

Legal Certainty in the Transfer of Land Rights Based on Deed of Transfer Under Private Hand Legalized by a Notary

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Abstrak. The role of notaries as public officials authorized to prepare authentic deeds is increasingly challenged by the rising complexity of financial crimes such as money laundering. While Indonesian regulations obligate notaries to implement the Know Your Customer principle (Prinsip Mengenali Pengguna Jasa/PMPJ), a normative gap exists in the Law on Notary Office (UUJN), particularly in Article 38, which does not authorize notaries to actively verify the legal identity or intentions of their clients. This discrepancy between regulatory obligation and statutory limitation creates legal uncertainty and exposes notaries to potential criminal liability. Previous studies have focused on compliance issues and ethical dilemmas faced by notaries but lack a comprehensive legal protection framework. This study aims to analyze the normative position of notaries in implementing PMPJ and to formulate an ideal legal protection model. The research employs a normative juridical method with statutory, conceptual, and case approaches, supported by qualitative-deductive analysis. The findings reveal that without the authority to verify client data beyond formal documents, notaries are vulnerable to misuse in money laundering schemes. The study proposes a legal reform model comprising: (1) revision of the UUJN to authorize controlled verification; (2) limited legal immunity for compliant notaries; and (3) integration of technological tools such as digital identity authentication. This work advances the current state of knowledge by highlighting the urgent need for harmonization between notarial duties and anti-money laundering mandates, thereby ensuring both legal certainty and protection for notaries within Indonesia's evolving legal system.

Keywords: land rights transfer; legal certainty; legal protection; notary; private deed

INTRODUCTION

Indonesia, as a state based on the rule of law, places legal certainty, justice, and legal protection as fundamental pillars in the governance of the nation. The Indonesian Constitution, through Article 28D paragraph (1) of the 1945 Constitution, affirms that every individual has the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law. In this context, notaries, as public officials authorized to draw up authentic deeds, hold a crucial role in ensuring the validity and legality of legal acts carried out by the public. However, with the increasing prevalence of white-collar crimes such as money laundering, notaries have become increasingly vulnerable to misuse or manipulation as instruments for legitimizing illegal transactions.

To address this issue, the Indonesian government mandates the implementation of the Know Your Customer Principle (Prinsip Mengenali Pengguna Jasa or PMPJ) by notaries through various regulations, including Government Regulation No. 43 of 2015 and Regulation of the Minister of Law and Human Rights No. 9 of 2017. Notaries are categorized as reporting parties with obligations to identify, verify, and monitor their clients, as well as to report suspicious transactions to the Financial Transaction Reports and Analysis Center (PPATK). In practice, however, the implementation of PMPJ presents several challenges, particularly regarding the conflict between the principle of information transparency and the duty of confidentiality, as regulated under the Law on Notary Office (UUJN).

Regulatory ambiguity, administrative burdens, and the lack of legal protection are key factors that hinder the effectiveness of this principle's implementation.

Previous studies have extensively discussed the obligation of notaries to report suspicious transactions, the ethical and legal challenges in maintaining client confidentiality, and the role of notaries as gatekeepers against money laundering. Nevertheless, most of these studies focus on sectoral regulatory aspects and do not explicitly formulate a comprehensive legal protection model for notaries. In practice, there have been various cases in which notaries have been indirectly involved in money laundering schemes due to limited access to valid information, inadequate identification systems, and the absence of comprehensive legal safeguards when notaries act in good faith.

The theoretical framework employed in this study encompasses four main legal theories: the theory of legal protection (Philipus M. Hadjon), which underscores the importance of guarantees for legal subjects in performing their duties; the theory of legal certainty (Gustav Radbruch), which emphasizes clarity and consistency in legal norms; the theory of authority (Utrecht and Hadjon), which delineates the limits of legitimacy in public officials' actions; and the theory of criminal responsibility (Roeslan Saleh), which explores whether notaries may be held criminally liable in cases involving money laundering. These theories are intended to establish a strong conceptual foundation for formulating normative recommendations and a balanced legal protection model for notaries.

Therefore, this study aims to comprehensively analyze the legal position of notaries in the context of PMPJ implementation and to formulate a legal protection model that ensures certainty, justice, and optimal safeguards for the notarial profession. This research offers novelty by not only highlighting the formal obligations of notaries but also proposing regulatory and institutional approaches to support the establishment of a professional and integrity-based notarial system in preventing money laundering.

Based on the above background and theoretical framework, the legal issues that form the focus of this study can be formulated as follows:

What is the essence of legal protection for notaries in identifying clients as part of efforts to prevent money laundering?

How is the implementation of the Know Your Customer principle by notaries regulated within Indonesia's legal framework?

What is the ideal legal protection model for notaries in performing client identification functions to prevent money laundering crimes?

METHOD

This study employs a normative juridical method with statutory, conceptual, and case approaches. These approaches are used to analyze the positive legal norms that govern the authority and legal protection of notaries in implementing the Know Your Customer Principle (PMPJ) as a preventive measure against money laundering crimes. Previous studies, have highlighted the conflict between reporting obligations and the duty of professional confidentiality. However, these studies have not yet provided a comprehensive model of legal protection. This research addresses that gap by examining the provisions of Law No. 8 of 2010, the Law on Notary Office, Government Regulation No. 43 of 2015, and Minister of Law and Human Rights Regulation No. 9 of 2017. Primary, secondary, and tertiary legal materials are collected through literature review and analyzed qualitatively using a deductive approach. The objective is to formulate an ideal and practically applicable model of legal protection for notaries as reporting parties, without compromising the principles of justice and legal certainty.

RESULT AND DISCUSSION

The provisions set forth in Article 38 of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 on the Office of Notary (hereinafter referred to as the Notary Law or UUJN) only stipulate that a notary is obligated to read aloud and explain the contents of the deed to the parties prior to signing. However, there is no explicit provision granting notaries the authority to verify information with relevant

institutions such as the Civil Registration Office, the Directorate General of Taxes, or financial institutions to confirm the identity, legal status, or authenticity of the documents submitted by the parties.

This normative provision creates a legal vacuum that poses serious implications for the legal protection of notaries. In practice, notaries are often subject to criminal allegations when the deeds they execute are subsequently used in criminal schemes such as fraud, asset smuggling, or money laundering. In most of these cases, notaries merely perform their function based on documents submitted by the parties, without any legally established mechanism for further verification. This situation raises a fundamental question: how can a notary be held accountable for the substantive truth of a party's identity or intentions without being legally equipped to conduct such verification?

A clear example is found in land-related cases in Buleleng and Denpasar Regencies, as highlighted in the research background. In these cases, notaries performed their duties in accordance with valid identity cards and administratively sound documents but were later found to have been unknowingly involved in fictitious transactions involving imposters. Without official access to identity verification systems or biometric authentication tools, notaries are in a vulnerable position and may be criminally implicated merely for recording legal acts based on documents that are formally valid on their face.

In line with the theoretical framework adopted in this research—particularly the Theory of Legal Protection by Philipus M. Hadjon—legal protection for notaries should be both preventive and repressive. However, within the context of implementing the Know Your Customer Principle (PMPJ), such protection tends to be symbolic and does not address the practical needs encountered in the field. For instance, although Government Regulation No. 43 of 2015 and Ministerial Regulation No. 9 of 2017 mandate the implementation of PMPJ by notaries, there is no clear provision regarding legal defense mechanisms, professional immunity, or compensation for legal risks when notaries are unintentionally involved in money laundering schemes.

Notaries are not law enforcement officers or investigators; rather, they are record-keeping officials who perform administrative functions in legal transactions. Therefore, when notaries are required to report suspicious transactions, they should also be afforded equivalent legal protection, particularly if such reports lead to legal consequences for their clients. This need is increasingly urgent, given that many money laundering cases involve false identities, shell companies, and documents that are formally valid but substantively fictitious. Without robust legal safeguards, the strategic role of notaries in preventing financial crime could become a disproportionate legal liability.

In many countries, including the Netherlands and Germany, the notarial profession is granted relatively strong legal protection, especially when notaries act in accordance with established procedures. These jurisdictions even provide limited legal immunity, as long as the notary is not proven to have acted with intent or gross negligence. In Indonesia, no such provisions exist within the UUJN or its derivative regulations concerning money laundering. This imbalance between reporting obligations and the right to protection contributes to legal uncertainty, as emphasized in Gustav Radbruch's Theory of Legal Certainty, which underpins this study.

Article 38 of the UUJN, which obligates notaries to read and explain the contents of a deed, is fundamentally intended to ensure that all parties understand and agree to the terms of the agreement. However, this provision is passive in nature and does not require notaries to conduct a material verification of the parties' identities or intentions. This becomes particularly problematic in the context of money laundering, where perpetrators often utilize legal transaction schemes to obscure the origins of illicit funds. If notaries are limited to relying on administrative documents such as ID cards (KTP) or tax registration numbers (NPWP), without the authority to verify authenticity through digital or biometric means, they become mere facilitators of formalities who are highly susceptible to exploitation.

The PMPJ should not be limited to the verification of data submitted by clients, but should extend to include access to population and financial information systems, supported by state-recognized electronic confirmation protocols. Without such mechanisms, notaries are placed in a dilemma: if they are overly cautious in rejecting clients, they are seen as obstructing public service; if they are too permissive, they risk becoming complicit in criminal activity.

From the perspective of the Theory of Authority, as articulated by Utrecht and Philipus Hadjon, legal actions are only valid if based on authority explicitly granted by law. Yet in the implementation of PMPJ, notaries are expected to assess transaction risks without being given the legal instruments to do so. This constitutes an "unfunded mandate," where the state imposes duties without providing the necessary tools or protections.

Based on these findings, a legal protection model is needed—one that not only relies on normative regulation but also incorporates institutional and technological aspects. This model must fulfill three main components: first, revision of the UUJN to accommodate extended verification powers for notaries, including limited access to population data systems, asset ownership records, and financial transaction histories under secure and verified conditions; second, the granting of limited legal immunity for notaries who act in accordance with procedures when reporting suspicious transactions; and third, the provision of supporting technologies, such as digital ID authentication systems and biometric signature verification integrated with the PPATK and the Directorate General of Civil Registration (Ditjen Dukcapil).

This model would offer proportionate preventive and repressive legal protection for notaries. Preventively, notaries would be less susceptible to criminalization for having conducted due diligence based on official government data. Repressively, in the event of a dispute, notaries could demonstrate that they performed their duties in accordance with legal procedures, thereby shielding them from criminal or civil liability.

The development of this model must also consider global trends and technological advancements. In many countries, the Know Your Customer (KYC) principle is not only applied by financial institutions but also by legal and accounting professionals. As part of the global financial system, Indonesia cannot ignore the importance of digital transformation in identity verification and legal transaction systems. Therefore, legal protection for notaries in the context of anti-money laundering efforts is not only a matter of individual justice but also part of a broader effort to safeguard the integrity of the national legal system and the international financial architecture.

CONCLUSION

This study concludes that the legal protection afforded to notaries in the implementation of the Know Your Customer Principle (PMPJ) to prevent money laundering remains normatively weak and vulnerable. This condition arises from the absence of explicit provisions in the Law on Notary Office (UUJN) that authorize notaries to actively verify or confirm the identities of the parties appearing before them. Article 38 of the UUJN is merely formalistic, requiring notaries to read and explain the contents of a deed, without providing a legal basis for examining the substantive truth of the parties involved. This regulatory gap creates opportunities for abuse, whereby notaries may be exploited by perpetrators of money laundering who utilize seemingly valid administrative documents and formal identities.

In terms of legal regulation, it was found that the PMPJ as governed by ministerial and governmental regulations has not been fully integrated into the notarial legal framework. This lack of harmonization leads to ambiguous responsibilities and weak legal protection for notaries as reporting entities. Although the obligation to report suspicious transactions carries significant legal risks, the rights of notaries to receive adequate protection remain disproportionate to their imposed duties.

To address these issues, this study formulates an ideal legal protection model, which integrates revisions to the UUJN to permit active verification authority, grants limited legal immunity to notaries acting in accordance with proper procedures, and incorporates information technology systems connected to national verification institutions. This model promotes a transformation of notarial practice—from a purely administrative role to a critical component of the national integrity system in the fight against financial crimes.

The scientific contribution of this research lies in identifying legal gaps in Indonesia's notarial system and in proposing normative and institutional solutions to reinforce the role of notaries as both guarantors of legal validity and legal subjects entitled to protection. These findings encourage the development of regulations that are not only responsive to the practical needs of the notarial profession,

but also adaptive to the growing complexities of modern legal challenges, particularly in dealing with money laundering schemes based on formal legal transactions.

REFERENCES

- Darmodiharjo, Darji and Sidharta. *Pokok-Pokok Filsafat Hukum; Apa dan Bagaimana Filsafat Hukum Indonesia*. Pen. Gramedia Pustaka Utama. Jakarta. 200
- Hadjon, Philipus, M. *Perlindungan Hukum Bagi Rakyat Indonesia*, Edisi, Cet, 1. Penerbit Bina Ilmu. Surabaya. 1987.
- _____, *Tentang Wewenang*, Penerbit Yuridika, Surabaya, 1997.
- Habib, Adjie. *Hukum Notaris Indonesia (Tafsir Tematik Terhadap UU No.30 Tahun 2004 tentang Jabatan Notaris)*. Penerbit PT Refika Aditama. Bandung. 2024
- Lumban. Tobing. H.S. *Peraturan Jabatan Notaris*, Penerbit Erlangga. Jakarta. 1983.
- Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris (LN Republik Indonesia No 117).
- Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana pencucian Uang (LN Republik Indonesia No.5406)
- Peraturan Pemerintah Republik Indonesia Nomor 43 Tahun 2015 tentang Pihak Pelapor Dalam Pencegahan Tindak Pidana Pencucian Uang.
- Peraturan Menteri Hukum dan HAM Nomor 9 Tahun 2017 tentang Penerapan Prinsip mengenali Pengguna Jasa Bagi Notaris.