

# The Obligation of Notary as a Reporter in Efforts to Prevent and Eradicate Money Laundering Crime

Erwin Kunta Tejakusuma  
[erwinerwin12344@gmail.com](mailto:erwinerwin12344@gmail.com)  
University of Jember, Indonesia

Dwi Endah Nurhayati  
University of Jember, Indonesia

Samuel Saut Martua Samosir  
University of Jember, Indonesia

## ABSTRACT

Money laundering is a structured and diverse crime, the implementation of which can utilize financial institutions and institutions outside the financial system. In Government Regulation No. 43/2015 on Reporting Parties in the Prevention and Eradication of ML, it is stated that notary is one of the reporting parties. However, this obligation to report conflicts with the obligation to keep the contents of the deed and all information regarding the deed confidential as stipulated in the Notary Position Law. Notaries in carrying out their duties are bound by an oath of office that they must uphold. One of the notary oaths is regarding notary confidentiality as written in Article 4 Paragraph (2) of Law Number 30 Year 2004. In addition, notaries in carrying out their positions, based on Article 16 of UUJN Paragraph (1) letter f, notaries are obliged to "keep confidential everything regarding the deed they make and all information obtained for the making of the deed in accordance with their oath / pledge of office, unless the law determines otherwise". The clash of norms between private law and public law certainly requires legal protection in carrying out their positions. The legal protection applied is related to the guarantee of the rights and obligations of notaries, both regarding their obligations as reporting parties in efforts to prevent and eradicate money laundering crimes and notary obligations in the realm of private law. This legal protection is intended so that notaries can be free from claims or lawsuits in carrying out their obligations as reporting parties in efforts to prevent and eradicate money laundering crimes.

**KEYWORDS :** Notary, Obligations of the Reporting Party, Legal Protection.



Copyright © 2024 by Author(s)  
This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License. All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions.

## HOW TO CITE:

Tejakusuma, Erwin Kunta. Dwi Endah Nurhayati. & Samuel Saut Martua Samosir. 'The Obligation of Notary as a Reporter in Efforts to Prevent and Eradicate Money Laundering Crime' (2024) 5:1 Jurnal Ilmu Kenotariatan 28-44. DOI: <<https://doi.org/10.19184/jik.v5i1.46678>>

## I. INTRODUCTION

Money laundering is a structured and varied criminal act, the implementation of which can utilize financial institutions and institutions outside the financial system and Its handling is also pursued nationally, regionally and globally through cooperation between countries<sup>1</sup>. The mode of money laundering has even penetrated into various sectors that can threaten the sustainability of community life. The crime of money laundering is not a stand-alone crime, but there is a predicate crime. The original crime referred to is as in Article 2 of Law No. 8 of 2010 concerning the Crime of Money Laundering, hereinafter referred to as the TPPU Law in the form of corruption, infiltration, narcotics, psychotropic drugs, labor smuggling, migrant smuggling, in the banking sector, in the capital market, customs, excise, trafficking in persons, trafficking in illicit weapons, terrorism, kidnapping, theft, embezzlement, fraud, counterfeiting of money, gambling, prostitution, in the field of taxation, in the field of forestry, in the field of environment, in the field of marine and fisheries, or other criminal acts punishable by imprisonment of 4 (four) years or more. The existence of the Anti-Money Laundering Law is expected to prevent and eradicate money laundering crimes optimally.

The prevention and eradication of money laundering requires support from various parties, one of which is the reporting party. The reporting party is an important component that assists in efforts to prevent and eradicate money laundering. Article 17 of the Anti-Money Laundering Law regulates reporting and compliance supervision related to reporting parties, the reporting parties referred to in Article 17 of the Anti-Money Laundering Law include financial service providers and providers of goods and/or services. The Article of the Anti-Money Laundering Law does not explicitly mention the notary's relationship as a reporting party but is regulated in another regulation, namely Government Regulation No. 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes. Article 3 states that the reporting parties include advocates, notaries, land deed officials, accountants, public accountants, and financial planners.

Notary as one of the reporting parties who has duties and obligations to prevent and eradicate money laundering criminal acts also has an obligation that cannot be separated from the notary's position as a public official. Based on Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Office of Notary, hereinafter referred to as UUJN, is a public official granted special authority by law. One of the powers of a Notary is to make an authentic deed in terms of a person's legal actions, an authentic deed is deliberately made to serve as written evidence in the future. The authentic deed must be in accordance with the events that occurred, the client will provide complete files and information to the Notary<sup>2</sup>.

Notaries in carrying out their duties are bound by an oath of office that must be upheld by them, because this oath of office is attached as long as the notary still holds office. One of the notary's oaths is regarding the confidentiality of the face which is written in Article 4 Paragraph (2) of Law Number 30 of 2004 t entangling the Office of Notary, hereinafter referred

---

<sup>1</sup> K. Kartika, L Ululuk, The Relevance of Notary as a Reporting Party in Efforts to Prevent Money Laundering Crimes, *Journal Notarius* 16 No. 3. (2023).

<sup>2</sup> Hereira Daniela, Legal Protection Of Notaries And Attorneys As Reporting Parties In Money Laundering Offenses, *Journal Jatiswara* 35. No. 1. (2020)

to as UUJN, which reads "I will keep the contents of the deed and information obtained in the implementation of my office confidential". In addition, in carrying out his/her position, based on Article 16 of UUJN Paragraph (1) letter f, the notary is obliged to "keep confidential everything regarding the deed he/she makes and all information obtained for the purpose of making the deed in accordance with the oath/pledge of office, unless the law determines otherwise". Based on Article 54 of the UUJN, it explains that the deed can only be shown to people who have a direct interest to be given, pay attention to, or informed of the contents of the deed, Grosse Akta.

Based on the Notary Position Law that every executor of the office is required to uphold the mandate regarding the confidentiality of the contents of the deed and all information obtained based on Article 16 paragraph 1 letter f of the UUJN, if the confidentiality is disclosed it can have legal consequences for the notary himself. However, confidentiality is not absolute, if there are exceptions regulated in other laws. With the existence of laws regarding the office of notary, it can be used as a form of legal protection for notaries who have been mandated by law to maintain the confidentiality of the parties.<sup>3</sup>

In some situations, notaries as one of the reporting parties in efforts to prevent and eradicate money laundering have duties and obligations. One of the obligations is based on Article 24 paragraphs (1) and (2) of the Minister of Law and Human Rights Regulation No. 9 of 2017 that the Notary has the obligation to report to PPATK regarding actions if the service user refuses to comply with the principle of recognizing the service user or the notary has doubts about the truth of the information submitted by the service user, However, in practice, it is certainly quite difficult to carry out reporting in the presence of suspicious transactions against the face, because the notary himself is bound by his oath of office and his obligation to keep confidential all information obtained from his face and the criminal rules if the notary reveals a secret that must be kept because of his position can be prosecuted criminally with Article 322 paragraph (1) of the Criminal Code. There is a clash of norms that makes it difficult to carry out regarding suspicious transaction reporting against the notary.

The disharmonization between private law and public law in relation to the notary's obligation to keep confidential all information of his confrontation with the notary's obligation as a reporting party in efforts to prevent and eradicate money laundering, then a form of legal protection is needed for notaries in carrying out their obligations. Previously, there has been research related to the obligation of notaries as reporters conducted by Kristanti Handayani with the title Notary as a Reporter in the Prevention of Money Laundering Crime. Unlike the previous research, this research discusses using the theory of interest with the main focus on the public interest by using the principle of prudence.

As a scientific paper, this thesis has objectives to be achieved, there are 2 (two) objectives of this research, namely; *first* to analyze the obligations of notaries as reporting parties in efforts to prevent and eradicate money laundering crimes in accordance with the obligation to keep the contents of the deed and the information of the confrontation confidential when viewed from UUJN jo UUJN-P jo UUTPPU; *second* to analyze the form of legal protection from UUTPPU to notaries as reporting parties from lawsuits. In the explanation above, the problem

---

<sup>3</sup> Hartanti Sulihandari, *Basic Principles of the Notary Profession*, (Jakarta, Sinar Grafika, 2011), p 63.

formulations that arise are: (1) Does the obligation of a notary as a reporting party in an effort to prevent and eradicate money laundering conflict with the obligation to keep the contents of the deed and the information of the confronting party confidential when viewed from the UUJN jo UUTPPU?; (2) Does the UUTPPU provide legal protection to notaries as reporting parties from lawsuits?

## II. METHODOLOGY

The research method is a step to find solutions to legal issues that arise. Therefore, legal research is a framework of *know-how* in law. Legal research is not only *know-about* but how legal research is conducted to solve existing legal issues. The ability to identify, analyze problems, and reasoning is needed as a solution to a problem. Legal research activities are not only an application of existing rules but also a place to create laws to solve problems in society.<sup>4</sup> The approaches used in this research are statutory approaches and conceptual approaches. The statutory approach is carried out by linking the legal issues to be discussed with related legislation, namely Law No. 30 of 2004 jo Law No. 02 of 2014 concerning the Office of Notary associated with Law No. 8 of 2010 concerning the Crime of Money Laundering, Government Regulation No. 43 of 2015 jo Government Regulation No. 61 of 2021 concerning Amendments to Government Regulation No. 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes, Minister of Law and Human Rights Regulation No. 9 of 2017 concerning the Implementation of the Principles of Recognizing Service Users for Money Laundering Crimes Regarding the Application of the Principle of Recognizing Service Users for Notaries. Conceptual approach by paying attention to concepts, doctrines regarding the application of as a basis for analyzing the legal issues to be discussed.

## III. THE OBLIGATION OF NOTARY AS A REPORTING PARTY IN VIEW OF THE OBLIGATION TO KEEP THE CONTENTS OF PARTY IN THE DEED UNDER THE NOTARY LAW

Efforts to prevent and eradicate money laundering certainly have the aim of maintaining public stability and protecting various aspects, because one of the objectives of the law itself is to protect interests within a country.<sup>5</sup> The interests themselves consist of public interests and private interests. One of the organizers of this public interest is the notary. Notary as a public official, one of his obligations is to maintain confidentiality regarding the deed he makes and all information obtained from the confrontation. With the notary's obligation to maintain confidentiality, the implementation of the notary position is very prone to the occurrence of ML in the scope of notaries, this is because with the confidentiality aspect, the perpetrators of money laundering crimes try to hide the origin of their assets and utilize notaries to transfer the wealth and make it appear as if it is a halal thing. The government's effort to combat this money laundering crime is by encouraging notaries as parties who actively participate in preventing and eradicating this crime.

---

<sup>4</sup> Peter Mahmud Marzuki, *Legal Research Revised Edition*, (Jakarta: Kencana, 2016), p. 83. 83.

<sup>5</sup> Sugiarto, Umar Said. *Introduction to Indonesian Law*, (Jakarta: Sinar Grafika. 2017).

The legal profession in carrying out its duties and obligations which are bound by confidentiality is very prone to be utilized as a process point for committing money laundering on behalf of the face or on behalf of the *beneficial owner*, one of the legal professions is a notary, where the notary himself has the authority to make authentic deeds. Regarding the gap for the legal profession to be used as a tool or medium for money laundering, a deeper understanding is needed considering its different and special nature and characteristics compared to *predicate crimes*. Money laundering will use the same cycle, which in various literature is understood as the stages of money laundering, or what is also referred to as the money laundering process. Money laundering does not only discuss the proceeds of wealth derived from criminal acts, but furthermore the criminal acts carried out on the wealth derived from these criminal acts. As long as these actions are carried out to hide or obscure or disguise the origin, source, and allocation of the proceeds of the criminal offense, the action is referred to as money laundering.<sup>6</sup>

In carrying out his position, a notary is bound by the oath taken after his appointment as a notary. Article 7 of UUJN-P states that "In the performance of his/her position after taking the oath, the notary is obliged to carry out his/her obligations in real terms, submit the minutes of the oath/pledge of office of Notary to the Minister, Notary Organization, and MPD; and submit the office address, sample signature, and initials, as well as the stamp or seal of the Notary office in red to the Minister, other officials in charge of land, Notary Organization, Chief of the District Court, MPD, and Regent/Mayor where the Notary is appointed". Based on Article 85 of UUJN-P, the consequences if a Notary does not carry out these obligations are a written warning, temporary dismissal, honorable dismissal, or dishonorable dismissal. In the notary oath of office which is based on Article 4 of the UUJN which reads " I swear/ pledge: that I will obey and be loyal to the State of the Republic of Indonesia, Pancasila and the 1945 Constitution of the Republic of Indonesia, the Law on the Office of Notary and other laws and regulations. that I will carry out my office with trustworthiness, honesty, thoroughness, independence, and impartiality. that I will maintain my attitude, behavior, and will carry out my obligations in accordance with the professional code of ethics, honor, dignity, and my responsibilities as a Notary. that I will keep the contents of deeds and information obtained in the exercise of my office confidential. that I, in order to be appointed in this position, either directly or indirectly, under any name or pretext, have never and will not give or promise anything to anyone ."

The oath of office of a notary contains several aspects, first, the aspect of morality which is in the mind and conscience of the notary has a strong desire to carry out his position wholeheartedly and responsibly, the religious aspect which means that all actions and behavior will be accounted for in the afterlife, third, the juridical aspect which if violated has legal consequences for the notary himself.<sup>7</sup> Position is a supporter of the existence of rights

---

<sup>6</sup> Lisanawati, Unraveling Legal Issues Related to Financial Transactions in Money Laundering, *Journal of Law* 1 No. 2. (2023). p 188

<sup>7</sup> Parapat P, et al. *Indonesian Kenotariatan Law Volume 2*, (Bandung, Media Sains Indonesia, 2022). p 188

and obligations, as a legal subject (person) authorized to perform legal acts, both according to private law and public law.<sup>8</sup>

Money laundering in practice is carried out in various ways such as buying and selling, investing shares in a company, financial disguise, and many more. In several cases, it was found that the practice of money laundering was carried out by buying and selling, making a company by obscuring financial sources. We know that in buying and selling, of course, we are familiar with the deed of sale and purchase. The deed of sale and purchase is one of the products issued by a notary, which will be used in accordance with the interests of the parties. This is an obstacle for notaries in certain conditions, which is very likely to trigger unlawful acts both in the scope of administration, civil or criminal<sup>9</sup>. The position of a notarial deed has strong legal force in the law of evidence, because this notarial deed is an authentic deed. This authentic deed according to Article 1868 BW (*Burgelijk Wetboek*) or the Civil Code is "An authentic deed is a deed in the form prescribed by law, made by or before public servants authorized to do so in the place where the deed is made." Leading to the definition of an authentic deed based on Article 1868 BW, the authentic deed itself is divided into 2, namely, a deed that has been determined by law in the form and a deed made before public servants. Deeds made in the form according to the law must have the same form and may not be changed or added. It can be analogized if the deed is changed or added with provisions that are not in accordance with the law then its position will change to a deed under the hand.

The obligation of notaries to maintain confidentiality is regulated in 2 articles in the UUJN, namely in Article 4 paragraph (2) and Article 16 paragraph (1) Letter f. The content of Article 4 paragraph (2) "I take an oath/pledge: that I will obey and be loyal to the State of the Republic of Indonesia, Pancasila and the 1945 Constitution of the Republic of Indonesia, the Law on the Position of Notary and other laws and regulations. that I will carry out my position with trustworthiness, honesty, thoroughness, independence, and impartiality. that I will maintain my attitude, behavior, and will carry out my obligations in accordance with the professional code of ethics, honor, dignity, and my responsibilities as a Notary. that I will keep secret the contents of deeds and information obtained in the exercise of my office. that I, in order to be appointed in this position, either directly or indirectly, by any name or pretext, have never and will not give or promise anything to anyone" and in Article 16 paragraph (1) Letter f it is stated that "Keep secret everything about the deed he makes and all information obtained for the purpose of making deeds in accordance with the oath / promise of office, unless the law determines otherwise".

In keeping the contents of the deed and information obtained from the confronter confidential, what is meant by the contents of this deed is related to the deed *groose*, a copy of the deed or a deed excerpt that cannot be shown about what is described or written in the contents of the deed, as mentioned in Article 54 of the UUJN with exceptions made by parties who have a direct interest, the heirs, and the beneficiaries. Article 4 paragraph (2)

---

<sup>8</sup> Habib Adjie, Sesung R. *Interpretation, Explanation, And Interpretation Of The Law On The Office Of Notary Public*, (Bandung, Refika Aditama, 2020), p 49.

<sup>9</sup> Edmon Makarim, *Notaries and Electronic Transactions: A Legal Study of Cybernotary or Electronic Notary*, (Jakarta: Raja Grafindo, 2012), p. 138.

and Article 16 paragraph (1) letter f with the diction "...unless other laws regulate" provide leeway for the principle of confidentiality. In line with the exception in the UUJN regarding confidentiality which can be overridden if there is an arrangement in the law, the exception in the UUTPPU regarding confidentiality in Article 28 of the Anti-Money Laundering Law "The implementation of reporting obligations by the Reporting Party is exempted from the confidentiality provisions that apply to the Reporting Party concerned" can be applied considering the position between the UUTPPU and the UUJN is equal.

Notaries are prohibited from immediately giving or disclosing everything that is confidential about the face but there are other laws that regulate. In relation to efforts to prevent and eradicate criminal acts of money laundering, of course, the role of notaries is needed and regarding the reporting mechanism, not necessarily notaries report suspicious transactions but there is a mechanism in accordance with UUTPPU jo PP No 43 of 2015 Jo Regulation of the Minister of Human Rights No 9 of 2017 by prioritizing the principle of prudence. This confidentiality is certainly a very sensitive and risky thing, of course in the handling of money laundering criminal acts prioritizes the public interest over personal interests with consideration of its benefits to the community and economic stability at large.

The obligation of confidentiality is a form of state protection of the private interests of its citizens. There are several legal consequences if the notary does not carry out this obligation, one of which is if there are related parties who feel harmed, they can sue the notary both criminally and civilly. Article 1365 BW states that "Every act that violates the law and brings harm to another obliges the person who causes the harm through his fault to compensate for the loss". Parties who feel aggrieved if the deed or information provided to the notary is against them in the form of material or immaterial losses can file a lawsuit to the court. Parties who feel aggrieved can not only file a civil lawsuit but can also file a criminal claim on the basis of Article 322 Paragraph (1) of the Criminal Code "Anyone who intentionally discloses a secret that he is obliged to keep because of his position or occupation, either current or former, shall be punished by a maximum imprisonment of nine months or a maximum fine of nine thousand rupiahs". Administrative sanctions are regulated in the Minister of Law and Human Rights Regulation No. 19 of 2019 Article 89 "Notaries are dishonorably dismissed from their positions by the Minister upon the recommendation of the MPP if:

- a. declared bankrupt based on a court decision that has permanent legal force;
- b. being under guardianship continuously for more than 3 (three) years;
- c. committing acts that degrade the honor, dignity and position of Notary;
- d. commits a serious violation of the obligations and prohibitions of the office of Notary; and/or
- e. does not carry out the protocol handover without valid reasons within the specified time period.

The existence of legal threats against notaries in the form of compensation claims, criminalization, and administrative threats will certainly be an obstacle for notaries in carrying out their obligations as reporters in efforts to prevent and eradicate money laundering crimes.

With the existence of criminal and civil threats, notaries have the duty to recognize service users. To recognize service users, Article 18 Paragraph (2) and Paragraph (3) of the UUTPPU reads;

- a. Article 18 paragraph (2), "the reporting party shall apply the principle of recognizing service users determined by each Supervisory and Regulatory institution as referred to in paragraph (1)"
- b. Article 18 paragraph (3), "The obligation to apply the principle of recognizing service users as referred to in point 1 above, is carried out when: conducting business relations with service users; there are financial transactions with rupiah currency and / or foreign currency with a value of at least or equal to Rp. 100,000,000, - (one hundred million rupiah); there are suspicious financial transactions related to criminal acts of money laundering and criminal acts of terrorism financing; or the reporting party doubts the truth of information from service users ".

The regulation regarding the reporting party in the efforts to prevent and eradicate money laundering is regulated in Article 17 Paragraph (2) of the Anti-Money Laundering Law, but Article 17 Paragraph (2) does not explicitly explain the position of notaries as reporting parties. The regulation of notary as a reporting party is in the derivative of Article 17 of the Anti-Money Laundering Law, namely in Government Regulation No. 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes. Article 3 of PP No 43/2015 states that notaries are classified as one of the reporting parties. The reporting parties referred to in PP No 43 of 2015 include advocates, notaries, land deed officials, accountants, public accountants, and financial planning. Based on Article 8 of PP No. 64 of 2021 that "The submission of this report is carried out by the profession for the benefit and on behalf of service users who are known to be suspected of originating from the proceeds of criminal acts regarding the manufacture of property, money management, securities, and / or other financial service products, management of current accounts, savings accounts, deposit accounts, and / or securities accounts, operation and management of companies, and / or the establishment of sales purchases, and legal entities."

The obligation of notary as a reporting party is required to apply the principle of recognizing service users must prioritize a risk-based approach, namely if the level of risk of money laundering is considered higher, it is necessary to establish stricter policies and procedures, while if the level of risk of money laundering is considered lower, it can apply simpler policies and procedures<sup>10</sup>. The application of recognizing service users is carried out in relation to the precautionary principle. In carrying out the principle of prudence, the notary must verify the identity of the confrontants, verify the subject and object of the confrontant, provide a grace period in the processing of authentic deeds, act carefully, carefully and thoroughly in the process of making deeds. Fulfill all the technical requirements for making Notarial deeds, Report to the authorities if there are indications of money laundering in transactions at the Notary.<sup>11</sup>

---

<sup>10</sup> [SE No AHU UM 01 01-1232 Guidelines PMPJ Notary pdf 750x 5e398edfd7434.pdf \(ini.id\)](#) accessed at 13.00 WIB, Saturday, August 25, 2023.

<sup>11</sup> Manuaba Paramaningrat, et al, *The principle of caution of notaries in making authentic deeds*. Scientific Journal of Master of Kenotariatan Study Program, Udayana University, 2018. h 48-49



Notary is one of the public officials required to apply the principle of recognizing service users in accordance with Article 3 of Government Regulation No. 43 of 2015 and Article 2 paragraph (1) of Minister of Law and Human Rights Regulation No. 9 of 2017. In Article 2 paragraph (2) of the Regulation of the Minister of Law and Human Rights No. 9 of 2017, the principle of recognizing service users contains identification of service users, verification of service users, and monitoring of service user transactions. Based on Article 2 (3) Permenkumham No 9 of 2017 "The principle of recognizing service users applies to notaries in providing services in the form of preparing and conducting transactions for the benefit of or for and on behalf of service users regarding the purchase of property and sale of property, management (money, securities, and / or other financial service products), management (checking accounts, savings accounts, deposit accounts, and / or securities accounts), operation and management of companies and / or establishment, purchase and sale of legal entities). The application of recognizing service users is carried out on individuals, corporations, and other legal arrangements".

Based on the Regulation of the Minister of Law and Human Rights No. 9 of 2017 Article 2 Paragraph (4) "the obligation to apply the principle of recognizing service users as referred to in paragraph (1) and paragraph (2) is carried out when conducting business relations with service users, there are financial transactions with rupiah and / or foreign currencies with a value of at least or equal to Rp 100,000,000.00 (one hundred million rupiah), there are suspicious financial transactions related to criminal acts of money laundering and criminal acts of terrorism financing, and if the notary has doubts about the truth of the information reported by service users".

Every person who conducts transactions with the reporting party is obliged to provide information at least containing personal identity, source of funds, and purpose of the transaction by filling out the form provided by the reporting party and attaching supporting documents. Risk-based service user identification in relation to the application of the principle of recognizing service users is further regulated starting from Articles 7 to 17 of the Minister of Law and Human Rights Regulation No. 9 of 2017 that in applying this principle it can be classified into 3 levels, namely the low level regulated in article 16, the medium level regulated in articles 7 to 15, and the deep level regulated in article 17. The grouping of service users based on risk levels is analyzed based on a. profile; b. c. d. business; country; and product. Based on article 17 paragraph (5) if there is a high risk basis the notary is authorized to:

- a. "give approval or rejection to Service Users and Beneficial Owners who are classified as high risk; and"
- b. "make decisions to continue or stop business relationships with Service Users and Beneficial Owners that are classified as high risk."

Article 17 Paragraph (2) reads "Service Users or Beneficial Owners who have a high risk level of money laundering or terrorism financing as referred to in paragraph (1) include Service Users or Beneficial Owners: are PEPs; and transact from and/or destined for high-risk countries", which includes the category of *Politically Exposed Person*, hereinafter referred to as PEP, is a person or individual who has been or who has authority in the executive, judicial, legislative, foreign countries and/or foreign jurisdictions, and/or international organizations.

Based on Article 19 Paragraphs (2) and (3) of Minister of Law and Human Rights Regulation No. 9/2017 that;

- (2) "The Notary may request information from the Service User to determine the formal truth of the Document as referred to in paragraph (1)."
- (3) "In the event that there is any doubt as to the formal correctness of the Document as referred to in paragraph (2), the Notary may request other supporting Documents from the authorized party."

The truth of the information desired under this article is about formal truth only. To ensure the correctness of the service user's identity, the notary public is obliged to meet directly with the service user, which is in accordance with Article 10 Paragraph (2) of Regulation of the Minister of Law and Human Rights No. 9/2017.

Based on Article 24 Paragraphs (1), (2) and (3) notaries are required to report their clients as suspicious transactions if the client refuses to comply with the principle of recognizing service users, or the notary doubts the truth of the information submitted by the client and the notary reports as soon as possible with a maximum period of 3 working days after the notary becomes aware of a suspicious financial transaction. In terms of reporting in line with the recommendations of the *Financial Action Task Force (FATF)* which states that certain professions if there are indications of money laundering criminal acts committed for or on behalf of personal or corporate interests are required to report the transaction to PPATK<sup>12</sup>.

Based on Circular Letter Number AHU.UM.01.01-1232 concerning Guidelines for the Implementation of Recognizing Service Users for Notaries, the procedures that must be applied by notaries in applying the principle of recognizing service users are identification of notary services used by service users, communicating with service users, risk analysis of service users and/or beneficial owners, application of the principle of recognizing service users based on the risk of criminal acts of money laundering and/or terrorism financing, document management, updating information and/or documents, and reporting to PPATK.

Based on Circular Letter Number AHU.UM.01.01-1232 concerning Guidelines for the Implementation of Recognizing Service Users for Notaries, the first step taken by notaries is to identify the notary services used by service users;

- a. "The application of the Principle of Recognizing Service Users (PMPJ) is carried out in the event that Notary provides services in the form of preparing and conducting transactions for the benefit or for and on behalf of Service Users, regarding:
  1. purchase and sale of property;
  2. management of money, securities, and/or other financial services products;
  3. management of current accounts, savings accounts, deposit accounts, and/or securities accounts;
  4. operation and management of the company; and/or
  5. establishment, purchase and sale of legal entities.

---

<sup>12</sup> Explanation of Government Regulation No. 43 Year 2015 on the Reporting Party in the Prevention and Eradication of Money Laundering Crime.

- b. The application of PMPJ as mentioned in letter a is carried out at the time of Notarization:
  1. conduct business relations with Service Users
  2. there are financial transactions with rupiah and/or foreign currencies with a value of at least or equal to Rp100,000,000.00
  3. there are Suspicious Financial Transactions related to the criminal offense of Laundering
  4. Money and terrorism financing crimes; or
  5. The Notary doubts the truth of the information reported by the Service User."

The **second** step is by communicating with service users. The notary communicates with the service user and informs that there will be information needed by the notary in order to identify and verify the service user, and the notary ensures the position of the service user who conducts the transaction with the notary, ensures that the service user acts for himself or for the beneficial owner, and the notary must understand the purpose and purpose of the business, as well as the transactions carried out by the service user and the beneficial owner. Based on the information obtained by the notary, the notary classifies based on individuals, corporations, or other engagements.

The **third** step is to analyze the risk of service users and/or beneficial owners. The notary has the obligation to conduct an assessment and grouping of service users based on the level of risk, this analysis is carried out based on an analysis of the service user profile, service user business, country or region of the service user and notary services. Notaries classify service users and determine the level of risk related to their respective characteristics. Notaries classify service user businesses and determine the level of risk associated with the service user's business by paying attention to the business field of the service user that most often uses notarial services, or the business field of the service user that most often reports suspicious financial transactions to PPATK, or the business field of the service user that is most often requested for information by the authorized agency. The notary analyzes the risk level of service users and categorizes them into low, medium, or high risk groups.

The **fourth** step is the implementation of service user recognition procedures based on the risk level of money laundering and/or terrorism financing. The implementation of the procedure for recognizing service users consists of identification, verification, and transaction monitoring processes. Identification of service users and/or *beneficial owners*, provided that if the service user acts for themselves, the identification process is carried out only on the service user, if the service user acts for and on behalf of the *beneficial owner*, the identification process is carried out on the service user as well as on the *beneficial owner*. The identification process is carried out in accordance with the risk category that has been analyzed against Service Users and / or BO, consisting of;

- a. The process of identifying low-level risks refers to Article 16 of the Minister of Law and Human Rights Regulation 9/2017 on the Application of the Principles of Recognizing Service Users for Notaries. If there are suspicions of money laundering transactions and/or terrorism financing, or when the risk category increases to medium or high risk, notaries are not allowed to use the application of recognizing service users at the medium level and

notaries are required to make and keep a list of Service Users who are classified as low risk.

- b. The mid-level risk identification process refers to Article 7 to Article 15 of the Minister of Law and Human Rights Regulation 9 of 2017 concerning the Application of the Principle of Recognizing Service Users for Notaries, which at least contains information on full name, identity number, residence / passport, legalization decree of legal entity, place and date of birth, nationality, form of business entity, field of business, address stated in the identity card, current address including telephone number, address in the country of origin for foreign nationals, occupation, source of funds, purpose of the transaction, authority to act for and on behalf of the corporation, legal relationship between the service user and the *beneficial owner*, written statement from the service user regarding the correctness of the identity and source of funds of the *beneficial owner*.
- c. The high-level risk identification process refers to Article 7 to Article 15 of the Minister of Law and Human Rights Regulation 9 of 2017 concerning the Application of the Principle of Recognizing Service Users for Notaries, with at least containing full name, identity number, residence / passport, decree, legal entity authorization, place and date of birth, citizenship, form of business entity, business field, address stated in the identity card, current address including telephone number, address in the country of origin for foreign nationals, occupation, source of funds, source of wealth, purpose of transaction, purpose of business relationship with related parties, authority to act for and on behalf of the corporation, legal relationship between service users and bo, written statement from service users regarding the correctness of the identity and source of funds of the *beneficial owner*.

After conducting the identification process, the notary conducts verification by conducting interviews to request information from the service user, confirming with the agency authorized to issue the service user's documents, for example, accessing E-KTP information to the Ministry of Home Affairs; and asking the service user to provide supporting documents issued by the authorized agency. If after the identification and verification process the notary has doubts about the formal truth of the information obtained, the notary is obliged to terminate the business relationship with the service user and report to PPATK.

Step Five is in the form of document administration. Document administration on the basis of Article 21 Paragraph (2) of the Anti-Money Laundering Law "The Reporting Party is obliged to keep records and documents regarding the identity of the perpetrator of the Transaction for a minimum of 5 (five) years since the end of the business relationship with the service user". The minimum documents that must be maintained are;

- a. Service user transaction documents;
- b. Service user and *beneficial owner* documents obtained
- c. Notary in the context of applying the principle of recognizing service users;  
and
- d. Correspondence documents with service users.

Documents can be maintained in the form of original, copy, electronic form, microfilm, or documents that based on applicable laws can be used as evidence. In the event of a request for documents and information by PPATK and/or other authorized authorities, the Notary

must submit the documents and information no later than 3 (three) days after receiving an official request letter. Notaries are required to have an information and transaction recording system for business relationships within the scope of Notary services, both manual and computerized, that can identify, monitor, and provide reports on the characteristics of transactions conducted by Service Users.

The **sixth** step is in the form of updating information and/or documents. Updating information and/or documents is carried out by In the event that the Notary is aware of changes in Service User information, the Notary is obliged to make efforts to update information and/or supporting documents as referred to in Article 7, Article 11, Article 12, Article 13, Article 14, Article 15, Article 16, and Article 17 of the Minister of Law and Human Rights Regulation Number 9 of 2017 concerning the Application of the Principle of Recognizing Service Users for Notaries. Knowledge of changes in information and supporting documents as referred to in letter a is obtained through direct information from service users or other information originating from other parties that can be accounted for. Notary is obliged to maintain documents resulting from updating information and/or documents.

The **seventh** step is reporting to PPATK. The Notary reports to PPATK if he/she terminates the business relationship with the Service User as a result of the Service User refusing to follow the PMPJ procedure; doubts the truth of the information submitted by the Service User; stops the application of PMPJ on the basis that the Notary believes that the application of the principle of recognizing the Service User being carried out will violate the *anti-tipping oft* provisions, and/or the identification of Suspicious Financial Transactions from the User.

Proper analysis by applying the principle of recognizing service users is also part of the implementation of the precautionary principle. The principle of prudence is mandatory for notaries in carrying out their duties and obligations. By applying the principle of recognizing service users, it is intended for notaries to be able to recognize their faces carefully and to avoid criminal acts of money laundering. The application of this principle cannot be separated from the existence of the principle of public interest taking precedence over personal interest.<sup>13</sup>

#### IV. LEGAL PROTECTION FOR NOTARIES FROM LAWSUITS UNDER THE UUTPPU

In relation to the notary's obligation as a reporter as stipulated in the Anti-Money Laundering Law Jo Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes is certainly very risky because the information provided to the authorities contains a very high risk<sup>14</sup>. Therefore, there is a need for clear legal protection for notaries, service users, and or beneficial owners because there is no provision in the UUJN that requires reporting to external parties.

<sup>13</sup> SE\_No\_AHU\_UM\_01\_01-1232\_Panduan\_PMPJ\_Notaris\_pdf\_750x\_5e398edfd7434.pdf (ini.id) Accessed on, i August 25, 2023 at 13.00 WIB

<sup>14</sup> Dermawan. Legal Protection for Notaries on the Crime of Money Laundering Committed by their Attendants. *Surya Kencana Satu Journal* 7. No. 1. (2017). h. 11

Legal protection is certainly very important in order to obtain a protection and legal certainty, for notaries legal protection is important related to the implementation of the duties and obligations of notaries and notaries can feel safe with the protection and legal certainty. According to Soetjipto Rahardjo, legal protection is an effort to maintain or protect a person's interests by allocating a power to him to act in his interests. That one of the characteristics and objectives of the law itself is to provide guarantees in the form of legal certainty.<sup>15</sup>

Legal protection is a form of effort provided by the government through legislation to guarantee the rights of legal subjects. Legal protection specifically related to the reporting party in this case is related to the crime of money laundering in Government Regulation No. 57 of 2003 concerning Procedures for Special Protection for Reporters and Witnesses of Money Laundering Crimes. Technically, protection regarding the reporting of money laundering crimes is regulated in Regulation of the Chief of the Indonesian National Police (KAPOLRI) Number 17 of 2005 on Procedures for Providing Special Protection to Whistleblowers and Witnesses in the Crime of Money Laundering. Based on Article 1 point 1 of Government Regulation No. 57 of 2003, special protection is a form of protection provided by the state to provide a guarantee of security to the Whistleblower or Witness from possible threats that endanger themselves, their lives, and/or their property, including their families. In Article 5 of Government Regulation No. 57 of 2003, special protection for the whistleblower is provided in the form of " protection of personal security, and/or the family of the Whistleblower and Witness from physical or mental threats, protection of the assets of the Whistleblower and Witness, confidentiality and disguise of the identity of the Whistleblower and Witness; and / or, providing information without meeting face to face with the suspect or defendant at every level of case examination". Special protection for whistleblowers is based on Article 2 of the Regulation of the Chief of the Indonesian National Police (KAPOLRI) Number 17 of 2005 that "Special Protection for Whistleblowers, Witnesses and their Families includes: a. protection of personal security from physical or mental threats; b. protection of property; c. confidentiality and concealment of identity; and / or d. providing information without face to face (confrontation) with the suspect or defendant at every level of case examination."

Notaries have the right of denial in accordance with Article 170 Paragraph (1) of the Criminal Procedure Code (KUHAP), which reads: "those who by virtue of their work, dignity or position are obliged to keep secrets, may request to be exempted from the obligation to testify as witnesses, namely about matters entrusted to them". In this article, a notary can be interpreted as a person who keeps secrets. Article 43 of the Criminal Procedure Code states that "the seizure of letters or other writings from those who are obliged by law to keep them secret, as long as it does not concern state secrets, can only be done with their consent or with the special permission of the chairman of the local district court unless the law determines otherwise", that in article 43 of the Criminal Procedure Code the seizure of letters in this case is about notary products and regarding their consent is intended as approval to the Notary Honor Council.

---

<sup>15</sup> <https://www.hukumonline.com/berita/a/teori-perlindungan-hukum-menurut-para-ahli-lt63366cd94dcbc>  
Accessed on January 31, 2024 at 01.30 WIB

The UUTPPU regulates the legal protection of notaries regarding personal and family security as well as security regarding identity confidentiality which is more fully regulated in Article 83 (1), Article 84 (1), Article 85 (1), 86 (1) and Article 87 (1) of the UUTPPU. Article 83 Paragraph 1 UUTPPU states that "PPATK officials and employees, investigators, public prosecutors, or even judges are obliged to keep the reporting party confidential from the reporter". If there is a violation of this provision, the reporting party or their heirs have the right to claim compensation through the court. Furthermore, in Article 84 Paragraph (1) "Every person who reports the alleged criminal offense of Money Laundering shall be given special protection by the state from possible threats that endanger his/her person, life, and/or property, including his/her family".

Article 85 Paragraph 1 states that "In the court session, witnesses, public prosecutors, judges, and other persons related to the criminal act of money laundering that is under examination are prohibited from mentioning the name or address of the reporter or other things that allow the identity of the reporter to be revealed". In Article 86 Paragraph (1) "Every person who reports the alleged criminal offense of Money Laundering shall be given special protection by the state from possible threats that endanger his/her person, life, and/or property, including his/her family." In addition to being given both material and non-material protection, the reporter is also free from all lawsuits on the basis of Article 87 Paragraph (1) that "The reporter and/or witness cannot be prosecuted, either civilly or criminally, for the report and/or testimony given by the person concerned". With good faith based on the application of the principle of recognizing service users, the protection is inherent for notaries. The legal protection provided by the government through UUTPPU is given to the whistleblower both before and after the examination process<sup>16</sup>. So that the reporting party does not feel hesitant about the implementation of obligations as a reporting party. Provisions regarding reporting must be in accordance with the procedures in accordance with applicable regulations, so as not to conflict regarding the rights and obligations as a reporter.

The protection provided by the UUTPPU aims to provide a guarantee of security for the identity of notaries and their families, because if the identity of notaries is not kept confidential there is a possibility of threats from perpetrators of money laundering crimes that can endanger notaries and their families. The UUTPPU does not only provide protection in terms of confidentiality of identity only, but there is also legal protection for notaries, namely avoiding claims and lawsuits in both civil and criminal forms as stipulated in Article 87 of the UUTPPU.<sup>17</sup>

#### IV. CONCLUSION

The obligation of notary as a reporting party in efforts to prevent and eradicate money laundering does not conflict with the obligation to keep the contents of the deed and the information of the confronted confidential. That the notary's obligation to keep confidential

---

<sup>16</sup> Maja Adi, *Legal Protection of Notary as a Reporter of Money Laundering Crime*. (Surabaya: alvabeta, 2020),p. 12.

<sup>17</sup> Ibrahim Muhammad, Amad Sudiro. "Authority and Legal Protection for Notary as a Reporting Party for Suspicious Transactions. *Journal of Legal Issues* 51, No. 2, (2022). p.9

all information of the confrontation stipulated in Article 4 Paragraph (2) and Article 16 Paragraph (1) Letter f of the UUJN can be excluded from the confidentiality provisions which are in accordance with Article 28 of the UUTPPU, this is in accordance with the theory of interests. Legal protection provided in accordance with Article 83 paragraph (1), Article 84 paragraph (1), Article 85 paragraph (1), Article 86 paragraph (1), Article 87 paragraph (1) of the UUTPPU, the protection is in the form of protection related to the confidentiality of the reporter's identity from the reporter, protection from threats that endanger the reporter and his family, protection from possible threats that endanger his person, life, and property including his family, protection in the form of maintaining the reporter's identity during the trial, and protection from all lawsuits.

## REFERENCES

- Adjie, Habib. & R Sesung. *Penafsiran, Penjelasan, Dan Interpretasi Undang-Undang Jabatan Notaris*, (Bandung, Refika Aditama; 2020)
- Amrullah, Arief. *Tindak Pidana Pencucian Uang Dalam Perspektif Kejahatan Terorganisasi: Pencegahan Dan Pemberantasannya*. (Jakarta: Kencana, 2020)
- Dermawan, *Perlindungan Hukum Bagi Notaris Atas Tindak Pidana Pencucian Uang Yang Dilakukan Oleh Penghadapnya* . Jurnal Surya Kencana Satu 7. No. 1. (2017).
- Makarim, Edmon. *Notaris dan Transaksi Elektronik: Kajian Hukum tentang Cybernotary atau Electronic Notary*. (Jakarta: Raja Grafindo, 2012)
- Hartanti Sulihandari, *Prinsi-Prinsip Dasar Profesi Notaris*, (Jakarta: Sinar Grafika, 2011),
- Hereira Daniela, Legal Protection Of Notaries And Attorneys As Reporting Parties In Money Laundering Offenses. *Journal of Jatiswara* 35. No. 1. (2020).
- K. Kartika, Luluk L, The Relevance of Notary as a Reporting Party in Efforts to Prevent Money Laundering Crimes, *Journal Notarius* 16. No. 3. (2023)
- Lisanawati, *Mengurai Permasalahan Hukum Terkait Transaksi Keuangan dalam Pencucian Uang*. *Jurnal Hukum* 1, No. 02. (2023).
- Maja Adi, *Perlindungan Hukum Terhadap Notaris Sebagai Pelapor Tindak Pidana Pencucian Uang*. *Jurnal Hukum Fakultas Hukum Narotama Surabaya*.
- Manuaba Paramaningrat, dkk, *Prinsip kehati-hatian notaris dalam membuat akta autentik*. *Jurnal Ilmiah Prodi Magister Kenotariatan Universitas Udayana*, 2018.
- Parapat P, dkk. *Hukum Kenotariatan Indonesia Jilid 2*, (Bandung, CV Media Sains Indonesia, 2022).
- Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia*, (Surabaya: Bina Ilmu, , 1987).



*SE\_No\_AHU\_UM\_01\_01-1232\_Panduan\_PMPJ\_Notaris\_pdf\_750x\_5e398edfd7434.pdf* (ini.id) accessed on 13.00 WIB, Saturday, 25 august 2023.

Sugiarto, Umar Said. *Pengantar Hukum Indonesia*, (Jakarta: Sinar Grafika, 2017).