The Role of Notaries and PPAT in the Implementation of Anti-Money Laundering Programs Based on the Precautionary Principle

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Abstract

Notary and PPAT professions are general officials appointed by the Government based on competence and integrity to carry out their duties and responsibilities to serve the community. In carrying out their duties and responsibilities, Notaries and PPAT are required to guide Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning Notary Positions and Government Regulation Number 37 of 1998 as amended by Government Regulation Number 24 of 2016 concerning the Position of Land Deed Making Officers. The rise of money laundering motives has an impact that can harm the Notary and PPAT professions, considering that Notaries and PPAT are tasked with making authentic deeds which are the strongest evidence. So that the Notary and PPAT professions can be used by perpetrators of money laundering crimes to help disguise the origin of the results of previous crimes. With that, the author will describe the urgency of the role of Notaries and PPAT in implementing anti-money laundering programs; and how to apply the precautionary principle that needs to be done by Notaries and PPAT in determining risk assessments for clients.

Keywords: Precautionary Principle, Notary and PPAT, Money Laundering, Money Laundering Program, Reporting Party

1. INTRODUCTION

The law will never be separated from human life. As if between man and the law continue to grow and interrelate with each other, then to talk about the law is inseparable from talking about it from human life(Sudikno Metrokusumo, 2014). Indonesia's economic development is not always followed or in line with legal developments, in order to support the growth rate of Indonesia's economic institutions. This situation occurs because of the
lack of care, between the development of economic institutions and legal reform (Sjahdeini, 2009)

The growth rate of financial transactions and the ease of applying technology to facilitate the process of financial transactions have an impact on new legal problems. The continued growth of economic activities causes activities and relationships between humans to become massive and develop. In everyday life, the more often it is inter-legal subjects, the greater the potential for conflict or the greater the opportunity for legal problems to arise in the midst of people's lives (Mertokusumo, 1996).

Money Laundering is any act that meets the elements of a criminal act in accordance with the provisions in the PPTPPU Law. Money laundering is carried out by certain individuals to avoid their obligations, such as running away from tax obligations or other legal obligations. Money laundering is a crime that covers a wide scope and its scope extends beyond national and international territories. Starting in the 1920s, organized crime perpetrators in the United States, laundered money from psychotropic substances through laundry businesses. The perpetrators set up a laundry business as a hiding place for illicit money (Setiadi dan Yulia, 2010) Developing from this, the perpetrators of money laundering crimes carry out violations of the law with various variants, including within the scope of the Notary and PPAT professions.

In carrying out their work, Notaries are required to guide Law No. 30 of 2004 as amended by Law No. 2 of 2014 concerning Notary Positions or can be referred to as UUJN. The Notary profession has existed since the Dutch colonial rule, which at first the existence of Notaries was a need for Europeans residing in Indonesia in creating authentic evidence of land ownership which until now has become perfect evidence of land ownership or other objects codified with authentic deeds. The existence of notaries is increasingly needed in making authentic written evidence of a legal act carried out by the community. Some laws and regulations require certain legal acts to be made in authentic deeds. Notary and PPAT deed products can be interpreted as state efforts to create legal certainty and protection for members of the public (Sulihandari dan Rifiani, 2013) Money laundering is an act of altering and hiding cash or assets obtained from a crime, which appear to come from legitimate sources. The problem of money laundering began to be discussed because it occupied a lot of national and international attention due to the dimensions and implications that violate national borders. As one of the crime phenomena that mainly concerns the world of "organized crime", it turns out that there are certain parties who enjoy the benefits of money laundering without realizing the impact of the losses caused.

As parties who know legal acts, Notaries and PPAT are very vulnerable to potential violations and abuse of authority, one of which is money laundering. In professionalism, legal
practitioners are known as *gatekeepers* in money laundering. The term *gatekeeper* is agreed with financial and legal professionals with expertise, knowledge, and special access to the global financial system that utilizes expertise to conceal the proceeds of money laundering crimes that have been committed. With their expertise and knowledge, Notaries and PPAT can participate in hiding money laundering crimes.

Notaries and PPAT in carrying out their work activities must be careful. There are several TPPU cases involving a Notary and PPAT in a TPPU case which will worse result in the Notary and PPAT participating in criminal acts, such as in the bribery case of procurement of aircraft and aircraft engines from Airbus S.A.S and Roll-Royce P.L.C at PT Garuda Indonesia (Persero) Tbk which resulted in the Notary participating in an examination by the KPK, and the case of the driver's license (SIM) exam simulator project that ensnared Inspector General Djoko Susilo, which resulted in 4 (four) Notaries participating in being examined because they were considered to know about Djoko Susilo's assets. That in the period 2011 to March 2015, there were 62 Suspicious Financial Transaction Reports (LTKM) reported by Notaries and PPAT submitted to PPATK during 2020 to 2023 as many as 49 LTKM. The most common modes are Notaries and PPAT accept the placement of funds from related parties whose transactions are suspicious, Notaries and PPAT as Nominees, and PPAT facilitate land sale and purchase.

It can be concluded that, money laundering can be interpreted as the act of converting money from criminal acts into clean money as if obtained through halal work. There is one feature that can be done against money launderers by transferring illegal assets into the economic system. As explained, the transfer of illegal assets that can be carried out by perpetrators of laundering crimes usually involves Notaries and PPAT to transfer illegal assets obtained from the money laundering crime. Therefore, based on Government Regulation No. 43 of 2015 concerning the Reporting Party in the Prevention and Eradication of Money Laundering with the existence of PP 43/2015 interprets that Notary and PPAT are professions that play a major role in the anti-money laundering regime in Indonesia at this time.

Initially, money laundering only involved financial service institutions, but along with the development of the times, new motives emerged committed by perpetrators of money laundering crimes, thus requiring financial services to be more careful in assessing or recognizing customers. In response to this, the Financial Services Authority has the authority to determine the provisions of financial service institutions through financial services authority regulations. Similar to financial service institutions, Notaries and PPAT are also required to apply the precautionary principle that can help them minimize and avoid Notaries and PPAT from the possibility of being involved in legal problems in the future.
However, the difference between Notary and PPAT does not have special arrangements to apply the precautionary principle so that a Notary and PPAT only run with their intuition and knowledge.

In connection with the explanation above regarding the risks to the Notary profession against the rise of money laundering crimes, the author assumes to research further on "The Role of Notaries and PPAT in the Implementation of Anti-Money Laundering Programs Based on the Precautionary Principle". With the formulation of the problem that the author focuses on is:

1. What is the Urgency of the Role of Notaries and PPAT in the Implementation of Anti-Money Laundering Programs?; and
2. How is the Application of the Precautionary Principle that Notaries and PPAT Need to Do in Determining Risk Assessment of Clients?

2. RESEARCH METHODS

This research uses the Normative Juridical method that explains the science of law, using an approach carried out with library research using literacy of Laws and Regulations and books or articles related to the topic in this study. This research is Descriptive Analytical which aims to describe or describe an object under study through data or samples that have been collected as they are without conducting analysis to make conclusions that apply to the public.

3. RESULTS AND DISCUSSION

3.1 Notary and PPAT Functions in the Implementation of Anti-Money Laundering Program Implementation Program

A Notary and PPAT in carrying out their profession to provide services to the community should behave in accordance with applicable laws and regulations. The Notary and PPAT positions are trust positions that must be in harmony with those who carry out the duties and positions of Notaries and PPAT as trusted people. Notaries and PPAT as trusted positions mean nothing if it turns out that they carry out the duties of the position as Notaries and PPAT are people who cannot be trusted. In this case, between the notary and PPAT positions, the official (the person who carries out the duties of the Notary and PPAT positions) must be in line like two sides of a coin that cannot be separated (Adjie, 2009).

In carrying out their duties and positions, a Notary and PPAT must be guided by the code of office ethics issued by the supervisory organization of each Notary profession or PPAT, if not applied in a Notary and PPAT, it will cause the dignity and dignity of professionalism of a Notary and PPAT to be lost and can result in matters related to criminal
acts. Therefore, a Notary and PPAT is obliged to have integrity in carrying out their profession so as not to be involved in things that harm the Notary and PPAT profession.

In the realm of the Application of Money Laundering, the Notary Profession is vulnerable to being used by perpetrators of money laundering crimes because of the confidentiality provisions provided under the Notary Position Law. As based on Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering by explaining acts that become money laundering, as follows:

1. Place, transfer, transfer, spend, pay, grant, deposit, carry abroad, change form, exchange, for currency or securities or other acts of property that he knows or reasonably suspects are the proceeds of crime with the aim of concealing or disguising the origin of the property;
2. Conceal or disguise the true origin of the source, location, designation, transfer of rights, or ownership of property that he knows or reasonably suspects is the proceeds of a criminal offence;
3. Receiving, controlling the placement, transfer, payment, grant, donation, custody, exchange, or use of property that he knows or reasonably suspects is the proceeds of a criminal offence.

With these actions, it can have an impact on Notaries and PPAT if they do not have integrity, it will result in criminal risks. Based on this, the Regulation of the Minister of Law and Human Rights Number 9 of 2017 concerning the Application of the Principle of Recognizing Service Users for Notaries and the Regulation of the Center for Financial Transaction Reporting and Analysis Number 11 of 2017 concerning the Application of the Principle of Recognizing Service Users for Land Deed Making Officials. The issuance of the Regulation has increased the burden on Notaries and PPAT in carrying out their duties and responsibilities to apply the principle of recognizing service users. These applications include:

1. Identification of Service Users;
2. Service User Verification; and

Since the enactment of the regulation on the principle of recognizing service users for Notaries and PPAT, where Notaries and PPAT are obliged to be able to know service users who deal with them by being given a principle that must be guided by Notaries and PPAT. Notaries and PPAT are obliged to use the principle of recognizing service users regarding several things, including:

1. Property Transactions;
2. Management of Money or Assets;
3. Company Management; and/or
4. Legal Entity Transactions.

The obligation to apply the principle of recognizing service users is carried out when:

a) Notaries and PPAT have relations with service users; b) at the time of the occurrence of a Financial Transaction whose value is at least or equivalent to Rp. 100,000,000.00 (one hundred also rupiah); c) Financial Transactions are suspected of being related to terrorism financing crimes; and d) Notaries and PPAT doubt the veracity of the information reported by service users.

Not only applying the principle of recognizing service users, Notaries and PPAT must also recognize Beneficial Owners. Beneficial Owner or beneficial ownership is a term in the world of commercial law that refers to who enjoys the benefits of ownership of certain assets without being recorded as an owner. Many people want to protect their assets. by using trusts to act as legal owners of assets, while they become beneficial owners.

The introduction of Beneficial Owners is also important in the application of money laundering programs by Notaries and PPAT. Usually, money launderers protect their assets by using trusts to act as legal owners of assets, while they become beneficial owners. This counterfeiting is generally legal for everyone but should be regulated because it can be abused and is very close to criminality. Money laundering does not use corporations to conceal their identity regarding the origin and use of funds or assets sourced from criminal acts.

Based on the Regulation of the Ministry of Law and Human Rights of the Republic of Indonesia Number 9 of 2017 concerning Recognizing Service Users for Notaries, what is meant by Beneficial Owner is:

1. Any Person who has the right to and/or receives certain benefits for a transaction which is directly or indirectly;
2. Any Person who is the actual owner of a transaction;
3. Any Person who controls a transaction;
4. Any Person who authorizes a transaction;
5. Any Person who controls the Corporation; and/or
6. Any Person who is the ultimate controller of a transaction.

Notaries and PPAT are general officials who have been trusted by the government so that they are given an authority. The trust given by the government should always be maintained by a Notary and PPAT maintains the trust that has been given by the government. Noatrist in maintaining this trust in a way that cannot be controlled by the client which results in prioritizing the client rather than enforcing the rules that have been applied (Harris and Helena, 2017)
For this reason, Notaries and PPAT have the necessary roles and functions in preventing money laundering by reporting to the Financial Transaction Reporting and Analysis Center (PPATK) when they know of suspicious transactions related to the deed they made. In the face of money laundering crimes, professionals such as Notaries and PPAT are obliged to report suspicious transactions on behalf of or for clients. Notaries and PPAT who conduct business relations must understand the profile, purpose, and purpose of business relations. In addition, transactions made by service users and beneficial owners for identification and verification.

3.2 Notary and PPAT as Reporting Parties for Suspicious Financial Transactions

In the Anti-Money Laundering Regime, the reporting party is a front liner who has a strategic role to detect suspicious financial transactions or report certain transactions in accordance with the provisions of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering (PPTPPU Law). Based on the PPTPPU Law, in addition to obligations, there is also special protection for reporting parties. The obligation to identify financial transactions and report by the whistleblower is also part of the application of prudential principles and part of risk management, to prevent the use of CHDs / PBJ as a means or target of money laundering by customers / service users. In this case, avoid CHD and BJP against reputational risk, operational risk, legal risk and concentration risk.

Based on Government Regulation Number 43 of 2015 concerning the Reporting Party in the Prevention and Eradication of Money Laundering Crimes, categorize the Reporting Party which includes:

1. Advocate;
2. Notary;
3. Land Deed Making Officer;
4. Accountant;
5. Public Accountant; and
6. Financial Planning

Based on Government Regulation Number 43 of 2015 concerning the Reporting Party in the Prevention and Eradication of Money Laundering which states that Notaries and PPAT are one of the professions that become reporting parties as Notaries and PPAT are required to apply the principle of recognizing service users with stages determined by laws and regulations. Therefore, as a Notary and PPAT it is mandatory to have knowledge related to laws and regulations so that it can help in carrying out its profession properly and correctly.
The report that must be reported by Notary and PPAT to the Financial Transaction Analysis and Reporting Center (PPATK) is the Suspicious Financial Transaction Report which includes:

1. Financial Transactions that deviate from the profile, characteristics, or habits of the Transaction pattern of the Service User concerned;
2. Financial Transactions by Service Users that are reasonably suspected to be carried out with the aim of avoiding reporting the relevant Transactions that must be carried out by the reporting party in accordance with the provisions of laws and regulations governing the prevention and eradication of money laundering;
3. Financial Transactions carried out or canceled using Assets allegedly derived from the proceeds of criminal acts; or
4. Financial Transactions requested by the Financial Transaction Reporting and Analysis Center to be reported by the reporting party because they involve Assets allegedly derived from criminal acts.

Based on the Regulation of the Head of the Center for Financial Transaction Reporting and Analysis Number 11 of 2016 concerning Procedures for Submitting Suspicious Financial Transaction Reports for the Profession, in carrying out reporting to PPATK Notaries and PPAT it is mandatory to assign reporting officers, register through the GRIPS application, and report to PPATK.

The format of the report carried out by Notary and PPAT must meet the criteria required by PPATK. Not only the reporting format has been determined, but Notaries and PPAT are required to fill out Suspicious Financial Transaction reports correctly and completely in accordance with the instructions for filling out Suspicious Financial Witness reports that have been determined by PPATK. If the Notary and PPAT do not perform properly and correctly, it will result in the Notary and PPAT being subject to administrative sanctions by PPATK. Filling out the Suspicious Financial Transaction Report is done through the GRIPS application. Filling out the Suspicious Financial Transaction report is carried out by a Notary or PPAT officer by manually filling in the suspicious financial transaction report on the GRIPS application or uploading files to the GRIPS application in Microsoft Excel format. Notaries and PPAT are obliged to submit Suspicious Financial Transaction Reports electronically by sending reports through the GRIPS application to telecommunication networks addressed directly to the PPATK database, through a web-based application provided by PPATK. However, since 2023, the GRIPS application has been slightly not used as a submission of Suspicious Financial Transaction Reports for Notaries and PPAT, it is known that the GRIPS application which has been used for the past few years as a submission of Suspicious Financial Transaction Reports has been replaced with another application
owned by PPATK, namely *goAML*, based on the Regulation of the Financial Transaction Reporting and Analysis Center (PPATK) Number 14 of 2021 concerning Technical Guidelines for the *goAML Application* for Reporting Parties. But the implementation of the report submission remains the same as with the GRIPS application.

The period for submitting Suspicious Financial Transaction reports must be submitted by notaries and PPAT as soon as possible no later than 3 (three) working days after Notaries and PPAT become aware of elements of Suspicious Financial Transactions. The period of 3 (three) working days is calculated from the date the Transaction is made until the delivery date recorded automatically in the *goAML* application for electronic delivery.

Notaries and PPAT can make reporting corrections in the event that the Notary or PPAT finds itself errors in the reports of Suspicious Financial Transactions that have been submitted to PPATK or Notaries and PPAT receives administrative sanctions imposed by PPATK. In the event that Notaries and PPAT find their own errors in the Suspicious Financial Transaction reports that have been submitted to PPATK, Notaries and PPAT are obliged to make corrections to Suspicious Financial Transactions no later than 3 (three) working days after discovering the errors themselves. The application of submission of 3 (three) working days also applies if the Notary and PPAT receive administrative sanctions from PPATK.

Notaries and PPAT are obliged to submit supporting documents for the Suspicious Financial Transaction report no later than 3 (three) working days after the submission of the Suspicious Financial Transaction report is submitted to PPATK. Supporting documents in the form of at least:

a. Identity of users of services, products, and portfolios owned;
b. The results of *due diligence* on service users;
c. Document evidence of conduct “for the benefit of or for and on behalf of the service user”.

If the documents that have been submitted according to PPATK have not described any Suspicious Financial Transactions, PPATK is authorized to request additional documents from Notaries and PPAT related to reports of Suspicious Financial Transactions. If PPATK requests additional documents to assist in the analysis of Suspicious Financial Transactions, Notaries and PPAT are obliged to submit these additional documents no later than 20 (twenty) working days after the Notary and PPAT receive a written letter from PPATK.

### 3.3 Precautionary Principles of Notary and PPAT in the Implementation of Risk Assessment of Service Users

The implementation of risk assessment conducted by Notary and PPAT is prepared based on NRA (*National Risk Assessment*) and SRA (*Sectoral Risk Assessment*). Because the supervisory institutions and professional regulations of Notaries and PPAT are different, the...
implementation of risk assessments carried out by Notaries and PPAT for the Application of the Principles of Recognizing Service Users (PMJP) is carried out based on CFS issued by the Ministry of Law and Human Rights in accordance with the Notary and PPAT professional supervisory institutions. Meanwhile, PPAT is issued by the Center for Financial Transaction Reporting and Analysis (PPATK).

_Sectoral Risk Assessment_ (SRA) as intended aims to measure the level of risk in a particular sector. Based on the principle of CFS so that the government wants surveillance data to be more focused, CFS is also related to Indonesia's membership efforts in the _Financial Action Task Force_ (FATF) which supports the prevention of money laundering crimes. Based on the Notary SRA in 2018, there is a risk mapping for 6 (six) important points, namely Service User Profile, in this case clients, Service User Businesses, Regions, Services, Products and Countries, which are categorized based on high, medium and low risk.

In preventing risks that will arise due to making poor deeds that can result in risks that harm Notaries and PPAT in the context of money laundering crimes, thus making Notaries and PPAT must be selective in identifying service users. Therefore, in carrying out their duties and responsibilities, Notaries and PPAT need to apply the precautionary principle in themselves. The precautionary principle that can be done by Notaries and PPAT, namely:

1. Be meticulous in knowing the identity of the client;
2. Verifying and validating data and information provided by clients;
3. Not in a hurry, meticulous and meticulous in making deeds;
4. Fulfill technical requirements in making deeds; and
5. Report suspicious financial transactions to PPATK

The application of the precautionary principle that can be carried out by Notaries and PPAT in money laundering crimes is reaffirmed in the Circular Letter of the Ministry of Law and Human Rights Number AHU. UM.01.01-1232 concerning Guidelines for the Application of the Principles of Recognizing Service Users for Notaries which can be used as a guide by Notaries and PPAT to conduct risk assessments on clients, namely:

1. First, by identifying Notary and PPAT services used by clients;
2. Second, communicate with clients;
3. Third, conduct a risk analysis of service users and/or _beneficial owners_;
4. Implement PMPJ procedures based on the level of risk of money laundering;
5. Fifth, carry out document administration;
6. Sixth, update information and/or documents; and
7. Seventh, reporting to PPATK
4. COVER

1. With the tightening of financial service institutions in carrying out their business activities. Making perpetrators of money laundering crimes to divert money laundering motives through the means of Notary and PPAT professional services. With the use of the Notary and PPAT professions as a means of utilizing perpetrators of money laundering crimes, it can have a negative impact on the state, society and the Notary profession and PPAT itself. Therefore, there is a need for legal changes with the aim of making it stronger for the prevention and eradication of money laundering crimes. The legal changes not only strengthen anti-money laundering regulations, but also provide protection for Notaries and PPAT in carrying out their duties and responsibilities for the impact of money laundering crimes that can directly or indirectly harm the Notary and PPAT profession. Not only that, Notaries and PPAT must also apply the principle of prudence in carrying out their duties and responsibilities carefully, verify, and validate the data submitted by clients to them, not in a hurry, and meet technical requirements in laws and regulations. In the event that Notaries and PPAT perform their roles in the anti-money laundering regime, Notaries and PPAT can identify, verify, and monitor client transactions by applying the Principles of Recognizing Service Users (PMJP) and reporting Suspicious Financial Transactions (LTKM) if there are indications that clients have committed money laundering crimes.

2. It is necessary to amend Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning Notary Positions and Government Regulation Number 37 of 1998 as amended by Government Regulation Number 24 of 2017 concerning the Position of Land Deed Making Officials by adjusting that the Notary and PPAT professions are professions included in the Reporting Party, so that with this arrangement, the Notary and PPAT professions can take refuge from the principle of confidentiality inherent in this profession. So that this can provide legal certainty for Notaries and PPAT in carrying out their duties as organizers of the anti-money laundering regime. As well as the active role of institutions, professional organizations on the implementation of the anti-money laundering regime in the Notary and PPAT professions so that the implementation of the implementation of anti-money laundering programs is well conveyed to Notaries and PPAT. By providing training programs and new knowledge related to the rampant mode of money laundering carried out by criminals.
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