

The Jurisdiction Analysis of Criminal Acts of Fraud & Embedding in the Buying of Fish

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Abstract.

This study aims to identify and analyze the investigation of criminal acts of fraud and embezzlement in the sale and purchase of fish at the Batang Police Resort. The approach used is sociological juridical. Collecting data through interviews, literature studies and documentation studies. The study concluded that the investigation of criminal acts of fraud and embezzlement in the sale and purchase of fish at the Batang Police Resort was based on the Criminal Procedure Code, the National Police Chief Regulation Number 6 of 2019 and the Republic of Indonesia Police Circular Number: SE/8/VII/2018. In the investigation of the crime, the investigator seeks a peaceful settlement of the case through a restorative justice approach with a view to obtaining a fair settlement for both parties. On the one hand, the victim gets a recovery from the loss and on the other hand the suspect can be released from criminal prosecution.

Keywords: Embezzlement; Fish; Fraud; Investigation; Transaction.

1. Introduction

Law enforcement is one of the parameters in the success of the rule of law.¹ Law enforcement basically wants to bring about justice for every human being, both as individuals and as citizens of Indonesia.

Criminal law is a law that regulates violations and crimes against the public interest, which actions are threatened with suffering. Investigators as law enforcers who are early in handling criminal cases must be able to resolve civil cases in which a criminal act has occurred or is suspected to have occurred. Investigators must examine and assess whether civil cases submitted can be processed through criminal justice or not. Generally, the submission of civil cases to the criminal route is carried out by parties who feel aggrieved after the settlement of civil cases through peaceful means or settlement of problems outside the court does not produce results.

For the unscrupulous, the crime of fraud is not so difficult to do. Fraud can be carried out simply by having good communication skills so that someone can convince others, either through a series of lies or fictitious words. Nowadays, there are a lot of criminal acts of fraud with various modes.² There is always a victim who

¹Sri Endah Wahyuningsih, Rismanto, "Kebijakan Penegakan Hukum Pidana Terhadap Penanggulangan Money Laundering Dalam Rangka Pembaharuan Hukum Pidana Di Indonesia", Jurnal Pembaharuan Hukum Volume II No. 1 January - April 2015, p. 46-47.

²Sumaryono and Sri Kusriyah, The Criminal Enforcement of the Fraud Mode of Multiple Money (Case study Decision No.61 / Pid.B / 2019 / PN.Bloro), in Jurnal Daulat Hukum: Volume 3 Issue 1, March 2020, p. 234.

is harmed in every fraud case.³On the other hand, in order to gain profit and enrich themselves, the perpetrators violate the rules and legal norms that apply.⁴

One of the civil disputes brought to the realm of criminal law is the case of fraud and embezzlement in the sale and purchase of fish in the jurisdiction of the Batang Police Resort. In this case, the suspect Hj. S alias Susi alias Wati bint S (deceased) from Batang entered into a fish trading relationship with victim H. Juanda bin Ajis (deceased) from Banyuwangi, East Java. At first the civil relationship between buying and selling fish went smoothly because the suspect always paid for the victim's fish that the suspect bought even though the payment was made 50% and the rest was paid after all the fish were sold by the suspect. Problems began to arise when the payment of the fish sent by the victim from Banyuwangi began to experience delays in payment by the suspect until the payment stopped and there were arrears in payment. Peace efforts have been made by the victim by collecting payment arrears in a family manner, but until the time limit specified in the agreement for the payment of arrears for fish payments that have not been paid on paper stamped with the suspect, the suspect has not made any payments. The victim suffered a loss of IDR 1,260,387,000, - (one billion two hundred sixty million three hundred eighty-seven thousand rupiah). Finally the victim reported the matter to the Batang Police Resort and the case was handled by the Batang Police Resort. In this case, the suspect was charged with fraud and embezzlement.

The case is interesting considering that it was originally a civil case that was brought to the criminal realm. The application of the article on fraud and embezzlement carried out by the Batang Police Resort investigators was carried out with consideration of the legal facts that occurred in the case. This becomes interesting as research material.

This study aims to identify and analyze the investigation of criminal acts of fraud and embezzlement in the sale and purchase of fish at the Batang Police Resort, and the obstacles and solutions faced by the Batang Police Resort in investigating criminal acts of fraud and embezzlement in the sale and purchase of fish.

2. Research Methods

The approach method used in this research is sociological juridical. Collecting data through interviews, literature study and documentation. Interview is a way of collecting data by way of question and answer which is done systematically and based on research objectives.⁵ Literature study, namely literature review which is intended to obtain complete information and to determine the actions to be taken as an important step in scientific activities.⁶ Documentation study, namely research on documents related to research. The documents studied are the minutes of the

³Noor Rahmad, "Kajian Hukum terhadap Tindak Pidana Penipuan Secara Online" Jurnal Hukum Ekonomi Syariah, Volume 3 | Nomor 2 | July-December 2019, p. 103

⁴Tony Yuri Rahmanto, "Penegakan Hukum Terhadap Tindak Pidana Penipuan Berbasis Transaksi Elektronik, Jurnal Penelitian Hukum DE JURE, Vol.19 No.1, March 2019, p. 33

⁵Marzuki. 2000. *Metodologi Riset*, Badan Penerbit Fakultas Ekonomi (BPFE) Universitas Islam Indonesia (UII), Yogyakarta, p. 62.

⁶P. Joko Subagyo,. 1997.*Metode Penelitian Dalam Teori dan Praktek*, Rineka Cipta, Jakarta, p. 109.

investigation. The data analysis method used is descriptive qualitative analysis, namely the analysis carried out on the data, both in the form of qualitative data.⁷

3. Results and Discussion

3.1. Investigating Fraud and Embezzlement in the Sale and Purchase of Fish at the Batang Police Resort

The occurrence of alleged criminal acts of fraud and embezzlement of buying and selling fish in the jurisdiction of the Batang Police Resort in this study began with a civil relationship in the form of buying and selling fish between the suspect named Hj Susinowati alias Susi alias Wati binti Sahuri Age 40 years, Occupation; Entrepreneur, Address Dk.Milingan RT.04 / RW.01 Kel. North Karangasem District. Batang Kab. Batang with a victim named H. Juanda bin (deceased) Ajis address Dsn. Krajan RT.01 / RW.01 Ds. Kedungrejo district. Muncar Kab. Banyuwangi. There was a problem in the civil relationship in the form of buying and selling fish between the two parties and the victim felt aggrieved because the 7 (seven) times delivery of fish orders to the suspect was not paid at all. The losses reached IDR 1,260,387,000, - (one billion two hundred sixty million three hundred eighty-seven thousand rupiah).

Based on the victim's report, Batang Police Investigators conducted a case analysis. Based on the case analysis conducted by the Batang Police Resort investigators, it was found that the case was originally a civil relationship between the complainant and the reported party so that the investigator would settle the case in a civil manner with a restorative justice approach as regulated in the National Police Chief Regulation Number 6 of 2019 concerning Criminal Investigations.

According to the Regulation of the National Police Chief Number 6 of 2019 concerning Criminal Acts of Investigation, restorative justice can be carried out, if material conditions are met, including not causing public unrest or no public rejection; does not result in social conflict; there is a statement from all parties involved not to object, and waive the right to sue before the law; the limiting principle covers the aspects of the perpetrator: 1) the level of the perpetrator's error is relatively light, namely the error is in the form of intentional; and 2) non-recidivist actors; on aspects of criminal acts in the process: 1) investigation; and 2) investigation, before the SPDP is sent to the Public Prosecutor. The formal requirements include: a letter of request for reconciliation of both parties (the reporting party and the reported party);

In addition to basing on the National Police Chief Regulation Number 6 of 2019 concerning Criminal Investigation, peaceful settlement of cases through a restorative justice approach is based on the Circular Letter of the Indonesian National Police Number: SE/8/VII/2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases. Restorative justice is an idea and movement that puts forward justice from the perspective of the perpetrator and his

⁷Ibid, p.106.

family, the victim and his family, the community, and stakeholders in the context of restoring their respective circumstances.⁸

Batang Police Resort investigators in handling the case attempted to settle the case with a restorative justice approach before further investigation was carried out. The reason for carrying out a restorative justice approach is that the case of buying and selling fish is a civil case that can still be pursued for a peaceful settlement. In addition, investigators use discretionary authority in the settlement of criminal cases. At the amicable settlement of the case, the suspect is given the opportunity to fulfill his obligations to the victim in a civil law relationship in the sale and purchase of fish between the suspect and the victim. Based on the peaceful efforts made by the investigators, they did not find an amicable settlement of the case.⁹

Restorative justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation.¹⁰ The purpose and objective of the application of restorative justice is to obtain a fair settlement of the case. On the one hand, the victim gets a recovery from the loss and on the other hand the suspect can be released from criminal prosecution.¹¹

Based on the amicable settlement of the case that failed, the investigator carried out a further case settlement process by conducting criminal investigations based on the Criminal Procedure Code and technically the field was guided by the National Police Chief Regulation Number 6 of 2019 concerning Criminal Investigations. Investigators make coercive efforts in the investigation, namely summons; arrest; detention; search; foreclosure; and mail checks.

The investigation into fraud and embezzlement in the sale and purchase of fish, apart from examining witnesses related to criminal cases, also examined expert testimony from Dr. Umi Rozah SH, M. Hum, lecturer at the Faculty of Law, Diponegoro University, Semarang. The expert has a certificate / doctoral diploma in the field of Criminal Law and Criminal Justice System from the Doctoral Program of Law Sciences, Faculty of Law UNDIP. That the Expert has experience in providing information in criminal cases: a) Fraud cases. b) The case of embezzlement. c) Cases of Forgery of Letters. d) Fraud Cases by Corporations. e) Domestic violence cases. f) Cases of Abuse of Authority. g) Cases of persecution by people who are not capable of being responsible. h) Insults on Facebook (UU ITE). i) The case of false information above the certificate.

Expert in cases of fraud and/or embezzlement committed by Suspect Hj. Susanowati als. Susi als. Wati binti (late) Sahuri on the sale and purchase of fish carried out with the victim witness H. Juanda bin (late) NIS, explained as follows:

⁸Hadi Noor Cahyo and Maryanto, "Implementation Of The Settlement Of The Case Restorative Justice In Fights By Children Because The Effect Of Liquor (Case Study In The Polres Kudus), Jurnal Daulat Hukum: Volume 2 Issue 1, March 2019, p 1024

⁹Dr. Dian Ayu KD., SH., M.H., Investigator of Batang Police Resort, Private interview on 20 December 2021.

¹⁰Decree of the Directorate General of the General Judiciary Agency Number: 1691/DJU/SK/PS.00/12/2020 dated 22 December 2020 concerning Guidelines for the Implementation of Restorative Justice

¹¹Dr. Dian Ayu KD., SH., M.H., Op.cit.

That an act is said to be a criminal act or a criminal act if the act has fulfilled all the elements in the formulation of the offense from article defined in the criminal code. Based on the facts found in the chronology of the case, where reported Susinowati has committed several lies in which one lie to another is related to the payment of fish sent by Reported Party H. Juanda, with the intention of unlawfully benefiting himself, thus resulting in H. Juanda was moved to hand over or send a number of fish continuously to Susinowati, so the reported actions of Susinowati have fulfilled all the elements of the fraud offense as formulated in Article 378 of the Criminal Code. By not handing over the money from the sale of fish belonging to H. Juanda, where Susinowati controlled the money from the sale of fish, it was unlawful not from a crime but from a fish sale and purchase agreement, where the act of controlling the money from selling fish belonging to H. Juanda was carried out by Susinowati. by using the money from the sale of fish belonging to H. Juanda according to his will and for his own benefit. Susinowati's actions have fulfilled all the elements in the formulation of the offense as formulated in Article 372 of the Criminal Code concerning embezzlement.

The expert also explained the difference between criminal law and civil law in relation to the case carried out by Suspect Hj. Susanowati als. Susi als. Wati binti (late) Sahuri against witness victim H. Juanda bin (late) Ajis as follows: The difference between criminal law and civil law is that criminal law is a public law, namely the rules regarding prohibited acts with certain conditions and criminal threats. As a public law, criminal law functions to maintain order in society with the threat of a tragic crime. Meanwhile, civil law regulates private matters between individuals and individuals, where the state is not involved in the settlement of these civil problems. Buying and selling transactions are the realm of civil law, but if there are elements of criminal acts such as lies, falsehoods, misdirection,

That with 7 (seven) times of fish shipments that have been received by Hj. Susanowati als. Susi als. Wati binti (alnr) Sahuri, and was not paid at all and the receipt of the fish shipment was partially received in the Batang area. Experts have the following objectives: locus delicti relates to the area of competence authorized to adjudicate cases with criminal acts. In the crime of fraud, locus delicti is the place where the goods are handed over to the perpetrator of the crime. Based on the facts in the chronology and the questions above, where the fish and purchase receipts were submitted in Batang, then the locus delicti is in the Batang area.

In line with the expert testimony, the Batang Police Resort investigators determined the scene of the case as follows:

- Place of suspect Hj. Susanowati als. Susi als. Wati binti (late) Sahuri called victim witness H. Juanda bin (late) Ajis and asked to be sent fish, and has admitted that he has become a big fish trader and has traded everywhere, and has always been smooth, mostly done in the jurisdiction of the Regency / Batang Police Resort so that in the process the suspect moves the victim's witness to send the fish, it is carried out in the jurisdiction of the Batang Police Resort
- Place of suspect Hj. Susanowati als. Susi als. Wati binti (alnr) Sahuri received a delivery on December 9, 2018 which was sent by witness Samsul Hadi bin Bonamo, at that time the fish and a delivery note were received by the suspect on the side of the highway Jl Yos Sudarso south of Trafight Light intersection four

Jl Yos Sudarso Batang, into the area of South Karangasem Village, Batang District, Batang Regency.

- Place of suspect Hj. Susanowati als. Susi als. Wati binti (alnr) Sahuri made a statement letter on March 14, 2019 which contained the suspect admitting that he had received the seven shipments of fish mentioned above but had not made payment, and agreed to make payments no later than June 30, 2019. As well as signing the original memorandum The receipt of fish was carried out at the suspect's house, namely in Dk Milingan, RT 04 RW 01, North Karangasem Village, Batang District, Batang Regency.

Based on this, the location of the case is determined in the jurisdiction of the Batang Police Resort so that the Batang Police Resort has the authority to handle the case.

Based on the facts and analysis of the case and associated with the evidence that has been confiscated, there have been indications of a criminal act of fraud and/or embezzlement committed by Suspect Hj. Susanowati als. Susi als. Wati binti (late) Sahuri, Age 40 Years, Employment, Islamic Religion, Citizenship, Indonesian, Javanese, Address Fifour lives Dk. Milingan RT 04 / RW 01 Kel. North Karangsem District. Batang Kab. Batang, because the elements formulated in Article 378 and/or 372 of the Criminal Code have been fulfilled.

Based on the results of the Batang District Court trial in this case, the defendant Hj. Susanowati als. Susi als. Wati binti (late) Sahuri was legally and convincingly declared guilty of committing a criminal act of continuous fraud and the defendant was sentenced to prison for 1 (one) year and 10 (ten) months.

According to the theory of Chambliss and Robert B. Seidman, that: a) Every legal regulation tells about how a role holder is expected to act. How a person will act in response to legal regulations is a function of regulations ± regulations directed at him, the sanctions, the activities of implementing agencies and the whole social, political and other complex regarding him. b) How the implementing agencies will act in response to the rule of law is a function of the legal regulations directed at them, the sanctions, the whole complex of social, political and other forces concerning themselves and the feedback that comes from role holder.¹²

According to the theory of criminal law enforcement from Chambliss Seidman that the investigation of criminal acts of fraud and embezzlement in the cases in this study is a response from the state through investigators to legal regulations, both criminal law regulations and civil law related to cases reported by victims as members of the community.

Based on the theory of legal certainty according to Jan Michiel Otto, the implementation of investigations into cases of fraud and embezzlement in the sale and purchase of fish has legal certainty considering that its implementation is in accordance with existing laws and regulations, namely the Criminal Procedure Code and National Police Chief Regulation Number 6 of 2019 concerning Criminal Investigations and Circular Letters. Police of the Republic of Indonesia Number:

¹²Ida Bagus Gde Sinung, "Penerapan Undang-Undang Perlindungan Konsumen Junto Undang Undang Perdagangan Oleh Penyidik Dalam Menangani Tindak Pidana Gula Ilegal (*Illegal Sugaring*) Dari Luar Negeri / Malaysia Di Wilayah Kalimantan Barat", Jurnal Mahasiswa S2 Hukum UNTAN, Vol. 4 No 4, 2015.

SE/8/VII/2018 Concerning the Application of Restorative Justice in the Settlement of Criminal Cases in terms of efforts to settle cases peacefully.

Legal certainty according to Jan Michiel Otto defines it as the possibility that in certain situations: 1) There are clear (clear), consistent and easy to obtain rules, issued by and recognized because of the (power) of the state. 2) Ruling agencies (government) apply these legal rules consistently and are also subject to and obedient to them. 3) Citizens principally adjust their behavior to these rules. 4) Judges (judicials) who are independent and do not think to apply the rules of law consistently when they resolve legal disputes. 5) Judicial decisions are concretely implemented.¹³

According to HD Stout that authority can be explained as a whole of the rules relating to the acquisition and use of government authority by public law subjects in public law.¹⁴ If it is related to the theory of authority, the authority possessed by investigators in conducting investigations of criminal acts that occur in civil law relations is based on applicable laws and regulations, including Act No. 2 of 2002 concerning the Indonesian National Police and the Criminal Procedure Code. The authority possessed by the investigator is the authority to reveal a criminal case through an investigation by conducting an assessment of the case based on the applicable laws and regulations.

4. Conclusion

Investigation of criminal acts of fraud and embezzlement in the sale and purchase of fish at the Batang Police Resort based on the Criminal Procedure Code, the National Police Chief Regulation Number 6 of 2019 concerning Criminal Investigations, and the Republic of Indonesia Police Circular Letter Number: SE/8/VII/2018 concerning the Application of Restorative Justice . In the investigation of the crime, the investigator seeks a peaceful settlement of the case through a restorative justice approach with a view to obtaining a fair settlement for both parties. On the one hand, the victim gets a recovery from the loss and on the other hand the suspect can be released from criminal prosecution. The restorative justice approach has not yet become a fundamental legal basis in the criminal law system in Indonesia, which still uses the colonial legacy criminal law system that is oriented to revenge. For this reason, there is a need for a study to place restorative justice as the fundamental basis of Indonesian criminal law that is oriented towards recovery, considering that restorative justice is in line with the spirit and philosophy of Pancasila and the nation's personality which emphasizes problem solving through deliberation.

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¹³Soeroso, 2011. *Pengantar Ilmu Hukum*, PT. Sinar Grafika, Jakarta, p. 12

¹⁴Stout HD, *de Betekenissen van de wet*, in Irfan Fachruddin, 2004, *Pengawasan Peradilan Administrasi terhadap Tindakan Pemerintah*, Alumni, Bandung, p.4.

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