

Beneficial Ownership in the Perspective of Islamic Criminal Law

Muhammad Wahyu Rizky Zainal¹, Nur Azisa²,
Muhammad Arfin Hamid³, & Ahsan Yunus⁴

Abstract

Beneficial ownership has become crucial in handling economic crimes like money laundering, tax evasion, and corruption. Regulations in Indonesia, such as Presidential Regulation No. 13/2018, require beneficial ownership reporting. However, its implementation still faces various challenges, including low company compliance and the use of shell companies to hide assets. From the perspective of Islamic criminal law, these acts can be categorized as *jarimah ta'zir*, especially when they involve elements of deception (*tadlis*) and uncertainty (*gharar*), which contradict *maqasid al-shariah* principles. This research explores Islamic law's ideal criminal liability model for beneficial owners. Through a normative-juridical approach, this research finds that Islamic law offers the principles of *ta'zir*, *hisbah*, and restorative justice in dealing with economic crimes. The concept of *hisbah*, as a preventive supervisory mechanism, and sharia auditing can effectively prevent asset misappropriation. Integrating sharia principles with national regulations is expected to strengthen the Indonesian legal system and create economic justice. The results show that applying Islamic law-based criminal liability models emphasizes punishment, restoration, and prevention. Therefore, combining *ta'zir* and restorative justice principles can be a comprehensive alternative to prevent future economic crimes while strengthening the financial system's integrity.

Keywords: Beneficial ownership; Islamic criminal law; *jarimah ta'zir*; *gharar* and *tadlis*; restorative justice; *hisbah*; money laundering; asset transparency.

Introduction

The phenomenon of beneficial ownership has become an important topic in various countries, especially in preventing economic crimes such as money laundering, tax evasion, and corruption. This phenomenon became a global concern, especially after the Panama Paper scandal was revealed in 2016. The scandal involved more than 11 million documents from the law firm Mossack Fonseca in Panama. It also revealed how wealthy and influential individuals, including politicians, celebrities and multinational corporations, hide their assets and wealth

¹ Faculty of Law, Hasanuddin University. Email: muhammadwahyurizkyzainal@gmail.com

² Dr. Nur Azisa, S.H., M.H., is a leading academic in the field of criminal law who currently serves as the Head of the Criminal Law Department at the Faculty of Law, Hasanuddin University (Unhas).. Email: nur.azisa@unhas.ac.id

³ Prof. Muhammad Arfin Hamid is a leading academic in the field of Islamic Economic Law with a position as Professor and Vice Rector I at Makassar State Islamic University. Email: arfin.hamid@yahoo.com

⁴ Ahsan Yunus is a Lecturer in Constitutional Law and Administrative Law at one of Indonesia's higher education institutions. Email: ahsanyunus@unhas.ac.id

through shell companies in tax haven jurisdictions. They utilize anonymous ownership structures and offshore companies to hide their proper control and ownership, evade taxes, launder money, or protect assets from legal sanctions (Fenwick & Vermeulen, 2016, pp. 1–2). These revelations highlight how shell companies are becoming a tool for corporations and individuals to manipulate the global financial system for personal gain. Several jurisdictions, such as the British Virgin Islands, Panama, and Seychelles, are cited as the leading destinations for shell company operations. These companies are used to disguise the origin of funds, facilitate money laundering practices, and avoid international tax supervision (Wicaksono et al., 2021, p. 377)

Like many other countries, Indonesia faces serious challenges in effectively detecting and regulating beneficial ownership. One of the biggest obstacles is the lack of transparency in corporate ownership structures. Money laundering and tax evasion cases involving complex ownership structures threaten the integrity of the country's markets and legal system. Often, beneficial owners hide behind shell companies operating across borders, making it difficult for authorities to identify the real owners and how they control the assets. Such schemes have been used to launder money and evade taxes, threatening the financial system's integrity and creating significant risks for law enforcement. Although Presidential Regulation No. 13/2018 has regulated the obligation of companies to report beneficial owner information, compliance is still low. Of Indonesia's approximately 2.2 million companies, only 22.65% have reported their beneficial ownership ultimately (Baharudin & Kartika, 2023, p. 107). This problem shows that criminals still have loopholes to utilize corporate structures to hide assets and avoid legal sanctions.

The beneficial ownership phenomenon is closely related to money laundering, which is the process of disguising the origins of illegal assets to make them appear legitimate in the eyes of the law. Beneficial owners often take advantage of legal loopholes and lack of transparency to launder proceeds of crime, such as corruption and illegal trade. Hidden ownership structures allow them to control assets and funds without being detected by authorities. This complicates law enforcement and undermines market integrity (Yamnenko & Savenkova, 2023, p. 335). In addition, tax avoidance by utilizing tax haven jurisdictions reduces the country's tax revenue, thus hindering economic development and stability (Aninta Sagitaria, 2022, pp. 186–188).

Transparency of beneficial ownership is a key aspect in combating economic crime. Financial Action Task Force (FATF) recommendations and international regulations emphasize the importance of accurate and timely information on beneficial ownership to support law enforcement and financial crime prevention (Sihombing, 2023, pp. 208–209). This policy allows authorities to monitor and prevent the misuse of companies by criminals. In addition, transparency increases investor confidence and strengthens corporate governance, promoting sustainable economic growth.

In the global law and economy context, the inability to identify and monitor beneficial owners has become a serious challenge. Various countries have tightened

regulations by creating beneficial ownership registers accessible to the public and legal authorities (Yamnenko & Savenkova, 2023). However, implementing these policies still encounters various obstacles, such as resistance from companies and individuals who want to maintain the confidentiality of their assets. This situation shows that strengthening the legal framework and international cooperation is necessary to increase transparency and prevent economic crimes in the future.

This makes beneficial ownership transparency an important tool in the fight against money laundering and tax evasion and enhances market integrity and investor confidence. Strong and effective regulation can ensure that companies and individuals engaged in economic activity comply with transparency principles, strengthening corporate governance and reducing the risk of misuse of assets for illicit purposes (Douglas & Layard, 2024, pp. 74–76). Without adequate transparency, beneficial ownership remains a significant challenge in economic law enforcement in Indonesia and internationally.

In the context of law enforcement and crime prevention, Islamic criminal law offers unique and relevant principles to tackle the issue of beneficial ownership. Islamic criminal law offers a different approach from positive law and puts forward strong principles of justice, openness, and honesty. The urgency of analyzing beneficial ownership from the perspective of Islamic criminal law is very relevant because Islam emphasizes honesty, justice, and openness in every social and economic activity. Hidden ownership structures, such as those often found in beneficial ownership practices, potentially violate the basic principles of sharia that prohibit gharar (uncertainty) and tadlis (deception). This principle is explained in the work of Abdul Wahhab Khallaf, that Islam prohibits activities that contain elements of fraud and manipulation that can harm other parties or society (Khallaf, 2003)

Islamic criminal law has a clear objective in safeguarding the five main aspects of life, including the protection of property or *hifz al-mal*. In this context, any economic activity that hides actual ownership or is used for illegal purposes, such as money laundering and tax evasion, is contrary to *maqasid al-shariah*. Marzuki, in his *Introduction to the Study of Islamic Law*, states that Islamic law seeks to protect wealth from unjust acts that can destroy social and economic structures (Marzuki, 2017). This confirms that non-transparent beneficial ownership can be considered a crime because it destroys a fair economic order. In addition, Islam emphasizes the importance of *hisbah* as a form of community supervision to ensure that every economic activity runs by sharia. The concept of *hisbah* functions as a preventive mechanism, which is different from the positive law approach that tends to be repressive (Nasution et al., 2019, p. 19). The comparison between Islamic criminal law and human-made criminal law, according to Muda et al., can be described in the table below:

Table1. Comparison of Islamic Criminal Law and Man-made Criminal Law

No.	Aspects	Islamic Criminal Law	Man-made Criminal Law
-----	---------	----------------------	-----------------------

1	Source of Law	Derived from Allah's revelation (the Qur'an) and the Sunnah of the Prophet. It cannot be changed.	Created by humans based on reason and social, political and cultural needs.
2	An approach to morals and morality	It is based on morality and aims to maintain spiritual values.	Tends to separate law from morality and is more pragmatic in its application.
3	Purpose of Law	Protecting the maqasid al-shariah: religion, soul, honour, mind, and property.	Creates social order and can change according to the needs of society.
4	Punishment Characteristics	Punishments are strictly defined in the Hudud, Qisas and Ta'zir categories, aiming for deterrence and justice.	Penalties are flexible and can be changed by legislators according to the social and political context.
5	Universality	Universal, relevant in all times, places and contexts.	It is local and contextual, different in each country or region.

(Source: Muda et al., 2024)

Therefore, Islam encourages transparency and openness in economic transactions as a form of social and moral responsibility while preventing the abuse of economic power.

Based on the above, legal research on beneficial ownership from the perspective of Islamic criminal law has great significance, given that most current research focuses on positive law and international regulations, such as recommendations from FATF. By introducing a Sharia law-based analysis, this research will provide a new and original perspective in understanding the beneficial ownership phenomenon and finding solutions by Islamic principles. In addition, this research can also contribute to the development of public policies in Indonesia that are in line with Sharia values. Practically, this research is expected to offer a model of criminal liability for beneficial owners based on Islamic law principles. In Islamic law, criminal liability is determined based on intent (*mens rea*) and the act's impact. Therefore, this research will explore:

1. What is the concept of beneficial ownership in Indonesian positive law, and what are its enforcement challenges?
2. Can the practice of beneficial ownership be categorized as a criminal act from the perspective of Islamic criminal law?
3. What is the ideal criminal liability model for beneficial owners in the Islamic legal system?

This research aims to identify the concept of beneficial ownership from Islamic criminal law's perspective and evaluate the extent to which the practice can be considered a criminal offence based on Sharia principles. In addition, this research aims to develop an ideal criminal liability model for beneficial owners in the Islamic legal system by integrating the principles of ta'zir, hisbah and restorative justice. Through a normative-juridical approach, this research also explores the relevance of Islamic law principles in strengthening Indonesia's national regulations related to beneficial ownership transparency to contribute to efforts to prevent economic crimes, such as money laundering, tax evasion and corruption. The ultimate goal is to provide policy recommendations based on Islamic justice values relevant to the national legal context.

Research Methods

As explained by Siddiq Armia, selecting appropriate research methods and approaches is crucial to ensure the validity of the findings (Armia, 2022, pp. 1–12). This research uses a normative-juridical approach, which focuses on the analysis of legislation, legal literature, and Islamic legal principles related to beneficial ownership. The normative-juridical approach was chosen because it aims to explore the concept of beneficial ownership in Indonesian positive law and Islamic criminal law and formulate a relevant criminal liability model. As described by Muhaimin, normative research is a method that emphasizes the analysis of legal documents as a basis for testing the truth of the theory and application of rules in concrete cases (Muhaimin, 2020, pp. 45–54)

This descriptive-analytical research provides a thorough explanation of the concept of beneficial ownership and then analyzes it from the perspective of Islamic criminal law. Several approaches are used in this research, namely:

- **Legislative Approach**

In this approach, the research will study related regulations, such as Law No. 8/2010 on the Prevention and Eradication of Money Laundering Crimes and Presidential Regulation No. 13/2018 on beneficial ownership reporting obligations. The analysis will focus on the effectiveness of the regulations in creating transparency and preventing asset misuse.

- **Conceptual Approach**

This approach explores fundamental concepts in Islamic criminal law, such as jarimah (criminal offence), gharar (uncertainty) and tadlis (deception). In addition, this research examines maqasid al-shariah, specifically hifz al-mal (protection of wealth), which is the basis for assessing whether beneficial ownership practices violate Sharia principles.

This research uses secondary data as the main source. The data used includes primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations, such as Law No. 8 of 2010 and Presidential Regulation No. 13 of 2018, as well as international recommendations from the Financial Action Task Force (FATF). Secondary legal materials include classical and contemporary Islamic legal literature, such as the

works of Abdul Wahhab Khallaf and Marzuki, to understand relevant sharia principles, and journals and scientific articles that discuss the relationship between beneficial ownership and economic crimes in the context of positive law and Islamic law. Tertiary legal materials include legal dictionaries, encyclopedias, and other supporting references that provide further understanding of the terms and concepts discussed in this research.

Data will be collected through desk study and legal document analysis. The desk study involves a review of legal literature and fiqh books related to the concept of criminal responsibility. Document analysis will include evaluating the implementation of beneficial ownership regulations in Indonesia and comparing them with those of other countries. A qualitative approach will explore how Islamic criminal law principles can be integrated into existing regulations.

This research is normative and prescriptive, as it seeks to provide policy recommendations that can strengthen beneficial ownership regulation in Indonesia. Through a comparative approach and analysis of Islamic legal principles, this research can offer a more effective solution in ensuring transparency and preventing financial crime, which is in line with the objectives of Islamic law and national policy.

Results and Discussion

1. Beneficial Ownership Concept in Positive Law and Enforcement Challenges

Beneficial ownership refers to individuals who acquire the economic benefits or complete control of a particular asset or entity despite not being the legal or administrative owner. In practice, beneficial owners enjoy complete control over entities without being formally registered as owners. In Indonesia, this concept is regulated in the Presidential Regulation of the Republic of Indonesia Number 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficial Owners, which requires every corporation to identify and report their beneficial owners to prevent criminal acts such as money laundering and terrorism financing (TPPT) (Aninta Sagitaria, 2022)

Implementing the beneficial ownership principle in Indonesia is part of a global effort led by the Financial Action Task Force (FATF). This international organization formulates standards and policies to prevent financial crimes. FATF emphasizes that beneficial owners are not always identical to legal owners on paper but rather individuals who obtain direct or indirect control and benefits from an asset or company (Sihombing, 2023). In this context, the application of transparency on beneficial owners aims to prevent corporations from becoming a means of money laundering, where illegal assets are mixed with legal assets and disguised to avoid detection (Agustianto, 2022).

However, although Indonesia has adopted most of the FATF recommendations, implementing this regulation still faces various challenges. One of them is the low compliance of corporations in reporting their beneficial owners. Data from the Ministry of Law and Human Rights shows that of the 2.2 million

corporations registered in Indonesia, only 22.65% have reported their beneficial owners (Baharudin & Kartika, 2023, p. 107). This shows that although regulations have been issued, there is still resistance and difficulty in ensuring corporate compliance.

Furthermore, one of the main problems in enforcing beneficial ownership regulations is the complexity of corporate ownership structures, where shell companies and entities with multiple ownership structures are often used to hide the identity of beneficial owners. Shell companies are established without any actual operational activities and only serve as vehicles to divert or hide the proceeds of crime (Yundira & Tiopan, 2023). In some cases, as revealed in PPATK reports, shell companies in Indonesia have been used to disguise the proceeds of corruption and money laundering involving public officials and large corporations (Agustianto, 2022). Cases such as the use of shell companies by the former Minister of Maritime Affairs and Fisheries in the lobster export license bribery case highlight how corporations can be misused for illegal purposes.

In addition, there are coordination challenges between law enforcement agencies and regulators in ensuring beneficial ownership transparency. Although the Financial Services Authority (OJK) and PPATK have worked together to implement this principle, coordination limitations and data discrepancies often hinder effective law enforcement (Novariza, 2021). OJK and PPATK report that suspicious fund flows in the financial sector often cannot be adequately traced due to the lack of accurate and complete information on the beneficial owners of these assets.

In addition to coordination, regulatory gaps and lack of harmonization of international laws also complicate law enforcement efforts. Although Indonesia has adopted the FATF recommendations, implementation at the level of presidential laws and regulations is still limited, which allows beneficial owners to take advantage of legal loopholes to hide ownership or avoid reporting obligations (Novariza, 2021). This is compounded by resistance from influential companies or individuals who use political influence to avoid reporting obligations. The use of nominees to disguise asset ownership is also a common tactic in money laundering cases, where beneficial owners use someone else's name to avoid detection (Baharudin & Kartika, 2023).

The lack of transparency over beneficial ownership seriously impacts preventing and combating financial crimes. Without transparency, law enforcement will find it difficult to trace the flow of funds and identify beneficial owners, which hinders asset recovery and law enforcement. In addition, the lack of transparency also negatively impacts the investment market, where investors' confidence is diminished as they cannot be sure who controls and benefits from the companies they invest in.

To overcome this challenge, several strategic steps are needed. Strengthening regulations must be made by adding stricter sanctions for corporations not complying with their beneficial owner-reporting obligations. In addition, improved coordination between institutions and integration of information systems are needed to ensure fast and accurate access to beneficial owner data. Socialization and

education for corporations are also important in increasing awareness of the importance of transparency in business and investment management.

2. Analysis of Beneficial Ownership as a Criminal Act in Islamic Criminal Law

The practice of beneficial ownership is often used to hide the identity of the valid owner of an asset or company, especially in the context of evading taxes, laundering money, or facilitating other criminal acts. In Islamic law, actions that violate the principles of fairness and transparency are prohibited and can also be categorized as criminal acts or *jarimah*. According to Muhammad Nur (2020), *jarimah* in Islamic criminal law is grouped into three categories: *hudud*, *qisas-diyat*, and *ta'zir* (Nur, 2020). *Hudud* covers crimes for which sanctions have been prescribed in the Qur'an or Hadith, such as theft and adultery. *Qisas-diyat* relates to crimes involving revenge or payment of compensation, such as murder. However, since beneficial ownership is not part of *hudud* or *qisas-diyat*, acts that abuse it can be categorized as *ta'zir*. In the context of Islamic law, *ta'zir* includes any form of offence whose punishment is left to the authority of the judge or ruler, depending on the degree of guilt and its impact on society (Junaidy et al., 2020). Therefore, if a beneficial owner intentionally hides his ownership for unlawful purposes, such as evading taxes or laundering money, he may be subject to *ta'zir* sanctions. The punishment can be fines, imprisonment, or social sanctions, according to the principles of justice stipulated in Sharia.

The principles of *gharar* and *tadlis* are particularly relevant in assessing beneficial ownership practices. *Gharar* refers to uncertainty in a transaction that can harm one of the parties. In Islamic law, *gharar* is a prohibited form of speculation, as it creates risk and uncertainty for the parties involved (Nasution et al., 2019). In the practice of beneficial ownership, uncertainty arises when the identity of the actual beneficial owner is hidden. This poses a risk to creditors or government authorities and can harm third parties with an interest in the transaction. In addition, if this act of concealing ownership is done with the intention of deceiving, then it can also be categorized as *tadlis* or fraud. *Tadlis* is a serious offence in Islamic mullah, as it contradicts the principles of honesty and transparency that must be upheld in every transaction (Ramadan, 1986).

In addition to violating the principle of justice, non-transparent beneficial ownership practices also violate the objectives of sharia or *maqasid al-shariah*. The main objectives of Sharia include the protection of religion (*din*), soul (*nafs*), intellect (*aql*), offspring (*nasal*), and property (*mal*). The practice of beneficial ownership used to launder money, avoid taxes, or hide the proceeds of crime violates the principle of *hifz al-mal* or the protection of property (Kisni, 2015). Assets that should be used for the public interest are misused for private interests through illegal actions. From the *Maqasid al-shariah* perspective, property protection is one of the main pillars that must be maintained to create economic and social justice.

In order to prevent the abuse of beneficial ownership, hisbah can be applied as a supervisory mechanism in Islamic law. Hisbah ensures that every individual and entity complies with Sharia norms and does not commit violations that harm society (Nasution et al., 2019). The application of hisbah in this context can be in the form of government policies to increase ownership transparency and reporting obligations for companies. Thus, hisbah can be an effective preventive tool to detect and act on violations early on.

In Islamic law, intention (*mens rea*) determines criminal liability. As emphasized by Abdul Wahhab Khallaf, every action must be judged not only in terms of the physical act but also from the intention behind the act (Khallaf, 2003). Suppose a beneficial owner intentionally hides his assets for illegitimate purposes, such as evading tax obligations or laundering money. In that case, this malicious intent becomes a significant factor in determining criminal liability. Perpetrators proven to have malicious intent may be subject to *ta'zir* penalties commensurate with the offence level and its impact on society. The *ta'zir* sanctions that can be applied to beneficial ownership cases vary widely, ranging from financial fines to imprisonment or social sanctions. Punishment in the form of fines aims to recover the losses suffered by the state or society due to the act. Social sanctions, such as a ban on conducting business transactions for a certain period, aim to provide a deterrent effect and prevent the perpetrator from repeating his actions. In addition, prison sentences can also be applied to offenders involved in serious offences as a form of deterrence against potential future crimes (Nur, 2020).

Therefore, beneficial ownership from the perspective of Islamic criminal law suggests that this act can be categorized as *jarimah ta'zir* if used unlawfully. Applying appropriate sanctions and effective oversight mechanisms is essential to prevent abuse and ensure economic and social justice for society. The integration between the principles of Islamic law and modern regulations is expected to create a more transparent and fair system for managing beneficial ownership in Indonesia.

3. Ideal Criminal Liability Model for Beneficial Owners in Islamic Legal System

In the Islamic criminal law system, criminal responsibility for an offender is highly dependent on his status and capacity as a *mukallaf*, i.e., someone considered to be of sound mind and understand the rules of *Shara'*. Only those with intent (*iradah*) and the ability to choose freely (*ikhtiar*) can be held criminally responsible. In beneficial ownership, a beneficial owner can be held liable if he consciously uses his position to hide or utilize assets illegally, such as in money laundering or tax evasion (Dr Fitri Wahyuni, S.H., 2018). This accountability strongly emphasizes the principles of *iradah* (will) and *ikhtiar* (free choice). The actions taken by the perpetrator must be based on intent and must not be under duress. This means that if a beneficial owner realizes that his involvement in the ownership structure is aimed at disguising assets with unlawful intent, he is eligible for sanctions. Islamic law emphasizes that liability cannot be imposed without the element of intent because sin and punishment can only be given if the perpetrator is fully aware of his actions (Junaidy et al., 2020).

In the case of economic crimes involving beneficial ownership, the application of ta'zir punishment becomes very relevant. Unlike hudud or qisas penalties fixed and determined by Nash, ta'zir penalties are flexible and left to the judge's discretion. The ta'zir punishment, in this case, could be in the form of a financial fine, prohibition from holding public office, or restriction of access to managing company assets. The judge can determine this form of punishment based on how much harm is caused and the intention behind the act (Tindak et al., n.d.). In addition to ta'zir punishment, hisbah as a public oversight mechanism is important in preventing economic crime. In Islamic history, hisbah served as an institution that ensured fairness in economic transactions and prevented fraud in the market. Today, hisbah can be adapted in the form of audit and regulatory oversight, where financial authorities and regulators ensure that every business entity honestly discloses its beneficial owners. This transparency is important to prevent money laundering and tax evasion practices, often linked to secrecy in a company's ownership structure (Nasution et al., 2019).

In addition to punishment, Islamic criminal law also prioritizes the principle of *islah* or restoration, where the primary purpose of punishment is not only to punish but also to correct the offender's behaviour and restore the injured party's rights. In the case of beneficial ownership, this can be realized through restorative justice mechanisms, where the perpetrator is required to return assets or ill-gotten gains. This approach ensures justice and restores public confidence in the financial and legal systems (Dr Fitri Wahyuni, S.H, 2018). Shariah auditing also plays an important role in ensuring transparency and accountability. In the modern economy, Sharia audits can help ensure that business and financial practices do not violate Sharia principles, such as avoiding *riba* (interest), *gharar* (uncertainty), and fraud. With Sharia auditing in place, any violations involving concealment of ownership can be identified early and acted upon appropriately. It also ensures that the financial system works cleanly and equitably, per Islamic values (Muzamil & Mashdurohatun, 2014).

In the Indonesian context, applying this model of criminal liability for beneficial owners can also be integrated with the positive legal system. Although Indonesia is not a country that fully implements Islamic law, the values of justice in Islam can complement national regulations in handling economic crimes. This model offers a comprehensive solution by combining the principles of ta'zir, hisbah and restorative justice. With this approach, it is hoped that regulations related to beneficial ownership in Indonesia will not only be effective in preventing economic crime but also in line with the values of social justice (Tahir, 2017).

Based on the above explanation, this model of criminal liability in the Islamic legal system provides a comprehensive approach, covering aspects of prevention, restoration and punishment. By integrating ta'zir and hisbah mechanisms and utilizing Sharia audits, Islamic law offers a solution that focuses on punishment, restoration, and prevention. This model can be well applied in Indonesia to strengthen regulations, maintain the financial system's integrity, and ensure that social justice is maintained.

Conclusion

Beneficial ownership has become a serious problem in efforts to eradicate economic crimes, such as money laundering, tax evasion and corruption. Although Indonesian regulations, such as Presidential Regulation No. 13/2018, have made it mandatory for companies to report beneficial owner information, implementation still faces various obstacles. Key challenges include low levels of corporate compliance, the complexity of layered ownership structures, and the use of shell companies to hide accurate control and ownership. This makes it difficult for authorities to track the flow of illicit funds and assets and threatens transparency and trust in the financial system.

From the perspective of Islamic criminal law, the practice of beneficial ownership that is not transparent and used for unlawful purposes can be categorized as *jarimah ta'zir*. Islamic law emphasizes the importance of honesty, openness, and fairness in every economic and social activity. Therefore, any action that involves deception (*tadlis*) and uncertainty (*gharar*) in asset ownership is contrary to the principles of *maqasid al-shariah*, particularly regarding the protection of wealth (*hifz al-mal*). Malicious intent (*mens rea*), a significant factor in Islamic criminal law, is important in determining criminal liability for beneficial owners. Suppose it is proven that a beneficial owner intentionally hides assets to launder money or evade taxes. In that case, he may be subject to punishment by the principle of *ta'zir*.

In this context, the relevant *ta'zir* penalties for beneficial ownership offenders could be fines, imprisonment, or social sanctions, which are determined based on the level of harm and social impact caused. In addition, the concept of *hisbah* in Islamic law, as a form of public oversight and authority, can play an important role in preventing economic crime. In its application in the modern era, *hisbah* can be realized through sharia audits and regulatory oversight to ensure that every company complies with its transparency obligations in beneficial owner reporting.

More than just punishment, Islamic criminal law also encourages the application of restorative justice, restoring conditions and social relations disrupted by the offence. This approach can be realized in beneficial ownership by returning illegally obtained assets or profits to the state or the harmed community. This restoration aims to repair the negative impacts of financial crimes while restoring public trust in the financial and legal systems.

This research proposes that Indonesia can develop a more effective criminal liability model by integrating Islamic law principles, such as *ta'zir*, *hisbah*, and restorative justice, to regulate beneficial ownership. This integration will balance prevention, punishment, and restoration aspects and ensure that justice and transparency are realized in economic and legal practices. In addition, stronger collaboration between law enforcement agencies and regulators is also needed to strengthen the supervisory system and improve companies' compliance with reporting obligations.

By adopting Islamic law principles and stricter regulations, Indonesia can create a more comprehensive and fair legal framework addressing beneficial ownership. This will not only strengthen the integrity of the national financial

system but also prevent the recurrence of economic crimes that take advantage of legal loopholes and lack of transparency in corporate ownership structures.

Recommendation

Based on the findings of this study, it is necessary to strengthen the national regulatory framework for beneficial ownership transparency in Indonesia. The government could introduce a stricter reporting system with significant administrative sanctions for corporations that fail to comply with reporting obligations. In addition, integrating Islamic legal principles, such as ta'zir, hisbah, and restorative justice, into national regulations can strengthen the supervision and prevention of economic crimes. As a strategic step, establishing an independent oversight body that functions as a modern hisbah mechanism can ensure corporate compliance with transparency principles. In the international context, cross-border cooperation needs to be enhanced to address the use of shell companies in tax haven jurisdictions, which are often used to launder money and evade taxes. This policy supports more effective law enforcement and contributes to creating economic justice in line with maqasid al-shariah values. To support implementation, public education and the socialization of regulations for businesses need to be conducted to increase awareness of the importance of transparency and accountability.

Acknowledgement

This research and the preparation of this manuscript were made possible through the support and guidance of several individuals. Gratitude is extended to **Nur Azisa, PhD**, Chair of the Criminal Law Department, Faculty of Law, Hasanuddin University, for her invaluable mentorship, constructive guidance, and encouragement throughout the research process. Her insights have been instrumental in shaping this study. Acknowledgement is also given to **Prof. Muhammad Arfin Hamid** of the Faculty of Law, Hasanuddin University, for his thoughtful advice and suggestions, which helped refine the research focus and enhance the quality of the findings. His academic expertise and dedication have contributed significantly to the success of this work. Appreciation is expressed to **Ahsan Yunus**, a law lecturer in the Faculty of Law at Hasanuddin University, for his critical review and valuable feedback on the manuscript. His contributions have been essential in ensuring the clarity and rigour of this paper. Special recognition is given to **Muhammad Na'afil Kamal Putra**, a peer and fellow student, for his companionship, encouragement, and guidance throughout the research and manuscript submission process. His unwavering support was invaluable during this journey. Profound gratitude is extended to **Siti Kamilah**, whose unwavering support and encouragement, from the early stages of research to the submission of this manuscript, has been a source of strength and motivation. Sincere thanks are also conveyed to the esteemed faculty members of the Criminal Law Department, the leadership of the Faculty of Law, Hasanuddin University, and the dedicated staff and personnel of the faculty. Their collective support, expertise, and resources have greatly facilitated the successful completion of this research. This manuscript aims

to advance the understanding of beneficial ownership from an Islamic criminal law perspective, and its completion would not have been possible without the assistance and inspiration of those mentioned above.

References

- Agustianto, A. (2022). Pentingnya Transparansi Beneficial Ownership oleh Korporasi. *Justisi*, 8(2), 108–118. <https://doi.org/10.33506/js.v8i2.1678>
- Aninta Sagitaria. (2022). Pertanggungjawaban Hukum Pemilik Manfaat (Beneficial Owner) Di Perusahaan Indonesia. *Maleo Law Journal*, 6(2), 186–199. <https://doi.org/10.56338/mlj.v6i2.2421>
- Armia, M. S. (2022). *Penentuan Metode dan Pendekatan Penelitian Hukum* (C. Fahmi (ed.)). Lembaga Kajian Konstitusi Indonesia (LKKI).
- Baharudin, A. K., & Kartika, A. W. (2023). Criminal Accountability for Beneficial Ownership of Corporations in the Crime of Money Laundering in Indonesia. *Jurnal Al-Dustur*, 6(1). <https://doi.org/10.30863/aldustur.v6i1.4684>
- Douglas, S., & Layard, A. (2024). Ownership Beneath: Transparency of Land Ownership in Times of Economic Crime. *Oxford Journal of Legal Studies*, 44(1), 74–103. <https://doi.org/10.1093/ojls/gqad024>
- Dr. Fitri Wahyuni, S.H, M.. (2018). *Hukum Pidana Islam (Aktualisasi Nilai-Nilai Hukum Pidana Islam Dalam Pembaharuan Hukum Pidana Indonesia)*. PT Nusantara Persada Utama.
- Fenwick, M., & Vermeulen, E. P. M. (2016). *Disclosure of Beneficial Ownership after the Panama Papers*. International Finance Corporation.
- Junaidy, A. B., Musyafa'ah, N., Syamsuri, & Mufid, M. (2020). *Hukum Pidana Islam* (W. A. Ghafur & I. M. D. Fajriyah (eds.)). Rajawali Pers.
- Khallaf, A. W. (2003). *Ilmu Ushul Fikih: Kaidah Hukum Islam*. Pustaka Amani.
- Kisni. (2015). *Epistemologi Hukum Islam (Sumber dan Dalil Hukum Islam, Metode Islimbath dan Ijtihad dalam Kajian Epistemologi Usul Fikih)*. UNNISULA PRESS.
http://scioteca.caf.com/bitstream/handle/123456789/1091/RED2017-Eng-8ene.pdf?sequence=12&isAllowed=y%0Ahttp://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0Ahttps://www.researchgate.net/publication/305320484_SISTEM_PEMBETUNGAN_TERPUSAT_STRATEGI_MELESTARI
- Marzuki. (2017). *Pengantar Studi Hukum Islam: Prinsip Dasar Memahami Berbagai Konsep dan Permasalahan Islam di Indonesia*. Penerbit Ombak.
- Muda, Z., Omar, N., & Ahmed, N. (2024). Comparison Between Islamic Criminal Law and Man-Made Law. *International Journal of Academic Research in Business and Social Sciences*, 14(2). <https://doi.org/10.6007/IJARBS/v14-i2/20718>
- Muhaimin. (2020). *Metode Penelitian Hukum* (Issue 112). Mataram University Press.
- Muzamil, M., & Mashdurohatun, A. (2014). *Perbandingan Sistem Hukum (Hukum Barat, Adat Dan Islam)*. Madina Semarang.
- Nasution, K. B., Mustafa, Tanjung, A. S., Siregar, M. Y., Muhammad, Z., Rahmi,

- A., Fahmi, R., Hakim, N., Muhazir, Asliani, Ritonga, M., Razali, Suarni, Yusmalinda, Bambang, R. J., Bukhari, Sitompul, M. N., Sitompul, A., Irvansyah, ... Hasanah, U. (2019). *HUKUM ISLAM KONTEMPORER (Dari Teori ke Implementasi Ayat-ayat Hukum)*. Sefa Bumi Persada.
- Novariza, N. (2021). Pengaturan Transparansi Beneficial Ownership di Sektor Jasa Keuangan dalam Rangka Pencegahan dan Pemberantasan TPPU. *PAMPAS: Journal of Criminal Law*, 2(3), 37–58. <https://doi.org/10.22437/pampas.v2i3.14946>
- Nur, M. (2020). Pengantar dan Asas-asas Hukum Pidana Islam. In Nurdin (Ed.), *PeNA*. PeNA.
- Ramadan, S. (1986). *Hukum Islam, ruang lingkup dan kandungannya*. CV Gaya Media Pratama. http://scioteca.caf.com/bitstream/handle/123456789/1091/RED2017-Eng-8ene.pdf?sequence=12&isAllowed=y%0Ahttp://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0Ahttps://www.researchgate.net/publication/305320484_SISTEM_PEMBETUNGAN_TERPUSAT_STRATEGI_MELESTARI
- Sihombing, J. A. (2023). Beneficial Ownership: Transparency As an Effort To Prevent and Eradicate Money Laundering and Its Impact on Investment Markets. *Policy, Law, Notary and Regulatory Issues (Polri)*, 2(3), 208–218. <https://doi.org/10.55047/polri.v2i3.642>
- Tahir, M. (2017). *Politik Hukum Islam Di Indonesia: Konsepsi, Kontekstualisasi, dan Implementasi* (A. Fadli (ed.)). Pustaka Lombok.
- Tindak, M., Dalam, P., & Islam, H. (n.d.). *AL-FIQH AL-JINAYAH (Hukum Pidana Islam)*.
- Wicaksono, S., Audi, N. A., Rachmaddi, A., & Imaduddin, R. (2021). TAX EVASION AND FRAUD SCANDAL IN PANAMA PAPER CASE. *International Journal of Economics, Business and Accounting Research (IJEBAR)*, 5(1), 377–382.
- Yamnenko, T., & Savenkova, V. (2023). Disclosure of information about the beneficial owner and the principle of transparency in corporate governance. *Analytical and Comparative Jurisprudence*, 12(6), 339–335. <https://doi.org/10.24144/2788-6018.2023.06.56>
- Yundira, I., & Tiopan, D. (2023). Urgensi Pengawasan Perusahaan Cangkang Sebagai Upaya Penghindaran Tindak Pidana Pencucian Uang Oleh Perusahaan Cangkang di Indonesia. *AL-MANHAIJ: Jurnal Hukum Dan Pranata Sosial Islam*, 5(2), 1221–1232. <https://doi.org/10.37680/almanhaj.v5i2.2930>