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Effectiveness of the Notary's Role in Participating in the Implementation of the Provisions of the Money Laundering Crime Law through PMPJ (Principle of Knowing the Service User)

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Abstract

This normative legal research analyzes the effectiveness of the notary's role in preventing money laundering (ML) through the implementation of the Anti-Money Laundering Law through the Know Your Customer (KYC) Principles. The increasing prevalence of ML modus operandi with the potential involvement of notaries serves as the background for this research. The findings indicate that the notary's authority in drafting deeds necessitates the application of the principle of prudence to understand the legal intent and purpose of the client's wishes. ML prevention efforts are also strengthened through technical guidance from the Financial Transaction Reports and Analysis Center (PPATK) to notaries regarding KYC and reporting suspicious financial transactions through the Go-AML application. This research recommends further evaluation of the implementation of KYC by notaries through surveys and analysis to ensure compliance and effectiveness in mitigating ML risks. This research is expected to contribute to the development of policies in notary practices in the prevention and eradication of ML in Indonesia.

Keywords: *role of the notary; money laundering; notary; PMPJ (Principle of Knowing Service Users).*

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Introduction

A notary is a public official who is authorized by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 Regarding the position of Notary, has the authority to make authentic deeds and carry out other tasks regulated in these laws and regulations. Notaries are positioned as public officials tasked with serving the interests of society at large. The philosophy of appointing a notary as a public official is to create legal certainty by providing protection and guarantees for notaries in carrying out their profession. The aim of legal protection for notaries is to provide and fulfill a sense of security for notaries in carrying out their authority, so that deeds made by or in the presence of a notary can be utilized optimally by the parties. Apart from that, the philosophy of appointing notaries as public officials is also related to efforts to provide order, legal certainty and legal protection for every citizen who uses notary services. A public official is a person who works to provide comprehensive service covering the interests of the community. 1

The essence of appointing a notary as a public official lies in providing guarantees and protection which leads to the realization of legal certainty. Providing legal protection is intended to foster a sense of security for notaries in carrying out their authority optimally, as well as ensuring that the deeds they make have binding legal force for the parties concerned. Furthermore, the appointment of notaries as public officials also aims to provide certainty, order and legal protection for every citizen who uses notary services.

In carrying out their official duties, notaries are required to be guided by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, in order to guarantee the validity of authentic deeds required by users of notary services. The creation of an authentic deed must always apply applicable legal principles, so that the legal certainty of the resulting deed can be guaranteed. The authority of a notary can be classified into two types, namely the authority regulated explicitly in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, as well as the authority stated in other statutory regulations. The authority of a notary as regulated in Law Number 2 of 2014 includes making authentic deeds, guaranteeing certainty of dates making deeds, storing deeds, providing grosses, copies and quotations of deeds, legalizing private deeds, waarmerking, making private copies of original documents, validating the suitability of photocopies with original documents, as well as providing legal counseling related to making deeds. The authority of notaries is also regulated in other laws and regulations, such as the Civil Code, Law Number 25 of 1992 concerning Cooperatives, Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 16 of 2001 concerning Foundations in conjunction with Law Number 38 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations, Law Number 41 of 2004 concerning Waqf, and Law Number 12 of 1995 in conjunction with Law Number 1 of 2009 concerning Aviation.

Article 38 paragraph (3) letter C of Law Number 2 of 2014 concerning the Position of Notaries emphasizes that the substance of the deed contained in the body of the deed is a manifestation of the wishes and desires of the parties conveyed before the notary. Based on these provisions, it can be concluded that the contents of the deed reflect the aims and objectives of the parties, not the notary. The role of the notary is to express these wishes and desires in the form of a notarial deed that is in accordance with the applicable legal corridors, as regulated in Law Number 2 of 2014 concerning the Position of Notaries.

Based on Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering (*TPPU* Law), money laundering is defined as a series of actions that fulfill the elements of a criminal act as regulated in this law. The crime of money laundering itself refers to efforts to hide or disguise the origin of assets obtained from illegal activities so that it appears as if they came from a legitimate source. The *TPPU* Law regulates various rules related to money laundering, including the stages generally carried out by the perpetrator, namely the first is placement, which is the initial stage where the perpetrator inserts illegal assets into the financial system, for example through purchasing assets or transferring to an account. bank. The second is layering, which means that at this stage it involves a series of complex transactions to disguise traces of the origin of illegal assets, such as transfers between accounts, buying and selling assets, or investing in various financial instruments. Third, is integration (merging) which is the final stage where illegal assets that have been disguised as legitimate assets are then used in legitimate business or investment activities, or even to refinance criminal activities. One of the crucial stages in money laundering is integration, which is explained in the *TPPU* Law as an effort to utilize assets obtained and generated from criminal acts, after being able to enter the financial system through placement or transfer, so that it appears as if the resulting assets are assets. legitimate wealth. These assets are then used for legitimate business activities or to refinance criminal activities.4

Article 41 paragraph (1) letter a of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering gives authority to the *PPATK* (Financial Transaction Reporting and Analysis Center) to obtain information from government agencies and private institutions that receive reports from certain professions in order to carry out the task of eradicating and preventing money laundering crimes. The explanation for Article 41

paragraph (1) letter a of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering further details that the private institutions in question include advocate associations, notary associations and accountant associations, while certain professions include advocates , financial consultant, notary, land deed official, and independent accountant.

The increasing frequency of money laundering criminal cases involving parties other than the main perpetrators has become a serious concern. The Financial Transaction Reports and Analysis Center (*PPATK*), which is an independent institution tasked with preventing and eradicating criminal acts of money laundering, in the 2023 performance evaluation coordination meeting with the Ministry of Law and Human Rights, identified the notary profession as one that is vulnerable and easily misused by perpetrators. money laundering as a facilitator. The Ministry of Law and Human Rights, through the Notary Supervisory Council, has a crucial role in preventing misuse of the notary profession for the purpose of money laundering crimes, both directly and indirectly. Notary involvement can occur at various levels of risk, ranging from low to very high.

The alleged crime of laundering involving the former Head of Makassar Customs and Excise, Andhi, has been named a suspect since then and is undergoing processing the judge. Two notaries were present in the trial process as witnesses in the suspect's money laundering case. In this process, Andhi was found to have gratified 58.9 billion in rupiah, Singapore dollars and US dollars. Notarial witnesses on behalf of Notaries Lila Dewi Puspita and Esty Paranti were asked for information regarding how Andhi did it. This case is proof that notaries can be related to money laundering crimes, either directly or indirectly.

Based on a study of the problems previously explained, the author intends to further explore the Effectiveness of the Notary's Role in Participating in the Implementation of the Provisions of the Money Laundering Crime Law through the Principle of Knowing the Service User (*PMPJ*). The formulation of the problem to be studied is as follows:

1. What is the role of a notary in preventing money laundering crimes through implementing the Principles of Knowing Your Service User (*PMPJ*)?
2. To what extent is the effectiveness of the notary's role in contributing to efforts to prevent money laundering through the implementation of the Principles of Knowing Your Service User (*PMPJ*)?

Research Methods

This research applies a normative legal approach with normative juridical methodology. This type of research is also known as doctrinal legal research, because it often focuses on the analysis of provisions contained in statutory regulations.

Juridical research that utilizes secondary data begins by conducting a study of legal issues sourced from literature and statutory regulations. This study applies a research approach based on statutory regulations, considering that the research objects studied by the author are various legal norms which are the center of attention and also the main theme of this research.

Normative studies that are based on a statutory approach must be based on the hierarchy of laws and regulations in force in the Republic of Indonesia. This hierarchy refers to the types and levels of statutory regulations as stipulated in Article 7 paragraph (1) of Law Number 10 of 2004 concerning the Formation of Legislative Regulations.

Results And Discussion

1. The Role of Notaries in Efforts to Prevent Money Laundering Crimes Through the Principle of Knowing Your Service User (*PMPJ*)

Money laundering can be defined as any action that fulfills the elements of a criminal offense as regulated in law. Actions that fall into the category of money laundering crimes, as stated in Article 3, Article 4 and Article 5 of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes, include:

a. Carrying out actions of placing, transferring, diverting, using, paying, granting, depositing, sending abroad, changing form, or exchanging currency, securities, or other actions for assets that are known or reasonably suspected to result from criminal acts, with the aim of hiding or disguising the origin of the assets.
b. Carrying out actions to obscure or cover up the origin, source, location, intended use, change of ownership, or legal ownership status of assets or wealth that are known or reasonably suspected to originate from illegal activities.
c. Any individual involved in receiving, controlling, placing, transferring, paying, granting, donating, keeping, exchanging or the use of assets that he knows or reasonably suspects originate from criminal activity may be subject to legal sanctions.

Article 1 paragraph (5) of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering identifies several types of financial transactions that are considered suspicious. These transactions include transactions that deviate from the profile or habits of service users, transactions that are suspected of being intended to avoid reporting, transactions that involve assets suspected of originating from criminal acts, and transactions that are requested to be reported by *PPATK* because they involve similar assets.

Article 2 paragraph (1) of the same law defines "proceeds from criminal acts" as assets obtained from various criminal acts. This includes criminal acts of corruption, bribery, narcotics, psychotropic substances, labor and migrant smuggling, as well as criminal acts in various sectors such as banking, capital markets, insurance, customs, excise, trafficking in people and illegal weapons, terrorism, kidnapping, theft, embezzlement, fraud, money counterfeiting, gambling, prostitution, taxation, forestry, environment, maritime affairs and fisheries, or other criminal acts that are punishable by imprisonment of 4 years or more.

In efforts to eradicate money laundering, there are several crucial aspects that need to be considered. First, criminals try to hide the identity of the true owner and the origin of the proceeds of crime. Second, they changed the form of the assets so that they could be easily moved. Third, the money laundering process is carried out covertly to avoid detection by law enforcement officials. Finally, the perpetrator continues to try to maintain control over the assets even though they have gone through the laundering process.

The practice of criminal acts of money laundering is usually carried out through various modus operandi, including:

1. Joint investment by investing illegal funds with legal capital to disguise their origins.
2. Use of credit collateral by providing collateral for credit from financial institutions.
3. Illegal funds are transferred abroad through various mechanisms to make it difficult to trace which are cross-border transactions
4. The perpetrator uses legitimate businesses to channel illegal funds, so that it appears as business profit.
5. Illegal funds are used in gambling, either directly or through intermediaries, to obscure traces as a disguise in gambling.
6. The perpetrator falsified documents related to financial transactions to hide the origin of the illegal funds.

7. The perpetrator applied for a loan from a foreign financial institution using collateral as assets resulting from crime.
8. The perpetrator engineered a foreign loan scheme to insert illegal funds into the domestic financial system.
9. Illegal funds are donated to social or religious institutions to give the impression of legality.

In accordance with the provisions of Law Number 2 of 2014 concerning Amendments

Based on Law Number 30 of 2004 concerning the Position of a Notary, the authority of a Notary includes making authentic deeds, guaranteeing the certainty of the date of making the deed, storing the deed, giving grosse, copying the deed, quoting the deed, legalizing the deed in private, waarmerking, making a copy of the original document. under hand, validation of the suitability of the photocopy with the original document, as well as legal counseling regarding the preparation of the deed. In carrying out the authority of his position, the Notary is obliged to pay attention to the limitations on the audience as regulated in Article 39, namely:

1. The applicant must be at least 18 (eighteen) years old or married, and competent in carrying out legal actions.
2. The presenter must be known by the Notary or introduced by 2 (two) witnesses identifier who is at least 18 (eighteen) years old or married and competent in carrying out legal actions, or introduced by 2 (two) other parties.
3. The introductory statement as intended in paragraph (2) must be included in detail expressly stated in the deed.

The introduction as referred to in the contents of Article 39 above is in the form of an introduction to the presenters who appear before the notary by showing proof in the form of personal identity or legal residence identity issued by an authorized government official in the form of *KTP* (Resident Identification Card), *KK* (Family Card).), marriage certificate, *NPWP* (Taxpayer Identification Number), and passport. During the introduction through personal identity shown directly in front of the notary, the notary must still apply the principle of caution and, if necessary and capable, can validate the personal identity using the legal tools and methods that are applied. The precautionary principle for notaries is a principle that requires notaries in carrying out their positions and functions to be in accordance with the Law on the Position of Notaries to always be careful in order to always comply with existing regulations and to provide services and protection for the interests and trust of the public as a whole. general. This precautionary principle is an implementation of Article 16 paragraph (1) letter a of the Law on Notary Positions which requires notaries to take careful action in carrying out their positions and functions.

Article 38 paragraph (3) letter C of Law Number 2 of 2014 concerning the Position of Notaries confirms that the substance of the deed contained in the body of the deed is a manifestation of the wishes and desires of the parties conveyed before the notary. Therefore, the substance of the deed reflects the will or desire of the parties alone, and is not the will or desire of the notary. The notary, in this case, plays the role of the party who expresses the will in the form of a notarial deed in accordance with the provisions of Law Number 2 of 2014 concerning the Position of Notaries. Apart from being required to recognize the person present and if necessary carry out validation, the notary also needs to pay attention to every wish and will of the person appearing by again applying the principle of prudence. The notary must fully understand whether the wishes and desires that will be stated in the deed are in accordance with the appropriate provisions and the legal consequences that will arise in the future due to the wishes and wishes that will be stated in the deed. If there is a will or wish from the person appearing that is not in accordance with the provisions and could give rise to legal consequences in the future, the notary is obliged to do so question this clarity and

provide legal advice and counseling so that the wishes and wishes of the person involved can be framed into a valid deed.

The increasing frequency of money laundering crimes committed by criminal elements in order to obscure the origin of illegal funds is a serious problem that needs to be handled firmly and anticipated by various parties, including notaries. The modus operandi commonly used in money laundering involves three main stages, namely placement, layering and integration.

The placement stage is the first step where the owner of illegal funds places or disguises these funds into the financial system, especially through banking. Next, the layering stage aims to obscure the traces of illegal funds by moving or transferring these funds repeatedly between financial institutions. Finally, the integration stage is carried out to integrate illegal funds that have successfully entered the financial system so that they appear as if they came from legitimate sources and can be used in legal business activities or even to refinance criminal activities.

At the layering stage, perpetrators of money laundering crimes can utilize the services of a notary to carry out their evil intentions. Therefore, notaries need to apply the principle of high caution in carrying out their duties to prevent involvement in money laundering practices.

2. Effectiveness of the Notary's Role in Taking Part in Preventing the Crime of Money Laundering Through the Principle of Knowing Your Service User (*PMPJ*)

Various criminal acts, both initiated by individuals and corporations, both within the country and across national borders, have shown a significant increase. These criminal acts include corruption, bribery, smuggling of goods, labor and immigrants, banking crimes, illicit trafficking in narcotics and psychotropic substances, human trafficking (including slaves, women and children), illegal arms trafficking, kidnapping, terrorism, theft, embezzlement, fraud, as well as various other white collar crimes. 10 White Collar Crime has special characteristics that differentiate it from other types of crime. First, this crime is invisible, meaning it does not involve physical violence and is often committed covertly through data manipulation or abuse of authority. Second, White Collar crimes tend to be very complex, involving complex schemes that are difficult for the lay public to understand. Third, there is a lack of clarity regarding criminal liability, because the perpetrators are often individuals or groups who have high positions and great influence. Fourth, the victims of these crimes are often unclear, they can be individuals, companies, or even the wider community who are harmed indirectly. Fifth, the legal regulations governing White Collar crime are sometimes vague or unclear, making the law enforcement process difficult. Lastly, these crimes are difficult to detect and prosecute because perpetrators often have sufficient resources and knowledge to cover their tracks.

In an effort to prevent and eradicate money laundering, the Indonesian Government established the Financial Transaction Reports and Analysis Center (*PPATK*). *PPATK* has the mandate to collect, store, analyze and evaluate information related to suspicious financial transactions in accordance with Law Number 8 of 2010. In addition, *PPATK* is also tasked with monitoring exception records from financial service providers, compiling guidelines for reporting suspicious transactions, and providing advice and assistance to authorized agencies regarding the information they obtain. *PPATK* also plays a role in issuing guidelines and publications for financial service providers regarding their obligations to detect customer behavior that is considered suspicious. *PPATK* also recommends that the government take steps to prevent and eradicate money laundering crimes, as well as provide reports on the results of analysis of financial transactions that are indicated as criminal acts to the police and prosecutors. Periodically, *PPATK* also submits reports regarding the results of its analysis

and activities to the President, the House of Representatives and supervisory institutions providing financial services.

Article 18 of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering mandates the implementation of the Principle of Recognizing Service Users (*PMPJ*) as a crucial instrument in efforts to prevent the crime of money laundering. The application of PMPJ is required in several specific situations, including: when establishing business relationships with service users, when there are financial transactions in rupiah and/or foreign currencies with a minimum value or equivalent to IDR 100,000,000, when there is a suspicious financial transaction and is potentially related to a money laundering crime and/or a terrorist financing crime, or when the reporting party doubts the accuracy of the information submitted by the service user.

The Principles of Recognizing Service Users (*PMPJ*) are a series of procedures that must be implemented to understand the identity and activities of service users. *PMPJ* includes three main stages: identification, verification and monitoring. The identification stage aims to collect information related to the identity of service users. Next, the verification stage is carried out to ensure the correctness of the information that has been obtained. Finally, monitoring of service user transactions is carried out periodically to detect potential risks of criminal acts of money laundering and funding for terrorist activities.

Article 17 paragraph (1) of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering mandates that parties who are required to report suspicious financial transactions include:

First, financial service providers, which include various institutions such as banks, finance companies, insurance, pension funds, securities companies, investment managers, custodians, trustees, current account service providers, foreign exchange traders, card payment providers, e-mail providers money and/or e-wallets, savings and loan cooperatives, pawnshops, commodity futures trading companies, as well as organizers of money transfer business activiies.

Second, providers of other goods and/or services, which include property companies/property agents, motor vehicle dealers, gem, jewelry and precious metal dealers, art and antique dealers, and auction houses.

Article 17 paragraph (2) of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering (*TPPU Law*) mandates further regulation regarding reporting parties through Government Regulations.

This mandate is implemented through Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes (Reporting Party PP). Article 3 PP Reporting Parties expands the scope of reporting parties in efforts to prevent *TPPU*, by adding the profession of advocate, notary, deed-making official land, accountants, public accountants and financial planners as parties who are obliged to report suspected *TPPU*.

Preventive and repressive efforts against money laundering crimes require multi-party synergy, both those who have direct or indirect links to the perpetrators who commit these crimes. This comprehensive collaboration is crucial considering the complexity of money laundering modus operandi which often involves various sectors and jurisdictions. The Financial Transaction Reports and Analysis Center (*PPATK*) proactively establishes synergy with various related parties in efforts to prevent and eradicate money laundering crimes. One concrete manifestation of this collaboration is the coordination meeting for the implementation and evaluation of performance targets for 2023 which was held in Bali on March 16 2023. In this forum, the Ministry of Law and Human Rights (*Kemenkumham*) emphasized its commitment to strengthening the role of notaries as reporting parties through various strategic steps.

The Ministry of Law and Human Rights provides technical guidance to notaries regarding the application of the Principles of Recognizing Service Users (*PMPJ*) as well as the mechanism for reporting suspicious financial transactions through the Go-AML application in accordance with the mandate of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering. It is hoped that this collaboration between *PPATK* and the Ministry of Law and Human Rights can increase the effectiveness of preventing and eradicating money laundering crimes in Indonesia.

The implementation of the *PMPJ* by notaries will then carry out a survey by giving questionnaires to notaries to then be analyzed so that data can be obtained on notaries who have low, medium to high levels of risk which are exploited by perpetrators of money laundering crimes. Notaries are required to comply with this regulation and report suspicious financial transactions in order to reduce the risk of being convicted of money laundering crimes. Law

Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries mandates the formation of a Notary Supervisory Council as a body that has the authority and responsibility for the guidance and supervision of notaries. Article 37 of this law details the authority of the Regional Supervisory Council, including: holding examination hearings and making decisions on public reports submitted through the Regional Supervisory Council; calling the reported notary to be examined regarding the report; granting permission for long-term leave (more than six months to one year); examination and decision making on the refusal of leave by the Regional Supervisory Council; giving sanctions in the form of verbal or written warnings; as well as proposing sanctions for temporary dismissal (three to six months) or dishonorable dismissal to the Central Supervisory Council.

The Notary Supervisory Council is responsible for conducting audits of notaries to ensure their compliance in carrying out their role as parties who participate in preventing and eradicating money laundering crimes, in accordance with the mandate of Law Number 8 of 2010. The audit is carried out directly or indirectly . Direct audits are aimed at notaries with high and very high risk, while indirect audits are carried out on notaries with low to medium risk levels. Through direct audits, obstacles faced by notaries can be identified in implementing Law Number 8 of 2010, as well as encouraging them to always apply the Principles of Recognizing Service Users (*PMPJ*) and reporting their implementation regularly. This reporting obligation is regulated in Article 28 and Article 29 of Law Number 8 of 2010, with the exception of confidentiality provisions for the reporting party, except in cases of abuse of authority. In carrying out these reporting obligations, the reporting party, officials and employees cannot be prosecuted, either civilly or criminally.

Conclusion

Based on the research results above, conclusions can be drawn in the form of;

1. One of the powers of a notary in *UUJN* is to make deeds. The part of the body of the deed which is the content of the deed is the wish and will of the parties themselves and is not the wish or will of the notary, but the notary in this case only frames it in the form of a notarial deed in accordance with the *UUJN*. Making the contents of this deed is not simply written down, but the notary needs to understand the intent, consequences and legal objectives of the wishes of the person who will be stated in the contents of the deed, so in doing this the notary needs to apply the principle caution.
2. The Financial Transaction Reports and Analysis Center (*PPATK*) has made many efforts by collaborating with many parties, one of which is the Ministry of Law and Human Rights. Through the Ministry of Law and Human Rights (Human

Rights), notaries are given technical guidance regarding the application of the Principles of Recognizing Service Users and reporting financial transactions of service users that meet the criteria for suspicious financial transactions to *PPATK* via the Go-AML application. The implementation of the PMPJ by notaries will then carry out a survey by giving questionnaires to notaries to then be analyzed so that data on notaries who have low, medium to high levels of risk can be obtained which are exploited by perpetrators of money laundering crimes. Notaries are required to comply with these regulations and report suspicious financial transactions in order to reduce the risk of money laundering crimes.

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