

## **Application of Criminal Consequences in Cases of Breach of Contract Agreement If the Case Cannot Be Resolved Civilly**

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**Abstract.** *This research is motivated by the occurrence of a case of default which is a civil law case but the case cannot be resolved civilly so that other efforts such as criminalization are needed. However, whether the application of criminal consequences in cases outside of criminal law can be done, this requires clear legal certainty in resolving this case because if it is not resolved it can cause injustice to other parties. The research conducted by this author uses a Juridical Sociological approach. The research specifications in this study include descriptive analysis research types. There are two types of data in this study, namely primary and secondary data. The research was conducted at the Kuningan District Court Office. The data collection method used is direct field study and literature study. The data obtained is processed using qualitative analysis. If done in good faith if one party does not fulfill its obligations then this is a civil breach of contract so that it cannot be categorized as fraud. If the agreement contains bad faith in the contract agreement then it can be categorized as getting criminal consequences. Criminal consequences in cases of breach of contract can only be carried out if the case does not yet have permanent legal force. The case of breach of contract agreement that is carried out contains elements of fraud in the agreement that occurs can be criminalized legally according to applicable laws. However, agreements made in good faith cannot be punished. If forced to get an onslag decision. Criminal consequences in cases of breach of contract can only be carried out if they do not yet have legal force.*

**Keywords:** *Criminalization; Criminal Consequences; Default; Fraud; Onslag.*

### **1. Introduction**

Indonesia is one of the countries that implements criminal law that aims to control the social life of society. In general, the definition of criminal law is a rule that regulates the relationship between the state and its citizens (Public) which regulates the rights and obligations of each.<sup>1</sup>

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<sup>1</sup>Miftahur Rachman & Fathra Fahasta, 2023, Judge's Considerations in Imposing a Criminal Corruption Decision on a Debtor Who is in Default, Seikat: Journal of Social, Political, and Legal Sciences, Vol.2, No. 3, p. 357.

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This criminal law has various kinds of legal rules, the contents of which are to regulate a matter of activity that is usually carried out by citizens or legal entities that have criminal consequences in it. Criminal consequences or commonly referred to as criminal sanctions are a law that is given to anyone who has fulfilled the requirements according to the provisions of the legal rules. The rules governing Criminal Law in Indonesia are contained in the Criminal Code (KUHP) or special rules that are outside the Criminal Code.<sup>2</sup>

This research is motivated by the occurrence of a case of default which is a civil law case but the case cannot be resolved civilly so that other efforts such as criminalization are needed. However, whether the application of criminal consequences in cases outside of criminal law can be done, it requires clear legal certainty in resolving this case because if the case cannot be resolved it will cause harm and injustice to one of the other parties. In terms of understanding, default is a condition where an obligation that must be fulfilled in an agreement is not carried out, either intentionally or unintentionally.

In comparison between criminal law and civil law, there is a similarity that is interrelated in terms of the regulated object because there are several acts that are still related to criminal law. An act can be assessed from the motives of the perpetrators themselves. If the perpetrators of default do it because of bad intentions, then this gives rise to a criminal act.

Default can turn into a criminal act of fraud if it fulfills the elements of using trickery, a series of lies, a false name, and a false state with the intention of benefiting oneself.<sup>3</sup> The rules related to the crime of fraud are regulated in Article 378 of the Criminal Code. The article explains that anyone who with the intention of benefiting himself or another person against the law, either by using a false name, or false circumstances, either by means of trickery and trickery, or by fabricating false words, persuades someone to give an item, make a debt or write off a debt, is punished for fraud, with a maximum prison sentence of four years.<sup>4</sup>

The imposition of criminal consequences for perpetrators of default that harm other parties is very important. However, in addition to the fraud article, perpetrators of default can also be punished using other articles depending on how the crime occurred. These criminal consequences are carried out on the basis of law enforcement that must be enforced.

If a civil case cannot resolve a problem, then the law must still be implemented as its function, namely as a protector of human interests. Therefore, legal certainty is needed in the case. Legal certainty is justifiable protection against arbitrary actions, which means that a person will be able to obtain something that is expected in certain circumstances.<sup>5</sup>

The form of Default which is a private legal realm is marked by the existence of an agreement, either written or unwritten, but it is better if it is stated in writing to strengthen the authenticity of the agreement. In practice, Default and fraud are different contexts. Howev-

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<sup>2</sup>Reski Oktoberi & Kasmanto Rinaldi, 2023, Corruption of Village Funds in the Ditch Construction Project by Village Officials; A Criminological Review, Journal Equitable, Vol. 8, No. 1, p. 160.

<sup>3</sup>Medika Andarika Adipati, Marman AT Mokorimban & Laurens LS Hermatus, 2018, Breach of Contract Which Can Be Criminalized According to Article 378 of the Criminal Code, Lex Pratikum, Vol. 6, No. 4, p. 5.

<sup>4</sup>R. Soesilo, 1988, Criminal Code (KUHP) and its Complete Commentaries Article by Article, Politea, Bogor, pp. 260-261.

<sup>5</sup>Sudikno Mertokusumo, 2019, Understanding the Law: An Introduction, CV. Maha Karya Pustaka, Yogyakarta, p. 223.

er, this is similar if we interpret that breaking a promise is one of the defaults. The act of denying is often related to the act of lying or deceiving. With this, it is certainly hoped that cases of default can be followed up by criminal law if civil settlement does not work.

In practice, there is a legal problem that contains 2 (two) different legal fields, namely criminal law and civil law, concerning fraud that is misinterpreted by law enforcement officers. Specifically, concerning the issue of broken promises and fraud. Breach of promise here in the context of a contractual relationship which is also called breach of contract. Breach of promise is often associated with an act of fraud.

One example of a case of default is the case involving Ellen Sulisty who was sued by the director of CV Kraton Resto which caused the Sangria restaurant to be closed due to default. Ellen Sulisty, a culinary entrepreneur, was sued by Fifie Pudjihartono, Director of CV Kraton Resto. She was accused of defaulting because she did not fulfill her obligations in the agreement. Fifie Pudjihartono sued Ellen Sulisty, Effendi Pudjihartono, Kodam V Brwawijaya and KPKNL who were accused of defaulting because they unilaterally terminated the contract. Fifie said in her lawsuit that Ellen did not fulfill her obligations which caused the Sangria restaurant to be closed.<sup>6</sup>

So far, there is no prohibition or legal provision that requires a fraud case to receive a final and binding criminal court decision (*inkracht van gewijsde*) first, only then can it be sued in a civil court.<sup>7</sup> Therefore, the issue related to the application of criminal consequences in cases of default that cannot be resolved civilly becomes important. Thus, the author chose the title of this research, namely "APPLICATION OF CRIMINAL CONSEQUENCES IN CASES OF BREACH OF CONTRACT AGREEMENT IF THE CASE CANNOT BE RESOLVED CIVILLY" as the main discussion later.

## **2. Research Methods**

The research specifications in this study include the descriptive analysis research type, namely describing the applicable laws and regulations in relation to legal theories and the practice of implementing positive law concerning the problems raised in the research.<sup>8</sup> The scope of this research is limited to the study of criminal law, especially regarding the criminal consequences in cases of breach of contract agreement if the case cannot be resolved civilly.

## **3. Results and Discussion**

### **3.1. Cases of Breach of Contract Agreement Can Be Criminally Charged**

The case of default is a civil case. This is stated in the Civil Code Article 1238, the contents of which are that the debtor is declared negligent by a letter of order, or by a similar deed, or based on the power of the obligation itself, namely if this obligation causes the debtor to be

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<sup>6</sup>Nyuciek Asih, the Boss of CV Kraton Resto is Said to Have Committed Breach of Contract, <https://beritajatim.com/bos-cv-kraton-resto-disebut-melakukan-wan-prestasi> accessed on September 30, 2024 at 10.45.

<sup>7</sup>Randi Aritama, 2022, Fraud in Criminal Law and Civil Law, Sentri: Scientific Research Journal, Vol. 1, No. 3, p. 728.

<sup>8</sup>Ronny Hanitdjo Soemitro, 1990, Legal Research Methodology and Jurimetrics, Ghalamania Indonesia Jakarta, p. 97.

considered negligent by the passage of the specified time.<sup>9</sup> Because breach of contract is a civil case, the consequences that arise are also part of civil law.

The consequences that arise from this default case include the need for reimbursement of costs incurred by the violating party to the party harmed in the default. This is due to the losses and interest resulting from the failure to fulfill an obligation starting from the required thing even though the party that budgeted has been declared negligent. However, if something that must be done can only be done within a predetermined time limit. This is certainly in accordance with the legal principle of 1243 of the Civil Code.

Before this default occurs, there must be a previous obligation. One of them is that an obligation can arise because of an agreement between one party and another. Agreements have various types, but in this case of default, it will only focus on the contract agreement. To make an agreement, one party and the other must fulfill the terms of the agreement that can be fulfilled by the parties. The valid requirements of this agreement are stated in Article 1320 of the Civil Code, the contents of which are agreement, capability, certain reasons and lawful reasons.

In this there are several things that must be emphasized in making an agreement, namely there must be an agreement from both parties. This agreement must not contain errors that can cancel the agreement. The error in question is regarding the nature of the goods that are the subject of the agreement. In addition, this agreement must not contain coercion carried out by one party against the party invited to enter into the agreement. This coercion usually occurs because there are actions that give the impression of frightening the party invited to enter into this agreement.

The agreement should also not contain elements of fraud which is one of the elements that can harm a party. The agreement must involve a competent person. A competent person here means that the person is an adult and not a child, the person is not a person who is placed under amnesty. Then, this agreement only involves something that is lawful that is permitted by law to be traded. And no less important in the agreement is having a clear cause. Because if an agreement does not have a cause or contains a false or prohibited cause, then it does not have legal force.

Obligations, agreements and contracts are a unity that are interrelated with each other. According to Subekti, an obligation is a legal relationship between two parties, based on which one party has the right to demand something from the other party. Meanwhile, Abdulkadir Muhammad, SH stated that an obligation is a legal relationship that occurs between a debtor and a creditor, which is located in the field of assets.<sup>10</sup>

Based on the two definitions, it can be concluded that what is meant by an obligation is a legal relationship between two parties, where one party has the right to demand something from the other party, and the other party is obliged to fulfill the demand.<sup>11</sup> Subekti stated

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<sup>9</sup>Civil Code, Article 1238.

<sup>10</sup>Kristiane Paendong, Herts Taunamang, 2022, Legal Study of Default in Contracts and Agreements Reviewed from Civil Law, *Lex Privatum*, Vol. 10, p. 3.

<sup>11</sup>Ibid.

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that an agreement is an event in which someone promises to another person or where two people promise each other to do something.<sup>12</sup>

The form of an agreement is usually a series of words containing elements, promises, or commitments that are spoken or in writing. Article 1313 of the Civil Code states that: "An agreement is an act in which one or more people bind themselves to one or more other people."<sup>13</sup> According to Subekti, a contract is a legal event in which there are parties who make an agreement to do something or not to do something. Then from this event a legal relationship occurs between the two parties which is called an agreement.<sup>14</sup>

From the explanations above, it can be interpreted that an agreement, covenant and contract have the same meaning. However, the difference is that an agreement is more detailed than a word. Then, a contract is a more specific agreement. So a contract is part of an agreement, but an agreement is not only related to a contract. Almost everyone has a contract agreement that binds them to another party. One of the most common is an employment contract. Everyone who works as an employee or employee must have an employment contract that contains the obligations and rights of the employee.

However, if a contract that has been agreed upon by the parties contains obligations or rights that are not implemented, it will cause a new problem, namely default. This problem will cause losses for one of the parties who feels that their rights are not fully fulfilled by the other party as agreed in the contract. This will cause a new legal problem, namely default of the contract agreement.

The problem of breach of contract agreement is a civil problem which of course every problem must be implemented according to civil law. If the acquisition is brought to the realm of civil law and the parties agree to compensate and pay according to the losses incurred then the problem will be resolved. However, if the party who committed the breach of contract does not want to pay the losses paid, can it be processed under criminal law where this problem finds a dead end if resolved civilly.

The injured party and does not receive replacement goods/replacement money will certainly feel cheated by the party. The Civil Code itself has regulated the rules related to fraud in article 1328 which reads: "Fraud is a reason to cancel an agreement, if the fraud used by one party is such that it is clear that the other party would not have entered into the agreement without the trickery. Fraud cannot be simply assumed, but must be proven."<sup>15</sup>

Fraud itself is one of the criminal acts regulated in the Criminal Code which is regulated in Article 378, the contents of which are anyone who with the intention of benefiting himself or another person against the rights, either by using a false name or false circumstances, either by means of trickery and trickery, or by making up false words, persuades people to give something, make money or write off debts, is punished for fraud, with a maximum prison sentence of 4 years.

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<sup>12</sup>R. Subekti, 2009, Contract Law, Intermasa, Jakarta p. 1.

<sup>13</sup>Civil Code, Article 1313.

<sup>14</sup>R. Subekti, 1996, Contract Law, Intermasa, Jakarta, p. 1.

<sup>15</sup>Civil Code, Article 1328.



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The rules mentioned in Article 378 of the Criminal Code are interrelated with each other with cases of breach of contract agreements where there are words to benefit oneself or others against rights. This is certainly appropriate because in a breach of contract agreement there are rights that are not fulfilled, resulting in losses with the false circumstances that arise.

The case of breach of contract agreement originally started from an act of agreement carried out by the parties where there is an agreement of the parties, the parties are competent, there is a certain thing that is agreed upon, and for a lawful reason. In implementing these requirements, the parties must have good faith in making the contract agreement, there is no element of fraud or something that violates the law. However, if the contract agreement has a party that violates it, then a breach of contract arises.

If there is an element of fraud in the agreement, can this be criminalized legally according to applicable law? At this time, there are no legal provisions governing criminalization in any civil case unless the case purely contains criminal elements in it. With the uncertainty and the need for rules that provide legal certainty, the Supreme Court has issued special jurisprudence regulating agreements with unlawful acts.

The Legal Principle issued by the Supreme Court is in the form of Jurisprudence Number 4/Yur/Pdt/2018. According to Tavia Rahmawati as Deputy Chairperson of the Kuningan District Court at this time, the contents of the jurisprudence Number 4/Yur/Pdt/2018 are "that the contents of the legal principle of the parties who do not fulfill their obligations in a legally made agreement are not an act of fraud but a breach of contract that falls into the civil realm unless the agreement is based on bad faith or good things".<sup>16</sup>

From the explanation given by Tavia Rahmawati, if the agreement has fulfilled the terms of the agreement as it should be, but later on there is a party that violates it, then it is purely an act of default, not an act of fraud. So, in essence, an agreement if it is carried out in good faith or in accordance with the valid terms of the agreement, then if one party does not fulfill its obligations, then this is a civil default so that it cannot be categorized as fraud. So this action cannot be punished legally.

However, there are several other considerations that must be seen legally, one of which is if an agreement contains bad faith that intentionally harms one of the parties in the contract agreement made or there is an element of fraud, then it can be categorized as not a crime. This is in accordance with what was conveyed by Tavia Rahmawati, namely "if in the agreement there is bad faith, there is fraud or the intention is not good, then it can be included in the criminal process".<sup>17</sup>

Regarding what is meant by bad faith, there are no articles that state this. The bad faith referred to is the opposite of the Principle of Utmost Good Faith (Article 1338 of the Civil Code) which emphasizes the importance of the principle of good faith in every agreement.<sup>18</sup> Article 1338 of the Civil Code explains that "all agreements made in accordance with the law apply as laws for those who make them. The agreement cannot be withdrawn

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<sup>16</sup>Interview with Deputy Chief Justice of Kuningan District Court, May 22, 2025.

<sup>17</sup>Ibid

<sup>18</sup>HARDYLES MDKH, 2013, Legal Review of Bad Faith Parties in Insurance. Civil Law Journal, Vol 1, pp. 3-4.

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except by agreement of both parties, or for reasons determined by law. The agreement must be carried out in good faith."<sup>19</sup>

With good faith, there is no element of fraud that is fulfilled that can make the case of breach of contract agreement punishable. The elements of fraud have been mentioned in the law, namely in Article 378 of the Criminal Code and Article 492 of Law Number 1 of 2023 which will later become the new Criminal Code which will come into effect in 2026.

The elements of fraud in a criminal act include a party who intends to benefit themselves or others unlawfully by using a false name or false position, using trickery or a series of lies, inducing people to hand over goods, giving debt, making an acknowledgement of debt, or writing off receivables.

Those are the elements of fraud contained in the old Criminal Code and in Law Number 1 of 2023 concerning the Criminal Code. If the elements referred to are fulfilled in the ongoing agreement, then the case of breach of contract agreement can be prosecuted.

However, even though it can be criminalized legally, the injured party must look at the details related to this case of breach of contract agreement to ensure that the party violating the breach of contract really has bad intentions and fulfills the elements of fraud in question. If the case of breach of contract agreement is only a case of ordinary breach of contract but is forced to be continued criminally, then what will happen is that the panel of judges will give an onslag verdict.

This is as conveyed by Tavia Rahmawati as the current Deputy Chairperson of the Kuningan District Court, according to her, "if an ordinary agreement cannot be criminalized, if the terms of the agreement are met, there are goods and agreements. Because if it is forced through a criminal legal process and then tried and the panel does not find any bad faith or fraud and so on, then the decision can be onslag. Because it is included in the civil realm, not the criminal realm, so it is like that".<sup>20</sup>

This onslag decision is regulated in the Civil Procedure Code Article 191 Paragraph 2 which states that "if the court is of the opinion that the act charged against the defendant has been proven, but the act does not constitute a criminal act, then the defendant is declared free from all legal charges."<sup>21</sup>The decision of onslag or onslag van recht vervolging in Indonesian is known as a decision to release from all legal charges.

Tavia Rahmawati also argued that "the purpose of Jurisprudence No./4/Yur/Per/2018, in my personal opinion, the Supreme Court has provided guidelines for us because indeed the demands of the community if civil cases cannot be resolved, ma'am, later people will run away and people will be more afraid of criminal cases. This jurisprudence guideline is a guideline to make it clear which direction is civil and which direction is criminal because there are many cases that are forced to be criminal, but in the end the decision is still civil."<sup>22</sup>

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<sup>19</sup>Civil Code, Article 1338.

<sup>20</sup>Interview with Deputy Chief Justice of Kuningan District Court, May 22, 2025.

<sup>21</sup>Civil Code, Article 191 paragraph 2.

<sup>22</sup>Interview with Deputy Chief Justice of Kuningan District Court, May 22, 2025.

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According to the theory, the provision of criminal consequences in cases of breach of contract agreement is very important to do, and the provision of criminal penalties in cases of breach of contract if there is bad faith or elements of fraud is correct to do as in the opinion of Tavia Rahmawati as Deputy Chairperson of the Kuningan District Court. This is in accordance with several theories such as:

a) Theory of Responsibility

In the theory of criminal liability, a case of default is a legal consequence that is present as a form of responsibility carried out by a party who intentionally or has bad intentions commits a default, causing losses to other parties in the contract agreement. The theory of liability is very influential in cases of default so that the violating party can be held accountable for their actions, especially criminal liability if it meets the elements of fraud in criminal penalties.

However, criminalization can only be carried out if the party committing the default contains elements of fraud and has bad faith. If the perpetrator of the default does not fulfill the elements of fraud but is reluctant to pay or cannot pay, then it is still not criminalized because there is no legal regulation that regulates it.

In the theory of responsibility, legal settlement must be able to be implemented, if the party committing the default is reluctant to pay, then the party is not yet responsible. Therefore, criminal sanctions should be able to be implemented to fulfill this theory of responsibility by considering why the party is reluctant to pay and does not want to fulfill civil obligations. If the party committing the default is reluctant to fulfill civil obligations, it is better to carry out a criminal process to fulfill the responsibility of the party committing the default.

b) Theory of the Purpose of Punishment

The purpose of criminal punishment in cases of default, especially in contract agreements, is very important to implement. Because the purpose of criminal punishment in cases of default is to provide an impact or deterrent effect on people who intentionally and have bad intentions to commit default. According to Sudarto, the purpose of criminal punishment is:

1. Influence the perpetrator's behavior so that they do not commit crimes again, which is usually called social prevention.
2. Influence the behavior of members of society in general so that they do not commit crimes like those committed by the convict.
3. Bringing a peaceful atmosphere or conflict resolution.
4. Retaliation or recompense and guidance for the maker's mistakes.<sup>23</sup>

The purpose of this criminalization is very clear because the perpetrator of default who fulfills the elements of fraud can be prosecuted by law. However, the perpetrator of default who does not fulfill the elements of fraud cannot be prosecuted. Then, if the perpetrator of default of the contract agreement is reluctant to pay the obligation in accordance with civil provisions, then there should be a follow-up to the criminalization process. That is the purpose of the criminalization referred to in this theory. With this, the parties involved must

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<sup>23</sup>Sudarto, 1997, Criminal Law, Sudarto Foundation, Faculty of Law, UNDIP, Semarang, p. 48.



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not ignore or consider trivial matters in committing default, especially if they want to violate the contract agreement intentionally.

c) Balance theory

The theory of balance aims to be a balance for the parties, especially to provide justice for the party who feels disadvantaged in the case of a contract agreement. Criminalization in cases of default can provide balance for the parties involved in making an agreement. However, only the defaulting party who has bad faith and meets the elements of criminalization can be processed under criminal law.

The party who commits a breach of contract but is reluctant to pay according to civil law provisions still cannot be prosecuted. Of course, the parties who are reluctant to pay, even though they do not fulfill the elements of fraud, should be prosecuted in order to provide a balance for the parties, especially the injured party. This balance means that the injured party can take other legal measures, especially criminal law, if the party who violates intentionally has bad intentions in making the contract agreement.

d) Theory of wisdom

Wisdom theory aims to provide justice for the parties concerned. If there is bad faith in an agreement, it will be difficult for the case to be resolved civilly. Thus, if the elements of fraud have been fulfilled, it can be punished legally, which is a wise action in resolving the issue of non-compliance with this contractual agreement.

This policy is very important to consider, especially for parties who do not fulfill the elements of fraud but are reluctant to pay losses, it would be good if there was a policy to be able to criminalize the party. Those are the theories related to the criminalization of cases of breach of contract agreement if the case cannot be carried out civilly. These theories can be used as considerations for the Panel of Judges and the District Court to resolve the case.

As stated by Tavia Rahmawati as Deputy Chairperson of the Kuningan District Court, according to her, "if an ordinary agreement cannot be criminalized, if the terms of the agreement are met, there are goods and agreements. Because if it is forced through a criminal legal process and then tried and the panel does not find any bad faith or fraud and so on, then the decision can be onslag. Because it is included in the civil realm, not the criminal realm, so it is like that".<sup>24</sup>

So there must be other alternatives to resolve this default problem so that it can be resolved and get good results. The purpose of getting good results is that the injured party gets compensation that is equivalent to the losses incurred due to the default of the contract agreement.

So, the alternative settlement of this default is by filing a security seizure during the trial process during the interim decision. Interim decisions according to article 185 HIR are explained that in paragraph 1, namely "decisions that are not final decisions, although they must be pronounced in the trial as well, are not made individually, but are only carried out in the trial report fiber".<sup>25</sup>

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<sup>24</sup>Interview with Deputy Chief Justice of Kuningan District Court, May 22, 2025.

<sup>25</sup>Herzien Inlandsch Reglement, Article 185 paragraph 1.

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Seizure of written collateral in article 227 HIR or 261 RBg. Article 227 HIR (Herzien Inlandsch Reglement) explains that in paragraph 1 if there is a reasonable suspicion that a debtor, while the decision has not been made by his superiors or while the decision against him cannot be executed, is trying to embezzle or carry away his goods, either non-permanent or permanent, with the intention of dropping the goods from the debt collector, then upon a written request from the interested person, the chairman of the district court can give an order that the goods be seized to protect the rights of the person who submitted the request, and the requester must be notified that he will appear in the first district court hearing after that to advance and strengthen his lawsuit.<sup>26</sup>

In the process, the person who owes must be summoned by order of the chairman to appear in court. Then, regarding the person who must carry out the confiscation and regarding the rules that must be followed, as well as the consequences related to it, articles 197, 198, and 199 also apply. On the appointed day, the case is examined as usual, if the lawsuit is rejected, then the confiscation is ordered to be revoked. Then, the revocation of the confiscation in all cases can be requested, if sufficient collateral or other guarantees are appointed.

From Article 227 HIR, Soesilo explained that Article 227 "determines a legal action if there is a reasonable suspicion that a debtor, against whom a judge's decision has not been issued or there is a judge's decision that cannot be executed, is trying to embezzle or transport his goods that cannot be lifted or his goods that can be lifted in order to keep the goods away from the creditor, then the judge upon application with a letter of intent from the interested party can give an order to seize such goods to protect the rights of the person who submitted the application."<sup>27</sup>

In addition, the applicant is required to provide information regarding the right to sue and the purpose of the seizure process. In the application letter, he must also explain what actions or incidents can indicate that the debtor is trying to distance his assets from the party who gave the debt.<sup>28</sup>

In this case, the judge has the freedom to accept the application for confiscation or not. At the time of the confiscation, the applicant is notified to appear in court on the day set by the judge. To file a lawsuit. Then, R Soesilo explained that "if the confiscation is approved, then it becomes a confiscation due to ordinary execution which is also called "executory" confiscation. It should be noted here that every action by the person whose goods are confiscated, which is contrary to or violates this confiscation action is void according to law and can also be subject to criminal penalties as stated in articles 231 and 232 of the Criminal Code".<sup>29</sup>

The submission of a collateral seizure in a case of breach of contract is indeed permitted as stated by Tavia Rahmawati as Deputy Chairperson of the Kuningan District Court, according to which "so in this default lawsuit, it is permissible to file a collateral seizure in an interim decision, and the Kuningan District Court has already done so, namely in case Number 10/Pdt.G/2023/PN Kng. So, at the time of the initial filing of the lawsuit, the plaintiff filed a

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<sup>26</sup>Ibid, Article 227 paragraph 1.

<sup>27</sup>R. Soesilo, 1995, RIB/HIR With Explanation, Politea, Bogor, p. 165.

<sup>28</sup>Ibid.

<sup>29</sup>Ibid, p. 166.

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collateral seizure and during the evidentiary trial process. The Panel of Judges issued a ruling on the collateral seizure. So it granted the collateral seizure and the ruling on the collateral seizure process was in the middle of the trial".<sup>30</sup>

### **3.2. Legal Consequences in the Breach of Contract Case Have Been Tried in Civil Court and Have Final Legal Effect, However the Defendant is Reluctant to Fulfil the Decision**

Criminal consequences in cases of breach of contract can only be carried out if the breach of contract case does not yet have permanent legal force or has never been tried by any court. A breach of contract case that has permanent legal force in civil law can be tried again even if the lawsuit is filed criminally. This is because there is a principle of *Ne bis In Idem* which means that a person cannot be sued again for the same act if the act has been decided by a court to have permanent legal force.

The principle of *Ne bis In Idem* is stated in Article 76 paragraph 1 of the Criminal Code. According to R Soesilo, the purpose of this principle is to prevent the government from repeatedly discussing the same incident, so that in one incident there are several different decisions that will reduce the people's trust in their government, once a person is a defendant, they must be given peace of mind, people should not be allowed to continue to feel threatened by the danger of being prosecuted again in an incident that has been decided once.<sup>31</sup>

So, a case of default that has already had civil law cannot be prosecuted. Criminal consequences can only be carried out before this case of default has permanent legal force. According to Tavia Rahmawati as Deputy Chief Justice of the Kuningan Court, she explained that "so if for example this case of default is forced to the criminal process because it does not receive compensation, it has been prosecuted if it does reach the criminal process in court, it will later consider whether there is bad faith".<sup>32</sup>

So, the parties who are harmed in a breach of contract case are afraid that if it is not resolved civilly, they will not get any results, aka losses. However, the panel of judges will only consider continuing the criminal process if there is bad faith in the agreement. In addition, the criminal consequences of a breach of contract case can only be processed criminally if it meets the elements of fraud. The elements of fraud referred to here are that the goods promised do not belong to him in their entirety, for example a land lease agreement that is contracted for 5 years but the land does not belong to the person in the contract agreement so that it is detrimental to the party who is violated because they have to be evicted from the land prematurely.

Then, another element of fraud is a procedural defect in the legal requirements for making an agreement that is not his right in its entirety. In addition, if there is something hidden in the agreement, it can be categorized as an element of fraud. If the element of fraud is fulfilled, it can be criminalized, but if it is not fulfilled and it is purely real, it is only a matter of ordinary default, then it cannot be criminalized. If forced criminally, the decision can be declared onslag by the Panel of Judges.

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<sup>30</sup>Interview with Deputy Chief Justice of Kuningan District Court, May 22, 2025.

<sup>31</sup>R. Soesilo, 1988, Criminal Code (KUHP) and Complete Article by Article Commentaries, Politea, Bogor, p. 90.

<sup>32</sup>Interview with Deputy Chief Justice of Kuningan District Court, May 22, 2025.

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Therefore, there are several things that must be considered by the Panel of Judges before declaring onslag in every default decision just because there is no element of fraud in the contract agreement. Because if it is not considered, it will cause concern if the loss due to default will not be paid. Several principles that must be considered by the panel of judges include:

a) Theory of Responsibility

According to Roeslan Saleh's theory of criminal responsibility in a broad sense, there are three areas, including:

1. The ability to be responsible for the person who committed the act.
2. The inner relationship (psychic attitude) of the person who commits the act with the act:
  - a. an act that is intentional, or
  - b. actions that are negligent, negligent, careless.
3. There is no reason to eliminate criminal liability for the creator.<sup>33</sup>

From the explanation above, the act of breach of contract agreement must first be seen whether the person who committed the breach of contract has the ability to be responsible or not. This can be seen if the losses resulting from the breach of contract must first be calculated as a whole. In the contract agreement that is made, it can be seen whether there is an object or goods that are promised or not, if there is then it can be used as collateral, but if there is not, only the loss must be paid.

However, if the person who commits a breach of contract is reluctant to pay according to the agreement, or is reluctant to pay compensation even though he is able to do so in terms of his economic condition, then the Panel of Judges should consider criminal punishment because the person does not have good intentions in carrying out the legal process.

Then, the actions of the person who committed the breach of contract must also be considered by the Panel of Judges. The act can be seen whether the breach of contract occurred because of an element of intent, or whether it was due to carelessness, negligence, and lack of caution. If in the process there is clearly an element of intent in the breach of contract, then this is an unlawful act.

With these elements, the Panel of Judges can consider the criminal consequences of the perpetrator. Then, the last reason is that there is no reason for the elimination of ongoing responsibility because if it is not resolved civilly because the perpetrator of the breach of contract is negligent in civil law, then a criminal act should be carried out to be held accountable for his actions.

b) Theory of the Purpose of Punishment

According to Sudarto, the purpose of criminal punishment is:

1. Influence the perpetrator's behavior so that they do not commit crimes again, which is usually called social prevention.
2. Influence the behavior of members of society in general so that they do not commit crimes like those committed by the convict.

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<sup>33</sup>Roeslan Saleh, 1999, Criminal Acts and Criminal Responsibility, Aksara Baru, Jakarta, p. 93.

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3. Bringing a peaceful atmosphere or conflict resolution.

4. Retaliation or recompense and guidance for the maker's mistakes.<sup>34</sup>

The purpose of criminalization in cases of default is not without reason, of course this is done because it raises concerns regarding the accountability of the person who committed the default but was not resolved properly because the person neglected his obligations.

The imposition of criminal consequences in cases of breach of contract agreement is to influence the behavior of people who breach the contract and intentionally ignore or are reluctant to take responsibility for the losses experienced so as not to take such actions because there is a criminal threat that arises. This is called social prevention. Then, to influence the general public not to breach the contract and intentionally ignore their obligations as was done by this convict.

Another objective in this theory of punishment is to bring about a peaceful atmosphere in resolving the conflict, so that it does not cause concern for the parties involved in the agreement because they are afraid of being cheated by the related parties in the agreement because in addition to the civil consequences, such cases can be criminalized if they meet fraud and bad faith. And the last is as retaliation and guidance from the mistakes of the perpetrators of this default so that they do not arbitrarily intentionally violate the agreement which causes losses to other parties in the agreement.

#### c. Balance theory

This theory was first put forward by Roeslan Saleh who said that punishment must accommodate the interests of society, the perpetrator and also the victim. Punishment cannot only pay attention to the interests of society, or the interests of the perpetrator, but must also pay attention to the feelings of the victim and his family.<sup>35</sup> If we only focus on the perpetrator, we will get a very individualistic picture of punishment, which only pays attention to the perpetrator's rights and ignores his obligations.<sup>36</sup>

So, in this theory, punishment must accommodate the interests of society where almost every society has a binding relationship or agreement in living their lives such as work contracts, rent and others. So, the Panel of Judges in considering the theory of balance to provide criminal consequences which must not ignore the obligations of the perpetrators.

If the perpetrators of the default do not want to pay the losses incurred but there are no criminal consequences incurred, then the law only pays attention to the rights of the perpetrators and ignores their obligations. Thus, there is a lack of synchronicity or imbalance that will only harm the party whose rights are violated in the contract agreement.

#### d) Theory of wisdom

According to Sternberg, wisdom is an assessment of an individual's understanding of the problems they have and involves solutions as alternative solutions to their problems that

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<sup>34</sup>Sudarto, 1997, Criminal Law, Sudarto Foundation, Faculty of Law, UNDIP, Semarang, p. 48.

<sup>35</sup>Roeslan Saleh, 1987, Indonesian Criminal System, Aksara Baru, Jakarta, pp. 4–5.

<sup>36</sup>Syarif Saddam Rivanie, Syamsuddin Muchtar, Audyna Mayasari Muin, AM Djaelani Prasetya, Ali Rizky, 2022, Development of Theories of the Purpose of Punishment, Halu Oleo Law Review, Vol. 6, No. 2. p.182.



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maximize various kinds of balance between themselves (interpersonal), other people (intrapersonal), and various aspects of their life (extrapersonal).<sup>37</sup>

This theory aims for the parties to be serious and wise in resolving cases of breach of contract agreement. In addition, as a consideration for both the Panel of Judges and the district court to be able to provide criminal consequences in the case. The wisdom here is that the court should be able to assess that even though there is no element of fraud in the agreement, but at the time of resolving the case, the person in default is reluctant to compensate for the loss, then alternative steps must be taken such as criminalization. This should be able to happen because there is an element of bad faith at the time of resolving the case.

These are the theories that can be used as considerations for providing criminal consequences for perpetrators who commit breach of contract but are unwilling to pay compensation for losses resulting from not keeping the promise.

However, before filing a lawsuit, the injured party cannot directly criminalize the matter, especially if the agreement is just an ordinary agreement. This is because the court will reject the lawsuit that is reported criminally because if it is forced, it will get an onslag decision.

The party harmed by the breach of contract must provide a warning letter and a summons to resolve the case outside the court first to ensure that the perpetrator of the breach of contract has good intentions or not. If various efforts have been made but are unsuccessful, it can be reported to the court and then evidence of bad intentions carried out by the reported party is also attached.

This is done to facilitate the provision of criminal consequences because everyone tends to be more afraid of being punished criminally than civilly. Although sued criminally, the injured party can file a claim for compensation for unlawful acts. This is regulated in Article 1365 of the Civil Code which explains that every act that violates the law and causes harm to another person, requires the person who caused the loss due to his mistake to replace the loss.<sup>38</sup>

So, the provision of criminal consequences aims only as a means of legal responsibility that has not been resolved, as guidance and an example for other individuals rather not trivializing default, as a balancer and as a means of justice. However, if there is good faith that is done by the defaulter, then the case should be carried out civilly or as it is natural.

If the case of breach of contract agreement has been tried but the defendant is reluctant to pay his obligations and during the court process no collateral seizure was submitted, then according to Tavia Rahmawati as Deputy Chair of the Kuningan District Court, "he can estimate the goods to pay".<sup>39</sup> This is because cases of default that already have legal force cannot be prosecuted by law.

For the confiscation process carried out by the plaintiff, it can be done by filing a confiscation process for the fulfillment of the demands of the civil case decision to the court. Then

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<sup>37</sup>Robert Sternberg & Jennifer Jordan, 2005, *A Handbook of Wisdom: Psychological Perspective*, Cambridge University Press. New York, p. 196.

<sup>38</sup>Civil Code, Article 1365.

<sup>39</sup>Interview with Deputy Chief Justice of Kuningan District Court, May 22, 2025.

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after that, there are other processes such as amanning or warnings from the losing party who pays for mediation. After these things are done, it can be seen first whether the defendant can pay the losses due to default or not.

In addition, the requirements for filing a seizure execution must be met correctly. Because, if it is not met correctly, it will still not be carried out. This is the same as what Tavia Rahmawati said, namely "To file it in court, later there will be a process called amaning or a warning from the losing party or the one who pays, mediation later on how can it be paid or not, then he also has to count the goods and the requirements for filing a seizure execution must be correct, if not correct then it cannot be done".<sup>40</sup>

That is an alternative settlement of a default case if the defendant has not fulfilled his obligations as in the decision issued by the court. The alternative is in the form of a process of confiscation of the defaulter's goods assisted by the court. This can be done if the criminal consequences in a default case cannot be applied because the case has already had permanent and binding legal force.

#### **4. Conclusion**

So, the conclusion of the explanation is that if the case of breach of contract agreement that is carried out contains elements of fraud in the agreement that occurs, it can be prosecuted legally according to applicable laws. However, an agreement that is made in good faith or in accordance with the valid terms of the agreement, then if one party does not fulfill its obligations, then this is a civil breach of contract so that it cannot be categorized as fraud. So this action cannot be prosecuted legally. If the case of breach of contract agreement is only an ordinary case of breach of contract but is forced to be continued criminally, then what will happen is that the panel of judges will give an onslag decision.

Criminal consequences in cases of breach of contract can only be carried out if the breach of contract case does not yet have permanent legal force or has never been tried by any court. A breach of contract case that has permanent legal force in civil law can be tried again even if the lawsuit is filed criminally. This is because there is a principle of *Ne bis In Idem* which means that a person cannot be sued again for the same act if the act has been decided by a court to have permanent legal force.

However, the parties who are harmed in a breach of contract case are afraid that if it is not resolved civilly, they will not get any results, aka losses. In addition, the panel of judges will only consider continuing the criminal process if the agreement contains bad faith and meets the elements of fraud. If a criminally enforced decision can be declared onslag by the Panel of Judges.

Therefore, there are several things that must be considered by the Panel of Judges before declaring onslag in every default decision just because there is no element of fraud in the contract agreement. Because if it is not considered, it will cause concern if the loss due to default will not be paid. Several principles that must be considered by the panel of judges include:

a) Theory of Responsibility

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<sup>40</sup>ibid

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If the perpetrators of the default do not want to pay the losses incurred but there are no criminal consequences incurred, then the law only pays attention to the rights of the perpetrators and ignores their obligations. Thus, there is a lack of synchronicity or imbalance that will only harm the party whose rights are violated in the contract agreement.

d) Theory of wisdom

This theory aims for the parties to be serious and wise in resolving cases of breach of contract agreement. In addition, as a consideration for both the Panel of Judges and the district court to be able to provide criminal consequences in the case. The wisdom here is that the court should be able to assess that even though there is no element of fraud in the agreement, but at the time of resolving the case, the person in default is reluctant to compensate for the damages, then alternative steps must be taken such as criminal sanctions. This should be able to happen because there is an element of bad faith at the time of resolving the case.

These are the theories that can be used as considerations for providing criminal consequences for perpetrators who commit default but are unwilling to pay compensation for losses resulting from not keeping the promise.

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