

## Notary Compliance with Criminal Procedure Rules Money Laundering in Business Transactions

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**Abstract.** *Money Laundering (TPPU) is a transnational crime that threatens the stability of the global financial system. Notaries, as Public Officials authorized to make authentic deeds, have a strategic role in helping to prevent Money Laundering. This study aims to analyze the notary's compliance obligations to the rules of money laundering in suspicious business transactions and their reporting process. The approach to this research uses the normative juridical approach method and descriptive analysis research specifications. The data used are secondary data with data collection methods using literature studies. Secondary data used in this study include primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials consist of laws and regulations related to the research being carried out. Secondary legal materials consist of books, journals. While tertiary legal materials are encyclopedias, magazines, newspapers, articles. The results of the study and discussion show that the obligation of notary compliance with Money Laundering Crimes (TPPU) in business transactions, the first is that notaries are required to report suspicious business transactions because it can make it easier for PPATK to prevent and eradicate money laundering by utilizing several roles of Notaries as Public Officials and Professionals who are interrelated in digging up data on Service Users. And the second is the process of reporting suspicious financial transactions by Notaries with several steps. First, the Notary appoints a reporting officer who is responsible for monitoring and identifying suspicious transactions. Second, the Notary must register through the GoAML application. Third, the Notary is required to report the suspicious transaction to PPATK.*

**Keywords:** *Business; Laundering; Money; Transactions.*

### 1. Introduction

Money laundering is one of the threats to a country's financial system and economic stability. This practice can disrupt the financial system and consequently harm society by obscuring the true nature of money obtained from illicit activities through a series of complex transactions. Therefore, many countries have taken steps to protect their financial systems by implementing

regulations and rules that require various sectors, including professional services sectors such as notaries, to comply with strict standards in identifying, documenting, and preventing money laundering activities.

One category of professional services that has significant advantages in facilitating various legal transactions, from business transactions to property transactions is a notary. Notaries have the authority according to Article 15 Paragraph (1) of the Notary Law (UUJN) to make deeds. Notaries are authorized to make authentic deeds regarding all acts, agreements, and determinations required by laws and regulations and/or desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide grosse, copies and extracts of the deed, all of which are as long as the making of the deed is not also assigned or excluded to other officials or other people determined by law.

Notaries as public officials play an important role in making deeds in business transactions such as property sales, company establishment, and other asset transfers. These transactions are often the main target for money launderers to disguise the origin of illegal funds. Therefore, notarial practices need to comply with strict integrity standards to ensure that the transactions are legally valid. Compliance with money laundering rules becomes very important in the context of notarial practices, due to the increasing complexity of transactions and the risks associated with money laundering.

In Article 1 Paragraph 11 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, it is determined that the reporting party is any person who according to this Law is required to submit a report to the Financial Transaction Reports and Analysis Center (PPATK). Then it is also regulated regarding the category of reporting parties, namely financial service providers, which can be banks or non-banks, and providers of goods and/or other services. And these provisions are further explained in Government Regulation No. 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes, in Article 3 it is determined that the reporting parties include;<sup>1</sup>Advocate, Notary, Land Deed Official, Accountant, Public Accountant, Financial Planner.

In the process of reporting suspicious transactions in the making of notarial deeds involves a series of stages that must be followed by the notary and of course it is not easy. So it requires a deep understanding of the criteria for suspicious transactions, as well as reporting procedures in accordance with applicable regulations. Therefore, by understanding this obligation and the steps required in the reporting process, it is expected to increase the compliance of notaries in carrying out their role in preventing money laundering, so the author is motivated to conduct a study entitled "Notary Compliance with Money Laundering Crime Rules in Business Transactions".

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<sup>1</sup>Go Lisnawati. Njoto Benarkah, 2018, Money Laundering Law Money Laundering in the Dimension of Compliance, Setara Press, Jakarta, p.44.

## 2. Research Methods

The approach method used in this research is a normative legal approach, because this research is a normative legal research concerning anti-money laundering regulations in notary practice, in order to understand this legal issue, a statute approach is used.<sup>2</sup>, namely by reviewing and examining the laws and regulations related to the laws and regulations related to money laundering in notarial practices related to business transactions. The specifications of this study are descriptive analysis. namely by describing the data obtained, then analyzed, and presented by explaining the problem with the chosen title, namely "Notary Compliance with the Rules of Money Laundering Crimes in Business Transactions". The data used in this study are secondary data, namely data obtained from library materials. The data obtained in the study will then be analyzed qualitatively to achieve clarity regarding notary compliance with the rules of money laundering crimes in business transactions.

## 3. Results And Discussion

### 3.1 Notary's Obligation to Comply with Money Laundering Crime Rules in Suspicious Business Transactions

To support efforts to combat (prevent and eradicate) the crime of money laundering in Indonesia, the Government together with the People's Representative Council have established Law of the Republic of Indonesia Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering which replaces Law of the Republic of Indonesia Number 15 of 2002 concerning the Crime of Money Laundering and Law Number 25 of 2003 concerning Amendments to Law of the Republic of Indonesia Number 15 of 2002 concerning the Crime of Money Laundering.<sup>3</sup>

The content of the material contained in Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering is as follows:<sup>4</sup>

1. Redefinition of the meaning of matters related to the crime of money laundering;
2. Improvement of the criminalization of money laundering crimes;
3. Regulations regarding the imposition of criminal sanctions and administrative sanctions;
4. Strengthening the implementation of the principle of recognizing service users;
5. Expansion of reporting parties;
6. Determination of the type of reporting by providers of goods and/or other services;
7. Arrangements regarding compliance monitoring;
8. granting authority to the reporting party to postpone the transaction;

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<sup>2</sup>Soerjono Soekamto, 1998, Introduction to Legal Research, University of Indonesia (UI) Press, p.18.

<sup>3</sup>ibid.

<sup>4</sup>ibid. p. 18

9. Expansion of the authority of the Directorate General of Customs and Excise regarding the carrying of cash and other payment instruments into or out of customs areas;
10. Granting authority to investigators of predicate crimes to investigate suspected money laundering crimes;
11. Expansion of agencies entitled to receive the results of PPATK analysis or examination;
12. Restructuring of the PPATK institution;
13. Additional authority of PPATK, including the authority to temporarily stop transactions;
14. Reorganization of the procedural law for examining money laundering crimes; and
15. Regulations regarding the confiscation of assets originating from criminal acts.

In addition to the above, one of the interesting new legal breakthroughs in the Republic of Indonesia Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes is using the "Follow the Money" approach in criminalizing money laundering.<sup>5</sup> The "Follow The Money" approach is better than the Conventional Approach, which is often used is "Follow The Suspect" or tracing the trail of the perpetrator of Money Laundering. This is more difficult because the perpetrator or witness is very likely to tell the truth, but by using the "Follow The Money" approach, the perpetrator or witness will not be able to deny it when the flow of money from Money Laundering is known. The Follow the Money approach can be effective if supported by the reporting of suspicious financial transactions from the reporting party to the institution that has the authority over money laundering.<sup>6</sup>

Initially, notaries were not included as reporting parties for suspicious financial transactions. Due to the increasingly sophisticated techniques and methods of perpetrators of money laundering crimes, perpetrators of money laundering crimes also utilize the professional services of notaries. Then with the issuance of Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes, notaries are made as one of the reporting parties in the prevention of money laundering crimes.

In accordance with Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering, a suspicious transaction is any transaction that meets the elements stipulated in the law. These elements include indications that the transaction is related to a crime, efforts to hide or disguise the origin of assets, or efforts to avoid reporting obligations.

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<sup>5</sup>Ni Komang Sutrisni, and AA Ketut Sukranata, 2013, "Follow The Money Approach in Investigating Money Laundering and Other Criminal Acts" Criminal Law Department, Faculty of Law, Udayana University, p. 3

<sup>6</sup>Kartika Wimawardani, and Luluk Lusiati Cahyarini, 2023, "The Relevance of Notaries as Reporting Parties in Efforts to Prevent Money Laundering Crimes" Notary, Number 3, Volume 16, Master of Notary Study Program, Diponegoro University.

The definition of suspicious financial transactions includes:<sup>7</sup>

1. Financial transactions that do not correspond to the identity, character or transaction habits of the service user concerned;
2. Financial transactions by service users that are suspected of being aimed at avoiding reporting the transactions in question, which must be carried out by the reporter as explained in the statutory regulations that discuss preventive and repressive efforts regarding money laundering crimes;
3. Financial transactions that are carried out or not carried out using assets suspected of originating from criminal acts; or
4. Financial transactions requested by the PPATK to be reported by the reporter because they involve assets suspected of originating from criminal acts.

The notary who is the reporting party has the role of reporting suspicious financial transactions for the benefit of or on behalf of the service user, related to:<sup>8</sup>

1. Property sale and purchase;
2. Capital management activities, securities, and/or other financial products;
3. Activities to manage savings, deposit, current account and/or securities;
4. Operational activities and management of the entity; and/or
5. Establishment, purchase and sale of a legal entity.

Notary, as a public official mandated by the Notary Law, especially Article 1 Number 1 which states "Notary is a Public Official who is authorized to make authentic deeds who has other authorities as referred to in this law or other laws", as one of the parties authorized to make deeds that often interact with business transactions or financial transactions, has an important role in this prevention effort. By requiring suspicious transactions to be reported, the state hopes to break the chain of money laundering and protect the financial system from the threat of crime.

The obligation of notaries to report suspicious transactions is a reflection of high professional responsibility. As public officials trusted by the state and the public, notaries have a moral obligation to maintain the integrity of the national financial system. By reporting suspicious transactions, notaries demonstrate their commitment to the principles of professional ethics and contribute to creating a clean and trusted business environment.

The obligation of notaries to report suspicious transactions is not only based on laws and regulations, but also on the principles of professional ethics. The notary code of ethics requires every notary to act honestly, fairly, and responsibly, prioritizing devotion to the interests of the community and the state. By reporting suspicious transactions, notaries not only fulfill their professional obligations, but also demonstrate their commitment to noble values such as honesty and integrity. This action not only protects the public from the negative impacts of money laundering, but also strengthens public trust in the notary

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<sup>7</sup>Basudewa Kresna, 2022. "Reporting of Suspicious Financial Transactions by Notaries as Public Officials in Criminal Law Enforcement", *Acta Comitas Journal of Notary Law*, Number 2, Volume 7, p.298, Faculty of Law, Udayana University.

<sup>8</sup>ibid.

profession and the financial system as a whole.

In addition to legal and ethical reasons, the obligation to report suspicious transactions also has practical benefits. For notaries, this reporting is a form of self-protection from the risk of being involved in money laundering. In addition, by reporting suspicious transactions, notaries help maintain the good reputation of their profession and financial institutions. This reporting is a form of active contribution to efforts to prevent and eradicate money laundering, thereby helping to maintain the stability of the national financial system.

If the notary does not report, the sanctions for the notary as the reporting party are:

1. Administrative Sanctions by LPP: if you do not register for GRIPS/GoAML and do not implement PMPJ.
2. Sanctions Criminal threat: if you do not submit a Suspicious Financial Transaction Report (LTKM) to the Financial Transaction Reports and Analysis Center (PPATK), a maximum of 5 years in prison plus a maximum fine of Rp. 1,000,000,000,

If a notary does not report any indication of suspicious transactions, it can also damage the notary's good reputation as a profession that upholds integrity and professionalism. Notaries can be sued civilly by parties who are harmed due to reported suspicious transactions and notary professional organizations can take action against members who violate the professional code of ethics, including not reporting suspicious transactions.

Notaries are required to report suspicious financial transactions related to the prevention and eradication of money laundering and terrorism financing for several main reasons, namely compliance with the law, prevention of money laundering, prevention of terrorism financing, increasing transparency in financial transactions so as to maintain the integrity of the financial and legal systems, professional responsibility, because there are sanctions, everything made before a notary will have an impact on legal force, if a transaction carried out by a criminal originating from money laundering has successfully passed the process through a notary transaction, then the crime becomes legal, so that the element of crime is also lost, and by reporting suspicious financial transactions, notaries have contributed to national and international efforts to prevent money laundering and ensure that the legal profession remains clean and trustworthy.

The obligation of notaries to report suspicious business transactions is a real manifestation of the theory of compliance, namely that notaries obey as Public Officials where notaries are expected to be able to help maintain the integrity of the state's legal and financial systems and as professionals, notaries have a code of ethics that must be obeyed that notaries are positions of trust that must act honestly, with a sense of responsibility prioritizing the interests of the community and the state. And if the rules are not fulfilled by notaries who do not report suspicious transactions, notaries can be subject to administrative, criminal sanctions, or even have their practice licenses revoked.

Thus, the theory of compliance provides an analysis to understand the compliance of notaries with the rules of money laundering crimes in reporting

suspicious business transactions. The act of reporting shows that notaries do not only pursue personal or client interests, but also prioritize state interests and notaries are required to report this shows that the role of notaries is not static but dynamic and can change along with social and legal changes.

For this reason, notaries need to be more careful in carrying out their duties and continue to update their legal knowledge which continues to develop in accordance with the notary code of ethics that notaries must always improve the knowledge they already have, not limited to legal and notarial knowledge because knowledge is always developing, and the law grows and develops together with the development of society.

### **3.2 The Reporting Process Carried Out by Notaries Regarding Suspicious Business Transactions in the Making of Notarial Deeds**

Notary is a public official, a person can become a public official, if he is appointed by the government and given the authority and obligation to serve the public in certain matters. Therefore, Notary as a public official participates in carrying out the authority of the government.<sup>9</sup>

A notary is a position to carry out state duties in civil law matters, the authority of a notary is to make an authentic deed required by the parties.<sup>10</sup>The importance of the Notary profession is due to the fact that Notaries are authorized by law to create absolute evidence, in the sense that what is stated in the authentic deed is considered true. This is very important for parties who need evidence for a purpose, whether for personal or business interests. For personal purposes, for example, giving and receiving grants, distributing in heritances and so on. As for the interests of a business, for example, deeds in establishing a PT (Limited Liability Company), Firma, CV, and deeds regarding transactions in the fields of business and trade, contracting work, credit agreements and others.<sup>11</sup>In carrying out his/her duties to make authentic deeds, a notary adheres to the principle of caution. The forms of principles that a notary can implement in the process of making deeds include:<sup>12</sup>

1. Conducting an introduction to the identity of the person appearing  
In carrying out his duties, a notary before starting to make a deed is certainly faced with parties who want to make a perfect deed, of course, before entering the identities of the parties into a deed, the notary must check the parties such as KTP, KK, or passport and match the photos of the identity holder with the parties who make a perfect deed, in order to prevent falsification of identities against the deed made by the notary.
2. Verifying the data of the subject and object of the person appearing. The purpose and objective of verification is to check the subject data of the

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<sup>9</sup>Shidqi Noer Salsa, 2020, Notary Supervision Law in Indonesia and the Netherlands, Kencana, Jakarta, p. 13.

<sup>10</sup>Ryan Sanjaya & Ety Susilowati, 2016. "A Study of Notary Bankruptcy in Indonesia". Diponegoro Law Journal. Volume 5(4), p.2 <https://doi.org/10.14710/dlj.2016.13313> accessed 8 June 2024 421.30 WIB

<sup>11</sup>Op.cit.

<sup>12</sup>Bella Okladea Amanda, 2022, "The Principle of Notary Prudence in Making a Perfect Deed", Recital Review, Vol. 4 Number. 1, p. 233

parties whether they are authorized and competent or not in carrying out legal acts so that they can meet the legal requirements of a deed such as whether the party acting is at least 18 years old or has been married according to Article 39 paragraph 1 letter a UUJN. While part of the process of validating object data is part of the process of checking the object documents brought by the person appearing, for example checking the land certificate to the National Land Agency whether the certificate is an original or fake certificate or whether or not the person concerned (the person appearing) has the certificate.

3. Giving a deadline in working on a perfect deed. In working on a deed to produce a good deed, the notary should give a deadline in the process of making the deed so that it is not rushed and can work carefully and precisely so as not to cause errors in the processing of the notarial deed.
4. Act carefully, meticulously and precisely in the process of making a perfect deed. Act carefully, meticulously and precisely in the process of making words in the deed, because it is often questioned because the words made are unclear or cause interpretation.
5. Fulfilling all the technical requirements for making a perfect notarial deed to make a notarial deed that is far from indications of legal problems, of course, the notary must meet the formal requirements and material requirements of making a notarial deed based on the Notary Law. Provisions regarding formal requirements in making a deed are regulated in Article 38 UUJN-P, while the material requirements that must be met in making an authentic deed are regulated in Article 1320 of the Civil Code.
6. Report to the relevant parties if there are indications of Money Laundering in notary transactions.

As a reporting party, a notary has compliance or obligations, namely implementing the principle of recognizing service users and is required to submit reports of Suspicious Financial Transactions to the Financial Transaction Analysis Reporting Center (PPATK).<sup>13</sup>

Based on the provisions of Article 3 of Government Regulation Number 43 of 2015, the notary profession is included in the category of reporting parties who are obliged to prevent and eradicate money laundering crimes. To carry out this obligation, Article 4 of the regulation requires notaries to apply the principle of recognizing service users. Service users, according to Article 1 Paragraph (3) of the Regulation of the Minister of Law and Human Rights Concerning the Application of the Principle of Recognizing Service Users for Notaries, are any person who uses notary services. Each person is an individual or corporation.

According to Article 18 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, the application of the principle of recognizing service users is as follows:

1. Supervisory and regulatory bodies establish principles for recognizing service users;

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<sup>13</sup>I Made Pria Dharsana, 2022, Indonesian notary law, Media Sains, Bandung, p.163.



2. The reporting party is obliged to apply the principle of recognizing service users as determined by each Supervisory and Regulatory Institution as referred to in paragraph (1);
3. The obligation to apply the principle of recognizing service users as referred to in Paragraph (2) is carried out when:
  - a. Conducting business relations with service users;
  - b. There are suspicious financial transactions with rupiah and/or foreign currency with a value of at least or equivalent to Rp. 100,000,000.00 (One hundred million rupiah);
  - c. There are suspicious financial transactions related to money laundering and terrorism financing crimes;
  - d. The Reporting Party doubts the truth of the information reported by the Service User.
4. The Supervisory and Regulatory Institution is obliged to supervise the Reporting Party's compliance in implementing the principle of recognizing Service Users.
5. The Principles of Recognizing Service Users at least include:
  - a. Identification of Service Users
  - b. Verification of Service Users; and
  - c. Monitoring of Service User Transactions

6. In the event that there is no Supervisory and Regulatory institution, provisions regarding the principles of recognizing service users and their supervision are regulated by the regulations of the Head of PPAK.

To fulfill the Principle of Recognizing Service Users (PMPJ), notaries are required to collect information regarding the identity of Service Users, both for individuals, corporations, and other agreements. This is done by examining the validity of identity documents such as Resident Identity Cards, Taxpayer Identification Numbers, and signature specimens of Service Users. In addition to examining these formal documents, Notaries are also required to meet directly with Service Users to ensure the authenticity of their identities.

In carrying out his/her position based on the provisions of the Notary Public Law Number 2 of 2014 Article 39, the notary implements the principle of recognizing service users based on the identity provided by the person appearing, namely the KTP as stipulated in Article 1 Number 14 of Law Number 23 of 2006 concerning Population Administration which explains: "Resident Identity Card, hereinafter abbreviated as KTP, is the official identity of a resident as proof of identity issued by the Implementing Agency which is valid throughout the territory of the Unitary State of the Republic of Indonesia."<sup>14</sup>

Based on the above, in carrying out his/her position as a Notary, in recognizing the person appearing only legally in the formal sense where the

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<sup>14</sup>Marthinus Mesak Mandala, 2021, "Principles of Recognizing Service Users for Notaries According to the Regulation of the Minister of Law and Human Rights Number 9 of 2017", *Officium Notarium*, Master of Notary, Faculty of Law, Islamic University of Indonesia, Yogyakarta, Vol. 1, Number 2, p. 322.

user of the notary's services only needs to provide an identification card to the Notary as his/her official identity. If the notary has doubts, he/she can ask for other identification from the person appearing such as a Family Card, Driving License, Passport, and others. These identities remain formal identities or are legally recognized so that the principle of recognizing the user of the service for a notary in his/her position is only formal.

According to Notary Taufik, Head of the Organizational Division of the Central Board of the Indonesian Notary Association (PP-INI) in the International Seminar on Notaries in the Prevention of Money Laundering in Tangerang on June 5, 2024, he said that the Principle of Recognizing Service Users (PMPJ) has nothing to do with deeds, as long as the notary only exercises the authority to make deeds and other authorities, there is no obligation to apply PMPJ. However, if acting outside the implementation of the position, providing other services must apply PMPJ. So the service user in question is not the person appearing in the deed.<sup>15</sup>

So, the implementation of reporting suspicious financial transactions to PPATK by a notary, these provisions include:

1. Appointing reporting officers, bound by the provisions in Article 6 of the Regulation of the Head of the Financial Transaction Reports and Analysis Center Number 11 of 2016 (Perka PPATK Number 11 of 2016).
2. Register through the GOAML application in accordance with PPATK Regulation Number 3 of 2021 concerning Procedures for Submitting Suspicious Financial Transaction Reports through the GOAML Application for professions.
3. Reporting to PPATK, Bound by the provisions in Article 6 of the Regulation of the Head of the Financial Transaction Reports and Analysis Center Number 11 of 2016 (Perka PPATK Number 11 of 2016).

#### **4. Conclusion**

The obligation of Notary compliance with the rules of money laundering crimes in suspicious business transactions as an effort to prevent and eradicate money laundering because it can facilitate PPATK to prevent and eradicate money laundering by utilizing several roles of Notaries as Public Officials and Professionals who are interrelated in digging up data on Service Users. The reporting process carried out by notaries on suspicious business transactions in making notarial deeds consists of several steps. First, the notary must appoint a reporting officer who is responsible for monitoring and identifying suspicious transactions. Second, the notary registers through the GoAML application to facilitate appropriate reporting. And third, the notary is required to report the suspicious transaction to PPATK.

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