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### The Legal Construction of Beneficial Ownership in Indonesia: Doctrinal Tensions and Normative Consequences

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#### ABSTRACT

This research is conducted in the wake of a new concept of Beneficial Ownership regulated in Presidential Regulation 13 of 2018 that contradicts the ownership concept in Indonesian Civil Code. The disharmony is causing confusion especially in practice by notaries and business actors. This paper aims to elucidate the ownership concepts between civil law with its absolute ownership, and common law that recognize legal and beneficial ownership, subsequently examine the impact on related legal actors. A qualitative doctrinal research method was used in this study, focusing on an in-depth analysis of Indonesia's regulatory framework on Beneficial Ownership and its interaction with the theoretical foundations of ownership in civil law. This research found that Indonesia's single-ownership system prioritizes formal legal certainty, unlike common law's separation of legal and beneficial ownership. Adopting beneficial ownership without proper conceptual reconstruction creates normative tension between formal and substantive ownership, leading to legal uncertainty, contractual ambiguity, evidentiary conflicts, and compliance burdens, particularly for notaries. Nonetheless, the underlying values of beneficial ownership—transparency, accountability, and fairness—align with Indonesian principles of social justice, making conceptual reconciliation essential to preserve legal certainty amid global transparency demands.

#### INTRODUCTION

One of the hallmarks of the Indonesian legal system, which adheres to the civil law tradition, is its comprehensive view of the concept of ownership. In Kitab Undang-Undang Hukum Perdata (Indonesian Civil Code), ownership is understood as an absolute right that grants the owner full authority to use, enjoy, and control the object of ownership. Similarly, in the context of corporate law, the Limited Liability Company Law (Law No. 40 of 2007) stipulates that the legitimate shareholder is the party registered in the shareholder register. This means that ownership under Indonesian civil law is formal and singular: whoever is registered is the owner. This system does not recognize the distinction between legal ownership and beneficial ownership, as is the case in common law.

However, developments in global law, particularly those related to the prevention of money laundering (AML) and counter-terrorism financing (CTF), have introduced a new concept previously

unfamiliar to Indonesian law: beneficial ownership (BO). This concept was then officially adopted through Presidential Regulation Number 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficial Owners of Corporations. This regulation requires every corporation to disclose the identity of the Beneficial Owner, namely the individual who actually controls or benefits from the corporation even if they are not listed as a shareholder or operator of the company.

This is where the legal issue arises. “Beneficial Ownership” is a conceptual product of the common law system, where the separation between legal and beneficial owners is typically achieved through trust institutions. In trust law, one person can hold shares or assets in the name of another (the legal owner), while the actual benefits are enjoyed by another party (the beneficial owner). This concept is unknown in Indonesian civil law, raising a serious question: what is the position of a Beneficial Owner within our legal framework? Can a Beneficial Owner be considered an owner in the civil sense, or is it simply an administrative category created to comply with international standards imposed by the Financial Action Task Force (FATF) and the United Nations Convention Against Corruption (UNCAC)?

This issue needs to be examined because it directly relates to legal certainty and the consistency of Indonesian civil law doctrine. For notaries, who have important authority in making authentic deeds and verifying identities, this ambiguity creates an additional burden. A notary, according to Article 16 paragraph (1) letter a of the Notary Law (UUJN), is obliged to act honestly, carefully, independently, impartially, and protect the interests of the parties. However, when a notary is faced with the obligation to recognize a Beneficial Owner, the normative basis for assessing who the true owner is becomes unclear. Notaries are caught in a dilemma: civilly, they may only recognize shareholders registered in the official register, but administratively they are obliged to trace who is behind the ownership structure.

On the other hand, the business world also faces uncertainty. In practice, Beneficial Ownership disclosure is often viewed as a mere administrative formality, thus having no legal consequences in civil relations. However, if the Beneficial Ownership concept is interpreted too broadly, potential conflicts can arise: does the Beneficial Owner have the right to file a lawsuit as the legal owner? Can it be held civilly liable even if it is not registered in the shareholder register? These questions indicate a conceptual disharmony that, if not promptly addressed, could undermine the principles of legal certainty and justice.

This article aims to provide a normative analysis of the position of Beneficial Owner within the perspective of Indonesian civil law. Its primary objective is to distinguish the function of Beneficial Ownership concept as an administrative instrument in the AML/CTF regime from the concept of ownership stipulated in the Indonesian Civil Code and the Limited Liability Company Law. Thus, this

article proceeds from the hypothesis that Beneficial Ownership may be more appropriately conceptualized as an administrative transparency mechanism rather than an ownership concept within Indonesian civil law. This research also attempts to offer a conceptual solution so that the existence of Beneficial Owner does not create legal uncertainty.

Based on these objectives, this article will answer several research questions. First, how is the concept of ownership understood in Indonesian civil law, particularly in relation to share ownership in limited liability companies versus the ones understood in common law? Second, what are the normative implications on the disharmony of the two concepts for notaries and corporate practice in Indonesia?

A number of existing literatures can help explain this issue. The World Bank Global Report (2020) indicates that the anonymity of Beneficial Owners within companies is a core characteristic of major financial crimes. The report emphasizes the importance of openness for the sake of global transparency.<sup>1</sup> In the Indonesian context, research by Nivia shows regulatory inconsistencies between the Indonesian Company Law, the Investment Law, and Presidential Regulation 13 of 2018, as well as their effects on the effectiveness of Beneficial Ownership regulations, so that it seems as if the ratification of Presidential Regulation 13/2018 is nothing more than a form of compliance with international standards rather than an innovation in national civil law.<sup>2</sup> On the other hand, classical literature such as the works of Prof. R. Subekti<sup>3</sup> and Prof. Sri Soedewi Masjchoen Sofwan<sup>4</sup> on national property law, as well as Yahya Harahap<sup>5</sup> on limited liability company law emphasizes that ownership in Indonesian law is absolute and formal, so that only registered owners are recognized by law. This sharp difference strengthens the suspicion that the concept of Beneficial Ownership in Indonesia is the result of a legal transplant that is not fully compatible with our civil law system.

Furthermore, studies opposing legal transplantation, such as those by Pierre Legrand in *The Impossibility of 'Legal Transplants'*, show that the adoption of legal concepts from foreign systems will not run smoothly, especially if the concepts conflict with the culture and basic structure of the existing legal system.<sup>6</sup> In this context, Beneficial Ownership can be seen as a form of legal transplantation forced by international demands, resulting in conceptual dissonance. Several classical Indonesian legal experts, such as Mochtar Kusumaatmadja, Satjipto Rahardjo, and Subekti,

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<sup>1</sup> WorldBank, "Enhancing Government Effectiveness and Transparency," *World Bank Publication*, 2020, doi:10.1596/34533.

<sup>2</sup> Nivia, "Dualisme Pengaturan Beneficial Ownership di Indonesia," *Mimbar Hukum* 35, no. 1 (2023): 29–58, doi: <https://doi.org/10.22146/mh.v35i1.5155>.

<sup>3</sup> R. Subekti, *Pokok-Pokok Hukum Perdata*, 31st ed. (Jakarta: Intermasa, 2003).

<sup>4</sup> Sri Soedewi Masjchoen Sofwan, *Hukum Perdata: Hukum Benda*, Cetakan ke (Yogyakarta: Liberty, 2008).

<sup>5</sup> M. Yahya Harahap, *Hukum Perseroan Terbatas* (Jakarta: Sinar Grafika, 2009).

<sup>6</sup> Pierre Legrand, "The Impossibility Og 'Legal Transplants,'" *Maastricht Journal of European and Comparative Law* 4, no. 2 (1997): 111–24, doi: [doi.org/10.1177/1023263X9700400202](https://doi.org/10.1177/1023263X9700400202).

also remind that every legal innovation must remain rooted in the principles and principles that exist within Indonesian legal society, so as not to give rise to confusing dualism and legal resistance.

Thus, the urgency of this research lies in clarifying and affirming the position of Beneficial Ownership in Indonesia. Without critical analysis, there is a risk that the Beneficial Ownership concept will become merely a "normative decoration" that does not function effectively, or worse, create new legal uncertainty in civil practice. This article aims to emphasize that Beneficial Owner should be understood not as an owner in the civil law sense, but rather as an administrative category aimed at increasing corporate transparency and accountability. If this position can be affirmed, notaries, business actors, and policymakers will have clearer guidelines for implementing Beneficial Ownership concept without sacrificing the principle of legal certainty in civil law.

## METHODS

This article employs a qualitative doctrinal research method, focusing on an in-depth analysis of Indonesia's regulatory framework on Beneficial Ownership (BO) and its interaction with the theoretical foundations of ownership in civil law. The study systematically examines primary legal materials—including Presidential Regulation Number 13 of 2018, Regulation of the Minister of Law and Human Rights Number 9 of 2017, relevant provisions of the Indonesian Civil Code, and sectoral regulations—supported by secondary legal literature such as academic commentaries, journal articles, FATF standards, and comparative studies. Using a normative-conceptual approach<sup>7</sup>, the research evaluates whether Indonesia's BO regime imposes merely administrative disclosure obligations or whether it implicitly redefines traditional ownership concepts. Interpretive legal analysis is applied to trace conceptual tensions, identify inconsistencies between BO regulations and civil law ownership doctrine, and assess the degree to which international standards influence Indonesia's legal construction of BO.<sup>8</sup> Grammatical (textual) interpretation to examine the literal wording of BO regulations and civil law provisions on ownership; Systematic interpretation in reading BO provisions in relation to the broader legal system (e.g., how BO regulations fit within or conflict with the Civil Code's ownership doctrine, company law, and AML/CFT framework); and Historical interpretation to trace how the concept evolved to explain why tensions exist.

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<sup>7</sup> Jaap C. Hage, *Reasoning with Rules: An Essay on Legal Reasoning and Its Underlying Logic* (Springer Science Business media Dordrecht, 1997), doi: 10.1007/978-94-015-8873-7.

<sup>8</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2007).

## DISCUSSION

### The Concept of Ownership in Civil Law vs. Common Law

The concept of ownership is one of the most fundamental aspects of civil law. Ownership is the central point of the legal relationship between humans and objects, determining who has the right to control, use, enjoy the benefits, or transfer those objects. Within legal traditions, there are differing perspectives on ownership. The civil law system, which forms the basis of Indonesian civil law, adheres to the concept of ownership as a unified, complete and undivided right. Within this framework, Indonesia adheres to the concept of single ownership, where the formal, legally registered owner also owns the economic benefits.<sup>9</sup>

Tracing its historical roots, this concept originates from Dutch law, which codified civil law in the 19th century *Burgerlijk Wetboek* (BW). This BW was then enacted in the Dutch East Indies in 1848, and after Indonesian independence was adopted as the Civil Code. In both the BW and the Civil Code, ownership (*eigendom*) is understood as full rights over an object, with no separation between the legal and beneficial aspects. This view was reinforced by classical legal scholars, such as Savigny, one of the classic figures of German civil law, who emphasized that ownership is a direct relationship between person and object, without intermediaries or division of rights.<sup>10</sup> Therefore, in Indonesia, to date, there is no concept of a "trust," or formal separation between legal and beneficial owners, as found in common law. When someone is a legal owner, they are automatically also a beneficial owner.<sup>11</sup> This concept has influenced civil law thinking in the Netherlands and ultimately in Indonesia.

In the Indonesian Civil Code, property rights are regulated in Book II concerning objects. Article 570 of the Civil Code states that property rights are the right to enjoy an object freely and fully, as long as it does not conflict with the law, general regulations established by the government, or does not interfere with the rights of others. This formulation emphasizes three important elements of property rights: first, property rights provide full authority (*plena in re potestas*); second, property rights are absolute (*erga omnes*), meaning they can be defended against anyone; and third, property rights are indivisible (*unitary*), where the person recognized as the legal owner is also the beneficial owner. Thus, if a person is listed as the owner in a formal document, such as a land certificate or shareholder list, they are the full owner, legally entitled to control the property and enjoy its benefits. There is no formal recognition of other parties who may actually receive benefits but are not listed

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<sup>9</sup> Subekti, *Pokok-Pokok Hukum Perdata*.

<sup>10</sup> Friedrich Karl von Savigny, *The Jus Possessionis of the Civil Law* (Minnesota: Hyperion Press, 1848).

<sup>11</sup> Hannelore Thijs, "The New Dutch Default Community of Acquests Regime: Key Innovations from a Comparative Perspective," *International Journal of Law, Policy and the Family*, Volume 39, no. 1 (2025): 1–19, doi: <https://doi.org/10.1093/lawfam/ebae026>.

as owners.<sup>12</sup> This doctrine distinguishes the Indonesian system from common law, which allows for a separation between legal owners and economic beneficiaries.

Indonesia, as a country that inherited the civil law tradition, recognizes the concept of ownership that is based on the principle of unity of rights (*droit de propriété*), as in French law. Ownership rights are viewed as a unified whole that includes the rights to use (*usus*), take the proceeds (*fructus*), and transfer or destroy the object (*abusus*). In Dutch legal literature, which is very influential in Indonesia, ownership is viewed as an absolute right that grants the owner the broadest possible freedom, although of course limited by statutory provisions and the public interest.<sup>13</sup>

The same thing is also seen in Indonesian agrarian law after the enactment of the Basic Agrarian Law (UUPA) in 1960. UUPA introduced new rights such as Ownership Rights, Cultivation Rights, Building Rights, and Use Rights, but the construction of ownership remains singular. The legal subject formally granted rights by the state is also the party entitled to enjoy the benefits of the land. There is no concept of formal rights held by one party while the economic benefits are legally enjoyed by another party. Boedi Harsono emphasized that agrarian rights in UUPA are full rights and grant comprehensive authority to their holders.<sup>14</sup>

The concept of sole/absolute ownership has several important implications for Indonesian legal practice. With no distinction between legal and beneficial owners, Indonesian law provides strong legal certainty. Formal registration (e.g., land certificates, shareholder lists) provides strong evidence of ownership.<sup>15</sup> Because there is only one recognized owner, there is no confusion about who owns the property. The party whose name is recorded on the land certificate or shareholder list is the sole legal owner. This simplifies dispute resolution, as judges only need to see formal proof of ownership.<sup>16</sup>

The foothold on formal registration renders the importance of a recording and registration system. Land administration, corporate governance, and property registration systems must be sound and accurate, as any errors in registration can have significant implications for ownership status.

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<sup>12</sup> Fokky Fuad, et al., "Ownership of Land: Legal Philosophy and Cultutre Analysis of Land Property Rights," *Jurnal Media Hukum* 30, no. 2 (2023), doi: <https://doi.org/10.18196/jmh.v29i2.18264>.

<sup>13</sup> Marija Bartl, Laura Burgers, and Chantal Mak, eds., *Uncovering European Private Law* (Cambridge: Open Book Publishers, 2025), doi:10.11647/OBP.0448.

<sup>14</sup> Boedi Harsono, *Hukum Agraria Indonesia* (Jakarta: Universitas Trisakti, 2019).

<sup>15</sup> Nadya Ivi Oktaviani, "Who Owns What? Legal Analysis of Unit Ownership in Solo Urbana Residence under Indonesian Land Law," *Indonesian Journal of Agrarian Law* 2, no. 2 (2025): 77–88, doi: <https://doi.org/10.15294/jal.v2i2.31116>.

<sup>16</sup> Bayyinatun Afifah, Suhadi, and Irawaty, "Legal Security and Legal Protection in the First Time Land Registration Publication System in Indonesia," *International Journal of Research and Innovation in Social Science* VIII, no. 8 (2024): 4469–77, doi:10.47772/IJRISS.

The concept of beneficial ownership emerged from medieval English feudal practice, tracing back to the Crusades (11th–13th centuries), when knights leaving for war entrusted their land to others to manage in their absence.<sup>17</sup> Because English land law recognized only the legal titleholder, returning knights often found custodians unwilling to give back their property, and common law courts offered no remedy since title had been formally transferred. Wronged owners appealed to the King, whose cases were handled by the Lord Chancellor, an ecclesiastical figure guided by conscience and equity rather than strict legal form. This gave rise to the Court of Chancery's recognition that someone could hold legal title while another held the equitable right to the property's benefits—the origin of the "use" (feoffment to uses) and the legal/beneficial ownership split.

By the 16th century, uses were widely exploited to dodge inheritance taxes and feudal duties, prompting Henry VIII's Statute of Uses (1535), which merged legal and beneficial title in the beneficiary. Lawyers circumvented this through "uses upon a use," later recognized by the Chancery as trusts—allowing the structure to survive despite the statute.

This evolution produced the English trust system, built on the division between legal ownership (recognized by common law) and beneficial ownership (recognized by equity)—a hallmark distinction of common law jurisdictions.<sup>18</sup> The trust concept was later institutionalized and exported to British colonies including the US, Australia, and Canada.

The division between legal ownership and beneficial ownership in common law carries several important normative implications for how property, responsibility, and justice are understood within the system. First, it implies that ownership is not a single, absolute right vested in one person, as it tends to be conceived in civil law traditions through the concept of dominium, but rather a bundle of rights and relationships that can be distributed among different parties at the same time. This reflects a normative view that property is fundamentally relational and functional in nature, defined by who holds formal control over an asset and who is entitled to enjoy its economic benefit. This flexible conception has allowed common law systems to develop instruments such as trusts, nominee arrangements, and fiduciary structures that civil law systems have historically found difficult to accommodate without separate statutory intervention.

Second, the historical origin of this split, born from equity's intervention where the rigidity of common law produced unjust outcomes, embeds a normative principle that legal form should never be permitted to defeat substantive justice. This is reflected in the enduring equitable maxim that equity looks to the substance rather than the form. In normative terms, this means the law

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<sup>17</sup> George William Cox, *The Crusades. Epochs of Modern History Series*, 3rd ed. (London: Longmans, Green & Co., 1874).

<sup>18</sup> Irina Gvelesiani, *The Origin of the Trust: A Comparative Linguistics and Law Perspective* (Springer International Publishing, 2024).

acknowledges that strict adherence to legal title can be exploited to defeat the legitimate expectations of those who do not hold formal title but who possess a genuine and recognized claim to the benefit of an asset.

Third, because legal owners such as trustees, nominees, or custodians hold title without personal entitlement to the benefits of the asset, the framework imposes strong fiduciary duties of loyalty, good faith, and accountability upon them toward the beneficial owner. This creates the normative expectation that formal control over property is not itself a source of entitlement, but a position of responsibility. This idea underlies broader common law doctrines concerning breach of trust, unjust enrichment, and constructive trusts, all of which exist to prevent legal titleholders from abusing their position at the expense of those who are truly entitled to the benefit.

Fourth, in contemporary contexts such as anti-money laundering and taxation law, the emphasis on identifying beneficial ownership reflects a policy concern that legal structures can be manipulated to conceal true economic control, thereby enabling tax evasion or the circumvention of regulatory obligations. This insistence that substance should prevail over form for purposes of accountability reinforces the broader rule-of-law value that transparency about who truly benefits from and controls an asset is essential to a just and functioning legal system.

The entire structure reflects an attempt to balance two competing legal values, namely certainty and predictability in property transactions, which are served by the recognition of legal title, against fairness and equitable outcomes, which are served by the recognition of beneficial interests. In this way, the dual-track system allows common law jurisdictions to maintain both the stability necessary for commercial and legal certainty and the moral responsiveness necessary to prevent injustice arising from purely formal ownership arrangements.

In the increasingly complex global capitalist system, many legal entities (companies, foundations, or trusts) are used to conceal the identities of true beneficial owners, whether for tax evasion, asset concealment, or criminal acts such as money laundering.<sup>19</sup> Therefore, international institutions such as the Financial Action Task Force (FATF) emphasize the importance of beneficial ownership transparency as a key element in global efforts to combat financial crime and the financing of terrorism.

The principle of beneficial ownership in the realm of financial regulation has subsequently evolved into a more technical legal instrument. It no longer merely addresses the moral relationship between formal and beneficial owners, but rather concerns the identification of individuals who

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<sup>19</sup> Marina Aristodemou, "Are Beneficial Ownership Laws Important? Exploring the Impact of Panama, FinCEN, and Pandora Papers on Beneficial Ownership Laws in the UK and the US," *Journal of Economic Criminology* 5, no. April 2016 (2024): 100082, doi: 10.1016/j.jeconc.2024.100082.

control or ultimately benefit from a legal entity or transaction. According to FATF Recommendations 24 and 25, each country is required to ensure an effective mechanism for identifying beneficial owners of legal entities to prevent the misuse of corporate structures for illicit purposes. This principle was also adopted by the European Union through its Anti-Money Laundering Directive (AMLD), which requires member states to maintain public beneficial ownership registers from the Fourth AMLD (2015) to the Sixth AMLD (2021).

Having examined how common law permits ownership to be split vertically between legal and equitable title through the trust mechanism, it is necessary to return to Indonesian civil law to clarify a point that is often conflated: the fact that the Civil Code recognizes plural ownership does not mean it recognizes ownership of the kind that Beneficial Ownership regulation presupposes. Indonesian civil law is, in fact, familiar with a form of shared ownership, namely co-ownership or joint ownership (*kepemilikan bersama*) as regulated under Articles 573 to 576 of the Civil Code, comprising both bound co-ownership (*hak milik bersama yang terikat*), such as marital joint property or undivided inheritance, and free co-ownership (*hak milik bersama yang bebas*), such as several persons holding undivided shares in a single object. However, this form of plural ownership is fundamentally horizontal in nature: each co-owner holds the same qualitative type of right, namely full ownership (*hak milik*), over an undivided share of the object, without any distinction in the legal character of what each party holds. This is categorically different from the "dual ownership" structure presupposed by the Beneficial Ownership concept, which is vertical rather than horizontal, dividing ownership into two qualitatively distinct interests, legal title held by one party and beneficial or economic interest held by another, over the same object.

Consequently, the existence of co-ownership within the Civil Code cannot be read as providing a doctrinal foundation for the legal and beneficial ownership split introduced by Beneficial Ownership regulation, since the two concepts address entirely different structures of plurality: one concerns multiple holders of the same right, while the other concerns a single object subject to two different kinds of right held by two different parties. This distinction is essential, as it confirms that Indonesian civil law, despite recognizing shared ownership in the horizontal sense, remains without an equivalent category for the vertical bifurcation of ownership that underlies the Beneficial Ownership concept, reinforcing the doctrinal tension discussed earlier.

Indonesia began formally adopting this concept through Presidential Regulation No. 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficial Owners of Corporations in the Context of Preventing and Eradicating Money Laundering and Terrorism Financing. This regulation is a manifestation of the national commitment to meet FATF standards and strengthen the domestic anti-money laundering regime. In practice, the concept of beneficial ownership is

translated as "beneficial owner," defined as an individual who actually owns or controls a corporation, or obtains benefits from it, either directly or indirectly. This regulation was later expanded through various technical regulations by the Financial Services Authority (OJK), the Ministry of Law and Human Rights, and the Financial Transaction Reports and Analysis Center (PPATK).

However, the adoption of this concept in the Indonesian legal system faces conceptual challenges due to fundamental differences between the common law system—the birthplace of the trust concept—and the civil law system adopted by Indonesia. In the civil law system, ownership rights are singular and do not recognize the separation between legal and beneficial ownership. Article 570 of the Indonesian Civil Code stipulates that ownership rights are the right to fully enjoy an object, with the power to use and collect the proceeds as long as they do not conflict with the law. Therefore, the national legal structure does not provide a natural space for dual ownership as is known in the trust system. Therefore, although functionally the concept of beneficial ownership is applied in the context of corporate transparency, conceptually it remains a transplant from the Anglo-Saxon legal tradition that requires interpretive adjustments in Indonesian legal practice.<sup>20</sup>

Interestingly, from a historical perspective, the long history of the concept of beneficial ownership demonstrates how social, political, and economic practices can shape legal norms across time. From the context of the Crusades, which gave rise to the practical need to entrust land, to equity systems that recognize substantive justice beyond formal ownership, and finally to modern legal systems that emphasize transparency and financial accountability, this concept reflects the evolution of humanity's relationship with ownership. Essentially, beneficial ownership is a principle of justice that seeks to ensure that anyone who benefits from a property or corporation is legally and morally responsible for it.

### **Normative Implications on The Disharmony of The Two Concepts for Notaries and Corporate Practice in Indonesia**

Indonesia, as a country with a civil law system, does not recognize the institution of trust in its positive law. National law recognizes the concept of absolute sole ownership as regulated in Book II of the Civil Code, where one legal subject is considered the full owner of an object with all rights and obligations attached to it. However, economic globalization and the integration of the international financial system demand a mechanism to trace who actually controls and obtains economic benefits from a legal entity, especially to combat the practices of money laundering, terrorism financing, and

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<sup>20</sup> Chi Zhang, "Re-Exploring the Nature of Dual Ownership in English Trusts: A Scottish Law Perspective," *Trusts & Trustees* 29, no. 1 (2023): 62–78, doi: <https://doi.org/10.1093/tandt/ttac113>.

tax evasion.<sup>21</sup> This pressure has driven Indonesia to adopt the concept of beneficial ownership through various regulatory instruments, one of which is Presidential Regulation Number 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficial Owners of Corporations.

According to Article 1(2) of Presidential Regulation No. 13 of 2018, a Beneficial Owner (Pemilik Manfaat) is defined as: "An individual who has the authority to appoint or dismiss the board of directors, board of commissioners, management, supervisors, or trustees of a corporation; has the ability to control the corporation; is entitled to and/or receives benefits from the corporation, whether directly or indirectly; is the true owner of the corporation's funds or shares; and/or fulfills the criteria stipulated in this Presidential Regulation."

The definition identifies a Beneficial Owner as a natural person who satisfies one or more of the following conditions: has the power to appoint or remove the corporation's governing bodies; has the ability to exercise control over the corporation; is entitled to or receives benefits from the corporation, directly or indirectly; is the true owner of the corporation's funds or shares; or otherwise satisfies the specific criteria applicable to the relevant type of corporation under the Regulation.

This regulation introduces a legal construct that sits uneasily alongside Law Number 40 of 2007 on Limited Liability Companies — Indonesia's foundational company law. Under the Company Law, corporate governance and decision-making authority are structured strictly around three organs: the General Meeting of Shareholders (RUPS), the Board of Directors, and the Board of Commissioners. These three organs exhaustively define who may exercise legal authority within the company and who bears legal responsibility for its actions. The BO regulation, however, introduces a fourth, extra-structural category of person, the "beneficial owner," who is not recognized as an organ of the company under the Company Law, yet is treated by Presidential Regulation Number 13 of 2018 as the party who ultimately controls the corporation, receives its economic benefits, or directs its decisions, whether through direct ownership, indirect ownership via a chain of entities, or through informal arrangements of control that need not correspond to any formal position within the three organs at all. This creates a conceptual conflict: company law identifies legal authority and responsibility solely through formal organs, while BO regulation recognizes a locus of factual control and economic benefit that may exist entirely outside those organs, for instance an individual who controls a shareholder entity, or who has an informal agreement granting them decision-making power without ever appearing in the company's official structure. The result is a dualism in which two different legal regimes describe "who really controls the company" using entirely different taxonomies, and BO regulation effectively operates as a parallel, extralegal organ recognized for

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<sup>21</sup> Sonja Cindori, "Beneficial Ownership – Demand for Transparency, Threat to Privacy," *Review of European and Comparative Law* 55, no. 4 (2023): 113–31, doi: <https://doi.org/10.31743/recl.16352>.

regulatory transparency purposes but without any corresponding status, rights, or obligations under the Company Law itself.

This tension is compounded by the ambiguity embedded in the quantitative threshold that Presidential Regulation Number 13 of 2018 uses to identify a beneficial owner: a person is presumed to be a BO if they hold at least 25% of the shares or voting rights, or otherwise receive at least 25% of the company's annual profits. This numeric threshold was evidently borrowed from international standards, particularly the FATF Recommendations, which suggest a comparable ownership threshold as a practical proxy for "significant control." However, applying a fixed 25% threshold produces serious definitional gaps in company structures where ownership is more evenly distributed. Consider a company with five shareholders, each holding exactly 20% of the shares. In such a scenario, no single shareholder meets the 25% threshold, meaning that under a literal reading of the regulation, the company would have no beneficial owner at all through the ownership-based criterion. Presidential Regulation Number 13 of 2018 does provide alternative criteria beyond the percentage threshold, such as control over the appointment of directors and commissioners, control over final decision-making, or receipt of benefit from the corporation through other arrangements, intended to catch such cases. Yet in practice, when ownership is genuinely and evenly dispersed among multiple parties with no single controlling shareholder and no other individual able to demonstrate the requisite control indicators, corporations, notaries, and even the Ministry of Law and Human Rights' AHU system frequently default to reporting "no beneficial owner identified," or resort to naming the most senior director as a fallback under the "highest-ranking officer" residual clause in the regulation.

This fallback mechanism itself reveals the doctrinal weakness of the threshold-based approach, because it effectively imports someone from within the three formal organs, namely a director, back into the BO framework simply because the ownership-based test failed to identify anyone, thereby blurring the very distinction the regulation was meant to establish between formal corporate organs and the substantive beneficial owner. This produces a paradox: the regulation was designed precisely to look beyond formal titleholders to the real economic controller, yet when ownership structures are diffuse enough, the regulation collapses back onto a formal officer for lack of any qualifying beneficial owner, undermining its own transparency objective. This ambiguity illustrates how a bright-line percentage rule, imported without full doctrinal integration into Indonesia's existing corporate law architecture, creates gaps that are structurally incapable of capturing legitimate cases of dispersed or collectively exercised control, precisely the kind of arrangement that anti-money laundering and beneficial ownership transparency regimes are meant to address.

This adoption is essentially a legal transplant, borrowing concepts from other legal systems to address needs not yet addressed by the national legal system. However, like many other examples of legal transplants, the transfer of the concept of beneficial ownership into the Indonesian legal system is not without adaptation challenges.<sup>22</sup> Beneficial ownership is a concept that operates within the Anglo-Saxon legal context, emphasizing economic facts and substantive control, while Indonesian ownership law is rooted in formal legality and written evidence. When these two logics meet in state administrative practice, a normative tension arises between the "invisible" economic facts and the "recorded" legal ownership.<sup>23</sup>

In practice, the government, through the Ministry of Law (Kementerian Hukum) and the Financial Transaction Reports and Analysis Center (PPATK), mandates that all corporations (both for-profit and non-profit) identify and report the true beneficial owners behind their formal ownership structures. Meanwhile, notaries—as public deed makers—are directly involved in the verification and reporting of beneficial owner data when registering legal entities or amending their articles of association. Therefore, notaries are at the forefront of implementing this principle and play a crucial role in ensuring the accuracy and validity of submitted ownership data.<sup>24</sup>

Problems arise when the national legal system has not fully provided a harmonious conceptual framework between formal ownership (which is legally valid) and beneficial ownership (which is administratively recognized). The concept of ownership in Indonesian law is still based on the principle of *nemo plus juris transferre potest quam ipse habet*—no one can transfer rights beyond what they own—while the concept of beneficial owner can refer to individuals who legally do not have formal ownership, but control or enjoy the economic benefits of the entity.<sup>25</sup> The absence of a normative bridge between these two concepts creates the potential for disharmony in their application, especially when beneficial owner data does not align with the formal ownership structure recorded in the deed. This is where significant normative implications arise for legal certainty, both for notaries and for the corporate world in Indonesia.

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<sup>22</sup> Jasminka Kalajdzic, Axel Halfmeier, and Bernard Murphy, "The (Un) Intended Consequences of Legal Transplants: A Comparative Study of Standing in Collective Litigation in Five Jurisdictions," *Journal of Tort Law* 17, no. 2 (2024): 149–202, doi:10.1515/jtl-2025-0003.

<sup>23</sup> Jia Wang, "Reflection on Legal Transplantation Theories: A Socio-Legal Historical Study of the Formulation and Evolution of Chinese Marine Insurance Law," *International Journal of Law in Context* 21, no. 1 (2025): 80–98, doi:10.1017/S174455232400034X.

<sup>24</sup> Bimo Kusumo and Putro Indarto, "Pertanggungjawaban Notaris dalam Mengungkapkan Pemilik Manfaat (Beneficial Owner) pada Pendirian Perusahaan" 1, no. 4 (2024): 199–206, doi: <https://doi.org/10.62383/aliansi.v1i4.309>.

<sup>25</sup> Gina Aulia Maulida Putri, "Tanggung Jawab PPAT dalam Menerapkan Asas *Nemo Plus Juris* pada Peralihan Hak Atas Tanah," *Jurnal Private Law* 5, no. 2 (2025), doi: <https://doi.org/10.29303/prlw.v5i2.6526>.

1. Determination of Legal Subjects Who Are Obligated or Have the Right to Act

The disharmony between formal ownership and beneficial ownership raises a fundamental legal issue: who ultimately constitutes the legal subject with the capacity to act, sue, or be held accountable in corporate relations—the administrators whose names are recorded in the deed, the legal shareholders, or the individuals identified as administratively beneficial owners. Within the framework of the Civil Code and national corporate law, legal capacity and authority to represent an entity are determined through formal legal documents such as the deed of incorporation and the shareholder register; therefore, extending administrative responsibility to unregistered beneficial owners creates a mismatch between the formal and substantive sources of legitimacy.

In notarial practice, this mismatch presents a concrete operational dilemma. Notaries are required to verify the identity and ownership structure based on official documents, but are also mandated by reporting regulations to investigate who actually receives economic benefits or controls the entity. A loose interpretation of this obligation can require notaries to verify beyond formal documents—for example, examining benefit flows, informal internal agreements, or intermediary structures—which places notaries in the realm of economic facts that are difficult to prove forensically under civil law.

The legal consequences of this situation are two-pronged. On the one hand, if administrative recognition of beneficial ownership is given high weight without clear mechanisms for correction and verification, the rights of formally registered parties may be compromised. On the other hand, if formal deeds are consistently viewed as superior without taking into account the realities of control and economic benefits, efforts to prevent abuse of legal entities risk being weakened. Therefore, to maintain legal certainty for all parties, a clear evidentiary mechanism and hierarchy of norms are needed—for example, provisions that emphasize the function of disclosing beneficial ownership for administrative oversight purposes, accompanied by alternative litigation or registration procedures if the claim of benefits changes the status of legal rights.

2. Operational Uncertainty and Contractual Legal Certainty in the Business World

Discrepancy between deed data and beneficial owner data pose real operational risks for corporations, particularly regarding the exercise of day-to-day corporate rights such as the use of voting rights in general shareholder meetings, managerial decision-making, and dividend distribution. When there are parties claiming substantial benefits but not formally listed, internal parties of the company can experience conflicts of interest that delay or destabilize the decision-making process, because the actors who actually regulate

the running of the company may be different from the actors recognized by law.<sup>26</sup>

The impact on contracts and third parties is also significant. Third parties (e.g., creditors, business partners, investors) who rely on legal registers and notarial deeds to assess contractual risk may experience misperceptions about the true economic owners and who has the authority to bind the company. This uncertainty can lead to bankruptcy disputes, challenges to transactions involving invisible parties, and potential claims for damages if third parties feel disadvantaged by the lack of transparency regarding benefit structures. Furthermore, institutional investors tend to impose price penalties or refuse to invest if ownership transparency is perceived as weak. To reduce this uncertainty, practical mechanisms are needed at the corporate level: (a) the inclusion of internal clauses that clarify the relationship between legal shareholders and ultimate beneficiaries; (b) consistent disclosure procedures between corporate documents and beneficial ownership reports; and (c) procedures for rapid correction if any discrepancies are identified. With such mechanisms in place, the impact on contractual continuity and third-party trust can be minimized, so that legal registers can still be used as a basis for economic decisions without neglecting the need for transparency of substantive benefits.

To strengthen the argument for third-party protection in the context of the Beneficial Ownership registry, it is necessary to ground the discussion in established legal theory rather than relying solely on a description of the ambiguity created by self-reporting. The first relevant foundation is the publicity principle and the theory of legal certainty (*rechtszekerheid*), which underlie the function of public registries such as the AHU system, whereby the state, by maintaining a public registry, implicitly guarantees a baseline of accuracy so that third parties, whether creditors, business partners, or regulators, may rely on registered information without needing to independently verify the underlying facts; however, because BO data is self-reported without independent verification, unlike notarial deeds which involve a notary's due diligence, this publicity principle is weakened at its very foundation, exposing third parties to precisely the risk it was designed to eliminate. This weakness must then be compensated through the doctrine of good faith third-party protection (*perlindungan pihak ketiga yang beritikad baik*), rooted in Article 1338 of the Civil Code and reflected throughout Indonesian company and land law, which protects a party who reasonably relies on apparent legal facts even where those

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<sup>26</sup> International Monetary Fund, Francisca Fernando, and Richard Berkhout, "Practical Implementation of Beneficial Ownership Requirements," in *Unmasking Control: A Guide to Beneficial Ownership Transparency* (International Monetary Fund, 2022), 31–83.

facts later prove false, provided that reliance was exercised in good faith and with reasonable diligence, meaning that a creditor or business partner who relies on the BO listed in the AHU system should remain legally protected even if that BO information later proves inaccurate, with the risk of inaccuracy shifted onto the reporting company rather than the innocent third party.

This protection may be reinforced procedurally through the doctrine of estoppel, whereby a party who creates a false appearance, such as a company self-reporting an inaccurate BO, should be barred from later denying that appearance to the detriment of a third party who reasonably relied upon it, thereby preventing the reporting company or the true beneficial owner from exploiting their own misrepresentation as a defense. At the same time, the theory of piercing the corporate veil, as recognized under Article 3(2) of Law Number 40 of 2007, offers a complementary remedy where self-reported BO data conceals or misstates true control to the detriment of third parties, allowing courts to disregard limited liability protection and hold the true beneficial owner personally accountable rather than permitting an inaccurate registry entry to serve as a shield. Taken together, these theories suggest that because the BO registry's reliance on self-reporting undermines the reliability traditionally guaranteed by the publicity principle, Indonesian law should compensate for this structural weakness by explicitly extending good faith third-party protection and estoppel to BO registry entries, while reserving the piercing of the corporate veil as a remedy against beneficial owners who deliberately conceal or misstate their status, thereby restoring the legal certainty that self-reporting alone is structurally incapable of guaranteeing.

### 3. Priority of Norms

The question of normative hierarchy becomes central when administrative regulations regarding beneficial ownership conflict with civil norms governing legal ownership. Courts and law enforcement officials must determine whether concealing beneficial ownership alters, negates, or merely supplements the evidence of legal ownership already recorded. Without certainty about normative priority, court decisions can be inconsistent—some cases may place greater weight on administrative documents, while others rely on formal deeds—ultimately undermining the principle of legal certainty.

The burden of proof becomes a technical tool that determines the outcome of a dispute:<sup>27</sup> the party claiming beneficial ownership must be provided with a clear standard of proof—is it sufficient to simply demonstrate factual control and the flow of economic

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<sup>27</sup> Laura Piazza, "The Burden of Proof in WTO Law and Practice" (Luigi Bocconi Commercial University, 2025).

benefits, or is documentary evidence equivalent to a notarial deed required? Similarly, the formally registered party is entitled to a presumption of legality from the deed; however, this presumption should not be an absolute shield if there is strong evidence of the intentional transfer of benefits for unlawful purposes. This unclear standard increases litigation costs and makes it difficult for authorities to enforce anti-abuse norms.<sup>28</sup>

A pragmatic solution is to establish tiered evidentiary rules and explicit administrative-judicial procedures: for example, requiring an administrative level of evidence for registration and investigation purposes (sufficient indication of control/benefit), but requiring a higher civil standard of proof for changing the legal status of rights or invalidating transactions.<sup>29</sup>

An actual evidentiary hierarchy using instruments that are already existed and recognized in Indonesian law must be constructed. For example, tier one as the strongest evidence is held by notarial deeds and the company's Deed of Establishment or Deed of Amendment, since under Law Number 2 of 2014, a notarial deed is an “*akta otentik*” carrying full evidentiary force and is presumed valid unless proven otherwise in court. Tier two as the secondary or administrative evidence is AHU registration data that contains BO reports submitted through the BO reporting system under Presidential Regulation Number 13 of 2018. This data is administrative in nature and self-reported by the corporation, so it should be treated as *prima facie* evidence, rebuttable if contradicted by a notarial deed or by proof of actual control. Tier three as supplementary or circumstantial evidence are internal corporate documents, shareholder agreements, profit distribution records, or minutes of General meeting of shareholders, used only when Tier One and Tier Two evidence conflict or fail to identify a clear beneficial owner

Furthermore, courts also need interpretive guidelines that harmonize the function of beneficial ownership registers with formal ownership principles to ensure consistent and predictable decisions. These measures would reduce arbitrariness and increase legal certainty for all actors.

#### 4. The Burden of Compliance and Ethical Consequences for Notaries

The expansion of beneficial owner verification functions increases the compliance burden on notaries, who already have a busy administrative and formal workload. Notaries must conduct document inspections, verify authenticity, and trace beneficial relationships

<sup>28</sup> Pawel A. Blajer, “On the Principle of Public Faith of Land Registers in Comparative Context,” *European Property Law Journal* 12, no. 2–3 (2023): 79–125, doi: <https://doi.org/10.1515/eplj-2023-0005>.

<sup>29</sup> Lingling Li, et al., “How to Use Evidence Rules Reasonably to Resolve Land Disputes: Analysis of Typical Land Dispute Cases from China,” *Land* 13, no. 8 (2024), doi: <https://doi.org/10.3390/land13081187>.

that may be hidden in private contracts, intermediary accounts, or cross-jurisdictional structures as it is obliged in Government Regulation Number 43 of 2015 regarding Reporting Parties for Prevention and Eradication of Money Laundering Crimes, and Regulation of the Minister of Law and Human Rights Number 9 of 2017 regarding the Implementation of the Recognizing-Service-User Principle for Notaries. In practice, when a notary files the electronic registration of a company's establishment or certain corporate changes through the Ministry of Law's AHU system, the notary is required to submit the corporation's Beneficial Ownership information as part of the registration process. Without completing the BO information, the filing generally cannot be finalized. This administrative and investigative burden is not only time-consuming but also requires adequate technical capacity, data access, and confidentiality—which, if not balanced by clear guidelines and institutional support, can lead to inconsistent verification practices across notary offices.

From a professional ethics perspective, notaries face a conflicting role: as public officials who guarantee the validity of documents, they are simultaneously expected to exercise public oversight over potential abuses of ownership structures.<sup>30</sup> This combination of two roles necessitates updating professional standards—both codes of ethics and operational procedures—that define the limits of notaries' authority and obligations in verifying beneficial ownership, including reporting obligations, client confidentiality, and procedures for dealing with ambiguous or conflicting information. Without such updates, notaries find themselves in a vulnerable position between the demands of law enforcement and the rights of their clients.

A clear liability protection framework (e.g., an administrative safe harbor) is needed for notaries who act in accordance with official guidelines and recognized verification standards to protect notary officials and simultaneously meet public policy objectives.<sup>31</sup> Such protection should be accompanied by training facilities, access to authoritative data (e.g., registry integration), and escalation mechanisms when beneficial ownership indicators indicate potential violations that require further investigation by authorized institutions. This way, the burden of compliance does not become a new source of legal uncertainty, but rather part of a measurable and legally protected prevention system.

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<sup>30</sup> Muhammad Yusron Aljula and Hartanto, "Risk, Responsibility, and Regulation: A Socio-Legal Analysis of Notarial Accountability in Identifying Beneficial Ownership," *Baileo: Jurnal Sosial Humaniora* 3, no. 1 (2025): 33–48, doi: <https://doi.org/10.30598/baileofisipvol3iss1ppXX-XX>.

<sup>31</sup> Kristantini Sugiharti and Yetty Komalasari Dewi, "Surat Pernyataan Kepemilikan Manfaat : Perlindungan Terhadap Notaris Dalam Mengenali Pemilik Manfaat ?," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022): 150–69, doi: <https://doi.org/10.14710/jphi.v4i2.150-169>.

## CONCLUSION

Conceptually, the Indonesian legal system is based on the principle of single ownership, which emphasizes formal certainty and legal clarity regarding ownership status. Unlike the common law tradition, where a distinction is made between legal and beneficial owners, the concept of beneficial ownership arises. Therefore, when the concept of beneficial ownership is adopted into the Indonesian legal system without adequate conceptual reconstruction, normative tension arises between formal and substantial ownership. This disharmony then manifests itself in various legal implications, such as uncertainty about the legal subject entitled to act, contractual ambiguity within corporations, conflicting norms regarding the proof of rights, and even the burden of compliance that puts pressure on the notary profession. Although the differences in legal systems pose challenges, the spirit behind the concept of beneficial ownership—namely, transparency, responsibility, and fairness in ownership—aligns with the fundamental values of Indonesian law that uphold social justice and the public interest. Therefore, conceptual reconciliation between the two systems is crucial to ensure legal certainty and maintain the consistency of the national ownership system amidst global demands for transparency.

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