

## Bank Responsibility for State Officials' Transactions in Efforts to Prevent and Eradicate Money Laundering Crimes

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**Abstract.** *Study this aims to determine and analyze the treatment of banks towards state administrator transactions and the bank's responsibility towards state administrator transactions in an effort to prevent and eradicate money laundering. The approach method in this study is sociological juridical. The research specification is analytical descriptive research. The data required includes field research data taken using the interview method and library research data. The data analysis method uses qualitative data analysis. Based on the research, it is concluded that banks apply further due diligence or Enhanced Due Diligence (EDD) to state administrator transactions in an effort to prevent and eradicate money laundering. The bank's responsibility for the state administrator transactions has legal consequences in the form of imposing administrative sanctions by the Financial Services Authority.*

**Keywords:** Banks; Money; Politically; Responsibility.

### 1. Introduction

The rapid development of community life is a process and result of the implementation of development in all areas of social, political, economic, security, technology and culture as well as science. This development also has a negative impact on the increase in the quality and quantity of various types of crimes that are very detrimental and disturbing to society. Prevention and eradication of crimes that occur in society are a guarantee of the right for every person to receive protection and fair legal certainty and equal treatment before the law as stated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

One of the crimes that is currently rampant is Money Laundering (hereinafter referred to as TPPU). Money laundering is the act of placing, transferring, diverting, spending, paying, granting, depositing, taking abroad, changing the form, exchanging with currency or securities or other acts on assets that are known or reasonably suspected to be the result of a crime with the aim of hiding or disguising the origin of the assets so that they appear to be legitimate assets.

Adrian Sutedi defines money laundering as activities that are processes carried out by a person or criminal organization against illicit money, namely money originating from criminal acts, with the intention of hiding the origin of the money from the government or authorities authorized to take action against criminal acts by primarily inserting the money into the financial system so that when the money is then removed from the financial system, the money has been transformed into legitimate money.<sup>1</sup>

In general, money launderers try to hide or disguise the origin of the wealth that is the result of criminal acts in various ways so that the wealth from their criminal acts is difficult to trace by law enforcement officers so that they can freely use the wealth for both legitimate and illegitimate activities. By distancing criminals from the proceeds of their crimes, criminals can enjoy the proceeds of their crimes without any suspicion of them, or reinvest the proceeds of their crimes for further criminal acts or in legitimate businesses.<sup>2</sup>

TPPU is a crime that not only threatens the stability and integrity of the economic system and financial system, but can also endanger the foundations of social, national and state life based on Pancasila and the 1945 Constitution of the Republic of Indonesia.<sup>3</sup>The government is making serious efforts to combat money laundering crimes and provide a strong legal basis to ensure the certainty and effectiveness of TPPU law enforcement in Indonesia. Handling TPPU in Indonesia has been encouraged by the Government since the enactment of Law of the Republic of Indonesia Number 15 of 2002 concerning the Crime of Money Laundering as amended by Law of the Republic of Indonesia Number 25 of 2003 concerning Amendments to Law of the Republic of Indonesia Number 15 of 2002 concerning the Crime of Money Laundering. Currently, both laws have been revoked and the Indonesian government has enacted Law of the Republic of Indonesia Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering (hereinafter referred to as the PPTPPU Law).

Money laundering will go through the process of placement, separation (layering) and integration of assets. This process risks exploiting the role of financial service providers, one of which is a bank. In fact, banks carry out their responsibilities as a function of collecting public funds by accepting the opening of accounts such as savings and deposits, then further carrying out their function as a distributor of public funds by providing credit services, as referred to in Article 3 of Law Number

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<sup>1</sup>Adrian Sutedi, *The Crime of Money Laundering*, (Bandung: PT Citra Aditya Bakti, 2014), p. 15.

<sup>2</sup><https://www.ppatk.go.id/backend/assets/uploads/20161003080031.doc>, accessed 02 November 2023.

<sup>3</sup>Explanation of the Republic of Indonesia Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

7 of 1992 concerning banking.<sup>4</sup> However, the activities of collecting and distributing funds carried out by the bank are vulnerable to having sources of funds originating from the proceeds of money laundering crimes.

Banks are involved in tracing the assets resulting from money laundering crimes as regulated in the PPTPPU Law. Banks have an important role, especially in implementing the principle of knowing your customer and reporting certain transactions to the financial intelligence unit authority or in Indonesia known as the Financial Transaction Reports and Analysis Center (PPATK) as analysis material and to be submitted to investigators. The obligation to implement the principle of knowing your customer and reporting customer financial transactions is further regulated in the provisions of the Financial Services Authority (OJK) and the Financial Transaction Reports and Analysis Center (PPATK).

In Indonesia, money laundering is often carried out by State Officials or Politically Exposed Persons (PEPs). PEPs are defined by the Financial Action Task Force (FATF) as someone who is or has been entrusted with a public function. Such public functions may include heads of state or government, senior politicians, senior government, judicial or military officials, senior executives of State-Owned Enterprises (BUMN), or important political party officials. Due to their position and influence, PEPs are in a position that is potentially misused for the purpose of committing TPPU and other related crimes such as corruption and bribery, as well as carrying out activities related to terrorism financing.<sup>5</sup>

One example of a money laundering case carried out by PEPs is the corruption and money laundering of the Bangkalan Regency Regional Revenue and Expenditure Budget (APBD) for 2010-2014 amounting to Rp414 billion carried out by the former Regent of Bangkalan, Fuad Amin. The defendant Fuad Amin took 5-15 percent of the APBD that flowed to each Regional Work Unit (SKPD). In addition, he also received gifts or gratuities related to the sale and purchase of natural gas supplies for gas-fired power plants in Gresik and Bangkalan, East Java.<sup>6</sup> The person concerned was proven to have made a number of money placements (placement process) by opening bank accounts in the name of the defendant using different identities, including using the identity of R. KH. Fuad Amin at Bank BRI for Rp2.667 billion, Haji Fuad Amin at BTN Syariah Account for Rp4.543 billion, Fuad Amin at Bank Mandiri for USD131,579, etc.<sup>7</sup>

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<sup>4</sup>Aprilya Altji Papendang, Bank Customer Rights and Obligations and Legal Protection According to Law Number 10 of 1998, in *Lex Administratum Journal*, Vol. IV/No. 3/Mar/2016, p. 82.

<sup>5</sup><https://antikoburu.org/sites/default/files/document/Kajian%20Pekerja%20Publik%20dan%20Afiliasi%20Bisnis%20Energi.pdf>, accessed 02 July 2024.

<sup>6</sup><https://news.detik.com/berita-jawa-timur/d-4709166/rekam-jejak-fuad-amin-eks-bupati-bangkalan-prior-meninggal-dunia>, accessed 06 July 2024.

<sup>7</sup><https://news.detik.com/berita/d-2908673/ini-deretan-kekayaan-fuad-amin-yang-di-however-hasil-pencucian-uang>, accessed 06 July 2024.

Based on statistical data from PPATK for the period from January to September 2020, information was obtained that the profile of legislative and government officials, Civil Servants (PNS), and TNI/Polri (including retirees) dominated the number of suspicious financial transactions (TKM) reported by reporting parties to PPATK, as many as 4,590 or 11% of the total TKM. This number is still not in line with the level of risk of money laundering crimes originating from corruption crimes.<sup>8</sup>

The large number of financial transactions related to money laundering carried out by State Officials or Politically Exposed Persons (PEPs) by utilizing banking service channels, has encouraged the Financial Services Authority to strengthen the prevention of money laundering crimes in the financial services sector. The commitment to strengthening is realized by the issuance of the Financial Services Authority Regulation (POJK) of the Republic of Indonesia Number 8 of 2023 concerning the Implementation of the Anti-Money Laundering Program, Prevention of Terrorism Financing and Prevention of Proliferation Funding of Weapons of Mass Destruction in the Financial Services Sector.

One of the implications of the issuance of the POJK is that banks are responsible for preventing and eradicating money laundering against transactions carried out by State Officials/PEPs.<sup>9</sup>Banks have an obligation to conduct further due diligence or Enhanced Due Diligence (EDD) which is an action to recognize service users or customers by conducting more in-depth identification, verification and monitoring carried out by financial service providers on prospective customers, Walk In Customers (WIC), or customers, who are high risk including PEPs and/or in high risk areas, to ensure that transactions are in accordance with the customer's profile, characteristics and/or transaction patterns.<sup>10</sup>

For banks that violate EDD obligations to PEPs, administrative sanctions will be imposed in the form of written warnings or reprimands accompanied by orders to take certain actions; fines; restrictions on certain business activities; reduction in the assessment of health level value formation factors; freezing of certain business activities; and/or prohibition as the main party.<sup>11</sup>These administrative

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<sup>8</sup>[https://www.ppatk.go.id/siaran\\_pers/read/1109/siaran-pers-detect-korup-through-pecepatn-aplikasi-politically-exposed-person.html](https://www.ppatk.go.id/siaran_pers/read/1109/siaran-pers-detect-korup-through-pecepatn-aplikasi-politically-exposed-person.html), accessed 02 July 2024.

<sup>9</sup>Article 35 paragraph (3) of POJK Number 8 of 2023 concerning the Implementation of Anti-Money Laundering Programs, Prevention of Terrorism Funding and Prevention of Funding for the Proliferation of Weapons of Mass Destruction in the Financial Services Sector.

<sup>10</sup>Article 1 number 14 of POJK Number 8 of 2023 concerning the Implementation of Anti-Money Laundering Programs, Prevention of Terrorism Funding and Prevention of Funding for the Proliferation of Weapons of Mass Destruction in the Financial Services Sector.

<sup>11</sup>Article 64 paragraph (1) of POJK Number 8 of 2023 concerning the Implementation of Anti-Money Laundering Programs, Prevention of Terrorism Funding and Prevention of Funding for the Proliferation of Weapons of Mass Destruction in the Financial Services Sector.

sanctions can be announced to the public.<sup>12</sup>so that it tarnishes the reputation and trust of the bank's good name which is recognized in the community.

Banks need to protect themselves from various risks, namely operational risks, legal risks, risks of transaction concentration and reputation risks so that they are no longer used as targets by criminals to launder money from criminal acts. Good risk management will enable banks to carry out their functions optimally, thus having an effect on a more stable and reliable financial system.<sup>13</sup>

In connection with the above, using the research object of field studies on Bank Rakyat Indonesia Sub Branch Office Malioboro, Yogyakarta, Researchers want to know and analyze how banks treat state administrators' transactions and how banks are responsible for these state administrators' transactions in efforts to prevent and eradicate money laundering crimes.

## **2. Research Methods**

The research method used in this study uses a sociological juridical method. The research specification used is analytical descriptive research. The type and source of data uses field research data taken by interview method and secondary data from library research. The data analysis method used is qualitative data analysis.

## **3. Results and Discussion**

### **3.1 Bank Treatment of State Officials' Transactions in Efforts to Prevent and Eradicate Money Laundering Crimes**

Article 1 number 13 of POJK Number 8 of 2023 defines State Administrators or what is known as Politically Exposed Persons (PEPs) as people who are given the authority to carry out important functions (prominent functions), which are not intended for middle or lower levels. PEPs as referred to in Article 1 number 13 include:<sup>14</sup>

- a. Foreign PEPs are people who are given the authority to perform prominent functions by another (foreign) country, such as heads of state or government, senior politicians, senior government officials, military officials or law enforcement officials, senior executives in state-owned companies, important officials in political parties;
- b. Domestic PEPs are people who are given the authority to perform prominent functions by the state, such as heads of state or government, senior politicians,

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<sup>12</sup>Article 64 paragraph (2) of POJK Number 8 of 2023 concerning the Implementation of Anti-Money Laundering Programs, Prevention of Terrorism Funding and Prevention of Funding for the Proliferation of Weapons of Mass Destruction in the Financial Services Sector.

<sup>13</sup>Robert Tampubolon, Risk Management: Qualitative Approach Applied to Commercial Banks, (Jakarta: PT Elex Media Komputindo, 2004), pp. 20-21.

<sup>14</sup>Article 2 paragraph (2) of POJK Number 8 of 2023 concerning the Implementation of Anti-Money Laundering Programs, Prevention of Terrorism Funding, and Prevention of Funding for the Proliferation of Weapons of Mass Destruction in the Financial Services Sector.

senior government officials, military officials or law enforcement officials, senior executives in state-owned companies, important officials in political parties; and  
c. Persons who are authorized to perform prominent functions by an international organization, such as senior managers including but not limited to directors, deputy directors, and board members or equivalent functions.

In carrying out its business activities, banks are in direct contact with customers who have various backgrounds or profiles. Each customer has their own level of risk for the vulnerability of money laundering. The customer's risk level consists of at least low risk, medium risk, and high risk.<sup>15</sup> Each level of customer risk in question determines the treatment that the bank will apply to the customer in order to carry out the process of recognizing or exploring the customer's profile (commonly known as the Know Your Customer (KYC) process).<sup>16</sup>

Customers with a background or profile that meets the criteria as State Officials or Politically Exposed Persons (PEPs) are high-risk customers so that banks are required to implement further due diligence or Enhanced Due Diligence (EDD) on transactions of State Officials or Politically Exposed Persons (PEPs). This is as regulated in the identification and verification of prospective customers and high-risk customers in Article 35 of POJK No. 8 of 2023 concerning the Implementation of Anti-Money Laundering (APU), Prevention of Terrorism Financing (PPT) and Prevention of Proliferation of Weapons of Mass Destruction (PPPSPM) Programs in the Financial Services Sector.

Enhanced Due Diligence (EDD) is a more in-depth identification, verification and monitoring activity carried out by banks on prospective customers, customers or Walk In Customers (WIC).<sup>17</sup> high-risk including State Administrators or Politically Exposed Persons (PEPs) and/or in high-risk areas to ensure transactions are in accordance with the customer's profile, characteristics and/or transaction patterns.<sup>18</sup> High-risk customers are customers who, based on their background,

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<sup>15</sup>Andini Dyahlistia Permatarani and R. Sugiharto, Implementation of Notary Marking at State-Owned Commercial Banks as High Risk Customers in the Context of Preventing and Eradicating Money Laundering Crimes, in *Tabellius Journal of Law*, Volume 1 No. 3, September 2023, ISSN 2988-6201, Master of Notarial Law, Sultan Agung Islamic University, Semarang, pp. 548-550, <https://jurnal.unissula.ac.id/index.php/tabelius/search/authors/view?firstName=Andini%20Dyahlistia&middleName=&lastName=Permatarani&affiliation=unissula&country=ID>, accessed 19 October 2024.

<sup>16</sup>Indonesian Bankers Association (IBI) and Banking Compliance Directors Communication Forum (FKDKP), *Culture Start From The Top: Building a Compliance Culture*, (Jakarta: PT Gramedia Pustaka Utama, 2018), p. 146.

<sup>17</sup>Article 1 number 11 of POJK Number 8 of 2023 states that Walk In Customer (WIC) is a party who uses bank services but does not have an account at the bank, not including parties who receive orders or assignments from Customers to carry out transactions on behalf of the Customer.

<sup>18</sup>Article 1 number 14 of POJK Number 8 of 2023 concerning the Implementation of Anti-Money Laundering Programs, Prevention of Terrorism Funding, and Prevention of Funding for the Proliferation of Weapons of Mass Destruction in the Financial Services Sector.

identity, history, and/or the results of risk assessments conducted by Financial Service Providers (PJK), have a high risk of carrying out activities related to Money Laundering (TPPU), Terrorism Financing (TPPT), and/or Prevention of Proliferation and Weapons of Mass Destruction (PPSPM).<sup>19</sup>

EDD is conducted by requesting additional information about the customer; conducting additional searches (for example, searching for customer information in trusted mass media); making intelligence reports on the risk profile of the customer or beneficial owner and the customer's alleged involvement in criminal activities; verifying the source of funds/wealth that may be involved in criminal activities and seeking additional information from the customer regarding the purpose and nature of the business relationship with the bank.<sup>20</sup>This EDD is carried out periodically, at least in the form of an analysis of information regarding Customers or Beneficial Owners.<sup>21</sup>, source of funds, and source of wealth.<sup>22</sup>

Location existence Bank Rakyat Indonesia Sub Branch Office Malioboro, Yogyakarta is strategically located and close to tourist attractions and government offices in the city of Yogyakarta, making the bank a choice for customers with various professional backgrounds to be able to access banking services. It is not surprising that there are several customers who meet the criteria as State Administrators or Politically Exposed Persons (PEPs) who choose to partner with the bank to be able to conduct financial transactions. The bank is required to apply further due diligence treatment or Enhanced Due Diligence (EDD) to prospective customers, customers and/or beneficial owners with a profile category as State Administrators or Politically Exposed Persons (PEPs). The bank's customers are automatically categorized as high-risk customers who have the potential to commit money laundering.<sup>23</sup>

Customers who meet the criteria as State Officials or Politically Exposed Persons (PEPs) will go through the Enhanced Due Diligence (EDD) procedure as determined

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<sup>19</sup>Article 1 number 15 of POJK Number 8 of 2023 concerning the Implementation of Anti-Money Laundering Programs, Prevention of Terrorism Funding, and Prevention of Funding for the Proliferation of Weapons of Mass Destruction in the Financial Services Sector.

<sup>20</sup>Section III– The FATF's RBA to AML/CFT, Financial Action Task Force's Guidance for A Risk Based Approach (RBA) – The Banking Sector October 2014., p. 20.

<sup>21</sup>Article 1 number 21 of POJK Number 8 of 2023 defines the Beneficial Owner as an individual who is entitled to and/or receives certain benefits related to the Customer's account, is the actual owner of the funds and/or securities placed in the PJK (ultimately own account), controls Customer transactions, grants power of attorney to carry out transactions, controls corporations or other agreements (legal arrangements), and/or is the final controller of transactions carried out through a legal entity or based on an agreement.

<sup>22</sup>Article 37 paragraph (1) of POJK No. 8 of 2023 concerning the Implementation of Anti-Money Laundering (APU), Prevention of Terrorism Funding (PPT) and Prevention of Proliferation of Weapons of Mass Destruction Funding (PPSPM) Programs in the Financial Services Sector.

<sup>23</sup>Results of an interview with Mr. Setiyanto Catur Widodo, Supervisor of the BRI Sub Branch Office Malioboro Yogyakarta on October 18, 2024.

by the Bank so that they can transact using banking products and services. The EDD procedure includes the following activities:<sup>24</sup>

- a. Conduct identification by requesting data, information and supporting documents to clarify the PEPs customer profile.
- b. Perform verification of:
  - 1) The truth and suitability of data, information and supporting documents provided by prospective customers or clients; and
  - 2) The truth and conformity of the profile of the person providing data, information and supporting documents with the profile of the prospective customer or client to ensure that the person providing data, information and supporting documents is the prospective customer or client in question.
- c. Conducting additional information searches to ensure and confirm the profile of the prospective customer or PEPs customer. This information search can utilize internal Bank data or third parties. The Bank will verify the source of funds/wealth that may be involved in criminal activities such as money laundering, terrorism financing or proliferation funding and weapons of mass destruction.
- d. Banks are required to categorize customers with PEPs profiles as high-risk customers.
- e. Bank appoints senior officials<sup>25</sup> who is responsible for business relations with Prospective Customers Customers, WICs, or Beneficial Owners meet the PEPs criteria. Senior officials must have adequate knowledge of potential risks such as reputational risk, operational risk and legal risk, and be able to take necessary actions in accordance with the risk profile of the customer and the customer's transactions.
- f. Conduct EDD periodically according to the period determined by the bank based on the customer's high risk. EDD analysis is at least an analysis of the update of information regarding the Customer or Beneficial Owner, source of funds, and source of customer wealth.

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<sup>24</sup>Article 37 paragraph (1) of POJK Number 8 of 2023 concerning the Implementation of Anti-Money Laundering Programs, Prevention of Terrorism Funding, and Prevention of Funding for the Proliferation of Weapons of Mass Destruction in the Financial Services Sector. The EDD procedure in this POJK is also implemented by Bank Rakyat Indonesia which is adopted into the bank's internal Standard Operational Procedure (SOP).

<sup>25</sup>Article 37 paragraph (2) of POJK Number 8 of 2023 concerning the Implementation of Anti-Money Laundering, Prevention of Terrorism Funding, and Prevention of Funding for the Proliferation of Weapons of Mass Destruction Programs in the Financial Services Sector, stipulates that the senior official in question has the authority to provide approval or rejection for the opening of a business relationship between the Bank and PEPs customers and make decisions to continue the business relationship and/or transactions with PEPs customers.



- g. Conducting stricter monitoring of transaction activities on PEPs customers, including paying attention to the increase in the number and frequency of transactions, types of transactions and transaction patterns used by customers.
- h. Report Suspicious Financial Transactions (TKM) to Financial Transaction Reports and Analysis Center (PPATK), if based on EDD and transaction monitoring, it turns out that no clear reasons for PEPs customer transactions are obtained.
- i. The Bank has the right to terminate and not process further if:
  - 1) Prospective customers or customers with PEPs profiles refuse to comply with regulations related to the implementation of Anti-Money Laundering (AML), Prevention of Terrorism Funding (PPT) and Prevention of Proliferation and Weapons of Mass Destruction (PPPSPM) programs; or
  - 2) The bank doubts the authenticity of the identity and completeness of the prospective customer's documents or the PEPs profile.

In addition, Prospective Customers, Customers, Walk in Customers (WIC) or Beneficial Owners with a background as family members of PEPs or related parties (close associates) of PEPs will be automatically/directly categorized as high-risk customers. In such conditions, the EDD procedure must be implemented and enforced.

The obligations of PEPs customers related to the EDD process carried out by the bank are to provide the correct identity and information required by the Bank and at least include personal identity, source of funds, and purpose of the transaction by filling out the form provided by the bank and attaching supporting documents.<sup>26</sup>Banks are also required to know that PEP customers who carry out transactions are acting for themselves or for and on behalf of other people.<sup>27</sup>All customer identities, documents and transaction records must be stored in accordance with statutory provisions.<sup>28</sup>

### **3.2 Bank Responsibilities for State Officials' Transactions in Efforts to Prevent and Eradicate Money Laundering Crimes**

Responsibility is an obligation for someone to bear everything or accept the burden of his actions. Bearing here does not only mean being willing to bear the consequences of the costs that must be incurred, but also guaranteeing and being willing to carry out legal obligations that have legal sanctions as a result of his actions that are contrary to the law.<sup>29</sup>

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<sup>26</sup>Article 19 paragraph (1) of Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

<sup>27</sup>Article 20 paragraph (1) of Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

<sup>28</sup>Article 21 of Law No. 8 of 2010 concerning the Prevention and Eradication of Criminal Acts and Money Laundering.

<sup>29</sup>HR. Ridwan, *State Administrative Law*, (Jakarta: PT Raja Grafindo Persada, 2006), p. 337.

In relation to the high risk inherent in customers with the profile of State Officials or PEPs, there are several responsibilities that must be adhered to and implemented by the Bank in efforts to prevent and eradicate the crime of money laundering, namely as follows:

a. Have Adequate Risk Management Policies and Systems to Determine High Risk Criteria Customers.

Banks are required to have risk management policies and systems to determine potential customers or customers who fall into high-risk criteria, especially State Officials or PEPs.<sup>30</sup>Determination of the high risk level in PEPs is based on the risks to be taken and the risks that the Bank can tolerate.<sup>31</sup>This risk management system is intended to be able to identify, assess, analyze, monitor and provide reports effectively regarding the characteristics or transaction pattern habits carried out by customers.<sup>32</sup>In addition, the risk management system can trace each transaction, if necessary, including tracing the Customer's identity, form of transaction, date of transaction, amount and denomination of transaction, and source of funds used for the transaction.<sup>33</sup>

b. Conducting Enhanced Due Diligence (EDD)

PEPs customers will go through Enhanced Due Diligence (EDD) procedures to be able to transact using banking products and services.

c. Appointing a Senior Official Responsible for Business Relations with Customers Who Meet the PEPs Criteria

Senior Officers appointed by the bank are authorized to:

1) Granting approval or rejection to the opening of business relations for Prospective Customers, or Beneficial Owners and/or transactions for Customers, Walk in Customers, or Beneficial Owners that are classified as high risk, including PEPs; and

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<sup>30</sup>Article 35 paragraph (1) of POJK No. 8 of 2023 concerning the Implementation of Anti-Money Laundering (APU), Prevention of Terrorism Funding (PPT) and Prevention of Proliferation of Weapons of Mass Destruction Funding (PPPSPM) Programs in the Financial Services Sector.

<sup>31</sup>Article 35 paragraph (3) of POJK No. 8 of 2023 concerning the Implementation of Anti-Money Laundering (APU), Prevention of Terrorism Funding (PPT) and Prevention of Funding for the Proliferation of Weapons of Mass Destruction (PPPSPM) Programs in the Financial Services Sector.

<sup>32</sup>Article 69 paragraph (1) of POJK No. 8 of 2023 concerning the Implementation of Anti-Money Laundering (APU), Prevention of Terrorism Funding (PPT) and Prevention of Funding for the Proliferation of Weapons of Mass Destruction (PPPSPM) Programs in the Financial Services Sector.

<sup>33</sup>Article 52 paragraph (3) of POJK No. 8 of 2023 concerning the Implementation of Anti-Money Laundering (APU), Prevention of Terrorism Funding (PPT) and Prevention of Proliferation of Weapons of Mass Destruction Funding (PPPSPM) Programs in the Financial Services Sector.

2) Making decisions to continue or terminate business relationships and/or transactions with Customers, Walk in Customers, or Beneficial Owners who fall into high-risk criteria, including PEPs.<sup>34</sup>

d. Carry out tighter monitoring of business relationships that exist between banks and customers using the PEPs criteria

The Bank is responsible for monitoring transactions regarding business relations with Customers, carried out by monitoring Customer transactions to ensure that the transactions carried out are in line with the Bank's understanding of the Customer, the Customer's business activities and risk profile, including the source of funds.<sup>35</sup> Banks may request information from customers about the background and purpose of transactions against transactions that do not match the profile, characteristics, and/or habits of the Customer's transaction patterns, by paying attention to anti-tipping-off in accordance with laws and regulations regarding the eradication of TPPU. If in the request for information the customer does not provide a convincing explanation, the Bank is required to report it to the PPATK as a Suspicious Financial Transaction.<sup>36</sup>

e. Making Efforts to Update PEPs Customer Data

In the event of any changes known from PJK's monitoring of Customers or other accountable information, PJK is required to make efforts to update data, information and/or supporting documents from customers.<sup>37</sup>

f. Protecting Customer Data with PEPs Criteria

Protection of PEPs customer data is part of the bank's responsibility to maintain bank secrecy as stipulated in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. The security and protection of PEPs customer data is guaranteed in Article 11 paragraph (1) of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, which stipulates that "PPATK officials or employees, investigators, public prosecutors, judges, and any person who obtains documents or information in the context of carrying out their duties according to this Law must keep the documents or information confidential, except to fulfill obligations according to this Law." Any

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<sup>34</sup>Article 37 paragraph (2) of POJK No. 8 of 2023 concerning the Implementation of Anti-Money Laundering (APU), Prevention of Terrorism Funding (PPT) and Prevention of Funding for the Proliferation of Weapons of Mass Destruction (PPPSPM) Programs in the Financial Services Sector.

<sup>35</sup>Article 51 paragraph (1) of POJK No. 8 of 2023 concerning the Implementation of Anti-Money Laundering (APU), Prevention of Terrorism Funding (PPT) and Prevention of Proliferation of Weapons of Mass Destruction Funding (PPPSPM) Programs in the Financial Services Sector.

<sup>36</sup>Article 52 of POJK No. 8 of 2023 concerning the Implementation of Anti-Money Laundering (APU), Prevention of Terrorism Financing (PPT) and Prevention of Proliferation of Weapons of Mass Destruction (PPPSPM) Programs in the Financial Services Sector.

<sup>37</sup>Article 51 paragraph (2) of POJK No. 8 of 2023 concerning the Implementation of Anti-Money Laundering (APU), Prevention of Terrorism Funding (PPT) and Prevention of Proliferation of Weapons of Mass Destruction Funding (PPPSPM) Programs in the Financial Services Sector.

person who violates this provision shall be subject to a maximum imprisonment of 4 (four) years.<sup>38</sup>

Furthermore, in Article 12 paragraph (1) of Law No. 8 of 2010, it is also stipulated that "The directors, commissioners, administrators or employees of the Reporting Party are prohibited from notifying Service Users or other parties, either directly or indirectly, in any way regarding Suspicious Financial Transaction reports that are being prepared or have been submitted to the PPATK."<sup>39</sup>The prohibition provision is called anti-tipping-off. The provision is intended to prevent customers from moving their assets, making it difficult for law enforcement to track customers and their assets.<sup>40</sup>Violation of the anti-tipping-off provisions is punishable by imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).<sup>41</sup>If the convict is unable to pay the fine, the fine will be replaced with a maximum imprisonment of 1 (one) year and 4 (four) months.<sup>42</sup>

The essence of the anti-tipping-off provisions is, on the one hand, intended to protect customer data information that is being traced in the context of analysis and/or examination at the PPATK for financial transactions suspected of being related to money laundering and/or other crimes, so that it is not known by other parties. On the other hand, it is so that the customer concerned cannot realize that his/her transaction is being monitored and/or analyzed to be reported as a suspicious financial transaction, thus making it easier for the bank, PPATK or investigators, in monitoring, analyzing, and/or investigating customer transactions that have a tendency to be reported as suspicious financial transactions. It is understood that the privacy rights of every person are rights that must be protected by the bank in carrying out banking activities. However, if there

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<sup>38</sup>Article 11 paragraph (2) of Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

<sup>39</sup>What is meant by the Reporting Party in Article 1 number 11 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes is Every Person who according to this Law is required to submit a report to the PPATK. The reporting parties include financial service providers (one of which is mentioned as a bank) and providers of goods and/or services. (Article 17 paragraph (1))

Meanwhile, the Service User is the party that uses the services of the Reporting Party. (article 1 number 12)

<sup>40</sup>Explanation of Article 12 paragraph (1) of Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

<sup>41</sup>Article 12 paragraph (5) of Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

<sup>42</sup>Article 13 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes.

are provisions in the law that require the bank to make a breakthrough against these provisions, then this does not constitute a violation.<sup>43</sup>

g. Submitting Reports to PPATK

Banks are responsible for submitting reports to PPATK which include:<sup>44</sup>

- 1) Suspicious Financial Transactions;
- 2) Cash Financial Transactions in the amount of at least IDR 500,000,000.00 (five hundred million rupiah) or in foreign currency of equivalent value, carried out either in one Transaction or several Transactions in 1 (one) working day; and/or
- 3) Financial transactions transfer funds from and to abroad.

h. Managing PEPs Criteria Customer Documents

The bank is responsible for administering documents in the form of:<sup>45</sup>

- 1) Documents related to customer data (including customers with PEPs criteria) with a minimum period of 5 (five) years since the end of the business relationship or transaction with the Customer and/or the discovery of a transaction that does not conform to economic and/or business objectives.
- 2) Documents related to customer data include customer identity including supporting documents; transaction information; results of analysis conducted by the bank; correspondence with customers; and other documents if needed.<sup>46</sup>
- 3) Customer documents related to financial transactions with a time period as stipulated in laws and regulations regarding company documents.

Banks that violate their responsibilities regarding State Organizer transactions will be subject to administrative sanctions in accordance with the provisions of Article 64 paragraph (1) of the Financial Services Authority Regulation (POJK) Number 8 of 2023 concerning the Implementation of Anti-Money Laundering (APU), Prevention of Terrorism Funding (PPT) and Prevention of Proliferation Funding of Weapons of Mass Destruction (PPPSPM) in the Financial Services Sector, in the form of:

- a. A written warning or warning accompanied by an order to take certain actions;

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<sup>43</sup>Muh Afdal Yanuar, Discrepancy Between Objects of Reporting Obligations for Banks Based on the Money Laundering Law and Those Required to be Confidential Based on Anti-Tipping Off Provisions, in *AML/CFT Journal: Journal of Anti-Money Laundering/Countering The Financing of Terrorism*, Vol. 02 No. 01 (December 2023), ISSN: 2963-220X (p); 2964-626X (e), pp. 46 and 49.

<sup>44</sup>Article 23 paragraph (1) of Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

<sup>45</sup>Article 63 paragraph (1) of POJK No. 8 of 2023 concerning the Implementation of Anti-Money Laundering (APU), Prevention of Terrorism Funding (PPT) and Prevention of Proliferation of Weapons of Mass Destruction Funding (PPPSPM) Programs in the Financial Services Sector.

<sup>46</sup>Article 63 paragraph (2) of POJK No. 8 of 2023 concerning the Implementation of Anti-Money Laundering (APU), Prevention of Terrorism Funding (PPT) and Prevention of Funding for the Proliferation of Weapons of Mass Destruction (PPPSPM) Programs in the Financial Services Sector.

- b. Fine;
- c. Restrictions on certain business activities;
- d. Decrease in the assessment of factors forming health level values;
- e. Freezing of certain business activities; and/or
- f. Prohibition as the main party.<sup>47</sup>

The Financial Services Authority (OJK) can announce the imposition of the above administrative sanctions to the public.<sup>48</sup> Announcements regarding the imposition of administrative sanctions on the public can be made, among other things, via the Financial Services Authority's page/website.<sup>49</sup> The imposition of administrative sanctions does not eliminate the Bank's obligation to continue to carry out the obligations of implementing the APU, PPT, and PPPSPM Programs.

The imposition of administrative sanctions in the form of fines by the Financial Services Authority (OJK) on Banks, is calculated with the following provisions:<sup>50</sup>

- a. Maximum per year Rp. 5,000,000,000.00 (five billion rupiah) for individuals; and/or
- b. A maximum of 1% (one percent) of the total net profit of the previous year with a maximum limit per year of IDR 100,000,000,000.00 (one hundred billion rupiah) for Banks.

The calculation of the imposition of fines by the OJK is suspended for banks that experienced losses in the previous year. If the bank has made a profit, the calculation of fines is determined based on the net profit received.

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<sup>47</sup>Article 1 number 2 of POJK No. 27/POJK.03/2016 concerning the Assessment of Capability and Properness for Main Parties of Financial Services Institutions (LJK), defines Main Parties as parties that own, manage, supervise, and/or have significant influence on LJK.

Article 2 paragraph (2) letter a, Main Parties for the Bank include Controlling Shareholders (PSP), members of the Board of Directors and members of the Board of Commissioners.

Administrative sanctions in the form of a prohibition as the main party, show that sanctions are not only imposed on the Bank as a corporation, but these sanctions also target individuals who are determined as the Main Party so that they are attached to the responsibility to implement provisions related to efforts to prevent and eradicate the crime of money laundering.

<sup>48</sup>Article 7 paragraph (2) of POJK No. 8 of 2023 concerning the Implementation of Anti-Money Laundering (APU), Prevention of Terrorism Funding (PPT) and Prevention of Proliferation of Weapons of Mass Destruction Funding (PPPSPM) Programs in the Financial Services Sector.

<sup>49</sup>Explanation of Article 7 paragraph (2) of POJK No. 8 of 2023 concerning the Implementation of Anti-Money Laundering (APU), Prevention of Terrorism Funding (PPT) and Prevention of Proliferation of Weapons of Mass Destruction Funding (PPPSPM) Programs in the Financial Services Sector.

<sup>50</sup>Article 79 paragraph (1) of POJK No. 8 of 2023 concerning the Implementation of Anti-Money Laundering (APU), Prevention of Terrorism Funding (PPT) and Prevention of Proliferation of Weapons of Mass Destruction Funding (PPPSPM) Programs in the Financial Services Sector.

The inclusion of sanctions in the provisions of POJK No. 8 of 2023 concerning the Implementation of the Anti-Money Laundering (APU), Prevention of Terrorism Funding (PPT) and Prevention of Proliferation of Weapons of Mass Destruction Funding (PPPSPM) Programs in the Financial Services Sector, is an incentive for banks to comply with these legal principles so that banks are committed to complying with and implementing these provisions in their business procedures and activities.

The responsibility of banks towards transactions of State Officials or Politically Exposed Persons (PEPs) has always been emphasized by regulators, both the Financial Services Authority (OJK) and the Financial Transaction Reports and Analysis Center (PPATK), to be implemented in every banking business activity. In the Dissemination of Regulatory Policies Regarding the Use of PEP Applications held by the Financial Transaction Reports and Analysis Center (PPATK) on December 10, 2020 virtually via Zoom which was attended by banking representatives, Mrs. Heni as Head of the OJK Anti-Money Laundering and Prevention of Terrorism Financing (GPUT) Handling Group, said that it is important for banks to conduct early identification of State Officials or Politically Exposed Persons (PEPs) because they can cause major legal and reputational risks.

The implementation of the Risk Based Approach (RBA) in preventing and eradicating money laundering is the key to the effectiveness of the implementation of the Anti-Money Laundering program. With RBA, banks can be more flexible and proportionate or focus data sources on areas where PEP risks lie so that banks can be more effective in mitigating risks. Based on the risk-based approach, the status of PEPs does not have a specific time period. Banks still need to periodically monitor customers who have not held positions as prominent functions. Therefore, Banks need to see whether former PEPs still have influence and/or are related to new PEPs. Risk assessment and handling of PEPs can be carried out by the Bank through an adequate risk management system, a periodic Enhanced Due Diligence (EDD) process regarding sources of funds and sources of wealth, the appointment of senior officials responsible for business relationships, and tighter monitoring of business relationships based on increasing numbers and supervision of transaction pattern selection.

In terms of mitigating violations of bank non-compliance in carrying out bank responsibilities for State Officials or Politically Exposed Persons (PEPs) transactions, banks can utilize the PPATK PEP Application to identify, verify and monitor PEPs. The use of this application is expected to make it easier for banks to find out their customer profiles so that they can identify the reasonableness of transactions made by their customers. Failure to identify customer profiles will cause banks to be unable to assess the reasonableness of transactions, which will have an impact on the delivery of the quality of suspicious financial transactions reported by banks to PPATK. Of course, the success of identifying, verifying and monitoring PEPs will provide a positive contribution to the efforts of the Government and law enforcement officers in preventing and eradicating money

laundering. Therefore, with this PEP database, it is hoped that it can help banks improve the quality of their reporting to PPATK.<sup>51</sup>

#### 4. Conclusion

From the discussion above, it can be concluded as follows:

a. Banks treat state administrators' transactions in an effort to prevent and eradicate money laundering crimes by implementing advanced due diligence procedures or Enhanced Due Diligence (EDD), namely more in-depth identification, verification and monitoring activities carried out by the Bank to ensure that transactions are in accordance with the profile, characteristics and/or transaction patterns of State administrators or Politically Exposed Persons (PEPs) customers.

b. The bank's responsibility for state administrators' transactions in efforts to prevent and eradicate money laundering crimes includes:

- 1) Have adequate risk management policies and systems to determine high-risk criteria for customers, especially for state administrator customers;
- 2) Conducting rigorous customer testing or Enhanced Due Diligence (EDD);
- 3) Appoint a senior official responsible for business relations with customers who meet the criteria of State Officials or Politically Exposed Persons (PEPs);
- 4) Conducting stricter monitoring of business relationships between banks and customers who are classified as State Officials or Politically Exposed Persons (PEPs);
- 5) Making efforts to update customer data of State Administrators or Politically Exposed Persons (PEPs);
- 6) Protecting customer data that is classified as a State Official or Politically Exposed Person (PEP);
- 7) Submitting reports to PPATK; and
- 8) Administering customer documents that meet the criteria of State Administrators or Politically Exposed Persons (PEPs).

In connection with the bank's responsibility, the researcher provides suggestions, namely:

a. Banks are expected to implement a risk-based approach to determine high risk for customers who meet the criteria of State Officials or Politically Exposed Persons (PEPs), to periodically update and assess customer risks to be in line with the implementation of the Anti-Money Laundering (AML) program set by the regulator. In addition, banks are expected to always provide regular training to

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<sup>51</sup>Results of an interview with Mrs. Shinta, Analyst at the Financial Transaction Reports and Analysis Center (PPATK) on October 19, 2024. The PPATK PEP application presented by her is one of the databases used by Bank Rakyat Indonesia for the purposes of identifying and verifying customer data that meets the criteria as State Administrators or Politically Exposed Persons (PEPs).



employees so that workers understand the risks and their duties and responsibilities in implementing the Anti-Money Laundering (AML) program.

b. Regulators such as OJK, PPATK and so on are expected to provide a regular database regarding the list of State Administrators and other data related to the implementation of the Anti-Money Laundering (APU) program. Given that the position of State Administrators is very easy to rotate, have retired or been dismissed. In addition, regulators are expected to be partners who are able to answer and translate laws and regulations related to money laundering crimes so that banks and other financial service providers are able to implement them easily into the practice of their business operations.

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