

CHAPTER 1 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 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 and lack of transparency to launder proceeds of crime, such as corruption and 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 including the protection of property or *hifz al-mal*. In this context, any 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	Aspect	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 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.



CHAPTER II 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.



...a will be collected through desk study and legal document analysis. The ...y involves a review of legal literature and fiqh books related to the concept of 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.

