

Politics Law On Notary Provision Obligation to Implement Principles for Recognizing User Services (PMPJ)

Hasrul¹ and Maryanto²

This study aimed (1) to determine the relevant arrangements Principle Recognizing User Services, (2) To know the laws granting political liability to the Notary to apply the principle Recognizing User Services.

This type of research used by the author is a normative law research. The type of approach used is the approach of law (statute approach), then analyzed using descriptive qualitative analysis.

This research resulted in (1) the enactment of Act No. 10 of 2010 on the Prevention and Combating of offense of Money Laundering and Act No. 9 of 2013 on the Prevention and Eradication of the Financing of Terrorism, is a cornerstone of the principal legal for the application of the principle of Identifying Users services and reinforced by Government Regulation No. 43 Of 2015 on the Reporting Parties under the Prevention and Combating of Money Laundering. (2) Political granting legal obligation to apply the principle to the Notary Recognizing User Services is to assist governments to combat money laundering. This is because it turns out in addition to utilizing the financial institution, the money launderers also use certain professions in which the relationship between the professional and his client confidentiality is protected by law or code of conduct.

Keyword: Liability Notary; Money Laundering; Principles Recognizing User Services (PMPJ).

1. Introduction

Notary institution in Indonesia which is known today, is not an institution that was born of the Earth Indonesia. Notary institution into Indonesia at the beginning of the seventeenth century with its being Vereenigde *Oost Ind. Compaignie* (VOC) in Indonesia.³ Notary at that time did not have an independent nature, different from the present, because of the Notary at that time remains an employee of "*Oost Indische Compaigni*" formed for the benefit of the state or the Dutch government.⁴ Appointment of Notary in Indonesia, which was then called the Dutch East Indies Islands aims to regulate trade competition colonial background. This is done by mastering the field of trade monopoly and at the inauguration of the Dutch government control of colonies in the archipelago⁵.

On June 16, 1925, made the rule that a Notary must keep all of what he was doing as well as information received from a client, unless requested by the Raad van Yustitie or court. This regulation is called "Instructions for the Notary" consists of 10 chapters. Instruction for the Notary office regulations regarding Notary profession regulated by Instruction Voor de Notarissen Residerende in Nederlands Indie oriented Notariswet or known by the Notary Regulation. This Directive has been implemented in the Netherlands. For Indonesia enacted since the article is in notariswet Notary adopted Regulation coupled with the

¹Students Master of Notary Law, UNISSULA, Semarang. E-mail: hasrul.ansar@gmail.com

² Faculty of Law Unissula, Semarang.

³Habib Adjie, *Sanksi Perdata dan Administratif terhadap Notaris sebagai Pejabat Publik*, Cetakan Pertama, PT. Refika Aditama, Bandung, 2009, p.3.

⁴ A.A. Andi Prajitno, *Apa dan Siapa Notaris di Indonesia?*, Cetakan Pertama, Putra Media Nusantara, Surabaya, 2010, p.13.

⁵ *Ibid.*

required clauses that time.⁶

Rules for maintaining the confidentiality of office is still retained in the Act No. 2 of 2014 on the Amendment of Act No. 30 of 2004 concerning Notary (hereinafter UUJN), which in Article 4 of the oath of office Notary.

In the oath of Notary stated that the Notary has vowed to keep the contents of the deed and the information obtained in the execution of positions and will adhere to Article 54 UUJN, which states that Notaries can only give, show or reveal the contents of the deed, grosse deed, copy of the deed or citations deed to person of interest directly on the deed, heirs or persons who are entitled, unless otherwise stipulated by legislation.⁷

Minister of Justice and Human Rights issued Regulation of the Minister of Law and Human Rights No. 9 of 2017 on the Application of Recognizing User Services for Notaries (hereinafter abbreviated as Permenkumham 9 Of 2017) which in the rule requires that a Notary to report suspicious financial transactions to the the competent authority without the consent or knowledge of the user services in order to implement the principle Recognizing user Services (PMPJ).

Research Methods

In this journal writing as for the type of research that is used by the author is the kind of normative legal research, the research approach which aims to illustrate the fact or phenomenon that became the material or object of the research. Mainly conducted to examine the legal formulation without associated with a community approach, which is further supported by secondary data as a reference in the study were obtained from books to do with the writing of the study. The type of approach used is the approach of law (statute approach), then analyzed using descriptive qualitative analysis.

2. Results and Discussion

2.1 Recognizing the principle of setting User Services (PMPJ)

The enactment of Act No. 10 of 2010 on the Prevention and Combating of offense of Money Laundering (AML Law) and Act No. 9 of 2013 on the Prevention and Eradication of the Financing of Terrorism (Act TPPT), is a cornerstone of the principal legal to combat laundering money and terrorism financing.⁸

In the law above, provide a strong legal foundation for all parties concerned, in meeting the conditions required, namely the obligation application of Principle Recognizing User Services (PMPJ) and reporting for Reporting parties, Institutions Supervisory and Regulatory (LPP) issued regulations with regard to PMPJ, PPATK analysis and examination, and law enforcement officials are obliged to handle cases of money laundering in accordance with their responsibilities.⁹

Recognizing the principle of Service Users (PMPJ) is the principle applied by the Reporting Party to know the background and identity of User Services, to monitor transactions and report transactions to the competent authorities / PPATK.¹⁰

There are some terms which in essence is a notion of PMPJ, such as Principle User Services (Know Your Customer Principle) and Anti-Money Laundering and Combating the Financing of Terrorism. Use of each of these terms especially for compliance with the respective business characteristics of the Reporting Party. In addition, there is a term that

⁶ *Ibid.*

⁷ Sjaifurrachman dan Habib Adjie, *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*, Mandar Maju, Bandung, 2011, p. 252.

⁸ PPATK, *Modul E-Learning 2 Prinsip Mengenali Pengguna Jasa dan Pelaporan bagi Pihak Pelapor dan Pihak Lainnya*, p.3 accessed at <http://elearning/ppatk.go.id> on Monday, October 1, 2018, at 19:00.

⁹ *Ibid.*

¹⁰ *Ibid.*, p.1.

is actually an important part of PMPJ that customer due diligence (CDD) and enhanced due diligence (EDD).¹¹

Implementation PMPJ involving multiple parties or actors in which each of the parties or the actors have roles and responsibilities of different from each other, some of which are:¹²

- user Services; Service users are individuals or corporations that do business with the Reporting Party.
- Reporting parties; Reporting Parties are:
 - Financial Service Providers (FSPs): The Rapporteur; finance companies; insurance companies and insurance brokers; pension funds of financial institutions; the securities company; investment management; custodian; trustee; as a postal giro service providers; foreign exchange trader; organizer tool card payment; organizers of e-money and / or e-wallet; cooperatives engaged in savings and loans; pawnshops; companies engaged in commodity futures trading; or remittance business activity organizers.
 - Providers of Goods and / or other services (PBJ): Companies property / real estate agent; motor vehicle dealers; gems and jewelery traders / precious metals; art dealers and antiques; or auction.
- Supervisory and Regulatory Institutions; LPP is an institution that has the authority of supervision, regulation, and / or the imposition of sanctions against the Party Rapporteur, namely: Bank Indonesia, the Financial Services Authority, the Ministry of Communications and Information Technology (Kemkominfo), Agency for the Commodity Futures Trading (BAPPEBTI), the Ministry of Cooperatives and SMEs (Small and Medium Enterprises), and PPATK.
- PPATK; PPATK occupies 3 strategic position, namely as:
 - LPP for the Reporting Party has no LPP
 - LPP for the Reporting Party has not yet applying LPP obligations.
 - Financial intelligence agencies (Financial Intelligence Unit), which is mandated to prevent and combat money laundering.
- Other Related Agencies; Other relevant agencies is the agency mandated by the AML Law must submit a report to the PPATK. Reporting institutions are the Directorate General of Customs and Excise (DBC), which is obliged to make a report on the disposition of cash and / or other payment instruments across borders.

2.2 Politics Law Notary Provision Obligation to Implement Principles for Recognizing User Services (PMPJ)

In doing deeds or actions in government law, the rights and obligations of the authority of government knotted. Definition of rights according to Nicolai P. et al provides freedom to do or not do certain actions or deeds or sue the other party to perform certain actions (een recht in de vrijheid Houdt beapaalde feitelijke handeling om een op te na te verrichten latent, of de aanspraak op het verrichten handeling door een van een ander). While intended as a loading imperative obligation to do or not do actions or deeds (een een plicht impliceert verplichting eenbepaalde handeling om op te na verrichten tealten).¹³ According to Bagir Manan¹⁴, Rights and obligations of government officials to be equipped with the duties and authority of government officials can be implemented in a concrete legal actions or deeds, and can be accounted for either political, legal or social.

¹¹ *Ibid.*

¹² *Ibid.* p. 9-11.

¹³ Aminuddin Ilmar, *Hukum Tata Pemerintahan*, Identitas Unhas, Makassar, 2013, p.115-116.

¹⁴ *Ibid.*, p.119.

Further explained that among the duties and authority on the one hand with rights and obligations on the other hand have a relationship that is both functional one another so that the determination of the duties and authority of government will be measuring whether the rights and obligations are properly enforced or has occurred actions or deeds of government beyond the limits of the authority granted to him, or whether there has been a form of government actions or deeds abuse of authority. On the contrary, the rights and obligations allow government officials perform certain concrete actions or deeds. Without the rights and obligations attached to the assignment of authority of the government officials then of course all the duties and authority can not be realized concretely in the form of government actions or deeds.¹⁵

Notary is an example of the most frequent official act or acts of government directly to the public. In any action or actions that government, duties and authority as well as the rights and obligations must be clearly and expressly provided for in the legislation governing the position.

On August 4, 2017, the Minister of Law and Human Rights issued Regulation of the Minister of Law and Human Rights No. 9 of 2017 on the Application of Recognizing User Services for Notaries (hereinafter abbreviated as Permenkumham No.9, 2017). This rule is issued as a follow up of the action Reporting and Financial Transaction Analysis Center (PPATK) that includes the Notary as one Party Reporting as defined in Section 3 of Government Regulation No. 43 Of 2015 on The Rapporteur on the Prevention and Combating of Money Laundering (hereinafter abbreviated PP Reporting AML).

The consequences of the inclusion of a Notary as the complainant is then automatically the Notary also required to PMPJ in running position.

There are some things behind the need for the application of Principle Recognizing User Services (PMPJ) are:¹⁶

- Risk management; PMPJ Implementation is an important part of good risk management, especially the risk of reputation, operations, legal and concentration, which are interconnected with one another. In the case of well-executed risk management, among others through the application of PMPJ, the financial system is able to function well too and finally stability is maintained.
- Fulfillment of Obligations Provisions of Legislation; The enactment of Act No. 10 of 2010 on the Prevention and Combating of offense of Money Laundering (AML Law) and Act No. 9 of 2013 on the Prevention and Eradication of the Financing of Terrorism (Act TPPT), is a cornerstone of the principal legal to combat laundering money and terrorism financing.
- Principles of Good Corporate Governance (GCG)
 - Transparency (Transparency); Through the application of PMPJ, particularly the availability of information and supporting data of User Services, not only will obtain information which is material and relevant, but also can be the basis of transparency in the decision making process for the Party Reporting, whether to reject or business relations, severed the business relationship and suspend transactions for service users.
 - Accountability (Accountability); Every organ and level of management has duties and responsibilities in a clear, since the service user acceptance, verification, monitoring, identification and reporting. With clarity and implementation of the accountability function of organs / units within the reporting Party organizations have an impact on effective management.
 - Accountability (Responsibility); All activities or PMPJ run the application procedure,

¹⁵ *Ibid.*, p.119-120.

¹⁶PPATK. Op.cit. p.1-4

- adapted or integrated with the operations of the Reporting Party, fully in accordance with the legislation in force and the principles of sound management.
- Independency (independency); Industrial management or business activities of the Reporting Party run professionally without influence / pressure from any party.
 - Fairness (Fairness); Through the application of PMPJ, it will be met also a sense of justice and equality in fulfilling the rights of stakeholders arising under the agreement and the legislation in force.
 - Incentives in Fostering Relationships with User Services or Customer; By knowing the background and identity and monitor the transactions performed by users of services, will provide added value to the Reporting Party, especially in building good relationships with service users is beneficial from the business aspect. Against prospective service users, will continue to be safeguarded and improved its good relations.
 - Facilitate Management for Decision Making; PMPJ In the application, the availability of customer data or User Services, track record and a wide range of transactions, as well as administration or administration of documents of good information, can be used to conduct various studies (research) included in the research development of industrial enterprises Reporting Party. Data accuracy and data processing methods that will produce materials essential for managerial decision-making accurately and professionally.

Based on the above background, it is clear that the provision of legal political liability to the Notary to apply PMPJ is to assist governments to combat money laundering. Based on the research results PPATK¹⁷, Lawyers, notaries, land deed officers, accountants, public accountants, and financial planners vulnerable to be exploited by the perpetrators of money laundering to conceal or disguise the origin of the assets that are the result of a criminal act by way of hiding behind the confidentiality provisions of their professional relationship with Users services are governed in accordance with the provisions of the legislation.

This is in line with the recommendations issued by the Financial Action Task Force (FATF), which states that to certain professions do Suspicious Transactions for the benefit or on behalf of the Service User is obliged to report such Transaction to the Financial Intelligence Unit (in this case, is PPATK), The obligation to report by profession proficiency level has been applied in many countries and have a positive impact on the prevention and combating of money laundering.¹⁸

So, in addition to utilizing the financial institution¹⁹, the money launderers also use certain professions in which the relationship between the professional and his client confidentiality is protected by law or code of conduct.

The research results typology and cases of money laundering sticking to the surface, indicating that certain professions such as Solicitors, Attorneys, Accountants Financial Advisor, Fiduciaries and Notaries. Professional services rendered was manipulated by the perpetrators of money laundering to conceal the identity of the perpetrators and to distribute the profits derived from the crime.²⁰

¹⁷ See Explanation of the PP in the AML Reporting

¹⁸ *Ibid.*

¹⁹ Yunus Husein dan Roberts K., *Tipologi dan Perkembangan Tindak Pidana Pencucian Uang*, Rajawali Pers, Depok, 2018, p.3-4

²⁰ *Ibid.*

3. Closing

3.1 Conclusion

Based on the results of research and discussion that has the writer explained, it can be concluded as follows:

- The enactment of Act No. 10 of 2010 on the Prevention and Combating of Money Laundering offense and Act No. 9 of 2013 on the Prevention and Eradication of the Financing of Terrorism, is the main legal basis for the application of the principle Recognizing User Services and reinforced by Government Regulation No. 43 Of 2015 on the Reporting Parties under the Prevention and Combating of Money Laundering.
- Laws granting political liability to the Notary to apply the principle Recognizing User Services is to assist governments to combat money laundering. This is because it turns out in addition to utilizing the financial institution, the money launderers also use certain professions in which the relationship between the professional and his client confidentiality is protected by law or code of conduct.

3.2 Suggestion

- The government should clarify the legal protection for the complainant in this particular application for Notary PMPJ because also bound by the confidentiality obligations of his position so that the limits of each obligation can be measured clearly.
- The need for more intense efforts especially on the part of PPATK and the Ministry of Justice and Human Rights to explain and disseminate related to the implementation of this PMPJ to the Notary.

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