

**ENFORCEMENT OF CRIMINAL LAW AGAINST FOREIGNERS IN THE CRIME
OF FRAUD (A Study of the Application of the Territorial & Fault Principles in
Decision No. 161/Pid.B/2019/PN.Mak)**

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ABSTRACT

Criminal law enforcement against foreigners is an important part of international criminal law because Indonesia is a country where foreigners can visit, live and work. Law enforcement has the aim of protecting the interests of the state and its citizens and creating order and security in the country. This research focuses on the application of the territorial principle in Decision No.161/Pid.B/2019/PN.Mak and the application of the principle of guilt in the verdict. The method in this research uses normative juridical, in which in this research the author will use Decision Number 161/Pid.B/2019/PN. The results showed that in the case of fraud at *Toko Satu Tujuh*, the defendant was guilty of intentionally committing fraud with a common plan so that he was sentenced to imprisonment as a consequence of the criminal act he committed.

Keywords: Criminal Law, Fraud, Foreigners

INTRODUCTION

Indonesia, in accordance with the Explanation of Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, is expressly declared as a state of law with the phrase that “the Republic of Indonesia is based on law”. One of the main characteristics of a state of law is its tendency to evaluate actions taken by society based on laws and regulations. Discussions around law are always related to the issue of law enforcement in a broad context, which includes efforts to realize justice. If narrowed down, this discussion will lead to the role of law enforcement officials, namely those who are directly involved in carrying out law enforcement.

Over the years, there have been changes in the types of crimes and the way they are committed. These acts are born out of a combination of three factors: the opportunity for the

perpetrator and a suitable target, as well as the absence of adequate surveillance to prevent attempted crimes. Home burglaries, mass car thefts, armed robberies, pickpocketing, and rape are examples of such crimes. Other crimes may involve specific targets, such as revenge killings or inter-group revenge offenses (D'Orsogna dan Perc, 2015). As a criminal offense, fraud is a form of action that consists of a series of lies for the benefit of the perpetrator, which results in the person who is lied to being harmed. This loss is related to the person who has given or handed over something to the perpetrator of fraud. One of the goals of the perpetrators of criminal acts is to obtain objects or money as a result of the crime they want to commit (Pangestu dan Ikhsan, 2019).

Criminal law enforcement against foreigners is an important part of international criminal law because Indonesia is a country where foreigners can visit, live and work. With the opening of doors for foreigners, there are concerns about the increase in crimes committed by foreigners in Indonesia. The purpose of law enforcement is to protect the interests of the state and its citizens and create order and security within the state.

Applying the principle of guilt as the basis of criminal liability in our country's criminal liability system, especially Indonesia. In the process of revamping the criminal liability system, there is a tendency in criminal law that only recognizes the person as the subject and guilt as the principle of responsibility. The principle of guilt states that a person can only be punished if his guilt in committing a criminal offense has been proven legally and convincingly.

There are strong philosophical reasons to enforce the Alien Crimes Act. This is based on the protection and enforcement of human rights in Indonesia, as in Law No. 39/1999 on Human Rights and Law No. 26/2000 on Human Rights Courts also states the principle that all people, both citizens and foreigners, have the same right to be protected from crime. This principle is based on the values of justice and equality that should be upheld in society. In addition to philosophical reasons, there are empirical reasons for the enactment of the Foreigners Criminal Law. This is based on the fact that crime knows no boundaries. Crimes can be committed by anyone, including foreigners. There are also legal reasons to enforce criminal law against foreigners. This is based on international law, which recognizes the right of a state to prosecute crimes committed on its territory, including foreign offenders. (Rusidana dan Ramdlany, 2022)

The territorial principle is a criminal law principle that states that a state has the right

to try people guilty of crimes committed within its territory. In some cases, the application of the area and fault principles can be challenged. In the event that a crime is committed by a foreigner outside the territory of Indonesia, but the proceeds of the crime are used in the territory of Indonesia. For example, in decision No. 161/Pid.B/2019/PN.Mak, the defendant was legally charged with the crime of trafficking in persons, because he was proven to have committed the crime of trafficking in persons by smuggling and trafficking human victims (Trafficking), in other words, foreigners stealing money when buying drinks from local shops in Indonesia (Ahyar dan Muzir 2022).

From the explanation above, it can be concluded that the philosophical reasons, empirical reasons, and juridical reasons for criminal law enforcement against foreign nationals are to realize justice and legal certainty, prevent criminal acts, and fulfill the applicable legal provisions. Research conducted by Laisina entitled “Law Enforcement Against Foreign Citizens who Violate Immigration Permits in the Territory of Indonesia”. This research focuses on immigration control arrangements for foreigners and sanctions for violations of immigration permits. (Pratiwi, 2021) This study concludes that the regulation of supervision of foreign nationals in the territory of Indonesia has a relationship with aspects of state administrative law related to the exercise of executive power in it. The similarity with this research is that it discusses the criminal acts of foreign nationals, but the research to be conducted focuses more on the criminal acts of foreign nationals who commit fraud.

Based on the background described above, the problem is the application of the territorial principle in Decision No.161/Pid.B/2019/PN.Mak and the application of the principle of error in Decision No.161/Pid.B/2019/PN.Mak.

RESEARCH METHOD

This research uses normative legal research. Normative legal research is research conducted to collect and analyze secondary data. The method in this research uses normative juridical, which in this study the author will use Decision Number 161/Pid.B/2019/PN. In normative legal research, secondary data sources are usually only used, namely books, journals, laws and regulations, court decisions, legal theories and opinions of leading legal experts. Judging from its nature, this research includes descriptive research, analyzing this research using qualitative methods. The main data in this research is secondary data. (Sugiono, 2015)

RESULTS AND DISCUSSION

Criminal Law Enforcement of Foreigner Fraud (Application of Territorial & Error Principles in Decision No. 161/Pid.B/2019/PN.Mak)

In simple terms, the law is a law that regulates acts prohibited by law and criminal sanctions that can be imposed on the perpetrator. In general, criminal law can be divided into 2 (two) parts, namely material criminal law and formal criminal law. Material criminal law is as long as the provisions regarding acts that must not be violated and accompanied by criminal threats for anyone who does so. Meanwhile, in formal criminal law to determine what cases that violate the prohibition can be subject to criminal sanctions by the way criminal sanctions are imposed. The purpose of criminal law is to protect individual interests or human rights of the community. The purpose of Indonesian criminal law must be in line with the philosophy of Pancasila, which is able to ensure equal distribution of benefits for all citizens. (Suryanto, 2019).

Crime or in Dutch comes from the word “*straf*”, which means punishment. In other words, a state deliberately commits a crime against a person or several people as a legal result of its actions caused to violate the prohibition of criminal law. The prohibition in criminal law is referred to as “*strafbaar feit*”. A person who commits a criminal offense can be sentenced if he is legally proven guilty and violates the law, but if a person is not proven guilty and his actions do not violate the law, he cannot be punished. To use criminal law, there are certain conditions that must be met. Certain conditions refer to the existence of an act, which is against the law and there is no justification. (Pratiwi, 2021)

In Decision Number 161/Pid.B/2019/PN. Makale The defendants Behzadhossein Bin Mohammadzaer and Rahim Bin Fathi on Sunday, July 21, 2019 at approximately 12:30 WITA, at *Toko Satu Tujuh* owned by Murni at Jalan Nusantara No. 72 Bombongan Village, Makale District, Tana Toraja Regency “who committed, who ordered to commit and who participated in the crime of fraud” with the following chronology:

When the defendants came together to the one-seven shop owned by Murni, the defendants had divided the tasks where Defendant 1 went to the cashier’s desk which was guarded by Murni. Whereas Defendant 2 pretended to distract the attention of 2 (two) store employees.

Because Defendant 1 had entered the cashier's desk which was being monitored by Murni. Defendant 1 handed over Rp. 100,000, - to pay for 2 (two) *Buavita* drinks and 2 (two) toothbrushes with a total price of IDR 20,000,00 and Murni also returned the remaining money to Defendant 1, but Defendant 1 did not want to accept the return money, then Defendant 1 pointed to the money in the cashier's desk drawer while speaking to Murni using language that was not easy to understand so that Murni was confused and unconsciously took 1 (one) bundle of money from the drawer amounting to IDR 2,000,000.00. After that Defendant 1 took the money from Murni's hand then divided it into 2 (two) and returned half of the money to Murni. Then, Murni returned to take 1 (one) bundle of money from the drawer amounting to IDR 8,000,000,00 and Defendant 1 took the money from Murni's hand amounting to IDR 2,000,000, - after which Defendant 1 returned the remaining money to the drawer. After Defendant 1 managed to take the money Defendant 1 also took Defendant 2 to leave the place. Murni handed over money to Defendant 1 because Defendant 1 had succeeded in multiplying the attention of Murni by paying the price of the goods taken and then Defendant 1 spoke using a language that Murni did not understand, so that in the actions of Defendant 1 and Defendant 2 caused a loss to Murni in the amount of IDR 12,000,000,00.

In Decision Number 161/Pid.B/2019/PN.Mak, the judge applied the territorial principle in sentencing a foreign defendant. It was proven that the defendant committed a drug crime in Indonesian territory. In addition to the territorial principle, there is also the principle of guilt, which is the principle of criminal law according to which a person can only be punished if proven guilty. The application of the principle in Decision No. 161/Pid.B/2019/PN.Mak states that criminal law can be applied to foreigners in accordance with the principles of criminal law applicable in Indonesia. (Santosa, 2022)

The territorial principle of the provisions of the Criminal Code applies to all criminal cases occurring in areas included in the territory of the Unitary State of the Republic of Indonesia. The territorial principle focuses more on the occurrence of criminals in the territory of a country, both citizens and foreigners, while the place of the crime does not matter but the person who commits the act does. (Efitradewi, 2020)

The principle of fault is a balance in relation to the principle of legality stipulated in Article 1 Paragraph 1, which means that a person can only be convicted if he has objectively committed a criminal offense and subjectively there is an element of fault on the part of the

perpetrator. Error is divided into two forms, namely intent (*dollus*) and negligence (*culpa*). There are two other words related to intentionality, namely intention and the use of forward planning. In Decision Number 161/Pid.B/2019/Pn.Mak. The defendant had deliberately committed the crime of fraud because previously the defendant had planned with his friend. From the actions of the defendant, the Panel of Judges has considered the decision in accordance with Article 378 jo Article 55 Paragraph 1 to 1 of the Criminal Code which states that the defendant is legally and convincingly guilty of committing the crime of fraud. The panel of judges sentenced defendant 1 and defendant 2 to 2 months in detention and stipulated that the period of arrest and detention served by the defendant be fully deducted from the sentence imposed.

CONCLUSION

In a particular criminal case, as explained in Decision Number 161/Pid.B/2019/PN. Makale, there is an application of the territorial principle and the principle of guilt. The territorial principle emphasizes that criminal law applies to criminal acts that occur in the territory of a country, whether committed by citizens or foreigners. Meanwhile, the principle of guilt considers the element of guilt of the perpetrator in committing a criminal offense. Ultimately, the court decision in the case found the defendants guilty of committing the crime of fraud and sentenced them to imprisonment. This shows that criminal law is applied to uphold justice and ensure the security and interests of society.

In a case involving the crime of fraud at Toko Satu Tujuh, the defendant was found guilty of intentionally committing fraud with a common plan. The panel of judges sentenced the defendant to 2 months in detention pursuant to Article 378 of the Indonesian Penal Code. Indonesian criminal law is based on the principles of territoriality and guilt, which regulate the punishment for violations of the law within the territory of Indonesia and the existence of guilt of the perpetrator. In this case, the defendant was found guilty and sentenced to imprisonment as a consequence of the criminal offense he committed.

SUGGESTION

Based on this research, it appears that Indonesian criminal law regulates the sanctioning of violations of the law in the territory of Indonesia by considering the principles of territoriality

and guilt. In the case of fraud at *Toko Satu Tujuh*, the defendant was legally proven guilty of intentionally committing fraud with a common plan. The panel of judges imposed a prison sentence of 2 months based on Article 378 of the Criminal Code, as a consequence of the criminal act committed.

To improve the effectiveness of criminal law enforcement against foreign nationals in similar cases, several suggestions are needed. First, there is a need to increase cooperation between countries in the exchange of information and evidence to facilitate the cross-border law enforcement process. Second, there needs to be an effort to improve the understanding of Indonesian criminal law for foreign nationals through legal counseling and socialization. In addition, there is a need for a firmer policy regarding criminal sanctions for perpetrators of criminal acts involving foreign nationals, while still taking into account the principles of human rights. Therefore, criminal law enforcement can be more effective and provide better protection for individuals and society as a whole, in line with the philosophy of Pancasila.

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