

LEGAL REVIEW OF THE TAKEOVER OF CONSUMER SHOPPING POINTS BY MINIMARKET EMPLOYEES FROM THE PERSPECTIVE OF CRIMINAL ACTS OF FRAUD

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Abstract

Advances in human intelligence have shaped new patterns of behavior, one of which is the habit of making transactions. Transactions take place everywhere, including minimarkets. As a result, competition and large-scale marketing promotions have emerged as solutions to retain customers. Shopping points have become a solution that has unique economic appeal for consumers. This phenomenon has opened up new motives for criminal acts. This study examines the phenomenon of minimarket employees taking over consumer shopping points as a form of fraudulent act that can be criminalized. The focus of the study is on the position of shopping points as economic assets that have exchange value and the construction of criminal liability for the perpetrators. The results of the study show that shopping points are intangible digital assets that have economic value, so legally they are the property of consumers that must be protected. Juridically, the actions of these employees fulfill the elements of criminal fraud as regulated in Article 495 of Law Number 1 of 2023 concerning the Criminal Code. Law enforcement against this practice recommends strict measures by minimarkets as a form of consumer protection within the company, and recommends the imposition of criminal sanctions if this action occurs repeatedly under the provisions of the New Criminal Code in order to provide a deterrent effect and ensure legal certainty in the retail sector.

Keywords: *Legal review, spending points, fraudulent acts*

INTRODUCTION

The modern retail world has grown rapidly in scale and scope. Shopping transactions at convenience stores have become the backbone of people's daily consumption, offering convenience and easy accessibility to meet needs across various regions in Indonesia. Convenience stores are considered a flexible option compared to other shopping venues, resulting in increasingly heated competition among minimarket companies. Different customer consumption patterns dictate different business strategies. ¹New marketing strategies are essential to attract consumers, which is why shopping points are emerging as a business innovation that attracts consumers through post-transaction loyalty services. Loyalty points serve as a form of exchange used by minimarkets, alongside traditional currencies and digital money. Consumers receive reward points after purchasing a certain number of products. Points are credited to customer accounts registered through the minimarket's app or website. Based on this phenomenon, it can be concluded that evolving human behavior has both positive and negative impacts on life. Human thinking, driven by progress, has led to changing patterns of crime and violations. The law, as the vanguard protecting people's rights and preventing any harm, must adapt to modern developments.

Losses don't always involve physical money. Loss of rights is also a part of the loss. Shopping points are not yet legally recognized as a means of exchange in transactions in Indonesia, despite their economic value. Shopping points are a right for consumers, a benefit of loyalty programs, and a real loss for consumers if they are wasted. There has been widespread discussion recently about minimarket employees committing fraud against customers during transactions. This is done by transferring the customer's shopping points to the employee's personal account. This action violates established company policy. Law in Indonesia has undergone a transition from the old Criminal Code (WvS) to the New Criminal Code, often referred to as the National Criminal Code. Law Number 1 of 2023 concerning the Criminal Code provides a new dimension in viewing fraudulent acts as a

¹Bob Foster et al., *Retail Management in the Era of Online Marketing* (Bandung: Unibi Press, 2021), p. 10

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paradigm shift in viewing crimes against wealth or honesty in a modern social order. Article 495 of the New Criminal Code is a sharper yet still humane instrument in maintaining the integrity of modern transactions and social interactions in Indonesia. The drawback is that the article does not clearly state the position of shopping points as objects of economic value and protected by law. This condition implies unclear penalties for this fraudulent act. Based on the findings published above, it can be interpreted that this legal study is urgently needed to examine more deeply whether the misuse of shopping points by minimarket employees can be qualified as a criminal act of fraud as referred to in Article 495 of the New Criminal Code. This research is also relevant to examine the position of shopping points from a criminal law perspective, whether they can be categorized as property, rights, or simply a service facility provided to consumers. This legal study is also expected to provide a scientific contribution to the development of Indonesian criminal law, particularly in responding to the challenges of the increasingly complex development of the digital economy and filling the legal gap that still exists in positive legal practice.

Formulation of the problem

1. Does the criminal act of taking over consumer shopping points by minimarket employees fulfill the elements of fraudulent acts in the New Criminal Code?
2. What is the criminal law responsibility for minimarket employees who take over consumer shopping points as a criminal act of fraud?

Research methods

This research uses a normative juridical method, namely legal research that focuses on the study of applicable legal norms and relevant legal literature. This research was conducted through a literature review to examine laws and regulations, legal doctrine, and scientific works related to the research problem. The approach used is a statute approach by examining the provisions of the old and new Criminal Code (KUHP) as outlined in Law Number 1 of 2023 and Law Number 8 of 1999 concerning Consumer Protection, which are relevant to the takeover of shopping points. In addition, this study also uses a conceptual approach by examining the concept of shopping points as consumer assets and acts of self-enrichment from a criminal law perspective. Through this approach, the researcher will analyze how criminal law doctrines such as *strafbaar feit* and criminal liability provide legal solutions to the practice of misusing consumer digital assets.

As a normative legal research, the author prioritizes library research by reviewing related literature. The design of this research framework uses references from Soerjono Soekanto & Sri Mamudji's book on normative legal research: a brief review and Nurul Qamar & Farah Syah Rezah on doctrinal and non-doctrinal legal research methodology. Thus, this research is descriptive qualitative in nature which aims to provide a systematic, factual, and accurate description of the facts and relationships between the legal events studied related to the practice of taking over shopping points by minimarket employees and their legal accountability. The sources used consist of primary legal materials, namely statutory regulations; secondary legal materials, in the form of literature, legal journals, previous research results, news, and expert opinions; and tertiary legal materials, such as legal dictionaries, encyclopedias, and reliable data sources.

Results and Discussion

Overview of the Shopping System in Indonesia

A minimarket is a modern retail store that sells a variety of everyday products, including food and beverages, cleaning supplies, kitchen supplies, and beauty products, all on a limited but comprehensive and easily accessible scale. Unlike traditional convenience stores or convenience stores, minimarkets offer a more modern approach. They focus on selling basic necessities and fast food. This is regulated by Government Regulation Number 29 of 2021 concerning the Implementation of the Trade Sector (PP Number 29 of 2021). Before establishing a minimarket, businesses must meet basic business licensing requirements. According to Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing (PP Number 5 of 2021), business licensing requirements include: compliance with space utilization requirements, environmental approval, building approval, and a certificate of building suitability. Payments at convenience stores are made using cash or digital currency. Payments are made at designated cashiers manned by employees. To ensure customer satisfaction and a happy shopping experience, convenience stores offer a variety of excellent services, including awarding shopping points to customers who purchase products. These points are credited to a registered account. The number of points earned varies depending on the number of products purchased. Shopping points have economic value at convenience stores because they can be exchanged for products of equal value or for discounts

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when shopping. In modern shopping mechanisms, every transaction validated by the cashier creates two forms of rights for consumers. First, the right to ownership of the physical goods paid for. Second, the right to digital benefits in the form of shopping points converted from the transaction amount. These points are managed through a loyalty system, where consumers are identified through a unique identity in the form of a phone number or digital membership code. Technically, each time a transaction occurs, the POS system will open access to input the member's identity to transfer points to the consumer's digital wallet. The complexity of this shopping system creates a tripartite interaction pattern involving companies, employees, and consumers, where each party has a different legal standing but is interconnected within a single transaction ecosystem. Employees, in this case, play a crucial role as the technical bridge that operates the company's system, giving them the authority to determine whether points will be credited to eligible consumer accounts.

However, behind this system's efficiency, there are operational gaps that are vulnerable to abuse. This transaction system places employees as the primary gatekeepers over data input. Vulnerabilities arise when anonymous transactions occur, namely when consumers who are not registered as members or members who forget to bring their cards make purchases. Systemically, the value of these transactions still generates points income, but their status becomes unallocated (unclaimed). This is where employee integrity is tested. Procedurally, employees are required to let points expire or offer new member registration. However, in reality, control over system access is often misused to illegally divert these potential points to personal accounts belonging to employees or third parties. Thus, the convenience store shopping system, originally designed to build customer loyalty, has instead become an instrument for digital property theft, hidden within a series of routine transactions. This vulnerability demonstrates that securing consumers' digital assets depends not only on software sophistication but also heavily on oversight of the access authority held by internal company personnel.

Forms and Modes of Consumer Shopping Point Takeover

The position of a minimarket cashier is an instrument that facilitates the occurrence of unmoral acts. To measure the good and bad of a person, a moral standard or norm is needed as a benchmark for determining the good and bad attitudes, actions, and actions of humans as human beings (A. Mangunharjana, 2000: 157-160).² The practice of taking over consumer shopping points by minimarket employees is a fraudulent crime committed by exploiting positional authority and sociological gaps which then triggers the emergence of space for fraud at the point of sale. This mode usually begins with the actions of employees who deliberately mislead consumers through incorrect information, not offering the use of membership cards to consumers, or secretly scanning their personal account identities during the payment process without the buyer's knowledge and taking advantage of consumers' ignorance of the loyalty program provided by the minimarket. In the plans that have been prepared, certain employees often throw out a series of deceptions and other claims for manipulation of transaction data or illegal transfer of points balances to personal accounts or employee holding accounts, becoming the latest method in this era to drain the digital economic value that should belong to consumers, thus damaging the good name of the loyalty program and trust in the national retail ecosystem.

Fraud, deception, and even irregularities, better known as fraud, are deliberate acts to gain personal or group benefits such as money or assets illegally, while simultaneously harming others. Soekardi Husodo stated in his paper, which was adapted from Donald R. Cressey's opinion, that there are three factors that cause someone to commit fraud: pressure, opportunity, and rationalization. Pressure is generally caused by individual employee behavior that causes them to commit fraud. This pressure could be caused by financial problems (financial pressure) triggered by an excessive lifestyle, greed, many debts or dependents, and so on, which cause someone to be forced to do it. The impact of this action creates widespread losses, affecting not only material aspects but also fundamental aspects of the business world. For consumers, the takeover of points means the loss of the right to economic exchange in the form of discounts or goods, which is legally a violation of consumer rights. However, the more destructive impact is felt by the minimarket company itself: the destruction of customer trust due to the dishonest behavior of employees entrusted to serve consumers. In addition to damaging brand reputation, discrepancies in consumer data at minimarkets are very detrimental to long-term marketing strategies, because the number of accounts recorded in the system becomes inaccurate due to the accumulation of points concentrated in personal or fictitious accounts belonging to employees. In fact, this action constitutes an act of abuse of the situation.

² Nomensen Sinamo, *Philosophy of Law*, (Jakarta: Permata Aksara, 2022), p. 67

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Fraudulent takeover is a material act that precedes the occurrence of loss, where without the illegal transfer of points, the abuse of position, circumstances or authority by employees will not occur, where both of them accumulatively form a fraudulent act that harms the economic rights of consumers. In general, there are two types of abuse of circumstances, namely: first, when someone uses their dominant psychological position which is used unfairly to pressure the weaker party to agree to something they actually do not want to agree to. Second, when someone uses their position and trust unfairly to use and persuade another party to carry out a transaction.³

Understanding and Legal Aspects of Consumer Shopping Points

Shopping has been a tradition for generations to fulfill human needs. Initially known as barter, it has evolved into a currency with economic value. Over time, money has evolved beyond physical forms to digital and non-cash forms. This has provided new innovations for businesses competing to attract market interest by adding service bonuses in the form of shopping points that can also be redeemed when shopping at their businesses. Shopping points in a customer loyalty system are no longer viewed merely as a marketing strategy to attract consumers, but rather as a digital instrument containing exchange value within the retail ecosystem. Conceptually, this loyalty system is a tangible form of the promise of providing performance rewards by businesses to consumers in the form of economic loyalty. According to the encyclopedia of marketing and business, loyalty points are units of value collected by customers for completing certain actions within a loyalty program, such as purchasing goods. These points function as profit units accumulated through each transaction, ultimately forming a unilateral contract that binds the service provider to provide certain benefits in the future according to the agreements stipulated in the membership clause. Points aim to encourage repeat purchases by rewarding customers every time they shop.

Shopping points are digital assets with economic value. According to the Consumer Protection Law, the relationship between businesses and consumers is based on the rights to security, accurate information, and compensation. Theoretically, shopping points represent a reward for performance that creates material rights for consumers. Therefore, any intervention by a third party, including employees, that results in the loss of these rights without the owner's consent is categorized as a violation of economic rights, which require legal protection. Points earned by customers are rewards or incentives for legitimate transactions.⁴ This study states that consumer shopping points accumulated in member accounts constitute a form of property with valuable value, such as a means of exchange that can be used for payment transactions, price reductions, or exchanged for certain goods. This transforms the status of points from mere numbers to assets with exchange value. This study references several studies that have substantial links to the misuse of digital systems and the protection of consumer rights. One primary reference is research conducted by Ahmad Khozi (2020) which discusses the misuse of personal data in electronic transactions.

The study concluded that data manipulation in electronic systems often occurs due to weak internal corporate oversight of employee access, which, from a criminal law perspective, constitutes data embezzlement.⁵ Zulham (2013) in his study discussed consumer protection law, emphasizing that any form of unilateral reduction in consumer economic benefits by business actors constitutes a serious violation of material rights.⁶ In general, this study concludes that the transformation of shopping points from mere marketing strategies into assets of economic value has created a new crime gap known as loyalty fraud. According to JE Sahetapi, namely that crime is closely related, even becoming part of the results of culture itself, this means that the higher the level of culture and the more modern a nation, the more modern the crime in terms of form, nature and method of implementation.⁷ Digital fraud in the loyalty system shows that perpetrators, mostly internal parties of the company, exploit the weaknesses in the supervision of the Point of Sales (POS) system to divert consumer rights for personal gain. The results of this study confirm that the diversion of points is an evolution of the crime of embezzlement, where the object of the crime has changed its form to electronic data that has material exchange value.

³ Ridwan Khairandy, *Indonesian Contract Law in Comparative Perspective (Part One)*, (Yogyakarta: FH UII Press, 2013), p. 274.

⁴ Nur Hikmah, Saifuddin, and Baharuddin, "Islamic Law Review of the Points Exchange Transaction System Through Member Cards (Case Study of the Ciki Shop Store, Polewali Mandar Regency)," *Journal Peqguruang: Conference Series* 5, no. 2 (2023): p. 962.

⁵ Ahmad Khozi, "Legal Protection for Consumers Against Misuse of Personal Data in Electronic Transactions," *Journal of Law and Justice*, Vol. 9, No. 1 (2020), p. 45.

⁶ Zulham, *Consumer Protection Law*, (Jakarta: Kencana, 2013), p. 112.

⁷ Ibrahim Fikma Edrisy et al., *Criminology*, (Bandar Lampung, 2023), p. 8.

Points are part of consumer property rights that are protected by law, so any form of arbitrary reduction or transfer of points without the owner's consent constitutes a violation of the right to honest information and the right to guaranteed benefits as regulated in Article 4 of the Consumer Protection Law (UUPK) No. 8 of 1999. The legal relationship between consumers and minimarket service providers is contractual, creating reciprocal obligations based on the principle of good faith. When consumers register for a loyalty program, a contract is created, with the minimarket acting as the trustee of the points collected by consumers. A contract is a legal relationship between two people or two parties, where one party has the right to demand something from the other, and the other party is obligated to fulfill that demand.⁸ This relationship obligates service providers to maintain data integrity and ensure that each point is credited to the correct account. Manipulation or takeover of points by internal minimarket parties is not only a civil breach of promise, but also a betrayal of the professional legal relationship, violating the norms of propriety and legal certainty in digital transactions and constitutes a criminal act of fraud. In this case, consumers can choose to seek compensation through civil, criminal, or through the Consumer Dispute Resolution Agency (BPSK) if their consumer rights are not met. Under Article 495 of Law No. 1 of 2023, this act of point takeover clearly qualifies as a fraudulent act that benefits oneself or others unlawfully. The nominal value of points unilaterally controlled by employees constitutes a real loss to consumers. Therefore, the synchronization between the status of points as digital assets protected by the Consumer Protection Law and the criminal provisions in the New Criminal Code provides a strong basis for demanding criminal accountability for perpetrators, in order to ensure a sense of security and fairness in e-commerce transactions in the retail sector.

Definition of the Criminal Act of Fraud

Cheating or fraud is commonly associated with actions that go against societal norms and are understood as undesirable. Cheating refers to someone who is dishonestly seeking to gain an advantage without effort or effort, deceiving others for personal gain, and potentially harming others. Fraudulent acts can be triggered by:

1. The habit of lying, meaning an act of lying that is continuously normalized until a person gets used to doing this act repeatedly;
2. Lack of self-confidence, either in financial matters or in one's own potential to do something, so that one has the thought of committing a dishonest act as an instant solution to overcome one's lack of self-confidence;
3. Excessive ambition triggers a person to take quick action to achieve a calculated target; and
4. Greed, or avarice, is an inner desire to obtain more than one deserves. This arises when opportunities arise, which leads to this trait manipulating people into action.

Fraud is a deliberate, manipulative act carried out through deception, a series of lies, or concealment of the truth to gain a unilateral advantage unlawfully. In essence, fraud is not simply dishonesty, but a violation of the trust and equity that should exist in social interactions and legal transactions. In terms of meaning, the terms fraud and cheating don't actually have a significant difference, just variations in the wording. However, both words imply that the term "cheating" has a broader meaning than "fraud." Fraud, under Indonesian law, is a manifestation of bad faith aimed at gaining profit by misleading others. Fundamentally, this act is viewed as manipulative and violates property rights and public trust in interactions, both socially and commercially. Philosophically, fraudulent acts are toxic to legal certainty and justice for every living human being. Their consequences include the destruction of a healthy competitive system and the violation of the principle of good faith (*bona fide*), the primary foundation of all legal relationships in society. Therefore, the law must impose strict sanctions, either imprisonment or fines, to protect society from these detrimental practices.

Fraud is any form of misrepresentation of information, identity, or circumstances committed with malicious intent to undermine the decision-making power of others for one-sided gain. Therefore, it can be broadly defined as not only a moral violation, but also a serious violation of legal certainty in society. Fraud is considered a crime that contains a defective will. This means that the victim may have voluntarily given the goods, but that willingness arose from being deceived by deception, manipulation of information, or a false situation created by the perpetrator. Within the framework of Indonesian positive law, specifically in Articles 492 to 502 of the New Criminal Code, fraud is defined as an act that induces another person to hand over something, grant a loan, or cancel a debt by misleading means. This includes the abuse of false dignity to exploiting circumstances that leave the victim with a false picture of a situation. Previously, fraud was regulated under Articles 378 to 395 as the purest form of fraud in the old codification, namely fraud, which was then redeveloped in the new Criminal Code so that its scope becomes broader. In the old Criminal Code, fraud has a legal basis in Article 378, while fraud is specifically regulated in Article 379a. The difference between these two articles shows that the crimes of fraud and

⁸Subekti, *Contract Law*, (Jakarta: Intermasa, 2005), p. 1

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fraud have their own characteristics in Indonesian criminal law. Another difference is that fraud is considered a more serious crime because it involves tangible evidence, such as the use of forged documents, contracts, or false identities to deceive victims. Meanwhile, fraud is usually considered a less serious offense, generally involving only minor losses or simple deception. Thus, it can be concluded that the old Criminal Code has differentiated between fraud and cheating, but for the crime of cheating itself, there is still no legal umbrella that follows modern developments, so that with the birth of the new Criminal Code, it can provide a much firmer legal label for this act so that it can strengthen understanding and law enforcement. The law does not consider a single lie to constitute a criminal act of fraud. Instead, it must fulfill the elements of a series of lies, known as "Samenweefsel van Verdichtfels," which include the following:

1. Lies that are systematically arranged.
2. One lie covers up or supports another lie.
3. Creating a situation that seems so real that even the most cautious person can be fooled.

In this crime, the perpetrator does not steal the goods, but rather manipulates the victim's mind with false information so effectively that the victim believes handing over the goods is the right or beneficial action. Unlike theft, which uses physical force or stealth, fraudulent acts violate a person's free will. The crime of fraud is fulfilled if the following two factors are met:

1. The factor of a person's ability/ingenuity to carry out tricks.
2. The factor of misleading the victim, meaning the victim believes the perpetrator's deception, who has bad intentions against them. This is because someone intends to deceive using deception that the victim is aware of so that the act itself is not apparent.

Theoretical Basis

An act is considered a crime (Strafbaar feit) if it fulfills the objective elements in the form of an act prohibited by law and the subjective element in the form of the perpetrator's fault. This theory is the foundation for determining whether an act can be subject to criminal sanctions. Moeljatno defines criminal law as a set of rules that regulate 3 (three) elements, namely rules regarding criminal acts, criminal responsibility, and the verbal process of law enforcement if a crime occurs.⁹ Meanwhile, D. Simons distinguishes the elements of a crime into objective and subjective elements. The objective elements in a crime include the person's actions, the consequences of the act and the circumstances that accompany the act. Meanwhile, the subjective elements in the crime include the person who is capable of being responsible and the existence of fault (dolus or culpa).¹⁰ The focus of this shopping point takeover case, the act must fulfill these three elements, namely the aspect of the criminal act (Strafbaar feit) fulfillment of the visualization of the real act in the form of the transfer of shopping points that have economic value.

The unlawful nature (Wederrechtelijkheid) arises when the perpetrator consciously takes away the consumer's right to loyalty points for personal gain, so that this act has materially injured the sense of justice under the law. Furthermore, to assess the aspect of criminal responsibility, shift from the first element that assesses the criminal act to an assessment of the perpetrator's personal capacity (Criminal liability). Based on the principle of geen straf zonder schuld, law enforcement ensures that the perpetrator has legal awareness and free will or evil intent (Mens rea) when following up on the actus reus or their external actions. This incident proves that the intention (Dolus) arises from a pattern of repeated and planned actions, namely the use of personal member identification numbers to absorb consumer points. Because there is no excuse or justification found, the perpetrator is considered to have absolute legal fault to be held responsible for his own actions. According to Roscoe Pound in his theory of interest (Theory of interest), there are 3 (three) classifications of interests that must be protected by law, namely first; those concerning personal interests (Individual interest), second; those concerning the interests of society (social interest), and third; those concerning the public interest (Public interest).¹¹ This theory views that protection against shopping points is not merely a matter of small nominal losses for one person, but rather an effort to maintain a balance between individual rights, societal ethics, and legal certainty maintained by the state.

⁹ Aris Prio Agus Santoso et al., *Introduction to Criminal Law*, (Yogyakarta: Pustaka Baru Press, 2025), p. 2.

¹⁰ S odaryono et al., *Criminal Law Basics of Criminal Law Based on the Criminal Code and the Draft Criminal Code*, (Surakarta: Muhammadiyah University Press, 2017), p. 94.

¹¹ Aris Prio Agus Santoso et al., *Consumer Protection Law* (Yogyakarta: Pustaka Baru Press, 2024), p. 11, quoted in Marmi Emmy Mustafa, *Principles of Proceedings in Patent Law Enforcement in Indonesia Associated with TriPs-WTO* (Bandung: Alumni, 2007), p. 58

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By placing Company Regulations as the first solution, the interests of society and individuals in the internal sphere can be restored quickly. However, if the violation has harmed the public interest and sense of justice, then criminal law intervention is absolutely necessary to protect broader interests. Regulations are said to be good if society respects and appreciates and obeys them. Conversely, these regulations are said to be bad, if society does not respect or does not obey them.¹²

Synchronization of Consumer Shopping Point Takeover with Criminal Acts of Fraud

Taking over a consumer's shopping points is a fundamental violation that violates constitutional rights as guaranteed in Article 28H paragraph (4) of the 1945 Constitution. Within the framework of the constitution, every individual has the right to personal property that may not be arbitrarily taken over by anyone. Shopping points, even though they are present in digital form, are assets that have real economic value because they can be converted into discounts or goods. Therefore, the transfer of points without permission is a form of confiscation of consumer property rights that is contrary to the principle of justice. The takeover of points fulfills the elements of the offense in Chapter XXVII Article 495 of Law Number 1 of 2023 concerning the National Criminal Code where there is an element of fraudulent acts that result in losses to other parties, either through false confessions or not disclosing the actual circumstances as described as follows: "Any person who commits an act in a fraudulent manner that results in another person suffering economic losses, through false confessions or by not disclosing the actual circumstances, shall be punished with imprisonment for a maximum of 1 (one) year or a maximum fine of category II." The elements that must be fulfilled in the offense of false confession according to Article 495 of the New Criminal Code include: (1) Every person, in this case both individuals or human individuals and corporations; (2) Committing an act in a fraudulent manner; (3) Causing another person to suffer economic losses; (4) Using false confessions; or (5) By not disclosing the actual circumstances.

Doctrinally, this act contains elements of deception and a series of lies. Shopping points, although digital, have economic value because they can be exchanged for goods or discounts. Therefore, their unlawful acquisition clearly violates consumers' constitutional rights to property protection. From the perspective of the new Criminal Code, the focus of this act is not merely on the material loss, but also on the fraudulent aspect that undermines the integrity of the trading system and public trust. National criminal law considers this action to meet the elements of Article 495 of Law Number 1 of 2023 (the National Criminal Code) concerning fraud. Employees who intentionally conceal points earned or use deception by entering personal information into the cashier system engage in a series of lies for their own benefit. Through this information manipulation, employees incite consumers to unknowingly relinquish their economic rights. Article 495's focus on deception makes it a highly relevant instrument for ensnaring individuals who abuse transaction procedures to gain material benefits from points that should belong to consumers.

This violation also strongly overlaps with Law Number 8 of 1999 concerning Consumer Protection, particularly regarding consumers' rights to correct, clear, and honest information as stipulated in Article 4. When employees leave consumers unaware of the points earned from the transaction, there is a disregard for the principle of good faith mandated by Article 7 of the Consumer Protection Law. Retail companies also have legal responsibility for the behavior of their employees that harms customers. However, if the method used has reached the level of a series of lies with an element of unlawful gain, then the jurisdiction shifts to the realm of pure criminal law. Therefore, there is a normative synergy between the new Criminal Code and the Consumer Protection Law, which ideally can be used together to achieve a deterrent effect and effective protection for victims. This action is not simply a violation of internal corporate ethics, but rather an unlawful act that undermines consumer protection and the integrity of Indonesia's digital trading system. Corporate disciplinary sanctions cannot eliminate an individual's criminal liability under state law.

A Legal Review of Fraudulent Acts in the Retail World

Understanding fraud in points theft cases requires comparison with real-life cases and applicable regulations. Point theft cases in Indonesia rarely make headlines because the individual value is small, but legally, points have economic value or an equally valuable right for consumers, making the surreptitious transfer of points by employees a criminal offense, a form of fraud. Fraudulent acts have been clearly regulated in Book II Chapter XXV of the old Criminal Code (KUHP), especially in Article 378 concerning fraud and Article 383 concerning seller fraud. The existence of this offense reflects the legal protection of the integrity of transactions and individual economic rights. Article 378 of the Criminal Code states that: "Anyone with the intention of unlawfully benefiting

¹²Yapiter Marpi, *Legal Science: An Introduction* (Jakarta: PT. Zona Media Mandiri, 2020), p. 112

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themselves or others, 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 fraud with a maximum prison sentence of four years." The elements that must be fulfilled in the crime of fraud according to Article 378 of the Criminal Code include: (1) the intention to carry out an act that benefits oneself or others; (2) carried out unlawfully; (3) using one of the methods including a false name, false dignity, trickery, or a series of lies; and (4) moving a person or other person to hand over an item, give a loan, make a debt acknowledgement, or write off a receivable. Meanwhile, Article 383 of the Criminal Code stipulates sanctions for sellers who cheat buyers, which reads: "A seller who cheats buyers is threatened with a maximum prison sentence of one year and four months: (1) Because he intentionally delivers goods other than those designated for purchase; (2) Regarding the type, condition or quantity of goods delivered, by using deception."

These provisions fail to comprehensively address abuse of authority by retail employees who manipulate cashier system algorithms or consumer point databases. The inability of the old regulations to mitigate the risks of this technology-based crime creates a legal loophole that has the potential to undermine legal certainty. Therefore, deconstructing conventional fraud articles is a legislative urgency, which was then addressed through a more adaptive codification in the New Criminal Code to provide comprehensive protection for consumers' digital assets. Although the above articles regulate fraudulent acts, there are fundamental shortcomings in their implementation in cases of digital shopping point takeovers. The main weakness of the old Criminal Code lies in the conventional nature of the object of the crime, where the term "goods" in Articles 378 and 383 is traditionally interpreted as tangible physical objects (*lichamelijk*). This creates a legal vacuum or at least interpretative debate when the object of fraud is a digital and intangible shopping point. This weakness was later refined in Article 495 of the New Criminal Code (Law No. 1 of 2023), which more progressively accommodates the protection of digital instruments and other non-physical assets to ensure legal certainty in the digital economy era. This practice of taking over shopping points fulfills all the elements of fraud as stipulated in Article 495 of Law Number 1 of 2023 concerning the Criminal Code. First, there is an element of deception, where employees exploit loopholes to profit by using personal membership numbers or exploiting consumers' ignorance. Second, there is an element of profit-seeking, where employees use accumulated points to obtain discounts, payments, or products of equal value. Third, there is a loss to others, namely consumers who lose bonuses or discounts they should have received. Combined, these regulations clearly demonstrate that diverting shopping points is not merely a trivial matter, but a crime that can be punished and subject to compensation.

Compared to developed countries, the handling of this case is much more modern. The Fraud Act 2006 is a modern legal framework that simplifies and expands the scope of fraud laws in England, Wales, and Northern Ireland. This Act relates to criminal liability for fraud and obtaining services dishonestly. The contents of this Act cover three main methods of fraud: first, the perpetrator acts dishonestly by providing false information; second, the perpetrator fails to provide information when the perpetrator has a legal obligation to do so; and finally, abuse of their position to act with the intention of obtaining a benefit for themselves or another person, or causing loss or risk of loss to others. Essentially, if someone commits a mistake that harms another person, they must compensate for that loss, which is also in accordance with the legal norm in Article 1365 of the Civil Code.¹³ This crime does not focus on the victim who was defrauded, but rather on intent. Prosecutors no longer need to prove that the victim was defrauded or suffered a loss; the primary factor is the intent to commit fraud. In conclusion, the Fraud Act 2006 is generally considered fit for purpose, meets its objectives, and is broad enough to cover all digital fraud and adapt to evolving technology.

Law Number 8 of 1999 concerning Consumer Protection serves as the primary basis for protecting the rights of every consumer. Specifically, Article 4 of the Consumer Protection Law states that consumers have the right to receive honest information and proper service. The action of employees taking consumer shopping points without permission indicates that the minimarket has failed to provide honest service. This gives consumers the right to demand the return of points or compensation from the minimarket. The minimarket is responsible for the behavior of its employees who are negligent in carrying out their work honestly and in accordance with applicable company regulations. Examining the practice of point manipulation by employees requires a comparative analysis to determine the boundaries between private (corporate) and public (criminal) law. The first comparison lies in the nature of the sanctions imposed. In company regulations, sanctions tend to be administrative and corrective in nature, emphasizing work discipline. Based on Law Number 13 of 2003 concerning Manpower, as amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, the employment relationship between retail companies and cashiers is based on

¹³ Mulida Hayati, *The Ideals of Indonesian Law*, (Palangka Raya: CV. Pustaka Learning Center, 2020), p. 34

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an employment agreement that requires the elements of orders, work, and wages. Within this framework, company regulations have the status of autonomous law drafted by employers to establish employment conditions and rules of conduct in the workplace. If a violation is deemed serious, the maximum consequence is termination of employment (PHK) without severance pay. On the other hand, in Article 495 of the New Criminal Code, sanctions are retributive and repressive in nature in the form of a category II fine or a maximum imprisonment of 1 (one) year, which aims to protect the legal interests of the wider community and provide a deterrent effect that cannot be achieved only through internal sanctions. This case highlights the need for immediate legal education for business owners, employees, and consumers. Many perpetrators fail to understand that concealing the true nature of a crime can be criminally punishable, even though it may seem trivial at first glance. Therefore, law enforcement must be accompanied by a preventative approach through public education regarding applicable criminal law norms, particularly regarding this article on fraudulent acts. The new Criminal Code allows judges to impose conditional sentences, supervision, or community service as alternatives to imprisonment. This aligns with the legal principle of *ultimum remedium*, which emphasizes development rather than retaliation or punishment alone.

From a normative juridical perspective of criminal law, the comparison of the old and new Criminal Codes shows the evolution of the concept of fraudulent acts towards comprehensive, synergistic and adaptive regulations to modern legal developments and provides clarity on the legal standing of victims and significant complaint mechanisms, because this offense often involves trust between individuals or individuals which is socially difficult to follow up without a formal complaint. Referring to one of the most phenomenal decisions in the history of criminal law, namely the *Elektriciteitsarrest* or the Decision of the Hoge Raad (Dutch Supreme Court) dated May 23, 1921. This case began with the actions of a resident of the city of 's-Gravenhage in the Netherlands in 1918 who manipulated the electrical installation to flow energy without going through an official meter, which was then charged with theft. At that time, a heated debate arose about whether electric current could be classified as goods (*goed*) as referred to in conventional articles, considering that electricity has no physical form (*lichamelijk*), does not occupy visible space, and cannot be moved mechanically. The debate between the first instance court (*Rechtsbank*), the appeal level (*Gerechtshof*), and the cassation level (*Hoge Raad*) of the Netherlands, which culminated in the final decision, namely Arrest HR dated May 23, 1921. The legal basis for the decision is Article 310 of the Dutch Criminal Code, which has the same content as Article 362 of the Indonesian Criminal Code. Several propositions emerged in the decision's considerations, as follows.

- a. An item has an independent existence;
- b. An item is an object of wealth (*vermogensobject*), that is, it can be owned by someone; an item has economic value because it is obtained through certain efforts and difficulties and brings rewards/profits; and
- c. An item can be transferred to another person, that is, transferred under the control of another party.

The transformation of the meaning of goods through the jurisprudence of electric current provides a strong theoretical foundation for addressing current digital legal issues, including the case of the takeover of shopping points in minimarkets. Shopping points, similar to electric current, which is not a physical object, are generated from an economic process of buying and selling transactions, have a nominal value that can be converted into material benefits, and are stored in an electronic system as a digital asset. Therefore, it can be analyzed that when a cashier manipulates the system to divert points belonging to consumers, such actions dogmatically attack an item that has economic value. Therefore, it can be imposed with the threat of punishment.

Legal Efforts and Prevention

Legal action against the practice of shoplifting must be viewed as a comprehensive law enforcement effort to uphold the rule of law in the retail sector. Legal action begins with consumer awareness and the willingness to file a complaint or report the incident to the minimarket owner. This is not difficult to cultivate in Indonesian society, as our society tends to obey its superiors. Within the scope of internal corporate law (minimarkets), company contracts are also a source of corporate law.¹⁴ A company contract regulates the rights, obligations, and responsibilities of the contracting parties. Furthermore, a company contract also regulates dispute resolution, which is attempted through peaceful means or deliberation. This principle reflects the spirit of restorative justice in modern Indonesian criminal law, where efforts to resolve disputes through deliberation or compensation for the victim's losses are prioritized before formal criminal proceedings are initiated. Investigators can only proceed with legal proceedings if the aggrieved consumer files a formal complaint. This clearly indicates a paradigm shift from a system that solely emphasizes the theory of retributive justice to a proportional legal system that focuses on

¹⁴R. Juli Moertiono, *Corporate Law (Company Development & Types of Business in the Reform Era)*, (Medan: Umsu Press, 2024), p. 5

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restorative justice (Kiling, 2022). If the settlement path is not met, consumers have the right to take the employee through the Consumer Dispute Resolution Agency (BPSK) or directly to the police under Article 495 of the New Criminal Code concerning fraudulent acts. Simultaneously, minimarkets have a legal obligation to impose disciplinary sanctions in the form of termination of employment for employees proven to have committed such serious violations. Companies must not stop at internal sanctions but must also facilitate the return of lost consumer points to maintain brand integrity and compliance with the law. This step also serves as corporate protection from being seen as allowing criminal acts that occur within the scope of its business.

Law enforcement with the above resolution is important so that actions that nominally seem small are not considered normal, but rather are seen as complete crimes that harm the wider community, and prevent recidivism, namely repetition, which is one of the bases in increasing criminal penalties.¹⁵ From the results of the analysis of the sociological approach to law, it shows that the practice of taking over consumer shopping points by minimarket employees is a reflection of the weak awareness of the public's economic law. Therefore, in the long term, it is necessary to enforce new articles of the Criminal Code, balanced with increased consumer legal literacy, so that the public is able to recognize fraudulent acts early and not only rely on complaints after losses have occurred. Thus, prevention and legal empowerment are two sides that go hand in hand with the enforcement of norms in the modern economic criminal order.

As a preventative measure, system oversight must be strengthened by synchronizing transaction data and the identities of employees on duty. The system needs to lock point input access so that it cannot be done after the receipt is printed, to prevent employees from making subsequent input using their personal numbers. Transparency in sales transactions needs to be increased through active education for consumers to always check shopping receipts and posting information regarding shopping point rights at the cashier area. Internally, companies must socialize integrity pacts that specifically include criminal penalties under Article 495 of the New Criminal Code for perpetrators of fraud, thereby creating an honest work culture while guaranteeing certainty of property rights for consumers as mandated by the constitution.

The application of criminal sanctions through a normative legal approach in this study demonstrates that Company Regulations serve as the initial corridor for proving malicious intent (*mens rea*). When an employee knowingly violates the standard operating procedures (SOP) for point transactions, the element of intent is fulfilled. Law enforcement through Article 495 of the New Criminal Code provides legal certainty that digital assets such as shopping points receive the same protection as physical assets. This aligns with the principle of *ultimum remedium*, where criminal action is a last resort when internal company guidance is no longer sufficient to stem systemic fraudulent practices in the retail sector.

Conclusion

Based on the analysis that has been carried out, it can be concluded that the act of transferring shopping points by the cashier unilaterally has fulfilled the elements of a criminal act of fraud as regulated in Article 495 of Law No. 1 of 2023 (New Criminal Code). This act fulfills the trilogy of legal elements according to Prof. Moeljatno, namely the existence of a criminal act (fraudulent act), criminal responsibility, and the fulfillment of law enforcement requirements due to the loss of consumer economic rights protected by the Consumer Protection Law and fulfilling the objective and subjective elements according to D. Simons. The legal position of shopping points is recognized as a digital asset belonging to consumers, so that its transfer is a form of violation of property rights that can be processed under criminal law. Legal liability for minimarket employees who take over consumer shopping points rests with Article 495 of the New Criminal Code concerning fraud. Perpetrators can be subject to imprisonment or a Category II fine if proven to have malicious intent (*mens rea*) to benefit themselves through deception and abuse of their position as employees.

Suggestion

As a remedial measure, retail companies are required to specifically stipulate in their Employment Agreements or Company Regulations that point manipulation constitutes a serious violation of integrity and professional ethics. If the company has not yet stipulated this, or if violations persist and result in systemic losses, then law enforcement must be shifted to the criminal realm using Article 495 of the New Criminal Code. Furthermore, it is recommended that legislators and law enforcement officials begin classifying digital assets such as point manipulation as legal objects equivalent to physical objects in handling civil and criminal cases. Law enforcement officials should prioritize a restorative justice approach for cases with small material losses, but still

¹⁵Tofik Yanuar Chandra, *Criminal Law*, (Jakarta: PT. Sangir Multi Usaha, 2022), p. 162.

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impose strict Category II fines if elements of massive and repeated acts are found to maintain legal certainty. Furthermore, derivative regulations are needed that require retail companies to have a technology-based internal monitoring system integrated with personal data protection, to ensure that every point transaction has a transparent audit trail as valid evidence in court.

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