

# The Relevance of the Criminal Office of Fraud in a Situation of Failure to Pay Debt Agreements

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## Abstract.

*This research aims to examine and analyze the divergence of default and fraud in accounts payable agreements. In this paper, the author uses a normative juridical method with research specifications in the form of descriptive analysis. Based on the discussion, it is concluded that the differentiating parameter of default from criminal acts of fraud is in default, seen from the good faith of the parties, while the criminal act of fraud is motivated by malicious intent (mens rea) in possessing an object (goods) belonging to another person and by seeing if there is any intentional element not to fulfill its achievements. The act of pure default and the crime of fraud also have different resolutions, namely the default case is resolved through a civil lawsuit which if the lawsuit is won, the settlement is in the form of returning the rights of the plaintiff or the defendant, depending on the judge's belief. Meanwhile, the criminal act of fraud begins with a report to the competent authority (police), a prosecution is carried out by the public prosecutor, and the judge decides. The punishment is corporal punishment. As long as one of the parties fulfills the element of fraud, even though that party has made achievements during the investigation process, this does not eliminate the criminal element from his actions.*

*Keywords: Accounts; Agreement; Criminal; Fraud; Payable.*

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## 1. Introduction

The Third Amendment to the 1945 Constitution of the Republic of Indonesia has added norms regarding the rule of law in Article 1 paragraph (3) of the Third Amendment to the 1945 Constitution of the Republic of Indonesia which reads: "The State of Indonesia is a state of law".<sup>1</sup> This provision is a form of normalization that comes from the content in the Elucidation of the 1945 Constitution of the Republic of Indonesia which states "The Indonesian state is based on law (Rechtsstaat) not based on mere power (Machtsstaat)". With the inclusion in the norms of the 1945 Constitution of the Republic of Indonesia, the concept of the rule of law in the Elucidation of the 1945 Constitution of the Republic of Indonesia has binding legal force as the highest norm in the national legal system of the Indonesian state.<sup>2</sup>

Terminologically, the term "state of law" in the provisions of Article 1 paragraph (3) of the Third Amendment to the 1945 Constitution of the Republic of Indonesia does not refer specifically to one of the main concepts in the Western legal tradition, both Rechtsstaat and the Rule of Law. This means that the term

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

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

“state of law” in the 1945 Constitution of the Republic of Indonesia is a relatively 'neutral' concept that opens up space for interpretation for new understandings in accordance with the paradigm and reality of the Republic of Indonesia.<sup>3</sup>

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

One of the unlawful acts committed by the community is a criminal act of fraud. This is because, the crime of fraud is very easy to do only with the ability to convince someone with a lie.

We often hear the words fraud and default in accounts payable agreements. The two words do have the same effect, namely causing harm to one party and both not paying off debts to creditors. However, we often misapply to a legal event. The word fraud is synonymous with criminal law, while default is included in the area of civil law. This research is motivated by the difficulty of distinguishing between default and fraud, especially in cases of debt due to both default and fraud, there is the possibility of bad ethics from the debtor.

Accounts payable is a problem that is commonly done by all circles of society. Accounts payable is an emphasis on money or goods lent to someone with an obligation to return the money or goods in accordance with the agreement or what has been agreed in accordance with the agreement. In short, the debt is giving something to another person with an agreement that he will pay or return it properly. However, lately there have been many actions or reports of complaints against criminal acts based on debt fraud.

Debts-Receivables 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. Accounts payable is the corridor of civil law, namely the rules governing the relationship between one person and another, with an emphasis on individual or personal interests. Debts - Receivables are considered legally valid if an agreement is made. Namely an agreement based on the law regulated in Article 1320 of the Criminal Code.

In the case of debts and receivables sometimes confusion arises, whether the act is included in an act of fraud or is included in an act of default (civil law aspect),

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

<sup>4</sup>Ilhami Bisri, (2004), *Sistem Hukum Indonesia*, Raja Grafindo Persada, Jakarta, p.13

<sup>5</sup>Amir Ilyas, (2012), *Asas-Asas Hukum Pidana*, Rangkang Education dan Pukap, Makassar, p.3

the level of public knowledge, especially law enforcement officers as the party carrying out the legislation, causes frequent errors in interpreting the crime of fraud. the.

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

## 2. Research Methods

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

## 3. Result and Discussion

### 3.1. Divergence of Default with Fraud in Accounts Payable Agreement

As social beings, interaction between humans in social life must occur. This interaction pattern is then bound by a norm that applies in society as well as legal norms. This form of interaction can give birth to a legal action in the form of an agreement. Munir Fuady said that the term agreement is the equivalent of the term *overeenkomst* in Dutch or agreement in English.<sup>6</sup>

According to Sutarno, the agreement is divided into several types, namely:

- A reciprocal agreement is an agreement made by placing rights and obligations on both parties who make the agreement. For example, the sale and purchase agreement of Article 1457 of the Civil Code and the lease agreement of Article 1548 of the Civil Code. In the sale and purchase agreement, the rights and obligations are shared by both parties. The seller is obliged to deliver the goods sold and is entitled to payment and the buyer is obliged to pay and receive the goods;
- A unilateral agreement is an agreement made by placing obligations on only one party, for example a grant agreement. In this case, the obligation only lies with the person who donates, namely providing the goods that are donated while the recipient of the grant does not have any obligations. The grantee is only entitled to receive the goods that are donated without any obligation to the person who donates;
- A free agreement is an agreement according to the law where there is benefit for only one party. For example grants (*scheking*) and borrow-to-use Article 1666 of the Civil Code and 1740 of the Civil Code;
- Consensual, real, and formal agreements. A consensual agreement is an agreement that is considered valid if there has been an agreement between the parties who made the agreement. A real agreement is an agreement that

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<sup>6</sup>Munir Fuady, (2001), *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)*, Bandung, Citra Aditya Bakti, p.2

requires an agreement but the goods must be submitted. For example, the safekeeping of goods in Article 1741 of the Civil Code. A formal agreement is an agreement that requires an agreement but the law requires the agreement to be made in a certain form in writing with a deed made by a notary public official or PPAT (Land Deed Making Officer). For example, the sale and purchase of land, the law determines that the deed of sale and purchase must be made with a PPAT deed, a marriage agreement is made with a notary deed;

- Named or special agreements and unnamed agreements. Named or special agreements are agreements that have been regulated with special provisions in the Civil Code book III Chapter V to Chapter XVIII. For example, sales and purchase agreements, leases, grants and others. While an unnamed agreement is an agreement that has no specific regulations in the law. Regarding unnamed agreements, it is regulated in Article 1319 of the Civil Code which states that "all agreements, both those with a special name and those not known by a certain name, are subject to the general rules contained in this chapter and other chapters".<sup>7</sup>

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

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

Defaults can occur either intentionally or unintentionally.<sup>9</sup> Failure to perform (default) results in legal consequences for the debtor after a grace period is given, namely the debtor must pay compensation to the creditor if the grace period given by the creditor cannot also be achieved by the debtor to carry out his achievements.<sup>10</sup>

If it fails to meet the achievements of one of the parties, it must be in good faith to notify the other party to provide an explanation or concession. The parties must also analyze the cause and effect of the other party failing to fulfill the performance, because the party experiencing the *overmacht* condition does not need to pay compensation. It is different if the achievement fails to be fulfilled due

<sup>7</sup>Sutarno. (2003). *Aspek-aspek Hukum Perkreditan Pada Bank*, Bandung, Alfabeta, p.82

<sup>8</sup>Zainal Asikin. (2012). *Pengantar Ilmu Hukum*, Jakarta, Raja Grafindo Persada, p.33

<sup>9</sup>Ahmadi Miru, (2007), *Hukum Kontrak dan Perancangan Kontrak*, Jakarta: Rajawali Pers, p. 74

<sup>10</sup>Sugirhot Marbun. (2015). *Perbedaan Antara Wanprestasi Dan Delik Penipuan Dalam Hubungan Perjanjian*, USU Law Journal, 3.(2) p. 132.

to negligence, as long as the negligence fulfills a criminal element, this breach of promise case can be tried under criminal procedure law.

Law enforcement officers must clearly understand the limits of default and the limits of fraud. Law enforcement officers must also dig up information and collect evidence from the parties as a guide for further legal action. A case of default must begin with the good faith of both parties. In every agreement making, the parties basically have the freedom to determine the contents of the agreement, with whom he makes the agreement, however, every agreement should always be based on the principle of good faith, not violating the laws and regulations, and not violating the interests of the community.<sup>11</sup>This requirement is intended to achieve justice for the parties in the agreement, so that there is no exploitation of the strong against the weak.

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

The parameter that distinguishes default from criminal acts of fraud is that default is seen from the good faith of the parties, while in criminal acts of fraud there is a background of malicious intent (*mens rea*) in possessing an object (goods) belonging to another person and by looking at whether there is an element of intent not to fulfill it. Default acts of pure default and criminal acts of fraud also have different resolutions, namely the default case is resolved through a civil lawsuit 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 conviction. the police), the prosecution is carried out by the public prosecutor, and decided by the judge. The punishment is corporal punishment. As long as one of the parties fulfills the element of fraud, even though that party has made achievements during the investigation process, this does not eliminate the criminal element from his actions. This means that the party must be responsible for his actions criminally, with imprisonment to provide a deterrent effect. Insofar as the default is carried out under forced circumstances and can be proven, the creditor's own negligence, the creditor has relinquished his right to claim compensation, then the act cannot be brought into the criminal realm, and becomes a civil matter. However, if the agreement is made because there is an intention, and there is an attempt to falsify the contents of the agreement or the condition of the party, the case of breaking a promise can enter the criminal realm with suspicion of fraud.

Based on Article 1328 of the Civil Code, which was translated by Subekti and R. Tjitrosudibio, fraud is a reason for the cancellation of the agreement, if the ruse, used by one of the parties, is such that it is clear and evident that the other party does not had made the engagement if the ruse had not been carried out. Fraud is

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<sup>11</sup>Luh Nila Winarni. (2015). *Asas Itikad Baik Sebagai Upaya Perlindungan Konsumen Dalam Perjanjian Pembiayaan*, DIH, Jurnal Ilmu Hukum, 11(21), p. 3-4

<sup>12</sup>Ridwan Khairandy, (2013), *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan (bagian Pertama)*, FH UII Press, Yogyakarta, p. 223



not suspected, but must be proven. Fraud also has an objective element and a subjective element. Objective elements related to the object of the agreement, namely:

- The act of moving (bewegen);
- What is moved is people.<sup>13</sup>

Subjective elements include the subject and the element of error. Meanwhile, what is included in the objective element is that the act is against the law<sup>14</sup>, actions that are prohibited or required by law/regulation and the violators are subject to criminal sanctions, and are carried out in certain times, places and circumstances. The objective and subjective elements must be met to determine the existence of a crime.

In the agreement, a person or parties are freed from compensation if they experience *overmacht*.<sup>15</sup> If in an agreement one of the parties falsifies the *overmacht* condition so that it does not fulfill its performance, the aggrieved party can report to the nearest police station by bringing preliminary evidence against the alleged criminal act of fraud. However, if the agreement is used as the basis for reporting a fraud complaint, because one of the parties breaks a promise, as long as there is no forgery and no ruse to fulfill achievements, then the path chosen by the parties is to file a civil lawsuit.

#### 4. Conclusion

The parameter that distinguishes default from criminal acts of fraud is that default is seen from the good faith of the parties, while in criminal acts of fraud there is a background of malicious intent (*mens rea*) in possessing an object (goods) belonging to another person and by looking at whether there is an element of intent not to fulfill it. The act of pure default and the crime of fraud also have different resolutions, namely the default case is resolved through a civil lawsuit which if the lawsuit is won, the settlement is in the form of returning the rights of the plaintiff or the defendant, depending on the judge's belief. Meanwhile, the criminal act of fraud begins with a report to the competent authority (police), a prosecution is carried out by the public prosecutor, and the judge decides. The punishment is corporal punishment. As long as one of the parties fulfills the element of fraud, even though that party has made achievements during the investigation process, this does not eliminate the criminal element from his actions. This means that the party must be responsible for his actions criminally, with imprisonment to provide a deterrent effect. Insofar as the default is carried out under forced circumstances and can be proven, the creditor's own negligence, the creditor has relinquished his right to claim compensation, then the act cannot be brought into the criminal realm, and becomes a civil matter. However, if the agreement is made because there is an intention, and there is an attempt to falsify

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<sup>13</sup>Azhari AR. (2020). *Prestasi Dan Penipuan Dari Suatu Perjanjian*, *Jurnal Hukum Kaidah Media Komunikasi Dan Informasi Hukum Dan Masyarakat*, 19 (3), p. 488-491

<sup>14</sup>K. Wantjik Saleh. (1998). *Kehakiman dan Keadilan*, Ghalia Indonesia, Jakarta, p.51

<sup>15</sup>P.A.F. Lamintang dan Theo Lamintang. (2009). *Delik-Delik Khusus Kejahatan Terhadap Harta Kekayaan*, Sinar Grafika, Jakarta, p. 167

the contents of the agreement or the condition of the party, the case of breaking a promise can enter the criminal realm with suspicion of fraud.

## 5. References

### Journals:

- [1] Ahmad Firmanto Prasedyomukti and Rakhmat Bowo Suharto. (2018). *The Role of Judicial Commission on Supervision of Judge's Crime in Indonesia*, Jurnal Daulat Hukum,1 (4) url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/3931/2793>
- [2] Azhari AR. (2020). *Prestasi Dan Penipuan Dari Suatu Perjanjian*, Jurnal Hukum Kaidah Media Komunikasi Dan Informasi Hukum Dan Masyarakat, 19 (3)
- [3] Beno, Gunarto and Sri Kusriyah. (2020), *Implementation of Fully Required Elements in the Crime of Planning Murder (Case Study in Blora State Court)*, Jurnal Daulat Hukum, 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8404/4058>
- [4] Luh Nila Winarni. (2015). *Asas Itikad Baik Sebagai Upaya Perlindungan Konsumen Dalam Perjanjian Pembiayaan*, DIH, Jurnal Ilmu Hukum, 11(21)
- [5] Nur Dwi Edie W, and Gunarto. (2020). *Analysis of Judicial Policy in Deciding Criminal Acts Based Alternative Indictment (Case Study Decision Number 82 / Pid.B / 2019 / PN.Blora)*, Jurnal Daulat Hukum, 3 (1), url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/8429/4063>
- [6] Sugirhot Marbun. (2015). *Perbedaan Antara Wanprestasi Dan Delik Penipuan Dalam Hubungan Perjanjian*, USU Law Jour-nal,.3.(2)

### Books:

- [1] Ahmadi Miru, (2007), *Hukum Kontrak dan Perancangan Kontrak*, Jakarta: Rajawali Pers
- [2] Amir Ilyas, (2012), *Asas-Asas Hukum Pidana*, Rangkang Education dan Pukap, Makassar
- [3] Ilhami Bisri, (2004), *Sistem Hukum Indonesia*, Raja Grafindo Persada, Jakarta
- [4] K. Wantjik Saleh. (1998). *Kehakiman dan Keadilan*, Ghalia Indonesia, Jakarta
- [5] Munir Fuady, (2001), *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)*, Bandung, Citra Aditya Bakti
- [6] P.A.F. Lamintang dan Theo Lamintang. (2009). *Delik-Delik Khusus Kejahatan Terhadap Harta Kekayaan*, Sinar Grafika, Jakarta
- [7] Ridwan Khairandy, (2013), *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan (bagian Pertama)*, FH UII Press, Yogyakarta
- [8] Sutarno. (2003). *Aspek-aspek Hukum Perkreditan Pada Bank*, Bandung, Alfabeta
- [9] Zainal Asikin. (2012). *Pengantar Ilmu Hukum*, Jakarta, Raja Grafindo Persada