JLPH: Journal of Law, Politic and Humanities
E-ISSN: 2962-2816
P-ISSN: 2747-1985
https://dinastires.org/JLPH dinasti.info@gmail.com +62 811 7404 455
DOI: https://doi.org/10.38035/jlph.v6i4

The Normative Ambiguity and Fragmented Standards in Notarial Criminal Liability for Negligence in Preparing Authentic Deeds Used in Money Laundering Crimes

Brighitta Priscilla MSS[1*], Wilma Silalahi[2]
[1]Universitas Tarumanegara, Jakarta, Indonesia, brighitta.217232020@stu.untar.ac.id
[2]Universitas Tarumanegara, Jakarta, Indonesia, wilmasilalahi@fh.untar.ac.id

Corresponding Author: brighitta.217232020@stu.untar.ac.id

Abstract: This study examines the limits of notarial criminal liability in the preparation of authentic deeds used in money laundering offences. The issue arises because notaries are authorized to draw up authentic deeds with strong evidentiary value, while such deeds may also be misused to conceal or disguise assets derived from criminal activities. This research applies normative legal research using statute and case approaches. The findings show that a notary cannot be held criminally liable merely because an authentic deed is later used in a money laundering scheme. Criminal liability may only arise when fault is proven, whether in the form of intent, knowledge, reasonable suspicion, or serious negligence. Court decisions indicate that judges tend to interpret negligence and "reasonably suspects" through an objective-professional standard. Although several legal instruments regulate notarial due diligence, reporting obligations, negligence, and criminal participation, Indonesian positive law has not clearly distinguished administrative negligence, gross professional negligence, and criminal participation. Therefore, the problem is better understood as normative ambiguity, regulatory fragmentation, and inconsistent judicial interpretation rather than a complete normative vacuum. This condition creates legal uncertainty and may lead to the criminalization of notaries who perform their duties in good faith.

Keyword: Notary, Authentic Deed, Criminal Liability, Money Laundering, Legal Vacuum.

INTRODUCTION

The notary profession holds a strategic position within the Indonesian legal ystem, as notaries are authoirized to draw up authentic deeds that function as written evidence with perdect evidentiary value (Sulihandari, 2013). Historically, the existence of notaries in Indonesia has bbeen recognized since the Dutch colonialk period and has continued to develop in line with society's increasing need for legal documents that are valid, reliable, and capable of providing legal certainty (Tan, 2007). Under Indonesian positive law, the position of notaries s affirmed in Article 1 of Law Number 2 of 2014 concerni8ng the Amendment to Law Number 30 of 2004 concerning the Notary Office, which states that:

> "*A notary is a public official authorized to draw up authentic deeds and has other authorities as referred to in this Law or based on other laws*"

The provision demonstrates that a notary is not merely an administrative profession, but a public official who carries out part of the state's function in producing legal documents that are valid and trustworthy. Authentic deeds drawn up by notaries do not only serve as formal documents, but also as legal instruments that provide certainty and legal protection for the parties. In practice, authentic deeds are used in various high-value legal transactions, such as the establishment of limited liability companies, transfer of land rights, credit agreements, grants, inheritance matters, and other business transactions (Anshori, 2020).

The status of authentic deeds as strong legal evidence makes the notary profession a trust-based profession. The public views notaries as parties who ensure that a legal act has fulfilled both formal and substantive requirements as determined by laws and regulations (Adjie, 2018). However, the strong evidentiary value of authentic deeds also creates potential risks of misuse. In certain practices, authentic deeds are not only used for legitimate legal purposes, but may also be used as instruments to legitimize assets derived from criminal activities, including money laundering (Sjahdeini, 2017).

Money laundering is an economic crime that continues to develop in line with globalization, financial technology advancement, and the increasing complexity of business transactions. In essence, money laundering refers to the process of disguising or concealing the origin of assets obtained from criminal acts so that they appear to originate from lawful sources. This process generally occurs through three stages, namely placement, layering, and integration (Suwitra et al., 2024). At the integration stage, proceeds of crime are often reintroduced into the legal economy, for example through property purchases, establishment of business entities, or other civil transactions that require authentic deeds.

In this context, notaries occupy a complex position. On the one hand, notaries are required to provide legal services through the preparation of authentic deeds. On the other hand, notaries may also be exploited by certain parties to legitimize assets derived from criminal activities (Darus, 2017). This risk becomes even greater when notaries are involved in land or property transactions that may be used as instruments of money laundering (Budiman, 2023). Therefore, the main issue that arises is the extent to which a notary may be held criminally liable when a deed drawn up by the notary is later used as a means of committing money laundering.

Normatively, money laundering is regulated under Article 5 paragraph (1) of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering, which provides that:

> "*Every person who receives or controls the placement, transfer, payment, grant, donation, safekeeping, exchange, or uses assets which he/she knows or reasonably suspects to constitute proceeds of crime as referred to in Article 2 paragraph (1), shall be punished with imprisonment for a maximum of 5 (five) years and a fine of a maximum of Rp1,000,000,000.00 (one billion rupiah)*"

The phrases "knows" and "reasonably suspects" in the provision are significant in determining the form of fault attributable to the perpetrator. In the context of the notary profession, the phrase "knows" may be associated with intent, while the phrase "reasonably suspects" relates to the duty of care to identify suspicious indications. Accordingly, a notary may be exposed to criminal liability if it is proven that the notary knew or should reasonably have suspected that the assets involved in the transaction originated from a criminal act.

However, the criminal liability of notaries must be distinguished from administrative and civil liability. A notary cannot automatically be held criminally liable merely because a deed drawn up by the notary is later misused by the parties. In principle, a notary cannot be held criminally liable if the notary has exercised his or her authority in accordance with the

Law on the Notary Office, conducted reasonable identity verification, found no indication of suspicious transactions, and acted neutrally and independently. Conversely, liability may arise if the notary violates official procedures, fails to conduct verification, ignores red flags, or assists in disguising transactions that should reasonably be suspected to originate from criminal acts (Anshori, 2020).

The professional obligations of notaries are also regulated under Article 16 paragraph (1) of the Law on the Notary Office, which essentially requires notaries to act in a trustworthy, honest, careful, independent, and impartial manner, while safeguarding the interests of the parties involved in legal acts. This norm indicates that notaries are not only required to perform formal functions in drawing up deeds, but also to apply the principle of prudence in every act carried out in their official capacity. Nevertheless, this provision places greater emphasis on ethical and administrative aspects of the notary office and has not provided clear parameters for determining when notarial negligence may transform into criminal fault (Adjie, 2021).

In the event of official misconduct, the Law on the Notary Office also provides administrative sanctions. Article 85 of the Law on the Notary Office stipulates that a notary who violates the provisions governing the office may be subject to administrative sanctions in the form of written warnings, temporary suspension, honorable dismissal, or dishonorable dismissal. This provision shows that violations committed by notaries are generally first situated within the framework of administrative liability. However, problems arise when such violations intersect with money laundering offences, because there is still no clear boundary between administrative negligence, ethical violations, and criminal fault.

In addition to the Law on the Notary Office, the prevention of money laundering within the notary profession is also regulated through Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 9 of 2017 concerning the Implementation of the Principle of Recognizing Service Users for Notaries. This regulation requires notaries to identify, verify, and monitor service users as part of the effort to prevent the misuse of notarial services in money laundering offences (Sembiring, 2022). However, the regulation still primarily emphasizes preventive and administrative obligations and has not specifically formulated criminal consequences where a notary negligently fails to apply the principle of recognizing service users and the deed subsequently becomes an instrument of money laundering.

The obligations of notaries within the anti-money laundering regime are further strengthened by Article 3 of Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering, which places notaries as one of the reporting parties. This means that notaries have an obligation to report transactions suspected to be suspicious in the performance of their official duties. This provision confirms that notaries are not outside the system for preventing and eradicating money laundering. However, it also does not fully answer the issue of the limits of criminal liability when a notary is negligent, rather than intentional, in identifying suspicious transactions.

This lack of clarity should not be understood simply as a normative vacuum in the sense of the total absence of legal norms. Indonesian law already contains several relevant legal instruments, including the Law on the Notary Office, the Money Laundering Law, Government Regulation Number 43 of 2015, Ministerial Regulation Number 9 of 2017, and judicial decisions concerning notarial conduct and money laundering. The problem lies in the ambiguity and fragmentation of these norms, particularly because statutory provisions employ open-textured concepts such as “reasonably suspects” and “careful.” On the one hand, a notary may be positioned as a party who assists in money laundering if deemed to have known or reasonably suspected the origin of the funds (Sutedi, 2020). On the other hand, a notary may also be regarded as merely carrying out formal authority based on documents submitted by the appearers. These different approaches indicate the absence of a uniform legal standard

regarding indicators of notarial negligence in money laundering offences (Prasetyo, 2021). Such a condition may create two problems at once: the risk of criminalization of notaries who have carried out their duties procedurally, and the weakness of accountability for notaries who are genuinely negligent or who assist in money laundering.

Based on the foregoing discussion, research on the criminal liability of notaries in drawing up authentic deeds used in money laundering offences is important to conduct. This issue is not only related to the misuse of authentic deeds, but also concerns the boundary between administrative negligence, ethical violations, and criminal fault. Therefore, a deeper analysis is needed regarding the parameters of the elements of "knowing" and "reasonably suspecting," the obligation to apply the principle of recognizing service users, and the need to harmonize the Law on the Notary Office with the Money Laundering Law in order to establish legal certainty in Indonesian notarial practice.

METHOD

The research method contains the type of research, sample and population or research subjects, time and place of research, instruments, procedures, and research techniques, as well as other matters relating to the method of research. This section can be divided into several sub-chapters, but no numbering is necessary.

This study uses normative legal research with a descriptive-analytical approach to examine the legal norms governing notarial criminal liability in authentic deeds used in money laundering offences. The research relies on secondary data, consisting of primary legal materials such as laws, regulations, and court decisions, as well as secondary and tertiary legal materials, including legal literature, journals, and legal dictionaries. Relevant legal instruments include Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering, Law Number 2 of 2014 concerning the Notary Office, Government Regulation Numbebr 43 of 2015, and Regulation of the Minster of Law and Human Rights Number 9 of 2017.

The data are collected through library research and analyzed qualitatively using statute and case approaches. The statute approach is used to examine the reevant legal framework, while thyhe case approach is used to analyze court decisions, particularly Decision Number 500/Pid.Sus/2020/PN Jkt.Sel, to understand the application of notarial criminal liability in practice.

RESULTS AND DISCUSSION

The Limits of Notarial Criminal Liability in the Preparation of Authentic Deeds Used in Money Laundering Offences Under Indonesian Law

Criminal liability in Indonesian criminal law is based on the principle of geen *straf zonder schuld*, meaning that there is no punishment without fault (Huda, 2018). This principle requires that a person may only be punished when fault can be proven, either in the form of intent or negligence (Moeljatno, 2015). In the context of notarial practice, this means that a notary cannot automatically be held criminally liable merely because an authentic deed made by the notary is later used by another party in a money laundering scheme (Barda Nawawi Arief, 2021). Law enforcement authorities must first prove that the notary had knowledge, intent, or serious negligence in relation to the unlawful transaction. This approach is important to prevent the criminalization of notaries who have acted in good faith and within the limits of their official duties (Huda, 2018).

This principle is also related to the concept of capacity to be held responsible. Article 44 paragraph (1) of the Indonesian Criminal Code provides:

> "*Any person who commits an act that cannot be attributed to him because of a defective mental development or mental disorder due to illness shall not be punished.*"

Although this article mainly concerns mental capacity, it confirms that criminal liability always requires the ability of a legal subject to understand and control his or her conduct. In the context of notarial practice, this means that a notary's liability must be linked to the notary's awareness, caution, and conduct in preparing the authentic deed.

The legal basis of money laundering is regulated under Law Number 8 of 2010. Article 1 point 1 states:

> "*Money Laundering is any act that fulfills the elements of a criminal offense in accordance with the provisions of this Law*."

Furthermore, Article 2 paragraph (1) of Law Number 8 of 2010 explains that the proceeds of crime are assets obtained from predicate offenses, including corruption, bribery, narcotics, fraud, embezzlement, taxation crimes, environmental crimes, and other criminal offenses punishable by imprisonment of four years or more (Sjahdeini, 2017). This shows that money laundering is a follow-up crime that is closely related to predicate offenses (Sutedi, 2020).

The most relevant provision for determining the possible criminal liability of notaries is Article 3 of Law Number 8 of 2010, which provides:

> "*Any person who places, transfers, diverts, spends, pays, grants, deposits, brings abroad, changes the form of, exchanges into currency or securities, or performs other acts upon Assets which he knows or reasonably suspects to be the proceeds of crime as referred to in Article 2 paragraph (1), with the purpose of concealing or disguising the origin of the Assets, shall be punished for money laundering with imprisonment for a maximum of 20 years and a fine of a maximum of Rp10,000,000,000.00*."

The phrase "any person" in this provision may include notaries if they are proven to have participated in concealing or disguising the origin of criminal assets (Yunus, 2022). The phrase "knows" refers to intent, while "reasonably suspects" reflects an objective duty of caution. Thus, a notary may be held criminally liable if he or she knowingly prepares a fictitious deed, facilitates a nominee arrangement, establishes a shell company, or assists in disguising the true ownership of assets derived from crime (Budiman, 2023).

This provision may apply to a notary if the notary is proven to have received unreasonable benefits, facilities, or payments from a transaction that he or she knew or reasonably suspected to be connected to criminal proceeds. However, ordinary notarial fees should not automatically be interpreted as criminal proceeds unless there is evidence that the payment was related to the unlawful transaction (Sutedi, 2020).

The boundary of criminal liability is also determined by the notary's statutory duty of care. Article 16 paragraph (1) letter a of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning Notary Office provides:

> "*In carrying out his or her office, a Notary is obliged to act trustworthy, honest, careful, independent, impartial, and to safeguard the interests of the parties involved in the legal act.*"

The word "careful" or "saksama" requires notaries to examine the identity of the appearers, the validity of documents, the legal capacity of the parties, the legality of the transaction object, and the economic purpose of the transaction (Adjie, 2021). Nevertheless, this obligation must be interpreted proportionally because notaries are not investigators with unlimited authority to trace the source of every asset (Anshori, 2020).

The preventive obligation of notaries is further regulated in Regulation of the Minister of Law and Human Rights Number 9 of 2017. Article 2 paragraph (1) provides:

> "*Notaries are obliged to apply the Principle of Recognizing Service Users*."

Article 3 further states:

> "*The application of the Principle of Recognizing Service Users shall be carried out through: a. identification of Service Users; b. verification of Service Users; and c. monitoring of Service User transactions*."

These provisions show that notaries are required to identify, verify, and monitor service users in order to prevent the misuse of authentic deeds in money laundering schemes. In corporate transactions, this obligation is also related to the identification of the beneficial owner. Article 1 point 2 of Presidential Regulation Number 13 of 2018 defines the beneficial owner as:

> "*An individual who may appoint or dismiss directors, board of commissioners, administrators, supervisors, or managers of a corporation, has the ability to control the corporation, is entitled to and/or receives benefits from the corporation either directly or indirectly, is the actual owner of the corporation's funds or shares, and/or fulfills the criteria as referred to in this Presidential Regulation*."

The reporting obligation of notaries is also emphasized in Government Regulation Number 43 of 2015. Article 3 paragraph (1) letter b states:

> "*Reporting Parties other than financial service providers include: b. notaries*."

Furthermore, Article 8 paragraph (1) provides:

> "*Reporting Parties are obliged to submit Suspicious Financial Transaction Reports to the Indonesian Financial Transaction Reports and Analysis Center*."

These provisions confirm that notaries are positioned as part of the anti-money laundering system and function as a gatekeeper profession (Sembiring, 2022). Therefore, a notary who ignores suspicious transactions, fails to identify or verify service users, or deliberately does not report suspicious transactions may be considered to have committed serious negligence or even participated in the concealment of criminal proceeds (Hernoko, 2021).

Based on these provisions, the criminal liability of notaries must be limited to circumstances where fault can be clearly proven. A notary who acts in good faith, verifies the parties, examines legal documents, applies the principle of recognizing service users, and reports suspicious transactions should not be punished merely because the deed is later misused by the parties. Conversely, a notary may be held criminally liable if he or she knowingly assists the concealment of criminal proceeds, ignores obvious red flags, receives unreasonable benefits, or prepares fictitious legal instruments. Thus, due diligence becomes the main boundary between a notary who lawfully performs his or her official function and a notary who is negligent or involved in money laundering crimes.

Judicial Interpretation of Negligence and "Reasonably Suspects" in Imposing Criminal Liability on Notaries

The court decisions examined in this study show that judges do not interpret notarial negligence merely as an ordinary administrative error. Instead, negligence is often understood as a serious deviation from the professional duties of a notary, especially when such deviation results in an authentic deed that does not reflect the actual legal facts. In notarial criminal cases, the judges' reasoning generally focuses not only on the issuance of the deed, but also on the deed-making process: whether the appearers were truly present, whether the deed was signed at the proper time and place, whether amendments were made according to the required procedure, and whether the notary continued the deed-making process despite circumstances that should have raised professional caution.

The normative basis for this judicial reasoning can be found in Article 16 paragraph (1) letter a of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning Notary Office, which provides:

> "*In carrying out his or her office, a Notary is obliged to act trustworthy, honest, careful, independent, impartial, and to safeguard the interests of the parties involved in the legal act.*"

In criminal law, the provisions most frequently used in cases involving notaries are Articles 263, 264, and 266 of the Indonesian Criminal Code. Article 264 paragraph (1) of the Indonesian Criminal Code provides aggravated punishment for forgery when it concerns authentic deeds:

> "*Forgery of documents shall be punished with imprisonment for a maximum of eight years if committed against authentic deeds."*

Article 266 of the Indonesian Criminal Code is also relevant when the issue concerns the insertion of false information into an authentic deed. It provides in substance that a person who orders false information to be inserted into an authentic deed concerning matters whose truth must be stated by the deed may be punished if the deed is intended to be used as if the information were true. Therefore, criminal liability of a notary cannot be based solely on the fact that a deed later becomes problematic. It must be proven that the notary actively made, falsified, used, or consciously contributed to the creation of a deed that was inconsistent with the actual facts.

In Decision Number 345/Pid/2012/PT.Smg and Supreme Court Decision Number 1014 K/Pid/2013, the case of Notary Ninoek Poernomo demonstrates how judges interpreted procedural negligence as an indicator of criminal fault. The court considered that the deed did not arise from an actual meeting, because the Deed of Minutes of Meeting of Yayasan Bhakti Sosial Surakarta Number 58 dated April 15, 2008 contained statements regarding the presence of parties that were not consistent with reality. The judges also emphasized that the defendant "did not carry out the procedure that should have been performed by a Notary." This reasoning shows that the court did not punish the notary merely because the deed was defective, but because the notary ignored essential procedures that formed the basis of public trust in authentic deeds.

However, this study argues that such reasoning must be applied carefully. Not every procedural violation by a notary should automatically be treated as a criminal offense. Criminal law still requires proof of fault, either in the form of intent or a legally relevant form of negligence. In the Ninoek Poernomo case, the judges appeared to find that the notary's fault was not a single administrative mistake, but a series of acts that objectively showed the deed did not reflect the real legal event. Thus, procedural negligence became criminally relevant because it was connected to fundamental irregularities in attendance, signatures, amendments, and the factual basis of the meeting.

Supreme Court Decision Number 933 K/Pid/2023 in the case of Notary Endah Sri Wahyuni shows another pattern of judicial reasoning. At the first instance, the defendant was found guilty of "assisting fraud." However, the appellate court changed the legal qualification and found the defendant guilty of "forging an authentic document," and the Supreme Court rejected the cassation petitions. This shift is important because assisting a crime under Article 56 of the Criminal Code differs from being the principal perpetrator under Article 264 of the Criminal Code. Article 56 of the Indonesian Criminal Code provides:

> "*Those who intentionally provide assistance at the time the crime is committed, and those who intentionally provide opportunity, means, or information to commit the crime, shall be punished as accomplices*."

Meanwhile, Article 55 paragraph (1) of the Indonesian Criminal Code provides:

> "*Those who commit, order to commit, or participate in committing a criminal act shall be punished as perpetrators*."

The shift from "assisting fraud" to "forging an authentic deed" shows that judges may view a notary not merely as an accessory to another crime, but as the principal actor when the making of the deed itself becomes the core of the criminal act. This study agrees with this approach only when the facts clearly show that the notary's conduct directly caused the birth of a false authentic deed. However, if the notary merely performed a formal duty based on

documents submitted by the parties, without knowledge or serious warning signs, then criminal liability should not be imposed.

The interpretation of "reasonably suspects" is most clearly seen in Decision Number 500/Pid.Sus/2020/PN.JKT.SEL, although the defendant in that case was not a notary. The case remains relevant because it involved property transactions, certificates, a false notarial figure, and suspicious financial flows.

In this decision, the judges did not interpret **"reasonably suspects"** as a purely subjective mental state that must always be proven by the defendant's confession. Instead, it was inferred from objective circumstances, including the use of a false notarial figure, the exchange of genuine certificates with false certificates, the receipt of Rp11,000,000,000.00 in the defendant's bank account, and the same-day cash withdrawal and transfer to other parties. The court concluded that these circumstances fulfilled the elements of Article 3 in conjunction with Article 2 paragraph (1) letter z of Law Number 8 of 2010 and Article 55 paragraph (1) of the Indonesian Criminal Code.

This study partly agrees with the judges' objective approach, because "reasonably suspects" cannot always be proven through direct evidence of inner knowledge. Suspicion may be inferred from external facts, especially where the transaction contains obvious red flags. However, this standard must not be applied too broadly to notaries. A notary should not be deemed to have "reasonably suspected" money laundering merely because the transaction involved a large amount of money, property transfer, or a third party. The judges must examine whether the red flags were concrete, visible, and within the notary's professional capacity to detect.

This is where the legal vacuum becomes relevant. Indonesian law imposes preventive obligations on notaries, but it does not clearly determine when failure to comply with those obligations becomes criminal negligence. Government Regulation Number 43 of 2015 places notaries as reporting parties.

These provisions confirm that notaries have a preventive function in the anti-money laundering regime. However, they do not provide a precise criminal-law standard for determining when a notary's failure to report or detect a suspicious transaction constitutes an administrative violation, gross negligence, or criminal participation. As a result, judges may interpret the same type of notarial conduct differently from case to case.

Based on the decisions examined, judges appear to interpret notarial negligence in stages. First, ordinary administrative negligence should not automatically become a criminal offense. Second, negligence may become criminally relevant when it produces an authentic deed that clearly contradicts the actual facts. Third, negligence approaches intent when the notary continues to make the deed despite visible red flags that should have alerted a professional public official. This staged interpretation is useful, but it remains incomplete because it has not yet been formulated as a clear and consistent legal standard.

Therefore, this study argues that judicial interpretation should be more proportional. The element of "reasonably suspects" should be assessed through an objective-professional standard, not a purely subjective assumption by law enforcement. For notaries, the relevant standard should be whether the suspicious circumstances were visible within the scope of notarial duties, such as false identities, irregular attendance, inconsistent documents, abnormal signatures, unusual transaction structures, unclear intermediaries, or deed contents that do not correspond to the real legal event.

Thus, the answer to this issue is that judges interpret negligence and "reasonably suspects" through a normative-objective approach. Negligence is not criminal when it stands alone as an administrative error. It becomes criminally relevant when it reflects serious disregard of notarial procedures and results in a deed that does not correspond to reality. Meanwhile, "reasonably suspects" is understood as a condition where a person, particularly a

notary as a public official, should have been aware of irregularities based on objective warning signs. However, to avoid criminalization of the notarial profession, courts must continue to prove the connection between the notary's act, the procedural violation, the suspicious circumstances, and the criminal consequence.

Normative Vacuum and Legal Uncertainty in Regulating the Limits of Notarial Negligence in Money Laundering Crimes

At the outset, this study distinguishes a normative vacuum (rechtsvacuum) from legal uncertainty. A normative vacuum refers to the absence of a legal norm governing a concrete legal issue. Legal uncertainty, by contrast, may arise even when relevant norms exist, particularly where the norms are general, fragmented, or contain open-textured concepts. Therefore, the issue examined in this article is not the absolute absence of regulation, because Indonesian law already regulates notarial duties, anti-money laundering reporting obligations, due diligence, negligence, and criminal participation. The central issue is whether those norms provide sufficiently clear, coherent, and predictable standards for determining when notarial negligence becomes criminal liability

The issue of notarial negligence in money laundering crimes arises from the absence of a clear legal standard distinguishing professional or administrative negligence from criminal liability. In notarial practice, a notary is a public official authorized to make authentic deeds that possess strong evidentiary value (Yunus, 2022). However, the development of increasingly complex money laundering schemes has caused authentic deeds to be misused as legal instruments for legitimizing criminal assets, particularly in property transactions, company establishment, grants, land transfers, and other high-value business transactions. This condition places notaries in a vulnerable position because they may be criminally questioned when a deed they prepare is later used as a means of money laundering, even when their involvement is limited to administrative negligence (Sutedi, 2020).

Normatively, Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning Notary Office requires notaries to act carefully and professionally. Article 16 paragraph (1) letter a provides:

> "*In carrying out his or her office, a Notary is obliged to act trustworthy, honest, careful, independent, impartial, and to safeguard the interests of the parties involved in the legal act*."

The phrase **"**careful" or "saksama" indicates that notaries must apply the principle of prudence in performing their duties. However, this provision does not clearly define the extent to which a notary must examine the material truth of documents, trace the source of the client's funds, or detect suspicious transactions (Huda, 2018). As a result, the norm remains general and creates room for different interpretations in law enforcement. In criminal law, not every administrative error should automatically be qualified as a crime. Criminal liability still requires proof of fault, either in the form of intent or negligence (Moeljatno, 2015).

The normative vacuum becomes more visible when connected to Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. Article 5 paragraph (1) provides:

> "*Any person who receives or controls the placement, transfer, payment, grant, donation, deposit, exchange, or uses Assets which he knows or reasonably suspects to be the proceeds of crime as referred to in Article 2 paragraph (1), shall be punished with imprisonment for a maximum of 5 years and a fine of a maximum of Rp1,000,000,000.00*."

The main problem lies in the phrase "reasonably suspects" or "patut diduganya". The law does not provide objective indicators to determine when a notary should be considered as having reasonably suspected that a transaction was related to criminal proceeds. Consequently,

the element of "reasonably suspects" may be interpreted subjectively by law enforcement officials (Yunus, 2022). A large transaction value, the involvement of third parties, or the use of a notarial deed should not automatically indicate money laundering, because such transactions may also be part of ordinary civil or commercial legal acts (Sugiarti, 2023). Therefore, without clear indicators, this phrase may create legal uncertainty and potential criminalization of notaries who merely perform their formal duties.

However, when applied to notaries, this approach becomes problematic because a notary does not have the same investigative authority as law enforcement officers or the Indonesian Financial Transaction Reports and Analysis Center. Therefore, the notary's liability should not be determined merely from the fact that an authentic deed was used in a money laundering scheme, but from whether the notary had actual knowledge, ignored concrete red flags, or seriously breached his or her professional duty of care.

The law does not define what kind of circumstances should make a notary legally bound to suspect money laundering. If this phrase is interpreted only from the existence of a large transaction or the use of a notarial deed, then the reasoning becomes too broad and may lead to the criminalization of notarial duties. A large property transaction, the establishment of a company, the use of a nominee, or the transfer of shares may indeed be suspicious in certain contexts, but these legal acts are also common objects of notarial services. Therefore, the Panel of Judges should not equate the existence of a suspicious transaction with the automatic existence of notarial negligence.

The notary's position must also be distinguished from the position of the main perpetrator of money laundering. Article 3 of Law Number 8 of 2010 provides:

> "*Any person who places, transfers, diverts, spends, pays, grants, deposits, brings abroad, changes the form of, exchanges into currency or securities, or performs other acts upon Assets which he knows or reasonably suspects to be the proceeds of crime as referred to in Article 2 paragraph (1), with the purpose of concealing or disguising the origin of the Assets, shall be punished for money laundering with imprisonment for a maximum of 20 years and a fine of a maximum of Rp10,000,000,000.00."*

Based on this provision, criminal liability requires not only the act of dealing with assets but also the purpose of concealing or disguising their origin. Therefore, this study argues that a notary should only be held criminally liable if the deed-making process is proven to be part of the concealment mechanism. The Panel of Judges should identify whether the notary actively created a fictitious deed, knowingly facilitated a false transaction, ignored clearly false documents, or assisted the parties in disguising the beneficial owner. Without such proof, the notary's conduct should remain within the scope of administrative or ethical responsibility, not criminal liability.

This uncertainty is also related to the legality principle. Article 1 paragraph (1) of the Indonesian Criminal Code provides:

> "*No act shall be punished unless by virtue of a criminal provision in legislation existing before the act was committed*."

This principle contains the requirement of lex certa, meaning that criminal norms must be clear and not open to broad interpretation. In relation to notarial liability, the law should provide a clear standard regarding which form of negligence may result in criminal sanctions (Marzuki, 2021). However, Indonesian positive law has not explicitly explained whether failure to verify identity, failure to examine the source of funds, or failure to detect suspicious transactions should be treated as an administrative violation or as a criminal offense (Sutiyoso, 2022). This shows the existence of a vague norm that may lead to legal uncertainty.

The disharmony between notarial law and the anti-money laundering regime further strengthens the normative vacuum. Article 15 paragraph (1) of Law Number 2 of 2014 provides:

"*A Notary is authorized to make authentic Deeds concerning all acts, agreements, and stipulations required by laws and regulations and/or desired by the interested parties to be stated in an authentic Deed*."

This provision shows that a notary's main authority is to record the will of the parties in the form of an authentic deed based on the documents and statements submitted by the appearers. A notary is not an investigator and has no authority to conduct an in-depth investigation into the origin of the parties' assets. However, in the anti-money laundering regime, notaries are required to recognize service users, verify information, monitor transactions, and report suspicious transactions. This creates a quasi-investigative burden without a clear legal boundary.

The obligation to recognize service users is regulated in Regulation of the Minister of Law and Human Rights Number 9 of 2017. Article 2 paragraph (1) provides:

"*Notaries are obliged to apply the Principle of Recognizing Service Users*."

Article 3 further states:

"*The application of the Principle of Recognizing Service Users shall be carried out through: a. identification of Service Users; b. verification of Service Users; and c. monitoring of Service User transactions."*

In addition, Article 24 paragraph (1) provides:

"*Notaries are obliged to report Suspicious Financial Transactions to PPATK*."

Although these provisions establish preventive duties, they do not clearly regulate the criminal consequences if a notary fails to conduct identification, verification, or monitoring optimally. The regulation is more administrative and preventive in nature, rather than a clear construction of criminal liability. Thus, uncertainty remains regarding when a failure to apply the principle of recognizing service users is merely an administrative violation and when it becomes a criminal offense.

These provisions establish preventive and administrative obligations. However, they do not clearly regulate the criminal consequences if a notary fails to conduct identification, verification, monitoring, or reporting optimally. This is not a legal vacuum in the strict sense, because relevant norms do exist. Rather, the problem arises from the absence of a precise bridge between preventive-administrative obligations and criminal liability. The regulation obliges notaries to act as part of the anti-money laundering prevention system, but it does not provide a clear standard for determining when failure to comply with these obligations becomes a criminal offense. As a result, the Panel of Judges may interpret notarial negligence differently from one case to another.

This ambiguity is also related to the principle of legality. Article 1 paragraph (1) of the Indonesian Criminal Code provides:

"*No act shall be punished unless by virtue of a criminal provision in legislation existing before the act was committed*."

Government Regulation Number 43 of 2015 also places notaries as reporting parties. Article 3 paragraph (1) letter b provides:

"*Reporting Parties other than financial service providers include: b. notaries."*

Furthermore, Article 8 paragraph (1) provides:

"*Reporting Parties are obliged to submit Suspicious Financial Transaction Reports to the Indonesian Financial Transaction Reports and Analysis Center*."

Nevertheless, this regulation does not provide detailed indicators of suspicious transactions that must be identified by notaries. It also does not define when a notary has acted sufficiently carefully, when the notary is merely negligent, and when such negligence may become the basis of criminal liability. Therefore, the state imposes a reporting obligation on notaries but has not yet provided sufficient legal protection or clear limits for the implementation of that obligation.

The uncertainty is reinforced by the absence of a specific formulation of criminal negligence in notarial office. Indonesian criminal law recognizes fault in the form of intent or dolus and negligence or culpa, but existing legislation does not clearly explain the form of notarial culpa in money laundering cases (Rahardjo, 2020). There is no clear distinction between culpa lata or gross negligence and culpa levis or minor negligence, nor is there a clear evidentiary standard. This condition creates legal uncertainty because notaries cannot predict which procedural failures may have criminal consequences (Simandjuntak & Rambing, 2024). In a state based on law, criminal liability must be based on clear, firm, and predictable rules.

This condition also contradicts the principle of legal certainty as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states:

"*The State of Indonesia shall be a state based on law*."

As a rule-of-law state, every imposition of criminal liability must be based on clear and non-ambiguous legal rules. When the law fails to provide a definite boundary regarding notarial negligence in money laundering crimes, such condition reflects a normative vacuum or rechtsvacuum, which may lead to legal uncertainty and potential criminalization of the notarial profession.

The normative vacuum can also be seen from judicial practice. Several court decisions show that there is no uniform standard in distinguishing administrative negligence, gross negligence, and criminal involvement. In some cases, notaries were held liable because the deed was considered inconsistent with factual circumstances, while in other cases, notaries were regarded merely as performing formal duties based on documents submitted by the parties. The comparison between Decision of the Semarang High Court Number 345/Pid/2012/PT.Smg, Supreme Court Decision Number 1014 K/Pid/2013, Supreme Court Decision Number 933 K/Pid/2023, and Decision of the South Jakarta District Court Number 500/Pid.Sus/2020/PN JKT.SEL shows that courts still apply different approaches in assessing the notary's role, degree of fault, and causal link between procedural violation and criminal consequence.

Therefore, the Supreme Court should develop a more measurable interpretation of the limits of notarial negligence in money laundering crimes. A notary should not be held criminally liable merely because the deed he or she made was later used in a money laundering scheme. Criminal liability should only arise when it is proven that the notary knew, reasonably suspected based on objective facts, or seriously ignored professional due diligence obligations, causing the deed to become an instrument for concealing or disguising criminal assets. The standard of "reasonably suspects" for notaries should not be the standard of an ordinary person, nor should it be the standard of an investigator. The proper standard is that of a public official with professional duties limited by his or her legal authority.

This study argues that the Panel of Judges should apply a stricter and more proportional test before concluding that a notary has fulfilled the element of "reasonably suspects." First, there must be concrete red flags that were visible to the notary in his or her professional capacity. Second, the red flags must be sufficiently serious, not merely based on transaction value or the involvement of third parties. Third, the notary must have ignored minimum professional obligations such as identity verification, document examination, transaction monitoring, or reporting of suspicious transactions. Fourth, there must be a causal link between the notary's negligence and the concealment or disguise of criminal assets.

Based on this analysis, the issue does not lie in the complete absence of regulation, but in the absence of a clear standard for distinguishing three different categories: administrative negligence, gross professional negligence, and criminal participation. Administrative negligence should be resolved through notarial supervision or ethical sanctions. Gross negligence may justify stronger administrative or civil consequences when the notary seriously ignores professional duties. Criminal liability, however, should only arise when the notary

knowingly assists, deliberately allows, or seriously facilitates the concealment of criminal proceeds.

Thus, the legal rule that should be developed is that notarial criminal liability must be based on three elements: first, the existence of concrete suspicious indicators that could reasonably be recognized by the notary; second, serious neglect of professional duties such as identification, verification, monitoring, or reporting; and third, a causal relationship between the notary's conduct and the concealment of criminal proceeds. Without these elements, notarial negligence should remain within the realm of administrative or ethical responsibility, not criminal liability. This formulation is necessary to ensure that law enforcement against notaries remains consistent with the principle of fault, the legality principle, and the principle of legal certainty.

CONCLUSION

This study concludes that the criminal liability of notaries in the preparation of authentic deeds used in money laundering offences cannot be imposed automatically merely because the deed is later misused by the parties. Criminal liability must be based on the principle of fault, namely the existence of intent, knowledge, reasonable suspicion, or serious negligence. Therefore, a notary who has acted in good faith, verified the parties, examined the relevant documents, applied the principle of recognizing service users, and reported suspicious transactions should not be criminally liable solely because the deed becomes part of a money laundering scheme. Conversely, criminal liability may arise when the notary knowingly assists the concealment of criminal proceeds, ignores clear red flags, prepares fictitious deeds, receives unreasonable benefits, or seriously violates professional due diligence obligations.

The judicial decisions examined in this study show that judges tend to interpret notarial negligence through a normative-objective approach. Negligence is not treated as a criminal offence when it merely constitutes an administrative or formal error. However, it may become criminally relevant when the notary's conduct results in an authentic deed that does not correspond to the actual facts, or when the notary continues to prepare the deed despite visible irregularities in the identity, documents, signatures, transaction structure, or factual basis of the legal act. The element of "reasonably suspects" is also interpreted based on objective circumstances rather than solely on the subjective confession of the defendant. Nevertheless, this standard must be applied proportionally so that notaries are not criminalized merely because they hold the status of public officials or because their deeds are later used by other parties in criminal transactions.

This study further finds that the regulation of notarial negligence in money laundering offences is better characterized as normative ambiguity, regulatory fragmentation, and legal uncertainty, rather than a complete normative vacuum. Indonesian law has imposed preventive obligations on notaries through the duty of care, the principle of recognizing service users, and the obligation to report suspicious financial transactions. However, existing regulations have not clearly defined the boundary between administrative negligence, gross professional negligence, and criminal participation. As a result, law enforcement officials and judges still have broad discretion in determining whether a notary's conduct constitutes an ethical violation, administrative fault, or criminal liability. This lack of clear parameters may create the risk of criminalizing notaries who merely perform their formal duties, while at the same time weakening accountability for notaries who genuinely facilitate money laundering.

Accordingly, the legal standard that should be developed is that notarial criminal liability may only be imposed when three elements are proven: first, the existence of concrete suspicious indicators that could reasonably be recognized by the notary in his or her professional capacity; second, serious neglect of professional obligations, such as identification, verification, monitoring, or reporting; and third, a causal relationship between

the notary's conduct and the concealment or disguise of criminal proceeds. Without these elements, notarial negligence should remain within the realm of administrative, ethical, or civil responsibility. This formulation is necessary to ensure that the enforcement of money laundering law remains consistent with the principle of fault, the legality principle, and legal certainty in Indonesian notarial practice.

REFERENCE

Adjie, H. (2018). *Hukum notaris Indonesia: Tafsir tematik terhadap Undang-Undang Jabatan Notaris*. Refika Aditama.

Anshori, A. G. (2020). *Lembaga kenotariatan Indonesia: Perspektif hukum dan etika*. UII Press.

Arief, B. N. (2021). *Bunga rampai kebijakan hukum pidana*. Kencana.

Budiman, M. (2023). Pencucian uang yang dilakukan oleh notaris dalam perspektif tindak pidana pencucian uang. *Litigasi, 24*(2), 299–321.

Damayanti, D. K. (2024). Tanggung jawab pidana terhadap notaris yang telah memalsukan keterangan dalam akta autentik: Studi kasus Putusan Nomor 1362/Pid.B/2019/PN.Jkt.Utr. *JIHHP: Jurnal Ilmu Hukum, Humaniora dan Politik, 4*(4), 930–935.

Darus, M. L. H. (2017). *Hukum notariat dan tanggung jawab jabatan notaris* (Ed. 1). UII Press.

Hernoko, A. Y. (2021). *Hukum perjanjian: Asas proporsionalitas dalam kontrak komersial*. Kencana.

Huda, C. (2018). *Dari tiada pidana tanpa kesalahan menuju kepada tiada pertanggungjawaban pidana tanpa kesalahan*. Kencana.

Kitab Undang-Undang Hukum Pidana.

Marzuki, P. M. (2021). *Pengantar ilmu hukum*. Kencana.

Moeljatno. (2015). *Asas-asas hukum pidana*. Rineka Cipta.

Peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor 9 Tahun 2017 tentang Penerapan Prinsip Mengenali Pengguna Jasa bagi Notaris.

Peraturan Pemerintah Republik Indonesia Nomor 43 Tahun 2015 tentang Pihak Pelapor dalam Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang.

Peraturan Presiden Republik Indonesia Nomor 13 Tahun 2018 tentang Penerapan Prinsip Mengenali Pemilik Manfaat dari Korporasi dalam rangka Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang dan Tindak Pidana Pendanaan Terorisme.

Prasetyo, T. (2021). *Keadilan bermartabat: Perspektif teori hukum*. Nusa Media.

Putusan Mahkamah Agung Republik Indonesia Nomor 1014 K/Pid/2013.

Putusan Mahkamah Agung Republik Indonesia Nomor 933 K/Pid/2023.

Putusan Pengadilan Negeri Bekasi Nomor 335/Pid.B/2022/PN.Bks.

Putusan Pengadilan Negeri Jakarta Selatan Nomor 500/Pid.Sus/2020/PN.JKT.SEL.

Putusan Pengadilan Negeri Surakarta Nomor 83/Pid.B/2011/PN.Ska.

Putusan Pengadilan Tinggi Bandung Nomor 73/PID/2023/PT.BDG.

Putusan Pengadilan Tinggi Semarang Nomor 345/Pid/2012/PT.Smg.

Rahardjo, S. (2020). *Ilmu hukum*. Citra Aditya Bakti.

Sembiring, R. M. (2022). Penerapan prinsip mengenali pengguna jasa terhadap profesi notaris. *Jurnal Notarius, 15*(2), 119–121.

Simandjuntak, F., & Rambing, C. (2024). Kepastian hukum dalam perspektif negara hukum. *Khatulistiwa Law Review, 5*(2), 92–93.

Sjahdeini, S. R. (2017). *Seluk beluk tindak pidana pencucian uang dan pembiayaan terorisme*. Pustaka Utama Grafiti.

Sugiarti, I. (2023). Kepastian hukum terhadap penerapan dan pemanfaatan konsep cyber notary di Indonesia. *Officium Notarium, 2*(1), 16.

Sulihandari, H. (2013). *Prinsip-prinsip dasar profesi notaris* (N. Rifiani, Ed.; Cet. 1). Dunia Cerdas.

Sutedi, A. (2020). *Tindak pidana pencucian uang*. Citra Aditya Bakti.

Sutiyoso, B. (2022). *Metode penemuan hukum: Upaya mewujudkan hukum yang pasti dan berkeadilan*. UII Press.

Suwitra, I. K., Hadiyanto, A., & Ciptono, C. (2024). Pencegahan tindak pidana pencucian uang melalui lintas internasional dalam perspektif Undang-Undang Tindak Pidana Pencucian Uang. *Jurnal USM Law Review, 7*(2), 960.

Tan, T. K. (2020). *Studi notariat dan serba-serbi praktek notaris*. Ichtiar Baru Van Hoeve.

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Undang-Undang Republik Indonesia Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris.

Undang-Undang Republik Indonesia Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang.

Yunus, Y. (2022). Konstruksi pertanggungjawaban pidana notaris dalam tindak pidana pencucian uang. *Jurnal RechtsVinding, 11*(1), 54–58.