

The Relevance of Fraud Criminal Offenses in a Situation of Default in Debt Agreements

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Abstract: *This research aims to study and analyze the divergence of default with fraud in debt agreements. In this writing, the writer uses a normative juridical method with research specifications in the form of descriptive analysis. Based on the discussion, it is concluded that the parameter that differentiates default from criminal acts of fraud is that default is seen from the good faith of the parties, while criminal acts of fraud are motivated by malicious intent (mens rea) in owning an object (goods) belonging to another person and by seeing whether there is element of intention not to fulfill his achievements. Acts of pure default and criminal acts of fraud also have different resolutions, namely default cases are resolved through civil lawsuits where if the lawsuit is won then the settlement will be in the form of returning the rights of the plaintiff or defendant, depending on the judge's conviction. Meanwhile, the criminal act of fraud begins with a report to the authorized official (police), is prosecuted by the public prosecutor, and is decided by a judge. The punishment was in the form of corporal punishment. Insofar as one of the parties fulfills the element of fraud, even though the party has made achievements during the investigation process, this does not eliminate the criminal element from his actions.*

Keywords: Accounts; Agreement; Payable.

1. Introduction

The Third Amendment to the 1945 Constitution of the Republic of Indonesia has added norms regarding the rule of law in Article 1 paragraph (3) of the Third Amendment to the 1945 Constitution of the Republic of Indonesia which reads: "Indonesia is a country based on law".¹ This provision is a form of normalization originating from the content in the Elucidation of the 1945 Constitution of the Republic of Indonesia which states "The State of Indonesia is based on law

¹Ahmad Firmanto Prasedyomukti and Rakhmat Bowo Suharto. (2018). The Role of Judicial Commission on Supervision of Judge's Crime in Indonesia, Jurnal Daulat Hukum, 1 (4) url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/3931/2793>

(Rechtsstaat) not based on mere power (Machtsstaat)". By loading it into the norms of the 1945 Constitution of the Republic of Indonesia, the concept of a rule of law in the Elucidation of the 1945 Constitution of the Republic of Indonesia has binding legal force as the highest norm in the Indonesian national legal system.²

Terminologically, the term "rule of law" in the provisions of Article 1 paragraph (3) of the Third Amendment to the 1945 Constitution of the Republic of Indonesia does not specifically refer to one of the main concepts in the Western legal tradition, both the Rechtsstaat and the Rule of Law. This means that the term "rule of law" in the 1945 Constitution of the Republic of Indonesia is a relatively 'neutral' concept which opens up space for interpretation for new understandings according to the paradigm and reality of the Republic of Indonesia.³

Indonesia as a country of law in the interpretation that all sectors in a country will always be implemented based on law as a system that works to regulate everything. The definition of law has an abstract nature, meaning it depends on where we interpret it. In every approach to law, we will find a fact that is somewhat surprising and even embarrassing, because it turns out that we cannot define law precisely.⁴ According to Achmad Ali; Law is a set of norms regarding what is right and wrong, which is made and acknowledged by the government, both contained in written rules and those that are not bound and in accordance with the needs of society as a whole and with the threat of sanctions for violators of these norms. Meanwhile, according to Lawrence M. Friedman, law is a word with many meanings, as smooth as glass, as nimble as a soap bubble. As we have mentioned, law is a concept, an abstraction, a social construct, not a real object in the world around us.⁵

One of the unlawful acts committed by the public is the crime of fraud. This is because, the crime of fraud is very easy to do only with the ability to convince someone with lies.

We often hear the words fraud and default in debt agreements. These two words do have the same effect, namely causing a loss to one of the parties and both do not pay off debtsto creditors. However, we often wrongly apply it to a legal event. The word fraud is synonymous with criminal law, while default enters the realm of civil law. The background of this research is because it is difficult to distinguish

²Nur Dwi Edie W, and Gunarto. (2020). Analysis of Judicial Policy in Deciding Criminal Acts Based Alternative Indictment (Case Study Decision Number 82 / Pid.B / 2019 / PN. Blora), Jurnal Daulat Hukum, 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8429/4063>

³Beno, Gunarto and Sri Kusriyah. (2020), Implementation of Fully Required Elements in the Crime of Planning Murder (Case Study in Blora State Court), Journal of Daulat Hukum, 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8404/4058>

⁴Ilhami Bisri, (2004), Indonesian Legal System, Raja Grafindo Persada, Jakarta, p.13

⁵Amir Ilyas, (2012), Principles of Criminal Law, Rangkang Education and Pukap, Makassar, page 3

between default and fraud, especially in cases of accounts payable because both default and fraud there is a possibility of bad ethics from the debtor.

Accounts payable is a problem that is commonly done by all circles of society. Accounts payable are focused on money or goods lent to someone with the obligation to return the money or goods according to the agreement or what has been agreed according to the agreement. In short, accounts payable is giving something to someone else with an agreement that he will pay or return it properly. However, recently there have been very many actions or reports of complaints against criminal acts based on debt or credit fraud.

Debts are our debts to (other) people, and (other) people's debts to us. Which means there is an obligation to carry out the promise to pay. Accounts payable is the corridor area of civil law, namely the rules governing the relationship between one person and another, with an emphasis on individual or personal interests. Debt - Receivables are considered legally valid if an agreement is made. Namely an agreement based on the law regulated in Article 1320 of the Criminal Code.

In cases of accounts payable, confusion sometimes arises, whether the act is included in an act of fraud or is included in an act of default (aspect of civil law), the level of public knowledge, especially law enforcement officials as parties who carry out laws and regulations, causes frequent mistakes in interpreting criminal acts of fraud. the.

From the things described above, the author's intention arises to establish the purpose of writing, namely to study and analyze the divergence of default and fraud in debt agreements.

2. Research Methods

To conduct an assessment in this writing the authors use the normative juridical method. Writing specifications are carried out using a descriptive analytical approach. The data used for this writing is secondary data. To obtain the data in this writing, secondary data collection methods were used which were obtained from library books, laws and regulations, as well as the opinions of legal experts. The data that has been obtained is then analyzed with qualitative analysis.

3. Result and Discussion

3.1. Divergence of Default with Fraud in Accounts Payable Agreements

As social beings, interactions between humans in social life must occur. This pattern of interaction is then bound by a norm that applies in society as well as legal norms. This form of interaction can give birth to a legal action in the form of

an agreement. Munir Fuady said that the term agreement is equivalent to the term *overeenkomst* in Dutch or agreement in English.⁶

According to Sutarno, agreements are divided into several types, namely:

1) A reciprocal agreement is an agreement made by placing rights and obligations on both parties who make the agreement. For example, the sale and purchase agreement Article 1457 of the Civil Code and the rental agreement of Article 1548 of the Civil Code. In a sale and purchase agreement, rights and obligations exist on both sides. The seller is obliged to deliver the goods sold and is entitled to payment and the buyer is obliged to pay and receive the goods;

2) Unilateral agreements are agreements made by placing obligations on only one party, for example a grant agreement. In this case, the obligation is only on the person who donates, namely to provide the goods donated, while the recipient of the grant does not have any obligations. The recipient of the grant is only entitled to receive the item donated without any obligation to the person giving it;

3) A free agreement is an agreement according to the law where only one party benefits. For example grants (*schenking*) and borrowing using Article 1666 of the Civil Code and 1740 of the Civil Code;

4) Consensual, real, and formal agreements. A consensual agreement is an agreement that is considered valid if there has been an agreement between the parties making the agreement. A real agreement is an agreement that requires an agreement but the goods must be submitted. For example, safekeeping of goods Article 1741 of the Civil Code. A formal agreement is an agreement that requires an agreement but the law requires that the agreement must be made in a certain form in writing with a deed drawn up by a notary public official or PPAT (Land Deed Making Officer). For example, buying and selling land, the law determines that a sale and purchase deed must be made with a PPAT deed, a marriage agreement is made with a notary deed;

5) Named or special agreements and unnamed agreements. Named or special agreements are agreements that have been regulated with special provisions in the Civil Code book III Chapter V to Chapter XVIII. For example, sale and purchase agreements, leases, grants and others. Meanwhile, anonymous agreements are agreements that do not have specific regulations in the law. Concerning anonymous agreements is regulated in Article 1319 of the Civil Code which states "all agreements, both those with a special name and those that are not known by

⁶Munir Fuady, (2001), *Contract Law (From a Business Law Perspective)*, Bandung, Citra Aditya Bakti, page 2

a certain name, are subject to the general regulations contained in this chapter and other chapters".⁷

Only legal subjects can perform legal actions. Legal subjects are holders of legal rights and obligations or supporters/owners of rights and obligations.⁸ Humans and legal entities have the opportunity to enter into agreements or agreements. This agreement resulted in achievements for the parties who entered into the agreement as stipulated in Article 1338 of the Civil Code. If the contents of the agreement or agreement are not fulfilled, the parties can take litigation or non-litigation as an alternative dispute resolution.

In practice, the disputing parties usually hold a mediation or negotiation as an effort to find a way out and an agreement before the case goes to court. In the settlement of non-litigation cases, the presence of a neutral third party is not to decide the dispute, but it is the parties themselves who make the final decision. The results of dispute resolution outside the court can be confirmed as a *van dading* deed by an authorized public official, in this case a notary as the basis for issuing a new agreement. The *van dading* deed has binding power for the parties.

Default can occur both intentionally and unintentionally.⁹ Failure to perform performance (default) creates legal consequences for the debtor after being given a grace period, namely the debtor must pay compensation to the creditor if the grace period given by the creditor cannot be reached by the debtor to carry out his achievements.¹⁰

If one party fails to fulfill the achievements, it must be in good faith notify the other party to provide an explanation or concession. The parties must also analyze the cause and effect of the other party failing to fulfill the performance, because the party experiencing an *overmacht* does not need to pay compensation. It is another case if the performance fails to be fulfilled due to negligence, as long as the negligence fulfills a criminal element, this case of broken promise can be tried under criminal procedural law.

Law enforcement officers must clearly understand the limits of default and the limits of fraud. Law enforcement officials must also dig up information and collect evidence from the parties as a guide for further legal action. A default case must begin with the good faith of both parties. In making any agreement, the parties basically have the freedom to determine the contents of the agreement, with

⁷Sutarno. (2003). *Legal Aspects of Credit at Banks*, Bandung, Alfabeta, page 82

⁸Zainal Asikin. (2012). *Introduction to Law*, Jakarta, Raja Grafindo Persada, page 33

⁹Ahmadi Miru, (2007), *Contract Law and Contract Drafting*, Jakarta: Rajawali Press, page 74

¹⁰Sugirhot Marbun. (2015). *Difference Between Default and Fraud Delict in Agreement Relationship*, *USU Law Journal*,.3.(2), p. 132.

whom they make the agreement, however, each agreement should always be based on the principle of good faith, not violating laws and regulations, and not violating the interests of society.¹¹Such a requirement is intended to bring justice to the parties in the agreement, so that the strong does not exploit the weak.

Whereas the agreement from the beginning was accompanied by malicious intent (*mens rea*) and deception to obtain a debt or write off a receivable, this constitutes an element of criminal fraud.¹²Conversely, if an agreement is basically accompanied by good faith, but there are things that make the debtor not carry out the agreement, then this can be classified as a default. It requires carefulness from law enforcement officials to classify an act of broken promise, whether it falls into the realm of default or a criminal act of fraud.

The parameter that differentiates default from criminal acts of fraud is that default is seen from the good faith of the parties, while criminal acts of fraud are motivated by malicious intent (*mens rea*) in owning an object (goods) belonging to another person and by looking at whether there is an element of intent not to pay achievement. Acts of pure default and criminal acts of fraud also have different settlements, namely cases of default are resolved through civil lawsuits where if the lawsuit is won, the settlement is in the form of returning the rights of the plaintiff or defendant, depending on the judge's conviction. Meanwhile, criminal acts of fraud begin with reports to authorized officials (police), prosecuted by the public prosecutor, and decided by the judge. The punishment was in the form of corporal punishment. Insofar as one of the parties fulfills the element of fraud, even though the party has made achievements during the investigation process, this does not eliminate the criminal element from his actions. This means that the party must be held accountable for their actions criminally, with a prison sentence to provide a deterrent effect. Insofar as the default is carried out under forced circumstances and can be proven, the creditor's own negligence, the creditor has waived his right to claim compensation, then the act cannot be brought into the criminal realm, and becomes a civil domain. However, if the agreement is made because there is intention, and there is an attempt to falsify the contents of the agreement or the condition of the party, the case of broken promises can enter the realm of crime with suspicion of fraud.

Based on Article 1328 of the Civil Code, translated by Subekti and R. Tjitrosudibio, fraud is a reason for canceling an agreement, if the trick used by one of the parties is such that it is clear and obvious that the other party does not would have made

¹¹Luh Nila Winarni. (2015). The Principle of Good Faith as an Effort to Protect Consumers in Financing Agreements, *DIH, Journal of Legal Studies*, 11(21), pp. 3-4

¹²Ridwan Khairandy, (2013), *Indonesian Contract Law in a Comparative Perspective (first part)*, FH UII Press, Yogyakarta, p. 223

the engagement if the ruse had not been carried out. Fraud is not suspected, but must be proven. Fraud also has an objective element and a subjective element. Objective elements related to the object of the agreement, namely:

- 1) The act of moving (bewegen);
- 2) What is being moved is people.¹³

The subjective element includes the subject and the element of error. Meanwhile, what is included as an objective element is that the act is against the law¹⁴, an action that is prohibited or required by law/legislation and the violators are subject to criminal penalties, and is carried out in a certain time, place and condition. The objective and subjective elements must be fulfilled to determine the existence of a crime.

In the agreement a person or the parties are exempt from compensation if they experience an overmacht.¹⁵ If in an agreement one of the parties falsifies an overmacht situation so as not to fulfill the achievement, the aggrieved party can report to the nearest police station bringing initial evidence against an alleged criminal act of fraud. However, if the agreement that is used as the basis for the fraud complaint report, because one of the parties broke a promise, as long as there is no falsification and there is no trickery to fulfill achievements, then the path chosen by the parties is to file a civil lawsuit.

4. Conclusion

The parameter that differentiates default from criminal acts of fraud is that default is seen from the good faith of the parties, while criminal acts of fraud are motivated by malicious intent (*mens rea*) in owning an object (goods) belonging to another person and by looking at whether there is an element of intent not to pay achievement. Acts of pure default and criminal acts of fraud also have different resolutions, namely default cases are resolved through civil lawsuits where if the lawsuit is won then the settlement will be in the form of returning the rights of the plaintiff or defendant, depending on the judge's conviction. Meanwhile, the criminal act of fraud begins with a report to the authorized official (police), is prosecuted by the public prosecutor, and is decided by a judge. The punishment was in the form of corporal punishment. Insofar as one of the parties fulfills the element of fraud, even though the party has made achievements during

¹³Azhari AR. (2020). Achievement and Fraud of an Agreement, *Journal of Law Rules of Media Communication and Legal Information and Society*, 19 (3), p. 488-491

¹⁴K. Wantjik Saleh. (1998). *Justice and Justice*, Ghalia Indonesia, Jakarta, page 51

¹⁵PAF Lamintang and Theo Lamintang. (2009). *Special Crimes Against Assets*, Sinar Graphic, Jakarta, p. 167

the investigation process, this does not eliminate the criminal element from his actions.

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