

Notary's Responsibility in Preventing and Handling Money Laundering Crimes in Pekalongan Regency

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Abstract. *The purpose of this study is to analyze: 1) To find out and analyze the responsibility of Notaries in the Prevention and handling of money laundering crimes in Pekalongan Regency. 2) To find out and analyze what are the obstacles and how to solve the prevention and handling of money laundering crimes in the Notary profession in Pekalongan Regency. The method of approach in writing this research is the Juridical Sociological approach. The data used in this study are primary data including the 1945 Constitution; Law No. 2 of 2014; Law on the Prevention and Eradication of Money Laundering; Notary Code of Ethics; Civil Code and Criminal Code. As well as secondary data containing books and other supporting documents. Collection of research data using interview techniques and document studies or library materials. The data analysis method used in analyzing the data is a qualitative analysis of the interactive model as proposed by Miles and Huberman. The results of the study show that Notaries are required to be active in carrying out efforts to prevent money laundering, especially from parties who are their clients and because Notaries as a legal profession should also be able to integrate with other professions/other law enforcers to become professional law enforcers in law enforcement duties. The role of the legal profession can only be carried out properly if it receives support for strengthening the code of ethics of the legal profession which until now is still somewhat vague or unclear, so that malpractice does not occur in the legal process. Notaries in Pekalongan Regency must apply the principle of recognizing service users (Know Your Consumer). The obstacles faced by notaries in efforts to eradicate money laundering are related to the theory of absolute secrecy, especially related to the obligation to maintain client confidentiality. In Indonesia, notaries have a legal obligation to maintain the confidentiality of all matters relating to the deeds they make*

Keywords: *Certainty; Laundering; Money; Reporting; Suspicious; Transactions.*

1. Introduction

A notary is a public official who has the authority to make authentic deeds. In carrying out his/her duties, a notary has a moral responsibility towards his/her position. Violation of the notary's position will ultimately result in accountability for the holder of the position, whether it is administratively responsible or compensating for losses in a civil manner, furthermore, a notary can be held criminally responsible if a notary violates the Criminal Code in carrying out his/her duties and position.¹In this modern era, economic development has an impact on the growth of various financial transactions. Financial transactions cause legal relations between two or more parties. In order to facilitate the flow of financial transactions, it is necessary to create evidence in the civil sector, therefore the role of a Notary is needed as a public official who has the task of making authentic deeds. The deed in question is an authentic deed made by or before a notary according to the form and procedures stipulated in the Law. In making authentic deeds, it is not uncommon for Notaries to meet with parties who are perpetrators of money laundering crimes with the aim of obtaining protection behind the provisions of the Notary's professional confidentiality.

Various financial transactions require evidence in the form of authentic deeds so that Notaries play an important role in preventing and eradicating money laundering. Based on Article 1 number 1 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering, it is explained that money laundering is any act that fulfills the elements of a crime in accordance with the provisions of this Law. Furthermore, the definition of money laundering can be interpreted in several criminal actions and sanctions as regulated in Article 3 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering which states that anyone who places, transfers, diverts, spends, pays, grants, deposits, takes abroad, changes the form, exchanges with currency or securities, or other acts on the proceeds of a crime.

The perpetrators of money laundering crimes have the aim of disguising the origin of assets that are the result of criminal acts so that they are difficult to trace by law enforcement. Based on Article 1 Number 11 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, the reporting party is determined to be any person who according to this Law is required to submit a report to the PPATK. Furthermore, it is also regulated regarding two categories of reporting parties, namely financial service providers, which can be banks or non-banks, and providers of goods and/or other services. These provisions are further explained in Government Regulation No. 43 of 2015 concerning Reporting Parties

¹M. Luthfan Hadi Daurus, 2017, Notary Law and Notary's Responsibilities, First Edition, UII Press Yogyakarta, Yogyakarta, p. 49

in the Prevention and Eradication of Money Laundering Crimes which based on Article 3 determines that reporting parties include:²

- a. Advocate ;
- b. Notary Public ;
- c. Land Titles Registrar ;
- d. Accountant ;
- e. Public Accountant;
- f. Financial Planning.

In simple terms, money laundering can be explained as the act of “changing dirty money into clean money”. One common characteristic in the definition of money laundering is “the transfer of illegal assets into the economic system”. Another definition of money laundering was put forward by Pamela H. Bucy who said that the meaning of money laundering is the concealment of the existence, nature or illegal source, movement or ownership of money for any reason with the aim of legalizing the money.³

Based on the above problems, according to the author, the problem must be studied more deeply to see whether the involvement of notaries in eradicating money laundering crimes with their obligation to report transactions that are considered suspicious does not violate the principle of limited confidentiality, where in Article 16 letter f of the Notary Law, Notaries are required to keep confidential everything regarding the deeds they make and all information obtained for the purpose of making deeds in accordance with the oath/promise of office, unless the law determines otherwise. The obligation of notaries to report suspicious transactions is stated in Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes, not regulated by Law.

2. Research Methods

The research approach method used in this thesis is the sociological legal research method. Sociological legal research emphasizes research that aims to obtain legal knowledge empirically by going directly to the object.⁴The specification of this research uses descriptive analysis, namely research that in addition to providing a

²Dr. Go Lisnawati, SH, M.Hum. Njoto Benarkah, ST, M.Sc., Money Laundering Law Money Laundering in the Dimension of Compliance, Setara Press, Jakarta Page 44

³Ivan Yustiavandana, Arman Nefi and Adiwarmar, 2010, Money Laundering Crimes in the Capital Market, Ghalia Indonesia, Bogor, p. 11.

⁴Soejono Soekanto, 2005, Introduction to Legal Research, University of Indonesia Press, Jakarta, p. 88.

description, writing and reporting an object or an event will also draw general conclusions from the problems discussed. Data sources come from primary data and secondary data. Data collection methods include interviews, Document Studies or Library Materials. The data analysis method used in analyzing data is an interactive qualitative model analysis as proposed by miles and Huberman.

3. Results and Discussion

3.1. Notary's Responsibility in Preventing and Combating Money Laundering in Pekalongan Regency

Responsibility arises as a result of the authority held by society. Authority is a legal action that is regulated and given to a position based on applicable laws and regulations that govern the position concerned.⁵Every authority has limitations, as stated in the laws and regulations that govern it. The authority held by a Notary is an attribution authority, namely the authority attached to a position. The authority held by a Notary is a result of the position he holds.

In general, the authority of a notary as a general official is to make authentic deeds. Article 15 Paragraph (1) of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 explains the authority of a Notary, namely that a Notary has the authority to make authentic deeds concerning all acts, agreements and provisions required by statutory regulations and/or required by the interested party to be stated in an authentic deed, guaranteeing the certainty of the date of the deed, storing the deed, providing a grosse, a copy and an extract of the deed, all of this as long as the making of the deed is not assigned or excluded to another official or another person. as stipulated by law.

In the civil trial process, the enforcement of truth is more based on formal evidence, where truth is measured based on evidence submitted by the parties in court. The role of witness testimony is not the main one in this context, because the main focus is on written evidence, especially in the form of authentic deeds. Therefore, calling a notary as a witness in a civil case is often not considered a very necessary step, because the existence of a deed is generally sufficient as evidence. However, witness testimony becomes relevant if there is a party who doubts the validity of the written evidence, so that clarification is needed about the validity of the evidence. In the context of evidence in the civil trial process, witness testimony only becomes relevant after there is initial evidence that is strengthened by written evidence, before the witness is finally called to provide additional information.

In the context of criminal justice, a Notary has an obligation to provide testimony regarding what he/she witnessed, knew, and heard regarding an event, with the aim of making the case examination process more transparent. In accordance with

⁵Habib Adjie, 2009, Indonesian Notary Law, PT Refika Aditama, Bandung, p. 5.

the provisions of Article 66 (1) of the Notary Law (UUJN), a Notary may be summoned by an investigator, public prosecutor, or judge with the approval of the Regional Supervisory Council (MPD) to attend an examination related to a deed he/she made. Although the judge acts as the legal determinant in the court process, the judge's knowledge in the field of notarial law may be limited. Therefore, information from the notary regarding the validity, authentication, and truth of a deed he/she made is needed to fill the gap in the judge's knowledge in this field.

A Notary may be asked to provide testimony related to a deed he made as part of his job duties. In this situation, the notary must balance between maintaining the confidentiality of his position and providing testimony only based on what he saw and heard, both during the investigation process and the trial. If viewed from Article 4 (2) together with Article 16 (1f) and Article 54 UUJN related to Article 66 UUJN, After obtaining approval from the Regional Supervisory Council (MPD), it is not permissible to refuse a request to provide information to the Notary related to the deed he has made.⁶

The role of a notary in the judicial process can be classified into two parts, namely as an ordinary witness and an expert witness. When acting as an expert witness, a notary does not violate the confidentiality of his position because the information provided is limited to his knowledge and expertise in the field of law and notary. However, if acting as a witness, a notary will provide information related to the substance of the deed, especially if there are provisions requiring the notary to provide testimony. As a witness, a notary provides information based on direct experience or knowledge of the event or fact being examined. The limitations for a notary to provide information about the contents of a deed are when the law instructs the notary to violate the confidentiality of the contents of the deed, and if the notary has knowledge of the purpose of making the deed. Therefore, a notary must consider the limitations in providing information, determine when to provide information and when not to, and cannot refuse if asked to be a witness with the approval of the Notary Honorary Council in accordance with Article 66 of the UUJN. If there are regulations that stipulate that a notary must provide testimony or expressly disclose the contents of the deed, then the notary can be exempted from the oath and the obligation to maintain the confidentiality of his position.⁷

If a notary commits a deviation from a deed that he has made, resulting in a criminal case, then the notary must be criminally responsible for what he has done. Criminal liability arises with the continuation of objective blame

⁶Arisaputra, "Notary's Obligations in Maintaining the Confidentiality of Deeds in Relation to Notary's Right to Refute, p. 182-183

⁷Dian Ayunita Prasstumi, "Notary's Obligation to Maintain Confidentiality of Deeds in Their Involvement in Court," EDUCATION AND DEVELOPMENT JOURNAL 10, no. 2 (2022): p. 213-214.

(verwijbaardheid) for an act that is declared a criminal act based on the applicable Criminal Law, and subjectively to the perpetrator who fulfills the requirements to be subject to criminal punishment for that act.⁸

The authority of a notary in relation to suspicious transactions in the making of deeds, regarding the existence of PP No. 43 of 2015 concerning the Reporting Party in the Prevention and Eradication of Money Laundering Crimes, confirms that: "The Reporting Party as referred to in Article 3 is required to submit a report of Suspicious Financial Transactions to the PPATK for the benefit of or for and on behalf of the Service User, regarding the purchase and sale of property, management of money, securities, and/or other financial service products, management of checking accounts, savings accounts, deposit accounts, and/or securities accounts, operation and management of companies; and/or the establishment, purchase, and sale of legal entities". In this regard, the consideration of including a notary as a reporting party in the prevention and eradication of money laundering crimes in Indonesia is because notaries are vulnerable to being used by perpetrators of money laundering crimes to hide or disguise the origin of assets resulting from criminal acts by conducting various business transactions such as buying and selling shares, establishing companies, property, and other transactions aimed at laundering money from criminal acts or terrorist activities by utilizing the services of a notary. This is done by perpetrators of money laundering to hide behind the confidentiality provisions of notaries as public officials, namely keeping the deeds made by the parties (notary clients) confidential. The confidentiality of the position held by notaries is regulated in Article 4 of the UUJN concerning the notary's oath/promise to keep the contents of the deed confidential and Article 16 Paragraph 1 letter (f) of the UUJN which requires notaries to keep everything confidential regarding the deeds they make, unless the law determines otherwise. In addition, the existence of FATH (Financial Action Task Force) recommendations and various international conventions have also made recommendations for anti-money laundering in the non-financial sector, such as auditors, accountants and external consultants, property agents, notaries and other legal professions are vulnerable to being used as a place for money laundering business transactions. The issuance of Government Regulation Number 43 of 2015 concerning the Reporting Party in the Prevention and Eradication of Money Laundering Crimes, as Article 3 of this Government Regulation requires notaries to be the reporting party for suspected criminal acts against deeds made by or before a notary, while in Article 4, Article 16 paragraph (1 letter f) and Article 54 paragraph (1) of Law No. 2 of 2014 concerning the Position of Notary requires notaries to keep confidential or not to inform the contents of the deed and all information related to the making of the deed to any party unless the law determines otherwise, so that this Government Regulation

⁸Dwidja Priyatno, 2004, Legislative Policy on the Corporate Criminal Liability System in Indonesia, CV. Utomo, Bandung, p. 30.

which requires notaries to be the reporting party in principle can be declared to have no legal force. This is because in terms of the hierarchy of the legal system and legislation in Indonesia, that the position of UUJN which orders notaries to keep deeds confidential is higher than Government Regulation Number 43 of 2015, so that this has the consequence that the theory of norm levels put forward by Hans Nawiasky applies. That lower-level laws and regulations may not conflict with higher-level laws and regulations.

In the UUJN it is stipulated that when a notary in carrying out his/her duties is proven to have committed a violation, then the notary can be subject to or given sanctions, in the form of civil sanctions, administrative sanctions, and the notary's code of ethics. These sanctions have been regulated in such a way, both previously in the PJN and now in the UUJN and the Notary's Code of Ethics, which do not regulate criminal sanctions against notaries. In practice, it is found that a legal action or violation committed by a notary can actually be subject to administrative or civil sanctions or the notary's code of ethics, but is then withdrawn or qualified as a criminal act committed by a notary.⁹

3.2. Obstacles and Solutions in Handling and Preventing Money Laundering Crimes in Notary Offices in Pekalongan Regency

Money laundering can be defined as follows below Sultan Remy Sjahdeini: Money laundering is a series of activities which are processes carried out by people or organizations on illicit money, namely money originating from criminal acts, with the intention of hiding or disguising the origin of the money from the government or authorities authorized to take action against criminal acts, by, among other things, and especially, entering the money into the financial system so that the money can then exit the financial system as halal money.¹⁰

Financial Action Task Force on Money Laundering formulates: Money laundering is the process of hiding or disguising the origin of the proceeds of crime. The process is for the purpose of eliminating traces so that the perpetrators can enjoy the benefits without revealing the source of the acquisition. The proceeds obtained from the crime then need to be laundered including in order to obscure it with a three-stage money laundering method. First, Placement is the placement of assets into the financial system through banks or other institutions. Countries must have requirements for reporting large cash transactions, where these transactions are carried out in large amounts by breaking them down into small transactions, which are called smurfing. Second, layering is an action that is intended to separate funds from their origin and is carried out to disguise what is actually there and make it

⁹Habib Adjie, 2008, Indonesian Notary Law, Thematic Interpretation of Law No. 30 of 2004 Concerning the Position of Notary, Refika Aditama, Bandung, (hereinafter abbreviated as Habib Adjie II), p.120

¹⁰Sultan Remy Sjahdeini, 2004, The Ins and Outs of Money Laundering and Terrorism Financing, Pustaka Utama Grafiti, Jakarta, p. 5

unclear in tracing it. The third stage, Integration, is the placement of wealth obtained from the proceeds of crime in a legitimate economy without getting suspicion of its origin.¹¹

Notaries face many obstacles in eradicating and overcoming money laundering that occurs within the scope of the notary profession. The obstacles faced by notaries in efforts to eradicate money laundering are related to the theory of absolute secrecy, especially related to the obligation to maintain client confidentiality. In Indonesia, notaries have a legal obligation to maintain the confidentiality of all matters relating to the deeds they make. This obligation is based on the provisions of Article 16 paragraph (1) letter f of Law No. 2 of 2014 concerning the Position of Notary (UUJN), which stipulates that notaries are required to keep the contents of the deed and all information obtained in making the deed confidential.

However, the absolute confidentiality theory that requires notaries to maintain client confidentiality without exception may conflict with efforts to prevent and eradicate money laundering. On the one hand, notaries are required to maintain the confidentiality of client information, but on the other hand, Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering (UU TPPU) requires certain parties, including notaries, to report suspicious transactions to the Financial Transaction Reports and Analysis Center (PPATK). The main obstacles faced by notaries in preventing and eradicating money laundering are as follows:

a. Conflict of Legal Obligations

Notaries are in a difficult position because on the one hand they must comply with the obligation to maintain client confidentiality based on the Notary Law, but on the other hand they must report suspicious financial transactions based on the Anti-Money Laundering Law (TPPU). This conflict can create legal uncertainty for a notary.

b. Legal Risks and Professionalism

If a Notary reports a suspicious financial transaction, they may face legal risks from clients who feel that their confidentiality has been violated. In addition, this step can have a negative impact on the notary's professional reputation and relationship with clients.

c. Lack of Understanding and Training

Many Notaries may not fully understand their obligations under the Money Laundering Act or how to recognize suspicious transactions. Without adequate training, Notaries may feel hesitant or unsure about what action to take.

¹¹Arif Amrullah, 2005, Money Laundering Crime, Banyu Media, Malang, p. 9

d. Administrative Expenses

Reporting suspicious transactions requires careful analysis and proper documentation. For Notaries who already have a high workload, this can be an additional heavy administrative burden.

e. Protection of Notaries

There is concern that Notaries may not receive adequate protection from the government if they report suspicious transactions. This could make Notaries reluctant to report for fear of possible negative repercussions.

4. Conclusion

Notaries are required to be active in carrying out efforts to prevent money laundering, especially from parties who are their clients and because Notaries as a legal profession should also be able to integrate with other professions / other law enforcers to become professional law enforcers in law enforcement duties. The role of the legal profession can only be carried out properly if it is supported by the strengthening of the code of ethics of the legal profession which until now is still somewhat vague or unclear, so that malpractice does not occur in the legal process. Notaries in Pekalongan Regency must apply the principle of recognizing service users (Know Your Consumer). Through the application of this Principle of Recognizing Service Users, Notaries can identify and verify Users, then the task assigned to Notaries is the obligation for Notaries as reporting parties to report if there are suspicious financial transactions carried out by service users. Notaries face many obstacles in eradicating and overcoming money laundering that occurs within the scope of the Notary profession. The obstacles faced by notaries in efforts to eradicate money laundering are related to the theory of absolute secrecy, especially related to the obligation to maintain client confidentiality. In Indonesia, notaries have a legal obligation to maintain the confidentiality of all matters relating to the deeds they make. One of the obstacles faced by Notaries is if a Notary reports a suspicious financial transaction, they may face legal risks from clients who feel that their secrets have been violated. In addition, this step can have a negative impact on the notary's professional reputation and relationship with clients.

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