

Criminal Act Ofbank's Atm Burglary In Langsawhich Is Related To The Law No. 11 Of 2008 On Information And Electronic Transactions

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Abstract: Article 30 paragraph (3) of the Law Number 11 of 2008 concerning Information and Electronic Transactions states that any person intentionally and without the right or violates the law in accessing Computers and / or Electronic Systems in any way by violating, breaking through, surpassing, or breaking into security system. ATM is one of electronic systems used to conduct financial transactions. Everyone has an ATM card for personal use that cannot be used and accessed by others without the consent of the owner. If someone uses an ATM card belonging to another person without rights (burglary) then that person can be charged under Article 30 Paragraphs (1), (2) and (3) of the Law No. 11 of 2008 concerning Information and Electronic Transaction. Based on the description above, the main problems in this research are that what are the legal consequences of the burglary of bank ATM machine according to the Law of ITE (the Law of Information and Electronic Transactions)? What are the Prosecutors' considerations regarding the Criminal Act of Burglary of Bank ATM in terms of using the Article on theft in the Criminal Code? How is the legal effectiveness of the Criminal Act of Burglary of Bank ATM in the Law of ITE? This study aims to find out and to explain about what are the legal consequences of the burglary of bank ATM machine according to the ITE Law and also What are the Prosecutors' considerations regarding the Criminal Act of Burglary of Bank ATM so that they use the Article on theft in the Criminal Code (KUHP) as well as the legal effectiveness of the Criminal Act of the Burglary of Bank ATM in the Law of ITE. The research method was carried out by normative juridical methods. The Penalty for the perpetrators of ATM burglary are more appropriate by using Article 30 paragraph (1), (2) and (3) of the Law Number 11 of 2008 concerning Information and Electronic Transaction because sanctions are more severe than using Article 363 paragraph (1) 4th of Civil Code (KUHP) then The Prosecutor's Consideration to use the Article on theft in the Criminal Code because it is constrained in the process of proof and presenting experts and also related to the Application of the Law of ITE, it is not effectively applied in criminal cases of bank ATM burglary, the reason is because it is very difficult to find the elements contained in that Law. In terms of human resources, it is also very difficult to present experts in that field so that the process of proof is not maximal. The difficulty in presenting experts in this field of Information and Electronic Transactions is because in Aceh there are no experts in this field and these experts need to be brought from outside Aceh which requires large amount of money so that the availability of the existing budget is not enough to cover.

Date of Submission: 18-06-2020

Date of Acceptance: 04-07-2020

I. INTRODUCTION

The rapid development of the world in terms of information and communication technology at this time give a positive impact in terms of economic benefits for the society who use the internet media, the information is very up to date and very helpful, on the contrary, it can also be a double-edged sword, because in addition to providing a good contribution to improving the welfare and progress of human civilization, as well as being an effective means to carry out the unlawful act. The negative impact of Technologies are caused by technology users themselves, for example; credit theft, the burglary of credit card, ATM card, website or website that provides services of thugs who is also hit man and others.¹

Along with the digital era of cyberspace, the development of technological science that is very rapid and modern makes a lot of convenience in the world of technology and information so that many people are

¹SuyantoSidik 2013 "Dampak Undang-Undang Informasi Dan Transaksi Elektronik (UuIte) Terhadap Perubahan Hukum Dan Sosial Dalam Masyarakat". Vol. 1 No. 1, 2013, 4.

interested in exploring it, both in terms of how people take advantage of the rapid development of Electronic Transaction Information Technology and in terms of science, but it is unfortunate that some people use their knowledge about the benefits of the science of Information Technology and Electronic Transactions negatively and there is also even those who deal with the law.

The occurrence of cases of bank account burglary whose victims are the customers through *Anjungan Tunai Mandiri* or in English Automatic Teller Machine (ATM) currently illustrates that if the perpetrators of crimes in this country are no longer criminals '*Kalengan* (amateur)' and cannot be underestimated. The application of the law for perpetrators of crimes that violate the law of ATM burglary must be sanctioned with a fair and definite punishment in order to be a deterrent effect of shock therapy for perpetrators such as the case of ATM Bank burglary that occurred in Langsa.

In the case of bank ATM burglary in Langsa city, Court Decision Number: 5 / Pid.B / 2017 / PN-Lgs. Previously in the same case, namely the bank ATM burglary, in the indictment of this case the Prosecutor only used the Criminal Code namely article 363 paragraphs 1 - 4 only a single indictment, furthermore the defendants had no objections or exceptions. The judge adjudicated and decided to convict the defendants with a single indictment in accordance with the indictment of the public prosecutor namely using the Criminal Code (KUHP) article 363 about theft, which was only convicted with a length of one year imprisonment for the defendants (the perpetrator of ATM bank burglary). It is regrettable that the judge is not right according to the author's view, whereas if we see what punishment is appropriate to be imposed, according to the opinion of the writer, here it is even more appropriate to use the Law 11 of 2008 concerning Information and Electronic Transactions by applying Article 30 paragraph (1) and (3) regarding Information and Electronic Transaction, which is very appropriate and the legal sanctions are also severe compared to using the articles contained in the Criminal Code.

Soemarno Partodihardjo explained in his book with the title Question and Answer Regarding the Law No. 11 of 2008 concerning Information and Electronic Transactions, it stated that there are seven (7) main points regarding the explanation of ITE Law (Information and Electronic Transactions Law):

- (1) Information and communication technology (ICT) changes behavior in society and human civilization globally in addition to the development of ICT causing the world relations to be borderless and causing changes in the economic, social and cultural fields rapidly and significantly.
- (2) ICT become double-edged sword because in addition to give a contribution in increasing the welfare and progress of human civilization, it also becomes an effective means to carry out the unlawful act. The term *hukumsiber* is the word from cyber law, IT law (law of information technology), which was created because of internet activities and virtual-based utilization.
- (3) ICT and the legal world have long expanded the interpretation of the principles and norms when dealing with problems that are intangible. Cyber activities are not limited by territory of a country, its access can easily be done from any part of the world, losses can occur either to transaction actors or other people who have never been in contact though. For example, theft of credit card funds through internet spending.
- (4) ICT and Evidence are very important factors considering the fact that the data is very vulnerable to be changed, tapped, falsified, and sent to various parts of the world in seconds. With a very powerful impact, ICTs have become effective instruments in global trade.
- (5) ICT and its broader problems occur for civil problems because e-commerce transactions have become part of other national and international commerce, the fact shows that the convergence of telematics can not be dammed along with the discovery of new developments in the field of ICT.
- (6) Cyber activities that are virtual in its character are categorized as real legal actions. Virtual activities have a very real impact even though the evidence is electronic. The subject of the offender must also qualify as someone who has done a legal act. In e-commerce, there are documents that are made on paper.
- (7) Three approaches to maintaining security in cyberspace. First, a legal approach to dealing with security disturbances, legal approach is absolutely necessary because without a legal certainty, the problem of ICT utilization cannot be done optimally, second, the technological approach. Then third, social, cultural and ethical approaches.

Article 30 Paragraph (1) of the ITE Law explains that each person intentionally and without right or violates the law in accessing another person's computer and or electronic system in any way, and paragraph (3) of the same Article states that every person intentionally and without rights or unlawfully accesses computers and or electronic systems in any way by violating, breaking through, surpassing, or breaking into security systems.

Furthermore, the offenders may be charged under Article 32 paragraph (2) which states, "that each person intentionally and without rights or violates the law in any way, move or transfers electronic information and or electronic documents to other person's electronic systems who is unauthorized", the next provision that can also be used is Article 36, which explains that "each person intentionally and without rights or violates the law in committing acts as referred to Article 27 until Article 34 which results losses to others".

In Article 363 first paragraph (1) number five (5) explains that “theft whereby the guilty person has forced an entrance into the place of crime, or has brought under his reach the property to be taken away by way of breaking into the house, damaging or climbing in, of false keys, of false order or a false costume”.

In the context of the constellation of criminal law in Indonesia, Cyber crime are included in the category of special criminal act even though the main elements can be compared with several Articles in the Criminal Code but it is carried out in new ways (*modus yang baru*), so that when fighting this crime, a more detailed instrument or legal instrument is needed. As explained by Soerjono Soekanto (2007: 8), that is one of the factors that influence the enforcement of the law, which is in the Facilities and Infrastructure or facilities that support law enforcement itself, because these factors are also a barometer of the effectiveness of law enforcement to outsmart crime development.²

The criminal law system in Indonesia recognizes that criminal act of cybercrime is included in the category of special crimes, although the main elements can be compared with several other Articles in the Criminal Code (KUHP) but it is carried out in the new ways new design. Until now, Indonesia has had Law No. 11 of 2008 on Information and Electronic Transactions that were passed in March 2008 and have been amended by Law No. 19 of 2016 which was validated and enacted on November 25, 2016, in the amended Law there are several points of new forms of criminal law regulation which have added rules of criminal law both materially and formally, which in principle it can be used based on the provisions contained in Article 103 of the Criminal Code (KUHP) and Article 284 paragraph (2) of the Criminal Procedure Code (KUHAP).

It is important to note that the existence of the amendment to the Law on Information and Electronic Transactions of 2016 has the big point namely to avoid multi-interpretations on articles of insults or defamation in article 27 paragraph (3). Furthermore, the aim of revising the ITE Law is to reduce criminal punishment from the previous (6) six years, now become (2) two years only and amendments to Article 31 and Article 43.

Special Criminal Law is included in the criminal law that is spread in various laws that are formed to specifically regulate legal material. In that Law, besides containing material of *materiil* Criminal Law, it also contains material of *formil* criminal law, or in other words special Criminal Law contains norms and criminal sanctions that are not regulated in the Criminal Code (KUHP), and also contains rules of procedural Law deviate from the provision contained in the Criminal Code.³

In general, the characteristics or specificities and deviations of the special Criminal Law in material Criminal Law (*Hukum Pidana materiil*) as explained by Teguh Prasetyo, namely: (1) Criminal Law is elastic (special provisions). (2) Trial and help in committing criminal act threatened by punishment (deviating). (3) Separate arrangements for criminal acts and violations (special provisions). (4) Expansion of the principle of territorial (extraterritorial) (deviating / special provisions). (5) Legal subjects are related / determined based on financial losses and the country's economy (special provisions). (6) Civil servants are separate legal subjects (special provisions). (7) Having an open character, meaning that there are provisions to include criminal acts that exist in other laws as long as the other laws determine to be Criminal Acts (special provisions). (8) Criminal fines plus one-third against corporations (deviating). (9) Expropriation of movable property, immovable (special provisions). (10) There is arrangement of Criminal Acts other than those stipulated in that Law (special provisions). (11) Criminal act are transnational (special provisions). (12) There are provisions of jurisdiction from other countries against criminal acts that occur (special provisions). (13) Criminal acts can be political in character (special provisions).

In addition to aspects that illustrate the specificity and deviation from the material criminal law (*Hukum pidana materiil*), it can also apply the principle of *retro active*. Deviations towards formal criminal law (*hukum pidana formil*) can be found in the following matters: (1) Investigations can be carried out by prosecutors, Investigators of the Corruption Eradication Commission. (2) Special Criminal Cases must take precedence over other criminal cases. (3) There is a civil lawsuit against the suspect / defendant of criminal act of corruption. (4) Re-Prosecution towards criminal sanctions of release based on state losses. (5) Special Criminal Cases are adjudicated in special courts. (6) embracing justice *in absentia*. (7) Breakthrough that is recognized towards bank secrecy. (8) embracing shifting burden of proof. (9) Prohibition of mentioning the identity of the informer. (10) The need for liaison employee (*pegawai penghubung*). (11) Regulated by TTS and TTD.

Based on Teguh Prasetyo's explanation, it can be concluded that the special criminal law does have certain characteristics so that it is different from general criminal law. The difference is seen in its law enforcement institutions, the judiciary and its legal subjects. In special criminal law, its legal subject is not only limited to individuals, but the subject of corporate law.

In order to avoid occurrence of the expansion of the discussion in this paper, the author limits the problems in this paper with the following identification:

² Muhammad Prima Ersa 2017 “Permasalahan Hukum Dalam Menanggulangi Cyber Crime Di Indonesia”. vol 1, no 1, 2017 hlm 52.

³ Ruslan Renggo, *Hukum Pidana Khusus Memahami Delik-Delik di Luar KUHP*, Kencana, Jakarta, 2016, hlm 31

1. What are the Legal Consequences of Burglary of Bank ATM Machines according To ITE Law(the Law of Information and Electronic Transactions)?
2. What are the Prosecutors' considerations regarding the Criminal Act of Burglary of Bank ATM in terms of using the Article on theft in the Criminal Code (KUHP)?
3. How is legal effectiveness of the Criminal Act of Burglary of Bank ATM in the Law of ITE?

II. METHODS

This research is an analytical description, which is to describe systematically, factually and accurately, on a particular population or area, regarding the natures, characteristics or certain factors.⁴

This research method uses normative juridical research, in which research is conducted by first investigating the legislation that is relevant to the problem, supported by data obtained from the literature by collecting secondary data, both in the form of primary legal materials, secondary legal materials, and tertiary legal material.

III. RESULT

A. Legal Consequences of Burglary of Bank ATM Machines According To ITE Law

Bank ATM burglary is not new thing anymore in Indonesia because the incident is common and have been processed as well as was tried in the Court. One of the Bank ATM burglary cases that had been decided by the Court is a case that occurred in the City of Langsawith Decision Number: 5 / Pid.B / 2017 / PN-Lgs. In this decision, the Panel of Judges who tried this case considers in the indictment of the Public Prosecutor using the article on theft namely Article 363 paragraph 1 4th which states: "any person who takes property, wholly or partially belonging to another, with intent to own the property by violating the rights, committed by two or more people, shall be punished by a maximum imprisonment of seven years".

Before the formation of Law No. 11 of 2008 concerning Information and Electronic Transactions, in Indonesia the perpetrators categorized as Cyber Crimes used the Law No. 36 of 1999 concerning Telecommunications. In consideration of the decision, the Judge stated that the actions of the Defendant had fulfilled the elements of Article 363 paragraph (1) 4th of the KUHP, then the Panel of Judges adjudicates with the decision of the Defendant which was proven legally and convincingly had committed criminal act of theft in the aggravation as referred to in Article 363 paragraph (1) 4th of the Criminal Code (KUHP). Sentencing the Defendant with imprisonment for 1 (one) year. If we see in that decision, the Public Prosecutor only indicted the defendant using a single Article namely Article 363 paragraph (1) 4th KUHP and the Panel of Judges also used that article in deciding cases that only sentenced the defendant with one-year imprisonment.

If it is seen from the way the perpetrators committed criminal act of ATM burglary, it can be linked to Law No. 11/2008 on Information and Electronic Transactions as has been amended by the Law No. 19 of 2016. In Article 30 Paragraphs (1), (2) and (3) of the Law No. 11 of 2008 concerning Information and Electronic Transactions:

- (1) Every person intentionally and without right or unlawfully accesses another person's Computer and / or Electronic System in any way.
- (2) Every person who intentionally and without rights or unlawfully accesses Computers and / or Electronic Systems in any way for the purpose of obtaining Electronic Information and / or Electronic Documents.
- (3) Every person intentionally and without right or unlawfully accesses Computers and / or Electronic Systems in any way by violating, breaking through, surpassing, or breaking into security system.

From the formulation of the above article explains that every person is prohibited from accessing other people's electronic systems for the purpose of obtaining Electronic Information and or Electronic Documents by violating, breaking through or breaking into the security system of an electronic system. ATM is one of electronic systems used to conduct financial transactions. Everyone has ATM card for personal use that cannot be used and accessed by others without the consent of the owner. If a person uses an ATM card belonging to another person without rights (burglary) then that person can be charged under Article 30 Paragraphs (1), (2) and (3) of the Law No. 11 of 2008 on Information and Electronic Transaction.

If the elements in Article 30 Paragraph (1) of the Law No. 11 of 2008 concerning Information and Electronic Transaction are detailed, they are⁵:

- (1) The existence of fault (intentionally);
- (2) The existence of characteristic of unlawfulness (without the rights or unlawful)
- (3) The existence of action (accessing in any way);
- (4) The existence of object (computers and or electronic systems belonging to others).

⁴ Bambang Sunggono, *Metodologi Penelitian Hukum*, Raja Grafindo Persada, Jakarta, Cetakan ke-12, 2011: 35.

⁵ Adami Chazawi dan Ardi Ferdian, *Tindak Pidana Informasi dan Transaksi Elektronik* Malang: Media Nusa Creative, 2015, hlm. 139.

The element of violating the law in this article lies in the condition that the computer system is not his/hers and does the act of accessing the computer without permission from the owner and the act is realized by the owner. The unlawfulness, here, is located in without permission from the owner.

Furthermore, in the formulation of Article 30 Paragraph (2) of the Law No. 11 of 2008 on Information and Electronic Transaction consists of elements, namely:

- (1) The existence of fault (intentionally);
- (2) The existence of unlawfulness (without the rights or unlawful);
- (3) The existence of action (accessing in any way);
- (4) The existence of object (computers and/or electronic systems);
- (5) For the purpose of obtaining electronic information and / or electronic documents.

The element of intentional in this criminal act is the will to access the computer and or electronic system in a certain way for the purpose of obtaining electronic information. There is the awareness from the perpetrator who accesses using certain methods to obtain electronic information in order to achieve his objectives. There is awareness from the perpetrator that the act is prohibited and despicable. The characteristic of the prohibited acts of accessing computers and or electronic systems to obtain electronic information because the electronic system belongs to someone else and from the owner's knowledge, there is no permission.

Then in the formulation of Article 30 Paragraph (3) of the Law No. 11 of 2008 concerning Information and Electronic Transaction consists of elements, namely:

- (1) The existence of fault (intentionally);
- (2) The existence of unlawfulness (without the rights or unlawful);
- (3) The existence of action (accessing);
- (4) The existence of object (computers and or electronic systems).
- (5) The way (by any way by violating, breaking through, surpassing, or breaking into security system).

Intentionally, in this article, means the intention to access what he/she knows namely accessing a computer and or electronic system by violating, breaking through, or breaking into security system and the defendant realized that the act is against the law (unlawful). The characteristic of unlawfulness is located in the way of accessing by violating, breaking through, surpassing, or breaking into the security system. Security system is a system that restricts computer access or prohibits access to computer based on user categorization and the specified level of authority.

In my opinion, ATM machines are included in electronic transactions because they use computers that are already programmed in ATM machines and use networks, because if they do not use the networks of ATM machine, the transactions cannot be done, in here, it includes elements of actions that is carried out by the perpetrators by disrupting the work of the ATM machine's computer system by making the victim's ATM card stuck so that the disruption of the system and other people can not use it, because the ATM machine does not operate safely as usual.

Therefore, the legal consequences for perpetrators of ATM burglaries are more appropriate to use Article 30 paragraph (1), (2) and (3) of the Law Number 11 of 2008 on Information and Electronic Transaction with sanctions as stated in Article 46 of the Law Number 11 of 2008:

- 1) Every person who fulfills the elements as referred to in Article 30 paragraph (1) shall be sentenced to a maximum imprisonment of 6 (six) years and / or a maximum fine of Rp. 600,000,000.00 (six hundred million rupiah).
- 2) Every person who fulfills the elements as referred to in Article 30 paragraph (2) shall be sentenced to a maximum imprisonment of 7 (seven) years and or a maximum fine of Rp. 700,000,000.00 (seven hundred million rupiah).
- 3) Every person who fulfills the elements as referred to in Article 30 paragraph (3) shall be sentenced to a maximum imprisonment of 8 (eight) years and / or a maximum fine of Rp. 800,000,000.00 (eight hundred million rupiah).

The aforementioned article clearly states that the legal sanctions will be more severe than using Article 363 paragraph (1) 4th of the Criminal Code (KUHP) so that the application of Article 363 paragraph (1) the 4th of the Criminal Code is decided by the Panel of Judges in Decision Number: 5/Pid.B/2017/PN-Lgis less precise, the perpetrators should be charged using Article contained in the Law Number 11 of 2008 concerning Information and Electronic Transaction (ITE).

B. The Prosecutors' considerations regarding the Criminal Act of Burglary of Bank ATM in Langsa in terms of Using Article on Theft in Criminal Code (KUHP).

The criminal act of ATM burglary which has been decided by the Panel of Judges on Decision Number: 5/Pid.B/2017/PN-Lgs, the Public Prosecutor only used a single indictment by using the article on theft namely Article 363 paragraph 1 4th which says:

“Any person who takes property, wholly or partially belonging to another, with intent to own the property by violating the rights, committed by two or more people, shall be punished by a maximum imprisonment of seven years”.

The aggravating element in the article is that if the theft is carried out jointly by two or more people (*twee of meerverenigdepersonen*). The term "jointly" (*verenigdepersonen*) indicates that two or more people have the intention to commit theft jointly. This article needs the elements of the defendants together or allied in relation with *mededaderschap* who have intentionality (*gezamenlijkopzet*) to commit theft.

According to Article 55 of the Criminal Code (KUHP) *Mededaderschap* consists of four types of acts that can be:

- a. Committing alone or perpetrator (*pleger*)
- b. Asking others to do (*doenpleger*).
- c. Participating in and committing crimes (*medepleger*).
- d. Persuade others to commit a crime (*uitlokker*).⁶

Regarding the consideration of the Public Prosecutor in applying Article 363 paragraphs 1 4th in the indictment as submitted by the Public Prosecutor in State Prosecutor's Office of Langsa, the reason is that the user of Article 363 paragraph 1 4th of the Criminal Code (KUHP) regarding theft is easier in its process of proof. The prosecutor realized that the punishment in the article was lighter than the article contained in the Law Number 11 of 2008. Prosecutors are aware that ITE Law is commonly applied to ensnare people with cases of insults or defamation in Article 27 paragraph (3) and regarding Criminal act of Interception or Wiretapping of Electronic Transactions by violating law (Article 31 jo Paragraph 47).

It should be understood that there is the revision of Law No. 19 of 2016 concerning ITE amendments to the Law No. 11 of 2008 concerning ITE but it still applies in general in order to avoid multi-interpretations on Article of insults or defamations in Article 27 paragraph (3). Furthermore, the aim of revising ITE Law is to reduce criminal punishment from the previous (6) six years, now become (2) two years only and amendments to Article 31 and Article 43.

According to him, *Anjungan Tunai Mandiri* or in English “Automatic Teller Machine” commonly abbreviated as "ATM" is an electronic device that makes it easy for Bank customers to take money at an ATM machine. Electronic transactions are legal actions carried out by using computers, computer networks, and other electronic media. Prosecutors may use articles in ITE Law because the threatened punishment is more severe than that contained in the Criminal Code (KUHP). For example, it's contained in Article 30 of the Criminal Code and its derivatives, but the Prosecutor is constrained later in the process of proof when presenting the Experts at the trial, he said it was not easy to bring the experts in the field of Electronic Transaction Information. The cost of presenting experts was also expensive, so that it hampered the process of proof.

The Public Prosecutor in snaring the ATM burglary perpetrators should also use the Articles contained in the Law on Information and Electronic Transaction. In addition to using Article 363 paragraph 1 4th of the Criminal Code (KUHP), it can also be in conjunction with (*dijuntokan*) by using Article 30 paragraphs (1), (2) and (3) of the Law Number 11 of 2008 on Information and Electronic Transaction.

In Article 63 of KUHP it is stated that if an act is included in more than one criminal rule, then only one of those rules will be imposed; if they are different, then the rules imposed are those that contain the most severe main criminal threats. If an act, which is included in a general criminal rule, is also regulated in a special criminal rule, then only the special rule must be applied.

In Legal Sciences, there are positive punishments for the three combined forms of committing criminal acts, namely⁷:

- (1) Combination of one acts *Concursus Idealis Eendaadse Samenloop*.
- (2) The act continues or *Voorgerzette Handeling*.
- (3) Combination of several acts/*Concursus Realis / Meendaadse Samenloop*.

Related to the combination of one act (*concursus idealis*), according to Article 63 of the Criminal Code is to carry out an act which includes several criminal provisions that cannot be separated between one without eliminating the other (*condition sine quanon*). ATM burglary case can be related to idealistic concursus theory, where the idealist concursus punishment uses the absorption system, which is only subjected to one main punishment that is the most severe. Furthermore, Article 63 paragraph 2 of the Criminal Code (KUHP)

⁶ Wahyu Nugroho, Disparitas Hukuman Dalam Perkara Pidana Pencurian Dengan Pemberatan Kajian terhadap Putusan Nomor 590/Pid.B/2007/PN.Smg dan Nomor 1055/Pid.B/2007/PN.Smg. *Jurnal Yudisial*, Vol. 5 No. 3 Desember 2012. hlm. 266.

⁷ Adami Chazawi. *Pelajaran Hukum Pidana Bagian 2, Raja Grafindo Persada*. Jakarta, 2009.

stipulates special provisions that deviate from the general principle in paragraph 1 in this case applies the principle of *lexspecialisderogatlegigenerali*.in the prosecutor's indictment, they only uses a single indictment of the Criminal Code (KUHP)namely Article 363 paragraph 1 4th, whereas if it is seen that there are rules of penalties governing more severe penalties, it is more appropriate byusing the Law on the Information and Electronic Transactions, namely Article 30 paragraph (1), (2) and (3) or may be in conjunction with the Law No. 11 of 2008 concerning Information and Electronic Transaction.

The reason that the prosecutor did not use the article contained in Law No. 11 of 2008 concerning Information and Electronic Transactions was because it was hampered in the process of proof that was when presenting experts at trial and also the expensive cost of presenting experts so that it hampered the process of proof, it is not the reason that is based on the law. That reason is a technical matter in carrying out duties of law enforcers.Prosecutors who are state representatives in terms of prosecution in Courts Should be required to apply special materials laws (*hukummaterilkhusus*)as enacted by the state.Prosecutors must be able to ensure the application of the articles contained in the Law on Information and Electronic Transactions.Likewise with the application of Article 30 paragraphs (1), (2) and (3) which in fact the actions of the defendants have fulfilled the elements of that article.

Therefore, the perpetrators of criminal act of bank ATM burglary in Langsa should be charged using Article 30 paragraph (1), (2), (3) of Law No. 11/2008 concerning Information and Electronic Transactions, the prosecutor should have used the article in preparing the indictment so that it would be considered by the judge in deciding that case.

C. Legal effectiveness of the Criminal Act of Burglary of Bank ATM in the Law of ITE

The law was made to be implemented and applied in people's lives.The law is said to be effective if the law can answer the issues or problems that exist in the community so that the law is really applied in social life.SoerjonoSoekanto argues that legal effectiveness is all efforts made so thatthe law that exist in society really live in society, and so that the rules of law or a regulation function even live in the order of people's lives.⁸

SaciptoRahardjo explained that the enactment of the law in the community was not necessarily immediately applied, but it requires several steps that allow the law to be implemented or worked.According to SaciptoRahardjo, there are four steps that should be fulfilled to make the law work and function effectively, namely:

- (1) The existence of law enforcement officials as specified in the legal regulations;
- (2) There are people (individuals of community) who commit legal actions, both those that obey or break the law;
- (3) The mentioned people know the existence of regulation;
- (4) These people as subjects or objects of law are willing to act according to the law.⁹

Likewise, the application of Law Number 11 of 2008 Regarding Information and Electronic Transactions which regulates about Information Technology and Electronic Transactions as well as regulates about the prohibited acts.

Ministry of Communication and Informatics through Press Release No. 17 / PIH / KOMINFO / 2/2010 provides explanations regarding the use of Law Number 11 of 2008 on Information and Electronic Transaction in providing legal basis to charge the perpetrators of criminal act who use electronic systems. The law has regulatedabout the acts related to cyber crime, including the acts that are prohibited to obtain electronic information and or electronic documents and that damages, removes, transfers electronic information and or electronic documents belonging to others.ITE law has regulated the legal consequences of damaging the devices to insert ATM cardswhich are replaced withskimmerthat are happening in ATM machines.The perpetrators who are suspected of committing the burglary were effectively charged under Article 30 of Law Number 11 of 2008.

To find out the effectiveness of the Law on Information and electronic transactions in its application to the crime of Bank's ATM Burglary, it is necessary to look at the theory presented by Lawrence M. Friedman regarding the Legal System.According to Friedman's Theory, the Legal System is the operation of a rule of law. There are three elements in the legal system that determines the functioning and operation of a legal rule, namely the Legal Structure, Legal Substance, and Legal Culture.

The legal system has a structure or its framework, the part that persists,the part that givesa kind of form and boundary to the whole, while the meaning of substance is the rules, norms, and patterns of real behaviorof human that are in that system.The emphasis is on living law, not only on the rules in the law books.Then, this brings us to the Third component, Legal Culture, which is human attitude towards law and the legal system; beliefs, values, thoughts and hopes.In other words, legal culture is a social mood and social forces that

⁸SoerjonoSoekanto, Sosiologi: SuatuPengantar, Rajawali Pres, Bandung, 1996, hlm. 53.

⁹SaciptoRahardjo, *Ilmu Hukum*, Citra Aditya Bakti, Bandung, 2000, hlm. 70

determine how law is used, avoided or misused. Without the legal culture, the legal system itself will be powerless.¹⁰

In terms of legal substance, in author's opinion, the Criminal Acts of Bank ATM Burglary is very effective in being charged by using the Law No. 11/2008 concerning Information and Electronic Transactions. Considering that the crime was committed by the perpetrators by tricking the victim in order to get a bank ATM's pin or password so that it is easy to commit the crime by taking money in the Victim's ATM. Bank ATM pin or password is one of the access codes because the ATM pin or password is confidential and to enter the system, it requires pin or password to be able to access, as stated in the Information and Electronic Transaction Law, where the pins or passwords are included in the category of electronic documents, one of which is the access code, but the access code referred to in the Information and Electronic Transaction Law is unlimited and broad or the like, which can be seen, displayed and or heard through a computer or electronic system, including but not limited to text, sound, images, maps, designs, photographs or such things, letters, signs, numbers, Access Codes, in here it is very clear that pin or password is an access code.

Therefore, the Criminal Act of Bank ATM Burglary as contained in the Decision of the District Court Number: 5 / Pid.B / 2017 / PN-Lgs in the indictment of the Public Prosecutor uses a single indictment of Article 363 paragraph 1 4th KUHP so that the Judge adjudicated with a single indictment in accordance with the indictment of the public prosecutor who only sentenced the defendants to 1 (one) year imprisonment for them, it was not appropriate. The defendants should be punishable by using Article 30 of Law No. 11 of 2008 concerning Electronic Transaction Information in which the Criminal Acts of ATM Bank burglary clearly has fulfilled the elements contained in the article and the criminal punishment is higher than using the article in Article 363 paragraph 1 4th of the Criminal Code.

If we related it to the effectiveness of the Law on information and electronic transaction in the application towards the crime of Burglary of Bank ATM, the most influential component lies in the legal structure that discusses about law enforcement efforts carried out by law enforcement officers. The unavailability of human resources in terms of proof, for example, the unavailability of experts in field of Electronic Transaction Information (ITE) to be presented as experts at the trial, so that it is difficult for law enforcement officials to charge the perpetrator of criminal act of Bank ATM Burglary using the Information and Electronic Transaction Law. By the existence of this obstacle, the application of the Law on Information and Electronic Transaction against Bank ATM burglary crime has not been effective.

IV. CONCLUSION

The legal consequences for perpetrator of ATM burglaries are more appropriate to use Article 30 paragraph (1), (2) and (3) of the Law Number 11 of 2008 concerning Information and Electronic Transaction with criminal sanctions as mentioned in Article 46 of the Law Number 11 of 2008, according to the above article, it is explained that everyone is prohibited from accessing other people's electronic systems with the purpose of obtaining electronic information and or electronic documents by violating, breaking through or breaking into the security system of an electronic system. ATM is one of electronic systems that is used to conduct financial transactions. Everyone has an ATM card for personal use that cannot be used and accessed by others without the consent of the owner. If someone uses an ATM card belonging to another person without rights (burglary) then that person can be charged under Article 30 Paragraphs (1), (2) and (3) of the Law No. 11 of 2008 concerning Information and Electronic Transaction.

Prosecutors' Considerations Regarding Criminal Acts of Burglary of Bank ATM so that they Only use Article on Theft in the Criminal Code (KUHP) because the Prosecutor actually can only use the Article contained in the Law on ITE because the threat of punishment is heavier than that contained in KUHP but the prosecutor found the difficulties in the process of proof that is when presenting Expert in the trial and the cost of presenting expert was also expensive, it hampered the process of proof. Therefore, it is very effective if in the Criminal act of Burglary of Bank ATM, Article 30 (Thirty) of Law No. 11 of 2008 concerning Information and Electronic Transactions is applied and it is even better if it could be in conjunction with (*dijunctokan*) Article 363 paragraph 1 4th of the Criminal Code (KUHP) so that material truth (*kebenaranmateril*) in the process of proof in the trial is achieved.

The application of the ITE Law is not effectively applied in cases of bank's ATM burglary crimes because the reason is because it is very difficult to find the elements contained in that Law. In terms of human resources, it is very difficult to bring experts in that field so that when the proof process is not optimal. The reason is the difficulty in bringing experts in the field of Information and Electronic Transactions because in Aceh there are no experts in that field and they need to be brought in from outside Aceh which requires a large amount of cost so that the availability of the existing budget is not enough to cover it. Although, In terms of legal substance, in author's opinion, the Criminal Acts of Bank ATM Burglary is very effective in being charged by

¹⁰ Lawrence M. Friedman, Hukum Amerika, Sebuah Pengantar, Terjemahan Wishnu Basuki, Tatanusa, Jakarta, 2001, hlm. 8.

using the Law No. 11/2008 concerning Information and Electronic Transactions. Considering that the crime was committed by the perpetrators by tricking the victim by setting a trap in the mouth of the ATM machine so that the system is disrupted normally, then with the aim of obtaining a bank ATM pin or password without permission from the ATM card holder so that it is easy to commit the crime by taking money in the victim's ATM.

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