



Indonesian Financial Service Authority as Sole Investigator in Eradication of Money Laundering

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ABSTRACT

With the granting of authority for OJK as sole investigator of criminal acts in the financial services sector as specified in Law Number 4 Year 2023, it is necessary to analyze its implications for the investigation of money laundering crimes, this is because criminal acts in the financial services sector is predicate crime of money laundering. Another thing that needs to be analyzed is whether the provision in the P2SK Law that authorizes OJK as the sole investigator of criminal acts in the financial services sector can be applied, because there is PP No. 55 of 2023 which also authorizes Police Investigators to conduct investigations in the financial services sector. The type of legal research is normative. Based on the research conducted, it is concluded that referring to the *Stufenbau des Recht* theory, in the event of a conflict between the provisions in the P2SK Law and the PP Regulation on Criminal Investigation in the Financial Services Sector can have consequences on the declared invalidity of the provisions regulated in the Government Regulation. Then, the implication of the granting of authority to OJK as the sole investigator in the financial services sector is that the implementation of Money Laundering investigations with criminal acts originating in the financial services sector can only be investigated by OJK. In addition, Analysis Results from PPATK which indicates criminal acts in the financial services sector can only be submitted to OJK.

Keywords: OJK, Investigator, Financial Sector, Money Laundering

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INTRODUCTION

Based on Law Number 4 of 2023 on Financial Sector Development and Reinforcement (P2SK Law), has been given authority to the Indonesia Financial Service Authority (OJK) as the sole investigator in the financial services sector. That this has been regulated in the provisions of Article 49 paragraph (5) in Article 8 of the P2SK Law which states that investigations into criminal acts in the financial services sector can only be carried out by OJK investigators.¹

The scope of criminal acts in the financial services sector based on OJK Regulation Number 22/POJK.01/2015 on Investigation of Criminal Acts in the Financial Services Sector consists of acts or events that are punishable by crime in the Law that regulates

¹Article 49 paragraph (5) in Article 8 of Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector.

the OJK. The financial services sector includes the banking, capital markets, insurance and pension sectors, financing institutions and other financial institutions.² So that criminal acts in the financial services sector can include criminal acts in banking, capital markets³, insurance and criminal acts in other financial institutions.

With the stipulation of the provisions of Article 49 paragraph (5) in Article 8 on the P2SK Law which has mandated OJK to be the sole investigator of criminal acts in the financial services sector, this will automatically revoke the investigative authority of the Indonesian Police in investigating criminal acts in the services sector and finance. Before the enactment of the P2SK Law, the Republic of Indonesia Police had the authority to investigate all types of criminal acts. This is as regulated in the provisions of Article 14 paragraph (1) letter g of Law Number 2 of 2002 on the National Police of the Republic of Indonesia which states that the Police of the Republic of Indonesia is tasked with carrying out inquiries and investigations of all criminal acts in accordance with criminal law, procedural law and regulations.⁴ The authority of Indonesian Police investigators to investigate all criminal acts is regulated in the Criminal Procedure Code and the National Police Law.⁵ So the existence of the provisions of the P2SK Law has reduced the authority of Indonesian National Police investigators to investigate criminal acts in the financial services sector.

The granting of authority to OJK as sole investigators in the financial sector will have implications for the eradication of money laundering (TPPU). Referring to the provisions of Article 2 paragraph (1) of Law Number 8 of 2010 on Prevention and Eradication of the Crime of Money Laundering (hereinafter referred to as "UU PPTPPU"), it is stated that the proceeds of crimes are assets obtained from criminal acts as intended in Article 2 paragraph (1) of the PPTPPU Law⁶, consists of 25 (twenty five) types of criminal acts and 1 (one) provision covering other criminal acts. The criminal acts referred to in the provisions of Article 2 paragraph (1) of the PPTPPU Law include criminal acts in the banking sector, in the capital markets sector, or in the insurance sector.⁷ Based on the provisions as mentioned above, it can be seen that criminal acts in the financial services sector, such as crimes in the banking sector, in the capital markets sector, or in the insurance sector, are predicate crimes from money laundering.⁸

By granting authority to the OJK as the sole investigator of criminal acts in the financial services sector, of course this has an impact on who has the authority to investigate

² Wahyu Wiradinata, "Masalah Penyidik dalam Tindak Pidana Jasa Keuangan di Indonesia," *Jurnal Hukum & Pembangunan* Volume 44, No 1 (2014): 156.

³ Soemitro Djohadikusumo, *Buku Saku Otoritas Jasa Keuangan*, (Jakarta: Otoritas Jasa Keuangan, 2015): 241.

⁴ Article 14 paragraph (1) letter g Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia.

⁵ Armunanto Hutahaean, "Lembaga Penyidik dalam Sistem Peradilan Pidana Terpadu di Indonesia," *Jurnal Legislasi Indonesia* Volume 16, No 1 (2019): 39.

⁶ Article 2 paragraph (1) of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering.

⁷ Tim Riset PPATK, *Tipologi Pencucian Uang berdasarkan Putusan Pengadilan Pencucian Uang Tahun 2017*, (Jakarta: Pusat Pelaporan dan Analisis Transaksi Keuangan, 2018): 13.

⁸ Syahrilal Syukur, *Kajian Hukum: Kewenangan Penyidikan Tindak Pidana Pencucian Uang yang Penyidikan Tindak Pidana Asalnya dilakukan oleh Penyidik Lain*, (Jakarta: Pusat Pelaporan dan Analisis Transaksi Keuangan, 2021): 76.

money laundering crimes whose predicate crimes are crimes in the financial services sector. Referring to the provisions of Article 74 of the PPTPPU Law, it is stated that money laundering crimes investigations are carried out by predicate crime investigators.⁹ With the provisions of Article 49 paragraph (5) Article 8 of the P2SK Law which only gives authority to the OJK to investigate criminal acts in the financial services sector, this has the implication that only the OJK that has the authority to investigate money laundering crimes with predicate crimes in the financial services sector.

Apart from the matters mentioned above, an interesting thing to study is the conflict between the P2SK Law and Government Regulation (PP) Number 5 of 2023 on Investigation of Criminal Acts in the Financial Services Sector (hereinafter referred to as "PP on Investigations in the Financial Services Sector"). The point of conflict between these two regulations is regarding the granting of authority to parties who can investigate criminal acts in the financial service sector. Referring to the provisions of Article 2 paragraph (1) of the PP on Investigation of Criminal Acts in the Financial Services Sector, it is stated that Financial Services Sector Investigators consist of Officials from the Indonesian National Police and OJK Investigators.¹⁰ For National Police Investigator, based on the PP on Investigation of Criminal Acts in the Financial Services Sector, they have the authority to investigate criminal act in the Financial Services Sector. Meanwhile, OJK investigators based on the PP on Financial Services Sector Investigations consist of Indonesian Police investigating officers, certain civil servant officials and certain employees. Certain employees, based on Article 5 paragraph (2) of the PP on Financial Services Sector Investigations, must meet qualifications, one of which is passing education organized by the Indonesian Police and the OJK. Meanwhile, referring to the provisions in the P2SK Law, it is stated that only the OJK has the authority to investigate criminal acts in the financial services sector. Based on the Elucidation of Article 49 paragraph (1) Article 8 of the P2SK Law, the position of National Police Investigators functions as coordinator and supervisor of investigations as referred to in the Criminal Procedure Code. Seeing that there is a conflict between the provisions in the P2SK Law which only gives authority to the OJK to be able to investigate criminal acts in the financial services sector, and the PP on Investigating Criminal Acts in the Financial Services Sector which also gives authority to Police Investigators to be able to investigate criminal acts in the financial services sector, it is necessary to study which provisions should be implemented.

METHOD

This type of legal research is normative legal research. The aim of normative legal research is to find the truth of coherence, to answer the question of whether legal rules are in accordance with legal norms and whether legal norms are in accordance with legal principles, as well as whether a person's actions are in accordance with existing legal

⁹ Article 74 of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering.

¹⁰Article 2 paragraph (1) Government Regulation Number 5 of 2023 concerning Investigation of Criminal Acts in the Financial Services Sector.

norms or legal principles.¹¹

The approaches in this legal research are the statutory approach and the conceptual approach. The statutory approach is a research approach that refers to the study of statutory regulations. Meanwhile, the conceptual approach is a conceptual study of an issue or problem.¹² This research is prescriptive research¹³, that tries to solve the problem regarding the existence of a conflict between the provisions regarding investigative authority in the financial services sector as regulated in the P2SK Law and the PP on Investigations in the Financial Services Sector.

DISCUSSION

Analysis of the Conflict Between P2SK Law and the Government Regulation on Investigation Criminal Acts in the Financial Services Sector

The hierarchy of statutory regulations¹⁴, it can be seen that the position of Government Regulations is under Laws/Government Regulations in Lieu of Laws. Referring to the provisions of Article 7 paragraph (2) of the Law on the Formation of Legislative Regulations, "hierarchy" is the ranking of each type of Legislative Regulation which is based on the principle that lower Legislative Regulations must not conflict with higher Legislative Regulations.¹⁵ This is in accordance with the principle of *lex superior derogate legi inferiori*, which means that legislation at a lower level in the hierarchy of legislation must not conflict with higher legislation.¹⁶ So based on the provisions and principles of *lex superior derogate legi inferiori*, the substance of the provisions in Government Regulations must not conflict with those regulated in the Law. The material for Government Regulations should contain material for the implementation of the Law as appropriate.

Even though the PP on Investigating Criminal Acts in the Financial Services Sector was enacted after the P2SK Law and gave the authority back to investigators at the Indonesian National Police to carry out investigations of criminal acts in the financial services sector, the problem is whether the provisions in the PP on Investigating Criminal Acts in the Financial Services Sector can eliminate the provisions in the P2SK Law which gives the OJK authority as the sole investigator of criminal acts in the financial services sector. This is because the P2SK Law is higher in hierarchy than the PP on Investigating Criminal Acts in the Financial Services Sector.

¹¹ Peter Mahmud Marzuki, *Pengantar Penelitian Hukum*, (Jakarta: Prenadamedia Group, 2014): 47.

¹² *Ibid.*, p. 93.

¹³ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tujuan Singkat*, (Jakarta: Raja Grafindo Persada, 2001): 5-6.

¹⁴ Legislative Regulations consist of Constitution of the Republic of Indonesia, Decree of the People's Consultative Assembly, Law/Government Regulation in Law; Government regulations, Presidential regulations, Provincial Regional Regulations; and Regency/City Regional Regulations.

¹⁵ Article 7 paragraph (2) Law Number 12 of 2011 concerning the Formation of Legislative Regulations.

¹⁶ Ni'matul Huda, "Kedudukan Peraturan Daerah dalam Hierarki Peraturan Perundang-Undangan", *Jurnal Hukum* Vol. 13 No. 1 (January, 2006): 29, on Ubaiyana, "Kedudukan Peraturan Menteri sebagai Bagian dari Peraturan Perundang-Undangan Berdasarkan UU 12/2011," *Jurnal Mimbar Hukum Universitas Gadjah Mada* Vol. 33, No. 1 (2021): 610.

Because the PP on Investigating Criminal Acts in the Financial Services Sector regulates things that are different or conflict with the substance of the P2SK Law, it is necessary to request a judicial review to the Supreme Court regarding these regulations. When referring to the provisions of Article 31 paragraph (1) of Law Number 5 of 2004 on Amendments to Law Number 14 of 1985 on the Supreme Court (hereinafter referred to as the "Supreme Court Amendment Law"), it is stated that the Supreme Court has the authority to review regulations under the law against the law.¹⁷ Based on Article 31 paragraph (2) of the Supreme Court Amendment Law, the Supreme Court has the authority to declare regulations under the law invalid on the basis that the regulations conflict with higher laws or their formation does not comply with applicable provisions. The authority of the Supreme Court to review statutory regulations under the law against the law is mandated in Article 24A of the 1945 Constitution.¹⁸ In the event that the statutory regulations under the law are declared invalid, the regulations do not have binding legal force.¹⁹

So, if the substance of the provisions regulated in the PP on Financial Services Sector Investigations is considered to be in conflict with those regulated in the P2SK Law, then a request for a judicial review of the PP on Financial Services Sector Investigations can be submitted to the Supreme Court. Then the Supreme Court will decide whether the regulation conflicts with higher regulations.

Then regarding which provisions should be applied if there is a conflict between the provisions in the Law (UU) and Government Regulations (PP), it is necessary to understand the principle of hierarchy of statutory regulations as stipulated in Law Number 12 of 2011 which has a correlation with Hans Kelsen's theory regarding *Stufenbau des Recht* or The Hierarchy of Law. According to Hans Kelsen's view, law is valid if it is made by an institution or authority that has the authority to form it, and is based on higher (superior) norms and the law is tiered to form a hierarchy. A lower norm is sourced and based on a higher norm.²⁰ Based on Hans Kelsen's view, it can also be seen that basic norms are the main source of norms that bind all the different norms that form a system of norms.²¹ The theory that presented by Hans Kelsen is also similar to that presented by Adolf Merkl. According to Adolf Merkl, a legal norm has two faces (*des Doppelte Rechtsantkizt*). In the structure or hierarchy of the system, the highest norms become the place where the norms below depend, so that if the basic norms change, it will cause damage to the norm system below.²² In

¹⁷Article 31 paragraph (1) Law Number 5 of 2004 concerning Amendments of Law Number 14 of 1985 concerning the Supreme Court.

¹⁸ L. Ansori, *Pengujian Peraturan Perundang-Undangan*, (Malang: Setara Press, 2018): 104.

¹⁹ Andryan, "Implikasi Putusan Hak Uji Material di Mahkamah Agung terhadap Legalitas Pimpinan Dewan Perwakilan Daerah Republik Indonesia", *Jurnal Penelitian Hukum De Jure* Volume 18 No. 3 (September, 2018): 372.

²⁰ Maria Farida Indrati S., *Ilmu Perundang-Undangan: Jenis, Fungsi, dan Materi Muatan*, (Yogyakarta: Kanisius, 2007): 24.

²¹ Hans Kelsen, *Teori Hukum Murni: Dasar-Dasar Ilmu Hukum Normatif sebagai Ilmu Hukum Empirik-Deskriptif (The Pure Theorie of Law)*, (Jakarta: Bee Media, 2007): 13, on Muhammad Fauzul Adzim, "Validitas Peraturan Pelaksana Undang-Undang Nomor 7 Tahun 2024 tentang Sumber Daya Air Pasca Putusan Mahkamah Konstitusi Nomor: 85/PUU-XI/2013", *Jurnal Constitutionale Fakultas Hukum Universitas Lampung* Volume 1 Issue. 1 (January-June, 2020): 53.

²² Rachmat Trijono, *Dasar-Dasar Ilmu Pengetahuan Perundang-Undangan*, (Jakarta: Papas Sinar Sinanti, 2014): 49-50.

Indonesia, the highest norms are contextualized in the form of a constitution. This norm is the highest reason for the validity of norms, one norm is created in accordance with another, thus forming a legal order in a hierarchical structure. (Anwar, 2016)²³

Therefore, the question is what if there is a suspect who submits a pre-trial application on the basis that Police Investigators do not have the authority to investigate criminal acts in the financial services sector, because the provisions in the PP which regulate investigations conflict with the provisions in the Law. Regarding pre-trial provisions, it is stated in Article 1 number 10 of Law Number 8 of 1981 on Criminal Procedure Law which states that: Pre-trial is the authority of the district court according to the method regulated in law regarding: a)²⁴ whether or not the arrest and/or detention is valid ; b) whether or not the termination of the investigation or prosecution is valid; or c) request for compensation or rehabilitation. A request for an examination regarding the legality of an arrest or detention can be submitted by the suspect, his family or his attorney to the head of the court, by stating the reasons. Meanwhile, a request to examine whether or not a termination of an investigation or prosecution is valid can be submitted by an investigator or public prosecutor or an interested third party to the chairman of the district court, by stating the reasons. Based on the provisions governing pretrial as mentioned above, it is possible for suspects to submit pretrial requests on the basis that Police Investigators do not have the authority to investigate criminal cases in the financial services sector. This is because the provisions in the PP on Investigations in the Financial Services Sector, which are the basis for the investigator's authority, conflict with the provisions in the P2SK Law which states that only the OJK can investigate criminal acts in the financial services sector.

If this situation occurs, the judge can grant the pretrial request by referring to the theory of legal validity or the theory of legal hierarchy as stated by Hans Kelsen, that a law is declared valid if it is made by an authority that has the authority to form it, and is based on higher norms.²⁵ So if the norm conflicts with a higher norm, the norm can then be declared invalid. Therefore, on the basis of this, the Judge can then decide that Police Investigators should not have the authority to carry out arrests and detentions because of the norms that form the legal basis for granting authority to Police investigators as regulated in the PP on Financial Services Sector Investigations are contrary to higher norms as regulated in the P2SK Law.

Then the next issue is what if a request for judicial review is submitted against the provisions of Article 49 paragraph (5) in Article 8 of the P2SK Law and the impact if the application for Judicial Review is then granted by the MK. As is known, currently the Constitutional Court has held a judicial review hearing regarding the provisions of Article 49 paragraph (5) in Article 8 of the P2SK Law, in case number 59/PUU-XXI/2023. The review was requested by the AJB Bumiputera 1912 Commercial Workers Union as

²³ Joel Freinberg and Hyman Gross, *Philosophy of Law* (Belmont: Wadsworth Publishing Company, 1986): 38-39, on Syamsul Anwar, "Teori Peningkatan Norma dalam Usul Fikih", *Jurnal Asy Syir'ah: Ilmu Syari'ah dan Hukum* Volume 50 No. 1 (June, 2016): 146.

²⁴ Article 1 number 10 of Law Number 8 of 1981 concerning Criminal Procedure Law.

²⁵ Maria Farida Indrati S., *op.cit.*

Petitioner I, I Made Widia as Petitioner II, Ida Bagus Made Sedana as Petitioner III, and Endang Sri Siti Kusuma Hendariwati as Petitioner IV.²⁶

The basis for Petitioner to submit a request for judicial review is because Petitioner I cannot take legal action at the Indonesian Police for criminal acts in the financial services sector, except through the law enforcement process at the OJK.²⁷ According to Petitioner I, the norm provisions in the P2SK Law will harm the Petitioner's constitutional rights and have a direct impact on his legal interests which are currently under administrative supervision by the OJK.²⁸

Meanwhile, Petitioners II, III and IV in their petition considered that the granting of sole investigative authority to the OJK in investigating criminal acts in the financial services sector resulted in the impairment of the Petitioners' constitutional rights. Meanwhile, Petitioner II had experienced an alleged banking crime and reported it to the Bali Regional Police. Regarding this matter, Petitioner II has received a response letter from the Ditreskrimsus Polda Bali, which essentially means that Petitioner II's complaint cannot be followed up on the basis of the P2SK Law which gives the OJK the sole investigative authority in the financial services sector.²⁹

The Petitioner assesses that the OJK's function in conducting investigations has monopolized investigations into the financial services sector and is contrary to the principle of due process of law. This is guaranteed in Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution and reduces the authority of the Indonesian Police as the main organ which has the task of enforcing the law as regulated in Article 30 paragraph (4) of the 1945 Constitution.³⁰

If you see this problem, it is possible for the Constitutional Court to further grant the Petitioner's petition on the basis that the Petitioner's constitutional rights have been harmed and on the basis of granting the OJK authority as the sole investigator of criminal acts in the financial services sector which will reduce the law enforcement authority of the Indonesian Police. That based on the provisions of Article 30 paragraph (4) of the 1945 Constitution, it is stated that the Indonesian National Police as a state instrument that maintains public security and order is tasked with protecting, protecting, serving the community and enforcing the law. So that with the provisions of Article 49 paragraph (5) in Article 8 of the P2SK Law which gives authority to the OJK as the sole investigator of criminal acts in the financial services sector, it can reduce the law enforcement authority of the Indonesian Police as mandated in the provisions of Article 30 paragraph (4) of the 1945 Constitution. That this could be a consideration for the Panel of Judges to declare that the provisions of Article 49 paragraph (5) in Article 8 of the P2SK Law are contrary to the provisions of Article 30 paragraph (4) of the 1945 Constitution so that they can then be declared null and void. In the event that the request for a judicial

²⁶Minutes of Case Hearing Number 59/PUU-XII/2023 concerning Judicial Review of Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector against the 1945 Constitution of the Republic of Indonesia, p. 2

²⁷ *Ibid.*, p. 4-5.

²⁸ *Ibid.*, p. 5.

²⁹ Sri Pujianti. Kewenangan, "Penyidikan Tunggal kepada OJK Dipertanyakan," accessed June 19, 2023, <https://www.mkri.id/index.php?page=web.Berita&id=19269>

³⁰Article 30 paragraph (4) of the 1945 Constitution of the Republic of Indonesia.

review is granted and the provisions of Article 49 paragraph (5) in Article 8 of the P2SK Law are declared to be in conflict with the 1945 Constitution and therefore null and void, then the provisions of Article 2 paragraph (1) of the PP on Financial Services Sector Investigations will remain in effect as long as they are not deemed to be in conflict with the provisions in Article 30 paragraph (4) of the 1945 Constitution.

Implications of Granting Authority to the OJK as the Sole Investigator of Criminal Offenses in the Financial Services Sector

Even though there is a conflict between the provisions in the P2SK Law and the PP on Financial Services Sector Investigations, referring to the principles of *lex lege derogate specialist generali* and *Stufenbau des Recht*, it is appropriate for the P2SK Law that grants authority to the OJK as the sole investigator of criminal acts in the financial services sector cannot then be ruled out by the PP, so that the provisions in the P2SK Law are still valid. There are implications of granting authority to the OJK as the sole investigator of criminal acts in the financial services sector, both for efforts to prevent and eradicate money laundering crimes because criminal acts in the financial services sector are one of the predicate crimes of money laundering crimes.³¹

The implications of granting authority to the OJK as the sole investigator in the financial services sector for efforts to prevent and eradicate money laundering are as follows, Investigation of money laundering crimes with predicate crimes in the Financial Services Sector can only be carried out by the OJK. Referring to the provisions of Article 74 of the TPPU Law, it is explained that money laundering investigations are carried out by predicate crime investigators in accordance with the provisions of procedural law and provisions of statutory regulations unless otherwise determined according to this Law.³²Based on these provisions, it can be seen that money laundering crime investigations with predicate crimes are criminal acts in the financial services sector, should be carried out by investigators who have the authority to investigate criminal acts in the financial services sector. In the event that only the OJK is given the authority to investigate criminal acts in the financial services sector, then only the OJK has the authority to investigate money laundering which is a predicate crime in the financial services sector.

Corruption is a criminal act that results in a loss to state finances, which come from the community.³³ Although based on the provisions of Elucidation of Article 74 of the TPPU Law, limitations are given to the definition of "predicate crime investigator", limited to 6 (six) investigators who come from investigators from the Indonesian Police, Prosecutor's Office, Corruption Eradication Commission, BNN, as well as the Directorate General of Taxes and the Directorate General of Customs and Excise³⁴, however, in its

³¹ Article 2 paragraph (1) of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering.

³² Article 74 of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering.

³³ Orin Gusta Andini, Nilasari Nilasari, and Andreas Avelino Eurian, "Restorative Justice in Indonesia Corruption Crime : A Utopia," *Legality Jurnal Ilmiah Hukum* 31, no. 1 (2023): 72–90, <https://ejournal.umm.ac.id/index.php/legality/article/view/24247/12233>.

³⁴ Prianter Jaya Hairi, "Putusan Mahkamah Konstitusi terkait Kewenangan PPNS dan Implikasinya Terhadap Penegakan Hukum," *Jurnal Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* Volume 12, No. 2 (2021): 162.

development, the definition of predicate crime investigator was then expanded through Constitutional Court Decision Number 15/PUU-XIX/2021. Based on Constitutional Court Decision Number 15/PUU-XIX/2021, in its decision the Panel of Judges of the Constitutional Court stated that:³⁵ what is meant by 'predicate crime investigator' is an official or agency that is authorized by statutory regulations to carry out investigations. So, based on the Constitutional Court's decision, every investigator who has the authority to investigate predicate crime is automatically also authorized to investigate money laundering crime, including the OJK which has the authority to investigate criminal acts in the financial services sector.

The Constitutional Court's consideration in expanding the definition of predicate crime investigators is because there is an inconsistency between the provisions of the norms of Article 74 of the TPPU Law and the Elucidation of Article 74 of the TPPU Law which according to the Petitioner could cause legal uncertainty. When referring to number 176 of Attachment I to Law Number 12 of 2011 on the Formation of Legislative Regulations, it is stated that the Explanation is a means of clarifying the norms in the body and must not cause ambiguity in the norms in question.³⁶ Then in Number 186 of Attachment I to the Law on the Establishment of Legislative Regulations it is stated that the explanatory formulation article by article is not intended to expand, narrow or add to the meaning of existing norms.³⁷ Based on these provisions, the Elucidation of Article 74 of the TPPU Law should not limit the meaning of predicate crime investigators in Article 74 of the TPPU Law. Therefore, the consideration of the Panel of Judges in the Constitutional Court Decision Number 15/PUU-XIX/2021 which broadens the definition of predicate crime investigators is correct. With the granting of authority to the OJK as the sole investigator in investigating criminal acts in the financial services sector as regulated in Article 49 paragraph (5) in Article 8 of the P2SK Law, this will certainly have implications for money laundering crime investigations involving predicate crimes in the financial services sector. That only the OJK can then investigate money laundering crimes which is a predicate crime in the financial services sector.

Second, Submission of Analysis Result Reports or Audit Result Reports that indicate criminal acts in the financial services sector and money laundering are submitted only to the OJK. Referring to the provisions of Article 40 letter d of the TPPU Law, the PPAJK has the function of analyzing or examining Financial Transaction reports and information that indicates money laundering crimes and/or other criminal acts as intended in Article 2 paragraph (1). In carrying out the function of analysis or examination of reports and information, PPAJK can forward the results of the analysis or examination results to investigators.³⁸ By granting authority to the OJK as the sole investigator in the financial services sector, this will certainly have an impact on the technical delivery of Analysis Results or Examination Results which indicate criminal acts in the financial services sector and money laundering crimes from PPAJK to Investigator. Based on Article 48 paragraph (2) of Presidential Regulation Number 50 of 2011 on Procedures for

³⁵Constitutional Court Decision Number 15/PUU-XIX/2021, p. 55.

³⁶ Number 176 Appendix I Law Number 12 of 2011 concerning the Formation of Legislative Regulations.

³⁷Number 186 Appendix I Law Number 12 of 2011 concerning the Formation of Legislative Regulations.

³⁸Article 44 paragraph (1) letter I Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Laundering.

Implementing PPATK Authority, the Analysis Results from PPATK are submitted to investigators in accordance with their authority, either on their own initiative (proactive) or at the investigator's request (reactive/inquiry) by considering the law enforcement process. Meanwhile, Examination Results based on Article 49 paragraph (2) of the Presidential Regulation on Procedures for Exercising PPATK Authority, are forwarded to investigators in accordance with their authority based on the Law as a basis for inquiry and investigation.³⁹Based on these provisions, Analysis/Examination Results from PPATK should be submitted to investigators who have the authority to carry out investigations into criminal acts that relate to the submitted Analysis/Examination Results. So, in the event that the authority to investigate criminal acts in the financial services sector can only be carried out by the OJK, then the Analysis/Examination Results from PPATK which are indicated as criminal acts in the financial services sector and money laundering must be submitted to the OJK as the sole investigator in the financial services sector.

Third, Complaints from the public or financial service providers regarding indications of criminal acts in the financial services sector which also indicate money laundering can only be submitted to the OJK. In the event that there is a grant of authority to the OJK as the sole investigator of criminal acts in the financial services sector, this will have an impact on public complaints regarding indications of criminal acts in the financial services sector which also indicate money laundering crimes. Based on the provisions of Article 9 paragraph (2) of Government Regulation Number 5 of 2023 on Investigation of Criminal Acts in the Financial Services Sector, it is stated that investigations into alleged criminal acts in the Financial Services Sector are carried out by OJK Investigators based on information and findings of criminal acts in the Financial Services Sector.⁴⁰ Information and findings regarding criminal acts in the financial services sector can be found from public reports/complaints, examinations carried out by the OJK on financial service providers and from reports of suspected fraud from financial service providers. By granting authority to the OJK as the sole investigator of criminal acts in the financial services sector, reports of complaints from the public and financial service providers (including banks) regarding criminal acts in the financial services sector which also indicate money laundering crimes must be submitted to the OJK.

In the event that an OJK investigator when conducting an investigation into a criminal act in the financial services sector then finds that the criminal act committed is a general crime, the OJK investigator will hand over the case to investigators at the Indonesian Police. This is in accordance with the provisions of Article 8 paragraph (1) letter c Government Regulation Number 5 of 2023 on Investigation of Criminal Acts in the Financial Services Sector.⁴¹

Fourth, at the stage of investigating criminal acts in the financial services sector that indicates money laundering, it is possible to resolve the violation with compensation

³⁹Article 48 paragraph (2) and Article 49 paragraph (2) Presidential Regulation Number 50 of 2020 concerning Procedures for Implementing PPATK Authorities.

⁴⁰Article 9 paragraph (2) Government Regulation Number 5 of 2023 concerning Investigation of Criminal Acts in the Financial Services Sector.

⁴¹Article 8 paragraph (1) letter c Government Regulation Number 5 of 2023 concerning Investigation of Criminal Acts in the Financial Services Sector.

from the party suspected of committing the crime. Referring to the provisions of Article 9 paragraph (3) of Government Regulation Number 5 of 2023 on Investigation of Criminal Acts in the Financial Services Sector, it is explained that at the investigation stage of alleged criminal acts in the financial services sector, the party that suspected of committing the criminal act can apply to OJK to resolve violations of laws and regulations in the financial services sector.⁴² OJK will assess requests for resolution of violations and calculate the value of losses for violations involving investigators, investigators and/or other parties by considering several things are whether or not there is a settlement for losses arising from criminal acts, transaction value and/or loss value for violations, and impact on the financial services sector, financial services institutions, and/or the interests of customers, financiers or investors, and/or the community.

In the event that the OJK then approves the application for settlement of the violation, the party that submitted the application for settlement of the violation is given the obligation to implement the agreement, including paying compensation to the agreed party. Then, if the agreement has been fulfilled by the party that submitted the request for settlement of the violation, the OJK will stop the investigation. The concept of the violation resolution mechanism regulated in the PP on Criminal Investigation in the Financial Services Sector, you can see that it applies the concept of restorative justice. Restorative Justice itself is a model approach in resolving criminal cases that prioritizes the concepts of peace, mediation and reconciliation where perpetrators, victims, law enforcement officers and the wider community participate directly in resolving criminal cases which is different from the traditional criminal justice system. (Kristian and Christine Tanuwijaya, 2015)⁴³ Based on a restorative justice lens, crime is viewed as a violation and this relationship creates an obligation to do the right thing.⁴⁴

With the existence of a restorative justice concept or mechanism in resolving criminal acts in the financial services sector by the OJK, it will have implications for resolving alleged money laundering crimes from violations that occurred in the financial services sector. If the investigation of criminal acts in the financial services sector is stopped because peace and compensation have been agreed upon for the victim, this will have implications for the investigation of the money laundering crime being stopped because the position of the money laundering crime is a follow-up crime (no money laundering without predicate offenses) (Yunus Husein, 2007)⁴⁵ from predicate crimes, one of which is a crime in the financial services sector.

Strategy for Optimizing Criminal Investigations in the Financial Services Sector and Money Laundering

By granting authority to the OJK as the sole investigator of criminal acts in the financial services sector, it is then necessary to study the strategies needed to optimize the

⁴²Article 9 paragraph (3) Government Regulation Number 5 of 2023 concerning Investigation of Criminal Acts in the Financial Services Sector.

⁴³ Kristian dan Christine Tanuwijaya, "Penyelesaian Perkara Pidana dengan Konsep Keadilan Restoratif (*Restorative Justice*) dalam Sistem Peradilan Pidana Terpadu di Indonesia", *Jurnal Mimbar Justitia* Volume 01 No. 02 (July-Desember, 2015): 596-597.

⁴⁴ Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice*, (Pennsylvania: Herald Press, 1990): 12, on Kristian and Christine Tanuwijaya, *op.cit.*, p. 598.

⁴⁵ Yunus Husein, *Bunga Rampai Anti Pencucian Uang*, (Bandung: Book Terrace & Library, 2007): 43.

investigation of criminal acts in the financial services sector and the investigation of money laundering which are predicate crimes in the financial services sector. When referring to legal system theory according to Lawrence M. Friedman's view, it is stated that determining the effectiveness and success of law enforcement depends on 3 (three) elements of the legal system. The elements of the legal system consist of structure of law, substance of law, and legal culture.

Regarding legal structure, Lawrence M. Friedman explains that:(Lawrence M. Friedman, 2001)⁴⁶"to begin with the legal system has the structure of a legal system consisting of elements of this kind: the number and size of courts; their jurisdiction. Structure also means how the legislature is organized, what procedures the police department follows, and so on." Apart from that, legal structure can also mean how the legislative body is organized. Where the legal structure in question consists of existing legal institutions and is intended to implement existing legal instruments.

Meanwhile, according to Lawrence M. Friedman, the legal substance is, "Another aspect of the legal system is its substance. By this is meant the actual rules, norms and behavioral patterns of people inside the system, the stress here is on living law, not just rules in law books."⁴⁷Based on the opinion of Lawrence M. Friedman, what is meant by legal substance consists of rules, norms and real human behavior patterns within the system. Where the legal substance concerns applicable laws and regulations which have binding force and serve as guidelines for law enforcement officials.

According to Lawrence M. Friedman's opinion, legal culture is human attitudes towards law and the legal system. Based on the theory from Lawrence M. Friedman above, to formulate a strategy for optimizing money laundering investigations whose predicate crimes are criminal acts in the financial services sector, it is necessary to look at the 3 (three) elements of law enforcement that currently exist. First, Strengthening the legal structure. With the granting of authority to the OJK as the sole investigator in the financial services sector, a strategy is needed to optimize the investigation of money laundering crimes which are predicate crimes in the financial services sector by strengthening the legal structure.

Strengthening the legal structure can be done by increasing the number of OJK investigators, adding investigation units at regional offices and strengthening the OJK complaints system. The steps to strengthen the legal structure that can be implemented are: it is necessary to increase the number of OJK investigators who have the authority to investigate criminal acts in the financial services sector. Until now, there are still very few OJK investigators who have the authority to investigate criminal acts in the financial services sector. There are only 17 (seventeen) OJK investigators consisting of 12 (twelve) Indonesian Police investigators and 5 (five) BPKP civil servant investigators.⁴⁸ Meanwhile, OJK employees themselves act as case analysts. Meanwhile, OJK employees themselves act as case analysts. By granting authority to the OJK as the sole investigator

⁴⁶ Lawrence M. Friedman, *Hukum Amerika: Sebuah Pengantar, Terjemahan dari American Law An Introduction 2nd Edition*, (Jakarta: Tatanusa, 2001): 6.

⁴⁷ *Ibid.*, p. 7-8.

⁴⁸ Otoritas Jasa Keuangan, *Siaran Pers Perkembangan Tugas Penyidikan Otoritas Jasa Keuangan*, SP 9/DHMS/OJK/I/2023, tanggal 25 January 2023.

for criminal acts in the financial services sector, it is necessary to increase the number of investigators. The addition of investigators was carried out through OJK's internal cadre formation and by collaborating with other agencies such as the Indonesian Police and BPKP to recruit investigators who could be employed at OJK.

Additional investigation units at OJK Regional Offices and OJK Regional Offices. Another problem regarding OJK's authority as the sole investigator in the financial services sector is that there are no OJK investigation units in the regions. Currently, the OJK investigation unit is still centralized in the Financial Services Sector Investigation Department at the Central OJK. The addition of OJK investigation units in the regions is necessary because the potential for criminal acts in the financial services sector is quite large and can be spread throughout all regions in Indonesia.⁴⁹ According to data from the Indonesian Police, the number of criminal cases in the financial services sector reached 1,250 cases. Investigations into these crimes were carried out by the Indonesian Police at various levels starting from the National Police Criminal Investigation Unit, National Police Headquarters, Regional Police (Polda) and Resort Police (Polres) spread across all regions in Indonesia. Meanwhile, data from the OJK shows that in the period 2014-2022, the OJK has handled 99 cases consisting of 78 banking cases, 5 capital markets cases, and 16 non-bank financial industry cases.⁵⁰

Based on this data, it can be seen that the cases handled by the OJK are mostly related to banking crimes, even though there are many variations in criminal acts in the financial services sector. Therefore, to optimize OJK's duties, it is necessary to increase the number of investigators as well as additional special units with regional investigative authority placed in the OJK Regional Office. This is to facilitate the OJK's actions in dealing with criminal acts in the financial services sector which is organized crime (Gilmour, 2016)⁵¹ and money laundering crimes whose predicate crimes are criminal acts in the financial services sector.

Placement of OJK Regional/Representative Offices in each city/district so that the public and financial service providers can submit complaints about criminal acts in the financial services sector. Another thing that is still a problem regarding the granting of authority to the OJK as the sole investigator of criminal acts in the financial services sector is that OJK Regional Offices do not exist in all cities/regencies in Indonesia. This makes it difficult for the public or Financial Services Providers if they want to submit complaints regarding alleged criminal acts in the financial services sector, money laundering crimes or if there are allegations of fraud committed by the Financial Services Provider.

Based on OJK data, there are currently 9 OJK regional offices and 33 OJK offices spread across Provincial Capitals, Municipalities and Regencies in Indonesia. The 9 OJK regional offices are in several cities, including Jakarta, Bandung, Yogyakarta, Surabaya, Medan, Makassar, Palembang, Denpasar and Banjar. Meanwhile, 33 OJK offices are at the city

⁴⁹Minutes of Case Hearing Number 59/PUU-XII/2023 concerning Judicial Review of Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector against the 1945 Constitution of the Republic of Indonesia, p. 11.

⁵⁰ Otoritas Jasa Keuangan, *Siaran Pers Perkembangan Tugas Penyidikan Otoritas Jasa Keuangan*, SP 9/DHMS/OJK/I/2023, tanggal 25 January 2023.

⁵¹ Nicholas Gilmour, "Understanding the Practices Behind Money Laundering-A Rational Choice Interpretation", *International Journal of Law, Crime and Justice*, *Crime and Justice* Volume 44 (March, 2016): 2.

or district level in Indonesia, although they are not yet spread across all cities/regencies in Indonesia.⁵² In the event that there is a grant of authority to the OJK as the sole investigator for criminal acts in the financial services sector, it is necessary to have additional Regional Offices and OJK Offices in the regions in each Regency/City which have the function of receiving reports or complaints of suspected criminal acts in the financial services sector from the public and Financial Service Providers.

Strengthening the legal substance and collaboration between OJK and the Indonesian Police, BPPK and other agencies to strengthen investigators. In order to cadre or increase the number of OJK investigators, it is necessary to have a regulatory framework that regulates the qualifications of OJK investigators. The existence of this regulatory framework or legal rules can be a reference for the OJK if it wants to recruit OJK employees to be appointed as OJK investigators or by recruiting investigators outside the OJK to be appointed as OJK investigators. As stated by Lawrence M. Friedman, legal culture is an attitude towards the law and the legal system. In relation to optimizing the handling of criminal cases in the financial services sector and money laundering crimes with the predicate crime of criminal acts in the financial services sector, there is a need for synergy between stakeholders in handling cases. These synergies can be in the form of cooperation between OJK and PPATK in exchanging information for handling criminal cases in the financial services sector and money laundering in the financial services sector.

PPATK's position as a Financial Intelligence Unit (Financial Intelligence Unit) functions to provide financial intelligence support by conveying information to investigators so that investigators can then follow up through inquiries and investigations.⁵³ Based on the provisions of Article 44 paragraph (1) letter I of the TPPU Law, in order to carry out the function of analyzing or examining reports and information, PPATK can forward the results of the analysis or examination to investigators.⁵⁴ Where the results of the PPATK analysis or examination are documents that can assist investigators in uncovering indications of transaction flows related to criminal acts.⁵⁵

In carrying out the function of preventing and eradicating money laundering, PPATK can then collaborate in exchanging information in the form of requesting, providing and receiving information with parties at national and international levels. Information exchange cooperation that can be carried out by PPATK includes cooperation with law enforcement agencies and institutions authorized to supervise financial service providers such as the OJK.⁵⁶ In order to strengthen OJK investigators, there is a need for cooperation between OJK and other agencies to recruit investigators. OJK can

⁵²Appendix IV Financial Services Authority Circular Letter Number 46/SEOJK.03/2016 concerning Sharia Rural Financing Banks.

⁵³ Prima Idwan Mariza, *Penelusuran Uang: Konsep Pengembalian Kerugian Keuangan Negara dalam Kasus Korupsi dan Pencucian Uang*, (Malang: Setara Press, 2021): 119.

⁵⁴Article 44 paragraph (1) letter I Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering.

⁵⁵ Fuad Hasan, *Kajian Hukum: Posibilitas Hasil dan Hasil Pemeriksaan PPATK sebagai Alat Bukti dalam Penanganan Perkara Tindak Pidana Pencucian Uang*, (Jakarta: Pusat Pelaporan dan Analisis Transaksi Keuangan, 2021): 44.

⁵⁶Article 90 paragraph (1) Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering.

collaborate with other agencies such as the Indonesian Police, BPKP or other agencies to recruit investigators who have competence or experience in handling criminal cases in the financial services sector. With this collaboration, it is hoped that effective handling of criminal cases in the financial services sector and money laundering can be created, because the modus operandi of economic criminals in committing crimes is very sophisticated and varied.⁵⁷

CONCLUSION

The substance of the provisions in the Government Regulation should be to implement the Law and must not conflict with what is regulated in the Law. So, if there is a conflict between the provisions in the P2SK Law and the PP Regulations on Investigating Criminal Acts in the Financial Services Sector, it could result in the invalidity of the provisions regulated in the Government Regulation. With the granting of authority to the OJK as the sole investigator of criminal acts in the financial services sector, it will have the consequence that investigations into money laundering cases with predicate crimes in the services sector can then only be carried out by the OJK. Apart from that, submission of Analysis and Examination Results, and public complaints regarding criminal acts in the financial services sector that indicate money laundering can only be submitted to the OJK. Therefore, as a strategy to optimize investigations into criminal acts in the financial services sector and money laundering, it is necessary to strengthen the legal structure, legal substance and legal culture, by increasing the number of OJK investigators, drafting regulations, and coordinating between institutions in handling criminal acts in the financial services sector and money laundering.

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⁵⁷ Milind Tiwari, Jamie Ferrill, Adrian Gepp, Kuldeep Kumar, "Factor Influencing the Choice of Technique to Launder Funds: The APPT Framework", *Journal of Economic Criminology* Volume 1 (September, 2023): 4.

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