



## **Judicial Review of Criminal Offenses on Customer Data Theft of Banks Implicated in the Loss of Customer's Money**

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### **ABSTRACT**

*Technological developments in the banking sector intend to improve the quality service for the community, especially those who are often called customers in banking transactions. The convenience provided in the banking sector has contributed to several crimes regarding the criminal act of customer data theft, considering that technological advances in banking services have facilitated the perpetrators to commit their crimes. The purpose of this research is to examine and obtain a legal perspective on the criminal act of customer data theft. The method of this research is normative juridical. According to the findings in this research, it is obtained that the positive legal regulation of the criminal offense regarding customer data theft is intended to provide relevant sanctions and legal protection to the perpetrators and victims of crime. The existence of criminal liability for the perpetrators of criminal acts of customer data theft, requires the application of criminal sanctions as a real effort to eradicate these crimes so as not to cause many losses.*

**Keywords:** *Banking Sector, Customer Data Theft, Criminal Act*

## INTRODUCTION

The banking sector is one of the main sectors in the social life of the community that is used by people in exchanging money and various financial transactions. In addition, according to Arofah, the banking industry is one of the industries that is vulnerable to the risk of loss related to the abuse of authority in conducting financial transactions and banking provisions both from the bank and outside parties who sometimes use banks as a place to store the proceeds of crime.<sup>1</sup> Customer data entry is a privacy right that needs to be protected. Customer personal information, including name, date of birth, birth mother's name, home address, e-mail address, and telephone number, must be kept confidential. As stipulated in Law No. 11/2008 on Electronic Information and Transactions Article 26 Paragraph (1), which states that unless otherwise provided by Laws and Regulations. The regulation of personal data theft in the banking sector is implied and regulated in several laws, the most dominant law regulating this crime is Law No. 19/2016 on the Amendment of Law No. 11/2008 on Electronic Information and Transactions, due to the general character of this Law, however, sometimes other regulations still need to be referred to.<sup>2</sup> When people are able to save their own money in various banking products, the bank will implement its banking strategy and increase its capacity as an institution that protects the interests of the general public in banking transactions.<sup>3</sup>

Law is defined as a set of rules about human behaviour patterns as a collection of individuals. People work together to make connections based on legal rules to fulfil their diverse interests and provide a balance for the general public. There will be a disruption of the balance if one or more persons violate the rules that may damage the interests of those parties.<sup>4</sup> Criminal law can be more appropriate if there is a formulation of the criminal law itself, especially in amending and making special policies (criminal law) relating to cybercrime. In order to achieve the formulation of criminal law rules, criminalisation in every act listed in Chapter VII as an act, there are laws and regulations regarding provisions in terms of electronic information 21 transactions in Indonesia, which is the Electronic Information and Transaction Law No. 19/2016.<sup>5</sup> Information theft, snooping, computer hacking, credit card fraud, network access breaches, and ATM data theft are some examples of criminal acts. Financial transaction theft aims to earn some money from the theft

<sup>1</sup> Nida Rafa Arofah and Yeni Priatasari, "Internet Banking Dan Cyber Crime: Sebuah Studi Kasus Di Perbankan Nasional," *Jurnal Pendidikan Akuntansi Indonesia* 18, no. 2 (2020).

<sup>2</sup> Otoritas Jasa Keuangan, *Buku 2 Perbankan Seri Literasi Keuangan* (Jakarta: Otoritas Jasa Keuangan, 2019).

<sup>3</sup> Hermansyah, *Hukum Perbankan Nasional Indonesia*, 3rd ed. (Jakarta: Prenada Media, 2020).

<sup>4</sup> Herry Bastian Pinem, Maidin Gultom, and Bachtiar Simatupang, "Tata Cara Dan Proses Penyidikan Terhadap Pelaku Tindak Pidana Pencurian Uang Melalui ATM Di Kepolisian Resor Kota Besar Medan," *Jurnal Prointegritas* 4, no. 1 (2020).

<sup>5</sup> Utin Indah Permata Sari, "Kebijakan Penegakan Hukum Dalam Upaya Penanganan Cyber Crime Yang Dilakukan Oleh Virtual Police Di Indonesia," *Mimbar Jurnal Hukum* 2, no. 1 (2021): 1–19.

through the banking transaction.<sup>6</sup> One of the technological crimes committed in the banking industry is the theft of bank customers' money using fake ATM cards. It is well-known that the method of skimming ATM cards to steal bank customers' data has been extended to several incidents. Many cases of customer data theft by skimming ATMs indicate the increasing sophistication of cybercriminals. Banks offer several ATM services as a convenience for their customers, but criminals use these facilities to commit crimes, including taking customers' money and stealing customers' data.<sup>7</sup>

Although it does not clearly regulate the criminal offence of skimming, Law No. 19/2016 on the Amendment to Law No. 11/2008 concerning Electronic Information and Transactions can be a reliable legal basis and reference for handling this criminal offence, more clearly regulated in Article 30 Paragraph (2) states that "every person intentionally and without rights or unlawfully accesses computers and/or electronic systems by any means in order to obtain electronic information and/or electronic documents." Criminal sanctions in Article 46 Paragraph (2) states that "any person who fulfills the elements as referred to in Article 30 Paragraph (2) shall be punished with a maximum imprisonment of seven years and a maximum fine of IDR 700 million for hacking into electronic systems within the government or local government."<sup>8</sup>

In Supreme Court Decision No. 915/Pid.Sus/2021/PN Dps, it is known that there was an act of theft of customer data related to the presence of a hidden camera and skimming device installed on a BNI Bank ATM machine with machine ID S1GRNN12NN Warung Bendega on St. Cok Agung Tresna No. 37 A Renon, Denpasar. There was equipment such as a deep insert skimmer installed in the ATM machine and there was also a hidden camera modified to resemble an ATM machine device attached to the PIN cover of the ATM machine which was conducted by the defendant Cezmi and the defendant Osman whose actions were recorded by CCTV. In addition, several magnetic stripe cards were found that allegedly contained banking card data belonging to other people, 250 magnetic stripe cards containing bank customer data belonging to other people, 1 card reader/writer brand MSR X6 silver colour, 13 aluminium rods used as a hidden camera holder, 1 laptop, 7 pieces of hidden camera circuitry, 2 pieces of ATM pin covers, 4 pieces of deep skimmer insert frames, 10 pieces of tools to install or take deep skimmers, 1 set of hidden camera circuitry and other electronic goods. As a result of the actions of the two defendants, BNI suffered an immaterial loss. This research focuses on a criminal

<sup>6</sup> Nunuk Sulisrudatin, "Analisa Kasus Cybercrime Bidang Perbankan Berupa Modus Pencurian Data Kartu Kredit," *Jurnal Ilmiah Hukum Dirgantara* 9, no. 1 (2018): 26–39.

<sup>7</sup> Victoria Linggoraharjo, "Tanggung Jawab Kejahatan Perbankan Melalui Modus Operandi Skimming," *Jurnal Magister Hukum* 7, no. 1 (2020): 34–46.

<sup>8</sup> Kementerian Hukum dan Hak Asasi Manusia, *Undang-Undang Republik Indonesia Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik* (Jakarta, 2016), <https://web.kominfo.go.id/sites/default/files/users/4761/UU 19 Tahun 2016.pdf>.

offence that can be categorised as customer data theft at a bank which implies the loss of customer money in decision number: 915/Pid.Sus/2021/PN Dps which is connected according to Article 30 Paragraph (2) jo Article 46 Paragraph (2) of Law No. 19/2016 concerning Amendments to Law No. 11/2008 concerning Electronic Information and Transactions Jo Article 55 Paragraph (1) to 1 of the Criminal Code.

## LITERATURE REVIEW

### Theory of Justice interpreted by John Rawls

Rawls states that justice is the primary virtue of social institutions. In his opinion, the good of the whole society cannot override or interfere with the justice of everyone who has obtained that justice, especially the people who are vulnerable. Therefore, some consider Rawls' perspective as a "liberal-egalitarian perspective of social justice."<sup>9</sup> There are several concepts of justice theory according to John Rawls, such following below:

1. Justice as a form of honesty
2. The original position and the veil of ignorance that relies on the notion of reflective equilibrium
3. Overlapping Consensus
4. Public Reason
5. Theory of Legal Protection

### Theory of Customer Legal Protection interpreted by Marulak Pardede

Regarding the legal protection of customers, Marulak Pardede stated that in the Indonesian banking system, the protection of depositors can be achieved in 2 ways, as follows: (1) implicit protection is protection generated by effective bank supervision and guidance, which can avoid bankruptcy; (2) explicit protection is protection through the establishment of an institution that guarantees public deposits so that if the bank fails, the institution will replace public funds deposited in the failed bank.<sup>10</sup>

### Theory of Law Enforcement interpreted by Joseph Goldstein

Joseph Goldstein distinguishes criminal law enforcement into 3 types, as follows:<sup>11</sup>

1. Total enforcement is the scope of criminal law enforcement as formulated by substantive laws of crime. Total enforcement is not possible because law enforcers are strictly limited by the criminal

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<sup>9</sup> John Rawls, *A Theory of Justice*, 1st ed. (Belknap Press, 1971).

<sup>10</sup> Sri Magfirah Indriani, Budiharto, and Rinitami Njatrijani, "Perlindungan Hukum Terhadap Nasabah Bank Dalam Penyalahgunaan Deposito Berjangka (Studi Kasus Commonwealth Bank Cabang Palembang Putusan Nomor 59/Pdt.G/2013/PN.PLG)," *Diponegoro Law Journal* 5, no. 4 (2016): 1–13.

<sup>11</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana : Perkembangan Penyusunan Konsep KUHP Baru*, 2nd ed. (Jakarta: Kencana, 2016).

procedure law, which includes rules on arrest, detention, frisk, confiscation, and preliminary examination.

2. Full enforcement, after the total enforcement scope of criminal law is reduced to the area of no enforcement in this law enforcement, law enforcers are expected to enforce the law to the fullest.
3. Actual enforcement is the limitations possessed by the legal apparatus, both juridical and technical characteristics, although there is still hope for the realisation of enforcement that is based on justice, as long as the legal apparatus still has good morals, even though the law on which it is based is not good.

## RESEARCH METHODOLOGY

This research uses a normative type of legal assessment research, that is, examining and analysing literature sources based on the legal materials used, including primary, secondary, and tertiary legal materials. The type of research in this research is a type of normative juridical research in accordance with the theories, principles, concepts and doctrines of legal science. The problem assessment approach applied to this research is using the statutory approach method, conceptual approach and case approach. The approach with statutory materials is an approach that is implemented by reviewing and examining all laws and regulations related to the problem or urgency (legal issues) related to the law. The approach of reviewing, examining and analysing legislation is implemented by observing and studying the suitability or consistency of the Constitution with court decisions that have permanent legal force. The conceptual approach is based on the doctrine developed in legal science. This approach is important because the understanding of the legal opinions/doctrines developed in legal science can be the basis for developing legal arguments when resolving the legal issues handled. The legal opinions/doctrines will clarify ideas by providing legal definitions, legal concepts, and legal principles that are relevant to the current problem.

## RESULT AND DISCUSSION

### Consequences for Data Theft Crimes in Banks

#### Legal Consequences for Criminal Offenders

The definition of theft according to the law and its elements are stipulated in Article 362 of the Criminal Code.<sup>12</sup> For further information, the formulation of elements is divided into two elements, such as (1) objective elements (the act of taking, the object being an object, and the element of circumstances attached to the object, that is, the object partially or all belongs to another person); and (2) subjective elements (the existence of intent, aimed at possessing, and against the

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<sup>12</sup> Moeljatno, *Kitab Undang-Undang Hukum Pidana (KUHP)* (Jakarta: Bumi Aksara, 2005).

law). An act or event can only be qualified as theft if all of these elements are included.

In objective elements, theft is a formal criminal offence which is a deliberate act that causes loss. At first, the objects that became the object of this theft in accordance with the information in the *Memorie van Toelichting* (MvT) regarding the formation of Article 362 of the Criminal Code were limited to movable objects (roerend goed) and tangible objects (stoffelijk goed). The object does not need to belong entirely to another person, just a part, while part of it belongs to the offender himself. For example, a bicycle belongs to A and B, and A takes it out of B's possession and sells it. However, if the bicycle was originally in his possession and then sold it, then it is not theft that occurs but smuggling (Article 372 of the Criminal Code). Therefore, objects that can be the object of theft must be objects that have an owner. Objects that do not have an owner cannot be the object of theft. Meanwhile, in subjective elements there are two elements, such as (1) intended to own means that taking another's belongings must be intended to possess them. As a subjective element, possession is to have for oneself or to be used as one's property; and (2) against the law means that before taking the object, he/she knows and realises that possessing another person's object (in this way) is against the law. Related to this reason, the unlawful element in theft is classified into the subjective element of unlawfulness. if the element of intent is expressly included in the formulation of the criminal offence, it means that the intent must be addressed to all the elements that are listed above.<sup>13</sup>

Aggravated theft (gequalificeerde diefstal) is a form of theft as formulated in Article 362 of the Criminal Code (the principal form) with the addition of other elements, both objective and subjective, which aggravate the theft, and because of that it is punishable with a heavier penalty than the principal form of theft. Aggravated theft is regulated under articles 363 and 365 of the Criminal Code. In article 363 of the Criminal Code stipulates that aggravated theft is punishable by a maximum imprisonment of 7 years and a maximum of 9 years. Meanwhile, Article 365 of the Criminal Code is known as violent theft. Based on the punishment, this aggravated theft can be divided into four categories, and each category includes violence or the threat of violence. The four categories as follows:

1. Violent theft punishable with a maximum imprisonment of 9 years.
2. Violent theft which is sentenced to a maximum imprisonment of 12 years
3. The third form of theft with violence, which is sentenced to a maximum imprisonment of 15 years.
4. The fourth form of theft with violence is the most serious, as it is punishable by death, life imprisonment or a maximum temporary imprisonment of 20 years.

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<sup>13</sup> Moeljatno, *Asas-Asas Hukum Pidana*, Cet. 8. (Jakarta: Rineka Cipta, 2008).

Petty theft (gepriviligeerde diefstal) is contained in Article 364 of the Criminal Code. Article 364 of the Criminal Code contains the offences described in Article 362 and Article 363 item 4, the offences described in Article 363 item 5, if not committed in a dwelling or enclosed yard where there is a dwelling, if the value of the property stolen does not amount to more than twenty five rupiahs, shall, being guilty of petty theft, be punished by a maximum imprisonment of three months or a maximum fine of sixty rupiah.<sup>14</sup>

The legal consequences that must be accepted by the perpetrator of the crime/defendant here are based on the Denpasar District Court Decision Number 915/Pid.Sus/2021/PN Dps. The defendant was charged with Article 30 Paragraph (2) jo Article 46 Paragraph (2) of Law No. 19/2016 concerning Amendments to Law No. 11/2008 concerning Electronic Information and Transactions (ITE). Instead of Article 363 of the Criminal Code on aggravated theft. In accordance with MvT's instructions, this criminal offense deliberately is the will to access computers and/or electronic systems in a certain way with the aim of obtaining electronic information. The maker realizes that the act of accessing in a certain way to obtain Electronic Information, the maker realizes that the act is prohibited or reprehensible. The defendant has fulfilled the elements contained in Law No. 11/2016 concerning Amendments to Law No. 11/2008 concerning Electronic Information and Transactions Article 30 Paragraph (2).

The way of Witness Cezmi Yamac committed the act was to prepare a skimming tool in the form of a deep insert skimmer, then the perpetrator installed the tool in the ATM machine card reader with machine ID S1GRNN12NN Warung Bendega, using special equipment to install/unplug, while a hidden camera modified to resemble an ATM machine device was installed by the perpetrator on the PIN cover with the camera pointing at the keypad button so that it could record the customer when pressing the ATM PIN number. The customer's ATM card data that was successfully copied using a device in the form of a deep insert skimmer will be transferred to another card with a magnetic stripe using a laptop and a device in the form of a magnetic stripe card reader/writer (encode card writer). Therefore, the card can then be used to make transactions at ATM machines by entering a PIN number that has previously been known by the perpetrator through the results of hidden camera recordings.

### **Legal Protection for Bank Customers against Potential Material Loss**

#### **The Position Case of Osman Ozperk 915/Pid.Sus/2021/PN Dps**

There was an act of theft of customer data related to the presence of a hidden camera and skimming device installed on a BNI Bank ATM machine with machine

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<sup>14</sup> Mega Dewi Ambarwati and Anggrita Esthi Suhessyani, "Legal Protection For Government Banks On The Implementation of Write-Off," *IUS POSITUM (Journal of Law Theory and Law Enforcement)* 1, no. 1 (2022).

ID S1GRNN12NN Warung Bendega on St. Cok Agung Tresna No. 37 A Renon, Denpasar. There was equipment such as a deep insert skimmer installed in the ATM machine and there was also a hidden camera modified to resemble an ATM machine device attached to the PIN cover of the ATM machine which was conducted by the defendant Cezmi and the defendant Osman whose actions were recorded by CCTV. In addition, several magnetic stripe cards were found that allegedly contained banking card data belonging to other people, 250 magnetic stripe cards containing bank customer data belonging to other people, 1 card reader/writer brand MSR X6 silver colour, 13 aluminium rods used as a hidden camera holder, 1 laptop, 7 pieces of hidden camera circuitry, 2 pieces of ATM pin covers, 4 pieces of deep skimmer insert frames, 10 pieces of tools to install or take deep skimmers, 1 set of hidden camera circuitry and other electronic goods. As a result of the actions of the two defendants, BNI suffered an immaterial loss. This research focuses on a criminal offence that can be categorised as customer data theft at a bank which implies the loss of customer money in decision number: 915/Pid.Sus/2021/PN Dps which is connected according to Article 30 Paragraph (2) jo Article 46 Paragraph (2) of Law No. 19/2016 concerning Amendments to Law No. 11/2008 concerning Electronic Information and Transactions Jo Article 55 Paragraph (1) to 1 of the Criminal Code.

### **Legal Certainty for Bank Customers**

Banks are one of the financing institutions that receive public money and redistribute it to the public as stated in Law No. 10/1998 concerning Amendments to Law No. 7/1992 concerning Banking Article 1 Number 2. Meanwhile, the customer is defined as “a party that uses bank services” in Article 1 point 16 of Law No. 10/1998 on the Amendment to Law No. 7/1992 on Banking.<sup>15</sup> In Indonesia, banking has strategic objectives and is not only focused on the economy; it also deals with non-economic issues including those affecting social and political stability at the national level. Therefore, Indonesian banking seeks to achieve the following objectives in order to increase equity for all the people.<sup>16</sup>

In addition to having objectives, banking also has principles in conducting its business, as stated in Law No. 7/1992 on Banking, Article 2 which states that “Indonesian banking in conducting its business is based on economic democracy using the principle of prudence.” In addition to objectives and principles, banking also has a function that can be considered in the provisions of Article 3 of Law No. 7/1992 on Banking which stipulate, “the main function of Indonesian banking is as a collector and distributor of public funds.” Due to this banking function, the existence of banks in society as an organization has legal significance and has an

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<sup>15</sup> Hermansyah, *Hukum Perbankan Nasional Indonesia*.

<sup>16</sup> Keuangan, *Buku 2 Perbankan Seri Literasi Keuangan*.

important role in the development of a country.<sup>17</sup> In general, the scope of banking law regulation is as follows:

1. The basics of banking, including standards of efficiency, effectiveness, the health level of banks, professionalism among banking actors, the purpose and objectives of financial institutions, as well as the relationship, rights and obligations of banks.
2. Banking actors, including the board of commissioners, directors, and staff (employees), as well as related parties. For the type of legal entity used for management, including PT Persero, Regional Company, Cooperative, and Limited Liability Company. Regarding ownership structure, including government, private, foreign joint ventures, or foreign banks.
3. Banking regulations are mainly intended to regulate the protection of the public interest against banking practices, such as the prohibition of unfair competition, antitrust, customer protection, and others.
4. The structure of banking organizations, which relate to the banking sector, such as the Monetary Board, Central Bank, etc., are also addressed.
5. The objectives to be achieved by the banking business, such as due process, sanctions, incentives, supervision, prudent banking, and others.

Banks implement laws relating to their banking operations to prevent the occurrence of things that can disadvantage banks and customers. Banks must observe the applicable banking principles in implementing their duties. These principles are as follows:

1. The proper legal foundation and legal philosophy adopted by the bank in fulfilling its obligation to serve the community cannot be separated.
2. Besides the legal principles, banks must also be able to apply the principles of justice and legal concepts are indispensable.
3. The basis of the relationship between banks and their customers is based on trust. Customers have trust that banks will keep their money in a safe and secure place.
4. The security principle is based on the principle applied by banks in providing services to their customers to protect their customers' deposits to avoid a crime.
5. The prudential principle is one of the banking principles covered in the Banking Law, but the law does not explain what the principle is.
6. The prudential principle is one of the banking principles covered in the Banking Law, but the law does not explain about the principle itself.

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<sup>17</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Penerbit Universitas Indonesia (UI-Press), 2015).

7. The economic principles of banks cannot be separated from economic principles as a business that aims to gain profit. Banks receive interest or profit from the public as payment for their services in the process of collecting funds from the public and channeling them to the public through credit.

The provisions on bank secrecy are regulated in Law No. 10/1998 on the Amendment to Law No. 7/1992:

Article 1 Paragraph 28: “Bank secrecy is anything related to information about depositing customers and their deposits.”

Article 40 Paragraph 1: “Banks are obliged to keep information about depositing customers and their deposits confidential, except in the cases referred to in Article 41, Article 41A, Article 42, Article 44, and Article 44.”

In the explanation of Article 40 of Law No. 10/1998 Amending Law No. 7/1992 on banking, it is stated as follows: “If a bank customer is a Depository Customer who is also a Debtor Customer, the bank is obliged to keep the information about the customer in his position as a Depository Customer confidential.”

In addition to the old provisions on bank secrecy, namely Article 36 of Law No. 14/1967 on the Principles of Banking which is the same formulation as Article 40 of the 1992 Banking Law, SEBI No. 2/377 UPPB/PbB on 11 September 1969 regarding the Interpretation of the Definition of Bank Secrecy was also issued which states:

1. The financial stability of the customer recorded at the bank is the financial stability recorded at the bank which includes all deposits listed in all items of liabilities and all items of assets which constitute the provision of credit in various forms to the person concerned.
2. Other things that must be kept confidential by banks according to the prevalence in the banking sector are all information about persons and entities known by banks due to their business activities as referred to in Article 23 of Law No. 14/1967, such following below:
  - Providing financial services in cash flow, both domestic and foreign;
  - Discounting and trading of securities;
  - Lending.<sup>18</sup>

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<sup>18</sup> Titik Triwulan Tutik, “Kedudukan Hukum Perbankan Syariah Dalam Sistem Perbankan Nasional,” *Jurnal Muqtasid* 7, no. 1 (2016): 1–27.

Based on Article 47 Paragraph 2, the parties who are obliged to protect bank secrecy as follows:

1. Member of the commissioner's team;
2. Directors of the bank;
3. Bank employees;
4. Affiliated parties.

According to Article 1 Paragraph 22 of the 1998 Banking Law, an affiliated party is defined as:

1. Commissioners or supervisory board members, directors, or their proxies, officers or employees of the bank.
2. Management members, supervisors, managers or their proxies, officers, or employees of the bank, especially for banks under cooperative law in accordance with applicable laws and regulations;
3. parties who provide services to banks, including public accountants, assessors, legal consultants and other consultants;
4. Those parties that according to Bank Indonesia's assessment participate in affecting the bank's management, including shareholders and their families, families of Commissioners, families of supervisors, families of Directors, families of administrators.<sup>19</sup>

The provisions on the bank's obligation to keep secrecy do not apply in the following cases:

1. The supervision and monitoring by Bank Indonesia as stipulated herein:
  - Article 30 of the 1992 Banking Law.
  - Article 31 of the 1998 Banking Law.
  - Article 34 of the 1992 Banking Law.
2. Tax interests as stipulated in:
  - Article 41 Paragraph 1 of the 1998 Banking Law.
  - Article 41A of the 1998 Banking Law.
3. Judicial interests in criminal cases as stipulated in:
  - Article 42 of the 1998 Banking Law.
  - Article 42A of the 1998 Banking Law.
4. Civil cases between banks and their customers as stipulated in:
  - Article 43 of the 1992 Banking Law.
5. Information exchange between banks as stipulated in:
  - Article 44 of the 1992 Banking Law.

<sup>19</sup> Kesekretariatan Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 10 Tahun 1998 Tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1992 Tentang Perbankan* (Jakarta, 1998).

- Article 44A of the 1998 Banking Law.

### **Sanctions for Violation against the Obligation to Keep Bank Secrecy**

The sanctions for violating the obligation to keep bank secrets as written in Article 47 Paragraph 2 of the 1998 Banking Law. Criminal offenses as referred to in Article 46, Article 47, Article 47A, Article 48 Paragraph (1), Article 49, Article 50, and Article 50A are crimes. (Article 51 Paragraph 1 of the 1998 Banking Law). The criminal penalties and fines are much more severe than the old provisions, i.e. Law No. 7/1992 on Banking (Article 47 Paragraph 2) which only threatened imprisonment for a maximum of 2 (two) years or a maximum fine of IDR 2,000,000,000,- (two billion rupiah). This is intended for the benefit of the bank itself, which basically requires the trust of the public who keep money in the bank. The public will only entrust their money to the bank or utilize bank services if there is a guarantee from the bank that the bank's knowledge of the customer's deposits and financial situation will not be misused. Further clarification in discussing bank secrecy is the limitation of "bank employees." The explanation of the 1998 Banking Law provides the following definition of a bank employee: The explanation of Article 47 Paragraph 2, bank employees means all officers and employees of the bank. Meanwhile, the explanation of Article 48 Paragraph 1, bank employees are bank officials who are authorized and responsible for operating the bank, and employees who have access to information about the condition of the bank.

### **Bank Customer Protection under the Consumer Protection Law**

All attempts to ensure legal certainty to provide protection to consumers.<sup>20</sup> Meanwhile, the definition of consumer as regulated in the Consumer Protection Law No. 8/1999 is every person who uses goods and/or services available in the community, both for the benefit of themselves, their families, other people, and other living things and not for trade. Meanwhile, the consumer as stipulated in Consumer Protection Law No. 8/1999 is every person who uses goods and/or services available in the community, both for consumer protection based on benefits, justice, balance, consumer safety and security, and legal certainty. Consumer protection aims to enhancing the knowledge, independence, and ability to protect themselves; and improving the human dignity of consumers by protecting them from harmful excesses in the use of goods, services, and so on. There are several consumer rights, such as the right to comfort, security, and safety while consuming goods and/or services; and the right to choose products and/or services and obtain these goods and/or services in accordance with the exchange value and terms and guarantees offered, and so on.

In addition, the obligations of business people are good faith in conducting their business activities; provide correct, clear and honest information regarding the

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<sup>20</sup> Pemerintah Pusat, *Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen* (Jakarta, 1999), <https://jdih.kemenkeu.go.id/fulltext/1999/8TAHUN~1999UU.htm>.

conditions and guarantees of goods and/or services and provide explanations for use, repair and maintenance. Prohibited actions for business actors, such as trading damaged, defective or used, and polluted goods without providing complete and correct information about the goods in question; business actors who violate Paragraph (1) and Paragraph (2) are prohibited from trading such goods and/or services and are obliged to withdraw them from circulation. Then, the responsibility of business actors is that business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded. The compensation as referred to in paragraph (1) may be in the form of a refund or replacement of goods and/or services of similar or equivalent value, or health care and/or compensation in accordance with the provisions of applicable laws and regulations. The provision of compensation as referred to in Paragraph (1) and Paragraph (2) shall not eliminate the possibility of criminal prosecution based on further proof of the existence of an element of fault. The provisions as referred to in Paragraph (1) and Paragraph (2) shall not apply if the business actor can prove that the fault is the fault of the consumer.

## CONCLUSION

In Decision Number: 915/Pid.Sus/2021/PN Dps, the defendant Osman Ozprek was legally proven guilty of committing the crime of theft of customer data at a bank which resulted in the loss of customer money. In this criminal offense, intent is the will to access computers and/or electronic systems in a certain way with the aim of obtaining electronic information. The defendant realized that his actions were prohibited or despicable. However, the defendant continued to commit these acts with the intention of gaining profit and causing harm to others, in this case bank customers. Based on the existing legal facts, the defendant's actions have fulfilled the elements contained in Article 30 Paragraph (2) jo Article 46 Paragraph (2) of Law No. 11/2016 on the Amendment to Law No. 11/2008 on Electronic Information and Transactions. Legal protection for bank customers when concluded is the overall main thing about bank customer protection has been guaranteed in the Consumer Protection Law No. 8/1999 because customers include consumers of services available in the community and the service provider is a bank.

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