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The Impact of Ultimate Beneficial Owner Being Declared Bankrupt on Companies Under its Control

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Abstract

The existence of the ultimate beneficial owner became a concern after the issuance of Presidential Regulation No. 13 of 2018 concerning the Principle of Recognizing the Beneficial Owner to Prevent and Eradicate Money Laundering and Terrorism Financing as the efforts to prevent criminal acts from the company's cash flow and trace the person who has control over the company. This paper uses a juridical-normative research method, examining the application of regulations of issues discussed in this paper. This paper discusses the impact if the ultimate beneficial owner is declared bankrupt by a court decision. From this paper, it can be concluded that the bankruptcy of the beneficial owner based on a court decision could have an impact on the shareholders composition company under their control.

Keywords*: Ultimate Beneficial Owner; Limited Liability Company; Bankruptcy.*

A. Introduction

Cases of corporate crime and tax evasion that often occur are the attention of many countries in the world. This has become a serious problem, so it is necessary to form a special organization, namely the Financial Action Task Force ("**FATF**") which was established in 1989 and currently consists of more than 200 countries, of which Indonesia is a member.[1] FATF focuses on preventing money laundering activities and as much as possible minimizing the losses it causes to the community by compiling references that can later be implemented in each member's country in accordance with the laws in force in their country.[2] Money laundering is closely related to the ultimate beneficial owner of a company. The attention of countries in the world regarding beneficial owners is getting more serious, as indicated by the agenda of discussing the urgency of beneficiary transparency at the 2014 G20 countries meeting in Australia[3] with a commitment to adopt "*High Level Principles on Beneficial Ownership Transparency*" which refers to the provisions of or recommendations that the FATF has previously made.of information on beneficial owners, was initially only for the benefit of tax collection which was often tricked by taxpayers by placing or transferring their assets to tax haven countries, however his benefit can have a wider impact on law enforcement, especially with regard to corporations.[4] The increasingly rapid economic

[1] Financial Action Task Force, "Who We Are," accessed April 10, 2022, https://www.fatf-gafi.org/about/.
[2] *Ibid*.
[3] Sherpa G20 Indonesia, "Sejarah Singkat G20," accessed April 10, 2022, https://sherpag20indonesia.ekon.go.id/sejarah-singkat-g20.
[4] Kusrini Purwijanti and Iman Prihandono, "Pengaturan Karakteristik Beneficiary Owner Di Indonesia," *Notaire* 1, no. 1 (2018): 54, https://e-journal.unair.ac.id/NTR/article/view/9098.

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development and the need for investment that keeps up with the increasing human needs will certainly be in line with increasing regulations to control this growth. In 2018, the Government of the Republic of Indonesia issued a regulation related to the application of the beneficial owner principle through Presidential Regulation No. 13 of 2018 concerning the Application of the Principle of Recognizing the Beneficial Owner of Corporations in the Context of Prevention and Eradication of the Crime of Money Laundering and the Financing of Terrorism ("**PR 13/2018**") as an implementation of the recommendations issued by the FATF to its member countries in relation to prevention efforts money laundering. Through this regulation, business owners and investors as the majority shareholder in a company are included in the government's surveillance radar. Companies are required to implement these regulations by reporting information related to the beneficial owner, which if not carried out will be subject to supervision and if they still do not comply, they will be subject to sanctions up to the revocation of the business license.

It is undeniable that the more rapid development is, the greater the possibility of future business risks, be it risks arising from internal companies or risks arising from the state of a country or even world conditions that occur out of control. Rapid growth can also be a double-edged sword for the company in the future. Companies or business actors who do not have sufficient resources, especially financially, to develop their business in order to adapt to business developments tend to borrow capital from other parties with the consequence that the loan must be returned or repaid on time according to what was previously agreed.[5] If a business actor makes a loan to more than one creditor, then in the event that later the business does not go according to plan, resulting in failure to repay the loan, the business actor as the debtor may be filed for bankruptcy by the creditors. In the midst of uncertain economic turmoil, the potential for bankruptcy does not only occur in a company, but also may occur to business owners and investors as individuals who may also have the status of beneficial owners of a company.

Based on the description that has been explained previously, there are two problems that will be discussed in this paper. The first discussion is how the beneficial owner applies to a limited liability company in Indonesia; and the second discussion is how the impact will be if the beneficial owner of a company is declared bankrupt by a legally-binding court decision.

In answering these problems, this paper uses a separate legal entity theory which explains that in short, the company and the capital depositor or shareholder are different individuals.[6] Since *Solomon v. Solomon & Co. Ltd. Case (1897)*, the modern company has been considered a separate legal entity.[7] As a separate legal entity, the company's goal is to maximize the assets or assets of the company and ensure that the

[5] Dedy Yudhistira, "Analisis Yuridis Kepailitan Terhadap Penjamin Perorangan (Studi Putusan No.74/Pailit/2009/Pn. Niaga.JKT.Pst)" (Universitas Indonesia, 2016), p. 11.

[6] Murray A. Pickering, "The Company as a Separate Legal Entity," *The Modern Law Review* 31, no. 5 (1968): 496, http://www.jstor.org/stable/1093759.

[7] Lynn Buckley, "The Foundations of Governance: Implications of Entity Theory for Directors' Duties and Corporate Sustainability," *Journal of Management and Governance*, 2021, 5, https://doi.org/10.1007/s10997-021-09580-y.

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company can continue to be financially sustainable.[8] Then, as a supporting theory, this paper also uses the entity concept which explains that a business or company must be considered separate from its owners or shareholders which focuses on the separation of assets between the company and its owners or shareholders.[9] This theory assumes that shareholders contribute (capital) to the company and the company is a separate entity from the shareholders, which makes assets andliabilitiesthe property of the company.[10] These theories will be linked to the beneficial owner relationship against companies under its control. The position of the person and the company as two different entities with different identities and legal interests affects the extent of the responsibility of the beneficial owner to his company if he is declared bankrupt by the court and what legal effects will be caused after the bankruptcy declaration decision applied.

This study discusses another perspective on bankruptcy from previous studies, especially in terms of the impact if the beneficial owner is declared bankrupt by a legally-binding court decision.

B. Methods

A research must meet several elements, namely based on methodological, systematic, and consistent.[11] Legal research itself is research that aims to analyze legal problems using theory, method, and structure.[12] This study uses a juridical-normative research method, namely by examining the application of rules or regulations related to the issues raised.[13] This research is descriptive in nature, namely research that aims to strengthen existing theories.[14] In order to obtain information related to emerging legal issues, this paper uses a statutory approach and a conceptual approach. The statutory approach is carried out by examining laws and regulations related to the problems studied.[15] While the conceptual approach is an approach that refers to opinions or doctrines that are relevant to the research problem.[16] The author analyzes the data qualitatively, which begins with data collection, then analyzes the data, which results in inductive conclusions about the problem under study.[17] This research is supported by secondary data or library data, which consists of primary legal materials and secondary legal materials. Primary legal materials are legal materials that have

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[8] Andrew Keay, "Ascertaining the Corporate Objective: An Entity Maximisation and Sustainability Model," *The Modern Law Review* 71, no. 5 (2008): 711–12, https://www.jstor.org/stable/25151234%0A.

[9] Arthur N. Lorig, "Some Basic Concepts of Accounting and Their Implications," *The Accounting Review* 39, no. 3 (1964): 566, https://www.jstor.org/stable/242448%0A.

[10] Keay, "Ascertaining…": 691.

[11] Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Penerbit Universitas Indonesia (UI-Press), 1986), p. 42.

[12] *Ibid*.

[13] Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006), p. 295.

[14] Soekanto, *Pengantar…*, p. 10.

[15] Marzuki Peter Mahmud, *Penelitian Hukum: Edisi Revisi* (Jakarta: Kencana Prenada Media Group, 2017), p. 85.

[16] *Ibid.*

[17] Marzuki Peter Mahmud, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2005), p. 38.

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binding power.[18] Meanwhile, secondary legal materials are the results of research and literature by experts, practitioners, or legal academics.[19]

C. Results and Discussion

1. Ultimate Beneficial Owner Concept and its Application in Indonesia

Beneficial Ownership is a term that refers to an individual who controls and owns a company or other legal entity.[20] The concept beneficial ownership first appeared in the tax treaty between the United States and Canada in 1942.[21] Then in 1966, the doctrine appeared in the agreement between the United Kingdom and the United States which stated that the beneficial owner must be the party entitled to the income he earned.[22] In 1990, the FATF set out several recommendations to tackle money laundering, including providing input for an anti-money laundering system to carry out beneficial owner known as The FATF Recommendations ("**FATF Recommendations**").[23] The FATF recommendations have been amended twice, in 1996 and 2003, which are currently adopted by more than 180 countries and are recognized as international standards for anti-money laundering and the prevention of the financing of terrorism.[24] There are two provisions relating to beneficial ownership in this recommendation, specifically in FATF Recommendation No.24, namely provisions regarding transparency of beneficial ownership from legal entities and legal arrangements ("**Trustees**"). These provisions require each country to:

1) carry out a risk assessment and prevent the misuse of legal entities for money laundering or terrorism financing;
2) ensure that beneficial ownership and Trustee is accurate and up-to-date;
3) prohibit legal entities from issuingbearer sharesorbearer share warrants;
4) ensure that nominee andshareholdersdirectors are not abused for money laundering or terrorism financing;
5) provide access to information and authority regarding beneficial ownership information to financial institutions and Designated Non-Financial Business and Professions ("**DNFBP**") or Goods and Services Providers ("**GSP**") to conduct customer due diligence by referring to the provisions in FATF Recommendation No.10 and No.22.[25]

Furthermore, in 2014, at its annual meeting, the G20 countries adopted the "*High Level Principles on Beneficial Ownership Transparency*" by declaring financial transparency, particularly the transparency of beneficial owners of legal entities as a top priority.[26] This declaration was followed up with the determination of the

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[18] Soekanto, *Pengantar…*, p. 52.

[19] *Ibid.*

[20] Andres Knobel, *Beneficial Ownership Verification: Ensuring the Truthfulness and Accuracy of Registered Ownership Information* (Bristol: Tax Justice Network, 2019), p. 10.

[21] Fredrik Hagmann, "Beneficial Ownership - a Concept in Identity Crisis" (Lund University, 2017), p. 16.

[22] *Ibid*.

[23] Jenik Radon and Mahima Achuthan, "Beneficial Ownership Disclosure: The Cure for the Panama Papers Ills," *Journal of International Affairs* 70, no. 2 (2017): 93, https://www.jstor.org/stable/90012622%0A.

[24] Financial Action Task Force, *International Standards on Combating Money Laundering and The Financing of Terrorism & Proliferation* (Paris: FATF, 2022), p. 97.

[25] *Ibid*.

[26] Radon and Achuthan, "Beneficial…": 93.

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principles drawn up by the G20 Anti-Corruption Working Group (ACWG) with reference to the provisions of the FATF which are expected to be concrete steps to prevent and combat abuse and ensure transparency of legal entities and Trustees.[27] The principles that need to be adhered to are that each country is obliged to:
1) have a definition of beneficial owner which may include an individual as the controller;
2) assessing the possible risks that will occur with respect to different legal entities and Trustees;
3) ensure that information related to beneficial ownership is accurate and always updated;
4) ensure that the competent authority or agency has access to information related to beneficial ownership;
5) ensure that the Trustee retains beneficial owner;
6) ensure that the competent authority or agency has access to information related to the beneficial ownership of the Trustee;
7) require financial institutions and DNFBP or GSP to be able to identify and take reasonable actions including considering country risk and verifying beneficial owners of their customers;
8) ensure that the authorities or agencies cooperate in the national and international scope;
9) support G20 measures to combattax evasionby ensuring that beneficial owner is accessible to tax authorities;
10) address abuse of legal entities and Trustees that may hinder information transparency.[28]

In short, beneficial owner transparency basically aims to prevent tax evasion, corruption, money laundering and terrorism. If a person can “hide” behind a company or legal entity, then the authorities cannot punish him. [29]

Beneficial owners in Indonesia are regulated in Presidential Regulation No. 13 of 2018 concerning the Application of the Principle of Recognizing the Beneficial Owner of Corporations in the Context of Prevention and Eradication of Money Laundering and Terrorism Financing Crimes. This PR 13/2018 was made on the basis of the awareness that corporations can be misused to commit money laundering and terrorism financing, in addition, international agreements by countries to trace the beneficial owners of corporations as one of the prevention of money laundering and terrorism financing are also the background. the formation of PR 13/2018. The beneficial owner according to Article 1 point 2 of PR 13/2018 is a person who:
(a) can appoint or dismiss the board of directors, board of commissioners, management, supervisor, or supervisor of the corporation; (b) has the ability to control the corporation; (c) are entitled to and/or receive benefits from the corporation either

[27] Attorney General’s Department of Australian Government, “G20 High-Level Principles on Beneficial Ownership Transparency,” accessed March 13, 2022, https://www.ag.gov.au/integrity/publications/g20-high-level-principles-beneficial-ownership-transparency.
[28] *Ibid*.
[29] Knobel, *Beneficial…*, p. 11.

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directly or indirectly; and (d) is the true owner of the funds or shares of the corporation.

To be identified as a beneficial owner, according to Article 4 paragraph (1) of PR 13/2018, a person must meet one of several criteria, namely:
(a) owning more than 25% shares in the company; (b) have more than 25% voting rights in the company; (c) receive a profit of more than 25% of that earned by the company; (d) has the authority to appoint, replace or dismiss members of the board of directors and board of commissioners; (e) has the authority or power to influence or control the company without having to get authorization from any party; (f) receive benefits from the company; and (g) is the actual owner of the funds on the company's shares.

Followed by Article 4 paragraph (2) which confirms that a person who falls into the criteria as mentioned in letters a, b, c, and d automatically does not meet the criteria as stated in letters e, f, and g; the opposite should also applies. Information regarding the beneficial owner must be submitted by the company through the founder or management, notary, or other party authorized at the time of application for establishment, registration, and/or ratification of the company; or when the company has carried out its activities as described under Article 18 paragraph (3) of PR 13/2018. In addition, PR 13/2018 through Article 13 paragraph (2) also gives authority to the Government through the authorized agency to determine other beneficial owners other than those determined by the company, the determination is made based on:
(a) audit results; (b) information on government agencies or private institutions that manage the beneficial owner information data; and/or (c) other reliable information.

As a form of fulfilling commitments, the Government through PR 13/2018 *jo*. Minister of Law and Human Rights Regulation No. 21 of 2019 concerning Procedures for Supervision of the Implementation of the Principle of Recognizing the Beneficial Owner of a Corporation ("**MOLHR 21/2019**") appoints the Ministry of Law and Human Rights ("**MOLHR**") as supervisor to supervise compliance companies to provide beneficial owner information. The supervision is carried out in several stages as described in Article 5 of the MOLHR 21/2019. General Legal Administration ("**GLA**") Online. Then, the supervisor conducts a risk assessment of the crime of money laundering and the crime of financing terrorism against the company. After that, proceed to the provisions of Article 9 jo. 10 MOLHR 21/2019, supervisors carry out supervision both indirectly (off-site) online through the GLA Online for low and medium risks and direct supervision (on-site) for high and very high risks. After that, the MOLHR will issue recommendations for companies based on findings from previous supervision through the GLA Online. After receiving the recommendation contained in GLA Online, the company is obliged to implement the recommendation no later than 14 (fourteen) days after the recommendation notification is sent. If the company ignores it, then the MOLHR can block the company's access to the GLA Online and/or issue recommendations to the agency that issued the business license to postpone, revoke, or cancel the business license of the relevant company as confirmed through the provisions of Article 12 of MOLHR 21/ 2019.

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2. Bankruptcy Regulation in Indonesia

Bankruptcy is the process of settling the debts of companies, individuals, or the government who are experiencing financial difficulties because they have more debt than their assets.[30] Bankruptcy law consists of three components: First, it includes a debt settlement framework for insolvent entities. Second, determine the distribution of assets used to pay creditors. Third, the provision of punishment to debtors who file for bankruptcy. [31]

Bankruptcy law in Indonesia has progressed to the current one. In 1945, after the proclamation of independence, the bankruptcy law referred to *Faillissements-verordening, Staatsblad*.1909-217 *jo*. *Staatsblad*.1906-348 as stipulated in Article II of the Transitional Rules of the 1945 Constitution which states that all bodies and regulations are still valid before new ones are formed, this means that all Dutch institutions and regulations are adopted by Indonesia, including one of the regulations concerning bankruptcy.[32] In the 1998 period, triggered by the monetary crisis, *Faillissements-verordening* was deemed ineffective so that Government Regulation in Lieu of Law No.1 of 1998 concerning Amendments to Bankruptcy Regulations was issued which were later enacted into Law No. 4 of 1998 concerning Bankruptcy. Then, in 2004, Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations ("**Law 37/2004**") which is currently in force.[33]

Bankruptcy according to Article 1 point 1 of Law 37/2004 is a general confiscation of all assets of a bankrupt debtor whose management and settlement is carried out by a curator under the supervision of a supervisory judge. In order to be filed for bankruptcy, Law 37/2004 in Article 2 paragraph (1) requires debtors to have two or more creditors and not to pay off at least one debt that has matured and can be collected from one creditor. The provision of the obligation to fulfill two or more creditors or concursus creditorum as a condition for filing for bankruptcy is a consequence of the enactment of Article 1131 of the Civil Code which states that all debtor's assets are used as collateral for the repayment of their own debts. So it does not need to be resolved through bankruptcy efforts because there is no seizure of the debtor's assets.[34] If there is only one creditor, the creditor can file a civil lawsuit against the debtor in a district court and use the debtor's assets as a source of debt repayment.[35] The existence of at least two of these creditors must be proven by the bankruptcy applicant referring to the provisions of Article 163 of the *Herzien Inlandsch Reglement* ("**HIR**") which essentially confirms that the burden of proof lies with the applicant. The reference to HIR is in view of the provisions in Article 299 of Law 37/2004 which states that if in Law 37/2004 there are provisions that have not been

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[30] Michelle J. White, "Corporate and Personal Bankruptcy Law," *Annual Review of Law and Social Science* 7, no. 1 (2011): 140, https://doi.org/10.1146/annurev-lawsocsci-102510-105401.

[31] *Ibid*.

[32] Sutan Remi Sjahdeini, *Sejarah, Asas, Dan Teori Hukum Kepailitan: Memahami Undang-Undang No.37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang* (Jakarta: Prenadamedia Group, 2018), p. 82.

[33] *Ibid*, p. 83.

[34] *Ibid*, p. 84.

[35] M. Hadi Subhan, "Insolvency Test: Melindungi Perusahaan Solven Yang Beritikad Baik Dari Penyalahgunaan Kepailitan," *Jurnal Hukum Bisnis* 33, no. 1 (2014): 13, http://repository.unair.ac.id/id/eprint/100362.

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regulated, then the civil procedural law applies.[36] The next requirement, namely the existence of debtor debt is further divided into two categories, namely debt that has matured and debt that can be collected. Debt that has matured means debt that arises because it has passed the payment period specified in the agreement between the debtor and creditor. Meanwhile, collectible debt is debt that can arise even though it has not passed the payment period. Regarding this, it can be found in the banking credit agreement, namely in the event of default. This clause contains events which, if they occur, will give the bank the right to terminate the credit agreement unilaterally and at the same time have the right to collect all outstanding loans.[37]

Furthermore, if in the court process, especially at the debt-and-debt verification meeting, a reconciliation plan is not offered; the peace plan is not accepted; or the ratification of the settlement is rejected based on a court decision with permanent legal force, then the debtor with the assets he owns is declared unable to pay the debt as described in Article 178 paragraph (1) of Law 37/2004. The legal status of the debtor's assets then becomes bankrupt property or bankruptcy estate. Then, the debtor will be liquidated or the bankruptcy estate will be settled by the curator as stated in Article 69 of Law 37/2004. Bankruptcy assets are all assets of the debtor at the time the bankruptcy declaration decision is pronounced and obtained during the bankruptcy process as described in Article 21 of Law 37/2004. However, not all objects of wealth that can be included in the bankruptcy estate, which is continued in Article 22 of Law 37/2004, exceptions to bankruptcy assets are:
(a) objects (in the form of animals related to the debtor's work along with other equipment, medical devices for health, bedding and equipment used by the debtor and his family, and sufficient food for 30 days for the debtor and his family); (b) all things that the debtor derives from his work (salary, pension, waiting or allowance) in the amount determined by the supervisory judge; and (c) money given to debtors to provide a living according to the law.

In the distribution of bankrupt assets, if there is more than one creditor, then the distribution is based on the principle of pari passu pro rata parte as stated in Article 1132 of the Civil Code which basically explains that the distribution of bankrupt assets is carried out proportionally according to the receivables they have.[38]

3. The Decision on the Declaration of Bankruptcy Against Ultimate Beneficial Ownerand Its Effect on the Beneficial Owner Company

Beneficial Owner according to PR 13/2018 is basically an individual who have civil rights as subjects under the law as long as they are not declared incompetent according to the applicable laws and regulations.[39] The legal consequence of a bankruptcy declaration decision for individuals according to Law 37/2004 as stated in Article 24 paragraph (1) is that the debtor is no longer entitled to manage and control his assets. The bankruptcy declaration decision only binds to the right to transfer and manage their assets, does not eliminate the debtor's authority to carry out other legal actions (*volkomen handelingebevoegd*) in a civil manner, such as marrying, receiving grants, or

[36] Sjahdeini, *Sejarah*…, p. 133.
[37] Djoni S. Gozali and Rachmadi Usman, *Hukum Perbankan* (Jakarta: Sinar Grafika, 2016), p. 330.
[38] Subhan, "*Insolvency*…": 14.
[39] Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: PT Intermasa, 2005), p. 19–20.

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acting as the giver or recipient of the power of attorney.[40] If the debtor will still receive the assets after being declared bankrupt, then the assets will be included in the bankruptcy estate.[41] Bankruptcy will continue until the end of the bankruptcy based on the provisions in Law 37/2004, namely: Article 18 paragraph (1), in the case of revocation of the bankruptcy declaration decision; Article 166 paragraph (1), in the case of ratification of a peace that has permanent legal force; and Article 202 paragraph (1), in the event that all receivables have been verified and paid to creditors. However, if the end of the bankruptcy is due to the ratification of the reconciliation and reconciliation and payment of receivables, the debtor is not legally entitled to re-manage his assets, but must first apply for rehabilitation with the aim of restoring the debtor's good name as stated in Article 215 of Law 37/2004.[42]

PR 13/2018 also categorizes several criteria for beneficial owners who have a direct role in the company, including: (a) owning a stake of more than 25% in the company; (b) have more than 25% voting rights in the company; (c) receive a profit of more than 25% of that earned by the company; and (d) has the authority to appoint, replace, or dismiss members of the board of directors and board of commissioners. These criteria are criteria that have a direct influence on the company because of their status as shareholders. The beneficial owner who is a shareholder has the influence to control the company's operations directly through the General Meeting of Shareholders ("**GMS**"). Shareholders through the GMS can exercise control over the management carried out by the directors, assets, or company management policies. Law No.40 of 2007 concerning Limited Liability Companies ("**Law 40/2007**") in Article 75 paragraph (1) states that the authority of the GMS is an authority that is not given to the board of directors or the board of commissioners, so it can be said that the GMS is the highest organ. at the company.[43]

Shareholders and companies have different positions from one another. Based on the separate legal entity, companies and shareholders are different individuals, then this is supported by the entity concept which states that companies should be considered separate from their shareholders. The consequence of the application of this theory is the distribution of shareholder's personal assets and shareholder's assets in the form of shares owned in the company. The concept of separating personal assets from company assets is adopted in Law 40/2007 in Article 3 paragraph (1) along with its explanation which states that shareholders are only responsible for the shares they have paid up. Thus, based on this, it can be concluded that if the company suffers a loss, the impact of the loss on the shareholders is only equal to the number of shares it owns. On the other hand, if a shareholder is declared bankrupt by a court decision with permanent legal force, the impact on the company is limited to the shares owned by the shareholder concerned which will be sold and the composition of the shareholders will automatically change. Because shares are not included in the exemption categories of bankruptcy assets as stated in Article 22 of Law 37/2004, shares owned by

[40] Saryana, "Akibat Hukum Putusan Pernyataan Pailit," *Hukum Dan Dinamika Masyarakat* 9, no. 2 (2012): 214, http://dx.doi.org/10.36356/hdm.v9i2.311.

[41] Brando Yohanes Tendean, "Akibat Hukum Tentang Debitur Yang Pailit Menurut Undang-Undang Nomor 37 Tahun 2004," *Lex Privatum* 5, no. 3 (2017): 136.

[42] Sjahdeini, *Sejarah…*, p.498.

[43] M. Yahya Harahap, *Hukum Perseroan Terbatas* (Jakarta: Sinar Grafika, 2019), p. 306.

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shareholders in a company can become bankrupt assets if the person concerned is declared bankrupt by the competent court.

Assets that are included in the bankruptcy estate, which in this case are shares, are then followed up by a curator consisting of Property and Heritage Agency or individuals appointed by a Court judge under the supervision of a supervisory judge as described in Article 1 point 5 of Law 37/2004 . The curator is in charge of managing and/or settling the bankruptcy estate with due observance of the provisions of Article 185 paragraph (1), namely that the sale of bankrupt assets must be carried out in public or by way of auction. However, if the auction is not successful, then the curator may make an underhand sale of the shares with the approval of the supervisory judge as described in Article 185 paragraph (2) of Law 37/2004. After the sale of shares is successful, which means that the shares have changed ownership, the curator shall notify the company's organs regarding the transfer of shares, which then the company must hold a GMS to make changes to the company's data because it has an impact on changes in the composition of shareholders.

D. Conclusion

The ultimate beneficial owner in Indonesia is regulated in PR No. 13 of 2018 concerning the Application of the Principle of Recognizing the Beneficial Owner of a Corporation in the Context of Prevention and Eradication of the Crime of Money Laundering and the Financing of Terrorism as an awareness that corporations can be misused to commit criminal acts. The implementation of PR 13/2018 is carried out by the MOLHR as the supervisor based on the Regulation of the MOLHR No. 21 of 2019 concerning Procedures for Supervision of the Implementation of the Principle of Recognizing the Beneficial Owner of a Corporation. A person must meet one of several criteria to be called a beneficial owner as stated in Article 4 paragraph (1) of PR 13/2018. Reporting the beneficial owner in the context of implementing the principle of identifying the beneficial owner is coercive and is an obligation that must be carried out by every business entity established by law and established in Indonesia. Failure to report the beneficial owner may result in the suspension, revocation or cancellation of the company's business license.

As an individual, the beneficial owner who is declared bankrupt by the court results in the loss of his authority to manage his assets which are included in the bankruptcy estate. The revocation of this authority lasts until the end of the bankruptcy caused by the revocation of the bankruptcy statement by the court, the ratification of the reconciliation, as well as the verification and settlement of creditors' receivables. Beneficial owners who have direct influence on the company include individuals who own more than 25% of the shares in the company, have more than 25% voting rights in the company, receive more than 25% of profits from the company, and have the authority to appoint, replace, or dismiss members of the board of directors and board of commissioners. These criteria are the criteria for shareholders who can directly influence the company through the GMS. If the beneficial owner and shareholder is declared bankrupt by a court decision with permanent legal force, then the impact on the company is limited to the shares owned by the relevant shareholder which will be sold and the composition of the shareholders will automatically change.

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