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The Validity Of The Additional Obligations Of The Notary Profession Through PP Number 43 Of 2015 Of The Notary As The Reporting Party

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ABSTRACT
The Indonesian government has enacted Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering, along with its implementing regulation, Government Regulation Number 43 of 2015 on Reporting Parties in the Prevention and Eradication of Money Laundering Crimes. This regulation designates Notaries as one of the reporting parties in Suspicious Financial Transactions related to Money Laundering (TFM), obligated to submit reports to the Financial Transaction Reports and Analysis Center (PPATK). Meanwhile, Article 16 paragraph (1) letter f of the Notary Law states that in carrying out their duties, Notaries must maintain the confidentiality of deed contents. Here, there is a contradiction between legal regulations. This study aims to examine and analyze the validity and legal consequences of the additional professional obligations for Notaries as stipulated in the Notary Law, supplemented by Government Regulation Number 43 of 2015, designating Notaries as reporting parties in TFM related to Money Laundering. The research indicates that the confidentiality duty of Notaries is not absolute; in other words, the obligation to maintain confidentiality in the Notary Law can be set aside by other laws, in this case, the Law on the Prevention and Eradication of Money Laundering through Government Regulation Number 43 of 2015, a directly authorized implementing regulation. The additional obligation as a reporting party cannot be considered a violation of the principle of notary confidentiality but rather a form of protection, with Minister of Law and Human Rights Regulation Number 9 of 2017 serving as an implementation of the prudence principle for Notaries in performing their duties. Furthermore, the legal consequences for Notaries, if they breach their duty as keepers of official secrets, may include criminal sanctions based on Article 322 of the Criminal Code and Law Number 43 of 2009 concerning Archives, civil sanctions under Article 1365 of the Civil Code, and administrative sanctions under Article 85 of the Notary Law. Additionally, if a Notary fails to report suspicious financial transactions resulting in criminal activities, the Notary faces the threat of punishment as regulated in Article 5 of the Law on the Prevention and Eradication of Money Laundering, which includes passive involvement in money laundering crimes (Article 55 of the Criminal Code) and active assistance in criminal activities (Article 56 of the Criminal Code).

Keywords: Notary Profession, PPTPPU, PPATK

INTRODUCTION

Referring to the Notary Position Law Number 2 of 2014 Article 1, it states that a Notary is a public official authorized to create authentic deeds and other authorities. An authentic deed, according to the law based on Article 1868 of the Civil Code, is "... a deed made in the form stipulated by law by or in the presence of a public official authorized to do so at the place where the deed is made." Article 1868 of the Civil Code interprets that for a deed to have the force of authentic evidence, there must be authorization from a Public Official, in this case, the Notary, to create authentic deeds based on the law.(Pramono, 2015)

A Notary is required not only to possess legal expertise but also to be grounded in responsibility and understanding of dignity and the duties assigned. The Notary

position is one of trust, and as a trusted individual, a Notary should uphold the confidentiality of their position by keeping confidential all information related to the creation of a deed. This aligns with the oath/promise that a Notary is obliged to utter and is also regulated in Article 16 paragraph (1) letter f of the Notary Law, which states: "In carrying out their duties, Notaries must keep confidential everything related to the Deed they create and all information obtained for the Deed's preparation according to the oath/promise of office, unless the law provides otherwise."

The use of the right to keep something related to the position is also regulated in Article 170 paragraph (1) of the Criminal Procedure Code, stating that those who, due to their work, status, dignity, or position, are obliged to keep secrets, can be requested to be exempted from using the right to provide information as witnesses, namely about matters entrusted to them. It is also emphasized in Article 51 paragraph (1) of the Criminal Code that "anyone who commits an act to implement the provisions of the law and performs an act to carry out the orders given by the authorized authority shall not be punished."

As a public official, a Notary is required to be responsible for the deeds they have created. If a deed created later gives rise to disputes, it needs to be questioned whether this is a mistake of the Notary or a mistake of the parties who did not provide honest information before the Notary or whether there was an agreement made between the Notary and the parties. If the deed issued by the Notary contains legal defects due to the Notary's negligence or intentional misconduct, the Notary must be held accountable.(H. Adjie, 2009)

In line with the rapid technological advancements, it influences development in various sectors, including politics, economics, and socio-cultural fields. In the advancement of knowledge, there are always both positive and negative impacts. One simple example of this expression is the discovery of nuclear energy for humans, on the one hand, it can be used for generating electricity that certainly helps human life, while on the other hand, nuclear energy can also be used as a weapon that can endanger human life. Similarly, with the development of legal knowledge impacting the phenomenon of the emergence of new types of crimes known as White Collar Crime. Various paradigms explain the existence of White Collar Crime, which is one of the typologies of crime. Various types of crimes committed by individuals, groups, or corporations can easily occur, one of which is the crime of money laundering that generates a significant amount of wealth or business transactions obtained from illegal activities. Money laundering, classified as a White Collar Crime, is fundamentally a crime with the characteristic of a single offense implicitly forming a double crime. This means that money laundering is a continuous crime, but its main crime is referred to as the originating crime involving a specific money-making model followed by the money laundering process.(Rahmat, 2019)

The situation becomes dilemmatic when a transaction obtained from the proceeds of money laundering exploits the presence of certain professions, such as Notaries, who are then utilized as gatekeepers to create authentic deeds as a strategy to avoid legal entanglements and hide the proceeds of crime by leveraging and seeking refuge in the confidentiality of the Notary's position. Through Article 3 of Government Regulation Number 43 of 2015 on Reporting Parties in the Prevention and Eradication of Money Laundering Crimes (PP 43 of 2015), which is derived from Article 17 paragraph (1) of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (hereinafter referred to as the AML Law),

specifically regulates who is categorized as a new Reporting Party to prevent and combat money laundering.(Dhaneswara, 2020). The additional substance regarding who is categorized as a Reporting Party includes: Advocates; Notaries; Land Deed Officials; Accountants; Public Accountants; and Financial Planners.

The steps taken by the government by including Notaries as reporting parties have sparked several debates and legal issues, one of which is that clients have the right to privacy protected by Notaries. In addition, Article 2 paragraph (1) and paragraph (2) of the Minister of Law and Human Rights Regulation Number 9 of 2017 concerning the Application of Principles in Recognizing Service Users for Notaries (Ministerial Regulation Number 9 of 2017), including Notaries, in reporting suspicious transactions, are obliged to exercise additional authority, namely, Notaries must apply the principle of recognizing service users by identifying and verifying the legal identity and monitoring transactions from their clients' funding sources used in connection with deed-making other than mandated by law.(Nurillah & Nashriana, 2020)

The existence of dual regulation of obligations derived from different regulations in a profession, such as the explanation above for Notaries who are essentially subject to primary norms or main regulations as regulated in the Notary Position Law. This main regulation imposes obligations to maintain the confidentiality of information and is supported by sanctions that use morality as a behavioral guideline. Meanwhile, in Article 3 of Government Regulation Number 43 of 2015, it is emphasized that Notaries, as reporting parties, are obligated to report suspicious transactions of money laundering to the Financial Transaction Reports and Analysis Center (PPATK). This can create legal uncertainty because a system must not contain regulations that contradict each other, and this is a crucial issue in this research.

Based on the above background, the main problem in this research is: What is the validity of the additional professional obligations for Notaries as stipulated in the Notary Position Law added through Government Regulation Number 43 of 2015, designating Notaries as reporting parties in suspicious financial transactions related to money laundering?

METHOD

In a research endeavor to discover and develop clarity in a body of knowledge, a research method is required. Using a research method facilitates the achievement of research objectives. Methodology is the procedure or approach to investigating a specific problem and is a way of collecting data from the researched issue to solve the problem. To obtain and gather such data and information, the author employs the following methods:

Normative Juridical Research Method, which can be interpreted as a scientific procedure to discover the truth based on the legal scientific logic from its normative side.(Johnny Ibrahim, 2012) Normative legal research is an analysis of legislation based on legal dogmatics, legal theory, and legal philosophy (Peter Mahmud Marzuki, 2011) Therefore, this thesis is normative juridical, used to identify issues related to the Addition of Notary Obligations Through Government Regulation Number 43 of 2015, where Notaries act as Reporting Parties in suspicious transactions of money laundering in connection with the Notary's Professional Secrecy, and analysis will be conducted based on legislation and literature studies (library research).

The research approach used in this study is as follows:

a. Statue Approach

The Statue Approach involves an examination of various legal regulations related to the research object.(Johnny Ibrahim, 2012) This approach is carried out by reviewing laws and regulations and all regulations related to the legal issues or research objects. Understanding the philosophical content behind the laws used allows the author to conclude whether there is a philosophical clash between the law and the issue at hand. The structure of norms in the form of a legal hierarchy or hierarchy of legislation, and the existence of norms in specific or general regulations, as well as whether the norms are in old or new legislation, should be considered in using the statute approach.(Diantha, 2016) The legislative approach in this research is conducted by examining the compatibility of legal rules between the Notary Position Law and the AML Law, as well as the Notary Position Law with Government Regulation Number 43 of 2015, and the Notary Position Law with the Minister of Law and Human Rights Regulation Number 9 of 2017. The researcher uses the legislative approach to assess the harmonization of legislation related to the notary's obligation to report suspicious financial transactions and the notary's obligation to keep the deeds secret.

b. Conceptual Approach

The Conceptual Approach is applied when there are no regulations governing the legal issues faced, relying on views or doctrines that have developed in legal science. This approach is important because an understanding of views or doctrines in legal science can serve as a foundation for building legal arguments when addressing legal issues. Views or doctrines clarify legal ideas by providing meanings of legal concepts, principles, and relevant legal principles related to the problem. In this study, the author uses the conceptual approach to examine legal science opinions and doctrines related to the notary's professional secrecy based on the Notary Position Law and the notary's obligation to report suspicious financial transactions of money laundering to PPATK as regulated in Government Regulation.

c. Case Approach

The Case Approach involves using cases to study the application of legal norms or rules in legal practice, especially regarding cases that have been decided, as seen in court rulings on cases that are the focus of the research. The cases focused on in the research serve as empirical evidence. However, in normative research, these cases are analyzed to obtain answers to the impact of normative dimensions in a legal rule in legal practice. The results of the analysis are then used as input for legal explanations. The author uses the case approach to examine the regulation related to Notaries being designated as reporting parties in suspicious financial transactions of money laundering to ensure it does not conflict with the notary's obligation to keep deeds secret. Therefore, real cases that have received court decisions and have legal force are needed for the legal issues in this study.

The legal materials used in this research are as follows:

a. Primary Legal Materials

Primary legal materials are binding materials or materials that have authority (Soerjono Soekanto & Sri Mamudji, 2005) The primary legal materials used by the author in this study include: Article 322 of the Criminal Code, Article 170 of the Criminal Procedure Code, Article 4 of Law Number 30 of 2004 Concerning Notary Position, Article 16 paragraph (1) letter f, Article 54 of Law Number 2 of 2014 Concerning Amendments to Law Number 30 of 2004 Concerning Notary Position, Article 17 of Law

Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes, Article 7 of Law Number 12 of 2011 concerning the Formation of Legislation, Article 3 of Government Regulation Number 43 of 2015 concerning Reporting Parties in Prevention and Eradication of Money Laundering Crimes, Article 8 of Government Regulation Number 61 of 2021 concerning Amendments to Government Regulation Number 43 of 2015 Concerning Reporting Parties in Prevention and Eradication of Money Laundering Crimes, Article 2 of the Minister of Law and Human Rights Regulation Number 9 of 2017 concerning the Application of Recognizing Service Users Principles for Notaries.

b. Secondary Legal Materials

Secondary legal materials provide explanations about this research in the form of legal facts, doctrines, legal principles, and legal opinions in literature, journals, research results, the internet, and scientific magazines

c. Tertiary Legal Materials

Tertiary legal materials provide guidance or explanations of primary and secondary legal materials, such as Legal Dictionaries and Encyclopedias. The theoretical framework is a framework of thought or a set of opinions and theories regarding a case or issue, serving as a basis for comparison or theoretical guidance in research.(M. Solly Lubis, 1994) The function of theory in research is to provide guidance for the study. Law serves as a tool to regulate social life, with the objectives of achieving justice (rechtsgerechtighrid), utility (rechtsutiliteit), and legal certainty (rechtszekerheid).(Achmad Ali, 2002).

The theories used as analytical tools are as follows:

a. Theory of Legal Certainty

Certainty is an inherent characteristic of law, especially for written legal norms. Law without legal certainty loses its meaning as it can no longer serve as a guide for everyone's behavior. Legal certainty is considered one of the goals of law, with historical discussions on this topic dating back to the concept of the separation of powers by Montesquieu. Normatively, legal certainty refers to the formulation and enforcement of a law precisely due to clear and logical provisions. Clarity means avoiding ambiguity (multitafsir), and logical implies that the norm becomes part of a system with other norms, avoiding conflicts. Legal certainty involves the clear, consistent, and suitable implementation of laws, unaffected by subjective conditions. Both legal certainty and justice are not just moral demands but factually characterize the legal system.(Cst Kansil, Christine, S.T Kansil, Engelien R, 2009)

Gustav Radbruch presented four fundamental aspects related to the meaning of legal certainty(Insolvensi, 2017), that is:

"Firstly, that law is positive, meaning that positive law is legislation. Secondly, that law is based on facts, meaning it is based on reality. Thirdly, that facts must be formulated clearly to avoid errors in interpretation, as well as being easily implemented. Fourthly, positive law should not be easily changed." Gustav Radbruch's opinion is based on his perspective that legal certainty is certainty about the law itself. Legal certainty is a product of the law, or more specifically, legislation. According to Radbruch, positive law that governs the interests of humans in society must always be obeyed, even if positive law is somewhat unfair.

In connection with the theory of legal certainty, a Notary, in performing their duties, is obliged to adhere normatively to legal rules related to all actions that will be taken and subsequently documented in a deed. Acting in accordance with the

applicable legal rules provides assurance to the parties involved that the deed made "in the presence of" or "by" the Notary complies with the existing legal norms. In the event of any issues, the Notary's deed can serve as a guide for the parties (Habib Adjie, 2009) Additionally, the theory of legal certainty is employed by the author as an analytical tool to scrutinize the issues regulating the validity of the additional obligations imposed on Notaries as reporting parties, which are only specified at the level of Government Regulations. When considering the legal hierarchy, Government Regulation Number 43 of 2015 is not equivalent to the Notary Law. Therefore, with clear legal certainty, adverse legal consequences arising from conflicting regulations can be minimized.

b. Legal Protection Theory

The presence of law in society is to integrate and coordinate conflicting interests. Therefore, law must be able to integrate them so that clashes of interests can be minimized as much as possible. Law functions as the protection of human interests, ensuring that human interests are safeguarded; law must be implemented professionally. This means that protection is an action or deed carried out in certain ways according to the law or prevailing regulations.

Legal protection can be considered as legal protection if it contains the following elements:

a) The government provides protection to its citizens.
b) Assurance of legal certainty.
c) Related to the rights of citizens.
d) The existence of legal sanctions for those who violate it.(Muchsin, 2003)

Legal protection is defined as a form of legal action or government action given to a legal subject in accordance with their rights and obligations, carried out based on positive law in Indonesia. Legal protection arises due to a legal relationship. A legal relationship is an interaction between legal subjects that has legal relevance or has legal consequences (the emergence of rights and obligations).(Soeroso, 2006) According to Satjipto Rahardjo, legal protection is interpreted as an effort to protect an individual's interests by allocating a human rights power to them to act in the interest of that person. Quoting Fitzgerald's opinion in his book "Ilmu Hukum," the meaning of the legal protection theory, according to Salmond, is that the purpose of law must be created to protect societal interests by integrating and coordinating various interests in society. In the traffic of interests, protection of specific interests can only be done by limiting various other interests. Legal interests involve managing human rights and interests, giving law the highest authority to determine and protect human interests (Satijipto Rahardjo, 2014).

A Notary in performing their duties as a public official often deals with clients who may have hidden intentions, such as hiding the origin of their wealth obtained from money laundering activities. A Notary, given the additional duty as the reporting party in suspicious money laundering transactions, may seem contradictory at first glance, as it goes against the Notary's oath to keep the contents of the deed confidential. Therefore, a Notary needs to be provided with legal protection in fulfilling their obligation as the reporting party, as regulated in Article 3 of Government Regulation No. 43 of 2015.

Based on the above description, it can be concluded that legal protection is the embodiment of the implementation of legal functions to achieve its goals of justice, utility, and legal certainty. Legal protection is an effort given to legal subjects based on

legal rules or principles, whether carried out preventively or repressively, whether in writing or unwritten, in the context of law enforcement efforts.

d. Authority Theory

Conceptually, the term "kewenangan" (authority) is an influential element in Administrative Law (Government Law) because the government can manage its obligations based on the authority it obtains. In the Indonesian language, "kewenangan" is defined in line with the term "wewenang," meaning power and the right to do something.

Authority is what is referred to as formal power, power derived from the authority granted by law or the legislature, separate from the executive or administrative power. Authority is the power of a particular group of people or power over a specific government field or affair that is complete, while "wewenang" (authority) only concerns a specific part of that power. "Wewenang" (authority) is the right to give orders and the power to request compliance. "Wewenang" can also be defined as the power to make decisions, give orders, and delegate responsibilities to others, functions that may not be executed. Authority must be based on existing legal provisions (constitution), making it legitimate authority. Officials (organs) in making decisions are supported by these sources of authority. According to Philipus M. Harjhon, authority is obtained through attribution and delegation, while the mandate is presented as a specific way to obtain authority, a view that aligns with Hens van Maarseven's perspective.(Azmi Fendri, 2016)

If it is related to the main problem in this research, the Notary's obligation as a reporting party as regulated in PP Number 43 of 2015 is a delegation of authority because PP Number 43 of 2015 is an implementing regulation of Law Number 8 of 2010 as a statutory regulation. higher. Meanwhile, a Notary in carrying out his duties as a public official has authority obtained by attribution from the State because this authority was created and granted by the Law on the Position of Notaries itself. In the 1945 Law of the Republic of Indonesia, the granting of authority to Notaries is not regulated, but the source of the Notary's authority comes from and/or is regulated in the UUJN, so it is said that the Notary's authority is obtained through attribution from the UUJN. The reason is seen from the definition of granting authority by attribution if it is regulated in the 1945 NRI Constitution and/or Law Number 30 of 2014 concerning Government Administration. In providing attribution, this means that the source of authority for attribution can come from the 1945 NRI Constitution and/or from law alone, which in the case of a Notary's authority is UUJN. Like other state officials, notaries also have their own authority that other state officials do not have. Apart from their authority, notaries also have obligations and prohibitions which they must comply with in carrying out their official duties.

RESULTS AND DISCUSSION

a. Obligations of Notaries as Holders of Official Secrets Based on the Law on Notary Positions

The scope (object) of the confidentiality of a Notary's official duties can be seen in the Notary's oath as regulated in Article 4 of the Notary Office Law (UUJN), stating that a Notary swears to keep confidential the contents of deeds and information obtained in the execution of notarial duties. The Notary's oath is divided into two parts, namely "belovende eed" (promissory oath) and "zuiveringseed" (oath of office).(Tobing, 1983) The promissory oath is found in the first paragraph, while the

subsequent paragraphs are included in the oath of office).(Ghansam Anand, 2018) This is then reaffirmed in Article 16 paragraph (1) letter f of UUJNP, which states, "In carrying out their duties, a Notary is obliged to maintain confidentiality regarding all matters concerning the deeds they create and all information obtained for the deed in accordance with the oath/oath of office, unless the law provides otherwise."

In the explanation of Article 16 paragraph (1) letter f, it is stated that the obligation to maintain confidentiality regarding deeds and other documents is to protect the interests of all parties related to the deed. Keeping the contents of deeds confidential is a legal and ethical principle, signifying that certain information cannot be disclosed due to its inherent confidentiality. Article 54 of UUJNP stipulates that a Notary can only provide, show, or disclose the contents of deeds, Grosse Akta, Akta Copies, and Akta Excerpts to those directly involved with the deed, heirs, or those with rights, except as stipulated otherwise by laws and regulations. According to these provisions, if the person requesting information about the deed is not directly involved, the Notary is obliged to refuse to provide information or keep the content of the relevant deed confidential.

The Notary's obligation described above is a mandatory obligation for a Notary. One purpose of a Notary's mandatory obligation is to provide protection to various parties related to the deed. The Notary's mandatory confidentiality is emphasized as one of the obligations mentioned in Article 16 paragraph (1) letter f of UUJNP, making the obligation to maintain confidentiality inherent in the notarial duties. As an obligation that must be fulfilled, it differs from the right to refuse, which can be exercised or not. However, the obligation to maintain confidentiality must be carried out and fulfilled by the Notary unless there is a law requiring the waiver of this obligation.

Regarding the confidentiality of the relationship between a client and a Notary, UUJN is a reinforcing and affirming regulation related to the relationship between a client and a Notary, which includes several confidential aspects that are unknown and not open to the public. As a position of trust, it is a Notary's obligation to maintain the confidentiality of their duties. If a Notary cannot uphold the confidentiality of their duties, they are not considered a trusted position, as evidenced by investigators being able to uncover the secrets of this trusted position through the testimony of witnesses, such as when the investigator summons a Notary. Article 16 paragraph (1) letter f of UUJNP and the Oath of Office oblige the Notary not to speak, even in court, meaning a Notary is not allowed to testify about the contents of a deed.(Habib Adjie, 2012) The right inherent in the Notary is the right to refuse, so in any examination process, whether in the investigation, prosecution, or during a trial, the Notary's stance is passive, meaning providing information only to the extent that concerns the execution of their duties. The obligation to maintain secrecy must not only cover the confidentiality of deed contents but also keep confidential all information obtained using the right to refuse.

b. Obligations of Notaries as Reporting Parties in Financial Transactions Suspicious of TPPU (PP Number 43 of 2015)

The "follow the money" paradigm in combating money laundering is less effective without the support of reports on suspicious financial transactions submitted by reporting entities. The submission of Suspicious Transaction Reports (STR) by reporting entities to the Financial Transaction Reports and Analysis Center (PPATK) is the initial step for PPATK to trace individuals involved in money laundering and to follow the flow of funds conducted by money laundering perpetrators. Understanding

the flow of funds through STRs also significantly aids law enforcement authorities in uncovering actors behind money laundering crimes. The reporting obligation is crucial considering that early monitoring is deemed most effective in anti-money laundering efforts. Financial transaction reporting involves identifying clients and recording transactions of a certain amount or those deemed suspicious. The data collected is then used for tracking purposes when suspicious activities are identified.

This aligns with the recommendations issued by the Financial Action Task Force (FATF), stating that certain professions involved in Suspicious Financial Transactions, for the benefit or on behalf of service users, are obligated to report these transactions to the Financial Intelligence Unit (in this case, PPATK). Reporting entities, as stipulated in Article 17 of Law Number 8 of 2010, include two types: financial service providers, which can be banks or non-banks, and providers of other goods and/or services. Additionally, to demonstrate the government's commitment to combating money laundering, several professions have been added as reporting entities. This is emphasized in Article 3 of Government Regulation Number 43 of 2015, which specifies that reporting entities also include professionals such as lawyers, notaries, land deed officials, accountants, public accountants, and financial planners who must report any suspicious transactions involving their clients. Notaries, as authentic deed drafters who directly interact with clients during the drafting process, play a crucial role and are considered gatekeepers capable of acting as guardians to prevent an unhealthy investment climate. However, whether this perception holds true or not requires further study (Malut 2020). The delegation of authority to specific professions is a response to the evolving typologies of money laundering crimes.

The origin of the development of typologies began in the banking sector. As a consequence, the banking sector has been strengthened by strict regulations to report customers suspected of being involved in money laundering crimes. Subsequently, criminals shifted to non-banking sectors after initially operating within the banking sector. Money laundering typologies then shifted to professions typically involved in significant financial transactions. This laid the foundation for Notaries, among other professions, being designated as reporting entities. The government was concerned that Notaries, as a profession, might assist in the methods of placement, layering, and integration. Therefore, the role of Notaries posed a risk of being used as a tool in money laundering crimes, prompting the obligation for Notaries to report any suspicious financial transactions to the Financial Transaction Reports and Analysis Center (PPATK). The reporting of suspicious transactions by Notaries is limited and mandated by the Law on the Prevention and Eradication of Money Laundering (UU PPTPPU) through Government Regulation Number 43 of 2015. Thus, it can be concluded that for the types of transactions specified in Article 8 of Government Regulation Number 43 of 2015, if they are found to exhibit characteristics outlined in Article 1 number 8 of Government Regulation Number 43 of 2015, then based on Article 8 paragraph (1) of Government Regulation Number 43 of 2015, parties aware of such transactions are obliged to report them to PPATK.

c. Obligation to Implement the Principle of Knowing Your Customer

Article 3 of Regulation of the Minister of Law and Human Rights Number 9 of 2017 states that: "A Notary engaging in a business relationship as referred to in Article 2 paragraph (4) letter a, must understand the profile, purpose, and objectives of the business relationship, as well as the Transactions conducted by the Service Users and Beneficial Owners through identification and verification." The elaboration of this

article explains that a Notary must actively engage in the identification and verification of transactions carried out by the parties involved. The Notary is actively required to further examine the profile of the parties involved, the purpose and objectives of the business relationship, and the transactions carried out by the parties, with another interpretation emphasizing the material aspects of recognizing service users for the Notary.

Regarding the accuracy of the identity of the parties involved (clients), it should be noted that no article in the Notary Law (UUJN) obliges a Notary to verify the accuracy of the identity of the parties involved. Therefore, based on the UUJN, a Notary is not obligated to ensure the material accuracy of the client's identity. The Notary only has the obligation to ensure that the party involved meets the minimum requirements of being 18 (eighteen) years old or married and capable of performing legal acts. This is explicitly regulated in Article 39 paragraph (1) of the UUJN. Identification of service users based on the explanation in Article 39 UUJN involves the use of personal identification such as the Identity Card (KTP). Only using personal identities such as KTP or other documents like a Passport, Driver's License (SIM), and Family Card is a formal identification where the KTP serves as the formal identity of an individual. Even though the UUJN specifies that the identity of the parties involved must be known to the Notary, as regulated in Article 39 paragraphs (2) and (3) of the UUJN, which states that the parties involved must be known to the Notary or introduced by 2 (two) identifying witnesses who are at least 18 (eighteen) years old or married and capable of performing legal acts or introduced by 2 (two) other parties involved. Introduction as referred to in paragraph (2) is expressly stated in the Deed. Because if not known, there is a possibility of forgery regarding the identity of the parties involved submitted/shown to the Notary (R. Soegondo Notodisoerjono, 1993). The term "Known" in a juridical sense means the conformity between all information orally provided by the parties involved about themselves to the Notary and the information stated in the identity (Population Identification Number) submitted/shown to the Notary (Habib Adjie, 2012).

If in the future inconsistencies are found between the two, it is not the responsibility of the Notary, but the responsibility of the client themselves who provided/conveyed inaccurate identity, as the obligation of the Notary is only to determine the requirement that the client is known to them. By simply determining that the client is known/introduced, it already fulfills the formal requirements for making a deed. There is a different interpretation between the principle of recognizing service users for the Notary based on the Notary Law and Regulation of the Minister of Law and Human Rights Number 9 of 2017. The Notary Law provides a corridor for the Notary to recognize service users or clients with valid identities, namely the Identity Card (KTP) as a valid and legally recognized identity. Meanwhile, Regulation of the Minister of Law and Human Rights Number 9 of 2017 provides a corridor for the Notary to assist the government in preventing and combating money laundering through the identification and verification of transactions carried out by service users or clients if the Notary, as the reporter, suspects that there are transactions conducted by their service users. The identification and verification carried out by the Notary no longer positions the Notary in recognizing their service users only based on personal identity, but in more detail, including the transactions carried out by the service users or clients.

The principle of recognizing service users for the Reporting Party applies mutatis mutandis, meaning that changes required for the application of the principle of

recognizing service users for the Reporting Party also apply. Article 18 of Law Number 8 of 2010 also regulates the application of the principle of recognizing service users.

d. The Validity of the Addition of Notary Professional Obligations as in the UUJN Added Through Government Regulation Number 43 of 2015 Notaries as TPPU Reporting Parties

The regulation of the Notary's obligation to keep deeds confidential and the obligation to report suspicious financial transactions related to money laundering is distinct, and they can even be in conflict. The norm of the obligation to keep everything about deeds confidential is associated with the right to remain silent (verschoningsrecht), while the Notary's obligation to report suspicious financial transactions releases this right to remain silent. The Notary's obligation to keep deeds confidential is based on Article 16 paragraph (1) letter f, Article 54 paragraph (1) of UUJNP, and the oath of office, and it has normative power. However, in Law Number 8 of 2010, there is no norm that obliges Notaries to report suspicious financial transactions. The obligation of the Notary to report suspicious financial transactions is only stipulated at the Government Regulation level, namely Government Regulation Number 43 of 2015. In terms of the hierarchy of legal regulations, UUJN has a higher position than Government Regulations, as stipulated by Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations.

When faced with conflicting regulations, the author applies the principle of conflict resolution or the preference principle, which is a legal principle that determines which law should be prioritized for enforcement when a legal event is subject to several regulations.(Agustina, 2015) The preference principle used is:

a) The Principle of Lex Superiori Derogat Legi Inferiori, the Principle of Lex Superiori Derogat Legi Inferiori states that higher-level legislation overrides lower-level legislation (the principle of hierarchy). When this principle is related to regulations regarding the Notary's obligation as a keeper of the confidentiality of the office based on UUJN and the provisions of Government Regulation Number 43 of 2015, the context is clear that hierarchically, the position of UUJN is not aligned with Government Regulation Number 43 of 2015. Additionally, the scope and content of the regulations in these legal provisions are different; UUJN specifically regulates the Notary profession, while Government Regulation Number 43 of 2015 specifically regulates money laundering. Thus, Government Regulation Number 43 of 2015 cannot override UUJN, which holds a higher hierarchical position.
b) The Principle of Lex Specialis Derogat Legi Generali, this principle implies that more specific legislation prevails over general legislation. There are several principles to consider when applying this principle, namely:
    1. Provisions found in legal rules still apply, except those specifically regulated in the special legal rules;
    2. Lex Specialis provisions must be of equal standing with Lex Generali provisions (law with law), and;
    3. Lex Specialis provisions must be within the same legal context (regime) as Lex Generali. For example, the Commercial Code and the Civil Code are both part of the civil law regime.

If this principle is related to the provisions in Article 4 paragraph (2) of UUJN, Article 16 paragraph (1) letter f, and Article 54 paragraph (1) of UUJNP, it can be understood that the norms within the Notary Law are not on the same level (hierarchy)

as the norms in Article 3 of Government Regulation Number 43 of 2015, and they are not within the same legal context (regime). Thus, based on this principle, it cannot be applied to resolve norm conflicts. In other words, the obligation of the Notary to keep the deed confidential based on the norms of Article 4 paragraph (2) of UUJN, Article 16 paragraph (1) letter f, and Article 54 paragraph (1) of UUJNP has a strong legal basis that cannot be overruled by the norms of Article 3 of Government Regulation Number 43 of 2015.

e. The Principle of Lex Posterior Derogat Legi Priori (The Later Law Overrides the Earlier Law)

This means that new legislation overrides or eliminates old legal regulations. The Lex Posterior Derogat Legi Priori principle adheres to several principles, namely:

a) The new legal rule must be of equal or higher standing than the old legal rule, and;
b) The new legal rule and the old legal rule regulate the same aspect.

Upon examination, the principle of lex posterior derogat legi priori, when related to the Notary's obligation as a keeper of the confidentiality of the office based on UUJN and the obligation of the Notary as a Reporting Party, can be interpreted that Government Regulation Number 43 of 2015 cannot override UUJN as the old/previous legislation, even though Government Regulation Number 43 of 2015 is a new/contemporary legal regulation. It is important to recall that the use of this principle requires that the two legal regulations being compared are within the same hierarchy. Meanwhile, the norms of Article 4 paragraph (2) of UUJN, Article 16 paragraph (1) letter f, and Article 54 paragraph (1) of UUJNP clearly have a higher hierarchical level than Article 3 of Government Regulation Number 43 of 2015.

In the framework of thinking about the types and hierarchy of legal regulations, one cannot ignore the theory of the legal hierarchy (Stufenbau Theorie) by Hans Kelsen. In this theory, Hans Kelsen argued that legal norms are hierarchical and layered in a legal structure/hierarchy, where the lower legal norms must adhere to the higher legal norms. This theory is used in the event of conflicts, in this case, some provisions in Government Regulation Number 43 of 2015 and Ministry of Law and Human Rights Regulation Number 9 of 2017 contradict the obligation to maintain confidentiality for Notaries as regulated in UUJN. Therefore, the applicable legal basis is the Notary Law considering that it holds a higher legal status. In addition, it is known that Notaries are not included as subjects designated and authorized as investigators by laws specifically regulating such matters (Criminal Procedure Code and Law Number 20 of 2002 concerning the Indonesian National Police).

Of course, the above indirectly states that the provisions of Government Regulation Number 43 of 2015 are not in accordance with UUJN and the Notary Oath. Article 16 paragraph (1) letter a of the Notary Law also regulates that a Notary performing their duties is obliged to act faithfully, honestly, carefully, independently, impartially, and to safeguard the interests of the parties involved in legal actions. It is noteworthy here that the Notary has an obligation to act honestly, impartially, and uphold the law and the Notary Oath. Regarding the Notary's obligations, they are regulated in Article 3 of the Notary Code of Ethics, among others:

a. Having good morals, ethics, and personality;
b. Respecting and upholding the dignity and position of the notary profession;
c. Safeguarding and defending the honor of the association;

d. Acting honestly, independently, impartially, and taking full responsibility based on legal provisions and the content of the notary oath;
e. Enhancing knowledge, not limited to legal and notarial knowledge;
f. Prioritizing dedication to the interests of the community and the country;
g. Establishing one office at the place of residence, and that office is the only office for the respective notary in performing their duties; and
h. Carrying out duties, especially in the preparation, reading, and signing of deeds, is done in the notary's office, except for valid reasons.

The above Code of Ethics is, in fact, a norm that is applied. This means that without the presence of Government Regulation Number 43 of 2015 threatening the obligation to keep deeds confidential, a Notary is already obliged to act with trustworthiness, honesty, impartiality, diligence, and independence. When providing information to investigators, a Notary cannot disregard the notarial oath. It is crucial for notaries and investigators to understand the nature of confidentiality inherent in the notarial profession, allowing Notaries to provide information without compromising the confidential nature of the deeds they prepare. Maintaining the confidentiality of the notarial profession is challenging. This is because there is no specific regulation defining the public interest that must be upheld by Notaries. Even in Article 3 letter h of the Memorandum of Understanding, it is stipulated that for the public interest, a Notary can set aside the right to refuse to testify held by the Notary. There is no clear, specific, and detailed definition of public interest in the legislation, so in each case, the parties, investigators, and Notaries each have their own definition of public interest.

However, in essence, a Notary as a public official has an obligation to prioritize the public interest over personal interests. This is in line with the statement in Article 3 letter f of the Code of Ethics for Notarial Duties, which emphasizes that a Notary must prioritize dedication to the interests of society and the state. Money laundering is a transnational organized crime, meaning that it involves groups operating in two or more countries, and the act is considered a criminal offense, at least in one of the countries involved. Thus, it can be concluded that money laundering not only encompasses public interests but also national interests.

According to Pilto, the obligation of confidentiality has a strong basis in public law (een publiekrechtelijke inslag). While an individual benefits from it, the duty of keeping deeds confidential is not imposed to protect the individual but for the benefit of the general public. As a position of trust, a Notary must consider what should be prioritized, whether it is the public interest, including the interest of the individual in not disclosing information, or whether the Notary should speak out or reveal the confidential nature of the profession. Pilto's opinion broadly aligns with the views of Prof. Van Bovenal Faure, who states that decision-making is left to those in positions of trust, adapting to their conscience.(Tobing, 1983) Therefore, a Notary is not considered to violate the principle of confidentiality but rather to apply the principle of caution. The Notary's function, appointed by the Minister, is not only to provide legal certainty to serve the public but also to be responsible to the state, especially in civil law, to prevent any harm to the state through efforts to conceal the proceeds of criminal activities.

The importance of the role of a Notary in helping to create legal certainty and legal protection for the community is more preventive, meaning it aims to prevent legal issues by issuing authentic deeds related to the legal status, rights, and obligations of individuals. These deeds serve as the most perfect evidence in court in case of

disputes over relevant rights and obligations.(S. dan H. Adjie, 2011) If a Notary is suspected of being involved in money laundering, they can defend themselves as long as the applicable rules are properly followed. In essence, the decision to report and maintain the confidentiality of the profession lies with the Notary themselves. A Notary, entrusted with a position of trust, must weigh the extent to which national interests are violated compared to individual interests. Therefore, a Notary is required to have strong moral values because in carrying out their duties, they must not only adhere to the Notary Law or other regulations but also to the morals and ethics prevailing in society.

CONCLUSION

Based on the discussion in the previous chapters, the author draws the following conclusions: The validity of adding obligations for Notaries as stipulated in the Notary Law (UUJN) supplemented by Government Regulation (PP) Number 43 of 2015, which designates Notaries as reporting entities obliged to submit reports to the Financial Transaction Reports and Analysis Center (PPATK) regarding suspicious transactions related to money laundering, is legally valid. This is true even though, in terms of hierarchy, the position of the Notary Law is higher than that of PP Number 43 of 2015.However, in essence, a Notary, as a public official, must prioritize public interest over personal interests, as stated in Article 3 letter f of the Notary Code of Ethics. One of the functions of a Notary, appointed by the Minister not only to provide legal certainty in serving the community but also to be accountable to the state. Therefore, a Notary is not considered to violate the principle of confidentiality but rather applies the principle of caution.

Acknowledgment

Bearing in mind that the position of Notary is a professional position in which there is confidentiality of office, Notaries should increase their professionalism and be firm and trustworthy in carrying out their position in accordance with applicable regulations. Apart from that, mastery of legal rules plays a very important role for notaries, especially notaries who have a role in preventing and eradicating criminal acts of money laundering as reporting parties.

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