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Criminal Liability for The Provision of Illegal WIFI Telecommunications Services

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Abstract
The impact of globalization and the rapid development of telecommunications technology has implications for changes in the operation and perspective of telecommunications, especially in the provision of Wi-Fi telecommunications services (ISP). The survey carried out by the Indonesian Internet Service Providers Association (APJII) Indonesia has reached 77.02% or the total population connected to the internet is 210,026,769 of the total population of 272,682,600 Indonesians in 2021. Along with the development of technology, of course It is undeniable that there will be potential violations or disobedience from people who do not comply with the provisions of laws and regulations so that they violate the rights of other communities. The rise of ISP and unlicensed or illegal Wi-Fi resellers has caused losses not only to the community but also to the national economy. Lack of understanding regarding licensing results in ISPs being subject to administrative sanctions to imprisonment. The purpose of this study is to find out how criminal liability for the operation of illegal Wi-Fi telecommunications services is.

Keywords
Illegal; Liability; Telecommunication; Wi-Fi

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Introduction

The development of the current digitalization era is very influential in all aspects of human life. The development of internet technology has become important in driving the progress of the times to ease the works and the tips in it. The works and the tips work and tips are of course inseparable from the role of the internet and telecommunications technology. The impact of globalization and the rapid development of telecommunications technology has implications for changes in the implementation and perspective of telecommunications.[1] Looking at the results of a survey that has been carried out by the Indonesian Internet Service Providers Association (APJII), as an association that supports digital transformation in Indonesia, it should be noted that the survey in 2021-2022, APJII took the initiative to provide information on the impact of infrastructure equity related to telecommunication networks and utilization of access the internet in Indonesia. Indeed, the implementation of the survey can broaden the scope of discussion topics to surveys on the use of telecommunication networks by MSMEs, surveys in the education sector, and surveys on the perceptions of APJII members on trends and developments in government policies. However, what needs to be explored in this survey is the use of telecommunications networks by the community, be it for MSMEs, for the education sector, to the province's coverage area. Besides, the penetration rate in Indonesia has reached 77.02% equals to 210,026,769 people out of a total population of 272,682,600 people in Indonesia are connected to the internet in 2021. This indicates that there has been an increase since the survey conducted in 2018 (64.80%) and 2019-2020 (73.70%).[2] Based on the survey, of course we can imagine the impact the use of internet connection has on the development of society in Indonesia. This survey also describes data related to the use of telecommunications services, in this case, Wireless Fidelity or commonly abbreviated as Wi-Fi.

The definition of Wi-Fi according to the laws and regulations applied in Indonesia always refers to article 1 number 8 of the Minister of Communication and Informatics Regulation number 5 of 2017 concerning the Fourth Amendment to the Minister of Communication and Informatics Regulation number 26/Per/M.Kominfo/5/2007 concerning Securing the

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1 Abdoel Gafar. "Penggunaan Internet sebagai Media Baru dalam Pembelajaran". *Jurnal LPPM Unbari*. Vol. 8. No. 2. (Juli 2017): 36.

2 APJII. "Asosiasi Penyelenggara Jasa Internet Indonesia." Apjii.Or.Id. https://apjii.or.id/. (Diakses 29 September 2022).

Utilization of Internet Protocol-Based Telecommunication Networks. The regulation explicitly defines Wi-Fi telecommunication network as a technology with wireless internet access. Then, when referring to Article 1 point 1 of Law Number 36 of 1999 concerning Telecommunications (UU 36/1999), for the meaning of telecommunications is any transmission, transmission and/or reception of any information in the form of signs, signals, writing, images, sounds and sounds via wire, optical, radio or other electromagnetic systems.[3] The provision of telecommunications is of course aimed to encourage national unity and integrity, increasing welfare in a fair and equitable manner, supporting economic dynamics and government activities for the community, and enhancing international relations. This explains that the government's role in providing internet facilities is also very vital for the development of telecommunications in Indonesia. This means giving freedom to telecommunications network users to use the internet to access various available information. It is also necessary to note that Article 14 of Law 36/1999 stipulates that every telecommunications user has the same rights to use telecommunications networks and telecommunications services with due observance of the applicable laws and regulations. Seeing the facts and existing practices, the operation of Wi-Fi telecommunications services is carried out by Internet Service Providers (ISP), where ISP is a business entity that provides Wi-Fi telecommunications network services to customers. ISPs use different methods of providing their services, including wired and wireless internet distribution. Referring to the Regulation of the Minister of Communication and Informatics Number 14 of 2021 concerning the Third Amendment to Regulations of the Ministry of Communication and Information Number 13 of 2019 concerning the Implementation of Telecommunications Services (regulations of the ministry of communication and information 14/2021), states that the provision of telecommunications services is required to provide opportunities for customers to use telecommunication tools or equipment in the form of access devices and its own customer terminal devices. What is meant by access or internet access services has been regulated in Article 1 number 16 regulations of the ministry of communication and information 14/2021, that ISP services are a type of service in the provision of telecommunications services that provide Wi-Fi telecommunications network services for customers connected to a public internet network. In practice ISPs can rent or build their own network infrastructure. The examples of fixed broad band operators that are often

[3] Iik Novianto, *Perilaku Penggunaan Internet di Kalangan Mahasiswa* (Surabaya: Universitas Airlangga 2011), 12-13.

used in Indonesia include IndiHome, First Media, MNC Vision, BizNet, Oxygen, IConnect, and Local Internet and others. In addition, based on data from APJII, it also states that there are ISP services managed by private corporations, state/local government-owned corporations (BUMN/BUMD), and retail.[4]

Based on the regulations described above, the fact that is happening at this time is that there are so many violations that have occurred that have even been included as crimes according to Law 36/1999. This is certainly an important matter to deal with because it will interfere with the rights of the parties who should receive it. The government, through legislative drafting, has certainly drawn up statutory provisions that are binding on society at large (positive law). Of course, this is intended as a real solution for the government in protecting the rights regulated in the provisions of the legislation. In other words, these rules have been regulated and become part of the overall norms that exist in society. Along with the development of technology, it is certainly undeniable that there will be the potential for violations or non-compliance from people who do not comply with statutory provisions thereby violating the rights of other communities. Due to the potential for non-compliance by people who are not responsible for complying with the regulations contained in Law 36/1999. In fact, there are still operators, both from the private sector and providing Wi-Fi telecommunications services, who do not have business licenses. Difficulty in obtaining permits is certainly a challenge faced by ISPs. Telecommunication sales services that are not in accordance with the provisions of the laws and regulations applied in Indonesia today are often found in public. However, there are not a few people who still use and even trust these sales services because they are interested in promos or cheap rates that are below the telecommunications sales service rates that comply with statutory (legal) regulations.[5] It is also important to note that there has been a problem in Pacitan regarding resellers of Wi-Fi telecommunications networks that are illegal or without permission from the relevant ministry. In addition, there is no agreement from the authorities regarding the operation of telecommunication services. This does not rule out the potential for similar incidents to occur in the future. So, it is necessary for

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4 Op. Cit. APJII. "Asosiasi Penyelenggara Jasa Internet Indonesia." Apjii.Or.Id. https://apjii.or.id/. (Diakses 29 September 2022).

5 Wike Herlinda. "Menyoal Legalitas Reseller Layanan Internet Telkom". https://bisnisindonesia.id/article/menyoal-legalitas-reseller-layanan-internet-telkom. (Diakses 29 September 2022).

the community to take care of all permits related to telecommunication network services. This is important so that the purpose of establishing telecommunication-related regulations that protect and maintain people's rights can run as it should. Apart from that, it is certainly undeniable that the direction of Indonesia's technological development tends to seek to be closer together and integrated with global technology. Unfortunately, there has been no concrete effort to isolate domestic telecommunications technology from the problems it is currently happening.[6] Not only that, but the government has also collaborated with APJII in socializing efforts regarding the Wi-Fi telecommunication service delivery scheme and how to apply for permits for ISPs.

Regulations related to telecommunications services have opened business opportunities for resellers to provide Wi-Fi telecommunications network services, so it doesn't require resellers to ask for licenses and simply cooperate with license holders for telecommunications services. Resellers are also not subject to the obligation to pay the Telecommunication Operational Rights Fee (BHP) which is an obligation to be paid and constitutes Non-Tax State Revenue (PNBP) but remains the obligation of the owner of the operating permit. Based on the applicable laws and regulations, it is also explained that telecommunications service providers and resellers must have a cooperation agreement with internet service provider companies. In addition, resellers are required to guarantee service continuity to consumer protection. Seeing the reality, even though various efforts have been made by the government, it is still undeniable that there are still many cases that violate the rule of law in public. The cases referred to are ISPs that do not have licenses.[7] Therefore, it has become an important matter today to emphasize criminal responsibility for the provision of illegal Wi-Fi services.

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6 Dinna Wisnu, *Politik Sistem Jaminan Sosial*, (Jakarta: Gramedia, 2012), 179-180.

7 Marselus Wibowo. "Asosiasi Penyelenggaraan Internet Ungkap Alasan Masyarakat Tergiur Wi-Fi Ilegal". https://bangka.sonora.id/read/503233684/asosiasi-penyelenggara-internet-ungkap-alasan-masyarakat-tergiur-Wi-Fi-ilegal?page=all. (Diakses 30 September 2022).

Method

Research in this writing using normative method. Whereas the data obtained by the authors were collected from various sources in the library and then the data was processed and analysed to obtain research results. The author, through a literature study approach, collects and sorts of data according to the scope of the research carried out, so that the data obtained is described in a descriptive analysis.

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Result and Discussions

Arrangements for the Implementation of Wi-Fi Telecommunications Services

Wi-Fi is a method of accessing internet or network with wireless cables using radio waves. Accessing of Wi-Fi network is done in smartphones, laptops, etc.[8] . Wi-Fi telecommunication access service is an Internet Protocol (IP) based telecommunication operation activity that can be utilized by the public to access the internet network by using telecommunication network.[9] The provision of telecommunication services according to Article 1 number 8 of Law 36/1999 can be carried out by companies, cooperatives, state-owned enterprises (BUMN), private companies, government agencies and state defence and security agencies. In practice, telecommunications operations are regulated in Government Regulation Number 46 of 2021 concerning Post, Telecommunications, and Broadcasting (Government

[8] Amritansh Kumar Mishra, *"Wireless Internet Access: 3G v/s Wi-Fi"*, Vol. 1, Issue 4, May 2014, International Journal of Research, Page 939 – 943.

[9] Emyana Ruth. 2015. "Deskripsi Kualitas Layanan Jasa Akses Internet di Indonesia Dari Sudut Pandang Penyelenggaraan". *Buletin Pos Dan Telekomunikasi* 11 (2): 137. doi:10.17933/bpostel.2013.110204.

Regulations 46/2021) and regulations of the ministry of communication and information 14/2021. It is explained that the forms of telecommunications operations in Indonesia can be distinguished, including:

Table 1.
Telecommunications Operations in Indonesia.

No.	Telecommunications Operations	Type of Telecommunications Operations	Forms of Telecommunications Operations
1.	Telecommunication Networks	• Fixed network • Mobile network	• Fixed networks include: a. Local network b. Remote direct connection network c. Closed network d. Another network • Mobile network includes: a. Terrestrial b. Cellular c. Satellite d. Other mobile networks

2.	Telecommunication Services	• Basic telephony services • Telephony value added services. • Multimedia services	• Basic telephony services include fixed network and mobile network. • Telephony value added services. *a. Call Center* b. Calling Card c. ITKP services d. Premium calling services e. Premium SMS concet services f. Other telephony value added services. • Multimedia services includes: a. Internet service provider (ISP) b. Internet interconnection services (NAP) c. Data communication system services d. IPTV services

			e. Other multimedia services
3.	Special Telecommunication	• Private needs • State defence and security needs	• Private needs include: a. Individual b. Government agencies c. Special services d. Legal entity • The need for state defence and security is the nature, form, and use specifically intended for the needs of state defence carried out by the ministry in charge of defence affairs and the TNI and the Police.

Source: Author's data processing.

One of the uniqueness of the Wi-Fi telecommunications network is that the state is not always the main controller and supervisor and can be controlled by intermediaries in the form of private business entities. ISP is an example of an intermediary party that will connect the transmission of Wi-Fi

telecommunication network content between users. If the operation of Wi-Fi telecommunications services is no longer operational, then users can no longer access Wi-Fi. The network available at ISPs consists of regional-scale networks and international networks so that customers can easily connect to the outside world globally.[10] The ISP's function is to verify the Internet Protocol (IP) address on the modem so that it can be connected to a Wi-Fi telecommunication network, so that it can spread the connection to other devices such as laptops, computers, iPads or cell phones.[11] The number of ISPs currently available certainly have different characteristics both in terms of network quality, bandwidth, service maintenance, connection stability, and the price offered. Various options for providing W-Fi services have emerged. ISP business actors must be able to observe consumer behaviour carefully.[12] Each ISP has a variety of quality characteristics offered. Every consumer will determine the choice of ISP that is used according to their needs. For example, ISPs with good quality but relatively expensive prices, there are also ISPs with affordable prices but are constrained by the stability of the internet connection.[13] The types of ISP services offered include:

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10 Edi Atmaja, "Kebebasan Mengakses Internet Sebagai Hak Asasi Manusia: Selayang Pandang Indonesia Dan Negara Asean Lainnya" *Jurnal Opinio Juris*, Vol. 18, (2015): 18.

11 I. Dahanum, Mesran, dan T. Zebua, "Sistem Pendukung Keputusan Pemilihan Internet Service Provider Menerapkan Metode Elimination and Choice Translation Reality (Electre)," *Konferensi Nasional Teknologi Inf. dan Komputer*, I, (November 2017): 248–255.

12 E. Suhartono, "Penentuan Pemilihan Operator Seluler Dengan Metode Analisis Efektifitas," *Maksipreneur*, VI, 2, (Mei 2017): 18–26.

13 D. Kurniawan, W. Wardhana, dan N. A. Ito, "Penggabungan Dua ISP Guna Menstabilkan Koneksi Internet Dengan Metode Failover," *J. Komputasi*, 4, 2, (Januari 2016): 1– 11.

Table 2.
ISP Service Type.

No.	ISP Service	ISP Service Function
1.	*Dial-Up*	Dial-up is generated over the wired connection to a conventional landline telephone. This type of connection has the slowest speed. Users must have a home phone to be able to get a dial-up connection.
2.	*Digital Subscriber Line (DSL)*	DSL is produced by ISPs from home telephone connections using a broadband network, whose speed is above Dial-Up services. Please note, broadband networks can transmit internet network connections using fibre optic and copper connections. For DSL, the internet connection is connected via a network of copper cables used on landlines.
3.	Cable TV	Cable TV results from a connection for cable TV. Then, just like DSL, the connection for cable TV also uses a broadband network. Typically, the broadband network of cable TV is delivered via a fiber optic cable network. Then, the cable is connected to a modem or router

		to spread the internet connection on the device.
4.	Satellite Connection	A type of ISP that uses space communication satellites with a broadband network to provide internet. To be able to capture the broadband network from a satellite connection, users need a satellite dish. After that, the satellite dish will spread the internet connection to several devices.
5.	Cellular Internet Network	The existence of a cellular internet network such as 4G or 5G, is a type of internet connection that is usually obtained on a cell phone or cell phone. This type of ISP provides an internet connection through a cellular network that is connected via a cellular network to produce a connection from the internet. The things that need to be done to be able to access an internet connection from a 4G or 5G network, the user must have an internet data package provided by the ISP.

Source: Zulfikar Hardiansyah, Harian Kompas.[14]

[14] Zulfikar Hardiansyah. "Apa Itu ISP? Mengenal Fungsi, Jenis, Serta Contohnya". TeknoKompas.Com, 2022.

What is happening in Indonesia, ISP implementation is regulated in Article 1 number 19 regulations of the ministry of communication and information 14/2021, it is explained that ISP is a type of service in the operation of telecommunications services that provides Wi-Fi telecommunications services for customers to connect to the public internet network. The wider range of Wi-Fi access services utilized by the public and the importance of high-speed internet access, the quality of internet services in Indonesia is an important element to pay attention to. The occurrence of reselling services or WIFI resellers which are rife at this time to support the need for quality internet services has made the government regulate the operation of resellers as described in Article 1 number 34 regulations of the ministry of communication and information 14/2021 which describes the activities carried out by resellers to resell telecommunications services in terms of this is a Wi-Fi network. The provisions for Wi-Fi resellers are explained in Article 223 paragraph (2) regulations of the ministry of communication and information 14/2021 stipulates that business actors conducting business activities reselling telecommunications services must fulfil the following conditions:

a. Fulfilling the business standards of telecommunications services resale service activities in accordance with the provisions of laws and regulations.

https://tekno.kompas.com/read/2022/03/12/13150007/apa-itu-isp-mengenal-fungsi-jenis-serta-contohnya?page=all (diakses 1 Oktober 2022).

b. Has a cooperation agreement between the telecommunications service provider and the executor of the resale of telecommunications services.

In practice, reseller business actors can use telecommunication service trademarks that are resold and can also add reseller company trademarks to customers. Resellers are also required to comply with the provision of quality standards for Wi-Fi telecommunications services which are equivalent to the existing implementation commitments. All revenues from reseller operations are recorded income and billing which must include the trademark of the telecommunications service provider. The rights and obligations of ISPs in providing Wi-Fi telecommunications services are regulated in Articles 8 and 9 regulations of the ministry of communication and information 14/2021 including:

Table 3.
ISP Rights and Obligations.

ISP Rights	ISP Obligations
• Obtain licensing services. • Obtain numbering determination request service. • Using the technology of his choice to deliver the service.	• Commence services no later than 120 days after the license is granted. • Ensure implementation according to permits. • Fulfil service commitments.

• Receive payments from customers for the provision of services. • Submitting complaints and resolutions to the Minister through the Director General in the event of a dispute between administrations • Obtain guarantees of confidentiality of data and information submitted related to service delivery. • Performing merger, consolidation, acquisition, or separation	• Using telecommunications equipment that meets the requirements. • Prioritizing domestic production of telecommunications equipment • Following the technical provisions in the basic technical plan • Obtaining anchorage rights • Fulfil the service and protection of customers. • Carry out security and protection of the services it provides. • Fulfilling BHP payment obligations. • Fulfil the obligation of KPU/USO Contribution • Putting every collaboration into a written agreement • Provide contact information services. • Prioritizing the transmission, distribution, and delivery of important

	information to the public relating to the interests of the state • Meet the provisions of the shareholding structure in legal entities. • Meet service quality standards. • Take notes, record, and also store in detail the usage of the service for 3 months. • Maintain a data record. • Publish achievement of service quality standards • Delivering service reports

Source: Regulation of the Ministry of Communication and Information Technology, Number 14/2021.

The implementation of Wi-Fi telecommunication services and resellers in their implementation must comply with the permits described in Article 11 of Law 36/1999 regarding licensing before carrying out their business which must be approved by the relevant Minister. According to regulations of the ministry of communication and information 14/2021, ISPs are required to fulfil business licenses that can be submitted electronically in Online Single Submission (OSS) in accordance with statutory provisions and business actors must carry out

tests. operational feasibility that will be verified by the relevant Minister. If the two conditions above are not met, ISPs are not allowed to provide Wi-Fi telecommunications services to the public and will be subject to sanctions ranging from administrative to imprisonment.

Criminal Liability for the Implementation of Illegal Wi-Fi Telecommunications Services

According to Jerome Hall, "Hardly any part of penal law is more definitely settled than that motive is irrelevant".[15] Several political concepts of criminal law need to be regulated by the state wisely and prudently.[16] So therefore, the provision of Wi-Fi telecommunications services by ISPs needs to first prepare the required network plus certified equipment. This certification is regulated in the provisions of Government Regulations 46/2021 part fourteen regarding technical standards for telecommunications equipment and telecommunications equipment that need to fulfil certification obligations before being able to provide telecommunications services on internet networks. This is intended so that the Wi-Fi internet network used is in accordance with standards, to support the interests of the community, both in terms of education and the economy who use access to information in their daily activities. Based on this, the government as a regulator has a role to maintain standards by creating various regulations and quality standards

[15] Husak, Douglas, "*Motive and Criminal Liability*", Articles Winter Spring 1989. Page 3 – 14.
[16] Michael Goldman, *The Politics of Crime"*, Articles of Criminal Justice Ethics 2011, Page 14 – 23.

so that the objectives of the provision of telecommunications networks are not hampered due to problems that can arise from the provision of Wi-Fi telecommunications services. After fulfilling the quality standards as stipulated in the regulations, then to be able to operate Wi-Fi telecommunications services based on Law 36/1999, it is necessary to obtain a permit from the Minister. From the formulation of the regulation, if the ISP or Wi-Fi reseller does not have a license as stipulated in Law 36/1999, then it is said to be an illegal ISP. The disadvantages that arise from the existence of illegal ISPs are that there is no after-sales service, official providers suffer losses, and the threat of data leaks because they are accessed through illegal networks.[17]

According to the general chairman of the Association for Internet Service Providers (APJII), Muhamad Arif stated that illegal ISP business schemes have opened opportunities for resellers to provide Wi-Fi services only by cooperating with permit holders. The aim of the scheme is to minimize the digital divide in society, provide protection for customers, contribute to the development and health of market competence.[18] Freddie Pinontoan, Head of Organization and Membership of APJII, said the reason why this could happen was because illegal ISPs did not need to pay obligations such as frequency usage rights fees (BHP), pay tax obligations like legal ISPs, pay universal service

[17] Kompasiana. "Jaringan Internet Ilegal akan Diterbitkan?," https://www.kompasiana.com/aandre1985/62b97cde0428245a2d38a3d2/jaringan-internet-ilegal-akan-ditertibkan, (Diakses pada 3 Oktober 2022).

[18] Rahmi Yati. "Kemenkominfo Ungkap Alasan Marak Penjualan Jasa Internet Ilegal". Bisnis.com, https://www.google.com/amp/s/m.bisnis.com/amp/read/20220412/101/1521801/kemenkominfo-ungkap-alasan-marak-penjualan-jasa-internet-ilegal , (Diakses pada Oktober 3 2022).

obligation (USO) funds. Illegal ISPs do not pay any obligations that need to be deposited like legal ISPs.[19] Departing from the existing problems, the licensing as previously mentioned needs to be set according to existing standards to protect potential consumers from the dangers of accessing Wi-Fi telecommunication networks, so that if there is an error, ISPs and Wi-Fi resellers can be held responsible for the dangers that threaten or hinder the use of Wi-Fi telecommunications services and will be subject to criminal liability.

Regulations that contain criminal sanctions and can be imposed on ISPs and illegal Wi-Fi resellers have been stipulated in Article 47 of Law 36/1999 with a maximum imprisonment of 6 years and/or a maximum fine of Rp. 600,000,000.00 (six hundred million rupiah). Other problems that can be imposed are in the form of unlawful acts. Such actions may also be subject to the provisions of Article 50 of Law 36/1999 which stipulates a prohibition on committing illegal acts, without rights and manipulating access to telecommunications networks or Wi-Fi telecommunications services to carry out their actions. Criminal threats under the provisions of Article 50 state that an offender who has fulfilled the elements of an offense may be subject to imprisonment for a maximum of 6 years and/or a fine of up to Rp. 600,000,000.00 (six hundred million rupiah). The two threats to these articles are strengthened by the words in Article 59 of Law 36/1999 which states that the offenses in Articles 47 and 50 are crimes. Regarding the actions that led to the occurrence of

[19] Yudo Widiyanto. "Penyelenggaraan Jasa Internet Ilegal Marak". Kontan.co.id, https://www.google.com/amp/s/amp.kontan.co.id/news/penyelenggara-jasa-internet-ilegal-marak--1, (Diakses pada 3 Oktober 2022).

crime, in this case the operation of illegal Wi-Fi telecommunications services, according to Simons, this means that the actions that have been committed can be punishable by crime, against the law, and have a relationship to mistakes by people who are capable of being responsible.[20] Meanwhile, to see criminal responsibility as the problems that have been described, it is necessary to look at the relationship between the nature of the mistake or inner attitude with the perpetrator's actions (mens rea with actus reus).

As an example of a case that occurred in Pacitan, a man was arrested by the police for providing a Wi-Fi service that he legally obtained from another party by withdrawing some money from that other party.[21] This action was carried out by using the same Internet Network (IP Address/Network Bandwidth) from a legal ISP illegally and without permission and then spreading it to other parties. In carrying out his actions, the perpetrator legally purchased an internet network with a bandwidth of 90 Mbps from PT Telkom Indonesia at a cost of Rp. 1,300,000 (one million three hundred thousand rupiah) per month. From purchasing the internet network, the perpetrator made an offer to the victims as many as 96 customers who used his services. Users of these illegal internet services are charged a fee of Rp. 165,000 (one hundred sixty-five thousand rupiah) per month. The fees charged are not only limited to monthly service

[20] Moeljatno. *Asas-asas Hukum Pidana*. (Jakarta: Rineka Cipta, 2019), 61-62.

[21] Galuh Putri Riyanto. "Pria di Pacitan Ditangkap karena Jual WiFi Ilegal, Bagaimana Aturan Hukumnya?". Kompas.Com. https://tekno.kompas.com/read/2022/04/12/09010067/pria-di-pacitan-ditangkap-karena-jual-wifi-ilegal-bagaimana-aturan-hukumnya?page=all. (Diakses 30 September 2022).

fees, but the victims, who are as many as 96 customers, are required to pay an installation fee to the perpetrator with a fee charged for each installation of Rp. 1,500,000 (one million five hundred thousand rupiah). From this, in addition to the perpetrators not doing permission to PT. Telkom Indonesia (Indihome) as an ISP, actors have also reaped economic benefits.[22] In the terms and conditions section, it is stated that for a new Indihome installation fee, a fee of IDR 150,000 (one hundred and fifty thousand rupiah) will be charged after the Indihome service device installation process is complete and this price does not include Value Added Tax (VAT). . From the comparison of the installation costs, it is very clear that the actions carried out by the perpetrators are very profit oriented. When compared to the installation costs themselves, the perpetrators set a price that was very much different from the price that should be paid by the victims if they used a legal ISP, with a price ratio of 1:10. Another interesting thing from the Indihome terms and conditions page states that customers are prohibited from reselling either part or all of Indihome services, and are also prohibited from transferring, changing any Indihome network and services.[23] Referring to these provisions,

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22 Slamet Widodo, Jual Wifi Ilegal, Warga Pacitan Ini Mengaku Tarik Biaya Pemasangan Rp 1,5 Juta, Kompas. Com, https://regional.kompas.com/read/2022/04/06/110040678/jual-wifi-ilegal-warga-pacitan-ini-mengaku-tarik-biaya-pemasangan-rp-15?page=all. (Diakses pada 11 Oktober 2022).

23 Indihome. *"Indihome | Daftar Regional 4". 2022. Indihome.Co.Id.* *https://www.indihome.co.id/landingpage/regional4/promo-spesial?utm_source=MDM-TREG04&utm_medium=Remarketing_SEM&utm_campaign=RemarketingPromoSpesial_SEM&gclid=CjwKCAjwqJSaBhBUEiwAg5W9p-4iYnNjp4uEt8C0SickkYPA4rmsahF16QX_oJr5hvqqDiAPYl0qJhoCTP4QAvD_BwE#*. (Diakses pada 11 Oktober 2022).

the actions taken by the perpetrator also violated the terms and conditions agreed upon by Indihome ISP service users.

The 96 victims who received the illegal Wi-Fi network did not get the internet bandwidth as promised because the perpetrators only had 90 Mbps of bandwidth which would be shared equally among 96 other people, so that each of them only received about 0.8 Mbps of network bandwidth. To be able to spread illegal Wi-Fi, perpetrators use tools that have been designed and are subject to installation fees and monthly fees. Of course, the telecommunications equipment provided by the actors is not certified as regulated in the provisions of Article 34 Government Regulations 46/2021 which of course cannot be guaranteed for its safety or quality standards regulated by the regulation. From the actions committed by the perpetrators, the total profit generated by the perpetrators is around IDR 15,000,000 (fifteen million rupiah) per month.[24] With the costs incurred by Illegal ISP operators in Pacitan, in addition to losses in the form of inappropriate network bandwidth, uncertified equipment that does not guarantee the technical standards of the equipment that should be provided, the costs incurred are not as they should be when compared to the provision of Wi-Fi telecommunications services. Victims also cannot get aftersales services, for example: complaining to service providers when there are problems with slow Wi-Fi telecommunication networks or when data leaks occur caused by ISPs. Even if these

[24] *Loc.cit*, Galuh Putri Riyanto, Galuh Putri Riyanto. "Pria di Pacitan Ditangkap karena Jual WiFi Ilegal, Bagaimana Aturan Hukumnya?". Kompas.Com. https://tekno.kompas.com/read/2022/04/12/09010067/pria-di-pacitan-ditangkap-karena-jual-wifi-ilegal-bagaimana-aturan-hukumnya?page=all. (Diakses 30 September 2022).

problems occur, of course the things that are expected by consumers to be able to use Wi-Fi telecommunication services properly both in terms of speed surfing the internet or network security that has been tested by quality standards, are not fulfilled as they should be obtained by 96 victims of the illegal network recipients.

Based on the illegal ISP incident, it shows that the actus reus in this case is the act of spreading Wi-Fi illegally and without permission, then the mens-rea is in the form of the goal of gaining profits from imposing installation fees and monthly fees to the victims which generate a profit of approx. 15.000.000 (fifteen million rupiah) per month. Simons also stated that accountability in crime needs to look at the psychological state of the perpetrator with the actions committed by the perpetrator and related to his actions can be reproached or not.[25] This is also in line with the negative formulation of the article in the Criminal Code article 44. The article does not explain the ability to be responsible but explains the inability to be responsible by the perpetrator. An important point based on the formulation of Article 44 of the Criminal Code describes that to be able to determine the ability of a perpetrator to be responsible it is determined by the judge in a court decision based on evidence which states that psychologically the perpetrator is unable to be responsible. A person can be declared responsible if he is found guilty, as in the legal fiction "Geen Straft Zonder Schuld (no

[25] Eddy O. S. Hiariej, *Prinsip-Prinsip Hukum Pidana Edisi Revisi* (Yogyakarta: Cahaya Atma Pustaka, 2019), 156.

crime without fault)". According to VOS, he describes errors based on three characteristics or elements including:[26]

1. Be accountable.
2. The psychological relationship between the perpetrator and the action committed in this case is related to intentional/negligence.
3. There is no excuse for criminal penalties.

Thus, based on these matters the formulation in the provisions of these articles is liability based on fault or responsibility based on errors. Article 47 and Article 50 of Law 36/1999 state that a person can be punished if he violates the provisions contained in the formulation of the article. The mistakes made by the perpetrators in the form of spreading Wi-Fi illegally were contrary to the provisions of Law 36/1999 and other implementing regulations, for their actions caused losses to other parties, namely victims and legal ISPs whose services were manipulated. As stated by Simons that criminal liability can be carried out if the act can be reproached. This is reinforced by the provisions in article 59 of Law 36/1999 which states that violations of articles 47 and 50 of Law 36/1999 are crimes. As in the example of the case in Pacitan, the reprehensible nature of the act can be seen from the violation of rights committed by the perpetrator against the victim who suffered a loss in the form of qualified Wi-Fi service rights and lost economic rights for legal ISPs. Violation of these rights is the basis that the actions committed by the perpetrators can be reproached because of

[26] *Op.cit*, Eddy. O.S Hiariej, 162.

mistakes, causing losses, there is a relationship between the act and the consequences.[27]

According to the Chairman of the Internet Service Providers Association (APJII) Muhamad Arif, business schemes carried out by illegal ISPs can be free from criminal threats as stipulated in the provisions of Article 47 and Article 50 of Law 36/1999. Where resellers of Wi-Fi telecommunication services can work together with legal ISP operator license holders. It is explained in Government Regulations 46/2021 that regulates resellers of Wi-Fi telecommunications services in the eleventh part of Article 31 paragraph (5) that resellers can be implemented with a pattern of cooperation that has been agreed upon by legal ISPs with executors of reselling Wi-Fi telecommunications services. stated in the form of a cooperation agreement. From the statement of the article, if it is related to the case that occurred in Pacitan. The provision of illegal Wi-Fi telecommunications services cannot be subject to criminal penalties as regulated in Law 36/1999 article 47 and article 50, if before deploying the internet network a cooperation agreement has been entered into as stated in the provisions of Government Regulations 46/2021 article 31 paragraph (5). From the cooperative agreement scheme, of course, it provides logical consequences for resellers to take part and be responsible for providing aftersales services if in the implementation of Wi-Fi telecommunications services there are problems experienced by customers of Wi-Fi telecommunications services.

27 M. Lukas, "Fault Liability, Tort Law of the European Community, Tort and Insurance Law", Springer, Vienna, 23, (2008): 20.

Conclusion

To become the operator of Wi-Fi telecommunications services based on Law 36/1999, it is necessary to obtain a permit from the Minister. From the formulation of the regulation, if the ISP or Wi-Fi reseller does not have a license as stipulated in Law 36/1999, then it is said to be an illegal ISP. As for the criminal liability imposed on ISPs and illegal Wi-Fi resellers, it has been regulated in Article 47 of Law 36/1999 which carries a maximum imprisonment of 6 years and/or a maximum fine of Rp. 600,000,000.00 (six hundred million rupiah). Other problems that can be imposed are in the form of unlawful acts. Such actions may also be subject to the provisions of Article 50 of Law 36/1999 which stipulates a prohibition on committing illegal acts, without rights and manipulating access to telecommunications networks or Wi-Fi telecommunications services to carry out their actions. Criminal threats under the provisions of Article 50 state that an offender who has fulfilled the elements of an offense may be subject to imprisonment for a maximum of 6 years and/or a fine of up to Rp. 600,000,000.00 (six hundred million rupiah). The two threats to these articles are strengthened by the words in Article 59 of Law 36/1999 which states that the offenses in Articles 47 and 50 are crimes.

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