

## CRIMINAL AGAINST ASSISTANT (MEDEPLICHTIGE) IN CASES OF EMBRACTION IN OFFICE AND FRAUD (CASE STUDY OF DECISION OF CENTRAL JAKARTA STATE COURT NUMBER 1194/PID.B/2018/PN JKT.SEL)

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**Abstract:** At present the legal subjects involved in criminal acts are not only one person but now this has been carried out jointly or by more than one person, there are those who commit crimes and there are those who act as orders to commit crimes, whether those who order them to commit crimes, participating in committing, persuading to commit or even committing the act itself and there are also those who assist in criminal acts. The research method used is normative juridical, namely library law research which is carried out by examining library materials or secondary data. The results of the research include that the form or form of participation in *deelneming* is participating in *medeplegen* and assistance (*medeplichtigheid*) contained in Articles 55 and Article 56 of the Criminal Code (KUHP). According to the formulation of the criminal provisions in Article 55 of the Criminal Code, it reads: (1) Punished as the perpetrators of a crime, namely: 1. Those who commit, order to commit or who participate in committing; 2. Those who, by giving gifts, promises, by abusing power or reputation, by force, by threat or by causing misunderstandings or by providing opportunities, means or information, have deliberately moved other people to commit criminal acts. concerned. (2) Concerning those last mentioned, what they can be accountable to is only the actions that they have deliberately moved others to do, along with the consequences. While the criminal provisions in Article 56 of the Criminal Code according to the formulation reads: (1). Those who have knowingly provided assistance in committing the crime. (2). Those who intentionally provide opportunities, means or information to commit the crime.

**Keywords:** Criminal acts, assistance, embezzlement in office

## I. INTRODUCTION

Crime as a complex phenomenon must be understood from many different angles. This is proven in everyday life, we can catch various comments about a crime event that are different from one another. Developments in information technology, knowledge, and even legal developments also have an impact on the development of crime. Simply put, laws and regulations that are getting more and more complicated seem to force criminals to be more creative and innovative in carrying out their criminal activities.<sup>1</sup>

Crime is an act that is prohibited by law and whoever commits an act previously regulated by law, there is a threat of criminal sanctions awaiting. Offenses are defined within the bounds of upheld values in a society in almost any society where life and property are valued highly.<sup>2</sup> "Crime (crime) according to Soerjono Soekanto is "a social phenomenon that is always faced by every society in the world".

As forefforts to eliminate it are not complete because the crime cannot be eradicated. This is mainly due to the fact that not all basic human needs can be fulfilled perfectly, moreover humans have different interests which can even manifest as principle conflicts.<sup>3</sup>

Fraud is a crime that is almost the same as the crime of embezzlement in Article 372, only the difference is in the crime of embezzlement, the goods owned are already in the hands of the perpetrator but the goods are not in his hands because of a crime or have been entrusted to him.<sup>4</sup> Because the crime of embezzlement is a crime committed after the goods are in the hands of the perpetrator, while the crime of fraud the goods owned are not yet in the hands of the perpetrator and they still have to be taken. get the target item.

The act of assisting in committing a crime, which is specified in Article 56 of the Criminal Code, in which a person's participation is termed by several terms including, persuading, ordering to do, giving opportunities, providing facilities and infrastructure, recommending and the like. Can be threatened with criminal penalties under Article 56 of the Indonesian Criminal Code (KUHP): "Convicted as an accomplice to crime:

1. Those who deliberately provide assistance when a crime is committed
2. Those who deliberately provide opportunities or information to commit crimes.<sup>5</sup>

The acts of assistance specified in Article 56 of the Criminal Code, in which the participation of a person is termed by several terms, including persuasion, ordering to do, giving opportunities, providing facilities and infrastructure, recommending and the like. The principle is that there are other people who play other roles that are related to being one unit with the realization of one perfect offense because there is the role of other people "participating" and the perfect/complete offense will not be realized if there is no other person's role and the role can be sufficient providing facilities and infrastructure, opportunities, persuading, ordering to do so can be called "intellectual actors. While those who helped implement it in the field, either in whole or in part.

Usually termed as the direct agent "material actor", but the direct actor is controlled by the indirect actor "intellectual dader" who can be in the form of ordering, persuading, or advocating with promises of gifts, expectations or threats. The participation of a person because of the threat of following him, because if he does not follow the order that orders him to endanger his own life and that of his family, participating can be a "forced condition" but with a note that the forced condition is really a condition which if not carried out will

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<sup>1</sup>Adami Chazawi, Lesson of Criminal Law Theories of Punishment & Limits of Applicability of Criminal Law, (Jakarta: PT Raja Grafindo), p.45.

<sup>2</sup>Sudikno Mertokusumo, Anthology of Law Studies, (Yogyakarta, Liberty, 1984) p. 1

<sup>3</sup>Soedjono Dirdjosiswoyo, Scope of Criminology, (Bandung, Youth Work, 1984), p. 27

<sup>4</sup>Ismu Gunadi. Jonaedi Efendi, Understanding Criminal Law Quickly & Easily, (Jakarta, Prenadamedia Group, 2014), Pg. 140

<sup>5</sup>Criminal Code & Criminal Procedure Code, (Cet. IX; Bandung: Citra Umbara, 2013), p.30

result in him dying or being injured serious threats or death threats to himself and his family are very close in sight, only one time is triggered by those who order him.

Forced circumstances as an element of forgiveness in law, in terms of participating because of being forced. Or is it not meant because circumstances are forced because there are debts of great value and are wrapped around it and must be repaid by being forced to commit a crime. The condition of coercion referred to last is not meant to have an element of forgiveness, but to be accounted for as a crime regardless of its role in participation.<sup>6</sup> In reality it often happens that more than a person is involved in one criminal act, in addition to the perpetrator, or one or several other people who are involved in this criminal law, this is called participation (*deelneming*), namely an event in which more than one person commits a crime. Classification in assistance according to article 56 of the Criminal Code, namely:

1. Maker (*dader*), which consists of those who:
  - a) do (*plegen*)
  - b) Ordered to do (*doen plegen*)
  - c) Participate in doing (*medeplegen*)
2. Auxiliary crimes (*medeplichtige*) (art. 56). Helping to commit violations (*overtrenging*) is not punished (article 60).

## II. RESEARCH METHODS

The data collection method in this study was carried out by means of library research or also known as document study which includes primary, secondary, and tertiary legal materials.<sup>7</sup> This library research includes:<sup>8</sup>

- 1) Primary legal materials are legal materials issued by the Government and are binding.
- 2) Secondary legal materials, namely in the form of the writings of experts in the field of primary law and can help analyze primary legal materials in the form of doctrine (expert opinion) both from the internet, newspapers, and also documents related to the theme.
- 3) Tertiary legal materials are legal materials that provide information on primary and secondary legal materials, such as the Big Black's Law Dictionary and encyclopedias.<sup>9</sup>

The function of the theory in this research is to structure the findings during the research, make some thoughts, predictions on the basis of the findings and present them in the form of explanations and questions. This means that theory can be used to explain facts and legal events that occur. This research can put the function and usefulness of the theory as a tool for analyzing the discussion of events or legal facts in the research. In order to analyze the collected data and answer the questions as stated in the problem formulation, The theory used as an analytical knife to answer the problem is that the writer uses legal protection.

Legal protection is the protection of dignity, as well as the recognition of human rights owned by legal subjects based on legal provisions of arbitrariness or as a collection of rules or rules that will be able to protect one thing from another. With regard to consumers, it means that the law provides protection for the rights of customers from something that results in non-fulfillment of these rights.<sup>10</sup> Legal protection is a narrowing of the meaning of protection, in this case only protection by law. The protection provided by law is also related to the existence of rights and obligations, in this case those owned

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<sup>6</sup>Hamsir, Introduction to Criminal Law and Criminal Procedure Law (Sociological Analysis of certain articles in the Criminal Code and Criminal Procedure Code) (Makassar: Alauddin University Press, 2013), p.2

<sup>7</sup> Appears Anshari, Legal Research Methodology: Thesis Writing, (Medan: Pustaka Bangsa Press, 2005), p. 21.

<sup>8</sup>Ronny Hanitijo Soemitro, Legal Research Methodology and Jurimetry, Ghalia Indonesia, Jakarta, 1990, p. 50

<sup>9</sup>Ibid

<sup>10</sup>Philipus M. Hadjon. Legal Protection for Indonesian People. Science Development, Surabaya, 1987, p.25

by humans as legal subjects in their interactions with fellow humans and their environment. As legal subjects, humans have rights and obligations to take legal action.<sup>11</sup>

According to Fitzgerald, citing Salmond's legal protection theory, law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can be done by limiting various interests on other parties. The interest of law is to deal with human rights and interests, so that law has the highest authority to determine human interests that need to be regulated and protected.<sup>12</sup>

According to Satjipto Rahardjo, legal protection is providing protection for human rights (HAM) that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law.<sup>13</sup> Furthermore, according to Phillipus M. Hadjon, legal protection for the people is a preventive and repressive government action. Preventive legal protection aims to prevent disputes from occurring, which directs government actions to be careful in making decisions based on discretion and repressive protection aims to prevent disputes from occurring, including handling them in the judiciary.<sup>14</sup>

Lawrence M Friedman suggests 3 elements that must be considered in law enforcement. These three elements include structure, substance and legal culture.

1. The definition of legal structure consists of:
  - a. Elements of the number and size of courts of jurisdiction.
  - b. How to appeal from one court to another.
  - c. How the legislature is organized.
2. The definition of substance includes:
  - a. Rules of norms and community behavior in the legal system.
  - b. The products that people in the legal system produce are the decisions they make and the new rules they implement.
3. Legal culture as attitudes and values that have to do with the legal and legal system. Legal culture is divided into two, namely:
  - a. External legal culture.
  - b. Internal legal culture.<sup>15</sup>

### III. RESULT AND DISCUSSIONS

#### **Provisions for the criminal offense of assistance in cases of embezzlement in office and fraud.**

According to Andi Hamzah in his book *Principles of Criminal Law*, the offense can be divided into various specific divisions such as<sup>16</sup> are below:

- 1) Crime offenses and violation offenses (*misdrijven en oventredingen*) Crimes are offenses that violate the interests of the law and are also harmful in a concrete way, these violations are only harmful in abstracto. Quantitatively, legislators distinguish between crime and violation offenses: To find out which is a crime and which is a violation, the Criminal Code is easier because it is clear that crimes are in book II while violations are in book III.
- 2) Material and formal offenses (*materiele end formeel delicten*).  
In material offenses, it is stated that there are certain consequences, with or without mentioning certain actions. In formal offenses, only certain actions are referred to as

<sup>11</sup>CST Chancellor. *Introduction to Indonesian Law and Legal System*. Balai Pustaka, Jakarta, 1989, p. 102

<sup>12</sup>Satjipto Raharjo, *Law Studies*, Bandung: PT. Citra Aditya Bakti, 2000, p. 53

<sup>13</sup>*Ibid.*, p. 69

<sup>14</sup>*Ibid.*, p. 54

<sup>15</sup>Lawrence M. Friedman, 2011. *Legal System Perspective of Social Sciences*, Bandung NusaMedia, p. 239

<sup>16</sup>Andi Hamzah, 2014, *Revised Edition of Criminal Law Principles*, Rineka Cipta, p. 104-105.

- punishable, for example Articles 160, 209, 242, 263, 362 of the Criminal Code.
- 3) Commission offenses and omission offenses (commissiedelicten en omissiedelicten). Commission offenses (delicta commissionis) are offenses committed by deed. Omission offenses (ommissiedelicten) are carried out by allowing or ignoring (nalaten). The omission offense is divided into two parts:
    - a) The offense of pure omission is allowing something ordered as Articles 164, 224, 522, 511 of the Criminal Code.
    - b) Impure omission delict (delicto commissionis per omissionem) This offense occurs if a consequence is not desired by law (which effect can be caused by negligence). Like Article 338 of the Criminal Code which is done by not giving food
  - 4) The offense is over and the offense continues (af lopende en voortdurende delicten). Completed offenses are offenses that occur by committing one or several specific actions. An ongoing offense is an offense that occurs due to continuing prohibited conditions.
  - 5) Single offenses and serial offenses (enkelvoudige en samengestelde delicten). Consecutive offense means an offense which is committed by more than one act for the occurrence of the offense. Van Hamel calls this a collective offense. The most important example is an offense committed as a habit, such as Article 296 of the Criminal Code.
  - 6) Simple offenses and qualified offenses (eenvoudige en gequalificeerde delicten). A qualified offense is a special form, having all the elements of the basic form, but one or more circumstances which aggravate the crime/no matter whether it is an element or not, for example theft by exposing, premeditated murder (as opposed to murder). On the other hand, privileged offenses (geprivilegieerde delict), special forms which result in reduced criminal circumstances (doesn't matter whether it is an element or not), are punished with a lighter sentence than the basic form, for example child murder is lighter than ordinary murder. The distinction between understated offenses and qualified (including privileged) offenses is important in studying objective experimental theory and inclusion.
  - 7) Intentional offenses and negligence or culpa offenses (doleuse en culpose delicten). Delict committed intentionally and delict of negligence are important in terms of trial, participation, imprisonment, and confiscation.
  - 8) Political offenses and communal or general offenses (politieke en commune delicten) Political offenses are divided into:
    - a) The pure, political goals to be achieved are listed in chapter I book II, Article 107. Here, Landes Verrat and Hochverrat are included. In the criminal law conference in Copenhagen 1935, the definition of political offense was given as follows: A crime that attacks both the organization and the functions of the state as well as the rights of citizens originating there.
    - b) Mixed political offenses, half political offenses and half communal (general) offenses.
  - 9) Delict propria and delict commun (delicta propria en commune delicten). Propria delict is defined as an offense that can only be committed by people who have certain qualities, such as delict of office, military delict, etc.

Help (*Medeplechtage*) The Indonesian Criminal Code, such as the Wetboek van Strafrecht voor Nederlandsch (except before 1886) adheres to the same expansion of criminal inclusion arrangements, when compared to the French Code of Penal which does not include criminal assistance or conversely the United States Criminal Code which is too far ahead by including

assistance after The offense occurs as a criminal accompaniment.<sup>17</sup>

Basically assistance is the 5th form of participation regulated in Articles 56, 57 and 60 of the Criminal Code. The definition of providing assistance before and when the offense is carried out is essentially an act that does not include the act of carrying out an offense, but is an act that facilitates the occurrence of an offense or expedites an offense. The argument that assistance is the fifth form of participation according to Indonesian criminal law is in accordance with the Dutch criminal law cited in the Criminal Code that title v regarding *deelneming aan strafbare feiten* also includes assistance where specifically the first to fifth forms are regulated in Article 47 and assistance is regulated in Article 48 *wetboek van strafrecht* or Articles 55 and 56 of the Criminal Code.<sup>18</sup>

Assistance is a person who deliberately provides assistance in the form of advice, information. or opportunities for other people who commit criminal acts, where the assistance is given either at the time or before the crime itself occurs. It is said there is assistance if there are people or more, one as a maker, and the other as a helper.<sup>19</sup>

**DAs the consideration of the Panel of Judges of the South Jakarta District Court Number 1194/Pid.B/2018/PN JKT.SEL against perpetrators of criminal assistance (Medeplichtige) in cases of embezzlement in office and fraud**

**a. Sit matter**

That the Defendant Fierga Apriza together with witness Roni Bin H. Dudung, (in a separate file) in October 2016, or at least at a time still included in 2016, located at Villa Kanaya Jl. Srengseng Sawah No 54. Srengseng Sawah Village, Jagakarsa District, South Jakarta, or at least in a certain place that is still included in the jurisdiction of the South Jakarta District Court, assists in committing a crime intentionally and against the law, owns goods which are wholly or partly owned by other people, but those who are in his power not because of a crime, which is committed by a person whose control of goods is due to a work relationship or because he earns money or because he gets wages for it which the Defendant does in the following ways:

That starting with the Defendant Fierga Apriza in 2013 working at Villa Kanaya with an office on Jl Srengseng Sawah No 54 Srengseng Sawah Village, Jagakarsa District with the Position as South Jakarta Administrative Staff with his duties and responsibilities, recording consumer data of the buyer of the house unit belonging to Villa Kanaya. storing files, paying employee/employee salaries, and the need for office equipment and other needs related to Villa Kanaya housing, while the salary received by the Defendant is Rp. 2,000 000,- (two million rupiah).

Whereas in 2014 I could no longer remember the day and date, witness Iwan Sumarwan came to the marketing office of Villa Kanaya Jl. Srengseng Sawah Jagakarsa, South Jakarta, to see the house and prices at Villa Kanaya, then met with the witness Roni bin H Dudung (in a separate prosecution file) as the marketing officer for Villa Kanaya, then witness Iwan Sumarwan was shown the location of the house on Jl. Batu Belah, Kelurahan Cipadak, District Jagakarsa, South Jakarta, the witness was interested in buying a unit of land with an area of 90 M, with a price of IDR 1,200 000 000 (one billion two hundred million rupiahs), after being approved

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<sup>17</sup>Aknes Susanty Sambulele, 2013, Responsibilities of Participating Actors in Action *Criminal (Articles 55 and 56 of the Criminal Code)*, Lex Crimean Vol. II/No.7/November/2013, p. 90-9

<sup>18</sup>ibid

<sup>19</sup>Agung maruli, 2017, Criminal Liability Against Actors Participating in Action *Pornography Crime According to Law No. 44 of 2008 Concerning Pornography*, Journal, Medan: Faculty North Sumatra University Law, p. 17-18

by the witness Roni bin H Dudung gave Bank BCA account No. 4212659995 belonging to the defendant to pay the booking fee (signature) and payment of DP to the account belonging to the witness, 5,000,000 (five million rupiah) by means of transfer to BCA Bank account No. 4212659995 belonging to the defendant at the order of the witness Roni bin H Dudung. Then the witness Iwan Sumarwan paid an advance of Rp. 351,000,000 (three hundred and fifty one million rupiah) paid in 13 (thirteen) installments, by means of transfer from a BCA account in the name of Hegi Rahmdani Account No. 02301530619 to Bank BCA account No. 4212659995 in the name of Fierga Apriza belonging to the defendant as ordered witness Roni bin H Dudung.

Whereas the submission of the 13 stages of down payment, a portion of the transfer from the BCA bank ATM No. my wife's Iwan Sumarwan account No. 230-153 0619, and from a BCA account in the name of the witness No. 016.1322 686, and some deposited from internet banking from the commonwealth bank, Account No. 105 977 7641, and some deposited cash from Bank Mandiri Account No. 126 000 5949366, all addressed to BCA account No. 4212659995 in the name of Fierga Apriza which is the account belonging to the defendant, then the payment money witness Roni bin H Dudung ordered the defendant to transfer the bank account belonging to witness Roni bin H Dudung (in a separate prosecution file) while the defendant handed over witness Dimasz Edwin Tosayah through transfer to BCA Bank Account number 6688799999 in the name of Dimasz Edwin Tosayah in the amount of Rp. 65,000,000.- (sixty five million rupiah).

In 2015 the witness Dieska Adisty Tanya visited the marketing office at Vila Kanaya on Jl. Srengseng Sawah Jagakarsa, South Jakarta, and met with witness Dewi Herawati as a marketing officer, then they were shown the houses that were already finished, which are located on Jl. Batu Belah Cipadak Jagakarsa, after the witness was interested then asked the price and the payment process in purchasing credit, then the witness Dewi Herawati told the price of the house, namely IDR 1,450,000 000 (one billion four hundred and fifty million rupiah), installments for 15 years, while Booking DP fee/down payment Rp. 650,000,000.- (six hundred and fifty million rupiah), can be paid in advance with a time limit for the construction of the house until it is finished, after the witness is interested in buying the housing unit through witness Dewi Herawati, staff of the Kanaya Villa marketing office.

Then the total down payment of Rp. 650,000,000 - (six hundred and fifty million rupiah) by the witness Dieska Adisty Tanya was paid starting from September 8 2015, where the witness paid a booking fee of Rp. 5,000 000 (five million rupiah) by means of transfer to BCA Bank Account Account No. 4212659995, belonging to the defendant,

That after the defendant and witness Miftah Juliani and witness Dewi Herawati (both in separate prosecution files) received all the payment for the purchase of a housing unit located on Jl. The Jagakarsa Cipadak Split Stone was then handed over to the witness Dimasz Edwin Tosansyah as the owner of Villa Kanaya for only Rp. 145,000,000.- (one hundred and forty-five million rupiah) by transferring in stages, namely on December 21 2015 and February 10 2015 and on March 9 2015, then witness Miftah Juliani made three cash withdrawals, namely January 3 2017 in the amount of Rp. . 90,000 000 (ninety million rupiah), then the money was deposited in cash through the BCA bank into the account of the victim witness Dimasz Edwin Tosansyah.MW then the remaining Rp. 152,700,000, - (one hundred and fifty two million seven hundred thousand rupiah) transferred to the defendant via Bank BCA account No. 4212756443 and was used for the personal needs of witness Dewi Herawati in the amount of Rp. 269,800,000,- (two hundred sixty nine million eight

hundred thousand rupiah).

Then in December 2015, the day and date that the witness Ulung Putri Ambang Palima can no longer remember bought a house at Villa Kanaya on Jl. The split stone in Cipadak Village, Jagakarsa District, South Jakarta, costs Rp. 1,400,000 000 (one billion four hundred million rupiah), the payment is made in monthly installments for 15 years, by paying Rp. 700,000 000 (seven hundred million rupiah) can be paid in installments until the house has been built, then the witness Roni bin H Dudung ordered the transfer of BCA bank account No 4212659995, in the name of the defendant, the witness because the witness believes the defendant and witness Roni bin H Dudung are employees in housing Villa Kanaya so that the witness assumed that the money to be transferred reached Villa Kanaya.

Furthermore, the witness Ulung Putri Ambang Palima paid a down payment of Rp. 700,000 000 (seven hundred million rupiah) paid by transfer from Bank BCA Kalibata Branch, Pancoran District, South Jakarta, and from Bank CIMB NIAGA, Kalibata Pancoran South Jakarta, to BCA Bank Account No 4212659995, belonging to the defendant transferred 4 (four) times the transfer:

- The first, around December 2015, paid a boking fee of Rp. 5,000 000 (five million rupiah), from BCA bank account Account No: 095 317 306-6 on behalf of the witness, Kalibata Pancoran branch, South Jakarta, to BCA Bank Account No. 4212659995, on behalf of Fierga Apriza.
- Second, on January 6 2016, from a BCA bank account on behalf of the witness from the Kalibata Pancoran branch, South Jakarta, two transfers of Rp. 200,000,000 (two hundred million rupiahs) and Rp. 100,000 000 (one hundred million rupiah), to BCA Bank Account No. 4212659995, on behalf of Fierga Apriza.
- Third on January 27 2016, IDR 395,000 000 (three hundred ninety five million rupiah), from the witness account of CIMB NIAGA Bank, Account No. 7005 777 87400 Kalibata Pancoran branch, South Jakarta, to BCA Bank Account No. 4212659995, on Fierga Apriza .

That the entire down payment of Rp 700,000 000 (seven hundred million rupiah) which the defendant had received then the witness ordered the defendant to transfer to Bank BCA account No. 4212756443 owned by the witness Roni bin H Dudung (in a separate prosecution file) in the amount of Rp. 450,000,000.- (four hundred and fifty million rupiah) and was used for the benefit of witness Roni bin H Dudung, while what was handed over to the Kanaya villa, namely witness Dimasz Edwin Tosayah MW as the owner/manager of Villa Kanaya, amounted to Rp. 250.000.000,- (two hundred and fifty million rupiah)

Whereas BCA Bank savings Account No. 4212659995 belonging to the defendant were used by witness Roni bin H Dudung (in a separate prosecution file) to receive advance payments for the purchase of housing units from consumers, including: Received a transfer from witness Iwan Sumarwan, down payment/Dp of Rp. 351,000 000,- (three hundred and fifty one million rupiah).

That the defendant together with witness Miftah Juliani and witness Dewi Herawati were not allowed to use their personal accounts to receive payments for buying a house unit, each house payment should have used a BCA account number 0688799999 and witness Dimasz Edwin Tosanyah.MW as the owner of Villa Kanaya. Whereas as a result of the defendant's actions the witness Dimasz Edwin Tosanyah.MW and witness RM Dody Hariarto as the owner of Villa Kanaya suffered a loss of  $\pm$  Rp. 1,241,000,000.- (one billion two hundred and forty one million rupiah) or around that amount.



**b. Judge's Consideration**

In their considerations, the Judge based on the demands of the Public Prosecutor against the defendant with the combined indictment, the Panel of Judges first considered the first/first indictment as stipulated in Article 378 in conjunction with Article 56 paragraph (1) 1st of the Criminal Code, the elements of which are as follows:

1. Whoever.

What is meant by the element of "whosoever" everyone is a person or human being who is a legal subject, whether a man or a woman who is physically and mentally healthy who commits a criminal act, that person is capable of being criminally responsible for his actions and the defendant himself has no reasons for forgiveness or the reasons for criminal abolition which can free him from criminal responsibility. In connection with this case, what is meant by "whoever" is the defendant who has been brought before the court, then the full identity of the defendant Fierga Apriza has been asked by the Panel of Judges at the South Jakarta District Court to the complete defendant Fierga Apriza and the defendant has confirmed his identity which is also in accordance with the identity described in the indictment and before the trial the defendant admitted that he was in good physical and mental health and was an adult and was able to take responsibility for all his actions and also found no reason at all indicating the occurrence of "error in persona" thus it is enough to state who's element has been proven, regarding whether the defendant is proven to have committed a crime depends on the elements of proof of other criminal acts. Considering, that thus the element of "whosoever" is proven.

2. Providing assistance in embezzlement by persons whose possession of goods is due to a work relationship or because of livelihood or because they are paid for it.

Whereas in September 2014 witness Iwan bought 1 unit of house in Perum Villa Kanaya and then witness Iwan submitted the down payment in 13 stages, part of the transfer from BCA bank ATM No. Witness Iwan's wife account 230-153 0619, and from BCA account in the name of witness No. 016.1322 686, and some deposited from internet banking from the commonwealth bank, Account No. 105 977 7641, and some deposited cash from Bank Mandiri account No. 126 000 5949366, all of which were addressed to BCA account No. 4212659995 in the name of the defendant Fierga Apriza, then the payment money witness Roni only partially handed it over to witness Dimasz while what was handed over/transferred to Bank BCA account number 6688799999 belonging to witness Dimasz Edwin Tosansyah amounted to Rp. 65,000,000.- (sixty five million rupiah) and the remainder was used for witness Roni's personal interests. That around 2015 the witness Dieska had bought 1 unit of house at the Villa Kana public company on Jl. Batu Belah, Kec. Cipadak Kel. Jagakarsam, South Jakarta for Rp. 1,450,000,000.- (one billion four hundred and fifty million rupiah) by means of payment in monthly installments for 15 years, the witness Dieska bought 1 unit of the house through the defendant who is a sales marketing at the Villa Kanaya public company office; witness Dieska paid the booking fee Rp. 5,000,000, - (five million rupiah) paid by the witness Dieska by transferring to the account of the defendant Fierga A based on instructions from witness Roni, then for installment payments to be made until 2016 to the accounts of witnesses Dewi and witness Mifta, then the payment money controlled by witness Mifta was borrowed by the defendant for the benefit of personally even though the defendant knew that the money should have been deposited with the witness Dimasz. Considering, that thus this element has been fulfilled

3. Providing assistance to unlawfully benefit oneself or others by using a false name or false honor with deception, or a series of lies, inducing other people to hand over something to him or to give debts or write off debts.

Considering, that in October 2016 witness Agustiono was interested in buying 1 unit of house at the Perum Villa Kanaya because witness Roni claimed to be a sales marketing officer at Perum Villa Kanaya and witness Agustiono paid a booking fee of Rp. 10,000,000.- (ten million rupiah) by transferring to a BCA account. The defendant Fierga Apriza then witness Roni came to witness Agustiono's house to submit a receipt for payment of the booking fee. Whereas the witness Agustiono made payments in stages through the account belonging to the defendant Fierga Apriza, as follows

1. Date 07 November 2016 the witness paid the first payment of Rp. 144,000 000 (one hundred and forty four million rupiah) via bank transfer from BNI Bank and Sri Wahyuni account, transfer to BCA account No 421 265 999-5 in the name of Fierga Apriza;
2. Date November 30, 2016 paid the second stage of payment of IDR 144,000 000 (one hundred and forty four million rupiah) via bank transfer from Bank Permata. and Sri Wahyuni's account, to BCA account No. 421 265 999-5, in the name of Fierga Apriza;
3. Date December 27, 2016 the witness paid the third Rp. 144,000 000 (one hundred and forty-four million rupiah), via bank transfer from Bank Permata. and Sri Wahyuni's account, to BCA account No. 421 265 999-5, in the name of Fierga Apriza;
4. Date February 3, 2017 the witness paid the fourth payment of IDR 144,000 000 (one hundred forty four million rupiah) bank transfer from Bank BCA and Sri Wahyuni's account, to BCA account No. 421 265 999-5, in the name of Fierga Apriza. Whereas on May 18 2017 the witness Dimasz Edwin Tosansyah and witness RM Dody Hariarto told witness Agustiono that witness Dimasz Edwin Tosansyah and witness RM Dody Hariarto had never received the money from witness Roni and had never made and signed a statement submitted by witness Roni with a signature hand on behalf of Dimasz Edwin Tosansyah and witness RM Dody Hariarto is a fake signature. All transfers of advance payments are transferred to the defendant's BCA account. Considering whereas, thus this element has also been legally proven according to law

**c. Decision**

- 1) Declare the Defendant Fierga Apriza proven legally and convincingly guilty of committing the crime of "Assist in embezzlement in office and assist in committing fraud;
- 2) Sentenced punishment against the Defendant therefore with imprisonment for 1 (one) year and 6 (six) months;
- 3) Determine that the period of arrest and detention that the Defendant has served is deducted entirely from the sentence imposed;
- 4) Stipulates that the accused remains in custody;
- 5) Establish evidence in the form of

#### IV. CONCLUSION

In Article 56 of the Criminal Code defines as follows: Sentenced as an accomplice to a crime: (1) Those who intentionally provide assistance when a crime is committed; (2) Those who deliberately provide opportunities, means or information to commit crimes.

Ss as stated in Article 56 of the Criminal Code, there are two types of assistance:

- 1) Assistance when a crime is committed. The method of how the assistance is not mentioned in the Criminal Code. This is similar to *medepleger* (participate), but the difference lies in:
  - a) In assisting, the action is only helping/supporting, while participating is an act of implementation.
  - b) In assistance, helpers only deliberately provide assistance without the requirement that they have to cooperate and do not aim / have their own interests, while in participating, people who participate deliberately commit criminal acts, by working together and having their own goals.
  - c) Assistance in violations is not punished (article 60 of the Criminal Code), while taking part in permanent violations
  - d) The maximum auxiliary punishment is the maximum criminal offense reduced by one third, while co-participating is subject to the same punishment.

The judge's legal considerations in passing the decision in Decision Number 1194/Pid.B/2018/PN Jkt.Sel, According to the author, it is in accordance with the applicable legal regulations as described by the previous author, namely based on at least two valid pieces of evidence. The legal evidence referred to is: a) Witness testimony, b) Expert testimony, c) Letter, d) Instructions and e) Statement of the Defendant or matters that are generally known so that no need to be proven (Article 184).

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