

The Position and Responsibilities of the Beneficiaries of the Limited Liability Company in View Regulation of the President of the Republic of Indonesia Number 13 of 2018

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Abstract. *Issuance of Regulation of the President of the Republic of Indonesia number 13 in 2018 regarding how to apply the principle of identifying the beneficiary. Cases of criminal acts of money laundering and financing of terrorists in the State of Indonesia under the guise of or by hiding the proceeds of such criminal behavior within a company. The purpose of this research to find out the position the beneficial owner of the Limited Liability Company in terms of Regulation of the President of the Republic of Indonesia number 13 of 2018 and to know responsibility the beneficial owner of the Limited Liability Company in terms of Regulation of the President of the Republic of Indonesia number 13 of 2018. The method used in this study is the Normative Juridical method, the specifications in this study are analytical descriptive, the data used are primary data and secondary data, using data collection by interviews and literature studies, qualitative data analysis, problems are analyzed by theory, law enforcement and legal certainty. The results of this study indicate that an equal position between beneficial ownership and major shareholders is based on the beneficial ownership rights described in Presidential Decree No. 13 of 2018. Thus, beneficial ownership can be subject to personal responsibility based on the principle of piercing the corporate veil contained in the Act No. 40 of 2007 concerning Limited Liability Companies, both jointly and or individually in committing money laundering crimes. However, currently there are no technical regulations that include sanctions for companies in the event of non-compliance with BO transparency.*

Keywords: *Beneficiary; Position; Responsibility.*

1. Introduction

In a country there have been many forms of crime both committed by individuals and limited liability companies. Where a crime can generate a lot of wealth, such

as money laundering or money laundering. This is a crime that has the nickname "White Collar Crime" or the foreign terms white collar crime and terrorism.¹ Money Laundering is a series of activities in which there is an activity that is carried out by a person and or organization with an amount of illicit money obtained from crime intending to embezzle and hide the origin of the money from the government/authorized agency as disclosed by Sutan Remy Sjahdaeni.² The rise of money laundering cases can threaten the stability and integrity of the economic system in Indonesia, which involves a group of people from a company as the place or vessel for the money to be circulated. A Limited Liability Company (PT) was established with the process of making a deed of establishment and validating a legal entity that was legalized by the Ministry of Law and Human Rights and assisted with access through the services of a Notary official.

The definition of a Limited Liability Company in the 2018 Presidential Regulation number 13 Article 1 is a collection of all people with an organized wealth that is shaped like a legal entity or not a legal entity. Not all Limited Liability Companies (PT) are places to store wealth resulting from money laundering crimes, but since the issuance of a regulation by the president number 13 in 2018 regarding how to apply the principle of identifying the beneficial owner of a company or Limited Liability Company, namely in the context of preventing and eradicating criminal cases of money laundering and criminal financing of terrorism is one of the rules for beneficial owners of a Limited Liability Company (PT).

The company is one of the main joints in the life of modern society because it is one of human activities to fulfill economic factors in their daily life. Company activities are economic activities carried out by organizations openly and continuously.³The rules of Article 6 of the Commercial Code, hereinafter referred to as (KUHD) first state that for people who establish a PT, they too as the founder and management structure of a limited liability company regarding assets and everything related to PT, make notes, so that when – when the records are obtained and it is known for all rights and obligations in the company, meaning that everyone who will enter as a founder in a company will have the assets that have been collected and will be paid in full/a few percent into the company with records of all rights and obligations will be recorded and regulated in the company deed.

¹ Kurniawan. Iwan. 2013. Perkembangan Tindak Pidana Pencucian Uang (Money Laundering) dan Dampaknya Terhadap Sektor Ekonomi dan Bisnis. *Jurnal Ilmu Hukum Riau*. 3(2). p. 4.

² Yani. Ahmad. Mas. 2013. Kejahatan Pencucian Uang (Money Laundering) (Tinjauan Undang-Undang Nomor 8 Tahun 2010 Tentang Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang). *E-Journal Widya Yustisia*. 1(1). p. 21

³ Kurniawan. 2014. Tanggung Jawab Pemegang Saham Perseroan Terbatas Menurut Hukum Positif. *Jurnal Bagian Hukum Bisnis. Fakultas Hukum Universitas Mataram*. Mimbar Hukum Volume 26. Nomor 1. February 2014. p.70-83

In this regard, the definition of a company in Act No. 40 of 2007 concerning PT is stated in Article 1 number 1 is a company that is a legal entity, has a capital partnership, is established based on an agreement, has business activities subject to regulations and rules regarding its implementation. The term company is no stranger to the world of economy in Indonesia, so it's hard to deny that PTs can grow and develop in Indonesia.⁴The dominant and most relative business in the economic world is a business in the form of a limited liability company (PT), in fact many companies have upgraded their legal status to become a limited liability company (PT), one of the factors is because the form of a limited liability company (PT) is a place of business that in which there is a grouping of rights and obligations between shareholders and the rights and obligations of the company, and this limited liability company (PT) is also known as the separation of assets.⁵

The regulation of a company with a legal entity is aimed at maintaining calm in business activities within the company, universally safeguarding economic investment, but a company that is a legal entity will certainly have legal consequences, because it does not rule out the possibility of being interpreted as committing a crime.⁶In the era of globalization, the establishment of cooperation between Limited Liability Companies or companies is believed to have influenced the economic structure in Indonesia. The development of this cooperation often has positive and negative impacts for each Limited Liability Company or company. The positive impact is the inclusion of a lot of shares into the company and makes rapid development within the company, while the negative impact is the income and circulation of money in the company that is not legal. This money game is often referred to as money laundering.⁷

The national economic system is implemented on the basis of freedom of expression which is based on mutual cohesiveness, orderliness, environmental friendliness along with the nature of independence and continues to maintain balance and progress along with the unity of the national economy.⁸Economic growth in 2018 has increased to reach 5.3% (five point three percent) as evidenced by the increase in the economy in Indonesia occupying 5.1% (five

⁴ Is, Muhammad, Sadi. 2016. Company Law in Indonesia. PT. Kharisma Putra Utama, Jakarta, p. 45

⁵ Santoso. Johari. 2000. Perseroan Terbatas sebagai Institusi Kegiatan Ekonomi yang Demokratis. *Jurnal Hukum Ius Quia Iustum*. 7(15). 194-203. p.194.

⁶ Listyowati. Nunuk. 2015. Tanggung Jawab Hukum Perseroan Terbatas Yang Belum Berstatus Badan Hukum. *E-Jurnal Spirit Pro Patria*. 1(2). p.25

⁷ Hariman. Satria. 2016. Pertanggungjawaban Pidana Perseroan Terbatas Dalam Tindak Pidana Sumber Daya Alam. *Jurnal Bagian Hukum Pidana. Fakultas Hukum Universitas Muhammadiyah Kendari. Kendari. Mimbar Hukum Volume 28. Nomor 2. June 2016. p.288-300*

⁸ Budiono. Herlien. 2012. Arah Pengaturan Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas dalam Menghadapi Era Global. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*. 1(2). 187-198. p.187.

point one percent) in 2018, due to increased exports and investment in Indonesian country,⁹ however, in the midst of an economic boom in Indonesia, cases of money laundering have been rife with the foreign term money laundering. Money laundering has become widely known in 2002, namely since the promulgation of Act No. 15 in 2002 regarding the crime of money laundering which was later amended by Act No. 25 in 2003, with the last amendment by Act No. 8 in 2010 regarding how to prevent and eradicate money laundering, after the promulgation of this rule it was discovered that many actions turned out to be money laundering.

Money laundering is defined simply as a process whereby the proceeds of crime or dirty money are converted into a form that appears legitimate so that it can be used safely.¹⁰ Investigated that money laundering in Indonesia originates from criminal acts of corruption, that the results of this corruption are very important to be obscured or laundered so that the money looks clean. A criminal act of money laundering really needs a container or place to occupy and circulate the money, not infrequently the container or place is a company.

The perpetrator of the criminal act of money laundering is a person or a Limited Liability Company that has embezzled money resulting from corruption and made that money a proper or legal income. A person or a Limited Liability Company will eventually find a place or place for the proceeds of corruption, namely by establishing a company or a limited liability company. The establishment of a limited liability company with a legal entity will involve Notary officials in preparing the deed of establishment of a limited liability company. The making of the deed is required to regulate all the company's articles of association, with the rise of cases of money laundering, the president of the Republic of Indonesia has issued rule number 13 in 2018 regarding the beneficial owner of a company,

The beneficial owner of a limited liability company in PP with number 13 in 2018 in Article 4, has at least:

- a. Owns more than 25% shares in the pt as stated in ad;
- b. Has more than 25% of the voting rights in a pt as stipulated in the articles of association;
- c. Obtaining a profit of more than 25% of the pt's profits annually;

⁹ DBS Bank Ltd (SG). Let's Know What Indonesia's Economic System Will Look Like in 2018. Available from <https://www.dbs.com/Indonesia-bh/blog/live-smart/yuk-ketahui-like-apa-sistem-economy-indonesia-di-2018>. page. (Accessed November 19, 2021 at 19.00 WIB).

¹⁰ Garnasih, Yenti. (2016). Anti-Money Laundering Law Enforcement and Its Problems in Indonesia. PT. RajaGrafindo Persada, Jakarta, p. 15

- d. Has the right to appoint, replace and dismiss members of the board of directors and commissioners;
- e. Have the authority and power to instigate and drive pt and do not need to wait for orders from anyone;
- f. Entitled to benefit from pt;
- g. As a person who is the real holder of pt money or the owner of pt shares.

PT must have the elements contained in the PT Law, namely:¹¹

1. Disciplined organizational structure

A disciplined organizational structure is known in the body of a PT where there is a GMS, members of the board of directors and commissioners. Regulations regarding this organization can be seen in the company's AD, decisions of the GMS, decisions of the directors and the approval of the board of commissioners which will be issued when the PT is running.

2. Wealth

Authorized capital is assets consisting of all share values in the form of cash and along with assets in other forms.

3. Carry out legal agreements with other people

Companies with the status of legal entities will carry out their own legal ties by accompanying other people or third parties, in carrying out this the PT is represented by its management, namely members of the board of directors and commissioners. Directors with the title Director are ready to have responsibility for managing the company, the interests and objectives of the company in this case will be carried out inside or outside the company, but the actions of the Directors are under the supervision of the Board of Commissioners, which means that every action or legal relationship of the company represented by The Board of Directors must obtain approval from the Board of Commissioners.

4. Have your own goals

The purpose of the company has been regulated in the company's articles of association, none other than the purpose of the company is to make a profit or profit.

¹¹ Wahyuni. Tri. Verti. 2017. Kepemilikan Tunggal Badan Hukum Perseroan Terbatas (PT). *Jurnal Hukum Novelty*. 8(2). 201-215. p.203

In connection with what was written and explained in the background of the problem above, that along with the rampant cases of criminal acts of money laundering and financing of terrorists in the State of Indonesia under the guise of or by hiding the proceeds of this criminal behavior in a company, the President of the Republic of Indonesia has issued Presidential Regulation number 13 in 2018 regarding how to apply the principle of identifying the beneficial owner of a company to prevent and eradicate cases of criminal acts of money laundering and criminal acts of financing terrorism.

Disclosure of the beneficial owners of each Limited Liability Company in Indonesia is intended so that the people behind the Limited Liability Company can be identified. So far, in Indonesia there have been many dirty games played by the people behind the Limited Liability Company to hide their wealth. With the obligation to disclose the beneficial owners, tax authorities can use their data to prevent taxpayers from escaping their obligations. Tax obligations are one of the reasons beneficiaries disguise and break the chain of ownership, in order to avoid paying taxes.

Center for Financial Transaction Reports and Analysis (PPATK) as a focal point in terms of the Anti-Money Laundering and Counter-Terrorism Financing regime in Indonesia. This regime has been running based on Act No. 15 of 2002 concerning the Crime of Money Laundering as amended by Act No. 25 of 2003, the regulations have been refined based on Act No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering (which hereinafter referred to as the TPPU Law).

The concept of Beneficiary as regulated in Presidential Decree No. 13/2018 departs from the concept of Beneficial Owner (hereinafter referred to as BO) which is regulated in the Financial Action Task Force (FATF) Recommendations. According to the FATF Recommendation, BO refers to individuals who ultimately own or rely on other parties (Ultimate Owns Or Controls), and/or individuals whose interests are controlled by other people. In addition, BO also refers to individuals who exercise overall effective control (ultimate affective control) over other parties or over legal arrangements⁸.

The terms Ultimate Owns Or Controls and Ultimate Effective Control underline a situation where the exercise of ownership or control is carried out either through direct or indirect control. Making the concept of Beneficiary according to Presidential Regulation No. 13/2018 also has the same background as the definition of beneficial ownership in the FATF Recommendations. Both of these rules state that disclosure of BO must be carried out by a Limited Liability Company. This is because a Limited Liability Company can be used as a tool, either directly or indirectly, by perpetrators of criminal acts who are BOs or Beneficiary Owners who commit TPU and Criminal Acts of Terrorism.

Thus, the purpose of making Presidential Decree No. 13/2018 and FATF Recommendations are to prevent ML and Terrorism Crimes. BO disclosure is regulated in Presidential Regulation No. 13/2018 can be carried out with the cooperation and request for information of the Beneficiary. In order to prevent and eradicate TPU and funding of Terrorism Crimes by Limited Liability Companies, the competent authorities can exchange information with requesting agencies, both nationally and internationally. Of course, the exchange of information is carried out in accordance with statutory provisions in the national scope and in accordance with statutory provisions in the foreign sector and international agreements in the international sphere.

2. Research Methods

The approach used in this study is a Sociological Juridical Approach, namely an approach that emphasizes research aimed at obtaining legal knowledge empirically by going directly to the object. The author conducted a descriptive analytical research which aims to decipher the facts to obtain a general picture of existing problems, examine and study legal facts to find out how the general meeting of shareholders is held in the event that a limited liability company is owned by two shareholders with a balanced percentage.

3. Results and Discussion

3.1. The Position Beneficial Owner of the Limited Liability Company in terms of Regulation of the President of the Republic of Indonesia number 13 of 2018

The legal politics of Beneficiary Ownership (BO) regulation in Indonesia are in the framework of keeping abreast of international economic developments related to the prevention and eradication of money laundering and terrorism crimes committed through abuse of corporate entities. Initially, the Beneficiary Owner (BO) international standard was regulated in the FATF Recommendation. Then in 2014, the G20 countries agreed to adopt the High-Level Principles on Beneficial Ownership Transparency which refers to the FATF Recommendations. Indonesia as a G20 member country, is required to be able to implement Beneficial Owner (BO) arrangements.

The President issued Presidential Regulation Number 13 of 2018 concerning Application of the Principle of Recognizing Beneficial Owners of Corporations in the Context of Prevention and Eradication of Money Laundering Crimes and Terrorism Financing Crimes (Perpres 13/2018) and its implementing regulations regulated through the Minister of Law and Human Rights Regulations Number 15 of 2019 concerning Procedures for Implementing the Application of the Principle of Recognizing Beneficial Owners of Corporations (Permenkumham 15/2019) and Regulation of the Minister of Law and Human Rights Number 21 of 2019

concerning Procedures for Oversight of the Application of the Principle of Recognizing Beneficial Owners of Corporations (Permenkumham 21/2019) .

Beneficiary Owner (BO) is basically an ownership concept contained in the common law legal system which has 2 (two) types of ownership of a property, namely legal and beneficial. Legal ownership is ownership that can be transferred, recorded, registered in the name of a certain party. Beneficial ownership is ownership that gives the right to use and control the property even though it does not have legal ownership. Indonesia as a country with a civil law legal system does not recognize beneficial ownership, and only recognizes legal ownership.

The difference in the legal system has caused the application of Beneficiary Owner (BO) arrangements in Presidential Decree 13/2018 to pay attention to regulations that have been in force in Indonesia. Application of Beneficial Owners (BO) requires countries to assess existing and emerging risks associated with different types of legal entities and arrangements, which must be addressed from both domestic and international perspectives.¹²

This aims to create legal certainty, where the law cannot be ambiguous, multiple interpretations or contradictory as explained by Gustav Radbruch in the theory of legal certainty. In addition, laws must also be interconnected with each other, because basically laws are tiered which causes the laws below to apply, sourced and based on the laws above them, as explained by Hans Kelsen in the theory of hierarchical laws and regulations.

The definition of Beneficiary Owner (BO) according to FATF recommendations refers to an individual who ultimately owns or controls the customer and/or an individual on whose behalf the transaction is carried out. It also includes those who exercise ultimate effective control over a legal entity or arrangement.¹³ According to FATF Recommendations, Beneficial Owners (BO) refer to individuals who last own or control other parties (ultimate owns or controls), and/or individuals whose interests are controlled by other people. In addition, Beneficiary Owners (BO) also refer to individuals who exercise overall effective control (ultimate effective control) over other parties or over legal arrangements. The terms ultimate owns or controls and ultimate effective

¹² Group of Twenty (G20), "High-Level Principles on Beneficial Ownership Transparency", Australia, November, 2014

¹³ FATF Guidance, "Transparency and Beneficial Ownership", p., 8.

control underline a situation where the exercise of ownership or control is carried out either through direct or indirect control.¹⁴

The definition of Beneficiary Owner (BO) in Presidential Decree 13/2018 is stated in Article 1 point 2, which explains that "Benefit Owner is an individual who can appoint or dismiss directors, board of commissioners, management, supervisors, or supervisors in corporations, has the ability to control corporations, are entitled to and/or receive benefits from corporations either directly or indirectly, are actual owners of corporate funds or shares and/or meet the criteria referred to in this Presidential Regulation."

Limited Liability Company is the type regulated in Presidential Decree 13/2018, as explained in Article 2 paragraph (2) Presidential Decree 13/2018, namely: "The corporation referred to in paragraph (1) includes: a. limited liability company; b. foundation; c. association; d. cooperative; e. limited partnership; f. firm alliance; and g. other forms of corporation." Based on the definition of Beneficiary Owner (BO) in Presidential Decree 13/2018, the Beneficial Owner (BO) of the Company is an individual who:

1. Individuals who can appoint or dismiss the Board of Directors and the Board of Commissioners;
2. Have the ability to control the corporation;
3. Entitled to and/or receive benefits from the Company either directly or indirectly;
4. Is the actual owner of the Company's funds or shares and/or
5. Meet the criteria as referred to in Presidential Decree 13/2018.

Appendix II of Permenkumham 15/2019, as the implementing regulation of Presidential Decree 13/2018 explains that there are 2 (two) Beneficiary Owner (BO) qualifications in the Company, namely general and specific qualifications. Beneficiary Owner (BO) which includes general qualifications are individuals who:

1. The identity is stated in the deed of establishment/deed of amendment of the Company or other documents of establishment/change of the Company (legal owner); And

¹⁴ Nevey Varida Ariani, "Beneficial Owner: Recognizing Beneficial Owners in Corporate Crime", ... p., 72.

2. The identity is not stated in the deed of establishment/deed of amendment of the Company or documents of establishment/other amendment documents of the Company (ultimate beneficial ownership).

The Beneficiary Owner (BO) in the Company is identified down to the individual. According to Appendix II of Permenkumham 15/2019 it explains that the Beneficial Owner (BO) of the Company can be either direct or indirect, as an example as follows:

1. Beneficiaries directly (direct ownership)

Example: Mr Adi owns 30% of PT. Buana, then Mr. Adi is a direct beneficial owner of PT. Buana.

2. Beneficiaries indirectly (indirect ownership)

Example: Mr Adi owns 50% of PT. Buana where PT. Buana is also a shareholder of PT. Kelana by 30%, then Mr. Adi is an indirect Beneficiary of PT. roam

Certain qualifications of the Company's Benefit Owner (BO) are explained in Article 4 paragraph (1) of Presidential Decree 13/2018 which refers to individuals who:

1. Have more than 25% shares in the Company as stated in the articles of association;
2. Has more than 25% voting rights in the Company as stated in the articles of association;
3. Receiving profits or profits of more than 25% of the profits or profits earned by the Company per year;
4. Has the authority to appoint, replace, or dismiss the Board of Directors and Board of Commissioners;
5. Has the authority or power to influence or control the Company without having to obtain authorization from any party;
6. Receiving benefits from the Company;
7. Is the actual owner of the funds for the ownership of the Company's shares.

The criteria for the Company's Beneficiary Owner (BO) are alternative, the Company's Beneficiary (BO) can meet 1 (one) or more of the above criteria. The

Beneficial Owners (BO) of the Company whose identity is stated in the deed of establishment/deed of amendment of the Company (legal owners) are individuals who:

1. Have more than 25% shares in the Company as stated in the articles of association;
2. Has voting rights of more than 25% in the Company as listed;
3. Receiving profits or profits of more than 25% of profits or profits;
4. Has the authority to appoint, replace, or dismiss the Board of Directors and Board of Commissioners.

The Beneficial Owner (BO) of the Company whose identity is not listed in the deed of establishment/deed of amendment of the corporation (ultimate beneficial ownership) is an individual who:

1. Has the authority or power to influence or control the Company without having to obtain authorization from any party;
2. Receiving benefits from the Company;
3. Is the actual owner of the funds for the ownership of the Company's shares.

As explained in Attachment II to Permenkumham 15/2019, the Beneficial Owner (BO) of a Company whose identity is listed (legal ownership) or not listed (ultimate beneficial ownership) must be able to perform the following actions:

1. Appoint or dismiss the Board of Directors and Board of Commissioners;
2. Have the ability to control the Company; and/or
3. Entitled to and/or receive benefits from the Company either directly or indirectly.

The regulation of Company Beneficial Owners (BO) in Perpres 13/2018 regarding ownership of Banking Companies must be adjusted to existing regulations in Indonesia. Directly, Perpres 13/2018 regulates the Company, so the position of the Beneficiary (BO) must comply with the 2007 UUPT. The Beneficiary Owner (BO) arrangements also intersect with capital in the Company, so the position of the Beneficiary (BO) must comply with the Investment Law. The Company has several fields whose ownership is specifically regulated, such as one of which is a

Banking Company, so the position of Beneficiary Owner (BO) must also be adjusted to POJK 56/POJK.03/2016 and POJK 39/POJK.03/2017.

As a corporate business entity, the ownership of a banking company is generally regulated in the 2007 UUPT. The 2007 UUPT has not yet regulated the Company's Beneficial Owner (BO). According to UUPT 2007, in the Company there are only 3 (three) organs of the Company, namely the Board of Directors, Board of Commissioners and GMS. Based on the arrangement of the Company's Beneficiary Owner (BO) in Presidential Decree 13/2018, there are 2 (two) types of Beneficiary Owners (BO), namely Beneficiary Owners (BO) whose identity is stated in the deed of establishment/change of the Company (legal ownership) and Beneficiary Owners (BO)) whose identity is not stated in the deed of establishment/change of the Company (ultimate beneficial ownership).

In the case of a Beneficiary Owner (BO) of a Company whose identity is stated in the deed of establishment/change of the Company (legal ownership), the source of authority comes from laws and regulations. The Company's Beneficial Owners (BO) who are legal ownership are explained in Presidential Decree 13/2018 which refers to individuals who:

- 1) Have more than 25% shares;
- 2) Has voting rights of more than 25%;
- 3) Earn more than 25% profit; and/or
- 4) Has the authority to appoint, replace and/or dismiss the Board of Directors and Board of Commissioners

The position of the Company's Beneficial Owner (BO) which is legal ownership is generally the same as the Company's shareholders. Thus, all forms of authority of the Company's Beneficial Owners (BO) which are legal ownership are the same as the Company's shareholders. Appendix II of Permenkumham 15/2019 provides criteria for authority that must be possessed by the Company's Beneficial Owner (BO) which is legal ownership, namely:

- 1) Must be able to appoint or dismiss the Board of Directors and Board of Commissioners;
- 2) Controlling the Company, and/or
- 3) Entitled to and/or receive benefits from the Company either directly or indirectly.

In the 2007 UUPT, shareholders are not categorized as organs of the Company, new shareholders can be said to be organs of the Company if they take the form of a General Meeting of Shareholders (GMS). So therefore, the authority that is the criteria for the Company's Beneficial Owner (BO) which is legal ownership in Appendix II of Permenkumham 15/2019 is a limited authority that can only be exercised through a GMS, not absolute by an individual as the Company's shareholder.

The GMS is the organ of the Company that holds the highest authority in the Company and holds all residual authority, meaning authority that is not allocated to other organs of the Company, namely the Directors and Commissioners.¹⁵ Through the GMS, the Company's shareholders exercise control over the management carried out by the Board of Directors and Board of Commissioners. Share ownership in general entitles the owner to share in the Company's profits (dividends). Vote in making decisions at the General Meeting of Shareholders (GMS) and get a share of the remaining wealth at the time of the Company's liquidity.¹⁶

Not all of the Company's shareholders have the same authority as the criteria for the Company's Beneficial Owner (BO) which is legal ownership. UUPT 2007 stipulates the classification of shares which differentiates the granting of rights between shareholders. The classification is listed in Article 53 Paragraph (4) of the 2007 Company Law, namely:¹⁷

- 1) *Common stock*, namely shares that have voting rights at the GMS, have the right to receive dividends and have the right to receive the remaining assets resulting from liquidation;
- 2) *Shares without voting rights*, namely shares that do not have votes or rights to participate in the GMS, as explained in Article 53 Paragraph (4) of the 2007 Company Law;
- 3) *Shares with special voting rights or priority shares*, namely shares having special speaking rights which are given special rights to nominate members of the Board of Directors and or the Board of Commissioners which this right is not granted to other classifications. as explained in Article 53 Paragraph (4) Letter b of the 2007 Company Law;

¹⁵ Munir Fuady, "New Paradigm Limited Liability Company", ... p., 129.

¹⁶ Tri Budiyo, "Company Law, Juridical Review of Act No. 40 of 200 concerning Limited Liability Companies", ... p. 89.

¹⁷ M. Yahya Harahap, "Limited Company Law", ... p., 264.

4) *retractable Shares*, namely shares that have a certain term and can be withdrawn or exchanged with another classification;

5) *Shares that provide dividend rights first or main shares*, namely shares that give their owners dividends before ordinary shareholders;

6) *Major shares receive first the distribution of the remaining assets of the Company in liquidation*, namely shares that have the right to receive in advance the distribution of the remaining assets of the Company in liquidation.

Based on the classification of shares described in the 2007 UUPT, specifically the position of Beneficiary Owner (BO) which is legal ownership if adjusted to the 2007 UUPT is an individual who is a shareholder of ordinary shares, shares with special voting rights, priority shares, shares that grant rights dividends in advance or the main shares and/or the main shares receive in advance the distribution of the remaining assets of the Company in liquidation. The classification of shares for each Company is different, this can be found in the articles of association of the Company.

Furthermore, in the case of a Beneficiary Owner (BO) whose identity is not listed in the deed of establishment/change of the Company (ultimate beneficial ownership), the authority does not originate from laws and regulations and does not require authority from any party. Certain criteria in Presidential Regulation 13/2018 explain that the Company's Beneficial Owner (BO) is the ultimate beneficial owner who:

- 1) Has the authority or power to influence or control a limited liability company without having to obtain authorization from any party;
- 2) Receiving the benefits of a limited liability company; and/or
- 3) Is the actual owner of the funds for the ownership of limited liability company shares.

The criteria for the Company's Beneficial Owner (BO) as ultimate beneficial ownership are not in accordance with the 2007 Company Law. The concept of share ownership adopted in the 2007 Company Law is absolute share ownership (dominium plenum).¹⁸This can be proven in Article 48 paragraph (1) UUPT 2007 which explains that: "Company shares are issued on behalf of the owner." Furthermore, it is reaffirmed in Article 52 paragraph (4) UUPT 2007 which explains that "Every share gives the owner rights that cannot be divided." These

¹⁸ Lucky Suryo Wicaksono, "Certainty of Nominee Agreement on Limited Liability Company Share Ownership", p., 51

rights are explained in Article 52 paragraph (1) UUPT 2007, namely: "Shares give the owner the right to:

- a. attend and vote at the GMS;
- b. receive payment of dividends and the remaining assets resulting from liquidation;
- c. exercise other rights under this law." The position of Beneficial Owner (BO), which is the ultimate beneficial ownership regulated in Perpres 13/2018, is not recognized in the 2007 UUPT because the 2007 UUPT only recognizes absolute or legal ownership of the Company.

3.2. Responsibility the Beneficial Owner of the Limited Liability Company in terms of Regulation of the President of the Republic of Indonesia number 13 of 2018

Cases of money laundering through corporate entities with predicate crimes of corruption are still rife in Indonesia, related to court decisions, based on until October 2018 there were 156 court decisions related to ML. The number of ML court decisions based on predicate crimes Corruption ranks second (2nd) after narcotics if accumulated from 2005 to October 2018. Meanwhile, according to PPATK, parties who were successfully audited regarding suspicious transactions related to ML, namely 303 banks, 183 property companies, there are 108 foreign exchange business activities. Corruption is still a problem that occurs in Indonesia. Based on the 2018 Corruption Perception Index (CPI), Indonesia ranks 89th out of 180 countries.¹⁹

The money laundering scheme through corporations, as in the cases found by researchers, is similar to the one that ensnared the Setnov case in the E-KTP case which was determined as a BO from PT. Murakabi Sejahtera who has a conflict of interest in the E KTP project, in which PT Murakabi Sejahtera is the lead consortium of E KTP bidders. It is known that Setnov owns shares in PT. Murakabi Sejahtera of 50% which is held by Deisti (wife) and Reza (Children) holds 30% of PT. Mondialindo Graha Perdana which was revealed in a trial at the Corruption Court (Tipikor) in 2017, namely by Deniarto Former Main Director of PT. Mondialindo Graha Perdana and PT. Prosperous Murakabi. Whereas, Dwina Michaella, Setnov's daughter, is registered as a Commissioner of PT Murakabi Sejahtera, where the office address is the same as PT. Mondialindo Graha

¹⁹Reflections at the End of 2017 Center for Financial Transaction Reports and Analysis, <http://www.ppatk.go.id/backend/assets/uploads/2017121916527.pdf>, p.6. Retrieved 27 March 2022

Perdana, namely on the 27th floor of the Imperium Tower, Jalan HR Rasuna Said, Kuningan, South Jakarta.

As chairman of the DPR, Novanto wields the authority to ensure that the budget proposal for the Rp 5.9 trillion electronic ID card implementation project passes the DPR along with Andi Narogong. Then the money was distributed to a number of leaders and members of Commission II of the DPR, as well as the Budget Agency. Apart from that, there was the involvement of Made Oka Masagung (a relative of Setnov) and Irvanto Hendra Pambudi (his nephew Setnov and former Director of PT. Murakabi Sejahtera) in providing a fee of US\$7.3 million. The transaction used by Setnov was a dollar barter scheme through fellow money changers from from PT.Biomorph in the country of Mauritius owned by businessman Johannes Marliem sent via Irvanto Hendra Pambudi in the amount of 3.5 million US dollars and Made Oka 1.8 million US dollars and 2 million US dollars. The money was then given through Setnov's nephew, Irvanto Hendra Pambudi Cahyo, in cash. The money was not immediately transferred directly to Setnov, but was circulated through a money changer using a barter transaction.

The international transaction was then accommodated by two parties, namely Irvanto Hendra Pambudi Cahyo (Director of PT Murakabi Sejahtera), an auction participant, and Made Oka Masagung as the owner of PT Delta Energy, namely Through Made oka Masagung, a total of USD 3.8 million through the OCBC Center account. Top branchNameOEM Investment, PT, Ltd. Then another USD 1.8 million was transferred to Delta Energy's account, at DBS Bank Singapore, and another USD 2 million. Meanwhile, through Irvanto Hendra Pambudi Cahyo, Novanto's nephew, transactions recorded from January 19 to February 19 2012 totaled US\$3.5 million. Thus, Setnov was charged with enriching himself by US\$7.3 million and a luxury Richard Mille brand watch worth Rp.3.5 billion from Johannes Marliem as Director of PT Biomor, a vendor providing AFIS brand L1 in the e-KTP project. Where there is a Layering stage, namely an attempt to transfer assets originating from criminal acts that have been successfully placed with financial service providers (especially banks) as a result of placement efforts to other financial service providers. Also using Legitimate business conversions, namely this method is carried out through legal business activities as a way of diverting or utilizing a dirty money result. The results of this dirty money are then converted by way of transfer, check or other payment method to be deposited in a bank account or transferred later to another bank account. Usually the perpetrators work with a company whose account can be used to collect the dirty money.

Setnov is included in the PEP as explained in Article 5 A Paragraph (1) state officials include members of the People's Consultative Assembly which include members of the People's Representative Council and members of the Regional

Representatives Council. Meanwhile, parties related to Setnov consist of the nuclear family including family members up to the second degree, companies owned, managed and/or controlled by PEP and parties that are generally and publicly known to have a close relationship with PEP, in this case namely the involvement of wives, children, nephews and close relatives or it can be said that the company is an affiliated company.

Meanwhile, at the level of law, the relation to affiliation within the company can be seen in Article 1 Paragraph (1) of Act No. 8 of 1995 concerning the Capital Market, which defines a relationship between, namely:

- a. family by marriage and descent to the second degree both horizontal and vertical.
- b. relationship between a Party and an employee, director or commissioner of that Party. For example, someone who works for another party, where the other party has the authority to control and direct the said person to do work by obtaining wages or salaries on a regular basis.
- c. relationship between 2 (two) companies in which there are one or more members of the same board of directors or board of commissioners
- d. the relationship between the company and (Parties) either directly or indirectly control or are controlled by the company in any way management and or company policy
- e. relationship between 2 (two) companies controlled either directly or indirectly by the same Party; or
- f. relationship between the company and the main shareholder in which the "major shareholder" is a party that either directly or indirectly owns at least 20% (twenty percent) of the voting rights of all shares with voting rights issued by a company or a smaller amount than that as determined by the Capital Market Supervisory Agency.

Based on this, it has to do with Presidential Regulation Number 13 of 2018, namely in Article 4 Paragraph (1) Letter e. has the authority or power to influence or control a limited liability company without having to obtain authorization from any party; f. receive benefits from a limited liability company; and g. being the true owner of the funds for the ownership of shares of a limited liability company can be expanded in its interpretation, namely its relation to affiliated companies and can also arise from the role of the PEP itself. The presence of PEP in the corporate ownership structure indicates a potential conflict of interest due to the existence of double power where officials have

authority in the political and economic domains. So according to researchers the government must implement a pro-active disclosure policy for disclosing BO data.

Where according to the researcher, progressive supervision from the government is needed in terms of disclosing beneficial owners who act either directly or indirectly. However, if we look at the complex ownership structure of an affiliated company, it has the potential to hide BO status which acts indirectly as in the category of Article 4 Letters e, f and g. So that in identifying the form of accountability imposed on the BO it is important to identify the point of view of the actions that caused losses, especially ML, where the form of accountability is determined based on material truth. Based on the point of view of criminal law BO can be held accountable by expanding what he did and what he intended. In Indonesian criminal law, it is known as the expansion of criminal responsibility or called inclusion (*deelneming*). According to Moeljatno, inclusion is when there is more than one person who is involved in the occurrence of a crime, because in fact not everyone involved can be said to be a participant in the meaning of Articles 55-56 of the Criminal Code. This is relevant to the categorization carried out according to Zevenbergen, Van Hamel, Simons, and Vos which states that there are two categories of participants, namely:²⁰

- a. Stand-alone participants (*zelfstandige deelnemers*)
- b. Participants who do not stand alone (*onzelfstandige deelnemers*)

If seen from the scheme, the BO which holds the highest role (ultimate/final beneficiary) in a complex ownership structure with the role of being able to appoint or dismiss directors, boards of commissioners, administrators, supervisors or supervisors of the Corporation, has the ability to control the Corporation, is entitled to and / or receiving benefits from the Corporation either directly or indirectly, being the actual owner of the funds or shares of the Corporation can be categorized as participants who are not independent. In the inclusion, it is known that there are four kinds of statements seen from article 55 of the Criminal Code, namely for those who:

1. Ordered to do
2. Also doing
3. Suggest to do/move to do

²⁰Moeljatno. (1985). *Delik-delik Percobaan dan Delik-delik Penyertaan*. PT Bina Aksara : Jakarta. p. 63.

4. Participate in helping/assisting doing

Meanwhile, in Act No. 8 of 2010 concerning TPPU, the expansion of criminal liability is contained in Article 10 of the TPPU Law which states: "Any person who is inside or outside the territory of the Unitary State of the Republic of Indonesia who participates in carrying out attempts, assistance, or evil conspiracy to commit the crime of Money Laundering shall be subject to the same penalty as referred to in Article 3, Article 4 and Article 5." An explanation regarding Evil Settlement is also contained in Article 1 Paragraph (15) which is the act of two or more people who agree to commit the crime of Money Laundering.

Thus, both the Criminal Code and the TPPU Law can basically ensnare anyone who abuses their BO status to commit money laundering crimes. As for the comparisons that the researchers found in Act No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, there is also a regulation regarding PCV, which is related to controlling personnel in corporations, Article 1 Paragraph (14), namely every person who has the power or authority as a determinant corporate policy or has the authority to carry out corporate policies without having to obtain authorization from his superiors. Whereas in Article 6 Paragraph (2) Criminal nature is imposed on Corporations if the crime of Money Laundering:

- a. carried out or ordered by the Corporate Control Personnel
- b. carried out in order to fulfill the aims and objectives of the Corporation
- c. carried out in accordance with the duties and functions of the actor or giver of the order
- d. carried out with the intention of providing benefits to the Corporation.

Whereas in Article 9 Paragraph (1) namely in the event that a corporation is unable to pay the fine as referred to in Article 7 Paragraph (1) the fine shall be replaced by confiscation of the Assets of the Corporation or Corporate Controlling Personnel whose value is the same as the fine imposed. Meanwhile, Paragraph (2) explains that in the event that the sale of assets belonging to the Corporation which is confiscated as referred to in Paragraph (1) is insufficient, imprisonment in lieu of fines shall be imposed on the Corporate Controlling Personnel taking into account the fines already paid.

Thus, BOs who commit ML can be subject to the doctrine of corporate responsibility or criminal liability which is intended to determine whether a person can be held responsible for his crime or not for the actions taken, one of which is applying the identification doctrine, namely the doctrine that looks at

the point of view of the actions or inner attitudes of senior officials. corporations that can affect the company means it can be considered as a corporate attitude. Meanwhile, according to Lord Diplock, senior officials are those who, based on the memorandum and provisions of the foundation or the decisions of the directors or the decisions of the company's general meeting, have been trusted. For carry out power company. So from this opinion it can be concluded that senior officials are individuals with high positions and have great authority. The application of this doctrine is also in contrast to what was stated by Sutan Remy S. in determining the "directing mind" or in other words the attitude of influencing company policy, namely by looking at it formally juridically, one of which is through the articles of association of the corporation or decrees issued officially by company.²¹

So that in determining the BO to be made the subject who is fully responsible for its actions, it is necessary to see it in reality in the operational activities of the corporation case by case. This is because, in several cases involving BO, it turns out that individuals who legally have a position with authority as a "directing mind", can still be influenced by other individuals with positions that legally do not have authority, such as majority shareholders with a relationship or certain Affiliates. This theory is also known as the "alter ego" or "organ theory" theory or doctrine as put forward by Barda Nawawi Arief, namely that criminal responsibility cannot only be imposed on senior officials but also on those under them.

In fact, disclosing this ownership status according to the Publish What You Pay (PWYP) report in the actual disclosure of BO in a Limited Liability Company through documents recorded in the General Legal Administration (AHU) system of the Ministry of Law and Human Rights often does not produce results. The legal entity obtained from AHU is not sufficient and can only be penetrated by layers 3 and 4 but cannot seek a Limited Liability Company with legal domicile outside Indonesia, such as a tax haven country.²²

Based on the 2014 Global Financial Integrity report, Indonesia ranks 7th out of 10 major countries with the largest illicit financial flow (IFF) in the world. IFF in Indonesia in 2003-2012 reached US\$187,884 million or an average of Rp169 trillion per year. In 2014, Indonesia's IFF is estimated to reach IDR 227.7 trillion or the equivalent of 11.7 percent of the APBN-P for that year. In the Mining sector, an estimated IDR 23.89 trillion, IDR 21.33 trillion from trade miss-

²¹Sutan Remy Sjahdeini, *Corporate Criminal Responsibility*, (Jakarta: Press Graffiti, 2006), p.104-105

²²Disclosure of Beneficial Owners 'Entrance' to Pursue Tax Avoidance Corporations https://www.Hukumonline.com/berita/read/lt59315073bc40e/penggulungan-ibeneficial-owner-ip_intu-enter-pursuit-corporate-tax-evader. Retrieved 27 March 2022

invoicing, and IDR 2.56 trillion from narrow hot money flows. Meanwhile, a report released by ONE in 2014 estimates that developing countries lose around US\$1 trillion per year or around Rp.10 thousand trillion as a result of illegal criminal acts from cross-border deals.²³ The existence of BO is also inseparable from third parties. If we look closely, the nominee agreement implicitly has the following elements:

1. There is a power of attorney agreement between two parties, namely the Beneficial Owner as the power giver and the Nominee as the power of attorney based on trust.
2. The power given is special with a limited type of legal action
3. Nominee acts as a trustee of the Beneficial Owner before the law

The provisions in Article 33 Paragraph (1) of the Investment Law stipulates that both domestic investors and foreign investors are prohibited from making agreements and or statements confirming that share ownership in a limited liability company is for and on behalf of other people. In this case, legal consequences have been stipulated in Article 33 Paragraph (2) of the Investment Law where the agreement or statement is declared null and void, so that in this case according to researchers other than the state requiring BO transparency, it will also be an important urgency to participate in disclosing the existence of the fictitious name or nominee of the share ownership by including it on the red list made by the government and being held responsible for disclosing money laundering crimes.

In Presidential Regulation Number 13 of 2018, in this case there is still a loophole for the company's non-compliance with this due to the lack of progressive efforts from the government to disclose nominees for share ownership and beneficial ownership in Indonesia. In line with the main ideas of Prof. Satjipto Raharjo in Progressive Legal Theory where progressive and futuristic law must regulate legal substance which is not only repressive in nature but must regulate legal substance which is preventive in nature as a deterrent to things that have happened or things that have the potential to happen. Where if referring to Article 13 Paragraph 3 of Presidential Decree Number 13 of 2018 where the Authorized Agencies referred to are the Ministries that carry out government affairs in the field of law for limited liability companies, foundations and associations.

²³Revealing Beneficial Ownership, Dismantling Economic Camouflage <https://www.cnnindonesia.com/nasional/20160620145755-21-139526/menguak-beneficial-owner-ship-disassemble-camouflage-economy>, Retrieved 14 May 2019

In this case, the Ministry of Law and Human Rights needs to make regulations in the form of ministerial regulations regarding administrative sanctions relating to late disclosure of BO, inaccurate data and falsification of BO data. This is necessary, in line with the theory of legal certainty put forward by Gustav Radbruch where as a rule of law it is necessary to have clarity and firmness regarding the enactment of law in society and also means things that can be determined by law in concrete matters, so that the law presented does not give rise to Doubt and logic do not cause clashes and confusion of norms in one norm system with another. The blurring of norms arising from the uncertainty of the rule of law, can result in multiple interpretations of something in a rule.

In addition to the responsibility imposed on the BO, according to the researcher, it is mandatory to impose sanctions in technical regulations in the form of candy to a notary for making company deeds in the form of revoking a professional license in the event that the making of a deed is dishonest and commits falsification related to the status of the existence of a BO in a company. As in accordance with the mandate of Article 2 of Presidential Decree Number 44 of 2015, namely the Ministry of Law and Human Rights has the task of carrying out government affairs in the field of law and human rights to assist the President in administering state government. Where one of the functions of Article 3 Letter a Presidential Decree Number 44 of 2015 is to formulate, determine, and implement policies in the field of legislation, general law administration, correctional, immigration,

According to Philipus M. Hadjon, in general, there is no point in including obligations and prohibitions for citizens in state administration laws and regulations, when the rules of conduct cannot be complied with. So it is appropriate that law should be used as a means of solving problems in society as stated by Mochtar Kusumatmaja in his work Theory of Development Law.²⁴

It is on this basis that there is a need for progressive efforts related to the transparency of the status of share ownership by BO, especially in facilitating the detection of risks of money laundering through the company. This is in line with the principles of good corporate governance (GCG), namely transparency where the company is open in disclosing material and relevant information about the company, accountability, in this case clarity of functions, structures, systems, and responsibilities of organs and BO so that company management is carried out effectively, independence. where the company is managed professionally without conflict of interest and influence/pressure from other parties as well as fair and equal treatment in fulfilling the rights of stakeholders. Disclosure of information on the existence of the BO.

²⁴Atip Lapulhayat, "Khazanah Mochtar Kusumatmaja", *Padjadjaran Journal of Law Science*, Volume 1 - No 3 - Year 2014, h.628-629

4. Conclusion

The review regarding the position of BO in a limited liability company is still not specifically regulated in the national legal framework. The issuance of Presidential Regulation Number 13 of 2018 concerning the Application of the Principle of Recognizing Beneficial Owners of Corporations in the Context of Prevention and Eradication of Money Laundering Crimes and Terrorism Financing Actions which contains BO definitions and criteria, namely referring to individuals who are ultimate (final beneficiaries) or holders of peak authority highest authority who has full control over the company. BO's position in the company is based on the rights stated in Article 4 Paragraph (1) of Presidential Decree Number 13 of 2018, namely equivalent to Major Shareholders. BO owns shares, voting rights and earn a profit of more than 25% which has exceeded the shareholding limit of the main shareholder, which is at least 20% in the company. However, researchers are of the opinion that there is still a legal vacuum regarding the firm position of BO in the company. And BO as a natural person has the highest controlling authority without having to obtain authorization from any party, including as a senior official in the company who can influence company policy can be considered as a corporate attitude. In the case of committing a criminal act of money laundering, BO can be subject to sanctions up to and including his personal assets. When the BO uses the company either directly or indirectly involved in unlawful acts for personal gain by uncovering limited liability or PCV according to Article 3 paragraph (2) UUPT.

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