

IMPLEMENTATION THE PRINCIPLE OF *IN GOOD FAITH* IN THE STANDART CONTRACT

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ABSTRACT

The purpose of this research was to determine how the principle in good faith was formulated in the standard contract, and the implementation of the principle of in good faith in implementing consumer financing of PT Astra Sedaya Finance Branch Medan. The method used in this study, is a normative study by taking legal material as a basis for analyzing the problem, namely the Minister of Finance Decree No.1251/KMK.013/1988 on the Implementation of the Provisions and Procedures Financing Agency in conjunction with the Finance Minister Regulation No.84/PMK.012/2006 on Financing Company expressly stated to obtain business licenses, financial institutions must attach an example of the financing contract that will be used as a standard contract. The results showed that the principle in good faith in the Consumer Financing Agreement of PT Astra Sedaya Finance Branch field is not formulated in writing in the articles that include the right of PT Astra Sedaya Finance Branch Medan and obligations of consumers, because of its nature as an abstract principle, but there must be a basis to determine the ethical value of the agreement in question. The principle of in good faith in the Consumer Financing Contract of PT Astra Sedaya Finance Branch field does not exist because basically the financing agreement only stipulates the obligation of the consumer without mentioning the obligation of PT Astra Sedaya Finance Branch Medan when it is well defined as to implement the agreement in accordance with the eligibility (*redelijkheid*) and propriety (*billijkheid*). whereas the principle of goodwill generally contains obligations consumers without discussing the terms or obligations arising from the financing agreement with the consumer prior to formulating

Key words : implementation, in good faith standart contract

Introduction

Article 1338 paragraph (3) of the Civil Code that a contract must be implemented with *in good faith*. This means that in carrying out the contract shall be implemented in accordance with the eligibility (*redelijkheid*) and propriety (*billijkheid*). Implementation of the contract with *in good faith* is defined by both parties must apply the one against the other as among polite person without guile without guile, without subterfuge, without interfering with the other party, not by looking at its own interests, but also with see the other party's interests.¹ *In good faith* mentioned in Article 1338 paragraph (3) is called a good faith measure is normative because the written law and morality in society as a value basic. *In good faith* both from the perspective of the perpetrator, the perpetrator well-meaning or not related to the contract.

In the contract, the *in good faith* it has the function of complement or as an enhancer, that *in good faith* that can be used to increase the functionality of a treaty, meaning that if a contract is not clear, it can be explained by *in good faith*, as a the Article 1344 of the Civil Code determines, that if in explaining the contract must be such that the intent of the contract was not deviate. In addition, *in good faith* can serve to restrict or negate, that an contract can be ruled out, if the conditions have changed so that if the contract was carried out in accordance with the contents of the contract, would be unjust.

In a standart contract, seldom was said the state tend to give rise to abuse (undue influence), because the standart contract is an agreement where it is determined a priori by one of the parties. In practice, the standart contract can be seen in contract of the Consumer Financing Contract of PT Astra Sedaya Finance Branch. The financing contract was made by a business entity engaged in the financing unilaterally made in writing. It is also in accordance with the provisions of Article 13 paragraph (1) letter e Decree of the Minister of Finance No. 1251/KMK.013/1988 on the Implementation of the Provisions and Procedures Financing Institutions in conjunction with Ministry of Finance Regulation No. 84/PMK.012 /2006 on Financing Companies which clearly states to obtain business licenses, financial institutions must attach examples financing contract that will be used.

Standart contract is often called quasi legislation or particuliere as having binding force which inevitably must be obeyed. In terms of benefits, the standard contract is intended to keep costs down, especially in a time of making a complicated agreement. The situation is not balanced or circumstances are not the same between the two sides has the potential to be misused (undue influence). Abuse of this situation may occur after the contract occurred. Unbalanced state occurs when one of the parties have unequal position both in terms of economic, psychological or potential misused his position stronger party in the contract. This is

¹ P.L.Wery, 1990, *Perkembangan Hukum tentang Itikad Baik di Nederland*, Percetakan Negara RI, hlm. 9.

caused, of these standart contract often do not observe the principle of in good faith its not implementation. Although when viewed from the birth of the agreement, there is no standard agreement misuse of state, since the birth of the contract were given the freedom to others to accept or reject. This can be seen in the agreement terms applicable standard, namely "take it or leave it contract."

Under the provisions of Article 1338 paragraph (1) of the Civil Code, all contract are made legally valid as a law for those who make it. Based on the content of Article 1338 paragraph (1) that the parties can not terminate or revoke the contract unilaterally. This means that the contract that has been made legally should be carried out in accordance with the already agreed. Associated with the provision of Article 1338 paragraph (3) of the Civil Code that a contract should be implemented in good faith, then the contract shall be implemented in good faith. This means that the principle of in good faith must exist in every contract includes standarts contract. Therefore, although not explicitly stated in the contract, but as a base mind, to be contained in any contract. This arrangement is regarded as the legislation should contain the principle of in good faith. Although considered in the standart contract, the principle of in good faith is often overlooked due to the standart contract basically made unilaterally, so tend not to include the principle of in good faith. Therefore, in this study, to be disclosed how the principles of in good faith was formulated standart contract and also how the principle of in good faith implemented in the standart contract.

Research design

This study is normative research, which used the data legal material as a basis for analyzing the problem, namely the Minister of Finance Decree No.1251/KMK.013/1988 on the Implementation of the Provisions and Procedures Financing Agency in conjunction with the Finance Minister Regulation No.84/PMK.012/2006 on Financing Company in Article 13 paragraph (1) expressly stated to obtain business licenses, financial institutions must attach an example of the financing contract that will be used as a standard contract. In this research that standart contract which used in Consumer Financing Agreement of PT Astra Sedaya Finance Branch Medan as primary legal materials in addition the rules and regulations relating to the cases. To complete the normative research, conducted empirical research with primary data obtained from PT Astra Sedaya Finance Branch Field which is considered a better understanding of the problems.

Babbie accordance with the opinion, that the appropriate method for analyzing legal materials containing messages/communication in the form of something that must be observed and followed by members of the community is content analysis.² These research results in this study were analyzed by content analysis, because the law is an indication of life which should be adhered to in life together. Primary data were analyzed by descriptive, normative, logical and systematic, and the conclusion is done by using deductive and inductive methods in order to answer the problems. To draw a conclusion use deductive and inductive methods. Deductive method or methods of reasoning is a method to draw conclusions from things common to specific things, being the inductive method is the opposite of the deductive method is to draw conclusions from things that are specific to the things that are special.³

Basic Law

Financing contract between PT Astra Sedaya Finance Branch Medan with customer/consumer is financing contract with fiduciary guarantee. This contract is a written agreement that has been standardized or a standart contract that has been provided by PT Astra Sedaya Finance Branch Medan as a creditor to be signed/initialed by consumers as debtors in making the contract.

Regulations are used as a legal basis for the implementation of the financing contract with PT Astra Sedaya Finance Branch Medan, is the President of the Republic of Indonesia Regulation Number 9 of 9 of 2009 on Financing Institutions and the Minister of Finance Regulation No. 84/ PMK.012/2006 on Financing Company. Article 13 paragraph (1) letter e Decree of the Minister of Finance No. 1251/KMK.013/1988 on the Implementation of the Provisions and Procedures Financing Agency in conjunction with the Finance Minister Regulation No. 84/PMK.012/2006 on Financing Company expressly stated to obtain business licenses, financial institutions must attach examples financing agreement that will be used.

Financing contract with PT Astra Sedaya Finance Branch Medan, consisting of, financing contract and fiduciary contract.

The financing contract as a principal contract that includes a contract between PT Astra Sedaya Finance Branch Medan with consumers to provide financing facilities in the form of providing funds for the purchase of motor vehicles. Fiduciary contract is an additional contract contains jamian payment of all liabilities of the debtor /consumer to the creditor where the debtor submit a motor vehicle that has become hers to PT Astra Sedaya Finance Branch Medan as a guarantee set forth in the Acta of Fiduciary in made by Notary and registered according to regulating applicable.

Formulation principle of in good faith in the Standart Contract

² Earl, Babbie, 1986, *The Practiceof Social Research*, Wadsworth Publishing Co. California, hlm 294.

³ Soerjono, Soekanto, 1990, *Pengantar Penelitian Hukum*, Cetakan Ketiga, UI Press, Jakarta, hlm. 75.

In this financing contract, the terms and conditions of a contract the object of the contents of the rights and obligations of both parties for the contract that has been specified and standardized by the PT Astra Sedaya Finance Branch Medan in the form of standart contract. Terms in the standart contract drawn up unilaterally without discussed beforehand with the consumer.

From the results of the research also note that the financing contract provided by the PT Astra Sedaya Finance Branch Medan always accepted by consumers without reading the terms or filling the entire contents of the contract. As noted by Mariam Darus,⁴ that the standart contract is a concept promises written, compiled without discussing its contents and usually poured into an infinite number of contract that are specific, or simply stated that the standart contract is an contract whose contents are standardized and poured in a form. For reasons of efficiency, it is in practice to grow the contract as a written contract in a form, so that similar legal actions that occur repeatedly and regularly involving many people need a treaty that has been prepared in advance, for the contents of the contract that is standardized and so on are printed in large quantities so easily provide it at any time if needed. Although in principle the shape of a contract freely and not tied to any particular shape, which means it can be oral or in writing, but for the sake of efficiency and effectiveness of the same legal act over and over again, this standard contract is required. Similarly, in the financing contracts undertaken by PT Astra Sedaya Finance Branch Medan, has prepared the contents of the contract for the people who perform similar legal relationship with Astra Sedaya Finance Branch Medan, regardless of differences in conditions between the debtor with each other.

F.A.J. Gras, in the book of Mariam Darus,⁵ has conducted research for three years concluded that the standard contract to grow and thrive in modern society that uses the organization and planning as a lifestyle. Contents of the standart contract, was planned by interested parties because they expect that what he wanted to become a reality. The problem, whether the standard contract ignores the principle of the is one of the conditions the validity of the contract referred to in Article 1320 of the Civil Code, has been fulfilled? The principle of agreement of the contract is an essential principle in was to make the contract. The principle of this contract contains the same desire to bind themselves. Principles of this agreement have a relationship with the principle of freedom and the binding principles contained in Article 1338 paragraph (1) of the Civil Code, which determines the agreement made lawfully in a sense created by the agreed binding as law.

According to Mariam Darus,⁶ raw agreement legally-binding theoretically has no power because it does not comply with Article 1320 of the Civil Code in conjunction with Article 1338 paragraph (1) of the Civil Code, the consequences if the in good faith associated with the principle in Article 1338 paragraph (3) of the Civil Code, then the contract standart can not be carried out in accordance with in good faith. The principle of in good faith is one of the principles that must be considered in the implementation of the contract. As mentioned in Article 1338 paragraph (3) of the Civil Code which specifies that a contract should be implemented in good faith.

In the standart contract drawn up unilaterally by the employer often it contains promises that are very detrimental to the consumer due to the contract made without the rights of consumers and disputes arising in the fulfillment of his achievements are basically always submitted to the court which has been determined solely by employers so inclined give a decision in favor. The nature of in good faith is meant here is that in implementing the contract, the parties take into account the interests of the opposition. Requirements to take into account the interests of the other party seen from the exercise of the rights and obligations arising from the agreement, and therefore the standard agreement, often negating the inclusion of the rights of the opposition because it can lead to conflict with the interests of the other party.

Definition of in good faith in terms of the objective defined in Article 1338 paragraph (3) of the Civil Code, that a contract must be implemented in good faith. Good faith pursuant to Article 1338 paragraph (3) of the Civil Code, refers to the unwritten norms objective, namely what is the common assumption about behavior that should be in the implementation of the agreement. Article 1338 paragraph (3) of the Civil Code specifies that an agreement must be implemented with goodwill. This means that in carrying out the agreement shall be implemented in accordance with the eligibility (*redelijkheid*) and propriety (*billijkheid*).

The principle of law which is the basis of mind or basic norm, not a concrete legal regulations, but the background of a concrete legal regulations, can be found in legislation or verdict. Legal principle, is an abstract, in the sense that can not be found or is poured in concrete regulations or clauses. Thus the principle of in good faith was not formulated explicitly in the provisions of the standart contract , but because it contains the legal principle of decency assessment, or has an ethical dimension, then the principle of in good faith is always present in every regulation.

Implementation of the principle of in good faith in the Standart Contract

The principle of in good faith is an abstract notion and difficult to be formulated, so the more defined it through the events in court. This is because the principle of law is a basic norm of a general nature, then so should not be considered as a concrete legal norm but should be viewed as a general basis or instructions for the applicable law. This means, the establishment of law must be oriented to the principles of the law. In Black's Law Dictionary,⁷ in good faith is defined as "inclusive or with good faith, honestly, openly and sincerely, without deceit or fraud truly, actually, without simulation or pretense". Sutan Remy Sjahdeini

⁴ Mariam Darus Badruzaman, 1981, *Op Cit*, hlm. 96.

⁵ *Ib id*, hlm. 98.

⁶ *Ib id*, hlm. 104.

⁷ Black, Henry Campbell, 1990, *Black's Law Dictionary*, Sixth Edition, West Publishing Co., Paul Minn.

generally describe good faith as an intention of the parties in an agreement partners promise not to harm or not harm the public interest.

Definition of in good faith in terms of the objective defined in Article 1338 paragraph (3) of the Civil Code, that a contract must be implemented in good faith. Good faith pursuant to Article 1338 paragraph (3) of the Civil Code, refers to the unwritten norms objective, namely what is the common assumption about behavior that should be in the implementation of the contract. Article 1338 paragraph (3) of the Civil Code specifies that an agreement should be implemented in good faith. This means that in carrying out the contract shall be implemented in accordance with the eligibility (*redelijkheid*) and propriety (*billijkheid*). The contract which have been agreed by and binding on the parties that often cause problems and obstacles in the future. Therefore, it is very important for all parties to understand and grasp the substance or content of the contract before agreeing or agreeing a contract.

In good faith in the implementation of the contract relating to the issue of propriety and decency. Theoretically stages in the preparation of contracts according to van Dunne can be divided into three stages, namely the preparation of contracts (precontractuele phase), the stage of implementation of the contract (contractuele phase) and a stage after the contract is executed (postcontractuele phase). Precontractuele phase is the stage where the parties are negotiating to determine the content of the contract which will have to agree on. This contract is one important requirement to publish legal relations in addition to other requirements as mentioned in Article 1320 of the Civil Code. In addition to the provisions of Article 1320 of the Civil Code, in making the parties' contract should also pay attention to the principles of in make of contract. The 1338 paragraph (3) of the Civil Code states, a contract must be implemented in good faith. This Article meaningful that the contract which agreed upon by the parties must be realized in accordance with propriety and fairness. Subjective in good faith, which is carried out before the contract the parties must demonstrate honesty. Usually the subjective good faith is in the stage of negotiations, where the parties openly gave the real information about who he was with gave the evidence in the form of documents about him and the other party shall check carefully.

In good faith objective, namely at the time of the execution of the contract must be in accordance with the propriety or justice. In the legal system in Indonesia, the main principle of developing goodwill in business activities such as financing because many finance companies that perform the requirements in the form of a standart contract. Financing contract of the PT Astra Sedaya Finance Branch Medan, which is a standart contract, which was made unilaterally by the company. Therefore, the conditions contained in the financing contract further highlight the obligation on the part of consumers to negate his rights as a party to the contract. Therefore, the principle of in good faith on the part of PT Astra Sedaya Finance Branch Medan, considered non-existent, because in good faith is related to the implementation of the obligations.

It can be seen from the terms set forth in the financing contract that define such an obligation of the debtor (consumer) to authorize the creditor to use the funds obtained from the liquefaction facility financing, the obligation to provide all data and information and become the property of the creditor, the obligation to prioritize payments in accordance with the agreed amount including penalties and other obligations arising from financing contract, as well as the rights of creditors to adjust payments arising from the monetary policy. When linked to Section 1320 in conjunction with Article 1338 paragraph (1) of the Civil Code, then the financing contract with fiduciary among consumers with PT Astra Sedaya Finance Branch Medan, there is no contract in the sense of obligation to the consumer which is born of the financing contract without discussing it first with consumers. Although according to research results, prior to the contract signed by the consumer, the PT Astra Sedaya Finance Branch Medan provide sufficient information to consumers about the obligations/ requirements are defined in the contract. Then after all understandable information about the terms of the financing agreement was given approval by his signature. Furthermore, said the thrust of the contract, the PT Astra Sedaya Finance Branch Medan, never forced to consent to consumers, so it is said that approving the financing agreement at PT Astra Sedaya Finance Branch Medan, based on the free will of the consumer. But if it is connected to Article 1321 of the Civil Code that regulate the three factors causing the defects will occur namely, mistake, fraud, and abuse of state that grows and develops in jurisprudence. This means that approval will be deformed in the event because of the cause of the defect will. Legal consequences of the contract can be canceled. According to research results, financing contract made unilaterally by PT Astra Sedaya Finance Branch Medan always accepted by consumers, in the sense that there is never a problem in the implementation of obligations by consumers.

If explored in depth, basically, in financing contract with fiduciary guarantee of Astra Sedaya Finance Branch Medan which contains the terms of raw consumer burden is not problematic because in general, consumers who are economically lower position of Astra Sedaya Finance Branch Medan. Consumers who are aware of a very weak position compared Astra Sedaya Finance Branch Medan, so in general they always perform his duty well.

From the results of the research also note that if they are not able to perform the obligation, namely to pay installments in accordance with the contract, basically they never put up a fight, in the sense of the company Astra Sedaya Finance Branch Medan without resistance exercise their rights, which is executing the collateral. But if it is connected to Article 1321 of the Civil Code that regulate the three factors causing the defects will occur because there is an element of coercion, mistake and fraud, and abuse of state that grows and develops in jurisprudence. This means that approval will be deformed in the event because of the cause of the defect will.

Mistake/oversight/fallacy occurs when a contract arise in making an oversight on the desire or concerned not obtain a clear picture/real against the wishes. So a mistake to assume a state of ignorance. In relation to the lack of knowledge as an element of mistake known what is called the hidden disability. Equally assume their ignorance at the time the agreement but it is known after the agreement implemented. In the third case this will handicap the injured party can apply to be canceled. This is due to

defects relating to the will of the contract as a condition relative to make arrangements, by factors of the defect will cause it to be a flawed contract.

Agreement or given free will in a treaty can be disabled as a result of the contract happened because of coercion, or because mistake and for fraud. Legal consequences, if it is proven in later emerged that the deal happened because one of the factors specified in Article 1321 of the Civil Code, then the agreement can be canceled.

In the Law of Contract, known as the four factors that cause disability will, namely mistake, duress (force), fraud and undue influence (abuse of state). Now in jurisprudence found abuse of state as factors causing defects will by using the term *omstandigheden*. Abuse of state happens when one party has superior state. This superior state can be seen in terms of psychological or economically unequal parties. It is often said that in the standart contract, tends to give rise to abuse of circumstances (*undue influence*), because the standart contract is a contract where it is determined a priori by one of the parties. However, if viewed from the birth of the agreement, there is no standard agreement misuse of state, since the birth of the contract were given the freedom to others to accept or reject. This can be seen in the contract terms applicable standart, namely "take it or leave it contract."

Instead of undue influence can occur after the agreement occurs, in which one of the factors that will lead to disability is not the same situation that has the potential to be misused. Basically, the judge handed down a decision in the face of undue influence by ignoring altogether the terms in the standard agreement, or reject all of these requirements, or also hear the case based on in good faith and decency.

In good faith principle contained in Article 1338 paragraph (3) Civil Code, which reads: "contract must be implemented in good faith." This principle is a principle that the parties, namely the first and second parties must implement the substance of the agreement is based on a firm belief or conviction and in good faith of the parties. On in good faith, someone noticed attitudes and real behavior of the subjects and the assessment lies in common sense and justice, and made an objective measure to assess the state (an impartial assessment) according to the norms that objective. The element of in good faith in terms of making a contract can already be covered by the legal clauses element of the 1320 article. Thus it can be a contract was made legally. In a sense meet all legitimate requirements of the contract (among others in accordance with Article 1320 of the Civil Code).

The contract. made with in good faith, but rather in the implementation eg adverse deflected toward one party. In this case it can be said that the agreement has been implemented contrary to in good faith. The principle of this in good faith can be known when the agreement-making process at the stage of "negotiation" between the first and second parties. At this stage there will be a bargain between the parties, so that the bargaining process will be the subject of an agreement to behave or act that shows signs of good will or not. In addition, the presence of the bargain, it will easily find the word "agreed" and the fulfillment of the principle of justice between the parties. Application of the principle of in good faith is required at all stages, either before, during or after the process of the contract. It is intended that the implementation or fulfillment of the object of the agreement can be run smoothly, from pre- to post-treaty contract.

Conclusion

From these descriptions the above , it can be concluded as follows :

1. The principle of in good faith in the standart contract not be formulated in writing in the articles that include the right of PT Astra Sedaya Finance Branch Medan and consumer obligations. Therefore, the principle of in good faith in Article 1338 paragraph (3) of the Civil Code is born from contractual relationships there should be a balance of rights and obligations , causing as if the principle of in good faith seen in the standart contract does not exist .
2. The principle of in good faith in the financing contract with PT Astra Sedaya Finance Branch Medan is not implemented as standart contract in financing contract with PT Astra Sedaya Finance Branch Medan just load consumer obligations without discussing the terms or obligations arising from the financing contract with the consumer prior to formulating .

Suggestions

1. Should the government investigate and examine the conditions and rights arising from the standart contract in consumer financing contract before granting business licenses for finance companies because standart contracts made unilaterally by the company in this case has a different financial level with consumers tend misused certain parties, so that consumer interests can be protected.
2. It should be in researching and examining the terms of the standards set in the standart contract, note the position of balance between the companies and consumers so that the principle of in good faith in the implementation of the financing contract s can be implemented .

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