



REGULATION OF FRAUD IN CIVIL CODE: A COMPARATIVE STUDY BETWEEN THE INDONESIAN CIVIL CODE AND NETHERLANDS *NIEUW BURGERLIJK WETBOEK*

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ABSTRACT

A person who commits fraud will move something as if something happened and was right but the act does not correspond to reality. The purpose of this study is to examine the elements of Fraud in Article 1328 of the Indonesian Civil Code and examine the regulation of fraud (bedrog) in the civil code in the Netherlands. This research is a Normative Legal Research which is legal research carried out by examining library materials or secondary data. Normative legal research is also called doctrinal legal research. The results indicated that the explanation of the definition of fraud (bedrog) has been regulated in Article 1328 of the Civil Code, but the substantial understanding has not been regulated in Article 1328 of the Indonesian Civil Code, fraud in Dutch civil law is regulated in article 3:44 Nieuw Burgerlijk Wetboek. The recommendation that the author can note is that as one of the countries adopted by Indonesia, it is appropriate for Fraud to get elaboration and technical procedures to identify Fraud as a defect of will. Bedrog is defined by definition as an act in which a party entices another party to take certain legal actions by, among others: making false and deliberate statements; deliberately not disclosing the fact that it should be mandatory to disclose, and intentionally withholding or providing incomplete information. The formulation of the definition in the NBW should be a reference in the renewal of the Civil Code related to Bedrog.

Keywords: Bedrog; Fraud; *Nieuw Burgerlijk Wetboek*

1. INTRODUCTION

Conceptually, the terms coercion (dwang), misguidance or error (dwaling), and fraud (bedrog), are contained in the clauses regarding defects of will in the law of engagement. However, when talking about fraud (bedrog), the reference that is always taken is the Criminal Code/KUHP (Wetboek van Strafrecht) Article 378 compared to other laws and regulations. Thus, in practice, a legal issue that is part of the civil law domain, however, is more often placed in the public or criminal law domain, especially in contractual relationships which tend to be considered fraud under criminal law.¹ This then causes aspects of public law to be used as a means of coercion for actions of a private or civil nature.

The Civil Code explains that fraud (bedrog) is a series of actions carried out by one party using deception (kunstgrepen), the actions of which are intended to cause misguidance against the other party.² In the realm of civil law, fraud can be found in the form of a defect of will (wilsgebreken or defect of consent), namely a defect in forming an agreement in a contract or agreement. This flawed will is an incomplete agreement.³ According

- 1 Amiruddin Amiruddin, Chrisdianto Eko Purnomo, and Rina Khairani Pancaningrum, "Himpitan Konsep Penipuan Dalam Ranah Hukum Pidana Dan Hukum Perdata," *Jurnal Kompilasi Hukum* 7, no. 2 (2022): 160, <https://doi.org/https://doi.org/10.29303/jkh.v7i2.102>.
- 2 Fitri Windradi and Gentur Cahyo Setiono, "Misbuik Van Omstandigheden Merupakan Bentuk Penyimpangan Terhadap Asas Kebebasan Berkontrak," *Transparansi Hukum* 5, no. 1 (2022): 58, <https://doi.org/https://doi.org/10.46799/syntax-idea.v2i4.197>.
- 3 Tantimin Tantimin, "Legal Liability of Minors as Perpetrators of Online Buying and Selling Fraud in Indonesia," *Law Reform* 17, no. 2 (2021): 149, <https://doi.org/https://doi.org/10.14710/lr.v17i2.41738>.

to Article 1321 of the Civil Code, an agreement contains a defect of will if the agreement occurs based on coercion (dwang), mistake (dwaling), or fraud (bedrog).⁴

Furthermore, Article 1328 of the Civil Code states that for fraud to exist, there must be deception (kunstgrepen), so it is clear that dishonesty/lies alone are not enough to constitute fraud. Thus, the deception referred to in Article 1328 of the Civil Code is not only limited to statements of lies, but there must be a series of lies (samenweefsel van verdichtsel), a series of untrue stories, and deceptive actions. The word “kunstgrepen” or deception is plural, so it can be interpreted that there must be a series of lies.⁵

The fraudulent act must be carried out on or by the name of the party to the contract and the act must have the intention or intent to deceive. Furthermore, the action must be an act with malicious intent, so that failure to inform the customer of the existence of hidden defects in an item does not constitute Fraud because it is not based on malicious intent or mere negligence.⁶ In addition, the deception must be intended to move someone to sign the agreement, whereas if there was no deception, the other party would not have agreed to the agreement.⁷ Violations in the form of fraud can be used as a basis for cancelling the contract as determined in Article 1328 of the Civil Code.

This of course raises thoughts about the principles or basic facts that encourage practitioners not to use fraud (bedrog) which are usually found in the Civil Code. In the example, the contractual relationship is an immutable rule, under which the parties cannot enter into a contract, regarding the performance of the contract in good faith.⁸

Historically, civil law in Indonesia is based on civil law in the Netherlands, especially Dutch civil law during the colonial period. The Civil Code that applies in Indonesia is nothing other than a translation of the codification of Burgerlijk Wetboek (BW).⁹ Examining the Civil Code as a colonial legacy law, the Netherlands itself has made far more advanced legal changes, marked by the existence of the Nieuw Burgerlijk Wetboek (hereinafter referred to as NBW) as a new procedural law reform implemented by the Netherlands.¹⁰ In this case, further regulations regarding Fraud in NBW have been regulated.

Provisions regarding Fraud in the realm of Dutch civil law are also regulated in Article 3:44 Nieuw Burgerlijk Wetboek which states that “een rechtshandeling is vernietigbaar, wanneer zij door bedreiging, door bedrog of door misbruik van omstandigheden is tot stand gekomen” or a legal action can be canceled if there is a threat, fraud or abuse of circumstances. Fraud occurs when someone persuades another person to carry out a certain legal act by deliberately providing incorrect information, hiding facts that must be disclosed, or by other fraud¹¹

With the existence of Article 3:44 above, to follow progress and updates, it is necessary to further study the current Fraud Regulations in the Indonesian Criminal Code and the NBW itself. So, it is important to know

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- 4 Eva Riska Isnandya, “Pembatalan Oleh Hakim Terhadap Akta Jual Beli Yang Dibuat Berdasarkan Penipuan (Bedrog,” *Indonesian Notary* 2, no. 3 (2020): 219, <https://scholarhub.ui.ac.id/notary/vol2/iss3/10>.
 - 5 Aini Zikriatul, “Tinjauan Yuridis Akibat Hukum Adanya Unsur Penipuan Dalam Perjanjian Utang Piutang (Studi Putusan Peninjauan Kembali Nomor 4 PK/PID/2019)” (Universitas Mataram, 2023), <http://eprints.unram.ac.id/id/eprint/38912>.
 - 6 Suci Octavia, “Misbruik Van Omstandigheden As Reason for Cancellation of Agreement In Progress Contract Law” (Untag 1945 Surabaya, 2020).
 - 7 Marhaeni Ria Siombo, “The Vulnerability Of Proving Fraud As The Basis For Cancelling Agreements In The Digital Era,” *Jurnal Bina Mulia Hukum* 7, no. 2 (2023): 243–58, <https://doi.org/https://doi.org/10.23920/jbmh.v7i2.708>.
 - 8 R E Barnett and N B Oman, *Perspectives on Contract Law*, V, Aspen Coursebook Series (California: Aspen Publishing, 2018), <https://books.google.co.id/books?id=amNjEAAAQBAJ>.
 - 9 Rika Aryati, Hamzah Vensuri, and M Febrianto, “Sejarah Berlakunya BW Dan KUHPperdata Di Indonesia,” *Journal of Criminology and Justice* 2, no. 1 (2022): 11–16.
 - 10 Rita Nurnaningsih and Dadin Solihin, “Badan Hukum Perseroan Ditinjau Menurut Undang-Undang Perseroan Terbatas (UUPT) Dan Nieuw Burgerlijk Wetboek (NBW) Di Era Bisnis Digital,” *Syntax* 2, no. 4 (2020): 62, <https://doi.org/https://doi.org/10.36418/syntax-imperatif.v1i2.28>.
 - 11 Amy Willemys, “Invulling van Het Foutbegrip Bij Schadevergoeding Bij Vernietiging van Overeenkomsten” (Universiteit Gent, 2019), https://libstore.ugent.be/fulltxt/RUG01/002/835/956/RUG01-002835956_2020_0001_AC.pdf.

the elements of fraud in NBW to provide certainty, and clarity, or to show that the policy is correct in legal terms.

In reality, there is still no clear explanation regarding fraud in the context of the Civil Code. This is because the Fraud article in the Civil Code is only one type of will defect, for which there is no further explanation regarding this matter. Thus, when providing evidence in the context of trials, practitioners, in this case, advocates or other law enforcers, often have difficulty implementing the Fraud articles contained in the Civil Code, even though in reality the regime point and concept of the purpose of application are different. Therefore, it is necessary to find the measure of fraud (bedrog) in Article 1328 of the Civil Code by comparing these regulations with the Regulations on Fraud contained in Dutch civil law or The New Netherlands Civil Code (Nieuw Burgerlijk Wetboek). The concept for finding the elements referred to above can use a Comparative Approach, namely by looking at legal provisions in other countries as a comparison, namely by still referring to the provisions in the NBW as long as they do not conflict with the values adhered to by the Indonesian people, especially at the practical level, the need for concretization of these elements becomes very important and relevant to discuss.

Starting from the lack of comparative discussion and the elements of Fraud referred to by the Civil Code in literacy¹², the author is interested in conducting comprehensive research that examines the comparison of Fraud in Article 1328 of the Indonesian Civil Code and compares it with Article 3:44 of the Dutch NBW. The interpretation of fraud in the civil regime relies more on the formulation of criminal law, rather than referring to Article 1328 of the Civil Code itself, so that at a practical level it can give rise to legal problems. Furthermore, many potential legal discoveries can be made by the Panel of Judges in examining cases of defective will that discuss Bedrog or fraud in the Civil Code, which so far only refers to previous jurisprudential decisions, not to existing laws and regulations that are under the concept of a civil law country¹³. Thus, the problem formulation that will be the focus of discussion in the research here is related to how the criteria for Fraud (Bedrog) are regulated in Article 1328 of the Civil Code and how the criteria for Fraud (Bedrog) are regulated in Article 3:44 of the Dutch NBW.

Previous research that has similar variables in common includes: First, research by Hadi Harul Hadi and Saifullah¹⁴ entitled, Cancellation by Judges of Deeds of Sale and Purchase Made Based on Fraud (BEDROG), in this research, the progress that has been obtained is that fraud occurs if there is an element of deliberate action by one of the parties, namely providing information or facts that are not true, and a lie alone is not enough for there to be fraud, but there must be a series of lies which concerning each other constitute a deception, and has a causal relationship, that is, if there had been no fraud, it would not have been possible for him to close the agreement. The legal consequences that arise from a Deed of Sale and Purchase that is cancelled by a Judge are that all conditions must be returned to their original state when no legal action occurred in the relevant deed. In this research, it can be seen that the focus of the research is deeds of sale and purchase or related Notaries and PPATs which are reviewed at a normative level, whereas in the research carried out by the author, the focus point is on the comparison of elements in the Dutch Civil Code and NBW. This has implications for differences and novelty with the research space that will be studied by the author, namely a comparative study with Dutch civil law.

Second, research conducted by Eva Riska Isnandya, et al, entitled, Cancellation by a Judge of a Deed of Sale and Purchase Based on Fraud (Bedrog)¹⁵, contributed to progress, namely Fraud occurs when there is an element of deliberate action by one of the parties, namely providing information or facts that are not true, and a lie alone is not enough for there to be fraud, but there must be a series of lies which, concerning one another, constitute a deception, and have a causal relationship, that is, if there was no fraud, then it would not

12 M.H.S. Lbens-de Mug, *Het Wilsgebreken Misbruik Van Omstandigheden* (Nijmegen: Radboud University, 2023), <http://hdl.handle.net/2066/148074>.

13 Annekatrien Lenaerts, "Fraus Omnia Corruptit: Autonome Rechtsfiguur of Miskend Correctiemechanisme?," 2013.

14 Hadi Haerul Hadi and Safiulloh Safiulloh, "Pembatalan Oleh Hakim Terhadap Akta Jual Beli Yang Dibuat Berdasarkan Penipuan (Bedrog)," *Jurnal Res Justitia: Jurnal Ilmu Hukum* 2, no. 2 (2022): 406–33, <https://doi.org/https://doi.org/10.46306/rj.v2i2>.

15 Isnandya, "Pembatalan Oleh Hakim Terhadap Akta Jual Beli Yang Dibuat Berdasarkan Penipuan (Bedrog)."

be possible to close the agreement. That. The legal consequences that arise from a Deed of Sale and Purchase that is canceled by a Judge are that all conditions must be returned to their original state when no legal action occurred in the relevant deed. This research also has almost the same results as the first research and has research variables that are very different from the research that will be researched, where the conditions of the variables studied are based on the Civil Code, and another very different variable is the discussion related to buying and selling, namely the contract variable that is emphasized. Not to look for elements of either differences or similarities between the Civil Code and the NBW.

Third, research conducted by Sri Laksmi Anindita¹⁶ entitled Settlement of Bedrog Disputes (Fraud) in Timber Sale and Purchase Agreements: *Onrechtmatige Daad Wederrechtelijk?* Case Study: Supreme Court Decision Number: 499K/PID/2001M which provides results namely Submission of dispute resolution through a criminal case for actions containing elements of Fraud in timber sale and purchase agreements (Case study: Supreme Court Decision Number: 449K/Pid/2001), is incorrect. Settlement of disputes that arise in this case must be carried out through filing a civil lawsuit. In this research, the research focus is more on case studies that have permanent legal force on past events. This research of course refers to articles in the Civil Code, not focusing on comparative research and studying the elements of the articles being compared, but rather on case studies, how the judge considers and his decision in the decision.

The most basic difference between this research and previous research is that this research describes the elements of fraud referred to in the Indonesian Civil Code, and compares them with the Dutch NBW. So you can see the regulations, what is not regulated, and what is regulated, the aim of which is to improve the articles related to the substance of Fraud (Bedrog) in the context of the Indonesian Civil Code, as explained in the paragraph above, what is very clearly visible is the dissection, review related to the elements. the element of fraud in existing cases, which still uses criminal law rules (namely Article 378 of the Criminal Code), rather than examining the original elements contained in the provisions of Article 1328 of the Civil Code which is included in Defects of Will, this is very fatal if there is no renewal because the aim of criminal law is imprisonment while civil law is cancellation and compensation. Another different thing is that this research tries to examine the original elements of the provisions of the Civil Code, to the original source, namely the Dutch Civil Code which is now known as NBW (Article 3:44). Both of them being compared because the regulation in NBW related to fraud is explained more specific than BW, which is why these need comparison. Furthermore, Civil Code used in Indonesia still refers to the old BW in Netherland.

2. RESEARCH METHODS

The legal research used in this research is normative legal research, meaning that it refers to the laws and regulations in force in Indonesia, which in this case refers to the provisions on defects of will as contained in Article 1328 of the Civil Code, namely legal research carried out by choosing Library material with secondary data, which is then compared using a comparative method, namely by examining the elements in Article 3:44 NBW, then compiled and narrated systematically and compared with Article 1328 of the Civil Code.¹⁷ The comparative method is a way of constructing relationships of similarity or dissimilarity between different factual matters. This method relies on the possession of the comparative concept of classification which is based on the similarities and differences between the two elements. However, comparisons usually require more than simply applying pre-existing categories. In the comparative method, the analysis process is carried out based on complex thinking that cannot be reduced to simple judgments. Thus, the comparison is intended to involve searching for new categories to understand relevant similarities or differences, or rethinking existing ones.¹⁸ The data source in this research uses secondary data sources. Secondary data sources are data sources carried out through library research by reviewing books, journals, research results, conventions, and statutory

16 Sri Laksmi Anindita and Eriska Fajrinita Sitanggang, "Penyelesaian Sengketa Bedrog (Penipuan) Dalam Perjanjian Jual Beli Kayu: *Onrechtmatige Daad Atau Wederrechtelijk?*(Studi Kasus: Putusan Mahkamah Agung Nomor: 449k/Pid/2001)," *Jurnal Hukum & Pembangunan* 52, no. 1 (2023): 301–19.

17 Maria SW. Sumardjono, *Metode Penelitian Ilmu Hukum* (Yogyakarta: FH UGM Press, 2021).

18 M Reimann and R Zimmermann, *The Oxford Handbook of Comparative Law*, Oxford Handbooks (OUP Oxford, 2019), <https://books.google.co.id/books?id=cvqNDwAAQBAJ>.

regulations as well as through internet media regarding matters related to research problems.¹⁹ Legal materials in obtaining secondary data consist of Primary legal materials, namely legal materials that have binding force, consisting of the Civil Code that applies in Indonesia, which is then compared with the *Nieuw Burgerlijk Wetboek* that applies in the Netherlands, Jurisprudence and agreement. Secondary legal materials, which provide explanations related to primary legal materials, such as the history of the application of Article 1328 of the Civil Code and its dynamics, are then elaborated with the history of Article 3:44 NBW, then research results, and so on. Tertiary legal materials are materials that provide explanations of primary and secondary legal materials, such as dictionaries that function to explain certain encyclopedia terms.²⁰

3. DISCUSSION

3.1 Elements of Fraud (Bedrog) in the Civil Code

The main instruments for checking the validity of an agreement are regulated in Article 1320 of the Civil Code, namely the agreement of the parties, skills in agreeing, certain matters, and halal clauses. Conformity between will and statement is the principle of an agreement. However, even if there is conformity between the will and the statement, a legal action may be annulled. This is because there is a possibility that there is a defect in the will. A defect of will here occurs when someone has taken legal action, but the will arises imperfectly.²¹

Defects of will are the result of the principle of freedom of contract that is currently developing, which causes injustice. Often, an unequal bargaining position between the two parties causes the party with a higher bargaining position than one party to impose its will on the other party. This then leads to abuse of circumstances²² in carrying out transactions. The existence of the element of defective will in the agreement then becomes important to support an agreement that can be trusted by the community. This is also in line with the development of the concept of agreements in the industrial era 4.0, where many traders often abuse trade transactions.²³

Furthermore, desires that are realized imperfectly can occur due to things including fraud or fraud. Provisions regarding Fraud (bedrog) are regulated in section 1328 of the Civil Code and are a form of defect of will. Fraud occurs when someone has the will and knowledge to intentionally mislead others. The meaning of misleading here is when a fact is deliberately hidden or when information is deliberately provided inaccurately or in a way that misleads others.²⁴

Departing from the definition above, fraud can be defined as certain statements that are untrue and made intentionally before the formation of the agreement and transmitted by one party to another party to persuade the other party to agree to terminate the agreement. Thus, it can be concluded that the elements of fraud are as follows: (1) it is an act with malicious intent, except for cases of negligence in reporting hidden defects in an object; (2) before the agreement is made; (3) with the intention or intent that the other party signs the agreement; (4) acts done solely with malicious intent.²⁵ In a fake or mistakenly obtained agreement, the facts that are considered valid do not constitute a real agreement, even though the agreement may invalidate a contract. Deception will always come in the form of Fraud when someone is dishonest.

19 Iwoeng Geovani et al., "Juridical Analysis of Victims of the Economic Exploitation of Children Under the Age To Realize Legal Protection From Human Rights Aspects," *International Journal of Educational Review, Law And Social Sciences (IJERLAS)* 1, no. 1 (2021): 45–52, <https://doi.org/10.54443/ijerlas.v1i1.10>. has been carried out as it should, in accordance with Law Number 35 of 2014 concerning Amendments to the Law Number 23 of 2002 concerning Child Protection (Supplementary Gazette of the State Gazette of 2014 Number 5606

20 Sumardjono, *Metode Penelitian Ilmu Hukum*.

21 Elia Cahya Putra, "Perlindungan Hukum Notaris Atas Pembuatan Jaminan Perusahaan Yang Diduga Mengandung Unsur Cacat Kehendak," *Indonesian Notary* 3, no. 1 (2021): 701–18, <https://scholarhub.ui.ac.id/notary/vol3/iss1/18>.

22 Wiwin Dwi Ratna Febriyanti, "Abuse of Circumstances (Misbruik Van Omstandigheden) in Developing Contract Law in Indonesia," *US-China L. Rev.* 19, no. 2 (2022): 85–91, <https://doi.org/http://www.doi.org/10.17265/1548-6605/2022.02.003>.

23 Sumriyah Sumriyah, "Cacat Kehendak (Wilsgebreken) Sebagai Upaya Pembatalan Perjanjian Dalam Persepektif Hukum Perdata," *Simposium Hukum Indonesia* 1, no. 1 (2019): 662–70, <http://journal.trunojoyo.ac.id/shi>.

24 Sumriyah.

25 R R Dewi Anggraeni, "Hukum Kontrak Bisnis" (Tangerang Selatan: Unpam Press, 2021).

In the Indonesian system, an action can be considered Fraud in Article 1328 of the Civil Code, but the Fraud requirement is not required. If there is a defect in the agreement in the form of fraud, then in principle it can be canceled. In this case, Ridwan Khairandy stated that Article 1328 of the Civil Code states that fraud is one of the reasons for canceling a letter of agreement (bedrog levert eenen grond op tot vernietiging der overeenkomst). Fraud in Article 1328 of the Civil Code can then be used as a reason for canceling the agreement if the fraud used by one party is such that it is clear that the other party is agreeing without any deception (niet zoude aangegaan).

Furthermore, Article 1321 of the Civil Code states, “No agreement is valid if the agreement was given by mistake or was obtained by force or fraud.” Based on these provisions, an agreement contains a defect in the will, the will given in the agreement is not based on a pure will (agreement), the agreement there was given because he was mistaken, pressured, deceived, or under the influence of another person who abused the existing situation”²⁶

Nevertheless, even though Article 1321 in conjunction with 1328 of the Civil Code regulates fraud concerning reasons for cancelling contracts or agreements, but the Civil Code does not regulate the substance or content of this norm at all. R. Subekti further stated that Fraud is a reason for the cancellation of an agreement if the deception used by one of the parties is such that it is obvious that the other party would not have agreed if it had not been for the deception. Fraud is not suspected but must be proven.²⁷

Fraud within the framework of civil law involves violations of a civil nature. Fraud in civil law occurs when someone intentionally uses lies or manipulation to influence a court decision in a civil context, such as a contract, business transaction, or insurance claim. These violations may involve Fraud, concealment of important facts, or providing false information. The penalties that can be imposed for civil fraud are more focused on recovering financial losses and returning the injured party to their original position before the fraud occurred and usually only harm that party, not necessarily for the common good.

Meanwhile, Article 1449 of the Civil Code states that for agreements made through coercion, mistake, or fraud, a demand is issued to cancel them. That the formulation of this article can be interpreted as an agreement carried out based on fraud is not automatically null and void, but only gives rise to a demand to cancel it. If an agreement has been given not freely, then the agreement is defective so that it can be cancelled by a judge at the request of the party who has given the agreement not freely. Agreements that occur due to fraud are not immediately canceled unilaterally or considered null and void by law. Therefore, the act of fraud must be such that it is obvious that the other party would not have agreed if the fraud had not been committed.²⁸

In practice, there are still differences in understanding between civil law fraud arising from contractual relationships. Although these two issues are related, they are still in different areas of law. It is not uncommon for legal issues that are civil law to be included in the scope of criminal law. For example, when there is a problem of broken promises in a contractual relationship, this tends to be considered Fraud under criminal law. From this mindset emerges aspects of public law that are used as a means of coercion against private legal acts.

With this explanation, it can be concluded that fraud can be a reason to cancel an agreement if one party’s fraudulent actions make it clear that the other party will not accept the agreement without fraud. To assume the existence of Fraud, there must be concrete evidence and mere conjecture is not enough. Therefore, if there are signs of fraud in an agreement or arrangement, the step taken is through civil action by invoking Article 1328 of the Civil Code to request the cancellation of the agreement, not by criminal action as intended in Article 378 of the Criminal Code on Fraud.

3.2 Elements of Fraud (Bedrog) in Dutch Law

Fraud (Bedrog) in the latest Nieuw Burgerlijk Wetboek (NBW) / Dutch Civil Code, is defined as “Lack of Will”. According to Dutch law, fraud occurs when someone induces another person to commit certain legal

26 Juswito Satrio, “Sepakat Dan Permasalahannya: Lahirnya Perjanjian,” Hukum online, 2018, <https://www.hukumonline.com/berita/a/sepakat-dan-permasalahannya--lahirnya-perjanjian-lt5a4db425c9b56>.

27 Ridwan Khairandy, *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan* (Yogyakarta: Fh Uii Press, 2023).

28 Puspa Pasaribu and Eva Achjani Zulfa, “Akibat Hukum Identitas Palsu Dalam Akta Perjanjian Kredit Yang Melibatkan Pihak Ketiga Pemberi Jaminan,” *Jurnal USM Law Review* 4, no. 2 (2021): 535–46, <https://doi.org/http://dx.doi.org/10.26623/julr.v4i2.4050>.

acts by deliberately making untrue statements, hiding facts that must be disclosed, or by deception. However, a conveyance or offer described in a general way, does not in itself constitute Fraud, even if it is untrue.

The following are several explanations regulated in Article 3:44 NBW (Nieuw Burgerlijk Wetboek/Latest Dutch Civil Code) regarding defects of will in carrying out legal actions, especially regulations regarding Fraud, including:

- 1) Legal acts can be annulled when the act is carried out under the influence of threats, fraud, or abuse of circumstances.
- 2) Legal threats are defined as when someone persuades another person to commit a legal act under the influence of unlawful coercion to directly harm or harm a third party or their property. The threat must be made in such a way that the victim can be affected by it in the same way.
- 3) Fraud is legally defined as when someone persuades another person to commit a legal act by deliberately making a statement that is not true, hiding facts that must be disclosed, or by other deception. However, a conveyance or offer described in general terms does not in itself constitute Fraud, even if it is not true.
- 4) Abuse A legal situation is defined as when a person knows or should have known that a person may be persuaded to take legal action because they are under certain influences, such as an emergency, dependency, carelessness, addiction, abnormal mental condition or lack of experience, but has influenced other people to carry out such legal actions. Despite what a person knows or should know, that person should refrain from doing it.
- 5) If a statement has been made under the influence of threats, fraud or abuse of circumstances caused by a person who is not a party to the legal action, it is not possible to appeal the legal defect to another party who has no reason to assume the statement exists.

Fraud in NBW is regulated through Article 3:44 paragraph (3), that a contract can be canceled based on fraud if a party persuades another party to take certain legal actions by, among other things: making false and deliberate statements; intentionally not disclosing facts that should be required to be disclosed; and using other deceptions (such as withholding important information when selling a home).²⁹ Deliberately false statements such as deliberately withholding or providing incomplete information can be called Fraud, provided that one of the parties to the contract must provide information and he is aware of the information.

Regarding NBW Article 3:44 paragraph (3) above, the definition of Fraud means that any form of intentionally misleading another party in an agreement is considered Fraud. However, this Article has general exceptions, one of which is the form of "Praise". Whether the praise is true or not, in general terms it is not considered fraud. Examples include: "We have the best detergent," "This is a great car," and "With our products you will make the best purchase."³⁰

In civil law, it can be seen that fraud (*bedrog*) and error (*dwaling*) are very closely related. However, the element of error (*dwaling*) is not mentioned in Article 3:44 NBW, but it is regulated in Article 6:228 NBW, which states that a contract can only be canceled due to an error if the other party provides false information or does not disclose important information. If a party to a contract knows material information, then the contract can generally be voided because the information should have been disclosed to the other party.³¹ The element of fraud can be seen from this condition, that someone is deliberately persuaded to misperceive. This occurs in situations where a person is aware of the high probability that his or her deception will cause another person to take legal action that is detrimental to the victim. The basis for fraud is characterized by deliberately false statements, deliberate concealment of facts, or other tricks/deceptions as stated in Article 3:44 (3) NBW. Looking at this statement, some several possible tricks/deceptions can be used, including:³² First, giving a fake name or fake address; second, falsifying certain documents; third, acting under a false identity.

29 Stibbe, "Annulment of Contract: Mistake and Fraud," 2023, <https://www.stibbe.com/publications-and-insights/annulment-of-contract-mistake-and-fraud>.

30 B.G.N. (Bart) Gubbels. n.d. "Bedrog (Wilsgebreken)." <https://www.wetrecht.nl/Bedrog-Wilsgebrek/>. B.G.N. (Bart) Gubbels, "Bedrog (Wilsgebrek)," accessed July 9, 2023, <https://www.wetrecht.nl/Bedrog-Wilsgebrek>.

31 "Nieuw Burgerlijk Wetboek", art. 6:228 (1) (b).

32 B.G.N. (Bart) Gubbels, "Bedrog (Wilsgebrek)."

The historical development of fraud in Dutch law begins with the formation of legal acts (*dolus*). The Netherlands is one of the countries that has adopted the European civil law system. In the codification of European civil law in Art. II-7:205 (2) DCFR (“fraud”) examines a further definition of Fraud which reads: “A misrepresentation is fraudulent if it is made with knowledge or belief that the representation is falsely broken and is intended to induce the recipient to make some mistakes. A non-disclosure is fraudulent if it is intended to induce the person from whom the information is held to make a mistake.”

The article explains that a defective will is fraud if it is carried out with the knowledge or belief that the statement is false and is intended to influence the recipient to commit a mistake. Confidentiality/covering up facts is fraud if it is intended to influence people who are not given information to make mistakes.

In contrast, Roman law states that fraud is a criminal offense.³³ The criminal concept of fraud is seen as a classic defect of will. In current Belgian law and French law, both aspects of Fraud remain. On the one hand, Deception from the victim’s perspective is a defect of will, namely a misrepresentation that leads to consent. In Belgian and French legal practice, a defect of will is still defined as a cunning act of one of the contracting parties with the explicit aim of deceiving the other party to induce them to agree.

According to previous legal views, a defect of will inferred against Fraud always assumes the explicit intention of the fraudster to harm another party. The meaning of fraud will be important in discussions regarding the enforcement of punishment against perpetrators of fraud, especially in cases of fraud, the moral character of the defect of will theory is very important. Therefore, it can be concluded that defective will focus on fraudulent acts carried out by the perpetrator with the result being a defective will from the victim. Thus, cancellation of the agreement is a sanction for the dishonest behavior of the parties to the agreement who carried out the tricks/deceit.

In general, knowledge of the losses that will be experienced by the victim is included in the fraudulent act itself, so basically, it does not need to be proven separately. If a fraudster commits a dishonest act to cause a contract to be formed, he will also know that the other party will be harmed by being forced to agree to a contract he did not want.

The principle relating to Fraud (*bedrog*) in the Netherlands is ‘*Fraus omnia corrumpit*’ or also known as the “Fraus Principle”. This principle prohibits perpetrators of fraud from claiming their fraud to obtain the application of legal rules that benefit them. Based on this principle, all legal consequences intended by the perpetrator of fraud through his fraudulent actions must be completely canceled. Thus, the Fraus Principle aims to prohibit fraud.

As the Latin proverb says: “Deception spoils everything.” In cassation legal proceedings, exceptions to the conventional distribution rules regarding responsibility are recognized in cases of a combination of intentional fault by the perpetrator and unintentional fault by the victim. Based on the Fraus principle, an intentional wrongdoer cannot claim the victim’s negligence or recklessness to limit or exclude his or her liability. In this case, the perpetrator is fully responsible for recovering losses, even though there was an unintentional error by the victim.

It can be understood that research on the concept of Fraud shows that the Fraus principle is the principle that underlies the punishment for defects in the will of Fraud, where the fraudster is not allowed to blame the victim for his negligence or the victim’s negligence which is considered fatal and cannot be forgiven. Therefore, only the Fraud aspect must be taken into account, regardless of whether the victim breached the obligation to seek information or not. It has been proven that the application of this principle requires an intention to harm another party. Defect of will In fraud there will also always be an intent to harm, which is defined broadly as the intentional and desired causing of adverse legal consequences.

Fraudsters want to gain profits illegally, namely by forming an agreement. Where definitively it also creates detrimental legal consequences for the other party, namely the formation of a detrimental agreement without the consent of that party. In this way, only one concept of Fraudulent deal defects is accepted, which in this case includes a subjective sense, namely inherently intent to harm.

33 Farihan Aulia and Sholahuddin Al-Fatih, “Perbandingan Sistem Hukum Common Law, Civil Law Dan Islamic Law Dalam Perspektif Sejarah Dan Karakteristik Berpikir,” *Jurnal Ilmiah Hukum Legality* 25, no. 1 (2018): 98, <https://doi.org/10.22219/jihl.v25i1.5993>.

Although Fraud’s will flaws are fundamentally based on the Fraus principle,³⁴ this legal figure has experienced significant autonomy in terms of legal requirements and consequences compared to the principle. However, the Fraus principle still influences the legal consequences of fraudulent agreement defects when fraud occurs by the contracting party with an unintentional mistake by the party who was cheated. The party who commits fraud will not be permitted to use the unintentional error of the party they deceive with certain exceptions.³⁵ It is hereby recognized that it is not necessary to be capable of a mistake committed by the party who was deceived to apply for cancellation of an agreement made by fraud, even though the party does not know the truth of the facts based on his own negligence. An examination of Fraud reveals that the Fraud principle is the underlying basis for recognizing the victim’s carelessness and the perpetrator’s fraud.

It has been shown that the application of this principle depends on the intention to cause harm. In cases of intentional Fraud, trust and loyalty are usually first established (some experts consider loyalty to be the essence of a fiduciary relationship).³⁶ The intent to cause harm is always present, which is generally defined as intentionally causing adverse legal consequences. After all, fraudsters want to gain an unlawful advantage, namely to achieve an agreed outcome. As a result, they also want to cause detrimental legal consequences for the party they deceive, namely causing losses to that party. Thus, only one concept of defect of will is maintained, of which the interpretation is subjective, namely the inherent intention to cause harm. Intentional fraud, based on the Fraus principle, has important independence in terms of legal conditions and effects. However, it is pointed out that the Fraus principle still influences the legal effects of unpreparedness and fraud in cases of a combination of Fraud by the contracting party and unintentional misconduct by the other deceived party.³⁷ A party who commits fraud intentionally is not permitted to ask his partner to be responsible for unintentional mistakes.

Because there are already measures regarding fraud from previous laws and the Netherlands has codified fraud in its constitution, here are several examples of summaries of fraud cases in the Netherlands that have occurred and have received permanent legal force, namely:

Table 1. The decision regarding fraud (bedrog) Article 3:44 NBW in the Netherlands

No	Court	Registration Number	Information	Main Decisions
1.	Court	Registration Number	Information	<ul style="list-style-type: none"> - Order the Defendant to pay PT. Marjoc finance a certain amount of money - Order to pay for the trial - Declare that this decision can be implemented temporarily - Reject the remainder of the lawsuit ³⁸

34 Daniele Lunghi et al., “Adversarial Learning in Real-World Fraud Detection: Challenges and Perspectives,” 2023, 27–33, <https://doi.org/10.1145/3600046.3600051>.

35 Annekatrien Lanaerts, *Loc. Cit.*

36 Andrew S Gold, “384385The Fiduciary Duty of Loyalty,” ed. Evan J Criddle, Paul B Miller, and Robert H Sitkoff, *The Oxford Handbook of Fiduciary Law* (Oxford University Press, May 27, 2019), <https://doi.org/10.1093/oxfordhb/9780190634100.013.20>.

37 Michael Lobban, “What Did the Makers of the Judicature Acts Understand by ‘fusion’?,” 2019.

38 Rechtbank Groningen, “ECLI:NL:RBGRO:2012:BY5967,” 2012.

2.	Groningen Court Decision Date: October 18, 2012 Jurisdiction: Civil Rights	532220 CV EXPL 12-492	Agreements made due to errors: Cancellation of agreements based on Article 3:44 paragraph 1 NBW or Appeal against Article 3:44 paragraph 5 NBW	<ul style="list-style-type: none"> - Reject the lawsuit - Order the plaintiff to pay the down payment ³⁹
3.	Oost Brabant Court Decision Date: 07-12-2018 Jurisdiction: Civil Rights	6861466 CV EXPL 18- 2591	Telephone acquisition, false announcements, Fraud, Article 3:44 paragraph 3 NBW	<ul style="list-style-type: none"> - Order the Defendant to vacate the house and return it to the Plaintiff, if evacuation is necessary, this can be done by a bailiff in accordance with the provisions of Article 555 jo 444 RV; - Order the Defendant jointly and severally to pay 452.60 euros as extrajudicial costs; - Order the Defendant jointly and severally to pay the trial costs; - Order the Defendant jointly and severally to pay the costs incurred after this decision; - Declare that the sentence can be carried out temporarily; - Reject part of the lawsuit;
4.	Amsterdam Court Decision Date: 07-10-2019 Jurisdiction: Civil Rights	7774283 KK EXPL 19-511	Fraud in rental housing agreements. Submission of false documents and incorrect information by third parties. Fraud committed by third parties. Article 3:44 paragraph (5) NBW	<p>In Claims</p> <ul style="list-style-type: none"> - Order the Defendant to pay the Plaintiff the amount of damages - Order the Defendant to pay the Plaintiff the temporary contract increase until the date the agreement legally ends <p>In Counterclaims</p> <ul style="list-style-type: none"> - Reject the lawsuit <p>In Claims and Counterclaims</p> <ul style="list-style-type: none"> - Order the Defendant to pay trial costs - Declare that this decision can be implemented temporarily⁴⁰

39 Rechtbank Oost-Brabant, “ECLI:NL:RBOBR:2018:3291,” 2018.

40 Rechtbank Rotterdam, “ECLI:NL:RBROT:2021:2187,” 2021.

5.	Rotterdam Court Decision Date: 02-12-2021 Jurisdiction: Contract Law	8247555 CV EXPL 20-321	Formation of agreements; similarity of representation. Appeal case regarding cancellation of agreement due to fraud Article 3:44 NBW or error Article 6:228 NBW and application for dissolution Article 6:265 NBW	<p>In Claims:</p> <ul style="list-style-type: none"> - Order jointly and severally to pay the amount of material losses plus interest in accordance with Article 6:119 NBW - Order the Defendant jointly and severally to pay the trial costs - Declare that this decision can be implemented temporarily; - Dismiss the remainder of the lawsuit <p>In Counterclaims:</p> <ul style="list-style-type: none"> - Reject the lawsuit - Sentence the Plaintiff in Counterclaim to pay the down payment of trial costs - Punish costs incurred after this decision.⁴¹
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Source: <https://www.hogeraad.nl/werken-bij/>

Table 1 above shows several decisions regarding bedrog (fraud) as stated in Article 3:44 Nieuw Burgerlijk Wetboek (NBW). Based on this table, it is clear that with the decision, the application of the Fraud provisions in Dutch Law has been applied, especially in the Civil Law chamber.

It explained in more detail that in most of the Dutch decisions above when faced with fraud (bedrog) cases, which mostly lead to a contract/agreement, the fraud victim has a legal basis to ask for the cancellation of the agreement because the perpetrator of the fraud used deception/cheating to influence the victim's (Plaintiff's) decision. This fraud has implications for affecting the validity of the agreement made between the two parties, and the aggrieved party has the right to cancel the agreement based on wilsgebrek (defect in the will) caused by the fraud.

To successfully file a Fraud claim, a cause-and-effect relationship is required between the Fraud and the legal action. A person will not sign a contract, or will not carry out the agreement if there is no fraud. The specific form is referred to as intentional Fraud. If the fraud results in a contract being made with different terms and conditions, then what has occurred is only incidental fraud. Incidental fraud does not result in the invalidation of the agreement but may result in compensation. In a legal case at the cassation level discussing "the nature of a person's intelligence" was confirmed as one of the elements of the cause of fraud. Article 3:44 in the NBW and further regulated in Article 5:35 NBW (Nieuw Burgerlijk Wetboek / Latest Dutch Civil Code) confirms that fraud as a special error is not subject to requirements that are considered customary.

⁴¹ Rechtbank Gelderland, "ECLI:NL:RBGEL:2022:2888," 2022.

If compared with the decision regarding fraud (bedrog) in Indonesia, the following data is found:

Table 2. The decision regarding fraud (bedrog) in Indonesia

No.	Court	Registration Number	Information	Main Decisions
1.	Bekasi District Court Classification: Civil Types of Lawsuits: Act against the law	97/ Pdt.G/2020/ PN.Bks	That the Defendant and Co-Defendant carried out an official report on the unloading of CPO on the MT Berkah Bahari 99 ship because of the presence of fraud (bedrog) elements, also to benefit themselves unlawfully based on Article 1320 and Article 1321 of the Civil Code and prematurely	In Exception: <ul style="list-style-type: none"> Reject the exceptions of First, Second, and Third Defendants in its entirety. In Claims: <ol style="list-style-type: none"> Grant the Plaintiff's lawsuit in part. Declare null and void and invalid the minutes of the unloading of CPO on the MT Berkah Bahari 99 ship because of the element of fraud (bedrog) and violates Article 1320 and Article 1321 of the Civil Code and is premature which benefits the Defendants and Co-Defendant themselves. Declare that the Defendants have committed unlawful acts. Sentence to the Defendants, both individually and jointly and severally, to return the CPO (Crude Palm Oil) which they took without right and against the law, equivalent to the price of Antam gold from 2011 to 2018 = Rp. 659,158,500 (six hundred and fifty-nine million one hundred and fifty-eight thousand and five hundred rupiah), immediately and simultaneously and in cash since this case has permanent legal force. In Counterclaims: <ul style="list-style-type: none"> Reject the lawsuit in Counterclaims its entirety; In Claims and Counterclaims: <ul style="list-style-type: none"> Punish the Defendants/First, Second, and Third Plaintiffs in Counterclaim to pay court costs.⁴²

42 Putusan Pengadilan Negeri Bekasi Nomor 97/Pdt.G/2020/PN Bks

2.	<p>Bandung District Court</p> <p>Classification: Civil</p> <p>Types of Lawsuits: Act against the law</p>	104/ Pdt.G/2021/ PN Bdg	Lawsuit regarding the cancellation of the Deed of Sale and Purchase because the Defendant has committed fraudulent acts so that the Defendant has committed an Unlawful Act	<p>IN CLAIMS:</p> <p>In Provisions:</p> <ul style="list-style-type: none"> Reject the claim for provisions from the Plaintiffs <p>In Exceptions:</p> <ul style="list-style-type: none"> Declare that Second Co-Defendant's objection cannot be accepted; <p>In Main Case:</p> <ul style="list-style-type: none"> Reject the claims of the Plaintiffs in Claims in its entirety; <p>In Counterclaims:</p> <ol style="list-style-type: none"> Grant the claim of Plaintiff in Counterclaim in part; Declare that the Plaintiff in Counterclaim is a buyer in good faith and must receive legal protection; Declare the validity of the sale and purchase between the Plaintiff in Counterclaim and the Defendants in Counterclaim; Declare the legal process of transferring the name of the Certificate of Ownership (SHM) on land from the names of the Defendants in Counterclaim / Plaintiffs in Claims and Second Defendant in Counterclaim to the Plaintiff in Counterclaim / First Defendant in Claim; Declare that the Plaintiff in Counterclaim / First Defendant in Claim is the legal owner of a plot of land and a 'Surat Hak Milik' registered in the name of the Plaintiff in
				<p>Counterclaim;</p> <ol style="list-style-type: none"> Declare that the Defendants in Counterclaim / Plaintiffs in Claim have committed unlawful acts; Sentence the Defendants in Counterclaim / Plaintiffs in Claim jointly and severally to pay the costs incurred at each level of justice that decides this case; Punish the Defendants in Counterclaim / Plaintiffs in Claim to hand over the land and house of the disputed object in its entirety to the Plaintiff in Counterclaim as the legal owners in an empty condition; Sentence the Defendants in Counterclaim / Plaintiffs in Claim jointly and severally to pay forced money (dwangsom) for every day of delay in implementing the contents of the decision in this case;

				<p>10. Reject the other and remaining lawsuit of the Plaintiff in Counterclaim;</p> <p>IN CLAIMS AND COUNTERCLAIMS:</p> <ul style="list-style-type: none"> • Punish the Plaintiffs in Claims / Defendants in Counterclaims to pay court costs⁴³
3.	<p>Surabaya High Court</p> <p>Classification: Civil</p> <p>Types of Lawsuits: Act against the law</p>	545/PDT/2020/PT SBY	<p>The Plaintiff initially objected and was not willing to make an agreement and agreement regarding the technical implementation of some of the work that the Plaintiff had received, then because of a deception, the Plaintiff signed the agreement.</p>	<ul style="list-style-type: none"> • Receive the appeal request from the Plaintiff's original Appellant's Attorney; • Strengthen the decision of the Surabaya District Court dated 30 July 2019 Number: 1113/Pdt.G/2018/PN Sby, which is being appealed; • Sentence the original Appellant, Plaintiff, to pay court costs at both levels of court, which at the appeal level were set at Rp. 150,000.00 (one hundred and fifty thousand rupiah);⁴⁴

Sumber: <https://putusan3.mahkamahagung.go.id/>

Based on Table 2 above, it can be seen that bedrog (fraud) regulations in Indonesia cannot stand alone. Even though the fraud (bedrog) clause is often found as one of the elements of the lawsuit, the fraud (bedrog) cannot stand alone and is always attached to other articles beside it, for example, clarified as an Unlawful Act or Default. Even though bedrog (fraud) is included in the civil law chamber.

This happens because it is difficult to prove the fraud (bedrog) element in Indonesia itself. Fraud cases in Indonesia always lead to criminal law, even though many cases of criminal fraud do not receive the compensation that should be given to the party affected by the fraud. This is different from the Dutch civil law system which specifically regulates fraud in civil rights jurisdiction and is listed in the Nieuw Burgerlijk Wetboek. Judges can easily decide fraud cases because there is a concrete legal interpretation and victims of fraud can immediately claim their losses. This can be seen from table 1, namely the decision of the Groningen Subdistrict Court Number 532220 CV EXPL 12-492 concerning cancellation of the agreement due to fraud (bedrog) based on Article 3:44 paragraph 1 NBW, Amsterdam Subdistrict Court Number 7774283 KK EXPL 19-511 concerning Fraud against rentalshousing, Rotterdam Subdistrict Court Number 8247555 EXPL 20-321 concerning cancellation of the agreement due to Fraud, Gelderland Court Number C/05/397207HZ ZA 22-1 concerning Abuse of Circumstances Article 3:44, all of them demanded material compensation, and the judge granted their demands. A practical lawsuit that can be applied in the Indonesian legal system regarding fraud in civil rights to immediately claim compensation for losses suffered by the victim.

Based on the explanation above, it can be seen that NBW has regulated more comprehensively the provisions on Fraud in the civil context. This can be seen from NBW which has provided an interpretation of what is meant by Fraud in the civil realm as well as providing benchmarks for an act that can be said to be Fraud in Article 3:44 (3), including, among other things, making false statements and deliberately not disclosing facts that which should be required to be disclosed, and deliberately providing incomplete information or

43 "Putusan Pengadilan Negeri Bandung Nomor 104/Pdt.G/2021/PN Bdg."

44 "Putusan Pengadilan Tinggi Surabaya Nomor 545/PDT/2020/PT SBY" (2020).

withholding important information. On the other hand, the Indonesian Civil Code only regulates fraud in two articles, namely Articles 1321 and 1328 without providing further explanation regarding the substantive meaning of fraud. The Indonesian Civil Code only defines fraud as one of the reasons for canceling a contract or agreement without regulating more clearly the substance or content of this norm.

Thus, it can be seen that the regulation of fraud in the civil realm is regulated more completely in the Dutch NBW compared to the Indonesian Civil Code. The consequences that will result from conditions that have not been regulated can lead to the emergence of legal uncertainty (*rechtsonzekerheid*). This then indicates that the Dutch NBW which has comprehensively regulated fraud in the civil context can accommodate the legal needs of its people so that it can provide legal certainty, while the Civil Code which has not regulated in more detail regarding fraud has not been able to provide legal certainty. So it is hoped that the regulations regarding fraud in the Indonesian constitution will become progressive law because fraud against civil rights will become more diverse. Therefore, the existence of fraud (*bedrog*) regulations in Indonesian Civil Law needs to be specifically regulated as *ius constituendum*, namely the law envisaged in the future.

4. CONCLUSION

Fraud (*bedrog*) of the Civil Code is regulated in Articles 1321 and 1328 of the Civil Code as one of the reasons for the cancellation of a contract or agreement and is a form of defect of will. However, the Civil Code does not provide further explanation regarding what is meant by fraud and what are the benchmarks for an act that can be considered fraud. On the other hand, regulations regarding fraud in Dutch civil law are regulated in Article 3:44 NBW which is also a form of disability of will. NBW defines fraud as an action in which a party induces another party to carry out certain legal actions by, among other things: making false and deliberate statements; intentionally not disclosing facts that should be required to be disclosed; and intentionally withholding or providing incomplete information. NBW has defined Fraud into several actions so that the benchmarks for identifying an action as Fraud in a civil context are clear. Based on this, it can be seen that the NBW has regulated in detail regarding fraud in civil law, so that it can provide legal certainty, while the Civil Code has not been able to accommodate this.

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Putusan Pengadilan Tinggi Surabaya Nomor 545/PDT/2020/PT SB

