

Towards A Better Understanding of Good Faith Concept in Islamic Contract Law

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Abstract

The purpose of this article is to clarify the concept of the duty in good faith in Islamic contract law. The principle of good faith is vital in contract law which covers the contract period ranging from pre-contractual stage of the contract to conclusion of the contract. In agreement the contractual parties would come across some pledges, such as the commitment to perform with the good faith obligation, stipulation of the required information, negotiation process's transparency, promise to cooperate and commitment not to diverge from contract and if these commitments are not fulfilled, the defaulting party has to pay some performance bonds, such as the commitment to negotiate, the duty to disclose, paying reparation for loss of position of the contract and benefit, contract's termination during the implementation phase due to the errors in the pre-contract phase. Good faith is applying to the world legal systems, which lead to the development of international law. For that reason, the elements of good faith in the civil law, the common law, international law and Islamic law are described in the following part to provide an attention for the study of good faith in more detailed. However, the main focus of the article to explore the Islamic contract law approach for this matter. Descriptive and analytical research methodology has adopted in this study in which relevant materials (verses) have been collected from the Quran, Islamic books, related research papers and web sites.

Keywords: Concept, Contract, Good Faith Principle, Islamic Contract law, Sharia

1. Introduction

The objective of this article is to clarify the concept of the good faith, in order to avoid misunderstandings during international trade in transaction. In a contract between different parties from different legal systems, several legal, political, economic and cultural issues are usually involved. To fulfill all the expectations from the parties is always a huge challenge for the stakeholders involved in the transaction. When parties decide to enter into a contract, they normally expect sooner or later to reach an agreement that benefits the parties. That is the basic idea about business cooperation in order to obtain mutual profits.

Contract law, is an extraordinary branch of law, locates in the center of business activities in such a significant way, which develops business transactions in the national as well as in the international level. In contract law, good faith is an essential principle and is imperative in all phases of contract from the first round negotiation to the last round of contracts [1]. Good faith in the sense of honesty whose accurate and logical position has been defined in the field of contract law is considered an important and necessary principle in all stages of contracts. Each of these stages, require special behaviors and rules for compliance with good faith. Pre-contractual negotiations and preliminary talks are inevitable for achieving an

agreement. During preliminary talks, the parties negotiate with the aim of concluding a contract at the end of the talks, and expect to achieve an agreement [1].

The obligation of good faith in negotiation is found practically in all civil law system countries and generally provides a remedy for a wrongful conduct produced by a bad faith act. However, there is no general rule in Common Law requiring the parties to negotiate in good faith [2]. Islamic law is in favor of applying a view of good faith obligations for local or international business transactions involving two or more different countries from different legal systems. In religion of Islam, good faith includes sincerity, truthfulness, straightforwardness, transparency, fair dealings, fulfilling promises, justice etc. Both Allah and His Prophet (PBUH) have provided persistence and performance of good faith in Muslims beliefs, religious practices and all sorts of economic and commercial dealings. The Islamic thinkers (Ulamas) say that Allah has sent all the essential principles of law in the Holy Quran for the presentation of a social behavior which must be implemented in the society for acting in a sophisticated manner every time. Good faith is not only a legal term but due to its nature also a behavioral term. Islamic contract law is a part of Islamic economic law, which has developed through the evaluation of Islamic law called Sharia. With respect to commercial and economic transactions, the good faith principle applies to private and corporate entities. For international trade contracts, good faith of international standard is crucial. Most of the

Muslim countries those were ruled by English empires are applying the principles of English contract law in their daily transaction of business. On the other hand, Muslim scholars are now conducting researches on the Islamic legal system and producing successful outcomes, some of them are currently being applied in the Islamic banking system.

But what happens when the agreement is not reached? What if a party finds out that the other party is not acting with good faith in the agreement? What if a party with no intention to reach a final agreement enters into a contract only in order to have approach to some secrets of the business of the other party? What if a party to a non-binding letter of intent terminates contract during a later stage of the contract without valid reason? In case a situation in which one individual breaks off, without genuine reason, contractual negotiations before a contract is agreed upon. If this individual has fraudulently or negligently created an expectation on another party, even he knows that the expectation could not be recognized, is he liable for compensation caused by the other's rational expectations? What if there is no fraud or negligence? Does the outcome differ? Are fraud and negligence the same?

These questions play a key role in motivation for this research. First of all, to answer these questions, we have to describe the concept of good faith and its effects on the contract process. After establishing this description, the differences in the interpretation and the application of the concept of good faith in the contractual procedure are analyzed. Good faith is applying to Islamic law, the civil and common law. Even though there are other important legal traditions, the influence of these three is clearly predominant and particularly evident in the development of international law. For that reason, the elements of good faith in the civil law, the common law, international law and Islamic law are described in the following part to provide an attention for the study of good faith in more detailed. The main focus of the article to explore the Islamic contract law approach for this matter. The rest of this article is organized as follows. Part two discusses the literature review. Part three examines the good faith in Islamic contract law. Finally, part four presents the study concluding discussion.

2. Literature Review

2.1. Generalities, definitions and concepts of good faith

Investigation of the concepts and words origins is one of the most primary steps for better understanding and description of those given words or concepts. The numerous references to such notions as equity and equality may well have raised a question what is 'good faith'? Unfortunately, the answer is that it depends. Good faith is a faint idea, having different meanings as we move from a context to another. It can depend on the legal system involved (e.g. Islamic law, civil law or common law), the type of the contract (e.g. labor, or commercial, consumer), the contract's subject matter nature (e.g. services, sale of goods or employment) [2]. The good faith doctrine is recognized as the general principle of contract law. In general, good faith is a concept of honesty, which means to act without any desire or malice to defraud others. Nevertheless, good faith is a subjective concept and it should be enforced and applied on a case by case basis [2]. According to many experts in law, good faith is a qualitative, subjective and vague, and therefore very difficult to define it. Some lawyers elaborate good faith as the intellectual disposition of an individual who performs a material or wrong legal action and believes that his/her action is in accordance with the law, while it is not. In the Persian and English cultures good faith is the

opposite of ill faith and literally refers to good intentions. In the foreign legal culture, good faith is consisting of two words good and will, mean good dealing in the contract law [3]. Good faith is the concept which is used par excellence in civilian systems to ensure that justice is done, that the need for certainty and efficiency. Black's Law Dictionary defines good faith as: a state of mind based on honesty in belief or purpose, adherence to the commitment made to others, the observance of reasonable commercial standards of fair dealing in a certain profession or trade or business and lack of fraud and subjection or concession intentions against conscience. In contract law, good faith and fair dealing can be defined as honesty in the conduct of the concerned transaction. In order to apply the good faith principle, we should analyze not only the act consequences, but also the action by itself. Good faith performance will be considered if in the phase of negotiation, before to the conclusion of the contract, if a party acts with no intention to violate the rights of the other party. The more we may clarify and specify the nature of the subject related to the contract issue, the greater are the chances to find the right good faith's doctrine applicable to the particular case [2].

In contract law, good faith can be considered as having both a subjective sense (requiring honesty in fact) and objective sense (requiring compliance with standards of fair dealing) [2]. In other word, two different notions of good faith: subjective and objective good faith. Subjective good faith is the subjective status of the mind of a contracting party (psychological condition) while Objective base addresses the terms of the agreement directly, by balancing between rights and obligations of the contracting parties. Under those two elements, good faith has three meanings, namely: firstly, the normative meaning reflects, the principle of good faith requires the discretion exercising party to act fairly, secondly, the contextual meaning reflects good faith is the expectation of each contractor since the other party will honestly and fairly perform his contractual duties in an acceptable manner to trade community, finally, the core meaning reflects the existing minimum standards of honesty when making legal transactions [4].

Good faith is applying to Islamic law, the civil and common law. Even though there are other important legal traditions, the influence of these three is clearly predominant and particularly evident in the development of international law. For that reason, the elements of good faith in the civil law, the common law, international law and Islamic law are described in the following part to provide an attention for the study of good faith in more detailed.

2.2. Good faith in Contract Law

Contract law, is an extraordinary branch of law, locates in the center of business activities in such a significant way, which develops business transactions in the national as well as in the international level. In contract law, good faith is an essential principle and is imperative in all phases of contract from the first round negotiation to the last round of contracts [1]. Good faith in the sense of honesty whose accurate and logical position has been defined in the field of contract law is considered an important and necessary principle in all stages of contracts. Each of these stages, require special behaviors and rules for compliance with good faith. Pre-contractual negotiations and preliminary talks are inevitable for achieving an agreement. During preliminary talks, the parties negotiate with the aim of concluding a contract at the end of the talks, and expect to achieve an agreement and conclude the contract at the end [1].

The obligation of good faith in negotiation is found practically in all civil law system countries and generally provides a remedy for a wrongful conduct produced by a bad faith act. However, there is no

general rule in Common Law requiring the parties to negotiate in good faith [2]. Islamic law is in favor of applying a view of good faith obligations for local or international business transactions involving two or more different countries from different legal systems. In contract law good faith is an essential principle. Good faith principle is considered vital in fulfilling of contracts, pre-contractual and as well conclusion stages of contracts. Good faith is imperative in all phases including the first round negotiation and it must be included in domestic legislations [1].

2.3. Civil law approach to contractual liability

Good faith has a very pervasive and broad approach since the countries which follow the written legal systems. Good faith has been clearly regarded as a necessary factor in the preliminary negotiations which has to be observed in the context of laws or legal proceedings. Just like the law the other Germanic Roman law countries, the basic principle is that parties are free to negotiate and put an end to it, and this principle arises from the fundamental principle of parties free will and freedom of contract, but with development of the overall commitment to honesty and loyalty in the negotiations and, in other words, the obligation to negotiate in good faith, this general principle has faced some restrictions. In case the negotiations are terminated with an ill faith, or at least some sort of fraud and deception has been performed, abuse of the right can be regarded as a fault and lead to liability in this regard.

The duty of good-faith in the Civil Legal System takes into consideration mainly the parties' mutual relationship. This consideration is different from the common law, which strictly considers what is reduced to writing, the codification of Civil Law focus on all the expectations of the parties to the transaction [5]. It means that what was spoken and treated by the parties may have a greater value than what is written on an article. Hence, sometimes, the signing of a written agreement does not have the same implication in the civil law that it has under common law. So, under the civil law mutual understanding can be implemented between parties even if they have not concluded a written contract. In 1907, Raymond Saleilles, a French scholar, who advanced the idea that after parties have entered into negotiations, both must act in good faith and cannot break off the negotiations illogically without compensating the other for damages measured by reliance. If during the process of contract a party takes advantage of the other, fraudulently and/or negligently creating an expectation in another party, even though he knows that the expectation could not be recognized, the defaulting party should be punished by having to perform the contract or have to pay some amount of money in order to compensate the other party for this loss [2].

Under the civil law, an agreement or a contract should be first interpreted so as to maintain the parties' common intention. It is a subjective analysis of the intention, conduct and expectations of the parties. In other words, the parties are obliged by not only the language of the contract but also by the conduct of the parties [6]. The tendency of civil law courts to impose a duty of good faith in the contractual process during the stage of negotiation. Nevertheless, only terminating the negotiations without reaching a contract will not result in any liability if the parties' involvement were transparent and clear during their negotiation. For example, if two parties are interested to have negotiation in order to verify between them the possibility of future business transactions, they are able to do that without having any responsibility with each other for the result of this conversation since they demonstrate in a transparent and clear way their intentions and interests from the beginning of the contract procedure [7]. The doctrine of culpa in contrahendo inspired many

law makers of civil law system so that in many jurisdictions the law of obligations enforces and recognizes the principle that in making and carrying out contractual parties should act in good faith [2].

2.4. Common law approach to contractual liability

Generally there is no rule in Common Law System of requiring the parties to conversation in good faith. Nevertheless, obligation may impose a degree of good faith in the performance stage of the contract. Usually there is no rule about pre-contractual obligation in the common law system, the present body of statutes and case law may punish a party which involve in unfair manner at the pre-contractual stage. An unreasonable refusal to deal or an unjustifiable last-minute withdrawal from negotiations is examples of the type of unfair manner which may constitute a breach of the duty of good faith in pre-contractual phase. However, for a violate of good faith in the pre-contractual stage, if a remedy in torts is not available, there may be no effective remedy at all in common law system. The simple absence of good faith is not of itself a reason of action. Good faith must be supported by conduct which the law recognizes as tortious or as avoiding the party concerned from going back on what he has presented or promised. In these cases, the law may imply a pledge on the defaulting party to pay on a quantum meruit. The system of common law, there are two notions of freedom: the positive contract's freedom, which means that the formation of a contract and the selection of its terms and conditions are the result of the parties free will and the negative contract freedom, which means that the parties are free from liabilities so long as a binding contract has not been concluded. It is clear that, according to most of the common law doctrines, imposing obligation on the parties before the formal requirements, e.g. the requirement of a formal document or consideration are met would be contradictory to the very subsistence of those requirements [2].

In common law and even in the United States (US) where the principle of good faith has been explicitly laid down in its domestic law, good faith has not been accepted in the preliminary negotiations and contract conclusions. The main reason of this is the contradiction of this principle with the principle of free will in general, and the principle of parties' freedom of contract in particular. Thus, the point that initiation of negotiations for a contract creates a binding relationship by itself is not accepted in these countries. In addition to the abovementioned reason, they argue that accepting the risks is one of the means of entering the hazardous arena of trade, the parties must accept the risks before the contract has been signed. The British laws just like the countries which follow the common law system, reject the principle of good faith in contractual negotiations and argue that the contradiction of this principle with the principle of free will and freedom of contract is the main reason of this rejection. Despite the clear rejection of good faith in negotiations in the common law (for example in England), this principle has been implicitly raised in facilities such as undue influence and abuse of supply. On the contrary, a theory known as binding promissory estoppel was raised in the common law which shows the importance of negotiation in good faith in the pre-contractual obligations. **Error! Bookmark not defined.**

2.5. International law approach to contractual liability

The 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) represents the most current effort to harmonize or unify international law of transaction. The CISG established a uniform law for the international sale of goods and is automatically applicable to contracts for the goods' sale

between parties located in two CISG states unless the parties agree. At the first look, the Convention does not enclose a provision openly addressing the matter of obligation for pre-contractual negotiation and preliminary contracts. This omission was not an oversight by the drafters of the CISG. In CISG article 5 that “in the course of the formation of the agreement the parties must observe good faith principle. The good faith concept could take the courts to have a non-uniform explanation for the CISG; good faith would be more suitable to contract performance than bargaining of contract; good faith would be only an ethical principle and not a legal liability. The CISG main considerations in interpreting the convention are the principle of good faith between the parties. A preliminary consideration might moreover be made regarding the eventuality that the parties themselves have specified what their duties and rights during the negotiation process. In *Genova Pharmaceutical Technology Corp. vs Barr Laboratories, Inc.*, an US District Court (SD NY) invoked the principle of good faith in international trade and referred to “practices of the industry” in order to advocate a liberal approach to contract formation under the CISG. Whether accepting or not the idea that the principle of good faith may be invoked in order to impose on the parties additional duties of behavior even during negotiation process is an issue for the courts and international tribunals to decide and to characterize such rule as containing to standards of good faith in international trade. The sooner the tribunals and courts refer to such standards, the more solid the needs for this provision become [2].

3. Good Faith in Islamic Law of Contract

3.1. Application and Recognition of Good faith in Islamic Contract Law

As mentioned that scholars have defined “good faith” in different ways, such as reasonableness, fair dealing, decency, fairness, community standards of fairness, and standards of appropriate behavior relevant in the community (Zahid et al, 2016).

The Quran says in this respect, “*And they have been commanded no more than this: To worship Allah, offering Him sincere devotion, being true (in faith); to establish regular prayer; and to practice regular charity; and that is the Religion Right and Straight*” (98:5). While this verse talks about sincerity in faith and religious practices, at another place the Quran reprimands people for their unfair and deceitful economic and commercial dealings: With respect to keeping contractual obligation, the Quran commands the Muslims to “*fulfill (all) obligations*” (5:1).

Prophet Muhammad (peace be upon him) said about how a Muslim character should be like in the following words

“A believer is frank and decent, whereas a wrongdoer is deceitful and blameworthy.”

Thus, in Islam, good faith includes sincerity, truthfulness, straightforwardness, fair dealings, fulfilling promises, etc. Both Allah and His Messenger (the Lawgiver) have provided for the maintenance and observance of good faith in their belief, religious practices and all sorts of economic and commercial dealings whatsoever. This is an all-comprehensive command. With respect to economic and commercial transactions, the principle applies both to individuals and corporate entities [8].

The Quran 2:224-225, 5:89 and 83:1-5 clearly enjoins honest and fair dealing: “*And do not allow your oaths in the name of God [frequently and hastily pronounced to thus] become an obstacle to acts of virtue and righteousness and reconciliation of people; surely God is All-hearing, All-knowing*”. “*God will not hold against you*

[an unintentional] slip in your oaths; but He will [only] hold you responsible for such oaths, which you have earnestly”.

Error! Bookmark not defined. “*Woe to the fraudulent dealers, who exact full measure from others, but give less than due to others in weight and measure, do they not know that they will be called to account, on a mighty day (83:1-3)*”. [9]. As far as traditions are concerned, it is recounted that the Prophet said: ‘Abu Sayed reported that the Messenger of Allah said: “*the truthful trustworthy merchant will be with the Prophets, truthful and martyrs. The merchants will be gathered on the Resurrection day as transgressors except those who were fearful of Allah, pious and truthful.*’ More specifically, there is a duty to disclose defects in sales”.

Error! Bookmark not defined. In another Hadis the Prophet Muhammad (peace and blessing be upon him) said; “*whoever cheats buyers while selling goods, they are not real Muslims*”. In another Hadis the Prophet Muhammad (peace be upon him) said: “*If any one sells a defective article without drawing attention to the buyer on the defect, he will then remain under God’s anger or the angels will continue cursing him unless he (the seller) informs the buyer of that defect*”.

The above is a brief outline of good faith in general. For the purpose of international trade, this general conception may be taken as precursor. Good faith of international standard is essential for international trading transactions. Good faith is not only a legal term but by its very nature it also has a behavioral function. Courts can only fully understand the intent of parties if they inquire into the objective intent and also explore the subjective intent of parties[8].

3.2. The good faith generally covers three areas in Islamic contract law

The good faith principles of Islamic law of contract base on three things i.e., contract bodies, goods under contract and the worth of goods

3.2.1. Contracting Parties

Primarily there are twelve rules of good faith under Islamic contract law for the parties,

3.2.1.1. The contract should be by free mutual consent

Principle of free mutual consent under the concept of good faith has been highlighted in a Quran Ayah and Hadith of Prophet (PBUH).

“O you who believe, Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent”
(Quran 04:29).

The condition of the contract is that only the mental balance of the parties is correct and they have the understanding of matters and they must be equally satisfied. Therefore, under any pressure or wrong impression or another party, it will be obtained by deceiving the fact of the matter with an unmatched or original price; Consent will not be reliable.

3.2.1.2. Resale of purchased goods before receiving

As per Islamic contract law under good faith concept, it is not allowed to resell goods before receiving the goods at first buyer end. If the first buyer did not receive the goods that he has bought and the goods are in shipping or even in the production process, the resell of those goods is not allowed until he receives the goods at his end. That is to close any gap where usury practices might sprout. Simply, it can be explained in this way that if the buyer resale the goods which were purchased but not received at his end and the next buyer

follows the same practice and so on. In the continuity of this practice, it can be assumed that any usury practice can cause an inevitable loss to all stakeholders and the business. Moreover, this practice results in the multiplication of money in the system without any transfer of goods or services.

Quoting a Hadith *"Whoever buys foodstuff, shouldn't sell it back until he fully received it"*

Ibn Abbas explained that every other stuff seems to be similar to the foodstuff.

3.2.1.3. Resale of purchased goods from the first seller place

The good faith principle Islamic contract law recommended that the goods you have bought are basically yours, thus, you should be the one to fully responsible for whatever happened to them. As you could gain profit from it, you should also suffer the loss, in case if any. To minimize the risk of loss during shipment, sometimes merchants resell the goods at the same place where they buy i.e., at the place of the first seller. The same situation happened in the early days of Islam and the Prophet prohibited for the people to sale the goods at the place where those were bought. Hence, prior to resale, the shifting of purchased items at buyer end is essential in Islamic contract law.

3.2.1.4. Interest-free contract

Consideration of good faith here interest (*Riba*), which means not only usury but all forms of unearned income, has been strictly prohibited by Islam. Although the Quran did not specify any particular kind of interest, Muslim scholars have categorized two types of interest i.e., *riba al-nasi'ah*, and *riba al-fadl*. *Riba al-nasi'ah* refers to the interest on loans; its prohibition essentially implies that the fixing in advance of a positive return on a loan as a reward for waiting is not permitted in Islam. *Riba al-Fadl* is the excess over and above the loan paid in kind. It lies in the payment of an addition by the debtor to the creditor in exchange for commodities of the same kind. The *Shariah* wishes to eliminate not merely the exploitation that is intrinsic in the institution of interest, but also that which is inherent in all forms of unjust exchange in business transactions. Despite the fact that interest occupies a central position in modern economic system and that it became the lifeblood for the existing financial institutions, Islam considers that the principle of charging interest is quite opposite of that of business in the spirit of sharing and cooperation and that lending on interest is not as a business in the real sense.

In legalizing trade and condemning interest, Islam considers that there are fundamental differences between the nature of profit resulting from interest charges and that earned by trade. In interest-based transactions, there may be no equitable division of profit between the buyer who makes a profit on the sale of good purchased, and the seller who derives a profit in consideration of the labor and time spent in procuring the goods. Moreover, there could be no end for an interest-based transaction, since there could always be interests of unpaid interests as long as the principal amount loaned is not fully returned. This could, in extreme cases, create unrepayable debt for generations. Therefore, *riba* or interest is not increasing simplicities under the *Shariah*; it is a special kind of increase. It increases or interest by way of compensation payable to the financier for the period of repayment of the loan. Since the 'period' is not a valuable property, any compensation for remaining out of pocket has not been earned and is unlawful [10]. The prohibition of interest is highlighted in eight verses in the Quran.(2:275)

3.2.1.5. Goods exchange policy in the contract (Ba'i al-Muhaqalah, and Ba'i al-Muzabanah)

Muhaqalah is an Arabic term that is derived from *haql* (field), implying a transaction which is based on raw produce (before or as it is harvested from a field in its unprocessed state). *Muhaqalah* is impermissible from a Sharia point of view, due to the potentiality of *riba*, i.e., the exchange of two unequal amounts of a *ribawi* item (wheat or barley), and also because of the element of uncertainty as to the counter values exchanged.

Muzabanah is a type of sale (*ba'i*) that involves the exchange of fresh fruits for dry ones, where the quantity of the dry fruits is actually known (by precise measurement) but the quantity of the fresh fruits to be handed over in exchange is estimated while they are in their ungathered state (on trees). An example is the exchange of dried dates for fresh (ungathered) dates. *Ba'i al-Suzannah* was particularly popular in pre-Islamic times. With the advent of Islam, *sharia* forbade *ba's al-muzabanah* because it involves *gharar* (by nature, *gharar*, especially *gharar fish*, may eventually lead to a dispute between the parties to the sale contract) and gives rise to *riba al-fadh* Bai Al Inah.

Bai Al Inah is related to the sale and buy-back of an asset for a higher price than that for which the seller originally sold it. A seller immediately buys back the asset he has sold on a deferred payment basis at a price higher than the original price. This can be seen as a loan in the form of the sale.

This is prohibited in Islamic contract of law as the Prophet told *"when you enter into the inah transaction, hold the tails of oxen, are pleased with agriculture and give up conducting jihad (struggle in the way of Allah). Allah will make disgrace prevail over you, and will not withdraw it until you return to your original religion"*.

3.2.1.6. Buying and selling on loan terms

One of the prohibited cases of debt is to sell or buy anything on the condition of lending, or otherwise, instead of a loan, betting for sale is to be betrayed.

Hakim b. Hizam narrated *"that the Prophet prohibited me from selling what was not with me"*. Ishaq bin Mansur said, "I said to Ahmad: 'What is the meaning of the prohibition from a loan along with a sale?'"

He said: *"That he gives him a loan and then he makes a sale to him greater than it's actual worth. And, it carries the meaning of him loaning it to him in exchange for something (as collateral), so he says: 'If you are unable to pay it (the loan), the it (the collateral) will be a sale for you"*. Ishaq [bin Rahuwyah] said as he said. And I said to Ahmad: 'What about selling what one does not possess?' He said: *"To me, it does not apply except in cases of food - meaning one has not taken possession of it"*. And Ishaq said the same for all of what is measured or weighed. Ahmad said: 'when he says: *"I will sell you this garment, with the condition that I am the tailor for it, and I am the one who bleaches it."* This is an example of two conditions in one sale. But if he says: *I am selling it to you with the condition that I am its tailor,*" then there is no harm in it. And, if he said: *"I am selling it to you with the condition that I am the one who bleaches it"* then there is no harm in it because this is only one condition.' And Ishaq said as he said."

3.2.1.7. The defective selling items should not be hidden

Under good faith in Islamic law of contract if the contracted items have any defect or issues, then those issued should not be hidden by the seller. Islam prohibited this practice and the Prophet used to enjoin traders to be righteous and honest and to give charity. Prophet

said, "The two parties to a transaction have the option (of canceling it) until they take part. If they are honest and disclose any defects, their transaction will be blessed, but if they lie and conceal defects the blessing of their transaction will be erased."

3.2.1.8. Justice in quantitative measurement

Justice could be considered the main theme of good faith principle, therefore in Quran verses has been revealed about justice.

In Quran; Woe to the defrauders. Who, when they take the measure (of their dues) from men, take it fully, but when they measure out to others or weigh out for them, they are deficient. Do not think that they shall be raised again, for a mighty day, the day on which men shall stand before the Lord of the worlds?" (83:1-6). Prophet said, "When you weigh, allow more".

3.2.1.9. Prohibition of false oaths for the sake of business

Some traders use to lie and make fraud in business while some keep their oath and make their customer satisfied comes under bad faith in Islamic law of contract. However, during the business, every kind of the oaths should be avoided. Imam Bukhari said, "the swearwords (by the seller) may persuade the buyer to purchase the goods but that will be deprived of Allah's blessing".

3.2.1.10. Be gentle in attitude

It is strongly recommended in Islam and directly related to good faith, to give discounts and convenience to business matters and other parties in transactions. It was stated that

"May Allah show mercy to a man who adopts a kind attitude when he sells, buys and demands the repayment of loans."

Once the sale has been concluded, neither the buyer nor the seller has the right to cancel it. However, if the seller takes pity on the buyer and agrees to cancel the sale and refund him, he will be rewarded. Prophet said, "Whoever cancels the sale of a regretful person, Allah will forgive his sins on the Day of Qiyaamah".

3.2.1.11. Prohibited to sell/buy items which are already bounded by other seller/buyer

As mentioned that good faith is not only a legal term but also a behavioral term. In Islamic law of contract under good faith concept, if the matter is already decided by the parties, the third party is not allowed to distribute a party and try to spoil the deal. The third party cannot say to the buyer if you finish the deal, it will neither reduce the price nor the seller can be asked if you do not buy it I will buy at the higher price. Prophet said,

"Do not go out to meet the riders, and do not urge someone to cancel a sale he has already agreed upon as to sell him your own goods, do not artificially inflate prices, and let not a town-dweller sell for a desert dweller."

3.2.1.12. The contract of debt for a fixed period should be written

Islam recommends written documentation in case a contract of debt. This provides safeguards against disputes and allows credit transactions for a fixed or known time period which come under the term of good faith. It is stated in Quran that "O you who believe! When you contract a debt for a fixed period, write it down, that is more just with Allah; more solid as evidence, and more convenient to prevent doubts among yourselves". (2:282)

3.2.2. Contracted goods

3.2.2.1. Trading things that are unlawful are also unlawful

Sharia allow all kind of the trading and promote it except few types of the trade which made unlawful by God. Islamic contract of law doesn't deal those things with it is all aspect mean if pork is unlawful then it is all kind of trade obviously unlawful but sometimes people change its shape and make a contract it. The sale of forbidden items in Islam is also prohibited.

Prophet said "Verily Allah and His Messenger have forbidden the wine sale, carcasses, pork, and sculpture."

Then someone asks, "O Messenger of Allah, do you think of (sell) carcass fat, in fact, he used to paint the boat, lubricate the skin and the people use for lighting?" He replied, "It should not be, he is unclean". The Prophet Sallallahu 'Alayhi Wa Sallam then said, "May Allah fight the Jews, when in fact God forbid fats (animal), they were melted and then sell it and take the money".

3.2.2.2. The contracted items should be clear in all aspects

The thing that is going to be contract must be clear in terms of its gender, caste, quantity, and virtue. In Islamic contract, transactions that involve excessive risk are forbidden. Gharar refers to the uncertainty or hazard, caused by the lack of clarity with the price in a contract or exchange. A sale or any business contract that has an element of gharar is prohibited. The reason for prohibiting gharar is not risk or uncertainty per se but as the definition above suggests, gharar, in the sense of trickery, and gambling involve unjust enrichment. Prohibiting gharar protects the weak from exploitation.

3.2.2.3. Delivery should be possible

Sold items should be delivered to the buyer at the time of contract. It is not permissible to sell anything that cannot be submitted to the buyer because it is not permissible to do not hand over the item after receiving the price from the customer.

3.2.3. Worth/Price of Goods

It is acknowledged that the price should be clear and same as the customer will pay for the replacement. Price should be known and standard. The difference in price down payment and installment is lawful but after fixing price if payment will late due to any reason it is not permissible to add extra charges. It is not permissible to delay the payment without any reason.

Prophet said, "delay in payment on the part of one who possesses means makes it lawful to dishonor and punish him". "dishonor" means that he may be spoken to roughly and "punish" means he may be imprisoned for it. The shariah did not set a limit for profit and Profit is dependent on the market.

It is important to note that for each of the above mentioned prohibitions in Islamic contract law, if not more, Islam has minimum one alternative, thus as not to build an image that Islamic contract law has more prohibitions than permissibility. We might therefore conclude that the sharia contains a duty of good faith. This is not entirely wrong, but it is misleading unless carefully qualified and viewed in a way which takes the different context into account. 'Good faith' is a culturally rooted concept which derives from a Western tradition in which 'hard' certainty can be counterbalanced on occasion by 'soft' or 'fuzzy' justice, in which certainty is given primacy because it leads to economic efficiency over a sense of morality only tenuously linked to religion [11]. In the commercial

sharia, economic efficiency has to be viewed in the context of religious values, one of which is fair dealing. Those values inform the entire system, generating rules intended to lead to a fair result, so there is no need for a concept to remedy harshness, no explicitly enunciated principle of good faith. It is much more accurate, therefore to view all principles and rules which deal with issues relevant to morality, in other words all principles and rules discussed so far, as the material to be compared with Western 'good faith', not just material such the Quranic verses and traditions set out above which, to a lawyer with a Western mindset, seems to be the most appropriate for such comparison.

4. Concluding Discussion

The above is a brief outline of good faith in general. For the purpose of international trade, this general conception may be taken as precursor. Good faith of international standard is essential for international trading transactions. The good faith doctrine is recognized as the general principle of contract law. In general, good faith is a concept of honesty, which means to act without any desire or malice to defraud others. Good faith is applying to Islamic law, civil and common legal system. Even though there are other important legal traditions, the influence of these three is clearly predominant and particularly evident in the development of international law. For that reason, the elements of good faith in the civil law, the common law, international law and Islamic law are described in this article to provide an attention for the study of good faith in more detailed.

The principle of good faith is one of the principles that dominates over the entire period of the contract and indicates that the parties must follow all the dominant ethical principles during there-contractual period, during the conclusion of contract, or at the time it is being enforced enter the contract conclusion process with no intention of fraud or causing loss to the other party, and conclude a contract in compliance with common standards. The pre-contractual negotiation period is also one of the stages in which the good faith principle should be observed. This stage includes some commitments, violation of which would bring about liability. These commitments include: provision of the necessary information, transparency in negotiations, obligation not to deviate from negotiations. Good faith is not only a legal term but by its very nature it also has a behavioral function. With respect to economic and commercial transactions, the principle applies both to individuals and corporate entities. Courts can only fully understand the intent of parties if they inquire into the objective intent and also explore the subjective intent of parties. Once the sale has been concluded, neither the buyer nor the seller has the right to cancel it. However, if the seller takes pity on the buyer and agrees to cancel the sale and refund him, he will be rewarded.

In contract law, good faith is an essential principle and is imperative in all phases of contract from the first round negotiation to the last round of contracts. The obligation of good faith in negotiation is found practically in all civil law system countries and generally provides a remedy for a wrongful conduct produced by a bad faith act. Under the civil law mutual understanding can be implemented between parties even if they have not concluded a written contract. In civil law, an agreement or a contract should be first interpreted so as to maintain the parties' common intention. However, there is no general rule in Common Law requiring the parties to negotiate in good faith. Nevertheless, obligation may impose a degree of good faith in the performance stage of the contract. The CISG main considerations in interpreting the convention are the principle of good faith between the parties. Islamic law is in favor of applying a

view of good faith obligations for local or international business transaction. Good faith of international standard is essential for international trading transactions involving two or more different countries from different legal systems.

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