

The Legal Basis for The Emergence of Civil Liability of The Beneficial Owner in Agreements That Harm Third Parties

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Abstract

This research examines the civil liability of beneficial owners in contractual relationships when third parties suffer losses. The issue arises because beneficial owners may substantially control corporate decisions and receive economic benefits without being formally recorded as shareholders, directors, or commissioners. This research uses a normative juridical method with a descriptive-analytical specification, supported by literature study and interviews with legal experts. The findings show that civil liability may be imposed based on the form of control exercised by the beneficial owner. If the beneficial owner is also a controlling shareholder, liability may be imposed through the doctrine of piercing the corporate veil under Article 3 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies. Meanwhile, hidden beneficial owners may be held liable under Article 1365 of the Indonesian Civil Code if factual control, bad faith, unlawful conduct, and a causal relationship with third-party losses can be proven. This study concludes that civil liability for beneficial owners is necessary to prevent misuse of corporate legal personality and strengthen legal protection for harmed third parties.

INTRODUCTION

Humans, known as social creatures (*homo socialis*), are also rational beings and economic actors (*homo economicus*) who make choices to fulfill their needs (Maharani, 2016). In fulfilling these needs, humans engage in work—some work for others and receive wages, while others engage in business activities. As the business world and economy have developed, business activities are no longer conducted solely by individuals but also by associations of people who combine capital, forming what is known as a business entity or company (De Angelis, Howard, & Miemczyk, 2018; Teece, 2016; Witkowski, 2017).

The term "company" replaces the term "trader" mentioned in the Commercial Code (hereinafter referred to as KUHD). In legal literature, company forms are generally divided into two large groups: business entities with legal personality and business entities without legal personality, collectively referred to as corporations (Bayern et al., 2017; Gutnikov, 2022; Kraakman & Armour, 2017; Pollman, 2021).

One of the most common corporate forms used for business activities today is the Limited Liability Company (PT). It is an incorporated legal entity, along with cooperatives and foundations. Limited Liability Companies are a favored legal form chosen by the public because they possess advantages from both economic and juridical aspects (Rock, 2021). These two aspects complement each other; the juridical aspect regulates and secures the balance of

interests of all parties to be implemented optimally within the framework of economic activity (Bagheri & Jahromi, 2016; Eckert, 2018; Garben, 2017; Petersmann, 2019).

Limited Liability Companies are established based on an agreement to conduct economic activity with capital divided into shares. Ownership of a company by an individual or group of people is limited to the number of shares they own. Typically, share ownership in a Limited Liability Company must be officially recorded in the company under the owner's name. However, Article 33 paragraph (1) of Law Number 25 of 2007 concerning Capital Investment explicitly prohibits agreements and/or declarations of share ownership on behalf of another party. Nevertheless, in current business practice, concealment of actual share ownership using another party's name (a nominee) through nominee agreements or nominee arrangements is widespread (Nielson & Sharman, 2022; Pacini, Lin, & Patterson, 2021; Sumarsih, 2025).

The concept of a nominee, according to Black's Law Dictionary, refers to an arrangement whereby someone appoints another person to act as a representative with limited authority. A nominee acts as a representative or agent for the beneficiary's interests in a legal matter. What distinguishes a nominee from a power of attorney recipient is that a nominee becomes the owner of certain objects, including interests or rights arising from any existing agreement in its management, whereas a power of attorney recipient does not become an owner of objects or interests, only managing them as a nominee (Pahlevi et al., 2017).

In practice, a nominee is appointed through a nominee agreement mechanism (a name-borrowing agreement), whereby de jure the shares are absolutely owned by the nominee party because his name is recorded in the share holder register (also known as the legal owner), whereas de facto the shares are owned by the beneficiary (actual owner) or beneficial owner (beneficial owner).

The concept of beneficiary or beneficial owner actually originates from the concept of dual ownership that emerged from Trust law institutions (common law system), which is based on equity. The concept of dual ownership differentiates between the beneficial owner as the economic owner and the legal owner as the owner in law who is authorized to perform legal acts over all assets for the interests of the beneficial owner. A similar concept is expressed by Paul Todd, who noted that this arrangement involves a separation of ownership into "ownership at law" and "ownership in equity" (Hagmann, 2017; Anggoro & Fahrurozi, 2025). Meanwhile, Indonesia, which adheres to a civil law system, does not recognize the concept of dual ownership in the sense that one asset has only one right of ownership.

The concept of beneficial owner is not new. Similar arrangements appear in the 1942 tax agreement between Canada and the United States. Subsequently, the term "beneficial owner" was first known in English Trust Law (common law system), where a beneficial owner is defined as a party that fulfills the criteria of an owner without the need for a confession of legal ownership.

In Indonesia, the concept of beneficial owner was first introduced in the capital markets sector, as evidenced in the Decree of the Chairman of the Capital Market Supervisory Agency Number Kep 48/PM/1997 concerning Effects Accounts in Custodian Care. According to this provision, ownership of effects held in collective custodian accounts comprises two types: beneficial ownership of effects and registered ownership of effects (Abubakar, 2009).

Subsequently, the concept of beneficial owner was incorporated into the criminal law regime as provided in Presidential Regulation Number 13 of 2018 concerning Implementation

of the Principle of Recognizing Beneficial Owners of Corporations in the context of preventing and combating money laundering and terrorism financing crimes. This regulation requires every corporation, including Limited Liability Companies, to disclose the beneficial owner. This arrangement marks formal state recognition of the existence of beneficial ownership within the national legal system, particularly for Limited Liability Companies and within the framework of preventing and combating money laundering and terrorism financing. This recognition was further strengthened by Law Number 1 of 2023 concerning the Criminal Code, which also accommodates the concept of beneficial owner in corporate criminal accountability.

Although the concept of beneficial owner initially emerged from the nominee agreement concept and Law Number 40 of 2007 concerning Limited Liability Companies in conjunction with Law Number 25 of 2007 concerning Capital Investment explicitly prohibits the use of shares on behalf of another person (nominee), the government has since set forth criteria for beneficial owners and requires every corporation, including Limited Liability Companies, to identify and report beneficial owners through Presidential Regulation Number 13 of 2018 concerning Implementation of the Principle of Recognizing Beneficial Owners of Corporations in the context of preventing and combating money laundering and terrorism financing crimes.

The obligation to report or disclose the beneficial owner of a corporation is further regulated in the Regulation of the Minister of Law and Human Rights Number 15 of 2019 concerning Implementation Procedures for the Principle of Recognizing Beneficial Owners of Corporations. This arrangement demonstrates that the concept of beneficial owner is not prohibited in principle but is recognized normatively within the framework of ensuring transparency and accountability as well as preventing the misuse of corporate legal personality as a means of concealing actual control and real benefits (Suhardin & Butarbutar, 2023).

A juridical problem arises when the criteria for beneficial owners of Limited Liability Companies formulated in Presidential Regulation Number 13 of 2018 concerning Implementation of the Principle of Recognizing Beneficial Owners of Corporations in the context of preventing and combating money laundering and terrorism financing is associated with the fundamental principles of company law. The Presidential Decree establishes that the beneficial owner criterion is anyone who has authority or power to influence or control a Limited Liability Company without requiring authorization from any party; such person is the actual owner of the company's share capital. This criterion demonstrates a substantive approach to control and ownership that is conceptually not entirely aligned with the formal approach adopted in Law Number 40 of 2007 concerning Limited Liability Companies in conjunction with Law Number 25 of 2007 concerning Capital Investment, which focuses on the structure and organs of the listed company as the center of control and legal accountability.

According to the provisions of Law Number 40 of 2007 concerning Limited Liability Companies, control or management of a company is formally carried out by the company's organs consisting of the General Meeting of Shareholders (GMS), Commissioners, and Directors as administrators and representatives of the company. However, in current practice, the reality often differs. It is not uncommon for a company to be controlled by a beneficial owner, whether through capital control, dominant economic influence, or even indirect intervention in board decision-making.

Company control exercised by a beneficial owner can potentially cause complex legal problems, especially when policies adopted by the board of directors based on influence or

direction from the beneficial owner result in losses to third parties, such as investors, creditors, or minority shareholders. In such circumstances, company law recognizes only the directors and the company as legal subjects that can be held accountable. Conversely, the beneficial owner who substantively controls the company and enjoys economic benefits from these policies precisely lies outside the scope of civil law accountability because they are not recorded in the formal structure of the company.

The practice of company control by a beneficial owner is very common, with companies frequently being used as instruments to commit crimes, as evidenced in various cases including the control of PT. Imaji Media by Riefan Avrian, the control of PT. Ardyaparamita by Soetikno Soedarjo, the control of PT. Orbit Terminal Merak by Riza Chalid, and the control of PT. Mellindo Bakti Persadatama and PT. Margo Umega by Vino Oktaviano.

Similarly, in civil cases, similar practices have caused real losses to third parties, as reflected in the Decision of the South Jakarta District Court Number 231/Pdt.G/2018/PN. Jkt. Sel. The case began when PT. Abadi Makmur Bersama (as plaintiff) entered into a franchise agreement with PT. Intikreasi Kultur Nusantara (as Defendant I) as franchise owner. PT. Abadi Makmur Bersama was obligated to pay a sum of money amounting to Rp. 230,013,000 (two hundred thirty million thirteen thousand rupiah) to PT. Intikreasi Kultur Nusantara, directed by Febi Salam as the beneficial owner/Main Commissioner (as Defendant II), with payment made through his account, and PT. Intikreasi Kultur Nusantara was obligated to conduct franchise agreement operations. However, in the course of operations, PT. Intikreasi Kultur Nusantara unilaterally stopped operations.

The conditions described above demonstrate a gap between economic reality and legal reality. Economically, the beneficial owner is the party who actually controls company policy and enjoys benefits from the activity. However, in law, the beneficial owner cannot be held accountable because they are not recorded in the formal structure of the company. Therefore, a fundamental legal problem arises regarding how to construct the civil accountability of a beneficial owner toward a third party who suffers losses as a consequence of company control policies carried out by the beneficial owner.

Research conducted by the author, both within and outside Padjadjaran University, shows that no thesis specifically addresses the implementation of beneficial owner civil accountability in contractual relationships without a nominee agreement. This study develops ideas and concepts independently by the author. Although there are several studies related to the beneficial owner theme, this research differs in terms of research object, problem formulation, and discussion approach.

One relevant previous study is a thesis written by Magfirah Hamsah in the Master of Notary Study Program at the Faculty of Law, Hasanuddin University, titled "Implementation of the Principle of Recognizing Beneficial Ownership in Foundations Based on Notary Deed." This research focused on implementing the principle of recognizing beneficial owners or beneficial ownership in foundations. Additionally, there is a thesis written by Naufaldi Noor Hilmiansyah in the Master of Law Program at the Faculty of Law, Airlangga University, titled "BO (Beneficial Owner) Responsibilities in Bankruptcy of Limited Liability Companies in Indonesia." This research discusses the position of the beneficial owner in company bankruptcy and the parameters for determining appropriate bankruptcy estates with principles of care exercised by the curator over bankrupt company assets.

In contrast to these previous studies, this research focuses on discussing the implementation of civil accountability of beneficial owners or beneficial ownership in contractual relationships, particularly regarding losses to third parties. This study analyzes the discussion using theories of corporation law as an analytical tool. Thus, the research conducted by the author does not have substantial similarities with previous studies, so that this study possesses elements of novelty and can account for its authenticity.

Based on the background presentation above and referring to the legal problem regarding the implementation of civil accountability of beneficial owners or beneficial ownership in a Limited Liability Company, the author is interested in conducting a study in thesis form with the title "Implementation of Civil Accountability of Beneficial Owners in Contractual Relationships in the Event of Loss to Third Parties."

Based on the background described above, this research identifies two main problems. First, what is the legal basis underlying the emergence of beneficial owner civil accountability in connection with contractual relationships with third parties? Second, how is civil accountability of beneficial owners implemented in contractual relationships toward third parties when loss occurs?

In line with the problem identification stated, this research aims to obtain an understanding of the legal basis underlying the emergence of beneficial owner civil accountability in connection with contractual relationships with third parties. Additionally, this research aims to obtain an understanding of how civil accountability of beneficial owners is implemented in contractual relationships toward third parties when loss occurs. The benefits of this research are that it can theoretically enrich the study of corporate law and civil law, especially regarding the construction of beneficial owner liability that is not explicitly regulated in Indonesian laws and regulations, as well as serve as a reference for the development of the doctrine of piercing the corporate veil and *onrechtmatige daad* in the context of beneficial ownership. Practically, this research is expected to provide guidance for judges, advocates, and legal practitioners in handling cases involving beneficial owners, as well as serve as a consideration for policymakers in formulating more comprehensive regulations regarding transparency of beneficial ownership and legal protection for harmed third parties.

METHOD

Research methods is something procedure or method get knowledge or truth with systematic steps. In study This used method study as following:

Specification Study

Nature or specification study This is descriptive analytical (descriptive research). Soerjono Soekanto have an opinion study descriptive is something the intended research For provide the most accurate data perhaps in humans, circumstances or symptoms others, as well as only explain condition object the problem without intend to take applicable conclusions general. The connection with study this, descriptive intended analysis is give or describe the problems that become object study namely about implementation accountability beneficial owner civil law in something agreement in matter occurrence loss to party third, then to problems the done analysis.

Research methods

The approach method used in study This is juridical normative. Use method juridical normative intended For study the problem being researched which is then done synchronization with rules law authoritative (regulations legislation related) that apply as well as principles, teachings or principles related laws with the problem being studied that is about implementation accountability beneficial owner civil law in something agreement in matter occurrence loss to party third

Stages Study

Study This done in stages as following:

Literature study, study literature done For get secondary data with learn conception theories and opinions or related discoveries with main problems in the form of regulation legislation, works scientific, letter news and so on.

Field studies, in relation to study This done with studying and analyzing primary data, namely do interview for get opinions and thoughts from experts or experts law. The instruments used in interview This is guidelines interview (interview guidelines) where the instrument the arranged with referring to the problem the law being studied.

Data collection technique

In do collection of necessary data, will use technique as following:

1. Documentation Study

Data collection techniques used in study This collected with do review to material library or secondary data obtained through studies documentation which is document related with object research. Secondary data intended among others:

2. Primary legal materials, namely material the law that has strength tie or basic data from problems that will researched include, among others following:
3. 1945 Constitution;
4. Constitution Number 40 of 2007 concerning Limited Liability Companies;
5. Constitution Number 1 of 2023 concerning the Criminal Code;
6. Constitution Number 6 of 2023 concerning Determination Regulation Government Replacement Constitution Number 2 of 2022 concerning Job Creation Becomes Constitution;
7. Regulation President Number 13 of 2018 concerning Implementation Principle Recognize Beneficial Owner of Corporation in the context of prevention and eradication Action Criminal Money Laundering and Terrorism Crimes;
8. Regulation of the Minister of Law and Human Rights Number 15 of 2019 concerning Implementation Procedures Implementation Principle Recognize Beneficial Owner of Corporation;

Decree of the Chairman of the Capital Market Supervisory Agency Number Kep 48/48/PM/1997 concerning Account Effect on Custodian.

Legal materials secondary, namely material the law that explains material primary law such as literature and results study related with object study about existence of beneficial owner (owner) benefits) in something company limited based on law corporation.

Legal materials tertiary, namely material the law that provides instruction or explanation to material primary law and materials law secondary like dictionaries and encyclopedias.

Interview

Interview done For complete the source data from secondary data namely: materials primary law, material law secondary, and materials law tertiary. The technique used through interview open (open interview) later guided with a series concept and subject is expert law.

Data Analysis Methods

Methods used For analyzing data is method qualitative, all data that has been obtained analyzed with use method qualitative which means is the data analyzed with No using mathematical models and formulas statistics.

Research Location

For obtain the necessary library data in study This obtained from Library Mochtar Kusumaatmadja at the Faculty of Law, Padjadjaran University (UNPAD), and several library laws spread across various college high state and private sector in Bandung.

RESULTS AND DISCUSSION

Practice Control of Companies by Beneficial Owners in Indonesia

Company (company) limited) is something incorporated company law, as confirmed in Article 1 Number 1 of the Law Number 40 of 2007 as has amended by law Number 6 of 2023 concerning Determination Regulation Government Replacement Law No. 2 of 2022 concerning Job Creation Constitution. As a legal entity, in stage connection business with other parties or operate activity its business, the company represented or controlled by the administrator.

According to provisions in Law Number 40 of 2007 concerning Limited Liability Companies, the controller of the company formally consists of company organs comprising the General Meeting of Shareholders (GMS), Board of Directors, and Commissioners (Prasetyo, 2023). More specifically, based on the provisions of Article 1 Number 5 of Law Number 40 of 2007 concerning Limited Liability Companies, directors are authorized and fully responsible for managing the company both inside and outside the court, including representing the company in legal relations with third parties (Raharjo, 2009; Mulhadi, 2017). However Thus, the normative construction in practice No always reflect reality control the actual company, which control company No A little carried out by the beneficial owner as recorded in a way legitimate or not recorded.

Control company by beneficial owner always done in a way informal (informal) factual). This means that control on direction and policies and activities business company executed through influence dominant, good in a way direct and No directly, so that beneficial owner position becomes determinant main in taking decision strategic company. In do control, the beneficial owner always is at behind structure ownership complex corporations, such as use party affiliated, other legal entities, or individual certain things that are formally recorded as holder share or administrators. Although No own position recorded law Formally, the beneficial owner has ability For direct or give instructions (commands) or agreement to board of directors or the party that formally represents company For do or No do something actions law certain for and on behalf of the company. As a result, the agreement is formally made on behalf of the company in essence is embodiment will from the beneficial owner, even though formally carried out by the company's organs. Already Lots cases control the company is run

by the beneficial owner either For do action criminal or those that can harm party third. As for the cases the will explained below This:

1. Control of PT Imaji Media by Riefan Avrian

The case of PT Imaji Media shows that the beneficial owner can control a company although not formally recorded as an administrator or shareholder. Riefan Avrian uses Hendra Saputra as a formal director, while strategic decisions, project management, financial management, and economic benefits are under the control of Riefan. This shows that accountability cannot only be assessed from the formal structure of the company, but also from factual control and benefits obtained (As'ad Imam Muhtadi et al., 2024).

2. Control of PT Ardyaparamita Ayuprakarsa by Soetikno Soedarjo

In PT Ardyaparamita Ayuprakarsa case, Soetikno Soedarjo played a role as a factual controller who used the company as a means in the procurement transaction of aircraft and maintenance of PT Garuda Indonesia's engine. Although the contractual relationship was formally carried out by the company, the facts show that Soetikno initiated, directed, and acquired benefits from the transaction. This confirms that the beneficial owner can be held accountable if proven to have dominant control over the company (Muhtadi et al., 2024).

3. Control of PT Orbit Terminal Merak by Riza Chalid

The case of PT Orbit Terminal Merak shows that beneficial owner control can be done through personal influence, network of trust, and formal implementing parties. Riza Chalid is not recorded in the company structure but has the ability to determine the direction of the company's policies and business relations. This pattern shows the existence of effective control which becomes the main indicator of the existence of a beneficial owner (Hidayat Salam, 2025).

4. Control of PT Mellindo Bhakti Persadatama and PT Margo Umega

The case of PT Mellindo Bhakti Persadatama and PT Margo Umega shows that the beneficial owner can use several legal entities to set tender strategies and influence the implementation of agreements. Vito Oktaviano was proven to have control over the tender process, preparation of bid documents, price arrangements, and determination of winning companies. This practice potentially harms third parties because it removes the principles of competition, objectivity, and fairness in the procurement of goods and services (Putusan KPPU Nomor: 03/KPPU-L/2018).

5. Control of PT Intikreasi Kultur Nusantara by Febi Salam

The case of PT Intikreasi Kultur Nusantara shows a more concrete form of civil accountability of the beneficial owner. Febi Salam as the ultimate beneficial owner was also punished jointly with the company for default in the franchise agreement. This decision shows that the beneficial owner can be held accountable if proven to be involved in controlling the agreement, receiving benefits, and causing losses to other parties (Putusan Pengadilan Negeri Jakarta Selatan Nomor 231/Pdt.G/2018/PN.Jkt.Sel.).

6. Comparison Beneficial Owner Regulations in Several Countries

The Netherlands and Germany generally emphasize three main elements, namely ownership, control, and economic benefits. The Netherlands and Germany use

ownership limits or voting rights of more than 25% as well as effective control. The United Kingdom recognizes the concept of *person with significant control*, while the United States emphasizes substantial control, minimum ownership of 25%, and receipt of substantial economic benefits. This comparison shows that beneficial owner arrangements are not only based on formal ownership, but also on real control of the corporation (Hagmann, 2017).

7. Accountability Civil Law Beneficial Owner against Party Third

Based on discussion cases and comparisons law, beneficial owner can asked accountability civil if there is proof control factual, involvement in connection contractual, acceptance benefit economy, as well as connection because consequence with loss party third. Therefore that, concept important beneficial owner accountability For prevent abuse of legal entity as tool For avoid not quite enough answer law.

Legal Basis Underlying the Emergence Accountability Civil Law of Beneficial Owner in Contractual Relations With Party Third

In a number of research, beneficial owner practices begin since 12th century England which adhered to system common law. Beneficial owner is known as as something concepts put into practice in development law form business care with deep management term English known with trust system. The connection with identical trust concept with management and ownership assets, English classify there are two types ownership Yangg known with dual ownership concept double).

The concept of dual ownership differentiates between the beneficial owners as owner benefit economic and legal owner as owner in a way law that is justified do deeds law on all over treasure riches For interests of the beneficial owner. Similar things expressed by Paul Todd who said that in draft This there is separation ownership into “ownership at law” in a way law)” and “ownership at equity (ownership in a way equity)”.

Although in a way practice Already known since 12th century, however beneficial owner concept written appear in document official agreement tax between the United States and Canada in 1942, an agreement was made the mention The terminology of beneficial owner and beneficially owned. Then, the concept of beneficial owner is also found in the protocol agreement 1966 between the United Kingdom and the United States and is beginning start birth doctrine ownership benefits that focus on ideas that, the owner benefit required own right on on income derived from from rights like equity, debt, and wealth intellectual.

In its development the beneficial owner concept has practiced in various system laws in various countries, not only applied to countries that adhere to system common law will but various countries that adhere to system civil law also participates as well as accommodate beneficial owner arrangements, such as the Netherlands, Germany, do not except for Indonesia. Although basically, in system civil law does not know the concept of beneficial owner is rooted from dual ownership concept, will but, the absence concepts and rules No means law positive in Indonesia refuse institutions the law that comes from system different laws.

Here it is law sued For operate its function as means development, which contains main points thought as following:

1. Law is means update public based on on assumption that existence regularity or order in business development or update That is something desired or even viewed (absolute necessary); and

2. Other assumptions contained in conception law as means development is that law in the sense of rules or regulation law of course Can functioning as tool (regulator) or means development in the sense of distributor direction activity man in the direction desired by development or renewal.

More continued, Mochtar Kusumaatmadja explain that essence law development in the broadest sense covers all aspect life society, and not only One aspect life. Characteristics of a developing society is ensure existence changes, so that role law in development is ensure that change happen in a way orderly. Regular changes thus can assisted by legislation or decision court or even combination from both of them, so that can it is said that law is an essential tool in the development process.

Entry of the beneficial owner concept into the Indonesian legal system cannot be separated from the process of acceptance and adaptation of foreign law. Conceptually, the beneficial owner is a form of arrangement that is not originally known in the Indonesian legal system. The birth of this type of arrangement is an implication of the implementation of the *scripless trading system*. This concept was introduced in the Decree of the Chairman of BAPEPAM Number Kep 48/PM/1997 concerning Effects Accounts in Custodian Care. In this provision, two types of ownership over effects in collective custodian account are recognized, namely beneficial ownership and registered ownership (Abubakar, 2009; Abubakar & Handayani, 2017).

More carry on adult beneficial owner arrangements This more close the connection with construction law action criminal money laundering and funding terrorism, even though it is basically the concept of beneficial owner is derived from from law civil law and law company. Beneficial owner arrangements in corporations in Indonesia are regulated in the criminal law regime, namely in Presidential Regulation Number 13 of 2018 concerning Implementation of the Principle of Recognizing Beneficial Owners of Corporations in the context of prevention and eradication of money laundering and terrorism financing crimes. This regulation explains the definition of beneficial owner and determining the criteria for beneficial owners in a corporation (Suryana, 2021; Sugiharti & Dewi, 2022).

Regulation the explain about understanding beneficial owner and determining beneficial owner criteria in something corporation. Against company limited, based on the provisions of Article 4 paragraph (1) of Presidential Decree 13 of 2018 stipulate criteria owner benefit from company limited is a natural person who fulfills criteria among others:

1. Own share more from 25% in the company limited as listed in budget base;
2. Own right more from 25% in the company limited as listed in budget base;
3. Accept profit or profit more from 25% of profit or profit earned company limited per year;
4. Own authority For lift, replace, or dismiss member directors and members of the board of commissioners;
5. Own authority or power For influence or control company limited without must get authority from party wherever;
6. Accept benefit from company limited; and/or
7. It is owner benefit Actually from the top fund ownership share company limited.

Beneficial owner arrangements in company limited to the regime law criminal No only carried out by Indonesia. The Netherlands also regulates regarding the beneficial owner in Wet

ter voorkoming van witwassen en finance van terrorism (Law Prevention Money Laundering and Financing Terrorism) which then integrated with Constitution other among others Implementatiewet registration comprehensive belanghebbenden van trusts en soortgelijke juridical constructs (Law Implementation about Registration Beneficial Ownership of Trusts and Similar Legal Arrangements) and Handelsregisterwet (Law Registration Trade). Likewise in Germany, beneficial owner regulations are regulated in Gesetz über das Aufspüren von Gewinnen wear out schweren Straftaten (Geldwäschegesetz – GwG (Anti- Money Laundering Law)).

The existence of beneficial owners in company limited No let go from practices business disguise ownership actual shares with using the name of another party (nominee) with various type purpose. In a number of the case that the author has describe in chapter previously, the beneficial owner's goal was to carry out disguise ownership shares in the company limited nothing but For do crime. Although based on provision in Constitution Number 40 of 2007 concerning Company Limited management company formally carried out by the company's organs. However, in a number of cases and practices in the field beneficial owner in company limited often plays a role as controller what really determines direction policy and decision making decision, although No listed as holder share or administrator formally.

Basically, every company limited required For disclose and report its beneficial owner as part effort transparency and prevention abuse of legal entity. However thus, in practice Still Lots found control company by beneficial owners who do not seen or No recorded, good through use of nominees, intermediaries, and structure complex ownership. Conditions the show existence gap between arrangement normative with reality practice, which ultimately potential cause loss for party the three who weave relationship law with company.

Related with criteria for beneficial owners of the company limited as arranged in Article 4 paragraph (1) of Presidential Decree No. 13 of 2018, the author classify to in 2 (two) groups namely the visible beneficial owner and the invisible beneficial owner visible. The criteria for beneficial owners are visible. among others: have share more from 25% in the company limited as listed in budget basic; have right more from 25% in the company limited as listed in budget basic; accept profit or profit more from 25% of profit or profit earned company limited per year; have authority For lift, replace, or dismiss member directors and members of the board of commissioners; receive benefit from company limited. While beneficial owner criteria that are not seen If No reported among others: have authority or power For influence or control company limited without must get authority from party wherever; is owner benefit Actually from the top fund ownership share company limited.

In connection with the above classification, the author have an opinion there are two constructions law can he asked accountability beneficial owner civil law in connection agreement with party the third one who experienced loss. First, for the beneficial owner who also recorded as holder shares (legal owner), then accountability private outside not quite enough answer limited company can requested through doctrine piercing the corporate veil (revealing curtain company), as can seen in provisions of Article 3 paragraph (2) of the Law Number 40 of 2007 concerning Limited Liability Companies which reads as following:

" Provision as referred to in paragraph (1) does not valid if:

- a. requirements for the Company as a legal entity Not yet or No fulfilled;

- b. holder the shares concerned Good direct and No direct with good faith bad utilize the Company for interest personal;
- c. holder the shares concerned involved in actions oppose laws carried out by the Company; or
- d. holder the shares concerned Good directly and No direct in a way oppose law use the Company's assets, which results in the Company's assets become No Enough For pay off the Company's debts."

Second, for the same beneficial owner very No visible and invisible recorded in document company, however in a way factual can proven do control company in connection law agreement that gives rise to loss to party thirdly caused on good faith bad, then base underlying law can he asked accountability beneficial owner civil law, namely Article 1365 of the Civil Code about actions oppose law (onrechtmatige daad). Article 1365 of the Civil Code sounds as following:

“ Every violations law and bring loss to others, obligating the person who caused it loss That Because his mistake For replace loss the.”

MA Moegni Djodirjo explain that, the term violate only reflect to characteristic active actions whereas characteristic passive ignored, whereas term oppose Already included in the definition actions that are active and passive. Someone with on purpose do something actions that cause loss to others, then it appears with clear characteristic active oppose the. On the other hand, if somebody with on purpose No do something or keep quiet even though know that indeed must do something actions For No harming others or in other words, it is passive only, even reluctant do loss to others, then has oppose without must move his body, thing this is what is called characteristic passive from term oppose.

Elasticity with the above argument, then For state beneficial owner's actions are qualified as actions oppose law elements in Article 1365 of the Civil Code must be fulfilled. The elements are among others:

1. existence deeds;
2. actions the violate law;
3. existence error;
4. existence loss; and
5. existence connection causal between actions with loss;

In context comparison law, especially in the Netherlands and Germany, which are both adhere to system civil law does not there is rule special about accountability beneficial owner civil law. As has been explained previously, the same such as Indonesia beneficial owner regulations in the Netherlands and Germany in connection with with action criminal money laundering and financing terrorism.

In system Dutch law, although No known the concept of trust as in system common law, law civil and legal Dutch corporations have long developed approach substantive to control and ownership of legal entities. Doctrine misbruik van rechtspersoonlijkheid (abuse personality law) allows court For penetrate separation personality law company if proven that company used solely as tool For avoid not quite enough answer or harm party third. In practice Dutch justice, accountability personal can charged to parties who are factual control companies, including holder share dominant or the party behind formal structure, if proven existence involvement active in actions oppose law. With however, although the term beneficial owner

does not always used in a way explicit, substance the settings has long been recognized in Dutch law through substance over form approach.

Temporary that, in system German law, liability controller company develop through doctrine *Durchgriffshaftung* or piercing the corporate veil. Doctrine This allows loading not quite enough answer to holder share or party controller if company misused, undercapitalized, or executed solely as instrument interest personal the controller. Besides, the law German companies also know draft *factischer Geschäftsführer* or *factischer Leiter*, namely the party that although No take office formally as directors, however in a way real operate function management and retrieval decision in company. Party kind of This can asked accountability law, including in a way civil, above losses incurred to party third.

Developments in the Netherlands and Germany show that system civil law in essence No close possibility loading accountability to the party behind formal structure of the company. Although terms and constructions the law different, both countries You're welcome put forward approach substantive to reality control and benefits economy. This is confirm that accountability civil against the beneficial owner is not conflicting concepts with principles base civil law, but rather precisely is consequence logical from effort prevent abuse of legal entity.

In perspective Indonesian law, developments in the Netherlands and Germany provide legitimacy comparative to loading accountability civil to the beneficial owner. The approach taken both countries in line with Spirit theory law development, where the law No only positioned as system static normative, but as means For direct behavior social and economic to be in line with mark justice and certainty law. With adopt approach substantive as developed in the Netherlands and Germany, Indonesian law has runway strong theoretical and comparative For penetrate formality company and place the beneficial owner as subject laws that can asked accountability civil.

Implementation Civil Liability of Beneficial Owners in A Agreement To Party Third When It Happens Loss

In principle, the beneficial owner does not in a way automatic easy burdened not quite enough answer in law agreement that adheres to principle personality (privacy of contract), because attachment agreements in general only valid for the parties who formally sign agreement. However Thus, the existence of a beneficial owner is not may left alone free from not quite enough answer law if He in a way active and substantial do control to company as well as influence implementation agreement. In context this, the agreement No solely binding on things that are firm promised, but also includes all something according to characteristic agreement required by propriety, custom, and law as confirmed in Article 1339 of the Civil Code.

More continued, Article 1338 paragraph (3) of the Civil Code in a way explicit outline that every agreement must implemented with good faith good (good faith) as fundamental principles in law agreement. If the beneficial owner with his position behind structure company act beyond authority, ignoring obligation For supervise the way company for the benefit of company, and in fact act For interest personal, then action the No only violate principle good faith good, but also shows negligence and lack of caution in operate its function.

Draft not quite enough sue is mechanism accountability law on losses incurred consequence existence error or risk certain. According to Y. Sogar Simamora, responsibility sue in law civil No only limited to obligations pay change loss, but also includes effort recovery

condition to position back to the beginning before occurrence detrimental act. In context actions oppose law (onrechtmatige daad), essence not quite enough sue located on not existence connection contractual between injured party and perpetrator deeds, where deeds the can done Good in a way on purpose and Because negligence throughout cause loss for other parties.

In line with view said, JH Nieuwenhuis emphasized that not quite enough sue appear as consequence direct from actions oppose the law that becomes oorzaak (because law) the emergence of loss. If perpetrator can proven do error (schuld), then in a way law He must bear losses incurred. Opinion This strengthened by Marthalena Pohan stated that element error is element essential in accountability civil. With thus, responsibility sue attached to each individual and entity that performs actions oppose detrimental laws party others, although No there is connection agreement previously.

In context company limited, concept not quite enough sue functioning as instrument law For protect company from action administrator or other potential parties cause loss. Responsibility answer law attached to each policies and actions taken in management the company so as not to harm company and party third. Ideally, protection the realized through implementation of governance good corporate governance, which is based on principle transparency, accountability, fairness, and responsibility answer. Principles the realized through guidelines ethics companies that generally codified in code ethics as framework standard operational and behavioral business company.

However thus, in practice, deviation to the principles of good corporate governance can happened, especially if there is the party that substantial control policy the company behind formal structure, namely the beneficial owner. If the beneficial owner is act exceeding the authority of the company's organs, misusing position its control, as well as cause loss substantial for company, then his actions No only is violation against the limits of authority, but can also qualified as actions oppose the law that gives rise to not quite enough sue in a way civil. This matter as arranged in provisions of Article 1365 of the Civil Code.

Implementation accountability beneficial owner civil law in something agreement to party third leave from reality practice modern business that does not always in line with structure formal corporate law limited. In Lots agreement, company come on stage as subject law that signed contract, while decision strategic, control policies, as well as utilization profit in a way real is on the other side which is not recorded formally in structure company. When the implementation agreement the cause loss for party third, restrictions not quite enough answer only to company potential remove protection law for the injured party and open room abuse of legal entity.

In context said, accountability beneficial owner civil law is instrument For bridge gap between connection formal law and reality control substantive. Implementation accountability this is in principle No intended For eliminate existence company as subject law independent, but rather For prevent use company in a way No reasonable as tool For avoid obligation law. Therefore that, the approach used is not approach formalistic, but rather approach substantive assessing Who the real party control the way agreement and enjoy benefit its economy.

If the beneficial owner is recorded formally as holder share controller, then as the author has explain previously base implementation accountability civil can done through the doctrine of piercing the corporate veil. In situation this, the judge can evaluate whether company used solely as an alter ego of holder share controller, for example with method operate agreement

without good faith well, divert risk in a way unilateral to party third, or let company is at in condition No capable fulfil obligation contractually. If condition the proven, separation personality law company can set aside and responsible answer civil charged in a way direct to the beneficial owner as holder share controller.

However Thus, more practice problematic precisely appear when the beneficial owner does not recorded as holder share and administrator company. In condition Thus, the application of piercing the corporate veil becomes No adequate, because No there is connection formal that can direct penetrated. Therefore that, basically accountability civil against hidden beneficial owners must constructed through regime actions oppose law as arranged in Article 1365 of the Civil Code. Beneficial owners can asked accountability if proven in a way oppose law do control hidden to company, providing instructions detrimental strategy party third, or use company as tool For reach interest personal with sacrifice interest other parties.

In connection agreement with party third, actions oppose law by the beneficial owner can realized in various forms, including with compile scheme contractual since beginning No intended For fulfilled, using nominee or board of directors doll For disguise control, as well as create structure companies that are on purpose made No independent. In condition said, even though the beneficial owner does not sign agreement in a way direct involvement in control and retrieval decision strategic become base For charge accountability civil in a way personal.

Proof in case a kind of a quo demands shift from formal proof towards proof substantive. Relevant indicators For prove the existence and role of beneficial owners include the existence of flow benefit dominant economy to party certain, dependency board of directors to instructions external parties formal structure, no existence independence company in taking decisions, and pattern relationship that shows that company only functioning as a vehicle for beneficial owner's interests. Approach proof kind of This in line with development law in civil law countries such as the Netherlands and Germany which emphasizes reality control compared to just formal position.

The principle of good faith good to have too role central in implementation accountability civil beneficial owner. In connection agreement, the parties in principle bound For act honest and not abuse structure law. If proven that identity the real controller in a way on purpose hidden For avoid not quite enough answer or divert risk to party third, then agreement the can assessed has executed with good faith No good. Violation to principle good faith Good This strengthen base law For demand accountability civil beneficial owner, either in a way together with company and in a way independent.

Based on results searches and data requests carried out by the author at the Supreme Court and several District Court Offices, almost No found matters that are special handle regarding implementation accountability beneficial owner civil law in something agreement to party third when happen loss. However, at the office South Jakarta District Court Class IA Special, author find matters that are No direct discuss about accountability civil beneficial owner as can seen in Decision South Jakarta District Court Number 231/Pdt.G/2018/PN. Jkt. Sel.

In decision the case started when PT. Abadi Makmur Bersama held agreement franchise with PT. Intikreasi Kultur Nusantara as owner franchise. In agreement In this regard, PT. Abadi Makmur Bersama has obligation For pay a sum of money amounting to Rp. 230, 013, 000.- (two hundred and three tens million three twelve thousand rupiah) to PT. Intikreasi Kultur

Nusantara which was directed by Febi Salam as the ultimate beneficial owner to paid through his account and PT. Intikreasi Kultur Nusantara has obligation For carry out operational agreement franchise. However, in the middle PT. Intikreasi Kultur Nusantara's journey stopped operational in a way unilateral.

In the verdict The panel of judges stated that PT. Intikreasi Kultur Nusantara has do actions breach of contract and punish PT. Intikreasi Kultur Nusantara together with Febi Salam as the ultimate beneficial owner not quite enough joint venture For pay loss material to PT. Eternal Prosperous Together. In case the The panel of judges sentenced Febi Salam as the ultimate beneficial owner not quite enough joint venture with company Because in trial proven Febi Salam who plays a role in a way active stage agreement of PT. Abadi Makmur Bersama, even there is directions from Febi Greetings to company For give number his account as account the money collector from PT. Abadi Makmur Bersama, on fact the The panel of judges sentenced Febi Greetings to participate responsible answer in a way together with PT. Intikreasi Kultur Nusantara for return a number of loss to PT. Eternal Prosperous Together.

With Thus, the implementation accountability beneficial owner civil law in connection agreement to party third when happen loss is consequence logical from development law modern corporation. Approach This confirm that law No may stop at formalities structure company, but rather must capable reach reality control and benefits economy. Implementation accountability civil against the beneficial owner not only give more protection effective for party third, but also encourages good governance more corporations transparent, accountable, and fair.

CONCLUSION

Based on exposure on both identification problems that have been writer convey in chapter previously so can concluded things as following:

1. The legal basis underlying emergence accountability beneficial owner civil law in connection agreement with party third can charged if there is proof control substantive that gives rise to loss to party third. In normative, beneficial owner who is also a holder share controller can asked accountability based on piercing the corporate veil doctrine in Article 3 paragraph (2) of the Law Number 40 of 2007 concerning Limited Liability Companies. Meanwhile that, the beneficial owner who does not seen in formal company structure can asked not quite enough answer through Article 1365 of the Civil Code if there is evidence that the beneficial owner has done control substantive, abuse of legal entity, or action oppose the law that gives rise to loss to party third.
2. Implementation accountability beneficial owner civil law in something agreement to party third when happen loss in a way No direct can seen in Decision South Jakarta District Court Number 231/Pdt.G/2018/PN. Jkt. Sel. In decision the The panel of judges decided For punish Febi Salam as the ultimate beneficial owner of PT. Intikreasil Kultur Nusantara not quite enough joint venture For pay loss material to PT. Abadi Makmur Bersama. This matter due to in trial proven Febi Salam who plays a role in a way active stage agreement of PT. Abadi Makmur Bersama, even there is directions from Febi Greetings to company For give number his account as account cash receptacle from PT. Abadi Makmur Bersama.

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