

## Violation of the Contract Contents as A Fraud

Adhiputro Pangarso Wicaksono<sup>1\*</sup> 

<sup>1</sup> Universitas Boyolali, Boyolali, Indonesia

\*Corresponding author [anggapangarso@gmail.com](mailto:anggapangarso@gmail.com)

### Abstract

This research aims to analyze the criteria for not fulfilling the agreement which can be categorized as a criminal act of fraud. This research is normative research with a case approach. The source of legal material used is legally and binding verdicts and are analyzed deductively. The results show that something that begins with an agreement and in its implementation there is not fulfilling the agreement can be categorized as a criminal act of fraud (not breach of contract) if the agreement contains elements of fraud. Likewise, if the agreement used as a instrument to get the victim to hand over their goods or something, then if the perpetrator does not fulfilling the agreement, their act can be categorized as a tort or fraud (not a breach of contract), even a tort of fraud was occurred when the victim handed over an item or something belonging to perpetrator.

**Keywords:** *contract; breach of contract; fraud;*

#### History:

Received: July 12<sup>th</sup> 2023

Accepted: July 20<sup>th</sup> 2024

Published: August 4<sup>th</sup> 2024

**Publisher:** Universitas PGRI Madiun

**Licensed:** This work is licensed under

a Creative Commons Attribution 3.0 License



### Introduction

The logical consequence of humans as social beings (zoon politicon), then humans will interact with other humans. This interaction is established because humans cannot meet their own needs and require the intervention of other parties to meet their needs, either through a barter system (exchange of goods or services), a system of fulfilling achievements, or voluntarily. In fact, from a time-period aspect, human dependence on each other never stops from birth to death (Riduan Syahrani, 1999: 139)

In line with humans as social beings, humans are also referred to as economic beings (homo economicus). Homo economicus refers to a human figure who is rational and free to determine the choices available to achieve certain goals (Septiana, 2016: 46). This means that in meeting their needs, humans can choose certain paths or methods, either individually or collaboratively.

Humans are basically an understanding in the perspective or meaning of biological beings, as a natural phenomenon (Gilang, 2022: 32). In the legal perspective, humans can be called people, namely legal subjects if they have met certain requirements, including being an adult (of a certain age) or married, not under guardianship, not under guardianship. Legal subjects in principle mean that the person concerned is the holder of rights and obligations or as stated by Sudikno Mertokusumo that legal subjects are everything that can obtain rights and obligations from the law (Sudikno Mertokusumo, 1988: 53). These rights include the right to carry out legal acts such as buying and selling, renting, making cooperation agreements, and so on. Agreements or for business people referred to as contracts, are legal instruments used in establishing a legal relationship including cooperation agreements or investments. The main purpose of compiling a written contract is as evidence of a letter, in this case as an instrument of legal certainty. The rights, obligations, prohibitions for the parties involved in the contract are binding as law with all its consequences. The inclusion of

rights, obligations and prohibitions in a contract is intended to ensure that the parties carry out the contents of the contract, this is because a violation of the contents of the contract can be detrimental to one of the parties.

As is known, there are 3 (three) stages of a contract, namely preparation, design and implementation of the contract, the implementation stage of an agreement is the essence of the agreement itself. In the implementation of the contract, the extent of the good faith of the parties in fulfilling the contents of the contract will be known. Good faith is the basis for implementing a contract, which in principle implementing a contract must comply with the norms of compliance and morality (Ayu & Yudho, 2020:51). However, despite the legal protection efforts provided by the state through the principle of good faith stated in the laws and regulations (Article 1338 of the Civil Code) as well as the efforts of the parties to the contract who make contracts in written form, even in the form of notarial deeds, not all contracts can be implemented as expected. As a consequence of contracts or agreements entering the realm of civil law which regulates obligations, violations of the contents of a contract or anything that originates from a contractual legal relationship are categorized as acts of breach of promise or default. In principle, default means the absence of an achievement, and achievement in an agreement means something that must be carried out in accordance with the contents of the agreement (Wirjono Prodjodikoro, 1974:17). The settlement of default is resolved civilly either through non-litigation or through litigation by filing a civil lawsuit. Based on this, a red line can be drawn that violations of an agreement cannot be resolved with criminal law instruments. In reality, in law enforcement practice, the above does not apply completely. There are several cases that start from an agreement or contract, but end in criminal penalties for parties who do not fulfill the contents of the contract. Criminal case with the Decision number of the West Jakarta District Court No. 438/Pid.B/2022/PN.Jkt. Brt dated July 14, 2022 in conjunction with the Decision of the DKI High Court Number 189/PID/2022/PT.DKI dated September 9, 2023 in conjunction with the Supreme Court Cassation Decision No. 29 K/Pid/2023 dated January 31, 2023, Decision of the West Jakarta District Court No. 593/Pid.B/2022/PN. Jkt. Brt dated September 21, 2022 in conjunction with the Supreme Court's Cassation Decision No. 34 K/Pid/2023 dated January 31, 2023, are some examples of cases that originated from a contractual legal relationship that resulted in criminal penalties because one party did not fulfill its obligations. This prompted the Author to conduct research on how violations of the contents of a contract are categorized as criminal acts, and as an analytical tool, the Author will use the theory of legal certainty.

## **Research Methods**

This research is a normative research using a case approach. The source of legal materials used is a court decision and a deductive analysis is carried out. In terms of the form and nature of the research, this research is descriptive with a diagnostic and perspective research form (Setiono, 2010:5-6).

## **Results And Discussion**

1. First Case: Decision of the West Jakarta District Court No. 438/Pid.B/2022/PN.Jkt. Brt dated July 14, 2022 in conjunction with the Decision of the DKI High Court Number 189/PID/2022/PT.DKI dated September 9, 2023 in conjunction with the Supreme Court's Cassation Decision No. 29 K/Pid/2023 dated January 31, 2023.
  - a. Main points of the District Court Decision: The defendant was proven legally and convincingly guilty of committing the crime of fraud;
  - b. Main points of the High Court Decision:

- The defendant's actions were proven but did not constitute a crime;
  - Release the defendant from all legal charges;
  - c. Main points of the Supreme Court Decision: Declares the defendant legally and convincingly proven guilty of committing the crime of "fraud".
  - d. The main legal considerations of the Supreme Court:
    - That the Defendant's actions have been proven to have persuaded the Victim Witness to invest in several of the Defendant's projects by promising a profit of 2% -3% per month and the capital will be returned within a period of 1 (one) year.
    - That the Defendant also promised to submit collateral in the form of a Motor Vehicle Ownership Certificate (BPKB) so that finally the Victim Witness was moved to invest his funds in the Defendant's project.
    - That after one year, the Defendant has never provided any profit and also returned the capital to the Victim Witness.
    - That the Victim Witness has several times demanded the Defendant's promise and to convince the Victim Witness, the Defendant made a debt statement and provided 3 (three) sheets of BCA Bank giro notes, but it turned out that the giro notes used as collateral were rejected on the grounds that the defendant's account balance at BCA Bank was insufficient. In fact, the Defendant had known that the funds in his bank account were insufficient.
    - That according to the facts, the defendant's actions were proven to be a trick, so that in accordance with the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 133/KK/1973 dated November 15, 1975 and the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 133 K/Pid/1989 dated July 8, 1992.
2. Second Case: Decision of the West Jakarta District Court No. 593/Pid.B/2022/PN. Jkt. Brt dated September 21, 2022 in conjunction with the Supreme Court's Cassation Decision No. 34 K/Pid/2023 dated January 31, 2023.
- a. Main Points of the District Court Decision:
    - Declares the Defendant proven to have committed the criminal act charged, but not a criminal act;
    - Releases the Defendant from all legal charges.
  - b. Main Points of the Supreme Court Decision: Declares the Defendant has been proven legally and convincingly guilty of committing the crime of "fraud"
  - c. Supreme Court's Main Considerations:
    - The Defendant is a Director of a Limited Liability Company engaged in advertising services who has received an order for advertising placement as a product broadcast on RCTI Television Station for the period of March 2020 and has paid the Defendant in full for the broadcasting service.
    - For the broadcasting and placement of the advertisement as an order from the Defendant, PT RCTI has issued an invoice to the Defendant for Rp. 13,575,438,050 (thirteen billion five hundred seventy-five million four hundred thirty-eight thousand fifty rupiah), but the Defendant did not make the payment even though the billing was carried out several times.
    - The Defendant then issued 20 (twenty) BCA checks worth the amount, but when the checks were disbursed, they were rejected by BCA Bank because the bank account had been closed.
    - The Defendant's actions in handing over checks which he knew did not contain the funds, according to Jurisprudence Number 133 K/Kr/1973 dated 15 November 1975, constitutes a trick as in Article 378 of the Criminal Code. Thus, the Defendant's actions have fulfilled all the elements of a criminal act in Article 378

of the Criminal Code in conjunction with Article 64 Paragraph (1) of the Criminal Code.

### 3. Analysis of Violation of Contract Contents as a Criminal Act of Fraud.

As previously stated, in general, violation of the contents of a contract is referred to as a breach of promise (default) and cannot be subject to criminal penalties, however, if we look at the cases that the Author has mentioned above, in reality there are exceptions in certain cases.

Based on the Cassation Decision No. 29 K/Pid/2023 and No. 34 K/Pid/2023, something that starts from an agreement and in the implementation there is a violation of the contents of the agreement can be categorized as a criminal act of fraud (not breach of promise) if the agreement contains elements of fraud including trickery, or a series of lies, moving other people (persuasion) so that other people hand over something to him and emphasized by the use of checks or giro bills that originally had no funds.

Fraud as regulated in Article 378 of the Criminal Code has elements of a person's actions with trickery, a series of lies, a false name and a false state with the intention of benefiting oneself without rights (R. Sugandi, 1980: 396-397). R. Soesilo related to Article 378 of the Criminal Code on fraud states that the fraudster's job includes 1) persuading people to give goods, make debts or write off receivables, 2) the intention of the persuasion is to benefit oneself or others against the right to persuade them by using a false name or false state, clever tricks (tricks), or fabrications of false words (R. Soesilo, 1986: 261).

The agreement which is in principle the basis of the contractual relationship, is used by the perpetrators as a tool or instrument in committing the crime of fraud in order to obtain an unlawful benefit. The use of the agreement as an instrument of the crime is a form of trickery or seduction by the perpetrators, which in certain cases is emphasized by the existence of a check or giro bill for which there are no funds submitted to fulfill their performance.

In another case, namely a criminal case with the Oelamasi District Court Decision Number 115 / Pid.B / 2022 / PN. Olm dated December 22, 2022 in conjunction with the Supreme Court Decision No. 432 K / Pid / 2023 dated May 8, 2023, the Defendant used a false situation, namely as if the Defendant had received a contract from PT IRJ regarding the Solar Power Plant Project for Solar Street Lighting (PLTS-PJU-TS) and the Defendant as the winner, and the victims would become subcontractors on the project. For this reason, the Defendant then made an agreement with the victims, the victims were asked to provide a guarantee and the victims had submitted the guarantee. In fact, the PLTS-PJU-TS Project obtained by the Defendant through the Subcontractor PT. IRJ never existed and the Ministry of Energy and Mineral Resources and PT IRJ never collaborated on a solar-powered public street lighting project, and the Ministry of Energy and Mineral Resources' 2020 project for PLTS-PJU-TS was completed in 2020 and NTT Province never received the project.

Tricks or fraud when faced with the valid requirements of an agreement as stipulated in Article 1320 of the Civil Code, are one of the things that are prohibited and are grounds for the cancellation of an agreement. This has been clearly regulated in Article 1321 of the Civil Code which states "an agreement is invalid if it is made due to an error, by coercion or fraud (bedrog)". The existence of elements of fraud in an agreement provides an implication that not all violations of the contents of the agreement are breach of promise or default but rather an unlawful act as stipulated in Article 1365 of the Civil Code as a consequence, the party who violates the contents of the agreement can be subject to criminal penalties because basically fraud is an unlawful act.

Breach of promise or default occurs when the agreement that is the basis of a contractual relationship is a valid agreement and has binding legal force as a law for the parties who make it, whereas if the agreement that is the basis of the contractual relationship is invalid because it contains elements of fraud, or the agreement is deliberately made by the

perpetrator of the crime as an instrument or tool so that the victim surrenders goods or something belonging to him, then if the perpetrator of the crime does not carry out the contents of the agreement that he made previously, it is categorized as an unlawful act, even the unlawful act has occurred when the victim surrenders the goods or something belonging to him. Rutten stated that breach of contract is a species while its genus is an unlawful act, namely concerning violations of subjective rights. Breach of contract and unlawful acts are *Lex specialis derogat Legi generali*. Breach of contract stems from an agreement, while unlawful acts stem from a law (Rosa Agustina, 2003: 46).

### **Conclusion**

Based on the cassation decision of the Supreme Court of the Republic of Indonesia No. 29 K/Pid/2023 and No. 34 K/Pid/2023, something that starts from an agreement and in the implementation there is a violation of the contents of the agreement can be categorized as a criminal act of fraud (not breach of contract) if the agreement contains elements of fraud. In Supreme Court Decision No. 432 K/Pid/2023, the Defendant used a false state, namely as if the Defendant had received the PLTS-PJU-TS Project contract for this matter, then the Defendant made an agreement with the victims. If the agreement, which in principle is the basis of the contractual relationship, is used by the perpetrators of the crime as a tool or instrument so that the victim hands over goods or something belonging to him, then if the perpetrator of the crime does not carry out the contents of the agreement he made previously, the act can be categorized as an unlawful act, namely fraud (not breach of contract), even the unlawful act or alleged fraud has occurred when the victim hands over goods or something belonging to him.

### **Acknowledgments**

Author say thank to God, my family, and all friends who support us to finish this research.

### **References**

#### **Books**

- R. Soesilo. 1986. *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*. Bogor: Politeia.
- R. Sugandhi. 1980. *Kitab Undang-Undang Hukum Pidana dengan Penjelasannya*. Surabaya: Usaha Nasional.
- Riduan Syahrani. 1999. *Rangkuman Intisari Ilmu Hukum*. Bandung : Citra Aditya Bakti.
- Rosa Agustina. 2003. *Perbuatan Melawan Hukum*. Jakarta: Pascasarjana Fakultas Hukum Universitas Indonesia.
- Setiono. 2010. *Pemahaman terhadap Metodologi Penelitian Hukum*. Surakarta : Program Pascasarjana Fakultas Hukum Universitas Sebelas Maret Surakarta.
- Sudikno, 1988. *Mengenal Hukum (Suatu Pengantar)*. Yogyakarta : Liberty.
- Wirjono Prodjodikoro. 1974. *Asas-Asas Hukum Perdata*, Cetakan VI. Bandung: Sumur.

#### **Journals**

Ayu Sundari & Yudho Taruno Muryanto. Penerapan Asas Itikad Baik Terhadap Kontrak Bagi Hasil dengan Sistem Cost Recovery dan Gross Split. *Jurnal Privat Law* Vol. VIII No. 1 Januari-Juni 2020.

Gilang Rizki Aji Putra. Manusia Sebagai Subyek Hukum. 'Adalah: *Buletin Hukum dan Keadilan*, Vol. 6, No. 1 (2022).

Septiana Dwiputri Maharani. Manusia Sebagai Homo Economicus: Refleksi Atas Kasus-Kasus Kejahatan di Indonesia. *Jurnal Filsafat*, Vol. 26, No. 1, Februari 2016.

#### Legislation and Court Decisions

Indonesian Criminal Code

Indonesia Civil Code

Decision of the Oelamasi District Court Number 115/Pid.B/2022/PN. Olm dated December 22, 2022

Decision of the West Jakarta District Court No. 438/Pid.B/2022/PN.Jkt. Brt dated July 14, 2022

Decision of the West Jakarta District Court No. 593/Pid.B/2022/PN. Jkt. Brt dated September 21, 2022

Decision of the DKI High Court Number 189/PID/2022/PT.DKI dated September 9, 2023

Supreme Court Decision No. 34 K/Pid/2023 dated January 31, 2023

Supreme Court No. 432 K/Pid/2023 dated May 8, 2023

Supreme Court Decision No. 29 K/Pid/2023 dated January 31, 2023.