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Criminal Responsibility For Perpetrators of Skimming Crime

Abdur Rohim[1*], Mohammad Roesli[1], Supolo Setyo Wibowo[1]
Faculty of Law Merdeka University Surabaya, indonesia
*Corresponding Author E-mail: orangsukses31081@gmail.com
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ABSTRACT
The purpose of this research isCriminal Responsibility for Perpetrators of Skimming Crimes, a qualitative-descriptive research method that produces analytical descriptive data stated by respondents in writing or verbally as well as real behavior, which is researched and studied as a whole. Basic Results of Judge's Considerations in determining the guilt of the perpetrator of skimming crimes in case Number 11/Pid.Sus/2022/PN. Psr. using Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions as amended and supplemented by Law of the Republic of Indonesia Number 19 of 2016 concerning amendments to Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions Article 30 Paragraph 2 (two) Jo. Article 46 Paragraph 2 (two) Jo Article 55 Paragraph 1 point 1 of the Criminal Code, the judge uses legal and non-legal considerations. With his legal considerations.

Keywords: Bank, Judge, Law, Online, Court

1. INTRODUCTION

A country can be categorized as a safe, peaceful and prosperous country if all activities directly related to those labeled "crime or crime" can be minimized as much as possible for the sake of the peace and sustainability of its people's lives, besides that it also creates an attraction for tourists from outside the region, abroad and even internationally (Meiditambua et al., 2023). However, the reality that is happening in Indonesia today is not decreasing but instead is increasingly skyrocketing until the history of cybercrime (Cyber Crime / CyberSpace) is increasingly rampant based on the number of crimes that occurred in Indonesia, in the escalation of the previous few years it also increased drastically which ultimately led to the presence of a new law called the Electronic Information and Transactions Law (UU ITE) (Maya, 2017). Ironically, the banking world is not immune to the impact of cybercrime, so that in the end, banks also suffer losses of no small amount. Among these crimes are wiretapping (espionage), hacking, electronic card counterfeiting (carding), system recording (cracking), data transfer from ATM cards (Skimming), and various other types of cybercrime (Fitriani & Pakpahan, 2020).

The purpose and objective of skimming itself is a crime in which in practice by duplicating all data and information on the customer's ATM (Automated Teller Machine) card by utilizing a chip or tool that has been assembled in such a way and placed on the card reader to take all data located on the magnetic strip on the customer's ATM card (Pamuji, 2017). And if the customer inserts his ATM

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card into the ATM machine, the chip or tool automatically duplicates and transfers the customer's password, then the perpetrator uses a fake card that has been provided to withdraw the customer's balance or money and sadly the customers do not realize that they have become victims of skimming crimes (Badraen, 2019).

This is why the law takes its position by resolving all problems in order to save humans from all unrest and chaos that ultimately leads to quarrels and hostility, and also provides peace and justice for fellow humans in determining their norms and social status (Zein, 2022). In connection with the increasingly developing era that brings all its progress in the form of technological sophistication, especially in the era of rapid globalization that we are currently enjoying together, but the presence of this very rapid technology does not always provide positive energy, but also negative energy comes along with the rapid technology. Due to the arrival of negative effects that are created along with technological developments, new and fresh types of crimes also emerge and are very complex regarding the form or model of crime, especially in their methods and modus operandi that have never existed before. These types of crimes are nicknamed cybercrime as a form of negative aspects that always follow the progress of technology (Minin, 2017).

The phenomenon of Skimming crime based on the investigation of the Pasuruan City Police Chief AKBP Arman, SURABAYA, KOMPAS.com - The Pasuruan City Police arrested two Foreign Citizens (WNA) from Bulgaria who dared to steal customer money using the skimming method. The two foreign citizens with the initials VDB (38) and PPB (41) have now been named as suspects and are being held at the Pasuruan City Police. As a result of their actions, 29 customers claimed to have suffered losses of IDR 493 million. "For your information, skimming is a form of crime that aims to steal information from customer debit or credit cards, using a special tool called a skimmer," said the Pasuruan City Police Chief AKBP Arman.

Arman stated that the suspects had been in Indonesia since 2020 and initially resided in Lombok, West Nusa Tenggara. According to Arman, this type of skimming crime was the first uncovered by the Pasuruan City Police. "This is the first time the Pasuruan City Police have uncovered a case of customer money theft through skimming," said Pasuruan City Police Chief, AKBP Arman, in a press conference held at the Pasuruan City Police headquarters on Tuesday (12/10/21).

Arman added that the suspects installed a special device in an ATM located on Jalan Sultan Agung in Pasuruan City. "The suspects installed the device from July 26 to 31, 2021," Arman said. According to Arman, the ATM is busy with customers every day. The two perpetrators have been operating in Pasuruan since July 2021.

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Cybercrime is a new form or dimension of crime that has received widespread international attention. It involves crimes committed through computer networks and communication systems, both local and global (the internet), utilizing computer information technology, an electronic system that can be viewed virtually, involving internet users as victims. According to (Hamzah, 1989) in his book "Criminal Aspects in the Computer Sector", cybercrime is defined as a crime in the computer sector which can generally be interpreted as the illegal use of computers. According to the British police, cybercrime is all kinds of use of computer networks for criminal purposes and/or high-tech crimes by abusing the convenience of digital technology.

Cybercrime has unique characteristics compared to conventional crime, including:

1. The illegal, unlawful or unethical acts occurred in cyberspace, so it cannot be ascertained which country's legal jurisdiction applies to them;
2. This act is carried out using any equipment that can connect to the internet;
3. These acts result in material and immaterial losses (time, value, services, money, goods, self-respect, dignity, confidentiality of information) which tend to be greater than conventional crimes;
4. The perpetrator is someone who masters the use of the internet and its applications. These acts are often carried out transnationally, or across national borders.

These crimes include data manipulation (Trojan horses), espionage, hacking, online credit card fraud (carding), system cracking, ATM card skimming, and various other crimes. These cybercriminals have highly skilled backgrounds in their fields, making them difficult to track and eradicate. Skimming is categorized as a cybercrime because it is carried out through computer networks, both local and global, utilizing technology. Skimming is a type of cybercrime that is currently on the rise, particularly crimes against privacy (infringements of privacy).

The Bank Tech website explains that the ATM card skimming technique was first identified in 2009 at a Citibank ATM in Woodland Hills, California. At the time, it was discovered that skimming involved using a device attached to the ATM slot, known as a skimmer. Cybercrime has been widespread in Indonesia, and the cases mentioned above are just a few examples of skimming crimes committed through automated teller machines.

Skimming involves stealing customer data stored on the magnetic stripe on an ATM card and sending it wirelessly. This data theft method involves several steps: First, the perpetrator installs a skimmer on the ATM slot to obtain the customer's card data. Then, the perpetrator installs a hidden camera to capture the customer's finger movements as they press the ATM PIN, which is hidden behind a mask.

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The crime of skimming has violated Law Number 7 Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE). In the Criminal Code and the ITE Law, there is no definition of the crime of skimming, however, the crime of skimming is included in the crime of illegally accessing computers and/or electronic systems belonging to other people, which is regulated in the Law on Information and Electronic Transactions.

The crime of skimming as regulated in Article 30 paragraph (2) of Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Electronic Information and Transactions above, consists of subjective and objective elements, namely as follows (Muharram, 2021):

Subjective Elements:

a. Deliberately;
b. Without rights;
c. Unlawfully.

Objective Elements:

a. Each person;
b. Unlawfully accessing a computer;
c. Belonging to someone else or the public

In fact, crimes that have emerged along with the development of the times have given rise to new laws and regulations to anticipate this type of crime, especially cybercrime in the banking sector, which is called skimming. From the various availability offered by banks, it is to ease the burden for customers to access finances more easily and practically and to make transfers or transfers that can also be accessed through gadgets that are always in hand that are no longer required to queue at the bank teller which is commonplace. And on the other hand, when we want to carry out a cash withdrawal transaction, it is mandatory for us to go to an Automated Teller Machine (ATM) and referring to Bank Indonesia Regulation Number: 11/11/PBI/2009 Concerning the Implementation of Activities Against Payment Instruments Using Cards as replaced by Bank Indonesia Regulation Number: 14/2/PBI/2012 Concerning Updates Regarding Activities Against Payment Instruments Using Cards, it can be carried out using internet facilities, namely in an electronic model using an Automated Teller Machine card (ATM Card), debit card and credit card (Benedict, 2020).

Matters regarding laws and regulations that explain the provisions related to various matters launched by the bank or associated parties. Explained in Law of the Republic of Indonesia Number 10 of 1998 concerning Banking Article 1 paragraph 22 which reads "Affiliated parties are a) Members of the board of commissioners, foremen, directors or their proxies, officials, bank employees; b) Members of management, foremen, administrators or their proxies, officials, or bank employees, specifically banks that are in the form of cooperative law based on applicable regulations and

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provisions; c) Parties that provide their services to banks, for example public accountants, appellants, legal consultants and other consultants; d) As well as parties that based on the Bank Indonesia scale which is now known as the OJK take part in initiating bank monitoring, such as, shareholders and families of commissioners, foremen, directors, administrators, administrators." The general mindset of society regarding the determination of criminal provisions is that it is only for those who hold high positions, while what actually happens is that banks also suffer losses caused by criminal acts, for example, bank burglaries which are commonplace.

The terms cybercrime and cyberspace are individually defined as crimes committed by exploiting electronic networks within a computer system, which can be viewed virtually through the internet, and carried out by targeting other internet users. Various types of cybercrime include data falsification, espionage, hacking, carding, cracking a system, transferring data using ATM cards (ATM skimming), and various other types of cybercrime. These crimes are considered quite complex to eradicate because the perpetrators are highly professional and expert in their fields.

In a countryIn Indonesia, all acts leading to cybercrime are regulated and affirmed by Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law). Furthermore, the police, based on Regulation of the Chief of Police Number 22 of 2010 concerning Organizational Structure and Organizational Work Procedures, established the Special Criminal Investigation Directorate (Ditreskrimsus) to provide optimal protection and strengthening, especially for cyberspace (Sondakh, 2021).

The act of skimming crime is classified as a crime mode by duplicating ATM card data (Automated Teller Machine) owned by customers which is contained in a card reader, through this method by containing special materials or tools that are assembled and modeled in such a way as to form a kind of card reader. Then using this mode then when the customer inserts his ATM card into the ATM machine then, spontaneously the material or tool that is assembled and modeled automatically duplicates the data and copies the pin located on the customer's ATM card, and the final step of the executor or perpetrator uses a fake card that he previously provided in order to seize the customer's money as quickly as possible and usually the customers and ATM card owners do not suspect and are not aware that they have been included in the category of victims of skimming crimes.

In practice, the crime of skimming can be carried out through the perpetrator's own computer network system which is a means to facilitate his actions to be able to access the victim's page or website. In the banking world, what commonly occurs is theft/hacking of other people's credit cards, carding, skimming, etc. Which crime is common recently, but since the enactment of the Electronic Information and Transactions Law (UU ITE) in 2016, changes from 2008 are detailed in Article 31

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paragraph (2) regarding illegal access and Article 32 paragraph (1) regarding data theft and also starting from the first quarter until now it has begun to subside, although there are still some who continue to dare to do their actions. But most of them can be overcome by the legal entity itself.

2. RESEARCH METHODS

In this research, the data will be analyzed qualitatively-descriptively. According to Soerjono Soekanto, qualitative data analysis is a method of analysis that produces analytical descriptive data, namely what is stated by respondents in writing or verbally and also real behavior, which is researched and studied as a whole. Meanwhile, Descriptive is a non-hypothetical research so that in the research steps there is no need to formulate a hypothesis, while qualitative is data that is described in words or sentences that are separated according to categories to obtain conclusions. According to Sunarto's definition: Qualitative descriptive is research that seeks to describe and interpret existing conditions or relationships, emerging opinions, ongoing processes, ongoing consequences or developing trends.

3. RESULTS AND DISCUSSION

Basis For Judges' Considerations In Making Decisions In Cases of Skimming Criminal Acts

Judges are a very essential dimension in the law enforcement process, especially in resolving cases at the court level (Nurdin & SH, 2021). Freedom in exercising judicial authority according to Law Number 48 of 2009 concerning Judicial Power is not absolute, because the duty of judges is to uphold law and justice based on Pancasila by interpreting the law and seeking the legal basis and principles that form its basis, through the cases presented to them, so that their decisions reflect justice.

The principle of objectivity, or impartiality, of the court is enshrined in Law Number 48 of 2009 (Aji, 2015). In examining cases and rendering decisions, judges must be objective and impartial. To ensure this principle, the party being tried can file an objection, accompanied by reasons, to the judge adjudicating their case, known as the right of recusal. Given that court decisions are made by human beings who happen to be called judges, they are not free from error, imperfection, and bias. It is therefore not surprising that many people are dissatisfied with court decisions. Judges serve to protect human interests, and therefore the law must be enforced. Law enforcement can occur normally and peacefully, but it can also result in violations. It is through law enforcement that law becomes a reality.

In enforcing the law there are three elements that must always be considered, namely:

1. Kepastian hukum (legal security)

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2. Utilization (Zweckmässigkeit)
3. Keadilan (justice).

The law must be implemented and enforced. Everyone expects the law to be enacted in the event of a concrete event. The law itself must be enforced; in essence, no deviation is permitted. Legal certainty provides justifiable protection against arbitrary action, meaning that a person will be able to obtain what they desire under certain circumstances. Society expects legal certainty because it will lead to a more orderly society. Society also expects benefits from the implementation or enforcement of the law. Law is for humans, so the implementation or enforcement of the law must provide benefits or benefits to society.

The third element is justice. Society has a strong interest in ensuring that justice is considered in the implementation or enforcement of the law. The implementation or enforcement of the law must be fair. Law is not synonymous with justice. Law is general, binding on everyone, and equalizing. If legal certainty is the only priority in enforcing the law, other elements are sacrificed. Likewise, if the focus is solely on utility, legal certainty and justice are sacrificed, and so on. In enforcing the law, a compromise must be reached between these three elements. All three elements must receive proportional and balanced attention. However, in practice, achieving a proportional and balanced compromise between these three elements is not always easy. In the event of a violation of rights, a judge must implement or enforce the law.

Judges cannot suspend the implementation or enforcement of laws that have been violated. Judges cannot and should not suspend or refuse to issue a decision on the grounds that the law is incomplete or unclear. They are prohibited from refusing to issue a decision on the grounds of incomplete legislation or the absence of regulations governing it. Because the law is incomplete or unclear, judges must seek the law, must discover the law. They must carry out legal discovery (rechtsvinding). The enforcement and implementation of law are often legal discovery and not simply the application of law.

"In the discovery of this law, there are progressive and conservative schools of thought. The progressive school believes that law and justice are tools for social change, while the conservative school believes that law and justice are only meant to prevent the decline of morals and values."

In legal discovery, judges can fully comply with the law. This legal discovery occurs based on regulations external to the judge. The legislator creates general rules, while the judge merely establishes that the law can be applied to the situation, then applies it according to the law's wording. Thus, legal discovery is nothing more than the forced application of the law, as a syllogism.

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Here, judges do not exercise an independent function in applying the law to specific legal events. Judges are merely mouthpieces for lawmakers and cannot amend or add to the law. Judges' decisions will not contain or encompass more than what is contained in the law pertaining to the specific event.

After explaining the basis for the sentencing above, the author describes a case that occurred in the jurisdiction of the Pasuruan District Court, one of the cases the author studied was Decision Number 11/PID.SUS/2022/PN.Psr which contains:

1. Case Position

a. Identity of the Perpetrator as the Defendant

Full name: VIKTOR BOYCHEV DIMITROV;

Place of birth: Sofia;

Age/Date of Birth : 38 Years / May 9, 1983;

Male gender;

Nationality : Bulgaria (WNA);

Residence : Bale Pelangi Sandik Block B5 No. 6 West Lombok Regency-West Nusa Tenggara;

Religion : Orthodox Christians;

Work : Self-employed;

The defendant together with witnesses PLAMEN PETKOV BASHIROV and PLAMEN DIMITROV and GEORGI YORDANOV TODOROV on July 26, 2021 at approximately 04.44 WIB in front of the BNI Bank Automated Teller Machine (ATM) outlet on Jalan Sultan Agung No. 1, Pasuruan City, installed skimmer devices at the BNI 46 ATM (Automated Teller Machine) in Pasuruan City.

b. Public Prosecutor's Indictment

In his letter of demand, the Public Prosecutor, which was read in essence, demanded that the Judge adjudicating this matter decide:

1. Declaring that the Defendant VIKTOR BOYCHEV DIMITROV has been proven legally and convincingly guilty of jointly and intentionally and without the right to access the electronic system in any way, as per the Second Primary indictment of the public prosecutor.

2. Sentencing the Defendant VIKTOR BOYCHEV DIMITROV to 2 (two) years imprisonment and a fine of Rp. 20,000,000.00 (twenty million rupiah) subsidiary to 6 (six) months imprisonment, reduced by the time the Defendant has been in detention with the order that the Defendant remain in detention.

Judge's Consideration

Considering that the Panel of Judges will then consider whether, based on the legal facts above, the Defendant can be declared to have committed the crime for which he is accused. Considering that the Defendant has been charged by the Public Prosecutor with an alternative charge,

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the Panel of Judges, by taking into account the legal facts above, will first consider the Second Primary Alternative Charge: as regulated in Article 30 paragraph (3) in conjunction with Article 46 paragraph (3) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code, the elements of which are as follows:

1. Every person's element;
2. Elements who intentionally and without authority or against the law access Computers and/or Electronic Systems in any way by violating, breaking through, exceeding or breaking through the security system;
3. Elements of Doing, Ordering to Do or Participating in Doing;

Considering that regarding these elements, the Panel of Judges

Ad. 1. Every Person's Element

Considering, that the element of Every Person refers to a legal subject who is brought to trial by the Public Prosecutor because he is accused of having committed a criminal act, intended to avoid subject error (error in persona);

Considering, that Article 1 number 21 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions regulates that "A person is an individual, whether an Indonesian citizen, a foreign citizen or a legal entity;

Considering that according to the legal facts revealed in the trial, the Defendant VIKTOR BOYCHEV DIMITROV has been presented by the Public Prosecutor as the perpetrator of a criminal act, as outlined in the Public Prosecutor's indictment;

Considering that, in addition to that, the Defendant himself during the trial was able to explain clearly and transparently, both regarding his identity and everything related to the indictment that had been submitted to him;

Considering, that based on the legal considerations above, according to the Panel of Judges, there was no error in persona in the aquo case and regarding whether the Defendant was proven to have committed a crime as charged by the Public Prosecutor, this is closely related to proving the elements of the Article in the Indictment, thus the Element of Every Person has been legally proven;

Ad.2. Elements intentionally and without authority or against the law access Computers and/or Electronic Systems in any way by violating, breaking through, exceeding or breaking through the security system.

Considering that what is meant by intention is wanting and being aware of the occurrence of an action and its consequences (willens en wetens veroorzaken van een gevolg), meaning that

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someone who carries out an action intentionally must want and be aware of the action and/or its consequences.

Considering, that what is meant by against rights or against the law is that the Criminal Act is carried out in ways that are contrary to the provisions of statutory regulations;

Considering, that a computer is a tool for processing electronic, magnetic, optical data or a system that carries out logical, arithmetic and storage functions.

Considering that what is meant by an Electronic System is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, send and/or distribute Electronic Information;

Considering that what is meant by Access is the activity of interacting with an Electronic System that is independent or in a network;

Considering that what is meant by a security system is a system that limits computer access or prohibits access to a computer based on the categorization or classification of users and the level of authority determined; Considering that legal facts have been revealed in court.

Considering, that based on the legal facts above in relation to the definition of the element of intentionally and without rights or unlawfully accessing a computer and/or electronic system in any way by violating, breaking through, exceeding or breaking through the security system, it has been proven.

Considering, that thus the element of intentionally and without authority or against the law accessing a Computer and/or Electronic System in any way by violating, breaking through, exceeding or breaking through the security system, has been proven according to law;

Ad. 3. Elements of Doing, Ordering to Do or Participating in Doing

Considering, that the form of inclusion in Article 55 paragraph 1 to 1 of the Criminal Code in criminal law doctrine is known in 3 forms, namely:

The perpetrator (pleger). According to Hazewinkel Suringa, what is meant by Pleger is every person who alone has fulfilled all the elements of the crime as determined in the formulation of the crime in question, even without the existence of a criminal law that regulates the matter of deelneming, these people can still be punished;

The one who orders to do it (doenpleger). Regarding doenplagen or ordering to do it in criminal law science, it is usually referred to as a middelijke dader or a mittelbare tater which means an indirect perpetrator. He is called an indirect perpetrator because he does not directly commit the crime himself but through the intermediary of another person. Thus there are two parties, namely the direct perpetrator or manus ministra/auctor physicus), and the indirect perpetrator or manus

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domina/auctor intellectualis. For there to be a doenplagen as intended in Article 55 paragraph (1) of the Criminal Code, the person who is ordered to do it must fulfill certain conditions.

According to the MvT, an accomplice is someone who intentionally participates in or helps cause something to happen. Therefore, the quality of each participant in a crime is the same.

Considering that legal facts have been revealed in the trial.

Considering, that based on the description of the legal facts above, the Panel of Judges is of the opinion that between the Defendant and GEORGI (DPO) and PLAMEN DIMITROV (DPO) there was an awareness to carry out close cooperation, which was manifested by the Defendant in the Defendant's actions: determining the location of the ATM machine where the skimming device would be installed by searching for the ATM location by driving around in the Defendant's Wuling car, installing LAN cables and routers, receiving money in the amount of Rp. 70,000,000,- (seventy million rupiah).

Considering, that thus the elements of Doing, Ordering to Do or Participating in Doing have been proven according to law;

Considering, that because all elements of the Public Prosecutor's Second Primary Alternative Charge have been legally proven by the Defendant's actions and with the added conviction of the judge, the Defendant has therefore been legally and convincingly proven to have committed the crime in the Second Primary Alternative Charge;

Considering, that because the Primary Second Alternative charge has been proven, the Subsidiary Second Alternative charge has no basis for consideration;

Considering that during the trial process the Panel did not find any excuses that could eliminate the unlawful nature of the crime or justifications that could eliminate the criminal offence, the Defendant should be given a punishment commensurate with his crime;

Considering, that because the Defendant in this case, in addition to being sentenced to imprisonment, was also sentenced to a fine, the Defendant was also sentenced to a fine, the amount of which will be determined in this decision, and if the Defendant does not pay the fine, then in accordance with the provisions of Article 30 paragraph (2) of the Criminal Code, it will be replaced with a prison sentence, the length of which will be determined in this decision;

Considering that in this case the Defendant has served a period of arrest and detention before this decision has permanent legal force, then in accordance with the provisions of Article 22 paragraph (4) of the Criminal Procedure Code, the period of arrest and detention that the Defendant has served must be deducted in full from the sentence imposed.

Considering that, because the panel of judges considers that there is no proper reason to release the Defendant from detention, then in accordance with Article 197 paragraph (1) letter k of the Criminal

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Procedure Code, the panel of judges considers it necessary to order that the Defendant remain in detention.

Considering, that the evidence in the form of: 1 (one) unit of Wuling brand car type Cortez, metallic gray color, year 2019 Police number: B-2315-BYZ, chassis number: MK3AAAGA1KJ003704, engine number: LJ018K31820085 in the name of ELLEN LOEKSONO address Jl. Patra Tomang II/30 RT.8 RW.2 West Jakarta City DKI Jakarta Province along with the ignition key and 1 (one) STNK and BPKB of Wuling brand car type Cortez, metallic gray color, year 2019 Police number: B-2315-BYZ, chassis number: MK3AAAGA1KJ003704, engine number: LJ018K31820085 in the name of ELEN LOEKSONO address Jl. Patra Tomang II/30 RT.8 RW.2 West Jakarta City, DKI Jakarta Province; because the evidence is a tool used to commit a crime and has economic value, the evidence is declared to be confiscated for the State;

Considering, that the evidence in the form of: (one) ACER brand laptop, type Aspire E-523 series, black; 1 (one) ACER brand laptop, type Aspire 3, black; 1 (one) OPPO Reno4 brand cellphone, blue, IMEI number 1: 867671052095098 IMEI 2: 857671052095080; 1 (one) SAMSUNG brand cellphone, type Galaxy S10e, black, IMEI number 1: 354889106429440, IMEI 2: 354890106429448; 1 (one) HUWAWEI brand cellphone, gold; 1 (one) H&M brand sweater jacket, dark gray; 186 (one hundred and eighty six) blank cards / blank cards with the words Rental Car, black with a picture of a car; 12 (twelve) camera circuit boards; 16 (sixteen) Micro USB charger circuit boards; 16 (sixteen) plates suspected of being ATM card skimming / data recorders; 3 (three) plates made of metal / used biscuit food containers; 3 (three) objects made of iron used to cover the PIN / number buttons on ATM machines (canopies); 3 (three) gray LAN / internet cables; 2 (two) Krisbow brand electric glue guns, green; 2 (two) electric soldering irons; 1 (one) silicone rubber sealant equipped with a skewer; 2 (two) electric soldering irons; 1 (one) set of mini pliers / wrenches; 3 (three) pliers / wrenches; 3 (three) scissors; 1 (one) Krisbow brand plastic cable ties; 3 (three) cutters; 1 (one) Krisbow brand electric screwdriver, red and black combined with a key; 1 (one) Casal brand electric drill, yellow and black combined with a drill bit; 3 (three) screwdrivers; 1 (one) cellphone battery activation tool / cellphone battery charger; 2 (two) digital multimeters; 1 (one) Advanced Card Systems tool / card reader; 1 (one) MSR X6 Magnetic Card Reader; 2 (two) Sandisk Ultra brand memory cards, micro SDHC type, 32 GB size; 4 (four) Samsung cellphone batteries; 2 (two) Apple cellphone batteries; 2 (two) unbranded cellphone batteries; 1 (one) Nokia cellphone battery; 1 (one) Rakkipanda cellphone battery; 10 (ten) blue micro USB data cables; 2 (two) yellow Krisbow brand saws; 1 (one) set of 2 in 1 Modular Telephone Plug Crimper Krisbow brand tools; 1 (one) 18" padlock cutting pliers without a red brand; 1 (one) 24" ACE padlock cutting pliers red; 7 (seven) padlock tools with various sizes in silver; 1 (one) black Krisbow brand crowbar / pick cube; 1

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(one) pack of Krisbow brand sandpaper; and 3 (three) Double tip; Because the evidence was used to commit a crime or is a tool related to the crime committed by the Defendant, the evidence was confiscated for destruction.

Considering, that the evidence in the form of: 1 (one) BCA Bank savings book, account number: 2320487385 in the name of VIKTOR BOYCHEV DIMITROV; 1 (one) BCA Bank ATM card card number: 5260512019587615; 1 (one) Mandiri Bank savings book, account number: 161-00-0698637-1 in the name of VIKTOR BOYCHEV DIMITROV; 1 (one) Mandiri Bank ATM card card number: 4617003730363265; 1 (one) Passport number: 386399689 in the name of AKTOR BOYCEV DIMITROV; and 1 (one) Residence Permit card Limited Electronics in the name of VIKTOR BOYCHEV DIMITROV, foreigner registration number: J1U1UAHC97899, permit number: 2C12EC0109-UU, Passport number: 386399689; Because the evidence is not a tool used to commit a crime or a tool related to a crime committed by the Defendant, it is returned to the Defendant VIKTOR BOYCHEV DIMITROV

Considering, that because the Defendant was declared guilty and sentenced to a criminal penalty, then in accordance with the provisions of Article 197 paragraph (1) letter I of the Criminal Procedure Code and Article 222 paragraph (1) of the Criminal Procedure Code, the Defendant is burdened with paying the costs of this case, the amount of which will be determined in this decision.

Considering, that regarding the imposition of a criminal sentence on the Defendant, the Panel of Judges views the imposition of said criminal sentence not merely as a means of revenge. revenge, but rather Also directed at providing legal protection in community life so that balance and harmony are created in community life while still paying attention to the interests of society/the State, victims and perpetrators of crimes, and specifically to provide a warning to the Defendant so that he does not repeat his actions in the future;

Weigh, that before dropping The punishment for the Defendant must take into account both aggravating and mitigating circumstances as follows:

Aggravating circumstances:

The defendant's actions disturbed the community;

Extenuating circumstances:

The defendant was polite in court

The defendant regrets his actions;

Considering the provisions of Article 30 paragraph (3) in conjunction with Article 46 paragraph (3) of Law Number 11 of 2008 concerning Electronic Information and Transactions in conjunction with Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 in conjunction with

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Article 55 paragraph (1) point 1 of the Criminal Code, and the Articles in the Criminal Procedure Code, as well as the applicable laws and regulations relating to this case.

M E N G A D I L I

Declaring that the Defendant VIKTOR BOYCHEV DIMITROV has been legally and convincingly proven guilty of committing the crime of "intentionally and without authority participating in accessing Computers and Network Systems in any way by violating the security system in the Primary Second Alternative indictment;

1. Therefore, to sentence the Defendant to 1 (one) year imprisonment and a fine of Rp. 20,000,000.00 (twenty million rupiah) with the provision that if the fine is not paid, it will be replaced with 1 (one) month imprisonment;
2. Determine that the period of arrest and detention that has been served by the Defendant is deducted in full from the sentence imposed;
3. Ordering the Defendant to remain in custody;
4. Determine the evidence in the form of:

1 (one) unit of Wuling brand car, type Cortez, metallic grey color, year 2019 number Police: B-2315-BYZ, number frame: MK3AAAGA1KJ003704, engine number: LJ018K31820085 in the name of ELEN LOEKSONO address Jl. Patra Tomang II/30 RT.8 RW.2 West Jakarta City DKI Jakarta Province along with the ignition key and 1 (one) STNK and BPKB of a Wuling car type Cortez, metallic gray, year 2019 Police number: B-2315-BYZ, frame number MK3AAAGA1KJ003704, engine number: LJ018K31820085 in the name of ELEN LOEKSONO address Jl. Patra Tomang II/30 RT.8 RW.2 West Jakarta City DKI Jakarta Province; Confiscated for the State;

1 (one) ACER laptop, type Aspire E-523 series, black; 1 (one) ACER laptop, type Aspire 3, black; 1 (one) mobile phone brand OPPO Reno 4 blue, IMEI number 1:867671052095098 IMEI 2:857671052095080; 1 (one) SAMSUNG brand mobile phone, type Galaxy S10e, black, IMEI number 1:354889106429440, IMEI2: 354890106429448; 1 (one) HUWAWEI brand mobile phone, gold; 1 (one) H&M brand sweater jacket, dark gray; 186 (one hundred and eighty-six) blank cards with the words Rental Car written on them, black with a picture of a car; 12 (twelve) camera circuit boards; 16 (sixteen) Micro USB charger circuit boards; 16 (sixteen) plates suspected of being ATM card skimming/data recorders; 3 (three) pieces of metal plates / used biscuit food containers; 3 (three) pieces of iron objects used for PIN / number button covers on ATM machines (canopies); 3 (three) gray LAN / internet cables; 2 (two) Krisbow brand electric glue guns, green; 2 (two) electric soldering irons; 1 (one) silicone rubber sealant equipped with a skewer; 2 (two) electric soldering irons; 1 (one) set of mini pliers tools / wrenches; 3 (three) pieces of pliers tools / wrenches; 3 (three) scissors; 1

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(one) Krisbow brand plastic cable ties; 3 (three) cutters; 1 (one) Krisbow brand electric screwdriver, red combined with black and a key; 1 (one) Casal brand electric drill, yellow combined with black and a drill bit; 3 (three) screwdrivers; 1 (one) cellphone battery activation tool / cellphone battery charger; 2 (two) digital multimeters; 1 (one) Advanced Card Systems / card reader; 1 (one) MSR X6 Magnetic Card Reader; 2 (two) Sandisk Ultra micro SDHC memory cards, 32 GB; 4 (four) Samsung cellphone batteries; 2 (two) Apple cellphone batteries; 2 (two) unbranded cellphone batteries; 1 (one) Nokia cellphone battery; 1 (one) Rakkipanda cellphone battery; 10 (ten) blue micro USB data cables; 2 (two) yellow Krisbow saws; 1 (one) set of 2 in 1 Modular Telephone Plug Crimper Krisbow tools; 1 (one) 18" padlock cutting pliers, unbranded, red; 1 (one) 24" ACE padlock cutting pliers, red; 7 (seven) padlocks of various sizes in silver; 1 (one) black Krisbow brand crowbar/cukit cube; 1 (one) pack of Krisbow brand sandpaper; and 3 (three) pieces of double tip; Confiscated for destruction

evidence in the form of: 1 (one) BCA Bank savings book, account number: 2320487385 in the name of VIKTOR BOYCHEV DIMITROV; 1 (one) BCA Bank ATM card card number: 5260512019587615; 1 (one) Mandiri Bank savings book, account number: 161-00-0698637-1 in the name of VIKTOR BOYCHEV DIMITROV; 1 (one) Mandiri Bank ATM card card number: 4617003730363265; 1 (one) Passport number: 386399689 in the name of VIKTOR BOYCHEV DIMITROV; and 1 (one) Electronic Limited Stay Permit card in the name of VIKTOR BOYCHEV DIMITROV, foreigner registration number: J1U1UAHC97899, permit number: 2C12EC0109-U, Passport number: 386399689; Returned to the Defendant VIKTOR BOYCEV DIMITROV

6. Charge the Defendant with court costs of Rp. 5,000 (Five Thousand Rupiah);

Thus it was decided in the Deliberation Meeting of the Panel of Judges of the Pasuruan District Court, on Tuesday, April 26, 2022 by Us: Haries Suharman Lubis, SH., MH., as the Chief Judge of the Panel, accompanied by Yusti Cinianus Radjah, SH., and I Komang Ari Anggara Putra SH., each as Member Judges, The decision was pronounced in a hearing open to the public on Wednesday, April 27, 2022 by the Chief Judge of the Panel and accompanied by Member Judges assisted by Sigit Meinarno, SH as Substitute Clerk and attended by Aryanto Novindra, SH, MH. Public Prosecutor at the Pasuruan City District Attorney's Office in front of the Defendant accompanied by his Legal Counsel

Analysis

According to the author, the prosecutor's indictment is correct, namely that he was accused of violating Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions as amended and supplemented by Law of the Republic of Indonesia Number 19 of 2016 concerning amendments to Law of the Republic of Indonesia Number 11 of 2008 concerning

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Electronic Information and Transactions Article 30 (Paragraph 2 (two) Jo. Article 46 Paragraph 2 (two), Jo Article 55 Paragraph 1 point 1 of the Criminal Code;

Article 30 paragraph (2):

"Any person who intentionally and without authority or against the law accesses a computer and/or electronic system in any way with the aim of obtaining electronic information and/or electronic documents.

Criminal threats under Article 46 paragraph (2):

"Any person who fulfills the elements as referred to in Article 30 paragraph (2) shall be punished with a maximum prison sentence of 7 (seven) years and/or a maximum fine of IDR 700,000,000.00 (seven hundred million rupiah)."

It is the judge's discretion to impose a sentence exceeding the prosecutor's demand, based on the facts of the trial and their convictions, if deemed just and rational. Furthermore, it is a reality that prosecutors' demands do not always equal or align with the maximum penalty limits explicitly stipulated in statutory regulations. Judges may impose a sentence higher than the prosecutor's demand, but may not exceed the maximum penalty limits stipulated by law.

The Judge's Consideration Basis in determining the guilt of the Defendants in case Number 11/Pid.Sus/2022/PN.Psr. by using the Republic of Indonesia Law Number 11 of 2008 concerning Electronic Information and Transactions as amended and supplemented by the Republic of Indonesia Law Number 19 of 2016 concerning amendments to the Republic of Indonesia Law Number 11 of 2008 concerning Electronic Information and Transactions Article 30 (Paragraph 2 (two) Jo. Article 46 Paragraph 2 (two), Jo Article 55 Paragraph 1 point 1 of the Criminal Code, the judge uses legal and non-legal considerations. With legal considerations (matters revealed in court) starting from:

1. allegations,
2. Witness testimony,
3. Defendant's statement,
4. And the discovery of evidence

All of this has been proven and acknowledged by the Defendants, who, in court, had the intention to steal money and bank customer data through skimming. However, from a non-legal perspective,

Aggravating factors:

The actions of the Defendants disturbed the public and could harm Bank BNI.

Mitigating factors for the Defendants:

The Defendants admitted frankly and regretted their actions;

The Defendants promised not to repeat their actions;

The Defendants have never been convicted;

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There have been no victims who have suffered losses due to the defendants' actions;

The defendants are the backbone of the family.

On that basis, the panel of judges considered that the defendants had carried out actions/deeds that fulfilled the elements of the article which were stated as an act of attempting to access another person's computer and/or electronic system with the aim of obtaining electronic information on an ongoing basis, so that the defendants deserved to be sentenced to a criminal sentence.

The application of criminal sanctions for the criminal act of skimming committed by the Defendants through automated teller machines (ATMs) in decision Number 11/Pid.Sus/2022/PN.Psr does not or does not adequately reflect a sense of justice. Therefore, in this case, the element of law enforcement regarding justice has not been fully fulfilled. In the above case, the criminal sanctions received by the Defendants were relatively light, with the public prosecutor only 2 (two) years in prison, while the final decision by the judge was only 1 (one) year.

4. CONCLUSION

In the Decision of case number 11/Pid.Sus/2022/PN. Psr, the burden of criminal responsibility is imposed on the Defendants, because based on the facts in the trial, the testimony of witnesses, evidence in the trial, as well as the statements of the Defendants themselves who admitted that they did have the intention to commit the crime of Skimming so that it is in accordance with the elements of criminal responsibility in case number 11/Pid.Sus/2022/PN. Psr.

The Judge's Consideration Basis in determining the guilt of the perpetrator of the skimming crime in case Number 11/Pid.Sus/2022/PN. Psr. by using the Republic of Indonesia Law Number 11 of 2008 concerning Electronic Information and Transactions as amended and supplemented by the Republic of Indonesia Law Number 19 of 2016 concerning amendments to the Republic of Indonesia Law Number 11 of 2008 concerning Electronic Information and Transactions Article 30 Paragraph 2 (two) Jo. Article 46 Paragraph 2 (two) Jo Article 55 Paragraph 1 point 1 of the Criminal Code, the judge uses legal and non-legal considerations. With his legal considerations (matters revealed in court) starting from:

a. allegations,
b. Witness testimony,
c. Defendant's statement,
d. And the discovery of evidence

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