

Pelanggaran terhadap asas itikad baik dalam pemutusan perjanjian secara sepihak sebagai perbuatan melawan hukum (studi kasus antara PT. Sumber Tangguh Baraindo dan PT. Indoasia Cemerlang = Violation of the principle of good faith in the unilateral termination of an agreement as a tort (case study between PT. Sumber Tangguh Baraindo and PT. Indoasia Cemerlang))

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Abstrak

[ABSTRAK

Tesis ini meneliti dan mengkaji pembatalan perjanjian secara sepihak yang dilakukan dengan tidak berdasarkan pada itikad baik. Itikad baik adalah salah satu asas klasik dalam hukum perjanjian yang terkandung pula dalam Kitab Undang-Undang Hukum Perdata. Asas itikad baik harus diterapkan sejak tahap prakontraktual sampai dengan pascakontraktual. Di dalam tahap prakontraktual, kedua belah pihak memiliki kewajiban untuk menjelaskan dan meneliti fakta material yang terkait dengan pembuatan perjanjian. Dalam hal suatu ketiadaan itikad baik pada tahap pembuatan perjanjian telah membawa para pihaknya dalam suatu hubungan kontraktual yang diikat dengan perjanjian, maka jelas bahwa dikemudian hari perjanjian tersebut senantiasa dapat dibatalkan. Kecakapan bertindak seseorang dalam suatu perjanjian adalah hal yang harus diteliti sebelum ditandatanganinya suatu perjanjian. Tipe penelitian yang digunakan adalah yuridis normatif yaitu penelitian hukum yang mengacu kepada kaidah-kaidah atau norma-norma hukum yang terdapat dalam peraturan perundang-undangan. Pelanggaran asas itikad baik dalam tahap pembuatan perjanjian menjadi suatu hal yang sulit untuk dibuktikan, oleh karena itu dibutuhkan suatu peraturan yang tegas untuk mewajibkan pihak-pihak dalam perjanjian untuk menjelaskan dan meneliti fakta material yang terkait dengan perjanjian. Hal ini dimaksudkan agar terpenuhinya syarat sah perjanjian sebagaimana diatur dalam pasal 1320 KUHPerdata. Pemutusan perjanjian secara sepihak yang memenuhi unsur perbuatan melawan hukum diharapkan dapat menciptakan kekonsistenan hakim dalam menerapkan hukum. Hal ini agar tercipta kejelasan dan kepastian hukum bagi para pihak yang terlibat dalam suatu perjanjian agar selalu beritikad baik dalam menjalankan suatu perjanjian baik dalam tahap prakontrak, pelaksanaan kontrak maupun pascakontrak.

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ABSTRACT

This thesis examines and assesses unilateral termination of the agreement which is not based on good faith. Good faith is one of the classic principles of contract law also contained in Indonesian Civil Code. The principle of good faith should be applied since pre-contractual phase until post-contractual. In the pre-contractual phase, both parties have an obligation to explain and examine the material facts related to the making of the agreement. In the case of an absence of good faith in the pre-contractual phase has brought the party in an contractual relationship which bound to the agreement, then obviously that the agreement in the future can always be canceled. The ability of a person in an agreement is something that should be examined before signing of the agreement. This type of research is normative juridical, which refers to the rules or norms of law contained in regulations. Violation of the principle of good faith in the process of

making the agreement becomes a difficult thing to prove, and therefore required a strict regulation to require the parties to the agreement to explain and examine the material facts relating to the agreement. This meant that the conditions are met the legitimate agreement as provided for in article 1320 of the Indonesian Civil Code. Unilateral termination of the agreement which meets the elements of the tort is expected to create the consistency of judges in applying the law. It is to create the clarity and legal certainty for the parties involved in an agreement to always have a good faith in carrying out an agreement in the pre- contract phase, contractual phase and post-contract phase.;This thesis examines and assesses unilateral termination of the agreement which is not based on good faith. Good faith is one of the classic principles of contract law also contained in Indonesian Civil Code. The principle of good faith should be applied since pre-contractual phase until post-contractual. In the pre-contractual phase, both parties have an obligation to explain and examine the material facts related to the making of the agreement. In the case of an absence of good faith in the pre-contractual phase has brought the party in an contractual relationship which bound to the agreement, then obviously that the agreement in the future can always be canceled. The ability of a person in an agreement is something that should be examined before signing of the agreement. This type of research is normative juridical, which refers to the rules or norms of law contained in regulations. Violation of the principle of good faith in the process of making the agreement becomes a difficult thing to prove, and therefore required a strict regulation to require the parties to the agreement to explain and examine the material facts relating to the agreement. This meant that the conditions are met the legitimate agreement as provided for in article 1320 of the Indonesian Civil Code. Unilateral termination of the agreement which meets the elements of the tort is expected to create the consistency of judges in applying the law. It is to create the clarity and legal certainty for the parties involved in an agreement to always have a good faith in carrying out an agreement in the pre- contract phase, contractual phase and post-contract phase.;This thesis examines and assesses unilateral termination of the agreement which is not based on good faith. Good faith is one of the classic principles of contract law also contained in Indonesian Civil Code. The principle of good faith should be applied since pre-contractual phase until post-contractual. In the pre-contractual phase, both parties have an obligation to explain and examine the material facts related to the making of the agreement. In the case of an absence of good faith in the pre-contractual phase has brought the party in an contractual relationship which bound to the agreement, then obviously that the agreement in the future can always be canceled. The ability of a person in an agreement is something that should be examined before signing of the agreement. This type of research is normative juridical, which refers to the rules or norms of law contained in regulations. Violation of the principle of good faith in the process of making the agreement becomes a difficult thing to prove, and therefore required a strict regulation to require the parties to the agreement to explain and examine the material facts relating to the agreement. This meant that the conditions are met the legitimate agreement as provided for in article 1320 of the Indonesian Civil Code. Unilateral termination of the agreement which meets the elements of the tort is expected to create the consistency of judges in applying the law. It is to create the clarity and legal certainty for the parties involved in an agreement to always have a good faith in carrying out an agreement in the pre- contract phase, contractual phase and post-contract phase.;This thesis examines and assesses unilateral termination of the agreement which is not based on good faith. Good faith is one of the classic principles of contract law also contained in Indonesian Civil Code. The principle of good faith should be applied since pre-contractual phase until post-contractual. In the pre-contractual phase, both parties have an obligation to explain and examine the material facts related to the making of the agreement. In the case of an absence of good faith in

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