

Legal Protection Against Criminal Fraud from Contractual Relationships According to Justice Principles

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Abstract. The agreement was made to fulfill the interests of the parties. However, in practice there are many violations committed by the parties to the agreement. This study uses normative juridical research methods and it can be concluded: (1) If there is a ruse, a fake situation and a series of false words by one of the parties, then this is called "fraud" in Criminal Code and "fraud" in Civil Code if there are defects in the will of them: mistakes, coercion, and fraud, (2) Implementation of the law and its implementation rules related to criminal acts of fraud arising from contractual relations in jurisprudence there is no common reference, understanding and interpretation, (3) In the concept of an ideal legal protection in the settlement of fraud cases arising from contractual relations, implementing concept of restorative justice is an effective way with the assistance of law enforcement.

Keywords: Legal Protection, Criminal Act, Fraud, Contractual, Justice.

1 Introduction

Humans are individual creatures as well as social creatures, as individual creatures, they have unique characters different from one another. Whereas as a social creature, humans need other human beings, they need a group in its minimal form, which recognizes its existence, and in its maximum form, that is the group on which it can depend. As social being's humans cannot live alone, humans need togetherness in their lives. All of that is in order to give and benefit from one another.

In the realm of law, humans as legal subjects who live in groups in a particular community in a particular area are called society, in their lives based on an interaction with each other. The relationship was born by nature as a reflection of the needs that must be met. Interacting like that means involving two parties, in the sense that each party wishes to obtain benefits. This is due to the two parties becoming intertwined, so that what is done by all groups is certain that the existence of ties that arise will require the existence of rules. Because if there are no clear rules, there will be a conflict of interest which can lead to disorder in group life.

To safeguard the interests it protects, the law is distinguished above public law and private law. Law governing interest's individuals and also the interests of the state which are not in their position as a ruler is private law, whereas law is regulate / protect the interests of the state as ruler is public law [15]. Humans as legal subjects interact with each other so 2 raises ties between

them, clearly these activities are private [20]. Remembering this private nature, in Indonesia these rules can be found in the Civil Code or *Burgerlijk Wetboek* (BW), the problem of binding committed by all members of the public can be found in the rules in Book III of the Agreement, the provisions are regulated in Article 1233 The Indonesian Civil Code is stated that the engagement can be born from laws and agreements.

Every member of the community in their daily lives will always be bound by other parties, it could be due to the Law but also because of the agreement. If someone is bound to another because of the law, then the will element of those who are bound does not take part [20]. Different if they are bound by interaction due to the contract, the parties knowingly and deliberately want to obtain benefits or benefits that have been in the first place desired and calculated. Private law as a provision accommodating an agreement is an effort to create order between people in contractual relationships. Previously important to stated, although some law scholars place contracts / agreements into a narrower meaning because it is addressed to a written agreement only, According to Subekti [16] said that agreements and agreements have the same meaning, whereas the contract term is narrower because it is addressed to written agreement, and the words of the contract and the agreement are placed in the same sense.

In legal cases related to contracts, it often happens that those who have made a contract have broken a promise, failed to carry out the rights and obligations that have been agreed between the two parties, the result of which could have resulted in the achievement of one of the parties not being carried out. Thus, legal problems will arise, even the solution is not so easy and fast even in protracted practice, and in the end boils down to a court that requires a judge's ruling.

The principle of justice is simple, fast and low cost one of the principles in justice system in Indonesia. The existence of this principle has existed since Law Number 14 of 1970 concerning the Basic Provisions of Judicial Power which is no longer valid. The principle now stipulated in the Act Number 48 of 2009 concerning Judicial Power wherein in article 4 paragraph (2) reads: "The court helps justice seekers and tries to overcome all obstacles and obstacles to achieving a simple, fast and low-cost trial" [19].

In essence, the purpose of this principle is a judicial process which is not convoluted, the event is clear, easy to understand and the cost is affordable by lower level society though. But in its implementation, this principle apparently it is still difficult to do. Many cases are processed in a given time quite long and not simple at all due to the many levels the judiciary, and costs that cannot be said to be light especially if it comes to the cassation court [4].

In the principle of a quick, simple trial and the cost of ripples from observers the researchers are still far from expectations, in handling cases both for criminal cases, civil, state administration, or other cases examined by the court to arrive at a decision that has legal force permanent (*in kracht van gewijsde*) takes many years and costs are not small for justice seekers. For example, in civil cases decisions that have legal force still require the determination of execution. The issue of execution is no less complex, many facts show the party won cannot directly obtain their rights but still have to pay a large fee. For example, in debt payments, land / house evacuation executions and other cases, the party won in the decision to obtain their rights still requires a significant cost for the execution itself, in other words declared winning "on

paper". Even the winner in the execution of the execution faces obstacles, namely the existence of resistance from being executed by following the court's decision to pay the debt that should be paid in accordance with the court's decision or mobilizing the masses and obstructing court officials as executors of the execution itself. So that the execution of the execution is hampered or even canceled, this is because the situation and conditions do not allow the execution to be carried out, if forced the execution of new problems will arise that will actually harm the winner of the execution.

Thus, the party won in a court decision that already has permanent legal force (*in kracht van gewijsde*) still cannot obtain and enjoy the expected achievements. This still requires quite a long time, therefore in the execution of the execution of the court and the winner always need help and the participation of the Police to secure the execution. Without the support and participation of the Police, the hope of justice seekers to obtain legal certainty will be in vain.

There is no guarantee that a court decision in a civil case effectively enforced in a rational time can result low public interest, especially business people, to use the court as a dispute resolution mechanism. Research conducted by the Judicial Independence Research and Advocacy Institute (LeIP) that uses literature and field study methods can provide data that from 2012 to 2018 in fifteen district courts in Indonesia showed that not all requests for execution of civil disputes before the court were finished. Book II of the 2015-2019 National Medium-Term Development Plan (RPJMN) states, the factors inhibiting the completion of business contracts are the difficulty of the decision execution process, the length of the case settlement process, and high case costs [5].

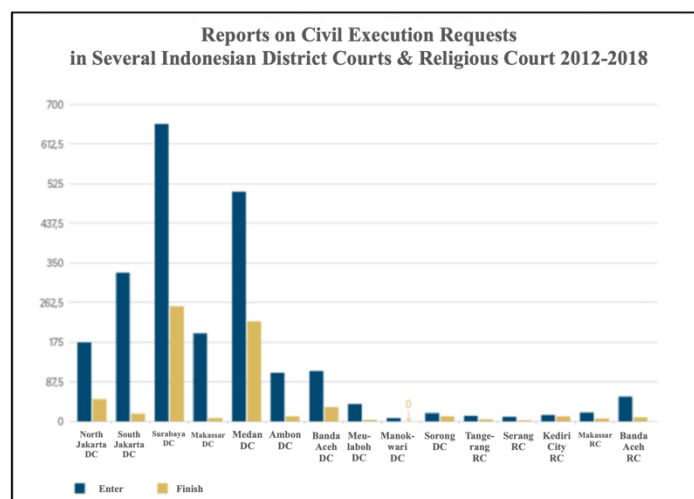


Fig. 1. Reports on Civil Execution Requests in Several Indonesian District Courts & Religious Court 2012-2018 [5]

Weak public trust in the judiciary is marked the lack of civil cases, including business contract disputes, were submitted to court. The delay in completing business contracts is also one factors affecting Indonesia's ranking in ease of doing business. Data Ease of Doing Business (EoDB) is released annually by the World Bank shows that in 2019 Indonesia only ranked 73 out of 190 countries with a score of 67.96. Based on indicators related to court, Indonesia is ranked 146th for contract law enforcement (enforcing contract) and rank 36 for handling bankruptcy (resolving insolvency) [5].

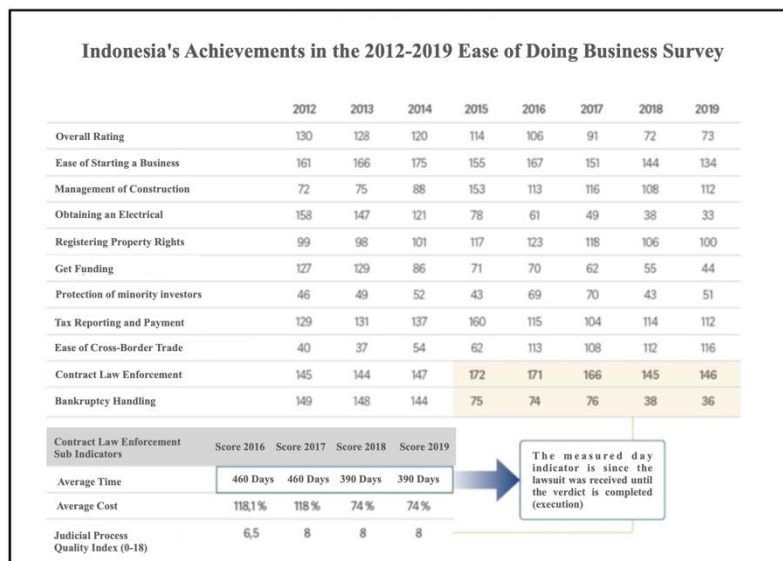


Fig. 2. Indonesia's Achievements in the 2012-2019 Ease of Doing Business Survey [5]

This is somewhat different from the implementation of executions in criminal cases which are relatively easier and faster. With regard to these two conditions, in law enforcement practices relating to contracts, one must immediately obtain his right to find a shortcut, one of which is by reporting to the Police (criminal case). The contractual relationship becomes interesting to talk about considering the contract which is the realm of civil law, but when in its implementation the achievements of the agreement are not fulfilled and then resolved using the mechanism of criminal law. The simple argument put forward by justice seekers to report to the Police is that the opposing party is "daunted" or "afraid" of the imposition of criminal sanctions that they will face, and in the end, it will not be too long to get an achievement soon.

The tendency to settle cases related to contracts, such as cooperation contracts, lending and borrowing, buying and selling, leasing, debt and so on by reporting to the Police, seems at first glance is a civil case but requested settlement through criminal channels. Therefore, law enforcement officers (police, prosecutors, judges and lawyers) must always be able to distinguish the legal areas of each field of law itself, namely criminal law and civil law and other

regulations. The loss of the barrier between criminal law and civil law is unavoidable. When law becomes a part of a grand narrative of postmodern culture, the loss of barriers between disciplines within it is a necessity. This situation will cause the conditions of attraction between the principles of various scientific disciplines science and culture, meant in this case the law itself [17].

The use of public legal mechanisms in resolving a problem that is within the domain of private law, one of which is the settlement of defaults through the mechanism of criminal prosecution for fraud. A default is basically the inability of one party to fulfill the performance required of him by an agreement with the other party. If it relies on the legal logic of an agreement, what must be done is to sue the contracting party to fulfill its contractual obligations, or if the party is unable to fulfill its obligations, then the agreement between them can be requested for cancellation by those who feel aggrieved, and are accompanied by a lawsuit for compensation.

The discussion about the boundary between fraud and default is very important to solve for legal certainty, on the other hand this problem often occurs in law enforcement practices related to legal issues arising from contractual relations. In connection with this problem there are differences in interpretation and understanding between law enforcer. There were also differences in understanding and interpretation, between the first level of court, the level of appeal and the level of cassation, there was no reference or guidelines relating to legal relations that arise from contractual relationships, so that many cases of fraud that arise from contractual relationships do not get the fairness they should.

2 Method

The research method used in this study uses a normative juridical problem approach through statute approach, case approach, historical approach, comparative approach, and conceptual approach [10]. This research is descriptive in nature with the aim of obtaining a comprehensive, complete and systematic picture of the problem under study. The data used is sourced from secondary data. Secondary data uses primary legal materials in the form of relevant laws and regulations, secondary legal materials and tertiary legal materials. Data collection techniques used in this study were literature study and interviews. Data processing methods through the editing process, and data analysis is done qualitatively.

3 Result and Discussion

a. Arrangement of Fraudulent Criminal Actions Arising from Contractual Relations According to the Regulations

Criminal justice is a broad and complex study. More than that, the criminal justice system is an interesting area in scientific disciplines relating to crime and perpetrators of crime. The criminal justice system is also one of the most important social issues now and in the past in

history. In fact, the criminal justice system is perhaps the most important mirror of society. With the exception of how people choose their leaders, there is no human activity that demonstrates more clearly the values, behavior, civilization and character of a nation than the process in the criminal justice system [13].

The discussion regarding fraud is inseparable from the rules governing the act namely, criminal law. Derived from the word "criminal" means the thing that is criminalized, namely by the ruling agency delegated to a person as something he feels uncomfortable and also things that are not every day delegated. Criminal law in general is divided into objective criminal law that is, the whole of the prohibitions and imperatives whose violations by the state or by any other public law community have been associated with suffering in the form of punishment, whereas in the subjective sense the state imposed its power to impose penalties based on regulations first [8].

Criminal Law made in writing, in the form of an Act that aims to provide penalties in the form of capital punishment, imprisonment, fines, closing penalties for offenders (Article 10 Indonesian Criminal Code). So that the creation of security, order, calm and protection of certain interests in society, as well as avoiding vigilantism against criminal offenders [20]. Crime or *strafbaar feit* in Dutch is a criminal act that refers to the meaning of a human behavior that causes certain consequences that are prohibited by law where the culprit may be subject to criminal sanctions. For those who do the deed [12].

Not all criminal offenders can be convicted. To be able to impose a crime against someone who has committed a crime, he or she has a mistake. According to Roeslan Saleh that those who could be responsible could fulfill the requirements, could realize the meaning and the reality of their actions, could realize that their actions were not deemed appropriate in the community, were able to determine their intentions or wills in carrying out the actions. There is another opinion which says that being able to be responsible means being aware of the nature of violating the law of his actions and according to his conviction that his will can be determined [14].

The element with the intention of having the desired goal of the perpetrator or knowing the consequences that will occur, or in other words there is an element of intentionality against the law, accompanied by knowing and realizing that the benefits obtained are unlawful objectives. Intentionality is knowledge, so there are actually two features of intentionality, namely intentionality as certainty and intentionality as a possibility. In this theory there is difficulty in determining intentionality as a possibility. Then to find out this is used the theory of *inkauf nehmen* or what may be made. This theory states that intentionality is based on the likelihood of occurring if the defendant is aware of the consequences / circumstances which constitute offense and the attitude towards that possibility if the word really occurs, is what is possible, can be agreed and dares to bear the risk [11].

The element of whoever does not constitute an offense but a legal subject, what is meant by who here is all the citizens of the Republic of Indonesia itself and foreigners, by not distinguishing gender or religion, position or rank and dignity who commit criminal acts in the region Unitary State of the Republic of Indonesia (NKRI), subject to criminal law regulations in force in Indonesia, except those who have the right to immunity as the right to impunity. This

principle is one of the characteristics of our criminal law, namely the territorial principle (Article 2 of the Criminal Code (KUHP)) [7].

Nature against the law itself according to Scaffmeister there are several types. First, the nature of violating common law is as an unwritten condition to be convicted. To be convicted of an act that is against the law and violates the interests of others. For example, taking the lives of others. Second, the specific unlawful nature which has an understanding against the law in writing to be convicted. For example, Article 378 of the Criminal Code (KUHP) expressly states "against the law" as part of the offense. So that it is against the law to prove someone suspected of committing a criminal offense in the trial process, an act against the law must be listed in the indictment. If it cannot be proven, then the decision is free (*Vrijspraak*) [21].

In connection with the term against the law and unlawful acts, in practice and academics there has been a kind of tacit agreement regarding the use of the term that is the mention of the term "unlawful" (*wedderrechtelijk*) used in criminal law, while the mention of the term "unlawful" (*onrechtmatigdaad*) is used in civil law.

Acts against the law in a fraud case is a legal relationship that is always preceded or preceded by a contractual legal relationship. A legal relationship that begins with a contractual is not always a breach of contract, but it can also constitute an act of criminal fraud as in Article 378 of the Criminal Code. When a contract is closed before there is a ruse, fake circumstances and a series of lies from the perpetrators that can cause harm to others or victims, this is fraud [20].

The concept of fraud in criminal law or known by the term (*bedrog*) contained in Article 378 of the Criminal Code is a criminal act or offense, if violated will get a prison sentence [7]. There are still various opinions and interpretations of the term, According to Marpaung gives the term or "*strafbaar feit*" (Dutch); "*delictum*" (Latin), "criminal act" (English), which means an act that is prohibited by criminal law and is subject to criminal sanctions for those who violate it [9].

Fraud in civil law, occurs because one party does not carry out obligations that have been agreed with in bad faith, this fraud always begins or is preceded by a contractual legal relationship. This legal relationship is a concept of fraud in civil law or in other words is a 'characteristic' of fraud in civil law.

Fraud in criminal law as regulated in Article 378 of the Criminal Code [7] and fraud in civil law regulated in Article 1328 BW [6] constitutes 2 (two) corridors of this law can be taken by someone who suffered a loss due to contractual relations, which is known when closing a previous contract carried out with guile and hoaxes, fake situations. In these circumstances a person can prosecute criminally by reporting to an authorized official (the National Police) related to the deterrent effect regarding criminal sanctions and can also file a civil suit related to compensation incurred by one of the parties in closing the contract.

Provisions governing defaults are found in Article 1328 of the Civil Code and also in Article 1239 of the Civil Code [6]. Basically, the default is negligence or non-fulfillment of obligations. In default, negligence in question is negligence in meeting matters mutually agreed upon by the parties. Thus, default arises as an excess of the agreement of the parties on

something or things. Negligence in legal actions based on Article 1365 of the Civil Code, namely responsibility for negligence or carelessness.

If the debtor (debtor) does not do what he promised he would do what he promised he would do, then it is said that he did "default". He is "negligent" or "negligent" or a broken promise. Or he also violates the agreement, that is if he does or does something he is not allowed to do. The words "default" come from Dutch, which means poor performance. Default (negligence or negligence of a debtor can be in four types [16]:

1. Not doing what he is committed to do;
2. Doing what was promised, but not as promised;
3. Doing what he promised but too late;
4. Do something that according to the agreement cannot be done.

For negligence or negligence of the debtor (the debtor or debtor is the party that is obliged to do something), threatened with several sanctions or penalties, namely [16]:

1. Paying losses suffered by creditors or shortly called compensation;
2. Cancellation of the agreement or also called solving the agreement;
3. Risk transition;
4. Paying the court fee if it is brought before the judge.

The contract is made as a means in business relations between the parties agreed specifically to regulate the legal relationship between interests that are private or civil, especially in making contracts. The interests between individual communities in social life, if violated will lead to a conflict of interest between rights and obligations. Violations that occur in the making of the contract, due to the bad intention by one of the parties. Thus, there is a default or break a promise from one of the parties that causes a loss on the contract that has been made or closes a contract.

Relationship between contract law agreed by both parties. This legal relationship can be known "its characteristics" [20], that is "always preceded or preceded by contractual relationships. In overcoming this problem, it is necessary to have a legal rule governing contractual relations. By understanding the characteristics of contractual relationships theoretically there are several legal issues concerning the characteristics of default arising from contractual relations, may be submitted as material for review, especially those concerning the validity and application of the general principles of contract law made by the parties. Contracts made by the parties should be carried out according to the wishes of the parties in protecting the interests between rights and obligations.

b. Implementation of the Law and its Implementation Regulations Against Fraud Crimes Arising from Contractual Relations

As applied in the legal system in various countries, the criminal justice process in Indonesia follows four stages, which include pre-investigation, investigation, prosecution and trial. The first two stages are under the authority of the police, and the last two stages are the

authority of the prosecutor and the court. In terms of the process, the pre-investigation stage is a series of investigative actions to look for and find an event that is suspected as a criminal offense to determine whether or not further investigation can be done. In the case of contractual problems, this stage is a complex process that is prone to generating incorrect or incorrect conclusions. The main problem is related to the complicated and difficult aspects of criminal law and civil law for the police and ordinary people in general. In fact, the conclusion at this stage will determine whether or not the pre-investigation process continues to the investigation stage. If the results of the investigation by the police produce conclusions about the event turn out to be wrong, then the potential for legal problems is even greater. The limited ability of the apparatus, mainly due to lack of sufficient knowledge in the field of business and business law / agreement in general, is a major obstacle that must be addressed properly and wisely.

If the results of the pre-investigation continue with the investigation, the police will conduct an investigation. Namely, the police will conduct a series of police investigative actions to find and collect evidence as well as possible. With this evidence the police will get clarity about the anatomy or a description of the crime or violation that occurred. After that, the investigator will determine the status of the suspect.

The third stage is the prosecution stage which is the authority of the Prosecutor. What the prosecutor is doing is checking the files sent from police investigators. If there is doubt and insufficient evidence is included or attached, the Prosecutor will return the file and request it to be completed. The completeness of the file can be completed immediately but can also be returned to the police repeatedly. When complete. The prosecutor will submit a criminal case to the competent district court in accordance with the provisions stipulated in the criminal procedure law with a request that it be examined by a judge at a court hearing. Considering the complexity of the process and the difficulty of obtaining sufficient evidence, the prosecution process often requires quite a long time. In terms of legal certainty, the process must indeed be taken. However, in terms of time, energy and cost, it will be very draining and tiring if one of the parties involved in a contractual relationship is made a suspect but is not supported by sufficient evidence.

The next stage is the judicial process through trial in court. The criminal trial process is a litigation process that is not short and simple. Many procedures must be followed and defenses formulated, including providing evidence and clarification from fact witnesses and expert witnesses. In matters of contractual relations, the difficulty is more multiplied. In the trial, the panel of judges will examine based on the indictment. Namely, a letter from the Public Prosecutor who appoints or brings a criminal case to the court based on sufficient reasons to prosecute the suspect. The indictment contains events and information regarding *Locus* and *Tempus* where the act was committed, and the circumstances of the defendant who committed the act, especially the circumstances which alleviate and aggravate the accused's guilt.

Next is the exception and objection filing or objection. That is, a defense tool with the aim of avoiding the decision of the decision on the subject matter, because if the exception is accepted by the District Court, then the subject matter does not need to be examined and decided.

Admittedly, district court decisions at the first instance are rarely acceptable to parties. Although criminal cases position the state as the party responsible for enforcing the law, namely through the prosecutor. But still in this criminal event there are two parties, namely the party who violated the law or the defendant and the party whose rights were harmed from the act of violation of the law or commonly called a victim witness.

Normatively, legal remedies are the right of a defendant or public prosecutor not to accept a court decision of the first instance. The right to refuse a court decision is part of human rights. Such rights are recognized and must be opened for further action. Because, a court decision is not free from errors. Occasionally, the verdict takes sides. Therefore, for the sake of truth and justice of each judge's decision it is possible to be reexamined so that the mistake of the decision can be corrected. This is the correction instrument available in the justice system.

By considering the process of handling criminal cases which are often tiring and time-consuming, including the consequences of inexpensive costs, the problem becomes serious to be questioned. What are the benefits for victims to report cases of fraud that arise from criminal contractual relations with the police. It should be noted that in criminal justice, the position of the reporter is only the witness of the reporter and does not get any profit. If the court sets a fine, then the fine must go to the state treasury and does not become the right of the victim of a criminal fraud as a reporter. In terms of examinations in court proceedings, criminal procedural law regulates classification into ordinary case hearings, brief hearings and quick hearings.

If the court determines imprisonment, it also does not provide any benefit to victims of criminal fraud. Even if there is, it is only in the form of satisfaction because the perpetrators of criminal acts of fraud have received a punishment commensurate with mistakes that harm victims of fraud. If that satisfaction factor is sought, then the court will only be considered as a means to take revenge. Ethically, it is not in line with the culture of the nation which has been developing teachings of compassion, not vengeful and do not like to be hostile or litigate.

Based on the above considerations, the logic of criminal justice is not an optional procedure for resolving contractual cases. Civil procedure is more advisable because it will provide economic recovery if the compensation suit is granted by the court. In accordance with its purpose, replace loss becomes an appropriate remedy to answer the needs and interests of fraud victims. Because, the essence of a contractual case is actually an action taken by a fraudulent party in a contractual relationship, which interferes with his interests or causes harm, both morally and materially.

One of the legal issues that might arise in the litigation before the court is the retraction of the lawsuit. In contractual disputes, something like that might happen. The victim as the plaintiff must rethink to continue his lawsuit in court. Moreover, the prospect of winning a case is very slim. The reasons for withdrawing a lawsuit vary greatly. Among them, due to reasons for retracting a lawsuit because the lawsuit filed is imperfect or the argument of the lawsuit is not strong or the argument of the lawsuit is contrary to the law and other relevant considerations. For example, due to peace efforts or mediation procedures, certainly the Civil Code / HIR does not regulate the provisions regarding the retraction of a lawsuit. The legal basis for withdrawing a claim is regulated in Article 271 and Article 272 of the *Reglement op de Rechtsvordering* ("Rv"). The provisions of Article 271 of the Rv regulate the plaintiff's right to revoke his case

without the defendant's consent on condition that it must be done before the respondent submits his response [6].

Implementation of Legal Protection Against Fraud Crimes Arising from Contractual Relations in the jurisprudence of cases arising from contractual relations, there has not been the same reference, understanding and interpretation, between judges of District Court, High Court and Supreme Court. One party states that the legal relationship is an act of "fraud", on the other hand is an act of "default". Therefore, there has been an 'inconsistency' of the Supreme Court Judge of the Republic of Indonesia in deciding a case arising from a contractual relationship. One party claimed to be proven to be an act of fraud, on the other hand stated it was not a criminal act or breach of contract. There is an inconsistency of the judge in deciding a case, as a reference and guideline as well Judge's rationale (*ratio decidendi*) related to the issue of default and fraud arising from contractual relations, this is to protect private interests and the public interest, with the hope that in the future justice, benefit and legal certainty will be created for the community. To find out the difference between fraud and default is the '*tempus delicti*' (time) when the contract is closed. If after the '*post factum*' contract is closed, it is known that there is a ruse, a fake situation or a series of false words from one of the parties, then the act is an interpretation. If a contract after being closed turns out to have previously been '*ante factum*' there are a series of lies, false circumstances, and deception from one of the parties, then the act is a fraud of Article 378 of the Criminal Code Jo. Article 1328 BW.

c. Ideal Arrangement in Settlement of Criminal Cases Fraud arises from contractual relationships

Legal protection for citizens in a country especially Indonesia is a must because protection is an integral part of human rights that are regulated and guaranteed in the constitution and international human rights instruments that have been ratified by the government. As a concept, human rights have a very broad meaning, bearing in mind that the issue of human rights is universal, recognizing national, political, economic, social, cultural and legal boundaries. As a gift from God Almighty, human rights is a fundamental right granted by God Almighty to mankind without questioning differences in social, cultural or cultural, political and economic backgrounds [2].

Discussing the law enforcement system that provides protection for the community certainly cannot be separated from the theory of legal protection as a pillar. Legal protection theory sees that the concept of legal protection must be born from a legal provision and all legal regulations given by the community which basically constitute the community's agreement to regulate the behavioral relationship between community members and between individuals and the government that are considered to represent the interests of the community.

The effort to get legal protection is certainly what is desired by humans is order and regularity between the basic values of the law namely the existence of legal certainty, the usefulness of law and legal justice, although in general in practice, the three basic values are often disputed, but must be sought for the three values these grounds together.

The primary function of law is to protect the people from danger and actions that can harm and tell their lives from others, society and the authorities. Besides that, the law also functions to provide justice and be a means to bring prosperity to all people. Such protection, justice and welfare are aimed at legal subjects, namely supporters of rights and obligations [1]. Legal protection which is interpreted dynamically is believed to provide guarantees of access to justice for all people regardless of their background. Justice must be distributed by the state to all people, and the law which has the duty to guard it so that justice reaches all people without exception. Whether capable or poor people, they all have access to the same justice.

Based on the explanation above, the researcher draws the conclusion that the law enforcement system in the criminal justice system that provides protection according to the researcher can be interpreted as all efforts made by the integrated criminal justice subsystem consisting of the police, prosecutors, advocates, judges, and correctional institutions to provide a sense of security, both psychologically and physically to every person who enters the criminal justice system. Talking about the protection given to every person who enters the criminal justice system, certainly cannot be separated from the discussion on legal protection in the criminal justice system in Indonesia with reference to the applicable laws and regulations.

For example, Law Number 23 Year 2004 concerning the Elimination of Domestic Violence is one of the many positive laws or laws in Indonesia that define or provide an understanding of what is meant by protection. In this Law, what is meant by protection is any effort aimed at providing a sense of security to victims carried out by the family, advocates, social institutions, police, prosecutors, courts or other parties both temporarily and based on the court's determination. The protection referred to in Government Regulation No. 2 of 2002 concerning Procedures for Protection of Victims and Witnesses in Serious Human Rights Violations, what is meant by protection is a form of service that must be carried out by law enforcement or security forces to provide a sense of security both physically and mentally, to victims and witnesses, from threats, harassment, terror, and violence from any party, which is given at the stage of investigation, investigation, prosecution and / or examination at a court hearing.

True law must provide protection for all parties in accordance with their legal status because everyone has the same position before the law as stipulated in the constitution. Every law enforcement apparatus in the criminal justice system is clearly obliged to enforce the law and with the functioning of the rule of law, the law will indirectly provide protection for every legal relationship or all aspects of people's lives governed by the law itself. Legal protection is an illustration of the operation of the legal function to realize the legal objectives of justice, expediency and legal certainty. Legal protection is a protection given to legal subjects in accordance with applicable law, both those that are preventive and in the form of repressive, both written and unwritten in order to enforce the rule of law (in this case criminal law).

Conceptually, the legal protection provided to the Indonesian people as well as legal protection for someone who enters the criminal justice system is an implementation of the principle of recognition and protection of human dignity based on the Pancasila and the 1945 Constitution [18] and the principles of the rule of law based on the Pancasila. Furthermore, according to Romli Atmasasmita, a democratic rule of law can be formed if it is consistently

met with three pillars, namely rule by law, protection of human rights, and access to justice for society (access to justice) [3]. In the Indonesian context, the three pillars must be bound by Pancasila as an ideology, outlook on life and the soul of the Indonesian nation. The Pancasila Association is the highest value system in changing norms and social justice systems.

Restorative justice is the process of resolving criminal cases with the aim of achieving justice that is fully carried out and achieved by perpetrators, victims, and the wider community. It is said so because the approach or concept of restorative justice (restorative justice) is a form of justice that puts forward a process of involvement of all parties who are actively involved in a particular crime. Crime in the view of restorative justice (restorative justice) is interpreted as a violation of humans and human relations as well as violations of social relations. Therefore, in solving problems (resolving criminal cases), they will be returned to the victims and / or their families, perpetrators, law enforcement officials as facilitators and the community or other parties who feel disadvantaged to jointly solve the problem based on family, awareness, and conviction with a sense of tolerance, mutual understanding and upholding human dignity to improve social life that is how to deal with the consequences of the crime with an orientation to improve (empower the recovery process), create reconciliation and satisfy all parties, both now and for the future . Likewise, the measure of justice in restorative justice, justice is no longer based on retaliation from victims to perpetrators (whether physical, psychological or punishment); however, the criminal act committed by the perpetrators is restored by providing support to the victim and requiring the perpetrator to be responsible with his awareness. Therefore, good faith or mutual agreement between the perpetrators and victims and the wider community in this case has a very important role. This will certainly benefit all parties and this will further ensure the fulfillment of a sense of justice between victims, perpetrators and the community, but can still prevent the re-occurrence of criminal acts in the future. If the settlement of the case with the approach or concept of restorative justice is not reached, then the state is authorized to impose criminal sanctions on the perpetrators. With this concept, criminal law and punishment can be used as the ultimate remedy (*ultimum remedium*).

As recognized, up to now the regulation regarding fraud that arises from contractual relations has not yet harmonized understanding and interpretation in the Criminal Code and the Civil Code which constitutes the legal basis. In terms of regulation, there are differences in understanding "Fraud" in the Criminal Code and "Fraud" in the Civil Code. So as a result of these regulations make several institutional components in the criminal justice system in Indonesia such as the Police, Prosecutor, Judge and Advocates have different answers when facing fraud cases arising from contractual relations. If we can implement a restorative justice system, the Police, Prosecutors' Court, Courts and Advocates can participate in helping to solve this problem by harmonizing understanding related to criminal acts arising from contractual relations. Of the four interviewees who have interviewed, they have their own answers to this research topic.

Based on interviews with the Indonesian National Police, Immanuel Larosa. Immanuel Larosa said that as a police officer he could not refuse or limit if there were people who came to seek justice by making a police report so that if there were cases related to fraudulent criminal acts arising from contractual relations, he would carry out Standard Operating Procedure in

accordance with regulations applicable law in the police force by conducting a brief interview with the reporter in order to know the picture of the reported case more clearly.

From the results of the interview the police can find out whether the report from someone is a criminal domain where it has been appropriately reported to the police or a civil domain which is not the authority of the police to take care of the problem. The speaker said that what he usually does is ask " Have you ever sent a subpoena / warning letter?" (Immanuel Larosa, personal communication, 11 March 2020). Because in practice if the party that sent the subpoena / warning letter will get a reply letter that will generally convey when the payment will be carried out, so if it is not in accordance with what was submitted will meet the elements of Article 378 of the Criminal Code. However, as stated by Immanuel Larosa, if a subpoena / warning letter has not been done because the criminal elements have not been fulfilled, the prospective reporter is required to complete a number of requirements that were asked before.

Different from the opinion of the second interviewees, Paulus Joko Subagyo, himself as a prosecutor, argues that prosecutors should be involved in the investigation process as stated in the RKUHAP, where prosecutors can participate in summoning reported parties or reporters so that they know the details related to cases under investigation by the police. is it true that a criminal matter (fraud) or a civil problem (broken promises / defaults) (Paulus Joko Subagyo, personal communication, March 10, 2020). Because according to the opinion of the prosecutor, the prosecutor has only examined the files submitted by the investigator, which is the police, where if all the criminal elements have been fulfilled, then the matter will be brought up by a criminal and will begin trial, whereas if the investigation file is incomplete, it will be asked to complete it.

The third interviewees, Rahmi Mulyati, as a Judge herself argued: "This depends on the circumstances of the case, must be examined in accordance with the evidence submitted by both parties. There are those who feel themselves cheated, because when making an agreement one party promises things that make other parties persuaded to make the agreement, such as the case of First Travel The defendant promised the victim that he would send the Umrah at a low cost so that if there was no element of fraud in the case, a legal relationship occurred because of the willingness of both parties, if one did not carry out the agreement, then the other party could sue in the civil court, which the authority to settle is a Civil Judge and not a criminal case". (Rahmi Mulyati communication via Email, March 16, 2020)

As we can see as a Judge, the interviewees argued that the judge / court could not reject the case that was filed with him due to unclear legal reasons. The judge must consider each case submitted to them, listen to the testimony of witnesses supported by evidence presented at the trial, pay attention to the basis of the occurrence of legal events, whether it is a criminal act (fraud) or civil (broken promise / breach of contract). Back again to the case that was submitted to the Court, if it was filed criminally, the judge had to consider whether the criminal element was proven in the case's indictment. If criminal elements can be proven, then they must be decided criminally. However, if in the case there is no element of a criminal act, but the existence of a promise is broken, the judge must declare the case not a criminal case.

And the fourth interviewees, Lelyana Santosa, as an advocate, if faced with a fraud case arising from a contractual relationship, will ask the victim one question "Has the perpetrator

ever made payments, or installments?" (Lelyana Santosa, personal communication, 12 March 2020). Lelyana Santosa is of the opinion that if in a criminal act of fraud arising from a contractual relationship in the course of the case, if the perpetrator has never made a payment or installment even though then it is more towards a criminal act (fraud) but if he has ever made a payment then it is a civil which is default), because there is a good intention to pay off but has not been resolved for one or two things.

Dissenting opinions and views of law enforcement officials such as the Police, Prosecutors, Judges and Advocates prove that criminal acts of fraud arising from contractual relations require Regulation of Harmonization of Understanding among Components of Institutions in the Criminal Justice System, it is expected that with the participation of the government, law enforcement officers and the public This can provide legal protection, legal certainty and justice in law enforcement in Indonesia.

4 Conclusion

From this study, it can be concluded that the principle of regulation of Fraud Crimes Arising from Contractual Relations in the legal system in Indonesia, whether it is a criminal act of fraud or default, has the same characteristics, which are both preceded or preceded by contractual legal relations. The difference lies when the contract is closed if previously known there are tricks, false circumstances and a series of lies by one of the parties, then this legal relationship is called 'fraud' which is regulated in criminal law Article 378 of the Indonesian Criminal Code and is called 'fraud' in civil law Article 1328 BW of the Indonesian Civil Code (there are defects in the will including: glitches, coercion and fraud). Implementation of Legal Protection Against Fraud Crimes Arising from Contractual Relations in the jurisprudence of cases arising from contractual relations, there has not been the same reference, understanding and interpretation, between judges. One party states that the legal relationship is an act of "fraud", on the other hand is an act of "default". Therefore, there has been an 'inconsistency' of the Supreme Court Judge of the Republic of Indonesia in deciding a case arising from a contractual relationship. In the conception of an ideal legal protection regulation in the settlement of fraud criminal cases arising from contractual relations, it is expected that Law Enforcement Officers such as the Police, Prosecutors, Judges and Advocates will play a role in helping provide an appropriate legal explanation for the public about the importance of a proof principle related to the development of the use of evidence in the form of a contract / agreement letter, in order to have the same thought about the value of the evidence evidentiary power contained in the Criminal Procedure Code whether the crime can be criminally acted and categorized as a criminal act of fraud or breach and can be impose or implement an approach or concept of restorative justice that is considered capable of "humanizing humans" such as the concept of dignified justice, which is an effective way and is considered to be able to overcome various problems that have so far been in the settlement of criminal acts of fraud arising from contractual relations. With the approach or concept of restorative justice, the problem can be cut or resolved from the initial process in accordance with the principle of justice that is simple, fast and low cost, assisted by the participation of law enforcement. So that all elements of the Indonesian justice system have integrity and can provide legal protection, legal certainty and justice can be achieved, especially in the implementation of restorative justice.

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