

## **Juridical Analysis of Foundation Beneficial Owner based on Presidential Regulations Number 13 of 2018**

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### **Abstract**

*This thesis aims to analyze the legal conflict between the foundation law and Presidential Regulation Number 13 of 2018 concerning beneficial owners in foundations, where foundations shouldn't have a beneficial owner. The issues raised are: (1) What's the juridical analysis of the Criteria for Beneficial Owners of Foundations based on Article 5 of Presidential Regulation Number 13 of 2018 from the perspective of the Foundation Law? and (2) What's the legal certainty regarding Notaries obligations in listing the beneficial owners in the process of ratifying, establishing or changing the foundation's legal entity, based on Minister of Law and Human Rights Regulation Number 9 of 2017? Research methods used are statute approach and conceptual approach. Resulting in a conclusion that a foundation doesn't have a beneficial owner, and legal certainty for notaries remains uncertain. Therefore, this Presidential Decree should be created and aimed at corporations formed as companies, with profit-oriented activities.*

**Keywords:** *Foundation, Beneficial Owner, Notary.*

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## **INTRODUCTION**

The continuing speed of establishing foundations has led to the need for guarantees related to legal certainty and order, so that foundations can implement their functions in accordance with their objectives which are based on the principles of openness and accountability for the community, as well as providing the public with the right understanding regarding foundations. (Setiawan, 1992) The regulations that specifically regulate foundations are Law Number 16 of 2001, which has been amended to become Law Number 28 of 2004 concerning Foundations (Foundation Law)

Article 1 paragraph (1) of the Foundation Law, provides a definition of a foundation, namely a legal entity consisting of separated assets and intended to achieve certain goals in the social, religious and humanitarian fields, which does not have members. Even though it is not explicitly stated in the foundation law that a foundation is a non-profit legal entity, it can be seen from its initial objectives which are intended in the social, religious and human fields, which is a key word that can be interpreted to mean that a foundation is an entity. Laws that are not profit oriented. In fact, from the beginning foundations were prohibited from carrying out activities in any legal action whose aim was to generate personal profits for the founders or administrators of the foundation. (Gatot Supramono, 2008)

Since the promulgation of Presidential Decree 13/2018, there has been a new concept regarding the obligation to submit data on beneficial owners of a Corporate, with the aim of transparency for all corporations in Indonesia which has been urged by the government. The Implementing Regulations of the Presidential Decree above, are regulated through: (1) Minister of Law and Human Rights Regulation Number 9 of 2017; (2) Minister of Law and Human Rights Regulation Number 15 of 2019; (3) Minister of Law and Human Rights Regulation Number 21 of 2019, which also regulated that Submission of information on the Beneficial Owners of a

Corporation is carried out electronically via AHU Online by a Notary. It also discusses the Application of the Principle of Recognizing Service Users for Notaries, where a Notary is required to input data regarding the identity of the beneficial owner of a corporation to fulfill the application for the establishment, registration and/or ratification of the Foundation.

However, the Notary's obligation to both know and/or input data regarding who the beneficial owner is actually has several obstacles due to a conflict of norms due to the foundation law which does not regulate beneficial owners at all, so there is no business element at all (voluntary) as per in line with the initial aims and objectives of the foundation. It can be seen that there is an imposition of the term because a Foundation (which is a non-profit legal entity), is included in the category of corporation which has beneficial owners, or can also be interpreted as a corporation with aims and objectives towards an orientation that seeks as much profit as possible.

This aligns with the statement made by Magfirah Hamsah in her journal titled "Kedudukan Pemilik Manfaat (Beneficial Ownership) dalam Penerapan Prinsip Mengenali Pemilik Manfaat pada Suatu Pendirian Badan Hukum Yayasan": "The emergence of the term 'beneficial owner' in Presidential Regulation No. 13/2018 raises questions about the status of beneficial owners in the establishment of foundations in Indonesia. This issue arises because the term 'beneficial owner' has never been found in the Law of the Republic of Indonesia No. 16 of 2001 in conjunction with Law No. 28 of 2004 on Foundations, as well as other regulations. This has led to various opinions and views on the status and relationship between beneficial owners and the legal entities of foundations, as well as the responsibility of notaries in complying with regulations on the disclosure of beneficial ownership, which contradicts the Notary Law (UUJN) in maintaining public trust in the notarial profession." (Magfirah Hamsah, 2021)

By paying attention to the substance of Law Number 12 of 2011 concerning the hierarchy of statutory regulations which also in line with The Hierarchy Theory of Statutory Regulations, Presidential Decree 13/2018 has violated the Foundation Law because of the hierarchy in statutory regulations, and the law is obliged to pay attention to the principle of *lex superior derogat legi inferior*. (Khusnu Goesniadie, 2010). The establishment of a regulation should provide legal certainty, in this case also for Notaries. However, in reality it has not been implemented properly, which has led to legal conflicts between the two. This is contrary to the legal certainty created by Sudikno Mertokusumo that Guarantee of the legal rules that have been formed can be carried out properly, it must pay attention to Human Rights, namely that the person or legal entity that is the subject of the regulation obtains a guarantee that their rights will be fulfilled, and their obligations will also be carried out. (Mertokusumo, 2007)

Based on the conflicts from the background above, the author will highlight the research results with the title Judicial Analysis of Foundation Beneficial Owners. Based on Presidential Regulation Number 13 of 2018 and Law Number 28 of 2004 concerning Foundations.

## RESEARCH METHODS

This research is normative juridical research. With objects including legal principles, legal systematics, legal synchronization, and legal comparison. By using a legal research approach, namely the Statutory Approach, that involves the study of relevant laws by considering the legal problems faced. Supported with a Conceptual Approach, that used to analyze and study legal concepts or ideas. Equipped with primary and secondary legal material sources, with legal material analysis techniques using systematic interpretation, grammatical interpretation and comparative interpretation. As stated by Peter Mahmud Marzuki, "Primary legal materials are

authoritative legal sources. In this context, primary legal materials consist of legislation, official records, or minutes from the drafting of legislation." (Marzuki, 2013)

## RESULT AND DISCUSSION

### **1. Juridical Analysis of the Criteria for Beneficial Owners of Foundations based on Article 5 of Presidential Regulation Number 13 of 2018 from the Perspective of the Foundation Law**

#### **(A) Foundation Aims and Objectives.**

The foundation's legal entity status was originally obtained as derived from an open system for determining legal entities (het open system van Rechtspersonen), which was later switched to a closed system for determining legal entities (de Gesloten systeem van Rechtspersonen). This means that currently foundations have become legal entities based on laws or closed systems, no longer based on open systems which are based on customs, doctrine and supported by jurisprudence. (Ais, 2006) Is stated in the provisions of Article 1 number (1) of the Foundation Law, namely, a foundation is a legal entity consisting of separated assets and intended to achieve certain goals in the social, religious and humanitarian fields, which does not have members. Based on the definition of "foundation", there are 4 (four) essential ingredients, consisting of:

1. The foundation is in the form of a legal entity.

The foundation is legally competent in carrying out various actions that are legal and have legal consequences even though those who actually act are the organs within the foundation.

2. Separate foundation assets.

The foundation's assets (movable or immovable objects) are obtained through assets that have been separated from its organs. So, legally the foundation has independent assets. (Gatot Supramono, 2008) The main purpose of separating assets is a form of prevention, so that the initial assets of the foundation are no longer personal assets or joint assets of the founders. Thus, these assets will remain the personal assets of the foundation.

3. The foundation's specific objectives take the form of implementing religious, social and humanitarian values.

Foundations were originally designed as non-profit organizations whose aim was not to gain a profit, unlike commercial bodies such as Joint Stock Companies, CVs, Corporations, etc.

4. The Foundation does not have members.

This means that foundations do not have any kind of shareholders similar to limited liability companies or other business entity members. However, foundations are operated and managed by the foundation's organs.

In line with the aims and objectives of foundations as a non-profit legal entities can also be found in Article 3 paragraph (2) of the Foundation Law, that foundations may not distribute the results of business activities to the Foundation's Organs. In detail, it is also stated in the explanation section of said Article, that the provisions in this paragraph are in accordance with the aims and objectives of the Foundation which are social, religious and humanitarian in nature, so someone who is a member of the Trustees, Management, and Foundation Supervisors must work voluntarily without receiving a salary, wage or fixed honorarium.

Each foundation organ will have its own rights, obligations and authority in realizing the aims and objectives of the foundation, as consisting of:

### 1. Trustee

Article 28 paragraph (1) of the Foundation Law, stated that the trustee is an organ of the Foundation which has authority which is not delegated to management or supervisors by this law or the articles of association. The authority of the Trustees includes: decisions regarding changes to the articles of association, determine the Foundation's public policy based on the Foundation's Articles of Association, ratify the Foundation's work program and annual budget draft, determine decisions regarding the merger or dissolution of the Foundation, as well as appoint and dismiss members of the Management and Supervisory members. However, this does not mean that trustees can interfere with their duties and authority.

### 2. Administrator

The role of management is very dominant in this organization. Without administrators, the foundation's management will not be able to operate. The composition of the Management consists of at least: a chairman, a secretary, and a treasurer. They are responsible for the management of the foundation or for the interests and objectives of the foundation, and have the right to represent the foundation both inside and outside the court. Management activities may be carried out by the executor of foundation activities appointed by the management. The explanation of Article 35 paragraph (3) states that the activity implementer is the daily administrator of the foundation who carries out the foundation's daily activities. It is possible to receive a salary or wages for his work, but still not with the administrator.

### 3. Supervisor

The supervisor is tasked with supervising and providing advice to the management in carrying out the foundation's activities. The supervisor supervises and provides advice to the Management in carrying out the foundation's activities.

The people who fill these positions work completely voluntarily without any compensation. Therefore, from the start it must be realized that being a foundation manager is not a job to earn income, so foundation administrators should be individuals who are financially fulfilled. Even though a foundation is a non-profit legal entity, that doesn't mean it can't make a profit. Article 3 paragraph (1) explains that foundations can only take profits to the extent of the profits from the business entity they founded or the assets they invest in other business entities that have the same aims and objectives as the foundation so that the foundation is not misused.

A Foundation is a legal entity that must be regulated by a notarial deed. Where then the deed is submitted for approval to the Minister of Law and Human Rights, and published in the State Gazette of the Republic of Indonesia. After the deed of establishment has been ratified, the foundation is officially born as a legal entity. All of these requirements are grouped into material requirements and formal requirements, with the material requirements consisting of the 4 (four) essential ingredients based on the "definition of foundation", that have been described above. Meanwhile, the formal requirements only consist of one thing, namely the existence of an authentic deed / notarial deed. (Adib Bahari, 2010)

Rochmat Soemitro stated that a foundation is a business entity that usually operates in the social sector and its aim is not to seek profit, but rather its aim is to carry out social business. Rochmat Soemitro's views above are also in line with Hayati Soeroredjo's views. According to Hayati Soeroredjo, foundations must be social and humanitarian as well as idealistic and are definitely not allowed to conflict with statutory regulations, public order and/or morality. (Soerodjo, 1981) This means that the founders and administrators of the foundation who founded and managed the foundation from the start had the sole intention and goal of helping people who needed a helping hand. The existence of foundations in general is a response to the paradigm of creating a civil society that prioritizes justice and human rights, which leads to general welfare, giving rise to pressure to form an agency with social goals that help fulfill general welfare.

**(B) Comparison between Foundations and Limited Liability Companies as Corporations**

The word "corporation" or "company" is commonly used by several criminal law experts to refer to the word "corporation", whether it is a company with a legal entity (which in Dutch is called *rechtspersoon*), and in English it is called corporation, company or legal entity, as well as non-legal companies. So the term "Corporation" here has a broad meaning because it also includes companies that are not legal entities. Corporations according to the criminal law above are not the same as the definition of corporations in civil law. Where, according to criminal law, it is broader than the definition according to civil law. According to civil law, legal subjects, namely those who can or are authorized to carry out legal actions in the field of civil law, such as making agreements, consist of 2 (two) types, namely natural person (human) and legal entity (legal person). If concluded, it means that according to civil law, a corporation is only a legal entity.

Presidential Decree 13/2018 defines that a Beneficial Owner is an individual who is capable of appointing or dismissing Directors, Board of Commissioners, Management, Trustees or Supervisors of a Corporation, has the capability to organize a Corporation, has authority over and/or receives benefits from the Corporation either directly or indirectly, is the actual owner of the Corporation's funds or shares and/or meets the criteria in the Presidential Decree. The context discussed in the Presidential Decree has a basis for consideration in the form of Law Number 9 of 2013 concerning the Crime of Terrorism Financing and Law Number 8 of 2010 concerning the Crime of Money Laundering. So, the corporation in question is an organized group of people and/or assets, both legal entities and non-legal entities, so that corporations do not only include legal entities, for example limited liability companies, foundations, cooperatives, or associations that have been legalized as legal entities. classified as corporations, according to criminal law, firms, limited liability companies or CVs, and partnerships or *maatschap* are also corporations.

Based on the explanation above, it is still found that there is an imposition of the term in Presidential Decree 13/2018 if the Foundation Legal Entity falls into the category of "Corporation that has a Beneficial Owner". There are various forms of corporations:

1) By status:

- a. A corporation as a legal entity that is established based on the applicable law and has received approval from the government, and is announced in the supplement to the state gazette of the Republic of Indonesia.
- b. Corporations that are not legal entities.

2) By ownership:

a. Individual Ownership (Proprietorship)

A business run by a person with the aim of achieving profit or profits. In contrast to legal entity companies, the number of entrepreneurs who run individual companies is only one person and so is the source of business capital. The actions of the business owner in an individual company are not too limited by regulations, both regulations in the nature of agreements with business partners and regulations in the nature of legislation.

b. Partnership

A combination or association of two or more individuals, to own and run a business together with the aim of making a profit, either to expand the business and add capital so that it can compete better with other companies and increase profits. A partnership can be established either by two more people who have a business or who do not have a business.

c. Limited Liability Company (Corporation)

Limited liability company, is a legal entity which is a capital partnership, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares and meets the requirements stipulated in the Law this and its implementing regulations. Which is further divided into: (Rustan, 2023)

- (a) Private Corporation: A type of corporation owned by a few people or limited to the closest relatives who run the business, with company shares that are private or not released to the public.
  - (b) Public Corporation: A company that can be purchased by another party when the company needs additional capital. This company can take over the shares that have been sold and the company can become a private company again. When additional capital is needed, it can be sold to other parties who want to buy company shares.
  - (c) Quasi Public Corporation: A Non-Profit Corporation, with activities that are carried out more for the benefit of the people, in the form of social activities and educational institutions, or that have a goal, namely goodness. This company sometimes carries out its business activities without profit and even has to bear the company's losses and still maintain the company's existence.(Perusahaan Korporasi: Definisi, Jenis, Ciri, Dan Contohnya, n.d.)
- 3) Based on activities:
- (A) A corporation in the form of a company, namely a corporation whose activities are to run a company with the main aim of gaining a lot of profit.
  - (B) Non-corporate corporation. In carrying out its activities, this corporation operates in the social, religious or humanitarian fields with the aim of helping or improving the welfare of society and doesn't seek profit.(Gatot Supramono, 2010)

From the explanation above, it can be concluded that there are 2 (two) types of corporations based on the form of their activities, namely corporations in the form of companies and non-companies, as examples can be taken between the two by comparing Limited Liability Companies (corporations in the form of companies) and Foundations. (a corporation in the form of a non-company). Based on the Limited Liability Company Law and the Foundation Law, the differences between the two are:

<b>Characteristic</b>	<b>Limited Liability Company</b>	<b>Foundation</b>
<b>Definition</b>	A legal entity which is a capital association, established based on an agreement, carries out business activities with authorized capital which is entirely divided into shares and meets the requirements stipulated in this Law and its implementing regulations.	Legal entity, which consists of separate assets and intended to achieve certain goals in the social field, religious and humanitarian, which has no members
<b>Legal Basis</b>	Law Number 40 of 2007 concerning Limited Liability Companies	Law Number 16 of 2001 juncto. Law Number 28 of 2004.
<b>Objective</b>	The goal of a Limited Liability Company is wealth, where Shareholder profits can be in the form of dividends depending on the agreement that has been made	The foundation has a specific goal or focus in the social sector, religion and humanity
<b>Establishment and Wealth</b>	Founded by at least 2 people with wealth from the founder's shares who are required to take shares, which will then become part of the General Meeting of	Founded by 1 or more people by separating personal assets which are then used as the initial assets of the foundation

	Shareholders (GMS) or the highest authority holder	
<b>Capital Sources</b>	Limited liability company capital comes from shares and bonds. Shares paid up and placed by shareholders with a minimum amount determined by law	Donations in the form of money and goods or untied assistance and other acquisitions that do not conflict with the foundation's articles of association or legislation
<b>Sharing Results</b>	Distributed to share owners.	There is no profit sharing.

*Tabel 1.1 Comparison Between Limited Liability Company and Foundation*

It can be concluded that there are so many differences between corporations in the form of Limited Liability Companies and Corporations in the form of Foundations. Meanwhile, the criteria for beneficial ownership of a corporation in Article 5 President Decree, consist of the same elements. Primarily, the results found were that a foundation was a legal entity founded on the founder's assets which were separated so that the assets no longer belonged to the founder, whereas a limited liability companies was established in the form of shares where profits from the business would later be distributed because the assets still belonged to the founder. Therefore, the concept of beneficial owner is more appropriately used by corporations that own all or some of the elements such as limited liability companies and profit oriented corporations.

### **(C) Analysis of Beneficial Owners in Foundations**

In general a foundation must have a founder. That founder is a person, or more than one person who founded the foundation. However, that the founder's wealth is separated and handed over to establish a Foundation, does not mean that the founder has rights to the Foundation, especially in obtaining a share of the proceeds from the management of the Foundation.

This clearly shows that the founder has no authority over the foundation he founded. But, the Foundation Law provides an opportunity for Founders who wish to participate in the management of the Foundation they founded, by taking part in becoming a Trustee organ, as regulated in Article 28 paragraph (3) which states that those who can be appointed as Trustee members are individuals as the founders of the foundation and/or those who, based on the decision of the Board of Trustees meeting are deemed to have high dedication to achieving the goals and objectives of the foundation. Therefore, the Founder can be involved and have authority in the management of the Foundation he founded, if he wants to sit in the Foundation Trustee organ, even though this is not an obligation to do so.

The Organization for Economic Co-operation and Development (OECD) explains that beneficial owners include individuals who receive the actual benefits. In its concept, the OECD divides 3 (three) types of beneficial owners, namely:

1. In a corporation, beneficial owners are obliged to act as part of the shareholders;
2. In a cooperation, the beneficial owner is an individual or party who has limited or general characteristics;
3. In a foundation, the beneficial owner acts as the founder.(Putra, 2019)

Based on the third point above, the OECD created a concept that in a foundation, the beneficial owner acts as the founder. But normatively, the founders do not have the authority as beneficial owners unlike other profit orientation corporations. After interpreting all the legal materials above, resulting a conclusions that a founder can not act as a beneficial owner and/or vice versa, because:

1. Foundation founders are not owners of the foundation

In the process of establishing a foundation, there is a clear separation between the personal assets of the founder and the assets owned by the foundation's legal entity. Therefore,

even though the founder has an important role in establishing the foundation, namely in determining the goals of the foundation and initial backing (providing initial wealth) to achieve these goals, he cannot be considered the owner of the foundation. After the foundation is formed, it becomes a separate legal entity, has continuity, and is managed by the foundation management in accordance with legal provisions and the foundation's articles of association. So that all possible profits obtained by a foundation are only used as operational costs for the continuation of the foundation's activities.

## 2. Foundation capital

Foundation business capital can come from the wealth of the founders, can also come from non-binding donations or assistance, endowments, grants and wills and other unregulated acquisitions that must have clarity on their identity and source. Thus, the foundation has no obligation to return the donation and is only obliged to use the donation in accordance with the wishes of the party providing the assistance or in accordance with the objectives of the foundation. This means that the wealth is separated and handed over by a founder to establish a foundation only.

## 3. Founder's authorities who do not meet the Beneficial Owner Criteria

The Founders were not recognized as part of the Foundation's organs, and regarding this matter it is expressly stated in Article 2 of Foundation Law, that the foundation has an organ consisting of Trustees, Management, and Supervisor. Mainly, the Founders duty is to register the Deed of Establishment of the Foundation. This clearly shows that the founder has no authority over the Foundation he established, as soon as the Foundation was officially registered with the Ministry of Law and Human Rights of the Republic of Indonesia. In the absence of the founder's authority over the Foundation he founded, he also does not have the right to obtain results from the management of the Foundation in any form, like the founder of a limited liability company who owns shares in it. Thus is in line with the legal opinion of N.H. Bregstein as legal expert, which states that a foundation is a legal entity established by a legal act, which does not aim to distribute wealth and/or income to the founder or authority within the foundation, or to other people, except as far as the latter is appropriate with idealistic foundation goals.(Chidir Ali, 1987)

Criteria for Foundation Beneficial Owners based on Article 5 of Presidential Decree 13/2018 are individuals who meet the following criteria:

- a. has initial assets of more than 25% (twenty five percent) of the foundation as stated in the articles of association;
- b. has the authority to appoint or dismiss foundation supervisors, administrators and supervisors;
- c. has the authority or power to influence or control the foundation without having to obtain authorization from any party;
- d. receive benefits from the foundation; and/or
- e. is the actual owner of funds for other assets or participation in the foundation.

Based on that criteria, it is true that the beneficial owner is the party who will later enjoy the profits from running a business because of their ownership rights, whether in the form of shares or authority. Da Silva identified that the core characteristic of beneficial ownership is that the person receives the payment (such as dividends, interest or royalties) and has the right to use and enjoy it, and may not be obliged, either by contract or by law, to pass on the income to another person.(Bruno Da Silva, 2017) Beneficial ownership is not a legal right. But it can be categorized as a privilege, but is not a legal right or claim.(Reinhard-DeRoo, 2014) So, regarding who should be the beneficial owner of the foundation, then the right answer should be “the people”.

If you pay attention to the substance of Law Number 12 of 2011 concerning the hierarchy of statutory regulations using the principle of *lex superior derogat legi inferior*, then Presidential

Decree 13/2018 has violates the Foundation Law, Khusnu Goesniadie stated that, the statutory regulations with lower degrees are prohibited from violating the laws and regulations of higher degrees, with the same norms. If a conflict occurs, the higher statutory regulations automatically override the lower statutory regulations, because of the hierarchy in statutory regulations, and the law is obliged to pay attention to the principle of *lex superior derogat legi inferior*.

Due to the hierarchical structure of legal norms, the validity of a lower legal norm will be very dependent on the norm above it, as the parameter for the enactment of the norm. The provisions that have been established by a higher norm are the parameter in establishing a lower norm. Thus, a lower legal norm will automatically be revoked or no longer valid, if the legal norm above is revoked or deleted. Or in other words, legal norms of a lower level must not conflict with legal norms of a higher level which are the basis or source of the enactment of that norm. (Syahuri, 2004) Therefore, law should always be formed and abolished by the authoritative institutions that have the authority to form it, based on higher norms, so that lower (inferior) norms can be formed based on higher (superior) norms.

The format of the results of research and discussion is not separated, considering the number of pages available for the author is limited.

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The results can be presented with support tables, graphics or images as needed, to clarify the presentation of results verbally.

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Description of the image / graph is placed under the picture / graph, while the title of the table is placed on it. The title begins with a capital letter.

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## **2. Analysis of Legal Certainty of Notary Obligations in Listing Beneficial Owners in the Process of Ratifying Establishment or Changes to Foundation Legal Entities, as Regulated in Minister of Law and Human Rights Regulation Number 9 of 2017.**

Notaries are regulated in the Law on the Position of Notaries (UUJN), which contains the authority, obligations and prohibitions that must be obeyed by Notaries. According to Habib Adjie, the definition of authority includes:

1. Authority over the person, namely for whose benefit the deed was made, or desired by the person concerned;
2. Authority over the deed, or the authority to make authentic deeds regarding all acts, agreements and provisions required by law or desired by the person concerned;
3. Authority over the time and place, namely according to the place of domicile and territory of the Notary's office and the Notary guarantees the certainty of the time of the presenters as stated in the deed. (Adjie, 2009)

Public officials (*openbaar ambtenaar*) can be defined as people who are appointed and dismissed by the government, given the authority and obligation to serve (the interests of) the public in certain matters. (Notodisoerjono, 1993) Therefore, Notaries have a role in providing services to the public in the civil sector specifically, namely creating written evidence as a means of protecting and guaranteeing legal certainty in civil relations.

In the Deed of Foundation Establishment, separate assets are necessary to achieve objectives and are the source of all legal relationships. The goal itself must be an ideal goal, so commercial goals or self-serving goals are not justified. The Foundation Law requires that

foundations must be established using a standard format in the form of an authentic deed by a notary. In accordance with the provisions outlined in Article 1868 of the Civil Code. An authentic deed is a deed made in a form determined by law, by or before a public official who has the authority for that purpose in the place where the deed was made. (Harahap, 2010) Furthermore, after the Foundation's Articles of Association are ratified by the Minister, the Foundation's Deed of Establishment must be published in the Supplement to the State Gazette of the Republic of Indonesia. The duty of a Notary is to formulate or express the wishes/actions of the parties in the form of an authentic deed and pay attention to applicable legal regulations. It is also known that a Notarial Deed or authentic deed has perfect evidentiary power, so no additional evidence is needed. (Adjie, 2018)

Notaries have a heavy responsibility in serving the public interest. The elements of professional behavior include (1) integrity, (2) intellectual honesty, (3) awareness of the limits of one's authority, (4) not solely based on monetary considerations. (Adjie, 2018) In point number three, Notaries are required to be aware of the limits of their authority, where the Notary's authority is only limited to making deeds or formal truths. However, the Minister of Law and Human Rights Regulation Number 9 of 2017 regulates that Notaries are one of the professions that are required to apply the Principle of Recognizing Service Users, which consists of: (a) Obtaining information on beneficial owners if the client is a corporation, through collecting information on beneficial owners from the Corporation either directly or indirectly or based on legal arrangements, and (2) Carry out deeper identification if the beneficial owner has a relatively high level of risk of money laundering or terrorist financing. It can be seen that these obligations are obligations that seek material truth, the process of investigating the client's data should be carried out by investigators in certain government agencies.

Submitting information on the Beneficial Owners of the Corporation can be carried out by the corporation itself if the Corporation has determined their Beneficial Owner, or by submitting a letter of statement of the Corporation's willingness to submit information regarding their Beneficial Owner to the Minister if the Corporation has not yet determined their Beneficial Owner. However, the existence of a letter of statement signed by the applicant as proof that a Notary has implemented the Principle of Recognizing Beneficial Owners cannot provide full legal certainty, especially for Notaries who understand that the concept of beneficial owners in foundations does not actually exist, based on the fact that beneficial owners are not regulated in the Foundation Law and not mentioned in the deed of foundation establishment made by a Notary. In essence, Notaries only play a role and have a position as a system that supports the disclosure of beneficial owners in foundations. Therefore, the involvement of a Notary in the process of establishing a foundation should be limited to draw up the deed of the legal entity. Nusrhasan Ismail stated that: "creating legal certainty in statutory regulations requires requirements related to the internal structure of the legal norms themselves." Those internal requirements are:

1. Clarity of the concepts used. So, the legal norms that are created must have substance that is based on certain behavior.
2. A clear hierarchy regarding whether it is valid or not, as well as binding or non-binding of the laws and regulations that are made. A clear hierarchy, will provide direction as a form of law that has authority so that it can form regulations from certain laws.
3. Consistent legal norms. That the provisions of several legal regulations must focus on one particular subject and not overlap or even conflict with other regulations.

Presidential Decree 13/2018 still needs to be improved, because the existing provisions are not yet in line with the authority and obligations of Notaries in UUJN. A certainty between regulations and their implementation must exist so that positive law can be implemented in the

realm of behavior, action, or other factors that influence the implementation of a rule to create a situation where a rule must be made and promulgated clearly, definitely and logically.

## CONCLUSION

1. The criteria for Foundation Beneficial Owners in Article 5 of Presidential Regulation Number 13 of 2018 from the perspective of the Foundation Law has a conflict between the two. The beneficial owner is the party who will enjoy the profits in the form of shares or ownership. Meanwhile, a foundation is a legal entity with objectives of a social, religious and humanitarian nature (non-profit). Apart from that, the OECD statement of the foundation's beneficial owners act as a founder, proves it does not meet the criteria for beneficial owners that have been regulated. Based on the Hierarchy Theory of Legislative Regulations, it appears that the Presidential Decree violates the Foundation Law, especially from the perspective of the principle of *lex superior derogat legi inferior*. So, to provide legal certainty for Notaries in their obligations regarding the identification of beneficial owners in foundations, it is necessary to revise them by eliminating foundations as one of the categories of companies that have beneficial owners in the Presidential Decree.
2. The Notary's obligations legal certainty in including the Beneficial Owners in the process of ratifying the establishment or changes to the foundation, in the Minister of Law and Human Rights Regulation Number 9 of 2017 concerning the Application of the Principles of Recognizing Service Users for Notaries, does not take into account the provisions of the Law on the Position of Notaries. The Result of the additional obligation to seek material truth is too complex to be implemented by a Notary. In fact, the Notary's involvement in foundation affairs should only be limited to making the deed of the legal entity. Also, regarding the "Statement Letter of Beneficial Ownership" by a Notary, in fact still does not fully provide legal certainty.

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