

CARDING CRIME IN MAKASSAR CITY: JURIDICAL REVIEW AS AN ISSUES OF CYBERCRIME

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Abstract

This study analyzes the juridical review of carding crime in Makassar City as part of cybercrime. The purpose of this study is to provide scientific benefits in the field of legal studies as well as provide practical and academic input for authors and interested parties to understand the criminal law arrangements against carding crimes and countermeasures. The research method used is the method of normative juridical literature, referring to legal norms in legislation, literature, expert opinions, and papers. The results showed that the laws that are the focus of the study are Law No. 19 of 2016 on amendments to Law No. 11 of 2008 on information and electronic transactions, as well as the Criminal Code (KUHP).

Keywords: Juridical review; Carding; Cyber Crime.

Abstrak

Penelitian ini menganalisis tinjauan yuridis terhadap kejahatan carding di Kota Makassar sebagai bagian dari cybercrime. Tujuan penelitian ini adalah memberikan manfaat ilmiah dalam bidang studi ilmu hukum serta memberikan masukan praktis dan akademis bagi penulis dan pihak-pihak yang tertarik memahami pengaturan hukum pidana terhadap kejahatan carding dan upaya penanggulangannya. Metode penelitian yang digunakan adalah metode kepustakaan yang bersifat yuridis normatif, merujuk pada norma-norma hukum dalam perundang-undangan, literatur, pendapat ahli, dan makalah. Hasil menunjukkan bahwa undang-undang yang menjadi fokus penelitian adalah Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik, serta Kitab Undang-Undang Hukum Pidana (KUHP).

Kata Kunci: Tinjauan yuridis; Kartu; Kejahatan Dunia Maya.

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INTRODUCTION

In the 1945 Constitution in Article 1 Paragraph (3) which reads the state of Indonesia is a state of law. The purpose of the state of Indonesia as stipulated in the preamble (preamble) of the 1945 Constitution should be based on Good Law, formal law and material law. The level of community needs are increasingly varied and diverse menarуска adequate set of rules.¹ The legal system in each society has its own nature, character and scope. The same is true of the legal system in Islam. Islam has its own legal system known as Islamic law.²

Moreover, looking in terms of globalization that is in the development of the times in Indonesia with science that is now increasing rapidly and precisely in covering various aspects of life in the field of information and communication technology with this relationship between each individual and the community will be more facilitated.³ There are some of the most basic important things in information and communication technology, among others, first, encourage the advancement of information and communication technology such as computers, credit cards, modems, internet networks and so on. Second, facilitate various transactions on-line and off-line.

Each province / district / city has characteristics and characteristics that are different from each other, for that should be based development in each region.⁴ Especially in the city of Makassar, which in fact is one of the big cities in Indonesia that will continue to develop in the field of information and communication technology and there are many shops that have sprung up using credit cards on-line and off-line. A credit card is a credit card that has been issued by a bank for use in one of the payment methods in the use of credit cards. In economic or business activities the existence of a business competition between business actors with each other is a common thing.⁵

However, with the benefit of an information and communication technology that improves welfare, progress, human civilization can not be separated from utilizing information and Communication Technology in a way against the law that harms every community, one of which is the crime of carding.⁶ Carding is one type of computer crime or cyber crime using computer facilities to enter any computer network by carrying out its actions without permission with this act carried out by conducting transactions using other people's data on the internet which means that the action has been against the law which causes damage to the computer.⁷ According to Sutheland, there are seven main elements in an act as a crime that are mutually related as follows:⁸

1. Actions that can cause harm(harm)
2. The existence of losses that have existed and regulated in law

¹ Abd. Rais Asmar, "Strategi Harmonisasi Regulasi Hubungan Pusat dan Daerah", Jurnal Bilancia Vol.12, No. 1, (2018)h.1-2

² Rahman Syamsuddin, "Pengantar Hukum Indonesia", (Jakarta: Prenadamedia, 2018)h.98

³ Edmon Makarim, "Kompilasi Hukum Telematika", (Jakarta: Raja Grafindo, 2003)h.7

⁴ Abd. Rais Asmar, "Pengaturan Peraturan Daerah (Perda) Syariah Dalam Penyelenggaraan Pemerintah Daerah", Jurnal El-Iqtishady, Vol.1, No.1, (2019)h.63

⁵ Istiqamah, Marilang, Nurhildawati, "Peranan Komisi Pengawas Persaingan Usaha Dalam Penangan Kasus Kartel Usaha", Jurnal Alauddin Law Developpent (ALDEV), Vo.1, No.2, (2019)h.50

⁶ Ahmad M. Ramli, "Cyber Law dan Haki Dalam Sistem Hukum Indonesia", (Bandung: Rafika Aditama, 2004)h.1

⁷ Dodo Zaenal Abidin, "Kejahatan Dalam Teknologi Informasi dan Komunikasi, Jurnal Ilmiah Media Processor, Vol.10, No.2, (2015)h.511

⁸ A.S Alam, "Pengantar Kriminologi", (Makassar: Pustaka Refleksi, 2010)h.17

3. There must be something caused in the act (criminal act)
4. There must be a criminal intent (mens rea)
5. There should be an update between the losses that have been regulated in the law and the act
6. There must be a criminal sanction that threatens the act
7. Time place and circumstances (other objective elements)

Meanwhile, from Moeljatno's explanation, a criminal act is committing an act that is prohibited by legal regulations, where the ban is accompanied by a threat or sanction in the form of a certain crime for people who violate these provisions.⁹ Please note that in 2003 the crime in cyberspace is newly categorized as cyber crime moreover, there have been many emerging crimes by utilizing information and communication technology which is one of the crimes of cyber crime is carding.¹⁰

Seeing the increasing prevalence of carding crimes, criminal law is therefore only seen as a set of rules and principles that govern human life in society, but must also include the institutions and processes necessary for the law in reality.¹¹ According to Widodo, the imposition of prison for cybercriminals is a wise move. This is due to the discrepancy between the characteristics of the perpetrators of criminal acts with the system of punishment of prisoners in correctional institutions, so that the purpose of the punishment as stipulated in the law on correctional facilities will not be achieved to overcome the crime.¹² The adherents of legal positivism say that law enforcement should be black and white. Looking at the law with horse glasses, so that anyone who violates the law must be punished based on the process that has been determined by Law (Law in the narrow sense). In other words, the law should be with Justice. Therefore, law must be conceptualized on the basis of justice, otherwise justice must be the soul and spirit of the law. Only such a concept can produce integration that can create compounding between law and justice, so that in its enforcement it is not detected which law and which Justice.¹³

METHOD

The type of research used in this study is literature research. The assessment approach used is a normative assessment approach. The Data used in this study are primary data and secondary data and tertiary data (additional materials). The method of data collection is Library Research. The technique of data processing is done with some data obtained from articles, literature and legislation as well as other sources related to the problems that the author is researching.

⁹ Moeljatno, *Asas-Asas Hukum Pidana*, Edisi VII, (Jakarta: Rineka cipta, 2002)h.55

¹⁰ Dian ekawati, *Perlindungan Hukum Terhadap Nasabah Bank Yang Dirugikan Akibat Skimming Ditinjau Dari Perspektif Teknologi Informasi dan Perbankan*, Jurnal Unes Law Review, Vol.1, No.2, (2018)h.158

¹¹ Zainal Asikin, *Pengantar Ilmu Hukum*, (Jakarta: Rajawali Press, 2012)h.11

¹² Widodo, *Sistem Pemidanaan Dalam Cyber Crime: Alternatif Ancaman Pidana Kerja Sosial dan Pidana Pengawasan Bagi Pelaku Cyber Crime*, Cet. 1, (Yogyakarta: Laksbang Mediatama, 2009)h.3

¹³ Marilang, *Menimbang Paradigma Keadilan Hukum Progresif Considering The Progressive Legal Justice Paradigm*, Jurnal Konstitusi, Vol.14, No.2, (2017)h.317

RESULT AND DISCUSSION

1. Criminal Law Arrangements For Carding Offences

Talking about carding crime is an internet technology crime that accesses a website unlawfully with the aim of obtaining data from credit card customers. The bank's activities as a manager of agreements between parties, both banks as investors/creditors and the public as debtors. So that part of the community felt it was fate that befell him.¹⁴ Prior to the Law No. 11 of 2008 on information and electronic transactions used is Law No. 36 of 1999 on telecommunications contained in Article Number (1) that Telecommunications is a type of dissemination, transmission, and/or, reception and any information in the form of signs, signals, writing, images, sounds, and bunti through wire, optical, radio, or other electromagnetic systems. Furthermore, in Article 22 which reads Everyone dilaang commit acts without rights, invalid, or manipulation

- a. Access to telecommunications networks; and / or
- b. Access to telecommunications services; and / or
- c. Access to dedicated telecommunications networks

If there is a crime committed, it can be imposed under Article 50 which states that anyone who violates the provisions referred to in Article 22, shall be punished with a maximum imprisonment of 6 (six) years and a maximum fine of Rp. 600,000,000.00 (six hundred million rupiah). However, it should be noted that the regulation in dealing with cybercrime, especially carding crimes, there are also several articles in the criminal code that criminalize cyber crime by using extensive interpretation methods against existing articles in the Criminal Code, First, Article 362 of the Criminal Code which means when it is associated with the crime of carding where the perpetrator steals someone else's credit card although not physically because only the credit card number taken by the perpetrator using the card generator software on the internet to get as much profit as possible. Second, Article 363 paragraph (1) Number 4 which means exactly the same as Article 362 about theft, but theft committed by two or more people with berkecut. Third, Article 378 which means when it is associated with a carding crime where the perpetrator commits a fraud by ostensibly buying a product or item on the internet using the data or identity of another person's credit card whose bill is addressed to the Direct owner of the credit card by conducting e-commerce transactions.

Law does not live alone in society, in an effort to be independent it is always influenced by several aspects of life that surround it, cultural, economic, political aspects and accompanied by the development of "ITE" technology.¹⁵ In principle, the normative criminal law, in the form of a criminal act and criminal sanctions, particularly concerning criminal acts, is relatively permanent, rigid and rigid, so that all crime events that occur both classical and temporary, almost all of them can be resolved by existing legislation mesikup so long made (except temporary crimes, which gave birth to the rules of delinquency is outside the Criminal Code).¹⁶ Thus the need for reform of the law for the establishment of new laws with more specific against cybercrime, especially carding crimes. Then there are policies

¹⁴ Hamsir, "Aspek-Aspek Tindak Pidana dalam Perbankan Syariah Dan Konvensional", Jurnal El-Iqtishady, Vol.2, No.2, (2020)h.81

¹⁵ Hamsir, "Fenomena Pemahaman dan Penerapan Hakikat Makna Kata Kejahatan dan Pelanggaran Dalam Perkembangan Hukum", Jurnal Ilmu Syariah dan Hukum Al-Risalah, Vol.19,No.2, (2019)h.174

¹⁶ Hamsir, "Pengajaran Ilmu Hukum dalam Kelas Model/Kreasi Pembelajaran Menghubungkan Teori Dengan Info-Info Peristiwa Hukum "Pidana" Dari Media cetak (Analisis Studi Kepuasan", Jurnal Al-Daulah, Vol.7, No.2, (2018)h.213-214

related to the establishment of a Law No. 19 of 2016 on amendments to Law No. 11 of 2008 on information and electronic transactions that regulate criminal acts of carding, first, Article 30 paragraph (1), (2), (3), Jo Article 46 paragraph (1), (2), (3). Second, Article 31 paragraph (1), (2), Jo Article 47. Third, Article 34 paragraph (1) letter A, B paragraph (2) and Article 50. Fourth, Article 32 paragraph (1), (2), (3) Jo Article 48 paragraph (1), (2), (3). Fifth, Article 35 and Article 51 paragraph (1).

2. *Implementation Efforts In Overcoming Crime Carding*

The implementation of service tasks in the organizational structure does not always go well as we expect, sometimes in the implementation of legal observers experience obstacles or inhibiting factors.

In a modern civilization, there is no one country that is separated from an order in the form of norms that can be used as guidelines in the administration of the state.¹⁷ Information technology is currently a double-edged sword, because in addition to contributing to the improvement of welfare, the progress of world civilization, it is also an effective target in unlawful acts.¹⁸ Every person's crime can be seen from the mental personality of a person or individual who is less good, so it tends to commit a crime, as well as in religious factors, educational factors, environmental factors, social factors, economic actors.

In this case there are 2 ways to secure a computer network to overcome carding crime as follows:

1. Computer network security software, with steps that can be done as follows:
 - a. Manage access (access control) through the mechanism of authentication by using a password
 - b. Firewall, a program in a device that is placed on the internet with an internal network to function to maintain access to and out of unauthorized people monitoring log files.
 - c. Intruder detection system (IDS), including autobase detects probing by monitoring log files.
 - d. Routine Backup, to backup the system later successfully entered the other party.
2. Hardware security hereby uses a way to lock the computer for Computer Work, display or receive input (input) process, manage data/information, provide output, and store information data installed inside and outside the computer safely.

The other prevention efforts in overcoming crime carding as follows:

- a. Internet service providers
 - 1) The existence of a public complaint hot line through ID-SRTII/CC
 - 2) The need for regulation of permits for the operation of internet cafes by requiring the obligation to record the identity of the use of services
 - 3) Blocking ip addresses from illegal ISPs and sites suspected of internet fraud based on public complaints and APJII members
- b. Delivery service
 - 1) The freight forwarder must ensure that the identity of the consignee matches the destination address, and the delivery of goods must be carried out at that address.

¹⁷ Fadli Andi Natsif, "Pancasila Dalam Perspektif Hukum Konstitusi Indonesia", Jurnal Jurisprudentie, Vo.4, No.2, (2017)h.123

¹⁸ Istiqamah, "Analisis Pinjaman Online Oleh Fintech Dalam Kajian Hukum Perdata", Jurnal Jurisprudentie, Vol.6, No.2, (2019)h.293

- 2) Freight forwarders check / ensure the identity as alternatif such as a driver'S license as a comparison of the identity of the recipient of the goods.
 - 3) Take photos and environmental checks on the recipient of the goods as a book for the collection of goods as evidence of the collection of goods originating from abroad.
- c. Banking service providers
- 1) The bank conducts education on sending accounts to customers
 - 2) The need for cooperation between the bank and the police in verifying customers who are considered suspicious
 - 3) The use of alternative identity to complete the ID card as a requirement in opening a suspicious customer account
- d. Depagri
- 1) Accelerate the realization of NIK
 - 2) Identity retrieval in the form of fingerprints and photo ID card application is done at the ID card service

To prevent in overcoming carding crimes including cyber crimes that are already rampant, in this case the government together with law enforcement officials need to immediately take actions to prevent these crimes by socializing, realizing, and implementing. The concept of legal protection has its source in the recognition of the state by law (*rechtsstaat*). Operationally, the concept of legal protection can be interpreted as the availability of legal instruments, both material and formal, which can be used by the state and citizens to solve every case that occurs in the life of the nation and state.¹⁹

The comparison is based on the results of interviews by Bripka Julianis M, S.H., M.H. As BA IDIK III SAT Reskrim Polrestabes Makassar related to implementation efforts in overcoming carding crimes as follows: First, Implementation efforts to overcome repressive carding crimes in this case the efforts in which all actions are taken by law enforcement officials after the occurrence of criminal acts to the prosecutor's office to hold charges in accordance with the article prosecuted and on sanctions to perpetrators who are proven and convincingly committed a crime by causing a deterrent effect on the perpetrators so as not to commit crimes or not repeat crimes that have been committed. Second, the implementation of efforts to overcome carding crimes that are preventive in this case the efforts made to overcome before the occurrence of carding crimes by minimizing the space for movement and the opportunity to commit a carding crime. Such as by holding a legal socialization aims to increase public awareness of the law so that people obey the law and the public knows how important credit cards are to avoid carding crimes because people in general do not know about the existence and impact of carding crimes. And conducting patrol activities in this case is carried out for prevention to prevent the intention and opportunity to commit crimes by visiting, observing, exploring, supervising, and paying attention to situations and conditions that are expected to cause all forms of security and public order disturbances in the form of crimes and violations.

¹⁹ Fadli Andi Natsif, "*Perlindungan Hak Asasi Manusia Dalam Prespektif Negara Hukum Indonesia*", Jurnal Al-Risalah, Vol.19, No.1, (2019)h.154-156

CONCLUSION

Regulation of carding crimes is used in the existing legal instruments in Law No. 19 of 2016 on amendments to Law No. 11 of 2008 on information and electronic transactions that regulate carding crimes, first, Article 30 paragraph (1), (2), (3), Jo Article 46 paragraph (1), (2), (3). Second, Article 31 paragraph (1), (2), Jo Article 47. Third, Article 34 paragraph (1) letter A,B paragraph (2) and Article 50. Fourth, Article 32 paragraph (1), (2), (3) Jo Article 48 paragraph (1), (2), (3). Fifth, Article 35 and Article 51 paragraph (1). Jo criminal code on Article 362, 363, 378

Implementation efforts in overcoming carding crimes can be done by repressive efforts, namely implementation efforts to overcome repressive carding crimes in this case efforts where all actions are taken by law enforcement officials after the occurrence of criminal acts through the legal process and preventive efforts are made to overcome before the occurrence of carding crimes by minimizing the space for movement and the opportunity carding crime.

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