

Analysis of Good Faith in Subsidized Property Disputes; A Case Study of Delayed Housing Handover by Developers

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Abstract: Subsidized housing programs are designed to ensure access to adequate housing for low-income communities. However, delays in the delivery of houses by developers frequently occur despite buyers having fulfilled their contractual obligations. Such disputes are not merely cases of breach of contract but also involve the principle of good faith in contract performance. This study analyzes the meaning and function of good faith in disputes concerning delayed delivery of subsidized housing and examines the implications of normative ambiguity on consumer legal protection. Using a normative juridical method with statutory, conceptual, and case approaches, the study finds that the absence of operational standards of good faith in the Civil Code and housing regulations leads to legal uncertainty and inconsistent judicial reasoning. Delays by developers are not consistently considered violations of good faith, thereby weakening consumer protection. The study concludes that explicit normative indicators of developers' good faith and regulatory harmonization are essential to ensure legal certainty and substantive justice.

Keywords : breach of contract; consumer protection; good faith; subsidized housing; sale and purchase agreement.

INTRODUCTION

The subsidized housing program is a strategic state policy aimed at ensuring the fulfillment of the rights of low-income communities to adequate, safe, and affordable housing. This policy is not positioned merely as a physical development program, but rather as an instrument of social protection that is directly linked to the right to housing as part of human rights. Within the national legal framework, the state's commitment to the provision of housing is reflected in Law Number 1 of 2011 on Housing and Settlement Areas, which affirms the state's obligation to ensure the implementation of housing that meets the principles of affordability, legal certainty, and sustainability.¹ Nevertheless, in empirical practice, the implementation of subsidized housing policies continues to face various legal problems, one of which is the delay in the handover of housing units by developers, even though the agreement has been signed and the consumers' payment obligations have been fulfilled. The phenomenon of delays in the handover of subsidized housing is not incidental in nature, but rather constitutes a structural problem that frequently occurs in housing development practices. Consumers, who are generally in a weak economic position and possess limited bargaining power, often have no alternative but to accept standard-form agreements unilaterally drafted by developers. Under such conditions, delays in handover not only cause material

¹Undang-Undang Nomor 1 Tahun 2011 tentang Perumahan dan Kawasan Permukiman.

losses, but also create legal uncertainty and significant social burdens for consumers, particularly because subsidized housing is generally acquired to meet the basic need for shelter. Shabrina and Aminah show that delays in housing delivery are among the most frequently experienced violations faced by housing consumers, yet their resolution still tends to focus solely on aspects of breach of contract.²

From the perspective of civil law, delays in housing handover are commonly classified as breach of contract (wanprestasi) as regulated under Articles 1239 and 1243 of the Indonesian Civil Code. This approach emphasizes the fulfillment of performance and the consequences of compensation arising from the failure to perform contractual obligations. However, in the context of subsidized housing, the issue of delayed handover cannot always be understood simply as a failure to perform. There exists a deeper normative dimension, namely good faith in the performance of contracts, as mandated by Article 1338 paragraph (3) of the Indonesian Civil Code, which stipulates that every agreement must be performed in good faith.³

The principle of good faith occupies a fundamental position in Indonesian contract law. It functions not only as a moral principle, but also as a normative standard for assessing the conduct of the parties throughout all stages of a contract, from the pre-contractual and contractual phases to the post-contractual stage. Sinaga emphasizes that good faith serves as an instrument for realizing justice between the parties to an agreement, particularly when there is an imbalance of bargaining positions.⁴ In the context of subsidized housing, this principle becomes highly relevant given that consumers are structurally in a weaker position compared to developers as business actors.

Nevertheless, the application of the principle of good faith in disputes over delays in the handover of subsidized housing continues to face serious challenges. The legal issue in this research is explicitly stated as the existence of normative ambiguity regarding the parameters and standards of good faith in the performance of subsidized housing sale and purchase agreements, particularly in cases of delayed handover by developers. To date, neither the Indonesian Civil Code nor sectoral housing regulations have provided clear operational indicators to assess whether a delay in handover remains within reasonable tolerance or instead reflects the absence of good faith on the part of the developer.

This normative ambiguity is further exacerbated by the absence of explicit regulation distinguishing delays caused by objectively justifiable circumstances from delays arising from negligence or business strategies of developers. Sinilele shows that good faith in land sale and purchase agreements is often understood in an abstract and subjective manner, resulting in assessments that are highly dependent on judicial interpretation.⁵ Consequently, in judicial practice, delays in housing handover are not always consistently assessed as violations of good faith, even where consumers have fully complied with their contractual obligations.

From the perspective of sectoral regulation, Law Number 1 of 2011 on Housing and Settlement Areas as well as Government Regulation Number 14 of 2016 in conjunction with Government Regulation

² R. Shabrina & A. Aminah, "Perlindungan Konsumen Terhadap Keterlambatan Penyerahan Rumah," *Notarius* 15, no. 2 (2022), <https://doi.org/10.14710/nts.v15i2.37371>

³ Kitab Undang-Undang Hukum Perdata, Pasal 1338 ayat (3).

⁴ N. Sinaga, "Peranan Asas Itikad Baik dalam Mewujudkan Keadilan Para Pihak dalam Perjanjian," *Mimbar Hukum* 8, no. 1 (2021), <https://doi.org/10.35968/m-pu.v8i1.186>

⁵ A. Sinilele, "Itikad Baik dalam Perjanjian Jual-Beli Tanah Menurut KUH Perdata," *El-Iqthisadi* 2, no. 2 (2020), <https://doi.org/10.24252/el-iqthisadi.v2i2.18350>

Number 12 of 2021 do regulate the obligations of housing developers. However, these regulations remain general in nature and have not addressed operational normative standards of developer good faith, particularly in the context of subsidized housing. Ramadhani emphasizes that legal protection for purchasers of subsidized housing continues to face normative obstacles due to the weakness of standards for evaluating the conduct of business actors.⁶

In addition, Law Number 8 of 1999 on Consumer Protection provides a framework for protecting consumers from harmful business practices. However, in disputes concerning delays in the handover of subsidized housing, consumer protection provisions often fail to comprehensively address the dimension of good faith. Martinouva et al. show that the liability of business actors in subsidized housing agreements is still largely understood in a formalistic manner, without due consideration of substantive justice and good-faith conduct.⁷

From an academic perspective, studies of housing-related civil law have largely focused on breach of contract, compensation, and developer liability. Research by Innaka et al. and Simamora et al. has discussed good faith in the context of preliminary sale and purchase agreements, but their focus remains limited to the pre-contractual stage or the form of preliminary agreements.⁸ Meanwhile, the research of Shabrina and Aminah places greater emphasis on consumer protection against delays in housing delivery without specifically examining good faith as a normative standard for evaluating developer conduct.⁹ Accordingly, there exists an academic gap in the form of a lack of analysis that specifically examines good faith as an instrument of juridical assessment in disputes over delays in the handover of subsidized housing. Based on this background, the novelty of this research lies in its normative analysis of the principle of good faith as an evaluative standard for developer conduct in subsidized housing disputes, rather than merely as an abstract principle within the law of obligations. This study aims to analyze the meaning and function of good faith in disputes concerning delays in the handover of subsidized housing, as well as to examine the implications of normative ambiguity surrounding good faith for the legal protection of consumers of subsidized housing. Through this approach, the research is expected to provide theoretical and prescriptive contributions to the strengthening of consumer protection and legal certainty in the subsidized housing sector.

METHOD

This research constitutes normative juridical legal research focusing on the analysis of legal norms governing good faith in subsidized housing sale and purchase agreements, as well as the ambiguity of their regulation in the practice of disputes involving delayed handover. This method is selected because the issues examined are directly related to the interpretation of norms, legal principles, and regulatory consistency within the systems of civil law and consumer protection.¹⁰

⁶ S. Ramadhani, "Perlindungan Hukum Pembeli Perumahan Subsidi," *Proceedings Series on Social Sciences & Humanities* 17 (2024), <https://doi.org/10.30595/pssh.v17i.1164>

⁷ R. Martinouva, H. Hamzah, & S. Sunaryo, "The Existence of Product Liability in Subsidized Housing Purchase Agreements," *International Journal of Advanced Research* (2024), <https://doi.org/10.21474/ijar01/19832>

⁸ A. Innaka, S. Rusdiana, & S., "Penerapan Asas Itikad Baik Tahap Prakontraktual pada Perjanjian Jual Beli Perumahan," *Mimbar Hukum* (2013), <https://doi.org/10.22146/jmh.16122>

⁹ R. Shabrina & A. Aminah, *op. cit.*

¹⁰ Sujadi. *Metode Penelitian Hukum*. Jakarta: Rajawali Press, 2012

The approaches employed include the statute approach, conceptual approach, and case approach. The statute approach is conducted by analyzing the provisions of the Indonesian Civil Code, particularly Articles 1239, 1243, and 1338, as well as Law Number 1 of 2011 on Housing and Settlement Areas and Law Number 8 of 1999 on Consumer Protection. The conceptual approach is used to examine doctrines of good faith, contractual justice, and consumer protection within the civil law literature. Meanwhile, the case approach is carried out by reviewing court decisions related to property disputes and delays in housing handover.

The legal materials used consist of primary legal materials in the form of laws and regulations and court decisions, secondary legal materials in the form of books and journal articles on contract law and housing, and tertiary legal materials in the form of legal dictionaries and encyclopedias. All legal materials are analyzed prescriptively and evaluatively using systematic and teleological interpretation to formulate normative recommendations concerning the strengthening of good faith standards for developers in subsidized housing.

RESULTS AND DISCUSSION

Normative Ambiguity of the Principle of Good Faith in the Regulation of Subsidized Housing Sale and Purchase Agreements

The principle of good faith constitutes one of the fundamental principles in Indonesian contract law and is normatively affirmed in Article 1338 paragraph (3) of the Indonesian Civil Code. This provision implies that the performance of an agreement is not measured solely by the formal fulfillment of obligations, but also by the quality of the parties' conduct in exercising their rights and obligations. Nevertheless, this provision is not accompanied by further explanation regarding the operational parameters of good faith, thereby opening broad interpretative space and potentially giving rise to legal uncertainty.¹¹

In the context of subsidized housing sale and purchase agreements, the ambiguity of the good faith norm becomes increasingly problematic due to the unbalanced legal relationship between developers and consumers. Consumers of subsidized housing are generally in a weak bargaining position and are bound by standard form agreements unilaterally drafted by developers. In such circumstances, the principle of good faith should function as a corrective instrument to prevent the abuse of a dominant position by business actors. Sinaga emphasizes that good faith must not be understood narrowly as subjective honesty, but rather as an objective standard for assessing the reasonableness of the parties' conduct.¹²

However, in positive legal practice, good faith is still treated as an abstract principle without concrete indicators. This is evident from the absence of an operational definition of good faith both in the Indonesian Civil Code and in sectoral housing regulations. Sinilele shows that in civil court practice, assessments of good faith often depend on the subjective considerations of judges rather than on measurable normative standards.¹³ As a result, delays in the handover of housing units by developers are

¹¹ Kitab Undang-Undang Hukum Perdata, Pasal 1338 ayat (3)

¹² N. Sinaga, *op. cit.*

¹³ A. Sinilele, *op. cit.*

not always regarded as violations of good faith, even when consumers have fulfilled all payment obligations in accordance with the agreement.

This normative ambiguity becomes even more apparent when linked to subsidized housing regulations. Law Number 1 of 2011 on Housing and Settlement Areas and Government Regulation Number 14 of 2016 in conjunction with Government Regulation Number 12 of 2021 do regulate the obligations of housing developers, including the obligation to hand over housing units in accordance with the agreement. However, these regulations do not provide normative standards for assessing whether delays in handover are still tolerable or have already reflected a lack of good faith. Ramadhani emphasizes that weak normative standards in subsidized housing regulations cause consumer legal protection to be reactive rather than preventive.¹⁴

From the perspective of contract law, delays in the handover of housing units may be qualified as breach of contract based on Articles 1239 and 1243 of the Indonesian Civil Code. However, a breach of contract approach alone is not always sufficient to assess the complexity of developer conduct in subsidized housing cases. Riansyah et al. demonstrate that breach of contract analysis merely evaluates whether performance has been fulfilled, without further examining whether the violation was committed in good faith or instead reflects systemic negligence and disregard for consumer interests.¹⁵ Therefore, the absence of good faith parameters causes the law to lose an important evaluative instrument for assessing developer conduct in a more fair and proportional manner.

The ambiguity of the good faith norm also results in legal uncertainty for consumers. When assessment standards are unclear, consumers find it difficult to predict whether the delays they experience can be qualified as serious legal violations or merely as contractual risks that must be tolerated. Hetarie emphasizes that normative ambiguity in housing agreements is often exploited by developers to avoid legal liability.¹⁶ Accordingly, the ambiguity of the good faith norm is not merely a conceptual issue, but also has tangible consequences for the effectiveness of legal protection for consumers of subsidized housing.

Good Faith of Developers in Delays of Subsidized Housing Handover: A Civil Law and Consumer Protection Perspective

The assessment of developer good faith in cases of delayed handover of subsidized housing must be situated within an integrated framework of civil law and consumer protection. From a civil law perspective, developers are bound to fulfill their contractual obligations, while from a consumer protection perspective, developers are positioned as business actors bearing specific responsibilities to protect consumer interests. This dual approach is important to avoid reducing delays in housing handover to mere ordinary contractual disputes.¹⁷

In civil law, delays in housing handover essentially constitute a breach of contract when performance is not fulfilled in a timely manner. However, not every breach of contract automatically

¹⁴ Peraturan Pemerintah Nomor 14 Tahun 2016 jo. PP Nomor 12 Tahun 2021.

¹⁵ A. Riansyah et al., "Penerapan Asas Itikad Baik dalam Pelaksanaan Perjanjian Jual Beli Tanah," *Consensus: Jurnal Ilmu Hukum* 1, no. 2 (2022), <https://doi.org/10.46839/consensus.v1i2.15>

¹⁶ M. Hetarie, "Penyalahgunaan Keadaan di Perjanjian Pengikatan Jual Beli oleh Developer," *Jurnal Ilmiah Universitas Batanghari Jambi* 22, no. 1 (2022), <https://doi.org/10.33087/jiubj.v22i1.1972>

¹⁷ Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen.

reflects the absence of good faith. Hariz and Muryanto emphasize that good faith must be assessed based on the overall conduct of business actors, including communication efforts, transparency of information, and measures taken to mitigate consumer losses.¹⁸ Accordingly, delays accompanied by an intention to responsibly fulfill obligations are normatively distinct from delays accompanied by disregard for consumer interests.

From the perspective of the Consumer Protection Law, delays in the handover of subsidized housing may be qualified as violations of consumers' rights to receive goods in accordance with the agreement. Shabrina and Aminah show that consumer protection against delays in housing handover still faces obstacles in proving elements of fault and the good faith of business actors.¹⁹ This indicates that although the Consumer Protection Law provides a protection framework, its effectiveness is highly dependent on the clarity of standards for assessing developer conduct.

To clarify the distinction between delays that still reflect good faith and delays that indicate the absence of good faith, the following analytical table is presented:

Table 1. Assessment of Good Faith in Delayed Delivery of Subsidized Housing

Aspect	Delay with Good Faith	Delay without Good Faith	Legal Consequence
Transparency	Developer informs buyers proactively	No clear information to buyers	Violation of consumer rights
Reason for Delay	объектив and verifiable obstacles	Negligence or profit-oriented delay	Indication of bad faith
Mitigation Efforts	Compensation or alternative solutions	No remedial action	Strong basis for liability
Compliance with Regulation	Efforts to comply with housing regulations	Ignoring obligations	Administrative and civil sanctions

The table shows that good faith cannot be assessed solely on the basis of the existence or absence of delay, but rather on the quality of the developer's conduct throughout the process of performing the agreement. This approach is consistent with the view of Karjoko et al., who emphasize the importance of objective standards in assessing good faith in order to ensure contractual justice.²⁰ By using such indicators, the evaluation of developer conduct can be carried out in a more consistent and measurable manner.

Furthermore, the structurally weak bargaining position of subsidized housing consumers reinforces the urgency of applying the principle of good faith as an instrument of legal protection. Nurzamzam and Mardiana emphasize that housing consumers often lack adequate access to information

¹⁸ A. Hariz & Y. Muryanto, "Implementing the Good Faith in the Buying Selling Agreement between the Developer and Buyer," *International Journal of Scientific & Technology Research* 8 (2019).

¹⁹ R. Shabrina & A. Aminah, *op. cit.*

²⁰ N. Nurzamzam & M. Mardiana, "Perlindungan Konsumen Terhadap Perjanjian Jual Beli Perumahan," *Borneo Law Review* 4, no. 2 (2020), <https://doi.org/10.35334/bolrev.v4i2.1718>

and effective dispute resolution mechanisms.²¹ Under such conditions, the absence of normative standards of good faith has the potential to exacerbate inequality and weaken the legal position of consumers.

Accordingly, delays in the handover of subsidized housing must be analyzed not only as a matter of breach of contract, but also as an issue of the developer's good faith. When delays occur without transparency, without justifiable reasons, and without efforts to protect consumers, such delays normatively reflect the absence of good faith. The existing normative ambiguity causes such assessments to be inconsistent, thereby generating legal uncertainty and weakening the effectiveness of legal protection for subsidized housing consumers.

Implications of the Normative Ambiguity of Good Faith for the Resolution of Subsidized Property Disputes

The normative ambiguity regarding good faith in subsidized housing sale and purchase agreements has direct implications for both the process and outcomes of dispute resolution between consumers and developers. When good faith lacks clear normative parameters, the assessment of developer conduct in cases of delayed housing handover becomes highly dependent on the subjective interpretation of judges. This condition results in significant variation in legal reasoning across court decisions, even where the factual circumstances are relatively similar. Simamora et al. show that in housing disputes, judges often focus on the formal aspects of agreements without elaborating in depth on the element of good faith as an evaluative standard of the parties' conduct.²²

Judicial difficulty in objectively assessing good faith is also caused by the absence of concrete indicators in statutory regulations. Article 1338 paragraph (3) of the Indonesian Civil Code contains only a general normative directive without providing operational guidance. As a result, in cases of delayed handover of subsidized housing, delays are often assessed merely as breaches of contract that can be resolved through compensation, without considering whether such delays reflect systemic negligence or disregard for consumer interests. Sinaga emphasizes that this approach has the potential to reduce the function of good faith as an instrument of substantive justice in contract law.²³

Another implication is the weakness of effective sanctions against developers who act without good faith. In many cases, the legal consequences of delayed housing handover are limited to the obligation to complete performance or to provide minimal compensation, which is disproportionate to the social and economic losses suffered by subsidized housing consumers. Putri et al. show that developer liability in housing disputes involving mortgage facilities often fails to produce a deterrent effect due to the absence of firm and consistent standards for evaluating conduct.²⁴ This condition potentially encourages developers to internalize delays as a tolerable business risk.

²¹ L. Karjoko et al., "Good Faith" in Land Transaction: A Comparative Analysis of the USA and Netherlands Law," *JSDERI* 2, no. 3 (2024), <https://doi.org/10.53955/jsderi.v2i3.49>

²² N. Simamora et al., "Asas Itikad Baik dalam Perjanjian Pendahuluan Jual Beli Rumah," *USU Law Journal* 3 (2015).

²³ N. Sinaga, *op. cit.*

²⁴ N. Putri et al., "Legal Liability of Developers in Breach of Contract through Mortgage Facilities," *Greenation International Journal of Law and Social Sciences* 3, no. 1 (2025), <https://doi.org/10.38035/gijss.v3i1.371>

In addition, the normative ambiguity of good faith also affects the effectiveness of the Consumer Protection Law in protecting purchasers of subsidized housing. Although the Consumer Protection Law provides a framework for protection against business practices that harm consumers, its application in disputes over delayed housing handover continues to face evidentiary obstacles, particularly with regard to proving elements of fault and good faith. Ramadani emphasizes that without clear normative standards, consumers encounter difficulties in proving that the delays they experience constitute serious violations of the developer's legal obligations.²⁵

These conditions demonstrate the urgency of establishing more operational normative standards of good faith in the context of subsidized housing. Such standards are necessary not only to provide legal certainty for consumers, but also to serve as guidance for judges in objectively and consistently assessing developer conduct. Karjoko et al., in their comparative study, emphasize that the development of measurable indicators of good faith is an essential prerequisite for ensuring contractual justice, particularly in transactions involving unequal bargaining positions.²⁶ With clear normative standards, the resolution of subsidized property disputes can move away from a formalistic approach toward more substantive legal protection.

Accordingly, the normative ambiguity of good faith affects not only the theoretical aspects of contract law, but also has tangible consequences for the quality of dispute resolution in subsidized property cases. Without firm normative reformulation, disputes over delayed housing handover will continue to be resolved inconsistently, thereby weakening consumer legal protection and undermining the social objectives of subsidized housing programs.

CONCLUSIONS

Good faith is a fundamental principle in the performance of subsidized housing sale and purchase agreements and should function as a normative standard for assessing developer conduct. However, this study demonstrates that the ambiguity of norms concerning the parameters and standards of good faith in the Indonesian Civil Code and subsidized housing regulations results in weak legal certainty for consumers when delays in housing handover occur. Delays by developers are not always consistently assessed as violations of good faith, causing dispute resolution to remain formalistic and limited to breach of contract. Such normative ambiguity leads to difficulties for judges in conducting objective assessments, weak effective sanctions against developers, and limited legal protection for subsidized housing consumers. Therefore, it is necessary to formulate explicit indicators of developer good faith within subsidized housing regulations through harmonization between the Indonesian Civil Code, the Law on Housing and Settlement Areas, and the Consumer Protection Law. In addition, strengthening governmental supervisory roles and improving consumer access to effective dispute resolution mechanisms are essential steps to ensure the realization of contractual justice and the social objectives of subsidized housing programs.

²⁵ F. Ramadani, "Consumer Legal Remedies Against Developer Default," *International Journal of Educational and Life Sciences* 3, no. 1 (2025), <https://doi.org/10.59890/ijels.v3i1.159>

²⁶ L. Karjoko et al., *op. cit.*

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