

CRIMINALIZATION OF CIVIL DISPUTES AS A FORM OF ABUSE OF POWER IN LAW ENFORCEMENT

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Abstract

The criminalization of civil disputes has become one of the major issues in the Indonesian law enforcement system. This phenomenon occurs when disputes arising from contractual relationships, particularly breaches of contract, are processed through criminal law mechanisms under allegations of fraud or embezzlement. Such practices create legal uncertainty by blurring the distinction between civil and criminal law. Furthermore, the use of criminal law as a tool to resolve contractual disputes potentially constitutes an abuse of power by law enforcement officers and contradicts the principle of *ultimum remedium*. This study employs normative legal research supported by empirical data using statutory, conceptual, and case approaches. Primary legal materials include the Indonesian Criminal Code, Civil Code, Criminal Procedure Code, and Supreme Court Decision Number 358 K/Pid/2020. The analysis applies legal certainty theory, law enforcement theory, legal protection theory, and authority theory through qualitative juridical analysis. The study concludes that the criminalization of civil disputes may constitute an abuse of power whenever criminal law is applied to contractual relationships lacking criminal intent (*mens rea*). Such practices undermine legal certainty, weaken legal protection, reduce public trust in the justice system, and negatively affect the investment climate. Therefore, stronger legal guidelines distinguishing civil disputes from criminal offenses, consistent implementation of the *ultimum remedium* principle, improved professionalism of law enforcement officers, and comprehensive legal education are necessary to ensure fair law enforcement.

Keywords: criminalization, civil disputes, abuse of power, legal certainty, law enforcement.

INTRODUCTION

As a state based on the rule of law—as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia—Indonesia requires that the exercise of all authority be conducted in accordance with the law. A key consequence of this principle is the clear separation between the realms of civil law and criminal law, ensuring that legal issues are resolved through mechanisms appropriate to their specific characteristics. In law enforcement practice, however, this boundary is not always consistently applied. Many disputes arising from contractual relationships or breaches of contract are instead processed as criminal offenses by invoking Article 378 of the Criminal Code (fraud) or Article 372 of the Criminal Code (embezzlement). This situation is known as the criminalization of civil disputes.

This phenomenon has grown alongside the increasing use of criminal complaints as a means to pressure parties perceived as having failed to fulfill their contractual obligations.

Consequently, criminal law ceases to function as an instrument for protecting the public interest and instead transforms into a tool for resolving private disputes—matters that properly fall within the domain of civil law. This issue received significant attention in Supreme Court Decision Number 358 K/Pid/2020, which ruled that the legal relationship between the parties was contractual in nature and thus did not satisfy the elements of a criminal offense. The Supreme Court affirmed that a failure to fulfill contractual obligations does not automatically constitute a criminal offense absent evidence of initial criminal intent.

This decision serves as a crucial precedent for establishing a clear boundary between a breach of contract and a criminal offense. Beyond providing legal certainty, the ruling demonstrates that applying criminal law to contractual disputes can be categorized as an abuse of power when done without an adequate legal basis. Based on this context, this article addresses two research questions: (1) whether the criminalization of civil disputes can be classified as an abuse of power by law enforcement officials; and (2) what implications the criminalization of civil disputes has for legal certainty, justice, and legal protection for the public. This formulation aligns with the research focus of the thesis upon which this article is based.

METHOD

This study employs a normative legal research method supported by empirical data. The normative approach was selected because the research focuses on examining the legal norms governing the boundary between civil and criminal law, while empirical data serves to illustrate the implementation of these norms in law enforcement practice. The study examines legislation, legal doctrine, court rulings, and interviews with law enforcement officials regarding the phenomenon of criminalizing civil disputes. The methodologies utilized include the statute approach, the conceptual approach, and the case approach. The statute approach is used to analyze provisions within the Criminal Code (KUHP), the Civil Code (KUHPerdata), the Criminal Procedure Code (KUHAP), and other legal provisions concerning the authority of law enforcement officials. The conceptual approach is employed to examine theories of legal certainty, law enforcement, legal protection, and legal authority. Furthermore, the case approach is used to analyze Supreme Court Decision Number 358 K/Pid/2020, a ruling that establishes a clear distinction between breach of contract and criminal offenses.

Primary legal materials in this study consist of legislation and court rulings, while secondary legal materials comprise law books, scholarly journal articles, research findings, and expert opinions. All legal materials are analyzed using a qualitative juridical method—

involving inventory, classification, interpretation, and legal argumentation—to derive a conclusion that comprehensively addresses the research problem.

RESULTS AND DISCUSSION

The Criminalization of Civil Disputes as a Form of Abuse of Power in Law Enforcement

Indonesia adheres to a legal system that makes a clear distinction between criminal law and civil law. Criminal law serves to protect the public interest by imposing sanctions on acts that meet the elements of a criminal offense, whereas civil law aims to resolve disputes regarding the rights and obligations of parties within private legal relationships. This distinction is a pillar of the rule of law, intended to ensure legal certainty and prevent the arbitrary exercise of authority. In practice, however, this boundary often becomes blurred. Many disputes arising from a breach of contract are reported as criminal offenses—specifically fraud or embezzlement. This situation reveals a tendency to use criminal law instruments to gain an advantage in resolving civil disputes; criminal law thus shifts from a means of public protection to a tool for pressuring a party perceived as having failed to fulfill contractual obligations.

Doctrinally, a breach of contract constitutes a failure to perform as agreed, thereby entitling the aggrieved party to seek specific performance, the annulment of the contract, or compensation for damages through civil legal mechanisms. Consequently, a breach of contract cannot automatically be classified as a criminal offense simply because one party has suffered an economic loss. In contrast, the criminal offense of fraud requires the existence of malicious intent from the very inception of the legal relationship. The perpetrator must intend to unlawfully benefit themselves or another person through the use of deceit or a series of falsehoods. If a legal relationship is validly established from the outset and the parties proceed to execute the agreement, but one party subsequently fails to fulfill their obligation, the matter remains, in principle, within the realm of civil law.

According to Soerjono Soekanto, the effectiveness of law enforcement is heavily influenced by the quality of law enforcement officials. The professionalism of these officials determines whether a legal event is accurately classified under applicable legal provisions. Errors in identifying the nature of a case can lead to legal uncertainty and result in injustice for the public. The phenomenon of criminalizing civil disputes demonstrates that the authority of law enforcement officials can potentially be exercised beyond the scope of its intended purpose. From the perspective of state administrative law, such actions can be categorized as an abuse of authority specifically, the exercise of authority in a manner inconsistent with the objectives established by law. While officials possess the authority to conduct inquiries and investigations

into alleged criminal acts, this authority must be exercised professionally, objectively, and based on evidence indicating the presence of criminal elements.

Ridwan HR explains that an abuse of authority occurs when an official exercises their power for a purpose that deviates from the original intent behind granting that power. In the context of criminalizing civil disputes, such a deviation occurs when investigative powers are deployed against contractual relationships that are clearly better resolved through civil litigation. Such practices not only violate the principle of legality but also contravene the principle of **ultimum remedium**—the doctrine that criminal law should serve only as a last resort when other legal instruments are no longer capable of providing legal protection. Relying on criminal law as the primary means of resolving breaches of contract leads to overcriminalization, which runs counter to modern criminal law policy.

Furthermore, the criminalization of civil disputes creates opportunities for certain parties to abuse the legal process. Many criminal complaints are filed not to uphold the law, but rather as a negotiating tactic to compel the opposing party to meet specific demands. Consequently, criminal proceedings are transformed into an instrument of psychological or economic pressure against parties involved in a contractual dispute. From the perspective of legal protection, this situation is detrimental to all parties involved. The accused party is deprived of legal certainty, as they are forced to undergo criminal proceedings for a dispute that is essentially private in nature. Meanwhile, law enforcement agencies expend resources handling cases that could—and should—be resolved through civil litigation. Ultimately, this diminishes the effectiveness of the criminal justice system in addressing criminal acts that genuinely harm the public interest.

Therefore, clearer standards are required to distinguish between a breach of contract and a criminal offense. Key indicators—such as the presence of malicious intent at the inception of the legal relationship, deceit employed prior to the agreement, and unlawful acts satisfying all elements of a crime—must be assessed before law enforcement authorities resort to criminal measures. By doing so, the criminalization of civil disputes can be minimized, allowing the objectives of law enforcement—namely legal certainty, justice, and utility—to be realized in a balanced manner.

Analysis of Supreme Court Decision Number 358 K/Pid/2020 as a Precedent Distinguishing Between Breach of Contract and Criminal Offenses

Supreme Court Decision Number 358 K/Pid/2020 stands as a significant ruling in the evolution of law enforcement practices in Indonesia regarding the boundary between civil and

criminal law. This decision serves as a precedent affirming that not every loss arising from a contractual relationship can be classified as a criminal offense. The Supreme Court prioritizes the substance of the legal relationship between the parties as the primary basis for determining whether a case constitutes a civil dispute or a criminal offense. This approach implements the principle of legal certainty and safeguards citizens' rights, preventing the criminalization of disputes that ought to be resolved through civil law mechanisms.

The case originated from a business partnership between PT Trimuda Adhipradana and PT Binasawit Abadi Pratama concerning land grading and main jetty construction projects in East Kotawaringin Regency. The legal relationship between the parties was established through a Work Agreement (SPK) that was valid and voluntarily agreed upon. During the project's execution, a dispute arose regarding the completion of work and payment, leading one party to report the other for alleged fraud, embezzlement, and the use of forged documents—offenses stipulated under Articles 378, 372, and 263 of the Indonesian Criminal Code (KUHP), respectively.

At the trial court level, the Central Jakarta District Court sentenced the defendant to imprisonment, having found them guilty of the criminal offense of continuing fraud. This verdict was subsequently upheld by the DKI Jakarta High Court. However, at the cassation stage, the Supreme Court adopted a different legal reasoning. The Supreme Court held that the legal relationship between the parties was established from the outset based on a valid cooperation agreement; consequently, the rights and obligations of the parties were governed by contract law. Therefore, if one party failed to fulfill their contractual obligations, the matter had to be resolved through civil legal mechanisms rather than criminal law. The Supreme Court also considered the opinion of a criminal law expert, who stated that the legal relationship did not meet the elements of fraud, as there was no evidence of deceit or malicious intent at the time the agreement was formed. Facts such as the partial execution of work, the existence of business communications, specific payments, and the implementation of the contract demonstrated that the relationship was a genuine business arrangement, rather than a series of criminal acts designed from the start to cause loss to the other party.

Based on these considerations, the Supreme Court granted the cassation appeal and ruled that, while the defendant had indeed committed the acts alleged, those acts did not constitute a criminal offense (resulting in a discharge from all legal proceedings, or **ontslag van alle rechtsvervolging**). This ruling is significant because the Supreme Court made a clear distinction between the occurrence of an act and the criminal nature of that act. Not every act resulting in loss qualifies as a criminal offense if it lacks the element of unlawfulness under

criminal law required by statute. The ruling demonstrates that the element of **mens rea** cannot be overlooked in criminal law enforcement. Criminal law doctrine recognizes the principle of meaning there is no punishment without culpability. A person may only be punished if, in addition to committing an act that meets the definition of an offense, they also possess the requisite culpability—whether in the form of intent or negligence—as prescribed by law. In the absence of such fault, the imposition of criminal punishment would contravene the principle of legality and the principle of the protection of human rights.

From a civil law perspective, a failure to fulfill contractual obligations constitutes a breach of contract, the legal consequences of which include the obligation to pay damages, specific performance, contract rescission, or the transfer of risk, in accordance with Article 1243 of the Indonesian Civil Code. Resolution is sought through a civil lawsuit, allowing a judge to assess the parties' rights and obligations based on the terms of their agreed-upon contract. Thus, a breach of contract carries legal consequences that are fundamentally different from those of a criminal offense. An analysis of Supreme Court Decision Number 358 K/Pid/2020 reveals several indicators that can be used to distinguish between a civil dispute and a criminal offense:

1. First, the legal relationship between the parties arises from an agreement validly concluded based on the principle of freedom of contract.
2. Second, the contract was genuinely executed, meaning the legal relationship is not fictitious.
3. Third, the resulting loss stems from the failure to fulfill contractual obligations, rather than from deceit or fraud perpetrated from the outset.
4. Fourth, there is no evidence indicating malicious intent (**mens rea**) at the time the agreement was made.

If these four indicators are met, the dispute is more appropriately resolved through civil legal mechanisms rather than criminal proceedings.

Beyond serving as a legal precedent, the decision carries practical implications for law enforcement officials. Investigators, public prosecutors, and judges are required to carefully identify the nature of the legal relationship before applying criminal law. Professionalism among these officials is measured not only by the success of bringing a case to court but also by the ability to assign a case to the correct legal regime. Errors in determining the applicable legal regime create legal uncertainty, violate citizens' rights, and may even open the door to an abuse of power. From the perspective of the theory of authority, employing criminal law instruments in contractual disputes without a solid basis constitutes a deviation from the

intended purpose of that authority. Investigative authority is granted by law to uncover criminal offenses, not to compel the fulfillment of civil obligations. Therefore, every action taken by law enforcement officials must be guided by the principles of legality, proportionality, due care, and professionalism to ensure that law enforcement remains within the framework of the rule of law.

Thus, Supreme Court Decision Number 358 K/Pid/2020 serves not only to resolve a specific case but also as a guideline for national law enforcement practices in establishing a clear boundary between breach of contract and criminal offenses. The decision strengthens legal protection for the public, enhances legal certainty in the business sector, and prevents the use of criminal law as a tool of coercion in civil matters.

The Implications of Criminalizing Civil Disputes for the Principles of Legal Certainty, Justice, and Legal Protection

The criminalization of civil disputes not only raises issues regarding the erroneous application of legal norms but also entails far-reaching consequences for the national law enforcement system. Employing criminal law instruments in matters of a civil nature distorts the function of criminal law and diminishes the judicial system's effectiveness in providing legal protection to the public. These impacts extend beyond the litigants themselves, affecting public trust in law enforcement institutions as well as legal certainty in economic and investment activities.

Implications for Legal Certainty

Legal certainty is a fundamental element of the rule of law. Gustav Radbruch identified legal certainty as one of the three basic values of law, alongside justice and utility. These three values must operate harmoniously for the law to provide effective protection to society. In the practice of criminalizing civil disputes, legal certainty is compromised because the public can no longer clearly distinguish between when a dispute should be resolved through a civil lawsuit and when it may be processed as a criminal offense. This ambiguity creates a situation where any failure to perform a contract potentially escalates into a criminal case. Consequently, the public loses certainty regarding the appropriate dispute resolution mechanism to pursue.

According to Utrecht, legal certainty guarantees that individuals know their rights and obligations and receive equal treatment before the law. If law enforcement officials apply different interpretations to cases with similar characteristics, inconsistencies in law enforcement arise. Such inconsistencies ultimately erode public trust in the national legal system. The phenomenon of criminalizing civil disputes also indicates that the principle of legality in criminal law is not yet being optimally applied. The principle of dictates that an act

is punishable only if it meets all the elements of a criminal offense as defined by statute. In practice, however, officials often focus solely on the loss suffered by the victim without adequately analyzing the presence of elements such as deceit, criminal intent, or the causal link required for offenses like fraud or embezzlement. Supreme Court Decision Number 358 K/Pid/2020 provides clear guidance that a contractual relationship cannot be criminalized simply because one party fails to fulfill their performance obligations. This decision serves as a crucial instrument for reinforcing legal certainty by establishing more objective parameters to distinguish between a breach of contract and a criminal offense. Thus, legal certainty can only be achieved if law enforcement officials share a common understanding regarding the boundary between criminal law and civil law, thereby preventing the criminalization of disputes that ought to be resolved through civil mechanisms.

Implications for Justice

Beyond affecting legal certainty, the criminalization of civil disputes also impacts the realization of justice. Satjipto Rahardjo asserted that the law must not merely pursue formal certainty but must also be capable of delivering substantive justice to society. Consequently, the application of the law must take into account the substance of the legal relationship at hand, rather than focusing solely on the literal wording of a statutory provision. When an individual faces criminal proceedings for a contractual dispute that is essentially a matter of breach of contract, their constitutional rights are compromised. The status of being a suspect or a defendant entails significant social, economic, and psychological consequences. An individual's reputation can be tarnished, business operations disrupted, and even long-standing business relationships severed—all due to criminal proceedings that should never have taken place.

On the other hand, complainants often utilize criminal proceedings as a tool to gain leverage in business dispute resolutions. The criminal process thus transforms into a means of coercion to compel the opposing party to accede to specific demands. Such a situation clearly conflicts with the fundamental purpose of criminal law, which is to protect the public interest against acts that genuinely threaten public order. From the perspectives of both distributive and corrective justice, applying criminal law to contractual disputes creates an imbalance in the parties' respective positions. One party gains an advantage through the threat of criminal sanctions, while the other is deprived of the opportunity for a proportionate resolution through civil legal mechanisms. Therefore, applying criminal law to civil disputes without the full satisfaction of criminal elements violates not only the principle of legality but also the principles of justice that constitute the primary objective of law-making.

Implications for Legal Protection for the Public

Legal protection is a right of every citizen, as guaranteed by the principles of the rule of law. Philipus M. Hadjon distinguishes between preventive and repressive legal protection. Preventive protection aims to forestall rights violations, whereas repressive protection is provided through dispute resolution mechanisms once a violation has occurred. The criminalization of civil disputes indicates that neither form of legal protection is functioning optimally. From a preventive standpoint, there is a lack of uniform guidelines for law enforcement officials regarding the parameters that distinguish a breach of contract from a criminal offense. Consequently, different officials may interpret cases with identical characteristics in different ways.

Regarding repressive protection, individuals named as suspects in criminal cases are compelled to undergo the entire judicial process, even if the court ultimately rules that the matter is a civil dispute. Such situations result in losses of time and money, as well as damage to reputations that is difficult to fully repair. Legal protection is also closely linked to the protection of the business sector. Assurance that contractual disputes will be resolved through civil mechanisms is a crucial factor in fostering a healthy investment climate. Erman Rajagukguk asserts that legal certainty is a fundamental prerequisite for investment growth and national economic development.

If business actors constantly face the looming threat of criminal prosecution for every breach of contract in their business dealings, confidence in the national legal system will decline. Investors may perceive the legal risk in Indonesia as higher compared to countries that maintain a clear distinction between criminal and civil law. Furthermore, the criminalization of civil disputes impacts the professionalism of law enforcement officials. Officials end up expending time and resources on cases that should properly fall under the jurisdiction of civil courts. As a result, the handling of criminal cases that genuinely threaten the public interest becomes less effective.

Based on the foregoing, it can be concluded that the criminalization of civil disputes has far-reaching implications for legal certainty, justice, legal protection, the effectiveness of law enforcement, and national economic development. Therefore, a reform of law enforcement policy is required—one capable of establishing a clear boundary between civil disputes and criminal offenses—through enhancing the professionalism of officials, strengthening the application of the principle, and formulating technical guidelines for case handling by investigators, public prosecutors, and judges.

CONCLUSION

Based on the research findings and discussion, the following conclusions can be drawn:

1. First, the criminalization of civil disputes can be classified as an abuse of power when law enforcement officials exercise criminal law authority over a legal relationship that is essentially civil in nature, without the fulfillment of the criminal offense elements stipulated in legislation. Such abuse of authority occurs when officials fail to accurately distinguish between a breach of contract and a criminal offense—particularly when assessing the presence of **mens rea**, deceit, or acts violating criminal law. Supreme Court Decision Number 358 K/Pid/2020 serves as a significant precedent, affirming that a legal relationship arising from a contract cannot be subject to criminal prosecution simply because one party fails to fulfill their contractual obligations.
2. Second, the criminalization of civil disputes has far-reaching implications for legal certainty, justice, and legal protection. Regarding legal certainty, this practice blurs the boundary between criminal and civil law, leaving the public uncertain about the appropriate dispute resolution mechanisms to pursue. Regarding justice, the use of criminal instruments in contractual disputes creates an imbalance in the parties' positions and opens the door for the legal process to be misused as a tool of coercion in business relationships. Regarding legal protection, the criminalization of civil disputes diminishes public security, harms business actors, erodes trust in law enforcement officials, and potentially hinders investment and national economic development. Therefore, applying the **ultimum remedium** principle, enhancing the professionalism of law enforcement officials, and establishing clear guidelines to distinguish between a breach of contract and a criminal offense are urgent necessities within Indonesia's law enforcement system.

Recommendation

Based on the research findings, the following recommendations are proposed:

1. The Indonesian National Police should formulate technical guidelines regarding the parameters distinguishing breach of contract from criminal offenses to serve as a reference during inquiry and investigation processes, ensuring that matters of a civil nature are not immediately processed as criminal cases.
2. Business entities and the public need to enhance their understanding of civil dispute resolution mechanisms—such as civil litigation, mediation, arbitration, and other forms of alternative dispute resolution—so that the use of criminal law is truly treated as a measure of last resort.

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