

Deontological Study of the Binding Strength of Precontractual Promises: A Legal and Ethical Approach

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Abstract. *This study analyzes the binding force of pre-contractual promises from the perspective of deontological law and ethics. In contract law, pre-contractual promises often raise debates about their validity and legal consequences. This study uses a normative legal approach with descriptive qualitative analysis, which focuses on the analysis of legal norms governing pre-contractual promises. From a deontological ethics perspective, the fulfillment of a promise is considered a moral obligation that must be honored regardless of the consequences, based on the principles of honesty and integrity. This study highlights that the combination of deontological law and ethics approaches can provide a stronger normative basis for assessing pre-contractual obligations, increase legal certainty, and strengthen the principle of trust in business relationships and contractual negotiations. Deontological studies of the binding force of pre-contractual promises confirm that promises made before a formal contract have interrelated legal and ethical dimensions. From a legal perspective, although not always legally binding, the principle of promissory estoppel in common law and the principle of good faith in civil law can provide protection for parties who suffer losses due to unfulfilled pre-contractual promises. Meanwhile, from a deontological ethical perspective, the obligation to fulfill promises is based on universal moral principles, such as honesty and good faith, which form the basis of trust in business and legal interactions.*

Keywords: *Deontological; Ethical; Legal; Precontractual; Promises.*

1. Introduction

In the world of business and law, contracts are the main foundation that regulates the relationship between the parties involved in an agreement. However, before an official contract is signed, there is a crucial stage called the pre-contract. This stage includes negotiation, risk analysis, and discussion of terms and conditions that will later be stated in the final contract. The pre-contract is the stage that precedes the formation of a

contract. In both common law and civil law systems, contract law has developed by giving greater attention to the pre-contract as a stage that is no less important than the contractual and post-contractual stages. In fact, the pre-contract is often considered the soul of the contract made by the parties later on. The pre-contract plays an important role in ensuring that the agreement made is not only legally valid, but also fair and beneficial to all parties (Dewanti et al., 2021).

This process also provides space for the parties to assess the credibility of business partners, understand their respective obligations, and avoid potential disputes in the future. In its development, the pre-contract not only functions as the initial stage in a business agreement, but also reflects the principles of ethics and transparency in business relationships. Therefore, understanding and implementing the pre-contract properly is a key factor in creating a strong and sustainable contract (Ardyo, 2019).

Generally, before entering into a contract, the parties promise to bind themselves to each other and will plan to make a contract in accordance with the applicable provisions and regulations. This promise is usually made before the pre-contract stage which refers to the initial agreement or statement of intent between the parties before the main contract is signed. Pre-contract promises are an important element in the legal and business world, which serve as the basis for the relationship between the parties involved in a binding agreement which will then be agreed upon in the form of a formal and binding written contract. In this context, pre-contract promises not only reflect the intentions and expectations of the interests of the parties, but also contain significant legal implications. Although pre-contract promises often do not have the same binding force as formal written contracts, their existence can affect the dynamics of the relationship between the contracting parties and give rise to complex legal consequences. Therefore, it is important to understand how pre-contract promises can be accounted for, both from a legal and ethical perspective.

A pre-contractual promise can be defined as a statement or commitment made by one party to another party before a formal written, binding contract is entered into. This promise often occurs in the form of a negotiation, offer, or preliminary agreement that indicates an intention to enter into a transaction and an agreement that will be outlined in a legal contract. In many cases, a pre-contractual promise serves as a signal of a desire to cooperate and build a mutually beneficial business relationship. Pre-contractual promises can vary in form and substance. For example, in a business context, a pre-contractual promise might be a statement about price, product quality, or delivery time. In a legal context, a pre-contractual promise might include a commitment not to disclose confidential information or to conduct due diligence before signing a final contract (Halimah, n.d.).

In a legal context, pre-contractual promises can have a number of significant implications. One important aspect is that pre-contractual promises can create expectations that the other party relies on. If one party withdraws from the agreement or fails to fulfill the promise that has been made, the injured party can bring a legal claim based on the principle of estoppel or tort theory. In this case, the court can consider the intentions and expectations that have been created through the pre-contractual promise in determining whether a breach has occurred. For example, when two business actors in the form of companies are negotiating a merger, if one party openly declares its intention to proceed with the agreement and the other party relies on that statement to take certain steps, then the party that withdraws may be held

legally liable. This shows that even though no formal contract is signed, pre-contractual promises can have significant legal consequences. Pre-contract negotiations are often equated with the meaning of a memorandum of understanding (MoU). Although they may differ in practice, the essence is the same. Pre-contract negotiations contain moral matters, meaning that the parties conducting pre-contract negotiations are based on certain moral values.

The discussion of ethics in relation to the formation and enforcement of law is because ethics examines human behavior or actions based on existing moral standards or values. Ethics provides a prescription for which actions should and should not be done based on these moral standards. From here, ethics then produces new, more practical rules that become guidelines for behavior in everyday life. The deontological approach, which focuses on moral obligations and ethical principles in human actions, offers a relevant framework for analyzing the binding power of pre-contractual promises. In the deontological view, human actions are not only judged based on the results or consequences, but also on the intentions and moral obligations that underlie them. In the context of pre-contractual promises, this means that the parties have a moral responsibility to fulfill the promises they have made, regardless of whether the promises are formally regulated in the contract. Deontological principles emphasize the importance of integrity and honesty in contractual relationships. When parties engage in negotiations and make pre-contractual promises, they must be aware that their actions have broader consequences than just the results of the agreement. Failure to fulfill promises can damage the reputation, trust, and long-term relationships between the parties. Therefore, the deontological approach encourages individuals and organizations to act in accordance with high moral principles, even in contexts that are not formally regulated.(Fattah, 2024).

The relevance of this research is increasing along with the complexity of business relationships that continue to grow in the era of globalization. In a dynamic business environment, where transactions are often carried out quickly and in a context that is not always formal, a deep understanding of pre-contractual promises and their ethical implications becomes very important. In addition, with the increasing number of legal disputes related to pre-contractual promises, this research is expected to provide better insight into how a deontological approach can help in resolving conflicts and maintaining integrity in transactions. This research also aims to contribute to the development of legal and ethical theory, as well as practices in the preparation and implementation of pre-contractual promises, so as to create a more transparent and accountable business environment.

Discussion of ethics in relation to the formation and enforcement of law because ethics examines human behavior or actions based on existing moral standards or values. Ethics provides a prescription for which actions should and should not be done based on these moral standards. From here, ethics then produces new rules that are more practical and become guidelines for behavior in everyday life (Li, 2022). The ethical aspect of pre-contractual promises cannot be ignored. In the process of implementing an agreement, ethics plays an important role in building trust between the parties. When parties engage in negotiations, they must consider not only their own interests but also the impact of their actions on the other party. Failure to fulfill pre-contractual promises can cause significant harm to the other party, both financially and in terms of reputation. In this context, it is important to develop a clear code of ethics that governs the behavior of the parties in negotiations. This code of ethics should include principles such as honesty,

transparency, and responsibility (Rahman et al., 2021). With a strong code of ethics in place, parties can more easily navigate the complexities of contractual relationships and reduce the risk of disputes related to pre-contractual promises.

2. Research Methods

This study uses a normative legal approach with descriptive qualitative analysis, which focuses on the analysis of legal norms governing pre-contractual promises (Asikin, 2016). This approach aims to understand how the law regulates and gives binding force to promises made before an official contract is signed. In this context, the study will explore various laws and regulations, legal doctrines, and relevant jurisprudence to assess the validity and legal force of pre-contractual promises (Siregar, 2020). In addition, this study also integrates ethical aspects with a deontological approach. The deontological approach emphasizes the importance of moral obligations and ethical principles in legal decision-making. In this case, the study will analyze how deontological ethical principles, such as honesty, integrity, and responsibility, play a role in shaping and influencing the binding force of pre-contractual promises. Thus, this study will not only look at the legal aspect normatively, but also consider the ethical dimensions underlying legal practices in the context of pre-contractual promises. Through this approach, it is hoped that the study can provide a comprehensive picture of the interaction between legal norms and ethical principles in the context of pre-contractual promises, as well as their implications for legal practice and justice (Ali, 2009). A normative legal approach combined with deontological ethical analysis will provide a strong foundation for understanding the complexity of the issues raised in this research (Qamar, Nuru, Muhammad Syarif, Dachran S. Busthami, 2017).

3. Results and Discussion

3.1. The Binding Power of Pre-Contractual Promises from the Perspective of Contract Law

The contract practice (covenant) is currently more complex. The parties who will enter into an agreement, especially in large-scale business contracts, usually negotiate pre-contracts or preliminary contracts. In principle, Preliminary contract negotiations aim to explore various possibilities for the plan to enter into an agreement between the parties. In this stage, covenant from one party to another often appear or are conveyed in the expectation that the other party agrees to enter into an agreement as a follow-up to the negotiations. The other party who was given covenant puts expectation in the agreement marked by a willingness to take several legal actions (*rechtshandeling*), for example, handing over money or goods as a sign of completion (Dewanti et al., 2021).

In some jurisdictions, pre-contractual promises may be considered binding if they meet the elements of an obligation, especially if one party has relied on the promise and suffered a loss due to unilateral cancellation (Hogg, 2011). Promises in pre-contracts play an important role in building trust and setting expectations before the final contract is signed. Although not always legally binding, such promises can have legal consequences if they involve bad faith or are detrimental to the other party. Therefore, it is important for business people to understand the legal implications of any statements made in the pre-contract stage. In relation to the legal force of promises in pre-contracts, there are several theories of contract law, which includes classical and modern contract law theories. Classical Contract Law Theory, in this theory pre-contract promises do not have binding legal force, therefore the parties involved cannot be held

accountable or sued for damages if they violate the promises that have been conveyed in the pre-contract. The classical contract theory only requires good faith at the time of implementation of the agreement. Modern Contract Law Theory, in this theory the pre-contract has binding force, and tends to eliminate formal requirements for legal certainty and emphasizes more on fulfilling a sense of justice. Good faith is recognized during the pre-contract stage to the post-contract stage (Bogoviz, 2020).

In Indonesia, which is one of the countries that adheres to Civil Law, in general, there are also principles of good faith in contract law. The legal provisions are contained in the Civil Code referring to Article 1338 paragraph (3) which is then linked to Article 1320 paragraph (3) which states that the principle of good faith can be applied in situations where the agreement has met certain requirements, so considering that the agreement has not met certain requirements, therefore pre-contract promises do not have a strong and binding legal impact at all. This means that if viewed from the Civil Code alone, Indonesia tends to apply the classical contract law theory, namely that classical contract law does not recognize the binding force of pre-contracts. The Civil Code only regulates the principle of good faith at the time of contract implementation as stated in Article 1338 (3) of the Civil Code. In practice, if there is a case, the judges will use the theory put forward by the experts.

In American law, a contract must be supported by valid consideration. According to the court in an early case, *Hardesty v. Smith*, consideration is described as follows: The doing of an act by one at the request of another, which may be a detriment or inconvenience, however slight, to the party doing it, or may be a benefit, however slight, to the party at whose request it is performed, is a legal consideration for a promise by such requesting party. So the parting with a right, which one possesses, to another, at his request, may constitute a good consideration (Caterini, 2004).

The principle of good faith is only applied where an agreement has been reached. As a result, it does not protect the party who suffers losses in the pre-contract or negotiation stage (Dewanti et al., 2021). Legal problems themselves will arise if before the agreement is valid and binding on the parties, namely in the negotiation process (preliminary negotiation), one of the parties has carried out a legal act such as borrowing money or buying something, even though the parties have not reached a final agreement regarding the contents of the business agreement being negotiated. This can happen because one of the parties believes and places hope in the promises made by their business partners. If in the end the negotiations reach a dead end and do not reach an agreement, for example no agreement is reached regarding fees, royalties, then the party who has carried out the legal act cannot claim compensation for all costs and investments that have been incurred for the benefit of the business. Likewise, with the promises of business actors contained in brochures distributed as advertisements, according to the classical theory of contract law, they cannot be held accountable because these promises are pre-contract promises that are not included in the sale and purchase agreement. This understanding certainly does not reflect justice and protection for one of the parties, which is usually the party in a weaker bargaining power position, such as consumers or debtors in debt agreements.

3.2. Deontological Study of the Binding Power of Pre-Contractual Promises

In the realm of contract law, pre-contractual promises are often debated regarding their binding force. The deontological perspective in ethics provides a normative basis that

emphasizes the moral obligation to fulfill promises that have been made, including in the pre-contractual stage. Deontology, which is rooted in the thinking of Immanuel Kant, emphasizes that actions must be based on universal moral principles and not solely on the consequences that result (Kleinhans, 2020).

Pre-Contractual Promises are statements, agreements, or commitments made by one or both parties before a formal contract is signed. These promises often appear in business negotiations, sales transactions, employment agreements, or investment agreements, where one party provides a guarantee or indication of seriousness before there is a valid legal obligation. Characteristics of Pre-contractual promises, although not fully binding in many legal systems, can still carry legal consequences under certain conditions—particularly when one party suffers a loss due to reliance on such promises. This reliance can manifest in actions like incurring investment costs or ceasing negotiations with other parties, which may establish responsibility on the part of the promisor. In certain legal frameworks, such as common law, the doctrine of promissory estoppel allows for these promises to be enforced if they result in significant reliance. Similarly, in civil law, the principle of good faith may be applied to ensure fairness and justice in honoring such commitments. Beyond the legal implications, pre-contractual promises also relate closely to business ethics and trust; consistently breaking these promises can harm reputations and erode confidence in professional relationships (Petridean, 2024).

In the context of contract law, the deontological approach to pre-contractual promises highlights the importance of honesty, transparency, and commitment in the negotiation process (Zhang, 2023). If a party makes a promise or statement that can raise expectations for the other party, then the party is morally obliged to honor its promise, regardless of whether a formal contract has been signed or not. This approach emphasizes that honoring promises is not only a matter of positive law, but also a universal moral obligation. Although in many legal systems, pre-contractual promises are not always considered legally binding, there are principles such as promissory estoppel in common law or the principle of good faith in civil law that can provide protection for parties who are harmed by the failure to fulfill pre-contractual promises. From a deontological perspective, failure to fulfill a pre-contractual promise can be considered a violation of moral principles, especially if the promise has created dependence or a change in the legal and economic position of the other party. Formal contracts are of course not the only way for parties to coordinate among multiple equilibria. The efficiency of the seller-buys equilibrium could make it a focal point for the parties (Hermalin et al., 2007).

The deontological study of the binding force of pre-contractual promises provides a broader perspective than just a positive law approach. In business practice and legal transactions, this approach emphasizes that integrity and moral responsibility must be upheld at every stage of contractual negotiations, in order to create trust and legal certainty between the parties to the transaction (Fried, 2015).

A caveat is in order at the outset: although it is conventional to present contract law as a discrete field, one should understand that, to a significant extent, the operation of the rules and institutions discussed below will depend on other aspects of the law, including the fields of tort, bankruptcy, procedure, and evidence (Bitca et al., 2015). Lawyers have a cliché that describes this interdependence; they say that “the law is a seamless web.” It is useful to keep in mind that many issues that economists would regard as contractual, including some important limits on contractual freedom, are governed not

by contract but by tort law (Reynolds, 2017). Additionally, the rules relating to certain categories of exchange, such as consumer, employment, insurance, and information-licensing contracts, have developed specialized content to the point that they are often treated as distinct legal fields. Finally, the practical ability of contracting parties to assert their legal entitlements depends importantly on the procedural rules that govern courts and other enforcement institutions. Many of the specific features of contract law that we discuss below cannot be understood except as a response to the costs and other limitations of such institutions.

Pre-contractual promises are somewhere between the realm of law and ethics. Although not always legally binding, under certain conditions these promises can have legal consequences, especially if there is an element of dependency or bad faith from the party who cancels the promise. Therefore, understanding pre-contractual promises is very important in the world of business and contract law to avoid disputes and ensure transparency and trust in negotiations.

4. Conclusion

Deontological studies of the binding force of pre-contractual promises confirm that promises made before a formal contract have interrelated legal and ethical dimensions. From a legal perspective, although not always legally binding, the principle of promissory estoppel in common law and the principle of good faith in civil law can provide protection for parties who suffer losses due to unfulfilled pre-contractual promises. Meanwhile, from a deontological ethical perspective, the obligation to fulfill promises is based on universal moral principles, such as honesty and good faith, which form the basis of trust in business and legal interactions. Thus, the combination of legal and deontological ethical approaches becomes the basis for assessing the validity and consequences of pre-contractual promises, while also emphasizing the importance of integrity and moral responsibility in the negotiation process to achieve justice and legal certainty.

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