

## **Legal Analysis of the Responsibility of Perpetrators of Fraud from a Gender Justice Perspective (Case Study of Criminal Case Decision Number 651/Pid.B/2024/Pn Jkt Pst)**

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**Abstract.** *The increase in fraud cases also shows weaknesses in the law enforcement system which is not yet fully effective in carrying out its preventive and repressive functions. Many fraud cases are not fully revealed or do not result in fair decisions, either due to limited evidence, lack of investigator capacity, or disparities in sentencing. Legally, fraud is regulated in Article 378 of the Criminal Code (KUHP) which reads: "Anyone who with the intention of benefiting himself or another person against their rights, either by using a false name, either by action and trickery or by fabricating false statements, persuades someone to give something, create debt or write off receivables, is threatened for fraud with a maximum prison sentence of four years. The approach method used in this study is a normative legal approach. The normative legal approach is a legal research conducted by examining library materials or secondary data as mere. The research specifications used are descriptive analysis, sources and types of data used are primary and secondary data. The data collection method is carried out by means of literature studies, including minutes of legislation, books, journals, research results. The problem is analyzed with the theory of criminal responsibility, the theory of substantive justice. In the case of Decision Number 651/Pid.B/2024/PN Jkt Pst, the Panel of Judges found the defendant Irma Fardila guilty of committing a criminal act of fraud. From a formal legal aspect, the elements of Article 378 of the Criminal Code have been proven legally and convincingly, so that criminal responsibility was imposed legally.*

**Keywords:** *Accountability; Fraud; Justice; Gender.*

## **1. Introduction**

Law and human civilization are two inseparable entities that are constantly developing dynamically along with social changes in society. Law is not only present as a system of norms that regulate human behavior, but also acts as a reflection of the values, morality, and social structure of a nation. In this context, law becomes a social mechanism that functions to create order, justice, and protection of the rights of every citizen, as well as a social engineering tool that is able to direct people's behavior in a more orderly and civilized direction. The preventive and repressive functions of law are very important in maintaining social stability, especially in a society that continues to change due to globalization, technological developments, and shifts in cultural values.

However, the reality in Indonesia shows an imbalance between legal idealism and the social reality that occurs in the field. Today, Indonesia is facing a major challenge in the form of a multidimensional moral crisis, which is not only marked by the decline in the quality of ethics and integrity in community life, but also by increasing unemployment rates, social inequality, moral degradation, and low community resilience to the temptation of deviant behavior. One real manifestation of this crisis is the increasing crime rate, especially in the form of fraudulent crimes that are increasingly rampant in various forms and patterns.

The phenomenon of fraud that occurs massively and systematically in various sectors of life ranging from personal relationships, economic transactions, to digital practices reflects a serious distortion in the value system of society. Trust as the main foundation in social interaction has been eroded due to increasing opportunistic behavior that ignores legal and ethical norms. This strengthens the assumption that crime, including fraud, is not only a violation of the law, but also a complex reflection of structural conditions, economic pressures, weak social control, to the permissive culture that has developed in modern society. Therefore, to understand and overcome the phenomenon of fraud crime comprehensively, an interdisciplinary approach is needed that involves legal analysis, sociology, criminology, and social psychology.

In addition, the increase in fraud cases also shows weaknesses in the law enforcement system which is not yet fully effective in carrying out its preventive and repressive functions. Many fraud cases are not fully revealed or do not result in fair decisions, either due to limited evidence, lack of investigator capacity, or disparities in sentencing. On the other hand, the lack of legal literacy among the public also worsens the situation, because many people are still easily fooled by fraudulent modes that can actually be anticipated if there is adequate legal understanding. This shows that handling fraud crimes cannot only rely on a legal-formalistic approach, but must also be accompanied by strengthening the social system, legal education, and reforms in the law enforcement structure itself.

Considering this complexity, it is important to make the crime of fraud an object of legal study that does not only focus on the formal elements in the laws and regulations, but also considers the social, moral, and structural aspects that accompany it. This kind of study will not only contribute to the development of criminal law, but can also be an important basis for formulating more effective, just, and humanistic crime prevention policies in the future. The crime of fraud is one of the most common forms of crime found in people's daily lives. Fraud as an unlawful act has received widespread attention in the realm of criminal law, criminology, and victimology. This crime is classified as a crime against property (*vermogensdelicten*), where the perpetrator intentionally misleads the victim into handing over goods, money, or rights by using trickery, false identities, or statements that are not in accordance with the facts. Fraud is not just a violation of legal norms, but a form of manipulation of trust that can damage social relations and cause significant economic losses.

Legally, fraud is regulated in Article 378 of the Criminal Code (KUHP) which states: "Anyone who with the intention of benefiting himself or another person against their rights, either by using a false name, either by means of acts and tricks or by fabricating false statements, persuades someone to give something, create debt or write off receivables, is threatened for fraud with a maximum prison sentence of four years."<sup>1</sup>This norm shows that the crime of fraud is included in the type of material delict, where the elements of the crime are considered perfect if the legal consequences have occurred, namely the transfer of the victim's wealth due to the perpetrator's deception.

In the view of R. Wirjono Prodjodikoro, fraud is an act of "chirping" or trickery that makes the victim mistaken and therefore voluntarily surrenders his property to the perpetrator.<sup>2</sup>This means that this crime does not rely on physical violence, but rather psychological manipulation and the perpetrator's intellectual ingenuity in creating a convincing scenario. Therefore, fraud is a crime that is very difficult to detect early and is often only realized after the victim has suffered a loss.

Fraud is a common crime, not a pure complaint crime, so it can be processed by law enforcement officers even though there is no report from the victim, except in certain forms such as fraud in the family. Fraud is also a developing crime, along with the advancement of information technology, this crime has developed in the form of digital fraud, investment fraud, to fraud in personal relationships. In this case, the social context of the perpetrator and the mode of crime are very important to analyze in more depth, especially when the perpetrator is an individual from a vulnerable group such as women, children, or individuals with certain economic dependencies.

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<sup>1</sup>Wirjono Prodjodikoro. (1989). Principles of Criminal Law in Indonesia. Bandung: Eresco, p. 28.

<sup>2</sup>Muladi & Barda Nawawi Arief. (1991). Criminal Theories and Policies. Bandung: Alumni, p.97.

Procedurally, handling of fraud crimes begins with the process of investigation and inquiry by the police. Based on Article 13 of Law No. 2 of 2002 concerning the Republic of Indonesia National Police, it is stated that the duties and authorities of the police include maintaining public security and order, law enforcement, and providing protection, shelter, and services to the community.<sup>3</sup>. In carrying out their duties, investigators from the police have the authority to summon, examine witnesses, arrest, confiscate, and transfer case files to the prosecutor's office. However, the success of the investigation in uncovering criminal acts does not only depend on formal legal authority, but also on the capacity of the apparatus in reading the sociological context of the fraud case itself.

After the investigation and prosecution process, the authority to decide the case lies with the judge, as the holder of independent judicial power as stipulated in Article 24 of the 1945 Constitution of the Republic of Indonesia and implemented in Law No. 48 of 2009 concerning Judicial Power. In fraud cases, the judge is not only tasked with ensuring that the elements of the crime as stipulated in Article 378 of the Criminal Code are fulfilled, but also has discretion to consider mitigating or aggravating factors based on the facts in the trial, the perpetrator's motives, the level of loss, and the social position of the victim and perpetrator. The judge can also use theories of criminal responsibility such as *dolus*, *culpa*, to responsibility based on the perpetrator's psychological condition to determine the degree of guilt that is worthy of being punished.

In this context, the form of criminal responsibility of the perpetrator in a fraud case doctrinally includes three main elements that are the foundation of the judge's assessment in determining guilt and imposing a sentence. First, there is an unlawful act that formally fulfills the elements of a crime as stated in Article 378 of the Criminal Code, which regulates trickery, lies, or false identities to persuade victims to hand over goods, create debts, or write off receivables. Second, there is an error (*schuld*) which can be in the form of *dolus* (intentional) or *culpa* (negligence), as a form of moral and intellectual responsibility of the perpetrator for the actions taken. Third, there is no justification or excuse, such as forced defense (*noodweer*), emergency (*overmacht*), or inability to take responsibility (*ontoerekeningsvatbaarheid*) that can eliminate guilt or criminal liability.

Criminal liability in Indonesian criminal law must be seen as an integration between objective and subjective elements. He stated that "a person can only be punished if the elements of his unlawful act are fulfilled, the element of error in the form of the ability to be responsible, and the absence of reasons that eliminate the crime". In his view, the assessment of the perpetrator's guilt cannot be separated from concrete and situational conditions, including the

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<sup>3</sup>Moeljatno. (2002). *Principles of Criminal Law*. Jakarta: Rineka Cipta, p. 76.

motive for the act, level of awareness, and socio-economic background of the perpetrator.<sup>4</sup>

In judicial practice, criminal liability for fraud can vary. In some cases, the perpetrator's liability is full, that is, it is done with full awareness, careful planning, and the intention to gain profit by unlawful means. However, in other cases, liability can be limited or reduced, especially when the perpetrator is under severe psychological pressure, urgent economic conditions, or experiences emotional and relational manipulation from other parties, as is often found in fraud cases involving personal relationships or gender-based violence.

Therefore, in assessing criminal responsibility, judges are not sufficient to only use a legal-formal approach, but must also explore the factual conditions and sociological context behind the perpetrator's actions. This assessment is important so that the verdict handed down does not only reflect rigid and positivistic procedural justice, but also substantive justice that considers humanity, social vulnerability, and proportionality of punishment. Substantive justice must be present in every criminal decision, especially when the perpetrator is a woman or an individual who is in a socially unequal position, because the purpose of criminal law is not only to punish, but also to rehabilitate and prevent discrimination.<sup>5</sup>

## **2. Research Methods**

Method comes from the Greek word "Methodus" which means way or path.<sup>6</sup> So, the method can be interpreted as a path related to the way of working in achieving a target needed by its users, so that they can understand the target object or the purpose of solving the problem. Meanwhile, research means re-search. The search in question is the search for true (scientific) knowledge, because the results of this search will be used to answer certain problems. In other words, research is a search effort that is very educational; it trains us to always be aware that in this world there is much that we do not know, and what we are trying to find, find, and know is still not absolute truth. Therefore, it still needs to be re-tested.

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<sup>4</sup>Rini, Indah Dwi K. (2014). *Principles of Criminal Responsibility in the Indonesian Criminal Law System*. Semarang: Faculty of Law, Sultan Agung Islamic University (Unissula), page 120.

<sup>5</sup>Rini, Indah Dwi K. (2021). *Substantive Justice in Criminal Judge Decisions*. *Mimbar Hukum Journal*, Vol. 33 No. 1, pp. 41–56.

<sup>6</sup>P. Joko Subagyo, 2004, *Research Methodology in Theory and Practice*, Rineka Cipta Jakarta, p. 1.

### 3. Results and Discussion

#### 3.1. Criminal Accountability for Fraud Perpetrators from a Gender Justice Perspective (Criminal Case Decision Number 651/Pid.B/2024/Pn Jkt Pst)

Criminal liability is a fundamental issue in criminal law, fault, liability and criminal are expressions and everyday conversations in morals, religion and law. These three elements are interrelated and rooted in the same condition, namely both covering a series of rules about behavior followed by a group from the similarity of giving birth to the concept of fault, liability and criminal. This shows the birth of a concept based on a normative system.<sup>7</sup>

Criminal liability is the liability for crimes committed by a person. Criminal liability for a person who commits a crime. Criminal liability is basically a mechanism created by the Criminal Code to address violations of a "contrary agreement" for a particular act.<sup>8</sup>

The concept of responsibility plays an important role in determining the outcome of a criminal case, as it relates to the decision whether a person should be acquitted or punished.<sup>9</sup> In particular, when assessing a person's criminal responsibility, when assessing a person's criminal responsibility, certain criteria must be met to establish their capacity to be responsible. These elements are as follows:

1) The existence of errors (intentional and negligent) The element of error itself is divided into two forms, namely:

a. Intentionally (dolus)

There are three types of deliberate divisions, namely:

a) The concept of intent, as applied in the context of a criminal act, relates to the will and awareness of the perpetrator, who has the desire and awareness of the act and its consequences.

b) Intentionally and consciously, this form of deliberation occurs when the perpetrator in carrying out his actions does not intend to realize the expected results, but rather views the action as a means necessary to achieve a different goal. This implies that the action is intentional, and the perpetrator is aware of

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<sup>7</sup>Amir Ilyas, 2014, Principles of Criminal Law, Rangkang Education, Yogyakarta, p. 73.

<sup>8</sup>Chairul Huda, 2006, From No Crime Without Fault Towards No Criminal Responsibility Without Fault, 2nd ed., Kencana, Jakarta, p. 70

<sup>9</sup>Susetiyo, Zainul Ichwan, M.Iftitah, and Dievar, 2022, Legal Certainty of the Job Creation Law in the Health Sector Following the Constitutional Court Decision Number 91/PUU-XVIII/2020, Jurnal Supremasi, Vol 12 Number 2, 2022, pp. 27-36

the intended action, even though they do not want the consequences resulting from the action they do.<sup>10</sup>

c) With deliberate awareness of the high probability of occurrence (opzet met waarshijnlijkheidsbewustzijn), the perpetrator, although not wanting the consequences of his actions, has prior knowledge of the potential for such consequences to occur. Nevertheless, the perpetrator continues his actions, bearing the associated risks.

#### b. Negligence

Leden Mapaung also explained that in general, negligence (culpa) is divided into 2, namely:<sup>11</sup>

1) Intentional negligence, as exemplified in this case, relates to a scenario where the perpetrator has mental awareness or suspicion of the potential for a consequence to occur, but fails to take sufficient action for its manifestation.

2) Unconscious negligence, also called “ombewuste schuld” in Dutch legal terminology, refers to a situation where the perpetrator has no awareness or foresight of the occurrence of a prohibited and legally criminal consequence. It is important for him to consider the occurrence of a certain result.

#### 2) Having Responsible Ability

The mental state of the perpetrator must be in a state of responsibility so that it can be said to be normal and healthy. This is what can regulate his behavior according to standards that are considered good by society. If not, the perpetrator cannot be responsible for his actions.<sup>12</sup>

#### 3) The Existence of Justification and Forgiveness

One of the determinants of criminal responsibility is whether or not there is a justifiable motive for committing a crime. The Criminal Code is covered in Chapter I Book III, which is part of the first comprehensive book that discusses the basic rules. Justifying reasons are stated in Article 164 of the Criminal Code to Article 166 of the Criminal Code, Article 186 of the Criminal Code, Article 314 of the Criminal Code. While forgiving reasons are stated in Article 44 of the Criminal Code, Article 48 of the Criminal Code to Article 51 of the Criminal Code.

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<sup>10</sup>Agus Rusianto, 2016, Criminal Acts and Criminal Responsibility, Jakarta Prenadamedia Group, p. 157

<sup>11</sup>Leden Mapaung, 2002, The Process of Criminal Acts against Life and Body (Eradication and Prevention), Jakarta, Sinar Grafika, p. 86

<sup>12</sup>Andi Matalatta, 2001, Victimology: A Collection, Jakarta, Sinar Harapan Center, p. 167

In a crime, more than one person can be involved. Criminal law regulates this in the matter of participation in committing a crime. Article 55 of the Criminal Code mentions several ways to participate in committing a crime, namely:

- 1) The perpetrator (dader)
- 2) The orderly (doenpleger)
- 3) Participate in doing (madedader / medepleger)
- 4) Persuading (job seeker)

Then Article 56 mentions the assistant (medeplichtige). In Article 55 of the Criminal Code above, it is punished as the person who does it. So the person who orders, persuades, and the person who participates in doing it are considered as the perpetrator or maker of the crime, so the criminal threat is the same. While for the assistant who commits the crime, the criminal threat is reduced by one third.<sup>13</sup>

Specifically regarding objective and subjective complaints, Sudarto said that it is not enough to punish someone if he commits an unlawful act (objective denunciation). Therefore, the law fulfills the elements of law and is not justified, but does not fulfill the requirements for criminal prosecution. Criminalization still requires the imposition of criminal law requirements. This means that the person who committed the act made a mistake and is guilty (subjective accusation). The person must be responsible for his actions, or in the case of his actions, his actions can only be held accountable for himself.<sup>14</sup>

Close cooperation alone is not enough to convict the participants of the crime. The cooperation must arise from their awareness or knowledge (willen en wetten). In other words, cooperation in participation must be done intentionally (opzettelijke). Furthermore, after it can be proven that there is an intention in cooperation in participation, then it must also be followed by an intention towards the crime itself. In the Criminal Law literature, this is referred to as "double intention" or "double opzet". The first intention, earlier, was directed towards the cooperation, namely the awareness or knowledge of those involved in a cooperation between them. The second intention was directed towards the crime itself, namely the awareness or knowledge of them that all of them were involved in realizing a crime.

Referring to the facts revealed in the trial against the verdict that the author researched and reviewed, it can be concluded that based on the facts revealed in the trial, the Defendant Irma Fardila was proven legally and convincingly guilty of

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<sup>13</sup>Muladi Barda Nawawi Arief, 1992, Criminal Theories and Policies, Bandung, Alumni, p. 46.

<sup>14</sup>Sudarto in Hanafi Amrani and Mahrus Ali, 2015, Criminal Responsibility System: Development and Implementation, Rajawali Pers, Jakarta, p. 22

committing a crime under Article 378 of the Criminal Code which regulates the Criminal Act of Fraud. This is manifested by the existence of a crime as regulated and threatened in Article 378 of the Criminal Code where all the elements regulated in the article are fulfilled in the context of the actions she committed, namely:

1) Whoever

What is meant by "whoever" here is to determine who the perpetrator of the crime is as a legal subject who has committed the crime and has the ability to be responsible for his actions.

In this case, the Public Prosecutor has presented and charged the Defendant Irma Fadila, where the Defendant who was questioned during the trial was in accordance with the Defendant's identity as stated in the Public Prosecutor's Indictment and during the examination of the Defendant, no matters were found that eliminated criminal responsibility, either as a reason for forgiveness or a reason for justification so that the Defendant was able to be held responsible for his criminal actions, thus the element of Whoever has been proven legally and convincingly.

2) With the intention of benefiting oneself or others

That what is meant by the element of benefiting oneself or others is that the defendant's intention to benefit himself or others is the perpetrator's closest goal, it is not required that the benefit has actually been obtained or not. The defendant Irma Fardila has intentionally borrowed 1 (one) unit of the Samsung Galaxy A54 5G Green cellphone belonging to the victim Raja Rivaldo Siahaan on the grounds of scanning the barcode to enter the mall, but after the cellphone was in her possession, the defendant immediately ran away and did not return the cellphone to the victim. From the series of the defendant's actions, it is clear that there was an intention to benefit oneself by controlling the victim's cellphone.

That what is meant by "without rights" is that the act carried out by the perpetrator is not based on the law but is contrary to the applicable laws and regulations, where in this case the act is to defraud the victim intentionally or with the intention of benefiting oneself unlawfully.

3) Elements of unlawful acts

The element of "unlawfully" in the case of theft of a cellphone by the Defendant Irma Fardila was clearly proven based on the trial facts and existing legal considerations. In Indonesian criminal law, an act is said to be "unlawful" if it is contrary to the law in a broad sense, namely including written laws such as the Criminal Code, as well as unwritten laws such as moral norms, propriety, and

protection of legitimate property rights. In this case, the Defendant borrowed the victim's cellphone on the grounds that he wanted to scan a barcode, but then ran away and did not return it.

This action is not just an ordinary loan, but a form of fraud to take goods with the intention of permanently controlling them without rights. This clearly violates Article 362 of the Criminal Code concerning theft, because the cellphone is the victim's legal property and was taken without permission or consent to be owned. In addition, the Defendant's actions also violate social norms that uphold honesty and personal property rights, and there was no justification such as an emergency or office order that could eliminate the unlawful nature. Thus, the Defendant's actions were proven to have fulfilled the element of "unlawfully" as regulated in criminal law and recognized by the Panel of Judges in its decision.

4) Elements By using a false name or false dignity, by deception, or by a series of lies

The element of "using a false name or false dignity, by trickery, or a series of lies" as referred to in Article 378 of the Criminal Code has been fulfilled in the case of Defendant Irma Fardila. Based on the considerations of the Panel of Judges, this element includes actions taken to create false trust in the victim so that they voluntarily hand over their belongings. In this case, the Defendant was proven to have carried out a series of actions that fulfilled this element, starting by claiming to be an employee of a restaurant at the Mall of Indonesia, a form of using false dignity to build a trusted self-image.

Next, the Defendant promised the victim a fare of Rp70,000 with the intention of persuading the victim to take him back and forth, which was a form of trickery to create the impression of good intentions. Finally, the Defendant pretended to borrow the victim's cellphone on the pretext of scanning the barcode to enter the mall, even though the reason was a fabrication to gain access to the victim's belongings. These three actions, namely false confessions, false promises, and false pretexts, complement each other and form a series of lies that successfully deceived the victim Raja Rivaldo Siahaan until he handed over his cellphone without coercion. Therefore, the Defendant's actions have fulfilled the elements of trickery and a series of lies, so that the elements in Article 378 of the Criminal Code are declared to have been proven legally and convincingly according to law.

5) The element of moving another person to hand over something to him, or to give credit or write off a receivable

The element of "moving another person to hand over something to him, or to give a loan or write off a receivable" as referred to in Article 378 of the Criminal Code has been fulfilled in the case of the Defendant Irma Fardila. This element means that the perpetrator carried out an action that influenced the victim's will by misleading him, so that the victim voluntarily handed over his belongings. In

this case, based on the considerations of the Panel of Judges, the Defendant had made a series of lies to build false trust in the victim, including by claiming to be a restaurant employee at the Mall of Indonesia, promising a fare of IDR 70,000, and pretending to borrow a cellphone on the grounds of scanning the barcode to enter the mall. Through these lies, the Defendant succeeded in moving the victim Raja Rivaldo Siahaan to hand over his green Samsung Galaxy A54 5G cellphone.

The Panel of Judges stated that if there was no trickery and a series of lies, the victim would not have handed over his cellphone. Therefore, the handover of goods in this case was not due to physical coercion, but the result of the cunning influence of the Defendant. As a result, the victim suffered a material loss of IDR 5,000,000. Thus, this element was proven legally and convincingly according to law, and all elements of Article 378 of the Criminal Code as the basis for the First indictment were declared fulfilled. Based on the considerations above, all elements in Article 378 of the Criminal Code as contained in the Public Prosecutor's indictment have been fulfilled.

To determine whether the perpetrators of the crime can be held accountable for their actions, it must first be proven that there is an element of error. Based on the concept of criminal responsibility, this element of error adheres to the doctrine of mens rea. In addition, this concept of criminal responsibility refers to the mental state of the perpetrators in carrying out their actions so that the actions can be blamed. Thus, the concept of criminal responsibility is "always related to errors, either in the form of errors or intent".<sup>15</sup>

After carefully examining the testimony and summarizing the evidence in the trial, the Panel of Judges decided to sentence the Defendant to imprisonment for 1 (One) Year and 4 (Four) Months minus the length of time the Defendant was detained with an order that the Defendant remain in detention. This decision, as reflected in the chronology of the case, is interpreted as a manifestation of the sense of justice that is to be upheld. The Panel of Judges' considerations involve an assessment of the severity and potential threats arising from the criminal acts committed by the Defendant. The imposition of this sentence is not merely a form of sanction, but rather as an educational and coaching step for the perpetrator. Thus, the prison sentence is considered a balanced response to the actions that occurred.

Criminal liability is not only carried out by considering the interests of society, but also the perpetrators themselves, the process depends on the fulfillment of the conditions and circumstances that can be blamed for the perpetrator of the crime. Criminal liability for fraud from a gender perspective is In Indonesian

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<sup>15</sup>Syawal Abdul Dan Anshar, 2010, *Criminal Responsibility of Military Command for Serious Human Rights Violations (A Study in Criminal Reform Theory)*, Laksbang Pressindo, Yogyakarta, p. 31.

criminal law, criminal liability for perpetrators of criminal acts including fraud as regulated in Article 378 of the Criminal Code is gender neutral, meaning that it does not differentiate between the gender of the perpetrator or victim in law enforcement. However, from a gender justice perspective, it is important to further examine how power relations, gender stereotypes, and socio-economic conditions can influence both the criminal justice process and the treatment of victims and perpetrators.

Normatively, the Criminal Code does not differentiate between men and women as subjects of criminal law. However, in practice, women are often in a more vulnerable position both as victims and perpetrators due to the influence of social, economic, and cultural inequality. In the context of perpetrators, women who commit fraud are sometimes driven by structural conditions such as poverty, limited access to employment, or heavy household responsibilities. Conversely, in the context of victims, fraud based on personal or emotional relationships (such as marriage promises or trust-based loans) often befall women because of the stereotype that women are more trusting or emotionally weak, which makes them easy targets for fraud based on psychological deception.

In relation to this, it is known that the elements of criminal responsibility consist of: Ability to be Responsible, Ability to be responsible is a state of mental normality and maturity that brings 3 (three) abilities, namely: Understanding the consequences/real consequences of one's own actions; Realizing that his actions are not permitted by society (contrary to public order); Being able to determine his will to act.

Being able to take responsibility can be interpreted as a psychological condition such that justifies the determination of a criminalization effort, both from a general perspective and from the individual, that a person is able to take responsibility if his soul is healthy, namely if: he is able to know or realize that his actions are against the law, and he can determine his will according to that awareness. The panel of judges considered that the defendant was an adult and was able to take responsibility because the defendant could make judgments with his thoughts and feelings. Then the defendant admitted that all the witness statements were true and regretted all his actions.

### **3.2. Implementation of Substantive Justice for the Accountability of Perpetrators of Fraud in the Perspective of Gender Justice (Case Study of Criminal Case Decision Number 651/Pid.B/2024/Pn Jkt Pst)**

In the case of the verdict Number 651/Pid.B/2024/PNJkt.Pst The defendants' actions began when the defendant Irma Fardila ordered an online motorcycle taxi through the Maxim application and was picked up by the victim witness Raja

Rivaldo Siahaan behind the Mall of Indonesia (MOI), Kelapa Gading. During the trip to the Grand Indonesia Mall, the defendant claimed to be a restaurant employee at MOI and promised to give the witness Rp70,000 if he was willing to take her there and back.

Upon arrival in front of the Grand Indonesia Mall, the Defendant asked to borrow the victim's Samsung Galaxy A54 5G cellphone on the pretext of being used to scan the barcode to enter the mall. Because he believed and was tempted by the promise of money, the victim handed over the cellphone. However, after receiving the cellphone, the Defendant immediately ran away and did not return. The victim had time to look for the perpetrator around the location, but to no avail. About two months later, the victim received a video call from witness Gabriel Hutagaol, who almost became a victim of fraud with a similar method. Gabriel showed the perpetrator's face via video call, and the victim immediately recognized that it was the same person. Due to this incident, the victim suffered a loss of IDR 5,000,000.

Then the Public Prosecutor submitted the Charges which in essence were as follows:

- 1) Declaring the defendant Irma Farida proven legally and convincingly guilty of committing an act of criminal fraud as regulated and threatened in Article 378 of the Criminal Code as charged in the Public Prosecutor's indictment;
- 2) Sentencing the defendants to 1 (one) year and 4 (four) months in prison each. the prison sentence was reduced while the defendant was being held with an order that the defendant remain in detention
- 3) State evidence in the form of:  
1 (One) cardboard box for HP Samsung Galaxy A54 5G brand, green color  
(Returned to Witness Victim King Rivaldo Siahaan)
- 4) Ordering the defendant to pay court costs of Rp. 2,000 (two thousand rupiah).

The judge's considerations which are of a legal nature are the judge's considerations which are based on the legal facts revealed in the trial and which have been determined by law as something which must be included in the decision. The author will describe the legal analysis of the judge's decision with the following description:

- 1) Public Prosecutor's Charge

The indictment is the legal basis for criminal procedure because it is based on that the examination in the trial is carried out. In addition to containing the

identity of the defendant, the indictment also contains a description of the crime charged by stating the time and place where the crime was committed. In the case of decision Number 651 / Pid.B / 2024 / PN Jkt Pst, the Defendant was charged with a single charge, namely being proven legally and convincingly guilty of committing a crime of fraud as regulated and threatened in Article 378 of the Criminal Code.

## 2) Defendant's Statement

That the defendant in this case admitted his guilt and asked for the lightest possible sentence and admitted to borrowing the victim's Samsung Galaxy A54 5G cellphone on the pretext of using it to scan the barcode to enter the mall as a trick to benefit himself, this act is a wrong act and is contrary to the laws and regulations.

## 3) Witness Statement

A witness is someone who gives testimony before a judge who saw and heard the event being contested. Witness testimony is one of the pieces of evidence in a criminal case in the form of testimony from a witness regarding a criminal event that he heard himself, saw himself and experienced himself by stating his reasons and knowledge.

In the case of decision number 651/Pid.B/2024/PN Jkt Pst, the following witnesses were asked for information:

### a. King Rivaldo Siahaan

Witness Raja Rivaldo Siahaan stated that he had no family or work relationship with Defendant Irma Fardila, and had only just met the Defendant at the time of the incident. On Saturday, May 11, 2024 at around 20.00 WIB, the witness who works as an online motorcycle taxi driver for the Maxim application received an order from the Defendant to pick up at the Get A Lobby behind the Mall of Indonesia (MOI), Kelapa Gading, and take her to the Grand Indonesia Mall in Central Jakarta. On the way, the Defendant admitted to working at a restaurant in MOI and promised to pay the fare of IDR 70,000 to the witness and asked to be taken back to MOI after his business was finished. Upon arriving at the Grand Indonesia Mall, the Defendant pretended to borrow the witness's green Samsung Galaxy A54 5G cellphone on the grounds that he was going to scan the barcode so he could enter the mall. Because he believed the Defendant's confession and promise, the witness handed over the cellphone. However, after receiving the cellphone, the Defendant left and did not return. The witness had time to look for the Defendant around the location, but was unable to find him. Several months later, the witness was contacted by his friend, Andreas Gabriel Hutagaol, who almost became a victim with the same modus operandi. In the video call, Gabriel showed the perpetrator's face, and the witness immediately

recognized that the person was the Defendant who took his cellphone. As a result of the incident, the witness suffered a loss of Rp5,000,000. At the trial, the witness admitted that the Samsung Galaxy A54 5G cellphone box shown was indeed his. The witness also stated that all of his statements in the Examination Report (BAP) were true, and this was confirmed by the Defendant at the trial.

b. Andreas Gabriel Hutagaol

Witness Andreas Gabriel Hutagaol gave a statement under oath that he knew the victim Raja Rivaldo Siahaan because he was a fellow online motorcycle taxi driver, and had just met the Defendant Irma Fardila when the incident took place. The witness knew about the fraud experienced by Raja Rivaldo Siahaan because the victim had previously told him directly that his cellphone was taken away by a short-haired tomboy woman who pretended to borrow the cellphone to scan a barcode to enter the mall. About two months after the incident, the witness almost became a victim with the same *modus operandi*. He received an order from an online motorcycle taxi application to take the Defendant, and after arriving at the destination, the Defendant again used the same *modus*, namely asking to borrow a cellphone on the grounds that he wanted to scan a barcode. Because he felt suspicious, the witness immediately contacted Raja Rivaldo Siahaan via video call and showed the Defendant's face. In the conversation, the victim confirmed that the person shown by the witness was the perpetrator who had taken his cellphone. The witness then took action by securing the Defendant while waiting for the victim to arrive at the location. After Raja Rivaldo Siahaan came and confirmed that the Defendant was the perpetrator, the witness and victim together took the Defendant to the Tanah Abang Police Station for further legal processing. The witness also confirmed that the evidence in the form of a green Samsung Galaxy A54 5G HP cardboard box shown in court belonged to the victim, and confirmed that Raja Rivaldo Siahaan suffered a loss of IDR 5,000,000 due to the Defendant's actions. All statements given by the witness were stated to be true as stated in the Examination Report (BAP), and the statement was also confirmed by the Defendant in court.

c. Antoni Dielpiro

Witness Antoni Dielpiro testified that he knew the victim Raja Rivaldo Siahaan as a close friend, but only met the Defendant Irma Fardila for the first time during the arrest process. He did not experience the fraud directly, but learned about the incident from the story of the victim Raja Rivaldo Siahaan and witness Andreas Gabriel Hutagaol. The witness explained that he helped during the arrest of the Defendant which was carried out on July 23, 2024 in the SCBD area, Sudirman, South Jakarta. Previously, the witness knew that the victim had lost a Samsung Galaxy A54 5G cellphone because he was deceived by a woman who pretended to borrow the cellphone to scan the barcode to enter the mall. About two months after the incident, witness Andreas Gabriel Hutagaol contacted the

victim because he almost became a victim with the same method. At that time, Antoni Dielpiro accompanied Raja Rivaldo Siahaan and Andreas Gabriel in the process of securing the Defendant, then together took him to the Tanah Abang Police. The witness also knew that while at the police station, the Defendant admitted his actions. In the trial, the witness confirmed that the green Samsung Galaxy A54 5G HP cardboard box shown belonged to the victim, and confirmed that the victim suffered a loss of Rp5,000,000 due to the Defendant's actions. All statements given by the witness in the Examination Report were declared true and confirmed by the Defendant in court.

Meanwhile, in her statement at the trial, Defendant Irma Fardila admitted that on Saturday, May 11, 2024 at around 20.00 WIB, she ordered an online motorcycle taxi through the Maxim application and asked to be picked up at the Get A Lobby behind Mall of Indonesia Gading, North Jakarta to be taken to Mall Grand Indonesia, Central Jakarta. During the trip, she admitted to the driver that she worked at the MOI restaurant and promised a reward of IDR 70,000 if the driver was willing to take her home. Upon arrival at Mall Grand Indonesia, the Defendant borrowed the victim's Samsung Galaxy A54 5G cellphone on the grounds that she wanted to scan the barcode. After the cellphone was handed over, the Defendant immediately ran away with the cellphone. As a result of this action, the victim suffered a loss of IDR 5,000,000. About two months later, witness Gabriel Hutagaol almost became a victim with a similar mode and managed to recognize the Defendant, then contacted the victim who then confirmed that the Defendant was the same person who had taken his cellphone.

#### 4) Evidence

Evidence is something to confirm the truth of a proposition, position or accusation. Evidence is an effort to provide evidence through tools that are permitted to be used to prove arguments or in criminal cases in court, for example the defendant's statement, testimony, expert testimony, letters and instructions, while in criminal cases this includes allegations and oaths.<sup>16</sup>

The type and appearance of evidence considered by the judge, namely according to the type of crime committed by the defendant regarding the crime of fraud, the public prosecutor submitted evidence of 1 (one) cardboard box of a green Samsung Galaxy A54 5G brand cellphone.

Judges deciding a case must look at several existing considerations and must not deviate from the applicable legal rules, so that the judge's considerations can be accepted by other parties. So judges in deciding a case must be objective, meaning in considering the interests of the various parties involved. Between the

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<sup>16</sup>Andi Hamzah, 2006, Indonesian Criminal Procedure Law, Sinar Grafika, Jakarta, p. 254.

interests of the injured party, the interests of the defendant and social interests in order to achieve justice for all parties. Therefore, judges must seek truth, justice, and legal certainty.

In accordance with Article 4 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states that "the court adjudicates according to the law without discriminating between people". Each judge has his/her considerations which according to the judge are correct so that they result in a conviction of the judge. Maybe that is one of the factors behind the judge in giving a verdict for his/her actions.

In the Indonesian criminal justice system, criminal responsibility for perpetrators of criminal acts basically follows the universal principle that anyone who has committed an act that fulfills the elements of a criminal act and has no justification or excuse must be held legally responsible. This principle applies without distinguishing the background, gender, or social condition of the perpetrator. However, if examined more deeply from the perspective of substantive justice, a critical question arises: has equality in the application of the law truly brought about true justice, especially in cases where the perpetrators are women who are socially and economically in a more vulnerable position than men? The substantive justice approach not only looks at the fulfillment of the elements of a crime in the formal legal sense, but also contextually considers the background of the perpetrator's life, the structure of inequality they face, and the consequences for the perpetrator, victim, and society as a whole.

The Central Jakarta District Court Decision Number 651/Pid.B/2024/PN Jkt Pst is a concrete example that can be analyzed in this context. In this case, the Defendant Irma Fardila, a woman, was charged and sentenced for committing a criminal act of fraud as regulated in Article 378 of the Criminal Code. Based on the trial facts, the Defendant made a series of lies to the victim, a man named Raja Rivaldo Siahaan, by claiming to be a restaurant employee at the Mall of Indonesia, promising transportation money of IDR 70,000 if the victim was willing to take her, and pretending to borrow the victim's cellphone for the purpose of scanning the barcode to enter the mall. After successfully getting the victim to hand over her cellphone, the Defendant ran away and did not return it. The Panel of Judges considered that the elements of the crime of fraud were legally and convincingly fulfilled, and sentenced the Defendant to prison. In addition, evidence in the form of a cellphone box was returned to the victim, and the detention period that had been served was deducted from the sentence imposed.<sup>17</sup>.

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<sup>17</sup>Siti Musdah Mulia, *Gender Justice in the Perspective of Islam and Law*, Jakarta: Gramedia, 2010, p. 46

Therefore, in the context of the decision 651/Pid.B/2024/PN Jkt Pst, it can be concluded that although the formal legal elements have been fulfilled, the aspects of substantive justice and gender justice have not been fully realized. The court did not see the perpetrator as part of a complex societal structure, and ignored the potential for social pressure or gender vulnerability that may be inherent in women like Irma Fardila. For this reason, in the future, it is very important that the justice system does not only impose rigid sentences, but also considers whether the sentence will create recovery or actually prolong social injustice. That way, justice in criminal law is not only limited to sentences, but becomes a path towards a more just and civilized society.

#### **4. Conclusion**

In the case of Decision Number 651/Pid.B/2024/PN Jkt Pst, the Panel of Judges found the defendant Irma Fardila guilty of committing a criminal act of fraud by pretending to borrow the victim's cellphone to scan the barcode and then running away. From a formal legal aspect, the elements of Article 378 of the Criminal Code have been proven legally and convincingly, so that criminal responsibility has been imposed legally. However, from a substantive justice and gender perspective, there are important notes. Although criminal law is gender neutral, women in vulnerable socio-economic positions often fall into criminal acts due to structural pressures, such as poverty or responsibility as heads of families. In this case, there was no attempt by the court to dig deeper into the defendant's social background. Therefore, the future justice system needs to integrate a more humane and gender-based approach, without reducing the principle of justice. Sentencing must consider not only the legal elements, but also the background of the perpetrator, so as not to prolong the cycle of injustice. Thus, the justice that is upheld is not merely formal, but substantive and civilized.

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