

# 8.\_Legal\_Protection\_against.pdf

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## Legal Protection against Notary Related to Parties Conducting Transactions of Crime Products in the Crime of Money Laundering

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### Abstract

The notary profession is a legal profession so that notary is a noble profession (*nobile officium*), because notaries are sworn in and have an obligation to keep secret the deed they have made in accordance with Law Number 30 of 2004 concerning Notary Position in Article 4 & Article 16 letter (F), but Notaries must also submit suspicious financial transactions based on Article 17 Paragraph (2) of Law Number 8 Year 2010 concerning the Prevention and Eradication of Money Laundering. The problems discussed in this thesis are 1). What is the position of the deed made by the notary if it is proven that it used the proceeds from the crime of money laundering? 2) What is the position of the deed made by the Notary if it is proven that it used the proceeds from the crime of money laundry? 3). How is the legal protection for Notaries who report the existence of kilen transactions that are suspected of being proceeds from the crime of money laundering? The method used in this research is normative law research using normative case studies in the form of legal behavior products. The results obtained are: 1) Notaries are required to carry out their obligations as Reporting Parties mandated by the Law on the Prevention and Eradication of the Crime of Money laundering. 2). The deed made by a notary will not result in the cancellation of the deed, because to cancel a deed must be based on a court decision 3). In this case, notaries can carry out their duties by examining carefully the files and profiles of service users so that they can find out early if there is a suspicion of money laundering.

**Keywords:** *Notary; Legal Protection; Reporting*

### Background of Research

Notary as a public official is one of the state organs equipped with legal authority to provide public services to the public, especially in making authentic deeds as perfect evidence with respect to legal actions in the civil sector. One of the powers of a notary is to make an authentic deed in the case of a person's legal actions, authentic deeds are deliberately made to be used as written evidence at a later date.<sup>1</sup>

Notary function is to give certainty and continuity of civil law for the entire business community. The notary must be reliable, impartial, able to keep secrets, and provide guarantees or solid evidence, the

<sup>1</sup> Liliana Tedjosaputro, *Notary Professional Ethics in Criminal Law Enforcement*, Bigraf Publishing, Jakarta 1994, p. 4.

authentic deed made by the notary must be in accordance with the events that occurred, the client will provide complete documents and information to the Notary, of the two things will be notary public pour into authentic deed. A deed has authentic proof strength, so there must be the authority of a public official who makes, in this case a Notary, to make an authentic deed that originates from the Law.

By affirming that the Notary has the obligation to submit suspicious transactions, the notary will <sup>1</sup> contrario violate the obligation to keep a secret as mandated by the Law on the Position of Notary. In carrying out his Position, <sup>2</sup> notary is bound by the powers and obligations that have been <sup>4</sup> affirmed in the Law on Notary, including Article 16 Paragraph (1) letter f of the Law on Notary Position which states that in carrying out his position, the Notary is obliged to keep confidential everything regarding the deed which is made and all information obtained for making deeds in accordance with the oath / promise of Position, unless the law stipulates otherwise, and this is strengthened by the provisions contained in Article 4 of the Law on Notary regarding the editorial of the oath to be pronounced by a prospective notary when he is to be sworn in, become a Notary Public, but with the provisions stipulated in Article 3 and Article 4<sup>2</sup>

<sup>4</sup> Government Regulation Number 43 of 2015 as the implementer of the Law on Prevention and Eradication of Money Laundering, which states that a Notary is a Reporting Party who is required to submit reports to the Financial Transaction Reports and Analysis Center, so that <sup>6</sup> notaries are required to apply the Principle of Recognizing Service Users, which results in all provisions concerning application of the principle of recognizing Service Users for Reporting Parties as stipulated in the Law on the Prevention and Eradication of Money Laundering, applies mutatis mutandis to notaries.

<sup>6</sup> The problem is, whether when a notary submits a report to the Financial Transaction Reports and Analysis Center on the results of the application of the Principle of Recognizing Service Users for Reporting Parties does not cause the notary to violate the obligation to keep position secrets as regulated in Article 16 Paragraph (1) letter f of the Law Notary Position. Based on Article 85 of the Law on the Position of Notary Public <sup>1</sup> Notary who violates the provisions of article 16 Paragraph (1) letter f of the Law on Notary Position may be subject to sanctions in the form of verbal warning, written warning, temporary dismissal, honorific dismissal, or dishonorable discharge.<sup>3</sup>

The existence of disharmony of these laws and regulations can result in different interpretations in their implementation, cause legal uncertainty, laws and regulations that are not implemented efficiently, and the occurrence of legal dysfunction, meaning that the law cannot function to provide guidelines for behavior to the community. Principally, Disharmony of statutory regulations can be analyzed using legal principles. For the problem in this study, considering that the two regulations are at the same level, namely laws, it can be analyzed based on the *lex specialis derogate generalis* principle and based on the *lex posterior derogat legi priori* principle.

Based on the *lex specialis derogate generalis* principle, this principle can be used to resolve conflicts between laws that have a wider regulatory substance and laws that have a narrower regulatory substance. The structural analysis of this principle shows that the statutory hierarchy (lex) must be parallel. If they are not parallel, then this principle cannot be used. The notary's obligation to keep secret the contents of the deed and everything related to the contents of the deed <sup>6</sup> regulated in the Law on Notary Position. On the other hand, the notary's obligation to submit a report to the Financial Transaction Reports and Analysis Center, which will automatically disclose matters relating to the contents of the deed are regulated in the Law on Prevention and Eradication of Money Laundering, which will be followed up with a Government Regulation. The phrase "unless the law stipulates otherwise" contained in

<sup>2</sup> R. Soegondo Notodisoerjo, *Notariat Law in Indonesia an explanation*, Rajawali Pers, Jakarta, 1982, p.19.

<sup>3</sup> Yussy Adelina Mannas, Firman Darajat, *Notarial Secrecy: Study of Legal Certainty in The Notarial Law and Money Laundering Prevention and Eradication Law in Indonesia*, PROCEEDINGS OF Researchfora 69th International Conference, Seoul, South Korea, 2019, p, 10

3 Article 16 Paragraph (1) letter f of the Law on the Position of Notary Public can be interpreted as an opportunity for the Law to make an exception.

Overcoming problems that arise in the world of notaries, it is necessary to provide legal protection to notaries in order to provide legal certainty in carrying out investigations to notaries in the future, therefore the author is interested in conducting research with the title "**Legal Protection Against Notary Related to Parties Conducting Transactions of Crime Products in the Crime of Money Laundering**".

### **Research Method**

The research method used in this study is a normative juridical, a research approach based on normative literature study and conducted through investigating law secondary data.<sup>4</sup> To conduct this study, the researcher completes any materials required in studying and finishing this study by investigating the primary, secondary, and tertiary data.<sup>5</sup> The techniques to collect the data are:

1. Literature study is conducted through collecting law materials relating to the study of materials, such as books of law whether in a form of written texts or soft-copy edition, such as e-books, journal articles, papers, government publication, and other sources provided in the internet and accessed via online. Besides, reading, studying, and noting some reviews of literature materials relating to the object of this study are conducted.
2. Study of interview was conducted to some related interviewees, such as the Head of National Land Agency of West Sumatera Province and Conveyance.

The method of data analysis used in this study is qualitative descriptive. Qualitative approach in this study is a procedure to produce descriptive data as revealed by the respondents orally and behaviorally. Then, the objects investigated and studied in this study is the whole research<sup>6</sup>.

### **Result of Research**

In carrying out his duties, the Notary makes an authentic deed by formulating the wishes of the parties (clients) which are poured into an authentic deed, so that when the client provides files and information it must be in accordance with reality, because there will be legal consequences in the future regarding the statements of the parties submitted to Notary Public. The notary must also see whether the file is genuine or not which allows the file to be faked by the client for the sake of making the authentic deed smooth.<sup>7</sup>

1 In accordance with the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 9 of 2017 concerning the Application of the Principles of Recognizing Service Users for Notaries (PMPJ), for the prevention and eradication of the crime of money laundering, the principle of recognizing service users must be applied by a Notary. According to Article 4 paragraph (1)

<sup>4</sup> Mamudji Sri, et al., Legal Research and Writing Methods, Faculty Publishing Board Law of the University of Indonesia, Jakarta, 2005, Page 4-5

<sup>5</sup> Adi Rianto, Social and Legal Research Methodology, Granite, Jakarta, 2004, page 31

<sup>6</sup> Soerjono Soekanto, Introduction to Legal Research, UI Press, Jakarta, 2006, Page 32

<sup>7</sup>Jan Michiel Otto,2003,Legal Certainty in Developing Countries,trans.Tristam Moeliono,National Law Commission,Jakarta.p. 41

5. Permenkumham Number 9 of 2017 states that in implementing the principle of recognizing service users, a Notary is obliged to:

- a. Have policies and procedures to manage and mitigate the identified risks of money laundering and / or terrorism financing in accordance with the risk assessment; and
- b. Conduct risk assessment and classify Service Users based on the level of risk of money laundering and terrorism financing crimes.<sup>8</sup>

With the management of identifying individual service users originating from the profile, characteristics, business, and State, it is hoped that the Notary will be able to know where the source of the funds was obtained, but notaries also have the obligation to keep secrets as emphasized in Article 4 and Article 16 of the Law on Notary Position. Article 4 of the Law on the Position of Notary Public states that before carrying out his position, Notary Public is obliged to take an oath / promise according to his religion in front of the Minister or an appointed official, the editorial of which, among other things, swears / promises to keep the contents of the deed secret and the information obtained in the exercise of his position. This is followed up in Article 16 Paragraph (1) letter f of the Law on the Position of Notary, which states that in carrying out his office, Notary Public is obliged to keep secret everything regarding the deed that he has drawn up and all information obtained for making deeds in accordance with the oath / promise of office, except the law decides otherwise.

The provisions regarding the obligation of a Notary Public to keep everything related to the content and information regarding the deed made, make the provisions regarding the right of refusal (verschoningsplicht) of a Notary which can be applied if a Notary when asked to be a witness at trial and or does not speak at the trial in connection with legal issues made by a Notary.<sup>5</sup> Therefore Article 4 paragraph (2) in conjunction with Article 16 paragraph (1) letter (F) of the Law on Notary Position (Amendment) clearly stipulates that a Notary in carrying out his profession is obliged to maintain all information related to with the deed, both client information, information submitted by the client, or other matters relating to the contents of the deed, unless the law stipulates otherwise.

Along with the proliferation of money laundering, the Notaries are required to accurately receive and examine all the files and information received, the main characteristic of Money Laundering is a crime that carried a double with a form of money laundering as a crime that is Follow Up Crime (Crime Continued), while the original crime is referred to as Predicate Deffense / Core Crime or as an unlawful activity, namely the original crime that generates money which is then carried out by the laundering process. The provisions of Article 18 of Law Number 8 of 2010 state that Reporting Parties must apply the principle of recognizing Service Users, Jo Article 8 PP 43 of 2015 Reporting Parties in the Prevention and Eradication of ML which states that reporting parties are required to submit Suspicious Financial Transaction reports to PPAATK for the benefit of or for and on behalf of the Service User, the Principles of Recognizing service users that must be carried out by a Notary include:

- a. Identification, namely the collection of information and documentation of service users;
- b. Verification, namely examining information and documents provided by service users and conducting direct meetings of service users;<sup>9</sup>

Notaries are not accompanied by provisions for legal protection as a reporting party in the crime of money laundering that is deemed inappropriate, because in order to guarantee legal protection for the

<sup>8</sup> Djoko Sukisno. (2004). The Role of Notaries as Witnesses in the Judicial Process and its Relation to the Position of Notary Public, Journal: edt.repository.ugm.ac.id., P. 1 27

<sup>9</sup> Habib Adjie, 2009, Telescoping the Treasury of Notaries and PPAT Indonesia (Collection of Writings on Notaries and PPAT, PT Citra Aditya Bakti, Bandung. P. 35

reporting party, legal certainty is needed to maintain security and smoothness when submitting reports, as well as Government Regulation Number 43 of 2015 about The Reporting Party in the Prevention and Eradication of Money Laundering, Jo Permenkumham Number 9 of 2017 concerning the Application of the principle of recognizing service users for Notaries, that in fact Notaries are not obliged to explore the material truth from service users, but those who are authorized for this are judges in court.

Legal protection efforts for Notaries are carried out by the Notary Honorary Council in the form of supervision, assistance, and provision of expert witnesses, because the Notary Honorary Council is the forefront of Notaries when dealing with authorities, both the police and the prosecutor's office.<sup>10</sup>

Notaries can not arbitrarily be called by the investigator because investigators have to go through several stages to bring the notary as a witness for questioning, while the procedures to be conducted by the authorities by means of sending a letter request for notary summons to the Notary Honorary Council.<sup>11</sup>

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<sup>10</sup> Anke Dwi Saputro, 2008, Identity of Indonesian Notaries Past, Present and Future, Gramedia Pustaka, Jakarta, p. 85

<sup>11</sup> ibid

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