

The Role of a Notary in Preventing Money Laundering

I Made Pria Dharsana¹, Indrasari Kresnadjaja², I Putu Lingga Dhananjaya³,
Rizky Mustika Rini⁴.

dharsanaimade@yahoo.co.id¹, notaris_ppat@indrasari.co.id²,
lingga_dhananjaya@yahoo.com³, rizky.mustika@ui.ac.id⁴

Faculty Of Law, Warmadewa University, Bali.

Article Info

Received: 2023 – 05 - 27

Revised: 2023 – 10 - 12

Accepted: 2023 – 12 - 30

Keywords:

Notary Role;
Prevention of TPPU;
Professionalism and
Keeping Office Secrets.

Abstract

The Notary's participation in preventing money laundering is to report to PPATK when they know of suspicious financial transactions related to the deed they made. The Notary's position as a whistleblower in the event of suspected suspicious financial transactions as an effort to prevent money laundering has not violated the principle of confidentiality of position. Instead, the Notary must apply the precautionary principle. Notary as the reporting party is an implementation of its obligations stipulated in Article 16 paragraph (1) point an of UUJN, namely acting trustfully and honestly. The State appoints notaries to serve the public in civil Law. Therefore Notaries must also take care not to let the State be harmed by attempts to disguise money from criminal acts. Notaries with this submit to higher interests. This is so that Notaries do not get involved in money laundering cases because they are considered to help carry out a criminal act

1. Introduction

The dimension of crime always develops following the dynamics of the times and technological advances. Money laundering 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 offenses include tax evasion (illegal tax or tax evasion) and illicit trafficking of narcotics (drug trafficking). Thus, the trigger of money laundering crimes is a criminal act.

Money laundering, as described in Article 1 point 1 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering (after this referred to as the TPPU Law),¹ is all acts that meet the elements of a criminal action following the provisions of this Law. The Indonesian government considers money laundering a criminal offense by considering that money laundering threatens economic stability and financial system integrity and can endanger the joints of life in society, nation, and State based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

¹ Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang (selanjutnya disebut dengan Undang-Undang TPPU)

Money laundering is an attempt by criminals to hide or disguise the origin of wealth obtained from criminal acts by entering assets resulting from criminal acts into the financial system and especially in the banking system both at home and abroad to avoid lawsuits for crimes that have been committed by securing assets resulting from crime.² In general. There are several reasons money laundering is combated and declared a criminal act: First, money laundering in the financial and economic systems is believed to hurt the world economy, and sharp fluctuations in exchange rates and interest rates are part of the negative consequences of money laundering. With the various negative impacts, it is believed that money laundering can affect the world economy. Second, being declared money laundering as a criminal offense will make it easier for law enforcement to confiscate the proceeds of criminal acts that are sometimes difficult to seize, such as assets that are difficult to trace or have been transferred to third parties. With this, the eradication of criminal acts has shifted from cracking down on the perpetrators to confiscating the proceeds of criminal acts.

Third, by being declared money laundering a criminal offense and with a system of reporting transactions in a certain amount and suspicious transactions, it is easier for law enforcement to investigate criminal cases to the figures behind them.

The basis for the criminalization of money laundering, as stipulated in Article 3 and Article 4, is a derivation of the provisions of the United Nations Convention Against Transnational Organized Crimes (UNTOC) as specified by Indonesia through Law No. 5 of 2009. The conditions referred to in the UNTOC only contain elements of "knowing or reasonably suspecting." Furthermore, in Article 3 and Article 4 above, regarding the existence of elements, "concealing or disguising" a difference in criminal Law is quite a significant difference in his presence. If Article 3 is preceded by the phrase "with purpose," in Article 4, the element "conceal or disguise" is not preceded by any words. On this distinction, it can at least be stated that in Article 3, the aspect "conceal or disguise" represents the perpetrator's men's rea because the phrase with the purpose is Another form of qualifying or formulating intentional elements in delicacies.³ Or in other words, as an action and effect that is the will and conviction of the perpetrator so that there must be an inherent purpose to the attitude the mind of the perpetrator to be realized through the acts prohibited in the Article (such as placing, transferring, transferring and so on).⁴

² Yunus Husein , dan Roberts K., *Tipologi Dan Perkembangan Tindak Pidana Pencucian Uang*, Rajagrafindo Persada, Jakarta , 2018, h. 39, hal. 40

³ Jan Rammelmink, *Hukum Pidana, Komentar Atas Pasal-pasal Terpenting Dari Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana Indonesia* (Jakarta: Gramedia Pusataka Utama, 2003), hal 161

⁴ E.Y Kanter dan S. R. Sianturi, *'Asas-Asas hukum Pidana di Indonesia dan Penerapannya'*, Storia Grafika, Jakarta, 2002, hlm 183

Meanwhile, in Article 4, the element "conceal or disguise" represents the actus reus of the perpetrator because the absence of the phrase "with purpose" means that "conceal or disguise" is not an intention attached to the inner attitude of the perpetrator to be realized, but only requires a real action done by the perpetrator. Meanwhile, the full text of article 5 is: "Every person who receives or controls the placement, transfer, payment, grant, donation, custody, Exchange or exchange of assets that are determined or reasonably suspected to be the result of a criminal act as referred to in Article 2 paragraph (1) is punishable by crime imprisonment for a maximum of five years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)

The anti-money laundering Rezin which was regulated initially in Law No. 15 of 2002, then amended by amending and added to Law No. 25 of 2003, and finally amended in its entirety with the promulgation of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering (after this referred to as the TPPU Law) shows a distortion or transformation in penal policy regarding the prevention and eradication of trafficking in Indonesia. In general, the disciplinary procedure is a regulation or rational preparation of crime control efforts by the community.⁵ The orientation of the penal policy is developed s not to realize; The direction of criminal law reform, measures to prevent criminal acts, and the way of investigation, prosecution, trial, and unlawful implementation must be implemented.⁶ The ultimate goal of the penal policy is to realize community protection to realize social welfare and equality.

So, why is Notary Public considered to play an essential role in eradicating money laundry crimes? The new regulation requires Notaries to be whistleblowers of money laundering criminal cases. Based on the mandate of PP Number: 61 of 2021, against⁷ Notaries are required to recognize service users, store service user data, and make classifications, and in this case, Notaries act as reporters of Suspicious Financial Transactions (TKM) based on their category. Notaries are general officials appointed by the State to provide services to the public in civil Law. In connection with the duties of his position, a Notary is considered a party who knows information about a legal action that will be stated in the form of an authentic deed. And it does not rule out the possibility that through these legal acts, there are efforts to commit money laundering crimes.

The position of 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

⁵ Muladi dan Barda Nawawi Arief, *Teori-Teori dan Kebijakan Hukum Pidana (Alumni Bandung)*, 2005, hlm 157

⁶ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana Perkembangan penyusunan Konsep KUPH Baru (Kencana, Jakarta, 2010)*, hal 25 - 26

laundering by money laundering criminals. Therefore there needs to be a regulation regarding the profession of Notaris as a reporting party who is obliged to report suspicious financial transactions carried out by individuals who use the services of Notaris. For this reason, professionalism is necessary for carrying out the duties and positions of Notaries. As Abdulkadi Muhammad argued, Notaries must have professional behavior.⁷

2. Research Method

The research method used standardized juridical examination through a literature study supported by additional information combining primary, secondary, and tertiary legal materials. The methodology used is the methodology referring to the Law. The data collected was checked using qualitative normative analysis.

3. Results and Discussion

The Role of Notaries to Prevent Money Laundering (TPPU)

The author argues that the relationship with the birth of Government Regulation (PP) Number 61 of 2021,⁸ Amendments to Government Regulation Number 43 of 2015 is against the Reporting Party in the Prevention and Eradication of Money Laundering Crimes stipulated on April 13, 2021, and Effective April 14, 2021. The government expects notaries to have a "Notary Participation in Preventing Money Laundering Crimes." However, according to the authors, there is a need for clear guidance so as not to be counterproductive to existing practices. As for the opinions of professionals such as Notaries, Public Accountants, to Advocates, it is considered that money launderers often use the government to obscure the origin of money derived from criminal acts is not entirely true. Because on the other hand, the government expects these professionals to be gatekeepers for any attempt at money laundering in the financial industry.

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 that⁸ The Role

⁷ Supriaadi, *Etika dan Tanggungjawab Profesi Hukum Di Indonesia*, Jakarta Sinar Grafika 2006, hal 50

⁸ Peraturan Pemerintah (PP) Nomor 61 Tahun 2021,⁸ Perubahan Atas Peraturan Pemerintah Nomor 43 Tahun 2015 tentang Pihak Pelapor Dalam Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang

Of Notary is huge on the Principle of Recognizing Beneficial Ownership of corporations as a form of early prevention of TPPU and TPPT. The reason is that the Notary is at the forefront of registering the Corporation's Principle of Recognizing Beneficial Ownership.

Furthermore, the Director General of AHU, Cahyo Rahadian Muzhar, at Rakernas I, Ikanot Unpad, Bandung, on (10/3/2018) ago, reminded that Notaris, in carrying out their positions, always act in a trustful, honest, fair, and impartial manner and safeguard the interests of parties related to legal actions. In addition, Notaris is 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 (TPPU) and not Terrorism Financing Crimes. In this case, Notaries must apply the concept of Know Your Customer (KYC), the beneficiary or Beneficial Owner (BO) of work as a Notary. Another thing is also conveyed that Notaries always follow every development of applicable laws and regulations so that notaries do not miss information and always stick to the legal rules set by the government—notaries, as legal advice, must verify legally valid state documents.

The Decision of the Plenary Meeting of the Central Board of the Indonesian Notary Association, which was issued in Balikpapan on January 12, 2017 ago, in the third annex number five, mentioned⁹ questions about Notary Reporting Obligations for Suspicious Financial Transactions to PPATK. Notary Reporting Obligation to PPATK in connection with Suspicious Financial Transactions. Based on PP 43 of 2015 concerning the Reporting Party in the Prevention and Eradication of Money Laundering (PP 43/2015) as an implementation of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering, in Article 3, the Notary is designated as one of the Reporting Parties.

As the Reporting Party, Notaries have two obligations, namely applying the principle of recognizing service users and must submit Suspicious Financial Transaction (TKM) reports to PPATK for the benefit of or for and on behalf of Service Users, regarding the Purchase and sale of property, Management of money, securities, or other financial service products, Management of current accounts, savings accounts, deposit

⁹ Santun Maspari Siregar, *Notaris Berperan Besar terhadap Pencehan TPPU*, <https://www.portal.ahu.go.id> (23 September 2022) diunduh 19.14 Wit

accounts, or securities accounts, Operation and management of the company; and or Establishment, purchase, and sale of legal entities(Article 8 paragraph 1 PP 43/2015). And so. By the provisions of Article 28 and Article 45 of the TPPU Law, the implementation of reporting obligations by Notaries is excluded from confidentiality provisions applicable to Notaries and in the exercise of their authority, confidentiality provisions stipulated in the UUJN and the Notary Code of Ethics are not applied, unless there is an element of abuse of power, Notaries cannot be prosecuted either civilly or criminally for reporting obligations under the TPPU Law (Article 29 of the TPPU Law).

Based on these matters, the recommendation or equality of attitude of INI, b related to the Notary as the Reporting Party The provisions of Article 8 PP 43/2015 will apply¹⁰ if the Notary actively participates in managing (as an authorized party) to carry out an activity outside of carrying out its duties or not by 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 event of a property sale and purchase transaction, or vice versa, receives power of attorney from the seller to receive money from the prospective buyer;
- b. Receive money deposits to be paid to certain parties related to transactions made, carried out, or before a Notary;
- c. Position yourself to act for the benefit of or for and on behalf of other Service Users. So that if the Notary does these things, the Notary is subject to provisions as the Reporting Party.

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

- a. Not position themselves to act for and on behalf of service users;
- b. Write down the actual transaction price in the sale and purchase of property, not grant the parties' request to include the Tax Object Selling Value (NJOP) price or other prices that are not the actual price where the

¹⁰ LAMPIRAN III KEPUTUSAN RAPAT PLENO PENGURUS PUSAT YANG DIPERLUAS IKATAN NOTARIS INDONESIA BALIKPAPAN, 12 Januari 2017), Soal Kewajiban Pelaporan oleh Notaris kepada PPATK sehubungan dengan Transaksi Keuangan Mencurigakan Pencucian Uang dan Tindak Pidana Pendanaan Terorisme

- Notary knows and helps determine/engineer the transaction price to reduce the amount of BPHTB and PPH taxes to be paid by the parties;
- c. Not make a deed or agreement that has a purpose and purpose or contains the purpose of the nominee agreement therein;
 - d. Also, design/assist the facing in carrying out law actions aimed at obscuring or disguising ownership of movable or immovable objects;
 - e. Do not make receipts or receipts of money by describing the type of work and the number of costs where the work and costs are the authority of other parties. What is included in the receipt/receipt of money is only the cost or service of Notaris only;
 - f. Be careful if significant cash transactions/transfers exist, especially those that do not fit the buyer's profile. Can be covered by making a Statement Letter about the validity of the purchase money signed by the buyer
 - g. It is recommended that Notaries do not accept BPHTB and PPH payment deposits to the Notary's Personal Account. As long as the Notary avoids the things mentioned above, the Notary is not / not as a party obliged to report.

So, how is the obligation to keep everything secret about containing an exception, namely by the existence of a phrase, unless the Law specifies otherwise? With these exceptions, the provision regarding office confidentiality can be stored when there is an order of the Law. Law No. 8 of 2010 concerning TPPU, in Article 17, regulates the parties required to report to the Center for Transaction Reporting and Analysis (after this, abbreviated as PPATK). Because until now, the question among Notaries is how then the authority of Notaris with the Principle of Recognizing Notary Service Users. Then, such as the obligation of the Notaris as the reporting party in connection with applying the Principle of Recognizing Notary Service Users. Then, how is the legal protection for notaries as reporting parties in connection with the obligation to use the Principles of Recognizing Notary Service Users?

According to Yunus Husein, the rise of money laundering criminals has a negative impact on various factors, including undermining the integrity of financial markets because financial institutions that rely on funds from crime can face liquidity risks. Second, it disrupts the legitimate private sector by criminals using front companies to mix illicit money with honest money.

Therefore, by joining professional groups, including Notaries as PPATK reporting parties, professional groups will be protected professionally because it is no longer possible for the profession to be misused by individuals as facilitators or means of trafficking crimes. For this reason, Notaries inevitably have to recognize the profile of their service users. They must also avoid or report customers whose transactions are classified as suspicious or who transact cash worth 500 million rupiahs and above. As gatekeepers, the profession agreed to help with the transparency effort. However, it should be noted that it conflicts with other regulations, especially the principles governing the confidentiality of customer data which have been regulated in various statutes, even set bylaws. In the profession, a Notary Law governs the confidentiality of data that cannot be opened arbitrarily.

Professor of the Faculty of Law, Padjadjaran University, Bandung, Romli Atmasasmita, believes that PP No. 43 of 2015 is challenging to implement. Primarily, there are countersanctions to Notaries. On the one hand, N notaries are required to report, but on the other hand, no incentive is given to Notaris who have notified. Based on Perka PPATK No. 11 of 2016, article 23, paragraph 1 limits the period of reporting suspicious transactions from the facer to three days since it is known. In addition to the short period, there is still the threat of administrative sanctions imposed by PPATK on Notaris, from a written reprimand and public announcements of actions or sanctions to administrative fines.

After all, there is no mention of the amount of fines that can be imposed. On the other hand, Notaris, as the reporting party in the prevention and eradication of money laundering crimes, poses legal problems when related to the provisions regarding the "Principles of Recognizing Notary Service Users" There is even a contradiction between keeping secret about everything known by the Notary through the deed it makes and the obligation to report to the PPATK, if there are financial transactions that suspicious, in connection with the duty to apply the Principles of Recognizing Notary Service Users.

4. Conclusion

- 1) The Notary's position as a whistleblower in the event of suspicious financial transactions as an effort to prevent money laundering does not violate the principle of confidentiality of place. Instead, the Notary

Public should apply the precautionary principle. Notary as the reporting party is an implementation of its obligations stipulated in Article 16 paragraph (1) point an of UUJN, namely acting trustfully and honestly. Notaries appoint notaries to serve the public in the field of Civil Law. Therefore Notaries must also take care not to be harmed by attempts to disguise money from criminal acts. Notaries with this submit to higher interests. This is so that Notaries do not get involved in cases of laundering because they are considered to help carry out a criminal act.

- 2) The Notary's participation in preventing money laundering is to report to PPATK when they know of suspicious financial transactions related to the deed they made. The means of reporting is through the GRPS application. In addition to establishing a Notary Corporation, it is mandatory to apply the principle of knowing the beneficial owners of a corporation. Implementing the direction of understanding the beneficial owner is to fill out an online form while establishing a corporation. Reporting suspicious financial transactions to prevent money laundering must also be supported by relevant evidence. Notaries must be observant and careful 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. The Notary can refuse to do the deed if it is considered unnatural.
- 3) Notaries must also be able to convey to service users that the principle of recognizing beneficial owners is a form of good faith from service users. So it is not interpreted as opening the financial confidentiality of service users.

References

Undang-undang

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris.

Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris.

Undang-Undang Nomor 8 Tahun 2010 Tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang.

Peraturan Pemerintah Nomor 43 Tahun 2015 tentang Pihak Pelapor dalam Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang.

Peraturan Presiden Nomor 13 Tahun 2018 tentang Penerapan Prinsip Mengenali Pemilik Manfaat Dari Korporasi Dalam Rangka Pencegahan dan Pemberantasan Tindak Pidana .

Peraturan Kepala Pusat Pelaporan Dan Analisis Laporan Keuangan 11 Tahun 2016 tentang Tata Cara Penyampaian Laporan Transaksi Keuangan Mencurigakan Bagi profesi.

Books and Journal

Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana Perkembangan penyusunan Konsep KUPH Baru (Kencana, Jakarta, 2010).

E.Y Kanter dan S. R. Sianturi, 'Asas-Asas hukum Pidana di Indonesia dan Penerapannya", Stora Grafika, Jakarta, 2002.

Jan Rammelmink, Hukum Pidana, Komentar Atas Pasal-pasal Terpenting Dari Kitab Undang-Undang Hukum Pidana Belanda dan Padananya dalam Kitab Undang-Undang Hukum Pidana Indonesia (Jakarta: Gramedia Pustaka Utama, 2003).

LAMPIRAN III KEPUTUSAN RAPAT PLENO PENGURUS PUSAT YANG DIPERLUAS IKATAN NOTARIS INDONESIA BALIKPAPAN, 12 Januari 2017), Soal Kewajiban Pelaporan oleh Notaris kepada PPATK sehubungan dengan Transaksi Keuangan Mencurigakan Pencucian Uang dan Tindak Pidana Pendanaan Terorisme.

Muladi dan Barda Nawawi Arief, Teori-Teori dan Kebijakan Hukum Pidana (Alumni Bandung), 2005.

Supriaadi, Etika dan Tanggungjawab Profesi Hukum Di Indonesia, Jakarta Sinar Grafika 2006.

Yunus Husein , dan Roberts K., Tipologi Dan Perkembangan Tindak Pidana Pencucian Uang. Rajagrafindo Persada, Jakarta , 2018.

Website

Santun Maspari Siregar, Notaris Berperan Besar terhadap Pencehan TPPU,
<https://www.portal.ahu.go.id> (23 September 2022) diunduh 19.14 WIT.