

The Role of Notaries/Land Deed Officials in Combating Money Laundering Crimes with the Know Your Customer Principle

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Abstract.

This research delves into the alarming intersection of notaries/land deed officials and money laundering crimes, highlighting the role of notarial services as potential facilitators in illicit financial activities. While notaries traditionally serve as impartial witnesses to document signings, their involvement in verifying transactions has increasingly attracted scrutiny due to the potential for abuse by money launderers. This study examines the vulnerabilities within the notarial system that may be exploited for money laundering purposes, including lax regulatory frameworks, inadequate due diligence practices, and the lack of standardized reporting mechanisms. The abstract also explores the challenges in detecting and preventing such illicit activities, emphasizing the need for enhanced regulatory oversight, improved training for notarial professionals, and increased collaboration between regulatory bodies, law enforcement, and the notarial community and also implementing the principle of know your customer. As the findings suggest, addressing these issues is crucial for safeguarding the integrity of notarial services and fortifying the global financial system against the insidious threat of money laundering.

Keywords: *Notaries, land deed officials, money laundering, and know your customer.*

I. INTRODUCTION

Money laundering is a global threat that undermines the integrity of financial systems, facilitates criminal activities, and poses a significant risk to the stability of economies. While the focus is often on traditional financial institutions, it is crucial to recognize the potential involvement of seemingly unrelated professionals, such as notaries and Land Deed Officials, in facilitating money laundering crimes. This essay explores the role of notaries and Land Deed Officials in enabling money laundering and the importance of addressing this issue to strengthen the overall anti-money laundering (AML) framework. Money laundering issues have recently gained increasing attention from various circles, not only on a national scale but also regionally and globally. This is because the practice of money laundering has become more prevalent over time. Money laundering is a criminal act due to the illicit nature of the funds involved, which are obtained through dark, illegal, or dirty means. These dirty funds are then managed through various activities, such as establishing businesses or transferring and converting them into banks or foreign currencies. These actions are taken to eliminate the trace of the illicit origin of the funds (Sutan Remy, 2007). The intersection between notaries and money laundering crimes is a critical area of concern within the realm of legal and financial oversight. Notaries, entrusted with the authentication of documents and transactions, play a pivotal role in the prevention of illicit activities, including money laundering. As gatekeepers of legal documentation, notaries wield significant influence in the verification and validation of financial transactions.

This connection between notarial services and money laundering underscores the importance of understanding and addressing potential vulnerabilities within the notarial system to safeguard against the misuse of this integral process for illicit financial activities. In exploring this relationship, it becomes imperative to analyze the mechanisms through which notaries can contribute to anti-money laundering efforts and foster a robust legal framework that bolsters the resilience of financial systems against criminal exploitation. Notaries/Land Deed Officials have an extra responsibility to thoroughly identify clients through the Principle of Knowing Your Customer. Generally, Notaries/Land Deed Officials only formally know clients, namely by checking identity cards and witnessed by two witnesses. The Principle of Knowing Your Customer is applied to ensure that the background and identity of service users are clearly known, as well as to monitor transactions and report suspicious activities to the authorities. The involvement of Notaries/ Land Deed

Officials as reporters of money laundering crimes is due to the vulnerability of their positions to money laundering actions, especially since their services involve clients in the business and property sectors (Khamisah, 2014).

II. METHODS

This type of research is referred to as normative or doctrinal research, with the terms often used interchangeably. Doctrinal research primarily focuses on the examination and critical analysis of legal documents, encompassing both primary and secondary sources. Adopting a statutory approach, this form of research delves into legal matters to identify resolutions for legal issues. Legal research, devoid of empirical data, relies on the sourcing of information to address and prescribe solutions for legal challenges. Within this realm, legal research materials are typically categorized into primary legal documents, which include statutes, case law, and regulations, and secondary legal documents, which encompass legal commentaries, scholarly articles, and textbooks.

The method employed for gathering legal documents in this legal writing involves library research on both primary and secondary legal documents. This approach to collecting legal materials includes reading, studying, reviewing, and analyzing these materials, tailored to address the specific issues investigated by the author. The analysis of legal documents utilizes sources that have been accumulated to address the research problems at hand. Subsequently, the processed legal materials undergo qualitative analysis, wherein the information is evaluated by referencing the existing theoretical foundation. The data derived from this study is then synthesized and described in a descriptive manner, aiming to present a lucid, comprehensible, and solution-oriented depiction of the researched issues. (Peter Mahmud Marzuki, 2013)

III. RESULT AND DISCUSSION

Notaries and Land Deed Officials's involvement in money laundering crimes can have serious consequences. Not only does it undermine the integrity of the legal system, but it also contributes to the perpetuation of illegal activities and the flow of illicit funds. Furthermore, the involvement of Notaries and Land Deed Officials in money laundering brings about reputational risks for the profession as a whole. Notaries and Land Deed Officials who are found to be involved in money laundering can face legal sanctions, including the revocation of their notary license and criminal prosecution. The involvement of Notaries and Land Deed Officials in money laundering raises concerns about the integrity and trustworthiness of the profession. Some of the background information that contributes to the involvement of Notaries and Land Deed Officials in money laundering crimes is their access to financial transactions and important documents such such as identification and property ownership. This access allows Notaries and Land Deed Officials to be used as a tool in the money laundering process. Additionally, the role of Notaries and Land Deed Officials in verifying and certifying documents related to property transactions provides an opportunity for individuals involved in money laundering to further their illicit activities. (Fikri Ariesta Rahman, 2018)According to the results of typology and money laundering cases research in Indonesia conducted by the Financial Transaction Reports and Analysis Center, it is shown that certain positions, including Notaries and Land Deed Officials, can be exploited as gatekeepers by money launderers to obscure the true origin of funds derived from criminal activities. The role of Notaries and Land Deed Officials is susceptible to being utilized for money laundering due to the confidentiality provisions in the relationship between Notaries and their clients. Notaries and Land Deed Officials, as public officials authorized to create authentic deeds and act as witnesses to legal events, play a crucial role in ensuring legal certainty and legal protection for the community. However, the involvement of Notaries and Land Deed Officials in money laundering cases raises serious concerns about the safety and public trust in the legal profession as a whole.

Notaries play a vital role in legalizing documents and verifying the authenticity of signatures, making them important figures in property transactions. Unfortunately, their position of trust can be exploited by individuals seeking to launder illicit funds through real estate transactions (Sjaifurrachman dan Habib Adjie, 2011). Money launderers may manipulate notaries into authenticating false documents or verifying transactions that conceal the illicit origin of funds. One common method involves the creation of shell

companies to purchase real estate. Notaries, if not vigilant, may unwittingly legitimize these transactions, allowing criminals to launder money through the acquisition of high-value assets. The lack of stringent regulations and oversight in some jurisdictions can exacerbate the problem, making it easier for money launderers to exploit the services of notaries. (Nadhilla Prijanka and Siti Hajati, 2023) Land Deed Officials, responsible for maintaining and recording property ownership records, are also susceptible to involvement in money laundering schemes. These officials can be coerced or bribed to manipulate property records, obscuring the true ownership of assets acquired through illicit means. Inaccurate property records not only facilitate money laundering but also hinder law enforcement efforts to trace and recover assets linked to criminal activities. Real estate transactions are attractive to money launderers due to the potential for large sums of money to be moved discreetly. Land Deed Officials who succumb to corruption or negligence can inadvertently contribute to the laundering process by failing to scrutinize the legitimacy of property transfers and registrations.

Money Laundering Crimes committed by service providers such as Notaries and Land Deed Officials can involve various factors that make them vulnerable to engaging in such illegal practices. Essentially, money laundering actions by service providers like Notaries and Land Deed Officials are closely related to their expertise in providing legal services that can be exploited by those intending to engage in money laundering activities. Some factors that underlie this can include: (I Made Dermawan, 2017)

1. **Access to Confidential Information:** Notaries often have access to confidential and private information about their clients, including financial information. This can make them a target to facilitate money laundering by exploiting the sensitive data they possess.
2. **Involvement in Property Transactions:** Notaries are frequently involved in property transactions, which often entail large sums of money. The complex nature of property transactions involving multiple parties can provide opportunities for immoral actors to infiltrate funds from illegal activities into these transactions.
3. **Involvement in Legal Entity Formation:** Notaries are also involved in the formation of legal entities such as companies and foundations. The creation of these entities can be exploited to conceal the origin of laundered funds by establishing complex and difficult-to-trace structures.
4. **Lack of Supervision and Control:** Some jurisdictions may lack sufficient supervision and control over notarial activities, creating loopholes for money laundering practices to go undetected.
5. **Unfamiliarity with Clients:** Notaries may not fully understand the background or true objectives of their clients. This can make it easier for those seeking to launder money to take advantage of the notary's lack of knowledge.
6. **Involvement in International Transactions:** Notaries involved in international transactions may become targets for cross-border money laundering. The complexity of international transactions can be used to obscure the trail of funds from illegal activities.

In Minister of Law and Human Rights Regulation Number 9 of 2017 regarding the Implementation of the Principle of Recognizing Service Users for Notaries, it is explained that a Notary is required to conduct a search on the individual or corporate profile intending to use the services of the Notary. As for Land Deed Officials, it is regulated in the Regulation of the Financial Transaction Reports and Analysis Center Number 11 of 2017 concerning the Implementation of the Principle of Recognizing Service Users for Land Deed Officials. In these two regulations, there are 3 stages of the Know Your Customer (KYC) Principle:

Identification of Service Users, Verification of Service Users, Monitoring of Service Users' Transactions.

Before recording the desires of the parties involved in an authentic deed, a Notary/Land Deed Official must ensure that the identities of the parties comply with the requirements stipulated in Article 39 of the Notary Public Law (UUJN) and Circular of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 4/SE/I/2015 regarding the Age Limitation of Adults in Land Services. These regulations stipulate that the parties involved must be at least 18 years old or married, capable of legal actions, and they must be known by the Notary or introduced by two identifying witnesses. Although Notaries/Land Deed Officials must comply with the principle of recognizing service users, it is not related to the authority of

Notaries/Land Deed Officials in the making of authentic deeds because the information collected when applying this principle is not related to the wishes of the service users to be recorded in the deed. This principle is implemented as a preventive measure by Notaries/Land Deed Officials to identify whether their service users are involved in money laundering crimes or not. Article 24 of the Minister of Law and Human Rights Regulation Number 9 of 2017 regarding the Implementation of the Principle of Recognizing Service Users for Notaries asserts that Notaries have the authority to terminate business relationships with service users if they refuse to comply with the principle of recognizing service users. Furthermore, the implementation of this principle to Notaries aims to support the government's efforts in combating money laundering crimes in Indonesia. As for Land Deed Officials (PPAT), it is regulated in Article 5 paragraph (1) of the Regulation of the Financial Transaction Reports and Analysis Center Number 11 of 2017 concerning the Implementation of the Principle of Recognizing Service Users for Land Deed Officials.

Factually, there are still Notaries/Land Deed Officials who refuse to implement KYC (Know Your Customer) with the reason that the Notary Public Law only instructs Notaries/Land Deed Officials to formally recognize their service users, and that Notaries/Land Deed Officials must follow the principle of presumption of innocence, which means Notaries must assume that their service users are innocent until a court decision declares otherwise.¹(Annisa Septia and Fifiana Wisnaeni, 2023)The principle of Know Your Costumer is considered difficult to implement by Notaries/Land Deed Officials because the Notary Public Law does not regulate the obligation of implementing this principle, and Notaries/Land Deed Officials in carrying out their duties refer to the material truth and the wishes of the parties. Furthermore, when seen from the legal systematics, Ministerial Regulations are subordinate to the Law. (Helmi Fariska Rahma, 2018) In regulations regarding the "know your customer" principle, there are no explanations regarding parameters indicating suspicious financial transactions conducted by parties availing the services of Notaries/Land Deed Officials. This poses a significant challenge because information about suspicious transactions is solely based on the parties involved without accurate evidence that the source of funds obtained does not originate from money laundering activities. Notaries/Land Deed Officials face difficulties in assessing the reasonableness of transactions by the parties involved because it is not possible to request financial data from the parties, as such data are confidential.

IV. CONCLUSION

To mitigate the involvement of notaries and Land Deed Officials in money laundering, a multifaceted approach is essential. Strengthening regulatory frameworks, enhancing oversight mechanisms, and promoting international cooperation are crucial steps. Authorities must implement robust AML policies that specifically target real estate transactions, requiring notaries and Land Deed Officials to adhere to stringent due diligence procedures. Additionally, providing comprehensive training to notaries and Land Deed Officials on recognizing red flags associated with money laundering can empower them to play a more active role in preventing illicit activities. Collaboration between government agencies, law enforcement, and industry stakeholders is vital to creating a unified front against money laundering in the real estate sector. Furthermore, the "know your customer" principle needs to be further clarified regarding its implementation procedures to facilitate Notaries/Land Deed Officials in carrying it out, aiming to assist the government in combating money laundering crimes.

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