



# IMPLEMENTATION OF PRESIDENTIAL REGULATION NUMBER 13 OF 2018 CONCERNING THE APPLICATION OF THE PRINCIPLE OF RECOGNIZING CORPORATION BENEFICIAL OWNERS IN THE FRAMEWORK OF PREVENTION AND ERADICATION OF MONEY LAUNDERING AND TERRORISM FINANCING IN CONNECTION WITH THE FUNCTION AND ROLE OF NOTARIES

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## Abstract

Beneficial Owner or beneficial owner in Presidential Decree Number 13 of 2018, explained as holder power and authority the highest one has control full towards the Corporation as a GMS. Based on his rights as regulated in Presidential Decree Number 13 of 2018, Beneficial Owners have equal standing with Major Shareholders who have shares, rights sound and get profit more of the 25% where has exceeding the ownership limit share holder share main namely at least 20% in the company. Corporations are often used as tool somebody For avoid not quite enough answer disclosure origin treasure riches as well as use assets. Misuse ownership benefit can harm holder share minorities, employees, creditors, and lead to crime businesses that are detrimental to the country, such as act criminal corruption, crime criminal money laundering, crime criminal funding terrorism, and others. The role of notaries in recognize Owner Sorry in Corporations, have obligation For to apply principle recognize Owner Benefits done through identification, verification and monitoring towards the Corporation as user service as regulated in Presidential Decree Number 13 of 2018 and Perkumham Number 15 of 2019. However, in reality matter the Not yet can implemented in a way maximum because of its complexity structure ownership in a Corporation and No existence clarity position about Beneficial Owner or beneficial owner in UUPT, apart from That Still many Corporations as user services that are still Not yet cooperative in give information related The Beneficial Owner is the real. Vacancy law related position Beneficial Owner or beneficial owner in a Corporation because Still Not yet there is arrangement legislation that regulates in a way clear and specific.

**Keywords:** Beneficial Owner, Corporation, Notary.

## Abstrak



Pemilik Manfaat atau beneficial owner dalam Perpres Nomor 13 Tahun 2018, dijelaskan sebagai pemegang kekuasaan dan kewenangan tertinggi yang memiliki kontrol penuh terhadap Korporasi selayaknya RUPS. Berdasarkan haknya sebagaimana di atur dalam Perpres Nomor 13 Tahun 2018, Pemilik Manfaat atau beneficial owner memiliki kedudukan yang setara dengan Pemegang Saham Utama yang mana memiliki saham, hak suara dan mendapatkan laba lebih dari 25% yang dimana telah melebihi batas kepemilikan saham pemegang saham utama yaitu paling sedikit 20% di perseroan. Korporasi sering kali dijadikan alat seseorang untuk menghindari tanggung jawab pengungkapan asal-usul harta kekayaan serta penggunaan aset. Penyalahgunaan kepemilikan manfaat dapat merugikan pemegang saham minoritas, karyawan, kreditor, serta berujung pada kejahatan bisnis yang merugikan negara, seperti tindak pidana korupsi, tindak pidana pencucian uang, tindak pidana pendanaan terorisme, dan lainnya. Peran Notaris didalam mengenali Pemilik Manfaat dalam Korporasi, memiliki kewajiban untuk menerapkan prinsip mengenali Pemilik Manfaat dilakukan melalui identifikasi, verifikasi, dan pemantauan terhadap Korporasi sebagai pengguna jasa sebagaimana di atur dalam Perpres Nomor 13 Tahun 2018 dan Perkumham Nomor 15 Tahun 2019. Namun, pada kenyataanya hal tersebut belum dapat dilaksanakan secara maksimal dikarenakan kompleksitasnya struktur kepemilikan dalam suatu Korporasi serta tidak adanya kejelasan kedudukan mengenai Pemilik Manfaat atau beneficial owner dalam UUPT, selain itu masih banyak Korporasi selaku pengguna jasa yang masih belum koorporatif dalam memberikan informasi terkait Pemilik Manfaat sebenarnya. Kekosongan hukum terkait kedudukan Pemilik Manfaat atau beneficial owner dalam Korporasi dikarenakan masih belum terdapat pengaturan perundang-undangan yang mengatur secara jelas dan khusus.

**Kata Kunci:** Pemilik Manfaat, Korporasi, Notaris.

## 1. INTRODUCTION

Development economy national is very dependent on the role of active actors effort , good individual and institutions , which in the practice Lots use legal entity form such as Limited Liability Company (PT). PT as form corporation play role significant in support activity business and distribute investment . However thus , in the practice often there are abuse legal entity form For hide owner Actually from a company , which is known as owner benefit or beneficial owner. For overcome matter said , the Indonesian government issued Regulation President Number 13 of 2018 which regulates implementation principle recognize owner benefit corporations , in particular For prevent and eradicate act criminal money laundering and financing terrorism . In the context of this , notary own role important in ensure that principles the run with right , especially in the process of establishment and change budget PT. Research basis This aiming For analyze position law owner benefit in a PT and its role as well as function Notary Public in disclosure identity owner benefit the in accordance with applicable provision .

## 2. RESEARCH METHOD

In general theoretical , understanding regarding PT as a legal entity has explained by various expert law . Utrecht calls the legal entity as subject the law that even though No soulful , still can act in Then cross law (Utrecht, 1953:102). The organ theory put forward by Otto von Gierke strengthens draft that the legal entity functioning through the organs that represent it ,



as human being in action through tool his body (Ali, 1990:34). Definition of PT according to Constitution Number 40 of 2007 is a legal entity which is established capital alliance based on agreement For operate business with basic capital divided in shares . In the context of owner benefits , OECD and FATF have introduce beneficial owner concept in frame transparency and accountability global corporations . According to the OECD, the owners benefit is an entitled individual in a way current on benefit from a asset although No own ownership law (OECD, 2014:8). Meanwhile, FATF emphasizes that the beneficial owner is controlling party company Good direct and No directly (FATF, 2012:9). In the Indonesian context , the Presidential Decree Number 13 of 2018 defines owner benefit as an individual who has control full on corporations , including ability pointing or to stop directors and commissioners . The role of notaries become crucial in matter This Because He is official common that makes deed authentic establishment or changes to PT and therefore must ensure that information about owner benefit delivered in a way true and accurate in accordance with principle recognize user services (UUJNP, 2014: Article 15).

Determination owner benefit in a PT is carried out based on criteria as determined in Article 4 of the Presidential Decree Number 13 of 2018, among other things, has shares , rights sound , or profit more from 25%, and own authority control or accept benefit from corporation . In practice , the owner benefit often not in a way direct listed in document establishment company , but rather using nominee or party representative For hide his identity . This is where role Notary Public become important . Notary as executor principle recognize owner benefit obliged For do identification , verification and monitoring to his client in accordance with applicable provisions , incl Regulation of the Minister of Law and Human Rights Number 15 of 2019. In addition , notaries must also report information owner benefit to agency authorized If found indication mismatch or potential violation . Challenge in implementation role This among other things complexity structure ownership company , limitations access information , and low level cooperation from party corporation . Notary sued own deep understanding regarding governance company and terms regulation legislation in order to be able to operate function supervision with accurate .

### 3. RESULTS AND DISCUSSION

Position law owner benefit in a Limited Liability Company (PT) experiences development important in context regulations in Indonesia. Based on Constitution Number 40 of 2007 concerning Limited Liability Companies , the owner legitimate from a PT is those whose names recorded as holder stock . Concept This emphasizing legal ownership, namely legal ownership in a way law and proven through sheet shares issued on behalf of. However in practice , often appear a situation in which a person or group that does not recorded in a way official as holder share still enjoy benefits and control of PT, as happen in case of PT. X.

In the practice of PT. X, it was found existence ownership No direct via nominee, where the name of the other party is used For represent ownership shares to hide owner actually . This is creating dual ownership: holder share legally (legal owner) and owner the actual beneficial



owner enjoy rights and benefits economy from PT. This action contradictory with Article 48 paragraph (1) of the PT Law which strictly firm mention that share must issued in the name of the owner , not on behalf of the party only become intermediary or name loan .

Position owner benefits that act as it should be legal owner creates dysfunction in PT. Shareholder's governance system that is not own legality as holder share Can still do actions like to stop or lift directors , change budget basic , up to control policy strategic PT. X. In fact , according to PT Law , authority the in a way exclusive in hand General Meeting of Shareholders (GMS) which has strength law highest in company and only can carried out by the registered party as holder share .

Phenomenon like This clear contradictory with legal entity theory , in particular Von Gierke 's organ theory , which emphasizes that the legal entity is entity real ones that have functioning organs as man in act in a way law . When the functions This run by someone else part from formal legal structure ( not a legal organ ), then the validity and independence of legal entities as entity standing law Alone become questioned . PT does not Again operate as subject independent law , but rather become tool interest owner benefit hidden .

For to overcome practice kind of this , the government emit Regulation President Number 13 of 2018 concerning Implementation Principle of Recognizing Beneficial Owners. In the regulation Here , the term " Beneficial Owner " is expanded covers parties who even though No own share formally , but own ability For control or to obtain profit from a corporation . This is to mark shift important in regulation corporation , from just formal ownership to direction identification and monitoring on controller Actually .

Presidential Decree Number 13 of 2018 stipulates that owner benefit must reported and revealed in a way transparent , especially For prevent practice illegal like money laundering , avoidance taxes , and abuse entity corporation . In addition to the criteria general , owner benefits can also be obtained classified based on criteria certain like mastery shares above 25% , or ability lift and dismiss directors and commissioners . This provides base law for authorities and the public For know who is the real one be behind a PT.

In addition to objective law and supervision , disclosure owner benefits are also closely related the relation with implementation Good Corporate Governance (GCG) principles . Transparency about structure ownership and control corporation increase accountability and market confidence , both from both domestic and foreign investors abroad . With Thus , compliance to regulation owner benefits also become step strategic in build reputation and integrity of the business world .

Implementation principle recognize owner benefits also require role active Notary Public as professional on duty compile deed establishment and change company . However , in practice found that No all Notary Public understand or apply principle This in a way right . There are still those who think that owner benefit is the listed parties in deed as founder or holder only formal shares , even though understanding This Already expanded in Presidential Decree and Regulation of the Minister of Law and Human Rights.



Some notaries understand regulation latest confess importance identify owner benefits , especially in context prevention act criminal like money laundering . Based on the Regulation of the Minister of Law and Human Rights Number 15 of 2019, the owner benefit defined as a person who has control or entitled on benefit economy from corporations , including those that can pointing or to stop administrator . Notary must ask and make sure Who owner benefit from a corporation moment do connection law or compile deed.

Ministry of Law and Human Rights through The Director General of AHU also emphasized importance role Notary Public in ensure transparency and accountability in establishment of a business entity . Notary requested apply principle recognize user services (Know Your Client), including identify Who recipient benefit Actually from the company that was founded . This is in line with Regulation of the Minister of Law and Human Rights Number 9 of 2017, which is base law for Notary Public For prevent involvement in practice illegal through introduction more deep to parties involved .

The concept of beneficial ownership is introduced in Presidential Decree Number 13 of 2018 basically become complement from system law corporations that have set up in the PT Law. Both own approach different —the PT Law emphasizes the formal aspects of ownership shares , while Presidential Decree emphasize substance control and mastery real . For strengthen principle justice and transparency in the business world , both regulation This should walk synergize and cooperate with each other complete .

Finally , there are two approaches in see Who owner corporation — good through legal ownership or benefit economical — to be runaway important in governance reform company . Implementation principle this also becomes tool For to reveal veil corporation (piercing the corporate veil), namely For know Who what really needs to be done responsible answer when company used For deviant goals . With method this , law No only see form formality , but also dig essence justice that is to be achieved enforced .

#### 4. CONCLUSION

##### Conclusion

1. There is emptiness law related position Beneficial Owner based on PT Law because Corporate Owners under the PT Law are Corporate owners who are owner share written whereas position Beneficial Owners of Corporations based on theory is owner corporations that do not listed his identity or owner actually , things the No set up its position in the PT Law. so that implementation about recognize owner benefit in the corporation connected with the PT Law no can applied .
2. The role of a notary in recognize Owner Sorry in Corporations , have obligation For to apply principle recognize Beneficial Ownership is carried out through identification , verification and monitoring towards the Corporation as user services . However , in reality matter the Not yet can implemented in a way maximum because of Notary Public No know about position owner benefit based on Presidential Decree Number 13 of 2018 and Perkumham Number 15 of 2019.





## Suggestion

1. It is expected government as a regulator can do revision to Constitution Number 40 of 2007 concerning Limited Liability Companies , related to position and authority Beneficial Owner in Corporations , as well as need to be arranged more carry on about accountability and sanctions for Beneficial Owners who do crime in Corporations in particular act criminal money laundering and crime criminal funding terrorism . It is expected government can do harmonization to regulation legislation related disclosure Beneficial Owner or beneficial owner, so that in its implementation No happen opposition between regulation one legislation with other.
2. Notary Public in the do duties and functions specifically in the recognize owner benefit must can understand about understanding position owner benefit in the corporations , notaries are also required dig information and ensure data regarding owner benefits reported by observers in accordance with Presidential Decree 13 of 2018 for ensure criteria Owner benefit in corporation has reported is correct and accurate data .
3. It is expected Bond Indonesian Notary (INI) as receptacle the only one profession Notary so that he can oversees the Notaries who have it function For strive for certainty law , develop knowledge law in general and science notary in particular , improving quality Notary , as it should be Keep going do effort to socialize knowledge and also improve quality Notary Public specifically related implementation principle recognize Beneficial Owners in Corporations as regulated in Presidential Decree Number 13 of 2018 and Perkumham Number 15 of 2019. It is expected Notary Public understand and execute his obligation in recognize Beneficial Owner in Corporations , as has mandated in Presidential Decree Number 13 of 2018 and Perkumham Number 15 of 2019.

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