

The Principles of Good Faith in E-Contract Financial Technology

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Abstract. *This research discusses the Principle of Good Faith in E-Contract Financial Technology, which is a relatively new type of agreement in Indonesia. An e-contract can be formed when there is an agreement or mutual consent between the parties involved in the contract during its drafting. The existence of an e-contract is a new development in modern contract types, requiring appropriate regulation based on clear legal foundations. However, in practice, current regulations are not yet able to fully protect the parties involved in e-contracts. Therefore, in the creation of e-contracts, it is necessary to have a controlling mechanism based on moral values and conscience, commonly known as the principle of good faith, to support the principle of freedom of contract. The principle of good faith is considered the most important (super eminent principle) in contracts. Given the various issues that arise, this research aims to discuss the importance of the principle of good faith in e-contract financial technology. This subject research is E-Contract Financial Technology, method research used is normative juridical, with data sourced from secondary data, analyzed using deductive logic. The research results indicate that the principle of good faith needs to be applied and instilled in the parties involved in the contract, namely business actors, in this case, fintech providers, and consumers as fintech users. This principle ensures that the contract's substance is carried out based on solid trust or confidence, as well as the good will of the parties involved. By applying the principle of good faith to the parties involved, the risk of wanprestatie on the part of any party can be minimized, as there is already a foundation of trust and good will.*

Keywords: *E-Contracts; Faith; Financial; Technology.*

1. INTRODUCTION

In the era of globalization, the development of technology, information and communication is increasingly rapid and cannot be avoided, because the development of technology, information and communication will run in accordance with the development of science. From the impact of developments in technology, information and communication that occur in society, a new aspect of law has emerged while still paying attention to the objectives of law, namely justice, benefit and certainty (Kusumastuti & Ishwara, 2023). With this development, people's lifestyles have become instantaneous because the majority of people have high mobility in their daily activities. So people often look for something that is instant and practical in meeting their daily

needs, the implications of which have an impact on meeting growing needs which are spreading to the Indonesian financial industry. This is marked by the presence of Financial Technology, hereinafter referred to as Fintech.

Fintech has grown rapidly in the Indonesian business world in recent years. One of the definitions of Fintech by The National Digital Research Center (NDRC) is "Innovation in financial services" or "innovation in financial services" which is a financial innovation that has a touch of modern technology (Saptono, Ernama Budiharto, 2016). Fintech is the implementation and use of technology to improve banking and financial services which are generally carried out by start-up companies by utilizing the latest software, internet, communications and computing technology (*Financial Technology dan Lembaga Keuangan, Yogyakarta: Gathering Mitra Linkage Bank Syariah Mandiri*, 2016). This concept adapts technological developments combined with the financial sector so that it can provide a more practical, safe and modern financial transaction process (Basrowi, 2019).

The contract law system in Indonesia is regulated in articles 1320 and 1338 BW (*burgerlijk wetboek*) consisting of written contracts and oral contracts (Kusumastuti, 2022). Classically, the preparation of contractual agreements in Indonesia is a conventional contract (preparation is carried out by signature and face-to-face meeting) with all its own advantages and disadvantages in its preparation (Nining, 2012). Contracts can also be created if there is an agreement or agreement between the parties involved in the contract when it is drawn up (Kusumastuti, 2014). In connection with the development of science and technology, the fintech process has become easier to carry out trade transactions in various activities and businesses. With the existence of the internet as a result of developments in science and technology, nowadays many trading activities are carried out electronically and many electronically created trading contracts have also emerged, better known as electronic contracts or abbreviated as e-contracts.

The existence of e-contracts is a new development in modern types of contracts so that they require appropriate arrangements and are based on clear law. Because the trade transaction system which was originally paper based has shifted to a non-paper based (digital) transaction system. The presence of information technology today has at least two implications. These implications have an impact on the economic sector and the legal sector. In the economic sector, the presence of the internet tends to bring about an increasingly transparent, effective and efficient climate. On the other hand, the presence of the internet in the legal sector raises various fundamental problems. One of these legal issues is related to the legal validity of conventional contracts written in electronic form. Until now, it is acknowledged that conventional contract law rules have not been able to reach them completely electronically (Khairandy, 2001) .

The implementation of e-contracts in its development has provisions, but does not guarantee complete consumer protection. Meanwhile, consumers in e-contracts have a weaker position than business actors, namely fintech providers, this is due to the characteristics of e-contracts and weak consumer protection. There is a quite important legal aspect related to technological developments, namely the protection of increasingly diverse forms of agreements including e-contracts. An agreement is a statement of the will of all parties which is formed by two things, namely offer and acceptance. An offer is also defined as a statement of will in which there is a proposal to make an agreement, while acceptance is a statement of agreement from the other party being offered (Yudha, 2010).

In accordance with the ideals of the Founding Fathers that Indonesia is a country based on law (*rechtsstaat*) and not based on power alone (*imachtsstaat*). This teaching developed in the 19th and early 20th centuries, pioneered by Western European legal experts such as Emanuel Kant and Frederick Stahl who used the term *rechtsstaat* while legal experts from the Anglo Saxon school such as AV Dicey used the term rule of law (state concept). Law which means the law holds the highest position in the administration of a legal state) (Kusumastuti, 2016), which in essence Indonesia is a country based on law. However, in its implementation, the current regulations cannot protect the parties involved in e-contracts. So, in making e-contracts, there needs to be a controller based on moral values, conscience, which is usually known as the principle of good faith, to underlie the principle of freedom of contract. The principle of good faith is the most important principle (super eminent principle) in contracts. This is where it is important to emphasize the principle of good faith in making e-contracts, both from fintech providers and consumers.

2. RESEARCH METHODS

The legal research method used is normative juridical, because in discussing the problem, legal rules that are still in force and library materials will be used as the main sources in the research (Amirrudin & Asikin, 2004). Based on this understanding, the research method aims to describe clearly and in detail all the information obtained. In other words, normative legal research, also called library legal research, is research carried out by examining secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials, then these legal materials are arranged systematically, studied and then drawn conclusions with deductive logic in relation to the problem being studied.

The research aims to explore the role of the principle of good faith as a control mechanism in making e-contracts in the financial technology (fintech) sector, in order to support the principle of freedom of contract. Then, seeks to examine the shortcomings of regulations currently in force in protecting parties involved in fintech e-contracts in Indonesia. The research also aims to provide advice regarding the application of the principle of good faith to the parties involved in contracts, both business actors (fintech providers) and consumers (fintech users).

3. RESULTS & DISCUSSION

3.1. The Principle of Good Faith

Good faith as a principle of contract law is essentially honesty and decency/fairness which contains the meaning of trust, transparency, autonomy, compliance with norms, without coercion and without deception. Honesty is concretized in positive legal rules, including; Articles 530, 531, 533 and 548 BW concerning *beziter* in good faith, Article 1963; 1966 and 1977 BW regarding ownership related to expiration; Article 1320 BW specifically requires an agreement and a *halal* cause. Properity/fairness is concretized in the legal rules Articles 1321, 1323, 1328 BW concerning error, coercion and fraud in making contracts; Article 1348 BW concerning payment with faith (Miftah, 2020).

At first, Roman law only recognized *iudicia stricti iuris*, namely contracts that were born from actions according to law (*negotium*) which strictly and formally referred to *ius civile*. If 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 terms). Next,

iudicia bonae fidei develops. Legal acts based on iudicia bonae fidei are called negotia bonae fidei. The concept of negotia comes from ius gentium which requires parties making and implementing contracts to be in good faith (Khairandy, 2009).

The provisions in article 1338 paragraph 3 which stipulate that agreements agreed to by the parties involved in the contract must be carried out in good faith (contractus bonafidei). This arrangement means that the agreement must be carried out with propriety and fairness that was agreed upon at the beginning of the contract. Good faith in Roman law refers to three forms of contractual behavior, namely, firstly, the parties must adhere to their promises or words, secondly, the parties must not take advantage by acting misleadingly towards one of the parties, and thirdly, the parties involved must comply with their obligations. whether stated in the contract or not and behave honestly.

The meaning of good faith and propriety developed in line with the development of Roman contract law, which initially only provided space for contracts that were regulated by law (iudicia stricti iuris which originates from Civil Law). Acceptance of contracts based on bonae fides requires the application of the Principles of Good Faith and Propriety in making and implementing contracts (Khairandy, 2009). The principle of good faith itself needs to be implemented in the parties involved in the contract, namely business actors, which here are fintech organizers, and consumers as fintech users, who carry out the substance of the contract based on solid trust or confidence and the good will of the parties involved. The principle of good faith is divided into two, the first is the principle of relative good faith, namely that a person involved in a contract pays attention to the real attitudes and behavior of the subject, his own judgment is based on common sense and justice. And the second principle of absolute good faith lies in common sense and justice, thus creating an objective measure for assessing situations based on objective norms (Muhtarom, 2014).

3.2. Application of the Principle of Good Faith in E-Contract Financial Technology

All agreements included in electronic contracts must be carried out in good faith (te goeder trouw; in good faith) based on Article 1338 paragraph 3 of the Civil Code. This principle emphasizes that when making an agreement the parties must be based on good faith and propriety, this means that making an agreement between the parties must be based on honesty to achieve common goals. The implementation of the agreement must also refer to what is appropriate and should be followed in social interactions (Priyono, 2017) . An agreement is a manifestation of will, giving rise to rights and obligations for the parties, so that to realize a free will in accordance with the terms of the validity of the agreement, one must uphold high values and morals. These values and morals have a correlation with good faith in drafting agreements (Kusumastuti, 2014).

Good faith does not only refer to the good intentions of the parties involved, but must also refer to the values that develop in society. Good faith basically reflects society's standards of justice and decency. This meaning makes good faith a universal social force that regulates social relations in society, where society has an obligation to have good faith in acting as well as in implementing contracts. The definition of a contract is basically a written document that states the wishes of the parties in achieving their goals and how their parties can gain benefits, obtain protection or limit their responsibilities in achieving their goals (Putra & I Made Dedy Priyanto, 2020). Good faith in the pre-

contract phase is also called subjective good faith. Then good faith in the contract implementation phase is called objective good faith (Innaka et al., 2013).

1) Good faith in the objective sense, that an agreement made must be implemented with due regard for the norms of propriety and decency, which means that the agreement must be implemented in such a way that it does not harm either party;

2) Good faith in the subjective sense, namely the meaning of good faith which lies in a person's inner attitude. In object law, good faith is usually defined as honesty.

The principle of good faith, which is gradually shifting the principle of freedom of contract in an agreement, is not just a discourse, but has been implemented by several countries that adhere to the civil law system and the common law system (Ariyanto, 2016). Good faith is basically an important principle in contracts, especially in making electronic contracts (e-contracts) where the parties involved do not meet face to face. E-contracts in Indonesia are mushrooming in society because they are practical to make, they can be made anytime and anywhere, they are also used in fintech.

Fintech is a financial innovation that has a touch of modern technology. Fintech is also the implementation and use of technology to improve financial banking services that innovate by utilizing developments in internet technology. As time goes by, fintech has a big influence on monetary stability, financial system stability, smooth efficiency and security of the payment system (Miswan, 2019). Because fintech has become integrated with the financial and payment system in Indonesia. However, in practice it turns out that the Fintech business has many potential risks, including in e-contracts (Napitupulu et al., 2017). Fintech business regulations in Indonesia were first issued by the OJK through Financial Services Authority Regulation (POJK) No. 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services. Lending and borrowing money based on information technology, which means a startup that provides an online lending platform (Basuki & Husein, 2018).

The dynamics of the e-contract process in fintech is very complicated, because it does not yet have strong and clear rules or legal umbrellas, it is only mentioned in general terms in existing regulations, many fintech providers harm consumers with the substance of e-contracts that benefit them. This can happen because the substance in the e-contract does not have clear boundaries. But on the other hand, consumers can also *wanprestatie* regarding the contents of the agreed contract due to the lack of strong existing legal umbrella. Fintech regulations are only regulated in Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of Financial Technology, and are not regulated more specifically in the Law. Article 17 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, states that electronic transactions can be carried out in the public or private sphere.

The principle of good faith is contained in article 1338 of the Civil Code which states "All agreements made in accordance with the law are valid as law for those who make them. This agreement cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. Agreements must be implemented in good faith." So, if you look at the provisions of this article, good faith is a principle that must be fulfilled by the parties to an agreement. The parties carrying out Electronic Transactions are required to act in good faith when interacting and/or exchanging Electronic Information and/or Electronic Documents during the transaction. The electronic transaction is outlined in an

e-contract which is binding on the parties. The function of the principle of good faith in the implementation of fintech e-contracts is to minimize the occurrence *wanprestatie* or breaking a promise by one of the parties.

4. CONCLUSION

The dynamics of the e-contract process in fintech is very complicated, because it does not yet have strong and clear rules or legal umbrella, it is only touched upon in general in existing regulations, many fintech operators harm consumers with the substance of e-contracts that benefit them, the substance in e-contracts. The contract also does not have clear boundaries. Therefore, the implementation of e-contracts must be carried out in good faith based on Article 1338 paragraph 3 of the Civil Code which stipulates that agreements agreed to by the parties involved in the contract must be carried out in good faith. The principle of good faith itself needs to be applied and instilled in the parties involved in the contract, namely business actors, here being fintech organizers, and consumers as fintech users, who carry out the substance of the contract based on solid trust or confidence and the good will of the parties involved. By applying the principle of good faith to the parties involved, risks can be minimized *wanprestatie* on one side because there is a principle of trust and good will.

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