

CRITICAL ANALYSIS OF STATE COURT DECISIONS

NUMBER: 49/PID.B/2021/PN. NGA RELATED TO THE ARTICLE 378

JO. ARTICLE 55 PARAGRAPH (1) OF THE CRIMINAL CODE

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Abstract

Law enforcement problems in Indonesia are often characterized by dissatisfaction with legal subjects when the law is being operationalized from the initial stage to the finalization of the law itself. Because the problem of law enforcement in Indonesia is still very thick with the color that law enforcement has not been implemented, law enforcement is only here and stops at the entrance of legal regulations without wanting to go deeper into the real world of law. Legislation is very thick with a political flavor, so that it will affect the achievement of the ideals of a very laudable goal, namely law enforcement, which can only rely on the mere form of enforcing written regulations. This type of research is normative juridical law, namely a research approach that aims to describe the facts or symptoms that are the material or object of the research. Inquiry and investigation efforts should be carried out carefully and carefully, so that in the end the true truth and error can be found.

Keywords: *Court Decision, Fraud Crime, Law*

A. Introduction

The beginning of the series of criminal justice is an act of investigation and investigation to seek answers to the question whether a criminal incident has actually occurred.¹ Preliminary investigations and investigations must be carried out by gathering information, statements of witnesses, and necessary evidence that is measurable and related to legal interests or criminal law regulations, namely regarding the nature of criminal events. If the collection of evidence in a criminal event meets certain requirements, then the fulfillment of the elements in the criminal event is ready for processing.²

Fulfillment of the elements in the provisions of the laws and regulations is only a minimal effort, at the stage of entering into an actual legal event.³ Fulfillment of this element, among other things, by fulfilling the conditions or prerequisites needed is not only for fulfilling the provisions contained in the provisions of the legal regulations, but must actually fulfill the legal requirements.

From these events, information can be obtained, namely through careful investigation and investigation efforts that must be carried out by investigators and investigators, namely officers of the Indonesian National Police and other elements, in accordance with applicable laws and regulations.⁴

The thoroughness of the investigation aims to obtain the necessary evidence related to criminal law violations.⁵ This is a very important step to find and determine whether or not a violation of the law has oc-

¹ Andri Winjaya Laksana, *Tinjauan Hukum Pidana Terhadap Pelaku Penyalahgunaan Narkotika Dengan Sistem Rehabilitasi*, *Jurnal Pembaharuan Hukum*, Vol 2, No 1 (2015), page 74-85

² Muhammad Syarif Hidayatullah H Djauhari, Kadir Sulingo, *Peranan Penyidik dalam Penanganan Kasus Anak sebagai Pelaku Tindak Pidana (Studi Kasus di Ditreskrim Polda Gorontalo)*, *Voice Justisia Jurnal Hukum dan Keadilan*, Vol 5 No 2 (2021), page 73-103

³ Meta Suryani, Anis Mashdurohatun, *Penegakan Hukum Terhadap Eksistensi Becak Bermotor Umum (Bentor) Berdasarkan Undang-Undang Nomor 22 Tahun 2009 Tentang Lalu Lintas Dan Angkutan Jalan*, *Jurnal Pembaharuan Hukum*, Vol 3, No 1 (2016), page 21-38

⁴ Iskandar Yoisanadji, *Hukum Praperadilan Terhadap Penetapan Tersangka*, (Studi Kasus Putusan Praperadilan Pengadilan Negeri Tobelo Nomor 7/ Pid.Pra/2021/PN Tob), *Justisia Jurnal Ilmu Hukum*, Vol 10 No 16 (21): Vol. 10 No. 16 Desember 2021, page 1-21

⁵ Ribka Layasina Br Sembiring and friends, *Penegakan Hukum Terhadap Pengemudi Angkutan Umum Yang Melampaui Batas Kecepatan Yang Menyebabkan Adanya Korban Jiwa (Studi Kasus Satlantas Polrestabes Medan)*, *Jurnal Komunitas Yustisia*, Vol. 5 No. 2 (2022), page 703-713

curred, which is supported by the adequacy of legal elements in the event of a crime. The process of starting investigations and investigations must always be guided by formal law or procedural law, both procedural law regulated in the Criminal Procedure Code and procedural law regulated outside the Criminal Procedure Code, including the nature of the legal interest itself, because the law in this case largely determines the direction of identification of events. regarding the existence and absence of criminal events that have been violated.⁶

Law enforcement problems in Indonesia are often characterized by dissatisfaction with legal subjects when the law is being operationalized from the initial stage to the finalization of the law itself.⁷ Because the problem of law enforcement in Indonesia is still very thick with the color that law enforcement has not been implemented, law enforcement is only here and stops at the entrance of legal regulations without wanting to go deeper into the real world of law. Legislation is very thick with a political flavor, so that it will affect the achievement of ideals for a very laudable goal, namely law enforcement, which can only rely on the mere form of enforcing written regulations. This is in line with what was conveyed by Satjipto Rahardjo as follows: In general, the way of judging in our country is still more dominated by “lawing by rules” rather than “lawing by common sense”. Judging by rules is minimalist law, namely carrying out the law by applying what is written in the text in a raw way. He stopped at spelling out laws. The soul and spirit (conscience) of the law are not involved.⁸

There are a number of indications conveyed by Satjipto Rahardjo, including that law enforcement which is patterned solely on enforcing statutory regulations, will have obstacles. The obstacle is the inability of law enforcement to read and find out which legal problems and what really happened, then the indications will certainly be related to the difficulty of laying down the foundations of real justice..⁹

B. Research Methods

Jenis penelitian hukum yuridis normatif, yaitu pendekatan penelitian yang bertujuan untuk menggambarkan fakta atau gejala yang menjadi bahan atau objek dari penelitian tersebut.¹⁰ Primarily carried out to research laws whose formulation is not linked to a community approach, which is then supported by secondary data as references in research obtained from books related to research.

C. Discussion

Starting from the introduction above, the author would like to describe a case that is related to Article 55 paragraph (1) of the Criminal Code (KUHP), which was experienced by one of the author’s clients, where the legal event occurred in the jurisdiction of Jembrana Regency , Bali.

1. Indictment of the Public Prosecutor

In his indictment, the Public Prosecutor has indicted H. MOH. THOIYIBI with the following indictments:¹¹

FIRST

That the Defendant H. MOH. THOIYIBI either acted individually or jointly with witness I PUTU ADI GUNA (a separate prosecution was carried out) and witness MARLON (Active Indonesian Navy Member) on Friday 12 February 2021 with a time that is no longer remembered until Thursday the 18 February 2021 at approximately 18.30 WITA or at least sometime in February

6 Zainal Arifin, Hary Masrukin, *Analisis Kewenangan Polri Dalam Melakukan Penyidikan Penangkapan Tindak Pidana Korupsi (Studi Di Kabupaten Nganjuk)*, Mizan: Jurnal Ilmu Hukum, VOL 7 NO 2 (2018), page 43-50

7 Andri Winjaya Laksana, *Pemidanaan Cybercrime Dalam Perspektif Hukum Pidana Positif*, Jurnal Hukum Fakultas Hukum Unissula, Vol 35, No 1 (2019), page 52-76

8 Dwidja Priyatno, M. Rendi Aridhayandi, *Resensi Buku (Book Review) Satjipto Rahardjo, Ilmu Hukum*, Bandung: PT. Citra Aditya, 2014, Jurnal Hukum Mimbar Justitia, Vol 2, No 2 (2016), page 881-889

9 Febryan Arda Ayu Lukitosarie dan Andri Winjaya Laksana, *Tinjauan Hukum Pelaksanaan Penyidikan Tindak Pidana Pembunuhan Berencana Yang Dilakukan Oleh Anak*, Prosiding Konstelasi Ilmiah Mahasiswa Unissula, page 217-231

10 Dafitson Husthinob, Zulfikar Hanafi Bahri, Anis Mashdurohatun, *Kedudukan Akta Fidusia Yang Dibuat Oleh Notaris Yang Diluar Daerah Jabatannya*, Jurnal Akta, Vol 5 No 1 Januari 2018, page 153-158

11 *Putusan Pengadilan Negeri Negara, Nomor: 49/Pid.B/2021/PN.Nga, tanggal 23 Agustus 2021*

2021 or at least still in 2021 at Air Anakan Banjar, Banyubiru Village, Negara District, Jembrana Regency, or at least somewhere which includes the jurisdiction of the State District Court, those who commit, who order to do, and who take part in the act, with the intention of unlawfully benefiting themselves or others, by using a false name or false prestige, with deception or a series of lies move other people to hand over something to him or to give debt m or writing off receivables, which the defendant did in the following way :-----

- Whereas initially the witness MOCH ARIFIN borrowed Rp. 50,000,000.- (fifty million rupiah) to the defendant H. MOH. THOYIBI (the defendant is in a separate prosecution file) and because the witness MOCH ARIFIN did not pay off his debt, then the defendant H.MOCH THOYIBI on Friday 12 February 2021 contacted to order witness I PUTU ADI GUNA and witness MARLON to look for witness MOCH. ARIFIN in Banyuwangi, East Java.
- Whereas then on Sunday 14 February 2021 the defendant together with witness I PUTU ADI GUNA and witness MARLON left for Java using the defendant's CRV car and arrived on Wednesday 17 February 2021 at around 19.00 WIB the defendant H.MOCH.THOYIBI together with witness I PUTU ADI GUNA, witness MARLON and 2 (two) other people found witness MOCH Arifin and his second wife namely witness RIZKY MAHARANI at a Rica-Rica Restaurant, located in Mangli Village, Jember Regency, East Java Province. Then witness I PUTU ADI GUNA immediately grabbed witness MOCH ARIFIN's hands and said "I arrest you, I will take you to the Jembrana Police Station" and then ordered WITNESS MARLON to forcibly put handcuffs on witness MOCH ARIFIN's hands so that he would not further resist witness H. MOH. THOYIBI got out of his car saying "what's wrong with you now, I'm bringing the police from Bali, just handcuff him, take him to Bali" (while pointing to witness I PUTU ADI GUNA and witness MARLON),"
- Whereas the witness MOCH ARIFIN and RIZKY MAHARANI were brought to Jembrana in handcuffed condition by driving a Honda CRV car belonging to the defendant H. MOH THOYIBI driven by witness I PUTU ADI GUNA and witness MARLON, while the defendant H. MOH THOYIBI was driving a Toyota Hartop type car Police number DK-836-CL belonging to witness MOCH Arifin;
- Whereas on the way witness I PUTU ADI GUNA and witness MARLON claimed to be police, by saying to witness MOCH ARIFIN "I am the head of Jembrana intelligence and Marlon is my subordinate stationed in Gilimanuk" and this statement was confirmed by witness MARLON, then the witness I PUTU ADI GUNA said "I will help you with Thoyibi's problem, so he won't be sent to the Jembrana Police, because he has reported you to the Police, I will help you withdraw the files, my commander asks for ten million";
- That the Defendant together with witness I PUTU ADI GUNA, witness MARLON, witness MOCH ARIFIN and witness RIZKY MAHARANI, headed for the Ketapang port and then all boarded a ferry to Bali, upon arrival at Gilimanuk Harbor the defendant together with witness I PUTU ADI GUNA, witness MARLON , witness MOCH ARIFIN and witness RIZKY MAHARANI got off the ship and immediately got on the CRV car while witness I PUTU ADI GUNA drove a Toyota Hartop type car Nopol DK-836-CL owned by witness MOCH ARIFIN;
- That upon arrival in Jembrana on Thursday 18 February 2021 at around 03.30 WITA the place was at the house of the defendant's wife with the intention of entrusting witness RIZKY MAHARANI but because there was no room then the defendant together with witness MARLON took witness MOCH ARIFIN and witness RIZKY MAHARANI to the Jati Hotel which took place in Kaliakah village, Negara sub-district and the defendant ordered a room while paying to be occupied by witness RIZKY MAHARANI. After about 20 minutes, the defendant and witness RIZKY MAHARANI were in the hotel room, after that the defendant left the hotel and headed to the defendant's house at around 04.20 WITA. Then at around 05.30 WITA at the house of the wife of the defendant H. MOH THOYIBI in Air Anakan Banjar, Banyubiru Village, Negara sub-district, Jembrana Regency, then met with witness I PUTU ADI GUNA

who first arrived at the defendant's house and then at 07.00 WITA witness AGUS RIYANTO came confessed to being an officer and when meeting with the witness MOCH ARIFIN said "hit you now, I'm not the one who catches you, if I die you, I have prepared golden bullets to shoot you and I was able to find you at the Gunitir cafe";

- Whereas at the defendant's house the witness I PUTU ADI GUNA said back to the witness MOCH ARIFIN "I will help you later with the problem with THOIYIBI, so that it won't be sent to the police station, please help you to withdraw the file, the supervisor asked for ten million", and the witness answered MOCH. ARIFIN "Yes, sir, I will try but not all of it because I still have to sell my rice fields"
- Whereas at around 10.00 WITA witness I PUTU ADI GUNA, witness MARLON witness AGUS RIYANTO and witness MOCH ARIFIN went to Hotel Jati where witness RIZKY MAHARANI was staying at Hotel Jati then witness MOCH. ARIFIN contacted his first wife, namely witness WENNY EVA NURDIAYUNI who was in Banyuwangi to ask for help paying off the debt to witness H. MOCH THOIYIBI and said that he could only transfer money in the amount of Rp. 10,000,000,- (ten million rupiahs), hearing that witness I PUTU ADI GUNA in front of witness MOCH ARIFIN, witness RIZKY MAHARANI, witness AGUS RIYANTO and witness MARLON again asked for money for the revocation of the case file by saying "there has been a report, the commander asked for ten million , but don't tell Mr. Thoiyibi, he will help you with your problem with Mr. Thoiyibi", then witness I PUTU ADI GUNA received a WhatsApp message from the defendant H.MOH THOIYIBI who ordered witness I PUTU ADI GUNA to take a photo of witness MOCH. Arifin and his second wife witness RIZKY MAHARANI in handcuffs with the aim of keeping the defendant to show his first wife if the debt is not paid;
- Whereas at around 13.00 WITA, witness I PUTU ADI GUNA, witness MOCH ARIFIN, witness RIZKY MAHARANI and witness MARLON returned to the house of the defendant H. MOH THOIYIBI and then witness MOCH ARIFIN offered the defendant H. MOH THOIYIBI an amount of Rp.10,000,000 (ten million rupiah) for payment of his debt but initially the defendant H. MOH. THOIYIBI. Hearing this, the witness I PUTU ADI GUNA and witness MARLON then convinced the defendant H. MOH THOIYIBI to accept it by saying "then just make a statement letter" containing the willingness to pay the debt and include the Toyota Hardtop DK-836-CL owned by witness MOCH ARIFIN as collateral. After that the witness MOCH ARIFIN made a statement which he signed on a stamp duty and then IDR 10,000,000 (ten million rupiah) was transferred from the witness WENNY EVA NURDIAYUNI to BRI's bank account with account number 007901000780564 belonging to the defendant H. MOH THOIYIBI;
- Whereas at around 18.30 WITA the defendant together with witness I PUTU ADI GUNA and witness MARLON escorted witness MOCH ARIFIN together with witness RIZKY MAHARANI to Gilimanuk Port and the defendant H. MOH THOIYIBI gave money in the amount of Rp. 200,000,- (two hundred thousand rupiah) for the return journey;
- Whereas the actions of the defendant ordered witness I PUTU ADI GUNA and witness MARLON aimed to write off the receivables of witness MOCH ARIFIN against the defendant amounting to Rp. 50,000,000.- (fifty million rupiah);
- Whereas the defendant gave wages/rewards to witness I PUTU ADI GUNA and witness MARLON each in the amount of Rp. 1,000,000.- (one million rupiah) to carry out the action.

----- The defendant's actions are as stipulated and punishable under Article 378 in conjunction with Article 55 paragraph (1) 1st of the Criminal Code. -----

Second

That the Defendant H. MOH. THOYIBI either acted individually or jointly with witness I PUTU ADI GUNA (a separate prosecution was carried out) and witness MARLON (Active Indonesian Navy Member) on Friday 12 February 2021 at an unspecified time again until Thursday 18 February 2021 at around 18.30 WITA or at least sometime in February 2021 or at least still in 2021 at Air Anakan Banjar, Banyubiru Village, Negara District, Jembrana Regency, or at least in a place that belongs to the jurisdiction of the State District Court, those who deliberately provide opportunities, means or information to commit a crime, with the intention of unlawfully benefiting themselves or others, by using a false name or false dignity, by deceit deception or a series of lies moves other people to give something to him at au in order to give debt or write off receivables, which the defendant did in the following way:

- Whereas initially the witness MOCH ARIFIN borrowed Rp. 50,000,000.- (fifty million rupiah) to the defendant H. MOH. THOYIBI (the defendant is in a separate prosecution file) and because the witness MOCH ARIFIN did not pay off his debt, then the defendant H. MOCH THOYIBI on Friday 12 February 2021 contacted to order witness I PUTU ADI GUNA and witness MARLON to look for witness MOCH. ARIFIN in Banyuwangi, East Java.
- Whereas then on Sunday 14 February 2021 the defendant together with witness I PUTU ADI GUNA and witness MARLON left for Java using the defendant's CRV car and arrived on Wednesday 17 February 2021 at around 19.00 WIB the defendant H. MOCH. THOYIBI together with witness I PUTU ADI GUNA, witness MARLON and 2 (two) other people found witness MOCH Arifin and his second wife namely witness RIZKY MAHARANI at a Rica-Rica Restaurant, located in Mangli Village, Jember Regency, East Java Province. Then witness I PUTU ADI GUNA immediately grabbed witness MOCH ARIFIN's hands and said "I arrest you, I will take you to the Jembrana Police Station" and then ordered WITNESS MARLON to forcibly put handcuffs on witness MOCH ARIFIN's hands so that he would not further resist witness H. MOH. THOYIBI got out of his car saying "what's wrong with you now, I'm bringing the police from Bali, just handcuff him, take him to Bali" (while pointing to witness I PUTU ADI GUNA and witness MARLON),"
- Whereas the witness MOCH ARIFIN and RIZKY MAHARANI were brought to Jembrana in handcuffed condition by driving a Honda CRV car belonging to the defendant H. MOH THOYIBI driven by witness I PUTU ADI GUNA and witness MARLON, while the defendant H. MOH THOYIBI was driving a Toyota Hartop type car Police number DK-836-CL belonging to witness MOCH Arifin;
- Whereas on the way witness I PUTU ADI GUNA and witness MARLON claimed to be police, by saying to witness MOCH ARIFIN "I am the head of Jembrana intelligence and Marlon is my subordinate stationed in Gilimanuk" and this statement was confirmed by witness MARLON, then the witness I PUTU ADI GUNA said "I will help you with Thoyibi's problem, so he won't be sent to the Jembrana Police, because he has reported you to the Police, I will help you withdraw the files, my commander asks for ten million";
- That the Defendant together with witness I PUTU ADI GUNA, witness MARLON, witness MOCH ARIFIN and witness RIZKY MAHARANI, headed for the Ketapang port and then all boarded a ferry to Bali, upon arrival at Gilimanuk Harbor the defendant together with witness I PUTU ADI GUNA, witness MARLON, witness MOCH ARIFIN and witness RIZKY MAHARANI got off the ship and immediately got on the CRV car while witness I PUTU ADI GUNA drove a Toyota Hartop type car Nopol DK-836-CL owned by witness MOCH ARIFIN;
- That upon arrival in Jembrana on Thursday 18 February 2021 at around 03.30 WITA the place was at the house of the defendant's wife with the intention of entrusting witness RIZKY MAHARANI but because there was no room then the defendant together with witness MARLON took witness MOCH ARIFIN and witness RIZKY MAHARANI to the Jati Hotel which took place in Kaliakah village, Negara sub-district and the defendant ordered a room while paying

to be occupied by witness RIZKY MAHARANI. After about 20 minutes, the defendant and witness RIZKY MAHARANI were in the hotel room, after that the defendant left the hotel and headed to the defendant's house at around 04.20 WITA. Then at around 05.30 WITA at the house of the wife of the defendant H. MOH THOYIBI in Air Anakan Banjar, Banyubiru Village, Negara sub-district, Jembrana Regency, then met with witness I PUTU ADI GUNA who first arrived at the defendant's house and then at 07.00 WITA witness AGUS RIYANTO came confessed to the officer and when he met the witness MOCH ARIFIN said "hit you now, I'm not the one who catches you, if I die you, I have prepared golden bullets to shoot you and I was able to find you at the Gunitir cafe."

- Whereas at the defendant's house the witness I PUTU ADI GUNA said back to the witness MOCH ARIFIN "I will help you later with the problem with THOYIBI, so that it won't be sent to the police station, please help you to withdraw the file, the supervisor asked for ten million", and the witness answered MOCH. ARIFIN "yes, sir, I will try but not all of it because I still have to sell my rice fields";
- Whereas at around 10.00 WITA witness I PUTU ADI GUNA, witness MARLON witness AGUS RIYANTO and witness MOCH ARIFIN went to Hotel Jati where witness RIZKY MAHARANI was staying at Hotel Jati then witness MOCH. ARIFIN contacted his first wife, namely witness WENNY EVA NURDIAYUNI who was in Banyuwangi to ask for help paying off the debt to witness H. MOCH THOYIBI and said that he could only transfer money in the amount of Rp. 10,000,000,- (ten million rupiahs), hearing that witness I PUTU ADI GUNA in front of witness MOCH ARIFIN, witness RIZKY MAHARANI, witness AGUS RIYANTO and witness MARLON again asked for money for the revocation of the case file by saying "there has been a report, the commander asked for ten million , but don't tell Mr. Thoyibi, he will help you with your problem with Mr. Thoyibi", then witness I PUTU ADI GUNA received a WhatsApp message from the defendant H.MOH THOYIBI who ordered witness I PUTU ADI GUNA to take a photo of witness MOCH. Arifin and his second wife witness RIZKY MAHARANI in handcuffs with the aim of keeping the defendant to show his first wife if the debt is not paid;
- Whereas at around 13.00 WITA, witness I PUTU ADI GUNA, witness MOCH ARIFIN, witness RIZKY MAHARANI and witness MARLON returned to the house of the defendant H. MOH THOYIBI and then witness MOCH ARIFIN offered the defendant H. MOH THOYIBI an amount of Rp.10,000,000 (ten million rupiah) for payment of his debt but initially the defendant H. MOH. THOYIBI. Hearing this, the witness I PUTU ADI GUNA and witness MARLON then convinced the defendant H. MOH THOYIBI to accept it by saying "then just make a statement letter" containing the willingness to pay the debt and include the Toyota Hardtop DK-836-CL owned by witness MOCH ARIFIN as collateral. After that the witness MOCH ARIFIN made a statement which he signed on a stamp duty and then IDR 10,000,000 (ten million rupiah) was transferred from the witness WENNY EVA NURDIAYUNI to BRI's bank account with account number 007901000780564 belonging to the defendant H. MOH THOYIBI;
- Whereas at around 18.30 WITA the defendant together with witness I PUTU ADI GUNA and witness MARLON escorted witness MOCH ARIFIN together with witness RIZKY MAHARANI to Gilimanuk Port and the defendant H. MOH THOYIBI gave money in the amount of Rp. 200,000,- (two hundred thousand rupiah) for the return journey;
- Whereas the defendant's act of giving opportunity, means or information to commit a crime was carried out by ordering witness I PUTU ADI GUNA and witness MARLON to look for witness MOCH ARIFIN using the defendant's car and then ordering a hotel room as well as information that the defendant brought members of the police from Bali to arrest the witness MOCH ARIFIN and finally the defendant gave wages/rewards to witness I PUTU ADI GUNA and witness MARLON each in the amount of Rp. 1,000,000.- (one million rupiah) to carry out the action,

----- The actions of the defendant as regulated and punishable under Article 378 Jo article 56 paragraph (2) of the Criminal Code. -----

Or Third

That the Defendant H. MOH.THOIYIBI either acted individually or jointly with witness I PUTU ADI GUNA (a separate prosecution was carried out) and witness MARLON (Active Indonesian Navy Member) on Friday 12 February 2021 at an unspecified time again until Thursday 18 February 2021 at around 18.30 WITA or at least sometime in February 2021 or at least still in 2021 at Air Anakan Banjar, Banyubiru Village, Negara District, Jembrana Regency, or at least in a place that belongs to the Legal Area of the State District Court, those who commit, who order to do, and who take part in committing the act, with the intention of unlawfully benefiting themselves or others, force someone by force or threat of violence to give something, which wholly or partly belongs to that person or another person, or in order to make debt or write off receivables threatened with extortion, which was carried out by the defendant in the following way:

- Whereas initially the witness MOCH ARIFIN borrowed Rp. 50,000,000.- (fifty million rupiah) to the defendant H. MOH. THOIYIBI (the defendant is in a separate prosecution file) and because the witness MOCH ARIFIN did not pay off his debt, then the defendant H.MOCH THOIYIBI on Friday 12 February 2021 contacted to order witness I PUTU ADI GUNA and witness MARLON to look for witness MOCH. ARIFIN in Banyuwangi, East Java.
- Whereas then on Sunday 14 February 2021 the defendant together with witness I PUTU ADI GUNA and witness MARLON left for Java using the defendant's CRV car and arrived on Wednesday 17 February 2021 at around 19.00 WIB the defendant H.MOCH.THOIYIBI together with witness I PUTU ADI GUNA, witness MARLON and 2 (two) other people found witness MOCH Arifin and his second wife namely witness RIZKY MAHARANI at a Rica-Rica Restaurant, located in Mangli Village, Jember Regency, East Java Province. Then witness I PUTU ADI GUNA immediately grabbed witness MOCH ARIFIN's hands and said "I arrest you, I will take you to the Jembrana Police Station" and then ordered WITNESS MARLON to forcibly put handcuffs on witness MOCH ARIFIN's hands so that he would not further resist witness H. MOH. THOIYIBI got out of his car saying "what's wrong with you now, I'm bringing the police from Bali, just handcuff him, take him to Bali" (while pointing to witness I PUTU ADI GUNA and witness MARLON),"
- Whereas the witness MOCH ARIFIN and RIZKY MAHARANI were brought to Jembrana in a handcuffed condition by driving a Honda CRV car belonging to the defendant H. MOH THOIYIBI driven by witness I PUTU ADI GUNA and witness MARLON, while the defendant H. MOH THOIYIBI was driving a Toyota Hartop type car Police number DK-836-CL belonging to witness MOCH Arifin;
- Whereas on the way witness I PUTU ADI GUNA and witness MARLON claimed to be police, by saying to witness MOCH ARIFIN "I am the head of Jembrana intelligence and Marlon is my subordinate stationed in Gilimanuk" and this statement was confirmed by witness MARLON, then the witness I PUTU ADI GUNA said "I will help you with the problem with Thoiyibi, so he won't be sent to the Jembrana police station, because he has reported you to the police station, I will help you to withdraw the file, the commander I ask for ten million."
- That the Defendant together with witness I PUTU ADI GUNA, witness MARLON, witness MOCH ARIFIN and witness RIZKY MAHARANI, headed for the Ketapang port and then all boarded a ferry to Bali, upon arrival at Gilimanuk Harbor the defendant together with witness I PUTU ADI GUNA, witness MARLON, witness MOCH ARIFIN and witness RIZKY MAHARANI got off the ship and immediately got on the CRV car while witness I PUTU ADI GUNA drove a Toyota Hartop type car Nopol DK-836-CL owned by witness MOCH ARIFIN;
- That upon arrival in Jembrana on Thursday 18 February 2021 at around 03.30 WITA the place

was at the house of the defendant's wife with the intention of entrusting witness RIZKY MAHARANI but because there was no room then the defendant together with witness MARLON took witness MOCH ARIFIN and witness RIZKY MAHARANI to the Jati Hotel which took place in Kaliakah village, Negara sub-district and the defendant ordered a room while paying to be occupied by witness RIZKY MAHARANI. After about 20 minutes, the defendant and witness RIZKY MAHARANI were in the hotel room, after that the defendant left the hotel and headed to the defendant's house at around 04.20 WITA. Then at around 05.30 WITA at the house of the wife of the defendant H. MOH THOYIBI in Air Anakan Banjar, Banyubiru Village, Negara sub-district, Jembrana Regency, then met with witness I PUTU ADI GUNA who first arrived at the defendant's house and then at 07.00 WITA witness AGUS RIYANTO came confessed to the officer and when he met the witness MOCH ARIFIN said "hit you now, I'm not the one who catches you, if I die you, I have prepared golden bullets to shoot you and I was able to find you at the Gunitir cafe"

- Whereas at the defendant's house the witness I PUTU ADI GUNA said back to the witness MOCH ARIFIN "I will help you later with the problem with THOYIBI, so that it won't be sent to the police station, please help you to withdraw the file, superiors ask for ten million", and the witness answered MOCH. ARIFIN "yes, sir, I will try but not all of it because I still have to sell my rice fields";
- Whereas at around 10.00 WITA witness I PUTU ADI GUNA, witness MARLON witness AGUS RIYANTO and witness MOCH ARIFIN went to Hotel Jati where witness RIZKY MAHARANI was staying at Hotel Jati then witness MOCH. ARIFIN contacted his first wife, namely witness WENNY EVA NURDIAYUNI who was in Banyuwangi to ask for help paying off the debt to witness H. MOCH THOYIBI and said that he could only transfer money in the amount of Rp. 10,000,000,- (ten million rupiahs), hearing that witness I PUTU ADI GUNA in front of witness MOCH ARIFIN, witness RIZKY MAHARANI, witness AGUS RIYANTO and witness MARLON again asked for money for the revocation of the case file by saying "there has been a report, the commander asked for ten million , but don't tell Mr. Thoyibi, he will help you with your problem with Mr. Thoyibi", then witness I PUTU ADI GUNA received a WhatsApp message from the defendant H.MOH THOYIBI who ordered witness I PUTU ADI GUNA to take a photo of witness MOCH. Arifin and his second wife witness RIZKY MAHARANI in handcuffs with the aim of keeping the defendant to show to his first wife if the debt is not paid;
- Whereas at around 13.00 WITA, witness I PUTU ADI GUNA, witness MOCH ARIFIN, witness RIZKY MAHARANI and witness MARLON returned to the house of the defendant H. MOH THOYIBI and then witness MOCH ARIFIN offered the defendant H. MOH THOYIBI an amount of Rp.10,000,000 (ten million rupiah) for payment of his debt but initially the defendant H. MOH. THOYIBI. Hearing this, the witness I PUTU ADI GUNA and witness MARLON then convinced the defendant H. MOH THOYIBI to accept it by saying "then just make a statement letter" containing the willingness to pay the debt and include the Toyota Hardtop DK-836-CL owned by witness MOCH ARIFIN as collateral. After that the witness MOCH ARIFIN made a statement which he signed on a stamp duty and then Rp. 10,000,000 (ten million rupiah) was transferred from the witness WENNY EVA NURDIAYUNI to BRI's bank account with account number 007901000780564 belonging to the defendant H. MOH THOYIBI;
- Whereas at around 18.30 WITA the defendant together with witness I PUTU ADI GUNA and witness MARLON escorted witness MOCH ARIFIN together with witness RIZKY MAHA-

RANI to Gilimanuk Port and the defendant H. MOH THOIYIBI gave money in the amount of Rp. 200,000,- (two hundred thousand rupiah) for the return journey;

- Whereas the actions of the defendant ordered witness I PUTU ADI GUNA and witness MARLON aimed to write off the receivables of witness MOCH ARIFIN against the defendant amounting to Rp. 50,000,000.- (fifty million rupiah);
- Whereas the defendant gave wages/rewards to witness I PUTU ADI GUNA and witness MARLON each in the amount of Rp. 1,000,000.- (one million rupiah) to carry out the action.

----- The actions of the defendant as regulated and punishable by punishment in Article 368 Jo article 55 paragraph (1) 1st of the Criminal Code.-----

2. Decision of the State District Court

Whereas in relation to the indictment of the Public Prosecutor against the Defendant H. MOH. THOIYIBI, the Panel of Judges of the State District Court has rendered a decision which reads:

Judging:

1. 1. Declare the Defendant H. MOH. THOIYIBI mentioned above, legally and convincingly proven guilty of committing a crime “those who committed, ordered to do, and who took part in committing the act, with the intention to unlawfully benefit themselves or others, by using a false name or false dignity , by means of deception, or a series of lies, to move other people to hand over something to him, or to give debts or write off debts” as in the Public Prosecutor’s First Alternative indictment;
2. Sentenced punishment against the Defendant and therefore with imprisonment for 2 (two) years;
3. Determine that the period of arrest and detention that the Defendant has served is deducted entirely from the sentence imposed;
4. Stipulate that the Defendant remains in detention;
5. Establish evidence in the form of:
 - 1 (one) piece of Xiaomi brand mobile phone silver color no card 0877814542244;
It was returned to the rightful person, namely Defendant I PUTU ADI GUNA.
 - 1 (one) black Samsung Galaxy A10s cellphone with card number 081913307068;
Returned to the rightful witness MOCH ARIFIN.
 - 1 (one) unit black Toyota Hardtop car with police number DK 836 CL, engine number 2F55455/4D34D4477241, frame number FJ40212341/ MHMFE34Y H4R007173.
Returned to the rightful witness I WAYAN WEGA.
 - 1 (one) sheet of MOCH ARIFIN statement dated 18 February 2021.
Tetap terlampir dalam berkas perkara.
6. Charged the Defendant to pay court fees in the amount of Rp. 5000, - (five thousand rupiah).

3. Juridical Analysis

Regarding the decision of the Panel of Judges at the Jembrana District Court, the panel of judges ignored legal facts and social facts, so that in the end the panel of judges’ decision injured the sense of

justice in society, in which the panel of judges decided guilt against an innocent person. This decision has caused deep psychological trauma and grudges against law enforcers.

- a. The Panel of Judges at the State District Court was wrong and wrong in applying the law regarding Article 378 of the Criminal Code jo. Article 55 paragraph (1)

WITNESS DESCRIPTION

1) Witness MOCH. ARIFIN which basically explains as follows:

- Whereas it is true that the problem started when the witness borrowed Rp. 50,000,000 (fifty million rupiah) from the defendant H.MOH THOIYIBI;
- Whereas it was true that when he was brought from Jember, the witness and witness RIZKY MAHARANI were handcuffed and put into a Honda CRV car that was going to Bali;
- That was true that before being taken to Bali, the witness and witness RIZKY MAHARANI brought 1 (one) unit of the witness's Toyota Hardtop car with the white color number DK 836 CL and after that the defendant H. MOH THOIYIBI brought and drove the witness car to Bali;
- Whereas it was true that when he arrived at a gas station in the Bondowoso area, East Java, the witness RIZKY MAHARANI asked that the handcuffs be removed but the defendant H. MOH THOIYIBI did not allow it;
- That it is true that when they arrived at Situbondo, East Java, witness and witness RIZKY MAHARANI were taken to witness MARLON's residence and after arriving in Jembrana, witness MOCH ARIFIN and his wife witness RIZKY MAHARANI were held captive at the house of defendant H.MOH THOIYIBI;
- That it was true that the witness I PUTU ADI GUNA, witness MARLON and 3 (three) other people who did not know each other, all of whom were not wearing uniforms, forced the witness and his wife, namely witness RIZKY MAHARANI, to pick them up at a rica-rica food stall in Jember, East Java. police officer or showing a letter of assignment;
- That was true then the defendant H. MOH THOIYIBI got out of his car after the witness MOCH ARIFIN and his wife namely witness RIZKY MAHARANI were taken by the defendant past the side of the food stall;
- That it was true that after arriving in Jembrana at a hotel, witness I PUTU AD GUNA had taken photos and/or videos using his cell phone which were to be used as a report to the supervisor of witness I PUTU ADI GUNA;
- That was true that witness MOCH ARIFIN had asked witness WENNY EVA NURDIAYUNI, namely the first wife of witness MOCH ARIFIN, to transfer an amount of Rp. 10,000,000 (ten million rupiah) which was requested by the defendant H MOH THOIYIBI as a debt payment and transferred to the account of the defendant H. MOH THOIYIBI;
- That was true after that the witness found out that his wife, RIZKY MAHARANI, took money from a local ATM in the amount of Rp. 3,000,000 (three million rupiahs) which was then handed over to the witness MARLON as money for revoking the case files requested by witness I PUTU ADI GUNA alias PAK ADI;
- Whereas it was true that after that the witness MOCH ARIFIN and his wife, witness RIZKY MAHARANI were escorted to the Gilimanuk port to return to Java with previously being given travel money in the amount of Rp. 200,000 (two hundred thousand rupiah);

The testimony of the witness was denied by the Defendant

2) Witness I PUTU ADI GUNA, which basically explains that:

- That it was true that the witness, on February 12 2021, was contacted by the defendant H MOH THOYIBI who expressed a desire to invite and also ordered the defendant to look for witness MOCH ARIFIN to Java;
- That it was true that he had communicated with the witness MARLON before leaving for Java based on the order of the defendant H MOH THOYIBI and it was true that he had been promised Rp. 1,000,000 and will be given a motorbike;
- That it was true that the witness and the defendant H. MOH THOYIBI, witness MARLON and Mr. SANGKALA left for Java using the Honda CRV car belonging to the defendant H. MOH THOYIBI;
- That it was true that on 17 February 2021 he found witness MOCH ARIFIN at a food stall in Jember, East Java with his wife, namely witness RIZKY MAHARANI and then together with witness MARLON arrested witness MOCH ARIFIN by handcuffing;
- That it was true that the witness made the arrest without an official warrant and only because of the order of the defendant H. MOH THOYIBI;
- That it was true that the witness had known the defendant H MOH THOYIBI for a long time and the defendant knew that the witness had been dishonorably dismissed as a member of the police in 2013;
- That the witness handcuffed witness MOCH ARIFIN with the handcuffs belonging to witness MARLON;

The testimony of the witness was partially refuted by the Defendant

3) Witness WENNY EVA NURDIAYUNI, his statement was read out which basically explained that:

- That it was true that the witness MOCH ARIFIN was the witness' husband while against the defendant H MOCH THOYIBI the witness knew him from the witness' brother and initially knew his husband in connection with supernatural things, in this case the ruby gemstone that the defendant H. MOH THOYIBI wanted and ordered witness MOCH ARIFIN to find;
- That it was true that at first the witness' husband refused but because of the strong desire of the defendant H. MOH THOYIBI then the witness MOCH ARIFIN agreed at a cost of Rp. 50,000,000 (fifty million rupiahs) but after two weeks the defendant H. MOH THOYIBI was disappointed because the promised goods had not yet arrived there is thus asking for the money to be returned;
- Whereas because the money had been used for ritual items and other purposes, the witness MOCH Arifin A could not return it but promised to return it in installments and after that the witness' husband was kept looking for by the defendant H. MOH THOYIBI to immediately return the money;
- That it was true that the witness had been contacted by the defendant H. MOH THOYIBI and said that the witness' husband was at home and would be handed over to the police office if he did not pay the debt and after that the witness transferred Rp. 10,000,000 (ten million rupiah) to the defendant H. MOH THOYIBI's account as requested;
- That after the witness transferred the money, the witness' husband, namely MOCH ARIFIN, was allowed to go home but by leaving his vehicle, namely the Toyota Hardtop at the residence of the defendant H. MOH THOYIBI as collateral for payment of unpaid debts;

The testimony of the witness was confirmed by the Defendant.

- 4) Witness I WAYAN WEGA, which basically explains that:
 - That the witness explained about the Toyota Hardtop car with the number DK 836 CL along with the STNK and BPKB which the witness then entrusted to the witness MOCH Arifin;
 - That the witness bought the car for Rp. 110,000,000 (one hundred and ten million rupiah) from the loan proceeds from the LPD for the Kedonganan Traditional Village, Badung Regency;
 - Whereas the witness borrowed money to buy the car with a loan term of 5 (five) years;
 - That it is true that the Toyota Hardtop car with the number DK 836 CL belongs to the witness.

Ad Charge Witness

1. Witness SANGKALA, which basically explains that:
 - That the Rp. 50,000,000 (fifty million rupiah) money belongs to the witness;
 - Whereas the witness was invited by the defendant H MOH THOIYIBI to go to Java to look for witness MOCH ARIFIN to collect debts;
 - That on February 14 2021, the witness accompanied witness I PUTU ADI GUNA and the defendant H MOH THOIYIBI to Java looking for witness MOCH ARIFIN;

The testimony of the witness was confirmed by the Defendant.

2. Witness BHRUN HELMIN, which basically explains that:
 - That on the ninth month of the month, the witness did not remember that in 2020 the witness had been invited by the defendant to Java to look for witness MOCH ARIFIN at his address but the person in question was not there and had asked the head of the environment for help to contact witness MOCH ARIFIN and within 1 (one) month the witness MOCH ARIFIN promised to pay the debt;
 - That the witness knew when the witness went to the defendant's house at around 11.00 WITA and met the defendant, witness I PUTU ADI GUNA, witness MOCH ARIFIN and witness RIZKY MAHARANI;
 - That the witness knew about the statement made by the witness MOCH ARIFIN and the wife of the defendant H MOH THOIYIBI who bought stamp duty;
 - That the witness did not know about the events in Jember or at the Jati Hotel

The testimony of the witness was confirmed by the Defendant.

3. Witness KETUT, which basically explains that:
 - That it was true that on September 2 2020 the witness was invited by the defendant to Java to look for witness MOCH Arifin at his house but the person concerned was not there to collect debts;

The testimony of the witness was confirmed by the Defendant.

STATEMENT OF THE DEFENDANT

Defendant H. MOH. THOIYIBI

in court, principally stated as follows:

- That it was true that the defendant had been examined by police investigators regarding the

defendant who committed extortion and fraud;

- That it was true that the defendant knew witness I PUTU ADI GUNA since he was still active as a member of the police;
- That the defendant knew about the extortion that was carried out by the defendant at the Segara Mandala State Hotel since witness I PUTU ADI GUNA was arrested at the Segara Mandala Hotel;
- That it was true that the defendant invited witness I PUTU ADI GUNA to Java to look for witness MOCH ARIFIN to collect a debt of Rp. 50,000,000 (fifty million rupiahs) and before leaving the witness first called and invited witness MARLON;
- That it was true that the defendant departed from the State to the witness MOCH ARIFIN's address in Kalibaru Banyuwangi with witness I PUTU ADI GUNA and Br. SANGKALA and when they arrived in Banyuwangi had stopped at witness MARLON's house and then looked for witness MOCH ARIFIN, but Br. SANGKALA does not participate;
- Whereas before leaving for Java to look for witness MOCH ARIFIN regarding the issue of his debts, the defendant had previously coordinated with the State Police, but no members were able to participate;
- That it was true that the defendant and witness I PUTU ADI GUNA were in Kalibaru Banyuwangi, East Java for 3 (three) days but did not find witness MOCH ARIFIN so they decided to look for the Jember area, East Java and on the way saw a Toyota Hardtop car with the number DK 836 CL but at that time the witness MOCH ARIFIN was not seen in the car but there was witness RIZKY MAHARANI and after that the witness followed witness MOCH ARIFIN's car towards the hotel;
- That was true then the witness waited for witness MOCH ARIFIN to leave the hotel and returned to follow witness MOCH ARIFIN's car until the Toyota Hardtop arrived at a restaurant;
- That after that the defendant ordered witness I PUTU ADI GUNA and witness MARLON to get out of the car to look for witness MOCH ARIFIN into the restaurant and after being found, witness MOCH ARIFIN was taken out by witness I PUTU ADI GUNA and witness MARLON to meet with the defendant H. MOH THOIYIBI who was waiting in his car;
- That at that time the defendant saw witness MOCH ARIFIN in an ordinary state and not handcuffed by his hands and after that witness MOCH ARIFIN and witness RIZKI MAHARANI were taken into the Honda CRV car owned by the defendant H. MOH THOIYIBI while witness MOCH ARIFIN's vehicle, namely a Toyota Hardtop, was driven by the defendant and then headed to the port of Ketapang to cross to Bali;
- That after being on board the crossing towards Bali, the witness and witness MOCH ARIFIN remained below while witness RIZKI MAHARANI, witness MARLON and witness I PUTU ADI GUNA were on deck while waiting for the journey to Bali;
- That was true when he arrived at the Gilimanuk harbor the witness continued to drive the witness MOCH ARIFIN's vehicle but when he arrived at the Cekik T-junction the witness asked to move to his car while witness I PUTU ADI GUNA took turns driving the vehicle owned by witness MOCH ARIFIN;
- That was true then the defendant sat in the seat next to the driver, witness MOCH ARIFIN and witness RIZKY MAHARANI in the rear passenger seat while witness MARLON was driving. And when he arrived at the residence of the defendant H. MOH THOIYIBI in Banyubiru to rest, but because it was busy, the defendant ordered witness MARLON to drive his car towards Hotel Jati to book a room with a rent of Rp. 200,000 (two hundred thousand rupiah) to be oc-

cupied by witness RIZKY MAHARANI;

- That after that the defendant went into the hotel room to urinate and after that the defendant and the witness MARLON left the hotel and brought the witness MOCH ARIFIN to his house in the Tegal Badeng area
 - Whereas the defendant had gone to the Kota Negara Police but because the gate was closed the witness then brought witness MOCH ARIFIN to his house in Banyubiru and when he arrived at his residence, the defendant ordered witness MARLON to accompany witness MOCH ARIFIN while the defendant rested;
 - That the defendant was then contacted via cell phone by the witness MOCH ARIFIN to ask for help so that witness MOCH ARIFIN was not taken to the police station and offered Rp. ARIFIN to the defendant H. MOH THOYIBI;
 - – That it was true that there was indeed a letter of agreement made by witness MOCH ARIFIN which was a suggestion from witness MOCH ARIFIN himself as a statement of commitment to complete his responsibility for paying off his debt to the defendant H. MOH. THOYIBI;
- Whereas based on the statements of the Witnesses, Ad Charge Witnesses and the statements of the Defendants mentioned above, there are several important points that can be concluded, namely:
- Witness MOCH ARIFIN borrowed Rp. 50,000,000.- (fifty million rupiah) to Defendant H. MOH. THOYIBI;
 - Witness MOCH ARIFIN did not pay off his debt even though he had been repeatedly billed, instead witness MOCH ARIFIN ‘disappeared’;
 - Defendant H. MOH. THOYIBI made a report to the State POLSEK and POLSEK in Banyuwangi and Jember, but there was no follow up;
 - Defendant H. MOH. THOYIBI continues to look for the whereabouts of MOCH witnesses. ARIFIN with the intention of asking for accountability for outstanding debts. The defendant invited witness I PUTU ADI GUNA and witness MARLON to look for the whereabouts of witness MOCH. ARIFIN, and found the witness MOCH. ARIFIN was in the Mangli area, Jember and took him to the residence of the Defendant H. MOH. THOYIBI in Banyubiru Village, Banjar Air Anakan, Negara District, Jembrana Regency;
 - Witness MOCH ARIFIN made and signed a statement to settle his debt to the defendant H. MOH THOYIBI, dated 18-02-2021;
- Whereas from the statements of the Witnesses, Ad Charge Witnesses and the statements of the Defendant mentioned above there is not a single statement which states that the Defendant H. MOH. THOYIBI has committed the act of “FRAUD” against witness MOCH. ARIFIN;
- Whereas after carefully studying the considerations of the Panel of Judges of the State District Court in their decision on page 43 paragraphs 6th and 7th which stated:

Considering, that “with intent” in this article is a translation of *met het oogmerk*, which means *opzet* or intention in this article is interpreted as *opzet als oogmerk*, thus the will of the perpetrator must show the awareness or knowledge of the perpetrator regarding his actions, so that the intent of the perpetrator must not be interpreted differently except with the intention to unlawfully benefit himself or another person, whereas “unlawful” itself means contrary to the law or violating existing legal rules;

Considering, that what is meant by profitable is that the perpetrator’s actions are aimed at seeking profit and the perpetrator uses the advantage both for other people and for himself;

The panel of judges’ considerations were FAKE AND NOT BASED ON LAW, BECAUSE THE

DEFENDANT WAS NOT PROVEN TO VIOLATE THE ELEMENTS OF ARTICLE 378 of the Criminal Code jo. Article 55 paragraph (1), because in the case a quo NOT ANY PROFIT was OBTAINED by the Defendant H. MOH. THOYIBI. On the other hand, the Defendant H. MOH. THOYIBI has been harmed by the actions of witness MOCH. ARIFIN, because witness MOCH. ARIFIN has not paid off its debts, or in other words, the Defendant H. MOH. THOYIBI has been “deceived” by the MOCH witness. ARIFIN, and witness MOCH. ARIFIN “disappeared” but in the end was “found” in the Mangli area, Jember after so long the Defendant H. MOH. THOYIBI looking for his whereabouts;

- Whereas thus it is clear that the opinion of the Panel of Judges of the State District Court stated that the Defendant H. MOH. THOYIBI was found guilty and violated Article 378 of the Criminal Code jo. Article 55 paragraph (1) is WRONG AND WRONG OPINION;
- b. Panel of Judges at the State District Court was wrong and mistaken in interpreting Article 378 of the Criminal Code jo. Article 55 paragraph (1)
 - 1) Definition of Fraud According to Language

According to the Big Indonesian Dictionary, it is stated that deception means deceit, trickery, dishonest acts or words, with the intent to mislead, outsmart, or seek profit. Fraud means process, deed, way of deceiving, case of deceiving.¹² Thus it means that those involved in fraud are two parties, namely people who cheat are called fraudsters and people who are deceived. So fraud can be interpreted as an act or making, the words of someone who is dishonest or lying with the intention of misleading or outsmarting other people for the benefit of himself or a group.

Fraud comes from the word deceit, which according to the Big Indonesian Dictionary is an act or word that is dishonest (lying, fake, etc.) with the intent to mislead, outsmart, or seek profit. Deception itself means a process, method, deceptive act. The crime of fraud is a material delict, which means that for its perfection there must be a consequence. The elements of fraud are acts committed to obtain goods or money belonging to other people and profits in a bad way. For using fake identities such as fake names and fake positions, with a series of lies, or using gimmicks. In deception, there must be causality between deception and the provision of certain goods, if there is no such deception, then there will be no gift of the item.

2) Fraud According to the Juridical Definition

The crime of fraud is a crime against property which is regulated in Book II of the Criminal Code in Chapter XXV from Article 378 to Article 395.

The crime of fraud in its main form is regulated in Article 378 of the Criminal Code which is formulated as follows: “Anyone who with the intention of unlawfully benefiting himself or others by using a false name or false dignity; by trickery, or a series of lies, inducing another person to hand over something to him, or to give a debt or write off a debt, is threatened, due to fraud, with a maximum imprisonment of four years”.

As a method of fraud in Article 378 of the Criminal Code, according to M. Sudrajat Bassar stated:

1. Using a fake name
2. Using fake position
3. Using gimmicks
4. Using a lying convoluted arrangement.

¹² Any person who with the intent to unlawfully benefit himself or another person by using a
Wiwit Pratiwi, Zico Junius Fernando *Penegakan Hukum Tindak Pidana Penipuan Berbasis Online Di Tinjau Dari Undang-Undang Informasi Dan Transaksi Elektronik (UU ITE), Majalah Keadilan, Vol 21 No 2 (2021), page 1-9*

false name or false prestige (hoedanigheid), by deception or a series of lies, incites another person to hand over something to him, or to give him a debt or write off a debt, is threatened for fraud, with a maximum imprisonment of four years.

The definition of the crime of fraud from a legal perspective does not yet exist, except for what is formulated in the Criminal Code. The formulation of fraud in the Criminal Code is not a definition but only to determine the elements of an act so that it can be said to be fraud and the perpetrator can be punished.

Fraud according to Article 378 of the Criminal Code by Moeljatno as follows: “Anyone who with the intention of unlawfully benefiting himself or others by using a fake name or fake dignity (hoedanigheid); by trickery, or a series of lies, inducing another person to hand over something to him, or to give a debt or write off a debt, is threatened, due to fraud, with a maximum imprisonment of four years.”¹³

Based on the elements of the crime of fraud contained in the formulation of Article 378 of the Criminal Code above. So R. Sugandhi put forward the notion of deception that: “Fraud is someone’s act with deception, a series of lies, fake names and fake circumstances with the intention of benefiting oneself with no rights. A series of lies is an arrangement of false sentences arranged in such a way that is a story of something that seems to be true.”¹⁴

The definition of fraud according to the opinion above seems clear that what is meant by deception is a trick or a series of lying words so that someone feels deceived because the words appear to be true. Usually someone who commits fraud, is explaining something that seems to be true or happened, but actually what he said is not in accordance with reality, because his goal is only to convince the target person to have his wish acknowledged, while using a false name so that the person concerned is not identified. as well as using a false position to make people believe in what he says.

3) Elements of Fraud in the Criminal Code

Regarding fraud, it can be found in Book II Chapter XXV. The entire article in Chapter XXV is known as bedrog or fraudulent act. The main form of bedrog or fraudulent acts is Article 378 of the Criminal Code regarding fraud. Based on the above formulation, the Criminal Act of Fraud has the main elements, namely:

a) Objective Elements

(1) With the intention to unlawfully benefit oneself or others

In simple terms, the explanation of this element is that the closest goal of the actor means that the actor wants to get a profit. That advantage is the main goal of the perpetrator by violating the law, if the perpetrator still requires other actions, then the intention cannot be fulfilled. Thus the intention is aimed at profit and against the law, so that the perpetrator must know that the profit that is the goal must be unlawful.

(2) By using one or more means of deception (false names, false prestige/false circumstances, tricks and series of lies).

The point is that the nature of fraud as a crime is determined by the ways in which the perpetrator moves other people to hand over goods/money.

The driving tools used to move others are as follows:

(a) False Name, in this case is a name that is different from the real name even though the

¹³ Medika Andarika Adati, *Wanprestasi Dalam Perjanjian Yang Dapat Di Pidana Menurut Pasal 378 Kitab Undang-Undang Hukum Pidana, Lex Privatum, Vol. 6 No. 4 (2018), page 5-15*

¹⁴ Rania Chaerunnisa, Aryo Fadlian, *Analisis Yuridis Tindak Pidana Penipuan Atas Tipu Muslihat Terhadap Pekerja Seks Komersial Berdasarkan Pasala 378 Kuhp Tentang Tindak Pidana Penipuan, Jurnal Ilmiah Wahana Pendidikan, Vol 8 No 15 (2022), page 487-498*

difference seems small. On the other hand, if the impostor uses another person's name with the same name as his own, then he can be blamed for deception or convoluted lies.

- (b) Deception, what is meant by deception are actions that are carried out in such a way that these actions give rise to belief or belief in the truth of something to other people. If this trick is not a word but a deed or action.
- (c) False dignity/statement, use of dignity or false state is when a person gives a statement that he is in a certain condition, in which condition gives rights to the person in that state..
- (d) Series of Lies, a few false words are considered insufficient as a driving force. This was emphasized by the Hoge Raad in his arrest on March 8, 1926, that: "There is a series of lies if between the various lies there is such a relationship and one lie complements another lie so that they reciprocally give rise to a false picture as if is a truth".¹⁵

So the series of lies must be said in a structured way, so that it is a story that can be accepted logically and correctly. Thus one word strengthens / justifies the words of others.

- (3) Motivate other people to give up something, or give debt, or write off debt. In the act of moving other people to hand over goods, it is implied that there is a causal relationship between the actuator and the delivery of goods. This was emphasized by the Hoge Raad in his arrest on August 25, 1923 that: "There must be a causal relationship between the effort used and the intended delivery of it."¹⁶

The delivery of an item that occurs as a result of the use of propulsion means is deemed not sufficiently proven without explaining the effects that arise because the use of these means creates an appropriate situation to mislead a normal person, so that the person is deceived because of that, the activator must create an impulse in a person's soul so that the person gives up something."

The elements of the criminal act of fraud according to Moeljatno are as follows:¹⁷

- (a) There is someone who is persuaded or moved to deliver an item or make a debt or write off a receivable. The item was handed over by the owner by means of deception. The goods handed over do not always have to belong to themselves, but also belong to other people.
- (b) The fraudster intends to benefit himself or others without right. From that intention it turns out that the aim is to harm the person who handed over the item.
- (c) Those who become victims of the fraud must be encouraged to hand over the goods by road:
 - The delivery of the goods must be the result of an act of deceit.
 - The fraudster must deceive the victim with one common sense regulated in Article 378 of the Criminal Code. Based on the opinion that has been stated above, then a new person can be said to have committed an act of fraud as referred to

¹⁵ P. L. Tobing, *Kajian Yuridis Terhadap Pelaku Tindak Pidana Penipuan (Studi Kasus Putusan Nomor 216/Pid/2016/PT. DKI)*, *Jurnal Kewarganegaraan*, Vol. 6 No. 2 September 2022, page 2953-2960

¹⁶ Meilinda Tarumingkeng, *Tanggung Jawab Pelaku Perbuatan Pidana Yang Sengaja Memberikan Keterangan Palsu Di Atas Sumpah Berdasarkan Pasal 242 Kuhp*, *Jurnal Lex Crimen*, Vol. 10 No. 3 (2021), page 49-59

¹⁷ I Gusti Ayu Devi Laksmi C.D.M. and friends, *Penjatuhan Sanksi Terhadap Pelaku Tindak Pidana Pembunuhan (Studi Kasus Di Pengadilan Negeri Singaraja Dalam Perkara No.124/Pid.B/2019/Pn.Sgr)*, *Jurnal Komunitas Yustisia*, Vol. 3 No. 1 (2020), page 48-58

in Article 378 of the Criminal Code, if the elements referred to in Article 378 of the Criminal Code are fulfilled, then the perpetrator of the crime of fraud can be sentenced according to his actions.

b) Subjective Elements:

- 1) With the intention to benefit oneself or others. The intention of the perpetrator in carrying out the act of moving must be aimed at benefiting himself or others, is in the form of an element of error in deception.
- 2) Unlawfully here it is not merely interpreted as simply prohibited by law or against formal law, but must be interpreted in a broader sense, namely as contrary to what the community wants, a social reproach.

c) Interpretation of Article 55 paragraph (1) of the Criminal Code

Convicted as a perpetrator of a crime:

1. those who do, those who order to do, and those who participate in doing the deed;

According to Prof. Mr. Roeslan Saleh, in the book *Criminal Law with Explanations*, explains that an act can be carried out by one person or several people. If done by several people, then each person has a position that may be different. The existence of differences in the forms of participation also requires that in court procedures it is determined the forms of participation in that particular act, whether the person who committed it, ordered it to do it, and participated in it.¹⁸

Ordering to do happens before the deed is done. In the case of being ordered to do this, the creator of the material cannot be punished. So if the creator of the material cannot be punished, then we face a form of participation which is called being told to do it. It doesn't matter how you get it done. Likewise, it doesn't matter why the material-maker cannot be punished.

In practice, the responsibility of the person who orders it is limited only to the actions committed by the creator of the material. That is, even though the person who orders it to do it intends to order something more remote in nature, he is responsible only to the actions that have been carried out by the material maker.

On the other hand, he is only responsible for the things he has been told to do. If the material-maker has done more than what he has been told to do, then the person who ordered it to be done is not responsible for the rest.

Those who participate in committing criminal acts are those who jointly commit criminal acts. So those who deliberately work on.

Memorie van Toelichting provided information that there are people who participate in committing criminal acts if they directly participate in the implementation of the act.

However, it should not be interpreted that in terms of participating in this activity, each participant must carry out implementation actions. The main thing is that in carrying out the criminal act there is close cooperation between them. Presumably this can be determined as the essence of participating in doing.

If the essence of participating in doing this is that there is close cooperation between them, then to be able to determine whether someone is participating or not, we do not look at the actions of each participant one by one and stand alone, regardless of the relationship between the actions of other participants. but looking at the actions of each participant in relation to and as a whole with the actions of the other participants.

Based on the facts stated in the trial:

¹⁸ Marchelya Sumera, *Perbuatan Kekerasan/Pelecehan Seksual Terhadap Perempuan*, *Jurnal Lex Et Societatis*, Vol. 1 No. 2 (2013), page 39-49

- 1) That the Defendant H. MOH. THOYIBI invited witness I PUTU ADI GUNA and witness MARLON for the purpose of “collecting debts” from witness MOCH. ARIFIN which has not been paid off. The actions taken by witness I PUTU ADI GUNA and witness MARLON against witness MOCH. ARIFIN is “without the knowledge” of the Defendant H. MOH. THOYIBI;
- 2) That is related to the statement made by the witness MOCH. ARIFIN on February 18 2021, the Defendant H. MOH. THOYIBI advised witness I PUTU ADI GUNA and witness MARLON not to contact witness MOCH. ARIFIN within a period of 2 (two) months, with the hope that within that period the witness MOCH. ARIFIN can pay off its debts.
- 3) If witness I PUTU ADI GUNA violates the contents of Defendant H. MOH. THOYIBI, as well as committing fraud against witness MOCH. ARIFIN, this was at the initiative of witness I PUTU ADI GUNA himself, without the knowledge of the Defendant H. MOH. THOYIBI;

If the facts of the trial are related to the opinion of Prof. Mr. Roeslan Saleh, it is clear that the Defendant H. MOH. THOYIBI deserves to be acquitted of the charge of “ordering to do, and those who took part in the act”, because witness I PUTU ADI GUNA committed fraud against witness MOCH. ARIFIN on its own initiative.

- Whereas based on the arguments and explanations that we have described above, a person can only be said to have committed an act of fraud if the elements referred to in Article 378 of the Criminal Code jo. Article 55 paragraph (1) is fulfilled, and the perpetrators of the crime of fraud can be sentenced according to their actions;
- Whereas the Panel of Judges at the State District Court was wrong and mistaken in interpreting Article 378 of the Criminal Code, as contained in its decision on page 47 paragraph 3 and 4, which stated:

Considering, that article 378 of the Criminal Code is a formal offense that regulates criminal acts of fraud, which means that the criminal act of fraud is considered to have been completed by carrying out the actions as formulated in the law without looking at the consequences of these actions, thus even though the Defendant’s goal of arresting witness Arifin is so that witness ARIFIN wants to pay off his debt to the Defendant, but the method used by the Defendant in demanding repayment of his debt was carried out unlawfully, so that according to the Panel of Judges the actions of the Defendant fulfilled the elements of the criminal act of fraud.

Considering, that thus these elements have been proven legally and convincingly according to law;

- Whereas the Panel of Judges at the State District Court had misunderstood and misinterpreted Article 378 of the Criminal Code which regulates “Crash/Fraudulent Acts”. What becomes an important point whether an act is considered a fraud or not lies in the following elements: 1) benefiting oneself or others; 2) deception and series of lies;

The Panel of Judges of the State District Court has stated: “..... **the purpose of the Defendant in arresting witness ARIFIN was so that witness ARIFIN would pay off his debt to the Defendant....**”

The question now is:

- 1) Is the Defendant H. MOH. THOYIBI arrested the witness MOCH ARIFIN to gain profit for himself?
- 2) Was the arrest of the witness MOCH. ARIFIN was carried out with tricks and a series of lies? Where is the lie?
- 3) Isn’t it the witness MOCH who gets the advantage? ARIFIN, because he borrowed money from

the Defendant H. MOH. THOIYIBI in the amount of IDR 50,000,000 (fifty million rupiah) but never paid it off?

- 4) 4) Wasn't it the MOCH witness who carried out the trick and the series of lies? ARIFIN, because they were billed many times but only promised and in the end "disappeared"?
- c. The Panel of Judges at the State District Court has wronged the Defendant by imposing a prison sentence of 2 (two) years on the Defendant H. MOH. THOIYIBI

The verdict in the a quo case was very cruel and unfair to the Defendant H. MOH. THOIYIBI, because besides the debts that the witness MOCH has not paid off. ARIFIN, precisely the Panel of Judges of the State District Court even sentenced the Defendant to 2 (two) years in prison.

The problems faced by the Defendant H. MOH. THOIYIBI with witness MOCH. ARIFIN is actually a civil matter that is criminalized into a criminal act. So thus there has been a criminalization of a civil case into a criminal case, and as a result the sentence given to Defendant H. MOH. THOIYIBI by the Panel of Judges is very inhumane;

D. CONCLUSION

The problem of law enforcement in Indonesia often results in public discontent when the law is being operationalized from the initial stage up to the finalization stage of the law itself. Because the problem of law enforcement in Indonesia is still very thick with the color that law enforcement has not been implemented, new law enforcement resides and stops at what is written in the text of the law in a raw manner, and the text is not understood in a comprehensive and in-depth manner, resulting in legal injustice as experienced by the author's client named H. MOH. THOIYIBI.

Inquiry and investigation efforts should be carried out carefully and carefully, so that in the end the true truth and error can be found.

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