



## Legal Implications of the Judex Facti Decision that acquits the Defendant of Fraud in an Agreement

Nurul Iin Pratiwi

Faculty of Law, State University of Gorontalo, Indonesia. E-mail: [nuruliinpratiwi@gmail.com](mailto:nuruliinpratiwi@gmail.com)

**Abstract:** This study aims to determine the legal implication of the judex facti decision that acquits the defendant of the criminal act of fraud in an agreement. The research method used is a normative legal research method using an approach law (statute approach) and the case approach (case approach). The results of this study show the legal implications of the Judex Facti decision which acquitted the accused of the crime of fraud in an agreement in Decision Number 208/Pid.B/2019/PN Gto, even though it had been decided it was a civil case and freed the defendants from criminal charges, even at the next level in Cassation Decision Number 277 K/Pid/2020 related to the request for a criminal case at the cassation level that was requested by the Public Prosecutor, the decision rejected the cassation request from the cassation applicant. Therefore, the legal implications of the Judex Facti decision that acquitted the accused of fraud in an agreement had implications for legal certainty, as well as implications for the re-submission of lawsuits from criminal to civil.

**Keywords:** *Implication; Crime; Fraud; Agreement*

©2023, Pratiwi, Nurul Iin.

Under the license CC BY-SA 4.0

### **How to cite:**

Pratiwi, Nurul Iin. "Legal Implications of the Judex Facti Decision that acquits the Accused of Fraud in an Agreement." *Estudiante Law Journal*, 5 (1), (June 2023): 316-329

## 1. Introduction

Indonesia is a country that adheres to the Continental European legal tradition or often referred to as civil law. The civil law tradition is characterized by a written legal system which is the main requirement in state administration.<sup>1</sup> Indonesia in its constitution is a constitutional state whose embodiment is reflected in laws and regulations made to limit the power of the state (government) and provide guidelines for the people in carrying out their activities as citizens<sup>2</sup> Indonesia itself, when viewed from the journey of Pancasila, which has its own history in the life of the nation and state, which until now has not shown the harmony of life for each component of the country, requires Indonesians to rethink the best path for the journey of national and state life in the corridors of Pancasila.<sup>3</sup>

The law is always identified as a guide in limiting all the behavior of citizens so that they stay on the right track. The foundations of Indonesian state administration as a state organization since 1945 in the 1945 Constitution have experienced a period of change in history,<sup>4</sup> to give birth to a basic legal construction that is considered perfect to protect the rights of every citizen. One of the positive consequences of the choice of a rule of law which is the foundation in Indonesia is the effort to protect every individual's rights guaranteed by the state. The main idea of this rule of law is the recognition of human rights based on the principles of freedom and equality.<sup>5</sup>

Textually in the 1945 Constitution of the Republic of Indonesia Article 28D Paragraph (1) states that everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law,<sup>6</sup> it explains that every action taken by an individual regarding rights and obligations in general or privately gets legal protection, as in its derivative regulations both in criminal law and Indonesian civil law. The difference between criminal law and civil law lies in the nature of its application. Criminal law applies to regulate individual behavior in life in society, while civil law applies to regulate the relationship between individuals and other individuals and the obligation to protect public and private law. One example of a legal action regulated under criminal law is fraud. Therefore, all the goals and ideals mandated by the opening of the 1945 Constitution of the Republic of Indonesia are also the aspirations and goals of the local government that must be achieved.<sup>7</sup> Of those cases the culprit was not sentenced the maximum penalty in accordance with

---

<sup>1</sup> Fence M. Wantu Kadek Wijayanto, Lusiana Margareth Tijow, "Kedudukan Peraturan Desa Dalam Sistem Pembentukan Peraturan Perundang Undangan Nasional," *Jurnal Ius Civile* 4, No. 2 (2020): 198–219., 198

<sup>2</sup> Nuvazria Achir, "Anotasi Normatif Terhadap Peraturan Daerah Tentang Transparasi.," *Jambura Law Review*. 2, No. 1 (2020): 83–100., 85

<sup>3</sup> Abdul Hamid. Tome, "Membumikan Pancasila: Upaya Pelembagaan Nilai Pancasila Dalam Kehidupan Masyarakat Desa.," *Jurnal Al-'Adl*. 13, No. 1 (2020): 83–100., 118

<sup>4</sup> R. Abdoel Djamali., *Pengantar Hukum Indonesia*. (Jakarta: Pt. Raja Grafindo Persada, 2014)., 105.

<sup>5</sup> Bachtiar, *Problematika Implementasi Putusan Mahkamah Konstitusi Pada Pengujian Uu Terhadap Uud* (Jakarta: Penebar Swadaya Grup, 2015)., 45.

<sup>6</sup> Lihat Pasal 28d Ayat (1) Uud Nri 1945.

<sup>7</sup> Lihat Pasal 28d Ayat (1) Uud Nri 1945.

statutory provisions.<sup>8</sup> Quoting what was said in the journal Fence Want and A. Hamid T that The existence of these regulations provides equal rights for every citizen.<sup>9</sup> In our daily lives, even in society, in order to make ends meet, there are often crimes and violations committed by certain people and people who threaten some members of society, which in law is known as criminal acts.<sup>10</sup> The efforts and role of law enforcers play an important role in eradicating every crime.<sup>11</sup>

Fraud is one of the criminal law acts regulated in article 378 of the Criminal Code which contains that:

“Whoever with the intent to unlawfully benefit himself or others, by using a false name or false prestige, by deception, or a series of lies, incites another person to hand over something to him, or to give a debt or write off a debt, is threatened because fraud with a maximum imprisonment of four years”<sup>12</sup>

According to Article 378 of the Criminal Code, in this case a person making a debt or writing off a debt is punished for fraud with a prison sentence. The process of settling accounts payable cases can be resolved through criminal law, in this case article 378 of the Criminal Code is an unlawful and self-serving act which is an urgent matter in the application of article 378 of the Criminal Code. Based on the reading of Article 378 of the Criminal Code above, juridically the offense of fraud must fulfill the main elements in the form of: subjective elements of the offense in the form of the intention of the perpetrator to deceive other people which is formulated in the article of the law with the words: "With the intent to benefit themselves or others unlawfully", and the elements in the form of objective offenses consisting of,<sup>13</sup>

Examining further in civil law, unlawful acts are regulated in Article 1365 of the Civil Code, which contains:

"Every act that violates the law and causes harm to another person, obliges the person who caused the loss because of his mistake to compensate for the loss"<sup>14</sup>

The reading of the article above will draw us to the elements in an unlawful act as follows: there is an unlawful act, there is an error, there is a causal relationship between the loss and the act of causing a loss. One example of a legal action regulated

---

<sup>8</sup> Mohamad Rizky Alhasni, Lisnawaty W Badu, And Novendri M Nggilu, "Menakar Peran Kepolisian Dalam Mencegah Tindak Pidana Pencabulan Terhadap Anak Di Bawah Umur," *Jurnal Legalitas*. 12, No. 2 (2019): 110-123., 112.

<sup>9</sup> Abdul Hamid Tome, "Dynamics Of Village Head Election Arrangements," *Jambura Law Review*. 3, No. Spesial Issue (2021): 96-116., 101.

<sup>10</sup> Dian Ekawaty Ismail And Mohamad Taufiq Zulfikar Sarson, "Criminology Analysis Of Women's As Perpetrators Of Domestic Violence Crimes," *Jambura Law Review*. 3, No. 1 (2021): 57-76., 58.

<sup>11</sup> Nuvazria Achir, Aniza Lakoro, Lisnawaty W. Badu, "Lemahnya Kepolisian Dalam Penanganan Tindak Pidana Perjudian Togel Online.," *Jurnal Legalitas* 13, No. 1 (2020): 31-50., 33

<sup>12</sup> *Kitab Undang-Undang Hukum Pidana Pasal 378 Kuhp Tentang Penipuan*, N.D.

<sup>13</sup> D. Mulyadi, "Unsur-Unsur Penipuan Dalam Pasal 378 Kuhp Dikaitkan Dengan Jual Beli Tanah.," *Jurnal Ilmiah Galuh Justisi* 5, No. 2 (2017): 206-223., 211.

<sup>14</sup> *Kitab Undang-Undang Hukum Perdata Pasal 1365 Kuh Perdata Tentang Perbuatan Melawan Hukum*

under civil law is an agreement. The legal act is in the form of an agreement on an object determined by both parties. The meaning in Article 1313 of the Civil Code, hereinafter referred to as the Civil Code, is that an agreement is an act by which one or more people bind themselves to one or more other people.<sup>15</sup>

The object of the agreement is a promise that must be fulfilled and determined by the parties to the agreement, and the promise is an achievement in the agreement. Achievement is an obligation that must be fulfilled or carried out by the agreed party, its form can be in the form of doing something or not doing something or giving something.<sup>16</sup> Breaking a promise or not fulfilling the achievement is called default.

Fraud and agreement are two examples of legal acts that are regulated in two different types of law. Basically cases of default in agreements can only be resolved through civil court, but in reality there are law enforcers in the area who resolve default cases through criminal justice, such as legal actions that occurred in Gorontalo City, Gorontalo Province, because it is considered that in the agreement there is an element of fraud, if drawn in the context of creating legal compliance, it will focus on the principle of creating clarity about legal regulations, this principle is the principle of legal certainty.<sup>17</sup>

## **2. Research methods**

The research method used by the authors in this study is empirical legal research based on the opinions of Mukti Fajar and Yulianto Ahmad where it is said that empirical legal research basically collects data through documentation studies or through literature searches and by conducting interviews or observations. The data to be collected is based on phenomena in the social field.<sup>18</sup>The research approach uses descriptive analysis and uses qualitative analysis techniques.

## **3. Legal Implications of the Decision *Judex Facti* who acquits the Defendant of Fraud in an Agreement.**

The judge's decision is closely related to how the judge presents opinions or considerations based on facts and evidence trial and the judge's conviction of a case. Therefore judge has a central role in making court decisions. In the verdict court there must be considerations regarding matters that aggravating and mitigating decisions, these considerations are used as reasons by the judge in passing his decision either in

---

<sup>15</sup> *Kitab Undang-Undang Hukum Perdata Indonesia,*

<sup>16</sup> Fx. Suhartono, *Contract Drafting Kerangka Dasar Dan Teknik Penyusunan Kontrak.* (Yogyakarta: Universitas Atma Jaya, 2009)., 12.

<sup>17</sup> Mario Julyano and Aditya Yuli Sulistyawan, "Understanding of the Principle of Legal Certainty Through the Construction of Legal Positivism Reasoning," *Credito Journal* 1, No. 1 (2019): 13-22., 14.

<sup>18</sup> Yulianto Fajar, Mukti & Achmad, *Dualism of Legal Research (Normative and Empirical).* (Yogyakarta: Student Library, 2010)., 153.

the form of a sentencing decision or civil decisions and so forth. <sup>19</sup> PDistrict Courts and High Courts are required to examine cases based on *judex facti* or considerations of legal facts related to applicable legal norms.<sup>20</sup>

Decision Number 208/Pid.B/2019/PN Gto, although it has been decided that it is a civil case and acquits the defendants from criminal charges, even at the next level in Cassation Decision Number 277 K/Pid/2020 related to the request for a criminal offense at the cassation level which filed by the Public Prosecutor at the Gorontalo City Public Prosecutor's Office in relation to the cases of Fadlya Halada, Afandi S. Bandu and Yusuf Akuba, the decision rejected the cassation request from the cassation applicant/Public Prosecutor at the Gorontalo City Public Prosecutor's Office. <sup>21</sup> In the consideration of the judges in the Cassation Decision Number 277 K/Pid/2020 in outline stated that:

1. Whereas the reason for cassation by the Public Prosecutor cannot be justified because *Judex Facti* was not wrong in applying the law;
2. Whereas according to the testimony of the witnesses and the testimony of the defendants, it was found that the defendants made a loan of money to the witness with the conditions set by the witness, that is, they were subject to interest of 30%, and after the appointed time it turned out that the defendants did not make payments, thus the defendants has committed a default that must be resolved through a civil law mechanism;
3. Whereas apart from that, the reason for cassation by the Public Prosecutor relates to the evaluation of the results of evidence that is in the nature of respect for a fact. This cannot be considered in an examination at the cassation level, because an examination at the cassation level is only concerned with the failure to apply a legal regulation or a legal regulation not being properly applied.

### **3.1.1 Implications for the existence of legal certainty**

There is a *Judex Facti* Decision based on the Decision Decision Number 208/Pid.B/2019/PN Gto and Cassation Decision Number 277 K/Pid/2020, it has implications for describing legal certainty. According to Utrecht legal certainty contains two meanings, namely:

- (1) There is a rule which has an ordinary nature which makes an individual to understand the actions that are permissible or not permissible.
- (2) A safeguard from the law in which the individual is subject to the authority of the government because because of the regulations that have this overall nature

---

<sup>19</sup> R. Nurhafifah, N., & Rahmiati, "Pertimbangan Hakim Dalam Penjatuhan Pidana Terkait Hal Yang Memberatkan Dan Meringankan Putusan.," *Kanun Jurnal Ilmu Hukum*, 17, No. 2 (2015): 341-362., 344.

<sup>20</sup> O. Pollicino, "Legal Reasoning Of The Court Of Justice In The Context Of The Principle Of Equality Between Judicial Activism And Self-Restraint.," *German Law Journal*, 5, No. 3 (2004): 283-317., 289.

<sup>21</sup> *Putusan Nomor 277 K/Pid/2020*

individuals can get what can be obtained or implemented from the State to individuals.<sup>22</sup>

A Theory of Legal Certainty explained by Utretht is very clearly related to problems related to contract fraud. Guaranteeing legal certainty is inseparable from the existence of written law as regulated in the Criminal Code and Criminal Procedure Code. Referring to the decision of a civil court judge, legal certainty is certainly bound by certainty for the parties to the case. A right is governed by at least 3 elements, namely subject, object and authority as stated by Warman, legal certainty in civil court judge decisions must be able to explain all three simultaneously. The civil court judge's decision must be able to explain who actually has the rights, must be able to identify what is the object and must be able to explain the authority of the subject over the object legally whether he has rights.<sup>23</sup>

Based on the description above, the criteria or measure of legal certainty can be formulated as follows: :<sup>24</sup>

- a. The existence of legal clarity means that it can be easily understood by the people;
- b. Rules of law do not conflict with each other;
- c. The rules may not require behavior that is beyond the ability of the legal subject, which means that the law may not order something that is impossible to do
- d. Recognition of the rights and obligations of every legal subject;
- e. There is recognition from citizens in principle against the rule of law;
- f. Legal certainty in court is characterized by the independence of judges and impartiality in applying legal rules;
- g. Legal certainty in court is determined by the clarity of the object in dispute;
- h. Legal certainty in court must clearly determine the object won by the litigants;
- i. Legal certainty in court is determined to be executed or implemented a decision.

Certainty is a characteristic that cannot be separated from law, especially written legal norms. Law without certainty value will lose meaning because it can no longer be used as a guideline for behavior for everyone. One law with another law cannot be contradictory if it becomes a source of doubt. Legal certainty can be interpreted as the enforcement of law strictly in society.<sup>25</sup> State policy is to guide and direct the functioning of state functions, state power and government to achieve state goals,<sup>26</sup> including in the jurisdiction of the judiciary which of course must be able to realize a

---

<sup>22</sup> Riduan Syahrani, *Rangkuman Intisari Ilmu Hukum*. (Bandung: Citra Aditya Bakti, 1999)., 23.

<sup>23</sup> Fence M. Wantu, *Idee Des Recht Kepastian Hukum, Keadilan Dan Kemanfaatan*. (Implementasi Dalam Proses Peradilan Perdata). (Yogyakarta: Pustaka Pelajar, 2011)., 85.

<sup>24</sup> *Ibid.*.

<sup>25</sup> *Ibid.*

<sup>26</sup> Novendri Mohamad Nggilu, Lisnawaty Wadju Badu, Dan Suwitno Yutye Imran, "Legal Protection Bonda And Bulango Language : In Reality And Prospect," *Jambura Law Review* 3, No. 1 (2020): 19-36., 148

legal certainty and benefit so that it reflects development through legal aspects in a country. The government creates order and peace in people's lives, and maximizes the potential for regional development. Everyone else, including the government must heed it, making laws on the basis of natural rights itself. <sup>27</sup>Because of this, one of the objectives of recognizing and strengthening a rule of law is to protect human rights, meaning that individual rights and freedoms are recognized, respected and upheld. <sup>28</sup>

The increase in people's welfare which is facilitated by this law is of course synergistic with Subekti who thinks that law is devoting to the direction of the state which in essence is to produce glory and joy for its people. <sup>29</sup>herefore, it is also hoped that the public will need to increase legal awareness and participation in supervising and preventing criminal offenses.<sup>30</sup>In an effort to apply legal certainty, ideally a judge's decision must be in accordance with the basic objectives of a court. Ideally the judge's decision should contain legal certainty as follows:

- a. carrying out authoritative solutions, meaning providing a way out of legal problems faced by the parties (plaintiff and defendant);
- b. efficiency means that the process must be fast, simple, low cost;
- c. in accordance with the purpose of the law which is used as the basis of the judge's decision;
- d. contains aspects of stability, namely being able to provide a sense of order and a sense of security in society;
- e. contains equality, namely providing equal opportunities for litigants. <sup>31</sup>

Based on the cases described above, in the framework and effort to find and apply justice, the judge's decision in court must be in accordance with its true purpose, namely as follows: <sup>32</sup>

- a. must make an authoritative solution, which means providing a way out of legal problems faced by the parties (plaintiff and defendant);
- b. it must contain efficiency, namely fast, simple, low cost, because delaying justice is an injustice;
- c. must be in accordance with the purpose of the law on which the court decision is based;

---

<sup>27</sup> Sri Nanang Meiska Kamba Nuvazria Achir, "The Function Of Sharia-Based Regional Regulations On Education And Social Services In The Regions," *Jambura Law Review*. 3, No. Special Issue (2021): 1-17., 16.

<sup>28</sup> Dolot Alhasni, "Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right " Determination Of The Legal Protection Of Right-Holders To," *Jambura Law Review*. 2, No. 01 (2020): 65-82., 67.

<sup>29</sup> Jufryanto Puluhalawa, Mellisa Towadi, And Vifi Swarianata, "Perlindungan Hukum Situs Bawah Air Leato/Japanese Cargo Wreck," *Jurnal Reformasi Hukum*. 24, No. 2 (2020): 189-208., 201.

<sup>30</sup> L. Solekha, R. R., Wantu, F., & Tijow, "Penegakan Hukum Terhadap Tindak Pidana Money Politic Oleh Calon Anggota Legislatif Pada Pemilihan Umum 2019.," *Jurnal Legalitas*. 13, No. 1 (2020): 51-69., 68.

<sup>31</sup> Wantu, *Idee Des Recht Kepastian Hukum, Keadilan Dan Kemanfaatan. (Implementasi Dalam Proses Peradilan Perdata)*.

<sup>32</sup> *Ibid*.

- d. must contain aspects of stability, namely social order and public tranquility;
- e. There must be fairness, namely giving equal opportunity to litigants.

The judge's decision will reflect expediency, when the judge does not only apply the law textually and only pursues justice, but also leads to benefits for the interests of the litigants and the interests of society in general. This means that in applying the law, the judge should consider the final result, whether the judge's decision will bring benefits or benefits to all parties. Here the judge is expected to apply existing laws and laws based on their purpose or benefit for the litigants and society. If referring to what was said by Prof. Fenty Puluhulawa in his writings that the government through law has provided a starting point for justice, which is carried out for the sake of justice based on Belief in One Almighty God.<sup>33</sup> Quoting as said by Fence M. Wantu in his journal that the nature of justice is something that is assessed from one person to another, which is generally seen from the side who receives the treatment.<sup>34</sup> quoting as said by Suwitno Yutye Imran that Justice serves as a guideline to distinguish between just and unjust actions. Elements of the aspect of justice can be contained in substance.<sup>35</sup> Equality in law or equality before the law means that when dealing with the law, there should be no form of discrimination or differential treatment for citizens, because all are equal before the law.<sup>36</sup>

Considering that the judge's decision is law, the judge must maintain balance in society by restoring the social order to its original state (*restitutio in integrum*). The community really hopes that the settlement of cases through the courts will bring benefits or uses for living together in society.<sup>37</sup>

### **3.1.2 Implications for Resubmitting Lawsuits from Criminal Cases to Civil Cases**

Decision Number 208/Pid.B/2019/PN Gto has stated that, based on the legal reasons that have been considered, the Panel of Judges is of the opinion that the actions of the Defendants were not criminal acts but civil acts, so that the Defendants must be released from all lawsuits.

The principle is that in implementing criminal regulations in a country, judges and courts can only enforce positive laws in that country, this is a form of state sovereignty in carrying out law enforcement. Regarding the applicability of a criminal law, there are 4 (four) principles whose existence is recognized, namely the territorial principle,

---

<sup>33</sup> Sutrisno, Puluhulawa Fenty, And Lusiana Margaereth Tijow, "Application of the Principles of Justice, Legal Certainty and Usefulness in Judge Decisions on Corruption Crimes," *Gorontalo Law Review*. 3, No. 2 (2020): 168-187., 174.

<sup>34</sup> Fence M. Wantu, "Kendala Hakim Dalam Menciptakan Kepastian Hukum, Keadilan, Dan Kemanfaatan Di Peradilan Perdata," *Jurnal Mimbar Hukum*. 25, No. 2 (2011): 205-218., 206.

<sup>35</sup> Suwitno Yutye Imran, "The Urgency Of Regulation Of The Ultra Qui Judicat Principle In Criminal Judgments," *Jambura Law Review*. 3, No. 2 (2021): 395-410., 398

<sup>36</sup> Lisnawaty W. Badu Dan Apripari., "Menggagas Tindak Pidana Militer Sebagai Kompetensi Absolut Peradilan Militer Dalam Perkara Pidana.," *Jurnal Legalitas*. 12, No. 1 (2019): 57-77., 61.

<sup>37</sup> *Ibid.*, 166.



the active national principle (nationality), the passive national principle (protection), and the universality principle (equality).<sup>38</sup>

One of the principles of criminal law is the territorial principle or area principle. Based on principle In this regard, the criminal legislation of a country applies to every legal subject who commits a crime in the territory of the country concerned. According to Professor van Hattum, every country is obliged to guarantee security and order within the territory of their respective countries.<sup>39</sup>

Territorial principles set in Article 2 of the Criminal Code (hereinafter referred to as the Criminal Code), which reads:

"Criminal provisions in Indonesian law apply to anyone who commits a crime in Indonesia."

Based on the above formulation, then in fact if it is associated with a criminal act of fraud, of course it can be subject to criminal sanctions in accordance with the laws and regulations that applies in Indonesia. Next specifically refers to a criminal case inside Decision Number 208/Pid.B/2019/PN G to clearly stated that based on the legal reasons that had been considered by the Panel of Judges, the Panel was of the opinion that the actions of the Defendants were not criminal acts but civil acts.

Examining through the competence of the judiciary then strictly in Absolute competence, namely related to what judicial authority is authorized to try the case above, based on Law Number 48 of 2009 concerning Judicial Power, in CHAPTER III, concerning Judicial Power Executors, Part One, Article 18 states that:

"Judicial power is exercised by a Supreme Court and by the courts under it in the general court environment, the religious court environment, the military court environment, the state administrative court environment, and by a Constitutional Court.

It appears that under the Supreme Court there are:

1. General Court.
2. Religious Court.
3. Military Court.
4. State Administrative Court.

Referring to the article above, it is of course related to the absolute competence of the judiciary in a manner firm case regarding fraud in tela agreements sh appropriate to be

---

<sup>38</sup> Brian Dave., "Mengenal Asas Teritorial Dalam Hukum Pidana," 2021, <https://Lbhpengayoman.Unpar.Ac.Id/Asas-Teritorial-Dalam-Pemberlakuan-Hukum-Pidana/>.

<sup>39</sup> P.A.F. Lamintang Dan Franciscus Theojunior Laminating., *Dasar-Dasar Hukum Pidana Di Indonesia*. (Jakarta: Pt Sinar Grafika, 2014)., 90.

tried in the General Court environment. The problem now is, there has been a decision criminal inside Decision Number 208/Pid.B/2019/PN Gto clearly stated that the actions of the Defendants were not criminal acts but civil acts, so there is a possibility that the plaintiff's demands could be changed to be a civil suit.

Associated with that, then there will be a presumption of cases that have been decided will raise other problems, viz with *Asas Ne Bis In Idem*, which is one of the principles in the Indonesian legal system which determines that the same case may not be tried a second time.<sup>40</sup>

The opinion of Yahya Harahap in his book entitled *Civil Procedure Law*, a decision is said to be *Nebis In Idem* if the following conditions are met:<sup>41</sup>

1. The lawsuit filed later had previously been filed;
2. Against the previous lawsuit (case) a decision has been passed and the decision has obtained permanent legal force (*resjudicata/inkracht van gewijsde*);
3. Decisions that have permanent legal force are positive in the form of: rejecting the lawsuit in full or granting part or all of the lawsuit;
4. Subjects who are the same party;
5. The object matter is the same.

However, in the case of Decision Number 208/Pid.B/2019/PN Gto which was previously a criminal claim by the plaintiff, then if it enters civil law it will change lawsuit becomes civil related to default. Oleh because of that, according to the researchers this could have been done as a form of seeking justice.

So far, there are no prohibitions or legal provisions requiring that a fraud case first receive a criminal court decision that has permanent legal force (*inkracht van gewijsde*), only then can it be sued civilly.<sup>42</sup>

Provisions for criminal acts of fraud or fraudulent acts (*bedrog*) which can be found in Article 378 [The Criminal Code](#) who has clearly stated that any person who with the intent to unlawfully benefit himself or another person, by using a false name or false prestige, by deception or a series of lies, incites another person to hand over something to him or to give him a debt or write off a debt, is threatened with fraud with a maximum imprisonment of four years.

Meanwhile, fraud in the context of Civil Law is not clearly defined in [Code of Civil law](#), but we can find the arrangement in Article 1328 of the Civil Code, which explains that fraud is a reason for canceling the agreement, if the trick used by one of the parties is

---

<sup>40</sup> *Ibid.*,

<sup>41</sup> *Ibid.*,

<sup>42</sup> Albert Aries., "Bisakah Kasus Penipuan Diproses Hukum Pidana Dan Perdata Secara Bersamaan.," 2017, <https://www.hukumonline.com/klinik/detail/ulasan/Lt58726763cfdcc/Bisakah-Kasus-Penipuan-Diproses-Hukum-Pidana-Dan-Perdata-Secara-Bersamaan/>.

such that it is clear and obvious that the other party has not made the agreement if the ruse was not carried out. Fraud is not suspected, but must be proven. .<sup>43</sup>

Fraud occurs when one party intentionally provides false or untrue information accompanied by trickery to persuade the other party to give its license. The deceptive party acts actively to plunge the other party. The principle in law is that even though a person has been declared legally and convincingly guilty of committing a crime based on a court decision, this does not make that person cannot be sued civilly, because the provisions of civil law and criminal law are very different.

The difference can be seen that in criminal law a reporter is a victim or witness in a criminal trial. Meanwhile, in civil law, he is a plaintiff. Furthermore, in civil law, the position of a court decision in a criminal case legally can be used as one of the authentic evidence tools and even with the existence of a court decision in a criminal case it will certainly be able to provide confidence to the panel of judges that the defendant really has commit an unlawful act.

Based on the description and explanation above, it can be concluded that a criminal case decision that has permanent legal force can be used as a basis for filing a civil lawsuit in the form of an unlawful act as stipulated in Article 1365 [Civil Code](#).

Even though in this case a lawsuit for cassation has been filed because Decision Number 208/Pid.B/2019/PN Gto is an acquittal<sup>44</sup> Cassation is one of the rights included in the category of ordinary legal remedies, as a right, the filing of cassation creates obligations for other parties, namely the court. The appeal must be accepted by the court, so there is no reason to reject it. The issue of whether the petition will be accepted or rejected is entirely within the competence of the Supreme Court to decide.

<sup>45</sup>

## 5. Conclusion

For victims, before submitting a complaint to the police, it is best to ensure in advance whether the case they are experiencing is really a criminal act of fraud or an act of default by tracing back the chronology of the case with the available evidence. Furthermore, for both parties (victims and perpetrators) it is better before going through both processes in default cases where there are elements of fraud both criminal and civil, the parties can resolve the problem in amicable manner first, so that the party (defendant) can pay or compensate installments/money that the victim has lent, but this requires the good will of the perpetrator (the defendant) so that a deliberative settlement can be reached, so that both parties are not harmed.

---

<sup>43</sup> *Ibid.*,

<sup>44</sup> J. Simamora, "Legal Certainty in Submission of Cassation by the Public Prosecutor Against Free Sentences," *Judicial Journal*, 7, No. 1 (2014): 1-17., 16.

<sup>45</sup> *Ibid.*, 7

## References

### Book

- Bachtiar. *Problematika Implementasi Putusan Mahkamah Konstitusi Pada Pengujian UU Terhadap UUD*. Jakarta: Penebar Swadaya Grup, 2015.
- Djamali., R. Abdoel. *Pengantar Hukum Indonesia*. Jakarta: PT. Raja Grafindo Persada, 2014.
- Laminating., P.A.F. Lamintang dan Franciscus Theojunior. *Dasar-Dasar Hukum Pidana di Indonesia*. Jakarta: PT Sinar Grafika, n.d.
- Suhartono, Fx. *Contract Drafting Kerangka Dasar dan Teknik Penyusunan Kontrak*. Yogyakarta: Universitas Atma Jaya, 2009.
- Syahrani, Riduan. *Rangkuman Intisari Ilmu Hukum*. Bandung: Citra Aditya Bakti, 1999.
- Wantu, Fence M. *Idee Des Recht Kepastian Hukum, Keadilan dan Kemanfaatan. (Implementasi Dalam Proses Peradilan Perdata)*. Yogyakarta: Pustaka Pelajar, 2011.

### Journal Article

- Achir, Nuvazria. "Anotasi Normatif Terhadap Peraturan Daerah Tentang Transparansi." *Jambura Law Review*. 2, No. 1 (2020): 83-100.
- Alhasni, Dolot. "Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right " Determination Of The Legal Protection Of Right-Holders To." *Jambura Law Review*. 2, No. 01 (2020): 65-82.
- Alhasni, Mohamad Rizky, Lisnawaty W Badu, And Novendri M Nggilu. "Menakar Peran Kepolisian Dalam Mencegah Tindak Pidana Pencabulan Terhadap Anak Di Bawah Umur." *Jurnal Legalitas*. 12, No. 2 (2019): 110-23.
- Aniza Lakoro, Lisnawaty W. Badu, Dan Nuvazria Achir. "Lemahnya Kepolisian Dalam Penanganan Tindak Pidana Perjudian Togel Online." *Jurnal Legalitas* 13, No. 1 (2020): 31-50.
- Badu Lisnawaty. "Euthanasia Dan Hak Asasi Manusia." *Jurnal Legalitas*. 5, No. 1 (2012): 1-11.
- Hikmah, N. "Penerapan Asas Ne Bis In Idem Dalam Putusan Perdata." *Jurnal Hukum*, 2022, 234-248.
- Imran, Suwitno Yutye. "The Urgency Of Regulation Of The Ultra Qui Judicat Principle In Criminal Judgments." *Jambura Law Review*. 3, No. 2 (2021): 395-410. <https://doi.org/10.33756/Jlr.V3i2.11154>.

- Ismail, Dian Ekawaty, And Mohamad Taufiq Zulfikar Sarson. "Criminology Analysis Of Women's As Perpetrators Of Domestic Violence Crimes." *Jambura Law Review*. 3, No. 1 (2021): 57-76. <https://doi.org/10.33756/Jlr.V3i0.10984>.
- Julyano, Mario, Dan Aditya Yuli Sulistyawan. "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum." *Jurnal Crepido* 1, No. 1 (2019): 13-22.
- Kadek Wijayanto, Lusiana Margareth Tijow, Fence M. Wantu. "Kedudukan Peraturan Desa Dalam Sistem Pembentukan Peraturan Perundang Undangan Nasional." *Jurnal Ius Civile* 4, No. 2 (2020): 198-219.
- Lisnawaty W. Badu Dan Apripari. "Menggagas Tindak Pidana Militer Sebagai Kompetensi Absolut Peradilan Militer Dalam Perkara Pidana." *Jurnal Legalitas*. 12, No. 1 (2019): 57-77.
- Mulyadi, D. "Unsur-Unsur Penipuan Dalam Pasal 378 Kuhp Dikaitkan Dengan Jual Beli Tanah." *Jurnal Ilmiah Galuh Justisi* 5, No. 2 (2017): 206-223.
- Nggilu, Novendri M. "Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo." *Lambung Mangkurat Law Journal*. 5, No. 2 (2020): 109-21.
- Nggilu, Novendri Mohamad, Lisnawaty Wadju Badu, Dan Suwitno Yutye Imran. "Legal Protection Bonda And Bulango Languange : In Reality And Prospect." *Jambura Law Review* 3, No. 1 (2020): 19-36. <https://doi.org/10.33756/Jlr.V3i1.6947>.
- Nurhafifah, N., & Rahmiati, R. "Pertimbangan Hakim Dalam Penjatuhan Pidana Terkait Hal Yang Memberatkan Dan Meringankan Putusan." *Kanun Jurnal Ilmu Hukum*, 17, No. 2 (2015): 341-62.
- Nuvazria Achir, Sri Nanang Meiska Kamba. "The Function Of Sharia-Based Regional Regulations On Education And Social Services In The Regions." *Jambura Law Review*. 3, No. Special Issue (2021): 1-17.
- Pollicino, O. "Legal Reasoning Of The Court Of Justice In The Context Of The Principle Of Equality Between Judicial Activism And Self-Restraint." *German Law Journal*, 5, No. 3 (2004): 283-317.
- Puluhulawa, Jufryanto, Mellisa Towadi, And Vifi Swarianata. "Perlindungan Hukum Situs Bawah Air Leato/Japanese Cargo Wreck." *Jurnal Reformasi Hukum*. 24, No. 2 (2020): 189-208.
- Simamora, J. "Kepastian Hukum Pengajuan Kasasi Oleh Jaksa Penuntut Umum Terhadap Vonis Bebas." *Jurnal Yudisial*, 7, No. 1 (2014): 1-17.
- Solekha, R. R., Wantu, F., & Tijow, L. "Penegakan Hukum Terhadap Tindak Pidana Money Politic Oleh Calon Anggota Legislatif Pada Pemilihan Umum 2019."

*Jurnal Legalitas*. 13, No. 1 (2020): 51-69.

Sutrisno, Puluhulawa Fenty, And Lusiana Margaereth Tijow. "Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi." *Gorontalo Law Review*. 3, No. 2 (2020): 168-87.

Tome, Abdul Hamid. "Dynamics Of Village Head Election Arrangements." *Jambura Law Review*. 3, No. Spesial Issue (2021): 96-116.

Tome, Abdul Hamid. "Membumikan Pancasila: Upaya Pelembagaan Nilai Pancasila Dalam Kehidupan Masyarakat Desa." *Jurnal Al-'Adl*. 13, No. 1 (2020): 83-100.

Wantu, Fence M. "Kendala Hakim Dalam Menciptakan Kepastian Hukum, Keadilan, Dan Kemanfaatan Di Peradilan Perdata." *Jurnal Mimbar Hukum*. 25, No. 2 (2011): 205-18

### Website

Aries., Albert. "Bisakah Kasus Penipuan Diproses Hukum Pidana dan Perdata Secara Bersamaan,," 2017.  
<https://www.hukumonline.com/klinik/detail/ulasan/lt58726763cfdcc/bisakah-kasus-penipuan-diproses-hukum-pidana-dan-perdata-secara-bersamaan/>.

Dave., Brian. "Mengenal Asas Teritorial dalam Hukum Pidana," 2021.  
<https://lbhpengayoman.unpar.ac.id/asas-teritorial-dalam-pemberlakuan-hukum-pidana/>.