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## GOOD FAITH ON ANIMAL CARE AGREEMENTS: STUDY ON THE USE OF ARTICLES ON TRANSFER OF ANIMAL OWNERSHIP

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### Abstract

This study aims to analyze and determine the good faith in the use of clauses on the transfer of animal ownership in animal care services business actor in GPSPK Depok. This study provides an analysis for the implementation of good faith in animal care contract. Problem formulations for this journal are; How is the implementation of good faith in the use of the transfer of animal ownership clause in animal care services business actor? and is the implementation of good faith in the transfer of animal ownership is in accordance with the good faith of contract implementation? This research is normative legal research accompanied by supporting data. The research data was collected through literature study. The analysis was carried out using qualitative methods. Based on the research results, it is concluded that: First, the service user binds himself to an animal care contract that contains the clauses of the transfer of animal ownership. However, the business actor does not execute these clauses, even though the business actor has the opportunity to do so. Second, the clauses of the transfer of animal ownership are against the good faith of contract implementation which refers to: fairness, equity, and reasonableness.

**Keywords:** Good Faith, Animal Care Service Contract, The Transfer of Animal Ownership.

### INTRODUCTION

Good faith is regulated in Article 1338 paragraph (3) of the Civil Code which stated: "Agreement must be carried out in good faith". Based on that article, the most important element of contract law is good faith in order to oversee the implementation of an agreement so as not to

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violate propriety and justice, which is dynamic in nature that covers the entire agreement process. (Syaifuddin, 2016)

The principle of good faith is guided by propriety by applying behavior that refers to: (Khairandy, 2003)

1. The parties must adhere to their promises and words regarding the agreement that has been made.
2. The parties must not take advantage of the agreed agreement by misleading or deviating from the other party.
3. The parties comply with their obligations and behave as someone who is honorable and honest, even though in fact these obligations are not clearly and explicitly stated in the agreement.

Celina Tri Siwi Kristiyanti, emphasized good faith to business actors which includes all stages such as pre-contract, contract implementation, and post-contract. This is done for the possibility of loss for consumers and business actors.(tri Celina, 2011) However, if one party creates an imbalance or violates justice, then the parties concerned can adjust to the rights and obligations contained in the agreement. That is, in an objective measure to assess the implementation of the agreement, it must obey the norms of decency and decency that live in society.(Setiawan, 1999) So, it can be concluded that good faith is a must that is required in every agreement and cannot be removed even though the parties agree.(Priyono, 2017)

Along with the development of the era, in practice, business actors use their authority to make as much profit as possible or in other words, losses will be transferred to consumers, so the use of the principle of good faith has been ruled out by the parties. Even though, good faith must exist at every stage of the contract.(Syaifuddin, 2016) The relationship between animals and humans provides an opportunity for humans to rely on animals as an idea to make a living by seeing the high interest in keeping animals today, both as friends, guards, and entertainment. This phenomenon opens great opportunities for animal care business to be increasingly

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widespread with various forms of offerings such as pet shops, grooming, clinics, home animal care services or services that work with clinics and pet shops to open animal care services with their supporting facilities.

Pet shop or animal care service is like a place of care in general, namely a place for storing goods that receives an item from someone on the condition that he will store it and return the item in its original form with the same terms and conditions, what makes it different is the object, namely animals. Based on the applicable conditions, animals are defined as animals that either kept by humans in their own homes or in habitats, where all or part of their life cycle is on land, water, and/or air. According to Frieda Husni Hasbullah, animals are movable objects categorized in Article 509 of the Civil Code based on their nature are objects that can be moved and moved as well as the provisions of the law.(Hasbullah, 2002) Subekti explained that levering is a juridical act to transfer ownership rights of animals in the same way that tangible and movable objects are carried out by a definite handover or handing over the power over goods.(Subekti, 2021) The transfer of animal ownership rights based on the explanation is regulated in Article 612 of the Civil Code, namely hand-to-hand handover, and movable objects in which real and juridical delivery falls at the same time, therefore resulting in the transfer of property rights immediately.(Hasbullah, 2002)

A legal relationship which made by a person, such as the transfer of property rights, will result in an obligation to surrender an object into the possession of a person who will receive the delivery of the object. The handover is carried out with the provisions of the statutory requirements, which must meet the conditions for a civil occasion to transfer ownership rights to a certain object and a surrender must be made and carried out by someone who has the right to the object to be transferred to act freely. At a minimum, there are legal actions such as agreements made by the parties with the aim of making them to transfer ownership rights to these objects.(Soeikromo, 2013) Basically, every agreement that has been made creates obligations for the parties, for example in a safekeeping agreement where business actors are

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obliged to have good intentions in carrying out their business activities. However, it recently has been found that in practice, agreements provide business actors the opportunity to reduce the benefits of services or reduce the consumer's assets for an object that has been the object of buying and selling services. Not only that, some service users experience losses due to animals that has been entrusted to animal care services, such as being injured, sick, even to a horrific death without further confirmation to the service user.

Animal care agreement at GPSPK Depok is one of the business actors who implement transactions by making provisions and conditions that have been prepared in advance unilaterally as outlined in an agreement that must be fulfilled by prospective service users. Last year around February 12, 2019, there was an incident regarding dogs that were entrusted by service users experiencing the threat of transfer of ownership rights to business actors because the service users did not take the animals entrusted to them at the end of the animal care agreement. Therefore, the cost for taking care the animals that are entrusted increased until it reached Rp. 1.500.000, -. This made the business actor, five days after the agreement ended, requested that the animal be immediately taken and redeemed, which is carried out with the threat of abandoning the entrusted animal if it was not taken and paid for the cost. However, service users experienced obstacles due to being in poor health conditions so they were treated in hospitals and has financial limitations to make up for the cost of the animal care. Because of this, the service user cannot pick up the animal that was entrusted on time at the end of the agreement. However, there is a response from service users regarding their condition, so that it is not solely without further notification to business actors.

The fate of the animal that has a special price will be abandoned if it was not taken immediately before 10 days after the end of the agreement to avoid even greater treatment costs. Because of this information, representatives from the service user's family asked for help from the Pejaten Shelter (dog shelter). Then there is an information circulated related to the payment for animal care and opened the adoption of the animal by paying the cost of animal care along

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with its bill's photo. However, it is unfortunate that there are no parties who will help service users, so Pejaten Shelter itself redeems, retrieves, and cares for the entrusted animal by submitting an animal retrieval note and showing the communication by whats app between service users and Pejaten Shelter. Based on the act of taking the entrusted animal, the agreement between the business actor and the service user ends. The fate of the entrusted animal was not handed back to the service user but was taken care by the Pejaten Shelter upon request for assistance to save the entrusted animal accompanied by submitting a photo of the bill while the service user did not contact the Pejaten Shelter after he pays the care fee and picks up the entrusted animal. After that, the threat of the transfer of animal ownership rights went viral in forums among animal lovers on the social media platform which is Facebook and raised condolences, bad reviews of the clauses used, and the services of animal care business actors to petitions for the closure of the animal care services.

The emergence of this experimental case stems from the act of transferring animal ownership rights contained in the agreement, that "If within 10 days there is no further confirmation about the animal being deposited, both healthy and sick, then the animal will fully become the property and rights of GPSPK ...". The clause without being realized by the service user will harm his position because the location and form of the clause's disclosure is difficult to understand by the service user, which is the position at the bottom and in small letters, so that the service user will not concentrate or pay a close attention to that section. Based on the results of an interview with one of the informants who had entrusted their cats to the GPSPK Depok animal care, service users were forced to ignore this provision because of the belief factor which made them think that such a thing was unlikely to happen and the urgency of their needs made the animal owner have no alternative but to immediately agree with the contract without considering the risks that may arise in the future. So with the great trust from service users, the transfer of property rights clause in the agreement is also considered to be only a reminder and will not have any consequences for it. Although the clause on the transfer of rights has not been

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implemented or has not occurred in practice, it is feared that the inclusion of the clause can actually transfer the rights of animal ownership unilaterally so that it will cause various consequences for service users. The inevitable consequence is that the animal which is the object of the agreement is transferred to the business actor in accordance with the clauses contained in the agreement that have been approved by the service user. Even though animal care is a normal thing, the existence of animal care business received so many good responses by the community, and this practice happened a lot in our daily lives. However, it is unusual if there is a transfer of animal ownership rights, as the author explained earlier.

Related to the explanation above, the implementation of the contract must be done in good faith and honesty from each individual. The actions of business actors who include this clause clearly violates the principle of good faith, which makes the service user lose his own animal and the service purchased will not benefit the animal owner, so that the purpose of entrusting the animal (buying services) should be able to help the activities of the service user instead of harming himself. In the end, the inclusion of a clause containing a clause on the transfer of animal ownership rights makes the position of business actors more dominant. Based on the idea of the Civil Code, it should provide an equal position. However, this equity is not realized in the implementation of the rights and obligations from the parties of the GPSPK Depok animal care agreement. Thus, the application of the clause is contrary to the good faith regulated in Article 1338 paragraph (3) and the application of good faith in Article 1339 of the Civil Code.

This research uses a normative type of research, which is carried out on legal principles, legal philosophy, legal theory and does not explore field data. In this study, data analysis was carried out using qualitative descriptive methods, by processing secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials that had been systematically collected to produce conclusions that could answer the research problem formulation.



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This study uses a statutory research approach by analyzing good faith in the use of clauses on the transfer of pet ownership rights that are entrusted to animal care business operators at GPSPK Depok. This research data collection method is carried out by reading and summarizing legal materials consisting of books, scientific journals, laws and regulations, mass media, and the internet as well as other references.

### **Research Method**

The research conducted by the author uses the normative research. This type of research is carried out on legal principles, legal philosophy, legal theory, and does not use data on the field at all, which focused on research to obtain analysis results on research conducted by the author on good faith in the use of clauses on the transfer of dog's ownership rights that are entrusted to business operators in animal care services at GPSPK Depok. The data source of this research is secondary data, where the data obtained by the author from a literature study conducted by reading, citing, and tracing laws and regulations, books, documents, articles, dictionaries, and other legal literature related to the issues raised researched. Data sources are referred to as legal materials namely: Primary Legal Materials, which are sourced from law and are legally binding, including: (1) Law Number 18 of 2009 concerning Livestock and Animal Health; (2) Law Number 41 of 2014 concerning Amendments to Law Number 18 of 2009 concerning Livestock and Animal Health; (3) Statement of Agreement and Approval of Action at Dog Care Services at GPSPK Depok; and (4) Interview with informant, Dr. Susana Somalia, SpPk. as founder of Pejaten Shelter in South Jakarta and Sofie Kemala as consumer in Central Jakarta.

Then, this study uses data collection methods through data research methods by reading and summarizing legal materials or library research consisting of books, scientific journals, laws and regulations, mass media, and the internet as well as other references, as well as visiting animal care services which is GPSPK Depok to obtain information related to the problems studied in the study. From the data that has been collected, the data processing is carried out using a qualitative descriptive method. This analysis is carried out by processing secondary data

in the form of primary legal materials, secondary legal materials, and tertiary legal materials that have been systematically collected to produce conclusions that can answer the formulation of research problems.

## **Discussion**

### **Implementation of Animal Care Services at GPSPK Depok**

On Tuesday, February 12<sup>th</sup> 2019, Susanti, a dog breeder, entrusted her animal to one of the animal care services, namely GPSPK which is domiciled in Depok or the surrounding area. Susanti entrusted her animals with the intention of being cared for properly. Susanti takes care of her own pets. Susanti, who is called a service user, entrusted the animal with the reason that there was an affair that resulted in the animal having to be entrusted to another party.

The business operators of GPSPK Depok animal care services receive the care services with the procedures that have been made from the business actors. There are terms and conditions that must be mutually agreed upon and carefully understood for prospective service users. Terms and conditions made and provided by business actors, namely:<sup>1</sup>

1. Identity of the animal owner or custodian containing the name, address, and mobile phone number;
2. The identity and condition of the animal to be deposited contains the name of the animal, type and color, age, sex, body weight, and body temperature;
3. Handing over of animals that medical or non-medical actions can be carried out with a down payment of a certain amount of money;
4. The ability of the custodian to bear all costs to be incurred in the treatment;
5. Acceptance of all risks that may occur, whether caused by the implementation of medical care or treatment or events outside the will and power of the recipient of the deposit;

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<sup>1</sup> Statement of Agreement and Approval of Action, GPSPK

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6. The ability of the custodian not to sue business actors in any form;
7. Approval in the form of signatures of the giver of the deposit and the recipient of the deposit;
8. Column for records of consumers or service users for business actors and pets; and
9. Business actor's note, that if within 10 days there is no further confirmation about the animal being deposited, either healthy or sick, then the animal is fully the property and rights of the business actor. And the recipient of the deposit does not accept the deposit of cages, ropes, clothes, and others.

The business actor also advises prospective service users to first read the applicable terms and conditions which are then signed when agreeing to these terms and conditions. After understanding the terms and conditions, Susanti decided to leave her animal for at least 20 days with a daily fee of Rp. 50.000,- for 1x24 hours.

At a cost of Rp. 50.000,- per day each animal will get facilities in the form of day care with maximum service according to the standards set by the business actor, such as: bathing, feeding, drinking, and getting their own cage and given a play room so they don't experience stress due to changes of environment. The facilities provided by business actors are standard services for animals that are deposited by adjusting the outgoing costs. There are even more treatment facilities if service users ask for grooming services or salon services or veterinary clinics which are facilities with different costs.

Susanti after agreeing on the letter of agreement and approval of the action then handed over the animal to the business actor to be cared for and maintained according to the agreed agreement. At the time of handing over the animal, the business actor also submits a memorandum for the collection of the deposited animal. Furthermore, the business actor carries out the agreed agreement until the specified time, and on the 25<sup>th</sup> day the business actor notifies the service user to immediately take his pet which is entrusted to them because it exceeds the agreement time limit. Due to unforeseen conditions, the representative of the service user replied to the

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notification by saying that they had not been able to take the animals that were deposited and had not been able to pay the cost of care, with the reason that the owner of the animal was being treated at the hospital and had to pay for hospital fees so that there was no money to pay for the animal care service.

The business actor does not pay attention to and accepts the reasons for the service user, which in essence the business actor emphasizes that the animal must be taken before 10 days as stated in the business actor's record, if it is not taken and paid for the custody fee that costs Rp. 1,500,000, then the animal will be threatened to be thrown away or abandoned. Seeing the response of the business actor, the service user representative asked for help from the Pejaten Shelter (founder of the animal shelter) to save the animal, then the Pejaten Shelter tried to help the service user so that the animal will not be thrown away. Through social media Facebook, Pejaten Shelter circulated information on the offer stating that "Anyone who intends or wants to adopt the animal accompanied by a photo of the bill for taking the deposited animal, can pay the cost of care directly to the GPSPK Depok animal care center." After waiting for some time, there is no party who wants to help service users, so Pejaten Shelter itself takes the initiative to redeem the cost of animal care before the 10 day deadline as stated in the record of the business actor and takes the animal by submitting photo evidence of the note that has been given by the previous service user. accompanied by evidence of communication via whats app between Pejaten Shelter and service users. Based on this evidence, the business actor submitted the animal to the Pejaten Shelter, thus ending the legal relationship between the service user and the business actor. Then Pejaten Shelter took care of him along with other animals that he kept at the animal shelter, hence why the animal was not handed back to their real owners.

Based on the results of the Pejaten Shelter interview, the payment for the care, collection, and care of the deposited animals was done because of the request for assistance from the service user to save the deposited animal by providing a photo of the bill for taking the animal and assumed that the service user did not have good intentions to take the animal back because there was not

any further contact towards the Pejaten Shelter after the animal is taken. So that communication between the two parties was cut off only until the service user asked for help and submitted a photo of the bill to take the animal, but then there was not any further discussion about the fate of the animal. However, if viewed from the side of the service user, it is impossible for him to leave his own pet, this happens because the condition of the service user does not allow him to pay the cost of care and pick up the deposited animal when the service user is sick. So, the authors argue that it is possible for service users to expect good faith from Pejaten Shelter to hand over the deposited animal back to its owner and if you want to take care of the animal, it is done with the agreement desired by the parties.<sup>2</sup>

### **Application of Good Faith in the Use of the Clause on the Transfer of Animal Property Rights to Animal Care Business Actors**

The legal relationship between business actors and service users has occurred when business actors provide promises and information related to goods and/or services that are the object of the agreement, because since then rights and obligations have aroused for the parties, both business actors and service users. The legal relationship is based on Article 1320 of the Civil Code and Article 1338 of the Civil Code, where business actors have agreed to what was promised when giving promises in an advertisement, leaflet, or brochure, so that the promises will apply as law for the parties. who made it. The origin of the animal care agreement refers to Article 1313 of the Civil Code that an agreement is an act where one or more people bind themselves to one or more other people. Furthermore, regarding the legal requirements of an agreement, it refers to Article 1320 of the Civil Code, in order for a valid agreement to occur, four conditions need to be fulfilled:<sup>3</sup>

1. agreement;

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<sup>2</sup> Interview with Interviewee Susana Somalia, the Founder of Pejaten Shelter, Jakarta Selatan, October 27<sup>th</sup> 2020

<sup>3</sup> Article 1320 of Indonesian Civil Code

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2. proficiency;
  3. a certain thing; and
  4. a lawful cause.

Based on the legal terms of the agreement above, it is grouped into two. If the subjective conditions are not met, the agreement can be canceled, while if the objective conditions are not met, the agreement is null and void. Based on the results of the author's study, that the Depok GPSPK animal care agreement has fulfilled both the subjective and objective conditions of the agreement.<sup>4</sup> It can be seen that there is a will between the two parties concerned, namely business actors and service users to agree and bind themselves in the animal care agreement in order to entrust the service user's pet to be treated and returned in a healthy condition after the agreement ends, so that the service user then pays a sum of money to redeem the deposited animal. This animal custody is guided by Article 1694 of the Civil Code which discusses the safekeeping of goods, because Indonesia does not have specific rules regarding animal custody, so that goods and animals are categorized into custody as referred to in Article 1694 of the Civil Code which states that occurs when a person receives an item from another person on the condition that he will keep it and return it in its original form. However, the custody agreement is also guided by Law Number 41 of 2014 concerning Amendments to Law Number 18 of 2009 concerning Livestock and Animal Health which regulates and explains the meaning of animals, business units in the animal sector, and animal welfare.

In principle, the agreement is valid since there is an agreement between the parties in order to achieve the objectives through the implementation of the agreed performances. An agreement that is binding and applies as law for the parties who make it if the pre-contract, contract implementation, and post-contract processes are in accordance with the applicable provisions

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<sup>4</sup> Hardijan Rusli, *Hukum Perjanjian Indonesia dan Common law*, Ctk. Pertama, (Jakarta: Pustaka Sinar Harapan, 1993), 32-33

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regarding the law of the agreement. Agreement that has no doubt is an agreement that applies the legal principles in it, because the legal principle is included in the category of objective nature which refers to a normative concept or is often seen as the highest norm as well as a relationship with moral standards, contained in Article 1339 of the Civil Code. Thus, good faith is said to be the entry point of law through moral values, where in the implementation of an agreement one must also pay attention to and apply the principles in contract law.<sup>5</sup> So, the ultimate goal of the agreement can be achieved as well as carried out as desired by the parties, especially in the discussion of this research, namely the principle of good faith.<sup>6</sup> This is because if the legal principles are not applied in the agreement, then based on the lawsuit filed, the judge can intervene either to interpreting the agreement in good faith in accordance with the will of the parties, filling or completing rights and obligations that are not stated in the agreement and even limiting or eliminating an agreement will be feared to cause intolerable consequences. According to the explanation above, regarding of good faith that is not applied can cause the agreement to be canceled. This is reinforced by the Supreme Court Decision No. 274 PK/Pdt/2003 which cancels the registration of the registered Prada brand and logo No. 328996 and No. 329217 on behalf of the Defendant from the General Register of Marks registered in bad faith.<sup>7</sup>

Henry P. Panggabean argues that the study of the principles of the agreement has a very important role in understanding various legal provisions regarding the validity of an agreement. Current developments on these provisions will be easier to understand after knowing the

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<sup>5</sup> Ridwan Khairandy, *Kebebasan Berkontrak Pacta Sunt Servanda, Versus Iktikad Baik: Sikap yang Harus Diambil Pengadilan, Ctk. Pertama*, (Yogyakarta: FH UII Press, 2015), 62

<sup>6</sup> Niru Anita Sinaga, "Peranan Asas-Asas Hukum Perjanjian dalam Mewujudkan Tujuan Perjanjian", *Jurnal Binamulia Hukum*, Vol. 7 No. 2, (Desember, 2018), 112

<sup>7</sup> Bernadetta Ides Bidhari, Ety Susilowati, dan Hendro Saptono, "Akibat Hukum Pelanggaran Merek Terkenal Prada Pada Produksi Fashion di Indonesia", *Diponegoro Law Review*, Vol. 1 No. 2, (2013), 10.

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principles related to the problems at hand.<sup>8</sup> Nieuwenhuis explains the functional relationship between legal principles and provisions, namely:<sup>9</sup>

1. Legal principles functioned as system builders, so that legal principles not only affect positive law but also affect in many ways including creating a system. Because a system will not exist without the presence of legal principles in it.
2. One legal principle with another will create a system of balance or so-called checks and balances, where on these principles it is found that these legal principles often point in the opposite direction which becomes an obstacle to legal provisions, to create a balance.

The law of agreement is regulated in Book III of the Civil Code regarding engagements that have a complementary or optional nature, so that the parties can deviate from the provisions contained in Book III of the Civil Code.<sup>10</sup> However, there are provisions that cannot be overridden, one of which is in the discussion of the author's research namely Article 1338 paragraph (3) of the Civil Code which states that an agreement must be carried out in good faith.<sup>11</sup> This article requires the parties to have good faith in carrying out the agreement that has been agreed and cannot deviate even though they both agree.

Good faith is a very unique principle, until now the understanding of this principle is not same. This becomes a problem regarding the benchmark and function of good faith which is more emphasized on the attitude or the view of the judge in resolving case by case.<sup>12</sup> Good faith based on its nature is divided into two, namely subjective good faith and objective good faith. For good faith that is subjective, the essence is honesty which must be applied to pre-contracts. Meanwhile,

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<sup>8</sup> Henry P. Panggabean, *Penyalahgunaan Keadaan sebagai Alasan Baru untuk Pembatalan Perjanjian (Berbagai Perkembangan Hukum di Belanda)*, (Yogyakarta: Liberty, 2001), 7.

<sup>9</sup> Ridwan Khairandy, *Kebebasan Berkontrak Pacta Sunt Servanda, Versus Iktikad Baik: Sikap yang Harus Diambil Pengadilan, Ctk. Pertama, Op., Cit., 16.*

<sup>10</sup> Subekti, *Hukum Perjanjian, Ctk. Kedua Puluh Satu*, (Jakarta: Intermasa, 2015), 15

<sup>11</sup> Ridwan Khairandy, *Perjanjian Jual Beli, Ctk. Pertama*, (Yogyakarta: FH UII Press, 2016), 22.

<sup>12</sup> Ridwan Khairandy, *Iktikad Baik dalam Kebebasan Berkontrak, Op. Cit., 129.*



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objective good faith is essentially propriety, followed by fairness and rationality that must exist in the implementation of the contract.<sup>13</sup> The author concludes that the good faith used in this study is objective good faith which refers to the benchmarks of rationality (reasonableness), propriety (equity), and/or fairness.

Ridwan Khairandy emphasized that good faith must exist since pre-contract and contract implementation.<sup>14</sup> In the practice of implementing an animal care contract, it begins with the agreement of the service user to entrust their animal to the business actor by signing a standard agreement provided by the business actor as a evidence. When the service user has agreed to the agreement, the pre-contract good faith is considered to have been implemented so that the animal owner as the person who will use the service then carries out the process of delivering the animal to be entrusted to the animal care service business actor as well as the business actor submitting a memorandum for the collection of the deposited animal. Based on Article 1697, that the custody agreement has not occurred before the goods are delivered. So that the actual delivery made by the business actor and the service user will automatically bring forth an animal care agreement, then after that each party between the business actor and the service user is equally obliged to act in good faith in the implementation of the rights and obligations between them that have been agreed upon.

In carrying out the contract, the parties are obliged to carry out the agreement in good faith. The good faith of the implementation of the contract is based on the norms of propriety, so that the contents of the agreement here must be rational which will embodied propriety and justice which contains the rights and obligations of the parties who entered into the agreement.<sup>15</sup> Righteousness is also referred to as objective good faith, mainly lies in the circumstances surrounding the agreement, which if one party acts in an irrational and inappropriate way will

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<sup>13</sup> Barnabas Dumas Manery, "Makna dan Fungsi Iktikad Baik dalam Kontrak Kerja Kontruksi", *Jurnal Sasi*, Vol. 23 No. 2, (Juli-Desember, 2017), 140.

<sup>14</sup> *Op. Cit.*, 190.

<sup>15</sup> *Ibid.*, 92.

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not be a good defense to say that he really honestly believes that his behavior is reasonable and fair.<sup>16</sup> This propriety requirement is actually rooted in a regulatory nature, namely an effort to get a balance of the various interests that exist in society where in a legal system it is essentially not allowed to fulfill one's interests entirely with the consequences of the interests of others at all, whether they have been urged or ignored.<sup>17</sup> In the practice, related to the animal care agreement at GPSPK Depok, the business actor has carried out the agreed agreement until the specified time. However, on the 25<sup>th</sup> or 5<sup>th</sup> day after the agreement ends, the business actor notifies the service user to immediately take the deposited animal because it has exceeded the agreed time limit. With unexpected conditions, representatives of the service user (his family) contacted the business actor via whats app stating that they had not been able to take the animal that was deposited and had not been able to pay the animal care fee, with the reason that the animal owner was being treated at the hospital and had to pay hospital fees so that they do not have money to pay for animal care.

The reason that has been given was not put into consideration and accepted by the business actor, then the business actor pressures the service user that the animal must be taken immediately before the 10<sup>th</sup> day as stated in the business actor's record in the custody agreement, if it is not collected and the fee of animal care which is amount to IDR 1,500,000 ,- be redeemed, then the animal is threatened to be abandoned or thrown away. The threat was made by business actors because business actors have a strong basis for doing so, this has been clearly seen in the clause of the safekeeping agreement in the statement of agreement and approval of actions in the notes column of business actors which states that,

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<sup>16</sup> Arthur S. Hartkamp dan Marianne M.M Tillema, *Contract Law in the Netherlands*, (Deventer: Kluwer, 1993), 48.

<sup>17</sup> Wirjono Prodjodikoro, *Asas-Asas Hukum Perjanjian*, (Bandung: Mandar Maju, 2001), 102-107

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"If within 10 days there is no further confirmation of the animal being deposited, whether healthy or sick, then the animal is fully be the property and rights of GPSPK. DO NOT ACCEPT CAGE, ROPE, CLOTHING ETC."

Based on the clause above, business actors actually have the opportunity and authority to execute the clause on the transfer of property rights to the animal in custody. However, in practice regarding this clause, business actors do not do it. This is because service user representatives ask for help from Pejaten Shelter (founder of animal shelters) to save their animals.

Through Pejaten Shelter's social media, namely Facebook, there was circulating an information about offers to help paying the cost of care or even to adopt the animal, so you can pay the cost of care directly to the GPSPK Depok animal care service. This information is also accompanied by a photo of the bill when they take the deposited animal. Unexpectedly, after waiting a few days, there were no parties that were willing to help service users. This resulted with Pejaten Shelter immediately redeemed the cost of the animal with their own initiative before the 10 (ten) day deadline as stated in the record of the business actor by submitting photo evidence of a note that had been given by previous service users, accompanied by evidence of communication via whats app between Pejaten Shelter and service users. Based on the two evidences, the business actor has a basis for handing over the animal entrusted to the Pejaten Shelter. Then the animal is cared for with other animals that are kept by the Pejaten Shelter, in which the animal is not handed back to its original owner. The act of not surrendering the animal to its owner was carried out by Pejaten Shelter based on the animal owner's requests to rescue the animal, in which the owner also submitted a photo of the receipt of the deposited animal. However, after the submission the photo of the bill, communication between the Pejaten Shelter and the owner of the animal was cut off without further discussion regarding the fate of the animal.

Based on the results of the author's study, animal care is a common thing, but it becomes unusual if in the custody agreement contained transfer of ownership rights. As applied by animal care services at GPSPK Depok, where a statement of agreement and approval of action uses standard

clauses. However, the standard clause attracts the author's attention because of the clause on the transfer of animal ownership rights to business actors as described previously. Although this clause is applied by business actors, in practice it is not implemented to service users even though business actors have the opportunity and authority to do so because the animals have been handed over to the Pejaten Shelter as the party who has paid or redeemed the cost of animal care belonging to service users, which in this case is the Susanti.

### **Implementation of the Clause on the Transfer of Animal Ownership Rights In Accordance with the Good Faith of the Implementation of the Contract**

According to Ridwan Khairandy, the principle of good faith is divided into three stages, namely: pre-contract, contract implementation, and post-contract. However, he emphasized that the application of good faith must exist from the pre-contract to the execution of the contract. In this study, it refers to the good faith of the implementation of the contract, which wants to show whether there is a fair, proper and/or rational action of the parties carrying out the rights and obligations of the clauses that have been agreed upon in the agreement.<sup>18</sup> The benchmarks that determine whether there is good faith in the implementation of the contract, namely:

1. Justice or fairness. According to Ridwan Khairandy, the theory of justice focuses on how to distribute rights and obligations in a balanced way, so that each party has the opportunity to benefit from it and actually bear the same burden.<sup>19</sup>
2. Propriety or equity. Based on Article 1339 of the Civil Code, the theory of propriety is a benchmark regarding relationships determined by the sense of justice that prevails in society. So that it is not only based on the views of the parties regarding propriety, but also on the views of the general public.<sup>20</sup>

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<sup>18</sup> Munir Fuady, *Hukum Kontrak: dari Sudut Pandang Hukum Bisnis*, (Bandung: Citra Aditya Bakti, 2003), 84-85

<sup>19</sup> Ridwan Khairandy, *Iktikad Baik dalam Kontrak di Berbagai Sistem Hukum*, Op. Cit., 144.

<sup>20</sup> Niru Anita Sinaga, Op. Cit., 118

3. Rational or reasonableness, rational theory is a measure of a person's actions based on logical, reasonable, consequential considerations, and in line with the performances of the parties concerned. So that these rational displays rational forms that are known and must be in accordance with the human mind towards understanding an action.<sup>21</sup>

Based on the explanation of the previous discussion, the contract is a role model that regulates what the parties must and cannot do, not only what is stated in the contract but also in the customs, decency, and applicable laws as regulated in Article 1339 of the Civil Code. So that the statement of agreement and approval of actions at GPSPK Depok, which contains a note at the end of the agreement stating that:<sup>22</sup>

"If within 10 days there is no further confirmation of the animal being deposited, whether healthy or sick, then the animal is fully the property and rights of GPSPK. DO NOT ACCEPT CAGE, ROPE, CLOTHING ETC."

It is one of the clauses that violates the good faith of the implementation of the contract as regulated in Article 1338 paragraph (3) of the Civil Code, that the agreement must be carried out in good faith which previously mentioned, namely justice, propriety, and/or rationality.

Regarding the clause on the transfer of property rights as stated above, it is necessary to know the meaning of property rights first, explained in Article 570 of the Civil Code is the right to enjoy an object freely, as long as it does not conflict with the law or general rules that have authority for that purpose and does not interfere with the rights of others, and does not reduce the possibility of revocation of that right in the public interest, by paying appropriate compensation and according to the provisions of the law.<sup>23</sup> With this theory of property rights, it gives service users the right to act freely on their animals to be entrusted to business actors.

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<sup>21</sup> Fuadi, "Peran Akal Menurut Pandangan Al-Ghazali", *Jurnal Substantia*, Vol. 15 No. 1, (April, 2013), 85

<sup>22</sup> Statement of Agreement and Approval of Action, GPS

<sup>23</sup> Andi Hamza, *Kitab Undang-Undang Hukum Perdata*, (Jakarta: Rineka Cipta, 2000), 170.

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However, with the clause on the transfer of animal ownership rights, the service user will lose the benefits or assets of the goods/and or services purchased from the animal care agreement, so that the services purchased cannot be felt because the ownership rights of the animal are transferred to the business actor. Thus, the service user no longer has the right to the pet and the transfer of the right to the entrusted animal if it is based on the agreement, it is not done voluntarily by the service user to transfer the ownership of his pet to another party, which if seen in Korea, dogs have formally adopted by the South Korean Government in 2007,<sup>24</sup> this is where the injustice for service users arises.

Talking about property rights, of course, you must also know how to obtain these property rights. Based on what is meant by Article 584 of the Civil Code, it can only be obtained because: ownership, attachment, expiration, inheritance (law or will), and appointment or delivery based on direct events to transfer property rights are carried out by a person who has the right to act freely on the object.<sup>25</sup>

Thus, the transfer of ownership rights based on the custody agreement cannot be justified because the transfer of rights does not create a balance between the parties, where the service user bears a heavy burden with the transfer of rights clause in the custody agreement and the agreement is not a civil event that is directly intended for transfer a property right, so that justice does not materialize if the transfer of rights is based on the clause contained in the agreement.

In this animal care agreement, the agreement of the parties is proofed by a written agreement. Based on contract law, it is allowed to use a written agreement that contains terms and conditions as well as standard clauses. However, it must also adhere to Article 1339 of the Civil Code, which states that the agreement does not only bind things that are expressly stated in it but also to everything according to propriety, custom or law. Furthermore, it is emphasized in Article 1347

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<sup>24</sup> Minjoo Oh dan Jeffrey Jackson, "Animal Rights VS. Cultural Rights Exploring the Dog Meat Debate in South from a World Polity Perspective", *Journal of Intercultural Studies*, Vol. 32 No. 1, (2011), 49.

<sup>25</sup> Article 584 of the Civil Code

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of the Civil Code, promises that according to customs attached to the agreement are considered in the contents of the agreement.<sup>26</sup> Based on the results of the author's study, that the clause on the transfer of animal ownership rights does not adhere the provisions of the article above, because the position and form of the clause is difficult to understand for service users, it is located at the bottom of the records of business actors and in small letters, so that service users do not will concentrate, pay close attention to the section and take it as a reminder only. On the other hand, the placement is not in accordance with what is commonly used by the general public where if you put a clause that has a big risk, it is placed in a part that can be reached by consumers or is located at the very top of the agreement. So, it is clear that the implementation of the clause on the transfer of property rights does not create justice between the parties, which refers to justice according to Ridwan Khairandy as previously explained that justice will be created when the distribution of rights and obligations between the parties is balanced, which benefits both parties. and bear the same burden.<sup>27</sup> Based on the results of the explanation above, the authors conclude that, based on the explanation of Article 570 of the Civil Code regarding property rights, Article 584 of the Civil Code on how to obtain property rights and Article 1339 of the Civil Code, the existence of a clause on the transfer of animal property rights violates the benchmark of justice or fairness of good faith. implementation of the contract on the agreement for animal care at GPSPK.

Talking about good faith, it is not only focused on justice, but also on the appropriateness of the implementation of the contract. One of the actions that should be taken by business actors is not only having an obligation to have good faith with the owner of the animal but also to the animal, because when the service user has given honest trust or confidence to the business actor, he is the one who is obliged to take care of and care for the animal until the animal is returned into the hands of the custodian or owner. Actually, the object of this animal care is very clear, so that

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<sup>26</sup> Niru Anita Sinaga, Op. Cit., 118

<sup>27</sup> Ridwan Khairandy, Iktikad Baik dalam Kontrak di Berbagai Sistem Hukum, Op. Cit., 114.

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the entrusted animal should be treated as well as possible as well as caring for one's own and behave like treating living creatures according to proper natural actions for animals.

If you look at the explanation in the previous chapter, in various countries such as Canada, South Korea, and England, animals are considered as living beings whose welfare must be protected, so that every animal that is kept must be registered as ownership in order to determine the obligation of the animal owner to be responsible for protecting and caring for his animal as well as to every human being has an obligation to respect living creatures.<sup>28</sup> If you turn to India, animals are even purified, and the act of harming animals is considered a crime.<sup>29</sup> Therefore, there is a clause on the transfer of ownership rights applied by business actors in the animal care agreement, which will transfer rights to animals arbitrarily or not reflect the transfer of animals that apply and live in the community in transferring ownership of pets. This is because animals are non-human beings with developed nervous systems and are entitled to love, respect, and treatment as they treat living beings other than humans.<sup>30</sup> Then, in addition to these reasons, in order to get the right to raise animals, one must complete a course in raising animals.<sup>31</sup> This explains that animals are living creatures as pets that are protected by their owners, thus prohibiting abuse of animals, namely actions that cause unnecessary and avoidable physical stress or stress on animals without justifiable reasons.<sup>32</sup> So, the author concludes that based on the explanation of the application of regulations abroad which define animals as living creatures, the existence of a clause on the transfer of animal ownership rights violates the good faith of the

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<sup>28</sup> Elaine L. Hughes dan Christiane Meyer, "Animal Welfare Law in Canada and Europe", *Edmonton Journal*, Vol. 6 No. 23, (2000), 42-47.

<sup>29</sup> <https://timesofindia.indiatimes.com/city/ahmedabad/cow-slaughter-now-punishable-with-life-term-in-gujarat-rules-notified/articleshow/58980619.cms>, accessed on 30/11/2020.

<sup>30</sup> Can Vet J, "Toward a Harmonized Approach to Animal Welfare Law in Canada", *The Canadian Veterinary Journal*, Vol. 59 No. 3, (2018), 293-302.

<sup>31</sup> <https://en.yna.co.kr/view/AEN20200114003051320>, accessed on 11/11/2020.

<sup>32</sup> Andrew Alberro, "The State of Modern South Korean Animal Cruelty Law: An Overview with Comparison to Relevant United States and Swiss Law and the Future", *Washington University Global Studies Law Review*, Vol. 18 No. 3, (2019), 679.



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implementation of the contract which refers to the benchmark of propriety or equity in the agreement for animal care at GPSPK.

In the explanation above, of course, it has shown that there is a violation of good faith in the implementation of the contract, namely propriety. When propriety does not materialize, then of course the rational value is certainly not contained in the agreement. If you look again at the explanation above, in various countries such as Canada, South Korea, England, and India, animals are defined as living things. But in practice, there are still many who consider animals as objects of law. So, keep in mind that animals are living things that must be treated as well as possible, because animals have a life, can feel pain and hunger. There has even been a shift in the view of animals as insensitive property into living property that deserves to be fostered and protected based on ethical actions and applicable laws because animals have the capacity to feel pain.<sup>33</sup> So, the transfer of animal ownership rights should not be equated with tangible objects because basically animal ownership can only be obtained through breeding permits and through purchases from captivity or previous owners.<sup>34</sup>

Then on the other hand, an animal care agreement should not contain a clause on the transfer of animal ownership rights, because the main point of the custody agreement in Article 1694 of the Civil Code is to entrust the animal to be cared for properly, the owner of the animal treats his pet properly and correctly and will return the animal to the owner. custodian. So that the clause on the transfer of animal ownership rights does not provide an obligation for business actors to return the animals. Thus, it is irrational to apply to an animal care agreement because the transfer of rights is not the subject of a care agreement. The transfer of ownership should be contained in an agreement related to the purpose of the transfer of ownership, namely:

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<sup>33</sup> David Favre, "Living Property: A New Status for Animals Within the Legal System", *Marquette Law Journal*, Vol. 93 No. 3, (2010), 1026.

<sup>34</sup> *Loc.*, *Cit.*

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1. Buying and selling in Chapter V Book III of the Civil Code.
2. Exchange in Chapter VI Book III of the Civil Code.
3. Grants in Chapter X Book III of the Civil Code.

In addition to the three methods above, in a more complex form and outside the form of legal actions based on the agreement of the parties (in the form of an agreement). There are legal events that do not depend on the agreement of the parties that can be the basis for the acquisition of property rights, namely in the form of a judge's decision and the determination of the winner of the auction.<sup>35</sup> So, the author concludes that based on the rules for transferring animal rights applied in various countries and Article 1694 of the Civil Code, the existence of a clause on the transfer of animal property rights violates the rationality or reasonableness of good faith in the implementation of contracts in animal care agreements at GPSPK.

Currently, there is not a single word to provide a solid basis to rely on the accuracy of the benchmark agreement has been implemented based on good faith or not. The practice is left to the Judge to assess it. This is also the case in Anglo Saxon countries, which do not yet have an agreed standard to measure the principle of good faith. Usually, good faith is always associated with the meaning of justice, legal certainty, and expediency.<sup>36</sup> In addition, it is also associated with the values of decency, propriety, civility, and culture that live and develop in society. So, this research was carried out by the author, solely worried that the clause on the transfer of animal property rights would be executed in the future against service users. It is hoped that after this research, GPSPK business actors and prospective business actors who will open animal care services do not apply this clause in their animal care agreement.

## CONCLUSION

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<sup>35</sup> Deasy Soeikromo, *Op. Cit.*, 26.

<sup>36</sup> Suwardi Sagama, "Analisis Konsep Keadilan, Kepastian Hukum dan Kemanfaatan dalam Pengelolaan Lingkungan", *Jurnal Pemikiran Hukum Islam*, Vol. 15 No. 1, (Juni, 2016), 38.

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Based on the discussion presented by the author, the conclusion drawn by the author is the application of good faith in the use of the clause on the transfer of animal ownership rights to business actors is not executed, even though business actors have the opportunity and authority to do so. And the clause on the transfer of property rights applied violates good faith, because: it violates the value of propriety or equity (Article 507 of the Civil Code, Article 584 of the Civil Code, and Article 1339 of the Civil Code); violates the value of propriety or equity (a foreign rule that defines animals as living creatures); and violates the value of rationality or reasonableness (rules abroad that apply the rules for the transfer of property rights to animals as living beings and Article 1694 of the Civil Code).

Based on the conclusions stated above, several suggestions are given that will be useful for the parties, namely: it is better for GPSPK business actors, not to apply the clause on transfer of animal ownership rights in animal care agreements. Then, it is better to replace the clause on the transfer of ownership of the animal with a better clause in accordance with the naturally good treatment of living creatures. For example, in order to prevent losses for business actors in the future, payment of animal care fees is made in advance and fines if there is a delay in animal collection after the end of the agreement. And service users should be more careful in transferring ownership rights to their animals to other parties without an agreement that expressly and clearly stated transfers ownership, it is recommended that this will be done by buying and selling or by paying compensation for the animal.

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