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Theory Analysis of Justice Against Good-faith Buyers in Freedom of Contract

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ABSTRACT

The abuse of circumstances can occur when one of the parties has advantages in economic, psychological, and physical fields. The cases regarding abuse of circumstances in Indonesia is often occur, but the law in Indonesia has not regulated this matter and is only based on jurisprudence. The case that often occurs is one of the parties who has weak economy in dependence/need position, then they forced to voluntary accept the clauses or promises made by monopolized party (bargaining power) in order to get the things needed (achievements), although the agreement can be detrimental to them. This research uses normative legal research which is also called doctrinal legal research. Normative legal research is legal research conducted by examining library materials or secondary legal data. Normative legal research is also called literature law research. The results of this research are good faith buyers who prioritize the main principle, no harm others and based on the principle of propriety as stated by Aristotle and Adam Smith.

Keywords: *Fairness, Freedom of Contract, Good Faith Buyers*

INTRODUCTION

Indonesian as dynamic legal state must be able to accommodate, adaptive and progressive. Accommodating means that the state must be able to accommodate and absorb the aspirations and desires of its citizens in realizing the function of protection in society. Adaptive legal state means that the state is able to adjust the development of its society, while progressive legal state cannot be oriented towards technological progress and era. Ideally, the law enforcement in the state of law (*rechtstaat*), the law should be emphasized in a state, rather than political or economic aspects.¹

Law enforcement must be adapted to current globalization development that causes the emergence of polemics (problems) of life and making humans were interconnected and recognize these relationships to meet their needs. The relationships formed by humans can be divided into two, called:

1. Legal Act

"Every human act is behaved intentionally for their rights and obligations. A legal act is every act of a legal subject (human or legal entity) whose consequences are regulated by law since the result can be considered as the will of the person in conducting the law.

2. Non-legal Act

"The actions whose consequences are not desired by those involved are not legal acts, even though they are regulated by legal regulations."

Philosophically, the need for economy and survival makes humans fulfill their life needs since everyone has the right to live and to maintain their life as stated in Article 28A of 1945 Constitution. The fulfillment of these life needs can be realized by working, become an entrepreneur, trading, pawning their property/ownership by providing a guarantee. These items can be both movable objects and immovable objects.

The fulfillment of needs by pawning goods is always related to debts made by individuals or an entity, to individuals, banking institutions or financial institutions. When a person applies for a debt to banking institution or financial institution, it required a guarantee that will be attached to dependent right if the guarantee is not a movable object. When the guarantee is a movable object, it be transferred ownership to receivable party collaterally (fiduciary guarantee).

This will be different if a person owes to an individual/lender, because the individual/lender is not willing to the dependent rights. In this research, the researchers will only examine guarantees for debts whose guarantees are related to land rights in land and buildings. The land rights contains the authorities, obligations or prohibitions for their rights holders to do something about the rights

¹ Komisi Yudisial Republik Indonesia, *Problematika Hukum & Peradilan Di Indonesia* (Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2014).

of land, and to prevent the land issues from causing conflict of the interests in society, it is necessary to regulate, control and use the land that stipulated in land law.² that can be used as collateral for the ownership of the right to land.

Regarding the right to land that used as collateral in 1945 Constitution, it has been affirmed in article 28H paragraph (4) that stated "everyone has the right to have private property rights and must not be arbitrarily taken over by anyone". Furthermore, Article 28D paragraph (1) of 1945 Constitution states that "Everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law". Similarly, Article 28G paragraph (1) of 1945 Constitution also provides legal protection for property under power, which states "Everyone has the right to the protection of personal self, family, honor, dignity, and property under his control, and is entitled to a sense of security and protection from the threat of fear of doing or not doing something that is a human right". It is also emphasized that protection, promotion, enforcement, and fulfillment of human rights are the state responsibility, especially government, which has been regulated in Article 28I paragraph (4) of 1945 Constitution.

Disputes related to land rights can occur due to several factors, including the unequal status regarding economic level of the parties which makes the main factor of imbalance. The inequality of parties' status caused to the misuse of situation of economically low party (the party in need), then it can be said that the agreement made contains an inequality agreement relationship that is contrary to propriety.

The abuse of circumstances can occur when one of the parties has advantages in economic, psychological, and physical fields. The cases regarding the abuse of circumstances in Indonesia often occur, but the law in Indonesia has not regulated this matter and is only based on jurisprudence. The case that often occurs is about the situation of one party who has weak economy in dependence/need position, the party is forced to voluntarily accept the clauses or promises made by monopolizing party (bargaining power) in order to get the things needed (achievements), and such consent that may be detrimental to them. The case is about a financial position that urges people to commit adverse acts and become the philosophical foundation of this research. Theoretically, the problem related to the abuse of circumstances. The intentional factors of dominant business actors are the cause of abuse of circumstances in the contract.³

The case is about *misbruik van de omstandigheden* or misuse of circumstances regarding the imbalance of achievements. It does not make an agreement contrary to decency *onzedelijk*, but the circumstances in making the

² Suparman, "Peranan Undang-Undang Pokok Agraria Bagi Masyarakat Indonesia Yang Bersifat Agraris," *Jurnal Warta* 54 (2017).

³ Celina Tri Siwi Kristiyani, "Consumer Legal Efforts Due to Abuse Of Circumstances (Misbruik Van Omstandigheden) In Standardized Agreements," *Jurnal Notariil* 5, no. 1 (2020).

agreement that make it contrary to decency. A case that often occurs regarding the misuse of circumstances is the case of accounts receivable, where the creditor does not want to make a receivables agreement. The creditor wants a binding agreement to buy and sell the rights to debtor's land and the deed of power to sell. The content of the agreement is not about the repayment of debtor's debt, but regarding when the debtor cannot return the creditor's money, then the debtor's land belongs to creditor. Then, the parties position changes from creditor with debtor to buyer with seller.

This research aims to know the justice in freedom of contract based on good faith regarding two parties concerned. The change in creditors and debtors' position to buyers and sellers with one of parties committing an abuse of circumstances *misbruik van de omstandigheden* in an agreement can be stated as a separate reason in demanding the agreement cancellation. The agreement cancellation is a circumstance that rise the result of an agreement legal relationship derived from non-existed agreement.⁴ There is a doctrine that states "*volenti non fit injuria*" which means when a person is harmed by a treaty due to his own fault, he must accept the consequences because he accepts the obligation voluntarily that must be fulfilled even he suffers a loss and the agreement remains valid as a law for the one who makes.⁵

RESEARCH METHODOLOGY

This type of legal research uses normative legal research or doctrinal legal research.⁶ Legal research is conducted to resolve the legal problems. Since jurisprudence is a prescriptive science, legal research is used to produce prescription that may be the basis of resolving the legal problem.⁷ The function of normative research is to provide juridical argumentation or legal opinion when there is a blurring and norms conflict. It plays a role in maintaining the critical aspects of legal science as a generic normative science. Normative legal research is type of research that used secondary legal data as the main data that supported by primary data.⁸ Doctrinal research,⁹ which examines laws and regulations, legal theories and jurisprudence related to discussed problems.

⁴ Muhammad Syaifuddin, *Hukum Kontrak Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)* (Mandar Maju, 2012).

⁵ Ridwan Khairandy, *Kebebasan Berkontrak & Pacta Sunt Servanda versus Iktikad Baik : Sikap Yang Harus Diambil Pengadilan* (Yogyakarta: FH UII Press, 2015).

⁶ Yati Nurhayati, Ifrani Ifrani, and M. Yasir Said, "Metodologi Normatif dan Empiris Dalam Perspektif Ilmu Hukum," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (January 17, 2021): 1–20, <https://ojs.bdproject.id/index.php/jphi/article/view/14>.

⁷ Peter Machmudz Marzuki, "The Essence of Legal Research Is to Resolve Legal Problems," *Yuridika* 37, no. 1 (March 1, 2022): 37–58, <https://e-journal.unair.ac.id/YDK/article/view/34597>.

⁸ Endah Triwulandari and Edy Tarsono, "Socio-Juridic Analysis of Abortion According to Article 75 of Law Number 36/2009 Concerning on Health and Law Number 35/2014 Concerning on Child

RESULT AND DISCUSSION

The meaning of justice according to Adam Smith is commutative justice. In some degree, Adam Smith's commutative justice is similar to commutative justice stated by Aristotle. Both the commutative justice of Aristotle and Adam Smith is built on the presupposition of ultimate commonality among mankind that relates to the concept of equality of values. The commutative justice proposed by Adam Smith contains the main principle of no harm or the principle of not hurting and harming others. Smith says that the rules of commutative justice are "precise and accurate."¹⁰ More specifically, this principle refers to attitude of refraining from harming others.

According to Adam Smith, the act of fairly towards others is when they do not hurt or harm them, either as human beings, as family members, or as citizens of a society. On the contrary, justice is violated when a person is stripped of what he has as a right and can lawfully prosecute him from others or when it harms him or injures him for no reason. It is hereby apparent that Adam Smith's commutative justice concerns guarantees and respect for individual rights and human rights. These individual rights are considered *perfect* rights that must be demanded of others to be valued.

With aforementioned principle, Adam Smith's commutative justice is broader than what was proposed by Aristotle because of several reasons. Commutative justice is not only concerned with damages restoration that have been done, but also concerns the prevention of violation of others' rights and interests. Commutative justice is set forth in a law that not only stipulates the recovery of losses, but also a law that regulates to prevent the violation of the rights and interests of certain parties. Justice lies in the ability to refrain from undermining what belongs to others and doing voluntarily what is appropriate to do. Thus, the rules of justice consist of prohibitions on what human being should not do in his social interactions.

The principle of Freedom of Contract, which was originally a guideline for parties to realize a fair agreement and was actually misused by strong parties to suppress weak parties in its development. In freedom of contract, the justice for weak parties becomes unrealized that accepting or rejecting is the only option for weak party in bargaining position.

Protection," *IUS POSITUM (Journal of Law Theory and Law Enforcement)* 1, no. 2 (2022): 43–59, <https://journal.jfpublisher.com/index.php/jlte/article/view/68>.

⁹ Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2013).

¹⁰ Mark J. Bonica and Daniel B. Klein, "Adam Smith on Reputation, Commutative Justice, and Defamation Laws," *Journal of Economic Behavior & Organization* 184 (April 2021): 788–803, <https://linkinghub.elsevier.com/retrieve/pii/S016726812030305X>.

The principle of freedom of contract is known as "partij otonomie" or "freedom of contract" or "liberty of contract". The second term is more commonly used than first and third terms. This principle of freedom in making contracts is a universal principle, means that it is embraced by contract law in all countries in general.¹¹ The Principle of Freedom of Contract is a universal principle, Schmitthoff in Huala Adolf asserts that "The autonomy of the parties is the basis on which an autonomous law of international trade can be built. The national sovereign has no objection that an autonomous law of international trade which is develop by the parties, the provided that the law respect in every national jurisdiction in limitations imposed by public policy"

Based on the principle of freedom of contract, one may or may not make agreements. The parties will be free to determine what can and cannot be included in an agreement it makes. The agreement taken by parties will bind them as a law as affirmed in Article 1338 of the Civil Code. This principle is made between parties who have equal bargaining power, abilities, and knowledge which relevant to market conditions. Also, freedom of contract has no limits on it (unrestricted freedom of contract).¹²

The freedom of contract is become the power to decide the contract and to establish the bargain. Therefore, the pre-nineteenth century contract law was a change of circumstances after an agreement that did not excuse the promisor from its right.¹³ The development of this principle emerged into a new paradigm in contract law that leads to unrestricted freedom of contract. This principle also allows a strong person or party to impose their will on weak party, then the ideal of freedom of contract which initially provides for a legal balance, a balance of interests and also a balance in bargaining position becomes a means of suppression against the weak party. Therefore Article 1337 of Civil Code specifies that "a cause is prohibited, when prohibited by law, or if contrary to good decency or public order" that placing a limit on applying the principle by asserting "cause". The treaty must be lawful meaning that is not prohibited by law, not contrary to good decency or public order.

All agreements must be executed in good faith (te goeder trouw; in good faith). In other words, both parties must have good faith during the agreement in case for not harming each other, as explained in Article 1338 of Civil Code paragraph (3) which stated that "An agreement must be conducted in good

¹¹ Ery Agus Priyono, "Peranan Asas Itikad Baik Dalam Kontrak Baku (Upaya Menjaga Keseimbangan Bagi Para Pihak)," *Diponegoro Private Law Review*, 1, no. 1 (2017).

¹² M. Pohan, "Principle of Freedom Contracts at a Company," *Utopía y Praxis Latinoamericana* 26, no. 1 (2021): 158–166.

¹³ Sheela Jayabalan, "The Legality of Doctrine of Frustration in the Realm of Covid-19 Pandemic," *Sociological Jurisprudence Journal* 3, no. 2 (August 7, 2020): 84–90, <https://www.ejournal.warmadewa.ac.id/index.php/sjj/article/view/1900>.

faith."¹⁴ This principle asserts that the parties in the agreement must be based on good faith and propriety, which implies that the agreement making between the parties must be based on honesty to achieve a common goal. The implementation of the agreement should also refer to what is appropriate and should be followed in the association of society.

This principle of good faith actually comes from Roman law. In Roman law, this principle is called the principle of Bonafides. In Roman law, good faith is a universal social norm that regulates social interrelationships, that is, every citizen has an obligation to act in good faith towards all citizens.¹⁵ The development of good faith in Roman law has no correlation in the evolution of contract law itself. The Roman law only recognized *iudicia stricti iuris* that contracts born of legal acts (negotium) which strictly and formally referred to *ius civile*. When the judge faces such a contract case, he must decide it in accordance with the law. The judge is bound to what is expressly stated in the contract (express term). The legal acts based on *iudicia bonae fidei* are also called *negotia bonae fidei* that comes from *ius gentium* which requires that the parties who make the agreement must be in good faith.¹⁶

The notion of good faith and propriety developed in line with the development of Roman contract law, which originally only made for contracts that had been provided in law (*iudicia stricti iuris*) which was derived from Civil Law). The acceptance of contracts based on *bonae fides* requires the application of principles of good faith and propriety in making and executing of agreements.¹⁷ The meaning of "good faith" according to Big Dictionary of Indonesian is trust, firm belief, intention, will (good). Then, good faith (*te goede trouvv*) according to Fockema Andreae Legal Dictionary, is "the intention, the spirit that animates the participants in a legal act or gets caught up in a legal relationship". Furthermore, *Black's Law Dictionary* provides a definition of good *faith*, states that "Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it compasses, an honest belief. The absence of malice and design to defraud or to seek an unconscionable advantage, and individual's personal good faith is the concept of their own mind and inner spirit. Therefore, it may not conclusively determine by his protestations alone. In common usage, this term is ordinarily used to describe that state of mind denoting honesty of purpose,

¹⁴ I Gusti Ngurah Muliarta, "The Principle of Good Faith in the Sale and Purchase Agreement of Rights Made Before a Notary," *Community Service Journal of Law* 1, no. 1 (2022): 44–48.

¹⁵ Ibid.

¹⁶ Ridwan Khairandy, "Makna, Tolok Ukur, Pemahaman, Dan Sikap Pengadilan Di Indonesia Terhadap Iktikad Baik Dalam Pelaksanaan Kontrak," *Jurnal Hukum IUS QUIA IUSTUM* (2016).

¹⁷ Muhammad Syaifuddin, *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)*, Cetakan 2. (Mandar Maju, 2016).

freedom from intention to defraud, and generally speaking, means being faithful to one's duty or obligation"

The National Civil Law Symposium organized by National Legal Development Agency (BPHN) in 1981, defines good faith, such as:

- a) Honesty when making and agreeing the contracts;
- b) It is emphasized when the contract is made right in front of the apparatus, the parties are considered to have good intentions (although there are also an objections);
- c) As appropriate in the implementation stage which is related to good assessment of parties' behavior in conducting what has been agreed in the contract, it is solely aimed at preventing inappropriate behavior in the contract implementation.¹⁸

Subekti explained that good faith according to Article 1338 part 3 of Civil Code is one of the most important joints of contract law, which gives judges the power to supervise the contract execution, for not violate propriety and fairness. This means that the judge is authorized to deviate from the contract when the execution violates the feeling of justice (*recht gevoel*) one between two parties.

The good faith in Roman law refers to three forms of behavior. First, the parties must uphold their promises or obligations. Second, the parties should not take advantage by misleading actions against the party. Third, the parties abide by their obligations and behave as honorable and honest persons even though those obligations are not expressly agreed.

The good faith testing must be implemented for each stage of the contract, both the pre-creation (design) stage, the manufacturing (signing) stage and the post-creation (execution) stage. Subjectively, the ignorance will result in one party in non-performance of the contract. Furthermore, it is important to understand that objective testing of good faith with propriety must be careful and in-depth, because propriety always undergoes changes in accordance with the development of values adopted by community members.¹⁹ In general, the understanding of good faith consists of two meanings:

- a. Objective meaning: that the agreement made must be conducted based on propriety and decency norms.
- b. Subjective meaning: the sense of good faith in one's inner attitude.

From various views expressed, it can be conducted that the principle of freedom of contract is the most important domain in contract law. The principle of freedom of contract is a universal principle since it is recognized in civil law and common law systems, which tend to be filled with restrictions in their development. the unlimited freedom will tend to abuse and harm one party in

¹⁸ Priyono, "Peranan Asas Itikad Baik Dalam Kontrak Baku (Upaya Menjaga Keseimbangan Bagi Para Pihak)."

¹⁹ Ibid.

weak bargaining position. The freedom of contract which is the "spirit" and "breath" of an agreement is implicitly provides guidance in contracting the parties for having an equal position in manifesting the fair and balanced contract for each party.²⁰

The development of freedom of contract principle was able to bring injustice since this principle can only achieve its objectives in having prosperity as optimally as possible when the parties have equal bargaining power.²¹ Unlike the principle of good faith which shows a stronger function, the principle of freedom of contract has actually decreased functionally due to the strong state intervention in restricting individuals in creating and regulating the contractual relationships. In fact, the freedom of contract is based on both parties' positions who are equally strong, have the same bargaining position, then each party is domiciled as a contract partner. In fact, in contracts making of each party, especially parties in strong economic position seeks to seize dominance over other party and face each other as opposed to the contract.

The freedom of contract according to Friedmann is still regarded as an essential aspect of individual freedom, but it no longer has such absolute nature compared to a century ago.²² Taking into account the provisions contained in Civil Code, it stated that the principle of freedom of contract does not mean absolute freedom, because there are restrictions given by several articles. The enactment of principle of consensually contained in Article 1320 of Civil Code gives the meaning, that in the absence of agreement from one of parties in making a contract, resulting in invalidity of a contract. The provisions of Article 1321 of Civil Code stated that no freedom in the encounter of will or consensus is granted due to oversight, coercion or fraud. When the agreement is obtained due to oversight, coercion or fraud, it results in an invalid contract. Whereas freedom of contract can only achieve justice when the parties have balanced bargaining power. An imbalance of the position of the parties in an agreement, not infrequently causes a party that has a lower position will experience a disadvantage.²³

²⁰ Nurlaila Kadarwati Papuluwa, Husen Alting, and Suwarti Suwarti, "Legal Existence of Brokers in Land Sale and Purchase Binding Agreement," *Journal of Sosial Science* 3, no. 4 (July 25, 2022): 744–755, <https://jsss.co.id/index.php/jsss/article/view/381>.

²¹ Tami Rusli, "Asas Kebebasan Berkontrak Sebagai Dasar Perkembangan Perjanjian Di Indonesia," *PRANATA HUKUM* 10, no. 1 (2015).

²² H Muhamad Rezky Pahlawan MP, "The Constitutional Court Function of the Indonesian State Concerning System for the Implementation Impeachment of the President and/or Vice President," *Jurnal Hukum Volkgeist* 4, no. 2 (June 1, 2020): 118–127, <https://jurnal-umbuton.ac.id/index.php/Volkgeist/article/view/496>.

²³ Dwi Ratna Indri Hapsari and Kukuh Dwi Kurniawan, "Consumer Protection in the Banking Credit Agreement in Accordance with the Principle of Proportionality under Indonesian Laws," *Fiat Justisia: Jurnal Ilmu Hukum* 14, no. 4 (July 28, 2020): 337–352, <https://jurnal.fh.unila.ac.id/index.php/fiat/article/view/1884>.

There are also other principles besides the principle of freedom of contract as outlined above, which is known as the principle of good faith. This principle is very important to be strongly owned and instilled by the parties in the agreements and in their execution. The principle of good faith contained in Article 1338 part 3 of Civil Code states that an agreement must be executed in good faith. The law should provide justice since justice is the purpose of the law.

The latest legislative of product relating to good faith is contained in Article 6.248.1 BW of the Netherlands. According to Hartkamp, the framers of the Act have distinguished good faith in observance of *reasonable commercial standard of fair dealing* from good faith in *honesty in fact*. The principle of reasonableness and fairness (*redelijkheid en billijkheid*) is a pair of principles that closely related and constitute an interpretation of good faith principles.²⁴

The provision specifies that the parties bind themselves or to others as debtors and creditors pursuant to *redelijkheid en billijkheid*. From such attachments, the parties are not only bound to what they agree to but also to *redelijkheid en billijkheid*. The good faith is a provision that bases itself on justice, called justice as propriety.²⁵

The good faith is distinguished between subjective good faith and objective good faith. Good faith in the performance of contracts is an objective standard that refers to the observance of reasonable commercial standards of fair dealing which according to Dutch legislators are called acting in accordance with *redelijkheid en billijkheid* (reasonableness and equity). Subjective good faith (*subjectieve goede trouw*) is associated with law of things (*bezit*). A good faith buyer is someone who buys goods with full confidence that the seller is really the owner of the goods. In the law of things, good faith is defined as honesty. A good faith buyer is an honest person who is aware of any defects inherent in the goods he purchased. This subjective of good faith has to do with mental or psychological attitudes (*psychische gestelheid*) whether the person concerned realizes or knows that his actions are contrary in good faith or not.

It is related to the case regarding the good faith purchaser contained in the case between Dadang Rusnandi as plaintiff and Tan Lin Sui as Defendant who has been decided by Supreme Court No. 2130 K/Pdt/2020, 9 September 2020 in conjunction with Bandung High Court Decision No. 306/PDT/2019/PT BDG, 15 August 2019, in conjunction with Bandung District Court Decision No. 112/Pdt.G/2018/PN Bdg, on 8 January 2019. It stated that the Plaintiff has been able to prove the argument of his lawsuit regarding legal relationship that occurred between the Plaintiff and Defendant I is not a sale and purchase the

²⁴ Ragil Kusnaning Rini, "Urgensi Prinsip Keadilan (Redelijkheid En Billijkheid) Dalam Pembuatan Perjanjian Pendahuluan," *Notaire* 4, no. 3 (September 30, 2021): 425, <https://e-journal.unair.ac.id/NTR/article/view/27221>.

²⁵ Ridwan Khairandy, *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan* (Yogyakarta: UII Press, 2013).

dispute object, but a debt receivable through intermediary of Co-Defendant I in the amount of IDR. 200,000,000.00 (two hundred million rupiah) which will be returned in the form of principal money in the amount of IDR. 270,000,000.00 (two hundred and seventy million rupiah) within a loan period of 3 (three) months, by providing a guarantee in the form of a Certificate of Property Rights Number 1097, covering an area of 140m² (one hundred and forty square meters), located in Cijawura Village, Buah Batu District, Bandung City, on behalf of Dadang Rusnandi. In addition, the market price of the land and house of the object dispute when compared with the amount of plaintiff's loan money to Defendant I is unreasonable and unfair. Therefore, the sale and purchase between Defendant I and Co-Defendant III is a form of abuse of circumstances and does not meet the conditions as stipulated in Article 1320 of the Civil Code.

Related to the misuse of circumstances related to good faith buyers is stipulated in Supreme Court Decision No. 604 K/Pdt/2020, 14 April, 2020, jo. Bandung High Court Decision No. 266/PDT/2019/PT BDG, 22 July, 2019 jo. Indramayu District Decision No. 35/Pdt.G/2018 /PN Idm, 4 April, 2019, the case between Ujang Suryadi as Plaintiff against Dina Nurhaelina and Nurul Fikriyah as Defendants. The Supreme Court gave consideration to "The sale and purchase of land based on accounts receivable because the debt is not paid, the land is used as collateral and converts ownership into the creditor property is not justified by law, the land used as a debt guarantee should be sold in public (auctioned) and the proceeds of sale are used for debt repayment; In the case of a quo, it is evident that the birth of Deed of Sale and Purchase No. 516/2012 10 September, 2012 was due to a debt receivable between the Plaintiff and Nurdianto bin Casman Nurjaman (ex-husband of Defendant I) who was being detained by the police using the land guarantee of the dispute object; Thus, the said sale and purchase deed becomes invalid and no unlawful act is committed by Defendants in inhabiting or controlling the dispute object." The misuse of circumstances as a reason for defect of will in an agreement can be seen from several such factors:

- a. At the end of the agreement, one of the parties is in a pinch, either because:
 - a) There is a pressing economic situation: financial difficulties
 - b) The existence of superior-subordinate relationships: economic advantage on one side, employer-labor relations, parents/guardians-children are not mature yet
- b. The agreement contains an unequal relationship, in reciprocal obligations between the parties (unequal performance), such as releasing the employer from taking risks and shifting it to workers' responsibility
- c. A very big loss for one of the parties to the agreement

Another case is that the court decided differently, but also based on the existence of receivables. The court has ruled the creditor as a good faith purchaser. This can be seen in case between Richard Raffles Kainage, et al against

Helmywati Suki, et al. which has been decided by Supreme Court decision Number 1896 K/Pdt/2020, 31 August, 2020, jo. Manado High Court Decision Number 127/PDT/2019/PT. MND, 28 November, 2019 jo. Manado District Court Decision no. 73/Rev.G/2019/PN.Mbd, 18 July, 2019.

In the consideration, it is stated that between the Plaintiffs and the Defendants have agreed to make a sale and purchase of a piece of land with Certificate of Property Rights No. 134/Tuminting that belongs to Defendants to the Plaintiffs in accordance with the evidence of letter P.2 in the form of Deed of Agreement No. 06 10 October, 2017 (proof of letter signed P.3) in the form of Deed of Power of Attorney to Sell No. 07 10 October, 2017 and proof of letter signed P.4 in the form of Deed of Sale and Purchase No. 54/2018 25 October, 2018 which originated from the relationship between the Defendants and the Plaintiffs relating to the borrowing money.

In another case, it is also the same between Sarmin and H. Achmad Rosyidi, et al., which has been decided by Supreme Court decision number 590 K/Pdt/2020, 5 May, 2020 jo. Surabaya High Court decision number 721/PDT/2018/PT. Sby, 28 February, 2019 jo. Surabaya District Court decision number 635/Pdt.G/2017/PN. Sby, 24 July, 2018. The consideration in the judgment is that the Plaintiff is the owner of the dispute object based on the sale and purchase with Defendant I of land object with Title Certificate No. 88, Langon Pond Village issued in 1986, as per Deed of Sale and Purchase No. 2, Year 2006 before Lilik Barasjid, S.H., PPAT, where the certificate of title a quo originally in the name of Achmad Rosyidi has been changed to Plaintiff name, whereas the Defendants could not prove that the object transfer of dispute from Defendant I to the Plaintiff was based on accounts receivable.

From some of the aforementioned rulings, there are legal inconsistencies, among which there is an abuse of circumstances in the freedom of contract, there are also creditors as good faith buyers. Then, there is no clear provision on good faith buyers. There is an abuse of circumstances in determining a good faith buyer refers to the provisions of Article 1178 of the Civil Code stating “Any agreement that stipulates the creditor is authorized to make the mortgaged goods his property is null and void. However, the creditor of first mortgage, at the time of delivery of the mortgage may expressly require that when the principal debt is not repaid properly, or when the interest owed is not paid, then he will be given absolute power to sell the bound parcels in public, from the proceeds are repaid, both principal amount, interest and fees. The agreement must be registered in public registers, and the auction must be conducted in manner prescribed in Article 1211.”

Meanwhile, in other cases, the decidendi ratio states that the debtor cannot prove his receivables. The drafting of treaties applying the principle of freedom of contract must be limited by the good faith underlying justice as Aristotle and Adam Smith's theory of commutative justice is built on essential commonality

presupposition of the among mankind relates to the concept of equality of values. The commutative justice proposed by Adam Smith contains the main principle of no harm or not hurting others and the kind of justice that Aristotle identified with propriety (fairness or equalness). Then, the buyers in good faith are buyers who prioritize the main principle by not harm others and based on the principle of propriety as is the norm in Article 1339 of the Civil Code.

CONCLUSION

The application of freedom of contract principle must be limited by the good faith of justice as Aristotle and Adam Smith's theory of commutative that built on the presupposition of essential commonality among mankind. The commutative justice relates to the concept of equality of values proposed by Adam Smith contains the main principle of no harm or not hurting others and the kind of justice that Aristotle identified with propriety (fairness or equalness). Then, the buyers in good faith are buyers who prioritize the main principle with no harm or hurting others and based on the principle of propriety as is the norm in Article 1339 of the Civil Code.

REFERENCES

- Bonica, Mark J., and Daniel B. Klein. "Adam Smith on Reputation, Commutative Justice, and Defamation Laws." *Journal of Economic Behavior & Organization* 184 (April 2021): 788–803. <https://linkinghub.elsevier.com/retrieve/pii/S016726812030305X>.
- Hapsari, Dwi Ratna Indri, and Kuku Dwi Kurniawan. "Consumer Protection in the Banking Credit Agreement in Accordance with the Principle of Proportionality under Indonesian Laws." *Fiat Justisia: Jurnal Ilmu Hukum* 14, no. 4 (July 28, 2020): 337–352. <https://jurnal.fh.unila.ac.id/index.php/fiat/article/view/1884>.
- Ibrahim, Johnny. *Teori & Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing, 2013.
- Jayabalan, Sheela. "The Legality of Doctrine of Frustration in the Realm of Covid-19 Pandemic." *Sociological Jurisprudence Journal* 3, no. 2 (August 7, 2020): 84–90. <https://www.ejournal.warmadewa.ac.id/index.php/sjj/article/view/1900>.
- Khairandy, Ridwan. *Kebebasan Berkontrak & Pacta Sunt Servanda versus Iktikad Baik : Sikap Yang Harus Diambil Pengadilan*. Yogyakarta: FH UII Press, 2015.
- . "Makna, Tolok Ukur, Pemahaman, Dan Sikap Pengadilan Di Indonesia Terhadap Iktikad Baik Dalam Pelaksanaan Kontrak." *Jurnal Hukum IUS QUIA IUSTUM* (2016).
- Komisi Yudisial Republik Indonesia. *Problematisa Hukum & Peradilan Di Indonesia*. Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2014.
- Kristiyani, Celina Tri Siwi. "Consumer Legal Efforts Due to Abuse Of

- Circumstances (Misbruik Van Omstandigheden) In Standardized Agreements.” *Jurnal Notariil* 5, no. 1 (2020).
- Marzuki, Peter Machmudz. “The Essence of Legal Research Is to Resolve Legal Problems.” *Yuridika* 37, no. 1 (March 1, 2022): 37–58. <https://e-journal.unair.ac.id/YDK/article/view/34597>.
- MP, H Muhamad Rezky Pahlawan. “The Constitutional Court Function of the Indonesian State Concerning System for the Implementation Impeachment of the President and/or Vice President.” *Jurnal Hukum Volkgeist* 4, no. 2 (June 1, 2020): 118–127. <https://jurnal-umbuton.ac.id/index.php/Volkgeist/article/view/496>.
- Muliarta, I Gusti Ngurah. “The Principle of Good Faith in the Sale and Purchase Agreement of Rights Made Before a Notary.” *Community Service Journal of Law* 1, no. 1 (2022): 44–48.
- Nurhayati, Yati, Ifrani Ifrani, and M. Yasir Said. “METODOLOGI NORMATIF DAN EMPIRIS DALAM PERSPEKTIF ILMU HUKUM.” *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (January 17, 2021): 1–20. <https://ojs.bdproject.id/index.php/jphi/article/view/14>.
- Papuluwa, Nurlaila Kadarwati, Husen Alting, and Suwarti Suwarti. “Legal Existence of Brokers in Land Sale and Purchase Binding Agreement.” *Journal of Sosial Science* 3, no. 4 (July 25, 2022): 744–755. <https://jsss.co.id/index.php/jsss/article/view/381>.
- Pohan, M. “Principle of Freedom Contracts at a Company.” *Utopía y Praxis Latinoamericana* 26, no. 1 (2021): 158–166.
- Priyono, Ery Agus. “PERANAN ASAS ITIKAD BAIK DALAM KONTRAK BAKU (Upaya Menjaga Keseimbangan Bagi Para Pihak).” *Diponegoro Private Law Review*, 1, no. 1 (2017).
- Ridwan Khairandy. *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan*. Yogyakarta: UII Press, 2013.
- Rini, Ragil Kusnaning. “Urgensi Prinsip Kepatutan Dan Keadilan (Redelijkheid En Billijkheid) Dalam Pembuatan Perjanjian Pendahuluan.” *Notaire* 4, no. 3 (September 30, 2021): 425. <https://e-journal.unair.ac.id/NTR/article/view/27221>.
- Rusli, Tami. “Asas Kebebasan Berkontrak Sebagai Dasar Perkembangan Perjanjian Di Indonesia.” *PRANATA HUKUM* 10, no. 1 (2015).
- Suparman. “Peranan Undang-Undang Pokok Agraria Bagi Masyarakat Indonesia Yang Bersifat Agraris.” *Jurnal Warta* 54 (2017).
- Syaifuddin, Muhammad. *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)*. Cetakan 2. Mandar Maju, 2016.
- . *Hukum Kontrak Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)*. Mandar Maju, 2012.
- Triwulandari, Endah, and Edy Tarsono. “Socio-Juridic Analysis of Abortion According to Article 75 of Law Number 36/2009 Concerning on Health and Law Number 35/2014 Concerning on Child Protection.” *IUS POSITUM (Journal of Law Theory and Law Enforcement)* 1, no. 2 (2022): 43–59. <https://journal.jfpublisher.com/index.php/jlte/article/view/68>.