



Responsibility of The Perpetrator in The Form of Compensation for The Unlawful Act of Fraud

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Abstract - Fraud is an act that is clearly against the law that has been regulated in the Unitary State of the Republic of Indonesia where fraud can cause losses to the Indonesian people. However, asking for compensation for fraud that has been committed by certain individuals is not an easy thing to do because fraud can enter the legal chamber and the civil chamber where the criminal court has the authority to impose penalties on the perpetrator in the form of fines and imprisonment, while the civil court has the authority to order the perpetrator to provide compensation to the victim. Although fraud can be addressed through civil proceedings to seek compensation, the research highlights that proving fraud is most effectively achieved in a criminal court. This underscores the necessity of obtaining an infract criminal decision one that is legally binding to establish the fraud. Such a decision serves as a prerequisite for ensuring that a civil claim for compensation is neither deemed premature nor rejected. The research recommends prioritizing criminal proceedings as a foundational step to strengthen civil compensation claims and ensure their admissibility.

Keywords: Fraud, Compensation, Unlawful Act

I. INTRODUCTION

The act of fraud as regulated in Article 378 of the Criminal Code is an act in which a person has the intention to benefit himself or another person unlawfully by using a false name or dignity, using trickery or a series of lies, moving someone to hand over an item or to provide a debt or write off a receivable. Seeing this definition, of course fraud is something that can threaten the welfare of Indonesian society. Fraud is still a very common thing in Indonesia, especially after the development of technology where technology can be a medium for several parties to commit fraud in various new ways such as fake investments, falsified transfer receipts, etc. This is certainly a threat to the Indonesian people considering that fraud can cause material losses in a nominal amount that is not small according to each case.

Losses experienced by victims of fraud have a bad impact on the victim and the victim should be able to obtain compensation from the perpetrator of the fraud so that the victim's rights that have been seized by the perpetrator of the fraud are returned in full, however, this is also a problem that still exists in Indonesia because there are still many acts of fraud that are only resolved in criminal courts and do not reach the civil court stage. This is a big and ongoing problem because criminal courts, basically, do not have the authority to impose compensation penalties. (Suhendro, 2023). Perpetrators of fraud can face criminal charges, which may include prison sentences and fines, as shown in various legal cases (Zaini & Chandra, 2024)

The problem of the legal process that only goes to criminal courts is caused by two things that actually happen in Indonesian society. The first thing is because of the lack of understanding of the public about the differences in authority between criminal and civil courts

in Indonesia so that fraud cases generally only go to criminal courts and are not continued through lawsuits filed with civil courts so that compensation can be requested. The second thing is the lack of understanding about the proof process that must be carried out first in fraud cases so that many lawsuits requesting compensation for fraud experienced by victims are declared premature or unacceptable (niet on vankelijk verklaard). Legal frameworks, such as Law No. 31 of 1999, provide guidelines for prosecuting fraud and ensuring accountability for financial losses incurred by victims (Sabela & Farhana, 2024).

This is because fraud, in accordance with the principle of proof, namely affirmanti incumbit probate, states that Whoever claims something is obliged to prove it meaning that the act of proof must be based on strong evidence which can be in the form of a final decision stating that the perpetrator of the fraud has been proven guilty of fraud and cannot be based solely on suspicion. Both of these things are certainly quite serious obstacles that must be clearly understood by victims of fraud so that their rights can be fully restored through compensation for material losses granted for the fraudulent acts committed by the perpetrator. Fraudsters with hypnosis can be considered criminally liable, which includes the obligation to compensate victims for their losses. This responsibility arises from the fulfillment of fraudulent elements, especially fraudulent acts, Sitanggang & Zarzani, 2023)

This research has the following problem formulation: How is compensation for fraud cases in Criminal Law? How is compensation for fraud cases reviewed in Civil Law? What kind of proof must be provided to request compensation for fraud cases? The research of purpose: Examining the claim for damages in fraud cases in Criminal Law, examining claims for damages in fraud cases in Civil Law, examining how evidence should be provided to seek compensation in fraud cases by minimizing claims that are declared premature or rejected.

II. METHOD

To address the main issues, this research employs a normative legal research approach, which systematically examines legal norms and systems. Normative legal research seeks to uncover and interpret legal rules and principles. It aims to provide clarity on legal issues by analyzing existing laws and their application in society (Pratama, 2024). This research method often involves examining laws and regulations and legal literature. It uses secondary data, including primary legal material, to support the findings (Arif et al., 2024). This approach is integrated with a case study methodology to bridge the theoretical analysis of positive law with its application to real-life cases. Case study methods, such as process tracing and qualitative comparative analysis, allow for in-depth exploration of legal outcomes, facilitating the development of typological theories that link theory to practice, (Bennett, 2001). While positive law serves as a fundamental element in the legal system, its effectiveness can be challenged by people's behavior that deviates from established norms, leading to a legal vacuum and the emergence of new unrecognized laws (Malan, 2016)

By focusing on existing legal aspects, the study aims to not only analyze the framework of positive law but also to demonstrate how these legal principles operate in practical scenarios to solve specific legal problems. (Benuf & Azhar, 2020). The approach that will be applied in this research is a case study approach where the case study approach will focus more on analyzing real cases to see the problems that occur and see what facts are contained in the cases used as references to answer the problem formulation contained in this journal. (Ilhami et al., 2024). This research focuses more on the study of legal norms contained in the Criminal Code, Criminal Procedure Code, Civil Code, and Civil Procedure Code in order to clearly see the correct procedures for requesting and filing a lawsuit for compensation for fraudulent acts that are still rampant. Research that focuses on the study of legal norms will also be synchronized with the case study approach so that research can be conducted by looking at legal norms and legal systems that already exist and are regulated in written law in real terms applied to existing cases. This aims to see problems that can be solved and solutions can be applied through the correct application of the law. The analysis of this research data focuses on fraud cases in Indonesian courts and the analysis of cases that resulted in compensation for losses made by the perpetrators to the victims was finally granted

so that the solution to the existing problem, namely regarding requests for compensation for fraudulent acts, can be carried out clearly and in accordance with laws and legal norms.

III. RESULT AND DISCUSSION

1. Legal Analysis Of The Request For Compensation For Fraud Acts According To Criminal Law

Indonesia adopts civil law, which means that written law is the main guideline for how the law will be implemented and applied in the country of Indonesia, which is more commonly known as the theory of supremacy of law, where the law has the highest sovereignty. This, if applied to the judiciary, means that a judge on duty in court can only decide a decision in accordance with the law that regulates the subject matter of the case. Considering this, fraudulent acts can be viewed from two different legal sources, namely a review using criminal law and using civil law. Fraud when viewed from a criminal law perspective is a form of criminal act in accordance with the existing legal basis, namely Article 378 of the Criminal Code where fraud is classified as a criminal act that can be given a maximum prison sentence of four (4) years.

According to the researcher's analysis through a criminal law perspective, the verdict given by the judge against the perpetrator of fraud is very limited by the regulations that have been written in Article 378 of the Criminal Code and the charges given by the Public Prosecutor as regulated in Article 193 paragraph (1) of the Criminal Procedure Code which states If the court is of the opinion that the defendant is guilty of committing the crime charged against him, then the court will impose a sentence. The limitations on criminal decisions are also added to by how the judge may not decide a criminal decision by giving a sentence that is contained outside the Criminal Code because that punishment means that the defendant is sentenced to a criminal sentence according to the threat determined in the article of the crime charged against the defendant. The limitations that have been written mean that the decision issued by the judge in trying a fraud case is very limited and the judge cannot order compensation by the perpetrator of the fraud against the victim of the fraud in criminal court because compensation is not a criminal penalty regulated in the Criminal Code as a whole and compensation is not explicitly mentioned in Article 378 of the Criminal Code which is the limitation of the decision that can be issued by the judge when trying a fraud case.

If the victim asks for compensation and demands that his money be returned after being defrauded by the criminal court, then this can indeed be attempted in accordance with Article 98 paragraph (1) of the Criminal Procedure Code which states If an act that is the basis for an indictment in a criminal case examination by the district court causes harm to another person, then the presiding judge at the request of that person may determine to combine the claim for compensation with the criminal case. However, this is still limited by Article 99 paragraph (1) of the Criminal Procedure Code which states "If the injured party requests the combination of his claim with the criminal case as referred to in Article 98, then the district court shall consider its authority to try the claim, the truth of the basis of the claim and the penalty for compensation for costs incurred by the injured party. This article means that the district court must still consider its authority to try the claim and the request for compensation for fraud will not necessarily be granted in the criminal court.

If we look at one of the existing case examples, namely in the decision with case register number 363/PID.B/2019/PN/JKT.UTR, it is stated that the defendant Ali Agus bin the late Iriandi has committed fraud against the victim witnesses, namely Lukman Riyanto and victim witness Suprayogo. In this case, victim witness Lukman Riyanto wanted to replace his electricity meter box from regular to prepaid and victim witness Suprayogo wanted to install electricity in his house. Then, the defendant offered his services to the two victim witnesses where he stated that he could replace the electricity meter box from regular to prepaid and take care of the electricity installation. The two victim witnesses believed the defendant and paid the defendant Rp. 2,000,000.00 (two million rupiah) and Rp. 1,700,000.00 (one million seven hundred thousand rupiah) to take care of the electricity meter box and electricity installation. The two victim witnesses stated that they believed the defendant because the defendant claimed to be a PLN employee and always wore a PLN uniform. After receiving

money from the two victim witnesses, the defendant did not install electricity or take care of the victim witnesses' electricity meter box and used the money he received for personal interests so that he caused losses of Rp. 2,000,000.00 (two million rupiah) to the victim witness Lukman Riyanto and Rp. 1,700,000.00 (one million seven hundred thousand rupiah) to the victim witness Suprayogo.

In this case, the judge decided that the defendant Ali Agus bin Alm Iriandi was legally guilty of committing fraud and sentenced him to 10 (ten) months in prison and imposed a court fee of Rp. 5,000 (five thousand rupiah) on the defendant. The judge's consideration in deciding this case used two elements inherent in Article 378 of the Criminal Code, namely the element of whoever and the element with the intent to use oneself or others unlawfully, by using a false name or false dignity, in order to benefit himself. Regarding the element of whoever, the judge considered that through the defendant's statement and the statements of the witnesses, it was clear that the defendant Ali Agus bin Alm Iriandi was the right defendant and there was no error in persona. Regarding the second element, the judge considered that with the defendant's actions in wearing a PLN uniform and admitting himself as a PLN employee to the two victim witnesses, the defendant had fulfilled the second element because he had used false dignity (in this case as a PLN employee) to deceive the two victim witnesses so that he obtained benefits for himself.

Through this case, the author sees that the judge only sentenced the defendant to 10 (ten) months in prison and charged the defendant with court costs without ordering the defendant to compensate for the losses caused by the fraud committed by the defendant even though the two victims participated in the trial process as victim witnesses and clearly explained the losses they had experienced due to the defendant's actions. Therefore, the author concludes that compensation for losses caused by fraud cannot be requested before a criminal court because the criminal court is only authorized to impose criminal penalties on the defendant and is not authorized to order the defendant to pay compensation because this is the authority of a civil (private) court.

2. Legal Analysis Of Compensation Suits For Fraud Acts According To Civil Law

Fraud is reviewed through the perspective of civil law, then fraud can be categorized as an unlawful act based on Article 1365 of the Civil Code. Due to the absence of a specific article in the Civil Code that regulates fraud, fraud falls into the category of unlawful acts where unlawful acts have five elements that must be met, namely the existence of an act, the act is against the law, there is an error, there is a loss, and there is a causal relationship between the error and the loss experienced. When reviewed through the lens of civil law, compensation for losses is the main thing in the occurrence of an unlawful act in accordance with Article 1365 of the Civil Code which reads "Every act that violates the law and causes loss to another person, requires the person who caused the loss due to his mistake to replace the loss." so that compensation for unlawful acts can be granted in civil court.

In the Civil law also states that compensation can be requested in two ways, namely material and immaterial compensation. Material compensation is compensation that is objective in nature where the value of the compensation determined can be seen from the nominal amount of money that was defrauded by the perpetrator and it can be proven that the loss experienced by the victim is indeed the amount requested in the material compensation. Compensation can also be requested through immaterial compensation where immaterial compensation includes things that cannot be valued in nominal terms such as mental suffering experienced by the victim after he/she finds out that he/she has been deceived by the perpetrator of fraud.

By doing review of fraudulent acts from a civil law perspective, fraud is not only assessed as an act of fraud but must be seen as an unlawful act where a party can file a lawsuit for compensation for the fraud that occurred by ensuring that the five elements of an unlawful act have been fulfilled first in order to request compensation for the fraud they experienced. When viewed in the verdict with case registration number 363/PID.B/2019/PN/JKT.UTR, the elements of PMH have been fulfilled through the defendant's actions in the case. The defendant's actions in the case itself fulfill the first

element, namely the existence of an act where the defendant committed an act claiming to be a PLN employee so that the victim witness would trust him and be given money for the promised services. The element of an unlawful act has also been fulfilled by how the defendant has been found guilty and committed a criminal act of fraud that violates Article 378 of the Criminal Code as decided by the judge in the verdict. The element of error has also been committed by the defendant where he was found guilty of committing a criminal act of fraud. The suspect was proven to have committed an error with an element of intent. The element of loss is fulfilled because the victim witnesses have each experienced losses of Rp. 2,000,000.00 (two million rupiah) and Rp. 1,700,000.00 (one million seven hundred thousand rupiah). The last element, namely the existence of a relationship between the loss and one's own fault has also been fulfilled by how the victim's loss occurred because the victim's witness believed that the defendant was a PLN employee because he claimed to be a PLN employee and always wore a PLN uniform so that the victim's witness gave money to the defendant so that the defendant would carry out the promised service which was not carried out so that in the end there was a loss for the victim's witness due to this.

Seeing from the elements of PMH that have been clearly fulfilled through the existing case examples, it is clear that the defendant's actions have violated Article 1365 of the Civil Code and because of this, the victim witness can claim compensation from the defendant by registering a lawsuit on the grounds of Unlawful Acts to the North Jakarta District Court with minimal chance of being rejected because it has fulfilled all the clear elements of PMH. Thus, based on the results of the author's research that in accordance with the provisions of existing laws and regulations, if viewed through the perspective of civil law, then a victim who has suffered a loss due to fraud that can be proven as an unlawful act, can be held accountable to the perpetrator to make compensation for the losses experienced by the victim due to the fraud that has been committed. Requesting compensation for civil losses is also more optimal because the victim can request compensation for material and immaterial losses.

3. Proof Of Fraud As An Unlawful Act In An Effort To Request Compensation

Considering that civil law is the appropriate area to request compensation for losses due to fraud committed by the perpetrator against the victim, the fact that the fraud must be classified as an unlawful act cannot be forgotten because civil law only regulates compensation for unlawful acts in a broad sense and does not narrow down fraud as an act. The problem that is often faced when wanting to file a lawsuit for damages for fraud classified as an unlawful act is proving two elements of the unlawful act, namely the element of error and also the element of an unlawful act. Fraud can be said to be an error and an unlawful act if it has been proven and fraud cannot be based on mere suspicion. This happens because fraud has been specifically regulated in Article 378 of the Criminal Code which states that fraud is an act with trickery or lies where both of these things cannot be merely suspected and must be proven by the party who makes the allegation first.

This is quite a problem large because if the party alleging fraud cannot prove that it fulfills the five elements of an unlawful act, then the lawsuit cannot be accepted and the lawsuit requesting compensation cannot be granted because it has not been sufficiently proven that the perpetrator of the fraud has committed an unlawful act which ultimately caused a loss to the victim. Fraud can be proven as an unlawful act must first be proven in a criminal court and there must be a final decision stating that the perpetrator is indeed guilty and has committed an unlawful act of fraud because if it has been proven in a criminal court and a final decision has been issued stating that the act of fraud has been carried out in real terms and the perpetrator is guilty, then the proof of fraud brought as an unlawful act in a civil court can be said to be complete and only then can compensation be requested by the victim through a civil court.

That matter applies in such a way because the proof of the element of an unlawful act where the perpetrator must be proven to have committed fraud and violated Article 378 of the Criminal Code itself must be proven in a criminal court where the verdict must state that the perpetrator is legally proven to have violated the law and committed a criminal act of fraud so that the perpetrator can be clearly proven that he has committed an unlawful act so that it

fulfills the element that the perpetrator has committed an unlawful act. With the fulfillment of the elements of the crime of fraud that have been proven in criminal court, then the victim can file a lawsuit for compensation against the perpetrator of the fraud and the victim can easily prove his claim so that compensation for losses can run smoothly so that the proof of fraudulent acts up to the point where the victim can ask for compensation without minimizing the claim for compensation being rejected by the civil court is by first proving that the element of fraud has been properly carried out by bringing the fraud case to the criminal court first as one form of proof when wanting to file a lawsuit with the civil court.

IV. CONCLUSION

Fraud, defined in Article 378 of the Criminal Code (KUHP), is a crime that not only violates the law but also has significant social and economic impacts on society. Fraud includes any form of use of a false name or dignity, trickery, or lies with the aim of unlawfully benefiting oneself or others. In the Indonesian context, this act is becoming increasingly common, especially with the rapid development of information technology that makes it easier for perpetrators to carry out their actions through various digital platforms. Cases such as fraudulent investments and online fraud have shown how vulnerable society is to these acts, often resulting in significant material losses for victims. From a legal perspective, fraud is not only a criminal act, but also an unlawful act that harms other parties. In the context of criminal law, perpetrators of fraud can be subject to imprisonment based on the provisions stipulated in the Criminal Code. However, criminal law in Indonesia has significant limitations related to the authority of judges. This becomes a problem when victims of fraud seek justice and compensation for losses suffered, because criminal courts do not have the authority to order compensation. In many cases, the criminal sanctions imposed on perpetrators of fraud are often disproportionate to the losses suffered by the victim.

One of the main reasons why many fraud cases are only processed in criminal cases is the public's lack of understanding of the difference between criminal and civil justice. Many victims assume that by reporting fraud cases to the authorities, they have fulfilled the legal steps necessary to obtain compensation. In fact, to obtain compensation, victims need to continue the legal process to civil court, where they can file a lawsuit for compensation based on Article 1365 of the Civil Code which regulates unlawful acts. The plaintiff in this case must be able to prove the existence of five elements of an unlawful act. In practice, this evidentiary process often becomes an obstacle for victims. Many of them do not understand that proof in the civil realm is different from that in the criminal realm. In criminal law, proof focuses on whether the perpetrator has been proven guilty of committing a crime. Meanwhile, in civil law, the proof required must cover broader aspects and is not limited to decisions in criminal courts. One of the main problems faced by victims of fraud in filing lawsuits in civil courts is the need to have a final decision from a criminal court. This means that victims must go through two different legal processes: first, filing a lawsuit in criminal court to prove that the fraud actually occurred, and second, filing a lawsuit in civil court to obtain compensation for the losses suffered. This adds to the mental and financial burden for victims, especially those who may have already suffered significant losses due to the fraud.

On the other hand, the legal awareness of Indonesian people about their rights and proper legal procedures still needs to be improved. Many victims do not know that they have the right to sue for compensation for the losses they have suffered, and even if they do, they often do not understand how to do so. Therefore, it is important for government institutions and civil society organizations to improve legal education and socialization regarding the rights of fraud victims. This will not only help victims get justice but will also raise collective awareness about the importance of fraud prevention in society. In addition, this study also shows that even though there is a mechanism to combine claims for damages in criminal cases, it does not guarantee that the criminal court will grant the request. Article 98 and Article 99 of the Criminal Procedure Code provide room for the court to consider its authority in trying claims for damages. However, often, the court prefers to separate criminal matters from civil matters, which makes victims lose the opportunity to obtain compensation directly in the criminal process.

From a legal policy perspective, there needs to be reform in the Indonesian legal system to deal with fraud more effectively. One solution that can be considered is strengthening collaboration between law enforcement agencies and the judiciary. This way, there can be a clearer path for victims to obtain justice and compensation. In addition, there needs to be a simplification of the legal procedures for filing a lawsuit for compensation, so that victims do not have to go through a long and complicated process. In the context of evidence, it would also be helpful to develop clearer guidelines or standards of evidence in fraud cases in civil court. This could include guidance on the types of evidence that are admissible in fraud cases, as well as the criteria that must be met for a claim for damages to be accepted by the court. With these guidelines in place, victims would be better prepared to file a claim and have a better chance of getting compensation.

Finally, it is important to create awareness among the public about the importance of reporting fraud. Many victims may feel embarrassed or afraid to report the fraud they have experienced, even though reporting is very important to enforce the law and prevent other perpetrators from doing the same thing. A protection program for whistleblowers or those who report fraud can also be considered as a way to encourage the public to be more courageous in reporting fraud cases. Overall, fraud is a complex problem that requires serious attention from all parties. From the government and law enforcement agencies, better policies are needed to protect the public from fraudulent acts. From the community's side, increasing legal awareness and understanding of their rights is very important so that they can protect themselves and seek compensation that they are entitled to. With a comprehensive and collaborative approach, it is hoped that the problem of fraud in Indonesia can be minimized and victims can obtain the justice they deserve.

REFERENCES

- Arif, Hairwansyah.,Et.All. (2024). Tindak Pidana Korupsi Pada Pekerjaan Swakelola. *Journal Publicuho*, 7(1), 396–403. <https://doi.org/10.35817/Publicuho.V7i1.373>
- Bennett, Andrew. (2015). Case Study: Methods And Analysis. In *International Encyclopedia Of The Social & Behavioral Sciences* (Pp. 208–213). Elsevier. <https://doi.org/10.1016/B978-0-08-097086-8.44003-1>
- Benuf, K., & Azhar, M. (2020). Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer. *Gema Keadilan*, 7(1), 20–33. <https://doi.org/10.14710/Gk.2020.7504>
- Ilhami, M. W., Nurfajriani, W. V., Mahendra, A., Sirodj, R. A., & Afgani, M. W. (2024). Application Of The Case Study Method In Qualitative Research. *Jurnal Ilmiah Wahana Pendidikan*, 10(9).
- Malan, K. (2015). Deliberating The Rule Of Law And Constitutional Supremacy From The Perspective Of The Factual Dimension Of Law. *Potchefstroom Electronic Law Journal*, 18(4), 1205–1250. <https://doi.org/10.4314/Pelj.V18i4.14>
- Pratama, W. A. (2024). Analisis Normatif Perlindungan Hukum Terhadap Anak Sebagai Korban Kejahatan Pedofilia. *Ta'zir: Jurnal Hukum Pidana*, 8(1), 17–28. <https://doi.org/10.19109/Tazir.V8i1.22072>
- Sabela, Ferry & Farhana Farhana. (2024). Accountability Of Perpetrators Of Corruption Criminal Acts For State Losses In The Use Of Customer Funds At Pt. Asuransi Jiwasraya. *International Journal Of Sociology And Law*, 1(4), 79–99. <https://doi.org/10.62951/ljsl.V1i4.162>
- Sitanggang, Agustian Fery Fernando & Zarzani, T. Riza. (2023). Criminal Responsibility For Perpetrators Of Fraud By Means Of Hypnosis. *Lawyer: Jurnal Hukum*, 1(2), 44–58. <https://doi.org/10.58738/Lawyer.V1i2.447>
- Suhendro, M. (2023). Gugatan Ganti Rugi Dalam Perkara Penipuan Melalui Peradilan Perdata. *Jurnal Res Justitia*, 3(1).
- Zaini, Z. D., & Chandra, A. P. (2024). Analysis Of The Liability Of Perpetrators Of Fraud Via Bri Link Transfer (Decision Study Number: 14/Pid.B/2023/Pn Bbu). *Jetish: Journal Of Education Technology Information Social Sciences And Health*, 3(1), 687–698. <https://doi.org/10.57235/Jetish.V3i1.2123>