

# Law Enforcement Against Skimming Criminal Actors of Bank Sumut Medan

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## ABSTRACT

This research was conducted by researchers starting from the skimming case that occurred in banking circles in Indonesia, one of which was at Bank Sumut Medan. This study aims to explain how the legal protection for skimming victims at Bank Sumut Medan and the threat of punishment for perpetrators of skimming crimes at Bank Sumut Medan. This type of research is normative juridical. This research is an analytical descriptive study that describes the applicable regulations related to legal theories in practice. Data collection is done by means of literature study. The results of this study found that the crime of skimming can be qualified in Article 362 and Article 263 of the criminal law as theft and forgery of letters. However, with the Law on electronic information and transactions and considering the principle of *lex specialis derogate legi generali*, perpetrators of skimming crimes can be charged with article 30 in conjunction with article 46 and article 32 in conjunction with article 48 of the law. regarding information and electronic transactions in conjunction with article 55 paragraph (1) of the Criminal Code.

**Keywords:** *Law enforcement; Criminal Act; Customer Skimming; Bank Sumut Medan.*

## INTRODUCTION

The development of times and technology in this world, no doubt, has had a very significant impact on the development of all countries, including Indonesia. The developments that occur cover all areas of life such as technology. (Litvinenko, 2020)

The more technology develops in a country, the more economic activities will be carried out, of course, this will be directly proportional to the faster the velocity of money that occurs in it. The more money circulation that occurs, it will further encourage the community's economic growth which will increase over time. To be able to keep the circulation of money running as it should, we need a financial institution that is able to play an active role in maintaining economic stability, namely the financial institution is a bank, almost all sectors related to various financial activities always need bank services. (Rajdeep Sengupta, 2007)

Banks are financial institutions whose main activities are collecting funds from the public and channeling these funds back to the public as well as providing other banking services. (Priyadarsini, J.Arcota, Karan Kumar, Tapasyapreeti Mukhopadhyay, 2020) People who use the services offered by the Bank are Bank customers. Bank business in principle is always related to the activities of collecting and distributing funds to the public. According to Law Number 10 of 1998 concerning Banking, it states that bank services include collecting funds from the public in the form of deposits in the form of demand deposits, time deposits, certificates of deposit, savings, and/or other equivalent forms, providing credit, issuing letters of acknowledgment. (Msweli & Mawela, 2020) debt, buying, selling or guaranteeing at its

own risk or for the benefit of and at the behest of its customers. According to Shelagh Heffernan, that banks are one of the highest regulatory stakeholders because bank failures will result in high social costs in the form of losing the bank's role as an intermediary and transmission institution in the payment system. (Peterson & Ozili, 2021)

As a financial institution, a bank where people save their funds is based on the belief that the money can be recovered on time and accompanied by interest. What is meant here is that a bank is highly dependent on the public's trust.(Julia & Kassim, 2020) The higher the public's trust, the higher the public's awareness to save their money at the bank and use other services from the bank. (Josh Lerner, 2010) Therefore, it is necessary to have legal protection for customers in the banking world as part of law enforcement. Shidarta stated that one of the characteristics as well as the purpose of law is to provide protection (protection) to the community. (Tatiana Tropina, 2014)

Currently, most banks have issued plastic card products as an effort to provide customer satisfaction. ATM cards (Automatic Teller Machines), usually given to every customer who wants to have a card for convenience in conducting financial transactions. Some banks also provide debit card facilities on ATM cards that can be used for goods purchase transactions. Basically, plastic cards aim to reduce the use of cash in carrying out various financial transactions, this is done for reasons of convenience and security. (Srivastava, 2020) Customers as consumers are required to receive legal protection for the use of service products offered by banks.

Legal protection is an effort to maintain and maintain public trust, especially customers. (van Dijk et al., 2019) The loss of customer funds is the result of a lack of bank protection for its customers. Losses can occur both to the perpetrator of the transaction and to other people who have never made a transaction, for example in

this case the theft of bank customer funds through the skimmer mode (copying Automated Teller Machines/ATM cards).(Rachavelias, 2019)

Theft of bank customer funds through the mode of duplicating ATM cards is one of the technological crimes in the banking sector. This is the case with the North Sumatra Bank skimming case which occurred in June 2022. Two foreigners from Russia and Saudi Arabia are suspected of having skimmed customers of Bank Sumut. The two of them carried out the action at the North Sumatra Bank ATM machine next to the Diamond minimarket, Jalan Karya Wisata, Medan Johor District, Medan City. From the results of the interim investigation, the two are suspected of carrying out actions from June 7 to July 4. During that time they broke into 239 Bank Sumut accounts and withdrew customer money of up to IDR 5.5 billion. In carrying out their crimes, they install skimmers to steal data and copy magnetic stripe data from ATM cards. Their actions were only detected starting July 3 after several customers filed complaints at Bank Sumut. Therefore, the author is interested in conducting law enforcement research on skimming crimes at Bank Sumut.

## **MATERIALS & METHODS**

The research method used is normative juridical, (Dona Budi Kharisma, 2022) namely an approach that is carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations that apply in Indonesia, such as laws and regulations related to with Civil Law, Criminal Law, Banking Law and other regulations relating to the crime of duplicating ATM cards. The data needed in this study is primary data and is supported by secondary data and tertiary data. The primary data used is the laws related to skimming crimes. Secondary data comes from books or other publications related to skimming crimes that occurred, and other supporting materials related to this research. Tertiary data in the form of encyclopedias

and websites related to this research. The data collection technique used was a literature study. The data analysis method used in this study is descriptive-qualitative in nature which aims to describe legal protection for customers who are victims of skimming crimes and criminal liability for skimming offenders at Bank Sumut Medan.

## RESULT

Bank Sumut Medan knows there is a skimming case after a complaint or report from a customer. For the skimming case, Bank Sumut Medan conducted an investigation and investigation of the transaction by looking at the instructions and evidence available. Based on the results of the CCTV investigation and examination development, it is estimated that on June 7 at 04.16 WIB it is suspected that the perpetrators numbering 2 people installed skimer devices to commit data theft by copying or duplicating magnetic stripe data on ATM or credit cards at the diamond supermarket ATM location on Jl. Karya Wisata No. 26, Pangkalan Masyhur, Medan Johor, Medan City. The police noted that there were 239 customers who were victims of this skimming action. In the period from 7 June to 4 July 2022, the perpetrators allegedly took IDR 5.5 billion from 239 customers. Previously, Bank Sumut officials admitted that a number of their customers were victims of skimming. As a result of this crime, Rp 2.7 billion worth of customer money disappeared from the account. most likely the perpetrators of skimming are not from Indonesia. Because, from the surveillance camera footage they saw, the perpetrators had Russian and Middle Eastern faces. In that action, the perpetrator managed to steal Rp. 2.7 billion from 83 customers of Bank Sumut. The total money that the perpetrators wanted to break into was actually Rp. 4.5 billion, but the rest could not be withdrawn because the Bank of North Sumatra immediately blocked transactions with outside banks. because this is not the fault of the customer but rather the negligence of the bank to maintain the

security of the ATM machine. Article 2 of the Banking Law stipulates that Indonesian Banking operates on the basis of economic democracy by using the precautionary principle. (Laura Drivdal, 2021) To emphasize the meaning of this principle of economic democracy, in the general explanation and explanation of Article 2 it states that: "What is meant by economic democracy is economic democracy based on Pancasila and the 1945 Constitution. This economic democracy is summed up in Article 33 of the 1945 Constitution, namely the economy is structured as a business together based on the principle of kinship". (Gunderson, 2019)

According to Rochmat Soemitro, development in the economic field based on economic democracy determines that society must play an active role in development activities, provide direction and guidance for economic growth and create a healthy climate for the development of the business world. (Changhwan Shin, 2016) In banking law, several banking principles are known, including the following: (Ishak, Muhammad Shahrul Ifwat; Asni, 2020)

1. The principle of trust (Fiduciary Relations Principle) The principle of trust is a principle that underlies the relationship between banks and bank customers. Banks work from public funds that are stored based on trust, so that every bank needs to maintain the health of its bank while maintaining and maintaining public trust. The principle of trust is regulated in Article 29 of the Banking Law.
2. Prudential Principle The precautionary principle is a principle which emphasizes that in carrying out business activities both in raising funds, especially in distributing funds to the public, they must be very careful. The purpose of implementing this precautionary principle is so that the bank is always in good health to run its business properly and comply with the provisions and legal norms that apply in

the banking world. The precautionary principle is stated in Article 2 and Article 29 paragraph (2) of the Banking Law.

3. The principle of bank secrecy is regulated in Article 40 to Article 47 A of Law Number 10 of 1998 concerning Banking. According to Article 40, banks are required to keep information about depositors and their deposits confidential. But in this provision the obligation to keep confidential is not without exception. The obligation to secrecy is exempted in cases of tax purposes, settlement of bank debts that have been submitted to the Receivables and Auction Agency/Committee for State Receivables Affairs (UPLN/PUPN), for the benefit of criminal court cases, in civil cases between banks and customers. , and in order to exchange information between banks.
4. Know Your Customer Principle. The principle of knowing your customer is a principle applied by banks to know and know the identity of customers, monitor customer transaction activities, including reporting any suspicious transactions. The know your customer principle is regulated in Bank Indonesia Regulation No.3/10/PBI/2001 concerning the Application of Know Your Customer Principles. The goal to be achieved in applying the know your customer principle is to increase the role of financial institutions with various policies in supporting the practices of financial institutions, avoiding various possibilities for financial institutions to be used as venues for crimes and illegal activities by customers, and protecting the good name and reputation of financial institutions.
5. The Skimming Crime Case described above is the bank's negligence in applying the prudential principle and the secrecy principle. (E. Rutger Leukfeldt, Edward R. Kleemans, Edwin W. Kruisbergen, 2019) Regarding the

principle of prudence (Prudential Principle) regulated in Article 2 of the Banking Law stipulates that: "Indonesian banking in conducting its business is based on economic democracy by using the precautionary principle." Article 29 paragraph (2) of the Banking Law stipulates that: Banks are required to maintain the soundness level of banks in accordance with the provisions of capital adequacy, asset quality, management quality, liquidity, earnings, solvency, and other aspects related to bank business, and are required to carry out business activities according to the precautionary principle." This clearly shows that banks do not apply the principle of prudence to the fullest as stipulated in the Banking Law. Regarding the principle of secrecy (Secrecy Principle) regulated in Article 40 paragraph (1) of the Banking Law stipulates that: Banks are required to keep confidential information regarding depositors and their deposits, except in matters referred to in Article 41, Article 41A, Article 42, Article 43, Article 44 , and Article 44A". (Al Sabri Halawi, 2019) With the occurrence of skimming crimes, criminals can just copy all the data and information on the ATM card into the skimmer machine. Thus, all customer data and information will indirectly be known by the perpetrators of the skimming crime.

Legal responsibility for perpetrators of skimming crimes at Bank Sumut Medan. The crime of skimming can be included in an offense in the Criminal Code, the elements of which are formulated in Article 362 of the Criminal Code. (Trong Van Nguyen, 2021) The elements in the article contain objective and subjective elements. Objective elements consist of: a. The act of taking (wegnemen); b. The object is an object; c. An element of circumstance that accompanies or is attached to an object, that is, the object is partly or wholly owned by another person. In legal practice, criminal

acts or offenses committed by skimming offenders can be applied to Article 362 of the Criminal Code. The article contains objective and subjective elements. (E. Rutger Leukfeldt, Edward R. Kleemans, Edwin W. Kruisbergen, 2019) The objective element is the act of taking which is considered to have the will to master it, so that the theft is said to be complete when the item has moved from its place of origin. When applied to the crime of skimming, it can be interpreted as an act of accessing information or data or electronic documents on a customer's debit/credit card.

An act of access comes from the word access which is based on the Computer Dictionary "access" which is related to the process of obtaining data from or placing data in a storage area. After accessing the data then transferred to other parties via e-mail, sms, flashdisk. With this transfer, the data that should only be owned by the customer is also owned by the actor who has accessed the electronic data without the permission of the original owner. While the subjective element is the element with the intention of owning an item against the right, if in the ITE Law it is usually referred to as controlling or possessing and against the law. In the event that the criminal act of skimming is an object that is intangible in the form of information or data, namely letters, numbers or codes, it is seen as an intangible object, so that the criminal act of skimming is carried out with the intention of controlling or possessing information or data or electronic documents in the form of letters, numbers, or password unlawfully. (Gupta & Kumar, 2020)

Skimming perpetrators can also be charged with Article 263 of the Criminal Code which contains objective and subjective elements. The objective element is the act of forging a letter which is considered to have a will to falsify it, it is said to have forged a letter if an existing letter is deleted, changed, or replaced one of its contents so that it is different from the original letter. (Asmir Butkovic\*, Sasa Mrdovicb , Suleyman Uludagc, 2018) If applied to the

crime of skimming, it can be interpreted that the act of entering electronic data or information into the perpetrator's blank/bulky card, then using it like the original ATM card and causing harm to the customer is included in the element of forging letters in the form of an ATM card. The subjective element in Article 263 paragraph (1) of the Criminal Code is an element with the intention that the skimming actor has willed the act to be done to falsify a letter in the form of an ATM card because it is included in a letter that can give rise to rights, an agreement, and can cause losses as a result of its use by the perpetrator. Whereas in Article 263 paragraph (2) the element of intentionally using a fake letter is addressed to the person using it must really know that the letter is fake. So it is necessary to prove the use of the ATM card as if the letter was genuine and not forged, and for his actions it caused a loss.

The ITE Law states that the basic word of access is access, the authentic interpretation of which in Article 1 point 15 of the ITE Law is the activity of interacting with an independent electronic system or network. (Depaoli et al., 2020) Whereas the prohibited nature of the act of accessing a computer and/or electronic system to obtain electronic information is because the electronic system belongs to someone else and there is no permission from the person concerned. The perpetrator's goal of access is to try to obtain electronic data on the customer's debit/credit card which will later be used as information and used as referred to in Article 32 paragraph (1) and paragraph (2). The element of every person in Articles 30 and 32 refers to the perpetrators who are responsible. The definition of an offender according to Zainal Abidin is a person who fulfills the elements of a delict, whether stated expressly verbally or received secretly (*stilzwiigende element*) or who is obliged to end a situation prohibited by criminal law, whether stated expressly in criminal laws or those that are accepted

tacitly. (Helene Merkt, Sophie Haesen, Leila Meyer, Reto W. Kressig, 2020)

As for the elements that must be fulfilled in criminal liability, namely, the ability to discriminate between good and bad actions that are in accordance with the law and those that are against the law and the ability to determine one's will according to the conviction about the good and bad of the act. The element that is deliberately attached to an element of lawlessness that can qualify as an error due to the act of accessing information or documents on a debit/credit card is a banking secret to protect the card owner (card holder) as referred to in Government Regulation Number 82 of 2012 concerning Implementation of the System and Electronic Transactions as well as 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. The element of unlawful nature is an absolute element in a criminal act. The existence of these elements can be known from certain behaviors, certain circumstances, or certain prohibited or required consequences. (Rabiu Abdullahi, Noorhayati Mansor, 2018)

## **DISCUSSION**

The concept of intentional and unlawful in the crime of skimming is an important matter in legal practice regarding the application of Article 30 paragraph (2) and Article 32 paragraph (1), paragraph (2) of the Electronic Information and Transaction Law. Deliberately according to the Indonesian Criminal Code means a conscious will aimed at committing a particular crime. Actions of access carried out by perpetrators with the aim of obtaining electronic data or documents and moving or transferring Electronic Information and/or Electronic Documents to their own Electronic Systems and or other people by sending using transmission to unauthorized persons, then moving or transferring them to a blank card / other

bulging and used to carry out electronic transactions, with the utilization carried out by plegen, and or doen plegen or medeplegen causing losses for the card owner / customer and the Bank. The perpetrators of the crime of skimming in the formulation of Article 30 paragraph (1), paragraph (2), and paragraph (3) due to the act of accessing are subject to criminal sanctions as stipulated in Article 46 paragraph (1), paragraph (2), and paragraph (3) UU ITE.

Therefore, if the objective and subjective elements in Article 30 or 32 of the ITE Law can be proven that the perpetrator made a mistake or caused a loss, he will be subject to criminal sanctions as stipulated in Article 46 if he is proven to have violated Article 30 or Article 48 if he violated Article 32 and the imposition This criminal sanction constitutes criminal responsibility for the perpetrators of the crime of skimming. The ITE Law does not clearly stipulate who can be said to be a perpetrator, so the understanding is that a person is considered a perpetrator so that he can be punished according to the provisions in Article 55 paragraph (1) 1e of the Criminal Code, namely people who commit criminal acts include people who commit, who order to do, or participate in doing the act. Thus, the perpetrators of skimming crimes at Bank Sumut Medan have fulfilled the elements of punishment.

## **CONCLUSION**

Legal protection for victims of skimming at Bank Sumut Medan has been protected by Article 2 of the banking law based on the principles of trust, prudence, confidentiality and the principle of knowing your customer. So, all forms of losses will be compensated by Bank Sumut Medan and legal responsibility for the perpetrators of the criminal act of skimming at Bank Sumut Medan has been regulated in Articles 362 and Article 263 of the Criminal Code as theft and forgery of letters, and article 46 of the Law ITE.

### Declaration by Authors

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