

## EXPLORING THE CRIMINAL IMPLICATIONS OF USING BLANK BILYET GIROS IN CONTRACT BREACHES IN INDONESIA

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### ABSTRACT

This article examines the criminal aspect of using blank *bilyet giro* (BG) as a payment method in breach of contract cases in Indonesia. It argues that such a practice could potentially constitute fraud, necessitating its differentiation from a mere contract breach. Utilising a doctrinal approach, underpinned by both statutory and conceptual analysis, it formulates a legal rationale for constructing a criminal case predicated on a contract breach involving a blank BG. Furthermore, it deliberates on the ramifications of this issue for business law and law enforcement practices. The primary objective of this article is to furnish pragmatic guidance for legal practitioners such as lawyers and investigators, while concurrently stimulating scholarly discourse.

**Keyword:** fraud, breach of contract, default, bilyet giro, Indonesia

### INTRODUCTION

Business collaborations has the potential to be a powerful engine for economic growth, creating opportunities for mutual benefit. These collaborations are often formalised through contracts, binding agreements that establish a

contractual relationship between parties. The urgency of contractual arrangements is to ensure that the exchange of interests (rights and obligations) takes place in a proportional, fair and mutually beneficial manner (Hernoko, 2009). While contractual relationships are primarily governed by civil law, they can sometimes intersect with criminal law. This paper posits that using blank *Bilyet Giro* (BG) in contract violations could equate to fraud, distinct from contract breach.

In fulfilling their contractual obligations, parties often establish payment methods. One of them is to facilitate the payment system in the form of demand deposits by issuing various securities, such as BG which is a popular choice because of its flexibility, practicality and safety in cross-payments (Pasaribu, 2022). Defined by the Bank Indonesia Regulation (*Peraturan Bank Indonesia*, PBI) Number 18/41/PBI/2016 on *Bilyet Giro* (PBI on BG) as a warrant from the withdrawer to the withdrawn bank to transfer to the first account, it is unfortunately susceptible to misuse as a tool of deception.

One of the most common violations in contractual relationships is default or breach of contract. This occurs when a party fails to perform as agreed (Simanjuntak, 2009). There have been several reported cases of contract breaches involving blank BGs as payment methods, causing harm to the counterpart, which are going to be explored further later.

The consequences of a contract breach can span both private and public law domains, including criminal law. Despite their distinct nature, law enforcement officers struggle to differentiate between fraud (as defined in Article 378 of the Criminal Code) and a breach of contract in business relationships.

In any contractual relationship, there is always a risk of falling victim to fraud. Data from the Republic of Indonesia National Police's Public Relations Division reveals that between January and November 2020, there were 12,278 reported cases of fraud. These included 27 Model A reports (filed by preliminary investigator or *penyelidik*, who discovered fraudulent events) and 12,251 Model B reports (filed by victims).

**Table 1. Summary of Fraud Cases Reported in 2020**

Working Unit	Report		Total
	Model A	Model B	
Police Criminal Investigation Unit	3	46	49
Aceh Regional Police	1	463	464
North Sumatra Regional Police	1	1.470	1.471
West Sumatera Regional Police	0	141	141
Riau Regional Police	0	366	366
Riau Islands Regional Police	0	109	109
Jambi Regional Police	0	163	163
South Sumatra Regional Police	0	588	588
Bengkulu Regional Police	0	119	119
Bangka Belitung Islands Regional Police	0	30	30
Lampung Regional Police	0	452	452
Banten Regional Police	0	334	334
Metro Jaya Regional Police	10	2.360	2.370
West Java Regional Police	4	1.274	1.278
Central Java Regional Police	2	371	373
East Java Regional Police	1	1.153	1.154
Yogyakarta Regional Police	1	629	630
Bali Regional Police	0	102	102
West Nusa Tenggara Regional Police	2	170	172
East Nusa Tenggara Regional Police	0	108	108
West Kalimantan Regional Police	0	91	91
North Kalimantan Regional Police	0	15	15
Central Kalimantan Regional Police	0	34	34
South Kalimantan Regional Police	0	146	146
East Kalimantan Regional Police	0	33	33

South Sulawesi Regional Police	1	714	715
West Sulawesi Regional Police	0	119	119
North Sulawesi Regional Police	0	192	192
Central Sulawesi Regional Police	0	125	125
Southeast Sulawesi Regional Police	0	71	71
Gorontalo Regional Police	0	109	109
Maluku Regional Police	1	53	54
North Maluku Regional Police	0	26	26
Papua Regional Police	0	29	29
West Papua Regional Police	0	46	46
<b>Total</b>	<b>27</b>	<b>12.251</b>	<b>12.278</b>

Source: Public Relations Division of the Republic of Indonesia National Police Headquarters, 2020.

Out of 12,278 general fraud cases, 1,162 were related to contracts, accounting for nearly 10% of the total (as shown in Table 2). To refine these figures and gain a more accurate understanding, further research is needed on fraud cases that are related to or result from contractual relationships. It is also crucial to clearly define when a ‘breach of contract’ constitutes fraud.

**Table 2. Incidence of Fraud Stemming from Contractual Relationships**

Satuan Kerja	Report		Total
	Model A	Model B	
Police Criminal Investigation Unit	0	25	25
Aceh Regional Police	0	31	31
North Sumatra Regional Police	7	164	171
West Sumatera Regional Police	0	19	19
Riau Regional Police	2	49	51
Riau Islands Regional Police	1	2	3
Jambi Regional Police	0	14	14
South Sumatra Regional Police	2	62	64
Bengkulu Regional Police	0	7	7

Bangka Belitung Islands Regional Police	1	6	7
Lampung Regional Police	0	48	48
Banten Regional Police	3	22	25
Metro Jaya Regional Police	21	165	186
West Java Regional Police	10	86	96
Central Java Regional Police	7	21	28
East Java Regional Police	6	83	89
Yogyakarta Regional Police	5	32	37
Bali Regional Police	2	19	21
West Nusa Tenggara Regional Police	0	10	10
East Nusa Tenggara Regional Police	1	14	15
West Kalimantan Regional Police	0	6	6
North Kalimantan Regional Police	0	1	1
Central Kalimantan Regional Police	0	13	13
South Kalimantan Regional Police	7	19	26
East Kalimantan Regional Police	0	7	7
South Sulawesi Regional Police	4	51	55
West Sulawesi Regional Police	0	13	13
North Sulawesi Regional Police	1	40	41
Central Sulawesi Regional Police	0	18	18
Southeast Sulawesi Regional Police	0	11	11
Gorontalo Regional Police	0	7	7
Maluku Regional Police	0	3	3
North Maluku Regional Police	0	9	9
Papua Regional Police	0	3	3
West Papua Regional Police	0	2	2
<b>Total</b>	<b>80</b>	<b>1.082</b>	<b>1.162</b>

*Source: Public Relations Division of the Republic of Indonesia National Police Headquarters, 2020.*

This article delves into the criminal implications of using blank BG as a payment method in breach of contract cases in Indonesia. A blank BG is a check or a BG that is rejected by the withdrawn bank for various reasons, such as insufficient funds, closed accounts, or other grounds specified by the PBI on BG.<sup>1</sup> This article argues that issuing a blank BG as a payment can amount to fraud, as defined by Article 378 of the Indonesian Criminal Code, if there is an intention to deceive and harm the counterparty. However, not every breach of contract involving a blank BG is necessarily fraudulent. Therefore, this article aims to provide clear criteria to distinguish between civil and criminal liability in such cases.

There are existing literatures on the topic which avail to identify research gaps and limitations. Ubwarin suggested (Ubwarin, 2022) that fraud and breach of contract should be carefully analysed to determine the criminality of the act, but did not provide a clear methodology or criteria for doing so. This statement implies that committing a fraud requires the initial malicious intention, and the elements of Article 378 of the Criminal Code must be met (Ubwarin, 2022). Nevertheless, the text – although mentioning the methodology, fails to clarify it for conducting the analysis, as it only presents case studies that demonstrate instances of fraudulent activity. This leaves the statement open to interpretation and ambiguity.

Wulandari and Parsa discussed the legal consequences for issuers of blank BG, such as criminal and civil sanctions and blacklisting (Wulandari & Parsa, 2016), but did not examine the underlying legal reasoning or principles. Aziz and Yasarman (Aziz & Yasarman, 2022) argued that breach of contract could be criminalised if there is intention and intentionality, and an attempt to falsify the contents of the agreement, but did not explain how these elements could be proven or applied in practice. In contrast, this article offers an in-depth examination of the criminal aspects related to jurisprudence, drawing on relevant laws, regulations, and cases.

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<sup>1</sup> See Article 1 number 27 of Bank Indonesia Regulation Number 18/43/PBI/2016 concerning Amendments to Bank Indonesia Regulation Number 8/29/PBI/2006 concerning the National Black List of Blank Check and/or BG Withdrawer.

The main research question of this article is: What are the limitations of applying Article 378 of the Criminal Code to the issuance of blank BG as a payment in contract fulfilment? This question is important to address because it can help provide legal certainty and protection for both parties in contractual relationships, as well as guide law enforcement officials in handling such cases.

## RESEARCH METHOD

This research employs a doctrinal legal research method or known as normative legal research. Ibrahim posits that normative legal research is focused on examining the application of rules or norms in positive law (Ibrahim, 2005).

This article scrutinises the laws and regulations related to fraud, a breach of contract, and BG as well as takes case law of the Indonesia Supreme Court and related legal doctrines into account. It employs a statute and conceptual approaches, which are employed to analyse and prescribe legal problem solving. The legal materials collected through literature searches and reviews, and then to be inventoried, classified, and systematised. An analytical description of legal materials was used for analysis by examining primary legal materials using the deduction method.

## RESEARCH OUTCOME AND DISCUSSION

### 1. Key Attributes of Contract Breach

A contract is established through an agreement between one party and the counterparty(ies), based on mutually agreed terms and conditions. Asnawi noted that the term ‘contract’ or ‘engagement’ (*overeenkomst*) is often used interchangeably with ‘agreement’ (*verbintenissen*) (Asnawi, 2017). Despite their etymological differences, an agreement forms the operational foundation of a contract. For an agreement to be recognised as a valid contract under Article 1320 of the Indonesian Civil Code, it must meet four conditions:

- 1) Consent of the individuals bound by the contract (consensualism principle)

- 2) Capacity to enter into an agreement
- 3) A specific subject matter
- 4) A lawful cause

These conditions ensure that the contract is legally binding and enforceable.

The first two conditions (consent and capacity) are termed ‘subjective’ as they pertain to the parties involved in the contract. The latter two conditions (specific subject and admissible cause) are termed ‘objective’ as they relate to the content of the contract. If the subjective conditions are not met, the contract can be annulled. Conversely, if the objective conditions are not fulfilled, the contract is deemed non-binding from its inception. Additionally, any agreements that contravene the law or public decency are not legally enforceable.

In accordance with legal stipulations, it is imperative for all parties engaged in a contract to articulate their respective intentions. The proclamation of one party is either ratified by the other or culminates in an agreement, encapsulating the principle of consensualism (Yahman, 2014).

The capacity to enter into an agreement without being contested is crucial. This capacity is usually associated with maturity and refers to Article 330 and Article 1330 of the Indonesian Civil Code. However, these provisions are no longer used as a reference due to the effective implementation of Law Number 1 of 1974 on Marriage. Thus, the generally applicable age of adulthood related to the ability to perform legal acts is 18 years old, as emphasised by the Supreme Court instructions Number MA/Pemb/0807/75 and Supreme Court Decision Number 477/Sip/1976, dated October 13, 1976.

Transitioning to the discussion of the legal prerequisites for an agreement object, Article 1332 of the Civil Code stipulates that the object of the agreement pertains to goods that are tradable. Complementing this, Article 1333 of the Civil Code mandates that the object of the agreement encompasses specific goods, which can minimally be identified by kind. It is noteworthy that the type need not be definitive, provided that the quantity is ascertainable or computable.



Lastly, a lawful cause signifies that the contract is in compliance with the law, morality, and public order, as delineated in Article 1337 of the Civil Code. Consequently, a contractual relationship is engendered from the volition of the parties involved, thereby instituting their respective rights and obligations. It is noteworthy that agreements manifested as contracts under Article 1233 of the Civil Code are legally binding.

Practically, contractual relationships may originate from verbal agreements. As per the assertions of Sitompul and Ariani (Sitompul & Agung Ariani, 2014), an oral agreement is enforceable provided it aligns with Article 1320 of the Civil Code. They contend that corroboration of an oral agreement can be substantiated through testimonies of witnesses.

Breach of contract can take several forms. As stipulated in Article 1234 of the Civil Code, a party may be considered to have breached a contract if they fail to perform at all, perform differently from what was agreed upon, or perform later than the agreed timeline. Subekti (Subekti, 2005) further categorises a debtor's breach of contract into four types:

- 1) Failure to perform the agreed terms and conditions;
- 2) Performance that deviates from what was agreed upon;
- 3) Failure to perform within the agreed timeline; and
- 4) Performance of actions that should not have been done.

Two potential consequences can arise from a breach of contract: The party at fault may be obligated to provide compensation for their negligence; or, the counterparty may have the right to cancel the contract and receive compensation.

## **2. Defining Features of Fraudulent Activities**

Fraud has been recognised as a criminal act for a long time. Chazawi and Ferdian posit that crimes, as defined by law, are typically described in one or more sentences (Chazawi & Ferdian, 2015). These sentences are composed of phrases or words that carry specific meanings and serve as the elements of the crime. Therefore, a crime can be defined as a series of elements that collectively form a

legal understanding of the prohibition of certain conduct, with a threat of sanction for those who engage in the prohibited conduct.

Ilyas (Ilyas, 2012) proposes that a criminal norm serves as a fundamental basis in sentencing individuals who have committed criminal acts. This is based on the individual's responsibility for their actions. This concept is rooted in the principle of legality, which stipulates that an act can only be penalised if there is a pre-existing criminal provision in the legislation that deems the act illegal. This principle is encapsulated in the Latin maxim "*nullum delictum nulla poena sine praevia lege poenali*", which translates to "no offense, no punishment without prior legislation".

Hamzah (Hamzah, 2017) suggests that if the essential elements of the criminal offence are not proven during the trial process, then the court's verdict should be acquittal. For a conviction to be secured, it must be proven in court that the defendant's conduct fulfils the elements of the crime.

Criminal law falls within the domain of public law and serves specifically to protect legal interests against reprehensible acts (Purwoleksono, 2014). Purwoleksono further cites Kartanegara and Koeswadji, stating that the legal interests protected by law include: a) human life; b) human body; c) human reputation; d) human independence or liberty; and e) property.

One of these legal interests pertains to property. Article 378 of the Criminal Code addresses one type of crime against property: "Any person who, with intent to unlawfully benefit himself or another, by means of a false legal name or false dignity, deceit, or a series of falsehoods, induces another person to deliver any property to him, or to incur a debt or to write off a debt, shall, being guilty of fraud, be punished by a maximum imprisonment of four years."

The elements of Article 378 of the Criminal Code, as interpreted by Moeljatno in Mulyadi (Mulyadi, 2017), are as follows:

- 1) A person is persuaded or induced to hand over goods, create a debt, or write off a debt. The transfer of property is assumed to be a result of trickery or deception. The property involved does not necessarily have to belong to the person making the transfer; it could also belong to others.

- 2) The fraudster intends to unlawfully benefit themselves or others. It seems that any attempt to harm the property of the person who handed over the item is prohibited.
- 3) The victim of fraud must be induced to hand over goods in a specific manner:
  - a) The transfer of goods must result from an act of deceit.
  - b) The fraudster must deceive the victim using a trick or deception as outlined in Article 378 of the Criminal Code.

Hamzah (Hamzah, 2017) formulates the elements of fraud more simple than Moeljatno, as follows:

- a) The subject (*normadressaat*): Whoever;
- b) The core offence (*delictsbestanddelen*) of fraud: With the intent to enrich oneself or others unlawfully, by using a false name or false dignity, deceit, or a series of false words, to induce another person to hand over any property to him, give any debt, or write off any debt.

Mulyadi (Mulyadi, 2017) formulates the elements of fraud in Article 378 as follows:

- a) The objective elements are:
  1. Action: to move or persuade;
  2. The moved: person;
  3. The act is intended to: (a. another person hands over an object; b. another person gives a debt; or c. another person writes off a debt);
  4. The move is with the use of: (a. false name; b. false condition; c. deceit; or d. series of lies).
- b) The subjective elements are:
  1. With intent (*met het oogmerk*);
  2. To enrich oneself or others;
  3. Unlawfully.

While legal scholars may differ in their interpretation of the elements of fraud, the authors agree that the subjective elements in fraud include the intent to unlawfully benefit oneself or others. This subjective element also encompasses the perpetrator's intent to benefit themselves or others unlawfully. As Hiariej (2015)

stated, “*Animus hominis est anima scripti*,” which means that a person’s intent is at the heart of their actions. Criminal law examines the element of intent on a case-by-case basis (*animus ad se omne jus ducit*). There are instances when wilfulness is more significant than the actual event or fact (*in maleficiis voluntas spectator, non exitus*).

Hiariej (Hiariej, 2015), citing Vos (1950), identifies several types of intention:

- Wilfulness as intention refers to the wilfulness to achieve a goal. This implies that a person’s motivation greatly influences their actions and their consequences.
- Wilfulness as certainty or necessity refers to intentionality that results in two outcomes: one intended by the perpetrator and another unintended but inevitable.
- Wilfulness as a possibility suggests that an intentional act may sometimes lead to an uncertain outcome but is intentional due to an awareness of the likelihood of its occurrence.

Unlawfulness is also included in the subjective element because the intent to benefit oneself or others by inducing must be an intention against the law. Furthermore, ‘law’ in the phrase ‘against the law’ encompasses legal statutes and regulations or *objectief recht*; a person’s rights or *subjectief recht*; without rights or without authority; and unwritten law, including customary law and other norms in a community (Hiariej, 2015).

Moeljatno (1993) posited that there are times when the unlawful act does not lie in an objective sense but rather in a subjective one, which is in the defendant’s mind. For instance, Article 362 of the Criminal Code discusses theft as unlawful taking of other people’s goods. Here, the unlawful nature of the act depends not on external factors but on the intention of the person who took the goods. If the intention is malicious, intending to own by disregarding the lawful owner, then it is prohibited and included in the formulation of theft (Moeliatno, 1993).

The aforementioned act against unwritten law can be interpreted not merely as a violation against what is prohibited by law or against formal law. It can also be interpreted broadly as contrary to public decency standards or public reproach (Mulyadi, 2017).

The objective elements of fraud are centred on the act of persuading or inducing another person with the aim for them to:

- a) Hand over a property;
- b) Give a debt; or
- c) Write off a debt.

The act of inducing others to hand over goods necessitates a causal relationship between the means of inducement and the handover of goods (Mulyadi, 2017). Mulyadi further cites from the *Hoge Raad's* case law in its ruling dated August 25, 1923: "A causal relationship must exist between the effort expended and the intended handover. The handover of property as a result of the use of a means of inducement would be insufficiently proven if there is no relation between the handover and the use of the means that creates a situation which misleads a decent person. The means of inducement must trigger an impulse in an individual's psyche, prompting them to hand over property" (Mulyadi, 2017).

The National Legal Development Agency (*Badan Pembinaan Hukum Nasional*, BPHN) as part of the Ministry of Law and Human Rights' Legal Consultation section (Kemenkumham, 2016), clarified that 'giving debt' refers to compelling individuals to enter into a loan agreement or an agreement that obligates another party to pay a certain amount of money. It further explained that 'writing off receivables' refers to erasing or nullifying existing obligations of a specific individual (Kemenkumham, 2016).

Consequently, there are various means of inducement or motivation for fraud to occur as stipulated in Article 378 of the Criminal Code. These can be used alternatively or cumulatively and include:

- a) Use of a false name;

- b) False condition;
- c) Deception; or
- d) A series of lies.

A ‘false name’ refers to a fabricated or borrowed name, including names that are unknown to others or belong to someone else. A so-called fake identity is also defined as a name whose ownership is uncertain or non-existent, necessitating the use of a name recognised by the broader community. On the other hand, a ‘false condition’ refers to a situation that deviates from reality (Yahman, 2014). For instance, consider two individuals who coincidentally share the same name, A. The first A, a construction worker, introduces himself as A, the property owner. The second A genuinely exists and is known as the homeowner. In this case, if the first A intentionally assumes the identity of the second A for personal gain, it can be considered as the usage of a false condition rather than a false name (Akbar, 2015). The use of a false condition occurs when an individual misrepresents their credentials or position to the victim in order to gain something (Mulyadi, 2017).

A ‘series of lies’ is an arrangement of deceptive words and/or false statements structured in such a way as to create an impression of truthfulness. Mulyadi (2017) quoted from the *Hoge Raad* in its ruling dated August 8, 1926: “A series of lies exists if there is a relationship between various lies and one lie complements another, creating a false depiction as if it were the truth.” Therefore, a series of lies must be structured logically and coherently, with each statement interrelated. Soesilo used the phrase approximate to “a Garland of Lying Words” to explain that a single lie is insufficient; instead, multiple lies must be arranged in such a way that one lie covers another, creating an overall narrative that appears truthful (Soesilo, 1998). However, case No. 221/Pid.B/2020/PN.Gto citing the case law in arrest *Hoge Raad* January 19, 1942 No. 574 stated that “the entire content of the statement does not need to be a lie for there to be an arrangement of false words.” Despite differing opinions on this matter, the authors argue that a series of lies does not require all statements to be lies; weaving a lie with facts into a narrative can also constitute a series of lies.

In contrast to a series of lies which must be spoken or written, ‘deception’ focuses on actions or gestures that suggest and create an impression or belief about the “truthful” nature of an act which is in fact untrue. It could create trust in the victim and influence them to hand over the object in question. Deception involves cunning actions or trickery shown to others so that they are influenced to follow what the perpetrator wants or believe in everything that has been suggested, including showing fake documents (Yahman, 2014). Anwar (1994) explained that deception consists not of speech but actions or gestures. An act alone may constitute deceit, such as showing false documents or counterfeit goods (H.A.K, 1994). Therefore, a specific case can be considered fraud if it fulfils the elements described in Article 378 of the Criminal Code.

### **3. Fraudulent Practices in the Use of Blank *Bilyet Giros* as Payment**

A BG is essentially a “promise to pay” and the issuer must ensure sufficient funds in their bank account. The issuer promises to pay the debt within the BG’s validity period. If they fail to do so, the dispute is settled in civil domain (Julisman, 2017). However, if they knowingly issue a BG with a closed account, they can be deemed to have fraudulent intent.

The consistent opinions of judges on similar cases formed case law No. 5/Yur/Pid/2018, which states: “Payments using a check or BG with insufficient or no funds can be qualified as fraud.” It means that handing over a check or BG with no funds is a deception as per Article 378 of Criminal Code. If the perpetrator is aware that the check or BG is blank, the fraud allegation is proven. Hence, the element of deception in Article 378 can be interpreted based on this case law.

An intriguing example of a civil case involving a contract breach with the use of blank BGs surfaced in the Jakarta District Court in 2019, which will be elaborated upon in subsequent sections. Owing to privacy considerations and the absence of a police report, this manuscript will employ acronyms to maintain anonymity.

The case revolved around a contract for motorcycle parts between two entities, TO and LU. TO functioned as the supplier, while LU was the purchaser who resold the parts to his clientele. The agreement between TO and LU stipulated that TO would deliver parts valued at 1,115,777,750 IDR to LU. However, LU remitted only 346,685,250 IDR, leaving an outstanding debt of 769,092,500 IDR to TO.

Despite TO's attempts at collection, LU consistently evaded payment. TO persisted in their collection efforts into January 2014. At this juncture, LU provided TO with BGs as follows:

**Table 3. Summary of *Bilyet Giros* Issued in the TO vs LU Case**

Date of BG	BG number	Nominal	Description
January 14, 2014	BD 910452	12.282.125 IDR	-
January 31, 2014	BD 910463	12.282.125 IDR	-
February 6, 2014	BD 910462	12.282.125 IDR	P.2
February 13, 2014	BD 910464	12.282.125 IDR	-
February 15, 2014	BJ 994851	22.977.700 IDR	P.3
February 20, 2014	BD 910465	12.282.125 IDR	-
February 28, 2014	BD 910458	15.911.250 IDR	P.4
March 13, 2014	BJ 994853	20.000.000 IDR	P.5
March 15, 2014	BJ 994867	25.000.000 IDR	P.6
March 22, 2014	BD 910468	12.282.125 IDR	P.7
March 29, 2014	BD 910469	12.282.125 IDR	P.9
March 30, 2014	BJ 994865	28.000.000 IDR	P.8
April 1, 2014	BJ 994859	24.455.550 IDR	-
April 5, 2014	BJ 994862	16.250.000 IDR	P.10
April 12, 2014	BJ 994861	31.250.000 IDR	-
April 27, 2014	BJ 994860	62.500.000 IDR	-
May 8, 2014	BJ 994864	28.000.000 IDR	-
May 10, 2014	BJ 994858	37.500.000 IDR	-
May 17, 2014	BD 910472	75.000.000 IDR	-



May 31, 2014	BD 910473	75.000.000 IDR	P.12
June 7, 2014	BJ 994855	25.000.000 IDR	P.11

*Source: Court's document on TO vs LU case*

However, shortly after TO obtained clearance for the BGs from the relevant bank, it was unveiled that the BG account had been terminated and the BGs were essentially void. This action by LU was indicative of bad faith or malicious intent towards TO. Among all the BGs, 14 of them (including P.2 - P.12) had been issued a rejection letter from the issuing bank.

Upon the revelation that the BGs were void, TO initiated a dispute with LU in civil court. Following a comprehensive examination and adjudication of the case by the panel of judges, they resolved to uphold TO's claim in its entirety.

When LU executed a payment using a Check/BG known to be devoid of funds, this action was construed as malicious intent. By employing the void Check/BG, LU signalled an intention to write off its receivables and terminate the contractual relationship between them. Therefore, LU's action of issuing a check/BG, despite being aware of its lack of funds, is deemed as malicious intent. As a result, failure to pay is frequently misinterpreted as a breach of contract or default, even though it encompasses criminal attributes.

Although Indonesia does not subscribe to the *stare decisis* principle, it is pivotal to take into account the provisions in case law no. 5/Yur/Pid/2018 when arguing for the fulfilment of the element of deception as stipulated in Article 378 of the Criminal Code. LU is alleged to have settled his debt using BGs from an account that had been knowingly closed (as corroborated by the bank's rejection letter) to write off TO's receivables. Hence, while it was a breach of contract, it can also be characterised as deception.

## CONCLUSION

Business practitioners who encounter a contract breach by their counterparts cannot invariably resort to lodging a fraud allegation with the police for contract

enforcement, even if the counterparty employed a BG as a payment method. It is paramount to discern whether the blank BG payment constitutes a criminal act or merely a contract breach; hence, the implementation of such limitations is essential.

The invocation of Article 378 of the Criminal Code on the issuance of blank BG in contractual relations necessitates the satisfaction of the crime elements as stipulated in the article. In fulfilling the fraud elements related to the issuance of a blank BG, case law no. 5/Yur/Pid/2018 must be considered. It essentially posits that ‘making a payment with a check or *bilyet giro* that does not exist or has insufficient funds can be classified as fraud’. Furthermore, it asserts that an individual who hands over a BG, cognizant that the BG is devoid of funds, is committing fraud as referred to in Article 378 of the Criminal Code. If from inception, the perpetrator consciously knew that the BG given to the victim was void or known as a blank BG, and this can be proven by the investigator, then fraud must be deemed proven.

Therefore, the limitation on applying criminal provisions to the issuance of blank BG hinges primarily on the perpetrator’s malicious intent at the time of BG issuance and/or submission to other parties. If at maturity, the BG grantor was aware that the submitted BG for collection was void because either the account had been closed or there were no funds, then allegations of fraud must be deemed proven. However, when at maturity, insufficient funds are attributable to negligence on part of the BG grantor due to various factors such as business money turnover, then such a case falls within civil jurisdiction as a contract breach. Similarly, when there are no funds whatsoever in the BG account at maturity due to negligence, it should be treated as a breach of contract and not a crime. However, proving perpetrator’s malicious intent or negligence presents another challenge.

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