KnE Social Sciences
The 8th Legal International Conference and Studies:
Justice, Human Rights, and Law—Protecting Vulnerable Communities
KnE Publishing

Research Article

Legal Analysis of the Responsibility of Perpetrators of Fraud from the Perspective of Gender Justice (Case Study of Criminal Case Decision Number 651/Pid.B/2024/Pn Jkt Pst)

Dany Agung Pratama* and Sri Endah Wahyuningsih

Master of Law Program, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia

ORCID
Dany Agung Pratama: https://orcid.org/0009-0006-3621-4870

Corresponding Author: Dany Agung Pratama; email: danyagung95@icloud.com

Published: 3 November 2025

Publishing services provided by Knowledge E

Selection and Peer-review under the responsibility of the 8th Legal International Conference and Studies Conference Committee.

Abstract.
The phenomenon of fraud that occurs massively and regularly in various sectors of life ranging from personal relationships, economic transactions, to digital practices reflects a serious distortion in the value system of society. Therefore, to understand and overcome the phenomenon of fraud crimes comprehensively, an interdisciplinary approach is needed involving legal analysis, sociology, criminology, and social psychology. In addition, the increase in fraud cases also shows weaknesses in the law enforcement system, which is not yet fully effective in carrying out its preventive and repressive functions. The approach method used by the author to compile the assessment uses the Normative Juridical method. The research specifications used in this study are descriptive analysis types. In this study, the author focuses on library research and primary documents in the form of current laws and secondary documents in the form of expert opinions, law books, journals and magazines. The Panel of Judges decided to sentence the defendant to imprisonment for 1 year and 4 months minus the length of time the defendant was detained with an order for the defendant to remain in detention. Although the verdict can be said to be legally correct from a legal-formal perspective, because the elements of Article 378 of the Criminal Code are indeed fulfilled (the existence of trickery, loss to the victim, and the intention to take possession of goods unlawfully), but from the perspective of substantive justice and gender justice, this verdict leaves important questions. In the verdict, there is no description of who the Defendant is in the social context.

Keywords: fraud, gender justice, judgment

1. Introduction

The phenomenon of fraud that occurs massively and systematically in various sectors of life ranging from personal relationships, economic transactions, to digital practices reflects a serious distortion in the value system of society. Trust as the main foundation in social interaction has been eroded due to increasing opportunistic behavior that ignores legal and ethical norms (Nurhayati, Siti., 2020). This strengthens the assumption that crime, including fraud, is not only a violation of the law, but also a complex reflection of structural conditions, economic pressures, weak social control, and a permissive culture that has developed in modern society. Therefore, to understand and overcome the phenomenon of fraud crime comprehensively, an interdisciplinary approach is needed that involves legal analysis, sociology, criminology, and social psychology.

In addition, the increase in fraud cases also shows weaknesses in the law enforcement system which is not yet fully effective in carrying out its preventive and repressive functions (Susetiyo, Zainul Ichwan, M.Iftitah, & Dievar, 2022). Many fraud cases are not fully revealed or do not result in fair decisions, either due to limited evidence, lack of investigator capacity, or disparities in sentencing. Taking into account this complexity, it is important to make the crime of fraud an object of legal study that does not only focus on the formal elements in statutory regulations, but also considers the accompanying social, moral and structural aspects (Chairul Huda, 2006). Such studies will not only contribute to the development of criminal law, but can also be an important basis for formulating more effective, fair, and humanistic crime prevention policies in the future. Procedurally, handling fraud crimes begins with the investigation and inquiry process by the police. Based on Article 13 of Law No. 2 of 2002 concerning the Indonesian National Police, it is stated that the duties and authorities of the police include maintaining public security and order, law enforcement, and providing protection, shelter, and services to the community.

In judicial practice, criminal liability for fraud crimes can vary (Amir Ilyas, 2014). In some cases, the perpetrator's responsibility is full, that is, it is done with full awareness, careful planning, and the intention to gain profit by unlawful means. However, in other cases, responsibility can be limited or reduced, especially when the perpetrator is under severe psychological pressure, urgent economic conditions, or experiences emotional and relational manipulation by others, as is often found in cases of fraud involving personal relationships or gender-based violence.

2. Methods

The approach method used by the author to compile the assessment uses the Normative Juridical method. The research specification used in this study is the descriptive analysis type. In this study, the author focuses on library research and primary documents in the form of current laws and secondary documents in the form of expert opinions, law books, journals and magazines. Data collection techniques the data collection technique used in this study uses a literature study, namely data collection from the results of a review of library documents and secondary data including primary legal materials, secondary legal materials, and tertiary legal materials. The data analysis technique in this study was carried out using qualitative data analysis, specifically data collection using law, theory, and legal principles.

3. Result and Discussion

3.1. Criminal Accountability for Fraud Perpetrators from a Gender Justice Perspective (Criminal Case Decision Number 651/Pid.B/2024/Pn Jkt Pst)

Criminal liability is liability for crimes committed by a person (Agus Rusianto, 2016). Criminal liability for someone who commits a crime. Criminal liability is basically a mechanism created by the Criminal Code to address violations of a “contrary agreement” for a particular act. The concept of liability plays an important role in determining the outcome of a criminal case, as it relates to the decision whether a person should be acquitted or punished (ndi Matalatta, 2001).

Roeslan Saleh stated that “criminal responsibility is defined as the continuation of objective blame that exists in a criminal act and subjectively fulfills the requirements to be punished for that act”. (Roeslan Saleh in Hanafi Amrani & Mahrus Ali, 2015). The purpose of objective charges is that the act committed by a person is actually prohibited. The indicator is that the act violates the law both formally and substantively. What is meant by subjective accusations relates to the person who committed the prohibited act. Even though the prohibited act is committed by a person, he cannot be blamed for his mistake, but there is no criminal responsibility.

Specifically regarding objective and subjective complaints, Sudarto said that it is not enough to punish someone if he commits an unlawful act (objective denunciation). (Muladi Barda Nawawi Arief, 1992). Therefore, the law meets the elements of law and is not justified, but does not meet the requirements for criminal prosecution. Criminalization still requires the imposition of criminal law requirements. This means that the person who committed the act made a mistake and is guilty (subjective accusation). The person must be responsible for his actions, or in the case of his actions, his actions can only be held accountable for himself.

Referring to the facts revealed in the trial against the verdict that the author researched and reviewed, it can be concluded that based on the facts revealed in the trial, the Defendant Irma Fardila was proven legally and convincingly guilty of committing a crime under Article 378 of the Criminal Code which regulates the Criminal Act of Fraud. This is manifested by the existence of a crime as regulated and threatened in Article 378 of the Criminal Code where all the elements regulated in the article are fulfilled in the context of the actions she committed, namely:

1. Whoever

What is meant by “whoever” here is to determine who the perpetrator of the crime is as a legal subject who has committed the crime and has the ability to be responsible for his actions.

In this case, the Public Prosecutor has presented and charged the Defendant Irma Fadila, where the Defendant who was questioned during the trial was in accordance with the Defendant’s identity as stated in the Public Prosecutor’s Indictment and during the examination of the Defendant, no matters were found that eliminated criminal responsibility, either as a reason for forgiveness or a reason for justification so that the Defendant was able to be held responsible for his criminal actions, thus the element of Whoever has been proven legally and convincingly.

2. With the intention of benefiting oneself or others

That what is meant by the element of benefiting oneself or others is that the defendant’s intention to benefit himself or others is the perpetrator’s closest goal, it is not required that the benefit has actually been obtained or not. The defendant Irma Fardila has intentionally borrowed 1 (one) unit of the Samsung Galaxy A54 5G Green cellphone belonging to the victim Raja Rivaldo Siahaan on the grounds of scanning the barcode to enter the mall, but after the cellphone was in her possession, the defendant immediately ran away and did not return the cellphone to the victim. From the series of the defendant’s actions, it is clear that there was an intention to benefit oneself by controlling the victim’s cellphone.

Based on the witness’s statement, the Defendant had also tried to commit similar acts with the same modus operandi, which shows a pattern of acts carried out to benefit oneself based on the considerations above, so the element “With the intention of benefiting oneself or others” has been fulfilled according to the law.

This intention is related to the perpetrator’s intention or inner attitude and it is quite difficult to know the perpetrator’s inner attitude or intention when or before committing an act (Roeslan Saleh in Hanafi Amrani & Mahrus Ali, 2015). However, the intention or inner attitude can be concluded from the external circumstances or actions that are visible from the outside, according to the panel there is a will or the consequences of the will of the Defendant, the act is realized by the defendant as an act that violates the law, so that there appears to be intent.

That what is meant by “without rights” is that the act carried out by the perpetrator is not based on the law but is contrary to the applicable laws and regulations, where in this case the act is to defraud the victim intentionally or with the intention of benefiting oneself unlawfully.

3. Elements of unlawful acts

The element of “unlawfully” in the case of theft of a cellphone by the Defendant Irma Fardila was clearly proven based on the trial facts and existing legal considerations. In Indonesian criminal law, an act is said to be “unlawful” if it is contrary to the law in a broad sense, namely including written laws such as the Criminal Code, as well as unwritten laws such as norms of morality, propriety, and protection of legitimate property rights. In this case, the Defendant borrowed the victim’s cellphone on the pretext of scanning a barcode, but then ran away and did not return it.

This action is not just an ordinary loan, but a form of fraud to take goods with the intention of permanently controlling them without rights. This clearly violates Article 362 of the Criminal Code concerning theft, because the cellphone is the victim’s legal property and was taken without permission or consent to be owned. In addition, the Defendant’s actions also violate social norms that uphold honesty and personal property rights, and there was no justification such as an emergency or office order that could eliminate the unlawful nature. Thus, the Defendant’s actions were proven to have fulfilled the element of “unlawfully” as regulated in criminal law and recognized by the Panel of Judges in its decision.

4. Elements By using a false name or false dignity, by deception, or by a series of lies

The element of “using a false name or false dignity, by trickery, or a series of lies” as referred to in Article 378 of the Criminal Code has been fulfilled in the case of Defendant Irma Fardila. Based on the considerations of the Panel of Judges, this element includes actions taken to create false trust in the victim so that they voluntarily hand over their belongings. In this case, the Defendant was proven to have carried out a series of actions that fulfilled this element, starting by claiming to be an employee of a restaurant at the Mall of Indonesia, a form of using false dignity to build a trusted self-image.

Next, the Defendant promised the victim a fare of Rp70,000 with the intention of persuading the victim to take him back and forth, which was a form of trickery to create the impression of good intentions. Finally, the Defendant pretended to borrow the victim's cellphone on the pretext of scanning the barcode to enter the mall, even though the reason was a fabrication to gain access to the victim's belongings. These three actions, namely false confessions, false promises, and false pretexts, complement each other and form a series of lies that successfully deceived the victim Raja Rivaldo Siahaan until he handed over his cellphone without coercion. Therefore, the Defendant's actions have fulfilled the elements of trickery and a series of lies, so that the elements in Article 378 of the Criminal Code are declared to have been proven legally and convincingly according to law.

5. The element of moving another person to hand over something to him, or to give credit or write off a receivable

The element of "moving another person to hand over something to him, or to give a debt or write off a debt" as referred to in Article 378 of the Criminal Code has been fulfilled in the case of the Defendant Irma Fardila. This element means that the perpetrator carried out an action that influenced the victim's will by misleading him, so that the victim voluntarily handed over his belongings (Sudarto in Hanafi Amrani & Mahrus Ali, 2015). In this case, based on the considerations of the Panel of Judges, the Defendant has committed a series of lies to build false trust in the victim, including by claiming to be a restaurant employee at the Mall of Indonesia, promising a fare of Rp70,000, and pretending to borrow a cellphone on the grounds of scanning the barcode to enter the mall. Through these lies, the Defendant succeeded in moving the victim Raja Rivaldo Siahaan to hand over his green Samsung Galaxy A54 5G cellphone.

The Panel of Judges stated that if there was no trickery and a series of lies, the victim would not have handed over his cellphone. Therefore, the handover of goods in this case was not due to physical coercion, but the result of the cunning influence of the Defendant. As a result, the victim suffered a material loss of Rp5,000,000. Thus, this element was proven legally and convincingly according to law, and all elements of Article 378 of the Criminal Code as the basis for the First indictment were declared fulfilled. Based on the considerations above, all elements in Article 378 of the Criminal Code as contained in the Public Prosecutor's indictment have been fulfilled.

After carefully examining the testimony and summarizing the evidence in the trial, the Panel of Judges decided to sentence the Defendant to imprisonment for 1 (One) Year and 4 (Four) Months minus the length of time the Defendant was detained with an order that the Defendant remain in detention. This decision, as reflected in the chronology of the case, is interpreted as a manifestation of the sense of justice that is to be upheld. The Panel of Judges' considerations involve an assessment of the severity and potential threats arising from the criminal acts committed by the Defendant.

3.2. ImplementationSubstantive Justice of Accountability of Perpetrators of Criminal Acts of Fraud in the Perspective of Gender Justice (Case Study of Criminal Case Decision Number 651/Pid.B/2024/Pn Jkt Pst)

In the case of Decision Number 651/Pid.B/2024/PN Jkt.Pst, the defendants' actions began when the defendant Irma Fardila ordered an online motorcycle taxi through the Maxim application and was picked up by the victim witness Raja Rivaldo Siahaan behind the Mall of Indonesia (MOI), Kelapa Gading. During the trip to the Grand Indonesia Mall, the defendant claimed to be a restaurant employee at MOI and promised to give the witness Rp70,000 if he was willing to take her there and back.

Upon arrival in front of the Grand Indonesia Mall, the Defendant asked to borrow the victim's Samsung Galaxy A54 5G cellphone on the pretext of being used to scan the barcode to enter the mall. Because he believed and was tempted by the promise of money, the victim handed over the cellphone. However, after receiving the cellphone, the Defendant immediately ran away and did not return. The victim had time to look for the perpetrator around the location, but to no avail. About two months later, the victim received a video call from witness Gabriel Hutagaol, who almost became a victim of fraud with a similar method. Gabriel showed the perpetrator's face via video call, and the victim immediately recognized that it was the same person. Due to this incident, the victim suffered a loss of IDR 5,000,000.

Judges deciding a case must look at several existing considerations and must not deviate from the applicable legal rules, so that the judge's considerations can be accepted by other parties. So judges in deciding a case must be objective, meaning in considering the interests of the various parties involved. Between the interests of the injured party, the interests of the defendant and social interests in order to achieve justice for all parties. Therefore, judges must seek truth, justice, and legal certainty.

In accordance with Article 4 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which states that "courts shall adjudicate according to the law without discriminating between people." (Andi Hamzah, 2006). Each judge has his/her considerations according to the judge that are correct so that they result in a judge's conviction. Maybe that is one of the factors behind the judge in giving a verdict for his/her actions.

In the Indonesian criminal justice system, criminal responsibility for perpetrators of criminal acts basically follows the universal principle that anyone who has committed an act that fulfills the elements of a criminal act and has no justification or excuse must be held legally responsible. This principle applies without distinguishing the background, gender, or social conditions of the perpetrator. However, if examined more deeply from the perspective of substantive justice, a critical question arises: has equality in the application of the law truly brought about true justice, especially in cases where the perpetrators are women who are socially and economically in a more vulnerable position than men? The substantive justice approach not only looks at the fulfillment of the elements of a crime in the formal legal sense, but also contextually considers the background of the perpetrator's life, the structure of inequality they face, and the consequences for the perpetrator, victim, and society as a whole (Syawal Abdul & Anshar, 2010).

The Central Jakarta District Court Decision Number 651/Pid.B/2024/PN Jkt Pst is a concrete example that can be analyzed in this context. In this case, the Defendant Irma Fardila, a woman, was charged and sentenced for committing a criminal act of fraud as regulated in Article 378 of the Criminal Code. Based on the trial facts, the Defendant made a series of lies to the victim, a man named Raja Rivaldo Siahaan, by claiming to be a restaurant employee at the Mall of Indonesia, promising transportation money of IDR 70,000 if the victim was willing to take her, and pretending to borrow the victim's cellphone for the purpose of scanning the barcode to enter the mall. After successfully getting the victim to hand over her cellphone, the Defendant ran away and did not return it. The Panel of Judges considered that the elements of the crime of fraud were legally and convincingly fulfilled, and sentenced the Defendant to prison. In addition, evidence in the form of a cellphone box was returned to the victim, and the detention period that had been served was deducted from the sentence imposed (Siti Musdah Mulia, 2010).

Although the verdict can be said to be legally correct from a legal-formal perspective, because the elements of Article 378 of the Criminal Code are indeed fulfilled (there is trickery, loss to the victim, and the intention to take possession of goods unlawfully), but from the perspective of substantive justice and gender justice, this verdict leaves room for important questions: has the criminal responsibility imposed on the Defendant really considered the living conditions and gender position of the perpetrator in its entirety? In the verdict, there is no description of who the Defendant is in a social context: is she a housewife, a single head of family, an informal sector worker, or a victim of economic pressure? There is no record of whether she has ever experienced violence, marginalization, or other social obstacles that are relevant to her behavior. This shows that the court's approach is still very formalistic, without opening up space to explore structural factors that might encourage a woman to fall into criminal acts.

Prof. Muhammad Taufiq in his book The Expensiveness of Legal Justice: Learning from the Lanjar Case highlights a similar problem when describing how the criminal justice system often fails to explore the socio-economic background of the accused in its entirety (Komnas Perempuan, 2021). He showed that the legal process is often bureaucratic and rigid, thus eliminating the values of substantive justice that should be at the heart of criminal punishment (Muhammad Taufiq, 2012). The Lanjar case discussed in the book is a vivid illustration of how justice can be expensive and difficult to access, especially for the poor and marginalized who cannot afford to navigate the complexities of the legal system.

Furthermore, in his other work, Substantial Justice Cuts the Chain of Legal Bureaucracy (2014), Prof. Taufiq emphasized the importance of reforming the legal structure so that it does not merely prioritize formal procedures, but must side with the achievement of real justice. He criticized how the justice system often ignores the sociological conditions of the accused and is instead trapped in procedural compliance that does not side with social justice (Muhammad Taufiq, 2014). This idea is relevant to encourage a more humane, empathetic, and contextual legal approach, especially in criminal cases involving women and vulnerable groups. In this context, justice should not stop at legal administration alone, but must be able to penetrate the walls of bureaucratic formalism and touch the roots of social problems that underlie the perpetrator's criminal actions.

In fact, in many feminist studies, it is explained that female perpetrators of crime often have very different backgrounds from male perpetrators. They are often involved in crime due to economic pressures, lack of access to decent work, or even as a form of response to the domestic violence they experience. In certain cases, the crimes committed by women are the last form of survival mechanisms (Elizabeth Comack, 1996). Thus, the court should not only look at the elements of the crime rigidly, but also consider whether the perpetrator's actions are a reaction to a larger structural injustice.

In addition, it is also important to highlight that substantive justice from a gender perspective does not aim to free women from legal accountability, but rather to ensure that legal processes and outcomes take into account gender-specific vulnerabilities (Maria SW Sumardjono, 2019). In this case, the court can dig deeper through a social examination or assessment prepared by a correctional officer or social worker, to find out social factors that may be relevant to the judge's decision. That a just law is not only a law that is applied equally, but a law that is able to understand the human context of the perpetrator.

4. Conclusion

In the case of Decision Number 651/Pid.B/2024/PN Jkt Pst, the Panel of Judges found the defendant Irma Fardila guilty of committing a criminal act of fraud by pretending to borrow the victim's cellphone to scan the barcode and then running away. From a formal legal aspect, the elements of Article 378 of the Criminal Code have been proven legally and convincingly, so that criminal responsibility was imposed legally. However, from the perspective of substantive justice and gender perspective, there are important notes. Although criminal law is gender neutral, women in vulnerable socio-economic positions often fall into criminal acts due to structural pressures, such as poverty or responsibility as head of the family. The Decision of the Central Jakarta District Court Number 651/Pid.B/2024/PN Jkt Pst stated that the Defendant Irma Fardila was legally and convincingly proven to have committed a criminal act of fraud as regulated in Article 378 of the Criminal Code, and was sentenced to 1 year and 4 months in prison. Although this decision is legally correct in formal terms, from the perspective of substantive and gender justice, there is no consideration of the Defendant's socio-economic background as a woman. This shows an approach that is still formalistic and not yet sensitive to gender vulnerability.

References

[1] Susetiyo ZI, Iftitah M. Kepastian Hukum Undang-Undang Cipta Kerja Bidang Kesehatan Pasca Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020. Jurnal Supremasi. 2022;12(2):27–36.

[2] Ilyas A. Asas-Asas Hukum Pidana. Yogyakarta: Rangkang Education; 2014.

[3] Hamzah A. Hukum Acara Pidana Indonesia. Jakarta: Sinar Grafika; 2006.

[4] Huda C. Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan (Cet. 2). Jakarta: Kencana; 2006.

[5] Comack E. Women in Trouble: Connecting Women's Law Violations to Their Histories of Abuse. Halifax: Fernwood Publishing; 1996.

[6] Perempuan K. Pedoman Pemeriksaan Perkara Berbasis Gender dalam Sistem Peradilan Pidana. Jakarta; 2021.

[7] Maria SW. Sumardjono. (n.d.). Hukum dan Gender: Tantangan dalam Pembangunan Hukum di Indonesia. Yogyakarta: Gadjah Mada University Press; 2009.

[8] Muladi & Barda Nawawi Arief. Teori-Teori dan Kebijakan Pidana. Bandung: Alumni; 1992.

[9] Mulia SM. Keadilan Gender dalam Perspektif Islam dan Hukum. Jakarta: Gramedia; 2010.

[10] Matalatta N. Victimology: Sebuah Bunga Rampai. Jakarta: Pusat Sinar Harapan; 2001.

[11] Taufiq M. Mahalnya Keadilan Hukum: Belajar dari Kasus Lanjar. Semarang: MT&P Law Firm; 2012.

[12] Taufiq M. Keadilan Substansial Memangkas Rantai Birokrasi Hukum. Semarang: MT&P Law Firm; 2014.

[13] Nurhayati S. Hukum Pidana dan Perempuan: Perspektif Gender dalam Penegakan Hukum. Jakarta: Kencana; 2020.

[14] Rusianto A. Tindak Pidana dan Pertanggungjawaban Pidana. Jakarta: Prenadamedia Group; 2016.

[15] Saleh R. dalam Amrani, H., & Ali, M. Sistem Pertanggungjawaban Pidana: Perkembangan dan Penerapan. Jakarta: Rajawali Press; 2015.

[16] Sudarto, dalam Amrani, H., & Ali, M. Sistem Pertanggungjawaban Pidana: Perkembangan dan Penerapan. Jakarta: Rajawali Press; 2015.

[17] Syawal Abdul & Anshar. Pertanggungjawaban Pidana Komando Militer pada Pelanggaran Berat HAM (Suatu Kajian dalam Teori Pembaharuan Pidana). Yogyakarta: Laksbang Pressindo; 2010.

[18] Constitution of the Republic of Indonesia; 1945.

[19] Criminal Code.

[20] Criminal Procedure Code (KUHAP).

[21] Law Number 1 of concerning the National Criminal Code; 2023.

[22] Court Decision Number. 651/PID.B/2024/PN JKT PST