

Criminal Liability for the Perpetrator of Fraud with the Modus of Lending Motorized Vehicles

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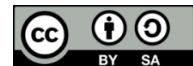
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ABSTRACT

Fraud in the form of borrowing motor vehicles under false pretenses is a type of crime that exploits trust in social relationships and is often overlooked in legal discussions. This study aims to analyze the application of Article 378 of the Indonesian Criminal Code and judicial considerations in determining criminal liability in fraud cases using the case study of Decision Number 102/Pid.B/2024/PN Kotabumi. The research employs a normative juridical method using literature and document analysis to examine the legal framework and factual evidence. Findings indicate that the elements of fraud, both objective and subjective, were fulfilled convincingly. The court imposed a 2-year and 6-month prison sentence, considering both juridical and non-juridical aspects. This study highlights the importance of distinguishing fraud from civil disputes in cases involving personal relationships and emphasizes the necessity for consistent law enforcement to ensure justice and legal certainty.

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1. INTRODUCTION

Law is an essential challenge in establishing norms and sanctions that aim to control human behavior, maintain order, uphold justice, and prevent riots [1]. According to Andi hamzah "law is a collection of rules regarding this behavior that applies to common life and can be enforced through sanctions. The implementation of the law can be carried out peacefully and formally but in some cases it also needs to be enforced due to violations" [2]. the law is dynamic because it does not only stick to previous cases, but also the ability to adapt and follow the times. Thus, the law serves as a reference in dealing with social changes in society [3]. Modern legal thinking also emphasizes the importance of

legal flexibility in responding to the social and economic development of society, including in trust-based crimes such as fraud [4].

In the context of protecting property, criminal law has an important role to take action against criminals who unlawfully control other people's property. One of the many criminal offenses related to property is fraud, which is known as a violation of trust as the main component in the occurrence of the crime [5].

Fraud as stipulated in Article 378 of the Criminal Code (KUHP) includes acts committed with the intention of unlawfully benefiting oneself or others by using a false name, false position, deception, or a series of lies, so as to encourage the other party to give up an item. In practice, fraud is not only

committed through digital means or complex schemes, but also through personal and trust-based social relationships. One form of fraud that is rampant but has not been widely discussed in academic studies is the mode of pretending to borrow a motor vehicle with the intention of unlawfully controlling it.

This form of fraud is often difficult to distinguish from civil matters because the perpetrator and victim have a close relationship. According to dulsimsn, it is not uncommon for perpetrators of fraud to try to disguise their actions as defaults in civil relationships to avoid criminal traps [6]. In fact, if from the beginning there has been malicious intent (*mens rea*), then the act is included in the criminal realm. In legal practice, the distinction between civil and criminal aspects is often confused when the perpetrator and victim have social relations, so the analysis of malicious intent (*mens rea*) is key in determining the legal domain [7]. Law enforcers, especially prosecutors and judges, have their own challenges in proving that there was an element of deception from the start, not just an abuse of trust.

The Kotabumi District Court Decision No. 102/Pid.B/2024/PN Kotabumi is a clear example of a fraud case involving the loan of a motor vehicle. In this case, the defendant borrowed the victim's motorcycle on the pretext of buying food, but instead took the vehicle away and pawned it without permission. These actions are considered to have fulfilled all the elements in Article 378 of the Criminal Code.

Based on this introduction, the subject matter of this paper is how is the application of the elements of the crime of fraud in verdict number 102/Pid.B'2024/PN Kotabumi? and how is the judge's legal consideration in imposing criminal responsibility on the perpetrator of fraud?

The Kotabumi District Court Decision No. 102/Pid.B/2024/PN Kotabumi is an example of a fraud case involving the borrowing of a motor vehicle. In this case, the defendant borrowed the victim's motorcycle on the pretext of buying food, but took the vehicle away and pawned it without permission. These actions were deemed to

have fulfilled all of the elements in Article 378 of the Penal Code.

Based on this introduction, the main problems in this paper are how is the application of the elements of the crime of fraud in verdict number 102/Pid.B'2024/PN Kotabumi? and how is the judge's legal consideration in imposing criminal liability on the perpetrator of the crime of fraud?

2. LITERATURE REVIEW

A number of previous studies have reviewed the importance of proving the element of malicious intent (*mens rea*) in the crime of fraud.

2.1 *Parama dan Sukma*

Explained that in online fraud cases, the element of the perpetrator's intention to obtain unlawful gain must be proven from the beginning of the act [3]. This is important so that the perpetrator does not take refuge behind the pretext of civil relations [9].

2.2 *Mustikajati dan Sulistyanta*

Research by Mustikajati and Sulistyanta emphasized that law enforcement against fraud requires consistency between legal facts, evidence, and integration between objective and subjective elements [10]. If one of the elements is not fulfilled, then the criminalization process can be legally invalid. In addition, Sihombing and Simanjuntak highlighted the need to prove the element of deception in social relations to prevent errors in case classification [11].

2.3 *laia and harita*

Laia and Harita in their research emphasized that the fulfillment of the elements of Article 378 of the Criminal Code thoroughly and integratively is an absolute requirement in a fair and objective criminal justice process [12]. They also highlighted the importance of analyzing the intention of the perpetrator and the social impact of the fraud. In addition, Bethari and Wahyudi reviewed the criminal act of fraud in the context of online arisan, and concluded that the

pattern of fraud based on social relations has a high destructive power on public trust [13]. Although focused on the digital realm, their findings remain relevant in showing that social trust is often used as a loophole to commit fraud.

However, there is no study that specifically discusses fraud by pretending to borrow a motor vehicle as a form of exploitation of trust in personal relationships. Therefore, this study has novelty value in providing juridical analysis of real cases that have not been widely explored in Indonesian criminal law literature.

3. METHODS

This research uses a normative juridical approach, which is legal research that focuses on the study of documents and literature to understand the application of legal norms in a systematic, logical and structured manner. This type of research is suitable for analyzing positive legal provisions in Article 378 of the Criminal Code and its application in criminal justice practices in Indonesia.

The subject of the research is the criminal liability of the perpetrator of the crime of fraud, while the object of the research is the Decision of the Kotabumi District Court Number 102/Pid.B/2024/PN Kotabumi relating to fraud under the guise of borrowing a motor vehicle.

The research was conducted in the jurisdiction of Kotabumi District Court, North Lampung, and the research took place during the period January-April 2024. This research is a literature study so it does not involve human subjects directly.

The research instrument used is a document content analysis format, which consists of categories of criminal offense elements, judges' legal considerations, and the relationship between the facts and the legal basis used. Data retrieval techniques were carried out by document study and literature study, including court decisions, laws and

regulations, legal literature, scientific journals, and expert opinions.

Data analysis was conducted qualitatively, by interpreting the data descriptively and compiling it in a coherent legal framework. The main objective of this analysis is to explain the suitability between legal norms and their application in concrete cases, as well as to assess the validity of the judges' legal arguments in imposing punishment.

4. RESULTS AND DISCUSSION

4.1 *Application of the Elements of the Crime of Fraud in Decision Number 102/Pid.B/2024 Pn.Kbu*

Criminal offenses are despicable acts that are directly related to violations of the law. One form of criminal offense is fraud which can be committed through various modes, including the criminal act of fraud with the mode [13] of Borrowing Goods. As in the case of the case that occurred, the mode of borrowing the victim's motorcycle with the intention of selling it. The perpetrator of fraud can be held criminally liable if:

- 1) His actions fulfill all elements of article 378 of the Criminal Code, both subjective and objective elements
- 2) There is a mistake (shculd), namely, done intentionally (dolus)
- 3) There is no reason to erase the punishment (such as justification or excuse).
- 4) Proven in the trial process either based on evidence or the judge's belief.

The elements of a criminal offense are the essential parts of an act that has been determined as a crime against the law according to the law. An act can only be punished if all elements in the formulation of the criminal article are fulfilled, both objective elements (relating to external actions) and subjective (relating to the inner attitude of the perpetrator) [14].

The following is a description of the elements of the crime of Fraud:

Table 1. elements of the crime of fraud

Category	Elements	Description
Object	Actions	Unlawful act

	As a result of	Impact
	Causality	Relationship between act and effect
	Object	Goods or rights lost
Subjek	Description	Intention or will to do
	Negligence	Lack of caution leading to consequences
	Purpose/Motive	Offender-specific objectives
	Knowledge	Aware that the act is against the law

Source: Source of analysis Author (2025).

Based on the table above, the objective element shows real facts that occur physically, and can be proven by evidence (sanctions, letters, evidence). While the objective element concerns the intention, will, or inner attitude of the perpetrator, and is usually drawn from confessions, motives, and series of events. An act can be categorized as a criminal offense if all the elements of the offense specified in the legal provisions are fulfilled. If one of the elements is not proven, then the perpetrator cannot be convicted. A concrete example in the crime of fraud, the objective act is pretending to borrow a motorcycle (action), then the motorcycle is not returned (effect), and the perpetrator from the beginning did intend to control (subjective: intention / *dolus*). According to Siregar, the objective and subjective elements must be fulfilled in full so that an act can be classified as a criminal offense of fraud [15].

Article 378 of the Criminal Code regulates the crime of fraud which contains the elements: (1) the perpetrator ("whoever"), (2) with the intention of unlawfully benefiting himself or others, (3) by deceit or a series of lies, (4) who moves others to deliver goods. In this case, the defendant Yantori alias Tori was proven to have committed the act by fulfilling the four elements:

- 1) The first element, "whoever", is clearly fulfilled because the defendant is a legal subject who can be held criminally responsible.
- 2) The second element, "intent to unlawfully benefit oneself", is proven by the fact that the defendant from the beginning intended to take the victim's motorcycle under false pretenses, namely to buy food. After the motorcycle was given to him, the defendant did not return it, but immediately pawned it for Rp1,000,000.

This confirms the intention to obtain personal gain by unlawful means.

- 3) The third element, "by deception or a series of lies", was also proven. The defendant used social relationships and trust as a tool to deceive the victim. The pretext of borrowing for food was a form of deception, and when it was followed by taking away the motorcycle and pawning it, these actions became an integrated series of lies.
- 4) The fourth element, "moving others to hand over goods", was fulfilled because the victim handed over the motorcycle voluntarily as a result of believing the lies told by the defendant.

The distinction between the crimes of fraud and embezzlement is often debated in judicial practice. The main difference lies in the way the perpetrator acquires the goods: in fraud, the goods are obtained by deception so that the victim surrenders voluntarily; while in embezzlement, the perpetrator initially legally controls the goods but then misuses them. Therefore, proving the elements of deception and malicious intent from the beginning (*mens rea*) becomes very important in determining that the act is fraud. Research by Kusmawati and Fadhilah on the mode of fraud using fictitious checks also emphasizes the importance of proving the elements of malicious intent and a series of lies from the start so that the perpetrator does not take refuge behind the pretext of civil relations [16], this is in line with Simons' opinion as cited by Moeljatno, that the element of deception must be misleading and capable of causing a mistake that encourages the victim to give up his property. In the case of the defendant Yantori, the pretext of wanting to buy food was used as a manipulative tool that made the victim believe and hand over his motorcycle. The fact that the motorcycle was

pawned immediately after the loan indicates a premeditated ulterior motive. These elements make the act not just a breach of trust, but a legal fraud under Article 378 of the Criminal Code. This decision also sets an important precedent for law enforcement officials to more carefully distinguish fraud from embezzlement, especially in modes based on social relationships.

This is in accordance with Suharto's opinion, which states that social media and personal relationships are now a new field for fraud crime modes [17]. Similarly, according to Laia and Yusuf (2024), the fulfillment of the elements of fraud in Article 378 of the Criminal Code requires the integration of mental and physical elements, namely malicious intent and concrete actions.

4.2 Judges' Legal Considerations In Imposing Criminal Liability Against Fraudoffenders

According to the definition of Law as social power or social designer, law is an action that is considered by society as a means to transform society in a desired or planned way [18]. Legal consideration is one of the crucial factors in the realization of the meaning of legal decisions, aspects that illustrate justice and legal stability, as well as the content of benefits obtained for related parties [19].

Criminal accountability is a form of legal responsibility imposed on a person for the criminal offense he has committed. In other words, the object of accountability is the criminal act itself. Therefore, criminal liability arises as a consequence of an act that fulfills a person's criminal offense. Criminal responsibility in essence is a procedure formulated in criminal law as a response to violations of law or social agreements through certain actions prohibited by law [20].

The requirement to impose a perpetrator can be held criminally responsible for the crime of fraud if all the elements that make up the offense that has been determined in addition it can be proven that the act is done intentionally and with awareness, where the perpetrator knows that the act is reprehensible according to the law [21]. The crime of fraud according to Article 378 of the

Criminal Code is: "Any person who, with the intent to unlawfully benefit himself or another, by using a false name or a series of falsehoods, induces another person to deliver any goods to him or to give a debt or to cancel a debt" [22].

The judge's consideration is a crucial element in the process of determining the decision in the trial. These considerations include the legal analysis used by the judge to decide a case based on the facts, evidence and relevant legal regulations. The Panel of Judges in Decision Number 102/Pid.B/2024/PN Kotabumi provided comprehensive considerations in sentencing the defendant. First, the judges considered that the defendant committed his actions consciously and deliberately. The defendant's statement that he intended to borrow a motorcycle for food was proven to be false because he followed up by pawning the motorcycle without the knowledge and permission of the victim. Secondly, the defendant also admitted that the money from the pawn was used for online gambling. This strengthened the judge's assessment that the defendant's aim from the outset was to obtain personal gain in violation of the law.

In addition, the judge also considered the evidence presented, including:

- Statement of the victim (Dahlan),
- Statement of the witness Kodri (friend of the victim),
- STNK and BPKB of the motorcycle as evidence. The confession of the defendant himself who did not deny these facts.

According to Putra's research, judges in fraud cases often consider the social relationship between the perpetrator and the victim to determine the severity of the punishment [23]. Aggravating considerations were that the defendant's actions harmed the victim and could disturb the community because he took advantage of social relationships to commit fraud. The mitigating circumstances in this case include the defendant's confession of his actions, remorse, or his actions, as well as the polite behavior shown during the trial.

The fulfillment of all elements of the crime of fraud must be followed by juridical and sociological considerations in handing down a verdict. In this context, Gultom, Hasanah and Yunus (2024) emphasized that judges should not only look at the fulfillment of formal legal elements, but must also consider the social impact on society and the potential for repetition of similar crimes as part of crime prevention [24]. In a criminal case on behalf of the defendant Yantori alias Tori bin Hakim Amir examined at the Kotabumi District Court, the panel of judges imposed a criminal decision based on the requirements of Article 378 of the Criminal Code regarding the crime of fraud. The imposition of punishment is based on a series of legal considerations from both juridical and non-juridical aspects.

1) Juridical Considerations

First, the judge considered that the first alternative charge as stipulated in Article 378 of the Criminal Code was more appropriate than the second alternative charge (Article 372 of the Criminal Code). This is because the defendant's actions from the outset have shown an intention to commit fraud by utilizing strategies of deception and lies to deceive the victim.

Based on the testimony of witnesses during the trial, the confession of the defendant, and the evidence, it was established that the defendant had asked for the victim's motorcycle on the pretext that he was going to pick up someone. After the motorcycle was borrowed, it turned out that the defendant did not return it, but took the vehicle to another area to pawn it to another person and the proceeds were used to play online gambling.

In the opinion of the Panel of Judges, the element of intent to obtain unlawful gain, either for oneself or for another person, has been proven legally and convincingly because from the outset the defendant had a plan and evil intention to take unlawful gain. The defendant used a misleading pretext (trickery) that made the victim voluntarily hand over her property. In addition, the judge also considered that in this case there were no grounds for justification or excuse that could

eliminate the defendant's criminal responsibility. The defendant is a legally competent person and is able to take responsibility for his actions, and did not experience mental disorders or pressure when committing these acts. In a similar study, Setiawan and Nurhidayat emphasized the importance of judges' caution in reading the motives and patterns of actions so as not to mistakenly apply criminal articles [25]. Thus, all elements in Article 378 of the Criminal Code are absolute requirements that must be fulfilled legally and convincingly.

2) Non-Juridical Considerations

According to Lilik Mulyadi, the judge's decision is a manifestation of juridical responsibility that not only reflects formal legal truth, but also substantive justice for the parties [26]. In imposing the punishment, the judge also considered the defendant's personal condition and background. Some of the aggravating circumstances in this case were that the defendant's actions had caused material losses to the victim amounting to six million rupiah and had caused unrest in the community. Meanwhile, the mitigating circumstances in this case were that the defendant had admitted his actions, showed remorse for his actions, and did not have a history of previous criminal convictions. The panel of judges decided for the defendant to be sentenced to imprisonment for 2 (two) years and 6 (six) months, with the provision of continuing to serve the detention period as previously stipulated, and charged the defendant to pay court costs of Rp5,000. The evidence in the form of BPKB and STNK were returned to the rightful owner, namely the victim.

Article 378 of the Criminal Code is not only proven formally, but also through an analysis of the intention, method, and consequences of the defendant's actions. The use of deception and a series of lies is the core of proving the element of fraud, and this shows the importance of judges' caution in sorting out the offenses of fraud and embezzlement. In addition, non-juridical considerations also show the judge's efforts to balance justice and humanity in imposing criminal decisions.

5. CONCLUSION

This study concludes that the crime of fraud by pretending to borrow a motor vehicle to be unlawfully controlled fulfills all the elements in Article 378 of the Criminal Code. Based on the study of Decision Number 102/Pid.B/2024/PN Kotabumi, the defendant's actions were proven to have been committed intentionally, using deception, and causing the victim to hand over goods voluntarily. The judge's legal considerations reflected the application of law that was juridically appropriate and took into account aspects of justice, by imposing a prison sentence of 2 years and 6 months. This shows that the justice system has been able to reach forms of crime based on social relations and trust.

As a follow-up, it is suggested that comparative research be conducted on court decisions in similar cases in various regions to measure the consistency of the application of the elements of the offense of fraud. In addition, law enforcement officials are expected to be more careful in distinguishing fraud from embezzlement, especially when the perpetrator utilizes personal relationships

to obtain goods. Further studies can also be conducted with an empirical approach in order to obtain practical understanding from law enforcement officials about the challenges in proving malicious intent in non-digital fraud.

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