



REGULATION OF THE AUTHORITY OF OJK INVESTIGATORS IN THE INVESTIGATION OF CRIMINAL ACTS IN THE FINANCIAL SERVICES SECTOR AFTER THE P2SK LAW

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Abstract

The development of the financial services sector has been accompanied by increasingly complex financial crimes, necessitating a specialized investigative body with sufficient technical authority. This study aims to analyze the regulatory framework governing the investigative authority of the Financial Services Authority (OJK) Investigators in financial sector crimes based on the applicable normative framework. This research employs a normative juridical method with a statute approach and conceptual approach, utilizing library research through primary and secondary legal materials analyzed prescriptively with deductive reasoning. The study finds that OJK Investigators hold investigative authority of an attributive nature derived from Law Number 21 of 2011 and Law Number 4 of 2023, encompassing four dimensions of authority: the scope of criminal offenses, subjects, types of actions, and the timeframe of exercise. Following Constitutional Court Decision Number 59/PUU-XXI/2023, this authority shifted from a potentially exclusive character to one exercised coordinatively alongside the National Police without eliminating its attributive legal basis. The exercise of OJK investigative authority requires procedural compliance with the principle of legality as reinforced through the case review mechanism under Law Number 20 of 2025 on the Criminal Procedure Code, such that deviations from prescribed procedures may invalidate investigation results and serve as the basis for assessing the legality of investigative actions in the financial services sector.

Keywords: *abuse of authority; criminal liability; financial services sector; investigator; OJK*

Abstrak

Perkembangan sektor jasa keuangan disertai dengan meningkatnya kompleksitas tindak pidana keuangan sehingga memerlukan aparat penyidik khusus yang memiliki kewenangan teknis memadai. Penelitian ini bertujuan menganalisis pengaturan kewenangan Penyidik Otoritas Jasa Keuangan dalam penyidikan tindak pidana di sektor jasa keuangan berdasarkan kerangka normatif yang berlaku. Penelitian menggunakan metode yuridis normatif dengan pendekatan perundang-undangan dan pendekatan konseptual, melalui studi kepustakaan terhadap bahan hukum primer dan sekunder yang dianalisis secara preskriptif dengan penalaran deduktif. Hasil penelitian menunjukkan bahwa Penyidik OJK memiliki kewenangan penyidikan bersifat atribusi yang bersumber dari Undang-Undang Nomor 21 Tahun 2011 dan Undang-Undang Nomor 4 Tahun 2023, mencakup empat dimensi kewenangan yakni bidang tindak pidana, subjek, jenis tindakan, dan waktu pelaksanaan. Pasca Putusan Mahkamah Konstitusi Nomor 59/PUU-XXI/2023, kewenangan tersebut

bergeser dari yang berpotensi dipahami eksklusif menjadi kewenangan yang dijalankan secara koordinatif bersama Kepolisian tanpa menghapus dasar hukum atribusinya. Pelaksanaan kewenangan penyidik OJK menuntut kepatuhan terhadap asas legalitas secara prosedural sebagaimana dipertegas melalui mekanisme gelar perkara dalam Undang-Undang Nomor 20 Tahun 2025 tentang KUHAP, sehingga penyimpangan terhadap prosedur tersebut berpotensi membatalkan hasil penyidikan sekaligus menjadi dasar penilaian keabsahan tindakan penyidikan di sektor jasa keuangan.

Kata Kunci: kewenangan penyidikan; otoritas jasa keuangan; pertanggungjawaban pidana; penyalahgunaan wewenang; sektor jasa keuangan.

I. INTRODUCTION

The development of the financial services sector is one of the key indicators used to assess a country's economic growth and stability. The modernization of the financial system, marked by the digitalization of banking services and the emergence of various financial technology innovations, has driven transactional efficiency while expanding public access to financial services. This progress has also brought consequences in the form of increasingly complex criminal offenses within the financial services sector, with various new criminal *modus operandi* such as investment fraud, money laundering, capital market manipulation, and digital technology-based crimes that are increasingly difficult to detect. Crimes in this sector fall into the category of economic crimes that have developed rapidly alongside the globalization of the financial system and advances in information technology.

The need for an effective law enforcement mechanism prompted the government to establish the Financial Services Authority (Otoritas Jasa Keuangan/OJK) on 31 December 2011 based on Law Number 21 of 2011. This institution functions not only as a regulator and supervisor but also holds law enforcement authority over criminal offenses in the financial services sector. Based on OJK's Press Release regarding its Monthly Board of Commissioners Meeting, by the end of December 2025 OJK Investigators had cumulatively completed 176 criminal cases in the financial services sector, with 140 cases having received court rulings and 134 of those already having permanent legal force (*inkracht*). This figure represents an increase compared to the end of 2024, which recorded 139 completed cases with 110 *inkracht*, indicating that investigation activity in this sector is ongoing and its volume continues to grow each year.

OJK's investigative authority derives from Article 49 of Law Number 21 of 2011, which was later reinforced through Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector. Article 49 paragraph (5) of the law originally stipulated



that investigations into criminal offenses in the financial services sector could only be conducted by OJK Investigators. The Constitutional Court, through Decision Number 59/PUU-XXI/2023, subsequently declared the word “only” in that article to be contrary to the 1945 Constitution and without binding legal force. As a result, since December 2023 investigations into criminal offenses in the financial services sector may be conducted by OJK Investigators coordinatively together with Police Investigators. The position of OJK Investigators within Indonesia’s criminal justice system forms part of the Civil Servant Investigators (Penyidik Pegawai Negeri Sipil/PPNS) who are granted special authority by law, encompassing actions such as summoning parties, examining witnesses and suspects, examining documents and financial transactions, confiscating evidence, and freezing certain accounts.

The extent of authority held by OJK Investigators demands clear limits so that the conduct of investigations remains consistent with the principles of legality and due process of law. Any exercise of authority that exceeds normative limits has the potential to be qualified as an abuse of authority if it fulfills the elements of a criminal offense. Criminal law enforcement practice shows that investigators, as state officials, are not immune from the possibility of committing legal violations in carrying out their duties, whether in the form of actions that do not comply with procedure, violations of suspects’ rights, or the use of unlawfully obtained evidence. In the context of investigators possessing technical and sectoral authority such as OJK Investigators, this risk needs to be anticipated through clear regulation concerning the limits of their criminal liability.

Existing legal literature on OJK investigators has generally focused on aspects of authority and institutional coordination, without deeply examining the parameters of criminal liability for abuse of authority in the investigative process. Several prior studies discuss the position of PPNS within the criminal justice system in general, but do not specifically examine OJK Investigators as subjects of criminal liability. This gap is important to address given that the volume of cases handled by OJK Investigators continues to increase and the complexity of criminal offenses in the financial services sector continues to grow. To date, there is no regulation that explicitly and thoroughly establishes the parameters for the limits of OJK Investigators’ authority or determines when an investigative action may be qualified as an abuse of authority giving rise to criminal liability. This research aims to analyze the regulation of OJK Investigators’ authority in investigating criminal offenses in the financial services sector and to examine the limits of OJK Investigators’ criminal liability for abuse of authority in the investigative process. This study is expected to contribute to the development of criminal

law, particularly with regard to the regulation of sectoral investigative authority and the limits of criminal liability of law enforcement officials in the financial services sector.

II. THEORETICAL STUDIES

General Overview of Investigation

Investigation is a series of actions carried out by investigators to search for and collect evidence in order to clarify a criminal offense and identify its perpetrator, as regulated in Article 1 number 5 of Law Number 20 of 2025 concerning the Criminal Procedure Code. An investigator is an official granted authority by law to carry out actions in the context of uncovering a criminal offense, which within Indonesia's criminal justice system is not limited to the Police but also includes Civil Servant Investigators (PPNS) who acquire authority in accordance with their respective fields of duty. The authority of an investigator constitutes legal power that must be exercised proportionally and in accordance with the procedures determined by criminal procedural law, encompassing actions such as summoning, examining witnesses and suspects, arrest, search, confiscation, and other actions necessary in the investigative process. The development of modern criminal offenses, particularly in the economic field and the financial services sector, has driven the emergence of specialized investigators possessing technical understanding of the field that becomes the object of their investigation, as explained by Romli Atmasasmita in the context of the specialization of law enforcement functions.

Authority of Financial Services Authority Investigators

The Financial Services Authority holds investigative authority derived directly from statute, positioning OJK Investigators as specialized investigators whose authority carries an attributive character. criminal offenses in the financial services sector, which involve complex transactions, digital technology, and modern financial instruments that are difficult to uncover through conventional investigative methods. This character aligns with Edwin H. Sutherland's theory of white collar crime, which explains that crimes in the economic sector are committed by perpetrators who understand how to conceal the traces of their acts behind the complexity of financial instruments and transactions. Following Constitutional Court Decision Number 59/PUU-XXI/2023, OJK's investigative authority shifted from what could potentially be understood as exclusive to authority exercised coordinatively together with the Police, without eliminating its attributive legal basis derived from Law Number 21 of 2011 and Law Number 4 of 2023.

Criminal Liability

Criminal liability relates to a person's capacity to be subjected to sanctions for a criminal act they have committed, which in criminal law doctrine requires the existence of a criminal offense, capacity for responsibility, fault in the form of intent (*dolus*) or negligence (*culpa*), and the absence of an excuse (*alasan pemaaf*). Criminal liability is the legal consequence that arises when a person commits an act fulfilling the elements of a criminal offense accompanied by fault, such that the perpetrator may be subjected to punishment. In the context of law enforcement officials, abuse of authority is understood as the exercise of power inconsistent with the purpose for which it was granted, or deviating from applicable legal procedure, and may fulfill the elements of abuse of power if committed intentionally. Forms of abuse of authority in the investigative process may include actions taken without a clear legal basis, the use of unlawfully obtained evidence, and examination conducted in violation of a suspect's rights contrary to the principle of human rights protection.

III. RESEARCH METHODS

This research employs a normative juridical legal research type, which focuses on examining legal norms as formulated in statutory regulations and relevant legal doctrine. The approaches used are the statute approach and the conceptual approach, by examining the legal provisions governing the authority of OJK Investigators while also studying the concepts of criminal liability and abuse of authority in criminal law. The collection of legal materials was carried out through library research, encompassing primary legal materials in the form of statutory regulations and secondary legal materials in the form of scholarly literature, legal journals, and relevant academic works. Analysis was conducted using a prescriptive method with deductive reasoning, namely drawing conclusions from general legal norms toward the resolution of specific legal problems.

IV. RESEARCH RESULTS

Regulation of the Authority of Financial Services Authority Investigators in Investigating Criminal Offenses in the Financial Services Sector

OJK Investigators occupy a legal position as Civil Servant Investigators (PPNS) with special authority in investigating criminal offenses in the financial services sector. The existence of this specialized investigator is a response to the characteristics of white collar crime in the financial sector as put forward by Edwin H. Sutherland, namely crime committed by perpetrators with high technical knowledge through complex financial instruments, making it difficult to uncover through conventional investigative methods. The establishment of the OJK investigative institution is a continuation of the arrangement for specialized investigators

previously recognized within the capital market law enforcement system through the Capital Market Supervisory Agency (Bapepam). The integration of that authority into a single institution was subsequently carried out through the establishment of OJK based on Law Number 21 of 2011. OJK Investigators do not stand outside the criminal justice system, but rather constitute a subsystem of law enforcement within the framework of an integrated criminal justice system that coordinates with the Police and the Public Prosecutor's Office. This position places OJK Investigators at the initial stage of the criminal justice process, as officials who produce case files to be forwarded to the prosecution and court examination stages.

The authority of OJK Investigators rests on a hierarchically arranged legal basis, beginning with Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution as the constitutional foundation, the Criminal Procedure Code as the general procedural framework, Law Number 21 of 2011 concerning OJK and Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (P2SK Law) as the material basis, down to Government Regulation Number 5 of 2023 and OJK Regulation Number 16 of 2023 as technical implementing regulations. Based on Philipus M. Hadjon's theory of authority, the authority attached to OJK Investigators falls into the category of attributive authority, namely authority obtained directly from statute without depending on delegation from another institution. This attributive character carries an important implication, as it confirms that every investigative action may only be carried out based on authority expressly regulated in statutory provisions, not at the discretion of the official concerned. This authority is also attached to the office, not to the individual holding it, so that its validity does not depend on who occupies that position. This hierarchical arrangement of the legal basis reflects the principle that implementing norms cannot expand or create new authority that has no grounding in higher norms.

Constitutional Court Decision Number 59/PUU-XXI/2023 brought a significant shift in the understanding of the character of OJK Investigators' authority. Prior to that decision, Article 49 paragraph (5) of the P2SK Law stated that investigations into criminal offenses in the financial services sector could "only" be carried out by OJK Investigators, so that this provision was at one point understood to confer exclusive authority. The Constitutional Court declared the word "only" in that article contrary to the 1945 Constitution and without binding legal force as of December 2023. The implication of this decision is not the elimination of OJK Investigators' authority, but rather a shift from what had previously been potentially

understood as exclusive to authority exercised coordinatively together with the Indonesian National Police. The attributive legal basis derived from Article 49 paragraph (1) of the OJK Law remains in effect and is unaffected by that decision. The coordination and supervision arrangements set out in Government Regulation Number 5 of 2023 subsequently became the operational mechanism bridging the exercise of that coordinative authority in law enforcement practice.

The scope of OJK Investigators' authority can be understood through four dimensions that shape the limits of the use of that authority in the investigative process. The first dimension is the dimension of the field of criminal offense, which restricts OJK Investigators' authority solely to criminal offenses in the financial services sector, including money laundering offenses whose predicate offense originates from that sector. The second dimension is the subject dimension, covering both individuals and corporations suspected of committing criminal offenses in the financial services sector, whether direct perpetrators or parties having a role in the transactions that are the object of investigation. The third dimension is the dimension of type of action, encompassing summoning, examining witnesses and suspects, confiscating evidence, freezing accounts, requesting information from financial services institutions, and other actions regulated under the Criminal Procedure Code and OJK Regulation Number 16 of 2023. The fourth dimension is the dimension of time, which determines when that authority may lawfully be exercised, namely from the commencement of an investigation based on sufficient grounds until the transfer of the case file to the public prosecutor.

The exercise of OJK Investigators' authority, viewed from the principle of legality, requires that every investigative action have a clear legal basis, be carried out by an official normatively designated as an investigator, and follow the procedures set out in statutory provisions. The principle of legality applies not only at the level of substantive criminal law, but also functions as a binding principle in the implementation of criminal procedural law, so that investigative actions carried out without a clear basis of authority may be qualified as unlawful. Law Number 20 of 2025 concerning the Criminal Procedure Code introduces an obligation to hold a case exposition (*gelar perkara*) as regulated in Article 19, which constitutes one procedural control mechanism over the conduct of investigations. Through this mechanism, an investigator's actions can be tested not only substantively, based on the sufficiency of evidence, but also procedurally, based on compliance with the prescribed stages. This provision carries the meaning that the principle of legality in investigation is not merely a matter of the existence of a written legal basis, but also a matter of factual compliance with

applicable procedure. Deviation from that procedure may result in the investigation results being voided, while also opening the possibility of criminal liability for investigators who commit such deviation intentionally.

The perspective of due process of law adds a dimension of individual rights protection to the assessment of the exercise of investigative authority, one not fully captured by the formal principle of legality. From this perspective, the conduct of an investigation must meet a standard of objectivity, so that every action is based on evidence and assessment free from pressure or interests outside the legal process. The principle of proportionality is also an important measure, namely that investigative action must not exceed the limits necessary to achieve the purpose of the investigation, for example the freezing of an account carried out without adequate consideration of its impact on the party being examined. The rights of the party being examined, including the right to be accompanied by legal counsel, to receive dignified treatment, and to obtain information regarding the basis for the investigative action taken against them, are components of due process that cannot be set aside for reasons of law enforcement efficiency. The principle of legality and due process of law do not operate separately, but complement one another as two parameters forming the standard for the validity of investigative action. The principle of legality ensures that an action has a valid normative basis, while due process ensures that its implementation does not violate the fundamental rights of parties involved in the investigative process.

V. CONCLUSION

Financial Services Authority Investigators hold investigative authority derived from statutory attribution, namely Law Number 21 of 2011 and Law Number 4 of 2023, which positions them as specialized investigators with technical competence in the financial services sector. Following Constitutional Court Decision Number 59/PUU-XXI/2023, this authority is no longer exclusive but is instead exercised coordinatively together with Police Investigators, without eliminating the attributive legal basis attached to OJK Investigators. This broad investigative authority encompasses summoning, examining witnesses and suspects, confiscating evidence, and freezing accounts, which demands clear normative limits so that its exercise remains consistent with the principle of legality and due process of law. Criminal liability of OJK Investigators for abuse of authority in the investigative process arises when their actions cumulatively fulfill four elements, namely the existence of an act fulfilling the formulation of a criminal offense, capacity for responsibility, fault in the form of intent (*dolus*) or negligence (*culpa*), and the absence of a ground exempting criminal liability. Abuse of

authority can manifest in various forms throughout the stages of investigation, ranging from investigation without a valid legal basis, coercion of statements, and the use of unlawfully obtained evidence, to disproportionate freezing of accounts. Such actions not only give rise to personal criminal liability for the investigator concerned, but also produce juridical implications that weaken the strength of the public prosecutor's evidence, potentially leading to the acquittal of a defendant who is materially guilty, as well as eroding public trust and the legitimacy of OJK as both a supervisory institution and a law enforcement body in the financial services sector. Clarity of the normative limits of authority, firmness in the parameters of criminal liability, and the effectiveness of accountability mechanisms are three components that must be strengthened simultaneously to ensure that investigations in the financial services sector are carried out effectively, fairly, and in a manner accountable to the public.

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