

CRIMINAL PROTECTION AGAINST VICTIMS CRIMINAL ACTIONS IN CYBER CRIME

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ABSTRACT

This study aims to determine the protection of criminal law against victims of carding in cyber-crime. Carding is a form of crime that other people use credit cards for is spent without the owner's knowledge, using the mode operandi. The research method for approaching the problem uses juridical normative and juridical empirical, assisted by primary data and secondary data. Data collection was carried out by literature study and field study and data processing was analyzed qualitatively. The results showed that there are two types of criminal law protection for victims of carding in cybercrime, namely legal protection preventive, namely the police (Polda Metro Jaya) prioritize the process of prevention before the crime occurs, which can be in the form of legal counseling related to carding, and repressive legal protection, namely by carrying out applicable criminal procedural law processes to realize their legal ideals. Regulations regarding carding in general, it is contained in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. Factors that hinder the protection of criminal law for victims of carding crimes in cybercrime, based on research conducted by the author, namely (1) community factors, (2) facilities and facilities, (3) legal factors, and (4) law enforcement factors.

Key words: Legal Protection, Victim, Carding, Cyber crime

INTRODUCTION

Cybercrime is all kinds of use of computer networks for criminal purposes and/or high-tech criminals by misusing the convenience of digital technology (Wahid & Mohammad Labib, 2005). In addition, in two UN Congress documents cited by Barda Nawawi Arief regarding The Preventive of Crime and the Treatment of Offenders in Havana Cuba in 1990 and Vienna Austria in 2000, explained that there are two terms related to the definition of cybercrime, namely cybercrime and computer-related crime (Arief, 2007). Regarding legal arrangements for crimes that exist in cyberspace, it has been regulated in one form of regulation, namely Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). On regulations that, describe the forms of cybercrime, the elements of the act, and the sanctions that threaten it. There are various classifications of cybercrime, one of which is cybercrime using a credit card or known as carding. The definition of carding is shopping using other people's credit card numbers and identities, which are obtained illegally, usually by stealing data on the internet. Then for the perpetrator who commits the carding action is referred to as a carder, another term for this type of crime is cyber fraud as a cyber fraud.

Carding itself is a criminal act that is illegal to intercept and then uses a credit card number without the physical presence of the card to shop at an online store (forgery). Some examples of Illegal Interception namely use of original cards that are not accepted by real cardholders (non received cards), original cards stolen/found (lost/stolen cards), original cards whose data has changed (altered cards), fake credit cards (totally counterfeit), sales draft copies by individual traders are then submitted to other merchants to be filled with fictitious transactions (record of charge pumping or multiple imprints), and others. This mode can occur as a result weak authentication system used in ensuring the identity of ordering goods at online stores. Considering that this carding crime uses computers and/or computer networks, it can become a type of crime that can be included in cybercrime law.

There is also a case regarding carding in Indonesia, one of the cases that the author will include in this research is a Credit Card Breaker in Jakarta Arrested, the model is that he is a Bank Employee who was reported by several news media. In this case, it occurred in Jakarta on Friday, March 6, 2020, namely the Jakarta Metro Police arrested seven suspected fraudsters who broke into the victim's credit card. The suspects used the one-time password (OTP) code to drain the victim's credit card. In addition, according to a statement from the head of the Jakarta Police Chief named Inspector General. Pol. Nana Sudjana said the seven suspects were named Al Interested Suhendra, Remondo, Eldin Agus Tryanzah, Sultani Billah Rizky, Helmi, and Deah Angraini. One more suspect, Yopi Altobelli, died. He was shot while trying to fight police officers using a firearm. The perpetrators were the South Tulung group in the Palembang area, South Sumatra. The suspects initially looked for BCA customer phone numbers through the Financial Services Authority (OJK) Financial Information Reporting System (SLIK). Then, they contacted the customer claiming to be a BCA employee who wanted to help the victim cancel online shopping transactions. The perpetrators contacted the victim, asking if the victim had made online shopping transactions. The victim answered no (online shopping), then they asked for an OTP number to help cancel the (online) shopping. The victim also informed the OTP (One Time Password) which was sent via short message. Furthermore, the suspect drained the money on the victim's credit card. The loss of BCA is estimated at Rp 22 billion. When he was secured in South Sumatra, the police confiscated evidence including 5 cellphones, 2 revolvers with 3 caliber bullets, and a laptop. For their actions, the suspects were charged under Article 30 in conjunction with Article 46 and or Article 35 in conjunction with Article 51 of Law of the Republic of Indonesia Number 19 of 2016 concerning Electronic Information and Transactions. which carries a penalty of 8 years in prison.

Based on the carding criminal case that occurred in Indonesia, in fact there is a legal subject that is often forgotten, namely the victim. Even though the legal status possessed by the victim makes him entitled to legal protection. Therefore, it is important to protect the victim in a carding crime. Talking about this, it is important to know the definition of legal protection for victims. Legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims, legal protection of crime victims as part of community protection, can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance (Soekanto, 1986). Because of the above, legal protection is very important for victims, both preventive and repressive. So that in the title of this thesis, the author wants to analyze more deeply the protection of criminal law against victims of carding in cybercrime. In the background of this problem, the author focuses more on whether the protection of criminal law for victims of carding in cybercrime has been carried out and/or the extent to which the form of protection is received by the victim. Then, regarding the factors that hinder the protection of criminal law for victims of carding in cybercrime. Based on the description above, the authors are interested in knowing clearly from the point of view of criminal law the protection of criminal law for victims of criminal acts carding in cyber crime, and factors that hinder the protection of criminal law against victims of carding in cyber crime.

RESEARCH METHOD

Legal research is all one's activities to answer legal and academic issues and practitioner in nature, both like legal principles, legal norms that live and develop in society, as well as those relating to legal realities in society (Ali, 2016). So that in this study, 2 (two) types of approaches were used, namely the normative juridical approach and the empirical approach. A normative juridical approach is an approach to literary law research by examining a doctrine, legal principles, norms, the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), then Law Number 19 2016 Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE), as well as other regulations relating to issues that will research. The second approach is an empirical juridical approach which is a research approach that is carried out by looking at the realities that exist in practice in the field. This approach is also known as a sociological approach which is carried out directly on the object of research using observation and interviews.

RESULT AND DISCUSSIONS

Protection of Criminal Law Against Victims of Carding Crime in Cyber Crime

For every criminal act that occurs, legal protection for the parties involved must be upheld. Therefore, in the criminal act of carding in cybercrime, the existence of legal protection, especially for victims, is needed in law and society. In this case, knowledge regarding the application of legal protection to victims in carding crimes needs to be known. Carding is a form of crime that uses someone else's credit card to spend without the owner's knowledge (Lestari & Johannes Arif, 2010). Carding or called Card Not Present Transaction is a form of crime using someone else's credit card number to spend (nonface to face transaction) without the knowledge of the rightful owner. Transactions are usually carried out electronically. General regulations regarding these crimes are found at in the provisions of Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions. However, the current definition of carding has not been specifically included in the law. However, in general, Carding is included in the form of Cybercrime crimes, namely "Infractions of privacy", crimes aimed at someone's information that is very private and confidential. This crime is usually committed against a person's personal information that is stored in a stored personal data from computerization, if it is known by other people, it will harm that person both materially and immaterially (Suhariyanto, 2012).

About the modus operandi used by the perpetrator of the carding crime, it can take various forms. This can develop by increasingly advanced technological developments. The current carding modus operandi can be classified into several forms, including:

- a. Fraud application; Using a genuine credit card obtained with a fake application. The perpetrator falsifies supporting data in the application process, such as KTP, passport, bank statements, income certificates, etc;
- b. Non received card; Using an original credit card that is not accepted by a valid (entitled) credit card holder then the perpetrator puts a signature in the signature column. Credit cards are obtained by courier or break into the post office if sent by post;
- c. Lost/stolen card; Using an original credit card that is stolen or lost. During the transaction, the perpetrator signs the sales draft and imitates the signature on the credit card or the signature of a valid cardholder. Transactions are carried out below the floor limit so there is no need done authorization;
- d. Altered card; Using an original credit card whose data has been changed. The perpetrator uses the stolen card (lost / stolen, non-received, expired card) and the relief card is heated and flattened and then re-embossed with new data. Meanwhile, the magnetic stripe is filled with new data with reencoded data obtained from the point of compromise (POC);
- e. Counterfeited; Using an entirely fake credit card. The perpetrator prints a counterfeit card using the valid number and cardholder data by embossed and reencoded;
- f. White plastic card; Using a plain plastic card that contains original data. The perpetrator printed data from legitimate credit card holders on plain plastic, without imitating holograms and issuer's logos. Magnetic stripe filled with cardholder data using encoding;
- g. Record of charge (Roc) pumping; Reproduction of sales drafts by merchants. One sales draft was not signed by a valid cardholder and submitted to another merchant to be filled in with fictitious transaction data;
- h. Altered amount; Changing the transaction value on the sales draft by merchants (traders);
- i. Telephone/mail ordered; Order goods by telephone or letter using another person's credit card whose name and number are already known;

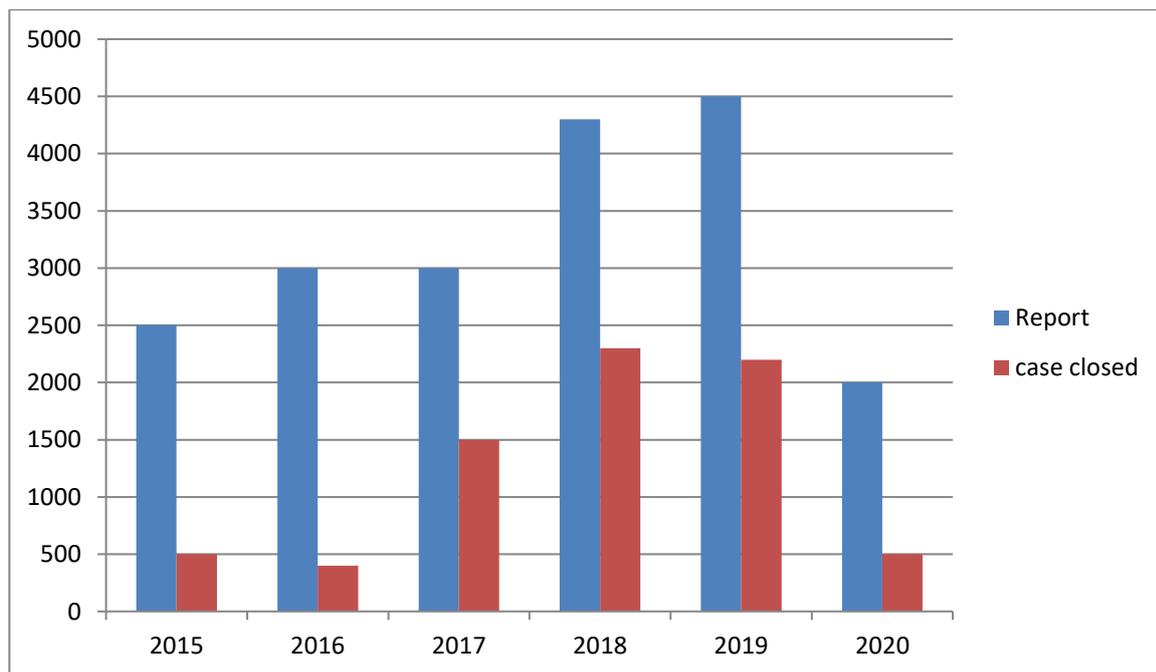
- j. Changing Electronic Data / Draft Capture (EDC) programs; Change and destroy the program on the authorization tool (electronic data/draft capture / EDC) owned by the manager by the merchant (merchant);
- k. Fictitious merchant; The perpetrator pretended to be a trader by submitting an application accompanied by false data. The implementation of the modus operandi is also supported by various instruments such as skimmers or software to generate credit card numbers and there is a relatively open opportunity to steal data from credit cards such as hotels, restaurants, cards centers, and others. so that credit card identities can be obtained easily. The modus operandi that can be done in carding can develop along with technological advances in society (Suseno, 2004).

The modus operandi used in carding is of course various types but is classified into two (2) techniques that are often used by perpetrators, namely skimming techniques and phishing techniques. Regarding both types of technique or mode This operandi, can be explained as follows:

- a. Skimming is a hi-tech method, where the perpetrator obtains personal or account information from a credit or debit card, driving license (SIM), identity card (KTP), or passport. Skimmers use electronic tools to get that information. This tool is called a cheap skimmer, which is under 50 US Dollars or around Rp. 450,000. When a credit card or ATM card is swiped through the skimmer, the information contained in the magnetic stripe on the card will be read by the skimmer and stored in that device or on a computer connected to the tool (Jati, 2012).
- b. Phishing is the activity of a person to obtain confidential user information by using fake e-mails and web pages that appear to resemble the actual original or official appearance (Sunarso, 2009).

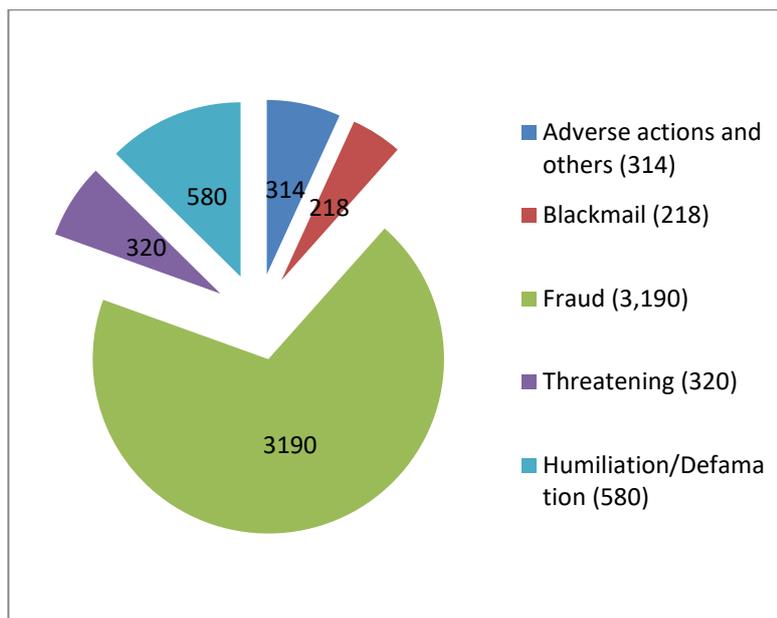
The author's analysis of the technique or modus operandi in the carding crime is as follows that apart from the various types of techniques that exist, it will not be separated from the meaning of the crime in question. Therefore, carding is an act of stealing personal data in the form of other people's credit cards to be used against the law for the benefit of the perpetrator. So the technique used is always related to the mode of data theft, either in person or online. This, of course, becomes an important point where carding problems can be related to criminal acts similar to them. Regarding the trend of cybercrime which is increasing every year, the Police have compiled various data regarding cybercrime. From previous years, the increase in cybercrime, in general, has increased. This is evidenced by a graph of the increase in the number of cases, as shown below:

Chart 1. Graph of the Number of Cyber Crimes



Based on the graph above, there is a significant increase in the number of cases. The comparison between the number of existing case reports and the number of cases that have been resolved is still problematic. It can be seen that the cases that have not been resolved have not been fully committed by the police, causing the accumulation of unresolved cases to increase as well. Apart from the increase in the number of cybercrime cases that have occurred, of course, this is closely related to the type of content or information available through the media or electronic products. This information or content also relates to what actions often occur in the context of existing cybercrimes. Below is a pie chart that describes five (5) types of negative actions that often occur in cybercrime, as follows:

Chart 2. Number and Information Regarding Types of Negative Actions in Cybercrime



Based on the previous diagram, the author can explain that in cyber crime there is behavior that is often carried out by the perpetrators, namely in the form of fraud. Fraud is a technique that is often one of the modus operandi of every cybercrime. This of course also relates to the carding crime, which as the author has previously explained. Whereas carding has a fraud application technique, namely a technique that uses an original credit card obtained with a fake application. Thus, every form of action that is carried out in cybercrime will always be related to one technique with another, such as fraud which will result in losses for the victim.

Forms of legal protection can be categorized into two (2) kinds, namely preventive legal protection and repressive legal protection. Even in the crime of carding, the victim has the right to get preventive and repressive legal protection. This is under the opinion of one legal expert named Philipus M. Hadjon, who stated that the division of legal protection consists of preventive and repressive. Based on the author's analysis regarding the protection of criminal law against victims of the crime of carding, there are still gaps in the regulations or regulations. This can be seen how the provisions of the regulations relating to it have not clearly described carding, and how legal efforts are to protect against it. To be precise, Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions, still does not explicitly or explicitly regulate what is legal protection of personal data and carding. So to enforce the law on carding, in this case realizing protection, still has shortcomings. Because to enforce the law, it is very important to have clarity in terms of regulations and the legal system. About legal protection for victims of carding, in particular, Bripka Dedy Wibowo has explained that the efforts made by the police to fulfill the form of legal protection include the following, namely:

1. preventive Legal protection constitutes preventive measures so as not to become victims of criminal acts. This is carried out by cooperating with related parties such as banks to educate the public regarding credit card policies, especially for each customer. Then the National Police disseminates it to students and the public in general by holding seminars inviting the police to educate about policies on using the internet, e-commerce, and its payment systems as well as those related to the digital world associated with its legislation.
2. Repressive legal protection by way of solving problems if a criminal act has occurred, namely conducting investigations and investigations to reveal the perpetrators in order to create legal certainty, benefit and justice.

Law enforcement officials who handle carding cases must embody the firmness of the law itself so that the perpetrators get a deterrent effect from committing criminal acts again. Whereas regarding the existing case phenomenon, the carding crime is increasing. This proves that the role of the user as the initial determinant of preventive protection has not been carried out optimally, namely that credit card users are often less careful in using credit cards. So that legal protection for victims in the form of both preventive and repressive forms must be improved by clarifying the legal rules again and also from the point of view of users and administrators of electronic systems.

Inhibiting Factors in the Protection of Criminal Law Against Victims of the Crime of Carding in Cyber Crime

According to the author's analysis, that successful law enforcement can occur if the factors related to it have been improved. This means that the functions, goals, and ideals of the law to realize justice, benefit, and legal certainty can be carried out properly so that public trust and high respect for the law itself can be regained. Regarding factors related to law enforcement, one of the legal experts has stated a theory regarding it, namely Soerjono Soekanto. That according to him, there are factors that affect the existing law enforcement and also directly affect legal protection. These factors are summarized in a theory of law enforcement according to Soerjono Soekanto are:

- a) Legal Factors; The practice of administering law in the field there are times when there is a conflict between legal certainty and justice, this is because the conception of justice is an abstract formulation, while legal certainty is a procedure that has been determined normatively;
- b) Law Enforcement Factors; The legal function, mentality, or personality of law enforcement officers play an important role if the regulations are good, but the quality of the officers is not good, there is a problem;
- c) Factors of Supporting Facilities or Facilities; Factors supporting facilities or facilities include software and hardware, one example of software is education;
- d) Community Factors; Law enforcement comes from the community and aims to achieve peace in society;
- e) Cultural Factors; Culture has a very large function for humans and society, namely regulating so that humans can understand how they should act, act, and determine their attitudes when they relate to other people (Soekanto, 2004).

Based on the theory of law enforcement, the factors that hinder the protection of criminal law against victims of the crime of carding can be described, among others, as follows:

a) Legal factors

That in this factor the author analyzes the extent to which the legal factors contained in the protection of criminal law against victims of carding in cybercrime have been implemented. The legal factor relates to the regulation of the rule of law relating to what is regulated, in this discussion it is related to the crime of carding. Law is anything that gives rise to rules that have coercive power, that is, if they are violated, they will get strict and real sanctions (Masriani, 2004). Based on the explanation of legal factors when it is associated with the crime of carding, the author's analysis is as follows, namely that it has been seen that the regulation regarding carding is still lacking, where there are only a few articles that can be used to ensnare perpetrators, and provide protection for victims. The provisions of these articles also do not concretely mention the carding itself, but rather the elements contained in it. Articles relating to carding include Articles 30, 31, 32, and 46 contained in Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Information and Electronic Transactions. In addition, legal factors relating to legal protection for victims can use the rules or articles in the Consumer Protection Act. According to the author's analysis, regarding the existing legal factors, there is a gap in law enforcement against the crime of carding. Existing loopholes can provide an opportunity for an imbalance between the law and its enforcement, which results in reduced legal certainty in protecting it. This is due to the lack of legal arrangements, related articles, sanctions, and how to provide legal protection that has not been accommodated into a clear unit. So that the legal factor becomes an obstacle for law enforcement officers and others to realize the goals and ideals of the law itself.

b) Law Enforcement Factor

Law enforcement factors, in this case, are individuals who are directly related to the existing law enforcement process, the police, prosecutors, courts, and other legal practitioners who have important roles and functions in realizing successful law enforcement. Law enforcement can be carried out if the law enforcers are professional, mentally tough, and have moral integrity, high ethics. Previously, it was important to discuss the role and function of law enforcers themselves, this was to find out the existence of law enforcers in the legal process in realizing their goals and ideals. Law enforcement is the central point, this is because legislation, drawn up by law enforcers, its implementation is carried out by law enforcers, and law enforcers are considered legal role models for the wider community. Therefore, if the morals of law enforcers are good, then the desired law enforcement is also good, otherwise, the morals of law enforcers are bad, so the desired law enforcement is also bad (Soekanto, 1983).

About research on the inhibiting factors of legal protection for victims of carding cases, it has been stated that the factors that hinder investigators or law enforcers in carrying out law enforcement are related to the length of time providing information on requests for transaction data and data instructions that lead to the perpetrators needed by investigators managed by the Operator. Electronic System. Based on this, according to the author, law enforcement as a determining factor in law enforcement is closely related to the system that forms the basis for law enforcement to carry out all forms of law enforcement efforts. So that between one law enforcement factor and another are closely related. The author argues that if there is a weakness in the process carried out by law enforcement, of course, this is related to what underlies this. As far as the case of the carding crime is concerned, according to the author, law enforcers, especially the Polda Metro Jaya Police Sub-Directorate IV Tipid Cyber have carried out their functions and duties following existing legal rules. However, there are obstacles regarding the performance of the legal process carried out, namely that there are shortcomings in terms of existing technology and also the system that must be carried out is often complicated. So concerning legal protection, of course, law enforcers will be less effective and efficient in carrying out their duties if there are not enough supporters.

c) Factors of Facilities and Facilities

A factor of facilities and facilities is an important factor in law enforcement, namely that without adequate facilities and infrastructure law enforcement can't run properly, the facilities where the law enforcement process will be carried out, for example, the police office, the prosecutor's office, and the court and also the infrastructure therein is not inadequate, resulting in inconvenience in the law enforcement process due to security factors and so on. The function of the existence of facilities and facilities is very important to make certain rules effective. The scope of the said facilities, especially physical facilities that function as supporting factors. How can law enforcers work properly if they are not equipped with proportional vehicles and communication tools?

According to the author's analysis, the crime of carding which is a type of cybercrime is in dire need of sophistication of technological tools to handle it. So that reforms are needed regarding facilities and facilities related to law enforcement both through tools, systems, and the level of ability of law enforcement officers. The existence of facilities and facilities as a factor in legal protection for victims of carding crimes in cybercrime is a very important complementary point. The author argues based on the explanation above, that seeing carding is cybercrime, which is very closely related to the use of advanced technology. So that adequate facilities and facilities are needed in all existing legal processes so that law protection and enforcement can be carried out properly. Therefore this factor is very important to be maximized.

d) Community Factor

Community factors can also affect law enforcement itself because law enforcement comes from the community and aims to achieve peace in society. The community has a big role in the realization of the law in an existing system, the role that the community has is very influential on the rules of the legal system. According to Bagir Manan, good law in its formation and enforcement is strongly influenced by social, economic, political, and cultural realities. Although in certain situations, it is recognized that the law can act as a means of reform, but in many cases, the law is a reflection of society (Manan, 2005). Community factors are very influential on the law itself. The community has a role in law enforcement, where public awareness and openness are needed to enforce the law. Awareness of awareness of the community in cases of carding crime is very much needed, legal protection can be started from people who are aware of the importance of increasing self-protection against carding crimes.

Legal awareness is a legal view in society about what the law is. This view develops and is influenced by various factors, namely religion, economy, politics, and so on. That view is always changing because the law is always changing too. About the crime of carding, public awareness has not been fully considered, where this crime is an act of cybercrime-related to technology. According to the author's analysis by looking at the development of existing cases, that public awareness in this regard is still lacking. The community considers that self-protection, in this case, is the full responsibility of law enforcement officers. Even though these protection efforts can be carried out by the public by still following the rules for the use of personal data by the law.

e) Cultural Factor

Cultural factors include the values that underlie the applicable law, which values are abstract conceptions of what is considered good and what is considered bad. Culture has a very large function for society and humans. Society has needs in the material and spiritual fields. To meet their needs, most of them are filled with culture that comes from the community itself. But human abilities are very limited, thus the ability of culture which is the result of his creation is also limited in meeting all needs (Soekanto, 1990). Culture in society is also a determining factor for the crime of carding, where carding can be judged by the community as an important crime to be eradicated or is it only considered small by the community. This means that the community can provide an assessment of the legal norms that exist in the carding arrangement, whether it can be understood by the community or not. According to the author, people's habits or culture in understanding carding are still minimal, where the culture of the people who are not open to technological developments and how people turn a blind eye to new things about technological developments are obstacles to enforcing the law itself. This is reinforced by the culture or habits of the people who are less concerned if they have not become victims or are directly related parties. This means that people tend to underestimate something which in the end can harm them. Thus, the author argues that in terms of cultural factors, the community still needs to be leveled, so that legal protection and law enforcement can be maximized.

Based on the research that has been done by the author, the author's analysis regarding the discussion of the factors that hinder the protection of criminal law against victims of the crime of carding in cybercrime is as follows:

- 1) Community Factors; that is, according to the author, society plays an important role in protection. There is still a shortage where people often don't care about their data, lack of prudence from the community as credit card users, causing an increase in the number of carding cases.
- 2) Facilities and Facilities Factors; considering that carding is a new crime in cybercrime, of course, this is related to technological advances. So that the existing facilities and facilities in the legal process need to be improved again so that law enforcement officers can carry out their duties optimally.
- 3) Legal Factors; that is, according to the author, the rules or legal arrangements in the form of legislation governing the crime of carding are still minimal, giving rise to gaps and uncertainties in the handling of the crime of carding. However, this can be resolved if there are clear, detailed arrangements regarding carding and its handling.
- 4) Law Enforcement Factors, according to the author, law enforcement officers can maximize their duties and functions in carrying out legal processes with the assistance of legal factors, and the community and good facilities and facilities.

CONCLUSION AND SUGGESTION

There are two types of criminal law protection for victims of carding crimes, namely: preventive and repressive legal protection. The preventive legal protection carried out by the Polda Metro Jaya prioritizes the prevention process before the crime occurs, which can be in the form of legal counseling related to carding, by educating on policies on the use and security of personal data, conveying about legal remedies that can be taken by victims. The Polda Metro Jaya Police also urge public awareness to protect each other from any cybercrime that occurs. Then on repressive legal protection, namely by carrying out the applicable criminal procedural law process to realize the ideals of the law itself. In this case, law enforcers follow the regulations contained in articles or provisions relating to carding such as Articles 30, 31, 32, and 46 of Law Number 11 of 2008 in conjunction with Law 19 of 2016 concerning Electronic Information and Transactions. Factors that hinder the protection of criminal law for victims of the

crime of carding, among others, are: community factors affect the level of development of existing carding cases, where openness or public awareness of carding can prevent or minimize the number of carding increases in the community. Then the factor of facilities and facilities still requires updating a sophisticated technology system to facilitate the legal process that is passed in handling carding cases. Then on the legal factor which is an important point where regulations or regulations regarding carding are still minimal to be found to ensnare the perpetrators. So that law enforcers also have difficulty regarding the rules that can be used as the basis for carrying out legal protection efforts.

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