

## JURIDICAL REVIEW OF THE ROLE OF NOTARIES IN THE IMPLEMENTATION OF ANTI MONEY LAUNDERING PROGRAMS

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### ABSTRACT

**Abstract:** The Notary profession is always guided by the prevailing laws and regulations including Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning Notary Positions. This study aims to illustrate the role of Notaries in the implementation of anti-money laundering programs as stipulated in Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Delivery of Anti-Money Laundering Crimes submitted to the Center for Financial Transaction Reporting and Analysis (PPATK). Based on this description, this study uses the Normative Juridical research method

**Keywords:** TPPU; Notary; Money Laundering; Implementation of Anti-Money Laundering Program; Center for Financial Transaction Reporting and Analysis

### Introduction

The law will never be separated from human life. If man and the law continue to grow and interrelate with each other, then talking about the law is inseparable from talking about it from human life (Mertokusumo, 1999). Indonesia's economic development is not always followed or in line with legal developments, in order to support the growth rate of Indonesia's economic institutions. This situation occurs because of the lack of care, between the development of economic institutions and legal reform (Sjahdeini, 1983).

The growth rate of financial transactions and the ease of applying technology to facilitate the process of financial transactions have an impact on new legal problems. The continued growth of economic activities causes activities and relationships between humans to become massive and develop. In everyday life, the more often it is inter-legal subjects, the greater the potential for conflict or the greater the opportunity for legal problems to arise in the midst of people's lives (Metakusumo, 1996).

Money Laundering is any act that meets the elements of a criminal act in accordance with the provisions in the PPTPPU Law. Money laundering is carried out by certain individuals to avoid their obligations, such as running away from tax obligations or other legal obligations. Money laundering is a crime that covers a wide scope and its scope extends beyond national and international territories. Starting in the 1920s, organized crime perpetrators in the United States, laundered money from psychotropic

substances through laundry businesses. The perpetrators set up a laundry business as a hiding place for illicit money (Suleaman, 2018). Developing from this, the perpetrators of money laundering crimes carry out violations of the law with various variants, including within the scope of the Notary profession.

In carrying out their work, Notaries are required to guide Law No. 30 of 2004 as amended by Law No. 2 of 2014 concerning Notary Positions or can be referred to as UUJN. The Notary profession has existed since the Dutch colonial rule, which at first the existence of Notaries was a necessity for Europeans residing in Indonesia in creating authentic evidence of land ownership which until now has become perfect evidence of land ownership or other objects codified with authentic deeds. The existence of a notary is increasingly needed in making authentic written evidence of a legal act carried out by the community. Some laws and regulations require certain legal acts to be made in authentic deeds. Notaries and their deed products can be interpreted as state efforts to create legal certainty and protection for members of the public (Setiyawan, 2020). Money laundering is the act of altering and hiding cash or assets obtained from a crime, which appear to come from legitimate sources. The problem of money laundering began to be discussed because it occupied a lot of national and international attention due to the dimensions and implications that violate national borders. As one of the crime phenomena that mainly concerns the world of "organized crime", it turns out that there are certain parties who enjoy the benefits of money laundering without realizing the impact of the losses caused (Tetehuka, 2019).

As a party who knows legal acts, Notaries are very vulnerable to potential violations and abuse of authority, one of which is money laundering. In professionalism, legal practitioners are known as gatekeepers in money laundering. The term gatekeeper is agreed with financial and legal professionals with expertise, knowledge, and special access to the global financial system that utilizes expertise to conceal the proceeds of money laundering crimes that have been committed (Yoga & Valentina, 2022). With their expertise and knowledge, notaries can participate in hiding money laundering crimes.

Along with the times and the pace of the economy, various kinds of financial transactions have also developed and increased, various business transactions involving Notaries are also increasingly varied, this is due to the needs of business people or interested parties for authentic written evidence (Dhaneswara, 2020). However, not all parties who come to the Notary Public are to carry out a clean transaction, there are also parties who come in bad faith with the aim of carrying out a financial transaction that actually violates the law with the aim of getting protection behind the confidentiality provisions of the Notary profession as regulated by the provisions of laws and regulations so that the transactions carried out seem clean. One form of such crime is money laundering.

It can be concluded that, money laundering can be interpreted as the act of converting money from criminal acts into clean money as if obtained through halal work. There is one feature that can be done against money launderers by transferring illegal assets into the economic system. As explained, the transfer of illegal assets that can be carried out by perpetrators of laundering crimes usually involves a notary to transfer illegal assets obtained from the money laundering crime. Therefore, based on Government Regulation No. 43 of 2015 concerning the Reporting Party in the Prevention and Eradication of Money Laundering with the existence of PP 43/2015 interprets that Notary is one of the professions that plays a major role in the disclosure of money laundering crimes.

In connection with the explanation above regarding related to the risk to the Notary profession against the rise of money laundering crimes, the author assumes to research further about "Juridical Review of the Role of Notaries in the Implementation of Anti-Money Laundering Implementation". With the formulation of the problem, the focus of the author is:

1. How Important is the Role of Notaries in the Implementation of Money Laundering Implementation Programs? and
2. What Will Be the Impact If the Notary's Role in the Implementation of Money Laundering Programs Does Not Work Well?

### Research Method

This research uses the Normatid Juridical method that explains the science of law, using an approach carried out with library research using literacy of Laws and Regulations and books or articles related to the topic in this study. This research is Descriptive Analytical which aims to describe or describe an object under study through data or samples that have been collected as they are without conducting analysis to make conclusions that apply to the public.

### Result and Discussion

#### Notary Function in the Implementation of Anti-Money Laundering Program

A Notary in carrying out his profession to provide services to the community should behave in accordance with applicable laws and regulations. The Notary Department is a trust position that must be in harmony with those who carry out the duties and positions of the notary as a trusted person. Notaries as a position of trust do not mean anything if it turns out that they carry out the duties of the office as a notary are people who cannot be trusted. In this case, the notary office and its officials (who carry out the duties of the notary office) must be in line like two sides of a coin that cannot be separated (Edwar et al., 2019).

Deep carrying out his duties and position a Notary must be guided by the code of ethics for the position of Notary, if not applied in a Notary, it will cause the dignity and dignity of professionalism of a Notary to be lost and can result in matters related to criminal

acts. Therefore, a Notary Public is obliged to have integrity in carrying out his profession so as not to be involved in matters that harm the Notary profession.

In the realm of the Application of Money Laundering, the Notary Profession is vulnerable to being used by perpetrators of money laundering crimes because of the confidentiality provisions provided under the Notary Position Law. Based on Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering by explaining acts that become money laundering, as follows:

1. Place, transfer, transfer, spend, pay, grant, deposit, carry abroad, change form, exchange, for currency or securities or other acts of property that he knows or reasonably suspects are the proceeds of a criminal offense with the aim of concealing or disguising the origin of the property; (Viki, 2020)
2. Conceal or disguise the true origin of the source, location, designation, transfer of rights, or ownership of property that he knows or reasonably suspects is the proceeds of a criminal offense; (Manopo, 2022)
3. Receiving, controlling the placement, transfer, payment, grant, donation, custody, exchange, or use of property that he knows or reasonably suspects is the proceeds of a criminal offense (Amalia, 2016).

These actions, the impact on notaries if notaries do not have integrity will have an impact on criminal risks. Based on this, the government issued Regulation of the Minister of Law and Human Rights Number 9 of 2017 concerning the Application of the Principle of Recognizing Service Users for Notaries by stipulating additional duties that must be carried out by Notaries. The addition of Notary duties must be carried out by applying the principle of recognizing Service Users. These principles contain at least, among others: (Simbolon & Sinaga, 2023)

1. Identification of Service Users;
2. Service User Verification;
3. Monitoring of Service User Transactions.

Since the enactment of the regulation on the principle of recognizing service users for Notaries, Notaries are obliged to be able to deal with service users who deal with them by being given tools of principles that can be upheld by Notaries. Notaries are obliged to use the principle of recognizing service users regarding several things, including (Adjie, 2020):

1. Property Transactions;
2. Management of Money or Assets;
3. Company Management; and/or
4. Legal Entity Transactions.

The obligation to apply the principle of recognizing service users is carried out when: a) Notaries have relationships with service users; b) at the time of the occurrence of a Financial Transaction whose value is at least or equivalent to Rp. 100,000,000.00 (one

hundred also rupiah); c) Financial Transactions are suspected of being related to terrorism financing crimes, and d) the notary doubts the veracity of the information reported by the service user (Putri & Rahayu, 2023).

Not only applying the principle of recognizing service users, Notaries must also recognize Beneficial Owners. Beneficial Owner or beneficial ownership is a term in the world of commercial law that refers to who enjoys the benefits of ownership of certain assets without being recorded as an owner. Many people want to protect their assets. by using trusts to act as legal owners of assets, while they become beneficial owners. (Hamsah, 2021)

The introduction of Beneficial Owners is also important in the application of money laundering programs by Notaries. Usually, money launderers protect their assets by using trusts to act as the legal owners of assets, while they become beneficial owners. This counterfeiting is generally legal for everyone but should be regulated because it can be abused and is very close to criminality. Money laundering does not use corporations to conceal their identity regarding the origin and use of funds or assets sourced from criminal acts.

Based on the Regulation of the Ministry of Law and Human Rights of the Republic of Indonesia Number 9 of 2017 concerning Recognizing Service Users for Notaries, what is meant by Beneficial Owner is: (Prayitno, 2017)

1. Any Person who has money and/or receives certain benefits for a transaction which is directly or indirectly;
2. Any Person who is the actual owner of a transaction;
3. Any Person who controls a transaction;
4. Any Person who authorizes a transaction;
5. Any Person who controls the Corporation; and/or
6. Any Person who is the ultimate controller of a transaction.

Notaries are public officials who have been trusted by the government so they are given authority. The trust given by the government should always be maintained by a Notary Public maintaining the trust that has been given by the government. Noatrist in maintaining this trust in a way that cannot be controlled by the client which results in prioritizing the client rather than enforcing the rules that have been applied. (Adjie, 2020)

For this reason, Notaries have the necessary role and function in preventing money laundering by reporting to the Financial Transaction Reporting and Analysis Center (PPATK) when they know of suspicious transactions related to the deeds they make. In the face of money laundering crimes, such professionals as notaries are obliged to report suspicious transactions on behalf of or for clients. Notaries who conduct business relations must understand the profile, purpose, and purpose of business relations. In

addition, transactions made by service users and beneficial owners for identification and verification.

### **Notary's Obligation in Following the Development of Information Technology**

Indonesia initiated regulations regarding money laundering with Law Number 15 of 2002 concerning Money Laundering, promulgated on April 17, 2002. The year 2003 was amended by Law Number 25 of 2003 concerning Amendments to Law Number 15 of 2002 concerning the Crime of Money Laundering, promulgated on October 13, 2003. The changes, which are only 18 (eighteen) months, are carried out in order to prevent and run effectively, meeting law enforcement standards related to money laundering, in accordance with the development of information technology and the development of criminal law on money laundering and international standards ([Rudy Haposan Siahaan, Rini Irianti Sunday, 2022](#)).

Technological progress is something that cannot be avoided in this life, because technological progress will go according to the progress of science. Every innovation is created to provide positive benefits for human life. Technology also provides many conveniences, as well as a new way of doing human activities. Humans have also enjoyed many benefits brought by technological innovations that have been produced in the last decade. ([Waqfin et al., 2021](#))

Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents 1961 directs every authorized and competent public authority including Notaries to simplify and authenticate public documents. This Convention encourages the emergence of 2 (two) important concepts, especially related to the role of Notaries in realizing the effectiveness of electronic transactions, namely Cyber Notary and Electronic Notary. Cyber Notary was initiated as an idea of the American Bar Association Information Security Committee. Cyber Notary has many implementations in common law countries such as the United Kingdom, the United States, Canada, and Australia. ([Nasution, 2011](#)) So that in carrying out their work, Notaries can be helped to report to PPATK clients who are indicated to have made Suspicious Financial Transactions.

### **Notary Public as the Reporting Party of Suspicious Financial Transactions**

In the Anti-Money Laundering Regime, the reporting party is a front liner who has a strategic role in detecting suspicious financial transactions or reporting certain transactions in accordance with the provisions of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering (PPTPPU Law). Based on the PPTPPU Law, in addition to obligations, there is also special protection for reporting parties. The obligation to identify financial transactions and report by the whistleblower is also part of the application of prudential principles and part of risk management, to prevent the use of CHDs / PBJ as a means or target of money laundering by customers/service users.



In this case, avoid CHD and BJP against reputational risk, operational risk, legal risk, and concentration risk. (Comyns, 2016)

Based on Government Regulation Number 43 of 2015 concerning the Reporting Party in the Prevention and Eradication of Money Laundering which states Notaries are one of the professions that become reporting parties as Notaries are required to apply the principle of recognizing service users with stages determined by laws and regulations. Therefore, as a Notary, it is mandatory to keep up with the times so that it can help him to carry out his profession properly and correctly.

The report that must be reported by a Notary to the Financial Transaction Analysis and Reporting Center (PPATK) is a Suspicious Financial Transaction Report which includes:

- a. Financial Transactions that deviate from the profile, characteristics, or habits of the Transaction pattern of the Service User concerned;
- b. Financial Transactions by Service Users that are reasonably suspected to be carried out with the aim of avoiding reporting the relevant Transactions that must be carried out by the reporting party in accordance with the provisions of laws and regulations governing the prevention and eradication of money laundering;
- c. Financial Transactions carried out or canceled using Assets allegedly derived from the proceeds of criminal acts; or
- d. Financial Transactions requested by the Center for Financial Transaction Reporting and Analysis to be reported by the reporting party because they involve Assets allegedly derived from the proceeds of criminal acts. (Manalu, 2021)

Based on the Regulation of the Head of the Center for Financial Transaction Reporting and Analysis Number 11 of 2016 concerning Procedures for Submitting Suspicious Financial Transaction Reports for the Profession, in carrying out reporting to PPATK Notaries are required to assign reporting officers, register through the GRIPS application, and report to PPATK.

The format of the report carried out by the Notary Public must meet the criteria required by PPATK. Not only the reporting format has been determined, but Notaries are required to fill out the Suspicious Financial Transaction report correctly and completely in accordance with the instructions for filling out the Suspicious Financial Witness report determined by PPATK. If the Notary does not perform properly and correctly, it will result in the Notary being subject to administrative sanctions by the PPAT. Filling out the Suspicious Financial Transaction Report is done through the GRIPS application. Filling out the Suspicious Financial Transaction report is carried out by a notary officer by manually filling in the suspicious financial transaction report on the GRIPS application or uploading files to the GRIPS application in Microsoft Exel format. Notaries are obliged to submit Suspicious Financial Transaction Reports electronically by sending reports through the GRIPS application to telecommunication networks

addressed directly to the PPATK database, through a web-based application provided by PPATK.

The period for submitting a Suspicious Financial Transaction report must be submitted by a notary as soon as possible no later than 3 (three) working days after the Notary becomes aware of any elements of Suspicious Financial Transactions. The period of 3 (three) working days is calculated from the date the Transaction is made until the delivery date recorded automatically in the GRIPS application for electronic delivery. Notaries can make reporting corrections in the event that the Notary finds itself errors in the Suspicious Financial Transaction report that has been submitted to PPATK or the Notary receives administrative sanctions imposed by PPATK. In the event that the Notary finds an error in the Suspicious Financial Transaction report that has been submitted to PPATK, the Notary is obliged to make corrections to the Suspicious Financial Transaction no later than 3 (three) working days after discovering the error himself. The application of submission of 3 (three) working days also applies if the Notary receives administrative sanctions from PPATK.

Notaries are obliged to submit supporting documents for the Suspicious Financial Transaction report no later than 3 (three) working days after the submission of the Suspicious Financial Transaction report is submitted to PPATK. Supporting documents in the form of at least:

- a. Identity of users of services, products, and portfolios owned;
- b. The results of due diligence on service users;
- c. Document evidence of conduct "for the benefit of or for and on behalf of the service user".

If the documents that have been submitted according to PPATK have not described the existence of Suspicious Financial Transactions, PPATK is authorized to request additional documents from the Notary related to the Suspicious Financial Transaction report. If PPATK requests additional documents to assist in the analysis of Suspicious Financial Transactions, the Notary is obliged to submit the additional documents no later than 20 (twenty) working days after the Notary receives a written letter from PPATK

### Conclusion

First, the Notary Function of the Anti-Money Laundering Program is very important to be carried out based on the modes of criminal perpetrators of laundering by hiding their assets obtained through unlawful acts, because the notarial deed contains a statement about a situation, event, or legal act desired by the parties to be stated in the notarial deed as perfect evidence of ownership with the aim of concealing the proceeds of a criminal act. So, with the existence of these empty gaps with the arrangements related to the Implementation of Anti-Money Laundering Programs implemented by Notaries, it is very important to patch these empty gaps.



Second, the Notary Deed is perfect evidence, so its perfection must be maintained so that evidence of ownership of rights cannot be tainted with actions resulting from violations of the law. So, if the implementation of the Anti-Money Laundering Program is not applied properly to Notaries, it will make it easier for criminal actors to hide their property by taking refuge with the notarial deed that the Notary made for him. Therefore, it is important to implement an anti-money laundering program for notaries in order to maintain the perfection of notarial deeds to be honest evidence, free from interference from other parties, and not hide the results of criminal acts.

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