

THE IMPLEMENTATION OF CRIMINAL SANCTION TOWARD CREDIT CARD FRAUD AS AN EFFORT OF CYBERCRIME PREVENTION IN INDONESIA

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Recently, cybercrime in Indonesia has occurred frequently in which there are many kinds of cybercrime coming up among society, such as; credit card theft, site hacking, tapping others' identity, and manipulating the data with designing undesired command into the computer program. The cybercrime of credit cards also called Carding. Carding is kind of payment using others' number and identity illegally, then, it is usually taken from internet. Moreover, the person who performs this kind of cybercrime of credit card is known as Carder. Surely, cybercrime of credit card leads to economically disadvantages for credit card holders since they have to pay what they are not supposed to purchase. In order to achieve the objectives of the research, library research was used as research method with obtaining the data from relevant cybercrime books, journals, laws, and articles. To overcome this problem is through designing legal law especially Criminal Law. Unfortunately, Indonesia has not yet had a specific law that regulates this Cybercrime, For this case, IT Acts will be applicable to concern the Cybercrime of credit card actors, thus, they will be sentenced based on IT Acts.

Keywords: *criminal sanction, cybercrime, credit card fraud*

1. BACKGROUND OF STUDY

The current development of technology and internet in Indonesia is rapidly increasing because the need of internet for Indonesian is considered as the essential necessity of life for running daily routines among children, teenagers, young adults and adults. Most people nowadays can do anything they want through internet in which everything is being easiest and fastest. In other words, it can not be denied that the strengths of internet really helps every users to perform their jobs, and tasks. All jobs and tasks desired can be completed by internet accurately so it will reduce the amount of worker, cost, and errors. Thus, most people rely on internet to survive because all things to do is carried out by internet and computer.

This kind of fact shows that internet can be seen in positive

ways in which people use it for undertaking anything relating to their responsibilities. Yet, the other fact shows that the use of internet brings to the negative ways. For instance, criminal practices has been performed through computer and internet technology. Most criminal actors change their ways in completing their tasks from conventional method to modern method which absolutely leads to greater loss¹. They create, design, and execute some modern methods to perform the criminal actions. Cyber law is very closely to the social media world as everything is invisible and false, then this situation automatically make the Law Enforcer is really hard to investigate the case because there are not authentic proofs found. In addition, cybercrime object is electronic data which is very easy to be changed, to be tapped, to be

forged, and to be sent to all over the world in only a few second. This criminal actions is known as cybercrime. Cybercrime is the development of crimes through internet in Indonesia. This kind of cybercrime is rapidly growing and seems to be hard to stop in Indonesia because Indonesia one of the country which has million citizens in the world. There is 2,4 % of world cybercrime coming up from Indonesia, and it keeps growing 1,7%, then, Indonesia is being 28 rank in 2010. This happen because the increasing of internet users in Indonesia (Kompas, 16 mei 2012). The worst thing is cybercrime will be merrier because of the existence of social networking in which cybercrime actors use it to find out the victims by making friends with strangers, and the users of social networking easily put their trust on links, and contents offered by cybercrime actor in which they get from mutual friends, unfortunately the content of websites is criminal program (Kompas, 16 Mei 2012).

There are many cybercrime through internet, namely; credit card theft, site hacking, tapping others' identity, and manipulating the data with designing undesired command into the computer program. The cybercrime of credit card is also called Carding. Carding is kind of payment using others' number and identity illegally, then, it is usually taken from internet. Moreover, the person who performs this kind of cybercrime of credit card is known as Carder. Surely, cybercrime of credit card leads to economically disadvantages for credit card holders since they have to pay what they are not supposed to purchase. Moreover, this kind of cybercrime must be

overcome by legal cybercrime law, eventough Indonesia has not specific cybercrime law, and this case has been regulated by IT acts. Based on the explanation above, this research problem of the research is: How is the implementation of criminal sanction of cybercrime of **credit card** Indonesia?

B. RESEARCH METHOD

In order to achieve the objectives of the research, library research was used as research method with obtaining the data from relevant cybercrime books, journals, laws, and articles.

C. DISCUSSION

The term of cybercrime is taken from two words, cyber which means "internet" and crime which means "offense". This term explain that cybercrime is any offense occurred through internet technology in which the process of crimes is performed by both computer and internet technology. Cybercrime is kind of offense using the development of technology in negative way, specifically, the use of internet. Cybercrime is defined as internet based-crime violating law. Furthermore, Andi Hamzah stated that cybercrime is criminal acts carried out by using computer technology as essential medium of crime. In other words, cybercrime is a crime that performs the development of computer technology, and this crime will be working perfectly if the actors of cybercrime really know about the sophistication and development of technology, then, the main objects of this crime is computer. Absolutely, this crime is forbidden and the actors will be having legal sanction. In addition, the activity of cybercrime is virtual yet real, eventough the proof is only

as electronic tools. It means that the actors who perform this kind of crime must be qualified as a person who commits the real legal act.

In this case, Indonesian Police use the parameter based on UN congress document, "The prevention of crime and the treatment of offenders in Havana, Cuba in 1999 and in Vienna, Austria in 2000, declared that there are two terms of cybercrime, namely:

- a. **Cybercrime in a narrow sense.** It means that computer cybercrime; any illegal behavior directed by means of electronic operation, the target, the security of computer system, and the data processed.
- b. Cybercrime in broader sense. It means that computer related crime; any illegal behavior committed by means on relation to a computer system offering or system or network, including such crime as illegal possession in offering or distributing information by means of computer system or network.

Furthermore, there are two factors affecting credit card identity fraud, such as:

- a. External factors. It includes the negligence of credit card holder
- b. Internal factors. It includes someone who performs hacking done by the employees through stealing the data from database that contains credit card owners list in which the credit card holders used that cards for online shopping payment.

Unfortunately, Indonesia has no specific Acts regulating cybercrime relating to data theft from credit card offense, yet, there are some applicable Laws and Legal Sanctions stipulated in the criminal code as well as specific Acts. The Criminal Code has been regulated in accordance with to the computer

crime which developed into cybercrime later on. Moreover, there are two opinions which deal with computer-based crimes, namely:

- a. Criminal Code (KUHP) is able to deal with computer-based crimes declared by Criminal Law expert, Mardjono Reksodiputro, a Criminologist from Indonesia University, stated that crime-based computer is not a new case and it is still reachable for Criminal Code to deal with.
- b. Crime-based computer requires special provisions especially for Criminal Code or Legal Law itself that regulate crime-based computer offense. This opinion is expressed by some experts, they are;
 - Sahetapy stated that the existing Criminal Law is not ready facing crime-based computer, because it is not easy assuming the crime-based computer to decide the defendant of that case.
 - Sudarma stated that the urgency of the need provisions that regulate the case of crime-based computer because concerning the crime-based computer must be dealt with exclusively including; the methods, the times, and the locations where the crime-based computer is being held.

Besides, there are some regulations of credit card theft in Criminal Code, namely:

1. Article 362 of the Criminal Code
Whoever steals anything entirely and partly belonging to others' with the intention of possessing the stuffs against the rights will be punished because of the theft with a prison sentence all the times or fined up with Rp 900. The core of this criminal code is regulation in Article 362 consisting of;
 - stealing something

- stealing it partly or wholly
- stealing a stuff
- againsts the law
- stealing a specific good.

The term “stealing or theft” refers to moving hands and fingers, holding the specific goods, and placing to another place. Then, Cleiren also stated that stealing means taking something on purpose. there are two purposes, namely: a) what it takes must be goods, b) the goods can be either abstract or concrete, and c) againsts the Law. Based on these purposes, against Law means being contrary to the Law or it does not suit to the regulations imposed in the Law or invades an interest protected by the Law. Besides, Pompe, a criminal Legal expert, argued that against the Law is the outer aspect of the violation of norms, while, fault is the inner aspect of the violation of the norm, the fault means that the effect can be dismissed. Simons argued that definition of unlawfulness is against the law in general. Similarly, Moelyatno and Ruslan Saleh argued that being unlawful must be interpreted in contravention of the law.

Thus, in the current available Criminal Law legislation is actually showed that unlawfulness dose not always include as one of the elements of offense in which it leads to the question whether the nature of unlawful should always be regarded as one of the elements of the offense, although not formulated explicitly, or newly perceived as an element of a offense if it is expresively defined in the offense.

Moreover, Article 362 of the Indonesian Criminal Code is imposed on the Carding Case (theft of Data from Credit Card) in which

the cybercrime actors stole credit card numbers belonging to others eventhough not physically, as they only steal the card numbers with using the Software Cards Generator on the Internet to conduct transactions in E-Commerce. After the transaction and the goods are delivered, then the seller who wants to withdraw his money at the Bank was rejected because the card owner is not the person doing the transaction.

Then, Article 378 of the Criminal Code which may be imposed on the Carding Case in which the cybercrime actors stole credit card numbers belonging to others eventhough it is not physically, since they only steal the card numbers taken by using the card generator software on the Internet to conduct transactions in E-commerce. After transactions and goods were shipped, then the seller who wants to withdraw his money at the Bank turned out to be rejected because the card owner is not the person who made the transaction.

Articles 378 and 262 of the Criminal Code may be imposed on the Carding case, as the cybercrime actors who commits fraud as if he wants to buy an item and pays using credit card whose credit card number is stolen.

Moreover, According to POLRI carding includes:

- a. theft of credit card number from hotel guests, especially foreigners.
- b. theft of card numbers through chat activities on the internet.
- c. Conducting the ordering of goods to the Overseas Company by using Internet services.
- d. Retrieving and manipulating data from the Internet.

- e. Providing fake information both at time of order and at the time of taking of goods in delivery service.

Law Number 36 Year 1999 concerning Telecommunication or Law Number 11 Year 2008 regarding Internet and Electronic Transaction. According to Article 1 Number 1 of Law Number 36 Year 1999, Telecommunication is any transmission, transmission and / or reception and any information in the form of signs, symbols, writings, drawings, sounds and sounds through wire, optical, radio or electromagnetic systems. Internet abuse that disturbs public order or privacy may be subject to sanctions by using this Act, especially the hackers who enter into other people's network system as provided for in Article 22 that is Everyone is prohibited from doing any act unlawfully, unlawfully or manipulating:

1. Accessing to Telecommunication network
2. Accessing to Telecommunication services
3. Accessing to a dedicated Telecommunication network.

If it happens as the case found in KPU website www.kpu.go.id then Article 50 may be imposed: Anyone violates the provisions referred to in Article 22, they will be liable to a maximum imprisonment of 6 years and / or a fine at most Rp 600.000.000.-

E. CONCLUSION

. Carding is kind of payment using others' number and identity illegally, then, it is usually taken from internet. Moreover, the person who performs this kind of cybercrime of credit card is known as Carder. Cyber Crime Through Credit Card stole data Economically refers to those who have the Credit

Card, yet, not using the Credit Card but must pay the bills addressed to them. To overcome this problem is through legal process especially Criminal Law. Unfortunately, Indonesia has not yet had a specific law that regulates this Cybercrime, For this case, IT Acts will be applicable to concern the Cybercrime of credit card actors, thus, they will be sentenced based on IT Acts.

SUGGESTIONS

1. Credit card owners should be more careful in using credit cards, and if there are things stole, especially bills that are not given in, this might be an indication of credit card offense
2. Specific Act regulating this Carding (credit card data stealing) is urgently needed considering the number of crimes is highly increasing in Indonesia year by year.

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