

NOTARY LEGAL RESPONSIBILITIES IN APPLYING THE PRUDENTIAL PRINCIPLE OF RECOGNIZING THE BENEFITS OF CORPORATIONS

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ABSTRACT

Funds for the establishment of a corporation come from the Beneficial Owner. The proceeds from Money Laundering and Terrorism Financing Crime are used as a source of funds so that Presidential Regulation Number 13 of 2018. Corporations and Notaries do not apply the principle of recognizing the beneficial owner as being punished, but Presidential Decree 13/2018 article 24 does not mention the sanctions. Therefore, the author examines this, as for the problems, namely how is the legal responsibility in applying the principle of recognizing the beneficial owner of the corporation, the role of the notary in the application of the principle of recognizing the beneficial owner of the corporation, and the responsibility of the notary in applying the principle of recognizing the beneficial owner of the corporation. The research method uses normative methods. The results of the study are the application of the principles of the beneficial owner of the corporation, namely, firstly, civil sanctions in the form of claims for compensation through civil lawsuits and restitution, secondly, criminal sanctions, namely imprisonment, fines, and additional penalties, and thirdly, administrative sanctions. Notaries play a role in implementing the principle of the beneficial owner of a corporation as a profession by providing corporate information about beneficial owners, reporting data and verifying data, matching identities with other files, updating data annually, and deciding agreements if suspicious transactions are being responsible for each series. A reporting of information and files of beneficial owners to the Director-General of AHU online. Notary prudence carried in receiving and reporting data as prevention at the beginning of eradicating ML and TPP, so it is not sustainable. If an error occurs from the Notary due to intentional or negligence, the Notary can be asked for legal responsibility, namely civil sanctions in the form of a claim for compensation, criminal sanctions in the form of imprisonment, administrative sanctions in the form of a decrease in the degree of the deed made by a Notary, reprimands, to dishonorable dismissal of the Notary.

Keywords: Legal Liability, Notary, Corporation

INTRODUCTION

With the existence of people who carry out associations, it can be in the form of assets owned in an organized manner, in the form of legal entities, or those that are not legal entities, which is the meaning of corporations. From the form of business entity, the difference lies in the subject and capital, establishment procedure, assets, and liability.

Wealth originating from the Crime of Money Laundering and Terrorism Financing Crime is used as funds for the establishment of a business entity. Thus, there is a corporation called the beneficial owner. If the beneficial owner directly or indirectly obtains use from the business entity, as the evident owner of the capital/shares of the business entity, has a good influence and controls the business entity freely without any participation from other parties, has power over the organs of the corporation other.

The Crime of Money Laundering and the Financing of Terrorism jeopardize the stability and integrity of the country's economy that affects the lives of the people. Thus, the Presidential Regulation of the Republic of Indonesia No. 13/2018, concerning the Application of the Principle of Recognizing the Beneficial Owner of Corporations in the Context of Prevention and Eradication of the Crime of Money Laundering and the Financing of Terrorism (Perpres 13/2018), that was promulgated on 05 March 2018.

A limited liability company as a business entity, foundation, association, cooperative, limited partnership, firm partnership, and others is a business entity that applies the principle of the beneficial owner (found in article 2 paragraphs (2) of Presidential Regulation 13/2018).

The notary is related to the making of the deed of establishment of the corporation. As stated in UUJN No. 2/2014 article 1 point 1. In making the deed, it is carried out carefully on all completeness and validity of the document. The principle of identifying service users or beneficial owners must be applied by a Notary at the time of making a business entity deed so that it does not become a problem in the future.

For this reason, the role of the Notary in disclosing the beneficial owner is required. Notaries are required to understand from the application of recognizing the beneficial owner of a business entity in terms of the relationship between a Notary as a profession that conveys information and administers documents related to the Beneficiary as stated in Presidential Regulation 13/2018 article 18 paragraphs (3) and Article 22 paragraph (1).

Therefore, the Notary in applying the beneficial owner of the corporation must be with the principle of prudence. Authorized agencies are greatly helped by the existence of data on legal ownership and beneficial owner (beneficiary owner) so that it is easy to identify the parties responsible for corporate business activities.

Corporations and Notaries have legal responsibilities in the application of the beneficial owner of the corporation, that if not implemented will be subject to sanctions. However, Presidential Decree 13/2018 does not state sanctions for corporations and notaries who do not report beneficial owners to regulators in this regard. As Perpres 13/2018 article 24 means that legal entities that do not implement the beneficial owner will be given sanctions following the applicable regulations, this case, it is not stated what the regulations are and what the sanctions are for those who do not apply the ownership of the benefits.

Therefore, researchers are interested in raising this issue to be studied and researched in writing a thesis entitled: “**Notary Legal Responsibilities in Applying the Prudential Principle of Recognizing the Benefits of Corporations**”.

RESEARCH METHOD

Research methodology as a science of research, teaches theoretically about the general principles of research methods, while methods as a scientific way of working in research are carried out starting from determining the nature and character of the study, formulating problems as the main target object of study, formulate hypotheses (if needed), thematic or study titles, theoretical frameworks, methods, discussions understudy, conclusions or suggestions, along with other research instruments.

This research uses normative juridical study from related library materials, analyzes from document studies, laws, legal theories, and expert opinions in the field of law, for secondary, tertiary, and primary.

RESULT AND DISCUSSION

Legal Responsibility in Applying the Principle of Recognizing the Beneficial Owners of the Corporation

The author examines several laws and other regulations to get what sanctions can give to corporations that do not implement the principle of introduction beneficial owners. The provisions of the sanctions are as follows:

A. Civil Sanctions

How to explain legal liability civilly one of based on default or against the law, the responsibility is compensation. The difference is if the default is due to an agreement so that rights and obligations arise as they should in article 1234 of the Civil Code with no obligation, namely to give something, do something, and not do something. If it is not implemented, it is declared negligent and can explain civil legal liability in default. Meanwhile, against legal actions, there is a legal relationship between rights and obligations as contained in Articles 1365 and 1366 of the Civil Code.

If the corporation does not implement the application of the beneficial owner, it is included as a civil legal liability against the law. The corporation commits an unlawful act, a mistake by not carrying out or violating the rules of applying the beneficial owner which results in a loss by the act.

Based on Perma (Supreme Court Regulation) No. 13/2016 Procedures for Handling Criminal Cases by Corporations

It is contained in the seventh part of the claim for compensation and restitution of Article 20 of Perma No. 13/2016 that mandates compensation through civil lawsuits and following the provisions of the applicable law, there is compensation from the victim's corporation with a restitution mechanism for victims of criminal acts committed by the corporation.

B. Criminal sanctions

The development of corporate crime from various parts of the world gave rise to the theory of corporate criminal responsibility without leaving the principle of no crime without fault. At first, the theory of corporate criminal responsibility developed in common law countries, which was then followed by other countries so that it became universal.

Several theories of criminal liability will be imposed on corporations, namely identification theory: 3 referred to as direct corporate criminal liability (criminal responsibility from corporations that carried out directly), strict liability theory, vicarious liability theory, aggregation theory, the doctrine of the corporate cultural model (with a model of work culture).

Based on Law no. 3/1982 concerning Compulsory Registration of Companies

The criminal provisions based on articles 32, 33, 34, and 35 of Law Number 3 of 1982, in that the provisions of criminal sanctions of Law Number 3 of 1982 for violations of company registration can also be given as sanctions which are legal responsibility for the application of the principle of recognizing the beneficial owner.

Based on Law No. 8/2010 concerning Prevention and Eradication of the Crime of Money Laundering

Because Presidential Decree 13/2018 was issued to prevent and eradicate money laundering and money laundering, the sanctions are following Law no. 8/2010, to be precise, as contained in articles 4 and 5 can be imposed on corporations, because money laundering and money laundering offenses can harm the people and state finances. Article 4 is given to legal subjects who disguise the source, designation, or transfer of rights to the assets of the perpetrators of money laundering offenses can be subject to imprisonment for a maximum of twenty years or a fine of up to five billion rupiahs. Whereas in Article 5 it is more for people who receive benefits that are suspected of being the result of money laundering offenses with a maximum imprisonment of five years or a maximum fine of one billion rupiahs. This penalty can be imposed on the corporation or the controlling organ of the corporation. For business entities, the principal criminal offense that can be given is a maximum fine of one hundred billion rupiahs or it may be replaced with imprisonment, confiscation of corporate assets, or its organs if the corporate assets are not sufficient to pay the fine. Additional punishments other than fines can also be given to corporations, namely in the form of freezing of corporations, revocation of business licenses, confiscation, dissolution, or takeover by the state so that corporations cannot carry out their business activities.

C. Administrative Sanctions

Administrative sanctions arise because of the application of government authority with citizens in the form of administrative rules that must be implemented. In enforcing administrative law, administrative sanctions are required. Administratively, it aims to eliminate feelings of impunity (monasteries) for certain violations, and some serious behavior, in this case, is considered a nuisance and is no longer given criminal sanctions for settlement, but will be given sanctions that will be given to the corporation.

The types of administrative sanctions based on their objectives consist of, sanctions (reparatory, punitive, and regressive). Types of administrative sanctions in the form of *Bestuursdwang* (coercion carried out by the government), withdrawal of decisions, imposed administrative fines, and the imposition of forced money by the government (*Dwangsom*). Relevant parties implement these rules. Then the corporation that does not carry out its obligations will be given administrative sanctions, namely:

Based on Permenkumham (Regulation of the Minister of Law and Human Rights) No. 21/2019 concerning Procedures for Supervision of the Application of the Principle of Recognizing the Beneficial Owners of Corporations.

In practice, corporations that do not carry out their obligations in the application of corporate beneficial owners are given administrative sanctions, as stated in Article 12 of the Minister of Law and Human Rights No. 21/2019, which in this case states that the corporation's obligation to make recommendations since the notification of the deadline is no later than 14 days. If no recommendations are made after the deadline, the Minister blocks corporate access to online AHU, delays corporate access, revokes it, and cancels the corporation's business license.

Starting from this research, the author analyzes that business entities or those authorized can be given civil sanctions in the case of claims for compensation and restitution, criminal sanctions in the form of imprisonment, fines, additional penalties, while from an administrative standpoint in the form of blocking or revocation corporate business license.

The Role of Notaries in Applying the Principle of Recognizing the Beneficial Owners of the Corporation

The authority of a notary is stated in Article 15 of the UUJN. In connection with this authority, if the lawyer acts outside his competency so that the deed is not legally binding on the parties who are harmed by the actions taken by the lawyer outside his authority, then the aggrieved party can sue the lawyer from the civil side to court.

National efforts to build an anti-laundering regime by making administrative arrangements and actions as government policies have been effective in the last few years and it can also be said that a lot has been done since the enactment of Minister of Law and Human Rights No. 9/2017 concerning the Application of the Principle of Recognizing Service Users for Notaries and then Presidential Decree 13/2018 was born to prevent and eradicate money laundering and money laundering which requires information on beneficial owners clear and transparent.

Therefore, the Notary plays a role in reporting information about the beneficial owner, and the notary is obliged to verify the data of the beneficial owner, especially if the beneficial owner has the potential for Money Laundering or Terrorism Financing Crime so that the information submitted is confirmed to be true. Verification is carried out by comparing personal data with supporting documents. The information must be updated by the corporation regularly every year.

If the lawyer applies the precautionary principle to the appearers who come to him because they think the transaction is suspicious, with a request for additional documents, but when the service user parties refuse to provide, therefore the lawyer is obliged to break the contractual relationship with the service users that will use the services of a Notary.

The Notary's Responsibility for Inclusion of Beneficial Owners in the Corporate Registration Process and Obligation to Maintain Confidentiality of the Deed

The existence of the authority and obligations of the Notary creates responsibility for the Notary that is legally binding on the Notary when taking the oath of office. The Notary is legally responsible for the Material Truth of the Deed he made. Accountability for actions usually only means if the person commits an act that is not permitted by law, and most of these acts are acts in the Civil Code that are called Act against the law. Act against the law broadly means if the act has violated the rights of others.

With the precautionary principle of a Notary, it is very necessary when a Notary accepts clients who come before him. If there is any doubt about the information submitted by the parties, the Notary is obliged to find out more information.

This precautionary principle must be applied by a notary in identifying the beneficial owner of the corporation. Because the management or people authorized by the corporation may provide false information/information and documents to the Notary. If the Notary does not apply the precautionary principle in identifying the beneficial owner, the Notary as the reporting party for service users can also participate in providing false information and false documents. This crime of forgery often ensnares a Notary in the criminal realm.

Hans Kelsen's Theory of Legal Responsibility that is divided into four theories; firstly, individual responsibility is responsible for the violations that he/she has made himself. Secondly, collective responsibility means that an individual is responsible for violations made by others. Thirdly, accountability according to mistakes means that an individual is responsible for the violations he/she has committed. Because intentionally and to cause harm, the four absolute liability means that an individual is responsible for an offense in the sense that the individual is responsible for an offense committed due to accidental and unexpected. Based on these theories, a notary must be held accountable for his actions. It can be considered as an intentional or negligent Notary either because of himself or another party.

The principle of the prudence of the Notary in identifying the beneficial owner during the process of making the deed includes:

1. From the identity of the appeared the Notary must identify the identity card, family card, or Passport and match it with other data to prevent document falsification.
2. Checking the authenticity of the data of the parties whether it is legal in the eyes of the law.
3. Making the deed in a calm condition or not in a hurry, there must be a gap in time in making the deed.
4. Done with great prudence, accuracy, thoroughness, the sentences are clearly stated to cause problems and multiple interpretations.

5. Fulfill the formal legal requirements and material requirements of making a notarial deed following UUJN.
6. Report to the authorized agency to the Financial Transactions and Analysis Reporting Center if there are indications of suspected transactions or Money Laundering in said Transactions.

Accountability for the actions of a practitioner only exists if he has done Act against the law, divided into two forms, either because of a violation of the code of ethics or criminalization, namely:

a. Liability for Civil Law is the legal basis for Article 1234 of the Civil Code and Article 1365 of the Civil Code, which in Article 1234 of the Civil Code is linked to breaking a promise is a Notary's fault, and 1365 of the Civil Code is an act of a Notary that is against the law so that for this mistake the client is harmed, the Notary can be sued for compensation as a civil penalty.

b. Criminal Law Liability, namely unlawful acts with intentional or negligence of the Notary so that the client is harmed, can be subject to criminal sanctions as explained by the existence of false information and false documents of the beneficial owner, so that the Notary can be subject to criminal sanctions as regulated in Article 263 of the Criminal Code concerning counterfeiting.

Meanwhile, administratively, Notaries can be subject to sanctions as contained in the UUJN, namely in the form of decreasing the degree of a deed made by a Notary from an authentic deed to a private deed in the provisions of Article (16 paragraph (9), 41, 44 paragraph (5), 48 paragraph (3), 49 paragraphs (4), 50 paragraphs (5), and 51 paragraphs (4)). Notaries can also be reprimanded or dismissed dishonorably according to the provisions of Article (7 paragraph (2), 16 paragraph (11), 17 paragraph (2), 19 paragraph (4), 32 paragraph (4), 37 paragraph (2), 54 paragraph (2), and 65A).

Not all companies list the beneficial owner even though the data should be given to a Notary. In this case, efforts to prevent TPPU and TPPT correct actions of a Notary following regulations can be said to be an early prevention so that TPPT and TPPU are not sustainable, therefore the Notary must care and be responsible for beneficial owner data which will then be forwarded to AHU online with identification and correct verification of the legality of these data and monitor the source of service user transactions at the time of making the deed of establishment, as well as report periodically every year and if there is a change must update the data.

CONCLUSION

1. Legal responsibility in applying the principle of recognizing the beneficial owner of the corporation, namely firstly civil sanctions in the form of claims for compensation through civil lawsuits and restitution, secondly criminal sanctions namely imprisonment, fines, and additional, and thirdly administrative sanctions in the form of blocking corporate access to the online Director General of AHU, postponement, revocation, and cancellation of corporate business licenses.

2. The role of the Notary in implementing the principle of recognizing the beneficial owner of the corporation is as a profession to forward beneficial owner data from the corporation to the online AHU, reporting data and verifying data, matching one data with other related data, updating data regularly. Periodically every year, and decide on a deal if there is a suspicious transaction.

3. The responsibility of the Notary to the application of the principle of recognizing the beneficial owner of the corporation is to be responsible for every series of reporting information and documentation of the beneficial owner to the Director General of AHU online. In receiving data and reporting data, the Notary does it by applying the precautionary principle as an early prevention in the eradication of money laundering and money laundering so that it is not sustainable, which if an error occurs from the Notary either due to intentional or negligence, the Notary can also be asked for legal responsibility, namely civil sanctions in the form of lawsuits for compensation, criminal sanctions in the form of imprisonment, administrative sanctions in the form of degrading the authentic deed of a Notary to a deed under the hand, and reprimands to dishonorable dismissal of the Notary.

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