

## Reconstruction of the Principle of Good Faith in Modern Trade Agreements in Indonesia

Syaiful Bahri <sup>1</sup>  
Institut Rahmaniyyah Sekayu

Muhammad Rhogust <sup>2</sup>  
Institut Rahmaniyyah Sekayu

Martanti Endah Lestari <sup>3</sup>  
Institut Rahmaniyyah Sekayu

Hermanto <sup>4</sup>  
Institut Rahmaniyyah Sekayu

Correspondence : Syaiful Bahri (syaifulmusahatif@gmail.com)

### Abstract

The principle of good faith constitutes a central norm in Indonesian contract law, serving as a moral and legal foundation that ensures honesty, fairness, and justice in contractual relations. As codified in Article 1338 paragraph (3) of the Civil Code (KUHPPerdata), it requires that agreements be executed in good faith, reflecting the balance between the binding force of contracts (*pacta sunt servanda*) and ethical considerations in commerce. However, in practice, judicial interpretation of good faith in Indonesia has often been inconsistent sometimes applied as a corrective mechanism to prevent abuse of rights, yet at other times restricted to literal contractual performance. This doctrinal ambiguity has become increasingly problematic amid the rapid transformation of trade relations driven by globalization, digitalization, and cross-border commercial practices. This study employs a normative juridical and doctrinal approach to examine how the principle of good faith is interpreted and applied in modern trade agreements. Through analysis of relevant legislation, judicial decisions, and academic perspectives, the research identifies the evolving meaning of good faith within Indonesia's dynamic commercial landscape. The findings reveal a need for doctrinal reconstruction to establish a more coherent and adaptive understanding that integrates both subjective sincerity and objective fairness, while aligning with international standards such as the UNIDROIT Principles and the CISG. The study concludes that the reconstruction of good faith must position it as a living principle of justice, capable of guiding not only traditional contractual relations but also digital and transnational commercial practices. A clearer and more harmonized interpretive framework will enhance legal certainty, promote fairness, and strengthen public trust in Indonesia's modern trade environment.

**Keywords:** good faith, contract law, modern trade agreements, Indonesian Civil Code, legal reconstruction, digital commerce

### Introduction

The principle of good faith has long stood as one of the most essential foundations of contract and commercial law, not only in Indonesia but also across various legal systems worldwide. Rooted in both moral philosophy and legal doctrine, this principle embodies the ethical expectation that parties entering into an agreement must act honestly, fairly, and responsibly throughout all stages of their contractual relationship from negotiation and

formation to performance and enforcement. Good faith serves as a moral compass that transforms the freedom to contract into a balanced and accountable exercise of private autonomy. It ensures that the exercise of rights does not lead to injustice, deception, or exploitation of the weaker party.

In the Indonesian legal system, the principle of good faith is expressly codified in Article 1338 paragraph (3) of the Civil Code (KUHPerdata), which provides that “agreements must be executed in good faith.” This provision, derived from the Dutch Burgerlijk Wetboek, reflects the classical civil law understanding that contractual obligations are not purely formal or mechanical, but must also be guided by fairness and social conscience. Over time, however, the interpretation and practical application of good faith in Indonesia have remained dynamic and, at times, inconsistent. Judicial practice shows varying tendencies: some decisions emphasize moral fairness and social justice, while others adopt a more textual or rigid approach to contractual interpretation. These inconsistencies raise crucial questions about how good faith should be conceptualized in a rapidly changing commercial environment.

The 21st century has ushered in a new era of globalization and digital transformation, profoundly reshaping the structure and nature of trade. Traditional face-to-face transactions have been replaced or supplemented by cross-border trade, e-commerce platforms, digital marketplaces, and smart contracts. In these contexts, interactions between parties are mediated through algorithms, automated systems, and online intermediaries, creating new legal and ethical complexities. The classical doctrine of good faith, which presupposes human intention and personal negotiation, often struggles to adapt to these automated and impersonal transactions. Questions emerge regarding what constitutes “good faith” when contractual performance is carried out by artificial intelligence or when algorithmic pricing leads to unfair advantage. These developments reveal the limitations of traditional legal frameworks and highlight the urgent need to reconstruct and reinterpret the principle of good faith in light of modern commercial realities.

Within the Indonesian context, the tension between freedom of contract and the duty of good faith becomes particularly evident in commercial disputes. The legal doctrine of *pacta sunt servanda* that agreements must be kept guarantees contractual freedom, while the principle of good faith serves as a corrective instrument against abuse of that freedom. Courts are therefore increasingly challenged to strike a delicate balance between protecting the autonomy of contracting parties and preventing opportunistic or bad-faith conduct that undermines justice and fairness. Inconsistent judicial reasoning in interpreting has, in some cases, resulted in legal uncertainty, eroding business confidence and undermining the predictability essential for commercial growth.

Given these developments, reconstructing the principle of good faith is not merely an academic exercise but a practical necessity to sustain justice, equity, and trust in commercial relations. A contemporary interpretation must reconcile classical values of honesty and fairness with the realities of digital transactions, global markets, and technological innovation. Such reconstruction should also reflect Indonesia's dual commitment to uphold private autonomy and protect the public interest, ensuring that contractual relationships promote ethical conduct and sustainable economic growth.

Therefore, this study aims to examine the application and interpretation of the principle of good faith within the framework of modern trade agreements in Indonesia. Through a normative juridical and doctrinal approach, it analyzes the interaction between statutory law, judicial practice, and scholarly thought to identify the evolving meaning of good faith in modern commerce. The ultimate objective is to propose a conceptual reconstruction that harmonizes traditional legal doctrine with contemporary commercial realities. By doing so, the study seeks to contribute to the modernization of Indonesian contract law ensuring that it remains adaptive, just, and relevant in the digital and globalized era of trade.

## Methods

This study employs a normative juridical approach that focuses on the analysis of legal principles, doctrines, and norms related to the concept of good faith in trade agreements. This method is used because the research aims to examine and reinterpret the existing legal framework to ensure its relevance in addressing the dynamics of modern trade practices in Indonesia. The normative juridical approach allows the researcher to analyze law not merely as a set of rules but as a living system that must evolve in harmony with societal and technological developments. The research adopts both conceptual and statutory approaches. The conceptual approach explores the theoretical foundation of the principle of good faith by examining its philosophical roots, doctrinal interpretations, and comparative insights from other legal systems, particularly those following civil law and common law traditions. Meanwhile, the statutory approach involves an in-depth study of various legal instruments governing trade and contracts in Indonesia, including the Civil Code (KUHPerdata), the Commercial Code (KUHD), and the Electronic Information and Transactions Law (UU ITE). These legal sources are analyzed to identify how the principle of good faith has been codified and applied in different contexts, from traditional contracts to digital trade transactions.

The study relies primarily on secondary legal materials, which consist of primary, secondary, and tertiary legal sources. Primary sources include statutory regulations, court decisions especially from the Supreme Court and Constitutional Court and international legal conventions relevant to commercial transactions. Secondary sources comprise academic writings, journal articles, and legal commentaries that discuss the application and challenges of the good faith principle in trade law. Tertiary sources such as legal dictionaries, encyclopedias, and reference books are used to clarify conceptual definitions and support analytical consistency. Data collection is conducted through library research, which involves systematic reading, identification, and classification of relevant legal materials. The gathered data are analyzed qualitatively using a descriptive-analytical method. The analysis begins by identifying

the normative structure of good faith within Indonesian contract law, followed by an examination of how courts have interpreted and applied this principle in commercial disputes. Comparative analysis is also conducted to observe international practices and identify potential harmonization points with Indonesian law. The analytical process employs doctrinal interpretation combined with the principle of proportionality and legal certainty to ensure that the proposed reconstruction of good faith maintains balance between freedom of contract and protection against unfair practices. Through this framework, the study aims to offer a comprehensive and adaptive understanding of good faith that aligns with modern trade realities, particularly in the context of digital and cross-border transactions. Ultimately, this methodological approach provides a structured foundation for proposing a reformed concept of good faith that strengthens justice, fairness, and trust in Indonesia's modern commercial law system.

## **Results and Discussion**

### **The Normative Foundation of Good Faith in Indonesian Contract Law**

The Indonesian legal system recognizes the principle of good faith as a fundamental element of contract law. As codified in Article 1338 paragraph (3) of the Civil Code (KUHPerdata), "agreements must be executed in good faith." This provision implies that the binding force of contracts (*pacta sunt servanda*) is not absolute but must be tempered by moral and ethical considerations. The principle functions as both a subjective duty requiring honesty and sincerity in one's intentions and an objective standard, demanding fairness, reasonableness, and equity in contractual behavior. Judicial practice, however, reveals varying interpretations of. In several decisions, the Indonesian Supreme Court has applied good faith as a corrective tool to prevent abuse of contractual rights, especially where one party acts oppressively or misleadingly. For instance, in cases involving consumer contracts or land sale agreements, the Court has emphasized that good faith must guide both parties not only during contract formation

but also throughout performance and termination. Yet, other decisions interpret good faith narrowly, limiting its application to the fulfillment of explicit contractual obligations. This inconsistency illustrates the lack of a uniform judicial standard and underscores the need for a clearer conceptual framework.

### **The Transformation of Commercial Practices in the Digital Era**

The digitalization of commerce has profoundly altered how contracts are formed and executed. E-commerce, online marketplaces, and electronic contracts now dominate the global trade landscape, replacing traditional paper-based and face-to-face transactions. In such contexts, good faith encounters new challenges. Online transactions often involve anonymous or impersonal parties, automated decision-making, and instantaneous performance all of which make it difficult to assess intention, sincerity, or fairness. For example, in electronic contracts governed by the Electronic Information and Transactions Law (UU ITE), consent is often given through digital clicks or algorithmic confirmations. This raises questions about whether such interactions satisfy the ethical and legal dimensions of good faith. Moreover, cases of digital fraud, misinformation, or manipulative marketing illustrate how the lack of direct interpersonal engagement can erode the trust element inherent in good faith. Consequently, the digital era calls for an expanded interpretation of one that incorporates duties of transparency, accuracy of information, and protection of consumer rights.

Comparatively, several jurisdictions have redefined good faith to adapt to these developments. The UNIDROIT Principles of International Commercial Contracts (2016) and the United Nations Convention on Contracts for the International Sale of Goods (CISG) both recognize good faith as an overarching standard guiding contractual relations. These instruments interpret good faith not only as an ethical expectation but also as a legal obligation that underpins fair dealing and cooperation between contracting parties. Indonesia's legal system, while influenced by civil law traditions, has yet to explicitly adopt such modernized interpretations.

## **Tension Between Contractual Freedom and the Duty of Good Faith**

One of the central tensions in contract law lies between freedom of contract and the duty of good faith. The former allows individuals to freely determine the contents of their agreements, while the latter imposes limitations to ensure fairness and prevent exploitation. In Indonesian jurisprudence, this tension becomes evident when one party invokes contractual freedom to justify conduct that undermines trust or fairness. In practice, courts have sometimes prioritized *pacta sunt servanda* the sanctity of contract over equitable considerations, particularly in commercial transactions involving parties of equal bargaining power. However, in cases where there is clear evidence of bad faith such as deceit, concealment of information, or exploitation of weaker parties courts have invoked to restore balance. This flexible yet uncertain application reveals both the strength and weakness of the principle: its moral authority provides flexibility, but its indeterminate scope can also lead to unpredictability. Thus, reconstructing good faith in modern trade requires a doctrinal recalibration one that recognizes good faith not as a mere moral ideal but as a binding legal principle integral to commercial fairness. This reconstruction must also clarify that good faith extends beyond contract performance to include pre-contractual duties (during negotiation) and post-contractual responsibilities (such as dispute resolution and termination).

## **Reconstructing the Principle of Good Faith: Toward a Modern Framework**

Based on the normative and practical challenges identified, this study proposes a reconstructed model of good faith that reflects Indonesia's evolving commercial landscape. The reconstruction rests on three essential dimensions:

### **1. Substantive Dimension**

Good faith should be defined as both a subjective obligation (honesty and sincerity) and an objective norm (fairness and equity). This dual definition ensures that good faith governs not only intention but also conduct, aligning moral expectations with legal accountability.

## 2. Procedural Dimension

Courts and lawmakers must develop clear judicial guidelines for interpreting and applying good faith in commercial disputes. The adoption of interpretive principles similar to those in the UNIDROIT Principles or CISG could enhance consistency and predictability in judicial reasoning.

## 3. Technological Dimension:

In the context of digital trade and electronic contracts, good faith should include obligations of transparency, data protection, and responsible use of technology. For example, algorithmic fairness and truthfulness in online transactions can be integrated into the legal interpretation of good faith to reflect modern ethical concerns.

By adopting this reconstructed framework, Indonesian trade law can maintain harmony between contractual autonomy, fairness, and the technological realities of the digital age. Furthermore, embedding good faith as a dynamic and enforceable principle will enhance legal certainty, business trust, and economic integrity, aligning Indonesia's commercial law with international best practices.

### **Implications for the Indonesian Legal System**

The reconstruction of good faith carries significant implications for both legal doctrine and judicial practice. It requires not only statutory clarification but also judicial education and awareness to ensure consistent application across cases. Moreover, integrating good faith into modern trade regulation will support Indonesia's participation in international commerce, where ethical standards and fair dealing are increasingly emphasized.

Ultimately, by reaffirming good faith as a living principle that evolves with society and technology, Indonesian contract law can uphold justice, strengthen commercial reliability, and promote sustainable economic development in the digital era.

## Conclusion

The study reaffirms that the principle of good faith occupies a central and indispensable position in Indonesian contract law. It is not merely a supplementary doctrine but a foundational principle that breathes ethical and moral life into the rigid framework of contractual relations. As codified in Article 1338 paragraph (3) of the Civil Code (KUHPerdata), the principle requires that every agreement be carried out with honesty, fairness, and responsibility. However, the findings reveal that while the normative foundation of good faith is well established, its judicial interpretation and practical application remain fragmented and inconsistent, creating uncertainty in commercial practice and undermining the broader pursuit of justice in private law.

In Indonesia, good faith has been applied by courts both as a corrective mechanism and as an interpretative standard sometimes expansively to prevent abuse of contractual power, and at other times restrictively to uphold the literal terms of an agreement. This inconsistency highlights the absence of a coherent doctrinal framework and the need for a more systematic reconstruction. Without clear guidance, risks losing its normative strength, becoming a vague moral ideal rather than a functional legal principle.

The transformation of global commerce marked by digitalization, cross-border trade, and algorithm-driven transactions further complicates the traditional understanding of good faith. In the digital era, contractual relationships are increasingly mediated by technology rather than direct human interaction, thereby obscuring the elements of honesty, trust, and fairness that underpin. To remain relevant, Indonesian law must expand the meaning of good faith to include modern obligations such as transparency, information accuracy, data integrity, and digital accountability.

The reconstruction of good faith in Indonesia must therefore rest on three key pillars. First, it should adopt a dual dimension: subjective sincerity and objective fairness, ensuring that both moral integrity and equitable conduct guide contractual relations. Second, a judicial

interpretive framework must be developed through jurisprudence or legislative clarification to harmonize how courts apply good faith across different types of commercial disputes. Third, the principle must be technologically adaptive, integrating ethical standards into digital and international trade contexts, consistent with global instruments such as the UNIDROIT Principles and the CISG.

By embracing this reconstructed understanding, Indonesia can enhance legal certainty, commercial trust, and economic justice, aligning its contract law with both domestic values and international norms. Good faith should not be perceived merely as a moral abstraction, but as a living principle of fairness and responsibility one that evolves in tandem with society's ethical consciousness and the realities of modern commerce. Ultimately, a coherent and adaptive doctrine of will fortify Indonesia's legal system, ensuring that the spirit of justice continues to guide the practice of trade in the digital and globalized age

## References

Asshiddiqie, J. (2005). *Konstitusi dan Konstitutionalisme Indonesia*. Jakarta: Konstitusi Press.

Atiyah, P. S. (1995). *An Introduction to the Law of Contract* (5th ed.). Oxford: Clarendon Press.

Beatson, J., Burrows, A., & Cartwright, J. (2010). *Anson's Law of Contract* (29th ed.). Oxford University Press.

Fried, C. (2015). *Contract as Promise: A Theory of Contractual Obligation* (2nd ed.). Oxford University Press.

Hadi, S. (2018). "Asas Itikad Baik dalam Hukum Kontrak Indonesia: Antara Norma Moral dan Kepastian Hukum." *Jurnal Hukum & Pembangunan*, 48(3), 421–438.  
<https://doi.org/10.21143/jhp.vol48.no3.1702>

Hernoko, A. Y. (2010). *Hukum Perjanjian: Asas Proporsionalitas dalam Kontrak Komersial*. Jakarta: Kencana Prenada Media Group.

Mertokusumo, S. (1999). *Hukum Perjanjian Indonesia*. Yogyakarta: Liberty.

Setiawan, R. (1992). *Pokok-Pokok Hukum Perikatan*. Bandung: Binacipta.

Simamora, Y. (2013). "Peranan Asas Itikad Baik dalam Perkembangan Hukum Kontrak Modern." *Jurnal Ilmu Hukum*, 8(2), 157–174.

Subekti. (2005). *Hukum Perjanjian*. Jakarta: Intermasa.

Susanto, A. (2017). "Good Faith and the Freedom of Contract in Indonesian Civil Law." *Indonesia Law Review*, 7(2), 145–162. <https://doi.org/10.15742/ilrev.v7n2.359>

UNIDROIT. (2016). *UNIDROIT Principles of International Commercial Contracts*. Rome: International Institute for the Unification of Private Law.

United Nations Commission on International Trade Law (UNCITRAL). (1980). *United Nations Convention on Contracts for the International Sale of Goods (CISG)*. Vienna: United Nations.

Von Bar, C., & Clive, E. (Eds.). (2009). *Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR)*. Munich: Sellier European Law Publishers.

Zimmermann, R. (1996). *The Law of Obligations: Roman Foundations of the Civilian Tradition*. Oxford: Clarendon Press.