



## LEGAL REVIEW ON PERSONS OF FRAUD USING BILYET GIRO

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**Abstract:** *Fraud is an act that is very harmful and disruptive to society. Based on Chapter XXV of the Criminal Code, various forms of fraud are contained in Article 378 of the Criminal Code. One form of criminal act of fraud is fraud with a blank transfer slip. One of them is contained in Decision Number: 926/Pid.B/2017/Pn.Tjk, which states that it has been legally and convincingly proven that the defendant committed fraud by using a giro. then the formulation of the problem is: a.) What is the legal review of fraud perpetrators using Bilyet Giro (Decision Study Number: 926/Pid.B/2017/Pn.Tjk)? b.) What factors become obstacles in applying sanctions against perpetrators of fraud by using Bilyet Giro (Decision Study Number: 926/Pid.B/2017/Pn.Tjk)? This research uses normative juridical and empirical juridical methods. Based on the results of a legal review of fraud perpetrators using Bilyet Giro (Decision Study Number: 926/Pid.B/2017/Pn.Tjk) stated that the defendant was legally and convincingly proven guilty of committing the crime of "fraud" as in the first alternative indictment and sentenced the defendant therefore to imprisonment for 3 (three) years and 3 (three) months. The Judge's decision is in accordance with Article 378 of the Criminal Code concerning fraud. What factors become obstacles in the application of sanctions against perpetrators of fraud by using Bilyet Giro (Decision Study Number: 926/Pid.B/2017/Pn.Tjk) include: a. Legal factors, b. Law enforcement factors, c. Facilities and facilities factor, d. Community factors, e. cultural factors.*

**Keywords:** *Legal Review, Fraud, Bilyet Giro.*

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### I. INTRODUCTION

Fraud is an act that is very harmful and disruptive to society. Based on Chapter XXV of the Criminal Code, various forms of fraud are contained in Article 378. Article 378 of the Criminal Code reads: "Anyone who with the intent to unlawfully benefit himself or others, by using a false name or false prestige, with deception, or a series of lying, inciting other people to hand over something to him, or to give debts or write off receivables, is punishable by fraud with a maximum imprisonment of four years."

The elements constituting a criminal act of fraud include the objective factor that the property is partly or wholly owned by another person as well as the subjective

element of this criminal act of fraud with the aim of obtaining benefits for oneself or others by violating the law so that the victim: gives the property, causing debts or canceling debts, persuading/entertaining other people by means and false names other than themselves, including names that do not belong to other people, including additional names and titles, the offense of fraud is one that is very detrimental and causes anxiety in society. One form of criminal act of fraud is fraud with a blank transfer slip.

Issuing banks that make blank transfer slips will be subject to administrative sanctions in the form of including the customer's name on the list of prohibited withdrawals and the customer is required to return unused transfer forms. Names of customers who are blacklisted expire and can then be accepted again as bank customers. However, if the issuer of blank checks has clues and doubts that after the investigation process, elements of fraud are found, they can be threatened and prosecuted for criminal liability as referred to in Article 378 of the Criminal Code.

If the cancellation of a canceled or canceled check qualifies as a crime and there is evidence that the payment of a canceled or canceled check is a crime, then the penalty can still be carried out. One of them is contained in Decision Number: 926/Pid.B/2017/Pn.Tjk, which states that it has been legally and convincingly proven that the defendant committed fraud by using a giro.

Based on the description of the background that has been presented above, the writer is interested in conducting research entitled "Juridical Review of Fraud Actors Using Bilyet Giro (Decision Study Number: 926/Pid.B/2017/Pn.Tjk)".

Based on the background above, the formulation of the problem is:

- a. What is the legal review of fraud perpetrators using Bilyet Giro (Decision Study Number: 926/Pid.B/2017/Pn.Tjk)?
- b. What factors become obstacles in the application of sanctions against perpetrators of fraud by using Bilyet Giro (Decision Study Number: 926/Pid.B/2017/Pn.Tjk)?

The type of research at the time of writing is the positivist legal research method, which in essence is a combination of legal approaches with the addition of various empirical elements. The normative-empirical research method is related to the implementation of normative legal norms (law) in their actions in every particular legal event that occurs in society.

## **II. DISCUSSION**

### **Legal Review of Fraud Perpetrators Using Bilyet Giro (Study of Decision Number: 926/Pid.B/2017/Pn.Tjk)**

One form of crime that is currently being developed is the criminal act of fraud using a giro slip, where this crime has also begun to develop in the jurisdiction of the Bandar Lampung City Police. A check is an order for payment (to the bank) from the person who brought it or the person whose name is mentioned in the

check for the amount of money stated on it. Viewed from the perspective of criminal law, the issuance of giro slips is included in the criminal act of fraud.

Fraud is contained in Article 378 of the Criminal Code, namely: Whoever with the intention to benefit himself or another person with the intention of violating the law, by using a false name or false dignity, with deception or with a series of lies moves another person to hand over an object to him or to give debts or writing off receivables, is threatened with fraud with a maximum imprisonment of 4 years.

The elements that represent an act of fraud are as follows:

1. With the intention to benefit oneself by violating the law.
2. Move people to hand over something or to give debt or write off receivables.
3. By using one of the efforts or methods of fraud including using a fake name, fake dignity, deception and a series of lies.

The factors that cause the issuance of blank checks/bilyet giro include:

1. Issuer's Negligence

The obligation to provide sufficient funds arises when the mandate referred to in the check/bilyet giro becomes effective, the problem is if, at the time the mandate becomes effective, it turns out that the funds are insufficient or even non-existent. In fact, when issuing an issue, the issuer should already know the amount of funds in the bank. But there are times when the issuer does not know or does not take into account the amount of funds in the bank. In this case, if the issuer issues a check/bilyet giro that turns out to have sufficient or even no funds, then the check/bilyet giro will be rejected by the bank and classified as a blank check/bilyet giro. But it is also possible for the issuer to issue a check/bilyet giro with a long grace period between the effective date and the date of issue stated in the check/bilyet giro. In this case the publisher can provide sufficient funds at that time. In fact, when the holder of the check/bilyet giro submits a check/bilyet giro to the bank according to the effective date specified in the check, the bank rejects it because the funds are insufficient or even non-existent.

2. Publisher's intent

The issuance of blank checks/bilyet giro was intentional by the issuer, usually the issuer knew from the start that the funds available at the bank were insufficient or did not exist but the issuer still issued the check/bilyet giro. This can also occur due to bad faith by the issuer, for example for the purpose of fraud or other cases, for example when a principal agreement arises, and the issuer has issued a check/bilyet giro with an effective date, there are times when the issuer deliberately withdraws funds in bank so that the check/bilyet giro cannot be used to withdraw funds.

Basically, the issuance of blank checks/bilyet giro is not permitted, because it can undermine public confidence in the world of banking, and is not in accordance with the function of checks/bilyet giro as securities, namely as a means of payment (by way of transfer). The factor that supports the practice of

using blank checks is bank secrecy. The bank will not provide information about the number of customer accounts. So if it turns out that the check letter has insufficient funds or is empty, it is not possible for the recipient of the check letter to know about it. The recipient of the check letter only believes that when shown he will get payment. For speculating check issuers, this is an opportunity to derive pleasure from issuing blank checks or paying with a blank check in a trade transaction.

One of the functions of the police as law enforcers is to prevent and deal with criminal acts that have recently occurred. One of them is the criminal act of fraud by using blank checks. The police as law enforcers are needed to eradicate this crime. Related to this, the settlement of criminal acts of fraud using giro forms is very interesting to study. At the police stage, the criminal act of fraud using a giro is still open to 2 (two) ways of settlement. The first way, the settlement can use aspects of civil law. The second way, this case can use the perspective of criminal law.

The process of settlement of criminal law is carried out starting from the police which is the most important element in the settlement of criminal law. The police as a component/element/subsystem of the criminal justice system is clearly seen in the current legislation (both in the Criminal Code (KUHP) and in the Police Law Number 28 of 1997 which has been replaced by the Criminal Law Act). Law Number 2 of 2002 namely as investigators and investigators.<sup>1</sup>

Through checks, payment transactions can be done more easily than paying with cash. Besides facilitating business payment transactions and creating new opportunities in people's lives, checks also create new opportunities for crime. The crime was committed by using a check or securities as a means of action.

The motive for the criminal act of fraud aims to gain profit by obtaining goods, being given debt or having the debt written off. Currently there are many frauds using blank checks/bilyet giro to pay off debts, for example. This action is classified as a criminal act of fraud, which carries a maximum prison sentence of 4 years. Article 378 of the Criminal Code in full reads as follows: Whoever with the intent to unlawfully benefit himself or another person, by using a false name or false dignity, with deception, or a series of lies, moves other people to hand over something to him, or to give debts or writing off receivables, is threatened with fraud by a maximum imprisonment of four years. Based on Bank Indonesia Circular Letter Number 2/10/DASP dated 8 June 2000 concerning Administration for Withdrawal of Blank Checks/Bilyet Giro which was later amended through Bank Indonesia Circular Letter Number 8/17/DASP, Blank Checks/Bilyet Giro are Checks/Bilyet Giro that shown and refused to be attracted within the grace period of the obligation to provide funds by the Withdrawer because the balance is insufficient or the Account has been closed.

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<sup>1</sup> Zainal Asikin, *Pengantar Hukum Perbankan Indonesia*, Jakarta, Rajawali Pers, 2010 hlm 12

In this case, it includes criminal acts of fraud and forgery which are regulated in the main form regulated in Article 378 of the Criminal Code (fraud) where the legal consequence is that which is punishable by a maximum prison sentence of four years, Article 263 of the Criminal Code (forgery) where the legal consequence is with penalty of six years imprisonment.

### **Inhibiting Factors in the Implementation of Sanctions Against Fraud Perpetrators Using Bilyet Giro (Study of Decision Number: 926/Pid.B/2017/Pn.Tjk)**

Harmony between the sub-systems is indeed very necessary, because the occurrence of problems in the sub-system alone will disrupt the running of the entire system, which in turn affects the achievement of system goals (law enforcement). The essence of law enforcement actually lies in the factors that might influence it. These factors have a neutral meaning, so that the positive or negative impact lies in the content of these factors.

These factors are, as follows:

1. The legal factor itself, in this case is limited to the law only.
2. Law enforcement factors, namely the parties that form and apply the law.
3. Facility factors or facilities that support law enforcement.
4. Community factors, namely the environment in which the law applies or is applied.
5. Cultural factors, namely as a result of work, creativity, and taste based on human initiative in social life.<sup>2</sup>

These five factors are closely related to each other, therefore they are the essence of law enforcement, as well as a benchmark for the effectiveness of law enforcement:

#### **1. Constitution**

Laws and regulations relating to banking crimes are the first requirement that must be fulfilled in criminal law enforcement. Because of the weaknesses and deficiencies in this matter, it will make criminal law enforcement activities encounter many obstacles. In this case the problem is first, regarding the availability of statutory regulations and second is regarding the technical and juridical feasibility of these regulations.

The wide scope of the crimes committed has caused the existing criminal provisions in the banking law to be unable to accommodate (be used) to act against developments in the types of banking crimes. For this reason, provisions outside the banking law that are directly related to banking are still needed, such as criminal law regulations in the Criminal Code, and the Corruption Law. The condition of regulations like this in law enforcement is complicated, both regarding the process and the relevance of the provisions to the crimes committed.

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<sup>2</sup> Soerjono Soekanto, *Faktor-faktor Yang Mempengaruhi Penegakan Hukum*, CV Rajawali, Jakarta, 2010, hlm. 142

The results of the interview with Jhony Butar Butar as the Judge of the Tanjung Karang District Court stated that regarding criminal provisions it can be said that there has been significant progress, compared to the previously applicable criminal provisions, especially with regard to the criminal penalty system, which has used a special strait minimum and the amount of punishment that is threatened . By using a special minimum and maximum threat system, it can be avoided from imposing too light a sentence.<sup>3</sup>

Based on the results of the interview above, it can be analyzed that in law enforcement, the law factor is a very important factor, where the laws and regulations relating to banking crimes are the first requirement that must be fulfilled in criminal law enforcement, the problems that arise are incompatibility of the law with its application in the field.

## 2. Law Enforcement Officers

The results of an interview with Jhony Butar Butar as a Tanjung Karang District Court Judge stated that human resources in criminal law enforcement are those who have been known as law enforcers, who are members of the criminal justice system institutions, starting from the Police, Prosecutors' Office, Courts and Correctional Institutions. They are very decisive actors in law enforcement. Therefore, even though it is as good and perfect as any rules that are made, it will ultimately be determined by the people who enforce these rules. Regarding this matter, the prerequisites that must be met are first, concerning the quantity of human resources and secondly, the quality of human resources, both intellectual and moral qualities. These prerequisites are important, especially in relation to the characteristics of banking crimes and the recent increase in the number of banking crimes, besides being an adequate number, it certainly requires high skills and strong morality.<sup>4</sup>

The quality of mediocre human resources will certainly not be able to compete with the ingenuity of banking criminals who are educated, respected, and have a lot of money. Therefore, if so far law enforcement against banking crimes has not been optimal, it is necessary to question the quantity and quality of law enforcement human resources. For this reason, it is necessary for investigators, public prosecutors and judges to have sufficient knowledge in the field of banking through integrated and continuous training.

The results of an interview with Jhony Butar Butar as a Tanjung Karang District Court Judge stated that even though they have received education or training in the banking sector, it is easy to imagine that their skills will not be the same as professional bankers or accountants, therefore in practice, cooperation with professional associations relating to banking activities, such as perbanas, accountants and others are needed. In addition to the individual

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<sup>3</sup> Hasil wawancara dengan Jhony Butar Butar selaku Hakim Pengadilan Negeri Tanjung Karang, Tanggal 19 Oktober 2021

<sup>4</sup> Hasil wawancara dengan Jhony Butar Butar selaku Hakim Pengadilan Negeri Tanjung Karang, Tanggal 20 Oktober 2021

problems of law enforcers, structurally or legally institutionally (criminal justice system), for example, if the police already have sections such as economic, drug and other investigations, then it is necessary to follow the customs at the Attorney and Court levels.

Based on the results of the interviews above, it can be analyzed that in law enforcement, law enforcement factors are very significant besides the law factor. Law enforcers are actors who are very decisive in law enforcement. Law enforcement against banking crimes has so far not been optimal, so it is necessary to increase the quantity and quality of law enforcement human resources.

### 3. Law Enforcement Support Facilities

Along with technological developments, banks also cannot be left behind following these developments, such as computerization, use of ATMs, credit cards and others. On the other hand, the modus operandi of banking acts is no less sophisticated. Therefore, it is unavoidable the need to fulfill the need for adequate facilities for law enforcers against banking crimes, both funds and equipment that are in accordance with developments in criminal law in general. In addition to the standard requirements for enforcing criminal law in general. Without the support of these facilities it is indeed difficult to optimize law enforcement against banking crimes. One other thing that also needs to be considered is adequate incentive facilities for investigators in particular.

The results of an interview with Jhony Butar Butar as a Tanjung Karang District Court Judge stated that because banking crimes cannot be denied wallowing in money. Therefore it will be more effective if there are incentives for investigators who can uncover cases of banking crimes. In addition, this model is likely to be able to reduce the moral degradation of investigators from the influence of bribery.

Based on the results of the interviews above, it can be analyzed that in law enforcement, banking support facility factors also cannot be left behind in following these developments, such as computerization, use of ATMs, credit cards and others must be increased in preventing banking crimes.

### 4. Public

Banking crime as an anti-social act, should get a reaction from the community. The public should be aware of and participate with law enforcement officials in tackling the Bilyet Giro crime. However, seeing the characteristics of banking crimes as stated earlier, it is rather difficult for the community to get involved in these matters, except for certain people who have understanding in the banking sector, especially Bilyet Giro. Therefore, the existence of Non-Governmental Organizations (NGOs) that understand and care about this problem will greatly assist in law enforcement.

The results of an interview with Jhony Butar Butar as a Tanjung Karang District Court Judge stated that on the other hand, in enforcing criminal law against banking crimes it is difficult to avoid intervention from groups in society, especially political interests and economic interests. Regarding economic interests, it is actually a normal thing in the banking business, because that is the goal, but it will be criminal when the method of actualizing these interests violates legal and social norms which are very detrimental. The problem then is that they feel they are innocent people and try their best to influence and even deny the operation of the criminal law against them. This indeed involves complex issues, ranging from fragile business ethics, officials who are easy to collude with, to the low level of public understanding in the banking sector.

Ability and superiority in a bargaining position that can affect the course of law enforcement. An influence that is no less important in enforcing criminal law against banking crimes is the intervention of power or politics. Actually, power is important in this context, because without the support of power, it is impossible for criminal law to be enforced, but on the other hand, power can also sterilize the uprightness and functioning of the law itself. Based on the results of the interviews above, it can be analyzed that in law enforcement, community factors are also important in enforcing the law on banking crimes. banking crime.

#### 5. Legal Culture

Systemically, legal culture is an element of a legal system, dividing the elements of the legal system into three, namely structure, substance, and legal culture. Structure includes bodies, frameworks, forms of enduring legal systems and jurisdictions. Substance includes observable norms. Meanwhile, legal culture includes ideas, attitudes, beliefs and opinions about the law.

The legal culture of society, especially those related to bank activities, whether affiliated parties or customers, has not been encouraging, as an example of how low bankers' appreciation is for obedience in using very large amounts of BLBI funds. Likewise their attitude towards the judiciary (criminal justice system). On the other hand, there are also quite a few borrowers who borrow money from banks in bad faith.

The results of an interview with Jhony Butar Butar as a Tanjung Karang District Court Judge stated that the condition of legal culture in society cannot be separated from other components of the social system. Because the relationship is so close and mutual influence and influence. Therefore to form positive legal culture conditions for criminal law enforcement against banking crimes cannot only improve the legal system without improving other social subsystems.

Based on the interview results above, it can be analyzed that in law enforcement, legal culture factors are important in banking law enforcement.



For example, when judges find that the case they are dealing with is a case that attracts public attention, non-legal pressures, such as political, sociological, and psychological nature, often accompany the course of this case during the trial process. As part of society, judges cannot be sterile and able to free themselves from these pressures. It's very humane if a judge can be influenced, even though normatively he shouldn't show this in public. However, regardless of the possibility of that influence, the judge must ensure that he is able to issue an authoritative decision. Decisions that depart from rational and argumentative sides because they are supported by ways of reasoning that can be accounted for. These decisions must accentuate a legal culture that is aware of the law. Legal culture is an element of the legal system that is the most difficult to establish because it requires a relatively long period of time. This happens because culture is related to values. What is related to values, definitely requires an internalization process so that these values are not only known, but also practiced in everyday life.

### III. CONCLUSION

1. A legal review of the perpetrators of fraud by using Bilyet Giro (Decision Study Number: 926/Pid.B/2017/Pn.Tjk) stated that the defendant was proven legally and convincingly guilty of committing the crime of "fraud" as in the first alternative indictment and sentenced the defendant to the defendant is therefore sentenced to imprisonment for 3 (three) years and 3 (three) months. The Judge's decision is in accordance with Article 378 of the Criminal Code concerning fraud.
2. What factors become obstacles in the application of sanctions against perpetrators of fraud by using Bilyet Giro (Decision Study Number: 926/Pid.B/2017/Pn.Tjk) are:
  - a. The legal factor itself, the law is not clear regarding transactions that use checks. The existing law only regulates blank checks, not checks.
  - b. Factors in law enforcement, namely the lack of professionalism of law enforcement officials in handling the law and the lack of competence of officers in handling the crime of forgery of giro slips.
  - c. The facility and facility factor is the lack of tools to support police investigations and there are still many unsophisticated tools to prove blank checks.
  - d. The community factor, there are still many people who do not know about transactions using giro slips and do not understand the checking of the giro bills themselves.
  - e. Cultural factors, people are still not used to using giro checks and especially entrepreneurs who use giro checks are not disciplined.

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