

Good Faith In Implementation of House Ownership Credit in Private Company

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Abstract:-This research aims to find out the process of house ownership credit implementation in the company and to identify fulfillment and nonfulfillment of good faith principal between customer and PT. KandangKarya Perkasa. House Ownership Credit is a credit conducted to purchase a house or other consumptive needs with house as the collateral or assurance. This research uses juridical empirical approach. The nature of this research is diagnostic with *statute approach*, and *conceptual approach*. Technique of collecting data was conducted by interview, observation, and literature review with three steps, they are; *data reduction*, *data display*, and *conclusion drawing*. Based on the research finding, it can be drawn a conclusion from general into specific issue. The actions which do not have good faith are shown in the implementation of house ownership credit, especially when a customer breach of contract (such as the customer does not pay home installment payment on due date), dishonest in giving information for administrative requirements, and the customer does not meet the requirements in applying for credit. Therefore, legal protection toward PT. KandangKarya Perkasa is conducted using preventive measure. It requires supervision, and binding agreement of credit assurance for both parties. Then it is also conducted using repressive measures by selling, auction of collateral goods, and emptying the house which is carried out in accordance with applicable procedure as stated in the agreement which has been made by both parties.

Keywords: Legal Protection, Good Faith Principle, House Ownership Credit Agreement

I. INTRODUCTION

Shelter is human basic need which strategically important in developing nation's character and personality in order to shape the people of Indonesia to be whole human being, embrace their own self-identity, independent and productive.¹The construction of housing and residence is stated on Article 3 of Act No. 1 Year 2011, on the order of Housing and Residential area intended for:

1. Giving legal certainty for housing and residential area implementation.
2. Enforcing the arrangement and development of an area and also the proportional population distribution through the growth of housing environment and residential area that spatially consistent to ascertain

the balance of interests, especially for the low wage earner society.

3. Increasing the usability and useful results of the natural resource of residence construction with eco-friendly approach.

The increasing population who necessitate shelter is an opportunity for PT. KandangKarya Perkasa to offer financial loan with House Credit Ownership system (Kredit Pemilikan Rumah). This payment system benefits society to own housing although they have to pay the installments in years. So, it becomes a trend among private companies in Indonesia and also as a development in property financial system. Referring to efforts increasing the residence construction as a service to the society, then it is needed to conduct programs that advance the society's standard of living. One of the programs is offering housing installment payment system to the society so it makes the construction process become easier and faster as it wished.

On the International Journal of Economics and Management of University of Nottingham Malaysia entitled "The link between Homeownership Motivation and Housing Satisfaction", it is stated that:It is reasonable to believe that degree of housing satisfaction may depend on the motivation of home owning as motivation has been an important reason in the explanation of homeownership. In this paper, Structural Equation Modeling (SEM) was used to examine the link between homeownership motivation and housing satisfaction. Results showed that social capital investment and residential stability of homeownership appears to be important determinants of housing satisfaction. The findings also indicated that interdependencies among homeownership motivation variables were important extensions of the housing satisfaction model because they help improve the ability of model to predict housing satisfaction.²

Credit, of which its definition is deferred payment system, becomes the important aspect in our modern life.Numerous efforts were done to control credit industry and protect the customer to be precise by regulating the installment offers and

¹Preamble a of Act No 1 of 2011 about Housing and Settlement Area.

² Tan, Teck-Hong And Khong, Kok-Wei. (2012).The Link Between Homeownership Motivation and Housing Satisfaction. *International Journal of Economics and Management*, 6 (1), 1-20.ISSN 1823-836X

through credit advertising done by Pawn brokers act 1872-1960, Money lenders Act 1900-1927, Hire Purchase Act 1965 and Advertisements (Hire Purchase) Act 1967. These Acts were the founding father of the creations of regulations credit system.³ House Ownership Credit is a consumptive credit facility given by the company to the customer who need to purchase or repair housing of which the payment done simultaneously in a certain period and certain interests as stated in the contract. A house ownership is one of the installment means for those who demanding house with installment payment system with interest expense.⁴

In applying the House Ownership Credit, society required to make a contract. It means that every party should obey the agreement because it raises legal relations between them. The contract is the Law for both parties. Moreover, the contract is often rise in the future. As a result, every party should understand and comprehend the substance or the subject matter of the contract before they both agree. Theoretically as stated by Van Dunne, the stages of the contract making classified into three stages, namely the arrangement of agreement (precontractuele fase), the implementation of the agreement subject matter (contractuele fase) and the after implantation done (postcontractuele fase).⁵

PT. KandangKarya Perkasa is one of companies that offering house ownership credit finance which currently develop. The company even constructs their own residence with their own company finance and sells it in credit or cash. In this era with developing property business, the researcher intends to draw a distinctive legal issue about the buy and sell with credit system in PT. KandangKarya Perkasa of which the customer has not good faith or breach out the contract when the contract being implemented.

II. RESEARCH METHOD

The research approach used by the researcher is juridical empiric approach, so the research should be the ultimate plan in science development. According to Soerjono Soekanto, the research on juridical empiric approach is a research that connecting law with human behavior. If the simple formulation could be used as guideline, then the scope of empirical law is the degree of legal effectiveness. It means that to what extent the law applied in living reality. This research is not only aimed at society but also the law enforcer, so the facility expected will support the implementation of the regulations.⁶

³Lewis, A. (2009). *Dasar-Dasar Hukum Bisnis*. Bandung: Nusa Media, p.277

⁴Natalia. (2015). Analisis Sistem dan Prosedur Pemberian Kredit Pemilikan Rumah (KPR) Dalam Usaha Mengantisipasi Terjadinya Tunggalan Kredit (Studi pada PT. Bank Muamalat Indonesia Tbk. Cabang Malang). *Jurnal of Business Administration*, 2(2),2, February 2015.

⁵Khairandy, R. (2003). *Itikad Baik Dalam Kebebasan Berkontrak*. Pascasarjana. Jakarta: FH UI, p. 190

⁶Soekanto, S. (2005). *Pengantar Penelitian Hukum*. Jakarta: Universitas Indonesia (UI-Press), p. 32

The researcher uses “analysis qualitative” technique. It is a research technique that uses and produces data descriptively analytical. This technique has three stages namely data reduction, drawing conclusion and verification. The stages were carried out simultaneously so the data collected were reduced then it the conclusion can be drawn.⁷

III. RESEARCH FINDING

1. The legitimate contract of House Ownership Credit between PT. KandangKarya Perkasa and the customer who are not in good faith.

On Article 1313 of Civil Code, R Subekti states that “a contract is an event of someone makes a promise to other person or two people promise to each other to do something”.⁸ The contract will raise an alliance in everyday life that is realized as promise or willingness either spoken or written. The legal relation in a contract is not a relation which created by itself. It is created because there are legal acts done by certain party who willing to raise the legal acts.

Based on Article 1320 of Civil Code, the legitimacy of a contract demands some requirements as follow:

a. The agreement from both parties

The first requirement is the agreement from both parties. It is regulated on Article 1320 paragraph 1 of Civil Code. It defines that agreement is conformity of aspirations between two parties. The aspiration should conform because it is invisible to other person.

b. The competence of creating agreement

On Article 1329 of Civil Code, the competence refers to the ability of the parties to implement legal action. Legal action is an action which raises legal consequences.⁹

c. The one certain thing

Article 1332 of Civil Code point out the third requirement is the existence of the one certain thing (een bepaald onderwert) of which the type (determinable).¹⁰

d. The lawful law

The fourth requirement which is regulated on Article 1335 of Civil Code describes that an agreement without causes or was created due to fake or forbidden reason cannot be counted as agreement which has no power.

Satjipto Rahardjo says that legal basis can be defined as specific thing which is considered as basic truth or fundamental truth by society because it is used as ethical and

⁷Soekanto, S. (2010). *Sosiologi Suatu Pengantar* (43rd Ed.). Jakarta: PT. Rajawali Pers, p. 250

⁸Subekti, R. (1989). *Hukum Perjanjian*. Jakarta: PT. Intermesa, p. 1

⁹Salim. (2009). *Hukum Kontrak Teori dan Teknik Penyusunan Kontrak*. Jakarta: Sinar Grafika, p. 33

¹⁰Gautama, S. (1995). *Indonesian Business Law*. Bandung: PT. Citra Aditya Bakti, p. 79

social consideration to enter jurisdiction. As a result, legal basis become a source to supporting the legal order with its ethical, moral and social values of the society.¹¹ Legal basis functions as guideline or orientation following the legal act used. Those legal bases not only functions as guideline when trouble comes, but also to implement the regulations.¹²

Good faith of legal contract of Rome era focuses on the party's three human behavior. Firstly, every party should keep their promises. Secondly, every party is forbidden to take any advantages by manipulating another party. Lastly, all the parties should obey their obligation and perform as honorable and honest person although the obligation was not clearly expressed on the contract.¹³

The definition of good faith in legal area is wider than in daily definition. J. M Van Dunne describes the good faith both the good thought and good faith covers the whole process of the contract or likened as "the rise and fall of contract". Accordingly, the good faith covers three phases of contract process namely pre contractuele fase, contractuele fase and post contractuele fase.¹⁴

The good faith should be interpreted in the whole contractual process, meaning that it should base party's relationship at the stages of pra contractual, contractual and the implementation of the contract until it's done. As the result, the function of good faith based on Article 1338 Paragraph 3 of Civil Code is dynamically covering the whole process of the contract. As the good faith functions stated on Article 1338 Paragraph 3 of Civil Code, some scholars like P. L. Werry, Arthur S, Hartkamp and Marianne M.M Tillem define the main three functions of good faith as follows:

1. Educating function that teach the party how the contract should be interpreted based on good faith (the good faith as general legal basis), meaning it should be done fairly and appropriately.
2. Adding or completing function (aanvullende werking van de geod trouw) which means that good faith enable to add subject matter or contract statement if rights and obligations raises between both parties were unclearly expressed on the contract.
3. Limiting or negating function (beperkende en derogerende werking van de geode trouw), meaning

that this function can be applied if there are reasons which is very important (allen in spreekende gavallend).¹⁵

Credit can be in the form of money or bill that can be measured by money as the agreement made before between creditor and the debtor. The relationship created from installment payment system is marked by the mechanism of home loan that exist in Norway. It is briefly describe as follows: the interaction between housing prices and household borrowing in Norway is estimated in a simultaneous setting in the long and the short run. The long run dependence as analyzed within a cointegrated vector autoregression in real housing prices, real disposable household income and real household debt, conditioning on the real after interest rate, the number of house transactions and the volume of housing capital.¹⁶

House Ownership Credit is installment payment used to purchase housing or another consumptive necessary with collateral in a form of house. In anticipating bad credit, companies by themselves (or by bank) assessing generally some aspects to gain customers as follow:

- a. Character. The characteristic of customer should be those who really can be trusted.
- b. Capacity is the analysis to recognize the customer's ability to pay the installment. The customer's ability to manage business can be seen through this analysis.
- c. Capital analysis. It analyzes the origin of all capital sources exist.
- d. Economical condition. It refers to assessing the credit by current economical, socio and political condition and its prediction for the future.
- e. Collateral. It is physical or non-physical collateral given by the prospective customer, of which the value should bigger than the credit.¹⁷

The House Ownership Credit is a facility given by the bank to the customer who will purchase or renovate their house. Nowadays, there are two kinds of house ownership credit system exist in Indonesia, namely:

1. Subsidized house ownership credit. It is a credit system dedicated for societies who were middle to low wage earner.
2. Non-subsidized house ownership credit for all society. The requirements of its system are decided by bank so the amount of the credit and its interest are judged

¹¹Raharjo, S. (1988). *Peranan dan Kedudukan Asas-Asas Hukum Dalam Kerangka Hukum Nasional (Pembatasan Terhadap Makalah Sunaryanti Hartono), Seminar dan Lokakarya Ketentuan Umum Peraturan Perundang-Undangan*. Jakarta, p.18, 20th October 1988.

¹²Kamilah, A. (2013). *Bangun Guna Serah (Build Operate and Transfer/BOT) Membangun Tanpa Harus Memiliki Tanah (Perspektif Hukum Agraria, Hukum Perjanjian dan Hukum Publik)*. Bandung: CV. Keni Media, p. 97.

¹³Hartkamp, A. (1994). The Concept of Good Faith in the Unidroit Principles for International Commercial Contracts. *Tulane Journal of International and Comparative Law*, (3), 66.

¹⁴Hernoko, A. Y. (2008). *Hukum Perjanjian Proporsionalitas Dalam Kontrak Komersial*. Yogyakarta: LaksBang Mediatama, p. 117.

¹⁵Khairandy, R. (2003). *Itikad Baik Dalam Kebebasan Berkontrak*. Pascasarjana. Jakarta: FH UI, p. 216

¹⁶Anundsen, A. K., and Jansen, E. S. (2011). Self-reinforcing effects between housing prices and credit evidence from Norway. *International Journal, Discussions Papers*, (651). March.

¹⁷Jesus, S & Gabriel, J. (2006). Credit Cycles, Credit Risk and Prudential Regulation. *International Journal of central Banking*, 2(2).

based on the bank regulations for example commercial residence or shop house credit.¹⁸

Setiono describes that legal protection is action or effort to protect the society from tyranny of the ruler party that is inconsistent to the rule of legal. It is used to establish the social order and peace, so people can be blessed with their dignity as human.¹⁹ Legal protection protects legal subjects through valid Laws and Regulations of which the implementation is forced with sanctions. It is classified into two categories, namely:

a. Preventive Legal Protection

Protection given by the government in form of Law is limiting rights and obligations that should be fulfilled so it does not raise infringement.²⁰

b. Repressive Legal Protection

This protection is the final protection. It is often realized in a form of administrative or criminal sanctions for the infringement committed.²¹

According to Lawrence M. Friedman, theory of legal system is a unit operating in certain limits. The system can be mechanical, organic or social²². The core of the system is the way to change an *input* into an *output*. Legal system structure is similar to large computer program, which is loaded with code to handle million problems which are input daily into the machine²³. Friedman also said that legal system in actual operation is a complex organism where a structure, substance, and culture interacted.

1. Legal Structure

Legal structure is one of the most real bases and elements within legal system. The structure of a system is the permanent form or the institutional body of the system²⁴.

2. Legal Substance

Legal substance (regulations) is the other element from the legal structure. Legal substance arranged from regulations and provisions concerning how the institutions should behave²⁵.

3. Legal Culture

Legal culture or “legal kulum” is elements of social attitude and value. Attitudes and value made by leaders and their members are used as a behavioral foundation for those who are walked as legal objectives or away from the law in certain ways²⁶.

In this research, fulfillment of good faith principle in house ownership credit implementation in PT. KandangKarya Perkasa influenced by structure, substance, and culture as stated by Lawrence M. Friedman. The cause of not fulfilling the principle of good faith in the implementation of credit agreements in PT. KandangKarya Perkasa can be known from those three elements of the working of the legal system.

The stages of Implementation process of House Ownership Credit (KPR) in a company are the creditor will find the information from the debtor or prospected customer concerning his/her monthly income. The creditor or the company will conduct depth discussion to find out the ability of the customer in paying the installment payment based on their monthly income. In the next interview, the creditor or PT. KandangKarya Perkasa will give positive response if the creditor believes that financially the customer has ability to pay the installment payment. Besides, the customer does not have any installment payment in other institutions. However, if the customers have other installment payments in other institutions and financially they still have ability in paying installment payment in PT. KandangKarya Perkasa, the company will judge and decide that the customer has ability and reasonable to become a customer in PT. KandangKarya Perkasa. It purposes to prevent actions which are not in good faith²⁷.

If the customer does not have good faith, PT. KandangKarya Perkasa will insist the customer to pay the installment payment and regularly give them a warning. If the customer has categorized as red name, the company will give first warning letter to the customer with time period in two weeks. If there is no progress within two weeks, the company will sent second warning letter with time period in a week. If there is still no progress within a week or the customer has neglected his/her obligation in paying the installment payment, the company will send final warning letter to the customer in three days. If the customer already does not have good faith, the company will give the customer notification letter which inform that the collateral will be sold. The collateral can be house certificate. If the customers have notification letter from the creditor in their hand, the customer will has good faith to pay the installment payment regularly. It can be said that the customer needs to give some warnings if they already does not have good faith²⁸. Besides, those stages

¹⁸Panjaitan, B. (2013). Penyelesaian Kredit Macet Dalam Perjanjian Kredit Pemilikan Rumah (KPR) Pada Bank. *Scientific Advocacy Journal*, 01(10). Maret.

¹⁹Setiono. (2004). *Rule of Law Supremasi Hukum*. Pascasarjana. Surakarta: Magister Ilmu Hukum Sebelas Maret University, p. 3.

²⁰Afifah, W. (2018). Eksistensi Perlindungan Hukum Terhadap pekerja Rumah Tangga di Indonesia. *DIH Journal of Legal Science*, 14(27), 17 Agustus 1945 University, 58,p. 58.

²¹ Ibid, p. 20

²² Friedman, L. M. (2011). *Sistem Hukum: Perspektif Ilmu Sosial* (4th Ed.). Translated by M. Khozim. Bandung: Nusa Media, p. 6. Translated from: Friedman, L. M. (1957). *The Legal System: A Social Science Perspective* (4th Ed.). New York: Russel Sage Foundation.

²³ Ibid,p. 14

²⁴ Ibid,p. 15

²⁵ Ibid,p. 16

²⁶ Ibid, pp. 255-257

²⁷ Interview with Mrs. Hj. Asnidar as the director. It was conducted on 23 March 2018 at 09.28 WIB in PT. Kandang Karya Perkasa's office.

²⁸ Interview with Mrs. Hj. Asnidar as the director. It was conducted on 28 March 2018 at 14.16 WIB in PT. Kandang Karya Perkasa's office.

actually aim to prevent everlasting risks.

The implementation of house ownership credit needs deed of sale and purchase as legal certainty. Deed of sale and purchase is conducted and signed by two parties. The customer party has obligation to fulfill his/her responsibility, it is paying the installments as stated in the provisions and regulations that are known by both parties. In the implementation of the credit agreement, what needs to be considered in conducting house ownership credit agreement in PT. KandangKarya Perkasa is deed of sale and purchase agreement. Therefore, the valid deed of sale and purchase between PT. KandangKarya Perkasa and customer is one of the legal aspects in conducting home buying and selling transactions on credit.

If the Deed of Sale and Purchase is not provided, there will be some difficulties in making certificate in office of Badan Pertanahan Nasional (*National Land Agency*). The Deed of Sale and Purchase is legal authentic evidence that the customer has purchased a land or building and made an agreement with a company in accordance with regulations which have been determined. In implementation of sale and purchase agreement on credit, the customer will fulfill his/her obligation by paying the installment payment every month during the agreed time period.

If the customer breaches the contract on the agreed agreement, or there is no good faith from the customer, for example the installment stuck or runaway, PT. KandangKarya Perkasa has rights to sell the object of dispute to another prospective customer. It is because as the creditor, PT. KandangKarya Perkasa is the risky party. It is natural that the company gives agreement contract which will overcome the risk. The company will cover the risk using the collateral owned by the debtor or the customer. The collateral can be house or house certificate. Therefore, as a party who buys house on credit, the customer must obey the provisions provided (land guarantees, certificates, breach of contract provision).²⁹

Implementation of House Ownership Credit has important function in giving housing credit, management and implementation of credit in PT. KandangKarya Perkasa. The functions of the credit agreement are as follow;

- a. There is evidence that the parties have made a House Ownership Credit agreement.
- b. Knowing and understanding the parties, debtor and creditor, to fulfill each of their rights and obligations.
- c. As a device for monitoring credit.

The implementation of the agreement is in accordance with Article 1320 of the Civil Code which states that the validity of an agreement requires four conditions, they are;

1. Agreement in binding their self
2. The capability of every party in making an agreement,
3. A certain thing,
4. Causation / reason that is lawful

The two first terms are terms regarding the subject (subjective terms), while the two last terms are the terms regarding the object (objective terms). An agreement that contains a defect in the subject does not always make the agreement invalidated (null and void) by itself, however it often gives the possibility to be canceled, while the agreement that is defective in terms of its object is invalidated by law.

If it is related to good faith principal, it can be said that in the pre-contractual stage the good faith has been existed. It means that good faith be existed among the parties in the negotiation stage. It can be said simply that in every negotiation, when decided the contents of the agreement, both parties must prioritize honesty. Subekti stated that there are two kinds of good faith, subjective and objective. Subjective good faith is honesty. Honesty must exist before the agreement was conducted by the parties. In other words, in the pre-contractual stage, the subjective good faith has been existed, while objective good faith exists in contractual stage. It occurs due to the contents of the agreement in the contractual stage, consisting rights and obligations, must also be conducted with good faith. In the contractual stage, a party who has authority to evaluate whether there is propriety or not in the agreement is a judge.³⁰

In the Article 1338 paragraph 3 of Civil Code stated that agreement should be conducted with good faith. The implementation of good faith means both parties must respect each other without deception, guile, disturbing other parties, not only seeing their own interests, but also the interest of other parties. By including good faith in the implementation of the agreement, it means that we have to interpret the agreement based on justice and propriety. Interpreting an agreement is determining the consequences that will be occurred.³¹

2. *Unfulfilled of Good Faith Principal at PT. KandangKarya Perkasa in Carrying Out House Ownership Credit.*

An agreement is started from a difference of interest among parties. Generally, formulation of contractual relations is always preceded by a negotiation process between the parties. The parties try to create any agreements to unify something they desired (interests) through negotiation. Legal basis which regulates the agreement provided in Book III of Civil Code concerning engagement. Therefore, all people free to make any agreements with other people concerning certain object along with its contents. Besides, people are able to make

³⁰ Subekti. (2009). *Hukum Perjanjian*. Jakarta: Intermesa, p. 7

³¹ Patrik, P. (1994). *Dasar-Dasar Hukum Perikatan (Perikatan Yang Lahir Dari Perjanjian dan Dari Undang-Undang)*. Bandung: CV. Mandar Maju, p. 67

²⁹ Interview with Mrs. Hj. Asnidar as the director. It was conducted on 7 April 2018 at 08.37 WIB in office of PT. Kandang Karya Perkasa

agreement without following the guidelines, in this case Book III of Civil Code, because the parties have regulated the contents and the consequences of the agreement when the agreement was made.

Good faith principal can be concluded from Article 1338 paragraph 3 of Civil Code. It is a principle which makes the parties has to conduct substance of the agreement based on based on trust or firm belief or willingness of the parties. According to the Article 1338 of Civil Code, it is determined that all agreements must be conducted with good faith. It means that an agreement may not contradict with propriety and justice.³²

Debt acknowledgment letter from PT. KandangKarya Perkasa is legal rule which must be obeyed by the parties including customer and the director of the company. The purpose of the company in making Debt acknowledgment letter is to regulate the implementation of House Ownership Credit, so the payment goes in an orderly and smoothly. *Order* here means the parties know their rights and obligations which must be obligated.³³

In fulfilling good faith principle in the implementation of credit agreement in PT. KandangKarya Perkasa influenced by three components, they are as follow:

a. Legal Substance

Legal substance greatly determines the quality of a legal system. In this stage, various interactions occur among the lawmakers concerning various approaches to factors that must be considered.³⁴ In implementation of house ownership credit, regulations referred to debt acknowledgment letter. When debt acknowledgment letter was created, the company created the regulation by considering various aspects and risks for giving credit to the customer. In addition, there are some Articles which regulate Rights and Obligations of the parties within the debt acknowledgment letter.

b. Legal Structure

The structure is closely related to law enforcement bureaucracy organization. Legal structure in the implementation of House Ownership Credit includes employees of the company consisted of commissioner 1 and commissioner 2, director, architect, executive marketing, marketing, and administrator.

c. Legal Culture

In other words, legal culture is social moods and social forces that determine how the law is used, avoided or misused. Honesty from the customer is necessary to fulfill good faith in implementation house ownership credit in PT. KandangKarya Perkasa. Edward Bayley stated:

*The concept of bona fides can be translated to mean in accordance with good faith. Bona fides on the other hand was utilised to ascertain the concept of a concluded contract. It required the parties to act honestly and therefore influenced the manner in which a contract was performed.*³⁵

The customer in PT. KandangKarya Perkasa is dishonest in giving their information to the company, when they are asked to give administrative requirements in applying for a house credit. There are debtors or customers who do not carry out their obligations. It caused by the customers do not have applicant's salary slip for 3 months, does not include a copy of NPWP (Tax ID Number). It can detain funds disbursement and construction of previous house. Therefore, home sales are hampered due to the customer does not have good faith in carrying out the agreement. Besides, company prospects and prospects for company profits are not optimal³⁶. Furthermore, the company uses repressive way. It is legal protection to resolve a dispute which can raise disadvantage. It can be solved by selling the dispute object which is carried out in accordance with applicable procedure as stated in the law and agreement which has been made by both parties. This protection used to prevent possible risk occurrence of loss from business activities carried out by the company.³⁷

Therefore, small court (which is similar to court for traffic violation) is required to solve the dispute or the case between the company and the customer without any cost. Besides, both parties can settle the problem peacefully with a win-win solution. In fact, the good faith principle is yet to be fulfilled in implementing credit agreement in PT. KandangKarya Perkasa. It can be seen from various factors, they are;

1. Human Resources factor. The employees of marketing section which has duty to offer the housing to the customer do not give the customer clear explanation. They only explain about payment system of House Ownership Credit.
2. Regulations. The regulation of PT. KandangKarya Perkasa is less forceful in handling customer who has overdue payments.

³² Sugito. (2008). Tinjauan Normatif Itikad Baik Dalam Suatu Perjanjian. *Journal of Pandecta*, 2(2) Juli-December 2008. Retrieved from <http://journal.unnes.ac.id/index.php/pandecta/article/1475>. on 29 April 2018, at 20.28 WIB

³³ Interview with Mrs. Hj. Asnidar as the director. It was conducted on 12 May 2018, at 10.27 WIB in office of PT. Kandang Karya Perkasa

³⁴ Friedman, L. M. (2012). *Sistem Hukum: Perpektif Ilmu Sosial* (11th Ed.). translated by M. Khozim. Jakarta: PT. Raja Grafindo Persada, p.7. Translated from: Friedman, L. M. (1975). *The Legal System: A social Science Perspective* (11th Ed.). New York: Russel Sage Foundation.

³⁵ Bayley, E. (2009). A Doctrine of Good Faith in New Zealand Contractual Relationship. *Journal of University of Canterbury*. Retrieved from: http://ir.canterbury.ac.nz/bitstream/10092/2862/1/Thesis_fulltext.pdf. Retrieved on 4 May 2018, at 19.46 WIB

³⁶ Interview with Mrs. Hj. Asnidar as the director. It was conducted on 2 August 2018, at 14.16 WIB in office of PT. Kandang Karya Perkasa.

³⁷ Aman, E. P. I. (1989). *Kredit Perbankan Suatu Tinjauan Yuridis*. Yogyakarta: Liberty, p.14

3. Society's culture. The buyer/customer has economy problem. It occurs because the customer is unable to divide finance between primary needs and secondary needs, which is caused extravagance for personal needs. Therefore, there are costumers who have overdue in paying installment payment.

Hence, the researcher conducted some definitive tests or standard tests which can be used to help in evaluating the behavior of the parties, whether it is important or not. It will provide two purposes; first, it will help reducing the feeling of arbitrariness which is often associated with good faith. Second, it will allow the parties to evaluate their own actions and implement some preventative measures.³⁸ Along with the good faith principle, freedom of the contract will not be conducted freely yet responsibly in order to not give disadvantageous for other people.

IV. CONCLUSION

Sale and purchase agreement on credit conducted by PT. KandangKarya Perkasa, which stated that good faith aims to indentify legal construction in the Article 1338 paragraph (3) of Civil Code concerning House Ownership Agreement between customer and PT. KandangKarya Perkasa. Good faith is carried out in pre-contractual stage to post contractual stage on the house purchase and sale credit agreement. The implementation of the agreement requires four conditions, they are; Agreement in binding their self, the capability of every party in making an agreement, a certain thing, causation / reason that is lawful. The two first terms are terms regarding the subject (subjective terms), while the two last terms are the terms regarding the object (objective terms).

The good faith principle is yet to be fulfilled by the customer, when the agreement implemented. It is occurred because there is breach of contract (wanprestasi) done by the customer (such as the customer does not pay home installment payment on due date), dishonest in giving information for administrative requirements. The agreement that contains a defect in the subject does not always make the agreement invalidated (null and void) by itself, however it often gives the possibility to be canceled. Therefore, preventive measure is required to improve the company. It requires supervision, and binding agreement of credit assurance for both parties. Then it is also conducted using repressive measures by selling, auction of collateral goods, and emptying the house which is carried out in accordance with applicable procedure as stated in the agreement which has been made by both parties. If the company violates the good faith principle, the company must pay the compensation for 5 billion in maximum, written warning, revocation of business licenses, and closure of locations.

³⁸ Bristow, David I, Seth, Reva.(2001). Good Faith Negotiations, *Dispute Resolution Journal*. November 2000-Januari 2001, retrieved from <http://search.proquest.com/docview/198085075/fulltextPDF/13B4522C01771C3BF05/3?account.id=44945>. Retrieved on 6 May 2018, at 22.47 WIB

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