

# BENEFICIAL OWNERSHIP TRANSPARENCY IN LAW ENFORCEMENT OF MONEY LAUNDERING ACT INVOLVING CORPORATIONS

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**Abstract:** *Corporations have an important role in economic growth and national development. In corporate practice, there are times when committing criminal acts of money laundering that have a detrimental impact on the state and society. The corporation has the potential to become a means to commit criminal acts of money laundering with the aim of benefiting (beneficial owner). The distribution of beneficial owner information is an effort to realize corporate sustainability. Consistency of beneficial ownership transparency is needed to ensure law enforcement of money laundering crimes involving corporations. The purpose of this study is to find the role of beneficial owners in the misuse of corporations as a medium for money laundering crimes in Indonesia. This research method uses a normative juridical approach that focuses on data collection techniques in the form of secondary data which is also supported by interviews. The research specifications are descriptive analytical, with literature studies and field studies being the research stage, then the data is analyzed qualitatively. The results of the analysis show that the position of beneficial owners in the corporation can in practice control the corporation to carry out money laundering actions, which then the proceeds from the money laundering are enjoyed by the beneficial owner. Transparency of beneficial owner information is part of the framework of the principles of prevention and eradication of money laundering. Transparency of beneficial owner information can ensure the implementation of practices and concept development that is used as a means of orientation in the prevention and eradication of money laundering crimes involving corporations.*

**Keywords:** *Beneficial Ownership, Information Transparency, Money Laundering Crime, Indonesia.*

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## 1. INTRODUCTION

A corporation is an organization that has a strategic role in bringing about the flow of change and growth of the world economy. The development of corporations at the beginning of modern times was influenced by the increasingly complex trading business. In the modern world corporations are transformed into entities that cross national borders, have dominant power and power because they control global energy and finance. In Indonesia, the emergence of corporations has created jobs for thousands of people even until 1992, the number of workers working in the industry reached around 2.6 million, thus helping to reduce the unemployment rate.



The large role of corporations in the economy in Indonesia cannot be separated from the new order development policy that prioritizes economic growth which has subsequently produced giant corporations and conglomerates that control and monopolize the Indonesian economy. The corporation as an entity of its existence makes a great contribution in increasing economic growth and national development. However, in reality, corporations sometimes also commit various criminal acts that have a detrimental impact on the state and society. In other words, the existence of corporations in human life and social life does not always have a positive impact. On the contrary, the existence of a corporation whose existence cannot be separated from social life can actually have a negative impact.

The emergence of these negative impacts is partly due to the fact that corporations guarantee more capital collection and corporations are always oriented towards the greatest profit without paying attention to social aspects. The existence will make it easy for corporations to do or not do something. In achieving its goal of getting the maximum profit, the corporation may commit unlawful acts including money laundering. A corporation can be a place to hide property resulting from a criminal act that is not touched by legal proceedings in criminal liability. Crimes committed by corporations are quite difficult and known, they are caused because they are covered by routine activities involving professional expertise and complex organizational systems. Corporations involved in a crime will hide their misconduct by minimizing formal evidence or by making double records so that they appear as a business activity in general. Corporations can be used as a means either directly or indirectly by criminal offenders who are beneficial owners of the proceeds of money laundering crimes.

In the context of binding and fulfilling Indonesia's international commitment to BO transparency, especially for the prevention and eradication of money laundering, the issuance of a legal instrument through Presidential Regulation Number 13 of 2018 concerning the Implementation of the Principle of Recognizing the Beneficial Owner of Corporations in the Context of Prevention and Eradication of Money Laundering and Terrorism Financing Crime. The stipulation of Presidential Regulation Number 13 of 2018 is also based on the idea that, based on international standards in the field of prevention and eradication of money laundering, it requires arrangements and mechanisms to identify the beneficial owners of a corporation to obtain information about beneficial owners that is accurate, current and available to the public.

Sufficiency, accuracy, and timeliness of information about BO an action to ensure information about BO is accurate and current (FATF). FATF formulates that BO refers to individuals who ultimately own or control other parties (ultimate owns or controls) and or individuals whose interests are controlled by other people (Henry Donald, 2017). BO also refers to natural persons exercising ultimate effective control over other parties or legal arrangements. The two terms ultimate owns or controls and ultimate effective control underline a situation in which the exercise of ownership or control is carried out either through direct or indirect control (Darussalam, 2019).

Presidential Regulation Number 13 of 2018 requires corporations to apply the principle of recognizing the beneficial owner, by appointing officials or employees to implement the principle of recognizing the beneficial owner of the corporation and providing information about the corporation and the beneficial owner of the corporation at the request of the competent authorities and law enforcement agencies. In practice, there are still many corporations that have not reported the ownership of the beneficial owner so the government has difficulty carrying out complete supervision, this is because the data regarding the beneficial owner's information is inaccurate (Varida Ariani, 2019). Then related to the issue that there are still many corporations that have not reported the ownership of the beneficial owners, it can be seen from the data on sending information dated October 24, 2021, which was received by the Ministry of Law and Human Rights, of the 2,226,687 total corporations in Indonesia, only 504,429 have reported their beneficial owners or equivalent to 22.65%. This shows that the implementation of the reporting of corporate beneficial owners has not been significant.



Referring to the issue of the level of reporting compliance and the importance of BO transparency which is currently still an obstacle, it is closely related to advances in technology and information that demands higher transparency, transparency determines the orientation and development of the company, including in governance related to the beneficial owners of the company. Prichard argues that BO transparency is related to tax interests, information transparency is the basis for shareholders to make decisions and control the company directly. Transparency is based on the assumption that: First, information is a concept that can be recognized and has legal significance. Second, the rationale for making or stipulating related laws and regulations and how to enforce the law (Prichard, 2018). Mock argues that transparency has a relationship with company activities in the country's economic structure (Mock, 1999).

The transparency of BO information, which is required to ensure the enforcement of money laundering offenses in Indonesia is not easy to implement. Information disclosure is faced with legal issues, regulatory synchronization, and protection of personal data from individual company owners, another challenge is related to the political will of policymakers to be more serious in seeking BO data disclosure (PPATK). Baggini and Fosl suggested that action is needed to understand the concept of information transparency in a more specific context, among others, relating to law enforcement issues in the prevention and eradication of money laundering offenses (Baggini & Fols, 2010).

The development of technology and information encourages transparency in the company to be the key in managing the company, including related to the legal aspects of the company. Information transparency is quite important in an economic system to make effective management decisions (Stohl, 2016). Kucherova emphasized that information transparency determines positive expectations about company development, builds trust, and improves the business climate which is always relevant in the context of competition, economic downturn, socio-political changes, and socio-economic development (Kucherova, 2019). Transparency of information is a very important tool to help reduce corruption (Brusca, 2014). The World Bank emphasizes that technological advances have increased access to information and that there has been a strong relationship between transparent business records and higher efficiency and lower bribery cases (World Bank, 2018).

The sustainable prevention and eradication of money laundering offenses are based on several assumptions regarding information and legal aspects. Benefits are not only limited to economic and legal interests as well as economic politics as stated by PPATK in Indonesia. Fernandez-Feijoo argues that transparency is related to sustainability which shows an ethical responsibility (Fernandez, 2014). Galera adds transparency as an orientation to better ensure a sustainability-oriented order (Galera, 2014). Mueller and Engewald provide important insights about the implementation of transparency regulations both for practitioners and for researchers for comprehensive evaluation (Mueller & Engewald, 2018). Gupta explained that in the realm of global sustainability, various forms of information disclosure are increasingly being demanded and provided by the state and the private sector (Gupta, 2020).

The benefits of regulating and implementing BO information transparency require empirical evidence to produce an understanding of the consistency of ideas and ideas on transparency principles that are used as the basis for legal sources related to efforts to prevent and eradicate money laundering. Empirical evidence is needed as a logical argument for the development of the concept of information transparency principles in the implementation related to the disclosure of beneficial owners in the context of preventing and eradicating money laundering offenses.

The conceptual preference for sustainable prevention and eradication of money laundering offenses through transparency of information for corporate beneficial owners is not enough just based on information assumptions. A legal conceptual framework that has a sustainability orientation is needed. FATF suggests that there are three approaches, namely: company approach, exiting information approach, and registry approach to ensure transparency in BO.



The three approaches have problems, especially in terms of mechanisms and procedures for sharing information between the competent authorities. For the information approach, the problem with the company approach is related to the definition of reasonable action that is not well defined and articulated, while from the registry approach, the information is less accurate and up-to-date, and the lack of human resources to collect, verify or monitor and maintain information about BO.

Forstater explained that financial transparency as a solution to prevent money laundering was further explained in the case of BO transparency. Transparency aims to make it difficult to hide the financial affairs of BOs and make it easier for others to manage risk (Forstater, 2017). The FATF added that the state must ensure that there is adequate, accurate, and timely information about BO and the control of legal entities that can be obtained or accessed promptly by the competent authorities. This emphasizes the importance of transparency of information about BO, BO transparency prevents impunity from being responsible for perpetrators, expands contracts and obligations for citizens, reduces business risks from fraud, embezzlement, or engaging in money laundering.

Prevention and eradication of money laundering offenses through BO transparency is a reality of efforts to achieve sustainability. The three good assumptions related to information, prevention and eradication of money laundering offenses, and sustainability can be used as the basis for building a legal conceptual framework regarding the principles of transparency in BO information. The legal framework regarding the implementation of information disclosure to beneficial owners of corporations does not appear to be sufficient with Presidential Regulation Number 13 of 2018 as the legal basis currently in force in Indonesia. So that it is the responsibility of the government to immediately formulate and stipulate laws and regulations in the form of laws that can synchronize legal regulations that are considered to be obstacles in the implementation of transparency of beneficiary information, so that with the existence of a special law that regulates the transparency of beneficiary information these benefits can resolve legal issues regarding the implementation of information transparency of corporate beneficiaries.

## 2. LITERATURE REVIEW MONEY LAUNDERING

Sutan Remy Sjahdeini (2003) said money laundering is a series of activities which is a process carried out by a person or organization against illicit money, namely money originating from crime, with the intention of hiding or disguising the origin of the money from the government or the competent authority to take action against criminal acts by primarily entering the money into the financial system so that the money can be removed from the financial system as lawful money. Unger, et.al., (2006); Kumar (2012); Friedrich, and Quick, (2019) define money laundering as related to predicate crime commissions, e.g. fraud, theft, drugs, tax evasion, and others. The illegal nature of the proceeds of crime makes laundering necessary to make wealth appear as if it was acquired legally. Weber and Kruisbergen (2019) describe money laundering as a fundamental need for criminals to hide illegal income. The purpose of money laundering is to hide the proceeds of crime. Cross-border problems and an important part of organized crime (Gelemerova, 2009). Kumar (2012) explains that it is a modern crime against the state, economic government, the rule of law, and the world and is a worldwide threat.

Money laundering is a process to create a veil from the law to disguise the proceeds of crime (Leong, 2016). Al-Suwaidi, et.al., (2020) added that money laundering is transferring formally or informally through the banking system to reach an unknown final recipient to hide the source of funds by mixing it with official money or to fund terrorists, extremist groups, or other organized criminals groups from various countries. Yenti Garnasih (2016) stated that the process or operation of money laundering is carried out through several stages, namely: placement, layering, and integration. These three steps can occur at the same time in only one transaction or several different transaction activities. These measures are intended to place



illegal funds into the financial system in order not to arouse suspicion from the authorities.

Rose (2020) stated that money laundering poses a general risk to society and is not a new phenomenon. The rapid development of trade and transactions in the era of globalization has made money laundering schemes very complex to unravel and become a global problem. Levi (2020) refers to the IMF concept (2001) explaining that money laundering is an activity that involves processing criminal proceeds disguised as legitimate activities.

### 2.1 Transparency of Beneficial Owner Information

Transparency has become part of the values that underlie the company's strategic and operational framework. Transparency bridges companies and owners of capital. Gupta, et.al., (2020) explain various forms of information disclosure as a need for both the state and private actors. Transparency is an important agenda in the implementation of corporate governance. Forstater (2017) argues that transparency as a general rule or standard that requires the publication of information about the financial affairs of private entities includes, among others, BO information. Publicly informed BOs are individuals who ultimately enjoy the benefits of property rights inequity as a way to increase transparency in the business environment. Knowbel, et.al., (2018) explained the importance of BO transparency in overcoming money laundering and terrorism crimes. Forstater (2017) stated that BO is the owner of the company and the trustee of the bondholders.

FATF, (2019) explains BO refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. BO includes people who run corporate governance. Important information focuses on the nature of the person who actually owns and utilizes the capital or wealth of such legal entity exercising effective control over it (whether or not they occupy a formal position within that legal entity), not just the person (natural or legal entity) who is legally (on paper) entitled to do so. A BO is the person who is behind the last company or holding company in the ownership chain and who controls it. People acting on behalf of others, cannot be considered beneficial owners because in the end they are used by others to exercise effective control over the company.

The company is responsible for the occurrence of criminal acts. Polidori and Teobaldelli (2016) show that companies are required to comply with duty-based compliance requirements in different forms in the CCL concept. In the first structure, strict liability is imposed every time a crime occurs, secondly, the company is liable only if it violates a legal obligation that is, if it does not comply with carefully preventing or reporting violations. Bittle and Lippel (2013) explain the growing concern regarding abuse of power, corporations. The corporation does not adequately regulate itself and give up its 'reputation' and market power to prevent the abuse of corporate power. Intervention in the form of criminal law is seen as necessary, FATF (2019), posits the importance of clear responsibility and role in maintaining the system to prevent abuse of authority.

Corporate criminal liability is applied generally where the corporation can be found guilty of an offence. (Alvesalo-Kuusi and Lahteenmaki, 2016). The theory behind the doctrine of CCL responsibility is the assumption that a corporation as a "person" can only act through the actions of its employees (Jimenez, 2019). Diamantis (2018) asserts that criminal and moral responsibility presupposes the company has a personal identity. Companies can be sanctioned and punished under civil and criminal law if and only if they make a mistake.

## 3. RESEARCH METHOD

A juridical normative method using legal norms stipulated in statutory regulations, international conventions, and court decisions were applied in this study. The legal norms were compared with the implementation of the disclosure principle of information regarding beneficial owners in Indonesia. This study aims to increase the effectiveness of risk mitigation in preventing money laundering in Indonesia. This study applies 3 (three) approaches to addressing this topic: a statutory approach, a conceptual approach, and a comparative



approach.

This study aims to see whether a statutory regulation that applies to a particular field of life does not conflict with one another when viewed from a vertical or hierarchical perspective of existing statutory regulations. In addition to obtaining comprehensive and complete data on laws and regulations for certain fields, research with this approach can also find weaknesses in the laws and regulations that regulate certain fields. Thus researchers can make recommendations to complement deficiencies, remove overlapping strengths, correct existing deviations, and so on.

The results of this research are not only useful for law enforcement, but also for scientists and legal education. Conceptual approach is a type of approach in legal research that provides a point of view of problem solving analysis in legal research seen from the aspect of the legal concepts underlying it, or even can be seen from the values contained in the normalization of a regulation in relation to the concepts contained in it. used. Most types of this approach are used to understand concepts related to normalization in a law, whether it is in accordance with the spirit contained in the legal concepts that underlie it. This approach departs from the views and doctrines that have developed in the science of law. This approach is important because understanding the views/doctrines that develop in legal science can be a basis for building legal arguments when resolving legal issues at hand.

Comparative approach, namely a macro comparative approach (macro comparative approach) and a micro comparative approach (micro comparative approach).[19] The macro comparative approach is used to compare an event or legal event that occurs in various countries, while the micro comparative approach only compares within a certain country in a certain time period.

#### 4. FINDING AND DISCUSSION

##### 4.1 Beneficial Owner Transparency as an Effort to Support Money Laundering Law Enforcement and Economic Growth

The development of national law has a strategic meaning which is an effort to realize national ideals as required in the preamble of the 1945 Constitution. The development of national law must be oriented towards realizing a better, more transparent, and responsive government system to the public's role in decision or policymaking. One theory that can be used as a basis for thinking regarding the development of national law is the theory of development law from Mochtar Kusumaatmadja which is a theory to respond to the development of a society that is building towards a modern society. The theory of development law is a legal policy that places the development of national law as one of the national development strategies. The function and role of law in development determine the direction of development policies in the field of law (Mochtar Kusumaatmadja, 2002).

To achieve the national law development, a basic strategy pattern of legal development should be drawn up, among others in this regard related to the dimension of reform which is part of efforts to improve and perfect national law, in which these efforts are carried out by reforming, codifying and unification of law.

The development of laws regarding the consistency of the principle of transparency of BO information is needed to ensure the practice and development of concepts that are used as a means of orientation in the prevention and eradication of money laundering in a sustainable manner. The implementation of the principle of BO transparency in the prevention and eradication of money laundering offenses in Indonesia requires support in the form of continuous coordination and supervision, including optimizing the big data function to ensure transparency in a collaborative model that can provide legal certainty.

Plaksiy points out that there is a typology in money laundering which is the most common as a sign of a crime. Therefore, transparency of information among the institutions involved, including corporations regarding BO information, will determine the direction of money laundering offenses. On the other hand, efforts to anticipate money laundering are more



motivated by economic interests (Plaksiy, 2018). Young and Woodiwiss put forward the opinion of experts who concluded that, at the core of the current global anti-money laundering regime, is not the destruction of money laundering originating from criminal acts such as drugs and banking secrecy or the termination of financial support for crime but rather the protection and influence of national trade interests (Young and Woodiwiss). & Woodiwiss, 2021). This conclusion adds to the complexity of efforts to enforce money-laundering laws.

In a 2014 report from Global Financial Integrity, Indonesia ranks seventh out of the ten major countries with the largest illicit money flows in the world. IFF in Indonesia in 2003-2012 was recorded at US\$ 187,884 million or equivalent to Rp. 227.7 trillion and/or equivalent to 11.7% of APBN-P in that year. In the mining sector, it is estimated at Rp. 23.89 trillion and 21.33 trillion came from the Trade Miss Invoicing sector then Rp. 2.56 trillion came from illicit money flows. Indonesia's state losses due to these flows of funds reached US\$ 18,071 million per year.

Recognizing the loss as mentioned in the data, Indonesia, which is also a member of the G20 in 2014, has agreed on the High-Level Principle on Beneficial Owners and Transparency, a principle that emphasizes the importance of transparency, availability of accurate and accessible information by authorized institutions. BO is often referred to as the true beneficial owner of a corporation. BO information disclosure is part of the principle framework of anti-revenue erosion and profit transfer or better known as Base Erosion and Profit Shifting (BEPS). The urge for information on BO occurs almost all over the world, especially in developed countries to pursue taxpayers who place and transfer their tax obligations in tax haven countries.

Danu Mahardika emphasized the urgency of transparency of BO information in Indonesia as an effort to prevent corporate abuse as a means of money laundering and corruption as well as maximizing the recovery of assets resulting from criminal acts and facilitating the tracking of assets in money laundering investigations, including making it difficult to hide assets resulting from corruption. Its relevance to the data obtained shows that developing countries have lost around US\$ 1 trillion per year or Rp. 10 thousand trillion as a result of illegal cross-border criminal acts, some of which involve companies with unclear ownership. Unclear BO information can cause the loss of economic potential and state revenues. This occurs as a result of tax avoidance opportunities by taxpayers.

Considering that corporations can be used as a means, either directly or indirectly, by perpetrators of criminal acts who are the beneficial owners of the proceeds of money laundering offenses. The state of Indonesia currently has a legal instrument that requires corporations to determine and report beneficial owners. The legal instrument is Presidential Regulation Number 13 of 2018 which also regulates the process of identification, verification, reporting, updating, supervision, law enforcement, and cooperation between agencies to realize transparency of information on corporate beneficiaries.

Isnu Yuana, who is a senior legal specialist at the PPATK institution, explained that another homework after the BO reporting by the corporation was how to verify it. In terms of verification, the State of Indonesia has adopted many practices in the UK. Considering that the UK is a country that has experience in implementing the concept of BO information transparency. However, even though the UK is a country that is positioned as a mature country for the study and practice of the concept of BO, in its development, the UK is still experiencing problems related to policies regarding the imposition of taxes on BO which are adjusted to the status of the recipient and the rights of residents according to the laws and regulations. Problems related to the process of verifying beneficial owners as stated by Isnu Yuana. It seems that this is not only happening in Indonesia. In many countries, information about the beneficial owners (other than legal owners) of corporations is not available because they were not adequately collected and verified at the time the corporation was created or at any stage during the corporation's existence.

Efforts to resolve the existing problems as stated above can be done by using legal and



regulatory instruments. The legal instrument is a law that specifically regulates legal entities or corporations. Indonesia was added to the FATF's "blacklist" of nations with a high risk of money laundering in 2012, and it was later taken off the list in 2015. 2018 saw the FATF admit Indonesia as an observer member.

APG, an organisation that localises FATF compliances in the Asia/Pacific region, and an associate member of FATF, both have Indonesia as a member state. The Basel AML index 2021, a global index of measuring AML/CFT risks of countries, ranks Indonesia at 76 in a list of 110 countries with the highest AML risk. The Basel AML Index measures the risk of money laundering and terrorist financing (ML / TF) in jurisdictions around the world. It is based on a composite methodology, with 17 indicators categorised into five domains in line with the five key factors considered to contribute to a high risk of ML/TF. It scores Indonesia 4.68 out of 10 (10 being the highest). This puts Indonesia in the medium-risk category.

Indonesia is categorised by the US Department of State Money Laundering assessment (INCSR) as a country/jurisdiction of primary concern in respect of Money Laundering and Financial Crimes. Indonesia is improving its ability to address vulnerabilities. There is generally a high level of technical compliance with anti-money laundering/combating the financing of terrorism (AML/CFT) standards, and authorities continue to develop regulations that are geared toward a risk-based approach. Only slight changes are required in terms of the coordination between the public and private sectors of the economy.

#### **4.2 The PPATK Institution's Efforts to Promote Beneficial Owner Transparency and Good Corporate Governance**

Corporations are often used by criminals to hide and disguise the identity of the perpetrator and the proceeds of a crime. This is what is called a *corporate vehicle* or corporation as media for money laundering. As a measure to anticipate and prevent this practice from occurring, the President of the Republic issued Presidential Regulation Number 13 of 2018 which is considered to encourage transparency of BO information from corporations. PPATK explained that, based on the results of the National Risk Assessment of money laundering offenses, it was identified that the threat level of money laundering offenses committed by corporations was higher at 7.1 compared to that carried out by individuals at 6.74 (PPATK, 2018).

Meanwhile, based on the results of the 2014 *Financial Action Task Force* (FATF) research on the regulation and application of transparency of BO information, it was stated that the lack of BO information that was adequate, accurate, or guaranteed to be true, and could be accessed quickly was eventually exploited by criminals. This shows that Indonesia is very urgent to strengthen regulations and implement transparency of information on beneficial owners of corporations.

Diani Sadia Wati, who is the Expert Staff of the Minister of National Development Planning for Institutional Relations, emphasized that the implementation of Presidential Regulation Number 13 of 2018 is believed to create an investment climate with integrity and high competitiveness (PPATK, 2019). Furthermore, it is said that the non-disclosure of BO information can cause the loss of economic potential and state revenues. This is due to the opportunity for tax avoidance by taxpayers. Undisclosed BO information also creates problems in the capital market and financial sector. These problems include the process of buying and selling fake securities because the selling company has an ownership affiliation with the buying company. In this case, the market exchange does not run perfectly because buyers and sellers may be controlled by the same BO, which makes the performance of the exchange not reflect the actual performance.

BO disclosure creates opportunities for many economic actors to do business fairly, compete fairly and compete to improve the quality of their business. BO disclosure also avoids monopoly and prevents conflict of interest in ownership of public resources. The government's commitment to implement regulations related to BO, which is contained in the National Strategic Action Plan on Corruption Prevention. One of its national actions is the focus on Business Licensing and Trading, Government Monetary, Law Enforcement, and Bureaucratic





Reform. Enforcement of rules on BO transparency will guarantee legal certainty, increase the ranking of ease of doing business and the end is the development of economic resilience for quality and equitable growth (PPATK, 2019).

Another proactive step taken by PPATK was to sign a Memorandum of Understanding with the Uzbekistan Financial Intelligence Institute in 2019. The scope of the Memorandum of Understanding includes an agreement on the mechanism for exchanging financial intelligence information between the two institutions. PPATK positions Uzbekistan as a strategic partner from the Central Asia region, to strengthen the work on prevention and eradication of money laundering offenses that have been carried out by PPATK. Then the last Memorandum of Understanding signed by PPATK was with the Kyrgyzstan FIU. This indicates that PPATK is committed to strengthening data and information sourced from the Central Asia region (PPATK, 2019).

In addition, PPATK also held a coordination meeting with Bank Indonesia which resulted in a joint commitment to support the realization of the integrity and stability of the financial system that encourages economic growth, by preventing and eradicating the entry of money laundering proceeds into the financial sector and payment system in Indonesia (PPATK, 2020). PPATK said that the meeting with Bank Indonesia was important to encourage an efficient, secure, and integrated payment system, both payment systems using cash, fund transfers, electronic money, and other payment systems such as digital payment services. In the end, the sustainable growth of the financial system, payment system, and even the economic system will largely depend on the level of integrity of the system.

#### **4.3 Implementation of the Integrated Concept about Coordination and Supervision between Law Enforcement Officials and Government Agencies**

Coordination between related institutions is still lacking in implementing the law regarding transparency of BO information and the use of big data is still not optimally carried out. This can be seen from the differences in data and delays in sending data for verifying BO in registration, monitoring of BO, and company activities. This condition can be seen from the level of difficulty in obtaining the necessary information data both to identify the beneficial owner for tax purposes and law enforcement officers in the context of investigations.

As an organized crime, complex and vague with legitimate activities, the existence of data mastery that is verified and up-to-date means that data storage with tight and secure access is very necessary. Challenges in the use of big data itself such as volume, speed of the data generated, especially big data are quite difficult to manage. Another challenge is the availability of human resources to analyze big data as the biggest challenge for institutions. The skills to analyze big data are not simple and it is not enough just with the high orientation of the institution on information technology.

Coordination is not only related to problem-solving in law enforcement. Important aspects about data such as the suitability of the latest data between institutions for purposes such as law enforcement are still weak. There are various data differences between institutions related to BO. Weak coordination occurs due to the overlapping span of control caused by the agents' limited understanding of money laundering, including an understanding of the functional duties of each agent.

Coordination vertically and horizontally among related institutions as a methodology for officials that directs knowledge about the transparency of BO information as well as formal procedures to identify when there is a data discrepancy that is indicated in the crime of money laundering. Coordination is an effort to integrate the activities of the work units of each institution according to their functions and authorities so that each institution operates as a unit. Coordination between institutions and work units as a representation of joint efforts in implementing the prevention and eradication of money laundering offenses. Coordination requires extra work of the apparatus as well as full responsibility in highly organized crime. This is in line with the thoughts of Gelemerova (2008) and Kumar (2012) who describe money laundering as an organized and complex crime. As stated by Levi regarding the IMF concept



which explains money laundering and legal activities, it is difficult to distinguish between them (Levi, 2020).

On the other hand, according to Weber and Kruisbergen, money laundering is a basic need for criminals to hide illegal income (Weber & Kruisbergen, 2019). This shows that money laundering is almost certainly a crime in terms of illegal income. Coordination gains legitimacy with a shared understanding that money laundering is a necessity for criminals. This means that this idea becomes the basis for coordination procedures for law enforcement officers to conduct investigations and preventive measures so that money laundering does not occur based on strong signals of illegal income from BO. Everyday financial transactions, both legal and indicated as illegal, are carried out using various registered non-cash payment systems, including those identified as containing violations of integrity, accessibility, and confidentiality. This incident can occur both on the client-side (fund owner) and on the bank or outlet side as well as at the payment stage of the transfer of information through communication channels.

Such incidents can be classified and data objects and properties can be recorded in the database using several patterns, namely by using the well-known FIU (Financial Intelligence Unit) typology which can analyze findings and identify facts of criminal activity by finding the main characteristics of the typology in money laundering scheme. However, the limited ability to analyze data based on the general typology of a money laundering crime is an obstacle. Therefore, coordination is very important to integrate various resources including weaknesses in dealing with money laundering crimes. The wider the effort to disclose BO to corporations in relation to money laundering, the more important it is for organizations to coordinate.

Coordination including with companies as stated by Polidori and Teobaldelli is very important (Polidori & Teobaldelli, 2016). In line with the FATF, coordination describes the company's compliance with systems and mechanisms to realize BO information transparency. Due to the company's compliance and the existence of criminal and corporate moral responsibility, the support of an adequate information system is very much needed. The availability of technology allows low asymmetric information related to the transparency of BO information both with companies and among law enforcers. It is no secret that, among law enforcers, there is still institutional competition and sectoral ego. In addition, the abuse of power in corporations is prone to occur. With coordination supported by information technology, it can ensure that there is a unity of action to protect BOs as well as uncover crimes involving BOs. Gupta emphasized the importance of information disclosure by the state and the private sector (Gupta, et.al., 2020).

The fact is that the use of big data is not optimal. Although the government sector has developed big data applications to help support decision development in real-time, the movement of data between institutions is still slow. Various data and information between institutions as the main challenge. Each relevant institution including the company must have the will, be ready and willing to share data, and build a system for prevention and law enforcement related to BO. Various data between government and business institutions have different scales and scopes of data. In government institutions, information disclosure is based on the implementation of laws and regulations, the implementation of public services. Therefore, the data regarding each transaction is enormous, piling up with several different attributes, values, and challenges than companies. The process of searching for data in government institutions is not easy. Although most government data is structured, it is collected from multiple channels and sources. Another challenge related to government data is the repository of ownership of each institution's data, confidential or public information, each institution is often reluctant to share what they perceive as ownership of the data.

Money laundering crimes can be prevented if the relevant institutions share information about indications of illegal company income committed by BO. In addition, there are still discrepancies in BO data that complicate efforts to reveal the identity of BOs and hinder



communication between institutions. The existing bureaucracy does not yet support the implementation of an integrated or separate system under the consideration of resource support and the readiness of the institution in implementing the information transparency system of corporate beneficiaries. In addition, information about BO is currently very limited and has not reached the final destination, many companies are hiding information about BO for various reasons. Moreover, the authority and power of the BO can exceed the legal owner and controller of the company even though the BO is not the owner who is legally entitled in writing. BO search in the process is faced with changes that cause the search to be uncertain and require the support of adequate resources.

This is in line with the concept of the approach taken by FATF regarding the company approach, exiting information approach, and registry approach to ensure transparency in BO. Indonesia has implemented this approach with various limitations, including in terms of regulation and coordination mechanisms that can provide legal certainty and the limitations of an information system to share accurate data. This is where there are still discrepancies in written legal rules and conflicts between laws and regulations.

A legal framework that can make compliance is not sufficient. The Government through the State Apparatus needs to ensure a coordinated and sustainable monitoring system. Effective implementation of the principle of transparency of BO information in practice requires monitoring and law enforcement processes to ensure that laws and regulations benefit BO. This is to increase the participation and involvement of corporations to disclose or report BO. Practical monitoring processes, including supervisory activities, are carried out to ensure compliance with applicable regulations on an ongoing basis. The effectiveness of the practice of transparency is shown, among other things, by the readiness of relevant parties to provide information about BO when requested.

The fact is that these conditions are difficult to realize, each party has not fully paid attention to the importance of up-to-date information on BO as an important part of the implementation of information transparency. Moreover, BO as a term in domestic law is not recognized by various jurisdictions. Various interpretations by different state apparatus by various authorities further obscure the definition and practice of disclosing information about BO. Efforts to protect BOs, including minority investors and stakeholders in the company, were hampered due to the lack of accurate access to BO information, including information on the identity of the controlling owner and the company's control structure. Government institutions including financial institutions are expected to be able to access information about BO to ensure certainty and a clear legal framework, including in the context of law enforcement.

Companies have an important role to support the successful implementation of BO information transparency. As stated by Forstater, transparency of BO information is a solution to prevent fraud and money laundering, including tax evasion, as stated by Prichard. The facts show that identification related to BO is hampered because of various interests, especially with the ownership and control exercised by shareholders or members who have the same position in the company's organizational structure. Attempts to identify individuals as BO from a trust are more complex, especially in forms such as private foundations, with different roles, rights, and responsibilities including the level of activity in the organization. As stated by Diamantis regarding corporate moral and criminal responsibility. Transparency of information that shows the company's identity is very important in uncovering money laundering crimes.

In an increasingly complex and global economic activity, identification of BO becomes increasingly difficult, especially with the existence of 'trust'. The amalgamation of various business entities into new companies further adds to the length of the process to obtain information about BO. The company as a legal entity is required to recognize and report information about BO, the company is subject to disclosure requirements that ensure adequate transparency of BO information.



Notaries have an important role in disclosing BO. Notaries have a role in knowing the BO from corporations and other forms of legal entities, although on the other hand it adds to the workload and is related to job secrets. This shows that the Notary as the entrance to the success of transparency at the same time has a room that is vulnerable to the problem of transparency of BO information. The use of the Notary profession by ML perpetrators is based on the confidentiality of professional relations. Notaries have the authority to make authentic deeds related to all actions, agreements, and provisions under the laws and regulations. Notaries are authoritative, guaranteeing conformity with facts and not being fictitious. Therefore, it can be trusted and relied on to ensure the transparency of BO information. In addition, Notaries are required to be active in applying the principle of recognizing service users on an ongoing basis.

Crime continues to grow, including in terms of money laundering. Efforts to prevent money laundering are related to policymakers. Legal certainty as outlined in the policy forms the basis for every practice. However, this problem is still a common problem that must be resolved. There is still confusion in the world of practitioners due to legal uncertainty that can hinder efforts to prevent and eradicate money laundering offenses related to beneficial owners, especially in prevention, especially in conditions in the current era of globalization.

Legal certainty is necessary to ensure the acquisition and maintenance of adequate, accurate, and up-to-date information about identities related to BO, including individuals who are entrusted with it. Trusts generally have a complex structure with various sub-structures and the tracing becomes more complex with the bureaucratic culture that exists within each institution. The policy ensures that information about BO can be obtained by efforts to ensure the prevention and eradication of money laundering offenses while still providing legal certainty for investors or companies.

Judging from the legal framework used to ensure that the implementation of BO information transparency is adequate, although there are legal certainty issues that require revision of policies and legal rules regarding transparency of BO information. Another major issue is at the level of practice. Weak support for building coordination and supervision in terms of concepts makes practice lose its consistency and orientation. Coordination and supervision in legal technical matters is a critical aspect that is still lacking in each institution. Coordination between Notaries, companies, relevant governments is an issue in the effort of BO information transparency with community support, becoming a critical aspect that leads to the success of implementing BO information transparency in corporations.

Community participation is an important aspect of transparency efforts facilitated by non-governmental organizations in relation to coordination.

Proactive behavior of institutions that act as supervisors to optimize information transparency. The community is an important part of efforts to reveal the transparency of BO information. The reporting system mechanism includes validation and legal consequences that ensure legal certainty and convenience for investors as a requirement that must be available. Efforts to prevent the occurrence of money laundering offenses have become a joint concern of the Government, Notaries, the Community, Companies, Financial Institutions, and Law Enforcement Officials. Information about BO in a corporation is currently needed to ensure transparency of BO information as well as a reference for monitoring and controlling.

## 5. CONCLUSION

Crime continues to grow including when it comes to money laundering. Efforts to prevent money laundering are linked to policymakers. Legal certainty as stated in the policy is the foundation of every practice. However, this problem is still a common problem that must be resolved. There is still confusion in the world of practitioners due to legal uncertainty that can hinder efforts to prevent and eradicate TPPU related to beneficial owners, especially in prevention, especially in the current conditions in the era of globalization. Trusts generally have complex structures with various substructures and tracing becomes more complex with



the bureaucratic culture that exists within each institution. The policy ensures that information about beneficial owners can be obtained in accordance with efforts to ensure the prevention and eradication of TPPU while still providing legal certainty for investors or companies.

Transparency of information does not only have an impact on efforts to prevent and eradicate money laundering but also has implications for economic conditions and legal certainty. The need to encourage cooperation mechanisms between law enforcement institutions with the support of laws and regulations governing the implementation of transparency of information on beneficial owners from corporations. Research is limited to money laundering crimes involving corporations as perpetrators of criminal acts related to their position as beneficial owners. The position of beneficial owners in a corporation can in practice control the corporation to carry out money laundering actions which then the proceeds from the money laundering are enjoyed by the beneficial owner. Beneficial owner information transparency is part of the framework of the principles of prevention and eradication of TPPU. Transparency of beneficial owner information can ensure the implementation of practices and concept development that is used as a means of orientation in the prevention and eradication of sustainable TPPU.


Legal certainty is needed to ensure the acquisition and maintenance of adequate, accurate, and up-to-date information about identities related to beneficial owners, including individuals who are given trust. In terms of the legal framework used to ensure the implementation of beneficial owner information transparency which is sufficient even though there are legal certainty issues that require revisions to policies and legal rules regarding beneficial owner information transparency. Another major issue is at the practical level. The weak support for building coordination and supervision from the concept side makes the practice lose consistency and orientation. Coordination and supervision in technical matters of law are critical aspects that are still lacking in each institution. Coordination between Notaries, companies, related governments is an issue in efforts to transparency of beneficial owner information with the support of the public, becoming a critical aspect that leads to the success for the implementation of beneficial owner information transparency in corporations.

Community participation is an important aspect of transparency efforts accommodated by non-governmental organizations in relation to coordination. Proactive behavior of institutions that act as supervisors to optimize information transparency. The public is an important part of efforts to uncover the transparency of beneficial owner information. The mechanism of the reporting system includes validation and legal consequences that ensure legal certainty and convenience for investors as a necessity that must be available. Efforts to prevent the occurrence of TPPU have become a common concern for the Government, Notaries, Communities, Companies, Financial Institutions and Law Enforcement Officials. Information about beneficial owners in a corporation is currently needed to ensure transparency of beneficial owner information and as a reference for monitoring and control.

## REFERENCES

- [1] Al-Suwaidi, N.A. and Nobanee, H. (2021), "Anti-money laundering and anti-terrorism financing: a survey of the existing literature and a future research agenda", *Journal of Money Laundering Control*, Vol. 24 No. 2, pp. 396-426. <https://doi.org/10.1108/JMLC-03-2020-0029>.
- [2] Andrian Sutedi, *Tindak Pidana Pencucian Uang*, Cetakan Pertama, Bandung: Citra Aditya Bakti, 2008.
- [3] Anthony Tiono dan R. Arja Sadjiarto, *Penentuan Beneficial Owner untuk Mencegah Penyalahgunaan Perjanjian Penghindaran Pajak Berganda*, *Jurnal Tax and Accounting Review*, Vol. 3 No. 2, (2013).
- [4] Azis Syamsuddin, *Tindak Pidana Khusus*, Jakarta: Sinar Grafika, 2011.
- [5] Baggini J and Fosl, P.S, *The Philosopher's A Compendium of Philosophical Concepts and Methods*, Second Edition, West Sussex, John Wiley and SonsLtd, 2010.
- [6] Brusca, I., et.al., *Accountability and Transparency to Fight Against Corruption: An International Comparative Analysis*, *Journal of Comparative Policy Analysis: Research and Practice*, 20 (5) 2018,

- pp. 486-504., and Williams, A., *A Global Index of Information Transparency and Accountability*, *Journal of Comparative Economics*, 43, 2014.
- [7] Danu Mahardika: *Spesialis Kerjasama Internasional Direktorat Pembinaan Jaringan Kerja antar Komisi Instansi (PJKAKI) pada Komisi Pemberantasan Korupsi (KPK), Beneficial Ownership Transparency in Indonesia*, materi disampaikan pada Pelatihan Beneficial Ownership Investigations for Corruption Cases.
- [8] Darussalam, *Beneficial Owner dalam Konteks Perpres No. 13 Tahun 2018 dan Pajak*, Last Modified, 2019., <https://news.ddtc.co.id/beneficialowner-dalam-kontek-perpres-no-13-2018-dan-pajak-12661>.
- [9] Fernandez-Feijoo, B., Romero, S. & Ruiz, S. *Effect of Stakeholders' Pressure on Transparency of Sustainability Reports within the GRI Framework*. *J Bus Ethics* 122, 53-63 (2014). <https://doi.org/10.1007/s10551-013-1748-5>
- [10] Friedrich, C., & Quick, R. (2019). *An analysis of anti-money laundering in the German non-financial sector*. *Journal of Management and Governance*, 23(4), 1099-1137. <https://doi.org/10.1007/s10997-019-09453-5>.
- [11] Forstater, M. (2017). *Beneficial Openness? Weighing the costs and benefits of financial transparency*. CMI Working Paper Number 3.
- [12] FATF. (2019). *Best Practices on Beneficial Ownership for Legal Persons*. Paris: FATF.
- [13] Gelemerova, L., *On the Frontline Against Money Laundering: the Regulatory Minefield, Crime, Law and Social Change*, 52 (1) 2008.
- [14] Gelera, A.N, et.al., *Transparency of Sustainability Information in Local Governments: English-Speaking and Nordic Cross-Country Analysis*, *Journal of Cleaner Production*, 64-2014.
- [15] Gupta, A, et.al., *Transparency in Global Sustainability Governance: To What Effect?* *Journal of Environmental Policy and Planning*, 22 (1) 2020.
- [16] Gupta, A., et.al., *Transparency in Global Sustainability Governance: to What Effect*, *Journal of Environmental Policy and Planning*, 22 (1) 2020.
- [17] Henry Donald Lbn, *Pembentukan Regulasi Badan Usaha Dengan Model OmnibusLaw*, *Jurnal De Jure*, Vol. 1, No. 1, (2017).
- [18] Kucherova, H., et.al., *Modeling Information Transparency of Economic Entities Under Uncertainty BT - Proceedings of the 1019 7th International Conference on Modeling, Development and Strategic Management of Economic System, MDSMES, 2019*.
- [19] Kumar, V.A., *Money Laundering: Concept, Significance and its Impact*, *European Journal of Business and Management*, 4 (2) 2012.
- [20] Levi, M., *Evaluating the Control of Money Laundering and its Underlying Offences: the Search for Meaningful Data*, *Asian Journal of Criminology*, 15 (2020).
- [21] M. Akil Mochtar, *Memberantas Korupsi, Efektivitas Sistem Pembalikan Beban Pembuktian dalam Gratifikasi*, Jakarta: Q-Communication, 2006.
- [22] Mansyur Semma, *Negara dan Korupsi: Pemikiran Mochtar Lubis Atas Negara, Manusia Indonesia dan Perilaku Politik*, Jakarta: Yayasan Obor Indonesia, 2008..
- [23] Mochtar Kusumaatmadja, *Konsep-Konsep Hukum dalam Pembangunan*, Bandung: Alumni, 2002.
- [24] Mock M, *On the Centrality of Information Law": a Rational Choice Discussion of Information Law and Transparency*, *Journal of Computer and Information Law*, 17-1999,
- [25] Mueller, C.E and Engewald, B, *Marking Transparency Work: Experiences from the Evaluation of the Hamburg Transparency Law*, *Central European Public Administration Review*, 16 (2) 2018.
- [26] Muladi dan Dwidja Priyatno, *Pertanggungjawab Pidana Korporasi*, Jakarta: Kencana Prenada Media Group, 2013.
- [27] Nevey Varida Ariani, *Penerapan Beneficial Owner dalam Tindak Pidana Pencucian Uang*, Jakarta: Balitbangkumham Press, 2019.
- [28] Plaksy, K., et.al., *Applying Big Data Technologies to Detect Cases of Money Laundering and Counter Financing of Terrorism*, 2018 6th International Conference on Future Internet of Things and Cloud Workshops (FicLoudW), 2018.
- [29] Polidori, P., & Teobaldelli, D., *Corporate Criminal Liability and Optimal Firm Behavior: Internal Monitoring versus Managerial Incentives*, *European Journal of Law and Economics*, 45 (2) 2016.

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- [30] Prichard W, *Linking Beneficial Ownership Transparency to Improved Tax Revenue Collection in Developing Countries*, Bill and Melinda Gates Foundation, Summary Brief Number 15, 2018.
- [31] Pusat Pelaporan dan Analisis Transaksi Keuangan, *Implementasi Atueran BO Mendorong Terwujudnya Iklim Investasi yang Berintegrasi*, 18 Desember 2019.
- [32] Pusat Pelaporan dan Analisis Transaksi Keuangan, *Implementasi Atueran BO Mendorong Terwujudnya Iklim Investasi yang Berintegrasi*, 18 Desember 2019.
- [33] Pusat Pelaporan dan Analisis Transaksi Keuangan, *Perpres Beneficial Owner, Upaya Cegah Korporasi Digunakan oleh Pelaku Tindak Pidana*, 28 Maret 2018.
- [34] Pusat Pelaporan dan Analisis Transaksi Keuangan, *Sah, Nota Kesepahaman PPATK dengan Lembaga Intelijen Keuangan Uzbekistan*, 31 Januari 2019.
- [35] Pusat Pelaporan dan Analisis Transaksi Keuangan, *Sinergi PPATK dan Bank Indonesia untuk Mencegah dan Memberantas Tindak Pidana Pencucian Uang dan Pendahaan Terorisme*, 26 Agustus 2020.
- [36] Reda Manthovani dan Narendra Jatna, *Rezim Anti Pencucian Uang dan Perolehan Hasil Kejahatan di Indonesia*, Cet. III, Jakarta: UAI Press, 2018.
- [37] Santum M. Siregar: *Direktur Urusan Sipil Direktorat Jenderal Urusan Hukum pada Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia*, materi disampaikan pada Pelatihan Beneficial Ownership Investigations for Corruption Cases.
- [38] Sutan Remy Sjahdeini, *Pencucian Uang: Pengertian, Sejarah, Faktor-Faktor Penyebab dan Dampaknya Bagi Masyarakat*, Jurnal Hukum Bisnis, Vol. 22 No. 3 Tahun 2003.
- [39] Stohl, C.M., et.al., *Managing Opacity: Information Visibility and the Paradox of Transparency in the Digital Age*, International Journal of Communication, 10-2016.
- [40] Unger, B., Siegel, M., Ferwerda, J., de Kruijff, W., Busuioic, M., & Wokke, K. (2006). *The amounts and the effects of money laundering*. Utrecht School of Economics.
- [41] Weber, J & Kruisbergen, E.W, *Criminal Markets: the Dark Web, Money Laundering and Counterstrategies - An Overview of the 10th Research Conference on Organized Crime, Trend in Organized Crime*, 2019.
- [42] World Bank, 2018.
- [43] Young, M.A & Woodiwiss, M., *A World Fit for Money Laundering: the Atlantic Alliance's Undermining of Organized Crime Control, Trends in Organized Crime*, 2021-24.
- [44] Yunus Husein dan Robert K, *Tipologi dan Perkembangan Tindak Pidana Pencucian Uang*, Depok: Raja Grafindo Persada, 2019.