Legal Analysis of the Imposition of Criminal Sentences for Fraud in Debt Agreement Cases: Case Study of Decision Number 331/PID.B/2021/PN JKT.BRT

Irsan Muharam[1], Nardiman[2], Markoni[3], I Made Kanthika[4]
[1,2,3,4]Universitas Esa Unggul, Jakarta, Indonesia
Email: irsan.muharam@student.esaunggul.ac.id

Abstract

According to Article 1328 of the Civil Code, fraud is a defect of will, while Article 378 of the Criminal Code contains a series of words such as lies, deception, false circumstances, and false dignity. The consequences of fraud are a reason for cancelling the agreement. The problems raised in research on the imposition of criminal fraud in debt and receivable agreement cases. The method used in this research is normative juridical with descriptive-analytical specifications. The research results obtained first: The parameter that differentiates default from criminal acts of fraud is that default is seen from the good faith of the parties, whereas in criminal acts of fraud, it is motivated by evil intentions (mens rea) to possess objects (goods) belonging to other people as well as intentionally not fulfil his achievements. second: The debtor can only be criminally processed if an agreement meets the elements of fraud. If the debtor does not commit a series of lies to obtain a loan from the debtor, the debtor cannot be prosecuted under the threat of Article 378 of the Criminal Code regarding fraud. The debtor will be free from the threat of criminal penalties due to his inability to carry out the agreement's contents. In the case based on Decision Number 331/Pid.B/2021/Pn Jkt. Brt, the defendant committed an act through deception or a series of lies, encouraging other people to write off the receivables by giving 2 blank checks to pay the remaining loan which appeared to be -as if the Defendant's debt had been paid off. This is a legal event that can be tried through criminal justice.

Keywords: *Debt and Receivable Agreement, Imposition of Criminal Fraud.*

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A. INTRODUCTION

Debt is a common problem that is done by all levels of society. Debt is focused on money or goods that are 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 (Carlson, 2020; Dmytryk et al., 2020; Kaplan et al., 2021; Rusydianta, 2021). In short, Debt is giving something to another person with the agreement that he will pay or return it properly. Lately, there have been many actions or reports of complaints against criminal acts based on Debt fraud (Bellm, 2020; Vuletic, 2023).

Criminal law can be identified with the relationship between the interests of citizens and the state, while civil law is more directed at the relationship between the interests of citizens with each other. This difference gives rise to different treatments in cases that occur in our daily lives. Debt is an obligation that is stated or cannot be stated in an amount of money, either directly or which will arise in the future, which arises due to an agreement or law and which must be fulfilled by the debtor and if not

fulfilled, gives the creditor the right to obtain fulfilment from the debtor's assets (Dasmawati et al., 2022; R. S. Manurung, 2022).

Debts and Credits Are our debts to (other) people, and (other) people's debts to us. Which means there is an obligation to carry out a promise to pay (Imanuddin et al., 2021). Debts and Credits are the area of civil law corridors, namely the rules that govern the relationship between one person and another, with an emphasis on individual or personal interests. Debts and Credits are considered legally valid if an agreement is made (Klimczak et al., 2022; Zulkipli, 2020). Namely an agreement based on the law regulated in Article 1320 of the Civil Code. In Article 1320 of the Civil Code which regulates the requirements for the validity of an agreement, four conditions are required, namely: 1) The agreement of those who bind themselves; 2) The ability to agree; 3) A certain thing; and 4) A lawful cause.

In cases of Debts, sometimes confusion arises, whether the act is included in fraud, as regulated in the provisions of the crime of fraud contained in Article 378 of the Criminal Code (KUHP) which is formulated as follows: Fraud is a form of crime that is grouped into crimes against people's property. Provisions regarding this crime are generally regulated in Articles 378 to 395 of Book II, Chapter XXV of the Criminal Code. Article 378 regulates the crime of fraud in the narrow sense (oplicthting) and other articles regulate the crime of fraud in the broad sense (bedrog) which have their specific names. In the provisions of the Criminal Code, the word "fraud" or "bedrog" is used, because in fact in this chapter several acts are regulated that are aimed at the property, where the perpetrators have used acts that are deceptive or used trickery (DiBiagio, 2020; Marriott, 2020).

To overcome the increasingly complex problems of fraud crimes, knowledge and understanding are needed that are in line with the provisions contained in the Criminal Code. This is because the problem of various fraud crimes is understood from a certain perspective, which includes the definition, scope, elements and sanctions that need to be known in the Criminal Code (KUHP). Criminal law in the form of written regulations is compiled, made and enacted to be enforced as positive law (ius constitutum), but it will be more effective and felt to be able to achieve a sense of justice and legal certainty if its application is by what is intended by the legislators, regarding what is written in the sentences (Kotlán, 2020; Wilkes, 2020).

A debtor's default (negligence or negligence) can be of four types: a) Not doing what he promised to do; b) Carrying out what he promised, but not as promised; c) Doing what he promised but late; and d) Doing something that according to the agreement he is not allowed to do.

In fulfilling the performance, both parties must follow the contents of the agreement. If the performance is not fulfilled, one party must have good intentions in notifying the relevant party to provide a period to pay in the event of negligence of the defaulter. The parties must also analyze the cause and effect of the other party failing to fulfil the performance, if the performance is failed to be fulfilled due to negligence, such negligence fulfills the elements of a crime, this case of breach of promise can be tried in criminal procedure law (Oladele et al., 2022; Tantimin, 2021).

In this legal writing, the author will discuss about forgery of bank checks in committing a crime intentionally and unlawfully by ordering someone to do an act, having something that is wholly or partly owned by someone else, but which is in his power not because of a crime (embezzlement together) as regulated and threatened according to Article 372 of the Criminal Code in conjunction with Article 55 Paragraph (1) ke-1 of the Criminal Code. Also, the criminal act that the author raises in this thesis is a problem that has obtained legal force, namely the West Jakarta District Court Decision Number 331/Pid.B/2021/PN.Jkt.Brt which issued a verdict as a case for the defendants Abubakar Siddik Suherman, and Eka Kunthara. The defendants were detained based on a warrant/Determination from 1) Investigator, Not detained; 2) Public Prosecutor, from April 8, 2021, to April 27, 2021; and 3) the Judge of the West Jakarta District Court, from April 23, 2021 to May 22, 2021.

In this case, the public prosecutor charged men named Abubakar Siddik Suherman and Eka Kunthara with committing the crime of fraud, guilty of committing the crime intentionally and unlawfully by ordering it to be done, and by participating in the act, possessing something which is wholly or partly owned by another person, but which is in their control not because of a crime (joint embezzlement) as regulated and threatened by Article 372 of the Criminal Code in conjunction with Article 55 Paragraph (1) ke-1 of the Criminal Code in the Second indictment.

Every act that is categorized as a criminal case must have an actus reus and malicious intent mens rea. If actus reus is an unlawful act, then what is meant by mens rea is something that includes elements of a criminal act (Hajdari, 2021; Hessick & Hessick, 2021; Petty, 2022). Therefore, the author wants to know whether Article 372 of the Criminal Code in conjunction with Article 55 Paragraph (1) ke–1 of the Criminal Code concerning embezzlement. Article 378 or Article 372 of the Criminal Code (KUHP). In this case, the Public Prosecutor is the party whose burden of proof is required to prove the defendant's guilt in committing a crime. An indictment is a deed containing the formulation of the criminal act charged and is a guideline for carrying out further checks. If what is described in the indictment is not a crime or violation, it can cause the defendant to be free or acquitted of all charges (Coffee Jr, 2020; Lollar, 2021; Lund & Sarin, 2021). The indictment comes from the investigation process which will be decided by the judge in court. Based on this, the author raises this problem as a study material with the title: "Legal Analysis of the Imposition of Criminal Sentences for Fraud in Debt Agreement Cases (Case Study of Decision Number 331/Pid.B/2021/Pn Jkt.Brt)".

Based on the background of the problems above, the problems that arise in the Imposition of Criminal Fraud in Debt Agreement Cases include: How is the crime of fraud based on Debt? and How are the judge's considerations in imposing fraud sanctions in cases of default in decision number 331 / Pid.B / 2021 / PN.Jkt.Brt? This study aims to examine and analyze the crime of fraud based on Debt, and the judge's considerations in imposing sanctions on perpetrators of default in Debt in Decision Number 331 / Pid.B / 2021 / PN.Jkt.Brt. This study uses a normative juridical method

which aims to examine the legal norms contained in the laws and regulations starting from the Constitution, Law, PP and Presidential Regulation.

B. METHOD

This study uses a qualitative method with a legal analysis approach. The theories used as the Analytical Knife in this study include: Theory of Agreement and Combined Criminalization Theory to analyze and examine the problems and find solutions to the problems that occur in this manufacturing business contract dispute, and both theories will be described in the Results and Discussion.

C. RESULT AND DISCUSSION

1. Theory of Agreement

The term agreement comes from the Dutch language, namely agreement, in English it is known as the term agreement/agreement. Agreement is formulated in Article 1313 of the Civil Code which determines the terms: "An agreement is a conversation with a person or a group of people who are more likely to be considered as an agreement or agreement." a person walks towards another person and the two people communicate with each other to carry out something, from this event, an external relationship arises between the two people which is called 'perikalan'." Therefore, the journey creates an external relationship between the two people which creates it.

As explained in the altals, the occurrence of the perialn is caused by the altalal law of eternal relations between two parties, so that the executor of a transaction is at least two parties who are legally entitled to occupy different places. One party becomes a "creditor" and one party becomes a "debtor". Both subjects have the same rights and obligations in the transaction that they are in conflict with, namely that one party has the right to carry out the performance and the other party has the right to demand the performance of the performance. According to transaction theory and practice, creditors and debtors consist of:

a. Individuals as persons involved, namely: The nature of a certain person or a particular person and the law of a person or a person who is not legally bound;
b. bA person or a particular person uses the position/rights of a certain person, for example, a person or a criminal;
c. The person who is in default (vervalngbalalr) means the creditor who is the original subject has been determined in the transaction, at any time in default his position with the new creditor/debtor, this transaction is in the form of "order" or "order" transaction in the transaction "toonder" or "toonder" transaction in the transaction to the head of the debtor/receiver of the debt.

The wrong way to travel is to bind the parties' rights as stipulated in Article 1320 of the Civil Code, namely:

a. Agreed for those who bind themselves

   Agreement is an important thing in a journey. Since the birth of a journey is when there is an agreement between the parties, since the agreement between

the parties creates a legal relationship between the parties which causes the parties to bind themselves to each other and there arises a matter of obligation between the parties.

b. Able to make an agreement
   All legal transactions must be made by legal experts so that from these transactions, matters arise in which the legal obligations of the parties are legally binding. This law is always in line with Article 1329 of the Civil Code which states, "Every person who has a calculation is to make a regulation, if the law does not signal it, it is not recommended." Indeed, every person who has already done it in his or her right mind is truly legal according to the law. Article 1330 of the Civil Code regulates the recognition of people who are not legally able to enter into a marriage, namely: 1) People who are not yet legally able; 2) People who are legally able to enter into a marriage; 3) Women who are not legally able to enter into a marriage, in Generally speaking, all people in the community have made certain agreements.
c. Regarding a particular matter
   A certain thing is the subject of the agreement, this thing concerns the performance of the obligation that must be fulfilled. The performance must be determined at least in terms of its source and type. In the debt agreement, the object must be clear. This thing is by Article 1333 of the Civil Code which states, "An agreement must fulfil the subject of a certain obligation that has at least been determined in terms of its type."
d. A lawful cause
   In agreeing, the parties have the freedom to determine the contents of the agreement on the condition that the contents of the agreement must not violate the law, morality, and public order. The first two conditions are called subjective conditions because they recognize the people or subjects who agree, while the last two conditions are called objective conditions because they recognize the agreement itself or the object of the legal act carried out.

2. Combined Theory of Punishment (Verenigings-Theorien)

This doctrine is based on the objectives of retribution and the integrated maintenance of public order. This means that the imposition of punishment is justified by two reasons: as a form of retribution and as a means of maintaining public order. This combined theory can be divided into two: 1) A combined theory that prioritizes retribution, but the retribution must not exceed the limits necessary and sufficient to maintain public order, and 2) A combined theory that prioritizes the protection of public order, but the suffering inflicted by the punishment must not be more severe than the crime committed by the convict (Chopra & Levine, 2021; Noble, 2021; Sinaga, Wirawan, et al., 2020).

This combined theory that emphasizes retaliation is supported by Zevenbergen who argues that "the meaning of every criminal act is retaliation, but has the intention of protecting the legal order because the criminal act is to restore and maintain

obedience to the law and government. Therefore, a new criminal act is imposed if there is indeed no other way to maintain the legal order". So emphasizing retaliation means giving punishment or retaliation to criminals to maintain the legal order so that society or its general interests can be protected and guaranteed from criminal acts.

The combined theory that prioritizes the protection of legal order is supported by Simons and Vos, among others. According to Simons, the primary basis of criminal law is general prevention and its secondary basis is specific prevention. In the sense that primary criminal law is aimed at general prevention which lies in the threat of punishment in the law, if this is not strong enough or is not effective in terms of general prevention, then special prevention is carried out which aims to scare, improve and make criminals helpless. In this case, it must be remembered that the punishment imposed must be by the law or based on the law of society [27], [28]. So, the combined theory that prioritizes protection and legal order in the sense of providing justice for victims of crime to protect their rights, and for the punishment itself aims to provide a deterrent effect so that they do not repeat their crimes.

3. Overview of Criminal Law

Criminal law contains several aspects, but more precisely, the Criminal Law can be viewed from several angles, namely from the perspective of objective criminal law (Ius Poenalle) and subjective criminal law (Ius Puniendi). Ius Poenalle can be divided into two groups, namely material criminal law and formal criminal law. In general, the purpose of criminal law is dual, namely: a) To prevent every person from carrying out criminal acts (preventive function); b) To educate people who have done bad things to become people who are accepted back into society (repressive function).

Article 378 of the Criminal Code defines fraudulent acts as a crime whereby a person sells or otherwise obtains a profit for himself or traffic to violate the law, uses a false identity or uses fraudulent deception to deceive traffic, or gives away an object or object, is punished with a penalty of four years of imprisonment.

Fraud in criminal law as regulated in Article 378 of the Criminal Code and fraud in civil law regulated in Article 1328 of the Civil Code are two legal corridors that can be taken by someone who suffers a loss due to the emergence of a contractual relationship. The crime of debt is an act carried out by a person or company that ignores the obligation to pay debts or collect receivables intentionally or without a valid reason. This action can be categorized as a violation of the law and can be regulated by the laws in force in a country.

Criminal Act of Fraud (Article 378 of the Criminal Code), Default can be turned into a criminal act of fraud if it meets the elements of using trickery, a series of lies, false names, and false circumstances to benefit oneself. Because in Article 378 of the Criminal Code, it is states with intent, then the intent includes the first form of intent (intention with intent). Therefore, in fraud, it cannot be stated that the act was carried out due to negligence (culpa). The elements of unlawful acts (wederechtelijkheid) must be related to the application of the principle of legality (Article 1 paragraph 1 of the Criminal Code). A person's actions are declared unlawful if they are contrary to

the law (legalization), the concept of "using a false name or false circumstances, trickery or trickery, a series of false words" can be equated with deception.

4. Difference between Default and Fraud in Debt Agreements

The parameters that distinguish between breach of contract and fraud are as follows: A breach of contract is closely related to an agreement as a legal relationship between individuals. The agreement itself is born from an agreement as referred to in Article 1320 of the Civil Code, which states that the parties mutually declare their will to agree; the statement of one party has been approved by the other party. Strictly speaking, a breach of contract is a violation of the law that they themselves created, where the subject of the norm is an individual with an individual. While fraud is a provision of law that regulates crimes against property.

The parameter that determines a breach of contract is a violation of a promise or law made by the parties in an individual relationship, where the subject of the norm is the state dealing with the individual. The parameter that determines a criminal act of fraud is a criminal act (mens rea) against a person's property, which is carried out by fraud or through lies so that a person hands over goods or objects not voluntarily. The crime of fraud regulated in the Criminal Code has a different legal character from fraud as a condition for the validity of an agreement. Fraud here refers to an agreement as a condition for the validity of an agreement, not to property as regulated in the Criminal Code. Fraud is related to the conditions for the validity of an agreement, where the agreement made in the agreement is flawed in the will because one party misleads the other party in describing the agreement so that in fraud, the position between one party and the other is not balanced.

Default is an act of violating personal obligations arising from a legal relationship made by the parties through an agreement. Meanwhile, fraud is an act carried out unlawfully against a person's assets. With the provisions as stated in Article 1 paragraph (1) of the Criminal Code, anyone who is proven to have violated a criminal provision, formally the act is considered unlawful because it has violated the prohibition stated in the Criminal Code. According to Hamel, quoted by R. Achmad S. Soema, the unlawful nature of a crime is part of the general understanding of a criminal act so even though it is not included in the formulation of the crime, this part is always considered to exist. Based on the understanding above, it can be understood that "unlawfully" as referred to in Article 378 of the Criminal Code is characterized by the use of a false name or false dignity, trickery, or a series of lies, to move others to hand over goods to him or to give debt or write off receivables.

Default is based on the principle of good faith, which means that the debtor tries to fulfil the performance according to what was agreed, even though in the end the performance ends badly. Article 1338 paragraph 3 states: "An agreement must be carried out in good faith." Fraud is based on evil intentions (mens rea), which can be seen from the subjective elements of the crime of fraud, namely the intention to benefit oneself or others, with an element of intent (dolus/opzet), and not in the form of unintentional.

5. Overview of the Parties Involved in Debts in Decision No. 331/Pid.B/2021/PN Jkt.Brt

The practice of law enforcement regarding agreements, decided by the court judge varies, although the Public Prosecutor applies Article 378 of the Criminal Code in the indictment and demands that the judge impose a criminal act of fraud by Article 378 of the Criminal Code, but in practice the judge's decision varies. There are times when the criminal charge for the crime of fraud that stems from the agreement is granted by the panel of judges, but there are also cases where it is decided onslag van alle rechtsvervolging, meaning that the accused act is proven to have committed an act threatened in Article 378 of the Criminal Code, but the act is not a criminal act, and there are also those who are given an acquittal (vrijspraak). An important aspect analyzed here is the consideration of the court judge who issued the verdict proven to have committed the crime of fraud. In this case, the case raised is in Decision Number 331/PID.B/2021/PN JKT.BRT.

PT Solusi Tehnikal Infodaltal (PT.STI), as the Debtor (Defendant)

Defendant II Albu Balkalr Siddik Suhermaln and as Commissioner of PT. Solusi Tehnikal Infodaltal (PT. STI), Defendant II Ekal Alrdi Kunthalral and as Director of PT. Solusi Tehnikal Infodaltal (PT STI), on April 2, 2019 or at least at another time which is still in April 2019, located at Roti Bakar Rolis Bank Gipari Jalan Masjid Al Anwar Rt. 001/Rw. 02 No. 3 Sukabumi Utara Village, Kebon Jeruk District, West Jakarta, or at least in a place that is still included in the jurisdiction of the West Jakarta District Court has the authority to examine and try them, Those who do, who order to do, and who participate in doing acts, to benefit themselves or others unlawfully by using a false name or a false nature by using trickery or by using a series of false words, moving someone to hand over something, to enter into a debt agreement or to make receivables. Which actions the Defendants did in the following manner:

Starting around February 2019 at the Cafe Shop Senayan Trade Center South Jakarta, Defendant I. ABUBAKAR SIDDIK SUHERMAN with Defendant II. EKA ADHI KUNTHARA from PT. SOLUSI TEHNIKA INFODATA (PT. STI) and Witness SENTRA and Witness IRWAN as people who provided capital for the Pedestrian Gate and Barrier Gate business then Defendant II. EKA ADHI KUNTHARA explained the existence of a project that will be made into a business and gave an overview of the business carried out by PT. SOLUSI TEHNIKA INFODATA (PT. STI) and at that time there was no agreement by PT. SOLUSI TEHNIKA INFODATA and PT. DYNASTI DWI ANUGERAH.

That on April 2, 2019, Witness SENTRA met with Defendant I. ABUBAKAR SIDDIK SUHERMAN at Roti Bakar Rolis Bank Gipari Jalan Masjid Al Anwar Rt. 001/Rw. 02 No. 3 Kelurahan Sukabumi Utara, Kebon Jeruk District, West Jakarta and said he needed capital and invited Witness SENTRA to cooperate in the field of Pedestrian Gate and Barrier by promising a profit of 50% of the capital back, plus Witness SENTRA was promised by Defendant I. ABUBAKAR SIDDIK SUHERMAN within two weeks after Witness SENTRA provided business capital to Defendant I.

ABUBAKAR SIDDIK SUHERMAN of approximately Rp. 360,000,000, - (three hundred and sixty thousand rupiah) for financing the procurement of pedestrian gate and barrier equipment with a promise that if PT. BAF (Bussan Auto Finance) had provided DP money for the purchase of goods to PT. Solusi Tehnik Infodata (PT. STI) of 50% worth Rp. 180,000,000,- (one hundred and eighty million rupiah) will be paid to Witness SENTRA's account and the profit will be divided into two with a value of Rp. 59,100,000,- (fifty nine million one hundred thousand rupiah) each, then within a period of two months the work will be completed and Witness SENTRA will get the profit that Defendant I. ABUBAKAR SIDDIK SUHERMAN promised so that Witness SENTRA is interested and moved to cooperate with Defendant I. ABUBAKAR SIDDIK SUHERMAN and Defendant II. EKA ADHI KUNTHARA so that Witness SENTRA provides capital of Rp. 360,000,000,- (three hundred and sixty million rupiah) to Defendant I. ABUBAKAR SIDDIK SUHERMAN with details of Witness SENTRA transferring Rp. 60,000,000,- (sixty million rupiah) to a BCA account in the name of Ms. DANIK PURBOSARI, wife of Defendant I. ABUBAKAR SIDDIK SUHERMAN, then the Witness transferred Rp. 300,000,000,- (three hundred million rupiah) to the account of PT. Solusi Tehnika Infodata (PT STI).

Then Witness SENTRA was given 2 (two) sheets of Checks with the number CG810577 Bank BRI due date November 10 amounting to Rp. 59,100,000, - and Check number CGC 810576 Bank BRI due date October 31, 2019 amounting to Rp. 360,000,000, - as a means of payment for the return of capital from Defendant I. ABUBAKAR SIDDIK SUHERMAN and Defendant II. EKA ADHI KUNTHARA and when due Witness SENTRA cleared at Bank BRI Kanca Kebon Jeruk and it turned out that there were no funds with evidence of SKP (Rejection Certificate) Bank RI Kanca Kebon Jeruk dated November 11, 2019 and October 31, 2019, then after that Witness SENTRA checked the PT Project. BAF PLAZA TANJUNG BARANG JAKARTA BARAT and Defendant I. ABUBAKAR SIDDIK SUHERMAN have received payment of 50% of the proceeds of the business and Witness SENTRA did not receive the profit promised by The Defendant so that due to the incident Witness SENTRA reported to the Criminal Investigation Unit of the West Jakarta Police for further processing. Due to the incident Witness SENTRA suffered a loss of Rp. 419,000,000,- (four hundred and nineteen million rupiah). The actions of The Defendant as regulated and threatened with criminal penalties according to Article 378 of the Criminal Code Jo. Article 55 Paragraph (1) ke-1 of the Criminal Code.

PT Dynalsti Dwi Alnugralh as a financier, for the Galte Pedestrian Usalhal and the Galte Balrrier (Creditor) Central Korbaln Salction

PT Dynasti Dwi Anugrah provided the business capital requested by the Defendants amounting to approximately Rp 360,000,000. In February 2019, at Café Shop Senayan Trade Center South Jakarta, Defendant I along with Defendant II from PT. STI met with Witness Sentra (Victim Witness) as an investor for the Pedestrian Gate and Barrier Gate business. Defendant II then presented a project that was to be pursued.

On April 2, 2019, Defendant I met with Victim Witness Sentra at Roti Bakar Rolis Bank Gipari Jalan Masjid Al Anwar Rt. 001 Rw. 02 No. 3 Kel. Sukabumi Utara Kec. Kebon Jeruk, West Jakarta, where Defendant I stated that they needed capital and invited Victim Witness Sentra to collaborate on a Pedestrian Gate and Barrier Gate business with a promise of a 50% return on investment within two weeks. Based on the project presentation by the Defendants and the promises made, Victim Witness Sentra (PT. Dynasti Dwi Anugrah) provided the requested business capital amounting to approximately Rp. 360,000,000 for the procurement of Pedestrian Gate and Barrier Gate equipment, with the promise that if PT. BAF paid a 50% down payment to PT. STI amounting to Rp. 180,000,000, this money would be paid into the victim's account and the profit would be shared equally with each receiving Rp. 59,100,000, and the project would be completed within two months.

However, after Victim Witness Sentra provided the capital to the Defendants, and the project assigned by PT. BAF was completed and paid for, the Defendants failed to return the capital and profits as promised to Victim Witness Sentra. Victim Witness Sentra frequently demanded payment from the Defendants but received nothing as the Defendants refused to return the capital and profits as promised. After being repeatedly confronted by Victim Witness Sentra at their office, the Defendants handed over two signed checks to Victim Witness Sentra: Check No. CGG610577 from Bank BRI with a maturity date of November 10, 2019, valued at Rp. 59,100,000, and Check No. CGG810576 from Bank BRI with a maturity date of October 21, 2019, valued at Rp. 360,000,000, as a form of repayment. These checks were then cashed by Victim Witness Sentra at Bank BRI Kebon Jeruk Branch, West Jakarta, but it turned out that there were no funds available, and Bank BRI Kebon Jeruk Branch subsequently issued a Money Disbursement Refusal Letter.

The Gate project from PT. BAF was completed by the Defendants (PT. Solusi Tehnika Infodata/PT. STI), and PT. BAF had paid the project to the Defendants. The Defendants admitted that they had received the project funds from PT. BAF. Victim Witness Sentra had repeatedly demanded the promised payment from the Defendants, but the Defendants only made empty promises and have not paid until now. Eventually, Victim Witness Sentra felt deceived by the Defendants and reported the matter to the police, leading to this criminal case. The Defendants also made a Declaration to pay the profit-sharing amount of Rp. 59,100,000 with a breakdown of Rp. 42,300,000 for profit-sharing and Rp. 16,800,000 for bank interest, signed on October 4, 2019, by Defendant I, Abubakar Siddik Suherman, and Defendant II, Eka Adhi Kunthara. In reality, the payment from PT. BAF for the completed Gate project was used by the Defendants for their gain. As a result of the Defendants' actions, Victim Witness Sentra felt deceived and suffered a loss of approximately Rp. 419,000,000 (four hundred and nineteen million rupiah). The Defendants gained personal profit from their actions.

PT BALF (Bussaln Aluto Finalnce) Sebalgali Project Owner(owner)

Whose address is Jalan Karsa South Jakarta, gave a DP for the purchase of goods to PT. Solusi Tekhnik Infodata (PT STI) of 50% worth Rp. 180,000,000 (one hundred and eighty million rupiah)

6. Criminal Act of Fraud Based on Debts

Fraud is a criminal act so this act is called a fraudulent offense. A person can be said to have committed a criminal act of fraud, if the formulation of the criminal act of fraud has been fulfilled by the perpetrator. A crime is a criminal act (strafbaar feit) namely an act that is prohibited in criminal law such that a person can be punished. In order to be said to have fulfilled the crime of fraud, the elements or elements that must be present in an act are: there is behavior and consequences of the act, things or circumstances that accompany the act, additional circumstances that aggravate the crime, objective unlawful elements, and subjective unlawful elements.

Default is a civil case, but developments that occur in society can be suspected of the perpetrator's intention to get money through loans to other people/victims by deceiving. Proof in cases of default that are subject to criminal sanctions for fraud is analyzed in the initial process of the agreement because if the agreement has been born and is ongoing but one party does not fulfil this promise, it is a breach of promise (default) and not fraud. The case of default in a debt agreement means that the agreement is said to be in default because the debtor does not return the money borrowed/debt at the promised time. Thus, default is not an act of fraud, the debtor is only unable to fulfil the obligation to return due to limited funds. The element of intent carried out by someone not to pay his debt also cannot be said that he has cheated. Because the debtor obtained the debt legally and not with knowledge or tricks that deceive the creditor [29], [30]. Cases of default reported as fraud by the public cannot be fully accepted by the police immediately.

The report must be followed up to prove the elements of fraud according to Article 378 of the Criminal Code, namely a fake name is the name used by the perpetrator in agreeing with the victim, this must be adjusted to the applicable identity. False dignity, namely the dignity in terms of work and the circumstances of the perpetrator in the reality of his daily life used by the perpetrator is not true or never existed. This trick or series of lies is carried out by the perpetrator so well to deceive the victim, so that the victim believes and is willing to agree with him without being suspected and even no irregularities are found in every word spoken and the actions of the perpetrator, if these elements are proven, then the perpetrator can be suspected of having committed fraud. The suspect can be threatened with imprisonment as stipulated in the article for a maximum of 4 years. Often, perpetrators who break promises avoid criminal penalties by taking refuge like civil law, which does not provide corporal punishment as in criminal law. To determine whether the act of breaking a promise is an act of default or a criminal act of fraud, first, the validity of the agreement must be examined, whether the agreement exists and has met the legal requirements based on Article 1320 of the Civil Code or not. Or

if the agreement is stated in an authentic deed, does the deed meet the requirements as stipulated in Law Number 30 of 2004 concerning the Position of Notary. Then what is seen is whether the act of breaking the promise was done intentionally or was done because of forced circumstances.

7. Judge's Considerations in Imposing Fraud Sanctions in Default Cases in Decision Number 331/PID.B/2021/PN.JKT.BRT

The discussion of the application of criminal law to the crime of fraud associated with a case in the decision issued by the Panel of Judges of the West Jakarta District Court Number 331/Pid.B/2021/PN Jkt.Brt has gone according to plan. Which, if explained starting from the investigation process, the investigation to the trial process, has directed that the defendant is supported by strong evidence stating that a crime of fraud has been committed.

As a legal fact revealed in the trial that the defendant committed fraud by means of trickery or a series of lies, moving other people to write off receivables by giving 2 checks with a nominal value of Rp 360,000,000,- (Three Hundred Sixty Million Rupiah) and Rp 59,100,000,- (Fifty-Nine Million, One Hundred Thousand Rupiah) where the Defendant knew and intentionally gave a check which was a blank check used to pay the remaining debt of the defendant so that the Defendant's debt to the victim was paid off is a criminal event that can be tried through criminal justice. These legal considerations are the basis for the defendant's actions arising from an intention, will or decision.

If viewed from the aspect of the role of a Judge as a party who has the right to make a decision and try a case, it has also been proven to be in accordance with applicable provisions. Where the role of a Judge as a party who issues a criminal sentence does not ignore the law or norms and regulations that exist in society as regulated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning the Principles of the Implementation of Judicial Power. Judges have the substance to impose a sentence, but in imposing the sentence, the Judge is limited by the rules of punishment, the problem of giving a sentence is not easy as people think, because the Judge has the freedom to decide or determine the type of sentence, the method of implementing the sentence, and the height or low of the sentence.

The verdict itself is the result or conclusion of something that has been considered and assessed carefully, which can be in written or oral form. In the provisions of Article 193 of the Criminal Procedure Code, there are several types of final decisions that can be issued by a judge in a case, namely an acquittal, a release, and a criminal sentence. In relation to the verdict of a Judge, if a common thread is drawn between the authority to decide and the description of the verdict in the fraud case based on debt, it is proven that the Judge sentenced the defendant 1 ABUBAKAR SIDDIK SUHERMAN and Defendant 2. EKA ADHI KUNTHARA to imprisonment for 2 (two) years and 6 (six) months, because the defendant was legally and convincingly proven to have committed a criminal act of fraud as regulated in Article 378 of the Criminal Code.

Cases that are decided by the judge as acts containing fraudulent offenses are more prominent in the presence of elements of error in the form of deliberate failure to carry out obligations with various modus operandi of the perpetrator so that the obligation is not carried out or avoiding the obligation with bad faith, lying words, and wasting time without clear reasons. The parameters that distinguish default from the crime of fraud are that default is seen from the good faith of the parties, while in the crime of fraud it is motivated by evil intentions (mens rea) in having an object (goods) belonging to another person and by seeing whether there is an element of intent not to fulfill its performance. Acts of pure default and criminal fraud also have different solutions, namely default cases are resolved through civil lawsuits which 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 belief.

Meanwhile, the crime of fraud begins with a report to the authorized official (police), is prosecuted by the public prosecutor, and is decided by the judge. The punishment is also in the form of corporal punishment. As long as one party fulfils the elements of fraud, even though the party has made achievements during the investigation process, this does not eliminate the criminal element of his actions. This means that the party must be held criminally responsible for his actions, with a prison sentence to provide a deterrent effect (Carlson, 2021; Silalahi, 2023). As long as the default is carried out under duress and can be proven, the creditor's negligence, the creditor has waived his right to claim compensation, then the act cannot be brought to the criminal realm, and becomes a civil realm. However, if the agreement is made because there is already an intention, and there is an attempt to falsify the implementation of the agreement, such as the elements that fulfill the elements of fraud in Decision Number 331 / Pid.B / 2021 / PN Jkt.Brt by trickery or a series of lies, moving other people to write off receivables by giving checks, then the case of breach of promise can enter the criminal realm with alleged fraud.

Article 197 paragraph (1) letter h of the Criminal Procedure Code determines the formal requirements for each criminal case decision, namely regarding the statement: regarding the defendant's guilt, all elements of the formulation of the crime have been fulfilled along with its qualifications and the punishment imposed. The defendant's guilt and what is considered as the basis for punishment is the fulfilment of the qualifications in the crime of fraud. The principle of legality as a fundamental principle in criminal law is full of the meaning of legal certainty. The purpose of legal certainty is the philosophy or spirit of the principle of legality, and judges in deciding cases must be guided by statutory regulations as an implication of the application of the principle of legality in criminal law. The aspect of certainty requires that in their decisions, judges must be guided by the provisions of statutory regulations. Law and punishment are two contradictory concepts, but both cannot be separated, because law without sanctions is meaningless, sanctions that exceed the specified law indicate legal uncertainty and violations of the law itself (Sinaga, Pramugar, et al., 2020; Zulyadi, 2020).

The negative legal system of proof should be maintained for two reasons, firstly, it is only right that there should be a judge's conviction regarding the defendant's guilt in order to be able to impose a criminal sentence, the judge should not be forced to convict someone when the judge is not sure about the defendant's guilt, secondly, it is useful if there are rules that bind judges in formulating their convictions, so that there are certain benchmarks that must be followed by the judge in carrying out the trial (B. F. L. Manurung et al., 2022; Spencer-Suarez & Martin, 2021).

D. CONCLUSION

Based on the quo case, the issue of Debt Receivables can be an aspect of a criminal act of fraud if one party already has bad intentions, carried out with a series of lies/tricks by using falsehood, falsehood, committing lies and using falsehood to benefit oneself, in this case the defendant used 2 blank checks, where this act also fulfils the elements of Article 378 of the Criminal Code which results in the fulfilment of the elements of a criminal act. The defendant knew and intentionally gave 2 checks which were blank checks used to pay the defendant's debt so that the defendant's debt to the victim was paid off, which is a criminal event that can be tried through criminal justice, These legal considerations are the basis for the defendant's actions arising from an intention, will or decision, and the judge's considerations in deciding this case are too light, it is better to be sentenced to a maximum of 4 years in prison to provide a deterrent effect on the defendant.

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