
**THE PRINCIPLE OF GOOD FAITH IN THE PRELIMINARY AGREEMENT (VOOR OVEREENKOMST) IN
THE HOUSE SALE AND PURCHASE AGREEMENT
(SEMARANG STATE COURT STUDY NO 467/Pdt.G/2022/SMG)**

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ABSTRACT

This research aims to analyze the principle of good faith related to preliminary agreements (voor overeenkomst) in the context of house sale and purchase agreements. This research takes a case study from the Semarang District Court decision with case number 467/Pdt.G/2022/SMG. The research method used is normative legal research with a statutory approach and a case approach. The data used in this research consists of primary and secondary legal materials, including related laws and regulations, court decisions, as well as relevant legal literature. The research results show that the principle of good faith has an important role in the preliminary agreement (voor overeenkomst) in the house sale and purchase agreement. The principle of good faith involves integrity and honesty between the parties involved in the agreement. The Semarang District Court's decision in this case shows the need to apply the principle of good faith in deciding disputes that arise related to preliminary agreements.

Keywords: voor overeenkomst, buying and selling land.

INTRODUCTION

An agreement is a legal instrument used to regulate the relationship between the parties involved in a transaction. In this context, the principle of good faith is one of the important principles that must be considered in the formation and implementation of agreements³⁴. The principle of good faith emphasizes that parties must act in good faith, respect each other's rights and obligations, and strive to achieve mutually beneficial goals.³⁵ The principle of good faith reflects the desire to create an environment of fairness and mutual trust between the parties involved in an agreement. In the context of contract law, the principle of good faith requires the parties to adhere to the words and actions they convey in the agreement.

In agreements, the principle of good faith is an important basis for interpreting the parties' intentions and resolving conflicts that arise during the implementation of the agreement³⁶. This principle involves mutual understanding, honesty, justice and fairness between the parties involved. However, in practice, the implementation of the principle of good faith in agreements does not always run smoothly. There are various situations where one or both parties violate this principle by taking actions that harm the other party or not fulfilling agreed obligations. For this reason, this research aims to examine further the principle of good faith in agreements. Through this study, various aspects related to the implementation of the principle of good faith will be studied, the challenges faced in its implementation, as well as efforts that can be made to ensure the success of agreements by upholding the principle of good faith.

It is hoped that the results of this research can provide a deeper understanding of the importance of

³⁴ Prasnowo, Aryo Dwi, and Siti Malikhatun Badriyah. "Implementasi Asas Keseimbangan Bagi Para Pihak dalam Perjanjian Baku." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 8.1 (2019): 61-75.

³⁵ Kolopaking, Ir Anita Dewi Anggraeni, and MH SH. *Asas Itikad Baik dalam Penyelesaian Sengketa Kontrak Melalui Arbitase*. Penerbit Alumni, 2021.

³⁶ Sinaga, Niru Anita. "Peranan Asas itikad baik dalam mewujudkan keadilan para pihak dalam perjanjian." *JURNAL ILMIAH M-PROGRESS* 8.1 (2021).

the principle of good faith in agreements and its consequences for the formation, implementation and completion of agreements. Apart from that, it is also hoped that this research can provide useful recommendations for the parties involved in the agreement so that they can effectively maintain the principle of good faith and carry out the agreement fairly and with mutual benefit.

RESEARCH METHODS

To conduct research regarding the principle of good faith in preliminary agreements (voorovereenkomst) in house sale and purchase agreements, the following are several research methods that can be used:

1. Document Study: This method involves analysis of relevant documents, such as the Semarang District Court decision no. 467/Pdt.G/2022/SMG, statutory regulations related to preliminary agreements, and similar legal cases. These documents can provide insight and a strong research basis³⁷.
2. Case Study: This method involves an in-depth analysis of cases related to preliminary agreements and the principle of good faith in the context of house sale and purchase agreements. These cases may stem from court decisions or the experience of related legal practitioners. Analysis of these cases can provide a more concrete understanding of the implementation of the principle of good faith in preliminary agreements.

RESULTS AND DISCUSSION

The meaning and function of a preliminary agreement in a house sale and purchase agreement, as well as its relation to the principle of good faith.

A preliminary agreement, also known as "voor overeenkomst" in Dutch, is an agreement made before the main agreement (house sale and purchase agreement) to bind the intentions of both parties in carrying out the agreement. The preliminary agreement aims to establish an initial agreement, including basic terms, price and other requirements which will be regulated in more detail in the main agreement³⁸.

The function of a preliminary agreement in a house sale and purchase agreement includes:

1. Binding the Parties' Intentions The preliminary agreement legally binds the intentions of both parties to continue and complete the home sale and purchase agreement. Thus, the preliminary agreement shows the seriousness and commitment of the parties in carrying out the house sale and purchase transaction.
2. Establishing Basic Terms A preliminary agreement sets out the basic terms of the agreement, such as price, payment method, delivery time, and other terms which constitute the initial agreement between the seller and the buyer. These conditions are the basis for drafting the main agreement in more detail and detail.
3. Avoiding Misunderstandings By having a preliminary agreement, the risk of misunderstanding between the seller and the buyer can be minimized. The initial terms agreed upon in the preliminary agreement provide clear guidance for both parties, thereby minimizing the potential for disputes later on.
4. Protecting the Interests of the Parties Preliminary agreements can be used to protect the interests of the parties. For example, a preliminary agreement may include a down payment clause or other legal measure that protects the buyer from the risk of the seller's failure to perform the agreement.

The connection between a preliminary agreement and the principle of good faith lies in the principles of honesty, fairness and mutual respect in carrying out the agreement. The principle of good faith requires

³⁷ Irianto, Sulistyowati. "Metode Penelitian Kualitatif dalam Metodologi Penelitian Ilmu Hukum." *Jurnal Hukum & Pembangunan* 32.2 (2017): 155-172.

³⁸ Simamora, Novalia Arnita, et al. "Asas Itikad Baik Dalam Perjanjian Pendahuluan (Voor Overeenkomst) Pada Perjanjian Pengikatan Jual Beli Rumah (Studi Putusan Pengadilan Negeri Simalungun No 37/Pdt/Plw/2012/Sim)." *USU Law Journal* 3.3 (2015): 84-96.

parties to act honestly, respect each other's rights and obligations, and avoid fraudulent behavior or abuse of the trust given.³⁹ In the context of a preliminary agreement, the principle of good faith requires that both parties act honestly and respect each other in establishing a preliminary agreement and implementing the agreement.

Concept of Home Purchase and Sale Agreement

The concept of a house sale and purchase agreement is an agreement made between the seller and the buyer with the aim of transferring ownership of a house from the seller to the buyer. This agreement is a common agreement in property transactions, where the seller agrees to sell the house to the buyer in exchange for payment of the agreed price⁴⁰.

The following are several main components in the concept of a house sale and purchase agreement:

1. **Identity of the Parties:** The agreement must include the complete identities of the seller and buyer. This includes full name, address, identification number and other relevant personal data.
2. **Property Description:** The agreement must contain a clear and complete description of the property to be sold. This description includes the complete address, land area, building area, and other relevant physical details.
3. **Sale Price:** The agreement must state the sale price of the home agreed upon between the seller and buyer. This price can be in the form of a cash amount or stated in another form agreed by both parties.
4. **Payment Terms:** The agreement must explain the method and schedule for payment of the sale price of the home. This may include the amount of the down payment (deposit) that must be paid when the agreement is signed, the number of installments (if any), and the specified payment completion date.
5. **Property Conditions:** The agreement may list property conditions that must be met by the seller prior to completion of the transaction. For example, the agreement may stipulate that the seller must make certain repairs or clean the house prior to completion of the transaction.
6. **Risks and Liabilities:** The agreement may govern the risks and responsibilities associated with the property from the date the agreement is signed to the date of completion of payment and transfer of ownership.
7. **Additional Terms and Conditions:** The agreement may include relevant additional terms and conditions, such as cancellation provisions, fulfillment of legal requirements, rights and obligations of the parties, as well as other matters deemed necessary by the parties concerned.

The Importance of a Preliminary Agreement (Voor Overeenkomst) in a House Sale and Purchase Agreement

The preliminary agreement, also known as Voor Overeenkomst in the Dutch context, has an important role in the binding agreement for the sale and purchase of a house. The following are several reasons why a preliminary agreement is important in the context of a home sale and purchase agreement⁴¹:

1. **Binding the Parties:** A preliminary agreement creates a legal bond between the seller and the buyer. Even though this agreement is still temporary and has not yet become a final sale and purchase agreement, it provides legal certainty and ensures the seriousness of both parties to continue the transaction.
2. **Establishing Basic Terms:** The preliminary agreement sets forth the basic terms of the transaction, such as the sale price, identity of the parties, and description of the property. Thus, this agreement helps avoid misunderstandings and disagreements later on.

³⁹ Darmawan, R. *Itikad Baik Dalam Perjanjian Kerja Bersama*. Diss. UNIVERSITAS ISLAM INDONESIA, 2012.

⁴⁰ Pawana, Sekhar Chandra. "Konsep Perjanjian Pengikatan Jual Beli Rumah Susun Milik Sebagai Sebuah Panjer." *Acta Comitas: Jurnal Hukum Kenotariatan* 10.2 (2019).

⁴¹ Rakhman, Taufik. *Analisa Yuridis Pembatalan Perjanjian Pengikatan Jual Beli Sebidang Tanah di Pengadilan Negeri Kota Cirebon (Studi Putusan Pengadilan Negeri Cirebon Nomor 48/Pdt. G/2020/PN. Cbn)*. Diss. Universitas Islam Sultan Agung (Indonesia), 2021.

3. **Maintaining Trust:** Through a preliminary agreement, parties can show their seriousness and good faith in carrying out a house buying and selling transaction. This helps create trust between sellers and buyers, and provides assurance that both parties are committed to continuing the buying and selling process in good faith.
4. **Protecting the Interests of the Parties:** A preliminary agreement can protect the interests of both parties in a home buying and selling transaction. In this agreement, provisions can be stipulated that protect the rights and obligations of each party, such as cancellation clauses, refund of down payments, or transaction completion periods.
5. **Provides a Basis for Further Negotiations:** A preliminary agreement provides a basis for the parties to conduct further negotiations before the final purchase and sale agreement is signed. In this phase, the parties can discuss and clarify additional terms or conditions that need to be met prior to completion of the transaction.

Analysis of decision Number 467 / PDT. G / 2022 / PN Smg

1. Introduction to Cases

The Plaintiff and the Defendant on February 2 2021 carried out a private sale and purchase of a plot of land and a house building on it, with Certificate of Ownership Number 1045/Randugarut Subdistrict, Measurement Letter Number 00424/Randugarut/2011, Area 96 M2. Located at RT 004 RW 002, Randugarut Village, Tugu District. That the sale and purchase of the land and building of the SHM house Number 1045/Randugarut Subdistrict was priced at Rp. 90,000,000.00,- (Ninety million rupiah) and the Plaintiff has paid it in full to the Defendant with a receipt for receipt of the money dated February 2, 2021.

That the sale and purchase of the land and house building of SHM Number 1045/Randugarut Subdistrict has not been followed up by making a Deed of Sale and Purchase before the PPAT and continued by changing the name of SHM Number 1045/Randugarut Subdistrict from being in the name of the Defendant to being in the name of the Plaintiff at the Semarang City Land Office, because the Defendant who was going to help with the PPAT arrangements and change of name at that time was not yet financially ready;

Whereas at the time of the sale and purchase of the land and building of SHM House Number 1045/Randugarut Subdistrict, the Defendant promised verbally to the Plaintiff, that when the Defendant was ready with his finances he would follow up with a Deed of Sale and Purchase before the PPAT and the Defendant was willing to appear at the PPAT; That then in March 2022 the Plaintiff intended to follow up on the sale and purchase before the PPAT then the Plaintiff intended to contact the Defendant to carry out the sale and purchase before the PPAT, the Plaintiff encountered difficulties because it turned out from the information of the Defendant's family that the Defendant had not lived in Gondang Village since March 2022. Cepiring District, Kendal Regency and where he lives is unknown. So the Defendant broke his promise to appear before the PPAT

Whereas since there was a private sale and purchase transaction between the Plaintiff and the Defendant regarding the land and building of the SHM House Number 1045/Randugarut Subdistrict, the land and building of the house are under the control of the Plaintiff and are used as a residence for the Plaintiff and his family;

2. Case Facts

- Whereas, on February 2 2021, the Plaintiff and the Defendant entered into a sale and purchase agreement for a land/house covering an area of + 96 M2 with a certificate of Ownership No. 1045/Randugarut Subdistrict is located at RT 004 RW 002 Kel. Semarang City Monument, as stated in the Sale and Purchase Agreement dated 2 February 2021 (vide Exhibit P-3);
- Whereas, the object of the dispute mentioned above has been paid by PBB in full by the Plaintiff (see Exhibit P-5);
- Whereas, the object of the dispute is currently known as Randugarut RT 004 RW 002 Kel. Tugu, Semarang City and Ownership Certificate No. 1045/Randugarut Subdistrict is in the hands of the

Plaintiff but the Deed of Sale and Purchase has not yet been executed before a Notary/PPAT Officer (see Exhibit P-4);

3. Relevant Party Arguments

- Declaring the legality of the private sale and purchase dated 2 February 2021 between the Plaintiff and the Defendant over a plot of land and house building, Ownership Certificate Number 1045/Randugarut Subdistrict, in the name of the rights holder Siti Waqidah/Defendant
- Declare that the Plaintiff is legally valid as the owner of the land and house building, Ownership Certificate Number 1045/Randugarut Subdistrict in the name of Siti Waqidah/Defendant. Measurement Letter Number 00424/Randugarut/2011, Area 96 M2. Located at RT 004 RW 002, Randugarut Village, Tugu District, Semarang City
- Declare that the Defendant is in default/breaks his promise because he did not follow up on the sale and purchase of land and house building with Ownership Certificate Number 1045/Randugarut Subdistrict before the PPAT and subsequently changed the name of the Defendant to the name of the Plaintiff
- Declare legally permission for the Plaintiff to change the name of Certificate of Ownership Number 1045/Randugarut Subdistrict from the name of Siti Waqidah/Defendant to the name of Surini/Plaintiff at the Semarang City Land Office;
- Legally stating that this decision can be used as a legal basis for changing the name of Certificate of Ownership Number 1045/Randugarut Subdistrict from the name of Siti Waqidah to Surini;

4. Court ruling

1. Declare that the Defendant has been properly summoned to appear at the trial but is not present;
2. Grant the Plaintiff's lawsuit in its entirety with *verstek*;
3. Declare that the sale and purchase agreement for a plot of land and house building SHM Number 1045/Randugarut Subdistrict RT 004 RW 002 Tugu District, Semarang City, in the name of the right holder Siti Waqidah/Defendant which was made under the hands of the Plaintiff and Defendant on February 2 2021 is valid based on legal and binding on the parties between the Plaintiff and the Defendant;
4. Declare legal and legal control and ownership by the Plaintiff (SURINI) of the house and land with SHM Number 1045/Randugarut Subdistrict, Kec. Semarang City Monument in the name of Siti Waqidah/Defendant, Measurement Letter Number 00424/Randugarut/2011, area 96 M2. Located at RT 004 RW 002 Randugarut Village, Tugu District, Semarang City with boundaries: - North side: Jalan Randugarut RT 004 RW 002 - East side: Mr Eko's house - South side: Mbah Sutiyah's house - West side: Mr Untung's house
5. States that the Defendant (Siti Waqidah) broke his promise/default because he did not follow up on the sale and purchase of the house and land mentioned above before a Notary/PPAT in Semarang, which was made on February 2 2021;
6. Authorize the PLAINTIFF to sign the Sale and Purchase Deed acting on behalf of himself as the Buyer and on behalf of the Defendant SITI WAQIDAH as the seller as stated in the SHM Ownership Certificate Number 1045/Randugarut Subdistrict on behalf of Siti Waqidah/Defendant. Measurement Letter Number 00424/Randugarut/2011, area 96 M2. located at RT 004 RW 002 Randugarut Village, Tugu District, Semarang City;
7. Sentence the DEFENDANT to submit and comply with this decision;
8. Sentenced the Defendant to pay court costs until this decision was read, amounting to Rp. 2,108,000.00,- (two million one hundred and eight thousand rupiah);

Violation of the Principle of Good Faith in the Preliminary Agreement

To identify violations of the principle of good faith in the preliminary agreement (*Voor Overeenkomst*) in the house sale and purchase agreement, it is necessary to analyze the contract and the facts related to the case mentioned, namely the Semarang District Court Study No. 467/Pdt.G/2022/SMG.

The following are some possible violations of the principle of good faith that can arise in this context⁴²:

1. **Concealment of Information:** If a party intentionally withholds important information or provides inaccurate information about the condition of the property being sold, this may be considered a violation of the principle of good faith. The principle of good faith requires that parties to an agreement must act honestly and transparently.
2. **Unreasonable Delay:** If one of the parties unfairly or unreasonably delays the process of completing the transaction or does not fulfill its obligations within a reasonable time, this can also be considered a violation of the principle of good faith. The parties must cooperate actively to carry out their obligations within the agreed time.
3. **Non-Compliance with the Terms of Agreement:** If one of the parties does not comply with the terms agreed in the preliminary agreement, for example not paying the down payment according to the specified schedule, not providing the necessary documents, or not fulfilling other requirements, this can also be considered as violation of the principle of good faith.
4. **Unfair Changes:** If one party suddenly proposes changes to terms or conditions that are unreasonable or detrimental to the other party after the preliminary agreement has been signed, this may be considered a violation of the principle of good faith. The parties must maintain the agreements reached unless there are reasonable grounds for making such changes.

In analyzing the factors that influence violations of the principle of good faith in preliminary agreements in house sale and purchase agreements, the following are several factors that need to be considered:

- 1) **Ambiguity or Deficiencies in the Agreement:** If the preliminary agreement does not contain clear or complete provisions, this could trigger a potential violation of the principle of good faith. Ambiguity or deficiencies in an agreement can lead to misinterpretations or different interpretations, which in turn can lead to disagreements or conflicts later on.
- 2) **Power Imbalance:** If there is a power imbalance between the seller and the buyer, the chances of a violation of the principle of good faith may increase. The party with greater negotiating power may try to exploit it to unfairly benefit itself or harm the other party.
- 3) **Deviation from Legal Obligations:** If one party violates its legal obligations in the agreement, such as not complying with the terms of the contract or violating applicable law, this can be considered a violation of the principle of good faith. The principle of good faith requires that parties comply with applicable legal regulations and carry out their obligations in accordance with the provisions of the contract.
- 4) **Inaccurate or Incomplete Information:** If one party provides inaccurate information, covers up important information, or does not provide complete information about the property being sold, this can be a factor that influences the violation of the principle of good faith. Inaccurate or incomplete information can result in losses for other parties and violate the principles of honesty and transparency.
- 5) **Inequality in Legal Protection:** If there is inequality in legal protection between sellers and buyers, for example when one party has better access to legal resources or the justice system, this can result in a violation of the principle of good faith. Unequal legal protection can create injustice in the implementation of agreements and encourage violations of the principle of good faith.

The Impact of the Lack of a Preliminary Agreement on the Implementation of the Principle of Good Faith

The lack of a preliminary agreement in the house sale and purchase agreement can have a negative impact on the implementation of the principle of good faith. When preliminary agreements are not adequate, clear, or complete, this can create ambiguity and vulnerability to violations of the principle of good faith. Ambiguity in the agreement can give rise to misunderstandings between the seller and the

⁴² Daniella, Margaretha Donda, William Tandya Putra, and Erich Kurniawan Widjaja. "Asas Itikad Baik Dalam Memorandum of Understanding Sebagai Dasar Pembuatan Kontrak." (2019).

buyer regarding the rights, obligations and expectations of each party. This can trigger disputes or conflicts at a later date, which can damage the relationship between the parties and hinder the completion of the transaction⁴³.

Additionally, the lack of a preliminary agreement may create an opportunity for a party not acting in good faith to take advantage of the situation. For example, the party in a stronger position may try to change the terms in its own favor or exploit the agreement's shortcomings to the detriment of the other party. This violates the principles of equality and honesty that underlie the principles of good faith in agreements.

When the information provided in a preliminary agreement is inaccurate, incomplete, or hidden, this also violates the principle of good faith. Inaccurate or incomplete information can result in losses or injustice for other parties, as well as damage trust between sellers and buyers. Non-compliance with the legal obligations stipulated in the preliminary agreement can also damage the implementation of the principle of good faith, because the principle of good faith requires parties to comply with applicable legal regulations.

Overall, the lack of a preliminary agreement can hinder the implementation of the principle of good faith in the home sale and purchase agreement. The impacts include ambiguity, disputes, inequality, and loss of trust between parties. Therefore, it is important to draw up a clear, comprehensive and fair preliminary agreement to ensure good implementation of the principle of good faith in the property transaction.

CONCLUSION

Based on a case study conducted on the Semarang District Court decision No. 467/Pdt.G/2022/SMG, several findings were found regarding the implementation of the principle of good faith in the preliminary agreement (Voor Overeenkomst) in the house sale and purchase agreement. These findings can provide an overview of how the principle of good faith is applied in this context. In this case, there was a violation of the principle of good faith committed by one of the parties. For example, there is concealment of important information that could affect the implementation of the agreement or there are dishonest actions in carrying out the obligations of the agreement.

In addition, there are deficiencies in the preliminary agreement that could affect the implementation of the principle of good faith. Preliminary agreements that are ambiguous, unclear, or inadequate in regulating the rights and obligations of the parties can lead to disagreements in interpretation or misunderstandings that have the potential to violate the principle of good faith.

Other factors can also influence the implementation of the principle of good faith in the home sale and purchase agreement. For example, unforeseen changes in circumstances or situations that prevent parties from fulfilling their obligations in a timely manner, such as regulatory changes or adverse economic conditions.

In the context of this research, it can be concluded that the implementation of the principle of good faith in the preliminary agreement (Voor Overeenkomst) in the house sale and purchase agreement does not always go as expected. Violations of the principle of good faith, deficiencies in preliminary agreements, and other factors may affect its implementation. Therefore, it is important for the parties to maintain transparency, honesty and accuracy in carrying out the agreement and pay attention to applicable legal aspects in order to prevent conflicts and ensure fairness in house buying and selling transactions.

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