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Legal Protection for Notaries Against Money Laundering Crimes in the Drafting of Deeds

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ABSTRACT

Money laundering is the process of concealing or disguising the origins of assets derived from criminal activities to make them appear legitimate. This practice has significant impacts on the stability of financial systems and the economy as a whole. This research employs a doctrinal research method. The process of money laundering consists of three stages: placement (depositing criminal proceeds into the financial system), layering (separating the illicit proceeds from their source through complex transactions), and integration (using the ostensibly legitimate funds for various purposes). n the integration stage, perpetrators often utilize the services of notaries to create authentic deeds, making transactions appear lawful, even though the provided data may be inaccurate. This can result in notaries becoming involved in legal cases due to perceived negligence. Therefore, this study aims to examine the legal protection for notaries in cases of money laundering. Research Findings that Notaries can be deemed to be complicit in money laundering if they meet the elements outlined in Articles 55 and 56 of the Criminal Code (KUHP) as well as the elements in the Money Laundering Act (PPTPPU). The law does not offer protection for notaries who are unaware that their client's funds originate from criminal activities. However, the PPTPPU provides protection for notaries who report suspicious financial transactions.

Keywords	*Legal Protection; Notary Profession; Money Laundering Crime*
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PRELEMINARY

In the execution of their duties, notaries require legal protection as they are the only officials authorized to create authentic deeds regarding acts, agreements, and determinations required by general regulations or by parties with vested interests to be stated in an authentic deed, provided that the drafting of such deeds is not delegated to other officials.[1] The function of the notarial profession is to provide legal certainty for the entire

[1] Kunni Afifah, "Tanggung Jawab dan Perlindungan Hukum bagi Notaris secara Perdata Terhadap Akta yang Dibuatnya", No. 1 Vol. 2 Januari 2017, hlm. 148

community's endeavors. Notaries also function to create agreements that protect the civil interests of the parties involved.[2]

A notary is responsible for the deeds they create, but they are not responsible for the content of the deeds as it is the agreement of the parties involved; the notary merely formalizes it into an authentic deed to ensure the legal certainty of the legal actions performed before them. However, in reality, there are parties engaged in money laundering activities through transactions involving notarial services to create authentic deeds, making these transactions appear legitimate, where parties provide information and data that do not align with the truth. This situation can lead to notaries becoming involved in legal cases as they may be seen as being less cautious in drafting deeds and participating in criminal activities.[3]

According to Regulation No. 9 of 2017 issued by the Minister of Law and Human Rights of the Republic of Indonesia regarding the Implementation of the Principle of Knowing Clients for Notaries ("Regulation 9/2017"), notaries, as one of the reporting parties as stipulated in Government Regulation No. 43 of 2015 regarding Reporting Parties in the Prevention and Eradication of Money Laundering Crimes, are obliged to apply the principle of knowing clients (hereinafter referred to as "KCP") and the implementation of reporting obligations by the Reporting Parties is exempted from the confidentiality provisions applicable to the relevant Reporting Parties.

Money laundering is a process or act aimed at concealing or disguising the origin of wealth acquired from criminal activities, which is then transformed into wealth that appears to originate from legitimate activities. Money laundering activities have significant impacts, both on financial system stability and the economy as a whole.[4] In money laundering, the original criminal activities are closely related and cannot be eliminated or separated. Money laundering crimes would not exist without the proceeds of crime, and the proceeds of crime would not exist without the original criminal activities (predicate crime).[5]

The money laundering process is carried out in three stages: placement, layering, and integration. The placement stage is the initial phase where efforts are made to place funds or wealth generated through criminal activities into the financial system. The layering stage involves separating the proceeds of crime from their source, i.e., the criminal activity, through multiple financial transactions to conceal or disguise the origin of the funds. The integration stage involves using the seemingly legitimate wealth either for direct enjoyment, investment in various forms of assets or financial instruments, channeling funds to finance legitimate business activities, or financing other criminal activities.[6]

There is a connection between money laundering perpetrators who utilize notarial services to commit money laundering crimes. Thus, a notary can be implicated if they fail to provide data or information on transactions suspected of being money laundering activities, as stipulated in Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering, Article 41 paragraph (1) a. Legal protection for notaries is necessary, especially for those who are unaware of the source of funds of the parties involved in the deeds they notarize because money launderers have various methods to conceal the origin of their illegal wealth.

[2] Hartanti Sulihandri dkk, Prinsip-Prinsip Dasar Profesi Notaris, Dunia Cerdas: Jakarta Timur, 2013, hlm. 13.

[3] Maulidia, Nina Khadijah, dkk. “Kewenangan Notaris dalam Mengenali Pengguna Jasa dan Perlindungan Hukum Jika Terjadi Tindak Pidana Pencucian Uang”. Vol. 5 No. 2. Agustus 2020, hlm. 276

[4] Adrian Sutedi, “Tindak Pidana Pencucian Uang”, Bandung: PT Citra Aditya Bakti, 2008, hlm. 12-13

[5] Tubagus Irman, “Money Launderong Hukum Pembuktian Tindak Pidana Pencucian Uang dalam Penetapan Tersangka”, Jakarta: PT Gramedia Pustaka Utama, 2017, hlm. 5

[6] Adrian Sutedi, “Tindak Pidana Pencucian Uang”, Bandung: PT Citra Aditya Bakti, 2008, hlm. 12

Based on the background outlined above, the problem formulation related to this discussion is as follows: 1. How is the implementation of Minister of Law and Human Rights Regulation No. 9 of 2017 regarding the principle of knowing clients for notaries? 2. What legal protections are available for notaries against money laundering crimes in the drafting of deeds?

METHOD

The research method employed in this journal is doctrinal research, which involves an examination of legal principles or norms. Therefore, this research is characterized as closed, focusing solely on positive law, including statutory regulations, jurisprudence, and other legal sources. The data gathered and collected take the form of primary legal materials and secondary legal materials. These data are qualitatively processed and analyzed, with the results presented descriptively, explaining, elaborating, and illustrating the issues along with their resolutions closely related to the writing.

RESULT AND DISCUSSION

The implementation of Minister of Law and Human Rights Regulation No. 9 of 2017 regarding the principle of knowing clients for notaries

The notary is a profession that holds a legal position and is tasked with providing legal services in civil law to meet the wide-ranging needs of society requiring authentic evidence. In relation to deeds executed before a notary, perpetrators of money laundering crimes utilize notarial services by creating authentic deeds for transactions derived from criminal activities to appear legitimate. This is an effort by money laundering perpetrators to obscure the origin of wealth at the integration stage, wherein they use seemingly legitimate wealth for direct enjoyment, investment in various assets or financial instruments, channeling funds to finance legitimate business activities, or funding other criminal activities, which can be facilitated through notarial services as notaries are authorized to create authentic deeds regarding all acts and agreements involving wealth where various legal actions and agreements will be carried out.

A notary, as an official who prepares authentic deeds, is one of the professions that may have connections with money laundering crimes. While not directly involved as perpetrators, notaries provide service to meet the broad societal needs for authentic evidence, which may include transactions with indications of money laundering. In executing their duties, notaries apply the principle of knowing clients based on the identities provided by the parties involved, as elaborated in Article 39 above. The identity used by the parties involved is the National Identity Card (KTP) as stipulated in Article 1 number 14 of Law No. 23 of 2006 concerning Population Administration, which states: "The National Identity Card, hereinafter abbreviated as KTP, is the official identity of residents as proof of self issued by the implementing agency valid throughout the territory of the Unitary State of the Republic of Indonesia."

Based on the above explanation, notaries, in carrying out their duties according to legal regulations, identify their clients only legally in a formal sense where the client or notary service user simply provides identification to the notary as their official identity. If the notary has doubts, they may request additional identification from the client such as the Family Card, Driver's License, Passport, and others. These additional identities remain formal or legally recognized identities, thus the principle of knowing clients for notaries is purely a formality. Article 2 paragraph (2) of Minister of Law and Human Rights Regulation No. 9 of 2017 elaborates: "The Principle of Knowing Clients as referred to in paragraph (1) shall at least include: (a) identification of Clients; (b) verification of Clients; and (c) monitoring of Client Transactions."

Article 3 of Minister of Law and Human Rights Regulation No. 9 of 2017 concerning the Principle of Knowing Clients for Notaries elaborates: "Notaries conducting business relations as referred to in Article 2 paragraph (4) letter a, are obliged to understand the profile, purpose, and objectives of the business relationship, as well as Transactions carried out by Clients and Beneficial Owners through identification and verification." The explanation of this article emphasizes that notaries must actively engage in identifying and verifying transactions conducted by clients. Notaries must actively examine the profile of clients, the purpose and objectives of the business relationship, and transactions conducted by clients, which implies a material understanding of knowing clients for notaries.

Notaries are required to comply with Minister of Law and Human Rights Regulation No. 9 of 2017 according to higher regulations, namely Government Regulation. However, according to the hierarchy of legal regulations, notaries are not obliged to comply with Minister of Law and Human Rights Regulation No. 9 of 2017 as it contradicts Article 16 paragraph (1) letter f of the Notary Position Law, which regulates the confidentiality of the profession unless ordered by Law. Therefore, formally, the implementation of Minister of Law and Human Rights Regulation No. 9 of 2017 is an obligation for notaries, but materially, it is not mandatory due to the contradiction with the Notary Position Law regarding professional confidentiality.

The implementation of Minister of Law and Human Rights Regulation No. 9 of 2017 regarding the principle of knowing clients for notaries, according to the Notary Position Law, requires only formal identification/acknowledgment of clients to notaries for the creation of authentic deeds. Notaries are not responsible for verifying material accuracy as stipulated in Minister of Law and Human Rights Regulation No. 9 of 2017.

The implementation of Minister of Law and Human Rights Regulation No. 9 of 2017 is indeed an obligation for notaries. However, according to the hierarchy theory of legal regulations, notaries are not required to implement it if it contradicts Article 16 paragraph (1) letter f of the Notary Position Law, which provides exceptions regarding professional confidentiality unless ordered by Law. Therefore, formally, the implementation of Minister of Law and Human Rights Regulation No. 9 of 2017 is an obligation for notaries, but materially, it is not mandatory due to the contradiction with the Notary Position Law regarding professional confidentiality.

Legal Protection for Notaries Against Money Laundering Crimes in Deed Making

In carrying out their duties, a Notary is obliged to apply the principle of knowing clients, which includes obligations related to money laundering crimes. By implementing this principle, a Notary can fulfill their subsequent obligation to report suspicious financial transactions. A Notary must be aware and reasonably suspect wealth suspected of originating from criminal activities as stated in Article 2 paragraph (1) of Regulation PPATK No. 3 of 2021. This means that a Notary must adhere to the principles of executing notarial duties to fulfill this obligation, namely:

Principle of Legal Certainty: A Notary acts based on legal provisions. In reporting suspicious financial transactions, a Notary must follow legal regulations, specifically the Anti-Money Laundering Law and Regulation PPATK No. 3 of 2021 as guidelines. Operating within the legal framework provides certainty to all parties that deeds executed before or by the Notary comply with applicable laws, making Notarial deeds a reliable guide for the involved parties.[7]

Principle of Equality: A Notary provides services to the public without discrimination based on socio-economic status or other reasons, including reporting suspicious financial transactions.

Principle of Trust: As a profession entrusted with a position, a Notary is obligated to keep confidential the deeds they create and the statements of parties involved in deed making, unless mandated by law to disclose such information. [8] Disobeying confidentiality can be done only within the scope of a Notary being examined by any institution seeking statements or information regarding deeds previously or currently made by the Notary. This can be applied in efforts by Notaries as crime prevention professionals against money laundering.

Principle of Prudence: A Notary must exercise caution in protecting the interests of the community entrusted to them. The purpose of prudence is to ensure the Notary remains within proper boundaries.[9] Forms of prudence that Notaries should implement in deed-making processes include identifying the identity of parties involved, carefully verifying the data of subjects and objects involved, allowing a grace period in deed preparation, acting carefully, diligently, and meticulously in deed preparation, fulfilling all technical requirements for deed preparation, and reporting indications of money laundering in Notarial transactions.[10]

Notaries, in carrying out their duties, have rights and interests that need protection. Notaries performing tasks related to money laundering crimes are not immune to being implicated in such crimes if they meet the elements of money laundering and fail to adhere to the principles and obligations mandated by law. Notaries require legal protection to uphold their rights and interests as citizens. If a Notary lacks intent and is unaware or reasonably does not suspect that the wealth in transactions with clients is related to money laundering, and if the Notary has applied the principle and fulfilled their obligations regarding reporting suspicious transactions (by applying the principle of knowing clients) and applying principles in fulfilling duties as a Notary optimally (not being negligent), then the Notary should receive legal protection regarding money laundering crimes.

The state provides protection to Notaries in cases where a Notary, as a service provider, is unaware that the funds used by a client for legal actions or agreements using Notarial services are derived from money laundering. Although not explicitly stated in the law regarding such protection, it is generally interpreted that the state provides legal protection to Notaries in such cases. In terms of "unawareness," it means that the Notary does not meet the criteria of "knowledge" or "reasonably suspecting wealth" in money laundering crimes, thus the Notary receives legal protection as they are not perpetrators or parties involved in money laundering crimes.

To strengthen mutual commitment in transparency and honesty, as well as to facilitate the relationship between Notaries and clients, an integrity pact document can be created. This pact is an agreement jointly made by officials to affirm their commitment to carrying out their duties honestly in accordance with legal regulations and their willingness to refrain from certain criminal activities. Additionally, for the prevention and eradication of money laundering crimes, Notaries can establish integrity pacts with clients in deed-making

[7] Hanafi Amrani, Hukum Pidana Pencucian Uang, Yogyakarta; UII Press, 2015, hlm. 80

[8] Ibid.

[9] Fikri Ariesta R, “Penerapan Prinsip Kehati-Hatian Notaris dalam Mengenal Para Penghadap”, Lex Renaissance No. 2 Vol. 3 Juli 2018, hlm. 428

[10] Ida Bagus Paramaningrat Manuaba, Prinsip Kehati-hatian Notaris dalam Membuat Akta Autentitk, tesis, Program Magister Kenotariatan Fakultas Hukum Universitas Udayana, 2017, hlm. 42

processes, where clients must sign statements affirming that the wealth in transactions between clients and Notaries is not derived from money laundering crimes. However, signing an integrity pact is a formality and does not automatically provide protection to Notaries, but it represents an effort by Notaries to prevent such crimes.

The Anti-Money Laundering Law provides protection for reporters and witnesses. This protection guarantee is given at the time of reporting, before or after the case examination process. In substance, the regulation concerning protection for victims and witnesses of money laundering crimes under the Anti-Money Laundering Law extends not only to physical protection but also to legal protection, which includes protection for reporters and witnesses from civil or criminal lawsuits or demands.[11]

CLOSING

Legal protection for notaries in cases of money laundering crimes is regulated in Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes and Presidential Regulation No. 57/2003. In cases where a Notary is unaware that a client's source of funds comes from money laundering, the state provides legal protection to the Notary regarding this matter. This protection guarantee is given at the time of reporting, whether before, during, or after the case examination process. A Notary is a position of trust required to keep all contents of deeds confidential according to the oath of office in Article 4 paragraph (2) and Article 16 paragraph (1) letter f of the Notary Law. However, in Minister of Law and Human Rights Regulation Number 9 of 2017 regarding the Principle of Knowing Clients (PMPJ), Article 2 paragraph (1) requires notaries to apply the principle of knowing clients. This provision is not contradictory because the implementation of PMPJ also protects notaries and the interests of all parties, preventing the misuse of positions by clients who wish to legalize their transactions through authentic deeds.

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