry out legal acts. Plaintiff I, Plaintiff II, and Plaintiff III as buyers are proven by their KTP identity while the Defendant as a legal entity is in the form of a limited liability company. A limited liability company is one form of legal entity. A legal entity can be classified as a legal subject so that it is considered competent to carry out legal acts. c) Third, a certain thing. In the PPJB, the object of the agreement in the form of land and houses can be shown from the provisions of the location of the plot, the type of land and the building that have been mutually agreed upon. d) Fourth, the requirement of a lawful cause shows the main purpose of the agreement between Plaintiff I, Plaintiff II, and Plaintiff III and the Defendant is to transfer ownership of the house and the purpose of the agreement, but for 12 years the Defendant has never fulfilled his promises to provide electricity, water, PAM, complex roads and other public facilities in the

[57] Pipin Syarifin, *Pengantar Ilmu Hukum*,(Pustaka Setia:Jakarta, 2011), h. 71.

[58] Putusan Nomor 402/PDT/2019/PT.MKS. h. 9

Pesona Khayangan Housing complex. Ironically, suddenly on Wednesday, September 13, 2017, Plaintiff I, Plaintiff II, and Plaintiff III were surprised by the arrival of the Makassar District Court Bailiff who asked Plaintiff I, Plaintiff II, and Plaintiff III to vacate the land and house that they control and occupy, because the Makassar District Court will carry out the Execution of Vacating the land and house at the Housing location which is contrary to laws and regulations, morality and public order.

Therefore, it can be concluded that the agreement does not meet the valid requirements of the agreement as regulated in Article 1320 of the Civil Code. Because it does not meet the requirement of "something prohibited by law", the requirement is an objective requirement, then the legal consequence is that the agreement is null and void. This means that from the beginning an agreement was never born and there was never a bond.[59]

Then the second case is in decision Number 104/PDT2019/PT.BNA where the position is that there is land inherited from the deceased. Cut Rohita, who has no children and has a husband named Said Djakfar (hereinafter referred to as the Plaintiff). Apart from her late husband. Cut Rohita also left behind another heir, namely Drs. Marakarma (deceased) and Hikmatullah (biological brother). The assets left behind were two plots of land managed by Yusuf (hereinafter referred to as the Defendant) for planting rice and paying land rent to the owner of Cut Rohita during his lifetime. Since Cut Rohita died, Yusuf continued to control the land by planting rice and never paid land rent again. Subpoenas were sent several times to Yusuf but he ignored them. On Friday, May 4, 2018, Yusuf unlawfully sold ½ (one half) of the land based on Deed of Sale and Purchase Number 1.348/JNP/2018 dated May 4, 2018, covering an area of 2030 M2 located in Gampong Seuleumbah, Jeumpa District, Bireuen Regency. On that day On Monday, May 14, 2018, Defendant I unlawfully sold a plot of land as stated in Deed of Sale and Purchase Number 4,416/JNP/2018 with an area of 1,260.6 M2 located in Buket Paya, Gampong Seuleumbah, Jeumpa District, Bireun Regency.[60]

From the case, the agreement that became the conflict was the Deed of Sale and Purchase which became the basis for the transfer of land ownership rights. Based on Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA), the definition of Ownership Rights as formulated in Article 20 of UUPA which is stated in Article (1), ownership rights are hereditary rights, the strongest and fulfilled, which can be owned by a person over land; (2), ownership rights can be transferred and assigned to another party. Ownership rights are the strongest and fulfilled rights, in the explanation of Article by Article that in Article 20 of the Basic Agrarian Law, the characteristics of ownership rights are mentioned which distinguish them from other rights. Ownership Rights give authority to the owner, which is the broadest when compared to other rights. Ownership Rights can be transferred to another party by sale and purchase, gift, will, exchange and others.[61]

A deed of sale and purchase of land is a very important thing that functions to transfer ownership rights to land and to establish land ownership.[62] For people living in remote villages, if buying and selling is required with a PPAT deed that has not been appointed by the Head of the BPN, then the village community will feel that their rights are limited in carrying out the continuity of the economy, especially in buying and selling land. In land law, land buying and selling transactions can be carried out by PPAT, the Sub-district Head can also be appointed as a temporary PPAT by the Head of the BPN. This needs to be given serious attention, in order to serve the community in making PPAT buying and selling deeds in areas where there are not enough PPAT.[63]

The provisions stipulate that the deed of transfer of land ownership must be made by a Land Deed Making Officer (PPAT), in which case the PPAT is usually also held by a Notary. Where in making the deed, both regarding the form, content, and method of making it, as stipulated in PP No. 24 of 2016 concerning PPAT. However, in practice, the making of AJB is sometimes not in accordance with the provisions of the law that have been set, so that it poses a risk to the legal certainty of land ownership rights. AJB is an authentic deed that has perfect evidentiary value to the parties as stated in Article 1870 of the Civil Code. So, if there is a problem with the deed, the consequence is that it is canceled or declared null and void by law by the court.

The Deed of Sale and Purchase (AJB) is a deed of information (acknowledgement) of the sale and purchase of land witnessed by two witnesses and authorized by the PPAT, so that it functions as evidence to be able to register land rights. The deed is a deed of sale and purchase, so the contents of the deed contain what was agreed upon in the sale and purchase by the parties appearing. The Civil Code in agreements adheres to an open concept, so that agreements follow whatever is desired by the parties, as long as it does not conflict with the law, public order and morality.[64]

The deed made by a notary must contain the necessary requirements to achieve the authentic nature of the deed, for example, in the reading of the deed it states that it must include the identities of the parties, make the contents of the agreement desired by the parties, sign the deed and so on. However, if these requirements are not met, the deed can be canceled or void by law.[65] The purpose of reading this deed is so that the parties know the contents of the deed because the contents of the deed are the wishes of the parties. The reading of this deed is also carried out so that one party does not feel disadvantaged if there is information or redaction in the deed that is burdensome or detrimental to the other party.[66]

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[59] Subekti, *Hukum Perjanjian*, (Jakarta: PT. Intermasa, 1990) h. 20

[60] Putusan Pengadilan Nomor 104/PDT/2019/PT.BNA

[61] Effendi Perangin, *Hukum Agraria di Indonesia Suatu Telaah dari sudut pandang praktisi hukum,* (Refika Aditama:Bandung, 2011) h.238

[62] Harun Al-Rasyid, *Sekilas Tentang Jual Beli Tanah*, Cetakan I,(Ghalia Indonesia, Jakarta, 1987), hal. 64.

[63] Urip Santoso, *Pendaftaran dan Peralihan Hak atas Tanah, Cetakan III*, (Kencana, Jakarta, 2013), h. 370

[64] https://www.hukumonline.com/klinik/detail/ulasan/lt4c3d1e98bb1bc/hukum-perjanjian/

[65] Andi Ahmad Suhar Mansyur, *Analisis Yuridis Normatif Terhadap Pemalsuan Akta Otentik Yang Dilakukan Oleh Notaris*, Hal 2.

[66] *Ibid.*

Supreme Court Jurisprudence No. 123/K/Sip/1971, land registration is merely an administrative act, meaning that registration is not a requirement for the validity or determines when land rights are transferred in a sale and purchase. According to the provisions of the UUPA, registration is strong evidence of the validity of a sale and purchase carried out, especially in relation to a third party in good faith. The administration of registration is open so that everyone is assumed to know about it.[67]

Article 19 UUPA has regulated land registration, and as an implementation of Article 19 UUPA concerning land registration, government regulation No. 24 of 1997 concerning land registration was issued. According to Article 19 PP No. 24 of 1997, it is stated that the objects of land registration are plots owned with ownership rights, AGU, HGB, Land Use Rights, Management Rights, Waqf Land, Ownership Rights for Apartment Units, Mortgage Rights and State Land. In the list, the intention is to record and issue proof of rights. Proof of rights is called a certificate of land rights consisting of the mortgage and measurement letter bound together in one envelope.

A sale and purchase conducted without the presence of a PPAT remains valid because the UUPA is based on customary law (Article 5 of the UUPA), while in the UUPA Law the system is concrete, cash/real/actual. However, in order to realize legal certainty in every transfer of land rights, PP No. 24 of 1977 as the implementing regulation of the UUPK has determined that every agreement that intends to transfer land rights must be proven by a deed made by and before a PPAT.

According to the Circular of the Supreme Court Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2016 as a Guideline for the Implementation of Duties for the Court (Hereinafter referred to as SEMA Number 4 of 2016) that Regarding the definition of a good faith buyer as stated in the civil chamber agreement dated October 9, 2014 in letter a is refined as follows: The criteria for a good faith buyer who needs to be protected based on Article 1338 paragraph (3) of the Civil Code are as follows:

a) Carry out the sale and purchase of the land object in accordance with the legal procedures and documents as determined by statutory regulations, namely:
   - Purchase of land through public auction or:
   - Purchase of land in the presence of a Land Deed Official (in accordance with the provisions of Government Regulation Number 24 of 1997 or;
   - Purchase of customary land / unregistered land carried out according to customary law provisions, namely:
   - carried out in cash and openly (in the presence / with the knowledge of the local Village Head / Lurah).
   - preceded by research on the status of the land object of the sale and purchase and based on the research it shows that the land object of the sale and purchase belongs to the seller.
   - Purchase is made at a reasonable price.

b) Exercise caution by examining matters relating to the promised land object, including:
   - The seller is a person who has the right/has the rights to the land that is the object of the sale and purchase, in accordance with the proof of ownership, or;
   - The land/object being traded is not in confiscated status, or;
   - The land object being traded is not in collateral/liability status, or;
   - For certified land, information has been obtained from the BPN and the history of the legal relationship between the land and the certificate holder.[68]

Legal certainty is one of the objectives of the drafting of laws and regulations. Each clause containing norms or rules arranged in articles must be in harmony and consistent in its implementation. So, even if there is a problem that ends in a dispute, it can still be resolved based on the regulations that have been made. In line with this, according to Gustav Radbruch, the objectives of law are oriented towards legal certainty, justice, and utility or benefit.[69]

It can be proven that the requirements: a) First, agreed, Defendant I and Defendant II have agreed to carry out the sale and purchase of land offered by Defendant I to Defendant II. The agreement between the parties is marked by the signing of the Deed of Sale and Purchase Agreement through the PPAT as Defendant III. b) Second, the requirement of competence in making the contract of Defendant I and the Defendant according to the provisions of the rules is considered competent to make an agreement as a legal subject, c) Third, a certain thing. In the AJB, the object of the agreement is 2 plots of land with an area of 4,270m2 each and the second area of 1,293m2. d) Fourth, the requirement of a lawful cause shows that Yusuf without rights sold ½ (one half) of the land based on the Deed of Sale and Purchase Number 1.348 / JNP / 2018 dated May 4, 2018 covering an area of 2030 M2 located in Gampong Seuleumbah, Jeumpa District, Bireuen Regency. On Monday, May 14, 2018, Defendant I unlawfully sold a plot of land as stated in Deed of Sale and Purchase Number 4,416/JNP/2018 with an area of 1,260.6 M2 located in Buket Paya, Gampong Seuleumbah, Jeumpa District, Bireun Regency, which is contrary to laws and regulations, morality and public order.

The seller's lack of good faith in a subject can cause an unlawful act, as regulated in Article 1365 of the Civil Code. Article 1365 of the Civil Code states: "Every unlawful act, which causes loss to another person, requires the person whose fault caused the loss, to compensate for the loss." If the obligated party is negligent in handing over the agreed legal object in this case land, then from that moment on the responsibility lies with the obligated party and if it does not fulfill the agreement then it is obliged to compensate for the loss.

Based on the article, the seller's obligation is to guarantee the goods to be sold safely from any detrimental disturbances, also explaining important things that must be known by the buyer so that when a dispute occurs, the object of the sale and purchase does not cause losses to the buyer. It is not only the seller who must have good intentions when selling something. So that what has been explained in Article 1338 paragraph 3 explains that an

[67] Boedi Harsono, *Op Cit*, h. 53.

[68] SEMA NOMOR 4 TAHUN 2016.

[69] Notohamidjojo, O. (2011). *Soal-Soal Pokok Filsafat Hukum*, (Griya Media:Salatiga, 2011) h. 75

agreement made must be based on good faith from both parties, which means that every making and implementation of a sale and purchase agreement based on good faith must pay attention to the substance of the agreement on the basis of trust between the two parties.[70]

According to the second case of decision Number 104/PDT2019/PT.BNA AJB which is a form of agreement between Defendant I and the Buyer, there are elements that are not fulfilled in the provisions of Article 1320 of the Civil Code concerning the valid requirements of an agreement. So that if in the case of an agreement containing a defect in will because there is an agreement containing coercion, fraud, error or abuse of circumstances, it results in the agreement being canceled. Likewise, in the case of an agreement made by an incompetent party, it does not result in the cancellation of the agreement, as long as there is no cancellation of the agreement, the agreement remains valid.[71] The agreement is considered that the buyer did not find out the origin of the object that he was going to buy, thus in the terms of the agreement not fulfilling the 4th condition is contrary to the Law where the condition is included in the objective condition which means that the agreement that has been executed is null and void by law as determined by the judge in court.

Conclusion

1. The meaning of Good Faith according to Article 1338 paragraph (3) of the Civil Code is not explicitly explained therein. According to Subekti, good faith is interpreted into two meanings, namely in the context of making an agreement (formation of contract) good faith is interpreted as "honesty" of one party in making it, this is because the parties place full trust in the other party who is considered honest and does not hide anything bad that can later cause difficulties and in the context of implementing the agreement (performance of contract).
2. The legal consequences of an agreement that has been agreed upon and is not carried out in good faith is an agreement that does not meet the valid requirements of an agreement as regulated in Article 1320 of the Civil Code. Because it does not meet the requirements of "something prohibited by law", the unfulfilled requirements are objective requirements, so the legal consequences of the agreement are that the agreement is null and void. Therefore, good faith in the agreed agreement is not found by the court due to the failure to fulfill the valid requirements of the agreement.

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[70] Badrulzaman, Kompilasi Hukum Perikatan (Bandung: PT. Citra Aditya Bakti, 2001), h. 24

[71] Khairandy, R. 2014. *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan* (Bagian Pertama). (Yogyakarta: FH UII Press. 2014) h. 50

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