

PPAT as the Reporting Party for Suspicious Financial Transactions Post Government Regulation Number 43 of 2015

Tasya Anggraini¹, Abdul Madjid², Dyah Widhiawati³

Faculty of Law, Brawijaya University, Malang¹²³

Contributor: tasyangrnish@gmail.com

ABSTRACT

This study is motivated by PPAT's obligations as the reporting party for suspicious financial transactions which conflict with the code of ethics of the PPAT profession and also result in regulatory inconsistencies so that it gives multiple interpretations for each PPAT individual. The aims of this study are to (1) review PPAT's obligations from Government Regulations and code of ethics, (2) determine the legal consequences if PPAT does not report suspicious transactions. This study used a normative juridical legal research type and used a statutory approach and a conceptual approach. The result of this study is that the code of ethics is not included in statutory regulations so that the provisions in Government Regulations can ignore the code of ethics.

Keywords: PPAT, Reporting Party, Suspicious Financial Transactions

INTRODUCTION

Indonesia is a country of law which requires all aspects of society to be implemented on the basis of written law; such as, laws and unwritten laws or what we usually know as customary law which exists and it is enforced within society. Law is a system in order to limit various human actions and behavior so that they are more focused. Law is one of the main aspects in the implementation of institutional or government power. The government has control over all matters including legal actions and law enforcement which occur in society.

In order to limit the government's authority in implementing the law; especially, perpetrators of criminal acts and the sanctions imposed, criminal law becomes a series of rules which regulate and determine various actions that are permitted or not permitted as well as criminal sanctions that will be given or what is usually called as substantive law. Moreover, the mechanisms that will be implemented for perpetrators of criminal acts who will later be given punishment based on the provisions stated in the law in order to enforce material laws.

There have been many updates in the development of criminal law in accordance with the times. It course gives rise to several actions which are contrary to norms or laws. In addition, one factor is the changing needs of society in terms of the economy and increasingly modern financial transactions so that it creates various new types of crime which are commonly known as the crime of money laundering (TPPU).

Money laundering is now attracting a lot of international attention since the implications of this act have a big impact on a country. TPPU actions in Indonesia are regulated in Law no. 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering (Later referred to as the TPPU Law).

Article 3 of the TPPU Law states "Any person who places, transfers, diverts, spends, pays out, gives away, entrusts, takes abroad, changes the form of, exchanges for currency or securities or other actions on assets which he knows or reasonably suspects are the proceeds of criminal acts as intended in Article 2 paragraph (1) with the aim of concealing or disguising the origin of assets shall be punished for the crime

of money laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah)".

The Indonesian government is acting quite seriously to eradicate and prevent TPPU. The Indonesian government seems to be serious in taking action against TPPU, including by establishing the Financial Transaction Reports and Analysis Center (PPATK) which plays a major role in eradicating money laundering. If PPATK does not conduct its duties properly, the effectiveness of implementing laws relating to TPPU cannot be achieved.

Article 3 Government Regulation (PP) No. 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of TPPU provides additional professions as parties who are obliged to make reports if unusual transactions are found. The professions are in the following;

1. Advocate
2. Notary
3. Land Deed Making Officials (PPAT)
4. Accountant
5. Public Accountant
6. Financial Planning

The formulation of Article 3 states that one of the professions which is required to report to PPATK is Land Deed Making Officials (PPAT). Furthermore, according to Article 2 of Government Regulation number 11 of 2016 concerning Procedures for Submission of suspicious financial transaction reports, it explains that PPAT is a profession that is obliged to make reports of suspicious transactions by the complainant.

PPAT is a public official who obtains a mandate from the law relating to the making of authentic deeds. The provisions of Article 1 number 1 of the Regulation of the Head of the National Land Agency (Perkaban) Number 1 of 2006 concerning Implementation Provisions of PP No. 37 of 1998 concerning PPAT Position Regulations, states "PPAT is a public official who is given the authority to make authentic deeds regarding certain legal acts about land rights or ownership rights to apartment units".

PPAT's obligation to make reports to PPATK where these matters intersect since PPAT will report on the confidentiality of clients or PPAT's representatives. Moreover, if it is aligned with the Law where PPAT has no legal basis, it may be referred to Article 322 paragraph (1) of the Criminal Procedure Code (KUHP) which states "whoever deliberately discloses a secret which he is obliged to keep because of his position or his livelihood, whether current or previous, is threatened with imprisonment for a maximum of nine months or a fine of a maximum of six hundred rupiah." Therefore, from the formulation of article 322 paragraph (1) of the Criminal Code, a person in his position is prohibited from disclosing official secrets involving other duties determined by law.

Article 3 letter p of the PPAT Code of Ethics also explains that a PPAT conducts other actions which are generally called obligations so that they are obeyed and conducted. One of the meanings of "other acts" in this article is related to the contents of the PPAT oath of office. When administering the oath of office, a PPAT promises that the PPAT is obliged to keep any secrets regarding the deed which has been made and various information obtained to make the deed. By including PPAT as one of the parties reporting suspicious transactions, it is certainly contrary to the code of ethics

of the PPAT profession; besides, it results in regulatory inconsistencies so that it gives rise to multiple interpretations for each PPAT individual.

METHOD

This study was a normative juridical legal research that is library legal research which includes research on legal principles, legal systematics, research on levels of vertical and horizontal synchronization, comparison and legal history (Soerjono Soekanto and Sri Mamudji, 2013). There were 2 (two) research approaches used that were the statutory approach which was conducted by examining related laws, which in this regard is PP No. 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of TPPU. The second research approach was use a conceptual approach.

The researcher would conduct search technique for legal materials in order to search for primary and secondary legal materials. Moreover, The researcher would conduct a library study of relevant statutory regulations. This study was conducted through a process of reading, analyzing, recording and reviewing relevant literature material. The material obtained was secondary data, in the form of legal literature; for example, the results of legal research, journals, and various comments related to relevant courts.

In order to analyze primary and secondary legal materials, it used the Grammatical Interpretation and Systematic Interpretation methods. Grammatical interpretation is based on the sound of the words as a whole and it is guided by the sentences prepared by the legislator. Meanwhile, systematic interpretation is conducted by linking laws

RESULTS AND DISCUSSION

1. The Obligation to Keep PPAT Confidential is Viewed from Law Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Corruption Crimes and the Code of Ethics for the Association of Land Deed Officials

Article 3 of Government Regulation (PP) No. 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of TPPU explains that "Land Deed Making Officials (PPAT) are obliged to report suspicious financial transactions related to criminal acts of money laundering which are committed by the complainant." Furthermore, Article 1 of Government Regulation (PP) No. 43 of 2015 explains the meaning of the reporting party. The article states "Reporting Party is every person who, according to the laws and regulations governing the prevention and eradication of money laundering crimes, is obliged to submit a report to PPATK." Moreover, Article 2 Government Regulation (PP) No. 11 of 2016 concerning Procedures for Submitting Suspicious Financial Transaction Reports explains that PPAT is one of the professions which is obliged to make a report if a client (compliant) conducts an unusual financial transaction.

PPAT not only has an obligation to make reports, but it also obliges to keep the confidentiality of all information including transactions conducted by its clients since this matter is included in the PPAT professional code of ethics. It raises doubts for PPAT to conduct the provisions on the obligation to report suspicious financial transactions (TKM) by compliant.

However, in its development, several statutory provisions can be found which indirectly regulate the PPAT's renegeing obligations, are as follows;

- a. Article 25 paragraph (1) of Law No. 21 of 1997 concerning Fees for the Acquisition of Land and Building Rights, which states: "Land Deed Making Officials/Notaries and heads of state auction offices report the preparation of deeds or auction minutes for the acquisition of land and/or building rights to the Directorate General of Taxes no later than 10th (tenth) of the following month"
- b. Article 36 of Law No. 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which states "The obligation to provide testimony as intended in Article 35 also applies to those who according to their work, dignity or position are required to keep secrets, except for religious officials who according to their beliefs must keep secrets."
- c. Article 35 paragraph (2) of Law No. 28 of 2007 concerning Amendments to Law No. 6 of 1983 concerning General Provisions and Tax Procedures which states "In the event that the parties as referred to in paragraph (1) are bound by an obligation to keep confidential, for audit purposes, tax collection, or investigation of criminal acts in the field of taxation, the obligation to keep confidentiality is waived, except for banks, the obligation to confidentiality is waived at the written request of the minister of finance."

Regulations related to the obligations of PPAT (as the reporting party) in reporting unusual financial transactions to TPPU conducted by clients on the basis of the TPPU Law. This obligation is regulated in Article 3 PP No. 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of TPPU which states:

"The Reporting Party as intended in Article 2 also includes:

- a) Advocate
- b) Notary
- c) Land Deed Making Officials (PPAT)
- d) Accountant
- e) Public Accountant
- f) Financial Planning

By including PPAT as one of the parties responsible for reporting unusual transactions, PPAT directly has an important role in eradicating and preventing TPPU. PPAT is obliged to apply the principle of recognizing service users in order to conduct client verification identification and report any unusual financial transactions by the compliant (client) to PPATK.

There are several reasons for PPAT inclusion, including reporting parties regarding suspicious financial transactions to PPATK (Agus Santoso, 2015):

- a. Studies obtained from TPPU cases in the world show that "gatekeepers" or certain professions, including PPAT, are often used by money launderers to disguise funds obtained illegally.
- b. The PPAT position has an obligation of confidentiality based on statutory regulations; such as, confidentiality between the profession and clients.
- c. Providing protection to PPAT from involvement in TPPU criminalization
- d. These reporting obligations have been established and implemented by various countries. It turned out to have a positive impact on preventing and eradicating TPPU
- e. There is a suggestion issued by the Financial Action Task Force (FATF) which states that "every particular profession which conducts suspicious financial transactions for the benefit of or on behalf of service users is obliged to report

these suspicious transactions to the financial intelligence unit (in Indonesia often known as PPATK)".

Based on the urgency above, a special regulation is formed in order to regulate PPAT so that it is included as a reporting party which is obliged to make reports of suspicious transactions by TPPU perpetrators as formulated in Government Regulation (PP) No. 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of TPPU.

Research results from TPPU cases around the world show that "gatekeepers" or certain professions including PPAT are often used by money launderers to disguise where the illegal funds come from. Moreover, the PPAT position has the obligation in order to maintain confidentiality based on statutory regulations; such as, confidentiality between the profession and clients. is often used as a "tool" by compliant in money laundering schemes.

If viewed from the perspective of legal norms for the formation of statutory regulations, the existence of Government Regulation (PP) No. 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of TPPU does not conflict with the provisions in the TPPU Law so that Government Regulation (PP) No. 43 of 2015 is binding on all Indonesian citizens, including PPAT.

The further problem is that the provisions of Government Regulation (PP) No. 43 Number 2015 seems contradict the contents of the Code of Ethics of the Association of Land Deed Officials, which is contained in Article 3 of the Attachment to the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 112/KEP-4.1/IV/ 2017 concerning the Code of Ethics for the Association of Land Deed Officials which states that "in order to conduct the duties of office of PPATs and Substitute PPATs or in daily life, each PPAT is required to (one of them) conduct other actions which are the contents of the PPAT oath of office". Therefore, with this conflict, it is not uncommon for PPATs to be confused about whether to keep client information confidential as stated in the code of ethics or to conduct their obligations as a reporting party for suspicious financial transactions in accordance with the provisions of Law No. 43 of 2015.

The hierarchy of statutory regulations is contained in Article 7 paragraph (1) of Law No. 12 of 2011 concerning the Formation of Legislative Regulations which states that "the hierarchies of statutory regulations are as follows;

- a. The 1945 Constitution of the Republic of Indonesia
- b. Decree of the People's Consultative Assembly
- c. Law/Government Regulation in Lieu of Law
- d. Government regulations
- e. Presidential decree
- f. Provincial Regional Regulations, and
- g. Regency/City Regional Regulations"

Furthermore, in determining whether a professional code of ethics is included in the category of legislation, it refers to Article 1 point 2 of Law No. 12 of 2011 which defines statutory regulations as "written regulations which contain generally binding legal norms and are formed or stipulated by state institutions or authorized officials through procedures stipulated in the Legislative Regulations." Therefore, based on this article, it can be concluded that there are 3 (three) characteristics of statutory regulations, are as follows;

- a. Written rules

- b. Legally binding
- c. Made by authorized officials through established procedures

Based on the explanation above, it shows that the code of ethics is not a statutory regulation. A code of ethics is a regulation made by a certain organization and the scope of its application is only for people/legal subjects within that organization. It is different from statutory regulations which are binding on all Indonesian citizens (not limited to a particular group). Furthermore, the code of ethics is also treated only on the basis of the moral awareness of each member of the profession and it is not the same as laws which are coercive in nature and have heavy sanctions for violators. Professional experts who violate the professional code of ethics will be given sanctions or fines from the organization. Meanwhile, for someone who violates the rules of the law, the judge as a judicial institution has the authority to determine the punishment. Therefore, the provisions in Law No. 43 of 2015 can ignore the PPAT Association Code of Ethics. In other words, if a compliant (client) who comes to PPAT is suspected/known to have conducted suspicious transactions, in this case PPAT is obliged to report this to PPATK and it is prohibited from covering up information (on the grounds of violating the code of ethics) since it could cause a PPAT to be suspected of participating in conducting criminal acts of money laundering.

2. Legal Consequences for PPAT If Not Reporting Suspicious Financial Transactions

The legal consequences if the reporting party does not conduct its obligations in reporting suspicious financial transactions related to TPPU are regulated in Article 25 paragraph (4) of the TPPU Law which states "*Financial service providers who do not submit reports to PPATK as intended in paragraph (1), paragraph (2), and paragraph (3) is subject to administrative sanctions.*"

Article 30 paragraph (2) Law Number 8 of 2010 explains further the various types of administrative sanctions. The article states:

"Administrative sanctions imposed by PPATK as intended in paragraph (2) can be in the form of:

- a. Warning
- b. Written warning
- c. Announcement to the public regarding actions or sanctions, and/or
- d. Administrative fine"

Sanctions in the form of written warnings are further explained in Article 13 of the Head of PPATK Regulation Number 14 of 2016 concerning the Imposition of Administrative Sanctions for Violations of Reporting Obligations, namely in the form of written warning I and written warning II which are explained as follows;

- a. "Written warning I: in the form of detail description and type of violation of the reporting obligation as well as the obligation for the reporting party to follow up on the written warning I in accordance with the specified time period
- b. Written warning II: in the form of detail description and type of violation of reporting obligations as well as the obligation for the reporting party to follow up on written warning II in accordance with the specified time period."

Article 20 of the Head of PPATK Regulation number 14 of 2014 concerning the Imposition of Administrative Sanctions for Violations of Reporting Obligations explains that "a Land Deed Making Official (PPAT) who does not conduct his

obligations in submitting suspicious financial transaction reports, the PPATK can do the following:

- a. Recommend to the competent authority in order to re-evaluate the suitability of the management of the reporting party
- b. Recommend to the competent authority in order to freeze business activities, revoke or cancel the reporting party's business permit
- c. Report to law enforcement regarding suspected money laundering crimes committed by the Reporting Party."

Article 5 paragraph (1) of the PP TPPU Law states *"Every person who receives or controls the placement, transfer, payment, grant, donation, safekeeping, exchange or use of assets which he knows or reasonably suspects are the proceeds of a criminal act as intended in Article 2 paragraph (1) shall be sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)."* The meaning of the phrase it is reasonable to suspect in this article is a condition which fulfills at least the knowledge, desires, or ethical objectives of a transaction that is known to indicate an unlawful act so that it is concluded that this condition is a condition when the PPAT doubts the client in a buying and selling transaction.

Article 2 of the Head of PPATK Regulation number 11 of 2017 concerning Principles of Recognizing Service Users for Land Deed Officials explains that "PPAT here is classified as providing services in the form of preparing and conducting transactions for the benefit of or for and on behalf of service users regarding the sale and purchase of property. Preparing and conducting transactions can be classified as receiving or controlling placements and payments according to Article 5 of the PPTPPU Law."

If PPAT does not make reports regarding unusual financial transactions, it is suspected that PPAT is involved in TPU activities conducted by its clients. Moreover, article 55 of the Criminal Code states that *"a person can be punished as a perpetrator of a criminal offense for those who commit, who order to commit, and who participate in committing the act"*. In addition, article 56 continues: *"Someone who can be punished as being an accomplice to a crime, namely those who intentionally provide assistance when a crime is committed, and those who intentionally provide the opportunity, means or information to commit a crime."*

CONCLUSION

Based on the explanation above, it can be drawn two conclusions are as follows; First, the code of ethics is not part of statutory regulations. The provisions contained in the code of ethics only apply on the basis of moral awareness and they are only binding on members of certain organizations/professions. Meanwhile, laws are more binding on all citizens and there are severe sanctions for those who violate them. Therefore, the provisions in Law No. 43 of 2015 can ignore the PPAT Association Code of Ethics. In other words, a PPAT is obliged to report any suspicious transactions to PPATK and must not cover up this information with reasons of violating the code of ethics. Second, a PPAT who does not conduct his obligations as party reporting suspicious financial transactions will be given sanctions in the form of administrative sanctions and criminal sanctions in accordance with applicable regulations.

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