



## Notary Roles and Liabilities Related to The Delivery of Information About the Beneficial Owners of Limited Liability Companies

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### Abstract

*In the event of participating the Financial Action Task Force recommendation, Indonesian Government issued Peraturan Presiden Nomor 13 Tahun 2018 on the Penerapan Prinsip Mengenali Pemilik Manfaat atas Korporasi dalam Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang dan Tindak Pidana Pendanaan Terorisme which required limited company to deliver the information regarding beneficial owner. In relation of this issuance, there are 2 significant problems that we can study further. Firstly we can look at the regulation on delivering the information of beneficial owner of a limited company. Second, how is the role and obligation of Notary regarding the delivery of the information. This research is made by using a juridical normative method with secondary data consisted of primary law substance and secondary law substance as the base of the research. Based on this research, we can conclude that Limited Company must apply the principle of recognizing its beneficial owner. Notary has an important role in delivering the information on the beneficial owner of the company. But, Notary do not have the responsibility for the factual integrity of the beneficial owner that is provided by the company. With that in mind, it is better to apply a strict penalty or sanction for limited company that violates the regulation. Other than that, socialization on the practice of Peraturan Presiden Nomor 13 Tahun 2018 will be beneficial for the limited company.*

**Keywords:** Notary; Beneficial Owner Information; Company; Role; Responsibility.

### A. Introduction

Economic growth, open investment, and rapid technological development, allow space for money laundering and terrorism financing. Both of these "can threaten the stability and integrity of the economic system and financial system, and endanger the joints of community, nation and state life based on Pancasila and the Constitution of the Republic of Indonesia of 1945." One way to overcome this is to meet the recommendations and become a member of the Financial Action Task Force (FATF). Currently, Indonesia has the status of an observer and will become a member of the FATF by implementing 40 recommendations as evidence that Indonesia is a country that does not provide space for money laundering and terrorism financing practices.<sup>1</sup>

In order to implement the FATF's recommendations, namely upholding the transparency of beneficial owners of corporations, which was promulgated based on "Presidential Regulation No. 13 of 2018 concerning the Application of the Principle of Recognizing Beneficial Owners of Corporations in the Framework of Prevention and Eradication of Money Laundering and Terrorism Financing Crimes." According to Article 31 of this Presidential Regulation, this Presidential Regulation is valid from the date of enactment, namely March 5, 2018, Article 18

<sup>1</sup> "Peran Kemenkumham Melalui Beneficial Ownership Sebagai Pendukung Keanggotaan Indonesia Dalam FATF," *Direktorat Jenderal Administrasi Hukum Umum*, <https://portal.ahu.go.id/id/detail/75-berita-lainnya/2904-peran-kemenkumham-melalui-beneficial-ownership-sebagai-pendukung-keanggotaan-indonesia-dalam-fatf>.

paragraph (1) of this Presidential Regulation stipulates expressly that corporations must submit information about beneficial owners to authorized agencies. Submission of information of beneficial owners can be done by: founder or administrator of the corporation, Notary, or other party as the founder or corporate administrator.<sup>2</sup>

The delivery of information related to the beneficial owners of the corporation can be done electronically through *the Online General Legal Administration* ("AHU ONLINE") system. Submission of information on beneficial owners carried out by notaries can be done in 2 (two) ways. First, the delivery of benefit owner information is done by accessing the AHU menu of Corporate Benefit Owners in *AHU Online*. Second, the submission of the information is carried out when submitting a Decree of Approval or Letter of Receipt of Notification of Changes in the AHU Online system.<sup>3</sup> There are two important issues to study. First, how to arrange the delivery of information about the beneficial owners of limited liability companies? Second, what is the role and responsibility of the Notary related to the delivery of information regarding the beneficial owners of limited liability companies?

## B. Literature review

Primary legal material is legal material that is authoritative which means having authority.<sup>4</sup> The primary legal materials used in this study are:

1. Civil Code;
2. Constitution of 1945;
3. Law No. 30 of 2004 concerning Notary Position as amended by Law No. 2 of 2014;
4. Law No. 40 of 2007 concerning Limited Liability Companies;
5. Law No. 8 of 2010 concerning prevention and eradication of money laundering;
6. Law No. 9 of 2013 concerning prevention and eradication of terrorism financing;
7. Presidential Regulation No. 13 of 2018 concerning the Application of the Principle of Recognizing Beneficial Owners of Corporations in the Prevention and Eradication of Money Laundering and Terrorism Financing Crimes;
8. Regulation of the Minister of Law and Human Rights Number 9 of 2017 concerning the Application of the Principle of Recognizing Service Users for Notaries;
9. Regulation of the Minister of Law and Human Rights Number 15 of 2019 concerning Procedures for the Implementation of the Principle of Recognizing The Beneficial Owners of Corporations;
10. Circular Letter of the Minister of Law and Human Rights Number AHU. UM.01.01.1232."

Secondary legal materials are materials that are closely related to primary legal materials and can help analyze and understand primary legal materials.<sup>5</sup> Secondary legal materials used in this study are the book *Law of Limited Liability Companies* by Yahya Harahap, *Anti-Money Laundering Regime Paper Based on Law No. 8 of 2010 concerning Prevention and Criminal Acts of Money Laundering* by Yunus Husein, *Anti-Money Laundering Regime Paper and Money Laundering Law* by Erman Rajagukguk, and books, scientific journals, articles and research results related to research objects.

<sup>2</sup> "Peraturan Presiden Nomor 13 Tahun 2018 Tentang Penerapan Prinsip Mengenali Pemilik Manfaat Dari Korporasi Dalam Rangka Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang Dan Tindak Pidana Pendanaan Terorisme, n.d., Pasal 18 ayat (3).

<sup>3</sup> "Wawancara Dengan Notaris Martina, S.H" (Jakarta Barat, 2022).

<sup>4</sup> Bambang Sunggono, *Metode Penelitian Hukum* (Jakarta: PT RajaGrafindo Persada, 2003).

<sup>5</sup> Romy Hanitijo Soemitio, *Metodologi Penelitian Hukum Dan Jurimetri* (Jakarta: Ghalia Indonesia, 1994).

### C. Research Methods

This research will be prepared using normative juridical research methods to answer the problems formulated above. Normative juridical research method is a legal research method by examining library materials or secondary data as basic materials to be researched by conducting a research on regulations and literature related to the object of the problem.

### D. Results and Discussion

#### 1. Information Delivery Arrangements regarding The Beneficial Owners of Limited Liability Companies

According to Article 1 point 1 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering, money laundering is defined as "the act of placing, transferring, paying, spending, granting, donating, depositing, bringing abroad, exchanging, or other acts of property that is known or suspected to be the result of a criminal act with the intention to conceal or disguise the origin of property so that it seems to be a legitimate treasure." In other words, money laundering is an attempt to obscure the origin of property from the proceeds of criminal acts so that the property seems to come from legitimate activities.<sup>6</sup>

Money laundering can be done in a variety of ways. There are three stages in the grouping of money laundering, namely:<sup>7</sup>

a. *Placement*

At this stage, the money from the crime is converted into other forms that are generally less or less cause harm. For example, bank deposits, insurance policies, and the purchase of assets such as: houses, jewelry and others.

b. *Layering*

At this stage, the money is carried out anonymously layered transactions with the aim of making it difficult to track the origin of the money.

c. *Integration*

At this stage, the disguised money is put back into the perpetrator's account by means of a legitimate transaction. Therefore, there is no visible origin of the money.

The process of money laundering that can hide the origin of the money is closely related to other criminal acts. Money laundering is often used by a group of people by transferring the money to eliminate traces so that it is criminal. According to *the Financial Intelligence Unit*, funding for crime groups stems from money laundering. Money laundering is used by terrorist organizations to conduct illegal financial transactions aimed at funding terrorist groups.<sup>8</sup>

The threat of terrorism and activities that support the occurrence of acts of terrorism are contrary to the Opening of the 1945 Constitution. The Indonesian state aims to "protect the entire Indonesian nation and all Indonesian blood spills and advance the common good, educate the nation's life, and participate in implementing world order based on independence, lasting peace, and social justice." Therefore, there is a need for decisive action against all forms of

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<sup>6</sup> "Yunus Husein, *Rezim Anti Pencucian Uang Berdasarkan Undang-Undang Nomor 8 Tahun 2010 Tentang Pencegahan Dan Tindak Pidana Pencucian Uang* (Yogyakarta: Makalah dalam kegiatan Training Pengarusutamaan Pendekatan Hak Asasi Manusia dalam Pemberantasan Korupsi di Indonesia bagi Hakim Seluruh Indonesia, 2013)."

<sup>7</sup> Erman Rajagukguk, "Rezim Anti Pencucian Uang Dan Undang-Undang Tindak Pidana Pencucian Uang" (Universitas Sumatera Utara, n.d.).

<sup>8</sup> "Pola Kejahatan Dalam Pendanaan Terorisme," *Pusat Pelaporan Dan Analisis Transaksi Keuangan*, last modified 2019, [https://www.pptk.go.id/siaran\\_pers/read/952/pola-kejahatan-dalam-pendanaan-terorisme-.html](https://www.pptk.go.id/siaran_pers/read/952/pola-kejahatan-dalam-pendanaan-terorisme-.html).

threats that interfere with citizens' sense of security and interfere with state sovereignty. The threat of terrorism crimes and supporting activities that cause acts of terrorism are also included. Because there is an element of terrorism financing, therefore a need for counter-terrorism efforts so that later in line with efforts to prevent and eradicate terrorism financing.

Funding becomes an important factor in carrying out ideological goals and launching terrorist attacks.<sup>9</sup> In Article 1 point 1 of Law No. 9 of 2013 concerning the Prevention and Eradication of Terrorism Financing, Terrorism Financing is defined as "any act in order to provide, collect, provide, or lend funds, whether directly or indirectly, with the intention to be used and/or known to be used to carry out terrorist activities, terrorist organizations or terrorist organizations."<sup>10</sup> There are similarities in the criminal acts of money laundering and terrorism financing, which both involve funds / wealth / money. Funds/wealth/money is the object of a criminal act.<sup>11</sup>

Based on Article 1 point 1 of Presidential Regulation Number 13 of 2018, a corporation is an organized collection of people and/or wealth, whether it is a legal entity or not a legal entity. The corporations referred to in this case include:

- a. Limited Liability Company;
- b. Foundation;
- c. Association;
- d. Cooperatives;
- e. Commander's Guild;
- f. Firm Persecution;
- g. Other forms of corporations.<sup>12</sup>

Funding into a Limited Liability Company is one type of corporation that is required by Presidential Regulation No. 13 of 2018 to convey information related to beneficial owners. Limited Liability Company according to Article 1 point 1 of Law No. 40 of 2007 concerning Limited Liability Companies is defined as "a legal entity that is a capital alliance, established based on an agreement, conducting business activities with authorized capital that is entirely divided into shares and meets the requirements set out in this law and its implementation regulations."<sup>13</sup> Then, since the enactment of Law No. 11 of 2020 concerning Job Creation, the provisions of Article 1 point 1 of the Limited Liability Company Law were changed. Article 109 of the Job Creation Law defines a Limited Liability Company as "a legal entity that is a capital alliance, established under the agreement, conducting business activities with authorized capital that is entirely divided into shares or individual Legal Entities that meet the criteria of Micro and Small Businesses as stipulated in the laws and regulations regarding Micro and Small Businesses."<sup>14</sup>

The establishment of a Limited Liability Company has conditions that must be met. The first condition, the Limited Liability Company is a capital partnership, so the Limited Liability Company as a legal entity must have the authorized capital written in the articles of association

<sup>9</sup> "Pola Kejahatan Dalam Pendanaan Terorisme."

<sup>10</sup> "Tim National Risk Assessment Indonesia Tindak Pidana Pendanaan Terorisme, *Penilaian Risiko Indonesia Terhadap Tindak Pidana Pendanaan Terorisme* (Jakarta: PPAK, 2015).

<sup>11</sup> Tim National Risk Assessment Indonesia Tindak Pidana Pendanaan Terorisme, *Penilaian Risiko Indonesia Terhadap Tindak Pidana Pendanaan Terorisme.*"

<sup>12</sup> "Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor 15 Tahun 2019 Tentang Tata Cara Pelaksanaan Penerapan Prinsip Mengenali Pemilik Manfaat Dari Korporasi., Pasal 2.

<sup>13</sup> *Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas*, n.d., Pasal 1 angka 1.

<sup>14</sup> *Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja*, n.d., Pasal 109.

of the Limited Liability Company<sup>15</sup> which is part of the deed of establishment of the Limited Liability Company. The capital consists of and divided into (face value)<sup>16</sup> Shares included by the founders of the Limited Liability Company in their status as shareholders of the Limited Liability Company.<sup>17</sup> The second condition, the establishment of a Limited Liability Company, is based on the agreement (of the) founders with a contractual nature. The contractual nature, in this case, is a result that arises due to an agreement to establish a Limited Liability Company. In addition to its contractual nature, the Limited Liability Company is also consensually arising from a deal to bind itself in an agreement to establish a Limited Liability Company.<sup>18</sup>

The third condition, the Limited Liability Company conducts business activities. This is also regulated in Article 2 of the Tax Law which requires Limited Liability Companies to have purposes and objectives and business activities that do not conflict with laws and regulations, public order, and decency. If a Limited Liability Company does not have business activities, then the Limited Liability Company is considered to no longer exist as a legal entity.

The last condition, the birth of a Limited Liability Company must be authorized by the Government. Prior to the enactment of the Job Creation Law, the birth of a Limited Liability Company as a legal entity was created through legal proceedings in accordance with Article 7 paragraph (4) of the Law on Whichby it stipulates that the status of the Limited Liability Company's legal entity is obtained on the date the minister's decision regarding the ratification of the Limited Liability Company's legal entity is issued. The implementation of the Job Creation Law changes the provisions of Article 7 paragraph (7) of this Law. In the Limited Liability Company Law, the exclusion of limited liability obligations of limited liability companies established by 2 or more persons can only apply to Limited Liability Companies whose shares are all owned by the State and to Limited Liability Companies that manage securities exchanges, clearing and underwriting institutions, storage and settlement institutions, and other institutions as stipulated in the Capital Market Law. With the enactment of the Job Creation Law, the exemption is extended to Limited Liability Companies whose shares are all owned by the State, Regionally Owned Enterprises, Village-Owned Enterprises, Limited Liability Companies that manage stock exchanges, clearing and underwriting institutions, storage and settlement institutions, and other institutions as stipulated in the Capital Market Law, and Limited Liability Companies that meet the criteria for Micro and Small Businesses.

Limited Liability Company has several characteristics. The first characteristic, the Limited Liability Company has a wealth that is separate from the shareholders as the owner. The second characteristic, shareholders, members of the board of directors, and members of the Board of Commissioners of limited Liability Companies have limited responsibility.<sup>19</sup> Because of the characteristics of the separation of property and responsibilities, the Limited Liability Company as a legal entity can perform legal actions as the legal subject of private persons. Therefore, a Limited Liability Company can own wealth and make loan agreements. A Limited Liability Company needs an organ to carry out the purposes and objectives of the Limited Liability Company. The organ is the Board of Directors. The Board of Directors "is responsible for the management of the Limited Liability Company for the benefit of the Limited Liability Company

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<sup>15</sup> Syahrul; dkk, *Kamus Lengkap Ekonomi* (Jakarta: Citra Harta Prima, 2000).

<sup>16</sup> *Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas.*, Pasal 31 ayat (1)."

<sup>17</sup> Yahya Harahap, *Hukum Perseroan Terbatas* (Jakarta: Sinar Grafika, 2013).

<sup>18</sup> Yahya Harahap, *Hukum Perseroan Terbatas*.

<sup>19</sup> Erman Rajagukguk, *Butir-Butir Hukum Ekonomi* (Jakarta: Lembaga Studi Hukum dan Ekonomi Fakultas Hukum Universitas Indonesia, 2011).

and in accordance with the purpose and purpose of the Limited Liability Company.”<sup>20</sup> The Board of Directors is responsible for ensuring that the Limited Liability Company meets the provisions of Article 3 of Presidential Regulation Number 13 of 2018. Article 3 of Presidential Regulation Number 13 of 2018 stipulates that The Limited Liability Company has an obligation to establish the Beneficial Owner of a Limited Liability Company.

In addition, the Board of Directors is authorized to represent the Limited Liability Company in front of the court or outside the court in accordance with the provisions of the Uupt and the articles of association. For the authority of the Board of Directors, uupt adopts a "collegial representative system." The purpose of this system is the authority to represent a Limited Liability Company owned by every member of the Board of Directors. However, the articles of association may regulate only a member of the Board of Directors authorized to represent the Limited Liability Company.<sup>21</sup> Therefore, the Board of Directors is authorized to represent the Limited Liability Company in the presence of authorized officials and agencies, including the Ministry of Law and Human Rights.

Parties categorized as beneficial owners of Limited Liability Companies in accordance with the provisions of Article 4 of Presidential Regulation No. 13 of 2018 are Limited Liability Companies that meet the criteria:

- a. Owns more than 25% (twenty-five percent) of the shares of the Limited Liability Company (PT) referred to in the AD;
- b. have more than 25% (twenty-five percent) voting rights in PT included in the Ad;
- c. earn more than 25% (twenty-five percent) of PT's profit or profit per year;
- d. have the authority to appoint, replace or dismiss the board of directors and board of commissioners;
- e. have the authority to control the PT without having to get approval from any party;
- f. receiving benefits from PT; and
- g. the actual owner of the shareholding fund in PT.

Criteria for the letter e, letter f, and letter g above to include those who are not inscribed criteria letter a to letter d.<sup>22</sup> Information about the beneficial owner can be determined by the Limited Liability Company through:

- a. articles of association since its establishment and all its changes;
- b. documents of the establishment of PT;
- c. GMS decision document;
- d. information from authorized agencies;
- e. information from private institutions that receive placement of funds in the framework of the purchase of shares of PT;
- f. information from private institutions that provide or provide benefits from PT;
- g. statements of members of the board of directors, board of commissioners or employees of PT who can be accounted for the truth;
- h. documents owned by PT or other parties indicating that the individual in question is the actual owner of the funds for the ownership of shares in PT;

<sup>20</sup> Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas., Pasal 92 ayat (1) jo. Pasal 97 ayat (1).

<sup>21</sup> Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas., Pasal 98 ayat (2).

<sup>22</sup> Peraturan Presiden Nomor 13 Tahun 2018 Tentang Penerapan Prinsip Mengenali Pemilik Manfaat Dari Korporasi Dalam Rangka Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang Dan Tindak Pidana Pendanaan Terorisme., Pasal 4 ayat (2).

- i. documents owned by PT or other parties that show that the individual is the actual owner of funds for other wealth or participation in PT;
- j. other information that can be accounted for the truth.

Article 14 paragraph (1) of Presidential Regulation No. 13 of 2018 confirms that Limited Liability Companies must apply the principles regarding the Beneficial Owners of Limited Liability Companies. Then, Based on Article 14 paragraph (2) of Presidential Regulation Number 13 of 2018, the Limited Liability Company must determine a person who is in charge of:<sup>23</sup>

- a. fulfill the obligations of the "principle of recognizing the Beneficial Owners" of the Limited Liability Company, and
- b. conveying the information of the Beneficial Owner in order to fulfill the request of the authorized agency.

Beneficial ownership has 2 main principles in PT, namely identification of beneficial owners and verification of beneficial owners. The application of this principle is carried out at the time of application for establishment, registration, endorsement, approval or business license of the Limited Liability Company and can be done when the Limited Liability Company conducts its business or activities. The identification process is carried out by collecting information that includes the least:

- a. full name;
- b. residence number, driver's license for Indonesian citizens or passport for foreign nationals;
- c. place of birth date;
- d. citizenship;
- e. residential address according to identity card;
- f. country of origin address for foreign nationals
- g. taxpayer identification number;
- h. the relationship between the Limited Liability Company and the beneficial owner.

Related information above the Limited Liability Company is obliged to complete it in a supporting document. The verification stage is carried out by conducting conformity research between the information of the beneficial owner and supporting documents. Information about beneficial owners must be properly conveyed by the Limited Liability Company to the authorized agencies. In Article 18 paragraph (3) of Presidential Regulation Number 13 of 2018, information on the beneficial owners of Limited Liability Companies can be submitted by:<sup>24</sup>

- a. founder or administrator of a Limited Liability Company
- b. notary; or
- c. other parties authorized by the founder or corporate administrator to convey information on the beneficial owners of the Limited Liability Company.

If there is a change in the information of the beneficial owner of the Limited Liability Company due to the addition or revocation of the information of the beneficial owner of the Limited Liability Company. The change must be submitted electronically through AHU *Online* no later than 3 (three) working days since the change in the information of the beneficial owner

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<sup>23</sup> Peraturan Presiden Nomor 13 Tahun 2018 Tentang Penerapan Prinsip Mengenali Pemilik Manfaat Dari Korporasi Dalam Rangka Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang Dan Tindak Pidana Pendanaan Terorisme., Pasal 14 ayat (2).

<sup>24</sup> Peraturan Presiden Nomor 13 Tahun 2018 Tentang Penerapan Prinsip Mengenali Pemilik Manfaat Dari Korporasi Dalam Rangka Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang Dan Tindak Pidana Pendanaan Terorisme., Pasal 18 ayat (3).

of the Limited Liability Company.<sup>25</sup> Regarding the information of the beneficial owners of Limited Liability Companies, the Minister of Law and Human Rights can cooperate in the exchange of information of beneficial owners with other agencies. The meaning of "other agencies" is:

- a. Law enforcement agencies;
- b. Government agencies; and
- c. The authority of the state authority or the authorized authority of another country.

Supervision of the implementation of the delivery of Beneficial Owner information is carried out by the Minister through the Director General. In carrying out this supervision, the Minister can:<sup>26</sup>

- a. menetapkan regulasi atau pedoman sesuai dengan kewenangannya;
- b. melakukan audit terhadap Perseroan Terbatas; dan/atau
- c. mengadakan kegiatan administratif lain yang masih dalam lingkup tugas dan tanggung jawabnya.

The supervision is carried out based on the results of the risk of money laundering and terrorism financing crimes. In carrying out such supervision, the Director General can cooperate with the Financial Transaction Reporting and Analysis Center. If a violation is found related to the application of the principle of recognizing the owner of the benefit, the Minister through the Director General can sanction in accordance with the provisions of the laws and regulations.<sup>27</sup>

## **2. Notary Roles and Responsibilities related to The Delivery of Information Regarding The Beneficial Owners of Limited Liability Companies**

Notary as mentioned in Article 18 paragraph (3) of Presidential Regulation Number 13 of 2018 is one of the parties that can convey information on the beneficial owners of the corporation. According to Article 1 point 1 of Law No. 30 of 2004 concerning the Position of Notary as amended by Law No. 2 of 2014, a Notary is "a general official authorized to make authentic deed and have other authority as referred to in this Law or based on other Laws."<sup>28</sup> Dalam Undang-Undang Jabatan Notaris, Notaris mempunyai kewenangan antara lain:<sup>29</sup>

- a. Making authentic deed of acts, agreements, and determinations required by laws and/or requested by the interested to be made in the authentic Deed, guaranteeing the certainty of the date of making the deed, saving the deed, making grosse, copying and citation of the deed, all as long as the making of the deed is not also assigned to other officials or other persons stipulated by the Law.
- b. in addition to the above authority notary authorized to:
  - 1) certify the signature and establish the certainty of the date of the letter under the hand by registering it in a special book;
  - 2) posting a letter under the hand by registering it in a special book;

<sup>25</sup> Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor 15 Tahun 2019 Tentang Tata Cara Pelaksanaan Penerapan Prinsip Mengenali Pemilik Manfaat Dari Korporasi., Pasal 9 ayat (3)."

<sup>26</sup> Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor 15 Tahun 2019 Tentang Tata Cara Pelaksanaan Penerapan Prinsip Mengenali Pemilik Manfaat Dari Korporasi., Pasal 15 ayat (3).

<sup>27</sup> Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor 15 Tahun 2019 Tentang Tata Cara Pelaksanaan Penerapan Prinsip Mengenali Pemilik Manfaat Dari Korporasi., Pasal 16 ayat (1).

<sup>28</sup> Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, n.d., Pasal 1 angka 1.

<sup>29</sup> Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris., Pasal 15.

- 3) make a copy of the original letter under the hand in the form of a copy containing the description written and described in the letter in question;
- 4) authenticate the copy match with the original letter;
- 5) provide legal counseling to the community in connection with the making of the deed;
- 6) make a deed relating to the land; or
- 7) make a deed of auction minutes.

In addition to these authorities Notaries have other authorities regulated in the laws and regulations. Authority is stipulated in the laws and regulations other than the Notary Department Law. The duties and authority of notaries in efforts to prevent money laundering and terrorism financing crimes are regulated in Article 2 of the Regulation of the Minister of Law and Human Rights Number 9 of 2017 concerning the Application of the Principle of Recognizing Service Users for Notaries. Based on the provisions of This Article 2, Notaries are required as one of the reporting parties to prevent and eradicate money laundering crimes to apply the principle of recognizing service users. The principle of recognising service users at least contains:

- a. Identification of service users, in this case, what is meant by the identification of service users is the collection of information about service users. Related to corporate service users information that must be collected by notaries based on Article 7 paragraph (2) permenkumham Number 9 of 2017 is:
  - 1) Corporate Identity (articles of association, along with the relevant Ministerial decrees, business licenses, addresses and telephone numbers);
  - 2) Source of funder;
  - 3) Business relationship or purpose of transaction that will be carried out by service users with Notaries;
  - 4) The information of the designated party has the authority to act for and on behalf of the corporation;
  - 5) Corporate Beneficial Owner Information;
  - 6) Corporate NPWP; and
  - 7) Other information to find out the profile of service users more deeply, including information ordered in accordance with the provisions of laws and regulations.
- b. Verification of service users, in this case what is meant by verification of service users is the obligation of the Notary to verify the information: Identity of the corporation and the beneficial owner. Verification of service users can be done in the manner stipulated in Point 2a circular letter of the Minister of Law and Human Rights Number AHU. UM.01.01.1232. If the Notary doubts the truth of the information conveyed by the service user then the notary must be:
  - 1) sever business ties with service users; and
  - 2) report to PPATK no later than 3 days from the time the notary breaks the business relationship with the service user.
- c. Monitoring of service user transactions, which is meant by monitoring service user transactions is the obligation of notaries to monitor service user transactions in accordance with the business relationship that is the scope of Notary services, with the procedures contained in the Circular Letter of the Minister of Law and Human Rights Number AHU. UM.01.01.1232 is as follows:
  - 1) see transaction payment procedures, transaction actors, transaction amounts, and transaction dates; and

2) make efforts to update data, information and supporting documents if there are changes.

In Article 18 paragraph (3) of the TPPU Law, the Notary as one of the reporting parties is obliged to apply the principle of recognizing the users of these services at the time of:

- a. conducting business relationships with service users;
- b. there are financial transactions with a value of at least or equivalent to Rp100,000,000, - either using rupiah or foreign currency;
- c. suspicious financial transactions related to the criminal act of money laundering and terrorism financing;
- d. Notaries doubt the veracity of information reported by service users

Suspicious financial transactions are regulated in Article 1 point 5 of the TPPU Law which includes:

- a. financial transactions that deviate from the profile, characteristics, or transaction habits of the service user concerned;
- b. financial transactions of service users that should be allegedly carried out to avoid reporting the relevant transactions that must be reported in accordance with the provisions of this Law;
- c. financial transactions carried out or canceled by using property that is suspected to come from the proceeds of criminal acts; or
- d. Financial transactions requested by PPATK to be reported because they involve property that is suspected to come from the proceeds of criminal acts.

Suspicious financial transactions can begin with the following characteristics:

- a. financial transactions without having a clear economic and business purpose;
- b. using a relatively large amount of cash and repeatedly outside of reasonableness;
- c. customer transaction activities are out of habit and reasonableness.

If there is a transaction, usually the transaction will be classified as a suspicious financial transaction and must be reported. As for transactions or activities outside of habit and fairness, financial service providers are required to pay special attention to complex and unusual transactions with large amounts of value, transactions with unusual patterns, no clear economic reasons, and no legitimate purpose. One of the application of the principle of recognizing service users that can be applied by a Notary is to recognize the beneficial owners of limited liability companies. Reporting of information related to the owner of benefits by a Notary can be done at the time of application for establishment, registration, endorsement, and also when the corporation carries out its business or activities. Submission of information related to the beneficial owners of the corporation is carried out electronically through AHU *Online*.

The absence of strict sanctions written in Presidential Regulation No. 13 of 2018 and Regulation of the Minister of Law and Human Rights No. 15 of 2019 concerning Procedures for implementing the Implementation of the Principle of Recognizing Beneficial Owners of Corporations makes reporting beneficial owners ineffective. According to the Director of Civil Directorate General of General Legal Administration, Santun Maspari Siregar, his party has implemented sanctions in the form of termination of the entire service process at the Director-General of General Legal Administration and the Administrative System page of the Limited Liability Company's Legal Entity if the Limited Liability Company has not carried out information reporting related to the beneficial owner.<sup>30</sup>

<sup>30</sup> "Perusahaan Indonesia Tak Patuh Laporkan Beneficial Owner," *RRI*, <https://rri.co.id/nasional/peristiwa/886737/perusahaan-indonesia-tak-patuh-laporkan-beneficial-owner>.

Lack of socialization related to the obligation to convey information related to beneficial owners is also a technical obstacle that should be overcome by relevant agencies. Lack of information and socialization related to the owner of benefits to the Limited Liability Company makes the work of the Notary as a General Officer who has become quite a lot more because the Notary must explain to the Limited Liability Company about the obligation to convey the information.<sup>31</sup>

Concerning the submission of information on beneficial owners, notaries may request a statement of the determination of the Beneficial Owner of the Limited Liability Company from members of the Board of Directors, Board of Commissioners, or officials/employees of the Limited Liability Company.<sup>32</sup> Concerning the correctness of the statement in question, the Notary cannot be held accountable. This is because the submission of information related to the owner of benefits made by the Notary at the time of application for establishment, registration, endorsement, and conducting business is based on the power given by the Limited Liability Company to the Notary to apply for related applications. In this case, the authority is the power born because of the law. Granting power gives rise to "representation", the state in which a person represents another person to perform a particular legal act.<sup>33</sup>

As long as the Notary as a power does not commit any negligence and acts within the limits of his authority, the Notary cannot be held accountable for the delivery of information of the owner of the benefit. The Limited Liability Company cannot escape from its obligations and responsibilities if the statement of the Board of Directors of the Limited Liability Company is contained incorrect information. Therefore, the Limited Liability Company shall assume responsibility for the sanctions and losses arising from such untrue statements.

## **E. Conclusion**

The arrangement for the delivery of information about the beneficial owners of Limited Liability Companies is regulated in Presidential Regulation Number 13 of 2018 and Permenkumham Number 15 of 2019. The Limited Liability Company is obliged to carry out the principle of recognizing the beneficial owner. Criteria on beneficial owners as outlined in Article 4 of Presidential Regulation No. 13 of 2018 regulate anyone who meets the criteria as a beneficial owner. Article 16 of Presidential Regulation Number 13 of 2018 regulates the information that must be explained by the whistleblower related to the personal data of the beneficial owner. Article 18 provides for anyone who can report the owner's information. If there are changes related to the information of the beneficial owner of the Limited Liability Company, it is mandatory to report the change no later than 3 working days. The Minister of Law and Human Rights can cooperate with other authorized agencies both from within and outside the country.

Notary is one of the parties who can convey information on the beneficial owners of limited liability companies. The obstacle for notaries in fulfilling this obligation is the absence of strict sanctions for Limited Liability Companies that violate the delivery of information about beneficial owners. Then, the socialization to the Limited Liability Company for the implementation of Presidential Regulation No. 13 of 2018 and Permenkumham Number 15 of

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<sup>31</sup> "Wawancara Dengan Notaris Martina, S.H."

<sup>32</sup> *Peraturan Presiden Nomor 13 Tahun 2018 Tentang Penerapan Prinsip Mengenali Pemilik Manfaat Dari Korporasi Dalam Rangka Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang Dan Tindak Pidana Pendanaan Terorisme.*, Pasal 11 huruf g.

<sup>33</sup> Subekti, *Aneka Perjanjian* (Jakarta: PT Citra Aditya Bakti, 2014).

2019 is still inadequate. In connection with the submission of information on beneficial owners, notaries may request a statement of determination of the Beneficial Owner of the Limited Liability Company from members of the Board of Directors, Board of Commissioners, or officials / employees of the Limited Liability Company. For the correctness of the beneficial owner information submitted based on the statement from the Board of Directors of the Limited Liability Company, the Notary cannot be held accountable. This is due to the position of the Notary as a power born because of the law. Thus, if in the statement of the Board of Directors of the Limited Liability Company, there is a misinformation, the party responsible for the error is the Limited Liability Company concerned.

## References

### Books

Rajagukguk, Erman. *Butir-Butir Hukum Ekonomi*. Jakarta: Lembaga Studi Hukum dan Ekonomi Fakultas Hukum Universitas Indonesia, 2011.

———. “Rezim Anti Pencucian Uang Dan Undang-Undang Tindak Pidana Pencucian Uang.” Universitas Sumatera Utara, n.d.

Soemitio, Romy Hanitijo. *Metodologi Penelitian Hukum Dan Jurimetri*. Jakarta: Ghalia Indonesia, 1994.

Subekti. *Aneka Perjanjian*. Jakarta: PT Citra Aditya Bakti, 2014.

Sunggono, Bambang. *Metode Penelitian Hukum*. Jakarta: PT RajaGrafindo Persada, 2003.

Syahrul; dkk. *Kamus Lengkap Ekonomi*. Jakarta: Citra Harta Prima, 2000.

Tim National Risk Assessment Indonesia Tindak Pidana Pendanaan Terorisme. *Penilaian Risiko Indonesia Terhadap Tindak Pidana Pendanaan Terorisme*. Jakarta: PPATK, 2015.

Yahya Harahap. *Hukum Perseroan Terbatas*. Jakarta: Sinar Grafika, 2013.

Yunus Husein. *Rezim Anti Pencucian Uang Berdasarkan Undang-Undang Nomor 8 Tahun 2010 Tentang Pencegahan Dan Tindak Pidana Pencucian Uang*. Yogyakarta: Makalah dalam kegiatan Training Pengarusutamaan Pendekatan Hak Asasi Manusia dalam Pemberantasan Korupsi di Indonesia bagi Hakim Seluruh Indonesia, 2013.

### Laws and Regulations

*Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja*, n.d.

*Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris*, n.d.

*Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas*, n.d.

*Peraturan Presiden Nomor 13 Tahun 2018 Tentang Penerapan Prinsip Mengenali Pemilik Manfaat Dari Korporasi Dalam Rangka Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang Dan Tindak Pidana Pendanaan Terorisme, n.d.*

*Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor 15 Tahun 2019 Tentang Tata Cara Pelaksanaan Penerapan Prinsip Mengenali Pemilik Manfaat Dari Korporasi, n.d.*

### **Interview**

“Wawancara Dengan Notaris Martina, S.H,” 2022.

### **Internet**

“Peran Kemenkumham Melalui Beneficial Ownership Sebagai Pendukung Keanggotaan Indonesia Dalam FATF.” *Direktorat Jenderal Administrasi Hukum Umum.* <https://portal.ahu.go.id/id/detail/75-berita-lainnya/2904-peran-kemenkumham-melalui-beneficial-ownership-sebagai-pendukung-keanggotaan-indonesia-dalam-fatf>.

“Perusahaan Indonesia Tak Patuh Laporkan Beneficial Owner.” *RRI.* <https://rri.co.id/nasional/peristiwa/886737/perusahaan-indonesia-tak-patuh-laporkan-beneficial-owner>.

“Pola Kejahatan Dalam Pendanaan Terorisme.” *Pusat Pelaporan Dan Analisis Transaksi Keuangan.* Last modified 2019. [https://www.ppatk.go.id/siaran\\_pers/read/952/pola-kejahatan-dalam-pendanaan-terorisme-.html](https://www.ppatk.go.id/siaran_pers/read/952/pola-kejahatan-dalam-pendanaan-terorisme-.html).