JURNAL
POROS HUKUM
PADJADJARAN

P-ISSN: 2715-7202
E-ISSN: 2715-9418

Volume 7, Number 2, May 2026

DOI:
https://doi.org/10.24198/jphp.v7i2.2881

Article History:
Received: February 12, 2026
Revised: April 5, 2026
Accepted: May 19, 2026
Published: May 30, 2026

Link Publication:
https://jurnal.fh.unpad.ac.id/index.php/jphp/issue/archive

Publisher:
Magister of Laws
Universitas Padjadjaran

Implications of the Notarial Code of Ethics' Confidentiality Principle on Corporate Money Laundering Crimes

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ABSTRACT

The confidentiality principle is an integral part of the notarial code of ethics regulated under the Law on Notary Positions. This principle requires notaries to maintain the secrecy of everything regarding the contents of the deeds they produce. However, the confidentiality principle applied within the notary profession is often exploited as a loophole in corporate Money Laundering schemes. This study aims to analyze the implications of the confidentiality principle on the potential abuse of the notarial professional code of ethics in corporate money laundering, as well as to formulate the concrete roles and measures of notaries in preventing money laundering to minimize the potential abuse of such confidentiality principle. This study employs a normative juridical legal research method utilizing a statutory approach and a conceptual approach. The secondary data obtained were analyzed qualitatively. The results indicate that the notary's confidentiality principle is not absolute. There are legal exceptions that oblige notaries to report suspicious financial transactions indicated as money laundering. In exercising their professional duties, notaries are required to identify service users as part of the efforts to prevent corporate money laundering. This action does not conflict with the provisions of Article 16 paragraph (1) letter f of the Law on Notary Positions. If a notary becomes aware of a transaction indicating money laundering committed by the parties or their clients, they possess the legal authority to submit a report to the Indonesian Financial Transaction Reports and Analysis Center (PPATK).

Keywords: confidentiality principle; money laundering; notary.

INTRODUCTION

The notary profession has existed in Indonesia since the Dutch colonial era. Initially, the existence of notaries was a necessity for Europeans in Indonesia to create authentic deeds. Over time, the role of notaries has become increasingly necessary to provide valid and authentic written evidence for legal acts committed by the public. Several laws and regulations require that certain legal acts be documented in the form of an authentic deed.[1]

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[1] Aganita Dhaneswara, 'Keterlibatan Notaris dalam Pemberantasan Money Laundering Berdasarkan PP No. 43 Tahun 2015 Dikaitkan dengan Asas Kerahasiaan Terbatas', *Jurnal Lex Renaissance*, 5.1 (2020), pp. 161–78, doi: 10.20885/jlr.vol5.iss1.art10.

 P-ISSN: 2715-7202
E-ISSN: 2715-9418

In carrying out their responsibilities, notaries must not only comply with applicable laws but also consider moral principles, ethics, and social norms. This is due to the moral responsibility inherent in the notarial profession, which is considered noble. Notaries provide civil legal services to the public as representatives of the state. Notaries help ensure and protect the law by creating authentic deeds and other legal documents.[2]

The position of a Notary in Indonesia's positive legal system has been specifically regulated by law. The government, together with the House of Representatives, has enacted Law Number 2 of 2014 as an amendment to Law Number 30 of 2004 concerning the Position of Notary, hereinafter referred to as UUJN. Based on the provisions of Article 1 of Law Number 2 of 2014, a Notary is authorized to make authentic deeds and exercise other rights and obligations as stipulated in Article 1 number 1 of the law. A Notary is classified as a Public Official, namely someone who carries out some of the state's public functions, particularly in the realm of civil law. As a Public Official, a Notary is appointed and dismissed by the government and is given the authority and responsibility to provide services to the public in certain matters, because they also exercise power derived from state authority.[3]

In practice, notaries not only act as public officials authorized to issue legal documents, but also provide legal advice regarding requested legal acts and deeds. Economic development influences the growth of various types of financial transactions, which in turn create legal relationships between two or more parties. These various financial transactions require evidence in the form of authentic deeds, so that notaries play an important role in efforts to prevent and eradicate the crime of money laundering. According to Article 1 number 1 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, hereinafter referred to as the TPPU Law, the crime of money laundering is any act that fulfills the elements of a crime in accordance with the provisions of the law. In addition, the crime of money laundering can also be interpreted through several actions and criminal sanctions as regulated in Article 3 of the TPPU Law, which states that anyone who carries out actions such as placing, transferring, diverting, spending, paying, granting, depositing, taking abroad, changing the form, exchanging with currency or securities, or carrying out other actions with the proceeds of crime, can be subject to criminal sanctions. [4]

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[2] Muhammad Bintang Naufaldy and Gandjar Laksmana Bonaparta, 'Peran Notaris Sebagai Pihak Pelapor dalam Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang', *Unes Law Review*, 6.2 (2023), pp. 4802–16.

[3] Indah Permatasari Kosuma, 'Pertanggungjawaban Notaris dalam Penyisipan Klausul Pelepasan Gugatan Notaris Atas Akta yang Dibuatnya', *Notaire*, 4.1 (2021), p. 23, doi:10.20473/ntr.v4i1.25297.

[4] Muhammad Bintang Naufaldy, Gandjar Laksmana Bonaparta, 'Peran Notaris Sebagai Pihak Pelapor dalam Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang', *UNES Law Review*, Vol.6 No.2 Tahun 2023.

P-ISSN: 2715-7202
E-ISSN: 2715-9418

The government believes that corporations can be used as a means, either directly or indirectly, by criminals who act as beneficial owners of the proceeds of money laundering crimes originating from terrorism. The government also ensures that efforts to prevent and eradicate these crimes have been aligned with international standards. One form of the government's commitment to handling money laundering crimes is by establishing the Financial Transaction Reports and Analysis Center (PPATK). In addition, through the Regulation of the Minister of Law and Human Rights Number 9 of 2017 concerning the Implementation of the Principle of Recognizing Service Users for Notaries in Article 2 paragraph (1) it is stipulated that Notaries are required to apply the principle of recognizing Service Users. Notaries are required to understand the profile, intent and purpose of business relationships, and Transactions carried out by Service Users and Beneficial Owners through identification and verification and are aligned with the provisions of Presidential Regulation Number 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficial Owners of Corporations in the Framework of Preventing and Eradicating Money Laundering and Terrorism Financing Crimes.[5]

Notaries, based on their oath or promise of office, have an obligation to maintain the confidentiality of all information related to the deeds they draft and other information required in drafting the deeds. Based on the provisions of Article 16 paragraph (1) letter f of the UUJN, Notaries are required to maintain the confidentiality of all matters related to the deeds they draft and information obtained in the process of drafting the deeds. The explanation of this provision confirms that the obligation to maintain confidentiality aims to protect the interests of the parties involved in the deeds and documents related to them. The obligation to maintain confidentiality as regulated in laws and regulations has the potential to be misused by perpetrators of money laundering crimes to conceal their identities and transactional activities.

Provisions regarding confidentiality that cover the identities and transactions of the parties involved in the crime can provide legal protection to perpetrators, in accordance with the provisions of laws and professional codes of ethics. As a result, perpetrators of money laundering crimes often exploit the role of Notaries as gatekeepers to carry out their goals, by using Notary services as an effective means of disguising illegal activities. Perpetrators can hide behind confidentiality provisions that cover information regarding the parties involved in notarial work.[6]

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[5] Ismail , Ermanto Fahamsyah, and I Gede Widhiana Suarda, 'Kewajiban Notaris Mengenali Pengguna Jasa dalam Upaya Pencegahan Tindak Pidana Pencucian Uang oleh Korporasi', *Syntax Idea*, 3.10 (2021), p. 2131, doi:10.36418/syntax-idea.v3i10.1511.

[6] M. Syahrul Borman, 'Kedudukan Notaris sebagai Pejabat Umum dalam Perspektf Undang-Undang Jabatan Notaris', *Jurnal Hukum dan Kenotariatan*, 3.1 (2019), p. 74, doi:10.33474/hukeno.v3i1.1920.

 P-ISSN: 2715-7202
E-ISSN: 2715-9418

The principle of recognizing service users is applied by notaries in order to implement the provisions of Government Regulation No. 43 of 2015, as amended by Government Regulation No. 61 of 2021 and Regulation of the Minister of Law and Human Rights No. 9 of 2017, which require notaries to implement this principle. This principle aims to detect the use of notary services by perpetrators of Money Laundering (TPPU) through the identification, verification, and monitoring of the identity and documents of notary service users. However, notaries are again faced with obstacles related to the obligation to maintain client confidentiality, namely the confidentiality of all matters relating to the deeds they prepare.

Exceptions to this obligation to maintain professional confidentiality can only be applied in certain circumstances that legally override the absolute nature of notarial confidentiality for the sake of a higher public interest. Based on Article 8 paragraphs (1) and (2) of Government Regulation No. 61 of 2021, these specific circumstances include transactional situations in which the notary acts in the interests of, for, or on behalf of, the service user, and knows or reasonably suspects that the assets used are derived from the proceeds of crime. Specifically, the obligation to report Suspicious Financial Transactions (SFTs) is mandatory when a notary handles corporate transactions, including the operation and management of a company, as well as the establishment, purchase, and sale of legal entities. This waiver of the confidentiality code of ethics is reaffirmed in Article 8B of the same government regulation, which states that the reporting obligation is exempt from the provisions of laws and regulations or professional codes of ethics that regulate the obligation to maintain confidentiality in relationships with service users. Therefore, the protection of notary confidentiality is legally declared invalid when faced with efforts to prevent and eradicate money laundering crimes involving corporations. Notaries are among the professions required to report suspicious financial transactions (hereinafter referred to as SFTs) to the Financial Transaction Reports and Analysis Center (PPATK). Although there are exceptions, the obligation to report Suspicious Financial Transactions (SFTs) is often considered contrary to the principle of professional confidentiality that notaries must maintain.[7]

To resolve this conflict and provide legal certainty, a legal solution has been accommodated through Article 29 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering (TPPU) and Article 8B of Government Regulation No. 61 of 2021. These regulations provide full legal protection (immunity) for notaries who

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[7] 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*, 3.1 (2023), pp. 131–46.

P-ISSN: 2715-7202
E-ISSN: 2715-9418

act as whistleblowers. These articles guarantee that notaries cannot be prosecuted, either civilly or criminally, and are free from sanctions for violating the professional code of ethics for fulfilling their reporting obligations. Furthermore, the identity of the notary as the whistleblower must be kept absolutely confidential by the Financial Transaction Reports and Analysis Center (PPATK) and law enforcement officials to anticipate physical and psychological threats. This legal protection is a crucial solution, affirming that as long as a notary acts in good faith and in accordance with the PMPJ procedures in reporting indications of corporate money laundering, such action is considered a form of legal compliance, waiving any charge of violating official secrecy.

Law Number 8 of 2010 concerning the prevention and eradication of money laundering crimes explains that TKM includes financial transactions that do not match the profile, characteristics, or transaction patterns of the service users, financial transactions that are suspected of being carried out by service users with the aim of avoiding the obligation to report transactions as regulated in this law, financial transactions that are carried out or cancelled using assets that are suspected of originating from the proceeds of crime, or financial transactions that are requested by the PPATK to be reported because they involve assets that are suspected of originating from the proceeds of crime.[8] Part of this was revoked by Law No. 1 of 2023 concerning the Criminal Code, specifically Article 2 Paragraph (1), Article 3, Article 4, and Article 5 of Law No. 8 of 2010.

An example of a suspicious transaction can be seen when a notary suspects that the identity of the person appearing does not match the expected profile. Notaries must understand the background and origin of the funds from their service users to prevent money laundering and terrorism financing. The existence of Law No. 8 of 2010 creates problems for notaries, due to differing opinions among them (the Law on State Officials and the Code of Ethics, the Money Laundering Law, and Government Regulation No. 61/2021). On the one hand, according to the norms contained in the Law on State Officials and the Code of Ethics, notaries are required to maintain confidentiality regarding the contents of deeds and information obtained in the performance of their duties. However, on the other hand, the obligation to report suspicious financial transactions under Government Regulation 61/2021 is problematic, as this could conflict with the obligation to maintain professional confidentiality as previously stipulated.[9]

The notary profession can be considered complicit in money laundering if it fails to report suspicious financial transactions. This creates a dilemma regarding the notary's

[8] Pasal 1 Ayat 5 Huruf a Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang
[9] Muhammad Bintang Naufaldy, Gandjar Laksmana Bonaparta, *loc.cit.*

P-ISSN: 2715-7202
E-ISSN: 2715-9418

role in complying with these two provisions. On the one hand, notaries must adhere to the principle of reciprocal trust, while on the other hand, they are obligated to report suspicious financial transactions from their service users. As a result, notaries/PPATs face difficulties in fully fulfilling both obligations, ultimately resulting in suboptimal reporting to the PPATK. Furthermore, this obligation has the potential to lead to a loss of trust from their service users.[10]

Here, a normative gap exists between the confidentiality principle in the Notary Code of Ethics, protected by the Notary Law, and the legal obligation to eradicate financial crime. The problem identified in this research focuses on how this confidentiality principle has the potential to be abused in the form of money laundering (TPPU) by corporations. Therefore, examining the role and concrete steps notaries take in preventing money laundering (TPPU) is crucial for achieving transparency and integrity in the legal system.

RESEARCH METHOD

This research uses a normative legal research method to examine applicable legal norms and provisions.[11] The approaches used are the statute approach and the conceptual approach. The research sources rely on secondary data collected through literature review, both through reviewing printed literature and internet searches.[12] The secondary data is classified into three: primary legal materials in the form of binding laws and regulations; secondary legal materials in the form of scientific works, books and literature from relevant experts,[13] and tertiary legal materials in the form of dictionaries, articles, and encyclopedias to supplement the primary legal materials. All collected legal materials were then analyzed qualitatively to address the legal issues being studied.

DISCUSSION

Implications of the Confidentiality Principle on the Potential Misuse of the Notary Professional Code of Ethics in Money Laundering Crimes by Corporations

The obligations of a notary public refer to the attitudes, behaviors, actions, or activities that must be carried out by individuals holding the position of notary public. These obligations aim to maintain and uphold the integrity of the notary institution, while preserving the noble values inherent in the profession. The Notary Code of Ethics

[10] G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris (Notaris Regtemen)*, Erlangga, Jakarta, 1996, p.118.
[11] Irwansyah, *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2021). p. 133.
[12] Bambang Sunggono, *Metode Penelitian Hukum,* (Jakarta: Raja Grafindo Persada, 2010). p. 147
[13] Achmad Ali, *Menguak Tabir Hukum: Suatu Kajian Filosofi dan Sosiologis* (Jakarta: Gunung Agung, 2002). p.7.

 P-ISSN: 2715-7202
E-ISSN: 2715-9418

contains provisions regarding the obligations that must be adhered to by notaries in carrying out their duties, including the obligation to submit to supervision by the Supervisory Board. Furthermore, based on the UUJN, violations of obligations and prohibitions in office can be subject to administrative sanctions in the form of a written warning, temporary dismissal, honorable dismissal, or dishonorable dismissal.[14]

Article 16 paragraph (1) letter f of the UUJN stipulates that a Notary is required to maintain the confidentiality of all information related to the deeds he has prepared and information obtained in the process of making the deed, in accordance with his oath/promise of office, unless there are other provisions regulated by law. This obligation cannot be denied because the deed prepared by the Notary functions as a legal basis that determines the status of property, rights and obligations of a party. Therefore, the contents of the deed generally include information that is confidential for the parties involved, so that the Notary, as the party who prepared the deed, is not permitted to reveal the contents of the deed to the public without permission from the parties involved in the transaction. This is what is meant by the principle of confidentiality.[15]

The right of denial (verschoningsrecht) is legally affirmed as a notary's obligation in Article 16 paragraph (1) letter f of the Notary Law. Through this provision, the obligation to maintain the confidentiality of deeds is automatically attached as an absolute part of the implementation of the notary's office duties. As an obligation that must be carried out, the obligation of denial is different from the right of denial which can be used or not, while the obligation of denial must be obeyed and carried out by the notary, unless there is a law that requires the waiver of said obligation. The notary profession has a special right known as the Right of Refusal. The philosophical basis of the right of denial initially refers to Article 1909 paragraph (2) number 3 of the Civil Code which states that a person can be released from the obligation to be a witness if due to his position, job, or legal position he is required to keep something secret. However, in modern notary law, this concept has been significantly strengthened through Article 16 paragraph (1) letter f of the UUJN. The fundamental difference between the two lies in the nature of the norm; While the Civil Code constructs this instrument as a "right" to refuse to provide information, the UUJN elevates it to an absolute "obligation" to maintain confidentiality regarding all matters relating to the deed. Thus, the right to refuse (verschoningsrecht) is no longer merely an optional privilege for notaries, but

[14] Bagus Gede Ardiartha Prabawa, 'Analisis Yuridis Tentang Hak Ingkar Notaris dalam Hal Pemeriksaan Menurut Undang-Undang Jabatan Notaris dan Kode Etik Notaris', *Acta Comitas*, 2017, p. 98, doi:10.24843/ac.2017.v02.i01.p09.

[15] Vira Prabaswara Tunggadewi, Nabila Aisha Padmasari, and Syafrudin Prawiro Utomo, 'Peran Serta Notaris dalam Mencegah Tindak Pidana Pencucian Uang', *Jurnal Education and Development*, Vol. 9,.No. 1 (2021), p.180-186.

P-ISSN: 2715-7202
E-ISSN: 2715-9418

rather a statutory mandate derived from the oath of office. This legal protection aims to maintain the confidentiality of the contents of the deed and protect the information of service users, as the collapse of a notary's ability to maintain confidentiality will automatically destroy public trust in the integrity of the notary profession.[16]

Notaries are prohibited from testifying regarding the contents of the deeds they drafted because the right of recusal for notaries is a legal obligation that, if violated, can be subject to administrative sanctions and even criminal penalties. However, this obligation to maintain professional secrecy is legally exempted when dealing with Article 8B of Government Regulation Number 61 of 2021 in conjunction with Article 29 of Law Number 8 of 2010. This public legal instrument emphasizes that the obligation to report Suspicious Financial Transactions (TKM) regarding suspected money laundering by corporations overrides the professional code of ethics and professional secrecy of notaries. Thus, reporting TKM to the Financial Transaction Reports and Analysis Center (PPATK) is not categorized as a violation of the right of recusal, but rather the fulfillment of a public legal obligation that receives full legal protection from civil and criminal prosecution. Their position as witnesses in civil cases gives notaries the right to request exemption from the obligation to testify. This is because the notary's position requires them to maintain the confidentiality of deed information, as regulated in Article 1909 paragraph (2) number 3 of the Civil Code.[17]

The principle of confidentiality can be a loophole for certain parties to abuse the Notary's code of ethics, which in turn can facilitate the commission of certain crimes, such as money laundering, which frequently occurs in Indonesia. Money laundering is an attempt to hide or disguise money or funds obtained from criminal activities, so that the assets appear to be legally legitimate. Money laundering can be carried out in various ways, such as placing, transferring, diverting, spending, paying, donating, depositing, taking abroad, changing the form, exchanging for currency or securities, or carrying out other actions against assets known or reasonably suspected to originate from criminal acts. If a party involved in money laundering requests the assistance of a Notary to prepare a deed, the Notary may be considered to be an accomplice in the crime. Therefore, in carrying out their duties, Notaries are required to apply the principle of prudence in order to know or suspect that their clients are involved in criminal acts and request assistance in concealing their assets.[18]

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[16] Dhaneswara, 'Keterlibatan Notaris dalam Pemberantasan Money Laundering Berdasarkan PP No. 43 Tahun 2015 Dikaitkan dengan Asas Kerahasiaan Terbatas'. *Lex-Renaissance*, vol 5 No.1 Tahun 2020.
[17] *Ibid*.
[18] Nadya Yusvira and Fitra Deni, "Perlindungan Hukum terhadap Notaris yang Melaporkan Pihak-Pihak dalam Akta yang Terindikasi Tindak Pidana Pencucian Uang (TPPU)" *Rewang Rencang: Jurnal Hukum Lex Generalis* 6, no. 4 (2025): 1–44..

P-ISSN: 2715-7202
E-ISSN: 2715-9418

A real-life example of a conflict between compliance with the code of ethics/UUJN and the obligation to report TKM (Corporate Financial Transactions) can be illustrated by the abuse of corporate establishment by a shadow shareholder (nominee). A notary was approached by a client seeking to establish a Limited Liability Company (PT) with an initial cash capital deposit of IDR 50 billion. Based on the PMPJ (Know Your Customer) procedure, the notary found strong indications that the client was merely a housewife with no financial capacity to manage the funds, which in fact belonged to her husband, a public official under scrutiny for alleged corruption.

In this dilemma, a clear clash of norms arose for the notary. On the one hand, according to professional ethics and Article 16 paragraph (1) letter f of the UUJN, the notary is bound by an absolute obligation to maintain the confidentiality of all corporate establishment documents and is prohibited from disclosing them to outside parties. However, on the other hand, the TPPU Law imperatively categorizes these irregular transactions as Suspicious Financial Transactions (TKM), which must be reported to the PPATK without the client's knowledge. This conflict often raises psychological and legal doubts for notaries in the field regarding the safe limits of professional secrecy.

The legal consequences and sanctions facing notaries in these cases depend heavily on the legal decisions they make. If a notary chooses to remain passive, hiding behind professional secrecy to protect the client's well-being, and intentionally failing to report the alleged misconduct, they may face severe administrative sanctions ranging from temporary suspension to a proposed revocation of their professional license by the Ministry of Law and Human Rights based on the recommendation of the Financial Transaction Reports and Analysis Center (PPATK). Furthermore, if the corporation is later proven to be a tool for money laundering, the notary who deliberately remains silent could face criminal sanctions under Article 5 of the Money Laundering Law for allegedly assisting in concealing illegal assets.

Conversely, if a notary decides to report but errs in implementing the procedure, for example by leaking the reporting information to the client or the public, this tipping-off is categorized as a serious violation of the Notary Code of Ethics and the Notary Law. Due to this negligence, the Notary Supervisory Board (MPN) and the Honorary Council of the Indonesian Notary Association (INI) have full authority to impose administrative sanctions in the form of written warnings, suspension of professional membership, and dishonorable dismissal because they are deemed to have damaged the dignity and public trust which are the main pillars of the notary profession.In carrying out their duties and functions, notaries require legal protection against actions that may be taken by other parties who attempt to exploit the notary profession to engage in money laundering.

P-ISSN: 2715-7202
E-ISSN: 2715-9418

The obligation to maintain professional confidentiality is not absolute, as there is an exception that states "unless the law stipulates otherwise." With this exception, the obligation to maintain professional confidentiality can be set aside due to a mandatory statutory order (dwingend recht). The normative conflict between the UUJN and the TPPU Law—both of which have the same status as laws—is resolved through the principle of lex posterior derogat legi priori, where the provisions of the more recent TPPU Law (Law No. 8 of 2010) override the confidentiality provisions in the UUJN (Law No. 30 of 2004). Furthermore, philosophically, the principle applies that public law, which protects the interests of the wider community from extraordinary crimes such as money laundering, must take precedence over private law, which protects the confidentiality of the relationship between notaries and clients. Thus, the exclusion of official secrecy has a strong legal basis and is theoretically valid.[19]

The obligation not to disclose confidential information inherent in notaries, as stipulated in Article 44 paragraph (2) and Article 16 paragraph (1) letter e of the Notary Law, has an exception if there are statutory provisions that explicitly require notaries to submit information or statements to authorized parties. Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes forms the basis for this exception, the implementation of which is further elaborated in Government Regulation No. 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes.

Notaries are individuals who report any indication of unclear transactions, as stipulated in Article 3 of Government Regulation No. 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes. However, the implementation of the notary's role as reporting party in money laundering cases often creates a dichotomy with the notary's constitutional obligation to guarantee the confidentiality of information related to their position.

Government Regulation No. 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering, when examined through the perspective of the limited confidentiality principle, has the potential to conflict with the fundamental confidentiality principle for the notary profession. However, this confidentiality principle can be considered to be overridden for the greater good, given that money laundering is categorized as an extraordinary crime that has a significant impact on the stability and financial security of the state. In certain situations, waiving the obligation not to disclose information can be justified on the basis of the public interest and as an implementation of statutory mandates. Article 28 of Law No. 8 of 2010

[19] Elrika, Benny Djaja, 'Antisipasi Tindak Pidana Pencucian Uang Berkaitan dengan Profesi Notaris dan Pejabat Pembuat Akta Tanah (PPAT)', UNES Law Review Vol 6 No.4 Tahun 2024, pp. 11060–66.

 P-ISSN: 2715-7202
E-ISSN: 2715-9418

concerning the Prevention and Eradication of Money Laundering explicitly excludes confidentiality provisions that apply to reporting parties. Furthermore, Article 45 of the same law also regulates the conditions for waiving the obligation to deny. The Financial Transaction Reports and Analysis Center (PPATK) argued that the inclusion of notaries as reporting parties in Government Regulation Number 43 of 2015 does not violate the principle of confidentiality, referring to the provisions of Article 28 and Article 45 of Law Number 8 of 2010 which clearly state that confidentiality obligations can be excluded in certain contexts.

The Role and Steps of Notaries in Preventing Money Laundering to Minimize the Potential for Abuse of the Confidentiality Principle

Notaries are required to consistently apply the principle of prudence in carrying out their duties. This principle reflects professionalism, aimed not only at protecting notaries in carrying out their profession but also at preventing problems arising from the deeds they draft, especially if those problems have the potential to result in criminal sanctions. One example of a notary's prudence is reporting to the Financial Transaction Reports and Analysis Center (PPATK) if they become aware of or suspect suspicious financial transactions that could be indicative of money laundering.[20]

To facilitate the implementation of reporting obligations, the Financial Transaction Reports and Analysis Center (PPATK) has issued Regulation Number 3 of 2021. Reporting of suspicious financial transactions is done through the GRIPS (GoAML Reporting and Information System) application. Access to this application requires prior registration with a notary. The reporting officer can complete the suspicious financial transaction report using two methods: manual data input or uploading files in Microsoft Excel format. Furthermore, suspicious financial transaction reports must be submitted electronically through the GRIPS application, which is transmitted via telecommunications networks directly to the PPATK database via a web-based platform. The report must contain information relevant to the financial transaction deemed suspicious, in accordance with applicable laws and regulations.[21]

The subject of the crime of money laundering can be seen based on the provisions of the TPPU Law, which includes individuals and corporations. Any individual or corporation, regardless of physical presence within or outside the jurisdiction of the Unitary State of the Republic of Indonesia, who is proven to be involved in conspiracy,

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[20] Hartanti Sulihandari, Nisya Rifiani, *Prinsip-Prinsip Dasar Profesi Notaris Berdasarkan Peraturan Perundang-Undangan Terbaru*, Cetakan Pertama, Dunia Cerdas, Jakarta, 2013, p. 2-3.

[21] Vira Prabaswara Tunggadewi, Nabila Aisha Padmasari, Syafrudin Prawiro Utomo, 'Peran Serta Notaris dalam Mencegah Tindak Pidana Pencucian Uang'. *Jurnal Education and Development,* Vol.9 No.1 Tahun 2021.

P-ISSN: 2715-7202
E-ISSN: 2715-9418

assisting in committing, or carrying out actions that lead to the crime of money laundering, may be subject to criminal sanctions equivalent to the provisions stated in Article 3, Article 4, and Article 5 of the TPPU Law. The definition of "Any Person" is explicitly stated in Article 1 number 9 of the PPTPPU Law, which articulates it as "individual or corporation".[22]

Article 5 paragraph (1) of the TPPU Law provides an exception to criminal liability for reporting parties who carry out reporting obligations in accordance with statutory provisions. The context of money laundering crimes committed by corporations, as regulated in Articles 3, 4, and 5 of the PPTPPU Law, allows criminal sanctions to be imposed on the corporation itself and/or individuals who have control over the corporation. Furthermore, regarding parties who can be held criminally responsible in relation to crimes committed by corporations (corporate crime), this is regulated in Article 6 paragraph (2) of the PPTPPU Law, which states that criminal penalties can be imposed on corporations if the crime of money laundering:[23]

a. Carried out or ordered by corporate control personnel;
b. Carried out in order to achieve the corporation's aims and objectives;
c. Carried out in accordance with the duties and functions of the perpetrator or party issuing the order; and
d. Carried out with the intention of providing benefit to the corporation.

The significant impact of criminal sanctions and repressive measures against corporations and their controlling personnel, as stipulated in the PPTPPU Law, underscores the crucial importance of early prevention efforts. In this regard, notaries play a leading role through the mandatory implementation of the Know Your Service User Principle (PMPJ). Exceptions to notary secrecy regarding reporting Suspicious Financial Transactions (TKM) are a vital preventive measure. Through early detection of a corporation's legal profile and transparency regarding beneficial ownership, notaries can minimize the potential for misuse of the principle of secrecy, which corporations often use to conceal the origins of their assets. Therefore, notary compliance in reporting is not merely a legal formality, but a tangible contribution to the system for preventing money laundering crimes before they reach the legal realm.[24]

Corporations, whether legal entities or not, have an existence and legal standing that are equated with human legal subjects (persona standi in judicio). Based on the

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[22] Ivan Yustiavandana, Arman Nefi, Adiwarman, *Tindak Pidana Pencucian Uang di Pasar Modal*, Ghalia Indonesia, Bogor, 2010, p. 11.
[23] Devi Devi and Rizqy Syailendra, 'Upaya Notaris dan PPAT terhadap Tindak Pidana Pencucian Uang atas Pembelian Tanah dan Properti', *Jurnal Multidisiplin Indonesia*, 2.10 (2023), pp. 3497–504, doi:10.58344/jmi.v2i10.680.
[24] Yusvira and Deni, *Loc. Cit.*

 P-ISSN: 2715-7202
E-ISSN: 2715-9418

Organ Theory, corporations are not mere fiction, but rather a legal reality capable of manifesting their will through the physical actions of their managers, who act as corporate organs. Therefore, corporations have full capacity to control assets, bind themselves to obligations, and be held criminally responsible for any unlawful acts they commit. However, one significant obstacle in eradicating money laundering lies in the complexity of identifying the mens rea (evil intent) of corporations. This difficulty arises because perpetrators often abuse the principle of separation of assets and conceal the identity of beneficial owners behind complex corporate organ structures, making it highly difficult to prove the involvement of managers, whether on their own behalf or for the benefit of the corporation.[25]

Currently, the crime of money laundering, whether committed by individuals or corporations, shows an increasing trend and results in substantial state losses. Therefore, identifying parties who have an obligation to report such crimes is essential. The Law on the Prevention and Eradication of the Crime of Money Laundering has classified the categories of Reporting Parties as stated in Article 17 paragraph (1) letters a and b, which include Financial Service Providers (PJK) and Providers of Goods and/or Other Services (PBJ). In addition, in accordance with the provisions of Article 17 paragraph (2) of the PPTPPU Law, certain professions are also designated as Reporting Parties, as detailed in Article 3 of Government Regulation of the Republic of Indonesia Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of the Crime of Money Laundering (PP Number 43 of 2015). Based on this regulation, notaries are included in the group of professions that have an obligation to report all indications of the crime of money laundering. This obligation includes the implementation of anti-money laundering and terrorism financing programs, namely:[26]

1. Implementation of the Know Your Service User Principle (PMPJ).
2. Submission of Suspicious Financial Transaction Reports (LTKM) to the Financial Transaction Reports and Analysis Center (PPATK).

The User Identification Principle (PMPJ) is a mechanism implemented by the Reporting Party to gain a comprehensive understanding of the background and identity of the Service User, monitor their transaction activities, and report these transactions to the competent authorities, in this case the Financial Transaction Reports and Analysis Center (PPATK). The application of this principle serves as a risk mitigation measure that adapts to the dynamics of developments at the national, regional, and global levels,

[25] Ismail, Fahamsyah, and Suarda, 'Kewajiban Notaris Mengenali Pengguna Jasa Dalam Upaya Pencegahan Tindak Pidana Pencucian Uang Oleh Korporasi'.Syntax Idea, Vol.3 No.10 Tahun 2021.
[26] Herlina Hanum Harahap, 'Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang', *Amaliah: Jurnal Pengabdian Kepada Masyarakat*, 4.2 (2020), pp. 186–90, doi:10.32696/ajpkm.v4i2.551.

 P-ISSN: 2715-7202
E-ISSN: 2715-9418

particularly those related to the evolution of products, activities, and information technology. The primary objective of PMPJ is to minimize the potential for misuse of facilities and products from the financial sector and related institutions, particularly in the context of preventing and eradicating money laundering.

Habib Adjie stated that this general authority has certain limitations, namely:[27]

1. No exceptions apply to officials specifically designated by law.
2. Regarding deeds that must be drawn up or a notary public authorized to draw up as an authentic deed regarding all legal acts, agreements, and provisions required by laws and regulations or required by interested parties.
3. Regarding the identity of the legal subject (individual or legal entity) for whose benefit the deed is drawn up or for whose benefit the interested party requests it.

The notary's obligation to implement the Know Your Customer (KYC) principle, internationally known as the Know Your Customer (PMPJ), is a crucial element in the framework for preventing and eradicating money laundering. As a reporting party, the notary bears the imperative responsibility to screen and verify the legal profile of each service user in order to mitigate the risk of corporate misuse. This compliance is emphasized in Article 8 paragraph (1) of Government Regulation Number 43 of 2015, which requires the reporting party to submit a Suspicious Financial Transaction Report (LTKM) to the Financial Transaction Reports and Analysis Center (PPATK), both for transactions carried out for the benefit of and on behalf of the service user.[28]

Thus, in the context of a money laundering (TPPU) perpetrator utilizing notary services to conceal the source of funds derived from illegal activities, the notary cannot be categorized as a party facilitating the TPPU perpetrator's efforts to disguise or obscure the origin, location, destination, transfer of rights, or true ownership of assets known or reasonably suspected to be proceeds of crime. Legal protection for the notary profession can be summarized as follows:

1. Guaranteed protection from criminalization of money laundering as stipulated in Article 5 paragraph (2) of the Law on the Prevention and Eradication of Money Laundering (UU PPTPPU).
2. Guaranteed protection for the implementation of reporting obligations that are exempt from confidentiality provisions, as stipulated in Article 28 of the UU PPTPPU.

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[27] Rendi Safitra, Nuzul Rahmayani & Anggun Lestari Suryamizon', Pelaksanaan Prinsip Mengenali Pengguna Jasa Oleh Notaris, Jurnal Hukum Sakato, Vol 1 No.1 Tahun 2023, pp. 91–98.
[28] Muhammad Bintang Naufaldy, Gandjar Laksmana Bonaparta, *Loc. Cit.*

P-ISSN: 2715-7202
E-ISSN: 2715-9418

3. Guaranteed protection from criminal prosecution and/or civil lawsuits that may arise from the implementation of reporting obligations, except in cases of abuse of authority, as stipulated in Article 29 of the UU PPTPPU.
4. Reporting parties, officials, PPATK employees, investigators, public prosecutors, and judges are required to maintain the confidentiality of information obtained in connection with the implementation of the PPTPPU Law, as stipulated in Article 83 paragraph (1) of the PPTPPU Law.

Notaries, as an integral part of the establishment of corporations, both legal entities and non-legal entities, play a crucial role in preventing money laundering. In addition to acting as the legal entity's legal representative, notaries are also responsible for conveying information regarding the corporation's beneficial owners to the authorities. The government has regulated the implementation of the principle of recognizing beneficial owners through Presidential Regulation No. 13 of 2018 concerning the Implementation of the Principle of Identifying Beneficial Owners of Corporations in the Context of Preventing and Eradicating Money Laundering and Terrorist Financing Crimes, which requires corporations to identify their beneficial owners. Beneficial owners are defined as individuals who control a corporation or are entitled to receive profits from it, either directly or indirectly.

This regulation requires all corporations to appoint an official responsible for implementing the principle of recognizing beneficial owners and providing related information to authorized agencies. Article 4 paragraph (2) of Presidential Regulation No. 13 of 2018 outlines the criteria for beneficial owners, including those who own more than 25% of the shares or voting rights in a limited liability company, have the authority to appoint or dismiss members of the board of directors and commissioners, and receive direct benefits from the corporation. Likewise, in foundations, beneficial owners are individuals who own more than 25% of the initial assets or have influence in the management of the foundation. The role of a notary in implementing this principle is to fill in the beneficial owner column in the online corporation establishment form. In addition, notaries are also required to implement the beneficial owner principle, which includes identification, verification, and monitoring of transactions.[29]

The obligation of notaries to implement the principle of recognizing service users and the principle of beneficial ownership arises as a consequence of the determination of notaries as one of the professions required to report, as stipulated in Article 3 of Government Regulation Number 43 of 2015. The main objective of this obligation is to minimize the potential for money laundering. Notaries have the authority to report

[29] Ayu Fitriyani, I Ketut Oka Setiawan, 'Upaya Hukum Mengatasi Kesulitan Notaris Mengenali Transaksi Keuangan Mencurigakan dalam Pembuatan Akta', *Jurnal Hukum Sasana,* Vol 10 No.2 (2024), pp. 76–92.

P-ISSN: 2715-7202
E-ISSN: 2715-9418

corporations suspected of being involved in money laundering activities to authorized law enforcement officials. This reporting obligation essentially aims to provide legal protection to notaries in the event of the discovery of suspicious financial transactions (TKM). Thus, if there are still perpetrators of money laundering who use notary services to disguise the origin of funds obtained from illegal activities, notaries will not be considered as a party facilitating the perpetrator's efforts to conceal or obscure the origin, location, destination, transfer of rights, or true ownership of assets known or reasonably suspected to be the proceeds of crime. The provisions in Government Regulation Number 43 of 2015 as amended by Government Regulation Number 61 of 2021 expand the scope of reporting obligations and the implementation of risk-based PMPJ for notaries. This regulatory change provides assurance of certainty and legal protection for notaries when carrying out their preventive supervisory function regarding suspicious financial transactions.

CLOSING

The conflict between the obligation to maintain the confidentiality of notaries' positions under Article 16 paragraph (1) letter f of the UUJN and the reporting obligations under Articles 28 and 45 of the TPPU Law is resolved through a legitimate legal exception mechanism. Government Regulation No. 43 of 2015, as amended by Government Regulation No. 61 of 2021, serves as an implementing instrument providing legal certainty. Through this regulation, notaries' submission of Suspicious Financial Transaction Reports is positioned as a legitimate exception to official confidentiality, so that such reporting is not categorized as a violation of the right to rebuttal or the professional code of ethics.

This legal synergy underpins the implementation of notaries' preventive role in preventing money laundering, which is carried out through the application of the Know Your Customer principle and the testing of Beneficial Owner transparency in the corporate establishment process. This role is concretely realized through online reporting of irregular transactions to the PPATK using the Gathering Reports & Information Processing System (GRIPS) application. In order to minimize the opportunity for corporations to abuse official confidentiality, notaries are required to prioritize the principle of prudence, provide education regarding good faith data disclosure, and use their authority to refuse to make a deed if there are indications of transactions that deviate from legal provisions.

P-ISSN: 2715-7202
E-ISSN: 2715-9418

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