Problems of the Obligation to Keep Information Confidential in Making a Notarial Deed with the Principle of Recognizing Notary Service Users

Ni Komang Arini Styawati(✉), I Nyoman Sumardika, and Ni Made Puspasutari Ujianti

Faculty of Law, Warmadewa University, Denpasar, Indonesia
arinistyawati@gmail.com

Abstract. Even though part of the material is not the notary's signature appears in the deed. Required to preserve everything relevant to the deed they produced and what was communicated to them as a notary confidential. The Notary is not permitted to share what their client has informed them as a notary while they are speaking with a client about the creation of a deed. In accordance with the Law on Notary Positions, how is the requirement for notaries to keep the full contents of the deed they created private balanced against the duty to report suspicious transactions that occurred before them? How does the fact that Peremenkumham Number 9 of 2017 exists affect the idea of recognizing notary service customers in respect to the secrecy of the notarial act? Notaries must uphold the idea that service recipients are one of the reporters in accordance with Whistleblowers in the Government Regulation Number 43 of 2015: Money Laundering Prevention and Eradication (PPTPPU). After taking this into account, Regulation Number 9 of 2017 about the Application of the Principle of Recognizing Service Users for Notaries was published by the Indonesian Minister of Law and Human Rights. There are problems with Article 17 paragraph 1 of Law Number 8 of 2010 regarding PPTPPU since Notaries and land deed authorities (PPAT) are not categorized as reporting parties as required by Article 17 paragraph 1 of the PPTPPU Law. Therefore, there is no legal obligation for Notaries and/or land deed officials to report suspicious transactions made by Notaries and/or land deed officials of the parties if land deed officials and members of the notarial profession are not categorized as reporters in combating the practice of money laundering. As a result of the exclusion of the Notary profession as a reporter for suspicious transactions, criminals use the services of a Notary and land deed officials to help hide and disguise assets derived from the proceeds of a crime.

Keywords: Confidential Information Obligation · Deed · Notary

1 Introduction

L. 15 of 2002, also known as Law Number 15 of 2002 addressing the Crime of Money Laundering, is generally regarded as the beginning of money laundering legislation

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in Indonesia (TPPU). One year following the regulation's revision, Enacted was Law Number 25 of 2003, which made amendments to Law Number 15 of 2002, which dealt with the crime of money laundering [1]. Because it is felt that it is still not running optimally since there have been different interpretations and the lack of precise sanctions and other reasons, there is a need to draft a law to meet the national interest with an international standard.

The PPTPPU, also known as Law No. 8 of 2010 Concerning the Prevention and Eradication of the Crime of Money Laundering, was published in the year 2010. The PPTPPU Law differs from the previous law in a number of ways [3]. The improvement in question is a more thorough regulation of the offense of money laundering as well as the regulation of 25 (twenty five) predicate offenses and other criminal activities that are punished by a term of imprisonment of four years or more. Money laundering is a crime that endangers the foundations of a community, a nation, or a state's way of life in addition to the stability of the economy as well as the stability of the financial system.

The establishment of a The Center for Financial Transaction Reports and Analysis is one indication of the Indonesian government's dedication to combating money laundering (hereinafter abbreviated as PPATK) [6]. PPATK is described as an autonomous institution created in an endeavor to combat and remove the crimes of money laundering in Article 1 Number 2 of Law Number 8 of 2010. PPATK was established to be the key role holder of the mechanism for eradicating criminal acts of money laundering. The law on offenses involving money laundering will not be implemented effectively if the PPATK does not perform its duties correctly.

Notaries must adhere to the requirements of Law Number 30 of 2004 Concerning Notary Positions, Article 4, Paragraph (2) (UUJN), which deal with the Notary's oath or pledge to keep the details of the deed and information acquired during the course of their office private. This clause is reiterated in UUJN Number 2 of 2014, Letter J of Article 16, Sect. 1, Notaries are obliged to retain the action which they made and the information notified to them by the appearers who came and gave information before them, confidential. This is in line with the oath of office that has been uttered by every Notary prior to carrying out a real office, and when carrying out the office, the enunciation of the oath taken has become an obligation that must be maintained properly.

On the other hand, According to Government Regulation Number 43 of 2015 regarding A Notary is one of the reporting parties under the Prevention and Eradication of the Crime of Money Laundering. The following reporting parties are listed in Article 3 of the aforementioned regulation in addition to those mentioned in Article 2: A lawyer, a notary public, a land title officer, an accountant, a public accountant, and a financial planner are all examples of professionals.

Notaries must abide by the demand to thank service recipients. In accordance with these concepts, For the purpose of putting the idea of service users being recognized as notaries into practice, The 2017 Regulation No. 9 was passed by the Minister of Law and Human Rights. (hereafter referred to as Permenkumham).

This regulation more specifically regulates the role of Notaries in the implementation of the idea of acknowledging service consumers (Know Your Consumer). By applying this idea of recognizing service users, notaries can identify service users, confirm service

users, and keep track of service user transactions. If there are any indicators of questionable financial transactions made by their notarial service users, the notary is required to report them as the reporting party.

Because Notaries and Land Deed Officials (PPAT) are not listed as reporting parties, there are shortcomings in Article 17 paragraph 1 of Law Number 8 of 2010 regulating PPTPPU. The Government Regulation 43 of 2015's Article 3 further mandates that PPATs and notaries serve as reporting parties. In this instance, there is a discrepancy between Government Regulation No. 43 of 2015 and PPTPPU Law No. 8 of 2010. There is a legal requirement for Notaries and/or PPAT to disclose suspicious transactions made by the parties appearing before them as a result of Law Number 8 of 2010's exclusion of the profession/position of a Notary and PPAT from the reporting party category. The result of the exclusion of the Notary profession as a reporter for suspicious transactions is an indication that criminals can use the services of a Notary and PPAT to help them hide and disguise the assets derived from the proceeds of a crime [8].

A profession or position should not be connected to money laundering offenses when offering civil law services to the general public because, in performing their duties, a Notary or PPAT only drafts a deed according to the requirements of the pertinent laws and regulations, and the idea of formal truth serves as its cornerstone. Meanwhile, the acts of the parties including the act of using money from transactions made before a Notary/PPAT are entirely the parties' responsibility. However, a Notary/PPAT in carrying out their position must continue to act by adhering to the precautionary principle by using various instruments as an anticipatory measure, especially with the stipulation of provisions regarding the obligation to recognize legal service users who appear at the Notary/PPAT office.

Substantively, Article 17 paragraph 1 of the PPTPPU Law does not stipulate that Notaries and Land Deed Officials (PPAT) are reporting parties. A Notary is likewise prohibited from disclosing their client's secret and is even obligated to keep it a secret in accordance with Law Number 30 and Law Number 2 of 2014 regarding Notary Positions. The requirement for Notaries to implement the idea of identifying service users is outlined in Combined with Permenkumham Number 9 of 2017, Government Regulation Number 43 of 2015 pertaining to Reporting Parties in the Prevention and Eradication of the Crime of Money Laundering. The organizational structures of the two laws and regulations, which are ranked below the law, are out of alignment in light of these circumstances.

1.1 Formulation of the Problem

This study examines 2 (two) legal issues, namely:

1. How are the rules dictating a notary's duty to maintain the deed's secrecy according to the Notary Position's Law and the obligation to report suspicious transactions conducted before them related to one another?
2. How effective is Peremenkumham No. 9 of 2017 in recognizing notary service customers and protecting the secrecy of the document a notary signed?

2 Overview

2.1 Overview of a Notary

A public official known as a notary may create legal documents and other rights in line with the provisions of this Law or other laws. "Openbare Ambtenaren" is translated as "Public Official." both in Article 1868 of the Civil Code and in Article 1 of the Notary Position Regulations 108. Furthermore, since the enactment of UUJN, The Republic of Indonesia's Notaries fall under the purview of the Minister of Law and Human Rights. Notaries have the obligation to carry out their duties in a contrario manner, which means that a notary is said to have neglected their duties or obligations if they do not carry out the statutory orders imposed on them. In carrying out their duties, a Notary has the rights, obligations and prohibitions as referred to in the office law that governs them [5].

Deeds made by a notary are authentic deeds that can be used as evidence it is fully convincing evidence, which is qualified as proof by letter according to article 164 HIR as long as it fulfills the requirements based on the guidelines of Civil Code Article 1868. According to the law, an official deed shall have perfect evidentiary power (volledigbewijs), which means that if a party submits an official deed, the judge must accept the deed and assume that what is written in the deed has actually happened, so the judge may not order additional evidence outwardly, formally and materially.

2.2 Overview of the Crime of Money Laundering

Launder money is a term refers to a set of actions taken by an individual or group against illicit money, that is, money obtained through criminal activity, with the goal of concealing or obscuring the money came from a government agency or other organization having the power to prosecute criminal behaviour. This is especially true when the money is deposited into a system that allows it to be withdrawn from the financial system to appear as if it were lawful.

According to Law Number 8 of 2010's Article 1 Number (9): "Everyone is an individual or a firm." This means the subject of criminal law according to Law No. 8 of 2010 also applies to non-natural persons, which have so far been regulated in the Criminal Code, also include juridical persons or corporations.

Corporations also include organizational organizations, more precisely, groupings with three or more members that have been in existence for a while and act with the intention of committing one or more crimes to directly or indirectly acquire cash or non-financial benefits. Money laundering offenders fall into two groups in the PPATK E-Learning: active money launderers and passive money launderers, according to Law Number 8 of 2010 concerning Financial Transaction Reports and Analysis Center (PPATK). Active money launderers are those who violate Articles 3 and 4 and who also commit predicate crimes [9]. They are also those who know or have reason to believe that the assets in question came from the profits of illegal activity. According to article 5, passive money launderers are those who commit crimes but do not actively participate in the process of concealing or obscuring the source of the riches.

2.3 Overview of the Principle of Recognizing Notary Legal Service Users

In the banking world, the principle of'know your customer' is defined as the principle applied by banks to find out everything related to the identity of every prospective customer which is then followed up by monitoring the customer transaction activities, and if there is suspicious transaction activity, it has to be reported. The four (four) types of main responsibilities for bank institutions listed under the KYCP (Know Your Customer Principle) are as follows: (a) establishing customer acceptance policies; (b) creating guidelines and practices for customer identification; (c) creating policies and practices for tracking customer accounts and transactions; and (d) Creating risk management policies and procedures to clarify that banks must create these policies and procedures before conducting business with clients.

A Notary is required to meet with potential customers or appearers in order to carry out their duties, at the very least when the deed is being signed. This means that the Notary has an essential interest in having to deal physically (face to face principle) with each prospective client. In serving prospective clients or appearers who act as intermediaries or proxies of other parties (beneficial owners), a Notary is oblidged to obtain supporting documents for identity and legal relations, proof of assignment in the form of a power of attorney, as well as the authority to act for and on behalf of the power of attorney if the it is authorized. A written declaration confirming the identification of the other party's proxy has been obtained, registered (warmerking), or legalized is typically how the principle of identifying service users is used by a notary.

According to Reporting Parties in the Prevention and Eradication of the Crime of Money Laundering, Government Regulation Number 43 of 2015, notaries are required to comply by the principle of include service consumers as one of the reporting parties. The topic of identifying service users is only briefly touched upon. Examples include service user transaction monitoring and service user identification.

The Notary carries out identification by gathering Service User data on people, corporations, and other entities (legal arrangements) [10]. The Notary is required to confirm facts and paperwork as well. In this situation, the notary can ask the service user for information to determine whether the formal document is accurate, and if there is any uncertainty, the notary can ask the authorized party for further supporting papers.

A notary is in charge of recording transactions and maintaining data systems for user identification, oversight, and the provision of reporting on their transactions. Depending on the complexity and qualities of the notary, either non-electronically or electronically can be used to record transactions and information systems. A notary must be able to follow If necessary for internal and/or ministry-related goals, such as those relating to law enforcement and other governmental legal actions, every transaction will be made.

3 Results and Discussion

3.1 The Obligation of a Notary to Keep the Deed Confidential in Accordance with the Law on Notary Positions

The Notary must uphold the confidentiality of all information pertaining to the deed that the Notary makes as well as according to Any information gathered to make the deed

compliant with the oath of office is covered by articles 4 and 16 of the Law on Notary Positions, letter f. Unless the law states differently, this is true. A Notary who disobeys specific rules may be subject to penalties ranging from verbal warnings to dishonorable dismissal, as mentioned in the Notary Position Law's Article 16 paragraph (11) [7].

The use of the right to remain silent in connection to positions is also governed by civil law, the Criminal Code, and criminal procedural law. People who are forced to keep secrets due to their position, standing, or dignity may request to be excused from exercising their right to testify as witnesses, specifically on matters that have been entrusted to them, as stated in The first paragraph of Criminal Procedure Code Article 170 In addition, Sect. 2 of Article 1909 of the Civil Code states that anyone who is forced to preserve a secret because of their position, employment, or status under the law is only required to do so with regard to matters whose knowledge has been given to them in that capacity. Anyone who intentionally divulges a secret that must be preserved due to his or her position or occupation, Criminal Code Article 322 states that a maximum punishment for a crime committed both now and in the past is nine months in prison or a fine of 600 rupiahs (1).

The definition of a notary under this or other laws is "public official with additional authorities and the authority to perform an actual act." according to Article 1 number 1 of UUJN. The term "Public Official" as used in Article 1 Point 1 of the UUJN must be understood to mean "Public Official" or "Notary" as a Public Official empowered to perform other duties as described in Article 15 Paragraphs (2) and (3) of the UUJN and to act in the public interest. In his or her capacity as a public official, a notary creates a deed that, so long as it is not established otherwise by the application of the restricted legal presumption, has legal force and complete proof value for the parties and anyone else.

There are two different sorts of Notary deeds: those made before (ten overstaan) a Notary and those made by (door) a Notary, which are both known as Deeds of Relaas or Deeds of Minutes in Notary practice. A notary is independent and acts in an unbiased and impartial manner when performing their duties.

An authentic deed serves as proof for the parties to a contract that details their rights and obligations with respect to things that, according to the oath of office and code of ethics of the notary, are considered to be trade secrets for the notary's position. As a position of trust, Notaries are obliged to maintain the secrets entrusted to them.

Regulations concerning position secrets are provided by law to Notaries in relation to their positions, specifically those contained in the oath of office in the terms of Article 4 and Letter F of Article 16 of the UUJN. Violations of these secrets are prescribed in Article 322 of the Criminal Code.

If Notaries provide information about the deed's contents for the goal of obtaining the truth during the legal procedure, they are protected legally by the law as public officers. The Right to Denial provides legal protection. The legal right to refuse or to request release as a witness is known as the right of denial. However, in the case of the public interest in order to produce a fair, beneficial decision and guaranteeing the legal certainty in accordance Combined with Article 54 of the UUJN and Article 16 paragraph 1 letter f, the Notary concerned may reveal the contents of the deed to parties who have

no interest in the deed they have made, provided that supported by applicable laws and regulations.

The Notary Honorary Council approved the Notary's examination with regard to the Notary's oath of office in accordance with Article 66 of the UUJN so that the Notary's disclosure of the deed's contents is not unlawful because it is required by law. If a Notary discloses secrecy about the contents of a deed before a trial at the request of a law enforcer (judge), a Notary cannot be held criminally liable, on the grounds that he has disclosed something that should be kept secret regarding the contents of the deed they have made, by another party by requesting a Derivative of the Minutes of Examination at the Court which is recorded by the Registrar and signed by the Judge.

3.2 The Existence of Permenkumham No. 9 of 2017 Concerning the Principle of Recognizing Notary Service Users Regarding the Confidentiality of a Notary Deed

In order to stop and prevent the funding of terrorism and money laundering, the reporting party shall put the principle of recognizing service users into practice in accordance with the legal requirements outlined in 2015 Government Regulation No. 43. The Prevention and Eradication of the Crime of Money Laundering lists notaries and land deed officers as reporting parties (PPAT).

The Government Regulation Number 43 of 2015 was released in order to implement the provisions of Article 17 Paragraph (2) of Law Number 8 of 2010 about the Prevention and Eradication of the Crime of Money Laundering. The publication of Rule of the Head of PPATK Number 11 of 2016 regarding Procedures for Submission of Suspicious Financial Transaction Reports for Professionals tightened this rule even more. Notaries and PPATs are required, like other professions, to follow the "Know Your Customer (KYC)" maxim.

In addition, as a follow-up regulation to the implementation of Government Regulation Number 43 of 2015, the Minister of Law and Human Rights issued Regulation of the Minister of Law and Human Rights Number 9 of 2017 concerning the Application of the Principle of Recognizing Service Users for Notaries. The requirements of a Notary as a Reporting Party on Suspicious Financial Transactions are further highlighted by this rule (Transaksi Keuangan Mencurigakan, referred to as TKM).

The following actions are classified as suspicious transactions under Article 1 of Minister of Law and Human Rights Order No. 9 of 2017 reads as follows:

1. Financial transactions that depart from the applicable Service User's profile, traits, or transactional patterns;
2. Financial transactions made by Service Users that may be done in accordance with the rules and laws controlling the avoidance of being reported by the Reporting Party and the prevention and elimination of the crime of money laundering;
3. Financial transactions that are initiated or canceled using resources that are thought to be the profits of illegal activity; or
4. Financial Transactions for which PPATK asked for a Notary report due to the presence of assets that could be the proceeds of crime

Additionally, according to Article 2, a Notary must follow the principle of recognizing Service Users, which at the very least entails identifying Service Users, verifying Service Users, and keeping an eye on Service User Transactions. This application covers Notaries who establish, acquire, and dispose of legal instruments; Manage checking, savings, time-deposit, and/or securities accounts; deal utilizing cash, securities, or other financial service goods, purchase and sell real estate for the benefit of or on behalf of service recipients.

The parties in charge of informing It has been established the Financial Transaction Reports and Analysis Center of Suspicious Transactions by Government Regulation Number 43 of 2013. (PPATK). First are the reporting parties, who are categorized as financial service providers. Banks, financial institutions, Financial institutions, pension funds, securities businesses, investment managers, custodians, trustees, insurance companies, insurance brokerage firms, and postal service providers are some of the entities that may make demand deposits. The reporting parties mentioned also include foreign exchange dealers, card payment instrument providers, e-wallet and/or e-money providers. The list of required reporting parties also includes cooperatives who engage in savings and loan operations, pawn shops, businesses that trade commodities in the futures market or plan money transfer business activities, and suppliers of other goods and or services.

Attorneys, Accountants, public accountants, land deed authority, and financial advisers are just a few of the other reporting parties. The reporting parties listed above are required to implement the concept of recognizing service consumers in accordance with Article 4 of Government Regulation Number 43 of 2015. This regulation further underlines that the PPATK must receive reports of questionable financial transactions from all reporting parties.

In addition to the wider metaphor of receiving "dirty" money obtained through criminal "washing" it so that it looks real, David Chaikin and J. C. Sharman [2] define money laundering as "the technique of disguising the illicit origin of money acquired from crime." Further, according to John Madinger [4], money laundering is "the use of funds obtained through illicit activity by obscuring the identity of those who obtained the funds and transforming it into assets that look to have come from legitimate sources". The notion of money laundering as intended by John Madinger can be interpreted as the use of money generated from illegal activities or contrary to the law by the offender keeping their identity secret and hiding the origin of the money. Furthermore, the offenders turn the money into assets so that it appears as if it originates from a legally legitimate source.

The creation of the Center for Financial Transaction Reports and Analysis (PPATK), which is tasked with regulating the application of the law on criminal acts of money laundering, is one indication of the government's commitment to the fight against money laundering as a crime.

Reports of You can find out about suspicious financial activities by PPATK based on reports based on information from the reporting party or other sources developed to be further analyzed by the PPATK. The results of reports from PPATK that have found suspicious transactions or transactions that are indicated to be suspected of money laundering will be reported to the relevant agencies.

Article 1 Number 3 of the Regulation of the Head of Financial Transactions explains the idea of the principle of recognizing service users Reports and Analysis Center Number: Per-10/1.02.1/ PPATK/09/2011 concerning Using the Recognizing Service Users for Goods and/or Other Service Providers principle. According to the rule, the term "principle" refers to the methodology used by suppliers of other goods and/or services to identify the characteristics and transactional patterns of service users by fulfilling the requirements laid out in the regulation.

According to Article 3 of Law No. 8 of 2010 and Government Regulation No. 43 of 2015 Regarding the Prevention and Eradication of the Crime of Money Laundering, notaries are regarded as reporters. This means that the provisions of these two laws and regulations serve as the legal foundation for the requirement that a notary report any suspicious transactions upon receiving a legal order. Although a notary is a public official who is particularly empowered to produce a deed, this will not lessen the strength of proof as a tool that is based on the distinctive character of the maker.

One of the reporters who has been identified is a notary, in accordance with Article 3 of Law No. 8 of 2010 and Government Regulation No. 43 of 2015 Regarding the Prevention and Eradication of the Crime of Money Laundering. As a result, it is now possible to assert legally that laws and regulations require notaries to report suspicious transactions when they occur.

Thus, it means that the Notary in making the report must disclose the information provided by their appearers. When referring to Article 16 of the UUJN, a Notary is obliged to keep information related to the making of a deed confidential, but that is excluded if there is a law that orders otherwise. In this context, Law Number 8 of 2010, which is supported by Peremenkumham No. 9 of 2017 and Government Regulation No. 43 of 2015, requires a Notary to act as a reporter if there is a suspicious transaction which if it will lead to the Criminal Act of Money Laundering.

In carrying out their position, a Notary will not be constrained by the existence of a series of rules on the obligation to be a journalist who committed money laundering. The reason is that UUJN is not violated because of it as long as it fulfills the applicable legal mechanism. Hence, there is no effect on the aquo deed made because the legal action taken for the suspected party is a material legal remedy in an effort to eradicate and prevent the criminal act of money laundering.

4 Conclusion

1. Notaries have received legal protection as public officials from the law if they disclose the contents of the deed they made in the interest of seeking material truth, as long as the action is based on the provisions of the UUJN by using the obligation to deny and the right of denial in the law enforcement process to disclose client/appearer's confidentiality. To create a decision that is fair, advantageous, and ensures legal certainty in accordance with Article 54 of the UUJN and Article 16 paragraph 1 letter f, the concerned Notary may, however, divulge the contents of the deed they have prepared if it is supported by the rules and laws that apply. The Notary's knowledge of the particulars of the deed they have prepared and the overall circumstances surrounding the deed is limited. Regarding the oath of office of a Notary in accordance

with Article 66 of the UUJN, the Notary Honorary Council approves the examination of a Notary, so that the action taken by the Notary concerned to reveal the contents of the deed is not a violation of the law because the law has ordered so.
2. The Notary will not be restricted in the performance of his or her duties by a set of rules relating to the requirement to report criminal actions of money laundering, as UUJN finds that the Notary has complied with the aforementioned obligation both procedurally and substantively.

Recommendations

1. To avoid any regulatory inconsistencies between the laws and regulations in the field of criminal acts of money laundering and the UUJN, it is necessary to synchronize the laws and regulations by making changes to these laws and regulations.
2. For Notaries/land deed officials, it is necessary to be more careful in carrying out the positions to avoid allegations from law enforcement officials that Notaries/land deed officials or are a part that participates in and/or assists in the occurrence of money laundering crimes.

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