

Protection of The Notary Position in Monitoring Beneficial Ownership to Prevent The Misuse of Issued Documents

Lidya Puspita¹, Maman Sudirman², Benny Djaja³

¹ Faculty of Law, Tarumanagara University, Indonesia. E-mail: lidya.217232023@stu.untar.ac.id

² Faculty of Law, Tarumanagara University, Indonesia. E-mail: m.sudirman321@gmail.com

³ Faculty of Law, Tarumanagara University, Indonesia. E-mail: bennyd@fh.untar.ac.id

Abstract: A notary is a public official authorized to create authentic deeds and perform other actions in accordance with the law. Given the significant responsibilities they bear, notaries require legal protection while performing their duties, particularly in applying the Principle of Identifying the Ultimate Beneficial Owner of a legal entity. This protection is crucial for reducing legal risks and supporting the implementation of Presidential Regulation Number 13 of 2018, which aims to combat Money Laundering and Terrorism Financing. This paper analyzes issues related to the application of the Principle of Identifying the Ultimate Beneficial Owner by notaries, including the importance of applying this principle and how the Beneficial Ownership Declaration can protect notaries from legal claims. The study uses a normative juridical method with a comparative approach, concluding that the application of this principle is important for notaries. Position of Notary Act as gatekeepers who can help prevent or mitigate undesired risks by obtaining accurate information about the parties involved. However, the legal protection provided by the Beneficial Ownership Declaration is not entirely effective.

Keywords: : Notary; Beneficial Ownership; Protection of Notaries

1. Introduction

Indonesia is governed as a state of law in accordance with the provisions set forth in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that 'Indonesia is a state based on law.' This article explains that Indonesia is a country where the system of governance is conducted based on applicable laws and regulations. The establishment of a legal entity as a separate entity from individuals can be achieved through two main processes. First, this process involves a series of steps in realizing the concept of the legal entity structure, which is then legitimized through the creation of an authentic deed made by a notary. This legal entity refers to a legal subject that stands independently from individuals, having its own rights and obligations. Under Indonesia's positive law, legal entities can be categorized into three main types: Limited Liability Companies, Foundations, and Cooperatives. Although they have different characteristics and purposes, all three share the commonality of separating the responsibilities of the founders and/or shareholders from the legal entity itself in conducting legal activities.¹

Article 1, point 1 of Law Number 12 of 2014 concerning Amendments to Law Number 30 of 2004 on the Position of Notary mandates that a notary is a public official with the authority to create authentic deeds and perform other actions regulated in this law and

¹ Kurniawan, *Hukum Perusahaan : Karakteristik Badan Usaha Berbadan Hukum Dan Tidak Hukum Di Indonesia* (Yogyakarta: Genta Publishing, 2014).

other laws. As a public official, the notary's primary duty is to create authentic deeds, known as notarial deeds.² The notary, as a party involved in the establishment of corporations, also plays a role in identifying the beneficial owners of a corporation in Indonesia. The authentic deed created by the notary serves as perfect evidence, where the statements and declarations it contains can be relied upon and trusted, with the notary's signature and seal providing strong assurance and proof. One of the purposes of creating a deed is for it to be used as evidence in legal disputes to help recall past events, making it useful for evidentiary purposes.³

The rapid growth of businesses in Indonesia has led to increased complexity in certain areas. Therefore, it is highly possible that various problems may arise from this business development. One potential issue that may emerge in the business world is related to the Beneficial Owner, also known internationally as Beneficial Ownership. The concept of Beneficial Ownership is regulated internationally by the recommendations of the Financial Action Task Force, which explains that a Beneficial Owner refers to an individual who ultimately owns or controls the customer and/or the individual on whose behalf a transaction is conducted. This includes influential individuals who exercise the highest effective control over a legal entity or legal arrangement.⁴

Beneficial Ownership refers to individuals who have the authority to appoint or dismiss management, such as directors, board of commissioners, managers, trustees, or supervisors in cooperatives. They also have the ability to control the corporation, hold rights to or receive benefits, either directly or indirectly, from the corporation, and are the true owners of the corporation's funds or shares. This concept applies to various types of corporations such as limited liability companies, foundations, associations, cooperatives, and other forms of cooperatives. Regulations related to Beneficial Ownership are outlined in Presidential Regulation Number 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficial Ownership of Corporations in the Prevention and Eradication of Criminal Acts of Money Laundering and Terrorism Financing ("Presidential Regulation Number 13 of 2018"). Although commonly practiced, this requires proper regulation due to its potential for abuse and vulnerability to crime. The use of beneficial ownership is often associated with concealment efforts, including tax evasion and attempts to hide the proceeds of crimes by individuals or corporations.

In the context of beneficial ownership, various professions are involved in its implementation, including notaries. Notaries play a key role, as Presidential Regulation Number 13 of 2018 stipulates that corporations are obliged to disclose information regarding beneficial owners to the relevant authorities, with notaries potentially acting as enforcers of this obligation. Beneficial ownership is a commercial legal term that refers to an individual or entity that actually enjoys the benefits of ownership of certain assets

² Bunga Cheta Kharisma Ardhita and Yunanto Yunanto, "Juridical Analysis of the Implementation of Notary Public's Authority in Making Deeds Related to the Land Sector," *SIGn Jurnal Hukum* 5, no. 2 (December 26, 2023): 312–23, <https://doi.org/10.37276/sjh.v5i2.298>.

³ Roesnantiti Prayitno, *Tugas Dan Tanggung Jawab Notaris Sebagai Pejabat Pembuat Akta Tanah* (Jakarta: Media Notariat INI, 1989).

⁴ Lucky Suryo Wicaksono, "Tinjauan Yuridis Kepastian Hukum Nominee Agreement Kepemilikan Saham Perseroan Terbatas" (Universitas Gadjah Mada, 2014).

without being officially registered as the owner. Many people use trusts to conceal their identity as the legitimate owner of assets, while they remain the beneficial owner. Although this practice is generally legal, strict regulations are needed to prevent abuse, particularly in the context of criminal activities such as money laundering, bribery, and corruption, where corporations are often used to conceal or falsify the origins of funds or assets to avoid taxes or oversight by authorities.

Presidential Regulation Number 13 of 2018, which governs the implementation of the beneficial ownership identification principle for corporations in efforts to prevent and combat money laundering and terrorism financing, has been followed by several implementing regulations. These include Minister of Law and Human Rights Regulation Number 15 of 2019, which outlines the procedures for implementing the beneficial ownership identification principle for corporations, and Minister of Law and Human Rights Regulation Number 21 of 2019, which provides guidelines for supervising the application of this principle. Additionally, Minister of Law and Human Rights Regulation Number 9 of 2017 was issued earlier, focusing on the principle of identifying service users for notaries, with the goal of preventing businesses established through notaries from being used as tools for illegal activities such as money laundering or terrorism financing. In this context, the role of notaries is crucial as the initial stage in the process of identifying and verifying the beneficial owners of corporations formed by customers.⁵

In the reality, the implementation still faces many challenges. Article 1 paragraph (1) of Presidential Regulation Number 13 of 2018 states: 'A corporation is a group of people and/or assets that are organized, whether as a legal entity or not.' Based on this article, the implementation of Beneficial Ownership Transparency is not only for Limited Liability Companies, but also for legal and non-legal entities, which means it must also be applied to Foundations, Cooperatives, Community Organizations, as well as other non-legal entities such as CVs, UDJs, and others. However, according to data from the Ministry of Law and Human Rights of the Republic of Indonesia as of August 31, 2021, only 22.36% of the total 2.3 million corporations in Indonesia have implemented Beneficial Ownership Transparency. This data is dominated by corporations engaged in Banking/Finance and publicly listed companies

The disclosure of beneficial ownership also serves as a protection for minority shareholders who hold limited shares in the company and helps new investors in making investment decisions. To this end, the government has enacted Presidential Regulation Number 13 of 2018, which governs the disclosure of beneficial owners. However, this regulation has not yet outlined in detail the legal responsibilities of beneficial owners in relation to unlawful acts committed by the corporation. Several factors contributing to the ineffective implementation of beneficial ownership include weaknesses in the application system that is inadequate to support beneficial owners, incomplete and outdated beneficial owner information, and limitations in human resources. Additionally, the lack of risk assessment related to criminal acts involving beneficial owners and the low level of public awareness also influence the effectiveness of implementation.

⁵ Fahrurrozi, "Optimalisasi Data Beneficial Ownership, Sambut Indonesia Menjadi Anggota FATF," *AHU Magz* 11 (2020).

Minister of Law and Human Rights Regulation Number 15 of 2019 and Number 21 of 2019 are derivative regulations of Presidential Regulation Number 13 of 2018. These two regulations are intended to provide a legal foundation in the era of public transparency regarding corporate ownership and to serve as new tools in the efforts to prevent and combat money laundering and terrorism financing, which are often perpetrated by individuals hiding their identities behind corporations. As a public official, notaries have the responsibility to apply the principle of identifying beneficial owners within a corporation, although this obligation is not explicitly regulated in the Notary Position Law. While notaries play a key role in disclosing corporate beneficial ownership, it is important to ensure that this transparency is based on honest and clear information from those representing the corporation, considering that the existence of beneficial ownership is sometimes not fully detectable by the notary. This issue will be further discussed in a journal titled "**Protection of the Notary Position in Monitoring Beneficial Ownership to Prevent the Misuse of Issued Documents**".

2. Method

The research presented in this journal adopts a normative legal research method, which is a literature-oriented approach focusing on legal rules contained in legislation and related regulations.⁶ This type of research emphasizes juridical facts applicable in society, contributing significantly to legal development, and is based on the utilization of secondary data.⁷ In this study, the researcher applies both statutory and conceptual approaches to examine the aspect of Notary Position Protection in relation to the monitoring of Beneficial Ownership as an effort to prevent the potential misuse of issued documents. The method of analysis used is deductive, where the researcher draws general conclusions based on relevant legal facts.

3. Discussion

3.1. The Role of Notaries in Implementing the Principle of Identifying Beneficial Owners

The term 'Beneficial Owner' originates from common law, which distinguishes between two forms of property ownership: legal and beneficial. Legal ownership refers to the ownership that can be transferred, recorded, and registered in the name of a specific party. On the other hand, beneficial ownership describes the type of ownership held by a party that is entitled to the use and benefits of the property, even though that party does not have legal ownership.⁸

⁶ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)* (Jakarta: Rajawali Press, 2006).

⁷ Juan Matheus and Ariawan Gunadi, "Pembentukan Lembaga Pengawas Perlindungan Data Pribadi Di Era Ekonomi Digital: Kajian Perbandingan Dengan KPPU," *JUSTISI* 10, no. 1 (2024): 20–35.

⁸ Anthony Tiono and Raden Arja Sadjarto, "Penentuan Beneficial Owner Untuk Mencegah Penyalahgunaan Perjanjian Penghindaran Pajak Berganda," *Petra Christian University Tax and Accounting Review* 3, no. 2 (2013): 80–92.

The implementation of the Beneficial Ownership principle in Indonesia involves various regulations and measures designed to enhance corporate ownership transparency and prevent illegal practices such as money laundering and terrorism financing. Presidential Regulation Number 13 of 2018 on Corporate Beneficial Ownership mandates the recording and reporting of information regarding beneficial owners in the company's establishment deed. This regulation includes details such as names, identification numbers, addresses, and the percentage of beneficial ownership that must be reported transparently.⁹ A notary is responsible for recording details about beneficial owners in the company's establishment documents. The recorded data includes complete identity information such as names, identification numbers, addresses, and the percentage of ownership held by the beneficial owners.

The role of notaries in the principle of beneficial ownership includes various aspects that support legal certainty and transparency in corporate or business entity ownership. Notaries have the primary responsibility for recording and identifying the beneficial owners of a company in the establishment or amendment of the company's articles of association.¹⁰ They ensure that information regarding beneficial owners is recorded clearly and accurately. Additionally, notaries are responsible for verifying the identities of beneficial owners and ensuring that their interests are recognized and properly recorded. This action is crucial in preventing the misuse of identities or information. Notaries must also ensure that the establishment or alteration of business entities complies with applicable legal provisions, including regulations concerning beneficial ownership. They play a role in helping company owners or related parties understand and comply with the relevant legal requirements.

Furthermore, as a notary, one plays a crucial role in creating authentic deeds that officially record information about beneficial owners. These authentic deeds have strong evidentiary value in the eyes of the law and provide a solid legal foundation for corporate ownership. In addition to official recording, notaries also provide legal advice to the parties involved regarding the legal consequences of ownership and changes in beneficial ownership, ensuring a clear understanding of their rights, obligations, and legal responsibilities. Moreover, notaries have the responsibility to report information about beneficial owners to the relevant authorities in accordance with the regulations applicable in a jurisdiction. By ensuring transparency and accuracy of information regarding beneficial ownership, notaries help prevent illegal practices such as money laundering and terrorism financing.¹¹

⁹ Reinaldy Yudha Wirathama, "Keterbukaan Pemilik Manfaat Dalam Pendirian Korporasi Di Indonesia" (Universitas Hasanuddin, 2021).

¹⁰ Achmad Dzulfadli Firdaus, "Tinjauan Pengaturan Pemilik Manfaat (Beneficial Ownership) Terhadap Kepemilikan Perseroan Terbatas Perbankan Di Indonesia (Studi PT. Bank Central Asia Tbk)" (UIN Syarif Hidayatullah Jakarta, 2021).

¹¹ Leo Agustino et al., "Beneficial Ownership Transparency Strategy in Law Enforcement of the Money Laundering Act Involving Corporations," *Corporate and Business Strategy Review* 4, no. 3 (2023): 148–158.

The importance of the principle of recognizing Beneficial Ownership in the execution of a notary's duties/role encompasses several crucial aspects related to transparency, legal compliance, and crime prevention. Key aspects of recognizing Beneficial Ownership in a notary's duties are as follows:¹²

1. Notaries have the responsibility to ensure that every business transaction, including the establishment of a company or amendments to the articles of association, complies with applicable laws, including the legal obligation to identify Beneficial Owners.
2. By accurately identifying Beneficial Owners, notaries can play a role in preventing money laundering and terrorism financing, as well as reducing the risk of misuse of corporate ownership for illegal activities.
3. The principle of recognizing Beneficial Owners often aligns with government regulations, such as those outlined in Presidential Regulation Number 13 of 2018 in Indonesia. Complying with these regulations is crucial for maintaining the integrity and trust in the legal system.
4. By clearly identifying Beneficial Owners, business transparency can be enhanced, providing assurance to investors, creditors, and business partners that corporate ownership is disclosed transparently and in accordance with business ethics principles.
5. In the authentic deeds prepared by notaries, information regarding Beneficial Owners is recorded, forming a solid legal basis for corporate ownership. This document serves as an official reference that can be used in the context of disputes or future changes.
6. Identifying Beneficial Owners helps prevent anonymous or hidden ownership practices that could be exploited for illegal activities by ensuring that ownership is recorded and accessible to authorized parties.
7. By recognizing Beneficial Owners, notaries contribute to building public and stakeholder trust in the integrity and security of the business environment, which potentially supports sustainable economic growth and investment.

Through the implementation of the principle of recognizing Beneficial Ownership, notaries play a role in ensuring that the process of establishing a company or other business transactions is conducted with integrity, transparency, and in compliance with applicable regulations. This action is crucial for maintaining public trust in the legal and business systems. By ensuring that the recording and access to information regarding Beneficial Owners is carried out in good faith, notaries contribute to building a responsible and fair business culture. The role of notaries is not limited to formal aspects of drafting legal documents but also includes educating and raising legal awareness among business owners and related parties. Through their involvement, notaries can provide a deeper understanding of the importance of Beneficial Ownership and its legal consequences. Overall, the active role of notaries in applying the principle of recognizing Beneficial Owners forms a solid foundation for a more transparent,

¹² Syarif Husein and Widodo Suryandono, "Implementasi Peraturan Presiden No 13 Tahun 2018 Dalam Pengadaan Barang/Jasa Pemerintah (Putusan Nomor 04/KPPU-L/2018)," *Indonesian Notary* 2, no. 1 (2020): 811–30.

responsible, and reliable legal and business system, with a wide-ranging positive impact on public trust and the integrity of the business environment.

3.2. Protection for Notaries in Monitoring Beneficial Ownership to Prevent the Misuse of Documents Issued by Notaries.

Since the enactment of Presidential Regulation Number 13 of 2018, corporations have a new legal obligation to identify their beneficial owners. Corporations must provide information about these beneficial owners to the relevant authorities through a statement, in accordance with the provisions of Article 18 of the regulation.

In applying the principle of identifying Beneficial Owners, this is implemented through a Beneficial Owner Statement, which may also be referred to as a Draft of the Statement of Beneficial Owner. This statement is a document that includes an acknowledgment of the accuracy of the information provided by the corporation regarding beneficial ownership, after identification and verification processes have been conducted by the corporation itself. The document must be submitted to the relevant authorities through the corporation's founders or managers, a Notary, or another party appointed by the founders or managers to disclose information about the beneficial owner of the corporation. The Beneficial Owner is often referred to in this context as the Beneficial Owner Statement. In terms of evidentiary law, this statement can be considered valid proof of an action, in line with its intended purpose.¹³

In the context of civil law, a statement letter from an owner used as evidence can take the form of either a letter or a deed, intended to serve as written proof and signed by the party making the statement. According to R. Susilo's explanation, Article 165 of the HIR (Civil Procedure Code) regulates documentary or deed evidence, where a deed is a written document containing information about a legal act that has occurred, and this information can be read by anyone who reads it. Documentary or deed evidence can be distinguished into authentic deeds, which are certified by an authorized official, and private deeds, which are signed only by the parties involved in the act.

According to Articles 1866 and 1867 of the Civil Code, proof through written documents can be established using both authentic writings and private writings. A statement letter is one of the instruments used to declare certain matters or actions within the context of civil law. Therefore, a statement letter can serve as valid evidence in the form of documentary or written proof in civil proceedings.¹⁴

The impact of a private deed is that its evidentiary value for a legal action requires additional procedures to verify its authenticity, such as evaluation by a judge. Private deeds are often created unilaterally, making the validity of the statements contained within them highly dependent on the honesty of the person making the statement. When a party submits a Beneficial Ownership Statement to the Notary, the Notary accepts the statement within their authority. The Notary's authority in this case includes requesting

¹³ R. Subekti, *Hukum Pembuktian*, 15th ed. (Jakarta: Pradnya Paramita, 2005).

¹⁴ Subekti.

and receiving the necessary documents related to the creation of the deed, which will then be attached to the Deed's Minuta.

According to A.W. Voors, as quoted by Tan Thong Kie in his book *Studi Notariat & Serba Serbi Praktek Notaris*, a notary has the obligation to thoroughly examine each deed to ensure its legal validity. A notary must guarantee that the rights of all parties involved in a contract are clearly and definitively secured. Therefore, a notary is not someone who takes risks in the legal realm. On the contrary, they will always choose the safe route, and in situations filled with legal uncertainty, it is better for them to refrain from acting rather than risk venturing into a dangerous and legally uncertain path.¹⁵

The opinion indicates that a Notary's duty is to ensure the validity of every deed, including the documents submitted to them, with the aim of safeguarding the rights of all parties involved. The certainty referred to here encompasses the application of the principles of diligence or caution to determine whether the action is suitable to be made into a deed or not.¹⁶ However, the Notary is not obligated to investigate whether the process of creating these documents was conducted illegally, unless the deed is clearly fraudulent. Additionally, the Notary is not required to conduct further examinations of the documents.

Recognizing beneficial owners is a complex challenge for Notaries in carrying out their duties, especially in relation to anti-money laundering policies. Lack of diligence in a Notary's actions can lead to serious errors for themselves, with the risk of administrative or even criminal sanctions if the principle of recognizing beneficial ownership is not adhered to. This not only limits the Notary's entrepreneurial activities but also increases their workload. Therefore, Notaries are required to conduct a thorough assessment of the documents that confirm ownership of property submitted by the parties, while also observing their behavior, to prevent potential money laundering or terrorism financing activities.

The Notary must adhere to the principles of diligence and caution in carrying out their duties, which includes compliance with the Position of Notary Act and the Code of Ethics for Notaries.¹⁷ In addition, in accordance with Article 16 paragraph (1) letter a of Law Number 2 of 2014 concerning the Amendment of Law Number 30 of 2004 concerning the Position of Notary, the Notary is also required to act with integrity, honesty, diligence, independence, impartiality, and to protect the interests of the parties involved in the legal act.

¹⁵ Tan Thong Kie, *Studi Notariat & Serba-Serbi Praktek Notaris*, 1st ed. (Jakarta: PT Ichtiar Baru van Hoeve, 2007).

¹⁶ Viona Ansila Domini, Mohamad Fajri Mekka Putra, and Widodo Suryandono, "TANGGUNG JAWAB NOTARIS/PPAT TERHADAP KEABSAHAN TANDA TANGAN DAN IDENTITAS PENGHADAP DALAM AKTA JUAL BELI (STUDI PUTUSAN PENGADILAN TINGGI DAERAH KHUSUS IBUKOTA JAKARTA NOMOR: 10/PID/2018/PT.DKI)," *Indonesian Notary* 4, no. 3 (2019): 1–23.

¹⁷ Denny Saputra and Sri Endah Wahyuningsih, "Prinsip Kehati-Hatian Bagi Notaris/PPAT Dalam Menjalankan Tupoksinya Dalam Upaya Pencegahan Kriminalisasi Berdasarkan Kode Etik," *Jurnal Akta* 4, no. 3 (2017): 347–54.

With the Notary's involvement in efforts to ensure the transparency of beneficial ownership based on Presidential Regulation Number 13 of 2018, including requesting information from the parties regarding the existence of beneficial ownership, especially when establishing a company, the Notary must ascertain whether there is beneficial ownership. When establishing a company, the Notary is obligated to determine whether the parties have beneficial ownership or not, in accordance with Article 39 of the Law Number 2 of 2014 concerning the Amendment of Law Number 30 of 2004 concerning the Position of Notary. Although this article does not provide detailed explanations of what is meant by "knowing the parties" and is not further elaborated in other articles of the Notary Law, the concept of "knowing the parties" refers to the views of experts and customary norms that have been practiced in legal practice to date.

The Notary's obligation to know the parties refers to their responsibility to ensure that the information about the identity of the parties provided by them matches the information in the official documents submitted to the Notary. The implementation of the principle of recognizing beneficial owners by the Notary, as stipulated in Presidential Regulation Number 13 of 2018, is closely related to the Notary's duty to know the parties. This obligation can be fulfilled through methods where the Notary obtains information from the parties to identify them according to the provisions outlined in the Notary Law. In this context, the recognition of beneficial owners is carried out through the use of documents such as a Beneficial Ownership Declaration.

The statement was then included as part of the documents submitted to the Ministry of Law and Human Rights through an electronic administrative system in the form of digital documents, as part of the process for applying for legal entity status.¹⁸ With the available mechanisms and systems, there are legal consequences for a Notary when the Notary uploads the required documents as a party involved in the process. In the Legal Entity Administration System regulated by the Ministry of Law and Human Rights, users are required to input information regarding the beneficial owners of the legal entity. In accordance with the mechanism outlined in Article 18, paragraph (3), the Notary is responsible for providing this information. Therefore, the Notary must ensure that the information provided is obtained from the relevant parties through a Beneficial Ownership Declaration. The Notary's knowledge, supported by the presence of the Beneficial Ownership Declaration, can indicate whether there are any beneficial owners in a transaction. However, the Notary also acknowledges that the accuracy of the statements in the declaration cannot always be guaranteed absolutely by the Notary.

The risk faced by Notaries in disputes over beneficial ownership or suspected money laundering increases with the mechanism in the Legal Entity Administration System. Before Legal Entity Administration System users can submit an application electronically, they must make certain declarations through the website. One of the requirements is to agree to accept any form of sanctions, including criminal, civil, and administrative penalties, in accordance with applicable regulations. This declaration relates to the

¹⁸ Michael Nugroho Widjaja, "Peran Notaris Dalam Penerapan Prinsip Mengenali Pemilik Manfaat Dalam Pendirian Korporasi," *Indonesian Notary Journal* 1, no. 1 (2019): 1–24.

accuracy of the information and data provided in the electronic application. Users of the website have no choice but to agree to this declaration in order to submit their application. By giving this consent, the responsibility for the accuracy of the information falls on the respective user.

With the user's consent to this, various rights and obligations arise as a result of agreeing to the conditions that are set.¹⁹ With the difficulty of verifying the truth of a private declaration, the risk of sanctions against the information provider increases. Therefore, with this mechanism in place, it is crucial to have protections that ensure Notaries acting in good faith to fulfill their obligations related to the transparency of beneficial owners are also safeguarded. In the context of implementing Presidential Regulation Number 13 of 2018 from a civil law perspective, the Notary essentially has the responsibility to ensure the accuracy of the Beneficial Owner Declaration and align it with all the documents provided by the presenter. However, when the Notary submits a request to the Legal Entity Administration System By endorsing the accuracy of the information provided, this opens up the possibility of civil legal consequences that could lead to a breach of contract case if it is later found that the statements in the declaration are false.²⁰

In essence, the Notary's role in obtaining information about the beneficial owner is limited to their scope of authority. According to Presidential Regulation Number 13 of 2018, the Notary needs to request a Beneficial Owner Declaration from the presenter to verify the presence of the beneficial owner within the corporation. The Notary's authority in this matter is limited to conducting a formal examination of the completeness of the documents and verifying them against other identities provided by the presenter.

The role of a Notary is a position of trust, which requires them to maintain the confidentiality of the deeds they create and the information/statements from the parties involved in the creation of the deeds, except as mandated by other laws that require them to disclose such information and provide statements to requesting parties. This action represents the Notary's diligent exercise of their duties and authority in accordance with the due diligence principle mandated by the Position of Notary Act. Although there are no specific provisions regulating legal protection for Notaries in applying the principle of identifying Beneficial Owners in related regulations, Notaries can still rely on the protection provided by the Position of Position of Notary Act and the professional code of ethics.

4. Conclusion

Based on the analysis above, it can be concluded that the application of the Know Your Beneficial Owner Principle by a Notary is of great importance, as it serves as an initial step in preventing undesirable activities such as Money Laundering and Terrorist Financing. This obligation allows a Notary to utilize information from clients when establishing a

¹⁹ Subekti, *Hukum Pembuktian*.

²⁰ Subekti.

legal entity, even though such information is generally protected by the confidentiality inherent in the relationship between the Notary and the client. The purpose is to ensure that the individual presenting themselves is indeed the actual Beneficial Owner. Nevertheless, the regulations concerning the use of Beneficial Owner information by Notaries, as one of the Designated Non-Financial Businesses and Professions (DNFBP) under Presidential Regulation Number 13 of 2018, still require further revisions to ensure more effective implementation.

The existing regulations are not yet fully aligned with the authority of Notaries as stipulated in the Notary Position Act. This is crucial to avoid placing excessive responsibility on Notaries for the task of identifying beneficial owners in order to prevent Money Laundering and Terrorist Financing. Although there exists a Beneficial Owner Declaration signed by the presenter, which serves as evidence that the Notary has applied the Know Your Beneficial Owner Principle, this does not completely shield the Notary from potential legal consequences in the future. In this context, while the Beneficial Owner Declaration can offer some degree of protection to the Notary against legal actions, there remains a level of uncertainty surrounding the Notary's legal position, necessitating further review and adjustment to ensure that their responsibilities do not become an undue burden.

In a broader context, considering that the document is a private agreement, its evidentiary value ultimately hinges on the acceptance by the parties to whom it is presented as evidence. This indicates that the truth derived from this evidence is highly subjective. By issuing the Beneficial Owner Declaration, the Notary has essentially fulfilled their duty in terms of exercising due diligence and, specifically, the obligation to identify the presenting party. However, the material truth of the statements made by the client or presenter in the declaration should not be the Notary's responsibility to verify, as this falls outside their authority. Therefore, to provide legal certainty for Notaries in carrying out their duty to identify Beneficial Owners, regulations should be established that clearly limit the Notary's responsibility to merely ensuring that the information they obtain is as disclosed by the client or presenter, or to the extent of formal accuracy only.

References

- Agustino, Leo, Indah Fitriani, Fitriani Reyta, and Ganjar Nurul Fajar. "Beneficial Ownership Transparency Strategy in Law Enforcement of the Money Laundering Act Involving Corporations." *Corporate and Business Strategy Review* 4, no. 3 (2023): 148–158.
- Ardhita, Bunga Cheta Kharisma, and Yunanto Yunanto. "Juridical Analysis of the Implementation of Notary Public's Authority in Making Deeds Related to the Land Sector." *SIGn Jurnal Hukum* 5, no. 2 (December 26, 2023): 312–23. <https://doi.org/10.37276/sjh.v5i2.298>.
- Domini, Viona Ansila, Mohamad Fajri Mekka Putra, and Widodo Suryandono.

- "TANGGUNG JAWAB NOTARIS/PPAT TERHADAP KEABSAHAN TANDA TANGAN DAN IDENTITAS PENGHADAP DALAM AKTA JUAL BELI (STUDI PUTUSAN PENGADILAN TINGGI DAERAH KHUSUS IBUKOTA JAKARTA NOMOR: 10/PID/2018/PT.DKI)." *Indonesian Notary* 4, no. 3 (2019): 1–23.
- Fahrurrozi. "Optimalisasi Data Beneficial Ownership, Sambut Indonesia Menjadi Anggota FATF." *AHU Magz* 11 (2020).
- Firdaus, Achmad Dzulfadli. "Tinjauan Pengaturan Pemilik Manfaat (Beneficial Ownership) Terhadap Kepemilikan Perseroan Terbatas Perbankan Di Indonesia (Studi PT. Bank Central Asia Tbk)." UIN Syarif Hidayatullah Jakarta, 2021.
- Husein, Syarif, and Widodo Suryandono. "Implementasi Peraturan Presiden No 13 Tahun 2018 Dalam Pengadaan Barang/Jasa Pemerintah (Putusan Nomor 04/KPPU-L/2018)." *Indonesian Notary* 2, no. 1 (2020): 811–30.
- Kie, Tan Thong. *Studi Notariat & Serba-Serbi Praktek Notaris*. 1st ed. Jakarta: PT Ichtiar Baru van Hoeve, 2007.
- Kurniawan. *Hukum Perusahaan : Karakteristik Badan Usaha Berbadan Hukum Dan Tidak Hukum Di Indonesia*. Yogyakarta: Genta Publishing, 2014.
- Matheus, Juan, and Ariawan Gunadi. "Pembentukan Lembaga Pengawas Perlindungan Data Pribadi Di Era Ekonomi Digital: Kajian Perbandingan Dengan KPPU." *JUSTISI* 10, no. 1 (2024): 20–35.
- Prayitno, Roesnantiti. *Tugas Dan Tanggung Jawab Notaris Sebagai Pejabat Pembuat Akta Tanah*. Jakarta: Media Notariat INI, 1989.
- Saputra, Denny, and Sri Endah Wahyuningsih. "Prinsip Kehati-Hatian Bagi Notaris/PPAT Dalam Menjalankan Tupoksinya Dalam Upaya Pencegahan Kriminalisasi Berdasarkan Kode Etik." *Jurnal Akta* 4, no. 3 (2017): 347–54.
- Soekanto, Soerjono, and Sri Mamudji. *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*. Jakarta: Rajawali Press, 2006.
- Subekti, R. *Hukum Pembuktian*. 15th ed. Jakarta: Pradnya Paramita, 2005.
- Tiono, Anthony, and Raden Arja Sadjiarto. "Penentuan Beneficial Owner Untuk Mencegah Penyalahgunaan Perjanjian Penghindaran Pajak Berganda." *Petra Christian University Tax and Accounting Review* 3, no. 2 (2013): 80–92.
- Wicaksono, Lucky Suryo. "Tinjauan Yuridis Kepastian Hukum Nominee Agreement Kepemilikan Saham Perseroan Terbatas." Universitas Gadjah Mada, 2014.
- Widjaja, Michael Nugroho. "Peran Notaris Dalam Penerapan Prinsip Mengenali Pemilik Manfaat Dalam Pendirian Korporasi." *Indonesian Notary Journal* 1, no. 1 (2019): 1–24.
- Wirathama, Reinaldy Yudha. "Keterbukaan Pemilik Manfaat Dalam Pendirian Korporasi Di Indonesia." Universitas Hasanuddin, 2021.

Conflict of Interest Statement: The author(s) declares that the research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest.

Copyright: © Jurnal Hukum dan Kenotariatan. This is an open access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC-BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

Jurnal Hukum dan kenotariatan is an open access and peer-reviewed journal published by Master Of Notarial, Universitas Islam Malang, Indonesia.

Open Access 