



The Role of The Notary to Prevent Money Laundering Actions

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ABSTRACT

The role of a notary in preventing money laundering is by reporting to the PPATK when he finds out that there is a suspicious financial transaction in connection with the deed he made. The position of a Notary as a reporter in the event of a suspicious financial transaction as an effort to prevent money laundering does not violate the principle of confidentiality of office, instead it is an obligation for the Notary in applying the precautionary principle. The notary as the reporting party is an implementation of his obligations regulated in UUJN Article 16 paragraph (1) point a, namely acting in a trustworthy and honest manner. Notaries are appointed by the State to serve the public in the field of civil law, therefore the Notary must also take care that the State is not harmed by efforts to disguise the proceeds of crime, hereby the Notary is subject to higher interests. This is intended so that the Notary does not get involved in money laundering cases, because they are considered to have contributed to the commission of a crime.

Keywords: Role of Notary, Preventions of ML, Profesionalism and Maintaining Position Secrets

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1. INTRODUCTION

In several cases of transfer of land rights which are currently being handled by investigators, it is not easy to uncover them in ordinary criminal acts, except through money laundering crimes. The dimension of crime always develops following the dynamics of the times and technological advances. Money laundering crimes or "money laundering" aims to protect or cover up a criminal activity that is the source of funds or money to be "laundered or cleaned". Criminal acts are referred to as criminal acts of tax evasion (illegal tax or tax avasion), illicit trade in narcotics (drug trafficking). Thus, the trigger for the crime of money laundering is actually a crime. Money laundering as described in Article 1 point 1 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering (hereinafter referred to as the TPPU Law)¹ is any act that fulfills the elements of a crime in accordance with the provisions of the Law Invite this. The Government of Indonesia views money laundering as a crime by considering that the crime of money laundering does not only threaten economic stability and the integrity of the financial system, but can also endanger the foundations of social, national and state life based on the Pancasila and the 1990 Constitution of the Republic of Indonesia. 1945. In principle, ML is an attempt to hide or disguise the origin of assets obtained from various criminal acts so that it cannot be traced where the source of the acquisition came from.

Money laundering or money laundering is an attempt by criminals to hide or disguise the origin of assets obtained from criminal acts by inserting proceeds of crime into the financial system and particularly in the banking system both at home and abroad with the intention of avoiding from lawsuits for crimes that have been committed by securing the proceeds of crime. Yunus Husein, (2018) In general, there are several reasons why money laundering is being fought and declared a criminal act, namely: First, the influence of money laundering on the financial and economic system is believed to have a negative impact on the world economy, sharp fluctuations in exchange rates and interest rates are part of the negative consequences of laundering money. With these various negative impacts it is believed that money laundering can affect the world economy. Second, declaring money laundering a crime will make it easier for law enforcement officers to confiscate proceeds of crime which are sometimes difficult to confiscate, for example assets that are difficult to trace, or have been transferred to third parties. The eradication of criminal acts has shifted its orientation from taking action against the perpetrators towards confiscating the proceeds of the crime.

Third, by declaring money laundering as a crime and by having a transaction reporting system of a certain amount and suspicious transactions, this makes it easier for law enforcers to investigate criminal cases up to the figures behind them. Whereas the criminalization basis for the crime of money laundering as referred to in Article 3 and Article 4, is a derivation of the provisions of the United Nations Convention Against Transnational Organized Crimes (UNTOC) as ratified by Indonesia through Law No. 5 of 2009. The provisions referred to in UNTOC are only contains the element of "knowing or reasonably suspecting it". Next, in Article 3 and Article 4, above, related to the existence of the element, "hiding or disguising", there is a difference in criminal law which is a quite significant difference. If in Article 3 it is preceded by the phrase "with the aim", while in Article 4 the element "to hide or disguise" is not preceded by any phrase. Based on these differences, at least it can be stated that in Article 3, the element of "concealing or disguising" represents the offender's mens rea, because the phrase with the aim is another form of qualifying or formulating the element of intent in an offense [Rammelinck, \(2003\)](#). In other words, as an action and consequence that is really the will and conviction of the actor, so that there must be a purpose attached to the inner attitude of the actor that is to be realized through actions prohibited in the article (such as placing, transferring, diverting and so on) [E.Y. Kanter, S.R. Sianturi, \(2012\)](#).

Article 4, the element "hiding or disguising" represents the actus reus of the perpetrator, because in the absence of the phrase "with a purpose", it means that "hiding or disguising" is not an intention attached to the inner attitude of the perpetrator to be realized, but only requires the existence of a actual actions committed by the perpetrator. Meanwhile, Article 5 in its entirety is: "Anyone who receives or controls the placement, transfer, payment, grant, donation, safekeeping, exchange or use of assets that he knows or reasonably suspects are the result of a crime as referred to in Article 2 paragraph (1)) shall be punished with imprisonment for a maximum of five years and a fine of up to Rp. 1,000,000,000.00 (one billion rupiah). The anti-money laundering regime which was originally regulated in Law No. 15 of 2002, was then amended by amendments and added to Law No. 25 of 2003, and finally changed in its entirety by the promulgation of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (hereinafter referred to as the TPPU Law) actually shows a distortion or transformation in the penal policy regarding the prevention and eradication of ML in Indonesia. In general, a penal policy is an arrangement or rational arrangement of efforts to control crime by the community. [Arief, \(2005\)](#) The orientation of the penal policy is expressed at least to realize; the direction of reforming criminal law, efforts to prevent criminal acts and methods of investigation, prosecution, trial and execution of crimes must be carried out [B. N. Arief, \(2010\)](#).

The ultimate goal of the penal policy is to realize community protection in order to realize social welfare and equality. So, why is a notary considered to play an important role in eradicating the crime of money laundering? The new regulation requires Notaries to become reporters of money laundering cases. Based on the mandate of PP Number: 61 of 2021 against 7 Notaries are required to identify service users, store service user data and make classifications, and in this case the Notary acts as a reporter for Suspicious Financial Transactions (TKM) based on their classification. Notaries are public officials appointed by the State to provide services to the public in the field of civil law. In connection with the duties of his position, a Notary is considered as a party who knows information about a legal action that will be set forth in the form of an authentic deed. And it does not rule out the possibility that through these legal actions there are attempts to commit money laundering crimes.

There are several studies that are similar to the author's research. First, the research conducted by [Prabaswara Tunggadewi, Padmasari, \(2021\)](#) conduct research about Peran Serta Notaris Dalam Mencegah Tindak Pidana Pencucian Uang, The research of his research, shows that The role of a notary in preventing money laundering is by reporting to the PPATK when he finds out that there is a suspicious financial transaction in connection with the deed he made. Second, [Risqullah, \(2022\)](#) conducted research on Peran Notaris Cegah Transaksi Illegal Melalui Goaml. The purpose of this study is to determine the role of a notary in the reporting system for submitting suspicious transactions and illegal transactions and to determine the role of a notary in this prevent illegal transactions through Goaml.

The position of a Notary as an honorable position tasked with serving the public in the field of civil law should not be used as a means of money laundering by money laundering offenders, therefore it is necessary to have provisions governing the position of a Notary as a reporting party who is obliged to report suspicious financial transactions committed by criminals. parties who use the services of a Notary. For this reason, professionalism is needed in carrying out the duties and positions of a Notary, in line with this statement Abdulkadi Muhammad argues that a Notary must have professional behavior (professional behavior) [Supriaadi, \(2006\)](#). The purpose of this study is to determine the role of a notary in preventing money laundering.

2. METHOD

The Research method concerning the Role Of The Notary To Prevent Money Laundering Actions is a type of normative legal research, namely research that refers to laws and regulations that apply well in Indonesia. This research can also be said as library research. In this study, the legal materials used were collections from a literature study. The process of collecting legal materials used in this research is a literature review by conducting a search of the governing norms about the role of a Notary to prevent illegal transactions through. Then an in-depth analysis was carried out in order to be able to answer some of the problem formulations taken in this study. The analysis process in this study uses a descriptive analysis by presenting a case in a decision which is the object of this research so that the circumstances and conditions are clear condition. This analysis is also one of the efforts to solve the problems found, and determine the relationship between the problems that have been found in order to find out how to solve them.

3. THE ROLE OF THE NOTARY TO PREVENT THE CRIME OF MONEY LAUNDERING (TPPU)

The author is of the opinion that in connection with the issuance of Government Regulation (PP) Number 61 of 2021, Amendments to Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes which were stipulated on April 13, 2021 and took effect on April 14, 2021, the government expects notaries to have "The Notary's Participation in Preventing Money Laundering Crimes". However, according to the author's opinion, clear guidance is needed so that it is not counterproductive to existing practices. As for the opinions of professionals such as Notaries, Public Accountants, the government considers that they are often used by money laundering actors to obscure the origin of money originating from criminal acts, this is not entirely true. Because on the other hand, the government hopes that these professions must become gatekeepers for any attempts at money laundering that occur in the financial industry. The burden of responsibility given is so great.

According to the Civil Director of the Directorate General of General Legal Administration (Ditjen AHU) of the Ministry of Law and Human Rights (Kemenkumham), Santun Maspari Siregar, SH, MH that the role of the Notary is very large in the Principle of Recognizing Beneficial Ownership of corporations as a form of early prevention of ML and TF. This is because the Notary is the front guard in the registration of the Principle of Recognizing Beneficial Ownership of Corporations Santun Maspari Sirega (2022). According to the Civil Director of the Directorate General of General Legal Administration (Ditjen AHU) of the Ministry of Law and Human Rights (Kemenkumham), Santun Maspari Siregar, SH, MH that the role of the Notary is very large in the Principle of Recognizing Beneficial Ownership of corporations as a form of early prevention of ML and TF. This is because the Notary is the front guard in the registration of the Principle of Recognizing Beneficial Ownership of Corporations.

Furthermore, the Director General of AHU, Cahyo Rahadian Muzhar, at the I National Working Meeting, Ikanot Unpad, Bandung on (10/3/2018), reminded that notaries in carrying out their positions always act in a trustful, honest, fair and impartial manner and safeguard the interests of the parties involved. related to legal actions. Besides that, notaries are also expected to be able to support government programs for their participation in FATF membership, one of which is participating in government programs in preventing Money Laundering Crimes (TPPU) and not Terrorism Funding Crimes. In this case the notary must apply the concept of Know Your Customer (KYC) who is the beneficiary or Beneficial Ownership (BO) of the client requesting a notarial deed. Another thing was also conveyed so that the notary always follows every development of the applicable laws and regulations, so that the notary does not miss information and always adheres to the legal rules that have been set by the government. Notaries as legal advice must verify state documents that are legally valid.

Decision of the Expanded Plenary Meeting of the Central Board of the Indonesian Notary Association in Balikpapan, January 12, 2017, in the third appendix number five, mentions 11 matters regarding the Notary Reporting Obligation for Suspicious Financial Transactions to PPATK. Reporting Obligations by Notaries to PPATK in connection with Suspicious Financial Transactions. Based on PP 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes (PP 43/2015) as the implementation of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes, in Article 3 the Notary is designated as one of the Reporting Parties.

As a Reporting Party, a notary has two obligations, namely applying the principle of recognizing service users and is required to submit Suspicious Financial Transactions (TKM) reports to PPATK for the benefit of or for and on behalf of Service Users, regarding: Purchase and sale of property, Management of money, securities, and / or other financial service products, Management of current accounts, savings accounts, deposit accounts, and or securities accounts, Operation and management of companies; and or Establishment, purchase

and sale of legal entities (Article 8 paragraph 1 PP 43/2015). So, in accordance with the provisions of Article 28 and Article 45 of the Money Laundering Law, the performance of reporting obligations by a notary is exempt from the confidentiality provisions that apply to notaries and in the exercise of their authority, the PPATK does not apply the confidentiality provisions stipulated in UUJN and the Notary's Code of Ethics, unless there is an element of abuse of authority, the notary cannot be prosecuted both civilly and criminally for reporting obligations under the TPPU Law (Article 29 of the TPPU Law).

Based on these matters, the recommendations or similar attitudes of INI, regarding the notary as the Reporting Party, the provisions of Article 8 PP 43/2015 will apply. if the notary actively participates in managing (as the authorized party) to carry out an activity outside of carrying out his/her duties or not in accordance with the authority as a notary determined by UUJN. for example :¹² Based on these matters, the recommendations or similar attitudes of INI, regarding the notary as the Reporting Party, the provisions of Article 8 PP 43/2015 will apply.

if the notary actively participates in managing (as the authorized party) to carry out an activity outside of carrying out his/her duties or not in accordance with the authority as a notary determined by UUJN. for example :

- a) The notary receives money and power of attorney from the prospective buyer to pay a sum of money to the seller in the case of a property sale and purchase transaction, or conversely receives power of attorney from the seller to receive money from the prospective buyer;
- b) Receiving deposit of money to be paid to certain parties related to transactions made, performed or before a Notary;
- c) Position yourself to act in the interests of or for and on behalf of other Service Users. So that if the Notary does these things, the Notary is subject to the provisions as a Reporting Party.

For this reason, as a unified attitude, the notary must avoid or not be involved in Suspicious Financial Transactions, namely by:

- a) Do not position yourself as acting for and on behalf of service users;
- b) Write down the actual transaction price in the sale and purchase of property, do not grant the request of the parties to include the price of the Sales Value of the Tax Object (NJOP) or other prices that are not the actual price where the notary knows and helps determine/manipulate the transaction price with the intention of reducing the amount of tax BPHTB and PPH that must be paid by the parties;
- c) Not making a deed or agreement that has the intent and purpose or contains the intent of the nominee agreement in it;
- d) Participate in designing/assisting appearers to take legal action aimed at obscuring or disguising an ownership of movable or immovable objects;
- e) Not making receipts or cash receipts outlining the type of work and the amount of costs where the work and costs are the authority of other parties. What is included in the receipt/receipt of money is only fees or notary services;
- f) Be careful if there are large amounts of cash/transfer transactions, especially those that do not match the buyer's profile. Can be covered by making a statement regarding the validity of the purchase money signed by the buyer
- g) It is recommended that the notary not accept the deposit of BPHTB and PPH payments to the notary's Personal Account. As long as the notary avoids things as mentioned above, then the notary is not/is not a party who is obliged to make a report.

So, what about the obligation to keep everything secret regarding an exception, namely with the phrase, unless the law determines otherwise. With these exceptions, provisions regarding office secrecy can be deviated when there is a law order. Law No. 8 of 2010 concerning TPPU, in Article 17 regulates which parties are required to report to the Financial Transaction Reports and Analysis Center (hereinafter abbreviated as PPATK). Because until now the question that has been raised by notaries is how then the authority of a Notary in relation to the Principle of Recognizing a Notary's Service User. Then, such as the obligations of a notary as a reporting party in connection with the application of the Principle of Recognizing Notary Service Users. Then, how is the legal protection for a notary as a reporting party in connection with the obligation to apply the Principle of Recognizing Notary Service Users.

According to Yunus Husein, due to the rise of money laundering offenders, of course, it has had a negative impact on various factors, including First, it undermines the integrity of financial markets because financial institutions (financial institutions) that rely on proceeds from crime can face liquidity risk. Second, disrupting the legitimate private sector with the actions of criminals using front companies to mix illicit money

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First, it undermines the integrity of financial markets because financial institutions (financial institutions) that rely on proceeds from crime can face liquidity risk. Second, disrupting the legitimate private sector with the actions of criminals using front companies to mix illicit money with legitimate money. So by joining professional groups including notaries as PPATK reporting parties, professional groups will have their professionalism protected because it is no longer possible for these professions to be misused by unscrupulous persons as facilitators or means of ML crimes. For that, the notary inevitably has to recognize the profile of the service user. They must also avoid or be obliged to report customers whose transactions are classified as suspicious or who transact in cash worth 500 million rupiah and above. As gatekeepers, the professional community agrees to help in the transparency effort. However, it is necessary to pay attention to conflicts with other regulations, especially the principles governing the confidentiality of customer data which so far have been regulated in various regulations, even at the level of the law. In a notary, there is a Notary Law that regulates the confidentiality of data that cannot be opened arbitrarily.

Professor of the Faculty of Law, Padjadjaran University, Bandung, Romli Atmasasmita, believes PP No. 43 of 2015 is difficult to implement in the field. Moreover, there is a counter sanction to the Notary. On the one hand, notaries are required to report, but on the other hand, no incentives are given to notaries who have reported. Based on PPATK Regulation No. 11 of 2016 article 23 paragraph 1 limits the period for reporting suspicious transactions from appearers to three days from the time they are known. In addition to the short time period, there is still the threat of administrative sanctions that can be imposed by PPATK on notaries. Starting from a written warning; public announcement of actions or sanctions; up to an administrative fine.

There is no mention of the amount of fines that can be imposed. On the other hand, the notary as the reporting party in the prevention and eradication of the crime of money laundering creates legal problems, when it is associated with the provisions concerning the "Principle of Recognizing Notary Service Users", there is even a contradiction between keeping secret anything known by the notary through the deed he made and the obligation to report. to the PPATK, if there is a suspicious financial transaction, in connection with the obligation to apply the Principle of Recognizing Notary Service Users.

IV. CONCLUSION

- 1) In cases of transfer of land rights using a notary's personal account should be avoided. The position of a notary as a reporter in the event of a suspicious financial transaction as an effort to prevent money laundering does not violate the principle of confidentiality of office, instead it is an obligation for the notary to apply the precautionary principle. The notary as the reporting party is an implementation of his obligations regulated in UUJN Article 16 paragraph (1) point a, namely acting in a trustworthy and honest manner. Notaries are appointed by the State to serve the public in the field of civil law, therefore the Notary must also take care that the State is not harmed by efforts to disguise the proceeds of crime, hereby the notary is subject to higher interests. This is intended so that the notary does not get involved in money laundering cases, because they are considered to have helped the commission of a crime.
- 2) The role of a notary in preventing money laundering is by reporting to the PPATK when he finds out that there is a suspicious financial transaction in connection with the deed he made. The means of reporting is through the GRIPS application, in addition to establishing a Corporation, a Notary is required to apply the principle of knowing the beneficial owners of a corporation. Implementation of the application of the principle of knowing the beneficial owner is by filling out an online form when establishing a corporation. Reporting of suspicious financial transactions in order to prevent the occurrence of money laundering crimes must also be supported by relevant evidence. Notaries must be observant and thorough in assessing the fairness of a transaction to be carried out by service users. Notaries should not hesitate to ask for supporting data such as balance sheets and so on.
- 3) The notary must also be able to properly convey to the service user that the principle of recognizing the beneficial owner is a form of good faith from the service user.

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