

## Research Article

## Crime Combating Policy of Carding in Indonesia in the Political Perspective of Criminal Law

Muhammad Isnaeni Puspito Adhi<sup>1\*</sup>, Eko Soponyono<sup>2</sup><sup>1</sup>Master of Law Program, Faculty of Law, Universitas Diponegoro<sup>2</sup>Faculty of Law, Universitas Diponegoro

\*adhimuhamad@yahoo.co.id

## ABSTRACT

The development and progress of science and technology lead to the emergence of cybercrime. One form of cybercrime is carding. Carding is a crime of using or stealing other people's credit cards through cyberspace. This paper discusses the process of criminal law enforcement against carding crimes based on current positive law and future carding crime prevention policies in terms of the political perspective of criminal law. The method used was a normative juridical research method. The discussion shows that criminal law enforcement efforts against carding crimes have been regulated through the Law on Information and Electronic Transactions, but these arrangements cannot overcome carding crimes in Indonesia, so there is a need for a formulation policy that specifically regulates carding crimes. The policy of dealing with carding crime in the future is reviewed from the perspective of criminal law politics, namely through penal and non-penal efforts. Efforts should be made to socialize cyber law for the people of Indonesia that can support the use of credit cards as a means of payment in online transactions in a responsible manner and have a strong legal basis.

Keywords: Crime Prevention Policy; Cards; Criminal law.

## A. INTRODUCTION

The development of science and technology in addition to repairing and making headway in terms of well-being in people's lives, but an effective medium for a person or group of people to utilize technology in the negative (Wang, Nnaji & Jung, 2020). The development of information technology has changed the perspective of some economic actors in their activities, especially in the business world (Tosoni, 2018). Information technology systems not only function as a means of supporting the company's performance, but furthermore it has become a weapon to take profits quickly by illegal means, especially using the internet (Rofikah et al, 2014). By

using the help of a computer, crime becomes easier, faster, more flexible and more instant to do (Siburian, 2016). One of them is an act against the law or used to commit a crime that causes harm to the community (Arifah, 2011). This crime is commonly known as cybercrime (Suseno, 2012).

Cybercrime has been arranged in a special law of Act No. 11 of 2008 on Information and Electronic Transactions which according to the legal principle of *lex specialis derogate legi generali* may be a reference to ensnare the criminals of cybercrime or other crimes related to the misuse of technology information (Orji, 2019). But in reality, in handling criminal cases that violate general and special

criminal provisions at the same time not a few still use general law provisions even though in the existing evidence it is clear that the perpetrator's actions have fulfilled special legal provisions (Widayati, Normasari, & Laili, 2018) .

One of the cybercrimes that is troubling the public today is credit card crime (carding). Carding is a matter of shopping using the "number and identity of someone else's credit card, which was obtained illegally, usually by stealing data on the internet. The term "another" for this type of crime is cyber fraud or fraud in cyberspace (Kurniawan, 2014) or in other words a crime carding (the illegal use of a credit card) is a crime to steal data or credit card information of others who used to shop online through the websites shopping on the internet or shopping conventionally whose bills are addressed to the original owner of the credit card (Panjaitan, 2012).

The emergence of various forms of cybercrime, especially carding in the era of information technology is a negative side of the development of society and the fact is that crime always develops in line with the development of society (Sidoti, & Devasagayam, 2010). An important issue related to the emergence of cybercrime is efforts to prevent and overcome it (Lee, 2019). Theoretically, this effort is not enough only with penal efforts (criminal law) but must be done with non-penal efforts through civil law, administrative law, the role of the mass media, the use of technological means (techno prevention) and other efforts (Suseno, & Barmawi, 2004). Crime prevention efforts can be broadly divided into two (2); penal (criminal law) and

non-penal (not/ out of criminal law). The application of criminal law (criminal law application) cannot be separated from the existence of criminal laws and regulations, according to Sudarto, the effort to realize criminal laws and regulations that are in accordance with the circumstances and situations at a time and for the future means carrying out criminal law politics (Prasetyo, 2009).

According to Marc Ansel, the politics of criminal law is a science to formulate or formulate positive law to be better than the previous one (Arief, 2014). Based on this, it is necessary to first examine how the current provisions apply or the positive law that regulates the crime of carding to make better policies in the future.

Carding has developed rapidly in Indonesia, and the legal system in Indonesia still provides loopholes and a weak monitoring system for this crime. Indonesia is one of the countries that are lagging behind in the development and use of information technology in formulating a law that regulates cybercrime, especially the regulation of the crime of carding in which law enforcement is still very concerned. This is related to various aspects that affect law enforcement, including regulatory issues in the field of information technology and other aspects are the ability of law enforcement officers, public legal awareness, and infrastructure that supports law enforcement in the field of information technology. Based on the description above, the writer is interested in writing about the application of criminal sanctions against the crime of carding (Hartono, 2013).

Based on statistical data from the Indonesian National Police Cyber Patrol, throughout 2020 there were 39 cases of data/identity theft, including carding crimes. This reflects that the current positive law is still unable to deal with carding in Indonesia. Based on this description, the problems related to criminal law policies in an effort to overcome carding crimes in the perspective of criminal law politics are first, how is the criminal law enforcement process against carding crimes based on current positive law?; secondly, how will the policy of dealing with carding crimes in the future be reviewed from the perspective of criminal law politics?

Several previous studies exist that discussed the crimes carding as in the article written by Bambang Hartono entitled "Application of Criminal Sanctions Against Crime Carding" (Hartono, 2013). This study discusses the criminal law enforcement process based on positive law in Indonesia today (based on the applicable laws and regulations). Another study was conducted by Asmir Butkovic, Sasa Mrdovic, Suleyman Uludag, and Anel Tanovic who studied the creation of geographic profiling for the investigations of cybercrime (Butkovic et al, 2019). Then by Shashi Kant Srivastava, Saini Das, Godwin Udo and Kallol Bagchi who focused on the factors of cybercrime originating from a country (Srivastava et al, 2020). Furthermore, there is a study that discusses the misuse of credit cards among credit card holders which results in cybercrime with the article title "Compulsive Buying and Credit Card Misuse among Credit Card Holders: The Roles of Self-Esteem, Materialism, Impulsive Buying and

Budget Constraints" (Omar et al, 2014). Furthermore, related to the macro impact of crime, carding Achsan et al. wrote in their article entitled "Impact of Macroeconomic Condition on Credit Card Defaults in Emerging Economy: Empirical Evidence from Indonesia" (Achsan, Achsani, & Bandono, 2020). Further research conducted by Khairun Ashikin Ismail, Mahinderjit Manmeet Singh, Musta Norliaffa, Pantea Keikhosrokiani, Zakiah Zulkefli examined security strategy to deter cyber-crime attacks (Ismail et al, 2017).

Based on these previous studies, the focus of the current research study is to examine the efforts to overcome the crime of carding explicitly, which will later be able to provide an overview of the special policies that regulate the crime of carding, so that it can be a reference for legal certainty in the future.

## B. RESEARCH METHODS

The research method used in this research was normative juridical approach. Juridical is an approach that refers to the laws and regulations in force, while the normative approach is the approach taken by examining the secondary data library materials or general principles of law as well as the study of literature (Soekanto, & Mamudji, 2004). In this case, the problem was focused on the criminal provisions in the legislation related to carding crimes. The specification of the research used is descriptive analytical, namely by describing the applicable laws and regulations associated with legal theory and practice of implementing law concerning the above problems (Soekanto & Mamudji, 2004). The method

used to analyze the data collected in this study is a qualitative analysis method. Normative juridical research that is qualitative in nature is research that refers to legal norms contained in legislation and norms that live and develop in society (Soekanto, & Mamudji, 2004).

## C. RESULTS AND DISCUSSION

### 1. The Criminal Law Enforcement Process Against Crimes Carding Based on Current Positive Laws

Reviewing the crime of carding, of course, cannot be separated from a crime where the computer is a tool to commit the crime of carding, where this carding crime is one type of crime known as cybercrime. The term cybercrime is now referring to a crime related to cyberspace (Hartono, 2013).

It is known that there are 4 types of carding that are very dangerous. First, misuse of card data in the form of misuse of credit cards that are not presented, is an event where a credit card user does not realize that his card has been used by another party until he receives the bill (Fuad, 2021); Second, there is carding and wiretapping which is done by tapping credit card transactions through a communication network. This crime can result in great losses for the victim; furthermore, the third is counterfeiting which is a type of crime with a credit card forgery mode (Permana, 2020). Usually they use fake cards that are made in such a way as to look like real cards. This type of carding is usually carried out by individuals to credit card counterfeiting syndicates who have certain skills; and lastly,

phishing is the most common in Indonesia. Usually, the perpetrators carry out their actions through a website or email to get the victim's personal data. For how they will send a virus that can threaten the PC system and then send a fake website link that looks like a trusted site (Sikapiuangmu OJK, 2021).

Criminal law in its development turned out to be more and more used and relied upon in order to regulate and curb the society through legislation. The dynamics of the law can be seen from the existence of a policy on the use of criminal sanctions through the inclusion of a chapter on the provisions of criminal sanctions at the end of most of the products of legislation in Indonesia (Yustisia, 2010).

The policy of carding crime regulation is contained in Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions (UU ITE), which is related to the act of using and or accessing other people's credit cards without rights. The provisions of Article 51 of the ITE Law can reach violations at the stages card embossing and delivery (courier/recipient or customer) and usage. Not all of the modus operandi in this stage can be reached, because the provisions of Article 51 in conjunction with Article 34 of the ITE Law only regulate actions committed by people who use credit cards but do not include traders or managers who can also be perpetrators of carding.

The Criminal Code (hereinafter abbreviated as KUHP) applies on the basis of the Transitional Rules Article 2 of the 1945 Constitution of the Republic of Indonesia, and began to be renewed starting in 1946

through Law Number 1 of 1946 (hereinafter abbreviated as Law Number 1 Year 1946). Due to the various needs and rapid development of society, several criminal laws were made outside the Criminal Code. Even so, the demands for material changes regulated in the Criminal Code are increasingly real, which is feared that there are still old values that are not in accordance with the spirit and soul of the Indonesian nation. Positive legal instruments, especially the Criminal Code, are already owned by Indonesia, but these regulations are still not sufficient to ensnare criminals on the Internet. Article 1 of the Criminal Code states: there is no criminal act if it was not previously stated in a statutory provision (*Nullum Delictum Noela Poena Siena Praveia Legi Poenali*). That is, the article confirms that the perpetrators of cybercrime, especially the crime of carding, may not necessarily be subject to criminal sanctions. In addition to conflict with Article 1 of the Criminal Code, the difficulty of being able to account for the perpetrators of the carding crime committed both offline and online is related to the problem of proof. Positive law requires evidence, witnesses, instructions, expert testimony and the defendant in proof (Agustina, 2015).

Imprisonment was imposed on the perpetrators of the crime of carding because it was included in the crime category that uses computers as a means of crime. The judges still consider that with careful consideration, imprisonment can still be used as an adequate means for dealing with credit card crimes (Tosoni, 2018). Imprisonment was imposed because it was threatened in the criminal

law. Imprisonment was imposed because it can be relied upon in overcoming crime in Indonesia.

In connection with the application of criminal sanctions to carding, the discussion of the problem of carding crime cannot be separated from the responsibility of the perpetrator by using Moeljatno's theory where there is no accountability without error, the error consists of intentional (*dolus*) where intentional or *dolus* is determined in 3 (three forms, namely intentional with the intention of (*dolus directus*), deliberate with certainty (*opzet bijt zekerheids bewotzjin*) and deliberate with the possibility (*dolus eventualis*) (Hartono, 2013).

The application of criminal sanctions system used formulation of criminal responsibility is closely related to the subject of crime. In view of the criminal Code, which can be the subject of a criminal act is a human being as an individual. This is in accordance with Article 59 of the Criminal Code, where legal entities/corporations are not subject to criminal liability. In the official explanation (*Memorie van Toelichting*) Article 59 of the Criminal Code states that a crime can only be realized by humans, and fiction about legal entities does not apply in criminal law. Therefore, the perpetrators of criminal acts who can be accounted for in decency offenses are only to individuals only (Hartono, 2013).

## 2. Policy for Addressing Future Crime Carding Viewed from Political Perspective of Criminal Law

In applying criminal sanctions against perpetrators of criminal acts carding, it should be noted the efforts to overcome them so as to prevent

the occurrence of such crimes, prevention efforts. It can be done in the following ways

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a. Non penal Effort

The prevention efforts of carding criminal offense that use non-penal mean an attempt to preventive law. It is any effort made to minimize the space and the opportunity to do a criminal act carding (Aini, & Hardianto, 2019). These efforts include outreach activities to the public regarding the crime of carding in particular and cybercrime in general so that the public can find out widely, patrols/raids at internet cafes, and coordinates with relevant agencies and the public.

The problem of law enforcement does not only concern actions if a crime has occurred or there is a suspicion that a criminal act has occurred (Rofiq, Disemadi & Jaya, 2019). However, it also includes activities to maintain the possibility of criminal acts (Onrecht in Potentie) which can generally be called crime prevention. This non-penal effort is considered not optimal, given the lack of literacy of the Indonesian people regarding credit cards and crimes related to credit cards (carding) (Pujoyono, 2020). In addition to the lack of literacy of the Indonesian people, current technological developments make it easier for criminals to break into other people's personal data to commit carding crimes. For this reason, this non-penal effort needs to be improved so that the literacy or legal understanding of the community regarding cybercrimes, especially carding, is increasing.

b. Penal Efforts

The efforts to overcome the crime of carding using penal facilities are repressive legal efforts, namely legal policies in tackling crimes by using criminal law or legislation, which focuses on taking action and eradicating crimes that occur.

The carding crime will be processed through the applicable legal mechanism (Pujoyono, 2020). Police officers coordinate with relevant agencies to reveal the crime of carding, but it must be in accordance with the facts or results of investigations and investigations. In connection with the above, in carrying out the duties of investigation and investigation, the police ranks coordinate with other law enforcement officers, for example, the Prosecutor's Office makes demands in accordance with the articles indicted to impose sanctions on perpetrators who are legally proven and convinced that they have committed a criminal act. In connection with the discussion in this study, namely the efforts of law enforcement officers in tackling the crime of carding, it is inseparable from the enforcement of criminal law (Zuraida, 2015). An example of this penal effort has been carried out by the East Java Regional Police who conducted an examination of carding crime cases experienced by several artists in Indonesia (Permana, 2020).

Criminal law enforcement can be achieved through the criminal justice system. Based on the descriptions above, it can analyze the law enforcement efforts against the carding crime above, and then, based on the Volgeist theory developed by Friedrich Carl von Savigny which says that the law is

not made but grows and develops together with the community, it means that society is forcing the state to make laws so that legal goals are realized in order to ensure balance in relations in society.

In connection with the Volgeist theory, related to law enforcement against the crime of carding, the criminal justice system according to the Criminal Procedure Code in force in Indonesia is used. The crime of carding is a crime of fraud in which the process of applying sanctions is used Article 378 of the Criminal Code regarding fraud, because the crime of carding is a crime that contains elements of deception, in addition to applying criminal sanctions, efforts to overcome the crime of carding are also needed which include non-penal countermeasures (preventive efforts) with penal countermeasures (repressive efforts).

The efforts of law enforcement authorities against criminal acts carding is a preventive effort namely its efforts to prevent acts or criminal offenses that occur either through institutional and manner in coordination with the local community. Meanwhile, other efforts are repressive efforts, namely efforts that emphasize the criminal process against the perpetrator after the crime has occurred, thereby causing a deterrent effect to the perpetrator so that he does not commit another crime (Sulaeman, 2017).

#### D. CONCLUSION

The criminal law enforcement process against carding crimes based on positive law is currently regulated in a special law, namely Law Number 11 of 2008 concerning Information and Electronic

Transactions or commonly called the ITE Law, so it is in accordance with the principle of *lex specialis derogate legi generali*, which says that special laws override general laws. Then, this ITE Law can be a reference in ensnaring carding criminals. However, this arrangement cannot overcome carding crime in Indonesia, so it is necessary to formulate a policy that specifically regulates the carding crime.

Policy to overcome carding crimes in the future is reviewed in the perspective of criminal law politics, namely through penal and non-penal efforts, it is necessary to immediately seek to disseminate cyber law in Indonesia which can support the use of credit cards as a means of payment in online transactions in a responsible and accountable manner under strong legal basis.

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