

## Legal Review of the Criminal act of Fraud in Sale and Purchase Transactions Property

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**Abstract.** *Nowadays, there are many cases of fraud with various forms and developments, one of which is fraud in property sales transactions. This study aims to determine how the regulation, mode and legal protection of fraud in property sales transactions in Indonesia. In this study, the approach method used is: a normative legal approach or an approach by means of literature study. The research specification used is Descriptive Analytical, which is an effort to analyze and explain legal problems related to objects with a comprehensive and systematic description of everything related to fraud in property sales transactions. Regulations related to fraud in property sales transactions in Indonesia are regulated in Book II of the Criminal Code in Chapter XXV from Articles 378 to 395. The crime of fraud in its basic form is regulated in Article 378 of the Criminal Code. Legal protection for victims of property crimes, namely in Articles 1 and 19 paragraphs (1) and (2) of Law No. 8 of 1999 concerning Consumer Protection.*

**keywords:** *Fraud; Law; Property.*

### 1. Introduction

Land has an important role in human life. The need for land by the community is increasing as seen from the progress of the economy, many people involved in economic activities such as increasing buying and selling, renting, providing credit and so on. This makes the land have value high economic value. So that society can have as much as possible and control the land to meet the needs of life and the survival of generations Next. One of the land ownership rights that can be owned by the community is right of ownership.

In the Basic Agrarian Law, the definition of Property Rights as stated formulated in Article 20 of the PA LAWS as stated in Article (1), rights

Ownership is the hereditary, strongest and most fulfilled right that a person can have over land; (2), ownership rights can be transferred and transferred to

another person. Property rights are rights strongest and fulfilled, in the explanation of Article by Article that in Article 20 of the Law the Basic Agrarian Law states the characteristics of property rights that differentiate them with other rights. The right of ownership gives authority to the owner, who the most extensive when compared to other rights. Ownership rights can be transferred to other parties others may be by buying and selling, gifts, wills, exchanges and so on one of the crimes that is rampant is the crime of fraud. This is because the crime of fraud is not difficult to do, just by based on a person's ability to convince others through a series of words lies or fiction, promises or offers enticements in any form, either towards something that can provide strength or wealth.

The crime of fraud is contained in Article 378 of the Criminal Code which reads: "Anyone with the intention of benefiting himself or others by going against the rights, either by using a false name or false circumstances, either by wit and deceit, as well as by composing lies, persuading people to give something, make a debt or write off a receivable, the crime of fraud states that anyone who has the intention to benefit himself yourself or another person unlawfully, using a false name or dignity false by deception, or a series of lies, inducing others to to hand over something to him, or to give him a debt or something writing off receivables is punishable by fraud with a maximum prison sentence of four years years. The application of criminal sanctions must have elements that are fulfilled or conditions must be met. fulfilled if committing a criminal act of fraud which includes objective elements and elements subjective.

In criminal acts of fraud, there are many types and modes of action that are carried out. The perpetrators try to attract victims, one of which is by using a buying and selling method. the object is land or house. To discuss land itself in Indonesia It seems like it will never end, because we can review it from the perspective of history, customs, systems law, and others. Even every level of society has its own beliefs. each about history, customs, and legal systems, so it is not surprising that in Indonesia There are often riots and evictions where the object of the incident is is land or house.

One example of a case that occurred was the Bumi Madina Housing Developer. Asri who offered a house with a sharia system was arrested. There were hundreds of prospective buyers who felt cheated because the promised house was never built. This case was revealed police on Friday, March 25, 2022.

A businessman named Dadang Hidayat (48) was arrested by the Police Investigation Team. Sidoarjo. He was arrested and named a suspect after being reported by a prospective buyer. houses that feel cheated by sharia housing offers. With that background As described above, the author is interested in writing an individual working paper entitled

## “LEGAL REVIEW OF THE CRIMINAL ACTS OF FRAUD IN PROPERTY SALE AND PURCHASE TRANSACTIONS”

### 2. Research Methods

This research uses normative legal research, namely using norms – norms in laws with a conceptual approach and a special approach. The method used in this study is normative juridical. This study through the literature study stage, the data obtained is then analyzed by means of a qualitative analysis approach. processing and analysis of qualitative data on generally emphasizes analysis more on the deductive and inductive conclusion processes and the dynamics of the relationship between observed phenomena using logic scientific.

### 3. Results and Discussion

#### 3. 1. Regulations on Criminal Acts of Fraud in the Sale and Purchase of Property in Indonesia

Criminal acts of fraud in the sale and purchase of property are included in one of the forms crimes that are grouped into crimes against property, which by the perpetrator has used deceptive actions or used deception trickery. The Criminal Code itself in article 378 emphasizes that A person who commits a crime of fraud is threatened with criminal sanctions.

This criminal act of fraud is regulated in Chapter XXV of the Criminal Code (KUHP). In Chapter XXV of the Criminal Code, bedrog (fraudulent acts) consists of various forms of fraudulent acts. criminal fraud is regulated from Article 378 to 395 of the Criminal Code. Formulated in Article 378 of the Criminal Code, fraud means "an act with the intention of to benefit oneself or others illegally by using false name, false dignity, deceit, or falsehood that may cause people others easily hand over their goods, money or wealth. "The provisions of Article 378 formulate the meaning of fraud (*lighting*) itself.

The definition of fraud according to the opinion above is clear that What is meant by fraud is deception or a series of false statements so that someone feels deceived because of words that seem true. Usually someone who commits fraud, is explaining something as if it were true or happened, but in fact his words were not in accordance with reality, because the goal is only to convince the target person to acknowledge his wishes, while using a fake name so that the person's identity is not known, Likewise, using a false position so that people believe in what they say.

Fraud itself is a very despicable act in society, but it is rare for the perpetrators of these crimes to not be reported to the police. Fraud small-scale fraud where the victim does not report it makes the perpetrator of the fraud continue to develop his actions which ultimately led to the perpetrator of the fraud becoming a perpetrator large-scale fraud.

Based on the elements of the crime of fraud contained in the formulation

Article 378 of the Criminal Code, R. Sugandi stated that the definition of fraud is "an act someone with a ruse, a series of lies, a fake name and fake circumstances with the intention of benefiting oneself without rights. A series of lies is a series of false sentences arranged in such a way that they constitute a story of something which seems true."

Based on the provisions of Article 378 of the Criminal Code above, the crime of fraud (in basic form) has the following elements:

1. Objective elements, which consist of;
  - a. Moving,
  - b. Other people,
  - c. To hand over an item/object,
  - d. To give credit,
  - e. To write off receivables,
  - f. By using efforts such as:
    - 1) Using a fake name or
    - 2) False dignity,
    - 3) By trickery, and
    - 4) A series of lies.
2. Subjective elements, which consist of:
  - a. With the intention
  - b. To benefit oneself or others, and
  - c. Unlawfully

In criminal sanctions regulated in Book II of the Criminal Code in Chapter XXV from Articles 378 to with Article 395. The crime of fraud in its main form is regulated in Article 378 of the Criminal Code which is formulated as follows: "Anyone who with the intention of benefiting oneself or another person unlawfully by using a false name or dignity false; by deception, or a series of lies, to induce others to hand over something to him, or to give or write off a debt receivables, threatened, because of fraud, with a maximum prison sentence of four years."

The scope, elements and sanctions that need to be known in the Criminal Code Criminal Code (KUHP). Criminal law in the form of written regulations is compiled, made and enacted to be enforced as positive law (*constitution*), but will become more effective and be felt to be able to achieve a sense of justice and legal certainty if its implementation is in accordance with what was intended by the legislator, regarding what is written in those sentences.

In Malaysia Various provisions in the Criminal Code and the Act The 1950 Contract also regulates fraudulent activities and provides legal recourse for

victims.

that is;

#### 1. Criminal Violations

##### a. Fraud (Article 415 of the Criminal Code)

Committing fraud or persuading others to hand over something goods or allowing ownership of goods is considered fraud and may punishable by imprisonment, a fine, or both.

b. Committing fraud and persuading others to hand over goods dishonestly (Article 420 of the Criminal Code) A more specific crime is deception to persuade others.

to hand over an item, which can be punished with imprisonment, whipping and fines.

#### 2. Civil Action

a. Cancellation of the contract if the agreement is caused by fraud or error presentation (Section 14 of the Contract Act 1950) : A contract made by reason of fraud or misrepresentation can be reversed, so that the victim can seek redress. legal settlement.

b. Claiming negligence against a financial institution: In cases where the financial institution financial negligence in preventing fraud, victims can take legal action to claim compensation, as illustrated by the case of Koperasi Sahabat v. RHB Investment Bank.

### **3.2 Modes of Fraud in Property Buying and Sale Transactions and How Legal Protection for Victims of Fraud in Sale and Purchase Transactions Property**

#### 1. Fraud Modes in property buying and selling transactions

The public's desire to own property is currently increasing. This is in comparison straight with the increase in crime in the property sector and the impact of losses big for the victims. Victims of property crimes are diverse as are the The modes used are also varied, so we need to know what the modes are.

often used by property crime perpetrators, namely:

##### a. Land Mafia

The land mafia consists of a number of people who are structured and organized in carrying out their crimes. Land mafia are people who have a position, so that by using that position they can carry out any means to manipulate an asset and gain an advantage over it and the perpetrators also include dishonest employees to carry out the scheme them. The mode they use is by targeting land that has not been developing, uninhabited, and struggling with their attack strategy.

The perpetrators made the original certificate to the National Land Agency

(BPN) and using fake girik certificates for land that has not been changed in accordance with the provisions of the Law Number 5 of 1960 concerning Agrarian Principles (hereinafter referred to as the Agrarian Law). The mafia evicted the old residents by using this original land certificate. Then, if a person sues the owner of a vacant plot of land using the certificate genuine, you have to be alert. By using fake documents and certificates, the mafia land filed a lawsuit against the original owner to the State Administrative Court.

Violators who are caught will be punished. Violators who are caught will be charged under Article 378 Criminal Code and 372 Criminal Code regarding fraud and embezzlement.

*b. Scam Listing*

*Scam listing* or fraud through advertising on online shopping sites. Fraud through advertisements on the internet market with various enticements written in the advertisement, so that the victims are attracted and fall into his trap. The scam listing mode is like a transaction rent an apartment. The stages are that the perpetrator first rents an apartment for approximately one month before renting it out again to another tenant (victim).

Then the perpetrator made an advertisement for renting an apartment on the internet with a rental period of 1 (one) year, but the rental price is cheaper and finally the tenant (victim) is interested and rent by paying full rent for 1 (one) year, but only occupied 1 (one) month the victim was informed by the original apartment management that the rent his apartment has ended. Online fraud is undoubtedly rampant as evidenced by the above-mentioned incident. As a result, the community must be more careful. Some tips to avoid scam listing or fraud through advertisements on online buying and selling sites, namely:

- 1) Be suspicious if the apartment is rented cheaper than the market price.
- 2) Ensure the credibility of the website and advertisements
- 3) Be careful if you are forced to pay a high down payment.
- 4) Check the unit before paying the down payment

*c. Property Agent*

Property fraud victims are diverse, including agents.property. Property agents are also not immune from property crimes. The methods used the perpetrator of property crime is first, the perpetrator contacts the property agent with the purpose of pretending to want to buy the property that is being sold. After the perpetrator and the agent property agrees with the price and conditions required, then the perpetrator ask individually or together to go to a fake/dishonest notary who has cooperate with him to check the authenticity of the certificate. After the certificate

submitted by the property agent to the notary, then the certificate is handed over by the perpetrator deposited into a finance company and disburse funds from the certificate. After that the perpetrator made a fake certificate and returned it to the agent. thus it is not appropriate for a notary to do this, because a notary should also uphold high ethics and integrity. As a result, the level of public trust against the notary to be reduced.

d. Property Fraud Under the Guise of Sharia

A breath of fresh air for Muslims with the existence of sharia-based services, especially the field of buying and selling or other property transactions. It is indeed very interesting to using sharia-based services because they are 100% free from usury and have many benefits enthusiasts. However, this is very unfortunate because the public must now be careful be careful when finding sharia property. The mode used is by offering cheap houses or plots under the guise of sharia without usury, after the victim agrees and pay, but in the end the promised property does not exist (does not have legality). The rise in sharia property fraud will have an impact on the decline public trust in sharia property. This is caused by certain individuals who are irresponsible in the name of their products being labeled as sharia. Sharia property fraud that occurs in society is caused by this lack of education.

e. Mode of Property Crime Perpetrators through Brochures and Print Media

The intense commercial competition among housing developers makes they use any means necessary to ensure everything sells.

Even the advertisements they display are designed to be as attractive as possible to attract interest. consumers towards their property. This is a common and normal situation for property developers to make exaggerated claims in their advertisements, as is the case housing advertisements. Developers tout a number of benefits, including a primary location or the ability for customers to choose their own location, affordable prices or discounts for first time buyers, property models that are also suitable with the preferences of society and not only for the rich but also for the lower classes below. In addition, offering low prices or discounts for first-time buyers. However, the things promised by the housing developer in the advertisement are very comparable contrary to reality. The house that was offered was not yet built, but only includes designs printed in brochures or printed media. they advertise. When a housing sale and purchase agreement is executed between the developer and consumers based on brochures, developers use sales and purchase agreements that standard in every transaction, where the developer is in a stronger position than consumers unilaterally determine the overall content of the agreement this is done by the developer in the interests of the developer themselves without regard to consumer rights. As a result, when used together with the Consumer Protection Act, legal protection for consumers becomes no longer unbalanced



and often violates consumer rights contained in the Law Consumer Protection Act, this is how naughty developers take advantage of loopholes to get the greatest possible profit.

## 2. Legal Protection for Victims of Fraud in Property Sale and Purchase Transactions

Everyone who experiences loss as a result of a crime is called a victim. Victims can experience losses in the form of material, psychological, or physical losses. The main reason the creation of law is to provide security, maintain order, and to realize justice. One of the rights of victims is to ask for compensation, especially from perpetrators in order to reduce their suffering. Victims of criminal acts of fraud who experience material loss, will expect compensation in the form of material in the amount of the loss that they experience. So in cases of crime the victim's loss is in the form of property This thing, what the victim basically hopes is to get their property back, right the problem of punishment.

Property crimes must be eradicated considering the impact of property crimes. This is very, very big, especially in terms of material, so you need to know what steps to take. can be done to help victims of property crimes get their rights.

return and receive legal protection during the process of obtaining justice taking place. However, it is very unfortunate that most of the victims are home buyers or properties do not want to file claims for compensation and report their problems to the authorities.

authorized. The reason is because it is doubtful if the report will be submitted to the authorities not getting a response or response and the costs will be expensive if resolved through the Court.

Clarity of legal protection against property crimes is essential so that The victims did not hesitate any longer and immediately reported the incident they experienced. The following Legal protection against property crimes that the public needs to know: Law Number 8 of 1999 (hereinafter referred to as Law No. 8 of 1999) regarding Consumer Protection can provide legal protection for victims property crimes. Article 1 number 1 of Law No. 8 of 1999 explains the protection of consumers, namely all efforts that guarantee legal certainty to provide protection for consumers. The definition of a consumer is a person who consume goods or services available in society, either for personal use or other people and not for trading.

Several types of protection provided to consumers, namely:

### 1. Preventive Protection

Consumers are protected when they decide to purchase, use, or use certain products and/or services, starting from the process of selecting a number of goods and/or services, and then choose to purchase, use, or utilize goods and



services that meet certain standards and brands. So Before using goods or services, consumers are protected.

## 2. Curative Protection

Consumers must be protected. This is as a result of the use or consumption certain goods or services. Although consumers are often individuals who purchase products or services, but it should be underlined that this particular situation does not require or equate consumers with buyers of goods or services. In the case of in this case, a person can be classified as a consumer when that person becomes a consumer.

users, beneficiaries, or enjoyers of goods or services, whether obtained through gifts or purchases. According to Law No. 8 of 1999, the existence of Consumer protection itself aims to:

- a. Increasing consumer awareness, ability and independence to protect self;
- b. Raising the honor and dignity of consumers by preventing them from negative access to use of goods and/or services;
- c. Increasing consumer empowerment in choosing, determining and demanding their rights as consumers;
- d. Creating a consumer protection system that contains elements of certainty law and openness of information and access to information;
- e. Raising awareness among business actors regarding the importance of this protection, so that an honest and responsible attitude in business grows;
- f. Improving the quality of goods and/or services that guarantee business continuity production of goods and/or services, health, comfort, security and safety consumer.

Handling of property fraud cases for the community Those who are victims of property fraud can go through the Dispute Resolution Agency Consumer (BPSK) in its resolution, where BPSK is the Settlement Agency disputes between consumers and developers or property sellers either through mediation, arbitration or conciliation, BPSK also provides consultation and so on.

3. Victims of property fraud are included in the property victims covered by Article 378 of the Criminal Code. This is because property fraud is a criminal act that regulated in Book II CHAPTER XXV, then the property fraud is also regulated in article Next are Articles 379 to 395. Article 378 of the Criminal Code regulates fraud. in its most basic form with a maximum prison sentence of four years as stated that "Anyone with the intention of benefiting themselves yourself or another person unlawfully, using a false name or dignity falsely, by deception, or a series of lies, to move others to hand over something to him, or to give him a debt or something write off receivables, threatened with fraud with a maximum prison sentence four years." With

this knowledge of the legal umbrella, it is hoped that the public will not hesitate again and immediately report the fraud incidents they experienced (Mulyadi, 2017).

Article 19 paragraphs (1) and (2) Law no. 8 of 2009 also states that consumers suffer losses due to consuming goods and/or services offered by business actors, consumers have the right to demand responsibility from business actors for losses experienced. Likewise in property transactions, if consumers experience losses, then he has the right to demand compensation from the property developer. Obligations providing compensation occurs when the perpetrator commits an unlawful act.

Thus, normatively, legal protection efforts for consumers (victims) property crimes) have been regulated.

#### 4. Conclusion

Regulations on criminal sanctions are regulated in Book II of the Criminal Code in Chapter XXV of Article 378 to Article 395. The crime of fraud in its basic form is regulated in Article 378 of the Criminal Code which is formulated as follows: "Anyone who with the intention of benefiting oneself or others illegally by using a name false or false dignity; with deceit, or a series of lies, encourage other people to hand over something to him, or so that giving credit or writing off receivables, is threatened, because of fraud, with imprisonment for a maximum of four years". Fraudulent modes in property buying and selling transactions can occur through some things include land mafia, scam listings, property agents, undercover properties sharia and through browser media. Legal protection given to para victims of property fraud are included in Articles 378 to 395 Chapter XXV Book II of the Criminal Code. The crime of fraud is a crime against property. objects, and there are regulations that serve as a legal umbrella to protect victims property crimes, namely those contained in Article 1 and 19 paragraphs (1) and (2) of Law No. 8 of 2003. 1999 concerning Consumer Protection.

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