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Legal Standing of Beneficial Ownership Under Nominee Agreements in Indonesian Corporate Law

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ABSTRACT

The absence of explicit legal regulations concerning beneficial ownership within Indonesian corporate law has generated uncertainty regarding the legal position of investors operating through nominee agreements. This study examines the legal standing of beneficial ownership and its legal consequences within nominee arrangements involving domestic limited liability companies in Indonesia. Normative legal research was employed using statutory, conceptual, and case approaches to examine the interaction between the Company Law, Investment Law, Civil Code, and related regulations governing beneficial ownership. The analysis demonstrates that Indonesian corporate law recognizes only registered shareholders as holders of corporate rights, whereas beneficial owners remain confined to administrative recognition without acquiring an enforceable civil legal standing. Nominee agreements established to conceal the identity of the actual investor are inconsistent with the objective requirements of lawful contracts under Articles 1320 and 1337 of the Civil Code and constitute fraus legis, rendering such agreements legally void and incapable of creating valid shareholder rights. Consequently, beneficial owners cannot effectively enforce corporate rights or contractual claims when disputes arise with the nominees. The novelty of this study lies in integrating corporate, investment, and contract law to explain the normative inconsistency governing beneficial ownership and proposing regulatory harmonization to strengthen legal certainty, investor protection, and corporate governancein the country. Future studies should comparatively examine beneficial ownership regulations across different jurisdictions to support legislative reform in Indonesia.

Keywords: *Beneficial Ownership, Corporate Law, Legal Standing, Nominee Agreement, Shareholder Rights.*

INTRODUCTION

Increasing cross-border investment has intensified the complexity of corporate ownership structures, requiring legal systems to balance investment facilitation, legal certainty, and corporate transparency. Indonesia has positioned investment as a strategic instrument for economic development by establishing a regulatory framework through Law Number 25 of 2007 concerning Investment and Law Number 40 of 2007 concerning Limited Liability Companies (Company Law). These statutes require investment activities to be conducted through Indonesian limited liability companies while ensuring accountability and legal certainty in corporate governance (Marzuki, 2008 Khairandy, 2009). Although the Company Law adopts the principle of registered ownership, contemporary business practices increasingly separate formal ownership from actual economic control through beneficial ownership arrangements implemented under nominee agreements. Such practices create a discrepancy between the legal ownership recognized by corporate law and the economic reality of investment, particularly where the registered shareholder differs from the person who ultimately provides capital, controls corporate decisions, and receives economic benefits.

The development of beneficial ownership has become an international concern because transparent ownership structures are essential for preventing money laundering, corruption, tax avoidance, and other financial crimes (World Bank & UNODC, 2011). Indonesia responded by issuing Presidential Regulation Number 13 of 2018, which requires corporations to disclose their beneficial owners as part of corporate transparency. However, this administrative recognition has not been accompanied by corresponding civil recognition in Indonesian corporate law. While the Investment Law expressly prohibits nominee agreements and declares them void, the Company Law does not explicitly regulate the legal standing of beneficial owners within the corporate shareholding structure, thereby creating regulatory inconsistency and legal uncertainty (Fuady, 2002; Salim H.S, 2008).

The inconsistency between these regulatory instruments raises significant legal questions regarding the position of beneficial owners in disputes with registered shareholders. Beneficial owners may bear the economic risks of investment and exercise actual corporate control; however, they often lack enforceable corporate rights because their names are absent from the shareholders register. Conversely, nominees obtain formal legal authority, despite merely functioning as legal representatives. Such circumstances undermine legal certainty, weaken investor protection, and create uncertainty concerning the validity and legal consequences of nominee agreements under Indonesian corporate law (Rahardjo, 2006 Marzuki, 2008).

Previous studies have examined beneficial ownership from various perspectives, including anti-money laundering regulations, nominee agreements in foreign investment companies, transparency obligations, legal protection, and dispute resolution (Saputra, 2024; Triwis, 2016; Wicaksono, 2014; Wiratama, 2021; Ghozali, 2020;Christiani, 2022). Nevertheless, these studies predominantly discuss beneficial ownership separately within investment, contract, or transparency regulations. Limited attention has been devoted to analyzing the legal standing of beneficial ownership as an independent juridical issue within the internal governance structure of Indonesian limited liability companies. Furthermore, previous research has not comprehensively examined the interaction between the Company Law, Investment Law, Civil Code, and Presidential Regulation Number 13 of 2018 in explaining the legal consequences arising from nominee agreements. This unresolved issue constitutes the principal research gap addressed in this study.

The novelty of this research lies in its integrated doctrinal analysis of the legal standing of beneficial ownership in Indonesian corporate law. Unlike previous studies that emphasize contractual validity, transparency obligations, or legal protection after disputes occur, this study evaluates whether beneficial ownership possesses independent legal standing capable of generating enforceable corporate rights despite the absence of formal shareholder registration. This research simultaneously analyses the interaction between corporate, investment, and contract laws and beneficial ownership regulations to explain the normative inconsistency that currently characterizes Indonesian corporate governance. Through this approach, the study proposes a more coherent legal framework capable of harmonizing corporate transparency with legal certainty and investor protection.

Accordingly, this study aims to analyze the legal standing of beneficial ownership arising from nominee agreements within the shareholding structure of Indonesian limited liability companies and evaluate the legal consequences resulting from such arrangements. The findings are expected to contribute to the development of Indonesian corporate law by providing a clearer doctrinal understanding of beneficial ownership, strengthening legal certainty, supporting regulatory harmonization, and offering practical recommendations for policymakers, corporate practitioners, investors, and judicial institutions to respond to increasingly sophisticated corporate ownership structures.

RESEARCH METHOD

This study employed normative legal research to examine the legal standing of beneficial ownership arising from nominee agreements within the shareholding structure of Indonesian limited liability companies. The normative approach was selected because the research focuses on identifying legal norms, evaluating inconsistencies among statutory regulations, and formulating doctrinal arguments regarding the legal position and consequences of beneficial ownership under Indonesian corporate law. This study primarily investigates the interaction between the Company Law (Law No. 40 of 2007), Investment Law (Law No. 25 of 2007), Indonesian Civil Code, and Presidential Regulation No. 13 of 2018 concerning the Identification of Beneficial Owners of Corporations. This methodological design is consistent with the research objectives of this study.

This study adopted three complementary legal approaches: statutory, conceptual, and case approaches. The statutory approach was used to examine the hierarchy, coherence, and consistency of the legislation governing corporate ownership, investment, contractual validity, and beneficial ownership disclosure. A conceptual approach was applied to analyze legal doctrines relating to legal standing, registered ownership, beneficial ownership, legal certainty, contractual validity, legal protection, and fraus legis. A case approach was employed to evaluate judicial reasoning and legal consequences arising from disputes involving nominee agreements, thereby enabling the interpretation of legal principles within practical corporate contexts. These approaches provide a comprehensive framework for assessing normative consistency and practical implementation.

The principal research materials consisted of primary, secondary, and tertiary legal materials. Primary legal materials included the 1945 Constitution of the Republic of Indonesia, the Indonesian Civil Code, Law No. 40 of 2007 on Limited Liability Companies, Law No. 25 of 2007 on Investment, Presidential Regulation No. 13 of 2018, and other relevant laws. Secondary legal materials comprised books, peer-reviewed journal articles, master's theses, dissertations, commentaries, and legal opinions concerning corporate law, investment law, beneficial ownership, nominee agreements, and contract law. Tertiary legal materials, including legal dictionaries and encyclopedias, were used to clarify legal terminology and to support doctrinal interpretation.

Legal materials were collected through library research using systematic document analysis. Relevant legislation, judicial decisions, academic literature, and official government documents were identified, classified, and critically reviewed based on the research questions. Rather than employing empirical sampling techniques, this study relied on the purposive selection of legal sources directly related to beneficial ownership, nominee agreements, and corporate governance in Indonesia. This approach ensured that the analyzed materials were authoritative, relevant, and capable of addressing the identified legal issues.

Data analysis was conducted using qualitative juridical analysis. Legal materials were interpreted through statutory interpretation and doctrinal legal reasoning to identify normative conflicts, evaluate legal consistency, and construct legal arguments regarding the rights, status, obligations, and legal consequences of beneficial ownership under the nominee arrangements. The analytical process emphasized systematic comparison among legal instruments rather than statistical testing, enabling the formulation of recommendations for regulatory harmonization and strengthening legal certainty within Indonesian corporate law. This analytical framework is widely recognized in normative legal research and follows the doctrinal legal research method described by Marzuki (2021) and IRAC-based legal reasoning in legal analysis.

RESULT & DISCUSSION

The findings demonstrate that Indonesian corporate law continues to prioritize registered ownership as the sole basis for recognizing shareholder status, thereby limiting the legal standing of beneficial owners despite their substantial economic interests in corporate structures. Under the Company Law, corporate rights, including voting rights, dividend entitlements, participation in the General Meeting of Shareholders (GMS), and derivative actions, are attached exclusively to shareholders whose names are recorded in the Shareholders Register. Consequently, investors acting as beneficial owners remain outside formal corporate relationships, even when they provide capital, exercise effective control, and bear the economic risks associated with corporate investment (Fuady, 2002;Khairandy, 2009).

The analysis further reveals that this formalistic approach creates structural inconsistencies between Indonesian corporate law and contemporary investment practices. Modern business transactions increasingly distinguish legal ownership from economic ownership, allowing beneficial owners to control corporations through nominee arrangements while remaining absent from official shareholders' records. Although Presidential Regulation No. 13 of 2018 recognizes beneficial ownership as an essential component of corporate transparency, such recognition is confined to administrative disclosure for anti-money laundering purposes and does not establish shareholder rights under private corporate law. Consequently, Indonesian legislation simultaneously acknowledges beneficial ownership for regulatory compliance while denying its legal standing in corporate governance, creating uncertainty regarding ownership, accountability, and investor protection (World Bank & UNODC, 2011OECD, 2023).

Another significant finding concerns the legal validity of such nominee agreements. Indonesian contract law recognizes contractual autonomy only when agreements satisfy the objective requirements established by Articles 1320 and 1337 of the Civil Code. Article 33 of Law No. 25 of 2007 concerning Investment expressly prohibits agreements declaring that shares are held on behalf of another person and stipulates that such agreements are legally invalid. Therefore, nominee arrangements cannot derive legal enforceability merely from mutual consent, because contractual freedom remains subordinate to mandatory statutory provisions and public policy. The application of the doctrine of fraus legis further strengthens this conclusion by emphasizing that legal transactions designed to circumvent statutory restrictions cannot produce legitimate legal consequences, even where their formal contractual structure appears valid (Salim H.S, 2008;Rahardjo, 2006).

These findings explain why beneficial owners continue to experience substantial legal vulnerabilities in practice. Since Indonesian corporate law recognizes only registered shareholders, beneficial owners cannot directly exercise their voting rights, receive dividends, challenge corporate resolutions, or initiate legal actions on behalf of the company. Their legal position depends entirely on the willingness of nominees to perform contractual obligations that may be legally unenforceable. Where disputes arise, judicial protection generally focuses on the restitution of financial losses rather than the recognition of shareholder status because the underlying nominee agreement lacks legal validity. Consequently, beneficial owners may recover invested assets through general civil law principles but remain unable to obtain corporate rights associated with registered share ownership (Marzuki, 2008);(Fuady, 2002).

The analysis also has corporate governance implications. The separation between economic and legal ownership reduces transparency concerning the individuals exercising ultimate corporate control and increases opportunities for regulatory avoidance, conflicts of interest, and misuse of corporate entities. Although beneficial ownership disclosure under Presidential Regulation No. 13 of 2018 improves transparency for regulatory authorities, the absence of corresponding civil law recognition creates fragmented governance in which disclosure obligations operate independently of shareholder rights. Similar observations have been reported in international governance frameworks, emphasizing that beneficial ownership transparency should function alongside effective legal accountability rather than merely administrative reporting (FATF, 2023;OECD, 2023).

A comparison with previous studies confirms that existing scholarship has predominantly examined nominee agreements from the perspectives of foreign investment regulation, anti-money laundering, contractual validity, and post-dispute legal protection. Relatively limited attention has been devoted to the legal standing of beneficial owners as an autonomous doctrinal issue integrating corporate, investment, and contract law. Accordingly, the present research extends earlier scholarship by demonstrating that the principal legal deficiency lies not simply in the prohibition of nominee agreements but in the absence of a coherent legal construction governing the relationship between beneficial ownership and registered share ownership in Indonesian corporate law. This integrated perspective explains why administrative recognition has evolved more rapidly than substantive corporate rights, despite ongoing regulatory reforms.

Overall, the findings support the argument that Indonesian corporate law currently recognizes administrative transparency without substantive legal standing for beneficial owners. This dualism weakens legal certainty, limits investor protection, and creates inconsistencies between corporate governance principles and contemporary investment practices. Therefore, legislative harmonization among the Company Law, Investment Law, Civil Code, and Presidential Regulation No. 13 of 2018 is necessary to establish a coherent legal framework capable of balancing legal certainty, corporate transparency, investor protection, and sustainable investment governance.

CONCLUSION

Indonesian corporate law does not presently confer substantive legal standing upon beneficial owners operating through nominee agreements because shareholder status remains exclusively attached to individuals or entities recorded in the shareholders' register, while beneficial ownership is recognized only for administrative transparency purposes under the existing regulatory framework. This dualistic approach creates a normative inconsistency between the Company Law, Investment Law, and Presidential Regulation No. 13 of 2018, resulting in legal uncertainty, limited investor protection, and fragmented corporate governance despite the increasing separation between legal and economic ownership in contemporary business practice. The prohibition of nominee agreements under Article 33 of the Investment Law further confirms that contractual arrangements intended to conceal actual ownership cannot establish enforceable corporate rights, leaving beneficial owners without effective legal standing, even when they provide capital and exercise actual control over corporate activities. Accordingly, the study concludes that a coherent legal reconstruction is required through the harmonization of corporate, investment, and civil law regulations to clarify the legal status of beneficial ownership, strengthen legal certainty, enhance corporate transparency, and provide a balanced framework that protects legitimate investment while preserving the integrity and accountability of Indonesia's corporate governance system.

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