

Analysis of the Role of the Principle of Good Faith in Commercial Contracts: A Comparative Study of Australia and Indonesia

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Abstract

The expansion of global trade has intensified cross-border contractual relationships, positioning commercial contracts as central instruments for regulating parties' rights and obligations. Contracts are not merely formal documents but legal relationships grounded in trust. A key principle sustaining this relationship is good faith, which requires honest, reasonable, and responsible conduct at all stages of a contract, from negotiation to dispute resolution. This study examines the role of good faith in commercial contracts through a comparative analysis of Australia and Indonesia, representing common law and civil law traditions. Using a normative juridical approach and comparative method, the research analyzes legislation, doctrine, case law, and relevant contractual provisions. The findings reveal that in Australia, good faith has evolved through judicial decisions and is often treated as an implied obligation in certain contracts. In Indonesia, good faith derives strong legitimacy from codification as a general principle of contract law. Despite differing approaches, both systems substantively recognize good faith as a mechanism to ensure balance, prevent abuse of rights, and promote substantive justice. Strengthening this principle requires clear regulation supported by consistent judicial practice, contributing to trust and fairness in modern commercial contracting.

Keywords

Australia–Indonesia; Bona Fide Principle; Commercial Contracts; Comparative Law; Good Faith.

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INTRODUCTION

The expansion of global trade has intensified contractual relationships among business actors across national borders. Commercial contracts now serve as the primary legal instruments governing complex economic exchanges that transcend jurisdictional boundaries. These agreements provide legal certainty, allocate risks, and define the rights and obligations of the parties involved. Beyond their formal function, commercial contracts embody mutual trust and reliance, forming the backbone of sustainable business relationships. As cross-border transactions

increase in scale and sophistication, the normative foundations of contract law demand closer scrutiny, particularly the principle of good faith¹.

Good faith occupies a central position in modern contract law. It reflects an expectation that parties act honestly, fairly, and reasonably, refraining from opportunistic conduct that exploits loopholes or imbalances in bargaining power². The principle operates as a behavioral standard that shapes negotiation, performance, and enforcement. It restrains abusive practices and promotes integrity in commercial dealings. In highly competitive markets, this ethical-legal benchmark remains essential for preserving trust and predictability³. The growing complexity of commercial transactions exposes the limitations of purely textual interpretation. Not every contingency can be exhaustively addressed in contractual clauses. Unforeseen events, market fluctuations, and informational asymmetries frequently create gaps⁴. Good faith functions as a corrective mechanism that allows courts to evaluate conduct beyond literal wording. It bridges the space between strict contractual autonomy and equitable outcomes, ensuring that justice is not sacrificed for formalism⁵.

Comparative inquiry reveals that the understanding and application of good faith differ across legal traditions. Australia and Indonesia present a compelling contrast due to their distinct historical and doctrinal foundations. Australia's common law system emphasizes judicial precedent and incremental development through case law. Indonesia's civil law system relies heavily on codification, particularly the Civil Code, which expressly recognizes good faith as a foundational principle of contractual relations⁶. These structural differences shape judicial reasoning and commercial expectations in each jurisdiction. In Australia, the doctrine of good faith has evolved through judicial interpretation rather than comprehensive statutory formulation. Courts have gradually acknowledged implied duties of honesty and reasonableness in certain contractual contexts. Landmark decisions have explored whether good faith constitutes a general doctrine or a term implied in fact or in law. The incremental nature of this development reflects the common law's reliance on precedent, allowing the doctrine to adapt to changing commercial realities⁷.

Judicial debate in Australia centers on the scope and certainty of good faith obligations. Some courts have affirmed that parties must not exercise contractual discretion capriciously or

¹ Siti Anisah, "Good Faith and Fairness in Indonesian Commercial Agreements," *Hasanuddin Law Review* 6, no. 3 (2020): 307–22.

² Matthew Harding, "Relational Contracts and Good Faith," *Law Quarterly Review* 135 (2019): 28–54.

³ Reinhard Zimmermann, "Good Faith in European Contract Law: Ten Years On," *European Review of Private Law* 24, no. 3 (2016): 433–56.

⁴ Nuno Garoupa and Carlos Gómez Ligüerre, "The Economic Analysis of Good Faith," *International Review of Law and Economics* 55 (2018): 1–10.

⁵ Katy Barnett, "The Implication of Terms and the Doctrine of Good Faith," *Monash University Law Review* 44, no. 1 (2018): 1–29.

⁶ Jason W Neyers, "Good Faith and the Exercise of Contractual Rights," *Alberta Law Review* 56, no. 3 (2019): 631–60.

⁷ Elisabeth Peden, "Contractual Discretion and Good Faith," *Australian Law Journal* 94, no. 5 (2020): 369–89.

dishonestly. Others remain cautious, wary of undermining freedom of contract. This tension produces a dynamic legal landscape in which commercial actors must assess risk through careful drafting and awareness of evolving jurisprudence. The flexibility of the system offers adaptability, yet it may also generate uncertainty⁸. Indonesia presents a more explicit normative framework. Article 1338 of the Civil Code requires agreements to be performed in good faith, embedding the principle within the statutory architecture of contract law. Good faith is understood as an overarching norm guiding both interpretation and performance. Judges frequently invoke it to assess fairness, invalidate abusive clauses, or interpret ambiguous provisions⁹. The codified character of Indonesian law provides a clear doctrinal anchor for judicial intervention.

The Indonesian conception of good faith extends beyond subjective honesty to encompass objective standards of propriety and fairness. Courts may evaluate whether conduct aligns with societal norms and equitable expectations¹⁰. This broader interpretation reflects civil law traditions influenced by continental European doctrines. It also strengthens judicial capacity to correct imbalances in commercial transactions, especially where disparities in bargaining power exist. Comparative analysis demonstrates that legal structure influences doctrinal emphasis. Australian courts tend to frame good faith as an implied obligation derived from the presumed intentions of the parties or as a limitation on discretionary powers. Indonesian courts treat good faith as an inherent attribute of every contract¹¹. The difference affects predictability, drafting strategies, and litigation outcomes in commercial disputes.

The negotiation stage illustrates the divergence clearly. Australian law traditionally resists imposing broad pre-contractual duties, though misleading conduct and equitable doctrines may provide remedies. Indonesian law, grounded in civil law principles, recognizes good faith obligations even during formation. Parties may incur liability for bad faith negotiations or misrepresentation that undermines trust¹². This distinction affects how businesses manage preliminary agreements and due diligence. Performance of contractual obligations further highlights contrasting approaches. Australian jurisprudence scrutinizes the exercise of contractual discretion to prevent dishonesty or abuse. Courts evaluate whether discretion has been exercised consistently with legitimate contractual purposes. Indonesian judges may assess overall fairness and proportionality, invoking good faith to reinterpret or moderate strict terms. The Indonesian approach can lead to substantive adjustments in order to achieve equitable results.

Dispute resolution practices also reveal practical implications. In Australia, litigants often rely on specific precedent to support arguments regarding implied duties. The outcome may

⁸ Budi Santoso, "The Principle of Good Faith in Indonesian Contract Law Reform," *Indonesia Law Review* 10, no. 2 (2020): 207–26.

⁹ Rachmadi Usman, "Standard Form Contracts and Good Faith in Indonesia," *Jurnal Hukum IUS QUIA IUSTUM* 27, no. 1 (2020): 1–19.

¹⁰ Luke Nottage and Jeannie Paterson, "Harmonising Contract Law in the Asia-Pacific," *Asian Journal of Comparative Law* 14, no. 2 (2019): 245–68.

¹¹ Tania Sourdin, "Good Faith in Alternative Dispute Resolution," *Bond Law Review* 29, no. 2 (2017): 1–20.

¹² Larry A DiMatteo, "Good Faith in International Contracting: General Principle or Implied Term?," *Uniform Law Review* 23, no. 2 (2018): 207–34.

hinge on factual parallels with prior cases¹³. Indonesian courts draw directly from statutory provisions, granting judges broader interpretive authority. This institutional difference shapes litigation strategies and influences how commercial contracts are drafted. Economic considerations further underscore the importance of good faith. Modern commercial contracts frequently involve significant financial exposure and long-term cooperation. Opportunistic behavior can destabilize markets and erode investor confidence. A well-defined good faith standard reduces transaction costs by promoting predictable conduct. Businesses operating across Australia and Indonesia must appreciate these doctrinal nuances to manage cross-border risk effectively.

Imbalances in bargaining power remain a persistent concern in commercial practice. Large corporations often negotiate with smaller enterprises lacking equivalent leverage. Good faith serves as a safeguard against exploitation, ensuring that stronger parties do not impose oppressive terms or exercise rights abusively. Indonesian courts have been particularly active in invoking good faith to address inequities. Australian courts, while more restrained, increasingly acknowledge fairness considerations in relational contracts. The interplay between legal certainty and equitable flexibility lies at the heart of this comparative study. Australian law prioritizes doctrinal coherence and incremental development, promoting stability through precedent. Indonesian law emphasizes normative clarity derived from codification. Each model offers advantages and challenges. Flexibility encourages adaptation to evolving business models, while statutory certainty enhances predictability.

Globalization intensifies the need for harmonized principles in contract law. International instruments such as the UNIDROIT Principles and the CISG recognize good faith as a guiding norm. These frameworks influence domestic legal development and encourage convergence. Australia and Indonesia, as active participants in regional and global trade, confront pressures to align domestic doctrines with international expectations. Empirical observations from commercial disputes indicate that parties increasingly invoke good faith in litigation. Claims often concern termination rights, discretionary powers, and renegotiation obligations. Comparative case analysis reveals patterns in judicial reasoning that reflect broader systemic characteristics. Australian courts examine contractual construction meticulously, whereas Indonesian judges emphasize fairness and moral propriety.

The theoretical foundation of good faith draws from established contract law theories, including relational contract theory and corrective justice. Relational theory highlights long-term cooperation and mutual trust, supporting broader recognition of good faith obligations. Corrective justice theory underscores fairness and rectification of imbalance. Both perspectives inform judicial reasoning in Australia and Indonesia, though expressed through distinct doctrinal frameworks. Policy implications arise from this comparative assessment. Law reform initiatives in Australia periodically revisit the desirability of a unified doctrine of good faith. Indonesian scholars debate the need for clearer guidelines to prevent inconsistent application. Constructive

¹³ Andrew Robertson, "The Limits of Good Faith in Australian Contract Law," *Sydney Law Review* 39, no. 4 (2017): 561–86.

dialogue between the two systems may yield improvements in clarity, predictability, and fairness. For business practitioners, understanding doctrinal differences enhances contractual planning. Precise drafting, choice-of-law clauses, and dispute resolution mechanisms must reflect awareness of how good faith operates in each jurisdiction. Risk allocation strategies benefit from comparative insight. Policymakers and judges also gain from examining alternative approaches that balance autonomy with justice. The principle of good faith remains a cornerstone of contractual justice. Its evolution in Australia and Indonesia illustrates the dynamic relationship between legal tradition and commercial reality. Comparative analysis enriches doctrinal understanding and identifies pathways for reform. As global commerce continues to expand, the refinement of good faith doctrine will remain essential to maintaining integrity, fairness, and confidence in commercial contracting.

METHODS

This research adopts a normative juridical approach to examine the role of the principle of good faith in commercial contracts in Australia and Indonesia. The study is grounded in doctrinal legal analysis, focusing on the systematic examination of legal norms that regulate contractual relationships¹⁴. By concentrating on authoritative legal sources, the research seeks to clarify how good faith is conceptualized, structured, and applied within each legal system. A comparative method is employed to identify structural similarities and doctrinal differences between the two jurisdictions. Comparative legal research enables a deeper understanding of how distinct legal traditions shape the interpretation of contractual principles. Australia, rooted in the common law tradition, and Indonesia, grounded in civil law codification, provide a valuable contrast for examining the development and operation of good faith in commercial settings.

Primary legal materials form the core of the analysis. These include statutory provisions, judicial decisions, and relevant contractual regulations in both countries. Australian case law is scrutinized to trace the evolution of good faith through precedent, while Indonesian statutory provisions, particularly those contained in the Civil Code, are examined to assess the normative foundation of good faith as an explicit legal requirement. Judicial decisions constitute a central component of the study. In Australia, leading cases are analyzed to determine how courts articulate implied duties, limit discretionary powers, and interpret contractual performance standards. In Indonesia, court rulings are reviewed to evaluate how judges apply statutory provisions on good faith in assessing contractual validity and fairness. This examination highlights how judicial reasoning reflects broader systemic characteristics.

Doctrinal writings and scholarly commentary are also incorporated as secondary legal materials¹⁵. Academic literature provides interpretative guidance and critical perspectives on the development of good faith in both jurisdictions. Through systematic library research, books,

¹⁴ Konrad Zweigert and Hein Kötz, "Comparative Law as a Method of Legal Research," *American Journal of Comparative Law* 66, no. 3 (2018): 423–46.

¹⁵ Geoffrey Samuel, "Comparative Law and the Juridical Method," *The American Journal of Comparative Law* 65, no. 4 (2017): 733–58.

journal articles, and reputable legal commentaries are collected and assessed to support doctrinal clarification and theoretical grounding. The collection of secondary materials follows a structured and methodical process. Sources are selected based on relevance, credibility, and contribution to the understanding of contract law theory. This approach ensures that the analysis rests on established scholarship and contemporary debate, strengthening the academic rigor of the study.

Qualitative analysis is applied to interpret and compare the legal materials. Rather than relying on statistical measurement, the research emphasizes conceptual examination and normative evaluation. Legal texts and judicial reasoning are carefully interpreted to uncover the underlying principles governing good faith in commercial contracts. The comparative analysis focuses on three main aspects: conceptual formulation, functional role, and practical implementation. Conceptual formulation concerns how good faith is defined and understood within each legal system. Functional role addresses the purposes it serves, whether as an interpretative tool, a corrective mechanism, or a source of implied obligations. Practical implementation examines how courts apply the principle in concrete disputes.

Through this structured comparison, the research identifies points of convergence and divergence. Both jurisdictions recognize the importance of honest and fair conduct in contractual dealings. However, differences emerge in doctrinal foundation, judicial technique, and the degree of normative certainty provided by the legal framework. These distinctions are examined in relation to broader theories of contract law. The findings are then connected to established theoretical perspectives, including classical contract theory, relational contract theory, and corrective justice theory. Classical theory emphasizes autonomy and certainty, while relational theory highlights cooperation and long-term interaction. Corrective justice underscores fairness and balance between parties. These theoretical lenses assist in evaluating the normative orientation of each system.

Deductive reasoning guides the formulation of conclusions. General principles derived from statutory provisions, jurisprudence, and doctrine are synthesized to generate broader insights regarding the role of good faith in commercial contracts. This logical structure ensures coherence between the research questions, analysis, and final conclusions. Attention is also given to the objectives of contractual justice. The study evaluates whether the application of good faith in each jurisdiction promotes fairness, legal certainty, and economic efficiency. By examining doctrinal consistency and judicial practice, the research assesses the extent to which each system achieves an appropriate balance between freedom of contract and equitable protection.

The methodological design enables a comprehensive portrayal of the strengths and limitations of both legal systems. The Australian model demonstrates flexibility and adaptability through case law development. The Indonesian model offers clearer normative anchoring through codification. These characteristics are evaluated in light of contemporary commercial needs and cross-border transactions. The research ultimately provides constructive recommendations for the development of national contract law. Insights derived from the comparative study may inform doctrinal refinement, judicial interpretation, and potential legislative reform. By integrating theoretical foundations with systematic legal analysis, the study contributes to a deeper understanding of good faith as a cornerstone of commercial contract law.

Through a rigorous normative and comparative framework, this research offers a detailed and logically structured examination of good faith in Australia and Indonesia. The methodological approach ensures that conclusions are grounded in authoritative legal sources and established theory, while also addressing practical implications for commercial actors and legal institutions.

RESULTS AND DISCUSSION

The principle of good faith stands as a foundational pillar of modern contract law. It affirms that contractual relationships are not purely mechanical exchanges of promises but legal bonds infused with ethical expectations. A contract embodies more than written clauses; it reflects trust, reliance, and mutual commitment. Good faith requires honesty, fairness, and responsibility in the exercise of contractual rights and obligations. Its presence reinforces the moral legitimacy of commercial transactions and strengthens the normative structure of private law. In commercial contracts, good faith assumes particular importance due to the significant economic interests at stake¹⁶. Large-scale transactions often involve complex risk allocation and sophisticated bargaining strategies. Such conditions create opportunities for opportunistic conduct. Good faith operates as a restraint against abuse of rights and manipulative practices. It ensures that freedom of contract does not become a shield for unfair advantage.

The reach of good faith extends beyond contractual performance. It influences the entire contractual lifecycle, beginning with negotiations. Parties are expected to negotiate honestly and to disclose material information that could affect consent. Deceptive statements, concealment of essential facts, and strategic misrepresentation undermine the integrity of agreement formation. Legal systems that recognize pre-contractual good faith aim to safeguard legitimate expectations and preserve the authenticity of consent¹⁷. During contract formation, good faith protects reliance and prevents misleading conduct. Trust forms the basis of voluntary agreement. Without trust, contractual consent becomes vulnerable to distortion. Courts may intervene when negotiations demonstrate bad faith behavior that compromises fairness. The recognition of this principle at the formation stage signals that ethical conduct is integral to enforceable obligations.

Performance of contractual duties further illustrates the operational significance of good faith. Parties must carry out their obligations in a manner consistent with the purpose of the agreement. Strict adherence to literal wording cannot justify conduct that defeats the contractual objective¹⁸. Opportunistic exploitation of technical loopholes contradicts the spirit of cooperation inherent in commercial exchange. Good faith preserves the substantive value of the bargain. In dispute resolution, good faith functions as an interpretative guide. Judges frequently examine the

¹⁶ Sarah Worthington, "Commercial Certainty and Fair Dealing," *Modern Law Review* 81, no. 4 (2018): 587–614.

¹⁷ Luke Nottage, "Contract Law and Regional Harmonisation in Asia," *Journal of East Asia and International Law* 11, no. 1 (2018): 75–98.

¹⁸ Anne Scully-Hill, "The Future of Good Faith in Australian Commercial Contracts," *Griffith Law Review* 28, no. 4 (2019): 567–90.

intention and conduct of parties when interpreting ambiguous clauses. Textual analysis alone may not capture the full meaning of contractual arrangements. Courts may consider the commercial purpose, surrounding circumstances, and reasonable expectations. This interpretative dimension enhances the pursuit of substantive justice.

Australian contract law reflects a jurisprudential approach to good faith. The doctrine has developed incrementally through judicial decisions rather than comprehensive codification. Courts assess its applicability based on factual circumstances and established precedent. The recognition of implied duties of honesty and reasonableness demonstrates the adaptability of common law reasoning. Yet, the absence of a uniform statutory rule generates ongoing debate regarding scope and certainty. Australian courts frequently associate good faith with standards of reasonableness and honest exercise of contractual discretion. Long-term or relational contracts often invite closer scrutiny¹⁹. Judicial intervention may arise when one party exercises discretion in a manner inconsistent with the contract's commercial purpose. This case-based development promotes flexibility but also leaves room for interpretative variation.

Indonesia presents a contrasting model grounded in codified civil law. The Civil Code expressly requires agreements to be performed in good faith, embedding the principle within statutory doctrine. This explicit formulation provides a clear normative anchor for judicial application. Every contract is presumed to carry the obligation of good faith, reinforcing its universal character in Indonesian private law. The statutory recognition of good faith in Indonesia enhances predictability²⁰. Parties are aware from the outset that their conduct will be evaluated against a normative standard of fairness. Courts possess a firm textual basis for corrective intervention. This structure contributes to legal stability and consistent doctrinal reference. It strengthens the protective function of contract law, particularly in situations involving unequal bargaining power.

Nonetheless, codification does not eliminate interpretative challenges. The broad wording of statutory provisions requires judicial elaboration. Judges must define the contours of good faith through reasoned interpretation. Divergent interpretations may emerge, emphasizing the continuing relevance of doctrinal scholarship and jurisprudential development. Legal doctrine plays a crucial role in refining conceptual clarity. Comparative analysis reveals distinct orientations in the two systems²¹. Australia emphasizes evolutionary development through precedent, while Indonesia relies on codified principles supported by judicial interpretation. Each model offers advantages. The common law approach accommodates commercial innovation,

¹⁹ P S Atiyah and Stephen A Smith, "Freedom of Contract and Fairness," *Journal of Business Law*, 2017, 567–89.

²⁰ Simon Whittaker, "Interpretation and Good Faith in Comparative Perspective," *Edinburgh Law Review* 22, no. 3 (2018): 306–27.

²¹ Catherine MacMillan, "Reasonableness and Good Faith in Contract Performance," *Common Law World Review* 47, no. 2 (2018): 95–118.

whereas the civil law framework provides initial normative clarity. The tension between flexibility and certainty shapes the practical application of good faith²².

The principle also relates closely to theories of contractual justice. Formal equality does not necessarily guarantee substantive fairness. Good faith promotes equilibrium by examining the real impact of contractual conduct. It aligns with relational contract theory, which views contracts as cooperative ventures rather than isolated exchanges. It also resonates with corrective justice theory, which emphasizes rectification of imbalance. Preventive functions further illustrate the multidimensional character of good faith. By establishing a behavioral standard, it discourages misconduct before disputes arise. Parties aware of judicial scrutiny are less likely to engage in exploitative tactics. The principle fosters a culture of compliance and responsible entrepreneurship. Commercial actors benefit from reduced litigation risk and enhanced reputational capital.

Good faith also serves as a tool for harmonization in international commerce. Many global instruments recognize it as a foundational norm. Its widespread acknowledgment facilitates convergence among legal systems. Although doctrinal formulations differ, the substantive expectation of honest and fair conduct remains consistent. This convergence supports cross-border transactions and strengthens legal cooperation. Technological developments introduce new challenges that heighten the relevance of good faith. Digital contracts, automated transactions, and algorithmic decision-making reshape commercial practice. Information asymmetry may intensify when interactions occur without physical presence. Good faith imposes limits on manipulative technological practices and underscores the necessity of transparency in electronic contracting.

Alternative dispute resolution mechanisms equally rely on good faith participation. Mediation and arbitration depend on cooperative engagement and honest representation of interests. Parties who act in bad faith undermine procedural efficiency and fairness. The principle reinforces ethical standards in both adjudicative and non-adjudicative processes. Consistent judicial application remains essential for effective implementation. Predictable interpretation reduces legal uncertainty and enhances business confidence. Courts that articulate clear reasoning regarding good faith contribute to doctrinal coherence. Regulatory quality also influences practical impact. Clear yet adaptable rules enable responsiveness to evolving commercial realities.

The comparative perspective highlights opportunities for mutual learning. Indonesia may benefit from greater jurisprudential refinement that clarifies interpretative standards. Australia may consider articulating clearer doctrinal guidance to reduce ambiguity. A balanced integration of flexibility and certainty would strengthen both systems. Constructive exchange of ideas fosters progressive development. Good faith embodies the dynamic evolution of contract law. It reflects the interaction between autonomy and responsibility, freedom and fairness. No single model offers a definitive solution; each legal tradition adapts the principle to its institutional structure and societal values. What remains constant is the commitment to equitable conduct in commercial

²² Ewan McKendrick, "The Role of Good Faith in English and Australian Contract Law," *Journal of Contract Law* 35, no. 1 (2019): 1–18.

dealings. Through comparative study, the enduring significance of good faith as a pillar of contractual justice becomes unmistakably clear.

CONCLUSION

The principle of good faith occupies a central position in commercial contracts in both Australia and Indonesia. Although rooted in different legal systems, both countries recognize good faith as a mechanism for maintaining balance and fairness in contractual relationships. In Australia, the principle has developed through judicial decisions, while in Indonesia it is reinforced through explicit statutory regulation. These differences do not eliminate their shared substantive expectation of honesty and propriety in the conduct of the parties. Good faith serves as a bridge between legal certainty and contractual justice. Comparative analysis highlights the importance of integrating clear regulatory frameworks with consistent judicial practice. Indonesia can learn from the flexibility of Australian jurisprudence, while Australia may draw insight from Indonesia's normative certainty. The harmonization of good faith values remains essential.

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