



RESEARCH ARTICLE

GOOD INTENTION IN VILLAGE ELECTRICAL CONTRACT AND ELECTRICAL INSTALLATION BASED ON FAIRNESS

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ABSTRACT

Provisional contract for electricity and electrical installation was one of government's provisional contracts. Goods/service provisional contract was done through selection process in tender project. Provisional activities would be announced online through provisional policy institution concerning the existence of regional government provisional activities which offer cooperation with third party. This contractual activities by the government often experience matters out of contract agreement in which government could terminated or delay the execution of inappropriate or out-of-contract activities, and this form of contract was not approached by agreement between both parties and thus considered to be unfair. In goods/service provisional activities there were also underhanded way in doing things particularly in the beginning of provisional activities, such as silent tender winner selection, unclear information during announcement, thus good intention has an important role in goods/service provision particularly in electricity for the village and electrical installation, to provide fair contract.

INTRODUCTION

Electricity contract for the village and electricity installation is one of government policy program to improve people's welfare and mostly directed for regions without electricity. This activity was not done by the government alone, which means that government conduct cooperation with other party regarding electricity provision. Government would open tender project by stating that anyone has the right to participate as the candidate in cooperating with the government in providing electricity. Government activities in goods/service provision has often experience contract and polemic, whereas the goods/service provision activities of the government was mostly in conflict with the agreement, in which government could terminate the contract anytime or delay the work so that it would not finish on time, also provisional contract would mostly did not go through negotiation process and all the content of the program and contract was one-sidedly decided by the government.

Study objective: Objective of this study was to analyze the implementation of good intention in the process of provisional contract particularly for electricity provision for villages and electricity installation.

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It aimed to give knowledge insight for scholars and all parties involved in goods/service provisional contract.

MATERIALS AND METHODS

Method used in this study was normative study with statute approach, conceptual approach, legal analysis in prescriptive manner and deductive-inductive reasoning toward legal rules by using legal interpretation.

RESULTS AND DISCUSSION

Philosophical Aspect: Philosophical consideration of contract as legal umbrella in the contracting activities was to give fairness for parties involved in the contract, whereas all things should be obtained through agreement in order to achieve contract's goal, therefore all parties should conduct the contract with good intention.

Ontological Aspect: Contract regarding electricity for villages and electricity installation is one of the goods/service contracts that often become polemic, from underhanded ways in the offerings of contract to the implementation of contract.

Epistemological Aspect: Good intention has become the basic in contract activities, not just in general matter but in all type

of contracts, as the warranty that all parties conduct the contract according to the agreement.

Axiological Aspect: The implementation of good intention was not limited on contract implementation but also in the provisional process.

The Philosophy of Good Intention: A Germany philosophical expert, Immanuel Kant stated things that absolutely good, are the good will itself. So it is clear, in this matter the question would be “how we can identify the good will”. Kant answer this question by suggesting that there is rational moral law, which can be identified based on reason. According to Kant, moral law was an intellectual effort to find it, by another word not to create it. Legal theoretical law has different approach in analyzing law/legal, justice and moral. Some would support legal relation, justice and moral, while other would separate it. It was all depends on the belief and value of each individual, or in another word, discussion about moral language concerning the right and the wrong. Philosopher would tend to consider this as part of the philosophy known as ethic which offers lots of answers. Argument based on duty, in the dictionary of philosophy can be divided into based on religion and based on non-religious matter. Let’s take argument based on religion, for example, God deliver the truth through holy book or through prophet sayings, transcendental experiences, in which life as a whole was based on. If the truth of this fact cannot shown to be equal with the “authentic” fact, it might be because the fact related with God existence was not fact in the second meaning. Those who believe in God, would satisfy with the first statement (argument based on religion), while those who did not believe in God would have different opinion. Those who believe in God proved that God existed based on rational argument. Second, there was difference opinion concerning power legitimate in the religion and tied to the difference between Catholic and Christian. In this matter, the believer trusts the difference in interpreting the holy bible and the doctrines. Those who felt dissatisfied with the answer that was based on religion would try to look for answers based on rationality over moral issues. Faithful philosopher, Immanuel Kant (1724-1804), for example, consider that something absolute and unconditional about goodness is good intention, while others that commercially said as good (such as rich or healthy) is only good as long as it was used to obtain good results.

Several opinions by experts concerning good intention were as follow, first one was stated by M.L Wry is “*Deed without trickery, without gimmick, without fake, without gibberish, without disturbing others, not only seeing self interest but also by looking at others’ interest as well*” (Khoirul 2018). In Black’s Law Dictionary good intention was defined as: “*In or with good faith, honestly, openly and sincerely, without deceit or fraud, truly, actually, without simulation or pretense*” (Khoirul 2018). In general, good intention as suggested by Sutan Remy Sjahdeini portrait good intention as “*Good intention is the intention of one party in an agreement to not damage its partner and also to not damage the public interest*” (Sutan Remy Sjahdeni 1993). As suggested by Muhammad Faiz that “good intention is an abstract understanding and hard to formulate, thus people would formulating it through events in the court. Good intention in the implementation of agreement related with decency and suitable manner” (Muhammad Faiz 2018).

Good Intention based on Civil Law: Good intention in the agreement law is a doctrine or principle originated from bona fide teaching in Romans Law. This is why good intention is closer with *Civil Law System* than *Common Law System*. Fides means religious source, which means trust given from one to another. Bona fides require good intention in the agreement made by Romans. In the beginning, Roman agreement law would only recognize iudicia stricti iuris, which means agreement born from deeds according to law (negotium) which tightly and formally refers to ius civile (law tools which regulate the right and duty of Roman people). When the judge faces with a case, he/she should decide according to the law and what was stated in the agreement. Later development known as iudicia bonae fidei is a concept sourced from ius gentium (nature law) which teach that one in the making and implement an agreement should be using good intention. This teaching developed along with the recognition of informal agreement as consensual agreement. Good intention in Roman contract law would refers to three behaviors of all parties involved in the contract, First, all parties should stand by their promises; Second, all parties should not obtain profit by being deceitful to other party; Third, all parties should fulfill its duty and act as a noble and honest person, although this duty was not stated implicitly in the agreement.

In the beginning of Roman agreement law, agreement was seen as something ritualistic. The agreement should be made in a ritual (formal contract). While informal contract, such as exchange agreement, rental agreement, civil agreement, and mandate agreement was initially only has moral value. In later development, informal agreements were recognized as consensual agreement, along with the development of good intention among Roman people. In the practice of business, meaning and function of contract law particularly good intention principle as the behavior principle for all parties has become one of the important issues thus in need of separate review. Based on this background, author would like to review more about how meaning and function of good intention in provisional contract.

The freedom of all parties involved in this classical agreement theory was not freedom in absolute meaning, but it was limited to the valid law. What was under agreement shall not in conflict with the existed law. Based on civil law, if what was agreed to was in conflict or against the law, this agreement would be nullified by the law. Contract should be implemented based on good intention in accordance with article 1338 clause (3) of Civil law. Subjective aspect of good intention is honesty and this was closely related with one’s spiritual behavior in the beginning of an agreement that suppose to be able to imagine the fulfillment of required conditions. Objective aspect of agreement was subservience which related with the implementation of agreement (Oscar S. Matompo, and Moh. Nafri Harun 2017). Honesty cannot assess visibly because it was source from human spiritual attitude, which can be seen by follow-up through the seriousness in fasten itself in legal relation through contract agreement. Good intention in the contract law has three functions, good intention in the first function teaches that all contract should be interpreted according to good intention. The second function is the addition function (*aanvullende werking van de goede trouw*), the third function is the limited and terminated function (*beperkende en derogerende werking van de goede trouw*). For contract law in Germany, good intention has three basic functions, first as the *basic legal on interstitial law-making by*

judiciary, second is as the basis of legal defenses in private law suites, third it provides a statutory basis for relocating risk in private contract. Wirjono Prodjodikoro called good intention with the term "honesty" and differentiate it with "decency" would explain that honesty consist of two types, which are (Wirjono Prodjodikoro 2011). Honesty in the beginning of legal relation, such as honesty in holding the goods as one of the condition to obtain the possession of the goods in past time "verjaring". This honesty is taken the form of presuming in the heart of one party that conditions to initiate legal relation has been fulfilled. The law would give protection toward those who has honest attitude, while those with bad intention (te kwade trouw) should take responsibility and carry the risk. This honesty was included in Article 1963 and Article 1977 BW which determine the condition of goods through expiration date. This honesty is subjective and static in characteristic.

Honesty during implementation of rights and duties in legal relation. Article 1338 clause (3) BW suggest that honesty in implementation of agreement would lies in the condition of human soul which its balance point lies in the action of both parties in realizing their promises. Honesty is always subjective, while those being objectives are honesty related with subservience (*bilikheid, redelijkheid*). Decency that has objective trait lies particularly in the condition during agreement. Decency condition (*bilikheid, redelijkheid*) would root in general regulation, which is the effort to obtain balance from various interest lies within the community. In a legal system, in principle, one interest should not be fulfilled by ignoring or pressuring other's interest.

Implementation of good intention in a contract should be born in the beginning of the contract agreement. In the initial process, it can be shown through negotiation, where all parties would give the opportunity to create agreement through negotiation. Highly forbidden is the negotiation with bad intention. Important principles arranged in UNIDROIT principles concerning the reach of good intention suggest that negotiation would carry several conditions as follows:

- Freedom in negotiation
- Responsibility of negotiation with bad intention
- Responsibility over cancelling negotiation with bad intention (Ni Luh Made Mahendrawati SH., M.Hum, 2018).

It was also seen during content interpretation of the contract. To determine content of the contract, interpretation should be done to obtain the intention of other party in the contract. According to Corbin, interpretation is the process when one attaching meaning toward symbols and expression used by others. Good intention has important role during content interpretation. Several law system, such as contract law in Germany has the requirement that contract should be interpreted with good intention/good faith. Article 157 BGB suggest that all contract should be interpreted according to good intention. Just like contract law in Netherland, the role of good intention in content interpretation was built by the court (Ridwan Khairandy 2003). If the contract should be interpreted with good intention, the content of the contract should be interpreted in fair and decent manner. The example of decency in contract was created from the proportion of legal relation between two parties, such as to call it decent, the contract should obtain fairness through the fulfillment of

proportionality principle, thus both were closely related and the final objective was to fulfill the interest of all related parties in the contract. Each relationship with the people should be implemented based on good intention which would give important meaning for community order. Good intention as spiritual attitude to not harm other's interest has become the warranty for better order within the community. Lack of good intention would direct to actions called down by the people. Excoriation would come from the spiritual attitude of those who has no good intention. This spiritual attitude would direct toward 'deliberateness in committing wrongness' in which psychologically speaking, the doer realize their own actions and the consequences it might carry. If good intention was not used as the basic of contract, all parties could do anything include tell lies for profit or to harm other in order to obtain its own objectives. M. L Wry suggested that good intention is deed without trickery, without gimmick, without fake, without gibberish, without disturbing others, not only seeing self interest but also by looking at others' interest as well (Khoirul 2018). In Black's Law Dictionary good intention was defined as: "In or with good faith, honestly, openly and sincerely, without deceit or fraud, truly, actually, without simulation or pretense" (Khoirul 2018).

This good intention was not only initiated in the beginning of the contract, but it should be reflected until the end of the contract, including if one was breaching the contract, thus good intention that should be implemented is compensation for one's default. Sutan Remy Sjahdeini in general has also described good intention as the intention of one party in an agreement to not damage its partner and also to not damage the public interest (Sutan Remy Sjahdeini 1993). Concerning the division of good intention, Muliadi Nur suggest that good intention can be divided into subjective and objective good intention. Good intention in subjective understanding means that someone honesty in conducting legal action, which lies in one's spiritual attitude while conduct legal action. Good intention in objective understanding means that implementation of an agreement should be based on decency norm among the society.

Good intention of parties in conducting agreement should be paying attention toward the appropriateness and based on *pretium iustum* that refers to reason and equity which requires balance between damage and benefit of both parties involved in the agreement. This was in accordance with legal objective to realize fairness. Good intention was used as the guide that content of the contract should mention the value of fairness (Ridwan Khairandy 2003). Good intention should be present since the beginning of the contract, it means that good intention should exist during negotiating pre-agreement requirements, suggested by Ridwan Khairandy that good intention should exist during pre-contract phase whereas all parties start to negotiate up to the agreement and implementation of the contract (Ridwan Khairandy 2003). Good intention element in the making of an agreement can be included by "legal clauses" from article 1320 (civil code law). If a contract was made with good intention but was directed toward damaging one party, it can be said that the agreement was implemented against good intention. Job agreement which generally showed standard agreement should be based on good intention in the making of the contract. This good intention principle should not only show by the first party, but also should be implemented by the second party. However, in the practice, first party should show more good intention actions

since first party is the one composing the job agreement. This good intention principle can be found out during the composing process which is during “negotiation” between first and second party. In this process, bargaining would occur between parties, thus good intention would be shown clearly during this process. Also, with this bargaining phase, “agreement” can be obtained and thus fulfill fairness for both parties. Implementation of good intention was needed in all phases, either before, during or after the agreement. This was meant so that the implementation or the fulfillment of contract objects can work well, from pre-agreement to post-agreement. Such as mention by Wirjono Prodjodikoro, there were two types of good intention which are good intention during legal relation between parties and can be seen in article 1977 (1) Civil Code Law and article 1963 Civil Code Law also good intention during implementation of rights and duties mention in legal relation, while according to Subekti good intention is one of the most important joint in agreement law. He said that agreement or contract with good intention is to implement agreement by depend on decency and appropriateness norms. Good intention can also function as the addition for certain contract content and it can also add statute requirement concerning the agreement. This function can be implemented if the right and duty that exist between parties was not stated implicitly within the contract. Good intention could also work to limit and to terminate. Several law experts do have opinion regarding this matter. They suggest that if certain agreement or certain requirement in the contract or agreement has change, it might provoke unfairness. In this matter, contractual duty can be limited, or even terminated on the basis of good intention.

Good Intention in Electricity Contract and Electricity Installation in the village: Good intention in the contract for village’s electricity and electricity installation for free as one of the standard contract without bargaining process in other commercial contract. To discover this good intention, the government would disclose information regarding goods/service provision implemented through auction under transparency concept in all documents and information. The duty to implement contract based on good intention was already recognized universally within international contract law principle. This international recognition was stated in Vienne Convention of 1969 whereas it was mention that: “*The principles of free consent and of good faith and the pacta sunt servanda rule are universally recognized*”. Other than this, Article 1.7 of UNIDROIT (The International Institute for the Unification of Private Law) stated that “*each party must act in accordance with good faith and fair dealing in international trade*” and “*the parties may not exclude or limit their duty*”. Based on this, good intention principle is the universal principle that should be implemented in each agreement.

Definition of good intention/*good faith* in the contract was clearly described in Simposium Hukum Perdata Nasional held by Badan Pembinaan Hukum Nasional (BPHN) which determines that good intention should be describe as follow:

- Honesty in contract making
- During composing process, it was emphasized that if the contract was made in front of an official, all parties was considered to have good intention (although some suggest their objection)
- As decency during its implementation, which related with good judgment toward the attitude of all parties in implementing the objective stated in the contract, it was

meant to prevent indecent attitude during contract implementation.

Based on the definition of good intention in the contract/agreement, the main element would be honesty. Honesty from all parties involved would covers honesty over self-identity and honesty of will and the objective of all parties. Honesty is the main element in the making of contract/agreement because dishonesty from one party would damage the other party. First of all, as illustration, if there is dishonest party in the beginning of contract making, concerning its identity, there was tendency that he/she would not implement the content of the agreement because he/she only want benefit from other but he/she did not work on his part. Second, those dishonest parties would lie concerning the objective of the contract/agreement. As illustration, A have debt toward B, A cannot pay the debt in the agreed schedule thus A intend to warranty his asset to B, but the parties was not making debt agreement with warranty through fiduciary or bail right, instead they were making transactional agreement with *buyback* option. This illustration shows that parties were dishonest in the objective of contract/agreement because the agreement/contract was not made in accordance with the actual intention. This kind of agreement would be nullified by the law and by cancellation of this contract, it would damage or harming parties involved in the contract.

NBW in regulating the substantial of good intention was stated in Article 6:2 and 6:248 (1) NBW. This requirement has deleted the dualism of term “*goede trouw*”. The definition of good intention as meant in Article 1338 (3) BW was meant as “*redelijkheid en billijkheid*”, while for the term “*goede trouw*” as meant in Article 1963 BW and 1977 BW would still use the term “*goede trouw*”. According to Arthur S. Hartkamp, statute-maker has differentiated good intention in the meaning of subservience over “*reasonable commercial standard affair dealing*” and good intention in the meaning “*honesty in fact*”. To prevent the confusion, in NBW it use good intention in the first meaning only, whereas good intention would then characterize as *reasonableness (redelijkheid)* and *equity (billijkheid)*. According to Arthur S, there were two type of testing model concerning the existence or lack of good intention within the contract, known as *objective test* and *subjective test*. *Objective test* would commonly related with decency/appropriateness, which means that one party cannot defend by stating that he/she has act honestly when he/she did not act appropriately. *Subjective test* toward good intention was related with situation due to *lack of notice*.

It was recognized that to understand the good intention is not an easy task. In the reality, good intention would mostly overlap with decency and appropriateness (*redelijkh eid en billijkheid; reasonableness and equity*). In good equity there was decency, in decency also containing good intention. Therefore, in the practice of the court, good intention and decency was taken as principles complementing one another (*complementary*). UPICC and RUU Kontrak (ELIPS), the substance of good intention was arranged in Article 1.7 and 2.15, which emphasized the need of good intention and honesty (*good faith and fair dealing*) and forbid contract negotiation based on bad intention. Though emphasizing the need of good intention and honesty (*good faith and fair dealing*) was put in contract negotiation, it did not meant that in the next process (i.e. contract implementation), good intention was ignored.

Good intention should be meant and formulated in all contract process. In the letter of Directors of PT. PLN (Ltd), No 0003.E/DIR/2014 also mention that one general requirement from the contract for goods/service provision is Good Intention (good faith), which contain statement below:

- All parties act based on trust and adjusted with rights existed within the contract.
- All parties agreed to conduct contract/agreement honestly without prioritizing party's private interest. If, during contract implementation, one party felt harmed financially, actions should be taken to deal with this situation.

It was clear that action taken in the contract for electricity installation for free should also base on good intention. It can act as guarantee for all parties to provide fair contract and did not financially damaged any other parties. Definition of good intention in Simposium Hukum Perdata Nasional was in line with the opinion of J.M Van Dunne in 3 agreement/contract phases: *pre-contractuale*, *contractuale* and *post-contractuale* phases, good intention should be attached in all phases. Related with these phases, each phase has different legal consequences if there was bad intention. Bad intention during *pre-contractuale* phase could result in lawsuit toward bad intention party in civil and criminal lawsuit.

Conclusion

The essence of good intention is the honesty and fairness which contain the meaning of transparency and trust and did not contain deceive. Good intention was describe as having the attitude and act based on the rules and always law-conscious.

The function of good intention in the process of goods/service provision particularly in the contract for village electricity and electricity installation was that all parties would act according to the agreed contract, however, beyond this good intention has the role since the announcement of goods/service provisional contract. The reflection of this good intention was the clear and transparent information being announced, so that private party or provider could obtain full information, and was given the opportunity to negotiate in bargaining if there were things felt unfair by the private party. Afterward, good intention would act in the contract process in which all parties would not do or act beyond the agreed behavior/attitude, and particularly for village electricity and electricity installation, government would not want to use the position as one in power to suppress the other party or to act beyond expected.

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