



AUTHORITIES OF CIVIL SERVANT INVESTIGATES IN CONDUCTING INVESTIGATIONS ON ACTS OF CORPORATE MALADMINISTRATION IN TELECOMMUNICATIONS ACCORDING TO LAW NO. 36 OF 1999 CONCERNING TELECOMMUNICATIONS ADJUSTED TO THE PRINCIPLE OF LEGAL CERTAINTY

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Article Info

Article history:

Received Nov 28, 2022

Revised Dec 15, 2022

Accepted Jan 31, 2023

Keywords:

Civil Servant

Investigation

Maladministration

Law No. 36 Of 1999

Legal Certainty

ABSTRACT

This research was conducted to find out how the laws and regulations regulate PPNS Authority in conducting investigations of corporate maladministration in the telecommunications sector, then regarding the Implementation of PPNS Authority in conducting investigations or corporate maladministration actions in the field of telecommunications, and find out how the PPNS authority mechanism to conduct maladministration investigations telecommunications sector corporations on the principle of legal certainty. This study uses a normative juridical approach, namely by examining theories, concepts, legal principles and laws and regulations and using the preparation of analytical descriptive research specifications, and the data used are primary, secondary, and tertiary. The results of this study are that PPNS is obliged to notify the investigation to Polri investigators. in the form of tactical assistance, technical assistance, coercive assistance and investigative consulting assistance. The case files must be submitted to the Prosecutor, in accordance with Article 110 paragraph (1) of the Criminal Procedure Code, the submission is carried out through Polri investigators in accordance with Article 107 paragraph (3) of the Criminal Procedure Code

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1. INTRODUCTION

In Article 14 contained in Law Number 39 of 1999 concerning Human Rights (UU HAM), the regulation clearly explains that the right to communicate and obtain information is one of human rights.³ Furthermore, in Article (2) it is also stated that in terms of their rights to seek, obtain, possess, store, process and convey information, everyone has the right to use all types of available means. The consequence is that both a State, Government and any organization are obliged to be able to protect these human rights because the denial of human rights is the same as denying human dignity itself.⁴

In this case, the prosecutor's view is that the Internet Service Provider (ISP), namely acting as the operator of Telecommunications Services, has harmed the state because it should have paid for a license to use the frequency as

³ Dalam Pasal 14, Undang-undang No. 39 Tahun 1999 Tentang Hak Asasi Manusia (HAM)

⁴ Dalam Pasal 2, Undang-undang No. 39 Tahun 1999 Tentang Hak Asasi Manusia (HAM)

benefits an Operator. According to the response from the Attorney General's Office, it was proven that Indosat Mega Media (IM2) and PT Indosat Tbk jointly used a frequency which, according to Implementing Regulation (PP) No. 53 of 2000 concerning the Use of Radio Frequency Spectrum and Satellite Orbit (Frequency Spectrum Implementing Regulation (PP)) in which each of them should have a license to use frequency.

A different opinion was actually conveyed by the competent state administration, namely the Ministry of Communication and Informatics and the Indonesian Telecommunication Regulatory Body (BRTI). Because in their opinion the cooperation that occurs between Internet Service Providers (ISP) and Operators is permitted by Article 9 paragraph (2) of the Telecommunications Law and there is also no shared use of frequencies in that context. The dimensions of the shared use of a frequency have been determined in the Implementing Regulations (PP) of the Frequency Spectrum itself which must be seen based on the size of the space (coverage), time and also the technology required. In this way, the Ministry of Communication and Information Technology (KemKominfo) stated that the Cooperation Agreement (PKS) does not violate the Telecommunications Law and does not harm the state.

Maladministration according to Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia is an act that is against the law, not based on an existing authority. Exercising this authority for other actions other than the objectives to be addressed previously, where without referring to existing regulations and carrying out intentionally or unintentionally in the administration of society or the public which is carried out by civil servants who are obliged to carry out public service activities that can cause harm material and immaterial for the people who are victims of the maladministration. Maladministration in the operation of telecommunications is where an action is carried out by a corporation/agency owned by a private, regional and state-owned company, outside of the authority which has been determined which causes the objective of fulfilling accessibility for the region or part of the community to reach networks and communications to not work.

The parameter of abuse of authority must be factually proven, namely that officials have used the intended authority for other purposes. Therefore, an abuse of authority is not due to negligence. Where Philipus M. Hadjon (2010: 6) also states, where the abuse of authority is done consciously to divert the purpose which has been given to that authority. The transfer of goals which are based on personal interest, which is in the interests of himself or for the interests of others. The definition of "abusing authority" contained in Article 52 paragraph (2) letter b of RI Law No. 5 of 1986 related to Law No.51 of 1986 amended by Law no. 51 of 2009 concerning the State Administrative Court, that abuse of authority means having used that authority for other purposes than what was intended when given this authority.⁵

The definition of Administrative Penal Law is where the Government Regulations Legislation which has the dimension of state administrative law which has criminal sanctions (criminalization of state administration). The main issue related to the "Penal Law Administration" itself is "can a violation of the Administrative Penal Law qualify as a criminal act of corruption because of the same material act (material daad), in a perspective violation of several laws" while the problems specific problems encountered, for example is "is it appropriate if criminal acts in the field of taxation or banking (Penal Law Administration) can be correlated with criminal acts of corruption?"⁶

Apart from the prosecutor's office, the police and the Corruption Eradication Commission (KPK) are also given the authority to carry out investigations and investigations. Special authorities are also given to Civil Servant Investigators (PPNS) such as the authority to conduct investigations and investigations into administrative criminal acts (Administrative Penal Law) which are listed in the Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP).

The appointment of civil servants as Civil Servant Investigators (PPNS) according to the provisions of Article 6 paragraph (1) point b of the Criminal Procedure Code (KUHAP) which allows for the effectiveness of the implementation and enforcement of criminal sanctions and certain legal rules more "bestuur burger rechtelijk", which is like legal rules regarding the environment, forest areas, industry, trade, protection of copyright/brand rights and issues of urban publishing. Where in reality, there are still certain legal principles, such as regional regulations, which are not yet widely known among citizens, while those legal rules also apply to them. Where there are still District Court judges who are not aware of the enactment of a regional regulation (which contains criminal sanctions) in the jurisdiction of the court where they serve.⁷

Related to this matter, the criminal act of corruption and the criminal act of telecommunications are regulated in different laws. The Attorney General's Office only has the authority to investigate corruption, while the authority to investigate/check the truth of public reports about telecommunications is given specifically to Civil Servant Investigators (PPNS) from the Ministry of Communication and Information as also regulated in Article 44 paragraph (1) of the Law Number 36 of 1999 concerning Telecommunications (Telecommunication Law) Investigators against

⁵ Abdul Latif, *Hukum Administrasi (Dalam Praktik Tindak Pidana Korupsi)*, Prenada Media Group, Jakarta, 2014, hlm. 293-294.

⁶ W.J.S Poerwadarminta, 2002, *Kamus Umum Bahasa Indonesia*, Jakarta : Balai Pustaka,

⁷ Philipus M. Hadjon, dkk, *Pengantar Hukum Administrasi Indonesia*, Gadjah Mada University Press, Yogyakarta, 2008, hlm. 262-263.



telecommunications crimes, which can also be carried out by certain Civil Servants within the department where the scope of duties and responsibilities in the telecommunications sector are given special authority as investigators. The authority of Telecommunications Civil Servant Investigators (PPNS) is regulated in Article 44 paragraph (2) of the Telecommunications Law. Which then elaborated again related to the investigation contained in Article 44 paragraph (1), paragraph (2) and paragraph (3) of Law No. 36 of 1999 concerning Telecommunications.

In Article 44 paragraph (1), namely where it is said that apart from Investigators from the Indonesian National Police (POLRI), certain Civil Servant Officials (PPNS) in the realm of the government environment where the scope of their duties in the field of Information Technology and Electronic Transactions is given authority in an independent manner. Specifically, to carry out investigations which are in accordance with the Criminal Procedure Code, which in paragraph (2) says Civil Servant Investigators (PPNS) coordinate together with Indonesian National Police Officers (POLRI) which in this context describes how the coordination mechanism between Investigators Civil Servants (PPNS) with Republic of Indonesia Police Officers (POLRI) in conducting investigations into criminal acts of telecommunications operations? Are there any special boundaries between the two?

Identification of Problems

- 1 How do the laws and regulations regulate the Authority of Civil Servant Investigators (PPNS) in conducting investigations into corporate maladministration actions in the telecommunications sector?
- 2 How is the Implementation of the Authority of Civil Servant Investigators (PPNS) in carrying out investigations or acts of corporate maladministration in the telecommunications sector?
- 3 What is the mechanism for the authority of Civil Servant Investigators (PPNS) to conduct investigations of corporate maladministration in the telecommunication sector on the principle of legal certainty?

2. RESEARCH METHOD

- 1 Theoretical Use
 - a This research is to contribute thoughts or further analysis relating to the authority of Civil Servant Investigators (PPNS) in the context of administrative penal law as stipulated in Law No. 36 of 1999 concerning Telecommunications, especially those related with the Authority to Investigate and Investigate administrative criminal law (administrative penal law) linked to the principle of legal certainty, furthermore it is hoped that it will also be able to sit on court decisions on corruption in the Indonesian criminal justice system and the implications of the decision of the Supreme Court of the Republic of Indonesia Number 282/Pid.SUS/2014 regarding acts Corruption crimes are connected with the Decision of the Supreme Court of the Republic of Indonesia Number 263K/TUN/2014 concerning State Administration relating to PT. Indosat Tbk and PT. Indosat Mega Media (IM2) which is regulated in Law Number 36 of 1999 concerning Telecommunications.
 - b Train the writer's ability to conduct research scientifically and formulate it in written form as well as apply legal science theoretically and practically and relate it to the data the writer obtained from the field.
- 2 Practical uses
Opening horizons and broadening knowledge about crimes in the field of telecommunications that have recently occurred and providing material to assist the authorities in resolving cases regarding criminal acts in the field of telecommunications. It is hoped that this research can provide input and additions to the wider community in general, and administrative criminal law practitioners relating to the application of corruption offenses in the context of administrative criminal law as stipulated in various laws, especially several articles in Law number 36 of 1999 concerning Telecommunications in its application is associated with the Corruption Crime Act which gave birth to the decision of the Supreme Court of the Republic of Indonesia Number 282/Pid.SUS/2014 and the concurrent strategy gave birth to the State Administration Decision Number: 263K/TUN/2014 with the same legal subject.

3. RESULTS AND ANALYSIS

3.1. Corporate Maladministrative Actions In The Field Of Telecommunications And Authority Of Civil Servant Investigators (Ppns) In Conducting Investigations

3.1.1. Collaboration carried out by PT. Indosat Tbk and Indosat Mega Media (IM2) Regarding Internet Service Provider (ISP) Management.

Cooperation agreement between PT. Indosat Tbk with PT. Indosat Mega Media (PT IM2) regarding Broadband Internet access via Indosat No. 3G/HSDPA network. Indosat: 224/E00-EA.A/MKT/06 and No. IM2: 0996/DU/IMM/XI/06 dated 24 November 2006 Concerning Broadband Internet Access via Indosat's 3G/HSDPA network which was signed by the Defendant as President Director of PT. Indosat Mega Media (PT IM2) and Kaizad

B Heerje as Deputy Main Director of PT. Indosat Tbk, in which the contents of the agreement were concluded among others: PT Indosat Tbk and PT Indosat Mega Media (PT IM2) agreed that the agreement was carried out within the scope of broadband internet access service provider cooperation organized by PT Indosat Mega Media (PT IM2), using Indosat's 3G/HSDPA network, the target customers in this collaboration are focused on the residential user segment, the 3G/HSDPA network is not available on Indosat BTS, customers can roam General Packet Radio Service (GPRS)/2G or 2.5 G) Indosat at a rate per -The kilobyte is the same as the tariff via the 3G/HSDPA network, using the same USIM, APN, user-id and password, the responsibility for providing Customer Packet Radio Service (CPE) in this collaboration is Indosat Mega Media (IM2), Indosat Mega Media (IM2) is the product owner of Indosat Net Via services for Indosat and Indosat Mega Media (IM2) Anywhere 3G/HSDPA networks and who performs marketing, sales and billing to customers and m To provide customer support, Indosat Mega Media (IM2) is obliged to perform marketing, provisioning, billing, collection and customer service functions for IM2 Anywhere services, including using Indosat's 3G/HSDPA network. For USIM that has been received by Indosat Mega Media (IM2) from time to time based on the minutes of handover signed by the parties which are fully the responsibility of Indosat Mega Media (IM2), the rates that apply to access IndosatNet Broadband using APN Indosatm2 IS Rp. 350 (three hundred and fifty) per megabyte and Indosat Mega Media (IM2) is allowed to sell to its customers the same per megabyte, upon implementation of the agreement, the parties agree that the results of the collaboration of internet access service providers using the 3G/HSDPA access network are Indosat: IM2 = 66 %: 34%. Then an amendment was also made between PT. Indosat Tbk and PT Indosat Mega Media (PT IM2) namely the first Amendment on 4 June 2007 signed by the Defendant and Deputy Main Director of PT Indosat Tbk, and the second Amendment on 15 September 2008 signed by the same party.⁸

There was close cooperation between the Defendant and Johny Swandy Sjam, and Ir. Harry Sasongko each as the Main Director of PT. Indosat Tbk, where the Defendant subsequently received facilities to use PT. Indosat Tbk. Indosat and PT Indosat Mega Media (PT IM2) also agreed that the agreement was made within the scope of the use of top-up vouchers for PT Indosat Mega Media (PT IM2) prepaid service top-ups.⁹

In the cassation decision it was explained that the Defendant as the Main Director of PT Indosat Mega Media (PT IM2) had used the primary and exclusive frequency, but in using the 2.1 GHz frequency without going through an auction process, which is contrary to Article 2 paragraph (2) of the Regulation of the Minister of Communications and Informatics Number 7 of 2006 concerning the Use of the 2.1 GHz radio frequency band for Cellular Mobile Network Operators which states: "Assignment of a radio frequency spectrum in the 2.1 GHz radio frequency band to participants in the selection of cellular mobile network operators stating that the frequency is primary and exclusive, but in the use of the 2.1 GHz frequency without going through an auction process, which is contrary to Article 2 paragraph (2) of the Regulation of the Minister of Communication and Informatics Number 7 of 2006 concerning the Use of the 2.1 GHz Radio Frequency Band for the Operation of Cellular Mobile Networks which states: " Determination of the radio frequency spectrum in the 2.1 GHz radio frequency band to pa and participants in the selection of network operators, and also contradicts Article 25 paragraph (10) of Government Regulation Number: 53 of 2000 concerning Use of Radio Frequency Spectrum and Satellite Orbit which states that a radio frequency allocation holder cannot transfer the radio frequency allocation it has obtained to another party. Where the defendant as the Main Director of PT Indosat Mega Media (PT IM2) in using the 2.1 GHz Frequency Band did not fulfill the specified obligations and contradicted Article 4 of the Regulation of the Minister of Communication and Information Number: 7 of 2006 concerning the Use of the 2.1 Radio Frequency Band GHz for cellular mobile network operators, which states: use of the 2.1 GHz radio frequency band in FDD mode for cellular mobile network operators is subject to tariffs for licenses to use radio frequency spectrum bands.

It is also known that the defendant besides using the network owned by PT. Indosat Tbk also uses the 2.1 GHz frequency owned by PT Indosat Tbk to operate internet access services so that PT Indosat Mega Media (PT IM2) together with PT Indosat Tbk have used Indosat's 2.1 GHz frequency band, which is contrary to Article 30 of the Government Regulation Number: 53 of 2000 concerning the use of Radio Frequency spectrum and Satellite Orbit which states: The fee for the right to use radio frequency spectrum for users of radio frequency bands or radio frequency channels is fully borne by each user. The Defendant and the Main Director of PT. Indosat Tbk namely Harry Swandy Sjam and Harry Sasongko as well as the Deputy Main Director of PT. Indosat Tbk Kaizad B Heerjee.¹⁰

The actions committed by the Defendant in this case are subject to punishment in Article 2 paragraph (1) Jo. Article 18 paragraph (1), (3) Law Number: 31 of 1999 concerning the Eradication of Corruption Crimes as amended and supplemented by Law Number: 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes Jo. Article 55 paragraph (1) 1st of the Criminal Code.

⁸ Kasus Indar Atmanto, dalam Putusan Pengadilan Negeri Jakarta Pusat No. 01/PID.Sus/2013PN.JKT.PST

⁹ *Ibid.*

¹⁰ Kasus Indar Atmanto, dalam Putusan Kasasi No. 787 K/Pid.Sus/2014



Judging from the very significant state financial losses in this case, namely: Rp. 1,358,343,346,574.00 which, as considered in the *Judex Facti* of the High Court, stated that the state financial losses in this case were very significant, namely above Rp. 1,000,000,000,000.00 therefore based on the evidence in the form of expert testimony, witnesses as well as the defendant's statement and documentary evidence where before the trial the legal facts of state financial losses were obtained as stated in the BPKP State Financial Loss Calculation Results Report (LHPKKN) mentioned above although it did not personally enrich the Defendant, it enriched PT. Indosat Tbk and PT Indosat Mega Media (PT IM2) in the amount of Rp. 1,358,343,346,674.00¹¹

3.1.2. Actions of Corporate Maladministration PT. Indosat Tbk and Indosat Mega Media (IM2) Related to Completion of Financial Statements.

In decision No. 01/PIDSUS/2013/PN.JKT.PST Minutes of agreement between PT. Indosat Tbk with IM2 regarding a new profit sharing scheme for utilizing IVDB, SEV, SMS, 6789, WEB Top Up, Electronic Banking and Gallery facilities No. Indosat; (without number), and No. IM2: 003/DPP-BPM/STR/I/2010 dated 13 January 2010 signed by the Defendant as Director of PT. Indosat Mega Media (IM2) and Harry Sasongko as main Director of PT. Indosat Tbk which basically contains: namely: the President Director of PT IM2 has used the 2.1 GHz frequency which is the primary and exclusive frequency, but in using the 2.1 GHz frequency without going through an auction process, which is contrary to Article 2 paragraph (2) The Regulation on Frequency Band Use states: "The assignment of a radio frequency spectrum in the 2.1 GHz radio frequency band to participants in the selection of cellular mobile network operators IMT-2000 is carried out through an auction mechanism, and is contrary to Article 25 paragraph (1) of Government Regulation Number: 53 of 2000 regarding the Use of Radio Frequency Spectrum and Satellite Orbit which states that the holder of radio frequency allocation cannot transfer the radio frequency allocation that has been obtained from another party."

There is a cooperation contract between PT Indosat Tbk and PT Indosat Mega Media (PT IM2), there is a report on usage, for example usage in the form of a link or so on, the amount of mega byte data used is invoiced to PT Indosat Mega Media (PT IM2). So, for the payment of Jastel User Rights Fee (BHP), OSU, Frequency to the state is carried out by PT Indosat Mega Media (PT IM2) itself. with the billing from PT Indosat Mega Media (PT IM2) related to the agreement between PT Indosat Mega Media (PT IM2) and PT Indosat Tbk, PT Indosat Tbk will benefit from the agreement.¹²

There are 2 telecommunications operators; User Rights Fees (BHP), namely BHP Universal Service Obligation (USO) and Telecommunications User Rights Fees (BHP), for Frequency User Rights Fees (Frequency BHP) are as long as obtaining permission from the Minister, he will be subject to the obligation to pay User Rights Fees (BHP) Frequency, if you do not pay the telecommunication User Rights Fee (BHP), then the system will be fined, and if there is bad intention, the license will be revoked.¹³

The Corruption Crime Court at the DKI Jakarta High Court, has decided based on consideration of the reasons put forward by the applicant, which is where the decision does not apply or stipulate the law as it should, namely in the case of money crime, which according to the consideration of the Panel of Judges at the Appellate Level as stipulated found on pages 77 and 78, where the conclusion is that the corporation is punished, the corporation because it is a legal subject must also be charged, then it does not or violates the law itself if the principal sentence is imposed on another legal subject and additional punishment is imposed on the legal subject others in this case the legal subject was not charged. Compensation money in this case cannot be charged to PT Indosat Mega Media (PT IM2) as a corporation. The civil route that can be taken if you want to recover the state's losses is by suing the corporation. *Judex Facti* (High Court) Substitute Money is an additional Criminal, so this additional Criminal must always follow the principal sentence.¹⁴

As the Main Director of PT Indosat Mega Media (PT IM2) which is engaged in the private sector associated with the principles of Good Corporate Governance, it is very clear and clear that based on the company constitution the Cassation Appellant did not commit *Ultra Vires* or violate the company's articles of association, and is also in accordance with the principles -the actual corporate law principle that is authorized to provide an assessment is the General Meeting of Shareholders, because all activities carried out are reported by the Directors and Commissioners at the General Meeting of Shareholders (GMS) and Shareholders provide release and discharge of responsibility (*acquiescence*) then it is very clear and obvious that the actions taken by the Cassation Appellant together with the Board of Directors were under the supervision of the Commissioner, and were not personal actions but collective actions in accordance with the Company's Articles of Association. The perception of the Public Prosecutor that the Cassation

¹¹ *Ibid.*

¹² Kasus Indar Atmanto, dalam putusan No. 01/PIDSUS/2013/PN.JKT.PST.

¹³ *Ibid.*

¹⁴ Kasus Indar Atmanto, dalam Putusan Kasasi No. 787K/Pid.Sus/2014.

Appellant had committed an unlawful act and was later confirmed by the Panel of Judges of First Instance and Appeal Level is very inappropriate and wrong.¹⁵

The State Administration Decree (TUN), the Financial and Development Supervisory Agency (BPKP) and the State Financial Loss Calculation Report (LHPKKN) are contrary to the applicable laws and regulations (onwetmatige), namely several things that are considered contradictory; a) State Administrative Decisions (TUN), Financial and Development Supervisory Agency (BPKP) and State Financial Loss Calculation Reports (LHPKKN) contradict procedural/formal laws and regulations, including: (Presidential Decree No. 3 of 1983 Concerning State Administration Monitoring of Finance and Development (BPKP), Presidential Decree No. 103 of 2001 concerning Position, Duties, Authorities, Organizational Structure, and Work Procedures of Non-Departmental Government Institutions¹⁶ b) State Administration Decree (TUN), Financial and Development Supervisory Agency (BPKP) and The Report on the Results of Calculation of State Financial Losses (LHPKKN) contradicts the provisions in the laws and regulations that are material and substantial in nature (inhoudsgebreken), in practice this concerns the contents of State Administration decisions (TUN) which are contrary to the basic regulations, or regulations that higher.

Since the beginning of the Telecommunications Law, "the issue of payment of Telecommunications User Rights Fees (BHP), Universal Service Obligation (USO) and Radio Frequency Spectrum User Rights Fees (BHP)" is a dispute part of state administrative law, not a delict or crime that is part of the law. criminal. Meanwhile, "use of a radio frequency spectrum that is not in accordance with its designation" is considered a criminal offense in the field of telecommunications, not a criminal act of corruption. The Telecommunications Law as a *lex special*, then it is solely a "telecommunication administration dispute" and "Criminal Acts in the field of Telecommunications" so that it falls within the scope of state administrative law and criminal law in the field of state administration (administration penal). Thus, the settlement that is in line with the legal principles is the rule in the Telecommunications Law. Concretely, the Minister of Communication and Information has the authority to determine whether there is a violation of the payment of Radio Frequency Spectrum Usage Rights Fee (BHP).¹⁷

3.1.3. The Authority of Civil Servant Investigators (PPNS) in Acts of Corporate Maladministration PT. Indosat Tbk, and IM2.

In the author's analysis regarding investigative duties in carrying out criminal investigations, the author concludes that, in addition to investigators from the State Police of the Republic of Indonesia, certain civil servant officials within government agencies whose scope of duties and responsibilities are in the corporate field are given special authority as civil servant investigators. (PPNS) to carry out: 1) Receive reports from everyone regarding alleged criminal acts of corporate maladministration, and/or mandatory procedures in the corporate field; 2) Examine the correctness of reports or information relating to criminal acts regarding corporate maladministration, and/or mandatory procedures in the corporate field; 3) summon and conduct an examination of every person suspected of committing a crime regarding corporate maladministration, and/or mandatory procedures in the corporate field; 4) Asking for information and evidence from everyone in connection with criminal acts regarding corporate maladministration, and/or mandatory procedures in the corporate field; 5) carry out inspections and searches of certain places that are suspected of being storage areas or places where evidence is obtained and confiscate objects that can be used as evidence and/or evidence in criminal acts regarding corporate maladministration, and/or procedures that are mandatory in the corporate field ; 6) Request the assistance of experts in carrying out criminal investigations regarding corporate maladministration, and/or mandatory procedures in the corporate field; 7) Arrest the perpetrators of corporate maladministration crimes, and/or procedures applied in the corporate field; 8) Stop the investigation if there is insufficient evidence regarding the existence of a crime regarding corporate maladministration, and/or procedures that are mandatory in the corporate field.¹⁸

3.1.4. Legal Certainty in the Authority of PPNS in Administrative Law Investigations.

PT Indosat Mega Media (PT IM2) has no obligation to pay any User Rights Fees (BHP) that are legal according to law, the witness knows that Article 2 of the Telecommunications Law regulates the principles in telecommunications operations, telecommunications operations have several principles- the principles namely, the principle of benefit, the principle of fairness and equity, the principle of legal certainty, and the principle of self-confidence as well as the principle of partnership security and the principle of ethics, based on Article 2 of the Telecommunications Law it is also stated that the principle of legal certainty means that the development of telecommunications itself, especially the operation of telecommunications must be based on statutory regulations that

¹⁵ *Ibid.*

¹⁶ BPKP, Deputi Bidang Investigasi, *Pedoman Penugasan Bidang Investigasi*, Jakarta, 2009, hlm. 1.

¹⁷ Kasus Indar Atmanto, dalam Putusan Putusan Mahkamah Agung Tata Usaha Negara dengan Nomor Perkara: 263K/TUN/2014.

¹⁸ GEA, ALBIN RAJANI. "Pertanggungjawaban Pidana Terhadap Pelaku Penyalahgunaan Alat Penyiar Spektrum Frekuensi Radio Tanpa Izin (Studi Putusan Nomor: 10/PID. SUS/2018/PN. Pti)." (2022).



guarantee legal certainty for investors for telecommunications operators to investors as well as to telecommunications users. The Guarantee of Legal Certainty that was embodied in the Telecommunications Law is still valid, if you don't get a permit it means you are included in the illegal category. This illegal which will be investigated by Civil Servant Investigators at the Ministry of Communication and Information, for violations of the use of radio spectrum/satellite orbits, is a Civil Servant Investigator (PPNS) at Kominfo as long as they get their PPNS card and usually the control is carried out by the technical implementation unit from the directorate the General of Resources and Equipment of Post and Information Technology in each Province who monitors and through issuance of frequency usage.¹⁹

3.1.5. Conformity of witnesses and evidence in the Indar Atmanto Case based on Judicial Review Decision No. 787 K/Pid.Sus/2014.

The reason for the review decision was that the Supreme Court issued 2 (two) conflicting decisions because the Tipikor District Court decision proved the element "May harm the state finances or the state economy" based on the State Financial Loss Calculation Results Report (LHPKKN) which had been declared invalid by the Court Decision decision State Administration (PTUN).

It is known that the decision of the Supreme Court for Corruption Crimes (MA Tipikor) in conjunction with the Decision of the High Court for Corruption Crimes (PT Tipikor) Jo. The decision of the Corruption Crime District Court (PN Tipikor) contradicts the decision of the State Administrative Supreme Court (MA TUN) in conjunction with the Jakarta State Administrative High Court (PT TUN) decision jo. The decision of the Jakarta State Administrative Court (PTUN), because the Corruption Crime Court (Tipikor) considered a state financial loss based on the Deputy Head of the Financial and Development Supervisory Agency for Investigations No. SR-1024/D6/01/2012 date regarding the audit results report in the context of calculating state financial losses in cases of alleged corruption in the use of the 2.1 GHz/ Generation Three (3G) radio frequency network by PT Indosat Tbk and PT Indosat Mega Media (PT IM2) which also includes an attachment in the form of a report on the results of calculating state financial losses on October 31, 2020 made by the Financial and Development Supervisory Agency (BPKP) team issued by the Financial and Development Supervisory Agency (BPKP) contrary to the ruling The Jakarta State Administrative Court (PTUN) has decided that the State Financial Loss Calculation Report (LHPKKN) letter is invalid.

Supreme Court in case No. 75PK/TUN/2015 namely granting the PK request so that the Supreme Court Decision in case No. 263 K/TUN/2014 has been annulled so that there are no 2 conflicting decisions against the judicial review petitioner's evidence, the Panel is of the opinion that the evidence submitted as Novum I turned out to be when the field inspection was carried out after the verdict of the criminal case, namely the date November 13, 2013, the conclusion is that the convict as the main director of PT Indosat Mega Media (PT IM2) is fully responsible for the management of the company and represents the company both inside and outside the court and it turns out that as a result of the convict's actions have provided benefits to PT Indosat Mega Media (PT IM2)) which is detrimental to the finances or the economy of the State so that PT Indosat Mega Media has benefited and based on Article 20 paragraph (1) Law No. 31 of 1999 as amended and supplemented by Law no. 20 of 2001 concerning the Eradication of Corruption Crimes as Judex Juris considered in the cassation case, PT Indosat Mega Media (PT IM2) was ordered to pay compensation in the amount of Rp. 1,358,343,346,574.00 (One Trillion Three Hundred Fifty-Eight Billion Three Hundred Forty-Three Million Three Hundred Forty-Six Thousand Five Hundred Seventy-Four Rupiah). The result of the decision on the request for review was that the judge rejected the request for review from the convict Indar Atmanto, then the convict paid the case at the review examination in the amount of Rp. 2,500.00 (Two Thousand Five Hundred Rupiah).²⁰

3.2. Take Over Of Maladministration Cases Conducted By Pt Indosat And Indosat Mega Media (Im2) By The Ago In The Crime Of Corruption

3.2.1. Orderliness in Criminal Law and Administration as Public Law in Corruption Crimes.

According to Marc Ancel, the notion of criminal law policy (Penal Policy) is a science as well as an art which ultimately has a practical goal to enable positive law regulations to be better formulated and to provide guidance not only to legislators, but also to courts that apply laws and to administrators or executors of court decisions. Furthermore, Marc Ancel said that penal policy is a component of modern criminal science in addition to other components such as "criminology", "criminal law".²¹

Related to administrative law theoretically administrative law is a state and government phenomenon whose existence is in accordance with the concept of a rule of law or arises simultaneously with the convening of state power and government based on certain legal rules. Nonetheless, administrative law as a branch of science. Especially in the

¹⁹ Op.cit., Putusan No. 01/PID.Sus/2013/PN.JKT.PST

²⁰ Kasus Indar Atmanto, dalam Putusan Peninjauan Kembali No. 787 K/Pid.Sus/2014.

²¹ Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana, Bandung: Citra Aditya Bakti, 1996, hlm. 23.

new continental region appeared recently. In the beginning, especially in the Netherlands, this administrative law became an integral part of constitutional law under the name "staat en administratief recht". It is quite different from what developed in France as a separate field besides constitutional law, and apart from that compared to civil law and criminal law, state administrative law is a relatively young area of law.

3.2.2. Corporate Criminal Responsibility in Corruption Crimes in the Perspective of Criminal Law.

Professor of the Faculty of Law, Airlangga University, Titiek Sri Djatmiati, believes that even if there is a loss to the state in this case, it should be subject to administrative sanctions, not corruption. He saw for himself from the side of administrative law, if there was a loss to the state in that case, then the punishment used should have been administrative punishment as well.²²

Between state administrative law and criminal law, particularly concerning corruption or between Law no. 30 of 2014 and Law no. 31 of 1999 which was amended by Law no. 20 of 2001 concerning Eradication of Criminal Acts of Corruption Law on Corruption Crimes. Both of these laws regulate acts of abuse of authority, but with different sanctions and different settlements. Article 3 of the Corruption Crime Act (UU Tipikor) states that abuse of power which can lead to loss of state funds includes corruption, is punishable by a maximum sentence of life imprisonment or a minimum of one year, while the formulation in Article 17 of Law no. 30 of 2014 stated that government agencies and/or officials are prohibited from abusing authority.

The Supreme Court (MA) has indeed issued a Supreme Court Regulation (Perma), which stipulates that criminal cases must first be resolved and overrides administrative cases, although theoretically the rule is a bit problematic because of the legal principle governing *Lex Specialist de rogat Lex Generalis*.

3.2.3. The Authority of Civil Servant Investigators (PPNS) in Conducting Investigations on Corporate Maladministration Actions in the Telecommunication Sector According to Laws and Regulations.

The investigative process carried out by Civil Servant Investigators (PPNS) is in principle the same as the investigative process carried out by POLRI, which is guided by the Criminal Procedure Code (KUHP). And if there are obstacles in the investigation process due to the limited authority of Civil Servant Investigators (PPNS) and limited resources owned by Civil Servant Investigators (PPNS), the Civil Servant Investigators (PPNS) coordinate with POLRI Investigators as stipulated in the Kapolri Regulation. Number 6 of 2010 concerning Management of Investigators by Civil Servant Investigators (PPNS) and Regulation of the Indonesian National Police Number 6 of 2010 concerning Management of Investigations by Civil Servant Investigators (PPNS) and Regulation of the Indonesian National Police Number 20 of 2010 concerning Coordination, Supervision, Investigation Development for Employee Investigators Civil Affairs (PPNS).

Civil Servant Investigators (PPNS) in carrying out investigations coordinate with POLRI, according to Awwaluddin Djamin, coordination is a cooperative effort between agencies, agencies, units in carrying out certain tasks in such a way, so that there is mutual complementarity, mutual assistance, and complementarity.²³

Civil Servant Investigators (PPNS) and POLRI coordinate in investigations related to corporate maladministration, in which both of them unite what is their respective activities so that they can form a unity and obtain harmony to find the truth from acts of corruption within corporations.

When there is a criminal act of maladministration, the first stage of the investigation carried out by the Civil Servant Investigator (PPNS) is to notify the Police Investigator about this to be forwarded to the Public Prosecutor as stipulated in Article 107 paragraph (2) and Article 109 paragraph (1) of the Criminal Procedure Code. In accordance with Article 107 paragraph (1) of the Criminal Procedure Code that for the purposes of investigation, POLRI investigators give instructions to Civil Servant Investigators (PPNS) and provide investigative assistance needed to find the truth of maladministration crimes. For the purposes of investigation, POLRI investigators are asked or not asked based on their responsibilities, they are obliged to provide investigative assistance to Civil Servant Investigators (PPNS). For this reason, Civil Servant Investigators (PPNS) from the start are obliged to provide investigation assistance to the National Police.

The dossier of the criminal act of maladministration is the investigator's obligation to submit it to the Public Prosecutor, as in accordance with Article 110 paragraph (1) of the Criminal Procedure Code (KUHP) that the investigation must immediately submit the case dossier to the Public Prosecutor where the submission is carried out through investigation Polri in accordance with Article 107 paragraph (3) of the Criminal Procedure Code (KUHP). Article 8 paragraph (3) explains that in submitting the dossier, investigators go through two stages; In the first stage, the investigator only submits the case files, and in the second stage, the investigator submits the suspect files and evidence to PU when the investigation is considered complete (P-21).

²² <https://economy.okezone.com/read/2013/02/20/278/764936/kasus-indosat-im2-dinilai-bukan-perkara-pidan>

²³ Malayu S.P Hasibuan, 2008, *Manajemen: Dasar, Pengertian, dan Masalah. Edisi Revisi*. Cetakan Ketujuh, Bumi Aksara, Jakarta, hlm.



In carrying out maladministration investigations, the handling of cases must be carried out in a professional and accountable manner, therefore investigations and investigations must be carried out in corridors without intervention by public pressure.

Civil Servant Investigators (PPNS) in carrying out investigations and investigations must be equipped with administrative investigations and investigations and coordinate with investigator superiors through instructions and directions for investigations and investigations.

Civil Servant Investigators (PPNS) in carrying out inspections must be carried out procedurally, which means that the investigation and investigation process is carried out in accordance with the mechanisms and procedures stipulated in the provisions of laws and regulations.

3.2.4. Implementation of PPNS Authorities in Conducting Investigations or Corporate Maladministration \ Actions in the Telecommunication Sector.

Based on Article 44 paragraph (2) letter (a) of the Telecommunications Law, it is the authority of Civil Servant Investigators (PPNS) to examine the truth of reports or statements regarding criminal acts in the telecommunications sector as referred to in Article 44 paragraph (1). Furthermore, Article 44 paragraph (2) letter e also explains that conducting inspections of telecommunication aids and/or equipment that are suspected of being used or suspected of being related to criminal acts in the field of telecommunications is the authority of Civil Servant Investigators as well, in terms of cooperation carried out by the Director of PT Indosat Mega Media (IM2) has signed a Cooperation Agreement Concerning Broadband Internet Access via Indosat Mega Media (IM2) 3G/HSDPA network with PT. Indosat Tbk. Based on the agreement, as previously explained, PT Indosat Tbk provides all telecommunications networks and facilities, and PT Indosat Mega Media (IM2) provides internet program and service providers. The implementation of the agreement is known to the Attorney General of the Republic of Indonesia where there has been an alleged deviation in the form of the use of the 2.1 GHz/Gnerasi Tiga (3G) radio frequency band by PT. Indosat Mega Media (IM2) illegally because it was deemed not to have paid the fees for using the radio frequency band. This is not in accordance with the provisions of Article 44 paragraph (2) letter a and Article 44 paragraph (2) letter e where the role of the Attorney General's Office has replaced Civil Servant Investigators (PPNS) who are obliged to examine the truth of reports relating to telecommunications crimes. However, in this case which stated that PT Indosat Mega Media (IM2) had committed an illegal act and suspected irregularities was directly based on the decision of the Attorney General's Office, civil servant investigators who had the right to suspect should have investigated the process so that the truth could be revealed in accordance with the provisions of the Indonesian Civil Code. Criminal Procedure Law and Telecommunications Laws.

3.2.5. Mechanism of PPNS Authority to Investigate Corporate Maladministration in the Telecommunication Sector Under the Principle of Legal Certainty.

In the perspective of legal objectives, ideal legal reasoning is legal reasoning capable of realizing justice, legal certainty and benefits together and in a balanced way.²⁴

The investigation needs to be carried out continuously until it finds certainty regarding the crime in question, as explained in Article 5 number 1 letter a of the Criminal Procedure Code, namely that it will provide fair legal certainty, as stated in Article 28C paragraph (2) and Article 28 D paragraph (1) The 1945 Constitution guarantees the applicant's constitutional right to advance himself in fighting for collective rights and the right to obtain fair legal certainty before the law. The word fair legal certainty is important when the addition of the phrase does not stop an investigation, this can be minimized as a control mechanism for the benefit of horizontal monitoring of legal certainty and constitutional rights as reporters to obtain justice.²⁵

4. CONCLUSION

Reliable and professional Civil Servant Investigators (PPNS) are at the forefront of law enforcement overseeing Law Number 36 of 1999 concerning Telecommunications, and in accordance with Law Number 8 of 1981 Article 6 paragraph (1) letter b, that investigators are Civil Servant Investigators Certain civilians who are given special authority (lex specialis) to oversee Law Number 36 of 1999 concerning Telecommunications. Civil Servant Investigators (PPNS) conducted an investigatied based on Government Regulation (PP) Number 58 of 2010 concerning amendments to Government Regulation (PP) Number 27 of 1983 concerning implementation of the Criminal Procedure Code (KUHP). Based on Article 44 paragraph (2) letter a of the Telecommunications Law, it is the authority of Civil Servant Investigators (PPNS) as referred to in Article 44 paragraph (1) to examine the correctness of reports or statements regarding criminal acts in the telecommunications sector. 44 paragraph (2) letter e also explains

²⁴ Shidarta, Hukum Penalaran dan Penalaran Hukum, Cet. I, Yogyakarta: Genta Publishing, 2013, hlm. 125.

²⁵ Risalah sidang perkara nomor 4/PUU-XX/20221, perihal: "PENGUJIAN MATERIIL UNDANG-UNDANG NOMOR 8 TAHUN 1981 TENTANG HUKUM ACARA PIDANA TERHADAP UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA TAHUN 1945"

that it is the authority of Civil Servant Investigators (PPNS) to examine telecommunications equipment and/or equipment suspected of being used or suspected of being related to criminal acts in the field of telecommunications.

The authority of Civil Servant Investigators (PPNS) in investigating cases of corporate maladministration in the field of telecommunications includes namely; 1) carry out an examination of the correctness of reports or information relating to criminal acts in the field of telecommunications, namely reports on the Results of Calculation of State Financial Losses (LHPKKN) requiring approval from other agencies, namely investigators determined according to statutory regulations, one of which is a Civil Servant Investigator (PPNS) , which can give rise to legal consequences, which can be used as the basis for calculating state financial losses, 2) stop the use of telecommunication tools and or equipment that deviates from the applicable provisions, namely deviations in the implementation of the 2.1GHz/3G Radio Frequency Network Use Cooperation Agreement between PT. Indosat Tbk with PT. Indosat Mega Media (IM2) which violates the applicable provisions, the deviation of the telecommunications equipment must be stopped so as not to cause lasting harm to all parties involved, 3) summon people to be heard and examined as witnesses or suspects, examine equipment and or telecommunications equipment that deviates from the applicable provisions, namely in order to obtain legal certainty, is also something that is very necessary to make clear whether or not there is a violation of the payment of Telecommunications Usage Rights Fee (BHP), Universal Service Obligation (USO) or Usage Rights Fee (BHP)) Radio Frequency Spectrum (SFR), 4) search a place used to commit a crime in the field of telecommunications, seal and or confiscate tools and or equipment used or suspected to be related to a crime in the field of telecommunications namely in certain crimes, the POLRI institution does not yet have adequate investigative facilities and infrastructure compared to with Civil Servant Investigators (PPNS), namely in cases of boredom that require certain facilities and infrastructure with special qualifications where in maladministration this requires investigators specifically to explore investigative actions within the scope of the corporation to be able to provide solutions and shed light on corporate maladministration actions committed by the company, 5) request expert assistance in the framework of carrying out the duties of investigating criminal acts in the field of telecommunications and holding an investigation termination, namely experts who know the scope of maladministration in public services. Then related to acts of abuse of authority, it has a double character, namely on the one hand it is included in the category of maladministration actions and on the other hand it is included in the category of acts that can be punished. This is where the role of Civil Servant Investigators (PPNS) is to conduct an examination of the correctness of reports or information regarding criminal acts in the field of telecommunications, namely reports on State Financial Losses Calculation Results (LHPKKN) because the investigator's task is to determine whether or not a crime has occurred in an event. Civil Servant Investigators (PPNS) is one of the investigators who are given special authority in Law no. 36 of 1999 concerning Telecommunications to conduct investigations into telecommunications crimes, one of which is related to corporate maladministration in the telecommunications sector, so that Civil Servant Investigators (PPNS) have an important role in making clearer an incident of a crime based on the evidence of the report complete regarding the case between PT. Indosat Tbk and PT. Indosat Mega Media (IM2).

Civil Servant Investigators (PPNS) with Police Investigators, as well as the Attorney General's Office, as well as Investigators at the Corruption Eradication Commission (KPK) collaborate with each other to uphold justice within the scope of criminal cases, both special crimes and general crimes. between Polri investigators, Civil Servant Investigators (PPNS), the Attorney General's Office, and also the Corruption Eradication Commission (KPK) it is hoped that there will be no cases that overlap with each other, and must be well organized. ²⁶

5. ACKNOWLEDGEMENTS

We would like to take this opportunity to express our deepest gratitude to all those who have helped in completing this research. The results of this study are certainly far from perfect; therefore, all suggestions and criticisms are of course very much expected for the perfection of this research in the future. Finally, I hope that this research can be useful for all parties and can add to the body of legal scholarship.

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²⁶ Nasution, Abdul Hayy, and I. Gusti Ayu Anita Lakshana. "Kewenangan Penyidik Pegawai Negeri Sipil (PPNS) dalam Undang-Undang Republik Indonesia No. 8 Tahun 1981 tentang Hukum Acara Pidana pada Pasal 1 Ayat (1) Jo. Pasal 6 Ayat (1) dan Undang-Undang No. 19 Tahun 2019 tentang Tindak Pidana Korupsi pada Pasal 1 Ayat (6) dalam Proses Peradilan Pidana Indonesia." *FOCUS* 3.2 (2022).



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