

Legal Analysis of Criminal Liability for Fraud Based on Social Justice (Case Study of Decision: Number 245/PID.B/2024/PN.BJM)

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Abstract. Indonesia is an archipelago that includes many races, tribes, religious cultures, and customs, because of this diversity, many crimes occur among the community, one of which is fraud in Indonesia. Fraud is a crime that is classified as a crime against people's property. With the threat of imprisonment, the reality is that many perpetrators of fraud often commit the act more than once for various reasons, including large financial gain and minimal risk of punishment. The problem in this research is to find out how criminal responsibility for fraud is based on social justice, and to know obstacles faced in criminal accountability for fraud based on social justice based on decision number: 245/Pid.B/2024/PN.Bjm and its solutions. The research approach used in this study is through a normative legal approach using secondary data obtained through literature studies, then data analysis is carried out using qualitative descriptive analysis. Based on the research results that the criminal liability for fraud has been regulated in the Criminal Code (KUHP), namely in Chapter XXV starts from Article 378 to Article 395 of the Criminal Code. Meanwhile, the obstacles faced in criminal liability for fraud based on social justice based on decision number: 245/Pid.B/2024/PN.Bjm can be from the perpetrator's side or from the law enforcement side, the obstacles can be in the form of difficulty in collecting written evidence, evidence dominated by oral testimony, difficulty in identifying the perpetrator's evil intentions (*mens rea*), and the delay in reporting the crime by the victim which can result in obstacles to achieving a fair decision.

Keywords: Accountability; Crime; Fraud; Obstacles.

1. Introduction

Indonesia is an archipelago that includes many different races, tribes, religious cultures, and customs, and this diversity is united by the existence of a legal

system. In general, laws are created to provide certainty and order, as is the case with criminal law which is also created to regulate the behavior of society so that public order can be maintained properly. This is because of the many different and conflicting needs and interests between individuals. Efforts to form good criminal law provisions are the goal of the law, namely to combat crime.

Crime in the form of fraud in Indonesia has developed with various types and forms, this is due to the development of thinking and also the advancement of the era. The crime of fraud is a crime that is classified as a crime against people's property. The crime of fraud is formulated in general in the Criminal Code in Article 378 in Book II Chapter XXV. Article 378 formulates the crime of fraud in the narrow sense (*oplichting*), where the crime of fraud is subject to a maximum prison sentence of four years. With the threat of prison, the reality is that many perpetrators of fraud often carry out these actions more than once for various reasons, including large financial gain and minimal risk of punishment.

Criminals or fraudsters often commit such acts more than once for a variety of reasons, including the high financial gain and minimal risk of punishment. They can fall into patterns of behavior that ignore moral and legal values, and are driven by the wide opportunities available in today's digital and global environment.

One of the cases was decided at the Banjarmasin District Court with decision number: 245/Pid.B/2024/PN Bjm, stating that the defendant Ardianto alias Ardi Bin Arpar Sidik was charged under Article 378 of the Criminal Code in conjunction with Article 65 paragraph (1) of the Criminal Code, then sentenced by the panel of judges to 2 (two) years and 6 (six) months in prison. In this crime, the perpetrator had committed fraud twice before finally being caught by the authorities.

Based on the case above, it can be seen that when the perpetrator has not felt retribution due to the first fraudulent act, this causes the perpetrator to feel happy and safe when committing fraud, so that the perpetrator continues the fraudulent act a second time. Based on the description of the background of the problem above, the author is interested in researching and reviewing it in the form of a scientific thesis entitled "Legal Analysis of Criminal Liability for Fraud Based on Social Justice (Case Study of Decision: No. 245/Pid.B/2024/PN.Bjm)."

2. Research Methods

The approach method used by the author in compiling the journal uses the normative legal method. The research specification used in this study is the descriptive analysis type. In this study, the author emphasizes library research and primary materials in the form of applicable laws and secondary materials in the form of expert opinions, law books, journals and magazines.

The data collection technique used in this study used literature study, by collecting data from the results of reviewing library materials and secondary data including primary legal materials, secondary legal materials and tertiary legal materials. The data analysis technique in this study was carried out using qualitative data analysis, namely giving meaning and interpreting each data, after being processed, it is then

manifested in the form of sentences systematically to draw a conclusion about the object being studied.

3. Results and Discussion

3.1. Criminal Accountability for Fraud Based on Social Justice

Criminal liability is essentially a mechanism created by the Criminal Code to address violations of a "contrary agreement" for a particular act.¹Criminal liability is the most important element in every criminal law. Criminal liability is not only regulated in the Criminal Code but is also regulated evenly in every law.

Criminal liability for perpetrators of fraud can refer to the Criminal Code (KUHP). This criminal act of fraud is regulated in Chapter XXV of the Criminal Code (KUHP). In Chapter XXV of the Criminal Code, bedrog (fraudulent acts) consists of various forms of criminal acts of fraud which are regulated from Article 378 to 395 of the Criminal Code.²

In Article 378, fraud means "an act with the intention of benefiting oneself or another person unlawfully by using a false name, false dignity, trickery or lies which can cause another person to easily hand over their goods, money or wealth".³The provisions of Article 378 formulate the definition of fraud (oplichting) itself.

The basic form of bedrog or fraudulent act is Article 378 of the Criminal Code concerning fraud. Based on the formulation above, the Criminal Act of Fraud has the following basic elements:⁴

1. Objective elements, consisting of:
 - a. Action, Moving,
 - b. The one who is moved, Other people
 - c. This action is shown in: Other people handing over objects, Other people giving debts, and Other people writing off receivables
 - d. The way to carry out these actions involves: Fake names, using deception, using deceit, using false dignity and using a series of lies.
2. Subjective elements, which consist of:
 1. Meaning of self-benefit
 2. Meaning of benefiting others means breaking the law

The crime of fraud in its basic form is regulated in Article 378 of the Criminal Code which is formulated as follows: "Anyone who with the intention of unlawfully benefiting himself or another person by using a false name or false dignity; by

¹Chairul Huda, 2006, From No Crime Without Fault Towards No Criminal Responsibility Without Fault, 2nd Edition, Kencana, Jakarta, p. 70.

²Tongat, 2003, Material Criminal Law, UMM Press, Malang, p. 71

³Moeljatno. 1985, Criminal Code, Bina Aksara, Jakarta, p. 161.

⁴Tongat, Op. Cit., p. 72

trickery, or a series of lies, induces another person to hand over something to him, or to grant a loan or write off a debt, is threatened, for fraud, with a maximum prison sentence of four years."

Benefiting oneself in this case by breaking the law or the rights of others means benefiting oneself without having the right to the object. The act of moving (Bewegen), the word bewegen is not only translated as moving, but some experts also use the term persuading, or moving the heart, persuading here means influencing someone with cunning, so that the person obeys him to do something that if he knew the real situation, he would not do so.⁵What is moved is people. Whereas a trick is a trick that is so cunning that a normal minded person can be deceived, a trick is enough, as long as it is cunning enough. A series of lies means that one lying word is not enough, here you have to use lots of lying words arranged in such a way, so that one lie can be covered with another lie, so that the whole is a story that seems to be true. A person who hands over an object, a person who gives a debt and a person who writes off a receivable is a victim of fraud driven by the person himself, but this is a necessity. Handing Over Objects, the definition of objects in fraud has the same meaning as objects in theft and embezzlement, namely as tangible and movable objects, and the restrictions on goods are not mentioned here, that the goods must belong to someone else so persuading people to hand over their own goods, can also be enter fraud. In this act of fraud, "handing over an object," the act must be carried out directly by the person who is defrauding.⁶

In the crime of fraud, the main elements that must be fulfilled are the unlawful nature and intent. The existence of an element with the intention to benefit oneself or others can be interpreted that there has been an intention or intent to commit the act. The act was carried out unlawfully. This means, among other things, that the perpetrator does not have the right to enjoy the benefits. Using a fake name, for example claiming a name that is well known by the person being deceived or using the name of someone who is famous. False dignity, for example claiming to be a sub-district head, village head, and others. With trickery, for example claiming to buy very cheap goods to the person being deceived. A series of lies means a lot, the main point of the lie is an attempt at fraud. Moving other people means that by these means he wants the person being deceived to be moved to hand over an item to him to give debt or write off the receivables is part of the core of the crime that is meaningful in the crime of fraud.

3.2. Obstacles Faced in Criminal Accountability for Fraud Based on Social Justice Based on Decision Number: 245/Pid.B/2024/Pn.Bjm and Its Solution

⁵R. Soesilo, 1998, Criminal Code (KUHP) and its Complete Commentaries Article by Article, Politeia, Bogor, pp. 260-261

⁶Kondios Meidarlin Pasaribu, Implementation of Criminal Law Against Money Laundering Perpetrators with the Predicate Crime of Fraud (Analysis of Supreme Court Decision Number: 1329k/Pid/2012), Civic Education Journal, Volume 1 Number 1 December 2018 Edition, p. 46

In Decision Number: 245/Pid.B/2024/Pn.Bjm, criminal liability by fraudsters encounters many obstacles in the judicial process, the obstacles can be from the perpetrator's side or from the side of law enforcement.

1.) Difficulty Collecting Written Evidence

In decision number: 245/Pid.B/2024/Pn.Bjm it is explained that evidence of the criminal act of fraud is only in the form of:

- 1 (one) black brown sweater jacket with VERSACE motif;
- 1 (one) large brown envelope containing a piece of red paper;
- 1 (one) sheet of Purchase Note for gold bracelet jewelry from Gunung Kawi gold shop;
- 1 (one) sheet of Purchase Note for gold pendant jewelry from Karina Gold Shop;

From the evidence, there is nothing that explains that the perpetrator borrowed from the victim, which means that the victim has no physical evidence that the perpetrator borrowed from the victim's property.

The lack of written evidence makes the evidentiary process very difficult, as courts usually require objectively verifiable evidence to support charges. Oral testimony from victims, while important, is often considered less powerful without supporting documentation. The perpetrator can easily deny the victim's claims, saying the transaction never happened or giving a different reason.⁷

To address this issue, a comprehensive approach is needed. Public education about the importance of documentation in every transaction, including borrowing goods, must be increased through campaigns and socialization programs. The public needs to be encouraged to always make and keep a written agreement or receipt every time they make a significant transaction, even with someone they trust.⁸In addition, law enforcement officers need to be trained to collect and analyze alternative evidence, such as recorded conversations, text messages, or other digital evidence, which can help strengthen cases in court.⁹

2.) Evidence Dominated by Oral Testimony

Evidence dominated by oral testimony in criminal fraud cases, especially with the mode of borrowing goods directly, which in decision number: 245 / Pid.B / 2024 / Pn.Bjm, the goods are gold, poses a major challenge in the evidentiary process in court. Oral testimony from the victim is often the only evidence available because transactions are carried out on the basis of trust without formal written

⁷Gottschalk, P., 2010, Policing Financial Crime: Intelligence Strategy Implementation, CRC Press, Florida, p. 43.

⁸Cressey, DR, 1973, Other People's Money: A Study in the Social Psychology of Embezzlement, Free Press, Illinois, p. 174.

⁹Wells, JT, 2013, Principles of Fraud Examination, Hoboken, New Jersey, p. 189.

documentation such as agreements or receipts. In decision number: 245 / Pid.B / 2024 / Pn.Bjm, oral testimony dominates the testimony of the case.

To overcome these obstacles, various strategic steps can be taken. First, increasing legal literacy and public awareness of the importance of documenting transactions in writing is crucial. Second, training for law enforcement officers and lawyers in witness interview techniques and presenting testimony in court is essential. The use of technology, such as audio or video recordings of conversations between victims and perpetrators, can also provide additional evidence to support oral testimony.¹⁰

3.) Identification of Evil Intent (Mens Rea)

Identifying malicious intent, or mens rea, is one of the most critical and complex aspects of criminal liability. Mens rea refers to a person's awareness and intention to commit a criminal act.

In the verdict number: 245/Pid.B/2024/Pn.Bjm. the perpetrator used the trust of his victim to deceive and take goods in this case gold which belonged to the victim. In the 2 times the fraud was carried out, the perpetrator always pretended to be a buyer who came to the kiosk owned by his victims to buy basic necessities. However, on that occasion the perpetrator asked for help to borrow the gold belonging to the victims on the grounds of pretending to be shown to the perpetrator's mother who wanted to come to the perpetrator's kiosk at that time, on the grounds that the defendant's mother believed that the gold belonged to the perpetrator, then the victim was asked to put the victim's gold into the plastic grocery or the box of basic necessities ordered by the perpetrator, then when the victim was off guard, the perpetrator took the opportunity to leave the shop while carrying the victim's gold.

The court process must rely on circumstantial evidence to show this malicious intent. However, such evidence often poses challenges, as it must be strong enough to overcome the ambiguities and doubts that may exist in the judge's mind.

In the legal context, strengthening regulations including clarifying the definition and parameters of mens rea, and establishing more detailed standards of proof could help provide clearer guidance to judges. This process could also be aided by increased collaboration between law enforcement agencies, psychologists, and the legal community to develop more effective techniques and methods for identifying and proving malicious intent in fraud cases.¹¹

4.) Delaying Reporting of Crimes by Victims

¹⁰Cutler, BL, & Penrod, SD, 1995, *Mistaken Identification: The Eyewitness, Psychology, and the Law*, Cambridge University Press, New York, pp. 87.

¹¹Penrod, S., & Cutler, B, *Witness Confidence and Witness Accuracy: Assessing Their Forensic Relations, Psychology, Public Policy, and Law*, Volume 1 Number 04, 1995, p. 817-845.

The victim's hesitation in reporting fraud incidents becomes complex even though the victim does not know the perpetrator at all. In cases of fraud with the mode of borrowing gold, uncertainty and confusion are often the main factors that prevent victims from reporting immediately.

In the decision number: 245/Pid.B/2024/Pn.Bjm, it is seen that the first fraud case committed by the perpetrator was carried out on October 5, 2022 and the second fraud was carried out on May 5, 2023, but the case was only completed on March 27, 2024, in which in the decision, the perpetrator was not detained at all but the perpetrator was detained in another case. The victim has a long time if he wants to report the crime committed by the perpetrator, plus the victim and the perpetrator are not related to each other which should make it easier for the victim to report.

Even if there is no personal relationship with the perpetrator, victims may have difficulty in compiling a clear and complete report because they feel they do not have strong evidence or because the legal process is complicated. Victims may feel pressured by the prospect that reporting the case will require significant effort and time, with no guarantee that their case will be successful or that they will recover lost assets. In addition, not knowing their rights and the legal process can add to victims' feelings of doubt.

To overcome these barriers, it is important to provide clear and accessible support for victims of fraud. Providing transparent information about reporting procedures and victims' legal rights can help them feel more prepared and confident in reporting the incident. In addition, law enforcement agencies need to provide simple and victim-friendly reporting channels, as well as provide step-by-step guidance to ensure victims do not feel left out of the legal process.

4. Conclusion

Based on the results of the research and discussion that have been described in chapter 3 (three), it can be concluded that the responsibility for criminal acts of fraud has been regulated in the Criminal Code (KUHP), the crime of fraud is one form of crime that is grouped into crimes against property, where the perpetrator has used acts that are deceptive or use trickery. In Chapter XXV starting from Article 378 to 395 of the Criminal Code, the types of criminal acts of fraud are clearly and in detail regulated. While the crime of fraud in its main form is regulated in Article 378 of the Criminal Code with a maximum imprisonment of four years. The obstacles faced in criminal accountability for fraud based on social justice based on decision number: 245/Pid.B/2024/PN.Bjm can be from the perpetrator's side or from the law enforcement side, the obstacles can be in the form of difficulties in collecting written evidence, evidence dominated by oral testimony, difficulties in identifying the perpetrator's malicious intent (*mens rea*), as well as the delay in reporting the crime by the victim which can result in obstacles to achieving a fair decision.

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