

## **Juridical Review Of The Criminal Act Of Online Fraud Is Reviewed From Law Number 19 Of 2016 Concerning Information And Electronic Transactions**

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### **Abstract**

The crime of fraud is currently increasingly developing following the times and advances in technology, the Internet can also be used as a forum that can generate income opportunities to meet life's needs, namely by carrying out online business activities. This research discusses the legal regulations for criminal acts of fraud. online, what are the factors that cause online criminal acts of fraud, how to resolve online criminal acts Research Studies at the Binjai Police. This research was carried out using an empirical juridical method with a field research method, in which case the research method used was that the researcher went directly into the field to conduct interviews with sources and collected secondary data consisting of primary legal material and secondary legal material. The criminal act of online-based fraud is based on evidence or means of action, namely using an electronic system (computer, internet, telecommunications equipment). Law enforcement regarding this criminal act of fraud can still be accommodated by the Criminal Code and Law Number 11 of 2008 concerning Information and Electronic Transactions. Barriers to law enforcement against criminal acts of fraud based on electronic transactions are still influenced by five factors, namely legal factors, law enforcement factors, means or facilities that support law enforcement, community factors and cultural factors. Legal rules governing criminal acts of fraud in the Criminal Code and protection of consumers, factors for criminal acts of online fraud which include economic, environmental, social and cultural, intellectual and security factors.

### **Keywords:**

Juridical Review, Crime of Fraud, Online Business

## **1. Introduction**

In today's developments, especially in everyday life, we always interact with other people, whether for personal interests or the interests of the world of work, directly or indirectly in terms of receiving information or vice versa. There are different ways of communicating, some use information technology media or communicate directly with other people, all of which are related to the interests that the person needs in their daily life.

One type of communication tool that is often used in everyday life is the telephone. A telephone is a two-way communication tool that allows 2 (two) or more people to have a conversation without being limited by distance. With the concomitant development of information technology, it is also becoming more sophisticated day by day, namely the existence of the internet which has so

many benefits not only for work needs but also in the world of education. The internet is a virtual world of computer networks formed from billions of computers throughout the world.<sup>1</sup>

The existence of information technology can improve the quality of human life. This means that information technology can provide advantages and benefits to human life. With information technology, everyone can get information from all over the world quickly and easily via television, radio, letters, newspapers, magazines or the internet. To contact other people who are in distant places is easier and faster using the telephone or internet.

In the field of education, the impact of information technology has the potential to build a democratic society. This is characterized by the existence of relationships between teachers and students, students and students, teachers and teachers, and the community in relation to the educational process inside and outside the school. With the development of information technology, national boundaries are disappearing, as are education, business and media, thus having an impact on aspects of life, trade, entertainment, government, work patterns and production patterns. All of this cannot be separated from the impact of information technology.<sup>2</sup>

The internet can also be used as a forum that can generate income opportunities to meet life's needs, namely by carrying out online business activities using an internet network. With just one online site, everyone can carry out buying and selling activities online and this has become a trend in cyberspace or the world of information technology, especially in electronic media (using internet networks).<sup>3</sup>

This online buying and selling activity was initially only carried out by people who were just experimenting, but after getting a satisfactory income, the internet became a place to do online buying and selling with only a small amount of capital compared to selling directly. hands down to consumers. Online business is basically a very promising business, this is because as times change, most people, especially millennial children (now teenagers) are more inclined to use internet applications to fulfill their daily needs.<sup>4</sup>

However, in online business activities, crimes sometimes arise which can occur, for example crimes of fraud, brand counterfeiting and so on. This is due to the problem that online buying and selling transactions cannot guarantee security, especially for buyers of goods bought and sold online. Even though there is a system that guarantees security for consumers, it is not 100 percent able to completely convince buyers in the buying and selling transaction.

The crime of fraud via the internet occurs not because an action occurs that moves an object, but rather the handing over of the purchased object to the person who bought it. In the process of handing over the object, there has been a transfer of authority over the goods between the seller and the buyer and the buyer has become fully entitled to the goods after payment has been made either in cash or via an internet application.<sup>5</sup>

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<sup>1</sup> Muhammad Sobri, *Pengantar Informasi Teknologi Konsep Dan Teori*, CV. Andi Offset, Yogyakarta, 2017, hal. 2.

<sup>2</sup> *Ibid.*, hal. 12

<sup>3</sup> Hery Nuryanto, *Sejarah Perkembangan Teknologi Dan Informasi*, PT. Balai Pustaka, Jakarta, 2012, hal. 10.

<sup>4</sup> M. Suyanto, *Pengantar Teknologi Informasi Untuk Bisnis*, CV. Andi Offset, Yogyakarta, 2009, hal. 15.

<sup>5</sup> Dhaniar Eka Budiastanti, *Perlindungan Hukum Terhadap Korban Tindak Pidana Penipuan Melalui Internet*, Jurnal Cakrawala Hukum, Vol. 8 No.1 Juni 2017, hal. 20

Fraud perpetrators via the internet usually aim to benefit themselves. In this case, the benefit in question is increasing existing wealth to become even more. And most perpetrators of online fraud crimes are committed by using other people's accounts as their own protection when committing these acts and can easily trick their victims, for example by offering goods at cheap prices and falsifying the brand of the merchandise so that consumers are tempted. at a relatively cheap price.<sup>6</sup>

A crime of fraud committed by another person (human) through electronic media using internet services within the scope of online business is a crime that occurs very often nowadays. Most of the victims are women, which is due to the large variety of goods offered in this online media, ranging from bags, clothes, make-up tools and other tools related to women's needs in decorating themselves to make them look more trendy. from friends around him.<sup>7</sup>

This is what causes the emergence of criminal acts of fraud in online media which often occur today. The crimes that occur can only be committed by people who master and understand information technology, so they use it to commit fraud crimes. And this is what makes many victims of fraud where the victims do not understand and master information technology so it is very difficult to hold them accountable for criminal acts. what happened to him. Fraud crimes committed in online media are regulated in Law Number 19 of 2016 concerning Information and Electronic Transactions.<sup>8</sup>

Various modes of fraud through online media continue to occur frequently and most criminals have more and more ways to carry out their actions. One way is by creating fake websites with this site where the goods are distributed at varying prices according to their various forms at prices that are relatively easily affordable with the aim and aim of making buyers interested in the prices offered. . Apart from that, there are also those who commit crimes of online business fraud by compromising other people's account numbers to carry out transactions to transfer money from the price of goods sold.<sup>9</sup>

## 2. Literature Review

### 1. Definition of Criminal Acts

The term criminal act comes from a term known in Dutch criminal law, namely *Strafbaar Feit*. Even though this term is found in the Dutch Wv's, as well as in the Dutch East Indies Wv's (KUHP), there is no official explanation of what is meant by *strafbaar feit*. Pompe formulated that a *strafbaar feit* is actually nothing other than an action which according to a formulation of the law has been declared as an action that can be punished.<sup>10</sup>

Meanwhile, according to Vos, a criminal act in Utrech's book entitled criminal law is a human behavior (*menselijk gedraging*) which is punishable by statutory regulations. So it is a human behavior that is generally prohibited and threatened with punishment. Based on this understanding, it can be concluded that a criminal act (criminal event) contains the following elements: 1. A provision

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<sup>6</sup> Dominikus Juju, *Teknik Menangkal Kejahatan Internet*, PT. Alex Media Komputindo, Jakarta, 2008, hal.15

<sup>7</sup> Ika Pomounda, *Perlindungan Hukum Bagi Korban Penipuan Melalui Media Elektronik Suatu Pendekatan Viktimologi*, Jurnal Ilmu Hukum Legal Opinion, Vol. 3 No.4 April 2015, hal. 16.

<sup>8</sup> Maskun, *Kejahatan Siber Cyber Crime Suatu Pengantar*, Kencana, Jakarta, 2013, hal.22

<sup>9</sup> Ikka Puspitasari, *Pertanggungjawaban Pidana Pelaku Tindak Pidana Penipuan Online Dalam Hukum Positif di Indonesia*, Jurnal Hukum Dan Masyarakat Madani, Vol. 8 No. 1 Mei,2018, hal.7.

<sup>10</sup> Adami Chazawi, *Pelajaran Hukum Pidana 1*, Rajawali Pers, Jakarta, 2010, hal. 67

that is contrary to (against) the law (onrechtmatig or wederrechtelijk). 2. An act carried out because the offender is guilty (aan schuld van de overtreder te wijten). 3. A behavior that can be punished (strafbaar).

In Indonesia, various regulations that can be threatened with criminal sanctions are primarily regulated in the Criminal Code (KUHP). The Criminal Code basically regulates three things, namely: general provisions regulated in the first book, crimes regulated in the second book, and offenses regulated in the third book. Apart from the Criminal Code, there are other acts which are punishable by crime and are regulated in various other laws and regulations.<sup>11</sup>

A criminal incident, which is also called a criminal act (delict), is an act or series of acts that can be subject to criminal penalties. A legal event can be declared a criminal event if it fulfills the criminal elements. The elements consist of: The objective element, namely an action (deed) that is contrary to the law and takes into account the consequences that are prohibited by law under threat of punishment. b. Subjective element Subjective element is a person's actions that have consequences that are not desired by law. The nature of this element prioritizes the existence of the perpetrator (one or several people).<sup>12</sup>

## 2. Definition of Fraud

The term fraud comes from the word deceit, which means an act or word that is not dishonest or lies, with the intention of misleading and wanting to gain profit for oneself. An act of fraud, an act that can harm other people, is even an act that can be subject to a prison sentence. The crime of fraud is regulated in the second book of the Criminal Code (KUHP), namely from Article 378 to Article 395 of the Criminal Code. Fraud has a subjective causal relationship (psychische causaliteit) between the actions that move it. In this case, moving is an action that influences the will of another person so that the person follows what the person ordered to hand over everything to him by means of persuasion, seduction so that the person is tempted by the words he says.

According to R. Sugandhi, fraud is someone's actions using deception, a series of lies, fake names and fake circumstances with the intention of benefiting oneself without rights. Meanwhile, according to Article 378 of the Criminal Code, fraud is: "Anyone who, with the intention of benefiting himself or another person, violates a right, either by using a false name or false circumstances, either by means of artifice and deceit, or by composing false words, to persuade someone to in order to give something, create a debt or write off a receivable, be punished for fraud, with a maximum prison sentence of 4 (four) years." The elements of criminal acts according to Moejadno are as follows: a. There is someone who is persuaded or moved to hand over an item or create a debt or write off a receivable. The goods given were done by deception. b. To benefit oneself or others without right. c. Those who are victims of fraud must be moved to hand over the goods by: a) Handing over the goods by deception b) Must use deception as stated in Article 378 of the Criminal Code.

The crime of fraud in the field of information technology currently has special regulations, namely Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. Article 28 paragraph (1) regulates prohibited acts in

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<sup>11</sup> Yesmil Anwar, dkk, *Sistem Peradilan Pidana Konsep dan Komponen Pelaksanaannya dalam Penegakan Hukum di Indonesia*, Widya Padjajaran, Bandung, 2009, hal. 295.

<sup>12</sup> R.Abdul Djamali, *Pengantar Hukum Indonesia*, PT. Raja Grafindo Persada, Jakarta, 2010, hal. 175.

electronic transactions, which states that every person is prohibited from spreading false and misleading news intentionally and without rights which can harm consumers in electronic transactions.

### 3. Understanding Online Business

Online business is a form of trading business that buys and sells merchandise using electronic information technology in the form of the internet. Usually the buying and selling transaction process using this online system between the seller and the buyer never meets face to face and they only know each other through the site that offers the merchandise.<sup>13</sup> With the internet, buyers can directly see the merchandise they want to buy and pay for it by transferring to the bank and waiting a few moments for the goods to arrive. In the current era of development, the internet is a necessity for some people, especially the online buying and selling process which can make everyday life easier. The process of buying and selling via the internet is often called e-commerce or electronic commerce or EC, which basically EC is electronic business.<sup>14</sup>

E-commerce is a trade transaction contact between sellers and buyers using internet media as a forum where this transaction process takes place, both in terms of ordering, delivery and also for payment. The existence of e-commerce is an alternative business that has a very important role today. This is because the seller and the buyer do not meet at all.<sup>15</sup>

### 3. Methods

Legal research methods are procedures for conducting research. In general, research methods discuss the procedures for carrying out the research to be studied. So in this case the research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out scientifically, both quantitative and qualitative, experimental and non-experimental, interactive and non-interactive.<sup>16</sup>

The nature of the research used in this research is descriptive research. Descriptive research is research that aims to provide as precise data as possible about humans, conditions or other symptoms that occur in people's lives to provide or obtain data regarding the relationship between one symptom and another. Descriptive research also aims to provide something that presents a complete picture of a phenomenon or social reality by describing a number of variables that exist regarding what happens in the environment surrounding everyday life.<sup>17</sup>

The type of research used in this research is empirical juridical research. Empirical juridical research is research that carries out research directly at the place to be researched by interviewing Ipda Hotdiatur Purba, S. Tr. assist the task of the person who is conducting the interview and obtain all the necessary data from the field where he is conducting the interview. The data collection method used in this research is field research, where the research is carried out by the researcher visiting the

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<sup>13</sup> Asep Mulyana, *Prosecution Agreement Dalam Kejahatan Bisnis*, PT. Grasindo, Jakarta 2017, hal. 27

<sup>14</sup> Wikan Pribadi, *Peluang Usaha Online*, Bukune Redaksi, Jakarta, 2010, hal. 14.

<sup>15</sup> Dayat Suryana, *Mengenal Teknologi*, CV. Sinar Terang, Jakarta, 2012, hal. 39

<sup>16</sup> Joenaidi Efendi, *Metode Penelitian Hukum Normatif Dan Empiris*, Kencana, Jakarta 2016, hal. 3

<sup>17</sup> Sulistyowati Irianto, *Metode Penelitian Hukum*, Yayasan Pustaka Obor Indonesia, Jakarta, 2013, hal. 45.



place to be researched and going directly into the field to conduct interviews in order to obtain all the data needed to search. answers to the formulation of the problem being researched.

This research uses data consisting of: a. Primary Legal Material Law Number 19 of 2016 concerning Electronic Information and Transactions, Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP). b. Secondary Legal Materials Secondary legal materials in this case relate to legal journals and the internet which are related to the research carried out. The type of research in this paper is qualitative research. Qualitative research is research that seeks the truth of what happened in the location studied. Therefore, qualitative research seeks to find legal symptoms that develop in society. The qualitative analysis used in this research is descriptive, where this research is not related to numbers but rather to symptoms of facts that occur in people's daily lives.

#### 4. Results and Discussion

##### 1. Legal Rules According to the Criminal Code

Buying and selling transactions is something that is often done by everyone, especially in today's increasingly sophisticated era, buying and selling transactions can be done online, either as an activity to sell an item or as an activity to purchase an item without the consumer having to go to the location of the item. sold by just looking at the motif or type of item you want to buy by looking at the picture of the item you want to buy. However, without realizing it, the existence of this online business can also have a negative impact, namely the modus operandi of individuals who impersonate online businesses by committing criminal acts of fraud against their victims.<sup>18</sup>

This criminal act of online fraud is carried out by offering goods at relatively cheap prices on the market so that it can attract the attention of everyone so they want to buy the goods they are selling. Fraud committed by someone using the internet or online-based fraud is something that is currently happening very frequently in people's daily lives. Internet users who are increasingly in demand can also open up opportunities for criminal acts, one of which is the crime of fraud being committed.<sup>19</sup>

There are so many methods used by someone to commit fraud in cyberspace. This is because there are so many benefits that can be gained as a result and it is very difficult for law enforcement to find out and most victims cannot ask for compensation for the losses they cause. Fraud under the guise of online business can be hidden carefully, even people who are more skilled in the internet can still be tricked due to being tempted by relatively cheap prices. This online-based criminal act of fraud usually has several methods, one of which is account hijacking, which involves account hijacking carried out by perpetrators who hijack accounts that are considered profitable for themselves, such as one of the well-known social media accounts. So, by having this account, criminals will use that account to offer merchandise to be bought and sold in cyberspace. And this is where people become interested in buying the item and are considered to be truly authentic in the quality of the item, even to the point where it gets worse, there are those who are willing to directly transfer the money to the account that hijacked the account.<sup>20</sup>

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<sup>18</sup> Sunarso, *Hukum Informasi dan Teknologi*, Renika Cipta, Jakarta, 2011, hal. 35

<sup>19</sup> Thirja Sakti, *Kejahatan Teknologi Informasi dalam Bisnis*, Pustaka Refleksi, Jakarta, 2009, hal.46.

<sup>20</sup> Edy Victor Hariyanto, *Kejahatan Jaringan Komputer*, CV. Andi Offset, Yogyakarta, 2012, hal. 38

Criminal law is the rules that apply and are enforced in society to regulate all actions that are not in accordance with the rules that have been implemented, written or unwritten, as stated in the ratification. In principle, in general there are two meanings of criminal law, namely *ius poenale* and *ius puniend*. *Ius poenale* is the definition of objective criminal law. In this sense, criminal law is legal rules that are binding on certain changes that fulfill certain conditions, resulting in criminal consequences.

The basics and rules of criminal law put forward by Moeljatno as comparative material require a view of criminal law (objective) to be expressed. These basics and rules include: 1. Determining which actions may not be carried out, which are carried out, which are prohibited, accompanied by threats or sanctions in the form of certain penalties for anyone who, in the form of certain penalties, violates these prohibitions. 2. Determine when and in what cases those who have violated these prohibitions can be subject to or be sentenced to the criminal penalties that have been threatened. 3. Determine how the criminal offense can be imposed or sentenced as threatened.<sup>21</sup>

The criminal act of fraud is the action of a person using deception, a series of lies, false names and false circumstances with the intention of benefiting oneself without rights. In general, a person who commits fraud is explaining something as if it really happened, but in fact his words do not match the reality with the aim of convincing someone to follow his wishes, by using a fake identity.<sup>22</sup>

## 2. Legal Rules According to Law Number 19 of 2016 concerning Information and Electronic Transactions

In this day and age, people use the internet to exchange information with each other all over the world. The uses also vary depending on what work is being done, one of which is being able to carry out buying and selling transactions of goods online. This transaction is better known as e-commerce, whereas in internet government it also triggers the growth of transparency in government implementation through e-government.<sup>23</sup>

Online buying and selling activities can be linked to Law Number 19 of 2016 concerning Electronic Information and Transactions, which based on Article 1 number 2 explains that Electronic Transactions are legal acts carried out using computers, computer networks and/or other electronic media. In the process of buying and selling transactions that occur in online media, many consumers complain, this is because generally the goods that have been purchased do not match what the buyer actually wants. So in this case, to protect consumers from these actions, a Legislative Regulation was created that specifically addresses this problem, namely Law Number 19 of 2016 concerning Information and Electronic Transactions.

There are several parties involved in this online transaction. In accordance with the secure electronic transaction (SET) protocol standard, explaining the components involved in e-commerce, namely: a. Cardholder (buyer) In the scope of electronic commerce, in contact with the seller via a PC computer, the buyer uses payment from a card issued by the issuer, secure electronic transaction (SET) guarantees that the relationship between the buyer and seller, also regarding customer data, is

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<sup>21</sup> Extrix Mangkeprijanto, *Hukum Pidana dan Kriminologi*, Sinar Abadi, Jakarta, 2011, hal. 23.

<sup>22</sup> Muhammad Mansur, *Aspek Hukum Teknologi Informasi*, Refika Aditama, Bandung, 2009, hal.23.

<sup>23</sup> Edy Irwansyah, *Pengantar Teknologi Informasi*, CV. Budi Utama, Yogyakarta, 2014, hal. 27.

confidential data . b. Issuer Is a financial institution where buyers become customers and issue payment cards. The issuer guarantees payment for approved transactions using payment cards in accordance with the brand printed on the card and local regulations. c. Merchant is a party who offers goods for sale or provides services in exchange for payment. In SET, sellers can advise buyers to carry out transactions safely. d. Acquirer Is a financial institution where the seller is the customer and processes payment card authentication.

The principles contained in the law on information and electronic transactions are regulated in Article 3 of information and electronic transactions which include the principles of legal certainty, benefit, prudence, good faith and freedom to choose technology or be technology neutral. The explanation of this principle is as follows: a. The principle of legal certainty is the legal basis for the use of information technology and electronic transactions as well as everything that supports their implementation that has legal recognition inside and outside the court. b. The principle of benefit, namely the principle for the use of information technology and electronic transactions, is sought to support the information process so that it can improve people's welfare. c. The precautionary principle means the basis for the party concerned must pay attention to all aspects that have the potential to cause harm, both to themselves and to other parties in the use of information technology and electronic transactions. d. The principle of good faith is the principle used by parties in conducting electronic transactions without the aim of intentionally and unlawfully or unlawfully causing harm to another party without the other party's knowledge. e. The principle of freedom to choose technology or technology neutrality is the principle of using information technology and electronic transactions which does not focus on the use of certain technologies so that it can keep up with developments in the future.

### 3. Law Enforcement Against Fraud Crimes in View of Law Number 19 of 2016 concerning Electronic Information and Transactions

The government's role in facilitating the use of information technology and electronic transactions is in accordance with the provisions of the Laws and Regulations. The government's obligation to protect the public interest from all types of interference resulting from misuse of electronic information and electronic transactions that disrupt public order, in accordance with statutory provisions. So the government determines agencies or institutions that have strategic electronic data that must be protected.

he agency or institution must create electronic documents and electronic backup records and connect them to a certain data center for data security purposes. Likewise, the role of the community can play a role in increasing the use of information technology through the use and implementation of electronic systems and electronic transactions in accordance with the provisions of the Law, and is guaranteed to receive legal protection. The role of the community can be carried out through institutions formed by the community. This institution can have consultation and mediation functions. The institution in question is a legal aid institution or GNO which operates in accordance with the function of law enforcement to obtain justice.

Lack of strict and clear law enforcement against perpetrators of criminal acts of online business fraud, often occurs when consumers never receive compensation. Based on this, everything related to criminal acts in the field of information and information technology has begun to be formed with



the existence of Law Number 19 of 2016 concerning Legislation which will provide protection for consumers. Law enforcement is carried out in accordance with the applicable legal system. , namely starting with punishment which aims to prevent criminal acts from occurring by enforcing legal norms in the interests of society, resolving conflicts caused by criminal acts, restoring/balancing, bringing security to society. In this case, the crime of online fraud is almost the same as conventional crime. In this case, the perpetrator explains to consumers that they will get good quality goods from purchasing goods that other consumers buy elsewhere. In general, the legal regulation of criminal acts of fraud is regulated in Article 378 of the Criminal Code, but the regulation of criminal acts of online fraud is specifically regulated in Article 45 A in conjunction with Article 28 paragraph (1) of Law Number 19 of 2016 concerning Information and Information Technology.

## 5. Conclusion

The Legal Rules for Online Fraud are regulated in chapter XXV of the second book of the Criminal Code (KUHP) which contains various types of fraud, with 20 articles, namely Articles 378-Article 395. The criminal act of fraud in the broadest sense is known as *bedrog*, which is regulated in Article 378 of the Criminal Code. In this case, fraud consists of objective elements and subjective elements. And in essence, corporate social responsibility towards consumers is in the company's own interest in winning public trust which then moves towards reaping the rewards of that public trust. Meanwhile, the crime of committing fraud in electronic media, such as in online buying and selling, is explained in Article 45 which states: "Every person who meets the elements as intended in Article 28 paragraph (1) or paragraph (2) will be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah)." Efforts to Resolve Fraud Crimes Online This dispute generally occurs due to fraud or broken promises by the parties or one of the parties does not do what was promised or agreed to be done. The parties or one of the parties has carried out what was agreed, but not exactly as promised. So these actions cause one party to feel disadvantaged. If someone has entered into an agreement with another party, then between those parties there has been an agreement. Therefore, according to civil law, the agreement that has been agreed by the parties will be binding as law for those who make it.

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