

Role Of Profession As Gatekeeper In Money Laundering

Budi Bahreisy

(Legal science doctoral student, Faculty of Law, University of Sumatera Utara, Medan, Indonesia)

ZulkarnainSitompul

(Promotor)

BismarNasution

(Co-Promotor)

Abstract: Speaking of assets obtained from corruption crimes usually by perpetrators both individuals and corporations can not be directly used because of fear or indicated as money laundering activities. Seeing the importance of the role of the legal profession, PPATK and professional organizations must hold a comprehensive socialization to all legal professions, members of the legal profession, as well as the public. This is important so that one vote in the role to prevent and eradicate the crime of money laundering. The problem raised in this paper is how is the role of the professions as a gatekeeper in money laundering, the method used in this dissertation is a normative juridical research method. The conclusion that can be written in this journal is that in practice, they make gatekeepers (special professions related to law and finance professionally connected to the financial system to hide assets resulting from crime). Therefore, suggestions that can be given in this journal writing are the need for the government, especially the House of Representatives, to revise every regulation related to these professions, which requires the reporting of the wealth of the perpetrators of money laundering crimes that uses others as a means of concealing and disguising the origin of these assets.

Keywords: Professional, Gatekeeper, Money Laundering

Date of Submission: 18-01-2020

Date of Acceptance: 06-02-2020

I. INTRODUCTION

Speaking of assets obtained from corruption crimes usually by perpetrators both individuals and corporations can not be directly used because of fear or indicated as money laundering activities. For this reason, the perpetrators usually try to hide the origin of the assets in various ways, including them in the banking system (financial system)¹, the methods taken are usually by hiding and disguising the origins of these assets with a view to avoiding efforts tracking by law enforcement officers which is usually termed money laundering².

Money Laundering Crime is basically an attempt to process the proceeds of crime with a legitimate business so that the money is clean or appears as halal money. Thus the origin of the money was covered up. Many parties agree that the Law on Money Laundering (henceforth in the TPPU Act) is more effective in recovering state finances in terms of asset recovery (Asset Recovery) compared to the Corruption Act (which is hereinafter briefly Act TIPIKOR). The reason is because the TPPU Law uses a new paradigm in the handling of criminal acts, namely the follow the money approach (Tracing the flow of money) to detect TPPU and other criminal acts³.

It is known, gatekeepers include lawyers, notaries, trusts and corporate service providers who utilize their expertise to hide the proceeds of corruption. The profession violates the law if it is used as a means of committing criminal acts. In addition to utilizing their expertise, the gatekeeper also acts as an intermediary, eliminating the corruptor's relationship with his property⁴. The gatekeeper becomes an agent who helps and

¹ Muchsin, *Ikhtisar Hukum Indonesia*, (Jakarta :BadanPenerbitIblam, 2005), P. 201.

² Yunus Husein, "Money laundering: Sampai di mana Langkah Negara Kita?", published in the bulletinPengembanganPerbankan May-June No. 89/2001, P. 3-4.

³ Fithriadi Muslim & Edi Nasution, *MenjeratKoruptorDenganUndang-UndangTindakPidanaPencucianUang*, paper presented at a national seminar betweenLembagaPengabdianKepadaMasyarakat (LPKM) UniversitasNegeri Padang in collaboration with Pro Justitia Jakarta danHarianUmumSinggalang, Padang on 19 November 2011, P. 4.

⁴ <http://news.okezone.com/read/2013/08/28/339/857164/ppatk-keterlibatan-gatekeeper-dalam-kasus-pencurian-uang-meningkata> accessed on 27 April 2016.

facilitates the process of money laundering and is responsible for the financial crime itself after receiving the proceeds of original crimes committed by other perpetrators. The task of the gatekeeper is to create conditions in which money launderers can maintain and enjoy the proceeds of crime without being tracked by law enforcement officials⁵.

Research Method

Based on the problems that have been formulated in this study, then this type of research is normative legal research. Because this research is a normative legal research, this research is based on an analysis of legal norms, both law in the sense of law as it is written in the books, and law in the sense of law as it is decided by the judge through judicial process. According to Bismar Nasution⁶ that normative legal research is research that refers to legal norms contained in legislation and court decisions.

Discussion

Seeing the importance of the role of the legal profession, PPATK and professional organizations must hold a comprehensive socialization to all legal professions, members of the legal profession, as well as the public. This is important so that one vote in the role of preventing and eradicating money laundering. This is to avoid the worries of the legal profession (which will carry out strict reporting obligations) for clients who move to other legal professions that do not strictly enforce reporting obligations, including carrying out customer due diligence and record keeping obligations⁷. In relation to the legal profession, each role will be described:

- Advocate

Law Number 18 Year 2003 regarding Advocates places Advocates as part of law enforcement, which in fact must participate in enforcing the law but in different functions with the police, public prosecutors and judges in a criminal justice system in Indonesia. This is explained in the explanation of Article 5 of the Advocate Law namely, "what is meant by" Advocates having the status of law enforcement "is an advocate as one of the instruments in the judicial process that has an equal position with other law enforcement agencies in upholding law and justice.

Essentially an Advocate is a profession, which provides legal services both inside and outside the court. Advocates carry out their profession based on knowledge, and at the same time are carried out with ethic conduct to provide services that have professionalism, accountability, independence, and full responsibility. Regarding this matter, TheodorusParera explained:⁸*"The aspects of knowledge, code of ethics, professional, independent, and accountable that distinguish the honor of the advocate profession from ordinary jobs. Ordinary work, is work that is more oriented to efforts to obtain a source of livelihood or earn a living wage. In contrast to that, a professional will work with high expertise, work on the basis of noble intentions, uphold the values of virtue, work under the control of a code of ethics, not humble themselves into wage people, and care for an abundance of honor (honoraria)".*

Regarding legal services, Article 1 number 2 of Law No. 18 of 2013 as follows: "Legal services are services provided by lawyers in the form of providing legal consultation, legal assistance, exercising power, representing, assisting, defending, and carrying out other legal actions in the interests of the client's law. Thus, advocates provide legal services to clients, while exercising power of attorney based on a power of attorney, representing, assisting, defending, as well as being able to take other legal actions for the benefit of the client. This shows that the task of the Advocate is not only to provide defense at court, but at the same time includes litigation and non-litigation.

Theodorus Yosep Parera reiterates that the functions and roles of the Advocate include the following⁹: Fight for Human Rights and the rule of law in Indonesia, Implement an advocate's code of ethics. Upholding the oath of advocates in order to uphold the law, justice and truth. Uphold and prioritize idealism, Protect and maintain

⁵ PakuUtama, *Memahami Asset Recovery & Gatekeeper*, (Jakarta: Indonesia Legal Rountable, 2013), P. 133.

⁶ Bismar Nasution, *Metode Penelitian Hukum Normatif dan Perbandingan Hukum*, Paper, delivered in an Interactive Dialogue on Legal Research and Legal Research Writing Results in the Magazine Akreditasi, (Medan : Fakultas Hukum USU, on 18 Februari 2003), P. 1.

⁷ Go LisanawatidanNjotoBenarkah, *Hukum Money Laundering (PencucuanUang) " DalamDimensiKepatuhan "*, (Malang : Setara Press, 2018), P. 58

⁸ TheodorusYosepParera, *AdvokatdanPenegakanHukum*, (Yogyakarta: Genta, 2016), P. 3.

⁹ *Ibid.* P. 6-7.

independence, freedom, degree and dignity of advocates. Maintain and improve the quality of advocate services to the community by means of continuous learning (continuous legal education) to broaden the horizons and legal knowledge. Maintain the personality of an advocate because the advocate profession is an honorable profession (*officium nobile*). Maintain good relations with clients and with colleagues. Legal services, legal advice, legal consultation, legal opinion, legal information, legal drafting, litigation, legal representation, legal aid/pro bono public.

The provisions of Article 4 of the Indonesian Advocate Code of Ethics also regulates the relationship of advocates with clients as follows: Advocates in civil cases must prioritize peaceful settlement. Advocates are not allowed to provide information that can mislead the client regarding the case being handled. Advocates are not justified in guaranteeing to their clients that the case they are handling will win. In determining the amount of honorarium advocates must consider the ability of clients. Advikat is not allowed to burden the client with unnecessary costs. Advocates in dealing with cases for Free must pay the same attention to cases for which they receive service fees. Advocates must refuse to take care of cases which according to belief have no legal basis. Advocates are required to hold office secrets about matters that are disclosed by the client in a trustworthy manner and are required to keep that secret after the end of the relationship between the advocate and the client. Advocates are not permitted to relinquish duties assigned to them at a time that does not benefit the client's position or at the time the task will cause irreparable harm to the client concerned. Advocates taking care of the joint interests of two or more parties must fully resign from the management of these interests, if later there is a conflict of interest between the parties concerned. Advocate retention rights of clients are recognized as long as they will not cause a loss in the interests of the client.

- Notary Public

Notaries as public officials who carry out the profession in providing legal services to the public, need to get protection and guarantees for the achievement of legal certainty (vide basic consider Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Notary positions). Based on these provisions, it can be understood that a notary is a public official and runs a profession to provide legal services to the public¹⁰. Because the notary public is also a legal profession, which is given authority, obligations, rights and prohibitions by law. For this reason, a notary public is also sworn in before carrying out his position. This oath is binding on every notary who will carry out his obligations, as determined in Article 4 of the Law of Notary Position. The oath is as follows: I swear / promise:

"That I will be obedient and loyal to the Republic of Indonesia, the Pancasila and the 1945 Constitution of the Republic of Indonesia, the Law on the Position of Notary and other laws and regulations. That I will carry out my position with trust, honesty, thorough, independent, and impartial. That I will maintain my attitude, conduct, and will carry out my obligations in accordance with my professional code of ethics, honor, dignity and responsibilities as a Notary. That I will keep the contents of the deed and information obtained in the performance of my position confidential. That I can be appointed to this position, either directly or indirectly, under whatever name or pretext, never and will not give or promise anything to anyone".

Related to the oath, the notary is actually bound not to notify the contents of the deed and information obtained in the performance of his position, and must keep it a secret because it is an oath in his office. This is due to the fact that obligations must be carried out in accordance with what is said in the oath¹¹.

The authority of a Notary Public shall be as referred to in Article 15 paragraph 1 and paragraph 2 of the Amendment to the Notary Office Act: Notary is authorized to make authentic Deed regarding all deeds, agreements and stipulations required by statutory regulations and / or desired by the parties concerned to be stated in an authentic Deed, guaranteeing certainty of the date of making the Deed, keeping the Deed, giving grosse, copy and citation Deed, all of that as long as the drafting of the Deed is not also assigned or excluded to other officials or other people determined by law. Authorize the signature and set the certainty of the date of the letter under the hand by registering in a special book. Book a letter under the hand by registering in a special book. Make a copy of the original letter under the form of a copy containing the description as written and described in the relevant letter. To validate the compatibility of the photocopy with the original letter. Providing legal counseling in connection with the making of Deed. Make Deed relating to land. Make the Deed of minutes of auction Referring to the above provisions, the notary can give or notify the contents of the deed to people who are directly interested in the deed, on the basis of the arrangements provided by the legislation. Pieter

¹⁰ As mandated in Article 1 Number 1 of Law No. 30 of 2004 concerning the Position of Notary, it is explained that the notary is a public official who is authorized to make an authentic deed and other authorities.

¹¹ Go LisanawatidanNjotoBenarkah, *Op. Cit*, P. 64.

Latumenten confirms¹²: “The concept of a secret notary public adheres to a relative or relative secret theory, in the sense that the secret of a notary public can be opened (open), if there is a public interest that must take precedence or the existence of laws or legislation that provides exceptions. Secret provisions of the position regulated in the Law of Notary Position Jo of the Notary Position Change Act, gave birth to a denial obligation, which is the obligation of a notary not to talk to anyone about the contents of the deed and all information obtained in the implementation of his position, whether contained in the deed or not contained in the deed , unless the law stipulates otherwise. These denial obligations have a strong public legal basis, where violations can be subject to sanctions based on public law”.

- Land Deed Making Officer (PPAT)

Regarding the Land Deed Making Official (hereinafter referred to as PPAT), Government Regulation Number 24 of 2016 concerning Amendment to Government Regulation Number 37 of 1998 concerning the Position of Land Deed Making Officials (hereinafter referred to as PJPPAT Amendment PP) confirms that the official land certificate maker is general official. The provisions of Article 1 number 1 of the PP amendment to the PJPPAT stipulate that, "Land Deed Making Officials are public officials who are authorized to make authentic deeds concerning certain legal actions regarding land rights or ownership rights over flats."

Freddy Harris and Leny Helena explain the position of PPAT and Notary as follows¹³: “So that many Notaries become PPAT or conversely a PPAT then becomes a Notary, depending on which profession they get first. But it can happen that a notary does not become a PPAT or PPAT does not become a notary. The notary was appointed based on a decree from the Minister of Law and Human Rights while the PPAT was appointed based on the Decree of the Minister of Agrarian Affairs and Spatial Planning”.

Thus, the fundamental difference between notary and PPAT can be understood. Duties and authorities of PPAT have been regulated by Government Regulation Number 37 of 1998 concerning Regulation of Position of Land Deed Making Official. Article 2 paragraph (1) of Government Regulation Number 37 of 1998 concerning the Position Regulation of the Official for Making Land Deed determines as follows: “The PPAT has the main task of carrying out some of the land registration activities by making a deed as proof of certain legal actions regarding land rights or Ownership Rights in Flats, which will be used as a basis for registering changes in land registration data resulting from legal actions”.

The legal acts include the following (Vide Article 2 (2) PP PJPPAT): Buying and selling. Exchange swap. Grants. Entering into the company (inbreng). Sharing of common rights. Granting of Building Use Rights / Use Rights on Property Rights. Granting Mortgage Rights. The granting of power of attorney imposes Mortgage Rights.

- Accountants and Public Accountants

Public Accountant is an accountant who works by opening a public accounting firm (KAP) that will provide services to companies in the field of auditing, accounting system preparation and other services-independently (independently). Public accountant is a field of activity carried out by public accountants, public accountants will provide various services to help companies which include taxation services, auditing services or for auditing the fairness of financial statements, and management consulting services. The various services that will be provided by public accountants will increasingly bring up other fields of specialization in accounting, namely: Accounting taxation, Accounting auditing, and also management consulting services.

On 25 April 2017 the Government through the Republic of Finance Minister issued Minister of Finance Regulation No.55 / PMK.01 / 2017 as amended by Regulation of the Minister of Finance of the Republic of Indonesia No.155 / PMK.01 / 2017 concerning Amendments to Regulation of the Minister of Finance No.55 / PMK.01 / 2017 concerning the Principle of Recognizing Service Users for Indonesian Accountants and Public Accountants. This regulation is generally intended to prevent and eradicate money laundering (TPPU) and specifically to provide a corridor for accountants and public accountants in identifying their service users, which is further useful for preventive actions against money laundering (TPPU) crimes¹⁴.

¹² Peter

Latumenten, *Dasar Pembeneran Menyimpan atau Membuka Rahasia jabatan Notaris dalam Regulasi UU lain yang Terkait*, Paper, submitted to Seminar Nasional Rahasia Jabatan vs Keterbukaan Informasi, Balai Kartini, Saturday 29 July 2017, P. 2.

¹³ Freddy Harris dan Leny Helena, *Notaris Indonesia*, (Jakarta: Lintas Cetak Djaja, 2017), P. 78.

¹⁴ <http://jtanzilco.com/blog/detail/911/slug/prinsip-mengenali-pengguna-jasa-bagi-akuntan-dan-akuntan-publik> accessed on 12 April 2019.

This Regulation of the Minister of Finance of the Republic of Indonesia requires accountants and public accountants to report to the Financial Professional Development Center (PPPK) and copy it to the Financial Transaction Reports and Analysis Center (PPATK), if in providing services "for and on behalf of service users" to be aware of suspicious transactions. If the accountant and public accountant do not report suspicious transactions, the accountant and public accountant may be subject to certain sanctions. But basically this Law was drafted in order to protect accountants and public accountants from money laundering activities.

Accountants and Public Accountants are required to apply the principle of recognizing service users (hereinafter abbreviated as PMPJ) as an effort to prevent money laundering as mandated in the Act. PMPJ includes identification, verification and monitoring of service user transactions. At the beginning of conducting business relations, accountants and public accountants conduct direct meetings with service users in order to ascertain the truth of the identity of their service users. Documents of service user identity, knowledge of work / line of business, source of funds and purpose of service user transactions must be held by accountants and public accountants¹⁵.

Accountants and Public Accountants provide professional services for the benefit of or for and on behalf of service users, regarding: buying and selling property; management of money, securities and / or other financial service products; management of current accounts, savings accounts, deposit accounts and / or securities accounts; operation and management of the company; and / or the establishment, purchase and sale of a legal entity.

Regulation of the Minister of Finance of the Republic of Indonesia No.55 / PMK.01 / 2017 as amended by Regulation of the Minister of Finance of the Republic of Indonesia No.155 / PMK.01 / 2017 states, the services of accountants and public accountants who are required to apply PMPJ are as follows: Making business relations with service users; There are financial transactions in rupiah and / or foreign currencies with a value of at least or equal to Rp 100,000,000; c. There are suspicious financial transactions related to money laundering and financing of terrorism; or Accountants and public accountants doubt the truth of information reported by service users.

Accountants and public accountants conduct risk assessments and group users of services based on the level of risk of money laundering or terrorism financing crimes. Risk assessment is carried out based on analysis in accordance with sectoral risk assessment and statutory provisions, at least regarding profiles, businesses, countries and products, which then the results of the assessment can be grouped as users of services that are low, medium or high risk. In the condition that service users refuse to follow PMPJ procedures performed by accountants and public accountants or if accountants and public accountants doubt the truth of the information conveyed by service users, accountants and public accountants are required to sever business relationships with service users.

Service users who have a high risk in relation to money laundering must be carried out in depth PMPJ, which can be in the form of requests for additional information about the source of funds, sources of wealth, transaction objectives, and the purpose of business relationships with parties related to service users and supervision further and on business relationships and the selection of transaction patterns that require further study. Sanctions for negligence by accountants and public accountants in implementing PMPJ and reporting obligations if they encounter suspicious financial transactions, the lightest of which is obtaining administrative sanctions in the form of a warning from the Head of PPPK, which is followed by remedial actions to the hardest sanctions in the form of freezing the state accountant's register or permit public accountant for three months.

The professions that are undertaken on a daily basis by the community, come up with a special term for certain professions to show how honored the task is carried out so that those who live it must be serious and maintain their dignity. *Officium Nobile*, also known as a noble and noble profession. This term is pinned to the profession of judges, prosecutors, advocates, notaries, because of their important role as individuals who carry out the mandate that is very influential on the lives of many people. The rule of law, justice, honesty, integrity and conscience become their main capital to devote themselves¹⁶.

II. CONCLUSION

The conclusion that can be written in this journal is that in practice, they make gatekeepers (special professions related to law and finance professionally connected to the financial system to hide assets resulting from crime) as the power of their assets / assets. many of those who as professions hold the title of *officium nobile* have harmed the honor of the profession. For example a lawyer who is proven to help his client by submitting a false statement to the court of his assets, helping his client make a fictitious agreement, a lawyer

¹⁵ *Ibid*

¹⁶ Yunus Husein, *Urgensi Peran Gatekeeper Sebagai Pelapor Dalam Rezim Anti Pencucian Uang*, Journal On Anti-Money Laundering, Volume I, Nomor 1/2013, P. 25.

helping his client to escape and hide the proceeds of crime through a complicated business scheme. Therefore, the advice that can be given in the writing of this journal is the need for the government, especially the House of Representatives, to revise every regulation related to these professions requiring to report the wealth of the perpetrators of money laundering crimes who use others as a means of concealing and disguising the origin of these assets.

BIBLIOGRAPHY

- [1]. Bismar Nasution, *Metode Penelitian Hukum Normatif dan Perbandingan Hukum*, Paper, delivered in an Interactive Dialogue on Legal Research and Legal Research Writing Results Majalah Akreditasi, (Medan: Fakultas Hukum USU, on 18 Februari 2003.
- [2]. Fithriadi Muslim & Edi Nasution, *Menjerat Koruptor Dengan Undang-Undang Tindak Pidana Pencucian Uang*, paper presented at a national seminar between Lembaga Pengabdian Kepada Masyarakat (LPKM) Universitas Negeri Padang in collaboration with Pro Justitia Jakarta dan Harian Umum Singgalang, Padang, on 19 November 2011.
- [3]. Freddy Harris dan Leny Helena, *Notaris Indonesia*, Jakarta : Lintas Cetak Djaja, 2017.
- [4]. Go Lisanawatidan Njoto Benarkah, *Hukum Money Laundering (Pencucian Uang) “ Dalam Dimensi Kepatuhan ”*, Malang : Setara Press, 2018.
- [5]. Muchsin, *Ikhtisar Hukum Indonesia*, Jakarta : Badan Penerbit Iblam, 2005.
- [6]. Paku Utama, *Memahami Asset Recovery & Gatekeeper*, Jakarta: Indonesia Legal Roundtable, 2013.
- [7]. Peter Latumenten, *Dasar Pembeneran Menyimpan atau Membuka Rahasia jabatan Notaris dalam Regulasi UU lain yang Terkait*, Paper, delivered at the National Seminar on Secret Position vs. Information Openness, Balai Kartini, on 29 July 2017.
- [8]. Theodorus Yosep Parera, *Advokat dan Penegakan Hukum*, Yogyakarta : Genta, 2016.
- [9]. Yunus Husein, “*Money laundering: Sampai di mana Langkah Negara Kita?*”, published in the bulletin Pengembangan Perbankan Mei-Juni No. 89/2001.
- [10]. -----, *Urgensi Peran Gatekeeper Sebagai Pelapor Dalam Rezim Anti Pencucian Uang*, Journal On Anti-Money Laundering, Volume I, Nomor 1/2013.
- [11]. <http://news.okezone.com/read/2013/08/28/339/857164/ppatk-keterlibatan-gatekeeper-dalam-kasus-pencurian-uang-meningkat> accessed on 27 April 2016.
- [12]. <http://jtanzilco.com/blog/detail/911/slug/prinsip-mengenali-pengguna-jasa-bagi-akuntan-dan-akuntan-publik> accessed on 12 April 2019.

Budi Bahreisy. "Role Of Profession As Gatekeeper In Money Laundering". *International Journal of Humanities and Social Science Invention (IJHSSI)*, vol. 09(1), 2020, pp 25-30.