

# Application of Sanctions for Violations of Mandatory Reporting of Beneficial Owners in Limited Liability Companies

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## Abstract

This research explores the concept and regulatory framework of Beneficial Owners in Indonesia's corporate governance, focusing on Limited Liability Companies. Beneficial Owners, distinct from registered shareholders, hold significant economic interests in corporations while their identities may not be publicly disclosed. The study traces the historical evolution of the Beneficial Owner concept from medieval proxy arrangements to modern corporate structures. It examines legal instruments such as Presidential Regulation Number 13 of 2018 and Minister of Law and Human Rights Regulation Number 15 of 2019, which mandate transparency in disclosing Beneficial Owners to prevent Money Laundering and Terrorism Financing. However, in reality, there is no specific law that regulates Beneficial Owners, so it is necessary to refer to the considerations for the formation of Presidential Regulation 13/2018 and the Regulation of the Minister of Law and Human Rights 15/2019. Despite regulatory advancements, compliance remains a challenge, with significant proportions of corporations failing to report Beneficial Owners annually. Sanctions, including administrative penalties and criminal liabilities under Indonesian laws, underscore the importance of enforcement to ensure transparency and accountability in corporate governance. The research highlights global implications, emphasizing the role of transparency in combating international financial crimes and promoting ethical business practices worldwide.

**Keywords:** Beneficial owner; limited liability company

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## Introduction

The main shareholders who create a Limited Liability Company are not necessarily included in the company's structure when reporting the Beneficial Owner. According to Article 7, Paragraph (1) of Law Number 40 of 2007 on Limited Liability Companies, it is required that a Limited Liability Company be founded by at least two individuals through a notarial deed drafted in Indonesian.

A Beneficial Owner refers to a capital owner who is not part of a company's structure. This concept is not new and can be traced back to the 15th-century Crusades (Hudson, 2009). During that period, many English nobles went to war, leaving their assets unattended for several years. To manage and maintain their property, a designated individual was given the authority to oversee the property or collect rent. Upon returning from the war, the original owner would regain their ownership rights (Hudson, 2009). In this arrangement, both the proxy and the landowner shared the same rights simultaneously. The idea of a Beneficial Owner has since evolved, particularly in the context of corporate ownership.

Several experts have discussed the concept of a Beneficial Owner. Among them, Klaus Vogel describes a Beneficial Owner as an individual or group with the authority to manage and control the use

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of another person's capital or assets, including deciding how the profits or proceeds from those assets are utilized (Vogel, 1997).

The regulation regarding Beneficial Owners in Indonesia is governed by Presidential Regulation Number 13 of 2018 on the Application of the Principle of Recognizing Beneficial Owners of Corporations in the Context of Preventing and Eradicating Money Laundering and Terrorism Financing (“Perpres 13/2018”) and the Minister of Law and Human Rights Regulation Number 15 of 2019 on the Procedures for Implementing the Principle of Recognizing Beneficial Owners of Corporations (“Permenkumham 15/2019”) (Purwijanti & Prihandono, 2018).

As investment increases both domestically and internationally, the practice of forming corporations without revealing the Beneficial Owner or the true capital owner has become more prevalent in business. Entrepreneurs who create corporations without disclosing the Beneficial Owner frequently employ complex ownership structures (layering), making it challenging to identify the true owner (Daudrikh, 2021). Capital owners often delegate authority to trusted individuals to represent them within the corporate structure or as registered capital owners. This business practice is known as a nominee agreement (Daudrikh, 2021).

According to Black’s Law Dictionary, a Nominee is (Garner, 1999): a. a person who is proposed for an office, membership, award, or similar title or status; b. a person designated to act on behalf of another, usually in a very limited capacity; c. a party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others.

From the definition of a nominee, it is clear that the term has two distinct meanings. Firstly, a nominee can be someone who is proposed or nominated for a particular position, award, or other recognition (Widjaja, 2008). Secondly, a nominee can also refer to an individual who represents or acts on behalf of another party’s interests (Widjaja, 2008).

Regarding the issue of nominees, one of the duties of a limited liability company is to uphold transparency and disclose information, especially regarding the Beneficial Owner as outlined in Article 16 of Presidential Regulation 13/2018. Transparency serves as a governmental administrative method, manifested in the requirement to publish the articles of association of newly formed limited liability companies and any subsequent changes in the official gazette (Agustianto, 2022).

Each year, Limited Liability Companies are required to electronically submit information about the Beneficial Owner through AHU Online. Sanctions for failing to comply with these requirements are specified in Article 24 of Perpres 13/2018, in line with legal provisions. However, there is presently no dedicated legislation governing Beneficial Owners, so it is necessary to refer to the principles guiding the adoption of Perpres 13/2018 and Permenkumham 15/2019.

## Method

This study utilizes empirical research, focusing on legal identification and the effectiveness of law (Soekanto, 2007). It gathers secondary data from sources such as books, regulations, legal journals, and law-related publications. The research approach adopted here is primarily legal or doctrinal, drawing insights from existing laws, regulations, and legal doctrines. The study examines legal issues concerning the terms, conditions, and privacy policies of a business entity, analyzing them through the lens of limited liability company law.

## Discussion

The current evolution of the modern world greatly influences the business and commerce sectors. Effective management is essential for achieving desired outcomes in all business activities. With competition growing increasingly complex, advanced management and organizational strategies are necessary to anticipate competitive threats. Companies play a vital role in modern life as they enable individuals to meet their economic needs (de. Long, *et. al*, 2017).

In brief, a significant global issue today involves the use of anonymous corporate entities to hide

funds obtained through corruption, tax evasion, and other illegal activities worldwide (Cassella, 2018). Given the global nature of corrupt practices and tax manipulation, it is essential to identify and share information about the true owners to prevent crimes, recover assets, and ensure criminal accountability. Furthermore, corruption and tax fraud are intricate international crimes that directly contribute to human rights violations and perpetuate inequality (Martinez, 2021). Therefore, limited liability companies have a responsibility to transparently disclose information. This obligation reflects how governments fulfil their duties, with transparency evident in the requirement to publish the articles of association of newly established companies and any changes in official publications issued by the state (Balfas, 2012).

As a member of the G20, Indonesia agreed in 2014 to the High-Level Principles on Beneficial Ownership Transparency. These principles emphasize the importance of transparency, accurate information availability regarding Beneficial Owners, and accessibility of this information by authorized institutions. Transparency concerning the true Beneficial Owner is part of the framework to address Base Erosion and Profit Shifting (BEPS) (Saleh, 2022).

The demand for transparency in information about Beneficial Owners has garnered global attention, particularly in developed countries, as a measure to address tax issues involving tax evasion, money laundering, corruption, and terrorism financing. However, it is important to note that transparency regarding Beneficial Owners is also closely related to efforts for general corporate law enforcement. Moreover, transparency on Beneficial Ownership also has the potential to serve as an instrument for law enforcement in environmental, labor, and consumer protection fields (Candra, 2020).

In efforts to prevent and combat Money Laundering (ML) and Terrorism Financing (TF), the Financial Action Task Force (FATF) has developed FATF Recommendations as international standards for Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT). FATF Recommendation Number 1 of 2012 mandates each country to identify, analyze, and evaluate ML and TF risks (FATF, 2012). Additionally, countries are expected to take concrete actions and designate competent authorities to coordinate risk assessments and resource utilization (Gilmoour, 2020). This aims to enhance effectiveness in mitigating these risks.

One crucial aspect of Sectoral Risk Assessment (SRA) is the SRA for the banking sector, which is a cornerstone of national economic activities. FATF has also set standards concerning transparency of information regarding beneficial owners through Recommendations 24 and 25, applicable to legal entities and legal arrangements. According to these recommendations, countries are required to take measures to prevent the misuse of legal entities and other legal arrangements for money laundering or terrorism financing (Alldridge, 2008). Countries must also ensure the availability of adequate, accurate, and timely information about beneficial ownership and corporate control, accessible promptly by competent authorities (Radon & Achuthan, 2017).

In the context of preventing money laundering, both recommendations emphasize that countries should consider measures to facilitate access to information regarding Beneficial Ownership and control by financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs) in fulfilling the requirements set forth in Recommendations 10 and 22 (Prevention Section) (Nguyen, 2018). Recommendations 10 and 22 relate, among other things, to the implementation of Customer Due Diligence (CDD) and record-keeping (Naheem, 2015).

Indonesia has implemented FATF standards through the issuance of Presidential Regulation Number 13 of 2018 concerning the Implementation of Principles for Recognizing Beneficial Owners of Corporations in the Prevention and Eradication of Money Laundering and Terrorism Financing (“Perpres 13/2018”). However, Perpres 13/2018 only adopts or criminalizes FATF Recommendation 24 regarding Beneficial Ownership for legal persons/corporations. Meanwhile, for other legal arrangements, regulations in Indonesia do not specifically address this yet (Ariani, 2020).

Other than in Presidential Regulation 13/2018, regulations concerning transparency in reporting the Beneficial Owner of a limited liability company are governed by:

Minister of Law and Human Rights Regulation Number 15 of 2019 concerning Procedures for Implementing the Principles of Recognizing Beneficial Owners of Corporations;

Financial Services Authority Regulation Number 12/POJK.01/2017 concerning the Implementation of Anti-Money Laundering and Prevention of Terrorism Financing Programs in the Financial Services Sector; and

Financial Services Authority Regulation Number 23/POJK.01/2019 concerning Amendments to Financial Services Authority Regulation Number 12/POJK.01/2017 on the Implementation of Anti-Money Laundering and Prevention of Terrorism Financing Programs in the Financial Services Sector.

This legal basis is established with several backgrounds as follows (Novariza, 2021):

Money laundering and terrorism financing crimes can threaten the stability and integrity of the economic and financial systems, as well as undermine the social, political, and legal values based on Pancasila and the 1945 Constitution of the Republic of Indonesia;

Based on international standards in preventing and combating money laundering and terrorism financing, regulations and mechanisms are necessary to identify the beneficial owners of a company with the aim of obtaining accurate, up-to-date, and publicly accessible information; and

Companies can be used as instruments by criminals who are beneficial owners of the proceeds from money laundering and terrorism financing crimes. Currently, there is no regulation governing the identification of beneficial owners of companies; therefore, regulations are needed to implement the principle of identifying beneficial owners of these companies.

The obligation to ensure transparency or information disclosure, particularly regarding the Beneficial Owner, is regulated in Article 16 of Presidential Regulation 13/2018. According to Article 21 of Presidential Regulation 13/2018, the submission of information regarding the Beneficial Owner must be done annually.

Violations of the reporting obligations concerning the Beneficial Owner are governed by Article 24 of Presidential Regulation 13/2018, which stipulates that corporations failing to comply with the requirements regarding the Beneficial Owner shall be subject to sanctions according to statutory provisions. However, considering that there is currently no specific law governing the Beneficial Owner, it is necessary to refer to the legislative regulations that were considered in the formation of Presidential Regulation 13/2018. In connection with this, the sanctions that can be imposed for violations of the reporting obligations regarding the Beneficial Owner are as follows:

#### Administrative Sanctions

Based on data recorded in the AHU Directorate General's database as of March 12, 2023, out of a total of 2,583,447 corporations, 836,580 have reported information about the Beneficial Owner, which is approximately 32.38 percent. As of March 11, 2023, a total of 1,142,005 corporations had their access blocked, including 734,669 Limited Liability Companies (PT), 225,064 foundations, and 182,272 associations. However, out of this total, 3,140 corporations that reported Beneficial Owner information through the official website *bo.abu.go.id* have had their access restored.

In connection with this, it can be seen that the administrative sanction that can be imposed on corporations, including limited liability companies, is the blocking of access to the Online Legal Administration (AHU) system. The lifting of this block can occur once the corporation reports the Beneficial Owner information.

#### Criminal Sanctions

Considering that the implementation of the Beneficial Owner principle is aimed at preventing and combating Money Laundering (ML) and Terrorism Financing (TF), sanctions for violations of the obligation to report Beneficial Owners also refer to Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering (AML Law) and Law Number 9 of 2013 concerning the Prevention and Eradication of Terrorism Financing (CFT Law), in cases where there are indications of ML or TF in violations of the obligation to report Beneficial Owners.

Sanctions for ML are regulated in Article 3 in conjunction with Article 4 of the AML Law. If the

Beneficial Owner in this situation is an individual who engages in money laundering activities and acts as a controller of money laundering crimes, influencing others to commit such acts with the aim of concealing or disguising the proceeds of crime and benefiting from such crime, then they can be held accountable under Article 3 of the AML Law. Additionally, they may also be subject to provisions under Article 5 of the AML Law related to the proceeds of crime.

## Conclusion

The implementation of the principle of recognizing Beneficial Owners has garnered global attention and has been implemented by developed countries as part of efforts to address tax issues involving corruption and tax abuse. This principle also has the potential to serve as a law enforcement instrument across various sectors, including environmental, labor, and consumer protection. The Financial Action Task Force (FATF) has developed recommendations as international standards in preventing and combating money laundering and terrorism financing. FATF recommendations require countries to identify, analyze, and evaluate these criminal risks, and to take concrete steps to prevent the misuse of legal entities and ensure adequate availability of Beneficial Ownership information. In Indonesia, the implementation of the principle of recognizing Beneficial Owners is regulated by Presidential Regulation Number 13 of 2018. However, this regulation currently criminalizes Beneficial Ownership only for corporations, including limited liability companies, while other legal entities have not been specifically regulated. In cases of violations regarding the obligation to report the Beneficial Owner, corporations may face administrative sanctions such as blocking access to the Online Legal Administration (AHU), as well as criminal sanctions under the Anti-Money Laundering Law and the Terrorism Financing Prevention Law if linked to such criminal activities. Despite some corporations reporting Beneficial Owner information, many still fail to meet these obligations. Therefore, it is crucial to enhance corporate awareness and compliance in disclosing Beneficial Owner information to promote transparency and prevent financial crime practices.

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