

## BENEFICIAL OWNERSHIP: TRANSPARENCY AS AN EFFORT TO PREVENT AND ERADICATE MONEY LAUNDERING AND ITS IMPACT ON INVESTMENT MARKETS

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### Abstract

*Transparency plays a crucial role in the prevention and eradication of money laundering, a significant threat to financial system stability and economic integrity. This study aims to analyze the significance of beneficial ownership in achieving transparency, particularly in the context of preventing and eliminating money laundering. It explores the impact of transparency on the investment market and identifies necessary efforts and policies to enhance transparency. Transparency is a critical factor for investors in making informed decisions and reducing risks within the investment market. Using the normative juridical method, this study reveals that disclosing information about beneficial owners has a positive effect on preventing and combating money laundering crimes. Improved transparency enables more effective identification of risks and violations, leading to appropriate preventive measures. Furthermore, greater transparency positively influences the investment market, as investors tend to trust and feel motivated to invest in an environment where information about ownership and asset utilization is readily accessible. This fosters investor confidence, strengthens market integrity, and promotes economic growth. Effective transparency necessitates collaboration among authorities, financial institutions, and participants in the investment market. Implementing clear and robust regulations is crucial, alongside fostering corporate awareness and fostering a strong commitment to transparency.*

**Keywords:** Beneficial Ownership, Investment, Money Laundering, Transparency

### 1. INTRODUCTION

Based on research conducted by the Financial Action Task Force (FATF), an international organization focusing on global efforts to eradicate money laundering, it has been found that the underreporting of beneficial owners in Indonesia has been exploited by criminals to conceal their identities and launder the proceeds of their illegal activities. Money laundering crimes (ML) pose a significant threat to the social, political, and economic fabric of communities, nations, and states, especially in an era of technological advancement where national boundaries are increasingly blurred (Hutabarat et al., 2022).

Various types of money laundering patterns involving corporations have been identified. These patterns include the utilization of shell companies, foreign trusts, complex corporate structures, merging legal assets with illicit proceeds, identity misuse of close associates, and trade-based money laundering. Additionally, a new modus operandi has emerged involving professional money launderers in the establishment and management of corporations (PPATK, 2019).

The importance of corporate awareness regarding the transparency of beneficial ownership information has reached a critical level. In a complex and dynamic investment market, transparency and integrity are vital principles that uphold investor confidence, safeguard shareholder rights, and ensure compliance with relevant regulations. One fundamental aspect of such transparency and integrity is the clear and accurate disclosure of beneficial ownership in investments.

Beneficial ownership refers to the individual or entity that truly owns and controls an asset or entity, even if legal ownership is registered under someone else's name (Elliffe, 2009). Their interests encompass voting rights, income rights, and involvement in strategic decision-making. However, the disclosure of beneficial owners is often lacking transparency, providing opportunities for fraudulent practices, money laundering, and questionable financial activities (Gilmour, 2020; Vail, 2017).

By implementing Recommendations 24 and 25 of the Financial Action Task Force on Money Laundering (FATF), the risk of money laundering can be significantly mitigated. These recommendations mandate countries to ensure that authorities have access to sufficient, accurate, and timely information about the beneficial ownership, asset sources, and activities of corporate entities. This information proves invaluable for law enforcement agencies in identifying the parties responsible for corporate activities.

FATF Recommendations 24 and 25 serve as guidelines for Indonesia, an observer in FATF, to address cases of money laundering and terrorist financing (ML/TF) by implementing beneficial ownership transparency in corporations. FATF defines beneficial ownership as the owner or ultimate controller of a customer or individual involved in a transaction. It encompasses individuals who exercise ultimate effective control over legal entities or other arrangements, focusing on those who actually wield control.

FATF Recommendation 24 emphasizes the importance of transparency and beneficial ownership of legal persons. Countries should take measures to prevent the misuse of legal entities for money laundering or terrorist financing. They should ensure that competent authorities have access to adequate, accurate, and timely information on the beneficial ownership and control of legal persons. Countries that permit bearer shares, nominee shareholders, or nominee directors should effectively address the risks associated with such practices. Furthermore, countries should consider facilitating financial institutions and designated non-financial businesses and professions (DNFBPs) in accessing beneficial ownership and control information, as outlined in Recommendations 10 and 22 (FFAT, 2012).

Recommendation 25 suggests that countries should implement preventive measures to deter the misuse of agreements for ML (money laundering) and TF (terrorist financing). This includes facilitating access to beneficial ownership and control information.

This study aims to analyze the role of beneficial ownership transparency in preventing and combating ML/TF and its impact on investment markets. It will examine the policies and regulations necessary to enhance beneficial ownership transparency and evaluate the effectiveness of such transparency in preventing and detecting ML/TF cases in the investment market. The research endeavors to provide a better understanding of the significance of beneficial ownership transparency, its contribution to combating money laundering, and its role in establishing a healthy and trustworthy investment environment.

## **2. RESEARCH METHODS**

The research utilized the Normative Juridical method to analyze legal regulations related to transparency and beneficial ownership in the prevention and eradication of money laundering crimes (Johnny, 2006). This method involved evaluating existing regulations, identifying any shortcomings or gaps, and providing recommendations for improvement or change.

In the implementation of the Normative Juridical method, legal documents such as laws, regulations, court decisions, and other relevant materials were analyzed. The content of existing laws was examined, comparing them with best practices or relevant international standards to assess their effectiveness in achieving transparency objectives. Additionally, an analysis of court decisions involving money laundering cases and beneficial ownership was conducted.

A comparative approach was employed to compare regulations across different countries or regions. Furthermore, a literature study was conducted to gather relevant references and support the arguments presented. The analysis of these findings served as the foundation for providing policy recommendations or proposing regulatory improvements to enhance transparency in the prevention and combat of money laundering.

Moreover, the research had the potential to include interviews with legal experts, authorities, financial institutions, or investment market participants. These interviews aimed to obtain practical viewpoints and additional information regarding the implementation of regulations and the challenges encountered in achieving desired levels of transparency.

By utilizing the Normative Juridical method, the research aimed to provide an in-depth analysis of the legal and regulatory aspects concerning transparency and beneficial ownership in the context of preventing and combating money laundering (Soekanto & Mamudji, 2013).

### **3. RESULTS AND DISCUSSION**

#### **3.1. Beneficial Ownership Overview and Arrangements**

The concept of beneficial ownership originated in countries that follow the common law system. Under this system, two types of property ownership exist: legal ownership and beneficial ownership (Firdaus, 2022). Beneficial ownership refers to parties who meet the criteria for ownership without requiring legal recognition (Tiono & Sadjiarto, 2013).

The term "beneficial ownership" first emerged in England and was further developed within trust law. In the United Kingdom, two types of ownership are recognized: legal ownership and beneficial ownership (Mee, 1993). In the concept of beneficial ownership, a trustee or fiduciary plays a role as a property manager, not for personal benefit but for the benefit of the beneficiary or *cestui que trustent* (de Willebois et al., 2011).

A beneficial owner is an individual who possesses the authority to appoint or dismiss directors, board members, management personnel, supervisors, or overseers within a corporation (Firdaus, 2022). They have the ability to control the corporation and are entitled to directly or indirectly receive benefits from the corporation. They are the actual owner of the corporation's funds or shares and meet the criteria outlined in the Presidential Regulation.

Furthermore, according to Article 1, point 20 of the Financial Services Authority Regulation Number 12/POJK.01/2017, a beneficial owner is defined as any person who is entitled to and/or receives specific benefits related to a customer's account. They are the actual owner of funds and/or securities held with the Financial Services Authority,

have control over the customer's transactions, authorize transactions, control a corporation or other legal arrangement, and/or act as the ultimate controller of transactions conducted through a legal entity or based on an agreement.

According to Presidential Regulation No. 13/2018, a corporation refers to an organized group of individuals and/or assets, whether in the form of a legal entity or not. This includes various types of corporations such as limited liability companies, foundations, associations, cooperatives, commodity partnerships, firm partnerships, and other similar entities.

A clear and comprehensive understanding of beneficial ownership holds significant importance for several reasons. Firstly, it ensures transparency and accountability within corporate structures. Identifying beneficial owners is a crucial aspect in combating financial crimes (Thomas & Dancy, 2020). By identifying the individuals or entities that ultimately benefit from a company's operations and assets, we can uncover potential conflicts of interest, illicit activities, or unethical practices.

Secondly, understanding beneficial ownership is critical in the fight against financial crimes like money laundering, corruption, and tax evasion. When the true owners of assets or funds are concealed through complex ownership structures or offshore entities, it becomes challenging for authorities to trace and prevent illicit financial activities. By exposing beneficial ownership, we can enhance the effectiveness of anti-money laundering (AML) measures and strengthen the integrity of the financial system.

Thirdly, beneficial ownership information is essential for promoting fair competition and preventing market abuse. It assists in identifying instances of market concentration, anti-competitive practices, or monopolistic behavior by revealing hidden relationships between companies and individuals. This knowledge enables regulatory agencies to enforce competition laws and ensure equal opportunities for all market participants.

Fourthly, understanding beneficial ownership is crucial for investor protection. Investors require knowledge of who controls and benefits from the companies they invest in to make informed decisions. Transparency in beneficial ownership allows investors to assess potential risks, evaluate the credibility and integrity of the entities they engage with, and build trust and confidence in the market. This attracts both domestic and foreign investors.

Lastly, effective regulation and policymaking necessitate a thorough understanding of beneficial ownership. Governments and regulatory bodies can analyze data on beneficial owners to identify regulatory gaps, assess the effectiveness of existing measures, and design appropriate policies to address emerging challenges. This facilitates evidence-based decision-making and supports the development of a robust regulatory framework.

The qualifications of beneficial owners of corporations can be categorized into general qualifications and certain qualifications. According to Presidential Regulation of the Republic of Indonesia Number 13 of 2018, which pertains to the implementation of recognizing beneficial owners of corporations in the context of preventing and eradicating money laundering and financing terrorism, general qualifications include individuals who have the authority to appoint or dismiss directors, board members, management personnel, supervisors, or overseers within the corporation. They possess the ability to control the corporation and are entitled to directly or indirectly receive benefits from the corporation. They are also the actual owners of the corporation's funds or shares.

On the other hand, certain qualifications refer to individuals who meet the specific criteria outlined in Presidential Regulation Number 13 of 2018 concerning the application of recognizing beneficial owners of corporations in the context of preventing and eradicating money laundering and financing terrorism.

The presence of anonymity allows for various illicit activities to be concealed from law enforcement authorities, such as tax evasion, corruption, money laundering, and financing terrorism. For instance, in the case of money laundering, complex operations and transactions are conducted to create the illusion that money derived from illegal sources, such as drug trafficking or tax evasion, possesses legitimate origins.

Enhancing the transparency of legal entities and financial structures is crucial for safeguarding the integrity and transparency of the global financial system (Demianyshyn & Kostetskyi, 2023). Preventing the misuse of these entities for illegal purposes, such as corruption, tax evasion, and money laundering, aligns with the G20's objective of promoting growth through private sector investment. Anonymous companies facilitate corrupt and criminal financial transactions, and they are involved in 70 percent of grand corruption cases reviewed by the World Bank. They represent one of the oldest methods for moving, laundering, and utilizing illicit funds.

The transparency of beneficial ownership is directly linked to the effectiveness of a jurisdiction's Anti-Money Laundering (AML) systems and their critical role in preventing, detecting, prosecuting, and penalizing financial crimes. Consequently, it is vital for a jurisdiction's resilience against money laundering and terrorist financing threats.

The regulations pertaining to Beneficial Ownership are governed by the following:

- a. Presidential Regulation (*Perpres*) Number 13 of 2018: This regulation outlines the principles for recognizing beneficial owners of corporations in the context of preventing and eradicating money laundering crimes and financing terrorism.
- b. Regulation of the Minister of Law and Human Rights Number 15 of 2019: This regulation specifies the procedures for implementing the principles of recognizing beneficial owners of corporations.
- c. Regulation of the Minister of Law and Human Rights Number 21 of 2019: This regulation delineates the procedures for supervising the implementation of the principle of recognizing beneficial owners of corporations.
- d. Financial Services Authority Regulation Number 23/POJK.01/2019: This regulation pertains to amendments made to the Financial Services Authority Regulation Number 12/POJK.01/2017, which focuses on the implementation of anti-money laundering and countering the financing of terrorism programs in the financial services sector.

These regulations collectively establish the framework and guidelines for identifying and disclosing beneficial ownership information, as well as ensuring compliance with anti-money laundering and counter-terrorism financing measures within the financial services sector.

The stipulation and implementation of Presidential Regulation No. 13/2018 on the Implementation of the Principle of Recognizing Beneficial Owners of Corporations in the Context of Preventing and Eradicating the Criminal Acts of Money Laundering and the Criminal Acts of Financing Terrorism will not hinder investment and ease of doing



business, particularly in company formation. This is because the requirement for beneficial ownership information is not mandatory for obtaining approval from the competent authority to establish a company. On the contrary, this regulation will promote the establishment of companies that uphold high integrity and are free from money laundering and terrorism financing activities. It signifies the era of Indonesian companies that prioritize integrity.

The authorized agency is responsible for overseeing the implementation of the principle of recognizing beneficial owners as stated in Article 23 of Presidential Regulation Number 13 of 2018. Supervision by the authorized agency is carried out in accordance with the law, based on an evaluation of the risks associated with money laundering and terrorism financing. The authorized agency collaborates with the Financial Transaction Reports and Analysis Center to conduct supervision in accordance with legal provisions. If necessary for supervision purposes, the authorized agency may coordinate with relevant institutions within its authority.

Transparency regarding reported and recorded beneficial ownership by corporations, as stipulated in the Presidential Regulation and the Minister of Law and Human Rights regulation, is considered crucial for building trust and fostering cooperation with other corporations, agencies, or institutions. Both legal and non-legal entity corporations are required to comply with these provisions. Article 14, paragraph (1) of Minister of Law and Human Rights Regulation Number 15 of 2019 emphasizes that any person, including the government, law enforcement agencies, and other competent authorities, may request information about the beneficial owners of a corporation from the Minister. This data has been submitted to the Notary Officer and recorded through the AHU Online system. Notaries, as officers responsible for collecting and reporting data related to beneficial owners in a corporation, bear the heavy responsibility of disclosing information about beneficial owners. The Minister of Law and Human Rights regulation also imposes sanctions on notaries who are dishonest in filling out the reporting form regarding beneficial owners (Kanwil NTT, 2020).

### **3.2. Overview of Money Laundering Crimes**

Money laundering is a criminal activity where the perpetrator seeks to conceal or alter the origin of illicit funds in order to make it difficult for law enforcement to trace (Abel Souto, 2022). The laundered money can then be used for either legitimate or illegitimate purposes.

Money laundering offenses are typically committed by individuals of high social status due to the organized and cross-border nature of the crime. Criminalizing money laundering is crucial for preserving the stability and integrity of Indonesia's economic and financial system. However, one of the challenges in combating money laundering is the increasing complexity of methods employed, necessitating stringent law enforcement measures to address this issue.

Given Indonesia's high market potential, it becomes a vulnerable area for money laundering practices. The government acknowledges the significance of preventing money laundering in the country and has taken steps to address it, such as enacting amendments to the Money Laundering Law, which led to the establishment of the Financial Transaction Reports and Analysis Center (PPATK).

Money laundering has the potential to disrupt economic stability and compromise the integrity of the financial system, as well as pose a threat to social, national, and

constitutional values based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In Indonesia, the crime of money laundering is regulated by Law Number 8 of 2010. According to Article 1 of this law, money laundering encompasses any act that fulfills the elements of a criminal offense as outlined in the legislation. Additionally, Law Number 15 of 2002, which addresses the crime of money laundering, defines it as "the act of placing, transferring, paying, spending, granting, donating, entrusting, bringing abroad, exchanging, or engaging in other actions involving assets that are known or reasonably suspected to be the proceeds of criminal activities, with the intention to conceal or disguise the origin of these assets so that they appear legitimate."

### **3.3. The Role and Impact of Lack of Transparency of Beneficial Ownership Information on the Investment Market**

The transparency provided by beneficial ownership plays a crucial role in the investment market. In many democratic government systems, information transparency is considered essential for overseeing government policies and programs, and it has a positive impact on various aspects of social, political, economic, and legal life (Salle, 2017). The implementation of regulations concerning beneficial ownership transparency holds significant importance as it can influence economic growth and foster a healthy competitive environment.

Data on beneficial owners serves as a valuable reference for taking action on transactions and business relationships to prevent money laundering in the financial services sector (Zigo & Vincent, 2021). It also acts as a supervisory measure to prevent the banking sector from being exploited for money laundering or the concealment and distribution of criminal proceeds. In asset recovery, having the ability to trace assets and proceeds of crime back to their true owners is crucial. Similarly, in dealing with money laundering cases, a valid, comprehensive, and easily accessible database of beneficial owners plays a pivotal role in enhancing the effectiveness of case handling and enabling the pursuit of the main perpetrators who benefit from the illicit activities.

By having accurate information on beneficial owners, law enforcement agencies can more effectively combat money laundering and recover assets connected to criminal activities. This database facilitates the identification of the true owners of assets and enables focused investigations targeting the individuals who derive benefits from criminal proceeds.

Transparency plays a crucial role, particularly in terms of beneficial ownership, as it helps foster investor confidence. The primary need of investors is to enhance their trust and assurance. When investors have access to clear information regarding the identity, ownership, and interests of beneficial owners, they tend to be more trusting and comfortable with their investments. This creates an environment of trust, reducing the risk of fraud or manipulation. By promoting beneficial ownership transparency, investors gain confidence that they are investing in entities that uphold integrity and responsible business practices. Consequently, this can boost investor confidence and cultivate long-term relationships between investors and companies.

Furthermore, transparency in beneficial ownership strengthens the integrity of investment markets (Grosman, 2022). When there is sufficient transparency, it becomes easier to detect and take action against illegal practices or market manipulation by competent authorities. This ensures the maintenance of fair, open, and efficient markets.

Beneficial ownership transparency allows investors to gain a better understanding of a company's ownership structure, fostering healthy and equitable competition in the investment market. With equal access to relevant information, investors can make informed investment decisions. They can also conduct thorough risk analysis and make smarter investment choices. Transparency also serves to mitigate the risk of market abuse or manipulation that could potentially harm investors.

The application of transparency is vital for meeting regulatory and legal requirements in the investment market. Parties with reporting obligations, such as public companies or financial institutions, must ensure the disclosure of relevant information about beneficial owner holdings in compliance with applicable regulations.

Other roles that have a positive impact on combating money laundering and benefit investors include the following:

Firstly, transparency regarding beneficial owners increases the effectiveness of prevention and combat against money laundering. It becomes challenging for criminal offenders to conceal the proceeds of their illicit activities when the ownership information is transparent. This strengthens the efforts to prevent and eliminate money laundering, as authorities and institutions can trace the origin of suspicious funds more easily.

Secondly, transparency reduces both reputational and legal risks for companies. By openly disclosing the beneficial owners, companies can uphold their integrity and avoid involvement in unlawful practices. This safeguards their reputation and mitigates the legal risks associated with money laundering activities.

Thirdly, transparency facilitates risk analysis for investors. By knowing the beneficial owners of an entity, investors can conduct thorough risk assessments. They can evaluate potential conflicts of interest, involvement in illegal activities, or unethical business practices. This transparency empowers investors to make informed, risk-based investment decisions.

Fourthly, by identifying the beneficial owners of a company, investors can detect and avoid potential risks linked to illicit or unethical practices. This enables them to make well-informed and relevant investment choices, minimizing the risk of financial loss.

Fifthly, transparency regarding beneficial owners fosters more transparent and trustworthy investment markets. This can enhance market liquidity by attracting more investors who have confidence in the market's integrity and the companies they invest in.

Lastly, transparency reduces vulnerability to market manipulation. By disclosing beneficial owners, practices such as insider trading or the unauthorized use of confidential information can be minimized. Investors gain improved access to relevant information, enabling them to make better-informed decisions.

Overall, transparency in beneficial ownership plays a crucial role in preserving the integrity, trust, and efficiency of investment markets. It contributes to the creation of a fairer, more dependable, and sustainable investment environment.

In addition to the aforementioned positive impacts of transparency, there are negative consequences resulting from the absence of beneficial ownership information transparency in the investment market. Beneficial owners who lack transparency and integrity, particularly those involved in money laundering offenses, can have detrimental effects, including the erosion of trust and reputation. When beneficial owners lack transparency and integrity, it undermines the trust of investors and other participants in the investment market.



The lack of transparency in beneficial ownership has a significant impact on the investment market. These impacts include investor mistrust. The absence of transparency can breed skepticism among investors. Investors may hesitate to invest if they are uncertain about the true identity and interests of the beneficial owner. This can disrupt capital flows and hinder the growth of the investment market. Additionally, the lack of transparency provides opportunities for beneficial owners to exploit and manipulate the investment market. They can exploit complex ownership structures to manipulate share prices, harm other investors, or unlawfully utilize insider information.

Furthermore, the absence of transparency can impede the growth of a robust investment market. Unclear or poorly identified beneficial ownership can disrupt fair competition and impede equal access for all investors. This can put small or institutional investors at a disadvantage, as they may lack access to relevant information. Moreover, the lack of transparency creates an opportunity for money launderers and perpetrators of financial crimes to conceal their illicit funds through investments.

Beneficial ownership that cannot be easily traced facilitates these illegal practices and undermines the integrity of investment markets. The absence of transparency can destabilize investment markets. Uncertainty surrounding the ownership and interests of beneficial owners can create market turbulence, impact share prices, and generate unhealthy volatility. As a result, investors are harmed, and confidence in investment markets is undermined.

To uphold the stability and integrity of investment markets, it is crucial to enhance beneficial ownership transparency. This can be achieved through stricter regulations, clear reporting requirements, effective information exchange mechanisms between competent authorities, and rigorous enforcement. These measures can help mitigate the negative impact caused by a lack of transparency.

#### **4. CONCLUSION**

This study emphasizes the vital role of transparency in disclosing beneficial owners in the prevention and eradication of money laundering crimes (ML). By providing accurate information about the beneficial owners of an entity, the risk of misuse for money laundering activities can be significantly reduced. Moreover, this transparency has a positive impact on investment markets, enabling investors to access clearer information and make more informed decisions.

To ensure effective and sustainable transparency, it is crucial to implement regulations and policies that support beneficial ownership transparency. This necessitates collaboration among governments, financial institutions, and regulators. Countries must strengthen their Anti-Money Laundering (AML) systems by adhering to international standards and fortifying existing legal frameworks.

Understanding beneficial owners is of utmost importance in promoting transparency, combating financial crime, protecting investors, and facilitating effective regulation. As a result, the demand for beneficial ownership transparency is expected to safeguard trustworthy beneficial owners and prevent the exploitation of entities for money laundering purposes. By improving legal frameworks and engaging stakeholders through socialization, we can cultivate an investment environment that is more transparent, fair, and resilient to illicit financial practices.

Socialization emerges as a crucial policy tool to enhance understanding, awareness, and trust in beneficial ownership transparency. It fosters a deeper appreciation among corporations, authorities, financial institutions, and the general public for the significance of disclosing beneficial ownership and preventing corporate abuse in money laundering. The positive impacts of socialization include nurturing a culture of transparency, bolstering investor confidence, improving risk assessment, identifying investment opportunities, and encouraging responsible and transparent business practices.

In summary, socialization emerges as a powerful policy tool with a transformative potential for beneficial owners and investors, fostering a more transparent and equitable investment market while mitigating corporate abuse in money laundering.

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