



Bank's Responsibility for Loss of Customers Victims of Crime Skimming and Prevention Measures

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Abstract

This study was conducted with the aim of analyzing the responsibility carried out by the bank for the losses experienced by customers who are victims of justice-based skimming crimes and to find out the construction or work system of skimming actors which can harm many parties, both from the bank and the customer. This research is an empirical or non-doctrinal research. The approach used in this research is to use an empirical juridical approach and a conceptual approach by using primary and secondary legal sources. The technique of collecting legal materials used is by studying documents on skimming cases that occurred in Indonesia and interviews with Bank BNI KC Pandanaran Semarang. Then analyzed by qualitative descriptive analysis. The results of the study show the bank will immediately provide compensation for the lost customer's money, and after that the bank will cooperate with the police to track down the skimming perpetrator. However, there are some exceptions for the bank to handle the skimming case, namely the bank will help the customer if the customer really maintains the confidentiality of his data, in the sense that when making transactions at the ATM machine, the customer has followed the advice from the bank to close his hand when pressing the PIN button. And ensure the distance of other ATM users behind it. However, if the customer's funds are lost due to negligence, then the bank will not provide compensation because the negligence lies with the customer.

Keywords: *Skimming, Customers; Banking; Responsibility; Loss*

Introduction

Bank is a business entity that collects funds from the public in the form of savings and distribute them to the public in the form of credit and or other forms in order to improve the standard of living of many people (Dendawijaya, 2005). A bank has an important role for the economy a nation because A bank is an important part of the financial market in addition to the capital market and insurance (Nia, 2012:11603- 11614). According to Bank Indonesia, banks in Indonesia have a market share of 80 percent of the entire existing system. One of the indicators used as an assessment in banking in the eyes of the public and investors is to look at information about banking performance. Banking performance is not only about the amount of profit generated but also using the efficiency and effectiveness of the bank's resources. Therefore, more in-depth and detailed research is needed in banking performance research.

In a bank there are various legal rules, one of which is the rules regarding the legal protection that exists in a bank and the rules regarding consumer protection provided by the bank to consumers or customers. Legal protection itself is a protection given to legal subjects in the form of legal instruments both preventive and repressive, both written and unwritten. In other words, it can be said that legal protection is a description of the function of law, namely where the law can provide justice, certainty, order, peace, and tranquility. (Rahayu, 2009)

Talking about legal protection, there are also things that must be considered by a bank, is it a state bank or a private bank, one of which is the consumer protection provided by banks to their customers or consumers. Because there are so many customers or consumers who are not fully aware of their rights so that this is widely used by the bank to misbehave or cheat in deceiving customers or consumers. Law Number 8 of 1999 concerning Consumer Protection provides a fairly broad understanding of consumer protection. Consumer protection is defined as all efforts to ensure legal certainty to provide protection to consumers. But in reality what is happening now is that the legal protection for the consumer in the agreement is very minimal, it can even be said that it is often neglected.

There are several provisions regulated in Law Number 10 of 1998 on amendments to Law Number 7 of 1992 concerning Banking that can be used to provide legal protection to users of banking services or often referred to as customers, including the following:

1. Provision of Information Regarding the Possible Risk of Loss

Article 29 Paragraph (4) of Law No. 10 of 1998 states that, "for" interest customer, the bank must provide information regarding the possible risk of loss in connection with the transaction customer which is done through banks ". This is intended so that access to obtain information regarding business activities and bank conditions becomes more open while at the same time guaranteeing transparency in the banking world.

2. Bank Secret

Article 1 number 28 of Law No. 10 of 1998 states that, "secret" bank is all something related to information regarding depositors and their deposits." Then in Article 40 Paragraphs (1) and (2) of Law No.10 of 1998, it is also stated that banks are required to keep information about their depositors and their deposits confidential, except in the case as referred to in Article 41, Article 41A, Article 42, Article 43, Article 44, and Article 44A. There are exceptions for the disclosure of banking secrets in the aforementioned article, namely for tax purposes, settlement of bank receivables submitted to the State Receivables and Auctions Agency or the State Receivables Affairs Committee (BUPLN/PUPN), judicial interests in criminal cases, civil cases. Between a bank and its customer, the exchange of information between banks at the request, approval, or authorization of the depositing customer which is made in writing, and in the event that the depositing customer has died. According to Muhammad Djumhana, with the uarantee of confidentiality of all public data in relation to the bank, the public trusts the bank. Henceforth, they entrust their money to the bank or use the services of a bank. Public trust is born when there is a guarantee from the bank that the bank's knowledge of deposits and the customer's financial condition will not be misused (Djumhana, 2012:157).

3. Guarantee for Customer Deposits Through a Deposit Insurance Corporation

Deposit insurance institutions are legal entities that carry out guarantee activities for customer deposits through insurance schemes, buffer funds, or other schemes (Law No. 10 1998). Thus, Law No. 10 of 1998 mandates the establishment of a Deposit Insurance Corporation and requires every bank guarantee public funds deposited in the bank concerned. The legal basis of this institution is Law No. 24 of 2004 concerning the Deposit Insurance Corporation, as amended by Government Regulation in Lieu of Law No. 3 of 2008 concerning Amendments to Law No. 24 of 2004 concerning the Deposit Insurance Corporation which has been stipulated as a law. Law through Law No. 7 of 2009.

The development of technology and information in Indonesia is currently increasingly advanced and experiencing rapid development, especially after the existence of technology that can connect computers to the internet. This is also used by criminals to use computers as a medium to facilitate their crime mode and this type of crime is often referred to as cyber crime. Cyber crime is a crime committed by utilizing computer technology as the main crime medium. Cyber crime is defined as an unlawful act that utilizes computer technology based on the sophistication of the development of internet technology.

Cyber crimes can also occur in the banking world, especially in theft of customer data. Bank facilities in the form of ATM are technological facilities that can serve customer needs automatically at any time 24 hours and 7 days a week including holidays (Kasmir, 2008:182). But behind the convenience, security, and convenience of an ATM machine technology, it turns out that there are still weaknesses. The fact that often occurs in the field is that the customer's funds suddenly disappear through the ATM machine without knowing who made the transaction because the customer who owns the card feels that he has not made a transaction at all. The customer as a consumer is obliged and has the right to obtain legal protection for the use of products and services offered by the Bank. Legal protection is an effort to maintain and maintain the trust of the wider community, especially customers (Hermansyah, 2013:146). Losses can occur both to customers who make transactions and those who have never made transactions. In this case, the theft of customer funds is carried out through skimming mode or ATM card duplication. Theft of customer funds through this mode is one of the technological crimes in the banking sector.

Skimming crime mode is a method of breaking into ATM carried out by criminals by installing a skimmer at the entrance and exit of the ATM card. With it installed skimmer on the ATM machine, then every customer who comes to make transactions with insert an ATM card, then before the ATM machine reads the customer's card, the skimmer installed at the mouth of the card will read the data on the customer's ATM card first. The skimmer will also record the customer's data which will then be copied to another magnetic card and then the thief will take the skimmer back and start duplicating the customer's ATM cards whose data has been recorded by the skimmer machine.

Research Methods

The research method is an important instrument in determining the success of a legal research because the research method used will be used to find answers to the problems that will be discussed in legal research. Research can be divided into two, namely doctrinal and non-doctrinal research. Legal writing is a "know-how" activity in law, not just "know-about". The research method that researchers use in legal writing this is the type of research that the author uses is this is empirical legal research or has similarities with non doctrinal research. Study Empirical law is a legal research method that functions to see the law in a real sense and examines how the law works in the community. Because this legal research examines people in living relationships in society, empirical legal research can also be said to be sociological, legal research because this research is taken from the facts that exist in a society. The approach used in the empirical juridical writing and the conceptual approach. The empirical juridical approach is a legal research regarding the enforcement or implementation normative legal provisions in action on certain legal events that occur in society (Abdulkadir, 2004:134).

Discussion

1. Skimming Crime Mode Which Causes Losses to Bank Customers

The crime of skimming is an act of stealing ATM card data by illegally copying the information contained in the magnetic stripe. The magnetic stripe is a wide black line located on the back of an ATM

card that has a function like a cassette tape that can store data on the card number, card validity period and the name of the customer who owns the card. Card skimming is done by placing a card reader or card skimmer in the card slot ATM (*www.ojk.go.id*, 2019).

In terms of banking law in Indonesia, the crime of skimming is a crime that has to do with banking activities. Skimming can also be done by recruiting people by providing small surveillance equipment or often called skimmers. The skimmer itself is usually installed on an ATM machine and the skimmer is installed as if it were like part of an ATM machine with the aim that customers are not suspicious when entering their ATM card into the ATM machine (Sugiharto, 2010, 140-141).

In skimming, the burglary process also involves the process of obtaining customer pin numbers so that the perpetrators skimming can access ATM machines using customer data. To get a customer pin, it can be done in various ways, the simplest is by peering over the customer's shoulder when the customer enters the pin, besides that it can also be done by installing a camera to record the customer's finger movements when entering the pin, and the most sophisticated is by replacing the keypad on the ATM by the perpetrator so that the customer's pin will be recorded automatically when the customer presses the keypad. In making a fake electronic card, there are several ways, including:

a. Altered Card

Is a card making, that is done by using an original electronic card whose data has been changed. This method is used by heating the relief on the electronic card and then filling it with the customer's personal data (Lexy, 2006:30-31).

b. Totally Counterfeit

Totally Counterfeit is the manufacture of completely fake electronic cards. In making this card, the perpetrator prints a card that is similar to the original electronic card by including a picture, logo, and number so that it looks like a real electronic card. In making this card involves the process of embossing and encoding (Lexy, 2006:30-31).

c. White Plastic Card

Is a technique of making fake electronic cards using plain plastic cards and by involving the encoding process because what is needed in making fake cards is only the data without changing the physical on the card.

According to Suheimi, skimming is the result of misuse by a third party. What is meant by third parties are hackers and phreaker a person whose job is to access a computer system or internet illegally. There are several ways a hacker can steal ATM holder customer data, namely as follows (Suheimi, 1995:146):

1) Through bank companies and credit card companies

2) Transhing, which is a way in which hackers disassemble or check the garbage of companies or shops that are thought to have received it through an ATM card.

Bank burglary itself is also divided into two types, namely:

a) Error Omission

Error Omission is a bank burglary by violating a passive system or procedure, here referring to accounting procedures and principles, namely on the functions of clerical operations, transaction recording, and journalizing (Humris, 2015:74). This violation has a clear form of regulation as well as clear sanctions, generally administrative sanctions.

b) Error Commission

Error Commission is a bank burglary that is actively carried out by committing a wrong act, but because it is not written in the system and procedures, it is carried out. This violation is closely related to the integrity of the people at the bank itself. This violation will be subject to sanctions that are normative but are usually regulated in the "Code of conduct" or code of conduct (Pohan, 1971:53).

2. Bank's Legal Responsibility for Customer Losses Victims of Skimming Crime Justice Based.

According to Abdul Kadir Muhammad's opinion, the theory of responsibility in violating the law is divided into several theories, namely: (Muhammad, 2010:503):

- a. Liability due to unlawful acts committed intentionally, the defendant must have acted in such a way as to harm the plaintiff or knew that what the defendant was doing would result in a loss.
- b. Liability due to loss of unlawful acts committed due to negligence is based on the concept of errors relating to morals and laws that have been mixed up.
- c. Absolute responsibility for violating the law without questioning the error is based on his actions either intentionally or unintentionally, meaning that even though it is not his fault he is still responsible for the losses that arise as a result of his actions.

Meanwhile, according to the opinion of a banking observer, Fadhil Hasan the actions taken by banks in providing compensation to customers who become victims of ATM burglary are indeed good because they can free victims from the risk of losing funds. However, according to him, this action is considered insufficient to relieve public anxiety regarding the security of their funds in the national banking system. As long as the authorities are not able to uncover cases of burglary that have occurred, and on the other hand, banking managers cannot convince the public regarding the security system for customer funds, public unrest will become more and more widespread. (Hasan, 2010:40).

Regarding the responsibilities taken by the bank, researchers have conducted online interviews with one of the BNI Bank parties in the city of Semarang regarding the responsibilities carried out by the bank if its customers experience losses due to cases of loss of funds in ATM machines. According to Ezra Sundari, the skimming-crime case is a very dangerous crime in the financial sector because it can cause fatal losses for both the customer and the bank. The loss to the customer is that the customer loses much money and the loss to the bank is that with the skimming-crime case, public trust in the bank is reduced because it is considered negligent in maintaining the security of customer funds. According to him, there were some customers who responded immediately by reporting to the bank and then to the police station. However, there are also customers who are not aware that their account has been skimmed, for example, the elderly who do not have Mobile Banking and rarely check their ATM regularly. He said the actions taken by the bank when its customers were exposed to skimming cases with a large enough nominal, then the parties the bank will immediately block the customer's old ATM and replace it with a new one, change the customer's ATM card in the form of a chip ATM card, after that the bank will check the CCTV installed on the ATM machine and check the customer's account through the system owned by the third party. bank, and if the customer is proven to be a victim of skimming crime, the bank will immediately report to the police and investigate the perpetrators of crimes caught on hidden CCTV embedded in the ATM machine. After that, the bank will replace the customer's funds according to the decision in the leadership meeting with the head office. However, if the skimming case occurs because of the customer's negligence in maintaining the confidentiality of the PIN, for example when the customer makes a transaction he forgets to cover the ATM keyboard which he presses with his hand so that the skimming player's small camera can see the customer's PIN number or the person queuing behind the customer can see the number pressed by the customer, and this is proven in the CCTV recording, then the

bank will not provide compensation because the negligence lies with the customer (interview with Bank BNI KC Pandanaran Semarang, 2021).

Regarding the efforts or actions taken by the bank according to Ezra Sundari as the customer service Bank BNI KC Pandanaran Semarang, he said that the bank would immediately block the customer's old ATM and replace it with a new one, change the customer's ATM card in the form of a chip ATM card, after that the bank will check the CCTV installed on the ATM machine and check the customer's account through the system owned by the bank, and if the customer is proven to be a victim of skimming crime, the bank will immediately report to the police and investigate the perpetrators of crimes caught on hidden CCTV embedded in the ATM machine. After that, the bank will replace the customer's funds according to the decision in the leadership meeting with the head office.

Conclusion

Skimming is a crime of stealing customer funds by stealing personal data belonging to customers in various ways, including by installing a small camera at the ATM. The crime of skimming itself has a construction, namely that the perpetrators of the crime to share their duties with other actors who have their respective roles and duties. The perpetrators consisted of the camera installer on the ATM machine, the data processor, and the fake card maker. After the perpetrator has succeeded in transferring the customer's personal data to the fake card, the perpetrator will immediately take the customer's funds using the card the fake card. The fake card belonging to the perpetrator will usually be made the same as the ATM card belonging to the customer whose data was taken. Regarding the responsibility carried out by the bank to customers who have suffered losses due to being victims of skimming cases, the bank will first check whether the customer's account is actually skimmed or not, usually checking is carried out for 7 working days. After the bank has finished checking the customer's account, the bank will immediately block the customer's account and replace it with a new one. If the customer's account is actually skimmed, the bank will immediately provide compensation for the lost customer's money, and after that the bank will cooperate with the police to track down the skimming perpetrator. However, there are some exceptions for the bank to handle the skimming case, namely the bank will help the customer if the customer really maintains the confidentiality of his data, in the sense that when making transactions at the ATM machine, the customer has followed the advice from the bank to close his hand when pressing the PIN button. And ensure the distance of other ATM users behind it. However, if the customer's funds are lost due to negligence, then the bank will not provide compensation because the negligence lies with the customer.

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