Pena Justisia:
Vol. 22, No. 1, June 2023

[PENA JUSTISIA: MEDIA KOMUNIKASI DAN KAJIAN HUKUM]

PRINCIPLES OF RECOGNIZING SERVICE USERS BY NOTARIES AND APPLICATION PROBLEMS IN PRACTICE

Venessa Veronica Elsa[1]
venessa.veronica@ui.ac.id

[1] Master Program in Notary, Faculty of Law, Universitas Indonesia

Article Info

Received: 2022-10-20
Revised: 2023-01-10
Accepted: 2023-04-10
Keywords: Money Laundering, Notary, Principles of Recognizing Service Users

Abstract

Money laundering is the process of turning the proceeds of crime into assets that appear legitimate to be used safely. Notaries are identified as gatekeepers who had an important role in the prevention of money laundering crimes and are required to report suspicious financial transactions to PPATK. This study aims to analyze the problems that occur related to the application of the Principle of Recognizing Service Users (PMPJ) by Notaries in practice and efforts made to increase Notary compliance in implementing PMPJ. The research method used is a doctrinal method with an analytical descriptive approach. The results of the study shows that the implementation of PMPJ by Notaries has not gone well. The Ministry of Law and Human Rights as a Supervisory and Regulatory Institution is currently making efforts to improve Notary compliance in implementing PMPJ through filling out questionnaires, but it needs to be followed up with strategic steps such as mentoring, socialization, and further evaluation. The Ministry of Law and Human Rights, which imposed sanctions in the form of temporary account blocking of Notaries who did not conduct the questionnaire, was considered ineffective. The application of sanctions should be appropriate and tiered to encourage Notary compliance in implementing PMPJ and protect the rights of Notaries in carrying out their positions.

I. Introduction

Money laundering is simply defined as a process of making the proceed of crimes or referred to as dirty money, for example; the outcome of corruption, drugs, tax evasion, gambling, smuggling, and so on that are converted into a form that appears legitimate so that it can be used safely. Money laundering crimes are very detrimental to the community and the State because they can affect or damage the stability of the national economy or state finances with an increase in various crimes. Therefore, it is important to implement anti-money laundering related to the legal process of the original criminal case, to trace the flow of funds of the main crime and provide sanctions for the perpetrators, both the main perpetrators of the crime and anyone who enjoys the proceeds of the crime (Garnasih, 2015).

A notary is a public official who is the only authorized to make an authentic deed regarding all acts, agreements and determinations required by a general regulation or by an interested person to be stated in an authentic deed, guarantee the certainty of the date, keep the deed and provide the grosse, copies and quotations, all as long as the deed is made by a general regulation is not also assigned or exempted to officials or other persons (Adjie, 2008). Notaries as public officials who are authorized to make authentic deeds have an important role in community life. Many sectors of business transaction from the community require the participation of a Notary, even some provisions that require to be made with a notary deed which means that if it is not made with a notary deed, the transaction or activity does not have legal force.

In practice, the Notary profession is very vulnerable to being used for money laundering because of the confidentiality of the relationship between Notaries and their clients which is provided based on the Law which can be a part in money laundering schemes. Since Notaries are a profession that is vulnerable to perpetrators of money laundering crimes, notaries are required to submit reports if there are suspicious financial transactions to the Financial Transaction Reporting and Analysis Center (PPATK) (Ibrahim and Sudiro, 2022). Notaries are required to apply the Principle of Recognizing Service Users (PMPJ) to clients before making transactions. If the Notary finds a suspicious transaction that is suspected of being a criminal act of money laundering, then the Notary is obliged to report it to PPATK.

However, the results of interviews with several Notaries indicate that the implementation of PMPJ is often considered difficult and an additional burden for Notaries to investigate the origin of funds from a transaction so that many Notaries are still reluctant to implement PMPJ. The Ministry of Law and Human Rights is making efforts to increase Notary compliance in implementing PMPJ. Therefore, this study will analyze how the problem of the application of the Principle of Recognizing Service Users (PMPJ) by Notaries in practice and efforts made to improve Notary compliance in implementing PMPJ.

2. Research Method

This research uses a doctrinal research method. The typology of the research used is analytical descriptive research. The type of data used in this study is secondary data. The data collection tools used are the study of documents or literature materials such as laws and regulations, namely Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions, Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, Government Regulation Number 61 of 2021 concerning Amendments to Government Regulation Number 43 of 2015 concerning Reporting Parties in Prevention and Eradication Money Laundering Crimes, as well as

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. The data analysis method in this study is qualitative. The form of research results is descriptive analytical.

3. Results and Discussion

3.1. Obligations of Notaries in Applying the Principle of Recognizing Service Users

The handling of money laundering in Indonesia began with the passage of Law Number 15 of 2002 concerning the Crime of Money Laundering which was later amended by Law Number 25 of 2003 concerning Amendments to Law Number 15 of 2002. These two legal products are considered less optimal and need to be adjusted to the development of law enforcement needs, practices, and international standards then need to be replaced with a new law, namely Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes.

In Law Number 8 of 2010, an independent institution is known to be formed in order to prevent and eradicate money laundering crimes, namely the Financial Transaction Reporting and Analysis Center or also known as PPATK. PPATK is an institution that role as a manager of financial transaction data provided by financial service providers. In addition, PPATK also acts as a provider of suspicious financial transactions analysis information (Santoso, 2011).

Fitriadi Muslim, Legal Director of PPATK, argues that Notaries are gatekeepers who can act as "guards" in stemming an unhealthy investment climate (Regional Office of the Ministry of Law and Human Rights of Malut, 2024). *Gatekeeper* is a term that refers to professionalism involved in or having a part in the commission of money laundering crimes (Nurillah and Nashriana, 2019). According to Habib Adjie, gatekeepers are parties who facilitate and provide assistance to perpetrators to hide their illicit *wealth* and illegally profit, in order to escape the snare of the law.

Actually, the rise of money laundering cases under the *gatekeeper position/profession* is what makes PPATK include a Notary as one of the reporting parties regulated in Article 3 of Government Regulation Number 61 of 2021 concerning Amendments to Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes. Article 1 number 3 of Government Regulation Number 61 of 2021 states that the Reporting Party is every person who, according to this Law, is obliged to report to PPATK, consisting of Financial Service Providers and Other Goods and/or Services Providers.

In particular, the obligation of Notaries in implementing PMPJ is regulated in 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. The Notary as the reporting party is obliged to convey to PPATK about transactions carried out by professions for the benefit or for and on behalf of Service Users who are known to be suspected of using assets suspected of coming from the proceeds of criminal acts (suspicious financial transactions) regarding : (Regulation of the Minister of Law and Human Rights Number 9 of 2017)

a. Sale and purchase of property ;
b. Management of money, securities, and/or other financial services products ;
c. Management of current accounts, savings accounts, deposit accounts, and/or securities accounts ;
d. Operation and management of the company; and/or
e. Incorporation, purchase, and sale of legal entities

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

time of :

a. Doing business relationships with service users ;
b. There are financial transactions in rupiah and/or foreign currencies with a value of at least or equivalent to Rp 100,000,000 (one hundred million Rupiah) ;
c. There are suspicious financial transactions related to money laundering and terrorism financing ;
d. Notary doubts the veracity of information reported by service users.

The obligation to implement PMPJ regulated in the Regulation of the Minister of Law and Human Rights Number 9 of 2017 has caused a lot of ignorance or wrong interpretation regarding transactions that are mandatory to be implemented by PMPJ. In the *Financial Action Task Force* (FATF) Recommendation, point 16 states that Notaries as one of the independent legal professions do not have the obligation to report allegations if relevant information is obtained from operating professional confidentiality or legal professional privileges. Furthermore, Article 2 paragraph (3) states that PMPJ is applied when the Notary conducts transactions for the benefit or for and on *behalf* of service users, not when the Notary exercises his authority. An example is that a Notary is authorized by the Service User to register a legal entity, assist with legal entity business licensing, pay taxes sales and purchases of land, and so on.

The obligation for Notaries in applying PMPJ to the transactions referred to above is a legal rule that must be complied with by Notaries. Although the legal rule only limits the obligation to apply PMPJ to transactions made for the benefit or for and on behalf of service users, Notaries can freely apply PMPJ to their authority in making authentic deeds if there is an alleged suspicious transaction. The application of PMPJ to transactions carried out in the context of carrying out their positions can be a protection for Notaries and reduce legal risks that may arise if it is later proven that the transactions are related to money laundering or terrorism financing activities.

In implementing PMPJ as mentioned above, Notaries are required to complete information about service users by filling out the *Customer Due Diligence* (CDD) form. This CDD form is filled out according to the category of service users by collecting information in the form of : (Regulation of the Minister of Law and Human Rights Number 9 of 2017)

1. For individuals
   a. Service User Identity, contains :
      - Full name
      - ID card, driving license, or pasport
      - Place and date of birth
      - Nationality
      - Residential address according to ID card
      - Domicile address and telephone number (if applicable)
      - Address in origin country (if a foreigner)
   b. Job
   c. Source of funds
   d. Business relationship / purpose of the transaction to be carried out
   e. NPWP
   f. Other related information of the service user, including information ordered in accordance with the provisions of laws and regulations.
2. For Corporations
   a. Service User Identity, contains :
      - Corporate Name
      - Corporate Decree Number (if it is a legal entity)

- Corporate Form
- Business Fields
- Business license number from the authorized agency
- Corporate address and phone number

b. Source of funds
c. Business relationship or purpose of the transaction
d. Information of the designated party who has the authority to act for and on behalf of the Corporation
e. Beneficial owner information for the Corporation
f. NPWP
g. Other related information of the service user, including information ordered in accordance with the provisions of laws and regulations.

3. For other engagements (*legal arrangements*)
   a. Service User Identity, contains :
      - Name
      - License number or business license from the authorized agency (if any)
      - Domicile address
   b. Source of funds
   c. Business relationship or purpose of the transaction
   d. Information on beneficial owners of other engagements (legal arrangements)
   e. NPWP
   f. Other types of engagements (legal arrangements)
   g. Information the designated party has the authority to act for and on behalf of other engagements
   h. Other related information of the service user, including information ordered in accordance with the provisions of laws and regulations.

After collecting this information, the Notary is required to conduct a risk assessment and grouping the service users based on the level of risk of money laundering and terrorism financing crimes (TPPU and TPPT). The grouping of service users based on the level of risk of TPPU and TPPT is carried out based on an analysis of the profile of service users, service user businesses, countries or regions, and Notary services.

In the event that the Notary finds a Service User or Beneficial Owner with high risk of money laundering, the Notary is obliged to conduct an in-depth identification. The in-depth identification is carried out by : (Regulation of the Minister of Law and Human Rights Number 9 of 2017)

a. Request additional information about the Service User or Beneficial Owner and verify based on valid information, validity of the source of the information, and the type of information related to it.;
b. Request additional information regarding the source of funds, sources of wealth, transaction purposes, and business relationship purposes with related parties, Service Users and Beneficial Owners and verify based on the validity of the information, the validity of the source of information, and the type of information related;
c. Further supervision of business relationships through increasing the number and frequency of supervision and selection of transaction patterns that require further review.

In the event that the Service User refuses to comply with the principle of recognizing the service user or the Notary doubts the validity of the submitted information by the Service User, the Notary is obliged to terminate the business relationship with the Service User and is obliged to report to PPATK regarding the action as a suspicious financial

transaction (Regulation of the Minister of Law and Human Rights Number 9 of 2017). If the Notary is proven not apply this PMPJ, then the Notary may be subject to administrative sanctions in accordance with the laws and regulations regarding notarization. (Regulation of the Minister of Law and Human Rights Number 9 of 2017),

3.2. Protection for Notaries as Reporting Parties in the Application of the Principle of Recognizing Service Users

Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes provides special protection for Notaries who act as the reporting party. In Article 5 paragraph (2), Notaries who report suspicious transactions are exempt from all forms of lawsuits or demands, both criminal and civil.

The existence of Article 5 paragraph (2) is a form of legal protection for Notaries when carrying out their functions. Notaries do not need to worry about accusation or allegations that may arise as a result of reports made related to suspicious transactions. In other words, in carrying out their obligations to implement PMPJ, Notaries are in a position protected by law. Thus, Notaries who implement PMPJ can make a significant contribution to the prevention and eradication of money laundering crimes, without worrying about the legal consequences that can harm them. Other protections are also regulated in the following Articles :

1. Article 83 paragraph (1) which states "PPATK officials and employees, investigators, public prosecutors, or judges are obliged to keep confidential the Reporting Party and the whistleblower."
2. Article 84 paragraph (1) which states "Every person who reports the alleged crime of money laundering must be given special protection by the State from possible threats that endanger himself, his life, and/or property, including his family."
3. Article 85 paragraph (1) which states "In court hearings, witnesses, public prosecutors, judges, and other persons related to the crime of money laundering who are under investigation are prohibited from mentioning the name or address of the complainant or other things that may reveal the identity of the complainant."
4. Article 87 paragraph (1) which states "The complainant and/or witness cannot be prosecuted, either civilly or criminally, for the report and/or testimony given by the person concerned."

3.3. Problems of the Application of the Principle of Recognizing Service Users by Notaries in Practice

The Principle of Recognizing Service Users (PMPJ) is one of the important efforts in preventing and overcoming money laundering and terrorism financing crimes. The implementation of PMPJ by Notaries is a dilemma for Notaries. Many Notaries are reluctant to implement PMPJ strictly. The author conducted interviews with several Notaries to find out how they implement PMPJ in the office.

First, Notary X who does a lot of work related to fiduciary guarantees, Power of Attorney to Charge Dependent Rights (SKMHT), as well as the management of legal entities of Companies (PT) and Foundations. According to Notary X, the implementation of PMPJ is an additional burden for Notaries because Notaries must investigate more deeply if there are suspicious transactions. He argued that this arrangement is very difficult because there is an obligation to investigate the origin of the funds of service users. Therefore, to avoid further investigation of the service user, usually the CDD form is filled out only based on formal evidence submitted by the service user (Interview with X, Notary in North Jakarta, May 21, 2024).

Second, Notary Y who does a lot of work related to the management of the legal entity of a Company (PT) and also the binding of sales and purchases. According to Notary Y, this

PMPJ is very difficult for Notaries. He explained as an example if there is a Civil Servant (PNS) who comes to make a Deed of Establishment of Company (PT) with a capital of IDR 5,000,000,000 (five billion Rupiah), the origin of the funds should be questioned. However, Notaries often make CDD forms as if there is nothing suspicious about the transaction. This is done because the Notary does not want to lose his client. According to him, if this PMPJ is really carried out, Notaries are worried about losing clients because clients are afraid to be asked in detail about the transactions they have made and are afraid that further investigations will be carried out (Interview with X, Notary in Batam City, May 21, 2024).

From the results of the interviews conducted, the author sees that in practice the implementation of PMPJ is actually considered to be an additional burden for Notaries because this PMPJ must be carried out when the Notary conducts transactions as referred to in the provisions of Article 2 paragraphs (3) and (4) of the Regulation of the Minister of Law and Human Rights Number 9 of 2017. Not only that, the Notary is also charged with an additional obligation to investigate the origin of the funds from the transaction. Second, the Notaries interviewed by the author do a lot of work that potentially had a risk of TPPU and TPPT, but the implementation of PMPJ in their offices is carried out only based on formal evidence submitted by Service Users without in-depth identification and even the filling is manipulative. If the implementation of PMPJ by Notaries like this continues, then TPPU and TPPT will be difficult to detect.

At the time this research was conducted, on May 27th, 2024, there was a Letter submitted by the Directorate General of General Legal Administration, Ministry of Law and Human Rights regarding the obligation of Notaries to fill out a questionnaire in order to measure the level of compliance and readiness of Notaries in the implementation of PMPJ and the submission of Suspicious Financial Transaction Reports (LTKM). If within the specified period of time the Notary does not fill out the questionnaire, a temporary block will be carried out until the Notary completes the obligation to fill out the questionnaire.

Filling out this questionnaire is actually a form of *Sectoral Risk Assessment (SRA)* or risk assessment of TPPU and TPPT issued by the Ministry of Law and Human Rights. This has been regulated since 2019 in the AHU Circular Number. UM.01.01-1232 concerning Guidelines for the Implementation of the Principle of Recognizing Service Users for Notaries, but its implementation will only be carried out in 2024. The delay in the implementation of SRA by the Ministry of Law and Human Rights as a form of supervision of the implementation of PMPJ by Notaries can also be a factor in the lack of compliance of Notaries in the implementation of PMPJ.

Although the implementation of this SRA is late, currently the Ministry of Law and Human Rights continues to make efforts to create consistency in understanding and implementing the obligations of implementing PMPJ and the submission of LTKM by Notaries. The author sees that filling out this questionnaire is very helpful for the Ministry of Law and Human Rights in supervising the compliance of Notaries in fulfilling their obligations to implement PMPJ. In addition, through this questionnaire, it is also possible to determine risks based on self-assessment conducted by the Notary and the risk factors that have been determined, namely the profile of the service user, the business of the service user, the country or region, and the Notary service.

By conducting this questionnaire, the supervisory institution can assess Notaries who are still lacking in carrying out the obligation to implement PMPJ. In addition, supervisory agencies can also focus on areas that are considered to have a high risk of TPPU and TPPT crimes so that they need more attention. The efforts made by this supervisory institution show a commitment to fostering and ensuring that Notaries comply with applicable regulations related to the obligation to implement PMPJ.

However, according to the author, the form of supervision carried out by the Ministry of Law and Human Rights through filling out this questionnaire needs to be followed up with strategic steps to ensure that Notaries understand and implement PMPJ correctly. Filling out this questionnaire can assess Notaries who are still lacking in carrying out the obligation to implement PMPJ so that the next step is that the supervisory institution needs to provide assistance for Notaries who are still lacking in implementing PMPJ. Socialization and education related to PMPJ need to continue to be carried out to improve Notary's understanding of the importance of PMPJ, how PMPJ is a protection for Notaries, and how to implement PMPJ in accordance with applicable regulations. In addition, the assessment of the implementation of PMPJ by Notaries through filling out this questionnaire needs to be carried out and evaluated regularly to monitor the progress of Notary compliance with this obligation.

As a sanction for Notaries who do not fill out the questionnaire, the Ministry of Law and Human Rights will temporarily block the account until the Notary fulfills his obligations. If referring to the provisions in the Regulation of the Minister of Law and Human Rights Number 9 of 2017, Notaries who do not carry out the obligation to implement PMPJ can be subject to administrative sanctions in accordance with the laws and regulations regarding notarization. Furthermore, in the provisions of the Regulation of the Minister of Law and Human Rights Number 61 of 2016 concerning Procedures for Imposition of Administrative Sanctions against Notaries, administrative sanctions consist of written warnings, temporary dismissals, respectful dismissals, or disrespectful dismissals. The imposition of administrative sanctions must be carried out in stages starting from the lightest to the heaviest.

Temporary account blocking is indeed considered effective in encouraging Notary compliance in fulfilling obligations, but this account blocking makes Notaries constrained in carrying out their positions. The temporary blocking will be too heavy if implemented as a first step in sanctioning. Regulation of the Minister of Law and Human Rights Number 61 of 2016 also stipulates that administrative sanctions must be carried out in stages, so that the sanction should be preceded by a written warning. A written reprimand will provide an opportunity for the Notary to correct mistakes without directly hindering the implementation of the office. If the written warning is not heeded, then the temporary account ban will be used as the next sanction. The application of appropriate and tiered sanctions not only encourages Notary compliance in carrying out obligations but also as a protection for the rights of Notaries in carrying out their positions.

4. Conclusion

The implementation of PMPJ by Notaries is an important step in preventing money laundering and terrorism financing crimes in Indonesia. However, the implementation of PMPJ by Notaries has not been done properly. The Ministry of Law and Human Rights as a supervisory institution has an important role in encouraging Notaries to carry out their obligations to implement PMPJ. The form of supervision that has just been carried out by the Ministry of Law and Human Rights is through filling out a questionnaire to measure the level of compliance of Notaries with the implementation of PMPJ. However, filling out this questionnaire needs to be followed up with strategic steps such as mentoring, socialization, and further education. The Ministry of Law and Human Rights provides sanctions for temporary account blocking for Notaries who do not fill out questionnaires. The temporary account blocking is considered too severe and hinders the implementation of the duties of the Notary position. The application of sanctions should be appropriate and tiered, this not only encourages Notary compliance in implementing PMPJ but also protects the rights of

Notaries in carrying out their positions.

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