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Juridical Analysis of the Determination of Suspect Hellyana (Deputy Governor of Bangka Belitung) According to the Jurisprudence of Indonesian Criminal Law

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ABSTRACT

The determination of the suspect against hellyana as the deputy governor of the Bangka Belitung Islands in an alleged fraud crime raises two perceptions about the boundary between civil acts or criminal acts. This study uses a normative juridical method through a legislative approach by analyzing the juridical basis regarding the case on the fulfillment of elements as a criminal act, not just a default or territorial dispute. Based on the existing elements, it results that the act that occurred was not only a failure to fulfill the agreement, but involved fraudulent acts with deception that resulted in losses to the victim. Therefore, this case deserves to be processed as a criminal offense according to the Indonesian criminal law framework.

keywords : Fraud, Suspect. Criminal Law

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INTRODUCTION

Criminal Acts is a term for wrongful acts derived from a term known in Dutch criminal regulations, namely *Criminal offence*. Although this term is found in the Dutch WvS, as well as the Dutch East Indies WvS (KUHP), there is no clear reason for what is implied by *Criminal offence*. Terms used in the interpretation of terms *Criminal offence* is "Criminal acts, criminal events, delicacies, criminal demonstrations, acts that can be damaged, acts that can be compromised, and criminal acts".[1]

Criminal offence, consists of three words namely *penalty*, *bar* and *Fact*. Of the seven terms used as interpretation *Criminal offence*, apparently *Starf* is defined as criminal and regulation. Laughter *bar* interpreted as can and can. While the word *Fact* It is defined as activities, events, violations and deeds. In a true sense, "*Punishment*" means criminal, "*bar*" means can or can, and "*Fact*" means deeds. About the term *Criminal offence* In general, it seems that *Punishment* It is also interpreted with the word law. In terms of "*bar*", there are two terms used, namely allowed and can. With respect to the word *Fact*, four terms are used, namely error, event, violation, and deed.[2]

a. Types of Criminal Acts

Criminal Acts can be distinguished on certain grounds, as follows:[3]

1) According to the framework of the Criminal Code, crimes (*misddrijven*) are recognized in Book II and offenses (*overtredingen*) are contained in Book III. The justification behind the difference between a crime and an offense is that the punishment for an offense is much lighter than a crime.
2) In accordance with the way it is solved, conventional crimes (*previous delicten*) are loaded from material crimes (*materiel delicten*). A formal law violator is a criminal act that is designed in such a way that it gives the understanding that the prohibition formed is to commit a certain act. On the other hand, in the plan of the act of violating material law, the essence of the prohibition is to cause the intended consequences. Therefore, whoever causes the restriction to occur as a result is the person who is considered responsible and punished.
3) Based on the type of wrongdoing, a qualification is made between intentional unlawful acts (*dolus*) and unintentional evil acts (*culpa*). Intentional acts of lawbreakers are criminal acts that are carried out intentionally in detail. Meanwhile, unexpected acts of lawbreakers are unintentional acts that contain mistakes or carelessness in detail.
4) Judging from the type of activity, it can be distinguished between dynamic/positive violations or also called commission violations and separate/negative violations or also called exclusion violations. Dynamic wrong acts are wrong acts whose activities are functional activities, dynamic activities are actions in which the development that does it is shown to make it happen. Meanwhile, passive lawbreaker acts are criminal protests that are

[1] Adami Chazawi, 2010, Criminal Law Lesson 1, Rajawali Pres, Jakarta, p. 67.
[2] *Ibid*, p. 69.
[3] Amir Ilyas, *Principles of Criminal Law,* Rangkang Education & PukaP-Indonesia, Yogyakarta, 2012, p. 28.

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officially planned or criminal acts that essentially have elements of passive acts.

5) Judging from the time and period of occurrence, criminal acts that occur immediately (*aflopende delicten*) and criminal acts that occur for a long time or last, are ongoing (*voordurende delicten*).
6) Based on the source, common violations and special violations can be identified. General criminal acts are criminal acts contained in the Criminal Code as a codification of material criminal regulations (Book II and Book III). while explicit violations are wrongful acts that are outside the codification of the Criminal Code, for example Blasphemy Violations (Law No. 20 of 2001).
7) Seen from the point of view of the subject of law, it is quite possible to recognize common offenses (offenses that can be committed by anyone) and *proria* offenses (which can only be committed by individuals who have certain individual activities.
8) Given whether the objection is due to an indictment, it is known the conventional crime and the crime of protest demonstration, or vice versa its representative in a general case, or the victim's family.
9) Based on the severity of the threatened crime, it is distinguished between the main form of crime, aggravated crime and the criminal act that is recalled. Given the protected legal interests, the types of criminal activities are not limited based on guaranteed legal interests, such as crimes against life and body, against property, criminal acts of duplicity, violations of fame, and others. Sometimes a criminal act can turn into a restriction, it is recognized as the only offense and a series of criminal acts.

Suspect As referred to in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) Article 1 Paragraph (14) A suspect is a person who, due to his activities or circumstances, based on the beginning of the evidence, should be associated with himself as the perpetrator. from a mistake.[4]

In general, the term suspect is a word in the Criminal Code that is recognized from the reported person. The case is different in its framework. In Dutch regulations as stated in the Wetboek van Strafvordering, the term suspect or *Defendant* and the litigant or *Suspect* is not considered important and is used with only one term, namely *Suspect*.

Suspects are people who are good or not and whether they are known or not, are suspected of committing criminal acts. If the identity of the suspect is known, and the decision to arrest or charge him or her has been approved by a public prosecutor who issued the information, or a judge issued an arrest warrant, then the suspect may be named as a defendant.

The determination of a suspect is a legal action taken by investigators against a person suspected of committing a criminal act based on sufficient preliminary evidence, as stipulated in the Criminal Code and developed through the decisions of the

[4] Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), Article 1 paragraph (14).

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Constitutional Court and the doctrine of contemporary criminal procedural law.[5] In the past five years, the issue of the standard for determining suspects has increasingly emerged as the public spotlight on investigative accountability has increased, especially in cases involving public officials. The application of the principle of prudence in the determination of suspects is important to ensure that the legal process runs according to the principles of due process of law and does not confuse the construction of the civil and criminal realms.[6]

In the context of Indonesian criminal law, the distinction between default and fraud has a strategic position. Default is in principle a failure to fulfill achievements in a civil relationship without malicious intent, while fraud requires the existence of misleading acts, tricks, or a series of lies committed since the beginning of the engagement.[7] Misclassification between the two legal domains not only has the potential to give birth to legal uncertainty, but can also lead to disproportionate criminalization or, conversely, failure to protect victims of crime. Therefore, the analysis to distinguish the two legal constructions is fundamental.

Fraud comes from the word deception which means according to the great Indonesian dictionary is an act or word that is dishonest (lie, false, etc.) with the intention of misleading, outsmarting, or profit-seeking. Fraud itself means a fraudulent process, method, act. The crimes of fraud include *Material crime* which means that for perfection there must be consequences. Elements of fraud are acts that are done to get goods or money belonging to others and profits in a bad way. Because of using false identities such as fake names and false positions, with a series of lies, or using deception. In fraud, there must be causality between the deception and the giving of certain goods, which if there is no deception, then there will be no giving of the goods. The crime of fraud is a crime against property regulated in Book II of the Criminal Code in Chapter XXV from Articles 378 to 395. The crime of fraud in its main form is regulated in Article 378 of the Criminal Code which is formulated as follows: "Whoever with the intention of unlawfully benefiting himself or others by using a false name or false dignity; by deception, or a series of lies, inducing another person to hand over something to him, or to give a debt or write off receivables, threatened, for fraud, with a maximum prison sentence of four years".[8]

The case of alleged fraud that ensnared Hellyana, the Deputy Governor of the Bangka Belitung Islands, is relevant because it shows how an act that originated from a private legal relationship can be transformed into a criminal case when there are strong allegations of misleading actions that result in losses. Empirical findings at the investigation level show that there are investigators' claims regarding elements of

[5] R. Aditya, "Reinterpretation of Preliminary Evidence in the Determination of Suspects," Journal of Criminal Procedure Law, 2021, p. 45.
[6] M. Rahmanto, "The Clash of Civil and Criminal Norms in Indonesian Law Enforcement Practices," National Law Enforcement Journal, 2022, p. 112.
[7] D. Yuliana, "Delik Fraud and Abuse of Trust in the Perspective of the Criminal Code", Yogyakarta: Pustaka Baru Press, 2021, p. 89.
[8] Dudung Mulyadi, *Elements of Fraud in Article 378 of the Criminal Code Associated with Buying and Selling Land*, in Galuh Justisi Scientific Journal, Volume 5 Number 2, 2017. p. 209.

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fraudulent acts that allegedly meet the construction of Article 378 of the Criminal Code.[9] The presence of an element of active action oriented towards fraud is the central point that distinguishes this case from default.

In addition to the material aspect, the procedural aspect in determining the suspect is no less important. The Constitutional Court's decision has provided a strict limit that investigators are required to have at least two pieces of evidence that are valid and objectively accountable before designating someone as a suspect.[10] This standard not only serves as a control against potential abuse of authority, but also as an instrument to ensure that the handling of criminal cases is based on evidence and not on the subjective perception of the authorities. In the context of public officials, this standard is becoming increasingly important to maintain the integrity of the investigative process and prevent the emergence of the notion that the legal process is influenced by political factors or external pressures.

Based on these conditions, this research has academic and practical urgency. The academic urgency lies in the need to test the meticulousness of the application of the element of fraud in cases that can structurally overlap with civil law. The practical urgency lies in the need to evaluate the basis for the determination of suspects against public officials, so as to ensure that investigative steps are carried out in accordance with the principles of legality, prudence, and protection of the legal rights of every citizen. Thus, this research is expected to contribute to strengthening understanding of civil-criminal boundaries and improving the quality of investigations in Indonesia.

METHOD

This research uses a normative juridical method, which focuses on the analysis of positive legal norms, legal doctrines, and court decisions. This approach is used to assess the suitability of the process of determining suspects and the application of elements of fraud with the provisions of the Criminal Code and the Criminal Code. Data sources include primary legal materials (laws), secondary legal materials for journals, and tertiary legal materials in the form of legal dictionaries.[11] All legal materials are collected through literature studies and analyzed qualitatively using a deductive pattern, which is to assess the case from general norms to ensure whether the elements of fraud are met and the procedure for determining suspects is in accordance with the standards of criminal procedure law.[12]

[9] L. Permana, "Handling of Alleged Fraud by Public Officials: Empirical Analysis of Investigations," Indonesian Journal of Criminology, 2023, p. 77.
[10] S. Wibisono, "The Standard of Two Pieces of Evidence in the Determination of Suspects After the Constitutional Court's Decision," Journal of Constitution and Justice, 2020, p. 53.
[11] Wicaksana, Normative Legal Research Methods, (Yogyakarta: UII Press, 2022), p. 67.
[12] Yudi Krismen, "Deductive Approach in Normative Juridical Analysis," Journal of Legal Science, Vol. 7 No. 1, 2021, p. 89.

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RESULT & DISCUSSION

1. **Juridical Basis for Determination of Suspects in the Indonesian Criminal Law System**

The determination of a suspect is a legal action that gives formal status to a person in the investigation stage based on the fulfillment of at least two sufficient preliminary evidence as stipulated in the Criminal Code and reaffirmed by the Constitutional Court. Constitutional Court Decision No. 21/PUU-XII/2014 emphasizes that "sufficient preliminary evidence" must be relevant, objective, and juridically testable to show a person's involvement in an alleged criminal act.[13] This principle requires investigators to work within a strict and measurable legal framework, so that the act of determining suspects cannot be carried out based on subjective allegations, political pressure, or moral evaluation that is not based on evidence.

The validity of the determination of suspects must also follow the principles of legality, objectivity, proportionality, and accountability. These four principles form a minimum standard that prevents abuse of investigators' authority. Legality ensures that every action has a normative basis; objectivity requires investigators to be neutral; proportionality requires a balance between action and evidence; While accountability ensures that the process can be accounted for administratively and juridically.[14] In the context of determining the suspect Hellyana, investigators are obliged to ensure that the existence of initial evidence is not only quantitatively adequate, but also meets the quality of evidence that is able to show the existence of suspected involvement in fraudulent crimes.

2. **Normative Distinction between Civil Relations and Fraud Crimes**

The separation between default as a civil realm and fraud as a criminal realm is a fundamental issue in legal theory and judicial practice. Contemporary legal literature emphasizes that the difference between the two lies in the element of intention (mens rea) from the beginning of the act. Default is born from failure to fulfill contractual performance without fraudulent intent, while fraud implies a misleading intent manifested through false statements, deception, or concealment of facts to obtain unlawful advantages.[15]

In doctrinal studies, fraud offenses contain elements of moral error that are not found in default. Fraud is considered to attack the integrity of transactions and social trust, so it is included in the public sphere that the state must handle. Criminal law research over the past five years has shown that the main distinguishing indicator is the "pattern of action from the start," i.e. whether the perpetrator entered into a contractual relationship with the intention of fulfilling the obligation, or whether it was intended to deceive from the start.[16] If the investigative evidence leads to a second

[13] Constitutional Court Decision No. 21/PUU-XII/2014, p. 32
[14] Andi Hamzah, Indonesian Criminal Procedure Law (Jakarta: Sinar Grafika, 2021), p. 102.
[15] R. Wiyono, "Fraud and the Frontier of the Civil-Criminal Realm," Journal of Law and Justice, Vol. 9 No. 2, 2023, p. 214.
[16] Barda Nawawi Arief, Modern Criminal Theories (Semarang: Pustaka Magister, 2020), p. 77.

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pattern, then the case is normatively appropriate to be placed as a criminal act, not just a civil dispute.

3. **Elements of Fraud in the Framework of Article 378 of the Criminal Code**

About deception is contained in Book II Chapter XXV. The entire article in Chapter XXV is known as bedrog or fraudulent acts. The main form of cheating or fraudulent acts is Article 378 of the Criminal Code concerning Fraud. Based on the formula mentioned above, the Fraud Act has the main elements, namely:

a. Objective Elements:
    1. With the intention to benefit oneself or others unlawfully. In simple terms, the explanation of this element is that the closest destination of the perpetrator means that the perpetrator wants to get a profit. That advantage is the main goal of the perpetrator by going against the law, if the perpetrator still needs other actions, then the intention cannot be fulfilled. Thus, the intention is intended to benefit and against the law, so the perpetrator must know that the profit that is his goal must be against the law.
        1. By using one or more deceptive driving devices (false names, false dignity/false circumstances, deception and a network of lies). The meaning is that the nature of fraud as a criminal act is determined by the ways in which the perpetrator moves others to hand over goods (R. Soenarto Soerodibroto, 1992: 241). The driving tools used to move others are as follows:
            a) A Fake Name, in this case is a name that is different from the real name even though the difference seems to be small. On the other hand, if the fraudster uses another person's name that is the same as his own, then he can be blamed for a deception or a convoluted arrangement of lies.
            b) Deception, which is meant by deception, is an act that is done in such a way, that the act creates trust or confidence in the truth of something to others. If this trick is not a speech but an act or action.
            c) False dignity, the use of dignity or false state is when a person makes a statement that he is in a certain state, which gives rights to the person who is in that state.
            d) A series of lies, a few lies are considered not enough as a driving tool. This was emphasized by **Hoge Raad** in his judgment of March 8, 1926 (**Soenarto Soerodibrooto**, 1992: 245), that: "There is a series of lies if there is such a relationship between the various lies and one lie complements the other so that they reciprocally give rise to a false image as if it were a truth". So the series of lies must be told in an orderly manner, so that it is a story that can be accepted logically and correctly. Thus one word reinforces / justifies the words of another.

        2. Moving others to hand over something, or give a debt, or write off a debt. In the act of moving another person to hand over goods, it is implied that

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there is a causal relationship between the means of driving and the delivery of goods. This was emphasized by Hoge Raad in his judgment dated August 25, 1923 (Soenarto Soerodibroto, 1992: 242) that: "There must be a causal relationship between the effort used and the surrender intended from it. The surrender of an item that occurs as a result of the use of the means of mobilization is seen as insufficiently proven without describing the effect caused by the use of such devices creates a situation that is right to mislead a normal person, so that the person is deceived by it, the means of mobilization must cause an impulse in the soul of a person so that the person hands over an item.[17]

b. Subjective Elements:
   1) With the intention of benefiting oneself or others. The perpetrator's intention in committing a moving act must be aimed at benefiting himself or others, is in the form of an element of error in fraud.
   2) Against the law here is not solely interpreted as being prohibited by law or against formal law, but must be interpreted more broadly, namely as contrary to what the community wants, a reproach of the community.

Based on the opinion that has been stated above, a person can only be said to have committed an act of fraud as referred to in Article 378 of the Criminal Code, if the elements mentioned in Article 378 of the Criminal Code are met, then the perpetrator of the crime of fraud can be sentenced according to his actions.[18]

In normative analysis, the first element emphasizes the existence of an intention to gain unlawful profits. This element can be proven through conversation patterns, acts of phishing, or inconsistencies in the behavior of the perpetrator. The second element emphasizes concrete forms of deception, such as false promises, manipulation of information, or the use of positions to convince victims. Based on what was in the news, it was stated that based on the indictment read by the prosecutor Irdo, Nanto Rossi said that Hellyana ordered her loyal guests to check in at the hotel without making payment by contacting the hotel manager and promising to settle the bill. Then Hellyana also promised the hotel manager that she would pay off the bill after being inaugurated as the Deputy Governor of Bangka Belitung, but after the inauguration Hellyana still refused to pay on the grounds that the bill was too large.[19]

In a number of Supreme Court decisions, a series of lies do not have to be in the form of written statements; Behavior that leads the victim to a misunderstanding can also qualify as a ruse.[20]

The third and fourth elements function to assess the consequences of the perpetrator's actions. The handover of goods or the birth of an agreement due to

[17] *Op.Cit*, Dudung Mulyadi, p. 211.
[18] *Ibid*, pp. 212-214.
[19] https://www.tempo.co/hukum/wakil-gubernur-bangka-belitung-hellyana-didakwa-tipu-tagihan-hotel-rp-22-juta-2090469, accessed on December 5, 2025 at 13.00 WIB.
[20] Supreme Court Decision No. 1845 K/Pid/2021, p. 12

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misdirection shows that the victim acted not of legitimate free will, but out of manipulation. Losses do not have to be in the form of large material losses; Even a small loss is sufficient as long as it can be objectively proven. For a long time, this case occurred and the billing process was increasingly protracted between the hotel manager and Hellyana which ultimately resulted in the hotel management delegating the responsibility for the hotel bill to Nuraida Adelia Saragih as the hotel manager at that time by deducting Nuraida Adelia Saragih's salary every month and then dismissing Nuraida Adelia Saragih's brother from his job. Therefore, if the series of events in the Hellyana case shows a motive to deceive and gain profits through misrepresentation, then the main indicator to establish the case as fraud is met.

4. Juridical Assessment of the Determination of Hellyana Suspect

Within the framework of legal certainty, the determination of suspects must reflect compliance with the initial evidentiary standards. Investigators must show that Hellyana's actions must meet the elements of fraud, including intent, deception, and the consequences caused. Contemporary legal literature confirms that modern criminal law enforcement avoids a rigid dichotomy between civil and criminal if the elements of delinquency are substantively met.[21] Thus, Hellyana's status as Deputy Governor of Bangka Belitung does not eliminate the possibility of criminal responsibility, because criminal law works on the principle of equality before the law.

The determination of suspects must also be seen as a legal instrument to protect the public from abuse of power, abuse of office and actions that have the potential to harm the public. The placement of the case in the criminal realm does not mean the criminalization of contractual relationships, but rather a juridical response when the relationship is colored by manipulation that meets the elements of delicacy.

CONCLUSION

The determination of the suspect against Hellyana juridically must be understood through two main frameworks: (1) the fulfillment of the principle of determining suspects in accordance with the legal system in Indonesia and based on the Criminal Code, and (2) the existence of elements of the fraud offense under Article 378 of the Criminal Code. Normative assessments show that the determination of a suspect is valid if the investigator has at least two sufficient preliminary evidence and the evidence leads to an act that shows the existence of fraudulent intent in the first place. The distinction between default and fraud depends on the perpetrator when indications of mislead with malicious intent are found from the beginning, then the case is in the criminal realm. In the context of handling the Hellyana case, it shows that criminal law remains the main instrument to respond to actions that violate public trust in public officials that result in losses to victims. Thus, the determination of the suspect in this

[21] H. Prasetyo, "The Transformation of Law Enforcement in Civil Cases with Criminal Nuances," Journal of Contemporary Criminal Law, Vol. 5 No. 1, 2022, p. 89.

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case has a juridical basis that is in line with the principles of legal certainty, community protection, and the principle of equality before the law.

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