

JURIDICAL REVIEW OF CRIMINAL ACTS
INTERNET BASED SCAM
(Studi Kasus Putusan PN Surabaya Nomor.1791/Pid.Sus/2019/PN.Sby)

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Article Info	Abstract
<p>Enter:23/02/2021 Revision:18/08/2021 Accepted:28/08/2021 Rise:30/08/2021</p> <p>Keywords: Fraud, Cybercrime, Carding</p>	<p><i>Crime in cyberspace knows no boundaries and time so that the handling is different from ordinary conventional crimes one Cybercrime crime is carding crime. This crime canbe calledalso as a credit cardwiretap which is classified as a moderncrime.</i></p> <p><i>This study aims to examine the form of accountabilityinternet-based fraud perpetratorsin the decision Number Judges'Considerations in make a verdict on the internet-based fraudcrime Decision Number 1791/2019 / Pid.sus / PN.Sby .</i></p> <p><i>his study uses the data analysis method used in this study is a normative qualitative analysis method. The data collection method uses the library research method. This method used to collect secondary data, several instrumentsthe c ollection used is literature study.</i></p> <p><i>based fraud in verdicts Number. 1791 / 2019 / Pid.sus / PN.Sby.supporting factors in enforcement carding crime, namely witness statements, expert statements, evidence. The defendant was charged under Article 30 paragraph (2) in conjunction with Article 46 paragraph (2) RI Law No. 19 of 2016 concerning amendments to Law of the Republic of Indonesia No. 11 of 2008 regarding Information and Electronic Transactions, Article 30 paragraph (2) in conjunction with Article 46 paragraph (2) RI Law No. 19 of 2016 concerning amendments to Law of the Republic of Indonesia No. 11 of 2008 regarding Information and Electronic Transactions in conjunction with Article 56 paragraph (2)ofthe Criminal Code and Law Number 8 of 1981.</i></p> <p><i>Judges' Legal Considerations in applying criminalprovisions agai nst the criminal perpetrator in the case of decision Number. 1791/2019 / Pid.sus / PN.Sby, The defendant was sentenced by the Panel of Judges respectively for the Defendant I 5 (five) months and 15 (fifteen) days and a fine of Rp.3,000,000 (three million rupiah) and for Defendant II for 6 (six) months and 15 (sixteen) days and a fine of IDR 3,000,000 (three million rupiah). Because it has been legally proven to have committed a carding crime as regulated in the Law on Information and Electronic Transactions.</i></p>

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Abstrak

batas dan waktu sehingga penanganannya pun berbeda dengan kejahatan konvensional biasa. Salah satu kejahatan *Cybercrime* ialah kejahatan *carding*. Tindak pidana ini bisa disebut juga sebagai penyadapan kartu kredit yang tergolong dalam kejahatan modern. Penelitian ini bertujuan untuk mengkaji bentuk pertanggungjawaban pelaku tindak pidana penipuan penelitian ini menggunakan metode analisis data yang dipergunakan dalam penelitian ini ialah metode analisis kualitatif normative. Metode pengumpulan data menggunakan metode *library research*. Metode ini dipergunakan untuk mengumpulkan data sekunder, beberapa instrumen pengumpulan yang digunakan yaitu studi kepustakaan Hasil penelitian ini yaitu bentuk pertanggungjawaban pelaku tindak pidana penipuan berbasis internet dalam Pertimbangan Hukum Hakim dalam menerapkan ketentuan pidana terhadap pelaku pidana dalam perkara putusan Nomor. 1791/2019/Pid.sus/PN.Sby, Oleh Majelis Hakim terdakwa dijatuhi hukuman masing-masing untuk Terdakwa 1 5 (lima) bulan dan 15 (lima belas) hari dan denda sebesar Rp3.000.000,- (tiga juta rupiah) dan untuk Terdakwa II selama 6 (enam) bulan dan 15 (lham belas) hari dan denda sebesar Rp3.000.000,- (tiga juta rupiah). Karena telah terbukti secara sah melakukan tindak pidana *carding* yang sebagaimana diatur dalam Undang-undang Informasi dan Transaksi Elektronik.

I. INTRODUCTION

The era of globalization is synonymous with advances in technology and information that are developing very rapidly and rapidly. This phenomenon occurs in all parts of the world regardless of developed or developing countries. As a world community, a country is required to keep up with the development of this technology and information, in order to compete in an increasingly modern, practical and efficient global competition¹.

Along with the development of the needs of the global community, information technology has an important impact on changes in the present and the future. because these developments have many advantages and positive impacts for countries in the world. There are at least two things that make information technology considered so important in spurring the growth of a country in the world. First, information technology creates an increasing demand for information technology products themselves, such as computers, modems, smartphones, laptops and so on. Second, is to facilitate the activities of the global community, one of which is in business transactions, especially the financial business in addition to other businesses

According to law number 11 of 2008 concerning information and electronic

transactions, buying and selling transactions through the internet are included in transactions using the internet electronic system so that in the language of the law called electronic transactions, the Internet itself began to enter Indonesia in the 1990s.³

The use of technology has encouraged rapid business growth, because various information can be presented in a sophisticated and very easy way and through long distance relationships by utilizing telecommunications technology can be used and utilized to carry out business steps.⁴

One of the technological advances is internet users. Through the internet we can find out various things, ranging from social media, applications, the latest news, even we can do online shopping activities. Technological developments have a positive impact and also impact

1 Based on the Big Indonesian Dictionary, <http://kbbi.web.id/globalisasi>, globalization is the process of entering the world scope (nomina) accessed on September 22, 2020.

2 Agus Rahardjo, 2002, *Cybercrime-Understanding and Efforts to Prevent Technological Crime*, Bandung: Citra Aditya Bakti, page 1.

3 Law Number 11 of 2008 concerning information and electronic transactions.

4 Niniek Supami, 2009, *Cyberspace: Problems and Anticipation of Its Arrangements*, Jakarta: Sinar Graphic, page.1.

Negative, one of the bad impacts of the development of this technology is the rise of online frauds and the threat of modern crimes, through the internet some criminal acts are easier to do such as; Criminal acts of defamation, Pornography, Online Gambling, Account Breaking, Cyber Network Destruction (Hacking) and so on.⁵

Lately there is an interesting phenomenon that has arisen in the community, namely Carding fraud, the term carding is quite widely used for an activity related to credit cards, such as e-commerce transactions. Why is it called carding, because in e-commerce website transactions the payment system is carried out using a credit card, and not a physical credit card, but simply by knowing the credit card numbers and expiration dates or their exp-dates.

Carding is an expression regarding shopping activities online or through shopping sites provided on the internet, while the payment method for these transactions is using someone else's credit card, which in this case is a stolen credit card. This means that carding perpetrators steal credit card numbers and their expiry dates which are usually

obtained from chatting and other results. The crime of using someone else's credit card illegally for a transaction and so on is a digital crime. 7

Fraud committed online is clearly something that can cause harm to others and is prohibited by law. Community participation is very important in efforts to uncover online fraud crimes.8.

Indonesia itself has a special law to regulate and handle cyber crime cases, namely Law Number 11 of 2008 concerning Information and Electronic Transactions. This law is materially able to answer the problem of legal certainty regarding the crime of Carding, Hacking and Cracking accompanied by criminal sanctions for these actions.

RESEARCH METHODS

The type of research used in this study is normative research, namely legal research carried out by researching library law or also called (Library Research) and also reviewing the decision of the Boyolali District Court Number 39/Pid.B/2019/PN.Byl the method used used to collect data from various literatures, this research is descriptive analysis meaning that this research includes the scope of research that describes, examines and explains appropriately and analyzes the laws and regulations related to this research.

The nature of the research used by the author in this study is descriptive research. Descriptive research is "research that is intended to provide data as accurately as possible about humans and circumstances in order to assist in strengthening old theories, or in the preparation of new theories". 2

The type of research data used is secondary data. Secondary data sources are data that are used as the main supported by decisions, books and laws and regulations related to the problem under study.

DISCUSSION

1. Accountability of Criminal Actors against Decision Number 1791/Pid.Sus/2019/PN.Sby. About the Crime of Internet Based Fraud.

With regard to criminal liability, for the application of criminal sanctions against the perpetrators of the crime of Carding, Judges must always consider the factors in order to determine the length of imprisonment. The crime of carding itself has grown rapidly in Indonesia, while the legal system in Indonesia has not been able to keep up and there are still many weaknesses in the supervision of this carding crime. Indonesia is one of the countries that are lagging behind in the development and use

of information technology in formulating a law that regulates cybercrime, especially in carding crimes, where law enforcement is still very concerning. The policy for regulating the crime of carding is contained in Law Number 11 of 2008 concerning Information and Electronic Transactions, namely those relating to the act of using and or accessing credit cards belonging to other people without rights and knowledge. The provisions of Article 51 of Law Number 11 of 2008 concerning Information and Electronic Transactions only cover violations at the card embossing and delivery (courier/recipient or customers) and usage stages. "Every person who intentionally and unlawfully violates the law as referred to in Article 34 paragraph (1), Article 34 paragraph (2), Article 35, or Article 36 paragraph (1), shall be sentenced to a maximum imprisonment of 10 (ten) year or a maximum fine of Rp. 2,000,000,000 (two billion rupiah)". Paragraph (1) : Using and or accessing computers and or electronic systems without rights and exceeding their authority with the intention of obtaining profits or obtaining financial information from banking institutions and or financial institutions, credit card issuers, or payment cards or containing data on their customers' reports.

According to the author, the complete material truth is in the decision Number 1791/Pid.sus/2019/Pn.Sby. The Surabaya District Court Panel of Judges has been very careful in conducting thorough research and review of the actions, events and circumstances that occurred during the trial period, using various facts obtained and also from evidence in the form of witness statements, expert statements and statements from the defendant and several other evidence. evidence. When reviewing the decision Number 1791/Pid.sus/2019/Pn.Sby regarding the crime of internet-based fraud committed by Defendant 1 Agung Suhartanto and Defendant II Aji Kusuma, the author argues, reviews and states that it is not in accordance with the provisions contained in Indonesia's positive law in this case the Criminal Code Article 363 paragraph (1). Because according to the prosecutor's demands, the perpetrator has been proven to have committed the crime of carding while the judge here only handed down criminal sentences for Defendant 1 Agung Suhartanto 5 (five) months and 15 (fifteen) days and for Defendant II Aji Kusuma 6 (six) months and 15 (fifteen) days. because it has been legally proven to have committed an aggravating crime of carding and paid a fine of Rp. 300.000,.(three million rupiah).

2. Judges' Considerations in Imposing Decisions on Decision Number 1791/2019/Pid.Sus/PN.Sby Regarding Internet-Based Fraud.

Judges' considerations are things that become a basis for judges in deciding a case, the judge in this case must pay attention to several important things, the judge must pay attention to the conditions that a person can be convicted of, namely objective and subjective conditions. Judges must pay attention to criminal acts committed by someone by paying attention to subjective conditions, namely mistakes, the ability to be responsible, besides that the judge also pays attention to objective conditions, namely the actions that have been committed are against the law and there is no justification. This is also explained in Article 183 of the Criminal Code which states that: "A judge may not impose a sentence on a person unless with at least two valid pieces of evidence he obtains the belief that a criminal act has actually occurred and that the defendant is guilty of committing it."

1. Juridical Considerations

Juridical considerations are judges' considerations that are based on juridical facts revealed in the trial and are stipulated by law as matters that must be included in the decision.¹³

Juridical considerations consist of witness testimony, expert testimony, testimony from the defendant and also evidence. The judge's decision in deciding a legal case must be based on the judge's own belief and based on two of the five valid pieces of evidence. Thus there must be a causal relationship (causality).

Based on article 184 paragraph (1) the valid evidence is: witness statements, expert statements, letters, instructions and statements of the defendant if they are related to the Internet-Based Fraud case Number 1791/Pid.sus/2019/Pn.Sby. The judges take into consideration the juridical considerations are all the facts revealed in the trial as regulated in article 184 paragraph (1). For more details as follows:

a. Witness Statement

In criminal cases, evidence of witness testimony almost always plays a very important role in the evidentiary process, because the material truth, although sometimes material truth is also obtained from other evidence, because material truth is actually born from the conformity of several pieces of evidence presented at trial. and the judge gained confidence in that fact. Witness testimony can explain the occurrence of a crime based on the sight, hearing and experience that he himself experienced Witness testimony is used to prove guilt for the unlawful act committed

by the defendant. In this internet-based fraud case, the Panel of Judges has brought in and examined 4 (four) witnesses, namely: (1) Herry Setyoko, S.Sos., MH. (2) Hery Kurniawan, SH. (3) Pupa Widianoro (4) Basar Idamana. According to the author of the incriminating expert testimony, the judge accepted the opinion of the incriminating witness because the judge's decision stated that the defendant was guilty by being proven guilty of committing a crime of internet-based fraud or carding.

This is based on the consideration of the statements of 2 witnesses Pupa Widianoro and Basar Idamana because these two witnesses were the first to know of any suspicious movements made by the defendant, from this, the Panel of Judges is of the opinion that the witness testimony can be accepted and considered as evidence as long as consistent with other evidence presented in this case.

b. Expert Description

The value of the evidentiary strength of the expert testimony is independent, meaning that it is up to the judge to evaluate the statement. If it is deemed that the statement is relevant and can clarify the issues that arise in court, the judge may take the information, in his judgment, but if it is deemed that the statement is considered dubious, then the judge may override the information with justifiable reasons.

Judge's decision in case Number 1791/Pid.sus/2019/Pn.Sby. The Panel of Judges uses Expert Statements as consideration in deciding the case. Expert statements from the public prosecutor are: (1) Aulia Bahar Permana, S. Kom., M. Ism., (2) Sapta Aprilianto, SH., MH., LL.M., In this case the Panel of Judges agrees with the statements of the experts that a carding crime has occurred. According to the author, the expert testimony brought by the public prosecutor is very helpful and burdensome for the punishment for carding crimes and strengthens the conviction of the Panel of Judges regarding the crimes committed by the defendants. Defendant's Statement In case No. 1791/pid.sis/2019/Pn.Sby regarding this internet-based fraud, based on facts and evidence at trial, there are things that prove the public prosecutor's indictment, that the defendant has admitted and proven valid and convincing to commit the crime of carding. Thus, the panel of judges handed down a guilty verdict against the defendants. According to Article 189 paragraph (1) of the Criminal Procedure Code that the defendant's statement is what the defendant stated in the court session regarding the actions that the defendant did or which the defendant knew and experienced himself. The defendant's statement is also an answer to the questions of

the judge and the public prosecutor. In practice, the defendant's statement can be expressed in the form of a confession or denial, in part or in whole of the indictment of the public prosecutor and the statements given by the witnesses.

The author is of the opinion that this honest confession of the defendant can increase the judge's confidence in the case being tried.

d. Evidence

Evidence in a trial is one of the main things that must be present during a trial because evidence is used as a series of evidence of the existence of a crime. The law stipulates five types of evidence, namely witness testimony, expert testimony, letters, instructions, and statements from the defendant. The existence of evidence revealed at the trial will increase the judge's confidence in assessing whether or not the actions alleged to the defendant are true, and of course the judge will be more confident if the evidence is known and acknowledged by the defendants or witnesses. The evidence referred to here is all objects that can be subject to confiscation and submitted by the public prosecutor before a court session, which includes:

- 1) The objects or claims of the suspect or the defendant in their entirety
- 2) or partly suspected to have been obtained from a criminal act or as a result of a criminal act;
- 3) Objects used directly to commit a crime or to prepare;
- 4) Objects used to hinder the investigation of criminal acts;
- 5) Other objects that have a direct relationship with the crime committed.

In this case, the Panel of Judges considers the aggravating and mitigating circumstances for the defendant, as follows:

Aggravating things:

- Whereas the actions of the Defendants harmed other parties;

Easing things:

- The defendant behaved politely, in court;
- The defendant admitted frankly his actions and expressed his regret.

According to the author, the sentence handed down by the Panel of Judges against Defendant 1 Agung Suharto and Defendant II Aji Kusuma was still inaccurate. This is because it is still very far when compared to criminal threats in Law Number 22 of 2008 in conjunction with Law Number 19 of 2016 Article 32 paragraph (2) which states:

"That in the provisions of article 32 paragraph (2) is sentenced to a maximum imprisonment of 8 (eight) years and Rp. 2,000,000,000.00 (two billion rupiah). Meanwhile, in article (2), they are sentenced to a maximum imprisonment of 9 (nine) years and a fine of Rp. 3,000,000,000.00 (three billion rupiah)." The author argues that this shows that the decision of the Panel of Judges in resolving cases in court regarding the crime of internet-based fraud is still less relevant. Given that internet-based crimes (online) are more difficult to investigate and the losses in this carding crime are sometimes greater than those of conventional crimes, the Panel of Judges should be able to give a sentence that is balanced with what the Defendant has done, because in this case the perpetrators of the carding crime committed their actions. without being seen with the naked eye, even the illegal system that it uses can hack systems that are outside the country, not only in the country, so cases like this should be handled properly and wisely and properly considered regarding the sentence to be handed down to the Defendant.

CONCLUSION

From the discussion that has been described in the previous material, it can be concluded that the form of accountability for internet-based fraud perpetrators is sentenced to use and pay attention to article 30 paragraph (20) in conjunction with article 46 paragraph (2) of the Republic of Indonesia Law No. 19 of 2016 concerning Information and Electronic Transactions. Accountability for the criminal act of internet-based fraud with Defendant 1 Agung Suhartanto and Defendant II Aji Kusuma has been legally proven and convincingly before the Panel of Judges that the defendant has intentionally and without rights committed a criminal act or violated the law.

Judgment's considerations regarding the decision number 1719/Pid.sus/2019/Pn.Sby regarding the crime of internet-based fraud. Based on juridical considerations based on witness testimony, defendant's statement, expert testimony and also evidence that was included in the Surabaya District Court trial. while non-juridical considerations in this case are emphasized and based on aggravating matters as well as mitigating matters.

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adalah proses masuknya ke ruang lingkup dunia (nomina) diakses tanggal 22
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