

## Notary as the Frontline of Money Laundering Prevention: An Analysis of the Implementation of the Obligation to Report Money Laundering Crimes by Notaries in Practical Law Enforcement in Malang City

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**Abstract:** This research examines the implementation of Government Regulation Number 43 of 2015, especially Article 3, related to the obligation of notaries as reporting parties in preventing money laundering crimes. The research method used to answer the existing problems is Sociolegal Legal research or commonly used as empirical juridical research. The results show that in practice, notaries still face a number of obstacles in carrying out the obligation to report suspicious financial transactions. The legal dilemma that arises in relation to this reporting obligation is often a challenge for notaries. This study further explores the factors that cause these obstacles and their implications for the effectiveness of preventing money laundering crimes.

**Keywords:** *Money Laundering; Role of Notary; Law Enforcement*

## INTRODUCTION

The Republic of Indonesia, as a state of law based on the 1945 Constitution, upholds the principles of justice, legal certainty, and societal welfare. These foundational ideals aim to create stability and protection grounded in justice and truth, ensuring that the rights and obligations of all legal subjects are clear and

1066



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enforceable.<sup>1</sup> As a legal state, Indonesia is committed to implementing law enforcement that balances justice, certainty, and benefit for public order and welfare. This balance is essential for sustaining a law-ordered society, although achieving harmony among these principles remains a persistent challenge.<sup>2</sup> Notaries, as public officials with specific legal authority, play a pivotal role in ensuring legal certainty through their authentic deeds. The duties and obligations of Notaries are codified in Law Number 2 of 2014 concerning the Office of Notary (UUJN), which mandates adherence to ethical standards and legal provisions. A Notary's primary responsibility includes drafting, maintaining, and providing access to authentic deeds, as stipulated in Article 15 of the UUJN.<sup>3</sup> These responsibilities underscore the trust placed in Notaries by society, as they are expected to uphold the integrity, confidentiality, and authenticity of their duties.

The rise of money laundering (ML) as a global and national concern has further complicated the role of Notaries. Money laundering involves disguising illicit proceeds from crimes such as corruption, tax evasion, and smuggling to appear legitimate.<sup>4</sup> In Indonesia, anti-money laundering efforts began with Law No. 15 of 2002, subsequently revised into Law No. 8 of 2010. Government Regulation No. 43 of 2015 further identified Notaries as reporting parties obligated to recognize and report suspicious transactions to the Financial Transaction Reports and Analysis Center (PPATK).<sup>5</sup> This regulation presents challenges for Notaries, as it seemingly contradicts their duty to maintain client confidentiality under the UUJN.

The conflicting mandates between the UUJN and PP No. 43/2015 place Notaries in a legal dilemma.<sup>6</sup> While the UUJN emphasizes the confidentiality of deeds, PP No. 43/2015 requires Notaries to investigate and report potential money laundering activities. This dual obligation complicates the practical implementation

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<sup>1</sup> Habib Adjie, *Hukum Notaris Indonesia* (Bandung: PT. Refika Aditama, 2018), 78.

<sup>2</sup> Edwar Edwar, Faisal Rani, and Dahlan Ali, "Kedudukan Notaris Sebagai Pejabat Umum Ditinjau Dari Konsep Equality Before Law," *Jurnal Hukum & Pembangunan* 49, no. 1 (March 31, 2019): 183, <https://doi.org/10.21143/jhp.vol49.no1.1916>.

<sup>3</sup> Yanti Garnasih, *Penegakan Hukum Anti Pencucian Uang Dan Permasalahannya Di Indonesia* (Depok: PT Raja Grafindo Persada, 2015), 2.

<sup>4</sup> Ali Geno, "Tindak Pidana Kejahatan Pencucian Uang (Money Laundering) Dalam Pandangan KUHP Dan Hukum Pidana Islam," *TAWAZUN: Journal of Sharia Economic Law* 2, no. 1 (June 23, 2019): 2, <https://doi.org/10.21043/tawazun.v2i1.5223>.

<sup>5</sup> Garnasih, *Penegakan Hukum Anti Pencucian Uang Dan Permasalahannya Di Indonesia*, 2.

<sup>6</sup> M. Arief Amrullah, "Pencegahan Tindak Pidana Pencucian Uang Melalui Jasa Gatekeeper Di Indonesia," *Jurnal Cakrawala Hukum* 6, no. 1 (2015): 79, <https://doi.org/10.26905/idjch.v6i1.687>.



of both laws.<sup>7</sup> Furthermore, Ministerial Regulation No. 9/2017 introduced the Principle of Recognizing Service Users (PMPJ), requiring Notaries to verify client identities and sources of funds. However, the limited authority granted to Notaries under Article 39 of the UUNJN hinders their ability to fully comply with these additional responsibilities.

This study examines the implementation of Article 3 of PP No. 43/2015 concerning the role of Notaries as reporting parties in preventing money laundering, focusing on the legal challenges and practical obstacles they face. Using an empirical juridical approach, the research is conducted in Malang City, a region with a significant presence of Notary offices. The findings aim to explore the dilemmas Notaries encounter in balancing their legal obligations under conflicting regulations while maintaining the trust and confidentiality essential to their role. By addressing these issues, this study seeks to contribute to the discourse on aligning legal frameworks to better support Notaries in their dual responsibilities.

## THEORETICAL BASIS

The problem raised in this research is the less than optimal implementation of law enforcement in the practice of notaries as reporting parties for ML in Malang City. This research aims to analyze the implementation of law enforcement in the practice of notaries as reporting parties in the prevention of money laundering (TPPU) in Article 3 of PP No.43 of 2015 in Malang City. To achieve the objectives and to answer the problems, this research uses law enforcement theory as an analytical framework to identify factors that influence the implementation of law enforcement, as well as legal certainty theory to evaluate the extent to which existing law enforcement practices have fulfilled the principle of legal certainty.

### Law Enforcement Theory

Law enforcement is the process of making efforts to uphold or function legal norms in reality as a guide to behavior in traffic or legal relations in the life of society and the state. Harmonizing the relationship of values that are elaborated in stable rules and attitudes of action as a series of final stage value explanations to create, maintain and maintain peaceful living relationships. The conception that has a philosophical basis requires further explanation so that it will appear more concrete.<sup>8</sup> In measuring how effective the application of a rule is, Soerjono Soekanto suggests that there are factors that can be used as benchmarks, namely the legal

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<sup>7</sup> Philips Darwin, *Money laundering: cara memahami dengan tepat dan benar soal pencucian uang* (Jakarta: Sinar Ilmu, 2012), 7.

<sup>8</sup> Soerjono Soekanto, *Sosisologi Suatu Pengantar* (Jakarta: Rajawali Pers, 2013), 46.



factor itself. The next factor is the law enforcer who is the party who compiles as well as applies the law itself. Factors of facilities or facilities that support the performance of law enforcers, community factors where the law applies and is applied. Cultural factors as works of copyright and taste based on human nature in the association of life.<sup>9</sup> Referring to Soerjono Soekanto's opinion, laws or legislation must be in harmony with the basic values of customary law so that the law can be effective. An atmosphere that is not free or not peaceful will cause interference from other parties (forced), there is no other choice (forced) and due to one's own condition at that time. On the basis of this description, it can be said that interference with law enforcement may occur if there is a mismatch between values, rules, and patterns of behavior. The disturbance occurs when there is a mismatch between paired values, which are incarnated in conflicting rules, and undirected patterns of behavior that disturb the peace of life.

### Legal Certainty Theory

Law is a norm that provides behavioral guidance for each individual in the life of a society that has an important role. Where if there is an imbalance between human needs that continue to grow with the state of the world and its limited contents will create a problem for each individual right that will rub against each other. So the law has an important role to direct humans to realize every limitation in this world including the rights of each individual by considering all demands for security for their interests.<sup>10</sup> Certainty can be defined as certainty, determination, or decision. Punishment needs to be fair and certain. Since they must support reasonable order, they must be fair and serve as guidelines for action. The law can work as long as it is implemented accurately and reasonably. *Ubi Jus Incertum, Ibi Jus Nullum* (Where there is no legal certainty, there is no law) and basically the law that must apply must uphold the principle of certainty in its enforcement, "*Fian Justitia Et Pereat Mundus* (Even though the world will fall, the law must still be enforced)" this is an aspiration for legal security.<sup>11</sup>

There are two ways to define legal certainty, according to Utrecht. First, general rules tell people what they can and cannot do. Second, general rules protect people from government authority because they inform people about what the government can impose or do to them. Because legal instruments or products will be needed in order to achieve justice and happiness between all parties involved in

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<sup>9</sup> Soerjono Soekanto, *Faktor- Fktor Yang Mempengaruhi Penegakan Hukum* (Jakarta: PT Raja Grafindo Persada, 1983), 8.

<sup>10</sup> ali Zainudin, *Sosiologi Hukum* (Jakarta: Sinar Grafika, 2016), 26.

<sup>11</sup> HS Salim, *Perkembangan Teori Dalam Ilmu Hukum* (Jakarta: Raja Grafindo Persada, 2010), 31.



it. Likewise, the principle of legal certainty should also produce legal products that are clear, consistent, and can be easily achieved by all parties where the rule of law is guaranteed rights by the state as the highest authority.

## RESEARCH METHODS

This research uses sociolegal or empirical legal research methods. The choice of this method is based on the aim of obtaining accurate and in-depth primary data regarding the implementation of law enforcement in the practice of notaries as reporting parties for money laundering crimes.<sup>12</sup> Sociolegal Legal Research Methods or commonly used as empirical juridical research, namely data obtained directly from the community as the first source through field research, empirical research is research in the form of activities that have occurred in the community, including having experience in this field, with this research as a separate form or another. This research is conducted in a sociolegal or empirical manner because it will conduct research directly to the research source.

## RESULT AND DISCUSSION

### **Implementation of Law Enforcement in the Practice of Notary as a Reporting Party for the Prevention of Money Laundering Crime in Article 3 of PP No.43 of 2015 in Malang City.**

The Unitary State of Indonesia as a State of Law based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UD 1945) guarantees certainty, order, and protection of Law and society requires writing as a form of legal acts, agreements, and provisions that have the strongest and fullest evidentiary power. The conception of the Indonesian State of Law is that the power exercised by the Indonesian government must be based on and derived from the provisions of the law so as to avoid the arbitrary use of power by state authorities. The rule of law is a state system based on the prevailing law that is justified based on a constitution, where both those who are ordered and those who rule must be subject to the same law.<sup>13</sup>

Implementation of Law Enforcement is the process of making efforts to uphold or function of legal norms in reality as a guide to behavior in the life of society and the state. Conceptually, the core and meaning of law enforcement lies

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<sup>12</sup> F.C. Susila Adiyanta, "Hukum Dan Studi Penelitian Empiris: Penggunaan Metode Survey Sebagai Instrumen Penelitian Hukum Empiris," *Administrative Law and Governance Journal* 2, no. 4 (November 8, 2019): 700, <https://doi.org/10.14710/alj.v2i4.697-709>.

<sup>13</sup> M. Yasin Soumena, *Membangun tatanan negara berdasarkan ideologi dan konstitusi*, Cetakan I (Banguntapan, Bantul, DI Yogyakarta: Samudra Biru, 2018), 132.





in the activity of harmonizing the relationship of values that are spelled out in stable rules and attitudes of action as a series of final stage value elaboration to create, maintain, and maintain peaceful living relationships. The conception that has a philosophical basis requires further explanation so that it will appear more concrete.<sup>14</sup>

Wayne LaFavre argues that law enforcement as a process is essentially an application of discretion which involves making decisions that are not strictly regulated by legal rules, but have elements of personal judgment. By quoting Roscoe Pound's opinion, Wayne LaFavre states that discretion is essentially between law and morals.<sup>15</sup> In the description above, it can be said that interference with law enforcement may occur if there is a mismatch between values, rules, and patterns of behavior. The disturbance occurs if there is a dissonance between the paired values, which incarnate in the rules that are confused. Therefore, it can be said that law enforcement is not merely carrying out legislation, although in Indonesia it has such a tendency.

Law enforcement arises because there is a violation of the law. The law must be enforced and implemented. In enforcing the law, there are three elements that must be considered, namely legal certainty, expediency, and justice. Legal certainty is an action that means that someone will be able to get something that is expected in certain circumstances. Society must expect legal certainty so that society will be more orderly. The law is tasked with creating legal certainty because it aims to bring order to society. Conversely, society expects benefits in law enforcement. Law enforcement must provide benefits to society. In law enforcement, justice must also be considered. In law enforcement there must be a compromise on these three elements. The three elements must receive balanced attention.<sup>16</sup>

Law enforcement in Indonesia is currently facing challenges along with the times. The number of cases occurring at this time is one proof that law enforcement in Indonesia is currently still facing various conflicts. One of the cases that often occurs and becomes a public concern is the case of money laundering. Cases of money laundering (TPPU) in Indonesia are often closely related to criminal offenses such as corruption, narcotics, and other economic crimes. Money laundering is an action taken to disguise or hide the origin of wealth obtained from illegal activities.

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<sup>14</sup> Soekanto, *Sosisologi Suatu Pengantar*, 50.

<sup>15</sup> Bernard L. Tanya, Markus Y.Hage, and Yoan N. Simanjuntak, *Teori hukum: strategi tertib manusia lintas ruang dan generasi* (Yogyakarta: Genta publishing, 2010), 67.

<sup>16</sup> Raymond Budiman, *Rahasia Analisis Fundamental Saham: Analisis Perusahaan* (Jakarta: Alex Media Komputindo, 2020), 54.



In a legal context, money laundering is an attempt to transform money or assets derived from crime into appearing legitimate, so that they can be used without raising suspicion.<sup>17</sup>

The legal basis for law enforcement related to ML in Indonesia is Law No. 8/2010, the primary law governing the prevention and eradication of ML. This law provides a framework for law enforcement and establishes obligations for various parties, including Financial Institutions, to report suspicious transactions. In addition to Law No. 8 of 2010, there are various implementing regulations that further regulate the procedures and reporting obligations for reporting parties, which are regulated in Government Regulation No. 43 of 2015, where one of the reporting parties is a Notary.

Government Regulation No. 43/2015 on Reporting Parties in the Prevention and Eradication of Money Laundering requires notaries to report suspicious deeds to PPATK. PPATK is an independent Indonesian institution established to prevent and eradicate ML and terrorism financing. Based on Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering, PPATK's duties and functions are to develop policies and strategies to prevent and eradicate money laundering. Then compliance monitoring, ensuring reporting parties such as bank and certain professions including Notaries, comply with suspicious transaction reporting obligations. In Ministerial Regulation No. 9/2017 on the Implementation of the Principle of Recognizing Service Users for Notaries, hereinafter referred to as PMPJ, PMPJ for Notaries is an obligation to identify and verify the identity of clients or users of Notary services. This is certainly in line with Law Number 8 Year 2010 on the Prevention and Eradication of ML, which requires Notaries to report any suspicious financial transactions to the Financial Reporting and Analysis Center (PPATK) through the Go-AML Application.

However, in reality, there are still many Notaries who are reluctant to apply this principle due to the Notary's confusion to carry out his obligation to maintain confidentiality regarding the contents of the deed and the information he obtained in the process of making a deed in accordance with Article 16 paragraph (1) letter F of the UUJN or the Notary's obligation to make a report on a transaction that is deemed suspicious to PPATK.<sup>18</sup> Based on Article 30 paragraph (1) Permenkumham

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<sup>17</sup> Halif, "Penyelesaian Tindak Pidana Pencucian Uang Yang Tidak Dibuktikan Terlebih Dahulu Tindak Pidana Asalnya," *Era Hukum - Jurnal Ilmiah Ilmu Hukum* 14, no. 2 (2016): 245, <https://doi.org/10.24912/era>.

<sup>18</sup> Annisa Septia Puspareni and Fifiana Wisnaeni, "Relevansi Penerapan Prinsip Mengenali Pengguna Jasa Terhadap Kewenangan Notaris," *Notarius* 16, no. 2 (August 31, 2023): 755, <https://doi.org/10.14710/nts.v16i2.41360>.



Number 9 Year 2017 that Notaries who do not implement PMPJ may be subject to administrative sanctions. Furthermore, Article 30 paragraph (2) explains that the types and procedures for imposing sanctions are carried out based on the provisions in the UUJN. Administrative sanctions based on the UUJN can be in the form of written warnings, temporary dismissal, respectful dismissal, and dishonorable dismissal. So it can be concluded that the legal consequences for Notaries who do not carry out PMPJ Notaries can be held accountable administratively in the form of administrative sanctions in the form of written warnings, temporary dismissal, respectful dismissal and dishonorable dismissal.<sup>19</sup>

Notaries in this case certainly experience a legal dilemma due to the authority and obligations of a Notary contained in the UUJN. Article 16 of the UUJN which explains the obligations of a Notary who must keep his deed confidential. From the obligations in Article 16 mentioned above in letter f which requires the Notary to keep his deed confidential. In addition to Article 16 of the UUJN, there is a notary authority in Article 15 of the UUJN. Of course in this case it is certainly not in line with the provisions of PP No.43 of 2015, because Notary when viewed from the point of view of the UUJN highly upholds the formal truth in carrying out its position. However, when looking at the provisions of PP No.43 of 2015 Article 3 which requires Notaries to report as well as in the Minister of Law and Human Rights Regulation Number 9 of 2017 concerning the Application of the Principles of Service users for Notaries. Which is where the Notary must know about the source of funds of his penghaap. Of course, in these conditions, many Notaries question the conditions of implementing PP 43 of 2015 by obliging to report their deeds to PPATK. Then Permen No.9 of 2017 concerning the application of the principle of service users for Notaries, in the candy which requires Notaries to identify the source of funds.

Talking about identifying the source of funds, of course here the Notary is required to find out about the source of funds of the confrontation, this is certainly beyond the authority of a Notary from what is specified in the UUJN. The notary must investigate about his client so that he can guarantee that the source of funds is halal. It is as if the notary is led to become an investigator of his own client. If the Facilitator has been able to complete the formal requirements determined by the law, then on that basis it can be used as a basis by the Notary to carry out legal actions agreed by all parties. Basically, it is not required for the notary to explore the material truth, it should be if doubts and irregularities arise from the document data provided or shown for the requirements of making the parties' deeds. Then the

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<sup>19</sup> Puspareni and Wisnaeni, 756.





Notary is obliged to dig deeper into the material truth of the parties' documents that he has obtained. This needs to be done so that the principle of prudence of the Notary in identifying users of his services is well achieved. If necessary, the Notary can avoid or cancel to start preparing an authentic deed, so that the principle of caution by the Notary can be implemented properly, knowing the parties and causing legal problems in the future can be prevented.<sup>20</sup>

The principle of trust is a principle that states that the office of notary is based on a relationship of trust between the notary and his client. Notaries mainly work and get honorariums from their clients who use notary services on the basis of trust, so every notary needs to continue to maintain the mandate by maintaining and maintaining public trust in him. In connection with the implementation of law enforcement in the practice of the position of Notary as the reporting party in this research studied in Malang City. And in this study after conducting questionnaires and interviews with several Notaries in Malang City, the answers and responses from the respondents and resource persons in this study said what was actually experienced.

Referring to the results of the questionnaire that has been conducted shows that the implementation of PMPJ carried out in the position of Notary is said to be less effective, because basically the Notary upholds formal truth, which means that the Notary only writes formal data. Then the nature of the Notary is passive in the sense that the Notary's position only constatarizes the deed, the Notary is not an office that can pry into the confrontation regarding the income earned. Another reason is that PMPJ is considered too invasive or too complicated for users. If user recognition requires collecting too much data, it will cause inconvenience to service users. Furthermore, PMPJ implementation requires additional resources and costs for identity verification and transaction monitoring. For some Notaries, especially for small or medium-sized Notaries, Notaries who tend to be new, can be an administrative burden and cost that becomes a challenge. As for the disadvantages faced by the counterparty, the reporting of suspicious transactions by the Notary may negatively affect the counterparty's reputation. Information about such reporting may become public, especially if the case involves important parties or gains media attention. Legal Consequences, the counterparty may face legal consequences if their activities are investigated and deemed unlawful. Even if the confronter is not found guilty, the legal process can cause stress, costs and other

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<sup>20</sup> Rosi Maryana, Endang Purwaningsih, and Irwan Santosa, "Peran Serta Notaris Dalam Pelaporan Transaksi Keuangan Mencurigakan Pendanaan Tindak Pidana Terorisme Di Era 4.0 Dan 5.0," *Jurnal Res Justitia: Jurnal Ilmu Hukum* 3, no. 1 (January 5, 2023): 133, <https://doi.org/10.46306/rj.v3i1.62>.



negative impacts. Business risks, if a whistleblower is involved in their business, including the potential loss of contracts, clients or financial losses due to a negative image.

Conversely, the Notary also suffers losses, counterclaims, even though reporting is protected by law, there is a possibility that a litigant or related party who feels aggrieved may file a civil suit or lawsuit against the Notary. The result can involve legal fees and reputational impact. Reporting suspicious transactions may get the Notary involved in controversial situations, especially if the case receives public attention. This may affect the professional reputation of the Notary in the eyes of the client or the public. The occurrence of tension some clients may feel dissatisfied or angry if they are reported which may damage the working relationship and result in loss of clients.

The author's next resource person, Arini Jauharoh, S.H., M.kn. who currently serves as Chairperson of the Malang Raya INI Regional Pengda, stated that she knew about the obligation of Notaries to keep deeds confidential and knew about the existence of PMPJ in the position of Notary, she also said that with the development of the era, the duties carried out by a Notary are also quite developed, one of which is having to deal with the problem of Money Laundering Crimes or commonly referred to as TPPU. Mrs. Arini Jauharoh said that: "In the application of PMPJ by requiring Notaries to report, of course there is a good side, but on the other hand, of course this is quite contrary to the obligations of the Notary position and the UUJN. The current condition of the government has shown its seriousness in eradicating money laundering and money laundering is a case that often occurs lately, of course in this TPPU action often requires Notary services to authorize, especially in terms of property purchases. However, in its application, there should be a law that regulates the application of PMPJ, for example, before facing the Notary, the face should have been declared free from the alleged TPPU authorized by an institution, so that the Notary does not appear to be investigating his client and creates tension between the Notary and his client." <sup>21</sup>

The author's next resource person, R. Imam Rahmat Sjafi'i, SH, M.Kn. as the former Chairperson of Pengda INI Malang Raya for the 2020-2023 period, also stated that he was aware of the PMPJ which was often debated in its implementation. For the sake of interest and if you look at the essence of the regulation, it will be a legal protection for Notary, so as to avoid TPPU. However, in practice there are several obstacles experienced because not everyone

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<sup>21</sup> Arini Jauharoh, Hasil wawancara bersama dengan Arini Jauharoh, S.H.,M.kn., September 29, 2024.



understands related to TPPU, PMPJ so that it requires Notary to explain to the parties. Mr. R. Imam Rahmat Sjafi'i, SH, M.Kn also gave his views on this, in the interview he said that: "the provisions regarding mandatory reporting to PPATK and implementing PMPJ do exist, but the implementation is still not effective. Regarding the obligation of Notaries to report and implement PMPJ so that the Ministry of Law and Human Rights conducts socialization or audits again from the number of Notaries in Malang City. then from that only 10% (ten percent) have implemented PMPJ, almost all of them still have not reported, which means that this implementation still seems less effective." He continued that the implementation of PMPJ is required in the position of Notary but its implementation is still less effective perhaps due to lack of socialization, then also not just socialization but all practice or training directly.<sup>22</sup>

Referring to the results of interviews and questionnaire surveys conducted by the author hereby assumes that in the application of PMPJ by requiring Notaries as reporting parties to PPATK. It is still not fully effective, the authority of the Notary based on the UUJN is a little contradictory to what is regulated in PP No. 43 of 2015 concerning the reporting party in the prevention and eradication of Money Laundering Crimes. However, to still be able to reduce the existence of Money Laundering Crimes, it is better if the notary has been declared free from the alleged TPPU authorized by an institution, so that the Notary does not seem to investigate his client and cause tension between the Notary and his client. Thus there is a need for a regulation governing the establishment of an institution under the auspices of PPATK which is devoted to analyzing or investigating transactions that will be carried out by Notary. So that the Notary is not impressed to investigate the party or user of Notary services. Which creates tension between the Notary and the party or user of Notary services.

### **Obstacles Experienced by Notary Position Holders in the Practice of Notary as a Reporting Party for the Prevention of Money Laundering Crimes in Article 3 of PP No.43 of 2015 in Malang City**

The main problem of law enforcement actually lies in the factors that may affect it. These factors have a neutral meaning so that the positive or negative impact lies in the content of these factors. These factors include the law itself, law enforcement factors, community factors, and cultural factors. The five factors are closely interrelated, because it is the essence of law enforcement as well as the

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<sup>22</sup> R. Imam Rahmat Sjafi'i, Hasil wawancara bersama dengan R. Imam Rahmat Sjafi'i, SH., M.Kn., September 28, 2024.



benchmark of the effectiveness of law enforcement.<sup>23</sup> Law enforcement always involves humans or individuals in it and also involves human behavior. The law cannot be upheld by itself, which means that the law is unable to realize what is stated in the legislation. In terms of law enforcement, it certainly needs intermediaries in realizing legal objectives. In this case, seeing the breadth of the duties of the Notary position holder as previously discussed above, where the Notary's duties are the most directly related to the community as his client.

The inclusion of the Notary as a reporting party in PP No.43 of 2015 symbolizes the work done by the Notary at this time is not only making deeds in accordance with his authority in the UUJN. Such as having to recognize the source of funds of the confronters, having to make sure that the funds used are clean money that does not come from illicit proceeds. Everything that is done certainly has a high enough risk, the Notary must work hard in investigating his clients. Notary in this case as a law enforcer, namely in his role as a reporting party, it is not impossible for conflicts to arise, or obstacles in carrying out his position as a Notary. At the same time, his role is to report if there is a criminal act of money laundering committed by his attendants. In reality, this implementation is very difficult to do, of course, seeing the position of the Notary which is quite suit because it must open the confidentiality of the account.

The state seeks to create legal protection and certainty for the community, therefore there are several laws and regulations that determine a legal act requires a Notary in making an authentic deed. Together with the development and growth of the economy, there are various kinds of new and increasingly varied financial transactions and business transactions that involve Notaries. The need for written evidence that is authentic by business people or parties causes the notary profession to be prone to being dragged into TPPU cases. To effectively address the multifaceted challenges faced by Notaries as reporting parties in the prevention of money laundering, an integrated approach to capacity building and support must be prioritized. Comprehensive and specialized training programs should not only focus on the technical aspects of identifying suspicious transactions and conducting due diligence but also emphasize the legal and ethical implications of reporting obligations.<sup>24</sup> These programs must incorporate case studies, simulations, and

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<sup>23</sup> Soekanto, *Sosisologi Suatu Pengantar*, 76.

<sup>24</sup> Eliya, "Peran Notaris Dalam Pencegahan Tindak Pidana Pencucian Uang Di Era Digital Melalui Aplikasi Go Anti Money Laundering (GoAML)," *Jurnal Hukum To-Ra : Hukum Untuk Mengatur Dan Melindungi Masyarakat* 8, no. 3 (December 13, 2022): 275-92, <https://doi.org/10.55809/tora.v8i3.148>.



practical scenarios to enable Notaries to navigate real-world complexities with confidence and precision. Furthermore, training should highlight strategies for resolving conflicts between confidentiality obligations and reporting requirements, ensuring that Notaries can uphold their professional integrity while complying with legal mandates.<sup>25</sup>

In addition to training, the establishment of a robust support system is imperative. A centralized platform, such as a hotline or online consultation portal, should provide Notaries with real-time access to legal experts, compliance officers, and financial analysts. This platform can serve as a resource for addressing uncertainties or ambiguities in client transactions, offering tailored advice to mitigate legal and reputational risks. Such a support system would not only reduce the burden on individual Notaries but also enhance overall compliance with anti-money laundering regulations by ensuring uniform interpretation and application of laws across the profession.<sup>26</sup> Regular and systematic updates on regulatory changes, technological advancements, and emerging trends in money laundering are equally crucial. Workshops and webinars should include discussions on evolving typologies of money laundering, especially in sectors involving high-value assets such as real estate, which frequently require Notary involvement.<sup>27</sup> These updates should also address international developments, such as the Financial Action Task Force (FATF) recommendations, to prepare Notaries for cross-border legal and compliance challenges. Newsletters and other digital content could be leveraged to deliver continuous education, ensuring that Notaries remain adaptive to dynamic legal landscapes.

To further support Notaries, the government and relevant professional organizations should consider introducing standardized operating procedures (SOPs) tailored to the dual role of Notaries. These SOPs can provide clear guidelines for conducting client due diligence, identifying red flags, and balancing confidentiality with legal reporting duties. Additionally, the SOPs could include specific protocols for handling disputes or lawsuits arising from reporting activities,

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<sup>25</sup> Kartika Kismawardani and Luluk Lusiati Cahyarini, "Relevansi Notaris Sebagai Pihak Pelapor Dalam Upaya Pencegahan Tindak Pidana Pencucian Uang," *Notarius* 16, no. 3 (December 29, 2023): 1321-32, <https://doi.org/10.14710/nts.v16i3.42407>.

<sup>26</sup> Marthinus Mesak Mandala, "Prinsip Mengenali Pengguna Jasa Bagi Notaris Menurut Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor 9 Tahun 2017," *Jurnal Officium Notarium* 1, no. 2 (August 1, 2021): 317-26, <https://doi.org/10.20885/JON.vol1.iss2.art11>.

<sup>27</sup> Fatria Hikmatiar Al Qindy, "Tanggung Jawab Notaris Dalam Pencegahan Tindak Pidana Pencucian Uang," *Jurnal Risalah Kenotariatan* 4, no. 2 (August 9, 2023), <https://doi.org/10.29303/risalahkenotariatan.v4i2.125>.





thereby offering Notaries a structured framework to navigate potential legal repercussions. Lastly, fostering collaboration between Notaries, government institutions, and financial intelligence units like PPATK is essential for a holistic approach to combating money laundering. Regular engagement sessions, joint training initiatives, and collaborative audits can build trust and improve coordination between these stakeholders. By aligning the interests of all parties, such efforts can reduce the conflict inherent in the dual obligations of Notaries and enhance the overall effectiveness of the anti-money laundering regime in Indonesia.

Notaries in performing their official duties are regulated by the UUJN and adhere to the Notary code of ethics. One of the obligations of a Notary is regulated in UUJN Article 16 Paragraph (1) letter f, which is to keep secret the entire deed made and all information obtained for the making of the deed in accordance with the oath / pledge of office, unless the law decides otherwise. This means that a notary can keep the secret of the deed and the information of the parties available to him only if another law regulates him to disclose the secret. As stipulated in Government Regulation No. 43 Article 3 letter b, which includes notaries as parties involved in reporting in the prevention of money laundering, it is very contrary to the obligation of notaries to maintain confidentiality stipulated in the UUJN. This regulatory provision can potentially create legal problems for notaries. The adverse impact of problems stemming from disproportionate regulations on the office of notary, can be in the form of legal risks for notaries as office holders, namely:<sup>28</sup>

- (a) Criminal risk, for example due to a criminal report against the notary on charges of disclosing official secrets;
- (b) Civil risks in the form of material losses due to the notary having to incur additional costs as a result of regulations or changes in regulations that have an impact on the notary having to spend a certain amount of funds or costs.

In the implementation of the principle of recognizing service users for notaries, there are several obstacles experienced. Both internal constraints and external constraints. Based on internal factors, the obstacle experienced is that the principle of recognizing service users (PMPJ) is not included in Law Number 2 of 2014 concerning the position of Notary. So that concerns arise for a notary if implementing PMPJ will violate the provisions of the UUJN, of course this will conflict. Then it is difficult for the Notary to ask about the origin of the source of funds and what the purpose of the Service User is and it would not be ethical to ask

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<sup>28</sup> Maryana, Purwaningsih, and Santosa, "Peran Serta Notaris Dalam Pelaporan Transaksi Keuangan Mencurigakan Pendanaan Tindak Pidana Terorisme Di Era 4.0 Dan 5.0," 135.



to the roots, because the notary is not involved in the financial transactions carried out by the parties but the notary only records a legal action to be carried out in making a Deed. Notary said that the implementation of PMPJ on the source of funds is only based on information from service users without the accuracy of data proving that the source of funds originated from money laundering. Notary when implementing PMPJ is in the process of verifying documents by a Notary is still constrained to ascertain whether the Notary Service User's Identity Card (KTP) is Original / Fake, because the Notary cannot access directly to the Population Census to check the Original / Fake KTP.<sup>29</sup>

As for external factors, Notary as a public official appointed by the Government, must be implemented and must apply the Principle of Recognizing Service Users and the Principle of Prudence and protection of the public. Notary in carrying out his position on the Authentic Deed, not only pouring the agreement of the parties, but also must pay attention to the application of PMPJ which contains identification, verification and monitoring of each transaction, so that what is agreed upon by the Parties does not conflict with the Notary Position Law and other laws and regulations.<sup>30</sup> Of course, notaries face various obstacles in their practice as reporting parties in the prevention of money laundering (TPPU), some of which were identified based on the results of the questionnaire survey and interviews with resource persons:

The obstacles experienced by a Notary office holder who is required to report, one of which is that the confronter or the party who feels aggrieved may file a civil lawsuit or lawsuit against the Notary, of course this is a source of risk for the Notary. Then the next is the impact on the Notary's reputation and professional relationship between the Notary and the client. Reporting obligations that contradict the principle of confidentiality. Referring to the results of the questionnaire survey conducted to the unfortunate Notary said that the obstacles experienced by Notaries Although reporting is usually protected by law, the confronter or related party who feels aggrieved may file a civil suit or lawsuit against the notary. This can be a source of legal risk for the notary. Then reporting suspicious transactions may cause tension with clients or gain public attention, which may have an impact on the notary's reputation and their professional relationships.

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<sup>29</sup> Rendi Safitra, Nuzul Rahmayani, and Anggun Lestari Suryamizon, "Pelaksanaan Prinsip Mengenal Pengguna Jasa Oleh Notaris," *Sakato Law Journal* 1, no. 1 (2023): 93.

<sup>30</sup> Cindy Oktaviyani, Muhammad Hadin Muhjad, and Diana Haiti, "Asas Mengenal Pengguna Jasa Notaris Dikaitkan Dengan Tanggung Jawab Jabatan Notaris," *Banua Law Review* 4, no. 1 (May 23, 2022): 48.



## CONCLUSION

In the implementation of PMPJ by requiring Notary as a reporting party to PPATK. It is still not fully effective, the Notary's authority based on the UUJN is a little contradictory to what is regulated in PP No. 43 of 2015 concerning the reporting party in the prevention and eradication of Money Laundering Crimes. However, to still be able to reduce the existence of Money Laundering Crimes, it is better if the notary has been declared free from suspicion of TPPU authorized by an institution, so that the Notary does not appear to be investigating his client and causing tension between the Notary and his client. Thus, there is a need for a regulation governing the establishment of an institution under the auspices of PPATK which is devoted to analyzing or investigating the transactions that will be carried out by the Notary. So that the Notary does not seem to investigate the party or user of Notary services. Which creates tension between the Notary and the party or user of Notary services. In practice, notaries face a number of obstacles in carrying out this obligation. Notaries who have long-term relationships with clients may certainly feel uncomfortable or caught in a conflict of interest when having to report transactions. Concerned about violations of the Professional Code of Ethics, Notaries have an obligation to maintain client confidentiality and trust. In this situation, the notary feels trapped between the obligation to keep confidentiality and maintain professional ethics or having to report suspicious transactions.

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