

Development of The Principle of Beneficial Ownership Identification of a Corporation and Their Implications for Tax Paying Obligation

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Article	Abstract
<p>Keywords: beneficial ownership principle, corporation, taxpayer, tax treaty</p> <p>Artikel History Received: Feb 8, 2024; Reviewed: Mar 31, 2024; Accepted: Apr 21, 2024; Published: Apr 30, 2024.</p> <p>DOI: 10.20961/jolsic.v12i1.84480</p>	<p>Business has a significant role in the Indonesian economy, contributing through tax revenue and foreign exchange. Nevertheless, violations such as manipulation and tax evasion by some companies can adversely affect economic growth. One strategy for tax avoidance is through Beneficial Ownership, especially with the treaty shopping scheme, which can result in significant losses in national tax revenue. The focus of this research is on the implementation of the "recognizing beneficial ownership" principle and increasing data transparency as a preventive measure against tax avoidance strategies. The aim of this study is to examine the implications of applying the principle of recognizing the beneficial ownership of corporations on tax payment obligations. This research uses a normative legal research method with a statutory approach. The implementation of rules related to beneficial ownership in Indonesia, especially after the enactment of Presidential Regulation No. 13 of 2018, is considered a key step in addressing tax avoidance. However, this study indicates that despite the regulations being in place, further preventive efforts are needed, such as the application of Limitation on Benefits and Principal Purpose Test, to prevent treaty shopping and ensure that transactions or agreements are not solely aimed at obtaining tax benefits.</p>

INTRODUCTION

Nowadays corporation has such a huge role for the Indonesian economy. A corporation is a legal entity that has its own legal identity, which means that the legal identities of its shareholders and corporate managers are separate from the corporate law identity. (Jatmiko & Prananingtyas, 2023, page number 238). According to Law No. 15 of 2002 on the Criminal Procedure for Money Laundering, corporations are defined as “a group of people and/or assets organized either as legal bodies or as non-legal bodies.” Furthermore, according to Yan Pramadya Puspa, a corporation is a company that is a legal body. A corporation or association is an association or organization that, by law, is treated as a personal entity, i.e., as the holder or owner of rights and obligations. (Priyatno, 2012). The impact of this corporation is basically dependent on its process and course, where the corporation can have a good impact if it is run on the basis of good faith and can have a bad impact when it is not run with good faith.

The major contribution of corporations to the development of a country can be seen primarily in the economic sphere, for example, through state contributions in the form of taxes or currencies. According to the website of the Secretariat of the Cabinet of the Republic of Indonesia, by the end of July 2023, state receipts from taxes had reached Rs1.109.1 trillion, or 64.6 percent of the target State Revenue and Expenditure Budget (APBN) for 2023 (2023). It shows that the largest source of income for the state is through taxes. On the other hand, it is true that many corporations violate the law by manipulating taxes and evading payments that have a negative impact on the country's economic growth. (Rully Trie Prasetyo dkk., 2017). One of the schemes used by the corporation to conduct tax manipulation and tax evasion is the scheme related to beneficial ownership. Beneficial Ownership on the basis of Article 1, Paragraph (2), of Presidential Regulations No. 13 of 2018 on the Application of the Principle of Recognition of Beneficial Ownership of Corporations in the Framework of Prevention and Prevention of Criminal Acts of Money Laundering and Punishment of Financing of Terrorism, which will then be called President (President) No. 13 of 2018, is:

“A person who may appoint or dismiss a director, board of directors, director, builder, or supervisor of a corporation, has the ability to control the corporation, is entitled to and/or receives benefits from the corporation either directly or indirectly, is the actual owner of the funds or shares of the corporation.”

This tax avoidance scheme can occur when a company or corporation located in Indonesia pays interest, royalties, or dividends to a party located in another country at a low tax rate or a country that has a double-tax avoidance agreement (P3B) with an Indonesian country. In fact, the beneficial ownership of the corporation actually exists in a country that does not have a double tax avoidance treaty (P3B). Such a double tax avoidance agreement may then be abused by a taxable person whose taxable party is located in a third country that is not a party to the double tax avoidance agreement by placing an agent or nominee, i.e., a party acting on behalf of another person under a nominee trustee agreement or a name-share loan agreement with a subject originating in a country that has entered into a double tax avoidance treaty (Darussalam & Septriadi, 2017, Page Number 335). The abuse scheme of the double tax avoidance agreement is

called treaty shopping. This scheme is a form of taking advantage of the double tax avoidance agreement by a person or a party who should not be entitled to the benefits of the double tax avoidance agreement (Tiono & Sadjiarto, 2013).

Then a step that can be taken to prevent the existence of a double tax avoidance scheme related to the beneficiary or beneficial ownership is by applying the principle of recognizing the beneficial owner or knowing your beneficiary's ownership and transparency of the data beneficiary of the corporation. So far, many corporations have not beneficial ownership of the corporation. This can be seen from a report from the Ministry of Law and Human Rights, or Kemenkumham. Out of 1,461,223 corporations in existence, there are only 58,743 corporations that have already reported beneficiaries of the corporation, while 1,402,480 other corporations have not reported beneficial owners of those corporations (Kamilah & Khan, 2021). Starting from the background of the problems that have been described earlier, the focus of discussion in this study is how the regulation on the principle of recognizing the owner of benefits or knowing your beneficial ownership as well as its implications for the obligation to pay taxes.

RESEARCH METHODS

This research uses legal research methods. According to Peter Mahmud Marzuki, legal research is the process of finding the rules of law, the principles of law, and the doctrines of law in order to answer the legal issues that are the focus of research. The approach used in this research uses the statute approach as well as research materials in the form of primary legal material, namely legislative regulations, secondary legal materials, such as literature related to this research, and tertiary legislative materials, such as dictionaries. This research material will later be analyzed in an analytically descriptive manner (Marzuki, 2017).

ANALYSIS AND DISCUSSION

1. The Regulation of Know Your Beneficial Owner's Principle

The term beneficial ownership first appeared in the Model Organization for Economic Cooperation and Development (OECD) Model precisely in 1977, due to the issue of taxation. The emergence of the concept of beneficial ownership is a form of attempt to limit individuals who receive tax deductions in a country on their income in the form of dividends, royalty, or interest. (Jatmiko & Prananingtyas, 2023). Then, in 2012, the Financial Action Task Force Recommendations (FATF) issued a recommendation regulating beneficial ownership as a form of breakthrough to eradicate money-laundering cases in drug transactions at the time. The application of the principle of recognition of beneficiaries in Indonesia is basically done in accordance with the FATF recommendations. The Regulation of Know Your Beneficial Owner's Principle (Ramadhani & Hutagalung, 2022, Page Number 60).

Beneficial Ownership based on Herman LJ's opinion quoted by Meyer (Meyer, t.t.) stated that beneficial ownership is property that is not only legally registered as ownership but also has the right to decide what to do with the possessed property. The term beneficiary in Indonesia was first introduced in SE-04/PJ.34/2005 on guidelines for the application of the beneficial owner criteria as set out in the double tax avoidance agreement between Indonesia

and other countries (Ardianyah, 2021). Subsequently, the definition of beneficial owners in Indonesia is contained in Article 1(2) of the Presidential (President) Regulations No. 13 of 2018 and then mentioned again in the regulations of its implementation, namely the Ministry of Law and Human Rights (Fraud) Regulation No. 15 of 2019 in Article 1(2): an individual who can appoint or dismiss the board of directors, commissioners, managers, builders, or supervisors of a corporation, has the ability to control the corporation, is entitled to and/or receives benefits from the corporation either directly or indirectly, is the actual owner of the funds or shares of the corporation. So the definition shows that beneficial ownership or beneficiary ownership has enormous authority in influencing the corporation, and we can mean that there are two types of benefit receipt: the direct beneficiary and the indirect beneficiary.

The principle of recognition of beneficiaries is a principle that requires the identification of the beneficiaries and verification of the beneficial owners of a corporation. The President's Decree No. 13 of 2018 on the Application of the Principle of Recognition of Owners Benefits of Corporations became the latest legal basis for applying the principle of knowing your beneficial ownership. Prior to the approval of Presidential Regulation No. 13 of 2018, the term beneficiary or beneficial owner had been first known by notaries, as this term was contained in the Regulation of the Minister of Law and Human Rights (Kemenkumham) No. 9 of 2017 on the Application of the Principle of Identification of Users of Services to Notaries, which even existed in the General Director of Tax Regulations No. PE62/PJ./2009.

Until the time this writing was made, there have been several regulations that regulate the principle of recognition of beneficiary or beneficial ownership in Indonesia, such as the Regulation of the Minister of Law and Human Rights No. 9 of 2017 on the Application of the Principle of Recognition of Users of Services to Notaries, Perpres No. 13 of 2018, and Regulations of the Minister of Law and Human Rights No. 15 of 2019 on the Procedures for Implementation of the Principle of Identifying Benefit Owners of the T.E.U. Corporation of Indonesia, later referred to as Permenkumham No. 15 of 2019. In general, Permenkumham No. 9 of 2017 regulates how notaries are obliged to obtain information about the users of the services of such notaries, including the beneficiaries, and how the notaries can obtain such information. There are also other regulations, such as the Finance Minister's regulation No. 19/PMK.03/2018 and the tax regulations No. PER-10/PJ/2017. Furthermore, Presidential Regulations No. 13 of 2018 sets out the criteria to be met in determining beneficiaries and how the principle of recognizing beneficiaries should be implemented. Then Permenkumham No. 15 of 2019 became a technical benchmark for the implementation of the principle of recognizing the owner of the benefit.

In Indonesia, the submission of information about beneficial ownership after being issued by Perpres No. 13 of 2018 becomes something that a corporation is obliged to do. The submission of information under Minister of Law and Human Rights regulations number 15/2019 is electronically through the General Law Administration Online (AHU) and must be updated periodically every one year. The information on beneficial ownership will be subsequently submitted by the notary, founder, or manager of a corporation and other parties

authorized by the founder of the corporation or manager, as stipulated in Article 9 Permenham 15/2019. Determination of the beneficiaries of the corporation based on Permenham 15/2019 through the identification stage, which is the collection of information from the statements of each authority, authority institution, reporting party, and other information that can be held accountable. After the identification is done, the information about the beneficial ownership will be verified through a study of the correspondence between the information of the beneficiary and the supporting documents carried out by the corporation. However, there is no explanation of any further process for verifying the authenticity of the beneficiary information that has been identified.

2. Implications of the Regulations of the Principle of Knowing the Beneficial Ownership Against the Obligation to Pay Tax Post-Implementation of Presidential Decree No. 13 of 2018, In the form of Regulation of the Minister of Law and Human Rights No. 15 of 2019

As we have known together that 64.4% (sixty-four commas, four percent) of the government state budget (APBN) income comes from tax receipts, the problem that emerged later is the existence of a tax evasion scheme by beneficial ownership through a double tax avoidance agreement (P3B), as described in the background of this writing. This has caused Indonesia to suffer losses in terms of reduced tax revenues. Quoted from DDTC News (Wildan, 2020), Research The Netherlands Bureau for Economic Policy Analysis (Central Planbureau/CPB) revealed that Indonesia was injured by the dual tax avoidance commitment. Even in the document Dutch Tax Treaties and Developing Countries: A Network Analysis, the CPB revealed that the double tax avoidance pledge was widely exploited by multinational corporations for tax evasion. This has caused Indonesia to suffer losses in terms of reduced tax revenues. Based on the calculation of the CPB, the potential tax receipts lost from dividends that cannot be collected by Indonesia as a result of a double tax avoidance undertaking amounted to 53.8% of the total potential receivables available, and 44.1% and 46.6% of the total potential income taxes from interest and royalty cannot be withdrawn by Indonesia.

The concept of beneficial ownership becomes crucial as an attempt to provide clear limits on who can be beneficiaries of the existence of a double tax avoidance agreement in a country or its receipts from dividends, interest, and royalty revenues. So there is a need for arrangements governing the application of the principle of recognition of beneficial ownership to avoid abuse of the reduction tax treaty facility (Ardianyah, 2021). The publication Perpres 13/2018 on the principle of beneficial ownership primarily aims to prevent and eradicate the crime of money laundering as well as the financing of terrorism because corporations are closely used as a means both directly and indirectly to commit such crimes. The purpose of this Perpres is also in line with the FATF recommendations. Although there are conceptual differences and they do not explicitly regulate the tax sector, Perpres No. 13/2018 can also avoid tax evasion carried out with treaty shopping schemes by the actual beneficial ownership, as described in the background of this notice. So the availability of information about the beneficial ownership of a corporation implies the proper use of the benefits obtained from the tax treaty through a double tax avoidance obligation against a state. But in addition to applying

the principle of recognition of benefits, there is a need for other efforts to ensure that the potential for tax avoidance through treaty shopping is minimized. Another effort to be made is to introduce a limitation on benefits, or LOB, an anti-treaty shopping provision intended to prevent third-country residents from gaining benefits under agreements that are not intended for them. In order to achieve that goal, the clause of the LOB contains a number of alternative tests, in which residents of a state party meet at least one such test. The principal purpose test is the approach used to test whether a transaction or agreement is solely made to benefit from a double-tax avoidance agreement, whether obtained directly or indirectly (Kurniawan & Rahayu, 2022, Page Number 2798). Thus, by applying these settings, it is possible to prevent tax evasion by beneficial ownership.

CONCLUSION

The corporation plays a crucial role in the economic development of Indonesia as a separate legal entity from its shareholders and managers. The major role of corporations is seen in the economic sector, providing state input from taxes and currencies, although the effects can vary depending on the good faith and regularity of the process. Although tax receipts are one of the key aspects of corporate contributions, some corporations are engaged in violations such as tax manipulation and tax evasion, which can harm economic growth. Tax evasion schemes, including through Beneficial Ownership, a treaty shopping scheme, are emerging problems. The implementation of the principles of "knowing the beneficial ownership" and data transparency became important as a preventive measure for preventing tax evasion schemes through treaty shopping.

The implementation of regulations concerning beneficiary or beneficial ownership in Indonesia is one of the steps taken to prevent tax evasion. As a further preventive measure, the implementation of the Limitation on Benefits (LOB) and Principal Purpose Test became relevant to prevent treaty shopping and to ensure that a transaction or agreement was not made solely to obtain tax benefits. Thus, this arrangement is expected to reduce the potential tax evasion by beneficial ownership.

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