

ABSTRAK

Jual beli adalah salah satu kontrak yang esensial. Adapun kesepakatan mengenai barang dan harga diperoleh melalui negosiasi. Dengan demikian negosiasi memiliki peran yang sangat krusial dalam jual beli. Namun terlepas dari perannya yang krusial, aturan hukum yang mengatur hak dan kewajiban para pihak selama negosiasi masih sangat kurang. Itikad baik dalam negosiasi telah diatur dalam Pasal 1338(3) BW, namun aturan tersebut belum memberi solusi karena makna itikad baik yang abstrak. Alhasil banyak pihak yang dirugikan selama negosiasi tanpa memperoleh perlindungan hukum. Oleh karena itu penelitian ini akan menganalisa kriteria negosiasi dengan itikad buruk dalam kontrak jual beli dan akibat hukum bagi pihak yang beritikad buruk dalam negosiasi kontrak jual beli. Adapun penelitian hukum ini menggunakan *statute approach*, *conceptual approach*, *comparative approach* (dibandingkan dengan hukum Belanda), dan *case approach*. Kemudian bahan hukum yang diperoleh akan dianalisa menggunakan metode konstruksi hukum dan penalaran deduktif. Dari analisa bahan hukum, kriteria itikad buruk dalam negosiasi kontrak jual beli dapat diperoleh dari peraturan perundang-undangan sektoral, prinsip hukum internasional, serta pendapat ahli *e.g.* menyesatkan lawan pihak, menggunakan paksaan, penipuan dan/atau menyalahgunakan keadaan selama negosiasi, menarik diri dari negosiasi tanpa alasan yang jelas ketika negosiasi telah mencapai tahap akhir, tidak menjelaskan serta meneliti seluruh fakta material terkait jual beli, dll. Kemudian, akibat hukum bagi pihak yang beritikad buruk selama negosiasi jual beli adalah wajib membayar ganti kerugian, yang disebut tanggung gugat pra kontrak. Sebagian dari tanggung gugat pra kontrak telah diatur dalam BW (Pasal 1446 BW- Pasal 1456 BW) sepanjang mengenai pembatalan atau kebatalan kontrak akibat melanggar syarat sah kontrak. Selebihnya, pihak yang dirugikan dalam negosiasi dapat menggugat berdasarkan perbuatan melanggar hukum dan memperoleh ganti kerugian sebatas *reliance interest* (kerugian materiil dan immateriil)

Keywords: kontrak jual beli, tanggung gugat pra kontrak, itikad baik, negosiasi

ABSTRACT

Sale and purchase contract is an essential contract. The agreement on goods and prices was obtained through negotiations. Thus, negotiation has a very crucial role in sale and purchase contract. However, despite its crucial role, there is a lack of legal rules regulating the rights and obligations of the parties during negotiations. Good faith in negotiations has been regulated in Article 1338 (3) BW, however, this regulation has not provided a solution because of the abstract meaning of good faith. As a result, many parties suffered losses during the negotiations without obtaining legal protection. Therefore this study will analyze the criteria for bad faith in the sale and purchase contract negotiations and the legal consequences for parties with bad faith in the sale and purchase contract negotiations. This legal research uses a statute approach, conceptual approach, comparative approach (compared to Dutch law), and a case approach. Then the legal material obtained will be analyzed using the legal construction method and deductive reasoning. From the analysis of legal materials, the criteria for bad faith in the negotiation of sale and purchase contracts can be obtained from sectoral laws and regulations, international legal principles, as well as expert opinions e.g. misleading opponents, using coercion, deception and / or abusing circumstances during negotiations, withdrawing from negotiations without clear reasons when negotiations have reached the final stage, failing to explain and examine all material facts related to buying and selling, etc. Then, the legal consequence for parties with bad faith during the sale and purchase negotiations is that they are obliged to pay compensation, which is called pre-contractual liability. Part of the pre-contractual liability has been regulated in BW (Article 1446 BW- Article 1456 BW) as long as it is regarding cancellation or termination of the contract due to violating the legal terms of the contract. The rest of the party that is injured in the negotiation can sue based on unlawful acts, and obtain compensation limited to reliance interest (materiil and immateriil loss)

Keywords: *sale and purchase agreement, pre-contractual liability, good faith, negotiation*