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Juridical Analysis Awareness of Profession Advocacy to Financial Transaction Reports and Analysis Centre (PPATK) During Prevent and Eradicate Money Laundering Crime

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An advocate is a professional who to provide litigation and non-litigation legal services in accordance with the term of the applicable laws and regulations. In this case, advocates might be paid an honorarium or fee from their clients in order to carry out their profession, alluded to in the Law on Advocates. In line to money laundering, the government in this case broadens the scope of the perpetrators of money laundering crimes, making the advocate profession a reporting party to their clients to Financial Transaction Reports and Analysis Centre (PPATK) in accordance with advocates who oppose to the presence of the Government Regulation by petitioning the Supreme Court for a Judicial Review. The question is whether money laundering may be executed at an attorney's fee and whether Government Regulation No. 43 of 2015 violates the Advocates Law (Case Study on Supreme Court Decree No. 51p/HUM/2015)? This research is normative legal research that uses a qualitative normative approach. The results of this study indicate that the crime of money laundering cannot be carried out on an advocate fee as long as it meets morality and is determined fairly based on the agreement of both parties as stipulated in Article 1320 of the terms of the validity of the agreement. However, it is possible to be subject to the crime of money laundering if the person concerned intentionally agrees with his client to deposit the authorized amount of money with his lawyer in the context of committing the crime of money laundering. Even with the rejection of the applicant's application with the Supreme Court Decree No. 51p/HUM/2015 in terms of Government Regulation No. 43 of 2015 which is considered to have conflicted with Article 19 of the Law on Advocate with regard to the confidentiality of their clients. Shows that the advocate profession is obliged as a reporting party to PPATK who with legal awareness must report related to suspicious financial transactions by their clients.

Keywords: Advocate Profession, Reporting Party, Money Laundering.

1. INTRODUCTION

An advocate is a professional to provide legal services both inside and outside the court to fulfill the requirements based on the provisions of the applicable law [1]. The roles and functions of an advocate including, among others, good work in court relating to legal issues, both criminal and civil, such as assisting clients in the investigation and investigation level (at the prosecutor's office or the police) or in court proceedings [2]. Advocates have the qualifications and authorization to practice in court in providing legal advice, assisting and defending their clients in legal matters so that the freedom of the advocate profession is very important for the -

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benefit of people who need legal services and litigation by an advocate. A member of the public who needs to be defended will receive legal services from an independent advocate, who can defend all the interests of his clients without hesitation [3]. At this time, the existence of the advocate profession cannot be denied since the colonial era to the era of independence and continues to grow to this day. However, mostly advocate in Indonesia is found in big cities area and very difficult to find in remote areas [4]. The existence of an advocate is very important since they have an important role and function in a law enforcement process. It makes the advocate profession need to be regulated in term of a rule of law. Legislation governing about the institution of advocates, have

development since the colonial era [4, 5]. As the historical, advocate is one of the oldest professions [6]. In their journey, the profession was even named as *officium nobile*, a noble position. The planting happened "because of the aspect of "trust" (the author or client) that they run to defend and fight for their rights in the forum that has been determined due to giving the trust is not easy [6, 7]. In line with that, when carrying out their profession in court forums, advocates always use a dress (toga). The use of this toga is very symbolic of something they do. It has become the main idea for an advocate or lawyer, is to realize the performance that can be expected by the community. In this case, efforts to develop the legal system involve several main factors whose roles are very important, including the advocate profession. Through the legal services provided, advocates run the profession for the sake of upholding law and justice for the benefit of justice seekers. The role of the advocate is carried out both inside and outside the court. In court, advocates are one element of the judicial system in order to create an independent and impartial judicial process and reduce the risk of violating the law. For the, outside court, advocates provide consulting services, negotiations, contract making, and carry out activities that increase the legal empowerment of the community [8].

Everyone has different needs and interests. To meet their needs and interests in society, many disputes and law violations occur. For people who selected of litigation as the solution, the services of an advocate are required to avoid the complicated and convoluted management of the court bureaucracy [9]. Being independent and responsible is essential in order to achieve the ideals of the rule of law in the lives of society and the state. In addition to the judiciary and law enforcement agencies such as the police and the prosecutor's office. Through the legal services provided, advocates carry out their professional duties for the sake of upholding justice based on the law for the benefit of the justice-seeking community, including efforts to empower the community to realize their fundamental rights before the law [10].

Advocates are law enforcers whose services are to provide legal assistance to the public or clients who have legal disputes. Advocates have noble duties, obligations, and responsibilities, both to themselves, clients, courts, and God, as well as for the sake of upholding justice and truth [11]. In their oath, the advocate swears not to commit fraud or make falsehood, both inside and outside the court. It will not obstruct a legal process for someone's gain or in bad faith, but will act as an advocate in the judicial process in line with his expertise and judgment [12]. When carrying out their duties, advocates have rights and obligations [13]. The rights and obligations of advocates are to carry out their duties and functions in accordance with the Indonesian Advocates'

Code of Ethics, Law Number 18 of 2003 concerning Advocates (hereinafter referred to as the Advocates Law), and other laws and regulations governing advocates [14].

At the opening of the code of ethics, the advocate states that the advocate profession is an honorable profession (*officium nobile*). The code of ethics regarding advocates is not intended to reduce or hinder the independence of the profession, which has noble or respected obligations. On the other hand, the advocate code of ethics is the highest law in carrying out the profession, which guarantees and protects but imposes an obligation on every advocate to be honest and responsible in carrying out his profession both to clients, courts, colleagues, the state or society, and especially to himself. Advocates' code of ethics must be obeyed by every advocate, in the code of ethics there are regulations that require advocates to keep secrets with their clients [15]. As quoted in the Advocates' Code of Ethics Article 4 letter h: "Advocates are obliged to hold office secrets about matters that are notified by clients in confidence and must keep those secrets after the end of the relationship between the advocate and the client."

Advocate services will be rewarded in the form of a legal fee or honorarium. Any regulation yet to regulate about the honorarium received by an advocate as the consequence the amount of honorarium have not limit. In addition, the amount of does not have a limit, which means that the amount of honorarium which receive for each lawyer is different, even though the case is similar. The most important thing it should be a clear agreement between the advocate and his prospective client, both regarding fees and contingency fees that will be received by the advocate [16]. A prospective client has the right to withdraw from his discussion, if they feel not be able to pay fees to an advocate. Likewise, advocates have the right to determine their position regarding the fees to be received from their prospective clients. In the era of globalization, many crimes perpetrated by individuals and corporations both within and outside national boundaries are on the rise. Liquor trading, gambling, illicit arms trade, corruption, smuggling are example of tht crimes. It not to be easily to traced by law enforcement regarding the origin of the crime funds. Usually the perpetrators did not use the funds directly but seek to disguise or hide the origin of these funds in traditional ways, for example through casinos, horse racing or entering funds into the financial system or banking. Efforts to hide or disguise the origin of the funds obtained from these criminal acts are known as money laundering.

Money laundering has been defined as "The use of money obtained from illegal activities by masking the identity of the individual who obtained the money and turning it into an asset that looks like it was obtained from a legitimate source". More broadly, money laundering can

be defined as an act or attempt by criminal actors to hide or disguise the origin of assets obtained from criminal acts [17]. They are entering the assets resulting from crimes into the financial system, especially the banking system both inside and outside the country. It aims to avoiding prosecution for crimes that have been committed and securing the assets resulting from crimes from being confiscated by law enforcement officers. With the advancement of technology, banking security, and the formation of various financial transaction regulatory organizations, criminals are finding it more difficult to launder their money to great lengths to launder of money [18]. Even now, legal fees (*honoraria*) for advocates are used as a means of laundering money for criminals. Money laundering activities have a serious impact on the stability of the financial system and the country's economy as a whole. In Indonesia, the crime of money laundering is regulated in Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering (hereinafter referred to as the PPTPPU Law). In June 2001, Indonesia was included in the Black List of the Financial Action Task Force (FATF) as a country that is not cooperative in efforts to eradicate money laundering (Non Cooperative Countries or Territories / NCCTs).

This is due to the vulnerability of regulatory policies in the financial industry sector and the absence of adequate means to prevent and eradicate money laundering crimes. In response to this condition, the Government of the Republic of Indonesia has also implemented an anti-money laundering regime approach since April 17, 2002 which was marked by the passing of Law Number 15 of 2002 concerning the Crime of Money Laundering, which was subsequently revised by Law Number 25 of 2003 concerning the Crime of Money Laundering which is now the Prevention and Eradication of the Crime of Money Laundering (PP-TPPU) Law. The issuance of the PP-TPPU Law provides an opportunity for law enforcement against "intellectual actors", by emphasizing investigations into the flow of money generated through money laundering practices, and also provides a solid foundation for law enforcement officers in an effort to ensnare these actors. intellectual actors who finance and plan crimes such as predicates crimes (predicate crimes) by conducting investigations and investigations into the flow of money that funds a crime [19]. Furthermore, the Financial Transaction Reports and Analysis Center (hereinafter referred to as PPATK) is one of the implementers of the PP-TPPU Law which plays a role in efforts to make the prevention and eradication of money laundering effective. In this regard, together with relevant agencies, PPATK has carried out an inventory of various obstacles and obstacles that occur for the effective implementation of the PP-TPPU Law. Although, the implementation of the Anti-Money Laundering Regime in

Indonesia still not optimaize, but considering the adequate and sustainable developments and the commitment of the Government of Indonesia in eradicating the crime of Money Laundering. Based on the results of the FATF plenary session on 11 February 2005 in Paris, Indonesia was declared out of from the NCCTs list for being able to meet the minimum requirements of an anti-money laundering regime based on a standard known as the FATF 40+9 Recommendations.

The arrangement of the advocate's honorarium as stated in Article 21 of the Advocates Law, the permissibility of this honorarium without any limitations or any of a standard for determining the honorarium received by advocates for legal services provided to their clients. Article 21 of the Law on Advocates can be said to be the juridical basis for the validity of honorariums. However, if it is not explicitly regulated, legal advisors who receive legal fees from defendants for money laundering or corruption may also be subject to criminal sanctions under the provisions of Article 5 of the PPTPPU Law [20]. The reason is, in the professional relationship between lawyers and clients, there is a very close relationship. Advocates should suspect that the assets owned by their clients are the proceeds of criminal acts. However, there is a provision of a code of ethics for confidentiality. The existence of a code of ethics for advocates does not allow advocates to report assets owned by their clients on suspicion of criminal acts. In addition, several cases about money laundering is committed by lawyers together with their clients. The honorarium received by an advocate from their clients is used as a mechanism in the process of committing a criminal act of money laundering, where the advocate becomes a stooge of the criminal to carry out money laundering [21]. Based on Law regulation Article no. 21 on Advocates, it states that the amount of honorarium for legal services is determined fairly based on the agreement of both parties. Any regulation by law on the limit of awarding honoraria to an advocate creates a legal loophole that can be exploited by perpetrators of money laundering crimes to make the advocate's honorarium a means of money laundering practices [22].

In Indonesia, money laundering is legally regulated in the Law of the Republic of Indonesia Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering (hereinafter referred to as the PPTPPU Law). After the PPTPPU Law was established, which is an extension of this Law, namely Government Regulation no. 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of the Crime of Money Laundering (hereinafter referred to as Government Regulation No. 43) [23]. Government Regulation No. 43 has included the advocate profession as a reporting party who is required to submit a report on alleged money laundering crimes to the Financial Transaction Reports

and Analysis Center. According to the Head of PPATK, Muhammad Yusuf, government regulations are issued solely to protect the advocate profession from crimes in the economic field [24]. Criminals usually take advantage of the profession of a lawyer to keep the wealth they get from the proceeds of a crime secret. On the other hand, Yusuf assessed that the legal profession was deliberately misused to maintain the confidentiality of his client from being ensnared in the money laundering article [24, 25].

In connection with the inclusion of Advocates as reporting parties, there are several obstacles faced by Advocates as their profession, including Advocates who are obliged to keep everything that is known or obtained from their Clients since of their professional relationship. Unless, any stipulated otherwise by the Law as referred to in Article 19 paragraph 1 The Law on Advocates that must be maintained and its relation to the obligations of the Advocate to deny. According to the problem, an advocate named Ferdi Sutanto has taken legal steps by filing a lawsuit regarding the obligation of an advocate to report money laundering. Through the mechanism of Material Test Rights (HUM), Ferdi questioned the substance of Government Regulation no. 43 concerning the Reporting Party in the Prevention and Eradication of the Crime of Money Laundering. Ferdi Sutanto, through his attorney, registered the application for the Judicial Rights to the Registrar of the Supreme Court. Ferdi explained that the legal steps for the application for Material Test Rights were taken because of Government Regulation no. 43 is contrary to Law no. 18 of 2003 concerning Advocates. Especially norms that require lawyers to maintain client confidentiality, such as Article 19 paragraph (1) and (2) Article 2 paragraph (1) and (2). Hierarchically, Government Regulations are under the Act. The principle is clear, lower regulations must not conflict with higher regulations. Government Regulation No. 43 is in conflict with the Law on Advocates [26, 27].

Based on that case, there are problems that will become new problems for the Advocate profession, because the provisions of Government Regulation no. 43 has been considered contrary to the Advocates Law related to the obligation of the Advocate profession in maintaining client confidentiality. So that the authors in this study will analyze the decision about Supreme Court Decision Number: 51 P/HUM/2015 related to the obligations of the Advocate profession as a Reporting Party to PPATK in an effort to prevent and eradicate money laundering [28].

2. METHODOLOGY

To complete the writing of this study, we determines several methods to analyze based on objectives study are more focused and accountable. It can be interpreted as a path that must be taken, then an investigation or research

takes place in a certain way [28]. The legal research methods used by the author to complete this study are as follows:

A. Research Type

The type of legal research used is the normative legal research method. In terms of normative legal research, the author conducts research on legislation. The collection of materials is carried out through library research, namely by studying written sources or materials that can be used as material in writing this study.

B. Problem Approach

In connection with the type of research used, namely the normative legal research method, the approach taken is the statutory approach. The statutory approach is carried out to examine the regulations related to the title of this thesis.

C. Legal Material

1. The legal materials used in this study are includes:

- a) Primary legal materials, namely all legal rules that are formally formed and/or made by a state institution, and or government agencies, which for the sake of enforcement will be pursued based on coercive power which is also carried out officially by state officials. The data from the government in the form of written documents sourced from legislation are as follows:
 - i. Law No. 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering (Law PP-TPPU),
 - ii. Law Number 18 of 2003 concerning Advocates,
 - iii. The Criminal Code,
 - iv. The Criminal Procedure Code,
 - v. Code of Ethics for Indonesian Advocates,
 - vi. Government Regulation No. 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of the Crime of Money Laundering,
 - vii. Supreme Court Decision No. 51 P/HUM/2015
 - viii. Regulations that have relevance to this research.
- b) Secondary legal materials are mainly textbooks because textbooks contain scholars who have high qualifications.
- c) Tertiary legal materials, namely materials that provide instructions or explanations of primary and secondary legal materials, for example, are dictionaries, encyclopedias, cumulative indexes and so on.

D. Procedure for collecting legal materials

The collection of materials, both primary legal materials and secondary legal materials were collected based on the topic of the problem. To obtain a scientific truth in writing the thesis, the authors use data collection methods by means of library research, namely studying and systematically analyzing books, scientific papers, internet, laws and regulations, and other materials related to the material covered. discussed in this thesis.

E. Data analysis

The research method used is qualitative analysis, where data is obtained and then compiled systematically and then analyzed qualitatively to achieve clarity of the problems to be discussed and the results are written in the form of a thesis. Qualitative methods are used to obtain descriptive-analytical data, namely data to be researched and studied as a whole. Data analysis was carried out by:

- a. Collecting legal materials that are relevant to the problem under study.
- b. Choose legal methods that are in accordance with the research.
- c. Drawing the conclusions by answering each of the problems studied.

3. RESULTS AND DISCUSSION*A. Suspicious Financial Transactions*

Based on Article 1 paragraph (5) of the PPTPPU Law which provides the meaning: "Suspicious financial transactions are:

- a. Financial Transactions that deviate from the profile, characteristics, or habits of the Transaction pattern of the relevant Service User;
- b. Financial Transactions by Service Users which are reasonably suspected to be carried out with the aim of avoiding reporting of the relevant Transactions that must be carried out by the Reporting Party in accordance with the provisions of this Law;
- c. Financial Transactions carried out or canceled using Assets suspected of originating from the proceeds of criminal acts; or
- d. Financial Transactions requested by PPATK to be reported by the Reporting Party because it involves Assets suspected of originating from the proceeds of criminal acts."

Bank Indonesia regulation Number: 3/1-/PBI/2001 concerning Know Your Customer Principles makes 6 (six) categories of suspicious transactions as can be used in the practice of money laundering, those categories are:

- a. Transactions using the cash pattern including, among others, unusually large deposits, deposits without adequate explanations, deposits with several slips and large deposits through deposit accounts after cash working hours.

- b. Transactions using bank accounts. Included in this category are the maintenance of several bank accounts in the name of other parties.
- c. Transactions related to investment. Transactions of this type are usually related to the purchase of securities to be deposited in a bank as a custodian;
- d. Transactions through foreign bank activities, including through the collection of large balances that are not in accordance with the characteristics of business turnover, as well as electronic transfers without adequate explanation.
- e. Transactions involving bank employees or agents by observing the increase in employees in the bank. In addition, transaction relationships through agents that are not equipped with adequate information.
- f. Lending and borrowing transactions, namely the occurrence of unexpected loan repayments, as well as requests for financing in which the origin of the customer's funds is unclear.

PPATK works with the mechanism of receiving Suspicious Financial Transaction Reports (LTKM) submitted by Financial Service Providers (PJK) and Goods and Service Providers (PBJ). Then the report is analyzed by PPATK using various sources of information to be analyzed using a honed and tested method carried out by human resources who have special certification for that. As for answering the objections of advocates, in this case PPATK will not go too far in investigating financial transactions between advocates and their clients. What PPATK is asking for is not a secret relationship between the advocate and his client, but if it is outside the relationship between the client and his advocate profession, it turns out that there are financial transactions listed on behalf of his client related to suspicious financial statements.

B. The Role of Advocates in Indonesia

Advocate is a form of honorable profession so that they are often referred to as a noble service provider in law. They are called noble because they are one of the pillars in upholding the rule of law and human rights and who seeks to empower the community in realizing their fundamental rights before the law. Here, the law regulation article 2 paragraph (1) of the Law on Advocates specifies the criteria for becoming a lawyer (advocate) in Indonesia, which include graduates with a legal higher education background who have completed special advocate education provided by the Advocates Organization. In the explanation of Article 2 paragraph (1) of the Law on Advocates. It states that what is meant by "higher legal education backgrounds" are graduates of law faculties, sharia faculties, military law colleges, and law colleges.

C. Relation of the Advocate Profession on legal services to Alleged Money Laundering

The advocate profession is one of the most vulnerable professions to become a gatekeeper, because the profession is very strong in its ability to defend or protect themselves or other parties. These principles are preserved to ensure the confidentiality of information shared between the advocate and the client, as well as the advocate's independence in representing the client. A gatekeeper is defined as a person who offers services to disguise or hide the profits of a predicate crime, by entering them into a financial system, a corporation, or other systems, both domestically and abroad.

Advocates can use these rules or privileges to fortify themselves from various regulations regarding information disclosure in various financial institutions, including regulations on the Principles of Recognizing Service Users (PMPJ) or known as Known Your Customer (KYC). It allows lawyers to engage in a variety of activities on behalf of their clients anonymously, including setting up fictitious companies, buying properties, opening bank accounts, and transferring assets for and on behalf of their clients with related parties or intermediaries. Professionals who become "Gatekeepers" protect their clients' interests in assets and hide their own involvement behind their profession through the protection of client confidentiality.

D. Determination of the Advocate Fee for Legal Services provided by Advocates

The amount of honorarium which received by the advocate is only determined based on the agreement as stated in Article 21 of the Law on Advocates, as follows:

- a. Advocates are entitled to receive an honorarium for legal services that have been provided to their clients;
- b. The amount of honorarium for legal services as referred to in paragraph (1) is determined fairly based on the agreement of both parties.

The "reasonable" in term of the law regarding advocates is indeed only taking into account the risk, time, ability, and interests of the client. Any other explanation for its magnitude. In fact, the principle of prudence is demanded by advocates with the intention of not burdening their clients by setting an honorarium that exceeds their capabilities. It is also expected that an advocate can assess the ability of his client based on propriety. As an illustration, for example, there is a civil servant, whose salary is generally estimated, but is able to pay hundreds of millions or even billions of rupiah to lawyers. So, this situation like this, the advocate should suspect that the money that will be used as an honorarium as result of corruption or other illegal activities, unless the advocate should believe otherwise

4. CONCLUSIONS

Payment of fees from clients to advocates cannot be claimed as money laundering, this is because fees for legal services are the rights of advocates with an amount that has been agreed between the client and the advocate and as long as the advocate fulfills morality and is reasonable in accordance with the agreement. both parties as stated in Article 1320 of the Civil Code. However, in this case, the advocate must be aware of any suspicious transactions regarding the fees that they receive. It is possible that the fees they have received as result of money laundering. If it turns out that there is an agreement between the client and an advocate regarding money laundering efforts, the advocate can be dragged into the crime of money laundering as referred to in Article 5 of Law no. 8 of 2010 as the perpetrators of passive money laundering. Therefore, for the reporting party who reports a suspicious financial transaction, there are exceptions in this article.

Based on the results of the study on the decision of the Supreme Court Number: 51 P/HUM/2015, it can be seen that the petition for objection to the right to judicial review submitted by Ferdian Sutanto, is related to Government Regulation no. 43 of 2015, which requires advocates as reporting parties cannot be accepted because Law Number 18 of 2003 concerning Advocates is still under judicial review at the Constitutional Court registered in case registers Number 84/PUU-XIII/2015 and Number 52/PUU-XIII/ 2015. Therefore, the Supreme Court has not yet been authorized to examine and decide on a quo petition and the petition for objection to the right of judicial review from the Petitioner is premature, therefore it must be declared unacceptable. Therefore, the Advocate Profession must comply with and be obliged to report suspected suspicious financial transactions which are indicated to belong to their clients to PPATK. Not only that, even Law no. 8 of 2010 has given immunity to the advocate profession. Advocates in this case must be able to apply the principle of recognizing service users (know your customer) and foster a sense in advocates that the advocate concerned has a role to play in the prevention and eradication of money laundering. So that it can make a good contribution to the Indonesian nation.

Increase socialization to the advocate profession that the role of the reporting party is very important in order to succeed in the prevention and eradication of money laundering. In addition, the advocate profession as the reporting party on suspicious financial transaction reports belonging to his clients does not conflict with the advocate law and the code of ethics. Not only that, in this case, the reporting party's identity is also protected as a witness, so it is not known who his identity is.

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