Principle of Beneficial Owner in Corporate Crime

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Abstract

This study aims to analyze the application of the principle of beneficial owners in corporate crimes in Indonesia. The background of this research focuses on the challenges of identifying beneficial owners within corporate structures that are often used to commit crimes, including money laundering and corruption. The method used is normative legal research with a juridical approach, where data is collected from laws and regulations and case studies. The results show that although the principle of beneficial owners has been regulated in positive law, its implementation is still not effective. This is due to a lack of understanding and compliance from corporations as well as weaknesses in supervision by the relevant authorities. This study recommends the need for reforms in regulations and increased supervisory capacity to ensure that beneficial owners can be identified and held legally accountable in cases of corporate crimes.

I. Introduction

In the era of globalization and the rapid development of information technology, corporations are increasingly playing an important role in the world economy. However, behind these advances, there are serious challenges related to corporate crime, including money laundering, corruption, and tax evasion. One aspect that is often overlooked in this context is the beneficial ownership of the corporation. A beneficial owner refers to an individual or entity that ultimately owns or controls a corporation, even though it is not directly registered as a shareholder. Uncertainty about who the beneficial owners are can create legal loopholes that can be used to commit corporate crimes.[1]

The application of the principle of beneficial owners in corporate criminal law in Indonesia has become very relevant, especially after the promulgation of various regulations aimed at increasing transparency and accountability in corporate management. For example, Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes requires corporations to disclose information about their beneficial owners. However, even though the regulation exists, its implementation is still far from expectations. Many corporations do not comply with these provisions, and the competent authorities often lack the resources to conduct effective supervision.[2]

Previous research has shown that various factors affect the effectiveness of the application of the beneficial owner principle. Among them are a lack of understanding of the importance of transparency of beneficial owners, limited human resources, and inadequate application systems to support information disclosure.[3] In addition, challenges in law enforcement and supervision are also significant obstacles in preventing corporate crimes involving unidentified beneficial owners.[4]

Although there have been several studies that discuss beneficial owners in the context of criminal law, there are still significant research gaps. First, many studies focus only on normative aspects without providing an in-depth analysis of how the application of the beneficial owner principle can be optimized in practice. Second, existing research often does not take into account the local and specific context of Indonesia, where business culture and practices can influence the way corporations operate and interact with

[1] Michelle Kristina, "Strengthening Corporate Crime Prevention In The Digital Economy In ASEAN," *JURNAL YUSTIKA: MEDIA OF LAW AND JUSTICE* 26, no. 02 (June 26, 2024): 120–31, doi:10.24123/yustika.v26i02.6618; Agustianto, "The Importance of Transparency of Beneficial Ownership by Corporations," *JUSTISI* 8, no. 2 (May 21, 2022): 108–18, doi:10.33506/js.v8i2.1678.
[2] Ridwan Arifin and Shafa Amalia Choirinnisa, "Corporate Responsibility on Money Laundering Crimes on Indonesian Criminal Law Principle," *JURNAL MERCATORIA* 12, no. 1 (June 25, 2019): 43, doi:10.31289/mercatoria.v12i1.2349.
[3] Agustianto, "The Importance of Transparency of Beneficial Ownership by Corporations"; Nevey Varida Ariani, "Beneficial Owner: Recognizing Beneficial Owner in Corporate Crimes," *Journal of Legal Research de Jure* 20, no. 1 (March 23, 2020): 71, doi:10.30641/dejure.2020.V20.71-84.
[4] Hari Sitra Disemadi and Nyoman Serikat Putra Jaya, "The Development of Corporate Regulation as a Subject of Criminal Law in Indonesia," *Journal of Law Media Bhakti* 3, no. 2 (November 3, 2019): 118–27, doi:10.32501/jhmb.v3i2.80.

regulations.[5] Third, there is a need to explore more about the role of notaries and financial institutions in disclosing beneficial owners, as well as how they can contribute to the prevention of corporate crimes.[6]

Research Implications This research is expected to make a significant contribution to the development of corporate criminal law in Indonesia. By analyzing the application of the principle of beneficial owners, this study aims to provide policy recommendations that can increase transparency and accountability in corporate management. In addition, the results of this study are expected to be a reference for policymakers in formulating more effective and responsive regulations to the challenges faced in preventing corporate crime.

Furthermore, this research will also provide insight for legal practitioners, academics, and other stakeholders on the importance of disclosure of beneficial owners in the context of crime prevention. Thus, it is hoped that this research can contribute to efforts to create a more transparent and responsible business environment in Indonesia, as well as strengthen the existing criminal law system to tackle corporate crime more effectively.

This research focuses on the application of the principle of beneficial owners in corporate crimes, taking into account the challenges and opportunities that exist. By filling in existing research gaps and providing policy recommendations based on in-depth analysis, it is hoped that this research can contribute to the development of better and more responsive laws to the needs of the community and the business world in Indonesia.

2. Research Method

This study uses a normative legal approach with a qualitative method to analyze the application of the principle of beneficial owners in corporate crimes in Indonesia. The main data sources come from literature studies that include laws and regulations, academic journals, and relevant articles. Data collection is carried out through literature studies and analysis of legal cases involving corporations and beneficial owners. The collected data is then analyzed qualitatively by categorizing information based on key themes, such as challenges in identifying beneficial owners and regulatory effectiveness.[7]

3. Results and Discussion

Application of the Beneficial Owner Principle in Corporate Criminal Law

The application of the principle of beneficial owners in corporate criminal law in Indonesia

[5] Ariani, "Beneficial Owner: Recognizing Beneficial Owners in Corporate Crimes."
[6] VELLICHIA LAWRENCE, "Juridical Analysis of the Position of Notaries in Revealing Beneficial Ownership in the Preparation of Notary Deeds," *Journal of Legal Perspective* 2, no. 1 (March 19, 2021): 15–25, doi:10.35447/jph.v2i1.269.
[7] Ahmad Rustan, Ju Lan Hsieh, and Wahyudi Umar, "Maladministration on Mining Business Licenses: Case Study "Mining Business License Production Operation PT. Aneka Tambang, Tbk," *Varia Justicia* 17, no. 03 (2021): 246–57.

is an important aspect of effective law enforcement efforts against criminal acts committed by corporations. This principle focuses on identifying individuals or entities that benefit from corporate activities, especially in the context of money laundering and terrorism financing crimes. In this case, the Presidential Regulation of the Republic of Indonesia Number 13 of 2018 is the legal basis that regulates the application of the principle of recognizing beneficial owners in corporations, where notaries play an important role in ensuring transparency and accountability.[8]

In the context of criminal law, corporations are seen as legal subjects that can be subject to criminal sanctions. This is in line with the view that corporations have the same rights and obligations as individuals so that they can be held accountable for criminal acts committed.[9] Research shows that the application of the beneficial owner principle can help identify responsible individuals in corporations, making it easier to enforce the law against violations committed.[10]

Furthermore, the application of this principle also contributes to overcoming the challenges faced in corporate criminal law enforcement. For example, in the case of corruption crimes, it is important to identify the beneficial owners of the corporations involved to enforce appropriate sanctions.[11] This shows that the application of the beneficial owner principle not only serves as a tool to detect criminal acts but also as a means to ensure that responsible individuals within the corporation can be held legally liable.

However, despite progress in the application of this principle, there are still weaknesses in its implementation. Some studies have shown that there are difficulties in identifying the true beneficial owners, especially when corporations use complex structures to hide their identities.[12]

Therefore, further efforts are needed to strengthen regulations and law enforcement mechanisms related to the principle of beneficial owners in corporate criminal law.

[8] Nyulistiowati Suryanti, "Notary in the Application of the Principle of Recognizing Beneficial Owners in Relation to Nominee Agreements," *Acta Diurnal Journal of Notary Law and PPAT-an* 4, no. 1 (December 31, 2020): 369–77, doi:10.23920/acta.v4i1.367.

[9] Amirullah Amirullah, "Corporations in the Perspective of Criminal Law Subjects," *al-Daulah: Journal of Islamic Law and Jurisprudence* 2, no. 2 (October 1, 2012): 139–60, doi:10.15642/ad.2012.2.2.139-160.

[10] Listawati Listawati, "Pertanggungjawaban Pidana Korporasi Pada Perkara Tindak Pidana Pencucian Uang," *Justitia et Pax* 37, no. 2 (December 22, 2021), doi:10.24002/jep.v37i2.4412; Deddy Sunanda et al., "Concept of Benefit Owner's Responsibility in Crime in Indonesia: Charging Criminal Actors Behind Corporates," *International Journal of Engineering Business and Social Science* 1, no. 05 (May 8, 2023): 363–71, doi:10.58451/ijebss.v1i05.62.

[11] Abdurrakhman Alhakim and Eko Soponyono, "Corporate Criminal Liability Policy for the Eradication of Corruption," *Indonesian Journal of Legal Development* 1, no. 3 (September 24, 2019): 322–36, doi:10.14710/jphi.v1i3.322-336.

[12] Fernando, "Limited Company Beneficial Owner Liability in Criminal Acts of Corruption," 2021, doi:10.2991/assehr.k.211223.094; Sunanda et al., "Concept of Benefit Owner's Responsibility in Crime in Indonesia: Charging Criminal Actors Behind Corporates."

Overall, the application of the principle of beneficial owners in corporate criminal law in Indonesia has great potential to increase accountability and transparency in corporate management. By identifying individuals who benefit from corporate actions, law enforcement can be more effective in tackling criminal acts committed by business entities. However, challenges in the implementation of this principle must be overcome through regulatory updates and increased law enforcement capacity.

Challenges in Identifying Beneficial Owners

Identification of beneficial owners in the context of corporate criminal law in Indonesia faces various significant challenges. These challenges are not only related to the technical aspects of data collection and analysis but also involve complex legal and ethical issues. One of the main challenges is the complexity of corporate ownership structures that are often designed to hide the identity of the owners. Many corporations use complicated schemes, such as nominee agreements or the use of offshore entities, which make it difficult to identify beneficial owners.[13]

In addition, the lack of clear and consistent regulations regarding the obligation to disclose beneficial owner information is also an obstacle. Although there are regulations governing the recognition of beneficial owners, their implementation is often not followed by strict sanctions for corporations that do not comply with these provisions. This creates legal loopholes that can be exploited by individuals or groups to avoid legal liability.[14] Research shows that this legal uncertainty can result in low corporate compliance with the principle of beneficial owners, thereby hindering effective law enforcement efforts.[15]

Another significant challenge is the limited capacity of law enforcement to conduct in-depth investigations. Law enforcement often faces difficulties in gathering the evidence necessary to identify beneficial owners, especially when dealing with large corporations that have the resources to obstruct the investigation process.[16] This demonstrates the need for capacity building and training for law enforcement to understand and apply beneficial owner principles effectively in practice.

In addition, social and cultural challenges also play a role in the process of identifying beneficial owners. In some cases, there is resistance from the community or stakeholders to the expected transparency of beneficial owner disclosure. This can be due to distrust of legal institutions or concerns about the negative impact on the reputation of the

[13] Suryanti, "Notary in the application of the principle of recognizing the beneficial owner in relation to the nominee agreement."
[14] Rodliyah Rodliyah, Any Suryani, and Lalu Husni, "The Concept of Corporate Crime in the Indonesian Criminal Law System," *Journal of Law Compilation* 5, no. 1 (February 9, 2021): 191–206, doi:10.29303/jkh.v5i1.43.
[15] Eddy O. S. Hiariej, "CORRUPTION IN THE PRIVATE SECTOR AND CORPORATE CRIMINAL LIABILITY," *Legal Issues* 49, no. 4 (October 29, 2020): 333–44, doi:10.14710/mmh.49.4.2020.333-344.
[16] Achmad Sofwan Mustafiddin et al., "Juridical Analysis of Criminal Penalties Against Corporations Committing Corruption Crimes (Study of the Decision of the Surabaya District Court Number 95/Pid.Sus-TPK/2019/PN Sby)," *Journal of Collaborative Science* 6, no. 1 (January 31, 2023): 79–89, doi:10.56338/jks.v6i1.3259.

individuals or corporations involved.[17] Therefore, a more inclusive and participatory approach is needed in the process of identifying beneficial owners to build trust and support from the community.

The Role of Notaries in the Application of the Beneficial Owner Principle

The role of notaries in the application of the beneficial owner principle in Indonesia is very important, especially in the context of corporate criminal law and the prevention of money laundering crimes. A notary functions as a public official who has the responsibility to ensure that all transactions carried out by him comply with applicable legal provisions, including the identification of the beneficial owner of a corporation. In this case, the notary is expected to identify and verify the parties involved.

One of the important aspects of the notary's role is the obligation to report suspicious transactions to the Financial Transaction Reporting and Analysis Center (PPATK). This is regulated in Law Number 30 of 2004 concerning the Notary Position, which requires notaries to act proactively in detecting and preventing money laundering crimes.[18] Research shows that although notaries have the authority to report suspicious transactions, the implementation of these obligations often does not run optimally. This is due to a lack of adequate understanding and training on suspicious transaction indicators.[19]

In addition, the notary also plays a role in ensuring the validity of the deed he makes. In the context of applying the principle of beneficial owners, the notary must ensure that all information provided by the parties involved is accurate and not misleading. If the notary fails to carry out this task, then the resulting deed can be considered null and void.[20] Therefore, the application of the principle of prudence in the preparation of authentic deeds is very important to maintain integrity and trust in the notary profession.[21]

However, the challenges faced by notaries in carrying out their roles are not few. One of the main challenges is the complexity of corporate ownership structures that are often designed to hide the identity of the owners. In many cases, notaries must deal with documents that are not transparent or even fake, which can hinder the process of

[17] S Sunarti et al., "Challenges of Tourism Development Based on the Dynamics of Community Participation in Montongsari Village, Kendal Regency," *Journal of Regional and Urban Development* 18, no. 4 (December 31, 2022): 367–80, doi:10.14710/pwk.v18i4.49740.
[18] Teuku Ulya Murtadha, Dahlan Ali, and Mohd Din, "The Obligation of Notaries to Report Suspicious Transactions in the Prevention and Eradication of Money Laundering Crimes," *Syiah Kuala Law Journal* 3, no. 3 (December 30, 2019): 364–79, doi:10.24815/sklj.v3i3.12486.
[19] Kartina Pakpahan et al., "Notary Principles in the Identification of Perpetrators of Money Laundering Crimes," *Prima Law (IHP)* 3, no. 1 (October 3, 2020), doi:10.34012/jihap.v3i1.929.
[20] Suhartati Suhartati, "The Application of the Principle of Prudence in Making Authentic Deed at the Gowa Regency Notary Office," *PETITUM* 8, no. 2 (October 29, 2020): 187–97, doi:10.36090/jh.v8i2.819.
[21] Desya Qotrannadha and Hanafi Tanawijaya, "The Application of the Notary Principle of Prudence in the Preparation of Authentic Deed in the Face of Fake Identity," *Syntax Literate; Indonesian Scientific Journal* 8, no. 5 (May 12, 2023): 3188–97, doi:10.36418/syntax-literate.v8i5.11804.

identifying beneficial owners.[22]

Therefore, capacity building and training for notaries in terms of identifying beneficial owners and preventing money laundering crimes are urgently needed. Overall, the role of notaries in the application of the beneficial owner principle is crucial to ensure that corporate transactions are carried out in a transparent and accountable manner. By carrying out their duties professionally and complying with applicable legal provisions, notaries can help prevent abuses that can harm the community and maintain the integrity of the legal system in Indonesia.

4. Conclusion

The application of the principle of beneficial owners in corporate criminal law in Indonesia is an important step in efforts to prevent and eradicate criminal acts such as money laundering and corruption. Despite the regulations governing this principle, challenges in identifying beneficial owners and complying with regulations remain significant obstacles. Therefore, regulatory reform, the development of an integrated database system, and increased socialization are needed to improve the application of the principle of beneficial owners. With these measures, it is hoped that a more transparent and accountable business environment can be created, as well as strengthen the existing criminal law system to tackle corporate crime more effectively.

[22] Suryanti, "Notary in the application of the principle of recognizing the beneficial owner in relation to the nominee agreement."

References

Law

Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang

Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris

Journal

Achmad Sofwan Mustafiddin, Ferry Adi Jaya, Lina Susiana, and Susanawati. "Analisis Yuridis Penjatuhan Pidana Terhadap Korporasi Yang Melakukan Tindak Pidana Korupsi (Studi Putusan Pengadilan Negeri Surabaya Nomor 95/Pid.Sus-TPK/2019/PN Sby)." *Jurnal Kolaboratif Sains* 6, no. 1 (January 31, 2023): 79–89. doi:10.56338/jks.v6i1.3259.

Agustianto. "Pentingnya Transparansi Beneficial Ownership Oleh Korporasi." *JUSTISI* 8, no. 2 (May 21, 2022): 108–18. doi:10.33506/js.v8i2.1678.

Alhakim, Abdurrakhman, and Eko Soponyono. "Kebijakan Pertanggungjawaban Pidana Korporasi Terhadap Pemberantasan Tindak Pidana Korupsi." *Jurnal Pembangunan Hukum Indonesia* 1, no. 3 (September 24, 2019): 322–36. doi:10.14710/jphi.v1i3.322-336.

Amirullah, Amirullah. "Korporasi Dalam Perspektif Subyek Hukum Pidana." *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 2, no. 2 (October 1, 2012): 139–60. doi:10.15642/ad.2012.2.2.139-160.

Ariani, Nevey Varida. "Beneficial Owner: Mengenali Pemilik Manfaat Dalam Tindak Pidana Korporasi." *Jurnal Penelitian Hukum De Jure* 20, no. 1 (March 23, 2020): 71. doi:10.30641/dejure.2020.V20.71-84.

Arifin, Ridwan, and Shafa Amalia Choirinnisa. "Pertanggungjawaban Korporasi Dalam Tindak Pidana Pencucian Uang Dalam Prinsip Hukum Pidana Indonesia (Corporate Responsibility on Money Laundering Crimes on Indonesian Criminal Law Principle)." *JURNAL MERCATORIA* 12, no. 1 (June 25, 2019): 43. doi:10.31289/mercatoria.v12i1.2349.

Disemadi, Hari Sitra, and Nyoman Serikat Putra Jaya. "Perkembangan Pengaturan Korporasi Sebagai Subjek Hukum Pidana Di Indonesia." *Jurnal Hukum Media Bhakti* 3, no. 2 (November 3, 2019): 118–27. doi:10.32501/jhmb.v3i2.80.

Fernando. "Limited Company Beneficial Owner Liability in Criminal Acts of Corruption," 2021. doi:10.2991/assehr.k.211223.094.

Hiariej, Eddy O. S. "KORUPSI DI SEKTOR SWASTA DAN TANGGUNG JAWAB PIDANA KORPORASI." *Masalah-Masalah Hukum* 49, no. 4 (October 29, 2020): 333–44. doi:10.14710/mmh.49.4.2020.333-344.

Kristina, Michelle. "Strengthening Corporate Crime Prevention In The Digital Economy In ASEAN." *JURNAL YUSTIKA: MEDIA HUKUM DAN KEADILAN* 26, no. 02 (June 26, 2024): 120–31. doi:10.24123/yustika.v26i02.6618.

LAWRENCE, VELLICHIA. "Analisis Yuridis Kedudukan Notaris Dalam Mengungkapkan Pemilik Manfaat (Beneficial Ownership) Dalam Pembuatan Akta Notaris." *Jurnal Perspektif Hukum* 2, no. 1 (March 19, 2021): 15–25. doi:10.35447/jph.v2i1.269.

Listawati, Listawati. "Pertanggungjawaban Pidana Korporasi Pada Perkara Tindak Pidana Pencucian Uang." *Justitia et Pax* 37, no. 2 (December 22, 2021). doi:10.24002/jep.v37i2.4412.

Murtadha, Teuku Ulya, Dahlan Ali, and Mohd Din. "Kewajiban Notaris Melaporkan

Transaksi Mencurigakan Dalam Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang." *Syiah Kuala Law Journal* 3, no. 3 (December 30, 2019): 364–79. doi:10.24815/sklj.v3i3.12486.

Pakpahan, Kartina, Maggie Maggie, Christian Agung Prawito, and Wico Dwi Pratama. "Prinsip Notaris Dalam Pengenalan Pelaku Tindak Pidana Pencucian Uang." *Ilmu Hukum Prima (IHP)* 3, no. 1 (October 3, 2020). doi:10.34012/jihap.v3i1.929.

Qotrannadha, Desya, and Hanafi Tanawijaya. "Penerapan Prinsip Kehati-Hatian Notaris Dalam Pembuatan Akta Otentik Yang Penghadapnya Menggunakan Identitas Palsu." *Syntax Literate ; Jurnal Ilmiah Indonesia* 8, no. 5 (May 12, 2023): 3188–97. doi:10.36418/syntax-literate.v8i5.11804.

Rodliyah, Rodliyah, Any Suryani, and Lalu Husni. "Konsep Pertanggungjawaban Pidana Korporasi (Corporate Crime) Dalam Sistem Hukum Pidana Indonesia." *Journal Kompilasi Hukum* 5, no. 1 (February 9, 2021): 191–206. doi:10.29303/jkh.v5i1.43.

Rustan, Ahmad, Ju Lan Hsieh, and Wahyudi Umar. "Maladministration on Mining Business Licenses: Case Study "Mining Business License Production Operation PT. Aneka Tambang, Tbk." *Varia Justicia* 17, no. 03 (2021): 246–57.

Suhartati, Suhartati. "Penerapan Prinsip Kehati-Hatian Pembuatan Akta Otentik Pada Kantor Notaris Kabupaten Gowa." *PETITUM* 8, no. 2 (October 29, 2020): 187–97. doi:10.36090/jh.v8i2.819.

Sunanda, Deddy, Topo Santoso, Eva Achjani Zulfa, and Muhammad Yusuf. "Concept of Benefit Owner's Responsibility in Crime in Indonesia: Charging Criminal Actors Behind Corporates." *International Journal of Engineering Business and Social Science* 1, no. 05 (May 8, 2023): 363–71. doi:10.58451/ijebss.v1i05.62.

Sunarti, S, Maya Damayanti, Landung Esariti, Mardwi Rahdriawan, and Novia Cecilia Medina. "Tantangan Pengembangan Wisata Berdasarkan Dinamika Partisipasi Masyarakat Desa Montongsari, Kabupaten Kendal." *Jurnal Pembangunan Wilayah Dan Kota* 18, no. 4 (December 31, 2022): 367–80. doi:10.14710/pwk.v18i4.49740.

Nyulistiowati Suryanti. "Notaris Dalam Penerapan Prinsip Mengenali Pemilik Manfaat Dalam Kaitannya Dengan Perjanjian Nominee." *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 4, no. 1 (December 31, 2020): 369–77. doi:10.23920/acta.v4i1.367.