

# Implementation Implications Non-Conviction Based Asset Forfeiture on Notaries Whose Authentic Deeds Are Indicated as Means of Money Laundering

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## Keywords

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## ABSTRACT

*Money laundering, which arises from illicit activities, typically requires a legitimate document to facilitate the transfer of funds into an asset. Notaries, authorized public officials capable of creating such legitimate documents, may be implicated in money laundering offenses. In the ongoing efforts to combat money laundering, there is an increasing emphasis on asset confiscation without the need for criminal convictions (Non-Conviction Asset Forfeiture), as exemplified in the Draft Law on Asset Confiscation. This study aims to evaluate the concept of Non-Conviction Asset Forfeiture, explore the role of Notaries in preventing money laundering activities, and scrutinize the implications of implementing Non-Conviction Asset Forfeiture on Notaries who authentically notarize documents that may be used for money laundering. The research employs a normative juridical approach focusing on theoretical and statutory considerations. It elucidates the core principles of Non-Conviction Asset Forfeiture, specifically the pursuit of assets derived from criminal activities when the perpetrator cannot be held accountable due to circumstances. Furthermore, the research underscores that Notaries who authenticate documents suspected of facilitating money laundering may face legal consequences, potentially including the confiscation of their assets if they violate relevant laws and regulations.*

## INTRODUCTION

A notary is a government-appointed public official vested with the authority to create authentic documents and perform other functions specified by statutory regulations (Syamsuddin, 2022). These public officials are both appointed and relieved of their duties by the government, wielding general powers and legal authorisation to address specific authorities and record the details of legal relationships between parties in authentic documents, which hold irrefutable evidentiary weight in court proceedings (Afzali et al., 2021; Hermawan et al., 2023).

In discharging their responsibilities, notaries adhere to the provisions of Law Number 30 of 2004, in conjunction with Law Number 2 of 2014, governing the role of notaries and the Notary's Code of Ethics. These legal standards mandate that notaries conduct their duties with a deep sense of accountability and professionalism. Notaries must exhibit noble character, honesty, and reliability in executing their roles and obligations. Should notaries fail to adhere to the norms outlined in the Laws governing their positions and the Notary's Code of Ethics, they become susceptible to potential involvement in civil or criminal legal proceedings (Xiong et al., 2022).

Every deed made by a Notary has the potential to trap the Notary as a related party in a case, whether civil or criminal (Athira & Ramesh, 2023; Dak-Adzaklo & Wong, 2023; Susilawati & Kanowski, 2022). One of the cases that might happen is doing a deed connecting with the endeavored criminal demonstration of tax evasion by the gatherings. The wrongdoing of tax evasion is wrongdoing as an endeavour to stow away or mask cash created from wrongdoing or the returns of wrongdoing (Aparicio & Kim, 2023; Firmansyah et al., 2022; Setyowati et al., 2023). Endeavors to conceal the returns of criminal demonstrations can appear as setting cash starting from illegal demonstrations into the monetary framework (placement), separation of criminal returns from the source through a few phases of economic exchanges to stow away or camouflage the beginning of the assets (layering), the utilisation of the returns of criminal demonstrations that have been set (position) or which have been isolated and give off an impression of being genuine resources, for halal business exercises or even reused in crimes, (combination), and buying resources with the returns of the wrongdoing for the sake of someone else (Gani, 2021).

The involvement of a Notary in a money laundering offence can occur when an authentic deed is used to conceal the proceeds of a criminal activity (Bolgorian et al., 2023; Konovalova et al., 2023a). Parties involved in this process often must disclose the true purpose behind creating the authentic deed to the Notary. In some cases, they might even collaborate with the parties' illicit intentions, such as disguising criminal proceeds through an original deed prepared by the Notary. In such instances, the Notary creates an authentic act based on false information. Commonly, money laundering perpetrators require various types of deeds, including the Deed of Sale and Purchase, Deed of Company Establishment, Deed of Entry into the Company, Deed of Cooperation Agreement, and other documents that serve as tools for accommodating money laundering activities (Badaruddin, 2018; Lasmadi & Sudarti, 2021). Consequently, suspicions have arisen, suggesting that the Notary may be facilitating money laundering and, therefore, could face criminal liability for their actions (Çemberci et al., 2022; Teichmann et al., 2023a).

Asset confiscation without the need for criminal prosecution, known as Non-Conviction Asset Forfeiture, represents a recent development in Indonesian criminal procedural law. It is a mechanism to recover state losses resulting from criminal acts. This concept is mandated by the United Nations Convention Against Corruption (UNCAC) for countries that sign the convention. It aims to enhance the recovery of state losses from corrupt criminal activities (Mulyadi, 2020; Nelson, 2020). Conventional methods that primarily rely on severe sanctions against offenders without attempts to seize ill-gotten funds or assets are considered ineffective in addressing crimes that inflict financial losses on the state. The existing criminal justice system in Indonesia has not fully achieved the primary objective of asset recovery, and as a result, state losses stemming from illegal activities remain unrecovered (Akartuna et al., 2022; Shen et al., 2021; Suh, 2023). Therefore, asset confiscation is deemed appropriate for recuperating state losses resulting from criminal acts (Sasmita et al., 2023).

Indonesia has introduced a Draft Law on the Confiscation of Assets Resulting from Criminal Acts to align with international conventions that have been ratified (Abd Rashid et al., 2023; H. Q. Nguyen, 2023; M. L. T. Nguyen & Bui, 2022). This draft law differs from the existing provisions on asset confiscation in Indonesia, as it permits asset confiscation without needing a court decision following the conclusion of the law enforcement process. The Non-Conviction Asset Forfeiture concept underpins the Draft Law on Asset Confiscation, which emphasises the importance of not only deterring offenders but also actively pursuing assets derived from criminal activities (Gowin et al., 2021; Konovalova et al., 2023b; Teichmann et al., 2023b). The Asset Confiscation Bill aims to trace and seize all funds associated with criminal acts, provided it can be proven that the assets originate from such illicit sources (Balsalobre-Lorente et al., 2023; Fhima et al., 2023; Szczepaniak et al., 2022). This legislation marks a significant shift in Indonesian criminal law, especially in dealing with financial crimes. Previously, the

focus was primarily on punitive measures, but introducing the Asset Confiscation Bill emphasises the recovery of state losses incurred (Anima et al., 2023; El Ghouli et al., 2023; Varvarigos, 2023).

Mahfud MD has conveyed the progress of ratification of the Asset Confiscation Bill as Coordinating Minister for Political, Legal and Security Affairs, that the presidential letter regarding the Asset Confiscation Bill has been submitted to the House of Representatives since May 4, 2023. Therefore, the ratification of the Confiscation Bill The assets is just at the stage of ratification by the House of Representatives, which, judging from these developments, is likely that the concept of asset confiscation will soon come into effect in Indonesia through the Asset Confiscation Law (Kuvvet, 2021; Laajaj et al., 2023; Wahyono & Narmaditya, 2022).

The potential involvement of notaries in money laundering crimes through authentic deeds made as described above raises critical thinking regarding the implications of the concept of Conviction Asset Forfeiture, which became the basic idea for creating the Draft Law on Asset Confiscation against Notaries whose authentic deeds were indicated as a means of money laundering (Bolgorian et al., 2023; Kirimhan, 2023; Kuzior et al., 2022; Saha & Sen, 2023). Based on this, the problem to be studied in this paper is the concept of confiscation of assets without criminal prosecution (Non-Conviction Based Asset Forfeiture) as well as implementation implications of confiscation of assets without criminal prosecution (Non-Conviction Based Asset Forfeiture) towards parties involved in the crime of money laundering, in this case, one of whom is a Notary. This paper will discuss further the implications of implementing Conviction Asset Forfeiture to the notary who did a deed that indicated a criminal money laundering act.

## **METHODS**

This study adopts a prescriptive analytical approach with a normative juridical research methodology. Two primary methods are employed: the statutory regulations approach and the conceptual approach. The statutory regulations approach involves referencing and analysing legal provisions such as Law Number 30 of 2004 concerning the Position of Notaries, Law Number 2 of 2014 amending Law Number 30 of 2004 regarding Notary Positions, Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, in addition to other relevant laws and regulations. This approach serves as the foundation for examining the legal aspects of the research. Concurrently, the conceptual approach is utilised to grasp relevant theories and concepts that provide the theoretical framework for the study. It aids in understanding the broader implications and perspectives related to the subject matter. The research data is predominantly secondary, encompassing primary, secondary, and tertiary legal materials. This secondary data is derived from an extensive literature review, often referred to as library research, and is subsequently subjected to qualitative analysis.

## **RESULTS**

### **A. Concept of Confiscation of Assets Without Punishment (Non-Conviction Based Asset Forfeiture)**

Returning or confiscating assets of perpetrators of criminal acts of corruption without punishment was born, grew and developed in Anglo-Saxon countries with a regime standard law system, which is commonly referred to as terminology Non-Conviction Asset Forfeiture, Civil forfeiture, Plunder into reality forfeiture, or objective forfeiture. Asset confiscation without punishment is centred on combating criminal activities that adversely affect the state's financial and economic well-being. This approach primarily seeks to recover assets acquired by individuals allegedly through criminal acts that harm the state's financial and economic interests. Such illegal activities may encompass corruption, drug-related offences, and money laundering.

Non-Conviction Based Asset Forfeiture (NCB Asset Forfeiture) is a legal action that targets

assets themselves rather than the individuals involved. This process is separate from the criminal justice system and necessitates evidence that the property is tainted or connected to illegal activities. In this context, the focus is on demonstrating the link between the asset and criminal activity, with the property owner often being a third party with the right to defend their ownership. Typically, in criminal cases, the prosecution must establish the accused's guilt beyond a reasonable doubt. However, NCB Asset Forfeiture operates on a lower standard of evidentiary probability, which can ease the government's burden of proof. This means that asset confiscation can potentially be pursued even when insufficient evidence can secure a criminal conviction. It is important to note that this concept primarily targets assets, not individuals. The owner of the purchase is often a third party who retains the right to defend the ownership of the property.

Draft NCB Asset Forfeiture is also part of the United Nations Convention Against Corruption (UNCAC) or the United Nations Convention on Anti-Corruption, ratified in 2003. This convention mandates all member countries to consider taking steps to enable the confiscation of property or assets without criminal penalties in cases where the perpetrator cannot be prosecuted on the grounds of death, escape, or other issues. According to Muladi, the substance of the preventive steps in UNCAC 2003 that Indonesia can implement includes:

1. Improvements to aspects of public services which can promote efficiency, transparency, and recruitment based on merit, codes of conduct of public servants, financial and other disclosure, and appropriate discipline measures.
2. The criminalisation of various new Corruption crimes.
3. Establishing comprehensive international cooperation;
4. Detailed arrangements regarding the eradication of Corruption in the private sector (private sector); as well as
5. Return on assets (asset recovery) Corruption crime results in the Corruption perpetrators being taken abroad. Return on assets indeed is a breakthrough from UNCAC 2003.

From an international agreement perspective, the logical consequence of the inclusion of UNCAC in the national legal system can be interpreted as a country being bound by the contents of the agreement. State parties must implement the convention's provisions and refrain from taking actions that will defeat the objects and purposes of the ratified convention. UNCAC outlines a comprehensive framework of legal instruments to support the recovery of international assets. There are five main things regulated in UNCAC, including preventive measures, criminalisation and law enforcement, international cooperation, return of assets, and technical assistance and exchange of information.

UNCAC also outlines legal instruments that support international asset recovery, including criminal confiscation of assets, private parties involved in criminal procedures, confiscation of help without a criminal conviction, and civil law forfeiture. These instruments are intended to accommodate law enforcement in criminal acts of corruption so that it is more optimal and does not only focus on the crime and the perpetrator, thus making asset recovery an essential part of the law enforcement process.

The confiscation of assets from individuals involved in corrupt criminal activities, as outlined in UNCAC 2003, can be accomplished through criminal and civil avenues. Additionally, UNCAC, in Article 54 paragraph (1) letter (c), encourages all state parties to consider the confiscation of proceeds of crime without necessitating a criminal conviction. According to the provisions in Article 54 paragraph (1) letter (c), UNCAC proposes non-criminal asset confiscation as a mechanism that transcends differences among legal systems.

In Indonesia, the current asset confiscation process can only be initiated if the individual responsible for the crime has been legally and conclusively declared guilty of the offence through a court decision that is legally binding and unappealable. In essence, asset confiscation is linked to a

criminal conviction, but implementing this unlawful confiscation often encounters significant challenges. These challenges include the ability of offenders to transfer or move the proceeds of their illegal activities abroad, with some even fleeing the country and remaining beyond the reach of extradition. As a solution to these issues, there is a need for a legal framework that allows the confiscation of assets derived from criminal activities through a mechanism known as Non-Conviction Based Asset Forfeiture. The NCB mechanism emphasises the seizure of criminal assets themselves rather than on the individuals involved. Therefore, a permanent and legally binding conviction against the offender is not a prerequisite for asset confiscation under this mechanism.

Stefan D. Casella provides that view Non-Conviction Based Asset Forfeiture is a crucial requirement to save assets. Confiscation of support is not enough to take over the economic profits obtained from criminals. This aspect is based on the many conditions that make it impossible for the perpetrator to be prosecuted criminally because it requires that the perpetrator be guilty to confiscate his assets.

Madrona Recondutor stated that if there is a suspicion that assets are related to a criminal act, these assets must be considered tainted assets. Therefore, NCB Asset Forfeiture is deemed capable of accommodating the movement of asset confiscation quickly because allegations of toxic assets can be followed up immediately without waiting for a criminal decision. Furthermore, Nanda Narendra Putra said the concept of NCB Asset Forfeiture would be helpful in various contexts, especially when criminal forfeiture is not available or not possible, such as:

1. The person who committed the crime has died (death automatically stops the criminal justice process);
2. The perpetrator of the crime has fled abroad (the criminal process is hampered and in limbo because the perpetrator is still a fugitive even though he can be tried legally *in the absence of*, but not executable).
3. Criminals are brutal to touch because of the robust immunity they possess.
4. The infringer was unknown, but the assets were discovered.
5. The related assets are held by a third party who is not subject to criminal charges, but there is a fact that the assets are tainted.
6. The criminal prosecution could not proceed because there was insufficient evidence.

Criminal assets that can be confiscated are assets obtained or suspected of resulting from criminal acts, namely:

- a. Assets acquired directly or indirectly from criminal acts, including those that have been gifted or converted into assets of individuals, other people, or corporations in the form of capital, income or other economic benefits obtained from such assets.
- b. Assets that are strongly suspected of being used or have been used to commit a criminal act;
- c. Other legitimate assets as a substitute for Criminal Assets or
- d. Assets that are found items that are suspected to have resulted from criminal acts.

There is a slight difference from general civil lawsuits, which require the claimant to prove that there are elements of an unlawful act and the losses they have experienced. Likewise, the asset owner does not have to prove that he is innocent or not involved in a criminal act. NCB Asset Forfeiture only concerns the relationship between a criminal offence and the asset being sued; the owner needs only prove that the support is "innocent." If the owner cannot prove this, then the investment is declared "guilty" and confiscated by the state.

One view from Muhammad Yusuf that illustrates the main point of the concept of Asset Forfeiture, NCB Asset Forfeiture is one of the efforts that can be made to return assets to the state or to parties who are entitled to ownership of assets that are not reasonable because they are suspected to be the proceeds of a crime, without having to be preceded by criminal charges. This means that confiscation of assets can be carried out without having to wait for an illegal decision to determine the fault and impose punishment on the perpetrator.



According to Yenti Garnasih (2010), the most appropriate and straightforward procedural method for implementing the Non-Conviction Asset Forfeiture (NCB) mechanism involves several steps. Initially, assets suspected to be the proceeds of a crime are frozen and removed from economic circulation, typically through a court-ordered confiscation. Subsequently, the assets are officially declared as tainted property through a court order. Once the assets are classified as contaminated property, the court issues a public announcement through accessible media channels, which remains accessible and known to the public for an adequate period, typically around 30 days. This duration is sufficient for third parties to know that the court intends to confiscate these assets. If, within this time frame, a third party wishes to contest the confiscation, they have the opportunity to submit an objection to the court. To substantiate their claim, they must provide valid evidence demonstrating ownership of the property and clarify how it was acquired.

Draft NCB Asset Forfeiture can be applied when the criminal justice process is not possible to run optimally, for example, in the following conditions:

1. The perpetrator of the crime has died (death will automatically stop the criminal justice process);
2. The perpetrator of the offence runs away (the criminal justice process is hampered and adrift so that the convict cannot be executed).
3. Certain things make it difficult for perpetrators of criminal acts to be touched because their political power or legal immunity hinders them.
4. Violators are challenging to find or unknown, but assets are located.
5. Assets are held by third parties not subject to criminal charges, but these assets may be contaminated.
6. The criminal prosecution process cannot continue due to insufficient evidence.
7. The perpetrator has been declared not guilty of committing a crime due to insufficient evidence. NCB Asset Forfeiture can still follow up on the suspected assets because the civil standard of proof is lower than the standard in criminal law.

Process NCB Asset Forfeiture involves PPATK analyzing assets suspected of being 'tainted' by a criminal act, where the analysis results will be submitted to investigators. When the perpetrator is not found during the investigation, the assets are handed over to the District Court to determine ownership to the state or the rightful party. NCB Asset Forfeiture continues to mandate the confiscation of assets resulting from criminal acts through court examination with high regard for due process of law, and several countries have implemented this concept without being based on the fault of the asset owner.

## **B. The Role of Notaries in Preventing Money Laundering**

Notaries are bound by the principle of prudence to exercise their authority effectively. As specified in the Law on the Position of Notaries, when fulfilling their role, notaries must act with honesty, diligence, trustworthiness, independence, and impartiality and priorities the interests of the parties involved in the legal transactions documented in the deed. The Notary Code of Ethics also mandates that Notaries must have good morals and personalities. This obligation guides Notaries to carry out their profession while adhering to morals so that no Notary's actions violate applicable legal provisions.

A notary is a public official appointed by the Minister of Law and Human Rights and given the authority to serve the public in making authentic deeds and other deeds deemed necessary. In this way, Notaries are one element of the profession that helps the government to provide services to the community and plays a role in the government's efforts to monitor and control legal acts in society. One is supervising money laundering crimes by reporting suspicious financial transactions using Notary/PPAT services.

The involvement of a Notary in efforts to report suspicious transactions is based on the role of the Notary who makes an authentic deed of a legal event carried out by the person present. To be able to do this authentic deed, a Notary must, of course, identify the presenting data/documents and implement the principle of identifying service users. Therefore, the Notary can request actual data, documents, and information from the audience so that the Notary can know the origin and background of the legal action carried out by the service user. The Notary's knowledge and assessment of service users is the government's effort to prevent the occurrence of criminal acts of money laundering.

The notary makes introductions and gets to know the parties and their identities, carefully examines the documents submitted by the presenter. Based on these documents, the Notary also coordinates with the authorised agencies. This is the most basic effort a Notary can take to prevent actions not by the law, both formally and materially. So, the authentic deed that will be made has little potential to cause conflict in the future.

The appointment of a Notary Public as a reporter for money laundering crimes is governed by Government Regulation 43 of 2015, which pertains to Reporting Parties involved in preventing and eliminating money laundering crimes. Specifically, Article 3 of this regulation stipulates that reporting parties, in addition to those mentioned in Article 2, include Advocates, Notaries, Officials, Land Deed Makers, Accountants, Public Accountants, and Financial Planners. The rationale behind including these additional reporting parties in Government Regulation Number 43 of 2015 is explained in the accompanying section. It is noted that advocates, notaries, land deed officials, public accountants, and financial planners, based on research conducted by PPATIK, are susceptible to exploitation by money laundering criminals seeking to conceal or disguise the illicit origins of their assets. These individuals may take advantage of the confidentiality provisions governing professional relationships with service users, which are regulated by statutory provisions.

The role of Notaries in preventing money laundering is defined in Minister of Law and Human Rights Regulation Number 9 of 2017, which outlines the application of the principle of recognising service users for notaries. As one of the reporting parties responsible for preventing and combating money laundering crimes, notaries must recognise service users. They must recognise and report suspicious financial transactions by individuals seeking notarial services. According to Minister of Law and Human Rights Regulation Number 9 of 2017, these suspicious financial transactions can take several forms, which are categorised as follows:

- a. Financial transactions that deviate from the profile, characteristics or transaction pattern habits of the service users concerned;
- b. Financial transactions by service users which are reasonably suspected to have been carried out to avoid reporting transactions which are required to be carried out by the reporting party by the provisions of laws and regulations governing the prevention and eradication of money laundering crimes;
- c. Financial transactions carried out or cancelled using assets suspected to be derived from the proceeds of criminal acts or
- d. The financial transactions requested by the PPATK are to be reported by a Notary because they involve assets suspected to originate from the proceeds of criminal acts.

Applying the principle of recognising service users by a Notary is a series of actions, including identifying service users, verifying service users, and monitoring service user transactions. This series of actions must be implemented by the Notary when:

- a. Carrying out business relationships with Service Entrepreneurs
- b. There are financial transactions in rupiah and foreign currency with a minimum value of IDR 100,000,000 (one hundred million rupiah).
- c. There are suspicious financial transactions related to money laundering, terrorism crimes, or
- d. The notary doubts the veracity of the information reported by service users.

In addition to the regulations above, the role of notaries in actively participating in the prevention of money laundering is further reinforced by the Regulation of the Head of the Center for Financial Transaction Reporting and Analysis, Number 11 of 2016, outlining the Procedures for Submitting Suspicious Financial Transaction Reports for Professionals (Perka PPATK). Perka PPATK mandates that professionals, including notaries, are required to submit reports on suspicious financial transactions. Notaries must report such transactions to the Center for Financial Transaction Reporting and Analysis (PPATK). The reporting process typically includes the following steps:

- a. Purchase and sale of property.
- b. Management of money, securities, and other financial service products.
- c. Management of checking, savings, deposit, and securities accounts.
- d. Company operations and management; and
- e. Establishment, purchase, and sale of legal entities.

To ascertain whether the service user's actions are classified as suspicious financial transactions, the Notary scrutinises every document and statement of the service user. One effort that a Notary can make is to obtain information regarding the beneficial owner or the beneficial owner of a legal act that will be stated in the authentic deed. The beneficial owner or beneficial owner *is*:

- a. Every person has rights and receives certain benefits related to service user transactions, directly or indirectly.
- b. every person who is the actual owner of the property related to the service user transaction;
- c. every person who controls service user transactions;
- d. every person who gives authority to make a transaction;
- e. any person who controls the corporation and
- f. every person who is the final controller of transactions carried out through a legal entity or based on an agreement.

To implement the principles of recognising service users, Notaries must understand the profile, data identification, aims and objectives of business relationships, and transactions carried out by service users with beneficial owners. The notary then verifies service users and monitors the fairness of financial transactions from service users. Based on sufficient evidence and it is reasonable to suspect that service users and beneficial owners carry out suspicious financial transactions to hide assets obtained from a criminal act, the Notary must report suspicious financial transactions to PPATK.

As a party who has a special responsibility to report indications of suspicious financial transactions, Notaries are also vulnerable to being involved in money laundering. The success of preventing money laundering crimes by Notaries can be booming if carried out with complete integrity and responsibility. It is a must for a Notary to deeply understand his duties and obligations, apart from making authentic deeds for the parties, but also to understand the implications of what will happen when the authentic deed is made.

### **C. Implications of Implementing Asset Confiscation Without Punishment (Non-Conviction Based Asset Forfeiture) against a Notary whose Authentic Deed is Indicated as a Means of Money Laundering**

The occurrence of a criminal act cannot be separated from the main issues in criminal law itself, which include the criminal act committed, the error, criminal sanctions, and the victims of the criminal act. Determining whether someone can be held criminally responsible is analysing whether the person concerned committed a criminal act. This means that the perpetrator commits an element of error, whether it was done intentionally or through negligence. As a result of this error, some parties suffer losses (victims). If there is an error, it is determined that the act committed is a criminal act which, if carried out, carries threatening sanctions.

The involvement of a Notary in money laundering activities can be identified when suspicions arise of suspicious financial transactions being carried out by the parties to the deed. The perpetrator



of the criminal act, which in this case is the presenter or the person who ordered someone to appear, is indicated to have carried out suspicious financial transactions. General indicators that can be classified as suspicious financial transactions include:

1. Not having clear economic and business goals;
2. Using relatively large amounts of cash and doing so repeatedly beyond reasonable limits or
3. Customer transaction activities are outside the norm and average.

Apart from that, the Chairman of PPATK, Kiagus Badarudin, explained several characteristics that indicate someone is committing a money laundering crime, including:

- a. The resulting funds or assets obtained will be placed in the financial system. Funds obtained from the proceeds of crime will usually be placed in banking, insurance or the capital market.
- b. They are transferring funds or assets, so it becomes increasingly difficult to find their origins. This characteristic is usually carried out by perpetrators by placing funds in one bank, then moving them to another bank, and then transferring them to an account in another name, such as the account of a maid, maid's wife, and so on.
- c. They are using funds to purchase assets in a region. However, the asset purchase process is carried out using the name of another person who is usually not from their circle of relatives. After that, to obtain these assets, the perpetrator will pretend to buy them second-hand using cash or credit.

Searches regarding a person's flow of funds and transactions can be carried out based on the abovementioned criteria. When a money laundering crime has been proven based on sufficient evidence, the person can be charged with money laundering crimes. Perpetrators of the crime of money laundering, in carrying out their actions, certainly need means so that their actions appear to be legal and do not indicate a criminal act. One of the efforts is to divert money from criminal acts into assets. There are 3 (three) basic methods criminals use to move their illegal funds from one transaction system to another: establishing a legal business, buying, and selling transactions, and transferring them to overseas tax-free countries. Two of the three methods require an authentic deed. The notary will be asked for information by investigators regarding the authentic deed he made, where it turns out that the authentic deed was a means of money laundering by the perpetrator. Investigators and PPATK will examine the Notary's testimony and the flow of funds entering the Notary's account to prove whether the Notary has collaborated to carry out an evil conspiracy with the perpetrator of the crime of money laundering.

Investigators and PPATK found evidence that there was an irregular flow from the account of the perpetrator of the crime of money laundering to the Notary's account, as well as other supporting evidence; it is reasonable to suspect that the Notary was involved in a crime of money laundering. In terms of the deed made, a Notary can be made a suspect for forgery of an authentic deed, as regulated in Article 263 of the Criminal Code, which stipulates that:

- (1) Any person who makes a fake document or falsifies a letter which can give rise to a right, obligation, or discharge of a debt or which is intended as proof of something to use or order another person to use the document as if the contents were accurate and not falsified, will be threatened with use. This can result in losses due to forgery of documents, with a maximum prison sentence of 6 years.
- (2) The same criminal penalty is imposed on anyone who deliberately uses a fake or falsified document as if it were genuine if using the letter could cause harm.

Moreover, Article 264 of the Criminal Code, which regulates that:

1. Forgery of documents is punishable by a maximum imprisonment of 8 years if committed against:
  - a. Authentic deeds.
  - b. Debt securities or debt certificates from a state, part thereof, or public institution.
  - c. Certificate of holding or debt or certificate of holding or debt from an association, foundation, company, or airline.

- d. Talon, proof of dividend or interest from one of the letters described in 2 and 3, or proof issued instead of those letters.
  - e. Letters of credit or commercial letters are to be distributed.
2. The same penalty shall be imposed on anyone who deliberately uses the letter in the first paragraph, the contents of which are not genuine, or which are falsified as if they were true and not falsified if the falsification of the letter could result in losses.

A notary can at least be held criminally liable for the deed they make based on Article 263 of the Criminal Code and Article 264 of the Criminal Code if:

- a. The notary knows that when a person appears before him to do an authentic deed, whether in the form of an agreement for sale and purchase or another agreement, that person cannot fulfil the requirements for the validity of an agreement based on the applicable laws and regulations. However, the notary ignored the conditions for the validity of the agreement and continued to make the deed as requested by the parties.
- b. The notary knows that when the person appears before him to do an authentic deed, that person has provided incorrect information and is included in the deed. The notary ignored this and continued to make the Authentic Deed.

In this context, the creation of an authentic deed by a Notary pertains to using authentic deeds as a method for money laundering. Consequently, a Notary can potentially become involved in a distinct offence, namely the crime of money laundering, in which they would be considered a passive perpetrator. Passive money laundering, as defined in Article 5 paragraph (1) of Law Number 8 of 2010 concerning the Crime of Money Laundering, involves an individual receiving the proceeds of a crime from the perpetrator of a money laundering offence.

"Any 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 punished with a maximum imprisonment of 5 (five) years and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah)."

The elements in Article 5 paragraph (1) of the TPPU Law above, examined by the actions of a Notary who does an authentic deed for a perpetrator of a money laundering crime, can be described as follows:

1. Every person's element  
Each person refers to an individual or individuals who can carry out specific actions and can be responsible for the actions they carry out. In this case, everyone can refer to a Notary who carries out an act in the form of making an authentic deed.
2. The element of receiving or controlling the placement, transfer, payment, grant, donation, custody, exchange or use of assets  
Acceptance or control of assets that are placed, transferred, paid, granted, donated, entrusted, exchanged, or used is an act in which a person or in this case, a Notary, uses assets that he received or controlled due to placement, transfer, payment, grant, donation, deposit, or exchange. This can be proven by checking the flow of funds to the Notary's account to see whether they receive irregular funds from perpetrators of money laundering crimes. Apart from that, it is also possible that the ownership of irregular assets by a Notary does not go through financial services facilities, meaning that the money from the perpetrator is physically given to the Notary. As long as there is evidence that the Notary received unreasonable assets from the perpetrator, it can be said to have fulfilled the elements of this article.
3. The element that he knows or reasonably suspects results from a criminal act.  
This element requires that the person who receives or controls the assets knows that the assets given to him are the proceeds of a criminal act. A Notary who continues to receive and control assets

from a person who knows that these assets were obtained from the proceeds of a money laundering crime can be suspected of being a passive perpetrator.

In summary, it can be deduced that the funds received by a Notary fall under the "transfer and payment that is reasonably suspected to be the result of a criminal act." Therefore, a Notary may face imprisonment, as indicated in Article 5, paragraph (1) of Law Number 8 of 2010 concerning the Crime of Money Laundering. Ironically, Notaries, who should ideally be at the forefront of preventing money laundering, may sometimes be implicated in money laundering activities themselves. As individuals legally authorised to report signs of money laundering, Notaries should exercise great caution and adhere to the principle of recognising service users as an initial step in combating money laundering.

Criminal charges may be applied if a Notary is found to have been involved in money laundering. According to Article 52 of the Criminal Code, when an official commits a criminal act, breaches a specific duty associated with their position, or employs the authority or resources granted to them due to their position to commit a criminal act, the penalty can be increased by one-third.

Therefore, a Notary who meets the criteria outlined in Article 5 paragraph (1) of the Law on the Eradication of Money Laundering (TPPU Law), as they have committed a criminal act in their capacity as a public official with the authority to create authentic deeds and have violated the special duty to report suspicious financial transactions, may be subject to an increased penalty of one third.

As a defendant, a notary has the right to carry out reverse evidence due to his involvement in a money laundering crime through an authentic deed he made. The notary has the right to prove that his assets do not come from the proceeds of a criminal act. If the judge accepts the evidence, the Notary and his assets can be released. The concept of reverse evidence has a limited and balanced nature, meaning that reverse evidence is limited to specific actions, and the burden of proof also remains on the public prosecutor based on the indictment. Reverse evidence provides two possibilities: if the defendant cannot prove that his assets do not come from the proceeds of a criminal act, then through a court decision that has permanent legal force, the assets that have been previously confiscated will be confiscated and handed over to the state treasury as Non-Tax State Income (PNBP). If it turns out that the defendant can prove that the assets did not come from the proceeds of a crime, then the panel of judges can issue a verdict of acquittal against the defendant.

The threat of punishment that may be imposed on Notaries who have passively committed the crime of money laundering is the confiscation of assets resulting from criminal acts. A notary who receives a flow of funds from a perpetrator of an active money theft crime, in addition to receiving a prison sentence, can also have the assets obtained from the proceeds of the crime confiscated. The TPPU Law regulates in Article 79, paragraph (4), that:

"If the defendant dies before the verdict is handed down and there is sufficient evidence that the person concerned has committed the crime of money laundering, the judge, at the request of the public prosecutor, decides on the confiscation of the assets that have been confiscated."

The asset confiscation system, which was initially carried out because the defendant died, is now starting to be designed to be able to apply to other defendants' conditions, which are felt to hamper the law enforcement process. These conditions are contained in the Draft Law on Confiscation of Assets Related to Criminal Acts, according to which all criminal acts that are committed and cause losses to the State or other parties can be subject to confiscation of assets without being required to undergo criminal prosecution. In this case, a Notary suspected and proven to be involved in a money laundering crime may also be threatened with asset confiscation. However, to confiscate assets from a Notary who is suspected of being involved in the crime of money laundering through a deed he made, he must fulfil conditions such as:

1. Assets that can be confiscated consist of:
  - a. Assets worth at least IDR 100,000,000 (one hundred million rupiah) And
  - b. Assets related to criminal acts are punishable by imprisonment for 4 (four) years or more.

2. The suspect or defendant is dead, absconding, permanently ill, or whose whereabouts are unknown;
3. The defendant was acquitted of all legal charges;
4. The criminal case cannot be tried;
5. The defendant had been found guilty by a court that had permanent legal force, and later, it was discovered that there were criminal assets that had not been declared confiscated.

If deeper analysis is conducted, and it is found that a Notary has knowingly and deliberately collaborated with parties to create an authentic deed for a legal act that is reasonably suspected to involve elements of a criminal offence, the Notary could be subject to legal consequences under Article 264 of the Criminal Code and Article 5 paragraph (1) of Law Number 8 of 2010 concerning the Crime of Money Laundering. The potential legal penalties include imprisonment for a maximum of 7 years and a maximum fine of IDR 1,000,000,000 (one billion rupiah).

If the concept of asset confiscation without prosecution is implemented in the Indonesian legal system through the Draft Asset Confiscation Law, Notaries could become subjects of asset confiscation if they are suspected of involvement in a money laundering offence. Asset confiscation may be applicable if the Notary is deceased, has fled, is seriously ill, or their whereabouts are unknown. The absence of a Notary as a suspect/defendant in the crime of money laundering results in obstruction of legal procedures that must be carried out. However, through this confiscation of assets, the pursuit is carried out against the person but also the assets so that the absence of a suspect/defendant will not hinder the law from pursuing assets resulting from criminal acts.

Potential sanctions for asset confiscation, seen from the Draft Asset Confiscation Law itself, can be carried out after initial evidence, based on searches carried out by investigators by requesting documents from each person, government agency or other related agencies. Suppose from the investigation results it is reasonably suspected that the assets in question are assets obtained from the proceeds of a criminal act. In that case, the investigator can block and confiscate them.

The assets that have been blocked and confiscated are handed over to the Attorney General along with supporting documents, which a determination by the local District Court regarding the assets confiscated precedes. After handing over the assets, the Attorney General, as the state attorney, submits a request for asset confiscation to the District Court, which has the authority to examine, try and decide on the asset confiscation request. Based on this request, the District Court summoned the State Attorney to attend the examination at the court hearing. Suppose it is proven based on examination at a court hearing that the assets are assets obtained from the proceeds of a criminal act. In that case, the court can decide that the state confiscates the assets.

Based on this description, assets resulting from criminal acts are the subject of trial so that the presence of the perpetrator of the criminal act is not an obstacle to confiscating these assets. Suppose it relates to a Notary whose authentic deed is used for money laundering. Based on preliminary evidence, it turns out that the Notary is proven to have collaborated with the parties to carry out money laundering. In that case, the assets that are proven to have been obtained by the Notary from receiving irregular assets can be confiscated by the state. A Notary whose whereabouts are unknown or in a condition where he cannot be tried through the normal judicial process so that recovery of losses resulting from criminal acts can continue, the pursuit of the Notary's assets becomes a form of punishment for the criminal act that has been committed.

## **CONCLUSION**

This text describes two legal concepts, namely "NCB Asset Forfeiture" (Confiscation of Assets Based on Non-Conviction) and the role of notaries in preventing money laundering crimes. In NCB Asset Forfeiture, assets related to a criminal offence can be sued (in rem), with the asset owner needing only to prove that the assets are "innocent." If the owner cannot prove this, the state can confiscate the assets.

Meanwhile, notaries have an essential role in avoiding misuse of notarial acts for money laundering by applying the principle of prudence and recognising service users. They also must identify suspicious financial transactions and report them. Notaries can face legal action Even if they are involved in money laundering practices through notarial acts. In the context of NCB Asset Forfeiture, confiscation of assets resulting from criminal acts can be carried out against perpetrators of criminal acts, including notaries, without waiting for the legal status of the individuals involved. Thus, this text illustrates NCB Asset Forfeiture principles, notaries' role in preventing money laundering, and the legal consequences that notaries involved in money laundering crimes may face.

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