

# Notary's Authority Concerning Reporting Suspicious Transactions in the Prevention and Eradication of Money Laundering Crimes

I Gusti Agung Ayu Winda Savitri Adi<sup>1</sup> | I Gede Yusa<sup>1</sup> | Anak Agung Sagung Laksmi Dewi<sup>2</sup>

1. Universitas Udayana, Bali, Indonesia

2. Universitas Warmadewa, Bali, Indonesia

Correspondence:

I Gusti Agung Ayu Winda Savitri Adi, Universitas Udayana  
[windsavitri72@yahoo.com](mailto:windsavitri72@yahoo.com)

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**Abstract**—The purpose of this study is to determine the authority of Notaries in reporting transactions related to suspected money laundering and to analyze the application of the principle of confidentiality of Notary positions related to their authority in reporting transactions with suspected money laundering. The research method used is normative law with the statute, analytical, conceptual, and comparative approaches. The study results show that Notaries have the authority and are responsible for reporting suspicious transactions suspected of money laundering. The authority is related to the confidentiality of Notary positions, which experience conflicting norms between PP No. 43 of 2015 and UUJN, resulting in legal uncertainty. UUJN can set aside PP No. 43 of 2015 based on its lower hierarchy. However, because the crime of money laundering concerns the public interest, the confidentiality of the position can be set aside. In terms of reporting the alleged crime, Notaries are required to obtain legal protection as determined by statutory regulations.

**Keywords:** Notary's authority; informant; transactions; money laundering crimes; confidentiality of notary

## Introduction

Notarial science is identical to the position of a Notary as a public official who provides legal services to the public in the civil sector. In serving their positions, a notary needs to obtain legal protection related to the duties, functions, and authority of Notaries in providing public services. At this moment, a notary complies with the regulations in Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN), as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN-P). The explanation of UUJN determines the role of notaries in society: notaries are required to make authentic written evidence regarding acts, agreements, determinations, and legal events. The written evidence is an authentic deed.

The creation of authentic deeds is an authority granted by the Notary Law to Notaries. In this regard, the authority of Notaries is regulated in Article 15, paragraph (1) of the UUJN-P, which states:

*“(1) A notary has the authority to make authentic deeds regarding all deeds, agreements and stipulations which are required by statutory regulations and/or which are desired by interested parties to be stated in authentic Deeds, guarantee the certainty of the date of making the Deed, store the Deed, give grosse, copy and quotation of the Deed, all of this as long as the making of the Deed is not also assigned or excluded to another official or other person as determined by law”*

In addition to the authority referred to in Article 15, paragraph (1) of the UUJN-P, Notaries have other authorities as determined by statutory regulations outside the Notary Law. As explained in Article 15, paragraph (3), that:

*“Notaries have other authorities as regulated in statutory regulations, in addition to the authorities referred to in paragraph (1) and paragraph (2)”*

Based on the provisions of Article 15 paragraph (3) of the UUJN, it can be concluded that the authority, responsibility, and role of Notaries in society are not only limited to being bound by the UUJN but there are still many other laws and regulations that regulate the authority of Notaries regarding the making of authentic deeds. One of the laws and regulations that regulate other authorities of Notaries is Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes (hereinafter referred to as PP No. 43 of 2015), which is an implementing regulation of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (hereinafter referred to as the UU PPTPPU). Article 3 of PP No. 43 of 2015 grants authority to Notaries as reporting parties to participate in reporting transactions suspected of being money laundering.

Article 1 number 1 of the UU PPTPPU defines money laundering as any act that fulfils the elements of a criminal act following the provisions of this law. Furthermore, Article 3 of the PPTPPU Law outlines the qualifications of acts that are considered money laundering that:

*“Any person who places, transfers, diverts, spends, pays, grants, deposits, takes abroad, changes the form, exchanges for currency or securities or other actions regarding Assets which he knows or reasonably suspects are the proceeds of a crime as referred to in Article 2 paragraph (1) with the aim of hiding or disguising the origin of the Assets shall be punished for the crime of Money Laundering with a maximum prison sentence of 20 (twenty) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah).”*

It is further explained in Article 4 of the UU TPPU that:

*“Any person who hides or disguises the origin, source, location, designation, transfer of rights or actual ownership of assets which he knows or reasonably suspects are the proceeds of a crime as referred to in Article 2 paragraph (1) shall be punished for the crime of money laundering with a maximum prison sentence of 20 (twenty) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).”*

The crime of money laundering, commonly known as money laundering, is an act to hide funds from crimes committed through transactions or transfers of illegal assets into the economic system. This act is carried out to eliminate traces of the crime, where the perpetrator can gain profit without knowing the source of the funds. The usual modus operandi uses professional positions, such as lawyers, financial accounting experts, pawnshops, notaries, etc. These professionals are known as gatekeepers, with expertise, access, and knowledge of the global financial system or individuals who use their expertise to hide money-laundered funds through certain transactions

The new legal breakthrough in UUTPPU is the concept of following the money, which means following the flow of money. This conceptual approach makes it easier to enforce the law compared to the conventional approach, namely, following the suspect (tracing the perpetrator's trail). The follow-the-money approach can be effective if supported by professionals such as Notaries who can report suspicious financial transactions to the Financial Transaction Reports and Analysis Center (hereinafter referred to as PPATK).

Efforts to prevent, supervise, and eradicate the crime of money laundering can be successful if they

are carried out in collaboration with a professional approach. Money laundering is an organized crime that threatens the development and welfare of the nation. Therefore, the role of Notaries as gatekeepers in carrying out their authority to participate as reporting parties in providing information and data related to alleged transactions involving the crime of money laundering is very necessary.

Based on the background above, this study aims to determine the authority of Notaries in reporting transactions related to suspected money laundering crimes and analyze the application of the principle of confidentiality of Notary positions related to their authority in reporting transactions with suspected money laundering crimes.

The following relevant studies serve as references and legal materials for this new study. First, a study conducted by Aganita Dhaneswara entitled “Notary involvement in eradicating money laundering based on pp no. 43 of 2015 associated with the principle of limited confidentiality,” which examines the obligation of Notaries to report suspicious financial transactions by Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes does not violate the principle of limited confidentiality of Notaries, and the losses that may occur due to the reporting action. Furthermore, research conducted by Vira Prabaswara Tunggadewi, Nabila Aisha Padmasari, and Syafrudin Prawiro Utomo entitled “The role of notaries in preventing money laundering”. This research discusses the position of Notaries as reporters in efforts to prevent money laundering, as well as the implementation of the authority to report suspicious financial transactions in the duties and positions of Notaries. Based on previous research, this research has a different focus of study and has an element of novelty for the study of legal science.

## Method

Starting from the existence of normative conflicts, the research was conducted in a normative way so that further regulation of legislation is needed to align the concept of Notary’s authority as the reporting party in money laundering crimes. The approaches used in this study are the statute, analytical, conceptual, and comparative approaches. The sources of legal materials use primary and secondary legal materials. Primary legal materials include the Civil Code, the Notary Law, the Law on the Prevention and Eradication of Money Laundering Crimes, the Law on the Formation of Legislation and Government Regulation Number 43 of 2015 concerning the Reporting Party in the Prevention and Eradication of Money Laundering Crimes. Meanwhile, the secondary legal materials include journal articles, books, theses, doctrines, encyclopedias, KBBI, etc. The technique of collecting legal materials uses literature studies, which are carried out gradually and continuously by looking at the sources referred to in a legal material (snowball method). The legal materials collected are then analyzed using several techniques, namely: description techniques to describe the legal conditions that occur; evaluation techniques as an assessment from the author’s point of view supported by scientific studies; argumentation techniques as a form of the author’s reasoning for the evaluation carried out and systematization techniques to link legal concepts from unequal laws and regulations.

## Result and Discussion

### Notary’s Authority in Reporting Transactions Related to Suspected Money Laundering Crimes

Based on Article 1 number (3) of PP No. 43 of 2015, the reporting party is any person who, according to the laws and regulations governing the prevention and eradication of money laundering crimes, is required to submit a report to the Financial Transaction Reports and Analysis Center (hereinafter referred to as PPATK). Furthermore, in Article 3 of PP No. 43 of 2015, one of the subjects which can be the reporting party is a Notary. Notaries can report suspicious financial transactions through the Go Anti Money Laundering (GoAML) application created by PPATK to facilitate the process of reporting financial

transactions suspected of being involved in money laundering crimes. Every Notary who has registered with GoAML is authorized to report suspicious financial transactions. Indications of suspicious transactions that Notaries must report are as follows:

- Purchase and sale of property;
- Management of money, securities and/or other financial services products;
- Management of checking accounts, savings accounts, deposit accounts, and/or securities accounts;
- Operation and management of the company; and
- Establishment, purchase and sale of legal entities.

At the international level, there is the Financial Action Task Force on Money Laundering (hereinafter referred to as FATF); FATF is an intergovernmental body that aims to build international cooperation in dealing with money laundering crimes by creating special international standards that are the benchmark for each country in the context of preventing and eradicating money laundering crimes. FATF makes recommendations for professions that can help the government prevent money laundering crimes, one of which is a notary. Notaries, as positions that make authentic deeds for all financial transactions related to buying and selling or establishing companies/business entities, are expected to report suspicious transactions. This is because authentic deeds made by Notaries can be misused by parties who violate the rules to hide the criminal acts they commit.

The authority of a Notary to report suspicious transactions to the PPATK is related to the theory of authority put forward by P. Nicolai. As translated by S.F. Marbun, authority is the ability to carry out certain legal actions. These actions are intended to cause legal consequences and include the emergence and disappearance of certain legal consequences. The authority must be based on existing legal provisions (constitution) so that authority is legitimate authority. When viewed from the source from which the authority was born, there are 3 (three) categories of authority, namely attributive, which is outlined or derived from the division of power by laws and regulations; delegation, which originates from the delegation of a government organ to another organ based on laws and regulations; and mandate which originates from the process or procedure of delegation from a higher official or agency to a lower official or agency. The authority of a Notary to be the reporting party for a transaction suspected of money laundering is a type of delegated authority because this authority is determined by PP No. 43 of 2015, which is the implementing regulation of the PPTPPU Law. There is a delegation of authority from the PPTPPU Law to PP No. 43 of 2015, so the authority of a Notary as a reporter in a transaction suspected of money laundering is a type of delegated authority.

The authority of the Notary's office, as stipulated by the UUJN, is to make authentic deeds as written evidence that has perfect evidentiary power for certain legal acts. Authentic deeds are made before a notary formulates the wishes of the parties who make them. The Notary's responsibility for his authority in making authentic deeds for every transaction carried out by the person appearing is related to the theory of responsibility. Based on the principle of *geen bevoegdheid zonder verantwoordelijkheid* [there is no authority without responsibility]. The authority to make authentic deeds held by a Notary directly gives rise to legal responsibility. When associated with the theory of responsibility put forward by Hans Kelsen as interpreted by Somardi, a person is legally responsible for specific actions, or he is responsible for a sanction if his actions are contrary to.

According to Hans Kelsen, responsibility is closely related to obligation but not identical. The obligation arises because of the existence of legal rules that regulate and provide obligations to legal subjects. Legal subjects burdened with obligations must carry out these obligations as ordered by legal rules. The consequences of not carrying out obligations will result in sanctions of responsibility. In terms of making authentic deeds for all transactions carried out by the parties, the responsibility of the Notary is limited to formal responsibility. There is no responsibility for the Notary to investigate materially what is agreed or

stated by the parties as stated in the authentic deed as long as it does not conflict with the provisions of Article 1320 of the Civil Code regarding the requirements for the validity of an agreement. However, based on Article 4 of PP No. 43 of 2015 in conjunction with Article 18 paragraph (5) of the PPTPPU Law, the Notary as a service provider for doing authentic deeds must apply the principle of recognizing the service user (known as PMPJ), which at least contains:

- Identification of service users;
- Verification of service users; and
- Monitoring of service user transactions

Thus, based on the provisions of the Article, the Notary's responsibility is related to the identification and verification of the parties as legal subjects in the authentic deeds he has made. The Notary is limitedly responsible for authentic deeds suspected of concealing assets for money laundering crimes. The Notary's limited responsibility means that he must report suspicious transactions as long as the act is known in his deed. If the Notary is aware of the unlawful act and does not report it as determined by statutory regulations, then based on Article 27 paragraph (3) of the PPTPPU Law, the Notary will be subject to the following sanctions:

*“Other providers of goods and/or services who do not submit reports to the PPATK as referred to in paragraph (1) and paragraph (2) will be subject to administrative sanctions.”*

In addition, Notaries must also be responsible for the confidentiality of the deeds they make as regulated in Article 16 paragraph (1) of the UUJN-P. If the confidentiality provisions are violated, the Notary will be subject to accountability sanctions as regulated in Article 85 of the UUJN-P, namely verbal warning, written warning, temporary dismissal, honourable dismissal, or dishonourable dismissal. The provisions of sanctions in the UUJN-P are in line with the provisions of Article 322 of the Criminal Code, that anyone who intentionally reveals a secret that he must keep because of his position or profession, whether current or former, is threatened with a maximum prison sentence of nine months or a maximum fine of nine thousand rupiahs.

These provisions require the Notary to keep confidential not only the contents of the deed but also all information or matters reported by the person appearing that are not stated in the deed. The concept of confidentiality of the Notary's position in PP No. 43 of 2015 and UUJN-P experience a conflict of norms, where if both provisions are violated, sanctions will result for the Notary concerned.

### Implementing of the Principle of Confidentiality of Notary Position regarding his Authority in Reporting Transactions Related to Alleged Money Laundering Crimes

The conflict of norms or norms related to the confidentiality principle of the Notary's position in PP No. 43 of 2015 with UUJN-P can cause legal uncertainty. According to the theory of legal certainty put forward by Maria S.W. Sumardjono, legal certainty in normative terms is the availability of a set of laws and regulations that operationally support its implementation. Empirically, the existence of these laws and regulations needs to be implemented consistently and consequently by supporting human resources. The regulation of the principle of confidentiality of the Notary's position in terms of preventing and eradicating money laundering crimes has been normatively regulated in the form of laws and regulations, namely the PPTPPU Law and PP No. 43 of 2015 as its implementing regulations. However, its regulation still overlaps with the UUJN-P, so legal certainty cannot be achieved.

In performing his/her duties, a Notary must adhere to the Notary's code of ethics because without it, the dignity and honour of professionalism will be lost, and he/she will no longer receive the public's trust. The explanation of PP No. 43 of 2015 explains that, based on the results of PPATK research, Notaries are a profession that is vulnerable to being exploited by perpetrators of money laundering crimes to hide the

origin of wealth by hiding behind the Notary's code of ethics and the principle of confidentiality. As regulated in Article 16 paragraph (1) letter f UUJN-P, that:

*“In serving his/her position, a Notary is obliged to keep confidential everything regarding the Deed he/she has made and all information obtained for the purpose of making the Deed in accordance with the oath/promise of office, unless the law stipulates otherwise.”*

Furthermore, in the explanation of Article 16 paragraph (1) letter f UUJN-P above, the obligation to keep confidential everything related to deeds and other documents is to protect the interests of all parties related to the deed. Keeping the contents of the deed confidential is also part of the Notary's oath/promise as regulated in Article 4 paragraph (2) UUJN.

The existence of a clause regarding the confidentiality of a Notary in carrying out his/her position, then perpetrators of money laundering crimes can take advantage of the Notary's obligation to maintain the confidentiality of their clients, which has been protected by law and code of ethics. This confidentiality also includes the identity and transactions of clients suspected of being perpetrators of money laundering crimes, which will be protected by the article regarding the confidentiality of clients with Notaries. Therefore, for perpetrators of money laundering crimes, it will be a new alternative ideal to facilitate the intent and purpose of disguising the proceeds of their crimes by making the Notary's professional services a gatekeeper in money laundering. Perpetrators of money laundering crimes will take cover behind the provisions regarding the confidentiality of client data in the Notary profession.

In general, a Notary is required to keep the contents of the deed and information obtained in the making of a Notarial deed confidential unless ordered by law that the Notary is not required to keep the contents of the deed confidential and provide the necessary information related to the deed, this is called the obligation to deny. Thus, the only limitation is that the law can order the Notary to reveal the contents of the deed and information or statements known to the Notary related to the making of the deed in question.

If examined based on the theory of norm hierarchy according to Hans Nawiasky, known as *theorie von stufenaufbau der rechtsordnung*. The arrangement of norms, according to this theory, is:

Fundamental norms of the state (*Staatsfundamentalnorm*);

Basic rules of the state (*staatsgrundgesetz*);

Formal laws (*formell gesetz*); dan

Implementing regulations and autonomous regulations (*verordnung en autonome satzung*).

Article 7 of Law Number 12 of 2011 concerning the Formation of Legislation also explains the hierarchy of legislation in Indonesia, as follows:

The 1945 Constitution of the Republic of Indonesia;

Decree of the People's Consultative Assembly;

Laws;

Laws/Government Regulations in Lieu of Laws;

Government Regulations;

Presidential Regulation;

Provincial Regional Regulations; and

District/City Regional Regulations



Thus, the position of a law is above government regulations. PP No. 43 of 2017, which is an implementing regulation, was born from the PPTPPU Law. So, if the norm is juxtaposed with the UUJN-P, then based on the principle of *lex superior derogat legi inferiori*, which means that the provisions of legislation that are higher in hierarchy can override the provisions of legislation that are lower in hierarchy. For this reason, the authority of a Notary to report financial transactions suspected of being money laundering crimes as stipulated by PP No. 43 of 2015 can be set aside by regulating the confidentiality of the Notary's position as stipulated by the UUJN-P.

The principle of legal preference cannot be applied solely to the problem of conflict of norms that occurs related to the application of the principle of confidentiality of the Notary's position in reporting money laundering crimes. If further investigated, PP No. 43 of 2015 is an implementing regulation derived from the PPTPPU Law, so that the law should be able to answer the problem of conflicting norms that occur. As explained in Article 16 paragraph (1) letter f of the UUJN, only laws and regulations in the form of laws can exclude the principle of confidentiality of the Notary's position. Currently, the law that orders Notaries to set aside the obligation to deny is explained in the PPTPPU Law as a regulation that gave birth to PP No. 43 of 2015.

The exception to the confidentiality of the position is regulated in Article 28 of the PPTPPU Law that:

*“The implementation of reporting obligations by the Reporting Party is exempt from the confidentiality provisions applicable to the Reporting Party concerned.”*

Therefore, the provisions on the confidentiality of the Notary's position as regulated in the UUJN-P can be set aside with the exception of the PPTPPU Law. In other words, the confidentiality of the position held by the Notary does not apply absolutely. As in the theory of relative confidentiality of the position put forward by Ko Tjay Sing, that a position holder who is obliged to keep a secret, can or must reveal his secret if by keeping his secret must be sacrificed interests that are considered greater. Thus, conflicting interests must be compared with one another. The one considered greater must be protected, the other must be sacrificed.

Although UUJN-P regulates the obligation of notaries to maintain client confidentiality, the PPTPPU Law provides an exception to reporting suspected money laundering transactions because it concerns the public interest for the common good. Efforts to prevent and eradicate money laundering crimes involve many legal professions identical to job confidentiality and codes of ethics, so it is necessary to relax the obligation to maintain client confidentiality. Notaries are determined by law as public officials, so their authority and obligations must prioritize the public interest. The crime of money laundering can be categorized as Transnational Organized Crime, which means that money laundering is a group act involving two or more countries, the act of which is a crime, at least according to one of the countries. So, it can be concluded that the crime of money laundering does not only cover public interests but also state interests. The interests of the state and the people must be prioritized over individual interests.

The authority of a notary to report secret transactions of money laundering crimes is very vulnerable to criminal intervention. Therefore, Notaries need legal protection. Soetjipto Rahardjo stated that legal protection is an effort to protect a person's interests by allocating power to him to act in his interests. Furthermore, it was also stated that one of the characteristics and, at the same time, the purpose of law is to provide protection to the community. Therefore, legal protection for the community must be realized through legal certainty (in the form of legislation).

In relation to the authority of Notaries to provide data and information on suspicious transactions and suspected money laundering crimes, the PPTPPU Law has provided legal protection to Notaries as reporting parties, which is determined in the formulation of Chapter IX of the PPTPPU Law concerning Protection for Reporters and Witnesses. Article 86 paragraph (1) of the PPTPPU Law stipulates that:

*“Every person who provides testimony in an investigation into the crime of Money Laundering must be given special protection by the state from potential threats that endanger themselves, their lives and/or their property, including their family.”*

Further regulated in Article 87 paragraph (1), that:

*“The reporter or witness cannot be sued, either civilly or criminally, for the report or testimony given by the person concerned.”*

With the provisions governing legal protection for Notaries as reporters of money laundering crimes, this will guarantee the safety of Notaries in the future.

## Conclusion

Notaries have the authority as reporting parties in the context of preventing and eradicating money laundering crimes. Based on the theory of authority, Notaries have the delegated authority as reporting parties for suspicious transactions as regulated by PP No. 43 of 2015 as a delegation of authority from the PPTPPU Law. Regarding this authority, based on the theory of responsibility, Notaries are formally responsible for the deeds made along with the official secrets attached to them. The issue of official secrets experiences a conflict of norms between PP No. 43 of 2015 and UUJN regarding the authority of notaries to report suspicious transactions. UUJN requires notaries to keep their clients' interests confidential unless the law stipulates otherwise.

Based on the theory of legal certainty, the conflict of norms regarding the secrecy of the Notary's position regarding the reporting of suspicious transactions that occur creates legal uncertainty. The conflict of norms can be resolved with the theory of norm hierarchy, in which PP Number 43 of 2015, which is hierarchized under UUJN, can be set aside so that Notaries cannot simply reveal the secrets of their position, including suspicious transactions that are carried out. However, based on the theory of relative secrecy of position, the secrecy of position can be excluded if a public interest is more prioritized. For this reason, the secrecy of the Notary's position based on UUJN can be excluded with the existence of delegated authority from the state. Reporting by Notaries regarding money laundering crimes is very vulnerable to intervention from perpetrators of crimes, so based on the theory of legal protection, Notaries have the right to receive a legal umbrella regulated by laws and regulations. In this case, the PPTPPU Law has provided legal guarantees regarding the protection of Notaries as reporting parties.

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