

Jurnal Notariil

Jurnal Notariil, Vol. 7, No. 1, May 2022, 18-23

Available Online at <https://ejournal.warmadewa.ac.id/index.php/notariil>

P ISSN 2540 - 797X

E ISSN 2615 - 1545

CONTRADICTION OF THE RIGHT TO DENY OF NOTARY WITH THE OBLIGATION TO REPORTING FOR THE PREVENTION OF MONEY LAUNDERING

Ida Ayu Ide Dinda Paramita*; Nyoman Gede Sugiarta; I Made Pria Dharsana
Universitas Warmadewa, Denpasar, Bali-Indonesia

*Email: idaayuaadin@gmail.com

How To Cite:

Paramita, I, A, I, D., Sugiarta, N, G., Dharsana, I, M, P. (2022). Contradiction of The Right to Deny of Notary with The Obligation to Reporting for The Prevention of Money Laundering. *Jurnal Notariil*, 7 (1), 18-23, Doi: <https://doi.org/10.22225/jn.7.1.2022.18-23>

Abstract

The purpose of this study is to examine the contradiction regarding the Principles of Recognizing Service Users (PMPJ) with the provisions of maintaining the confidentiality of the Deed by a Notary and to examine the limitations regarding the obligation of a Notary to keep the contents of the Deed secret with the obligation to report the Deed related to alleged money laundering. The research type used is normative legal research, with a statutory approach and a conceptual approach. The technique of collecting legal materials uses identification techniques and snowball techniques. The results show that based on Law Number 12 of 2011 concerning the Establishment of Legislation and the principle of *lex superior derogate legi inferior*. Moreover, between UUJN.P and Government Regulation Number 43 of 2015 concerning Plaintiff in the Prevention and Eradication of the Crime of Money Laundering, which is implementing regulations of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, the obligation to keep the data of service users cannot be disclosed by a Notary.

Keywords: money laundering; notary; plaintiff; right to deny

1. INTRODUCTION

The Crime of Money Laundering (TPPU) is essentially an act of violating the law carried out by disguising or hiding the property owned with the aim that the origin of the property cannot be traced by law enforcement officials. The state certainly does not turn a blind eye to this phenomenon. This is evident from the formulation of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering. This is only done to emphasize the presence and commitment of the state in the effort to eradicate money laundering itself.

Talking about the relationship between the practice of money laundering and the presence of a notary in it certainly cannot be separated from various factors. The perpetrators of money laundering offenses often use the services of a legal official, namely a notary, to obscure the origin of ownership of property and objects to close the recording of data related to the flow of wealth in and out of their possession.

This is certainly a dilemma for the Notary himself because talking about the correlation between the two parties, of course, it cannot rule out the PMPJ factor that must be upheld by a Notary.

The implementation of the profession of

a Notary is certainly guided by the UUJN.P, the Code of Ethics, and the Oath of Position. Related to this, it has also been stated in Article 4 of the UUJN. Referring to Article 4 paragraph (2) of the UUJN, it is written that the Act has regulated the Oath of Office of a Notary in carrying out his profession which is required to maintain all information in the Deed of its service users. This of course includes transaction information along with other information contained in the Deed.

Notaries should maintain the confidentiality of their service users which is also emphasized in Article 16 paragraph (1) letter f of the *UUJN.P* which states that the Notary keeps everything about the Deed he made and all information obtained for making the Deed per the oath/promise of office, except the law dictates otherwise.

Based on the description above, it can be seen that there is a contradiction that leads to a conflict of legal norms between the obligations of a Notary as stipulated in Article 16 paragraph (1) letter f of the *UUJN.P* which states that a Notary should keep the Deed secret but Government Regulation Number 43 2015 concerning the Plaintiff in the Prevention and Eradication of the Crime of Money Laundering which is the implementing regulation of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering which states that the Notary is the plaintiff in the prevention and eradication of money laundering crimes in carrying out their duties.

The result study conducted by [Ramadhani et al. \(2020\)](#) about 'The Obligation of Notary to Prevent and Eradicate Criminal Acts of Money Laundering' revealed that regulatory obligations of notary in the prevention and eradication of Money laundering crimes against the secret obligation of the position that these two obligations are not contradicted. The notary is obliged to report to the PPATK, if the notary acts for interest or for and on behalf of the service

user. If a notary is acting in accordance with the Authority as stipulated in the UUJN, the notary is not obliged to report any suspicious financial transactions made by his clients. Secondly, the obligation and responsibility of the notary in the prevention and eradication of Money Laundering Crimes is legally notarized liable for alleged criminal acts of money laundering when it acts for the benefit of or for behalf of the service user to objects that are required to be reported, by applying the principle of recognizing the service users, the principle of recognizing the benefit owners of corporations and delivering suspicious financial transaction. In addition, [Djunaedi \(2021\)](#) in his research on 'Juridical Analysis Related To Confidentiality Of Notary Liability' found that the limitations of a notary in maintaining the confidentiality of a notary's duties based on the Notary's Position Law are that notaries must keep secrets related to their position. The notary is obliged to keep the contents of the act secret, even the notary is obliged to keep all information from the preparation of the deed to the completion of the drawing up of a deed and if he is made a witness in a case, can exercise his right to resign as a witness. However, it often happens that in a law enforcement process, a notary who is asked to assist in proof by disclosing the confidentiality of a deed that he has made can be sued and threatened by legal sanctions both in civil terms, namely acts against the law or for criminal reasons. Therefore, it is necessary to do more real legal protection for notaries who disclose the confidentiality of the deeds they have made for the sake of law enforcement.

Based on the background and the previous research above, the purpose of this study is to examine the contradiction regarding the Principles of Recognizing Service Users (*PMPJ*) with the provisions of maintaining the confidentiality of the Deed by a Notary and to examine the limitations regarding the obligation of a Notary to keep the contents of the Deed secret with

the obligation to report the Deed related to alleged money laundering. The results of this study are expected to provide a basis for good juridical considerations for Notaries in carrying out their authorities and obligations as mandated by *UUJN.P* and the Notary Code of Ethics and also for the Government as a regulatory institution and to provide a basis for Notaries in making decisions as a Notary who is obedient and loyal to The Republic of Indonesia, Pancasila and the 1945 Constitution of the Republic of Indonesia and other laws and regulations as stipulated in the *UUJN*.

2. METHOD

The research method used in this research is the normative research method, which refers to primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are legal materials that have binding power in general (laws) or have binding power for interested parties (contracts, conventions, legal documents, and judge decisions). Secondary legal materials are legal materials that provide explanations for primary legal materials (legal science books, legal journals, legal reports, any printed or electronic media), while tertiary legal materials are legal materials that provide explanations for primary legal materials and secondary legal materials (drafts) laws, legal dictionaries, and encyclopedias) (Muhammad, 2004). The approach used is the approach to legislation in the legal approach is carried out by research that harmonizes the legislation both vertically and horizontally (Soemitro, 1990). The approach to legislation in this research is carried out by examining the laws and regulations related to the obligations of a Notary as a Plaintiff in the prevention and in the eradication of money laundering, the conceptual approach departs from the views and doctrines that develop in legal science. By studying these views and doctrines, researchers find ideas that give rise to legal understandings, concepts, and principles relevant to the issues at hand.

Understanding this can then be a stepping stone for researchers in creating an argument in viewing and solving the issues being raised in this research. The sources of legal materials consist of primary legal materials, secondary legal materials, and tertiary legal materials. The technique of collecting legal materials used is the identification technique and the snowball technique. The analysis technique used is the technique of description, interpretation, systematization, and evaluation and then concluded with the technique of argumentation. The theory used is the Theory of Legal Certainty, Theory of Authority, Theory of Legal Protection, Theory of Responsibility. The theory of legal certainty relates to the alignment of the Notary's arrangement as the Plaintiff regarding the contradictions between Article 16 paragraph (1) letter f of *UUJN.P* which states that a Notary should keep his Deed secret with Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering. which states the obligations of the Notary as the plaintiff in the prevention and eradication of money laundering in carrying out its duties. The use of legal certainty theory is intended to see how the two contradictory laws and regulations have a "common thread" so that they can become a liaison and fulfill aspects related to legal certainty itself the theory of authority relates to whether the obligations of a Notary as a Plaintiff in preventing money laundering as regulated in Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering can/have been in sync with *UUJN.P* which is an umbrella Notary office law. The theory of legal protection can help in creating an "analysis knife", especially in seeing whether these two laws and regulations can present a guideline for the Notary himself regarding what his obligations are without having to harm a party let alone take unlawful actions. The theory of responsibility contributes to the juridical consequences if the Notary does not implement the provisions to keep the contents of the

Deed secret in Article 16 paragraph (1) letter f *UUJN.P*. By using this theory as a supporting element, the writer is expected to be able to produce an analysis in seeing how the risks will be faced by the Notary and what are the legal consequences and responsibilities of the Notary himself if he discloses the secret of his position.

3. DISCUSSION

Contradiction Related to the Principle of Recognizing Service Users (PMPJ) Against Provisions to Maintain Confidentiality of Deeds

Contradiction Related to the Principle of Recognizing Service Users (*PMPJ*) Against Provisions on Keeping the Confidentiality of Deeds by Notaries, namely the first discussion of Notaries as Plaintiff in the Prevention and Eradication of Money Laundering Crimes must apply *PMPJ*, this principle is implemented to facilitate a Notary to identify possible transactions suspicious finances. However, in making a notarial Deed, if the appearers have fulfilled all the formal requirements, then it is sufficient for the notary to carry out the legal actions desired by the appearers. Notaries are only obliged to verify the parties legally and formally and take legal actions in terms of making a Deed per *UUJN*. Notaries do not have the competence to identify the appearers in detail, such as the origin of wealth, unless the appearers have been publicly reported because the Notary cannot reach out and know the origin of the wealth and financial transactions of the parties.

Legal protection for a Notary as a Plaintiff in the Crime of Money Laundering is Article 66 paragraph (1) *UUJN.P* regarding supervision by the Notary Honorary Council, the Right to Deny Notaries based on Article 170 of the Criminal Procedure Code, Article 1909 paragraph (3) of the Civil Code, Article 146 HIR. Sanctions for Notaries if they do not implement the Principles of Recognizing Service Users (*PMPJ*) based on Article 27 paragraph (3) of Law Number 8 of 2010

concerning Prevention and Eradication of the Crime of Money Laundering, the sanctions imposed are administrative. Article 30 paragraph (3) states administrative sanctions imposed by *PPATK*, in the form of warnings, written warnings, announcements to the public regarding actions or sanctions, and/or administrative fines. Article 30 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 9 of 2017 concerning the Principle of Recognizing Service Users for Notaries states that Notaries who do not implement *PMPJ* may be subject to administrative sanctions.

The obligation of a Notary to Keep the Content of the Deed Confidential Regarding the Obligation to Report the Crime of Money Laundering

The Notary's Obligation to keep the contents of the deed confidential regarding the obligation to report the crime of money laundering, a form of legal protection for the Notary in terms of maintaining the confidentiality of the contents of the Deed, namely Article 66 paragraph (1) *UUJN.P* regarding the duties and authorities of the Notary Honorary Council, the terms and procedures for taking the minutes of the Deed or a photocopy of the minutes of the Deed and the summons of a Notary as regulated in Article 20 to Article 26 of the Regulation of the Minister of Law and Human Rights Number 7 of 2016 concerning the Honorary Council of Notaries. There are additional obligations for Notaries, beyond the obligations contained in the *UUJN*, namely in Articles 53 and 54 of the Regulation of the Head of the Center for Financial Transaction Reports and Analysis Number 13 of 2016 concerning Procedures for Implementing Compliance Audits, Special Audits, and Monitoring Follow-Up Audit Results, as for these obligations cannot be implemented by a Notary, because based on the principle of legal hierarchy, that the position of *UUJN* is higher than the Regulation of the Head of the Center for Financial Transaction Reports and Analysis Number 13 of 2016

concerning Procedures for Implementing Compliance Audits, Special Audits, and Monitoring Follow-Up Audit Results.

The absence of legal protection for Notaries can be seen from the sanctions for Notaries if they violate Article 16 paragraph (1) letter f and Article 54 of the *UUJN*. Besides that, there are also sanctions in Article 55 paragraph (2) for Notaries who do not fulfill the *PPATK* request, namely in the form of administrative sanctions and written warnings. As for the legal consequences of violating the confidentiality of the Notary's position, it can be subject to criminal sanctions based on Article 322 of the Criminal Code, if it causes harm to interested parties, the Notary can be sued civilly based on Article 1365 of the Criminal Code and violations of the obligation to maintain confidentiality can be subject to sanctions following Article 85 of the *UUJN*.

4. CONCLUSION

Based on the results, it can be concluded that 1) contradiction related to the principle of recognizing the service user (*PMPJ*) against the provisions for maintaining the confidentiality of the Deed by a Notary, namely based on Law Number 12 of 2011 concerning the Establishment of Legislation and the principle of *lex superior derogate legi inferior*, which means that newer regulations override more advanced regulations. a long time of manufacture. In addition to the obligation to pay attention to the hierarchy of laws and regulations, the chronology of the year and number of stipulations of the relevant laws and regulations must also be considered, namely following the order in which the relevant laws and regulations were enacted. This principle applies to two rules governing the same problem in the same hierarchy. So between *UUJN.P* and Government Regulation Number 43 of 2015 concerning Plaintiff in the Prevention and Eradication of the Crime of Money Laundering, which is the implementing regulation of Law Number 8 of 2010

concerning Prevention and Eradication of the Crime of Money Laundering, the obligation to keep data confidential service users cannot be opened by a Notary because based on the time and number of stipulations in-laws and regulations, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions with Law Number 8 of 2010 concerning Prevention and Eradication The Crime of Money Laundering overrides Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering. 2) The Notary's obligation to keep the contents of the Deed confidential concerning the obligation to report the crime of money laundering is based on Article 27 paragraph (3) of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, which mentions sanctions for Notaries for not submitting suspicious financial transaction reports to *PPATK* who were stated in the provision, the sanctions to be imposed are administrative. On the other hand, based on Article 16 paragraph (1) letter f *UUJN.P* which states that the Notary is obliged to keep everything about the Deed he made and all information obtained for making the Deed following the oath/promise of office, otherwise the Notary will be subject to sanctions as regulated in Article 322 of the Criminal Code, Article 1365 of the Criminal Code and Article 85 of the *UUJN*.

REFERENCES

- Djunaedi, D. D. (2021). Juridical Analysis Related To Confidentiality Of Notary Liability. *Jurnal Daulat Hukum*, 4(1), 91. doi:10.30659/jdh.v4i2.15576
- Muhammad, A. (2004). *Hukum Dan Penelitian Hukum*. Bandung: Citra Aditya Bakti.
- Ramadhani, D., Rodliyah, R., & Djumardin, D. (2020). The Obligation of Notary to Prevent and Eradicate Criminal Acts of Money Laundering. *International Journal of Multicultural and Multireligious Understanding*, 7(5), 367–377. doi:http://dx.doi.org/10.18415/ijmmu.v7i5.1688
- Soemitro, R. H. (1990). *Metodologi Penelitian Hukum dan Jurimetri*. Jakarta: Ghalia

Indonesia.

- Undang-Undang Nomor 30 Tahun 2004
Tentang Jabatan Notaris
- Undang-Undang Republik Indonesia Nomor 2
Tahun 2014 Tentang Perubahan Atas
Undang-Undang Nomor 30 Tahun 2004
Tentang Jabatan Notaris
- Undang-Undang Republik Indonesia Nomor 8
Tahun 2010 Tentang Pencegahan Dan
Pemberantasan Tindak Pidana Pencucian
Uang
- Undang-Undang Republik Indonesia Nomor 12
Tahun 2011 Tentang Pembentukan
Peraturan Perundang-undangan
- Kitab Undang-Undang Hukum Pidana
- Kitab Undang-Undang Hukum Acara Pidana
- Kitab Undang-Undang Hukum Perdata
- Herzien Inlandsch Reglement (HIR)*
- Peraturan Pemerintah Republik Indonesia
Nomor 43 Tahun 2015 Tentang Pihak
Pelapor
Dalam Pencegahan dan Pemberantasan
Tindak Pidana Pencucian Uang
- Peraturan Pemerintah Republik Indonesia
Nomor 57 Tahun 2003 Tentang Tata Cara
Perlindungan Khusus Bagi Pelapor dan
Saksi Tindak Pidana Pencucian Uang
- Peraturan Pemerintah Republik Indonesia
Nomor 61 Tahun 2021 Tentang
Perubahan Peraturan Pemerintah Nomor
Nomor 43 Tahun 2015 Tentang Pihak
Pelapor Dalam Pencegahan dan
Pemberantasan Tindak Pidana Pencucian
Uang
- Peraturan Menteri Hukum Dan Hak Asasi
Manusia Nomor 7 Tahun 2016 Tentang
Majelis Kehormatan Notaris
- Peraturan Menteri Hukum dan Hak Asasi
Manusia Republik Indonesia Nomor 9
Tahun 2017 Tentang Penerapan Prinsip
Mengenali Pengguna Jasa Bagi Notaris
- Peraturan Kepala Pusat Pelaporan Dan Analisis
Transaksi Keuangan Nomor 13 Tahun
2016 Tentang Tata Cara Pelaksanaan
Audit Kepatuhan, Audit Khusus Dan
Pemantauan Tindak Lanjut Hasil Audit