

LEGAL PROTECTION AGAINST NOTARY IN REPORTING SUSPICIOUS FINANCIAL TRANSACTIONS THROUGH GO ANTI MONEY LAUNDERING APPLICATION

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Abstract

This research is legal research that analyzes and examines the legal protection of notaries in reporting suspicious financial transactions through the Go Anti Money Laundering application. This study aims to provide legal protection for notaries in a preventive and repressive manner to create a sense of security and attitude towards a notary in carrying out his role and responsibility as a reporting party. This research method uses typeprescriptive normative research by using data on primary legal materials and secondary legal materials, which were analyzed using qualitative methods by using the theoretical basis and then presented in a comprehensive and descriptive. The results of the research show that the shape legal protection for notaries as reporting parties in reporting suspicious financial transactions, namely the presence of involvement of a notary in the ML system by applying know your customer principle with customer due diligence and enhanced due diligence in risk assessment as on preventive efforts in prevention as well sanctions and punishments as a repressive effort to resolve criminal acts or other legal actions that are against the law.

Keywords: Legal Protection, Notary, Reporting Parties, Suspicious Financial Transactions

INTRODUCTION

The world is facing the fifth industrial revolution, known as the societal revolution 5.0. This is an era of Disruptive innovation, where digital innovation is developing very rapidly so that humans are closely related to the use of the internet or Internet of Things (IoT), coupled with the development of digital platform innovations that affect efficiency, both in terms of manufacturing and service.¹

The existence of information technology is a big opportunity and challenge. This is because the development of information technology or social media has a lot of influence. Both positive and negative influences. The dynamics of Indonesian society, which is still growing and developing, seem premature to keep pace with these technological developments. In addition to contributing to increasing the welfare progress of human civilization, on the other hand, the development of information technology can also lead to unlawful acts,² but it also can help the implementation of law enforcement and facilitate administrative matters, including legal services.

Notaries in carrying out their duties, can also be said to be legal servants, and their functions as public officials certainly cannot be separated from technological advances as developments in society. In carrying out these duties, it has been stated in Article 15 paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position Regulations which states that a Notary has other powers regulated in laws and regulations.

In the explanation of Article 15 paragraph (3) of Law Number 2 of 2014, what is meant by other authorities regulated in laws and regulations is the authority to certify transactions carried out electronically (Cyber Notary).[3]³

Without the need to be regulated in even more specific regulations, the Notary has an obligation to keep the Deeds made secret. The obligation to keep the deed confidential is contained in the provisions of Article 16 letter f of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary. However, in this provision, there is an exception that secrecy regarding deeds can deviate in the event that the law determines otherwise. On the other hand, there is a provision in Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes, which states that a Notary is one of the reporting parties. As one of the reporting parties, a Notary is required to report data and information that is suspected of containing elements of a Suspicious Financial Transaction. These provisions aim to prevent and eradicate money laundering crimes where the perpetrators of money laundering often use professional services by protecting themselves from the secret provisions of professional positions. Prevention and eradication of the crime of money laundering itself are very important because the crime of money laundering threatens economic stability and financial integrity and even threatens the foundations of social, national and state life based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Then what if the Notary knows or suspects that the client's assets are indicated to have elements of a Suspicious Financial Transaction? What is Law Number 11 of 2016 or Government Regulation Number 43 of 2015 that a Notary must comply with?

The enactment of the two laws and regulations above becomes a dilemma for the Notary. If the Notary knows there is a Suspicious Financial Transaction but the Notary does not report it to the Financial Transaction Reports and Analysis Center (PPATK), then the Notary can be made a suspect as participating in committing the crime of money laundering.⁴In this case, the Notary may be subject to Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Laundering.⁵as a party participating in the crime of money laundering. This is also supported by Yunus Husein's opinion, which states that if a Notary does not report Suspicious Financial Transactions, and in the future, it turns out that the transaction is considered a crime, then the Notary can face threats under Article 55 of the Criminal Code concerning participating in helping crimes and Article 56 of the Criminal Code regarding participating actively aiding crime.

These provisions have the potential to weaken the national spirit to prevent and eradicate money laundering. Exchange of data and information is a very crucial factor in the prevention and eradication

¹ Tasya Safiranita Ramli, Armelia Safira and Maudy Andreana Lestari, Dalam Maskun and Hasbi Assidiq, "Cyber Security: Regulatory Urgency and Future Challenges, Indonesian – Singapore Cyber Security Comparison, Chapter 04, p. 77

² Andi, What and How E-Commerce, Semarang Computer Forum, Yogyakarta, 2002, p. 1

³ Edmon Makarim, Notary & Electronic Transactions (Legal Studies on cybernotary or electronic Notary), Rajagrafindo Persada, Jakarta, 2016, p. 7

⁴ Made Riyaldi, et.al., The Urgency of Arranging Notaries and Land Deed Officials as Reporting Parties for Suspicious Financial Transactions Related to Money Laundering Crimes. Matter. 12

⁵ Made Riyaldi, et.al., op.cit.

of the crime of money laundering. PPATK requires data and information related to Suspicious Financial Transactions to analyze a Money Laundering Crime and then the results will be given to law enforcement officials, such as the Police and the Attorney General's Office of the Republic of Indonesia.

The biggest question is how is the legal protection of a notary in reporting suspicious financial transactions reporting suspicious financial transactions through the Go Anti Money Laundering application, including leaking data and client information. Notaries need to get legal certainty regarding this matter so that notaries avoid unwanted things. The notary himself either when the notary makes the deed or when the notary reports to PPATK. This is important to answer considering the position of a Notary as one of the Suspicious Financial Transaction Reporting Parties which is one of the professions that becomes a gatekeeper related to the eradication of Money Laundering Crimes in Indonesia.

Regarding the problems and questions mentioned above, it is necessary to have a comprehensive study regarding legal protection for notaries as reporters of suspicious financial transactions through the go Anti Money Laundering application.

RESEARCH METHODS

The type of research in this paper based on the focus of the study is normative research that is prescriptive in nature. aims to find the truth of coherence by examining whether the legal rules are in accordance with legal norms and whether there are norms in the form of orders or prohibitions in accordance with existing legal principles, and whether a person's actions are in accordance with legal norms (not just legal rules) or principles.⁶ Analysis techniques were carried out on the legal materials that had been collected in the form of primary legal materials and secondary legal materials which were identified and inventoried using Legislative Approach and Conceptual Approach. The analysis of legal material used is a qualitative method using a theoretical basis which is then presented in a comprehensive and descriptive manner.

RESULTS AND DISCUSSION

Legal Protection for Notaries in Reporting Suspicious Financial Transactions Through the Go Anti Money Laundering Application

Notary is a public official who is given the authority to make authentic deeds. A Notary is seen as a figure needed by society today in terms of making deeds as proof of the legal actions they will take. This is because what is written by a Notary in a deed must be able to provide legal certainty, be used as evidence and can provide legal protection for the parties in the deed.

The legal protection given to a Notary in carrying out his duties as a public official is regulated in the JN Law. This legal protection is closely related to the making of a deed which is the main task of a Notary.

This form of legal protection for Notaries is carried out both preventively and repressively. Preventive legal efforts here are preventive. Preventing the rights of a notary from being violated. This means that preventive legal efforts are carried out before the occurrence of a violation of the law. If a violation of the law has occurred, legal remedies here are no longer preventive in nature but are already repressive in nature.

Legal protection for Notaries in a preventive manner includes provisions contained in the UU-JN and the Notary code of ethics, supervision carried out by the Regional Supervisory Council and Supervision by the Honorary Council of the Indonesian Notary Association

While repressively it can be in the form of reprimands and sanctions from the Notary Supervisory Council as well as reprimands and sanctions from the Honorary Council of the Indonesian Notary Association.

Based on Article 1 point 6 of Law Number 13 of 2006 concerning Protection of Witnesses and Victims, protection is:

"All efforts to fulfill rights and provide assistance to provide a sense of security to Witnesses and/or victims which must be carried out by the LPSK or other institutions in accordance with the provisions of this Law."

It is worth looking at the difference between protection and legal protection. According to Satjipto Rahardjo, legal protection is the provision of shelter to people who have been harmed by other people so that they can enjoy all the rights granted by law. Thus, it can be said that legal protection is a variety

⁶Irwansyah, Legal Research Choice of Methods & Article Writing Practices, Mirra Buana Media, Yogyakarta, 2021. Pg 44

of legal remedies that must be provided by law enforcers to provide a sense of security, both mentally and physically from disturbances and various threats from any party.⁷ From the definition of legal protection above, it can be seen the differences in legal protection and protection, namely protection that is broader in nature, can be in the form of physical, psychological and juridical protection. Meanwhile, legal protection is limited to juridical protection, such as the right for reporting witnesses not to be prosecuted either criminally or civilly.

In addition to legal protection for society in general, in particular legal protection is closely related to witnesses and reporting parties. Therefore the definition of legal protection can be found in Article 1 number 6 of Law Number 13 of 2006 concerning Protection of Witnesses and Victims which states that protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims that must be implemented by the Witness and Victim Protection Agency (LPSK) or other institutions.

In relation to Notaries, Notaries need legal protection in order to be able to carry out all their duties and authorities as mandated by the Law on Notary Position, Notary's Code of Ethics and other laws and regulations. The Notary's obligation to keep the contents of the Deed secret and the Notary's obligation to report Suspicious Financial Transactions are like two sides of a sword. On the one hand, notaries need legal protection so that deeds reported to the competent authority are not used as the basis for claims from clients for leaking office secrets. Meanwhile, on the other hand, notaries need legal protection so that all criminal acts committed by clients related to the deed made by them do not drag the notary/PPAT into any criminal charges.

In addition to legal protection in carrying out their duties and authorities, Notaries also need legal protection regarding their obligation to report Suspicious Financial Transactions, particularly reporting Suspicious Financial Transactions for Taxpayers participating in Tax Amnesty. Based on the previous sub-chapter, it is known that a Notary who reports Suspicious Financial Transactions for Taxpayers participating in Tax Amnesty should not be prosecuted under Article 21 paragraph (2) of Law Number 11 of 2016. In addition, Notaries/PPATs also need other legal protections so that the reporting of Suspicious Financial Transactions by Taxpayers participating in the Tax Amnesty does not backfire for the Notary himself.

Legal Protection in Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes

Law Number 8 of 2010 basically regulates comprehensive protection for parties who report Suspicious Financial Transactions, be it physical, psychological or juridical protection. These legal protections include:

1. Immunity of the Reporting Party so that it cannot be prosecuted, both civilly and criminally for the implementation of the obligation to report Suspicious Financial Transactions, unless there is an element of abuse of authority.
2. The obligation for PPATK officials and employees, investigators, public prosecutors, or judges to keep the Reporting Parties and reporters confidential.
3. The right of the Reporting Party or its heirs to demand compensation through the court if the confidentiality of the Reporting Party is violated.
4. Prohibition of mentioning the name or address of the Reporting Party or other matters that may reveal the identity of the Reporting Party in court hearings by witnesses, public prosecutors, judges and other persons related to the crime of money laundering.
5. The right for the Reporting Party not to be prosecuted either criminally or civilly, for reports and/or testimony given by the Reporting Party.

Based on the protections above, with the protection of points 2 and 4, namely the obligation to keep the identity of the reporting party confidential, the Notary who reports Suspicious Financial Transactions for Taxpayers participating in the Tax Amnesty will not be known by anyone except the Notary as the reporting party itself and the PPATK. Taxpayers participating in the Tax Amnesty will not even know that they have been reported by the Notary who uses their services.

Especially with the protection of points 1 and 5 above, namely the right of immunity for the reporting party not to be prosecuted both criminally and civilly. With this protection, if at any time the confidentiality of the reporting party is leaked, the reporting party cannot be prosecuted either criminally or civilly. This is very fundamental for the reporting party so that there will be no more cases where the reporting party is counter-claimed by the person they reported, as happened with Endin Wahyudin, Khairiansah Salman and Vicentius Amin Sutanto.⁸

⁷Satjipto Rahardjo, *Law and Society*, (Bandung: Space, 1984), pg. 74

⁸Yunus Husein (2), *The Land of the Money Launderers*, (Jakarta: Pustaka Juanda Tigalima, 2008), p. 116-121.

Legal Protection in Law Number 13 of 2006 concerning Protection of Witnesses and Victims

Law Number 13 of 2006 concerning Protection of Witnesses and Victims is a milestone in the birth of comprehensive legal protection in all criminal acts against witnesses and victims. Previously, the protection of witnesses and victims was only physical protection and was spread across various laws and regulations such as:⁹

1. Article 41 paragraph (2) letter e of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes;
2. Article 15 Law no. 30 of 2002 concerning the Corruption Eradication Commission;
3. PP No. 57 of 2003 concerning Procedures for Special Protection of Reporters and Witnesses which is the implementing regulation of the Money Laundering Law.

In general, based on Article 5 of Law Number 13 of 2006, a witness and victim are entitled to the following protection:

- a. Obtain protection for personal, family and property security, and be free from threats regarding the testimony that will be, is being given, or has been given;
- b. Participate in the process of selecting and determining forms of security protection and support;
- c. Give information without pressure;
- d. Got a translator;
- e. Free from ensnared questions;
- f. Obtain information regarding the progress of the case;
- g. Obtain information regarding court decisions;
- h. Knowing in terms of the convict being released;
- i. Got a new identity;
- j. Get a new residence;
- k. Obtain reimbursement of transportation costs as needed;
- l. Get legal advice;
- m. Obtaining temporary living expenses assistance until the protection deadline expires.

In addition to the protection above, Law Number 13 of 2006 has also provided very strong legal protection for witnesses, victims and reporters, namely the right not to be prosecuted both criminally and civilly for reports, testimony that will be, is being, or has been given. Whereas Law Number 13 of 2006 defines a reporter as a person who provides information to law enforcement about the occurrence of a crime. However, Law Number 13 of 2006 has not provided legal protection for reporters in the form of guaranteed identity confidentiality and compensation if that confidentiality is violated.

Legal protection in Law Number 13 of 2006 applies to all citizens. Thus, legal protection for the reporter can be applied to a Notary who reports on the occurrence of a crime or who suspects a crime has occurred. The reporting notary can be done in a context where the notary makes a deed for the client but the notary suspects that the money used in the transaction originates from a criminal act. Because the Notary only draws up deeds, the Notary has no obligation to report Suspicious Financial Transactions to the PPATK. However,

In the context of reporting suspicious financial transactions, a notary who simply draws up a deed of transfer of assets and legalization of a declaration of assets for taxpayers can report as a citizen if the notary finds indications of a crime occurring. The notary who reports on the Taxpayer participating in the Tax Amnesty is protected by Article 10 paragraph (1) of Law Number 13 of 2006 which states that the reporter cannot be prosecuted either criminally or civilly. However, it is regrettable that Law Number 13 of 2006 has not provided guarantees for the confidentiality of identity for reporters and compensation if their confidentiality is violated as contained in Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes.

Arrangements regarding protection for reporters and witnesses in the PPTPPU Law are regulated in a separate chapter, Chapter IX. There are 5 (five) articles that regulate this issue, namely Article 83 to Article 87. These articles basically regulate the following matters:

1. Article 83 paragraphs (1) and (2) of the PPTPPU Law require the PPATK, investigators, public prosecutors and judges to keep the identity of the pioneers secret. Violations of these provisions give rise to the right of the complainant or his heirs to demand compensation through the courts;
2. Article 84 paragraph (1) of the PPTPPU Law is obligated to provide special protection by the state for everyone who reports suspected ML, both from possible threats that endanger themselves, life, and/or their assets, including their families;
3. Article 85 paragraph (1) and (2) of the PPTPPU Law prohibits mentioning the name or address of the complainant, or other matters that allow the identity of the complainant to be revealed in court.

⁹Ibid., p. 118

- Even before the examination session begins, the judge is obliged to remind witnesses, public prosecutors, and other people related to the examination of the case that there is such a prohibition;
4. Article 86 paragraph (1) of the PPTPPU Law is obliged to provide special protection by the state for everyone who gives testimony in the trial of TPPU, both from possible threats that endanger themselves, life and/or their assets, including their families; and
 5. Article 87 of the PPTPPU Law. Providing guarantees to reporters and/or witnesses so that they cannot be prosecuted either civilly or criminally for reporting and/or testimony given by those concerned.

The PPTPPU Law is very concerned about the need to provide protection for both reporters and witnesses. The guarantee of protection has been given at the time of reporting. This protection is given before and after the case examination process. Materially, the regulation regarding protection for victims and witnesses of the crime of money laundering in the PPTPPU Law is not only limited to physical protection but also legal protection in the form of protection for reporters and witnesses from lawsuits or lawsuits, both civil and criminal.

Article 86 paragraph (1) of the PPTPPU Law stipulates that every person who gives testimony in the examination of money laundering crimes must be given special protection by the state from possible threats that endanger themselves, their lives and/or their assets, including their families. Specifically, the definition of a witness can be found in Article 1 point 1 of the Law on Witness Protection, which stipulates that "a witness is a person who can provide information for the purposes of investigation, investigation, prosecution and examination at a court hearing regarding a criminal case that he himself heard, he see for yourself, and/or he experienced it himself".

The elucidation of Article 83 paragraph (1) of the PPTPPU Law includes the definition of "reporter", namely any person who has good intentions and voluntarily submits a report on an alleged crime of money laundering. Article 84 of the PPTPPU Law stipulates that every person who reports an alleged crime of money laundering must be given special protection by the state from possible threats that endanger themselves, their lives and/or their assets, including their families.

It is realized that due to the limited scope of parties who will receive special protection, which are only reporters of alleged money laundering crimes and witnesses of money laundering crimes, Government Regulation Number 57 of 2003 concerning Procedures for Special Protection for Reporters and Witnesses of Money Laundering Crimes has been issued. broaden the meaning of "reporter" to include:

- 1 Reporting Party which due to its obligations based on laws and regulations submits financial transaction reports to PPATK as referred to in the PPTPPU Law;
- 2 Reporting parties who voluntarily report to investigators about the alleged occurrence of money laundering as referred to in the law. As well as Reporting Parties who because of their obligations based on statutory regulations submit financial transaction reports to PPATK as referred to in the PPTPPU Law also receive protection in the form of:
 - a. Release from criminal charges and civil lawsuits;
 - b. Exception from threats in confidentiality provisions;
 - c. The obligation to keep the identity of the Reporting Party confidential for PPATK officials and employees, investigators, public prosecutors, or judges.

Legal Protection in the Criminal Procedure Code

Notaries as citizens can make reports in the event that the Notary experiences, sees, witnesses an event which constitutes a crime. In Article 108 paragraph (1) of the Criminal Procedure Code there is a regulation that gives every citizen the right to report a crime. Apart from that, in Article 108 paragraph (3) of the Criminal Procedure Code there is an obligation for civil servants to report a crime if they know about it. Notaries can report as contained in Article 108 paragraph (1) of the Criminal Procedure Code in their position as citizens, but the reporting obligations for civil servants in Article 108 paragraph (3) of the Criminal Procedure Code are not suitable for notaries. This is because the position of a Notary is not a civil servant, but a public official appointed by the state.

In addition, preventive actions that can be taken by a notary to help the government prevent and eradicate money laundering can:

1. Adding in one of the clauses provides information that the parties guarantee that the money or funds do not come from other legal actions; or
2. Make a statement letter for the service user that the money that will be or has been deposited is not the proceeds of money laundering and other crimes.

CONCLUSION

Based on the analysis and discussion above, it can be concluded that preventive actions that a Notary can take as legal protection against a notary in reporting suspicious financial transactions through the Go Anti Money Laundering application so that they are not involved in criminal acts, namely recognizing and understanding the norms and elements of criminal offenses contained in the Criminal Code, understand and recognize the provisions of the Criminal Code that reporters can use to ensnare a Notary, and recognize and understand the attributive authority of a Notary granted by UUJN. For the preventive efforts of Notaries related to the TPPU Law include the Notary's obligation to report suspicious financial transactions and can result in crime to avoid criminal threats, identify service users such as providing correct identity and information, sources of funds, and the purpose of other party transactions. carry out verification, request information from service users to find out the correctness of formal documents, must cut ties with service users, monitor the fairness of service user transactions, comply with the principles of Good Corporate Governance, pay attention to international best practices, add one of the clauses that guarantees that the funds do not originate from criminal acts or other legal actions that are against the law, making statements for service users that the money to be deposited or has been deposited is not the proceeds of money laundering and other crimes.

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