



When a Breach of Contract Becomes Fraud

Breach of contract under (known as “wanprestasi”) Indonesian law is set out in Article 1238 and 1243 of Indonesian Civil Code. Wanprestasi is a condition where a contracting party (i) did not fulfill the obligation in the contract (ii) fulfill the obligation, but beyond the required time period (iii) perform the obligation, but not as required in the contract (iv) Perform certain things that is prohibited in the contract.

On the other hand, fraud is regulated in Article 378 Indonesian Criminal Code where any person who intends to unlawfully benefit himself or another party either by assuming a false name or capacity, or craftiness, or series of lies, induces someone to deliver any property or to negotiate a loan or to annul a debt.

It is noteworthy that breach of contract and fraud are two different legal matters. Consequently, it takes two different legal actions to exercise. Unlike most of common law jurisdictions, Indonesian law does not recognize claim of fraud where the plaintiff may request the opposing party to pay compensation. Fraud is merely considered as violation of criminal law instead. Therefore, the victim should report such fraud to the police instead of filing a claim to the court. On the contrary, breach of contract allows the affected party to file a civil claim to the court.

The main distinction between fraud and breach of contract is in the intention of the party. To be considered as a fraud, there has to be a bad intention before contract signing. Any bad intention after contract execution that resulting failure to perform obligation can be considered as breach of contract. One of the indications to identify whether a breach of contract can be considered as fraud it has to be proved whether there is any false representation or information (material fact) stated in the contract.

In practice, it is quite difficult to bring a breach of contract event into a fraud case. The following court decisions of criminal case indicates that – without a strong and legitimate evidence to prove there is a bad

intention before contract signing – the judges consider failure to perform an obligation under a contract as breach of contract.

Medan Distric Court Decision Number 2533 /Pid.B/2013/PN.Mdn provides that the agreement is valid since there is an evidence of down payment receipt for selling an area of land in Medan. The fact that the defendant did not fulfil his obligation after receiving down payment is not a fraud. The defendant action is considered as breach of contract. Eventhough the victim witness testified that the land is not owned by the defendant, the judges did not consider the testimony. The judges consider there is no evidence presented in court relating to the land ownership, then dispute should be settled by filing civil claim to the court. This decision was then reaffirmed by Supreme Court through Decision Number 1206 K/Pid/2014.

Supreme Court Decision 424 K/Pid/2008 stated that between the defendant and the victim entered into agreement regarding the profit-sharing of an electronic phone credit, where the victim is the capital owner. The defendant did not share the profit with the victim as the capital owner. The victim demand payment and the defendant did not pay full, so the defendant still has a debt Rp 21.829.520,00 to the victim. The defendant promises to pay the outstanding debt no later than October 13, 2006. The judges stated that the relation between the defendant and the victim is a loan agreement, in which such relation is in the jurisdiction of a private relation.

It is common knowledge that civil proceedings in Indonesia is lengthy where to obtain a final and binding court decision it may take two years. Hence, it is understandable that they prefer to make police report rather than filing lawsuit to the court. By filing police report they want to put pressure on opposing party and wish to settle the dispute outside the court. (MJN).

The above article should not be deemed as legal advice in any way. Please contact the author at marulijn@adplaws.com if you have further queries on this matter.