

Legal Review of the Issuance of Blank Bilyet Giro

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Abstract

This research aims to thoroughly examine the legal implications of issuing blank bilyet giro. The goal is to educate the public about the appropriate legal actions to take when engaging in commercial transactions via cheques and bilyet giro, especially when such transactions result in legal consequences. Offenses related to commercial transactions using cheques and bilyet giro can vary in nature, and illegal acts may be categorized as either criminal or civil violations. Depending on the situation, the utilization of cheques and bilyet giro in commercial transactions may be deemed a civil or criminal offense. This research employs a descriptive research methodology. The writing utilizes a normative juridical method with a focus on the statutory approach. Additional legal consequences can lead to both criminal and civil penalties. When handling bank giro bilyet, interested parties must refuse an offered bilyet giro if it is found to be empty or if there are insufficient funds. This refusal must be documented with a Certificate of Refusal (SKP), which should include the full name and address of the individual making the withdrawal.

Keywords: Bilyet; Legal Consequences; Transgression

1. INTRODUCTION

The pace of progress, especially in trade and payment systems, is accelerating swiftly. As a result, physical cash payments are increasingly seen as inadequate for keeping up with the demands of modern life. Several factors contribute to this, including the challenges of transporting physical cash across borders, high transportation costs, and the significant risk of losing physical money. To address these issues, alternative payment methods have been developed. These include instruments with monetary value such as money orders, checks, and bilyet giro, which serve as non-physical forms of payment.¹

Banks are legal entities that enhance people's quality of life by collecting individual savings and redistributing them to the community through loans or other financial services. As financial institutions, banks serve a crucial intermediary function and play a significant role in driving national economic growth.² Banking operations are inherently high-risk endeavors due to their heavy reliance on public deposits for their activities.³ Indeed, banks contribute to economic growth by providing credit, which serves as a vital mechanism for fostering economic development.⁴

¹ Masitah Pohan, "The Use of Cheques and Current Accounts in Business Transactions that Cause Civil Losses", *Journal of Social and Economic Affairs*, Vol 1, No 02, (2020), <https://doi.org/10.55357/sosek.v1i2.62>

² Marwah Hasna Lathifah, Heru Suyanto, "Single Presence Policy on Bank Ownership Structure After Consolidation of Commercial Banks". *USM Law Review Journal* 5, No 1 (2022): 16-30, <http://dx.doi.org/10.26623/julr.v5i1.4689>

³ Agus Priyonggojati, "Legal Protection for Loan Recipients in the Implementation of Peer-to-Peer Lending-Based Financial Technology", *USM Law Review Journal* 2, No 2 (2019): 162-173, <http://dx.doi.org/10.26623/julr.v2i2.2268>

⁴ Andi Nova Bukit, "Bank's Responsibility for the Rights of Aggrieved Customers in Breaking into Customer Accounts (research at Pt. Bank Rakyat Indonesia Tbk, Medan Gatot Subroto Branch Office)", *Jurnal Ius Constituendum* 4, No 02, (2019), <http://dx.doi.org/10.26623/jic.v4i2.1656>

There are various methods for making payments, such as through commercial transactions, checks, and drafts. According to Article 178, paragraph (2) of the Commercial Code (KUHD), a check is essentially a payment directive issued to a designated individual. A checking account is a type of deposit that can be accessed at any time using checks, bilyet giro, other payment orders, or transfers. (Sultan Thaha Saifuddin Jambi State Islam Jalan Arif Rahman Hakim 2022) ⁵

Law Number 7 of 1992, revised by Law Number 10 of 1998 regarding Banking, clearly defines the term "giro," specifically using "bilyet giro." A checking account deposit is described as a sum of money that can be accessed at any time via bookkeeping, checks, and checking accounts. According to Widjanarto, a "Bilyet Giro" is a customer's directive to their bank, instructing it to transfer a specified amount of money from the customer's account to a designated recipient, either within the same bank or at a different bank.⁶

Various rules and regulations govern different types of securities, including Bilyet Giro. Since the current account is a type of security that has evolved in practice due to its existence, it is not regulated under the Criminal Code. This is because it cannot be cashed and is only usable for book transfers. While Bilyet Giro payments are meant to be practical and secure, the issuance of empty Bilyet Giro by consumers leads to ineffective services. This situation can result in losses for both banks and the public, ultimately affecting public trust in the banking system and Bilyet Giro in particular.

Cheques and current accounts are financial instruments that facilitate economic growth by acting as a medium for the exchange of goods and services. The author believes that there is "Concern from parties with political influence" due to the fact that law enforcement officials still lack a comprehensive understanding of the regulations outlined in Law of the Republic of Indonesia Number 1 of 1971, which repeals the prohibition on the issuance of blank checks stated in Law Number 17 of 1964. Consequently, the inadequate enforcement of the law contributes to the overall fragility of society.⁷

Cheques and Bilyet Giro are recognized forms of payment; however, liabilities incurred under such agreements can be classified as defaults or unpaid amounts not attributable to force majeure. Law No. 1 of 1971 should explicitly state that in cases of debt agreements, efforts must be made for peaceful resolution before public dissatisfaction arises. This process should involve public prosecutors, investigators, and

⁵ Nur Hidayah, "The Effect of Savings and Current Account Savings Funds on Musharakah Financing at Bank Syariah Indonesia KCP Muara Bulian in 2017-2019", *Margin 2 Journal*, No. 1, (2022)

⁶ Farkhan Marcelino, Ratu Mawar Kartina, "Legal Protection for Recipients of Blank Bilyet Giro as a Means of Payment in Purchase and Sale Transactions", *Responsive Law* 12, NO. 1, (2021): 44-52 <http://dx.doi.org/10.33603/responsif.v12i1.5029>

⁷ Toga Lamhot Sinaga, "Criminal Law System Against Blank Cheques/Bilyet Giro", *To-ra Law Journal: Law to Regulate and Protect Society* 7, No 1, (2021): 199-207, <https://doi.org/10.33541/JtVol5Iss2pp102>

courts. If a peaceful resolution cannot be achieved, the matter may proceed through civil litigation. The use of checks and current accounts in commercial transactions resulting in civil losses is extensively studied by Masitah Pohan (2020). The issuance of blank checks and unpaid checks often presents significant issues related to this payment method in Indonesia.

Issues concerning checks and checking accounts are prevalent in Indonesia's payment system. When a customer's account lacks sufficient funds to cover the amount of a check, it is deemed a blank check and cannot be cashed by the relevant bank. If an account holder issues a blank check three times within six months, they are required to close their account and report the closure to Bank Indonesia.

The research conducted by Ningsih Wandasari, Syamsul Alam, and Salle (2022) examined the issue of empty Bilyet Giro and its legal handling at the Bank BNI Palopo Branch. The issuance of empty checking accounts poses a threat to the government's efforts to stabilize and enhance the economy. Moreover, public trust in Bilyet Giro as a payment and transaction method is diminishing. Therefore, various measures are required to prevent and address these issues to mitigate the problem of depleted checking accounts.⁸

This research enhances the existing knowledge about the utilization of bilyet giro and checks in legally binding commercial transactions. The nature of the act determines whether it constitutes a criminal or civil offense. Depending on the specifics of the transaction, using bilyet giro and checks in commercial dealings can be classified as either a civil or criminal violation. An act is deemed illegal if it infringes upon the public interest, while a violation of civil law through bilyet giro or checks typically affects personal interests. The objective of this research is to examine the accountability of issuers when issuing bilyet giro in Indonesia.

2. METHOD

This research employs a descriptive research design and adopts a normative legal perspective. The writing utilizes a normative juridical method with a focus on the statutory approach.⁹ This approach involves conducting research using library resources for foundational materials.¹⁰ Primary and secondary legal facts are substantiated through tertiary legal sources. Secondary sources employ a conceptual approach, utilizing resources such as dictionaries and encyclopedias. This conceptual method provides an

⁸ Ningsih Wandasari, Syamsul Alam & Salle, "The Application of the Law on the Issuance of Blank Bilyet Giro: A Case research at Bank BNI Palopo Branch", *Lex Generalis Journal (JLS)*, Vol 3, No 02, (2022): 454-467

⁹ Muhammad Iqbal Asnawi, Vita Cita Emia Tarigan, Christian, "Regulatory Structuring in an Effort to Support the Restructuring of Plantation SOEs", *De Jure Research Law Journal* 24 No 2 (2024): 107-120 <http://dx.doi.org/10.30641/>

¹⁰ Raddine Salsabila, Elisatris Gultom, Sudaryat, "The Existence of Crypto Coins as a Means of Payment and the Security of Their Storage in E-Wallets" *USM Law Review Journal* 6, No 2 (2023): 485-498, <http://dx.doi.org/10.26623/julr.v6i2.6866>

analytical framework for addressing issues in legal research, examining them through the perspective of legal theories and concepts.¹¹

The conceptual approach offers an analytical framework for tackling issues in legal research by examining them through legal principles. In this research, the qualitative data analysis approach involves presenting data in a well-organized, logical, cohesive, and orderly manner, ensuring clarity and efficiency without redundancy. This method facilitates the interpretation of data and enhances the understanding of the analysis outcomes.

This theory concerning illicit actions functions as a framework for comprehending the distinction between criminal and civil wrongdoing. According to Article 1365 of Book III of the Civil Code, which pertains to agreements, the law addresses unlawful acts (*onrechtmatige daad*) within the realm of civil law. It mandates that whenever an unlawful act causes harm to another individual, accountability for the action rests squarely upon the perpetrator.

3. RESULTS AND DISCUSSION

As times evolve and technology advances, particularly in trade and payment transactions, physical cash is becoming less efficient in keeping pace with modern developments. This is primarily due to challenges such as the logistical difficulty and high costs associated with transporting cash across borders, along with the significant risk of loss. To address these issues, alternative forms of payment are being sought, including letters of credit and other financial instruments like money orders, checks, promissory notes, and electronic transfers.

The Bilyet Giro lacks comprehensive regulation under the Commercial Code (KUHD) and is instead governed by Bank Indonesia's Decree Number: 28/32/KEP/DIR/1995 and Circular Letter Number: 28/32/UPG (dated July 4, 1995). Despite this, due to increasing public demand for Bilyet Giro as a payment method, clear provisions and procedural guidelines for its use are crucial. Advancements in payment system technology have shifted the role of physical currency as a means of payment towards more efficient and cost-effective non-cash payment methods.

Non-cash payments typically involve transactions conducted via interbank transfers or within a bank's internal network, rather than using physical currency. Completion of a trade transaction is considered achieved once the bank executes the book transfer specified in the Bilyet Giro. In the context of Bilyet Giro, the issuer is obligated to make the payment; issuing the instrument entails instructing their bank to transfer a specified amount from their account to the designated third-party account. The

¹¹Mochamad Ramdhan Pratama, Mas Putra Zenno Januarsyah, "Non-Penal Efforts in Corruption Eradication", *Jurnal Ius Constituendum* 5, No. 2 (2020): 235-255 <http://dx.doi.org/10.26623/jic.v5i2.2195>

recipient of the Bilyet Giro is referred to as the holder or payee, while the bank initiating the book transfer is termed the drawer.¹²

The Bilyet Giro is a payment instrument unique to Indonesia, primarily associated with checking accounts and arising from community needs. Unlike the Commercial Law Code, which does not specifically regulate current transaction obligations, these are instead governed by Bank Indonesia's regulations on current accounts, clearing, and checks. This comprehensive exploration of the Bilyet Giro covers various aspects: its procedural framework, legal foundations, the role of current accounts, issuance protocols, formal and substantive requirements, transaction processes, conditions for effectiveness and maturity, blank instruments, penalties, blacklisting, validity periods, cancellation procedures, and management guidelines.¹³

Technological advancements have influenced the utilization of bilyet giro and checks, despite their relatively manual processing. One advantage of bilyet giro lies in its enhanced security features, such as the inclusion of signatures and stamps from the issuer. Moreover, bilyet giro can serve as collateral in trade transactions, offering companies greater financial flexibility.

According to H. M. N. Purwostujipto (2000), Bilyet Giro is an unequivocal order from a customer, standardized in format, directing a depository bank to transfer a specified sum from the customer's current account to a named recipient. The essential components of a Bilyet Giro include: a) an order or warrant, b) issued by the depositor to the bank, c) recording the transfer of funds from the relevant account, and d) specifying the amount to be transferred to the named recipient.

The legal criteria for Bilyet Giro issuance are outlined in Article 2, Paragraph (1) of Bank Indonesia's Decree No. 28/32/Kep/Dir of 1995. These include: a) the specific name and number of the Bilyet Giro, b) the name of the interested party, c) a clear and unconditional directive for book transfer, d) the name and account number of the recipient, e) the name of the beneficiary bank, f) the exact amount of funds transferred in numerical and written forms, g) the place and date of issuance, and h) a signature, clearly printed name, and/or stamp complying with account bookkeeping requirements. This description categorizes Bilyet Giro as a form of security and as an order for book transfer, it cannot be settled in cash.¹⁴

When a holder presents a Bilyet Giro to the bank and it is found to be without sufficient funds, the bank is obligated to decline it, issuing a refusal certificate that

¹² Milyatul Fariyah, Kamila Sari, Sumriyah, "The Effect of the Application of Digital Technology on the Use of Bilyet Giro in Trading Business, *Journal of Social, Political, and Humanities Research*, Vol. 2, No. 2, (2023), 45-57, <https://doi.org/10.55606/jurish.v2i2.1256>

¹³ Paramita Prananingtyas, *The Law of Consequences*, (Semarang: Yoga Pratama, 2018)

¹⁴ Yegi Saputri, Jhon Fernos, "Mechanism for Issuing Cheques and Bilyet Giro as Giral Payment Instruments at PT. BTN Padang Branch" (Padang: Academy of Banking Finance "Development", 2019), <https://doi.org/10.31227/osf.io/ntpz8>

includes details such as the drawer's full name and address. Even if a Bilyet Giro is rejected for reasons other than insufficient funds, it is categorized as an empty Bilyet Giro. Banks involved must promptly report such refusals and provide Bank Indonesia with a copy of the Refusal Certificate (SKP).¹⁵

As outlined in Law Number 10 of 1998 regarding Banking, Bilyet Giro represents a method for transferring funds deposited in current accounts, available to all respective customers. Under this Banking Law, a current account is defined as a deposit from which withdrawals can be made using checks, Bilyet Giro, book transfers, or other payment orders. Banks view current accounts as a cost-effective means of funding due to their lower profitability compared to alternatives like time deposits and savings accounts. Government regulation of interest rates aims to uphold economic stability.¹⁶

The utilization of checks and Bilyet Giro as collateral in commercial dealings carries legal implications under both civil and criminal law. However, there is no specific regulation delineating how the use of these instruments can constitute criminal offenses or civil wrongs. The primary legal basis for such matters lies in the jurisprudence of the Supreme Court of the Republic of Indonesia, recognized as a source of law in the country. Historically, there was legislation such as Law Number 17 of 1964, which explicitly prohibited the issuance of blank checks.

This has led to a societal perception where individuals using blank checks may face criminal prosecution. The legislation provides clear provisions and imposes severe penalties on those who utilize blank checks. According to Article 1 of Law Number 17 of 1964 concerning the Prohibition of Withdrawal of Blank Cheques, it stipulates: "Anyone who withdraws a check knowing or reasonably suspecting that there are insufficient funds available in the bank under the check's name (blank check) at the time of withdrawal shall be subject to penalties including death, life imprisonment, or imprisonment for up to twenty years, along with a fine not exceeding four times the amount stated on the blank check."

Under these provisions, issuing a blank check constitutes a criminal offense as defined in Article 3 of Law Number 17 of 1964 regarding the Prohibition of Withdrawal of Blank Cheques. A blank check, as per this law, refers to a check that is drawn without adequate funds at the time of issuance. According to the nature of checks, there must be sufficient funds available when the recipient attempts to cash it. This aspect has contributed to a reluctance among people to use checks, leading to the emergence of alternative payment products like "Bilyet Giro" as substitutes for checks. The enactment

¹⁵ Imroatul Hasanah, Nazatul Inayah, Sumriyah, "Legal Aspects of the Use of Blank Bilyet Giro in Buying and Selling Transactions", *Khirani*, Vol 1, No. 2, (2023), 40, <https://doi.org/10.47861/khirani.v1i2.202>

¹⁶ Gagan Gunawan, Ani Mekaniwati, "The Effect of Interest Rates on Deposits, Savings, and Current Accounts on Increasing Corporate Profits Case research on PT. Bank Nobu" *Scientific Journal of Kesatuan Management* 8 No. 2, (2020): 159-168, <https://doi.org/10.37641/jimkes.v8i2.352>

of Government Regulation in Lieu of Law (Perpu) Number 1 of 1971, which repealed Law Number 17 of 1964, brought about changes to these provisions.

With the repeal of Law Number 17 of 1964, which prohibited the issuance of blank checks, the offense related to blank checks has transitioned from a banking crime to a general criminal offense. As stated in paragraphs 7, 8, and 9 of the General Explanation of Government Regulation in Lieu of Law Number 1 of 1971 concerning the Repeal of Law Number 17 of 1964, this change does not imply a relaxed attitude towards the careless use of blank checks. Instead, other legal provisions are in place to prosecute individuals who intentionally issue blank checks. Specifically, Article 1321 in conjunction with Article 1328 of the Criminal Code allows for prosecution in cases where fraudulent intent is proven in making agreements. This requirement underscores that agreements involving fraudulence cannot be upheld without establishing fraudulent intent first.

This allows business agreements falling under private (civil) legal relations to also be subject to criminal law scrutiny. It means that investigations by the Indonesian National Police can determine whether fraudulent intent was involved in such agreements. The determination of whether the case falls under criminal or civil law liability is guided by jurisprudence, which derives from court decisions, particularly those of the Supreme Court. While these rulings do not create new laws directly, they influence legal precedent because lower courts typically follow decisions made by higher courts. This establishes a customary practice within the judicial system known as jurisprudence.¹⁷

Banks typically inform the issuer whether a Bilyet Giro will be honored even if formal requirements are not fully met. After debiting the Bilyet Giro, any formal errors or deficiencies can usually be corrected as long as they are promptly addressed. In many instances, banks proceed with the Bilyet Giro transaction despite incomplete formalities.

The proliferation of Blank Bills is significantly influenced by several factors: (1) Legal Implications of Blank Bill Laws: The widespread issuance of blank Bilyet Giro is partly attributed to the lack of stringent laws and regulations governing its issuance. This perceived leniency encourages criminals to exploit this loophole freely. (2) Ease of Opening Bilyet Giro Accounts: Many individuals are attracted to opening Bilyet Giro accounts due to their straightforward nature and ease of setup.

Without considering the permissibility of using Bilyet Giro for fund transfers, small business owners are eager to expand their enterprises. Many users find themselves unable to replenish withdrawn Bilyet Giro accounts because they opened these accounts

¹⁷ Ferdy Saputra, "Criteria for Checking and Bilyet Giro in Business Transactions that Pose Criminal and Civil Law Consequences", *Scientific Journal of Law Enforcement*, Vol. 6, No. 1 (2019), 27-39, <http://dx.doi.org/10.31289/jiph.v6i1.2264>

with the intention of boosting their trading capital, overlooking the need to generate sufficient daily turnover.¹⁸

Deposits from third parties in government financial institutions and national private banks can take diverse forms, tailored to the preferences and intentions of the customers. Typically, funds from the broader community are stored in various types of deposits, including current accounts, time deposits, and savings accounts. These savings options are chosen according to the individual preferences of depositors within the community. Typically, individuals predominantly use checks and Bilyet Giro for their savings and financial transactions. These payment instruments are valued for their effectiveness, meeting customer preferences for practicality, safety, and ease of use. When issuing a check to a third party, the recipient can easily convert it into cash at a designated bank.¹⁹

A check made out to a specific recipient is termed a "named check," with the bank disbursing funds to the named recipient. Conversely, a bearer check lacks a designated recipient's name, allowing the bank to pay whoever presents the check. The use of checks raises concerns that may undermine public confidence in banking institutions. This is particularly highlighted in Article 180 of the Criminal Code, along with Articles 190a and 190b, which regulate the issuance of checks and financial transactions involving banks. Additionally, provisions addressing bank confidentiality under Article 40 of Banking Law Number 10 of 1998 have been criticized for potentially enabling reckless issuance of blank checks. Even when a blank check is received in good faith, the holder retains the right to seek legal recourse due to the potential for financial losses stemming from its issuance. This legal protection aims to ensure that rights holders can recover their entitlements, whether through payment from the issuer or the fulfillment of their intended objectives.

When Bilyet Giro holders experience losses from non-payment, legal safeguards come into play to support them. If the debtor fails to fulfill their obligation without external interference, they are considered in breach of contract, putting the issuer at risk of legal action. The individual responsible for repaying the debt is known as the debtor. The obligations that can lead to legal prosecution, as outlined in Article 1234 of the Civil Code, include delivering an item, performing an action, or refraining from an action.

The occurrence of default grants the injured party in an agreement the legal entitlement to demand payment from the debtor. If the issuer (debtor) issues a blank check, it can be deemed a default if the debtor fails to fulfill their obligations. This

¹⁸ Mutiara Mega Dwi Putri, Suhermi, Pahlefi, "Legal Protection for Recipients of Blank Bilyet Giro in the Perspective of Laws and Regulations", *Zaaken: Journal of Civil and Business Law* 2, No. 2 (2021): 332 – 348, <https://doi.org/10.22437/zaaken.v2i2.11351>

¹⁹ Zen Abdullah, "Issuance of Cheques as a Means of Payment and Its Problems in Banking Institutions", *Scientific Journal of Batanghari University of Jambi*, Vol 8 No 2, 2008, <http://dx.doi.org/10.33087/jiubj.v8i2.243>

scenario unfolds when the check, issued by the debtor, is received by the holder (creditor). Upon presenting the check to the bank for payment, it is discovered that the check is empty, leading the bank to decline the transaction. Consequently, the holder is unable to collect repayment from the debtor for the debt owed.

In contractual agreements, the term "default" typically applies when parties cannot promptly fulfill their obligations. A default can occur due to a party's negligence, circumstances beyond their control, or deliberate failure to meet agreed-upon terms. Instances of default in credit card agreements often stem from intentional actions by users who are aware that their actions are improper. These deliberate actions contribute significantly to the occurrence of defaults in credit card transactions.

To ascertain whether a debtor is liable for default, it is crucial to assess the circumstances under which the debtor intentionally or negligently fails to fulfill their obligations. These circumstances include: a) failing to fulfill their promised obligations, b) fulfilling their promises inadequately compared to what was agreed, c) fulfilling their promises but tardily, and d) undertaking actions prohibited by the agreement.

Determining when a debtor enters default hinges on whether a specific deadline for fulfilling obligations is stipulated in the agreement. If no deadline is specified, it becomes essential to notify the debtor to fulfill their obligations. However, if a grace period is defined, as outlined in Article 1238 of the Civil Code, the debtor is deemed negligent upon expiration of the specified grace period established in the agreement.²⁰

Due to widespread misuse of Bilyet Giro funds, prominent business figures have started to abandon its use. The functionality of Bilyet Giro has consequently declined, with instances of Bilyet Giro payments and maturity extensions exceeding the permitted limits. This trend has rendered Bilyet Giro increasingly obsolete as a viable payment method. Several factors significantly contribute to the increasing prevalence of issuing empty Bilyet Giro accounts, including: a) Weak Legal Regulations on Issuing Empty Bilyet Giro: Inadequate regulations regarding the consequences of issuing blank Bilyet Giro contribute to the widespread issuance of such instruments. Perpetrators of issuing blank Bilyet Giro feel emboldened because they believe there are no serious legal repercussions for doing so. Moreover, recipients of blank Bilyet Giro often hesitate to report fraud cases to authorities due to fears of escalating losses. b) Ease of Obtaining Bilyet Giro Accounts: The simplified process of obtaining Bilyet Giro accounts also plays a significant role in their increased issuance.

Opening a Bilyet Giro account is a straightforward process that appeals to many individuals. Small business owners are particularly drawn to the idea of expanding their enterprises through Bilyet Giro, often without considering its practical liquidity

²⁰ Farkhan Marcelino, Ratu Mawar Kartina, "Legal Protection for Recipients of Blank Giro Bilyet as a Means of Payment in Buying and Selling Transactions", *Responsive Law* 12, No. 1, (2021): 47-48 <http://dx.doi.org/10.33603/responsif.v12i1.5029>

implications. Many open such accounts solely to bolster their trading capital, neglecting the daily turnover required to sustain them. Moreover, Indonesia's legal framework pertaining to Bilyet Giro, including relevant court cases and rulings, is perceived as lacking in robustness.²¹

Legal safeguards are essential to shield creditors and bona fide holders of blank checks from losses caused by debtor negligence. Holders are endowed with recourse rights, enabling them to admonish and seek restitution for payments and damages incurred.

When the issuer knowingly issues insufficient funds in a check, it constitutes fraudulent issuance. This could be the first or subsequent instance where the issuer intentionally deceives unsuspecting holders. Understanding the motives and methods behind such actions, whether they amount to fraud or a simple breach of contract, is crucial when addressing agreement-related matters.²²

The requirement to fulfill payment through issuing securities arises from a pre-existing contractual agreement between the involved parties. Issuing these securities represents the fulfillment of the payment obligation. The primary responsibility of the issuer of bilyet giro lies in ensuring the timely payment and bookkeeping associated with these securities for their holders.

Furthermore, the bilyet giro issuer bears responsibility for ensuring that each issued bilyet giro meets specific formal criteria. These include requirements such as the issuer's signature or stamp, the explicit mention of the transfer amount in numerical and written form, the effective date, and the issuance date. Additionally, the issuer must maintain accurate financial records to demonstrate its capacity to meet obligations related to bilyet giro withdrawals.

In practical scenarios, if the issuer fails to meet formal requirements at any stage, the concerned bank will seek clarification from the issuer regarding the implementation status of the bilyet giro. If the transaction proceeds, corrections to any deficiencies or errors in formal requirements can be addressed following the debit of the bilyet giro. Each bilyet giro includes two critical dates: the date of issuance and the effective date. The processing of bilyet giro entries can only commence once the effective date has been reached.

If a current account bill is presented to the bank before its effective date, it must be declined, irrespective of whether adequate funds are available for withdrawal. Conversely, a bilyet giro presented on or after its effective date must be accepted for processing. The period between the issuance date and the effective date allows the issuer

²¹ Syalshabilla Andi Puteri, Risma Seli Novitasari, Sumriyah, "Misuse of Bilyet Giro as a Means of Delivery, *Journal of Public Relations*, Vol. 1, No. 2, (2023), 242-243, <https://doi.org/10.59581/jrp-widyakarya.v1i2.372>

²² Ruri Pranata Ginting, "Issuance of Blank Cheques in the Perspective of Criminal Law and Civil Law", *Lex et Societatis* 7, No. 7, (2019): 127-137 <https://doi.org/10.35796/les.v7i7.26851>

ample time to secure and deposit funds, thereby assuming responsibility for funding until the effective date.²³

The payment of a check hinges on the issuer's responsibility as the account holder to ensure there are adequate funds available. If sufficient funds exist, the check must be honored in full. Should there be insufficient funds, the issuer is required to cover the deficit from their current account. However, if there are no funds available at all, the issuer will decline payment of the check. In cases where a check is declined due to insufficient balance, the issuer must initiate proceedings to withdraw the blank check from the current account holder and return it to the recipient. According to legal provisions, such actions are governed under Bank Indonesia Regulation No. 18/43/PBI/2016, which outlines procedures for checks and/or Bilyet Giro rejected due to insufficient funds.

An instance of a blank check occurs when an issuer is placed on Bank Indonesia's blacklist due to repeated instances of issuing checks with insufficient or nonexistent funds. Upon three consecutive rejections by the bank, the issuer's data is forwarded to Bank Indonesia for inclusion in the blacklist. This list remains valid for one year from the issuance date and aims to prevent individuals from withdrawing blank checks and/or bilyet giro, thereby safeguarding and enhancing public confidence in their use as payment instruments.²⁴

Requests to transfer bilyet giro books are subject to approval by the relevant banks, which may not always grant such requests. According to Bank Indonesia Circular Letter No. 9/13/DASP dated June 19, 2007, concerning the National Blacklist of Blank Cheques and/or Bilyet Giro number II, there are 22 specified reasons that may lead a bank to reject a cheque and/or bilyet giro. Should any of these conditions be met, the bank is obliged to conduct internal administrative procedures regarding the checks and/or current account bills issued to the customer of the current account holder..

According to Item I.C of Bank Indonesia Circular Letter Number 18/41/DPSP dated June 5, 2015, regarding the National Blacklist of Blank Current Accounts, meticulous administration ensures accurate arrangement of all data, information, and related documents to minimize errors. This administrative process enables banks to make informed decisions efficiently, thereby enhancing public confidence in the use of bilyet giro for transactions.²⁵

²³ Dwi Ariana Fahrur Nisa, Widya Elfareda Putri, Sumriyah, "Legal Protection for Recipients of Empty Bilyet Giro", Karinaningsih, Asikin, and Mulada *Aladallah*, Vol. 1, No. 3 (2023), 60, <https://doi.org/10.59246/aladallah.v1i2.328>

²⁴ I Gusti Made Raamdhana Prandiva Smapta, Ni Luh Made Mahendrawati, i Ketut Sukadana, "The Responsibility of Check Issuers as an Effort to Protect the Legal Protection of Blank Check Holders", *Sinaga Journal of Legal Analogy*, 2, No. 1, (2020), 47-52, <http://dx.doi.org/10.22225/.2.1.1611.47-52>

²⁵ Irham Faishal, Budiharto, Edy Sismarwoto, "Legal Consequences of Blank Bilyet Giro Issuers in Banking Activities", *Diponegoro Law Journal*, Vol. 8 No. 1, (2019), 448, <https://doi.org/10.14710/dlj.2019.25190>

Under criminal law, an action becomes illegal when it explicitly violates legal statutes, is conducted without proper authority or consent, and contravenes fundamental legal principles. Conversely, in civil law, an unlawful act comprises several elements: the occurrence of the act itself, its unlawfulness, fault on the part of the perpetrator, resulting harm to the victim, and a causal link between the act and the incurred losses.²⁶

A claim for breach of contract may be initiated when an investor incurs losses due to the violation of an agreed-upon agreement between parties in a contractual relationship. Conversely, in cases where no contractual bond exists between parties, a claim for tort can be filed at the local District Court as a primary jurisdiction. In civil litigation, the plaintiff seeks restitution for damages, aiming to secure compensation if the defendant is found liable.²⁷

Under criminal law, an individual may be considered to fulfill the criteria for fraud, outlined in Article 378 of the Criminal Code, through several actions: a) Attempting to gain illicit profits for oneself or others; b) Assuming false identities or attitudes; c) Deceiving others through lies or manipulative tactics; d) Providing something in exchange; or e) Committing a fraudulent act by using accounts receivable to clear or settle debts.

Blank checks and promissory notes are considered *wedderechtelijkheid* if the act of withdrawing against a blank check meets the threshold of a criminal offense as defined in the Criminal Code. For instance, in situations where the issuer should have been aware and was conscious when issuing a check to another person, despite knowing their account lacked sufficient funds, such actions are regarded as fraudulent. This behavior is punishable under Article 378 of the Criminal Code, which imposes criminal penalties for fraud. The unique circumstances of each instance involving the issuance of checks and promissory notes must be carefully scrutinized.

The default occurred because the issuer issued a bilyet giro that was empty at the time. Court decisions often classify the issuance of blank check notes as a breach of contract in cases involving this practice. Furthermore, some of these issuance actions have been categorized as fraudulent acts.

Conversely, the action is deemed *onrechtmatigedaad* if it does not meet the criteria for a criminal offense outlined in the Criminal Code. In essence, for the drawer of the empty check to be considered committing a criminal act against the recipient, it must be demonstrated that they acted with the requisite intent (*mens rea*). Bank Indonesia directs banks to close the accounts of customers who receive three consecutive rejections of blank checks within six months. This policy requires banks to

²⁶ Indah Sari, "Unlawful Acts (PMH) in Criminal Law and Civil Law", Scientific Journal of *Aerospace Law*, Vol 11 No. 1 (2020): 53-70, <https://doi.org/10.35968/jh.v11i1.651>

²⁷ Nur Indah Putri Ramadhani, Rianda Dirkareshza, "Risk Dispute Resolution Faced by Investors in Securities Crowdfunding in Indonesia", *Jurnal Ius Constituendum* 6, No 2, (2021): 306-327, <http://dx.doi.org/10.26623/jic.v6i2.3774>

notify the affected customers each time a blank check is declined by sending them a warning letter.²⁸

The issuance of blank checks falls within the purview of criminal fraud. Fraud is defined under Article 378 of the Criminal Code as follows: "Anyone who, with the intent to unlawfully enrich oneself or others, uses a false name or identity, deceives or misleads another person through a series of falsehoods to induce them to surrender an item, forgive a debt, or release a claim, is liable for fraud and may face a maximum prison sentence of 4 years."

Regarding the national blacklist of check drawers and/or bilyet giro, as per Bank Indonesia Regulation No. 8/29/PBI/2006, banks are obligated to notify customers whose blank check transactions are rejected. This notification must be in the form of: (a) Warning Letter 1 (SP I), informing the customer that subsequent blank check transactions will not be honored, contrary to the first instance; (b) Warning Letter II (SP II), which warns of potential account closure and inclusion on the blacklist if a third blank bilyet giro is issued after two violations. (c) Customers are promptly informed by letter if their account is closed due to a third blank bilyet giro issuance. Rehabilitation criteria are outlined in the account closure notification letter (SPR) and must be met. The national blacklist of check and bilyet giro issuers includes names of customers whose accounts have been canceled by Bank Indonesia.

The process of penalizing individuals who issue blank bilyet giro, particularly those who do so for the third time or more, is governed by Monetary Decree Number 53 of 1962. Detailed guidelines for enforcing this decree are outlined in Bank Indonesia Circular Letter No. 4/437UPPB/Pbn dated October 5, 1971. According to this regulation, banks are forbidden from accepting new customers or maintaining relationships with existing customers whose names appear on the list of those who issue blank current account documents.

Government agencies and state entities that issue empty checks three times within six months will not be included in the blacklist, even if their accounts are closed. Bank Indonesia reserves the blacklist for internal purposes only, given its sensitive nature. Therefore, individuals outside the banking sector do not have the authority to access information regarding who is listed on the blacklist.

The initial Warning Letter 1 (SP 1) serves as a cautionary notice to customers regarding the issuance of blank Bilyet Giro, emphasizing compliance. Bank Indonesia also issues a reprimand letter to consumers who repeat the offense by obtaining a second blank current account bill from another bank. The National Blacklist for Blank Checks and/or Bilyet Giro is governed solely by the relevant laws and regulations of Bank Indonesia pertaining to Bilyet Giro. These regulations specifically outline administrative

penalties for individuals who issue blank Bilyet Giro and are placed on the Black List. Recipients of blank Bilyet Giro are not covered by any legal protection regulations.

4. CONCLUSION

From the aforementioned, it is evident that there are legal ambiguities in the laws, Bank Indonesia circulars, regulations, and agreements concerning the issuance of bilyet giro, none of which explicitly ensure protection for holders in cases where an empty bilyet giro is issued. The use of blank bilyet giro in payment transactions can lead to losses, which is unfortunate for both the issuer and the recipient. According to Bank Indonesia Circulars, individuals who issue checks and bilyet giro face mandatory legal repercussions, such as fines for the expiration of their right to issue checks or bilyet giro, the requirement to return unused blank forms, inclusion on a national blacklist, and closure of their bank accounts. These actions can also lead to criminal and civil liabilities. Procedures dictate that parties involved must reject any bilyet giro presented by the issuer if it is found to be empty or lacks sufficient funds. This rejection must be documented with a Certificate of Refusal (SKP), detailing the withdrawer's full name and address, among other information.

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