

CRIMINAL POLICY AGAINST ACCOUNT BREAKING THROUGH AUTOMATED TELLER MACHINES (ATM)

I Nyoman Gede Sugiarta, I Made Minggu Widyantara, Ni Made Puspasutari Ujianti

Universitas Warmadewa, Denpasar, Indonesia

Email: nyomansugiarta14@gmail.com, mademinggu21@gmail.com,

puspa.niwapong@gmail.com

ABSTRACT

Indonesia as a state of law is obliged that the law must always be enforced, respected and obeyed by anyone without any reason for exception. In response to this, positive legal policies in Indonesia are required to be able to respond to the phenomena of crimes committed by utilizing this technology. The problems of this study are 1) What is the policy of criminal sanctions against account break-ins through Automated Teller Machines (ATMs)? 2) What is the judge's consideration in deciding the case of account burglary through Automated Teller Machines (ATMs)? The research method used is a normative legal research method, with a literature study of primary and secondary legal materials. The results of the study can be concluded that: 1) The policy of criminal sanctions against account burglary through Automated Teller Machines (ATM) in the Criminal Code, the ITE Law, the Fund Transfer Act, the Money Laundering Eradication Act. 2) The judge's consideration in deciding the case of Account Burglary through Automated Teller Machines (ATM) is that the defendant TEGUH T KHASAN has been legally proven. Aggravating things The defendant's actions can disturb the community and can cause harm to others. The mitigating factors were that the defendant admitted that he had never been convicted, the defendant was polite in court and admitted frankly his actions, the defendant felt guilty and regretful.

KEYWORDS

Crime, ITE, Automated Teller Machines, Burglary

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INTRODUCTION

Indonesia The presence of the internet and the industrial revolution 4.0 can change people's views and lifestyles. One of them is that the banking sector makes reasonable use of technological developments to facilitate customers in conducting banking transactions. Transactions in banking with electronic products issued by the Bank are ATM cards (Budhijanto, 2019). The presence of ATM in the banking world certainly makes it easier for Bank customers to carry out their transactions. The existence of the Bank stems from the public's sense of trust to perform all types of banking services. The development of banking must pay attention to the security system on the instruments used as a means of banking services. The presence of industry 4.0 in banking is implemented to provide transaction services through technology devices. Therefore, Banks as Financial Services Businesses must know the possible risks that exist in the banking world. In addition, the Bank must also guarantee a security system and provide legal protection to its customers (Sari, 2019). One of the banking services is conducting transactions, for example making transfers using electronic bank products, namely ATM cards as cards for payments either by credit or debit. Based on Article 1 point 3 of Bank Indonesia Regulation Number 14/2/PBI/2012 concerning Amendments to Bank Indonesia Regulation Number 11/11/PBI/2009 concerning Implementation of Card-Based Payment Instrument Activities, it is explained that:

“Card-Based Payment Instruments, hereinafter referred to as APMK, are payment instruments in the form of credit cards, automated teller machine (ATM) cards and/or debit cards.”

The ATM card has a security system using a personal identification number (PIN), and only the customer as the owner of the ATM card knows the security code. With the existence of an ATM card, of course, it makes it easier for customers to complete transactions quickly and can be done anytime and anywhere, no need to come to the teller anymore to make transactions. So, the Bank must ensure that the confidentiality of the security code or PIN code will not be hacked by other parties (Muryatini, 2016). However, the ease of banking transactions today has negative impacts and risks that may occur. Crimes that occur can be transnational or even international in scale because crimes only use internet network access. Crimes that occur due to the development of internet network access technology are known as cybercrime (Kian, 2015)

As a state of law, it is proper that the law must be enforced, respected and obeyed and implemented by the community without any exceptions. The main purpose of law enforcement is to get a sense of security, order, peace and discipline for the life of the nation and state. Law basically has limitations in an effort to carry out its functions, as expected by justice seekers, in acting to fulfill the objectives of the law itself.

Discussing about cyber crime is one part of today's crime that has a wide place in society. Volodymyr Golubev said an attitude that adopts the attitude of not wanting to be in a social environment. This criminal act is a criminal act through computer signals with connections both local and long distance (all over the world) by using techniques and methods based on computer signals that apply magnetic networks that can be observed directly, which includes internet users as targets (Arief, 2006)

The criminal acts in question are information embezzlement, surveillance, hacking, credit card duplication, breaking into networks, copying Automated Teller Machine (ATM) information for ATM card hacking and various others. These cybercriminals have a high potential environment on their part making it difficult to trace and cleanly exterminate them.

Although criminal acts in cyberspace normally refer to criminal activities that use computerized tools for the main tool of the crime, this understanding is also used in ancient criminal activities that use computerized tools as a tool to facilitate crime being committed.

Crime is an act that is regulated in the Criminal Code, the definition of a crime is a translation of strafbaarfeit which means the movements of a person's behavior. Criminal acts have a concrete explanation of real events within the scope of criminal law, so criminal acts have a rational nature and have even been regulated to be able to distinguish them from the understanding that exists in society.

The basis for territoriality deals with the authority over which the law Criminal law is applied to the scope of its application, the territorial basis describes the highest basis of the grounds for the application of criminal law according to where the crime was committed. The territorial basis describes the basic foundation, this understanding means that although the role of Indonesian criminal law for a particular situation and also a certain legal subject, the development of the territorial basis can be applied (Atmasasmita, 1997)

Break-in describes a procedure or activity of breaking into something. To break into means to break in, to disrupt, to break in, and to disrupt with cruelty, or to break in with a compulsion.

Criminal liability basically has a reciprocal meaning for the actions of the criminal maker for the crime he committed. Thus, criminal liability contains an object element and a subject element. That is, according to the fact that the crime maker has committed an offense (criminal crime) where individually the crime maker deserves to be blamed for the offense he has committed so that he can be punished. This study aims to examine and analyze criminal sanctions in cases of account burglary through Automated Teller Machines (ATM) and to find out the considerations of Denpasar District Court judges in the Directory of the Supreme Court of the Republic of Indonesia on cases of account burglary through ATMs in (Study Decision Number: 688/Pid.B). /2012/PN.Dps).

RESEARCH METHOD

This study uses a normative juridical approach, namely research conducted by examining theories, concepts, legal principles and legislation (Ali, 2021; Soekanto, 2007) Data collection techniques were carried out using interviews and questionnaires. In-depth interviews were conducted with Bank employees who provide service activities to customers. The selection of key informants is based on customer service at Menin-ATM machines as a form of service whose aim is to facilitate banking transactions.

The sources of legal materials used by the author will be used, namely those from research and literature. The technique of collecting legal materials used in this study is a documentation technique which is carried out by inventorying and categorizing legal materials in the form of legislation, literature and other legal materials related to Criminal Sanctions Against Criminal Acts of Account Breaking Through Teller Machines. Independent (ATM). Furthermore, the recording method is carried out by quoting, summarizing, and providing reviews with the topic of discussion.

After the primary legal materials and secondary legal materials are completed, then the legal materials are processed and analyzed using qualitative and quantitative processing methods (exploratory sequential design) (Ibrahim, 2006). legal materials systematically,

that is, by using legal arguments based on deductive and inductive legal logic and the presentation is done by means of descriptive analysis, which is a way of analyzing legal materials which is carried out by systematically compiling.

RESULT AND DISCUSSION

Criminal Sanction Policy Against Account Burglary Through Automated Teller Machines (ATM)

Account, which is a tool for storing important banking transaction data in the form of assets, dependents, capital, income and funds. The main target of using accounts is to store data that will form the basis for the formation of reports in banking activities. The value of the number of accounts entered in the data collection of an account is based on how much interest the account holder has.

The term ATM in Indonesia is translated into an abbreviation of Automated Teller Machines (ATM). The form is an electronic device whose job is to replace human work (cashier), by regulating bank users to withdraw money and check savings accounts. Thus, with this tool, payment activities can run effectively without the need for additional human labor (Sugiharto, 2010).

Automated Teller Machines (ATM) are the main tools in attracting users. Customers are basically more interested in one of the banks and or financial companies that have quality and also perfect and profitable facilities. The facilities that will be obtained by users are not only in terms of banking staff and CS facilities but also need to be considered with various bank products in the development of Automated Teller Machines (ATM) facilities.

Automated Teller Machine (ATM) is a device for holding input and output devices. Automated Teller Machine (ATM) data devices basically have a network in the form of a host processor. The processing center is accompanied by an ISP which is a pathway to various types of Automated Teller Machines (ATM) networks and serves as the advantage of a bank for the card holder of an Automated Teller Machine (ATM).

The process of working an Automated Teller Machine (ATM) can be controlled by financial companies or banks in general, and it is also possible to control the telephone network provider that is already independent. If controlled by a bank, generally it can only support the bank's own Automated Teller Machine (ATM), which usually can only be in line with the bank that is available to shop owners or places of business.

Automated Teller Machines (ATM) are connected to a bank's communication network. This Automated Teller Machine (ATM) makes it easier for customers to carry out financial activities, without having to visit a bank. Automated Teller Machines are usually found in public places, such as malls, office buildings, super markets, and gas stations.

Automated Teller Machines have benefits for the entire community, namely: Credit or debit cards that can be used without having to pay in cash. Credit cards can be used to make payments in important situations. There are several types of Credit and Debit Cards that allow them to be accepted by all Automated Teller Machines (ATMs) in the world and record all transactions every month.

It can be said that the benefits of an Automated Teller Machine (ATM) account according to the author are in a payment without using cash and it is very easy to use just by bringing a debit or credit card to the Automated Teller Machine (ATM). If the debit or credit card of the Automated Teller Machine (ATM) is lost, you can immediately report it to the bank concerned and it can be blocked so that the money in the debit or credit card is not lost. As well as account mutations if someone uses a debit or credit card, the owner does not know.

ATM accounts have a legal basis which is contained in Article 3 paragraph (3) of the 1945 Constitution, Article 1 paragraph (1) of the Criminal Code, Article 1 paragraph (1) of Law Number. 10 of 1998, Article 1 paragraph (16) of Law No. 10 of 1998, Article 1 paragraph (17) of Law No. 10 of 1998, Article 1 paragraph (18) of Law No. 10 of 1998, Article 1 paragraph (19) of Law No. 10 of 1998.

Skimming is one of the criminal activities in cyberspace where this criminal activity is carried out with the help of computers, through local and foreign channels, by using information imitation technology contained in the Automated Teller Machine Card section against the law to control the victim's account. These cybercriminals are based on their expertise in their fields, which makes it difficult to trace and eradicate them as perfectly as possible (Budi, 2013)

Banking crimes through the skimming method are still common. as an account holder or an Automated Teller Machine (ATM) card, you have to be careful because skimming actors have sophisticated ways to break into Automated Teller Machines (ATM). Usually the perpetrator uses a computer/laptop, software decoder to a special card encoder. The new magnetic card and card reader.

The legal basis for the crime of skimming is: Article 55 paragraph (1) of the Criminal Code, Article 362 of the Criminal Code, Article 2 paragraph (1) of Law no. 8 of 2010, Article 5 paragraph (1) of Law No. 8 In 2010, Article 30 paragraph (1) of Law No. 11 of 2008, Article 30 paragraph (3) of Law No. 11 of 2008, Article 32 paragraph (2) of Law no. 11 of 2008, Article 32 paragraph (3) of Law No. 11 of 2008, Article 36 of Law No. 11 of 2008, Article 81 of Law No. 3 of 2011, Article 83 paragraph (1) of Law No. 3 of 2011, Article 83 paragraph (2) of Law No. 3 of 2011. In addition, based on Article 1 point 15 of Law no. 19 of 2016, explains that "Access is an activity of interacting with an electronic system that stands alone or in a network". The access code contained in illegal transactions using ATM cards belonging to other people is ATM PIN, as based on Article 1 point 16 of Law no. 19

In 2016, explained that:

“Access Codes are numbers, letters, symbols, other characters or a combination of them, which are the keys to being able to access Computers and/or other Electronic Systems.”

Meanwhile, in this crime included in the electronic system is an ATM machine that is used as a way to reach or enter an electronic system carried out illegally. Accessing an ATM card information belonging to another person without permission from the customer is a crime that focuses on the actions and consequences.

Preventive protection is carried out by always paying attention to the level of security system implemented by the FSB. As for legal remedies that can be given to customers as victims of criminal acts of illegal transactions, as based on Article 10 of Bank Indonesia Regulation Number 16/1/PBI/2014 concerning Consumer Protection of Payment System Services (hereinafter referred to as PBI No. 16/1/PBI/2014) stipulates that "The Operator is obliged to be responsible to the Consumers for losses arising from the errors of the administrators and employees of the Operator".

From the above provisions, it can also be understood that the responsibility of the Financial Services Authority is based on the principle of responsibility, which consists of (Makarim, 2006)

1. Contractual responsibilities;
2. Product responsibility;
3. Professional responsibility;
4. Criminal liability.

Ways to avoid skimming are: by checking the location of the Automated Teller Machine (ATM) whether it is strategic or in a quiet place, changing pins regularly, monitoring balances regularly, and tightening bank authentication lists.

Judges' considerations in deciding the case of account burglary through automated teller machines (ATM)

The development of cases of breaking into customer accounts at several banks from 2018-2019 increased by using cloned ATM cards. In Central Jakarta and Mataram, the perpetrators broke into people's ATM cards. On the basis of this case, the Bank received a report from its customer because when the customer wanted to make a money withdrawal transaction, the ATM machine did not respond with a statement that the balance was insufficient. Meanwhile, the customer believes that the balance in his account is still sufficient. In addition, the police concluded from their observations that there had been an illegal transaction using a cloned ATM card. Therefore, the balance of the customer runs out without his knowledge. The crime of breaking into someone else's ATM card, where later the customer does not know that the balance in his account has been exhausted because there has been a withdrawal using the cloned ATM card. As happened in 2018 and 2019 at Bank BNI, Bank Mandiri, and Bank BCA whose account balances were lost up to tens of millions of rupiah. After making a complaint to the Bank, it turns out that the customer has made a money withdrawal transaction at the ATM machine. Customers who are victims of criminal acts of illegal transactions feel that they do not carry out the withdrawal of the money. Therefore, the legal protection that can be provided to customers consists of two ways, including the following (Marzuki, 2011; Rahardjo, 2020)

This crime of burglary of an account through ATM is included in the type of criminal act of theft because the burglary includes taking the rights of others that should not belong to the burglar of the ATM account. Based on Article 46 of Law no. 19 of 2016, stipulates that:

- (1) Everyone who fulfills the elements as referred to in Article 30 paragraph (1) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 600,000,000.00 (six hundred million rupiah).
- (2) Everyone who fulfills the elements as referred to in Article 30 paragraph (2) shall be sentenced to a maximum imprisonment of 7 (seven) years and/or a maximum fine of Rp. 700,000,000.00 (seven hundred million rupiah).
- (3) Everyone who fulfills the elements as referred to in Article 30 paragraph (3) shall be sentenced to a maximum imprisonment of 8 (eight) years and/or a maximum fine of Rp. 800,000,000.00 (eight hundred million rupiah).

In addition to being regulated under Law no. 19 In 2016, illegal transactions using other people's ATM cards are also regulated under Article 363 paragraph (1) point 4 of Law no. 1 of 1960.

The judge's consideration is a decision determined by the judge to resolve the case in an ongoing trial. The decision is a judge's decision on the case he is handling with the meaning of ending a case before the judge. The judge's decision is the end of the process of examining a case. But in a case the judge's decision can also be annulled by the High Court of the Supreme Court.

The judge's first consideration is a juridical consideration, namely, legal considerations in order to find juridical facts revealed before the trial and the law is stipulated as something that must be included in the decision. In the juridical considerations there are: the Public Prosecutor's Indictment, Defendant's Statement, Witness Statement, Evidence, Articles contained in criminal law. In the second judge's consideration,

the non-judicial considerations are: the background of the accused, the legal consequences of the defendant, the condition of the accused, and the religion of the accused.

Referring to Decision Number: 688/ Pid.B/ 2012/ PN.Dps. The judge described the case that the defendant TEGUH T KHASAN was proven legally and convincingly guilty of committing an offense that violated the law such as shopping, renting, replacing, justifying as a pledge, justifying as a gift or waiting to pocket profits, peddling, storing, exchanging, pawning, transporting, keep or secure an item which he knows or reasonably should suspect that the object has been obtained due to a criminal act and has received or occupied the placement, transfer, payment, grant, donation, safekeeping, exchange or use of assets which are known or reasonably suspected to be the proceeds of the crime. as referred to in Article 2 paragraph (1) with the aim of hiding or disguising the origin of assets. As regulated and subject to criminal penalties in Article 480 to 1 of the Criminal Code and Article 5 paragraph (1) in conjunction with Article 2 paragraph (1) of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering in conjunction with Article 55 paragraph (1) to 1 The Criminal Code as stated in the indictment and the defendant can be held criminally responsible for his actions. Also based on the consideration of the Panel of Judges legally proven to have violated the provisions of Article 46 of Law no. 19 of 2016, regulates that those who meet the elements as referred to in Article 30 paragraph (1) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 600,000,000.00 (six hundred million rupiah). If you are unable to pay the fine with a substitute penalty for 6 (six) months.

CONCLUSION

The conclusion of the author seen from the discussion above is that the policy of criminal sanctions against burglary accounts through ATMs in the Criminal Code for theft is contained in Article 362-365, in Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE) the theft is in Article 30 paragraph (1), Article 30 paragraph (3), Article 32 paragraph (2), Article 32 paragraph (3), Article 36. Law No. 3 of 2011 concerning Transfer of Funds theft is contained in article 81, article 83 paragraph (1), article 83 paragraph (2), article 86 and Law no. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering is contained in Article 2 paragraph (1) and Article 5 paragraph (1), Article 46 of Law No.19 of 2016.

Judge's consideration in Decision Number: 688/ Pid.B/ 2012/ PN. Dps. In deciding the case of Account Burglary Through ATM that the defendant TEGUH T KHASAN has been legally proven Aggravating things The defendant's actions can disturb the public and can cause harm to others. Mitigating factors, the defendant admitted that he had never been convicted; The defendant was polite in court and admitted frankly his actions, the defendant felt guilty and regretful.

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