

# Good Faith Principles Application in Property Trading Business Agreements

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## Abstract

The business practice of property service users in Denpasar City makes an agreement that begins with a standard agreement of cooperation that does not provide a balance of interests for the parties leading to a reaction that leads to the need to be given a proper place for the existence of the principles of good faith and propriety in the making and implementation of the agreement. So it is necessary to conduct a study on 1) How to implement the application of the principle of good faith in the implementation of business agreements for trade intermediary business actors in the city of Denpasar and 2) What are the forms of legal accountability of trade intermediary business actors to the parties related to the default of business agreements in Denpasar City. The method used in this study is a type of empirical normative legal research with a direct review approach to the field. The application of the principle of good faith in business agreements in the property trading business in Denpasar City has not been carried out properly, as indicated by the existence of defaults. To overcome this, any problems that arise in the field of business agreements must pay attention to the terms of the validity of the agreement, and the principles or principles in contract law by applying the principle of good faith. Basically, the parties must apply the principle of good faith in carrying out business agreements in order to achieve a balance of interests between the two parties.

**Keywords:** business transaction agreement; good faith; property; buy; sell

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## INTRODUCTION

In the era of globalization, the development of increasingly rapid economic conditions and increasingly fierce competition is an opportunity for a business actor with high creativity to compete with others due to the large number of requests to be able to fulfill all the needs of the community.

Nowadays the trend is increasingly showing that many agreements in business transactions that occur not through a balanced negotiation process between the parties but complete agreements occur in a way that one party has prepared standard conditions on an agreement form that has been printed and then presented to the other party. others to be agreed with almost no freedom at all to the other party to negotiate the proposed terms.

Good faith is one of the principles that apply in the agreement, namely the agreement that has been agreed then applies as the governing law. However, in reality there are several legal facts that the business owner denies the contents of the business space lease agreement, causing losses to other parties.

The business practice of property service users in the city of Denpasar makes an agreement that begins with a standard agreement of cooperation that does not provide a balance of interests for the parties so that it creates a reaction that leads to the need to be given a proper place for the existence of the principles of good faith and propriety in the making and implementation of the agreement. As stated in Article 1338 of the Civil Code, the agreement must be carried out in good faith.

Whereas Article 1339 of the Civil Code states that consent is not only binding on things that are expressly stated therein, but also for everything which according to the nature of approval is required by propriety.

The presence of an intermediary institution in the property sector, namely a property broker or better known as a marketing agency, is considered to bring many benefits to the parties, especially in terms of marketing, the negotiation process, and the ease of obtaining complete and accurate information about the property. Realizing this situation, property brokers are expected to work professionally in responding to the demands of the times and the demands of the growing community. Coupled with the large number of business spaces that are already available and marketed, it can also be seen that many companies engaged in property brokerage services are growing to become intermediaries for the satisfaction of not only shop-house owners but also prospective buyers and tenants in making their choices.

## METHODS

The implementation method in this research uses the type of empirical normative legal research. Normative law

is the law that puts the law as a building system of norms. Empirical Normative Legal Research is research regarding the application of normative legal provisions (codification, laws or contracts) in action on every particular legal event that occurs in the community (Muhammad, 2004).

This research was carried out with a direct observation approach to the field, conducting observations, document studies and direct interviews with informants at predetermined locations.

This research is supported by 3 (three) types of data from different sources. The three types of data in question are:

- 1) Primary data, obtained directly from data sources in the field. As previously stated, the primary data in this study will be conducted on property-trading brokerage companies in Denpasar City.
- 2) Secondary data, obtained through indirect sources in the form of books, magazines or other electronic sources so as to be able to support scientific theoretical analysis of the primary data obtained.
- 3) Tertiary data is legal material that provides instructions and explanations for primary legal materials and secondary legal materials, for example dictionaries, encyclopedias, legal dictionaries.

## RESULT AND DISCUSSION

### *The Principle of Good Faith in Implementing Business Agreements for Property Trade Intermediaries in Denpasar City*

Good faith is one of the principles that apply in the agreement, namely the agreement that has been agreed then applies as the governing law. The principle of good faith is often called the principle of Utmost Good Faith which contains the understanding of both parties, namely the insured and the insurer who must reciprocally base the insurance agreement/agreement in very good faith. Legal relations can occur between fellow legal subjects and between legal subjects and objects. Relationships between fellow legal subjects can occur between people, people and legal entities, and between legal entities. This legal relationship can occur at the meeting of the two parties who will make an agreement, where one party in good faith will bind himself with the other party to get something. Regarding the relationship between an agreement and an engagement, it can be said that an agreement is an event where one person promises to another or where two people promise each other to carry out something. From this event arises a legal relationship called an engagement. The agreement publishes an agreement between the two people who make it. Thus the relationship between the agreement and the engagement is that the agreement gives rise to an engagement. The agreement is a source of engagement in addition to other sources.

The lease agreement is made so that both parties feel safe and feel protected so that there are no problems between the two parties in the future. The lease agreement also provides legal certainty to both parties who promise and in good faith carry out their rights and obligations. This has been stated in the lease agreement that has been agreed by both parties which has been regulated in Articles 1548 to 1600 of the Civil Code. A lease agreement made by a property trading brokerage company is an underhand agreement, a lease is an agreement for the temporary use of an object, either movable or immovable, with the payment of a certain price.

This is done if both parties agree to enter into an engagement based on an underhand agreement. The standard types of contracts entered into by real estate brokerage firms differ. There are 2 (two) types of standard underhand agreements which are usually made at the time of the transaction between the owner and the lessee. These 2 (two) types of agreements are made when there is a legal relationship where the tenant will rent a house or a legal relationship where the tenant will rent a shop-house. In addition to the underhand lease agreement with the house object, there is an underhand lease agreement with the shop-house object, where there are several differences compared to house rental conducted through a trade intermediary company. An underhand agreement signed by both parties has been made by a property trading brokerage company taking into account all applicable legal aspects. However, in this lease agreement what is used as a reference is the principle of freedom of contract which basically freedom of contract is not freedom without limitations, but freedom that has value and dignity.

The law of the agreement provides space for the parties to form and determine the contents of the agreement to be carried out, however, in its application there are several problems that are often experienced in carrying out the agreement, one of which is the existence of a standard contract, in Law Number 8 of 1999 regarding Consumer Protection. In every relationship, regardless of its form, there is always a risk of conflict. Disputes originating from the agreement are usually caused by the incompatibility of understanding about the contents of the agreement. A Property Trade Intermediary Company is regulated in (PERMENDAG Number 51/2017), regulating several matters including the scope of activities of the company or company agent, the structure of the business entity, the determination of the content of the minimum agreement between the user and the service provider, the amount of the commission, business licenses, and others.

An agreement is an event where one person promises to another person or where two people promise each other to do something. And the standard agreement in the lease agreement that is accommodated by property trading brokerage companies has developed rapidly and can be found in various human lives. In a standard agreement, the consumer in this case only has two choices, namely accepting or rejecting the agreement that is

offered to him, which means that there is no transaction between the parties. The standard agreement made by the property trade intermediary company is more towards justice for both parties to the agreement. In order not to violate Article 18 of the Consumer Protection Law (UUPK), a property trade intermediary company must explain in detail one by one the meaning of the standard rental agreement. Many of the use of standard agreements are accommodated by property trade intermediary companies, besides economic factors, efficiency factors, and time factors are also reasons that standard agreements are still used. In accordance with Article 18 of Law Number 8 of 1999 concerning Consumer Behavior that the standard underhand agreement made by a property trading intermediary company is in accordance with requests from owners and tenants in leasing activities, whether carried out for renting shop houses or renting houses, then researchers can say that this agreement does not violate the existing legal rules. This standard underhand agreement is still described in detail and clearly so that it is easy to understand, the standard underhand agreement is in accordance with applicable law until it is finally signed by both parties who will carry out an agreement. Consumer Protection Law strictly prohibits the inclusion of standard clauses in every document and or agreement whose purpose is to harm consumers.

Law is tasked with creating legal certainty because it aims to create order in society. This underhand lease agreement is a consensual agreement which means it is valid if there is an agreement regarding the main elements, namely the shophouse unit and the rental price. The lease agreement aims to provide material rights, but only gives individual rights to the renter to enjoy and not ownership rights to the shophouse unit. With the existence of Law number 8 of 1999 concerning Consumer Behavior, a standard underhand agreement made through a property trading intermediary company with the agreement of both parties who will bind themselves to one another, it can be seen that there are no violations made by service providers in formulate a standard agreement. In accordance with Article 18 of Law number 8 of 1999 concerning Consumer Behavior, in paragraph 1 of this article there are no conflicting clauses starting from letter A to letter G in standard agreements made by trade intermediary companies in terms of renting shop houses or house that violates the substance contained in this article. In accordance with paragraph 2 of this article, the standard underhand agreement made by the property trade intermediary company is in accordance with what is expected by both parties to the agreement. In paragraph 3 of this article formulating a clause in a standard underhand agreement made by a property trade intermediary company, the researcher sees that there is no agreement that does not meet the existing legal provisions. As an intermediary company, a property company should formulate an agreement in accordance with applicable law, namely Article 1313 in conjunction with Article 1320 of the Civil Code. In paragraph 4 of this article, it is formulated that a trade intermediary company must act fairly and not contradict the laws and regulations. After the absence of a clause that contradicts Article 18 of Law number 8 of 1999 concerning Consumer Behavior, a new agreement can be signed by the parties if it has fulfilled the legal requirements of the agreement as stated in Article 1320 of the Civil Code.

#### *Forms of Accountability of Property Trade Intermediary Business Actors in Business Agreements in Denpasar City*

In its activities, the legal relationship that occurs between the Owner and the Property Trade Intermediary Company is a reciprocal legal relationship. The reciprocal legal relationship referred to occurs when the owner sends the Property Trade Intermediary Company to conduct marketing so that the building owned by the owner can be marketed. Then the Property Trade Intermediary Company also gets a fee according to the agreement when signing the Marketing Agency Agreement. In the property marketing activity, it is explained that the property trade intermediary company can make an Open Listing agreement if the property to be marketed has been cooperated with other property trading brokerage companies by the owner. In this agreement, property trading brokerage companies are given the opportunity to cooperate with other property brokers in marketing a product. Then the property trading intermediary company that has signed the exclusive agency listing agreement is still entitled to get a commission according to the agreement even though the tenant and buyer are met by another property trading brokerage company. The property trading brokerage company is entitled to a commission even though it is not a property trading brokerage company that ultimately succeeds in carrying out the transaction.

Legal relations are also known as *rechtsverhouding*. Legal relationship is a relationship that occurs between one legal subject and another legal subject in society as regulated by law. There are several things that are different from the legal relationship between a property trading brokerage company and a tenant with regard to the activities of marketing a product, a property regulation brokerage company will meet with prospective tenants. In the process, the property trading brokerage company should explain in advance about the property to be rented by the prospective tenant. After prospective tenants see in real terms in the field, proceed to the negotiation process first. The legal relationship between a property trading brokerage company and prospective tenants or prospective buyers has occurred when the property trade brokerage company provides promises and information related to goods and/or services, because since then the rights and obligations of the parties have

arisen, both from the provider. services with prospective buyers or prospective tenants. The legal relationship is based on Article 1320 in conjunction with Article 1338 of the Civil Code (KUHP), where business actors have agreed to what was promised when making promises in an advertisement, or leaflet or brochure, so that the promises will be fulfilled. acts as law for the parties who make it. The legal event that occurs against the property trading intermediary company with the prospective tenant or prospective buyer is a trade in services for an item which in this case is a property of the owner.

Negligence or failure is a situation that occurs because one party does not carry out its obligations or allows a situation to take place in such a way (non-performance), so that the other party is unfairly harmed because it cannot enjoy its rights based on a mutually agreed contract. Based on the legal system in Indonesia and generally in a legal country, if one of the parties does not fulfill the performance, then the other party in the contract must first file a warning known as a "sumasi" (article 1238 of the Civil Code).

In the activity of marketing a property for rent, default can be made by the Owner or the Tenant. In practice, default tends to be carried out by the lessee. The tenant is sometimes negligent in making payments, or sometimes there are parties who do not do what should be done even though it is stated in the lease agreement. However, it does not rule out the possibility that the owner can also default when the commission should be paid because the property has been transacted. Default committed by the owner when the owner fails to pay his obligations to the property trade intermediary business actor cannot make a marketing agency agreement terminated. There are many considerations to be able to break an agreement, one of which is that in the agreement. The service provider still has the responsibility to rent out the remaining units in the property.

In addition to the owner, the tenant is also not spared in the event of default. As tenants who should pay attention to what has been stated in the lease agreement that has been made and signed by both parties, sometimes they do not do what is stated in the agreed agreement. In practice, there are still tenants who do not return the building to its original condition, because the building that has been leased is no longer their right to lease, so they are no longer responsible for the building that has been completed. This is one of the defaults where the tenant fulfills the performance but is wrong. The tenant is right to have vacated the building in accordance with what has been agreed, but has not returned the building as it was before the beginning of the lease. The basic principle of accountability on the basis of error implies that a person must be responsible because he made a mistake so as to harm others. According to civil law, basic liability is divided into two types, namely errors and risks. Thus, it is known as a liability on the basis of error, liability without error, and risk responsibility or absolute responsibility.

In Denpasar, one example of a default that has occurred is a breach of contract in the rental agreement between Denpasar City Market and the traders at Kumbasari Denpasar Market. Leasing at Kumbasari Market is carried out in written form in accordance with the format of the business place rental agreement at Kumbasari Market Denpasar. If the merchant does not carry out his obligations, namely paying rent, does not maintain cleanliness, damages property and is not repaired, or violates the rules in accordance with the agreement made, the tenants will be given a warning letter. However, if the tenant does not have good faith after being given a warning letter, then in accordance with the provisions contained in the rental agreement for the place of business in the market, the business actor has the authority to unilaterally cancel the lease agreement, in other words, the tenant of the place of business is in default. allowed to sell in the market.

In civil law, responsibility is a person's responsibility for actions that are against the law. The definition of unlawful acts can be concluded from two articles in the Civil Code which regulates compensation due to unlawful acts. The concept of legal responsibility is related to the concept of legal obligation, that a person is legally responsible for certain actions or that he bears legal responsibility means that he is responsible for a sanction if his actions are contrary. Individual responsibility is a person's responsibility for a violation that he/she commits himself, while collective responsibility is the responsibility of an individual for a violation committed by another person. The concept of legal liability is basically related but not identical with the concept of legal obligation. However, this coercive action does not have to be directed at the individual who is required to be the "offender" but can be directed at another individual who is related to the first individual in a prescribed manner.

In law, there are several types of legal liability, including:

- 1) Absolute responsibility is a legal responsibility that is imposed on the perpetrator of an unlawful act regardless of whether the person concerned in carrying out his act has an element of error or not, in this case the perpetrator is only asked to be legally responsible, even though in carrying out his act he did not do it. intentionally and does not contain elements of negligence, carelessness, or impropriety.
- 2) Legal responsibility without guilt which is meant as an error in the legal sense. It could be that the act is still a moral error.
- 3) Unlimited liability, namely the concept of unlimited liability, is a concept where if the land owner is able to prove the fault of the intermediary, the losses and losses are the result of the intermediary's fault, the intermediary must pay compensation for the losses suffered by the lender. power or land owner.

In addition, when a tenant makes negligence that fulfills 4 (four) main elements in an unlawful act in

accordance with Article 1365 of the Civil Code, the tenant should pay material losses in the form of additional rent because the tenant cannot vacate the building on time. So that the property trading brokerage company cannot lease the property back to other potential tenants.

## CONCLUSION

Based on the discussion above, it can be concluded that in the city of Denpasar there are still weaknesses in the marketing agency business agreement. This is indicated by the fact that there are still many cases of default, not only for business actors but also for tenants. Default committed by the owner when the owner fails to pay his obligations to the property trade intermediary. The tenant is also not spared in the event of default. Therefore, it is necessary to have good faith from property trade intermediary business actors to reduce the occurrence of defaults from both parties, such as an attitude of openness. Property trade intermediary business actors function to bring together the two parties, as well as management agreements between owners and tenants. An agreement that will be mutually agreed upon is called an agreement. The agreement made between the two parties must be based on good faith as stated in Article 1338 of the Civil Code, namely the agreement must be carried out in good faith. This should be the orientation in implementing property trading business agreements anywhere, especially in Denpasar City to reduce the occurrence of defaults. The responsibility of the trade intermediary business actor must also be clear regarding the sanctions imposed in the event of a default on one of the parties. In agreement, all forms of the agreement must be clearly written so that all parties can achieve a balance of their respective interests. With the awareness and sense of responsibility from all parties, the business agreement of property trade intermediary business actors in Denpasar City goes well, not harming any party.

Suggestions that researchers can give to parties involved and related to research on the Application of Good Faith Principles in Business Agreements for Property Trade Intermediary Business Actors in Denpasar City are always adjusting the agreement to the needs of both parties and see the development of community dynamics and supporting rules and more participation from both parties is needed so that the principle of good faith in business agreements can develop properly.

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