

Profession Role as Reporting Parties in Preventing and Eradicating Money Laundering Crimes

Fauziah Lubis, Bismar Nasution, Ediwarman, Zulkarnain Sitompul
Postgraduate Program in Law Science
University of North Sumatra
Medan, Indonesia
fauziahlubis2018@gmail.com

Abstract— Money laundering is one of the crimes of White Collar Crime which attracts the attention and concerns of the international community, including Indonesia. The research aims to examine and analyze the role of the profession as a reporting party in preventing and eradicating money laundering crime using Lawrence Meir Friedman's theory of the legal system and Sudarto's theory of criminal law policy. This research method is a normative research method by analyzing a statutory regulation and analyzed qualitatively. The results showed that 1) the rule of law of Government Regulation (PP) Number 43 of 2015 which regulates the role of the profession as a reporting party in preventing and eradicating money laundering has not been effective, this is due to the professionals involved in Advocates, Notaries, Land Deed Making Officer, Accountants, Public Accountants and Financial Planners each still have the nature of secrecy in professional relations with their clients that cannot be violated by professional code of ethics laws, and are still idealistic with the principle of carrying out state duties rather than humanitarian duties, 2) professional obligations in preventing and eradicating acts money laundering is considered to be caused by pressure from the Financial Action Task Force and vulnerable professions are used by money laundering criminals to hide and disguise the origin of assets which are the result of criminal acts by taking refuge behind the provisions of maintaining confidentiality of clients. en that has been regulated by Law, 3) Laws for the protection of witnesses and reporters as criminal law policies for reporting provided by the profession as an effort to prevent and eradicate the occurrence of criminal acts of money laundering, covering the whole function of law enforcement officials, reactions to violations law in the form of criminal.

Keywords—role; money laundering; law; profession

I. INTRODUCTION

Since the enactment of Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering in June 2015, the Financial Transaction Analysis Center (PPATK) has optimized the effectiveness of the implementation of the intended provisions. The efforts made by PPATK coordinate and communicate related to the acceleration of the preparation of implementing regulations regarding the principle of recognizing service users for the profession, as well as socialization and training for the profession. As it is known that the profession determined to be the reporting party is an advocate, notary, Land Deed Making Officer (PPAT), accountant, public accountant, and financial planner.

Money Laundering is one of the crimes of White Collar Crime which attracts attention and concerns of the international community including Indonesia. This is common considering the impact caused by the money laundering crime action is very extraordinary, namely in addition to threatening economic stability and financial system integrity, but also can endanger the joints of life in the community, nation and state based on the Pancasila and the Constitution of the Republic of Indonesia 1945. The obligation to report to the profession raises legal issues in a juridical manner, the formulation of the reporting party regulated in Article 17 paragraph (1) of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes).

In the money laundering crime law it expressly stipulates that Financial Service Providers and other providers of goods and / or services have the obligation to report suspicious financial transactions. However, also the obligation for the profession is interpreted from the clause, it can be said that the legislators only focus on using financial service providers and providers of other goods and / or services. Whereas in recommendation 12 and recommendation 16 FATF (Financial Action Task Force) on Money Laundering has classified reporting parties into 3 categories, namely financial institutions, non-financial institutions, and professions (including professions in the legal field). So that it can be understood that the international community actually wants the legal profession to be made the reporting party for suspicious financial actions.

The will, the legal profession such as Advocates, Notaries, and PPAT have become the reporting parties as stated in Article 15 of the Government Regulation Money Laundering Crimes Law. Then the fourth is the professional profession, such as Advocates, Notaries, PPAT, Accountants, and Financial Planners. The obligation to report is aimed at narrowing the scope of money laundering practices. Likewise, it is intended for financial service providers. The addition of financial service providers consisting of venture capital companies, infrastructure finance companies, microfinance institutions and export financing institutions as reporting parties are motivated by business activities, or businesses carried out by these companies or institutions because they are vulnerable to being used as facilities and targets for money laundering. , so it is considered important to make a rule and legal system.

Law refers to a unit formed in one system. Systems intended to achieve a particular destination occur in a complex environment. The legal system is also part of the transformation of social symptoms into the norm. The legal system describes various legal norms. Legal norms can be determined in the Act, and implementing regulations, including the norms contained in the Judge's decision. Understanding the legal system as a system (Friedman, 2001).

At another conclusion, Lawrence Meir Friedman explained that law as a system consists of 3 (three) components, namely: legal structure, a legal substance, and legal culture. Understanding of Legal structure. The legal substance is about government regulations regarding the role and obligations of the profession as a reporting party in preventing and eradicating money laundering. The legal structure in this research is how the professional role in implementing the provisions of laws and government regulations regarding money laundering, where the profession is required as the reporting party. Legal culture includes the attitudes of the community or the values they hold in determining the activities or activities of the legal system in question. Attitudes and values will influence both good and bad behavior related to the law so that legal culture is an embodiment of people's thinking and social forces in determining how the law is used, avoided or harassed.

Responding to the Money Laundering Crimes Law, the criminal law policy against witnesses or reporters by profession must be protected physically and non-physically (by law) security and comfort. Criminal law policy is defined as a means to eradicate the occurrence of an event by using various efforts. Criminal policy in the politics of criminal law with the term using this means of reasoning there are two central problems, namely: the problem of determining what actions should be used as criminal acts and the problem of determining what sanctions should be used or imposed on violators. To deal with the central problem things must be considered in essence as follows: 1) improvement and utilization of law enforcement officials, including strengthening organizations, personnel, and facilities to solve criminal cases, 2) legislation that can function to analyze and stem crime and have future reach, 3) effective criminal justice mechanism with fast, appropriate, cheap and simple terms and 4) coordination between law enforcement officials and other government apparatuses related to increasing use in crime prevention, 5) public participation to help smooth the implementation of criminality enforcement (Nawawi, 1996).

Furthermore, the provisions of Government Regulation Number 43 of 2015 require the profession as the reporting party to reduce the danger and losses of the state. Besides that, also the role of the profession in preventing and eradicating Money Laundering has a very positive impact so as not to be ensnared by the law. Therefore, it is very important to study. Therefore, this study aims to analyze the Professional Role as a Reporting Party in Preventing and Eradicating Money Laundering in accordance with the mandate of Government Regulation Number 43 of 2015.

II. METHOD

A. *Type of Research*

The type of legal research method used in this study is the normative research method. In normative research secondary data as a source of information can be primary legal material, secondary legal materials, and tertiary legal materials.

B. *Research Specifications*

The specification of this research is specifically to analyze the implementation of legal principles, namely research on written positive law or research on legal methods that live in society. In this type of legal research, laws are often conceptualized as what is written in legislation (law in books), or the law is conceived as a rule or norm. The approach method that will be applied is the Statute Approach and Case Approach. Case research in normative legal research aims to study legal norms or rules carried out in legal practice

C. *Collecting Data Technique*

The technique of collecting data using literature studies (normative legal research) that focuses on secondary data, the authors conducted research on the laws and government regulations relating to this research. Then conduct interviews with informants, especially the public relations department of the PPATK and the profession to obtain information to add to the lack of complete secondary data. Data collection tools in normative juridical research are derived from secondary data with the aim of obtaining concepts, theories, and information and conceptual thinking from previous researchers in the form of legislation, scientific works, journals, and others. The data collection and collection procedure in this study was conducted in two ways, namely by conducting library research at the University of North Sumatra (USU) library interviews with key informants such as PPATK public relations, lawyers, and prosecutors and financial service providers.

D. Analysis

Data analysis techniques are carried out starting with an examination of the collected data and then conducting direct and directed interviews and then analyzing the data qualitatively, the data obtained are systematically arranged and then analyzed qualitatively in the form of rules. The process of legal analysis is linked to the theoretical framework to be able to answer the formulation of the problem under study.

III. FINDING AND DISCUSSION

A. Legal Rules That Regulate Professional Roles As Reporting Parties In Preventing And Eradicating Money Laundering Crimes

The results of the analysis carried out in this study indicate that in the implementation of the professional role in preventing and eradicating money laundering crimes it has not been effective, this is due to the weakness of coordination among authorized institutions, where coordination between the PPATK, the Police, Prosecutors and Courts related to the handling of money laundering crimes tends to remain stand in their respective positions even though there is a coordination forum called the money laundering crimes committee but needs to be improved, and a pattern is sought for operational level coordination between agencies, institutions, related bodies that regulate clearer patterns of field work, then prevent and eradicate money laundering crimes, namely the weakness in interpreting professional codes of ethics about client confidentiality in each profession. As PP Number 43 of 2015 concerning Reporting Parties in the prevention and eradication of money laundering crime, the professions involved are Advocates, Notaries, PPAT, Accountants, Public Accountants, and financial planners. Each of these professions has the nature of secrecy in relation to the client.

Based on the results of PPATK's research, vulnerable professions are used by money laundering criminals to hide or disguise the origin of assets which are the result of criminal acts by taking refuge behind the provisions of the confidentiality of profession relations with Service Users regulated in accordance with statutory provisions. In addition, profession arrangements as a reporting party and the implementation of reporting obligations by venture capital companies, infrastructure finance companies, microfinance institutions, export financing institutions, advocates, notaries, land deed makers, accountants, public accountants, and financial planners are intended to protect parties Reporting parties from lawsuits, both civil and criminal. Therefore, consideration of including the profession as a reporting party in the prevention and eradication of money laundering crimes in Indonesia is based on the results of the PPATK research that vulnerable professions are used by perpetrators of money laundering to conceal or disguise the origin of assets that are the result of money laundering how to take refuge behind the provisions of confidentiality that the profession has as a public official.

B. Profession Obligations as Reporting Parties in Preventing and Eradicating Money Laundering Crimes

As published/mandated in PP Number 43 of 2015 namely Advocates, Notaries, PPAT, Accountants, Public Accountants, Financial Planners, is a professional obligation in reporting criminal acts of money laundering to PPATK based on observations, typologies or modes of money laundering to prevent and eradicate money laundering. Criminals often use services to conduct illegal transactions so that it is difficult to detect in the banking system for example by entering into accounts in the name of lawyers, accountants, public accountants, notary funds notary as well as Advocate professions that are interpreted as having important positions in law enforcement so there again an argument that states hiding crime behind client confidentiality. The philosophy of the advocate as a client defender must be straightened out, to position the client in a position that should be/is actually because a profession also justifies hiding one's crime. Basically, the professions have been able to understand the purpose of the Government Regulation to prevent money laundering crimes, but the problem is that the Government Regulation is allegedly in contravention of their respective professional laws, plus there has been no verdict in the Supreme Court related to violation of Government Regulation Number 43 of 2015.

In addition, according to the results of this study with the existence of Government Regulation Number 43 of 2015 as the implementing regulation of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering that includes lawyers as reporting parties, advocates must expressly implement these provisions. Analysis of some data on special criminal cases including money laundering that violates Republic of Indonesia Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes that have been decided by the Supreme Court as follows:

TABLE I. CLASSIFICATION OF SPECIAL CRIMINAL PERKARA ACCEPTED BY THE REPUBLIC OF INDONESIA SUPREME COURT YEAR 2010-2018

No.	Classification	Amount	Percentage (%)
1.	Corruption	13569	31.23
2.	Narcotics & Psychotropic	20689	47.61
3.	Juvenile Justice	6203	14.27
4.	Forestry	203	0.46
5.	Banking	74	0.17

6.	Terorism	171	0.39
7.	Living Environment	1202	2.76
8.	Domestic Violence	1158	2.66
10.	Money Laundering	178	0.40
		43.447	100

Source: Directory of Decisions of the Supreme Court, Processed (2018)

The table above shows that of all special criminal classifications of money laundering criminal acts are classified as low, which are 178 cases (0.40%), while the highest percentage is related to Narcotics and Psychotropic drugs, which are 20689 cases (47.61%). Therefore, based on PP Number 43 of 2015 and Republic Indonesia Law No. 8 of 2010 concerning the prevention and eradication of criminal acts of money laundering, requires professional professions to provide reports to the PPATK regarding suspicious and active transactions as gatekeepers in an effort to prevent and eradicate money laundering.

Furthermore, the results of the interview with the Informant, namely the Prosecutor as well as the public relations officer of PPATK, gave the following statement:

“Sejauh ini belum ada pihak pelapor dari profesi yang melaporkan kliennya terkait transaksi keuangan mencurigakan dan belum ada. PP Nomor 43 Tahun 2015 ini sudah mencapai tahap implementasi, namun demikian, kami sebagai inisiator sebelum merumuskan PP ini mengundang berbagai kalangan profesi sehingga pemerintah (Presiden) menyetujui terbitnya PP ini. Permasalahannya adalah dalam melaksanakan kewajiban mereka sebagai profesi masih terikat kepada prinsip dan kode etik profesi. Kode etik tersebut adalah Undang-undang masing-masing profesi sedang prinsip yang dipegang adalah masih dianggap sebagai tugas profesional bukan tugas kemanusiaan, karena jika profesi itu dianggap sebagai tugas kemanusiaan saya yakin banyak yang melaporkan kliennya. Jadi PP ini akan efektif jika profesi bisa mengesampingkan kode etik profesi dan menganggap kewajiban sebagai pihak pelapor inimmerupakan tugas kemanusiaan. Jika dilihat secara statistik per Januari 2017 belum ada satupun profesi yang melapor, bisa di cek di bulletin tahunan PPATK 2018. Profesi juga diberikan perlindungan baik sebagai saksi atau pelapor secara undang-undang”.

The above statement explains that since the issuance of Government Regulation Number 43 the Year 2015 there has been no indication of profession involvement in money laundering because that regulation has not been effective. In carrying out its obligations as a reporting party, the current profession has only been fully aware of the importance of integrity in preventing and eradicating money laundering. The profession's obligation as a reporting party in having an ontological foundation is in the context of the Advocate, Notary, PPAT, Accountant, Public Accountant, and Financial Planner profession in preventing money laundering, ontology is intended here as an effort to find out the nature of the PPAT Advocate's main duties and functions. Notary, PPAT, Accountant, Public Accountant, and Financial Planner in the crime of money laundering profession obligations in the context of Advocates, Notaries, PPAT, Accountants, Public Accountants and Financial Planners, referred to as epistemology is to place the legal sources of these professions as the basis the task of the roles and functions of the professions.

In general, the sources and legal basis (formal sources of material resources) the role and function of the profession are based on the stipulation of various regulations (Legislation) and the Code of Ethics governing all professions. In axiology in the context of the Advocate profession, Notary, PPAT, Accountants, Public Accountants, and Financial Planners are associated with eradicating criminal acts of laundering, in axiology will provide benefit to humanity itself. Because these professions become important pillars and legal needs. Professions are part of law enforcement. Legal services provided by all professions will be able to carry out their professional duties for the sake of legal justice for the benefit of justice seekers, including efforts to empower people to realize their fundamental rights before the law.

C. Criminal Law Policy Against Reporting Given by Profession in Preventing and Eradicating Money Laundering

Prevention and countermeasures policies including criminal policy are inseparable from broader policies, namely social policy which consists of policies for social welfare and policies for social defense policy. Thus, if political crimes are carried out by using a means of penal (criminal law), criminal law policy (reasoning policy), especially at the judicial policy stage, must pay attention and lead to the achievement of the objectives of social policy in the form of social welfare and social defense. Penal policy or law enforcement policy' that is functional and operational through several stages:

- 1) Stage of policy formulation
- 2) Application stage
- 3) The execution phase

In the formulation stage, prevention and prevention of crime is not only the duty of law enforcement officials but also law makers in this matter the legislature. Legislative policy is the most strategic stage of reasoning policy. The basic strategy of crime prevention is directed at efforts to eliminate (eliminate) or cope with and improve overall power and conditions that become criminogenic factors for the occurrence of crime. So an integral approach is needed in the sense of:

- a) Not only symptomatic and repressive coping strategies through law reform and enforcement but also causative and

preventive countermeasures;

b) Not only do law reform but also social, economic, political, cultural, moral and administrative reform; and

c) Not only do a renewal of one law, but also all legislation that gives an opportunity for the occurrence of crime.

Besides that, it is very important to hold elections to achieve the results of criminal legislation that are best in the sense of meeting the requirements of justice and usability. In the broad sense, the criminal law policy covers the entire function of law enforcement officials, including the workings of the Court and the police, while in the narrow sense the overall principles and methods are the basis of the reaction to violations of laws in the form of criminal law. Criminal law policies in the broadest sense are carried out through legislation, and official bodies use the means of reasoning (criminal law) so that significant changes in the legal system are obtained, namely substance, culture, and legal structure.

IV. CONCLUSION

In implementing the legal rules of Government Regulation (PP) Number 43 of 2015 which regulates the role of the profession as a reporting party in preventing and eradicating money laundering crimes has not been effective, this is due to the professionals involved in Advocates, Notaries, PPAT, Accountants, Public Accountants and planners each finance still has the nature of secrecy in professional relations with its clients which cannot be violated by law on professional ethics code, and is still idealistic with the principle that carrying out state duties is not a humanitarian task. The profession's obligation in preventing and eradicating money laundering is considered to be caused by pressure from the FATF (Financial Action Task Force) and vulnerable professions are used by money laundering criminals to hide and disguise the origin of assets which are the result of criminal acts by taking refuge in behind the provision between the relationship of maintaining the confidentiality of the client that has been regulated by the Act. However, professions both as witnesses and exporters continue to be given safeguards as stipulated in the 2010 law on legal reporting and protection procedures. The legal policy is an effort to prevent and eradicate the occurrence of money laundering crimes. In the broad sense, the criminal law policy covers the entire function of law enforcement officials, including the workings of the Court and the police, while in the narrow sense the overall principles and methods are the basis of the reaction to violations of laws in the form of criminal law. Criminal law policies in the broadest sense are carried out through legislation, and official bodies use the means of reasoning (criminal law) so that significant changes in the legal system are obtained, namely substance, culture, and legal structure.

REFERENCES

- Friedman, L.M. (1990). *The Republic of Choice Law, Authority and Culture*. London: Harvard University Press.
- Nawawi, A.B. (1996). *Bunga Rampai Kebijakan Hukum Pidana*. Bandung: PT. Citra Aditya Bakti.
- Peraturan Pemerintah Nomor 43 Tahun 2015 tentang Pihak Pelapor dalam Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang
- Peraturan Pemerintah Nomor 57 Tahun 2003 Tata Cara Perlindungan Bagi Pelapor dan Saksi Tindak Pidana Pencucian Uang
- Sudarto, (1981). *Kapita Selekta Hukum Pidana*. Bandung: Alumni.
- Undang-Undang Nomor 8 Tahun 2010 Tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang. Undang-Undang Nomor 18 tahun (2003) tentang Advokat.
- Undang-Undang Nomor. 30 Tahun 2004 Tentang Jabatan Notaris.