



Implementation of Notary Obligations as a Reporter in the Alleged Criminal Act of Money Laundering Reviewed from the Notary Position Law and the Prevention and Eradication of the Criminal Acts of Money Laundering

Rendu Fernanda; Rembrandt; Yussy Adelina Mannas

Universitas Andalas, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v9i8.3962>

Abstract

The honorable profession of a notary who is in charge of serving the community in the field of civil law should not be used as a means of money laundering by money laundering criminals, therefore it is necessary to regulate the notary profession as a reporting party who is obliged to report suspicious financial transactions carried out by the parties using the services of a notary. Realizing the existence of a legal vacuum, which does not require a notary as the reporting party for suspicious financial transactions, to follow up on it The government issues Government Regulation Number 61 of 2021, an amendment to Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of the Crime of Money Laundering which is a mandate from Article 17 paragraph (2) of Law Number 8 of 2010 concerning the Prevention and Eradication of Crime Money Laundering and Regulation of the Minister of Law and Human Rights Number 9 of 2017 concerning the Application of the Principle of Service Users for Notaries, what is the application and the implementation of the obligations of a Notary as a Reporter in Alleged Crimes of Money Laundering in terms of the Act on Notary Positions and the Act on Prevention and Eradication of Acts Money Laundering can be realized. The type of research used in this research is Juridical Empirical, namely research conducted directly in the field through interviews to obtain primary data. In addition, literature research was conducted to obtain secondary data. The results of this study are (1) the implementation of legal certainty of a notary as a reporter in the alleged crime of money laundering in terms of the law on the position of a notary and the law on the prevention and eradication of the crime of money laundering in the event of an alleged crime of money laundering against the deed he made, namely the existence of the conflicting objectives between the notary position regulations and the set of regulations regarding the eradication of money laundering crime make it impossible to implement legal certainty for notaries as reporters, (2) Obstacles of a Notary as a Reporter in Implementing Legal Certainty of a Notary As a Reporter in Alleged Crimes of Money Laundering in terms of The Law on the Position of Notaries and the Law on Prevention and Eradication of the Crime of Money Laundering, namely the existence of statutory constraints and obstacles to the confidentiality of the position of a notary, (3) Forms of Legal Protection Against Notaries as Reporters in Alleged Crimes of Crime Money Laundering on Deeds Made by Notaries, which has been regulated in the Regulation of the Minister of Law and Human Rights Number 9 of 2017.

Keywords: *Notary; Notary as Whistleblower; Money Laundering*

Introduction

Notaries have the authority regulated in UUJN, in accordance with the provisions of Article 15 paragraph (1) UUJN, Notaries have the authority to make authentic deeds regarding all actions, agreements and stipulations required by laws and regulations and/or what the interested parties want. to be stated in an authentic deed, by guaranteeing the certainty of the date of making the deed, keeping the deed, providing grosse, copies and quotations of the deed, all of this as long as the making of the deed is not assigned or excluded to other officials or other people stipulated by law.

The authority of a notary to provide legal counseling in making a notarial deed is to provide a deep understanding for the parties of the deed he did considering the rapid development of the law which urges everyone to understand the applicable rules so that they do not deviate or violate the current rules.

Related to that, the practice of money laundering itself is a way for perpetrators of economic crimes to freely enjoy and take advantage of the proceeds of their crimes. In addition, the proceeds of these crimes are the pulse for organized crime in developing their criminal networks, so preventing the perpetrators from enjoying the proceeds of crime is very important. The crime of money laundering was originally more related to drug trafficking crimes. Now the crime is associated with the process or the proceeds of criminal acts in general in large amounts.

The honorable profession of a notary who is in charge of serving the community in the field of civil law should not be used as a means of money laundering by money laundering criminals, therefore it is necessary to regulate the notary profession as a reporting party who is obliged to report suspicious financial transactions carried out by the parties using the services of a notary. Therefore, the issuance of Government Regulation Number 61 of 2021 amendments to Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of the Crime of Money Laundering which is a mandate from article 17 paragraph (2) of Law number 8 of 2010 concerning Prevention and Eradication Money Laundering Crime.

Government Regulation No. 61/2021 changes from the Government Regulation No. 43/2015, there are several reporting parties regulated in Article 3 where the reporting parties besides those referred to include advocates, notaries, land deed officials, accountants, public accountants, and financial planner. Where in Law Number 8 of 2010 there are several reporting parties that have not previously been regulated, and one of them is a notary as a reporting party for suspicious financial transactions, and since then a notary as a public official is obliged to apply the principle of Recognizing Service Users as regulated in Government Regulation Number 61 of 2021 changes from the Government Regulation Number 43 of 2015.

Recognizing that there are no laws and regulations governing policies and procedures to manage and mitigate the risk of money laundering and/or terrorism financing identified by an assessment of the reporting party on suspicious transactions, the government issued Regulation of the Minister of Law and Human Rights Number 9 Year 2017 concerning the Application of the Principle of Recognizing Service Users for Notaries, hereinafter referred to as (Permenkumham Number 9 of 2017) requires Notaries to carry out additional authority, namely to identify and verify legal identity and monitor transactions from their clients' sources of funds used in connection with making deeds other than those mandated by law. Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN), namely making an authentic deed. Problems arise in terms of the form of notary accountability for the process of making authentic deeds in verifying and identifying notary service users in Permenkumham Number 9 of 2017 concerning Application of the Principle of Recognizing Service Users for Notaries, notaries must carry out Identification and Verification of Service User Data as a whole, namely up to the material truth. .

In Permenkumham Number 9 of 2017 Article 2, it is mandatory for a notary to apply the principle of recognizing service users. The principle of recognizing Service Users as referred to in Paragraph (1) shall at least contain the identification of Service Users, verification of Service Users and monitoring of Service User Transactions.

One of the considerations for the author based on Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering and Government Regulation Number 61 of 2021 concerning Reporting Parties in the Prevention and Eradication of the Crime of Money Laundering and Regulation of the Minister of Law and Human Rights Number 9 of 2017 Regarding the Application of the Principle of Service Users for Notaries whether its implementation is in accordance with the principle of recognizing service users by a notary in the City of Padang in accordance with the regulation, therefore based on this description, the author wants to examine more deeply through a paper entitled **"Implementation of the Obligations of a Notary as a Whistleblower in Alleged Crime of Money Laundering Judging From the Act on Notary Positions and the Law on Prevention and Eradication of the Crime of Money Laundering"**

Research Methods

The type of research used in this research is Juridical Empirical, namely research conducted directly in the field through interviews to obtain primary data. In addition, literature research was conducted to obtain secondary data. To carry out this method, the author will take the following steps, including collecting data or information, both in a decision study and from parties that the author considers to have the authority/competence, capabilities and data or information that can be accounted for.

Research Result

One of the powers of a notary is to make an authentic deed in the case of a person's legal action, an authentic deed is deliberately made to serve as written evidence in the future. The function of a notary is to make certainty and smoothness of civil law for all community businesses. Notaries must be reliable, impartial, or confidential, and provide guarantees or strong evidence. The authentic deed made by the notary must be in accordance with the events that occurred, the client will provide the complete file and information to the notary, from these two things the notary will later pour it into the authentic deed. A deed has the power of authentic evidence, so there must be authority from a public official who makes, in this case a notary, to make an authentic deed originating from the Act.

In carrying out his duties, the notary makes an authentic deed by formulating the wishes of the parties (clients) which is poured into an authentic deed, so that when the client provides files or information it must be in accordance with the reality, because there will be legal consequences in the future regarding the statements of the parties submitted to the notary. . The notary must also see whether the file is genuine or not, which allows the client to falsify the file for the smooth making of the authentic deed. In accordance with the regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 9 of 2017 concerning the Principle of Recognizing Service Users for Notaries (PMPJ), for the eradication and prevention of money laundering, the principle of recognizing service users must be applied by a notary. According to Article 4 paragraph (1) of the Minister of Law and Human Rights Number 9 of 2017 states that in applying the principle of recognizing service users, a notary must :

- a. Have policies and procedures to manage and mitigate the risk of money laundering and/or terrorist financing identified in accordance with the risk assessment.
- b. Conduct risk assessments and classify service users based on the level of risk of money laundering and terrorism crimes.

With the management of individual service users originating from profiles, characteristics, business, the State, it is hoped that the notary will know where the source of funds is obtained, but the notary also has obligations that are emphasized in Article 4 and Article 16 of the Law on Notary Positions. Article 4 of the Notary Position Law states that before carrying out his office, a notary is obliged to take an oath/promise according to his religion before the Minister or an appointed official, whose editorial includes swearing/promising to keep the contents of the deed and information obtained in the exercise of his office confidential. This is followed up in Article 16 paragraph (1) letter f of the Law on Notary Positions which states that in carrying out their positions, the notary is obliged to keep everything about the deed he made and all information obtained for making the deed in accordance with the oath/promise of office, except The law determines otherwise.

The provisions regarding the obligation of a notary to keep everything related to the content and information regarding the deed he made, gave birth to a provision regarding the right of denial (*veschoningsplicht*) of a notary which can be applied if a notary is asked to be a witness at trial and or does not speak in court in connection with legal issues of the deed he made.

Often with the rise of money laundering crimes, notaries are required to be careful in receiving and examining files and information received, the main characteristic of money laundering crimes is a crime that is carried out in a double manner in the form of money laundering as a crime that is Follow Up Crime. Continued), while the original crime is referred to as Predicate Defense/Core Crime or as Unlawful Activity, namely the original crime that generates money which is then carried out in the laundering process.

Article 4 which states that as referred to in Article 2 and Article 3, it is obligatory to apply the principle of recognizing service users so far notaries are obliged to know more about the profile, background of service users and can then report if there are glaring suspicions that are different from their actual identities, but on the other hand , the notary seems to be burdened with material proof by the Government Regulation in the prevention and eradication of the crime of money laundering, which requires the notary to identify and explore the identity of service users in detail, to what extent the notary must recognize the profile, background of the client, the source of funds, because they do not explicitly stated in the Act on the position of a notary.

Furthermore, by not clearly mentioning the reporting procedures and formats for notaries as reporting parties who are required to submit reports to the financial transaction reporting and analysis center (PPATK) related to suspicious financial transactions, it makes it difficult for the notary to find out the source of the parties' funds because the notary has no obligation under the law. -Invite the position of a notary to dig deeper into the matter. Whereas the provisions in Government Regulation of the Republic of Indonesia Number 61 of 2021 Amendments to Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of the Crime of Money Laundering in particular Article 3 can threaten the profession of a notary in carrying out his duties, must report on legal actions committed by service users suspected of being indicated for money laundering crimes. Every notary is obliged to report on various kinds of deeds he has made, including legality and waarmeking.

So the ratio of legal obligations of a notary/PPAT as a reporting party in the case of alleged money laundering crimes (TPPA) aims to protect noble professional bearers. Indonesia is a legal state based on Pancasila, where every citizen is required to participate in upholding law, justice and truth, that to achieve this goal, every notary/PPAT as a servant is required to have the determination to uphold law, justice and truth as a manifestation of a sense of responsibility to the state, as a notary public official/PPAT enforce the law in accordance with his profession by connecting energy and thoughts and carrying out office duties in a trustworthy, honest, independent and impartial manner.

However, Government Regulation Number 61 of 2021 concerning Reporting Parties in the Prevention and Eradication of the Crime of Money Laundering does not provide a clear enough

benchmark and a safe legal umbrella for notaries and PPATs regarding suspicious financial transactions such as what requires a notary/PPAT to make a report to report to the Center. Financial Transaction Reports and Analysis (PPATK), because the purpose of a notary/PPAT in community service is to uphold truth and justice and strive for the realization of legal certainty. Though the report is related to the amount of transaction value.

Based on the description above, that the implementation of legal certainty of a notary as a reporter in the alleged crime of money laundering in terms of the notary position law and the law on the prevention and eradication of the crime of money laundering in the event of an alleged crime of money laundering against the deed made. The theory of authority used as the theoretical basis in this thesis has not been fulfilled, because there is no legal umbrella in the form of a clear law to protect the implementation of positions, as has been described in the Law on Notary Positions, therefore the government, especially the Ministry of Law and Rights, should Human Rights and the National Land Agency make laws and regulations in order to achieve legal certainty related to legal protection for notaries/PPAT, then the implementation of the position can clearly know the rules and mechanisms so as not to harm the notary/PPAT concerned. and for the organization itself.

References

Books

- Abdul Ghofur Anshori, *Indonesian Notary Institute (Legal and Ethical Perspective)*, UII Pers, Yogyakarta, 2009, p 25
- Anke Dwi Saputro, *The Identity of Indonesian Notaries Past, Present, and Future*, Gramedia Pustaka, Jakarta 2008, page 25
- Djiki Suksino, *The Role of the Notary as a Witness in the Judicial Process and Its Relation to the Oath of Notary Position*, Journal: edt,repository.ugm.ac.id,2004,p 127
- Habib Adjie, *Law on Notary Positions (UUJN) as Unification of Regulatory Law, Renvoi*, No. 28 Years, III, Jakarta, 2005, page 30
- Ivan Yustia vandana, Arman Nevi, Adiwarmarman, *Money Laundering in the Capital Market*, Ghalia Indonesia, Bogor, 2010, page 45
- Pingkan Sundah, *Juridical Review of the non-performance of the obligations of the Notary Position according to Law Number 2 of 2014*, Journal: ejournal.unsrt.ac.id, page 37
- Supjipto Rahardjo, *Law and Society*, Space, Bandung, 2004, page 102
- Yussy Adelina Mannas, Firman Drajat, *Notarial Secrecy: Study Of Legal Cetainty In The Notarial Law and Money Laundering Prevention and Eradication Law In Indonesia*, *PROCEEDING OF RESERCHFORA 69 th INTERNATIONAL CONFERENCE*, Seul South Korea, 2019, hlm 10

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).