

# LEGAL ANALYSIS OF THE CRIME OF FRAUD BASED ON AGREEMENT (RESEARCH STUDY AT THE BARELANG BATAM POLICE CRIMINAL INVESTIGATION DEPARTMENT)

Olden Siahaan<sup>1</sup>, Ramlan<sup>2</sup>, Dahlan<sup>3</sup>, Soerya Respationo<sup>4</sup>, Erniyanti<sup>5</sup>

<sup>1</sup> Master of Law Student, Faculty of Law, Universitas Batam, Batam, Indonesia

<sup>2</sup> Master of Law Lecturer, Faculty of Law, Universitas Batam, Batam, Indonesia

<sup>3</sup> Master of Law Lecturer, Faculty of Law, Universitas Batam, Batam, Indonesia

<sup>4</sup> Master of Law Lecturer, Faculty of Law, Universitas Batam, Batam, Indonesia

<sup>5</sup> Master of Law Lecturer, Faculty of Law, Universitas Batam, Batam, Indonesia

## ABSTRACT

*A contract is a legal event in which one person promises another, or two people promise each other, to do or not to do something. Definitions of contract have been given, each depending on which parts of the contract are considered very important, and that part is highlighted in the definition. Disclosure of fraud offences based on agreement (research study at Sat Reskrim Polresta Bareleng). The investigation process of the criminal offence of fraud based on agreement by the Batam City Police has not run maximally as it should because the role of the community is still lacking in assisting the investigators in the investigation because the community feels that they do not care in criminal cases. The obstacles in the implementation of the investigation of the crime of fraud based on the agreement in the Bareleng Police Resort Police are witnesses who are less cooperative, and the lack of human resources in the investigators and the lack of facilities and infrastructure provided to investigators in the Bareleng Police Resort Police Efforts made by the police in tackling the crime of fraud based on the agreement is to increase human resources, especially in the investigators and provide legal information to the public.*

**Keyword:** Agreement, commitment, fraud

## 1. Background

Criminal law, as an instrument or means to solve this problem, is expected to provide the right solution. Therefore, the development of law, especially criminal law, must continue to be improved in a targeted and integrated manner, including the codification and unification of certain areas of law and the preparation of new laws that are necessary to meet all the challenges of criminal development.

Among the various crimes that occur in society, one of them is the crime of fraud with the mode of agreement, both written and oral agreement. An agreement is defined as an event in which one person promises to another or in which two people promise each other to do something.

An agreement is defined in Article 1313 of the Civil Code, which states: "An agreement is an act by which one or more persons bind themselves to one or more other persons". Many people do not always equate the definition of an agreement with a contract, because Article 1313 of the Civil Code does not contain the sentence "The agreement must be in writing". In Dutch law, namely the Bugerlijk Wetbook (BW), an agreement is called overeenkomst, which when translated into Indonesian means agreement.

This agreement is a legal event in which one person promises another person or two people promise each other to do or not to do something.

According to the provisions of Article 1321 of the Civil Code (hereinafter referred to as the Civil Code), an agreement is an act by which one or more people bind themselves to one or more other people. The result of this event is a relationship between the two persons, called an obligation. The agreement creates an obligation between

the two people who make it. In its form, the agreement takes the form of a series of words containing promises or commitments that are spoken or written. Thus, the relationship between an obligation and an agreement is that the agreement creates an obligation. The agreement is the source of the obligation.

However, in practice, agreement is not always given freely. Quite a lot of agreements contain defects of will because they are made on the basis of coercion, threats, or ignorance of the parties, as well as abuse of circumstances, economic abuse as well as psychology.

Burgerlijk Wetboek (BW) in article 1328 states that fraud is one of the reasons for canceling an agreement (bedrog levert een grond op tot vernietig der overeenkomst). According to Article 1328 BW, fraud can be used as a reason for canceling an agreement if the fraud used by one party is such that it is obvious that the other party would not have entered into an agreement without deception (niet zoude aangegaan).

To understand the word fraud in the agreement, we must look at or refer to Article 378 of the Criminal Code (KUHP). This article determines: "Whoever, with intent to unlawfully enrich himself or another, either by assuming a false name or a false pretence, either by artifice and deceit or by falsehood, induces another to give something, to incur a debt or to extinguish a debt, shall be guilty of fraud and shall be punished with a maximum of four years' imprisonment."

A person can only be said to have committed an act of fraud under Article 378 of the Criminal Code if the elements referred to in Article 378 of the Criminal Code are fulfilled, then the perpetrator of the crime of fraud can be sentenced according to his actions.

The author sees that cases of fraud initiated by agreement in Batam City from year to year continue to occur, this can be seen from the data of the Bareleng Police Department, which explains that in 2019 there were 82 cases of fraud initiated by agreement, in 2020 there were 53 cases of fraud initiated by agreement, in 2021 there were 61 cases of fraud initiated by agreement, in 2022 there were 90 cases of fraud initiated by agreement.

Against this background, the following problems can be formulated:

1. How is the detection of fraud based on agreements (research study at Bareleng Police Station)?
2. What are the barriers to the prosecution of collusion fraud offences (research study at Bareleng Police Station)?
3. How are efforts being made to overcome obstacles in carrying out law enforcement of criminal offences of fraud based on agreements (research study at Bareleng Police Station)?

## 2. Theory

### 2.1 Grand Theory

Fitzgerald explained that the origin of this legal protection theory comes from the theory of natural law or the flow of natural law. According to the school of natural law states that the law comes from God which is universal and eternal, and between law and morals cannot be separated. The adherents of this school view that law and morals are a reflection and rule internally and externally from human life which is realised through law and morals.

According to Satjipto Raharjo, legal protection is to provide protection for human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. Law can be functioned to realise protection that is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice.

Bentham's utilitarianism theory says the essence of happiness is enjoyment and a life free from misery. Dworkin said that the good and bad of the law must be measured by the good and bad consequences produced by the application of the law. A legal provision can only be considered good if the consequences resulting from its application are good, the greatest happiness and the reduction of suffering.

### 2.2 Middle Theory

Justice is the morally idealised state of being right about something, whether it concerns things or people. According to most theories, justice has a high degree of importance. John Rawls, an American philosopher considered one of the leading political philosophers of the 20th century, said that "justice is the first virtue of social institutions, as truth is of systems of thought".

Justice comes from the Arabic word adil. The word fair means middle, while the definition of fair is to give everything according to its right. Justice means not one-sided, putting something in the middle, impartial, in favour of the right, not arbitrary. Justice also has another meaning, namely, a situation in the life of society, nation and state to obtain what is right so that it can fulfil its obligations. Meanwhile, the definition of justice according to the Indonesian Dictionary (KBBI) is something that is not one-sided or impartial and not arbitrary. According to the Indonesian comprehensive dictionary (KBBI), the word fair comes from the word fair, which means honesty,

straightforwardness and sincerity that is not one-sided. Aristotle argued that the sole purpose of law is to achieve justice. Justice here is *ius queque tribuere*, which means giving each person what is his or her share or right.

### 2.3 Legal Certainty

Applied theory The author uses the theory of law enforcement, which is called law enforcement in English and *rechtshandhaving* in Dutch. According to the *Notitie Handhaving* 1981, law enforcement is the supervision and application (or threat) of the use of administrative, criminal or civil instruments to achieve the structuring of legal provisions and regulations that apply generally and individually.

Legal problems that often arise are a natural part of life and the social development of society. Legal problems that often arise in society due to the lack of firmness of law enforcers and the lack of public awareness of the rule of law. Recent developments have led to the decline or weakening of the authority of the law, so that it is still difficult to enforce the law. In order to avoid overlapping law enforcement, with different instruments and enforcement, it is necessary to have cooperation between law enforcement agencies such as the police, prosecutors, judges and the local government itself. Law enforcement can simply be understood as the process of realising the wishes of the law or the ideal values of the law that are embedded in the regulations themselves.

According to Soerjono Soekanto, conceptually, the essence of the meaning of law enforcement lies in the activity of harmonising the relationship of values outlined in stable rules and final attitudes in order to create, maintain and preserve peaceful living relations.

### 3. Methodology

The method is a scientific activity related to a way of working (systematic) to understand a subject or object of research, as an effort to find answers that can be scientifically explained and including their validity. In this research the author uses the normative legal research method, also called doctrinal legal research, also called library research or document studies with secondary data sources. data analysis techniques in this study are by means of descriptive techniques.

## 4. Discussion

### 4.1 Detecting Fraud Based On Agreements (Research Study Conducted By The Barelang Police Criminal Investigation Department)

The use of these methods or means of persuasion creates a suitable situation to mislead an ordinary person until he is deceived by them. So if the person who is induced or moved knows or understands that the means of inducement are untrue or contrary to the truth, then his psyche is not moved and therefore he is not misled or deceived, so there is no act of inducement or persuasion by means of the means of inducement, even if the person gives up his goods.

The scope of investigation is a series of investigative actions to search and find an event suspected of being a criminal offence in order to determine whether or not an investigation can be carried out according to the method regulated by this Law. Investigators, by virtue of their duties, have the authority to receive reports, search for information and evidence, order suspects to stop, ask for and check identification, and take other actions in accordance with the law.

In practice, the term investigator is more commonly used. Where the main task is to receive reports and organise and stop suspected persons for investigation. This means that this investigation precedes the investigation. If it is connected with the theory of criminal procedure as proposed by Van Bemmelen, then this investigation means the first stage of the seven stages of criminal procedure, which means the search for the truth.

While those who carry out the task of investigation are investigators, who are regulated in Article 1 number 4 of the Criminal Procedure Code, namely "Investigators are officers of the Indonesian State Police who are authorised by this law to conduct investigations". Based on the provisions of Article 16 (1) of the Criminal Procedure Code, investigators can make an arrest for the purpose of investigation upon the order of the investigator. However, in order to guarantee the human rights of the suspect, the arrest order must be based on sufficient preliminary evidence. However, in order to guarantee the human rights of the suspect, the arrest order must be based on sufficient preliminary evidence.

The criminal events referred to in the above definition of investigation, namely

1. A report or complaint about an alleged criminal offence to a state law enforcement agency.
2. The existence of alleged criminal events occurring at a time or at a point in time easily understood by common sense (a certain time).
3. The existence of certain parties who feel harmed by the alleged criminal event.



4. The existence of a clear and definite place or location of the alleged criminal event.

#### **4.2 Obstacles In The Implementation Of The Law On The Prosecution Of Fraud Offences Based On Agreements (Research Study At The Barelang Police Criminal Investigation Unit)**

The use of these methods or means of persuasion creates a suitable situation to mislead an ordinary person until he is deceived by them. So if the person being persuaded or induced knows or understands that the means of inducement are untrue or contrary to the truth, then his psyche is not moved and therefore he is not misled or deceived, and therefore there is no act of inducement or persuasion by means of the means of inducement, even if the person gives up his goods.

Intent to benefit self or others Intent means the immediate goal. If the perpetrator needs to take other actions to achieve the benefit, then the element of intent cannot be met. The intention must be to obtain an unlawful benefit, so that the offender knows that the benefit to be obtained must be unlawful.

Benefiting oneself or others by unlawful means The term "unlawful" must always be linked to the means used. It is well known that unlawful means are contrary to the decency that prevails in the life of the community. A benefit is unreasonable or improper to demand the association of society can occur if this benefit is obtained because of the use of the means of driving or persuasion, sebbab on this benefit is still attached to the lack of appropriateness of the means of driving / persuasion used to obtain the benefit. Thus, there is a causal relationship between the use of the means of inducement and the profit obtained. Even if the benefit is reasonable, if it is obtained by means of the aforementioned inducement, the benefit will still be unlawful. The benefit is any improvement in the position or lot in life that the perpetrator has obtained or will obtain. In general, this advantage is in the area of one's own property. See the description of Article 368(1) of the Criminal Code.

Then, in the Civil Code, Article 1321 BW mentions 3 (three) reasons for the annulment of the contract:

1. Negligence / delusion (dwaling) Article 1322 BW.
2. Coercion (dwang) Articles 1323, 1324, 1325, 1326 and 1327 BW.
3. Fraud (bedrog) Article 1328 BW.

In addition to the defect of intention to conclude a contract, which occurs in Article 1321 BW, there is also a 4th (fourth) form of defect of intention in judicial practice, which is reflected in decision no. 343 K / Sip / 1980 of 16 January 1982, namely the misuse of circumstances (misbruik van omstandigheden).

The Dutch Civil Code states in Article 1328 that fraud is one of the grounds for setting aside an agreement (bedrog levert een grond op tot vernietig der overeenkomst). According to Article 1328 BW, fraud can be used as a ground for rescinding an agreement if the fraud committed by one party is such that it is obvious that the other party would not have entered into the agreement without fraud (niet zoude aangegaan).

Although the law has expressly regulated the offence of fraud on the basis of an agreement, there are a number of obstacles, both internal and external, that the investigators of the Barelang City Resort Police have to overcome in order to enforce the law.

The external obstacles faced by the investigators of the Barelang City Police Resort are witnesses. In the process of investigation and inquiry, the existence of witnesses who are not in Batam City, which is difficult to comply with the invitation to clarify the case, makes it difficult for investigators to carry out the process of investigation and inquiry, so the investigation and inquiry officer has to send an invitation to clarify up to several times, and the investigator has to go where the witness is located. Sometimes witnesses also feel frightened when they receive a request for clarification from the investigator.

#### **4.3 Efforts To Overcome Obstacles To The Prosecution Of Fraud Offences Based On Agreements (Research Study At The Barelang Police Criminal Investigation Unit)**

In law enforcement against the crime of fraud based on the agreement at Barelang Police Station which the author has described above, it is known that there are obstacles that exist in legal factors, namely legal substance, legal structure, legal culture and non-legal factors, so that legal objectives are not achieved. Therefore, the Barelang Police Force has made several efforts to deal with the obstacles that occur in the law enforcement process:

1. Legal efforts

There are 2 (two) options of efforts in enforcing the law against criminal acts of fraud based on agreements related to the substance of the law, namely Law reform. A legal rule will be respected by the community if the rule is well known and understood by the community. This means that the community has really felt that the legal norms produce order and peace in its survival. With the existence of several weaknesses contained in the Criminal Code and Civil Code, it is necessary to revise or reform the law so that it can guarantee a sense of justice for the community. This is because a law is the basis for the implementation of law

enforcement. Without good legislation, law enforcement cannot be achieved. This is what law reform is all about:

- 1) Clarification of the wording of the article on fraud based on an agreement on the subject matter of the relationship between the perpetrator and the victim.
- 2) Clarify the forms of fraud by agreement.
- 3) Establish a link between the two provisions on the offence of fraud based on agreements that exist in the Criminal Code and the Civil Code to be harmonised. And law enforcement agencies will have no difficulty in choosing articles.
2. Increase investigators' knowledge of collusive fraud  
Efforts that can be made by the Bareleng City Police Resort are to require investigators to understand the problems associated with criminal acts of collusion fraud and the laws and regulations relating to collusion fraud. Police investigators need to increase their knowledge of the law relating to fraud by agreement, particularly knowledge of how to deal with criminal offences of fraud by agreement. In addition, the police must provide additional training for police investigators to improve their quality in understanding, analysing and solving problems quickly and accurately in accordance with the applicable regulations.
3. Raising public awareness of the law  
Legal awareness should be raised through regular legal information and advice, based on careful planning. Legal advice aims to make people aware of and understand certain laws. Legal advice is a further stage of legal information.  
The main purpose of legal information and counselling is to enable citizens to understand certain laws according to the legal problems they face. Legal advice must include rights and obligations in certain areas and the benefits of complying with the law.
4. Improving the economic quality of low-income communities  
Improving the economic quality of parents and the community in this case is experiencing low economic conditions. These economic improvement efforts have actually been carried out by the Social Service because they are included in the Social Service's work programme.

## 5. Conclusions

Based on the descriptions that the author describes in the discussion of this thesis, it can be concluded in accordance with the problems raised as follows:

- a. Disclosure of Fraud Crime Based on Agreement (Research Study at Bareleng Police Criminal Investigation Unit). The investigation process of the crime of fraud based on the agreement of the Batam City Resort Police, has not run optimally as it should, because the role of the community is still very lacking in assisting investigators in the investigation, because the community feels indifferent in criminal cases.
- b. Obstacles in the implementation of the investigation of criminal offences of fraud based on agreements in the Bareleng Police Resort Police are witnesses who are less cooperative, and the lack of human resources in the investigators and the lack of facilities and infrastructure provided to investigators in the Bareleng Police Resort Police.
- c. Efforts made by the police in tackling criminal acts of fraud based on agreements are by increasing human resources, especially in the investigator's section and providing legal information to the public.

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