Position and Notary Responsibilities In Financial Statements

Cahyo Widodo, Nynda Fatmawati Octarina
Faculty of Law, Narotama University, Surabaya
E-mail: cahyowi_yoyok@yahoo.co.id dan nynda_f@yahoo.com

ABSTRACT
The development of information technology and globalization at this time can lead to organized criminal activities that have crossed many jurisdictions in a country in the form of transnational crimes such as money laundering. In money laundering crimes can often involve a Notary in his authority to make an authentic deed. Therefore, the government expands the provisions of the reporting parties, especially the Notary, to report suspicious financial transactions to the Financial Transaction Reporting and Analysis Center (PPATK) by registering and reporting in a special means, namely the Gathering Report and Information Processing System (GRIPS) reporting application. However, the true reporting obligations conflict with the obligations held by the Notary as the secret bearer of office. Thus, problems were found regarding: how the position and role of the Notary in the system of reporting money laundering crimes and their responsibilities as a reporting party in the Gathering Report and Information Processing System (GRIPS) application. This study uses a method in the form of normative juridical research with qualitative methods as a method of data analysis and uses document studies supported by interviews as a data collection tool. Based on the research results, it can be concluded that the Notary has been given authority through the Act, and therefore if the Notary is burdened with other obligations, it must also be regulated in the Act.

Keywords: Responsibility, Notary, Authentic Deed, Financial Transactions.

1. INTRODUCTION

The 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) confirms that the State of Indonesia is a state of law. The meaning of the rule of law itself is essentially rooted in the concept of the rule of law, which in principle states that the highest authority in a country is the law, therefore all state equipment, whatever its name, including citizens, must be subject to and obey and uphold the law without exception (Hestu Cipto Handoyo, 2003).

As a law state that is also developing, Indonesia has succeeded in becoming the only ASEAN country included in the G-20 member of the world's large economies. This is evidenced by the existence of a stable economic growth of Indonesia each year and put the country of Indonesia into one of the economic forces in the world. Indonesia's success in becoming a global power economy is inseparable from the implementation of development owned by the Indonesian state accompanied by advances in information technology and trade globalization.

The impact of such a large economy can be seen in various fields of life, both legal, economic and political following the rapid development of information technology (Rudianto & Roesli, 2019). However, on the other hand the development of information technology and
globalization can lead to organized criminal activities that have crossed the borders of a country's jurisdiction in the form of transnational crime that starts from economic competition. Some of these crimes include corruption, trafficking in persons, smuggling of people and weapons, and money laundering.

Money laundering is a form of organized crime by hiding and disguising assets resulting from criminal acts, so that the origin of the assets that have been obtained seems to originate from the results of legal or legal business activities. As it turns out in the Black's Law Dictionary which gives the sense that money laundering is "term used to describe investment or other transfers of money flowing from rackets, drug transactions, and other illegal sources into legitimate channels so that original sources cannot be traced." In its free translation it can be interpreted that money laundering is a term used to describe investments or other money transfers that flow from extortion, transactions and illegal sources through legal channels, so that the money can no longer be known for its origin.

In combating money laundering crimes not only regulations are needed, but also requires a special characteristic and also the starting point and eradication of economic crimes that are not only by eradicating the original crime but also chasing the proceeds of crime by implementing anti-money laundering provisions, not only the perpetrators the origin is caught but also where the flow of funds resulting from the crime is revealed, by applying anti-money laundering provisions accompanying the original crime, the law enforcer can get 2 (two) at a time, namely arresting the perpetrators of original crimes and at the same time reclaiming the proceeds of crime to be returned to those entitled (Yenti Ganarsih, 2015).  

There are at least 3 (three) motivations of the perpetrators to commit money laundering from the proceeds of the crime committed, namely the fear of the perpetrators facing a tax officer, prosecution by law enforcement officials, and concern that the proceeds of the crime were confiscated because they were obtained illegally. As it turns out what Emily G. Lawrence has mentioned in her book entitled "Lest Seller Beware of Money Laundering", as follows: “The motivation for all of this activity arises from a situation where a person attempts to spend illegally-acquired money without first hiding its origin. When this occurs, one of there is likely to result: (1) the individual may be held liable for taxes on the fund and / or for non-payment of taxes; (2) the money may be linked to the crime, making the owners a target for persecution; (3) the money may be subjects forfeiture if the government finds that it was illegally acquired ” (Emilly G. Lawrence, 1992). 

As a concrete form of Indonesia's commitment in the fight against money laundering crimes, it can be seen that in 2002 the Indonesian government together with the House of Representatives of the Republic of Indonesia had ratified Law Number 15 of 2002 concerning Money Laundering Crimes as amended by the Law Law Number 25 of 2003 concerning Amendment to Law Number 15 of 2002 concerning Money Laundering Crimes. However, due to the need for a strong legal basis to guarantee the certainty and effectiveness of law enforcement as well as tracking and returning assets resulting from criminal acts, the Indonesian government felt the need to replace the previous Money Laundering Act with a new one, Law No. 8 The year 2010 concerning the Prevention and Eradication of Money Laundering Criminal Acts (hereinafter referred to as the TPPU Law) which is still valid today.

With the existence of the TPPU Law, it is hoped that these transnational crime practices can be eradicated so that a special independent body is needed to assist law enforcement against money laundering, by establishing a Financial Transaction Reports and Analysis Center (PPATK). This is further emphasized in the provisions of Article 39 of the TPPU Law which states that PPATK has the duty to prevent and eradicate money laundering, and in carrying out its duties and functions, PPATK collaborates with several parties, both government agencies and private institutions, such as Financial Service Providers and Goods and Services Providers as Reporting Parties who are required to submit suspicious financial transaction reports to PPATK.

However, in order to harmonize the international regime's standard provisions (40 Recommendation of the FATF), the Indonesian government expanded the provisions of the Reporting Party by issuing Government Regulation Number 43 of 2015 which obliged the professions to submit suspicious financial transaction reports to PPATK, such as: "Advocates, Notaries , Land Deed Makers, Accountants, Public Accountants and Financial Planners as Reporting Parties." When looking at the provisions of Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Criminal Acts (hereinafter referred to as PP 43/2015) which requires professions, especially Notaries to submit reports of suspicious financial transactions to PPATK, actually this matter has never been regulated in legal umbrella position of Notary Public. But the Law of Notary Position (hereinafter referred to as UUJN) itself requires the Notary to keep the contents of the deed confidential as stated in the provisions of Article 4 and Article 16 paragraph (1) letter f of Law Number 2 of 2014 concerning Amendments to Law Number 30 of the Year 2004 concerning Notary Position.

So in this case, there is a debate over the rule of law regarding the consideration of including the Notary profession as a Reporting Party in the prevention and eradication of money laundering crimes on the other hand as a Notary Public as well as carrying out secret positions. Besides that, Notary is also a position of trust (vertrouwensambt) and therefore someone is willing
to entrust something to him. So in this case the Notary Public is obliged to keep the deed of secrecy for everything notified to him. Even though there are parts that are not included in the deed, the Notary also still may not tell what has been told by his client. If a notary who cannot limit himself will experience the consequences in practice, he will immediately lose public trust and he will no longer be considered a trusted person (vertrouwenspersoon).

However, until now the debate over the rule of law continues, especially with the support issued by the Ministry of Law and Human Rights. The Directorate General of General Law Administration, the Center for Reporting and Analysis of Financial Transactions (PPATK) and the Indonesian Notary Association (INI) through a Joint Announcement that requires the Notary to register and report on the application Gathering Reports & Information Processing System (hereinafter referred to as GRIPS) in the context of prevention and eradication of money laundering.

The GRIPS application is presented as a form of support for joint commitments in the framework of preventing and eradifying money laundering and carrying out the obligations of the Indonesian government in various international forums such as FATF. Therefore, the Notary is required to register and report suspicious financial transactions through the GRATPS PPATK application by referring to the Regulation of the Head of the Financial Transaction Reports and Analysis Center Number 11 of 2016 concerning Procedures for Submitting Suspicious Financial Transaction Reports for Professionals (hereinafter referred to as Perka PPATK 11 / 2016).

From the descriptions above, it can be seen that there are provisions that are not harmonious in terms of both vertical and horizontal which actually have a very important role to maintain harmony and prevent overlapping of laws and regulations with one another. On the one hand, the Notary has the obligation to keep the deed confidential and on the other hand the Notary is also burdened with other obligations as a reporter in suspicious financial transactions. So in this case the author feels the need to further study the reporting and responsibilities of the Notary in keeping confidential positions and responsibilities as a reporter in the prevention of money laundering through the application of Gathering Reports & Information Processing System (GRIPS).

Based on the description above, there are 2 (two) formulations of the problem to be examined, namely:

1. What is the position and role of the Notary in a suspicious financial reporting system?
2. What is the responsibility of the Notary Public as a reporting party in the application Gathering Reports & Information Processing System (GRIPS)?
2. DISCUSSION

Position and Role of the Notary in the Financial Reporting System

Notary as a public official has been given the authority to make an authentic deed together with other authorities, therefore the Notary is required to perform legal actions properly and correctly, which means the deed made before or by the parties must fulfill all legal wishes and also from the request of the parties concerned. To produce a quality deed made in accordance with the law and the wishes of the parties concerned, the Notary must carry out his obligations as stipulated in the provisions of Article 16 of the UUJN, as follows:

(1). In carrying out his position, the Notary must:

a. act trustworthy, honest, thorough, independent, impartial, and protect the interests of parties involved in legal actions.

b. make a Deed in the form of a Minutes Deed and save it as part of the Notary Protocol.

c. attach letters and documents and fingerprints to the Minutes of Deed.

d. issuing Grosse Deed, Copy of Deed, or Deed Quote based on Deed Minutes.

e. provide services in accordance with the provisions of this Law, unless there is a reason to refuse them.

f. keep everything about the Deed he made and all information obtained to make the Deed in accordance with the oath / promise of office, unless the law stipulates otherwise.

g. binding a Deed that is made in 1 (one) month into a book that contains no more than 50 (fifty) Deed, and if the number of Deed cannot be contained in one book, the Deed can be bound to more than one book, and record the Minutes of Deed, month and year of manufacture on the cover of each book.

h. make a list of the Deed of protest against the non-payment or receipt of securities.

i. make a list of Deeds relating to the will according to the order in which they are made each month.

j. send a list of Deed as referred to in letter i or zero list relating to the will to the center of the testament to the ministry which carries out government affairs in the field of law within 5 (five) days in the first week of the following month.

k. record in the repertorium the date of sending a list of wills at the end of each month.

l. has a stamp or stamp containing the symbol of the state of the Republic of Indonesia and in the space enclosing it, write the name, position and place of residence concerned.

m. read the Deed before the parties, attended by at least 2 (two) witnesses, or 4 (four) special witnesses for the making of a will, and signed at the same time by the parties, witnesses and Notaries.

n. receive a notary candidate internship.
From the aforementioned obligations, it can be seen that one of the obligations of a Notary in the provisions of Article 16 paragraph (1) letter f of the UUJN, is to keep the contents of the deed confidential. Therefore, in the principle of confidentiality held by the Notary Public, a general legal provision is also attached, namely Article 170 paragraph (1) of the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code) which affirms that "those who due to work, dignity or dignity his position is required to keep a secret, can ask to be released from the obligation to give information as a witness, namely about the things entrusted to them ".

The secret of office which is attached to the legal umbrella of the position of Notary and criminal procedure mentioned above becomes a benchmark that must be carried out by the Notary to carry out his obligations to keep secret the contents of the deed only to those who are directly interested in the deed. As it turns out in the provisions of Article 54 UUJN, which states that: "Notary can only give, show, or notify the contents of the Deed, Grosse Deed, Copy of Deed or Quotation of Deed, to people who have direct interest in the Deed, heirs, or people who have rights, unless otherwise specified by legislation ".

Because of the existence of norms or principles for notaries in connection with the obligation to keep all the contents of the deed or other information relating to the notarial deed, it often provides space / loopholes for the perpetrators of criminal acts to commit the crime behind the services provided by the notary public.

The intention of the legislators who set up a Notary as one of the Reporting Parties in submitting suspicious financial transaction reports to PPATK is a policy to close the space / legal loopholes that are often used by the perpetrators of money laundering crimes who hide behind the legal provisions owned by the Notary in particular the principle of the confidentiality of his position with his client, so PP 43/2015 expands the reporting party including the Notary. This is also in line with safeguarding the interests of the State to set anti-money laundering standards in order to build national development stability.

But unfortunately, the new obligation imposed on the Notary Public as a Reporting Party for the alleged crime of money laundering will make the position of the Notary no longer trusted by clients who feel objected to it. This is because the Notary has the character as a trusted person and as a public official who upholds the principle of confidential office. But as a legal profession bearer, the Notary is also obliged to comply with the applicable laws and regulations, as stipulated in PP 43/2015 above.

This is a debate over legal issues where the Notary as a public official who is given his obligations in the Law of the Notary Position is concerned about other obligations imposed on him as a Reporting Party that is not expressly regulated in the provisions of the Act, but only regulated in PP 43/2015 which only has a position under the Act. PP 43/2015 should not be able to rule out
the highest provision, namely the UUJN which regulates the Notary's obligation to maintain the confidentiality of the deed he made in accordance with the provisions of Article 4 paragraph (2), Article 16 paragraph (1) letter f and Article 54 paragraph (1) UUJN.

Therefore, the enforcement of obligations for the Notary in his responsibility to keep secret office as stipulated in UUJN, can only be opened if it is regulated in the Act or the contents must be explicitly stated in the Act not in the form of legislation below it. as it turns out in PP 43/2015 mentioned above.

This is what is felt that the formation of a hierarchy of legislation feels out of harmony both horizontally and vertically. Horizontal disharmony can be seen in the structure of legislation horizontally which can be different from other provisions, where the existence of UUJN that requires the Notary to keep the contents of the deed contrary to the TPPU Law requires the reporting party to submit its report on suspicious financial transactions. In this case, the legislators should coordinate with the relevant agencies so that conditions do not overlap between sectors and the legal sector in the Indonesian legal system.

In addition to the horizontal harmonization, it is also important to note that the harmonization of laws and regulations in the hierarchical structure decreases by applying vertical harmonization. In this case it can be seen that the legal umbrella of the position of Notary, namely the UUJN is not vertically equipped with detailed provisions relating to reporting obligations stipulated in other regulations under the law. However, there are other Government Regulations such as PP 43/2015 that require Notaries to report to suspicious financial transactions. This causes, as if UUJN acts egosectoral by not implementing coordination between ministries without thinking about other interests with other ministries such as PPATK, Financial Services Authority, National Land Agency, and others. Therefore, lawmakers should see the harmonization of legislation vertically because it has an important role in shaping legislation that is interrelated and dependent on one another so there is no debate over legal issues as UUJN with PP 43/2015.

Based on the above legal principles, based on a hierarchical system of laws and regulations at the lower levels, it should not be in conflict with the laws and regulations that are above it. Therefore, the provisions of the Government Regulation governing Notaries as Reporting Parties who are required to report suspicious financial transactions must not violate the above provisions, namely the Notary Position Act, which does not regulate the obligation to report, but regulates the confidentiality of positions held by the Notary Public.

If the Notary violates his obligations in keeping the secret of his position, the Notary may be subject to occupational sanctions in the form of:

a. Verbal reprimand.

b. Written warning.
Responsibilities of the Notary Public as a Reporting Party in the Application Reporting Gathering Reports & Information Processing System (GRIPS)

Obligations to the professions and agencies are seen as a gate keeper for transactions / activities that require data / information. One of the professions that can act as a gate keeper is Notary. So to carry out its obligations as stipulated in PP 43/2015, the Notary is responsible for any alleged money laundering crime. Although actually this responsibility only applies when the Notary acts for the benefit or for and on behalf of the User of the Service to the object that has been mentioned in the provisions of Article 3 PP 43/2015. Therefore, if the Notary does not act for and on behalf of the User in relation to the object required to be reported, then the Notary does not need to report on the transaction activities carried out by the User.

In the provisions of Article 3 PP 43/2015 it is stated that certain professions such as Advocates, Notaries, Land Deed Making Officials, Accountants, Public Accountants, and Financial Planners are included in the Reporting Parties that are obliged to participate in preventing and eradicating money laundering. Therefore, the professions, especially the Notary Public as a Reporting Party, need to do more in-depth prevention efforts. As contained in the provisions of Article 4 of the Government Regulation which states that "Reporting Parties must apply the principle of recognizing Service Users".

In connection with the obligation of a Notary Public as a Reporting Party in submitting his report on suspicion of suspicious financial transactions to the PPATK, to provide legal certainty the PPATK issued a Regulation of the Head of the Financial Transaction Reports and Analysis Center Number 11 of 2016 concerning Procedures for Submitting Suspicious Financial Transaction Reports for Professionals (hereinafter referred to Perka PPATK 11/2016). In Perka PPATK 11/2016, it regulates the obligation to report suspicious financial transactions that must be reported to PPATK conducted by the Profession for the benefit of or for and on behalf of the User, regarding:

a. Buying and selling property.
b. Management of money, securities and / or other financial service products.
c. Management of current accounts, savings accounts, deposit accounts and / or securities accounts.

d. Operation and management of the company.

e. Establishment, purchase and sale of legal entities.  

As it turns out in practice, a number of Notaries have registered on the application GRIPS. This can be seen in the results of interviews conducted by the author with Notary A in the City of East Jakarta. According to him, the effectiveness of Government Regulation Number 43 of 2015 concerning Reporting Parties in Preventing and Eradicating Money Laundering is not exhaustive, because one side requires the Notary to report Suspicious financial transactions to the PPATK, but on the other hand the Notary also has an obligation to keep the deed of secrecy. According to him, he had done the registration obligation on the GRATPS PPATK application because of the 'coercive' nature that was applied to the Notary when he did not carry out these obligations, but to carry out reporting of suspicious financial transactions for his service users, he could not apply because he did not have further access and deeply related to the suspicious finances.

In connection with the prevention and eradication of money laundering, the Notary is a key part of the establishment of a corporation both a legal entity and not a legal entity, so the Notary does not only act as the power of the applicant to ratify the legal entity but also as the power of the corporation to convey information the beneficial owner of the corporation to the authorized agency.

Therefore, the government through its legal policy has set the application of the principle of recognizing the beneficial owners of the corporation by issuing Presidential Regulation No. 13 of 2018 concerning the Application of the Principle of Recognizing Benefit Owners from Corporations in the Context of Preventing and Eradicating Criminal Acts of Money Laundering and Criminal Funding for Terrorism Funding (hereinafter referred to Perpres 13/2018).

The policy is based on international standards in the area of preventing and eradicating money laundering, that there is a need for arrangements and mechanisms to recognize the beneficial owner of a corporation in order to obtain information about the beneficial owner that is accurate, current and publicly available. In the general provisions of Perpres 13/2018 it is explained that what is meant by the Beneficiary is: "Individuals who can appoint or dismiss directors, boards of commissioners, management, Trustees or supervisors at the Corporation, have the ability to control the Corporation, are entitled to and / or receive benefits from the Corporation both directly and indirectly, is the actual owner of and or shares of the Corporation and / or meets
the criteria referred to in this Presidential Regulation "). Furthermore, this Perpres also sets the
criteria for the beneficial owner of the Corporation in more detail, the criteria of which are adjusted
to each type of Corporation based on the level of share ownership, voting rights, profitability, and
so forth. The types of Corporations that were targeted in the formation of this Perpres can be seen
further in the table below including: Limited Liability Companies, Foundations, Associations,
Cooperatives, Limited Partnerships, Firm Fellowships, and other forms of Corporations.

Therefore, since the issuance of Perpres 13/2018, which came into force on March 5, 2018,
it has consequences for all types of Corporations in the establishment process shall also convey
information or with a Statement of Capability to Provide Information on the application of the
principle of recognizing the Beneficiary Owner of the Corporation. Article 24 of Perpres 13/2018
provides sanctions for parties who do not implement the provisions referred to in Article 3
(determination of the beneficial owner), Article 14 (application of the principle of recognizing the
beneficial owner), and Articles 18 through Article 22 (the obligation to submit) may be subject to
sanctions in accordance with statutory provisions. The existence of a clause related to "... sanctions
imposed in accordance with the laws and regulations", according to the opinion of the author for
each corporation or party appointed in Perpres 13/2018 that violates the provisions in these articles
can be charged with the Law on Money Laundering and the Terrorism Funding Law, as contained
in the main title of this Presidential Regulation 13/2018.

2. METHODOLOGY

Type of research used in this study is a normative legal research method. Normative legal
research (normative juridical) that is research conducted and aimed at various written statutory
regulations and various literature relating to issues in journals (law in book). Normative juridical
research is also called doctrinal research or law conceptualized as a method or norm which is a
benchmark of human behavior that is considered appropriate.

4. CONCLUSION

Position and role of a Notary in a money laundering reporting system is closely related to
his responsibility in making an authentic deed. In making an authentic deed, a Notary is required to
make law properly and properly, which means that the deed made by or before him must fulfill the
legal will and request of the parties concerned. Thus, in carrying out his position the Notary is
given the obligation to keep all the contents of the deed either contained in the deed or only to
convey the will of the parties. The notary must uphold the oath / promise of office as regulated in
Article 4 in conjunction with Article 16 paragraph (1) letter f of Law Number 2 of 2014 concerning
Amendment to Law Number 30 of 2004 concerning Notary Position which obliges the Notary to
keep the contents secret. deed and all information obtained for the deed making. However, in reality the Notary is charged with other obligations as a Reporting Party for suspicious financial transactions as stipulated in Government Regulation Number 43 of 2015 concerning Reporting Parties in Prevention and Eradication of Money Laundering. In that case it can be seen that the Notary Public General has obligations that are stipulated in the Act, and therefore the Notary should not be subject to other obligations outside the Law. Then, it is necessary to harmonize the formation of a hierarchy of legislation vertically and horizontally to harmonize these provisions.

REFERENCES


