

Qualifications in the Decision to Release from All Charges (*Onslag Van Rechtsvervolging*) in the Online Social Gathering Criminal Case Study Decision No. 3562/PID.B/2021/PN MDN

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ABSTRACT

The problems in this study examined the case, namely the case of a loan guarantor who defaults, but is prosecuted and criminally decided in the court of First Instance, and the decision to release from all lawsuits in the case of Decision No. 3562 / PID.B / 2021 / PT.MDN. This study uses the type of normative research with case approach and legislation approach. The type of research used in this study is descriptive research. The problem approach used in this study is a legal case study. Source data obtained is secondary data. The results of this study that if in a case of borrowing and borrowing, the reference point in civil law and criminal law is on the side of the agreement that binds both parties. In this study the act of the defendant who borrowed a sum of money to witness Wahyuni as the owner of the arisan qualification requirement is the act of the defendant who borrowed, but in general it is a legal act on debt and also under the provisions of Article 19 paragraph (2) of Law No. 39 of 1999 on human rights, no one in a court decision may be sentenced to imprisonment or confinement on the grounds of failure to fulfill obligations under the indebtedness agreement.

Keywords: *Legal Certainty, Lending And Borrowing, The Justice System*

INTRODUCTION

The state of Indonesia is a state of law, in accordance with Article 1 Paragraph (3) of the 1945 Constitution. According to Article 1 Paragraph 3 of the 1945 Constitution, a legal state can be interpreted as a state if the actions of the government and its people are based on the law, to prevent arbitrary actions on the part of the government or authorities and the actions of the people carried out according to their own will. The statement of the state of Indonesia is a state of law can be seen in the general explanation of the 1945 Constitution, item I on the system of government, which states that: Indonesia is a state based on law (*rechtstaat*) and not based on mere power (*machtstaat*). The state of law is a state that runs its government based on the rule of law (rule of law) and aims to maintain legal order. The state of law is also defined as a state that stands on the law that guarantees justice to its citizens. Justice is a condition for the achievement of happiness of life for its citizens, and as the basis of justice it is necessary to teach morality to every human being so that he becomes a good citizen. Similarly, the actual legal regulations only exist if the legal regulations reflect justice for the social life between citizens.

Law enforcement in Indonesia today is interpreted as a process, and efforts to make legal arrangements that lead to the settlement of cases and law enforcement are always carried out democratically, openly, and with attention to human rights. This becomes very important, given the many parties involved in the enforcement process, ranging from the community to government agencies. Law enforcement is aimed at improving order and legal certainty in society. This is done, among others, by putting in order the functions, duties and authorities of the institutions in charge of enforcing the law according to the proportion of their respective scope, and based on a good cooperation system and supporting the goals to be achieved. Law enforcement in Indonesia consists of several stand-alone institutions, namely the police, prosecutors, and Justice. In addition to being regulated in Law No. 8 of 1981 concerning the Code of Criminal Procedure, the duties and authorities of each country have also been regulated by laws and regulations that specifically regulate these institutions.

In law, there are three things that must be contained in the law as an identity value and one of them is legal certainty. Legal certainty is a protection for justice seekers against arbitrary actions which means that someone will be able to get something expected in certain circumstances. People expect legal certainty because with legal certainty the community will be more orderly. Legal certainty is basically proposed based on the political objectives of a particular group and does not answer the issue of legal certainty that actually occurs in Indonesia between positive law and customary law of Indonesian society. The Criminal Code as a source of criminal law has contained the principle of legality / legal certainty, Namely in Article 1 Paragraph (1): "No act can be punished except for the power of criminal rules in existing legislation, before the act is committed".

Criminal law is a part of the overall law in force in a country that establishes the basics and rules to determine which acts should not

be carried out that are prohibited accompanied by threats or sanctions in the form of certain crimes for those who violate them, determine when and in what cases to those who have violated the prohibitions can be imposed or sentenced as they have been threatened and determine by The function of criminal law is to regulate community life or maintain order in society.

According to Wirjono Pradjodikoro, the purpose of criminal law is to scare people not to commit crimes, either by scaring people (genele preventive) or by scaring certain people who have committed crimes so that in the future they do not commit crimes again (special preventive) and to educate or improve people who have indicated that they like to commit crimes in order to become good people so that they benefit society.

In criminal law there are also written rules that must be obeyed which are legality, even Article 1 of the Criminal Code (Criminal Code) states that there is no crime if there are no rules that govern. This requires the existence of a legal certainty, as well as the type of punishment that will be applied there must be legal certainty. According to Article 10 of the Criminal Code, the types of criminal penalties, namely the main punishment consists of the death penalty, imprisonment, imprisonment and fines and additional penalties consist of revocation of certain rights, confiscation of certain goods and the announcement of a judge's decision.

The state of Indonesia as a state of law has the task of running a justice system that is honest (based on conscience and belief), fair (without taking sides in certain groups or groups / justifying the right to blame the wrong without any intervention from any party) and clean of corruption(acts that abuse the competency owned), Collusion (a form of cooperation between government officials, for family or close relatives of officials, thus closing the opportunity for others).

The judicial system in Indonesia is a whole of court cases in a country that are different from each other but are interrelated or

related so that a mechanism is formed and can be applied consistently in the judicial system in Indonesia. Justice is a process carried out in courts related to the task of examining, deciding and adjudicating cases. While the court is an official body or institution that carries out the judicial system in the form of examining, adjudicating, and deciding cases.

The criminal justice system as a system is essentially an open system. Open system is a system that in the movement to achieve the goals of both short-term goals (resocialization), medium-term (crime prevention) and long-term (social welfare) is strongly influenced by the community environment and areas of human life, then the criminal justice system in motion will always experience the interface (interaction, interconnection, interdependence) with its environment in the ranks, society, economy, politics, education, as well as subsystems of the criminal justice system itself (subsystem of criminal justice system). The criminal justice system is a crime control system consisting of the police, prosecutors, courts and correctional institutions of convicts. The purpose of the criminal justice system is to prevent people from becoming objects / victims, solve cases of crimes that occur so that people are satisfied that justice has been established and the guilty are punished and try so that those who have committed crimes do not repeat their crimes.

The power of a judge to make a decision is called judicial power. Judicial power is defined as the authority to establish the legal value of people's actions based on legal rules and embed legal consequences in these actions. Judicial power is the power of an independent state to administer justice in order to enforce law and justice based on Pancasila and the Constitution of the Republic of Indonesia in 1945, for the implementation of the rule of Law of the Republic of Indonesia. The freedom of judges from the intervention of any party in deciding cases is known as the expression "independent judicial power". Judicial power is an independent power to

administer justice in Article 24 paragraph 1 of the 1945 Constitution.

The judge's decision is the subject of a trial process, because the judge's decision can determine the fate of the defendant and the severity of a sentence imposed on the defendant. In the decision of the judge contains the judge's assessment of the criminal act prosecuted by the public prosecutor if in the proof of what the public prosecutor is accused of proved, the judge will judge that there has been a criminal act. According to *Memorie Van Toelichting* "the element if between several acts, although each constitutes a crime or transgression is connected in such a way that it must be viewed as one continuous act". As with the facts revealed in the trial based on the testimony of witnesses and the defendant's testimony and linked to evidence, it is known that the actions of the defendant who borrowed the Arisan Duos to Wahyuni's witnesses were carried out several times each on April 4, 2021 with investors on behalf of Yudi and an amount of Rp. 25,000,000, then on April 20, 2021 with investors in the name of Freddy aka Franky amounting to Rp. 25,000,000, and on April 25 with an Investor on behalf of Jimmy amounting to Rp. 25,000,000 and on May 8, 2021 with investors on behalf of Siska amounting to Rp. 15.000.000. This case stems from the fact that the process of borrowing and borrowing money by the defendant to several investors through Wahyuni as the Owner of Arisan Duos, all of which amounted to Rp. 90,000,000, with the promise that the defendant would pay the debt in installments several times in exchange for an average amount of interest of 20%/60.

That of the legal facts that occurred between the defendant and the witness Wahyuni according to the Assembly in general is a legal event of accounts payable between the defendant and the witness Wahyuni subject to civil law and not subject to the provisions of criminal law, so that if the witness Wahyuni feel aggrieved by the defendant for not paying the debt (installments) can

file a lawsuit to court. The opinion of the Assembly is based on the provisions of Article 19 paragraph (2) of Law No. 39 of 1999 on Human Rights which reads: "No person shall be sentenced to prison or This research is a normative legal research, or known as doctrinal legal research is legal research conducted by studying and researching primary legal materials and secondary. Legal material collection techniques in this writing are literature study (study of documents) is the collection of legal material by means of written legal material analysis techniques that the author use in this study is the technique of analysis of eduction (deduction), namely draw conclusions from the general nature of the problem concrete facing.

ANALYSIS AND DISCUSSION

Punishment is defined as a sanction that makes suffering or sorrow deliberately inflicted on someone. Criminal sanctions are one of the most effective means used to combat crime, but crime is not the only means, so when necessary, it is used in combination with social efforts. Therefore, it is necessary to develop the principle of *ultimum remedium* instead of *primum remedium*.

According to Sudarto that the nature of criminal sanctions contain elements or characteristics as follows:

- a. Punishment is essentially an imposition of suffering or mourning or other unpleasant consequences;
- b. Criminal given intentionally by a person or entity that has power (by authority);
- c. Criminal charged to a person who has committed a criminal offense under the law;

The elements of sanctions and crimes as described above can be formulated that sanctions in criminal law are reactions given deliberately by bodies that have authority or power in the form of the imposition of suffering or mourning or other unpleasant consequences to someone who has committed a violation of the rule of law or a criminal act according to the law. Legal

confinement on the grounds of inability to fulfill an obligation in a debt and receivable agreement".

METHODS

Sanctions in the form of a criminal who is threatened with the offender are the characteristics of the difference in criminal law with other types of law. Soejono explained that punishment is a sanction for violation of a legal provision. criminal More clarify on the sanctions imposed against violations of criminal law.

A judicial process ends with a final verdict or verdict which means the final result of the examination of the case at a court hearing. The court decision is the statement of the judge who spoke during the open court hearing. The Criminal Procedure Code regulates 3 (three) types of criminal judge decisions as contained in Article 191 paragraph (1), (2) and 193 paragraph (1) of the Criminal Procedure Code, namely loose decisions, loose decisions from all lawsuits, and conviction decisions.

The decision to release from all lawsuits is that all lawsuits for actions committed by the defendant in the indictment of the prosecutor / public prosecutor have been proven legally and convincingly according to law, but the defendant cannot be sentenced to a criminal offense, because the act is not a criminal offense, for example, in the field of civil law, customary law or commercial law.

As contained in Article 191 Paragraph (2) of the Criminal Procedure Code which regulates the decision to release from all lawsuits explains that if the court believes the defendant's actions can be proven but are not classified as a criminal offense, the judge must give a decision to release from all lawsuits.

Judges in trying a case, especially those who embrace the view of progressivity and responsiveness of the law, will dare to make a kind of antithesis to the sound and enforceability of the rules in the law. A judge is a state judicial official who is

authorized by law to judge a case before him.

The verdict handed down by the judge on a case that is examined and tried is the result of an analytical process of legal facts that are linked to the rules of law and equipped with legal arguments. Legal decision is the mouth of the three stages of the judge's work in deciding the case, namely:

- a. The constant stage is to see, acknowledge or confirm that the proposed event has occurred. The judge confirms whether or not the proposed event is true.
- b. The Qualifying Stage is to assess the events that have been considered to have actually occurred, including what or which legal relationships, in other words: to find the law for the events that have been confirmed. The judge qualifies including the legal relationship of the Committed Act. In this case, it is qualified as an unlawful act.
- c. The constatory stage is a very important stage for the judge in finding legal facts against the events revealed by the plaintiff. The judge must be able to find out the truth. If the judge is wrong in finding legal facts or legal events, it will also be wrong in finding the law or qualifying.

The three stages are basically taken in order to realize the objectives of the law, namely:

- a. Justice;
- b. Certainty;
- c. Expediency;

According to the provisions of Article 19 paragraph (2) of Law No. 39 of 1999 on Human Rights which reads: "No person on a court decision may be sentenced to imprisonment or confinement based on the reason of inability to fulfill an obligation in a debt agreement". On the provisions of this article, it is clear that a person who is unable to pay debts cannot be imprisoned. Independent decision of all lawsuits can not be done appeal and judicial review, but can be done Cassation based on Article 244 of the code of Criminal Procedure.

As for the other reasons the defendant is disconnected from all lawsuits as follows:

- a. Among the criminal laws that are prosecuted against the accused do not include criminal acts; for example, acts that are prosecuted as criminal acts but it is found that the act is not classified as criminal law but classified as civil law.
- b. The existence of special circumstances that make the accused unpunishable is contained in articles 44, 48, 49, 50, 51 of the Criminal Code. There are seven special circumstances that make the defendant can not be convicted as prescribed by law Chapter III of the Criminal Procedure Code:
 - As contained in Article 44 paragraph (1) explains the inability to be responsible for the criminal maker (ontoerekeningsvatbaarheid);
 - As contained in Article 48 describes danya force (overmacht);
 - As contained in Article 49 Paragraph (1) describes the forced defense (noodweer);
 - As contained in Article 49 Paragraph (2) describes the existence of forced defense that exceeds the limits (noodwerexes);
 - As contained in Article 50 explains the reason for carrying out the orders of the law;
 - As contained in Article 51 Paragraph (1) explains for carrying out orders legitimate office;
 - As contained in Article 51 Paragraph (2) explains the reason for carrying out an invalid position order in good faith;

Based on Decision number: 3652 / PID.B/2021 / PN MDN, the judge's legal considerations against fraud in online social gatherings are as follows:

- a. The legal facts that occur between the defendant and the witness according to the assembly is a legal event of debts and receivables that are subject to civil law and are not subject to criminal law provisions, so that if the witness feels aggrieved by the defendant for not

paying his debt (installment), he can file a lawsuit in court.

- b. Based on the provisions of Article 19 paragraph (2) of Law No. 39 of 1999 on Human Rights which reads: "No person on a court decision may be sentenced to prison or confinement based on the reason of inability to fulfill an obligation in a debt and receivable agreement."
- c. Based on the reasons mentioned above, according to the Assembly of the defendant's actions have been proven but the act was not a crime thus the defendant must be released from all charges (onslaught van alle rechtsvervolging)
- d. In the opinion of the tribunal since the defendant was released from all lawsuits, the defendant should be ordered to be released from custody. The defendant is released from all charges, the defendant must be restored in ability, position and must and dignity.

CONCLUSIONS

Based On Decision No. 3562/Pid / PN Mdn, the judge's legal consideration of fraud in online social gathering is from the facts revealed in accordance with the testimony of witnesses and the defendant's testimony proven by evidence, it is known that the defendant borrowed, but in general it is a legal event of debts and also under the provisions of Article 19 paragraph (2) of Law Number 39 of 1999, no person shall be sentenced by a court decision to imprisonment or confinement on the grounds of inability to fulfill an obligation under the indebtedness agreement. So that the application of sanctions to perpetrators of crimes must be done more optimally, integrated and directed which is not only in the form of law enforcement in the theoretical basis based on legislation, but must be based on facts and evidence disclosed, so as to create a fair and not arbitrary legal provisions.

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