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Disparity in the Doctrine of Promissory Estoppel between Indonesia, the Philippines and the United Kingdom

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Abstract

There is a legal vacuum that regulates the settlement and legal consequences of pre-contractual promises between parties in Indonesia. This research aims to examine the legal application of the Promissory Estoppel Doctrine in filling legal gaps while comparing it with a number of Common Law countries, including England, which implemented this doctrine earlier. This research uses normative legal research using a comparative approach, case approach and conceptual approach. The

sources of legal materials in this research consist of primary, secondary and tertiary legal materials. The application of the Promissory Estoppel doctrine to the Indonesian legal system can be done because there are similarities between the legal system in common law (England, the Philippines) and the legal system in Indonesia, so that courts in Indonesia can use this doctrine to fill legal gaps. Pre-contracts have been regulated in such a way both through legislation and the application of relevant legal doctrines in a number of developed countries. with the doctrine of promissory estoppel, an agreement that has not fulfilled certain conditions or objects, in this case a pre-agreement, can protect a party who has placed a trust in another party in the process of carrying out negotiations which causes him to carry out certain legal actions (*rechtshandeling*) and causes the birth of reliance. loss. Promissory estoppel is an important concept in English law however, the legal requirements for promissory estoppel may differ from country to country.

Keywords
Promissory estoppel, Comparative Law

Introduction

This article is a form of the authors' anxiety regarding a number of agreements[1] that continue to develop and adapt to developments in the era that has entered the 4.0 era in the era of the Industrial Revolution, where business in Indonesia is growing rapidly. There are many agreement actors on a micro to macro scale and even across countries with various consumer market segments. Investors are starting to look at Indonesia and businesses that before the reform did not develop have now become gold fields for business, even various types of businesses that are more contemporary where the market players are the millennial generation who are aware of disruptive technology, which

[1] Promises need not be disclosed, it can be implied from circumstances

means that in short, disruptive technology is innovation [2]. or technology that initially creates a new market, and in the next moment disrupts or destroys an existing market. In the end, the new innovation even replaces the previous product or technology on the market. Along with the development of the business world both in the world and in Indonesia, many business actors both from within and outside the country collaborate with each other and this cooperation is realized in the form of an agreement or contract. The agreements made vary depending on the needs of each party making them, they can take the form of cooperation contracts in the procurement of goods and services, business contracts to work and service contracts to new, renewable technology.[3]

This positive form of market development will of course be followed by a negative side that needs to be anticipated so that it does not have a big effect. One of them is the problem with the second or third form of pre-agreement, even some parties where in the pre-agreement a number of parties involved have already carried out the initial stages of the pre-agreement. Legal problems will arise if before the agreement is valid and binding on the parties, namely in the negotiation process or preliminary negotiation, one of the parties has carried out legal actions such as borrowing money, buying land, even though a final agreement has not been reached between them regarding the business contract being negotiated. This can happen because one party really believes and has hope in the promises made by his business partner. [4]If in the end the negotiations reach an impasse and an agreement cannot be reached, for example an agreement cannot be reached regarding fees, royalties or the term of the license, then compensation cannot be claimed for all costs and investments that have been incurred by the

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[2] Esben H Østergaard, "Welcome to Industry 5.0, The 'Human Touch' Revolution Is Now Under Way," Industrial Machinery Digest, 2018, https://industrialmachinerydigest.com/industrial-news/white-papers/welcome-industry-5-0-human-touch-revolution-now-way/.

[3] Jorge Blazquez et.al.., "The Renewable Energy Policy Paradox," *Renewable and Sustainable Energy Reviews* 821, no. 1 (2018): 1–5, https://doi.org/10.1016/j.rser.2017.09.002.

[4] Suharnoko, *Hukum Perjanjian: Teori Dan Analisa Kasus* (Jakarta: Prenada Media Group, 2004).

business partner. [5]Of course, the party who has carried out the legal action feels disadvantaged if the action is an action carried out before the final contract occurs or there is a dead end between the parties entering into the agreement or in other words one of the parties withdraws the promises that have been made which results in losses suffered by the party. other parties. This situation arises due to the existence of a vacuum of norms where the Civil Code and statutory regulations relating to agreements or contracts do not yet regulate the legal consequences of promises made at the pre-contract stage. In the legal system in Indonesia which adheres to the civil law legal system, it is not yet clearly regulated regarding the legal consequences of agreements at the pre-contract stage which exist only when the agreement or agreement or contract is implemented or completed, whether it is implemented or defaults on the agreement that arises from the agreement (To [6]simplify mention), regulated in Book III of the Civil Code Articles 1313 – 1351. Regulations regarding agreements in Book III include:

a. General provisions (Articles 1313 – 1319);
b. Terms of validity of the agreement (Articles 1320 – 1337);
c. Consequences of the agreement (Articles 1338 – 1341);
d. Interpretation of the agreement (Articles 1342 – 1351).

In general, to define an agreement, the main reference is Article 1313 of the Civil Code. According to Article 1313 of the Civil Code, an agreement is: "An agreement is an act in which one or more people bind themselves to one or more other people." [7]If a party experiences a loss in the pre-contract stage and files a lawsuit in court, of course the lawsuit will lose. So far, judges in Indonesia decide cases not only from legal certainty alone, but also from the perspective of justice. In the eyes

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[5] I Gde Prim Hadi Susetya, I Made Pasek Diantha, and Putu Tuni Cakabawa Landra, "Adaptasi Doktrin Promissory Estoppel dalam Penyelesaian Ganti Rugi Pada Tahap Pra Kontrak Pada Hukum Kontrak di Indonesia," *Acta Comitas : Jurnal Hukum Kenotariatan* 3, no. 1 (2 April 2018): 1–15, https://doi.org/10.24843/AC.2018.v03.i01.p08.

[6] Niru Anita Sinaga and Nurlely Darwis, "Wanprestasi Dan Akibatnya Dalam Pelaksanaan Perjanjian," *Jurnal Mitra Manajemen* 7, no. 2 (2015): 1.

[7] Muhammad Natsir Asnawi, "Perlindungan Hukum Kontrak Dalam Perspektif Hukum Kontrak Kontemporer," *Masalah-Masalah Hukum* 46, no. 1 (30 Januari 2017): 55–68, https://doi.org/10.14710/mmh.46.1.2017.55-68.

of several Indonesian judges, a pre-contract agreement is considered not to be a valid agreement because it does not or does not have certain things agreed upon so that compensation for non-performance of the pre-contract agreement cannot be requested. The court is a gateway to justice, where people seeking justice must act fairly towards every citizen.

To anticipate this happening in Indonesia, it is necessary to implement *the Promissory Estoppel Doctrine*.[8] is a doctrine originating from *Common Law* countries which provides legal protection to the aggrieved party if the other party avoids what he has promised to the aggrieved party. This legal protection is also provided in the pre-contract phase, so that if the *Factor* does not get the right to receivables that have been transferred to him, the *Factor can submit a claim to the Court in the form of out-of-pocket* compensation, in addition, other legal protection can be provided in a *preventive* and/or *repressive manner* . [9]A form of inevitability in the implementation of a number of developed countries that apply the *Common Law legal system* have used a legal system with a *Promissory Estoppel Doctrine approach* to protect the form of pre-agreement for parties who will enter into an agreement both generally and specifically. Meanwhile, in its implementation in Indonesia, the legal system that refers to *the Promissory Estoppel Doctrine* has not been standardized, resulting in a legal vacuum. With this legal vacuum, parties who feel disadvantaged will have difficulty fighting for the losses they have experienced when entering the pre-agreement phase.

In developed countries that adhere to the common law system such as the UK and the Philippines, based on the doctrine of promissory estoppels or detrimental reliance, promises at the pre-contract stage can be claimed for compensation if a party feels disadvantaged. The promissory estoppels doctrine is a legal doctrine that prevents a person giving a promise (*promissor*) from withdrawing his promise, in the event that the party receiving the promise (promise) because of his belief in

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[8] Stanley D Henderson, "Promissory Estoppel and Traditional Contract Doctrine," *The Yale Law Journal* 78, no. 3 (27 Oktober 1969): 343–87, https://doi.org/10.2307/794874.

[9] R. Suharto, Ery Agus Priyono, and Magnis F. B. B, "Penerapan Doktrin Promissory Estoppel dalam Pemenuhan Prestasi sebagai Akibat Adanya Perjanjian Anjak Piutang di Indonesi," *Diponegoro Law Journal* 6, no. 2 (2017): 1–20, https://doi.org/10.14710/dlj.2017.19576.

the promise has done something or not done something, so that the recipient of the promise will suffer loss. [10]So at the negotiation or pre-contract stage compensation can be claimed. This is to protect the party receiving the promise who has done or not done something, so that they will suffer a loss if the party giving the promise withdraws their promise. Based on what has been explained above, there is a legal vacuum in the protection of parties who feel doubtful in pre-agreement matters. Based on the explanation above, this research discusses the disparity in the doctrine of promissory estoppel between Indonesia, the Philippines and the UK.

The problem formulation in this journal is narrowed down into two parts which according to the author need to be analyzed, namely the concept of *the promissory estoppel* doctrine in the context of England, the Philippines and Indonesia and the characteristics of the *promissory estoppel doctrine* in the current and future Indonesian legal system.

A study that looks at the differences in the doctrine of promissory estoppel between Indonesia, the Philippines, and the UK looks at the legal details and how promissory estoppel is used in those places. It shows that Indonesia doesn't have any laws that cover promises made before a contract is made. Alden, Martin, Irianto, Wan Talaat, and Butar-Butar et al. have extensively examined the role of promissory estoppel and its evolution in contract law, in contrast to the legal vacuum in Indonesia regarding pre-contractual promises. Alden ' S,[11] for example, it delves into the historical shift from traditional contract law to the use of assumpsit in England during the years 1350-1600, emphasizing the enduring principle of reciprocity in contract, opposed by promissory estoppel. Martin[12] criticized the expansion of promissory estoppel as a cause for independent action, fearing an erosion of contractual predictability. Irianto[13] discussing the pre-contractual stage

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[10] Bisdan Sigalingging, "Teori Tentang Perjanjian, Serial Online," 2014, https://bisdansigalingging.blogspot.co.id/2014/10/teori-tentangperjanjian.html.

[11] Eric Alden, "Promissory Estoppel and the Origins of Contract Law," *Northeastern University Law Journal* 9 (2017): 1.

[12] Susan Lorde Martin, "Kill the Monster: Promissory Estoppel as an Independent Cause of Action," *William and Mary Business Law Review* 7 (2016): 1.

[13] Sigit Irianto, "Legal Consequences in Pre-Contracting in the Perspective of Indonesian Contract Law: Comparative Study of Law with Other Countries," *Baltic Journal of Law & Politics* 15, no. 3 (21 November 2022): 403–16.

in Indonesian law, highlighting the absence of legal consequences for pre-contractual acts, stands in stark contrast to more developed doctrines in the UK, Australia, and the US. Comparative analysis Wan Talaat[14] demonstrates the ever-growing flexibility of promissory estoppel in common law countries, changing its traditional boundaries. Butar-Butar et al[15] focus on the application of promissory estoppel in the specific context of the Indonesian factoring agreement, which describes its protective role in the pre-contract phase.

Our research uniquely positions itself by utilizing a comparative approach to fill legal gaps in Indonesian pre-contract promises, distinguishing it from previous studies and research on the disparity of the doctrine of promissory estoppel between Indonesia, the Philippines, and the United Kingdom. Although previous works provide in-depth analysis in their respective domains of historical development, critique of current application, comparative legal evolution, and specific national contexts, our research uniquely positions itself by examining how promissory estoppel can bridge the legal vacuum in Indonesia by utilizing practices from common law jurisdictions. It introduces a new perspective by suggesting potential legal transplants from countries such as the UK to Indonesia, despite their different legal traditions, to address specific pre-contract challenges. This approach not only adds to the understanding of the adaptability of promissory estoppel across legal systems but also proposes practical solutions to the uncertainties of Indonesian pre-contract law, marking a significant contribution to the discourse of the international application of promissory estoppel and its role in aligning legal principles across different legal cultures.

Pre-agreement has the basic word promise. *The Essential Law Dictionary defines a promise* as " *A binding declaration that a person will do a certain act, which gives the person receiving the promise the right to*

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[14] Wan Izatul Asma Wan Talaat, "The Present Parameters of Promissory Estoppel and Its Changing Role in the English, Australian and Malaysian Contract Law," *Journal of Malaysian and Comparative Law* 35 (2008): 39.

[15] Magnis Florencia Butar-Butar, R. Suharto, dan Ery Agus Priyono, "Penerapan Doktrin Promissory Estoppel Dalam Pemenuhan Prestasi Sebagai Akibat Adanya Perjanjian Anjak Piutang Di Indonesia," *Diponegoro Law Journal* 6, no. 2 (20 April 2017): 1–20, https://doi.org/10.14710/dlj.2017.19576.

expect performance".[16] A promise is basically a statement given by someone that is binding. This research is normative legal research. To support research related to the Promissory Estoppel Doctrine, the author takes a normative research approach that examines legal norms. Which consists of at least 4 (four) models, namely doctrinal research, reform-oriented research, theoretical research, and fundamental research.[17] Apart from that, this research uses a *reform-oriented* research model *research* and *theoretical research*. [18]

This type of research is a type of research that is in line with the purpose of this research. This research legal material includes 2 (two) types, namely primary legal material and secondary legal material. The primary legal material in this research is legislation and court decisions. Meanwhile, secondary legal materials in this research are textbooks, scientific articles, and/or research results on the law of agreements, engagements, contracts, pre-contracts, legal philosophy, and doctrines relating to the law of agreements/engagements and/or contracts. Apart from that, other secondary legal materials include legal dictionaries and legal encyclopedias. In order to obtain appropriate conclusions that can be scientifically justified, this research uses several approaches that are adapted to the object and objectives of the research. The approach used in this research is:

1. Legislative approach (*statute approach*), namely a research approach using legislation and regulations. [19]This approach will also carefully study the foundation or philosophical basis of regulations (legislation and/or regulations) in a number of countries that have implemented the doctrine of Promissory Estoppel where the distinction is made between developed countries, in this case the UK and developing countries represented by the Philippines.
2. Case approach, namely the approach to various cases or cases that have been decided by the Court. The essence of this approach is to

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[16] Henry Campbell Black, *Black's Law Dictionary, Fourth Edition* (Minnesota: West Publishing Co, 1968).

[17] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011).

[18] Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (2012): 122–80, https://doi.org/10.21153/dlr2012vol17no1art70.

[19] Hutchinson dan Duncan, p.137

examine *the ratio decidendi* of the Court's decision. This research will explore the Judge's legal reasoning patterns regarding existing legal facts which are linked to legal norms and rules until the Judge reaches a conclusion on the case. The aim of using this approach is to obtain a more real picture regarding the application of law by Judges in deciding cases related to the Agreement.

3. Conceptual approach (*conceptual approach*), namely the approach used in cases where the research subject is not or has not been regulated in existing legislation. This approach is used in research because there are no or no legal regulations regarding research subjects. The ultimate goal of the conceptual approach is to build a concept regarding the research subject. [20]This research has the ultimate aim of building a comprehensive concept regarding pre-contractual promises (binding power and legal consequences) in contract law institutions in Indonesia.[21]

Promissory Estoppel Doctrine in the English, Philippine and Indonesian Contexts

The promissory estoppel doctrine is a doctrine that developed in the common law legal system, namely in England and the United States. The word estoppel is the most important part of the doctrine. Estoppel is taken from the word "estop" which the Oxford Dictionary calls "stop-up". In the Black Law Dictionary, the concept of estoppel is defined as:

1. *A bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true*
2. *A bar that prevents the litigation of issues.*

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[20] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2016).

[21] Sigit Irianto, "Hukum Kontrak dan Perkembangannya," *Jurnal Spektrum Hukum* 10, no. 1 (2013): 1–22, http://dx.doi.org/10.35973/sh.v10i1.1620.

3. *An affirmative defense alleging good-faith reliance on a misleading representation and an injury or detrimental change in position resulting from that reliance.*[22]

Charles YC Chew in his book entitled *Business Law* : Guidebook, states that there are elements for the promissory estoppel doctrine to apply, including:[23]

1. A representation must be made.
2. The representation must be clear, whether expressed or implied
3. The party relying on the representation must be placed at material disadvantage because that representation has not been honored

The concept of estoppel is basically the law of evidence where someone is prohibited from denying evidence that has been clearly and clearly proven in a trial. Estoppel is closely related to the letter of request for release of claim. [24]The application of the promissory estoppel doctrine is a form of legal system developed in a legal country that adheres to *Common Law.* Originalism developed under the influence of an adversarial system in English history based on court decisions based on tradition, custom and precedent. The form of reasoning used in common law is known as casuistry or case-based reasoning. Common law can also take the form of unwritten law or written law as stated in statutes or codes.[25] The term common law comes from the French word "*communeley*" which refers to customs in England that are not written and which through judges' decisions are made legally binding. Common law is customary law or unwritten principles that have become the basis of court decisions and have long been accepted in human behavior. Customs and principles in common law originate from case law, which has been accepted for so long that it has become a precedent. Case law is a collection of court decisions of a higher level

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[22] Henry Campbell Black and Bryan A Garner, *Black's Law Dictionary* (New York: West Publishing Co, 2009).

[23] Charles YC Chew, *Business Law: Guide Book* (Australia: Oxford University Press, 2008).

[24] Hadi Susetya, Pasek Diantha, and Cakabawa Landra, "Adaptasi Doktrin Promissory Estoppel dalam Penyelesaian Ganti Rugi Pada Tahap Pra Kontrak Pada Hukum Kontrakdi Indonesia."

[25] Ade Maman Suherman, *Introduction to Comparative Legal Systems: Civil Law, Common Law, Islamic Law* (Jakarta: RajaGrafindo Persada, 2012).

which must be followed by judges of a lower level in deciding similar cases. In fact, case law which has become present is often also called common law.[26]

In the initial stage of this discussion, the author divides three topics with structural and systematic explanations, with the hope that the parties can understand them more clearly. Therefore, the author discusses the application of *Promissory Estoppel* starting with its application in countries that have advanced legal systems with the direction of Common Law, namely England.

1. The Promissory Estoppel in English Law

One of the developed countries in the world that uses a Common Law legal system where one of the legal doctrines is promissory estoppel which can affect the rights and obligations of the parties in a contract. This doctrine applies if one party makes a promise that modifies an existing contract, and the other party relies on that promise in a detrimental manner. In this case, the party who made the promise cannot deny it, even if there is no consideration or new agreement.

Promissory estoppel originates from English law, and has been applied in many countries that adhere to the common law legal system. In England, this doctrine has developed since the 19th century, and reached its peak in the case of Waltons Stores v Maher (1988), where the Australian Supreme Court decided that promissory estoppel could be used as a "sword" and not just as a "shield". This means that promissory estoppel can be used to demand performance of a promise, not just to prevent the enforcement of contractual rights.[27]

The effect of promissory estoppel in England in 2022 can be seen from several aspects, including:

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[26] Ayu Sundari and Yudho Taruno Muryanto, "Penerapan Asas Itikad Baik Terhadap Kontrak Bagi Hasil Dengan Sistem Cost Recovery Dan Gross Split," *Jurnal Privat Law* 8, no. 1 (2020), https://doi.org/10.20961/privat.v8i1.40366.

[27] Stephen Puttick, "Vestiges in Promissory Estoppel Across The Antipodes: Trial Lawyers Association of British Columbia V Royal and Sun Alliance Insurance Company Of Canada," *The Journal o The Commercial Law Association Of Australia Commercial Law Quarterly* 36, no. 1 (2022): 3–10.

1) Promissory estoppel can affect legal certainty in contracts, because it can change the rights and obligations of the parties without a formal agreement. This can cause doubt and uncertainty for parties who want to carry out business transactions.
2) Promissory estoppel can affect legal fairness in contracts, because it can prevent injustice or abuse of rights by one of the parties. This can provide protection for parties who are weak or powerless in a contractual relationship.
3) Promissory estoppel can affect legal flexibility in contracts, because it can adjust the rights and obligations of the parties according to changing situations and conditions. [28]This can provide space for parties to adapt to changes in the business environment.[29]

According to Emily M. Weitzenboeck, [30]the doctrine *of Promissory Estoppel* in the English context can be seen from several aspects, including:

1) Context. Promissory estoppel concerns certain situations where one party to a contract promises something different to the terms of the original contract and where the other party to the contract changes its behavior in accordance with that promise. In such situations, English law will often prevent the former party from enforcing the original terms of the contract.
2) Basic Effects. In its application it is divided into two general parts, namely Estoppel limits a person's ability to "revert to" beliefs or assumptions that they have caused in others and makes certain types of promises binding even if they are not supported by consideration. Meanwhile, the implementation of *Promissory Estoppel* in England is divided into several.

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[28] Regarding the elements of this contract, there are several opinions, for example T. Anthony Downes states that there are three elements of a contract, namely, intention, consideration and form, in his book, Contract, Blackstone Press Limited, London, 1997, p. 41. Harold. F. Lusk states that there are five elements, namely offer, acceptance, reality of consent, consideration and capacity of party. *See* Harold. F. Lusk, *Contract* (London: Blackstone Press Limited, 1997).

[29] Loan Şumandea-Simionescu, "On Efficiency, Bargaining Power and Information Asymmetry. A Legal and Economic Analysis of Alternative Legal Methods of Creditor Protection For In Bonis Companies In Romania And England," *Journal of Public Administration, Finance and Law* 23, no. 1 (2022): 304–17.

[30] Emily M. Weitzenboeck, *English Law of Contract: Promissory Estoppel* (Norwegian Research Center for Computers & Law: Universitetet I Oslo, 2012).

Apart from that, further, in the *Common Law system It is one of several kinds of estoppel all of which can be said to be "mechanisms for enforcing consistency".*[31] Apart from that, the doctrine of *Promissory Estoppel.* There are several other types of legal implementation, namely:

1) *Proprietary estoppel.* Which is often classified into the type of goods ownership agreement. Applies where a person intends or promises to give but fails to effectively convey, property or an interest in property, to another person knowing that the person will spend money or act to their detriment in reliance on the claimed or promised gift.[32]
2) *Estoppel by representation of fac.* [33]Known in Indonesian, it is a representation of fact if one person ("representative") has made a statement of fact to another person ("representative") in words or by action or behavior, or (is under obligation to the representative to speak or act) by silence or inaction, with the intention (actual or alleged) and with the result of persuading the representative on the representative's belief to change his position to his detriment, the representative, in any litigation that may then occur between him and his representative, is cancelled, as contrary to represents, from making, or attempting to prove by evidence, any reluctance substantially different from the previous representation, if the representative at the proper time, and in the proper manner, repudiates it.
3) *Promissory estoppel in relation to contract,* [34]*where* the applicable legal type can be divided into several parts, namely Promissory estoppel in relation to contracts. Promissory estoppel essentially prevents one party to a contract from acting in a certain way because they promised not to act in that way, and the other party to the contract

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[31] Elizabeth Cooke, *The Modern Law of Estoppel, 1st edition* (Oxford-Portland, Oregon: Oxford University Press, 2000).

[32] UK Law, "Crabb v Arun DC 1976," LawTeacher, 2019, https://lawprof.co/land/proprietary-estoppel-cases/crabb-v-arun-dc-1976-ch-179/.

[33] G. Spencer Bower, *The Law Relating To Estoppel By Representation, 4th Ed* (London: Butterworths, 2004).

[34] John H. Matheson, and Daniel A. Farber. "Beyond Promissory Estoppel: Contract Law and the 'Invisible Handshake'." *University of Chicago Law Review* 52 (1985): 903

relied on that promise and followed through. Further to Hughes v in Metropolitan Railway Company (1877), [35]according to Lord Cairns: "It is the first principle upon which all Courts of Justice rest, that if the parties have entered into definite and distinct terms it involves a certain legal result-a certain punishment or legal forfeiture – having then by their own action or with their own consent entered into a process of negotiation which has the effect of leading one of the parties to assume that the strict rights arising under the contract will not be enforced, or will be held in suspense, or held in check. delay, the person who may have enforced those rights will not be permitted to enforce them in an unfair manner in relation to the transaction that has taken place between the parties". [36]These principles are applied at Central London Property Trust Ltd. v. Tall Tree House Ltd. (1947) by Denning J. (as it was then) to discover the modern doctrine p.e. Denning J. attempted to arrive at an equitable solution to the problem of partial payment of a debt, and, in doing so, avoided the precedent set by Foakes v. Beer (1884).[37]

Apart from that, the general rules that apply the doctrine of *promissory estoppel* contain several general requirements that must be implemented by legal countries that adhere to Common Law, including:

1) Requirements of promissory estoppel.[38]
2) There is a pre-existing contractual relationship.
3) One of the parties to the contract makes a clear promise that they will not fully enforce their legal rights (under the contract).
4) The promisor intends for the promise to be relied upon and the promisee actually relies on it.

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[35] Muhammad Hafiz Isa and Mohd Samsudin, "Perkembangan Sistem Telegraf di Perak, 1876-1900," *Malaysia and International History Review* 2, no. 2 (2020): 15–34.

[36] Jeffrey Goldberger, "Unconscionable conduct and unfair contract terms." *Commercial Law Quarterly: The Journal of the Commercial Law Association of Australia* 30, no. 2 (2016): 17-44.

[37] Andrew Robertson, "Precontractual Estoppel by Convention." *Sydney Law Review* 44, no. 4 (2022): 532-558.

[38] Sumati Narayan, "A Short Note on the Evolution of the Doctrine of Promissory Estoppel," 2023, http://dx.doi.org/10.2139/ssrn.4338787.

5) It is unfair for promisers to go back on (back out of) their promises. It seems that the promisee's dependency needs not be detrimental in the sense that, if the promise is revoked, the promisee will be worse off than if the promise had never been made.
6) It is enough that the promisee has changed their position in relying on the promise so that they will be prejudiced if the promisee backs out of the promise [39]. "The bottom line is the inability of the promisee to resume his original position due to dependency. The corollary is that if he can resume his original position, or can do so with reasonable notice (as in Tall Trees), there is no injustice in reinstating the promisee either in full or for future, depending on the case.[40]
7) *Effect of promissory estoppel on promisee's position*.[41] Although the promisee does not need to give any consideration to the promisor's promise, they cannot claim the promise (they have not considered it). In other words, doctrine cannot be used as a cause of action itself; it does not confer or create new rights on the promisee; it simply operates to stop the promisor from fully enforcing his prior rights against the promisee (i.e. the doctrine operates as a "shield but not as a sword"). Concurrently, the doctrine can only be invoked where there is a pre-existing contractual relationship (or other relationship that creates legal rights), which requires consideration. It cannot be used where one party promises to do more than the contract requires or pay more than required.

A number of other cases that can be seen in the application of the promissory estoppel doctrine are English; including the recognition in several court decisions, such as in the case of Central London Property Trust Ltd v High Trees House Ltd, where the British High Court stated that "a promise intended to be binding, intended to be acted on and in fact acted on, is binding so far as its terms properly apply". This means that a promise that is intended to be binding, is

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[39] It seems that the Promisee's Dependence is Unnecessarily Harmful in the sense that, if the Promise is Revoked, the Promisee Will Be Worse Off Than If the Promise Was Never Made.

[40] Mindy Chen-Wishart, *Contract Law* (Oxford: Oxford University Press, 2012).

[41] Puttick, "Vestiges in Promissory Estoppel Across The Antipodes:'Trial Lawyers Association Of British Columbia V Royal And Sun Alliance Insurance Company Of Canada."

intended to be implemented and is indeed implemented, is binding to the extent that its provisions apply.

The UK doctrine of promissory estoppel can be applied in a variety of legal situations, including at the pre-contract stage. For example, in the case of Baird Textile Holdings Ltd v Marks & Spencer plc, where the English Court of Appeal decided that there was promissory estoppel between the supplier and the buyer, because the buyer had given a guarantee to the supplier that they would purchase their products exclusively for five years. Even though the guarantee is not yet a valid contract, the buyer cannot change his decision without good reason, because that would be detrimental to the supplier.

The doctrine of promissory estoppel in England can impact the rights and obligations of parties involved in a legal relationship. For example, in the case of Tool Metal Manufacturing Co Ltd v Tungsten Electric Co Ltd, where the United Kingdom Privy Council decided that there was promissory estoppel between the seller and the buyer, because the seller had given the buyer leeway to pay the price of the goods in installments. Although this allowance can be revoked by the seller in accordance with the contract, the seller must give prior notice to the buyer before revoking it, because this is a result of the trust built by the seller.

2. The Promissory Estoppel in Philippines[42]

In general, the application of the *Promissory Estoppel* doctrine is based on a number of general issues regarding agreements or what Filipinos know as contracts:[43]

1) Pre-contract law in the Philippines is regulated in Articles 1318-1326 of the Civil Code of the Philippines. Article 1318 states that a contract is valid if it meets the conditions for approval; the specific object that is the subject of the contract; and the cause of the contract .

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[42] Anna Marie V. Alhambra and Marvee Anne M. Ramos, *Ano Ang Mabuti Sa Saligang Batas Ng 1987?* (Manilla: Intersect, 2018).

[43] Priskila P. Penasthika, "Berlakukah Hukum Asing untuk Sengketa Kontrak Internasional di Indonesia?," HukumOnline, 2019, https://www.hukumonline.com/berita/a/berlakukah-hukum-asing-untuk-sengketa-kontrak-internasional-di-indonesia-lt5cc1491768ea9.

2) Pre-contract law in the Philippines also recognizes the existence of a preliminary agreement, which is an agreement between the parties to enter into another contract in the future. Preliminary agreements can be binding or non-binding, depending on the intentions of the parties and the content of the agreement .
3) Pre-contractual law in the Philippines also regulates pre-contractual liability, which is the responsibility that arises as a result of breaching the obligation of good faith during the contract negotiation stage. This responsibility can take the form of damages, cancellation of the contract, or enforcement of the contract .

The doctrine of promissory estoppel in the Philippines is recognized in several court decisions, such as in the case of Guevara vs. Court of Appeals , [44]where the Philippine Supreme Court stated that *"promissory estoppel is a doctrine to the effect that if one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal change in their relationship, he is to be regarded as bound by the promise to the extent that it would be unjust and inequitable if he were left free to ignore it. [45]"*

The doctrine of promissory estoppel in the Philippines can be applied in various legal situations, including in the pre-contract stage. For example, in the case of Philippine National Bank vs. Court of Appeals [46], where the Philippine Supreme Court decided that there was promissory estoppel between the bank and the debtor, because the bank had given a credit approval letter to the debtor, who then relied on the letter to carry out transactions with third parties. Even though the letter is not yet a valid contract, the bank cannot withdraw its agreement without good reason, because this will be detrimental to the debtor and third parties.

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[44] Moch. Dani Pratama Huzaini, "Doktrin Promissory Estopel dalam Penyelesaian Ganti Rugi pada Tahap Pra Kontrak," HukumOnline, 2021, https://www.hukumonline.com/stories/article/lt60eff977d59db/doktrin-promissory-estopel-dalam-penyelesaian-ganti-rugi-pada-tahap-pra-kontrak.

[45] Promissory estoppel is a doctrine which states that if one party has by his words or conduct made to the other party a clear and unequivocal promise intended to create a legal relationship or change their legal relationship, then he must be deemed to be bound by that promise to the extent it would be unfair and unbalanced if he were left free to ignore it

[46] *Ibid.*

The doctrine of promissory estoppel in the Philippines may impact the rights and obligations of parties involved in a legal relationship. For example, in the case of Republic vs. Sandiganbayan , [47]where the Philippine Supreme Court ruled that there was promissory estoppel between the state and oil companies, because the state had granted oil exploration permits to oil companies, which then incurred large costs to carry out the exploration. Even though the permit can be revoked by the state in accordance with law, the state must provide compensation to the oil company for the costs it has incurred, because this is the result of the trust built by the state.

The country is known as the Pearl of the Sea of Orien [48]. Although not all contracts must be in writing for validity or enforceability, the best practice is to reduce all agreements to writing. This will help the parties avoid ambiguity in their agreements and ensure that all parties understand their obligations. With a written contract, proving one's position in the event of a dispute is also easier and avoids a "he said, she said" scenario. A well-drafted contract that outlines the consequences of a breach and necessary remedies can help avoid costly litigation and maintain harmony between the parties.[49]

Therefore, the Philippine Civil Code[50] regulates the general obligation for parties to act in good faith in the formation of agreements or contracts which are initiated based on the "Principle of Good Faith". [51] According to the Civil Code, every person in exercising his rights and carrying out his duties is obliged to act fairly, provide his rights to everyone, and uphold honesty and good faith, and every person who,

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47 Suharto, Priyono, dan B, "Penerapan Doktrin Promissory Estoppel dalam Pemenuhan Prestasi sebagai Akibat Adanya Perjanjian Anjak Piutang di Indonesi."

48 Sekretariat Nasional ASEAN, "Peran Negara ASEAN dan Tiga Fakta Menarik Tentangnya!", *Online*, retrieved from https://setnasasean.id/news/read/peran-negara-asean-dan-3-fakta-menarik-tentangnya

49 Conventus Law, "Philippines - What Makes A Contract Valid?," *Conventus Law* (blog), 2 Agustus 2019, https://conventuslaw.com/report/philippines-what-makes-a-contract-valid/.

50 Marcus Mietzner, "Democratic Deconsolidation in Southeast Asia," *Elements in Politics and Society in Southeast Asia*, Agustus 2021, https://doi.org/10.1017/9781108677080.

51 Dante G. Guevarra, *History of the Philippine Labor Movement* (Rex Bookstore, Inc., 1995).

contrary to the law, intentionally or through negligence causing harm to another person, will compensate that person for the same.

The Philippine Supreme Court said 'bad faith' does not only relate to bad judgment or negligence, but relates to dishonest intentions and deliberate wrongdoing.[52] The Philippine Supreme Court has ruled that bad faith involves a breach of a knowing duty through fraudulent motives or interests or bad faith.

The above obligations will apply to the parties negotiating the contract. *'Battle of Forms'* . Contracts are perfected with the agreement of the contracting parties. Based on the Civil Code of the Philippines, agreement is realized by meeting an offer and acceptance of a matter and cause that forms a contract. The offer must be definite and acceptance absolute.[53] If the acceptance meets the conditions, then it is a counteroffer that does not result in perfection of the contract.[54] The Supreme Court of the Philippines has ruled that acceptance must be unequivocal and any modification or variation of the terms of an offer relieves the party making the offer.

The Supreme Court of the Philippines has also decided that: *"Even though Article 1319 of the New Civil Code stipulates that "agreement is realized by the fulfillment of an offer and acceptance of an item as well as the reasons that form the basis of the agreement", this provision does not apply in situations where a person or both parties consider that these matters or details, in addition to the subject matter and considerations, must be determined and agreed upon. The area of the*

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[52] Fathudin Fathudin, and Ahmad Tholabi Kharlie, "Existence of Clemency as President Prerogative Right (Comparison Study of Indonesia with Countries of the World)," *Jurnal Cita Hukum* 5, no. 1 (2017): 1-24.

[53] Hotma P. Sibuea and Hotmaria Hertawaty Sijabat, "Three Models of Impeachment in a Presidential System (Comparative Study of Indonesia, the Philippines, and America)," *Journal of Legal, Ethical and Regulatory Issues* 25 (2022): 1.

[54] Hartiwiningsih Hartiwiningsih andSeno Wibowo Gumbira, "Dysfunctional Factors of Environmental Law on Strategic Lawsuit Against Public Participation and Developing Remedial Strategies Through Reconstruction Criminal Law System Model in Indonesia," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 10, no. 3 (2023): 411–30.

agreement must include all matters deemed essential by the parties or there is no contract [55]."

Considering the above, 'battle of forms' disputes are not common in the Philippines. Usually, one of the parties involved in contract negotiations will win and the opposing party accepts the form determined by the winning party. There are also instances where both parties are forced to negotiate the terms of the contract to avoid deadlock.

Language requirements is there a legal requirement to draft contracts in the local language.[56] There is no legal requirement in the Philippines for contracts to be drawn up in the local language.[57] English is the official language in the Philippines,[58] and most commercial documents are in English.[59]

Signatures and other implementation formalities. Under what circumstances is a signature or other formality required to execute a commercial contract in your jurisdiction? Is it possible to agree to B2B contracts online (for example, using a click-to-accept process)? Does the law recognize the validity of electronic and digital contract signatures? If so, how does the treatment compare to a wet ink signature. According to the Civil Code of the Philippines, the general law regarding contracts, a contract is formed once all of the following requirements are met:

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[55] Law No. 386. An Act to Announce and Continue the Civil Code of The Philippines

[56] Aninditya Sri Nugraheni et.al., "Teaching Design and Indonesian Language Materials at Universities of Thailand And Manila, Philippines, Based on Local Wisdom in BIPA Learning (Desain Pengajaran Dan Materi Bahasa Indonesia Di Universitas Thailand Dan Manila Filipina, Berbasis Kearifan Lokal Dalam Pembelajaran BIPA)," *Jurnal Gramatika: Jurnal Penelitian Pendidikan Bahasa dan Sastra Indonesia* 8, no. 2 (2022): 154–71.

[57] Ian Mark P. Nibalvos, "Ang Wika sa Pampublikong Espasyo: Isang Pag-aaral sa Tanawing Pangwika ng Maynila," *Scientia-The International Journal on the Liberal Arts* 6, no. 2 (2017).

[58] Jayson D. Petras, "Ang Pagsasakatutubo mula sa Loob/Kultural na Pagpapatibay ng mga Salitang Pandamdaming Tumutukoy sa "Sayá": Isang Semantikal na Elaborasyon ng Wikang Filipino sa Larangan ng Sikolohiya." *Humanities Diliman: A Philippine Journal of Humanities* 10, no. 2 (2013).

[59] Clemencia C. Espiritu, "Tugon ng mga Cebuano sa Kontrobersyang Pangwika: Implikasyon para sa Debelopment ng Filipino." *MALAY* 22, no. 1 (2009).

1) Agreement - agreement means that there has been an offer and acceptance of the cause and object of the contract. Such acceptance must be conveyed to the party making the offer.
2) Object - everything in the trade in human beings and services that does not conflict with law, morality, customs, public order and public policy can be the object of a valid contract.
3) Causation – causation is understood as 'consideration' in common law jurisdictions. Cause has been defined by the Supreme Court of the Philippines as 'the essential reason that moves the contracting parties to enter into the contract'.

Article 1356 of the Civil Code then states that 'agreements are mandatory, in whatever form they are made, as long as the essential conditions for their validity are present.' Therefore, as a general rule, contracts under Philippine law will be valid in any form, whether oral, paper, electronic, or digital. The Civil Code is supplemented by the Electronic Commerce Law (Republic Law No. 8792) regarding electronic or digital documents and signatures.[60]

Based on the Electronic Commerce Law, electronic documents are expressly stated to have the same legal effect, validity and enforceability as other legal documents or writings provided that the electronic documents maintain their integrity and reliability and can be authenticated. For evidentiary purposes, electronic documents have an equivalent function to written documents based on applicable laws and regulations.

'Electronic documents' under the Electronic Commerce Act refer to records 'generated, communicated, received or stored by electronic means in an information system or for transmission from one information system to another'. Therefore, online contracts will generally be valid and enforceable if they were valid and enforceable if the contract were a paper-based document. Furthermore, based on the Electronic Commerce Law, an offer, acceptance of an offer and other elements for the formation of a contract can be expressed or indicated through electronic data messages or electronic documents.

Thus, the Electronic Commerce Law expressly regulates that electronic data messages or electronic documents 'must have the legal effect, validity or enforceability of other legal documents or writings'.

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[60] Nibalvos, "Ang Wika sa Pampublikong Espasyo."

An electronic document will be considered 'genuine' a document, if there is a reliable guarantee regarding the integrity of the electronic document or electronic data message from the time it is first produced in its final form and such integrity is demonstrated by evidence (that is, evidence other than the electronic data message itself) or if not; and electronic documents or electronic data messages can be displayed to the person to whom they are presented.

Since electronic documents are given legal recognition under the Electronic Commerce Law, expressions of agreement to a contract can also be made electronically. Given that 'consent' is an essential requirement for forming a binding contract, a person's consent, whether in digital or electronic form, must also be sufficiently established for a contract to be enforceable.

In this case, similar to electronic documents, electronic signatures are also given clear legal recognition under the E-Commerce Law. According to the E-Commerce Law, 'electronic signature' refers to 'any sign, characteristic and/or sound in electronic form, which represents the identity of a person and is inherent or logically associated with an electronic data message or electronic document or anything else. a methodology or procedure used or adopted by a person and implemented or adopted by that person for the purpose of authenticating or approving an electronic data message or electronic document'.

Therefore, contracts in digital form, coupled with an express (albeit electronic) acknowledgment of the terms and conditions of the contract (i.e., 'I agree to and understand the Terms and Conditions…'), should be enforceable under Philippine law. However the parties must ensure that the elements of contract formation – in particular the customer agreement – are properly documented and recorded and, where necessary, can be expressed or demonstrated in a reliable manner.

On the other hand, there are contracts that must appear in public documents to be valid. According to the Civil Code, the following contracts must appear in public documents: a deed of donation of immovable property, a partnership contract in which immovable property or property rights are donated, and the transfer of a credit, right or action.

Despite the endorsement of a private deed by a notary tasked with converting it into a public deed, the 2004 Notary Practice

Regulations do not recognize the validity of electronic signatures, and still require signatories to certify to the notary that the signature on the instrument or document was affixed voluntarily by the party who signs it for the purposes stated in the instrument or document, and to declare that he signed the instrument or document as a free and voluntary act and deed. The above means that the signature is a 'wet' signature of the signer. Therefore, if an agreement is to be notarized in the Philippines, electronic signatures cannot be used to execute the agreement.[61]

3. The Promissory Estoppel in Indonesia

The doctrine of *Promissory Estoppel* is defined in Indonesian, namely, as a form of legal protection for the injured party if the other party avoids what he promised to the injured party at the pre-contract stage. Meanwhile, in its implementation, in Indonesia it only regulates:

1) Algemene Bepalingen van Wetgeving (AB)
2) Book III of the Civil Code
3) Trade Code
4) Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition.
5) Law Number 18 of 1999 concerning Construction Services f. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution Options
6) Law Number 24 of 2000 concerning International Agreements.

The rules described by the author above as a whole only provide legal protection for the parties who have entered into an agreement. Not before the implementation of the agreement, so in essence legal protection for parties who suffer losses before the implementation of the agreed agreement, in this case it is signed, does not have clear and definite legal protection. Problems or disputes between the parties often arise when the parties are already in the contract implementation stage, but it is not uncommon for disputes to arise when the parties are still in the pre-contract/negotiation (pre-contractual) stage.

The parties often do not reach an agreement or have difficulty reaching an agreement in the pre-contract stage. or even one of the

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[61] "Q&A: contract formation in Philippines - Lexology," retrieved from https://www.lexology.com/library/Detail.Aspx?G=2df0f27b-D430-48c7-843a-82edab73e1b9.

parties has suffered a loss during the pre-contract stage. In principle, law enforcement is only carried out by judicial power , which constitutionally is commonly called the judiciary (Article 24 of the 1945 Constitution). Thus, the authority to examine and adjudicate disputes is only the judiciary under judicial authority which culminates in the Supreme Court. Article 2 Law no. 14 of 1970 expressly states that those who have the authority and function to carry out justice are only judicial bodies established by law. Apart from that, it is not justified because it does not meet formal and official requirements and is contrary to the principle of *under the authority of law* . If a person or a legal entity "feels" and "perceives" that their rights have been violated by another person, and a peaceful, amicable resolution cannot be achieved, one way they can take this is to submit the case to the competent Judge/District Court, namely by making a civil suit letter (*burgelijk vordering, civil suit*). According to Sudikno Mertokusumo, what is meant by a lawsuit letter is a claim for rights as an action aimed at obtaining protection granted by the court to prevent *eigenrichting.*

If based on the provisions of Chapter I Article 1 number 2 of the Draft Law (RUU) on Civil Procedure Law as " *Future Law* " then the lawsuit will be formulated as a claim for rights that contains a dispute and submitted to court for a decision. Darwan Prinst said that a lawsuit is a request submitted to the Head of the competent District Court, regarding a claim against another party, and must be examined according to certain procedures by the court, and then a decision is made on the lawsuit. Disputes between parties or parties who feel disadvantaged can claim rights and/or compensation to the local District Court.[62] Based on Article 118 paragraph (1) *Het Herziene Indonesisch Reglement* (hereinafter referred to as HIR) states that: "Civil claims (lawsuits) at the first instance, including the scope of the district court's authority, must be submitted with a letter of request (lawsuit) signed by the plaintiff, or by representative according to Article 123, to the Chairman of the District Court at the defendant's place of residence, or if his place of residence is unknown, to the Chairman of the District Court at his actual place of residence." Rights claims which in Article 118 paragraph (1) HIR, Article 14 2 paragraph 1 *Rechtsreglemet*

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[62] "Negotiation and the law of contract-multivalency or." Common Law World Review," *Common Law World Review* 52 (2023): 3.

Buitengewesten (hereinafter referred to as RBg) are referred to as civil claims (*burgerlijke vordering*) are nothing other than rights claims involving disputes and are usually called lawsuits. A lawsuit can be submitted either in writing or orally.

In Indonesia, the doctrine of promissory estoppel has not been explicitly recognized in civil law, but there are several court decisions that refer to this doctrine in resolving legal disputes. Some examples of promissory estoppel cases in Indonesia are as follows:

1) PT case. Bank Mandiri (Persero) Tbk. vs PT. Bumi Resources Tbk. and PT. Bumi Capital Indonesia, where PT. Bank Mandiri filed a lawsuit for compensation against PT. Bumi Resources and PT. Bumi Capital because it did not fulfill its promise to pay debts based on a special power of attorney granted by PT. Bumi Resources to PT. Mandiri Bank. The Central Jakarta District Court granted PT. Bank Mandiri applied the promissory estoppel doctrine, on the grounds that the special power of attorney was a binding promise and had to be fulfilled by the defendants .[63]
2) PT case. Karya Sumiden Indonesia vs PT. PLN (Persero), where PT. Karya Sumiden Indonesia filed a lawsuit for compensation against PT. PLN for not implementing the steel wire purchase agreement that had been agreed verbally by both parties. The Central Jakarta District Court rejected PT's lawsuit. Karya Sumiden Indonesia argued that the verbal agreement did not meet the requirements for forming a contract as regulated in Article 1320 of the Civil Code, and there was no written evidence that could prove the existence of the agreement .[64] However, this decision was overturned by the DKI Jakarta High Court, which granted PT's lawsuit. Karya Sumiden Indonesia applied the promissory estoppel doctrine, arguing that the oral agreement had created trust for PT. Karya Sumiden Indonesia to produce steel wire according to PT's

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63 Huzaini, "Doktrin Promissory Estopel dalam Penyelesaian Ganti Rugi pada Tahap Pra Kontrak."

64 Butar-Butar, Florencia, Suharto, and Priyono. "Penerapan Doktrin Promissory Estoppel dalam Pemenuhan Prestasi Sebagai Akibat Adanya Perjanjian Anjak Piutang di Indonesia."

request. PLN, and that PT. PLN cannot renege on the promises it has made .[65]

3) CV Case. Sinar Jaya vs CV. Sinar Abadi, where CV. Sinar Jaya filed a lawsuit for compensation against CV. Sinar Abadi for not implementing the cooperation agreement in the field of electronic goods trade which had been agreed upon verbally by both parties. Bandung District Court rejected CV's lawsuit. Sinar Jaya for the same reason as the previous case, namely that the verbal agreement did not meet the requirements for forming a contract as regulated in Article 1320 of the Civil Code, and there was no written evidence that could prove the existence of the agreement . However, this decision was overturned by the Bandung High Court, which granted CV's lawsuit. Sinar Jaya applied the doctrine of promissory estoppel, on the grounds that the oral agreement had created trust for CV. Sinar Jaya to provide electronic goods according to CV's request. Sinar Abadi, and that CV. Sinar Abadi cannot break the promise it has made.

From the several case examples above, it can be seen that the promissory estoppel doctrine can be a legal instrument that can be used to resolve legal disputes related to promises made before a formal contract exists, or which do not meet the requirements for forming a contract. This doctrine can provide legal protection to the injured party, and prevent other parties from breaking the promises they have made. However, this doctrine also has several criticisms and challenges, such as difficulties in proving the existence of promises, uncertainty in determining the amount of compensation, and the potential for abuse of this doctrine by dishonest parties. Therefore, this doctrine must be applied carefully and based on the principles of justice and propriety.

Promissory Estoppel Doctrine in the Current and Future Indonesian Legal System?

When Indonesia entered independence, until now it has implemented several regulations from several countries and international organizations, including one of the oldest regulations

[65] Alfred Junaidhi, "Pendekatan Promissory Estoppel Untuk Menegakkan Tanggung Jawab Sosial Dan Lingkungan Perusahaan Di Indonesia" (Universitas Tarumanagara, 2018).

which until now has not been changed is the Civil Code which is a legacy from the Dutch colonial era. Civil law is the law that regulates relationships. between individuals who have a regulatory character with the aim of protecting individual *interests*. Formally juridically, the Civil Code consists of 4 (four) books, namely book I regulates people (*van Perrsonen*) from Articles 1 to 498, book II regulates objects (*van Zaken*) from Articles 499 to 1232, book III regulates engagement (van *Verbintenissen*) from Article 1233 to 1864, and book IV regulates evidence and expiration (*van Bewijs en Verjaring*) from Article 1865 to 1993.

However, based on the systematics of legal science, the systematics of civil law is divided into individual law (*personenrecht*), the second part is about family law (*Familierecht*), the third part is about property law (*Vermogenrecht*), and the fourth part is about inheritance law (*Erfrecht*). The existence of civil procedural law as formal law has an important and strategic position in efforts to enforce civil (material) law in judicial institutions. As formal law, civil procedural law functions to enforce, maintain and guarantee compliance with civil (material) law in court practice. Therefore, civil law is closely related to civil procedural law, in fact the two are inseparable partners. [66]However, the current civil procedural law regulations are quite worrying [67], because our independence has lasted for approximately 100 years, but up to now Indonesia still uses civil procedural law products from the legacy of the Dutch East Indies government, namely HIR and RBG.[68]

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[66] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 1998).

[67] The legal rules that were created after independence are no longer in accordance with the demands of current developments, and are not in accordance with the demands of developments outside of national factors, namely rational and global factors. Regarding further development of civil law, it can be seen in M. Solly Lubis, Development of Written Law on Indonesian Legislation, in the *Sixth National Law Seminar 1994*, BPHN, Jakarta, pp. 138-139.

[68] HIR is an abbreviation of *Herzien Inlandsch Reglement* which is often translated as Revised Indonesian Regulations, namely the procedural law in trials of civil and criminal cases that applies on the islands of Java and Madura. RBG is an abbreviation of *Rechtreglement voor de Buitengewesten* which is often translated as Regional Legal Regulations Overseas (outside Java, Madura), namely the procedural law that applies in civil and criminal trials in courts outside Java and Madura. Further explanation regarding HIR can be seen in Togar S.M. Sijabat,

Several principles contained in the Civil Code are very important in every agreement, namely the principle of freedom of contract, the principle of consensualism, the principle of trust, the principle of binding force, the principle of legal equality, the principle of balance, the principle of legal certainty, the principle of morals, the principle of propriety. [69]There are several regulations that apply and are regulated outside the Civil Code, for example in the land sector, namely Law no. 5 of 1960 concerning Basic Agrarian Regulations known as the Basic Agrarian Law (UUPA), Marriage Law known as Law No. 1 of 1974 concerning Marriage, [70]Mortgage Law.[71]

The existence of civil procedural law which is a legacy of the Dutch East Indies government has not been able to respond to the very dynamic development of society's needs. Efforts to address the public's need for the existence of civil procedural law have been carried out through regulations spread across several laws, including Law No. 48 of 2009 concerning Judicial Power and Law No. 14 of 1985 concerning the Supreme Court as amended by Law No. 5 of 2004 and last amended

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"Perbedaan Antara HIR dan RBG," HukumOnline, 2015, https://www.hukumonline.com/klinik/detail/lt54dc318596a4d/perbedaan-antara-hir-dan-rbg.

69 Mariam Darus Badrulzaman, *Kompilasi Hukum Perikatan* (Bandung: Penerbit Citra Aditya Bakti, 2001).

70 Ratified by the President on January 2 1974 and promulgated in the 1974 State Gazette No. 1, Supplement to State Gazette No. 3019. In the closing provisions it is stated that for marriage everything related to marriage is based on this Law, then with the enactment of this Law the provisions regulated in the Civil Code, the Indonesian Christian Marriage Ordinance (*Huwelijks Ordonnantie Christen Indonesia* S. 1933 No. 74), Mixed marriage regulations (*Regeling op de Gemengde Huwelijken* S. 1898 No. 158), and other regulations governing marriage as far as they have been regulated in this Law, are declared no longer valid. A more complete explanation of Law No. 1 of 1974 can be seen in C.S.T. Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia* (Jakarta: Balai Pustaka, 1984).

71 Law No. 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land. Ratified in Jakarta on April 9 1996. Closing Provisions, Article 29 of this UUHT determines that with the enactment of this Law, provisions regarding *Credietverband* as stated in S. 1908 – 542 in conjunction with S. 1909 – 190. S. 1937 – 191 and provisions regarding mortgage as stated in Book II of the Indonesian Civil Code, insofar as it concerns the imposition of mortgage rights on land rights and objects related to the land, it is declared no longer valid. *See* Sutan Remy Syahdeini, *Hak tanggungan, Asas-Asas, Ketentuan-Ketentuan Pokok Dan Masalah Yang Dihadapi Oleh Perbankan* (Bandung: Penerbit Alumni, 1999).

by Law No. 3 of 2009. These regulations, which are spread across many places, have the potential to cause inconsistencies in their implementation, especially since the regulations regarding procedural law are not regulated in detail and therefore require implementing regulations. Unfortunately, implementing regulations are needed to regulate technical matters mandated by law, resulting in difficulties in court practice.[72]

Transplantation or legal adaptation is a process of accepting foreign legal institutions or rules into the legal system of a country which is defined as the transfer of a rule or legal system or part of a legal system from one country to another country, or from one nation to another nation. The terms that describe the occurrence of transfer or imitation or transfer or application of a rule, sub or sub-sub-system of the law are varied. Some call it legal transposition, some call it legal adoption, legal reception, legal passing.

One of the most crucial matters related to the above is the issue of agreements or engagements which have a function, in various sectors which discusses profits and losses for the parties who exist and are bound by the agreement or contract, including the type of contract or agreement in business world, is to protect the interests of the parties in order to regulate rights and obligations, so as to create legal certainty for the parties who create them. Typically in the business world, agreements are made in writing, namely by making a contract. Before entering a contract, the parties usually enter the pre-contact stage, namely the stage where the parties have an initial understanding to enter a contract. Legal problems will arise if before the agreement is valid and binding on the parties, namely in the negotiation process or *preliminary negotiation* , one of the parties has carried out legal actions such as borrowing money, buying land, even though a final agreement has not been reached between them regarding the business contract being negotiated. This can happen because one party really believes and has hope in the promises made by his business partner.[73] If in the end the negotiations reach an impasse and an agreement cannot be reached, for example an agreement cannot be reached regarding fees, royalties or the term of the

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[72] Budiman Ginting, "Perkembangan Hukum Perdata di Indonesia Pembaharuan terhadap Hukum Perdata di Indonesia," 2021.

[73] Suharnoko, *Hukum Perjanjian Teori dan Analisis Kasus* (Prenada Media, 2015).

license, then compensation cannot be claimed for all costs and investments that have been incurred by the business partner. This of course has a negative impact on parties who feel they have been harmed if their actions were carried out before the agreement was established. Only with the intention of smoothing out the final agreement but it turns out the agreement has not been completed, this arises due to the vacuum *of norms* where the Civil Code and statutory regulations related to agreements or contracts do not yet regulate the consequences. legal promises made at the pre-contract stage.

The pre-contractual stage is the stage where the parties carry out negotiations to determine the contents of the agreement that they will later agree to. This agreement is one of the important conditions for issuing a legal relationship in addition to other conditions as regulated in the provisions of Article 1320 of the Civil Code. Apart from the provisions of Article 1320 of the Civil Code, when making an agreement the parties must also pay attention to the principles in the agreement. [74]Meanwhile, the standard rules that protect the pre-contract stage in Indonesia have not been clearly established, so it is necessary to establish the characteristics of *the Promissory Estoppel* doctrine in the current and future Indonesian legal system.

The next stage, the Era of Disruption. [75]The form of pre-agreement protection contained in the *Promissory Estoppel* doctrine must be clearer, bearing in mind that in this era various types of agreements continue to experience quite significant developments, so that in order to facilitate and anticipate problems before an agreement occurs, it must be formed as soon as possible in the territory of Indonesia. This can start from legal adoption or adaptation, which can occur because there are similarities or similarities between the two legal systems so that they can meet. In other words, if the doctrine of *promissory estoppels* which originates from the *common law legal system* can be adapted or adopted by Indonesia which adheres to a *civil law legal system*, then similarities

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[74] Antari Innaka, *Penerapan Asas Itikad Baik Tahap Pra Kontraktual Pada Perjanjian Jual Beli Perumahan, Mimbar Hukum Bagian Hukum Perdata* (Yogyakarta: Fakultas Hukum Universitas Gadjah Mada, 2012).

[75] Disruption is a term that refers to major changes that are significant and profound. According to the Big Indonesian Dictionary (KBBI), it is something that has been uprooted from its roots. Disruption is a term that refers to major changes that break away from the old order and produce a new system

must be sought between the *common law* and *civil law legal systems* in terms of contract law. Apart from that, the characteristics of the promissory estoppel doctrine in the current and future Indonesian legal system are as follows:

1) The promissory estoppel doctrine has not been explicitly recognized in Indonesian civil law, but there are several court decisions that refer to this doctrine in resolving legal disputes. An example is the case of PT. Bank Mandiri (Persero) Tbk. vs PT. Bumi Resources Tbk. and PT. Bumi Capital Indonesia, where the Central Jakarta district court granted PT. Bank Mandiri applied the promissory estoppel doctrine, on the grounds that the special power of attorney granted by PT. Bumi Resources to PT . Bank Mandiri is a binding promise and must be fulfilled by the defendants .[76]
2) The doctrine of *promissory estoppel* can be a legal instrument that can be used to resolve legal disputes related to promises made before a formal contract exists, or which do not meet the requirements for forming a contract. This doctrine can provide legal protection to the injured party, and prevent other parties from breaking the promises they have made.
3) *Promissory estoppel* doctrine also has several criticisms and challenges, such as difficulties in proving the existence of a promise, uncertainty in determining the amount of compensation, and the potential for abuse of this doctrine by dishonest parties. Therefore, this doctrine must be applied carefully and based on the principles of justice and propriety.
4) *Promissory estoppel* doctrine can adapt to developments in contract law in Indonesia, especially with the paradigm shift from contracts as unilateral legal acts to contracts as multilateral legal acts. This doctrine can fill the gap in norms in contract law in Indonesia, and accommodate the needs of the parties in business transactions.

Conclusion

Disparities in the application of the *promissory estoppel doctrine.* What can be seen from developed countries, namely

[76] Huzaini, "Doktrin Promissory Estopel dalam Penyelesaian Ganti Rugi pada Tahap Pra Kontrak."

England, has been implementing it since the 50s with an approach to a number of cases after the Second World War so that entering the modern era, the concept of a legal system relating to Pre-Contract has more effective implementation. Meanwhile, the Philippines, which is a country in the ASEAN region with Indonesia, has implemented it in the Civil Code with an approach in the form of adapting to the problems in that country. Meanwhile, until now Indonesia has had no reason to assert legal protection for the pre-agreement parties.

The formation of rules for absorbing and implementing the *promissory estoppel doctrine system* must be implemented considering that the current rules in Indonesia still refer to colonial rules. There needs to be a reconstruction of the rules by considering Indonesia which adheres to a *civil law legal system* with a *common law system* which is the birthplace of the *promissory estoppel doctrine.* So naturally a system of rules will be created that are standard and binding on parties who, intentionally or unintentionally, based on good faith or bad faith, can be protected or entangled with these new and standard rules. Of course, the relevant parties will consider clearly and definitely when carrying out preliminary steps (pre-agreement) before the agreement is finalized, not to cancel the pre-agreement unilaterally.

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