



## Beyond Moral Commitment and Binding Force: A Spectrum-Based Analysis of Memoranda of Understanding in Indonesian Contract Law

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### ABSTRACT

*Memoranda of Understanding (MoUs) are widely used in governmental and commercial practice in Indonesia, yet their legal status remains contested due to the absence of explicit regulation in the Indonesian Civil Code. This article examines the legal position of MoUs within Indonesian contract law by analyzing their normative foundations under freedom of contract, pacta sunt servanda, and their role in the pre-contractual phase. Employing a normative juridical method with doctrinal and comparative analysis, the study argues that the binding force of an MoU cannot be determined by its formal label but must be assessed based on the substantive allocation of rights and obligations, the parties' intention to create legal relations, and compliance with Article 1320 of the Civil Code. The findings demonstrate that MoUs operate along a legal spectrum, ranging from non-binding moral commitments to instruments capable of generating contractual liability. By advancing a spectrum-based framework, this article contributes to contract law scholarship and provides normative guidance for courts and practitioners in drafting, interpreting, and enforcing MoUs.*

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## 1. Introduction

Memorandum of Understanding (MoU) has become a prevalent legal instrument in business, governmental, and inter-institutional cooperation across multiple jurisdictions.<sup>1</sup> In contemporary contract practice, MoUs are frequently employed to articulate a preliminary legal framework prior to the conclusion of comprehensive and formally binding agreements.<sup>2</sup> Their inherent flexibility allows parties to manage uncertainty, accelerate cooperation, and preserve negotiating space in complex or evolving transactions.<sup>3</sup> Paradoxically, this same flexibility has generated persistent doctrinal and practical challenges concerning legal certainty, particularly in determining the binding nature and enforceability of MoU provisions when disputes arise.

In international contract law discourse, Memoranda of Understanding (MoUs) are commonly situated as pre-contractual instruments occupying an intermediate space between moral commitments and legally enforceable obligations. A growing body of scholarship emphasizes that MoUs cannot be treated uniformly, as their binding force is highly contingent upon the applicable legal framework, the structure and specificity of contractual clauses, and the discernible intention of the parties. Developments in relational contract theory and doctrines of pre-contractual liability have further accelerated a shift away from rigid formalism toward a substantive assessment, in which legal intent and the parties' legitimate expectations assume a central role.

Notwithstanding this paradigmatic shift, normative clarity at the level of national legal systems has not always followed. In many jurisdictions, including Indonesia, Memoranda of Understanding (MoUs) continue to be treated ambiguously: on the one hand as non-binding expressions of intent, and on the other as operational instruments capable of generating concrete legal and economic expectations. This ambiguity becomes particularly problematic where MoUs serve as the basis for the implementation of activities, allocation of resources, or strategic decision-making prior to the execution of a final contract.

Within the framework of Indonesian contract law, the legal complexity surrounding Memoranda of Understanding (MoUs) is further intensified by the absence of any explicit regulation in the Indonesian Civil Code (KUH Perdata). This normative silence renders the legal assessment of MoUs heavily dependent on doctrinal constructions and judicial interpretation of general principles of contract law, particularly the validity requirements under Article 1320 of the Civil Code, the principle of freedom of contract, and the obligation

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<sup>1</sup> John H. McNeill, "International Agreements: Recent U.S.-UK Practice Concerning the Memorandum of Understanding," *American Journal of International Law* 88, no. 4 (1994): 821–26, <https://doi.org/https://doi.org/10.2307/2204146>.

<sup>2</sup> Carissa Amanda Siswanto dan Dita Birahayu, "Akibat Hukum Mou Impor Beras Indonesia - Thailand Berdasarkan Hukum Perdagangan Internasional," *YUSTISIA MERDEKA: Jurnal Imiah Hukum* 8, no. 2 (2022): 66–72, <https://doi.org/https://doi.org/10.33319/yume.v8i1.145>.

<sup>3</sup> Carmen Martínez San Millán, "The cooperation agreements within the belt and road initiative : The european common commercial policy at crossroads," *Cuadernos Europeos De Deusto* 03, no. january (2022): 51–69, <https://doi.org/https://doi.org/10.18543/ced-03-2022pp51-69>.

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of good faith. As a consequence, legal practice and judicial decisions exhibit a degree of inconsistency in determining whether MoUs give rise to legally binding obligations.

Existing Indonesian scholarship has largely approached Memoranda of Understanding (MoUs) through a dichotomous lens, treating them either as legally binding agreements when the requirements of contractual validity are satisfied, or as non-binding expressions of intent when characterized as purely pre-contractual instruments. While this binary framework offers conceptual simplicity, it tends to overlook the practical complexity of MoUs, which frequently contain a combination of binding and non-binding provisions. Moreover, such approaches have yet to fully engage with developments in international contract law scholarship that emphasize the spectrum of legal effects associated with pre-contractual instruments.

Conversely, leading international scholarship has developed more nuanced approaches to assessing Memoranda of Understanding (MoUs) by emphasizing their substantive content, the parties' intention, and post-signing conduct. However, much of this literature is grounded in common law or European legal contexts, and therefore does not adequately address how such substantive assessments may be integrated into a codified civil law system such as Indonesia's. As a result, a significant research gap persists between international doctrinal developments and the normative needs of the Indonesian contract law framework.

Building upon this identified gap, this article advances a conceptual contribution by developing a spectrum-based analytical framework for assessing the legal status and binding force of Memoranda of Understanding (MoUs) within the Indonesian contract law system. Rather than adopting a binary inquiry into whether an MoU is binding or non-binding, the article argues that the legal effects of an MoU should be evaluated incrementally, with reference to the substance of its clauses, the parties' legal intention, and the fulfillment of the essential elements of contractual validity as set out in Article 1320 of the Indonesian Civil Code. This approach enables a more contextual and coherent assessment that aligns with contemporary contractual practice.

Against this analytical backdrop, the article addresses three interrelated research questions: (1) how Memoranda of Understanding (MoUs) are situated within the Indonesian contract law system under prevailing principles and norms; (2) to what extent MoUs are capable of generating binding legal effects and corresponding legal consequences; and (3) whether a spectrum-based analytical approach offers greater normative certainty than the dichotomous frameworks that have traditionally dominated MoU analysis.

The significance of this study is both theoretical and practical. Theoretically, it advances contract law scholarship by proposing a conceptual framework that bridges Indonesian contract law with international literature on pre-contractual instruments. Practically, the findings offer normative guidance for policymakers, legal practitioners, and contracting parties in structuring and interpreting MoUs in a more accountable manner, thereby reducing legal uncertainty and mitigating the risk of future disputes.

## 2. Legal Material and Methods

This study adopts normative legal research grounded in conceptual and statutory approaches, supplemented by limited engagement with international contract law literature. The analysis examines the legal status and binding force of Memoranda of Understanding (MoUs) within the Indonesian contract law system through systematic interpretation of positive legal norms, general principles of contract law, and doctrinal developments in contemporary contract theory. The conceptual approach is employed to situate MoUs as pre-contractual instruments and to develop a spectrum-based analytical framework, while the statutory approach focuses on the interpretation of relevant provisions of the Indonesian Civil Code, particularly those governing contractual validity, freedom of contract, and good faith.

The legal materials analyzed consist of primary legal materials in the form of statutory provisions, notably the Indonesian Civil Code; secondary legal materials including doctrinal writings and peer-reviewed international journal articles addressing MoUs and pre-contractual relations; and tertiary materials used selectively for conceptual clarification. All legal materials are examined qualitatively through legal reasoning using systematic, conceptual, and teleological methods of interpretation in order to generate coherent, normatively grounded, and practically applicable legal conclusions.

## 3. Results and Discussion

### 3.1. The Legal Status of Memoranda of Understanding (MoUs) in the Indonesian Contract Law System: Between Soft Commitment and Legal Binding Force

Within the Indonesian contract law system, Memoranda of Understanding (MoUs) occupy an inherently ambiguous position due to the absence of explicit regulation in the Indonesian Civil Code.<sup>4</sup> Nevertheless, this normative silence does not negate the legal relevance of MoUs in contractual practice. On the contrary, it opens a space for interpretative construction grounded in the principle of freedom of contract as enshrined in Article 1338(1) of the Civil Code. In this context, MoUs should not be understood as autonomous legal categories detached from the law of contract, but rather as hybrid contractual instruments whose legal status and binding force are determined by the substantive content of their provisions and the parties' legal intention at the time of their formation.<sup>5</sup>

Viewed from a broader comparative perspective, this interpretative position finds strong support in international contract law scholarship, which consistently emphasizes that the legal status of an agreement is not determined by its formal nomenclature, but by the parties' intention to create legal relations. In both common law and contemporary civil law

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<sup>4</sup> Azamta Besnata Mutiara dan Arief Suryono, "Analisis Yuridis Kedudukan Hukum Nota Kesepahaman Dalam Pranata Hukum Kontrak Di Indonesia," *Amandemen: Jurnal Ilmu pertahanan, Politik dan Hukum Indonesia* 1, no. 2 (2024): 95–106, <https://doi.org/https://doi.org/10.62383/amandemen.v1i2.141>.

<sup>5</sup> Siti Syarifah, Wafiqah Wardah, dan Abdul Qahar, "THE STATUS OF THE LAW OF MEMORANDUM OF UNDERSTANDING REVIEWED FROM ALL THE LEGAL AGREEMENTS IN CODE OF CIVIL LAW," *Meraja Journal* 3, no. 2 (2020): 179–91.

traditions, Memoranda of Understanding (MoUs) are commonly situated along a continuum between soft law and hard law, where their binding force depends on the extent to which the parties intend to assume legally enforceable obligations. As noted by Ewan McKendrick,<sup>6</sup> Jill Poole,<sup>7</sup> and John Cartwright,<sup>8</sup> the decisive inquiry lies in the substantive manifestation of legal intent, as reflected in the language of the document, the allocation of rights and obligations, and the surrounding circumstances of its formation.

Within the Indonesian legal context, Article 1320 of the Indonesian Civil Code serves as the primary doctrinal benchmark for determining whether a Memorandum of Understanding (MoU) may be classified as a valid and legally binding agreement. Where the elements of consent, legal capacity, a certain subject matter, and a lawful cause are fulfilled, an MoU may, in doctrinal terms, be treated as an enforceable contract. However, the mechanical application of Article 1320 to MoUs gives rise to significant conceptual difficulties, as the provision was originally designed to govern finalized contractual arrangements rather than pre-contractual instruments that are inherently provisional and contingent upon future negotiation.

International legal scholarship has identified a comparable problem by introducing a distinction between binding preliminary agreements and non-binding arrangements. Schwartz and Scott (2007) observe that not all preliminary understandings are intended to give rise to immediate and comprehensive legal obligations; yet this does not imply that such instruments fall entirely outside the realm of law. Accordingly, Memoranda of Understanding (MoUs) should not be conceptualized through a rigid dichotomy of binding versus non-binding, but rather as instruments whose legal effects operate along a graduated spectrum of enforceability, contingent upon their substantive content, the parties' intention, and the surrounding contractual context.<sup>9</sup>

In Indonesian legal practice, Memoranda of Understanding (MoUs) are frequently characterized as gentlemen's agreements that give rise only to moral or political commitments.<sup>10</sup> This characterization is problematic, as it overlooks the empirical reality that many MoUs contain detailed provisions governing rights and obligations, duration, performance standards, and even dispute resolution mechanisms. From the perspective of modern contract law, the inclusion of such clauses constitutes a strong indicator of the parties' intention to create legally binding relations, irrespective of the formal label attached

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<sup>6</sup> Ewan McKendrick, *Contract Law: Text Cases and Materials, Text, Cases, and Materials*, 11 ed. (Oxford: Oxford University Press, 2024), <https://doi.org/10.1093/he/9780198898047.001.0001>.

<sup>7</sup> Robert Merkin, Séverine Saintier, dan Jill. Poole, *Poole's Textbook on contract law., Textbook on contract law*, Fourteenth edition. / Robert Merkin, Séverine Saintier. (Oxford: Oxford University Press, 2019).

<sup>8</sup> John Cartwright, *Contract Law An Introduction to the English Law of Contract for the Civil Lawyer*, Bloomsbury Publishing, n.d.

<sup>9</sup> Alan Schwartz dan Robert E Scott, "PRECONTRACTUAL LIABILITY AND PRELIMINARY AGREEMENTS," *Harvard Law Review* 120, no. 3 (2007): 661–707.

<sup>10</sup> Mochamad Moro Asih dan Tunjung Fitra Wijanarko, "FUNGSI HUKUM NOTA KESEPAHAMAN SEBAGAI PERIKATAN PERJANJIAN MENURUT KITAB UNDANG-UNDANG HUKUM PERDATA," *Supremasi Hukum* 17, no. 1 (2021): 78–93.

to the instrument. Consequently, the legal assessment of an MoU should be grounded in its substantive content and functional role, rather than in its nomenclature alone.

From a comparative perspective, courts across multiple jurisdictions have increasingly shifted their analytical focus from formal classification to substantive evaluation. Judicial decisions in England, Australia, and the European Union demonstrate a growing tendency to assess Memoranda of Understanding (MoUs) by reference to the structure of obligations they establish, the degree of certainty and completeness of their clauses, and the conduct of the parties following the execution of the instrument.<sup>11</sup> This functional approach is particularly relevant for the Indonesian context, where the absence of explicit statutory regulation on MoUs necessitates a more nuanced, substance-oriented mode of legal interpretation.

On the basis of the foregoing analysis, Memoranda of Understanding (MoUs) within the Indonesian legal system may be classified into two principal categories. The first consists of non-binding MoUs that function primarily as statements of intent or preliminary frameworks for future negotiation.<sup>12</sup> The second comprises substantively binding MoUs that, notwithstanding their label, satisfy the essential elements of a contract and are therefore capable of generating enforceable legal obligations.<sup>13</sup> This classification operates not merely as a descriptive typology, but as an analytical tool for assessing legal risk and determining the juridical consequences that may arise from the breach of an MoU.

Non-binding Memoranda of Understanding (MoUs) generally do not give rise to enforceable rights to performance; nevertheless, they retain legal relevance in shaping reputation, trust, and long-term commercial relationships. In international legal scholarship, this dimension is frequently associated with the theory of relational contracts, which emphasizes that the primary value of an agreement may lie not in the availability of formal legal sanctions, but in the preservation and continuity of the contractual relationship itself. Within this framework, the normative significance of a non-binding MoU derives from its capacity to structure expectations, guide conduct, and signal commitment in an ongoing relational context.

By contrast, a Memorandum of Understanding (MoU) that contains concrete, determinate, and reciprocal obligations may be qualified as a legally binding contract.<sup>14</sup> In such circumstances, the principle of *pacta sunt servanda* applies in full, and any breach of the MoU may give rise to contractual liability. The central challenge, however, lies in the absence of clear normative guidelines within the Indonesian legal system for consistently

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<sup>11</sup> Marta Infantino dan Larry A Dimatteo, "Emory International Law Review Crossing the Abyss : A Comparative Analysis of the Enforceability of Preliminary Agreements," *Emory International Law Review* 37, no. 4 (2023).

<sup>12</sup> Evi Deliana, "Memorandum of Understanding in the Context of Indonesian International Treaty," in *Riau Annual Meeting on Law and Social Sciences (RAMLAS 2019)*, vol. 442, 2020, 122–24, <https://doi.org/10.2991/ASSEHR.K.200529.283>.

<sup>13</sup> Deliana.

<sup>14</sup> Ronald Fadly Sopamena, "Kekuatan Hukum MoU Dari Segi Hukum Perjanjian," *Batulis Civil Law Review* 2, no. 1 (2021): 1–15, <https://doi.org/10.47268/ballrev.v2i1.451>.

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distinguishing between non-binding MoUs and those that produce enforceable legal obligations.

Accordingly, the legal status of Memoranda of Understanding (MoUs) within the Indonesian contract law system is inherently relative and context-dependent. A substance- and intention-based approach, as advanced in leading international scholarship, provides a more analytically robust framework than a purely formalistic assessment. This framework enables MoUs to be positioned with greater precision along the continuum between moral commitment and legally enforceable obligation, thereby offering a more coherent basis for evaluating their normative significance and legal consequences.

This spectrum-based understanding of the legal status of Memoranda of Understanding (MoUs) necessarily raises a further and more complex question concerning the legal consequences that may arise when such instruments are breached, particularly in their function as pre-contractual arrangements.

### **3.2. MoUs as Pre-Contractual Instruments and the Legal Consequences of Breach: Doctrinal Tensions and Practical Implications**

In contemporary contract formation theory, Memoranda of Understanding (MoUs) are commonly positioned as pre-contractual instruments that operate as an intermediary stage between negotiation and the conclusion of a final contract. This pre-contractual phase has gained increasing legal significance, particularly in complex commercial transactions that unfold through incremental commitments and phased decision-making. International legal scholarship conceptualizes this phase as the pre-contractual stage, a stage that is not normatively neutral but capable of generating legally relevant expectations and responsibilities. While parties may not yet intend to be fully bound in the contractual sense, their conduct and preliminary commitments during this stage may nevertheless give rise to legally cognizable interests. Consequently, the breach of an MoU cannot be assessed solely through the lens of classical contract law, but must be examined within the broader doctrinal framework governing pre-contractual liability and good faith obligations.<sup>15</sup>

In the Indonesian legal context, Memoranda of Understanding (MoUs) are often presumed to be non-binding pre-contractual documents by default.<sup>16</sup> Such an assumption, however, oversimplifies a far more complex legal reality. In practice, MoUs frequently serve as the primary operational basis upon which parties undertake significant legal and economic actions, including preliminary investments, the exchange of confidential information, organizational restructuring, or the mobilization of resources. These actions are not merely preparatory in nature, but may generate reliance interests and legitimate expectations that

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<sup>15</sup> A Schwartz dan R E Scott, "Precontractual liability and preliminary agreements," *Harvard Law Review* 120, no. 3 (2007): 661–707, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-33846833906&partnerID=40&md5=59beb51bc9a69b9cadfd1e977f43948d>.

<sup>16</sup> Devi Setyaningsih dan Ambar Budhisulistiyawati, "KEDUDUKAN DAN KEKUATAN HUKUM Memorandum of Understanding ( MoU ) SEBAGAI TAHAP PRAKONTRAK ( KAJIAN DARI SISI HUKUM PERIKATAN )," *Jurnal Privat Law Vol. VIII*, no. 2 (2020): 173–79.

are legally cognizable.<sup>17</sup> Accordingly, the categorical characterization of MoUs as legally irrelevant prior to the conclusion of a final contract fails to account for the normative implications arising from reliance, good faith, and the allocation of pre-contractual risk.<sup>18</sup>

Leading legal scholarship consistently emphasizes that, at the pre-contractual stage, the principle of good faith assumes a central normative function. Within European civil law traditions, this principle is doctrinally articulated through the doctrine of culpa in contrahendo, which recognizes that parties may incur legal responsibility for bad faith conduct during negotiations even in the absence of a concluded contract.<sup>19</sup> Such responsibility may arise where a party engages in deceptive negotiations, induces reliance without a genuine intention to contract, or abruptly withdraws from negotiations after creating reasonable expectations of agreement.<sup>20</sup> Crucially, the doctrine does not seek to equate pre-contractual liability with full contractual liability; rather, it aims to protect reliance interests and to sanction opportunistic behavior that undermines trust in the negotiation process.<sup>21</sup> Consequently, the pre-contractual phase can no longer be regarded as a legally neutral space, but must be understood as a normatively regulated stage that shapes the legal consequences of breaching preliminary instruments such as Memoranda of Understanding.

The Indonesian Civil Code does not explicitly adopt the doctrine of culpa in contrahendo as developed in European civil law systems. Nevertheless, the principle of good faith embodied in Article 1338(3) of the Civil Code may be interpreted progressively to address this normative gap.<sup>22</sup> In the context of Memoranda of Understanding (MoUs), such an interpretation implies that conduct undermining legitimate expectations generated during the pre-contractual phase may give rise to certain legal consequences. This approach does not require the full transposition of culpa in contrahendo into Indonesian law, but rather a functional adaptation grounded in existing contractual principles. Through this interpretative lens, good faith operates not merely as a principle governing contract performance, but as a normative standard capable of regulating pre-contractual behavior and mitigating opportunistic conduct in MoU-based negotiations.

The breach of a non-binding Memorandum of Understanding (MoU) does not automatically give rise to contractual liability in the form of breach of contract. Nevertheless, from a comparative and functional perspective, such conduct may still be subject to legal

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<sup>17</sup> Rizky Febri Dewanti, Pujiyono, dan Yudho Taruno Muryanto, "The application of good Faith principle of precontract in common law and civil law contry," *Research, Society and Development* 10, no. 16 (2021): 1–8, <https://doi.org/http://dx.doi.org/10.33448/rsd-v10i16.23621>.

<sup>18</sup> Deviana Yuanitasari dan Hazar Kusmayanti, "PENGEMBANGAN HUKUM PERJANJIAN DALAM PELAKSANAAN ASAS ITIKAD BAIK PADA TAHAP PRA KONTRAKTUAL," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 3, no. 2 (2020): 292–304.

<sup>19</sup> Yuanitasari dan Kusmayanti.

<sup>20</sup> Pedro Barasnevicius Quagliato, "The duty to negotiate in good faith," *International Journal of Law and Management* 50, no. 5 (2008): 213–25, <https://doi.org/10.1108/17542430810903896>.

<sup>21</sup> Quagliato.

<sup>22</sup> Ery Agus Priyono, "PERANAN ASAS ITIKAD BAIK DALAM KONTRAK BAKU (Upaya Menjaga Keseimbangan bagi Para Pihak)," *Diponegoro Private Law Review* 1, no. 1 (2025): 13–22.

scrutiny under the doctrine of tort or unlawful act where the elements of damage, fault, and causation are established.<sup>23</sup> This approach recognizes that the absence of contractual binding force does not render pre-contractual conduct legally irrelevant. Rather, it provides a calibrated mechanism for legal protection that safeguards reliance interests without collapsing the doctrinal distinction between contractual and non-contractual liability. By allowing tort-based remedies in appropriate cases, the law is able to respond to opportunistic or harmful conduct during the pre-contractual phase while preserving the structural integrity of contract law doctrine.<sup>24</sup>

Where a Memorandum of Understanding (MoU) is substantively binding, the legal consequences of breach are comparatively more determinate. In such cases, a violation of MoU provisions may be qualified as a breach of contract, thereby triggering the full range of contractual remedies, including specific performance, damages, termination, or a combination thereof. However, doctrinal complexity arises where an MoU is only partially binding, such as when binding force is expressly or implicitly limited to particular clauses, including confidentiality, exclusivity, or non-disclosure obligations.<sup>25</sup> This phenomenon reflects the increasingly modular nature of modern contractual instruments, in which binding and non-binding elements coexist within a single document. The challenge for legal adjudication lies in identifying which provisions give rise to enforceable obligations while preserving the parties' original allocation of legal risk and intent.

International contract law scholarship characterizes this phenomenon as partial binding agreements, in which only specific clauses are intended to produce legally enforceable obligations while the remainder of the instrument retains a non-binding character. This concept is highly relevant to contractual practice in Indonesia, where Memoranda of Understanding (MoUs) frequently incorporate binding provisions alongside aspirational or programmatic statements. Despite its practical significance, the notion of partial binding agreements has not yet been adequately accommodated within Indonesian contractual doctrine or consistently recognized in judicial reasoning. As a result, courts and practitioners often face uncertainty when determining the precise scope and enforceability of obligations arising from MoUs. This doctrinal gap undermines legal predictability and increases transactional risk, particularly in complex commercial arrangements that rely on staged commitments.

This legal uncertainty is further exacerbated by prevalent drafting practices in which Memoranda of Understanding (MoUs) employ inconsistent terminology and loosely structured clauses. The frequent combination of declaratory language expressing intentions with normative language purporting to impose obligations creates ambiguity as to the legal

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<sup>23</sup> Quagliato, "The duty to negotiate in good faith."

<sup>24</sup> Sara Vora Hoxha dan D Ph, "The Dance of the Deal Exploring Culpa in Contrahendo and ECJ Jurisprudence," *Global Journal of Politics and Law Research* 11, no. 3 (2023): 42–53.

<sup>25</sup> Joachim Dietrich, "Classifying precontractual liability: a comparative analysis," *Legal Studies* 21, no. 2 (2001): 153–91, <https://doi.org/DOI: 10.1111/j.1748-121X.2001.tb00570.x>.

status of the instrument as a whole and of individual provisions in particular.<sup>26</sup> From a doctrinal perspective, this ambiguity cannot be dismissed as a mere technical deficiency in contract drafting. Rather, it reflects a deeper structural tension between the demand for commercial flexibility and the requirement of legal certainty within contract law. When left unaddressed, such tension undermines both the predictability of legal outcomes and the reliability of MoUs as instruments of structured cooperation.

Accordingly, the legal assessment of breaches of Memoranda of Understanding (MoUs) cannot be conducted through a uniform or formulaic approach. A contextual analysis is required one that takes into account the substantive content of contractual clauses, the parties' intention to create legal relations, and their conduct following the execution of the instrument. This approach is consistent with global trends in contract law that prioritize substantive justice over rigid formal compliance.<sup>27</sup> More broadly, the use of MoUs as pre-contractual instruments exposes the limitations of Indonesia's contract law framework, which remains predominantly oriented toward finalized contracts. Integrating international perspectives on pre-contractual liability and good faith not only enriches academic analysis but also offers a normative pathway for adapting Indonesian contract law to the realities of contemporary commercial practice.

#### 4. Conclusion

This article concludes that the legal status of Memoranda of Understanding (MoUs) within the Indonesian contract law system cannot be adequately explained through a rigid dichotomy between binding and non-binding instruments. Instead, MoUs should be situated along a legal spectrum in which their enforceability is determined by the substantive allocation of rights and obligations, the parties' intention to create legal relations, and compliance with the validity requirements set out in Article 1320 of the Indonesian Civil Code. This spectrum-based analytical framework demonstrates that, notwithstanding the absence of explicit statutory regulation, MoUs may generate binding legal consequences when they reflect contractual intent and satisfy core principles of contract law, while remaining primarily moral or relational commitments when they function solely as preparatory or declaratory instruments. Beyond its conceptual contribution, this study offers practical normative guidance for courts, legal practitioners, and contracting parties in drafting, interpreting, and enforcing MoUs beyond rigid formal classifications, while simultaneously underscoring the need for clearer doctrinal development whether through judicial reasoning or soft-law guidance to reduce legal uncertainty surrounding pre-contractual instruments in Indonesian contract practice. Future research may extend this analysis through empirical examination of judicial decisions and comparative studies across

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<sup>26</sup> Rida Halimah dan Pranoto, "ANALISIS PERBANDINGAN KEKUATAN MENGIKAT PRA KONTRAK DALAM HUKUM KONTRAK DI INDONESIA DENGAN HUKUM KONTRAK," *Jurnal Privat Law* VII, no. 1 (2019): 55–59.

<sup>27</sup> M Natsir Asnawi, "PERLINDUNGAN HUKUM KONTRAK DALAM PERSPEKTIF HUKUM KONTRAK KONTEMPORER," *Masalah-Masalah Hukum* 46, no. 1 (2017): 55–68, <https://doi.org/https://doi.org/10.14710/mmh.46.1.2017.55-68>.

civil law jurisdictions to further refine the regulation of MoUs and the scope of pre-contractual liability.

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