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## **JURIDICAL ANALYSIS OF WANPRESTASI IN THE PERSPECTIVE OF AGREEMENT LAW IN INDONESIA**

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### **ABSTRACT**

The purpose of this study is to provide readers with a deeper understanding of legal findings from the perspective of Islamic economic law. This research uses a qualitative method, which is a type of library research that involves collecting data or documents related to legal findings from the perspective of Islamic economic law. The development and implementation of Sharia law in financial institutions will have a significant impact on social and environmental performance. Therefore, the most important reform of Islamic Sharia law is carried out through legal processes and religious court decisions after the *ijtihad* of judges. In addition to research conducted by several universities in Indonesia, they are also involved in research on Islamic law, especially Islamic economics. From this research, there are several aspects of legal modifiers, there are also developments and extensions of Islamic economic law that have a major influence on the activities of society and its environment.

**Keywords:** *Wanprestasi, Unlawful Acts, Civil Code*



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## **Introduction**

Wanprestasi is one of the important issues in the realm of civil law that often arises in the implementation of agreements between parties. This term is used to describe a situation when one party does not fulfill its obligations as stated in the agreement, either because it does not perform at all, performs but not in accordance with the provisions, or is late in its implementation. In the context of Indonesian civil law, Wanprestasi plays a crucial role in assessing the legal responsibility of parties who violate agreements, as regulated in the Civil Code.

The legal consequences of Wanprestasi can vary, ranging from the obligation to pay compensation, cancellation of the agreement, forced enforcement through legal mechanisms, to the transfer of responsibility for risks to the negligent party. Thus, an in-depth understanding of the types of Wanprestasi and their legal impacts is necessary for the parties involved in the contract. This study aims to examine the forms of Wanprestasi and its legal consequences as an effort to provide clear insights in legal protection for the injured party.

Unlawful Acts (PMH) is a fundamental principle in the Indonesian civil law system that refers to the provisions of Article 1365 of the Civil Code (KUHPPerdata). The article states that any action that is contrary to the law and causes harm to another party, obliges the perpetrator to provide compensation. PMH serves as the basis for compensation claims in cases that do not have a contractual basis, and provides legal protection for parties harmed by unauthorized actions, whether intentional or negligent.

Along with the development of society, the understanding of the concept of PMH has also expanded. Not only limited to violations of written legal norms, PMH also includes violations of moral values, social decency, and public order. Therefore, it is important to comprehensively examine this concept, including the elements that make it up, developments in judicial practice (jurisprudence), and its implementation in real cases. This research aims to provide a comprehensive overview of PMH as an instrument of legal protection in Indonesia's evolving civil system.

## **Research Methods**

This research uses a qualitative descriptive method and is included in the type of library research, which means collecting data or papers related to Legal Discovery in the perspective of Sharia Economic Law. Qualitative descriptive studies combine descriptive and qualitative research and present findings in their original form without additional treatment processes.

Qualitative descriptive methods focus more on the characteristics, qualities, and relationships between activities to describe various types of natural phenomena. In contrast, descriptive research describes overall conditions rather than treating, altering, or changing the variables under study. Qualitative research aims to explore descriptive phenomena that cannot be quantified such as the process of work steps, recipe formulas, understanding of different concepts, characteristics of goods and services, different images and styles, cultural procedures, physical models of objects, and so on.

By looking from the point of view of legal discovery methods, this study aims to provide readers with an in-depth understanding of legal discovery from the perspective of

sharia economic law. It is hoped that this will encourage readers to apply the law in accordance with its rules and consider that studying legal discovery from the perspective of sharia economic law is important.

## **Results And Discussion**

### **A. Wanprestasi In the Law of Ties**

Wanprestasi in the law of ties refers to the failure or inability of one of the parties to fulfill its obligations in accordance with the agreed agreement (Effyanto, 2023) . In this case, Wanprestasi occurs when the debtor does not carry out the promised obligations, whether it is in the form of performing an action, not doing something, or delivering something that has been agreed upon in the agreement (Dalimunthe, 2017) . Wanprestasi is a situation where one of the parties to the agreement does not carry out its obligations as it should. According to Article 1238 of the Civil Code, the debtor is considered negligent if he has been declared negligent by warrant or similar deed, or if due to the nature of the obligation, a warning is required to declare the negligence. In the context of an agreement, the party in Wanprestasi can be asked for compensation in accordance with the provisions of Article 1243 of the Civil Code, which states that compensation must be given if the debtor fails to fulfill the obligation after being given an official warning. The form of Wanprestasi can be in the form of: *First*, not doing what is agreed upon; *Second*, Delivering what is promised, but not as intended; *Third*, doing what is promised but late; *Fourth*, doing something that according to the agreement should not be done.

These four forms of Wanprestasi show how important the precautionary principle is in drafting and executing contracts. Each form has its own legal consequences depending on the level of violation and its impact on the other party. Therefore, in practice, agreements are often accompanied by penalty clauses or fines as a preventive mechanism so that the parties carry out their obligations in an orderly manner. In addition, in civil law practice, proving the occurrence of Wanprestasi is an important aspect in the judicial process. The aggrieved party must be able to show the existence of a valid agreement, a violation of the contents of the agreement, and the loss caused. Commonly used evidence includes contract documents, correspondence, proof of payment transfers, and witness testimony.

#### **a. Case Study and Juridical Analysis**

Supreme Court Decision No. 1575 K/Pdt/2010 can be used as a concrete example. In this case, the defendant did not carry out its obligations as stated in the land sale and purchase agreement, namely handing over the certificate to the plaintiff. The court declared the defendant to have committed a Wanprestasi and rendered a verdict in the form of cancellation of the agreement and compensation to the plaintiff. Juridical analysis based on the Civil Code: Article 1320 of the Civil Code regulates the legal requirements of an agreement: agreement, capacity, specific object, and lawful cause. In the above case,

although the legal requirements were met at the outset, the defendant violated the element of performance of obligations, which is a form of violation of performance, as stipulated in Article 1338 paragraph (1) of the Civil Code, which states that the agreement shall apply as law to the parties. Therefore, the defendant's negligence is considered as a Wanprestasi which results in legal consequences in the form of an obligation to pay compensation (Article 1243 of the Civil Code). Furthermore, this case shows the importance of the principle of *\*pacta sunt servanda\** which binds the parties to comply with the contents of the agreement consistently. Non-compliance with this principle disrupts the stability of legal relationships, especially in high-value contracts such as land sales and purchases, which have a direct impact on the property rights and legal interests of other parties. Not only that, this decision emphasizes the important role of the judiciary in providing legal certainty and protection for aggrieved parties. The court as a neutral institution has the authority to assess performance and determine whether there are elements of negligence that can be qualified as Wanprestasi. This is also an important reference for other civil contracts that have a similar obligation structure.

*\*\*Position of the Parties to the Agreement\*\**

*In the context of contract law:*

*\* The creditor is the party who has the right to receive the performance (fulfillment of obligations).*

*\* The debtor is the party obliged to perform the performance.*

If the debtor fails to perform its performance, the creditor has a legal basis to claim compensation, forced fulfillment of the agreement, or cancellation of the agreement. In practice, the legal position of the parties is determined by the contractual clauses and the applicable laws and regulations. In modern contracts, parties generally include a dispute resolution clause, either through court or arbitration, as a form of anticipation in the event of Wanprestasi. Furthermore, in some types of agreements, such as franchise agreements, construction agreements, or leasing agreements, the legal relationship between creditors and debtors becomes complex because it involves additional obligations such as quality assurance, compliance with technical standards, and responsibility for third parties. Therefore, the analysis of Wanprestasi does not only stop at the violation of the main clause, but must also consider the accessory obligations inherent in the agreement. The characteristics of Wanprestasi are as follows: *First*, Inability to perform obligations: The party to the agreement fails to fulfill the agreed obligations, such as not paying or not delivering the promised goods (Elmanzah et al., 2023) ;*Second*, Delay in fulfilling obligations: The debtor does not perform the obligation in accordance with the time agreed upon in the agreement *Third*, cancellation or failure to perform: The debtor deliberately does not fulfill his obligations or violates the contents of the agreement (Aulia & Syawali, 2025) .

Wanprestasi is a situation when the party who has an obligation in an agreement (called the debtor) does not carry out its obligations in accordance with the contents of the agreement (Bandem et al., 2020) . In civil law, this means breach of promise, and is regulated in Article 1238 of the Civil Code (Paendong, 2022) . A person is considered negligent or in Wanprestasi if he does not fulfill his obligations after being given an official warning (summons) by the entitled party (creditor) (Hariyani et al., 2021) . The consequences of Wanprestasi can vary, such as compensation, contract cancellation, or demands that the performance be carried out in accordance with the agreement (Siswandari, 2017) . Parties who are harmed by Wanprestasi have the right to demand fulfillment of the agreement, cancellation of the contract, and compensation for losses arising from the negligence of the other party in fulfilling their obligations (Sinaga & Darwis, 2020) .

## **B. Definition and Types of Wanprestasi**

### **a. Definition of Wanprestasi**

Wanprestasi is not fulfilling or neglecting to carry out obligations as specified in the agreement made between the creditor and the debtor. Wanprestasi or non-fulfillment of promises can occur either intentionally or unintentionally. A Debtor Is Said To Be Negligent, If He Does Not Fulfill His Obligations Or Fulfills Them Late But Not As Agreed (Mukhlis, 2024). Default is contained in article 1243 of the Civil Code, which states that:

*"Reimbursement of costs, losses and interest for non-fulfillment of an obligation, will only begin to be required, if the debtor, after being declared negligent to fulfill his obligation, continues to neglect it, or if something that must be given or made, can only be given or made, can only be given or made within the time that has been exceeded"* (Harlina & Lastfitriani, 2017) .

Another word Wanprestasi can also be interpreted as an act of broken promise committed by one of the parties who does not carry out the contents of the agreement, the contents or carry out but is late or does what he really should not do (Prasetyo, 2019) . Regarding the definition of Wanprestasi, according to Ahmadi Miru, Wanprestasi can be in the form of actions: *First*, doesn't fulfill the achievement at all; *Second*, achievements performed are not perfect; *Third*, late fulfillment of achievements; *Fourth*, doing what in the agreement is prohibited to do (Wibawati et al., 2019) . Meanwhile, according to A. Qirom Syamsudin Meliala, Wanprestasi can be in the form of: *First*, does not fulfill the achievement at all, In connection with the debtor not fulfilling the performance, it is said that the debtor does not fulfill the performance at all; *Second*, fulfilling achievements but not on time, If the debtor's performance can still be expected to be fulfilled, then the debtor is considered to have fulfilled the performance but not on time, so it can be said to be in Wanprestasi; *Third*, meets the milestones but is inappropriate or erroneous. Debtors who fulfill their achievements but are wrong, if the wrong performance cannot be corrected anymore, the debtor is said not to fulfill the achievement at all (Fazriah, 2023).

### **C. Sanctions and Legal Consequences of Wanprestasi**

Every action that violates the law will have legal consequences for the perpetrator. Wanprestasi is a term used in law to describe a situation in which a person is negligent or fails to fulfill his obligations in an agreement, either in the form of a broken promise or a breach of promise (Iwanti, 2022) . According to Prof. Subekti, Wanprestasi has a number of important disadvantages that need to be considered. Therefore, before a Wanprestasi case is brought to court, an in-depth discussion must first be held between the creditor and the debtor. This is so that the debtor has the opportunity to explain his position before being determined as the Wanprestasiing party (SAM, 2024) .The determination of the debtor as the party in Wanprestasi is regulated in Article 1238 of the Civil Code (KUHPerdata), which states:

*"A person is deemed to be negligent if he has been declared negligent by warrant or similar deed, or based on the contents of the agreement itself if it has been determined that negligence arises from the passage of time that has been agreed upon."* (Ramadhani, 2012) .

The term "legal consequences" refers to all forms of actions or consequences arising from a legal event, both those that have been regulated in legislation and those agreed upon by the parties involved (Kasih et al., 2021) . This legal action aims to resolve a problem in accordance with the applicable provisions. In general, legal consequences include all consequences arising from legal actions carried out by legal subjects against legal objects, as well as from certain events that are legally considered to have legal consequences (Rahadiyan Veda Mahardika et al., 2022) .

If a debtor has been bound by an agreement that expressly states his obligations, but apparently does not fulfill the performance as required, then the debtor can be considered in Wanprestasi (Gusti, 2018) . For this Wanprestasi, legal sanctions can be imposed as stipulated in Article 1243 of the Civil Code (KUHPerdata) (Sinaulan et al., 2023) . One of the main forms of sanctions due to Wanprestasi is the obligation to pay compensation. This compensation includes three elements, namely costs, losses, and interest. Costs refer to all expenses or costs that have been incurred by the creditor, which often become a large financial burden, especially for the Company. Loss is the impact of damage or material loss suffered by the creditor due to the debtor's negligence (Prawira, 2022) .

Meanwhile, interest reflects the losses that arise due to the creditor's failure to obtain profits that have been predicted in advance, as a result of the non-fulfillment of the agreement by the debtor (Sudarmanto et al., 2021) . Furthermore, Wanprestasi can also disrupt the continuity of the agreement. Article 1266 of the Civil Code states that a voidable condition can be included in the agreement as a provision that allows the agreement to end if one party does not fulfill its obligations (Ganie & Se, 2023) . However, the implementation of this void condition cannot be done unilaterally or automatically. The decision to cancel the agreement remains within the authority of the judge, not the unilateral right of one of the parties to the agreement. In other words, even though an agreement has clearly stated a voidable condition, it must still be reviewed and decided by the court (Aula & Cahyono, 2023) . This aims to prevent abuse and ensure that settlements



are made through a fair legal process, not through unilateral actions that can lead to further conflict.

In treaty law, good faith or honesty is one of the most basic and important principles. This principle becomes a moral as well as legal guideline in every process of making, implementing, and completing an agreement. However, according to Ridwan Khairandy in his book "*Good Faith in Freedom of Contract*", although the principle of good faith is very important and recognized in various branches of law, its application often causes problems. This is because the limits or measures of what is meant by "good faith" are often subjective and lead to different interpretations in practice....

In this regard, Article 1247 of the Civil Code (KUHPerdata) states that the debtor is only obliged to reimburse costs, losses, and interest that have actually occurred, or that can reasonably be expected to arise at the time the obligation is born. However, this provision is excluded if the failure to fulfill the obligation is caused by deceitful actions on the part of the debtor. Furthermore, Article 1248 of the Civil Code also reinforces this, stating that even if the failure to fulfill the obligation is caused by deceit, the compensation that must be provided by the debtor to the creditor only covers losses that directly arise from the non-fulfillment of the agreement. Such reimbursement includes both the actual losses suffered by the creditor and the benefits that should have been obtained but were lost due to the debtor's actions.

#### **D. Definition and elements of tort (PMH) (Article 1365 of the Civil Code)**

##### **a. Unlawful Acts**

In the context of civil law, PMH is known as *onrechtmatige daad*. One of the important articles regulating PMH is Article 1365 of the Civil Code. According to this article, PMH is defined as follows: Every unlawful act which causes damage to another person, obliges the person who caused the damage through his fault to compensate for the loss.

According to Rosa Agustina, in her book *Perbuatan Melawan Hukum*, that in determining an act so that it can be qualified as PMH, 4 conditions are needed: *First*, contrary to the perpetrator's legal obligations; *Second*, Contrary to the subjective rights of others; *Third*, contrary to decency; *Fourth*, contrary to propriety, accuracy and prudence. Mariam Darus Badruzaman in her book *Civil Code Book III Law of Engagement with Explanations*, as quoted by Rosa Agustina, outlines the elements of tort that must be fulfilled, among others: *First*, there must be an action, either positive (doing) or negative (not doing); *Second*, the act must be against the law; *Third*, there is a loss; *Fourth*, there is a causal relationship between the tort and the loss; *Fifth*, there was a mistake.

##### **b. Wrongful Acts in Criminal Law**

As is known, there are two broad areas of law, namely criminal law and civil law. It turns out that in both fields of law, PMH is equally known. Unlike the term *onrechtmatige daad* which is used to refer to a civil tort, in criminal law, a tort is known as *wederrechtelijk*.

According to Satochid Kartanegara, "against the law" (*wederrechtelijk*) in criminal law can be divided into: *First*, *Wederrechtelijk* formil, which is when an act is prohibited and punishable by law; *Second*, *Wederrechtelijk* materiil, i.e. an act that "may" be *wederrechtelijk*,

even though it is not expressly prohibited and punishable by law. But also general principles contained in the field of law (*algemen beginsel*).

Furthermore, Schaffmeister, as quoted by Andi Hamzah in his book Introduction to Indonesian Criminal Law argues that "against the law" listed in the formulation of the offense which becomes the core part of the offense is referred to as "against the law in particular" (for example Article 372 of the Criminal Code), while "against the law" as an element that is not mentioned in the formulation of the offense but is the basis for imposing punishment is referred to as "against the law in general" (for example Article 351 of the Criminal Code).

Schaffmeister's opinion is actually applied in positive law in Indonesia, for example in Article 2 and Article 3 of the Anti-Corruption Law. Article 2 of the Anti-Corruption Law contains the element against the law, while Article 3 of the Anti-Corruption Law does not include the element "against the law".

#### **E. The difference between Wanprestasi and PMH**

Unlawful Acts and Wanprestasi are two different forms of violation of the law. Nonetheless, many people still have difficulty in distinguishing whether an action falls into the category of Unlawful Acts or Wanprestasi (Mantili, 2019). As an illustration, here are two examples of cases to examine the difference: *First*, A buys a truckload of high-quality bricks (grade 1) from B. However, B delivers lower quality bricks (grade 2) with the intention of making a larger profit from the transaction; *Second*, C lives in an apartment that strictly prohibits residents from keeping animals. However, C kept a snake in his apartment unit. As a result, there was an unpleasant odor that disturbed the comfort of other residents in the vicinity.

To be able to distinguish between tort and Wanprestasi, we first need to understand the classification of each. An explanation of this will be outlined below. Unlawful Acts are regulated in Article 1365 of the Civil Code (KUHPerdata), which requires four main elements for an action to be categorized as Unlawful Acts, namely: *First*, Such actions are against the law; *Second*, There is an element of error; *Third*, Loss incurred; and *Fourth*, There is a causal link between the act and the harm.

What is meant by violation of law is an action that is contrary to the rights of others, violates its own legal obligations, contradicts the norms of decency, or is not in accordance with the norms that apply in social life. Furthermore, the element of fault refers to actions taken either intentionally or unintentionally, which can cause harm to other parties. The third element, the occurrence of loss, does not only include material loss, but also immaterial loss such as moral loss, ideal loss, loss that cannot be measured in money, and other non-economic losses.

Meanwhile, the last element, causality, means that there must be a causal link between the unlawful act and the loss suffered. Thus, the party who committed the act can be held legally liable, and this emphasizes that before demanding liability, it is necessary to first prove the existence of a direct relationship between the perpetrator's actions and the harm caused to the victim.

Meanwhile, Wanprestasi is regulated in Article 1243 of the Civil Code (KUHPerdata) and has three main elements that must be met so that a legal action can be categorized as



Wanprestasi, namely: *First*, The existence of an agreement between the parties; *Second*, One of the parties does not fulfill or violate the contents of the agreement; and *Third*, the Wanprestasiing party has been given a warning or declared negligent, but still does not carry out its obligations in accordance with the agreement.

Wanprestasi is not only limited to a person's inability to perform their obligations, but also includes several other forms of violations, including: *First*, Performing the performance but not on time. This means that the obligation is fulfilled, but it is done after the time limit specified in the agreement; *Second*, not performing the performance at all. In this case, the party concerned does not carry out its obligations in accordance with the contents of the agreement; *Third*, performing the performance imperfectly. This means that the obligation is carried out, but not in accordance with the type or object that was previously agreed upon; *Fourth*, performing actions that are prohibited in the agreement. That is, the party does things that have been explicitly agreed not to do (Arini, 2020) .

Based on the previous description, the main difference between tort and Wanprestasi lies in the basis of the legal relationship. If the legal relationship arises because of an agreement, then the violation that occurs falls into the category of Wanprestasi. Conversely, if the legal relationship is not based on an agreement, then the action falls into the category of Unlawful Acts (Abidin & Kahpi, 2021) . Thus, Wanprestasi can only occur if there has previously been an agreement or agreement between the parties. Meanwhile, a person is considered to have committed an Unlawful Act if his actions are contrary to the rights of others, his own legal obligations, or norms of decency (Novriansyah et al., 2021) .

## **Conclusion**

Wanprestasi is a form of failure or negligence committed by the debtor in fulfilling the obligations agreed upon in a written or oral agreement. This failure can be in the form of non-performance at all, untimely implementation, implementation that is not in accordance with the contents of the agreement, or imperfect implementation. As a result of this Wanprestasi, the creditor as the injured party has the legal right to demand fulfillment of obligations, compensation, cancellation of the agreement, or even termination of legal relations. In the context of Indonesian civil law, Wanprestasi is regulated in the Civil Code (KUHPerdata), which provides a normative basis related to time limits, forms of responsibility, and settlement mechanisms that can be taken. This provision is very important because it creates legal certainty in civil relations, which in turn plays a role in maintaining the balance between the rights and obligations of the parties. Thus, creditors who feel aggrieved by the non-fulfillment of obligations by the debtor get fair legal protection and can claim their rights through legal channels. The form of Wanprestasi can be in the form of not performing the performance at all, performing it not as it should, or being late in carrying out the obligation.

The legal consequences of Wanprestasi include the right for the injured party to demand the fulfillment of the agreement, request compensation, cancel the agreement, and request the transfer of risk of loss. To enforce rights due to Wanprestasi, the injured party can take legal remedies either through litigation (court) or non-litigation channels such as mediation or arbitration, depending on the provisions of the contract and the agreement of the parties. With a proper understanding of Wanprestasi and the legal

remedies available, the parties to the agreement are expected to be able to resolve disputes fairly and proportionally. Meanwhile, Unlawful Acts (PMH) is a form of action that violates legal norms, both written and unwritten, which results in harm to others. This action does not stem from a contractual relationship, but rather from a violation of general norms in society that are protected by law. In the Civil Code, PMH is regulated in Article 1365 onwards, which stipulates that every act that is against the law and causes harm to others obliges the perpetrator to compensate for the loss. To be considered as PMH, important elements must be fulfilled, such as the existence of an unlawful act, the wrongdoing of the perpetrator, the incurrence of losses to other parties, and the causal relationship between the act and the losses.

PMH functions not only as a protection for the interests of individuals who are harmed, but also as a mechanism to maintain order and justice in society through sanctioning actions that are considered unlawful and detrimental. The interaction between Wanprestasi and PMH in civil law practice is often complex because both can overlap in a case. For example, in a contractual relationship, in addition to a violation of the contents of the agreement (Wanprestasi), there may also be a violation of generally applicable legal norms, so that it can also be categorized as PMH. In these circumstances, the plaintiff may file a lawsuit based on both legal bases simultaneously, as long as each element of Wanprestasi and PMH can be proven separately. This combination allows the judge to assess the case more comprehensively and provide a more thorough legal solution to the losses suffered by the injured party. Therefore, a deep understanding of the concepts of Wanprestasi and PMH, as well as the ability to distinguish or connect the two appropriately, is very important for legal practitioners, academics, and the public involved in civil law relationships. This knowledge is not only useful in the litigation process, but also in drafting contracts and making wise legal decisions to prevent future disputes.

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