

Legal Protection for Customer Credit Card Fraud Cases in International Criminal Law

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ABSTRACT

Credit card fraud is one from of identity-related crime. Credit card fraud is a new transnational crimes have not received much special attention from the international community. From sufficient studies aspect, definitions and criminalization. The era of consumable technology, credit card number can be stolen from unsafe websites or could be obtained with identity theft scheme. Worsens, Indonesia became number two on the world is worst list for credit card fraud. This goes hand in hand with the fact that there is an open sale of the Indonesian identity in marketplace. The goal of research is to provide analysis of law enforcement to overcome credit card fraud as transnational crime. The methodology used in this study is normative juridical with a approach and literature. This research has conclude is that attempt to strive to encourage the mainstreaming of new transnational crimes through various international forums such as the maintenance of cyber security. International cooperation must be improved to eradicate this crime more comprehensive a major drawback occur, including of cooperation increased law enforcement capacity and exchange information.

Keywords: *Credit card fraud, Identity-related crime, Law enforcement.*

1. Introduction

The development and growth times were involved countries around the world seemed without limit (borderless) and connecting. It simplifies someone who wants to access an address in another country just type the uniform resource locater (URL) and input user account and password. Afterward, we have lots of facilities that provided. This easiness does not only contribute to increased well-being human progress and civilization, but also had a negative effect that making an effective tool for committed a crime.⁶⁹

Cybercrime within the law is known as cyber law.⁷⁰ The result of cybercrime is greater than conventional crime, because the perpetrators are not limited by time and geography, wherefore region existed not only locally or nationally but also transnational and international.

One form of a new cyber law emerged ten years ago is identity-related crime, more specifically will be discussed in this paper are credit card fraud or carding. This crime has not received much special attention from the international community. This crime fall into a transnational crime category with a many Sades and form of modus operandi, with

⁶⁹ Hendrik, A., Lisanawati, G., & Wijaya, N. (2018). *The role of telecommunications service providers in efforts to prevent and tackle online fraud crime in the city of surabaya*. Surabaya University. h.3

⁷⁰ Kurniawan, N. A. (2014). *Prevention of carding as a Transnasional crime according to internal law*. Ministry of Education and Culture. Brawijaya University. h.2

a credit card number that can be taken from illegal sites or with an identity theft scheme and etc.

Cybercrime in the virtual world present evoke difficulties in the process of law enforcement: in determining the scene of the crime (*locus delicti*), to prove this crime because of the perpetrators are committed a crime by faceless, locations became difficult to determine when perpetrators stole foreign national data. Investigators are also having problem looking for of witnesses who saw or heard the incident, to gathers tools of evidence that require fees of having to use adequate technology and human domain experts for doing this.⁷¹

International organizations that look at of this issue are countries incorporated to the European Union (council of Europe) on November 23, 2001 in Budapest. The convention will effective once ratified by 3 the council of Europe. The convention substance covers a wide area. It even has criminal policies elevated levels a criminal policy intended to protect people for cybercrime, both through domestic and international law.

Credit card fraud is a transnational crime that will use extraterritorial jurisdiction to establish, implement and enforce the terms of the law that have been established by a state. International criminal law responds to this problem by using principle of the convention on cybercrime is "aut dedere aut judicare."

Based on the background description above, the author is interested for conducting research regarding legal protection of Credit Card Fraud Customers in International criminal. This article will answer the main problem with a discussion of the issues that will be divided into three parts : *first*, credit card fraud as a cybercrime and international crime, *second* types of credit card fraud and *third*, efforts to protect credit card fraud customers from a perspective. International criminal law.

For novelty, will be presented in this article which is international criminal law to face this problem regulation requires a model of international legal norms in the form of the adoption of cybercrime regulatory principles that is global in nature, and every country is obliged or needs to implement jurisdiction over the perpetrator, nonetheless the existence of an extradition treaty between these countries, the law of *locus delicti* and *tempus* must be elevated.

2. Methods

The research employed normative juridical methods of legal research on legal principles.⁷² The legal references referred to in this research are drawn from various international and regional conventions, including Convention on Cybercrime, Book of penal law, republic of Indonesia regulation number 11 year 2008 on information and electronic transactions, Indonesia government regulation number 82 year 2012 on system and electronic. The study is legal research using a conceptual approach will study the principles of international law and statue approach were made to study the law

⁷¹ Sitompul, J. (2012) *Cyberspace, Cybercrime, Cyberlaw: Review the Aspect of Criminal Law*. PT Tatanusa. h.103.

⁷² Marzuki, P. M. (2016). *Legal Research*. Jakarta : Pranadamedia.

relating to credit card fraud prevention, namely the 2008 law on information and electronic transactions and the convention on cybercrime was the convention made by the council of Europe and was open to all. In addition, this research is a library research study, which uses both primary and secondary legal uses relevant academic references from books, journal articles, and reports to strengthen its arguments.

As a comparative study, the analysis in this research refers to important decisions in analyzing the nature of credit card fraud, then associating with principles that apply to international law. This analysis figured out for applicable international principles of law credit card fraud prevention.

3. Discussion

Cybercrime: credit card fraud as a transnational crime

An electronic transaction is legal acts that are carried out using computers or other electronic media. The new world is created because the internet offers a new reality in a virtual so that we can feel where we are and do things for real, especially in the world of transactions. The internet connect with the legal ability to keep the scope and development of the law. ⁷³Besides positive things there must be negative things. One form the problems that arise due to the development of information technology is the rise of crimes that are new, especially those that use the internet as a tool of assistance known as cybercrimes. ⁷⁴ Internet makes it easier for people to commit crimes with computers / smartphones. Cyber Crime results in material and non-material loss. The consequences of cybercrime can be greater than conventional crime, because the perpetrators are not limited by time and geography. The nature of Cyber Crime is to cross national borders or known as transnational crime. Transnasional crime is an extension of the impact of globalization and experiencing differences. ⁷⁵

According to chapter 3 verse 2 of the United Nations Convention Against Transnational Organized Crime, a crime can be categorized as a transnational crime if:

- 1. It is committed in more than one State;*
- 2. It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;*
- 3. It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or*
- 4. It is committed in one State but has substantial effects in another State.*

The state and society are taking heavy losses in the emergence of new crimes. Cybercrimes that has been recently committed nowadays is credit card fraud. Along with

⁷³ Rumampuk, A. M. (2015). *The Crime of Fraud Through the Internet Based on the Laws in Force in Indonesia*. Lex Crimen Vol. IV No. 3, h.34

⁷⁴ Kurniawan, N. A. (2014). *Prevention of carding as a Transnasional crime according to internal law*. Ministry of Education and Culture. Brawijaya University. h.3

⁷⁵ Oliy, M. I. (2005). *Narrow of the world, the extent of evil? A brief study of transnational crime*. Journal Indonesian Criminology. Vol. 4 No. 1, h.25

the increasing use of credit cards, credits rates are caused by lower levels of increased collection are sharp enough as credit card fraud with various modus operandi.⁷⁶

Credit card fraud is one form of identity-related crime as a transnational crime. According to Wikedia the free encyclopedia:

*Credit card fraud is an inclusive term for fraud committed using a payment card, such as a credit card or debit card. The purpose may be to obtain goods or services, or to make payment to another account which is controlled by a criminal.*⁷⁷

Credit card fraud is carried out with full calculation and uses the knowledge owned by the perpetrators, the perpetrators of these crimes generally consist of people or groups of people who have a high level of intelligence and are able to take advantage of technological advances. As a result, the modus operandi of criminal acts related to credit cards is increased in perfection and varied and often creates difficulties in investigations.

Credit card fraud can be committed in various modus operandi. From the simplest, such as creating a fake identity for credit card applications to creating a fake credit card using super sophisticated technology as used by publisher credit card. In the network system, the copying of data can be done easily without having to go through the permission of the data owner. Theft is no longer just the taking of tangible commodity / materials, but also illegal taking of data.⁷⁸

Credit card fraud can be categorized as a transnational crime because:

1. Carder credit card theft can be conducted in several countries.
2. The Preparation, planning and supervision by the perpetrator of the carding crime is carried out in one country but the target of the crime is outside the country where the carder is on.
3. Carders can get credit card data assisted by friends abroad who work in retail outlets such as restaurants or shops that serve credit card payments. They can also get the data through carding forums using internet technology.
4. Carding crimes have targets in more than one country.⁷⁹

Review by method, character and modus operandi, credit card fraud enters in category of cybercrime and accordance The Prevention of Crime and The Treatment of Offenders in Vienna April 10-17, 2000. Modus operandi within credit card fraud there are

⁷⁶ Utomo, B. S. R., Satria, D., & Wisudawati, L. M. (2012). *Improved Credit Card Security Using the Fingerprint Verification System in Indonesia*. Scientific seminar proceedings National Computer and Intelligence Systems . Vol. 7. h.72

⁷⁷Credit Card fraud. (n.d.). In Encyclopedia online. Retrieved from <http://www.en.wikipedia.org>. (10 november 2020)

⁷⁸ Lalamentik, S. J. (2020). *Application of law for perpetrators of credit card fraud*, Lex Crimen Vol. IX/No.1/ Jan-Mar. H. 152

⁷⁹ Kurniawan, N. A. (2014). *Prevention of carding as a Transnasional crime according to internal law*. Ministry of Education and Culture. Brawijaya University. h.7

4 take, that is : located the internet, obtain credit card, order item and take order. Credit card fraud use phishing methods, Shoulder, Scam Page and SQL Injection. ⁸⁰

Based on the description above, technological advances have created new crimes known as cybercrimes. One form of cybercrime is credit card fraud. These crimes fall into the category of transnational crimes. Credit card fraud is very detrimental to customers around the world, even the crime rate is increasing as technology advances.

Credit card fraud in Indonesia and other countries in the world

The modus operandi⁸¹ of credit card crimes committed by carders has always shifted over time as along with developments in technology and information. In 2005, credit card crimes were only committed through credit card theft, then signatures was forged. The various types of credit card crimes committed by carders (credit card criminals) in society have brought damage to users and credit card owners.

The number of cases of credit card fraud increased recently shows that credit card holders as consumers have a weak position. Cardholders can only filing a claim to the bank without handling which is still unclear. In this crime known as carding, the bank and the credit card holder are victims, is due to the evil of a third person who has the ability in the field of information technology or someone who takes advantage of the negligence of the bank or the credit card holder.⁸²



Figure 1. The crime rate on credit cards in Indonesia

Figure 1. Describing the number of credit card crime rates in Indonesia in 2007. There are many types of card crimes. The largest number of crime figures was in cases of lost cards with a total of 48,797. Since January 2011, reached 2,741 credit card fraud cases with a loss of Rp. 11.78 billion. The biggest fraud occurred in April 2011, reaching up to Rp3.42 billion.⁸³ In 2012, bank of Indonesia stated the credit card crimes reached 11,263 cases. In February 2017, Bareskrim Polri uncovered a suspected bank breach 834 billion. So, it also because of credit card fraud. In Experian Asia Pacific report, Indonesia

⁸⁰ Aru, M. (2018). *International Law Regulations against carding crimes (illegal use of credit cards as a form of cybercrime)*. (Essay). Retrieved from <http://repositori.usu.ac.id>

⁸¹ The operation of person or group involved in carrying out their evil plans. This word is often used in newspaper or television and is often abbreviated with M.O

⁸² Lalamentik, S. J. (2020). *Application of law for perpetrators of credit card fraud*, Lex Crimen Vol. IX/No.1/ Jan-Mar. H.151

⁸³ Utomo, B. S. R., Satria, D., & Wisudawati, L. M. (2012). *Improved Credit Card Security Using the Fingerprint Verification System in Indonesia*. Scientific seminar proceedings National Computer and Intelligence Systems. Vol. 7. h. 73

occupation a number 4.6 on a scale of 1-5 (5 is the worst). Indonesia is now a bustling country with problems credit card fraud.⁸⁴

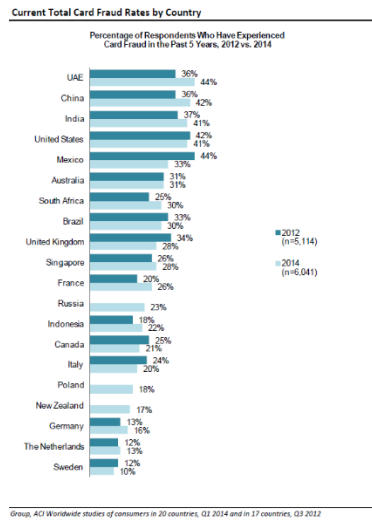


Figure 2. Percentage of Consumers card fraud 2012 vs. 2014

In 2012, percentage of respondent who have experienced card fraud in the past 5 years, 2012 v 2014, and Indonesia percentage increased about 4%. High five on Mexico, United States, India, China and UAE. There are several countries that in 2012 have not experienced fraud card but have in 2014. Among other, there was Russia, Poland and New Zealand. This proves that the percentage of card fraud increased significantly.

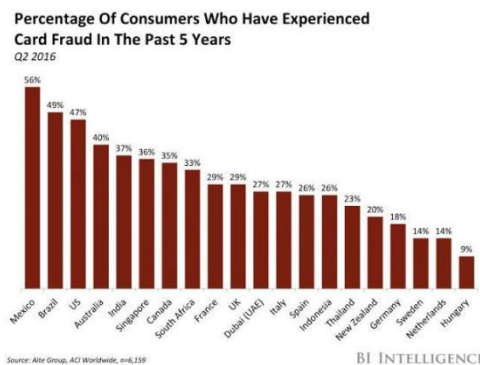


Figure 3. Percentage of Consumers card fraud 2016

In 2016, Indonesia percentage was on 26%. If we compared with figure 2, Indonesia increased by 4 %. That’s a high number for a year. The highest rank still in Mexico with 56%. On figure 2, china in the highest number but in 2016, China was nowhere to be seen. Its shows that china was able to handle card fraud problem.

⁸⁴ Hafiz, M. P. A. (2020). *The rate of credit card fraud in Indonesia exceeds China?*. Retrieved from <http://www.marketeers.com>. (11 November 2020)

From all figure above, we can conclude that one of the factors that makes a percentage of credit card fraud increase is technological advances. Technological advances make it easier for perpetrator to carry out their action. But also, we know that are also useful for handling this problem.

Legal Protection for Customer Credit Card Fraud Case in Criminal International Law.

Credit card fraud is discharges customers around the world and threatens economics, business and individual. Indonesia ranks second as a country with the most cases of credit card fraud. In order to minimize the occurrence of credit card fraud, Bank of Indonesia issued several laws. The regulation also applies that every time a credit card user is going to make a transaction on the internet, a credit card user must provide his personal details as one of the transaction authorizations for both services and buy-sell of commodity that he accesses on the internet because it is often an opening for criminals to falsify the transaction notarization so that it seems the transaction will actually have been validly approved by the credit card owner.⁸⁵ The risk of transactions in cyberspace is very complex and credit card fraud is a criminal act with criminalized data.⁸⁶

Credit card fraud is a transnational crime that uses extraterritorial jurisdiction to establish, implement and enforce legal provisions that have been established by a State. Jurisdiction is the legal power of the State over vital and central legal events that can change, create or end a relationship or legal obligation. Jurisdiction is also a reflection of the basic principles of state sovereignty, the principle of non-interference and equality of the state.

Several countries have used the principle of extraterritorial jurisdiction in their national laws. This extraterritorial principle is used when the impact arising from a violation affects many parties and when the area where the violation occurs does not regulate it but the consequences are still detrimental to other.⁸⁷

International criminal law responds to this problem by using the principles contained in the provisions of the Convention on Cybercrime, namely the principle of "aut dedere aut judicare", listed in article 24 paragraph 3, which means:

"Every State has the obligation to prosecute and prosecute perpetrators of international crimes and has the obligation to prosecute and prosecute perpetrators of international crimes and is obliged to cooperate with other countries in arresting, detaining and prosecuting and prosecuting perpetrators of international crimes."

A country may not take an action that cross the boundaries of sovereignty in the territory of another country because it is in accordance with the general principle in

⁸⁵ Rusmini, A. (2017). *Criminal Offence of credit card use and Prevention of credit card fraud*. Al'Adl, (IX) 1. h.39

⁸⁷ Carolina, V. *Application of extraterritorial jurisdictional principles in the utilization of information technology and communication and Indonesia implementation according law number 11 year 2008 on information and electronic transactions*, Bandung, Padjadjaran University, h. 48

international law which states that each country has the highest sovereignty over whatever is in its territory.⁸⁸

Indonesia already has a law to handle cybercrime cases, namely Law Number 11 of 2008 concerning Electronic Information and Transactions. In terms of material content, the law has been able to answer the issue of legal certainty regarding carding crimes accompanied by criminal sanctions and the application of the principle of extraterritorial jurisdiction but cannot be widely used because it requires recognition or ratification by a country.

Indonesia has made various efforts in dealing with credit card fraud as Cyber Crime across national borders, both externally and internally. Externally, through the Police, collaborating with the Australian Federal Police. Meanwhile, Indonesia's internal efforts include the issuance of the European Union Convention on Cybercrime Bill, Cyber Defense Competition, and Cyber Defense Development. Apart from that, it can also be done in 2 (two) ways, namely criminal law and preventive and repressive countermeasures.⁸⁹

Credit card fraud prevention practice in Indonesia is still at a lower level. The bank and the police report on these crimes on penal dan non-penal devices.⁹⁰ Penal is a efforts to overcome a crime with criminal sanction, while non-penal is a preventive efforts and a strategic policy on overcoming a crime. ⁹¹Deficiencies in the system should be identified taken to make it more consistent with credit card fraud prevention practices of other countries.⁹² The common criminal law in Indonesia has not been effective, flagged by the existence of the latest modus operandi, including: totally counterfeit, white plastic card, internal compromise, and internet phishing. Then, in the matter of legal subject does not include individuals and corporation, it is necessary to formulate a new comprehensive criminal law. With the subject expansion, it is expected to reach all modus operandi, even for the modus operandi that will appear in the future. Then, it requires an expansion with renewal of sanctions. ⁹³

According to Mohammad Burhan Tsani, international agreements have several functions and one of their functions is as a means of developing peaceful international cooperation. ⁹⁴ Based on this, international agreements are mandatory means of preventing transnational crimes, so that Indonesia joins the Convention on Cybercrime.

Given the nature of the internet that operates virtually and across borders, it is best for each country to improve the national computer network security system

⁸⁸ Kurniawan, N. A. (2014). *Prevention of carding as a Transnasional crime according to internal law*. Ministry of Education and Culture. Brawijaya University. h.8

⁸⁹ Pernandha, G. G. (2016). *Criminological Judicial Review on the Crime of Credit Card in Connection with Law number 11 year 2008 concerning electronic information and transactions*. (Thesis Faculty of Law Unpas). (NPM. 121000405)

⁹⁰ Yuda, B. S. (2019). *Prevention Efforts against Crime Theft of Credit Card Personal Data (Carding) in Online Transactions*. (Thesis Faculty of law Lampung University). Retrieved from <http://semanticscholar.org>

⁹¹ Wulandari, S. (2019). *Perlindungan Hukum Bagi Nasabah Perbankan Terhadap Kejahatan Kartu Kredit*. Hukum dan dinamika masyarakat. Vol. 17. No. 1. h.37

⁹² Prabowo, H. Y.(2012). *A better credit card fraud prevention strategy for Indonesia*, Journal of money laundering control.

⁹³ Nugraha, E. (2016). *Legal perspective of perpetrator of credit card fraud*. (Dissertation Program doctor law Hasanuddin University. h. 7

⁹⁴ Kurniawan, N. A. (2014). *Prevention of carding as a Transnasional crime according to internal law*. Ministry of Education and Culture. Brawijaya University. h.9

according to international standards through cooperation between countries in efforts to deal with cybercrime, including through extradition agreements and mutual assistance treaties.⁹⁵ Because it must be done through cooperation between countries. Crime no longer stops at borders. However, along the way, cooperation between countries sometimes encounters difficulties because it is related to the sovereignty of a country, differences in culture, language and differences in the legal system.⁹⁶

In preventing transnational credit card fraud, it is necessary to use international legal principles that can be applied in crime prevention and the need for joint responsibility between countries in the form of international cooperation. There is a need for regulation through a model of international legal norms in the form of the adoption of cybercrime regulatory principles that are global in nature, and each country is obliged or necessary to apply its jurisdiction to the perpetrator, even though there is an extradition agreement between these countries but the law of *locus delicti* and *tempus* must be elevated.

4. Conclusion

Based on the result and discussion, conclusion from this research is that credit card fraud is a transnational crime because qualifying to be a transnational crime on United Nations Convention against Transnational Organized Crime. More and more cases of credit card fraud are being experienced as technological advances have become an opening for perpetrators to do their actions.

Research show that efforts to encourage cross-country crime of credit card fraud can be overcome with cyber security maintenance. International cooperation should be further enhanced in order to tackle this crime by being regulated in a more comprehensive manner considering the huge losses it has incurred, including by means of cooperation in order to increase the capacity of law enforcement and exchange of information. The legal principle that can prevent credit card fraud is the extraterritorial principle and is accompanied by the principle of international cooperation that is in the provisions of the Convention on Cybercrime.

In the formulation of legal norms that prevent credit card fraud, it refers to the provisions on Convention on Cybercrime. Previously, Indonesia had to ratify the convention. Indonesia needs to add adjusting several articles in Law Number 11 of 2008 about Electronic Information and Transactions in accordance with those stipulated in the convention and there is a need for implementing regulations of the Law.

International criminal law facing the problem of credit card fraud is by implementing regulations through a model or international legal norms form adopting global cybercrime regulatory principles. Regulations made must be ratified against the Convention on Cybercrime and every country in the world is obliged to exercise

⁹⁵ Romulo, R. (2008). *Criminal fraud and theft through the internet using other credit card*. (Thesis Tarumanegara University).

⁹⁶ Kurniawan, N. A. (2014). *Prevention of carding as a Transnasional crime according to internal law*. Ministry of Education and Culture. Brawijaya University. h.13

jurisdiction over the perpetrators, however there are extradition agreements between these countries. The tempo and the law of locus delicti must still be elevated.

This article not only for describe credit card fraud data but also serve as evaluation for countries around the world is constantly trying to handling this problem. So it created a country that is peaceful, prosperous, and safe.

In the future, jurisdiction should be integrated to review all laws and regulations against the constitution. Then, being expected to maintain its performance, the state should be encouraged to increase security for credit card customers and establish new regulations to face with the new modus operandi that will appear in the future.

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