

When Breach Becomes Fraud: The Boundary Between Civil And Criminal Liability In Indonesia's Digital Marketplace

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Abstract

A failed online transaction may constitute a contractual breach, a civil wrong, or a criminal offence, but these classifications are not interchangeable. This article examines how Indonesian law should distinguish ordinary non-performance from intentional deception and coordinate remedies when both private and public legal interests are affected. Using doctrinal legal research, it analyses the Indonesian Civil Code, the Consumer Protection Law, the 2023 Criminal Code, the Electronic Information and Transactions framework as amended in 2024, and the criminal-law and procedural reforms effective in January 2026. The article argues that non-performance alone cannot establish fraud: the criminal characterization requires evidence of the statutory method of deception, unlawful intent, and the induced transfer or other conduct identified in the offence. Civil liability, by contrast, may arise from a violated obligation, an unlawful act causing loss, or defective consent without automatically proving a crime. Three hypothetical transaction patterns illustrate a practical classification test. The proposed approach preserves the principle of legality, protects defendants from the criminalization of commercial disputes, and allows victims to seek compensation and criminal accountability when each pathway is independently justified.

Keywords: Civil Liability; Criminal Fraud; Breach of Contract; Consumer Protection; Electronic Evidence; Indonesia.



INTRODUCTION

Imagine that a consumer transfers payment for a laptop advertised on an online marketplace. The seller misses the promised delivery date, ceases replying to messages, and eventually disappears. From the buyer's perspective, the economic injury is obvious. Its legal classification is not. The same outward result—payment without delivery—may follow a logistical failure, a genuine dispute over contractual performance, negligent management, or a scheme designed from the beginning to obtain money by deception. Determining which explanation is supported by evidence is central to the proper relationship between civil and criminal law.

In Indonesian legal discourse, this distinction is commonly framed as the boundary between wanprestasi (breach of an obligation) and penipuan (fraud). The boundary has practical consequences. A civil claim ordinarily seeks enforcement, rescission where legally available, restitution, or damages. Criminal law authorizes a public response to conduct satisfying the elements of a statutory offence, subject to procedural safeguards. Invoking criminal investigation solely to secure payment of an ordinary debt risks turning the coercive authority of the state into a collection mechanism. Yet describing a deliberately fictitious transaction merely as contractual default can equally leave a genuine criminal wrong unanswered.

The growth of electronic commerce makes the distinction especially consequential. Digital storefronts can provide detailed records of offers, negotiations, payments, and delivery promises; at the same time, pseudonymous accounts, recycled product images, and rapid communication can obscure a seller's actual identity or intention. Earlier Indonesian scholarship has documented the criminal-law dimensions of online selling fraud, although studies written before 2026 necessarily relied on a different penal and procedural framework (Karo Karo & Sebastian, 2019; Lutfiyana, 2021). Updating the doctrinal analysis is therefore important rather than simply reproducing the pre-2026 description of cybercrime.

This article addresses three questions: What separates private-law non-performance from punishable deception? Under what circumstances may civil compensation and criminal enforcement legitimately operate in parallel? And what evidence should determine the legal characterization of a disputed online transaction? Its thesis is that the decisive distinction is not the magnitude of the buyer's loss or the seller's subsequent failure to respond, but the independently provable elements of the relevant legal ground, including the character and timing of any deceit. The argument is developed through current Indonesian legislation, selected legal



scholarship, and expressly hypothetical examples rather than unverified claims about case outcomes.

RESEARCH METHOD

This study uses a normative or doctrinal legal-research method. Doctrinal analysis identifies the applicable legal norms, interprets their elements within the statutory system, and tests the coherence of potential legal outcomes against those norms. Hutchinson and Duncan (2012) describe the importance of making doctrinal methods explicit rather than presenting the lawyer's selection and interpretation of sources as self-evident. In that spirit, this article distinguishes statutory descriptions from the evaluative recommendations offered in its discussion.

The principal materials are the Indonesian Civil Code (Burgerlijk Wetboek), Law No. 8 of 1999 on Consumer Protection, Government Regulation No. 80 of 2019 on Trading Through Electronic Systems, Law No. 1 of 2023 on the Criminal Code, Law No. 1 of 2024 revising the Electronic Information and Transactions legislation, Law No. 20 of 2025 on Criminal Procedure, and Law No. 1 of 2026 on Penal Adjustments. The legislative position is assessed as of October 2026. A statutory approach is combined with a conceptual distinction between private recourse and public punishment and a problem-oriented analysis of three constructed factual scenarios. No interviews, judicial-case dataset, or empirical effectiveness estimates were undertaken; conclusions should consequently be read as doctrinal findings, not measured claims about enforcement practice.

THE CIVIL-LAW FRAMEWORK: AGREEMENT, DEFAULT, AND WRONGFUL CONDUCT

The Indonesian Civil Code supplies a starting point for identifying enforceable obligations. Article 1320 states four conditions for a valid agreement: consent, capacity, a determinate subject matter, and a lawful cause. Electronic form does not, by itself, eliminate the need to establish an agreement or the scope of the parties' obligations. Government Regulation No. 80 of 2019 expressly addresses commerce and electronic contracts, giving the general rules a more specific institutional setting (Republic of Indonesia, 2019). A claimant must first identify the relevant promise, its agreed terms, and the party bound to perform it.

Breach and compensation are related but analytically distinct. Article 1243 of the Civil Code addresses damages arising from the failure to perform an obligation, including the question



of default after notice or performance that can occur only after the agreed time. Articles 1244–1245 recognize limits related to causes not attributable to the debtor and force majeure. In a delayed shipment dispute, the inquiry therefore includes the agreed delivery period, any required notice, the reason for non-performance, whether the seller could still perform, and the loss claimed. A late delivery should not be treated as sufficient evidence of a criminal plan.

Civil liability is not limited to contract. Article 1365 establishes an obligation to compensate another person for loss caused by an unlawful act attributable to fault, while Article 1366 addresses negligence. The doctrinal components generally examined under Article 1365 include unlawful conduct, fault, harm, and a causal connection. These questions can matter when misrepresentation injures a person beyond the ordinary failure to deliver, including where the misleading conduct precedes contract formation. Goldberg and Zipursky's (2010) account of tort law as a form of civil recourse helps explain why a private remedy responds to a legal wrong without requiring that every wrong also be categorized as a crime.

Contract validity deserves separate attention. Article 1321 concerns consent obtained through mistake, coercion, or fraud, and Article 1328 treats fraud as a ground for annulling an agreement where the deception materially induced the other party to contract. The Civil Code also requires fraud to be proved, not merely presumed. Consequently, the same fact pattern may generate questions about valid consent, civil damages, and possibly penal deception, but the existence of a civil defect does not mechanically prove each element of a criminal offence. The remedial route and the precise factual basis of each claim must be kept clear.

Consumer protection adds a specific layer. Article 19 of Law No. 8 of 1999 addresses a trader's responsibility to compensate consumers for qualifying losses and contemplates remedies such as refunds or replacement goods and services. Its fourth paragraph is particularly significant: the provision of compensation does not extinguish the possibility of criminal prosecution when the further requirements relating to fault are met. This statutory text directly contradicts the assumption that compensation and penal responsibility are categorically exclusive. It does not, however, mean that compensation automatically proves an offence or that every disappointed purchaser falls within each consumer-protection rule (Republic of Indonesia, 1999).

THE CRIMINAL-LAW FRAMEWORK: FRAUD IS MORE THAN NON-PERFORMANCE

Indonesia's national Criminal Code under Law No. 1 of 2023 came into operation on 2 January 2026, alongside the new Criminal Procedure Code under Law No. 20 of 2025. Law No. 1 of 2026 also adjusted provisions of the penal system, including sanctions in legislation outside



the Criminal Code. Analysis of a transaction taking place in 2026 must therefore refer to the laws in force at the relevant time rather than assuming that the pre-2026 penal and procedural codes remain controlling (Republic of Indonesia, 2023, 2025, 2026). Questions about conduct before the transition require an additional temporal-law analysis, which falls outside this article's core scenarios.

Article 492 of the 2023 Criminal Code addresses fraud by reference to an intention of unlawful gain and specified deceptive techniques, such as a false name or false position, trickery, or a sequence of lies, used to induce another person to surrender property or undertake the other acts listed in that article. The offence is thus not constructed from non-delivery alone. It requires analysis of the means of deception, the defendant's legally relevant mental state, and the connection between those means and the induced disposition. A broken promise may be probative in context, but its evidentiary value depends on what else is known about the seller's conduct and intentions.

The time at which the alleged deception occurred matters. A merchant who accurately represents existing stock but later experiences a documented supply disruption presents a fundamentally different question from a person who advertises a nonexistent business, sends counterfeit proof of inventory, and directs payments into accounts set up to receive proceeds from several victims. The latter circumstances may support an inference of deliberate deceit, although inference must still be tested against contrary evidence and the precise statutory elements. Conduct after payment—blocking the buyer or offering inconsistent explanations—can supplement the analysis, but cannot substitute for proof of the relevant offence.

Electronic transactions may also engage the special rules of Law No. 11 of 2008 as amended, particularly by Law No. 1 of 2024. Article 28(1), read with the related sanction in Article 45A(1), concerns intentional transmission or distribution of false or misleading electronic information that results in material loss to consumers in electronic transactions. Whether a particular online statement and loss meet these requirements calls for a separate legal assessment; neither an incorrect advertisement nor consumer dissatisfaction automatically fulfills the statutory test. Moreover, Law No. 1 of 2026 changed the fine framework for certain Electronic Information and Transactions offences, including Article 45A(1). The penalty therefore should not be quoted from the 2024 text without checking the later adjustment (Republic of Indonesia, 2024, 2026).



The principle of legality requires precision in both selection and interpretation of charges. It is not enough to argue that a seller behaved badly or that the buyer suffered financial harm. The prosecution must prove conduct falling within the offence and must respect the procedural rights associated with a criminal accusation. Civil and criminal law may be animated by shared concerns about honesty, but public punishment invokes a distinctive justification, standard of legal attribution, and exposure to coercive state power.

CONCURRENT LIABILITY AND THE DESIGN OF REMEDIES

A single factual episode can implicate more than one legal interest. The buyer's private interest concerns an enforceable transaction, the return of money, or reparation for loss. The public interest concerns whether the defendant committed conduct expressly criminalized by legislation. These pathways do not collapse into one another. Article 19(4) of the Consumer Protection Law makes the possibility of parallel criminal proceedings explicit, while the Civil Code supplies distinct grounds for relief. The correct conclusion is coexistence subject to separate substantive requirements, not an unrestricted right to re-label every civil dispute as criminal.

A civil claimant may pursue the appropriate contractual or non-contractual remedy, depending on the legal relationship and injury alleged. A request for payment or damages requires a legal ground and proof of loss and causation where those elements are applicable. Where consent itself was induced by fraud, a challenge to the validity of the transaction may become relevant. Choices among specific performance, termination or annulment, refund, and compensation should follow the governing legal provision and procedural rules; they should not be presented as a single automatic bundle available in every case.

Criminal proceedings, by comparison, respond to the offence against the public legal order. A sentence imposed by the state should not be confused with a civil damages award or a guarantee that the victim's full loss will be repaid. The 2025 Criminal Procedure Code recognizes mechanisms relating to victims, restitution, and compensation, making their availability an issue for case-specific procedural analysis. Whether a victim should additionally file a civil claim depends on the recoverable heads of loss, the accused person's assets, the available procedural mechanism, and the risk that the same loss might be reimbursed twice (Republic of Indonesia, 2025).

Coordination does not justify shortcuts. A settlement or repayment may be relevant to the disposition of some disputes and to restorative mechanisms where the law permits them; it



does not retrospectively prove that no fraudulent representation occurred. Nor does a complainant's request for a refund by itself establish a penal offence. A defensible system should maintain distinct records of loss, amounts returned, the basis of any prosecution, and the relief finally ordered, so that victim recovery and public accountability remain intelligible and proportionate.

The distinction can also be understood through competing theories of legal response. Goldberg and Zipursky (2010) characterize civil recourse as a victim's legal response to a wrong, while Becker (1968) provides a foundational account of sanctions and deterrence in public enforcement. These perspectives are not interchangeable, but together they clarify why private compensation and public punishment may coexist. Their overlap is justified when the conduct independently infringes a private right and satisfies a public prohibition. A loss without proved deception and a deception without a legally relevant claim for damages should not be treated as identical cases.

ELECTRONIC EVIDENCE AND PROCEDURAL SAFEGUARDS

Digital evidence can illuminate both the agreement and the alleged scheme. Product listings, chat histories, electronic invoices, payment confirmations, account-registration information, shipping records, returns correspondence, and archived changes to product descriptions may clarify what was represented, when payment occurred, and whether performance was possible. Under Article 5 of the Electronic Information and Transactions legislation, as amended in 2024, electronic information and documents and their printouts are recognized as lawful evidence, subject to the statutory conditions and applicable procedural law (Republic of Indonesia, 2024). This recognition does not mean that any screenshot is inherently authentic or decisive.

For civil claims, Article 1865 of the Civil Code places the burden on a person asserting a right or factual event to support that assertion. A buyer therefore needs more than a generalized statement of having been cheated. The evidentiary presentation should establish an identifiable seller or responsible party, the relevant transaction, the content of representations, payment, the breach or wrongful act, and the damage causally attributed to it. The defense may raise documentary evidence of shipment, refund, communication, or a legally relevant obstacle to performance. The statutory approach calls for a reasoned evaluation of conflicting material rather than a presumption that a complainant's account is complete.



In criminal proceedings, authorities must separately investigate the accused person's connection to the account or communication, the authenticity and provenance of electronic materials, the allegedly false representation, the required intention, and the induced act. Evidence originating from a device, a platform operator, or a bank may have different strengths and weaknesses. A screenshot can show the existence of a message yet leave unresolved who controlled the account. Logs and transaction metadata can be more informative when lawfully obtained and interpreted, but technical complexity is not an excuse to weaken a defendant's procedural rights. The new criminal procedural framework should be applied rather than continuing to cite repealed procedural provisions as if they governed post-January 2026 investigations.

An evidence-preservation protocol can reduce both wrongful criminalization and victim disadvantage. Parties should retain original transaction records, capture relevant chronological communications, preserve transaction and account identifiers, document refunds or attempted delivery, and avoid altering metadata. Investigators and courts should evaluate chain of custody, integrity, relevance, and lawful collection under the applicable procedural rules. These are recommended good practices derived from the evidentiary problems identified here, not findings that every Indonesian court presently uses an identical technical protocol.

A THREE-SCENARIO TEST FOR LEGAL CLASSIFICATION

The following scenarios are expressly hypothetical. They are analytical tools, not summaries of decided cases. Each isolates a different combination of contractual obligation, deception, causation, and loss.

SCENARIO ONE: A DOCUMENTED PERFORMANCE FAILURE

An established electronics merchant accepts a genuine order, issues a valid invoice, and has a confirmed supplier arrangement. A warehouse fire subsequently interrupts distribution. The seller informs buyers of the delay, produces records of the disruption, and offers a refund under the relevant terms. If a buyer is not paid within the legally applicable period, the facts may support a contractual or consumer-protection dispute. Without further evidence of false pretenses or an intentionally fraudulent representation, the lapse does not demonstrate Article 492 fraud merely because money was received and delivery failed. The classification changes only if additional proved facts establish the elements of an offence.



SCENARIO TWO: A FABRICATED DIGITAL STOREFRONT

A person creates several storefronts with borrowed identities, posts photographs of nonexistent inventory, and sends invented shipment numbers to induce advance payments. Account records show withdrawals immediately after deposits; the same seller reopens under new names after complaints. These facts could support a civil claim arising from misrepresentation and loss, and they may also support investigation under Article 492 of the Criminal Code or the relevant electronic-information provision if its separate elements are met. The evidence must still identify the individual responsible and connect the particular representation to the buyer's decision to pay. The illustrative pattern is stronger than Scenario One not because the loss is larger, but because the alleged conduct concerns deliberate deception at the moment of inducement.

SCENARIO THREE: MISLEADING QUALITY CLAIMS WITH ACTUAL DELIVERY

A seller delivers a computer, but its technical specifications materially differ from those repeatedly advertised. A civil inquiry concerns the contractual description, conformity of the goods, consumer-protection duties, the buyer's available remedy, and proven damage. A penal inquiry asks more: whether the representation was intentionally false, whether the statutory form of deception and its effects are proved, and which offence—if any—properly fits the evidence. A mistaken catalogue entry corrected promptly may warrant a different characterization from a coordinated practice of knowingly falsifying specifications. Proof of nonconformity does not remove the need to prove criminal fault.

Table 1. Comparative Classification Of The Same Transaction

Question	Civil-law inquiry	Criminal-law inquiry
Legal trigger	Unperformed obligation, defective consent, or a civil wrongful act	Proof of conduct matching a defined offence
Central facts	Terms, performance, loss, causation, and available defenses	Deceptive method, intent, induced action, and identity
Typical purpose	Private redress, restitution, and enforceable relief	Public accountability and punishment under law

3254



Primary materials	Civil Code; Consumer Protection Law; electronic-commerce rules	2023 Criminal Code; amended ITE Law; 2025 procedural law; 2026 adjustments
Crucial limit	Loss must be linked to an applicable civil ground	Non-delivery alone does not prove fraudulent inducement

DISCUSSION: AN EVIDENCE-LED AND RIGHTS-CONSISTENT APPROACH

The three patterns support a sequential classification model. The decision-maker should first reconstruct the transaction: identity, offer, acceptance, performance obligations, payment, and chronology. Next, the decision-maker should analyze the civil basis of the claim, including the possible defect in consent, breach, unlawful act, loss, and causation. Only after this analysis should the alleged conduct be tested against the full elements of Article 492 or, where appropriate, Article 28(1) of the electronic-transactions legislation. Criminal intent must be inferred from evidence that makes deceit a defensible explanation rather than from non-payment alone. Finally, the decision-maker should select procedurally lawful remedies and record any overlap in financial recovery.

This sequence avoids two mirror-image errors. The first is excessive criminalization, in which a failed commercial bargain is treated as fraud because the claimant regards the outcome as unfair. That shortcut dilutes the distinction between failure to perform and inducement by deceit. The second is excessive privatization, in which a fabricated transaction is dismissed as a mere debt because the perpetrator used the surface form of a sales agreement. Contracts can be used as instruments of deception; conversely, not every breached contract is a criminal instrument. What matters is the proven legal character of the conduct.

The law's remedial architecture provides reasons to preserve the distinction. Article 19(4) of the Consumer Protection Law recognizes that compensatory and criminal consequences can coexist. Article 1328 of the Civil Code, however, treats deceptive inducement as a civil ground that must itself be substantiated. Article 492 of the Criminal Code expresses a narrower public prohibition with particular methods and effects. Reading these instruments together supports a coherent approach: protect the buyer's right to redress, respect the accused's right not to be punished without a properly established crime, and prevent procedural pressure from displacing substantive legal analysis.



The 2026 statutory transition adds a caution about citation practices. Commentaries published before January 2026 can remain useful for identifying enduring difficulties in online fraud, but their citations to the former Criminal Code and Criminal Procedure Code cannot automatically be repeated as current governing law. Likewise, the monetary penalty expressed in the 2024 amendment of the electronic-transactions legislation must be read with the 2026 adjustment law. Careful legal research therefore requires both historical awareness and consolidation of later amendments. This is a methodological point with immediate substantive consequences: using an outdated penal text can misstate the applicable offence or sanction.

The article's approach is deliberately limited. It does not claim that civil proceedings must always occur before criminal proceedings, that a complainant must choose only one remedy, or that a restitution mechanism guarantees full reimbursement. Such rules would require a specific legal basis not supplied by the general distinction between public and private liability. Instead, independent legal characterization and procedurally coordinated remedies provide a more defensible basis for action in cases where the same transaction gives rise to different forms of responsibility.

For legal practice, a standard intake checklist would be useful for police officers, consumer agencies, lawyers, platforms, and courts. The checklist could identify the factual timeline; the seller's verified identity; original representations; stock or delivery evidence; transfer records; signs of an organized false-identity scheme; consumer loss; mitigation and refunds; and the statutory provisions invoked. It could also record facts tending to disprove fraudulent intent, not just incriminating materials. Such symmetry matters because legal characterization should arise from an inquiry into competing explanations, not from selecting facts to fit the remedy initially desired.

CONCLUSION

The legal distinction between civil breach and criminal fraud is substantive, not merely terminological. Under Indonesian law, contractual default may create an obligation to perform or compensate, an unlawful act may trigger civil reparation, and deceit may undermine contractual consent. Criminal liability requires additional proof that the conduct satisfies the elements of a penal prohibition, including the required deceptive method, culpable intention, and induced conduct. Online non-delivery, even when economically serious, cannot by itself replace that proof.



Civil and criminal avenues can nevertheless coexist when both sets of requirements are independently fulfilled. Article 19(4) of the Consumer Protection Law expressly preserves the possibility of criminal action notwithstanding compensation, while the 2023 Criminal Code, the 2024 electronic-transactions amendments, and the 2025–2026 reforms define the current legal environment. A disciplined assessment of chronology, deception, causation, identity, and electronic evidence offers a practical way to protect consumers without converting ordinary contractual disputes into crimes. Its central principle is simple: the remedy must follow the wrong that can actually be proved.

FUTURE DIRECTIONS

Further research should examine published judicial decisions issued under the legal regime effective from January 2026, with close coding of the evidence courts use to distinguish fraud from contractual default. Empirical work could assess the accessibility of consumer redress, restitution, preservation of electronic records, and coordination between civil litigation and criminal proceedings. Such research would test whether the doctrinal classification proposed here improves consistency and victim outcomes in actual disputes; this article does not claim to have established those effects.

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