

The Criminal Law Policy against Carding's Crimes as a Form of Cyber Crime



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ABSTRACT: As technology progresses, there are many facilities available online. Developing this technology can also provide opportunities for perpetrators of crime especially crimes in cyberspace. Cybercrime is a new form or dimension to a crime that is currently receiving much attention from the international community. Among the types of cyber crimes referred to is carding's evil use of Internet technology as a tool for illegal logging systems on websites to obtain information on credit CARDS for customers. The purpose of this study is to identify and analyze the arrangements regarding carding's criminal actions in Indonesia at present, as well as criminal law policies against carding's criminal actions within Indonesia's positive laws. This study was a normative-juridical study type. Studies show that delict-delic and the classifications governing carding felonies in Indonesia are not strictly and explicitly regulating carding's crimes, So law enforcement law enforcement is based only on chapters 31 and 32 of 2016's number 19 legislation that regulates only a fraction of the many crimes of carding and in many cases law enforcement must use an interpretation or appropriate a few of the chapters in a cell phone that some consider to be irrelevant as chapters 263 and 378 under the law. Therefore, it will require future criminal renewal of carding's criminal actions in Indonesian positive laws

KEYWORD: carding, criminal law policy, criminal action

INTRODUCTION

The law was a tool of the state intended to order and reconcile the life of a nation to establish a justice and a balance between rights and obligations. Just as in Indonesia it is a legal state, in which power is governed and enforced under the laws of all aspects of life for the creation of justice and the protection of laws equal to every citizen of Indonesia. In order to connect humans with other humans in making ends meet, humans are taking advantage of the proliferation of technological science. With rapid technological developments, the advent of modernization is an inevitable period, as well as the presence of the Internet around the world plays a vital role in human life, it is no exception in Indonesia.

Technological developments open up opportunities for previously impossible things, just as communication and information technologies can link distant ones. According to Soerjono Soekanto, technological progress will continue along with changes in the field of community. Changes in society could be about social worth, social codes, peripheral patterns, organizations, and social institutions. ¹

Information technology development also has a negative impact, including the development of various crimes. As technology develops as a result of existing consent patterns and needs in society, crime has developed, as the saying "where there is a society where there is evil." One is the Internet media or the so-called cybercrime. Cyber crime is a new dimension of crime that captures international public attention. Of the types of crimes that use technology as a means of committing crimes are carding crimes. Carding is a credit card fraud when the perpetrators have a credit card number and CVV security code (card verification value) of a person who is still valid, so the perpetrators can purchase items online that have been addressed to the original credit card owner, while the perpetrator is named carder.

Credit card crime has a common plot that can be the object of the first anatomical breach, source of application, application processing, card embossing and delivery (courier/recipient or customer), usage, payment to merchant.² According to Budi Suharyanto, Indonesia's rating in virtual crime has replaced Ukraine's previous position of first place. Indonesia is at the highest

¹ Dikdik M. Arief Mansur Dan Elistris Gultom, *CyberLaw Aspek Hukum Teknologi Dan Informasi*, Retika Aditama, Bandung, 2009, hlm. 3

² Sigid Suseno dan Syarif A. Barmawi. "Kebijakan Pengaturan Carding Dalam Hukum Pidana Di Indonesia". *Jurnal Sosiohumaniora*, 6, 3, (2004). hlm.254, <http://jurnal.unpad.ac.id/sosio>

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percentage in the online world.³ The data came from the Verisign assessment, a company that provides online intelligence services centered in California, in the United States. This is also confirmed by the Stoic, brave brigitor-general Anton chief That Indonesia's cyber crime Numbers are the highest in the world. Indications are that of credit card forgery and bank burglary. Indonesia alone has no firm and specific policy on carding crime. The rule still adheres to the criminal code, section 362 of the theft and 32 of the 2008 article 11 of the 2008 bill of information and electronic transactions:

Chapter 31 verse (1) each person intentionally and without due or unlawful rights carries an intercept or wiretap on electronic information and/or electronic documents in a computer and/or other person's electronic system.

Chapter 32 verse (1) each person deliberately and unlawfully or deliberately changes, adds, subtract, transforms, damages, detracts, transfers, hides an electronic information and/or electronic documents belonging to another person or public.

Under chapters 31 and 32, there is no criminal minimum, so it does not rule out the possibility that judges tend to cut the trophy relatively lightly. But neither carding under national criminal invitations makes law enforcement enforceable. For example, in mid-2010 a carding case involving one of the established coffee shops in the Tebet region, South Jakarta, with a reprint from the receipt of the verification code, from which the suspect obtained hundreds of credit card data and used by the suspect to purchase goods at the online shopping site and cost hundreds of millions of dollars in damages. The suspect is charged with article 362 and 378 criminal code and article 19 of 2016's law on a change to the 2008 article 11 of information and electronic transactions.⁴

According to Peter Mahmud Marzuki, the law should protect human interests from being both materially and immaterial to achieve legal objectives.⁵ But what if the crime was no longer identifiable, according to Andi Hamzah a process of criminalization was needed, where it was no longer identifiable, using the penal code of law or regulations outside the penal code in hopes that the sufficiently advanced crime might be incriminated under the threat of criminal penalties in the new law.⁶

Also, as Roeslan Saleh proposes by citing the opinion of J.M. Van Bemmelen in the book *Criminologie, leerboek der misdadaakunde*, it is the view that it is generally to be viewed as a crime as corrupt and disorderly conduct.

FORMULATION OF THE PROBLEM

Based on the above background that is a problem in this study is how to manage carding's criminal ACTS in Indonesia is that good?

RESEARCH METHODS

The method used in conducting the question discussed in the study was normative legal research method. As for the measures used for research on this normative law method, by analyzing the literature in the cultural literature of the law in the tangible forms of primary, secondary and tertiary law sources.

In this assessment the subject is: (a) principles of law; (b) systemic law; (c) level of law synchronization; (d) comparisons of law; (e) the history of law there are 3 (three) that could underlie the normative-juridical research of a law - norm, a diffusion of law norms, or a conflict between law norms. The study will further discuss the default vacuum of criminal laws governing the carding crime (credit card fraud).

DISCUSSION

Settings Regarding Carding Crimes in Indonesia

As is known for determining an act to be categorized as a crime and then punishable, it would have to be viewed by what was forbidden, which could be held accountable for any legal subject, and its sanctions. Carding's crimes are no different. The carding crime is ethically a crime that USES Internet technology as a primary means of unauthorized access to a system on a website to get data on credit card customers.⁷ The goal is to spend unauthorized credit CARDS that have been obtained or to collect credit card holders' funds.

As one new type of carding crime has a particular characteristic in the execution of its actions:⁸

- a. Minimize of physical contact Because in his mode between the victim and the perpetrator never had physical contact because the event occurred in the virtual world, but the damage was real. There is an interesting fact in this carding crime

³ Bambang Hartono. "Penerapan Sanksi Pidana Terhadap Tindak Pidana Carding". *Jurnal Pranata Hukum*, 8, 2, (2013), hlm.169, <http://jurnal.ubl.ac.id/index.php/PH/article/view/19>

⁴ <https://metro.tempo.co/read/264510/karyawan-starbucks-tebet-bajak-ratusan-kartu-kredit>, Diakses Pada Tanggal 15 Juni 2022

⁵ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum, Kencana Prenadamedia Group*, Jakarta, 2011, hlm

⁶ Andi Hamzah, *Aspek-Aspek Pidana di bidang Komputer*, Sinar Grafika, Jakarta, 1990, hlm.29

⁷ Victor Ardi Asmara, "Analisis Kejahatan Carding Sebagai Bentuk Cyber Crime dalam Hukum Pidana Indonesia", Skripsi Sarjana Hukum Universitas Pancasakti Tegal, Tegal, 2010, hlm.18

⁸ FN. Jovan, *Pembobol Kartu Kredit-Menyingskap Teknik dan Cara Kerja Para Carder di Internet*, Mediakita, Jakarta, 2006, hlm. 12

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where the perpetrator does not need to physically steal the credit card from the original owner but enough to know the number of the person already has the ability to perform the act, and it will require specific techniques and rules of law to be able to ensnare the perpetrator.

- b. Non violence It does not involve physical contact between the perpetrator and the victim as a physical threat to induce fear until the victim gives up his material possessions. The target didn't need to steal the victim's credit card but just enough to know the number from the card so he could act.
- c. Global due to these crimes across the country, which ignores geographical and time boundaries.
- d. High Tech, Because using technology-based tools and using information networks in this regard is the Internet to commit crimes.

Based on the characteristics of these differences for law enforcement, it is not traditionally possible, it is best to use a separate law. Carding's general character is non-violence so that the chaos caused by this crime is not seen directly but the effects it poses can be disastrous.

The setting regarding crime or carding crimes is not regulated arbitrarily in any Indonesian law at this time. No invitation was special. All the legal grounds used by law enforcement in an attempt to eradicate crime or carding crime are largely the result of the analogy of several chapters in the penal code (criminal law) that are adjusted to elements of the crime or carding crime.

In the case of carding cases in Indonesia that are used are several chapters in Indonesia's penal code and act 19 in 2016 on changes to the 2008 11th law on information and electronic transactions. Then we will discuss the chapters used to ensnare credit card criminals and suspects (carding), which are as follows:

- 1) Fraud under article 378 of the penal code (criminal law), determined that anyone with a view to benefiting himself or others is unlawful, by using a false name, by deceit, or by lying, imposes others to hand over items to him, or to repay or release debts, is threatened for fraud with four years at most.
- 2) Forgery under article 263 of penal code (criminal law) passage (1), asserted that: anyone who makes a forgery or falsified a letter that could result in a right, binding or discharging of a debt, or that is reduced to evidence of something in order to use or to have someone else wear the letter as if it were true and was not a fake, is threatened if the wearing of it would result in harm, for counterfeiting a letter, on a prison term of six at most years. In this regard, one of the most essential elements of criminal crimes arranged in article 263 of the criminal code, is: the presence of a false letter, fake or forged paper. To be able to apply 263 criminal code to credit card crimes, it is true that the credit card is a type of paper in spite of the plastic that criminals have already falsified.
- 3) The theft in article 362 of the penal code (criminal law), stipulated that anyone would take something, the whole or part of someone else, in order to be held against the law, was threatened for theft, with a prison sentence of five years at most or with a fine of nine hundred rupiah at the most.⁹

Then, the arrangements for carding crime or criminal, article 31, chapter 47 and article 32, article 48 of act number 19 in 2016, on a change to 2008 article 11 of information and electronic transactions that read as follows:

Chapter 31 verse (1)

Each person intentionally and without due or unlawful action employs intercepts or intercepts of electronic information and/or electronic documents in a computer and/or other person's electronic system.

Chapter 47

Each person who meets the element as referred to in chapter 31 of the verse (1) or verse (2) has been sentenced to the maximum prison penalty 10 (ten) years and/or a fine of eight hundred million rupiah at most

Chapter 32 verse (1)

Each person deliberately and unlawfully or by any means altering, adding, reducing, transmitting, damaging, deleting, moving, hiding an electronic information and/or electronic document belonging to another person or public.

Chapter 48 verses (1)

Each person who meets the element as referred to in article 32 verse (1) has been sentenced to maximum prison criminal 8 (eight) years and/or a fine of two billion rupiah at most

As was previously explained above, that no legislation had ever been duly regulated and strictly regulated regarding carding's crimes. Carding is a complex crime with many types of modus operandi, from the simplest such as creating a false identity for credit card applications to creating a false credit card using the same super sophisticated technology as the credit card publisher USES.

Some of the above chapters are deemed inadequate to address the full range of modus operandi of this crime. According to the transaction flow through credit card, there are steps that can become objects of credit card crime, among other things:¹⁰

⁹ Hendryawan Dwi Putra Idris, "Kebijakan Dalam Penanggulangan Penyalahgunaan Kartu Kredit", Jurnal Lex Privatum, 7, 4, (2019), hlm.18

¹⁰ Sigid Suseno dan Syarif A. Barmawi. Op.cit. hlm254

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- a. Source of applications, A crime committed is committing fraud application.
- b. Application processing, A crime committed is committing fraud application.
- c. Card embossing and delivery (courier / recipient or customer), The crime was committed using the original credit card that was not accepted (Non Received Intercept /NRI)
- d. Usage, Crime is committed by committing forgery.
- e. Payment to merchant.

By referring to the line in the credit card process above, then the set in 2016 legislation on the 2008 11 - year bill regarding information and electronic transactions of chapter 31, chapter 47, and chapter 32, chapter 48 can only be read at the embossing and delivery stages at the embossing and delivery. So the terms of these are reaching only a few modus operandi of carding crimes. The 2016 clause in act number 19 on the 2008 change to act 11 on information and electronic transactions is that article 31, Jo chapter 47 and 32 chapter 48 also enlists only those using credit CARDS but not including the merchant or manager or credit card publishers that have the potential to become the carding criminal.

1. Criminal Law Policy Against Carding Crimes In Indonesia

The renewal of criminal law is part of the law enforcement policy, a criminal policy, and social policy. Criminal law reform is basically part of a policy (rational effort) aimed at updating legal substances to reduce and eradicate crime in order to protect society, social welfare, the fight against social and humanitarian problems to achieve or support a national goal. According to Barda Nawawi Arief, in vice law reform when viewed from policy approach, criminal law renewal can be socialized as part of efforts to address social problems (including humanitarian issues).¹¹

According to research done by Clear Commerce Inc, an information technology company based in Texas, USA, in 2005, Indonesia rose to the top 2 carder state in the world, with more and more Internet users and online finance services proliferating in Indonesia at the present time. Above may promote growth in opportunities for crimes targeting the Internet or cyberspace as a medium to commit crimes such as carding crimes. It has previously been explained that the legal device of these laws governing the terms of carding is far from perfect and there is, according to Sigid Suseno, there is still lots of gaps and also according to Sigid Suseno in his journal entitled "carding management policies in Indonesian penal laws," that the policy of carding is viewed as unclear and unambiguous.

Article after chapter of the 2016 statute 19 about the 2008 change of the 11th law on information and electronic transactions governing the carding crime will be explained the following:

Chapter 31 verse (1) each person intentionally and without due or unlawful rights carries an intercept or wiretap on electronic information and/or electronic documents in a computer and/or other person's electronic system.

The elements are as follows:

- 1) Subject (normadresmoment) : everyone
- 2) Delik core (delictsbestanddelen) :
 - a) On purpose,
 - b) Without right or against the law
 - c) Intercept or intercept on electronic information/electronic documents
 - d) In a particular computer and/or electronic system
 - e) Belongs to someone else

Chapter 32 verse (1) each person intentionally and unlawfully or by any means changes, adds, detracts, transforms, damages, eliminates transfer, hides an electronic information and/or electronic documents belonging to another person or public.

The elements are as follows:

- 1) Subject (normadresmoment): everyone
- 2) Delik core (delictsbestanddelen):
 - a) On purpose,
 - b) Without right or against the law
 - c) In any way
 - d) Alter, add, reduce, transmit, damage, eliminate, move, hide an electronic information and/or electronic document
 - e) Belongs to someone else or the public

In the 2016 article of the 2008 bill number 19 on the change to the 2008 bill of information and electronic transactions, article 31, chapter 47 and article 32, chapter 48, which is the only law or provision regulating carding, It does not set up the full mode of operation of this crime and does not limit to the ACTS of using and/or accessing other people's credit CARDS without the right and only ensnare those who use credit CARDS but not include the merchant or operator or credit card publisher who is also potentially the perpetrator of the carding crime.

The formulation of credit card crime is based solely on article 31, chapter 47, article 32, article 48 of act number 19 in

¹¹ Barda Nawawi Arief, Op. Cit

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2016 on the change to the 2008 article 11 of information and electronic transactions, certainly not enough to protect society and its interests. There is still a need for more representative formulations that can cover all forms of credit card crime. Even the use of penal code such as article 263 and section 378 is deemed inappropriate/irrelevant because credit CARDS cannot be equalized or interpreted as letters.

Passing the 2016 statute on the change to the 2008 11 bill on information and electronic transactions can narrow down the movement of a hacker who is doing damage and stealing credit card Numbers via the Internet or carding. The scope or scope of invitation number 19 in 2016 is the change to the 2008 11 bill on information and electronic transactions as the *lex generalis* for electronics, information technology and communication. However, this scope should also be coupled with specific arrangements in carding's criminal activities.

To compare the fraudulent Settings using credit CARDS in the United States at 15 usc section 1644 section section of credit CARDS; Where under article 15 usc section 1644, Settings on fraud using a credit card are broader than those in 2016 on the change to the 2008 11 - year bill on information and electronic transactions:

- a) Knowledge of credit card transactions includes forgery, undercover work, forgery, name theft, or fraud. Intentionally and legally sell or transport such credit CARDS.
- b) Receiving, hiding or using those credit CARDS.
- c) Receive, hide, sell or transport tickets obtained from the credit card.
- d) Providing money, goods, services, or anything of value obtained through the credit card. That included the works of experiments and the permutations of those works above.¹²

Thus, the usage of credit-card evil can be done in the relatively affordable flow stages of the credit card process, both in the source stage application, application processing, embossing and delivery card, usage or payment to merchant. So, too, credit card criminals are within the reach of the stipulation that not only credit card users but also merchants, credit card publishers or anyone who is aware of credit card forgery, use or circulation, even those attempting credit card crime are subject to criminal threats.

Article 1 of the law states that "there is no crime if nothing is specified in the nullum's delictum noela poena Siena praveia leenali)." It means that it asserts that cybercrime, especially credit card crime (carding), is not necessarily a crime punishable by criminal penalties. In addition to conflicts with article 1 of the criminal code, the difficulty can be held accountable for both offline and online carding crimes related to the issue of proof. Positive laws require evidence, witness, guidance, expert information as well as defendants in evidence. As for crimes related to evidention-information technology, it is very difficult to commit.

Therefore, with the present conditions in which the age grows, as with all forms of crime, particularly crimes, utilizing the sophistication of high tech technology, requires a legal device capable of compensating for the development of the age and technology of adequate legal rules or regulations and representative and spesifik Settings on these carding crimes.

Therefore for treatment of the practice of carding it requires several additions to the section of act 19 in 2016 on the 2008 bill 11 on information and electronic transactions of the next revision or in an individual regulation. Some of the Settings or formulations of the law that need to be added explicitly are as follows:

- 1) Criminal trafficking in data and leaking credit card information. This is to anticipate data exchanges in banking and other financial institutions. This precedent can be found on credit card data when customers can apply credit card applications to Banks. In addition, bank X's existing bank application to credit card at the bank y, and those who do not have the right to read the information on the Y-bank application will be able to provide easy carding. This is because to get a credit card at the Y bank, simply attach a copy of the X credit card card or fill in the bank's previous credit card column.
- 2) A felony for perpetrators in a credit-card transaction network. This can happen because the decryption of credit card information can occur at various points of network such as credit card print services, couriers, merchants (casters and other employees), switching companies and service providers of data communication networks.
- 3) A crime against any person or organization or machine that provides the facility or the means for creating or intercepting credit card data. This is in anticipation of any undertaking that will include the existence of warnets as the means by which carders gather for action.¹³

Why are specific rules governing carding's crimes necessary regardless of the nature of this particular crime, such as:

- a) Carding isa transnational or cross-country crime, there are no territorial boundaries in these crime. The crime scene can happen anywhere at any time.
- b) The existence of increased legal subjects such as other criminal acts the carding crime also has an extension of a legal subject not only can a person be ensnared by a criminal organization or legal entity, even a machine that provides access and facilities for this crime can be convicted.
- c) There are laws in other countries such as the philippines and taiwan that regulate carding's crimes specifically under

¹² Sigid Suseno dan Syarif A. Barmawi. *Op.cit.* 257

¹³ Leo Panjaitan, *Op.Cit.*, hlm. 22

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individual laws.

- d) Special investigations and investigations involve the use of sophisticated equipment by specific methods and methods. For these reasons it would be best for carding's crimes in Indonesia to be governed under specific regulations in view of these crimes as crimes of a particular nature.

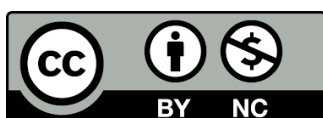
CONCLUSION

From the foregoing, it can be concluded that the article on carding in Indonesia is found in the 2016 act on the 2008 bill for information and electronic transactions, article 31, chapter 47 and chapter 32, chapter 48 section 31, and there are several under the law that is often used to endear carding's crimes, section 263, section 362, and chapter 378. But such regulations are not enough to protect society and concerned parties. Even the use of the penal code, section 263 and section 378, is deemed inappropriate/irrelevant because the credit card cannot be equalized or interpreted as a letter.

Therefore, criminal reform especially criminal credit CARDS requires either a revision of the 2016 statute on changes to the 2008 11 bill on information and electronic transactions, or a new rule specifically regulating credit card felony (carding), Because this criminal credit card not only costs Banks and credit card holders but also takes a negative toll on a country's economy and also carries a negative stigma on a country that it is prone and unsafe to carry out credit card transactions.

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