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Integration of the Estoppel Principle as a Complement to Good-Faith Regulation in Indonesian Private Law

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Abstract

This study seeks to investigate the concept of estoppel and its potential incorporation into Indonesian civil law. This research is important not because Indonesian civil law lacks protection, but because the existing framework may not always provide optimal conceptual articulation in addressing losses arising from reliance. The Civil Code recognizes principles such as *pacta sunt servanda* and good faith; however, protection of reliance is not limited to these principles, as it is also addressed through unlawful acts (Article 1365) and the doctrine of culpa in contrahendo. Therefore, it would be overstated to claim the existence of a legal vacuum. In many legal systems, particularly in the common law tradition, estoppel has developed to address reliance, detriment, and unconscionability. In civil law systems, the protection of reliance is not contingent upon estoppel as a separate doctrine; rather, it is integrated within established legal principles. This study uses normative legal research methods, including statutory, conceptual, and comparative approaches, by examining laws, court decisions, and legal doctrines. The findings show that estoppel has evolved from a rule of evidence into a doctrine concerned with fairness. In Indonesia, similar values are reflected in good faith, rechtsverwerking, and unlawful acts, which demonstrate how these concepts align with the evolving understanding of estoppel in promoting fairness within the legal system. Accordingly, this research does not posit estoppel as a response to a legal gap but as a complementary and adaptive conceptual framework, consisting of representation, reasonable reliance, and detriment, which may be integrated through interpretation, jurisprudential development, and gradual legal refinement.

1. Introduction

The principle of *pacta sunt servanda* means that a valid agreement has the force of law between the parties, subject to limitations such as defects of consent, unlawful cause, and bad faith.[1] This principle is explicitly stated in Article 1338, paragraph (1), of the Civil Code (*KUHPerdata*), which states that "all agreements made in accordance with the law shall have the force of law for those who make them".[2] Thus, if someone breaches a promise agreed upon in a contract, one of the legal mechanisms available to enforce it is through a lawsuit in court.[3]

KUHPerdata also guarantees legal certainty for parties who have executed the agreement in good faith, as emphasized in Article 1338 paragraph (3).[4] In practice, the Supreme Court of the Republic of Indonesia, through several Supreme Court Circular Letters (SEMA)—including SEMA Number 1 of 2017, SEMA Number 4 of 2016, SEMA Number 5 of 2014, and SEMA Number 7 of 2012—highlights the importance of legal protection for third parties or good faith buyers in criminal, civil, and land dispute cases. However, SEMA emphasizes the significance of legal protection for third parties or bona fide purchasers in criminal, civil, and land disputes. It clarifies that these matters do not constitute a generally binding source of law but rather function as an internal judicial guideline.

In the context of criminal law, protection is granted to third parties holding civil rights over goods seized in corruption cases, as regulated by Article 19 of the Corruption Crime Law. Meanwhile, in the civil realm, buyers who are considered to have good faith are those who purchase land through legitimate procedures, conduct research on the legal status of the land and the identity of the seller, and transact at a fair price. The principle of caution and diligence in every transaction process constitutes an important indicator in assessing good faith; however, good faith encompasses both subjective honesty (intention) and objective standards of proper conduct. Thus, it is not limited to administrative verification alone. A buyer may still be considered in good faith if both elements are fulfilled, even if the seller is later found to lack the right to the object being sold. Conversely, if the buyer knows that the land ownership document is not in the seller's name or that the object of sale is an undivided inheritance sold without the consent of all heirs, the buyer cannot be regarded as acting in good faith. In such circumstances, the buyer may only claim compensation from the seller. A buyer may still be considered in good faith if both elements are fulfilled, even if the seller is later found to lack the right to the object being sold.

Estoppel in the common law tradition is a specific doctrine, whereas good faith is a general principle in civil law; although they share similar underlying values, they are not identical.[5] This doctrine essentially prevents a person from denying or retracting a statement, promise, or legal stance that they had previously made if another party has relied on it and subsequently suffered a loss. "In brief, estoppel is a doctrine that prevents injustice arising from inconsistent legal positions.[6] This doctrine is important, it is necessary to examine whether the existing legal norms in Indonesian are sufficient before its incorporation into the national legal system. Article 1338 of the KUHPerdata says that Indonesian civil law already recognizes the principle of "*pacta sunt servanda* and good faith." These two rules say that "agreements bind the parties and must be performed in good faith and honesty." However, doctrinally, the principle of good faith is more inclined to function as a "guideline" in the execution or interpretation of contracts rather than as a separate mechanism to protect trust that arises before the formation of a valid agreement.

This limitation is evident when an individual incurs a loss due to reliance on the statements or legal stance of another party, despite the absence of a formal binding agreement. In such situations, while the principles of pacta sunt servanda and good faith may not always provide optimal protection for reliance interests, the legal

[1] S Cornelius, "Die Formeelregtelike Grondslag van Die Ex Contractu-Eis Vir Skadevergoeding Weens Kontrakbreuk," *Tydskrif Vir Die Suid-Afrikaanse Reg* 2024, no. 1 (2024), https://doi.org/10.47348/tsar/2024/i1a5.

[2] Dolot Alhasni Bakung, Zamroni Abdussamad, and Mohamad Hidayat Muhtar, "The Principle of Freedom of Contract in Agricultural Product Sharing Based on Islamic Law," *Jambura Law Review* 4, no. 2 (2022), https://doi.org/10.33756/jlr.v4i2.11645.

[3] Ryan H. Nelson, "An Employment Discrimination Class Action By Any Other Name," *Fordham Law Review* 91 (2023), https://doi.org/10.2139/ssrn.4197404.

[4] Sudjana Sudjana, "Principle Of Good Faith In Confidentiality Agreements Of Trade Secret Information," *Dialogia Iuridica* 14, no. 1 (2022), https://doi.org/10.28932/di.v14i1.5376.

[5] Janet O'Sullivan, "5. Consideration and Estoppel," in *O'Sullivan & Hilliard's The Law of Contract*, 2022, https://doi.org/10.1093/he/9780192856555.003.0005.

[6] Elaine Palser, "Proprietary Estoppel and the Position of the Stranger," *Trusts & Trustees* 29, no. 3 (2023), https://doi.org/10.1093/tandt/ttac125.

framework does not lack protection, as remedies can be found in tort law (Article 1365 of the KUHPerdata) and the doctrinal development of unjust enrichment. Accordingly, the issue lies not in a regulatory gap but in the limitations of implementation and conceptual application of existing mechanisms, which can lead to inadequate protection for individuals who suffer losses due to reliance on non-binding statements. In many common law countries, the doctrine of estoppel addresses similar concerns by preventing a person from acting inconsistently with a prior representation when such conduct causes harm to a party who has relied upon it. Therefore, estoppel may be understood as a supplementary doctrine that could strengthen the practical application of good faith in Indonesia.

Regarding the principle of estoppel, several studies in Indonesia identify parallels, rather than an equivalent, in the doctrine of *rechtsverwerking*, which involves the loss of rights due to inaction, as recognized under Article 32 paragraph (2) of Government Regulation No. 24 of 1997. However, they are not identical: rechtsverwerking is based on inaction, whereas estoppel prohibits inconsistent conduct that harms reliance.[7] In the common law system, estoppel is an exception to the principle *nemo dat quod non habet* and protects the party acting in good faith from detrimental changes in attitude, as reflected in Supreme Court Decision No. 1012 K/Pdt/2021, which emphasizes legal protection for third parties acting in good faith.[8] In the context of a Memorandum of Understanding (MoU), promissory estoppel becomes relevant when a promise in the MoU is relied upon by another party in taking action and thus cannot be unilaterally withdrawn if it causes harm.[9] Unlike the common law and Dutch systems, which have begun to recognize protection against pre-contractual losses based on the principle of good faith, Indonesian law still adheres to Article 1320 of the KUHPerdata, which does not yet regulate compensation at the pre-contract stage.[10] In the field of insurance, the principle of estoppel is used to prevent illegal double claims, therefore prompting recommendation for the establishment of a national insurance database.[11] Globally, Greenwood estoppel in the case of PT Asuransi Tugu Pratama Indonesia Tbk v Citibank N.A. [2023] HKCFA 3 strengthens the bank's defense by preventing the corporation from denying its agent's wrongdoing if it has previously remained silent.[12]

It is important to note, though, that the estoppel doctrine has grown in countries with common law systems, while Indonesia has a civil law system. Common law systems evolve and expand estoppel through various court decisions that set precedents and influence subsequent cases. The Indonesian legal system, on the other hand, sees written laws as the most important source. To use estoppel in Indonesia, it should not rely solely on jurisprudence or the Supreme Court's guidelines, although jurisprudence remains an important persuasive source of law in practice. Such an arrangement does not necessarily lead to legal uncertainty, considering that many legal doctrines have evolved through jurisprudence despite the codified nature of the Indonesian legal system. Before formally acknowledging estoppel, it is imperative to comprehend the scope of prevailing norms, including regulations pertaining to "the principle of *pacta sunt servanda*, the principle of good faith, and doctrines such as *rechtsverwerking*," which effectively offer legal safeguards against losses incurred from justifiable reliance on legal relationships.

Based on the explanation above, existing studies have not yet fully developed a comprehensive and adaptive formulation of estoppel for application in the Indonesian legal system. Therefore, there is an urgency to conduct the present research. This research aims to develop an integrative estoppel concept relevant to the national legal context. To achieve this goal, this research will address two main questions, namely: (1) What is the position, development, and role of the principle of estoppel in theory and practice across various legal systems; and (2)

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[7] Togi Marolop Pangaribuan Joseph Noviandri, "Perbandingan Rechtsverwerking Sebagai Doktrin Hukum Di Indonesia Dan Doktrin Estoppel Di Amerika Serikat Pada Bidang Hukum Perjanjian," *Lex Patrimonium* 2, no. 2 (2023): 1–18.

[8] Melan Yakob, Mercy M. M. Setlight, and Djefry W. Lumintang, "Kajian Hukum Asas Nemo Dat Qui Non Habet Atas Peralihan Hak Benda Bergerak Dalam Hukum Perdata Di Indonesia," *Lex Privatum* 15, no. 3 (2025).

[9] Andi Dadi Mashuri Makmur et al., "Amatan Hukum Perikatan Mengenai Otoritas Memorandum of Understanding (MoU) Sebagai Tahapan Pra Kontrak," *Andi Dadi Mashuri Makmur, Yustiana, Andi Wira Saputra, Besse Muqita Dewi* 2, no. 2 (2023): 36–45.

[10] Elyatul Azizah, Armansyah Armansyah, and Yulianingsih Yulianingsih, "Development of Indonesian Business Contract Law in The Globalization Era," *International Journal Of Social Science And Education Research Studies* 03, no. 04 (2023), https://doi.org/10.55677/ijssers/v03i4y2023-14.

[11] Kanon Mommsen Wongkar, "Legal And Ethical Aspect Of Double Insurance In Indonesia: A Literature Review," *Ultima Management : Jurnal Ilmu Manajemen*, 2023, https://doi.org/10.31937/manajemen.v15i1.3011.

[12] Christy Suen, "Bank Payments on Instructions of Delinquent Agents: A Paradigm Shift," *Trusts & Trustees* 30, no. 1 (2024), https://doi.org/10.1093/tandt/ttad082.

How can the integrative concept of estoppel be adaptively formulated for the Indonesian legal system? This research aims to examine the theoretical and practical aspects of the principle of estoppel in various countries while also formulating a conceptual model that aligns with the needs and characteristics of Indonesian law.

2. Method

This research employs a doctrinal legal research methodology, including statutory, conceptual, and comparative approaches. This method is used to examine the adequacy of Indonesian positive legal norms in regulating contractual relationships and the principle of good faith, as well as to assess whether existing norms provide sufficient protection against losses arising from breach of contract or unlawful acts (Article 1365 of the KUHPerdata.

There are two types of legal materials used: primary and secondary. The KUHPerdata and Government Regulation No. 24 of 1997 on Land Registration are examples of primary legal materials. Other examples include relevant Supreme Court Circular Letters and related judicial regulations. This study also utilizes court rulings from Indonesia and several comparable jurisdictions. International legal instruments, such as the 1969 Vienna Convention on the Law of Treaties, are referred to in a limited manner to illustrate the general development of the principles of pacta sunt servanda and good faith, although their direct applicability is confined to public international law rather than private contractual relations.

Books, scholarly articles, and legal doctrines serve as secondary legal materials, discussing the principles of pacta sunt servanda, good faith, rechtsverwerking, and the doctrine of estoppel. These doctrines originate from different legal traditions—civil law and common law—and therefore have distinct normative functions and positions. Accordingly, they are used to build normative arguments and to interpret the development of legal principles within their respective legal contexts.

The collection of legal materials is carried out through a systematic search of regulations, court decisions, and relevant academic literature. Comparative analysis is conducted on several countries that have developed doctrines related to estoppel or the protection of reliance, such as England, India, Australia, the United States, Canada, South Africa, and France, despite their differing legal traditions (common law and civil law). This comparative approach is not intended to directly adopt foreign doctrines but rather to identify functional similarities, particularly in terms of the protection of reliance interests, consistency in legal conduct, and mechanisms for preventing unfairness, to develop a more comprehensive understanding of legal protection in civil relations.

The analysis is performed qualitatively in multiple stages. First, this research identifies and systematizes Indonesian positive legal norms that relate to contract law. These include the principles of *pacta sunt servanda*, good faith, and the doctrine of *rechtsverwerking*. Second, this research examines the legal issues addressed by courts to understand how Indonesian courts handle situations where changes in legal positions cause losses to parties relying on previous representations. Third, this research analyzes how the principle of estoppel has developed in different jurisdiction by conducting a comparative doctrinal analysis. This stage aims to explain the doctrinal function and legal implications of estoppel across legal systems.

The normative argumentation in this research is structured by considering its alignment with primary legal sources, its relation to developing legal doctrines and theories, its consistency with judicial practices, and its openness to the developments in international and comparative law. Through these stages of analysis, this research aims to conceptually explain the relationship between the principle of good faith, *pacta sunt servanda*, and the protection of legal trust within the Indonesian civil law system.

3. Findings and Discussion

3.1 The Position, Development, and Role of the Principle of Estoppel in Theory and Practice in Various Countries

Estoppel is a legal doctrine in common law that may prevent a party from denying a prior promise, statement, or legal stance if another party has reasonably relied upon it and would suffer loss as a result. However, its application is not absolute, as it is subject to considerations of reasonableness and unconscionability. For example, if a person promises to provide a piece of land and the other party incurs expenses in reasonable reliance on that promise, the promisor may, in certain circumstances, be precluded from acting inconsistently.

Nevertheless, from the perspective of the KUHPerdata, providing such a promise does not automatically create a binding obligation unless it fulfills the legal requirements of agreement, lawful cause, and a definite object as stipulated under Article 1320.[13] The main purpose of this principle is to protect reasonable reliance and prevent injustice due to inconsistent behavior.[14] In the common law tradition, including in England, estoppel is considered part of the principle of equity, which is a legal mechanism to prevent unfair behavior. This principle is often described as "a shield, not a sword," meaning that estoppel is used to uphold a legal position, not to attack or acquire new rights.[15] A party should not benefit from its own inconsistency, especially if it harms another party who has acted in good faith.

Estoppel appears in various forms according to its context. Promissory estoppel applies when someone makes a promise that is relied upon by another party and then fails to fulfill it. Estoppel by representation occurs when someone makes a statement that is relied upon and serves as the basis for another party's action. Estoppel by convention arises if two parties agree on a legal state, and one of them later unilaterally denies that agreement.[16] All these forms aim to prevent deviations from the trust that has been legitimately placed.

In the field of civil law, estoppel is often used in cases of contract disputes and ownership. For example, if someone appears to agree to the sale of land and allows the transaction to proceed without protest, they cannot cancel that agreement if it causes harm to another party.[17] In certain situations, estoppel does not extinguish rights but precludes their enforcement due to prior conduct or Inconsistency. Etymologically, the term "estoppel" comes from Old French, meaning "stopper." In the legal context, this term refers to a mechanism to prevent a party from acting inconsistently with previous statements or legal positions.[18]

In India, the principle of estoppel is regulated under the Indian Evidence Act 1872, specifically in Sections 115–117. Although initially a rule of evidence, in practice, estoppel has a function comparable to substantive law because it can determine the outcome of a case.[19] Someone who, by words, actions, or negligence, has caused another person to believe that a certain state of affairs is true, and that person acts based on that belief, cannot later deny the truth of that state of affairs. This principle is also recognized in various important rulings, such as *Pickard v. Sears* (1837), an early English case that laid the foundation of estoppel, and *Motilal Padampat Sugar Mills v. State of UP* (1979), an Indian case that established that a government promise may give rise to estoppel against the state. Meanwhile, in *Pritam Singh v. State of Punjab* (1956), the Supreme Court of India affirmed the principle of issue estoppel, stating that a legal issue that has been decided cannot be re-litigated in subsequent cases between the same parties. However, its regulation in the law is considered inadequate because Section 115 only contains a formulation that is too brief.[20]

From the experience in India, we gain additional understanding that, although estoppel was initially regulated as a rule of evidence, through judicial interpretation, estoppel then developed into a doctrine of private law. This development shows that estoppel not only regulates matters of evidence but also serves as a legal institution to maintain the consistency of parties in legal relationships. Such dynamics are certainly relevant for countries that have not explicitly regulated it, including Indonesia.

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[13] Fatima Idrees, "Comparative Analysis of the Principle of Estoppel With Principle of Res Judicata," *Available at SSRN 4864710*, 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4864710.

[14] Mohd Asmadi Mohd Angsor and Nazir Adi, "View of The Doctrine of Promissory Estoppel: As a Shield or Sword?," *Research in Management of Technology and Business* 1, no. 1 (2020): 918–25, https://publisher.uthm.edu.my/periodicals/index.php/rmtb/article/view/530/272.

[15] Jorge Larroucau Torres, "The Doctrine of Estoppel in Chilean Civil Justice," *Revista de Derecho* 33, no. 1 (2020), https://doi.org/10.4067/S0718-09502020000100273.

[16] Svitlana Rabovska, "Estoppel Principle Or Venire Contra Factum Proprium: Their Co-Existence And Priority," *Bulletin of Taras Shevchenko National University of Kyiv. Legal Studies*, no. 125 (2023), https://doi.org/10.17721/1728-2195/2023/1.125-14.

[17] Clireesh Terry Joshua, "The Constitutionality of Estoppel in the Context of Vindication," *Constitutional Court Review* 11, no. 1 (2021), https://doi.org/10.2989/ccr.2021.0005.

[18] Liu Guoqing, "A Comparative Study Of The Doctrine Of Estoppel: A Civilian Contractarian Approach In China," Canberra Law Review 1 (2010), https://classic.austlii.edu.au/au/journals/CanLawRw/2010/5.pdf.

[19] Ashish Mishra, Harsh Bhardwaj, and Shailender Singh Rana, "The Doctrine of Estoppel as a Rule of Evidence: An Overview," *International Journal of Legal Science and Innovation* 4, no. 2 (2022): 307.

[20] Prachi Sahay, "Relevance of the Principle of Estoppel under Indian Evidence Law," *Supremo Amicus* 75, no. 17 (2021): 399–405.

The principle of estoppel also plays an important role in achieving a swift, simple, and cost-effective justice system, as it can prevent inconsistency in legal positions that may lead to disputes. However, estoppel is distinct from res judicata, which concerns the finality of judgments. In England, the principle is reflected in the *Henderson v. Henderson* doctrine, which asserts that all claims must be submitted at once and cannot be split into separate cases.[21] In English law, estoppel is divided into three types according to the situation. First, estoppel by representation occurs when someone makes a representation that is relied upon by another party, and then that person acts based on that belief—therefore, the representing party cannot deny it. Second, promissory estoppel arises if someone makes a promise and the other party has relied on it; then the promise cannot be unilaterally revoked. Third, formal estoppel usually occurs if someone has signed an official document such as a deed; then they cannot deny the contents of that document later.[22] Additionally, the terms "positive estoppel" and "negative estoppel" are also known.[23] Positive estoppel grants the right to enforce a promise made, whereas negative estoppel only prohibits the other party from acting contrary to their previous stance without providing a basis for a claim.[24]

The forms of estoppel are now expanding and continuously evolving. For example, estoppel by deed occurs when someone has made a statement in an official document, thereby precluding them from denying its content. Estoppel by record occurs when a court has already decided a matter, preventing it from being disputed again in another case involving the same issue. There is also equitable estoppel, which is a form of estoppel aimed at upholding equity, including the type of promissory estoppel due to a promise and proprietary estoppel arising from representations relating to property rights.[25] In essence, if someone has given another person a reasonable expectation, they cannot arbitrarily retract their statement.

In the United States, the application of estoppel to the government is highly complex and case-specific, particularly due to the doctrine of sovereign immunity. In *Office of Personnel Management v. Richmond* (1990), the Supreme Court rejected a claim for estoppel in the absence of a statutory basis. Meanwhile, in *Heckler v. Community Health Services* (1984), the Court suggested that estoppel against the government may be considered in limited circumstances, particularly where there is evidence of affirmative misconduct. These cases indicate that the application of estoppel in this context is not absolute but depends on specific legal and factual considerations.[26] Therefore, even though estoppel can apply to the government, the requirements are very strict and cannot be used carelessly.

In Australia, proprietary estoppel has rapidly developed to protect promised property rights. In the case of *Giumelli v. Giumelli* (1999), the High Court of Australia affirmed that the court must fairly assess the expectations arising from the promise and the losses incurred if it is not fulfilled. The final outcome could be monetary compensation or the fulfillment of the promise itself, depending on which is more just. In the case *of Sidhu v. Van Dyke* (2014), the High Court of Australia ruled that Van Dyke was entitled to relief because he had reasonably relied on Sidhu's promise, who repeatedly said that a house would be granted. Van Dyke did not seek any other benefit because he trusted that promise, but suffered loss when the promise was not fulfilled.

The court affirmed that in proprietary estoppel, it is necessary to establish reliance, detriment, and unconscionability, rather than merely demonstrate a reasonable expectation and resulting loss. Accordingly, it is not sufficient to rely solely on expectation and loss without considering these core elements.[27]

In Canada, two important types of estoppel are recognized, namely estoppel in pais and issue estoppel. In the case of *Ryan v. Moore* (2005 SCC 38), the Supreme Court explained that estoppel by convention—a part of estoppel in pais—applies when two parties agree on something and make it the basis of their legal relationship,

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[21] Myron Phua and Serena Seo Yeon Lee, "The Applicability of Henderson v Henderson in an Arbitration Seated in England," *Arbitration International* 38, no. 4 (2022), https://doi.org/10.1093/arbint/aiac016.

[22] Lex Humana and Rio De Janeiro, "Some Issues Of Borrowing The Estoppel Doctrine In Civil Proceedings Of The Russian Federation," *Lex Humana* 15, no. 1 (2023): 167–79.

[23] Ying Khai Liew, "Proprietary Estoppel in Australia: Two Options for Exercising Remedial Discretion," *University of New South Wales Law Journal* 43, no. 1 (2020), https://doi.org/10.53637/bzfg3327.

[24] Joel Horsman, "Starting Afresh: Reformulating and Reconceptualising the Law of Estoppel," *Oxford U. Undergraduate LJ*, no. XIII (2024): 166–95.

[25] Social Scienceshumanities, "Civil Procedual Tools For Filtering Legal Actions Considering The Contradictory Behavior Of The Parties," *Cluj University Journal. Interdisciplinary: Social Sciences And Humanities* 2, no. 3 (2024): 65–68.

[26] Leonard C. Brahin, "A Jacksonian Theory of Estoppel in IP Litigation Against the United States," *Wash. & Lee L. Rev. Online* 82, no. 2 (2024).

[27] Liew, "Proprietary Estoppel in Australia: Two Options for Exercising Remedial Discretion."

so that one party cannot later deny it. Meanwhile, in *Danyluk v. Ainsworth Technologies Inc*. (2001 SCC 44), the Court affirmed that issue estoppel prevents the same party from re-litigating a legal issue that has already been decided. This principle is part of the *res judicata* doctrine, which aims to maintain legal certainty and prevent people from abusing the legal process by repeatedly bringing the same case to court.[28]

In South Africa, estoppel is recognized in two forms: estoppel by representation and estoppel by conduct, which occur when someone, through their words or actions, causes another party to believe that a certain state of affairs exists, and then that party acts based on that belief. This principle is often used in contract disputes, such as in the case of SA Eagle v. Norman's Transport Lines, where a party that has created reliance in another party should not act inconsistently and harm that party.[29] In France, although the term estoppel is not used directly, the underlying principle is still recognized in legal practice as part of the principles of justice and good faith, especially in arbitration and civil matters. For example, in the case of Golshani v. The Islamic Republic of Iran, the plaintiff is not allowed to act contrary to its past actions, as it is considered unfair. This principle was then reinforced in legal reforms through Décret No. 48/2011 and Article 1466 of the Code de procédure civile, which states that if someone remains silent despite knowing of a violation, such silence can be considered a waiver of rights. This indicates that French law protects the principles of reliance and consistency in actions.[30]

From the comparative study, it is understood that, although the terms and structures of estoppel differ across jurisdictions, its function is not identical across legal systems. In common law, estoppel operates as a distinct legal doctrine to prevent contradictory conduct and protect reliance. In contrast, civil law systems do not recognize estoppel as an independent doctrine, but similar values—such as consistency (venire contra factum proprium), good faith, and the protection of legitimate expectations—are reflected through general principles and other legal mechanisms. This comparison shows that, while estoppel is characteristic of the common law system, the underlying values it embodies are also recognized in other legal traditions.

If one examines the Indonesian legal system, this development can be adapted to fill the regulatory gap. Basically, Indonesian civil law recognizes the principle of pacta sunt servanda as reflected in Article 1338, paragraph (1), of the KUHPerdata, while Article 1320 sets out the validity requirements of a contract. However, these regulations do not always provide an explicit framework to address situations arising outside formal contractual relationships. In such cases, legal protection may instead be examined through the doctrine of unlawful acts (Article 1365 of the KUHPerdata), particularly where a party suffers loss due to reliance on pre-contractual conduct, informal statements, or even silence that gives rise to reasonable expectations. Accordingly, the issue lies not in the absence of legal protection but in how existing doctrines are applied to such situations.

Historically, estoppel was once considered merely a part of evidentiary law. However, over time, many legal experts have stated that estoppel is also part of substantive law because it can serve as a basis for substantive consideration in delivering a verdict. Lord Wright even emphasized that estoppel is part of substantive legal rules.[31] The debate regarding the scope of estoppel is also evident in the two developing approaches: the strict view and the broad view. The strict view emphasizes the existence of a clear statement, reliance, and actual loss. Conversely, the broad view emphasizes the importance of consistency without requiring proof of reliance or direct loss.[32]

If estoppel is only viewed as a rule of evidence, then its function will be limited to technical evidentiary aspects in judicial proceedings. However, estoppel can influence the judge's decision. The rules of evidence are temporary and only apply during the trial process, whereas substantive rules create rights and obligations that have a broader application. Therefore, in modern law, estoppel is viewed as an important instrument to ensure that the law is not applied arbitrarily and remains in line with the principles of justice, consistency, and legal

[28] Felicity Maher, "Doing the Same Work? Estoppel by Convention and Failure of Basis," *University of Western Australia Law Review* 50, no. 2 (2023).

[29] Tumo Charles Maloka and Isaiah Mmatipe Sefoka, "Accountability, Estoppel and Bypassing of the Municipal Finance Management Act: A Note on Merifon (Pty) Ltd v Greater Letaba Municipality Trilogy," *Southern African Public Law* 37, no. 2 (2023), https://doi.org/10.25159/2522-6800/13240.

[30] Scienceshumanities, "Civil Procedual Tools For Filtering Legal Actions Considering The Contradictory Behavior Of The Parties."

[31] Sara Qayum, Muhammad Ifzal Mehmood, and Sajjad Hussain, "Review of Doctrine of Estoppel as Substantive Rule of Law and Its Application in Civil and Criminal Law," *Pakistan Journal of Criminology* 3, no. 3 (2021): 101–16.

[32] Dingley Gavin, "Estoppel," Jus Mundi, 2024, https://jusmundi.com/en/document/publication/en-estoppel.

certainty.[33] By considering the various forms, applications, and developments of estoppel in different countries, it can be understood that this principle has evolved from a rule of evidence into an essential substantive legal instrument for ensuring justice, consistency, and legal certainty. Estoppel functions to prevent someone from acting contrary to a previous stance or promise that has created reasonable reliance by another party and effectively protects the established legal relationship. In relation to modern law, estoppel serves as both a procedural and substantive mechanism and embodies the principle of justice that can prevent abuse of process and injustice due to inconsistent legal positions.

Based on the explanation above, there are three ways to understand estoppel's role and place in modern legal systems. First, estoppel ensures consistency in parties' legal conduct by restricting a party from departing from its prior representations or conduct. Second, estoppel is a mechanism to prevent repetitive litigation and abuse of judicial process. Third, estoppel protects reliance interest arising from reasonable expectations in a legal relationship. These three factors demonstrate that estoppel is no longer regarded merely as an evidentiary rule in numerous jurisdictions but has evolvedinto a substantive legal doctrine. This comparative overview is significant for Indonesia, as it highlights that, although reliance-based interests are not formulated as a distinct doctrinal mechanism, protection can be derived from existing legal principles, including unlawful acts (Article 1365 of the KUHPerdata), good faith (Article 1338 paragraph (3)), and the doctrinal development of *culpa in contrahendo*. There are principles that are closely related, such as the principle of good faith and the doctrine of *rechtsverwerking*, but neither fully addresses situations where someone acts inconsistently, thereby harming another party who has relied on their previous conduct or statements. Consequently, understanding the status and evolution of estoppel across different jurisdictions can provide an analytical framework for evaluating the potential adaptation of this principle to enhance Indonesian civil law.

3.2. The Formulation of an Integrative and Adaptive Estoppel Concept for the Indonesian Legal System

A contract is one of the essential parts of civil law, as regulated in Book III of the Indonesian Civil Code (KUHPerdata). Every person, in principle, has the legal right to make agreements, including setting their terms, whether orally or in writing. The provisions regarding the validity of an agreement are explicitly regulated in Article 1320 of the Indonesian Civil Code, which formulates four conditions for the validity of an agreement, namely, "the existence of an agreement between the parties, legal capacity to bind oneself, the existence of a specific object, and a cause that is not contrary to law".[34] The first two requirements are subjective, as they concern the parties involved, while the other two are objective, as they pertain to the agreement's content. If the subjective conditions are not met, the agreement can be voidable at the request of the aggrieved party. On the other hand, if the objective conditions are not met, the agreement is null and void from the beginning because it is considered never to have existed.[35] However, in the KUHPerdata, freedom of contract is not absolute, as it is limited by Article 1337 concerning lawful cause, as well as by considerations of public order and morality.

Contract law is rooted in ancient moral and spiritual values that emphasize the importance of keeping promises. The principle of *pacta sunt servanda* (Latin: "agreements must be kept"), although not explicitly mentioned in the Digest of Justinian, is implied in Ulpian's view, who stated, "For what is more in accordance with human honesty than keeping what they have agreed upon?" This concept was first explicitly known in the writings of Hostiensis, a church jurist in the Middle Ages, who stated that agreements, even if unwritten or informal, must be honored in accordance with the teachings of the Gospel. He referred to Bible verses such as Matthew 5:37 and James 5:12, which emphasize integrity in speech and the avoidance of falsehood. Even in medieval England, church courts declared that covenant breakers were considered "sinners who must be corrected".[36] However, these arguments are historical and theological in nature and do not constitute binding

[33] Qayum, Mehmood, and Hussain, "Review of Doctrine of Estoppel as Substantive Rule of Law and Its Application in Civil and Criminal Law."

[34] Widaningsih Widaningsih et al., "The Balance Of Legal Position Of Farmers With Dairy- Producing Industries In The Contents Of Milk Deposit Contracts At KUD," *Technium Social Sciences Journal* 41 (2023), https://doi.org/10.47577/tssj.v41i1.8444.

[35] Wardatul Fitri, Fx Djoko Priyono, and Bambang Eko Turisno, "The Juridical Review on Legal Position of Illegal Online Loans Based on Article 1320 of the Civil Code (Burgerlijk Wetboek)," *Baltic Journal of Law & Politics* 15, no. 7 (2022).

[36] Dmitrii A. Torkin, "Specific Performance and Damages in Anglo-American and Continental Law," *Vestnik Sankt-Peterburgskogo Universiteta. Pravo* 14, no. 2 (2023), https://doi.org/10.21638/spbu14.2023.212.

normative sources within the framework of positive law in Indonesia.

A similar principle is also found in Islamic teachings. Surah At-Taubah verse 4 states that if the polytheists uphold their promise and do not assist the enemies, then Muslims are obliged to honor that promise until the agreed-upon time, because Allah loves those who are pious. In canon law, the principle of *pacta sunt servanda* contrasts with ancient Roman law, which only recognized certain contracts that fulfilled specific legal forms. Canon law introduced this principle universally: "every form of agreement, in whatever form, can be enforced".[37] This principle is also formally recognized in Article 26 of the 1969 Vienna Convention on the Law of Treaties, which explicitly states that every binding treaty must be performed in good faith. This convention, on the other hand, only applies to relations between states in the realm of public international law. It does not directly govern private contractual relations under the Civil Code. Nevertheless, it illustrates the close relationship between the principles of *pacta sunt servanda* and good faith in maintaining the validity of legal obligations and promoting certainty and trust within a legal system.[38]

In Indonesia, the principle of *pacta sunt servanda* is regulated in Article 1338 paragraph (1), of the Indonesian Civil Code, which states that "all agreements made in accordance with the law shall have the force of law for those who make them." To strengthen the implementation of the agreement, Article 1338, paragraph (3), of the Indonesian Civil Code emphasizes that it must be executed in good faith.[39] The principle of *bona fides*, or good faith, in Roman contract law also highlights the importance of morality in the execution of contracts. However, the historical approach reveals that this principle did not develop into a definite substantive norm but rather served as an ethical guideline for judges to fairly assess the behavior of the parties. In *bonae fidei* contracts such as sales and partnerships, judges are given the authority to consider the context and justice comprehensively, including in determining the form of *condemnatio*.[40] This principle of good faith is also closely related to the concept of rechtsverwerking, which does not arise automatically from mere passive behavior or delay but requires circumstances where the other party has reasonably relied on such inaction and adjusted their legal position accordingly. In this sense, it may be understood as a loss of the right to assert a claim under certain conditions. This principle is normatively reflected in Article 32, paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration, which provides that if a person acquires a land certificate legally and in good faith, other parties cannot assert their rights if they fail to raise an objection within five years from the issuance of the certificate.[41] [42]

Article 1335 and Article 1337 of the Indonesian Civil Code also reinforce the importance of the principle of good faith. Article 1335 states that "an agreement without a lawful cause, or made based on a false or prohibited cause, shall have no legal effect," while Article 1337 explains that "a cause is prohibited if it is contrary to law, morality, or public order".[43] These provisions leave issues of inconsistency in conduct or reliance unregulated, which are more closely associated with the doctrine of estoppel in common law and are not explicitly recognized in the KUHPerdata. In the Indonesian context, such issues are more appropriately addressed through the doctrine of unlawful acts (Article 1365 of the KUHPerdata). This principle can be seen in the Sigli District Court Decision Number 25/Pdt.G/2023/PN Sgi, where the Plaintiff filed a claim for an unlawful act concerning the sale and purchase of a plot of land and a house in Gampong Blang Paseh, Kota Sigli. The Plaintiff had purchased the land from Defendant I based on a sale agreement in 2021 but was unable to proceed with certification because Defendant I refused to execute a formal sale and purchase deed. Meanwhile, Defendant II, the sibling of Defendant I, constructed a concrete fence that obstructed access to the Plaintiff's house.

The panel of judges stated that the sale and purchase agreement is legally valid, including the boundaries

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[37] Torkin

[38] Sebastian Denst, "Znaczenie Zasad Pacta Sunt Servanda i Dobrej Wiary w Prawie Traktatów," *Kortowski Przegląd Prawniczy*, no. 4 (2022), https://doi.org/10.31648/kpp.7387.

[39] Faizal Kurniawan et al., "Auction Winner as a New Criteria in The Concept of Good Faith Buyer in Indonesia," *Jambe Law Journal* 4, no. 2 (2021), https://doi.org/10.22437/jlj.4.2.171-190.

[40] Philip Thomas, "Wishful Thinking; The Role and Development of Good Faith in the Roman Law of Contracts," *Pravnehistoricke Studie* 51, no. 3 (2021), https://doi.org/10.14712/2464689X.2021.30.

[41] Marina Satya, "Legal Protection of Land Right Holders Against The Establishment of The Rechtsverwerking Institution," *JIHK* 2, no. 2 (2021), https://doi.org/10.46924/jihk.v2i2.138.

[42] Widyorini Indriasti Wardani, "Eksistensi Lembaga Rechtsverweking Dalam Sistem Publikasi Pendaftaran Tanah Di Indonesia," *MAGISTRA Law Review* 2, no. 02 (2021), https://doi.org/10.35973/malrev.v2i2.2332.

[43] Habib Adjie, "Kedudukan Hukum Perjanjian Internasional Yang Tidak Menggunakan Bahasa Indonesia," *Jurnal Education and Development* 9, no. 2 (2021).

of the land, as stated in the document. The action of Defendant II in blocking access is deemed an unlawful act as it infringes upon the right to use the property. However, the request for Defendant I to be obligated to execute a sale and purchase deed was rejected, as no such obligation was stipulated in the agreement or required by applicable law, reflecting the court's adherence to the principle of contractual freedom rather than the application of estoppel. The Plaintiff's lawsuit was partially granted, with one of the orders stating, "the Defendants are ordered to dismantle the concrete fence." This decision was upheld by the Banda Aceh High Court Decision Number 69/PDT/2024/PT BNA and the Supreme Court of the Republic of Indonesia Cassation Decision Number 415 K/PDT/2025.

The decision of the Sigli District Court, as affirmed at both the appellate and cassation level, demonstrates the importance of consistency in the legal stance of the parties involved in the litigation. Although neither the ruling nor the legal considerations explicitly refer to the term "estoppel," the decision substantially reflects the application of the core values of that principle. In the case at hand, the plaintiff had legally purchased a piece of land but suffered losses due to the passivity and subsequent inconsistent conduct of the seller and his family, which effectively restricted the plaintiff's access to the house that had been purchased. The court decided to grant the petition for the demolition of the fence as a form of restoration of the plaintiff's rights, thereby demonstrating that the court has considered the protection of the plaintiff's legitimate position and prevented the abuse of rights that contradict the principles of propriety and legitimate expectation.

This condition underscores the relevance of further conceptualizing the principle of estoppel within the Indonesian legal system, not as a response to a legal vacuum, but as a complementary framework alongside existing provisions such as Article 1365 and Article 1338 paragraph (3) of the KUHPerdata. This principle is not sufficiently understood merely as a doctrine in comparative law studies but needs to be developed into a concrete and applicable norm within Indonesia's positive law. In the context of a legal system that adheres to the civil law tradition, such as Indonesia,[44] principles like estoppel cannot be immediately recognized through judge-made law as in the common law system.[45] Therefore, the recognition of this principle must be built through integration into legislation, consistency in jurisprudence, and scholarly doctrine that promotes the renewal of national civil law.

Therefore, the concept of estoppel, when adaptively formulated for the Indonesian legal system, may be understood as a supplementary principle that, in certain circumstances, limits a party from acting inconsistently with a prior representation, promise, or conduct that has induced reasonable reliance and caused detriment to another party. However, within the framework of the KUHPerdata, a party generally retains the freedom to change its legal position in the absence of a binding agreement, so any such limitation must be carefully aligned with existing doctrines such as unlawful acts and good faith.

This concept contains three essential elements that must be cumulatively fulfilled: (1) representation or legal conduct, (2) reliance or reasonable reliance, and (3) detriment (actual loss). However, these elements are not recognized as a formal normative structure within the KUHPerdata and may instead be understood in relation to the elements of unlawful acts (Article 1365), namely act, loss, causation, and fault. The following table systematically presents and clarifies these three elements. The following table systematically presents and clarifies these three elements:

[44] Amelia Dwi and Dr. Jonaedi Efendi, "Juridical Analysis Of Fintech Lending Agreement Based On Civil Law Perspective In Indonesia," *Journal Of Law Theory And Law Enforcement*, 2023, https://doi.org/10.56943/jlte.v2i3.344.

[45] Payam Akhavan and Frédéric Mégret, "The Problem of 'Uncertainty' in International Criminal Law and the Common Law 'Method,'" *British Yearbook of International Law*, 2023, https://doi.org/10.1093/bybil/brad002.

Table 1. Essential Elements of the Estoppel Principle in the Indonesian Legal System

Element	Description	Application Example
Representation / Legal Attitude	A statement, promise, or conduct action by a person that establishes a particular legal position, whether expressed explicitly (oral/written) or implicitly (conduct/behavior).	A seller executes a sale agreement or permits the buyer to act as though ownership rights have already been transferred.
Reliance / Reasonable Belief	Reasonable reliance by another party on that representation, which materially influences their decision-making or legal actions.	The buyer reasonably relies on the seller's representation and incurs expenses in pursuing land certification.
Actual Loss	Detriment suffered by the relying party as a result of the promisor's subsequent inconsistency or failure to perform.	The buyer suffers detriment when access to or certification of the land is obstructed by the seller or related parties.

Source: Author's analysis, 2025.

These three elements, when assessed cumulatively, serve as a theoretical framework rather than a binding normative standard. In the Indonesian civil law system, judges remain bound by statutory provisions and cannot rely solely on non-normative conceptual benchmarks. Accordingly, the application of similar considerations must be grounded in existing legal doctrines, particularly unlawful acts (Article 1365) and the principle of good faith (Article 1338 paragraph (3)). In this context, estoppel has not been acknowledged as a positive legal norm but may serve as a conceptual reference in the interpretation of such provisions. Furthermore, any guidance from the Supreme Court, including Circular Letters (SEMA), functions only as internal judicial guidance and does not create new legal norms or introduce independent principles such as estoppel. Therefore, the development of this concept must remain aligned with the existing legal framework, ensuring that judges assess disputes based on established legal provisions while promoting consistency, fairness, and the protection of legitimate interests in civil relations.

To elucidate the operational dimension of the concept within the Indonesian legal framework, the principle of estoppel may be articulated into a conceptual model comprising three principal dimensions: doctrinal structure, application prerequisites, and normative integration mechanisms. At the doctrinal level, estoppel originates from equity in the common law tradition and functions as a supplementary concept, rather than deriving directly from the principle of good faith in civil law. While good faith, as reflected in Article 1338 paragraph (3) of the KUHPerdata, provides a general normative standard, it is not conceptually identical to estoppel. Furthermore, Articles 1335 and 1337 of the KUHPerdata regulate the requirement of a lawful cause in contractual relations and are not directly concerned with issues of inconsistent conduct or reliance.

In this context, estoppel does not aim to establish new contractual obligations; instead, it can be perceived as a conceptual mechanism that, under specific circumstances, restricts inconsistent behavior. However, the Civil Code only permits the restriction of rights through established legal provisions, not through non-codified doctrines. Therefore, any limitation on rights must be grounded in existing doctrines, such as unlawful acts (Article 1365) and the principle of good faith (Article 1338, paragraph 3). Judges may, in this regard, employ an analytical approach by examining elements such as representation, reliance, and detriment, not as an independent legal test, but as considerations within the application of existing legal norms. Accordingly, even if these elements are present, a party cannot automatically be prevented from changing their legal position unless such restriction is justified under applicable law.

Furthermore, in the context of normative integration, the principle of estoppel may be operationalized through three pathways: (i) judicial interpretation of the principle of good faith in Article 1338 of the KUHPerdata, (ii) reinforcement in jurisprudential practice that emphasizes the importance of consistency in the legal positions of the parties, and (iii) the long term through the reform of national civil law. Through this conceptual model, estoppel can function as a doctrinal bridge that strengthens the relationship between the principle of pacta sunt servanda, the principle of good faith, and the protection of legitimate expectations in civil law relationships.

4. Conclusion

The evolution of the principle of estoppel across various jurisdictions demonstrates its significant role in safeguarding parties acting in good faith from losses arising from reliance on another party's conduct. Within the common law tradition, estoppel has evolved from a mere evidentiary rule into a substantive legal doctrine, primarily concerned with reliance, detriment, and unconscionability, rather than merely inconsistent legal positions. In the context of Indonesian civil law, such losses must be qualified within established legal categories, particularly as breach of contract or unlawful acts (Article 1365 of the KUHPerdata).

Indonesian positive law has not yet explicitly regulated the principle of estoppel. However, its underlying values may be reflected in existing legal principles, particularly pacta sunt servanda as stipulated in Article 1338 paragraph (1) of the KUHPerdata, and the principle of good faith as reflected in Article 1338 paragraph (3), as well as in the doctrine of rechtsverwerking under Article 32 paragraph (2) of Government Regulation Number 24 of 1997. Article 1320 of the KUHPerdata, on the other hand, governs the validity requirements of a contract. Judicial practice, as reflected in the Sigli District Court Decision Number 25/Pdt.G/2023/PN Sgi, which has been upheld to the cassation level, also demonstrates the application of existing legal doctrines in addressing disputes involving reliance and inconsistent conduct that may cause harm to other parties.

Based on that analysis, this research finds that, rather than indicating a clear normative gap, the issue lies in the limited conceptual articulation and application of existing legal mechanisms in addressing losses arising from reasonable reliance in legal relationships. Accordingly, the development of an estoppel concept within the Indonesian legal system should not be framed as a response to a legal vacuum but as a complementary and adaptive framework that builds upon existing doctrines. Such a concept may be analytically structured upon three elements: (i) a clear representation or legal position, (ii) reasonable reliance by another party, and (iii) detriment arising from a subsequent change in position. In the long run, any potential development of this concept should be grounded in demonstrated practical needs, supported by legislative refinement, consistent jurisprudential interpretation, and doctrinal elaboration, in order to enhance fairness in civil legal relationships

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