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Limits of Criminal and Civil Liability in Default Disputes Containing Elements of Fraud

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Abstract

This study analyzes the boundary between civil and criminal liability in contractual disputes where a breach of contract is alleged to contain elements of fraud. The problem arises because non-performance of an agreement does not automatically constitute a criminal offense, yet the existence of a contract cannot be used as immunity when the agreement was formed through deception. This normative legal research employs statutory, conceptual, and case approaches by examining the Indonesian Civil Code, Law Number 1 of 2023 on the Criminal Code, Supreme Court Jurisprudence Number 4/Yur/Pid/2018, and relevant judicial decisions and legal scholarship. The study finds that breach of contract remains within civil law when a valid agreement was made in good faith and the failure to perform occurred afterwards because of negligence, inability, or a contractual risk. Criminal fraud exists when, before or at the formation of the agreement, the perpetrator intended to obtain an unlawful benefit and used a false name or capacity, deceit, or a series of lies that causally induced the victim to deliver property, provide credit, acknowledge debt, or discharge a claim. This study proposes a five-stage assessment consisting of contract validity, reconstruction of pre-contractual representations, determination of the timing of intent, examination of the causal transfer of assets, and evaluation of post-contract conduct and evidence. The proposed framework prevents the criminal process from becoming a debt-collection instrument while preserving criminal accountability for contracts used as a vehicle of deception.

Keywords:*criminal liability, civil liability, breach of contract, fraud, bad faith*

INTRODUCTION

An agreement is the primary instrument governing the exchange of rights and obligations in economic activities. The parties are essentially free to determine the content of the agreement as long as it meets the legal requirements stipulated in Article 1320 of the Civil Code. Once an agreement is legally established, the provisions of Article 1338 of the Civil Code constitute it law for the parties. The principle of pacta sunt servanda establishes certainty that promised performance must be fulfilled, while violations result in civil consequences.

In practice, not every agreement ends with the fulfillment of obligations. One party may fail to fulfill an obligation, be late in fulfilling an obligation, perform an obligation imperfectly, or do something prohibited by the agreement. These circumstances are commonly classified as breach of contract. Articles 1238 and 1243 of the Civil Code provide the basis for establishing negligence and demanding compensation for costs, losses, and interest. Therefore, the primary focus of civil law is fulfilling the rights of the injured party and restoring balance in the contractual relationship.

The problem becomes more complex when failure to fulfill obligations is accompanied by false statements, incorrect documentation, the object of the agreement being nonexistent, disguised identities, or the use of funds that were not initially in accordance with the intended purpose of the transfer. In such circumstances, the dispute can no longer be judged solely on the fact that obligations were not fulfilled. Law enforcement must investigate whether the agreement was born out of a legitimate legal relationship or was instead used as a means to induce the other party to hand over goods or funds.

Civil law itself recognizes fraud as a defect of will. Article 1328 of the Civil Code stipulates that fraud can be grounds for cancellation if the deception used is such that the other party would not have entered into the agreement without it. Fraud in the civil context relates to the validity of the agreement and its legal consequences. Meanwhile, fraud in criminal law relates to the protection of the public interest, the perpetrator's culpability, the method used, the causal relationship, and the consequences in the form of delivery of goods, granting of debt, acknowledgment of debt, or cancellation of receivables.

Since January 2, 2026, the definition of fraud in national criminal law has been contained in Article 492 of Law Number 1 of 2023 concerning the Criminal Code. This provision requires the intention to unlawfully benefit oneself or another person, the use of a false name or false position, deception or a series of lies, and the victim's act of handing over goods, granting a loan, making an acknowledgement of debt, or writing off a receivable. This formulation demonstrates that fraud is not sufficiently proven by the existence of an unpaid debt or a broken promise. There must be a means of deception that causes the victim to commit an act that is detrimental to themselves.

In law enforcement practice, this line often becomes blurred. A party disappointed by a payment failure may choose to file a criminal report, perceived as a quicker way to pressure the debtor. Conversely, a party who has resorted to deception from the outset may hide behind an agreement and claim the entire matter is merely a civil dispute. Both tendencies are equally dangerous. Criminalizing default can transform criminal law into a debt collection tool, while civil fraud can eliminate accountability for perpetrators who intentionally create false contractual relationships.

The Supreme Court, through Jurisprudence Number 4/Yur/Pid/2018, emphasized that failure to fulfill obligations in a legally made agreement is essentially a breach of contract, unless the agreement is based on bad faith or lack of good faith. This principle, which is derived, among others, from Decision Number 1689 K/Pid/2015, is important because it places good faith at the stage of forming an agreement as a differentiating point. However, the concept of bad faith should not stop at an abstract conclusion. Bad faith needs to be proven through objective facts, such as false representations, the absence of objects, deliberately concealed incompetence, document falsification, cash flow, patterns towards other victims, and the perpetrator's behavior after receiving the achievement.

Previous research has examined the distinction between breach of contract and fraud from various perspectives. Yahman (2014) places intent at the outset of a contractual relationship as a crucial characteristic. Slamet, Fadillah, and Fahruddin (2020) point to disparities in judicial interpretation, particularly regarding when fraud is considered to have occurred. Aziz and Yasarman (2022) emphasize that elements of fraud can arise during the contract formation stage. Winata and Adhari (2024) then tested these criteria based on Jurisprudence Number 4/Yur/Pid/2018, while Perdana and Jadidah (2025) positioned good faith as a determining indicator in concrete cases. These studies provide important foundations, but a more operational examination model is still needed for consistent use from investigation to trial.

The novelty of this research lies in the formulation of temporal, causal, and evidentiary parameters within a single assessment framework. The assessment does not rely solely on the existence or absence of an agreement, but rather examines when the unlawful intent was formed, the methods used to influence the victim's will, whether those methods resulted in the transfer of assets, and the perpetrator's actions after the agreement was concluded. This framework also distinguishes fraud from embezzlement. If possession of the goods was initially obtained legally and the intention to possess them unlawfully only arose after the goods were in the perpetrator's possession, then the act is more appropriately tested based on the elements of embezzlement as stipulated in Article 486 of Law Number 1 of 2023, rather than being forced to be considered fraud.

Based on this description, this study formulates two main problems:

1. How is civil and criminal liability constructed in a default dispute that is suspected of containing elements of fraud?
2. What parameters can be used to distinguish between breach of contract, fraud and other forms of liability in contractual relationships?

This research aims to systematically analyze the limits of civil and criminal liability and formulate assessment parameters that can help investigators, public prosecutors, judges, advocates and parties determine the appropriate resolution path. This clarity is needed so that victim protection is effective, freedom of contract is respected, and criminal law is not used excessively.

METHOD

This research uses a normative legal method with descriptive and prescriptive characteristics. Normative legal research was chosen because the core problem lies in the interpretation and relationship between contractual norms, criminal liability norms, and rules in court decisions. Within the framework of legal research, an inventory of legal materials, identification of issues, interpretation of norms, and formulation of arguments must be conducted systematically so that conclusions not only describe applicable law but also offer solutions to problems in its application (Tanjung, 2024).

The approaches used consist of a statutory approach, a conceptual approach, and a case approach. The statutory approach is carried out on the Civil Code, Law Number 1 of 2023 concerning the Criminal Code, and regulations related to case resolution based on restorative justice. The conceptual approach is used to examine default, good faith, fault, mens rea, actus reus, causal relationships, and unlawful nature. The case approach is carried out primarily on Supreme Court Jurisprudence Number 4/Yur/Pid/2018, Decision Number 1689 K/Pid/2015, and other decisions that show the difference between contractual failure and fraud.

Primary legal materials consist of laws and court decisions. Secondary legal materials consist of books, journal articles, research results, and relevant expert opinions. Legal materials were collected through literature review, then classified based on civil, criminal, evidentiary, and dispute resolution aspects. Analysis was conducted qualitatively using deductive reasoning and prescriptive argumentation. The results of the analysis were then formulated into operational parameters to determine whether certain facts fall within the realm of breach of contract, fraud, embezzlement, or allow for simultaneous civil and criminal liability.

RESULTS AND DISCUSSION

1. Construction of Civil and Criminal Liability in Contractual Relations

Civil liability in contract disputes is based on a valid legal relationship and a definable performance. Performance can take the form of providing something, doing something, or not doing something. When the debtor fails to perform the performance according to the agreed time, quality, or method, the creditor can demand fulfillment of the agreement, compensation, cancellation, or a combination of legal consequences depending on the nature of the case. The focus of civil proceedings is on the existence of the agreement, the content of the obligation, the due date, the state of negligence, the loss, and the causal relationship between the breach and the loss.

Default doesn't always arise from bad intentions. Failure can occur due to management negligence, changes in financial capacity, supply constraints, technical errors, or force majeure. As long as, at the time the agreement was made, the promisee intended to fulfill its obligations, provided reasonable information, had a justifiable object or capability, and did not use deception to obtain the other party's performance, then the failure generally remains within the realm of civil law. Good faith can also be demonstrated by efforts to communicate, request rescheduling, make partial payments, offer replacements, or disclose the true circumstances to the creditor.

However, good faith cannot be inferred solely from the existence of a partial payment or written agreement. Fraudsters may make an initial payment to build trust, sign a contract to create a legal appearance, or return some funds after a report is filed. Therefore, subsequent actions must be assessed in conjunction with the circumstances before and during the agreement. The test is not simply whether partial performance occurred, but whether the entire sequence of actions demonstrates a real project or transaction, genuine capability, and the use of funds for the stated purpose.

Criminal liability for fraud has a distinct structure. The subjective element is the intention to unlawfully benefit oneself or another person. The objective element is the use of a false name or false position, deception, or a series of lies to induce another person to hand over goods, grant a loan, acknowledge debt, or write off a receivable. There must be a causal relationship between the means of fraud and the victim's handover. Therefore, a lie that emerges after the money is handed over does not necessarily constitute fraud if the lie itself is not the cause of the handover.

The time dimension is crucial. If the intent to gain unlawful gain and the means of deception existed before or at the time the agreement was formed, the agreement can function as an instrument of fraud. Conversely, if the malicious intent only emerged after the goods or money were in the perpetrator's original legal possession, the element of fraud must be carefully examined. In certain circumstances, this fact can lead to embezzlement because the essence of the act is the unlawful possession of goods originally in the perpetrator's possession, not due to a criminal act. In other circumstances, if there is simply an inability to fulfill obligations without unlawful possession, the dispute remains a breach of contract.

Fraud under Article 1328 of the Civil Code and fraud under Article 492 of Law Number 1 of 2023 share common ground, but their objectives and legal elements are not the same. In civil law, fraud is grounds for cancellation because the will of one party is flawed. In criminal law, fraud requires proof of unlawful intent, a specific method of deception, the victim's actions, and a causal relationship. Therefore, cancellation of an agreement due to fraud does not automatically prove a crime, nor does a criminal verdict always resolve the full recovery of the victim's contractual losses.

The existence of an agreement does not preclude criminal liability. An agreement merely demonstrates the nature of the relationship between the parties, not proof that the entire process of its formation was conducted honestly. A judgment that merely declares a case a civil matter because of the existence of a contract risks ignoring the fact that the object never existed, the document was falsified, or the perpetrator's capacity was deliberately fabricated. Conversely, a criminal complaint that relies solely on late payment, without evidence of causal deception from the outset, risks using criminal prosecution as a means of collecting the debt.

Jurisprudence Number 4/Yur/Pid/2018 outlines that legitimate and good-faith contractual relationships are resolved through civil litigation. This principle must be read in its entirety. The exception phrase regarding bad faith means that law enforcement is obliged to examine the agreement formation process, not just the written contract. Winata and Adhari (2024) also emphasize that the criteria for fraud arise when the agreement is based on the intention to harm the other party. Meanwhile, Pridiani and Siagian (2025) show that project losses do not automatically constitute fraud if the facts further demonstrate the failure to implement the contract.

The boundaries of the settlement forum also determine the effectiveness of protection. Civil lawsuits focus on achieving performance, annulment, and compensation, while criminal proceedings focus on proving fault and imposing sanctions. In consumer disputes, selecting an inappropriate forum can hinder recovery, as seen in the study by Bangun, Purba, and Bintang (2025) regarding the rejection of consumer complaints in installment payment disputes. Therefore, factual qualification must be carried out before determining the legal instrument, not the other way around.

Civil and criminal liability can coexist if the respective grounds are met. Victims may have the right to demand restitution or compensation, while the state remains interested in prosecuting fraudulent means of obtaining money. However, dual proceedings should not be used to punish parties twice for the same aspect or to circumvent the standard of proof. Each forum must examine its own legal elements and objectives. Criminal judgments can be important evidence in civil cases, but the extent of recovery must still be determined based on actual and demonstrable losses.

2. Distinguishing Parameters and Accountability Assessment Model

Distinguishing between breach of contract and fraud requires parameters that can be applied sequentially. An assessment using only one indicator is prone to error. The absence of payment is not sole evidence of fraud, just as the existence of a contract is not sole evidence that a case is solely civil. Table 1 outlines the assessment dimensions that link contractual facts, criminal elements, evidence, and legal consequences.

Table 1. Parameters Distinguishing Default and Criminal Acts of Fraud in Contractual Relations

Assessment Dimensions	Indication of Default	Indications of Fraud	Relevant Evidence	Main Legal Consequences
Origin of legal relationship	Valid agreement, object and purpose of real transaction.	The agreement was used as a cover to obtain surrender.	Contracts, correspondence, business profiles, object existence.	Civil or criminal according to the facts of its formation.
Time of formation of intention	The intention to fulfill achievements is there from the start, failure arises later.	The intention to profit unlawfully existed before or at the time of the agreement.	Pre-contract communication, work plans, capacity, transaction patterns.	The time of intention is the main point of differentiation.
Representation to other parties	The information was basically correct, although the	Names, positions, objects, capacities, or important facts are conveyed falsely.	Identity documents, permits, certificates,	Deception must be proven, not assumed.

Assessment Dimensions	Indication of Default	Indications of Fraud	Relevant Evidence	Main Legal Consequences
	implementation later failed.		recorded messages, witness statements.	
Causal relationship	The delivery was made due to a true and fair contract.	Victims hand over assets because they believe in lies or deception.	Sequence of communication and transactions, transfer date, reason for transfer.	Without a causal relationship, the element of fraud is incomplete.
Abilities and objects of achievement	The ability or object once existed, but was then disrupted.	The object never existed or the ability was intentionally engineered from the start.	Audit, accounts, stock, project locations, suppliers, ownership documents.	The absence from the beginning strengthens the suspicion of fraud.
Use of assets received	Funds were used for the purposes of the agreement, but results were not achieved.	The funds were immediately diverted for other purposes that had been hidden from the start.	Cash flow, bookkeeping, related transactions, assets resulting from the use of funds.	Can reinforce fraud or lead to embezzlement.
Behavior after maturity	There are communications, partial payments, restructuring, or recovery offers.	Disappearing, making up new false excuses, falsifying evidence, or repeating the modus operandi on other victims.	Summons, responses, communication recordings, reports from other victims.	Supporting evidence, not a substitute for evidence of original intent.
Completion objectives	Fulfillment of performance, cancellation, and compensation.	Accountability for errors and protection of public interests.	Value of loss, status of goods, condition of victim, attitude of perpetrator.	Civil lawsuits, criminal proceedings, or both in proportion.

Based on the table, this study offers five stages of examination. The first stage is verifying the existence and validity of the agreement. The examination covers the parties, object, value, obligations, timeframe, delivery conditions, and circumstances of default. This stage determines whether there is truly a performance that can be claimed. If the obligation is unclear or the agreement was never formed, the qualification cannot be directly directed to breach of contract.

The second step is to reconstruct all pre-contract representations. Law enforcement must compare the statements with the actual situation. Statements regarding ownership of goods, authority to act, business permits, project availability, ability to provide goods, relationships with third parties, and the intended use of funds must be tested. A single inaccurate statement does not necessarily constitute a series of lies, but a number of mutually reinforcing false statements can indicate a fraudulent scheme.

The third step is determining the time of intent. Mens rea cannot be directly observed and must therefore be inferred from objective facts. Relevant indicators include the lack of preparation for executing the agreement, the use of falsified documents prior to the transaction, the offering of objects known to be non-existent, the receipt of funds from multiple victims in a similar manner, and the transfer of funds immediately after receipt. Conversely, evidence of material purchases, agreements with suppliers, actual work performed, and subsequent obstacles may indicate that failure was not part of the original plan.

The fourth step is to test the causal relationship between the deception and the transfer. The victim must transfer goods or money because they are influenced by a false name, false position, deception, or a series of lies. If the victim is aware of the true circumstances and still enters into the transaction based on business risks, the element of inducement by deception may be weak. Conversely, if the victim can demonstrate that the decision to transfer funds was based solely on false project documents or false claims of ownership, the causal relationship is strong.

The fifth stage is evaluating post-contract behavior as supporting evidence and determining proportionate legal action. Cooperation does not automatically eliminate a completed crime, but it can help assess consistency of intent and inform settlement considerations. Similarly, non-cooperation does not automatically prove fraud if the element of misdirection was not present from the outset. At this stage, law enforcement must distinguish between the evidentiary and restorative functions.

Some common indicators of bad faith include the use of false identities or positions, offering objects never owned, forged supporting documents, concealing recipient accounts, using funds for purposes contrary to the original statement, repeating the pattern against multiple victims, and creating false proof of payment. These indicators should be read as a whole. Criminal conclusions should not be based solely on moral suspicion or the assessment that the debtor is irresponsible.

Proving evidence in modern transactions also requires examining electronic evidence. Conversations, emails, meeting recordings, digital documents, location data, file change histories, and account statements can provide a more accurate depiction of the sequence of events. Evidence must be tested for authenticity, relevance, and integrity. Taking screenshots without context can be misleading because they don't reveal the full conversation, the time of creation, or the identity of the sender. Therefore, digital evidence needs to be linked to witness statements, contract documents, and transaction flows.

At the investigation and inquiry level, authorities should not use the simple formula that the existence of an agreement necessarily constitutes a civil case. The initial investigation should focus on two questions: First, was there any deception or deception that preceded the handover? Second, was the deception the reason the victim surrendered the assets. If the answer is not supported by evidence, a civil settlement is more appropriate. If the answer is supported by sufficient evidence, criminal proceedings can proceed despite the existence of a contract.

The public prosecutor needs to structure the indictment based on temporal sequence and causal relationships, rather than simply stating that the defendant failed to fulfill a promise. The statement must explain the false facts presented, the defendant's knowledge of the falsehood, the intent to gain profit, the actions of the affected victim, and the resulting losses. The judge must then assess each element separately and collectively. This approach can reduce the disparities in interpretation identified by Slamet, Fadillah, and Fahruddin (2020).

Restorative justice-based resolutions can be considered after the criminal qualifications are clear, rather than being used to cover up unclear elements. Hasibuan, Brahmana, and Herqutanto (2025) suggest that public prosecutors can act as recovery facilitators in cases that meet the requirements. Sembiring, Saragih, and Zarzani (2024) also emphasize restoration as the orientation of restorative resolutions. In contractual fraud cases, restitution and amicable agreements can be an important part of recovery, but they should not transform a breach of contract into a criminal offense simply to ensure the defendant pays, or otherwise eliminate serious fraud liability without legal basis.

The application of the parameters can be illustrated in three situations. First, a supplier has a legitimate business, has ordered goods from a supplier, but fails to deliver because the supplier ceases operations and offers a staged return. This situation is closer to a breach of contract, unless other fraud is discovered from the outset. Second, someone offers a non-existent project with a fake letter of appointment, receives a down payment, and then immediately transfers the funds for personal use. This situation meets the criteria for fraud because the misrepresentation precedes and leads to the transfer of the money. Third, a party receives goods under a valid contract, then, once in possession, intends to sell them without delivering the proceeds. This third situation must be tested as embezzlement or breach of contract, depending on the ownership status of the goods and evidence of unlawful intent.

This model positions criminal law as an instrument of protection against misdirection that attacks freedom of will and property, not as a substitute for civil lawsuits. At the same time, this model prevents perpetrators from hiding behind contractual formalities. Legal certainty arises not from rigid separation, but from consistency in examining the time of intent, means of misdirection, causal relationships, and purpose of redress.

CONCLUSION

The limits of civil and criminal liability in breach of contract disputes are determined by the process of establishing the legal relationship, the time of the intent, the means used, and the causal relationship with the transfer of assets. Failure to fulfill performance remains within the civil realm if the agreement is made legally and in good faith, while inability or negligence only arises after the agreement is in effect. An act becomes fraud if, before or at the time of the agreement, there is an intention to gain unlawful advantage through a false name or position, deception, or a series of lies, and this method induces the victim to hand over goods, grant debt, make an acknowledgement of debt, or write off receivables. The existence of a contract does not eliminate the crime, but non-compliance with a contract does not in itself prove fraud.

An ideal assessment involves five steps: verifying the validity and content of the contract, reconstructing pre-contractual representations, determining the time of intent, testing the causal relationship between the misrepresentation and the delivery, and evaluating post-contract behavior in conjunction with available evidence. This model helps determine whether a case should be resolved through a civil lawsuit, criminal proceedings for fraud, embezzlement, or a proportionate combination of responsibilities. Law enforcement must avoid two mistakes: using criminal law as a means of debt collection and using contracts as protection for fraud. Consistent application of these parameters will strengthen legal certainty, victim protection, and fairness in contractual activities.

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