

ABSTRACT

THE CHARACTERISTICS OF THE BREACH OF CONTRACT AND FRAUD EMERGED FROM A CONTRACTUAL RELATIONSHIP

This study of the characteristics breach of contract (*wanprestatie*) and fraud emerged from a contractual relationship examined two legal issues related to: 1) conceptual characteristics of breach of contract and fraud, 2) implementation of breach of contract and fraud concepts in jurisprudence.

Three approaches were used in this study in order to analyze the two legal issues above: a) statute approach, an approach used to examine the rationale or law regulating breach of contract and fraud, b) conceptual approach, an approach applied to analyze and comprehend the nature of breach of contract and fraud concepts, and c) case approach, an approach employed to analyze both fixed and contemporary court decisions in order to discover the substance or *ratio decidendi* as the rationale or principle underlying the decisions.

The results of the study showed that:

- Breach of contract was in the domain of private law, while fraud was in the domain of public law. Both of them had a strong correlation to the establishment of contract or agreement. The relationship between breach of contract and fraud laws was always started or initiated by a contract or agreement between two parties.
- The implementation of breach of contract and fraud concepts in jurisprudence related to contractual disputes varied in the court decisions. The court proved some cases as a fraud, while others were not considered as a fraud. However, there was no similarity of understanding and interpretation in the judges' decision towards the legal cases of contract or agreement.
- The legal boundary between breach of contract and fraud emerged from a contractual relationship could be found and determined. It was situated "before" (*ante factum*) and "after" (*post factum*) the contract or closing agreement, and there had been a bad intention from one of the parties.

Keywords: breach of contract, fraud, and contract