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## Submission of Blank Checks as Fraud in Supreme Court Decision Number 1412 K/PID/2023

Article	Abstract
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### INTRODUCTION

The practice of criminal law enforcement in Indonesia still often faces problems in distinguishing civil law disputes from criminal acts, especially in cases departing from

contractual relationships or<sup>1</sup> engagements. Not infrequently, failure to fulfill achievements in an agreement is actually drawn into the realm of criminal law with the construction of fraud crimes as stipulated in Article 378 of the Criminal Code. This condition has the potential to criminalize civil law relations and is contrary to the principle that criminal law should be placed as the ultimate remedium<sup>2</sup>.

The Supreme Court Decision Number 1412 K/Pid/2023 is interesting to analyze because it shows the judge's prudent attitude in assessing whether an act originating from an agreement relationship can be qualified as a criminal offense or solely a civil dispute. In the decision, the Supreme Court assessed in depth the elements of the criminal act charged and related it to the legal facts revealed at the trial, resulting in legal considerations that affirmed the boundary between default and fraud.

The study of this decision is important considering that law enforcement officials still often use criminal instruments to resolve disputes that are actually civil in nature<sup>3</sup>. In fact, the mistake in attracting an act to the criminal realm not only has implications for the violation of the defendant's rights, but also injures the legal certainty and the purpose of the crime itself. Therefore, the analysis of the Supreme Court's ratio decidendi in this decision has strategic value for the development of fair and proportionate criminal justice practices.

Several previous studies have addressed the conceptual differences between defaults and fraud and the tendency to criminalize civil disputes in judicial practice. However, these studies are generally theoretical and have not specifically examined the annotations of the Supreme Court's cassation decisions using a systematic analytical approach. In addition, the use of the IRAC structure in analyzing judges' legal considerations is still relatively rarely applied in the annotation study of criminal decisions.

Based on this background, the legal issue studied in this article is whether the Supreme Court's legal considerations in Decision Number 1412 K/Pid/2023 are correct in assessing the defendant's actions and distinguishing between fraud and civil disputes. This article aims to critically and systematically analyze the Supreme Court's legal considerations in order to assess the consistency of the application of the criminal element of fraud in cases rooted in the relationship of engagement.

The novelty of this article lies in the use of a decision annotation approach with an Issue, Rule, Application, and Conclusion (IRAC) structure to the Supreme Court's criminal cassation decision, so that it is expected to be able to make an academic contribution in clarifying the boundaries between the realm of criminal law and civil law and encouraging law enforcement practices that uphold the principles of justice and legal certainty.

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<sup>1</sup> Riska Ari Amalia, "A Study of Default in Covenant Relationships" 36, no. 2 (2021): 126–39.

<sup>2</sup> Adi Wijaya, Eli Tri Kusiwanti, and maria Ana Liwa, "Limits of Default and Fraud in Loan Agreements," *Journal Of Indonesia Law & Policy Review* 6, no. 3 (2025): 254–60.

<sup>3</sup> Faculty of Law and Universitas Airlangga, "Criminalizing Civil Law Actions of Default into Criminal Acts of Fraud: A Human Rights Perspective" 39, no. 3 (2024): 303–28.

## RESEARCH METHODS

This research is a normative legal research that focuses on the study of law as a positive norm that lives in laws and regulations, court decisions and legal doctrine. The normative character of this research places the object of study not on the empirical behavior of the parties, but on the construction of norms, their application by judges, and their coherence with the Indonesian criminal law system. Thus, this study aims to assess juridically the legal considerations of the panel of judges in the annotated decision, their conformity with the provisions of applicable laws and regulations, and their alignment with the principles, principles, and doctrines of criminal law.

The approaches used are a case approach, a legislative approach, and a conceptual approach. The case approach is used to examine in depth the court decision that is the object of annotation, by reconstructing the case position as contained in the judge's consideration and analyzing the ratio decidendi of the decision. The legislative approach is used to examine positive legal norms that are relevant to the legal issues in the case, both in the Criminal Code, special laws, and other related laws and regulations. The conceptual approach is used to explain and test the application of criminal law principles, criminal liability doctrine, and other relevant theoretical concepts, so that the analysis does not stop at the textual level of norms, but also considers a broader legal framework.

The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include court decisions that are analyzed as the main source as well as laws and regulations that are directly related to the legal issues in the case. Secondary legal materials are in the form of legal literature such as criminal law textbooks, scientific journal articles, results of academic research, comments on decisions, and the views of scholars relevant to the topic of discussion. Tertiary legal materials are used to strengthen conceptual understanding and terminology, including legal dictionaries, legal encyclopedias, and scientific writing guidelines. All such legal materials are collected, classified, and analyzed systematically through legal reasoning, grammatical, systematic, and teleological interpretation techniques according to the needs of the analysis, while still limiting themselves only to the facts that are explicitly contained in the court decision and valid legal sources, without speculating or adding facts outside the judgment.

## ANALYSIS AND DISCUSSION

### A. Position Case

This case began with the legal relationship between the defendant, Eni Ginarsih Ermaya, who served as the Director of PT Rayna Dominique Zalika, and PT Beton Elemenindo Perkasa as the supplier of concrete fence panels. Based on the information revealed during the trial, the Defendant, through an intermediary witness who acted as a sales marketer at PT Beton Elemenindo Perkasa, ordered concrete fence panels, which were recorded in four Purchase Orders (PO) with a total value of Rp1,844,435,214.00. Regarding the order, PT Rayna Dominique Zalika made a prepayment of 20% of the total transaction value, so that the ordered goods could be sent and received in accordance with the purpose intended by the Defendant.

After the goods were received, on November 30, 2018, PT Beton Elemenindo Perkasa submitted a claim for the payment of the remaining liabilities. As a follow-up to the

collection, the Defendant handed over two checks from Bank BJB in the name of PT Rayna Dominique Zalika, with a value of IDR 300,000,000.00 and IDR 963,250,000.00, respectively. However, prior to the payment date, the Defendant filed a formal request to replace the checks and in fact never made a reimbursement of the bill. When the cheques were submitted for payment, Bank BJB refused to cash them on the grounds that the account balance was insufficient, as evidenced by the Rejection Letter. This rejection caused financial losses for PT Beton Elemenindo Perkasa amounting to IDR 1,525,673,688.00.

Based on this incident, the Public Prosecutor submitted the Defendant to the court at the Bandung District Court with two alternative charges, namely the first indictment based on Article 372 of the Criminal Code regarding embezzlement and the second indictment based on Article 378 of the Criminal Code regarding fraud. In its decision, the Bandung District Court, with Case Number 16/Pid. B/2023/PN Bdg dated May 9, 2023, stated that the Defendant was legally proven to have committed the crime of fraud as the second indictment and sentenced him to one year in prison. This decision was then upheld by the Bandung High Court through Decision No. 178/PID/2023/PT BDG issued on July 20, 2023.

Regarding the judge's decision in this case, both the Defendant and the Public Prosecutor appealed. The reason for appeal filed by the Defendant was basically related to the application for a reduction of sentence, while the Public Prosecutor asked the Supreme Court to impose the sentence in accordance with his demands, namely one year and six months in prison. The Supreme Court, in Decision Number 1412 K/Pid/2023, stated that the legal basis provided by the court of first instance is appropriate and correct, both in the assessment of facts and in the application of Article 378 of the Criminal Code. Therefore, the appeal filed by both parties was dismissed, and the earlier judgment was upheld.

## **B. Legal Analysis**

### **1. Issue**

The central legal issue in the Supreme Court Decision Number 1412 K/Pid/2023 lies in the determination of the juridical qualification of the Defendant's act of handing over a bank check without adequate balance support in a transaction relationship of buying and selling goods. This issue raises a fundamental question whether the act can be construed as a criminal act of fraud as stipulated in Article 378 of the Criminal Code, or whether it is merely a form of breach of promise (default) that should be resolved in the realm of civil law.

This issue is relevant because factually the legal relationship between the Defendant and the victim began with the agreement to buy and sell concrete fence panels as evidenced by the purchase order document and the realization of the delivery of goods by the seller. The relationship is basically a civil relationship born from the agreement of the parties. However, the Defendant's failure to fulfill the payment obligation through the submission of an uncashable check raises legal problems regarding the existence or absence of malicious intent (*mens rea*) and bad faith that has existed since the stage of the formation of the agreement.

Thus, the derivative legal issue that is no less important is how to draw a firm demarcation line between default in civil contracts and fraudulent acts in criminal law. In

addition, it is necessary to analyze the extent to which the use of payment instruments in the form of blank checks can be seen as an act that contains elements of "deception" or "series of lies" as required in Article 378 of the Criminal Code, especially in the context of a contractual relationship that is initially legal and built on the basis of trust between the parties<sup>4</sup>

## 2. Rule

### 2.1 Provisions of Article 378 of the Criminal Code

Article 378 of the Criminal Code defines fraud as an act committed with the intention of unlawfully benefiting oneself or others through the use of a false name, false position, deception, or a series of lies, which moves another person to hand over an item, give a debt, or write off a receivable<sup>5</sup>. The formulation of the norm shows that fraud is a criminal act that focuses on the existence of active acts that are misleading, which directly affects the victim's will in committing a legal act that is detrimental to him.

Furthermore, the structure of the fraud offense not only requires the occurrence of losses, but also requires a causal relationship between the act of deception committed by the perpetrator and the act of handing over goods or giving a debt by the victim. This means that the victim's actions must be a direct result of a series of lies or deception committed by the perpetrator. Thus, the main focus in proving fraud lies in whether the perpetrator's actions really serve as a determining factor that motivates the victim to act, not solely on the consequences of the losses that arise later.

The most essential element of the crime of fraud is the existence of malicious intent (*mens rea*) that has been formed from the beginning of the act, namely when the perpetrator creates or takes advantage of misleading circumstances to establish a legal relationship with the victim. The malicious intent must be proven to have existed before or at least at the same time as the act on which the bond was born. Therefore, fraud cannot be reduced to mere inability to fulfill obligations or failures in the execution of an agreement, but must be understood as an act that from the beginning is built on lies or deliberate manipulation

### 2.2 Article 191 Paragraph (2) of the Criminal Code

Article 191 paragraph (2) of the Criminal Procedure Code provides a firm normative basis that if the act charged is legally and convincingly proven, but the act does not meet the qualification as a criminal act, then the defendant must be released from all legal claims<sup>6</sup>. This provision reflects the fundamental principle in criminal law that punishment can only be imposed on acts that clearly and expressly meet the elements of criminal offenses as formulated in the law. Thus, this norm functions as a safeguard against the application of criminal law that goes beyond the proper scope.

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<sup>4</sup> Randi Aritama, "Fraud in Criminal Law and Civil Law" 1, no. 3 (2022): 728–36.

<sup>5</sup> Medika Andarika Adapati, "DEFAULT IN AN AGREEMENT THAT CAN BE CRIMINALIZED ACCORDING TO ARTICLE 378 OF THE CRIMINAL CODE," *Lex Privatum* VI, no. 4 (2018): 5–15.

<sup>6</sup> Hendrika Beatrix et al., "LEGAL CONSEQUENCES OF JUDGES' DECISIONS THAT RENDER VERDICTS OUTSIDE THE PUBLIC PROSECUTION INDICTMENT," 2018.

Furthermore, the existence of Article 191 paragraph (2) of the Criminal Code has a strategic meaning in cases that are in the border area between criminal law and civil law. In this context, this provision emphasizes that the occurrence of losses or non-fulfillment of an obligation does not automatically make an act a criminal act. The judge is required to conduct a careful and comprehensive juridical assessment of the character of the act charged, by examining whether the act really contains elements of intentionality, unlawful nature, and active form of act required by criminal norms.

Therefore, Article 191 paragraph (2) of the Criminal Code plays an important role in preventing the criminalization of civil disputes that should be resolved through civil law mechanisms. This provision provides space for judges to place a case proportionately according to its legal nature, so that law enforcement is not only oriented towards punishment, but also ensures legal certainty, justice, and protection of the rights of the accused. In judicial practice, the application of this norm is an important indicator for the prudence of law enforcement officials in determining whether an act is worthy of being processed in the criminal realm or whether it should be returned to the civil settlement mechanism.

### 2.3 The Doctrine of Fraud Vs Default Difference and Supporting Jurisprudence

The doctrine of criminal law consistently distinguishes between default and fraud by considering the timing of the appearance of malicious intent (*mens rea*). Default occurs when one of the parties fails to fulfill the obligations that have been agreed upon after the agreement has been made, either due to negligence, incompetence, or bad faith that arises later. In default, the legal relationship from the beginning is built legally and legitimately without any intention to deceive the other party, so that the violation that occurs becomes a problem in the implementation of the agreement which is included in the field of civil law.

On the other hand, fraud requires the existence of an intention to mislead that has existed since the beginning of the process of forming an agreement. Legal relationships formed as a result of fraud have actually been problematic from the beginning because they are based on lies, tricks, or a series of lies that are deliberately carried out to influence the will of the victim. Thus, the inability to meet payment obligations, including the non-fulfillment of the agreed performance, cannot necessarily be considered a criminal act of fraud if there is no evidence to show the existence of malicious intent underlying the formation of the agreement.

The Supreme Court, through a number of its rulings, further affirmed the distinction, especially in cases relating to the use of blank checks. In its ruling, the Supreme Court affirmed that an unfilled check can be considered a fraudulent tool if it is proven that the perpetrator knew from the beginning that the check was not backed by an adequate balance and knowingly used it to convince the victim to hand over the goods or services. This principle is reflected in Supreme Court Decision No. 133 K/Kr/1973 and No. 1036 K/Pid/1989, which show that blank checks are not just a payment issue, but can be a tool of fraud if used with bad intentions from the beginning of a legal relationship. This jurisprudence serves as an important reference

to determine whether an act falls under the category of civil default or has qualified as fraud under criminal law<sup>7</sup>

### 3. Application

The use of Article 378 of the Criminal Code in the Supreme Court Decision Number 1412 K/Pid/2023 must be seen from an important need to clearly and practically separate default in the civil context and fraud as a criminal act. This difference is very important because in law enforcement in Indonesia, often cases that start from agreements move to the criminal realm without sufficient examination of the elements of guilt and malicious intent<sup>8</sup>. Therefore, the application analysis should focus on trying to systematically link the legal facts that arise in court with the objective and subjective elements of the criminal act of fraud, while explaining the logical reasoning behind the Supreme Court's perspective that this case has exceeded the threshold of default and should be categorized as a crime.

The legal facts show that the legal relationship between the Defendant and PT Beton Elemenindo Perkasa originated from a valid sale and purchase agreement and had legal force. The defendant, in his capacity as Director of PT Rayna Dominique Zalika, placed orders for concrete fence panels through four order letters with a total value of Rp1,844. 435. 214,00. This order is followed by a 20% down payment, which is then followed by the delivery of goods by the seller. This process illustrates that in the early stages of a legal relationship, both parties enter into an engagement in accordance with business practices based on the principles of freedom of contract and mutual trust. In this case, the Supreme Court indirectly recognized that not all failure to fulfill the performance of an agreement can automatically be considered a criminal offense, as long as the legal relationship is still in the context of good faith and there is no indication of fraud in the first place.

However, the character of the Defendant's actions changed significantly when it came time to pay off the payment. When the payment was due and the collection was carried out by PT Beton Elemenindo Perkasa, the Defendant handed over two cheques from Bank BJB listed in the name of PT Rayna Dominique Zalika with a total amount of Rp1.263. 250. 000,00. The handing over of this check visibly indicates the ability to meet payment obligations. However, based on the evidence revealed at the trial, the two checks could not be cashed because the account balance was insufficient, which was proven through a Certificate of Rejection from Bank BJB. This situation not only resulted in failure of achievements, but also caused real losses for victims of Rp1,525. 673. 688.00, which shows the existence of real and measurable legal consequences.

In the context of the application of the elements of Article 378 of the Criminal Code, the Supreme Court held that the Defendant's actions had fulfilled the element of "unlawfully benefiting oneself or others". The advantage is not theoretical or unclear, but

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<sup>7</sup> M.H. Dr. Yahman, S.H, *Characteristics of Default and Criminal Acts of Fraud Born from Contractual Relationships*, 2014.

<sup>8</sup> Hukum and Airlangga, "Criminalizing Civil Law Actions of Default into Criminal Acts of Fraud: A Human Rights Perspective."

is the possession of goods that have been handed over by the victim without the settlement of a valid payment obligation. This mastery does not occur as part of a reasonable contractual relationship, but is the result of an act contrary to the principle of good faith in the engagement. Therefore, the profits obtained by the Defendant cannot be seen only as a mere business risk, but must be understood as the result of a normatively unlawful abuse of trust.

The element of "fraud or a series of lies" is the main focus that distinguishes this case from ordinary civil disputes. The Supreme Court interpreted the handing over of a blank check as an act of fraud, because a check is legally and socially considered a means of payment that shows the existence of funds in the drawer's account. When a check is submitted in a condition of insufficient balance, it automatically creates a misleading impression for the recipient of the check. The handing over of this blank check is not only an expression of promise, but an active action that serves to calm the victim and buy time before legal action is taken<sup>9</sup>. This assessment is reinforced by the fact that the Defendant had applied to replace the check, but never carried out the replacement, thus indicating a consistent set of measures to maintain the false trust of the victim.

The Supreme Court then linked these facts to existing jurisprudence, especially Supreme Court Decisions No. 133 K/Kr/1973 and No. 1036 K/Pid/1989, which affirmed that the use of blank checks in business transactions could be considered fraud if there was awareness from the beginning about insufficient funds. This reference shows the Supreme Court's efforts to maintain clarity in law enforcement and provide legal certainty in the field. Thus, it has been proven that there is a causal relationship between fraud and the delivery of goods, as the submission of blank checks is a key factor that causes victims to hand over goods and delay other legal steps that can be taken faster.

From the point of view of the limits on criminalization in civil disputes, the Supreme Court indirectly established a clear separation between default and fraud. Default is understood as the inability to fulfill achievements caused by the factor of inability or negligence without malicious intent<sup>10</sup>. On the contrary, in this case, the Supreme Court held that from the repayment stage, the Defendant had acted deliberately, i.e. by handing over a means of payment that was factually uncashable and leaving this situation without any real remedial effort. This element of intentionality is a determining factor that changes the nature of the case from the civil realm to the criminal realm, because it shows the intention to mislead other parties for profit<sup>11</sup>.

From an academic point of view, the Supreme Court's consideration can be considered appropriate because it does not directly criminalize the contractual relationship, but first strictly evaluates the existence of an active and deliberate element of fraud. This ruling reinforces the doctrine that criminal law serves as a last resort, but remains relevant to be applied when civil mechanisms are no longer sufficient due to

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<sup>9</sup> Amellya Fatikhah et al., "Qualification of Withdrawal of Blank Checks as Fraud From a Criminal and Civil Law Perspective" 1, no. 2 (2025).

<sup>10</sup> Ph.D. H. Abd Thalib, Sm.Hk., S.H., M.C.L. and M.H. Nur Aisyah T., S.H., "COVENANT LAW," no. 1 (2024): 205.

<sup>11</sup> Wijaya, Kususwanti, and Liwa, "Limits of Default and Fraud in Loan Agreements."

abuse of trust. However, from the perspective of constructive criticism, the Supreme Court should be able to explain more deeply about the aspect of malicious intent at the time of handing over the check, for example by attributing the condition of the account mutation or the pattern of the Defendant's financial transactions as indicators of personal awareness. This deepening is important to strengthen the legitimacy of the judge's argument while preventing the excessive application of Article 378 of the Criminal Code in business disputes that are basically still in the civil realm.

Thus, the application of Article 378 of the Criminal Code in the Supreme Court Decision Number 1412 K/Pid/2023 shows a fairly balanced approach between the protection of victims of fraud and efforts to avoid criminalization in civil relations. This ruling affirms that even if a legal relationship begins with a contract, the use of civil instruments as a tool to commit manipulative acts can still result in criminal liability if all elements of fraud are legally and convincingly proven<sup>12</sup>.

#### 4. Conclusion

Based on the results of the analysis of legal issues, the provisions of Article 378 of the Criminal Code, Article 191 paragraph (2) of the Criminal Procedure Code, the discussion of the difference between default and fraud, and how this is applied to the facts in the Supreme Court Decision Number 1412 K/Pid/2023, it can be concluded that the actions taken by the Defendant cannot only be considered as default in the civil context, but also meets the characteristics of fraud crimes.

Although the legal relationship between the Defendant and PT Beton Elemenindo Perkasa began with a valid sale and purchase agreement based on trust, the Defendant's actions during the execution of the agreement showed a series of misleading behaviors. The delivery of bank checks that are known to be not backed by sufficient balances, coupled with the absence of the implementation of the replacement of the checks as promised, is an active act that creates the illusion as if payment obligations will be made. This act serves as a scam that directly encourages the victim to hand over the goods and delays taking legal action.

The Supreme Court rightly considered that the element of illegal self-gain had been met, because the Defendant had taken control of the victim's property without settling the payment obligation legally. Such gains cannot be considered as ordinary business risks, but rather as the result of misuse of trust contrary to the goodwill principles in the engagement. Therefore, the losses suffered by the victim are not only the result of failure to perform, but are a direct impact of fraudulent acts committed by the Defendant.

Furthermore, referring to the Supreme Court's jurisprudence on blank checks, the Panel of Judges emphasized that civil instruments can turn into fraudulent tools if they are used knowingly for lack of funds and aim to mislead other parties. Therefore, Supreme Court Decision Number 1412 K/Pid/2023 has normatively established a clear boundary between default and fraud, and shows a balanced application of criminal law, namely not

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<sup>12</sup> Nilam Suryanai et al., "Fraud and embezzlement," 2014.

criminalizing contractual relationships automatically but still providing legal protection when civil engagements are misused as a means of crime.

### **C. Implications of the Verdict**

#### **1. Implications of Decisions on Law Enforcement Practices**

The Supreme Court's Decision Number 1412 K/Pid/2023 has a significant impact on law enforcement practices, especially in cases that are between civil and criminal law. This decision provides a clearer limit that not all defaults are criminal, but the use of civil instruments to commit fraud still opens the possibility of criminal liability if it is proven that there is bad faith and a series of lies.

For the prosecutor, this decision emphasizes the importance of building evidence that focuses on the element of fraud and the causal relationship between the perpetrator's actions and the losses suffered by the victim, not only based on the fact of non-fulfillment of payment obligations. Meanwhile, for the judge, this ruling emphasizes the need to conduct an accurate and thorough legal assessment so that there is no criminalization in civil disputes, while still providing effective legal protection for victims of fraud.

#### **2. Implications for Business Actors and Contractual Relationships**

From the perspective of business actors, this ruling emphasizes that freedom of contract must be carried out in good faith and responsibility. The use of payment methods, such as checks, is inseparable from the legal obligation to ensure the availability of funds and the ability to meet the achievements. Failure to comply with such obligations, especially if accompanied by misleading acts, may result in criminal consequences.

On the other hand, this ruling also provides legal guarantees for business actors who act well that criminal law is not automatically applied to resolve contractual disputes. Criminal protection is only relevant when a civil relationship is abused as a tool to commit manipulative acts that are actually detrimental to the other party.

#### **3. Prevention of Criminalization of Civil Relations**

Although in this case the Supreme Court upheld the criminal decision against the Defendant, the legal considerations given also indirectly served as a tool to prevent criminalization in civil relations. This ruling emphasizes that the difference between default and fraud lies in the existence of bad intentions and fraudulent active actions, not only in the results of the losses that arise.

Therefore, Supreme Court Decision Number 1412 K/Pid/2023 not only resolves certain cases, but also makes an important contribution in clarifying the limits of the application of criminal law in contract disputes. This ruling also strengthens the balance between legal certainty, substantial justice, and protection against possible abuse of criminal law in the practice of civil relations.

## CONCLUSION

Based on the discussion in this article, it can be concluded that the Supreme Court Decision Number 1412 K/Pid/2023 provides an important explanation regarding the boundary between default in civil law and fraud in criminal law. The Supreme Court affirmed that the existence of a contractual relationship does not automatically eliminate criminal liability, as long as there is evidence of malicious intent and a series of fraudulent acts accompanying the execution of the agreement. This decision has had a great influence on the development of law enforcement by clarifying the legal parameters for criminalization in business cases, especially regarding the use of blank checks as means of payment. In its consideration, the Supreme Court placed the criminal law in a balanced manner, so that it is not used to punish every failure of achievement, but still functions relevant when civil relationships are abused for manipulation and abuse of trust.

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