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Comparative Study of The Good Faith Concept between Indonesia and The Netherlands in Civil Law

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ABSTRACT

Indonesian law is not only dominated by the customary system, but also by the European legal system. Indonesia still adhered to the old Dutch “Burgelijk Wetboek” for several years after its independence, even though the Dutch had completely reformed their Burgelijk Wetboek with a more modern version. One of the significant changes that the Dutch implemented is the paradigm change in the regulation of good faith. Therefore, this research is conducted to determine the effect of paradigm changes in good faith under Dutch civil law on the design of legal arrangements in Indonesian civil law. The research method used is normative juridical which focuses on the problem analysis by approaching the principles and legal norms in the applicable laws and regulations, through statutory, comparative, and historical approaches. Good faith concepts in Indonesia and the Netherlands are basically contained in one specific article. The distinction between Indonesia and the Netherlands is the concept of good faith, which is only contained in the article and after the amendment of the new Civil Code in the Netherlands, it is contained in the heading of that article which stipulates that good faith must be applied.

Keywords: *Concept of Good Faith, Dutch Civil Code, Indonesian Civil Code*

INTRODUCTION

Indonesian law is often influenced by various legal systems, one of which is the European legal system which is commonly known as the Roman German legal system. This legal system originated from Belgian law. This system has concluded legal issues that separate society into two categories, the general public and individuals, and pay attention to the relationship between society.¹ Good faith is one of the most important principles in civil law. It has important implications for the establishment of legal relationships between the parties involved, both contractual and non-contractual. Good faith is a concept that is universally recognized and upheld by national and international legal systems.² The principle of good faith and propriety originated in Roman law, which was later adopted by Civil Law and in later developments was adopted by several countries adhering to Common Law.³

According to Paul Scholten, legal principles are “The basic thoughts contained in and behind the legal system are respectively formulated in statutory rules and legal decisions relating to individual provisions and decisions can be seen as their elaboration.” Meanwhile, in terms of the meaning of good faith, Subekti defines good faith as “honesty”. Likewise, Wirjono Prodjodikoro refers to good faith as “honesty” and distinguishes it from “propriety”.⁴

Good faith is a complex concept. A distinction can be drawn between the good faith of one’s actions (good faith as a standard of behavior; known as ‘objective good faith’) and the good faith of knowledge (good faith as a standard of knowledge; known as ‘subjective good faith’).⁵ The doctrine of good faith has its roots in Roman social ethics of a comprehensive obligation of obedience and faith that applies to everyone including the state. Currently, there is no universal agreement among scholars on the definition of good faith, either in civil law countries or common law countries.⁶

¹ M. Muhtarom, “Asas-Asas Hukum Perjanjian: Suatu Landasan Dalam Pembuatan Kontrak,” *Terbitan Berkala Ilmiah* 26, no. 1 (2014), <http://hdl.handle.net/11617/4573>.

² Valérie Verstraeten, “Goede Trouw: Van Openbare Orde? (Belgisch, Duits En Frans Recht)” (2015), https://lib.ugent.be/fulltxt/RUG01/002/213/671/RUG01-002213671_2015_0001_AC.pdf.

³ Ery Agus Priyono, “Peranan Asas Itikad Baik Dalam Kontrak Baku (Upaya Menjaga Keseimbangan Bagi Para Pihak),” *Diponegoro Private Law Review* 1, no. 1 (2017), <https://ejournal2.undip.ac.id/index.php/dplr/article/view/1934>.

⁴ Afif Khalid, “Analisis Itikad Baik Sebagai Asas Hukum Perjanjian,” *Jurnal Legal Reasoning* 5, no. 2 (2023): 109–22, <https://doi.org/10.35814/jlr.v5i2.4644>.

⁵ Johan Van de Voorde, Björn Hoops, and Ernst Marais, “De Verkrijgende Verjaring Door de Bezitter Niet Te Goeder Trouw: Een Driespraak Tussen België, Nederland En Zuid-Afrika” (2021), <https://repository.uantwerpen.be/docstore/d:irua:4112>.

⁶ Manaon Damianus Sirait, Johannes Ibrahim Kosasih, and Desak Gde Dwi Arini, “Asas Itikad Baik Dalam Perjanjian Sewa-Menyewa Rumah Kantor,” *Jurnal Analogi Hukum* 2, no. 2 (2020): 221–27, <https://doi.org/10.22225/ah.2.2.2020.221-227>.

In Indonesia, the understanding of the development of the good faith principle has undergone significant changes in recent decades.⁷ Enforcing the principle of good faith is not a straightforward task, and as a result, important steps have been taken in mutually agreed agreements. Good faith should not only include the goodwill of the parties involved, but also refer to the values that develop in society, as good faith is an integral part of people's lives. Overall, the principle of good faith reflects the standards of fairness and reasonableness for society. The previously explained meaning states that good faith becomes a universal social force that governs relationships between individuals, where every citizen has the responsibility to behave in good faith within their social encounters.⁸

The background of the problem found is grounded in the development of civil law legislation in Indonesia, which is historically related to the pre-existing Dutch civil law, the Burgerlijke Wetboek (BW). Meanwhile, in the Netherlands, there was a transformation from BW to a revised civil code, the Nieuw Burgerlijke Wetboek (NBW). This change provides a foundation for analyzing the differences in the good faith concept between Indonesia and the Netherlands, as well as providing comparative material to comprehend the significance of good faith after the amendment of the latest civil law in the Netherlands. Therefore, this research is conducted to determine the effect of paradigm changes in good faith under Dutch civil law on the design of legal arrangements in Indonesian civil law.

RESEARCH METHODOLOGY

Soekanto describes legal research as a scientific activity, method, systematics, and thought that seeks to examine and analyze a certain legal situation.⁹ The research method used is normative juridical where this research is focused on analyzing the problem by taking an approach that refers to the principles and legal norms in the relevant laws and regulations. The approach to the addressed topic is conducted through a statute approach to BW and NBW Civil Law as a form of comparison to the concept of good faith in civil law, through applying the comparative approach. Sunaryati emphasized that in doing comparative law, there are two important conclusions. First, in research, similar necessities will result in similar methods. Second, in relation to specific

⁷ Deviana Yواناتari and Hazar Kusmayanti, "Pengembangan Hukum Perjanjian Dalam Pelaksanaan Asas Itikad Baik Pada Tahap Pra-Kontraktual," *ACTA DIURNAL: Jurnal Ilmu Hukum Kenotariatan* 3, no. 2 SE-Articles (June 29, 2020): 292–304, <https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/228>.

⁸ Miftah Arifin, "Membangun Konsep Ideal Penerapan Asas Iktikad Baik Dalam Hukum Perjanjian," *Jurnal Ius Constituendum* 5, no. 1 (2020): 66–82, <https://doi.org/10.26623/jic.v5i1.2119>.

⁹ Johnny Efendi, Jonaedi & Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris*, 1st ed. (Depok: Prenada Media Group, 2016).

necessities, the origin of a legal effect will lead to different approaches.¹⁰ In addition, the historical approach is also applied to examine the origin of the adoption of BW as a guide to civil law in Indonesia, as well as its transformation into NBW in the context of civil law in the Netherlands. The analysis of legal materials in this research is carried out through the study of journals and literature relevant to the discussion topic.

RESULT AND DISCUSSION

The Concept of Good Faith in Indonesia Under the Burgerlijk Wetboek (BW)

The enactment of Dutch civil law in Indonesia was also closely related to the legal policy of the Dutch government which categorized Dutch society into three groups: The European group, which includes all Dutch, Europeans, Japanese, whose family law is identical to Dutch law based on the principles and their descendants; the Chinese and non-Chinese foreigners such as Arabs, Indians and Pakistanis; and the Indigenous group, which includes those who have immersed themselves and adjusted their lives in the Netherlands.¹¹ Reforms in the field of Civil Law in Indonesia are as significant as the reforms taking place in the legal disciplines of several European countries. The Burgerlijk Wetboek (BW) or Civil Code is the main source of civil law. The most significant part of the Civil Code is the law relating to private property. The Napoleonic Code enacted in 1811-1838 as a result of the French annexation of Belgium was an important factor in the formation of the Law on Private Property in Belgium, which later became a comprehensive set of official regulations.¹²

In Indonesian civil law, the concept of good faith is regulated in Article 1338 Paragraph 1 of the Civil Code. The paragraph states that “all agreements legally concluded shall apply as law to those who make them.” Book III of the Civil Code contains four important universal principles, which include the principle of freedom of contract, the principle of *pacta sunt servanda*, the principle of good faith, and the principle of consensualism.¹³ Article 1338 Paragraph 3 of the Civil Code states that “an agreement must be executed in good faith.” The purpose of implementation in good faith is for both parties to interact

¹⁰ Suhaimi, “Problem Hukum Dan Pendekatan Dalam Penelitian Hukum Normatif,” *Jurnal Yustitia* 19, no. 2 (2018): 202–10, <https://doi.org/10.53712/yustitia.v19i2.477>.

¹¹ Muhammad Faisal, “Pengaruh Perubahan Paradigma Itikad Baik Dalam Hukum Keperdataan Belanda Terhadap Perancangan Pengaturan Hukum Keperdataan Indonesia,” *Jurnal Legislasi Indonesia* 20, no. 1 (2023): 126–38.

¹² Rika Aryati, Hamzah Vensuri, and M. Febrianto, “Sejarah Berlakunya BW Dan KUHPerdata Di Indonesia,” *Journal of Criminology and Justice* 2, no. 1 (2022): 11–16, <https://journal.fkpt.org/index.php/criminology/article/view/422>.

¹³ Muhtarom, “Asas-Asas Hukum Perjanjian: Suatu Landasan Dalam Pembuatan Kontrak.”

respectfully, without deception, lies, without considering their own interests, and also considering the interests of the other party.¹⁴

The understanding of the article is not intended to be specific, but rather the principles within it form a unified system with other principles. In relation to the binding force (*pacta sunt servanda*) of a contract, which is a condition demanded by the parties, it should be noted that in certain situations, the enforceability (*strekking*) of the contract may be bound by good faith.¹⁵

The correlation between good faith and public welfare is particularly close because it has an impact on public legal awareness, which requires collaboration and law enforcement. The concept of good faith can be divided into two types, subjective good faith and objective good faith. In the Indonesian language, subjective good faith is often referred to as honesty, and this principle is regulated in article 530 of the Civil Code, specifically related to the position of power (*bezit*). In relation to objective good faith, it is important to note that the execution of an agreement is not merely dependent on the written terms, but must also be conducted properly (*redelijkheid en billijkheid*).¹⁶

The relationship with the civil law legal system regarding the principle of good faith, compared to the common law, is the driving force behind the implementation of the good faith principle in Indonesia. The purpose of the good faith principle is to conduct an agreement honestly and fairly, with a view to ensure no violation of the law and prevent loss. Prodjodikoro in Mustika (2021) divides the concept of good faith into two types:

1. Good faith at the beginning of the contractual agreement: This relationship refers to the provisions that must be fulfilled by both parties as the first step in any agreement. Thus, there is legal protection for parties who have good faith, while parties who do not have good faith will be responsible for any losses that arise;
2. Good faith in the realization of rights and obligations: As explained in the provisions of Article 1383 Paragraph 3 of the Civil Code, actions taken in the realization of rights and obligations become the standard for implementing the principle of good faith.¹⁷

In addition to the provisions of the article above, the implementation of the good faith principle is also stated in:

1. Book I on People

¹⁴ Mulyani Zulaeha, "Asas Itikad Baik Dalam Mediasi," *Banua Law Review* 4, no. 2 (2022): 156–68, <https://doi.org/10.32801/balrev.v4i2.43>.

¹⁵ Zulaeha.

¹⁶ Novran Harisa, "Asas Itikad Baik Dalam Perjanjian Arbitrase Sebagai Metode Penyelesaian Sengketa," *Aktualita (Jurnal Hukum)* 1, no. 1 (June 4, 2018): 261–79, <https://doi.org/10.29313/aktualita.v1i1.3722>.

¹⁷ Sri Mustika, "Pelaksanaan Jual Beli Sepeda Motor Bekas Antara Individu Dengan Individu Ditinjau Berdasarkan Asas Itikad Baik (Studi Kota Pekanbaru)," *Repository Universitas Islam Riau* (Universitas Islam Riau, 2021), <http://repository.uir.ac.id/id/eprint/8174>.

- a. Article 95: “A marriage, even if it has been declared null, shall have all its civil consequences, both as regards the husband and wife and as regards their children, if the marriage was entered into in good faith by the husband and wife.”
 - b. Article 96: “If good faith exists only on the part of one of the husband and wife, the marriage shall have civil consequences only in favor of the party of good faith and of the children born of the marriage. The husband or wife who acted in bad faith may be sentenced to pay costs, damages and interest against the other party.”
 - c. Article 98: “The nullity of a marriage shall not prejudice a third party, if that third party has behaved in good faith with the husband and wife.”
2. Book II on Possession
- a. Article 530, “Besit exists in good faith and exists in bad faith.”
 - b. Article 531, “Besit in good faith occurs when the possessor acquires the goods by obtaining title without knowing of any defect in them.”
 - c. Article 533, “The possessor of a besit shall always be presumed to be in good faith; whoever accuses them of bad faith shall prove it.”
 - d. Article 548, “Besit in good faith gives the possessor the right to an asset.”
 - 1) Paragraph 1, to be regarded as the possessor of the asset temporarily, until such time as the asset is reclaimed before the Judge;
 - 2) Paragraph 2, to be able to obtain possession of the asset by virtue of lapse of time;
 - 3) Paragraph 3, to enjoy the fruits thereof until such time as the asset is reclaimed before a judge;
 - 4) Paragraph 4, to retain the possession if the possessor is interfered with in holding it, or to recover the possession if they lose it.
 - e. Article 567: “In connection with these suits, for the possessor of a besit, whether in good faith or in bad faith, the period of enjoyment of the produce and of the expenses incurred during the possession of the besit, the provisions set forth in Chapter III on the same subject shall apply.”
 - f. Article 575: “The possessor of a besit in good faith shall be entitled to retain all the property they have enjoyed from the property claimed until the day on which they are sued before the judge. They shall be obliged to return to the owner of the property all the produce they have enjoyed since the day they were sued, after

deducting the costs of acquiring it, i.e. for planting, seeding and tilling the land. Furthermore, they shall have the right to claim back all expenses incurred to save and benefit the property, and they shall have the right to take possession of the property as long as they have not been reimbursed for the costs and expenses mentioned in this article.”

- g. Article 576: “With the same rights and in the same manner, the possessor of a besit in good faith, on surrendering the thing requested, may claim back any expenses incurred in obtaining the produce described above, provided that the produce has not been separated from the land at the time of the surrender of the thing concerned.”
- h. Article 604, “If the building is erected by a besit possessor in good faith, the owner may not demand the demolition of the building, but they may choose to pay the price of the materials and labor or to pay a sum of money equal to the increase in the price of the land.”

3. Book III on Agreement

- a. Article 1341, “Notwithstanding the foregoing, a creditor may claim the invalidity of any unauthorized act performed by the debtor, by whatever name called, to the detriment of the creditor; provided that it is proved that when the act was performed, the debtor and the person by whom or for whom the debtor acted, knew that the act would result in detriment to the creditors. The rights acquired by third parties in good faith in the goods subject to the unauthorized act shall be respected. In order to invalidate an act freely performed by the debtor, it is sufficient for the creditor to show that at the time of performing the act the debtor knew that in this way he was harming the creditors, regardless of whether the person benefited also knew this or not.”
- b. Article 1363, “Whoever sells an article which they have received in good faith, as an obligatory payment, have only to give back the price. If they have, in good faith, given the goods free of charge to another person, they are not required to give anything back.”
- c. Article 1364: “The person to whom the property is returned is obliged, even to the person who in good faith has taken possession of it, to reimburse all necessary expenses incurred for its safety. The person in possession of the goods shall have the right to hold them in their possession until these expenses have been reimbursed.”
- d. Article 1386, “Payment in good faith made to a person holding a letter of credit is valid, also if the receivable is by a penalty to

- deliver it to another person, taken and the possession of the person.”
- e. Article 1532, Paragraph 3: “If the seller recovers the price as a result of a repurchase agreement, the property shall be delivered to them free of all encumbrances and mortgages placed on it by the buyer but they shall be obliged to fulfill the lease agreements made in good faith by the buyer.”
 - f. Article 1632, “The participant is entitled to the company not only for the money that has been spent for the company, but also for all agreements that the participant entered into in good faith for the company, and for losses incurred during the management that could not be avoided.”
 - g. Article 1649, “A company may be dissolved at the will of several participants or at the will of only one participant, if the company was established for an indefinite period. Such dissolution shall only take place if notice of dissolution is given to all participants in good faith and in a timely manner.”
 - h. Article 1717, “If a beneficiary of a entrusted property sells the entrusted property in good faith, without knowing that the property sold was entrusted property, they shall only be obliged to return the purchase price they have received or, if they have not received the money, to surrender the right to sue the purchaser of the property.”
4. Book IV on Evidence and Expiration
- a. Article 1818, “If the holder of the power of attorney does not know about the death of the grantor or about some other cause that causes the end of the power of attorney, then the act performed in the state of not knowing it is valid. In such a case, all agreements entered into by the power of attorney with third parties in good faith, must be fulfilled against them.”
 - b. Article 1963,
 - 1) Paragraph 1, A person who in good faith acquires an immovable property, an interest, or any other receivable not payable on appointment with a besit for twenty years, acquires title thereof by way of lapse of time.
 - 2) Paragraph 2, A person who in good faith controls something for thirty years acquires a property right without being forced to show the basis of the right.
 - c. Article 1965, “Good faith shall always be presumed to exist, and whoever makes a claim based on bad faith shall be obliged to prove it.”

Honesty in the making of agreement is expected as a realization of good faith. The party committing the manipulation can file it before a public official in order for the execution of the agreement to be legally recognized.¹⁸ In simplified terms, good faith has traction in the making and executing phase of the agreement.¹⁹ According to Satrio, the purpose of this provision is for the court, where the authority of the judge in deciding cases in court is based on the implementation of this principle. As a result, the development of the doctrine of good faith tends to be casuistic, which means that it differs from one case to another.²⁰

The Concept of Good Faith in the Netherlands Under the Nieuw Burgerlijk Wetboek (NBW)

The Burgerlijk Wetboek (BW), as a long-established statutory regulation, undeniably has many shortcomings and lags behind in adapting to the times. As the country that introduced BW in Indonesia, the Netherlands itself has gone a step further by replacing it with a new Civil Code, known as the Nieuw Burgerlijk Wetboek (NBW), which has significant differences with BW. The Civil Code currently applicable in the Netherlands, or NBW, presents better progress both in terms of legal substance and systematics, which serves as an improvement to the various deficiencies contained in BW.²¹

Many provisions in the NBW are based on traditional laws that have been adopted by European countries, including the fundamental laws of the European community. In the NBW, some legal acts are recognized as a state of good faith.²² The meaning of good faith refers to a person's actions that must be performed and complied with according to the agreement, regardless of the circumstances, or an action that reflects decency and justice for society as an expression of respect for the law. Good faith does not only refer to the goodwill of the parties, but also refers to the values and norms prevailing in society. Therefore, the

¹⁸ Fajar Rachmad Dwi Miarsa et al., "Theory Analysis of Justice Against Good-Faith Buyers in Freedom of Contract," *IUS POSITUM: Journal of Law Theory and Enforcement* 1, no. 4 (2022): 45–58, <https://doi.org/10.56943/jlte.v1i4.197>.

¹⁹ Erlinda Linda Megantari, "Kekuatan Hukum Perjanjian Asuransi Melalui Telemarketing Menurut Buku III Burgerlijk Wetboek (BW)," *NOVUM: Jurnal Hukum* 6, no. 4 (2019): 30–39, <https://doi.org/10.2674/novum.v6i4.30707>.

²⁰ Noorzana Muji Solikha, "Asas Itikad Baik Sebagai Pembatas Kebebasan Berkontrak Dalam Perjanjian Kredit Bank" (Universitas Islam Indonesia, 2015), <https://dspace.uui.ac.id/handle/123456789/9098>.

²¹ Ery Agus Priyono, "Pengaruh Globalisasi Ekonomi Terhadap Perubahan Peraturan Bidang Perjanjian Di Indonesia," *Diponegoro Private Law Review* 3, no. 1 (2018), <https://ejournal2.undip.ac.id/index.php/dplr/article/view/3827>.

²² Rida Halimah and Pranoto, "Analisis Perbandingan Kekuatan Mengikat Pra Kontrak Dalam Hukum Kontrak Di Indonesia Dengan Hukum Kontrak Di Eropa Kontinental," *Jurnal Privat Law* 7, no. 1 (February 2, 2019): 55, <https://doi.org/10.20961/privat.v7i1.30100>.

implementation of good faith is not only limited to following important procedures in every agreement drafted by the relevant parties.²³

In countries that adhere to civil law, the doctrine development of good faith is influenced by the thought of Rudolf von Jhering through the concept of culpa in contrahendo. This concept indicates that liability arises as a result of errors or omissions, instead of non-fulfillment of contractual obligations, caused by the negligence of one of the parties in the negotiation stage.

While the principle of good faith is recognized in the process of negotiating and drafting contracts in the law of the Netherlands, the NBW has not fully adopted the principle. The legislators tend to leave it to the courts to develop and interpret the principle of good faith.²⁴ In the context of good faith in the Nieuw Burgerlijk Wetboek (NBW) as the new Civil Code in the Netherlands, the principle of good faith is listed in:

1. Book III on Property Law in General
 - a. Article 3:11 on Good Faith stipulates that a person is not considered to have behaved in “good faith” as a condition for the occurrence of certain legal consequences, if in reasonable circumstances they should have known the facts on which good faith is based. In the context of an investigation, it is possible to make a person doubt the relevant matter.
 - b. Article 3:61 on the Opposing Party Behaving in Good Faith
 - 1) Paragraph 1, that procurement is given explicitly or implicitly.
 - 2) Paragraph 2, when an act is committed by another person, it is not possible for the opposite party in such circumstances to take over the act of that person (the person authorized to appeal against this assumption error).
 - 3) Paragraph 3, if a procurement that is publicized through legislation is restricted and results in the opposing party not expecting to be present, the opposing party cannot appeal unless the opposing party is aware of its existence.
 - c. Article 3:118 on Possession in Good Faith
 - 1) Paragraph 1, a possessor has good faith if at the time of acquiring their possession they regard themselves as reasonably able to regard themselves as such.
 - 2) Paragraph 2, once the possessor has acted in good faith, they are deemed to have acted in good faith.

²³ Ivie Yullya Kaltsum, “Penerapan Asas Itikad Baik Dalam Perjanjian Sewa-Menyewa Stroller Di Rental Stroller Baby & Kids Kartama Pekanbaru” (Universitas Islam Riau, 2021), <http://repository.uir.ac.id/id/eprint/19509>.

²⁴ Ragil Kusnaning Rini, “Urgensi Prinsip Kepatutan Dan Keadilan (Redelijkheid En Billijkheid) Dalam Pembuatan Perjanjian Pendahuluan,” *Notaire* 4, no. 3 (September 2021): 425, <https://doi.org/10.20473/ntr.v4i3.27221>.

- 3) Paragraph 3, good faith is presumed to exist and the absence of good faith must be proven.
- d. Article 3:120 on Possession with Good Faith (fruits, costs, damage and possessory lien)
 - 1) Paragraph 1, the separated natural products and fruits due for payment belong to the owner who owns the property and produces the fruits in good faith.
 - 2) Ayat 2, pemilik barang yang menuntut kembalian dari pemilik barang yang beritikad baik harus ganti rugi terhadap pemiliknya sesuai biaya yang telah dikeluarkannya.
 - 3) Ayat 3, pada imbalan yang dimaksudkan diatas jika belum dibayarkan maka pemilik yang beritikad baik berhak menahan diri untuk tidak memenuhi kewajiban itu.
 - 4) Ayat 4, ketentuan tersebut juga berlaku kepada seseorang yang meyakini bahwa ia telah memperoleh kepemilikan secara sah atas barang tersebut, meskipun telah mengetahui atas formalitas dalam penyerahan barang tersebut secara hak milik belum terjadi.
2. Book VI of the Law of Obligations
 - a. Article 6:204 on Good Faith of the Recipient of an Undue Performance.
 - 1) Paragraph 1, if the consignee within a reasonable time does not realize the obligation to return the goods, has not taken proper care of them, the failure is not caused by them.
 - 2) Paragraph 2, where a person on behalf of another person has received a sum of money without any debt to that person, the person shall be exempted from returning the money received.²⁵

In terms of interpretation, the meaning of good faith is still abstract, and in practice, discussions on its standard and role, as well as the lack of a comprehensive meaning of good faith in terms of time, place, and individuals are still common. As a result, the meaning, standard, and function of good faith are more often considered through the judge's view or evaluated behavior in a particular context.²⁶ Good faith is reflected in a person's state of mind, which demands intention and honesty in making an agreement, although it is not always

²⁵ The Netherlands Government, "Dutch Civil Code," 1992.

²⁶ Novalia Arnita Simamora, "Asas Itikad Baik Dalam Perjanjian Pendahuluan (Voor Overeenkomst) Pada Perjanjian Pengikatan Jual Beli Rumah (Studi Putusan Pengadilan Negeri Nomor 37/PDT/PLW/2012/PN. SIM)" (Universitas Sumatera Utara, 2015), <http://repositori.usu.ac.id/handle/123456789/43036>.

possessed by all parties involved.²⁷ The Nieuw Burgerlijk Wetboek (NBW) confirms that the concept of good faith under the new law is a general one, as stated in the general provisions on ownership and also in the articulated terms of the general provisions.²⁸

Comparison of the Good Faith Concept on Civil Law between Indonesia and the Netherlands

The concept of good faith in law is not only present in national legal structures, but also in international legal instruments.²⁹ Currently, the Civil Code is the legacy of the Dutch Civil Code of 1838. In this regard, the basis of the Indonesian Civil Code, which originated from the Dutch Civil Code, has been reformed. In the 20th century, Prof. E.M. Meijers, based on his legal knowledge, was appointed by the Dutch government to draft a recodification of the new Dutch Civil Code, known as the Nieuw Burgerlijk Wetboek (NBW) and was the result of Prof. E.M. Meijers' notion.

The new Civil Code consists of ten books, whereas previously there were only four. The ten books consist of: Book 1 covers Natural Persons and Family Law; Book 2 covers Legal Persons; Book 3 covers Property Law in General; Book 4 covers the Law of Succession; Book 5 covers Real Property Rights; Book 6 covers Obligations and Contracts; Book 7 covers Particular Contracts; Book 7A covers Particular Contracts; Book 8 covers Transport Law and Means of Transport; Book 9 covers Intellectual Property; and Book 10 covers International Private Law.³⁰

On January 1, 1992, the NBW came into force as the new and modern civil law in the Netherlands. The NBW was heavily influenced by the German civil law known as the Bürgerliches Gesetzbuch (BGB). Previously, the BGB consisted of 4 books, and the article numbers in each book remained associated so that the order could not be changed. In contrast, the NBW consists of 10 books, and each book starts with article 1, followed by the book number followed by the article number. For example, the mention of chapter 10 in book 1 becomes 1:10, and the mention of chapter 3 in book 6 becomes 6:3. The regulations in all ten books of the NBW have a multi-layered system as some regulations can be found in multiple books. In order to comprehend potential problems in the NBW, one must

²⁷ Muhammad Asshidiq and Muhammad Farid Alwajdi, "Penerapan Asas Itikad Baik Dalam Transaksi Jual-Beli Tanah (Studi Putusan Nomor 13/Pdt.G/2018/PN Bar)," *Ahamd Dahlan Legal Perspective* 3, no. 1 (2023): 63–78, <https://doi.org/10.12928/adlp.v3i1.7661>.

²⁸ Johan Van de Voorde, Björn Hoops, and Ernst Marais, "De Verkrijgende Verjaring Door de Bezitter Niet Te Goeder Trouw: Een Driespraak Tussen België, Nederland En Zuid-Afrika," *Tijdschrift Voor Privaatrecht*, 2020, 97–170, <https://repository.uantwerpen.be/docstore/d:irua:4112>.

²⁹ Miarsa et al., "Theory Analysis of Justice Against Good-Faith Buyers in Freedom of Contract."

³⁰ R. A. Retno Murni, Ni Ketut Supasti Dharmawan, and Putu Aras Samsithawrati, "Transformasi Good Faith Principle Dalam Hukum Perbankan Khususnya BPR: Perspektif Lokal Nasional Dan Internasional," *Arena Hukum* 11, no. 3 (2018): 571–99, <https://doi.org/10.21776/ub.arenahukum.2018.00903.9TRANSFORMASI>.

check the NBW books. Hence, this is known as the sequential rules in NBW (schakelbepalingen).³¹

Indonesia's legal system is derived from the Netherlands civil law system, with civil law as its primary subject of law. The Netherlands has successfully gone through legal reform, which can be considered as a model of civil law reform that Indonesia might adopt.³² In Indonesian civil law, the concept of good faith is generally explained and regulated in Article 1338 of the Civil Code, which is also applied to articles containing the concept. On the other hand, the Civil Code in the Netherlands has been specifically codified in Article 3:11, Article 3:61, Article 3:118, Article 3:120, and Article 6:204. The reform of civil law in the Netherlands also has an impact on other areas of law, as can be seen from the application of the concept of good faith which is specifically categorized in articles in accordance with its development.

Table 1. Concept of Good Faith Between Indonesia and the Netherlands in Civil Code

Aspects	Indonesian Civil Code	Dutch Civil Code
Regulations	Article 1338 of the Civil Code	Article 3:11, Article 3:61, Article 3:118, Article 3:120 and Article 6:204 of the Nieuw Burgerlijk Wetboek
Extent	Agreement	Legal Relationship Between Parties
Implementation	In General	Specifically

Source: Processed Data by Researchers

A comprehensive understanding towards the law needs to be firmly maintained, especially when it comes to making legal decisions. The implementation of the good faith concept in Civil Code may cause difficulties in subjective understanding. Therefore, the implementation of good faith should be conducted objectively, which is related to the relevant legal regulations. Fundamentally, the principle of good faith includes elements of justice, particularly remedial justice. This concept of justice aims to strengthen cooperation through the enforcement of the law against the parties involved.

³¹ Muhammad Faisal, "Pengaruh Perubahan Paradigma Itikad Baik Dalam Hukum Keperdataan Belanda Terhadap Perancangan Pengaturan Hukum Keperdataan Indonesia," *Jurnal Legislasi Indonesia* 20, no. 1 (March 31, 2023): 110, <https://doi.org/10.54629/jli.v20i1.1009>.

³² Lastuti Abubakar, "Perkembangan Transaksi Perbankan Dan Implikasinya Terhadap Pembaharuan Hukum Perdata Indonesia," *JUSTITIA JURNAL HUKUM* 1, no. 2 (December 29, 2017), <https://doi.org/10.30651/justitia.v1i2.1149>.

Therefore, this principle views justice as a form of rectification of wrongdoing, by compensating victims and imposing punishments on perpetrators.³³

CONCLUSION

Indonesian civil law is closely related to the Netherlands legislation. The concept of good faith, which is regulated in the Indonesian Civil Code, is explained in Article 1338, which states that every legal agreement has legal force for the parties who make it and must be implemented in good faith. Another support for the implementation of the principle of good faith in Indonesia is the relationship between the principle of good faith in civil law (as the primary reference in Indonesia) compared to Common Law.

The development of the good faith concept in the Netherlands includes the concept of *Culpa in contrahendo*, where legal liability arises due to errors in negotiations that were not undertaken in good faith. Although not yet recognized in the NBW, this concept has been accepted in the Netherlands jurisprudence. The principle of good faith in the NBW is regulated in Article 3:11, explaining that a person is deemed to act in good faith if they know, in reasonable circumstances, the facts on which good faith is predicated. This does not rule out the possibility for someone to have doubts about it. The difference in the implementation of the good faith concept between the Indonesian Civil Code and the latest Civil Code in the Netherlands can be seen from the general codification in the content of the articles in Indonesia, while in the Netherlands, the concept of good faith is specifically explained in the articles that regulate it.

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³³ Rafiqah Sari, Winanda Kusuma, and A. Cery Kurnial, "Ultra Vires Perlindungan Hukum Terhadap Kreditur Dalam Perseroan Terbatas," *PROGRESIF: Jurnal Hukum* 13, no. 2 (December 2, 2019): 145–66, <https://doi.org/10.33019/progresif.v13i2.1225>.

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