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# Beyond Confidentiality: Advocates' Reporting Duties in the War Against Money Laundering

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## Abstract

The Principle of Recognizing Service Users (*Prinsip Mengenali Pengguna Jasa*, PMPJ), as outlined in Article 3 of Government Regulation No. 61 of 2021 concerning Amendments to Government Regulation No. 43 of 2015 on Whistleblowers in the Prevention and Eradication of Money Laundering Crimes, underscores the role of advocates as mandatory whistleblowers. This creates legal challenges regarding its implementation, resulting in a dialectical tension with the central argument that while PMPJ obligations are firmly grounded in normative legal frameworks, advocates—who are explicitly required to uphold these provisions—find no compelling legal basis for such duties in Law No. 18 of 2003 on

Advocates (the Advocate Law). The principle of *Lex Superior Derogat Legi Inferior* further complicates this issue, as it suggests that the Advocate Law, being of a higher legal order, supersedes the obligations imposed by PMPJ. The primary objective of this study is to critically analyze the implementation of PMPJ, specifically focusing on the supporting and inhibiting factors in the context of preventing and combating money laundering crimes. The findings highlight that the failure to optimally implement PMPJ within the advocate profession is largely due to the unresolved legal dialectic surrounding the obligations of advocates. This issue has not been addressed in prior studies, representing a novel contribution of this research. Consequently, this study proposes the need for a reformulation of the Advocate Law, emphasizing the explicit inclusion of advocates' obligations regarding the implementation of PMPJ principles.

## Keywords

*Principles of Recognizing Service Users, Money Laundering Crimes, Advocates*

## A. Introduction

As a rule-of-law country, Indonesia requires law enforcement officials to oversee the continuity of the legal process. The role of law enforcement, in this context, extends beyond those directly involved in the enforcement of laws. It encompasses not only law enforcement officers but also those responsible for maintaining public order. These key actors include the Police, Prosecutor's Office, Judges, Corrections Officers, and, crucially, Advocates.[1]

[1] Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Jakarta: Rajawali Pers, 2021). *See also* Herning Setyowati, and Nurul Muchiningtias. "The Role of Advocates in Providing Legal Assistance to the Community in the Perspective of Human Rights." *Lex Scientia Law Review* 2, no. 2 (2018): 155-168; Chairani Azifah, "Pro Bono Legal Aid by Advocates: Guarantee of Justice for the Poor." *The Indonesian Journal of International Clinical Legal Education* 3, no. 4 (2021): 537-552.

The advocate, more commonly known as a lawyer or legal advisor, is a free and independent profession, regarded as a respectable and honorable vocation. This is reflected in the term *officium nobile*, which signifies an "*honorable work*." However, despite its recognition as a profession of independence, the role of an advocate is not without limitations. It is subject to a strict code of ethics, which governs the conduct and responsibilities of practitioners within the legal field.[2]

Following Indonesia's independence, a special regulation governing the advocacy profession was introduced in 1947 through the *Reglement op de Rechterlijke Organisatie en het Beleid der Justitie in Indonesia* (Stb. 1847 No. 23 jo. Stb. 1848 No. 57). This regulation, along with its subsequent amendments and revisions, recognized advocates under the title of "*Procureurs*." However, the current legal framework for the profession of advocates is now primarily governed by Law No. 18 of 2003 on Advocates.

The wider community really needs the services of an Advocate, this is very much in line with the increasing complexity of the problems faced among the community, these problems are both public and private, starting from the field of Litigation and *non-litigation* fields[3], this need is also an awareness that Advocates have an important role in law enforcement[4].

For the 2019 period, in the publication of the Member List Book (BDA) of the National Leadership Council (DPN) of the Indonesian Advocates Association (Peradi), the total number of registered members in 2019 was 35,504 members, an increase from the previous year 2018 of 28,324 members[5]. With the increasing number of members of the Advocate profession, it

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2 Artidjo Alkostar, *Peran Dan Tantangan Advokat Dalam Era Globalisasi* (Yogyakarta: FH UII Press, 2010).

3 I Nyoman Gede Remaja Gusti Ketut Sanjaya, "Kedudukan Profesi Advokat Dalam Rangka Memberikan Pelayanan Kepada Masyarakat Di Bidang Hukum Berdasarkan Undang-Undang Nomor 18 Tahun 2003 Tentang Advokat," *Kertha Widya Jurnal Hukum* 7, no. 1 (2019): 15.

4 Raden Muyazin Arifin, "Fungsi Dan Kedudukan Advokat Dalam Proses Penegakan Hukum Di Indonesia," *Ar-Risalah* 13, no. 1 (2015): 37.

5 Hukum Online, "Terbitkan Buku Daftar Anggota Tahun 2019, Sebanyak 35.504 Advokat Terdaftar Di Peradi," Hukumonline.com, 2020, https://www.hukumonline.com/berita/a/terbitkan-buku-daftar-anggota-tahun-2019--sebanyak-35504-advokat-terdaftar-di-peradi-lt5f02c9e79a120.

also increases the chances of involvement of members of the Advocate profession in the crime of money laundering.

The public in looking for an Advocate who can help their affairs both litigated and non-litigation is certainly looking for an Advocate who has excellent quality or ability, so that the trust given by the client can be carried out correctly, quality and professionally and refer to existing regulations.

With this way of working, it will be able to break the talk of some people who state that Advocates are only good at talking, but do not understand the essence of the law and cannot practice[6], even Advocates are often considered as a profession that distorts facts or truth, does not have a conscience, defends mistakes and gets pleasure over the hardships of others[7].

Advocates also have the right to refuse their prospective clients to help with something related to the prospective client. Advocates can provide legal assistance without discriminating against background, gender, religion, politics, ancestry, race, social and culture[8]. However, for matters beyond these, the Advocate has the right to reject the client.

Clients who have found an Advocate to be able to assist their affairs in litigation and non-litigation, then the follow-up will be poured into a Power of Attorney which will then be expressed in a Power of Attorney which will then act for and on behalf of the client against the interests of the client itself. So that the agreement is a reciprocal relationship. In this case, a client can be defined as individuals, legal entities or other institutions that request or receive legal services from Advocates[9].

Advocates who receive trust from clients will provide services owned by the Advocate and use them for the benefit of

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6 Boris Tampubolon, *Strategi Menangani Dan Memenangkan Perkara Pidana di Pengadilan (Perspektif Advokat)* (Jakarta: Kencana Prenada Media Group, 2022).

7 Afandi Revoli Syah Rizal Wahyu Jonansa, Anang Sulistiyono, "Implementasi Hak Retensi Dalam Pemenuhan Hak Honorarium Advokat (Studi Di Kantor Advokat Husein Tarang & Partner Di Malang)," *Jurnal Dinamika* 28, no. 1 (2022): 4856.

8 Patricko Octavianno Untajana, "Honorarium Advokat Yang Dapat Dikategorikan Sebagai Tindak Pidana Pencucian Uang," *E-Journal Universitas Atma Jaya Jogjakarta*, 2016, 1.

9 Eleanora, "Kode Etik Advokat Sebagai Pedoman Dalam Penegakan Hukum."

the client himself, and with the implementation of the provision of services by the Advocate to the client, the Advocate is entitled to receive Honorarium for the services that have been provided. So that the relationship that arises between the Advocate and the client is subject to the rules of Private Law which specifically against the Agreement, as we can find in article 1320 of the Civil Code regarding the legal conditions of the agreement, which include: The existence of an agreement between the two parties, the existence of the ability to perform legal acts, the existence of certain objects and the existence of halal causes[10], and of course the Advocate must be responsible for the content of the agreement by the way of the realization of his advocacy work.

Regarding the Advocate Honorarium for the services that have been provided, until now there is no minimum or maximum size and/or limit on the payment of Advocate services, for that the amount of the Advocate Honorarium is determined by the agreement of both parties. Even in the Code of Ethics of Indonesian Advocates in Chapter III Article 4 paragraph (d) it is explained that "In determining the size of the Honorarium Advocates, it is mandatory to consider the client's ability"[11].

It is customary that the nominal amount received by the Advocate as an Honorarium for the services that have been provided is the "company secret" of each Advocate[12], which is unethical to preach to any party to discuss the nominal amount for the services that have been provided by the client.

The public's need for the Advocate profession is very high, and the lack of a clear number of Honorarium for Advocate services, of course, this makes the Advocate profession vulnerable to despicable acts in carrying out their profession in order to reap personal gains[13], one of which is *Money Laundering.*

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10 Bambang Sutiyoso, *Hukum Kontrak: Interpretasi Dan Penyelesaian Sengketa Di Indonesia* (Yogyakarta: UII Press, 2019).

11 Dominggus Maurits Luitnan, *Hukum Acara Peradilan Etika Advokat Indonesia* (Jakarta: Bentara Komunika, 2021).

12 Yudhi Widyo Armono, "Pelaksanaan Perjanjian Advokasi Antara Advokat Dengan Klien Dan Penentuan Besaran FEE Advokat," *Journal: RECHSTAAT Ilmu Hukum Fakultas Hukum UNSA* 8, no. 1 (2014): 4.

13 Angga Arya Saputra, "Pertanggungjawaban Pidana Advokat Dalam Menjalankan Profesi Berkaitan Dengan Iktikad Baik Dalam Pasal 16 Undang-Undang Advokat," *E-Journal Ilmu Hukum Kertha Wicara* 6, no. 4 (2017): 2.

The mode of money laundering by utilizing Advocates as involved parties is with Honorarium as a medium in carrying out money laundering by taking advantage of the absence of rules regarding the minimum and maximum limits of Honorarium for Advocates, thus opening opportunities for large and unnatural transactions.

Money laundering refers to the process of concealing the illicit origins of proceeds derived from criminal activities or illegal enterprises.[14] The primary objective is to obscure the criminal nature of the funds, making them appear as though they originate from legitimate business or economic activities, thereby enabling the perpetrator to enjoy the benefits in a lawful and sustainable manner.

A particular risk arises when advocates are involved in money laundering schemes, as the fees they receive are legally recognized as compensation for providing legal services. In this context, the payment of advocate honoraria is, in itself, a legitimate transaction. However, in the current global economy, which is increasingly service-oriented, the potential for misuse of legal services to facilitate money laundering becomes a significant concern. This highlights the intersection between legal practice and financial crime, underscoring the need for rigorous oversight in the legal profession.[15]

The mandate of Law Number 18 of 2003 concerning Advocates, in article 19 paragraph (1) Advocates have the right to protect documents and client secrets[16], of course this is a scourge as well as a very large opportunity to utilize the Advocate profession in committing money laundering crimes with the scheme of granting Advocate Honorarium.

As noted by Erman Rajagukguk[17], lawyers can indeed become a fertile ground for money laundering activities. This is because "*lawyers are especially attractive to money launderers due to the professional conduct rules that require them to maintain*

14 Fauziah Lubis, *Advokat VS Pencuciang Uang* (Medan: DeePublish, 2020).

15 Michel M. Kostecki Bernard M. Hoekman, *The Political Economy of The World Trading System from GATT to WTO* (Oxford: Oxford University Press, 1995).

16 Republik Indonesia, "Undang-Undang Nomor 18 Tahun 2003 Tentang Advokat" (2003).

17 Erman Rajagukguk, "Advocate and Corruption Eradication," *Jurnal Hukum Ius Quia Iustum* 15, no. 3 (2008): 4.

*client confidentiality*." The ethical obligation to preserve the secrecy of client information creates an environment in which illicit activities can be concealed under the guise of legal services, making the legal profession vulnerable to exploitation by individuals seeking to launder illicit proceeds.

The crime of money laundering has a very wide impact that destroys the national and international economic order, security and social and endangers the joints of the life order of the nation and state based on Pancasila and the 1945 Constitution, so the government has issued a legal product, namely Law Number 15 of 2002 concerning the Crime of Money Laundering as amended by Law Number 25 of 2003 concerning Amendments to Law Number 15 of 2003 2002 concerning the Crime of Money Laundering, and as a result of the development of the Money Laundering regime, a new legal product was created, namely Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering as an update of Law Number 25 of 2003 concerning Money Laundering. This legal product aims to be a shield against crimes that have the potential to cause money laundering crimes.

Efforts to prevent the crime of money laundering, in the Law have classified what criminal acts can lead to money laundering, as well as the possibility of criminal acts that are not explicitly mentioned in the law to be money laundering crimes where the criminal act is threatened with a prison sentence of 4 (four) years or more, which indirectly, all criminal acts can lead to money laundering[18].

There are roles of various parties in preventing money laundering crimes as explained in Chapter IV Reporting and Compliance Supervision of Law Number 8 of 2010 article 17 paragraph 1 letters (a) and (b)[19], but none of the reporting parties described in the law mention that Advocates are one of them. Of course, this will further increase the opportunity for

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18 Kartini Laras Makmur, "Why Only Scrutinise Formal Finance? Money Laundering and Informal Remittance Regulations in Indonesia," *Journal of Economic Criminology* 6 (December 2024): 100111, https://doi.org/10.1016/j.jeconc.2024.100111.

19 Republik Indonesia, "Undang-Undang Nomor 8 Tahun 2010 Tentang Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang" (2010).

Advocates to fall freely in participating in the profession in criminal acts.

Starting from the Honorarium of Advocates which does not have minimum and maximum limits, coupled with the Law and the Code of Ethics of Advocates[20], which clearly state that Advocates have the right to protect documents and client secrets, and are not included as reporting parties for the prevention of money laundering crimes, the position of Advocates is very strategic to be part of money laundering.

The impact arising from the involvement of Advocates in money laundering can damage business reputations, increase crime both in terms of type and quality, exacerbate social inequality, instability of the financial system, loss of government control over economic policies and loss of potential state opinion from the tax sector[21]. More than that, making Advocates a forum to seek profit and abandon their non-profit nature, and no longer a means of struggle to defend the rights of the poor[22].

The enforcement of the money laundering legal regime cannot release the involvement of several parties which is not clearly described in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, and the increasingly open possibilities of the legal profession, especially Advocates in the involvement of money laundering, the government has issued Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes[23], where one of the professions classified as a whistleblower related to suspicious transactions is an Advocate[24].

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20 Komite Kerja Advokat Indonesia, "Kode Etik Advokat Indonesia" (2002).

21 Lubis, *Advokat VS Pencuciang Uang*.

22 Stella Delarosa, "Liberalisasi Fee Advokat: Antara Perlindungan Dan Kompetisi Terhadap Advokat Indonesia," *Veritas et Justitia* 2, no. 2 (2016): 360, https://doi.org/https://doi.org/10.25123/vej.v2i2.2271.

23 Republik Indonesia, "Peraturan Pemerintah Republik Indonesia Nomor 43 Tahun 2015 Tentang Pihak Pelapor Dalam Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang" (2015).

24 Ahmad Badawi Maria Yeti Andrias, Liani Sari, Jayanti Puspita Ningrum, "Kewajiban Profesi Sebagai Pihak Pelapor Dalam Tindak Pidana Pencucian Uang," *Legal Pluralism: Jurnal Ilmu Hukum* 11, no. 2 (2021): 468–69.

Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes explicitly explains that Advocates are one of the service providers who must report if suspicious financial transactions are found against their clients. The importance of this Government Regulation is so as not to create a superior situation for the Advocate profession, so that in carrying out professional duties it is still necessary to pay attention to the rules of the game outside of Law Number 18 of 2003 concerning Advocates and the Code of Ethics for the Advocate Profession, especially to this Government Regulation itself.

The Head of PPATK issued Regulation of the Head of PPATK Number 11 of 2016 concerning Procedures for Submitting Suspicious Financial Transaction Reports for Professions, namely by accessing the GRIPS Application that has been provided to facilitate reporting to clients with abnormal financial activities[25]. However, so far only 2 (two) Advocates have just registered on the application[26].

The Head of PPATK also issued the Head of PPATK Regulation Number 10 of 2017 concerning the Principle of Recognizing Service Users for Advocates[27], through it as a forum to prevent Advocates from being involved in criminal acts. The involvement of Advocates as reporting parties in these norms also makes them supervisors of Advocates' behavior so that they do not deviate.

However, starting from Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes was enacted, along with the issuance of Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes and Regulation of the Head of PPATK Number 10 of 2017 concerning

25 Republik Indonesia, "Peraturan Kepala Pusat Pelaporan Analisis Transaksi Keuangan Tentang Tata Cara Penyampaian Laporan Transaksi Keuangan Mencurigakan Bagi Profesi" (2016).

26 Lubis, *Advokat VS Pencuciang Uang*.

27 Nashriana Isma Nurlillah, "Gatekeeper Dalam Skema Korupsi Dan Praktik Pencucian Uang," *Simbur Cahaya: Fakultas Hukum Universitas Sriwijaya* 26, no. 2 (2020): 212.

the Principle of Recognizing Service Users for Advocates[28], until today it has not run effectively because the legal profession, especially Advocates, is protected by Law Number 18 of 2003 concerning Advocates which specifically protects client secrets, and the regulation of Advocates as Whistleblowers is only regulated in Government Regulations which of course can be declared to have no legal force[29], and does not describe the spirit of the hierarchy of the formation of Laws and Regulations as stipulated in Article 7 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations.

The research carried out is included in the type of Normative Law research, because in the implementation of this research it refers to the norms contained in the laws and regulations that are directly related to the research conducted[30], whether the existing norms are supportive, there are vague norms or there is a conflict of norms in the implementation of reporting by the reporting of the whistleblower in preventing and eradicating money laundering crimes by the Advocate profession is associated with the honorarium received. The data used in this study is Secondary Data. Secondary data is data obtained from the results of a review of several literature relevant to the material, problem and substance of this research[31]. Secondary Data consists of Primary Legal Materials, namely authoritative legal materials consisting of legislation, official records or minutes of law-making and court decisions, Secondary Legal Materials consist of publications on law including textbooks, legal dictionaries, journals, and comments on court decisions[32].

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28 Republik Indonesia, "Peraturan Kepala Pusat Pelaporan Analisis Transaksi Keuangan Mengenai Prinsip Mengenali Pengguna Jasa Bagi Profesi Advokat" (2017).

29 Markoni Yudhi Ongkowijaya, Helvis, "Kewajiban Advokat Dalam Upaya Mencegah Transaksi Keuangan Mencurigakan," *Jurnal Syntax Admiration* 2, no. 11 (2021): 2193.

30 M. Syamsudin, *Mahir Meneliti Permasalahan Hukum* (Yogyakarta: Kencana : Prenada Media Group, 2021).

31 Mukti Fajar, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2015).

32 Peter Mahmud Marzuki, *Penelitian Hukum* (Surabaya: Kencana : Prenada Media Group, 2021).

## B. Reporting Obligations in the Prevention and Eradication of Money Laudering Crimes for the Advocate Profession

The Anti-Money Laundering Regime has received special attention for law enforcement, ranging from the international and national world, because the Crime of Money Laundering itself can damage the joints of state and nation life, ranging from economic, political, social instability and increasing the crime rate in a country.

If Money Laundering Crimes are rampant, it will indirectly have a negative impact on society, including[33]:

1. Money laundering can harm the state from the potential of government revenue in the tax sector, where the tax money it produces indirectly contributes to improving the standard of living of the wider community, developing human resources, infrastructure development and small and medium-scale economic development;
2. Money laundering activities can cause the repetition of the original crime or other criminal acts that have the potential to disrupt the security and comfort of the life of the wider community, ranging from the increase in the sale and circulation of narcotics, the high cost of law enforcement in line with the high crime rate;
3. Money laundering can damage the community's financial sector, the potential for committing corruption crimes increases due to the high circulation of money from money laundering, so that it is no longer possible to distinguish which money comes from legitimate sources, and which comes from illegal and haram sources;
4. Money laundering as a transnational crime, without having to have physical movement carried out by the perpetrator, with modern technological advances can move large amounts of money from one country to another, thus having an impact on the country of origin that is harmed, as well as eliminating investment

[33] Hasanal Mulkan, *Hukum Tindak Pidana Khusus* (Palembang: Kencana : Prenada Media Group, 2022).

interest, raising doubts in the security of investing capital. So that it has an impact on the closure of job opportunities, reducing the quality of life of the wider community.

The classification of criminal acts that are criminal acts as long as the Crime of Money Laundering occurs as per article 2 paragraph (1) of the Anti-Money Laundering Law as explained on Table 1.

**TABLE 1. Original Crimes Related to Money Laundering and Its Regulations**

| Original Criminal Acts | Regulation |
|---|---|
| Corruption | Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption |
| Bribery | Law Number 11 of 1980 concerning the Crime of Bribery jo. Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption |
| Drugs | Law Number 35 of 2009 concerning Narcotics |
| Psychotropics | Law Number 5 of 1997 concerning Psychotropics |
| Labor Smuggling | Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad and Law Number 18 of 2017 concerning the Protection of Indonesian Migrants |
| Migrant Smuggling | Law Number 6 of 2011 concerning Immigration |
| In the Banking Sector | Law No. 7 of 1992 jo. Law No. 10 of 1998 concerning Banking |
| In the field of capital market | Law Number 8 of 1995 concerning the Capital Market |
| In the field of insurance | Law Number 40 of 2014 concerning Insurance |
| Customs | Law Number 10 of 1995 jo. Law Number 17 of 2006 concerning Customs |
| Excise | Law Number 11 of 1995 jo. Law 39 of 2007 on Excise |

| Original Criminal Acts | Regulation |
|---|---|
| Trafficking in Persons | Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons and Several Provisions in the Criminal Code |
| The Dark Arms Trade | Emergency Law No. 12 of 1951 on amending the "*Ordonnantietijdelijke Bijzondere Strafbepalingen*" (Staatsblad 1948: 17) and the Former Law of the Republic of Indonesia No. 8 of 1948 concerning the Registration and Granting of Permits to Use Firearms |
| Terrorism | Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning Terrorism Crimes into Law |
| Abduction | Article 328 of the Criminal Code |
| Theft | Articles 362 – 365 of the Criminal Code |
| Embezzlement | Articles 372 – 375 of the Criminal Code |
| Deceit | Articles 378 – 380 of the Criminal Code |
| Money Counterfeiting | Chapter X of the Criminal Code concerning Counterfeiting of Money and Banknotes Articles 244 – 251 and Law Number 7 of 2011 concerning Currency |
| Gambling | Article 303 of the Criminal Code |
| Prostitution | Article 296 jo. Article 506 and Criminal Provisions in Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons |
| In the field of taxation | Law Number 16 of 2009 concerning the Stipulation of Government Regulations in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures into Law |
| In the field of forestry | Law No. 41 of 1999 concerning Forestry and Law No. 18 of 2013 concerning Prevention and Eradication of Forest Destruction |
| In the field of environment | Law Number 32 of 2009 concerning Environmental Protection and Management |
| In the Marine and Fisheries Sector | Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries and Law No. 32 of 2014 concerning Marine Affairs |
| Other Criminal Acts that are threatened with imprisonment for 4 (four) years or more | Criminal acts other than crimes as determined from letters (a) to (y) which have a minimum penalty of 4 (four) years in prison. |

The Crime of Money Laundering is not a stand-alone criminal act, so the *legal ratio* is that there is no crime of money laundering as a follow-up crime if there is no original crime[34]. Because the money obtained from *core crime* is usually laundered so that the proceeds can be enjoyed by the original perpetrator or other perpetrators.

The Orientation of the Crime of Money Theft departs from the pursuit of the proceeds of the crime, so that the perpetrator of the original crime cannot enjoy the proceeds of the crime. The existence of this clustering of original crimes starting from letter a to letter y is an approach with *a listing crimes scheme,* while the letter z uses *a threshold approach.* The crime of money laundering does not depend on the large or small amount of money that is hidden, disguised, because in fact every money generated from the crime is the object of the crime of money laundering[35]. With many types of criminal acts originating from the crime of money laundering, and as the letter z in the table above which can be said to be a *sweeping* article because the criminal act is outside what has been determined in article 2 paragraph (1), it can be a criminal act of money laundering if the criminal act is threatened with a minimum of 4 (four) years in prison.

In order to avoid the rampant practice of Money Laundering, Indonesia has produced legal products that aim to prevent the occurrence and eradication of Money Laundering, which cannot be enforced without good cooperation between the state and its citizens. Furthermore, Law Number 8 of 2010 concerning the Crime of Money Laundering itself, clusters anyone who is the reporting party (subject) and anything that is reported (object) from the prevention of the Crime of Money Laundering itself. With this clustering, there is an obligation from the subject to be able to report objects that are suspected to be Suspicious Financial Transactions (TKM).

CHAPTER IV concerning Reporting and Compliance Supervision in article 17 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes,

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34 Yenti Garnasih, *Penegakan Hukum Anti Pencucian Uang Dan Permasalahannya Di Indonesia*, Edisi Pert (Jakarta: Rajawali Pers, 2015).

35 Mahkamah Agung, "Naskah Akademis: Tindak Pidana Pencucian Uang" (Jakarta, 2006).

there are parties who become reporters in the event of Money Laundering Crimes, namely:

a. *Financial Service Providers:*
   1. Bank;
   2. Financing companies;
   3. Insurance companies and insurance brokerage firms;
   4. Pension funds of financial institutions;
   5. Securities companies;
   6. Investment managers;
   7. Custodian;
   8. Trustees;
   9. Posts as current account providers;
   10. Foreign exchange traders;
   11. Payment instrument operators using cards;
   12. Operators of *e-money* and/or *e-wallets*;
   13. Cooperatives that carry out savings and loan activities;
   14. Pawnshop;
   15. Companies engaged in commodity futures trading; or
   16. Organizers of money transfer business activities.

b. *Other providers of goods and/or services:*
   1. Property companies/property agents;
   2. Motor vehicle traders;
   3. Gem and jewelry/precious metals traders;
   4. Merchants of art and antiques; or
   5. Auction hall

Article 17 Paragraph (2) of Law Number 8 of 2010 concerning the Prevention and Eradication of Laundering Crimes explains that the reporting party other than what has been described in Article 17 Paragraph (1) is regulated by Government Regulation. Therefore, in the period from 2010 to 2015 the Government Regulation in question was only issued.

On June 23, 2015, the Government has issued Government Regulation Number 43 of 2015 concerning Whistleblowers in the Prevention and Eradication of Money Laundering Crimes. In this Government Regulation, it has expanded the subject that becomes a reporter if in carrying out the transaction there is a Suspicious Financial Transaction.

The issuance of this Government Regulation is not only carrying out the mandate of Law Number 8 of 2010 concerning

the Prevention of the Eradication of Money Laundering Crimes, but the more sophisticated and developing the modus operandi used by the perpetrators of money laundering crimes, there is a role of certain parties that are very vulnerable to being utilized[36].

The other parties other than those regulated in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes which are regulated as reporters in Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes are contained in Articles 2 and 3, namely:

1. Article (2) includes:
   a. Venture capital firms;
   b. Infrastructure finance companies;
   c. Microfinance institutions; and
   d. Export financing institutions.
2. Article 3 explains that the reporting party also includes:
   a. Advocate;
   b. Notary;
   c. Land deed-making officials;
   d. Accountant;
   e. Public accountants; and
   f. Financial planner.

The government also issued Government Regulation Number 61 of 2021 concerning Amendments to Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes, which added several parties who became reporting parties, namely information technology-based money lending service providers, crowdfunding service providers through technology-based stock offerings and financial transaction service providers based on information technology. information technology.

Especially for the Advocate profession, it is explicitly regulated in Government Regulation Number 43 of 2015 concerning the Whistleblower in the Prevention and Eradication of Money Laundering Crimes. Therefore, it can be carefully understood that the Advocate Profession is one of the most

36 "Hasil Wawancara Dengan Bidang Hukum Dan Regulasi PPATK Bapak Dandi Riskia Dan Ibu Andhesti Rarasati, Jakarta, 13 Januari 2023, Pukul 19.00 WIB."

vulnerable professions to be used for its specificity in the Crime of Money Laundering.

To support the implementation of the Principle of Recognizing Service Users (PMPJ) by PPATK as a *Financial Intelligent Unit (FIU),* the Head of the Center for Financial Transaction Reporting and Analysis issued regulation Number 10 of 2017 concerning the Application of the Principle of Recognizing Service Users for Advocates, as a benchmark for the Advocate Profession in implementing PMPJ.

The Advocate profession, which is made the subject of Whistleblower in the Money Laundering Crimes regime, must be clearly and firmly regulated in relation to the enforcement of this anti-money laundering regime. This is clearly needed considering that the Advocate profession is a free profession, with this freedom Advocates have a very wide scope of work[37].

Due to the breadth of the scope of work of the Advocate Profession, it is regulated what must be reported by Advocates as contained in Article 8 of Government Regulation Number 43 of 2015 concerning the Whistleblower in the Prevention and Eradication of Money Laundering which reads:

Article 8

1) The Whistleblower as referred to in Article 3 is obliged to submit a report on **Suspicious Financial Transactions** to PPATK **for the Benefit of or for and on behalf of Service Users**, regarding:
   a) Purchase and sale of property;
   b) Management of money, securities, and/or other financial services products;
   c) Management of current accounts, savings accounts, deposit accounts, and/or securities accounts;
   d) Operation and management of the company; and/or
   e) Establishment, purchase, and sale of legal entities.

Article 8 explains that the Reporting Party, in this case the Advocate, must report to PPATK in the event of a Suspicious Financial Transaction in which case the Advocate is acting for the benefit of and on behalf of his client. In the Government

37 V Harlen Sinaga, *Dasar-Dasar Profesi Advokat* (Jakarta: Erlangga, 2011).

Regulation *a quo* conveys reports carried out by the Advocate Profession only if they are found in real terms. Of course, this is a debate among many circles that the act must be real first before it can be reported.

Seeing that it is still possible for article 8 of *the Government Regulation a quo* to be misinterpreted, the *Government Regulation a quo* was updated with Government Regulation Number 61 of 2021 concerning Amendments to Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes. The amended Article 8 reads:

Article 8

1) The Reporting Party as referred to in Article 3 is obliged to submit to PPATK the Transactions carried out by the Profession for the benefit of or for and on behalf of the Service User **who is known to be suspected of using Assets that are suspected of originating from the proceeds of criminal acts** regarding:
   a) Purchase and sale of property;
   b) Management of money, securities, and/or other financial services products;
   c) Management of current accounts, savings accounts, deposit accounts, and/or securities accounts;
   d) Operation and management of the company; and/or
   e) Establishment, purchase, and sale of legal entities.

Article 8, which has been updated, includes a sentence that clarifies the position of the enforcement of the anti-money laundering regime so that law enforcement is not only against its eradication, but also at the stage of preventing money laundering which can involve professionals such as Advocates.

The keywords added in Government Regulation Number 61 of 2021 concerning Amendments to Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes are *those that are known to be suspected of coming from the proceeds of criminal acts.* With this phrase, in carrying out the interests of the client for and on behalf of the client, the transaction carried

out if it deviates from the characteristics of the client, it should be suspected that it comes from the proceeds of the criminal act or the Advocate himself has known the source of the transaction funds.

Regarding the formulation of article paragraph 8 (1) of *PP a quo,* when viewed from the perspective of the professional characteristics of the Advocate's work, what is possible or still often done by the Advocate is the operation and management of the company as well as the establishment, purchase and sale of legal entities.

The transaction listed is still in an unclear territory, because this is certainly important to know whether the transaction carried out in accordance with the mandate of article 8 paragraph (1) a person places himself as an Advocate or not. For the sale and purchase of property, of course, it can be done by civilians as it should[38].

The arrangement as stipulated in Article 8 paragraph (1) of PP *a quo* is based on the principle that Advocates who have a wide work area, as well as unlimited access are often used in certain situations. As in the management and operation of a company, the Advocate may be lent his name to be a director, commissioner or organ of the company, where the activities of this company are illegal that are not known for sure by the Advocate concerned. So that the formulation of article 8 paragraph (1) of PP *a quo* emphasizes sentences *that are known to be suspected of coming from the proceeds of criminal acts,* of course this PP *a quo* aims to protect the Advocate himself[39].

Although the existence of reporting obligations still does not receive high appreciation, in Government Regulation Number 61 of 2021 concerning Amendments to Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes, it still provides space for Advocates to be able to carry out their obligations in providing legal assistance in the form of reporting exemptions in article 8 paragraph (3), as follows:

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38 "Hasil Wawancara Dengan Bidang Hukum DPN Peradi Bapak Dr. Nikolas Simanjuntak, S.H., M.H, Jakarta, 11 Januari 2023, Pukul 11.00 WIB."

39 "Hasil Wawancara Dengan Bidang Hukum Dan Regulasi PPATK Bapak Dandi Riskia Dan Ibu Andhesti Rarasati, Jakarta, 13 Januari 2023, Pukul 19.00 WIB."

3) Provisions as intended in paragraph (1) **Excluded** Advocates acting in the interests of or for and on behalf of Service Users, in the event that:
   a. Ensuring the legal position of the Service User; and
   b. Handling a case, arbitration, or alternative dispute resolution.

This exception is intended to provide protection to Advocates in carrying out their duties[40]. Advocates in acting in the interests of their clients and on behalf of their clients, whether in terms of securing legal positions, handling of a case, arbitration or alternative dispute resolution, because the reporting carried out is not on the case being handled[41].

The formulation of Article 8 paragraph (1) PP *a quo* certainly does not violate the rules because the more sophisticated and developing civilization is, the more modes used by criminal offenders to take advantage of certain professions in carrying out transactions that can disguise and obscure the results of criminal acts that have been committed.

The Advocate profession at this time is actually more numerous and active, not as referred to in Article 8 paragraph (1), but in matters that are excluded in the PP *a quo* as referred to in Article 8 paragraph (2), because it can be understood that the Advocate profession is a profession that provides humanitarian asylum[42].

The implementation of the Principle of Recognizing Service Users for Advocates will be carried out when:

a) Conduct legal/business relations with service users/clients at the first time using the Advocate's services;

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40 Pujiyono Richard Purnomo, Nyoman Serikat P.J, "Pengaturan Wajib Lapor Advokat Dalam Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang Berdasarkan Peraturan Pemerintah Nomomr 43 Tahun 2015 Tentang Pihak Pelapor Dalam Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang," *Diponegoro Law Review* 5, no. 2 (2016): 12.

41 Njoto Benarkah Go Lisanawati, *Hukum Money Laundering Dalam Dimensi Kepatuhan* (Malang: Setara Press, 2018).

42 Nikolas Simanjuntak, *Acara Pidana Indonesia Dalam Sirkus Hukum* (Jakarta: Alumni, 2022).

b) There are financial transactions in rupiah and/or foreign currencies with a value of at least or equivalent to Rp. 100,000,000 (one hundred million rupiah);
c) There are suspicious financial transactions related to money laundering and terrorism financing crimes; or
d) Advocates doubt the veracity of the information reported by service users.

In carrying out the Implementation of the Principle of Recognizing Service Users for Advocates, at least contain:

a) Identification of service users;
b) Verification of service users; and
c) Monitoring of service user transactions

Identification is the earliest part carried out in the PMPJ stage, therefore this identification is the submission of personal data attached to the service user or client concerned. Verification is a stage of checking personal data that has been submitted by the service user with valid supporting documents.

Monitoring is divided into transaction monitoring and service user profile monitoring. The monitoring of transactions is in accordance with the limits determined to be able to be carried out by PMPJ and profile monitoring is carried out when service users make transactions that are not in accordance with the profile of service user characteristics, or which is meant by greater expenses than income[43].

Identification, verification and monitoring during PMPJ are not only carried out for individual subjects, but also for Corporations and Legal Arrangements. After PMPJ is carried out, there is a risk assessment of the client or service user. Whether the service users who have been carried out by PMPJ have a high, medium or low risk value.

The Principle of Recognizing Service Users (PMPJ) will be carried out by Advocates in three stages, namely simple PMPJ, ordinary PMPJ and in-depth PMPJ. Of the three PMPJs, it will be carried out in accordance with the classification of risks that exist in Advocate service users.

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43 "Hasil Wawancara Dengan Bidang Hukum Dan Regulasi PPATK Bapak Dandi Riskia Dan Ibu Andhesti Rarasati, Jakarta, 13 Januari 2023, Pukul 19.00 WIB."

**TABLE 2. Principles of Recognizing Simple Service Users**

| Documents and Information | Service User | | Beneficial Ownership | |
|---|---|---|---|---|
| | Individual | Corporation | Individual | Corporation |
| Full Name | ✓ | ✓ | ✓ | ✓ |
| Identity Number | ✓ | | ✓ | |
| Place and date of birth | ✓ | | ✓ | |
| Address | ✓ | ✓ | ✓ | ✓ |
| Phone number | | ✓ | | ✓ |
| Appointment documents acting for and on behalf of the corporation | | ✓ | | ✓ |

**TABLE 3. Principles of Recognizing Ordinary Service Users**

| Documents and Information | Service User | | Beneficial Ownership | |
|---|---|---|---|---|
| | Individual | Corporation | Individual | Corporation |
| Full Name | ✓ | ✓ | ✓ | ✓ |
| Identity Number | ✓ | | ✓ | |
| Legal Entity Ratification Decree | | ✓ | | ✓ |
| Place and date of birth | ✓ | | ✓ | |
| Citizenship | ✓ | | ✓ | |
| Form of business entity | | ✓ | | ✓ |
| Address listed on the ID card | ✓ | | ✓ | |
| Current address including phone number | ✓ | ✓ | | ✓ |
| Address in the country of origin for foreign nationals | ✓ | | ✓ | |
| Work | ✓ | | ✓ | |

| Documents and Information | Service User | | Beneficial Ownership | |
|---|---|---|---|---|
| | Individual | Corporation | Individual | Corporation |
| Source of funds | ✓ | ✓ | | |
| Purpose of the transaction | ✓ | ✓ | | |
| Authority to act for and on behalf of corporations | | ✓ | | |
| Legal relationship between service users and BO | | | ✓ | ✓ |
| Written statement from the service user regarding the correctness of the identity and source of BO funds | | | ✓ | ✓ |

**TABLE 4. Principles of Recognizing In-depth Service Users**

| Documents and Information | Service User | | Beneficial Ownership | |
|---|---|---|---|---|
| | Individual | Corporation | Individual | Corporation |
| Full Name | ✓ | ✓ | ✓ | ✓ |
| Identity Number | ✓ | | ✓ | |
| Legal Entity Ratification Decree | | ✓ | | ✓ |
| Place and date of birth | ✓ | | ✓ | |
| Citizenship | ✓ | | ✓ | |
| Form of business entity | | ✓ | | ✓ |
| Business entity field | | ✓ | | ✓ |
| Address listed on the ID card | ✓ | | ✓ | |

| Documents and Information | Service User | | Beneficial Ownership | |
|---|---|---|---|---|
| | Individual | Corporation | Individual | Corporation |
| Current address including phone number | ✓ | ✓ | | ✓ |
| Address in the country of origin for foreign nationals | ✓ | | ✓ | |
| Work | ✓ | | | |
| Source of funds | ✓ | ✓ | | |
| Source of wealth | ✓ | ✓ | | |
| Purpose of the transaction | ✓ | ✓ | | |
| Purpose of business relationship with related parties | ✓ | | | |
| Authority to act for and on behalf of corporations | | ✓ | | |
| Legal relationship between service users and BO | | | ✓ | ✓ |
| Written statement from the service user regarding the correctness of the identity and source of BO funds | | | ✓ | ✓ |

For documents as necessary to support the implementation of PMPJ by the reporting party, namely the Advocate must store and manage the document for 5 (five) years from the end of the

legal relationship between the Advocate and the Service User. This aims to be evidence if problems occur in the future.

The reporting carried out by the Advocate if a Suspicious Financial Transaction is found, it can be reported electronically or non-electronically, and the reporting party is not allowed to inform the client that the client is reported for the existence of TKM, for that it is known as *anti-tipping off*. So that clients or suspected service users do not flee or complicate the investigation process[44].

The Financial Transaction Reporting and Analysis Center as an independent body/institution was established to prevent and eradicate money laundering crimes, supervising Advocates on Advocates' compliance in implementing the Principle of Recognizing Service Users. Because without reporting from Advocates, the prevention carried out will not be carried out properly and with quality[45].

The Center for Financial Transaction Reporting and Analysis can also provide administrative sanctions against Service Providers which in this study is especially for Advocates who do not implement the Principle of Recognizing Service Users. The sanctions as intended are:

a. Written warning;
b. Public announcements of actions or sanctions; and/or
c. Administrative fine

In addition to the sanctions imposed directly by PPATK as a supervisory institution, PPATK can also provide recommendations to the competent authorities to:

a. Freezing business activities;
b. Revoking or canceling the advocate's business license;
c. Revoking and revoking the Advocate's license; and/or
d. Dismissing Advocates.

The phrase "recommendation to the authorities" according to the author is aimed directly at the Advocate Organization as a

44 "The results of the interview with the Legal and Regulation Division of PPATK, Mr. Dandi Riskia and Mrs. Andhesti Rarasati, Jakarta, January 13, 2023, at 19.00 WIB."

45 "The results of the interview with the Legal and Regulation Division of PPATK, Mr. Dandi Riskia and Mrs. Andhesti Rarasati, Jakarta, January 13, 2023, at 19.00 WIB."

forum for the Advocate to obtain a permit/license as stipulated by Law Number 18 of 2013 concerning Advocates, which in this case is the National Leadership Council of the Indonesian Advocates Association (DPN Peradi).

Recommendations issued or issued by PPATK must of course be considered by DPN Peradi as a partner of PPATK in realizing the Prevention and Eradication of Money Laundering Crimes, especially for the Advocate Profession whose existence and expertise are very vulnerable to being used by certain parties.

The Principle of Recognizing Service Users (PMPJ) carried out by Advocates is carried out based on Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes and Government Regulation Number 61 of 2021 concerning Amendments to Government Regulation Number 43 of 2015 concerning Reporting Parties In the Prevention and Eradication of Money Laundering Crimes, PMPJ is carried out by Advocates to PPATK as a supervisory and prevention and eradication agency money laundering.

This reporting obligation at the beginning of the legal relationship between the advocate and the client has actually been implemented, because at the time of making the power of attorney for and on behalf of the client, the Advocate has carried out the initial identification and verification of the identity, but then if it is found that it is not in accordance with the profile and characteristics, then that is when the new reporting is carried out.

The reporting carried out by the service provider, in this case, the advocate needs to be underlined that every report submitted to PPATK as the supervisor, will be analyzed first, for that if the report indicates a criminal act of embezzlement, it will be made in the form of an LHA (Analysis Result Report) which is then forwarded to APH (Law Enforcement Officials) as information, not evidence.

The report on the results of the analysis given to APH is often only information that cannot be passed on by investigators because of the challenges of law enforcement of the crime of laundering, collecting evidence and the necessary information, of course, requires special treatment, considering that the crime of

money laundering as *lex specialis derogate legi generali* must be treated specially.

## C. Supporting Factors for Law Enforcement and Advocates as Gatekeepers in Preventing Money Laundering

Law enforcement, especially the Prevention and Eradication of Money Laundering Crimes, is very complicated and *complicated.* In addition to the growing modus operandi used by criminal offenders from time to time, there are also many parties involved in providing goods and services both from banking and non-banking as well as professionals[46], who in this study are Advocates.

Money Laundering Crime is a transnational crime, because the crime is not a crime committed in a certain jurisdiction but is carried out across borders between one country and another so that it is a *concern* of the international world as well as Indonesia in particular for this crime.

Globalization has become a great opportunity for money laundering crime, the influence of *the internet* has also had a wide impact on the development of money laundering crimes. So it is undeniable that transnational money laundering crimes are considered a dark side of globalization[47].

The benefits brought by the *internet* have a significant impact on today's survival, but this impact also brings negative things because its use is inappropriate and deviant[48]. If it is linked to money laundering, with the internet, it is very possible to move the proceeds of criminal acts to other regions without having to have physical movement. However, it is undeniable that conventional methods still exist and are used by TPPU perpetrators.

Money laundering proceeds from crime aims to make the dirty money can still be enjoyed by placing it in a system that

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46 Rismanto Sri Endah Wahyuningsih, "Kebijakan Penegakan Hukum Pidana Terhadap Penanggulangan Money Loundering Dalam Rangka Pembaharuan Hukum Pidana Di Indonesia," *Jurnal Pembaharuan Hukum* 2, no. 1 (2015): 49–51.

47 Baiq L.S.W Wardhani, *Kajian Asia Pasifik* (Malang: Cita Intrans Selaras, 2015).

48 Marc Goodman, *Future Crime* (Great Brittain: Corgi Books, 2016).

seems to come from halal and legitimate business activities. Efforts to disguise and/or hide *dirty money* generated by criminal offenders usually use a typology that is continuously related to each other[49].

## 1. Supporting Factor's for Law Enforcement in the Prevention and Eradication of Money Laundering Crimes

### A. Principle of Double Criminality

Wealth from the proceeds of criminal acts can be a new blood for the sustainability of other criminal acts, both domestic and cross-jurisdictional. For this reason, the TPPU Law adheres to the principle of *double criminality* where this principle can be interpreted that an activity carried out by a legal subject is a criminal act in two countries (the country that is the *locus delicti* and the state that wants to prosecute) so that the activity can be accounted for[50].

The principle of *double criminality* must be interpreted as an activity is included in the classification of criminal acts against the two countries mentioned above, so that if an activity is a criminal act in our country, but in the *locus delicti* country the activity is not a criminal act, then for the sake of the law the act cannot be punished[51].

Gambling is a criminal offense in Indonesia as regulated in Article 303 of the Criminal Code, but if a citizen gambles in the *Las Vegas* or *Macau* area at official casinos and the money from the gambling is exchanged or transacted so that it is disguised and concealed as an element of "with the purpose of concealing or disgueving", the prosecution of TPPU cannot be carried out

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49 Normah Omar, Zulaikha Amirah Johari, and Roshayani Arshad, "Money Laundering – FATF Special Recommendation VIII: A Review of Evaluation Reports," *Procedia - Social and Behavioral Sciences* 145 (August 2014): 211–25, https://doi.org/10.1016/j.sbspro.2014.06.029.

50 Yuli Asmara Triputra Derry Angling Kesuma, "Penerapan Mutual Legal Asistence (MLA) Dan Perjanjian Ektsradisi Sebagai Upaya Indonesia Terkait Pengembalian Aset Hasil Tindak Pidana Korupsi," *Lex Lata: Jurnal Ilmu Hukum* 3, no. 1 (2021): 24, e-issn: 2657-0343%0AWebsite : http://journal.fh.unsri.ac.id/index.php/LexS%0A.

51 Muh. Afdal Yanuar, *Tindak Pidana Pencucian Uang Dan Perampasan Aset* (Jakarta: Setara Press, 2021).

against the citizen because it is contrary to with the principle of *double criminality.*

This principle certainly provides support for the enforcement of the law of the money laundering regime, but on the other hand this principle applies only if *the locus delicti* state or the country where the prosecution declares the activity to be a criminal offense. Of course, it is difficult in tracking, identifying and enforcing TPPU.

The *FATF* institution as in recommendation number 37 recommends member countries to provide legal assistance even if these activities do not meet the principle of *double criminality*[52]. Law Number 1 of 2006 concerning Mutual Assistance also does not require the principle of *double criminality* as an absolute condition to reject an application or request for mutual assistance because it is an optional policy of the state to accept or reject such applications[53].

## B. Reversal of the burden of proof

Proof, in addition to seeking the truth whether or not a person has done or not done what has been accused (charged) against him, also risks human rights values if proof he is found guilty based on evidence and the judge's conviction, even though what is proven is not true[54].

Indonesia in the system of proof in the Criminal Code adheres to a negative system, which in essence is who charges, the burden of proof is completely left to the prosecutor, in this case the prosecutor. The TPPU Law in its procedural law deviates from the Criminal Code, which requires proof in court to be carried out by the defendant.

This deviation is due to the fact that the TPPU Law is a *lex specialis derogate legi generali* which can override the Criminal Code in its procedural law. Because the TPPU Law that is proven is the origin of the defendant's wealth that does not come from a

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52 Georgios Pavlidis, "The Dark Side of Anti-Money Laundering: Mitigating the Unintended Consequences of FATF Standards," *Journal of Economic Criminology* 2 (December 2023): 100040, https://doi.org/10.1016/j.jeconc.2023.100040.

53 Yanuar, *Tindak Pidana Pencucian Uang Dan Perampasan Aset*.

54 Muhammad Nurul Huda, "Asas Pembuktian Terbalik Tindak Pidana Pencucian Uang Dalam Globalisasi Hukum," *Supremasi Hukum* 2, no. 2 (2013): 316.

criminal act, for that reason the burden of proof is carried out by the defendant[55].

The burden of reverse proof embraced in the TPPU Law does not apply to all criminal acts, because the TPPU Law is special, so special legal cases can also be applied to the burden of reverse proof, such as corruption, smuggling, narcotics, psychotropics, or banking crimes[56].

## C. Breaking Bank Secrets

Banking is an institution where financial transactions, both small and large-scale, occur. Because transactions made by customers are very sensitive, banks apply bank confidentiality rules which are usually absolute. Because of the ease with which banking in this case banks are used as a means of money laundering, therefore the provisions of bank secrecy are excluded when it concerns law enforcement, is limitative or on orders regulated in regulations or there is a decision from the court. The exception of bank secrecy is made because[57]:

a. Taxation interests;
b. The importance of the judiciary in a case;
c. Cases that occur between banks and their customers;
d. Exchange information between banks;
e. With the consent of the customer;
f. There are other provisions to require the disclosure of bank secrets (*compulsory law*);
g. Duty *to the public to prevent fraud and crimes*;
h. There is an inspection or summons by the government.

The absoluteness of banks in maintaining the confidentiality of their customers is redeemed by the existence of the Anti-Money Laundering Law, especially which is contained in Article 28, Article 45, Article 72 Paragraph (2). With this provision, of course, monitoring of unnatural transactions can be monitored for further analysis whether it is included as a stolen financial transaction that meets the elements of TPPU. It will be very ineffective if in the enforcement of the TPPU legal regime bank

55 Roberts K Yunus Husein, *Tipologi Dan Perkembangan Tindak Pidana Pencucian Uang* (Jakarta: Rajawali Pers, 2021).
56 Yunus Husein.
57 Yunus Husein, *Rahasia Bank: Privasi versus Kepentingan Umum* (Jakarta: PDIH UI, 2003).

secrets cannot be redeemed at all, even though with the exception of bank secrets, there are still many money laundering cases, let alone no exceptions[58].

**D. Trial in Absentia**

The trial in absentia is a process of examining and adjudicating in court without the defendant being charged. Judge and impose the law on the defendant who is not attended by the defendant himself[59]. Even though he has been legally summoned according to the applicable rules.

The existence of *in absentia justice* is a manifestation of a change in the pattern of eradication of crimes related to property. So far, the pattern adopted is to pursue the perpetrator of criminal acts, but in the TPPU Law, in addition to pursuing the perpetrator, it also pursues assets or assets that are owned, quasi-or hidden by the perpetrator of the crime[60], so that it does not become a new support in committing other crimes.

## *2. Proving TPPU Without Proving the Criminal Acts of Origin First*

Article 69 of the Anti-Money Laundering Law reads "*in order to be able to carry out investigations, prosecutions, and examinations in court for the crime of Money Laundering, it is not mandatory to first prove the original criminal act*". Of course, this is a new breakthrough in the law. Because as is commonly known, there is no money laundering without a criminal act of origin.

The enactment of Article 69 of the Anti-Corruption Law received many contradictions, and multiple interpretations, until 2014 and 2015 Article 69 of the Anti-Corruption Law was tested at the Constitutional Court, so that the Constitutional Court in Decision Number 77/PUU-XII/2014[61] gave consideration, namely:

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58 Yanuar, *Tindak Pidana Pencucian Uang Dan Perampasan Aset*.

59 Marwan Effendy, *Peradilan In Absentia Dan Koneksitas* (Jakarta: Timpani Publishing, 2010).

60 Yanuar, *Tindak Pidana Pencucian Uang Dan Perampasan Aset*.

61 Mahkamah Konstitusi, Putusan Mahkamah Konstitusi Nomor 77/PUU-XII/2014 (2014).

> "It is an injustice that a person who has actually received profits from the crime of money laundering is not criminally prosecuted just because the original crime has not been proven first... However, the crime of money laundering does not stand alone, but must be related to the original crime. How can there be a crime of money laundering if there is no original crime. If the original criminal act cannot be proven first, then it is not an obstacle to prosecuting the crime of money laundering. Although it is not exactly the same as the crime of money laundering, in the Criminal Code it has been known that the crime of theft (vide Article 480 of the Criminal Code) which in practice has long since been the original criminal act does not need to be proven first".

The Constitutional Court's Decision No. 90/PUU-XIII/2015[62] essentially states:

> Money laundering is a follow-up crime which is a continuation of the original crime (predicate crime). Meanwhile, a predicate crime is a criminal act that generates money/wealth which is then laundered. Therefore, it is impossible for there to be TPPU without the existence of the original criminal act first. As a follow-up crime, according to the Court, conducting investigations, prosecutions, and examinations in TPPU cases must still be preceded by the existence of an original criminal act, but the original criminal act is not required to be proven first. So the phrase "not required to be proven first" does not mean that it does not need to be proven at all. However, TPPU does not need to wait long until the original criminal case is decided or has obtained permanent legal force.

62 Mahkamah Konstitusi, Putusan Mahkamah Konstitusi Nomor 90/PUU-XIII/2015 (2016).

The existence of article 69 is based on the fact that in the process of investigation, prosecution and examination, things such as:

a) Perpetrators of Original Crimes with DPO (Person Search List) status;
b) The case files of the original criminal offenders (active perpetrators) and passive perpetrators (*third parties*) are separated because of the same/almost simultaneous legal process.

The crime of money laundering that adheres to the principle of *double criminality,* reversal of the burden of proof, breach of bank secrets, conducting judicial *proceedings in absentia* and TPPU can be proven without first proving the original criminal act, all of which aim to break the chain of corruption that arises as a result[63]. Both by *self-laundering* and by *third parties*.

The damage caused by the crime of money laundering will not be directly felt by the wider community, but because this TPPU is a new ammunition and blood for other crimes, of course the wider community and even the state will feel its significant impact[64].

The five variables as supporting factors for law enforcement of money laundering crimes, especially for the Advocate profession, are a complementary and binding unit so that every perpetrator of money laundering crime can no longer enjoy the proceeds of his crime and also cannot become a new ammunition for other crimes.

63 Muhtar Hadi, Wibowo Muhtar, and Hadi Wibowo, "Corporate Responsibility in Money Laundering Crime (Perspective Criminal Law Policy in Crime of Corruption in Indonesia)," *Journal of Indonesian Legal Studies* 3, no. 2 (2018): 2548–1584, http://journal.unnes.ac.id/sju/index.php/jils.

64 Maria Silvya E. Wangga et al., "Criminal Liability of Political Parties from The Perspective of Anti-Money Laundering Act," *Journal of Indonesian Legal Studies* 7, no. 1 (June 10, 2022): 229–64, https://doi.org/10.15294/jils.v7i1.54534.

## 3. *Supporting Factor's for Advocates as Gatekeeper are Associated with the Right of Advocates to Receive Honorarium in the Prevention and Eradication of Money Laundering Crimes*

As a profession that provides legal services, Advocates have their own challenges in maintaining the dignity and integrity of the Advocate Profession so that they are not involved or fall into acts that do not reflect the values of the respected profession itself, especially being a party that is directly (active) and indirect (passive) in the Crime of Money Laundering. Some factors that can be used by criminals to use Advocates in providing their services in supporting money laundering crimes as Gatekeepers *are*:

**1) Honorarium Advocate**

Advocates as one of the Law Enforcers must have their own advantages and the services provided are certainly multi-action and multi-function to clients/service users. Because of its role, Advocate is considered a profession that has a high income[65].

Honorarium as a right received by Advocates because of the legal services that have been provided certainly cannot be equated between one Advocate and another, because indeed the handling of each case is different and there is no standard for how much honorarium must be given to Advocates, both in handling litigation and non-litigation, as well as winning or losing a case.

Article 1 Paragraph (7) of Law Number 18 of 2003 concerning Advocates explains that Honorarium is a reward for legal services received by Advocates based on *an agreement* with clients. For this reason, in providing legal assistance/legal services to clients, from the beginning there has been an agreement to determine the amount of Honorarium that will be received by the Advocate which of course is reasonable, in accordance with Article 21 paragraph (2) *of a quo* Law.

The agreement between the Advocate and the client/service user is in principle subject to the Civil Law regime,

65 Binoto Nadapdap, *Menjajaki Seluk Beluk Honorarium Advokat* (Jakarta: Jala Permata, 2008).

because the agreement obtained will be stated in the agreement. As per Article 1313 of the Civil Code, the formulation of the elements of the agreement is[66]:

a) There are parties;
b) There is an agreement/agreement between the parties;
c) There are goals to be achieved;
d) There are achievements to be implemented;
e) There are certain forms, both oral and written;
f) There are certain conditions

The honorarium that is reasonably agreed upon between the Advocate and the Client can be determined by taking into account the time, ability, risks faced and the interests of the client. The time used by Advocates to provide legal services is very relative, because this depends on the case being handled. The more complicated a case is, the longer it will take to resolve. Fairness is meant as Advocates and clients can judge based on common sense and taste[67].

The ability of Advocates to provide legal services is an obligation[68]. Based on the ability, the Advocate is selected by the client to act for and on behalf of the client, so that what the client expects can certainly be realized properly. This also applies to the risks faced by Advocates in providing legal assistance for the benefit of clients, because Advocates can at any time receive intervention and intimidation from other parties.

The current laws and regulations only regulate the Right of Advocates to receive Honorariums, but there is no specific regulation to determine the number of Honorariums for Advocates. Although in the previous explanation it was found that it can be determined by taking into account the time, risk, ability and interests of the client, but because it is basically an agreement that it is also reasonable to specify otherwise as the previous explanation.

The source of income of a professional is generally obtained from clients, not from institutions or others. Of course, advocates

66 P.N.H Simanjuntak, *Hukum Perdata Indonesia* (Jakarta: Prenada Media Group, 2015).
67 Suparman Marzuki, *Pengantar Ilmu Hukum* (Yogyakarta: Rajawali Pers, 2022).
68 Tampubolon, *Strategi Menangani Dan Memenangkan Perkara Pidana Di Pengadilan (Perspektif Advokat)*.

in carrying out humanitarian asylum duties are not only looking for rewards, because the most important thing is the upholding of the law, finding a sense of justice and providing legal certainty. Money is indeed important, but it is not only money that determines something in the provision of legal services[69].

The Advocate profession is also obliged to provide free legal assistance, especially for the poor and the lawless. This is based on the principle of *equality before the law* and *access to legal counsel* which aims to provide justice for all citizens[70]. Indirectly, this explains that Advocates with all their positions, influences and appearances are not solely looking for profit, because there are services provided by way of pro *bono* legal aid[71], which is directly charged by law to help the poor and lawless[72].

**2) Client Secrets**

Article 19 Paragraphs (1) and (2) of Law Number 18 of 2003 concerning Advocates expressly states that in essence Advocates are ordered to keep the secrets provided by their clients, both in the form of document files and given protection against the interception of electronic communications arising from the relationship between the Advocate and the client. The Code of Ethics for the Advocate Profession as Article 4 letter h expressly states that Advocates are obliged to hold Position Secrets.

The reason or *ratio of the legis* to the confidentiality arrangement is not explained in *the a quo* law. It's just that this is a *trust principle* in the lives of fellow humans. For this reason, Advocates are not allowed to convey information or provide documents related to clients to third parties. In fact, the summons of investigators to Advocates related to client cases

69 Binoto Nadapdap, *Dari Ruang Konsultasi Hukum: Menguping Hubungan Advokat Dengan Klien* (Utan Kayu: Jala Permata Aksara, 2022).

70 Nurtin Tarigan Yahman, *Peran Advokat Dalam Sistem Hukum Nasional* (Jakarta: Prenada Media Group, 2019).

71 Nadapdap, *Dari Ruang Konsultasi Hukum: Menguping Hubungan Advokat Dengan Klien*.

72 Agus Raharjo, A Angkasa, and Rahadi Wasi Bintoro, "Akses Keadilan Bagi Rakyat Miskin (Dilema Dalam Pemberian Bantuan Hukum Oleh Advokat)," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 27, no. 3 (2016): 433, https://doi.org/10.22146/jmh.15881.

should be rejected by Advocates because they hold on to the secrecy of the position itself[73].

Position secrets are not only regulated in *the a quo law* and the Advocate Professional Code of Ethics (KEAI), but also regulated in the Criminal Code in article 322 of the Criminal Code, in essence, anyone who discloses secrets either because of their position or livelihood, past or present secrets are threatened with a maximum penalty of 9 (nine) months or a maximum fine of 9 (nine) thousand rupiah.

This arrangement is inseparable from the possibility that it can happen at any time that the Advocate gives his client's confidentiality to another person or a third party, either intentionally or unintentionally, which of course will harm the client himself both materially and immaterially[74]. So that divulging client secrets can be threatened with criminal sanctions and also ethical sanctions regulated in KEAI[75].

**3) Right to Immunity**

The State grants Advocates the status of Law Enforcers through Law Number 18 of 2003 concerning Advocates. The status given is inherent in the Right to Immunity as in Article 16 of the *a quo* Law which reads "Advocates cannot be prosecuted either civilly or criminally in carrying out their professional duties in good faith for the benefit of defending clients in court hearings".

If the article is understood with a stipulative interpretation[76], then the Right to Immunity only exists as long as the Advocate carries out his duties in good faith in the court hearing. Of course, it will be a challenge considering that in addition to the duties carried out by the Advocate in court, the Advocate also has duties outside the court which are equally important. For this reason, a broader interpretation of the Advocate's Immunity Rights is needed.

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73 Sinaga, *Dasar-Dasar Profesi Advokat*.

74 Agus Pramono, "Etika Profesi Advokat Sebagai Upaya Pengawasan Dalam Menjalankan Fungsi Advokat Sebagai Penegak Hukum," *DIH Jurnal Ilmu Hukum* 12, no. 24 (2016): 144.

75 Sinaga, *Dasar-Dasar Profesi Advokat*.

76 Moh. Mahfud MD, *Pokok-Pokok Hukum Administrasi Negara* (Yogyakarta: Liberty, 2006).

The Constitutional Court's Decision No. 52/PUU-XVI/2018[77] in its consideration states that "the Court needs to affirm that the provisions of Article 16 of Law No. 18 of 2003 concerning Advocates must be interpreted: Advocates cannot be prosecuted either civilly or criminally in carrying out their professional duties in good faith for the benefit of defending clients inside and outside court sessions" vide Constitutional Court Decision No. 26/PUU-XI/2013[78].

The Constitutional Court's decision is a necessity for the Advocate Profession in the freedom to feel comfortable, safe and independent in carrying out their professional duties carried out in good faith. The right to immunity aims to protect the Advocate Profession from criminalization against him[79]. If this is not regulated, of course the Advocate will be identified with his client.

The purpose of regulating Honorarium, Secrets of Positions and Immunity Rights of Advocates is very important as a form of appreciation for the Advocate profession for its performance as a humanitarian sanctuary. In this study, it is associated with the prevention of money laundering crimes against Honorariums, Secrets of Positions and the Right to Immunity are positioned as a gap and vulnerability owned by Advocates.

Honorariums that can be ridden/entrusted with funds from crimes aimed at money laundering will certainly be very detrimental to the Advocate himself. The secret of the position can be used that in transactions between Advocates and clients/service users, of course, it is not allowed to be notified to anyone and the immunity inherent in Advocates certainly places Advocates as a *super powerful* profession.

The multiple interpretations of this TPPU in relation to the regulation of Advocates and the secrets of positions get their own portion. Advocates are regulated by law, the obligations of Advocates in implementing PMPJ are only regulated by

77 Mahkamah Konstitusi, Putusan Mahkamah Konstitusi Nomor 52/PUU-XVI/2018 (2019).

78 Imam Hidayat, "Fungsi Pengawasan Dewan Profesi Advokat Terhadap Organisasi Advokat Indonesia," in *Single Bar: Standar Profesi Advokat Yang Tunggal* (Jakarta: Papas Sinar Sinanti, 2022), 167–68.

79 Muhammad Khambali, "Hak Imunitas Advokat Tidak Tak Terbatas," *Cakrawala Hukum* 13, no. 1 (2017): 25–27.

Government Regulations so that they reflect the dualism of regulation and the discontinuity of the legislative hierarchy[80].

Advocates have never expressed objections, even strongly support this TPPU regime, so that the measurement of Advocate obedience in order to support the TPPU regime cannot be seen from whether an Advocate has registered or not, even the Advocate himself is certainly *aware* of the legal relationship with his client, because it is possible that the legal relationship will cause problems in the future[81].

Advocates in carrying out their duties are not always about honorarium (money) because in fact Advocates also often provide legal assistance that is *pro bono.* The provision of legal aid on *a pro bono* or voluntary basis, also often called the provision of free assistance is based on the noble nature of this profession which upholds the dignity and status of human beings who are normatively equal to everyone where the law is.

The defense is also in quality and quantity indistinguishable from paid legal aid. This is where the *value* of Advocate as *Officum Nobile* lies which prioritizes human values for respect for civilization. So that with the supporting factors for Advocates to be used as *gatekeepers* in the TPPU, the three variables are inherent between each other, must make Advocates self-aware and careful and careful in conducting legal relations with clients so as not to be used as a means of money laundering.

## D. Conclusion

The obligation for advocates to report under the Principle of Recognizing Service Users (PMPJ) in the context of preventing and eradicating money laundering has not been effectively implemented. This is primarily because the regulation requiring advocates to act as reporting parties is only outlined in government regulations, rather than formalized in law. As a result, advocates' position in the legislative hierarchy is inferior, with their reporting obligations treated as administrative in nature and subject to ineffective sanctions. There is a pressing need for more comprehensive regulatory frameworks, including the harmonization of existing laws, partial replacements, and more robust systems for reporting and oversight. The current

80 Go Lisanawati, *Hukum Money Laundering Dalam Dimensi Kepatuhan*.
81 Simanjuntak, *Acara Pidana Indonesia Dalam Sirkus Hukum*.

arrangement, particularly the lack of minimum and maximum limits on advocate honoraria, opens a vulnerability that criminals can exploit. By leveraging the confidentiality privilege and the right to immunity, perpetrators can use advocates as gatekeepers, potentially using the profession to launder illicit funds.

Therefore, it is crucial that advocates remain vigilant and discerning when engaging with clients or service users. To address these vulnerabilities, a reformulation of regulations surrounding money laundering is necessary. This reform must align with the Law on Advocates and ensure that the profession is not misused as a vehicle for money laundering, particularly through the honorarium mechanism, which currently lacks regulatory safeguards.

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