

# Perbandingan Penerapan Asas Itikad Baik pada Tahap Prakontrak di Indonesia dan Prancis dengan Doktrin Promissory Estoppel di Malaysia = Comparison of the Application of Good Faith Principles at the Pre-contract Stage in Indonesia and France with the Promissory Estoppel Doctrine in Malaysia

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## Abstrak

Di Indonesia asas itikad baik hanya diatur dalam tahap pelaksanaan perjanjian. Namun, permasalahan yang timbul akibat salah satu pihak tidak beritikad baik kerap kali muncul pada tahap prakontrak. Tulisan ini bertujuan untuk membandingkan penerapan asas itikad baik pada tahap prakontrak di Indonesia dan Prancis dengan doktrin promissory estoppel di Malaysia. Penelitian ini adalah penelitian yuridis-normatif dengan metode perbandingan hukum. Penelitian ini menggunakan jenis data sekunder yang dikumpulkan dengan teknik studi kepustakaan dan dianalisis secara kualitatif. Berdasarkan penelitian yang dilakukan, diketahui bahwa di Indonesia asas itikad baik masih didasarkan pada teori klasik hukum kontrak yang membatasi ruang lingkup itikad baik hanya sebatas pada saat pelaksanaan perjanjian sebagaimana diatur dalam Pasal 1338 ayat (3) KUHPerdara. Sedangkan di Prancis sudah mengikuti teori hukum kontrak modern yang mengatur penerapan asas itikad baik sejak tahap prakontrak sebagaimana diatur dalam Pasal 1112 Civil Code Prancis 2016. Sedangkan di Malaysia, sebagai negara yang menganut sistem hukum common law, perjanjian prakontrak dilindungi oleh doktrin promissory estoppel melalui resepsi hukum Inggris yang diatur dalam Pasal 3 ayat (1) Civil Law Act 1956.

.....In Indonesia the principle of good faith is only regulated in the implementation stage of the agreement. However, problems arising from one of the parties having bad intentions often arise at the pre-contract stage. This paper aims to compare the application of the principle of good faith at the pre-contract stage in Indonesia and France with the promissory estoppel doctrine in Malaysia. This research is a juridical-normative research using comparative law method. This research uses secondary data types that were collected using literature study techniques and analyzed qualitatively. Based on the research conducted, it is known that in Indonesia the principle of good faith is still based on the classical theory of contract law which limits the scope of good faith only at the time of execution of the agreement as stipulated in Article 1338 paragraph (3) of the Civil Code. Whereas in France it has followed modern contract law theory which regulates the application of the principle of good faith since the pre-contract stage as stipulated in Article 1112 of the 2016 French Civil Code. Meanwhile in Malaysia, as a country that adheres to the common law legal system, pre-contract agreements are protected by the promissory estoppel doctrine through receptions of English law regulated in Article 3 paragraph (1) of the Civil Law Act 1956.