

**Determination of Beneficial Ownership in
A Partnership Firm from The Perspective
of Joint and Several Liability of Partners**

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Abstract

This paper discusses about the legal implications of the obligation to determine the beneficial owner in a partnership firm, within the context of the joint and several liability of partners as regulated in Article 18 of the Indonesian Commercial Code (KUHD). The study is motivated by increasing demands for business transparency in the digital and globalization era, as well as the introduction of new regulations through Presidential Regulation No. 13 of 2018 and Minister of Law and Human Rights Regulation No. 15 of 2019. As a non-legal entity business form, a firm is fundamentally based on the principle of joint and unlimited liability among its partners. However, with the mandatory determination of a beneficial owner, there arises a potential disharmony between private law, which governs joint and several liability, and public law, which demands the identification of specific individuals as the ultimate controllers. This study employs a normative juridical approach by examining relevant laws and regulations. The findings indicate that the obligation to identify a beneficial owner has significant legal implications, including clarifying individual accountability within the firm, reinforcing the principle of piercing the corporate veil, and potentially shifting the traditional principle of joint and several liability. Therefore, regulatory harmonization is necessary to avoid normative conflicts and ensure legal certainty in business practices, particularly for micro, small, and medium enterprises (MSMEs) that commonly use the partnership form.

Keywords: partnership firm, beneficial owner, joint and several liability, corporate law, transparency

Abstrak

Tulisan ini membahas implikasi hukum dari kewajiban penetapan pemilik manfaat (beneficial owner) terhadap persekutuan firma, dalam konteks tanggung jawab renteng para sekutu sebagaimana diatur dalam Pasal 18 Kitab Undang-Undang Hukum Dagang (KUHD). Penelitian ini dilatarbelakangi oleh meningkatnya tuntutan transparansi usaha di era digital dan globalisasi, serta adanya regulasi baru melalui Peraturan Presiden Nomor 13 Tahun 2018 dan Peraturan Menteri Hukum dan HAM Nomor 15 Tahun 2019. Firma sebagai badan usaha yang tidak berbadan hukum, pada dasarnya menganut prinsip pertanggungjawaban bersama dan tidak terbatas di antara para sekutu. Namun, dengan diwajibkannya penetapan pemilik manfaat, terjadi potensi disharmoni antara hukum privat yang mengatur tanggung renteng dan hukum publik yang menuntut identifikasi individu tertentu sebagai pengendali utama. Penelitian ini menggunakan pendekatan yuridis normatif dengan menelaah peraturan perundang-undangan terkait. Hasil kajian menunjukkan bahwa kewajiban penetapan pemilik manfaat membawa implikasi

hukum signifikan, antara lain memperjelas pertanggungjawaban individu dalam firma, memperkuat prinsip piercing the corporate veil, dan membuka kemungkinan pergeseran prinsip tanggung jawab renteng. Oleh karena itu, dibutuhkan harmonisasi regulasi untuk menghindari konflik norma serta menjamin kepastian hukum dalam praktik berusaha, khususnya bagi pelaku usaha mikro, kecil, dan menengah (UMKM) yang banyak menggunakan bentuk firma.

Kata Kunci: persekutuan firma, pemilik manfaat, tanggung jawab renteng, hukum korporasi, transparansi.

A. Introduction

Facing global challenges in the digital era requires strengthening the business sector to be competitive at the international level, which in turn impacts the national economy and society. Increasingly intense business competition demands that entrepreneurs adapt to technological advancements. Technological progress is undeniable. Both business actors and the government must be able to leverage technology to facilitate business activities and encourage the emergence of new types of enterprises (Sembiring, 2008)

In order to support the business sector, the government must create regulations that simplify the establishment of business entities. Theoretically, business entities can be classified into two types: non-legal entities and legal entities. The laws governing types of companies generally cover forms of partnerships and corporate forms of business entities (Sarjono et al., 2022).

Regarding the term corporation, it is found in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which states: "A corporation is an organized group of people and/or assets, whether it is a legal entity or not." Law Number 35 of 2009 concerning Narcotics also provides the same definition of a corporation, stating: "A corporation is an organized group of people and/or assets, whether it is a legal entity or not. Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes defines: "A corporation is an organized group of people and/or assets, whether it is a legal entity or not.

Based on the definitions in the laws mentioned above, all business entities, whether legal entities or not, are considered corporations. This is also stated in Presidential Regulation Number 13 of 2018 concerning the Implementation of the Principle of Identifying Beneficial Owners of Corporations in the Context of Preventing and Eradicating Money Laundering and Terrorism Financing Crimes, which defines a corporation as an organized group of people and/or assets, whether it is a legal entity or not. In this context, the definition of a corporation is broadened not only referring to business entities that are legal entities but also including legal entities that do not conduct business activities, such as foundations and associations, as well as other business entities that are not legal entities.

It is important to understand the difference between a corporation that is a legal entity and one that is not, as this relates to who is responsible for the corporation's actions, whether civilly, administratively, or criminally. In a corporation that is a legal entity, there is a separation of responsibility and assets between the legal entity itself and the organs within that legal entity.

Regarding the responsibility and assets of a legal entity, it is important to understand the definition of a legal entity as explained by several experts.

According to Molengraaff, a legal entity essentially represents the rights and obligations of its members collectively, and within it exists joint assets that cannot be divided. Each member is not only an individual owner of their respective share within an indivisible unity but also a co-owner of the entire assets. Therefore, every individual member is also an owner of the assets organized within the legal entity (Asshiddiqie, 2006).

Meanwhile, R. Subekti (1999) states that, fundamentally, a legal entity is a body or association that can hold rights and perform actions like a human being, possesses its own assets, and can be sued or sue in court.

Based on the definitions of a legal entity above, it can be concluded that in a business organized as a legal entity, there is a separation of responsibility and assets between the legal entity itself and its owners or corporate organs. Conversely, for business entities that are not legal entities, there is no separation of assets and responsibility between the owners or partners and the business entity itself.

In Indonesia, forms of business entities that are not legal entities can be distinguished between sole proprietorships and partnerships. However, with Law Number 11 of 2020 concerning Job Creation, reinforced by Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, which was enacted into law by Law Number 6 of 2023 concerning the Establishment of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law, there is a new provision: a sole proprietorship can now take the form of a legal entity.

It is hoped that the enactment of the Job Creation Law will provide regulatory ease and incentives for MSMEs (Micro, Small, and Medium Enterprises), thereby boosting their growth and competitiveness, as well as improving the investment climate in Indonesia through licensing simplification and deregulation. This is expected to attract more foreign investment, enhance ease of doing business for entrepreneurs in Indonesia, create equitable employment opportunities throughout the country, simplify bureaucratic procedures governing licensing, and facilitate the public in investing or establishing business entities. Easier business operations will encourage economic development in the community. People can choose the form of business entity according to their capabilities, capital, and the responsibilities they are willing to bear based on their chosen type of business entity.

The spirit of supporting small and medium enterprises is accompanied by a business registration system for non-legal entities through the business entity administration system managed by the Ministry of Law and Human Rights, as regulated in Minister of Law and Human Rights Regulation Number 17 of 2018 concerning the Registration of Limited Partnerships, Partnerships, and Civil Partnerships. The main objectives of this system reform are efficiency, transparency, accessibility, and integration, which accelerate the registration process and reduce bureaucracy. It also aims to increase transparency in the registration process, facilitate business actors in accessing registration services, and integrate the registration system with other relevant systems.

A corporation or company that is not a legal entity is a business organization that does not have official legal status but still has an organized structure, purpose, and operations. This includes small and medium enterprises, startups, non-profit organizations, and informal groups engaged in business activities. Non-legal entity companies in the form of partnerships consist of Civil Partnerships (*maatschap*), General Partnerships (*Vennootschap onder*

firma), and Limited Partnerships (*commanditaire vennootschap*). Each has different responsibilities for its partners. Civil partnerships, general partnerships, and limited partnerships are regulated in the Indonesian Civil Code and the Commercial Code. The civil partnership, as a simple form of business, is governed by Articles 1618 to 1652. A civil partnership is established based on an agreement between two or more persons who bind themselves by contributing something (*inbreng*) to the partnership with the intention of sharing profits among them.

The full formulation of Article 1618 of the Indonesian Civil Code states that: “A civil partnership is an agreement by which two or more persons bind themselves to contribute something to the partnership with the intention of sharing the profits arising from it (Subekti, 1999).

The provisions regulating civil partnerships in the Indonesian Civil Code also apply to general partnerships (*firma*) because the Commercial Code (KUHD) only regulates specific matters regarding general partnerships in several articles, namely Articles 16 to 35 of the KUHD. This application is subject to the legal principle of *lex specialis derogat legi generali*, which is a legal interpretation principle stating that a specific law (*lex specialis*) overrides a general law (*lex generalis*).

A general partnership (*firma*) according to Article 16 of the Commercial Code (KUHD) is a partnership established to run a business under a single joint name. Furthermore, Article 18 of the KUHD regulates the partners’ liability: “In a general partnership, each partner is jointly and severally liable for all obligations of the partnership” (Fuady, 2019).

A general partnership (*firma*) is a civil partnership that has a joint name based on an agreement, which cannot be separated from the validity requirements of a contract as regulated in Article 1320 of the Indonesian Civil Code (KUHPer). Within it, there is freedom to determine the contents of the agreement as stipulated in Article 1338, which essentially governs the freedom of contract. The freedom of contract is fundamentally an expression of free will, a reflection of human rights, whose development is rooted in the spirit of liberalism that upholds individual freedom. The substance of Article 1338 paragraph (1) of the Civil Code states that: “All legally made agreements shall have the force of law for those who make them.” The way to interpret the principle of freedom of contract is by emphasizing the word “all” that precedes the word “agreements.” It is said that Article 1338 paragraph (1) almost proclaims that we are allowed to make any agreements, and these will bind us as law binds us (Subekti, 1995). This principle of freedom of contract is a reflection of the open system of contract law (Fuady, 2007).

In 2018, Presidential Regulation Number 13 of 2018 was issued concerning the Application of the Principle of Knowing the Beneficial Owners of Corporations for the Prevention and Eradication of Money Laundering and Terrorism Financing, which requires every corporation to determine its beneficial owners. More specifically, Article 3 paragraph (1) of this Presidential Regulation states that every Corporation shall determine the Beneficial Owner of the Corporation, consisting of at least one individual who meets the criteria according to the form of the corporation, including limited liability companies, foundations, associations, cooperatives, limited partnerships, or general partnerships.

A beneficial owner is an individual who can appoint or dismiss directors, board members, management, trustees, or supervisors of a Corporation; has the

ability to control the Corporation; is entitled to and/or receives benefits from the Corporation, whether directly or indirectly; is the true owner of the Corporation's funds or shares; and/or meets the criteria referred to in this Presidential Regulation. (Article 1 point 2, Perpres No. 13/2018). Literally, the beneficial owner can be understood as an individual who derives profit from a legal entity or from an activity.

When the provision concerning the beneficial owner is applied to a general partnership (*firma*), it raises ambiguity in terms of responsibility, because a *firma* is a partnership established under a common name to conduct business for the purpose of sharing profits among its partners. In other words, the benefits of the partnership are intended for mutual gain, and likewise, any losses are also shared collectively.

The regulations concerning the establishment of a firm (*firma*) are subject to the Civil Code, namely Book III concerning obligations, specifically in the field of business, and the Commercial Code (KUHD). Book III is open in nature, containing governing provisions that may be deviated from as long as the parties agree. Meanwhile, the application of beneficial ownership falls under public law, which is mandatory in nature. To date, there has been no law that amends the provisions on partnerships (*firma*) or the joint and several liability of partners in a partnership (*firma*).

In 2013, a team was established by the National Legal Development Agency (BPHN), under the Ministry of Law and Human Rights, to draft the Academic Draft of the Bill on Civil Partnerships, General Partnerships, and Limited Partnerships. However, to this day, the draft bill has not been discussed in the House of Representatives (DPR). To accommodate changes regarding the procedures for the establishment of firms, the Ministry of Law and Human Rights issued Regulation No. 17 of 2018 on the Registration of Limited Partnerships, General Partnerships, and Civil Partnerships.

This Regulation of the Minister of Law and Human Rights changed the rules on establishing a firm, which previously required registration at the District Court where the firm is domiciled. Under this new regulation, the firm must be registered in the Business Entity Administration System (SABU). Hence, registration of the firm is no longer carried out at the local District Court but instead at SABU. The registration process involves a notary and is conducted electronically/digitally. Furthermore, when filling out the application, it is mandatory to include the beneficial owner. In this regard, the notary is not only responsible for drawing up the authentic deed but also bears the additional obligation of registering the firm digitally with the Ministry of Law and Human Rights and registering the establishment of the firm with the State Gazette so that it is officially published in the State Gazette.

Based on the above discussion, there is a conflict of norms between Presidential Regulation No. 13 of 2018 and Article 18 of the Commercial Code (KUHD) as well as Article 1618 of the Civil Code (KUHP). Meanwhile, KUHP and KUHD, in terms of the legislative hierarchy, hold a higher position than a Presidential Regulation. Therefore, the author is interested in conducting research and writing a dissertation titled *"Determination Of Beneficial Ownership In A Partnership Firm From The Perspective Of Joint And Several Liability Of Partners"*.

B. Problem Formulation

Based on the discussion above, the author formulates the problem as follow: How is the liability of partners in a general partnership determined after the implementation of the obligation to identify the beneficial owner for corporations?

C. Research Methodology

1. Type of Research

Legal research generally employs normative juridical and empirical juridical approaches. The normative juridical approach refers not only to legal norms found in statutory regulations and judicial decisions, but also to legal norms existing in society.

2. Research Approach

This research applies a normative juridical research method, which is focused on examining the application of legal principles or norms in positive law. The problem approach used in this research consists of the Statute Approach and the Conceptual Approach (Ali, 2022).

The Statute Approach is also often referred to as the normative juridical approach. Essentially, this approach is carried out by examining all statutory regulations relevant to the legal issue at hand. Meanwhile, the term “Concept” has many meanings. In the sense relevant here, a concept refers to abstract elements that represent classes of phenomena within a particular field of study, which sometimes refer to universal matters that have been abstracted from particular instances.

This research examines the regulation of partnerships (firma) as provided in:

- a. The Indonesian Civil Code
- b. The Indonesian Commercial Code
- c. Presidential Regulation No. 13 of 2018 concerning the Application of the Principle of Identifying Beneficial Owners of Corporations for the Prevention and Eradication of Money Laundering and Terrorism Financing
- d. Regulation of the Minister of Law and Human Rights No. 17 of 2018 concerning the Registration of Limited Partnerships, General Partnerships, and Civil Partnerships
- e. Regulation of the Minister of Law and Human Rights No. 15 of 2019 concerning the Procedures for Implementing the Principle of Identifying Beneficial Owners of Corporations

D. Results and Discussion

1. Definition

A Beneficial Owner is an individual who has the authority to appoint or dismiss the board of directors and has the ability to control the Corporation (Article 1 point 2, Permenkumham No. 21/2019). This applies to corporations defined as an organized group of people and/or assets (Article 1 point 1, Permenkumham No. 21/2019).

Meanwhile, the definition of a Corporation in this context is an organized group of people and/or assets, whether it has legal entity status or not. In a corporation with legal entity status, there is a separation of

responsibility between the company's organs and the corporation itself. In a limited liability company (Perseroan Terbatas), the shareholders' liability is limited to the amount of shares they have paid into the company. In contrast, in a general partnership (firma), under the provisions of Article 18 of the Civil Code, the partners bear joint and several liability. A general partnership (firma) is defined as a partnership that continuously conducts business, where each partner is entitled to act on behalf of the partnership.

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A general partnership (firma) is a partnership between two or more people under a common name to conduct a business, usually formed by individuals who possess the same skills or profession. Each partner bears unlimited liability, and the profits or losses are shared collectively. The risks of this business entity are borne jointly by the partners or founders, including with their personal assets (joint and several liability) ((Siloendae & Ilyas, 2011).

Furthermore, the concept of joint and several liability (*tanggung renteng*) means that each partner is fully and collectively responsible for all of the debts and obligations, which is referred to as personal liability for the whole. Personal liability of the partners, or overall liability, implies that in addition to the firm's assets, the personal assets of each founding partner can also be used to fulfill the firm's obligations to third parties (Asyahdie, 2005).

Each partner is jointly and severally liable for all obligations of the firm, including debts arising from the firm's activities. This means that if one partner cannot fulfill the obligations, the other partners must bear the responsibility to cover them. Furthermore, any partner can be held accountable for actions taken by other partners in the course of the firm's business. Conversely, creditors may demand payment of debts from any one of the partners, not just from the partner directly involved in the transaction.

Factually is that a general partnership (firma) is intended for founders who desire freedom in determining the amount of capital (*inbreng*) contributed to the company and in jointly managing the company, as well as sharing joint responsibility for the company and its obligations. This is different from a situation where some partners are only liable up to the amount of their capital contribution; in that case, they would typically choose to establish a limited partnership (CV) or a limited liability company (PT) with legal entity status.

A firma is a type of business entity that is not a legal entity, established by an agreement between two or more people who agree to conduct business

together under a common name and with unlimited liability. Thus, the existence of a firma is highly dependent on the agreement between the partners, making the principle of freedom of contract directly applicable to its formation and regulation.

The principle of freedom of contract allows the partners to arrange the firm's structure and management flexibly; however, it does not eliminate joint and several liability to third parties (Fuady, 2019) as the firm is still subject to Article 18 of the Commercial Code (KUHD).

Limitations on freedom of contract can be found in the requirements for a valid agreement concerning a lawful cause as stipulated in Article 1337 of the Civil Code (KUHP), which states that "a cause is prohibited if it is prohibited by law, or if it is contrary to public decency or public order. The principle of freedom of contract means that the parties are free to make a contract and determine its contents, as long as it meets the following requirements:

- a. meets the requirements of a valid contract,
- b. is not prohibited by law,
- c. is in accordance with prevailing customs, and
- d. is carried out in good faith.

According to Subekti, the establishment of a firm as a civil partnership "can be carried out very freely by the parties, as long as it is not contrary to the law, public order, or public morals." This means that the partners are free to draw up the contents of the firm's deed of establishment according to their needs and agreements, including matters concerning:

- a. capital contributions,
- b. profit and loss sharing,
- c. appointment of managing partners,
- d. entry and withdrawal of partners, and
- e. the duration and purpose of the firm.

In the Indonesian legal system, the obligation to identify the beneficial owner has become an essential part of national efforts to create transparency and accountability in business entities. This obligation is established through Presidential Regulation No. 13 of 2018 on the Application of the Principle of Knowing the Beneficial Owners of Corporations, which applies to all forms of corporations, including partnerships (firma). This regulation is part of Indonesia's commitment to preventing money laundering, terrorism financing, and various cross-border financial crimes that often use legal entities as a legal shield to conceal the identity of perpetrators or assets derived from crimes.

A beneficial owner is an individual who exercises direct or indirect control over a corporation. They may not necessarily be formally registered as a shareholder or manager but hold significant influence over the company's policies or strategic decisions. This concept is important to ensure that the parties who truly benefit from business activities can be identified. In the legal and regulatory context, a beneficial owner is defined as a person who owns or controls more than a certain percentage of the company's shares, voting rights, or assets, depending on the applicable regulations in each country. The purpose of this regulation is to identify the party responsible for the company's operations, especially where the legal structure may be complex or non-transparent.

To ensure the implementation of identifying the beneficial owner, the Ministry of Law and Human Rights issued Regulation No. 15 of 2019 concerning the Procedures for Implementing the Application of the Principle of

Knowing the Beneficial Owner of a Corporation. Article 2 of this Ministerial Regulation states:

- (1) Every Corporation is required to identify the Beneficial Owner of the Corporation.
- (2) The Corporations referred to in paragraph (1) include:
 - a. limited liability companies (perseroan terbatas);
 - b. foundations (yayasan);
 - c. associations (perkumpulan);
 - d. cooperatives (koperasi);
 - e. limited partnerships (persekutuan komanditer); and
 - f. general partnerships (persekutuan firma).
- (3) The determination of the Beneficial Owner of a Corporation as referred to in paragraph (1) shall be carried out by the Corporation through the implementation of the principle of knowing the Beneficial Owner of the Corporation.
- (4) The principle of knowing the Beneficial Owner of a Corporation as referred to in paragraph (3) includes the identification and verification of the Beneficial Owner of the Corporation.
- (5) The identification and verification of the Beneficial Owner of a Corporation as referred to in paragraph (4) are set forth in Annex I, which is an integral part of this Ministerial Regulation.

Although not a legal entity, a general partnership (firma) is classified as a "corporation" as regulated under Presidential Regulation No. 13 of 2018. Article 1 paragraph (1) of this Presidential Regulation states that a corporation includes: limited liability companies, foundations, cooperatives, civil partnerships, general partnerships (firma), and other forms of business entities. Accordingly, a general partnership (firma) is obligated to:

- 1) Identify the beneficial owner of the partnership.
- 2) Report the beneficial owner information to the Ministry of Law and Human Rights through the AHU Online system.
- 3) Update this information regularly or whenever there are changes.

A beneficial owner is defined as an individual who truly owns or controls the corporation, either directly or indirectly, and benefits from the corporation. In the case of a general partnership (firma), the active partners who manage the operations of the partnership and receive the profits are usually designated as the beneficial owners. They hold a dominant position in decision-making and control of business activities, thus falling within the definition of a beneficial owner as referred to in the applicable laws and regulations.

Furthermore, the obligation to submit the Beneficial Owner information for a corporation is regulated in Articles 7 through 10 of the Regulation of the Minister of Law and Human Rights No. 15 of 2019 concerning the Procedures for Implementing the Application of the Principle of Knowing the Beneficial Owner of a Corporation. The provisions concerning the submission of Beneficial Owner information during the establishment process are regulated in Article 7, which states:

- (1) The submission of Beneficial Owner information of the Corporation at the time of application for the establishment, registration, and/or approval of the Corporation as referred to in Article 4 paragraph (2) letter a shall be carried out by a Notary.

- (2) The submission of Beneficial Owner information of the Corporation as referred to in paragraph (1) shall be carried out electronically through AHU Online.
- (3) The submission of Beneficial Owner information of the Corporation as referred to in paragraph (1) is listed in Annex I, which is an integral part of this Ministerial Regulation.

The obligation to submit beneficial owner information while the Corporation is conducting its business is regulated under Article 8, while the submission of information on changes in the beneficial owner is regulated in Article 9, which states that:

- (1) Submission of changes to the Beneficial Owner information of the Corporation shall be carried out by:
 - a. notary;
 - b. the founder or management of the Corporation; or
 - c. another party authorized by the founder or management of the Corporation.
- (2) The submission of changes to the Beneficial Owner information of the Corporation as referred to in paragraph (1) shall be carried out when:
 - a. there is an addition of Beneficial Owner information of the Corporation; and/or
 - b. there is a removal of Beneficial Owner information of the Corporation.
- (3) The submission of changes to the Beneficial Owner information of the Corporation as referred to in paragraph (1) must be made no later than 3 (three) working days after the change in the Beneficial Owner information of the Corporation occurs.
- (4) The submission of changes to the Beneficial Owner information of the Corporation as referred to in paragraph (1) shall be conducted electronically through AHU Online.

Article 9 of Presidential Regulation No. 13 of 2018 concerning the Application of the Principle of Knowing the Beneficial Owner of Corporations for the Prevention and Eradication of Money Laundering and Terrorism Financing stipulates that the Beneficial Owner of a limited partnership (*persekutuan komanditer*) is an individual who meets the following criteria:

- a. owns capital and/or contributed assets exceeding 25% (twenty-five percent) as stated in the deed of establishment of the general partnership (*firma*);
- b. receives more than 25% (twenty-five percent) of the profits or income earned by the general partnership (*firma*) per year;
- c. has the authority or power to influence or control the general partnership (*firma*) without needing authorization from any party;
- d. receives benefits from the general partnership (*firma*); and/or
- e. is the true owner of the funds for the capital in the general partnership (*firma*).

The identification of a beneficial owner in a general partnership (*firma*) points toward recognizing one or more individuals as the parties who have substantial control over the firm's decisions or operational direction. This opens the possibility that liability would no longer necessarily be distributed equally among all partners but could be specifically directed at the beneficial owner, especially in cases of legal violations or breach of contract. This raises the question: will all partners remain jointly and severally liable, or only those listed as beneficial owners?

Although a general partnership (*firma*) is not a legal entity, the principle of piercing the corporate veil is now beginning to be applied to penetrate the firm's formal structure and identify who truly controls the business entity. With the identification of the beneficial owner, the state or third parties (such as creditors or law enforcement agencies) have a stronger basis for holding specific individuals directly accountable, even beyond the internal agreements made between the partners.

With the possibility of designating specific individuals as beneficial owners, the principle of joint and several liability which originally applied collectively to all partners may become distorted. In practice, legal and financial liability could be focused more on the beneficial owner, especially in terms of control and being the primary recipient of the firm's business profits. This can lead to an imbalance in liability among the partners, particularly if the roles and risks have not been clearly allocated in the partnership agreement.

Regulations concerning beneficial owners are part of public law products intended to prevent the misuse of business entities for illegal purposes (such as money laundering and terrorism financing). However, in a general partnership (*firma*), the relationship among the partners is contractual and governed by private law. When the state requires the designation of beneficial owners in a non-corporate structure like a firm, tension arises between the sovereignty of private agreements and the public obligation for transparency. This disharmony can create legal uncertainty for business actors.

Enterprises (MSMEs) because of their simple and flexible structure. The obligation to identify the beneficial owner can burden MSMEs with additional administrative requirements and also raise concerns over legal liability that may be directed individually and personally. This can hinder MSMEs' access to financing and business development due to the emergence of new legal risks.

In terms of determining the beneficial owner, it can be understood that each partner is entitled to a portion of the profits and bears a proportion of the losses according to the capital contributed. However, under a general partnership (*firma*), it is emphasized that each partner bears joint and several liability for all the obligations of the partnership. The allocation of profits and losses in a general partnership can be determined by agreement among the partners. This is usually set out in the partnership agreement, so that each partner's rights and responsibilities related to the sharing of business results are clearly defined.

The identification of beneficial owners in a general partnership (*firma*) carries significant legal consequences. First, it eliminates the possibility for partners to conceal their identity and involvement in the partnership, which was previously feasible due to the informal and flexible nature of partnership formation. Second, this transparency strengthens the legal position of third parties, including creditors and law enforcement authorities, in tracing the responsibility and involvement of specific individuals in the firm's activities, especially in the event of alleged legal violations or financial crimes. Third, the identification of beneficial owners provides a crucial foundation for applying the principle of piercing the corporate veil a legal doctrine that allows courts to hold individuals personally liable behind a business entity. Once the partners who act as beneficial owners are publicly identified, establishing legal responsibility becomes much simpler, since the ownership and control of the firm have been officially documented and reported. Fourth, it also blurs the application of Article 18 of the Commercial Code concerning the joint and several liability of the partners, because the law now designates a beneficial

owner. Thus, it is logical that this beneficial owner should also bear the responsibility if the firm causes any loss or engages in unlawful conduct.

It can be concluded that designating a partner as the Beneficial Owner entails the following legal consequences:

1. **Clearer and More Transparent Liability**
Partners can no longer hide behind the informal structure of the firm. Their identities are officially recorded in state data and can be used as evidence in legal proceedings.
2. **Strengthened Application of the Piercing the Corporate Veil Principle**
In cases of misuse of the firm for unlawful purposes, authorities can easily trace and pierce the legal veil to hold the beneficial owner personally liable.
3. **Sanctions and Legal Enforcement** If the firm fails to identify or report its beneficial owner, administrative sanctions may be imposed, and partners may face criminal liability if criminal acts such as money laundering occur.
4. **Blurred Liability Among Partners** the liability among partners in a general partnership (*firma*) becomes unclear between the beneficial owner and the other partners. This distorts the provisions of Article 18 of the Commercial Code, as the originally joint and several liability of all partners could shift toward the personal liability of the beneficial owner.

E. Conclusion And Recommendation

1. Conclusion

The obligation to identify the beneficial owner in a general partnership (*firma*) is a significant step toward achieving transparent and responsible business governance. Firms, which previously operated with minimal oversight, are now required to disclose who truly controls and benefits from their business activities. This designation has a crucial impact on the legal liability of the partners, which is no longer just administrative in nature, but also potentially forms the basis for civil and criminal accountability. Therefore, it is important for general partnership actors to properly understand and implement this obligation to avoid legal risks in the future. However, behind the benefit of designating the beneficial owner in a firm lies an inconsistency with the principle of joint and several liability of the partners, as regulated under Article 18 of the Commercial Code (*Kitab Undang-Undang Hukum Dagang*), which has long served as the legal basis for the establishment of firms. Even though the procedures for establishing a firm have been regulated by the Minister of Law and Human Rights Regulation No. 17 of 2018 concerning the Registration of Limited Partnerships, General Partnerships, and Civil Partnerships, this regulation does not address the issue of partner liability in the firm. Meanwhile, the Commercial Code has not been revoked and can still be interpreted as being in force for firms, resulting in legal uncertainty regarding the liability of the partners.

2. Recommendation

The obligation to identify the beneficial owner should be accompanied by a corresponding reform at the statutory level to revise the regulations governing the establishment of a firm and the provisions on partner liability. Under this reform, the beneficial owner would bear liability externally, while internally, the provisions would follow the same principles as Article

18 of the Commercial Code (KUHD). It is hoped that the House of Representatives and the Government will prioritize the acceleration of the drafting and enactment of a law on unincorporated business entities, which would specifically regulate general partnerships (*firma*). Harmonization between private law and public law is needed to prevent conflicts of norms and to ensure legal certainty as well as balanced protection for firm partners, especially in the context of MSMEs.

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