

THE RELEVANCE OF ELECTRONIC KNOW YOUR CUSTOMER AS THE PRINCIPLE OF
CUSTOMER IDENTIFICATION FOR NOTARIES IN CREATING AUTHENTIC DEEDS AS
EFFORTS TO PREVENT MONEY LAUNDERING CRIMES.

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ABSTRACT

Notaries not only have the authority to create authentic deeds but also have the authority to identify their users through EKYC as part of anti-money laundering efforts. The purpose of this article is to explore the relevance of implementing the principle of identifying users in accordance with Minister of Law and Human Rights Regulation No. 9 of 2017 on the authority of notaries and its legal consequences. According to the author, notaries who do not implement this principle through the EKYC system could face legal consequences. This research adopts a normative approach. The results indicate that the authority of notaries to implement the principle of identifying users is granted by Minister of Law and Human Rights Regulation No. 9 of 2017, and the legal consequences for notaries who fail to implement this principle may include administrative sanctions under the Notary Law and lack of support for government programs on combating money laundering.

Keywords: EKYC, principle of identifying users, money laundering.

INTRODUCTION

At present, the rapid development of regional economies is moving towards integration with the international economy to address increasingly complex challenges. Along with this, rapid advancements in the field of information technology represent one of the modern era's progressions in daily life that can be felt, utilized, and witnessed. This has a significant impact on human existence. These advancements have influenced lifestyles and work in various sectors such as artificial intelligence, biotechnology, robotics, and information technology. Although the concept of technology and innovation is not directly mentioned in the Qur'an,¹ with deeper understanding and interpretation, there are verses and guidance in the Qur'an that state:

Do you not see that Allah has subjected to you whatever is in the heavens and whatever is in the earth and amply bestowed upon you His favors, [both] apparent and unapparent? But of the people is he who disputes about Allah without knowledge or guidance or an enlightening book [from Him]." (Quran, Luqman/31:20)

One result of technological development is electronic Know Your Customer (hereinafter referred to as e-KYC), which is aimed at customer transactions conducted through banking services. e-KYC essentially refers to the implementation of Know Your Customer (hereinafter referred to as KYC) using technology such as electronic devices and the internet, enabling Enhanced Due Diligence² (hereinafter referred to as EDD) to be conducted remotely without the need for direct meetings between the Bank or other financial service providers and the respective customers. There are several benefits to implementing e-KYC, including faster and more flexible service

¹ Zuhriyandi dan Malik Alfannaja, "Penafsiran Ayat-Ayat Tentang Teknologi dan Inovasi Dalam Al-Qur'an: Implikasi Untuk Pengembangan Ilmu Pengetahuan di Era Modern", *Jurnal Cendekia Ilmiah*, Volume 2, Nomor 6, Oktober 2023.

² Diego Belva Putra, M. Abd. Malik Hakim dan Bambang Nurdewanto, "Implementasi Electronic-Know Your Customer pada aplikasi Fintech untuk meningkatkan keamanan akun user", *Journal of Information System and Application Development*, Volume 1, Number 2 (2023).

access, increased accessibility to financial services, and cost savings for both banks and other financial service providers³.

The e-KYC facility functions to verify the accuracy of an individual's personal data within the Dukcapil database when residents input their name, address, place and date of birth, along with a verifier NIK, fingerprints, iris scan, and facial photo in the e-ID card. Thus, when residents have input their data, they cannot record new data outside of the initial input. This relates to the Notary in issuing deeds having its own privileges because Notarial deeds are products of public officials, therefore the assessment of Notarial deeds must be done with the presumption of validity. The purpose of assessing Notarial deeds using the presumption of validity is that Notarial deeds must be considered correct and valid until there is a party that declares and can prove the truth and validity of the deed is invalid. Parties wishing to declare and prove that the deed is invalid must do so through a lawsuit in General Court.⁴ Even the principle of recognizing service users is an additional obligation for notaries to deeply recognize service users. In the Notary Law recognizing service users is only formal recognition, enough to be introduced by two witnesses and recognized through identification cards. This raises the question of whether notaries are capable of implementing this principle. Often in making a deed, we find forgery of the identities of the parties involved which has implications for the Notary in making authentic deeds, such as suspected participation or assistance in the forgery of deeds, becoming witnesses in court proceedings. This underscores the importance of the e-KYC facility for Notaries to prevent criminal acts in making authentic deeds. Additionally, criminals hide the proceeds of crime in the financial system or in various other forms of efforts. The act of hiding the proceeds of crime or funds obtained from criminal acts is intended to obscure the origin of wealth. Money laundering practices are extremely difficult to prove, due to their complex and diverse nature, but experts have successfully classified

³ Adi Permana, "Mengenal Sistem e-KYC: Manfaat dan Keuntungannya di Era Digital", terdapat disitus <https://www.itb.ac.id/berita/mengenal-sistem-e-kyc-manfaat-dan-keuntungannya-di-era-digital/58560>, diakses pada tanggal 6 Juli 2023.

⁴ Dea Derika, "Fungsi Notaris Dalam Pemeriksaan Identitas Penghadap Terhadap Autentisitas Akta Dihubungkan Dengan Asas Kehati-hatian", *Jurnal Ilmu Hukum: Syiar Hukum*, Vol. 18, No. 2, 174.

this money laundering process into three separate but often carried out together stages, namely placement, layering, and integration.

Notaries sometimes fail to understand the consequences borne if it turns out that the parties involved in a deed have provided false identities. Therefore, Notaries request the original Identity Card (hereinafter referred to as KTP) or electronic Identity Card (hereinafter referred to as e-KTP) from each party for the purpose of matching it with the copy of the Identity Card provided by the parties involved. If, in practice, when implementing e-KYC in making authentic deeds, Notaries find that the identity in the form of the KTP submitted by the parties involved does not match the information in the Dukcapil database, then the Notary may refuse to create an authentic deed for the parties involved. Additionally, criminals hide the proceeds of crime in the financial system or in various other forms of efforts. The act of concealing the proceeds of crime or funds obtained from criminal acts is intended to obscure the origin of wealth. Money laundering practices are extremely difficult to prove, due to their complex and diverse nature, but experts have successfully classified this money laundering process into three separate but often jointly conducted stages, namely placement, layering, and integration. Therefore, the author narrows down the research with a relevant title, "The relevance of electronic know your customer as a principle of notarial customer recognition in making authentic deeds: efforts to prevent money laundering crimes." The problems in this research can be formulated as follows: what is the role of e-KYC before creating a notarial deed as a prevention of money laundering crimes and also the application of the principle of recognizing service users by notaries as reporting parties in money laundering crimes.

RESEARCH METHODS

The research method used is normative legal research, which relies on secondary data as its basis. These secondary data include the library materials of Government Regulation Number 40 of 2019 concerning Population Administration, the Law on Personal Data Protection, Law Number 19 of 2016 concerning Electronic Information and Transactions, as well as Law Number 24 of 2013 concerning Population Administration and Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notaries. The library materials encompass primary legal materials that are binding, secondary legal materials that provide explanations, and tertiary

legal materials such as the Great Dictionary of the Indonesian Language. Data obtained from these library materials are then processed and analyzed qualitatively to understand the phenomenon under study, namely the protection of personal data in electronic transactions. This analysis is important to comprehend the impact and implications of existing regulations on the protection of personal data in the context of information technology.

DISCUSSION

The Implementation of Electronic Know Your Customer Based on National Identification Number (NIK) in the Making of Notarial Deeds in Indonesia.

A Notary is a public official appointed by the state to handle certain tasks of state authority, especially in the creation of legally valid and authentic written documents in the realm of civil law. This authority is granted to notaries through the Notary Position Law, which provides direct attribution authority from the law, not through the governmental structure. In this context, the notary's position operates independently, not as part of the government's organizational structure such as executive, legislative, or judicial. Instead, notaries have an independent position as public officials responsible for civil law, assisting the community in the process of creating authentic deeds and other legal documents. According to Soegondo Notodisoerjo, a public official is someone appointed and dismissed by the government and given the authority and duty to serve the public in certain matters because they participate in exercising authority derived from the government's authority. In their position, there are inherent qualities and characteristics that distinguish them from other positions in society.⁵

Regarding Cyber Notary, its main function is to perform certification and authentication in electronic transaction flows. Certification itself means that a notary has the authority to act as a Certification Authority (trusted third party), enabling them to issue digital certificates to interested parties. ⁶Authentication, on the other hand, pertains to the legal aspects that must be fulfilled in

⁵ R. Soegondo Notodisoerjo, "*Hukum Notariat di Indonesia Suatu Penjelasan*." Rajawali Pers, Jakarta (1982), 42.

⁶Prastyo, Brian Army. "Peluang dan Tantangan Cyber Notary di Indonesia.", (2014), <https://staff.blog.ui.ac.id/brian.amy/2009/11/29/peluang-cyber-notary-di-indonesia/>,

the execution of electronic transactions. The implementation of Cyber Notary based on the concept of Electronic Know Your Customer (E-KYC) Based on Population Identification Number (NIK) in the Making of Notarial Deeds in Indonesia has numerous benefits, particularly in preventing identity forgery and related criminal activities. The E-KYC facility, which uses NIK as its basis, aims to verify the authenticity of personal information registered in the Population Administration database. When someone inputs data such as name, address, date of birth, and verifies it with NIK, fingerprints, iris scans, and facial photos in the e-ID, the system ensures that no additional data can be entered after the initial data input process is completed.

The e-KYC facility that utilizes the National Identification Number (NIK) as its basis aims to verify the authenticity of an individual's personal information registered in the Civil Registration database. When someone inputs data such as name, address, date of birth, and undergoes verification with NIK, fingerprints, iris scans, and facial photos in the electronic ID card (e-ID), this system ensures that no additional data can be inputted after the initial data input process is completed. Notaries have the authority derived directly from Law Number 2 of 2014 concerning the Position of Notaries (hereinafter referred to as the Notary Law) to create authentic deeds. Through the creation of authentic deeds, notaries are tasked with providing the best service to the public. In every deed created or signed, notaries bear the responsibility to ensure legal certainty for all parties involved. Therefore, notaries must be individually and socially responsible, adhering to positive legal norms and obeying the Code of Ethics of the profession, thereby reinforcing the existence of applicable positive legal norms. Additionally, they are obligated to carry out their duties and authorities accurately and honestly,⁷ in accordance with the oath of office they take and their conscience obligations. In providing services, notaries are expected to maintain high professional moral standards, in line with the call of conscience and the demands of professional obligations.

⁷ Urip Prayitno dan Moh. Saleh, "The Urgency of Applying Article 39 paragraph (2) UUJN Against Prevention of Indications of Criminal Acts in Notary Deeds", *Jurnal Ilmu Syariah, Perundang-undangan dan Ekonomi Islam*, Vol. 15 No. 2 (Februari-Juni2023): 58-70.

EKY (Electronic Know Your Customer) is the Implementation of the Principle of Recognizing Service Users by Notaries as an Effort to Prevent Money Laundering.

One form of the government's seriousness in handling money laundering crimes is by establishing the Financial Transaction Reports and Analysis Center (PPATK). PPATK, as defined in Article 1 number 2 of Law Number 8 of 2010, is an independent institution formed to prevent and combat money laundering crimes. PPATK plays a key role in the mechanism of combating money laundering crimes. If PPATK fails to perform its functions properly, the effectiveness of the implementation of the Anti-Money Laundering Law will not be achieved⁸.

The general and specific authorities outlined in Article 15 paragraphs (1) and (2) of the Notary Law, Notaries have other authorities based on other regulations outside the Notary Law. One of the other authorities of Notaries is the obligation of Notaries in implementing the principle of knowing their customers as stipulated in Minister of Law and Human Rights Regulation No. 9 of 2017 (hereinafter referred to as Minister of Law and Human Rights Regulation No. 9 of 2017). This regulation was enacted as a form of implementation of Article 6 paragraph (1) of Government Regulation No. 43 of 2015 concerning Reporting Parties in the Prevention of Money Laundering.

Moreover, Notaries are also among the professions obligated to report suspicious financial transactions of their clients to the Financial Transaction Reports and Analysis Center (PPATK). This obligation is stipulated in Government Regulation No. 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering. This Government Regulation is an implementing regulation of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering. Money laundering is a process to eliminate the source of funds obtained from illegal activities through a series of investment activities or repeated transactions with the intention of obtaining legal status for the proceeds of investment in the financial system.

⁸ Sutan Remi Sjahdeni, 2003, "*Pencucian Uang: Pengertian, Sejarah, Faktor Penyebab, Dan Dampaknya Bagi Masyarakat*", *Jurnal Hukum Bisnis*, Vol 22 No 3.

Personal data is a part of everyone's privacy, which is reflected in the second principle of Pancasila which states "Just and Civilized Humanity." The definition of personal data according to the Population Administration Law is "Population Personal Data is specific individual data that is stored, maintained, and kept accurate and protected." (Law, 2013) The protection of personal data is necessary so that when using services, users can calmly provide data to the system to be processed and obtain convenience in their current life.⁹In the Population Administration Law, it is explained that personal data of residents that must be protected include: "Family Card Number; ID Number (NIK); date/month/year of birth; information about physical and/or mental disabilities; mother's NIK; father's NIK; and some contents of Important Events records." According to the Personal Data Protection Law, the definition of personal data is data of an individual either alone or in combination through electronic or non-electronic systems. Meanwhile, in the Civil Code, personal data means property that can be subject to property rights or ownership rights, which means that theft of personal data can be subject to sanctions and/or accountability.¹⁰

Legal Consequences for Notaries Who Fail to Implement the Principle of Knowing Their Customers

As a public official, a notary is authorized to draw up authentic deeds and has other powers. In carrying out their duties, a notary is required to act with trustworthiness, honesty, diligence, independence, and impartiality as stipulated in Article 4 paragraph (2) of the Notary Law. All information in a deed prepared by a notary and the statements made by the parties during the preparation of the deed must be kept confidential by the notary, unless there is a legal order instructing the notary to provide information related to the deed to the requesting party. Therefore, the obligation to maintain confidentiality held by the notary is not for the notary's personal

⁹ Afif Farhan ,Cindy, Perlindungan Hukum Data Pribadi Di Indonesia, Seminar Nasional Hasil Penelitian Dan Pengabdian Kepada Masyarakat 2022 Penguatan Ekonomi Bangsa Melalui Inovasi Digital Hasil Penelitian Dan Pengabdian Kepada Masyarakat Yang Berkelanjutan Jakarta, 20 Oktober 2022

¹⁰ Tumulun, B. (2018). Upaya Penanggulangan Kejahatan Komputer Dalam Sistem Elektronik Menurut Pasal 30 Undang Undang Nomor 11 Tahun 2008. *Jurnal Lex Et Societas* 6, 24.

interests, but for the interests of the parties who trust that the notary can safeguard the confidentiality of the information provided by the parties during the deed preparation process.

The authority of a notary to implement Customer Due Diligence (CDD) imposed on them is one of the government's efforts to anticipate the increasing prevalence of money laundering crimes. Bambang Rantam Sariwanto, the Secretary General of the Ministry of Law and Human Rights and also the Chairperson of the Central Notary Supervisory Council (MPPN), argues that CDD is in line with the provisions regarding the confidentiality of the notary's position, thus CDD must be implemented. The applied CDD is used for the benefit of the parties and to protect the notary so that in carrying out their professional duties, they are not misused or exploited by clients who wish to formalize transactions into authentic deeds to establish legal entities or other business entities.

Notaries who fail to perform their duties as they should be held accountable. Accountability is an attitude or action taken by someone to bear the consequences of their actions. This accountability can take the form of sanctions. This is in line with Hans Kelsen's theory of legal responsibility, which states that a person is legally responsible for an act and can be sanctioned in cases of contrary actions. Based on Article 30 paragraph (1) of Minister of Law and Human Rights Regulation No. 9 of 2017, a notary who fails to implement CDD may be subject to administrative sanctions. Furthermore, Article 30 paragraph (2) explains that the type and procedures for imposing sanctions are carried out based on the provisions of the Notary Law. Administrative sanctions under the Notary Law may include written warnings, temporary suspension, honorable discharge, and dishonorable discharge. Thus, it can be concluded that the legal consequences for notaries who fail to implement the principle of knowing their customers are administrative accountability in the form of written warnings, temporary suspension, honorable discharge, or dishonorable discharge.

CONCLUSION

Based on the discussion, a conclusion is drawn stating that the relevance of implementing electronic Know Your Customer (KYC) for notaries in preparing authentic deeds is an effort to

prevent money laundering crimes. This makes EKY one of the customer identification principles. Notaries are required to collect information about the identity of customers and the source of funds, which will then be reported to the Financial Transaction Reports and Analysis Center (PPATK) through goAML. The information obtained is not included in the deed preparation, so notaries do not need to hesitate to apply the customer identification principle. The legal consequences for notaries who do not comply with the customer identification principle may include administrative sanctions under the Notary Law, such as written warnings, temporary suspension, honorable discharge, or dishonorable discharge.

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