

Mens Rea and Ultimum Remedium in Distinguishing Breach of Contract from Fraud: Analysis of Indonesian Supreme Court Decision No. 4/Yur/Pid/2018

***Chandi Aulia^a, Amanda Adelina Harun^a, Nurifana Umar^a, Ahmad Ridhwan Abd Rani^b**

^a Fakultas Hukum, Universitas Negeri Gorontalo, Indonesia

^b Faculty of Syariah and Law, Universiti Sains Islam Malaysia, Malaysia

*Correspondensi author: chandiaulia5@gmail.com

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Abstract

The intersection between breach of contract (wanprestasi) and the criminal offense of fraud in contractual relationships creates legal issues in determining the boundary between civil and criminal liability. Previous studies generally discuss elements of fraud, breach of contract, and the principle of good faith separately, resulting in a lack of research that specifically analyzes Supreme Court Decision Number 4/Yur/Pid/2018 by integrating the perspectives of mens rea, the principle of good faith, and civil liability. This study aims to analyze the juridical construction employed by the Supreme Court in distinguishing breach of contract from fraud and to examine civil liability arising from breach of contract containing elements of fraud. This study is normative legal research using statutory, case, and conceptual approaches. The novelty of this study lies in the application of the perspectives of mens rea and the principle of ultimum remedium as instruments to limit the criminalization of contractual disputes in analyzing Supreme Court Decision Number 4/Yur/Pid/2018. The findings show that the existence of mens rea from the initial formation of the agreement serves as the main parameter in distinguishing breach of contract from fraud, while contractual violations without malicious intent remain within the scope of civil law, with remedies in the form of specific performance, compensation, or contract termination. This study also finds that the decision has not provided detailed parameters regarding the limits of mens rea and the principle of good faith, which may lead to differing interpretations in judicial practice. Therefore, further development of jurisprudence and legal doctrine is required to strengthen legal certainty in the settlement of contractual disputes.

Keywords: Breach of Contract; Fraud; Mens Rea; Good Faith; Civil Liability.

Abstrak

Persinggungan antara wanprestasi dan tindak pidana penipuan dalam hubungan kontraktual menimbulkan persoalan dalam menentukan batas antara pertanggungjawaban perdata dan pidana. Penelitian terdahulu umumnya membahas unsur penipuan, wanprestasi, maupun asas itikad baik secara terpisah, sehingga belum terdapat penelitian yang secara khusus menganalisis Putusan Mahkamah Agung Nomor 4/Yur/Pid/2018, dengan mengintegrasikan perspektif mens rea, asas itikad baik, dan pertanggungjawaban perdata. Penelitian ini bertujuan untuk menganalisis konstruksi yuridis Mahkamah Agung dalam membedakan wanprestasi dan tindak pidana penipuan serta menganalisis pertanggungjawaban perdata terhadap wanprestasi yang mengandung unsur penipuan. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan perundang-undangan, kasus, dan konseptual. Kebaruan penelitian ini terletak pada penggunaan perspektif mens rea dan asas ultimum remedium sebagai instrumen pembatas kriminalisasi sengketa kontraktual dalam menganalisis Putusan Mahkamah Agung Nomor 4/Yur/Pid/2018. Hasil Penelitian menunjukkan bahwa keberadaan mens rea sejak awal



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pembentukan perjanjian menjadi parameter utama dalam membedakan wanprestasi dan penipuan, sedangkan pelanggaran kontraktual tanpa adanya niat jahat tetap berada dalam ranah hukum perdata dengan mekanisme pemulihan berupa pemenuhan prestasi, ganti rugi, atau pembatalan perjanjian. Kajian ini juga menemukan bahwa putusan tersebut belum memberikan parameter yang rinci mengenai batas *mens rea* dan asas itikad baik sehingga masih berpotensi menimbulkan perbedaan penafsiran dalam praktik peradilan. Oleh karena itu, penelitian ini merekomendasikan agar Mahkamah Agung mengembangkan yurisprudensi yang lebih konsisten serta memperjelas parameter mengenai *mens rea* dan asas itikad baik sebagai pedoman bagi hakim dalam membedakan wanprestasi dan tindak pidana penipuan sehingga tercipta kepastian hukum dalam penyelesaian sengketa kontraktual.

Kata Kunci: Wanprestasi; Penipuan; *Mens Rea*; Itikad Baik; Pertanggungjawaban Perdata.

INTRODUCTION

An agreement is a legal relationship that gives rise to rights and obligations for each party. Agreements that are legally made are binding on the parties based on the principle of *pacta sunt servanda*, so that the parties are obliged to exercise their rights and obligations in accordance with the content of the agreement.¹ However, in practice, not all agreements can run according to the agreement, so they can cause default. In civil law, default basically causes consequences in the form of obligations to fulfill achievements, compensation, or other forms of civil liability.² In judicial practice, not all disputes arising from contractual relationships are resolved through civil law mechanisms. There are cases that problematic the failure to fulfill achievements as a criminal act of fraud by postulating the existence of an element of deception in the implementation of the agreement.³ This phenomenon shows that there is a connection between the realm of civil law and criminal law, and raises problems regarding the boundary between default and criminal acts of fraud.

Default is part of the realm of civil law that aims to restore the rights of the aggrieved party. However, the development of legal practice shows that disputes that originate in contractual relationships are not always resolved through civil mechanisms.⁴ The party who feels aggrieved chooses to use criminal law instruments by postulating the existence of an element of fraud in the implementation of the agreement. This situation shows that there is a crossover between civil law and criminal law in practice often raises debates about the difference between a breach of contract and an act that constitutes a criminal act.⁵

¹ Muhammad Husni Abdulah Pakarti, Ija Suntana, dan Ramdani Wahyu Sururie, "Application Of Legal Maxims In Contract Law: Pacta Sunt Servanda And Islamic Rules On Promises," *Lex Scientia Law Review* 9, no. 1 (Mei 2025): 1223–51, <https://doi.org/10.15294/lsr.v9i1.20858>.

² Muzakir Syah S. Mohamad, Mutia Cherawaty Thalib, dan Nurul Fazri Elfikri, "Kepastian Hukum Dalam Penyelesaian Sengketa Pelanggaran Perjanjian Lisan Yang Berpotensi Terjadi Pelanggaran Hukum," *RechtJiva*, 2035, 420–37, <https://doi.org/10.21776/rechtjiva.v2n3.2>.

³ Aldi Ferdiansyah, Berdi Adityas Wiryawan Wahyono, dan Almansyah Harahap, "Efektivitas Mediasi Sebagai Alternatif Penyelesaian Sengketa Perdata Dalam Meningkatkan Akses Keadilan Di Indonesia," *Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 1, no. 4 (September 2025): 471–80.

⁴ Chelsea Kairadinda Adam Cantika Tresna Rahayu, *Legal Protection for Injured Parties in Default*, November 9, 2024, <https://doi.org/10.5281/ZENODO.14058588>.

⁵ Randi Aritama, "FRAUD IN CRIMINAL LAW AND CIVIL LAW," *CENTRI: Journal of Scientific Research* 1, no. 3 (November 2022): 728–36, <https://doi.org/10.55681/sentri.v1i3.283>.

Article 1243 of the Criminal Code emphasizes that non-conformity in fulfilling an agreement creates an obligation to provide compensation to the party who suffers losses.⁶ On the other hand, the crime of fraud in criminal law requires that there be an act that is done to gain profit for oneself or other parties unlawfully by using a false identity, a series of tricks, or a series of lies. Thus, the main difference between default and fraud is that there is an element of intentionality and bad faith that accompanies the action.⁷

Although there are clear differences normatively, their application in practice is not always easy to do. In many cases, failure to meet contractual obligations is often perceived as a criminal act of fraud. It is not uncommon for criminal channels to be used as a means to exert pressure on the opposing party in a contract dispute.⁸ This phenomenon raises complex legal issues because it can blur the line between civil liability and criminal liability. As a result, legal certainty in the settlement of contractual disputes is disturbed and has the potential to lead to the application of criminal sanctions to legal relations which are essentially included in the civil realm.⁹

The problem of the difference between default and crime. Fraud is important because the determination of the qualification of an act is not only influenced by the consequences caused, but also by the will behind it.¹⁰ In judicial practice, the element of *mens rea* or malicious intent has a central role. If from the beginning of the establishment of the agreement there has been an intention to deceive the other party, therefore, such action can be considered a criminal act of fraud. On the other hand, if the failure to fulfill the achievement occurs without malicious intent from the beginning, then the act is in principle a default that is the domain of civil law.¹¹

The determination of the boundary between default and fraud is highly dependent on the judge's assessment of the facts, evidence, and related legal elements.¹² In this context, Supreme Court Decision Number 4/Yur/Pid/2018 has an important meaning as a rule of jurisprudence that emphasizes that failure to fulfill contractual obligations cannot necessarily be criminalized as fraud. The Supreme Court affirmed that a new act can be qualified as fraud if it is proven that there is malicious intent from the beginning of the formation of the agreement. This rule shows that there is a correlation between the realm of civil law and criminal law. in matters that originate from a contractual relationship. Civil law is oriented towards the restoration of rights through the fulfillment of achievements or compensation, while criminal law focuses on the responsibility of the

⁶ Syaiful Badri, Pristika Handayani, and Tri Anugrah Rizki, "Compensation for Unlawful Acts and Defaults in the Civil Law System," *JURNAL USM LAW REVIEW* 7, no. 2 (July 2024): 974–85, <https://doi.org/10.26623/julr.v7i2.9440>.

⁷ Dina Elisa Putri, Elly Sudarti, and Elizabeth Siregar, "The Crime of Fraud Through Digital Applications (The Idea of Accountability Thinking by Banks)," *PAMPAS: Journal of Criminal Law* 5, no. 1 (March 2024): 72–87, <https://doi.org/10.22437/pampas.v5i1.31716>.

⁸ Yahman, *Characteristics of Default & Fraud* (Prenada Media, 2017).

⁹ Yogie Fahrissal, *Criminal Law Enforcement in Land Tenure Disputes* (Adab Publishers, t.t.).

¹⁰ Tania Winata and Ade Adhari, "The Basis of Criteria in Determining the Existence of Fraud and Default in Supreme Court Jurisprudence No.4/Yur/Pid/2018," *UNES Law Review* 6, no. 4 (June 2024): 10643–50, <https://doi.org/10.31933/unesrev.v6i4.2026>.

¹¹ Andi Bau Mallarangeng et al., "Proof of the Element of Intention Associated with the Element of *Mens Rea* in the Crime of Corruption," *Legal Journal of Law* 2, no. 2 (November 2023): 11–24.

¹² Alwan Hadiyanto, Emy Hajar Abra, and Linayati Lestari, "Tricks in the Perspective of Criminal Law: An Analysis of Judges' Juridical Reasoning in Determining the Elements of Fraud," *JURNAL USM LAW REVIEW* 8, no. 2 (June 2025): 836–48, <https://doi.org/10.26623/julr.v8i2.12062>.

perpetrator for acts that meet the elements of a criminal act.¹³ Therefore, clear parameters are needed to determine the limits of the application of the two legal regimes.

The research conducted by W. Nurpasa discusses the application of criminal consequences in default cases that contain elements of fraud. The study shows a link between contractual violations and fraudulent crimes, but still focuses on criminal consequences in general and has not analyzed civil liability based on Supreme Court Decisions with the same decision number as the author studied.¹⁴ Rina Fitriana and Ahmad Zainuddin examined the breach of agreement that can be qualified as a criminal act of fraud. The research focuses on conceptual analysis of the boundaries between the civil and criminal domains, but has not examined the application of the Supreme Court's jurisprudence rules and their implications for civil liability.¹⁵ Fery Andika's research examines the qualifications of a dispute over the sale and purchase of a house as a default or criminal act as well as the appropriate form of legal settlement. Both studies have similarities in terms of discussion of the boundary between default and criminal acts in contractual relationships. However, the study focuses on the analysis of a first-instance court decision and the settlement of defaults through civil law mechanisms, and cannot be said to be a general guideline in determining the boundaries between default and fraud, including an analysis of the elements of *mens rea*, the principle of good faith, and civil liability.¹⁶

Research on proving the element of *mens rea* in fraud has been carried out through a study of the Study of the Proof of Elements of Evil Intent (*Mens Rea*) of the Board of Directors of the Debtor in the A.P that Have an Impact on Creditors: Harmony of Bankruptcy Law with the Provisions of Fraud Crimes. The research focuses on proving the malicious intent of the debtor's directors in bankruptcy cases as well as synchronization between the bankruptcy legal mechanism and criminal liability for fraud. Although both discuss the element of *mens rea* as the basis for criminal liability, the study does not examine the element of malicious intent in the contractual relationship between the parties, nor its relation to the distinction between default and criminal acts of fraud.¹⁷ Research conducted by N.A.S Sinaga on the Study of the Role of the Principle of Good Faith in the Fulfillment of Justice of the Parties in the Treaty Relationship discusses the importance of the principle of good faith as a basis for the parties in the implementation of the agreement in order to create justice, legal certainty, and a balance of rights and obligations. The two studies have similarities in the study of the principle of good faith in contractual relationships. However, the study places good faith as a general principle in the implementation of agreements, while this study examines good faith as a parameter

¹³ M. Irsan Arief M.H S. H., *Civil Nuances in Criminal Cases* (MCL Publisher, 2023).

¹⁴ WIBOWO NURPASA, "THE APPLICATION OF CRIMINAL CONSEQUENCES IN CASES OF BREACH OF CONTRACT AGREEMENT IF THE CASE CANNOT BE RESOLVED CIVILLY" (masters, Sultan Agung Islamic University Semarang, 2025), <https://repository.unissula.ac.id/41692/>.

¹⁵ Rina Fitriana & Ahmad Zainuddin, *Breach of Agreement as a Criminal Crime of Fraud*, (West Java) 10 No 2 (2022).

¹⁶ Fery Andika, "JURIDICAL ANALYSIS OF THE SETTLEMENT OF DEFAULTS IN THE SALE AND PURCHASE OF HOUSES (STUDY OF DECISION NUMBER 30/PID. B/2022/PN. IDI)," *Jurist Argumentum: Legal Intellectual Thought* 3, no. 1 (July 2025), <https://doi.org/10.35308/jjm.v3i1.12116>.

¹⁷ Beriman Jaya Nazara and Roida Nababan, "Proof of the Element of Malicious Intent (*Mens Rea*) of the Debtor's Directors in Actio Pauliana That Harms Creditors: Synchronization of Bankruptcy Laws and Fraud Crimes," *Journal of Social and Science* 5, no. 10 (October 2025): 3521–29, <https://doi.org/10.59188/jurnalsosains.v5i10.32529>.

to assess the boundary between default and acts that have contained elements of fraud, especially in the application of the legal principles of the Supreme Court Decision.¹⁸

Based on previous research, studies on defaults and fraud crimes are still carried out separately. Some of the research focuses on the elements of fraud and criminal consequences, while others discuss the differences in the qualifications of judges' decisions, the concept of *mens rea*, and the principle of good faith in agreements. This research focuses on a juridical analysis of the Supreme Court Decision Number 4/Yur/Pid/2018 in determining the boundary between default and fraud. The novelty of this research lies in the integration of the analysis of *mens rea* elements, the principle of good faith, and civil liability as parameters to distinguish default and fraudulent crimes, which have not been comprehensively studied in previous studies.

RESEARCH METHODS

This research is included in the normative legal research category which relies on three main types of approaches. The study of regulations is carried out through a legislative approach to trace norms related to defaults and fraudulent crimes. Furthermore, the case approach is used to examine the arguments and legal considerations in the Supreme Court Decision Number 4/Yur/Pid/2018 which is used as the focus of the analysis. Meanwhile, a conceptual approach is used to describe various legal concepts such as default, fraud, *mens rea*, good faith, and forms of legal liability based on the thoughts of legal experts.

This research is supported by various types of legal materials used in accordance with their functions in the analysis, namely primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are the main foundation that comes from binding normative provisions, including the 1945 Constitution, the Criminal Code, Supreme Court Decisions, and various other laws and regulations that are related to the object of research. On the other hand, secondary legal materials are used to provide explanations and strengthen analysis of primary legal materials. The sources come from scientific literature such as law books, academic journals, research results, and various scientific works relevant to the topic being studied. The tertiary legal material is positioned as a supporting tool that helps clarify the legal terms used in research. The sources include legal dictionaries, the Great Dictionary of the Indonesian Language, and various additional references that support the understanding of concepts.

The collection of legal materials in this study was carried out through literature studies by tracing various written sources related to the object of research. The collected legal materials are then processed through the stages of inventory, identification, and grouping according to the relevance of each to the problem being studied. Furthermore, the analysis of legal materials is carried out qualitatively using descriptive-analytical methods. This process is carried out through the interpretation of the provisions of laws and regulations, legal doctrines, and considerations in court decisions that are relevant to the focus of the research. in the Supreme Court Decision Number 4/Yur/Pid/2018 to gain an understanding of the boundaries between default and fraud as well as forms of civil liability arising in contractual relationships.

¹⁸ Niru Anita Sinaga, "The Fundamental Role of Good Faith in Realizing Justice of the Parties in Agreements," *M-Progress 8 Scientific Journal*, no. 1 (2018), <https://doi.org/10.35968/m-pu.v8i1.186>; Kusumastuti, Dora, Rian Saputra, and Nilam Firmandayu. 2025. "Good Faith in the United States' International Reciprocal Tariff Agreements: Safeguarding Indonesian Domestic Products". *Substantive Justice International Journal of Law* 8 (2):163-83. <https://doi.org/10.56087/substantivejustice.v8i2.512>.

RESULTS AND DISCUSSION

Juridical Construction of the Supreme Court in Distinguishing Default and Fraud Crimes

Supreme Court Decision Number 4/Yur/Pid/2018 formulates legal rules that serve as guidelines in determining the boundary between default and fraud in contractual relationships. The legal rules formulated by the Supreme Court affirm that failure to fulfill obligations born from an agreement is basically a default that is the domain of civil law. An act cannot be directly qualified as a criminal act of fraud just because it causes harm to one of the parties. On the other hand, fraud can only be proven if from the beginning of the formation of the agreement there has been an intention to mislead or harm the other party.¹⁹

These considerations show that the distinction between default and fraud does not lie in the consequences caused, but in the source of the violation that occurred. Default is rooted in the non-fulfillment of the agreed performance, while fraud is related to the existence of actions that hurt the agreement formation process.²⁰ Thus, the existence of a contractual relationship does not automatically eliminate the possibility of a criminal act, but also cannot be used as a basis for criminalizing every breach of contract that occurs.²¹

In interpreting the boundaries between the civil and criminal spheres, the Supreme Court uses a systematic and teleological interpretation approach. Systematic interpretation can be seen from the attempt to connect the element of fraud in criminal law with the principles of civil law regarding agreements and defaults. Meanwhile, the teleological interpretation can be seen from the orientation of the Supreme Court to maintain the function of criminal law as the ultimate remedium, which is the last step taken when it is used when an act truly fulfills the elements of a criminal act. This approach provides protection for legal certainty and prevents the use of criminal instruments as a tool of pressure in resolving contractual disputes.

The approach used by the Supreme Court is in line with the development of modern contract law which places the settlement of contractual disputes through civil law mechanisms as the main option, while the use of criminal law can only be carried out if it is proven that there is an element of fraud that has existed since the beginning of the formation of legal relations. In the development of the doctrine of contract law, the principle is intended to maintain a balance between protection for the aggrieved party and legal certainty for the parties bound by the agreement.²²

Therefore, not every failure to meet the achievement can be automatically qualified as a criminal offense, because criminal law still requires the existence of an element of error (*mens rea*) that can be proven based on legal facts in the trial. Such an approach also strengthens the function of criminal law as the *ultimate remedium*, so that it is not used as a means of resolving every dispute that is essentially a breach of contract

¹⁹ Dea Novitasari, "Pertanggungjawaban Pidana Pelaku Penipuan dengan Modus Kerja Sama usaha," *Jurnal Hukum Lex Generalis* 7, no. 7 (April 2026), <https://doi.org/10.56370/jhlg.v7i7.3434>.

²⁰ Satiah Satiah and Riska Ari Amalia, "A Study of Default in Covenant Relationships," *JATISWARA* 36, no. 2 (August 2021): 126–39, <https://doi.org/10.29303/jtsw.v36i2.280>.

²¹ Ardy Dwi Cahyono, "CIRI WANPRESTASI DAN TINDAK PIDANA PENGGELOPAN YANG LAHIR DARI HUBUNGAN KONTRAKTUAL," *NOVUM: JURNAL HUKUM* 3, no. 4 (Oktober 2016): 52–60, <https://doi.org/10.2674/novum.v3i4.17899>.

²² Adi Wijaya, Eli Tri Kursiswanti, dan Maria Ana Liwa, "LIMITS OF DEFAULT AND FRAUD IN LOAN AGREEMENTS," *JILPR Journal Indonesia Law and Policy Review* 6, no. 3 (Juni 2025): 254–60, <https://doi.org/10.56371/jirpl.v6i3.506>.

Analysis of Mens Rea Elements and the Basis of Good Faith as Parameters for Differentiating Default and Fraud

The problem of the boundary between default and fraud basically arises because both forms of violations can cause losses to other parties. However, losses arising from the non-fulfillment of achievements do not necessarily indicate the existence of a criminal act. In the perspective of modern contract law, the existence of a contractual relationship must still be respected as long as the parties carry out their rights and obligations in good faith. Therefore, the assessment of the existence of malicious intent from the stage of contract formation is an aspect that determines whether a case remains in the realm of civil law or has met the elements of fraud.²³

The main problem in distinguishing default and fraud lies in the absence of parameters that can be expressly used to determine when a contractual breach remains in the realm of civil law and when it has fulfilled the elements of fraud. In judicial practice, this condition often causes differences in interpretation because not every failure to meet the achievement indicates malicious intent from the beginning of the agreement.

The results of the analysis show that the Supreme Court placed the *element of mens rea* as the main parameter in distinguishing default and fraudulent crimes. This element is reflected in the existence of malicious intentions that existed before or at the time the agreement was made. The emphasis on *mens rea* shows that criminal law pays attention not only to the act committed, but also to the inner state of the perpetrator when the act is committed.²⁴ Therefore, failure to fulfill achievements after the birth of the agreement cannot immediately be considered fraud if no evidence is found to show malicious intent from the beginning of the legal relationship. Thus, *proof of mens rea* is the main indicator to assess whether a failure to meet achievements is pure default or has contained elements of fraud.

In addition to the element of *mens rea*, the principle of good faith as stated in Article 1338 paragraph 3 of the Criminal Code is also an important parameter in determining the boundary between default and fraud.²⁵ This principle requires the parties to carry out the agreement honestly, appropriately, and with regard to the interests of the other party. In the context of a contractual relationship, an assessment of good faith is necessary to find out whether the failure to meet the performance occurred due to circumstances that arose after the agreement was made or that there was an intention to harm the other party from the beginning.²⁶

In the development of contract law, the principle of *good faith* is no longer interpreted only as an obligation to carry out the content of the agreement honestly, but also includes the behavior of the parties from the negotiation stage, contract formation, implementation to the end of the contractual relationship. Thus, the assessment of good

²³ N. Ike Kusmiati, "Legal Standing of Pre-Contractual Good Faith Principle as a Law Reformation of Indonesian Contract Law," *International Journal of Science and Society (IJSOC)* 2, no. 1 (Maret 2020): 73–85, <https://doi.org/10.54783/ijssoc.v2i1.61>.

²⁴ Rizki Romandona and Bukhari Yasin, "Legal Analysis of the Principles of Mens Rea and Actus Reus in the Case of the Murder of Brigadier Nofriansyah Yosua Hutabarat (Case Study in the Decision of the South Jakarta District Court No. 796/Pid.B/2022/Pn Jkt.Sel)," *JUSTITIABLE - Legal Journal* 6, no. 2 (January 2024): 1–12, <https://doi.org/10.56071/justitable.v6i2.817>.

²⁵ Satiah Satiah and Riska Ari Amalia, "A Study of Default in Covenant Relationships," *JATISWARA* 36, no. 2 (August 2021): 126–39, <https://doi.org/10.29303/jtsw.v36i2.280>.

²⁶ Ni Made Cahya Kirana Dewi et al., "Violation of the Principle of Good Faith in Article 1338 of the Civil Code by the First Party in a Lease Contract," *Al-Zayn : Journal of Social Sciences & Law* 3, no. 6 (December 2025): 10712–18, <https://doi.org/10.61104/alz.v3i6.2842>.

faith is not only focused on the implementation of achievements, but also on whether from the beginning one of the parties has provided misleading information or concealed circumstances that the other party should have known. This understanding strengthens the argument that the existence of *mens rea* cannot be separated from the assessment of the good faith of the parties during the entire contractual process.²⁷

From the perspective of legal certainty, the absence of uniform indicators regarding *mens rea* proof has the potential to cause disparity in verdicts in cases that have similar characteristics. This condition causes the judge's assessment of an act to often depend on the interpretation of the evidence presented at trial. Therefore, it is necessary to develop more objective parameters regarding the relationship between the elements of *mens rea*, the principle of good faith, and the facts that show the existence of deception since the beginning of the formation of the contract. With these parameters, the distinction between default and fraud can be applied more consistently so as to increase legal certainty in resolving contractual disputes.²⁸

However, Supreme Court Decision Number 4/Yur/Pid/2018 still leaves problems related to the parameters of *mens rea* proof. The ruling has not provided a detailed indicator of the size of malicious intent that can be applied uniformly in each case. As a result, the assessment of the existence of *mens rea* still depends heavily on the judge's interpretation of the facts and evidence presented in the trial. This condition has the potential to cause differences in the application of the law in cases that have similar characteristics so that the development of more concrete jurisprudence is still needed to strengthen legal certainty. As a result, the assessment of the existence of *mens rea* and the limits of good faith still depends heavily on the judge's interpretation of the facts and evidence in the trial so that it has the potential to cause differences in the application of the law in cases that have characteristics similar.

Application of Civil Liability for Defaults Containing Elements of Fraud

Civil liability is a legal consequence that arises from the non-performance of obligations that have been agreed upon in a contractual relationship. In the case of default that contains elements of fraud, civil law still provides room for recovery for the aggrieved party through various available mechanisms.²⁹ The form of accountability for these efforts can be realized in the form of fulfilling achievements, paying compensation, or canceling agreements, according to the characteristics of the violations that occurred. The existence of this mechanism shows that civil law has the main function of restoring the rights and interests of the aggrieved party due to contractual violations.³⁰

Supreme Court Decision Number 4/Yur/Pid/2018 emphasizes that failure to implement achievements that are not accompanied by malicious intent from the beginning must be placed as a default whose settlement is carried out through a civil law mechanism.

²⁷ Muhammad Amin Sentosa, Siti Malikhatun Badriyah, dan Yunarto, "Good Faith Principles in International Business Contract Law," *International Journal of Law and Politics Studies* 5, no. 2 (April 2023): 27–33, <https://doi.org/10.32996/ijlps.2023.5.2.3>.

²⁸ Yuvita Tri Mardiana dkk., "Reconstructing Prosecutorial Epistemology for Substantive Justice in Contract Law: A Comparative Philosophical and International Legal Analysis of Indonesia and Kazakhstan," *PATTIMURA Legal Journal*, 14 Oktober 2025, 328–253, <https://doi.org/10.47268/pela.v4i3.22780>.

²⁹ Dwi Alfianto, Ali Rido, and Geraldo Valento Wijaya, "Civil Liability and Liability in Cases of Default and Unlawful Acts," *Journal of Community Service: Empowerment, Innovation and Change* 4, no. 6 (November 2024), <https://doi.org/10.59818/jpm.v4i6.986>.

³⁰ Markus Suryoutomo et al., "Civil Liability in Cases of Default and Unlawful Acts :," *Journal of Collaborative Science* 8, no. 4 (April 2025): 2018–23, <https://doi.org/10.56338/jks.v8i4.7261>.

In this case, the aggrieved party can demand the fulfillment of the agreement, payment of compensation, cancellation of the agreement, or other forms of legal remedy in accordance with the provisions of the Criminal Code.³¹ Thus, the use of criminal instruments can no longer be carried out only on the grounds that one of the parties suffers losses due to the non-implementation of achievements.

The civil liability mechanism essentially aims to restore the balance of rights and obligations of the parties due to contractual violations. In contrast to criminal law which is oriented towards sanctioning perpetrators, civil law focuses more on recovering losses suffered by the aggrieved party through the fulfillment of achievements, payment of compensation, and cancellation of agreements. In line with that, Bryhinets explained that civil liability for breach of contract basically serves to restore the legal standing of the aggrieved party through a compensation mechanism, while encouraging the parties to fulfill contractual obligations in accordance with the content of the agreement. Thus, the existence of an element of fraud in a contractual relationship does not necessarily eliminate the right of the aggrieved party to obtain civil redress. On the contrary, the civil mechanism remains the main instrument as long as the dispute is related to the exercise of rights and obligations born from the agreement.³²

Another implication of the ruling is the creation of guidelines that can clarify for law enforcement officials in handling similar cases to distinguish between civil and criminal disputes. This ruling also serves to prevent the criminalization of contractual disputes which are essentially violations of civil obligations. However, the absence of more detailed parameters regarding the measure of *mens rea* and good faith still has the potential to cause differences in interpretation in practice. Therefore, further development of doctrine and jurisprudence is needed so that the boundaries between default and fraud can be applied more consistently, thereby providing stronger legal certainty for the parties.

CONCLUSION

Based on the results of the research, it can be concluded that the Supreme Court Decision Number 4/Yur/Pid/2018 makes an important contribution in establishing a conceptual and juridical boundary between default and the crime of fraud in contractual relationships. The ruling affirms that failure to fulfill the achievements in an agreement cannot necessarily be qualified as a criminal offense, even if it causes losses to other parties. The criminal qualification can only be applied if there is an *element of mens rea* in the form of malicious intent or a will to commit deception that has existed since the stage of forming the agreement. Through a systematic and teleological interpretation approach, the Supreme Court strengthened the principle of criminal law as *the ultimate remedium*, so that disputes arising from violations of contractual obligations essentially remain the domain of civil law.

This study also shows that the elements of *mens rea* and the principle of good faith are fundamental indicators in determining the legal character of a contractual violation. The existence of *mens rea* is the main differentiator between default and fraud, while the basis of good faith serves as a normative instrument to assess the honesty, propriety, and

³¹ Imelda Martinelli et al., "BEHAVIORAL INCONSISTENCIES IN AGREEMENT AGREEMENTS (STUDY OF SUPREME COURT DECISION NUMBER 3686 K/PDT/2024)," *NUSANTARA: Journal of Social Sciences* 12, no. 5 (August 2025): 1966–75, <https://doi.org/10.31604/jips.v12i5.2025.1966-1975>.

³² Oleksandr Bryhinets, "Civil Liability for Breach of Contract," *Economics. Finances. Law* 3, no. (2022): 19–21, <https://doi.org/10.37634/efp.2022.3.4>.

sincerity of the parties in implementing the agreement. However, Supreme Court Decision Number 4/Yur/Pid/2018 has not formulated operational and measurable parameters regarding *mens rea* proof and concrete limits of good faith. This condition has implications for the judge's discretion in assessing the facts, evidence, and context of legal events presented at trial, so that it has the potential to cause variations in the application of the law in cases that have similar characteristics.

In the perspective of legal liability, this study emphasizes that contractual violations that are not accompanied by malicious intent from the beginning must be resolved through civil law mechanisms as the main instrument of legal protection for the parties. The forms of recovery that can be provided include the fulfillment of achievements, payment of compensation, and cancellation of agreements in accordance with the legal principles of the agreement. These findings show that the orientation of default settlement does not focus on punishment, but rather on restoring the balance of rights and obligations of the parties in the contractual relationship. Therefore, it is necessary to develop more comprehensive juridical guidelines regarding *mens rea indicators* and the implementation of the principle of good faith in order to increase legal certainty, consistency of court decisions, and prevent criminalization of purely contractual civil disputes.

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BIBLIOGRAPHY

- Alfianto, Dwi, Ali Rido, dan Geraldo Valento Wijaya. "Pertanggungjawaban Perdata Dan Tanggung Gugat Dalam Perkara Wanprestasi Dan Perbuatan Melawan Hukum." *Jurnal Pengabdian Masyarakat: Pemberdayaan, Inovasi Dan Perubahan* 4, no. 6 (November 2024). <https://doi.org/10.59818/jpm.v4i6.986>.
- Andika, Fery. "ANALISIS YURIDIS PENYELESAIAN WANPRESTASI JUAL BELI RUMAH (STUDI PUTUSAN NOMOR 30/PID.B/2022/PN.IDI)." *Jurist Argumentum: Pemikiran Intelektual Hukum* 3, no. 1 (Juli 2025). <https://doi.org/10.35308/jjm.v3i1.12116>.
- Aritama, Randi. "PENIPUAN DALAM HUKUM PIDANA DAN HUKUM PERDATA." *SENTRI: Jurnal Riset Ilmiah* 1, no. 3 (November 2022): 728–36. <https://doi.org/10.55681/sentri.v1i3.283>.
- Badri, Syaiful, Pristika Handayani, dan Tri Anugrah Rizki. "Ganti Rugi Terhadap Perbuatan Melawan Hukum Dan Wanprestasi Dalam Sistem Hukum Perdata." *JURNAL USM LAW REVIEW* 7, no. 2 (Juli 2024): 974–85. <https://doi.org/10.26623/julr.v7i2.9440>.
- Bryhinets, Oleksandr. "Civil Liability for Breach of Contract." *Economics. Finances. Law* 3, no. (2022): 19–21. <https://doi.org/10.37634/efp.2022.3.4>.
- Cahyono, Ardy Dwi. "CIRI WANPRESTASI DAN TINDAK PIDANA PENGELAPAN YANG LAHIR DARI HUBUNGAN KONTRAKTUAL." *NOVUM: JURNAL HUKUM* 3, no. 4 (Oktober 2016): 52–60. <https://doi.org/10.2674/novum.v3i4.17899>.
- Cantika Tresna Rahayu, Chelsea Kairadinda Adam. *Perlindungan Hukum Terhadap Pihak yang Dirugikan Dalam Wanprestasi*. 9 November 2024. <https://doi.org/10.5281/ZENODO.14058588>.
- CLA, Dr Yogie Fahrissal, SH ., MM ., MH. *Penegakan Hukum Pidana dalam Sengketa Penguasaan Tanah*. Penerbit Adab, t.t.
- Dewi, Ni Made Cahya Kirana, Dewa Ayu Putri Sukadana, Komang Satria Wibawa Putra, dan Gusti Ayu Eviani Yuliantari. "Pelanggaran Asas Itikad Baik Pasal 1338 KUHPerdata Oleh Pihak Pertama Dalam Kontrak Sewa." *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 3, no. 6 (Desember 2025): 10712–18. <https://doi.org/10.61104/alz.v3i6.2842>.
- Elisa Putri, Dina, Elly Sudarti, dan Elizabeth Siregar. "Tindak Pidana Penipuan Melalui Aplikasi Digital (Gagasan Pemikiran Pertanggungjawaban Oleh Bank)." *PAMPAS: Journal of Criminal Law* 5, no. 1 (Maret 2024): 72–87. <https://doi.org/10.22437/pampas.v5i1.31716>.
- Ferdiansyah, Aldi, Berdi Adityas Wiryawan Wahyono, dan Almansyah Harahap. "Efektivitas Mediasi Sebagai Alternatif Penyelesaian Sengketa Perdata Dalam Meningkatkan Akses Keadilan Di Indonesia." *Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 1, no. 4 (September 2025): 471–80.
- Hadiyanto, Alwan, Emy Hajar Abra, dan Linayati Lestari. "Tipu Muslihat Dalam Perspektif Hukum Pidana: Analisis Penalaran Yuridis Hakim Dalam Menentukan Unsur Penipuan." *JURNAL USM LAW REVIEW* 8, no. 2 (Juni 2025): 836–48. <https://doi.org/10.26623/julr.v8i2.12062>.
- Kusumastuti, Dora, Rian Saputra, and Nilam Firmandayu. 2025. "Good Faith in the United States' International Reciprocal Tariff Agreements: Safeguarding Indonesian Domestic Products". *Substantive Justice International Journal of Law* 8 (2):163-83. <https://doi.org/10.56087/substantivejustice.v8i2.512>.

- Kusmiati, N. Ike. "Legal Standing of Pre-Contractual Good Faith Principle as a Law Reformation of Indonesian Contract Law." *International Journal of Science and Society (IJSOC)* 2, no. 1 (Maret 2020): 73–85. <https://doi.org/10.54783/ijssoc.v2i1.61>.
- Mallarangeng, Andi Bau, Mustari, Firman, dan Ismail Ali. "Pembuktian Unsur Niat Dikaitkan Dengan Unsur *Mens Rea* Dalam Tindak Pidana Korupsi." *Legal Journal of Law* 2, no. 2 (November 2023): 11–24.
- Mardiana, Yuvita Tri, Fendi Setyawan, Muhammad Arief Amrullah, Ayu Herlin Norma Yunita, dan Dametken Medikhanovna Turekulova. "Reconstructing Prosecutorial Epistemology for Substantive Justice in Contract Law: A Comparative Philosophical and International Legal Analysis of Indonesia and Kazakhstan." *PATTIMURA Legal Journal*, 14 Oktober 2025, 328–253. <https://doi.org/10.47268/pela.v4i3.22780>.
- Martinelli, Imelda, Destiana Vani Candra, Devika Graciella Gunawan, dan Kaniko Dyon Gerald. "KETIDAKSESUAIAN PERILAKU DALAM PERJANJIAN KESEPAKATAN (STUDI PUTUSAN MAHKAMAH AGUNG NOMOR 3686 K/PDT/2024)." *NUSANTARA : Jurnal Ilmu Pengetahuan Sosial* 12, no. 5 (Agustus 2025): 1966–75. <https://doi.org/10.31604/jips.v12i5.2025.1966-1975>.
- M. Irsan Arief,. *Nuansa Perdata Dalam Perkara Pidana*. MCL Publisher, 2023.
- Mohamad, Muzakir Syah S., Mutia Cherawaty Thalib, dan Nurul Fazri Elfikri. "Kepastian Hukum Dalam Penyelesaian Sengketa Pelanggaran Perjanjian Lisan Yang Berpotensi Terjadi Pelanggaran Hukum." *RechtJiva*, 2035, 420–37. <https://doi.org/10.21776/rechtjiva.v2n3.2>.
- Muhammad Husni Abdulah Pakarti, Ija Suntana, dan Ramdani Wahyu Sururie; "Application Of Legal Maxims In Contract Law: Pacta Sunt Servanda And Islamic Rules On Promises." *Lex Scientia Law Review* 9, no. 1 (Mei 2025): 1223–51. <https://doi.org/10.15294/lsr.v9i1.20858>.
- Nazara, Beriman Jaya, dan Roida Nababan. "Pembuktian Unsur Niat Jahat (*Mens Rea*) Direksi Debitor Dalam Actio Pauliana Yang Merugikan Kreditur: Sinkronisasi Hukum Kepailitan Dan Tindak Pidana Penipuan." *Jurnal Sosial Dan Sains* 5, no. 10 (Oktober 2025): 3521–29. <https://doi.org/10.59188/jurnalsosains.v5i10.32529>.
- Novitasari, Dea. "Pertanggungjawaban Pidana Pelaku Penipuan dengan Modus Kerja Sama usaha." *Jurnal Hukum Lex Generalis* 7, no. 7 (April 2026). <https://doi.org/10.56370/jhlg.v7i7.3434>.
- NURPASA, WIBOWO. "PENERAPAN KONSEKUENSI PIDANA DALAM KASUS WANPRESTASI PERJANJIAN KONTRAK JIKA PERKARA TIDAK DAPAT DISELESAIKAN SECARA PERDATA." Masters, Universitas Islam Sultan Agung Semarang, 2025. <https://repository.unissula.ac.id/41692/>.
- Rina Fitriana & Ahmad Zainuddin. *Wanprestasi Perjanjian sebagai Tindak Pidana Penipuan*. (Jawa Barat) 10 No 2 (2022).
- Romandona, Rizki, dan Bukhari Yasin. "Analisis Hukum Asas *Mens Rea* Dan *Actus Reus* Dalam Kasus Pembunuhan Brigadir Nofriansyah Yosua Hutabarat (Studi Kasus Dalam Putusan Pn Jakarta Selatan No. 796/Pid.B/2022/Pn Jkt.Sel)." *JUSTITIABLE - Jurnal Hukum* 6, no. 2 (Januari 2024): 1–12. <https://doi.org/10.56071/justitable.v6i2.817>.
- Satiah, Satiah, dan Riska Ari Amalia. "Kajian Tentang Wanprestasi Dalam Hubungan Perjanjian." *JATISWARA* 36, no. 2 (Agustus 2021): 126–39. <https://doi.org/10.29303/jtsw.v36i2.280>.

- “Kajian Tentang Wanprestasi Dalam Hubungan Perjanjian.” *JATISWARA* 36, no. 2 (Agustus 2021): 126–39. <https://doi.org/10.29303/jtsw.v36i2.280>.
- Sentosa, Muhammad Amin, Siti Malikhatun Badriyah, dan Yunarto. “Good Faith Principles in International Business Contract Law.” *International Journal of Law and Politics Studies* 5, no. 2 (April 2023): 27–33. <https://doi.org/10.32996/ijlps.2023.5.2.3>.
- Sinaga, Niru Anita. “PERANAN ASAS ITIKAD BAIK DALAM MEWUJUDKAN KEADILAN PARA PIHAK DALAM PERJANJIAN.” *JURNAL ILMIAH M-PROGRESS* 8, no. 1 (2018). <https://doi.org/10.35968/m-pu.v8i1.186>.
- Suryoutomo, Markus, Mohammad Solekhan, Sri Murni, Hamdani, dan Saryana. “Tanggung Jawab Perdata Dalam Kasus Wanprestasi Dan Perbuatan Melawan Hukum :” *Jurnal Kolaboratif Sains* 8, no. 4 (April 2025): 2018–23. <https://doi.org/10.56338/jks.v8i4.7261>.
- Wijaya, Adi, Eli Tri Kursiswanti, dan Maria Ana Liwa. “LIMITS OF DEFAULT AND FRAUD IN LOAN AGREEMENTS.” *JILPR Journal Indonesia Law and Policy Review* 6, no. 3 (Juni 2025): 254–60. <https://doi.org/10.56371/jirpl.v6i3.506>.
- Winata, Tania, dan Ade Adhari. “Dasar Kriteria Dalam Menentukan Adanya Penipuan Dan Wanprestasi Dalam Yurisprudensi Mahkamah Agung Nomor No.4/Yur/Pid/2018.” *UNES Law Review* 6, no. 4 (Juni 2024): 10643–50. <https://doi.org/10.31933/unesrev.v6i4.2026>.
- Yahman,. *Karakteristik Wanprestasi & Tindak Pidana Penipuan*. Prenada Media, 2017.