

Advocates Obligation to Play an Active Role Regarding Support Eradicate Money Laundering Crimes

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Keywords: Advocates, Money Laundering.

Abstract: Advocates are a profession that can contribute to preventing money laundering activities from developing, where based on Government Regulation No. 43 of 2015, advocates are one of the professions that are required to report in the agenda of eradicating money laundering. The reporting obligation is accompanied by the provision of protection based on Law Number 8 of 2010. However, the nature of advocates who are obliged to maintain client confidentiality makes advocates in a difficult position to report regarding the possibility of money laundering which makes advocates vulnerable to being used as gatekeepers.

1 INTRODUCTION

Advocates as people who carry out the profession of providing legal services to people in court or who have a license to practice law in courts throughout Indonesia have an important role in combating money laundering. Especially since entering the time of globalization, stamped by the spread of data and data innovation and open interest in social and political forms, has entered all viewpoints of human life. The effect of globalization isn't as it were positive but can moreover have negative impacts such as moving control relations, uncommon security courses of action, and the extending crevice between wealthy and destitute nations (Sularto RB, 2018,p.127).

One of the biggest issues is transnational money laundering were without surveillance money laundering can erode the integrity of a country's financial institutions. Due to the high integration of capital markets, money laundering can also affect currencies and interest rates. Ultimately, laundered money flows into the global financial system, where it can damage national economies and currencies.

Fundamentally, According to Government Regulation No. 43 Year 2015, there are several professions that have the responsibility to report suspicious financial transactions to Financial Transaction Reports and Analysis Center (FTRAC), which includes the advocate profession.

The obstacles faced by the legal professions such

as advocates which are vulnerable to being used as gatekeepers by perpetrators of money laundering crimes to hide or disguise the origin of assets that are the proceeds of criminal acts by taking refuge behind the confidentiality provisions of professional relationships with service users which are regulated in accordance with statutory provisions.

2 LITERATUR REVIEW

The theory used in this study includes the theory of legal effectiveness. Legal effectiveness means that people actually act in accordance with legal norms as they should act, that the norms are actually applied and obeyed (Usman.S,2009,p.12). This is related to the author's hope that advocates can play an active role in eradicating money laundering, especially transnational money laundering which is one of the issues in the G20.

There are several previous articles that discuss issues surrounding advocates and their relation to money laundering, such as the honorarium of advocates that can be categorized as money laundering crimes, or regarding the possibility for advocates to also help with money laundering. This article is different from the articles that have been written before because this article is more focused on highlighting issues related to the Advocate's obligation to report and its correlation with the

advocate's obligation to maintain client confidentiality.

3 METHODS

This study uses normative juridical research methods. Normative juridical research is legal literature research conducted by examining primary and secondary legal materials using the legislation approach and legal concept analysis approach, made by reviewing all laws and regulations relating to legal issues (Soekanto, 2015).

Normative legal research functions to provide juridical argument when there is gap, obscurity, and norm conflicts. Furthermore, legal research has the role of maintaining critical aspects of legal science as a normative science that is *sui generis* (Efendy & Ibrahim, 2018).

4 RESULTS AND DISCUSSION

4.1 The Responsibility of Advocates as Whistleblowers to Prevent and Eradicate Money Laundering

According to Lance Cole A whistleblower (Hall, 2014) is often understood as a reporting witness. People who provide reports or testimony regarding an alleged criminal offense to law enforcement officials in the criminal justice process. However, to be called a whistleblower, the witness must fulfill at least two basic criteria. The first criterion is that the whistleblower submits or discloses the report to the competent authority or to the mass media or public. By disclosing to the competent authority or mass media, it is hoped that allegations of a crime can be uncovered and exposed. Protection of whistleblowers is a state obligation as a guarantee of physical and non-physical safety. So that the whistleblower gets the flexibility and freedom in providing information if they find suspicious financial transactions. To emphasize the guarantee for the whistleblower, it is legalized in Law Number 8 Year 2010 Chapter IX on Protection for Whistleblowers and Witnesses. Along with the existence of Government Regulation Number 43 of 2015, it is expected to be able to suppress money laundering crimes so that it requires Advocates to report, so Advocates are obliged to carry out their role as reporters. Suspicious Financial Transactions according to Law Number 8 of 2010 concerning Prevention and Eradication of Money

Laundering Crime and according to Government Regulation No.43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crime, namely Suspicious Financial Transactions are:

- a. Financial Transactions that deviate from the profile, characteristics, or habitual pattern of Transactions of the Service User concerned;
- b. Financial Transactions by Service Users that should be suspected of being carried out with the aim of avoiding the reporting of the relevant Transactions that must be carried out by the Reporting Party in accordance with the provisions of laws and regulations governing the prevention and eradication of money laundering criminal acts;
- c. Financial Transactions conducted or canceled using Assets suspected of originating from the proceeds of a criminal offense; or
- d. Financial Transactions requested by FTRAC to be reported by the Reporting Party because they involve Assets suspected of originating from the proceeds of a criminal offense.

Unlike financial service providers, Advocates may only report in accordance with Article 8 paragraph (1) of Government Regulation No.43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes, namely regarding:

- a. Purchase and sale of property;
- b. Management of money, securities, and/or other financial service 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

Advocates do have an obligation to apply the principle of recognizing service users and have an obligation to report suspicious financial transactions, but it is limited to the purchase and sale of 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 companies, and/or establishment, purchase, and sale of legal entities. So advocates do not need to worry, because there are exceptions when they are ensuring the legal position of Service Users or handling a case, arbitration, or alternative dispute resolution. Basically, advocates as legal subjects can report suspicious financial transactions to the authorities.

4.2 The Obligation of Advocates to Play an Active Role in Eradicate Money Laundering Crimes and It's Relation to Maintain Client Confidentiality

Money laundering is a process or action that aims to hide or disguise the origin of money or assets obtained from the proceeds of a criminal offense which is then converted into assets that act as if they came from legitimate activities (Arifin,2011). In accordance with Article 2 of Law Number 15 of 2002, criminal acts that trigger money laundering include corruption, bribery, smuggling of goods/immigrant labor, banking, narcotics, psychotropic drugs, trafficking of budah/women/children/illegal weapons, kidnapping, terrorism, theft, embezzlement, and fraud. Based on its normative perspective, the Law on money laundering is very effectively implemented. Therefore, all parties must be able to work together, especially the advocate profession as a service provider. Based on the report data from FTRAC research from January 2020 to December 2020, there were 710 professionals and consultants registered as reported based on Suspicious Financial Transaction Reports.

Advocates as a profession have an obligation to report indications of money laundering to FTRAC, the urgency is that advocates are expected to be able to apply the principle of knowing the client (know your customer) in order to avoid all types of crimes, one of which is money laundering (Lubis,2020). Law enforcement for the crime of money laundering or money laundering is still little revealed in Indonesia. Although the effect of state losses arising from the act of money laundering is far greater than the original crime, such as cases of corruption, narcotics trafficking, and other illegal business activities that are growing. The various modes used by the perpetrators of money laundering crimes start from using other parties such as lawyers to engineer the flow of funds from illegal business activities as if it were a source of halal funds. So that the advocate profession, which is expected to be a law enforcer, is actually included in the vortex of this criminal action. Because the competence of advocates can be misused to cover up these crimes only for the benefit of clients. In terms of money laundering, the advocate profession has a strategic role, either as a perpetrator or a position utilized by his client or as a reporter. It is possible that a money laundering crime occurs and is known by the advocate but does not want to report it for fear of losing the client.

The potential for advocates to be involved in money laundering crimes because one of the professions that can be a proxy for the main perpetrators of money laundering crimes because they can manage the flow of funds so that illegal activities are not indicated. Advocates can take care of creating new companies so that they are not suspected. Therefore, advocates who are authorized to handle corruption cases as well as money laundering crimes and are indicated to be involved in this crime are asked to immediately report to FTRAC. If the advocate argues, then he/she can be penalized for being involved in this crime. However, advocates cannot be penalized if they report their clients' criminal acts.

Basically, if accepting a client is a business and reports to FTRAC then the advocate needs to get protection and immunity. In addition, advocates have the obligation to maintain the confidentiality of each client's data. Law No.18/2003 on advocates itself has explicitly regulated client secrecy. However, according to Article 19 of the Advocates Law, the confidentiality of client relationships does not apply when law enforcement agencies request advocates or their law offices to disclose data related to alleged money laundering crimes. The advocate law provides advocates with confidentiality of (client) data. However, if it is related to money laundering crime, it does not apply. This is in line with the law on money laundering no. 8 of 2010 article 45 that:

“In exercising its authority as referred to in this law, the provisions of laws and regulations and codes of ethics governing confidentiality shall not apply to FTRAC.”

For this reason, every advocate and law office must apply the principle of know your customer (KYC) or know their client's profile in depth. This is necessary so that advocates can avoid all forms of crime including money laundering crimes. Because during this practice, law offices often ignore the KYC principle. In order to obtain a fee for services provided with an unspecified nominal. Advocates do not care about the source of their client's funds. However, it returns to the advocate himself because it is a challenge in implementing his professionalism.

There are various ways to mitigate (prevent) risks so that advocates avoid involvement in money laundering. One of them is that advocates must ensure compliance and discipline in the client screening process through the specified standards and requirements. Then, philosophically advocates instill the thought that the legal profession is not immune to money laundering crimes and must recognize human resources and aggressively socialize anti-money

laundering principles periodically. In addition to legal risks, there are reputational and operational risks for advocates involved in money laundering, namely loss of reputation and trust from the public.

5 CONCLUSIONS

Based on the above description, the conclusion of this article is that Advocates should be able to play an active role and even have an obligation to report if clients conduct suspicious financial activities based on Government Regulation No.43 of 2015, and are protected if they report in accordance with Law Number 8 Year 2010 Chapter IX on Protection for Whistleblowers and Witnesses. Along with the existence of Government Regulation Number 43 of 2015, it is expected to be able to suppress money laundering crimes so that it requires Advocates to report. Advocates are also obliged to be careful in accepting clients so as to avoid participating in money laundering. Other than legal risks, there are reputational and operational risks for advocates involved in money laundering, namely loss of reputation and trust from the public.

REFERENCES

- Arifin,R,M. (2021). *Tindak Pidana Pencucian Uang Di Indonesia: Peran Profesi Advokat Sebagai Pihak Pelapor Terhadap Unusual Transaction*. LPPM IAI Ibrahimy. Banyuwangi.
- Efendy, J., & Ibrahim, J. (2018) *Metode Penelitian Hukum:Normative dan Empriris*. Prenada Media. Bandung.
- Hall,L,K. (2014). *Whistleblower Laws in the 21st Century: Greater Rewards, Heightened Risks, Increased Complexity*. The Dickinson School of Law.Pennsylvania.
- Irman,T. (2017) *Money Laundering*. Gramedia Pustaka Utama. Jakarta.
- Lubis,L. (2020). *Advokat VS Pencucian Uang*. Deepublish. Yogyakarta.
- Soekanto,S. (2015). *Penelitian Hukum Normatif (Suatu Kajian Singkat)*. Refika Aditama.Bandung.
- Sularto,RB. (2018). *Pengadilan HAM (AD HOC) : Telaah Kelembagaan Dan Kebijakan Hukum*, Sinar Grafika. Jakarta.
- Usman,S. (2009). *Dasar-Dasar Sosiologi*. Pustaka Belajar.Yogyakarta.