

Responsibilities of Notaries as Gate Keeper in Reporting Financial Transactions in Semarang City

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Abstract. *Money Laundering is a white collar crime that is difficult to identify. Suspicious transactions are unusual and out of the ordinary transactions. Therefore, this study aims to analyze the obligations and responsibilities of Notaries as reporting parties in reporting financial transactions. This study uses a type of sociological legal research, namely looking at the law in a real sense and examining how the law works in a particular society or group. The study is described using a qualitative approach method to reveal attitudes, conflicts, relationships, and views that occur in a respondent's scope, describing conditions as they are, without treating or manipulating the variables studied. Using primary data collection with direct interview techniques, and secondary data collection by collecting legal materials. The results of the study show that Notaries have an obligation to apply the principle of recognizing service users (PMPJ) in the Regulation of the Minister of Law and Human Rights Number 19 of 2017, Notaries are required to apply the principle of caution in identifying, verifying and monitoring service user transactions. Notaries as gatekeepers are responsible for implementing procedures for recognizing service users and are responsible for recording transactions and information systems both electronically and non-electronically. Suspicious financial transaction reports (LKTM) must be submitted to PPATK via the GOAML (government anti-money laundering) application.*

Keywords: *Notary; Reporting; Responsibility.*

1. Introduction

Efforts to eradicate money laundering transactions have formed a special institution, namely the Financial Transaction Reports and Analysis Center (PPATK), with the enactment of Law Number 15 of 2002 concerning the crime of money laundering as amended by Law Number 25 of 2003 and the latest amendment by Law Number 8 of 2010 concerning the prevention and

eradication of money laundering. There are several characteristics of money laundering crimes including Active perpetrators, Passive perpetrators and perpetrators who disguise or hide the origin, source, location, transfer of rights and ownership that originate from criminal acts.¹

Notaries were initially not included as reporting parties in money laundering crimes, but according to Article 3 of Government Regulation Number 43 of 2015 concerning reporting parties in the prevention and eradication of money laundering crimes, it states that Notaries are reporting parties. Notaries have the authority to make authentic deeds regarding all acts, agreements, provisions, which are required by laws and regulations or which are desired by interests to be stated in authentic deeds based on Article 15 of Law Number 2 of 2004 concerning the Position of Notaries².

Therefore, Notaries have another obligation as reporting parties to submit suspicious financial transaction reports to the Financial Transaction Reports and Analysis Center (PPATK) through the GOAML (government anti-money laundering) application. Financial transaction reporting is carried out by Notaries after Notaries implement the Principle of Recognizing Service Users (PMPJ). This is certainly to maintain the stability of the financial system and reduce the occurrence of predicate crimes. Meanwhile, in Article 16 paragraph 1 letter (f) of Law Number 2 of 2014 concerning the Position of Notaries, Notaries are required to keep confidential everything regarding the Deeds they make and all information obtained for the purpose of making the Deed in accordance with the oath or promise of office. Notaries are faced with contradictory obligations but result in sanctions if the Notary does not carry out these obligations. This is a dilemma for the Notary profession, thus affecting the compliance of notaries in pioneering financial transactions to PPATK.

Based on data from the Financial Transaction Reports and Analysis Center (PPATK), up to 2020, there were 100 notaries reported by PPATK due to money laundering cases in the preparation of sales and purchase deeds, gift deeds, and company establishment deeds.³. In fact, a Notary is a prestigious,

¹Devinda Irvana Yunianda, Mohamad Fajri Mekka Putra, et.al.2022.Notary as Reporter in Eradicating Money Laundering Crimes with Obligations to Deny Rights. Palar (Pakuan Law Review). No.1. Vol. 08. pp. 421-422.

Url: <https://journal.unpak.ac.id/index.php/palar/article/download/5000/2940>

²Kartika Kismawardani, Luluk Lusiati Cahyarini.et.al.2023.Relevance of Notary as Reporting Party in Efforts to Prevent Money Laundering Crime.NOTARIUS.No.3.Vol.16.p.1323. Url:<https://ejournal.undip.ac.id/index.php/notarius/article/download/42407/pdf>

³Kartika Kismawardani, Luluk Lusiati Cahyarini.et.al.2023.Relevance of Notary as Reporting Party in Efforts to Prevent Money Laundering Crime.NOTARIUS.No.3.Vol.16..p.1323. Url:<https://ejournal.undip.ac.id/index.php/notarius/article/download/42407/pdf>

noble, high-value and highly dignified position. The deeds made are authentic deeds that have perfect evidentiary value as regulated in Article 1865 of the Civil Code. Notaries must be willing to provide the best possible service without discrimination in accordance with the Notary's oath of office. So that the Notary has the responsibility to bear the legal consequences of the deeds he makes.⁴ Therefore, to maintain the integrity of the profession and the dignity of Notaries, they should carry out their obligation to report suspicious financial transactions to the Financial Reporting and Analysis Center (PPATK).

2. Research Methods

The research method used in this research is sociological juridical legal research (applied law research).⁵ is to see the law in a real sense and examine how the law works in a particular society or group. The specifications in this study are described using a qualitative approach method to reveal attitudes, conflicts, relationships, and views that occur in a respondent's scope, describing conditions as they are, without giving treatment or manipulation to the variables studied. This study uses primary data collection obtained directly with question and answer interview techniques with informants, and secondary data collection by collecting legal materials in this study.

3. Results and Discussion

3.1 Obligations of Notaries as Gate Keepers in Implementing the Principle of Recognizing Service Users (PMPJ)

Notaries in carrying out their duties must be honest and act professionally based on a noble personality by always carrying out their duties in accordance with applicable laws and regulations and implementing a code of ethics in daily behavior, to create moral integrity, be honest with clients and themselves (intellectual honesty), be aware of the limits of authority and not merely carry out duties based on monetary considerations. Because the fundamental nature of the authentic deed must be prioritized because authentic deeds become legitimacy in society.

A notary is a public official who has the authority to make deeds. authentic and have other authorities, this is also regulated in Article 1868 of the Civil Code. Notaries as Reporting Parties are required to submit reports to the Financial Transaction Reports and Analysis Center (PPATK) based on Article 3 of Government Regulation Number 43 of 2015 concerning

⁴Eka Febriyanti.2019.Moral Responsibility of Notaries in Carrying Out Their Official Duties in Accordance with the Oath.Thesis of the Faculty of Law, Sriwijaya University.Page 38

⁵Muhaimin.2020.Legal Research Methodology.Mataram University Press.Mataram.p.. 45

reporting parties in money laundering transactions.⁶

As a reporting party, notaries are required to apply the principle of recognizing service users as specifically regulated in the Regulation of the Minister of Law and Human Rights Number 19 of 2017 concerning the application of the principle of recognizing service users (PMPJ) for Notaries. Thus, a person who comes to see a Notary can be said to be a service user. Furthermore, the Notary is given power by the service user to take legal action for and on behalf of and in the interests of the service user in preparing and carrying out a transaction. Notaries are required to apply the principle of caution in identifying service users, verifying service users and monitoring service user transactions. Notaries are required to understand the profile, intent and purpose of the business relationship or transaction carried out by the service user and the beneficial owner. With procedures including⁷:

a. Identification of Notary services used by Service Users

The principle of recognizing service users is carried out by Notaries by preparing everything related to transactions for the benefit and on behalf of service users regarding the purchase and sale of property; management of financial service products; establishment, purchase and sale of legal entities.⁸

In addition, Notaries are required to apply the principle of recognizing service users (PMPJ) for transactions carried out by corporations with identification and verification of beneficial owners related to the name and position of the corporation, in accordance with the Regulation of the Minister of Law and Human Rights Number 15 of 2019 concerning procedures for implementing the application of the principle of recognizing beneficial owners of corporations.

b. Communication with service users

The Notary communicates to and informs the service user or beneficial owner that there will be information needed by the Notary in order to identify and verify the service user based on the Regulation of the Ministry

⁶Article 3 of Government Regulation Number 43 of 2015 concerning reporting parties in money laundering transactions

⁷Ministry of Law and Human Rights.2019.Circular of the Director General of General Legal Administration No. AHU.UM.01.01-1239 dated September 16, 2019 concerning Guidelines for Supervising Compliance with the Implementation of the Principle of Recognizing Service Users (PMPJ) and Reporting to the Financial Transaction Reports and Analysis Center (PPATK) for Notaries.Directorate of General Legal Administration.Jakarta.page.1

⁸Ibid.p.2

of Law and Human Rights Number 19 of 2017 concerning the application of the principle of recognizing service users for notaries. The Notary ensures the position of the service user who transacts with the Notary acting on his/her own behalf or the beneficial owner.

Corporations are required to provide correct information regarding applications for the establishment, registration and ratification of corporations as regulated in Article 4 of the Regulation of the Minister of Law and Human Rights Number 15 of 2019.⁹In addition, Notaries are required to understand the profile, intent and purpose of the business relationship or transaction carried out by the service user (benefit owner). Based on the profile information received from the service user, the notary can group the service user as an individual, corporation, or a legal arrangement. If the service user rejects the application of the principle of recognizing the service user (PMPJ), the Notary is required to:¹⁰

- 1) Terminating business relationships with service users
- 2) Report to PPATK no later than 3 (three) days after the Notary terminates the business relationship with the service user.

c. Risk analysis of service users or beneficial owners

Notaries are required to carry out risk assessments and group service users based on the level of risk of money laundering, which is carried out based on an analysis of the profile of the service user, the service user's business, the country and region and the Notary's services as regulated in Article 4 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 9 of 2017.¹¹

d. Document Arrangement

Notaries are required to administer all documents related to the implementation of the principle of recognizing service users in accordance

⁹Regulation of the Minister of Law and Human Rights Number 15 of 2019 concerning Procedures for Implementing the Application of the Principle of Recognizing Beneficial Owners of Corporations

¹⁰Ministry of Law and Human Rights.2019.Circular of the Director General of General Legal Administration No. AHU.UM.01.01-1239 dated September 16, 2019 concerning Guidelines for Supervising Compliance with the Implementation of the Principle of Recognizing Service Users (PMPJ) and Reporting to the Financial Transaction Reports and Analysis Center (PPATK) for Notaries.Directorate of General Legal Administration.Jakarta.p.3

¹¹Article 4 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 9 of 2017

with the provisions of laws and regulations or at least 5 (five) years since the end of the business relationship with the service user as stipulated in the provisions of Article 28 of the Regulation of the Head of PPATK Number 11 of 2016 concerning the procedures for submitting suspicious financial transaction reports for the profession.¹²

e. Information and Document Updates

Referring to Article 26 paragraph (1) and paragraph (2) of the Regulation of the Minister of Law and Human Rights Number 9 of 2017, Notaries are required to make efforts to update information and/or supporting documents. In addition, Notaries are required to document the results of updating the information and/or documents. Notaries are responsible for the authentic truth related to changes in information and supporting documents obtained from service users or beneficial owners, either directly or indirectly.¹³

3.2 Notary's Responsibilities as Gate Keeper in Financial Transaction Reporting

A concept related to legal obligations is the concept of legal responsibility. Notaries as gatekeepers, namely goalkeepers to prevent money laundering. Notaries are required to report suspicious financial transactions or unusual transactions that are out of the habits of service users and beneficial owners. Financial reports aim to maintain the professionalism of Notaries, because Notaries have a function as public servants. Therefore, Notaries are required to conduct assessments or evaluations of transactions carried out by service users and beneficial owners.¹⁴.

Provisions of Article 22 of the Regulation of the Minister of Law and Human Rights Number 19 of 2017, Notaries are responsible for recording transactions and information systems both electronically and non-electronically regarding the identification and monitoring of service users or beneficial owners, as well as providing reports on transactions being carried out. From the results of the analysis, Notaries are responsible for ensuring that transactions carried out by service users or beneficial owners are suspected of containing elements of money laundering or not. Furthermore, Notaries are obliged to fill in the PPATK

¹²Article 28 of the Regulation of the Head of PPATK Number 11 of 2016 concerning the procedures for submitting reports of suspicious financial transactions for the profession

¹³Article 26 paragraph (1) and paragraph (2) of the Regulation of the Minister of Law and Human Rights Number 9 of 2017

¹⁴Interview with Agustinus Yosi Setyawan, SH, MH, (Head of Legal Services Division, Central Java Regional Office of the Ministry of Law and Human Rights), April 02, 2024

financial transaction reporting form.¹⁵

Suspicious financial transaction reports (LKTM) must be submitted to PPATK through the GOAML (government anti-money laundering) application. Notaries are responsible for the accuracy of the data and the completeness of the report contents. Therefore, Notaries must be careful and thorough in filling out the report.¹⁶The report is made by filling in (entry) directly on the report menu, or can be used to first fill in the professional suspicious financial transaction report (LTKM) form which is then uploaded in XML format. The suspicious financial transaction report is made as soon as possible, no later than 3 (three) working days after the service provider is aware of the suspicious financial transaction elements and the submission of the cash financial transaction report is made no later than 14 (fourteen) working days from the date of the transaction as regulated in Article 25 paragraph 1 and paragraph 2 of the Money Laundering Crime Law. Cash financial transactions as regulated in Article 23 of the Money Laundering Crime Law, namely cash financial transactions in an amount of at least IDR 500,000,000.00 (five hundred million rupiah) or with foreign currency of equivalent value, which is carried out either in one transaction or several transactions in 1 (one) working day.

For service users and Beneficial Owners who have high risk potential, the Notary is required to create a document analyzing the fairness of the service user's transaction. Termination of business relations with the Service User or Beneficial Owner can be done if the service user refuses to comply with the principle of recognizing the service user, and the Notary doubts the truth of the information obtained from the Service User or Beneficial Owner. Reporting to the PPATK is done no later than 3 (three) days since the Notary is aware of the suspicious financial transaction. In addition, the Notary has the right to stop the application of the principle of recognizing the service user.

Financial transaction reports are individualistic, meaning they are submitted directly by individuals or a Notary to the PPATK using the GOAML (government anti-money laundering) application. Thus, the Notary Law has provided clear legal certainty. This legal certainty includes the existence of a Notary's oath of office which is able to regulate the behavior of Notaries in carrying out their profession in order to carry out the integrity of the profession as regulated in Article 4 of Law Number 2 of 2014 concerning the Notary's Office. The Supervisory and Regulatory Institution (LPP) supervises and assesses the

¹⁵Article 22 of the Regulation of the Minister of Law and Human Rights Number 19 of 2017, concerning the Application of the Principle of Recognizing Service Users for Notaries

¹⁶Article 1 paragraph (5) of the Regulation of the Financial Transaction Reports and Analysis Center Number 14 of 2021 concerning technical instructions for using the GOAML application for Reporting Parties

compliance of a Notary in carrying out his/her obligations to apply the principle of recognizing service users and beneficial owners, and then the results of the assessment are reported to the PPATK as findings.¹⁷

The legal implications if a Notary does not heed his obligation to implement the principle of recognizing service users (PMPJ) and does not report to PPATK, will be subject to administrative sanctions in the form of account deactivation on the AHU-Online system. The AHU Online system is an online public service system owned by the Directorate General of General Legal Administration.¹⁸In addition, Notaries can be given other administrative sanctions based on Article 55 paragraph (3) of the Head of PPATK Regulation Number 13 of 2016 in the form of 2 written warnings; Announcement to the public that the Notary is a reporting party who does not comply with the PPATK application or website; Recommendation to the authorized agency to freeze business activities, revoke or cancel the business license of the reporting party.¹⁹

Notaries as reporting parties can be subject to criminal liability if the results of the PPATK analysis prove that the Notary as reporting party meets the criteria that must be reported based on the Suspicious Financial Transaction Report (LTKM). PPATK will report the Notary to law enforcement regarding suspected money laundering or participating in money laundering or other crimes. Based on Article 5 paragraph (1) of Law Number 8 of 2010, reporting parties who do not fulfill their reporting obligations and who participate in attempts, assistance, or conspiracy to commit money laundering shall be punished with the same penalty, because they participate in money laundering with a maximum prison sentence of 20 (twenty) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah). Therefore, the principle of "nulla poena sine culpa" applies, which means there is no punishment without fault.²⁰

A notary is dishonorably dismissed by the Minister because he is sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a crime that is threatened with imprisonment of 5 (five) years or more as stipulated in Article 13 of the Notary Law. The status of an authentic deed made by a Notary remains valid and binding even though there is an allegation that the Notary participated in the crime of money laundering. However, if the Notary is proven to have committed the crime of money laundering on behalf of himself or another party involved, then the Notary can

¹⁷Interview with Dr. Muhammad Hafidh, SH, M.Kn. (Notary in Semarang City), March 22, 2024

¹⁸Interview with Agustinus Yosi Setyawan, SH, MH, (Head of Legal Services Division, Central Java Regional Office of the Ministry of Law and Human Rights), April 2, 2024.

¹⁹Article 55 paragraph (3) of the Head of PPATK Regulation Number 13 of 2016 concerning procedures for implementing compliance audits, special audits and monitoring follow-up to audit results.

²⁰Sudarto.2013.Criminal Law I. Faculty of Law, Diponegoro University.Semarang.p.144

lose his license and be sentenced to criminal penalties. A deed made by a Notary has authentic evidentiary force as long as the requirements in the Notary Law are met when it is made.²¹.

- a. Legal protection is provided by the State to Notaries as reporting parties based on Law Number 8 of 2010, including:²²:
- b. Notaries who report suspected money laundering crimes must be given special protection by the state from potential threats that could endanger themselves, their lives and their property, including their families (Article 84 paragraph (1)).
- c. In court hearings, witnesses, public prosecutors, judges and other people involved in money laundering crimes that are being investigated are prohibited from mentioning the name or address of the reporter or anything else that could reveal the reporter's identity (Article 85 paragraph (1)).
- d. Notaries who provide testimony in investigations into money laundering crimes must be given special protection by the state from potential threats that endanger themselves, their lives and/or their property, including their families (Article 86 paragraph (1)).
- e. Notaries as reporting parties and witnesses cannot be sued, either civilly or criminally, for reports and/or testimony given by the person concerned (Article 87 paragraph (1)).

4. Conclusion

Notaries as gatekeepers are responsible for implementing customer due diligence procedures and are responsible for recording transactions and information systems both electronically and non-electronically. Suspicious financial transaction reports (LKTM) must be submitted to PPATK through the GOAML (government anti-money laundering) application. Notaries are required to implement the principle of recognizing service users (PMPJ) in the Regulation of the Minister of Law and Human Rights Number 19 of 2017, Notaries are required to implement the principle of caution in identifying service users, verifying service users and monitoring service user transactions. Notaries are required to understand the profile, intent and purpose of the business relationship or transaction carried out by service users and beneficial owners. Notaries are required to obtain information regarding legal arrangements,

²¹Interview with Dr. Muhammad Hafidh, SH, M.Kn. (Notary in Semarang City), March 22, 2024

²²Article 84, Article 85, Article 86, Article 87 of Law Number 8 of 2010 concerning the Crime of Money Laundering and Terrorism Financing

through collecting information on individuals who control and/or receive benefits from the Corporation either directly or indirectly. Notaries are required to implement the principle of caution in identifying service users, verifying service users and monitoring service user transactions.

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