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REFLECTION ON LEGAL STUDIES OF BENEFICIAL OWNERS IN CORPORATIONS COMMITTING MONEY LAUNDERING AND TERRORISM CRIMES IN INDONESIA

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ABSTRACT

In order to advance and develop a base in the national economy where the implementation is carried out on the basis of democracy with the foundations of the principles of togetherness and justice which will later encourage harmony in the implementation of the economy in a sustainable and independent manner so as to form a company in the form of a PT which has competitive power as a driving force for increasing National PDP to provide welfare for all components. Legal consequences when a Money Laundering Crime occurs against a beneficial owner based on the Company Law and Presidential Regulation Number 13 of 2018 concerning the Application of the Principle of Beneficial Owners of Corporations in the Context of Prevention and Eradication of Money Laundering Crimes and Terrorism Financing Crimes, the beneficial owner must be submitted because the beneficial owner is not present in a limited liability company, the beneficial owner as a legal subject to influence or control the limited liability company without having to obtain authorization from any party and is the actual owner of the funds for the ownership of limited liability company shares based on the provisions of Article 4 paragraph (1) letters (e) and (g) so that the criminal act of money laundering and terrorism in a limited liability company is what is being pursued is the actor who is suspected of entering funds as a form of act of money laundering and terrorism.

Keywords : Legal Vacuum, Beneficiary, Corporation.

INTRODUCTION

Important business components that are widely available in the world, including in Indonesia, which are legal entities that have different characteristics and quality characteristics from other forms of business. One of the characteristics that distinguishes a corporation from other business entities can be seen from the doctrine of separate legal personality which essentially explains that there is a separation of wealth between the owners or investors

(shareholders) and the assets of the legal entity itself. The presence of beneficial owners is only regulated in the provisions of the Presidential Regulation of the Republic of Indonesia Number 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 and Terrorism Financing Crimes.

Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 15 of the Year 2019 concerning Procedures for Implementing the Application of the Principle of Recognizing Beneficial Owners of Corporations and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2019 concerning Procedures for Oversight of the Application of the Principle of Recognizing Beneficial Owners of Corporations, but no clear position was found regarding the legal subject of benefit owners in the provisions of the Limited Liability Company Law, even though in order to improve and build the national economy which at the same time provides a solid foundation for responding to what will be the challenges of the times in the era of globalization in the future, it is therefore necessary for the position of this beneficial owner to be the basis of a law that regulates beneficial owners in a limited liability company that can guarantee the implementation of a conducive business climate for the company.¹

Based on the description above, the problem that arises is the existence of beneficial owners legally regulated through Presidential Decree Number 13 of 2018 concerning the Application of the Principle of Beneficial Owners of Corporations in the Context of Prevention and Eradication of Money Laundering Crimes and Terrorism Financing Crimes, problems within corporations as a result of legal developments crimes directed at corporations as a medium for criminal acts of money laundering and terrorism. so that the problem is whether the existence of a beneficial owner in a limited liability company whose authority has the right to control a limited liability company without the need for approval from authorization from any party as a cause of money laundering and terrorism in Indonesia. further efforts are needed to prevent criminal acts of money laundering and terrorism against beneficial owners in corporations.

RESEARCH METHOD

Legal research methods can be used to examine problems within corporations as a result of the development of criminal law which leads to corporations as a medium for money laundering and terrorism. This study aims to analyze the relationship between the existence of beneficial owners in a limited liability company and the possibility of money laundering and terrorism in Indonesia, as well as to identify preventive measures that can be taken against beneficial owners in corporations. The normative legal research method involves analyzing applicable legal regulations, including the Limited Liability Company Law, regulations related to money laundering and terrorism, as well as regulations governing beneficial owners in corporations. This research will be carried out by means of a literature study to collect relevant data and information.

¹ Mulhadi, 2010, *Hukum Perusahaan (Bentuk-Bentuk Badan Usaha di Indonesia)*, Bogor: Ghalia Indonesia, h. 83

The steps in the normative legal research method are to identify and analyze related legal regulations researchers will identify and analyze relevant legal regulations, such as the Limited Liability Company Law, money laundering crime regulations, and terrorism regulations. This will be done to understand the legal framework governing corporations and related crimes. Researchers will conduct a literature study to collect relevant information and data regarding beneficial owners in corporations, money laundering crimes, and terrorism. Literary sources that can be used include books, scientific journals, research reports, and related documents. Researchers will analyze existing and relevant legal regulations with a focus on the beneficial owner's authority in controlling a limited liability company. This analysis will involve the interpretation of legal regulations, a systematic approach, and the search for related legal arguments.

RESULTS AND DISCUSSION

Problems of Legal Application of Beneficial Owners in Corporations in Money Laundering and Terrorism Crimes

In a limited liability company, when a crime of money laundering occurs in a company, the beneficial owner must be informed that the beneficial owner has a legal subject in the company, this is inseparable from the beneficial owner's share ownership of more than 25% based on the provisions of Article 4 paragraph (1) letter (a) Presidential Regulation Number 13 of 2018 concerning Application of the Principle of Recognizing Beneficial Owners of Corporations that the Beneficial Owners of a limited liability company are individuals who meet the criteria of owning more than 25% (twenty five percent) shares in a limited liability company as stated in the articles of association.² So the share ownership of the beneficial owner is stated in the articles of association of the company that the share ownership is for the beneficial owner.

Classification of shares based on the provisions of Article 53 paragraph (4) UUPT which states that Classification of shares, among others: ³

1. shares with voting rights or without voting rights;
2. shares with special rights to nominate members of the Board of Directors and/or members of the Board of Commissioners;
3. shares which after a certain period of time are withdrawn or exchanged with other classifications of shares;
4. shares that give rights to their holders to receive dividends earlier than shareholders of other classifications for the distribution of cumulative or non-cumulative dividends;
5. shares that give rights to their holders to receive in advance from shareholders of other classifications the distribution of the remaining assets of the Company in liquidation.

based on the classification of shares above, firstly, regulates the existence of share ownership with voting rights or without voting rights but when in the company there is a legal subject who owns the benefit, then with a position as a shareholder of more than 25% in the

² Pasal 4 ayat (1) huruf (a) Perpres Nomor 13 tahun 2018 tentang Penerapan Prinsip Mengenali Pemilik Manfaat Dari Korporasi

³ Pasal 53 ayat 4 UUPT

company there is no other legal subject entitled to vote later at the GMS except for beneficial owners, even the classification of shares with special rights to nominate members of the Board of Directors and/or members of the Board of Commissioners becomes meaningless with the presence of the beneficial owner in a company because his position has changed the system in the company. because the positions of the directors and commissioners can be replaced directly by the beneficial owner based on the authority they have within the company.⁴

Disharmony in legal products governing beneficial owners which is only regulated through presidential regulations and ministerial regulations, of course, in terms of legal status for beneficial owners, which are actually inseparable from the existence of the Limited Liability Company Law, it becomes disharmony, the limited liability company law has not regulated legal subjects. beneficial owner in the company but there is already a presidential regulation and ministerial regulation governing the whereabouts of the beneficial owner. Therefore, the basis for the regulation of the President of the Republic of Indonesia Number 13 of 2018 should be to harmonize the existence of beneficial owners in the law on limited liability companies. The existence of disharmony in the existence of beneficial owners in a limited liability company is inseparable from the development of the company, which is getting more and more legal dynamics which results in a shift in legal requirements that begin to grow and develop because the nature of the law itself follows the development and activities of the limited liability company.⁵

The existence of these legal developments related to the existence of beneficial owners has not been harmonized in the PT Law, this is inseparable from the law as if it is always changing to follow the pattern of movement of legal requirements that are developing, especially in limited liability companies. This legal change with the presence of beneficial owners in a limited liability company that is a problem is not a matter of community activities, but the legal product that is used as a legal basis for running a limited company does not work, not in line with the provisions stipulated in Presidential Decree No. 13 of 2018 concerning the Application of the Principle of Recognizing Beneficial Owners of Corporations and UUPT. Issues leading to contemporary legal developments in the PT law have given a signal to legislators that the law changes very quickly so that when the acceleration of legal changes causes legal uncertainty which results in disharmony in the legal rules regarding beneficial owners in the company. limited.

The beneficial owner in a limited liability company does not actually exist in a limited liability company, this is as a result of the legal provisions of Article 4 paragraph (1) letter (g) that the beneficial owner is the actual owner of the funds for the limited liability company's share ownership. This means that the existence of funds provided to the limited liability company is actually the actual owner who is the beneficial owner, it's just that the beneficial owner in managing the funds for the limited liability company is managed by the company's structures such as directors and commissioners as legal subjects who run the limited liability company.

⁴ Misahardi Wilamarta, 2002, *Hak Pemegang Saham Minoritas dalam Rangka Good Corporate Governance*, Jakarta : Program Pascasarjana Fakultas Hukum UI, h. 81

⁵ Sutarno, 2011, *Aspek-aspek Hukum Perkreditasi Pada Bank*, Bandung: Alfabeta. h.12.

therefore a position with strong authority owned by the beneficial owner in the company is the forerunner of the crime of money laundering in the company.⁶

Legal issues when a crime of money laundering and terrorism occurs in a company, what is being pursued is the actor who is suspected of entering funds as a form of money laundering and terrorism. as in the case of the beneficial owner by setya novanto. In that case, Setya Novanto, Andi Narogong, Anang Sugiana and other people who also took part in this case. The judge stated that Andi Narogong and other parties directed a certain company as the winner of the e-KTP project auction and Andi Narogong was proven to have received USD 2.5 million or Rp. and Actions that benefit themselves or other people or corporations in setting up the e-KTP project amounting to IDR 5.9 trillion and have succeeded in causing losses to the state of up to IDR 2.3 trillion. Anang Sugiana, who is the former Main Director of PT Quadra Solution, is considered proven to have been a faucet for corruption money for Setya Novanto in the amount of USD 7.3 million from the e-KTP project, the money was then distributed through various money changers to avoid detection by banks and profits. for PT Quadra Solution itself, it reached Rp. 79 billion rupiah, sourced from consortium payments totaling Rp. 1.950 trillion, while the realization of goods work carried out by the company was only Rp. 1.871 trillion. For cases like money laundering, this is very complicated for law enforcement, so the follow the money approach will greatly assist investigations, namely that we must prioritize looking for money or assets resulting from crime compared to finding the perpetrators of the crime. This approach is an approach used to pursue, confiscate, and also seize the proceeds of crime.

Based on the case above, the problem of money laundering involving PT Quadra Solution was by Setya Novanto, Andi Narogong, Anang Sugiana and the people who took part in the case. The implementation practice in the limited liability company law is that there is a problem regarding the position of the beneficial owner in PT Quadra Solution. In practice it is not able to cover the problems that arise when it turns out that the board of directors, commissioners in a corporation take actual legal action on the control of the beneficial owner carried out by the legal subject who gives ownership of the company is the beneficial owner who is not included in the corporate structure the. The problem concretely comes from the development of the company, where there are increasingly legal dynamics which result in a shift in legal requirements that are starting to grow and develop because the nature of the law itself follows developments and community activities. The formation of the dynamics of the limited liability company makes it seem that the law is always changing by following the pattern of movement of legal needs that are developing in society. The legal change that becomes a problem is not only making the company a medium for committing money laundering crimes but also as a criminal act of terrorism.

⁶ Meyer, S.P. 2010, *The Meaning Of Beneficial Ownership And The Use Thereof For Tax Treaty Shopping And Tax Avoidance* , Pretoria, Greek : University Of Pretoria, h. 67

Efforts to Prevent Money Laundering and Terrorism Crimes Against Beneficial Owners in Corporations

The existence of an owner in a corporation must always receive supervision based on the provisions of Supervision in the application of the principle of recognizing the beneficial owner of this corporation that is given authority by the minister through the director general who is given the task of carrying out supervisory actions on the corporation. This regulation will explain the stages in supervision as regulated in the provisions of Article 5 paragraph (1), namely:

1. filling out questionnaires by Corporations;
2. risk assessment of money laundering and terrorism financing crimes against Corporations;
3. implementation of Supervision in accordance with the level of risk; And
4. implementation of recommendations by the Corporation

Based on the provisions above, the Supervision stage is related to filling out questionnaires by corporations and assessing the risks of money laundering and terrorism financing crimes against Corporations. The beneficial owner has become a new legal subject in the company so that his existence which is regulated through the presidential regulation creates disharmony between the regulations of the Presidential Regulation of the Republic of Indonesia Number 13 of 2018 which should harmonize the existence of the beneficial owner in the law on limited liability companies. Problems in the PT law have the effect of changing and questioning the provisions stipulated in the law.

Preventive measures for beneficial owners in corporations are very important to carry out Supervision based on the provisions of Article 8 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2019 that in carrying out Supervision the Minister carries out indirect (off-site) Supervision. Indirect (off-site) supervision is carried out electronically through AHU Online, for Corporations with low and medium risk levels.⁷ Implementation of indirect supervision (off-site), including inspection of documents and information; assessment of the application of the principle of recognizing Beneficiaries of Corporations; and description of the results of indirect supervision (offsite). then the results of indirect (off-site) supervision shall at least contain:

1. Corporate data and information entry;
2. Supervision findings based on examination of the application of the principle of recognizing Beneficiaries of Corporations; And
3. recommendations on the results of indirect supervision (offsite).

Submission of recommendations on the results of indirect (off-site) Supervision to Corporations is carried out through AHU Online. This oversight will later draw conclusions on allegations of corporations committing criminal acts of money laundering or terrorism.

Direct supervision (on-site) is carried out for Corporations that have a high level of risk and very high risk. Implementation of direct (on-site) supervision is carried out through document and information verification; verification of information on the determination of the

⁷ Ahmad Yani dan Widjaya Gunawan, 2000, *Seri Hukum Bisnis : Perseroan Terbatas*, Jakarta: PT. Raja Grafindo Persada, h. 7

Beneficiary of the Corporation; reports of Authorized Agencies and related Agencies; the process of granting a business license from the competent authority to summon the Corporation; and preparation of results of direct supervision (on-site).⁸ Preparation of direct (on-site) Supervision results, at least containing documents and information submitted by the Corporation; Supervision findings based on research and assessment of the application of the principle of recognizing Beneficial Owners of Corporations; and recommendations on the results of direct supervision (on-site). Submission of recommendations on the results of direct (on-site) Supervision to Corporations is carried out through AHU Online. The results of direct supervision (on-site) are submitted to the Minister to be followed up in periodic discussions. If necessary, on the results of on-site supervision, the Minister will summon the Corporation that has committed the violation.

The motive for the crime committed by the beneficial owner in the corporation who commits the crime of money laundering or terrorism often changes the structure of the company, namely the directors and commissioners so that in order to overcome the emergence of this crime, it is obligatory for the Corporation to carry out a structural reform of the corporation, because if the corporation has not submitted information to the Owner The Beneficiary of the Corporation is required to determine and submit information on the Beneficiary of the Corporation no later than 7 (seven) working days after the Corporation obtains a business license or registered mark from the competent authority/institution. Therefore, in order to minimize the existence of a lack of clarity with the beneficial owner, in submitting information on the beneficial owner, that when the Corporation is running its business or activities, it is carried out by submitting any changes and/or updates to the Beneficiary Owner's information from the Corporation to the Minister. Submission of Information on Beneficiary Owners of the Corporation at the Time of Application for Establishment, Registration and/or Legalization of the Corporation. Legal subjects who are given the authority to submit information on the Beneficiary Owners of the Corporation at the time of the Application for Establishment, Registration and/or Legalization of the Corporation based on the provisions of Article 7 paragraph (1) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 15 of 2019 carried out by a Notary. Submission of information on Beneficiary Owners of Corporations is carried out electronically through AHU Online.

This is because the beneficiary as the largest shareholder or it can be said that the owner of the most capital is in trouble for committing criminal acts of money laundering or terrorism involving corporate media. This is very important, we need to study together so that we know that the structural position in the company, namely the directors and commissioners, is the heart of PT. So if you are confronted with the authority of the two important positions in the structure of the PT, the PT will be in the position to benefit the most from the authority assumed. Meanwhile, the position of the beneficial owner who is not included in the structure of a limited

⁸ Reda Mantovani dan R. Narendra Jatna. 2011, *Rezim Anti Pencucian Uang dan Perolehan Hasil Kejahatan di Indonesia*, Jakarta: Malibu, h. 65

liability company is very difficult to detect because it is on behalf of the limited liability company.

CONCLUSION

The presence of criminal acts of laundering and terrorism within a corporation is a form of criminal law development, resulting in the presence of the Presidential Regulation of the Republic of Indonesia Number 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. Therefore the orientation of the existence of these legal products is solely to prevent and eradicate criminal acts so that the regulation regarding corporations related to the existence of these beneficial owners is an aspect that needs to be reaffirmed in Law Number 40 of 2007 concerning Limited Liability Companies.

The existence of criminal acts of money laundering and criminal acts of financing terrorism in a corporation as stipulated in the provisions of Presidential Regulation Number 13 of 2018 concerning the Application of the Principle of Recognizing Beneficial Owners of Corporations, which when money laundering occurs is not merely then violates the lex specialist aspect as stipulated in the law on money laundering and the law on terrorism which regulates in more detail regarding these legal actions, but this is a form of government action to supervise and enforce criminal law which makes corporations as a tool to commit money laundering and terrorism financing crimes.

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