

# ADOPTING THE FINANCIAL ACTION TASK FORCE (FATF) RECOMMENDATIONS IN REALIZING BENEFICIAL OWNERS TRANSPARENCY IN LIMITED COMPANIES TO PREVENT MONEY LAUNDERING CRIMINAL ACTS IN INDONESIA

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## ABSTRACT

*The Government is promoting transparency on the Beneficiary of Limited Liability Companies in Indonesia in preventing and eradicating money laundering and terrorism financing. This is done to prevent and eradicate Limited Liability Companies as a tool used to carry out money laundering activities. The non-exposure of the Beneficiary is used to take action that fulfills all elements of money laundering. Prevention and eradication are carried out by issuing regulations that require transparency of the identity of the Beneficiary, namely Presidential Regulation Number 13 of 2018, which was born based on the recommendation of the 24th Financial Action Task Force (FATF), Transparency and Beneficiary of Legal Entities. However, the implementation in Indonesia is not directly proportional to the regulations that have been issued because there are still universities that do not follow the rules. In addition, Indonesia, whose current position is only an observer country, is obliged to adopt all recommendations issued by the FATF into the legal system in Indonesia as a step to become a member of the FATF and then be assessed annually with an assessment rating given by the FATF.*

**Keywords:** Beneficial Owner, Transparency, FATF, Money Laundering, Limited Company.

## INTRODUCTION

Limited Company (from now on as LC) is a legal entity often used by certain parties to perform money laundering. Money laundering is a criminal offense that involves assets being disguised or hidden by hiding, transferring, and using the proceeds of crime so that later those assets can be used without being detected as sourced from illegal acts (Fuat, 2020). To prevent suspicion, the perpetrator does not immediately use the money, instead disguises or hides its identity or origin.

Since the issuance of Presidential Decree Number 13 of 2018 concerning the Implementation of the Principles of Recognizing Corporation Beneficial Owners as an Attempt of Preventing and Eradicating Money Laundering and Terrorism Funding (in the future as Presidential Decree No.13/2018), a new term has emerged, Beneficial Owner, in the

establishment of a corporation which meets the set criteria in LC. Although LC is established with the highest body of General Meeting of Shareholders (in the future as GMS), which has the authority to appoint the Board of Directors and the Board of Commissioners, the Beneficial Owner has authority exceeding the GMS (Michael, 2018).

A Beneficial Owner is defined as an individual, supervisor, or superintendent, who can control the corporation, is entitled to and/or receive benefits from the corporation, either directly or indirectly, is the valid owner of the funds or shares of the corporation. Beneficial Owners with illegal purposes, such as money laundering and suspicious financial transactions, usually do not appear and expose their identity to the Ministry of Law and Human Rights and other concerned institutions because they do not have direct authority in managing the company. They take advantage of their non-exposure to hide any illegal activities that law enforcers may have carried out unnoticed.

In 2014, there was a report by Global Financial Integrity revealing that Indonesia was ranked 7th out of 10 countries with the most significant flow of illicit money in the world, reaching IDR 227.7 trillion (Kusrini, 2018). In addition, the data from Suspicious Financial Transaction Report and Analysis Center (PPATK) showed that there were 5,146 suspicious financial transactions related to money laundering and terrorism financing, with a total value of around IDR 1.6 trillion (Laode, 2018).

A person who receives a large amount of money obtained from a criminal act does not immediately use the money. This is done to avoid arousing suspicion in its use because a suspicious financial transaction is the beginning of money laundering. In addition, to disguise the source or origin of the money and keep the crime unknown, the perpetrator carries out money laundering by allocating money on lawful business activities, buying luxury houses, and purchasing shares. The criminal act of money laundering is characterized as a Follow-Up Crime, while the original crime is referred to as a Predicate Offense/Core Crime or as an unlawful activity that generates money which is then processed by the money laundering process (Emirzon, 2017).

Various efforts have been made to combat money laundering criminal acts, one of which is establishing Financial Action Task Force (after this as FATF) on Money Laundering in 1989 by the Organization for Economic Co-Operation and Development (OECD). FATF issued a comprehensive policy as an international standard consisting of 40 recommendations covering legal systems, financial and non-financial measures, institutional measures, and international co-operations (Husein, 2005). In addition to the 40 recommendations, there are nine specific recommendations to eradicate Terrorist Financing (TF), formed to prevent and combat money laundering. The purpose of the international publication of these Recommendations is to urge all countries to take necessary actions based on their respective situations. The research of FATF is focused on analyzing complex commercial arrangements by money laundering and terrorism financing to hide their traces of money. Emerging from this typology, the FATF standard requires all countries to increase their Anti-Money Laundering and Counter-Terrorism Financing measures in Designated Non-Financial Business Professions (Omar, 2015).

All over the world, this matter has been taken seriously. To anticipate this criminal act, Indonesia has made several attempts to become a member of the FATF. This is done so that Indonesia becomes an observer (owning the right to speak) and owning the right to vote (in

decision making). In this case, an action that Indonesia can take is to implement the 24th FATF recommendation regarding transparency and Beneficial Ownership of legal persons, in which the Government must take steps to prevent the abuse of legal persons, such as creating a mechanism aimed at ensuring that adequate, accurate. Sufficient information is available on time regarding Beneficial Owners and legal control that can be obtained promptly by the competent authorities, especially concerning Beneficial Owners within LC, to achieve transparency, prevent, and eradicate criminal acts committed by Beneficial Owners. The Positive Laws in Indonesia still consider the management in a company to be the most responsible party. This provides a loophole for related parties to use the Company as a means of money laundering. Those related parties are the actual owners and controllers of the company and the company's assets, namely the Beneficial Owners.

Therefore, the formulation of problems for this research is stated as the following:

1. How is the arrangement and implementation of the Beneficial Owners in Limited Companies in Indonesia?
2. What is the impact of adopting the 24<sup>th</sup> recommendation of FATF on Beneficial Owners in Limited Companies in Indonesia?

## RESEARCH METHODS

In this research, the authors used normative-empirical legal research, combining research sources from literature reviews and interviews. The discussion provided by the authors is focused and dealing more with favorable laws related to the topic of this research. The authors implemented a comparative law approach, which compared legal arrangements regarding Beneficial Owners applied in Indonesia and United Kingdom.

The authors used secondary data consisting of primary legal materials, including the Criminal Code, Law Number 8 of 2010, Presidential Decree No.13/2018, and Financial Services Authority Regulation Number 23/POJK.01/2019. The secondary legal materials used included several books related to the topic under discussion and official FATF documents. Secondary data were also provided to support the primary data, which included interviews with informants related to the title of this research.

The data analysis was done qualitatively. Qualitative analysis is carried out for investigating and identifying the quality of an arrangement.

### Analysis

Initially, the legal system in Indonesia did not recognize the existence of a Beneficial Ownership regime. However, Indonesia did recognize a Legal Ownership regime as its own based on supporting documents. This system recognizes the first to a file system, which is recorded in legally recognized documents (Budianto, 2020). However, Indonesia soon realized that there were gaps in assets control. It is not done by a party registered in an official document but by one behind the scenes or unrecorded. As long as the party registered in the legal document commits to the one behind the scenes, all benefits will fall behind the scenes. This caused Indonesia to be increasingly aware that the Legal Ownership regime cannot stand alone and

encouraged Indonesia to think about how to identify the party behind the scenes, for the sake of implementing transparency of Beneficial Owners and mitigating criminal acts of money laundering and terrorism financing that could threaten stability and integrity of Indonesia (Budianto, 2020).

To achieve said goal, Indonesia has established a comprehensive regulation through the issuance of Presidential Decree No.13/2018 and Financial Services Authority Regulation Number 12/POJK.01/2017 as amended by Financial Services Authority Regulation Number 23/POJK.01/2019 concerning the Implementation of Anti-Money Laundering and Counter-Terrorism Funding Program in the Financial Services Sector (POJK APU-PPT). The two regulations accommodate the same concept of Beneficial Owners, namely subjects who are entitled to benefit from assets, and ownership rights are viewed differently through the perspective of Presidential Decree No.13/2018, which regulates individuals controlling a corporation as its subjects, different from POJK APU-PPT which acts as supervisor (Budianto, 2020).

The urgency of issuing Presidential Decree No.13/2018 is as a legal effort to prevent and eradicate money laundering in the corporate sector and achieve accountability and transparency. Related to money laundering, a corporation can be positioned as a “*vehicle*” where corporate abuse is carried out by an individual who is the Beneficial Owner. According to Article 1 Paragraph 2 of Presidential Decree No.13/2018, the Beneficial Owner is defined as:

Beneficial Owner is an individual who plays a role in appointing or dismissing the management of a corporation such as the board of directors, the board of commissioners, and the supervisors or superintendent of the corporation; can control the corporation, has the right to and/or receive benefits from the corporation, either directly or indirectly, is the valid owner of the funds or shares of the corporation and/or meets the criteria stated in Presidential Decree No.13/2018.

There are several benefits from the Beneficial Owner, one of them is providing legal certainty for criminal liability because it makes it easier to look for identities in uncovering criminal cases; facilitate the search of proof for ML; protect legal entities (in this case, LCs) that have good faith in carrying out their business, and the optimization of assets recovery from perpetrators of corruption and money laundering (Abdullah, 2020).

This regulation stipulates each category of Beneficial Owners in each type of corporation; with Beneficial Owners at LC are those who have met the criteria stated in Article 4 Paragraph (1). This regulation requires LC to convey truthful information about Beneficial Owners to the Ministry of Law and Human Rights via online Legal Administration (online AHU) submitted by a notary, management, or authorized party. The LC determines the Beneficial Owners of at least two people, and the determination process is based on information consisting of relevant documents such as the article of association, amendments to the article of association and/or deed of establishment, and other supporting information or documents that can prove the status of beneficial owners. LCs is obliged to apply the principles of identifying Beneficial Owners through the identification and verification stages. The identification stage is carried out through the collection of information such as completeness of identity. Meanwhile, the verification stage is carried out to examine the suitability of the information on Beneficial Owners and supporting

documents. These two stages are carried out at the time of application for establishment, registration, validation, licensing, and/or when LCs runs their business activities.

Determination of categories to identify the Beneficial Owners of LCs is by the information submitted by LCs to the Authorized Institution as stated in Article 13 Paragraph (3), which states that the Authorized Agency is the Ministry that administers legal affairs for LCs, namely the Ministry of Law and Human Rights and a government agency which has the authority to supervise and regulate matters in the business sector, the Financial Services Authority (OJK).

If LCs have not determined and submitted information related to their Beneficial Owners, they have to report the information to the Ministry of Law and Human Rights within 7 (seven) working days after the issuance of business license or registration sign. If there is a change in the information, LCs must report the changed information to online AHU within 3 (three) working days after the change occurs. LCs is also required to update their data annually. In addition, notaries, LCs, and other parties who have been granted the authority are required to archive related documents within at least 5 (five) years from the establishment of LCs.

To facilitate the implementation of principles for recognizing Beneficial Owners, the Directorate General of General Legal Administration (from now on as Ditjen AHU) of the Ministry of Law and Human Rights has developed an application-based system whose functions are as follows (Ditjen, 2020):

1. Inputting the criteria of Beneficial Owner into the application, especially the criteria for the Beneficial Owner in LCs,
2. Creating a Beneficial Owner form containing important data such as full name; residential identification number, driver's license, or passport; place and date of birth; citizenship; residential address as stated on the identity card and address in the country of origin if the Beneficial Owner is a foreign citizen; Taxpayer Identification Number (NPWP); and the relationship between concerned LCs and the Beneficial Owner.
3. Creating a monitoring system to oversee and identify LCs in which there are Beneficial Owners.
4. Creating a data utilization system for Beneficiary Owners so that these data can be used or utilized by other authorized and concerned agencies.

However, suppose an LC decides to dissolve its business. In that case, the liquidator or person appointed to carry out the liquidation must archive documents within at least 5 (five) years after the dissolution occurs. Related documents include documents of changes, updates, and other documents containing information on its Beneficial Owners.

In the provisions of Presidential Decree No.13/2018, there are no articles that regulate the imposition of sanctions for LC violating this provision. Article 24 only states that LC not implementing the provisions referred to in Article 3, Article 14, and Article 18 to Article 22 will be subject to sanctions. However, there is no explanation regarding the imposition of sanctions referred to in the regulation.

With this provision, the Indonesian Government has required all corporations in Indonesia to disclose the identity of their Beneficial Owners. This provision encourages preventing and eradicating money laundering and terrorism financing, including tax evasion, and achieving transparency mechanisms as commonly found in developed countries.

The Head of Financial Transaction Report and Analysis Center, Kiagus Ahmad Badaruddin, explained that with the adjustment to the results of the National Risk Assessment of The Money Laundering, it was revealed that the threat of money laundering committed by corporations is higher (7.1%) compared to those committed by individuals (6.74%). Meanwhile, according to research conducted by FATF in 2014 regarding the regulation and implementation of Beneficial Ownership transparency, it was stated that the lack of adequate and accurate information which can be quickly accessed served as the gaps abused by criminal offenders.

Based on Presidential Decree No.13/2018, Indonesia has published a good list of companies to obtain the identity of Beneficial Owners behind the scenes or legal entities. The Ministry of Law and Human Rights has conducted outreach programs to several regions in Indonesia to inform that all forms of corporations as regulated by Presidential Decree No.13/2018 must be on alert concerning Beneficial Owner transparency. In the implementation of Presidential Decree No.13/2018, it can also be seen how the Government views corporations as potential direct means by perpetrators, namely the Beneficial Owners, for money laundering and terrorism financing. It also ensures that the regulations seeking to prevent and eradicate these crimes meet the criteria set in international standards.

### **The Implementation of Presidential Decree No.13/2018 in LCs in Indonesia**

Presidential Decree No. 13/2018 has defined corporations' definition, including Limited Companies, Foundations, Associations, Cooperatives, Limited Partnerships, and Firm Partnerships. However, the authors focused on analyzing the implementation of Presidential Decree No.13/2018 on Beneficial Ownership within the scope of LCs. Presidential Decree No.13/2018 has stipulated that every LC wishing to apply for registration at the Ministry of Law and Human Rights or has been registered, said LC must convey information regarding Beneficial Owners or Beneficial Ownership.

Referring to Law Number 40 of 2010 concerning Limited Companies, the management structure stated in the Articles of Association is the board of directors, the board of commissioners, and the GMS. Beneficial Owners are not included in the Articles of Association as Law Number 40 of 2010 does not require this and the legal system in Indonesia still recognizes Legal Ownership. With the issuance of Presidential Decree No.13/2018, even though the identity of Beneficial Owners is not recorded in the Articles of Association, they must be registered in the system provided by the Ministry of Law and Human Rights. If LCS does not comply with this rule, the Ministry of Law and Human Rights will refuse and ratify the Articles of Association. LCs who performed registration before the issuance of Presidential Decree No.13/2018 is given time to immediately registering their Beneficial Owner's information to the Ministry of Law and Humans Rights (Budianto, 2020).

To investigate the implementation of Presidential Decree No.13/2018 and Beneficial Owners transparency in Indonesia, the authors conducted interviews with the Beneficial Owners at MBS Co. Ltd. The authors obtained data that this LC was not running the company following the existing regulation of Presidential Decree No.13/2018. Their statement showed that they had 2 (two) Beneficial Owners, but they had never reported ever since the establishment of this company back in 2019. In addition, they stated that there were no difficulties or obstacles faced

in its establishment. The Articles of Association are legalized by the Ministry of Law and Human Rights. This LC is permitted to set up their business even though they do not register the Beneficial Owners through a notary into the system provided by the Ministry of Law and Human Rights. They further stated that there were 3 (three) reasons for not reporting to the Ministry:

1. Because the Beneficial Owners have been listed in another company structure they own,
2. Because the Beneficial Owners do not want the public to know their ownership of the company, and
3. Because the Beneficial Owners do not want to be controlled by tax authorities that they are the actual owners of that LC.

MBS Co. Ltd. acknowledged that they were aware of the regulations from the Ministry of Law and Human Rights and OJK, requiring them to record the Beneficial Owners. Through the registration to this date, they have never been questioned regarding reporting, expenses, ratification of the Articles of Association, deeds of an amendment, or while running their business. However, even though they do not carry out the provisions stated in Presidential Decree No.13/2018, they always ensure that the money circulating in their company or investors is not involved in any actions or cases of money laundering and terrorism financing as they conduct the periodical internal inspection.

This proves that the existing regulation has not been adequately enforced and implemented. That means Presidential Decree No.13/2018, which is considered comprehensive in achieving transparency, still has its shortcomings because it is pretty clear that some companies are not following the rules. This is also since the sanctions stated in Presidential Decree No.13/2018 are not explained in detail and do not deter any corporations from violating this rule. The Indonesian government has asked all corporations in Indonesia to disclose the identities of Beneficial Owners to prevent tax evasion, money laundering, and terrorism financing.

### **The Role of OJK in Beneficial Owners Transparency in LCs to Prevent Money Laundering and Terrorism Funding**

OJK serves as a state institution that functions as an integrated regulatory and supervisory system for all activities in the financial sector. The establishment of OJK is to replace the role of Bank Indonesia, even though one of its primary functions is to carry out a supervisory function in the banking sector, financial service activities in the insurance sector, venture capital companies, pension funds, and others. In addition to Presidential Decree No.13/2018 as the main framework for implementing Beneficial Owners transparency, there is a legal framework in the financial services sector to prevent money laundering and terrorism financing, namely OJK, which issues the Financial Services Authority Regulation No.12/POJK.01/2017 concerning the Implementation of the Anti-Money Laundering and Counter-Terrorism Funding Program in the Financial Services Sector (POJK No.12/POJK.01/2017) as amended by the Financial Services Authority Regulation No.23/POJK.01/2019 (after this referred to as POJK APU-PPT). The POJK APU-PPT is issued with the aim of facilitate LCs at any given time they want to hold a business relationship with a Financial Services Provider (PJK), for example, creating an account

in the name of LC to a Bank or a Non-Bank Financial Institution such as Insurance, Saving and Loan Cooperatives, or Applying for a loan to a Venture Capital Company.

This regulation requires PJK to identify the Beneficial Owners of its corporate customers. The identification and verification of Beneficial Owners are based on information stated in the Articles of Association, whether there are other Beneficial Owners other than those stated in the Articles of Association. Even though the data are not listed in the Articles of Association, it does not mean that there are no available data regarding the Beneficial Owners. The bank will ask about the Beneficial Ownership in LC, and the LC must convey the information correctly. If not, the Bank has the right to refuse account opening (Budianto, 2020). Based on the interviews conducted with MBS Co. Ltd., they stated that they had a business relationship with a Bank in opening an account in the name of this company. However, they never encountered any obstacles in opening their account. In addition, the Bank did not identify and ask about the Beneficial Ownership, indicating the Bank did not comply with the provisions required by the Financial Services Authority Regulation No.23/POJK.01/2019. The Bank only asked for the identity of the management as stated in the Articles of Association. Even though opening an account in the name of LC is crucial because it is often used as a medium for money laundering (Budianto, 2020).

### **The Comparison Analysis of Beneficial Owners Regulation with UK**

The United Kingdom is a country that has the full attention and deep concern over the problem of Beneficial Ownership that misuses legal entities to perform money laundering to the detriment of others. It has taken various measures to tackle the existence of legal entity abuse by Beneficial Owners to perform money laundering threatening the financial services sector. In order to mitigate the threat to the financial services sector, countries must enforce Beneficial Ownership transparency so that they can obtain information regarding Beneficial Ownership quickly. An essential thing that a particular country does in order to disclose information from the Beneficial Owners quickly is to establish a registration place within a Government agency, so that information regarding Beneficial Ownership will be more exposed and transparent (Dutilh, 2020).

The term Beneficial Owner in the UK is better known as People with Significant Control (in the future referred to as PSC). Small Business, Enterprise & Employment Act 2015 was introduced by its government which further introduced a registration system called The Register of PSC, which is the world's first public register of individuals who own or control companies (i.e., Beneficial Owners) in an open data format.

This PSC regime came into force in April 2016 through The Register of PSC 2016 which requires companies to:

1. Identify those with significant control (PSC) over the company and confirm the information;
2. Record the details of PSC in the company PSC list within 14 days;
3. Provide this information to Companies House within the following 14 days;
4. Update the information on the company PSC list if anything changes within 14 days, and update the information to Companies House within the next 14 days; and
5. Confirm with Companies House that the information on the public register is accurate, especially those



which has not been updated in the previous 12 months.

In identifying PSC, it is necessary to ensure that the PSC is someone with significant control over a company as an individual who meets the categories listed as follows:

1. Owning more than 25% of shares (directly or indirectly),
2. Having more than 25% of voting rights in the company (directly or indirectly),
3. Holding the right to appoint or dismiss the majority of directors (directly or indirectly),
4. Otherwise, the PSC is the one that has the right to exercise, or actually exercise, significant influence or control, and
5. Retaining the right to exercise, or actually exercise, significant influence or control over the activities of a trust or firm that is not a legal entity, but will itself satisfy any of the first four conditions if it is an individual.

The existence of The Register of PSC 2016 requires all UK companies to have a PSC list. However, following the implementation of The Information of PSC (Amendment) Regulation 2017, there was a renewal and filing requirement whereby companies are now required to update their PSC information to Companies House within 14 days of updating their PSC. The responsibility for registering and changing to Companies House falls under the Department for Business Enterprise and Regulatory Reform responsibility. If there is a change to the list, it must be made within 14 days from confirming the relevant PSC change.

When a company is first registered, it must file an "*initial significant control statement*" to Companies House. For existing companies, changes must be written in the PSC Register within 14 days of being confirmed by the relevant PSC (Travers, 2020). Details of changes must be filed to Companies House within 14 days of imputing the company register. If a company has chosen not to keep its registers, it must submit all changes in-person to Companies House by the date it must renew its PSC.

PSC information provided to Companies House must contain the full name, company name, residential and registered company address, country of residence, nationality, place/date of birth, date of PSC registration, and the nature and level of control. If the company manages the PSC list, a copy of the list must be submitted to the establishment at Companies House and proceed with submitting confirmation to meet the requirements and notifying if there are changes at least once a year. If the PSC register is kept at Companies House, the change must be communicated as soon as possible but no later than 2 (two) months after the change occurs. Unlike Authorized Agencies in Indonesia, Companies House does not carry out any independent verification and the information recorded follows what has been announced by the company. Additionally, Companies House has no investigative authority and therefore does not investigate fraud or misconduct.

Having this public disclosure of PSCs allows the public to view information and download it as structured data. This further allows the public to know who controls any UK companies and to provide greater transparency that will help tackle tax evasion, money laundering, and other crimes.

In the UK, the following provisions have been regulated:

1. Failure to provide information regarding PSC: recipients for PSC notifications usually have 1 (one) month

to respond. The Failure may result in the relevant shares being restricted, so that all voting rights, dividends, and other share rights will be suspended and no transfer permitted without a court order. Failure to provide information is also a criminal offense with punishment threat of 2 (two) years in prison or a fine or both.

2. Provision of false information regarding PSC: if a company provides false information about PSC to commit a criminal act, it can be punished with up to 2 (two) years in prison or a fine or both. If the violation is committed by a company, the director will also be criminally liable.
3. Failure to maintain PSC Register or the refusal of a request to review PSC registration: a criminal offense may be committed by the company and its directors, which can be punished with an amount of fine.
4. Failure to take reasonable steps to identify PSC or send notification to PSC regarding amendments: this is a criminal offense which can be punished with 2 years' imprisonment or a fine or both.
5. Failure to file changes to Companies House: this is a criminal offense punishable by an amount of fine.

Referring to Presidential Decree No.13/2018, it can be proven that even though the existence of Beneficial Owners has been regulated in such a way through Presidential Decree No.13/2018, there are still weaknesses. There are no strict and precise sanctions for companies that do not apply the principle of openness to Beneficial Owners for the sake of transparency. The same is the case for regulations issued by Authorized Agencies. Thus, several LCs hide specific parties behind the scenes, the Beneficial Owners of their business activities. Unlike the UK, their PSC provisions are regulated in such a way as to impose detailed sanctions so that no one tries to hide, provide false information, and uncertainty about PSC information. It is also proven after the enforcement of compulsory disclosure regulations for PSC that the UK has amassed more than 3.8 million companies submitting PSC data to Companies House (Aggas, 2019).

### **The Impact of Adopting the 24<sup>th</sup> FATF Recommendation in Indonesian Law System**

OECD founded FATF in 1989 to issue international standards that act as measures for every country in preventing and eradicating money laundering and terrorism financing. Then, FATF causes the Financial Action Task Force Recommendations known as "*40+9 Recommendations*" (in the future referred to as FATF Recommendations). The 40 Recommendations are steps taken by FATF as the principal-agent driving the Anti-Money Laundering regime to combat financial crimes, money laundering, and terrorism financing. These recommendations cover the legal system, financial and non-financial business measures, institutional measures, and international cooperation that have been determined by FATF, adopted by Indonesia into its legal system by making some adjustments.

FATF is actively supervising Indonesia and observes its efforts to eradicate money laundering crimes, starting from the system that has implemented the laws and regulations. However, FATF issued a result that Indonesia had many shortcomings in its efforts to eradicate money laundering, there were weaknesses identified (Husein, 2005):

1. There is no law that criminalizes money laundering
2. There is no establishment of Financial Intelligence Unit (known as the FIU)
3. There is no obligation to report suspicious financial transactions to FIU
4. There is a lack of international cooperation

This causes Indonesia to be included in the list of Non-Cooperative Countries and Territories (in the future referred to as NCCTs) in 2001, a group of countries deemed uncooperative in combating money laundering globally. This proves that Indonesia has not met international standards. FATF required Indonesia to take immediate actions to criminalize money laundering and adjust the existing regulations based on the FATF Recommendations. As a first step toward this objective, Indonesia issued a Law on the Prevention and Eradication of Money Laundering in Law Number 15 of 2002, amended into Law Number 25 of 2010. However, due to many shortcomings and a need to strengthen the legal framework, the Law was amended further to Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering. In addition, Indonesia established the Suspicious Financial Transaction Report and Analysis Center (in the future referred to as PPATK) as FIU and strengthened cooperation between domestic and international institutions. FATF then decided that Indonesia would leave the NCCTs list in 2005 because Indonesia was considered following developments and progress in regulations, policies, and handlings of money laundering.

Although not all of the FATF recommendations have been adopted in Indonesian regulations, Indonesia has taken steps to implement an anti-money laundering regime by adopting the 24th FATF Recommendation for Beneficial Owners transparency in Legal Entities which led Indonesia to issue Presidential Decree No.13/2018. Even though Presidential Decree No.13/2018 has just been published, the definition of Beneficial Owners has already been discussed in POJK No.12/POJK.01/2017, albeit it is not in detail. Indonesia indeed aspires to become a member of FATF through its recommendations. However, to this date, Indonesia's status in FATF is still as an observer. Stage by stage of following and adopting FATF recommendations into its legal system, Indonesia will soon become a member of FATF. By becoming a member of FATF, Indonesia would be more assertive against money laundering and terrorism financing. Although there are still deficiencies and some improvements to be made, the assessment for Indonesia is relatively compliant with international standards. This still provides benefits for Indonesia because Indonesia at least proves that it can be trusted by the international community as a country that does not have a high risk of money laundering.

### **The 24<sup>th</sup> FATF Recommendation**

The main requirement is to adopt all the FATF recommendations. One of the recommendations that the authors discussed in this research are the 24th Recommendation, concerning transparency and beneficial ownership of legal persons, which states that “*Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.*” Therefore, the purpose of adopting this FATF recommendation is to set a standard of transparency in preventing the abuse of legal entities and ensuring that there is accurate and precise information on Beneficial Ownership that authorized parties can access. This 24th Recommendation regulates basic information about companies. The government requires all companies to register information regarding a company name and shreds of evidence of establishment, which must be openly available and publicly accessible.

The company must also maintain Beneficial Owners information, shareholder information, and the number of shares owned by each shareholder, all of which must be accurate and updated promptly. The 24th Recommendation requires that information related to Beneficial Owners in any entities (or its administrator, liquidator, or other person involved in the dissolution of the company) is required to maintain the information and records referred to for at least 5 (five) years after the date the company is dissolved or ceases to exist, or five years after the date the company is no longer a customer of a professional intermediary or financial institution. Indonesia must create a mechanism that identifies the types, forms, and essential characteristics of legal entities and the process of establishing such legal entities and records Beneficial Ownership information, which must be made available to the public.

This 24th recommendation discusses the government obligation to implement Beneficial Ownership transparency in any corporation. These recommendations should be adopted by or translated into Indonesian regulations. If not, the assessment will be inadequate, and it will harm Indonesia by the international community. Indonesia must fulfill every sentence contained in the 24th recommendation by including it in the provisions of favorable laws in Indonesia (Budianto, 2020).

The must-be-fulfilled recommendations set by FATF are the main points. However, considering that Indonesia is currently an observer country, Indonesia has taken various steps such as coordinating and communicating with the FATF Secretariat, conveying its commitment to become a member of FATF, and requests for support from several other member countries to be quickly included in the list of FATF member countries (Tim, 2020). There are 3 (three) urgencies for Indonesia to become a member of FATF, namely:

1. Indonesia is not a member of FATF,
2. Indonesia plays a significant role when it would become a member of FATF. Indonesia needs to play an active role directly in preparing or discussing Recommendations.
3. Indonesia needs to have the authority to deliver a direct explanation of the technical compliance assessment through FATF in order to prevent money laundering and terrorism financing.

### **The Status of Indonesia in FATF Membership**

In addition to issuing recommendations, FATF has the function of issuing assessments and publications. Various countries carry out the assessments in other countries by conducting field visits. The assessment results are reports providing analysis about the implementation and effectiveness of measures to combat money laundering "*Mutual Evaluation Report*" (in the future as MER). A country will be deemed compliant if judged to be responsible and prove that it has a practical framework. The assessments are done on 2 (two) essential components; the effectiveness of implementation and the technical compliance towards the 40 FATF recommendations. If the assessments end badly, FATF will deny list assessed countries and consider them as High-Risk Countries or countries at high risk of money laundering.

Concerning the effectiveness of its implementation, Indonesia has achieved a substantial ranking, which means that Indonesia has a high level of effectiveness but still requires improvement, with almost all criteria being ticked. However, its legal persons and arrangements

only reached a moderate level. That means the implementation of Beneficial Ownership (BO) transparency requires a significant improvement to prevent the abuse of legal entities. In addition, viewed from the technical compliance assessment related to the 24th Recommendation, Indonesia has reached a partially compliant rating. It can be concluded that the 24th Recommendation is only partially applied as there are shortcomings of moderate level. This is because Indonesia does not have any legal provisions concerning the availability of BOs information following the criteria that require companies or parties managing their establishment (in this case, LCs) to obtain and store information about BOs and take reasonable actions to obtain and store information regarding said BOs.

The 24th FATF recommendation adopted by Indonesia has led Indonesia to issue Presidential Decree No.13/2018 regarding Beneficial Owners are assessed effectiveness and technical compliance, which is not yet perfect. This is due to Presidential Decree No.13/2018, which has just been issued, has not been appropriately implemented by Indonesia. Nevertheless, Indonesia's assessment is quite suitable as other countries need more than 6 (six) years to get partially compliant assessments. In principle, FATF recommendations have been adopted by Indonesia. However, the 7th Recommendation regarding Targeted financial sanctions and proliferation is considered non-compliant. Even though POJK regulation regarding this matter has added a definition of profiling, there is no existing law yet that regulates profiling in detail.

Indonesia becoming FATF membership has received a reasonably good assessment, which the ranking obtained by Indonesia shows. MER stated that Indonesia is ready and fulfills the requirements to become a full member of FATF. This result will assist Indonesia is going through all the processes to become a member of FATF. In addition, by becoming a member of FATF, Indonesia can prove that it has complied with FATF assessments. Thus, Indonesia does not belong to high-risk countries for money laundering and terrorism financing.

### **The Birth of Presidential Decree No.13/2018 as a Result of Adopting the 24<sup>th</sup> FATF Recommendation**

Cases involving LC as a direct or indirect means of performing money laundering have made Indonesia aware that every country needs to have Beneficial Owners transparency. It provides proof that even though a specific party is not registered in the management, this party can control the management of LC and get the most benefits. This means that Legal Ownership in Indonesia does not influence whoever is in control behind the scenes or not recorded in the Articles of Association. The international community has taken money laundering and terrorist financing crimes seriously. Egmont Group (a Financial Intelligence Unit (FIU) has issued a document entitled 100 Cases from The Egmont Group. The document proves that LC is one of the high-risk areas for conducting Money Laundering for several reasons, namely:

1. Misuse of legitimate business;
2. Use of false identity documents;

The awareness by Egmont Group was built into FATF, which then issued recommendations, one of which is that each country must have a Beneficial Ownership

identification mechanism. However, Indonesia still adheres to the Legal Ownership regime, along with the arrival of assessors from FATF in 2017 and 2018 to Indonesia to assess the implementation of all FATF recommendations in Indonesia. Therefore, as an effort to fill the void, Indonesia issued Presidential Decree No.13/2018. This decree was born by 2 (two) factors: domestic needs from Indonesia and international needs. Domestic needs are seen in terms of prevention and eradication. Prevention is related to the registration of LC, ensuring LC is established from clean and legal money. In addition, it is for investigation. For example, there is an official caught in a case related to LC, if an investigator asks the Ministry of Law and Human Rights to list the names of management stated in the Articles of Association, the list will not come out. However, due to Presidential Decree No.13/2018, the Ministry has the necessary data as LCs are required to register Beneficial Ownership information to the Ministry of Law and Human Rights through a notary (Budianto, 2020).

Viewed from an international perspective, there are 3 (three) aspects of Presidential Decree No.13/2018:

1. FATF sets an international standard. If Indonesia is deemed to not comply with FATF, Indonesia will face wrong opinions from the international community;
2. The need for information exchange with other countries;
3. The prevalence interest of asset recovery.

In addition, the initiation of adopting FATF Recommendations dates back to when Indonesia entered the NCCTs list in 2001, even though Indonesia was not a member of FATF and had no problems related to money laundering. However, Indonesia was considered to have many shortcomings because the preventive criteria contained in the regulation had not been fulfilled, and the efforts to prevent money laundering were incomplete. Indonesia used this factor as an impetus for taking steps by designing regulations that prevent and eradicate money laundering crime to prove that Indonesia is a country that is not at high risk for money laundering.

## CONCLUSION

Beneficial Owners in LCs in Indonesia are regulated by Presidential Decree No.13/2018, which has been issued and is considered comprehensive. This regulation has served as the primary basis for implementing Beneficial Owners transparency. However, the legal arrangements stated in Presidential Decree No.13/2018 are not following the existing implementation in Indonesia. The discrepancy is because there are several LCs in Indonesia that do not provide their complete reports regarding Beneficial Owners. In addition, sanctions are not implemented. The reason is that Presidential Decree No.13/2018 has a blind spot in which it does not state clear sanctions for LCs or other corporations that do not report Beneficial Owners to Authorized Agencies. The impact of adopting the 24th FATF recommendation on Beneficial Owners in Indonesia, namely Presidential Decree No.13/2018, as an effort to prevent and eradicate Beneficial Owners who abuse legal entities to perform money laundering. Indonesia must fulfil the 24th recommendation through Presidential Decree No.13/2018. In addition,

adopting FATF recommendations, one of which is the 24th Recommendation, will help Indonesia, which is currently only an observer country, to become an official member of FATF. Thus, Indonesia will be considered entirely compliant with international standards that positively impact Indonesia because the international community increasingly trusts it.

## REFERENCES

- Abdullah, M. (2020). *Reveal beneficial ownership, uncover economic camouflage*. Retrieved November 15 2020, from <https://pwyp-indonesia.org/id/155817/menguak-beneficial-ownership-membongkar-kamu-flase-ekonomi>
- Aggas, C. (2019). *Beneficial ownership in the UK British embassy Jakarta*. Retrieved December 5, 2020, from <https://jdih.ppatk.go.id/2019/12/Materi-Diseminasi-BO.pdf>
- Budianto, R.A. (2020). *Junior analysis of APU-PPT financial services authority via WebEx teams video call*.
- Ditjen, A.K. (2020). *Corporate benefit owner application*. Retrieved February 8, 2020, [https://panduan.ahu.go.id/doku.php?id=permohonan\\_-\\_notaris](https://panduan.ahu.go.id/doku.php?id=permohonan_-_notaris)
- Dutilh, N. (2020). *Status overview UBO register Europe Nautah Dutilh international firm*. Retrieved from [https://www.cobalt.legal/files/bundleNewsPost/2990/Overview\\_status\\_implementation\\_UBO\\_regiLawster\\_-\\_survey\\_NautaDutilh\\_31\\_August\\_2017.pdf](https://www.cobalt.legal/files/bundleNewsPost/2990/Overview_status_implementation_UBO_regiLawster_-_survey_NautaDutilh_31_August_2017.pdf)
- Emirzon, J. (2017). *Forms of practice and mode of money laundering*. Retrieved from [https://jurnal.kpk.go.id/Dokumen/SEMINAR\\_ROADSHOW/Bentuk-praktik-dan-modus-tppu-Joni-Emirzon.pdf](https://jurnal.kpk.go.id/Dokumen/SEMINAR_ROADSHOW/Bentuk-praktik-dan-modus-tppu-Joni-Emirzon.pdf)
- Emirzon, J. (2017). *Forms of practice and mode of money laundering*. Retrieved July 24, 2020, from [https://jurnal.kpk.go.id/Dokumen/SEMINAR\\_ROADSHOW/Bentuk-praktik-dan-modus-tppu-Joni-Emirzon.pdf](https://jurnal.kpk.go.id/Dokumen/SEMINAR_ROADSHOW/Bentuk-praktik-dan-modus-tppu-Joni-Emirzon.pdf)
- Fuat, M. (2020). *Recognizing the money laundering process from the proceeds of a crime*. Retrieved from [https://pusdiklatwas.bpkp.go.id/asset/files/post/20140203\\_085447/MENGENALI%20PROSES%20PENCUCIAN%20UANG%20\(MONEY%20LAUNDERING\)%20DARI%20HASIL%20TINDAK%20PIDANA.pdf](https://pusdiklatwas.bpkp.go.id/asset/files/post/20140203_085447/MENGENALI%20PROSES%20PENCUCIAN%20UANG%20(MONEY%20LAUNDERING)%20DARI%20HASIL%20TINDAK%20PIDANA.pdf)
- Husein, Y. (2005). *A study of the causes of Indonesia being included in the list of non-cooperative countries and territories by FATF on money laundering*.
- Husein, Y. (2005). Indonesia's effort to get out of the NCCTS: Continuous hard work. *Journal of Banking and Central Banking Law Bulletin*, 3(2), 1-9.
- Kusrini, P. (2018). Setting beneficiary owner characteristics in Indonesia. *Notaire*, 1(1), 63-72.
- Laode, M.S. (2018). *Eradication of corruption and money laundering through transparency of beneficiary's dissemination of presidential regulation number 13 of 2018 concerning application of the principle of recognizing the beneficial owner of corporations in the context of prevention and eradication of criminal acts of money laundering and criminal acts of terrorism financing*. Retrieved March 27, 2018, from [http://jdih.ppatk.go.id/wp-content/uploads/2018/03/Materi-Narsum\\_all-1.pdf](http://jdih.ppatk.go.id/wp-content/uploads/2018/03/Materi-Narsum_all-1.pdf)
- Michael, N.W. (2018). The role of a notary in the application of the principle of recognizing the beneficial owner in the establishment of a corporation. *University of Indonesia*, 3(2), 18-29.
- Omar, N.B. (2015). FATF recommendations related to DNFPBs on anti-money laundering assessment. *Journal Economics, Business and Management*, 3(2), 156-169.
- Tim, P. (2020). *Online law: 4 the urgency of Indonesia to become a member of the FATF*. Retrieved December 2, 2020, from <https://www.hukumonline.com/berita/baca/lt58d4cb040d555/4-urgensi-indonesia-menjadi-anggota-fatf/>
- Travers, S. (2020). *The PSC regime-A guide for UK companies on their obligations*. Retrieved December 3, 2020, from <https://www.traverssmith.com/knowledge/knowledge-container/the-psc-regime-a-guide-for-uk-companies-on-their-obligations/>