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Application of the principle of good faith in a notarial deed Partij

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Abstract
The purpose of this research is to find out the importance of the application of the principle of good faith in the agreement made by the confronters and the Notary. This research method uses normative legal research methods by paying attention to the issues studied in relation to Juridical Studies on the Application of the Principle of Good Faith in a Notarial Partij Deed. The result of this research is to build a scope of thought that an application of the principle of good faith in this notarial partij deed is not only related to the confronters, but of course related to the notary, because it is the notary who really understands the existence of the notary office law which actually directs in the right direction instead of directing in the wrong direction and carelessly, on the grounds of facta sunt servanda, freedom of contract.

Keywords: Principle of good faith, notarial deed, agreement

1. Introduction
The social life of the community is getting more complex every day. Social life often creates legal actions and legal relationships between one party and another. The legal relationship is realized in an agreement so as to provide legal certainty for the parties who bind themselves. Legal certainty ultimately requires other institutions to place an agreement to have authentic evidentiary properties, so that in the end the institution of kenotariatan was born [1].

Legal certainty cannot fulfill a sense of justice where in a good faith between the parties who make an agreement, as well as the existence of a Notary who can establish an agreement / partij acta to be authentic and based on good faith. Many people in Indonesia still make agreements with oral agreements, although oral agreements are not prohibited by the Civil Code, oral agreements do not have strong legal force compared to agreements in written form [2].

In the interaction of an association in society in general, it is certainly a high socialization with the development of the times increasingly rapidly and accompanied by the existence of ties to individuals with each other that create an agreement, both within the environment and outside by using the barter method to be a staple of socialization that has developed until now, the definition of an agreement is "a legal relationship between a number of legal subjects; in connection with that, one or several of them bind themselves to do or not do something against the other party" with the existence of a definition of this agreement then in an agreement related to the elements of legal relations [3].

It cannot be denied that in carrying out an agreement, it certainly requires legal certainty in an agreement that requires public service providers who offer services in the field of law. Various kinds of agreements have been implemented in public relations, both regulated in law and not regulated in law, one of which is an agreement arising in community activities in general, such as buying and selling. In Book III on Bonds, according to Article 1233 of the Civil Code, all bonds arise from an agreement or from the law. Bonds arising from the law according to Article 1352 of the Civil Code, arise from the law alone or from the law due to human actions. Article 1352 of the Civil Code stipulates that ties arising from human actions.

The existence of the Position and Profession of Notary as a public official who carries out the profession in providing legal services to the people of Indonesia which guarantees certainty, order and legal protection needed by using a normative approach. The Position and Profession of Notary has the authority, obligations and prohibitions that have been included in the provisions of Law Number 2 of 2014 concerning Amendments to Law Number 30 of2004 concerning Notary Positions hereinafter referred to as UUJNP.

In the provisions of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions. In the provisions of the UUJNP to carry out the duties and appointment of a Notary, there are conditions in the provisions of the UUJNP.

As already explained, a person who serves as a qualified Notary must obey the laws and regulations in carrying out his authority, which the Notary himself has the absolute authority to make a Deed that is authentic or absolute before the law, in short, the Notary has the authority trusted by the Republic of Indonesia to make an authentic Deed.

In relation to a sale and purchase agreement in the association carried out by the community at this time, many agreement activities are carried out, especially the sale and purchase of land which is still in process, causing oral purchases, with the results of the agreement in the sale and purchase agreement which will later be stated in the sale and purchase deed (AJB). In other words, all agreements should be carried out in good faith te goeder trouw in good faith. This is the provision of the contents of Article 1338 paragraph 3 of the Civil Code and actually good faith has 2 meanings where good faith as a principle and good faith as a norm, and every agreement must be carried out in good faith, as stipulated in Article 1338 paragraph (3) which states that: "an agreement must be carried out in good faith". This article means that the agreement that has been agreed upon by the parties must be carried out in accordance with decency and justice. Good faith in buying and selling is an important factor so that buyers who have good faith will receive reasonable legal protection, while parties who do not have good faith should feel the consequences of their dishonesty. Judges do play an important role in interpreting or expanding the doctrine of good faith so that it appears that good faith must exist not only at the signing and execution stages of a contract, but also at the contract drafting stage. As a result, the meaning and standards of good faith are more dependent on the attitudes and views of judges which develop on a case-by-case basis.

As this good faith is based on the value of decency and propriety located in the attitude and inner nature of a person who has the perfection of God. So important is good faith that in legislation or agreements between the confronters, both parties and the Notary will face off in a legal relationship specifically controlled by good faith and this special relationship has the further consequence that the confronters and the Notary must act with the reasonable interests of one another in mind. Good faith can serve as a filter for irregularities or improper conduct when both the confronter and the Notary themselves decide to enter into a contractual relationship.

The existence of the principle and norm of good faith has the aim that the making of notarial partij deeds is based on agreements carried out on the norms of propriety or what is felt to be in accordance with what is appropriate in public relations. However, it is not denied that the confronters and notaries are also involved in cases with the absence of the principle of good faith used in making agreements and making notarial partij deeds, with the parable of a deceitful attempt made by one of the parties and one of the confronters, which makes one of the parties a victim who does not know about the information made.

In fact, it is stated in the Supreme Court Decision Number 324/Pid.B/2020/PN Dps that the defendant Esti Yuliani on December 26, 2016 or at some time in December in 2016 at the home of the witness Nyoman Mudiana whose address is Banjar Jaba Pura Kuta Selatan, Badung Regency, or at least at another place which is still included in the jurisdiction of the Denpasar District Court, as a person who committed or participated in the act together with the witness Agus Satoto, S.H., M.Hum (as a suspect in a separate case file), forged or falsified a letter which may give rise to a right, obligation or release of debt, or which is intended as evidence of a matter with the intention of using or causing others to use the letter as if the contents were true and not forged, which was carried out against an authentic deed in the form of a Sale and Purchase Bond Agreement (PIJB) Number 04 dated February 22, 2017 from the Notary Office of Agus Satoto, S.H., M. Hum. [1] With this case, it is considered that notaries can actually be dragged into cases that are not based on good faith.

In principle, when viewed from the provisions of the Civil Code, usually the application of the principle of good faith only focuses on the faces who want to make an agreement, where the agreement must be based on good faith. However, the issue of good faith should be expanded because in making an agreement sometimes there are other parties in the agreement even though they are not directly involved in the agreement, maybe from the Notary, sometimes in making an agreement a notary who already has the authority sometimes uses his authority to legalize the wishes of one of the parties or take sides with one of the parties. Or indeed the party designs the creation of an agreement where the other party does not know anything about the information that will be included in the agreement in making a notarial partij acta.

As a result of the occurrence of a good faith that is not carried out by one of the parties with a notary which as an example of a Notary has the authority to make an authentic deed, by looking at the provisions of the Notary prohibition where the prohibition of making a Nominee agreement which is actually not allowed in making the deed, but the notary still makes the agreement with the acknowledgment of the debt made under the hand and the Notary makes it with Notariil, after which it is made with a Legal agreement. Can the principle of good faith stipulated in the Civil Code not only cover the parties, but also cover the Notary.

Actually, the proof in the Civil Code is more striking on formal proof, not material proof. By talking about the principle of good faith, it is the judge who has the authority. An agreement can be null and void apart from the issue of formal requirements, it can also be a formal requirement that should have been done but was not done, causing the deed to be declared authentic as long as no one has challenged it. As an example in the inauguration of the deed must be attended by both parties, witnesses and Notary at that time, the bottom line shows that the parties were present at the inauguration or signing, but in reality they were not. In the application of good faith, of course, avoiding the prohibitions in the provisions of the Law, such as the draft deed made by another party and authorized by a Notary then at the time of signing is not together, in the formal context it can be said to be valid, because it is already valid and written in the deed.

[1] Putusan Mahkamah Agung Nomor 324/Pid.B/2020/PN Dps perihal Peninjauan Kembali perkara Notaris Agus Satoto, SH., M. Hum., 31 Maret 2020 (324/Pid.B/2020/PN Dps).

But in reality it is not, this problem actually arises in the court process, and during the judicial process the Notary admits his mistake, which means that the Notary does not have good faith, actually before the notary takes the action the Notary already knows if this agreement can lead to null and void, by being connected to the provisions of Article 44 paragraph (5) if a loss arises from one of the parties, the Notary is obliged to be burdened with the responsibility of the loss. The purpose of this paper is to build a scope of thought that an application of the principle of good faith in this notarial deed partij is not only related to the confronters, but of course it is related to the notary, because the Notary who fully understands the existence of the Law, which actually directs in the right direction instead of directing the wrong and just doing it silently, with the excuse of facta sunt servanda, freedom of contract.

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2. Methods

This research uses the type of Normative research which is seen as identical to written norms, which are made and promulgated by authorized institutions or officials and reviews the law as an autonomous, independent, closed normaitf system and independent of real community life [6]. This research is often called doctrinal research, which is research focused on examining the application of rules or norms in positive law [7]. Therefore, this paper will also be discussed based on legal theories and studies of legal events related to the object of research in the literature so as to determine its effect on society by examining the decision of the Denpasar District Court as primary legal material and literature as secondary legal material as supporting data, theoretical studies that have been studied will be poured through descriptive analysis by explaining the results of research that has been normatively studied into a form of writing. This research uses legal material collection with document studies in this study, namely primary legal materials, secondary legal materials, which include laws and regulations. Law books, legal papers, and articles on the internet related to the application of the principle of good faith in the making of a notarial deed.

3. Results and Discussion

In the association of society there are legal norms that regulate human behavior that is growing more rapidly in different ways, general norms through custom or legislation. Along with the development of a society, the existence of agreements has been widely recognized in society, regarding the definition of an agreement according to Prof. Subekti, an agreement is an event where one person promises to another or where the two people promise each other to carry out a matter [8]. When the will of the confronters in a contract occurs, the will can be expressed in various ways both oral and written with all its legal consequences. A binding agreement will give birth to positive and negative obligations. A positive obligation is an obligation to do something, while a negative one is an obligation to comply with a prohibition. The principle contained in a binding agreement is that there is a guarantee of certainty in the implementation of the agreement [9].

The principle of freedom of contract is recognized in Indonesian treaty law, so that Indonesian treaty law adheres to an open system. This means that the law not only recognizes the types of agreements regulated and named in the law but also recognizes and gives effect to agreements made by the parties even though these types of agreements are not regulated in the law. This can be concluded from the provisions of Article 1338 paragraph (1) of the Civil Code[[10], binding as law for the parties who make it which must be in accordance with article 1338 paragraph 3 determines that, every agreement must be carried out in good faith [11].

That way an agreement is said to run if there are two (2) provisions of the above arrangement. Agreement is the source of the obligation / verbintenis, which can be born from the agreement or derived from the law, a valid agreement / overeenkomst must fulfill certain conditions that contain elements of essentialia. Naturalia, and accindentalia are based on consensuality, freedom of contract and pacta sunt servanda [12]. Determines that: "All agreements made in accordance with the law shall be valid as laws for those who make them. It shall be irrevocable other than by agreement of both parties, or for reasons provided by law. Consent shall be executed in good faith."

The purpose of the implementation of the agreement in good faith is actually seen from a Notary and the faces who want to make a Sale and Purchase agreement with the making of an authentic deed. for the faces in the agreement there is a necessity not to do anything that does not make sense, it is also undeniable that the Notary himself has an obligation to make a deed with information from the faces that should make sense. By not contradicting the norms of decency and

decency, so that it will be able to cause justice for both parties, as well as the notary and not harm. In addition, the principle of good faith that lies in a person's inner attitude is needed to prevent defaults from the confronters in the agreement.

So when viewed from the provisions of the article, good faith is a principle and norm that must be fulfilled by the faces and notaries who agree to carry out an agreement. In other words, good faith actually has 2 (two) meanings, namely:

1. In an external sense, an agreement made by the confronter in terms of making a deed as the basis is carried out by providing norms of decency and morality.
2. Internal meaning, namely good faith which lies in the state of a person's soul whether it is appropriate to behave properly in making an agreement that is carried out in making a notarial partij deed, in conclusion good faith is assessed from a person's inner attitude.

Judging from the point of view of a Notary who has the role of carrying out his obligations to make an authentic deed, of course here his role as a Notary is a public official who is the only authorized to make authentic deeds regarding all legal acts authorized by law and other regulations, and in carrying out his duties Notaries must be independent (autonomous), impartial to anyone (impartial), not dependent on anyone (independent), which means that in carrying out the duties of the spirit of his position [13], cannot be interfered with by the party who appointed him or the other party in favor of anyone or an intermediary as well as a consultant, does not take sides with both parties and his actions must consider the rights and obligations of both parties who will make an agreement, so as a notary should be obliged to listen to the wishes that want to be stated in the agreement from both parties without burdening one of the parties, if there is a desire that is burdensome for one of the parties, it should be given better advice, so as not to harm one of the parties, if I think like this.

Notaries have a fairly important position and role in the life of the nation and state, because they have the authority of a Notary As an official authorized to make authentic deeds, notaries have been given the authority in the UUJN to make various authentic deeds. The authority of the Notary is regulated in Article 15 of the UUJN. The authority to make authentic deeds has been mentioned in Article 15 paragraph (1) of the UUJN. Article 15 paragraph (2) of the UUJN describes various authentic deeds that can be made by a notary. The authorities include [14]:

1. certify the signature and establish the certainty of the date of the underhand letter by registering it in a special book;
2. record the letters under hand by registering them in a special book;
3. Article 15 Paragraph (2) of Law Number 30 Year 2004 on the Position of Notary.
4. make copies of the original underhand letters in the form of copies containing the description as written and described in the letter concerned;
5. attesting the match of the photocopy with the original letter;
6. provide legal counseling in connection with the making of deeds;
7. make deeds relating to land; or
8. Make a deed of minutes of auction.

There are 2 (two) types / classes of deeds, namely deeds made (door) Notary commonly referred to as akta Relaas, or minutes. Then the second in the presence (ten overstaan) of a Notary, commonly referred to as a party deed or Partij deed [15]. In carrying out their positions, notaries are bound by regulations that limit them. These regulations include the UUJN, the Notary Code of Ethics and others related to notaries. Notaries have rights, obligations, authorities, prohibitions and limitations to sanctions in carrying out their positions, all of which are regulated in the UUJN and the Notary Professional Code of Ethics that applies to notaries [4].

Deed can be interpreted as one of the evidence in civil procedure law and criminal procedure law. According to the opinion of A. Pitlo who defines a deed as signed letters, made to be used as evidence, and to be used by the person, for whose benefit the letter was made. In addition to the notion of a deed as a letter that is deliberately made to be used as evidence, in the laws and regulations we often encounter the word deed which means not a letter at all but an act. This is stated in Article 108 of the Civil Code [16]. In a notarial deed agreement, which is an agreement between the parties, it is binding on those who make it. Therefore, the conditions for the validity of an agreement must be met. These conditions include subjective conditions relating to the subject who enters into or makes an agreement, and objective conditions relating to the object of the agreement. The validity of the agreement must be realized in a notarial deed. Subjective requirements are included in the beginning of the deed, and objective requirements are included in the body of the deed as the content of the deed [17].

The main element of the principle of good faith is honesty, if indeed the confronters are considered honest and their requests also do not violate the rules and norms of good faith and decency, as a notary should make the agreement, besides that we as notaries also have our own assessment of whether the confronters are in good faith or not in providing information made in the agreement, and the notary has the right to refuse if we think the confronters are not in good faith, It's just that in other words, the rejection or nullification of the agreement that was carried out because of bad faith because of the defect of will in the agreement, which is because of the defect of will due to delusion (Dwaling), coercion (Dwang) and fraud (Bedrog) as a reason to cancel the agreement and the agreement must not conflict with decency, decency and public interest is essentially a restriction on the principle of freedom of contract [18]. The principle of good faith is important in making a deed, because basically the confronters must provide factual information related to the deed made by the confronters in good faith. So it can be said that the principle of good faith has a very important role in making an agreement, including in an authentic deed.

The more advanced the development of the teaching of good faith means that the more influential the abuse of circumstances as a basis for the opinion of invalidation of the agreement also limits the freedom of contract. The development of legislation in any field also limits freedom of contract. In practice, cases that often occur with notaries are because the notary only listens to one of the parties, so with a sense of importance for notaries before making or making an agreement directly with both parties should find

out about the existence of factual information in order to carry out the obligations of the Notary and achieve the will of the parties.

Actually the role of notaries and the faces in applying the principles and norms of good faith in the provisions of article 15 paragraph (2), as explained Notary should provide legal counseling, besides that notaries must also carry out the duties of their office in accordance with the contents of the Law, but not only in accordance with the laws regulated in UUJNP alone but based on other laws as well.

The application of good faith in the agreement desired by the confronter and Notary to make a Notarial Deed Partij as well as the standard for determining the agreement in making a notarial deed partij in good faith. Actually, in the classical theory of contract law, this principle of good faith can be applied in situations where the agreement has fulfilled certain conditions, as a result, in practice it does not protect parties who suffer losses in the pre-contract stage or negotiation stage, because in a stage the agreement has not fulfilled certain conditions.

In the case of Agus Santoto and Esti Yuliani, where the plaintiff was one of the plaintiffs suing Notary Agus Santoto and Esti Yuliani utilizing the condition of the victims who could not read and write by making two sale and purchase agreements (PIJB) whose contents did not match the factual information in the field and caused losses experienced by four illiterate farmers with a loss of Rp. 9.5 billion [19]. Meanwhile, Esti Yuliani as the buyer claimed to have paid in full to the four victims of I Wayan Rumpiak. But in fact Esti has not made a full payment at all. Also without the knowledge of the reporting witness. But Agus Satoto has made / issued a Power of Attorney Deed whose contents also do not match the facts. The point is that there has been no full payment, but the certificate has been transferred to a third party Ester Sukmawati from Esti Yuliani, and also in the sale and purchase the notary defendant Agus Satoto was also made a suspect for committing the crime of embezzlement and making false documents, this does not fulfill the formal and material requirements in this agreement. However, in his consideration, the judge needs to explain in more detail and what regulations were violated so that the sale and purchase deed can be declared null and void.

False information submitted by the confronter in the notarial deed partij results in an agreement that does not meet the subjective requirements of the agreement because there is a defect in the will. What is meant by agreements that contain defects in the will are agreements that "at the time of their birth" contain defects in the will. Articles 1322 to 1328 of the Civil Code regulate agreements that have been closed on the basis of a defect in the will. Into the group of agreements containing defects in the will in doctrine are included agreements that contain elements of misrepresentation, coercion or fraud at the time of the birth of the agreement. In agreements containing defects in the will, the will given in the agreement is not based on a pure will (agreement), the agreement there is given because it is mistaken, pressured, deceived or under the influence of other people who abuse the existing circumstances. So that this condition is not an agreement that should be given if he is not mistaken (mistaken), not afraid of the pressure that exists, if his will is not led to an incorrect picture by his opponent or his trust is not misused by his opponent [20].

From the above case, if it is related to the principle of good faith, it can be said that the agreement made by the four victims with the defendant, the application of the principle of good faith is not fully implemented, the principle of good faith simply puts forward an honest nature, but the defendant is the opposite of not exercising his authority without good faith when it does not match the factual information that occurred in the field. In order for the implementation of the agreement made under Article 1338 of the Civil Code, the agreement is carried out in good faith (zij moten te goeder trouw worden ten uitvoer verklaart). This provision is very ideal.

There is no definition and measure of good faith in the Civil Code. Therefore, it is necessary to explore the benchmarks of good faith that can be explained through existing legal theories. The benchmarks as the application of good faith in buying and selling can actually be distinguished from the stages of its application from the preagreement and the implementation of the agreement. From the pre-agreement, it has an obligation as an intermediary for information or explaining the facts in the field for the parties who will negotiate with the subject of the agreement. So that in the case of buying and selling, each has an obligation of good faith in the form of an obligation to analyze an agreement to be carried out, then the obligation to notify and explain the information contained in the agreement.

In this case, ethics always refers to the good and bad of human beings as human beings. ethics is related to the concept that is owned by individuals or groups to judge whether the actions they do are wrong or right, where the defendant holds the position of notary that the legal actions mentioned in the deed are categorized as actions or legal acts of Notary or Notary to cooperate by the other confronters mentioned in the deed.

A Notary profession is not arbitrary to exercise its authority in making authentic deeds, Notaries have special authority in making evidence and are public officials listed in the provisions of Article 1 number 1 and Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2009 concerning the Office of Notary. In carrying out the dignity of their position, Notaries are bound by regulations that limit their profession. These regulations include the Notary Position Law, the Code of Ethics for Notaries and laws relating to Notaries. With the occurrence of the above case, the relationship between the Notary and good faith has clearly become a unity. It is not only the confronters who are required to have good faith, but the Notary himself should also have good faith in making agreements and making deeds. Of course, this good faith has a picture in the form of attitudes, and the behavior of the people involved in a legal act such as an agreement. In making a deed regarding good faith, a deed made by a notary by constatirizing the wishes of the confronters, the deed must have a reflection of the knowledge of a Notary who already understands the Law, then the Notary in the application of the known Law must be in accordance with the Law governing his position, as well as related to the making of the deed, so that the deed made does not result in disputes in the future.

Although in essence the Notary in making the deed is only based on the documents provided by the parties. However, the notary needs to apply the principle of prudence, as well as the principle of good faith so that the notary can be a little more observant and fair in ascertaining the documents

submitted by the confronters, whether the documents are fake, incomplete or so on. The completeness of this document is related to the formal requirements in making a deed. As well as notaries should be guided as a public official and one of the law enforcers and implementers, Notaries have the obligation and responsibility to participate in upholding the law in accordance with their profession and or position by contributing energy, thoughts and carrying out their duties and obligations with honesty, wisdom and always prioritizing the parties without taking sides and always maintaining the confidentiality of the office in accordance with the main duties and functions of the Notary is to make authentic deeds.

4. Conclusion

An application of the principle of good faith in this notarial deed partij is not only related to the confronters and related to the notary, because the Notary who fully understands the existence of the Law, which actually directs in the right direction instead of directing the wrong and just doing nothing, on the grounds of facta sunt servanda, freedom of contract. The existence of the Agus Santoto and Esti Yuliani cases above if it is related to the principle of good faith, it can be stated that it is not only the confronters who can override the principle of good faith, but in fact a Notary Public Official can also in the agreement made by the four victims with the defendant, the application of the principle of good faith does not run fully, a public official, namely a notary must apply good faith in the agreement desired by the confronters. It is not only the confronters who are required to have good faith, but the Notary himself should also have good faith in making agreements and making deeds. Of course, this good faith has a picture of the attitude and behavior of the people involved in a legal action such as an agreement. In making a notarial deed partij regarding good faith.

4.1 Regulations

Civil Code

Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on the Office of Notary.

Supreme Court Decision Number 324/Pid.B/2020/PN Dps regarding the Reconsideration of the Notary case Agus Satoto, S.H., M. Hum, March 31, 2020 (324/Pid.B/2020/PN Dps). Code of Ethics of the Notary Position

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