



The Principle of Prudence and Legal Responsibility of Notaries in Beneficial Ownership Verification

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Abstract: The purpose of this paper is to describe and analyze issues related to the protection and legal certainty of notaries in verifying the accuracy of corporate BO information, where Permenkum 2/2025 transforms verification from passive to active. The research used a normative approach with a statutory, conceptual, and analytical approach. The analysis reveals an asymmetry between the obligation to verify the accuracy of BO information and the authority possessed by notaries. The absence of investigative authority and cross-verification mechanisms eliminates the substantive nature of notaries' reports on the accuracy of BO information. Protection in the form of liability for notaries who do not or incorrectly include BO information is based on how consistently notaries apply the principle of prudence. If notaries consistently apply this principle, then the element of mens rea in criminal liability and the element of fault in PMH are invalidated, so that notaries cannot be held legally liable.

Keyword: Notary, Legal Liability, Principle of Prudence

INTRODUCTION

A notary is a public official appointed by the government who is authorized to draw up authentic deeds as stipulated in Article 1 paragraph (1) of Law Number 2 of 2014 concerning the Second Amendment to Law Number 2004 concerning the Position of Notary (hereinafter referred to as UUJN). According to this definition, notaries are public officials, but not civil servants. Notaries do not receive a salary; instead, they receive honoraria as compensation for the services they provide to their clients (Samiya & Susetyo, 2021).

Notaries are appointed and dismissed by the Minister of Law and Human Rights, with the function and position of carrying out general tasks in the private law sector as public officials who provide services to service users who wish to make authentic deeds. Authentic deeds provide certainty, order, and legal protection, serving as written evidence with the full burden of proof in private law (Kurniawan, 2018).

The perfect nature of authentic deeds correlates with the process of their creation, which contains formal truths in accordance with what the parties have informed the notary, to represent the will and wishes of the parties as framed in the form of a notarial deed. Notaries have an obligation to ensure that the parties truly understand the contents of the notarial deed

(Ghani et al., 2025). Thus, the parties can verify whether or not they agree with the contents of the deed.

The notary profession has evolved to assume greater responsibility, not only as an extension of the government in the public law sector, but also in assisting the government in mitigating the risk of criminal acts committed by corporations by identifying, recording, and reporting corporations' beneficial ownership.

The development of notaries' obligations to identify corporate BO aligns with the evolution of BO regulations in Indonesia, which have undergone significant transformation to mitigate the risks of money laundering and terrorism financing. Based on Presidential Regulation No. 13 of 2018 concerning the Principles for Recognizing the Beneficial Owners of Corporations, notaries are obliged to ensure the accuracy of corporate BO in the deeds of establishment they draw up, and to report them to the Ministry of Law and Human Rights through the online system (AHU).

The legal basis for notaries' obligations in the BO identification and reporting ecosystem is multi-layered with several statutory provisions. First, Article 17 paragraph (2) of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, which opens the door for other professions to be designated as reporting parties through Government Regulations. Second, Article 3, letter b of Government Regulation Number 61 of 2021 emphasizes the obligation of notaries to report suspicious financial transactions to PPATK (Aang Okta Wijaya, 2025).

Third, Regulation of the Minister of Law and Human Rights Number 9 of 2007 concerning the Application of the Principles of Notary Service Users requires notaries to identify, verify, and monitor service users' transactions. Fourth, Regulation of the Minister of Law and Human Rights Number 15 of 2019 concerning Procedures for Implementing the Principle of Recognizing the Beneficial Owner of a Corporation requires corporations to submit accurate information related to the BO to a notary when drafting or amending a deed of establishment.

The development of the legal construction of notary obligations in the BO verification and reporting ecosystem with the issuance of Regulation of the Minister of Law and Human Rights Number 2 of 2025 concerning Verification and Supervision of Corporate Beneficial Owners, which came into effect on February 4, 2025, marks a paradigm shift in the BO verification and reporting ecosystem to active-collaborative verification, where there is a proportional and balanced division of obligations between corporations and notaries in verifying the accuracy of BO information.

However, amid the aggressive expansion of corporate crime risk mitigation through BO verification, a legal vacuum has arisen for notaries as one of the reporting parties. Amidst the BO verification obligations for notaries, there is a lack of explicit regulations granting notaries the authority to legally access and verify the material truth of the BO information submitted by corporations, where Article 16 paragraph (1) of the UUJN only grants procedural authority without the authority to verify the truth of the information provided by corporations.

The legal framework for mitigating corporate criminal risk—corporate BO identification and disclosure, in the form of expanded obligations to notaries—faces a complex structural dilemma. According to Senior Notary Aulia Taufani, the complexity of the notary's responsibility to identify and disclose corporate BO is oriented towards legal protection, where in essence notaries are bound by the doctrine of registered title and confidential obligation, so that even if they have to identify and report, the type of legal protection must first guarantee the position and mitigate the risk of distrust from users and potential users of services. (Putri, 2021).

In addition, verifying corporate BO by notaries is, in practice, quite complicated. The complex structure of corporations, ranging from shareholders to the board of directors; the possibility of nominee agreements between directors; Beneficial Ownership; and the possibility

of dishonest information disclosure by service users. The BO disclosure strategy by notaries also relies solely on closed Question-and-Answer (Q&A) sessions with service users, given the lack of access to a database that can verify the BO information claims submitted by corporations.

The notary's obligation to verify and report BO, starting from the complexity of BO verification, the tiered sanctions in Permenhukam 2/2025, which include written warnings to blacklisting, and the absence of adequate legal protection for notaries who have applied the principles of due diligence and know your customer, but are still deceived by false statements from service users, giving rise to legal anomalies and inconsistencies that place notaries in a vulnerable position (Hidayah, 2025).

The conflict between the norms of confidentiality and reporting in Article 16, paragraph (1), letter f, of the UUJN requires notaries to keep confidential all matters relating to deeds and information obtained for the purpose of preparing deeds. On the other hand, Government Regulation No. 43/2015 and Minister of Law and Human Rights Regulation No. 9/2017 require notaries to verify and report BO to the Ministry of Law and Human Rights. The absence of clear boundaries around information leaves notaries vulnerable to such reporting (Peraturan Menteri Hukum, 2025).

The imbalance between the verification obligation and investigative authority in Minister of Law Regulation No. 2/2025, which requires notaries to verify the accuracy of BO information but does not provide investigative access to obtain accurate information, leaves notaries vulnerable to being deceived by false information and statements from service users. The shift in the proportionality of the burden of responsibility for BO verification by notaries and corporations in practice places notaries as parties who are vulnerable to sanctions because of their position as gatekeepers for the creation of deeds of establishment and changes to corporations, so that corporations can easily provide false information that cannot be detected by notaries (Peraturan Menteri Hukum, 2025).

There is a lack of harmonization between formal and material verification standards, whereby, under legal doctrine, notaries are only responsible for the formal correctness of deeds, not their material correctness. However, related regulations implicitly require notaries to conduct material verification by understanding the profiles, intentions, objectives, and confidentiality requirements of service users. The dual verification standard creates legal uncertainty that is detrimental to notaries. (Amalia et al., 2021).

The urgency of this research stems from three considerations. First, the legal protection for the notary profession through the enactment of Permenkum 2/2025, which raises the standard from passive to active verification. Second, the aspect of legal certainty in notarial practice, where the unclear limits of notary responsibility in BO verification create uncertainty. Third, the effectiveness of preventing corporate crime through adequate BO disclosure requires synchronization between institutions with a proportional division of responsibility, which now includes notaries as BO verifiers.

METHOD

This article is a legal-normative/doctrinal research that views law in a narrow sense as written law. The research approaches used are the statutory, conceptual, and analytical approaches. The primary legal sources consist of: Law Number 8 of 2010 concerning TPPU, PP Number 43 of 2015, Government Regulation Number 61 of 2021 concerning Reporting Parties in the Prevention and Eradication of TPPU, Ministry of Law and Human Rights Regulation Number 15 of 2019, Ministry of Law and Human Rights Regulation Number 9 of 2017, Ministry of Law and Human Rights Regulation No. 2 of 2025, while secondary legal materials include PPATK reports, books, journals, and relevant scientific works. The technique

used to collect legal materials is literature study, while the method used to analyze legal materials is descriptive-analytical.

RESULTS AND DISCUSSION

1. Legal Provisions on Notary Obligations in Beneficial Ownership Verification and Reporting

Beneficial owner According to Article 1 paragraph 2 of Presidential Regulation 13/2018, a beneficial owner is an individual who can appoint or dismiss directors, commissioners, administrators, advisors, or supervisors of a corporation, can control the corporation, is entitled to and/or receives benefits from the corporation either directly or indirectly, and is the owner of the corporation's benefits. Article 3 of this Presidential Regulation requires corporations to list the names of their BOs, with the provision that there must be at least one BO (Peraturan Presiden RI, 2018).

BOs of limited liability companies, foundations, limited partnerships, firms, cooperatives, and other types of corporations generally have ownership interests, rights to profits, and voting rights exceeding 25%. Presidential Regulation 13/2018 lists at least three elements or criteria used to identify and verify the accuracy of BO information, namely: supreme power according to the corporate articles of association, obtaining economic benefits from the corporation directly, and having the authority to manage the corporation (Jatmiko et al., 2023).

The notary's obligations in the BO verification ecosystem in Indonesia are structured through a multi-layer legal framework comprising three integrated sets of regulations. However, they are not coherent with one another. The first layer is found in the anti-money laundering legal regime as stipulated in the PTPK Law and Government Regulation No. 43 of 2015, which places notaries as reporting parties with the main obligations of applying the know your customer (KYC) principle and submitting reports on suspicious financial transactions to PPATK (Aang Okta Wijaya, 2025).

The second layer is contained in Regulation of the Minister of Law and Human Rights of Indonesia Number 15 of 2019 as a derivative of Government Regulation No. 43 of 2015, which imposes an obligation on notaries as agents or intermediaries of the government to act in the interests of the government in reporting BO information to the Ministry of Law and Human Rights. Articles 4 and 5 of Regulation of the Minister of Law and Human Rights of Indonesia Number 15 of 2019 impose an obligation on corporations to submit BO information, which is then forwarded electronically via SABH by notaries.

The third layer is contained in Regulation of the Minister of Law No. 2 of 2025. This requires notaries to actively verify the accuracy of corporate BO information. Article 5 paragraph (2) of Minister of Law Regulation No. 2 of 2025 explicitly states that the verification of information is carried out by a notary, while Article 7 paragraph (1) emphasizes that the verification of the accuracy of information is carried out by a notary when a corporation uses the services of a notary. The substance of Minister of Law Regulation No. 2 of 2025 represents a paradigm shift from passive reporting to active verification, whereby notaries are not only obliged to receive and submit reports, but also to verify their accuracy.

The KYC principle in notary operational activities is based on Article 3 of Regulation No 9 of 2017 Requires notaries to know the profile, intent, purpose, and transactions of service users, and to verify BO. Article 5 also emphasizes that the verification process includes information on identity, intent, and the purpose of business relationships. Article 6 emphasizes that verification is conducted to ensure the accuracy of information provided by service users.

The construction of the notary's multi-layered obligations from a critical perspective indicates a structural flaw, whereby, based on the theory of authority, there is a failure in the

epistemological order. Authority as a right and power, from the perspective of authority theory, is always correlated proportionally with obligations. The notary's obligation to verify without the authority to access verification resources indicates a disproportion between authority and obligation.

The obligation to verify the accuracy of BO information submitted by corporations as service users by notaries and the limited authority of notaries to access verification information indicates a disproportion between obligations and authority, which ultimately represents structural and informational limitations in practical arrangements, making it possible for the verification of BO information by notaries to be ineffective given the limited access and complexity of modern corporations.

The multi-layered legal framework for risk mitigation of corporate criminal acts, in the form of verification and reporting of BO information by notaries, poses complex problems. In verifying information, notaries can only request identity documents, corporate documents, and statements from corporate administrators. If there are doubts, notaries can use a closed Q&A mechanism with service users (Sugiharti & Dewi, 2022).

The entire process of verifying the accuracy of information represents formal accuracy, not material accuracy. All documents and information can be falsified, even if the notary has consistently applied the principle of prudence. The material truth of the information can only be obtained through cross-checking between the service user's statements and integrated information systems such as: the Directorate General of Population and Civil Registration database to verify the accuracy of identity data, the Directorate General of Taxes information system to verify the accuracy of Tax Identification Numbers (NPWP) and Tax Returns (SPT), the Legal Entity Administration Information System to verify the similarity of BO with other corporations, the Banking Information System to verify corporate cash flows, and the Indonesian Central Securities Depository database to verify share ownership propositions in public companies.

The obligation to understand the profile of service users and verify the accuracy of BO information in Permenkum 9/2017, without being accompanied by investigative cross-checking authority with information systems, may undermine the effectiveness of the multi-layered legal framework for verifying and reporting the accuracy of BO information by notaries. Even if notaries are given investigative authority, informational limitations are highly likely to occur given the complexity of modern corporate ownership structures.

Corporate beneficial ownership can be concealed through various mechanisms, such as nominee agreements, whereby a person (the nominee) lends their identity to be used by another party in the ownership of assets or financial transactions; layered ownership through holding companies, where complex equity structures between parent and subsidiary companies may obscure corporate beneficial ownership; trust mechanisms; and the use of entities outside Indonesian jurisdiction (FATF, 2018).

Therefore, to verify the accuracy of the BO information submitted by service users, a comprehensive, systematic, and in-depth investigation is required, ranging from reviewing corporate documents and tracing cash flows to international cooperation, all of which require considerable resources and are beyond the capacity and attributable authority of notaries.

The disproportionate situation between the obligation to verify the accuracy of the service user's BO information and the limited authority to access information creates several legal implications, all of which are oriented towards addressing the legal vacuum and providing legal protection for notaries. This asymmetry is likely to lead to false compliance by legal subjects (notaries), ultimately undermining the legislator's intentions.

The asymmetry between the obligation and authority to verify the accuracy of BO information may prompt notaries to conduct formal verification solely to fulfill their administrative obligations, without any actual verification. A regulatory framework that

transforms the passive verification obligations of notaries into active ones would contradict the ontological basis of the notary profession, which is oriented towards the formal truth of the authentic deeds it creates. thus, this resistance triggers counterproductive results from the BO regulation's objective of requiring substantial material transparency of corporate ownership (Sugiharti & Dewi, 2022).

The inconsistency of the multi-layer regulation of BO information verification obligations with the provisions of the UUJN and the lack of adequate access to information creates conditions that make it impossible for the legal framework to be complied with by its legal subjects (impossibility of compliance) due to the uncertainty of the law itself, where legal rules require subjects to perform acts that are factually impossible to perform.

Lon L. Fuller, in his book "The Morality of Law," formulated a theory of legal certainty by identifying eight principles of law that must be fulfilled in order for the law to provide certainty, including: the law must be made by the authorities, it must be announced, it must not be retroactive, clearly formulated so that it is easy to understand, harmonized with one another, does not demand excessive things, is not changed frequently, and there is consistency between regulations and daily practice (Fuller, 1969).

The regulation governing BO information verification by notaries contradicts the principles of clarity, harmonization, feasibility, and consistency with daily implementation. Verifying the accuracy of BO information is challenging to implement without cross-checking against relevant databases. The regulations are abstract and impractical, contrary to the principle of confidentiality in Law No. 2 of 2014 (UUJN), and notaries can't implement the regulations fully (Armansyah & Triastuti, 2018).

Notaries, in fulfilling their obligation to report accurate BO information, are not free to disclose what they know from service users. Discussions and verifications in the context of creating authentic deeds are not only oriented towards reporting, but also take into account confidentiality, the trust of service users and prospective service users, and the interests of the notary. Notaries who cannot limit themselves will lose the trust of prospective service users and be considered untrustworthy (Yalid & Simamora, 2021).

The tension between the complexity of the issue and the importance of BO transparency raises additional legal implications, such as a liability gap and a distortion of the notary profession. When criminal acts involving corporations and the concealment of BO information are revealed, the burden of responsibility borne by notaries becomes very heavy, even if formal verification procedures and the principle of prudence have been followed, thereby requiring an adequate legal protection mechanism.

2. Legal Construction of Criminal and Civil Liability of Notaries in Beneficial Ownership Verification

Liability in criminal law doctrine requires the fulfillment of at least two essential elements, namely: criminal acts (actus reus) and reprehensible intent (mens rea). A criminal act is an act prohibited by law and punishable by criminal sanctions. The justification for imposing criminal penalties on someone who commits such an act because they violate norms established by law and disturb public order, necessitating punishment and criminal sanctions (Hamzah, 2014).

Malicious intent (mens rea) is a mental condition or intention that underlies the commission of a criminal act by a person (Lamintang, 2013). Malicious intent must be proven together with the criminal act to determine a person's criminal liability. Criminal intent as an inner attitude can be proven by looking at a person's actions in a criminal act oriented towards intent (dolus) or negligence as an act committed without intent, but rather due to carelessness, recklessness, or lack of caution (culpa) on the part of a person who violates the law.

The fundamental principle of criminal law states that there is no crime without guilt (geen straf zonder schuld) (Arief, 2010), so that a person cannot be subject to criminal sanctions if it cannot be proven that there is an element of guilt (dolus and culpa) attached to their actions. Therefore, a person can only be held accountable for a criminal act if it is proven that they committed it intentionally or negligently. This principle is explicitly stated in Article 36, paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code).

Criminal liability for notaries who fail to include or incorrectly include BO in deeds, both for the establishment and amendment of corporations, requires a thorough analysis of the fulfillment of criminal elements and malicious intent inherent in the actions of the notary (Bimo Kusumo Putro Indarto & Suraji Suraji, 2024). A notary can be considered to have committed a criminal offense if their actions fulfill the elements of a criminal offense as stipulated in laws and regulations such as Articles 263, 264, and 266 concerning document forgery in the Criminal Code, Article 55 of the Criminal Code concerning participation, and Article 5 of the TPPU Law concerning the obligation to report suspicious financial transactions to the PPATK.

Article 263 of the Criminal Code on forgery of ordinary documents regulates the act of making or using forged documents, including those that create rights, obligations, or debt relief. Article 264 on the falsification of official documents or authentic deeds specifically regulates acts of falsification, including creating false authentic deeds, in whole or in part, adding to or taking from other authentic documents, or affixing false signatures or stamps to authentic documents. Article 266 on false statements in authentic deeds regulates the act of inserting false statements into deeds, including incorrect statements.

Notaries are subject to the criminal provisions on deed forgery as stipulated in Articles 263, 264, and 266 of the Criminal Code if they are proven to have intentionally created a false deed or included false information in an authentic deed. However, in the formulation of these articles, there is an element of intent —malicious intent — that needs to be proven. Suppose a notary creates an authentic deed based on documents and information provided by the service user and has exercised due diligence, but is still deceived. In that case, the element of intent in the offense is not fulfilled (Taofik & Putra, 2023).

A notary can be accused of being an accomplice (medeplichtige) or participant (medepleger) under Articles 55, 56, and 64 of the Criminal Code as a party involved in money laundering if the deed they made was used to hide a corporate BO that committed money laundering. However, as stated earlier, in order to be held liable for this offense, it must first be proven that the notary knew or should have suspected that the act was unlawful (Sugiharti & Dewi, 2022).

Notaries may be found to have committed the crime of money laundering under Article 5 of the TPPU Law, which regulates passive money laundering, whereby a person receives or controls assets that are reasonably suspected to be derived from a criminal act. Notaries are obliged to report any suspicious financial transactions, and if they fail to do so, they are considered to have committed the crime of money laundering as facilitators (Peraturan Pemerintah, 2015).

The problem is that in cases where notaries have consistently applied the principle of prudence in carrying out their duties but are still deceived by false statements or documents provided by service users, it is difficult to say that notaries have fulfilled the elements of a criminal act (actus reus) as the basis for liability. Notaries do not have investigative authority to verify the material truth of information provided by service users that appears legitimate, so the notary's act of creating a deed without or incorrectly including the BO cannot be classified as creating a false deed.

The aspect of malicious intent (mens rea) as the inner attitude determining the criminal liability of a notary who does not or incorrectly includes the name of the BO in the authentic

deed he/she has drawn up needs to be viewed in the perspective of malicious intent, which is classified into four forms, namely: intent with purpose (opzet als oogmerk), intent as certainty (opzet als zekerheidsbewustzijn), intent as possibility (opzet als mogelijkheidsbewustzijn), and negligence (culpa).

Intent with purpose (opzet als oogmerk) is the purest form of intent in criminal law, where the actions taken by a person and the consequences of the criminal act are indeed their direct purpose (Henok, 2023). In the context of notaries and BO, a notary who deliberately creates a deed that does not include BO, or incorrectly includes BO, to assist in a criminal act is clearly criminally liable.

Intent as certainty (opzet als zekerheids-bewustzijn) is a form of indirect intent, where the consequences of a person's actions are not directly intended, but are still carried out. In this context, a notary who knows that the information and documents provided by the service user are false but still draws up the deed can clearly be criminally liable.

Intent as a possibility (opzet als mogelijkheids-bewustzijn) is where a person is aware of an undesirable possibility but still carries out the act. In this context, if a notary receives information from a client, finds irregularities based on their suspicion that the BO information is incorrect, and still continues with the deed drafting process, the notary may be criminally liable.

Negligence (culpa) is a careless act that arises from a lack of caution, where a person does not see the consequences of their actions and does not prepare mitigation measures as is commonly done. In this context, a notary who, due to negligence, fails to include, or incorrectly includes, the name of the BO in the authentic deed they have drawn up, without the verification process that should have been carried out to verify the accuracy of the information provided by the service user, may be held criminally liable.

Intent as a possibility and culpa as malicious intent that must be proven in the case of a notary being held criminally liable for an authentic deed that is found to have problems oriented towards the standard practice of verifying the accuracy of information provided by the client to the notary. In the case of intent as a possibility, liability depends on how strong the notary's suspicion is and whether the notary took steps to verify the truth. Meanwhile, in cases of negligence in conducting verification efforts, the question arises as to how far formal verification protects the notary's interests.

The Medan High Court Decision Number 66/Pid.Sus/2018/Pn. Mdn emphasizes the obligation of notaries to verify the accuracy of information submitted by service users, both formally and substantively. This decision found the defendant, Tiandi Lukman, to be the alleged beneficial owner (BO) of several corporations operating in the crude palm oil (CPO) sector that committed tax crimes by submitting fictitious tax invoices and fictitious CPO sale and purchase transactions. Tiandi Lukman is considered the BO of these corporations even though he is not formally registered as a shareholder or company director.

Decision No. 66/Pid.Sus/2018/Pn. Mdn emphasizes notaries' obligation to verify the formal and substantive accuracy of information provided by service users. However, this decision does not explicitly state that notaries in this case can be held criminally liable, in that they must fulfill the elements of malicious intent (dolus/culpa) and of efforts to verify the accuracy of the information they carry out. In this case, the notary was required to verify the accuracy of the BO's information, but criminal liability was imposed on the defendant as the BO.

Criminal liability theory recognizes strict liability, whereby a person or legal entity can be held criminally liable without first having to prove malicious intent (dolus/culpa); it is sufficient to prove the criminal act (actus reus) (Moeljatno, 2008). In the context of notaries and the verification of BO information, there are no provisions for strict liability. Therefore, in order for a notary to be held criminally liable, malicious intent and criminal acts must be proven.

If the notary has applied the principle of due care, then malicious intent is not fulfilled, and the notary cannot be held criminally liable.

The civil liability of a notary for an authentic deed that is made without or incorrectly includes the name of the BO is based on the legal construction of an unlawful act (tort/onrechtmatige daad) as an unlawful act that causes harm to another person as stated in Article 1365 of the Civil Code and the conditions for the cancellation of an agreement and restoration to the original state as stated in Article 1265 of the Civil Code.

Unlawful acts (PMH) based on Article 1265 of the Civil Code have at least five elements, namely: the existence of an act (positive or negative), the act is against the law (law), the existence of fault (schuld), the existence of damage caused to another party, and the existence of causality between the act and the damage caused. In its development, PMH, based on the jurisprudence of Arrest Hoge Road 1919 (Lindenbaum v. Cohen) expanded the concept of PMH to include not only laws, but also subjective rights, legal obligations, morality, and propriety (Hukum Online).

PMH by notaries in the context of drafting deeds of establishment or amendment of corporations can occur in several forms, namely: drafting deeds with false data where the notary is proven to have intentionally or negligently allowed the falsification of data by the service user, drafting deeds that do not comply with procedures, failing to verify the accuracy of the information provided by the service user where the notary does not apply the principle of due diligent ensure the integrity of the service user, and disregarding the interests of the service user.

Notarial malpractice in the context of fulfilling their obligations as public officials authorized to draw up authentic deeds and various other documents that have legal force as an extension of the government in the private legal sector based on Article 16 paragraph (1) letter a of the UUJN relates to the notary's obligation to act in a trustworthy, honest, careful, independent, impartial manner, and to protect the interests of the parties involved in their operational activities.

The keyword "careful" in Article 16 paragraph (1) letter a of the UUJN is interpreted as the obligation of notaries to act carefully, thoroughly, and meticulously in carrying out their activities. This provision is related to the principle of prudence as the operational standard for notaries in carrying out their activities. The question is to what extent efforts to identify and verify the accuracy of information protect notaries' interests if they fail to do so for the BO information provided by the service user.

The civil liability of notaries in the event of failure to or incorrect inclusion of BO in the authentic deeds they draw up takes several forms, namely: the principle of fault-based liability (liability based on fault) where a person can be held liable if there is an element of fault inherent in their actions as stated in Article 1365 of the Civil Code and the principle of presumption of liability where a person is presumed guilty until proven otherwise.

In cases where a notary is at fault or fails to include BO information in an authentic deed that he or she has drawn up, if the principle of liability based on fault is applied, the plaintiff must prove that the notary has neglected his or her duty to verify and identify the accuracy of the BO information in the deed that he or she has drawn up. Whereas if the principle of presumption of responsibility is used, then the notary must prove that the verification procedure has been carried out consistently with the limits of his authority (Bimo Kusumo Putro Indarto & Suraji Suraji, 2024).

The prudent notary principle is a standard of professional conduct that requires notaries to act carefully, thoroughly, and meticulously in carrying out their activities (Manuaba et al., 2018). This principle has three sources, namely: Article 16 paragraph (1) letter a of the UUJN concerning the obligation to act carefully, Article 4 of the UUJN concerning the obligation of notaries to act neutrally and not to disclose the confidentiality of deeds, and the notary

professional code of ethics which requires checking the accuracy and formal validity of information submitted by service users.

The application of the principle of prudence in the process of authentic deed preparation by notaries in mitigating the risk of BO errors by identifying and verifying the formal accuracy of BO information can be used as a consideration in Presidential Regulation 13/2018, which states that the BO of a corporation, foundation, limited partnership, limited liability company, cooperatives, and other types of corporations in general can be identified through propositions of capital ownership, equity, voting rights, and ownership of assets that are greater than other partnerships with a position greater than 25%.

The application of the principle of prudence in the process of verifying the accuracy of information submitted by service users can use the BO criteria in the Presidential Regulation, with at least three general determining factors of a BO of a corporation, namely: 1) supreme power, according to the articles of association of the corporation, where the BO is not always a legal entity; 2) economic benefits, where the BO is always the party that receives direct benefits in greater amounts than other partnerships; 3) control, where BO refers to the extent of influence over management, policy, and the direction of the corporation.

Simple standards for applying the principle of prudence in notarial professional activities can be classified into three stages of authentic deed preparation, namely: the pre-deed preparation stage, the deed preparation stage, and the post-deed preparation stage (Farid Alwajdi, 2020). In the pre-deed stage, notaries need to identify service users by requesting all relevant documents, including identity documents and supporting documents such as deeds of establishment, GMS, and other documents. In order to fulfill the notary's duty of care, they must identify the authenticity of the BO by matching it with the proposition of ownership rights from the establishment of the company, while to verify this, the notary can conduct a closed Q&A interview to understand the intentions, objectives, and profile of the service user. To eliminate any doubts, notaries can provide legal advice on the obligation to disclose BO and the legal consequences of providing false information.

During the deed drafting stage, the notary can ensure that all service users and other interested parties are present, examine all documents and information provided are coherent, and include all BO-related information provided by the service user in the authentic deed they create. The obligation to act with due care can be waived by requesting a letter of certification that the information provided by the service user is accurate and that the service user can be held legally accountable.

After the deed is completed, the notary reports the corporate BO information to the AHU online system in accordance with Permenkum 15/2019 and Permenkum 2/2025. If there is a financial transaction worth more than IDR 100 million or if the notary has doubts about the info, they report it to PPATK right away. One hundred million, or if the notary has doubts about the accuracy of the information, they must immediately report it to the PPATK, and the notary must document the entire process of verifying the accuracy of the information provided by the service user and keep it for at least 5 years, even if the corporation has been dissolved.

The entire general process of applying the principle of due diligence in verifying a corporation's BO by a notary, when applied consistently, but is still deceived by false information concealed by the service user from the notary, the notary may use a counterargument based on the business judgment rule defense or good faith defense with the logical argument that in this case, a professional decision was made in good faith and based on the information provided at the time the legal event was constructed, which cannot be used as a basis for liability, even if the client is later proven to be at fault.

The use of this argument is taken from the concept of the duty of care in corporate law, whereby directors cannot be held liable for business decisions that are detrimental to the company if those business decisions were made carefully, taking into account various

influential variables, and were made in good faith, based on all available information at the time. The decision-making process was solely for the benefit of the corporation.

In the context of notaries, given the complexity of structural and informational limitations on the possibility of verifying the material truth of the BO information provided by service users during the process of creating authentic deeds, notaries should not be held liable for errors in corporate BO information that are beyond their ability to verify, as long as they have consistently applied the principle of due diligence.

CONCLUSION

The notary's obligation to verify the accuracy of BO information in Permenkum 9/2017 and 2/2025, which is not accompanied by the granting of investigative authority and access to relevant information databases, creates an asymmetry between obligations and authority that implies the impossibility of compliance because the regulation does not accommodate legal certainty given the lack of formulation of mechanisms, standards, sources of information that notaries can use to verify the substantive accuracy of BO information.

The construction of notary criminal liability is based on the fulfillment of the elements of malicious intent and criminal acts, while civil liability is based on PMH. The standard for applying the principle of prudence is key to notaries' legal liability, as notaries who consistently apply it negate the element of malicious intent in criminal liability and the element of fault in PMH.

REFERENCE

Aang Okta Wijaya. (2025). Legal Protection of Suspicious Financial Transaction Reports by Notaries in the Know Your Customer Principle. *Mahkamah : Jurnal Riset Ilmu Hukum*, 2(2), 96–104. <https://doi.org/10.62383/mahkamah.v2i2.578>

Amalia, R., Musakkir, M., & Muchtar, S. (2021). Notary Liability for Authentic Deeds That Do Not Conform to the Facts. *Al-Ishlah: Jurnal Ilmiah Hukum*, 24(1), 188–206. <https://doi.org/10.56087/aijih.v24i1.77>

Arief, B. Nawawi. (2010). *A Collection of Criminal Law Policies: The Development of the New Criminal Code Concept*. Kencana.

Armansyah, & Triastuti. (2018). Beneficial Ownership and Reporting Obligations for Suspicious Financial Transactions. *ADIL: Jurnal Hukum*, 9, 18.

Bimo Kusumo Putro Indarto, & Suraji Suraji. (2024). Notary Responsibility in Disclosing Beneficial Owners in Company Establishment. *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora*, 1(4), 199–206. <https://doi.org/10.62383/aliansi.v1i4.309>

Farid Alwajdi, M. (2020). *The Urgency Of Cyber Notary Regulation In Supporting Ease Of Doing Business In Indonesia*. 9(2), 257–274.

FATF. (2018). *Concealment of Beneficial Ownership*. www.fatf-gafi.org

Fuller, L. L. (1969). *The Morality Of Law (Revised)*.

Ghani, A. R., Firdaus, M., & Al Ansari, M. (2025). The Role of Notaries in the Creation of Authentic Deeds and Their Impact on Legal Validity in Indonesia. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 3(2), 1547–1582. <https://shariajournal.com/index.php/IJIEL/>

Hamzah, A. (2014). *Principles of Criminal Law (Revised)*. PT Rineka Cipta.

Henok, A. H. (2023). Construction of Motive in Criminal Case Evidence. *Honeste Vivere*, 33(2), 113–129. <https://doi.org/10.55809/hv.v33i2.242>

Hidayah, F. N. (2025). *Legal Protection for Notaries in the Preparation of Authentic Deeds Where the Parties Use False Identities from an International Law Perspective*. Hukum Online. (n.d.). *Unlawful Acts and Breach of Contract as the Basis for a Lawsuit*.

Jatmiko, B., & Prananingtyas, P. (2023). Legal Review of Provisions Regarding Beneficial Owners of Companies. *NOTARIUS*, 16(1).

Ministry of Law and Human Rights. (2017). Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 9 of 2017 concerning the Application of the Know Your Customer Principle for Notaries. www.peraturan.go.id

Kurniawan, I. W. A. (2018). Notary Responsibility for Deeds Not Read Before the Parties. *Acta Comitas Jurnal Hukum Kenotariatan*, 3(3), 489–499. <https://ojs.unud.ac.id/index.php/ActaComitas>

Lamintang, P. A. F. (2013). *Fundamentals of Indonesian Criminal Law* (V). Citra Aditya Bhakti. <http://inlislite.perpusnas.go.id>

Manuaba, I. B. P., Parsa, I. W., & Ariawan, I. G. K. (2018). The Principle of Prudence of Notaries in Creating Authentic Deeds. *Acta Comitas: Jurnal Ilmiah Prodi Magister Kenotariatan*, 1, 59–74.

Moeljatno. (2008). *Principles of Criminal Law* (8th Edition). Rineka Cipta. <http://inlislite.perpusnas.go.id>

Ministry of Law Regulation. (2025). Regulation of the Minister of Law of the Republic of Indonesia Number 2 of 2025 concerning Verification and Supervision of Corporate Beneficial Owners.

REGULATION OF THE MINISTER OF LAW AND HUMAN RIGHTS OF INDONESIA NUMBER 15 OF 2019 ON THE IMPLEMENTATION OF BENEFICIAL OWNER IDENTIFICATION BENEFICIARIES OF CORPORATIONS (2019). www.peraturan.go.id

Government Regulation. (2015). Government Regulation of the Republic of Indonesia Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes.

Presidential Regulation of the Republic of Indonesia. (2018). Presidential Regulation of the Republic of Indonesia Number 13 of 2018 concerning the Implementation of the Principle of Recognizing the Beneficial Owners of Corporations in the Context of Preventing and Eradicating Money Laundering and Terrorism Financing Crimes.

Putri, N. A. (2021). The Role of Notaries in Implementing the Principle of Recognizing Beneficial Owners of State-Owned Enterprises in the Form of Limited Liability Companies. *Indonesian Notary*, 3(4), 369–393. <http://www.fatf-gafi.org/recommendations.html>

Samiya, A. I., & Susetyo, H. (2021). Notaries as Reporters in the Prevention and Eradication of Money Laundering Crimes Based on Government Regulation Number 43 of 2015. *Jurnal Ilmu Hukum “THE JURIS,”* V(2), 185–192. <http://ejournal.stihawanglong.ac.id/index.php/juris>

Sugiharti, K., & Dewi, Y. K. (2022). *Statement of Beneficial Ownership: Protection for Notaries in Identifying Beneficial Owners?* (Vol. 4, Issue 2).

Taofik, T. V. D. U., & Putra, M. F. M. (2023). Representation of the Hedonism of the Main Character in Kevin Kwan’s Chinese Novel Rich Girlfriend. *Syntax Idea*, 5(9), 1194–1204. <https://doi.org/10.46799/syntax-idea.v5i7.2416>

Law of the Republic of Indonesia Number 31 of 1999 Concerning the Eradication of Corruption Crimes (1999).

Law of the Republic of Indonesia Number 2 of 2014 on Law Number 30 of 2004 on Notary Positions (2014). www.bphn.go.id

Yalid, & Simamora, B. (2021). Conflict of Norms Between the Notary's Obligation to Keep Deeds Confidential and the Obligation to Report Suspicious Financial Transactions. *Era Hukum: Jurnal Ilmiah Ilmu Hukum*, 19, 16–39.