

# Policies and Responsibilities of Government Officials during the Covid-19: The Problem of Interpreting the Phrase of Good Faith in Law Number 2 of 2020

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**Abstract:** Article 27 Paragraph (2) Law Number 2 of 2020 introduces the term "good faith" which forms the basis for the policy of non-prosecution of government officials either criminally or civilly. The good faith phrase has led to public polemics and debates. This article aims to describe the position of Law Number 2 of 2020 as well as the meaning and the concept of "good faith" as found in Law No. 2 of 2020 based on the Civil Code. This research utilizes the library method. The research results show that: first, Law Number 2 of 2020 is an adequate legal instrument to provide a strong foundation for the government and related institutions to make certain necessary policies and measures. Second, the good faith phrase as found in Law No. 2 of 2020 can be interpreted and implemented through 4 (four) indicators, namely: (1) there is business; (2) legal guarantees through regulations that are a win-win solution; (3) implementation of regulations that are appropriate and run optimally; and (4) cooperation between all parties.

**Kata kunci:** *Government policy, good faith, civil law, Covid-19*

**Abstrak:** Pasal 27 Ayat (2) Undang-undang Nomor 2 Tahun 2020 menyebut kata "iktikad baik" yang menjadi dasar kebijakan pejabat pemerintah tidak dapat dituntut secara pidana maupun perdata. Frase iktikad baik tersebut sempat menimbulkan polemik dan perdebatan di kalangan masyarakat. Artikel ini bertujuan mendeskripsikan kedudukan Undang-undang Nomor 2 Tahun 2020 dan sekaligus makna dan konsep "iktikad baik" yang ada dalam undang-undang tersebut berdasar Civil Code. Penelitian ini menggunakan metode kepustakaan. Hasil penelitian menunjukkan bahwa: *pertama*, UU No. 2 Tahun 2020 merupakan perangkat hukum yang memadai untuk memberikan landasan yang kuat bagi pemerintah dan lembaga-lembaga terkait untuk pengambilan kebijakan dan langkah-langkah tertentu yang diperlukan. *Kedua*, frase "iktikad baik" yang ada dalam UU No. 2 Tahun 2020 dapat diinterpretasikan dan diterapkan melalui 4 (empat) indikator, yaitu: (1) adanya usaha; (2) jaminan hukum melalui regulasi yang *win-win solution*; (3) implementasi regulasi tepat dan berjalan maksimal; dan (4) adanya kerja sama antara semua pihak.

**Kata kunci:** *Kebijakan pemerintah, iktikad baik, hukum perdata; Covid-19*

## Introduction

The Covid-19 pandemic has recorded itself as a virus capable of changing various aspects of human life which have been carrying on for years. Covid-19 is a virus that was initially discovered in Wuhan, China, with symptoms resembling influenza and coughing.

Covid-19 first appeared at the end of 2019 in Wuhan City, China. Until November 11, 2020, Covid-19 had penetrated and entered 219 countries with the number of confirmed cases reaching up to 50,810,763 people and the number of death rate worldwide reaching up to 1,263,844 people.<sup>1</sup> Meanwhile in Indonesia, the first confirmed case of Covid-19 were found on March 2, 2020 and up to November 11, 2020 a total of 448,118 positive cases had been recorded. A total of 378,982 people infected with the Covid-19 virus were declared cured, while 14,836 people were declared dead.<sup>2</sup>

The lack of research on the Covid-19 has turned the virus into becoming a global concern, ranging from endemic to pandemic status. Various steps have been taken by the Indonesian government to control the spread of the virus, ranging from working from home policies, studying from home, to strictly limiting religious worship activities and the mobility of the citizens.<sup>3</sup>

The Covid-19 pandemic has impacted all aspects of life, including the economy of Indonesia. In response, the government has issued various policies to tackle and overcome the problems caused by the spread of the virus, although with various deficiencies, considering the circumstances surrounding the pandemic that have never been predicted before. Legally speaking, on the other hand, regulations or policies adopted by the state have principles to guarantee the existence

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<sup>1</sup> Abidah et al., "The Impact of Covid-19 to Indonesian Education and Its Relation to the Philosophy of 'Merdeka Belajar,'" *Studies in Philosophy of Science and Education (SiPoSE)* 1, no. 1 (2020), pp. 38-49.

<sup>2</sup> Dewi Susanna, "When Will the COVID-19 Pandemic in Indonesia End?," *Kesmas* 15, no. 4 (2020), pp. 160-162.

<sup>3</sup> Makhrus, "Policies and Implementation of Village Fund Direct Cash Assistance (BLT-DD) during the Covid-19 Pandemic in Central Java: Juridical and Maqasid ash-Shari'a Perspective", *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum*, 55, no. 2 (2021), pp. 367-392.

of human life.<sup>4</sup> The promulgation of Law Number 2 of 2020 on the Stipulation of Government Regulation in lieu of Law Number 1 of 2020 on State Financial Policies and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and/or in the Context of Facing Threats That Endanger the National Economy and/or Financial System Stability is the regulation made by the government in an effort to handle state finances during the pandemic.

The interesting aspect is that in Article 27 Paragraph (2) of Law No. 2 of 2020, it is stated that various officials related to state finances cannot be prosecuted criminally or civilly, if the policy is based on good faith in accordance with the provisions of the law, as an effort in maintaining the national economy.<sup>5</sup>

Disruption of economic activity has implications on changes in the posture of the State Revenue and Expenditure Budget (*Anggaran Pendapatan dan Belanja Negara*, APBN) for the 2020 Fiscal Year, both on the State Revenue side, as well as the State Expenditure and the Financing side. This is stated in the considerations for the issuance of Law No. 20 of 2020. The explanation section of the Law affirms that there is a potential for disruption to economic activity which could impact changes in the State Budget for Fiscal Year 2020 originating from disruptions to economic activity or vice versa. Disruptions to economic activity disrupt the 2020 State Budget from the State Revenue side. He further said that a state financial and fiscal policy response is needed to deal with the risk of the Corona Virus Disease 2019 (Covid-19) pandemic, including increasing spending to mitigate health risks, protect the community, and maintain business activities.

When viewed historically, based on the explanation section in Law No. 2 of 2020, this policy was taken as an effort to address the impact on the country's economy that had arisen due to the pandemic. State financial institutions are required to take quick and appropriate

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<sup>4</sup> Nak-huyn Han, Seok-beom Choi, and Jung-han Bae, "A Study on the Principle of Good Faith in Korea : Concept and Application," *Korea Trade Review* 44, no. 6 (2019), pp. 285–302.

<sup>5</sup> Article 27 of Law Number 2 of 2020 on the Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 on State Financial Policies and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and/or in the Context of Facing Harmful Threats to National Economy and/or Financial System Stability.

steps in restoring the business world. This urgent condition became the basis for the emergence of Article 27 of Law no. 2 of 2020 which states that officials related to state finances cannot be prosecuted criminally and civilly.

The inability of state officials to be punished as stated in Article 27 of Law No. 2 of 2020 has raised pros and cons in the society. The community's response to government regulations in a legal perspective can be seen as direct interaction between the public in viewing and assessing government performance which can influence decisions to be taken by the government.<sup>6</sup> It is natural that the government policy in a country will give rise to the perception of its citizens.<sup>7</sup>

Unrest in the community is provoked when the term “good faith” in Law No. 2 of 2020 is used as a basis for government officials not being able to be prosecuted financially and civilly. Therefore, the rightful interpretation of the phrase is direly needed. If one only understands that the use of state finances cannot be prosecuted criminally or civilly, then this will potentially cause the public to render a negative perception of the government.<sup>8</sup>

The Indonesian Civil Code in Article 1338 Paragraph (3) states that in contract law, the principle of good faith is an implementation of concrete law. This can be deemed inappropriate, considering that in contract law, good faith includes concrete law as well as the legal principle of the said contract. Concrete law is included in the dogmatic realm, while legal principles are included in the philosophical level.<sup>9</sup>

The principle of good faith must be the spirit in every agreement. Without the application of the good faith principle, subsequently means the violation of the principles in Book III of the Civil Code, especially the principle of freedom of contract. Apart from that, it would also mean the violation of the consumer protection law. additionally, this would incur the opportunities for the implementation

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<sup>6</sup> Halil Rahman Basaran, “The Principle of Good Faith in International Law,” *Hong Kong Law Journal*, no. August (2021), pp. 507–524.

<sup>7</sup> Edward Bayley, “A Doctrine of Good Faith in New Zealand Contractual Relationships” (University of Canterbury, 2009).

<sup>8</sup> Ajeng Parameswari Sekarsih and Dewa Nyoman Rai Asmara, “Problematisa Hukum Mengenai Ketentuan Pasal 27 Ayat (3) Undang – Undang Nomor 2 Tahun 2020,” *Jurnal Kertha Desa* 8, no. 11 (2020), pp. 1–13.

<sup>9</sup> Ithiwat Methatham, “The Role of Good Faith in Pre-Contractual Liability,” *Thammasat Business Law Journal* 10 (2020), pp. 107–118.

of freedom of contract based on unequal bargaining powers and pays no attention to consumer protection and the people's sense of justice. An unbalanced contract will harm one of the parties and can indirectly cancel the said contract.<sup>10</sup>

The word “good faith” can be interpreted as an attempt to take a middle ground to accommodate the interests of all parties who enter into an agreement. Textually, the word “good faith” may not be included in an agreement, but that does not necessarily make an agreement strays from the said principle.<sup>11</sup>

In Indonesia, good faith in its implementation leads to the same regulations, namely the Civil Code. Thus, it can be said that every good faith in agreements and legislation uses a civil law perspective. The study conducted by Schafer shows that a policy is prone to various interpretations which ultimately lead to mutually agreed meanings. In other words, the meaning of a word in a regulation is the embodiment of the government's aspiration. A word can be interpreted based on custom, but if it involves many parties then which custom applies will be questioned.<sup>12</sup>

The “good faith” phrase in Article 27 of Law No. 2 of 2020 has stirred debate since it states that officials cannot be subject to criminal or civil sanctions for policies they take related to state finances. This Law was passed on May 1, 2020. Certainly, it remains fresh in the society's memories that, on December 6, 2020 a government official at the Ministerial level was named as a suspect for alleged corruption in the humanitarian assistance of handling the Covid-19. He received the criminal as well as the civil charges.<sup>13</sup>

Several scholars have conducted research related to Law No. 2 of 2020. Elmiana Febri Syahputri *et al.* for example, conducted research

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<sup>10</sup> Widhayani Dian Pawestri Rizky Amalia, Hilda Yunita Sabrie, “The Principle of Good Faith in The Choice of Law of Foreign Direct Investment Contracts in Indonesia,” *Fiat Justicia* 12, no. 2 (2018), pp. 170–180.

<sup>11</sup> Catherine Valcke, “Bhasin V Hrynew : Why a General Duty of Good Faith Would be Out of Place in English Canadian Contract Law,” *Journal of Commonwealth law* 1 (2019), pp. 65–82.

<sup>12</sup> Rosalie Jukier, “Good Faith in Contract : A Judicial Dialogue Between Common Law Canada and Québec,” *The Journal of Commonwealth Law* 1, no. 1 (2019).

<sup>13</sup> St. Elmiana Febri Syahputri *et al.*, “Perspektif Ekonomi: Stimulus Pandemi Covid-19 Dalam Undang-Undang Nomor 2 Tahun 2020,” *Journal of Economic, Management, Accounting and Technology* 4, no. 2 (2021), pp. 138–148.

with a focus on Law No. 2 of 2020 as a stimulus from an economic perspective.<sup>14</sup> Meanwhile, Yolanda Aninditya reviewed Article 27 Paragraph (1) regarding the priorities taken by the government in dealing with the Covid-19 pandemic. Yolanda's research shows that the government is more concerned with dealing with economic threats and financial system stability compared to handling the Covid-19 outbreak which is considered legally inappropriate.<sup>15</sup> Nearly the similar feature was done by Sekarsih and Asmara. They conducted research focusing on Article 27 Paragraph (3) which states that financial policies cannot be registered at the State Administrative Court.<sup>16</sup> Sakarsih's research is similar to the present research. However, this research focuses more on Article 27 Paragraph (2) related to the phrase good faith which is the basis for not being able to carry out criminal or civil charges for state officials who issue policies related to state finances.

Several other studies were conducted by Abdul Haq, Santi Ayu Puteri, Widigdo, and Makhrus. Abdul Haq *et al.*, stated in their research that there were several principles for forming Legislation that were not fulfilled in the stipulation of Law No. 2 of 2020,<sup>17</sup> while Santi Ayu Putri, *et. al.*, highlighted that there are articles that have vertical inconsistencies in Law No. 2 of 2020, namely Article 2 Paragraph (1) and Article 27 Paragraph (1) and (2).<sup>18</sup> In contrast to the two, Widigdo and Makhrus are more focused on the implementation of Law No. 2 of 2020. Widigdo, who researched the implementation of prevention and handling of potential Rural Bank liquidity risks through short-term liquidity loans, as stated in Law No. 2 of 2020 concluded that there had

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<sup>14</sup> *Ibid.*

<sup>15</sup> Yolanda Aniditya, "Analisis Yuridis Undang-Undang No. 2 Tahun 2020 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang No.1 Tahun 2020 Tentang Kebijakan Keuangan Negara Dan Stabilitas Sistem Keuangan Untuk Penanganan Pandemi Corona Virus Disease 2019 (Covid-19)", (Universitas Muhammadiyah Jember, 2020).

<sup>16</sup> Sekarsih and Asmara, "Problematika Hukum Mengenai Ketentuan Pasal 27 Ayat ( 3 ) Undang – Undang Nomor 2 Tahun 2020," *Jurnal Kertha Desa* 8, no. 11 (2020), pp. 1–13.

<sup>17</sup> Yasin Abdul Haq, Irwandi, and Firmansyah Putra, "Tinjauan Yuridis Undang-undang Nomor 2 Tahun 2020 untuk Penanganan Pandemi Corona Virus Disease 2019," *Limbago* 2, no. 3 (2021), pp. 442–457.

<sup>18</sup> Santi Ayu Puteri, Aprillyna Ilmy Akmalya, and Rinawasih, "Analisa Yuridis Inkonsistensi Vertikal Undang-undang - Peraturan Pemerintah Pengganti Undang-undang," *Education and development Institut* 10, no. 1 (2022): 30–36.

been a transition microprudential banking supervision authority to the Financial Services Authority.<sup>19</sup> Meanwhile Makhrus, who researched government policies related to Village Fund Direct Cash Assistance (*Bantuan Langsung Tunai*, BLT), especially in Central Java, concluded that the implementation of the policy experienced quite a number of problems. However, from a juridical and normative perspective, this policy shows that the government has carried out the mandate of Pancasila and the 1945 Constitution to protect the citizens. Apart from that, it is also in line with the objective of establishing Islamic law (*maqasid al-syari'ah*).<sup>20</sup>

Based on the above description, it can be stated that there has been no work or research that examines specifically the phrase good faith in Article 27 of Law Number 2 of 2020. This research focuses on and seeks to answer questions related to the existing interpretation of “good faith” in Law Number 2 of 2020 is seen from the perspective of the Civil Code.

This is a normative research. Data collection was carried out through literature review related to the research focus. The data were taken from a number of sources of literature and documentation of government regulatory documents. The data analysis was carried out using content analysis, which is an analysis carried out through a series of procedures to ensure that conclusions are obtained through a valid literature review.

### **The Covid-19 Pandemic and the Enactment of Law No. 2 of 2020**

The Covid-19 pandemic has changed many fundamental aspects of human life, both individually and socially. This condition gets even worse wherein the impacts extend to the global level.<sup>21</sup> In fact, there have been various speculations on the subsequent impact that are no

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<sup>19</sup> Setyo Karno Widigdo, “Implikasi Hukum Undang-undang No. 2 Tahun 2020 terhadap Pencegahan dan Penanganan Potensi Risiko Likuiditas Bank Perkreditan Rakyat Melalui Pinjaman Likuiditas Jangka Pendek,” *Bina Mulia Hukum* 5, no. 2 (2020), pp. 137–155.

<sup>20</sup> Makhrus, “Policies and Implementation of Village Fund Direct Cash Assistance (BLT-DD) during the Covid-19 Pandemic in Central Java: Juridical and Maqasid ash-Shari'a Perspective”, *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum*, 55, no. 2 (2021), pp. 367-392.

<sup>21</sup> Abidah et al., “The Impact of Covid-19 to Indonesian Education and Its Relation to the Philosophy of ‘Merdeka Belajar.’”

less frightening from various sides.<sup>22</sup> It is unquestionably challenging to go through difficult times during a pandemic.<sup>23</sup> Therefore, an understanding of Covid-19 as a form of health pandemic is urgently needed to enable everyone to contribute and understand each other when dealing with extraordinary conditions.<sup>24</sup>

It has influenced a number of aspects in human life, including but not limited to education, health, economy, and socio-culture. In the education realm alone, the long-established learning patterns must be altered from the learning models that have been running for hundreds of years.<sup>25</sup> Various learning methods and concepts emerged as a form of learning creativity.<sup>26</sup> Meanwhile in the tourism sector, Covid-19 has affected the national and regional economies as well.<sup>27</sup>

The explanation section of Law No. 2 of 2020 affirms that the Covid-19 pandemic has also significantly disrupted economic activity and has major implications for the economies of most countries around the world, in which Indonesia is not immune.<sup>28</sup> At that time, global economic growth is expected to decline from 3% (three percent) to only 1.5% (one point five percent) or even lower. Admitted or not, the pandemic has disrupted economic activity in various financial sectors

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<sup>22</sup> Dina Tri and Andrie Pasca, "Risk Analysis on the Growth Rate of Covid-19 Cases in Indonesia Using Statistical Distribution Model," *Enthusiastic* 1, no. 1 (2021), pp. 13–19.

<sup>23</sup> Yulia Anita Indrianingrum and Alma Wiranta, "Correlation of Factors Causing the Death of COVID-19 Patients and Enforcement of Regulations in Handling COVID-19 in the City of Bogor," *Bina Praja* 13, no. 3 (2021), pp. 471–484.

<sup>24</sup> Riyanti Djalante et al., "Progress in Disaster Science Review and Analysis of Current Responses to COVID-19 in Indonesia : Period of January to March 2020," *ELSEIVER* 6 (2020).

<sup>25</sup> Shixian Gu et al., "Online Re-Examination of Postgraduate Medical Students during the COVID-19 Pandemic," *BMC Medical Education* 22, no. 1 (2022), pp. 1–9, <https://doi.org/10.1186/s12909-022-03100-8>.

<sup>26</sup> Dwi Prasetyanto, Muhamad Rizki, and Yos Sunitiyoso, "Online Learning Participation Intention after COVID-19 Pandemic in Indonesia: Do Students Still Make Trips for Online Class?," *Sustainability* 14, no. 4 (2022).

<sup>27</sup> Buntu Marannu Eppang et al., "The Impacts of the Covid-19 Pandemic on the Tourism Economy in South Sulawesi, Indonesia," *Psychology and Education* (2021) 58, no. 2 (2021), pp. 2613–2624.

<sup>28</sup> Law of the Republic of Indonesia Number 2 of 2020 on Stipulation of Government Regulation in lieu of Law Number 1 of 2020 on State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic.

in Indonesia.<sup>29</sup> One of the implications of the Covid-19 pandemic is the decline in the economic growth of Indonesia which has reached 4% (four percent).<sup>30</sup> The teaching and learning process that is carried out online also contributes to reducing the economic side of parties outside the school, from food traders to school supplies.<sup>31</sup> Schools themselves are not able to focus on the implementation of the teaching and learning process directly, considering that everything has been determined by the government.<sup>32</sup>

Various occurrences that have aroused during the pandemic, including its impact, need to be known by the wider community,<sup>33</sup> including potential changes to the state budget.<sup>34</sup> The recovery process from pandemic to endemic is a long one that requires the participation of the government with all the relevant regulations.<sup>35</sup> Finance as one of the main strengths of a country certainly requires special attention.<sup>36</sup> Additionally, the readiness of various parties and stake-holders is needed in anticipating various possibilities and consequences that can occur during the pandemic.<sup>37</sup>

Pressure on the financial sector has significantly affected the 2020 State Budget, especially on the financing side. The implications of

<sup>29</sup> *Ibid.*

<sup>30</sup> Widigdo, "Implikasi Hukum Undang-undang No. 2 Tahun 2020 terhadap Pencegahan dan Penanganan Potensi Risiko Likuiditas Bank Perkreditan Rakyat Melalui Pinjaman Likuiditas Jangka Pendek."

<sup>31</sup> Susanna, "When Will the COVID-19 Pandemic in Indonesia End?"

<sup>32</sup> Irfan Fauzi and Iman Hermawan Sastra Khusuma, "Teachers' Elementary School in Online Learning of COVID-19 Pandemic Conditions," *Jurnal Iqra': Kajian Ilmu Pendidikan* 5, no. 1 (2020), pp. 58–70.

<sup>33</sup> Ni Putu Emy Darma Yanti1 et al., "Gambaran Pengetahuan Masyarakat Tentang Covid-19 dan Perilaku Masyarakat di Masa Pandemi Covid-19," *Keperawatan Jiwa* 8, no. 3 (2020), pp. 491–504.

<sup>34</sup> Ali Roziqin, Syasya Y.F. Mas'udi, and Iradhad T. Sihidi, "An Analysis of Indonesian Government Policies Against," *Public Administration and Policy* 24, no. 1 (2021), pp. 92–107.

<sup>35</sup> Muhyiddin and Hanan Nugroho, "A Year of Covid-19: A Long Road to Recovery and Acceleration of Indonesia 's Development," *The Indonesian Journal of Development Planning* V, no. 1 (2021), pp. 1–19.

<sup>36</sup> Susilawati, Reinpal Falefi, and Agus Purwoko, "Impact of COVID- 19 ' s Pandemic on the Economy of Indonesia," *BIRCI-Journal* 3, no. 2 (2020): 1147–1156.

<sup>37</sup> Narila Mutia Nasir, Baequni, and Mochamad Iqbal Nurmansyah, "Misinformation Related to Covid-19 in Indonesia," *Jurnal Administrasi Kesehatan Indonesia* 8, no. 1 (2020).

the Covid-19 pandemic have also impacted in the emerging threat of further deterioration in the financial system. This was demonstrated by the decline in various domestic economic activities due to measures to deal with the Covid-19 pandemic which put at risk macroeconomic and financial system instability that needed to be jointly mitigated by the government and policy coordination within the Financial System Stability Committee (*Komite Stabilitas Sistem Keuangan*, KSSK). Therefore, various efforts from the government and related institutions are needed to take forward-looking actions to maintain financial sector stability.<sup>38</sup>

### Good Faith in the Civil Code

Good faith as stated in Article 27 of Law Number 2 of 2020 is a line of words that reads, “in accordance with statutory provisions”. This shows that other regulations are needed to assess good faith as well as other regulations that were enacted during the pandemic. In the view of civil law, good faith is a discussion of the Civil Code, as stated in Article 1338.

Essentially, there are accompanying principles in good faith, namely honesty, fairness, without coercion and does not contain elements of fraud. This renders a permanent fact. For this reason, joint legal awareness is needed, both the community and the government.<sup>39</sup>

As a principle of contract law, good faith must be linked to its accompanying principle, namely honesty and fair decency.<sup>40</sup> Honesty is concretized in the rules of positive law, including: Articles 530, 531, 533 and 548 of the *Burgelijke Wetboek* (BW) which concern *bezijter* in good faith; Article 1963, 1966 and 1977 of the BW which concern holdings related to expiration; Article 1320 of the BW, specifically regarding terms of agreement and a lawful cause. Decency and justice are concretized into the rule of law as can be seen in Articles 1321, 1323, 1328 of the BW concerning negligence, coercion and fraud in making

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<sup>38</sup> Aniditya, “Analisis Yuridis Undang-Undang No.2 Tahun 2020 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang No.1 Tahun 2020 Tentang Kebijakan Keuangan Negara Dan Stabilitas Sistem Keuangan Untuk Penanganan Pandemi Corona Virus Disease 2019 (Covid-19).”

<sup>39</sup> Hrvoje Markovinović Nina Tepeš, “The Cisg and the Good Faith Principle,” *Journal of Law & Commerce* 38 (2020), pp. 10–34.

<sup>40</sup> Dina Esmaeil, “Reform of the Doctrine of Utmost Good Faith: A Comparative Study Between the UK and Saudi Arabia,” 2018.

contracts; Article 1348 of the BW regarding payments in good faith, Article 1337 BW concerning prohibited causes and Articles 1338, 1339 BW. Meanwhile, good faith as a principle of contract law, in practice comprises of three functions: (1) complementary/add-on (*aanvullende werking van de goede trouw*) the contents of the agreement; (2) limiting the implementation of the agreement (*derogorende werking van de goede trouw*); and (3) abolish the implementation of the agreement.<sup>41</sup>

In the perspective of the contract, good faith includes the natural element, namely the existence of objects that are essentially attached to the contract.<sup>42</sup> Thus it can be understood that good faith is not a source of law, but rather a source of the rule of law. As a source, good faith plays a role in a legal action.<sup>43</sup> Parties to an agreement or policy are directly required to show their performance.

Changes in the world will affect the execution power of a contract.<sup>44</sup> Therefore, mastery and expertise are needed in compiling and interpreting the meaning of the words.<sup>45</sup> In this case, the hermeneutic method is deemed appropriate for understanding and interpreting every word in the contract. This method will lead the interpreter to always consider all the principles of contract interpretation.<sup>46</sup> A neglectful attitude towards good faith by one party will give rise to the seeds of distrust of the other party.<sup>47</sup>

The legal principles which are the pillars of contract law consist of the principles of freedom of contract which stands parallel to the other legal principles based on a balance. These principles include: (1)

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<sup>41</sup> Eylem Apaydin, *The Principle of Good Faith in Contracts*, 2019.

<sup>42</sup> Santiago Dussan Laverde, "A Commentary on the Meaning of Objective Good Faith in the Translex Principles through International Arbitration: A Law & Economics Approach," *Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito (RECHTD)* 13, no. 2 (2021), pp. 164–179.

<sup>43</sup> Umar Haris Sanjaya, "Good Faith on Contract Performance," *Arena Hukum* 12, no. 3 (2019), pp. 500–523.

<sup>44</sup> Andrew D M, "Good Faith in WTO Dispute Settlement," *Melbourne Journal of International Law* 7 (2007).

<sup>45</sup> Paul S Davies, "The Basis of Contractual Duties," *Journal of Commonwealth Law* 1, no. March 2018 (2019), pp. 1–34.

<sup>46</sup> Nuli Bagyo and Indratirini, "Application of The Principle of Good Faith In Land Buying," *Yurisdiiksi* 18, no. 1 (2022), pp. 114–125.

<sup>47</sup> Abdullah, F Kari, and Ismail Nawang, "Incorporating the Concept of Good Faith in Australian Contract Law : Implication or Construction," *Social Sciences & Humanities* 23 (2015), pp. 119–128.

the principle of *pacta sunt servanda*; (2) the principle of equality; (3) the principle of profit of contract; (4) the principle of consensualism; and (5) the principle of good faith. Especially for the principle of good faith, it is said in Article 1338 of the Civil Code that all agreements must be made in good faith.

The agreement is not only binding for things that are expressly stated in the agreement, but also everything that according to its nature, the agreement is required by decency, custom and law. There are three forms of behavior in a contract that must be carried out by the parties involved in it as a form of good faith that has been implemented in Roman law, namely: keeping promises; misleading the other party; and complying with the obligations in an effort to demonstrate respectable behavior.<sup>48</sup>

Good faith is understood as openness in an effort to achieve common goals.<sup>49</sup> Thus, it can be concluded that the principle of good faith contains several elements, namely: honesty, appropriateness, and fairness.

The Civil Code of various of other countries states that good faith in the civil law regulations of a country has its own place to be discussed.<sup>50</sup> Indonesia is one of the countries whose regulations contain good faith provisions in an agreement, as stated in Article 1338 of the Civil Code. Therefore, every “good faith” entry that appears in laws and regulations can be seen from the perspective of the Civil Code as a source of civil law.

For a country that adheres to Islamic ideology or the majority of its citizens are Muslim, good faith renders a more complex discussion.<sup>51</sup> In general, the understanding of the definition of “good faith” consists of two meanings, namely: an objective meaning in which the contents made must be carried out by observing the norms of decency and decency; and the subjective meaning in which “good faith” lies in one’s

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<sup>48</sup> Dewanti, Pujiyono, and Muryanto, “The Application of Good Faith Principle of Precontract in Common Law and Civil Law Contry.”

<sup>49</sup> Umar Haris Sanjaya, “Good Faith on Contract Performance,” *Arena Hukum* 12, no. 3 (2019), pp. 500–523.

<sup>50</sup> Mahsuda Tadjibayeva Rustamjonovna, “The Principle Of Good Faith In Civil Law,” *Turkish Journal of Computer and Mathematics Education* 12, no. 4 (2021), pp. 1062–1067.

<sup>51</sup> M Khan, N H Han, and S B Hoi, “Good Faith Principle of Contract Law for the Islamic Banking System,” *Utopía y Praxis Latinoamericana* 24, no. 5 (2019).

inner attitude.<sup>52</sup>

Standard contracts are not necessarily prohibited.<sup>53</sup> If a violation of the principle of good faith is categorized as a violation of subjective conditions, the agreement is null and void.<sup>54</sup> According to a report published in the Harvard Law Review, in 1971, 99 percent of agreements made in the United States were in the form of standard contracts or standard agreements.<sup>55</sup> This term refers to the terms of the agreement that has been standardized beforehand.<sup>56</sup> The standard agreement in Indonesia is known through Article 1320 of the Civil Code, where in its implementation, agreements are not made through a bargaining process. Rather, one party has the authority to determine the contents of the agreement. The standard agreement indicates the different levels of the parties.<sup>57</sup> In addition, the world of agreement also recognizes negligence or default on the part of the Debtor.<sup>58</sup> This is regulated in Article 1266, where cancellation conditions must be submitted.

### **The Problems Surrounding Good Faith in Law No. 2 of 2020**

One form of government policy is contained in Article 27 Paragraph (2) of Law Number 2 of 2020, which states that the word “good faith” is the basis for the policy that state officials cannot be

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<sup>52</sup> Julian Bailey, “Faith, Hope, and Charity’: The Role of Good Faith in Construction – a Common Law Perspective,” *Revista Derecho & Sociedad* (2020), pp. 19–31.

<sup>53</sup> Zaldi Bagus Pratama Putra, “The Basics of Good Faith and Good Intention in Land Purchase System in Indonesia,” *Journal of Law and Legal Reform* 1, no. May (2020), pp. 691–703.

<sup>54</sup> Alexander S. Komarov, “Internationality, Uniformity and Observance of Good Faith as Criteria in Interpretation of Cisc: Some Remarks on Article 7(1),” *Journal of Law and Commerce* 7, no. 1 (2001), pp. 75–85.

<sup>55</sup> Chen Lei, “The Historical Development of the Civil Law Tradition in China: A Private Law Perspective,” *The Legal History Review* 78, no. September 2009 (2018), pp. 159–181.

<sup>56</sup> Novran Harisa, “Good Faith In Arbitration Resolution In Indonesia,” *Mimbar* 35, no. 1 (2019), pp. 185–191.

<sup>57</sup> I Gusti Ngurah Muliarta, “The Principle of Good Faith in the Sale and Purchase Agreement of Rights Made Before a Notary,” *Community Service Journal of Law* 1, no. 1 (2022), pp. 44–48.

<sup>58</sup> Brighton M Mupangavanhu, “Evolving Statutory Derivative Action Principles in South Africa: The Good Faith Criterion and Other Legal Grounds,” *Journal of African Law* 2, no. 2 (2021), pp. 293–311.

prosecuted criminally or civilly. In the Civil Code, as one of the main sources of law in Indonesia, the word good faith is associated with an agreement. This is stated in Article 1338 paragraph (3) of the Civil Code which stipulates that an agreement must be implemented in good faith. The agreement or contract itself is a legal act. In the context of Law No. 2 of 2020, every action taken by the government is a legal action that must be based on good faith.

In an agreement, good faith begins when there is an intention to draw up an agreement or a rule. The Civil Code has stated the legal consequences of a valid agreement, as stated in Articles 1338 to 1341 of the Civil Code. The legal consequences in question are: (1) the agreement applies as a law; (2) cannot be withdrawn unilaterally, and (3) the implementation is carried out in good faith.

### 1. Agreement Applies as Law

In Article 1338, appears the word “legally” which means that it must fulfill the legal requirements of the agreement as determined by law, and the word “binding as a law” which means binding for the parties who have made an agreement. The legal consequences of an agreement can expand and are often beyond what has been predicted, given the many parties that can enter into a conflict.<sup>59</sup>

All agreements are made to be legally applicable as laws to the parties who enter into them. This implies that everyone is free to make an agreement. Such freedom includes the content and forms of agreements and what they agree upon consensually. The agreement becomes law for the parties who enter into it hence it must be obeyed and obeyed. If someone violates the agreement they made, then it is considered the same as violating the law which has certain legal consequences, namely legal sanctions.<sup>60</sup>

The agreement has legal binding power and compels the parties who enter into it to take action. The parties to the agreement must also comply with the coercive law.<sup>61</sup> In the event that one of the parties violates the mutually agreed upon agreement, the judge shall determine

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<sup>59</sup> Jan Halberda, “The Principle of Good Faith and Fair Dealing in English Contract Law,” *Иправоеденне* 4, no. 3 (2020), pp. 312–325.

<sup>60</sup> Widaningsih, “The Implementation of Good Faith Principles in Online Sale and Purchase,” *Kertha Wicaksana* 13, no. 3 (2019), pp. 62–68.

<sup>61</sup> J W Carter and Elisabeth Peden, “Good Faith in Australian Contract Law,” *Journal of Contract Law* 19 (2003), pp. 155–172.

the penalty based on the law at the request of the other party.<sup>62</sup> The Indonesian Civil Code spells out that parties who violate the agreement are required to pay compensation (Article 1243), the agreement can be terminated (Article 1266), and to pay the court fees if they are brought before into a judicial proceeding (Article 181 paragraph (1) of the *Herzien Inlandsch Reglement*, HIR).

## 2. No unilateral back-loading commitment

An agreement that has been made legally will bind the parties and cannot be withdrawn or cancelled unilaterally (Article 1338 of the Civil Code). Cancellation of the agreement can only be undertaken by additional agreement between the two, under the consideration that if the agreement can be cancelled unilaterally, it simply means that the agreement is not binding in the first place. Thus, if one party wishes to withdraw or cancel the agreement, they must obtain approval from the other party in the form of another agreement.<sup>63</sup>

## 3. Enforcement with good faith

Article 1338 of the Civil Code stipulates that every agreement must be implemented in good faith, which means that the agreement demands propriety and justice. The agreement is not only binding for objects that are expressly stated in the agreement, but also everything that according to the nature of the agreement is required by decency, custom and law. On the other hand, the implementation of the agreement should not only be based on custom because it has the potential to give rise to other interpretations.<sup>64</sup> Therefore, if Article 27 Paragraph (2) of Law No. 2 of 2020 is implemented only on the basis of habit, it will be merely subjective from the government's point of view, bearing in mind that state-level financial management cannot be prosecuted criminally or civilly.

To show that a policy or agreement is based on the good faith,

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<sup>62</sup> Mokhamad Khoirul Huda, Ridwan Khairandy, and Agus Yudha Hernoko, "The Principle of Good Faith in Life Insurance Contract: A Comparative Study of Indonesia and The UK," *The Social Sciences* (2017), pp. 1–13.

<sup>63</sup> Huseyin Can Aksoy Hans-Bernd Schafera, "Good Faith," *Encyclopedia of Law and Economics*, no. December (2015), pp. 1–8.

<sup>64</sup> Jee-moon Pak, "Application of the Terms and Conditions of English Law Related to the Duty of Utmost Good Faith under Marine Insurance Contract: Korean Supreme Court Decision 2018 . 10 . 25 , Docket No . 2017Da272103," *Journal of Korea Trade* 24, no. 6 (2020), pp. 19–36.

it must satisfy at least 4 (four) indicators. First, there is an effort.<sup>65</sup> Government policies during a pandemic can be judged to have been based on good faith if efforts were made to improve the situation. In this case, the government's good intentions are apparent through various efforts, namely fulfilling the promise of a pre-employment card campaign, Direct Cash Assistance (BLT), the Task Force, Large-Scale Social Restrictions (*Pembatasan Sosial Berskala Besar*, PSBB), and implementing the new normal policy. Second, legal guarantees.<sup>66</sup> This was obtained through regulations that renders a win-win solution during the Covid-19 pandemic. Third, the implementation of regulations is right and runs optimally.<sup>67</sup> In this case, it can be proven by the lack of the impression that somewhat indicates the government is acting slowly, indecisive, or the government is unprepared in dealing with the Covid-19 pandemic. On the other hand, government regulation does not risk health for the sake of the economy. Fourth, the cooperation of all parties (government and society).<sup>68</sup>

The good faith interpretation of Article 27 Paragraph (2) of Law No. 2 of 2020 based on the Civil Code is directed at the aspects of decency and justice. This is in line with various regulations in other countries that apply the Civil Code in their legislation.<sup>69</sup> All legal actions are not only binding on matters expressly stated in the agreement, but also regarding all matters which by their nature an agreement must be carried out in accordance with the principles of decency, custom and law.<sup>70</sup>

Thus, the implementation of the word "good faith" requires the fulfillment of 4 (four) indicators, namely the presence of business; legal guarantees; implementation of appropriate regulations and run optimally; and requires the cooperation of all parties. Compliance is one of the principles in the agreement. This principle is stated in Article 1339 of the Civil Code. This principle relates to provisions regarding

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<sup>65</sup> Rustamjonovna, "The Principle Of Good Faith In Civil Law."

<sup>66</sup> Basaran, "The Principle of Good Faith in International Law."

<sup>67</sup> Davies, "The Basis of Contractual Duties."

<sup>68</sup> Julian Bailey, "'Faith, Hope, and Charity': The Role of Good Faith in Construction – a Common Law Perspective."

<sup>69</sup> Muhammad Jibril and Talitha Amanda Ekadhani, "Legal Assurance : A Comparative Study of the Good Faith Doctrine in Australia and Indonesia," *Jurisprudence* 11, no. 2 (2021), pp. 129–140.

<sup>70</sup> Emily Sipiorski, *Good Faith in International Investment Arbitration*, 30, (2019).

the contents of the agreement which form the basis of legal actions. Through this principle the size of a relationship is also determined by the sense of justice in society. In addition, there is also a human element in a legal action.<sup>71</sup>

At first glance it can be understood that the government is only focused on handling the spread and handling of Covid-19, and ignoring the impact or economic risk. The government in this case issues regulations that can anticipate various impacts related to state finances while still considering other sectors, such as health and the business world. One of these regulations is Law No. 2 of 2020 which is focused on state financial policy.

The explanation section of Law No. 2 of 2020 has affirmed that state financial and fiscal policy responses are needed to handle the risk of the Covid-19 pandemic, including increasing spending to mitigate health risks, protect the community, and maintain business activities. Pressure on the financial sector will affect the state budget, especially on the financing side.<sup>72</sup>

Apart from piling news on corruption, unevenly distributed humanitarian assistance, the dilapidated legal handling of perpetrators who violate the PSBB regulations, for example, as well as the impression that the government is being slow and unprepared during this pandemic, at least one can see that the government has “good faith” in handling Covid-19. However, it must be admitted that the Indonesian government, when viewed from the definition of good faith as contained in the Civil Code, actually has not fully implemented existing policies optimally.

## **Conculssion**

Policy is basically an instrument that is needed as a basis for doing something in certain fields and conditions. Law Number 2 of 2020 is an adequate legal instrument to provide a strong foundation for the government and related institutions to make policies and effective measures in the context of saving health and the national economy,

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<sup>71</sup> Ismail Yusuf, “Juridic Review Of The Implementation Of The Principle Of Good Faith In Online Buying Transactions,” *Estudiante Law Journal* 2, no. 3 (2020), pp. 396–409.

<sup>72</sup> Law of the Republic of Indonesia Number 2 of 2020.

with a focus on health spending, social safety nets (social safety net), as well as the recovery of the business world affected by Covid-19.

The existence of the term “good faith” in Law Number 2 of 2020 which states that policy-making state officials cannot be prosecuted criminally or civilly has indeed activated endless debates. However, based on the studies and analyzes that have been carried out, there is no real problem with this phrasing as long as it is interpreted and implemented correctly and true to its meaning. With reference to the provisions of the agreement contained in the Civil Code, the phrase good faith can be interpreted and applied through 4 (four) indicators, namely: (1) there is business; (2) legal guarantees through regulations that are a win-win solution; (3) implementation of regulations that are appropriate and run optimally; and (4) cooperation between all parties. Therefore, Article 27 Paragraph (2) of Law No. 2 of 2020 cannot be implemented solely on the basis of custom, as it will be subjective. Rather, it must be referred to existing norms, rules and standards.

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