

Application Of Article 378 Of The Criminal Code Concerning Fraud In *Pre-Project Selling Housing(Study at PT. GSP)*

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Abstract

Pre-project selling is a method of selling property before the physical development is completed or even started. In Bandar Lampung, such practices have raised public and legal concerns due to their harmful impact on consumers. A notable case involved the developer PT. GSP, reported to authorities by dozens of buyers in 2023. This study examines the application of Article 378 of the Indonesian Criminal Code (KUHP) concerning fraud in pre-project housing sales and the challenges encountered in its enforcement. Using a normative and empirical juridical approach with both primary and secondary data, the study found that applying Article 378 is legally feasible, especially when fraudulent intent can be proven from the outlet. Elements such as deception, false information, and manipulative tactics align with the legal definition of fraud. However, significant obstacles exist, including difficulties in proving men's rea (criminal intent), the absence of clear regulations governing pre-project selling, legal uncertainty, and weak inter-agency coordination among local governments, notaries, licensing offices, and law enforcement. Strengthening cooperation among these stakeholders is essential to prevent similar crimes and ensure legal protection for consumers.

Keywords : Criminal Offense, Fraud, Pre-Project Selling, Housing.



INTRODUCTION

Fraud is a crime that often occurs in society and is regulated in Article 378 of the Criminal Code (KUHP). This article states that: *"Anyone who, with the intention of unlawfully benefiting himself or another person, by using a false name or false dignity, by trickery, or a series of lies, induces another person to hand over something to him, or to grant a loan or write off a debt, is threatened with a maximum prison sentence of four years for fraud."*

Article 378 of the Criminal Code (KUHP) states that fraud is not limited to the transfer of goods but can occur in various forms, including in the property sector. In practice, fraud often occurs in property transactions, particularly through **pre-project selling mechanisms**.

Pre-project selling is a method of selling property before the physical project is completed or even before construction begins. *Pre-project selling* offers consumers the opportunity to purchase property at a lower price before construction is complete, but carries significant legal risks if the developer fails to fulfill its promises. This method carries significant legal risks if the developer fails to fulfill its promises to build or deliver the property as promised. This phenomenon often results in significant losses for consumers.¹

Pre-project housing sales fraud have also occurred in Bandar Lampung City. One concrete example is the case of a property developer promising to build affordable housing through social media advertisements. The developer collected funds from the public through a phased payment scheme, but by the promised deadline, the housing development had not been completed. Furthermore, the promised land had no clear legal status, and the developer disappeared without a trace.

Similar cases in Bandar Lampung have drawn public and law enforcement attention, given their devastating impact. For example, the case of developer PT. GSP, which was reported to the authorities by dozens of consumers in 2023, drew public attention. In this case, the developer allegedly committed fraud by promising to build housing in the Sukarame area, but no physical progress was made on the project site by the promised deadline. The victims not only lost their deposited funds but also felt neglected by law enforcement. Most victims relied on legal remedies, reporting the developer to the police under Article 378 of the Criminal Code. However, legal resolution of these cases often encounters obstacles, both in proving the elements of the fraud and in executing the verdict.²

¹ Munir Fuady. 2016. *Business Law in Theory and Practice*, PT Citra Aditya Bakti, Bandung, 2016, p. 52.

² Samino Nugroho. 2023. *Dozens of consumers report housing developers to the police*, accessed from <https://lampung.antaranews.com/berita/306302>, April 16 2025.



This research has novelty *with* a focus on **the analysis of the implementation of Article 378 of the Criminal Code in *pre-project selling***, this research will examine how Article 378 of the Criminal Code is applied by law enforcement in *pre-project selling cases*, especially in the Bandar Lampung area. This includes an analysis of the obstacles faced in proving the elements of fraud. This research also offers a new perspective in consumer prevention and protection efforts through stricter regulations and community empowerment to be more critical in understanding *pre-project selling schemes*. This study provides a concrete picture of the case that occurred in Bandar Lampung, so that it can be used as evaluation material for law enforcement and policy makers in handling similar cases in the future.

According to a 2023 report from the Indonesian Property Consumers Association (AKPI), approximately 30% of total property consumer complaints related to *pre-project selling fraud*, resulting in financial losses reaching hundreds of billions of rupiah. Furthermore, this research is expected to contribute to the development of criminal law, particularly in handling fraud cases involving the property sector. Therefore, this research can also serve as a reference for consumers, property developers, and law enforcement officials in preventing and resolving similar cases.³

DISCUSSION

1. Application of Article 378 of the Criminal Code concerning the Crime of Fraud in *Pre-Project Selling of Housing*

Pre-project selling is a common marketing strategy in the property sector, particularly by housing developers, where housing units are offered to consumers before the physical construction process begins. This strategy is considered effective for raising initial capital for development, as funds raised from consumers can be used to finance subsequent construction phases.

In practice, this scheme involves various forms of promotion such as brochures, mock-ups, and residential design simulations to attract public interest. While it offers advantages in terms of financing efficiency and accelerated sales, *pre-project selling* also carries potential risks, particularly if it is not accompanied by information transparency and legal certainty from the developer. When project implementation does not live up to promises or is not realized at all, consumers can suffer significant losses, even in some cases resulting in allegations of fraud. Therefore, the implementation of this strategy must be carried out carefully and in compliance

³ Indonesian Property Consumers Association (AKPI). 2023. *Annual Report: Property Fraud Cases in Indonesia*, AKPI, Jakarta, p. 21.



with applicable regulations to maintain public trust and prevent abuse by irresponsible parties.

In *pre-project selling*, housing units are offered to consumers early on before construction begins. This strategy is primarily designed to provide developers with flexibility in obtaining project funding through a system of installment payments from consumers. From the developer's perspective, this method is considered efficient because it reduces the initial financing burden and accelerates the marketing process. However, in practice, this strategy is often misused by irresponsible developers. By exploiting public trust and weak oversight, they use the *pre-project selling scheme* as a means of committing fraud, such as selling fictitious units, providing false information, or diverting consumer funds without ever realizing the promised development. This undoubtedly causes significant losses for consumers and creates legal uncertainty in the property sector.

The modus operandi frequently encountered in fraud cases disguised as *pre-project selling* generally involves promising the construction of housing units within a specified timeframe, accompanied by the lure of strategic locations, affordable prices, and superior facilities. After consumers make payments, either in installments or in full, the promised construction never materializes for no apparent reason. In some cases, the marketed projects turn out to lack building permits, are not yet registered in spatial plans, or are even fictitious projects never planned for construction at all. This situation not only causes financial losses but also has psychological and social impacts on victims. Therefore, the application of the provisions of Article 378 of the Criminal Code concerning criminal fraud is very important as an instrument of legal protection, to ensnare perpetrators criminally and provide a sense of justice for the community who are victims of fraud in property transactions.⁴

An interview with Mr. Eko Prasetyo, an investigator at the Bandar Lampung Police, revealed that *pre-project selling* is considered a common mechanism in the property sector for raising initial development funds. The developer stated that as long as it complies with applicable legal procedures and permits, this method is legal. However, he acknowledged that a number of property business owners abuse this practice for personal gain, without any intention of building the units offered. Weak verification of project feasibility by notaries and minimal oversight by local governments also open up opportunities for fraud.

A subsequent interview with Mr. Eko Prasetyo, an investigator at the Bandar Lampung Police, revealed that public reports of alleged *pre-project selling fraud* have increased in recent years. However, the police must conduct a thorough review of each report to distinguish between

⁴ Andi Hamzah . 2012. *Introduction to Indonesian Criminal Law*, Ghalia Indonesia, Jakarta, p. 152.



civil default cases and alleged criminal fraud. The investigator explained that if there are indications that the perpetrator had no intention of building from the start and was simply exploiting customer payments for personal gain, then the act could be prosecuted under Article 378 of the Criminal Code. Furthermore, evidence such as transfer receipts, transaction records, and victim statements are very helpful in uncovering the motives and patterns of fraud.

Based on the results of an interview with Mrs. S. Endang Prasetyawati as a Lecturer at the Faculty of Law, Bandar Lampung University, it was stated that the elements contained in Article 378 of the Criminal Code can be applied to fraudsters who use the *pre-project selling method*. The elements that are most often fulfilled in this kind of case are the use of trickery and a series of lies carried out systematically by the perpetrator. Actions such as distributing fake brochures, showing house plans that were never planned to be built, and promising fictitious construction schedules, can be qualified as part of a series of lies. The importance of proving the perpetrator's malicious intent from the beginning of the offer is important, because this is the point of difference between fraud and ordinary civil disputes.

In cases of fictitious *pre-project selling*, the elements of deception and a series of lies are at the heart of fulfilling the elements of the crime of fraud as stipulated in Article 378 of the Criminal Code. Perpetrators generally deliberately create the illusion of the project's legality and credibility through various manipulative means, such as distributing brochures displaying attractive housing designs, showing the location of land that does not yet have permits, and preparing an unrealistic but convincing construction schedule. All of these actions are carried out to instill trust in consumers, even though the perpetrators have known from the start that the project will not or cannot be realized.

The element of deception in this context is not only verbal, but can also take the form of active actions or deliberate omissions in conveying important information. Therefore, if it can be proven that the series of lies was carried out systematically to gain personal advantage through unlawful means and harm consumers, then the elements of the crime of fraud have been legally fulfilled.

In practice, irresponsible developers often develop systematic and persuasive marketing strategies to create the impression that the housing projects they offer are genuine and worthy of investment. Various manipulative approaches are used, such as offering prices far below market value, promising strategic locations with easy access, and guaranteeing quick unit handover. These efforts are aimed at building trust and encouraging potential customers to make immediate payments, without having the opportunity to thoroughly verify the project's legality. However, in



many cases, these projects lack a strong legal basis, such as a building permit (IMB), technical planning, or even legal land ownership. This fact indicates that fraud in the context of *pre-project selling* does not occur spontaneously, but rather is a deliberate, structured, and systematic crime designed to deceive victims and obtain unlawful profits.

In the process of enforcing the law against fraudulent acts in *pre-project selling practices*, one of the most significant obstacles lies in proving the element of *mens rea* or the perpetrator's malicious intent from the outset. This is because perpetrators often provide reasons that appear rational, such as delays in construction due to the lack of permits from local governments, disruptions in the procurement of building materials, or funding problems. These excuses are often used as a shield to obscure the perpetrator's original intention, which is actually to have planned the fraud. Therefore, investigators and prosecutors are required to conduct a thorough investigation of several aspects, such as the flow of funds received from consumers, the existence and validity of cooperation documents with third parties, and the legal status of the business entity used to offer the project. If it is discovered that consumer funds were used for personal gain, or that the development company lacks legal standing and never applied for a building permit, then this can be a strong indicator that the perpetrator's actions have fulfilled the element of deception as stipulated in Article 378 of the Criminal Code.⁵

The role of notaries and local governments is highly strategic in preventing fraud committed through *pre-project selling schemes* in the property sector. Notaries, as public officials authorized to draw up authentic deeds, should not only act as registrars of agreements, but also exercise a prudential duty by thoroughly verifying the validity of project documents, the legality of the developer's legal entity, the status of the land, and the completeness of permits before drafting the deed of agreement between consumers and developers. On the other hand, local governments also have a significant responsibility in strengthening the oversight system for the issuance of housing permits, including ensuring that projects marketed to the public comply with spatial plans, have a building construction permit (IMB), and meet development feasibility standards. If the roles of these two institutions are not optimally implemented, legal loopholes will be created that perpetrators can exploit to commit fraud covertly. Weak supervision and minimal active involvement from relevant institutions in the early stages of housing marketing contribute to the increased risk of crime, which ultimately harms the public as consumers.⁶

⁵Zainal Abidin. 2021. *Law Enforcement against Unscrupulous Housing Developers in Pre-Project Selling*, Journal of Law and Development, Vol. 48, No. 1, p. 112.

⁶*Ibid* .



Based on the interview results as mentioned above, the author analyzes that the application of Article 378 of the Criminal Code against perpetrators of fraud in *pre-project selling* practices is very possible legally, especially if it can be proven that there was malicious intent from the beginning of the offer. Elements such as the use of deception, dissemination of false information, and other manipulative actions are an integral part of the crime of fraud as regulated in the Criminal Code. Therefore, closer cooperation is needed between law enforcement officials, notaries, and local governments to prevent similar crimes in the future and provide maximum legal protection for housing consumers.

2. Obstacles Faced in Applying Article 378 of the Criminal Code to *Pre-Project Selling* of Housing

Article 378 of the Criminal Code (KUHP) regulates the crime of fraud, which in practice is often used as a legal basis by law enforcement officers to ensnare criminals who commit fraudulent acts in order to obtain unlawful benefits. This article stipulates that anyone who, with the intention of unlawfully benefiting themselves or others, by using a false name or false dignity, by trickery, or a series of lies, induces another person to hand over an item, grant a debt or write off a receivable, may be subject to criminal sanctions.

In modern business practices, including in the property sector, this provision is highly relevant for various forms of fraud hidden behind seemingly legitimate commercial activities. Therefore, Article 378 of the Criminal Code serves as a crucial legal instrument in addressing the increasingly complex issue of fraud, including *pre-project selling schemes*, which are often exploited by certain parties to deceive consumers with baseless promises of development.

Article 378 of the Criminal Code is highly relevant for application to fraudulent schemes occurring in *pre-project selling schemes*, a practice in which housing units are offered to consumers before physical construction actually begins. In practice, this scheme is often exploited by irresponsible developers to attract funds from the public with the lure of housing projects that promise strategic locations, affordable prices, and attractive facilities. However, without any real commitment to realizing the project, the funds deposited by consumers are diverted to other interests, and in some cases, the project is never built at all. Such actions substantially fulfill the elements of Article 378 of the Criminal Code, particularly regarding the use of deception and a series of lies to obtain unlawful profits. Therefore, the application of this article is very important as a form of legal protection for consumers and as a preventative measure to prevent similar practices from recurring in the future.

The application of Article 378 of the Criminal Code to prosecute perpetrators of fraud,



particularly those under the guise of *pre-project selling* in the housing sector, is not always effective. This is due to a number of substantive and technical obstacles, including the difficulty of proving the elements of the crime, the lack of clarity in regulations specifically governing property marketing practices prior to construction, and weak coordination between law enforcement officials, notaries, and other relevant agencies. Fraudulent practices in *pre-project selling schemes* are generally packaged in a formal legal manner, supplemented by administrative documents such as brochures, house reservation letters, and sales and purchase agreements that are legally valid under civil law, making it difficult for authorities to identify elements of malicious intent (*mens rea*) from the outset. This situation often results in the law enforcement process encountering obstacles during the investigation and prosecution stages. Therefore, an in-depth study is needed of the various obstacles faced in the implementation of the provisions of Article 378 of the Criminal Code, so that legal protection efforts for consumers can be realized more optimally and fairly.⁷

The practice of *pre-project selling* is generally viewed as a legitimate and common marketing strategy in the property industry, as long as it is based on good faith and a commitment to deliver on development promises to consumers. In reality, unprofessional developers abuse this mechanism for personal gain by soliciting funds from the public without a clear development plan. The primary problem lies not with the *pre-project selling system* itself, but rather with the weak oversight system of relevant authorities and the lack of clarity in legally distinguishing between civil default and criminal fraud. Many cases reported as suspected fraud are actually rooted in technical or administrative obstacles in the development process, such as delays in obtaining permits or financing constraints.

An interview with Mr. Eko Prasetyo, an investigator at the Bandar Lampung Police, revealed that public reports of alleged fraud in housing projects are quite numerous. However, not all of them can be followed up by implementing Article 378 of the Criminal Code. Investigators face obstacles in obtaining evidence that can support the existence of fraud, such as initial statements from the perpetrator, the flow of consumer funds, and the existence of bad faith in the marketing process. There are difficulties in bringing in expert witnesses from the property and accounting fields to explain the financing structure and legality of the project, which causes the investigation process to be lengthy and often ends with the case being dismissed or transferred to civil court.

Based on the results of an interview with Mrs. S. Endang Prasetyawati, a lecturer at the Faculty of Law at Bandar Lampung University, she stated that the main obstacle in applying Article

⁷ Zainal Abidin. 2021. *Op. Cit.* , p. 113.



378 of the Criminal Code to cases of fraud in *pre-project selling practices* lies in the difficulty in proving the element of *opzet* or the perpetrator's malicious intent. In practice, perpetrators generally use various formal documents and agreements that appear legally valid, such as house reservation letters, sales and purchase agreements, and marketing brochures. The existence of these documents often becomes an obstacle for law enforcement officials in assessing whether the action is an unlawful act or merely a breach of contract in a civil context. The law enforcement paradigm in Indonesia still tends to be cautious in qualifying consumer disputes, unless evidence is found that explicitly shows the existence of elements of lies, forgery, or manipulation carried out from the beginning of the offer. Therefore, she emphasized the importance of proving the perpetrator's intention from the initial stage of the transaction as the main foundation for effectively applying Article 378 of the Criminal Code to perpetrators of fraud in the property sector.

One of the main obstacles in applying Article 378 of the Criminal Code to fraud cases in *pre-project selling schemes* lies in the difficulty in proving the subjective element of the crime, namely the perpetrator's intention to unlawfully benefit themselves or others through deception. This element is very essential in the construction of the crime of fraud, but it is often difficult to prove concretely because the perpetrators generally disguise this evil intention behind formal agreements and project presentations that appear legitimate. In some cases, the perpetrators have even prepared supporting documents such as offer letters, sales and purchase agreements, and marketing brochures that are professionally written to convince the victim. This makes the process of proof in the investigation and prosecution stages complex, because law enforcement officials must be able to trace that from the beginning, the perpetrators did not have the intention to realize the project as promised, but rather solely aimed to obtain unlawful benefits through disguised fraudulent means.

Fraudsters who commit fraud through *pre-project selling schemes* are often able to construct narratives that appear rational and convincing to disguise their true motives. These narratives are usually systematically constructed and supported by various formal legal documents, such as marketing brochures, price quotations, and sales and purchase agreements legally drawn up before a notary. The existence of these documents gives the impression that the project has a valid legal basis and planning, when in reality, the project was never intended to be realized. The use of such legitimizing tools presents a challenge for law enforcement officials, particularly investigators, because it creates ambiguity in distinguishing whether the act constitutes a criminal offense or simply a business failure that can be handled through civil legal



mechanisms. Therefore, careful and comprehensive approaches are required in assessing each element of the crime, especially in uncovering the hidden intentions behind documents that appear administratively valid.

On the other hand, the lack of specific regulations that specifically address *pre-project selling* has led to differing legal interpretations in practice. Consumers who feel they have been harmed often report their cases to the police, but often end up returning the case to the civil court. This creates legal uncertainty and has the potential to undermine public trust in law enforcement efforts. Therefore, more specific sectoral regulations are needed, such as Ministerial Regulations or Regional Regulations that clarify the legal boundaries of pre-construction marketing practices.

Another obstacle is the weak coordination between law enforcement officials, notaries, local governments, and property sector supervisory agencies. In several cases, the author found that notaries drafted deeds of sale and purchase without thoroughly verifying land status or project permits. Meanwhile, local governments lack an online monitoring system that facilitates tracking of construction progress. This weak coordination increases the potential for irregularities and complicates effective legal enforcement.

Based on the interview results mentioned above, the author analyzes that the application of Article 378 of the Criminal Code to fraud in *pre-project selling* housing still faces various complex obstacles. The main obstacle lies in proving the element of *mens rea*, or malicious intent, of the perpetrator, which is often disguised behind formal legal contracts and seemingly legitimate business narratives. Furthermore, the absence of regulations that clearly and specifically define the boundaries and mechanisms for implementing *pre-project selling* creates legal uncertainty and complicates criminal enforcement. Weak coordination between authorized agencies, such as local governments, notaries, licensing offices, and law enforcement officials, also hinders the effective handling of cases. Therefore, comprehensive legal reform efforts are needed, including the establishment of technical and operational derivative regulations, increasing the capacity and sensitivity of investigators to the modus operandi of crimes in the property sector, and strengthening the role of supervisory institutions to detect and address potential violations early on. These steps are crucial to provide more effective legal protection for consumers and prevent the recurrence of similar cases in the future.

CONCLUSION

Based on the research results and discussion, it can be concluded that:



1. The application of Article 378 of the Criminal Code to perpetrators of fraud in *pre-project selling practices* is very possible legally, especially if it can be proven that there was malicious intent from the outset of the offer. Elements such as the use of deception, the dissemination of false information, and other manipulative actions are integral parts of the crime of fraud as regulated in the Criminal Code. Therefore, closer cooperation is needed between law enforcement officials, notaries, and local governments to prevent similar crimes in the future and provide maximum legal protection for housing consumers.
2. The obstacles encountered in applying Article 378 of the Criminal Code to *pre-project selling* of housing are in the aspect of proving the element of *mens rea* or malicious intent of the perpetrator which is often disguised behind formal legal contracts and seemingly legitimate business narratives, the absence of regulations that firmly and specifically regulate the limits and mechanisms for implementing *pre-project selling* creates legal uncertainty and complicates criminal enforcement. And weak coordination between authorized agencies such as local governments, notaries, licensing services and law enforcement officers.

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