

Legal Protection for Creditors of Promissory Notes in Case of Debtor Default: A Comparative Study between Indonesia and Singapore

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Abstract. A promissory note is a negotiable instrument governed by the Commercial Code in Indonesia and the Bills of Exchange Act 1949 in Singapore. This research conducts a comparative legal study concerning the legal protection afforded to creditors of promissory notes in cases of debtor default. This research aims to analyze the legal protection afforded to promissory note holders in cases of debtor default under Indonesia and Singaporean law. The objective of this study is to examine the legal basis for the use of promissory notes and the extent of protection granted to creditors when the debtor fails to pay at maturity. Using normative legal research methods, the study applies a statute approach, a comparative approach, and a conceptual approach. The results show that the legal framework in Indonesia still contains several weaknesses. A significant limitation of Indonesian law is the unavailability of collateral arrangements, which stands in contrast to the Singaporean legal system that accommodates the use of tangible assets as collateral security, thereby affording creditors enhanced legal protection. Moreover, the regulatory framework in Indonesia remains ambiguous with regard to installment payments; while one provision renders promissory notes invalid if paid by installment, another permits partial payment by the debtor. Based on the findings, this study recommends comprehensive reform of Indonesia's legal framework governing promissory notes. It also encourages parties to exercise caution when using promissory notes as credit instruments. The research highlights the importance of clear legal standards to ensure effective creditor protection and legal certainty in financial transactions involving promissory notes.

Keywords: Legal Comparative, Promissory Notes, Legal Protection, Default

Abstrak. Surat sanggup (Promissory note) adalah instrumen yang dapat dipindahtangankan (negotiable instrument) yang diatur oleh Kitab Undang-Undang Hukum Dagang (KUHD) di Indonesia dan Bills of Exchange Act 1949 di Singapura. Penelitian ini merupakan studi hukum komparatif yang mengkaji tentang perlindungan hukum bagi kreditur pemegang Surat sanggup dalam hal debitur mengalami wanprestasi atau gagal bayar. Penelitian ini bertujuan untuk menganalisis perlindungan hukum yang diberikan kepada pemegang Surat sanggup dalam kasus wanprestasi berdasarkan hukum di Indonesia dan Singapura. Tujuan dari penelitian ini adalah untuk mengkaji dasar hukum penggunaan Surat sanggup serta sejauh mana perlindungan diberikan kepada kreditur apabila debitur tidak melakukan pembayaran pada saat jatuh tempo. Dengan menggunakan metode penelitian hukum normatif, studi ini menerapkan pendekatan perundang-undangan (statute approach), pendekatan perbandingan (comparative approach), dan pendekatan konseptual (conceptual approach). Hasil penelitian menunjukkan bahwa kerangka hukum di Indonesia masih memiliki beberapa kelemahan. Salah satu kelemahan dalam hukum Indonesia adalah tidak tersedianya pengaturan mengenai jaminan, yang berbeda dengan sistem hukum di Singapura yang memungkinkan penggunaan aset berwujud sebagai jaminan, sehingga memberikan perlindungan hukum yang lebih kuat bagi kreditur. Selain itu, kerangka regulasi di Indonesia juga masih ambigu terkait dengan pembayaran yang dilakukan dalam bentuk angsuran; terdapat satu ketentuan yang menyatakan bahwa Surat sanggup menjadi tidak sah apabila dibayar secara angsuran, sementara ketentuan lainnya justru mengatur sebaliknya. Berdasarkan temuan tersebut, penelitian ini merekomendasikan adanya reformasi menyeluruh terhadap kerangka hukum yang mengatur Surat sanggup di Indonesia. Penelitian ini juga mendorong para pihak untuk lebih berhati-hati dalam menggunakan Surat sanggup dalam kredit. Penelitian ini menekankan pentingnya adanya standar hukum yang jelas guna menjamin perlindungan bagi kreditur dan kepastian hukum dalam transaksi keuangan yang berkaitan dengan Surat sanggup.

Kata kunci: Perbandingan Hukum, Surat sanggup, Perlindungan Hukum, Wanprestasi

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INTRODUCTION

A negotiable instrument is a deed that embodies a certain monetary claim as stipulated in the underlying obligation or the transaction from which the instrument originates.¹ The issuance of a negotiable instrument serves the purpose of fulfilling an obligation in the form of payment of a sum of money and also functions as:²

1. A means of payment (a medium of exchange) – Upon its issuance by the drawer, the holder of negotiable instrument acquires the right to obtain payment by presenting and delivering the instrument to a third party or to the party who has undertaken to pay. In other words, the holder possesses a legal claim to the sum of money stated therein;
2. an instrument for the transfer of claims (easily negotiable or transferable) – The holder may transfer the instrument to a subsequent holder in a simple manner, either by handing it over directly (hand-to-hand delivery) or by endorsing it with a written statement or act on the instrument itself (endorsement), after which the instrument may be delivered to the next holder, thereby transferring the legal claim;
3. a documentary proof of a claim (a legitimating instrument) – The instrument serves as evidence that its holder is the rightful claimant to the amount stated therein. When the holder presents the instrument to the party ordered or committed to pay, as specified in the instrument, payment may be obtained merely by presenting and delivering the document without any further formalities.

In this study, the comparison between the legal protections afforded to promissory note creditors under the laws of Indonesia and Singapore is not without basis. In terms of legal infrastructure, Singapore possesses a clear and comprehensive regulatory framework through the Bills of Exchange Act 1949, which contains seven provisions specifically addressing promissory notes, as well as the application of rules governing

¹ Emmy Pangaribuan Simanjuntak, *Law of Negotiable Instruments*, as cited in Sri Harini Dwiyaatmi, *Law of First, Second, and Third Generation Negotiable Instruments*, 1st ed. (Yogyakarta: Pustaka Pelajar, 2022), p. 6.

² Muhammad Abdulkadir, *Commercial Law on Negotiable Instruments*, 2nd ed. (Bandung: Alumni, 1984), p. 4–5.

bills of exchange under section 98 of the Act.. This section also delineates exceptions whereby certain provisions applicable to bills of exchange do not apply to promissory notes. Beyond stipulating the requirements for the issuance of promissory notes, the legislation also regulates the obligations of the maker and the rights of the holder, as governed under the provisions relating to bills of exchange.

The Bills of Exchange Act 1949 has undergone several amendments, the most recent of which occurred in 2021.³ These legislative developments provide a legal framework that is more attuned to contemporary needs, particularly in relation to the use of promissory notes and the protection of promissory note creditors in the event of debtor default.

Singapore is a developed country located in the Southeast Asian Region. This status is recognized based on various indicators of human and economic development, as well as acknowledgments from numerous international research institutions. For instance, the World Bank has consistently ranked Singapore among the highest in terms of government effectiveness in recent years.⁴ The Economist Intelligence Unit (EIU), through its Business Environment Rankings (BERs), has identified Singapore as the world's best business hub, attributed to its infrastructure, connectivity, and regulatory environment.⁵ Additionally, the globalEDGE platform of Michigan State University notes that Singapore possesses a highly developed and open free-market economy, supported by numerous international trade agreements that reinforce its status as a developed country.⁶

Given that a promissory note constitutes one form of negotiable instrument, its regulation in Indonesia is primarily governed by the Commercial Code (*Kitab Undang-Undang Hukum Dagang* or *KUHD*), a legal legacy from the former Dutch East Indies

³ Singapore Statutes Online, Bills of Exchange Act 1949, <https://sso.agc.gov.sg/Act/BEA1949> (accessed August 28, 2024, 5:08 p.m.).

⁴ Jon S.T. Quah, "Why Singapore Works: Five Secrets of Singapore's Success," *Public Administration and Policy: An Asia-Pacific Journal* 21, no. 1 (2018): 8.

⁵ The Economist Intelligence Unit, "Singapore Retains Its Lead in Business Environment Rankings," *The Economist Intelligence Unit*, last modified June 27, 2024, accessed June 27, 2024 at 10:18 PM WIB, <https://www.eiu.com/n/singapore-retains-its-lead-in-business-environment-rankings/>.

⁶ Michigan State University, "Singapore: Introduction," *globalEDGE*, last modified 2024, accessed June 27, 2024, at 10:19 PM WIB, <https://globaledge.msu.edu/countries/singapore/>.

administration. However, the contemporary legal development of negotiable instruments in Indonesia has also seen the emergence of legal provisions outside the *KUHD*. This plurality of legal sources raises concerns regarding legal certainty in law enforcement, which in turn has implications for the adequacy of legal protection.⁷ This issue becomes particularly compelling when contrasted with the situation in Singapore, a country that has already achieved a high degree of legal infrastructure development. In comparison, Indonesia still requires significant progress in strengthening its legal framework to attain a similar level of maturity as that found in developed countries such as Singapore.

Based on the research background, two main issues require further analysis: (1) the regulation of promissory note issuance in Indonesia and Singapore differs in terms of legal basis, formal requirements, and enforcement procedures; and (2) the legal protection for promissory note holders in cases of debtor default varies in both countries, depending on their respective laws and court procedures.

METHODOLOGY

This study employs a normative juridical or legal doctrinal research methodology, wherein the research is conducted through library-based study by examining secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. These materials include statutory regulations, books, academic journals, research findings, and other scholarly works that support the research in accordance with the subject matter under investigation.⁸ The object of this research is the comparative legal framework governing promissory notes in Indonesia, as regulated in the Commercial Code (*Wetboek van Koophandel voor Indonesie*), and in Singapore, as regulated under their Bills of Exchange Act 1949. This research adopts a statutory approach, a comparative approach, and a conceptual approach. The method of legal analysis applied in this study is descriptive-analytical,

⁷ Kingkin Wahyuningdyah, "Reconstruction of Negotiable Instruments Law in the Development of the National Legal System," *Fiat Justitia: Journal of Legal Studies* 5, no. 3 (2015): 339.

⁸ Suratman and Philips Dillah, *Legal Research Methods*, 3rd edition, Alfabeta, Bandung, 2015, p. 66.

utilizing a qualitative approach to examine and interpret secondary legal data. As this research is a comparative legal study, its primary objective is to identify the similarities and differences in the specific legal provisions governing promissory notes in Indonesia and Singapore.⁹

RESULT AND DISCUSSION

Regulation of promissory note issuance in Indonesia and Singapore

A promissory note is one of the instruments classified as a negotiable instrument. A promissory note refers to a written instrument containing an unconditional promise to pay a specified sum of money to the holder or its transferee, duly signed by the maker at a designated date and place.¹⁰ The issuance of promissory note, similar to the issuance of other negotiable instruments, requires the fulfillment of material requirements, particularly the existence of an underlying obligation (*perikatan dasar*).¹¹

Given that the existence of an underlying obligation is a mandatory prerequisite for the issuance of a promissory note, the legal relationship between the debtor and the creditor is accordingly founded upon and governed by that underlying obligation. The underlying obligation arises from an agreement between the creditor, as the recipient of payment, and the debtor, as the party obligated to deliver the payment or sum of money, in accordance with the provisions of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*).

Singapore adheres to the common law legal system, which is fundamentally derived from English law. The English Bills of Exchange Act 1882 serves as the foundational legislation governing bills of exchange and promissory notes in England, and its substantive provisions have significantly influenced Singapore's legislation, namely the Bills of Exchange Act 1949.¹² However, the Bills of Exchange Act 1949 has undergone

⁹ Munir Fuady, *Legal Research Method: Theoretical and Conceptual Approach*, 1st ed. (Depok: Rajawali Pers, 2018), P. 169.

¹⁰ Joni Emirzon, "Law of Negotiable Instruments...", Op. Cit., p. 76.

¹¹ Djoko Imbawani Atmadjaja, *Indonesian Commercial Law: History, Concepts, and Principles of Commercial Law*, Setara Press, Malang, 2012, p. 107.

¹² M. J. L. Rajanayagam, "Banking and Bills of Exchange in Malaysia and Singapore," *Malaya Law Review*, Vol. 10, No. 1, 1968, p. 79.

several amendments, beginning in 1987 and most recently revised in 2021, reflecting Singapore's effort to adapt its legal framework to contemporary commercial needs.¹³

Under the Bills of Exchange Act 1949, the regulation of promissory notes is set out in Part IV, Sections 92 to 98. The Bills of Exchange Act 1949 provides the definition of a promissory note in Section 92(1), which states: "A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer."¹⁴

According to this provision, a promissory note is defined as an unconditional promise made by one person to another, signed by the maker. A promissory note contains a promise to pay a certain sum of money, either on demand or at a specified time, to a designated person or to bearer. When compared with the provisions of Article 174 of the Indonesia Commercial Code (*KUHD*), the definition of a promissory note under the Bills of Exchange Act 1949 bears similarities to the formal requirements for promissory notes regulated under the *KUHD*. However, a notable distinction exists between the two: under the Bills of Exchange Act 1949, payment may be made to bearer, whereas under the *KUHD*, such arrangements are regulated separately.

Section 92(3) of the Bills of Exchange Act 1949 stipulates that a promissory note may be accompanied by collateral security, whereby the creditor has the right to sell or transfer such collateral. The inclusion of collateral in promissory note generally necessitates the execution of supplementary agreements governing the collateral arrangement.¹⁵

In the event of debtor's default, the creditor may utilize the collateral to compensate for the amount unpaid by the debtor. To execute the collateral provided by the debtor, the creditor must apply to the court by filing for a writ of seizures, as regulated under the Supreme Court of Judicature Act – Rules of Court – Order 47 – Writs of Seizure

¹³ Singapore Statutes Online, <https://sso.agc.gov.sg/Act/BEA1949?ValidDate=20211231&Timeline=On>, accessed September 15, 2024, at 13:19 WIB.

¹⁴ Bills of Exchange Act 1949, Section 92(1).

¹⁵ LegalZoom, "Secured Promissory Notes vs. Unsecured Promissory Notes," <https://www.legalzoom.com/articles/secured-promissory-note-vs-unsecured-promissory-note>, accessed December 24, 2024, 4:47 AM WIB.

and Sale. The Collateral is then sold through an auction process, and the proceeds are used to satisfy the debtor's obligations.¹⁶

To obtain payment under a promissory note, the creditor must request payment at the designated place of payment specified in the note. This requirement aims to ensure the debtor's accountability. However, the creditor may also demand payment at another location, provided that sufficient ground exist, and the debtor remains liable for payments. These provisions are set forth in the Bills of Exchange Act 1949, as follows:¹⁷ Section 96(1) "Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable." And Section 96(4) "Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice."¹⁸

The provision allowing payment demands to be made at alternative locations provides flexibility for creditors in enforcing claims, ensuring that the debtor remains liable and protecting the creditor's right to receive payment. This approach differs from the Indonesian Commercial Code (*KUHD*), which places greater emphasis on formalities, thereby requiring that payment be requested at the place specified in the promissory note.

By issuing a promissory note, the debtor undertakes to pay the specified amount stated in the note. The debtor is not permitted to deny, as against a holder in due course, the authority of the payee to endorse the note at the relevant time. This is governed under Section 97 of the Bills of Exchange Act 1949.

Similarly, under Indonesian law, the provisions applicable to promissory notes refer to those governing bill of exchange.¹⁹ According to Section 98(1) of the Bills of Exchange

¹⁶ SG Court, <https://www.judiciary.gov.sg/civil/file-writ-of-seizure-and-sale>, accessed December 24, 2024, 5:16 AM WIB.

¹⁷ Bills of Exchange Act 1949, Section 96(1).

¹⁸ Bills of Exchange Act 1949, Section 96(4).

¹⁹ Imam Prayogo Suryohadibroto dan Djoko Prakoso, *Op. Cit.*, p. 182.

Act 1949, "...the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes."²⁰ This provision forms the legal basis for applying the rules governing bills of exchange to promissory notes in Singapore.

In order to provide a clearer understanding of the similarities and differences between the Indonesian Commercial Code (KUHD) and the Bills of Exchange Act 1949, a comparative table is presented below. This table outlines several key points of comparison, including the governing legal framework, the parties involved, the stages of promissory note issuance, and the competent authorities responsible for supervision.

Table 1

Comparative regulation on the issuance of promissory notes in Indonesia and Singapore

Points of Comparison	Indonesia	Singapore
Legal Basis	The provisions governing promissory notes are specifically regulated in Articles 174 to 177 of the Indonesian Commercial Code (KUHD), which further refers to several provisions on bills of exchange that are applicable to promissory notes. As stipulated in Article 174 of the KUHD, the formal requirements of promissory note include: the inclusion of the " <i>sanggup</i> " (promise to pay) clause, an unconditional promise to pay a sum of money, specification of the maturity	The provisions governing promissory notes are specifically set forth in Sections 92 to 98 of the Bills of Exchange Act 1949, which also refer to certain provisions on bills of exchange that apply, with the necessary modifications, to promissory notes. As stipulated in Sections 92(1) of the Bills of Exchange Act 1949, a promissory note is defined as an unconditional promise in writing made and signed by the maker to pay a specified sum of money to, or to the order of, a specified person or to the

²⁰ Bills of Exchange Act 1949, Section 98(1).

	date, designation of the place of payment, identification of the creditor, the date and place of issuance, and the signature of the debtor.	bearer, either a at fixed or determinable future time, or on demand.
Parties Involved	Drawer or maker or debtor, holder or creditor, endorser, and avalist or guarantor for the payment of the promissory note.	Drawer or maker or debtor, holder or creditor, endorser, and referee in case of need, who may be contacted by the creditor in the event of non-payment by the debtor.
Stages of Promissory Note Issuance	The issuance of a promissory note under the provisions of Article 174 of the Indonesian Commercial Code (<i>KUHD</i>) is carried out by the debtor or the person who signs the promissory note, by fulfilling the formal requirements for the issuance of such note. The individual whose name is stated in the promissory note becomes the holder or creditor, who is entitled to receive payment at a specified time.	Based on the definition of a promissory note as provided in Section 92(1) of the Bills of Exchange Act 1949, a promissory note is a written instrument made by a person containing an unconditional promise to pay a specified sum of money to the creditor at a determined time. Section 93 of the Bills of Exchange Act 1949 stipulates that a promissory note, once created, must be delivered to the creditor. In order to obtain payment on the promissory note in their possession, the creditor may present it to the debtor for payment, as regulated under Section 96 of the Bills of Exchange Act 1949.
Supervisory Authority	The supervision of the circulation of promissory	Similarly, in Singapore, the regulation of promissory

	<p>notes is not specifically accommodated under the Indonesian Commercial Code (<i>KUHD</i>); the provisions contained therein only govern the legality of promissory notes. Meanwhile, Bank Indonesia (BI) carries out responsibilities as stipulated in Article 9 point (3) of law Number 4 of 2023 concerning the Development and Strengthening of Financial Sector (<i>UUPPSK</i>), namely: to establish and implement monetary policy in a sustainable, consistent, and transparent manner; to regulate and ensure the smooth operation of the payment system; and to establish and implement macroprudential policy.²¹</p>	<p>notes under the Bills of Exchange Act 1949 does not provide for the authority of a specific institution to supervise promissory notes. The provisions of the Bills of Exchange Act 1949 afford legal protection to the holder, granting the right to pursue legal remedies in the event of a dispute.</p>
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In the point of comparison concerning the legal basis, there is a similarity between the regulation of promissory notes in Indonesia and Singapore, namely that both refer to the provisions on bills of exchange to regulate promissory notes, as a result of the Geneva Convention of 1930. When examined under Article 174 of the Indonesian Commercial Code (*KUHD*) and Article 92 paragraph (1) of the Bills of Exchange Act 1949, both share a similarity in the reference to clauses and the requirements of promissory notes, namely containing an unconditional promise to pay a specific sum of money.

²¹ Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector, Article 9 paragraph (3).

In the point of comparison concerning the parties involved, there is a similarity in the parties participating in the circulation of promissory notes, namely: the debtor or issuer, the creditor or holder, the endorser, and the avalist or guarantor. However, the main distinction lies in the terminology used, where in Singapore, the term referee in case of need is employed, which essentially carries the same obligations as an avalist in the event of debtor default.²²

In the point of comparison regarding the stages of issuing a promissory note, the Indonesian Commercial Code (*KUHD*) does not yet encompass several fundamental provisions related to the issuance of promissory notes. The *KUHD* primarily regulates the formal requirements for the creation of promissory notes, whereas matters concerning the payment mechanism, amount of payment, and other related aspects are governed by reference to the provisions on bills of exchange. In contrast, the regulation of promissory notes issuance under the Bills of Exchange Act 1949 is more comprehensive; it not only regulates the formal requirements but also provides provisions concerning the delivery of the duly executed promissory note to the rightful holder in order to perfect the instrument (Section 93 of the Bills of Exchange Act 1949), the presentation for payment (Section 96 of the Bills of Exchange Act 1949), and the liability of the maker to fulfill the promise of payment as stipulated in the instrument (Section 97 of the Bills of Exchange Act 1949).

In the point of comparison regarding supervisory institutions, although both the Indonesia Commercial Code (*KUHD*) and the Bills of Exchange Act 1949 do not specifically regulate institutions authorized to supervise the circulation of promissory notes, both provide for the legal validity of the issuance of promissory notes, whereby in the event of a dispute or default, legal remedies may be pursued as a form of legal protection. The courts serve as the competent authority to adjudicate disputes related to promissory notes, for example, when a creditor files a claim against the debtor for breach of contract due to non-payment. The supervisory role of Bank Indonesia over the circulation of promissory notes is highly limited, applying only to promissory note

²² Bills of Exchange Act 1949, Section 15.

instruments beyond the scope of the *KUHD*. Nevertheless, as stipulated in Article 9 point (3) of the Law Number 4 of 2023 of the Republic of Indonesia concerning the Development and Strengthening of the Financial Sector (*UUPPSK*), Bank Indonesia is tasked with formulating and implementing monetary policy in a suitable, consistent, and transparent manner; regulating and safeguarding the smooth operation of the payment system; and establishing and implementing macroprudential policy.²³

Legal protection for creditors in the event of debtor default on promissory notes in Indonesia and Singapore

In general, legal protection can be understood as the protection granted by law to all parties in accordance with their legal status, as the law is fundamentally intended to safeguard the interests of all parties who hold equality before the law.²⁴ As a form of legal protection for individuals whose civil rights have been harmed, a claim may be filed before the court in the form of an action for breach of contract or tort. Article 1365 of the Indonesian Civil Code regulates tort, which refers to an unlawful act committed by an individual that, due to his or her fault, causes harm to another person.²⁵ Breach of contract pertains to the failure of a debtor to fulfill obligations; in the context of a promissory note, the debtor is deemed to be in breach of contract when failing to pay the amount of money stipulated under the lying agreement.²⁶

Although a promissory note contains a promise to pay a certain amount of money, it does not constitute a principal agreement, in other words, a promissory note arises from an underlying obligation, namely a principal agreement in the form of a loan.²⁷ In the event that the debtor of the promissory note defaults, such failure constitutes a breach of the underlying agreement, and consequently, the creditor may file a claim

²³ Law Number 4 of 2023 on the Development and Strengthening of the Financial Sector, Article 9, point (3).

²⁴ Lukman Farid Bahtiar and Agus Yudha Hernoko, "Legal Protection for Creditors in Securing Collateral Objects Through Power of Sale in the Event of Debtor Default," *Jurnal Komunikasi Hukum* [Legal Communication Journal], Vol. 4 No. 2, 2018, p. 122.

²⁵ Evalina Yessica, "The Characteristics and Relationship between Unlawful Acts and Breach of Contract," *Jurnal Repertorium*, Vol. 1 No. 2, 2014, p. 53.

²⁶ J. Satrio, *Breach of Contract According to the Indonesian Civil Code, Doctrine, and Jurisprudence*, PT Citra Aditya Bakti, Bandung, 2012, p. 15.

²⁷ Andyna Susiawati Achmad and Astrid Athina Indradewi, "The Legal Position and Consequences of a Supplemental Agreement That Is Not Renewed Along with Its Principal Agreement," *Jurnal Ilmu Hukum, Humaniora dan Politik (JIHHP)*, Vol. 4, No. 6, 2024, p. 2048.

against the debtor on the grounds of breach of contract. In situations where a debtor fails to pay a specified sum of money as promised in promissory note, the debtor may be held liable to provide compensations for cost, damages, and interest as stipulated under Article 1243 of the Indonesian Civil Code (*KUHPerdata*).²⁸ This reflects the legal protection afforded to creditors in the event of debtor's default, whereby the creditor holding the promissory note is entitled to file a claim for breach of contract against the debtor.

A comparison regarding the legal protection afforded to promissory note creditors against debtor default in Indonesia and Singapore will be presented in the form of a table. The table below will elaborate on several points of comparison, including: legal basis, security over the promissory note, amount of payment, legal remedies for lost promissory notes, actions to claim recourse rights, and other legal measures in response to debtor default.

Table 2

Comparison of the legal protection for promissory note creditors between Indonesia and Singapore

Point of Comparison	Indonesia	Singapore
Collateral for Promissory Notes	There is a guarantee agreement, known as an <i>aval</i> , as regulated in Articles 129 to 131 of the Indonesian Commercial Code (<i>KUHD</i>).	There is an individual appointed by the debtor to act as a guarantor, referred to in Article 15 of the Bills of Exchange Act 1949 as a referee in case of need. In addition, under the issuance of a promissory note in Singapore, collateral security may be provided, as regulated in Article 92(2) of the Bills of Exchange Act 1949.

²⁸ Hukumonline.com, "Understanding Breach of Contract, Its Legal Consequences, and Remedies," <https://www.hukumonline.com/berita/a/unsur-dan-cara-menyelesaikan-wanprestasi-lt62174878376c7/?page=2>, last accessed September 25, 2024, at 11:12 AM (WIB).

The Method of Payment	Article 138 paragraph (2) of the Indonesian Commercial Code (<i>KUHD</i>) provides that a debtor may make partial payment on a promissory note, that is, payment of part of the total amount due. Furthermore, Article 132 letter (e) of the <i>KUHD</i> stipulates that installment payments are considered void.	Payment of a promissory note may be in installments as stipulated in Article 9 paragraph (1) of the Bills of Exchange Act 1949. The provision regarding installment payments includes the condition that if there is a default in any installment payment, the entire outstanding amount will become due.
Legal Remedies for Claiming the Right of Recourse	To be able to claim the right of recourse (<i>regres</i>) against the debtor, endorser, or guarantor (<i>aval</i>), the creditor must first carry out a protest for non-payment. According to Article 143b of the Indonesian Commercial Code (<i>KUHD</i>), the protest must be made authentically by a notary or a court officer (<i>juru sita</i>). This protest serves as an official declaration that the payment has not been made as agreed, and it is a necessary step for the creditor to pursue further legal actions against the parties involved in the promissory note, including the endorser or aval. The protest acts as formal evidence that the	For a promissory note that is not paid on the due date, the creditor may record or protest the non-payment of the debtor. However, the creditor does not lose their rights if they do not make the record or protest. This provision is outlined in Section 51(1) of the Bills of Exchange Act 1949. Additionally, in Section 51(8), the provision states that a protest is deemed necessary by the creditor if the debtor is in state of bankruptcy. This means that while the creditor has the option to protest the non-payment, failure to do so does not automatically forfeit their rights. However, if the debtor enters bankruptcy, protesting the non-payment becomes a required step for the creditor to protect their legal position and pursue recovery through legal channels.

	debtor has failed to fulfill the payment obligation, thus enabling the creditor to exercise their right of recourse.	
Legal Remedies for Lost Promissory Notes	A creditor who has lost a promissory note, pursuant to the provisions of Articles 167a and 167b of the Indonesian Commercial Code (<i>KUHD</i>), may request payment from the debtor upon the note's maturity. If the debtor refuses to make payment, a protest must then be carried out. Furthermore, the creditor is obliged to provide security to the debtor, which is to be maintained for a period of thirty (30) years.	A protest is not required for a lost promissory note, the creditor is merely required to notify the debtor that the note has been lost and as a result, request the debtor to issue a new promissory note to the creditor. If the debtor requests security, the creditor is obliged to provide it. In the event that the debtor refuses to issue a new promissory note, the debtor may be compelled to do so. This provision is regulated under Section 69 of the Bills of Exchange Act 1949.
Other Legal Remedies for Debtor Default	Article 146 of the Indonesian Commercial Code (<i>KUHD</i>) provides that a creditor may file a lawsuit against the debtor, the endorser, or the avalist, all of whom are jointly and severally liable to the creditor. Such a lawsuit may be brought either collectively or individually against those who are held responsible.	Article 38(1) of the Bills of Exchange Act 1949 regulates that the creditor of a promissory note may bring an action in court in respect of the promissory note in his or her own name.

In the comparative point regarding security for promissory notes, Singapore not only provides for personal guarantees but also regulates the provision of collateral security in the form of tangible assets. Such security is granted by the debtor to the creditor, along with the right to sell or transfer the collateral. The existence of collateral in the form of the debtor's assets provides stronger protection for the creditor, especially in the event of debtor default. In contrast, Indonesia only regulates the guarantee agreement known as an "*aval*", therefore, it would be appropriate to introduce provisions concerning collateral security that can be utilized by the creditor.

In the comparative point regarding the method of payment, there is a contradiction within the provisions of the *KUHD* concerning the method of payment. This contradiction is evident in the regulation that allows the debtor to make partial payment of the total amount stated in the promissory note, while another provision declares that payment by installment is null and void. Moreover, there is no clarity regarding the exact amount that may be paid as part of the total sum. In contrast, Singapore explicitly provides rules on installment payments, including further provisions stipulating that in the event of default on an installment, the entire amount becomes due.

In the comparative point regarding legal remedies to claim the right of recourse, Indonesia requires a highly formal process. To preserve their right of recourse, a creditor must first carry out an authentic protest drawn up by a notary or court officer (*juru sita*), if the creditor fails to make this protest at the time the promissory note is dishonored, they will lose their right of recourse. In contrast, under Singaporean law, a creditor is not required to conduct a protest in order to preserve their rights against the debtor. A protest is only deemed necessary if the debtor is declared bankrupt, serving the purpose of providing assurance of payment to the creditor.

In the comparative point regarding legal remedies for a lost promissory note, Indonesian law only provides the creditor with the opportunity to request payment from debtor at maturity, even without presenting the promissory note, provided that the creditor offers a guarantee. If payment on the lost promissory note is refused, the creditor must carry out a protest, which must be made authentically by a notary or

court officer (*juru sita*), a process that can incur significant cost. In contrast, under Singaporean law, for a lost promissory note, the creditor may request the debtor to issue a new promissory note as a replacement for the loss, and such issuance may be accompanied by a guarantee if requested by the debtor. Moreover, the debtor can be compelled if they refuse to provide the replacement promissory note.

In the comparative point regarding other legal remedies for debtor default, both Indonesia and Singapore provide provisions that allow creditors to pursue litigation in court by filing a claim to assert their rights over a promissory note in which their name is stated. Creditors of promissory notes in Indonesia may file a civil lawsuit for breach of contract under Article 1243 of the Indonesia Civil Code (*KUHPerdata*) as a legal remedy to hold the debtor accountable for failing to pay the amount of money based on the underlying obligation of the promissory note.

Indonesian law, while offering formal legal frameworks, generally favors debtors by imposing technical and procedural barriers that can weaken creditor enforcement rights. On the other hand, creditors face significant limitations due to the lack of clarity, inflexible formalities, and restricted remedies.

CONCLUSION

From the analysis presented above, several conclusions may be reached:

1. The Indonesian Commercial Code (*KUHHD*) remains limited in scope, as it does not yet incorporate several substantive provisions essential to the comprehensive regulation of such instruments. The *KUHHD* predominantly outlines the formal requirements for the creation of promissory notes, whereas substantive aspects; including the mechanism of payment, the amount to be paid, and other related matters are regulated indirectly through the provisions applicable to bills of exchange. In contrast, the Bills of Exchange Act 1949 provides a more robust and integrated regulatory framework. In addition to stipulating the formal requirements, the Act also sets forth detailed provisions concerning the delivery of the duly executed instrument to the rightful holder

to establish its legal effect (Section 93), the procedure for presentment of the note for payment (Section 96), and the enforceability of the maker's obligation to fulfill the promise to pay as set out in the instrument (Section 97)

2. The provisions in the Commercial Code (*KUHD*) concerning promissory notes offer legal protection to creditors in the event of debtor default, allowing creditors to pursue legal remedies such as asserting their right of recourse or filing a lawsuit in court. Singapore's legal framework accommodates provisions that enable creditors to invite legal proceedings before the court by filing a claim to enforce their rights over a promissory note in which they are expressly named as the right full holder. In Singapore, a promissory note may be accompanied by collateral security, which serves to provide a safeguard in the event of the debtor's default in payment.

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COMPETING INTEREST

There is no conflict of interest in the publication of this article.

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