

## **Critique of the Dominance of Public Law Over Private Law in the Application of the Principle of Freedom of Contract (A Study of Several Corruption Court Decisions)**

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### **Abstract**

The dominance of public law over private law is often observed in several decisions of the Indonesian Corruption Court (TIPIKOR), where the original cases were civil matters involving agreements or contracts regulated under Article 1313 of the Indonesian Civil Code (KUHPperdata). This article defines an act where one or more persons bind themselves to one or more other persons, creating a legal relationship in the form of rights and obligations for the parties involved. In agreements/contracts commonly executed by the public, there are several principles, including the principle of consensualism, the principle of freedom of contract, the principle of pacta sunt servanda, the principle of good faith, and the principle of personality. This research focuses on Article 1338 concerning the freedom of contract. With the freedom of contract, various new agreements/contracts emerge within society, including those involving public officials and business actors. In cases where a party fails to fulfill any aspect of the contract, under private law (civil law), this is considered a breach of contract or unlawful act (PMH), which is regulated under Article 1365 of the Indonesian Civil Code (KUHPperdata). This article states that every unlawful act that causes harm to another person obliges the party responsible for the harm to compensate for the damage caused. However, in several TIPIKOR court decisions, parties who breach contracts or commit unlawful acts (PMH) have been convicted of corruption, despite the fact that the case originated from an agreement or contract. If the PMH relates to the non-fulfillment of a contractual term, it should be resolved under private law, not criminal corruption law. This research uses a normative legal research method, employing a legal principles approach, doctrine, and TIPIKOR court decisions.

**Keywords:** Dominance of Public Law; Over Private Law; Court Decisions.

### **INTRODUCTION**

The legal landscape in Indonesia reflects a complex relationship between public law and private law, especially within the jurisdiction of the Corruption Court, known as TIPIKOR (Hamzah, 2018). This court frequently encounters cases where public law, specifically criminal law related to corruption, takes precedence over private law principles (Indrati, & Raharja, 2019). This dynamic often leads to an overlap between public and private law, particularly when the court applies criminal sanctions to disputes that fundamentally arise from civil matters, such as contractual agreements. The research focuses on exploring this phenomenon and aims to analyze the circumstances in which TIPIKOR treats breaches of contract, traditionally handled as civil disputes, as acts of corruption under public law.

Central to the discussion of private law is Article 1313 of the Indonesian Civil Code (KUHPperdata), which defines a contract as an act by which one or more persons bind themselves to one or more

other persons, thereby creating a legal relationship of rights and obligations (Yusuf, 2020). Contracts are fundamental to private transactions, where parties voluntarily agree to terms and are expected to fulfill their duties in good faith. However, the issue arises when the failure to perform or breach of a contractual obligation is interpreted not just as a civil wrong but as a criminal act of corruption. This shift from private to public law raises questions about the proper classification of such disputes and their resolution under the Indonesian legal framework.

The principles that underpin contract law in Indonesia establish the basis for how contractual agreements are formed, executed, and enforced. These principles include consensualism, which emphasizes mutual consent as the essential foundation for any valid contract, and the freedom of contract principle outlined in Article 1338 of the Civil Code, which grants parties the liberty to create agreements according to their wishes and circumstances. Furthermore, the principle of "pacta sunt servanda" upholds the binding nature of contracts, requiring parties to honor their agreements. Additionally, the principle of good faith emphasizes the need for fairness and honesty in contractual dealings, while the principle of personality underscores the personal nature of contractual rights and obligations. Together, these principles provide the legal framework for understanding contracts within the sphere of private law.

Despite the clear demarcation of these principles, there have been instances where TIPIKOR court decisions reflect a different approach to breaches of contract. Specifically, in several cases, acts that would traditionally be considered breaches of contract or unlawful acts under private law (as regulated under Article 1365 KUHPPerdata) are treated as corruption offenses. Article 1365 of the Civil Code, which deals with unlawful acts, generally requires that any person who causes harm to another through such an act must compensate for the damage caused. However, the criminalization of these breaches, when interpreted as corruption, suggests a blurring of lines between civil obligations and criminal liability. This practice raises concerns about legal certainty and the distinction between private and public legal domains.

This overlap between private law breaches and public law corruption charges calls into question the appropriate boundaries of legal interpretation in Indonesia. The phenomenon suggests a possible tendency of the TIPIKOR court to expand the reach of public law into areas traditionally governed by private legal principles. This not only impacts the parties involved but also challenges the established understanding of how contractual obligations should be enforced and how breaches should be remedied. The broader implications are significant, as they touch upon the fundamental principles of contract law and the legal expectations of parties entering into agreements within Indonesia.

Therefore, the central question guiding this research is why contractual breaches, which should fall under private law, are being treated as corruption and subjected to criminal prosecution under public law. Furthermore, what are the broader implications of this practice for legal interpretation and the enforcement of contracts in Indonesia? By examining this question, the research aims to shed light on the boundaries between private and public law and to provide a clearer understanding of how the principles of contract law are being applied or reinterpreted within the context of TIPIKOR court decisions.

## METHODS

The research employs a normative legal methodology, focusing on analyzing legal principles, doctrines, and case law to understand the intersection between public and private law in Indonesia, particularly in TIPIKOR court decisions (Anwar, 2017). A critical part of this approach is the examination of legal principles that govern contracts, such as consensualism, freedom of contract, and *pacta sunt servanda*. This exploration seeks to understand how these foundational principles of private law interact with or are influenced by public law when cases of contractual breaches are brought before TIPIKOR. The relationship between private law, which traditionally handles contractual disputes, and public law, which governs criminal acts like corruption, is central to understanding the broader legal implications of TIPIKOR's decisions. Through this approach, the study seeks to determine whether there is a systematic legal framework justifying the application of corruption law to breaches of private contracts and how this affects the enforcement of contractual obligations.

To further clarify this intersection, the research undertakes a doctrinal review, systematically analyzing legal doctrines that define the boundaries between civil breaches and criminal acts. This includes reviewing the interpretation of Articles 1313 and 1365 of the Indonesian Civil Code (KUHPerdata), which regulate contractual relationships and unlawful acts, respectively. The doctrinal review helps to reveal the underlying legal rationale used by TIPIKOR courts when they criminalize actions that are essentially contractual breaches. Complementing this analysis, the research also incorporates a case study analysis of TIPIKOR court decisions, scrutinizing specific instances where contractual disputes have been adjudicated as corruption. By examining how these cases are interpreted and resolved, the study identifies patterns and legal reasoning that justify the TIPIKOR court's application of public law to what might be considered purely private legal matters. This comprehensive analysis aims to provide a clearer understanding of how normative legal principles are applied in practice and how they affect the treatment of contracts in the realm of Indonesian law.

## RESULTS

The research adopts a normative legal methodology aimed at dissecting and analyzing the principles, doctrines, and case law that illustrate the interplay between public and private law within the context of Indonesian legal practice, specifically in decisions made by the Corruption Court (TIPIKOR). This methodology focuses on a critical examination of the core legal principles governing contracts such as consensualism, which emphasizes mutual agreement; freedom of contract, which provides parties with the autonomy to form agreements; and *pacta sunt servanda*, which obligates parties to honor their contractual commitments. By examining these principles, the research explores how they function within the sphere of private law and how their application is influenced or altered when contractual breaches are presented before TIPIKOR as potential acts of corruption. Understanding the interaction between private law (contractual obligations and rights) and public law (criminal acts, such as corruption) is essential to analyzing TIPIKOR's legal reasoning and determining the extent to which public law is utilized to interpret what would typically be private disputes.

To further clarify this intersection between private and public legal norms, the research conducts an in-depth doctrinal review. This review systematically examines legal doctrines that delineate the boundaries between civil breaches of contract and criminal actions. It specifically involves an

interpretive analysis of Articles 1313 and 1365 of the Indonesian Civil Code (KUHPerduta). Article 1313 outlines the fundamental nature of contracts as legally binding agreements between parties, while Article 1365 addresses unlawful acts (*perbuatan melawan hukum*) and the legal responsibility to compensate for damages caused by such acts. By critically analyzing these provisions, the research seeks to uncover the legal justifications and rationale employed by TIPIKOR in transforming contractual breaches typically a matter of private law into criminal acts under the realm of corruption law. This doctrinal review is essential to understanding the normative basis upon which the TIPIKOR court grounds its decisions, especially when civil disputes cross over into the domain of public law.

Complementing the doctrinal review is a case study analysis of selected TIPIKOR court decisions that specifically deal with the treatment of contractual breaches as corruption. This case study approach allows for a detailed examination of how TIPIKOR interprets, adjudicates, and applies public law to cases originating from private contractual disputes. By investigating these decisions, the study identifies patterns, precedents, and legal reasoning used by TIPIKOR to justify the criminalization of what would traditionally be seen as civil law violations. These analyses provide insight into the courts' approach to bridging or blurring the line between private and public legal spheres and reveal how normative legal principles are applied in practice, ultimately affecting the enforcement and interpretation of contractual obligations in Indonesia. The findings are anticipated to contribute to a broader understanding of how public law dominance over private contractual matters impacts legal certainty and contract enforcement in the Indonesian legal system.

## **DISCUSSION**

The discussion delves into the broader implications of the research findings, particularly the conflict arising from the application of public law over private law in decisions by the Indonesian Corruption Court (TIPIKOR). A key issue identified is how the TIPIKOR's interpretation of contract breaches as criminal acts, specifically corruption, challenges the traditional boundary between private and public legal domains. The research questions whether such a criminal law approach is suitable when the origins of a case lie in a contractual dispute, a matter that private law typically governs. The practice of using public law to resolve contract-related disputes not only complicates legal interpretation but also affects the predictability of how contracts are enforced. This conflict between public and private law in TIPIKOR's decisions highlights the need for a more nuanced understanding of when and how public law should intervene in what are fundamentally private law matters.

One of the critical areas of analysis is whether public law, specifically corruption law, is an appropriate mechanism for addressing breaches of contract. Traditionally, breaches are seen as civil violations, remedied through restitution or compensation as provided for under the Indonesian Civil Code (KUHPerduta). However, when TIPIKOR treats these breaches as corruption, it introduces a layer of criminal liability that fundamentally changes the nature of the dispute. While public officials' involvement in contracts may raise concerns over public interest and potential corruption, the indiscriminate use of criminal law may lead to over-criminalization. This approach risks penalizing actions that would otherwise be settled through private remedies, raising questions about legal proportionality and fairness in applying criminal law to civil disputes.

The consequences of treating contractual breaches as corruption have a significant impact on core principles of private law, such as consensualism and freedom of contract. Consensualism, which relies on the voluntary agreement of parties, and freedom of contract, which allows parties to set

their terms and conditions, form the foundation of private legal transactions. When TIPIKOR courts frame breaches of these agreements as criminal corruption, it disrupts the autonomy of private parties. The looming threat of criminal liability undermines the freedom to negotiate and execute contracts without fear of criminal prosecution. This shift challenges the integrity of private law principles and may deter individuals and businesses from engaging in contractual agreements, fearing that any dispute may be escalated to a criminal matter.

The doctrinal implications of this conflict are significant for Indonesian legal practice. The overlap between public and private law creates legal uncertainty, as parties cannot easily predict whether a contractual breach will be addressed as a civil matter or treated as corruption. This legal ambiguity complicates the enforcement of contracts and disrupts the expectation of parties that civil disputes will be resolved within the private law domain. The expansion of TIPIKOR's jurisdiction over contract-based cases suggests a need for clearer guidelines and legal doctrines to delineate the boundaries between public law and private law. The research underscores the importance of establishing more precise legal standards that define when a contractual breach can be classified as a criminal act, thereby preventing the erosion of private law principles.

Furthermore, the TIPIKOR court's decisions raise questions about the consistency of legal interpretation across Indonesian courts. The tendency to apply public law standards to private legal disputes reflects a broader challenge within the legal system: balancing the enforcement of anti-corruption measures with the preservation of private legal rights. This discussion suggests that Indonesian jurisprudence requires a more refined approach to distinguish between criminal acts that violate public trust and private breaches that are better handled through civil law remedies. Without clear boundaries, the legal system risks conflating the two domains, potentially overextending the reach of criminal law into private contractual relations.

In conclusion, the research highlights the necessity for reform in the application of legal principles to ensure that public law does not unduly dominate private law, particularly in TIPIKOR's adjudication of contractual breaches. There is a need for a more coherent legal framework that respects the autonomy of private parties to engage in contracts while appropriately addressing instances where public interests are compromised. Establishing clearer distinctions between private breaches and criminal corruption will help uphold the principles of consensualism and freedom of contract while ensuring that corruption law is effectively and justly applied. This discussion contributes to a broader conversation on how the legal system can maintain the integrity of both private and public law, ensuring fairness, legal certainty, and respect for contractual obligations.

## CONCLUSION

The findings of this research highlight a critical legal tension in Indonesia between the principles governing private law and the expanding reach of public law, particularly in TIPIKOR court decisions. By analyzing how contractual breaches are sometimes reclassified as criminal acts of corruption, the research underscores a significant challenge to the foundational principles of consensualism, freedom of contract, and *pacta sunt servanda*. The examination of these principles shows that while private law seeks to resolve disputes through civil remedies like compensation or restitution, the application of public law transforms these private legal matters into criminal cases. This practice disrupts the predictability of contract enforcement and risks criminalizing behavior that, in essence, is a matter of civil dispute. Thus, the study calls for a more consistent and principled approach in distinguishing between private law breaches and criminal acts, ensuring that

the autonomy of contractual agreements is preserved while appropriately addressing genuine instances of corruption.

In light of these findings, the research suggests the need for legal reforms and improvements in judicial practices within TIPIKOR courts. A clearer framework is necessary to establish the boundaries between contractual disputes and criminal acts, providing guidelines that safeguard the core principles of private law while preventing the misuse of corruption law. Judicial practices in TIPIKOR should emphasize the importance of adhering to private law doctrines when dealing with contract-based disputes unless there is a clear and compelling public interest that justifies the application of criminal law. By promoting such reforms, the legal system can maintain the balance between upholding anti-corruption laws and respecting the legal certainty and autonomy inherent in private contractual relationships. This balanced approach will enhance the integrity of legal interpretation and ensure fairer outcomes for parties involved in contractual agreements in Indonesia.

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