

# Implementasi asas iktikad baik pada tahap pra kontrak ditinjau dari kerangka hukum perjanjian Indonesia dan doktrin promissory estoppel = The implementation of good faith principles on the pre contractual phase in terms of Indonesian contract law and promissory estoppel doctrine

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## Abstrak

Di Indonesia asas iktikad baik diatur dalam Pasal 1338 ayat (3) KUH Perdata. Iktikad baik yang diatur dalam ketentuan tersebut terbatas hanya meliputi tahap pelaksanaan perjanjian saja. Berbeda dengan Indonesia, beberapa negara penganut sistem civil law telah mengakui iktikad baik pada tahap negosiasi atau pra-kontrak, sehingga janji-janji pra-kontrak diakui dan jika dilanggar menimbulkan akibat hukum. Karena belum ada perjanjian yang mengikat maka gugatan yang diajukan untuk memperoleh ganti rugi dianggap sebagai Perbuatan Melawan Hukum (PMH). Dengan konsep yang sama, di dalam sistem common law khususnya di Amerika Serikat, muncul doktrin promissory estoppel yang berakibat bahwa meskipun belum ada consideration namun janji-janji dapat mengikat. Adapun yang menjadi tujuan dari penelitian ini adalah untuk mengetahui bagaimana penerapan asas iktikad baik pada tahap pra-kontrak di Indonesia melalui putusan pengadilan. Penelitian ini merupakan penelitian yang bersifat yuridis normatif dengan pendekatan perundang-undangan (statue approach), perbandingan (comparative approach) dan pendekatan kasus (case approach). Dalam penelitian ini diperoleh kesimpulan bahwa sampai saat ini belum ada pengaturan yang khusus mengatur penerapan asas iktikad baik pada tahap pra-kontrak. Namun demikian, berdasarkan putusan-putusan di pengadilan negeri yang dianalisis pada penelitian ini diketahui bahwa Hakim telah mengakui adanya keharusan beriktikad baik pada tahap pra-kontrak oleh para pihak.

.....In Indonesia, good faith principle set in article 1338 subsection (3) on the Indonesian Civil Code. The implementation of good faith principle set out from this article is limited only to the contractual phase. In contrast to Indonesia, some civil law countries have recognized the principle of good faith on the phase of negotiations or pre-contractual phase, so the promises of the pre-contract is recognized and lead to legal consequences if its broken. Since there is no binding agreement on the pre-contractual phase, therefore to the injured party in this phase can sue for reliance damages based on tort. Based on the same concept, in the common law system, particularly in US the promissory estoppel doctrine has the effect of making some kinds of promise binding even where they are not supported by consideration. This research aims to determine how the implementation of good faith principle on the pre-contractual phase in Indonesia through court orders. It is a judicial-normative research, with statute, case and comparative approach. In this research, author concluded that til nowadays there is no regulation that specifically regulates the application of good faith principle on the pre-contractual phase. Moreover, based on court orders which analyzed in this research, note that the Judge has recognizes the necessity of good faith at the pre-contractual phase by the parties.

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