

AN UNREASONABLE PURCHASE OF GOODS: A CRIMINAL LAW PERSPECTIVE

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Abstract

The purpose of this study is to compare the criminal law regarding the dishonest purchase of goods or receipt of goods resulting or also known as fencing from crime between the Indonesian Criminal Code and the Penal Code of Singapore. This research uses a normative juridical method, so the data used is secondary. This data consists of the Indonesian Criminal Code and the Singapore Penal Code, as well as journals relevant to the problem. The novelty of this research is that the formulation of criminal sanctions is not only alternative but can be imposed cumulatively, and there is a separate formulation regarding the receipt of stolen motor vehicle goods. The research results show that purchasing criminal goods or receiving stolen property or fencing is regulated under Article 480 of the Indonesian Criminal Code and Article 411 of the Singapore Criminal Code. Both define the offense as intentional by a responsible perpetrator. Criminal sanctions under the Indonesian Criminal Code are alternative, and if fencing occurs, there is jurisprudence as source of formal law. While those under the Singapore Penal Code are alternative or cumulative. Receiving stolen property, particularly motor vehicles, carries cumulative penalties, plus a ban on holding or obtaining a driver's license, imposed by the court upon release from prison. The research concludes that fencing is a violation in both Indonesia and Singapore. The only differences lie in the form of punishment stipulated in the Criminal Code and the formulation of receiving stolen property for motor vehicles. The research concludes that fencing is a violation in both Indonesia and Singapore. The only differences lie in the form of punishment stipulated in the Criminal Code and the formulation of receiving stolen property for motor vehicles.

Keywords: Fencing, Comparative criminal law, Unreasonable purchase of goods

INTRODUCTION

Dishonest buying and selling falls under the realm of civil law, known as unlawful acts (*onrechtmatige daad*). This differs from unlawful acts of a criminal nature (*wederrechtelijk*). In civil law, as regulated in Article 1365 of the Civil Code, which in principle states that an unlawful act is an act that causes harm to another person and requires that person to compensate for the loss for their mistake. (Indonesia, 1847) This is not a crime as defined by criminal law. Meanwhile, against the criminal law according to Eddy O.S there is a *formeel wederrechtelijk* (teaching of the nature of opposing formal), stating that the act is punished because the act has matched the written formulation of the crime. Second, *materiel wederrechtelijk* means in Dutch the same as the teaching of the nature of unlawful material, according to criminal law experts there are two, namely the teaching of the nature of unlawful material in its negative function that the act fulfills or matches the formulation of the crime but does not conflict with the values of social justice, then the act is not punished. While the teaching of the nature of unlawful material in its positive function that the act is not regulated in legislation, but the act is reprehensible and does not comply with the sense of justice and norms of social life, then the act is punished. (Hiariej, 2021)

The phenomenon is that goods resulting from crime, for example theft or robbery, are sold at unreasonable or cheap prices. Liam Quinn et al said that an unreasonable purchase which is included in the crime is one where there is a meaningful relationship between the price and the goods, meaning that the price of the goods varies, especially certain goods such as types of merchandise or commodities. Liam Quin also explain that the goods are the proceeds of a crime, such as theft. (Liam Quinn, 2023) In Indonesia, these goods resulting from crime have their own market, as the research results of Septhian Eka Adiyatma et al. stated that at Jalan Madukoro Market in Central Java Province, most of the goods traded are the result of crime or stolen goods and the prices are cheaper compared to legal goods or goods sold officially. (Septhian Eka Adiyatma, 2020) In Singapore there is also a marketplace called Carousell which sells stolen goods in general, although there are legitimate goods for sale, so stolen goods are cheaper. Because the price of goods obtained through crime is an indicator of their being sold at a low price, buyers must check whether the goods are legal or not. Buying goods that are not fair, meaning they are priced at a lower price, is punishable by criminal law in both Indonesia and Singapore. Although Singapore has established an online reporting system for buyers to the police, the problem of unfair purchases on the Carousell marketplace remains widespread. (Singapore legal advice, 2025)

The purchase of goods in an unlawful manner is called fencing in Indonesian criminal law. According to the Black Law Dictionary, this term refers to someone who receives stolen goods. (Garner, 2021). Meanwhile, in the Singapore Criminal Code, it is defined as "receiving stolen property." Therefore, the author believes that the term "receiving stolen property" can be used interchangeably with the term "fencing." The Singapore Criminal Code defines this offense Code (receiving stolen property) in Article 411, officially known as The Statutes of the Republic of Singapore on Penal Code 1871. (Singapore Government, 2021) Meanwhile, this fencing is regulated in Indonesia under Article 480 of the Indonesian Criminal.

Based on the description above, the author will examine two Criminal Codes, namely the Indonesian Criminal Code and the Penal Code of Singapore by comparing them from the aspect of the formulation of acts, errors and criminal sanctions.

RESEARCH METHOD

This manuscript is normative legal research, so the data used is secondary data. (Riswan, 2025) This data consists of laws and regulations, namely the Indonesian Criminal Code and the Singapore Criminal Code, for comparison regarding unreasonable purchases or fencing. Secondary data collection through identification and inventory is regulated in the Indonesian Criminal Code and the Singapore Criminal Code, as well as journals relevant to the subject matter. Data analysis is the answer to this problem by comparing the formulation of criminal acts, errors, and criminal sanctions

RESULTS AND DISCUSSION

This manuscript will examine the comparative provisions in accordance with the above issues, namely Article 480 of the Indonesian Criminal Code with Article 411 of the Statutes of the Republic of Singapore on Penal Code 1871, which the author hereinafter refers to as the Singapore Criminal Code. The comparison is based on the form of wrongful acts, the person at fault can be held responsible for the wrongdoing and the criminal sanctions. Piet Hein van Kempen & Maatje Krabbe et al. state that the requirements for punishment must meet the requirements of criminal law, meaning that the act is regulated by written or unwritten law, thus fulfilling the element of guilt, and this principle is not

interpreted broadly by the court so as not to disadvantage the defendant. In addition, this principle of legality recognizes the individualization of criminal acts, meaning that the guilty person is punished. Similarly, George Baldwin et al. state that in England and Wales, the capacity to be responsible is a requirement for sentencing, in addition to the act violating criminal law. (Piet Hein van Kempen, 2023) (George Baldwin, 2025)

An Unreasonable Purchase of Goods in the Criminal Code of Indonesia

Unfair purchases in criminal law or what is called fencing are different from civil law, because unfair purchases are related to the purchase of goods with hidden defects as regulated in Article 1491 of the Civil Code. Therefore, the buyer has the right to return the goods and the seller is obliged to return the money or demand compensation for hidden defects, this is regulated in Article 1507 of the Civil Code. This is also regulated in Law Number 8 of 1999 concerning Consumer Protection, that the seller is obliged to provide compensation for losses incurred due to defective products. Both are errors and both have different legal consequences.

Fault in criminal law is a fundamental principle in criminal law, which is often called the principle of culpability or *geen straf zonder schuld* (Dutch), which means there is no punishment without error or *actus non facit reum nisi mens sist rea* (Latin), which means an act does not make someone guilty unless there is evil intent. In other words, this principle of fault is often referred to as *nullum crimen sine culpa*, meaning there is no crime without fault. This principle originates from the Rome Statute, which more or less states that "a person is criminally responsible and punishable for a crime within the jurisdiction of the court only if the material elements are committed with intent and knowledge." (Rights, 1998) This principle means that, first, a person can be punished for an act that is outwardly wrong; second, the act must be committed with malice. In other words, the principle of culpability contains the elements of both the wrongfulness of the act and personal guilt. Because this principle, among other things, involves liability based on fault, it can be used as a basis for punishment. This, as stated by Andri Winjaya Laksana et al., demonstrates that the element of criminal responsibility is a crucial element in criminal law. Although this study discusses cases of embezzlement, this principle applies generally, as outlined in the study's conclusion. (Andri Winjaya Laksana, 2024) This principle serves as the primary basis for assessing a person's actions and determining the conditions for sentencing.

Purchasing goods dishonestly or purchasing goods from the proceeds of crime acts such as theft is called fencing, which is regulated in Article 480 of the Criminal Code as the main article on fencing. Meanwhile, Article 481 of the Criminal Code paragraph (1) regulates fencing which has become a habit, paragraph (2) fencing as a livelihood, and Article 482 regulates light fencing. The manuscript only focuses on discussing the main form of receiving bribes, namely Article 480 of the Criminal Code. This article consists of two paragraphs, the first paragraph (1) has the elements (1) whoever; (2) buys, rents, exchanges, accepts a pawn, and receives a gift; (3) or to gain a profit, sells, rents, exchanges, pawns, transports, stores, or hides an object; (4) which he knows or should reasonably suspect was obtained from a crime; (5) the last element states the qualifications of the crime formulated as fencing. Paragraph (2) is (1) anyone who; (2) takes advantage of the results of an object; (3) which he knows or should suspect is obtained from a criminal act. (Indonesian Government, 1946) Based on this formulation, fencing is a formal crime, because this formulation only describes the act without looking at the consequences of the act, so that if the act has fulfilled the elements, then it is said to have committed the crime of fencing. (Hiariej, 2021)

Firstly, the element of the crime of receiving stolen goods is in accordance with Article 480 of the Penal Code, which means its measurement is the principle of legality. This is as stated by JNE Varuhas, who stated that the principle of legality requires clear wording in the law, thus limiting the interpretation of the law, even though it is carried out by the Supreme Court in jurisprudence, especially in material criminal law, to ensure legal certainty and protect human rights. (Varuhas, 2020) (Ahmad, 2024) This principle in Law No. 1 of 2023 concerning the Criminal Code (this law is valid three years after its enactment – its enactment on January 2, 2023 means it will be valid on January 2, 2026) is expanded to accommodate local customary law if customary law does not have a national philosophical basis. This principle of legality is known as *nullum delictum nullapoena sine praevia legepoenali* (There is no crime, no crime that is not preceded by law), meaning that the act must be formulated in law accompanied by criminal sanctions and to ensure legal certainty.

Secondly, those elements of the article in the paragraph above indicate the perpetrator of the crime indicated by the word "whoever". The perpetrator must have the ability to be responsible from the internal side of the perpetrator or from a psychological point of view. In the Criminal Code, criminal responsibility is only imposed on individuals, but after the thoughts of legal experts at that time (including R. Subekti, R. Tjitrosudibio, and Wirjono Prodjodikoro) corporations became subjects of criminal law. Formal juridical after Emergency Law No. 7 of 1955 concerning the Investigation, Prosecution, and Trial

of Economic Crimes which expressly mentions "legal entities" as legal subjects, especially in the formulation of Article 15 paragraph (1) which basically states that economic crimes committed by legal entities, or companies, or associations of other people or foundations can be punished. (Indonesian Government, 1955)

Furthermore, the second element after the ability to be responsible is the existence of intention/mens rea, as stated by Nicholas Hallett et al that the evil intention must be reflected in the substantial characteristics of the perpetrator, and the perpetrator is conscious to realize the results achieved. Nicholas Hallett et al also said that the perpetrator must have a level of knowledge about his actions and that the actions have a negative impact. (Nicholas Hallett, 2024)

Receiving stolen goods as a crime or fencing in the Penal Code of Singapore

The Singapore Criminal Code regulates the act of receiving stolen goods, also known as fencing, under Section 411, which consists of three paragraphs. A comparative analysis based on the opinions of Piet Hein van Kempen and Maatje Krabbe et al. (Piet Hein van Kempen, 2023) is as shown in the table below.

Table 1. Comparison of the Penal Code of Singapore and the Indonesian Criminal Code on Fencing

No	Elements	Article 411	Article 480
Paragraph 1			
1	Action	<i>receives or retains any property stolen property or property obtained in whole or in part through an offence involving fraud or dishonesty.</i>	<i>buy, rent, exchange, accept a pawn, receive, present to make a profit, sell, rent, exchange, pawn, transport, store or hide an object</i>
2	Qualification of action	-----	Fencing (heling — Dutch)
3	Subject	<i>Whoever knowing or having reason to believe</i>	<i>Whoever known or reasonably suspected to be obtained from a crime</i>
4	Criminal sanctions	<i>punished with imprisonment for a term which may extend to 5 years or with fine</i> <i>Or with both (imprisonment and fines)</i>	<i>a maximum prison sentence of four years</i> <i>or a maximum fine of nine hundred rupiah</i> <i>Alternatif</i>
Paragraph 2			
1	Action	<i>The stolen property is a motor vehicle or any component part of a motor vehicle</i>	<i>profits from the proceeds of something</i>
2	Subject	<i>Whoever</i> <i>Guilt --- The felonious taking and removing of another's personal property with the intent of depriving the true owner of it</i>	<i>Whoever</i> <i>Gilt --- which he knows or should reasonably suspect is obtained from a crime</i>
3	Criminal sanction	<i>punished with imprisonment for a term which may extend to 5 years and shall also be liable to fines --- cumulative may be disqualified for such period as the court may order from holding or obtaining a driving licence under the Road Traffic Act 1961.</i>	<i>imprisonment of up to four years.</i> <i>or a fine of up to nine hundred rupiah.</i>

Guilt under Section 411 of the Singapore Penal Code is external and internal. (Kartiko, 20020) External misconduct is an act that violates the provisions outlined in Table 1. Internal guilt is an intentional act, as outlined in Table 2. Criminal sanctions that can be imposed on perpetrators can be alternative (imprisonment or a fine) or cumulative (imprisonment and a fine). The error from the subject aspect is that the perpetrator did the act intentionally or the perpetrator wanted the consequences of the act to occur, so that according to Loso Pujianto et al., intention is also formal in nature because the

act is prohibited by law. In addition, the intentional character has a goal, meaning wanting the consequences to occur. (Pujiyanto, 2025)

Article 411 paragraph (2) of the Singapore Criminal Code has formulated that the criminal sanctions for fencing motor vehicles or their components are cumulative, namely imprisonment and fines and can result in disqualification from holding or obtaining a driving license. Indonesia has not yet established provisions regarding fencing of motor vehicles and their components. Therefore, there is established jurisprudence, meaning that the jurisprudence has become a legally binding judicial decision, serving as the basis or benchmark, or reference for judges when deciding similar cases. (Hutagalung, 2024) Although the Indonesian legal system is based on the civil law system or continental law system, the main source of law is the law, Article 5 of Law No. 48/2009 on Judicial Power states that judges are obliged to explore, follow, and understand the legal values and sense of justice that exist in society. This means that customary law (the law that exists within society) is recognized as existing if it does not conflict with the nation's philosophical values. This jurisprudence is No. 3/Yur/Pid/2018 concerning the fencing, whose ruling source serves as the basis for this jurisprudence, namely Supreme Court Decision No. 1586 K/Pid/2011. Subsequent decisions include Supreme Court Decision No. 371 K/Pid/2017, Supreme Court Decision No. 1503K/Pid/2015, and Supreme Court Decision No. 1750K/Pid/2012. The legal basis is that if someone buys a motor vehicle without valid vehicle documents, the person should reasonably suspect that the vehicle originates from a crime. The generally valid documents are the BPKB (Motor Vehicle Ownership Certificate) and STNK (Vehicle Registration Certificate). (Mahkamah Agung Republic of Indonesia, 2018)

CONCLUSION

The sale and purchase of goods falls within the scope of criminal law and is prohibited by criminal law because the act has a formal unlawful nature, as regulated in Article 480 of the Indonesian Criminal Code and Article 411 of the Singapore Criminal Code. The error of purchasing goods that is not reasonable in these two Criminal Codes has two internal and external aspects. The error from the internal aspect is that the perpetrator carries out the act intentionally with the aim of consciously wanting to provide certainty. The external aspect of the perpetrator's actions means that the act has fulfilled the elements of the law. Criminal sanctions in the Indonesian Criminal Code are alternative, for the Singapore Criminal Code they can be alternative and can be cumulative.

Furthermore, the Singapore Criminal Code in Article 411 paragraph (2) has prohibited the acceptance of motor vehicles and their parts. The criminal sanctions are cumulative, namely imprisonment and fines, and can be in the form of revocation of driving licenses based on court decisions since being released from prison. Therefore, the Supreme Court issued Jurisprudence No. 3/Yur/Pid/2018 concerning Acceptance of Jurisprudence, the source of the decision of which is Supreme Court Decision No. 1586 K/Pid/2011, this jurisprudence remains in effect because it has been followed by other judges.

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