

Legal Architecture Beneficiary Owners at Individual Company; Reconstruction and Opportunity

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Article	Abstract
<p>Keywords: Beneficiary Owners, Individual Company, Legal Architecture.</p> <p>Artikel History Received: Oct 27, 2024; Reviewed: Oct 28, 2024; Accepted: Oct 29, 2024; Published: Oct 31, 2024.</p> <p>DOI: 10.20961/jolsic.v12i2.944 92</p>	<p>There is a legal vacuum in the regulation of beneficiary owners of companies in Indonesia. The regulation of beneficiary owners, which should be used as a preventive supervision method, is misinterpreted as a form of repressive supervision. As a result, preventive supervision of financial transactions involving money laundering crimes is slightly slower than it should be. Another legal vacuum also occurs in relation to whether beneficiary owners share the burden of the company's debt if the company goes bankrupt. This research will be limited to individual companies only. As a new company, and targeting micro, small, and medium companies, the potential for money laundering crimes against this company is even greater. The entire description above has not been expressly regulated in Indonesian national law. This research uses normative legal research with a statutory approach and a conceptual approach. The results of the research obtained indicate that there is indeed a legal vacuum in the regulation of beneficiary owners. Therefore, it is necessary to reconstruct the regulation of beneficiary owners, so that this legal vacuum does not happen again.</p>

INTRODUCTION

Money laundering is one of the crimes that continues to be eradicated in many countries (Teichmann, 2020: 26). One of them is Indonesia. Therefore, preventive and repressive supervision mechanisms are prepared. Repressive supervision is of course carried out by every law enforcement officer who has the authority to investigate corruption. Meanwhile, preventive supervision is carried out by reporting every financial transaction to the Financial Transaction Reports and Analysis Center (PPATK). PPATK initially received reports from various financial institutions, banks, and non-banks regarding suspicious transactions. After receiving the report, PPATK then analyzes the data and information obtained. This includes detecting potential money laundering or other unlawful acts. If the results of the analysis indicate such indications, PPATK will forward the information to the relevant law enforcement officers.

Based on the applicable mechanism, PPATK's performance report does show interesting data and facts. As of June 2023, PPATK found 11,495 Suspicious Financial Transaction Reports (LKTM). This number reaches 53.1% of all financial transaction reports submitted to PPATK. It should be noted that the number of financial transactions submitted to PPATK as of June 2023 reached 2,649,961 reports (Keuangan, 2023: 10). This number of LKTM is the largest number of reports compared to other financial reports which include Cash Financial Transaction Reports (LTKT), Cash Carrying Reports (LPUT), Goods and Services Provider Transaction Reports (LTPBJ), Fund Transfer Reports from/to Abroad (LTKL), and Transaction Delay Reports (LPT). In addition to PPATK reports, the state also carries out preventive supervision of every financial transaction by regulating Beneficiary Owners (BO). This regulation is a recommendation from the Financial Action Task Force (FATF) in 2012, which requires every country to ensure that every company established according to national law is not the result of money laundering (Urooj, 2024: 98).

Therefore, the state is required to create an integrated system, so that Beneficiary ownership and access to legal entities can be known in a timely manner by the competent authorities (Knobel & Lorenzo, 2022: 27). From the results of this recommendation, in 2018, the state enacted Presidential Regulation Number 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficiary Owners of Corporations in the Framework of Preventing and Eradicating Money Laundering and Terrorism Financing. This Presidential Regulation further regulates who has the right and may become the Beneficiary owner of a company. At first glance, the regulation on Beneficiary owners is good. However, the author found that there is a legal vacuum among the existing regulations, so it needs to be improved. The legal vacuum in question includes whether the Beneficiary owner will have his assets confiscated if the company goes bankrupt. Or, regulations regarding requests for Beneficiary owner data. Requests for data regarding Beneficiary owners are only made after there is a suspicious transaction report from the PPATK. Thus, this regulation places Beneficiary owners as a repressive supervision mechanism. In fact, from its characteristics, the provisions regarding Beneficiary owners are a form of preventive supervision that should be carried out before a crime occurs. Problems also occur related to the non-listing of Beneficiary owners in the Articles of Association or the Deed of Establishment of a Legal Entity

for Individual Companies. This certainly makes it difficult to track who is the Beneficiary owner of a company. Based on the description above, the author is interested in reformulating the ideal regulation regarding Beneficiary owners, especially for individual companies.

RESEARCH METHODS

This research is a normative legal research (Negara, 2023:17). The legal issues raised in this research are the existence of legal vacuum and legal ambiguity in the regulation regarding Beneficiary owners. As is known, normative legal research only uses studies secondary legal materials (Taekema & van der Burg, 2024: 25). Therefore, this research will also study all laws and regulations, principles, principles, and doctrines related to Beneficiary Owners in particular, as well as corporate law in general. This research will also use the statute approach method and the conceptual approach (Kadir & Kadir, 2024: 31). All of them aim to formulate and reconstruct the regulation regarding Beneficiary owners, especially in individual companies.

ANALYSIS AND DISCUSSION

1. National Legal System On Beneficiary Owner

As with other legal aspects, supervision of the occurrence of money laundering crimes also has 2 supervision mechanisms. First, Preventive Supervision and Second, Repressive Supervision (Setiawan et al., 2024: 64). Preventive Supervision is carried out before the crime occurs, and repressive supervision is carried out after the crime occurs. Several forms of preventive supervision in the context of handling money laundering crimes are (Zein & Septiani, 2023: 72):

- 1) Education and Socialization. This is done by several related institutions such as the Corruption Eradication Commission (KPK), the Financial Transaction Reports and Analysis Center (PPATK), and the Police. This concept is given to the general public, especially regarding the importance of reporting suspicious financial transactions.
- 2) Transaction Monitoring. The financial system in the digital era continues to be developed, especially in relation to the possibility of suspicious financial transactions. With the increasingly massive use of technology, especially in the modern financial system, it is very possible to monitor suspicious financial transactions. This process sometimes also runs quickly because financial reports can be accessed in real time.

As for supervision which is repressive in nature, among others are (Sari et al., 2022: 15):

- 1) Investigation and Prosecution. This mechanism runs after a report from PPATK regarding the possibility of suspicious financial transactions. Each appointed law enforcement officer then carries out investigations and prosecutions according to their authority.
- 2) Asset Confiscation. This mechanism is an integral part of the investigation and prosecution process. Because the confiscation or asset recovery process is used as a form of accountability for the perpetrator for state or victim losses caused by the crime of money laundering.

As previously explained, another form of supervision is through regulations regarding Beneficiary Owners. Regulations regarding Beneficiary Owners in Companies are regulated

in Article 4 paragraph (1) of Presidential Regulation Number 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficiary Owners of Corporations in the Framework of Preventing and Eradicating Money Laundering and Terrorism Financing Crimes. In these regulations, what is meant by Beneficiary Owners is:

- 1) Own more than 25% of shares in the Company;
- 2) Own more than 25% of voting rights in the Company;
- 3) Receive more than 25% of profits in the Company;
- 4) Have the authority to appoint, replace, or dismiss members of the board of directors and members of the board of commissioners;
- 5) Have the authority or power to influence and control the Company;
- 6) Receive benefits from the Company;
- 7) Are the actual owners of funds from the ownership of Company shares.

Beneficiary Owners are basically the true owners of a company. This is proven by Beneficiary Owners who have the right to own shares, the right to have voting rights, the right to receive profits from the company, and the right to appoint and dismiss directors and commissioners (Alexander, 2020: 201). A position that is almost the same as shareholders. However, there are very striking differences between Shareholders and Beneficiary Owners. These differences can be illustrated through the following table (Tingle, 2021: 96):

Table 1: Differences between Beneficiary Owners and Shareholders

Differences	Beneficiary Owners	Shareholders
Ownership Aspects	Not a direct owner	Direct Owner
Profit sharing	Receive more than 25% profit	Receive profits according to the number of shares owned

Beneficiary Owners and shareholders are the owners of a company. However, Beneficiary Owners are not direct owners, while shareholders are direct owners of the company. This means that Beneficiary Owners sometimes do not have shares in the company, but all capital from the company comes from them. Meanwhile, shareholders must be able to prove their ownership of shares in the company so that they can make strategic decisions for the company. In addition, the profit can be given more than 25% of the company's profit. Meanwhile, shareholders get profits based on their ownership of shares in the company. On another occasion, after the Covid-19 pandemic, the government began launching a policy package, which many parties considered controversial. The policy package is the Job Creation Law. Initially, the Job Creation Law was regulated in Law Number 11 of 2020 concerning Job Creation. The law was then challenged at the Constitutional Court and declared unconstitutional. Then, the government together with the legislative body re-established Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. The Job Creation Law is basically a policy package that aims to facilitate licensing and increase domestic investment.

Although controversial, this policy leaves behind policies that deserve appreciation. One of them is the establishment of individual companies. Individual companies aim to be an effort by the government to recognize the existence of micro and small business actors as legal entities. So far, these micro and small business actors have not received recognition facilities from the state and tend to turn into informal sectors that are not licensed. With the Job Creation Law, these micro and small business actors receive recognition in the form of establishing individual companies. This policy has also received an extraordinary response from the public. Based on data from the General Legal Administration (AHU) of the Ministry of Law and Human Rights, since it was first recognized in 2021 to October 2023, there have been 175,023 new individual companies born in Indonesia (Rumawi et al., 2023: 84).

An individual company is a company that can be established by just 1 person. All registration processes are easy not only because they can do it through the internet, but also not inexpensive. In this individual company organ, there is an organ regarding beneficiaries. However, in practice, many legal gaps have been found that regulate beneficiaries in this individual company. Among others are:

- 1) The Beneficiary Owners is not listed in the Articles of Association or the Company's Statement of Establishment

As an important part of a company, the Beneficiary Owners does not appear in the deed of establishment or articles of association of individual companies. The following is evidence of the Statement of Establishment and Articles of Association obtained by the author from the Directorate of General Legal Administration (AHU) of the Ministry of Law and Human Rights:

Figure 1: *Statement of Establishment and Articles of Association of an Individual Company*



KEMENTERIAN HUKUM DAN HAK ASASI MANUSIA REPUBLIK INDONESIA

SERTIFIKAT PENDAFTARAN PENDIRIAN PERSEROAN PERORANGAN

NOMOR : AHU-01/ [REDACTED] in 2022

PT [REDACTED] INDONESIA
Berkedudukan di Kota Bandung

telah terdaftar sebagai badan hukum dan tercatat dalam pangkalan data Direktorat Jenderal Administrasi Hukum Umum. Sertifikat ini berlaku sejak tanggal diterbitkan.



Jakarta, 30 Mei 2022

a.n. Menteri Hukum dan Hak Asasi Manusia,
Direktur Jenderal Administrasi Hukum Umum



PERNYATAAN
PENDIRIAN PERSEROAN PERORANGAN

Data Perseroan

1. Nama perseroan : PT [REDACTED]

2. Alamat Lengkap : Bellezza Shopping Arcade Lantai 1 Unit 106, Kota Adm. Jakarta Selatan, DKI Jakarta

3. Kegiatan Usaha : • 10710 - Industri Produk Roti Dan Kue
• 10792 - Industri Kue Basah
• 47242 - Perdagangan Eceran Roti, Kue Kering, serta Kue Basah dan Sejenisnya
• 56109 - Restoran dan penyediaan makanan keliling lainnya

4. Modal Usaha : Rp. [REDACTED]

Data Pemilik Usaha

a. Nama Lengkap : Jul [REDACTED]

b. Tanggal Lahir : 13 [REDACTED]

c. Alamat Lengkap : Sa [REDACTED]
Tangerang

d. Nomor Induk Kependudukan : 36 [REDACTED]

e. Nomor Pokok Wajib Pajak : 81 [REDACTED]

Saya selaku Pendiri bertanggung jawab atas data yang Saya isi dan bersedia untuk menaati peraturan yang berkaitan dengan Perseroan Perorangan dan peraturan terkait lainnya.



Surat Pernyataan telah disetujui Pemohon secara elektronik.

Source: Directorate of General Legal Administration of the Ministry of Law and Human Rights

Based on the two images, it can be seen that the establishment of a sole proprietorship, it does not mention who the Beneficiary Owners is in the company. The statement of establishment only mentions the identity of the company and the identity of the business owner. Likewise, the Company's Articles of Association. This certainly makes it difficult to access and find out who the Beneficiary Owners of the company is.

- 2) There are no provisions regarding whether the Beneficiary Owners is responsible for the debt if the company goes bankrupt

As the Beneficiary Owners of the company, it is not explained in any law what the position of the Beneficiary Owners is if the company is in debt. When the company is declared bankrupt. This is different from shareholders. If the company experiences debt or is declared bankrupt, the shareholders are not responsible for the debt. However, if the company's debt continues to increase and is even declared bankrupt, then the share price of the company becomes meaningless. The impact is that shareholders will lose the money they have invested in the company.

This concept cannot be applied to Beneficiary Owners. Beneficiary Owners, as previously explained, do not have shares in the company. Especially individual companies. The impact is that when the company's performance continues to decline, the Beneficiary Owners cannot sell the shares they own. Because there are no shares being traded. When the company is declared bankrupt. There is no legal protection for Beneficiary Owners, even though at the reality the Beneficiary Owners are the owners of the source of funds from which the company was founded (Erdayani et al., 2023: 7).

Provisions regarding bankruptcy are only found in Article 22 of Presidential Regulation Number 13 of 2018 concerning the Application of the Principle of Recognizing Beneficiary Owners of Corporations in the Framework of Preventing and Eradicating the Crime of Money Laundering and the Crime of Financing Terrorism, which states:

“In the event that the Corporation is dissolved, the liquidator is obliged to administer documents relating to the Beneficiary Owners of the Corporation within a minimum period of 5 (five) years from the dissolution of the Corporation”.

There is also no mention of the position of the Beneficiary Owners if the company is dissolved or declared bankrupt. In this context, there is a legal vacuum, especially regarding the position of the Beneficiary Owners after the company is declared dissolved or bankrupt.

- 3) Access to Beneficiary Owners in sole proprietorships is only granted after there is suspicion of suspicious transactions

As explained previously, the regulation on Beneficiary Owners is real evidence of preventive supervision of the possibility of money laundering. However, in Article 26 of Presidential Regulation Number 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficiary Owners of Corporations in the Framework of Preventing and Eradicating Money Laundering and Terrorism Financing, it is stated:

- (1) In order to prevent and eradicate the crime of money laundering and the crime of financing terrorism by Corporations, the Authorized Agency may carry out cooperation in the exchange of information on Beneficiary Owners with requesting agencies, both nationally and internationally.
- (2) The implementation of cooperation in the exchange of information as referred to in paragraph (1) in the national scope is carried out in accordance with the provisions of laws and regulations.
- (3) The implementation of cooperation in the exchange of information as referred to in paragraph (1) in the international scope is carried out by the Authorized Agency in accordance with the provisions of laws and regulations in the field of foreign relations and international agreements.

The existence of Beneficiary Owners is changed into a form of repressive supervision, and no longer a form of preventive supervision. The existence of Beneficiary Owners must be verified before a company establishment permit is granted. So that it is clear whether in terms of Beneficiary Owners and their directors, there are indications of committing money laundering or not. The current regulation, because it places supervision of Beneficiary Owners only after a suspicious transaction report has been received, the process of handling money laundering becomes slower. Imagine, for example, if the identification of Beneficiary Owners had been carried out previously. Of course, the existence of suspicious transactions can also be known more quickly and can be identified earlier.

2. Legal Architecture of Beneficiary Owners in Indonesia

Legal Architecture, in simple terms, is the form of legal structure that will be created. This concept refers to the structure, system, and new legal framework that will regulate a certain aspect. Some key elements in building a legal architecture are as follows (Mason & Potts, 2023: 154):

- 1) Legal Substance. The legal substance in question is the laws and regulations that will be regulated, amended, or determined next;

2) Law Enforcement Institutions. After regulating and building legal construction in the aspects of the laws and regulations, what is built next is the law enforcement apparatus. This improvement includes procedures, methods, who is authorized, and what is the authority of each law enforcement institution.

The legal architecture referred in this article is certainly related to building legal regulations on Beneficiary Owners in Indonesia to be more equitable and guarantee legal certainty. As previously mentioned, there are many gaps and legal ambiguities in the regulatory aspects of Beneficiary Owners, especially in individual companies. Therefore, it is necessary to make various improvements to the legal substance and law enforcement agencies in improving this regulation. This is because, with the increasing number of individual company establishments, there will be more Beneficiary Owners who will be appointed in the company. Therefore, clear, firm, and non-vacuum-forming legal arrangements need to be implemented immediately (Edward H. Levi, 2013: 81). Several important points in the regulation of Beneficiary Owners are:

1) Beneficiary Owners must appear as part of the Company's Articles of Association and Statement of Establishment

The spirit of the need to create a systematic regulation regarding Beneficiary Owners is to avoid money laundering. Therefore, all Beneficiary Owners must have their identities displayed in the articles of association and the company's statement of establishment (Antony & Nurisman, 2023: 16). This certainly makes it easier for the public to see and monitor who the Beneficiary Owners are of all companies in Indonesia. The display of Beneficiary Owners also facilitates the supervision process that should be carried out by related institutions. Moreover, Beneficiary Owners for individual companies that are currently growing rapidly. Micro and small businesses, as a type of business that touches the lower class, have proven to be able to support the national economy. According to data from the Ministry of Cooperatives and UMKM as of 2023, the number of micro, small and medium businesses in Indonesia reached 65 million. This number even dominates almost 70 percent of national financial transactions. This means that more than 50 percent of economic transactions are carried out by micro, small and medium businesses (Yolanda, 2024; 23). Therefore, these micro, small and medium businesses have enormous potential. Moreover, it is equipped with an easy, cheap and fast individual company establishment program like now. The potential that emerges is not only in the form of economic turnover alone. Moreover, the potential for money laundering against micro and small businesses is also increasing. Therefore, every Beneficiary Owners must appear in the company's statement of establishment and its articles of association (Hafidzah et al., 2024: 33).

In order to support this idea, it is necessary to create a mandatory regulation. As previously explained, there is a legal vacuum in this aspect. There are no further regulations governing the Beneficiary Owners who must be displayed in the articles of association and the company's statement of establishment. It seems that the reason why Beneficiary Owners are not displayed in the articles of association and the company's statement of establishment

is because of doctrine. The existing doctrine does support this. Expert opinion states that Beneficiary Owners do not always have to appear in the company's articles of association. The most common reason given is to protect the privacy of the Beneficiary Owners himself. In addition, the Beneficiary Owners is displayed is a form of decision that is in the private realm. The state cannot go too far in regulating this (Mayrolla et al., 2023: 57).

This doctrine must not develop too far. The state must be firm, especially in ensuring that the crime of money laundering does not happen again. Therefore, it is necessary to add a mandatory regulation, that every Beneficiary Owners must be displayed in the articles of association and the company's statement of establishment. More specifically, this rule also applies to individual companies.

2) Beneficiary Owners must share responsibility if the company experiences losses or goes bankrupt

Beneficiary Owners, as explained previously, are not jointly responsible for the company's losses. The impact felt by Beneficiary Owners when a company goes bankrupt or goes bankrupt is the loss of money that has been invested in the company. This condition should not occur. Beneficiary Owners must be jointly responsible if the company goes bankrupt or goes bankrupt. Beneficiary Owners cannot let go and appear indifferent if the company is experiencing financial difficulties. After all, the most common cause of bankruptcy or go bankrupt is mismanagement. Meanwhile, who has the right to occupy a seat at the board of directors and management level is the result of the appointment of the Beneficiary Owners. Therefore, the Beneficiary Owners must also be jointly responsible (Hadju, 2023: 92).

The next question is, what form of responsibility does the Beneficiary Owners take if the company goes bankrupt or goes bankrupt? The liability of Beneficiary Owners in cases of bankruptcy or go bankrupt can vary depending on several factors, including the legal structure of the company and the laws in force in the country. Here are some important points (Jatmiko & Prananingtyas, 2023: 49):

- a. Limit of Liability. If the company is incorporated (such as a PT in Indonesia), the Beneficiary Owners usually have limited liability. This means that they are only liable for the company's debts to the extent of the investments they have made, not their personal assets;
- b. Fraud or Abuse. If it is proven that Beneficiary Owners have engaged in fraudulent practices, embezzlement, or abuse of the corporate structure to avoid liability, they may be held personally liable. In this case, creditors may file claims against their personal assets;
- c. Board of Directors. If Beneficiary Owners also serve on the board of directors or management, they may have additional responsibilities regarding business decisions made, especially if those decisions are deemed detrimental to the company;
- d. Legal Compliance. Beneficiary Owners must comply with applicable regulations. If they fail to meet their legal obligations, they may be subject to sanctions or lawsuits;

- e. Investigations. In bankruptcy proceedings, authorities or courts may conduct investigations to identify the true Beneficiary Owners and see if there are any unethical practices that need to be accounted for.

3) Reform of the individual company registration system

The existence of Beneficiary Owners functions as a preventive supervision mechanism. Not as a form of repressive supervision. With the current laws and regulations, there has been a huge paradigm shift. There needs to be improvement, so that this preventive supervision mechanism can return to its previous state. Preventive supervision is always better than repressive supervision. This is based on several factors, such as (Razi et al., 2023: 51):

- a. With prevention, the law can reduce the risk of violations and crimes that will occur. This can maintain a safer environment for the community;
- b. Cost effectiveness. The cost of handling cases in a repressive manner always requires large costs, even though in principle it should be low cost. By trying to prevent criminal acts from occurring, savings in court costs can be further increased;
- c. The legal system will be stronger. With increased preventive supervision, the legal system that is formed has been proven to be able to maintain stability and order in society.

Preventive supervision is better than repressive supervision. Therefore, the new company identification model that is carried out after the permit is issued should not happen again. The individual company establishment licensing system that is currently practiced is that business actors register first. After registering, a registration fee will appear. After being paid, business actors fill out the form provided. After the form is completed, the permit will be issued immediately. This process is indeed easy. However, it leaves legal issues behind. What if, for example, it is found in company A, the Beneficiary Owners is suspected of committing money laundering? If this happens, there must be an initial report of the suspicious transaction. Then law enforcement agencies conduct data checks, and the Ministry of Law and Human Rights as the party that has the data, is required to provide the data. Then the process continues like the general criminal process.

This is certainly not efficient. According to the author, permits should not be issued immediately. The licensing process always talks about preventive supervision. If the permit is issued immediately, then there is no preventive supervision mechanism. In fact, after business actors fill out the form provided, there should be formal and substantive checks carried out by the relevant institutions. This includes ensuring that the Beneficiary Owners is not suspected of money laundering. Once the inspection has been completed, a company establishment permit can be granted.

CONCLUSIONS

This article finds the fact that many individual companies are established in Indonesia. As an effort to provide legal entity recognition to small businesses, Individual Companies are highly increased in demand. In the process of its establishment, Individual Companies must have

Beneficiary Owners. This article also finds out the fact that the regulation on Beneficiary Owners is experiencing a legal vacuum and legal ambiguity. With the increasing number of individual companies being established, there will be more Beneficiary Owners appointed by the company. This is an opportunity and challenge for improving the regulation on Beneficiary Owners. In addition, the legal vacuum relates to the position of Beneficiary Owner in individual companies as regulated in Presidential Regulation Number 13 of 2018. Meanwhile, the legal ambiguity relates to the concept of preventive supervision that should be attached to Beneficiary Owners. Beneficiary Owners should be a form of supervision before the occurrence of money laundering crimes, and not the other way. This article also formulates a new form of reconstruction in the regulation of Beneficiary Owners in Indonesia. Among them are related to the position of Beneficiary Owners in companies that are dissolved or bankrupt, the statement of Beneficiary Owners as an integral part of the establishment of individual companies, and the return of preventive supervision.

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