



Harmonization of Authority in the Investigation of the Financial Services Sector in Indonesia

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Abstract

The rapid growth of the financial services sector in Indonesia demonstrates its strategic role in the national economy. However, harmonizing investigative authorities in this sector poses a challenge that needs to be addressed to maintain stability and public trust. This paper aims to investigate the issue of harmonizing investigative authorities in the Indonesian financial services sector, focusing on regulatory frameworks, case developments, and potential harmonization models. The evolution of investigative authority regulations in the financial services sector is outlined, identifying weaknesses in the system that need to be addressed. Case studies provide a concrete overview of the challenges faced in field investigations. A harmonization model for investigative authorities is proposed as a solution to enhance the effectiveness and efficiency of investigations. Under this harmonization model, OJK investigators are not the sole authority to conduct investigations in the financial services sector, but their authority must be elaborated with that of the POLRI or PPNS investigators as regulated in the Criminal Procedure Code (KUHAP). Article 49 paragraph (5) of Law No. 4 of 2023 concerning Financial Services Sector (P2SK Law), which essentially states that criminal investigations in the financial services sector can only be conducted by OJK investigators through a harmonization model of investigative authority in the financial services sector in Indonesia, should be elaborated so that investigative authority in the financial services sector can be carried out by POLRI or PPNS with the assistance of OJK investigators.

Keywords: *Harmonization; Authority; Investigation; Financial Services Sector*

Introduction

Indonesia, as a constitutional state in administering governance, firmly adheres to the constitution, namely the 1945 Constitution of the Republic of Indonesia, which aims to protect all Indonesian people and the entire Indonesian homeland, as well as to advance the general welfare, which is carried out through national development (Kamaluddin, 1983:16). The constitution, in the form of national development outlined above, is carried out with the vision of the people, by the people, for the people, in several main aspects, namely security, defense, politics, economy, and socio-cultural aspects (Suhardjana, 2010: 34). As time evolves and technology, economy, social, and cultural aspects develop rapidly, policymakers (the government) are expected to create a conducive environment, particularly in the business sector, so that entrepreneurs, banks, and other relevant parties can conduct their businesses well and have a positive impact on national economic development (Setyobudi, 2007: 29).

In its implementation, the crucial role of banking in national economic development cannot be overlooked, considering that entrepreneurs require banking services to support their businesses, facilitating them in conducting their operations (Asikin, 2020:26). In conducting its operations, initially, banks are overseen by stakeholders who play a vital role in fostering a strong national economy, both generally within a country's governance and specifically within the financial sector in Indonesia. The importance of Bank Indonesia as the central bank lies in its duties, functions, and authorities in formulating regulations related to monetary policy and conducting supervision to achieve economic stability within a country (Christian, &Ardhianto, 2016: 42). The stability of a country's economy hinges on the achievement of the nation's goals in striving for *general welfare*, which can be attained through effective oversight by Bank Indonesia in its capacity as the central bank(Tarigan, 2019: 61).

In carrying out its supervisory duties, Bank Indonesia is based on Law No. 3 of 2004 concerning Amendments to Law No. 23 of 1999 (BI Law). In BI Law, precisely in Article 34 paragraph (1), it states that the supervision of banks is further carried out by institutions responsible for supervision in the financial services sector (Yunita, 2020: 45)which is independent and established based on the law. Consequently, in 2011, with the enactment of Law No. 21 of 2011 concerning the Financial Services Authority (OJK Law), the institution tasked with supervision was established, namely the Financial Services Authority, hereinafter referred to as the OJK. The establishment of the OJK led to a shift in the duties and functions of supervision previously carried out by Bank Indonesia. The definition of the OJK is regulated in Article 1 paragraph 1 of the OJK Law, which states that the OJK is an independent institution free from intervention/interference from other parties, with the task, principal, and function of formulating regulations, conducting supervision, inspection, and investigation in accordance with the OJK Law.

In principle, the provisions of the OJK Law only regulate the authority, duties, and functions of the OJK in general. The provisions regarding the authority to conduct investigations in the financial services sector are further regulated in Article 49 paragraph (5) of Law No. 4 of 2023 concerning Financial Services Sector (P2SK Law), which essentially states that criminal investigations in the financial services sector can only be conducted by OJK investigators. This provision is considered biased because it is not in line with the provisions of Article 6 paragraph (1) of the Indonesian Criminal Procedure Code (KUHAP), which essentially states that the authority to conduct investigations lies with the Indonesian National Police (POLRI) and the Attorney General's Office (PPNS). The financial services sector plays a vital role in Indonesia's economic growth, contributing significantly to the development and stability of the financial system. However, in line with the complexity and dynamics of the sector's development, the challenges in managing investigative authority become increasingly complex. Harmonizing investigative authority in the financial services sector is an urgent need to ensure sustainability, fairness, and public trust in the financial system.

The rapid growth of the financial services sector not only creates economic opportunities but also increases risks related to legal violations, fraud, and other financial crimes. Therefore, there is a need for effective coordination among institutions with investigative authority in this sector, to ensure that prevention efforts and law enforcement can operate optimally(Siroj, 2017: 21).

This paper aims to examine the issues surrounding the harmonization of investigative authority in the Indonesian financial services sector. By exploring existing regulations, recent case developments, and potential harmonization models, it is hoped that this paper can contribute to the understanding and improvement of the investigation system in this sector(Sukanto, 2008). The problem formulation of this paper involves crucial questions concerning the effectiveness, efficiency, and transparency of investigative authority in the financial services sector. To what extent has cooperation between institutions been established, and how can the implementation of harmonization models enhance investigation outcomes? By posing these questions, this paper aims to provide deep insights into the issues surrounding the harmonization of investigative authority in the Indonesian financial services sector.

Method

Research is a scholarly activity conducted through constructive analysis, carried out systematically, methodically, and sequentially (Abdulkadir, 2004:82). System means the processes involved in a system. In this research, the author employs normative legal research. Jhony Ibrahim, in his book titled *Theory and Method of Normative Legal Research*, defines normative legal research, particularly as a scientific research process to seek truth based on the logic of legal science, examined from the perspective of regulations (norms) (Amirudin, 2012:32). The research specification utilized is descriptive-analytical, meaning the author will outline the research findings supported by comprehensive and detailed data regarding the discrepancies between the P2SK Law and the Indonesian Criminal Procedure Code (KUHAP) as well as other legislation. It also examines the ideal law enforcement process regarding crimes in the financial services sector. In descriptive-analytical research specification, numerical data is not employed; instead, it provides descriptions, illustrations, explanations, and analyzes the factors found in the research.

Research Result and Discussion

1. The Dynamics of Investigative Authority in the Financial Services Sector

The dynamics of growth in the financial services sector create economic opportunities but also present significant legal challenges. Globalization, financial technology, and product innovation act as drivers of structural change in this sector, while legal challenges such as anti-money laundering, corruption, and consumer protection require specialized handling in the context of investigation and law enforcement. A deep understanding of these dynamics is essential for designing responsive and effective regulations to address the development of the financial services sector. (Santi, & Budiharto, 2017:14).

Legal issues in the financial services sector are currently highly complex and can encompass various aspects. Some key issues that often arise include:

- a) **Prevention and Combating of Money Laundering Crimes (TPPU):** Lack of Interagency Cooperation: Poor coordination among relevant government agencies can hinder efforts to prevent and enforce laws against money laundering.
- b) **Corruption and Financial Crimes:** Corruption Practices in Financial Institutions: Weaknesses in the supervision and internal control system may enable corruption within financial institutions, harming shareholders and customers.
- c) **Financial Technology (Fintech):** Consumer Protection: The rapid growth of Fintech often outpaces regulatory developments, leading to consumer protection becoming a major issue, especially concerning data security and privacy.
- d) **Regulatory Compliance:** Difficulty in Adapting to Regulatory Changes: Financial institutions often face challenges in adapting to rapid regulatory changes, which can lead to violations and legal sanctions.
- e) **Operational and Technological Risks:** Information System Security: Cybersecurity threats and technological risks can jeopardize the integrity and security of financial information, opening opportunities for fraud and data theft.
- f) **Global Market:** Harmonization of Regulations Among Countries: Difficulty in achieving harmonization of regulations between countries can create legal loopholes that can be exploited by financial criminals.
- g) **Legal Infrastructure Update:** Weaknesses in the Judicial System: The inability of the judicial system to swiftly and effectively handle complex financial cases can hinder law enforcement.

These issues underscore the importance of reforms and enhancements in regulations, supervision, and law enforcement in the financial services sector to maintain the integrity of the financial system and protect the interests of consumers and stakeholders involved. The urgency of reforms and enhancements in regulations in the financial services sector is crucial for several critical reasons related to economic stability and public trust,(Harrieti, 2016:71) and protection of the interests of those involved. Here are several key reasons why reforms and enhancements in regulations in the financial services sector are highly crucial. Firstly, it is for the sake of achieving economic stability. Effective regulations, when implemented properly, can help prevent financial crises and safeguard national economic stability. With good oversight mechanisms in place, the potential risks of systemic failure can be identified and minimized. Secondly, it is for the prevention of financial crimes. Regulatory reforms are necessary to enhance effectiveness in preventing and addressing financial crimes such as money laundering, fraud, and corruption in the financial services sector(Irma, 2019:47). Stringent regulations can serve as barriers to criminals and impose strict sanctions.

The next reason is Consumer Protection. Strong regulations are needed to protect the rights and interests of consumers in the financial services sector. With clear regulations in place, consumers can feel safer and protected from harmful practices. Additionally, to enhance public trust(Suharini, 2020:42). Regulatory reform supports the enhancement of public trust in financial institutions. High trust is crucial for maintaining stability in the financial sector and encouraging public participation in economic activities. By responding to the dynamics and complexities of the financial services sector, regulatory reform and enhancement serve as the foundation for maintaining sustainability and economic health, as well as protecting the interests of all stakeholders involved.

The challenges of investigation in the financial services sector currently encompass several complex and often dynamic aspects. Some key challenges include:

- a) Complexity of Financial Transactions: Financial transactions in this sector are often highly complex and involve intricate financial instruments. Investigators need to thoroughly understand these transactions to identify potential financial crimes.
- b) Utilization of Technology: The development of financial technology (Fintech) has brought significant innovation to this sector. Investigating financial crimes involving technology requires specialized expertise and the ability to track criminal activities digitally.
- c) Inconsistencies in Regulations Among Countries: Many financial institutions operate across borders, and inconsistencies in regulations between countries can pose serious obstacles in investigating cross-border financial crimes.
- d) Confidentiality and Data Protection: Data protection is becoming increasingly important, and investigators need to comply with data protection regulations while still being able to access necessary information for financial crime investigations.
- e) Rapid Changes in Law and Technology: Law and technology are continuously evolving rapidly. Investigators need to constantly update their knowledge and be able to adapt to these changes to remain effective in combating financial crimes.
- f) Interagency Cooperation: Investigative authority may be dispersed among several institutions, such as the police, tax authorities, and financial regulators. Effective coordination and cooperation among these institutions are key to the success of investigations.
- g) Defense Against Counterfeiting and Fraudulent Acts: Financial criminals are becoming increasingly sophisticated in using forgery and fraud techniques that are difficult to detect. Investigators need to have high forensic skills to uncover such actions.
- h) Challenges of Globalization: Financial globalization can complicate investigations as criminals can easily move assets and activities across various jurisdictions.
- i) Sustainability of Funds and Resources: Financial crime investigations often require significant financial and human resources. The sustainability of funding and resource support is key to maintaining the effectiveness of investigations.

Addressing these challenges requires close cooperation among various relevant institutions, investment in training and technology, and regulatory adaptation that is responsive to the dynamics of the financial services sector.

2. Implementation of Harmonization Model of Investigative Authority in the Financial Services Sector in Indonesia

Harmonizing the investigative authority in Indonesia's financial services sector is an urgent matter to address. This is due to the lack of synchronization between Article 49 Paragraph (5) of the Financial Services Authority Law (UU PPSK) and Article 2 Paragraph (1) of Government Regulation No. 5 of 2023 concerning Criminal Investigations in the Financial Services Sector, which creates a normative conflict between UU PPSK and Government Regulation No. 5 of 2023 that may lead to legal uncertainty. Article 49 Paragraph (5) of the Financial Services Authority Law has eliminated the position of the Indonesian National Police (Polri) as the primary investigator in the national law enforcement system. However, according to Article 30 Paragraph (4) of the 1945 Constitution (UUD 1945), which states, "The Indonesian National Police, as a state apparatus tasked with maintaining security and public order, is responsible for protecting, serving, and upholding the law." The transfer of sole investigative authority to the Financial Services Authority (OJK) in the financial sector appears to weaken the role of the Indonesian National Police as the primary state institution in maintaining national security. Therefore, the Financial Services Authority Law seriously violates the provisions of the 1945 Constitution as the highest law in Indonesia (Adlina, 2023:253).

The implementation of a harmonization model for investigative authority in the financial services sector requires strong commitment from relevant institutions, effective coordination, and adequate regulatory updates. Through this holistic approach, it is hoped that the financial services sector can more effectively and efficiently address investigative challenges while ensuring the protection of human rights and privacy (Mayasari, 2019:81). Harmonization of investigative authority in the financial services sector can be understood as an effort to create alignment and coordination among various investigative agencies, such as the police, Financial Services Authority (OJK), and other law enforcement agencies, in handling cases of financial crimes. **Fundamental Principles Underlying Harmonization.**

Integration and Coordination, ensuring that the involved agencies work in a unified and coordinated manner to enhance investigative effectiveness. **Openness and Transparency**, promoting transparency in the investigative process, facilitating the exchange of necessary information, and instilling confidence in the public (Yustianti, 2017:51). **Justice and Legal Compliance**, ensuring that investigations are conducted with principles of justice, compliance with the law, and upholding human rights. **Flexibility and Responsiveness**, recognizing the need to adapt to changes in the financial and legal environment, including technological advancements and market dynamics.

The goal of harmonization is to enhance investigative effectiveness by creating an environment where investigations can be conducted more efficiently while minimizing coordination barriers and difficulties. **Optimization of Resources**, avoiding overlapping jurisdiction and ensuring the optimal use of resources from various investigative agencies. **Enhancement of Security and Financial Stability**. Ensuring the security of the financial services sector and preventing financial crimes that could jeopardize economic stability. **Improving Public Trust**. Demonstrating to the public that investigative agencies are working together to protect public interests and uphold justice.

Harmonization Dynamics, by adapting to changes in regulations, technology, and evolving market trends. **Routine Evaluation**, conducting periodic evaluations to assess the effectiveness of the harmonization model, identify weaknesses, and make improvements as needed. **Active Participation**, by encouraging active participation from all relevant agencies, as well as external stakeholders such as ombudsmen, civil society organizations, and the private sector. It is important to ensure that the definition

of harmonization of investigative authority reflects the goals and fundamental principles that lead to optimal outcomes in handling financial crime cases in the financial services sector.

Cooperation Model Among Investigative Agencies (Purnomo, 2015:34), This can be realized through the formation of a joint investigation team. Involvement of the Financial Services Authority (OJK), the Police, and other Law Enforcement Agencies, specifying the involvement of various relevant investigative agencies such as the OJK, the police, and financial investigation units in the joint team. Ensuring balanced representation from various agencies to achieve diversity of perspectives. Organizational Structure of the Joint Team, by establishing a clear organizational structure and responsibilities for each member of the joint team. Appointing a coordinator or team leader to facilitate communication and coordination.

The dynamics and governance of joint teams (Mumu, 2016:13). Coordination and Communication Mechanism: Establishing effective communication channels among investigative agencies for smooth information exchange. Adopting communication technology enabling real-time coordination. Task and Responsibility Allocation: Identifying task specifications and responsibilities of each team member to avoid overlap or ambiguity. Ensuring a fair and balanced division of work based on the expertise and capacity of each agency. Developing a culture of cooperation by fostering openness and trust, encouraging a collaborative culture, willingness to share information, and mutual trust among agencies. Involving coaching and training activities to strengthen team cooperation.

Establishing mechanisms to resolve internal disputes or disagreements in an effective and fair manner. Adopting a transparent approach to solving problems and rebuilding trust. Involving external stakeholders such as ombudsmen, civil society organizations, and the private sector. Gathering input and feedback from stakeholders to improve cooperation processes. Providing open information to the public about the goals, progress, and outcomes of cooperation (Utiarahman, 2020:13). Building public support for this cooperation model through information campaigns and education. Having the flexibility to adapt investigation strategies based on changing conditions and new information. Implementing an approach that is responsive to market dynamics and legal developments. Collaboration models between investigative agencies need to be designed considering the principles of engagement, coordination, and flexibility to ensure sustainability and effectiveness in addressing financial crime cases in the financial services sector. The goals of harmonizing investigations in the financial services sector include a series of aspirations to create a coordinated, effective, and transparent system in handling financial crime cases in that sector. Some key objectives of harmonizing investigations in the financial services sector include;

- a) Improving Investigation Effectiveness: Achieving more optimal investigation outcomes by avoiding overlapping and coordination difficulties among various investigative agencies.
- b) ***Resource Optimization: Ensuring the efficient and effective use of human, technological, and financial resources through close collaboration among investigative agencies.***
- c) ***Enhancement of Financial Security and Stability: Protecting the financial sector from the risks of financial crimes that could jeopardize national economic stability and security.***
- d) ***Boosting Public Trust: Demonstrating to the public that investigative agencies are working together to safeguard public interests and uphold justice.***
- e) ***Prevention of Financial Crimes: Developing proactive investigative strategies to prevent financial crimes before they harm the financial sector or society.***
- f) ***Regulatory Harmonization: Adjusting regulations related to investigations to be consistent and aligned, creating clear and coherent legal frameworks.***
- g) ***Reduction of Financial Loss Potential: Identifying, addressing, and mitigating financial risks arising from criminal activities, such as money laundering or fraud.***

- h) ***Enhancing Cross-Border Cooperation: Facilitating cooperation and information exchange with investigative agencies from other countries, especially in cases involving cross-border transactions.***
- i) ***Adapting to Environmental Changes: Adapting to changes in regulations, technology, and market trends to remain relevant and effective in responding to new challenges.***
- j) ***Strengthening Justice and Legal Compliance: Ensuring that investigations are conducted with justice and legal compliance, as well as upholding human rights.***
- k) ***Enhancing Deterrence: Building a system capable of imposing strong and effective sanctions to deter potential financial crime perpetrators.***

Based on the above description, it is advisable that the OJK investigators are not the sole authority to conduct investigations in the financial services sector. Instead, this authority should be elaborated to include the investigative authority of the Indonesian National Police (POLRI) or other law enforcement agencies as stipulated in the Criminal Procedure Code (KUHAP). The essence of Article 49 paragraph (5) of Law No. 4 of 2023 concerning the Financial Services Sector (UU P2SK), which states that criminal investigations in the financial services sector can only be conducted by OJK Investigators through a harmonized model of investigative authority in the financial services sector in Indonesia, should be elaborated so that investigative authority in the financial services sector is carried out by POLRI or other law enforcement agencies with the assistance of OJK investigators. The harmonized model of investigation in the financial services sector is expected to create a safer, more stable, and fair environment for all stakeholders involved.

Conclusion

The implementation of harmonized investigative authority in the financial services sector in Indonesia is a strategic step to enhance the effectiveness of handling criminal cases in the financial services sector. Through this harmonized model, OJK investigators are not the sole authority to conduct investigations in the financial services sector; instead, this authority should be elaborated to include the investigative authority of the Indonesian National Police (POLRI) or other law enforcement agencies as stipulated in the Criminal Procedure Code (KUHAP). Article 49 paragraph (5) of Law No. 4 of 2023 concerning the Financial Services Sector (UU P2SK) essentially states that criminal investigations in the financial services sector can only be conducted by OJK Investigators through a harmonized model of investigative authority in the financial services sector in Indonesia. This should be elaborated so that investigative authority in the financial services sector is carried out by POLRI or other law enforcement agencies with the assistance of OJK investigators. Harmonization of investigative authority in the financial services sector supports the enhancement of effectiveness, optimization of resources, and prevention of financial crimes. It also creates a consistent and coordinated legal framework.

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