

# Juridical Perspective Of Credit Card Misuse Under Criminal Law (A Comparative Study)

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**Abstract:** The development of the national economy shows the direction that increasingly integrated with the regional and international economy that can support both a negative and positive impacts. Meanwhile, the development of national economy continues to move quickly to the increasingly complex challenges, therefore, necessary adjustments in economic policies, including the banking sector which is expected to be able to improve and strengthen the national economy. Bank as a means that ease people with all benefit is also not released from the weakness. The type of this research is normative for making criminal legislation as an object of study, while the approach used tends juridical as a point of reference the theories of law and the rules of law in view of the problem. The outcomes of the research indicate that the efforts should be made to address the misuse of credit cards in the enforcement of the Indonesians' criminal law is to formulate the rules of criminal law with a comprehensive pattern of expansion of legal subjects the offender is to enter the legal entity (*recht persoon*) as the parties may be subject to liability and formulate formulation of criminal in order to reach the entire *modus operandi* is being or may develop in the future. Besides the expansion of sanctions should be accompanied by sanction renewal that oriented to the cumulative punishment is retaliation, deterrence, and development.

**Index Terms:** Credit Card; Credit Card Fraud; Criminal Law; Legal System

## 1 Introduction

Indonesia is a country that makes law as commander (supremacy of law). One of laws in force that directly can sustain these goals is the criminal law, where the criminal law is a law that aims to protect the public interest (people) in order to create conducive condition to the life of the nation. Based on the views of some circles, in carrying out its functions, the criminal law is often regarded as the laws established to scare people not to commit a crime, both aimed at the crowd and to individual persons. The enforcement of criminal law in public life was not the perfect guarantee to reduce the incidence of crimes that occur in the community. It can be seen from the increase in the number of crime at all times, even an increase in the number of crime is still a phenomenon of a society that cannot be removed from time and space. Actually, the increase in the number of crimes that occurred in Indonesia continuously does not mean that criminal law does not need to be enacted again, but it should be understood that the criminal law shall be enacted, but needs to do a variety of optimization in its enact because in reality there are many gap in Indonesia's law, which has implications for criminal law less optimal in achieving its goals. A gap in the reality of criminal law in Indonesia as lack of juridical instruments to cover the various types of crimes is growing, often a legal vacuum and overlap in various juridical instruments in force in Indonesia. This is understandable because most of the laws that are used today still is the adoption of the growing Dutch's law and does not comply with the conditions of Indonesian society.

The dynamics of the peoples' development is a major factor in the problems among the people; there are members of the people so easily to meet their needs, while on the other hand there are other groups that are actually experiencing difficulty in meeting their needs. As a result, there arises an imbalance that can lead to crime in order to meet the necessities of life, which in turn would be very disruptive and unsettling society, which is in line with what was said by Bonger that "crime is a very anti-social act, that the State was opposed in conscious". Today, the development of the national economy shows the direction that increasingly integrated with the regional and international economy that can support both a negative and positive impacts. Meanwhile, the development of national economy continues to move quickly to the increasingly complex challenges, therefore, necessary adjustments in economic policies, including the banking sector which is expected to be able to improve and strengthen the national economy. One of the sub-sectors of the economy are very influential in economic life is the banking sector; this sector has a strategic position as a supporting institution of payment system. Banking institutions is a core of the financial system of each country. Bank is a financial institution that is a place for persons, private enterprises and the state. In connection with the financial system adopted in Indonesia, consists of the monetary financial system and other financial institutions. Monetary financial system consists of the monetary authority and commercial banks. The monetary authority as stipulated in the several of banking-related legislation. Bank as a means that ease people with all benefit is also not released from the weakness. The weakness of banks which often questioned is the security system, and one of the causes in Indonesia is not implementing the Single Identity Number (SIN) so that arise ease to falsify identity that can disrupt bank's validation system and resulting in credit card-related crimes. And then, the weakness can impact on bank operations, including in the course of a savings and loans in the current era is not required to use cash. Cash is slowly leaved because the risks that arise and must be faced, such as losses, forgery or robbery. As a result, the activities of use cash as a payment instrument began to decrease its use. Now the "Plastic Card" or better known as the "Credit Card" or "Plastic Money" is slowly able to replace the function of money as means of payment. The development of credit card enthusiast makes banks compete with each other lucrative offers. Which could have a

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competitive atmosphere between the Bank to offer credit cards and favor each. But these facilities are sometimes even opened up opportunities for those who want to misuse the facility of credit cards. Based on data from Bank Indonesia (BI) per April 2010, the value of the card losses on credit card fraud reached 16.72 billion. The total value of losses is made up of six cases of credit card fraud, namely card fraud, lost or stolen cards, the cards are not accepted, Card Not Present (CNP), application fraud, and other fraud cases. From January to April 2010, total cases of fraud, there were 2,829 cases with total losses reached 16.72 billion. As for the credit card transaction volume reached 62.9 million transactions with a value of 49.85 trillion. For the number of cards in circulation alone totaled 12.61 million cards. As described above, the author draws the issue being put forward about the lack of effectiveness of law enforcement against crimes related to credit cards, and hypothesizes the author of the cause of the condition is due to the existing provisions (including those that have been described previously) less relevant for use in overcoming the crime of credit card because it has some weakness.

## 2. METHOD OF RESEARCH

### 2.1 Type and Approach

The type of this research is normative for making criminal legislation as an object of study, while the approach used tends juridical as a point of reference the theories of law and the rules of law in view of the problem.

### 2.2 Location of the Research

Location of research was conducted in two areas i.e Jakarta and Serang, where research site on the Regional Police of Polda Metro Jaya, Police Resort Serang, Bank Indonesia and the Financial Services Authority. The selection of this site was based on the consideration that the number of crime found related to the credit card.

### 2.3 Data Analysis

The data obtained were primary and secondary and analyzed deductively and inductively and presented descriptively to explain, describe, and illustrate in accordance with the problems closely related to this research.

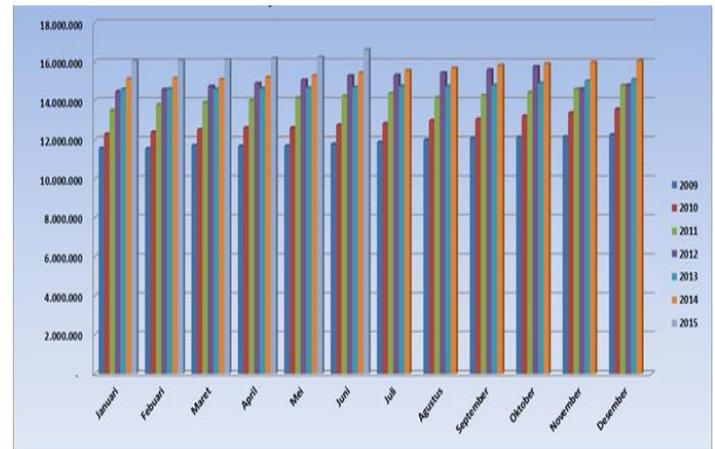
## 3. RESULTS AND DISCUSSION

### 3.1 The Effectiveness of Existing Criminal Law Instruments in Overcoming the Credit Card Misuse

A modern public life in the era of globalization which is too complex experiences changes in various aspects of human life, in social, economic, political, science and technology. This raises many problems and require adaptation and adjustment immediately so that the level of development can be anticipated. The development is more multi-dimensional, when faced with the demands and needs of human beings are so diverse. However, dynamic law still lagging behind the development of society, especially in Indonesia that criminal law is strictly adhered to the principle of legality. As a consequence of this principle that many types of crimes that occur but cannot be investigated, prosecuted and brought in front of court, because the type of crime that is new, has not been set explicitly in a criminal law, so it can be viewed as a gap in law enforcement. Therefore, the law should move

quickly to follow the dynamics of the community. If not, then the law will not be effective anymore to carry out the functions and achieve its objectives. Based on the results of research at Bank Indonesia obtained data on growth of credit card in Indonesia (See: Figure 1 and Table 1).

**Figure 1. Growth of Credit Card in Indonesia**



**Source:** Bank Indonesia per June 2015

**Table 1.** Details of credit card usage in Indonesia

Year	Number of Card	Total Transaction	Transaction Value (Million Rupiah)
2009	12.259.295	177.817.542	132.651.567
2010	13.574.673	194.675.233	158.687.057
2011	14.785.382	205.303.560	178.160.763
2012	14.817.168	217.956.183	197.558.986
2013	15.091.684	235.695.969	219.026.985
2014	16.043.347	250.543.218	250.177.517
2015 (per June)	16.621.918	132.652.766	133.475.758

**Source:** Bank Indonesia per June 2015

Bank as a legal entity is deemed to have rights and obligations, therefore should be burdened with the responsibility in case of any crime related to credit cards, banks should be blamed in the event involved directly harm the credit card users or at least if it does not optimize protection against credit card users. One example of the protection is not maximal by banks to credit card users by using electronic data security systems under standards such as only 64 bits, while bank currently should uses 256 bits for data encryption. Weak data security must provide opportunities so great for the perpetrators, the bank as a party that believed to save an important good then let the goods open in public must be seen as the guilty party and shall be responsible under the criminal law. The question that then arises is why accountability to such cases should be criminal accountability? the authors argue that the criminal law is a law that aims to protect the interests of human rights in the sense of the public, not only aims to protect the private interests because that criminal law oriented primarily on the perpetrator rather than the victim, the offender will have to be punished in retaliation and deterrence as well as an example for others that the same thing does not recur and evolve so that it can destroy the existing social order, in criminal law the return of the victims' right is not the orientation of the settlement, the orientation is the perpetrator should be punishable by that crime is not repeated and growing, this is different from civil law that focuses settlement with indemnification for the victims is not deterrent for the perpetrators. The description above must have been able to give an idea why the author felt the bank as a legal entity should be criminally liable for the protection of which is not optimal for the users of credit cards, crimes related to credit cards will increase and develop if there is no maximum protection of the bank, therefore, it is reasonable the bank bears criminal responsibility for more attention to the protection of consumers, including credit card users. Civil sanctions are now a threat to them is also certainly not be serious because the civil side, the perpetrators of evil that are considered most responsible position so that the bank simply as a person who participated sued. Based on the descriptions in this section, the authors argued that the criminal law is currently still has many weaknesses, both in terms of setting a criminal act or in terms of legal subject, for which of course reduces the effectiveness of criminal law enforcement, especially related to the crime of credit card.

### 3.2 Efforts to Overcome Credit Card Misuses through Law Enforcement Instruments

Before stepping on the section that outlines effort to overcome, the author firstly will explore how the urgency in effort to overcome this crime, if viewed from the aspect of legal purposes, considering an effort of law enforcement must always directed to the goal; the following is authors' description:

#### Legal Certainty

Legal certainty is the fundamental law purpose in the field of law, it is a main road the creation of other laws that are expediency and justice because the legal certainty implies that any existing law should provide certainty about the guarantee of a sense of justice and expediency in the community. In connection with what has been described earlier by author, there is still a gap in the enforcement of criminal law in the case of crimes related to the credit card. The author considers that such cases do not warrant the creation of a sense of security for the stakeholders in this field, especially card holder, legal action cannot be conducted for the perpetrator due to the absence of legal certainty that applicable to them. Based on what has been stated above, it can be understood if the enforcement of criminal law related to this issue is something that is urgent for the sake of legal certainty for its perpetrators to be responsible for their actions.

#### Theory of Justice

Justice is one of the law purposes and most talked in the legal field due to various opinion emerging and very difficult to give a benchmark of what constitutes justice. However, irrespective of the various debates about the meaning of justice, man as a creature of God, of course intuitively understand the sense of justice, so that each individual case can still be assessed whether the treatment has to be fair or not. In relation to the object of study, it can be understood intuitively that the perpetrators were not caught by the law will receive profit-making from the losses of others, thus directly can be concluded that the gap in this issue have an impact on the sense of injustice for those who have become victims of crime. Based on what has been stated above, it can be understood if the enforcement of criminal law related to this issue is something that is urgent that the perpetrators can be sanctioned to justice for their actions and ultimately the victim may feel they are treated fairly by the law.

### Legal Expediency

Legal expediency as one of the law purposes considers that the existing law should benefit as much as possible for as many people, therefore the law must rely on the existing realities, the law should move to follow the patterns of changes in society in order to give expedience for them. The benefit in question is very broad including the real benefits are material or non-material such as a sense of security, peace, and so forth. In relation to the object of study, it can be analyzed that the existing gap in the enforcement of criminal law against crimes related to the credit card will make the perpetrators free to use modes that escape the law, and it is certainly going to spread and eventually cause loss of material for society as well as causing anxiety and insecurity in the community who are now very dependent on technology as a form of globalization era. Based on what has been stated above, it can be understood if the enforcement of criminal law related to this issue is something that is urgent in order to give effect deterrent to people, so do not dare to do so, which in turn has implications for the creation of a credit card transaction secure, for it is reasonable if the author will discuss how efforts to overcome as may be explored in the section below. As explained in the framework, that efforts to overcome can be seen with the anticipation to the development of crimes associated with credit cards, it can be seen with the law on Information and Electronic transactions, and the laws of banking that can be used as an additional or complement to the rules contained in the criminal code in the hope of making the criminal law is certainly more effective, than that lawmakers have formulated various rules in the draft of criminal code in order to anticipate all the evil that is growing, and should include also crimes related credit card. Updates of various criminal legislations included with the draft of Criminal Code, it is a part of efforts to respond the phenomenon of crime is growing in society, therefore a series of changes and additions have been made in order to include latest crime arising as result of technological advances. In relation to the problem, the authors of the crimes related to credit cards, will assess how far efforts have been made to overcome it, particularly in the draft of criminal code to address the legal gaps that occur as described in the previous section, which case will be compared well with the arrangement of this crime that has contained in the Criminal Code and Act No. 11 of 2008 on Information and Electronic Transactions to assess whether there has been a positive effort to overcome crimes related to credit cards.

### 3.3 A Comparative Study on the Effectiveness of Criminal Law Enforcement in Indonesia and the Anglo-Saxon against Credit Card Misuse

Wikipedia defines Anglo-Saxons' legal system as a legal system that is based on jurisprudence, the previous decisions of judge who later became the basis of the decision of the next judges. Further explained that the legal system is implemented in Ireland, UK, Australia, New Zealand, South Africa, Canada (excluding the Province of Quebec) and the United States (although the state of Louisiana to use the legal system coincides with the Napoleon Continental European legal systems). In addition to these countries, some other countries have also introduced a mix legal system of Anglo-Saxon, for example Pakistan, India and Nigeria that implements most of the Anglo-Saxon legal system, but also enforce customary and religious laws. After reviewing the comparison of both the legal

system above, the authors will examine further the effectiveness both to overcome crimes related to credit cards. Anglo-Saxon countries were used as study materials are the United States because the country is a place where the credit card was emerged, home to the two largest credit card networks in the world, namely Visa and Master Card. No doubt, if the credit card is not unusual in America. In 2009, 156 million people in the United States have a credit card, which means that half of the US's population has a credit card. In the same year, the total volume of purchases through credit cards in the US reached \$1.94 billion. The frequency of use of credit cards in the United States noted for both small and large payments. As market share of credit card in the world, the perpetrators of crimes targeting the United States as a place to conduct credit card fraud. As the United States Government published formally in a report published in late 2005, entitled *Money Laundering Threat Assessment*. This report is the product of an inter-institutional working group in the United States consisting of experts from the Ministry of Finance, Ministry of Justice, the Department of Homeland Security, Federal Reserve System Board of Governors, and the United States Postal Service. Credit card fraud in the United States serves as a predicate of crime for money laundering. The modus operandi in cases of credit card fraud, criminals steal credit card or someone's credit card account information and then use the stolen cards or account information to purchase goods or services for their own consumption. In the scenario of a long, criminals can use a stolen credit card to purchase, transfer money or a prepaid card and then use the proceeds from prepaid cards or transfer money to make purchases. The rightful owner of the credit card will see an unauthorized transaction on monthly reports and notify the card issuing bank. In general, in that scenario is an unauthorized transaction on a customer's account, and the card-issuing bank. In terms of the legal structure in the United States, law enforcement officers will immediately take action if there is an international cyber-criminal who commit credit card fraud against a United States citizen, or a foreign citizen as long as the crime is done in America. As law enforcement officials who take action is the Federal Attorney cooperate with investigative agencies federal as Federal Bureau of Investigation (FBI), United States Secret Service and the US's Postal Inspection Service to prosecute identity theft and fraud in relation to the credit card. On the implementation of the law enforcement, there is a legal mechanism that allows it to take the case to the Court on Kibervorovstve International, but the Ministry of Justice stressed the need for new legislation, citing the fact that the criminals who operate mainly in Eastern Europe, with just a few clicks "mouse" to stealing and selling millions of credit card numbers. There is an online marketplace where participants of the illegal transactions using the anonymity to the Internet, it is easy to advertise to buy and sell credit card information. Credit card fee depends on the balance of the card exchanges are made on the web-forum for the most part outside the United States and deliver information in a foreign language. The cards are used to buy luxury goods, converted into gift certificates, a scheme known when withdrawing money at ATM by a group of speculators. One mode of banking crimes includes identity theft or identity fraud, it is seen from the number of people who have reported people who are not entitled to withdraw funds from a bank or financial accounts, or in the worst cases, taken over their identities altogether, leaving huge debts and committing crimes while

using the names of these victims, where it is a crime. Identity theft and identity fraud are terms used to refer to all types of crime in which someone unlawfully obtaining and using other people's personal data in some way that involves fraud or deception, typically for economic gain. Authorities declared a crime was facilitated by an online marketplace where participants, covered the anonymity of the Internet, can easily advertise, buy and sell stolen credit card information in data breaches. Credit cards are sold at different prices and redeemed on Web forums that often operate in a foreign language and the majority is hosted in countries non-US. The cards are sometimes used to purchase valuable items and sometimes also converted into gift cards. With increasing mode of the crime of credit card, the US's Justice Department had difficulty in prosecuting cases of identity theft and fraud under various federal laws. Therefore, in 1998, Congress passed the Identity Theft and Presumption Law on Prevention. This legislation creates a new offense of identity theft, which prohibits "knowingly transfer or use without lawful authority, means of identification of another person with intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or which constitutes a crime under the laws of the State or local regulations." As it is stipulated in the US Code:

- a. Producing without lawful authority an identification document or a false identification document (18 U.S.C. § 1028(a)(1));
- b. Transferring an identification document or a false identification document knowing that such document was stolen or produced without lawful authority (18 U.S.C. § 1028(a)(2));
- c. Possessing with intent to use unlawfully five or more identification documents (other than those issued lawfully for the use of the possessor) or false identification documents (18 U.S.C. § 1028(a)(3));
- d. Possessing with intent to transfer unlawfully five or more identification documents (other than those issued lawfully for the use of the possessor) or false identification documents (18 U.S.C. § 1028(a)(3));
- e. Possessing an identification document (other than one issued lawfully for the use of the possessor) or a false identification document with the intent such document be used to defraud the United States (18 U.S.C. § 1028(a)(4));
- f. Possessing an identification document that is an identification document of the United States which is stolen, knowing that such document was stolen (18 U.S.C. § 1028(a)(6));
- g. Possessing an identification document that appears to be an identification document of the United States, which was produced without authority knowing that such document was produced without authority (18 U.S.C. § 1028(a)(6));
- h. Producing, transferring, or possessing a document-making implement with the intent that such document-making implement be used in the production of a false identification document (18 U.S.C. § 1028(a)(5));
- i. Producing, transferring, or possessing a document-making implement with the intent that such document-making implement be used in the production of another document-making implement which will be used in the production of a false identification document (18 U.S.C. § 1028(a)(5)); and
- j. Attempting to do any of the above (18 U.S.C. § 1028(a)).

Law enforcement in the United States is not only related to the prosecution of criminal acts of a credit card but also prevention, it is intended to explain why it is necessary to take precautions to protect from identity theft is different from Indonesia. Unlike everyone's fingerprints are unique, will not be the same in every person and cannot be given to someone else to use, customers' personal data, especially your Social Security number, bank account or credit card numbers, telephone calling your card numbers, and other valuable identification data can be used, if they fall into the wrong hands for evil, personally profit on the cost of customers. In many cases, victims' losses may include not only *out-of-pocket* of financial losses, but the additional financial cost related to the effort to restore his reputation in the community (*public trust*) and correcting erroneous information about criminals who should be responsible. In terms of culture in the United States, the consumption pattern by using a credit card looks has anything to do with social class, income level and lifestyle. Research conducted by Slocum and Matthews (1970), in the United States showed that people from lower social classes are more likely to use a credit card for the purpose of installments while people from higher social classes are for purposes of convenience. In addition, the study results also showed that all credit card holders generally have a positive attitude towards credit. However, users with the aim of installments tend to use credit cards more often than users with the purpose of convenience. According to Ingene and Levy (1982), there are three reasons why someone would choose to use a credit card instead of paying cash. First, since consumers need credit to be able to buy goods or services desired. Secondly, consumers want to take advantage of the comfort of not having to carry cash. Third, consumers are people who are very calculating and understanding the benefits of buying now and paying later. As described in the previous sections that the development of credit card crime is related to the pattern of the changing times, so as to countries with continental European legal systems (including Indonesia), its handling should use the rules that already exist, the judges who hear the case is not may make laws to deal with these crimes judge actions, and thereby new patterns of crimes, especially those related to credit cards that have not been regulated surely must be released from the bondage of criminal law. It is certainly different from countries with Anglo-Saxon legal systems, where the law was based on the fact, the judge can make laws to address the developmental patterns of crime, so however the mode of crimes, including crimes related to credit cards, can be charged under the law all the judges assess that the action has been at odds with the customs or values of decency in society. Although in this case, the Anglo-Saxon legal system is more effective in combating crime, but it does not mean that Indonesia should reorganize the legal system, because after all, the existing legal system now (European continental) is more ensure legal certainty, so that the things that the author must do is reform the rules as soon as possible to anticipate the development of all forms of crime.

#### 4 CONCLUSION

The criminal law in Indonesia that applied today already reached some acts that can be considered a crime related to credit cards, either by using the Criminal Code or other regulations outside the Criminal Code, but it is still not very effective because the dynamic development of credit card

crime is very dynamic. Efforts should be made to address the misuse of credit cards in the enforcement of the Indonesians' criminal law is to formulate the rules of criminal law with a comprehensive pattern of expansion of legal subjects the offender is to enter the legal entity (*recht persoon*) as the parties may be subject to liability and formulate formulation of criminal in order to reach the entire modus operandi is being or may develop in the future. Besides the expansion of sanctions should be accompanied by sanction renewal that oriented to the cumulative punishment is retaliation, deterrence, and development. The enforcement of criminal law of states that adopts Anglo-Saxon against credit card misuse is more effective than the countries that adhered to the European continental legal system (including Indonesia), this is because the Anglo-Saxon legal system is more bases its laws on reality, reason, and the role the judge in making the law so that the law in such countries will be more responsive and never looked back, it is different from the European continental countries bases its laws on written rules that must exist beforehand (*legality*) and implications for the omission of law in tackling developments crimes that exist in society. As a recommendation, it needed criminal law reform as soon as possible to the Criminal Code and or legislation to regulate any crime related to credit card because the pattern of technological development is so fast it easier for perpetrators to use modes that are not covered by criminal law.

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