



The Concept of Benefit Owner's Responsibility in Crime in Indonesia: Charging Criminal Actors Behind Corporates

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Abstract

This paper discusses the concept of criminal liability for beneficial owners who misuse corporations to commit criminal acts or corporations used as vehicles or means (corporate vehicles) to hide or disguise the proceeds of their crimes. The emphasis used in exploring the problem is on a conceptual, historical and comparative approach through regulations, court decisions and a review of literature as well as a Forum Group Discussion (FGD) related to Beneficiary Owners to discuss how accountability to beneficial owners and what criminal acts can be categorized as a crime committed by the beneficial owner. This paper concludes to hold criminally accountable beneficial owners by conducting investigations into corporations and implementing the Principle of Recognizing Service Users by conducting Due Diligence and if necessary using Enhanced Due Diligence. Criminal acts that can be categorized as being committed by Beneficiaries are not only money laundering and terrorism financing but can be expanded to criminal acts related to Corporations and aimed at obtaining economic benefits.



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1. Introduction

The importance of the issue of identifying the beneficial owner is contained in Article 14 paragraph (1) letter a, the UN Convention on the crime of corruption mentions that every ratifying country in terms of preventing and detecting all forms of money laundering...emphasizes the obligation of all service users, if necessary, to identify the owner benefits, recording, and reporting of suspicious transactions. Furthermore, Article 52 paragraph (1) states that every country that ratifies...requires financial institutions to verify the identity of service users, take reasonable steps to determine the identity of the beneficial owner's high-value funds deposited into accounts...(UNCAC, 2004).

In daily practice, beneficial owners always use corporations (legal entities or non-legal entities) as vehicles or corporate vehicles such as companies, trusts, foundations, partnerships and other forms of legal entities and partnerships (legal arrangements) to carry out various types of trade. and legitimate businesses, in certain circumstances misused either by perpetrators of criminal acts or by beneficiaries for the purpose of committing criminal acts including money laundering, bribery and corruption, insider trading (in the Capital Market), tax evasion, financing of terrorism and other criminal activities (FATF, 2014).

Based on the above, the FATF issued recommendations 24 and 25 which stated that member countries should encourage, in general, the development of modern and safe money management techniques, including increasing the

use of checks, payment cards, direct deposit of salaries, and bookkeeping of securities as means of encouraging reimbursement of cash transfers and Member States should be mindful of the possibility of misuse of shell corporations by money launderers and should consider whether additional measures are necessary to prevent the unauthorized use of such agencies. Where the purpose of recommendations 24 and 25 is to significantly reduce corporate abuse by means of providing information regarding corporate owners (legal owners) and beneficial owners, sources of corporate assets as vehicles (corporate vehicles) and their activities are provided to the authorities (authorities).) whose purpose is to assist law enforcement or other competent authorities in identifying persons responsible for violations of law/criminal acts or related to information on investigations of parties who violate the law/criminal acts (Force, 2014). This FATF recommendation was adopted by countries in the world, including the United Kingdom, the United States, the Netherlands and Italy, including Indonesia (Senate, 2010).

In England, a Beneficiary is referred to as a Person With Significant Control (PSC) which is regulated in Law No. 46 of 2006 concerning Companies Act. Where in Article 790F paragraph (2) of Law No. 46 of 2006 it provides sanctions to related parties who do not disclose the whereabouts of beneficial owners and falsify information during Corporation registration in the form of fines or imprisonment as well as penalties for violations. (Companies Act, 2006). In the United States, Beneficiaries are regulated in the True Incorporate Transparency for Law Enforcement Act (S1454), where sanctions are given to parties who do not disclose and falsify Beneficiary information are criminal or civil sanctions or both. (A. Bill, 2017). Whereas in the Netherlands Beneficial Owners are regulated in the Prevention Act (July 15, 2008), the Sanctions Act 1977 and the Money Laundering and Terrorist Financing (Prevention) Act. Where the sanctions given are in the form of administrative sanctions (as updated July 3, 2017). In Italy, beneficial owners are regulated in [CIVIL CODE], arts. 2188 & 2630, Legislative Decree of May 25, 2017, No. 90, Implementation of Directive (EU) 2015/849], G.U. No. 140, Legislative Decree No. 231 of November 21, 2007, Implementation of Directive 2005/60/EC of the European Parliament and of the Law Library of Congress 1 Council of 26 October 2005 & Commission Directive 2006/70/EC of 1 August 2006], art. 2, G.U. No. 290 (Dec. 14, 2007) (L. D. No. 231). And the sanctions imposed are in the form of administrative sanctions (June 19, 2017).

In Indonesia, the FATF recommendations regarding beneficial owners are adopted in Presidential Regulation No. 13 of 2018 concerning the Application of the Principle of Recognizing Beneficial Owners of Corporations in the Context of Prevention and Eradication of Money Laundering Crimes and Terrorism Financing Crimes. Where in the Regulation Corporations that do not comply with the provisions in the regulation, among others, do not provide correct information about the Beneficiary will be subject to sanctions. Based on the explanation above, based on the laws and regulations in several countries, it can be observed that only parties that are given sanctions do not report or falsify information on the beneficial owner, so the question arises what about the beneficial owner who commits a crime whether he cannot be held accountable legally, the especially criminal liability that is by the beneficial owner?

In the FATF, to identify beneficial owners who use corporations as vehicles (corporate vehicles) only related to money laundering and terrorism financing, what about corporations that are misused for other crimes such as corruption?

2. Materials and Methods

This writing uses qualitative methods and concepts with historical and comparative approaches through the literature which discusses the problems in this writing (Nelson & Santoso, 2020). Data collection techniques use general data and official records as well as mass media and electronic media (Singleton, et al, 1988). Data collection in this study used data collection tools in the form of document research or library materials, namely in the form of primary legal materials such as laws, regulations and court decisions (Soekanto, 1986) and secondary legal materials, both primary legal data in the form of forums. Group Discussion (FGD) and secondary legal data in the form of books, journals or scientific writings (dissertations), mass media and electronic media in the form of data from the internet. Secondary legal documents can also be obtained by conducting interviews with parties related to the discussion in this study (Denzin & Lincoln, 2011). The purpose of the interviews was to obtain information on the application of criminal liability for beneficial owners who have committed criminal acts in Indonesia and what criminal acts are suspected of being committed by beneficial owners.

The data obtained was analyzed using literature and supported by interviews and Forum Group Discussions (FGD) to answer the question to what extent can the beneficial owner be held criminally responsible? In the first part, it will explain the responsibility of the beneficial owner who misuses the corporation as a vehicle (corporate vehicle) to commit a crime. In this discussion, the author will briefly explain the history of the beneficial owner, the definition

of the beneficial owner and a comparison of definitions from several countries, how the beneficial owner abuses corporations to commit criminal acts and there are several cases of criminal acts assisted by third parties (Gate Keepers or Intermediaries) and examples of cases of beneficial owners who commit criminal acts in Indonesia. Furthermore, regarding any criminal acts that can be categorized as criminal acts committed by the Beneficiary. The results of research documents and interviews as well as the Forum Group Discussion (FGD) are used to answer criminal liability against beneficial owners who commit criminal acts, especially criminal acts in Indonesia and the categories of criminal acts that can be imposed on beneficial owners.

3. Results and Discussions

How far is the Benefit Owner's Criminal Liability?

The term beneficial ownership first appeared in the field of taxation, namely the 1942 tax treaty between Canada and the United States. This agreement contains the concept of beneficial ownership, although it does not exclude full participation or reduce tax on intra-group dividends when paid by a subsidiary. A subsidiary is then defined as a company whose shares with full voting rights are owned by another corporation and that a maximum of 25 percent of its revenue is passive income from sources other than, in turn, being a subsidiary (Hagmann, 2017).

As Vann admits, beneficial ownership requirements are focused on shares that need to be held by beneficial owners and the notion appears to be unrelated to the outcome of creating shares, as opposed to how the concept is perceived today in the article mentioned from models agreement. The 1966 Agreement Protocol between the United Kingdom and the United States was the first time that the beneficial ownership doctrine focused that beneficial owners should have rights to income derived from rights such as equity, debt and intellectual property (Bassiouni, 2013). Meanwhile, the term beneficial owner comes from common law.

In common law, there are two forms of ownership of wealth, namely legal and beneficial. Legal ownership, namely when ownership can be transferred, recorded, registered on behalf of a certain party. Meanwhile, beneficially describes the type of ownership of a party entitled to the use and benefits of the property even though that party does not have legal ownership. On the other hand, civil law countries believe that ownership of wealth cannot be distinguished between the legal owner who bears the legal title and the beneficial owner who benefits from the wealth. Civil law countries assume that the rights and obligations with respect to other people are subject to those who bear the legal title. Rights owned by third parties can be requested from the party bearing the title. (Tiano and Sadjiarto, 2013).

The concept of beneficial owner does not only develop in the national laws of each country, but also develops in a number of international organizations and conventions. This concept is known among others in the FATF, Global Forum and OECD. Discussing beneficial owners, we cannot separate from discussing corporations because of the emergence of beneficial owners due to the existence of corporations as corporate vehicles as defined by beneficial owners, namely: "A corporate shareholder who has the power to buy or sell the shares, but who is not registered on the corporation's book as the owner" (a shareholder of a corporation who has the authority to buy or sell shares, but he is not registered in the corporate books as an owner) (Garner, 2014);

Meanwhile, according to the FATF, namely: the beneficial owner is defined as an individual (natural person) who ultimately owns or controls a service user and or an individual on whose behalf a transaction is carried out. This also includes those who exercise ultimate effective control over a legal or non-legal entity. (Force, 2018). Apart from the FATF, another international convention that defines beneficial owners is the Global Forum on Transparency and Exchange of Information for Tax Purposes which defines beneficial owners following FATF standards. but even so, the Global Forum also has key differences from the FATF, namely: FATF refers to information on beneficial ownership of legal entities and non-legal entities because the FATF focuses on Anti-Money Laundering and terrorism financing. While the global forum on the exchange of tax information; FATF considers every legal form as a vehicle (legal vehicle) or corporation as a vehicle (corporate vehicle) so that the FATF focuses on legal entities and non-legal entities that can be misused for money laundering and terrorism funding. Meanwhile, the global forum does not consider legal entities or non-legal entities because the global forum only focuses on tax exchange information; FATF obtains and verifies beneficial ownership information through CDD (Customer Due Diligence) which reflects the risk profile of service users and certain transactions that are relevant to money laundering and terrorism financing . While global forums are irrelevant using CDD (Customer Due Diligence) because it is related to tax information; The FATF authorities with access to information are very broad including the police whose aim is to prevent money laundering and the financing of terrorism. Meanwhile, the global forum that accesses information is the tax authority whose purpose is related to taxes, and trade and so on; Differences in the perspective of legal entities and non-legal entities,

the FATF requires legal entities to be registered, while non-legal entities such as Trusts are not always registered. Meanwhile, the global forum believes that Trust must be registered because it is related to tax revenue (The Secretariat of the Global Forum, 2019).

Furthermore, in the 3rd Anti Money Laundering Directive (3AML Directive) basically the definition of a beneficial owner is the same as the FATF (Michelle & Ernesto, 2013). Internationally, the definition of an accepted beneficial owner is that given by the FATF. (Willebois, et al, 2011). Based on the definitions above, a beneficial owner is always a person as the ultimate owner or controller of a legal entity or non-legal entity such as companies, foundations, trusts and others (The Secretariat of the Global Forum, 2019).

In misusing corporations to hide or disguise assets resulting from criminal acts, Beneficiaries use two methods, namely through direct and indirect control. Direct control is rarely used by Beneficiaries, because direct control is on behalf of the beneficial owners themselves (transactions carried out on behalf of the beneficial owner without involving third parties) assets resulting from criminal acts are easily traced by law enforcement (Knobel, 2017). In the case of indirect control of the beneficial ownership of the beneficial owner's assets, it involves several parties as intermediaries.

Intermediary is a person (a person) as a contact or intermediary between parties who carry out trade. In the business context, intermediaries are generally understood as conduits for goods or services offered by suppliers to consumers. Therefore intermediaries can act as conduits for legitimate economic activities, payment of illegal bribes, or a combination of both. The legal reason for recruiting intermediaries was at a time of rapid growth of multinational corporations, where companies opening for business abroad were often unfamiliar with the environmental conditions in a country with various cultural, legal, financial, complex accounting and corporate obligations. With the knowledge of local intermediaries can help companies navigate/show uncharted territory.

They can provide services such as legal advice, accounting, identifying business projects and carrying out other business activities related to the company. However, in practice intermediaries can be abused or misused to commit criminal acts. Intermediaries are generally located overseas such as the Baker Hughes oil company located in the United States which has intermediaries located in Indonesia, Angola, Nigeria and Kazakhstan. In addition, there are also intermediary locations located in third countries such as the Siemens case, where Siemens is in Germany using a third party country (as an intermediary) in Dubai to bribe officials in Italy and Venezuela (OECD, 2009).

The types of intermediaries are as follows:

- a. Informal Nominee (Straw Man) or accomplice (Force, 2018). Several cases show that beneficial owners rarely control directly without involving intermediaries or straw men, namely nominee shareholders and informal nominee directors, such as spouses, children, extended family, and other personal or business partners, and other individuals. who have been recruited or forced to act on behalf of the ultimate beneficial owner. The use of Nominees and other third parties can make it difficult to identify the true beneficial owner of an asset or transaction, as the beneficial owner cannot be recorded in official company or Trust records in many jurisdictions. While it is important for the authorities to have the ability to understand the identity of the individuals who control an asset, it is also important for law enforcement to understand who benefits from it. In some cases, the role of the nominee protects or disguises the identity of the beneficial owners and controllers of the company or assets (beneficial owners). A nominee can help overcome jurisdiction to control company ownership and avoid the ban on directorship imposed by courts and government authorities. While appointing nominees is legal in most countries, the usefulness of this practice is questionable in the context of the significant money laundering and terrorist financing vulnerabilities associated with its use;
- b. Gatekeepers. Kraakman considers gatekeepers as actors who have the capacity to monitor, control, or at least influence the actions of their corporate clients and thereby prevent their clients' mistakes (Kraakman, 1984). He considers gatekeepers within a broader legal framework and views liability as a mechanism for ensuring optimal prevention of corporate wrongdoing. Within this framework, mistakes are directly preventable by imposing corporate responsibilities and individual company managers. It is only when additional precautions are required that gatekeepers face the possible responsibility of providing assistance to them (clients) in their ability to monitor and control. Thus the gatekeeper is considered to have the capacity to prevent corporate mistakes (Tuch, 2010).

Furthermore, Shepperd explained the scope of gatekeepers including lawyers, notaries, trusts and service provider companies / Trust and Company Service Providers (TCSPs), real estate agents, accountants, auditors and other designed non-financial businesses and professions (DNFBPs) who assist by engaging in money transfer

transactions within the domestic and foreign financial systems (Shepperd, 2009). However, sometimes the existence of gatekeepers is often misused by perpetrators of criminal acts. The definition of gatekeepers according to Paku Utama (which narrowly defines gatekeepers) are various professionals in the fields of finance or law with special expertise, knowledge and access to the global financial system, who use their expertise to hide the proceeds of corruption. And these professions are not illegal and bad professions. These professions become unlawful as gatekeepers when used as a means to commit criminal acts such as money laundering (Utama, 2013).

Gatekeepers often take advantage of the confidentiality provided under confidentiality rules between the profession and the client as a tool in money laundering schemes. Several developed countries have included certain professions into the category of reporting parties who are required to submit reports to the Financial Intelligence Unit (FIU), including France, Romania, Canada, Belgium, the Netherlands, Spain, Italy and Australia. Indonesia through Government Regulation No. 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes has enacted the same thing. The magnitude of the gatekeeper's role in money laundering can be minimized by including the gatekeeper profession as a reporting party, this is one of the money laundering prevention measures. So it is necessary to know the workings and motivation of the gatekeepers. In preventing and eradicating money laundering, in addition to using follow the money, it is also necessary to use the follow the gatekeeper concept. Because in addition to following the gatekeeper there is an element of eradication, there is also an element of prevention in it (Yusuf, 2018).

According to Shepperd, Lawyers, Trusts and Company Service Providers (TCSPs), accountants and legal professions other than lawyers are notaries who include some of the gatekeepers (Shepperd, 2009), which in the FATF are known as Specialists and Professional Intermediaries (specialized and professional intermediaries). Where the use of special and professional intermediaries in practice is often misused by perpetrators of criminal acts with the aim of obscuring beneficial ownership, especially in cases of significant criminal proceeds (FATF, 2019).

The specialist and professional intermediaries (special and professional intermediaries) are: Company Service Providers and Trust / Trust and Company Service Providers (TCSPs). Within the limits of the FATF, TCSPs do not include financial institutions, lawyers, notaries, other independent legal professionals and accountants. So that guidelines other than TCSPs are regulated separately (FATF, 2019); Accountant Profession, and Legal Profession (Lawyers and Notaries). Specialist and Professional intermediaries are vulnerable to being abused by perpetrators to hide beneficial ownership. The vulnerability to abuse includes, among other things, the formation of corporations in the form of legal entities (legal persons) and non-legal entities (legal arrangements); establishment and sale of shelf companies, providing directorships, trustees, virtual offices, and mailbox services; facilitating transactions through trust accounts and client accounts; facilitating the buying and selling of real property; client advocacy and brokerage services; providing services to clients and intermediary clients who are domiciled abroad; provide advice on tax compliance and tax minimization; privileges of the legal profession and client confidentiality (FATF, 2019).

One example of the abuse of intermediary involvement in this matter is the lawyers in the cases of Sweet Pink Inc and Unlimited Horizon Inc, where two lawyers (MB & GN) assisted a suspect (TNOM) the son of the President of Equatorial Guinea who had committed money laundering. for the proceeds of corruption in France amounting to more than \$10 million by establishing several Shell Companies to hide and disguise the proceeds of the offender's crimes. (Carl Lewin & Tom Coburn, 2014)

In committing a crime, the Beneficiary generally uses intermediaries to hide the proceeds of the crime, including in Indonesia. In Indonesia there are several cases of beneficial owners using intermediaries such as informal nominees who come from their own families to build a company to hide the proceeds of their crimes, such as the following cases, including:

A. AM v Government of RI

AM, a Judicial official at the Center, committed a criminal act of corruption by accepting a sum of money from several Executive Officers in the regions to change the Regional Head Election Decision by asking the Executive Officers to transfer a sum of funds to his personal driver's account (D). In order to hide the results of the bribery crime, AM formed a corporation (CV RS) and appointed his wife, RRA as Director and his son, AAS as Deputy Director and AA as Persero Limited. Where AM is not found in the corporate organ (Central Jakarta District Court Decision No: 10/Pid.Sus/TPK/2014/PN.Jkt.Pst, 30 June 2014).

B. MN v RI Government

MN, a member of the Central Legislature committed a criminal act of corruption by receiving a number of checks from parties who had received the Athlete Village Development project in the regions due to the efforts of MN.

Apart from being a member of the central legislature, MN is also the owner and controller of a corporation (PG), which later MN forms a subsidiary company (PT.AN) to store the proceeds of its crimes. Then MN appointed his wife (NSW) to be the finance director at PT.AN. In concealing the results of his corruption crime, MN together with NSW kept them in the safe of PT. AN. And PT.AN is not registered as an organ or administrator of PT.AN (Central Jakarta District Court Decision No: 69/Pid.B/TPK/2011/PN.Jkt.Pst, 20 April 2012).

C. SN vs RI Government

SN, a Central Legislative official committed a criminal act of corruption by arranging the E-KTP project in order to benefit from the Project by building a corporation (PT.MS) together with a businessman, AA. PT. Ms. The PT was formed to assist the Project. SN controls PT.MS through his nephew (IHPC) as Director, wife (DAT) and child of the defendant (RH) who bought most of the shares of PT. MGP which is the holding company of PT. MS. (Central Jakarta District Court Decision No: 130/Pid.Sus/TPK/2017/PN.Jkt.Pst, 24 April 2018)

How to ensnare Beneficiaries who commit Crimes in Indonesia.

Based on the case examples above, it can be proven that the beneficial owner is related to the corporation. In order to ensnare the beneficial owner, we must first identify the characteristics of the beneficial owner. In Indonesia, the characteristics of the beneficial owners can be traced in Presidential Decree No. 13 of 2018 regulates how to recognize the beneficial owner of a corporation. (Perpres No. 13, 2018). In the Perpres it is assumed that there are three types of beneficial owners, namely first, systemized beneficial owners within the corporation legally formally and determined/reported by the corporation; secondly, the beneficial owners are patterned through other corporate intermediaries and thirdly, the beneficial owners are not legally systemized within the corporation and are not reported but control and control the corporation. The first and second types are still easy to recognize, but the third is difficult to recognize. (Arifuddin, 2020).

To identify the third type, the author tries to link it with investigations related to corporations, where when carrying out a corporation investigation, an examination is made of the Articles of Association whether it is in accordance with the business sector, Notary Deed of Establishment, GMS, Organizational Structure, Functions and authorization limitations. the corporation violates something that is not within its authority so that it can be punished, SOP and internal regulations/policies of the corporation, corporation's business activities and corporation's checking account/cash flow. This corporate cash flow is to see whether there are funds flowing to corporations as a means or as a place to accommodate the proceeds of corporate crime itself (Iswari & Azriadi, 2022).

Furthermore, it is necessary to apply the Know Your Customer (KYC) Principle. The KYC principle is carried out by companies to check the background of service users which makes it possible to obtain and confirm additional information about service users and together with additional claims in the form of sources of funds (Cox, 2011). An important part of PMPJ is customer due diligence (CDD) and enhanced due diligence (EDD) (PPATK).

Customer Due Diligence (CDD) stages: Documentation and information; Beneficial Ownership which consists of guidelines for beneficial ownership, testing the identity of beneficial ownership, Ownership to determine beneficial ownership, Effective Controller, Person on behalf of transactions made (nominee), acting on behalf of service users, Application of a risk-based approach and Record Keeping; Defining Business Relationships; Purpose and nature of Business Relations; Using Innovative Solutions, Depending on other parties conducting CDD (PPATK).

If the perceived risk is higher, the financial institution can upgrade to Enhanced Due Diligence (EDD). Enhanced Due Diligence is contained in Article 52 (1) UNCAC which reads: State parties take steps that may be necessary in accordance with their national laws, oblige financial institutions (banks) to verify the identity of service users, take reasonable steps determine the identity of the beneficial owner's high-value funds deposited in accounts and enhance oversight of accounts managed by or on behalf of individuals who are, have been, entrusted with prominent public functions and their family members and associates. Such controls should be made reasonable to detect suspicious transactions for the purpose of reporting to competent authorities and should not be construed to prevent or prohibit financial institutions (banks) from doing business with legitimate service users (PPATK).

EDD descriptions can be seen from the cases below. Enhanced Due Diligence (EDD) stages; Regarding Politically Exposed Persons (PEPs). The definition of PEP is implicitly contained in Article 52 UNCAC above, and explicitly in the FATF which in essence is a PEP is a prominent person in society or at the top level such as heads of state, senior politicians, senior government officials, court and military officials, family members of PEP and people close to PEP. But it does not include middle and lower level officials; Regarding Correspondent relations; Related to

unusual or difficult transactions; Regarding very risky relationships from third party countries and other very risky situations. (Greenberg et al., 2010).

What criminal acts can be categorized as criminal acts committed by beneficial owners?

Based on the FATF (Financial Action Task Force), criminal acts where the perpetrators are beneficial owners are money laundering and terrorism financing crimes. According to the author, this is too narrow, so the writer tries to explain what criminal acts can be categorized as criminal acts where the perpetrators are beneficial owners. What the author conveys is in line with Muladi's opinion, who said he disagreed with the FATF which only included the two crimes (Muladi, 2020).

Crimes committed by beneficial owners, according to the author, are criminal acts whose characteristics are related to corporations or in other words a person is said to be a beneficial owner if there is a connection with a corporation whose ultimate goal is to obtain something of economic value. and result in economic-related losses in the form of assets/property or in the form of money or assets. Because it has something to do with corporations, the authors try to provide limits on what crimes can be linked. The author tries to provide boundaries for criminal acts such as business crimes, economic crimes and financial crimes where each country has different typologies of criminal acts against these crimes. So that the discussion is not too broad, the author will further narrow down these criminal acts by only discussing criminal acts related to corporations as a means (corporate vehicle) which can be explained as follows:

First, Business Crime. According to Bessler, all business ventures (business ventures) can potentially become targets of crime including money laundering, intellectual property theft and embezzlement, where crimes against business can be divided into two categories, namely: the category of crimes committed by employees against businesses and those business crimes committed by others (Bressler, 2009). Romli believes that the notion of business crime contains philosophical, juridical and sociological meanings. The philosophical meaning implies that there has been a change in values in society when a business is carried out both nationally and internationally which results in causing harm to the wider community as shareholders who belong to the lower middle class such as activities in the capital market. This change is because business people to achieve the goal of setting aside business ethics and harming fellow business actors is a normal thing or in other words, in business activities it creates a legal problem, namely that there is no order and legal certainty and therefore it is impossible to find justice for the perpetrators. good faith business. Juridically, the term "business crime" is like two sides of a coin, namely there are aspects of civil law and aspects of criminal law, each of which has two different objectives and conflicting characteristics. The aspect of civil law is more concerned with peace between the parties so that the nature of regulation is more prominent and only relations between individuals or corporations. The objective to be achieved by regulation is to maintain harmonization between the interests of the parties. Meanwhile, the criminal aspect is more concerned with protecting the public interest or the wider community or the state so that coercion is more prominent than regulation. Sociological meaning, "business crime" has shown the real situation that has occurred in the business world, but on the other hand, it shows business activities as if there is no more trust between business people or there is no more "hospitality" (unfriendly business atmosphere). . Sociologically, the meaning of the term above shows a demand (demand) from business people with good intentions to prevent and overcome disgraceful business conditions in order to restore comfort in carrying out their activities (Atmasasmita, 2003).

Second, Economic Crime. According to Tupman, the forms of economic crimes are theft, smuggling, fraud, corruption, money laundering, cyber crime and product counterfeiting (Tupman, 2015). Muladi equates economic crimes with financial crimes (economic crime/financial crime), which are illegal acts committed by an individual or an organized group of individuals to obtain financial and professional gains. Economic crimes, including acts of corruption, are committed by perpetrators on the basis of rational considerations in deciding whether the perpetrator will commit a crime or not, taking into account the pros and cons, including all risks if caught and sentenced (a crime of calculation, not passion). Some examples of economic crimes that have recently occurred are related: The PT Jiwasraya (Persero) case, in addition to customer default claims amounting to around IDR 12.4 trillion, also contains potential state losses of IDR 13.7 trillion due to misuse of investments in assets with high risk; In the case of PT Asabri (Persero), this case was allegedly carried out with indications of the same pattern, estimated to have the potential to cause losses to the state's finances of IDR 10 trillion. If this allegation is true, it will be related to corruption, possibly money laundering; The MeMiles PT Kam and Kam case, this case involved allegations of fraud under the guise of investment (illegal or fraudulent investment) without OJK permission which is likely to be closely related to criminal acts that violate trade laws and banking laws, and does not rule out the possibility of money laundering among its members. . These various economic crimes tend to become corporate crimes (crime for corporations or corporate

criminal) if the crimes also benefit the corporation and are committed, either by people who have or do not have functional positions within the corporation, but are capable of giving related orders. with a criminal offense and holds control over an unlawful act is called a beneficial owner of a corporation, namely an individual who can appoint or dismiss directors, commissioners, management, advisors or supervisors at a corporation, has the ability to control a corporation, is entitled to and/or receive benefits from corporations, either directly or indirectly, are actual owners of corporate funds or shares and or meet the criteria as referred to in laws and regulations which are comprehensively regulated in the RKUHP (Muladi, 2020).

Third, Financial Crime. A number of illegal acts can occur both in the field of commerce and the public. So long as there are weaknesses that can be exploited for profit, companies and other organizations and private individuals are taking advantage. Therefore we find various criminal activities classified as financial crimes (Picket & Picket, 2002). Petter Gottschalk classifies financial crimes into 4 main categories, namely Fraud Crime, Theft Crime, Manipulation Crime and Corruption Crime (Gottschalk, 2014).

Based on the 3 categories of crimes above (business crimes, economic crimes and financial crimes), each country is different in viewing the three categories of crimes, perhaps due to the existence of different legal cultural factors within a nation. different historical factors in a nation and others. However, the aim is the same, namely criminal acts that aim to gain financial or economic benefits for the perpetrators of criminal acts.

4. Conclusion

Based on the discussion above, accountability for beneficial owners who commit criminal acts in Indonesia can be seen in Presidential Regulation No. 13 of 2018 which regulates beneficial owners consisting of systemized beneficial owners within corporations legally formal and determined/reported by corporations, patterned beneficial owners through other corporate intermediaries and benefit owners who are not legally systemized within the corporation and are not reported but control and control the corporation. For Beneficiaries who are not in the corporation, investigative steps can be taken against corporations that commit criminal acts by examining related documents in the form of Articles of Association, Notary Deeds of Establishment, GMS, Organizational Structure, Functions and authorization limitations, SOPs and internal regulations/policies of the Corporation, Corporate business activities and Corporate checking/cash flow accounts. This corporate cash flow is to see whether there are any funds flowing to the corporation as a means or as a place to accommodate the proceeds of the corporation's own crimes. Another way is to implement the Principle of Recognizing Service Users by conducting Customer Due Diligence and if necessary Enhanced Due Diligence. Customer Due Diligence is carried out by carrying out documentation and information to find out Beneficial Ownership of the Corporation so that it will be known who are the beneficial owners and nominees in the corporation.

Criminal acts that can be categorized as crimes committed by Corporations are crimes related to corporations because it can be seen from the cases that these crimes were committed by perpetrators of crimes by utilizing intermediaries either in the form of family, close friends or using Gate Keepers or Professionals, including lawyers and accountants, to disguise or hide the results of criminal acts, whether those crimes are business, economic or financial crimes, or in other words, criminal acts that are oriented towards economic gain.

Based on the conclusions above, the authors suggest, to the FATF, first, it should be necessary to make recommendations on how the criminal liability is carried out by the Beneficiary or what criminal sanctions will be given to the beneficial owner. Furthermore, the FATF should not only regulate Beneficiaries in relation to Money Laundering and Terrorist Financing. However, it also regulates criminal acts that are broader but limited, namely crimes that are related to corporations and are oriented towards seeking economic benefits.

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