
**BANK CUSTOMER PROTECTION LAW FROM SKIMMING CRIMES: ACCORDING TO THE CONSUMER
LAW AND THE BANKING LAW**

Fajriansyah Anugraha¹, Hanifah Febriani²¹ Fakultas Hukum, Universitas Muhammadiyah Surakarta (C100190160@student.ums.ac.id)² Fakultas Hukum, Universitas Muhammadiyah Surakarta (hf185@ums.ac.id)

ABSTRACT

The purpose of this article is to explain the legal protection and responsibility of banks for the security of customers' personal data and customer deposits at the bank in cases of skimming crimes. This research uses a juridical-normative approach, namely by researching library materials, namely primary and secondary legal materials. Data collection was carried out through literature study. The results of this research indicate that the bank is responsible for losses experienced by customers due to theft using the skimming crime mode, if proven by CCTV cameras and there is no negligence on the part of the customer who is the victim. Legal protection for customers is related to the reporting obligations offered by banks, namely Law no. 8 of 1999 concerning Consumer Protection and PBI no. 16/1/PBI/2014.

INTRODUCTION

As technology and the internet advances, things have become much more interesting. The most prominent area affected by advances in technology and communications is banking, a segment of the economy that increases the wealth of the average citizen. Information and communications technologies have provided banks with innovative ideas, and have since provided them with accelerated growth and significant deviations from the norm. The main activity of banks is distributing products and services.¹ Banking provides products that are fast and easy to use. E-banking is the practice of carrying out banking transactions electronically (e-banking). Examples of this practice include using an ATM, cellphone, or internet connection (Internet banking). The use of technology can provide data and transaction security in terms of security.

Internet technology has been widely used by businesses, with the banking industry being the most prominent example. The integration of internet technology specifically increases ease of use while reducing organizational operational costs. Apart from that, it is easy for customers to process online transactions wherever they are and whenever they want. However, in reality, there are a number of legal issues at stake here related to the protection of confidential information and electronic banking transactions, which if not handled properly could harm banks, the general public and the government.²

Skimming is the only example of a crime that uses technology and targets banks to gain profits that is currently occurring. Skimming is a type of crime that often occurs in the surrounding environment without any clear perpetrator. All data from customers has been transferred to the tool operator using a compact tool with a 24 hour time frame.

As technology advances, skimming crimes are increasingly popular. In this country, prevention efforts have been carried out by the government in collaboration with banks. The change from not using chips to using them still does not change the disappearance of this skimming crime. The form of crime is not only limited to obtaining customer data illegally, apart from taking customers' money without the customers' knowledge, but also selling customer data to other parties. Not only Indonesian citizens, but also foreign

¹ Astrini, D. A. (2015). *Perlindungan Hukum Terhadap Nasabah Bank Pengguna Internet Banking Dari Ancaman Cybercrime*. *Lex Privatum*, 140-149.

² Ferdian, H. A. (2015). *Tindak Pidana Informasi & Transaksi Elektronik*. Malang: Media Nusa Creative.

citizens in some cases are participants in the game.³

Law functions as the main protector of humans. Laws must be implemented so that human rights can be protected. Therefore, the means of legal protection are divided into two that can be understood, namely preventive and repressive protection. The aim of legal protection is to provide a means to improve human conditions so that human life can continue normally, peacefully and peacefully. In Indonesia itself, there are currently several laws relating to consumer protection that raise concerns about business principles. According to the facts, this law has the same objectives as those offered, namely to create ties between business owners and consumers and provide protection for consumers. However, in simple terms, the basic meaning of the balance articulated in the Consumer Protection Act is that it is an attempt to address the lack of understanding that exists between business owners and consumers as opposed to the previous explanation of how to properly handle some issues.

Customers as consumers must have legal certainty regarding the bank's use of the goods it sells. Legal protection is a useful tool in fostering a culture of trust among all members of society, especially the customer population. The cause of the loss of customer money was due to errors in the bank's protection of customers.

Losses can be experienced by people making transactions or other people who have never done so, as happened to one Bank Mandiri customer named Surianty who felt he had to refrain from making a savings withdrawal transaction even though he had a balance of around Rp. 19,450,000.00 in his account. Then the customer concerned began to investigate the cause of the lack of money. In fact, using an ATM card already produces transactions.⁴

However, the bank confirmed that there were no recurring problems with the transaction process and advised customers to take personal responsibility for any problems encountered. In general, the response bank was very persistent. According to the bank, all transactions were completed quickly and without problems.

Referring to Article 37 B number 1 of Law Number 10 of 1998 concerning Banking which has been amended, it states: "Every bank is obliged to guarantee public funds deposited with the bank concerned." The case above shows that there are still problems with banks towards customers in terms of responsibility.

Therefore, by looking at the background regarding the problems related to Skimming Crime, this is what makes the author want to discuss it in a journal study with the title "Legal Protection of bank customers from Skimming Crime According to the Consumer Protection Law and Banking Law." Then, the author wrote this journal with the aim of analyzing and understanding the problems and providing solutions to skimming crimes committed by several irresponsible parties. Therefore, the problem formulation in this journal is related to how the form of legal protection from Skimming Crime is viewed from the Consumer Protection Law and Banking Law and how to provide compensation to bank consumers who are harmed by Skimming crimes. The aim and benefits of this journal include helping bank customers in solving the problem of skimming crimes.

RESEARCH METHODS

This research article applies normative juridical research methods by examining library materials, namely primary and secondary legal materials.⁵The data collection technique uses library research, by collecting data and information or legal materials related to the substance of the research. After the legal materials are collected, analysis is carried out and appropriate conclusions are drawn regarding the problems contained in the problem formulation. This research applies data analysis techniques using

³ Jurnal Kajian Hukum, Vol. 7(1) Mei 2022

⁴ Prasetya, R. (2010). *Pembobolan ATM : Tinjauan Hukum Perlindungan Nasabah Korban Kejahatan Perbankan*. Jakarta: Prestasi Pustaka Publisher.

⁵ Wardiono, K. D. (2004). *Metode Penelitian Hukum*. Surakarta: Fakultas Hukum UMS.

deductive logic. This conclusion is based on an analysis of banking problems. This banking dispute will be analyzed according to existing regulations, from a brand law perspective in order to understand its essence and intent in resolving the legal problems discussed in this research.

RESULTS AND DISCUSSION

ANALYSIS OF LEGAL PROTECTION FROM SKIMMING CRIMES

A. Legal Protection According to UUPK

a) Preventive

The only problem in the national banking system that has not yet been resolved is the protection of banking customers.⁶When a dispute occurs between a bank and its customers, it often happens that the customer will be weak or in a disadvantageous position, causing the customer to suffer losses. In this position, customers will undoubtedly be disadvantaged due to skimming crimes, the weak position of customers as consumers is partly due to their lack of knowledge about the law, existing legal instruments cannot guarantee a sense of security and current regulations are not sufficient to protect customers' interests and rights. directly. Therefore, in the banking world, legal protection is needed to protect customers. Shidarta stated that one of the characteristics and objectives of law is to provide protection to society.⁷

Consumer protection includes 2 things, namely preventing consumer losses caused by consumer financial services, namely: pre-transaction protection and implementing compensation measures. As a result of this, legal protection for customers using banking services is based on the Financial Services Authority Law no. 21 of 2011 is to prevent losses suffered by customers by banking services and obtain legal protection for losses that befall customers. So it is hoped that with the enactment of the Consumer Protection Law no. 8 of 1999 can further strengthen and provide a legal basis for aggrieved consumers to demand their rights.

The burden and responsibility of business owners in the case of skimming crimes refers to the burden of proof regarding whether or not there is an element of error in the claim for compensation as intended in Article 28 of Law Number 8 of 1999. In this case according to Article 4 of Law Number 8 of 1999 Regarding Consumer Protection, customers have the right to receive compensation and/or a refund for lost funds, if the customer's money is lost because someone does not want to pay it.

b) Repressive

To understand the bank's response to customer losses due to skimming, it can be previously concluded that customers are in the same situation as consumers who are entitled to consumer protection based on the Consumer Protection Law. In this situation, bank employees refer to the company and the corporation's articles of association as the official name of the bank. There are two types of bank responsibility related to customer losses in a criminal context. There is personal and corporate responsibility. In the case of personal information, something happens when it is determined what the company must disclose; however, when a company acts outside its corporate structure, it becomes personal information about the company. Carelessness on the part of parties must also be considered in terms of skimming which results in customers. For example, if the customer is negligent, the bank will not be able to admit liability, but after completion of the transaction

Furthermore, Article 19 of the Consumer Protection Law outlines the provisions regarding the responsibilities of business actors, namely:

“(1) Business actors are responsible for providing compensation for damage, pollution and/or

⁶ Hermansyah. (2000). *Hukum Perbankan Nasional Indonesia*. Jakarta: Kencana Prenada Media Group.

⁷ Shidarta. (2000). *Hukum Perlindungan Konsumen*. Jakarta: Grasindo.

loss to consumers resulting from consuming goods and/or services produced or traded.

(2) Compensation as intended in paragraph (1) may take the form of a refund or replacement of goods and/or services of the same type or equivalent value, or health care and/or provision of compensation in accordance with the provisions of the applicable laws and regulations."

B. Legal Protection According to the Banking Law

a) Preventive

In theory, many terms are used to refer to this banking crime. These terms include banking crimes, crimes in the banking sector, crimes against banking, banking crimes, criminal acts in the banking sector, criminal acts against banking, and various other terms. Banking crime must be differentiated from the term banking crime. Banking criminal acts are violations of banking laws which are regulated and threatened by the Banking Law (UU No. 7 of 1992, amended by Banking Law No. 10 of 1998).⁸

Banking crime is a form of crime in the financial sector, namely crimes that are often committed to seek profit for financial reasons, such as theft, embezzlement, skimming, fraud, etc., which in this case are directed at banks.

The crime of skimming is the act of illegally copying information on the magnetic stripe of a credit or ATM/debit card. From this it can be concluded that skimming is an activity related to the perpetrator's attempt to illegally steal information from the magnetic strip of an ATM/debit card to gain control over the victim's account. The above authorization function includes unauthorized access to another person's computer and/or information system for the purpose of illegally retrieving personal data into that computer and/or information system.

In banking, basically there are 4 (four) types of Skimming crimes which can be classified as crimes, namely:

1. wiretapping, namely interception of transmissions between parties.
2. Interruption is an action that results in the cessation of communication between two communicating parties.
3. Modification is a procedure that results in changes to data or information or content that moves within the information technology infrastructure without the knowledge of the sender/recipient.
4. Fabrication is deceiving someone as if a transaction request occurred without the sender/recipient's knowledge.

To anticipate skimming crimes which are increasing in banking, the government in a country must be aware of the dangers of internet misuse in the banking world. So the steps or countermeasures for skimming crimes are as follows:

1. Check the transaction equipment, if you find a suspicious device in the ATM machine and on the surface of the ATM machine when making a transaction, immediately contact and report it to the nearest bank.
2. Cover your hand when entering the PIN, if this step is implemented, the skimmer machine will have difficulty recording hand movements when pressing the ATM TIP. This step can also minimize the possibility of other people seeing your PIN.
3. Change the PIN regularly. The PIN code can be changed once a week, once every three days or every day. In this way, skimming crimes can be avoided even though the perpetrator has saved the ATM PIN code.
4. Using a chip-based card, with a chip-based card, bank or credit card information is safer, because data encryption technology is implemented in the chip used. Even if the skimming tool recognizes it, the information stored is just abstract codes and symbols that cannot be deciphered.

⁸ Gunawan, K. d. (2013). *Tindak Pidana Perbankan*. Bandung: Nuansa Aulia.

b) Repressive

Regarding losses experienced by customers, Bank Indonesia urges banks to continue to pay attention to the principles of customer protection. In this case, if the customer feels there is a suspicious transaction in his account, he can immediately contact the bank where the customer opened the account. The Bank investigates incoming notifications based on available evidence in accordance with applicable rules/procedures.

In addition, Bank Indonesia emphasized that banks must have and implement a mechanism for handling consumer complaints, while this mechanism must be in written form which includes receiving, handling and resolving complaints, as well as monitoring the handling and resolution of complaints.⁹ Consumers should be informed about the complaint handling mechanism.

Handling of complaints is carried out through banking media processes. Bank reconciliation is the next step after a customer complaint if the customer is unable to comply with the procedures and assistance provided by the bank. In running a bank business, it is often not possible to carry out tasks related to customers properly to prevent friction between customers and the bank which has implications for debts related to customers.

If the bank does not resolve customer complaints properly, disputes or disagreements between the customer and the bank may arise and continue. This is proven, among other things, by the number of customer complaints in various media. To reduce negative publicity regarding bank activities and ensure the implementation of an effective customer complaint mechanism in a timely manner, the Bank has established minimum standards for customer complaint resolution mechanisms in Bank Indonesia Regulation: 7/7/PBI/2005, which regulates the mandatory handling of customer complaints in all banks. .

CONCLUSION AND SUGGESTION

Legal protection for victims of ATM card fraud, including: legal remedies given to customers when they experience difficulties because they have run out of money; According to Article 19 paragraphs 1 and 3 of the Consumer Protection Law, consumers who search for producers can do so without interference, and producers are obliged to provide guarantees and/or performance obligations within seven days of the transaction. Additionally, consumers seeking manufacturers can engage entrepreneurs through reputable organizations that will mediate any disputes between them and the company through court or other formal negotiations.

Bank enforcement action is an investigation into complaints from customers who have lost money, customer account information to identify transactions that cause the customer's account balance to decrease, then the customer submits transactions that the customer thinks are strange or that the customer has never carried out. Apart from that, I also monitor transactions made by Arabs based on their feedback, the most prominent of which is the CCTV installed in ATMs where Arabs do not recognize the value of the currency. Based on the transaction results, it is possible to determine whether the transaction was successful or failed. Lastly, if it is determined that the Customer has not made any transactions involving anything under investigation in his/her Customer account, the outstanding money will be destroyed.

On the other hand, the bank's policy in handling ATM card transaction errors that result in lost funds is to replace the lost funds after thorough verification that the lost funds were lost as a result of an error that was made. Whether or not the ATM card is duplicated is due to the customer's own negligence, to the extent that if the customer's money is lost due to the customer's own failure, the bank is not obliged to compensate the customer for losses.

⁹ Peraturan Bank Indonesia Nomor 16/1/PBI/2014 tentang Perlindungan Konsumen Jasa Sistem Pembayaran Pasal 16 ayat (1) dan ayat (2)

REFERENCES

1. Astrini, D. A. (2015). Perlindungan Hukum Terhadap Nasabah Bank Pengguna Internet Banking Dari Ancaman Cybercrime. *Lex Privatum*, 140-149.
2. Ferdian, H. A. (2015). *Tindak Pidana Informasi & Transaksi Elektronik*. Malang: Media Nusa Creative.
3. Gunawan, K. d. (2013). *Tindak Pidana Perbankan*. Bandung: Nuansa Aulia.
4. Hermansyah. (2000). *Hukum Perbankan Nasional Indonesia*. Jakarta: Kencana Prenada Media Group.
5. Hermansyah. (2013). *Hukum Perbankan Nasional Indonesia Edisi Ke-2*. Jakarta: Kencana.
6. Prasetya, R. (2010). *Pembobolan ATM : Tinjauan Hukum Perlindungan Nasabah Korban Kejahatan Perbankan*. Jakarta: Prestasi Pustaka Publisher.
7. Shidarta. (2000). *Hukum Perlindungan Konsumen*. Jakarta: Grasindo.
8. Wardiono, K. D. (2004). *Metode Penelitian Hukum*. Surakarta: Fakultas Hukum UMS.
9. Peraturan Pemerintah Nomor 25 Tahun 1999 Tentang Pencabutan Izin Usaha, Pembubaran, dan Likuidasi Bank
10. Undang-Undang Nomor 7 Tahun 1992 sebagaimana diubah dengan Undang-Undang Nomor 10 Tahun 1998 Tentang Perbankan.
11. Undang-Undang No. 8 Tahun 1999 Tentang Perlindungan Konsumen