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## **The Good Faith Principle and the Transformation of Contract Law in a Globalized Legal Order**

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### **ABSTRACT**

*By examining the viewpoint of international law and comparing the global legal system. This study attempts to assess how the concept of good faith has changed in the context of contract law in the age of globalization. The issue raised by Article 1338 of the Civil Code, which describes Indonesia's good faith notion, serves as the study's backdrop, is still declarative and lacks adequate operational power. This situation diminishes the parties' protection and results in inconsistent application of contract law. This research is urgent because more cross-border transactions and digital contracts are required, which calls for global criteria of integrity and fairness. The method is normative juridical research with a descriptive-analytical approach, utilizing secondary legal materials from relevant scientific literature in addition to primary legal resources in the form of national and international legal instruments. The effort to create a concept of good faith principle change that is realistic and in line with global practice, in order to incorporate it into Indonesian law without ignoring the characteristics of civil law, is what distinguishes this research from others. The study's findings demonstrate how, globally, the application of the good faith notion has changed from moral to legally required standards. Indonesia must follow suit by establishing specific normative standards in order to make its national contract law more adaptable to the forces of globalization and technological advancements.*

**Keywords:** *Contract, Good Faith, Legal System, Technology*

## INTRODUCTION

The concept of good faith has long been acknowledged. Many scholars view the concept of good faith as a duty.<sup>1</sup> The contract's parties are required to uphold this good faith standard.<sup>2</sup> Regardless of whether it is stated in the contract or not, this duty always exists. This idea is regarded as a responsibility in the execution and enforcement of contracts. One of the most significant and well-known concepts in both domestic and international contract law is this responsibility. This concept can be categorized as a general law principle due to its nature. This idea is mentioned in a number of national and international law documents. Among other places, The Civil Code's Article 1338 establishes guidelines for good faith.<sup>3</sup> The concept of good faith is found in Articles 157 and 242 of the German Civil Code. According to the Restatement of Contract, this essential concept or obligation is necessary under U.S. contract law.<sup>4</sup>

The pattern of economic contact and contractual agreements between corporate players has undergone significant modifications in the period of globalization.<sup>5</sup> Geographical restrictions no longer apply to business transactions, which now occur across national borders via intricate and quick moving digital systems. The good faith standard, which has guided the application of contract law, now faces a new obstacle: how to remain relevant given the complexity of today's algorithm-based, transactional business relationships.<sup>6</sup> Different legal systems and contractual cultures are also brought together by globalization, way that there are a variety of views of what constitutes good faith, which can lead to conflicts between substantive fairness and legal certainty.<sup>7</sup>

The civil law system in Indonesia has long recognized the good faith concept, this has developed into one of the main pillars for carrying out agreements as specified by the Civil Code. Nevertheless, in actuality, judges and legal professionals frequently interpret this idea differently. Due to the vagueness in the definition of operations and the limitations on its application, the idea of good faith

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<sup>1</sup> Elisabeth Gloria and Putri Triari Dwijayanthi, "Rekonstruksi Kedudukan Prinsip Itikad Baik Dalam Transaksi Bisnis Era Media Sosial Digital," *Jurnal Media Akademik (JMA)* 3, no. 11 (2025).

<sup>2</sup> Fajar Rachmad et al., "Comparison of the Implementation of Good Faith in Indonesia, China, and Japan: Building Legal Harmonization," *SASI* 31, no. 2 (2025): 142–58.

<sup>3</sup> Ekacatra Hery Jatmiko, "Penerapan Asas Kebebasan Berkontrak Dalam Kontrak Bisnis Di Indonesia," *Hukum Inovatif: Jurnal Ilmu Hukum Sosial Dan Humaniora* 2, no. 3 (2025).

<sup>4</sup> Muzdalifah Karsa Prima and Helena Primadianti Sulistyningrum, "Asas Itikad Baik Dalam Memorandum Of Understanding: Tinjauan Terhadap Hukum Perjanjian Di Indonesia," *Sriwijaya Journal of Private Law* 2, no. 1 (2025).

<sup>5</sup> Fairus Nur Fitriana and Herma Setiasih, "THE ENFORCEMENT OF WANPRESTASI ON DEBT RECOGNITION IN DEBT AGREEMENTS," *Journal of Court and Justice* 1, no. 4 (December 1, 2022): 1–10, <https://doi.org/10.56943/jcj.v1i4.206>.

<sup>6</sup> Wenzhou Shu, "Dynamic Adaptation of the Basic Principles of Civil Law and Reconstruction of the Market Economic Order: Based on the Systematic Logic of the Chinese Civil Code," *Journal of Historical, Cultural and Social Sciences* 1, no. 1 (May 9, 2025): 19–28, <https://doi.org/10.71204/524by011>.

<sup>7</sup> Bogna Kaczorowska, "Articulating Contractual Good Faith: The Evolving Civil and Common Law Dimension," *Studia Iuridica* 106 (2025), <https://doi.org/10.31338/2544-3135.si.2025-106.7>.

is often viewed as just a moral admonition with no decisive remedial power.<sup>8</sup> Actually, in the evolution of contemporary contract law, good faith has evolved from only being an ethical standard to a legal instrument that may regulate the conduct of the parties in order to prevent them from abusing their rights and acting opportunistically.<sup>9</sup>

There are two reasons why this research is urgent. First, due to the increasing frequency of cross-border contracts and the digitization of transactions, the notion of good faith must be modified for a new context. Second, Business players acting internationally face legal ambiguity due to the discrepancy between national standards and international regulations included in the International Commercial Contracts UNIDROIT guidelines. Indonesia may fall behind in establishing a just and competitive business environment on a global scale if harmonization and adaptive understanding are lacking.

Several previous studies have addressed the notion of good faith in the implementation of contract law, but the most of them still concentrate on the normative aspect and have not yet achieved the metamorphosis of this concept in the global and digital contexts. The research, highlights the importance of the good faith concept in Indonesian civil law, for example, and stresses the need for objective methods to assess violations of the principle. The analysis demonstrates a discrepancy between court practice and the Civil Code's standards. The study hasn't, however, connected this idea to the evolution of digital technology or the dynamics of international contracts.

In the meanwhile, the study talks about how Indonesia is putting the good faith concept into practice in order to create just laws. He underlined that good faith must be taken into account both during the contract's creation and during its implementation. The benefit of this study is that it clarifies the connection between the principles of justice and good faith, but its application is still restricted to the domestic setting and does not take international norms into account.<sup>10</sup> Transparency and communication between parties are crucial, especially in online transactions, according to another study on the use of the good faith concept in cross border deposit service agreements. This research is still sectoral and hasn't addressed the larger global theoretical level, albeit offering an empirical viewpoint.

Conversely, numerous international studies, like those published in the *International Journal of Business Law*, demonstrate how the good faith concept has evolved into a normative tool that serves as more than just an interpretative, but it

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<sup>8</sup> Meydora Cahya Nugraheni and Ari Hernawan, "Good Faith Principle in Indonesian Contract Law: How to Set the Definition and Its Benchmarks," *Journal of Infrastructure Policy and Development* 8, no. 10 (September 26, 2024): 7358, <https://doi.org/10.24294/jipd.v8i10.7358>.

<sup>9</sup> Mindy Chen-Wishart and Victoria Dixon, "Good Faith in English Contract Law," in *Oxford Studies in Private Law Theory: Volume 1* (Oxford University Press Oxford, 2020), 187–232, <https://doi.org/10.1093/oso/9780198851356.003.0008>.

<sup>10</sup> Rachmad et al., "Comparison of the Implementation of Good Faith in Indonesia , China , and Japan : Building Legal Harmonization."

has a regulatory function in stopping rights violations and contractual trust violations.<sup>11</sup> The study does point out that there is still a problem with applying this idea to smart contracts and digital contracts. Since algorithms lack morality, a new legal framework that emphasizes system design and algorithmic openness is required.

It is clear from these diverse investigations that earlier research has significantly advanced our conceptual grasp of the good faith principle, however, it still remains a gap regarding the transformation and operationalization of the concept in the context of contract digitization and globalization.<sup>12</sup> In other words, despite the complexity of cross border transactions, the literature currently in publication has not completely addressed how the good faith concept might be employed as an effective legal parameter in avoiding the misuse of contractual authority.

This study is unique in that it uses contextual and comparative methods to try to bridge these gaps. The author will look at how the UNIDROIT rules and arbitration practice correspond with the concepts of good faith that are evolving at the international level. The applicability of the good faith concept to the dynamics of smart contracts and electronic contracts will also be investigated in this study. Additionally, operational benchmarks that judges, arbitrators, and business actors may utilize will be developed.

Therefore, without disregarding the features of Indonesian law, This study aims to offer a paradigm for applying the good faith notion that may be adjusted to the challenges posed by globalization. Three items are included in the development of the research's objectives: first, examining how the good faith concept is used differently in domestic and foreign contracts; second, to set up operational settings in order to implement the idea; and third, evaluating how the good faith concept is affected by digital revolution.

## RESEARCH METHODOLOGY

This study employs a normative juridical methodology, which is legal research with a primary focus on positive legal norms.<sup>1314</sup> This method was selected because, rather than using actual field observations, from the perspective of laws, regulations, and international legal instruments, investigating the concept of good

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<sup>11</sup> Leilani Alysia Hapsari and Anang Setiyawan, "Penerapan Asas Itikad Baik Dalam Penyelesaian Sengketa Perdata," *Zaaken: Journal of Civil and Business Law* 4, no. 3 (2023): 436–54.

<sup>12</sup> Yahman Liana, "Legal Protection of Workers with A Specific Time Work Agreement ( PKWT ) in The Transfer of Outsourcing Companies Following The Enactment of Law No . 6 / 2023," *YURIS: Journal of Court and Justice* 3, no. 2 (2024): 111–22.

<sup>13</sup> Tanti Kirana Utami et al., "The Existence of Legal Principles and The Changing Times : Challenges and Adaptations in The Formation of Laws and Regulations," *Indonesian Journal of Law and Justice* 2, no. 4 (2025): 1–12.

<sup>14</sup> Dr. Suyanto Suyanto, *Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris Dan Gabungan* (Gresik: Unigress Press, 2022).

faith in the application of contract law is the goal of the study. Using this method, the study looks at the suitability, weaknesses, and potential for change of relevant legal standards in both the Indonesian legal system and The UNIDROIT Principles of International Commercial Contracts are examples of international law documents and the Contracts for the International Sale of Goods Convention (CISG) of the United Nations.

This study is descriptive-analytical. In the context of globalization and the digitization of contracts, this study not only clarifies the good faith principle's existence as it occurs in various legal writings, but it also critically examines how these principles are applied, interpreted, and changed. While analysis is used to look at the links between norms, the coherence of their application, and their consequences for contemporary contract law practice, descriptions are used to characterize the normative conditions that already exist.

The two types of legal materials employed in this study are primary and secondary legal resources. National laws and rules like the Civil Code and the Electronic Information and Transaction Law are examples of primary legal resources. Other pertinent international legal instruments include the CISG and UNIDROIT Principles. Academic literature such as textbooks, scientific journal articles, research findings, and the opinions of legal experts pertinent to the research issue are examples of secondary legal resources. These resources assist scholars comprehend the evolution of doctrine and scholarly perspectives on the evolution of the good faith standard while offering a theoretical and conceptual foundation for legal study.

Library research is the method used to gather legal resources. A methodical search of primary and secondary legal sources is part of this procedure, which may be done via online scientific journal repositories, academic databases, and university libraries. The sources are then categorized according to how pertinent they are to the study's main objective, this is how contract law is applied and how the good faith notion has evolved in the setting of globalization.

## **RESULT AND DISCUSSION**

### **The Idea of Good Faith**

The concept of good faith originates from natural law principles. Humans must, in theory, behave honorably. An act of good faith is one that is mandated by the creator. In subsequent stages, the natural law thinkers of the Enlightenment believed that man had to act morally because reason required it. Similarly, he wants or anticipates the other party to have such an attitude. Roscoe Pound asserts that the

requirement for the good faith concept cannot be avoided. The actions involved in public relations are becoming more and more complicated.<sup>15</sup>

The breadth of laws that are ethical in character or that have moral significance, good faith, or conscience in social interactions tends to expand. According to Pound, mankind turn to ethical concepts of what good faith or conscience requires in specific relationships or transactions as well as logical development of the nature or ideal form of circumstances under the guidance of philosophical jurists.<sup>16</sup>

There is a change in the direction of a society that is becoming more complex. The first legislation was fully formulated and governed social interactions. It is no longer possible to control complex interactions in such a clear-cut or comprehensive way. The rule of law changed to the *ratio iuris* in response to this development. A legal formulation that goes beyond what can be expressed in words or the creation of legal laws is known as *ratio iuris*. *Ratio iuris* is a legal formulation based on established legal principles that specifies the will (intention) to be carried out in accordance with what is necessary or desired by common sense and good faith.

Pound asserted: *Iuris* was the ratio, it went beyond words and equations. The conventional rule was also not a secret formula that our elders had found. It was a natural law concept expressed in a customary way. Similarly, there was no private magic used to create legal culpability through the formal transaction. It was the desire to act as reason and good faith require in a particular circumstance while wearing legally approved vestments. It makes sense to create legal regulations that uphold moral principles and go beyond crafting such a straightforward language. It is an inevitable formula. In the passage above, Pound describes good faith as having a transcendent meaning (sometimes known as "transcendent words").<sup>17</sup> This good faith principle was described by Zeller as a philosophical idea.

The concept of good faith based on contracts has been frequently adopted in civil law nations. The responsibility comes from the Roman legal system, which created the fundamental idea of good faith in business dealings. Recognizing the link between the contractual parties and the need of encouraging civic involvement are two aspects of this commitment.<sup>18</sup> Despite being generally accepted in some civil law countries, this doctrine's implementation varies and frequently lacks a clear definition. Belgian, Dutch, and German civil laws all create the duty of good

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<sup>15</sup> Imelda Martinelli et al., "Keterbukaan Dan Kepastian Hukum Dalam Teori Kontrak Roscoe Pound," *Jurnal Unes LAW Review* 6, no. 2 (2023): 4099–4107, <https://doi.org/https://doi.org/10.31933/unesrev.v6i2.1248>.

<sup>16</sup> Shavira Ardita Maharani Imelda Martinelli, Clarissa Mayella Chandra, "Fungsi Dan Penerapan Hukum Kontrak Berdasarkan Pandangan Roscoe Pound," *Jurnal Kewarganegaraan* 7, no. 2 (2023): 2089–95.

<sup>17</sup> Oksidelfa Yanto, *Negara Hukum: Kepastian, Keadilan Dan Kemanfaatan Hukum (Dalam Sistem Peradilan Pidana Indonesia)*, Cetakan ke (Jawa Barat: Penerbit Pustaka Reka Cipta, 2020).

<sup>18</sup> Muhammad Dzikirullah H. Noho et al., "Pengaktualisasian Itikad Baik Dalam Mencapai Hukum Kontrak Yang Progresif Di Indonesia," *Progressive Law and Society (PLS)* 1, no. 2 (2023): 1–9.

faith, whereas France bears a significant responsibility for pre contract discussions and contract principles once the agreement has been finalized.<sup>19</sup>

The idea of an obligation to act in good faith in commercial negotiations is frequently challenged. The "spirit" of freedom of contract, which motivates each party to protect its rights, is incompatible with it, is too vague and abstract, too difficult to implement, and requires the courts to set economic standards rather than the parties' own monetary interests. These arguments must, however, always be weighed against the incremental remedies offered to address the parties' infringement. For instance, if it reflects the purported intents of the contracting parties on the grounds that it is required to offer a commercial advantage to the connection between the parties, an obligation of honesty may be inferred in actuality.

Through the concept of good faith or a stand-alone obligation, several legal systems provide for the acknowledgment and accommodation of external norms in contract law. The term "good faith" is implied because it affects the background norms and values; therefore, it must be able to be articulated clearly and be known around the time the contract is signed. The norm must be introduced using more general principles in a way consistent with those principles.<sup>20</sup> Goodwill clauses in contracts are more often the result of applying cultural values and standards than suggested condition requirements. Additionally, good faith is meant to have an impact with a standard rather than because the requirements are fulfilled. The ramifications of using this standard as a "background" must be substantial.

In Indonesia, the Criminal Code's Article 1338, paragraph 3, embodies the idea of good faith. The agreement's provisions are not the only ones that bind the parties but also by social norms like customs, propriety, and legal culture.<sup>21</sup> In actuality, the term "good faith" describes the parties' sincere behavior throughout a transaction, which may protect the parties to the agreement from harm.

The Criminal Code's Article 1338 Paragraph 3 acknowledges two types of good faith that are governed by it: first, The notion of *goeder trouw*, or subjective good faith (honesty of inner attitude), is seen in The Civil Code's Article 531 declares: position in good faith if the holder, even if he is not aware of such rights, acquires the item through the acquisition of property rights. flaws that it has, The Civil Code's continuing Article 533 states: Every office holder must constantly be

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<sup>19</sup> Agus Wibowo, *Etika Profesi Hukum*, ed. Joseph Teguh Santoso (Semarang: Yayasan Prima Agus Teknik Bekerja sama dengan Universitas Sains & Teknologi Komputer (Universitas STEKOM), 2024).

<sup>20</sup> Ayu Sundari and Yudho Taruno, Muryanto, "Penerapan Asas Itikad Baik Terhadap Kontrak Bagi Hasil Dengan Sistem," *Jurnal Privat Law* VIII, no. 1 (2020): 49–56.

<sup>21</sup> Dwi Atmoko and Noviriska Noviriska, "Kepastian Hukum Dalam Transaksi Online: Peran Asas Itikad Baik Berdasarkan Hukum Perdata Indonesia," *Binamulia Hukum* 13, no. 2 (2024): 421–28, <https://doi.org/10.37893/jbh.v13i2.955>.

evaluated for good faith, and anybody accusing them of acting dishonestly must provide evidence.<sup>22</sup>

Second, The difference between good faith in terms of exercising rights and responsibilities in a legal relationship (objective) and the essence of good faith at the time of the formation of a legal relationship (subjective) is known as *redelijkheid/reasonableness* (consideration of reason) and *billijkheid/equity* (consideration of taste).<sup>23</sup> The state of the human soul at a certain moment, that is, at the time the legal connection was enacted, constitutes the first good faith.<sup>24</sup> Regarding the implementation of rights and responsibilities in legal relationships, it is different. The concept that the parties' conduct should be in line with general assumptions about good faith rather than being solely based on their own opinions is referred to as the "objective" in this context.

### **Comparative and International Law Perspectives on the Good Faith Principle**

The core idea of good faith in contract law is that parties behave honestly, equitably, and without abusing their rights while creating and carrying out agreements.<sup>25</sup> This universal concept is crucial to preserving equilibrium and confidence in contractual legal interactions in both domestic and global settings.<sup>26</sup>

#### 1. From an international legal standpoint

In international law, good faith has been recognized as a legally binding requirement, in addition to being a moral precept. Several international legal frameworks that regulate cross border commercial agreements reflect this idea, including:<sup>27</sup>

- a. International Commercial Contracts: UNIDROIT Principles (PICC). Article 1.7 highlights the parties' need to conduct themselves fairly and in good faith throughout the contractual procedure. The parties cannot agree to waive this requirement since it is required. This

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<sup>22</sup> Ahmad Riansyah, Riski Rahmadhan, and M Willy Pratama, "Penerapan Asas Itikad Baik Dalam Pelaksanaan Perjanjian Jual Beli Tanah," *Consensus : Jurnal Ilmu Hukum* 1, no. November (2022): 43–46.

<sup>23</sup> Ragil Kusnaning Rini, "Urgensi Prinsip Kepatutan Dan Keadilan (Redelijkheid En Billijkheid) Dalam Pembuatan Perjanjian Pendahuluan," *Notaire* 4, no. 3 (2021): 425–40, <https://doi.org/10.20473/ntr.v4i3.27221>.

<sup>24</sup> A Djoko Sumaryanto Kunarso, "Eksistensi Perjanjian Ditengah Pandemi Covid-19," *Batulis Civil Law Rev.* 1, no. November (2020): 33–46, <https://doi.org/10.47268/ballrev.v1i1.423>.

<sup>25</sup> Khairun Na, Faisal Sadat, and Soadun Harahap, "Menetapkan Perjanjian Kredit Yang Adil Untuk Pinjaman Yang Bermasalah," *Jurnal Ilmu Hukum, Humaniora Dan Politik (JIHHP)* 4, no. 6 (2024): 2698–2708.

<sup>26</sup> Amara Thalia, Bima Janggo Bintoro, and Gerrald Jovan Esfandiary, "Penerapan Prinsip Good Faith Dan Fair Dealing Dalam Hukum Kontrak Nasional Dan Internasional: Membangun Kepercayaan Dan Kepastian Hukum Bisnis Global," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 3 (2025): 2301–7.

<sup>27</sup> Orid Tatiana, "Peranan United Nation Convention On Contracts For The International Sale Of Goods (CISG) Dan Prinsip-Prinsip Upicc Principles Of International Commercial Contracts (UPICC) Dalam Hukum Jual Beli Internasional," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 7, no. 3 (2025).

implies that every international contract must be implemented with integrity and justice.

- b. The United Nations Convention on the International Sale of Goods (CISG) agreements. Article 7 paragraph (1) of the CISG requires that this agreement be interpreted with care for the maintenance of good faith in international trade. International arbitration authorities view the clause as a legal requirement inherent in international contracts, even though the CISG does not specifically require the parties to operate in good faith.
- c. Practice of International Arbitration (ICC, UNCITRAL). In international business dispute resolution, breaches of good faith undertakings are sometimes seen as a breach of contract even when they are not specifically mentioned in the agreement. This demonstrates how every international contract inherently incorporates the implicit term norm of good faith.

This results in the conclusion that international law views good faith as a universal virtue that serves to uphold fairness, integrity, and equilibrium in cross border contractual relationships.

## 2. The Legal System from a Comparative Perspective.

Every legal system has a varied interpretation and application of good faith, despite the fact that the notion is fundamentally the same.

- a. Germany's and the Netherlands' civil law systems. One of the most significant substantive standards of the civil law system is good faith. Netherlands: The parties must act in line with *redelijkheid en billijkheid* (fairness and propriety) according to *Burgerlijk Wetboek* (BW) Article 6 (2). It highlights that, in addition to the parties' individual interests, the fulfillment of contracts must take into consideration widely recognized norms of morality and propriety in the legal community. Germany: The execution of contractual commitments must be founded on *Treu und Glauben* (good faith and good faith), according to *§ liches Gesetzbuch* (BGB) Article 242. In actuality, this concept prevents the arbitrary use of contractual rights; hence, the contract should not be utilized to oppress or injure the other party. Contracts should not be carried out in a manner that goes against the sense of justice as both nations employ good faith as a foundation for limiting the exercise of contractual rights.
- b. Common Law (United States and United Kingdom). The common law system did not previously recognize a universal need to operate in good faith because of its focus on the idea of contract freedom. Nonetheless, recent advancements indicate a broader adoption. United States: Every obligation or contract under the Uniform Commercial Code (UCC) entails a duty to execute and enforce it in

good faith, according to Article 1-304. That is to say, In order to avoid opportunistic conduct and rights abuse, the performance and enforcement of some contracts are subject to the duty of good faith, especially in business dealings. UK: Through court practice, the idea of good faith gradually gained recognition, as demonstrated by the *Yam Seng Pte Ltd v. International Trade Corporation Ltd* ruling. The Court stressed that a long term, relational contract that is, one that necessitates ongoing collaboration between the parties can recognize the duty of good faith.

The main way that common law and civil law differ from one another is in their application:<sup>28</sup>

1. The main difference between civil law and common law is the application of each. Legal law: The basic idea of good faith must be upheld in every deal, which inherently restricts contractual rights and responsibilities.
2. Common law: Good faith is more flexible but not always relevant to all contracts; it is interpretative and contextual, depending on the terms of the agreement, the goals of the parties, and the custom of the court.

This distinction reflects the two systems' divergent legal philosophies: common law stresses individual freedom and interpretation depending on relational context, whereas civil law stresses obedience to objective and universal principles, because in cross-border contracts, applying the good faith notion occasionally requires combining the two approaches., this knowledge is crucial in comparative study.

Judicial precedent is the most important source of law in the common law system. Higher courts' decisions are binding on subordinate courts, which makes things more consistent but may also make things too rigid if old decisions are obeyed. This dependence on case law may be considered to provide flexibility since judges can adjust to changes in social standards. However, this can also cause ambiguity because there is no one codified reference point.

Judges have a more active part in the general legal system since they make laws by interpreting and judging on them. Because judicial procedures may be quite heated, judges operate as impartial mediators, making decisions based on the arguments made by both sides. This kind of lawmaking by judges lets them be flexible, but it may also cause problems if different courts interpret precedents in different ways. So, depending on the situation, the function of the court under common law shows its strengths and weaknesses.

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<sup>28</sup> Feri Pramudya Suhartanto, Yenny Febrianty, and Pakuan, "Perbandingan Sistem Hukum Civil Law Dan Common Law," *KONSENSUS: Jurnal Ilmu Pertahanan, Hukum Dan Ilmu Komunikasi*, no. 3 (2024): 72–83.

**CONCLUSION**

A comparison of the legal systems leads to the conclusion that, depending on the legal tradition used, the good faith concept has various purposes and applications. This concept is substantive in civil law and has to be implemented consistently so that it may be used as an objective standard to evaluate how fairly the contract was performed. In contrast, the common law concept of good faith is more adaptable and contextual, developing as an interpretative tool that adapts to the parties' intents and the nature of the contract. This discrepancy demonstrates that the good faith concept cannot be applied consistently in cross border contracts. It is necessary to take an adaptable approach that may ensure fairness and propriety in contractual agreements while taking into account the features of both legal systems.

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