



RESEARCH ARTICLE

## Legal Accountability of Beneficial Owners in Tax Crimes: Theories of Identification, Strict Liability, and Vicarious Liability

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ARTICLE INFO	ABSTRACT
Received: Oct 23, 2024 Accepted: Dec 27, 2024	This research explores the determination of criminal responsibility for beneficial owners in tax crimes, employing a normative legal research method with a statute approach and conceptual approach. The study examines three primary theories used to identify and hold beneficial owners accountable for tax-related offenses. The first is the Identification Theory, which identifies beneficial owners as the individuals directing corporate organs or managers to commit tax crimes. This theory establishes accountability by linking the actions of corporate representatives to the beneficial owners. The second is the Strict Liability Theory, applied when the beneficial owner's violation of tax laws is evident and does not require proof of intent. This theory simplifies the process of assigning responsibility by focusing on the frequent occurrence of the violation. Lastly, the Vicarious Liability Theory addresses cases where beneficial owners delegate illegal activities to subordinates. This theory recognizes the superior-subordinate relationship and holds beneficial owners liable for offenses committed under their directive. This study contributes to the understanding of legal frameworks for addressing beneficial ownership in tax crimes, emphasizing compliance and accountability. It offers practical insights into applying these theories within the Indonesian tax law context to ensure effective enforcement and prevention of tax offenses.
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### INTRODUCTION

The development of corporations is in line with trade and business activities. If trade or business activities have their complexity, then corporations also have complex forms of crime <sup>1</sup>, in handling tax crime cases, sometimes it does not involve the " *beneficial owner* ". The definition of *beneficial owner* is the actual owner of income in the form of dividends, interest, or royalties originating from individual taxpayers or corporate taxpayers, who are fully entitled to directly enjoy the benefits of the income. In other words, in tax crime cases, *the beneficial owner can be positioned* as the main perpetrator of the crime as a tax crime case. On the other hand, there are administrative and criminal sanctions in taxation, which are two different things. If administrative sanctions have been applied and it turns out that these provisions are still being violated, then criminal sanctions will be applied<sup>2</sup>

Article 1 number 2 of Presidential Regulation Number 13 of 2018 concerning the Implementation of the Principle of Recognizing Beneficial Owners of Corporations in the Framework of Prevention and Eradication of TPPU and TPPT (Presidential Regulation No. 13/2018), stipulates that beneficial owners are individuals who can appoint or dismiss Directors, Board of Commissioners, Management, Supervisors, or Supervisors in a corporation. Therefore, beneficial owners have the ability to control the corporation, are entitled to and/or receive benefits from the corporation either directly or

<sup>1</sup> Prasetya, MD, & Ratnawati, R. (2023). Re- Definition Efforts Corporation in Constitution Number 1 of 2023. UNES Law Review, 6(1), page 869

<sup>2</sup>Putra, AD, Saputra, IE, Prasetya, MD, & Rahman, A. (2023). Legal Analysis On Deliberate Tax Evasion In Indonesia. Jurnal Meta- Juridis, 6(1), p. 73

indirectly. Thus, they are the actual owners of the funds or shares of the corporation and/or meet the criteria as referred to in Article 1 number 3 of Presidential Regulation No. 13/2018.

Sometimes beneficial owners in tax crime cases take refuge behind the principle of *ultimum remedium*. Regulations related to taxation are harmonized in Law Number 7 of 2021 concerning Harmonization of Tax Laws (hereinafter referred to as the Tax Harmonization Law). Apart from that, the Tax Law is the one that generally regulates taxation and its crimes.

Based on the Tax Law, criminal acts in the field of taxation are divided into two, namely violations and crimes.<sup>3</sup>This tax crime is committed by taxpayers, where taxpayers consist of 2 (two), namely individuals or legal entities.<sup>4</sup>Violations are criminal acts that occur not based on elements of intent or occur due to mistakes or negligence, for example, forgetting to submit a Tax Return (SPT) or making mistakes in filling out the SPT, etc. While crimes are acts that are carried out intentionally, that the taxpayer knows that his actions are contrary to the Tax Law, for example illegal actions that cause his tax payments to be lighter, obtaining tax benefits that are detrimental to state finances, etc.<sup>5</sup> All tax crimes have the potential to be committed by individuals or legal entities (corporations), including *beneficial owners* as those who receive benefits from the corporation. Because, both individuals and corporations (legal entities) are taxpayers.

In criminal law theory it is said that each form of offense consists of the core elements of the offense (*bestaedeelen*) and the elements of the offense (*elementen*).<sup>6</sup>Furthermore, related to the attachment of criminal liability for tax crimes, we can identify it using several theories. Before that, the author needs to explain the position of the corporation as a legal subject so that criminal liability can be attached to it, as well as the theories used to measure the involvement of *beneficial owners* in committing tax crimes.

The role of corporations in national economic development provides benefits for economic growth, but it can also lead to crime, particularly among those seeking to maximize profits. Clinard stated in several of his studies on corporate crime that: Corporate crime has recently been perceived by society as the most serious and dangerous crime, surpassing traditional crimes such as robbery or violent theft, because the consequences of corporate crime are far more devastating than those of traditional crimes.<sup>7</sup> Brandon, *Too Big Jail: How Prosecutors Compromise with Corporations*, 2014, states that "Sentencing guidelines and judicial practices could be reconsidered, but prosecutors themselves can revitalize the area by adopting a new set of guidelines to strengthen the punishment reserved for the most serious corporate criminals"<sup>8</sup>

Corporations or legal entities were not previously considered legal subjects. As a result, the Criminal Code still accepts the principle of "*societas/universitas delinquere non potest*" that legal entities cannot commit crimes. This principle actually applied in the last century, throughout the Continental European legal system. This is in line with the opinions of individual criminal law from the classical school that was in effect at that time and later also from the modern school in criminal law.<sup>9</sup>This refers to the theory of fiction or entity theory which emphasizes that a legal entity is only a symbol of the totality of the number of people related to the legal entity.<sup>10</sup>So, the one who has the will here is a human being.

Along with the development, the understanding has undergone a transformation. Legal entities are also understood as legal subjects, both in the scope of criminal law, let alone civil law. In criminal law

<sup>3</sup> Antori Royan Adyan, *Criminal Law Enforcement To Action Criminal in the Field Taxation*, Journal of Legal Institutions, Vol. 2, No. 2, July 2007, p. 92

<sup>4</sup> Look Article 1 number 2 of the Tax Law.

<sup>5</sup> *Ibid.*

<sup>6</sup> Muchtar, M., Asis, A., & Muin, AM (2023). Proving of Predicate Crimes in Cases of Money Laundering Crimes. *Alauddin Law Development Journal*, 5(2), p. 414

<sup>7</sup> Wiranti, A., Azisa, N., & Haeranah, H. (2022). The Implementation of Criminal against Corporations in Environmental Crime. *LEGAL BRIEF*, 11 (2), p. 678

<sup>8</sup> Bachri, S., Arie, M., & Azisa, N. (2023). CORPORATE CRIMINAL LIABILITY RELATED TO THE BUSINESS JUDGMENT RULE DOCTRINE. *Russian Law Journal*, 11 (3S), p. 55

<sup>9</sup> Rony Saputra, *Accountability Criminal Corporation in Action Criminal Corruption*, Journal of Legal Cita, State Islamic University of Jakarta, Vol. II, No. 2, 2015, p. 276

<sup>10</sup> Tri Budiyo, 2010, *Commercial Law*, Griya Media, Salatiga, p. 21

itself, corporations as legal subjects can be seen in Article 1 number 1 of the Corruption Eradication Law stating that a corporation is a group of people and/or wealth that is organized, whether it is a legal entity or not.

This is based on the theory of organs or the theory of equipment which assumes that a legal entity is like a human being, becoming an incarnation in legal relations. A legal entity is a body that forms a will through the intermediary of tools or organs of the body. According to the theory of organs, a legal entity is not something abstract, but really exists. A legal entity is not a property (right) that has no subject, but a legal entity is a real organism, which lives and works like an ordinary human being.<sup>11</sup> This means that the position of a legal entity is the same as a human being as a legal subject. However, a legal entity as a form of unity does not act alone, but its organs do.

In civil law, it is the same. The subjects of law include humans (*natuurlijke persoon*) and legal entities (*rechtspersoon*), such as PT, Foundations, and other bodies.<sup>12</sup> Legal entities can have rights and carry out legal acts like humans, have their own wealth, participate in legal traffic, can be sued and sued before a judge.<sup>13</sup> However, the legal acts of legal entities are carried out by their management or organs, in line with the theory of organs above.

Referring to the explanation above, we can draw a common thread that between the corporation/legal entity and its organs there is a relationship, that the legal entity is passive, the one who runs it is its organs. The author divides two subjects in the corporation, namely the owner of the corporation and the management of the corporation. The owner here is the one who receives the benefits (*beneficial owner*) of the corporation, while the management is the one who runs the corporation.

In connection with the description of the background of the problem, So the problem in this research is how to determine the perpetrators of criminal acts that ensnare beneficial owners in tax crimes.

## RESEARCH METHOD

This study uses a normative research type *using a statute approach* and a conceptual approach. In this study, the data used are primary data and secondary data. Primary data is data sourced from field research, which is obtained through direct observation activities in the field, starting from searching, collecting and compiling existing facts in accordance with the formulation of the problems discussed using interviews, observations, and distributing questionnaires. After obtaining primary data, the next process is data editing, checking the accuracy of the data and if errors are found, then corrected and the data source is re-explored. Then after the data editing process is carried out, the next process is data processing. After the entire process is complete, then all data, both primary data and secondary data, are analyzed using inductive and deductive methods through a qualitative approach by studying and analyzing the answers in the study.

## RESEARCH RESULTS AND DISCUSSION

that there is an inseparable relationship between *the beneficial owner and the corporation, that the beneficial owner*, either directly or indirectly, is the actual owner of a corporation.

The consequence of a corporation as a legal subject, then it is also attached to criminal responsibility, just like a human legal subject, if it commits a criminal act. If we refer to the theory of organs, the management is the one who is responsible, where the management is considered the implementing tool as has been assigned in the articles of association of a corporation, including the beneficial owner (*owner*). However, this criminal responsibility must be clarified, whether the beneficial owner or manager in the context of a corporation or the beneficial owner or manager in the context of a human/individual. For this reason, 3 (three) theories are used to identify this, namely: (1) identification theory, (2) delegation theory, and (3) Direct theory.

According to the author's interview with Mr. Teguh Widodo as Head of Investigation Section I of the West Sumatra High Prosecutor's Office, the prosecutor's office has many methods and ways to find

<sup>11</sup> Suparji, 2015, *Transformation of Legal Entities in Indonesia*, UAI Press, South Jakarta, p. 5

<sup>12</sup> Point Quarterly Tutik, 2008, *Civil Law in National Legal System*, Prenada Media Group, Jakarta, p. 40

<sup>13</sup>A. Ridwan Halim, 1985, *Civil Law in Q&A*, 2nd ed., Ghalia Indonesia, Jakarta, p. 29

and discover the involvement of perpetrators with other parties. We work together with the police in handling this matter. Including in terms of tax crimes, the involvement of the Company's leadership is important to investigate, usually the Company's leadership is also involved in a crime. The Cibinong Court Decision Number 570/Pid.Sus/2021/PN Cbi dated February 14, 2022 has sentenced the Convict Topik Nurjaman alias Muhammad Devis alias Davis for having intentionally issued and/or used tax invoices, proof of tax collection, forms, proof of tax deductions and/or proof of tax payments that were not based on actual transactions by issuing tax invoices in the name of PT. Gunan Daya Energitama and An. CV Tri Intan Karsatama is for the purpose of obtaining profit or fees from the sale of tax invoices. In this case, it turns out that the company owner, Hari Budianto, was involved as the owner of PT GDE. Therefore, all available methods and means are used to the maximum to ensnare all those involved. This also applies to all criminal acts, not just tax crimes.<sup>14</sup>

### 1. Identification theory (Identification theory)

Identification theory or *identification theory* or *direct corporate criminal liability* is a doctrine of corporate criminal liability originating from *Anglo -Saxon countries*, such as England and America.<sup>15</sup>This theory focuses on the assumption that all actions taken by *high -level managers* or directors, both legal and illegal are identified as corporate acts.<sup>16</sup>So, this theory exists to provide an assessment that the imposition of criminal responsibility is directed at corporations, even though it can be assessed that corporations cannot act alone and do not have *mens rea* because they don't have a heart.<sup>17</sup>

Muladi has the same opinion that a corporation can commit crimes directly through people who are closely related to the corporation and are seen as the corporation itself.<sup>18</sup>The people referred to here are "senior officers" or *high - level seniors* or directors. However, it is necessary to identify who and in what position these "senior officers" are.

Muladi explained that a "senior official" is a person who controls a company, either alone or together, generally holding the position of director or manager.<sup>19</sup>

Judge Reid in the case of *Tesco Supermarket Ltd. v Nattrass* in 197282 attempted to define who was meant by a "senior official", namely:<sup>20</sup>

- a. For legal purposes, senior officers typically consist of "the board of directors, the managing director, and other high-ranking officers who perform management functions and speak and act for the corporation."
- b. Senior officials do not include "all company employees who work or carry out the instructions of senior company officials".

Lord Morris held that a "senior official" is a person whose responsibility is to represent/symbolize the execution of " the directing mind and the will of the company ". There is also Lord Diplock who argues that "senior officials" are those who, based on the memorandum and provisions of the foundation or the results of decisions of the directors or decisions of the company's general meeting, have been trusted to exercise the company's power.<sup>21</sup>The author concludes that senior officials here are corporate organs that have great authority to make a decision.

In relation to *mens rea* or the attitude of the maker, Denning LJ explains that the attitude of the managers or directors is " *directing* " mind " or the attitude of the heart of the company itself.<sup>22</sup>This

<sup>14</sup> Interview results with Mr. Teguh Widodo, Head of Investigation Section I of the West Sumatra High Prosecutor's Office which was conducted on August 8, 2023

<sup>15</sup>Muladi and Dwidja Priyatno, 2010, *Accountability Criminal Corporation*, Kencana, Jakarta, p. 233

<sup>16</sup>Cristina Maglie, *Models of Corporate Criminal Liability in Corporate Law*, Washington University Global Studies Law Review, Vol. 4 : 547, January 2005, p. 556

<sup>17</sup>Sutan Remy Sjahdeini, 2006, *Accountability Criminal Corporation*, Graffiti Press, Jakarta, p. 100

<sup>18</sup>Muladi and Dwidja Priyatno, *Loc. Cit*

<sup>19</sup> *Ibid.*

<sup>20</sup>*Tesco Supermarkets Ltd v, Nattrass*, (1972), AC. 153

<sup>21</sup>Muladi and Dwidja Priyatno, *Op.Cit.*, p. 234

<sup>22</sup>*H.L. Bolton Engineering Co. Ltd. V TJ Graham & Sons Ltd* (1957) 1 QB 159

means, " *directing mind* " or *mens rea* This is attached to *high level seniors* or senior officials of the corporation.

Christopher M Little and Natasha Savoline respond to the ruling issued by The Supreme Court of Canada , that the decision regarding *identification theory* indicates six principles, namely:<sup>23</sup>

1. *Directing The mind* of a corporation is not limited to one person, but also a number of officers and directors. The directing persons are. mind of the company concerned. So that regional differences cannot be a reason for someone to avoid being a *directing mind* .
2. A corporation cannot avoid responsibility by claiming that a particular person or persons have committed a crime even though there has been a clear order to them to only carry out acts that do not violate the law.
3. In order for a person to be found guilty of committing a crime, he must have a wrong heart or evil values, which is known in criminal law as *mens rea* . If an official or director of a corporation who is *directing The mind* is not aware of the crime he has committed, so he cannot be held responsible.
4. To be able to apply *identification this theory* , it must be shown that the actions carried out by individuals are *directing mind* is part of the activities assigned to him. The act is also not a fraudulent act directed at the corporation. And the crime committed must be aimed at providing benefits to the corporation.
5. Corporate criminal liability requires contextual analysis, or in other words, the analysis must be carried out on a case-by-case basis.

Sutan Remy S. has his own view in determining " *directing* " *mind* ". According to him, the way to determine an individual as " *directing mind* " is to see it formally and legally, one of which is through the articles of association of the corporation or decrees officially issued by the company. In addition, it is also necessary to see it in reality in the operational activities of the corporation on a case-by-case basis. This is because, in some cases, it turns out that individuals who legally have positions with the authority as " *directing mind* " , can also be influenced by other individuals with positions that legally do not have authority, such as majority shareholders with certain closeness. Therefore, it is not limited to certain positions that have formal legal authority, but also other positions that formally do not have legal authority, but are factually influential.<sup>24</sup>

If we relate it to the *beneficial position owner* as mentioned in Presidential Decree 13/2018, *beneficial owner* is the one who appoints its organs in the form of directors, board of commissioners , administrators, guidance or supervisors. This means, using *identification theory* , then criminal responsibility carried out by corporations can be attached to *beneficial owners. owner* . This can be done by identifying that the criminal act was based on the element of an order from *the beneficial owner. owner* .

## 2. Strict theory liability

This theory is based on the *strict doctrine liability* which is adopted from civil law which is often applied to unlawful acts in civil law. <sup>25</sup>According to Aul Dobson , " *These are some crimes for which with regard to at least one element of the act reus , no mens rea is required* ".<sup>26</sup> *Strict liability* means as a form of responsibility that focuses on referring to the applicable laws and regulations. Corporate responsibility does not look at the element of error, but only looks at the sound of the law that was violated. Even in *Black's Law Dictionary* define *strict liability* as " *a crime that does not require a mens rea elements , such as traffic offenses and illegal sales of intoxicating liquor* " <sup>27</sup>. From the definition of BLD it is shown that the *strict doctrine liability* setting aside the main principle in criminal law, namely the principle of guilt or the principle of *mens rea* .<sup>28</sup>

<sup>23</sup>Christopher M Little, Natasha Savoline , Corporation Criminal Liability in Canada: The Criminalization of Occupational Health and Safety Offenses. (Fillion Wakely Thorup Angeletti LLP. Management Labor Lawyers, 2002)., See also Sutan Remy S. *Op.cit.* , p . 106-107.

<sup>24</sup>Sutan Remi Sjahdeini , *Op.Cit.* , pp . 104-105

<sup>25</sup>Muladi & Dwidja Priyatno, *Op.Cit.* p . 111

<sup>26</sup>Paul Dobson, 2008, *Criminal Law (Eight Edition)* , Thomson Sweet and Maxwell, London, p . 22

<sup>27</sup>Black's Law Dictionary, Eight Edition, United States of America: west, 2004, p . 400

<sup>28</sup>Sutan Remy S., *Op.Cit.* , p . 78

Paul explained that there are 2 (two) main objectives in enforcing *strict liability*, namely: (1) *to protect the public from dangerous actions by creating a higher standard of care*. (2) *to regulate quasi-criminal activities in efficient manner possible*.<sup>29</sup> To limit the limits of this doctrine, Muladi and Dwidja Priyatno assessed that related to the application of the doctrine, it should only be applied to types of acts that are minor in nature, such as traffic violations.<sup>30</sup> Meanwhile, for corporations, it can be applied to demand accountability for crimes related to the public interest, for example environmental health.<sup>31</sup>

The author assesses that there is a deviation from the principle of fault or *mens rea* in this doctrine because of its focus on what is prohibited only. whereas according to the author, something that is prohibited must contain a value of error, whether it is with deliberate intention or due to negligence. Apart from that, if this doctrine is associated with a *beneficial owner* In tax crimes, criminal responsibility is attached to those who violate the law. Criminal responsibility is direct, that is, it is directly attached to those who violate the law without looking at whether the perpetrator is an employee or a director or a *beneficial owner*. That's why *strict liability* This is also known as direct criminal liability. That is, a *beneficial person owner* possible as a corporate criminal liability if he clearly violates the law.

Likewise in tax crimes, if *beneficial owner* in real terms through his authority as the owner of the company who receives benefits from the company, commits a tax crime, then the criminal responsibility is directly attached to him. If the tax crime is committed by an organ on the orders of *the beneficial party owner*, then the responsibility remains attached to the organ, because from the start the organ knew that the *beneficial order owner* This violates the provisions of the law. Moreover, *beneficial owner* together with the organ that was ordered earlier, they can jointly accept criminal responsibility because they both committed tax crimes. The *beneficial party owner* as "the one who ordered" the tax crime, while the organ is the one who "did" or "made" the tax crime. Both are equally responsible.

### 3. Vicarious theory liability

This theory is based on the doctrine of civil law applied to criminal law. Sutan Remy explains that in civil law there is a relationship between workers and employers, where the employer is responsible for mistakes made by his employees. This means that if a mistake occurs that causes someone to suffer a loss due to his employees, that person can sue his employees or the employer. However, it should be emphasized that the employer's liability is limited to actions carried out by workers or subordinates that are still within the scope of his work or authority.<sup>32</sup>

The author believes that this doctrine, when applied to corporate criminal law, emphasizes that criminal responsibility can be imposed on a certain person for the actions of another person, within the scope of work in the same corporation. This means that the act begins with the delegation of authority from a high position to a lower position or from a superior to a subordinate or from an employer to an employee.

*Black's Law Dictionary* defines *vicarious liability* as " *Liability that a supervisor party ( such as an employer ) bears for the actionable conduct of a subordinate or associate ( such as an employee ) because of the relationship between the two parties* ".<sup>33</sup> The author freely interprets that the responsibility is attached to the employer for the actions of the worker (employee) in the employment relationship. Sutan Remy emphasized that the relationship is subordinate between the employer and the worker.<sup>34</sup> The subordination relationship here is related to the different positions between the two, one higher than the other, thus creating a superior and subordinate relationship (subordination).

It should be noted that this doctrine is an exception to individual responsibility adopted in criminal law on the basis of the adage " *nemo alieni punire delicto* ", which means "no one is punished for the

<sup>29</sup> *Ibid.*, p. 27

<sup>30</sup> Muladi and Dwidja Priyatno, *Op.Cit.*, p. 121

<sup>31</sup> Loebby Luqman, 2002, *Selected Chapters Action Criminal in the Field Economy*, Datacom, Jakarta, p. 93.

<sup>32</sup> Sutan Remy S., *Op.Cit.*, p. 79

<sup>33</sup> *Black's Law Dictionary*, Eighth Edition, (United States of America: West, 2004).

<sup>34</sup> Sutan Remy S., *Op.Cit.*, p. 87

actions of another person".<sup>35</sup>The exception is due to the existence of a relationship of delegation of authority between superiors and subordinates (subordination) in one scope of work or one corporate scope.

However, the occurrence of this delegation of authority needs to be proven true, and it needs to be ensured that the actions of the worker or subordinate are indeed based on work or in the context of carrying out the duties of the corporate leader. Because, if the act is not in the corridor of work, then the perpetrator is responsible, without involving the subordination relationship.

Lord Russell LJ, a judge in England, held that, under the doctrine of vicarious liability, a person can be charged with criminal liability for actions carried out by employees or their proxies if: "... *the conduct constituting the offence was pursued by such your servant (employee) agents within the scope or in the course of their employment*".<sup>36</sup>The judge's opinion is based on the opinion expressed by Lord Russell, put limitations on the application of the *vicarious doctrine liability*, that an employer can only be charged with criminal responsibility if the act committed by his employee is within the scope of his work. A contrario, this doctrine cannot be applied if the act committed by the employee is outside or has nothing to do with his duties.<sup>37</sup>

This doctrine has a different side from *strict liability*. The difference lies in the imposition of criminal liability, where in *strict liability* criminal responsibility is direct, whereas in *vicarious liability* indirect criminal liability.

Of course, the existence of this doctrine has resolved several issues related to corporate criminal liability, especially crimes committed by employees with low positions, who usually only follow the orders of their boss or superiors. In addition, this doctrine is useful in efforts to carry out prevention. This is because the superior or employer will supervise and monitor his subordinates or workers when carrying out the tasks given. This means that if the subordinate or worker commits a wrong act, it can be immediately prevented by the superior or employer.

Through the *vicarious doctrine liability*, then the corporation can be held responsible for the actions carried out by parties who have been given an attribution of duties by the corporation based on an employment relationship. This is not limited to workers who are within the company's organs, but also agents or representatives who are outside the company's organs, with the limitation that the actions carried out by the worker, agent, or representative are limited to the scope of work or attribution given to the worker or agent. Application of the *vicarious doctrine liability* must be limited, because this doctrine is a form of deviation from the principle of *mens rea* in criminal law. Application can only be done if the law expressly permits it.

Based on the theory above, if it is related to *beneficial owner* for tax crimes, of course it is possible to separate between orders that are legally valid and those that are not. The *vicarious doctrine liability* requires a valid order, namely an order that does not violate applicable laws or regulations. This means that if *beneficial owner* attribute its authority to a corporate organ, while the corporate organ has no malicious intent or *mens rea* in carrying out his/her duties, but it turns out that he/she violates existing legal provisions, then the responsibility is attached to *the beneficial party owner* within the framework of the corporation, not the personal *beneficiary owner*.

However, if the order is *beneficial owner* based on an order that from the start violates legal provisions, it will return to the *identification doctrine theory*, that it is necessary to identify the act based on the orders of the corporate owner or *high level manager*. Therefore, it is possible that criminal responsibility is attached to both of them, namely *beneficial owner* and the organ, outside the corporate framework, which is *beneficial owner* this as the one who "orders to do", while in the organ as the "maker" or "the one who does". Both can be charged with criminal responsibility in tax crimes.

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<sup>35</sup>Eddy OS Hiariej, 2014, *Principles of Criminal Law*, Cahya Atma Pustaka, Yogyakarta, p. 165

<sup>36</sup>Aulia Ali Reza, 2015, *Accountability Corporation in Draft Criminal Code*, Institute for Criminal Justice Reform, South Jakarta, p. 21

<sup>37</sup>Gary Scanlan and Christopher Ray, 1985, *An Introduction to Criminal Law*, Blackstone Press Limited, London, p. 121. See also Sutan Remy S., *Op.Cit.*, p. 89

Based on the 3 (three) theories above, regarding *the beneficial owner*, criminal responsibility can be attached to him, as well as for tax crimes, namely by using the identification theory (*theory*). Because, tax crimes committed by organs or managers of a corporation can be identified whether it is an act carried out on their own intentions or is an order from *a high level senior* or the *beneficial party owner* as the owner of the corporation (beneficial owner). *Beneficial tendencies owner* to influence organs or administrators is certainly very strong because *it is beneficial owner* is the one who appoints and dismisses them. This is based on Article 1 number 2 of Presidential Regulation 13/2018 which states that "beneficial owners are individuals who can appoint or dismiss directors, board of commissioners, administrators, supervisors, or supervisors in a Corporation, have the ability to control the Corporation, are entitled to and/or receive benefits from the Corporation either directly or indirectly, are the actual owners of the Corporation's funds or shares".

For this reason, efforts to identify or recognize *beneficial owner* In a corporation it is important to measure the extent of *beneficial involvement*. *owner* in a criminal act, including tax crimes, if the corporation is suspected of committing a crime. In addition, the process of recognizing *beneficial owner* This is a mandate from Presidential Decree 13/2018. This refers to Article 14 of Presidential Decree 13/2018 which emphasizes that corporations are required to apply the principle of recognizing the beneficial owners of corporations. This principle of recognition is carried out by appointing officials or employees to implement the application of the principle of recognizing the beneficial owners of a corporation and providing information about the corporation and its beneficial owners upon request from authorized agencies and law enforcement agencies. Article 14 really opens up space for *beneficial owner* to be involved, known and interrogated if a crime occurs, including tax crimes, because the article clearly states that law enforcement agencies can request information related to *beneficial owner*.

Furthermore, Article 15 of Presidential Decree 13/2018 states that the principle of recognizing beneficial owners is carried out by identifying beneficial owners and verifying the beneficial owners. This process is carried out when a corporation applies for the establishment, registration, ratification, approval, licensing of a corporate business, even when the corporation carries out its activities or business. This shows that the recognition of *beneficial owners owner* This is very important, in the event of a crime, *beneficial owner* involvement in a criminal act can be identified, including in tax crimes.

According to the results of the author's interview with Mr. Dwi Agus Arfianto, SH, MH, as the Head of the Sub-Directorate of TPP and TPPU at the Directorate of Ordinary Broad Legal Efforts, Execution and Examination (Primary Prosecutor Pratama) that tax crimes have different characteristics from other crimes. Most of the perpetrators are carried out by persons who hold positions in a company. It is quite rare for a person without involving a corporation, although it could happen. If a person is usually a rich person who is in the government, such as in the taxation directorate, etc. Unlike a person, in the corporate scope, usually the perpetrator uses his company to trick taxes or lie to tax officials, although it is possible that the perpetrator works together with tax officials. All potentials could happen. For example, in the Decision of the Central Java High Court Number 57 / Pid.Sus / 2018 / PT.SMG, which found the perpetrator guilty because together with his friends (separately charged) who were members of CV. Media Dynamics Periwira, committed a tax crime, namely issuing and/or using tax invoices that were not based on actual transactions. Finally sentenced to 3 (three) years in prison and a fine of 2 times the amount of the criminal debt. Even in the judge's verdict, if the criminal debt is not paid, we as prosecutors will confiscate the defendant's property to be auctioned and used to pay the shortfall in tax owed.<sup>38</sup>

Mr. Dwi Agus continued that the characteristics of criminal acts by companies, most of them provide false information so that their tax payments are not high. Most are ordered by their company leaders to deceive taxes. So, it is necessary for us as prosecutors to apply many methods to ensnare all perpetrators.<sup>39</sup>

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<sup>38</sup>Interview results with Mr. Dwi Agus Arfianto, SH, MH, as Head Sub-directorate of TPP and TPPU at the Directorate of General Legal Efforts, Execution and Examination (Primary Prosecutor Pratama), which was carried out on August 9, 2023

<sup>39</sup> *Ibid.*



*Beneficial* abilities owner to control the corporation, appoint and dismiss the management, of course will affect how the organs or management make decisions. This condition causes criminal responsibility for tax crimes to be very likely to be attached to *the beneficial party. owner*, depending on the investigation and inquiry process in determining *beneficial involvement owner* in tax crimes

## CONCLUSION

How to determine the perpetrator of a crime that *ensnares a beneficial owner* in tax crimes is by using 3 (three) theories. Identification theory or *identification theory* can be used to track *beneficial owner* as a party that orders an organ or administrator to commit a tax crime. *Strict Theory Liability* or Direct Theory is used if it can be easily known that *the beneficial party owner* violate laws relating to taxes. *Vicarious Theory Liability* or delegation theory is used to determine *beneficial owner* as a perpetrator of a tax crime in the case that he is the person who ordered his subordinates to do it.

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