

A Review of the Principle *Geen Straf Zonder Schuld* in Criminal Liability for Fraud Through Mystical Ritual Modus

Ahda Muttaqin

Faculty of Law, Universitas Bangka Belitung, Bangka, 33172,
Bangka Belitung Islands Province, Indonesia

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Corresponding author:

Ahda Muttaqin

ahda.muttaqin@yahoo.co.id

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Faculty of Law
Universitas Bangka Belitung
Indonesia

Abstract

A criminal act refers not only to conduct prohibited by law but also to conduct punishable by criminal sanctions. The principle of criminal responsibility holds that no one shall be punished without fault (*geen straf zonder schuld*). Although not codified in written law, this principle applies as part of unwritten legal norms. In the current era of globalization and technological advancement, rational and modern thinking has not entirely replaced mystical beliefs within society. Many Indonesians, regardless of their level of education, still hold strong beliefs in mystical practices. In criminal law, all parties involved in a crime, including accomplices, may be held criminally liable. This study aims to formulate the elements of fraud as a criminal offense and to examine the application of the *geen straf zonder schuld* principle in cases of fraud committed through mystical ritual schemes. The method employed in this research is normative juridical, using both statutory and conceptual approaches. The core research questions addressed are: how is the delict of fraud through mystical rituals normatively formulated, and how does the *geen straf zonder schuld* principle apply in such cases? The study concludes that the normative formulation of fraud in this context lies in the deceptive acts or efforts used by perpetrators to persuade victims to believe in mystical or supernatural claims. The principle of *geen straf zonder schuld* underscores that criminal liability must be based on fault, and although not explicitly codified, it remains valid as part of Indonesia's unwritten legal doctrine.

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1. Introduction

Long before the advent of the world's major religions, belief in supernatural beings was already present in early human civilizations. Interpretations of such beings have varied widely depending on the specific belief systems of different communities (Shihab, 2010). In Indonesia, mystical knowledge and practices are deeply entrenched and widespread. Nearly every region has individuals regarded as *dukun* (shamans), spiritual practitioners, or persons believed to possess supernatural powers.

In criminal law, the fundamental principle of culpability is encapsulated in the Latin maxim *nullum crimen sine culpa*, or in its Dutch formulation, *geen straf zonder schuld*, which means "no punishment without fault." Although this principle is not explicitly codified in statutory law, it is widely recognized in unwritten legal doctrine. Fault, in this context, refers to a specific psychological condition in the perpetrator, which must be causally linked to the criminal act committed.

Despite the rapid advancement of globalization and technology, these developments have not necessarily transformed public consciousness toward rational or modernist ways of thinking. A significant portion of Indonesian society, regardless of education level, continues to place trust in mystical or occult practices (Shihab, 2010).

One illustrative case in Indonesia was the widely publicized dispute between Gus Samsudin, a self-proclaimed spiritual healer, and “Pesulap Merah” (The Red Magician), a stage magician who accused Samsudin of employing sleight-of-hand tricks under the guise of religious healing. This incident highlighted the existence of spiritual healing institutions or *pesantren* that operate as potential sites for fraudulent practices, raising important questions about their position as subjects of criminal liability. It also reflects broader implications for the development of criminal responsibility and penal frameworks in Indonesia.

The question of whether corporations or institutions can be held criminally liable remains a contentious issue. There is an ongoing debate between those who support the recognition of corporate criminal liability and those who oppose it (Muladi & Priyatno, 2012). At the heart of this debate lies a core legal question: under what legal construction can a corporate entity be deemed at fault and thus held criminally accountable under Indonesian law? This inquiry carries significant juridical implications, as it engages directly with the foundational principle of criminal law, that there can be no punishment without fault (*geen straf zonder schuld*).

Against this backdrop, the present study seeks to examine the normative formulation of fraud offenses committed through mystical ritual practices. It further aims to analyze the applicability of the *geen straf zonder schuld* principle in determining criminal responsibility for fraudulent acts committed under the guise of mysticism.

2. Research Methods

This study adopts a normative juridical method. It employs a statutory approach by analyzing relevant legal provisions, particularly those contained in the Indonesian Penal Code (KUHP), in relation to the legal issues under examination (Marzuki, 2007).

3. Results and Discussion

3.1. Examining the Principle of *Geen Straf Zonder Schuld* in the Criminal Liability for Fraud Committed Through Mystical Rituals

The principle of *Geen Straf Zonder Schuld*, “no punishment without fault”, is a fundamental doctrine in criminal law that underpins the imposition of criminal liability on an offender. This principle affirms that a person may only be punished if there is culpability attributable to their conduct.

Empirically, mystical rituals remain widely practiced and believed in, even in the context of modernity. Despite the rapid development of science and technology, mystical beliefs continue to shape the everyday lives of many individuals. It is not uncommon, for instance, to find people who rely on esoteric calculations to determine auspicious days for making important decisions, demonstrating how deeply embedded mystical worldviews remain in modern social life (Huda, 2015).

In cases of fraud committed through the use of mystical rituals, the imposition of criminal liability requires that all elements of the offense be fulfilled. It must be proven that the act was carried out with the intent to unlawfully benefit oneself or another party through deceit, manipulation, or trickery, acts that are explicitly condemned under Article 378 of the Indonesian Penal Code (KUHP).

Furthermore, the question of criminal responsibility must take into account the element of fault (*schuld*) as it relates to the mental state of the accused at the time of the offense. In criminal law, culpability may take the form of intent (*opzet*) or negligence (*culpa*), depending on the degree of awareness and volition involved in the commission of the act.

The application of the *Geen Straf Zonder Schuld* principle thus serves as a doctrinal framework for assessing whether fraudulent acts carried out under the guise of mystical rituals can justifiably

be subjected to criminal sanctions. It emphasizes the necessity of proving both the material and mental elements of the offense before criminal liability can be established.

3.2. Normative Formulation of Fraud Offenses Committed Through Mystical Ritual Practices

Fraud refers to a dishonest or false act or statement intended to deceive, manipulate, or obtain an unlawful advantage, resulting in harm or loss to another party. In criminal law, fraud is a punishable offense and must meet certain core elements to be considered a criminal act (*delict*). These elements are commonly divided into:

1) Subjective Element

This refers to the perpetrator's intent to deceive another person, typically formulated in statutory language as “with the intent to unlawfully benefit oneself or another party.”

2) Objective Elements

These include: (a) the existence of a subject (*barang siapa*); (b) the act of persuading another person to hand over property, extend credit, or cancel a debt; and (c) the means by which such persuasion occurs, namely, the use of a false name, a false position or identity, deceit, or a series of lies (*rangkaian kebohongan*).

Fraud may be committed through various methods, one of which involves mystical ritual practices, often found in the realm of spiritual healing or traditional mysticism. In such cases, deception does not involve coercion but rather manipulative tactics designed to influence the victim's judgment or perception, often leading them to act without full awareness or rational deliberation. Despite its mystical or spiritual form, this type of fraud still constitutes a criminal offense under the law.

In Indonesia, belief in mystical phenomena is deeply ingrained and socially accepted in many communities. The term “mystical” generally refers to individuals who are believed to communicate with supernatural forces or possess magical abilities. Such cultural acceptance often blurs the boundary between spiritual practices and deceptive conduct.

A prominent case illustrating this issue is the dispute between Gus Samsudin, a self-identified spiritual healer, and Marcel Radhival, widely known as "Pesulap Merah" (The Red Magician), who exposed alleged fraudulent practices disguised as supernatural healing. Radhival released a video alleging that Samsudin's methods involved sleight-of-hand techniques rather than genuine spiritual treatment. If such actions involve deceit or fabrication intended to mislead patients and obtain material gain, they may fall under Article 378 of the Indonesian Penal Code, which criminalizes fraud.

In circumstances where spiritual or alternative healing practices employ supernatural or magical claims not recognized by modern medicine, and where the practitioner seeks financial benefit, such acts may be subject to criminal liability under Article 378, provided that the essential elements of fraud are satisfied.

3.3. Analyzing the Principle of *Geen Straf Zonder Schuld* in the Criminal Liability for Fraud Committed Through Mystical Ritual Practices

The principle of *Geen Straf Zonder Schuld*, “no punishment without fault”, is a foundational doctrine in criminal law that underpins the assignment of criminal liability to individuals who commit unlawful acts. This principle affirms that punishment cannot be imposed in the absence of personal culpability.

Empirically, mystical rituals remain deeply embedded in modern Indonesian society. Despite the pressures of modernization and the advancement of scientific knowledge, mystical beliefs and practices continue to persist and shape individual behavior and decision-making. The influence of mysticism is far from obsolete in contemporary life.

In criminal law, liability is premised on a specific psychological condition within the perpetrator at the time of the offense and on the existence of a causal relationship between that

mental state and the unlawful act. Such a relationship must be sufficiently established for the offender to be deemed blameworthy (Atmasasmita, 2017). The same standard applies in cases involving fraud committed through mystical ritual practices.

The principle of *Geen Straf Zonder Schuld* must be fulfilled for a legal subject to be punished. As Sudarto has emphasized, it is not sufficient that an individual merely commits an act that is unlawful or contrary to legal norms. Even if the act meets all the formal elements of a criminal offense as defined by statute, this alone does not justify the imposition of punishment (Sudarto, 1983). A further requirement must be satisfied: the offender must be shown to possess culpability or subjective guilt (*schuld*) in connection with the act.

The principle of "no punishment without fault" implies that a person who has committed an act in violation of criminal law cannot be punished if there is no fault attributable to them in the commission of that act. Culpability thus becomes a necessary condition for imposing criminal sanctions (Sudarto, 1983).

In cases of fraud perpetrated through mystical rituals, criminal liability can only be established if all the elements of the offense are present and if it can be proven that the act was deliberately committed with the intent of unlawfully benefiting oneself or another party through deceit or manipulation. Such conduct falls under the scope of Article 378 of the Indonesian Penal Code, which criminalizes fraud and condemns acts of deception for personal gain.

4. Conclusion

This study concludes that the normative formulation of fraud offenses lies in the methods and strategies employed by the perpetrator to induce others to believe in certain claims, often involving mystical or supernatural elements, with the intention of deception. The application of the *geen straf zonder schuld* principle to criminal liability in such cases demonstrates that although this principle is not codified in written law, it remains a recognized and operative norm within unwritten legal doctrine.

It is therefore essential to exercise careful judgment in assessing actions that may constitute violations of criminal law, particularly those that exploit public trust and create social harm. At the same time, members of the public must also develop greater critical awareness in evaluating mystical claims and practices, so as not to become victims of fraudulent conduct disguised in the form of supernatural belief.

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