

**Criminal Liability For The Elements Of Embezzlement And Fraud In A Rotating Savings Organizer's Payment Default Case
(A Case Study at H&P Advocates in Surakarta)**

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Abstract: The phenomenon of arisan as a trust-based fund-raising mechanism is widespread in society, but its practice is prone to abuse through manipulative schemes that result in collective losses. This study aims to analyse the forms of criminal liability for perpetrators of arisan default by examining the fulfilment of the elements of criminal fraud and embezzlement. The research method uses a normative juridical approach supported by empirical data from case handling at law firms. The results show that a series of tricks, unauthorised control of funds, and failure to fulfil payment obligations indicate the cumulative fulfilment of the elements of Article 486 and Article 492 of the Criminal Code. Criminal liability is imposed on the perpetrator based on the offence of intent with the aim of obtaining unlawful gains. This study confirms that failure to pay arisan, preceded by the manipulation of trust, is not merely a civil breach of contract, but a criminal act.

Keywords: fraud, embezzlement, illegal savings club

INTRODUCTION

Arisan is essentially a community-based financial practice in which a group of people periodically contribute money or goods of equal value, which are then distributed in turn through a lottery or mutual agreement until all members have received their share. In this way, it functions as a rotating fund distribution mechanism based on trust and social solidarity [1]. Over time, arisan has evolved beyond a simple platform for savings and social cohesion; participants increasingly perceive it as a form of savings, receivables, and even an informal investment instrument. For example, early turns are often regarded as an “investment,” and certain schemes are designed to protect assets from inflation or facilitate household wealth accumulation [2]. Modernization and digitalization—such as online arisan and auction-based or descending models—have introduced various package options, contribution patterns, and return structures that increasingly resemble investment products. However, these developments also raise risks of inequality, overpayment, breach of obligation, and fraud, particularly when organizers exercise full control over member recruitment and fund collection without strong written regulations [3].

Legal issues arise when the arisan organizer controls the participants' funds but fails to fulfill payment obligations and subsequently disappears without accountability. This is because the legal relationship within an arisan essentially arises from an agreement that generates reciprocal rights and obligations between participants and the organizer [4]. In such circumstances, the boundary between breach of contract as a civil dispute and the criminal offense of fraud becomes a central issue. Generally, breach of contract occurs when contractual obligations are not fulfilled without the presence of deception from the outset, resulting in legal consequences such as compensation, contract cancellation, or enforcement of

performance under Article 1243 of the Indonesian Civil Code and general principles of contractual obligations [5]. Conversely, when the organizer from the beginning designs a fictitious arisan scheme, conceals essential facts, or manipulates the recruitment of participants with unrealistic promises of profit to gain control of the funds and subsequently absconds, the elements of bad faith and fraudulent intent (*mens rea*) bring the act closer to the definition of fraud under Article 492 of the Indonesian Criminal Code and/or electronic-based fraud under the Electronic Information and Transactions Law (ITE Law) [6].

The arisan organizer's payment default case handled by H&P Advocates in Surakarta represents a typical characteristic of trust-based economic crime, where the perpetrator exploits social relationships and informal legitimacy to collect funds from the public through various arisan package schemes. The collected funds—most of which originated from elderly victims—were not managed according to their intended purpose, and at a certain stage the payments were unilaterally halted, accompanied by the disappearance of communication access with the organizer. The accumulation of victim losses exceeding one billion rupiah indicates a systematic pattern of fund appropriation without a lawful basis. Juridically, this situation requires a comprehensive analysis of the construction of the perpetrator's criminal liability by examining the fulfillment of elements of unlawful acts, culpability, and the cumulative indications of fraud and embezzlement within the framework of Indonesian criminal law.

This research is important because illegal arisan practices are often perceived merely as civil disputes, even though under certain circumstances they fulfill the characteristics of criminal offenses. Clarifying this normative boundary contributes to legal certainty and the protection of victims.

RESEARCH METHOD

This study employs a normative–empirical juridical approach, a method that integrates the analysis of positive legal norms with the examination of social facts within law enforcement practices. The normative approach is conducted through a review of statutory regulations, particularly provisions concerning the criminal offenses of fraud and embezzlement under the applicable Indonesian Criminal Code, as well as doctrines and contemporary criminal law literature relevant to the concept of criminal liability. The normative analysis is directed at constructing the elements of the offense, forms of culpability, and the legal basis for imposing criminal responsibility on perpetrators of trust-based economic crimes.

The empirical approach is carried out through a case study of a rotating savings default case handled with legal assistance from H&P Advocates in Surakarta. Empirical data were obtained from the case chronology, legal assistance documents, and evidence of the victims' financial losses, which were analyzed to assess the conformity between legal norms and their practical application. Data analysis employed a qualitative method with a deductive reasoning pattern, drawing conclusions from general legal norms toward their application to concrete facts. Through the integration of normative and empirical analyses, this research aims to develop a comprehensive framework of criminal liability for payment-default practices in rotating savings schemes as a form of economic crime.

RESULTS AND DISCUSSION

Juridical Construction of the Crime of Fraud in Rotating Savings Default Cases

Fraud is an act of inducing another person to surrender property or money by using a false name, false status, deceit, or a series of lies to obtain unlawful benefit, as formulated in Article 492 of the Indonesian Criminal Code [7]. The essential elements of fraud include the existence of deceptive actions through fabricated falsehoods, the presence of a victim who, due to deception, is persuaded to surrender property, create or eliminate debts, and the perpetrator's intention to benefit themselves or others unlawfully. In various contexts, including investment fraud and online transaction fraud, the fundamental characteristic remains the same, namely the pursuit of economic gain through dishonest means that harm victims and violate applicable legal provisions [8].

In the rotating savings default case handled by H&P Advocates in Surakarta, the construction of fraud can be traced from the early stage of the scheme's management after the perpetrator replaced the previous organizer. This takeover was not merely administrative but also involved exploiting the social reputation of the rotating savings scheme that had previously been established. The existing reputation was used as a means of legitimacy to create the perception of continuity and security within the system. From a

criminological perspective, such actions reflect the practice of social engineering, namely psychological manipulation techniques that exploit community trust to influence the economic decisions of victims. In this context, trust is not merely a social factor but a central instrument in the construction of the criminal act [9].

The perpetrator's conduct did not stop at the stage of promotion and fundraising. Evidence shows that misleading information was provided regarding the continuity of the scheme and the ability to make payments. Victims continued to deposit funds because they believed the system was operating normally and that payment obligations would be fulfilled according to schedule. The trust relationship formed through repeated communication and positive representations of the scheme's condition created a psychological state that encouraged victims to voluntarily surrender their assets. However, such voluntariness did not arise from fully autonomous will, but from a will influenced by misleading information.

When payments were unilaterally halted and the perpetrator could no longer be contacted, it became apparent that the fundraising process was not based on good faith to fulfill obligations. This situation indicates the existence of a deliberate manipulation of trust from the outset aimed at obtaining the victims' funds. In criminal law doctrine, a series of lies does not necessarily need to be proven through a single specific false statement, but may be inferred from the overall pattern of conduct that systematically creates a false representation of reality. Therefore, the perpetrator's behavior in continuously collecting funds despite being unable or unwilling to fulfill obligations constitutes a strong indicator of deceit.

From the perspective of legal causality, the victims' transfer of funds has a direct causal relationship with the perpetrator's manipulative actions. Without the false representation regarding the continuity of the scheme, the victims would not have surrendered their assets. Therefore, the element of inducing another person to surrender money through deceit can be considered fulfilled. The magnitude of the victims' losses further strengthens the indication that the perpetrator's objective was to obtain unlawful gain rather than merely experiencing a failed business venture.

This analysis confirms that in rotating savings default cases, the essential aspect of fraud lies in the manipulation of trust that shapes the victim's intention. Fraud does not merely concern the falsity of information but also the deliberate construction of circumstances that mislead victims regarding the risks and security of the transaction. Consequently, the payment failure in this case cannot be regarded solely as a civil matter but rather as a criminal act fulfilling the normative structure of the offense of fraud.

Legal Construction of Embezzlement in Rotating Savings Schemes

Embezzlement occurs when a person who initially lawfully possesses property belonging to another subsequently intentionally appropriates it unlawfully for their own benefit or for the benefit of others, as stipulated in Article 486 of the Indonesian Criminal Code [10]. In the context of rotating savings schemes, the organizer initially receives and holds the participants' funds lawfully based on trust and the function of managing collective finances [11]. However, the legal status of such possession becomes unlawful when the funds are not used according to their intended purpose, are misappropriated for personal interests, or are not returned to the rightful parties at the appropriate time, thereby fulfilling the elements of intent, unlawfulness, and control over property within the perpetrator's possession.

In the rotating savings default case handled by H&P Advocates in Surakarta, participants' funds were entrusted to the organizer within a framework of trust for management according to the rotating savings mechanism. This trust has a legal dimension because it creates an obligation for the organizer to use the funds according to their intended purpose and return them through the rotational payment system. Therefore, the perpetrator's possession of the funds at the initial stage cannot be categorized as unlawful. However, such possession is conditional and limited by fiduciary obligations, namely the moral and legal duty to manage the funds for the benefit of participants.

The change in the legal status of possession occurs when the funds are no longer used according to their intended purpose and the perpetrator fails to fulfill payment obligations. The fact that the organizer unilaterally ceased the scheme's activities and became unreachable indicates a shift in intent from management to permanent appropriation. In criminal law perspective, this change in intention constitutes

an important indicator in determining whether possession remains within the boundaries of lawful legal relations or has transformed into a violation of property rights.

The legal relationship between participants and the organizer is essentially based on trust through temporary control of funds. When the organizer refuses or avoids returning the funds without legitimate grounds, this relationship transforms into one of violation. At this stage, the object that was originally under lawful possession becomes the object of unlawful control. This shift marks the fulfillment of the objective element of embezzlement, namely the existence of property belonging to another person that is unlawfully controlled by the perpetrator.

Doctrinally, the boundary between breach of contract and embezzlement lies in the presence of an intention to permanently control the property or funds. Breach of contract concerns the non-fulfillment of obligations within a civil relationship, such as delayed or unmet payment obligations, which in principle are resolved through compensation, enforcement of obligations, or cancellation of agreements under civil law [12]. Such situations generally arise due to objective inability or certain circumstances that do not necessarily indicate an intention to permanently deprive another party of their rights. Conversely, embezzlement enters the criminal realm when a person who initially lawfully controls property consciously retains, uses, or transfers it without any intention to return it to the rightful owner, thereby fulfilling the elements of unlawfulness and intent to appropriate [13].

This lack of good faith may be indicated by behaviors such as avoiding communication, failing to provide explanations regarding the use of funds, and not demonstrating genuine efforts to restore the losses suffered by the injured parties.

The juridical analysis confirms that the elements of embezzlement are fulfilled because there was lawful possession of funds initially, followed by a change of intent toward unlawful control and the absence of good faith to return the funds to their rightful owners. Thus, the payment failure in this case cannot be viewed merely as a contractual violation but as a violation of property rights that gives rise to criminal liability. In terms of legal protection, this construction is important to ensure that abuses of trust in the management of collective funds receive a proportionate and effective legal response.

Criminal Liability of the Perpetrator

Criminal liability in criminal law requires the fulfillment of three fundamental elements: the existence of an unlawful act, the presence of fault in the form of intent or negligence, and the perpetrator's capacity to be held responsible for their actions. These three elements must be analyzed integrally to determine whether an act can be attributed as a criminal offense. In the rotating savings default case assisted by H&P Advocates in Surakarta, the construction of the perpetrator's criminal liability can be traced through patterns of behavior demonstrating intentional acts in collecting and controlling victims' funds.

The unlawful act is reflected in the perpetrator's conduct of continuing to collect funds from the public through rotating savings schemes despite lacking the actual capacity to fulfill payment obligations. From a criminal law perspective, intent is not only proven through the perpetrator's confession but may also be inferred from the overall series of actions indicating a conscious will to produce certain consequences. Repeated fundraising patterns, the significant number of victims, and the perpetrator's disappearance after the funds were collected constitute objective indicators of an intention to obtain unlawful financial gain.

The element of fault is further reinforced by the existence of a clear economic motive underlying the perpetrator's actions. The drive to obtain financial benefit through the control of participants' funds demonstrates a subjective purpose consistent with the construction of both fraud and embezzlement offenses. In criminal law doctrine, this situation reflects *dolus directus*, a form of intent in which the perpetrator consciously desires and accepts the direct consequences of their actions.

From the perspective of H&P Advocates in Surakarta, the perpetrator's criminal liability can be explicitly analyzed under the provisions of the new Indonesian Criminal Code, which emphasizes the structure of fraud and embezzlement as two distinct normative constructions that may nevertheless be applied cumulatively. Fraud, as stipulated in Article 492 of the Criminal Code, focuses on the act of inducing another person to surrender property through a series of lies or deceptive practices. In the rotating savings default case, the use of package-based schemes promoted as sustainable despite later becoming inactive

and failing to meet obligations demonstrates the construction of false representations designed to attract victims' participation, particularly among elderly individuals who possess a high level of social trust.

The victims' transfer of funds amounting cumulatively to more than one billion rupiah cannot be separated from the trust built by the perpetrator through communication and social legitimacy as the scheme's organizer. Thus, the elements of inducing others through deception and the objective of obtaining unlawful benefit are normatively fulfilled [14].

In addition to fraud, the perpetrator's actions also fulfill the elements of embezzlement as stipulated in Article 486 of the Criminal Code. The funds entrusted by participants were initially under the perpetrator's lawful control due to the trust-based relationship as the scheme's organizer. However, when the funds were not used according to their intended purpose, were not returned at maturity, and the perpetrator disappeared without accountability, the legal status of possession transformed into unlawful appropriation. This abuse of trust constitutes the central characteristic of embezzlement because the perpetrator retains control over property that does not legally belong to them [15].

Aggravating factors in criminal liability are also evident in the characteristics of the victims and the magnitude of the losses. Most victims were elderly individuals aged over fifty, indicating the exploitation of a vulnerable group that is psychologically more susceptible to trust-based persuasion. In sentencing practice, exploitation of vulnerable victims is often considered an aggravating circumstance in assessing the perpetrator's culpability. Furthermore, total losses exceeding one billion rupiah reflect significant socio-economic impacts, which doctrinally strengthen the justification for the application of criminal law enforcement in a repressive manner [16].

To ensure that the case is not reduced to a mere civil dispute, the construction of mens rea must be clearly emphasized. The perpetrator's disappearance and the victims' inability to contact the organizer indicate bad faith aimed at avoiding responsibility rather than mere financial incapacity. If the payment mechanism relied on funds from new members to fulfill obligations to earlier members, such a pattern would reflect the characteristics of a Ponzi scheme, which inherently contains elements of systematic deception. Moreover, the failure to respond to formal legal warnings (somasi) submitted by the victims' legal counsel demonstrates the closure of civil settlement avenues, making criminal law intervention a relevant and proportionate instrument [17].

Thus, the application of Articles 492 and 486 of the Criminal Code in rotating savings default cases is not solely based on the losses incurred but on the structure of culpability in which the perpetrator from the outset exploited trust as a means of obtaining unlawful gain. This analysis confirms that criminal liability in trust-based economic crimes is grounded in the protection of victims' freedom of will as well as the protection of property rights, thereby providing a strong normative basis for the application of criminal sanctions within the Indonesian criminal justice system [17].

CONCLUSION

Based on the analysis of the construction of the offense and the factual circumstances of the case, the practice of payment default by the rotating savings organizer handled with legal assistance from H&P Advocates in Surakarta fulfills the elements of criminal liability through the cumulative fulfillment of the offenses of fraud and embezzlement. The perpetrator intentionally constructed the victims' trust through misleading representations in order to induce the transfer of funds and subsequently exercised unlawful control over those funds without any intention of returning them. This situation reflects a transformation from a trust-based civil relationship into a criminal violation of property rights. The pattern of repeated conduct, the significant number of victims, and the cessation of payments accompanied by the perpetrator's disappearance clearly demonstrate culpability in the form of intent and the objective of obtaining unlawful financial gain. Therefore, the payment failure in this rotating savings scheme cannot be qualified merely as a breach of contract but rather constitutes a trust-based economic crime arising from the abuse of confidence, which requires the application of criminal sanctions to ensure legal certainty and effective protection for the victims.

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