Jurnal Notariil

Available Online at https://ejournal.warmadewa.ac.id/index.php/notariil
Jurnal Notariil, Volume 11, Nomor 1, 2026, Page: 107-113
P ISSN 2540-797X
E ISSN 2615-1545

Criminal Liability of Notaries for Failure to Identify Beneficial Ownership in Banking Transactions

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How to cite:
Cantika, A. A. L., & Dewi, I. A. C. K. (2026). Criminal Liability of Notaries for Failure to Identify Beneficial Ownership in Banking Transactions. *Jurnal Notariil, 11*(1), 107-113. Doi. https://doi.org/10.22225/jn.11.1.2026.107-113

Abstract. The increasing complexity of banking transactions and the growing misuse of legal entities for money laundering, terrorism financing, and other financial crimes have intensified the importance of identifying Beneficial Ownership within the banking sector. In Indonesia, notaries play a strategic role in the establishment of legal entities, authentication of legal documents, and facilitation of banking transactions. However, failures in identifying Beneficial Ownership may create legal consequences, particularly when such negligence contributes to unlawful financial activities. This study aims to analyze the criminal liability of notaries arising from the failure to identify Beneficial Ownership in banking transactions, as well as to examine the legal norms governing the obligations of notaries in implementing the principle of prudence and transparency. This research employs normative legal research using statutory, conceptual, and case approaches. The legal materials consist of primary legal materials including laws and regulations related to notarial duties, banking law, anti-money laundering law, and Beneficial Ownership regulations, as well as secondary legal materials derived from legal doctrines and scholarly literature. The results indicate that notaries may bear criminal liability when their failure to identify Beneficial Ownership fulfills the elements of criminal negligence or intentional participation in unlawful financial transactions. Furthermore, the existing legal framework regarding Beneficial Ownership obligations for notaries remains fragmented and lacks harmonization, leading to legal uncertainty in practice. Therefore, stronger regulatory frameworks and clearer legal standards are necessary to enhance legal certainty, accountability, and preventive measures against financial crimes in banking transactions.

Keywords: criminal liability; notary; beneficial ownership; banking transactions; financial crime.

1. INTRODUCTION

The development of economic globalization and advances in information technology have significantly transformed financial systems and banking activities in various countries, including Indonesia. Modern banking institutions no longer merely function as institutions for collecting and distributing public funds but also serve as integral components within increasingly complex cross-border business transactions. Such complexity has given rise to various financial transaction models involving legal entities, shell companies, nominee arrangements, and multilayered corporate ownership structures that obscure the identification of parties who control and economically benefit from such transactions. The party who ultimately owns, controls, or benefits from a corporation or financial transaction is commonly referred to as the *Beneficial*

Owner. Transparency regarding Beneficial Ownership has become highly important because non-transparent ownership structures are frequently utilized to conceal proceeds of crime, money laundering activities, tax evasion, terrorism financing, and other financial crimes (Sutedi, 2020).

In international practice, the regulation of Beneficial Ownership has evolved as part of the anti-money laundering (*AML*) and counter-terrorism financing (*CTF*) regime. The Financial Action Task Force (FATF), as the international body establishing global standards for combating money laundering, emphasizes the importance of Beneficial Ownership transparency in preventing the misuse of legal entities for illicit purposes. FATF Recommendation Number 24 specifically requires states to ensure the availability of adequate, accurate, and up-to-date information regarding the beneficial owners of corporations (FATF Recommendations, 2023). As part of the international financial community, Indonesia has aligned its legal framework with these international standards through various regulations governing the identification of Beneficial Ownership in corporations and financial transactions.

In Indonesia, the regulation concerning Beneficial Ownership is specifically stipulated under Presidential Regulation Number 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficial Owners of Corporations in the Prevention and Eradication of Money Laundering and Terrorism Financing Crimes. The regulation obliges corporations to identify parties who ultimately control, receive benefits from, or influence the operations of corporations. Within the banking sector, Beneficial Ownership identification is closely related to the implementation of the prudential banking principle and the *know your customer principle* as regulated under Law Number 10 of 1998 concerning Banking and various regulations issued by the Financial Services Authority (OJK). These principles aim to ensure that financial transactions are conducted transparently and are not used as instruments for disguising criminal activities (Hermansyah, 2021).

Notaries occupy a strategic position within various legal and business activities related to banking transactions. As public officials authorized to create authentic deeds, notaries are frequently involved in the establishment of legal entities, amendments to articles of association, collateral agreements, credit agreements, and other financial transactions. Such authority renders notaries vulnerable to being utilized as formal legitimizing instruments for transactions that conceal actual Beneficial Ownership. In practice, numerous financial crimes employ legal entities as vehicles for concealing assets and transactions, while notarial deeds are used to provide formal legality to complicated ownership structures (Adjie, 2022).

The involvement of notaries in corporate activities and banking transactions requires them to implement the principle of prudence with utmost diligence. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 regarding the Position of Notary stipulates that notaries are obligated to act honestly, carefully, independently, impartially, and protect the interests of all parties involved in legal acts. Furthermore, Article 16 of the Notary Position Law imposes an obligation upon notaries to act carefully in performing their duties. Normatively, such obligations imply that notaries are not merely responsible for formalizing the intentions of parties into authentic deeds, but also for ensuring that legal acts are not contrary to law and are not utilized for unlawful purposes (Kie, 2021).

Legal issues arise when notaries fail to properly identify Beneficial Ownership in banking transactions, particularly when such transactions are later proven to be related to money laundering or other financial crimes. In many cases, nominee arrangements or shell companies obscure the actual beneficial owners from the knowledge of notaries. Such circumstances raise important legal questions concerning the extent of notarial liability, especially when authentic deeds are subsequently used as instruments for criminal conduct. Numerous notaries have been summoned as witnesses and even subjected to criminal proceedings on allegations of negligence or participation in facilitating unlawful financial transactions (Harahap, 2020).

Theoretically, criminal liability may only be imposed where elements of fault (*mens rea*) and unlawful conduct (*actus reus*) are fulfilled. Within the context of notarial office, the issue becomes increasingly complex because notaries fundamentally perform formal-administrative functions based on documents and information provided by parties. Nevertheless, the development of modern legal systems demonstrates an expansion of the principle of professional due diligence, requiring certain professions, including notaries, to actively verify identities and the legality of parties involved in transactions. Consequently, failure to identify Beneficial Ownership may be regarded as professional negligence when notaries fail to adequately exercise the duty of prudence (Kelsen, 2020).

Furthermore, the absence of specific regulations governing the standards for Beneficial Ownership identification by notaries has created legal uncertainty in practice. On one hand, notaries are expected to support transparency and the prevention of money laundering and financial crimes; on the other hand, their investigative authority to trace complex ownership structures remains highly limited. Such conditions create normative ambiguity regarding the extent to which notaries may be held criminally liable for failing to identify Beneficial Ownership in banking transactions.

This research is important because there remains a regulatory vacuum and lack of clarity concerning the construction of criminal liability of notaries related to Beneficial Ownership identification failures. Previous studies have predominantly focused on Beneficial Ownership within the perspectives of money laundering crimes and corporate governance, whereas studies specifically examining the criminal liability of notaries for failures in identifying Beneficial Ownership in banking transactions remain limited. Therefore, this research is expected to contribute both theoretically and practically to the development of notarial law, banking law, and the legal regime concerning the prevention of financial crimes in Indonesia.

Based on the foregoing background, this study aims to normatively examine the legal framework governing Beneficial Ownership and the construction of criminal liability of notaries for failures in identifying Beneficial Ownership in banking transactions. Accordingly, the research addresses two main problems: (1) how the legal regulations govern the obligations of notaries in identifying Beneficial Ownership in banking transactions, and (2) how the construction of criminal liability of notaries is formulated in cases involving failures to identify Beneficial Ownership in banking transactions.

2. METHOD

This study employs normative legal research (*normative juridical research*) focusing on legal norms and regulations related to the criminal liability of notaries for failure to identify Beneficial Ownership in banking transactions. The approaches used in this research are the statutory approach, conceptual approach, and case approach. The statutory approach examines laws and regulations related to notarial law, banking law, anti-money laundering law, and Beneficial Ownership regulations. The conceptual approach analyzes legal doctrines and theories concerning criminal liability and professional responsibility, while the case approach examines relevant judicial decisions and legal cases. The legal materials used consist of primary, secondary, and tertiary legal materials obtained through library research. The collected legal materials are analyzed qualitatively using juridical analysis and legal interpretation to obtain conclusions related to the legal construction of notarial criminal liability in banking transactions involving Beneficial Ownership.

3. DISCUSSION

The Legal Regulations Governing the Obligations of Notaries in Identifying Beneficial Ownership in Banking Transactions

The regulation concerning the obligation of notaries to identify Beneficial Ownership in banking transactions in Indonesia is closely related to the legal framework governing anti-money laundering, banking prudential principles, and the professional obligations of notaries. The emergence of Beneficial Ownership regulation is fundamentally aimed at preventing the misuse of corporations, banking systems, and legal entities as instruments for concealing illicit assets, money laundering, terrorism financing, and other financial crimes. In practice, transparency regarding the actual controlling party behind a corporation or transaction has become an essential element within the global financial system (Sutedi, 2020).

Internationally, the concept of Beneficial Ownership is strongly influenced by the recommendations issued by the Financial Action Task Force (FATF). FATF Recommendation Number 24 emphasizes that every country must ensure transparency and the availability of adequate, accurate, and up-to-date information regarding the beneficial owners of legal entities and corporations (FATF Recommendations, 2023). These international standards require member states, including Indonesia, to strengthen legal mechanisms enabling competent authorities and reporting parties to identify the actual parties controlling corporate transactions and financial activities.

In Indonesia, the principal regulation governing Beneficial Ownership is Presidential Regulation Number 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficial Owners of Corporations in the Prevention and Eradication of Money Laundering and Terrorism Financing Crimes. Article 1 paragraph (2) of the Presidential Regulation defines Beneficial Owner as an individual who can appoint or dismiss directors, commissioners, management, supervisors, or controllers of a corporation, possesses the ability to control the corporation, receives benefits from the corporation, and/or is the actual owner of funds or shares of the corporation. This regulation demonstrates that the identification of Beneficial Ownership is no longer limited to formal ownership but extends to actual control and economic benefit over corporations and financial transactions.

Within banking transactions, the obligation to identify Beneficial Ownership is also connected to the implementation of the prudential banking principle and the *know your customer principle* regulated under Law Number 10 of 1998 concerning Banking and anti-money laundering regulations. Financial institutions are obligated to conduct customer due diligence and identify parties who ultimately own or control accounts, assets, or transactions. Such obligations are intended to minimize legal risks, operational risks, and the misuse of banking facilities for criminal purposes (Hermansyah, 2021).

The role of notaries becomes highly significant because notaries are directly involved in legal acts related to banking transactions, including the establishment of corporations, amendments to corporate structures, preparation of authentic deeds, credit agreements, and collateral arrangements. As public officials authorized to create authentic deeds, notaries possess strategic access to corporate documents and identities of parties involved in transactions. Consequently, notaries indirectly hold an important role in supporting transparency concerning Beneficial Ownership.

The obligations of notaries are normatively regulated under Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 regarding the Position of Notary. Article 16 paragraph (1) letter a stipulates that notaries are obligated to act honestly, carefully, independently, impartially, and protect the interests of parties involved in legal acts. Furthermore, the obligation to act carefully reflects the implementation of the prudential principle within the notarial profession. Such obligations imply that notaries are not merely passive recorders of the intentions of parties but must also ensure that legal acts and supporting documents do not violate the law (Adjie, 2022).

In the context of Beneficial Ownership, the prudential obligation of notaries may include verifying corporate identities, examining corporate documents, identifying controlling parties, and ensuring that transactions are not conducted using fictitious ownership structures or nominee arrangements. However, Indonesian positive law has not specifically regulated the technical standards or detailed procedures concerning how notaries should identify Beneficial Ownership in banking transactions. This regulatory gap creates legal uncertainty regarding the scope of notarial obligations and the extent of professional liability when the actual beneficial owner is concealed behind complicated corporate structures.

Additionally, notaries are also associated with the anti-money laundering regime under Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. Although notaries are not categorized identically to banking institutions, notarial services are frequently recognized internationally as vulnerable professions potentially exploited for money laundering activities. Therefore, the implementation of enhanced due diligence and professional prudence has become increasingly important within notarial practice (Kie, 2021).

From a legal perspective, the absence of specific regulations governing the standards of Beneficial Ownership identification by notaries has resulted in fragmented legal obligations. On one hand, notaries are required to uphold prudence and legality principles; on the other hand, notaries do not possess investigative authority equivalent to law enforcement agencies or financial intelligence institutions. As a result, the legal framework governing notarial obligations concerning Beneficial Ownership remains relatively general and primarily derives from broader professional obligations to act carefully and in good faith.

Therefore, the current legal regulation concerning the obligations of notaries in identifying Beneficial Ownership in banking transactions demonstrates that although Indonesia has established a general framework regarding Beneficial Ownership transparency, there remains an absence of comprehensive and specific legal provisions regulating the scope, procedures, and standards of identification obligations for notaries. This condition creates legal ambiguity and potentially exposes notaries to legal risks, particularly when banking transactions involving hidden Beneficial Ownership are subsequently connected to financial crimes.

The Construction of Criminal Liability of Notaries for Failures in Identifying Beneficial Ownership in Banking Transactions

The construction of criminal liability of notaries for failures in identifying Beneficial Ownership in banking transactions is closely related to the principles of criminal responsibility, professional prudence, and the legal obligations attached to the notarial profession. In Indonesian criminal law, criminal liability fundamentally arises when a person commits an unlawful act accompanied by fault, either in the form of intent (*dolus*) or negligence (*culpa*). Therefore, the criminal liability of a notary cannot automatically arise solely because the notary participated in preparing an authentic deed connected to an unlawful banking transaction. Criminal liability must first fulfill the essential elements of criminal conduct, unlawful act, fault, and causal relationship between the conduct and the resulting harm (Harahap, 2020).

Within the context of banking transactions, notaries frequently act as public officials authorized to prepare authentic deeds related to corporate establishment, amendments of articles of association, credit agreements, collateral arrangements, and other legal acts involving corporations and financial institutions. Such authority places notaries in a strategic position within the legal structure of banking transactions. Consequently, when a transaction involves hidden or fictitious Beneficial Ownership structures intended to conceal illegal assets or facilitate money laundering, the role of the notary may become legally scrutinized.

Theoretically, criminal liability of notaries may arise under several legal constructions. First, criminal liability may emerge based on intentional participation (*medeplegen*) when a notary knowingly assists, facilitates, or formalizes transactions involving concealed Beneficial Ownership for unlawful purposes. Under such circumstances, the notary may be categorized as participating in criminal conduct because the authentic deed produced serves as a legal instrument facilitating the execution or concealment of financial crimes. The Indonesian Criminal Code recognizes participation in criminal acts through Article 55 of the Criminal Code, which stipulates that individuals who commit, order, or participate in criminal acts may be held criminally liable (Moeljatno, 2021).

Second, criminal liability may arise through negligence (*culpa*) when a notary fails to exercise the professional prudence required by law. The obligation of prudence is explicitly regulated under Article 16 paragraph (1) letter a of Law Number 2 of 2014 concerning Amendments to Law

Number 30 of 2004 regarding the Position of Notary, which requires notaries to act honestly, carefully, independently, impartially, and protect the interests of all parties involved in legal acts. The phrase "carefully" (*seksama*) reflects the obligation of professional due diligence. Therefore, when a notary neglects to verify corporate ownership structures, ignores suspicious nominee arrangements, or fails to examine documents adequately, such conduct may potentially constitute professional negligence if it facilitates unlawful banking transactions (Adjie, 2022).

The issue becomes increasingly complex because notaries fundamentally rely on formal documents and statements provided by parties appearing before them. In principle, notaries do not possess investigative powers equivalent to law enforcement agencies, banks, or financial intelligence authorities. Nevertheless, modern legal developments indicate that professions vulnerable to exploitation for financial crimes, including notaries, are increasingly expected to implement enhanced due diligence measures. This expectation aligns with international anti-money laundering standards emphasizing preventive legal professions' obligations to support financial transparency (FATF Recommendations, 2023).

From the perspective of anti-money laundering law, the role of notaries becomes particularly important because legal entities and authentic deeds are frequently utilized as mechanisms for concealing ownership and disguising illicit financial flows. Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes establishes obligations for various parties to support the prevention of money laundering activities. Although notaries are not categorized identically to banking institutions, their involvement in corporate and financial transactions places them within professions susceptible to abuse by criminal actors. Consequently, failures to identify Beneficial Ownership may potentially expose notaries to allegations of facilitating money laundering activities, particularly where indications of bad faith or gross negligence are present (Sutedi, 2020).

The construction of criminal liability also relates to the doctrine of abuse of authority and misuse of professional office. As public officials, notaries are entrusted with state authority to create authentic deeds possessing perfect evidentiary value. Therefore, misuse of such authority, whether intentional or negligent, may create legal consequences extending beyond civil or administrative liability into criminal liability. In practice, several cases demonstrate that notaries have been examined as suspects or defendants in financial crime cases because the deeds they prepared were used to support fictitious ownership structures, nominee transactions, or fraudulent banking schemes (Kie, 2021).

However, criminal liability of notaries should not be interpreted excessively. Notaries cannot automatically be held criminally liable merely because a transaction subsequently proves unlawful. The principle of criminal law requires proof of fault and knowledge regarding the unlawful nature of the transaction. If the notary has fulfilled professional obligations, verified formal documents properly, and acted in good faith, criminal liability should not arise solely due to hidden Beneficial Ownership structures undisclosed by parties. Therefore, the distinction between intentional participation, professional negligence, and mere formal involvement becomes essential in determining the criminal liability of notaries.

Normatively, Indonesian law still lacks comprehensive regulations specifically governing the standards and scope of notarial obligations in identifying Beneficial Ownership within banking transactions. Existing regulations only generally impose prudential obligations without clearly defining technical procedures or legal limits concerning Beneficial Ownership verification. This condition creates legal uncertainty and potentially exposes notaries to broad criminal interpretation when financial crimes involving hidden ownership structures are uncovered.

Accordingly, the construction of criminal liability of notaries for failures in identifying Beneficial Ownership in banking transactions may arise under two principal forms: intentional participation and professional negligence. Such liability depends upon the existence of fault, the extent of prudential obligations fulfilled by the notary, and the causal relationship between the notarial conduct and the unlawful banking transaction. Therefore, clearer legal standards concerning Beneficial Ownership verification and the scope of notarial professional responsibility are necessary to ensure legal certainty, professional protection, and effective prevention of financial crimes within banking transactions.

4. CONCLUSION

The legal regulations governing the obligations of notaries in identifying Beneficial Ownership in banking transactions in Indonesia have generally been established through various legal instruments related to anti-money laundering, banking law, and notarial law, including Presidential Regulation Number 13 of 2018 concerning Beneficial Ownership, Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, and Law Number 2 of 2014 concerning the Position of Notary. These regulations impose general obligations upon notaries to act honestly, carefully, prudently, and in good faith when performing their professional duties. However, the existing legal framework has not specifically regulated the technical standards, procedures, and limitations concerning the identification of Beneficial Ownership by notaries in banking transactions. As a result, the regulation remains fragmented and creates legal uncertainty regarding the scope of notarial obligations in ensuring Beneficial Ownership transparency.

Furthermore, the construction of criminal liability of notaries for failures in identifying Beneficial Ownership in banking transactions may arise when the essential elements of criminal responsibility are fulfilled, particularly in cases involving intentional participation (*dolus*) or professional negligence (*culpa*). A notary may be held criminally liable when knowingly facilitating unlawful banking transactions or when failing to exercise adequate professional prudence in verifying ownership structures and supporting legal documents. Nevertheless, criminal liability cannot automatically be imposed solely because a transaction subsequently proves unlawful, considering that notaries fundamentally perform formal legal functions based on documents and information provided by the parties. Therefore, the determination of criminal liability must carefully consider the existence of fault, the fulfillment of professional prudential obligations, and the causal relationship between the conduct of the notary and the unlawful banking transaction. Accordingly, clearer legal standards and more comprehensive regulations concerning Beneficial Ownership verification are necessary to ensure legal certainty, professional protection for notaries, and stronger preventive measures against financial crimes within banking transactions.

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