

## CRIMINALITY OF BREACH OF AGREEMENT: CONSEQUENCES AND LEGAL REMEDIES

HARRIS ARTHUR HEDAR<sup>1</sup>, DHONI MARTIEN<sup>2</sup>, IRWAN SAPTA PUTRA<sup>3</sup>

Universitas Jayabaya, Jakarta, Indonesia<sup>1,2</sup>

Universitas Bina Bangsa, Serang, Indonesia<sup>3</sup>

Email: harris.arthur@jayabaya.ac.id<sup>1</sup>

Email: dhonimartien75@gmail.com<sup>2</sup>

Email: irwansp.law@gmail.com<sup>3</sup>

**Abstract** - This article examines the criminal aspects of breach of contract and its effect on legal certainty. The analysis centers on Article 378 of the Indonesian Criminal Code, which outlines fraud as a criminal offense in relation to breaches in contract, as well as the associated legal repercussions. The article also covers the available legal remedies for injured parties, including contract annulment and claims for damages. Utilizing a multidisciplinary approach, this article examines the intricate interplay between criminal and civil law in resolving contract breaches. Through a comprehensive analysis of case studies, the aim is to offer a complete understanding of this phenomenon. Further studies should investigate the "anyone" element in Article 378 of the Indonesian Criminal Code, improve the interaction between criminal and civil law, and examine international dimensions in the context of criminal breaches of contract. This article aims to deepen the comprehension of legal issues related to breaches of contract, enhance legal literature, and foster wider discussions.

**Keywords:** Criminality, Damages, Contract Cancellation, Fraud, Breach of Contract.

### INTRODUCTION

In the legal context, breach of contract pertains to the incapacity to fulfill pre-established obligations.[1] In most cases, debtor-creditor relationships and contract law are the scenarios in which breach of contract occurs. Essentially, breach of contract occurs when a party to an agreement fails to meet the predetermined obligations. The term "breach of contract" is said to have originated from the Dutch term "*wanprestatie*," which directly translates to "failure to perform"[2].

Within the contractual legal framework, breach of contract clauses determines the actions that the non-breaching party can take if the other party breaches the contract. For instance, contracts prescribe events of default, which enable lenders to demand full payment of the remaining outstanding balance before maturity. Lenders typically include such clauses to safeguard their interests in situations where the borrower shows signs of being unable or unwilling to repay the loan in the future [3].

Failure to meet any aspect of the loan requirements, apart from regular payments, can result in a breach of contract. Such a breach may signify that the borrower is facing financial difficulties and can lead to various consequences, including increased loan interest rates, seizures of assets, or other negative impacts. There are contractual provisions that serve as breach of contract sanctions, which encourage the parties involved to carefully specify the terms of the contract and prevent any breaches.

In Indonesia, Article 1233 of the Civil Code (*Kitab Undang-Undang Hukum Perdata*) regulates breach of contract. The mentioned article establishes the legal foundation for claims of contract cancellation and damages in case of breach of contract. In essence, a debtor who does not fulfill an obligation can be sued for either canceling the agreement or paying damages, covering costs, losses, and interest. Breach of contract, as defined in Article 1233 KUHPerdata, results in two legal consequences: rescission of the agreement and a claim for damages from the injured party [4].



Besides the provisions in the Civil Code, breach of contract is also addressed in multiple other laws in Indonesia, including Law Number 8 of 1999 on Consumer Protection [5].

The impact of a breach of contract on the parties involved can have different levels of significance, depending on the specific context and type of agreement. In the field of contract law, a breach of contract entails a failure to meet obligations, which might lead to legal action or the enforcement of separate contract provisions [6]. Breach of contract can result in significant financial and legal consequences for all parties involved [7]. It is vital for innocent parties to take proactive measures to minimize losses caused by the breach since failing to do so may impede their ability to receive full compensation.

The consequences of breaching a contract can vary for the party in violation, including financial losses, application of contractual penalty clauses, and the risk of damaging their reputation. Financial losses may encompass costs, damages, or contract cancellations, while the penalty stipulated by the contract could exacerbate the financial burden on the breaching party. In cases of breach of contract, the parties involved may suffer negative consequences. In cases of breach of contract, the parties involved may suffer negative consequences. Breach of contract can damage a party's reputation, which in turn may adversely affect their future agreement opportunities [8].

In cases of breach of contract, the parties involved may suffer negative consequences. Additionally, parties who have been subject to such a breach may experience financial loss, failure to achieve their goals, and general dissatisfaction. In loan agreements, default can lead to asset seizures, increased interest rates, and legal actions including collections and lawsuits.

Addressing contract breaches through legal efforts is a crucial element of contract law. Contract agreements may contain clauses that provide the foundation for legal action by non-breaching parties following breaches by the other party. The occurrence of breach of contract itself has been predetermined, allowing lenders to demand full payment for loans not yet due. This clause specifies certain conditions under which the buyer is considered in breach and mentions potential consequences [9].

If a contract is breached, legal action can be taken to address the violation. If the buyer fails to remedy the breach after the notice and cure period, the seller can choose to pursue legal action. Legal efforts may include seeking damages, specific performance of the contract, or withholding earnest money paid by the buyer. If a contract is breached, the aggrieved party has the freedom to select the desired legal remedy, such as specific damages.

Legal action refers to the measures taken for resolving legal disputes and in the event of a breach of contract, the aggrieved party can initiate legal proceedings to recover damages from the party in breach. [10,11]. The significance of legal endeavors in addressing contract breaches is apparent due to various crucial factors [12,13]:

1. Justice Perspective: Legal endeavors deliver justice to the harmed party by enabling them to receive adequate compensation for the damages they have incurred. The compensation may come in the form of currency, products, or services that make up for the loss.
2. Legal Certainty Aspect: Legal efforts provide certainty for parties involved in an agreement. Parties failing to meet their obligations will face sanctions, including damages, fines, or contract cancellations.
3. Prevention Aspect: Legal efforts also prevent future breaches of contract. Awareness that breach of contract may result in legal repercussions can motivate parties involved to observe their obligations more diligently.

Various methods exist for an aggrieved party to address a breach of contract, such as amicable negotiation, mediation, and litigation[13,14]. These options strive to reach a fair resolution and range from informal discussions to formal legal proceedings.

### **CRIMINAL DIMENSIONS OF BREACH OF CONTRACT**

The legal framework regulating breach of contract in Indonesia is intricate and subject to variation, contingent upon context and contract type. Breach of contract, encompassing the incapacity to carry out contractual duties, may lead to litigation or trigger distinct provisions in the contract



[15]. While the Indonesian Civil Code governs breach of contract in Articles 1234 to 1245, it does not contain any explicit provisions pertaining to the termination of contracts as a result of such breaches [16]. Hence, a comparative analysis with other nations is warranted to comprehend the effects of contract breaches on contract termination.

Article 1234 of the Civil Code states that "Agreements must be fulfilled in good faith," highlighting the principle that all parties to an agreement must uphold their obligations in good faith and that a breach may result in claims for damages. Additionally, Article 209 of the Job Creation Law, enacted in 2020, regulates contract breaches, mandating that the defaulting party compensate the affected party for any losses suffered [17].

Consequences of a contractual breach may result in financial losses, legal ramifications, and future credit limitations for the non-breaching party. Conversely, the breaching party faces potential legal claims and damage to their credit score [18]. In loan agreements, such as defaults, penalties may include asset seizure, elevated interest rates, and legal actions, including collections and lawsuits [18].

In addition to formal legal frameworks, breach of contract can also be addressed through customary laws or societal norms. Resolution of disputes may involve reference to these applicable laws or norms. While existing legal frameworks protect the aggrieved party, there is a need to strengthen them to be more effective in addressing breach of contract. The legal framework governing contract breaches in Indonesia has significant implications and variations that depend on the agreement's type and context. A breach of contract, which refers to the failure to fulfill contractual obligations, can have civil and criminal consequences in certain cases.

In the Indonesian legal system, various articles of the Indonesian Criminal Code (KUHP) outline situations resulting in criminal liability for contract violations. These aspects of breach of contract are strictly criminal in nature. Some situations in which a breach of contract can be considered a criminal offense include:

1. Defamation (Article 104 KUHP): This occurs when information that damages someone's reputation is spread, whether orally or in writing.
2. Insult (Article 106 KUHP): Insulting or showing disrespect to others in public or in front of others, either orally or in writing.
3. Coercion (Article 107 KUHP): Forcing others to do something against their will.
4. Disturbance (Article 108 KUHP): refers to activities that disturb the peace of others, such as disruptive operation of loudspeakers.
5. Forgery (Article 438 KUHP): Involves forgery or use of documents or signatures for fraudulent purposes.
6. Fraud (Articles 444-446 KUHP): Deceiving others to believe something untrue.
7. Misuse of Funds (Articles 450 and 451 KUHP): Involves embezzlement or fraudulent use of funds or property entrusted to others.

Breach of contract may result in contract crimes, including embezzlement, fraud, and breach of fiduciary duty [19]. Factors such as loss and intent, as well as positions of trust, are critical indicators in determining whether a breach of contract should be regarded as a crime. Breach of contract may result in contract crimes, including embezzlement, fraud, and breach of fiduciary duty [19]. The criminalization of breaching contracts in Indonesia significantly influences conduct, helping to prevent contract violations. The Indonesian Criminal Code (KUHP) contains numerous provisions that criminalize actions linked to contract breaches, including defamation, coercion, fraud, forgery, insult, and misappropriation of funds[19].

The aim of these criminalizations is to prevent behaviors that could result in contract breaches or violations. However, it is noteworthy that the Indonesian Civil Code lacks specific provisions for terminating contracts due to breaches, resulting in potential ambiguity of legal consequences in contractual agreements[12]. This lack of clarity may lessen the effectiveness of criminalizing contract breaches as a preventative measure because parties might not fully comprehend the legal repercussions.



Criminalizing breach of contract's success relies on the enforcement of criminal provisions and the judiciary system's ability to handle breach-related violations. Potential penalties and legal processes can get impacted by criminal sanctions against parties committing breach of contract, serving as a possible deterrent for future violations.

There are several alternatives in Indonesia to address the legal implications of breach of contract in contractual relationships without violating civil liberties and human rights. Some of these choices include [16]:

1. **Civil Legal Remedies:** Civil legal remedies that can be pursued to address breach of contract include:
  - **Breach of contract lawsuit:** A lawsuit filed by the aggrieved party against the breaching party to claim compensation for the losses suffered. A breach of contract lawsuit can be filed in the competent district court. Article 1243 of the Civil Code states: "Every obligation to give something must be fulfilled as well as possible." Article 1244 of the Civil Code states: "Anyone who does not fulfill an obligation, caused by their own fault, must compensate the costs, losses, and interest caused by the non-fulfillment of that obligation."
  - **Contract cancellation:** Contract cancellation can be pursued if one party has committed a serious breach of contract. Contract cancellation can be filed in the competent district court. Article 1266 of the Civil Code states: "The cancellation of an agreement can be done for reasons specified by law or by the agreement of the parties."
2. **Clarifying Contract Terms:** To prevent breach of contract, contract terms must be made clear and precise to avoid different interpretations. Contract terms should also cover all relevant and important aspects of the agreement. Examples of clear and precise contract terms:
  - **Article 1: Definition** In this agreement, the terms: "Party A" refers to [name of party A]. "Party B" refers to [name of party B].
  - **Article 2: Object of the Agreement** Party A sells to Party B, and Party B buys from Party A, [name of the item] with the following specifications: [item specifications]
  - **Article 3: Price** The price of [name of the item] is [amount] rupiahs.
  - **Article 4: Payment** Payment of the price of [name of the item] shall be made by Party B to Party A within [number] calendar days after the signing of this agreement.
  - **Article 5: Delivery** Party A will deliver [name of the item] to Party B within [number] calendar days after the payment of the price.
  - **Article 6: Warranty** [Name of the item] is guaranteed by Party A for [number] years.
  - **Article 7: Sanctions** If Party B fails to fulfill its obligation to pay the price of [name of the item] within [number] calendar days after the signing of this agreement, Party A has the right to cancel this agreement and claim damages from Party B.
3. **Alternative Dispute Resolution (ADR):** Alternative dispute resolution (ADR) can be a more effective and efficient alternative to resolve breach of contract disputes. Some types of ADR that can be used to resolve breach of contract disputes are:
  - a) **Mediation:** Mediation is a dispute resolution process with the assistance of a mediator. The mediator is a neutral third party not biased towards either party in the dispute.
  - b) **Conciliation:** Conciliation is a dispute resolution process with the assistance of a conciliator. The conciliator is a third party with expertise in a particular field.
  - c) **Arbitration:** Arbitration is a dispute resolution process with the assistance of an arbitrator. The arbitrator is a third party with the authority to decide the dispute.

#### **LEGAL IMPLICATIONS OF BREACH OF CONTRACT**

Article 1267 of the Civil Code provides options for parties who experience a contract breach. They may compel the other party to fulfill the agreement or demand contract annulment with compensation. This flexibility offers the aggrieved party the freedom to choose the legal course appropriate for their situation [19]. The article also enables creditors to demand compliance, annulment, and compensation, covering loss costs and interest.



If a debtor violates the agreement, the creditor has several options available. The creditor may request enforcement of the agreement, even if there is a delay. In addition, the creditor may also claim compensation for delays or non-compliance, or seek to annul the agreement [19]. Breach of contract carries several adverse consequences for the debtor, including paying damages for unfulfilled performance, compensating for losses caused by the debtor's negligence, forfeiting calculated or envisaged profits by the creditor, and covering the costs incurred by the creditor.

An additional sanction for breach of contract is contract annulment, which is also known as contract rescission and is regulated by Article 1266 of the Civil Code. The aim of rescinding a contract is to return both parties to their pre-agreement state [19]. While debtors may view the nullification as freeing, the possible losses incurred must be evaluated. Additionally, contract rescission could result in the imposition of litigation expenses as an added penalty.

The transfer of risk, as stipulated in Article 1237 of the Civil Code, is a third measure taken against the debtor's negligence. In cases where delivery is deficient, the risk of undelivered goods shifts to the debtor [19]. Additionally, the transfer of risk impacts the debtor's responsibility to pay for damages resulting from events outside of their control.

Debtors accused of breaching a contract may invoke various defenses, including force majeure, the creditor's default, or waiver. These defenses could influence the ruling of damage claims or contract invalidation. The defenses may also involve discussions concerning risk transfer and the obligation to bear legal costs as a result of breaching the contract [19].

Seeking expert opinions on breach of contract can provide significant insights. Legal professionals can provide comprehensive assessments, understanding of cases, and impartial recommendations for achieving equitable outcomes. Taking a multidisciplinary perspective from an expert's standpoint can expand understanding in discussions concerning contractual breaches. Case studies and simulations can prove to be effective tools for apprehending the application of concepts within authentic contexts, enabling direct experience in confronting potential legal predicaments.

Examining breach of contract in a worldwide scope facilitates comprehension of cultural variances, legal systems, and business procedures that can impact the management of breach of contract cases. Additional research on breach of contract cases in diverse countries can furnish supplementary perspectives into the intricacy and diversity of handling breaches. Deconstructing Article 1266 of the Civil Code can provide a more profound comprehension by disclosing underlying assumptions and permitting contextual and reflective interpretations.

Regarding breach of contract, ethical considerations encompass moral and justice principles. Therefore, ethical discussions are essential to obtain a balanced perspective of breach of contract actions, assessing their impact not only on legal aspects but also their psychological and economic consequences on society. Therefore, understanding the ethical implications of breach of contract is crucial in addressing this issue. Analyzing Article 1266 of the Civil Code and considering policies related to breach of contract create opportunities to evaluate the effectiveness of the judicial system. Policy directions to respond to the dynamics of breach of contract in society can be shaped by questions regarding legal protection, dispute resolution processes, and penalties.

### RESEARCH FINDINGS AND DISCUSSION

The research findings indicate that in cases of breach of contract, which fundamentally falls within the realm of civil law, it can be interpreted as a criminal act of fraud and its impact on legal certainty. The analysis focuses on agreements derived from contracts between parties, which usually do not present issues if they adhere to the provisions in Book III of the Civil Code (KUHPer), particularly Article 1320 of the KUHPer, governing the legal terms of an agreement.

Criminal charges of fraud may apply if the requirements of Article 378 of the Criminal Code (KUHP) are fulfilled. In the context of a breach of contract, failure to fulfill promised obligations, performing outside of the agreement's parameters, delays, or conducting actions prohibited by the contract may result in criminal charges.

Non-fulfillment of promises is one factor analyzed, which can be classified as an attempt to benefit oneself or others, breaching the law and causing harm to those involved. Performing actions that



are inconsistent with the agreement may be considered fraudulent, involving deceit or a series of lies. Additionally, delaying performance of the agreement, especially through the use of false names or false prestige, may also be linked to fraud.

The study outlines four criteria for breach of contract, which are then correlated with the elements of Article 378 in the Criminal Code.

Firstly, failure to fulfill promises corresponds with the elements of "benefiting oneself or others" and "against the law" outlined in Article 378. Secondly, non-performance in accordance with the agreement is connected with "deceit" and a "series of lies." Thirdly, delays in performance are interpreted as a "series of lies" involving fraud. Finally, performing an activity that the agreement prohibits categorizes as "benefitting oneself" and "against the law."

A more profound comprehension of how breaching a contract leads to a criminal act of fraud can be obtained by reviewing the provisions outlined in Article 378 of the Criminal Code. However, the success of the aforementioned criminal charges is contingent on meeting the legal requirements and providing proof in court.

Subsequently, this study explores the legal consequences of agreements that incorporate fraudulent criminal acts. As per Article 1321 of the Civil Code, agreements formed through fraud are void. Hence, if a causal connection between fraud and the agreement's formation exists, an application for the agreement's annulment under Article 1328 of the Civil Code can be submitted.

The legal ramifications of annulling an agreement are delineated in Articles 1449, 1451, and 1452 of the Civil Code. Article 1451 and Article 1452 govern the nullification of an agreement resulting from the incapacity of the parties involved, as stated in Article 1330 of the Civil Code, which may require the refund of property or money granted to the unauthorized party.

According to Article 1449, agreements that were coerced, misrepresented, or obtained fraudulently are subject to annulment. Article 1451 and Article 1452 govern the nullification of an agreement resulting from the incapacity of the parties involved, as stated in Article 1330 of the Civil Code, which may require the refund of property or money granted to the unauthorized party.

Therefore, this study proposes that breach of contract cases that qualify for criminal prosecution should be recognized as a legal breakthrough that can rectify damages incurred by the affected party. Nonetheless, success of the criminal charges is contingent on fulfilling legal requisites and providing relevant evidences in court.

Furthermore, this study unearthed a fresh interpretation of the phrase "*barangsiapa*" (anyone) as used in Article 378 of the Criminal Code. Conventionally, "*barangsiapa*" is interpreted as an individual legal entity. However, there is consideration that legal entities or corporations can also be included, particularly in specific criminal laws. Therefore, it is necessary to reevaluate whether the breach of contract by a legal entity can be classified as a criminal act of fraud, provided it meets the criteria outlined in Article 378 of the Criminal Code.

### **Conclusion**

This article examines the legal consequences and remedies associated with breach of contract, which is regarded as a criminal offense, emphasizing its link to Article 378 of the Criminal Code. A comprehensive study of the criminal ramifications of breach of contract cases presents the possibility of significant legal advancements, including the possibility of using alternative criminal charges to redress the injured party. The application of Article 378 of the Criminal Code to acts of breach of contract is feasible upon acceptance of evidence in court. Moreover, the article explicates how engagements incorporating criminal acts of fraud can be invalidated under the purview of Article 1321 and Article 1328 of the Civil Code. The outcomes of agreement annulment are addressed in Article 1449, Article 1451, and Article 1452 of the Civil Code. These articles govern the return of goods or money in such cases.

### **RECOMMENDATIONS**

To enrich and improve this article on the complex interplay between criminal and civil law regarding breach of contract, it is recommended to gain a deeper understanding of the term "*barangsiapa*" (anyone) in Article 378 of the Criminal Code. It must be examined whether

corporations or legal entities should be held accountable as perpetrators of fraudulent criminal acts, taking into account the applicability of criminal laws that may cover non-individual entities. Additionally, the relationship and more robust interaction between criminal and civil legal proceedings must be enhanced. Further studies could examine how criminal charges are handled by courts in a civil context to improve the overall integrity and effectiveness of the legal system.

#### REFERENCES:

- [1] Legal Information Institute. "Default." *Cornell Law School Legal Information Institute*, [https://www.law.cornell.edu/lii/get\\_the\\_law](https://www.law.cornell.edu/lii/get_the_law). Accessed November 27, 2023.
- [2] Meher, M., et al. "Protection For Parties Involved In A Bank Credit Agreement With The Principles Of Balance And Good Faith." *Womela-Gg 2019: The 1st Workshop On Multimedia Education, Learning, Assessment And Its Implementation In Game And Gamification In Conjunction With Comdev 2018, Medan Indonesia, 26th January 2019*.
- [3] Ayres, Ian, and Robert Gertner. "Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules." *The Yale Law Journal*, vol. 99, no. 1, 1989, pp. 87.
- [4] *Kitab Undang-Undang Hukum Perdata* [Indonesian Civil Code].
- [5] *Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen* [Law Number 8 Year 1999 on Consumer Protection].
- [6] Putra, Panji Adam Agus, and E. Rezaldy. "The Default Concept in the Sharia Contract Law in Indonesia." *J. Legal Ethical & Regul. Issues*, vol. 25, 2022, pp. 1.
- [7] Posner, Eric A. "There are no penalty default rules in contract law." *Fla. St. UL Rev.*, vol. 33, 2005, pp. 563.
- [8] Ben-Shahar, Omri, et al. "Nonparty Interests in Contract Law." *University of Pennsylvania Law Review*, Forthcoming, Virginia Public Law and Legal Theory Research Paper 2022-17, 2022.
- [9] Arbel, Yonathan A. "Contract remedies in action: Specific performance." *W. Va. L. Rev.*, vol. 118, 2015, pp. 369.
- [10] Subekti. *Hukum Perjanjian* [Covenant Law]. Jakarta: Intermedia, 1996.
- [11] Salim HS. *Pengantar Hukum Perdata Tertulis (BW)* [Introduction to Indonesian Civil Law]. Jakarta: Pradnya Paramita, 2008.
- [12] Miru, Ahmadi. *Hukum Kontrak dan Perancangan Kontrak* [Contract Law and Contract Drafting]. Jakarta: Rajawali Pers, 2007.
- [13] Miru, Ahmadi, and Sakka Pati. *Hukum Perikatan* [Law of Engagement]. Jakarta: Rajawali Pers, 2008.
- [14] Agustina, Rosa. *Perbuatan Melawan Hukum* [Unlawful Acts]. Depok: Penerbit Pasca Sarjana FH Universitas Indonesia, 2003.
- [15] *BFI Finance Indonesia*. "Default is: Definition, Legal Basis, Causes dan Example." 17 March 2023, <https://www.bfi.co.id/en/blog/wanprestasi-adalah-pengertian-dan-hal-penting-lainnya#> Accessed November 27, 2023.
- [16] Cahyono, Akhmad Budi. "Default and Termination of Contract: A Comparative Study between Indonesia and The United Kingdom." *Yuridika*, vol. 35, no. 3, 2020, pp. 469-484.
- [17] *Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja* [Law Number 11 of 2020 concerning Job Creation].
- [18] Condro, Marsella, and Mellalsmelina Farma Rahayu. "The Legal Consequences of Default in the Oral Lease Agreement based on Indonesia Private Law (Decision Study of Supreme Court No. 2368K/Pdt/2019)." *3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021)*. Atlantis Press, 2022.
- [19] *Kitab Undang-undang Hukum Pidana* [Indonesian Criminal Code].