

## Criminal Sanctions Against Empty Bilyet Giro Issuers in Indonesia

M. Zahlan<sup>1</sup>, Faisal Santiago<sup>2</sup>, Megawati Barthos<sup>3</sup>

<sup>1,2,3</sup> Universitas Borobudur, Indonesia

Email: [zahlanmuhammad@gmail.com](mailto:zahlanmuhammad@gmail.com), [faisalsantiago@borobudur.ac.id](mailto:faisalsantiago@borobudur.ac.id),  
[megawati\\_barthos@borobudur.ac.id](mailto:megawati_barthos@borobudur.ac.id)

Corresponding Author: [zahlanmuhammad@gmail.com](mailto:zahlanmuhammad@gmail.com)

---

### KEYWORDS

Criminal sanctions; Publisher;  
Bilyet Giro is empty;  
Indonesian.

### ABSTRACT

Bilyet Giro is part of banking services in Indonesia carried out by conventional commercial banks. Conventional commercial banks are closely related to people's economic activities. The use of Bilyet Giro as a means of payment began to be felt by businesses, so the introduction and use of Bilyet Giro is a sign that the public knows the important role of Bilyet Giro as a means of giral payment. For issuers who issue empty bilyet giro will receive administrative sanctions in the form of inclusion of the customer's name into the Blank Giro Withdrawal Black List, and the customer is required to return the remaining unused bilyet giro blanks. The name of the customer listed in the blacklist expires, and then can be accepted again as a bank customer. However, if the issuer of an empty bilyet giro has an indication and it should be suspected that after the investigation process it turns out that there is an element of fraud, criminal sanctions can be imposed as stipulated in the Criminal Code. Guarantee of legal certainty in the application of the principle stated in Article 1 paragraph (1) of the Criminal Code, namely that a person can only be punished for his actions, if criminal sanctions for those actions have been regulated in advance in the Law. No matter how evil an act is, it will not be punishable if there is no law prohibiting it and mentions its sanctions. (Article 1 paragraph (1) of the Criminal Code).

Attribution-ShareAlike 4.0 International (CC BY-SA 4.0)



---

### 1. Introduction

National Development has been carried out so far as a sustainable development effort in order to realize a just and prosperous society based on Pancasila and the 1945 Constitution. In order to achieve this goal, the implementation of development must always pay attention to the harmony, harmony and balance of various elements of development, including in the economic and financial fields. Today's national economic development shows an increasingly unified direction with regional and international economies that can support or have an unfavorable impact.

Since Indonesia became independent in 1945 until now there have been many developments

in science and technology in the lives of Indonesian people, especially in the banking sector. Payment through banking services has increased significantly every year which is influenced by various factors. The use of Bilyet Giro has increased every year.

The development of the payment system from time to time is growing rapidly, humans at first using the barter system continue to experience increased development by using money as a means of payment, so that the process of exchanging goods becomes more effective. Money is a means of exchanging and paying for commercial and financial transactions, so that money becomes a driver of economic progress and national and international trade. Money is divided into currency and giral money. Currency is an exchange consisting of paper and metal denominations whose face value has been determined by the government, while giral money is paper money and its face value is determined by its respective draw. Innovation in payments continues to be developed by the banking system to anticipate the magnitude of risk in large cash payments, so that non-cash payments in the form of securities are known because they are considered more efficient, fast, and secure.

*"Money is a legal payment that has been determined by a country through an applicable law and regulation. Indonesia uses rupiah as legal tender, based on the provisions of Law Number 23 of 1999 concerning Bank Indonesia as amended by Law Number 3 of 2004. Rupiah currency must be used for settlement of payment obligations among members of the public in Indonesian territory because rupiah is legal tender."*(M. Bahsan., 2006)

This bilyet giro is a securities. The term "bilyet giro" began to be used expressly in the sense of "giro", which was stipulated by Law Number 7 of 1992 as amended by Law Number 10 of 1998 concerning Banking. A giro is a deposit of funds whose withdrawal can be made at any time by means of cheques, bilyet giro, other means of payment orders or by book-entry. Meanwhile, bilyet giro is an order from the customer to the depository bank to transfer a certain amount of funds from the account concerned to the account of the named holder.(Widiyono., 2006) And the provisions governing bilyet giro are contained in Bank Indonesia Circular Letter (SEBI) dated January 24, 1972 No. 4/670/UPPB/PbB, which is enhanced by: Director Decree No. 28/32 KEP/DIR dated July 4, 1995, Circular Letter No. 28/32/UPG dated July 4, 1995, Circular Letter No. 2/10/DASP/ dated June 8, 2000, Circular Letter No. 4/17/DASP dated November 7, 2002.

Growth of bank assets, banking products and services that experienced an increase in form and services. This growth has caused businesses and the public to make payment transactions. The Bank has operational activities, including banking services in payment activities using payment instruments in the form of money and securities.

The cashless payment system in its development has broad implications for various aspects, including: the institutions involved, the legal aspects of the parties involved, the payment mechanism and risks. These various aspects have an impact on the financial system and economy, giving rise to the need for a fast, secure, and easy payment system.

The definition of securities according to Abdulkadir Muhammad:(Abdulkadir, 1998)

*"Securities are letters that the issuer deliberately issued as an implementation of the fulfillment of an achievement, which is in the form of payment of a sum of money. Payment is not made using currency, but using other means of payment. The instrument of payment is a letter containing an order to a third party or a declaration of ability, to pay a sum of money to the holder of the letter."*

The use of Bilyet Giro as a means of giral payment from year to year has increased, both in nominal amounts and sheets as seen from clearing turnover, thus proving that Bilyet Giro has been widely known by the public. Bilyet Giro is an order from the customer to the depository bank to transfer a certain amount of funds from the account concerned to the account of the holder who has been named.

For issuers who issue empty bilyet giro will receive administrative sanctions in the form of inclusion of the customer's name into the Blank Giro Withdrawal Black List, and the customer is

required to return the remaining unused bilyet giro blanks. The name of the customer listed in the blacklist expires, and then can be accepted again as a bank customer. However, if the issuer of an empty bilyet giro has an indication and it should be suspected that after the investigation process it turns out that there is an element of fraud, criminal sanctions can be imposed as stipulated in the Criminal Code.

Guarantee of legal certainty in the application of the principle stated in Article 1 paragraph (1) of the Criminal Code, namely that a person can only be punished for his actions, if criminal sanctions for those actions have been regulated in advance in the Law. No matter how evil an act is, it will not be punishable if there is no law prohibiting it and mentions its sanctions. (Article 1 paragraph (1) of the Criminal Code).

The problem in this paper is: How are the criminal sanctions against the publisher of empty Bilyet Giro in Indonesia?

## 2. Materials and Methods

The method used in writing this applied paper is the analytical descriptive method, which is to use data that clearly describes the problem directly in the field, then analysis is carried out and then concluded to achieve a solution to a problem. Data collection methods through observation and literature study to obtain problem solving in the preparation of this paper.

In line with the research objectives to be achieved, this research domain is included in the realm of qualitative research and thus a qualitative approach method will be used. According to Petrus Soerjowinoto et al., qualitative methods are methods that emphasize the process of understanding researchers on problem formulation to construct a complex and holistic legal phenomenon. (Petrus Soerjowinoto, 2006)

A normative juridical approach, carried out on certain laws and regulations or written laws, relating to the Regulation of Unlicensed Coal Mining Crimes in Indonesia. (Soemitro, 1988) This study describes the state of the object studied, which focuses on How to Regulate Coal Mining Crimes Without Permits in Indonesia in practice.

## 3. Results and Discussions

### 3.1 Criminal sanctions against the issuer of empty bilyet giro in Indonesia.

According to Fitzgerald, as quoted by Satjipto Raharjo, the beginning of the emergence of the theory of legal protection came from the theory of natural law or the flow of natural law. It was pioneered by Plato, Aristotle (a disciple of Plato), and Zeno (a member of the Stoic school). According to the school of natural law, it is said that the law comes from God who is universal and eternal, and between law and morals should not be separated. The adherents of this school view that laws and morals are reflections and rules internally and externally

of human life manifested through law and morals. (Satjipto Rahardjo, 2009)

Fitzgerald explained Salmond's theory of legal protection that law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests on the other hand. Legal interests are concerned with human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must see stages, namely legal protection born from a legal provision and all legal regulations provided by the community which is basically an agreement of the community to regulate behavioral relations between community members and between individuals and the government who are considered to represent the interests of the community. (Satjipto Rahardjo, 1982)

Macroeconomic developments have had a significant impact on the political, legal,

industrial, social, and cultural aspects of a country. The logical consequence (adequat) of the economic development of a country is the increased traffic of payments in trade transactions. Starting from buying and selling transactions with small values such as people's markets, to buying and selling transactions with fantastic values.(Zainal Asakin., 2010)

Bilyet giro is only a bookkeeping order from the issuer to the bank for the benefit of the recipient of the bilyet giro. Because it can only be used for bookkeeping and cannot be cashed (taken in cash), it is considered safer, so people tend to like it. But in reality, bilyet giro, which is expected to fulfill its function as a practical, efficient, and safe means of giral payment, has not been fully realized. This is due to problems arising in the use of bilyet giro, especially in relation to the responsibility of bilyet giro issuers for bilyet giro whose obligations cannot be carried out. With this problem, it can cause losses to the public, especially bilyet giro holders and banks as interested, which as a result can affect public trust in bilyet giro in particular and in banks in general. So far, problems related to the issuance of bilyet giro whose obligations are not carried out tend to be raised in the realm of civil law so that the thought is created that everything related to bilyet giro, must be resolved through civil channels. With this thinking, it has resulted in some people using this problem as a mode to commit crimes, where the solution uses the criminal realm.

The elements that result in criminal liability include;

1. The existence of an element against the law.

The principle of legal responsibility is the existence of unlawful acts or immoral acts that are doing things that are prohibited or abandoning things that are commanded by Islamic law. The responsibility of criminal acts varies according to the level of violation or immoral act. Perpetrators who do have the intention to go against the law then the sanctions (punishment) are aggravated. But if it is the other way around, then the punishment is commuted, in this case the main factor here is against the law.

It is meant against the law to do an act prohibited by sharia after it is known that shari'i prohibits or obliges such acts. Unlawful acts are the main element that must be found in every criminal act, meaning that immoral acts or unlawful acts are factors that must be called criminal liability, because causes (factors) are used as a sign of determining or producing disaster.(Topo Santoso., 2003)

The absence of cause does not require a disaster. Thus, the existence of immoral acts or unlawful acts in shari'i requires accountability. The existence of committing immorality / against the law is abandoning religious orders or doing something that is prohibited in religion. Prohibited acts include all physical elements of the crime, without these elements no crime occurs and criminal liability does not exist because criminal liability requires the commission of an act that is prohibited by law.

In terms of liability for being against the law, it can be distinguished in understanding it between unlawful and unlawful intent. Unlawful means doing prohibited acts or leaving obligations without any intention from the perpetrator himself but causing harm to others. The unlawful intent is the tendency of the perpetrator's intention to do or abandon an act that is known that it is prohibited or to commit an act with the intention of being against the law.(Abdul Qadir Audah, 2007)

2. The presence of errors.

The factor that causes criminal liability is immoral acts, namely doing actions prohibited by shara'. What is meant here is a person's guilt against an act that has been determined not to be done. It concerns that a person has abandoned an obligation or command, so that he can be held accountable.

There is a difference in understanding wrongdoing as a factor of liability. This difference is

related to the understanding between criminal acts and guilt itself, where according to some legal experts that the definition of criminal acts is not found in the Law, only that criminal acts are theoretical creations put forward by legal experts. This will bring some consequences in understanding criminal acts. Because according to legal experts, guilt must be separated from the notion of criminal acts and guilt itself is the determining factor of liability. The definition of criminal acts only contains the characteristics of prohibited acts and threatened with punishment. This understanding is important not only academically but also as an awareness in building a law-conscious society. As it is mentioned that there is no crime without guilt meaning that a person cannot be held criminally liable if the guilt attached to the subject of the perpetrator has not been proven, the guilt referred to here is an objective error meaning that it can be reproached to the perpetrator.

The legal basis and position of *Cheque/Bilyet Giro* are as follows:

a. Article 378 states as follows:

"Whosoever with intent to benefit himself or others unlawfully, either by using a false name, either by deceit, or by a series of lies, entices any person to give away an item or to make a debt or write off a receivable, shall be punished for fraud with imprisonment for not more than four years".

The elements contained in this article on fraud are:

a. Objective elements

- 1) Mobilize, that is, use actions, both in the form of deceptive deeds and words. In this case, for example, someone always gives reasons and promises if asked for responsibility regarding solving the problem of payment for a number of goods purchased by using *bilyet giro* but rejected by the bank because of insufficient funds.
- 2) To hand over an item / object;
- 3) To give debt;
- 4) By using efforts such as: by deceit, and a series of lies in this case someone uses Blank *Bilyet Giro* in making payments to the complainant and stating several complementary information that seems to be the correct content of the information.

b. Subjective elements

- 1) By intent, i.e. a crime committed intentionally and having a specific intent/purpose. If it is associated with intentionality, it is included in the *Dolus Premeditatus*, that is, intentionality accompanied by a plan in advance;
- 2) To benefit oneself
- 3) Unlawfully

That the fact when viewed from the side of the giver (debtor) *Bilyet Giro* is the ability and ability of the *Bilyet Giro* giver in this case Reported in terms of fulfilling the obligations of the recipient (creditor) *Bilyet Giro* recipient;

That with the submission of *Bilyet Giro*, the recipient of *Bilyet Giro* will believe that the giver of *Bilyet Giro* is able and able to pay his debt, by transferring a certain amount of funds from the account of the *Bilyet Giro* giver to the account of the *Bilyet Giro* Recipient;

That *Bilyet Giro* is one of the instruments that is a type of securities that are not regulated in the KUHD (Commercial Law Code), which grows and develops in Banking practice due to the need for giral payment traffic;

Thus, fraudulent payment acts through empty *bilyet giro* can also be charged with criminal penalties. As a crime, payment by blank check can be classified and included in the crime of fraud. The crime of fraud (*bedrog*) is contained in Chapter XXV Book II of the Criminal Code from Article 378. The original title of this chapter is a *bedrog* that many experts translate as fraud,



or some also translate it as cheating. Article 378 of the Criminal Code reads as follows:

"Whosoever with intent to benefit himself or others unlawfully, by using a false name or false dignity, by deceit, or (warning) as a basis for taking a series of lies, moving another person to deliver something to him, or to give a debt or write off a receivable shall be punished with fraud with imprisonment for not more than four years."

The crime of fraud in a broad sense is regulated in chapter XXV concerning Fraudulent Acts from Article 378 of the Criminal Code (KUHP), so that in the Criminal Code the regulation regarding fraud is the longest discussed crime among crimes against other property. The crime of fraud is an ordinary offense, which means that if there is a fraud, anyone can report the incident to the police, in contrast to the complaint offense which can only be processed if the victim who feels aggrieved makes a complaint to the local police authorities.

Reporting of an ordinary offense can be reported to the local police authorities, then the police based on the report will conduct an investigation, checking whether what is reported is a criminal offense or not. After the police conducted an investigation, and it was true that the reported incident was a criminal act of fraud, the investigation process was upgraded to an investigation process.

At the investigation level, police investigators will try to collect supporting evidence so that later if the evidence is deemed sufficient, the case file will be submitted to the public prosecutor. The duties of police investigators cease at the time of handover file the case to the Public Prosecutor. Next is the duty of the Public Prosecutor to make an indictment which will later be transferred to the court for examination, trial and decision by the district court.

#### **4. Conclusion**

Consumer protection is one of the fundamental issues in the constellation of national development in a country including Indonesia. The results showed the protection of consumers in Law Number. 8 Year 1999 in article 2 consumers get benefits, fairness, balance, security and safety of consumers, and legal certainty. This consumer protection is a guarantee that should be obtained by consumers for every food product purchased from producers or business actors.

The issuer of bilyet giro must provide sufficient funds in his current account with interested banks. The issuer must provide funds for the bilyet giro from the effective date until the maturity date as long as the bilyet giro is not cancelled by the issuer after the expiry of the appointment grace period. In the event that the bilyet giro appointment is not supported by sufficient funds or the account has been closed, then the withdrawal is categorized as the issuance of an empty bilyet giro.

The effective date according to Article 1 point 22 of Bank Indonesia Decree Number 8/29/PBI/2006 concerning the National Black List dated December 20, 2006 is the date containing the grace period for offering bilyet giro, which is 70 (seventy) days. The importance of the grace period is because bilyet giro recognizes an expiration, which is 6 (six) months from the end date of the grace period for the issuer of bilyet giro to raise funds at least the amount of funds listed in the bilyet giro.

In civil law, the issuance of an empty bilyet giro can be said to be a failure to pay debts and can be sued to court with a lawsuit for default (broken promise). Achievement in Article 1234 of the Civil Code is something that can be demanded fulfillment. In criminal law, the issuance of empty bilyet giro can be sued to court with the case of an element of fraud regulated in Article 378 of the Criminal Code.

## 5. References

- Abdul Qadir Audah. (2007). *Ensiklopedi Hukum Pidana Islam*. Jakarta: Rehat Publika.
- Abdulkadir, Muhammad. (1998). *Hukum Dagang Surat-Surat Berharga*. Bandung: Citra Aditya Bakti.
- M. Bahsan. (2006). *Cek dan Bilyet Giro Perbankan Indonesia*. Jakarta: RajaGrafindo Persada.
- Petrus Soerjowinoto, Dkk. (2006). *Buku Panduan Metode Penulisan Karya Hukum (MPKH) dan Skripsi*. Semarang: Fakultas Hukum,UNIKA Soegijapranata.
- Satjipto Rahardjo. (1982). *Ilmu Hukum*. Bandung: Citra Aditya Bakti.
- Satjipto Rahardjo. (2009). *Penegakan Hukum (Suatu Tinjauan Sosiologis)*. Yogyakarta: Genta.
- Soemitro, Ronny Hanitijo. (1988). *Metodologi Penelitian Hukum dan Jurimetri*. Jakarta : Ghalia Indonesia.
- Topo Santoso. (2003). *Menggagas Hukum Pidana Islam*. Bandung: Murababh.
- Widiyono., Tri. (2006). *Aspek Hukum Operasional Transaksi Produk Perbankan di Indonesia*. Bogor: Ghalia Indonesia.
- Zainal Asakin. (2010). *Pengantar Hukum Perbankan Indonesia*. Jakarta: Rajawali Pers.