

The Role of Notaries in Implementing the Principle of Beneficial Ownership of Corporations in Order to Prevent Crimes of Money Laundering and Terrorism Financing

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Abstract. *This research aims to find out and analyze in depth the implementation of the principle of beneficial ownership by corporations to prevent criminal acts of money laundering and terrorism financing as well as the effects on Notaries and the role of Notaries in Implementing the Principle of Recognizing Beneficial Owners and the role of Notaries in preventing criminal acts of money laundering and terrorism financing. The approach method used by researchers in this thesis is a qualitative approach method. The type of research used by the author in his thesis is empirical legal research. Types and Sources of Data used are primary data sources and secondary data sources. Data collection methods are descriptive, namely interviews and observations. Data Analysis Method The research conducted by the author is descriptive. The results of the research and discussion show that: First, the government's implementation of corporate transparency is by uncovering the principle of beneficial ownership by blocking corporate access to OSS and SABH so that corporations will have difficulty in running their business so that the Notary is the party who has the authority to unblock the block. Second, the role played by a Notary means something that is carried out related to the Notary's duties or obligations in carrying out his work. The role of the Notary in preventing TTPU and Terrorist Financing by revealing beneficial owners in order to minimize the establishment of corporations that aim to commit these crimes by obtaining information regarding beneficial owners, Submitting information related to beneficial owners, Arranging documents related to beneficial owners.*

Keywords: *Beneficial; Corporation; Laundering; Notary.*

1. Introduction

Indonesia has a high commitment to preventing and eradicating corruption and efforts to eradicate money laundering. One manifestation of this global commitment is to combat the abuse of the role of the Company and its trustees as a means of committing corruption and increasing the transparency of

beneficial ownership of corporate recipients of economic activities. Transparency of Beneficial Ownership (BO) is a very strategic and cross-sectoral issue, especially related to the prevention and eradication of corruption, money laundering, terrorism financing, state recipients from taxation, extractive industries and investment. A corporation is a legal entity, a legal entity is an entity that in addition to individuals is also considered to be able to act in law and which has rights, obligations and legal relations to other people or other bodies.¹ Furthermore, Salim HS is of the opinion that a legal entity is a group of people who have certain goals (directions they wish to achieve), assets, and rights and obligations.²

BO transparency is part of the frame work the principle of anti-Revenue Erosion and Profit Shifting or what is known as Base Erosion and Profit Shifting (BEPS). Indonesia is committed to preventing and eradicating money laundering (TPPU) and terrorism financing (TPPT). Corporations can be used as a means, either directly or indirectly, by perpetrators of criminal acts who are the beneficial owners of the proceeds of TPPU and TPPT crimes. Therefore, there needs to be a regulation and mechanism to identify the beneficial owners of a corporation in order to obtain accurate, up-to-date and publicly available beneficial owner information. Therefore, the government issued a regulation, namely Presidential Regulation No. 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficial Owners of Corporations in the Framework of Preventing and Eradicating Criminal Acts in Money Laundering and Criminal Acts in the Framework of Terrorism Financing. When viewed from the applicable provisions, corporate owners actually have an obligation to report BO which can be done by self-declaring, through a Notary or other party authorized by the founder or manager of the corporation to convey information on the beneficial owners of the corporation.

Concerns about the emergence of criminal means through corporate media or legal entities are emphasized through government prevention by ratifying the Presidential Regulation on Recognizing Beneficial Owners. With the enactment of Presidential Regulation Number 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficial Owners of Corporations in the Framework of Preventing and Eradicating Money Laundering (TPPU) and Terrorism Financing (TPPT), every corporation is required to determine and implement the principle of recognizing Beneficial Owners and submit correct information related to Beneficial Owners to the authorized agencies. There are 7 (seven) forms of Corporations targeted by Presidential Regulation No. 13/2018, both in the form of legal entities and non-legal entities without limitations on certain sectors or business fields, namely limited liability companies, foundations, associations, cooperatives, limited partnerships, firm partnerships and other forms of corporations. There are no exceptions to these forms of corporations in

¹Wirjono Prodjodikoro, 1987, Principles of Civil Law, Bale Sumur, Bandung, p.23.

²Salim HS, 2016, Introduction to Written Civil Law, Raja wali Pers, Jakarta, p.26.

Presidential Regulation No. 13/2018.³ There is an emphasis in the definition of Beneficial Owner in a corporation as previously explained, namely an individual who meets certain criteria. In tracing the Beneficial Owner in a limited liability company, it must be seen from the criteria contained in Presidential Regulation No. 13/2018.⁴

In the Presidential Decree, the main gateway to recognizing and identifying is the role of a Notary in the establishment of a legal entity. As stated in the Presidential Decree, all business entities, whether incorporated or not, are objects that can be given access to information regarding who the beneficial owner is behind the existence of a corporation. It is stated that the establishment of a legal entity through the creation of a deed of establishment is a basic requirement for the establishment of a legal entity, where the deed of establishment contains, among other things, the identity of the shareholders, founders and administrators of the legal entity up to its implementing organs. In terms of the wording of the provisions of Article 18 paragraph (3) of the Presidential Decree Recognizing Beneficial Owners, a Notary as a public official has an obligation to provide information regarding the identity and assessment of who the beneficial owner is in a business entity that appears before a Notary to request a deed of establishment to be made. The obligation as referred to in Article 18 paragraph (3) is very relevant to the authority and function of a Notary as a public official who the essence is only to make an authentic deed regarding the existence of a legal act. In the Notary Law, there is no mention of the obligation to report on who specifically is the beneficial owner in a legal entity that is established. Although in the ratification of a legal entity through the Ministry of Law and Human Rights, it mentions a list of shareholders and company organs if the legal entity is in the form of a limited liability company, it is not specifically clear what authority has been delegated to a Notary as referred to in Article 18 paragraph (3) of the Presidential Decree on Recognizing Beneficial Owners.⁵

Notary is a State official/public official who can be appointed by the State to carry out State duties in terms of legal services as an official who makes authentic deeds in civil matters. The definition of Notary can be seen in the

³Law on State-Owned Enterprises, Law No. 19 of 2003, LN Number 70 of 2003, TLN Number 4297, article 1 Number 2.

⁴Novita Arie fiani Putri, 2021, "The Role of Notaries in the Implementation of the Principle of Recognizing Beneficial Owners of State-Owned Enterprises in the Form of Limited Liability Companies", Indonesian Notary, Vol. 3, Article 18, page 373. Url:<https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1152&context=notary>. Accessed January 03, 2024, 12.30 p.m.

⁵Candra Wijaya Niti hardjo, Habib Adjie, "The Authority of Notaries in Recognizing the Principle of Beneficial Ownership Related to the Establishment of a Legal Entity", Narotama University Surabaya, Vol 20, No 1, page 132, <https://ejournal.penerbitjournal.com/index.php/law/article/download/278/246/429> accessed on January 07, 2024 at 20.33.

provisions of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.⁶

Notary is one of the Beneficial Owner Reporting Parties who is required to apply the Principle of Recognizing Service Users because the Notary profession is considered vulnerable by perpetrators of money laundering and perpetrators of terrorism affiliated with Limited Liability Companies to hide or disguise the origin of assets both at the time of establishing a Limited Liability Company legal entity and during the implementation of a Limited Liability Company Business Entity. However, on the other hand, this leaves room for debate because of the obligation to report the beneficial owner (BO).⁷Notaries as the spearhead of providing services to the community who need Notary services, together make efforts to encourage these corporate owners to report BO. Which in fact BO reporting is not only carried out at the beginning of establishing the corporation, but during the running of the corporation is required to report, especially if there are changes from the recipient or beneficial owner of the corporation.

BO reporting to corporations is very important to prevent corporate abuse as a means of committing TPPU and TPPT. Based on the database of the Directorate General of AHU as of March 12, 2023, only 836,580 have reported BO out of a total of 2,583,447 corporations that have reported BO, so the percentage is still 32.38 percent.⁸So it can be concluded that the percentage of BO reporters is still very small and there must be government action to accelerate corporations to immediately report BO. And how is the role of a notary in recognizing beneficial owners when establishing a Corporation established based on a notarial deed. With this problem, the researcher conducted research on.

2. Research Methods

The type of research conducted by the author is empirical legal research. The approach method used by the researcher is a qualitative approach. The first type and source of data is called secondary data and the second type of data is called primary data. Data Collection Method: descriptive, namely interviews and Observations. Data Analysis Method The research conducted by the author is descriptive. Research interviews at Notaries in Batang Regency.

⁶Salim Hs, 2015, Techniques for Making a Deed (theoretical concept, authority of Notary, form and minutes of the deed, PT. Raja Grafindo Persada, Jakarta, p. 33.

⁷Mavoarota Abraham Hoegelstravores Zamili, 2022. "Legal Analysis of the Notary's Obligation to Apply the Principle of Recognizing Beneficial Ownership in the Process of Making Deeds of Limited Liability Company Legal Entities", Fiat Jutitia: Journal of Law, No. 2, Vol 2, Page 223. url:<https://repository.usu.ac.id/handle/123456789/45694>. accessed on January 07, 2024 at 21.20.

⁸Public Relations/rin, "Ministry of Law and Human Rights Blocks Access to Corporations That Have Not Reported Beneficial Ownership",<https://ntt.kemenkumham.go.id/berita-kanwil/berita-utama/12184-kemenkumham-blok-akses-korporasi-yang-belum-laporkan-beneficial-ownership>, accessed on January 04, 2024 at 10.15.

3. Results And Discussion

3.1. Implementation of the Application of the Principle of Beneficial Ownership of Corporations for the Prevention of Money Laundering and Terrorism Financing Crimes and the Effects on Notaries.

The government's efforts for corporate transparency in Indonesia are through disclosure and implementation of the Principle of Recognizing Beneficial Owners of Companies (Beneficial Ownership). This transparency is needed to stop and combat money laundering and terrorism financing. The umbrella policy for this is Presidential Regulation (Perpres) Number 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficial Owners of Corporations in the Framework of Preventing and Eradicating Money Laundering and Terrorism Financing, which has been in effect since its enactment on March 1, 2018. That based on international standards in the field of preventing and eradicating money laundering and terrorism financing, there needs to be a regulation and mechanism to recognize the beneficial owner of a corporation in order to obtain information on the beneficial owner that is accurate, up-to-date, and publicly available;

The intended beneficiary is an individual who can appoint or dismiss directors, commissioners, managers, supervisors, or supervisors in a corporation, and has the ability to control the company. Beneficial owners can also receive benefits from the Company either directly or indirectly and are the actual owners of the company's funds or shares. The types of corporations that are the target of this Beneficial Owner rule include: Limited Liability Company (PT); Foundation; Association; Cooperative; Limited Partnership (CV); Partnership Firma (FA); and other forms of corporations.

The purpose of implementing the principle of recognizing beneficial owners (Beneficial Ownership):

1. Providing transparency of beneficial owner data from corporations so that complete and accurate data can be obtained;
2. Achieving the service standards that have been set in providing legal certainty for the parties and encouraging the prevention and eradication of criminal acts of money laundering and terrorism financing;
3. Supporting ease of investment and growing trust for investors.

Following the issuance of Presidential Regulation No. 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficial Owners of Corporations in the Framework of Preventing and Eradicating Money Laundering and Terrorism. In line with that, as a technical form of its regulation, two derivative regulations were also formed, namely Regulation of the Minister of Law and Human Rights No. 15 of 2019 concerning Procedures for Implementing the Principle of Recognizing Beneficial Ownership of Corporations and Regulation of the Minister of Law and Human Rights No. 21 of 2019 concerning Procedures

for Supervising the Implementation of the Principle of Recognizing Beneficial Owners of Corporations. Through these two regulations, Indonesia stipulates that all types of corporations, whether in the form of Limited Liability Companies, Foundations, Associations, Cooperatives, Limited Partnerships, Firms, and other forms, are required to report their beneficial owner (BO) data to the Ministry of Law and Human Rights (Kemenkumham) as one of the ministries dedicated as a center for registering beneficial ownership information. This obligation relates to managing the establishment, registration and/or ratification of a legal entity.

According to an interview with Mr. Shidhiq Murtadho as a Notary and PPAT in Batang Regency, Notaries in Batang Regency have recognized and understood the principle of beneficial owners because Notaries in Batang Regency are members of a Whats App group containing all Notaries and PPATs in Batang Regency who are very open in the information system and share experiences in the group and also always update the development of the system related to Notaries and PPATs. Therefore, in order to make the implementation of technical regulations related to BO more effective, it is necessary to disseminate information through electronic media, both websites and other social media so that the information can be distributed evenly. This effort is carried out as a form of dissemination to Notaries to update information, especially regarding the implementation of the principle of recognizing beneficial owners, in encouraging the prevention and eradication of money laundering and terrorism financing.⁹

For the effectiveness of the implementation of the principle of recognizing the Beneficial Owner of a Corporation, a recording has been carried out to obtain accurate and up-to-date information on the Beneficial Owner carried out by the Regional Office of the Ministry of Law and Human Rights. By disseminating information to the public, the Ministry of Law and Human Rights encourages corporations to submit information on the Beneficial Owner of the corporation or known as Beneficial Ownership (BO) correctly at the time of the application for establishment, registration, and/or ratification of the corporation and when running its business or activities. The submission of BO information can be done, one of which is by a Notary during the process of establishing a corporation, which is directly recorded during the online establishment of the corporation, if the corporation has been established and has not reported to a Notary, the reporting of the beneficial owner can be done by a Notary. Meanwhile, the means to submit this information can be done electronically through AHU Online.

This regulation also regulates the procedures for exchanging BO information for the benefit of law enforcement agencies, government agencies and competent authorities of other countries or jurisdictions. In addition to the authorities, the exchange of information can also be carried out by reporting parties who according to the provisions of laws and regulations are required to submit

⁹Interview with Mr. Shidhiq Murtadho as Notary and PPAT in Batang Regency, March 28, 2024.

reports to the Financial Transaction Reports and Analysis Center-PPATK. This exchange of BO information is also carried out electronically. Supervision in the implementation of the BO principle is carried out by the Minister of Law and Human Rights through the Director General of General Legal Administration including the imposition of sanctions if violations are found.

The technical regulation is expected to be a concrete step for the government and corporations in realizing transparency of corporate BO information. This transparency can accelerate the implementation of a corporate culture with more integrity and a form of corporate participation in preventing and eradicating money laundering and terrorism financing.

In addition, the Ministry of Law and Human Rights through the Directorate General of General Legal Administration has blocked access to PT, foundations, and associations that have not reported Beneficial Ownership. The blocking is a form of implementation of Presidential Regulation No. 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficial Owners of Corporations in the context of preventing and eradicating Money Laundering (TPPU) and Terrorism Financing (TPPT). This blocking was not done suddenly, but there has been a Beneficial Ownership timeline since the issuance of Presidential Regulation No. 13 of 2018.

Based on the database of the Directorate General of AHU as of March 12, 2023, only 836,580 have reported BO out of 2,583,447 total corporations or 32.38 percent. Meanwhile, as of March 11, 2023, 1,142,005 corporations have been blocked, consisting of 734,669 PT (Limited Liability Companies), 225,064 foundations, and 182,272 associations. Of that number, access blocking has been opened for 3,140 corporations that have reported BO through the official website bo.ahu.go.id. The improvement of BO data is part of the Indonesian Government's efforts to become a member of the FATF (Financial Action Task Force).¹⁰

Interview Results from Mrs. Murti Harini Setyowati SH, as a Notary in Batang Regency that there was once a PT client engaged in the construction sector whose OSS and SABH were blocked and could not carry out permits in the housing construction process. So that the PT had great difficulty in carrying out administration. This is because the PT has not reported the beneficial owner. Then the role of the Notary arises as a person who is authorized by law to report the beneficial owner. If associated with a Corporation, the Corporation should be able to implement Good Corporate Governance, namely in the principle of Legal Compliance including an understanding of obedience to existing regulations and

¹⁰Public Relations/rin, "Ministry of Law and Human Rights Blocks Access to Corporations That Have Not Reported Beneficial Ownership", <https://ntt.kemenkumham.go.id/berita-kanwil/berita-utama/12184-kemenkumham-blok-akses-korporasi-yang-belum-laporkan-beneficial-ownership>, accessed on January 04, 2024 at 10.15.

rules. From this basis, the PT should be able to update information and report the beneficial owner who can be assisted by a Notary before the PT is blocked.¹¹

If we draw a conclusion from the interview above, then companies that do not report the Beneficial Owner will be subject to sanctions in the form of blocking company access to both the Legal Entity Administration System (SABH) and the Online Single Submission system (OSS system). The blocking applies primarily to PT, foundations and associations. Blocking the company's access will have a further impact on the course of business activities. So the impact that can be caused by blocking company access to both systems is that the company cannot make changes to the articles of association due to access to the blocked SABH account. Furthermore, blocking accounts on the OSS system will result in the company being unable to change, add and update company data. Companies whose access rights to the OSS system are blocked and cannot make changes to data will result in business activity data that does not match their practices in the field. This automatically makes the business licenses issued inappropriate. If a business actor carries out business activities that do not comply with their business license, it is considered a violation and will be subject to administrative sanctions in the form of revocation of the business license. This is in accordance with Investment Coordinating Board Regulation Number 5 of 2021 concerning Guidelines and Procedures for Supervision of Risk-Based Business Licensing.

Due to such impacts, it is important for companies to report beneficial owners. Reporting on corporate beneficial owner information can be done online through the Corporate Administration System, SABH, or the bo.ahu.go.id application.

The parties who can provide information on the beneficial owners of a corporation include:

1. Founder or director of a corporation,
2. Notary, or
3. A party authorized by the founder or management of a corporation to convey information on the beneficial owners of the corporation.

According to the results of the interview with Mr. Shidhiq Murtadho SH, MKn in the position and position of Notary is not affected in any way but Notary feels strange with the way of conveying the beneficial owner in the input on the ahu.go.id website because there are 2 ways that can be filled in, namely the direct input method during online registration for the establishment of a Legal Entity on the ahu.go.id website or with a statement letter stored in the Notary archive document so if it is filled in directly online when registering for the establishment of a legal entity, it will not be blocked by the Ministry of Law and Human Rights last year but if the opposite is the case, namely only using a statement letter and not inputting online when registering for establishment on the ahu website, the legal entity will be blocked because it is considered that the

¹¹Interview with Mrs. Murti Harini Setyowati, SH as Notary and PPAT in Batang Regency. April 29, 2024

beneficial owner has not been reported. This also causes confusion in inputting. It is better not to have a choice to use a statement letter because it is mandatory to input the beneficial owner online at Ahu.go.id. As a Notary, only submit the administration online regarding who the Beneficial Owner is in the establishment of the legal entity on the website of the Ministry of Law and Human Rights. In principle, a Notary is not affected in his/her position, however, the effect felt by a Notary from the blocking of a legal entity that is blocked because it has not reported its beneficial owner is that he/she is given the authority to report the beneficial owner of a legal entity or corporation that is blocked because it has not reported its beneficial owner.¹²

3.2. The Role of Notaries in Implementing the Principle of Recognizing Beneficial Owners of Corporations to Prevent Money Laundering and Terrorism Financing.

A notary is a public official who has the authority to validate authentic deeds. One form of deed made by a notary is a deed of establishment of a corporation. Legal entities include limited liability companies, foundations, associations, cooperatives, limited partnerships, partnerships, and other forms of legal entities.

The main purpose of establishing a corporation is to run a business and raise funds. However, over time, companies have increasingly been used by certain individuals as vehicles to commit money laundering and terrorist financing crimes.

In this case, a new term emerged, namely beneficial owner. The beneficial owner of a corporation has power beyond other organs in the corporation and can control the corporation. Many people set up fake corporations to commit tax evasion, money laundering crimes, and even terrorist crimes. Given this, the government requires all companies to disclose the identity of the beneficial owners of all companies in Indonesia. Notaries play an important role in establishing a corporation, Notaries are also required to apply the principle of identifying beneficial owners.

Interview Results of Mr. Shidhiq Murtadho as a Notary and PPAT in Batang Regency that the Implementation of the principle of recognizing the Beneficial Owner (BO) of a corporation is by identifying BO and verifying BO. While the implementation of the principle of recognizing beneficial ownership is carried out at the time of the Application for establishment, registration, approval, ratification, or licensing of the corporation, but when the corporation runs its business or activities, the Notary does not have the authority if it is not related to the service relationship provided by the Notary. Related to the relationship between the Beneficial Owner and the Crime of Money Laundering and Terrorism Financing is by registering the beneficial owner with the Ministry of Law and Human Rights by the Notary can provide transparency of the beneficial

¹²Interview with Mr. Shidhiq Murtadho as Notary and PPAT in Batang Regency, March 28, 2024.

owner data from the corporation so that complete and accurate data can be obtained so that the specified service standards can be achieved in order to encourage prevention and eradication of money laundering and terrorism financing because the corporation can be supervised and controlled by the authorized party in real time by the authorized party. And the last one supports investors to invest in the corporation, because by recognizing Beneficial Ownership is a trust that can be held by investors.¹³

So from the results of the Interview it can be concluded that transparency regarding the BO of a company or corporation and the implementation of supervision of transparency by authorized institutions are very important because with BO transparency, the state can strive to prevent money laundering and terrorism financing, and can gain trust from investors so that they can invest in the corporation. Notaries are one of the parties who can play a role in administration to minimize corporations that commit money laundering and terrorism financing by carrying out transparency of beneficial owners (BO) reported by Notaries when establishing the corporation.

Interview Results with Mrs. Murti Harini Setyowati, SH as a Notary and PPAT in Batang Regency that related to criminal acts and money laundering committed by corporations for prevention is not the domain of Notaries in doing so. Because law enforcers are given the authority to eradicate criminal acts. The role that can be carried out by Notaries in relation to this is to minimize the establishment of corporations used by certain individuals as a means to commit money laundering and terrorism financing crimes. By revealing the beneficial owner at the time of establishment of the corporation in this case focused on legal entity corporations, namely Limited Liability Companies (PT).¹⁴

Interview Results with Mrs. Murti Harini Setyowati, SH as a Notary and PPAT in Batang Regency that for the application of Beneficial Owners in the Establishment of Limited Liability Companies for the implementation of Presidential Regulation Number 13 of 2018 for Notaries, beneficial owners have been implemented at the time of the establishment of Limited Liability Companies, but that the Notary knows who the actual beneficial owner is from the statement of the management of the corporation itself, and the article is that the Notary only states what the Notary hears from the client, namely the management of the Corporation or Limited Liability Company, that in the deed of establishment of a Limited Liability Company only the shareholders and managers in the Limited Liability Company are mentioned, the Notary is required to ask who the beneficial owner is in the Limited Liability Company but it cannot be guaranteed one hundred percent truth about this because the Notary only states what is heard from the client. Therefore, the Notary must comply with the Notary Law (UUJN) which is contained in Article 15 paragraph 1, namely that the

¹³Interview with Shidhiq Murtadho as Notary and PPAT in Batang Regency. March 28, 2024

¹⁴Interview with Mrs. Murti Harini Setyowati, SH as Notary and PPAT in Batang Regency. April 29, 2024

Notary has the authority to make an authentic deed with all words, actions stated in an agreement, and the following stipulations regarding statutory regulations, in essence that everything said by the client is the will and interests of the client and that is what is stated by the Notary in his deed, and does not forget to guarantee the date of the deed, the time of making the deed, the storage process for the following deed when providing a copy/grosse of the deed.¹⁵

The role carried out by a Notary means something that is carried out related to the duties or obligations of a Notary in carrying out his work. So the role of a Notary in the Implementation of Presidential Regulation Number 13 of 2018 concerning the Implementation of the Principle of Identification of Company Beneficiaries for the Prevention and Eradication of Money Laundering and Terrorism Financing in corporations is the first to obtain information about the beneficial owner by identifying the beneficial owner by looking at his identity card, verifying the beneficial owner by checking the validity of his identity card. The second is the delivery of information related to the beneficial owner carried out by a Notary on the basis that all PTs or corporations are required to appoint employees and officials to carry out by applying the principle of recognizing the beneficial owner in the Company, providing information about the company and the beneficial owner on the grounds of requests from the authorities and law enforcement officers. Third, the arrangement of documents related to the beneficial owner, namely the Notary plays a role in storing administrative archives of documents related to the beneficial owner of the corporation. This is related to the Notary also playing a role in implementing the Principle of Recognizing Beneficial Owners which not only plays a role at the stage of establishing a legal entity but also plays a role when the legal entity carries out its duties or business and requires changes to its articles of association.

Referring to the interview results above which state that the Notary must obtain information regarding the Beneficial Owner, namely when establishing a Corporation in the form of a legal entity, namely a PT, then based on Article 15 paragraph (1) and paragraph (2) of Presidential Regulation 13/2018, the corporation is required to provide information on the results of the identification and verification of the beneficial owner in the Corporation. This is related to the identity of the parties including the beneficial owner. The Notary has a role to determine an action that can be stated in a Deed, therefore the implementation of the principle of accuracy (caution) must be carried out when the process of making a deed by introducing the person appearing based on their identity shown to the Notary. In carrying out his duties, the Notary before starting to make a deed is of course faced with parties who want to make an authentic deed, of course the Notary before entering the identities of the parties into a deed, the Notary must check the identities of the parties such as KTP, KK, or

¹⁵Interview with Mrs. Murti Harini Setyowati, SH as Notary and PPAT in Batang Regency. April 29, 2024

Passport and match the photos of the Identity owner with the parties making the authentic deed, in order to prevent falsification of identity against the deed made by the Notary. Carefully verify the data of the subject and object of the person appearing. The purpose and objective of Verification is to check the subject data of the parties whether they are authorized and competent or not in carrying out legal acts so that they can meet the legal requirements of a deed such as whether the party acting is at least 18 years old or has been married according to Article 39 paragraph 1 letter a UUJN. While part of the data validation process is part of the process of checking the documents of the object brought by the person appearing, for example checking the Company's Power of Attorney and others.

In relation to the Beneficial Owner because the Notary is only based on identity documents and information from the client, the information needs to be stated in the form of a statement of beneficial ownership in the Corporation, then the statement of beneficial ownership will be used as one of the requirements for establishing the Corporation in question. The information in the statement then becomes one of the complete documents required and used to submit or register for legal entity ratification which is uploaded electronically to a special administration system organized by the Ministry of Law and Human Rights. In its regulations, the party burdened with this obligation is the Corporation, the aim is to obtain information regarding the beneficial owner and to always update the information. In this case, the Notary is not burdened with the obligation to be the party carrying out the activity. However, the Notary is required to obtain this information because of the need for registration and ratification of the legal entity in question which is established by a Notarial deed.

Normatively, the role of a Notary is only to establish the will of the parties to be stated in an Authentic Deed, so that the legal rights and obligations arising from the legal acts referred to in the Deed only bind the parties in the deed, if there is a dispute regarding the contents of the agreement, the Notary is not involved in the implementation of obligations and in the prosecution of a right. The Notary's responsibility related to the authenticity of the PT Deed of Establishment is only limited to formal and not material truth, which has been determined in laws and regulations, especially the UUPT, that what needs to be stated by the founders to be stated in the Deed of Establishment in the form of articles of association that have been regulated in Article 15 of the UUPT, including:

- a. Name and domicile of the company;
- b. The purpose and objectives and business activities of the company are in accordance with applicable laws and regulations;
- c. The period of existence of the company;
- d. The amount of authorized capital, issued capital and paid-up capital;

- e. Number of shares, number of qualifying shares if any, including the number of shares for each classification, the rights attached to each share, and the nominal value of each share;
- f. Title and number of members of the Board of Directors and Board of Commissioners;
- g. Determination of the place and procedures for holding the GMS;
- h. Procedures for the appointment, replacement and dismissal of members of the Board of Directors and Board of Commissioners;
- i. Procedures for the use of profits and distribution of dividends.

Following up on the results of the interview above, recognizing the beneficial owner is done when the client requests a deed of establishment of a Limited Liability Company complete with its registration, ratification and approval process. In its implementation, a data collection process is carried out as regulated in Article 16 of Presidential Regulation Number 13 of 2018, namely:

- a. Full name
- b. Population Identity Number, Passport, KITAS or Driving License;
- c. Place and date of birth ;
- d. Population/Citizenship Status;
- e. Home/residence road;
- f. Address outside Indonesia, if the beneficial owner is a foreign citizen;
- g. Taxpayer Identification Number or (NPWP)
- h. The status of the beneficial owner's relationship with the company.

The purpose of collecting the data is to ensure that the legality data of the beneficial owner is complete and its authenticity is guaranteed by officials and authorized agencies. In this case, the submission of the information can be done by the founder or administrator, by a Notary and/or by another party who has been given power of attorney.

Based on the results of the interview with Mrs. Murti Harini Setyowati, SH as a Notary and PPAT in Batang Regency, the next role of a Notary in recognizing the second beneficial owner is the Submission of beneficial owner information. As stated in Article 18 paragraph (1) in conjunction with paragraph (2) of Presidential Regulation 13/2018, it is stipulated that Corporations are required to submit correct information about beneficial owners to authorized agencies. Furthermore, it is stipulated in paragraph (3) of Article 18 that the submission of information regarding beneficial owners does not always have to be carried out by the Corporation, but there are other alternatives, namely that it can be carried out by other parties, one of which is a Notary or another party who has the power to do so. Referring to the regulation, if a Notary is required by the Corporation to submit beneficial owner information to an Authorized Agency or Party, then the Notary who has been appointed has an obligation to submit the

information. The use of the word "can" in the provisions of Article 18 paragraph (3) of Presidential Regulation 13/2018 has the legal consequence that this submission activity is not an obligation for a Notary. However, these activities are permitted by law to be carried out by Notaries.

Based on the provisions stipulated in Article 7 paragraph (4) in conjunction with Article 9 paragraph (1) of the Limited Liability Company Law, basically the submission of information along with complete documents regarding the establishment of a PT is charged to the founders of the PT, however, if viewed in Article 9 paragraph (3) of the UUPT, this can also be authorized but is limited to a Notary. Therefore, a Notary has the authority to submit information on the beneficial owners of a Corporation when the founders of the PT give their authority to the Notary to do so. Article 2 paragraph (1) of Permen No. M. 01-HT 01-10/2007 Concerning Procedures for Submitting an Application for Legal Entity and Approval of Amendments to the Articles of Association, Submission of Notification of Articles of Association and Amendments to the Articles of Association and Amendments to Company Data (hereinafter referred to as PERMEN No. M. 01-HT 01-10/2007) states that "the submission of an application for ratification of the Company's legal entity is carried out by a Notary as the attorney of the founders". that the one who has the right to submit an application, the founder gives power of attorney to the Notary so that the one who is formally authorized to submit the application is the Notary "in the quality and capacity as the attorney" of the founder. Based on the above, the Notary also plays a role in making a message about the name of the PT and as the attorney of the founder in terms of obtaining the status of a legal entity from the Deed of Establishment of the PT until the announcement of the Company in the State Gazette of the Republic of Indonesia. After the submission of information is carried out by the Notary when after the Deed of Establishment of the PT by the Notary and in accordance with the wishes of the founder, then a message is made about the name for the PT through ahu.go.id, submitting information about the Company online on the ahu.go id website. Includes the submission of information regarding the beneficial owner of the PT. In registering a PT, the Notary must understand and comprehend the beneficial owner referred to in Presidential Regulation Number 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficial Owners of Corporations in the Framework of Preventing and Eradicating Money Laundering and Terrorist Financing Crimes. After the Notary understands and checks the beneficial owner page, the Notary is required to fill in the beneficial owner of the PT Establishment based on the Client's information, one of which is that the Notary must know which category the beneficial owner in the establishment of the PT falls into in the selection of beneficial owner criteria as follows. Article 4 paragraph (2) of PP 13/2018 stipulates that there are various criteria for beneficial owners in corporations, with the following criteria:

- a. Owning more than 25% (twenty five percent) of shares in a limited company as stated in the articles of association;

- b. Have voting rights of more than 25% (twenty five percent) in a limited liability company as stated in the articles of association;
- c. Receiving profits or gains of more than 25% (twenty five percent) of the profits or gains obtained by the limited company per year;
- d. Has the authority to appoint, replace, or dismiss members of the board of directors and members of the board of commissioners;
- e. Have the authority or power to influence or control a limited company without having to obtain authorization from any party;
- f. Receive benefits from a limited company; and/or
- g. Is the actual owner of the funds for ownership of shares in a limited company.

In the Legal Entity Administration System of the Ministry of Law and Human Rights (SABH), users are required to enter information regarding who the beneficial owners are in the legal entity. If using the mechanism as regulated in Article 18 paragraph (3), where the person submitting the information is a Notary, then the Notary must know this, which information is obtained by the Notary from the relevant party through the Beneficial Owner Statement Letter. The Notary's knowledge supported by the existence of the Beneficial Owner Statement Letter can have implications that the Notary knows whether or not the beneficial owner exists.

The risk of a Notary being dragged into a dispute over beneficial ownership or participation in TPPU is further increased by the mechanism implemented on the SABH website, to make certain statements before submitting an electronic application via the page. Before SABH users can submit the application in question, SABH users must state their agreement to the conditions, one of which states that the user is willing to "... accept all forms of sanctions including but not limited to criminal, civil and/or administrative sanctions in accordance with the provisions of applicable laws and regulations." This statement is related to the truth of the information and data submitted in the electronic application. Users of the page inevitably agree to this statement, because if they do not agree to submit the application, it cannot be done. When this agreement is made, the burden of responsibility is attached to the relevant party.

When the user agrees to it, then rights and obligations arise as a consequence of the agreement on certain things. With the difficulty of ascertaining the truth of a statement of the Beneficial Owner under hand, the greater the risk of imposing sanctions on the Notary who conveys the information.

After the online registration is complete, the next step is to print the Decree of Approval from the Directorate General of General Legal Administration (AHU) of the Ministry of Law and Human Rights. After receiving the Decree, the founders register it in the Online Single Submission system (hereinafter abbreviated as OSS), because OSS is not an obligation of a Notary.

Interview Results with Mr. Shidhiq Murtadho as a Notary and PPAT in Batang Regency that if using the mechanism when online entering PT data online at ahu.go.id at the time of establishment as regulated in Article 18 paragraph (3), where the person who submits the information is a Notary, then the Notary must know this, which information is obtained by the Notary from the relevant party through the Beneficial Owner Statement Letter. So in my opinion the Beneficial Owner Statement Letter must be attached to the establishment of the PT because the Notary's knowledge supported by the existence of the Beneficial Owner Statement Letter can have implications that the Notary knows whether or not the beneficial owner exists. Although in reality the truth of the statement above the letter cannot be guaranteed by the Notary. The material truth of the client's or party's statement stated in the statement letter should not be an obligation for the Notary to ensure it, because this is no longer something that is included in the Notary's authority.¹⁶

Following up on the results of the interview in relation to the truth of the contents of the beneficial owner's statement letter in the implementation of Presidential Regulation 13/2018 from a civil law perspective, in essence the Notary has a role as a party that is required to obtain complete documents of beneficial ownership and adjust to all related documents provided by the person appearing. In essence, the role of the Notary in obtaining information regarding the beneficial owner is limited to his/her authority only. To obtain this information, based on Presidential Regulation 13/2018, the Notary needs to request a beneficial owner's statement letter made by the person appearing to conduct an examination of the existence of the beneficial owner in the Corporation. The Notary's authority in this case is limited to formally checking the completeness of the document and matching it with other identities submitted by the person appearing. These things are basically the implementation of the Notary's duties and authorities carefully and cautiously so that in this case the principle of accuracy has been applied as determined by the UJUN.

Following up on the results of the interview with Mrs. Murti Harini Setyowati, SH as a Notary and PPAT in Batang Regency. The role of a Notary in recognizing the third beneficial owner from the interview above is to store archives of documents related to the beneficial owner. One of the important things in the Implementation of the Principle of Recognizing Beneficial Owners is the archiving or administration of documents of Beneficial Owners from Corporations. In Article 22 of Presidential Regulation 13/2018, in paragraph (1) it has been determined that "Corporations, Notaries, or other parties who receive power of attorney from the Corporation, are required to administer documents related to Beneficial Owners from Corporations within a minimum period of 5 (five) years from the date of establishment or ratification of the Corporation." The word administer has the basic word administration, namely the implementation of

¹⁶Interview with Shidhiq Murtadho as Notary and PPAT in Batang Regency. March 28, 2024

matters concerning writing (finance and so on) in a company (state and so on) or administration.

By interpreting the provisions according to grammatical interpretation, the Corporation, Notary or other party who receives power of attorney from the Corporation, is given the obligation to administer the archiving of documents related to the beneficial owners of the Corporation within a certain period of time. The subjects addressed by the provisions alternatively consist of three parties, namely (1) Corporation; (2) Notary; or (3) Attorney from the Corporation. As a party who can be subject to obligations based on the provisions of Article 22 paragraph (1) of Presidential Regulation 13/2018, a Notary is required to administer documents related to the beneficial owners of a Corporation. However, in this case, it is not further explained when the Notary is subject to this obligation and which Corporation is required to administer its beneficial owner documents.

Article 15 paragraph (1) and (2) of Presidential Regulation 13/2018 states that in order to recognize the beneficial owner, a Corporation must identify and verify the beneficial owner at the time of the application, establishment, registration, ratification, approval or licensing of the Corporation's business and/or when the Corporation carries out its business or activities. This provision means that the Notary plays a role in implementing the Principle of Recognizing Beneficial Owners which not only plays a role at the stage of establishing a legal entity but also plays a role when the legal entity carries out its duties or business and requires changes to its articles of association. In the case of a legal entity in the form of a Limited Liability Company, this provision is in line with the rules regarding the establishment of a PT and changes to its articles of association and also links the provisions regarding the authority of a Notary who has the authority to document these legal events in an authentic deed. In addition to making an authentic deed, based on Article 16 of the UUJN concerning the obligations of a Notary, a Notary also has an obligation to archive or store the minutes of the deed made by the Notary and documents related to this in the Notary's protocol.

Based on these regulations, and by linking them to Article 22 paragraph (1) in conjunction with (3) of Presidential Decree 13/2018, a Notary has an obligation to administer documents regarding the beneficial owners of a PT legal entity, namely to store and maintain related documents provided by the founders of the PT in order to make a deed of establishment of the PT; when the founders of the PT authorize the Notary to submit an application or ratification of the PT; and in relation to storing and maintaining documents provided by the PT when changes to the articles of association will be made, through the preparation of a deed of minutes of the meeting containing or through a deed stating changes to the articles of association of the PT. Administration of the documents referred to above is not specifically the administration of documents related to the beneficial owners only, but also other complete documents related to legal acts written in the Notarial deed in question. A Notary does not have the specific

authority to create documentation regarding beneficial owners based on the UUJN, although such provisions can be found in Presidential Decree 13/2018. In addition, a Corporation in making changes related to its articles of association is not always required to do so before the same Notary, so that comprehensive administration of beneficial ownership documents by a Notary, in practice, cannot always be carried out.

Despite the importance of administering beneficial owner documents, it is not the authority of a particular Notary to always update data and information regarding changes that occur within a PT. This is because the changes are highly dependent on the PT's intentions, in addition, the updating activity is also highly dependent on the discipline of a PT to carry out its reporting. Thus, a Notary cannot proactively request data updates within a certain period of time, other than in the context of the completeness of the deed required by the PT.

4. Conclusion

First, the government's implementation of corporate transparency is by revealing the principle of beneficial owners by blocking corporate access to OSS and SABH so that corporations will have difficulty running their businesses so that notaries as parties have the authority to unblock them. Second, the role carried out by Notaries means something that is carried out related to the duties or obligations of Notaries in carrying out their work. The role that Notaries can play in the Principle of Beneficial Owners of Corporations in the Framework of Preventing Money Laundering and Terrorist Financing is to minimize the establishment of corporations used by certain individuals as a means to commit money laundering and terrorism financing by revealing beneficial owners in three ways, namely first obtaining information about the beneficial owner, Second is Submission of information related to the beneficial owner, Third Arrangement of documents related to the beneficial owner. This is the role of notaries in minimizing TPPT and TPPU by providing accurate data when the beneficial owner is registered with the Ministry of Law and Human Rights by a notary. So it can provide transparency of beneficial owner data from the corporation so that complete and accurate data can be obtained so that the specified service standards can be achieved in order to encourage the prevention and eradication of money laundering and terrorism financing because the corporation can be monitored and controlled by the authorized party in real time by the authorized party. There needs to be a Beneficial Owner Statement Letter signed by the PT at the time of signing the establishment of the PT, that the Notary knows whether or not the beneficial owner exists through the client and is strengthened by the letter. Although in reality the truth of the statement above the letter cannot necessarily be guaranteed by the Notary.

5. References

Book:

Prodjodikoro, Wirjono, (1987), Principles of Civil Law, Bale Sumur, Bandung.

Salim HS, (2015), Techniques for Making a Deed (theoretical concept, authority of Notary, form and minutes of the deed), PT. Raja Grafindo Persada, Jakarta.

Salim HS, (2016), Introduction to Written Civil Law, Rajawali Pers, Jakarta.

Journal:

Candra Wijaya Nitihardjo & Habib Adjie, "Notary's Authority in Recognizing the Principle of Beneficial Ownership Related to the Establishment of a Legal Entity", Narotama University Surabaya, Vol 20, No1, <https://ejournal.publikajournal.com/index.php/law/article/download/278/246/429> accessed on January 07, 2024 at 20.33.

Putri, Novita Ariefiani, 2021, "The Role of Notaries in Implementing the Principle of Recognizing Beneficial Owners of State-Owned Enterprises in the Form of Limited Liability Companies", Indonesian Notary, Vol. 3, Article 18, Url: <https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1152&context=notary>. Accessed January 03, 2024, at 12.30.

Zamili, Mavoarota Abraham Hoegelstravores, 2022. "Legal Analysis of Notary's Obligation to Apply the Principle of Recognizing Beneficial Ownership in the Process of Establishing a Limited Liability Company Legal Entity", Fiat Jutitia: Jurnal Hukum, No.2, Vol 2. url: <https://repositori.usu.ac.id/handle/123456789/45694>. accessed on January 07, 2024 at 20.50.

Internet:

Public Relations/rin, "Ministry of Law and Human Rights Blocks Access to Corporations That Have Not Reported Beneficial Ownership", <https://ntt.kemerkumham.go.id/berita-kanwil/berita-utama/12184-kemerkumham-blokir-akses-korporasi-yang-belum-laporkan-beneficial-ownership>, accessed on January 4, 2023 at 10.15.

Interview:

Interview with Mr. Shidhiq Murtadho as Notary and PPAT in Batang Regency, March 28, 2024.

Interview with Mrs. Murti Harini Setyowati, SH as Notary and PPAT in Batang Regency, April 29, 2024.

Regulation:

The 1945 Constitution of the Republic of Indonesia.

Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

Law Number 9 of 2013 concerning Prevention and Eradication of Criminal Acts of Terrorism Financing

Law on State-Owned Enterprises, Law No. 19 of 2003, LN Number 70 of 2003, TLN Number 4297, article 1 Number 2.

Presidential Regulation Number 13 of 2018 Concerning the Implementation of the Principle of Recognizing Beneficial Owners of Corporations in the Framework of Prevention and Eradication of Money Laundering (TPPU) and Terrorism Financing (TPPT).