



Legal reconstruction of bank responsibility in the issuance of debit cards on card skimming crimes based on justice values

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Abstract

This research aims to examine the agreement between banks and creditors in issuing electronic-based Debit (ATM) cards, how banks are responsible for customers who have been harmed by card skimming crimes, and how to prevent card skimming crimes in bank transactions. Some of the legal bases for this writing include Law Number 10 of 1998 concerning Banking, Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE), Law Number 8 of 1999 concerning Consumer Protection, Article 1367 of the Civil Code and Bank Regulations Indonesia PBI 11/11/PBI/2009. In this research, the author uses a type of normative legal research, namely a form/type of research that relies on data and information about the law, both primary legal materials, secondary legal materials, and tertiary legal materials.

Research result shows that The ATM card issuance agreement between the bank and the customer creates a legal relationship between the bank and the customer who deposits funds based on a borrowing agreement, which means that the bank positions itself as a borrower of funds from the customer so that the bank has the right to use these funds. The bank must compensate customers whose ATM cards were skimmed by criminals and replace the amount of money the customer lost. Customer protection against the occurrence of card skimming is in the form of preventive legal protection and repressive legal protection, and efforts that can be made by banks to prevent skimming crimes are by replacing debit cards from magnetic strip technology to chip technology.

Keywords: Legal reconstruction, bank, skimming, justice value

Introduction

Skimming is one of the crimes in cybercrime where this crime is carried out through computer system networks, both locally and globally, by utilizing technology to illegally copy the information contained on the magnetic stripe of the automated teller machines (ATM) card to gain control over the victim's account. These cybercrime perpetrators have a highly skilled background in their field so it is difficult to track them down and eradicate them (Toebagus, 2022) ^[8].

The modus operandi in card skimming (data theft) used by these criminals is also quite complicated and cannot be done simply by everyone. Therefore, increasing e-banking security and customer vigilance may be necessary so that e-banking transactions do not lose trust and provide protection for customers. Bearing in mind the importance of customer protection contained in pillar VI of the Indonesian Banking Architecture (API). Efforts to protect customers in Pillar VI of the API are outlined in 4 (four) aspects that are related to each other and together will be able to increase the protection and empowerment of customer rights. Apart from that, regulations regarding the implementation of payment instrument activities using cards have been specifically regulated in PBI Number 11/11/PBI/2009.

To reduce negative publicity regarding bank operations and the impacts they cause, as well as to ensure that the mechanism for resolving customer complaints by banks is implemented effectively and can provide legal protection to the public, Bank Indonesia considers it necessary to establish minimum standards for the mechanism for resolving customer complaints through PBI No. 7/7/PBI/2006 concerning Settlement of Customer

Complaints as amended by PBI NO. 10/10/PBI/2008 concerning Settlement of Customer Complaints.

In general, society is of the view that disputes (conflicts) can only be resolved through the courts, even legal professionals share the same view. To resolve disputes, there are several ways that parties can take, namely through litigation and non-litigation. The litigation process is submitted through the court and in its initial implementation, mediation will be carried out under the provisions stipulated in Perma Number 1 of 2016 concerning Mediation Procedures in Court. Meanwhile, for non-litigation, under Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, alternative dispute resolution institutions are through negotiation, consultation, and mediation. Bank Indonesia believes that the arbitration route is not easy for small customers and micro and small enterprises (UMK) to carry out, considering that the value of the object of the dispute is not commensurate with the costs incurred. Dispute resolution must be carried out simply, cheaply, and quickly (Widodo, 2019) ^[10]. Judging from several alternative dispute resolution methods outside of court, it is preferable to resolve customer disputes with banks through direct customer complaints to the bank. However, if the bank cannot resolve it well and the customer is not satisfied with the dispute resolution by the bank, then settlement through banking mediation is the best option because a solution is sought that benefits both parties and does not harm the disputing party.

Referring to Article 37 B number 1 of Law Number 10 of 1998 concerning Banking which has been amended, it is stated that "every bank is obliged to guarantee public funds

deposited with the bank concerned". The case above shows that there are still weaknesses in the implementation of bank responsibilities towards customers.

Various crimes that occur using technological development facilities, especially theft of bank customer funds, take various forms, one of which is using the ATM card duplication mode, this problem is interesting to be studied further and organized into research with the following main problem:

1. What are the weaknesses of The Bank Responsibility In The Issuance Of Debit Cards On Card Skimming Crimes in Indonesia currently?
2. How Is The Legal Reconstruction Of The Bank Responsibility In The Issuance Of Debit Cards On Card Skimming Crimes Based On The Value Of Justice?

Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010)^[2]:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research Result and Discussion

1. Weaknesses of The Bank Responsibility In The Issuance Of Debit Cards On Card Skimming Crimes In Indonesia Currently

One of the Weaknesses of The Bank's Responsibility In The Issuance Of Debit Cards On Card Skimming Crimes In Indonesia Currently is that Regulations that are too general or unpecific can cause uncertainty for banks and customers.

This can make it difficult to monitor and enforce the law against violations that occur (Widodo, 2018)^[9]. A case study of uncertainty in regulations regarding the issuance of ATM cards is a case that occurred in India in 2018. 168 At that time, the Reserve Bank of India (RBI), for example, issued a new regulation requiring all banks in India to replace customers' old ATM cards with ATM cards that have integrated chips. However, the regulation does not provide clear provisions regarding who is responsible for the costs of replacing the ATM card (Setiawan, 2019)^[5].

As a result, banks in India have difficulty making decisions regarding who should be responsible for the costs of replacing ATM cards. Some banks decide to cover the entire replacement cost, while other banks decide to pass the cost on to the customer. In addition, because the regulations are too general, monitoring and law enforcement regarding violations related to ATM card replacement fees is also difficult. This causes uncertainty and losses for customers who have to pay ATM card replacement fees, even though the bank should be responsible (Widodo, 2019)^[10].

On the other hand, regulations that are too complicated and complex can also be a problem. Banks that lack the resources and technical capabilities may struggle to understand and comply with these regulations. A case study of regulatory complexity in issuing ATM cards is a case that occurred in India in 2018.

The Indian government has implemented new regulations for issuing ATM cards which are very complex and consist of more than 50 clauses. These regulations create confusion and difficulties for small banks that do not have sufficient resources and technical capabilities to comply with these regulations. Some small banks even had to close their ATM card services because they were unable to meet these complicated and complex requirements. As a result, customers of these small banks are impacted because they can no longer use their ATM cards and have to switch to larger banks which may have higher fees and requirements (Natalia, 2020)^[4].

In addition, regulations that are not updated regularly can be less effective and unresponsive to changes in the business and technological environment. This can weaken the effectiveness of regulations in protecting customers from card skimming crimes. case study of the lack of regulatory updates related to card skimming crimes that occurred in Indonesia in 2018 (Sitorus, 2023)^[6].

At that time, Indonesian banking authorities had not yet implemented newer and safer technology standards for ATM cards such as chip and PIN. This technology has been widely used in developed countries to reduce the risk of card skimming.

As a result, card skimming perpetrators can easily install data recording devices on ATMs that use magnetic stripe technology, and steal ATM card information and PINs from customers. This results in significant financial losses for customers and banks. Even though banking authorities then updated regulations and encouraged the use of chip and PIN technology, the spread of card skimming tools is still occurring and shows that regulatory updates still need to be carried out on an ongoing basis.

lastly, regulations that lack strict supervision can allow banks to violate regulations without clear consequences. This can damage customer trust and allow card skimming crimes to occur more easily. A case study related to the lack of supervision in regulations related to ATM card issuance

is the case of credit card data leakage that occurred in 2013 at Target Corporation, a retail store chain in the United States.

In this case, The hackers managed to access the personal and financial information of about 40 million Target customers, including credit card numbers and other identifying information. After an investigation, it turned out that Target had violated established data security regulations and was not supervised enough by regulators, thus allowing the data leak to occur. This case shows the importance of strict supervision of data security regulations and ATM card issuance to prevent card skimming crimes.

Bank responsibility regulations in issuing ATM cards are closely related to the agreement between banks and creditors in issuing ATM cards. Weaknesses in regulations can cause uncertainty for banks and creditors in understanding their responsibilities towards customers (Juita, 2023) ^[3]. In addition, if banks do not take adequate responsibility for card skimming crimes that harm customers, customer protection against card skimming will be compromised. Therefore, there is a need for clear and effective regulations to ensure bank accountability and customer protection against card skimming crimes, including agreements between banks and creditors that can regulate the rights and obligations of each party regarding the issuance of ATM cards, including matters relating to customer security and protection from card skimming crimes.

Bank accountability for card skimming crimes that harm customers can be a reminder for banks to always pay attention to security in issuing ATM cards and ensure fairness in service to customers.

Customer protection against card skimming can provide a sense of security for customers and reduce the risk of card skimming crimes. By providing sufficient protection, customers will feel more appreciated by the bank and will increase customer trust in the bank.

2. Legal Reconstruction of The Bank Responsibility in The Issuance Of Debit Cards On Card Skimming Crimes Based On The Value Of Justice

Regarding several articles in the Indonesian Banking Law related to bank accountability and customer protection, it is necessary to reconstruct the articles for several reasons, including (Dewi, 2021) ^[1]:

- a. **Technological Developments:** Technological developments continue to develop rapidly and create new challenges in the banking industry, including in terms of bank accountability and customer protection. Therefore, several articles in the Banking Law need to be updated and adapted to current conditions.
- b. **Customer Interests:** Reconstruction of articles in the Banking Law needs to be carried out to increase customer protection and strengthen their rights. The Banking Law must ensure that banks are responsible for losses experienced by customers due to the bank's failure to provide adequate services.
- c. **Regulatory Effectiveness and Efficiency:** Reconstruction of articles in the Banking Law is also needed to increase regulatory effectiveness and efficiency. Irrelevant or ineffective articles must be deleted, while new articles must be added to meet new regulatory needs.

- d. **Regulatory Harmonization:** Reconstructing articles in the Banking Law is also important to ensure regulatory harmonization between banks and regulators. This can help strengthen the integrity of the banking industry and encourage the development of a healthy banking sector.
- e. **International Perspective:** Lastly, reconstruction of articles in the Banking Law needs to be carried out to ensure that the Banking Law is in line with international practices and internationally recognized standards. This can help increase investor and customer confidence, as well as open access to global markets.

Based on this, the articles in the Indonesian banking law that need to be revised to increase the protection of bank customers from electronic crimes, such as card skimming, phishing, and other electronic crimes, are as follows:

- a. The article concerning Banks' Obligations to protect customers can be strengthened by adding an obligation to protect customers from electronic crime which includes card skimming, phishing, and hacking.
- b. The article on Customer Obligations to protect data security can be expanded by adding obligations to protect data security in electronic banking transactions and prevent criminal acts such as phishing.
- c. Article regarding reports that banks must submit to the banking authorities. Some of the proposed revisions that have been submitted include;
 1. Clarify the type of information that banks must report to the banking authorities, including information regarding the risks faced by the bank and the steps taken to overcome these risks.
 2. Providing stricter and more effective sanctions for banks that do not comply with the obligation to submit financial reports to the banking authorities.
 3. Add provisions governing the frequency of financial reporting, so that banks must submit financial reports periodically and not only at certain times.
 4. Encourage the adoption of information technology and transparency in financial reporting, so that banks can submit financial reports more easily and quickly to banking authorities.
 5. Strengthen the supervision and inspection mechanisms by banking authorities on financial reports submitted by banks, so that banks can be better monitored and the risk of bad credit can be avoided.
- d. The Article on Reporting Suspicious Transactions can be amended to include reporting suspicious acts of electronic crime, such as card skimming or hacking.
- e. The article concerning Bank Responsibility for the Confidentiality of Customer Information can be strengthened by adding more specific and detailed provisions regarding the protection of customer data from electronic crime.
- f. The article on Administrative Sanctions could be strengthened by adding stricter sanctions for banks that fail to protect customers from electronic crime or violate customer data privacy.
- g. The article on Legal Action can be expanded to include legal action against perpetrators of electronic crimes, such as card skimming or hacking, which harm bank customers.

Changes to Indonesian banking law must be carefully considered by experts and policymakers, depending on

developing trends and evolving electronic security threats. So, with these additional articles, it is hoped that the protection of bank customers from electronic transaction crimes can be further strengthened and provide security and confidence to customers in carrying out electronic transactions.

Conclusion

1. There are four weaknesses in bank responsibility regulations in issuing ATM cards, namely uncertainty, complexity, lack of updates, and lack of supervision. Uncertainty and complexity in regulations can lead to difficulties in supervision and law enforcement, as well as difficulties for banks to understand and comply with regulations. Meanwhile, the lack of updates and supervision of regulations can reduce the effectiveness and responsiveness of regulations in protecting customers from card skimming crimes. Case studies from several countries show that good and responsive regulations must be implemented to protect customers and prevent card skimming crimes.
2. Regulations and laws need to be reconstructed periodically to adapt to changing times, technology, government policies, and increasingly complex societal demands. Revisions to Article 40 and Article 43 of the Republic of Indonesia Banking Law need to be carried out to strengthen Bank Indonesia's authority in supervising and controlling banks, adding provisions for preventive and control measures for banks that have high risks, as well as establishing stricter and clearer sanctions for banks that violate regulatory provisions. legislation. Apart from that, discussions about bank responsibility towards customers for electronic crimes are also an important concern in customer protection. With responsive banking regulations, customers can feel safe and protected from various risks in banking transactions.

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