

Regulations Development Concerning Good Faith Principles in Land or House Purchase Agreements in Indonesia: Is It Important for Good-Faiths Buyers?

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Abstract

The need for housing in Indonesia continues to grow and to meet these basic needs, many housing development companies offer models, facilities, and convenient payment methods. If the prospective buyer and developer have agreed, it will be stated in the form of a house and or land sale and purchase agreement that puts forward good faith principles. This study uses a normative juridical method and was supported by in-depth interviews with legal experts, and practitioners, showing that: 1) Land and or house buyers are generally economically weak, have legal control, and in various aspects often side with the aggrieved and disadvantaged parties in the judicial process in the court; 2) Legal protection for buyers with good faith is carried out in two ways, namely; preventive methods or legal protection are regulated by positive law and or clauses contained in the agreement. The repressive method of the buyer can directly demand the developer to fulfill all his obligations or through the Consumer Protection Agency and all methods must prioritize the principle of deliberation. If it is not successful, you can use litigation to a lawsuit file to a court that is examined and tried based on the criteria set out in the Circular er of the Supreme Court Republic of Indonesia, namely; Supreme Court Republic of Indonesia Number 7 of 2012, and The Supreme Court Republic of Indonesia Number 4 of 2016.

Keywords: regulation development, good faith, land or house, purchase agreement, Indonesia

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1. Introduction

The development of the housing business in Indonesia is progressing very rapidly and to meet these needs, many housing development companies offer house models with various attractive facilities, for example; buying a house in installments using bank credit facilities and without using bank facilities.

The development of the housing business in Indonesia is progressing very rapidly and to meet these needs, many housing development companies offer house models with various attractive facilities, for example; buying a house in installments using bank credit facilities and without using bank facilities. The Code of Civil, Article 1338 Paragraph (3), states that: "Agreements must be made with good faith". This article states; "The agreement that has been agreed upon by the parties must be carried out by propriety and justice". This article means that the agreement that has been agreed upon by the parties must be carried out with propriety and justice (J. Satrio, 2001).

Good faith looks very easy to say, but it turns out to be very difficult to apply in an agreement, even in the last year there have been disputes between sellers (housing developers) and buyers of houses and/or land, many of which have been continued in court. Based on the Supreme Court Republic of Indonesia has issued Circular Number 7 of 2012 and Number 4 of 2016.

Based on this description, there are research problems that are formulated, as follows: 1) good faith implementation in the selling land and/or house purchase agreement in Indonesia; 2) paying attention to the buyer's legal protection is bound well?

2. Research Methods

This research is based on literature and documentary research using the normative juridical approach, namely the rule of law research (laws and regulations, jurisprudence, adat law, unwritten law), and legal principles (Bagir Manan, 1999). This study focuses on positive laws and norms related to the application of ethical principles inland and/or house sale and purchase agreements in Indonesia. Research is also supported, and complemented by in-depth interviews with legal experts, consumers, and housing developers. Data and information that have been obtained are then processed and analyzed qualitatively (L. Moleong, 2002). This means that the primary data obtained through literature study is analyzed juridically, then compared with data and information from experts and practitioners who are accustomed to handling disputes over the application of good faith principles

in order to obtain qualitative juridical research results.

3. Results And Discussion

3.1. Principles of Good faith (Theory and Implementation) in Land and or Houses Purchase Agreement

Theoretically, there are several general legal principles, as stated by Budiono, which include at least fulfilling the three basic principles of contract law, as follows:

- 1) The consensual principle; is that the agreement is formed because of the common will (consensus) of the parties who will enter into an agreement. Essence agreements can be free, not bound, and not achieved formally, but through only an agreement consensus.
- 2) The binding agreement power principle; must fulfill the parties they were made agreement to an agreement.
- 3) The freedom agreement principle; the parties can according freely to their own will make agreements and are also bound free themselves to whomever they want. The parties are free to the determine scope, content, and the terms agreement validity as long as it does not contrary to the law, public order, and decency (Pan Lindawati S.S., 2019).

The freedom of contract principle is a general contract law principle that essentially allows parties to freely express their will, then it is regulated as an agreement that binds the parties who sign the original agreement it does not contrary to the law, morality, and public order (Article 1337, Code Civil). This principle known as "contract freedom" is one of the most contract law principles most important. The origins of contract freedom were originally born in medieval Europe and were a reaction to the classical economic theory emergence, the Laissez-Faire Theory in the European trading system.

The objective of contract freedom can be achieved only if the parties have a balanced bargaining position. If one party is in a weak position then the parties did not have a balanced bargaining position. The party with a stronger bargaining position will force tend its will pressure on the party other for its personal gain. Therefore, the agreement's validity terms have been deemed to have violated a justice sense. The facts of practice show that the parties are not always had balanced bargaining positions, therefore the state's presence is needed with the aim of the protecting weaker party. (Pan Lindawati S.S, 2019).

Furthermore, about the principle of good faith, quite many opinions, views, and concepts about good faith, among others, submitted by J. Morgan have interpreted the clause, as follows: 'In all matters relating to matters agreed, the parties will act good faith with each other and will act fairly, and always be careful.

In conclusion, it is explained that the relationship of English law with the doctrine of good faith seems to change from time to time. While there is not a general obligation to good faith in British contract law, the obligation enters into commercial contracts both by inclusion as the terms are clear and also the implications. Likewise, the obligation to act with good faith promotes fairness in transactions between commercial agents as something that is desired and desired. It was suggested respectfully that this is true. The content obligation to the good faith act is entirely context-dependent, and the context will change on a case-by-case basis and be open allowing exceptions or to be managed with great care so that any form of uncertainty can be minimized (James Hannant and Guildhall Chambers, 2001).

The bonafide principle (good faith/good faith) is a key component of the most historic modern legal order and an international law general principle. The principle requires parties to be honest and fair with each other, and refrain from taking unfair advantage. In international law, bonafide principles are often associated with state behavior and relations between states, and those that are usually claimed under international agreements, based on the principle "Pacta Sunt Servanda" (Mohamed Azer Zouari, 2020).

According to Subekti, theoretically, there are two good ethical types of principles, namely; subjective-good faith, and objective-good faith. Subjective-good faith means honesty. Honesty must exist before the agreement was implemented by the parties. This means that at the pre-contract stage, there has been subjective good faith, while objective good faith is at the contract stage. Ethics is propriety and the contractual stage. This can happen because, at the contract agreement, the stage contains rights and obligations that must be carried out with as good faith. Furthermore, the authority assesses whether an agreement is in accordance with part of objective good faith principles which were intended for dispute resolution about agreement contents, and the rights, and obligations implemented by each party in the agreement. (Subekti, 2009, Antari Innaka et. al, 2012).

Still, in the same context, the good faith theory of student relations can be divided into two, namely:

- 1) Subjective good faith, is ethics before the agreement was implemented the parties must show honesty. Usually, subjective good faith is in the negotiation stage, where the parties openly provide true information about who they are by providing evidence in the form of documents about themselves, for example, the Articles of Association document if the party making the agreement is a legal entity, and the other party must examine it carefully.
- 2) The objective of good faith, at the implementing agreement time must be carried out in accordance with the principle of decency or fairness (Ridwan Khairandy, 2003).

According to JM van Dunne, theoretically, every agreement must go through three stages, namely: a) the

pre-contract stage; b) the contractual phase; c) the post-contractually. With regard to the good faith principles application, it should have existed at the time of the pre-contract. This means, good faith always must exist during the negotiation to determine, the period, and agreement content, and both parties must prioritize honesty (N. Ike Kusmiati, 2020, J. Satrio, 2001).

According to modern theory, promises that have been agreed upon by the parties at the pre-contract stage are considered binding. So, the concept that the agreement is only binding at the contract stage is considered to have a shift experienced. So, the agreement has bound the parties both at the pre-contract, contract, and post-contract stages. Good faith should not only exist at the contract execution stage but should also underlie the pre-contract stage because good faith should be reflected in the entire contract process. Starting from the negotiation process, contract making, and the contract execution including the contract termination, everything must be closed with good faith. The legal position of pre-contract good faith in the Code Civil is still weak. There are no stipulations that regulate so it causes multiple interpretations and overlaps that cause fundamental problems, even though the Code Civil, Article 1338, paragraph (3) regulates good faith in the implementation of contracts. As a result, it creates legal uncertainty (N. Ike Kusmiati, 2020).

Standard agreements in the sale and purchase of housing tend to reduce the existence of good faith. Good faith is if the agreement contains provisions that are unreasonable (not detailed, clear, reasonable, and unfair) (Umar Haris Sanjaya, 2019, Butar Butar, 2020).

Good faith is a very important and decisive principle in the contract law system. Good faith must be carried out from the pre-contract stage. The agreement must be able to describe what is promised with certainty, and all supporting factors other than later affect the contract implementation. Good faith function, as follows:

- 1) Contract interpretation does not base only on what has been agreed clearly upon or the wishes of the parties, but also on ethical considerations.
- 2) Addition or reduction of the agreement contents or requirements is not legal if a judge believes in certain cases that the contract contents are contrary to fairness, and propriety, and even reduces or eliminates contractual obligations (Subekti, 2009, Pan Lindawaty S.S., 2009).

If a dispute arises, the judge must have a standard that can be used to assess the good faith principle in cases of law enforcement of purchase disputes. Objective standards, where these standards refer to the behavior of the party making the agreement, and the assessment must also be based on rationality and legal propriety. The parties making the agreement at least have good intentions so that the agreement can be implemented with the principles of decency, justice, and certainty legal (Ery Agus Priyono, 2017).

Article 1338 (1), Code Civil, states; " All agreements legally made apply as laws to those who make them". Article 1457, states; "Buying and selling is an agreement where one party (sellers) binds himself to deliver an item, and the other party (buyers) pays a price-proven". The land or house purchase is offered by means of a wake-up call, which is a house unit sales system where when a consumer wants to buy a house, the house to be purchased has not been built. Buying and selling houses usually begins with offers made by development companies, including through brochures, print/electronic advertisements media, billboards or cyberspace, and others.

If the consumer was interested, then before the purchase contract a notarial deed will be made in the form of a Purchase Deed, or an underhand contract can be made and this is the beginning of the sale and purchase contract. During the pre-sale agreement, negotiations are carried out which would occur in an actual sale and purchase agreement. However, in reality, it often happens that the contents of the agreement that have been agreed upon during the negotiation period (pre-contract stage) are not included or are not implemented in the execution of the contract.

When potential customers are interested, they will then pay a certain amount of money as a booking fee which is a guarantee that consumers really want to buy a house. Furthermore, payments can be made in several ways, namely:

- 1) Cash means that sometime after payment of the booking fee the consumer pays the shortage of house prices directly according to the house price to the developer plus other costs, for example, Cost of Acquisition of Land and Building Rights and Value Added Tax;
- 2) The cash method is gradual, meaning that sometimes after paying the booking fee, the consumer immediately pays 50% of the house price to the developer. The shortfall is paid in stages according to the agreement.
- 3) The Home Ownership Credit method, where payments are made in installments by the bank as a third party who also acts as a guarantor for consumers. On the other hand, the consumer must also provide a guarantee or collateral in land or house which is the object of the purchase agreement between the consumer (buyer), and developer by paying a down payment of 30% of the house price (Antari Innaka, at. al, 2012).

In particular, the house sale and purchase agreement are regulated in the Decree of the State Minister of Public Housing Number 09/KPTS/M/1995 which regulates the subject and object of the housing agreement. In its decision, developer or seller, while consumer or buyer. While land and house object purchase agreement usually includes:

- 1) the building area of the house accompanied by architectural drawings, floor plans, and technical specifications of the building. The building area is mentioned in detail in the PPJB, but architectural drawings, floor plans, and the technical specifications of the building are an integral part that cannot be separated from the Sale and Purchase Agreement (PPJB);
- 2) land area, land status, permits, and rights in it. In PPJB it is stated that the status of land in housing is the right to use a building that is in the process of demolition at the local BPN office. The land and its status must be included in the agreement with the intention of guaranteeing that the land is really owned by the developer and guarantees that there is no interference from unauthorized third parties;
- 3) the location of the land by stating the number of plots, details of the area starting from the village, sub-district, and sub-district completely listed in PPJB; and the
- 4) The price of the land and house payment procedures are listed in Article 1 and Article 2 of the PPJB Ministerial Regulation (Kepmen PPJB, 1995).

Purchase Binding Agreement or Preliminary Agreement which is upgraded to purchase agreement or purchase deed drawn up by Land Act Making Officer (PPAT). PPJB is a document that shows a legal relationship between developers and consumers. Developers bind themselves to sell land and houses, while consumers are obliged to pay the price of the object of the agreement. PPJB is not a purchase agreement that has not occurred, because there are still requirements that have not been met, for example; the price has not been paid off, the certificate does not exist, and others. Not completing all the requirements will cause The land deed official refuses to make a purchase agreement. In order for parties to continue buying, and selling houses, they are required to the purchase price pay after the certificate is completed and the consumer has paid the price in full.

Purchase Binding Agreements are not specifically regulated in Code Civil but are still subject to the general provisions in Book III, Code Civil Meanwhile, special provisions are regulated in Decree State of Public Housing Minister Number 09/KPTS/M/1995 concerning Binding Purchase Agreements Guidelines.

PPJB contains promises made by the parties where the promises are morally and ethically binding. Promises born on the basis of trust must be upheld and not ruled out, because they will tarnish the purity of a form of appreciation for a pledge or promise.

In the pre-contract period where the parties negotiate to reach a meeting point or agreement on the things of substance, they intend to make an agreement to the interests protected, and objectives of the agreement itself. Even though at the pre-contract stage there is no agreement that binds two parties, elements, and listed terms in pre-contract will bind parties if an agreement has been reached on been required clausula.

Thus, the agreement on matters that are principal in the pre-contract must be interpreted by the parties as a necessity in the agreement at a later date. There is a possibility that certain changes in circumstances or events will occur which will result in changes to the main points that have been negotiated and agreed upon at a pre-contract stage. However, if there are no circumstances change, there is no reason for the parties not to comply with the agreement reached during the pre-contract. This is because the pre-contract agreement has legally bound the parties, so it cannot be simply ignored without clear reasons and justified by law.

It should be noted that pre-contractual promises that are not promised in the agreement will have consequences if the problem caused by the bad deeds of one party has no basis for filing by the other party, even if that party suffers a loss. The basis claim for default cannot be used because there are no agreement clauses that is by the parties violated. Therefore, a pre-contract promise contained in the PPJB must be the basis for determining whether the circumstances that occurred during the contract stage can be used as the basis for a lawsuit for the aggrieved party (Hasanudin, 2021).

3.2. Legal Protection for Buyers with Good faith in Land and or House Sale and Purchase Agreements

Theoretically, legal protection can be carried out in two ways, namely; preventive, and repressive. Preventive ways can be done by making regulations or making provisions that accommodate consumer protection. Consumers must play an active role in proposing to housing developers to include all pre-contract agreements in housing purchase agreements.

A repressive effort to sue the developer directly to fulfill the rights that have been harmed or violated. In addition, consumers can also submit complaints to the Consumer Protection Agency or the Indonesian Consumers Foundation (YLKI) to be able to resolve problems with developers more wisely.

In addition to these channels, housing consumers can also use non-litigation or litigation channels to resolve disputes that arise because the contents of the pre-contract agreement are not included in the Sale and Purchase Agreement by the housing developer who harms himself.

Settlement of disputes between the two parties is determined by way of deliberation and if the method of deliberation is not reached an agreement. The PPJB provides a way out of dispute resolution between the seller and the buyer of the house through the Indonesian National Arbitration Board.

Preventively and repressively, consumer legal protection (good intentions buyer) in the land, and or houses

purchase agreement can use several regulations as a basis, including:

a. The Code of Civil

Book III Regulates Complementary, Article 1493, Code Civil states that there are restrictions or needs of one of the parties. This means that the parties to the agreement can arrange agreements between parties different from the provisions contained in Book III, Code of Civil. However, Article 1493, Code Civil does not mean that seller (*developer*) is responsible for consumer losses. This is emphasized further in Article 1494, Code Civil states, that: "even though it has been agreed that the seller will not do anything, he is still responsible for what is caused by his actions, all agreements that are contrary to this are void".

b. Law Number 8 of 1999 concerning Consumer Protection

In it, there are articles that protection measures regulate for consumers whose rights are violated by producers. Therefore, housing consumers whose rights are reduced, because of Producers' unilateral actions that harm them directly or indirectly will be protected by law. General Explanation of Article 2, Law Number 8 of 1999, stated that; "There are five consumer protection principles, namely: benefit, justice, security balance and safety; and certainty. At a time when justice is explained, society tries to participate as much as possible and is given the opportunity for consumers, and business actors to obtain their rights, and carry out their obligations fairly". This balance, there needs to be a balance between the interests of consumers, business actors, and government in a material and spiritual sense (Celina Tri Siwi Kristiyanti, 2008).

Furthermore, Article 7, Paragraph (1), Law regulates the obligations of business actors (sellers) who offer and sell a product with good faith in carrying out their business activities. Legal protection for consumers is to protect consumer rights. Although very diverse, broadly speaking, consumer rights can be divided into three basic principles, namely: a) the Right to consumers prevent harm, both personal loss, and property loss; b) the right to goods obtain and/or reasonable price services; c) and the right to address the issues worth facing (Abdul Halim Barkatullah, 2021).

Article 134, Law Number 1 of 2011 concerning Housing and Settlements, states that; "Everyone whom a house builds or does not a house build is not accordance with agreed criteria, specification, requirement, infrastructure, and public facilities, are criminal subject sanctions according to Article 151 paragraph (1) and paragraph (2). Many developer cases have been processed legally, and have been tried by courts, and criminal sanctions have been imposed, but this makes it difficult for buyers with good intentions to claim back the rights that have been harmed.

c. Supreme Court Circular Letter Number 7 of 2012 and Circular Letter Number 4 of 2016

In recent years, the issue of applying ethical principles in land and/or house sale and purchase agreements has become a matter of many court cases, both at the District Court level (Court of First Instance), the High Court (Appeal Court), and Supreme Court (Cassation Court, and Judicial review). Surprisingly, in the same case, it turns out that the court's decisions are quite diverse or different, giving the impression of inconsistency in court decisions and causing endless public debates. In this regard, it is deemed necessary to have a standard decision to protect buyers and sellers in good faith so that consistency can be achieved in court decisions.

Since September 19, 2011, the Supreme Court Republic of Indonesia has implemented a chamber system in handling cases that aim to create legal unity. As a first step, each chamber held a plenary meeting to discuss legal issues which often gave rise to differences of opinion resulting in inconsistencies in decisions.

The Civil Council session Supreme Court Republic of Indonesia was held on March 14-16, 2011, and attended by the Supreme Court Justices of the Civil Chamber. The results of meeting the civil chamber (Sub Chamber of General Civil) resulted in things as stated in the Circular Letter Supreme Court Number 7 of 2012 concerning the Results Formulation Plenary Meeting Supreme Court Chamber as implementation guidelines of judicial duties. Specifically related to "good ethical principles" as stated in point IX which is formulated as follows (SEMA No. 7 of 2012): 1) Legal protection must be given to buyers who have good intentions, even if it is later found out that a seller is a person who has no right to the land or house being the object of sale and purchase; 2) The owner originally can file only a compensation claim against who is not entitled seller.

Then, on 23-25 October 2016, the Supreme Court Republic of Indonesia again held a plenary meeting to discuss legal issues (questions of law) that arose in each room. The plenary meeting resulted in a decision as stated in Circular Letter Number 4 of 2016 concerning the Results of the Implementation Formulation of the Supreme Court Chamber Plenary Meeting as the Court's Duties Implementation Guide. In relation to the results formulation of plenary meetings of the civil assembly, the following is presented (SEMA No. 4 of 2016):

- 1) Making legal formulations of the results of plenary meetings of 2012, 2013, 2014, 2015, and 2016, as an inseparable unit, and all legal formulations are applied as guidelines handling cases at the Supreme Court and the courts of first instance and appeals as long as the substance of the formulation relates to the authority of the courts of first instance and appeal;
- 2) Legal formulations of 2012, 2013, 2014, and 2015 results of the plenary meetings, which are expressly stated to have been revised or substantially contradict the results of the 2016 plenary meetings are declared invalid.

The Supreme Court Republic of Indonesia Number 4 of 2016 has explained and the outlined buyer's criteria with intentions good, that be protected need by law, namely:

- 1) Carry out the land or house purchase with legal procedures, and documents as determined by laws, and regulations, namely: a) Land purchase through a public auction or; b) Land purchase before Land Act Making Officer (Provisions Government Regulation Number 24 of 1997 or; c) customary/unregistered land purchase that was carried out according to customary law provisions, namely: (a) done in cash, and openly (in front of/known to the village head/village head); (b) by research preceded on land status of the purchase objects based on this research shows that purchase of object land is the property seller; b) Purchases are made at a reasonable price, among others.
- 2) Exercise caution by examining matters related to the land object agreed, including; a) A seller is a person who has the right to the land which is the object of sale and purchase, according to proof of ownership, or; b) The land object being traded is not in confiscation status, or; c) The object being traded does not have collateral/mortgage status, or; d) For land that has been certified, it must be supported and strengthened by the National Land Agency information, and legal relations land history between them and the certificate holder.

Requirements observed as referred to in letters a and b of Sema No. 4 of 2016, it is clear that it is cumulative or not alternative and requires both to be implemented, not just one of them. Based on these criteria, a person can be said to be a buyer with good intentions, when buying land or a house he is obliged to 1) comply with laws and regulations; 2) previously carefully examined the material facts (physical data), and the transfer of rights validity (juridical data) on the land and/or purchased house.

Before and during the transfer process of land rights, a buyer must exercise caution and care. Believe that he is in the position of a buyer with good faith, and must receive proper legal protection. Based on these criteria, a buyer who has good faith (meets the requirements), even though it is later found out that the land was purchased from who does not have the right person (seller with bad ethics), a land buyer who has good faith cannot be contested by anyone and must receive proper legal protection.

Holders of legal (entitled) land rights can file only compensation claims to sellers who are not entitled, and not to the buyer who has good intentions. This has been regulated in Point IX, Circular Supreme Court Number 7 of 2012, which is formulated, that: a) Protection must be given to a buyer who has good intentions, even though it is found out later that a seller is a person who is not authorized over the land or house as the sale and purchase object; b) Original rights holders can claim only file for damages against unauthorized sellers.

In real fact, the land seller is the legal owner of land rights, but then it turns out that he does not have good faith and even with bad ethics has deliberately sold to a buyer who has good faith according to the criteria of Circular No. 4 of 2016. By utilizing evidence of land rights and or houses that are still in the process of being managed, the seller deliberately applies for credit with proof of land rights as collateral.

The phenomenon occurs because of the collaboration between the seller and a notary who is authorized to issue Covernotes which then become guidelines and guarantees for creditors. This means that documents related to the realization of bank credit are being processed by a notary so that the bank based on the cover note can realize the credit requested by the debtor (Dewi Rachmiyani, et. al., 2017).

Notaries are fully responsible for the contents of the published cover notes. The discrepancy that occurs between the statement in the cover note and the reality on the ground, the notary must be responsible, both criminally and civilly and even morally. This also has implications for the position of a notary who has been given great, and high trust by the community, so that what is stated in legal products, statements, and testimonials can be considered as something true (Dewa Made Dwi Sanjaya, 2017). So, when there is a notary statement that does not match the actual facts, it will have an impact on the injury to the notary profession itself (Rahmiah Kadir, at. al., 2019).

Even though the mortgagee (developer company) was later found to have no good faith and the cover note issued by the Notary was also not in accordance with reality, then based on Point VIII, Circular Letter Supreme Court Number 7 of 2012); "Banks as holders of mortgage rights in good faith must be protected by customers if it is discovered later that the landholder or house rights are, in fact, someone who is not entitled". While resistance (*partij verzet*), and third-party resistance (*derden verzet*) carried out executions based on mortgage rights, Point VII concerning Resistance stipulates, as follows:

- 1) Party-opposition (*partij verzet*) based on Article 207 HIR can only be filed on the grounds that the Opponent has fulfilled its obligations according to the decision or if an error occurs in the confiscation procedure, for example, an excess of the area of the confiscated object, see Article 197 HIR.
- 2) Third-party resistance (*derden verzet*), based on Article 195 Paragraph (6) jo. Article 208 HIR, can only be submitted for reasons of "ownership" (HM, HGB, HGU, HP, and Pawn land).
- 3) For Mortgage Holders, there is no need to file a resistance (*derden verzet*) because the object of the Mortgage cannot be placed for an Execution Seizure except for an Equation Seizure because it is impossible to conduct an execution auction.

Still, in the applying context of good faith principles, there are views that need to be considered by judges in Indonesia in examining and adjudicating issues of good faith principles. It should be highlighted that the drafting list with detailed obligations would make it easier for the judiciary to apply good faith. Duties, such as; 1) the respecting agreed on negotiation framework in the provisions of the contract; 2) the regard to prior contractual practice between parties; 3) the changing information necessary for the success of the agreement; 4) showing a willingness to reach a compromise; 5) the avoiding production of misleading information and; 6) unnecessary delays avoiding (Simamora,2015).

The tasks mentioned above can assist in resolving cases related to good faith. The fact is that in many cases, there must be different experiences in maintaining the objectives contract, and interests of parties. The court will examine whether there has been a violation of good faith, and then try and decide on the law. (Klaus Peter Berger, 2003).

Observing the Circular Letter of the Supreme Court, in my opinion, it has limited judges in their efforts to find law, even though the case mode continues to develop in accordance with developments in commercial law or business law. In several cities, developers have deliberately bought land with a certain area to be plotted or built housing with the help of bank loans. After that, the plots of land are sold directly or housing is built to be sold in cash or on credit to consumers. Until here it is still running normally, but in accordance with the passage of time consumers who have paid or paid in installments (many have even been paid off), suddenly the land plots or houses that have been occupied for a long time are confiscated by the Court. On the grounds that the land or house has been encumbered with mortgage rights while the Developer as a debtor has never paid the Bank's credit installments.

Observing the considerations of the Supreme Court Circular Letter, it is quite reasonable and acceptable if the aim is to avoid inconsistencies in Court decisions, but from the point of view of consumers or buyers who have good ethics and are full of caution, it has created new problems which have resulted in unclear positions unless they continue to be sacrificed.

4. Conclusion

Based on the description of results, and discussion, it can be concluded as follows: 1) In theory, the good faith principles in both the land and/or house sale and purchase agreement are no different from other agreements. In its implementation, the seller (housing developer) does not include the clauses that have been agreed with the preliminary agreement into the purchase agreement. In bad faith (bad ethics), the seller has intentionally done an act that is not stated in the purchase agreement so that it has a buyer harmed. This is where buyers with good faith need to get proper legal protection; 2) Legal protection for buyers with good faith is carried out in two ways, namely; preventive methods or legal protection are regulated by positive law, and or clauses contained in the agreement. While the repressive method of the buyer can directly demand the developer to fulfill all his obligations or through the Consumer Protection Agency and these all methods must prioritize the deliberation principle. If it is not successful, it can use repressive methods, namely, the litigation route to a lawsuit file to the court, legally, buyers with good faith will be examined, and judged based on the criteria set out in the Circular Letter of the Supreme Court of the Republic of Indonesia, namely; SEMA No. 7 of 2012 and SEMA No. 4 of 2016. However, unfortunately, this Circular Letter is instruction only to all judges so that those adjudicating ethical disputes are guided by the Circular Letter, and does not have an impact on legal protection aspects for land or housing buyers who have good ethics.

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