

Strengthening Corporate Crime Prevention In The Digital Economy In ASEAN

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Halaman | 120

Abstract

Economic growth and development in the digital era have presented new challenges in structuring business between countries, especially countries in ASEAN. Relations and cooperation between corporations are no longer limited to being within the scope of one country but across countries. Such conditions certainly produce new threats. In addition to the positive impact on corporations by presenting wider markets and development opportunities in ASEAN countries, economic developments in the digital era are also accompanied by negative impacts. This can be seen from the opportunity to commit transnational corporate crimes, such as corruption, and market abuse by conducting covert monopolies and creating an unhealthy economic climate for market growth by presenting unfair competition between capital owners. Such a situation will certainly damage the spirit of solidarity presented by ASEAN when initiating the MEA. Therefore, it is necessary to have an integrated system between countries in ASEAN that covers cooperation between corporations in preventing corporate crime in the era of the digital economy. Furthermore, the government and society can find out every beneficial ownership behind each of corporate crime. This integrated system will help economic actors, communities, and governments to map out the dangers and opportunities that cooperation between corporations in ASEAN countries can provide. A healthy economic climate can be created by presenting a system acceptable to all parties (government, corporate, and society). This research is focus on enhancing measures to prevent corporate crime within the digital economy across ASEAN countries.

Keywords: *Corporate Crime; Digital Economy; ASEAN.*

1. Introduction

The presence of corporations has contributed to meeting the needs of human life. For example, in the economic field by creating jobs and in terms of income for the state in the form of taxes (Kristina, 2021). But on the other hand, the development of this corporation is also followed by the growing number of crimes that can be committed or referred to as corporate crimes (Ali, 2013). This is related to the nature of the corporation which is always looking for profit but by doing everything possible including breaking the law or known as an anomie of success, namely success without rules (Yunara, 2005). Based on this, crimes in the corporate sector arise as modern crimes in the economy (Budianto, 2013). The criminal dimensions of corporate crime are patterned in forms such as: defrauding stockholders, defrauding the public, defrauding the government, endangering the public welfare, endangering employees, and illegal intervention in the political process (Hatrik, 1996).

The width dimensions of corporate crime are also directly proportional to the number of losses that can be caused (Prasetyo et al., 2017). Losses caused by corporate crime have a broad impact not only in the economic field but can also have an impact on the loss of life if not immediately followed up with proper handling and prevention (Burhanudin, 2013). This causes

the need for corporate crime regulations, especially in studying cooperation between countries in the ASEAN region.

Corporate crime is a crime committed by the management of the corporation or by the corporation itself for the benefit of the corporation (offenses committed by corporate officials for their corporation or the offenses of the corporation itself) (Ali, 2008). The crime committed by the individual legal subject is considered an act of the corporation (functioneel daderschap) and results in a functional act against the corporation (Sahetapy, 1994). Based on this understanding, corporations can commit 3 forms of corporate crime, namely: Crimes for corporations; Crimes against corporations; and criminal corporations (Ali, 2008).

Crimes for corporations are crimes committed for the benefit of corporations. Crimes for corporation place corporations as perpetrators of criminal acts because corporations are the beneficiary parties. Crimes against corporations often referred to as employee crimes, are crimes committed by employees or workers against corporations. Crimes against corporations place the corporation as a victim, meaning that the crime committed against the corporation or harms the corporation. While criminal corporations are corporations that are intentionally formed and controlled to commit crimes. The position of corporations in criminal corporations is only as a means of committing crimes; as a mask to hide the true face of a crime.

Corporate crime as organized crime / transnational crime is recognized as organized crime and its activities pose a real threat to global stability. The breadth of the dimensions of corporate crime has led to the need for regulations that can increase resilience between countries in the form of cooperation in the economic field. One of these policies relates to reporting on corporate beneficial ownership. The importance of discussing beneficial ownership, especially for Indonesia and countries in the ASEAN region, is needed in handling and disclosing cases related to crimes in the financial sector, such as corruption, taxes, financing of terrorism, and money laundering. Juridically, the regulation regarding beneficial ownership can be seen from the issuance of Presidential Regulation of the Republic of Indonesia Number 13 of 2018 concerning the Application of the Principle of Recognizing the Beneficial Owner of Corporations in the Context of Prevention and Eradication of Money Laundering and Terrorism Financing Crimes (hereinafter referred to as Presidential Regulation No. 13 of 2018). One of the considerations that underlie the issuance of Presidential Regulation No. 13 of 2018 is a threat that criminal acts related to finance can threaten the stability and integrity of the economic system and financial system and endanger the life of society, nation, and state.

The urgent need for strengthening cooperation between countries in the ASEAN region in disclosing beneficial ownership in corporations is evident from the birth of the Treaty on Mutual Legal Assistance in Criminal Matters (MLAT) (Indira Devitasari, 2015). It is stated that MLAT aims to combat transnational crime and the various challenges that arise by increasing cooperation in criminal law enforcement. MLAT is a formal process for obtaining and providing assistance in gathering evidence for use in criminal cases. MLAT is an indispensable tool in international cooperation in the field of criminal law enforcement (Latifah, 2017). These various collaborative processes aim to increase the effectiveness of law enforcement and the efficiency of law enforcement system rules (ASEAN, 2020). MLAT itself cannot be separated from the background of the increasing development of transportation, communication, and information which makes one country to another country seem borderless. On the other hand, this has increased transnational crimes with increasingly sophisticated modus operandi. Therefore,

more effective cooperation between countries is needed to facilitate the prevention and handling of the criminal justice process.

2. Discussion

The contribution given by the corporation in the economic field has had a positive impact, but on the other hand, the corporation can also have a negative impact, such as the existence of criminal acts in the field of corruption, tax manipulation, and money laundering both directly and indirectly. terrorism financing crime (Setiyono, 2005). Based on this, it cannot be denied that corporations can commit criminal acts in order to gain profit (anomie of success). These benefits are often not only enjoyed by the Corporation itself but also enjoyed by individuals as the true owners of the Corporation (beneficial ownership) (Ariani, 2020). There are two general criteria in determining the beneficial ownership of the Corporation which are then applied to the Corporation with their respective characteristics. Both criteria can be applied based on the needs of the corporation in identifying the Corporate Beneficial Owners.

The first criterion is regarding the minimum limit of shares, capital, funding, or wealth of at least 25% (twenty-five percent) which is used as a limit to determine the amount of power possessed or the profit received as then stated in the Articles of Association or the partnership establishment agreement, and has the authority to appoint or dismiss the management or supervisor of the Corporation. The second criterion that can be applied in identifying the Corporate Beneficial Owner is an individual who has the authority or power to influence or control the Corporation without the need for any authority from any party, receive benefits from the Corporation, and/or the actual owner of funds or funding sources from the Corporation.

The second criterion has a wider range than the first criterion and is a different criterion from the first criterion in determining the Corporate Beneficial Owner. This is because, in the first criterion, there is a requirement that it has been clearly written in the Articles of Association or other forms of engagement in the establishment of the Corporation. Thus, the second criterion, it is intended to reach individuals who are not included in the requirements of the first criterion but still have power or authority in the Corporation so that they are also considered as Corporate Beneficial Owners.

The regulation regarding the beneficial owner of the corporation requires the disclosure of information from the corporation regarding the beneficial owner of the corporation in an honest and truthful manner (Agustianto, 2022). However, identification of the Corporate Beneficial Owner does not necessarily eliminate the potential for corporate crime, especially in criminal acts in the financial sector (Kristina, 2019). Corporations can manipulate the information data of individuals as Corporate Beneficial Owners (Naufal, 2021).

Overcoming these legal loopholes, the laws and regulations in Indonesia then impose disclosure of information regarding the Corporate Beneficial Owner on the capacity of the Authorized Agencies. The authorized agency is expected to be able to conduct an assessment and identification based on

audit of the Corporation;
information from government or private institutions that manage data or information regarding the Beneficiary; or
other reliable information.

Based on this rationale, the implementation of the regulation will face challenges in terms of the ability of each government agency to be able to identify the Corporate Beneficial Owner. Especially with the increasingly widespread modus operandi of a corporate crime involving corporations in other countries (transnational crime) (Kristian & Tanuwijaya, 2019).

One of the modes of crime that often occurs is the concealment of the assets of the Corporate Beneficial Owners carried out in other countries, in this case in ASEAN countries. Handling crimes that occur by involving other countries will experience greater obstacles than if they only occurred in their own country. This obstacle will increase when other countries do not have security cooperation and adequate regulations/rules to be a solution to the legal problems currently being faced by the countries involved (SETIAWAN, 2016).

To overcome these problems and to increase the effectiveness of law enforcement agencies to prevent and eradicate transnational crimes, international cooperation is needed for the prevention and eradication of transnational crimes, namely extradition agreements, mutual assistance agreements in criminal matters (MLAT), and agreements on transfers in the proceedings, etc. Focusing on MLAT, this agreement forms the legal basis for ASEAN countries to provide mutual assistance in the widest possible range of criminal matters, including investigations, prosecutions, and criminal justice processes.

As for some settings in MLAT include (UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 15 TAHUN 2008 TENTANG PENGESAHAN TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (PERJANJIAN TENTANG BANTUAN TIMBAL BALIK DALAM MASALAH PIDANA), 2008):

- a) Taking evidence or statements from someone;
- b) Arrangements so that a person can provide evidence or assist in the criminal case process;
- c) Submission of documents related to the judicial process;
- d) Search and confiscation measures;
- e) The act of investigating an object and place;
- f) Submission of original documents or legalized copies, records, and evidence;
- g) Identification or tracing of property obtained from a criminal act and objects used to commit a crime;
- h) Blocking and confiscation of assets resulting from criminal acts that can be confiscated or confiscated;
- i) confiscation and return of assets resulting from criminal acts;
- j) Search and identify witnesses and suspects;
- k) The provision of other agreed assistance in accordance with the objectives of this agreement and the provisions of laws and regulations.

The MLAT agreement is a very important agreement in the disclosure of transnational organized crime because it has proven effective as a way to prevent, arrest, and prosecute perpetrators of transnational crimes (Indriati, 2009).

With regard to reporting on the beneficial ownership of the Corporation with various modes of crime in disguise of the information, each country is expected to be able to apply the principles and identification of beneficial ownership. This is based on the idea that corporations can become a means, either directly or indirectly, by criminals who incidentally also act as the beneficial owner of the corporation.

Corporate crime as organized crime is recognized as a crime consisting of a group of people who jointly bind themselves because of the similarity of views that apply hierarchically to achieve a goal by unlawful means. Based on this opinion, an understanding can be drawn that corporate crime occurs in an organized manner in order to achieve a common goal against the law. The formulation shows that the beneficial owner of the corporation can use the corporation as a means either directly or indirectly against certain criminal acts. Thus, the actions taken by the beneficial owner of the corporation can cause the corporation to become a victim (crimes against corporation) or the corporation as a perpetrator (crimes for the corporation).

The presence of an information disclosure mechanism regarding the Corporate Beneficial Owner expects accurate and up-to-date information to ensnare the Corporate Beneficial Owner who commits a criminal act by using the Corporation as a means. Thus, this information becomes the basis for carrying out investigations up to the criminal liability process that can be requested from beneficial owners.

Strengthening cooperation between countries in ASEAN (Mustofa, 2001) related to reporting and disclosure of Corporate Beneficial Owners in the context of preventing corporate crime, it can be seen from the arrangement in MLAT (Warsono, 2017) concerning the submission of identity and documents or data as desired by the requesting country. In connection with this arrangement, the disguise of the identity of the Corporate Beneficial Owner for the realization of Corporate Crime is a common problem between countries. This is based on the fact that Corporate Crime is a transnational crime.

Cooperation between ASEAN countries is not only about harmonizing the legal system and the rule of law (Ringga et al., 2018) but based on a mutual need for correct and accurate information between countries in the ASEAN region. Building information disclosure regarding Corporate Beneficial Owners among countries in the ASEAN region will be the first step in preventing corporate crime.

The identification of the beneficial owner of the corporation also raises the question of how the legal consequences of the actions of the beneficial owner of the corporation on the corporation itself. Associated with corporate criminal liability, it is very important to be able to determine the actions of the Beneficial Owner of the Corporation against the Corporation will result in the Corporation as the perpetrator or the Corporation as the victim. The real threat of

the difficulty of dismantling the Beneficial Owner of the Corporation is increasingly evident from the BINOMO case that occurred in Indonesia.

BINOMO is an online trading patterned application that is used to trade the money market and crypto in the OTC (Over The Counter) market (Sayoga, 2022). This site was first introduced in 2014. BINOMO itself has a way of trading using a system called Binary Options. The way the Binary Options system works will ask the user to guess whether the asset price will go up (by clicking the green button) or down (click the red button) within a predetermined period of time. If the user guesses correctly, they will get 80 percent of the total invested, but if they are wrong, they will lose all the money.

The problem arose when the Indonesian police succeeded in dismantling the evil scheme implemented by BINOMO (Risayat & Pemasyarakatan, 2022). This happens because the affiliates in BINOMO will actually benefit if the investors suffer losses. BINOMO itself is a trading platform that does not have a real time market (price movements that are not in accordance with the original conditions of the market economy) so that many investors lose because the graph of the chart can be set according to the wishes of the application owner/affiliator. This fraud case caused more than 118 victims and resulted in economic losses of up to IDR 72,138,093,000.00.

The BINOMO case itself has attracted the attention of legal observers because of the difficulty of uncovering the perpetrators behind the BINOMO website/application. Until now, the only perpetrators who can be held accountable are the affiliates in the application (CNN Indonesia, 2022). Meanwhile, the actual owners of the BINOMO site have not been touched by legal action. The head of the Financial Transaction Reports and Analysis Center (PPATK) Ivan Yustivandana also stated that the owner of the illegal investment platform BINOMO is suspected of being in the Caribbean Islands. PPATK also coordinated with the Financial Intelligence Unit (FIU) from other countries to check the flow of funds. Based on the results of coordination with the FIU, it was found that foreign funds flowed in significant amounts to bank accounts located in Belarus, Kazakhstan, and Switzerland. The recipient is the owner of the Binomo platform located in the Caribbean Islands. The total funds that entered the account during the period from September 2020 to December 2021 exceeded 7.9 million Euros (Rosana & Widyastuti, 2022).

The modus operandi of transnational crimes is getting more complicated and more sophisticated in line with technological advances in the global financial industry. No wonder today's crime has evolved into a computer crime (high-tech crime) (EUROPOL, 2007). Facing threats that can come from any country, ASEAN needs to fortify itself by promoting cooperation. The cooperation is in terms of information disclosure, especially to uncover the actual Beneficial Owner of the Corporation that committed the crime. Efforts to prevent and eradicate transnational crimes are often faced with the absence of a global criminal law order (lack of global criminal law) (Simanjuntak, 2020). Therefore, MLAT is here to overcome the lack of mutual understanding between ASEAN countries.

MLAT is an instrument of legal cooperation between countries in the fields of investigation, prosecution, and court proceedings. One of the scopes of cooperation within the MLAT framework is cooperation that includes localizing or identifying (locating and identifying suspects) suspects (perpetrators) in foreign jurisdictions. This means that the MLAT actually wants this treaty to be applied to “suspects” who have the potential to hide behind the Corporation. The importance of MLAT is not only to support economic integration within the framework of the ASEAN Free Trade Area (ASEAN Free Trade Area / AFTA) in welcoming the ASEAN Economic Community (AEC) but also to synergize law and the economy for the realization of a legal and equitable order in the ASEAN region.

The importance of disclosure of information and data related to the Corporate Beneficial Owner will not be easy if the cooperation only occurs based on certain cases/casualties. This will actually give the Corporate Beneficial Owner an opportunity to escape due to the slow process of law enforcement caused by legal reasons and other political reasons. Therefore, the desired cooperation to overcome this problem is a commitment to sustainability that is maintained continuously by each country in the ASEAN region. The Corporate Beneficial Owner reporting system should be mandatory for every country and the information can be accessed by every country that is a member of the cooperation pact.

The cooperation pacts in the field of criminal law are regionally binding, as follows:

- a) European Convention on Mutual Assistance in Criminal Matters, 1959; Additional Protocol 1978; Recommendation concerning The Practical Application 1980
- b) Scheme Relating Assistance in Criminal Matters within the Commonwealth, 1986.
- c) United National Treaty on Mutual Assistance In Criminal Matters 1990.
- d) European Union Convention on Mutual Assistance in Criminal Matters 2000.
- e) Treaty on Mutual Legal Assistance in Criminal Matters, 2004 among eight countries in Southeast Asia, namely Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, and Vietnam.

Based on the various forms of cooperation, each country realizes the importance of cooperation between countries to be able to resolve criminal law problems. However, the implementation of the agreement is only waiting for cases to occur, without an obligation to build an integrated system between the countries parties to the cooperation agreement.

Based on this explanation, it is very important for ASEAN to be able to build a system that can be accessed by every state party to share accurate information and data regarding the Corporate Beneficial Owner. The establishment of an integrated system will greatly help ASEAN countries to uncover criminals who are hiding and use corporations as a disguise for their modus operandi of crimes.

The integrated system has actually been initiated by the OECD (Organization for Economic Co-operation and Development) since 2018 in the field of corruption. The OECD implements the SEACAB (OECD South East Asia Anti-Corruption and Business Integrity) program. The program aims to improve the integrity of the business world by strengthening the

legal awareness of business actors and their ability to recognize the risks of corporate crime related to corruption.

The presence of this program can be applied in the prevention and eradication of corporate crime. Especially in reporting the beneficial owners. Implementation of periodic reporting and assessment of corporations related to the reporting of Corporate Beneficial Owners will take into account the characteristics of the risks faced by each corporation. The implementation of the integrated system should also be made as simple as possible so that it can be analysed quickly and clearly.

Building an integrated system in the ASEAN region will be a good start in creating a healthy business climate free from potential crime. The Corporate Beneficial Owner Report will provide a complete picture of the assessment of the level of risk that the corporation faces. In particular, the report aims to detect the magnitude of the scope of corporate activities in accordance with national and international policies so that Good Corporate Governance is achieved. This integrated system is expected to be able to reach all types of corporations and their business activities wherever they are.

The implementation of this integrated system also collaborates with third parties (non-profit agencies) as a balance between the government and business people. This collaboration is related to the risks they can also experience. The application of this system is not only carried out once but must be carried out continuously. The parties must provide up-to-date and accurate data relating to each corporate activity. Furthermore, disclosure of information about the Corporate Beneficial Owner will have a positive impact on every stakeholder of the corporation as well as the country where the corporation is located or operates.

The process of implementing an integrated system of reporting and identification of Corporate Beneficial Owners includes the process of identification, analysis, and evaluation involving the Corporation, the Government, and third parties. The implementation of the system will be a solid foundation in helping corporations achieve Good Corporate Governance. In addition, the report will be the basis for law enforcement officials in analysing the level of corporate guilt for the crimes committed. Therefore, it is very important for countries in the ASEAN region to be able to start building an integrated system for Reporting and Identification of Corporate Beneficial Owners.

3. Solution

The breadth of the dimensions of corporate crime is directly proportional to the number of losses that can be caused. Corporate crime is a crime committed by the management of the corporation or by the corporation itself for the benefit of the corporation (offenses committed by corporate officials for their corporation or the offenses of the corporation itself). Corporate crime as organized crime / transnational crime is recognized as organized crime and its activities pose a real threat to global stability. The breadth of the dimensions of corporate crime has led to the need for regulations that can increase resilience between countries in the form of cooperation in the economic field. One of these policies relates to reporting on corporate

beneficial ownership. The importance of discussing beneficial ownership, especially for Indonesia and countries in the ASEAN region, is needed in handling and disclosing cases related to crimes in the financial sector, such as corruption, taxation, financing of terrorism, and money laundering.

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Jurnal Yustika
Vol. 26 No. 02, Des 2023

Halaman | 131
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Digital Economy In
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