



# THE RELATIONSHIP BETWEEN NOTARIES AND MONEY LAUNDERING CRIMES

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**Abstract:** In this case, the social function of the notary is very important to provide authentic deeds for the community. A person in a respectable position who is able to carry out the requirements of an authentic deed is needed by the community, which guarantees legal certainty and builds trust in the production of written evidence. In addition to being responsible for themselves, this individual is also responsible for society. A notary must be moral in order to be able to carry out his responsibilities, investigating and reporting transactions made by service users to PPATK, the authorized organization. Notaries are not harmed by their role as Whistleblowers in Government Regulation Number 43 of 2015 in accordance with the mandate of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. Regulation Number 9 of 2017 concerning the Application of the Principle of Recognizing Notary Service Users in order to help eradicate money laundering crimes.

**Keywords:** *Criminal Acts; Money Laundering; Notary*

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## I. INTRODUCTION

The differences in law in Indonesia are very visible, but there is an inherent characteristic of civil law, namely the difference between public and private law.<sup>1</sup> Because it is a state organ, the government also gives some of its powers and duties to civil servants. Public officials are those who are given authority and the duty to serve the community in certain circumstances and to be appointed and handed down by the state which in this case is represented by the government.<sup>2</sup> Public officials are not only civil servants or people who work in the ministry, but

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<sup>1</sup> Salim HS, 2019. *Pengantar Hukum Perdata Tertulis (BW)*. Jakarta: Sinar Grafika.

<sup>2</sup> Tedi Sudrajat and Endra Wijaya, 2020. *Perlindungan Hukum Terhadap Tindakan Pemerintahan*. Jakarta: Sinar Grafika.

also public officials who have the authority to make an authentic deed that cannot be made by anyone.

The Act is a state document. Because it is expected to help the community in completing an authentic deed, notaries as representatives of the state play a role in advancing public welfare. All parties need to pay attention to the smooth running of ensuring a sense of justice and safety in society, especially Notaries, who carry out their responsibilities and use the authority given by the state to meet legal requirements.<sup>3</sup>

There is a sense that must be given and maintained by fellow Indonesian people, namely the existence of justice and security, the community itself has the ability to be used to make protection for the community, such as the police who have the duty to protect and ensure the absence of conflicts, so that the people of the state can enjoy their basic rights as citizens. And because of that, all elements are needed in making comfort and justice for the community, such as notaries, needed for the making of authentic deeds that must be in accordance with the rules of law.<sup>4</sup> In this case, the social function of the Notary is very important to meet the needs of the public for authentic deeds. In addition to being responsible for himself, a person in a respectable position who is capable of carrying out the requirements of an authentic deed is needed by the community that provides legal certainty and increases trust in the production of written evidence.<sup>5</sup> The responsibility and role of Notaries in society are very important for law enforcement and protection in order to obtain justice and a sense of security as legal subjects and to meet the needs of the community for welfare and prosperity.<sup>6</sup>

Human life and law are inseparable because they seem to be interrelated and grow together. Indonesia's economic growth does not always follow the growth of Indonesia's economic institutions as a result of the new law. between legal reform and the establishment of economic institutions, due to carelessness. The rule of law cannot cover economic activities due to its diversity and scope. The speed of

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<sup>3</sup> Peter Mahmud Marzuki, 2020. *Teori Hukum*. Jakarta: Prenada Media.

<sup>4</sup> Sutan Remy Sjahdeini, 1993. *Kebebasan Berkontrak dan Perlindungan yang Seimbang Bagi Para Pihak dalam Perjanjian Kredit di Indonesia*.

<sup>5</sup> Sahla Billah Sahira, Debriana Novianti, and Devany Putri Prasetya, 2023. *Penerapan Etika dan Transparansi Notaris dalam Akta Otentik*. Nusantara: Jurnal Pendidikan, Seni, Sains, dan Sosial Humaniora 1, no. 02, p. 1-39.

<sup>6</sup> Bambang Waluyo, 2022. *Penegakan Hukum di Indonesia*. Jakarta: Sinar Grafika.

financial transactions and the ease of use of technology to facilitate ongoing financial transactions are influencing new legal issues. Community relationships and activities continue to grow as a result of the continued economic expansion. Conflicts or legal issues that arise in the midst of people's lives are more likely to occur when people interact with legal topics. Banking is just one of the many financial systems that can now be operated more easily thanks to technological advancements.<sup>7</sup>

By making it quick and simple to do these things, many banks today make it easier for money to move between countries. When in conditions like this, there are several good or positive impacts on the community, but it is undeniable that they also have a bad impact and this cannot be denied. The rise of national and international crimes that use banking facilities to hide the source of funds due to money laundering is one of the negative impacts.<sup>8</sup>

Due to the fact that the English words "money" and "laundering" come from the same root, the term "money laundering" can be interpreted literally to mean "money laundering" of assets obtained from criminal acts. comply with other legal requirements. Money laundering is a common offense that can occur anywhere in the world. To hide funds from drug and psychotropic smuggling, organized criminals began using the money laundering industry in the United States in the 1920s. The perpetrator set up a laundry business to hide illegal funds. The Drug and Control Program of the United Nations (UNDCP) was established in Vienna in 1988. The United Nations Office on Drugs and Crime (UNODC) based in Vienna, Austria was established in 1997 The United Nations Vienna Convention against the Illicit Circulation of Narcotics and Psychotropics ended this procedure in 1988. The first international treaty to criminalize money laundering was the ENN Convention which has been ratified by 162 countries.<sup>9</sup>

Various financial and business transactions involving Notaries have also developed along with the times and the pace of economic growth due to the requirement for

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<sup>7</sup> Christian Herdinata and Fransisca Desiana Pranatasari, 2019. *Panduan Penerapan Financial Technology Melalui Regulasi, Kolaborasi, dan Literasi Keuangan pada UMKM*.

<sup>8</sup> Brian Septiadi Daud and Nyoman Serikat Putra Jaya, 2022. *Kebijakan Hukum Pidana dalam Tindak Pidana Pencucian Uang di Pasar Modal*. Journal of Judicial Review 24, no. 1, p. 59-80.

<sup>9</sup> Moch Andriansyah, 2013. *Membandingkan Jumlah PSK Dolly dengan Lokalisasi di Asean*. <https://www.merdeka.com/peristiwa/membandingkan-jumlah-psk-dolly-dengan-lokalisasi-di-asean.html>.

original written evidence from business actors or interested parties. In each currency, the parties appear before the Notary with malicious intent to conceal themselves in order to conduct unauthorized financial transactions in order to maintain the confidentiality of the provisions. The notary profession is regulated by law to guarantee that all transactions appear legal. One such crime is money laundering. As mentioned earlier, the use of public officials to commit a crime in the form of a criminal act, especially large corrupt officials, this supports the increase in the rate of money laundering, in PP 43/2015 it is written in detail that the rampant money laundering also depends on large officials who should be able to help reduce or eradicate money laundering. Article 1 of PP No.3 as the basis for Everyone who is obliged to report to PPATK, this is based on existing rules to participate in preventing or preventing and participating in the eradication of TPPU.<sup>10</sup>

## **II. RESEARCH METHODS**

The research in this journal is included in the research using normative laws.<sup>11</sup> This research uses positive law, namely the law that is currently used in Indonesia. In addition to the UUJN, it also uses PP 43/2015 to see the responsibility carried by a notary through the money laundering case. In this journal research, because it is normative, it uses a statutory or legal approach and its derivatives as well as a conceptual approach derived from previous researchers. In addition, in the laws and regulations used using the Indonesian legal hierarchy, namely looking at all laws related to this discussion.<sup>12</sup>

## **III. ANALYSIS AND DISCUSSION**

### **a. Money Laundering in Indonesia**

The beginning of Indonesian criminal law occurred on April 17, 2002, with the passage of Law Number 15 of 2002 which regulates the crime of money laundering. The TPPU Law 2002 was passed into law. made which will not be valid for another 18 months. This is in line with advances in information technology, international norms, and criminal law that apply to money laundering. Money Laundering, or the

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<sup>10</sup> Dewi Saksi Sudarto, 2021. *Tindak Pidana Pencucian Uang dalam Perspektif Hukum Indonesia*, "Diploma Thesis" Banjarmasin: Universitas Islam Kalimantan MAB.

<sup>11</sup> Mahmud Marzuki, 2017. *Penelitian Hukum: Edisi Revisi*. Jakarta: Prenada Media.

<sup>12</sup> Irwansyah, 2020. *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*. Yogyakarta: Mirra Buana Media 8.

PPTPPU Law, which came into effect on October 22, 2010. On December 15, 2002, and December 25, 2003, they moved locations, respectively. There are several reasons for these changes, including: The life of society, nation, and state, as well as the integrity and stability of the economy and finance, are in danger.<sup>13</sup>

- 1) The need for a strong legal foundation if we want to have law enforcement that is effective, dexterous and applicable for asset recovery, prevention and eradication of TPPU;
- 2) It is necessary to have a condition that a criminal act according to its provisions is considered as TPPU as referred to in Article 1 number 1 of the PPTPPU Law. New arrangements adapted to the needs of international developments must be made, standards and procedures for law enforcement. It is difficult for law enforcement to track these assets and allow criminals to use them freely because criminals usually seek to hide their illicit source of wealth for a variety of reasons. As a result, the TPPU incident shook Pancasila and the basis of the state mandate by disrupting the state financial system and disrupting economic stability. This faltering often occurs in both corners of the state for a prosperous, prosperous and just society;
- 3) In eradicating TPPU, the government wisely establishes PPATK;
- 4) PPATK for the Prevention and Eradication of Money Laundering Crimes has the purpose of preventing and eradicating criminal acts, facts, and specificities;
- 5) Control over how whistleblowers act; and
- 6) Analysis or investigation of the existence of reporting and transactions that are carried out but are unusual so as to raise doubts about the existence of TPPU or other violations of the law.

In the case of TPPU, it is a double case because of its singularity and can be categorized as a follow-up criminal act that has been mandated in Article 2 paragraph 1 of the TPPU which is a core criminal act. A crime is a crime even if it is committed outside the territory of the Republic of Indonesia. In the initial sense, the crime is very important, especially in consideration of the type of crime that gets money from the crime. Indonesia is often the destination country due to the lack of supervision regarding financial entry and exit in Indonesia.

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<sup>13</sup> Nurul Asriari, et al., 2022. *Meningkatkan Nilai Kemanusiaan dengan Cara Saling Membantu dalam Kehidupan Bermasyarakat*. AMMA: Jurnal Pengabdian Masyarakat 1, no. 4, p. 207-215.

In addition, one of the safest places to use for money laundering is Indonesia, due to the lack of supervision and an undeveloped financial system like other countries. In the bank secrecy has been strictly guarded, this development exists because of the demand from abroad that asks Indonesia to supervise more and in addition for the good development of Indonesia and because in Indonesia there is no special regulation that regulates it, the existence of this TPPU has a great impact on the country's economy.<sup>14</sup>

## **b. The Relationship Between Money Laundering and Notaries in Indonesia**

The legal dictionary uses the terms "liability" and "liability" to describe liability. The legal term "liability" can be used to refer to almost any type of risk or liability. All aspects of actual or potential rights and obligations are covered by liability, including costs, losses, threats, crimes, and conditions that require legal compliance. The decision, ability, skill, and obligation to accept responsibility for applicable law all fall under the concept of responsibility. Legal liability, or liability for wrongs committed by legal subjects, is referred to as liability in practical and usage terms. Political responsibility is referred to as obligation.<sup>15</sup>

According to Kranenburg and Vegtig, two fundamental theories underlie the issue of official accountability.<sup>16</sup> According to the theory of fautes personnelles, it is the official who bears the financial losses who are to blame. According to this theory, people are responsible for their actions. The theory of fausses de services states that the official in question is liable for any losses incurred by third parties. This hypothesis is strongly supported by responsibility. In practice, losses are also adjusted in proportion to the level of error. The gravity of the error determines how much responsibility must be accepted.

The concept of legal liability is related to the idea of legal responsibility. A person who can be punished for breaking the law and is legally responsible for it. The individual's own actions often result in the revocation of sanctions. Legal

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<sup>14</sup> Raihan Dirham, 2015. *Tindak Pidana Pencucian Uang (Money Laundering) dalam Transaksi Perbankan*. "Skripsi" Makassar: Universitas Hasanuddin.

<sup>15</sup> Dwi Alfianto, Ali Rido, and Geraldo Valento Wijaya, 2024. *Pertanggungjawaban Perdata dan Tanggung Gugat dalam Perkara Wanprestasi dan Perbuatan Melawan Hukum*. Jurnal Pengabdian Masyarakat 4, no. 6, p. 492-502.

<sup>16</sup> Aulia Ertasuci, 2023. *Pertanggung Jawaban Pidana Terhadap Badan Publik yang Tidak Menyediakan Informasi Publik Berdasarkan UU No. 14 Tahun 2008 Tentang Keterbukaan Informasi Publik*. "Skripsi" Jambi: Universitas Batanghari Jambi.

responsibilities and obligations are the same. Conventional theory divides liability into two categories: Absolute liability versus guilt-based liability. Absolute liability refers to the action and the relationship between the action and its consequences that lawmakers consider harmful.<sup>17</sup>

The mental state of the perpetrator has nothing to do with the outcome of his actions, in the sense of acts that are contrary to each other," said Hans Kelsen in his theory of legal liability. According to the UUJN, the relationship between the authority and responsibility of the notary in civil law must be explained using the theory of legal liability. The party is one of these authorities, and it is an offense or act that each party must show evidence that can be invalidated or the legal certainty of the community. Article 1 number 11 of the PPTPPU Law defines a "whistleblower" as any person who submits a report to PPATK. Article 17 of the PPTPPU Law defines an individual or legal entity including a provider of financial services and other goods and/or services.<sup>18</sup>

As of June 23, 2015, there are additional whistleblowers in accordance with Government Regulation Number 43 of 2015 concerning Whistleblowers in the Prevention and Eradication of Money Laundering Crimes. Lawyers, notaries, land certificate officials, public accountants, and others fall into this category. Article 3 of Government Regulation Number 43 of 2015 also covers journalists. Advocates, notaries, and deed-making officials must adhere to the principle of recognizing land service recipients, public accountants, in carrying out their duties. Accountant and Financial Planner.<sup>19</sup>

Law Number 2 of 2014, which amends Law Number 30 of 2004 concerning the Office of Notary, was passed in 2014. For certain positions, original written evidence of a legal circumstance, event, or act is required. and legal protection. In accordance with the provisions of Article 1 number 1 of the UUJN, a Notary is a public official who is authorized to make authentic deeds and other authorities. under this or any

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<sup>17</sup> Husin, 2023. *Rekonstruksi Regulasi Tanggung Jawab Direksi sebagai Organ Perseroan Terbatas Berbasis Nilai Keadilan*. "Doctoral Thesis" Semarang: Universitas Islam Sultan Agung.

<sup>18</sup> Vici Anjela Keintjem and Sri Murni, 2022. *Analisis Kinerja Keuangan Pemerintah Daerah Kabupaten Banggai Laut Tahun Anggaran 2017-2019*. Jurnal EMBA: Jurnal Riset Ekonomi, Manajemen, Bisnis dan Akuntansi 10, no. 1, p. 953-962.

<sup>19</sup> Kristanti Handayani, M. Arief Amrullah, and Fanny Tanuwijaya, 2017. *Notaris Sebagai Pihak Pelapor dalam Pencegahan Tindak Pidana Pencucian Uang*. Lex Humana: Jurnal Hukum dan Humaniora 1, no. 2, p. 203-216.

other law. The authority belongs to the Notary as long as it is not the authority of other officials in terms of making authentic deeds and other authorities. In the sense that it has never been given to another official, this is the position of the Notary as a public official.<sup>20</sup>

One of the notary's jobs is to make an authentic deed that is based on honesty on the part of the party to make an agreement which is seen from the actions and other provisions that exist in the mandatory conditions that must be fulfilled for all people who want to make a deed. In addition, in the words of the deed made there is a distinctive feature, namely by affixing the day, date, month, year and hour, this is done to help if there are irregularities in the deed in the future. And in the first word of the deed there is a word that states that this deed in its making cannot be handed over and delegated to other people including other officials.<sup>21</sup>

Other similar provisions are also regulated. the second paragraph of Article 15 of UUJN 2/2014, which amends UUJN 30/2004. Acts such as registering the letter in a specific place, e.g. books (for attestation), verifying the date and authenticity of signatures; handwritten letters and store them in special books; Copying a fictitious letter with a written explanation and details about the letter; confirmation that the same photocopy of the original document is included in the letter; exp what else you need to do legally to make a deed; make land deeds; The deed is made from the auction minutes.<sup>22</sup> A statement made by the parties in the form of a real deed known as a notary deed can be used as evidence of a certain circumstance, event, or legal act. authentic deeds in accordance with their authority, so that a relationship is established. Notary. After that, the person in attendance or asks the Notary to sign the deed. The notary must ensure that the deed is based on applicable law to protect those interests. The door deed, also known as the "relaas deed," and the tenth overstaan deed, also known as the "tenth deed", make the notary deed a joint deed witnessed by the notary. A deed of release is a document that is requested by the parties to be signed by a notary so that the notary can record or write down

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<sup>20</sup> Karina Prasetyo Putri, 2016. *Tanggung Jawab dan Perlindungan Hukum Bagi Notaris Purna Bakti Terhadap Akta yang Pernah Dibuat (Analisis Pasal 65 dan Pasal 66 Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris)*. "Thesis" Malang: Universitas Brawijaya.

<sup>21</sup> Mariah Kamelia, 2017. *Peran Notaris dalam Pembuatan Akta Perjanjian Kredit dalam Perspektif Hukum Positif dan Hukum Islam*. Jurnal Akta 4, no. 4, p. 575-584.

<sup>22</sup> Virginia Puspa Dianti, 2021. *Analisis Kewenangan Notaris Pengganti dalam Pembuatan Akta Pendirian Koperasi Menurut UU Nomor 2 Tahun 2014*. "Thesis" Semarang: Universitas Islam Sultan Agung.



everything that is discussed in the provisions of the law or other acts. The deed records everything that the parties see or hear directly from the Notary. The parties want the deeds to be signed by a notary. In the presence of a notary, the statements of the parties or explanations of the statement must be heard by the notary.

A notary deed is made by adding the information of the parties in it. Because they are noble professions (*nobile officium*) whose job is to make real deeds to provide legal certainty to the public, notaries are important public officials in Indonesian law enforcement. Compared to society as a whole, notaries occupy a higher sociological, economic, political, and psychological strata. Notaries must be trusted because they have the potential to abuse public trust because they are vulnerable to it. To carry out their duties, notaries must have a moral foundation. The whistleblower uses the concept of recognizing service users to identify, investigate, and report service user transactions to the competent authority, PPATK. On May 5, the Minister of Law and Human Rights of the Republic of Indonesia issued Ministerial Regulation Number 9 of 2017 concerning the Application of the Principle of Recognizing Notary Service Users in an effort to help eradicate money laundering crimes.<sup>23</sup>

Notaries are required to apply the concept of "knowing your customer" or "knowing service users" as the reporting party to express that there are financial transactions that need to be suspected. Because of this, notaries use the principle of service users that are attached to the performance of the notary position in accordance with the UUJN, and notaries are required to know that notaries are obliged to know their customers before the deed is made. The existence of a strangeness in the client can be detected by a notary, especially if the client has committed a violation according to the UUJN. Often on the deed under hand. To fulfill his responsibilities, notaries are obliged to include concepts to introduce service users into practice. The determination of who uses the service is one of the things that must be included in the application of the principle of Notary who recognizes the Service User.

Notaries who prepare and carry out property transactions for the benefit of or on behalf of service users, notary clients, or other types of financial services are subject to the principle of recognition of service users. Management of other accounts, such as savings, current accounts, securities, time deposits, and so on; management and

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<sup>23</sup> Muhammad Farsha Kautsar, 2023. *Peran PPATK dalam Pengungkapan Keterlibatan Gatekeeper pada Tindak Pidana Pencucian Uang Hasil Perkara Tindak Pidana Korupsi*. "Thesis" Yogyakarta: Universitas Islam Indonesia.

administration; and/or; creation, sale, and acquisition of legal entities in doing business with the recipient of the service, the notary must adhere to the principle of knowing it; Financial transactions have a minimum value of Rp. 100,000,000.00 in local and international currencies; terrorism financing and money laundering in connection with dubious financial transactions; or Notaries are not sure of the accuracy of the Service User's information. When the principle of service user identification is applied through the collection of service user information, the notary identifies the service user. The Notary obtains information about the Service User from an individual, business, or other agreement (legal arrangement) with the Service User.<sup>24</sup>

#### **IV. CONCLUSION**

As mentioned earlier, some of the potential results of this research include the following: To begin with, the law requires the following things so that notaries can carry out their duties as civil servants and provide legal services to the general public: UUJN, the definition of notary "is "... the obligation of the notary to keep the contents of the deed confidential." that I will keep the contents of the deed and all the information I obtain from my work confidential..." Notaries are obliged to keep the contents of the deed and all information obtained from the secrets of his work confidential. This is in accordance with the oath of office taken before the Notary carries out his duties, as stated in Article 4 paragraph 2 of the UUJN.

Unless otherwise specified by additional laws and regulations, notaries are prohibited from freely disclosing the secrets of their positions. law. Notaries are protected by the state as a reporter or witness on the submission of a notary based on Article 16 paragraph (1) letter f which is based on Law Number 8 of 2010 concerning the Prevention and Eradication of Corruption Crimes. The role of the notary as a whistleblower based on Government Regulation 43 of 2015 does not harm them. Everything he does to hide the deed while carrying out the law, including the details of the deed and the information he collects. Notaries are aware of the suspicious financial transactions in accordance with Article 25 paragraph 4, but do not report them to PPATK: administrative sanctions

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<sup>24</sup> B. Tinjauan Umum Tentang Akta Notaris, "1. Akta Notaris Sebagai Akta Otentik," Mengenal Para Penghadap, n.d., p. 48.

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