

PRINCIPLES FOR IDENTIFYING THE BENEFICIAL OWNERS AND SANCTIONS

The Minister of Law and Human Rights recently issued Regulation of the Minister of Law and Human Rights No. 15 of 2019 regarding Procedures for Implementing the Application of Principles for Identifying Beneficial Owners of Corporations (“**Regulation of the Minister of Law and Human Rights No. 15/2019**”) as an implementation of the Presidential Regulation on the Application of Principles for Identifying Beneficial Owners of Corporations in the Prevention and Eradication of Criminal Acts of Money Laundering and Criminal Acts of Terrorism Funding (“**Presidential Regulation No. 13/2018**”).

A person can hide money laundering and terrorism activities behind a company's legal business. For example, a person may establish a limited liability company (“PT”) which also has shares in another PT which, it transpires, also has shares in another PT. And so on, so that it blurs the traces of the actual Beneficial Owner of the companies.

Using this multilayered ownership, the individual Beneficial Owner strives to conceal himself/herself from the spotlight or the supervision of the competent authority over financial transactions for money laundering or terrorism funding carried out through the companies he/she owns. In view of these,, the government considers it necessary to have arrangements and mechanisms to identify the Beneficial Owner of a corporation in order to obtain information about the Beneficial Owner that is accurate, current, and publicly available.

Corporate Obligations to Convey Information about Beneficial Owner

Presidential Regulation No. 13/2018 and Regulation of the Minister of Law and Human Rights No. 15/2019 use the term 'Corporation' which has a broader meaning than 'company'. Corporations are defined as organized groups of people and / or assets, both legal and non-legal entities, including limited liability companies, foundations, associations, cooperatives, limited partnership, alliances of firms, and others.



According to Presidential Regulation No. 13/2018 definition, a “Beneficial Owner” can be briefly interpreted as: (i) an individual person, (ii) who has control over management, (iii) who has the ability to control the Corporation, (iv) who receives benefits either directly or indirectly, (v) who is the actual owner of the Corporation, (vi) and/or complies with the criteria in Presidential Regulation No. 13/2018.

Regulation of the Minister of Law and Human Rights No. 15 of 2019 obliges the Corporations to submit correct information about the Beneficial Owner of the corporate to the government at the time of establishment and when there is a change or update of the Beneficial Owner information. The information is submitted through the AHU Online electronic system by a notary, founder or management of the Corporation or other authorized party.

In this case, the Minister of Law and Human Rights can cooperate in the exchange of information on Corporate Beneficial Owners with other agencies such as law enforcement agencies, government agencies and other authorities in states or jurisdictions. Moreover, it should be noted that Perpres No. 13/2018 provides everyone with the right to request Beneficial Owner information from the Authorized Authority. The request must be exercised in accordance with the provisions concerning the disclosure of public information.

Sanctions

What is the sanction if there is a violation of the obligation to submit information about the Corporate Beneficial Owner? Presidential Regulation No. 13/2018 only regulates briefly in Article 24 that violations may be subject to sanctions in accordance with statutory provisions. These provisions are not regulated further in Regulation of the Minister of Law and Human Rights No. 15 of 2019. Therefore, sanctions imposed will refer to statutory provisions related to the relevant Corporation, whether the regulations related to limited liability companies, foundations, associations, cooperatives, limited partnerships, alliance of firms, or other form of corporation.

For example, Law No. 40 of 2007 concerning Limited Liability Company regulates that the organ of Limited Liability Company responsible for carrying out the day-to-day management of a Limited Liability Company is the Board of Directors. Therefore, in the context of a limited liability company as a Corporation, the Board of Directors can be held personally liable if a loss can be proven to be due to the negligence and fault of the Board of Directors in providing Corporate Beneficial Owner information.

On the other hand, the result of the sanctions for violations of the delivery of the Beneficial Owner information being unclear may arise on the side of the establishment of a Corporation. Presidential Regulation No. 13/2018 regulates that Beneficial Owner Information must be submitted at, among others, the time of the establishment of the Corporation. Could a mistake in conveying the information on the Corporate Benefit Owner be so interpreted that the establishment of a Limited Liability Company is legally flawed?

An example of the complications the lack of clarity on the sanctions in the legislation can be seen in Article 31 of Law no. 24/2009, which requires that every international business contract involving an Indonesian party must be made in the Indonesian language. This regulation does not set clear consequences if the contract is not made in an Indonesian version.

Meanwhile, the obligation to use Bahasa Indonesia is interpreted by the West Jakarta District Court as a condition for the validity of a contract. This appears in West Jakarta District Court Verdict No. 451 / Pdt.G / 2012 / PN.Jkt.Bar between PT Bangun Karya Pratama Lestari and Nine AM Ltd. which states that the contract between the two parties to the dispute is "null and void" because it does not meet the requirements of 'lawful causes' as stipulated in the Civil Code.

Mirroring on the Case of Bangun Karya - Nine AM, it is possible that in the future there could be parties in dispute who may strive to cancel the establishment of a Corporation as a result of a failure to submit or an error in submitting the Beneficial Owner information. If this happens outside the context of money laundering acts or criminal acts of terrorism, then the articles in Presidential Regulation No. 13/2018, which in fact aims to prevent money laundering and criminal acts of terrorism, will have become a weapon for use in commercial disputes.

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