



Final Report

A Roadmap of Beneficiary Ownership Transparency in The Extractive Industries in Indonesia



**Coordinating Ministry
for Economic Affairs**

EITI Extractive
Industries
Transparency
Initiative
INDONESIA

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Abstract

This study aims to develop a road map to build a recording system of beneficial ownership (BO) in extractive industries in Indonesia. As Indonesia follows civil law, the obligation of corporation is to report only the legal ownership to the government. Under the Extractive Industries Transparency Initiative (EITI) initiative and also The Financial Action Task Force (FATF), however, it is imperative that the government of Indonesia (GoI) records the ultimate beneficiary ownership of corporations, particularly in the extractive industries. The road map consists of three stages during the period of 2017-2019. In the final stage, it is envisaged that the database of the BO is going to be established for the extractive industries.

Keyword: Beneficiary ownership, extractive industries, information system

JEL Classification: H20, K23, K32, Q28, Q38, Q48

A. Background

One of the key driver of a nation's economic development is the business confidence and the certainty of various aspect of government regulations which related to business. Economic theory has predicted that an agent will be more likely to cooperate with others when they know several information of their counterparts (Charness *et al.*, 2007; Croson *et al.*, 2008). Indeed, better information will lead to better decisions made by economic agents. Conversely, incomplete and asymmetric information increase the complexity in making decisions and the occurrence of moral hazard, adverse selection and also principal-agency problems may arise owing to the lack of information.

The complexity and the uncertainty aspects on decision making are going to increase transaction cost leading to inefficiency and a higher chance of market failure. The impetus of information in the era of globalization is not only based on the argument of economic inefficiency but also on the increase of the incentive for economic agents to involve in

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criminal activities. In this context, the concept of beneficial ownership plays a crucial role in explaining how corporate entities may involve in law infringements.

Beneficial owners are widely defined as a person(s) who ultimately control a corporate entity, even though they are not necessarily recorded as the legal owner of the company. To mention few, Singaporean law system² defines beneficial ownership, in the context of relation of a customer to a bank, as the natural person who ultimately owns or controls the customer or the natural person on whose behalf a transaction is conducted or business relations are established, and includes any person who exercises ultimate effective control over a legal person or legal arrangement. A similar definition has also been adopted by European Union through their Anti-Money Laundering Directives (AMLD) Framework in a broader context, where UBO (ultimate beneficial owner) is defined as any natural person who ultimately owns or controls the customer (i.e. a corporate entity or other legal entity) and/or the natural person on whose behalf a transaction or activity is being conducted³. In the British law system, the definition of BO is even more specified⁴ based on the context, whether it is the case of corporate bodies, partnership or trust. Recently a more mainstreamed concept of person with significant control (PSC) has been introduced in 2014, however, within The Small Business, Enterprise and Employment Act.

Tax evasion and avoidance practices using shell companies within multiple tax jurisdictions have been identified since the 2000s, when OECD published the report that lists 35 tax haven countries⁵. The recent case of the Panama Papers in April 2016 and also the Offshore Leaks in mid 2013, shows how legal entities such as corporate vehicles were abused by the owner(s) to carry out outlawed activities such as corruption, tax evasion, money laundering, financing of terrorism and others. This phenomenon occurs through complex ownership structure within a company. Under this information obscurity, it is possible for a person secretly control multiple companies and practically run effective monopoly without being noticed by the authority. Preventive measures are unable to be formulated since there is no information available to allow the authority to anticipate the phenomena.

Indonesia is a rich country in terms of natural resources, such as hydrocarbon (oil and gas) commodities and mining sectors. As set in the Constitution of 1945, Article 33

² Defined in the MAS (Monetary Authority of Singapore) Notice 626

³ New EU Rules on Disclosure of Ultimate Beneficial Owners. See more:

<http://www.globaltradelawblog.com/2015/06/24/new-eu-rules-on-disclosure-of-ultimate-beneficial-owners/> (accessed 26 December 2016, 13.40)

⁴ These specifications is mentioned in The Money Laundering Regulations 2007. See more:

<http://www.legislation.gov.uk/ukxi/2007/2157/regulation/6/made>

⁵ OECD Report 2000: Towards Global Tax Cooperation. See more: <http://www.oecd.org/ctp/harmful/2090192.pdf> (accessed 26 December 2016, 13.40)

Paragraph (3) emphasized on how natural resource should be managed for the benefits of the society. Along with the principles of economic democracy, everyone has the right to participate in the natural resources industries and management as long as they comply with the objectives mandated by the Constitution. In this case, the management of natural resources by companies and industries should be directed utmost for the benefits of society. Economic theory predicts, however, that in the absence of appropriate institutions and regulations, management of natural resources will tend to be in exploitative and the society may not obtain its benefits optimally (Hardin, 1968).

Despite the richness of extractive commodities, Indonesia has become a net importer of oil since 2003. Currently, oil production level had been cut by almost half since its' peak level during 1996, from 1.5 million barrels per day into just 0.79 million barrels in 2014. On the other hand, domestic consumption of oil has been increasing steadily, forcing the nation to import oil to fill the demand. In comparison to the oil industry, the mining of mineral industries show a more positive trend. Back in 2013, the unprocessed mineral exports alone values at USD 15.1 billion⁶ , more than five times of the value in 2003. The GoI is also optimistic that this figure will reach USD 17 billion at the end of 2016. In total, the mineral exports account for 6.3% of the total value of export in 2013.

It should be noted, however, that the gigantic business in the extractive industries, unfortunately, is not free from corruptions. Several studies conducted by Khan (1994), Krueger (1974) and Tanzi (1998) show a positive relationship between an economy's dependence on natural resources with the potential for corruption. KPK (2012) reported that the resource sector has the highest social costs of corruption. KPK also identified 3.772 out of 11.000 Indonesian mining permits are prone to corruption activities, which may result to the loss of approximately IDR 28.5 trillion (around USD 2.2 billion) of state revenue each year⁷. Even this massive figure was not yet accounting for social and ecological cost of corruption in the extractive industries.

Government is not the only party that are carrying the burden of corruption; along with civil society, and business sectors are also worsen off due to higher transaction cost, inefficiency and uncertainty. Again, the obscurity of real owners of the business is one of key factors that encourage corruption in the extractive industries. In the absence of information of who owns what in the extractive industries may lead into the worst type of corruption, which

⁶ <http://jakartaglobe.id/business/indonesias-mineral-exports-seen-climbing-17b-2016-smelter-operations/> (Accessed on 15 December 2016, 16.51)

⁷ <http://www.antikorupsi.org/id/content/korupsi-sektor-pertambangan> (Accessed on 15 December 2016, 17.00)

is state-captured corruption⁸. The state-captured corruption is a corruption in which the legislation has been formed by the policy makers in such a way to benefit a particular business group. Corrupt business owners may influence the policy making process through their channel of government officials, turning public policies into their private favor instead of the benefits to the society.

As a result of the stellar social costs of corruption in the sector, corrupt practices carried out in the natural resources sector demand a special attention. Attempts to minimize corruption in the extractive industries have been advancing into the next level since the involvement of Corruption Eradication Commission (KPK) in natural resources industry back in 2009. The National Movement on Conservation of Natural Resources (GNP-SDA) traces the corruption schemes in the natural resource industries including bribery, embezzlement, abuse in licensing, conflict of interest, bad governance, selective favoritism and state-captured corruption. Learning from the cases of corruption in the natural resource sectors, GNP-SDA identified several aspects that require improvement to minimize corruption, such as⁹:

- a) data and information integration,
- b) intersectoral approach on database integration,
- c) data sharing mechanism and transparency among regulators and local/regional governments,
- d) intersectoral coordination,
- e) synergy within law enforcements,
- f) innovative breakthrough in problem solving, and
- g) focus on problem solving by all parties.

In order to improve all of those aspects above, solid institutional and regulatory frameworks should be improved in supporting better transparency, coordination and collaboration. According to Ostrom (1990), the acts of crime and exploitation may be minimized if the business actors, regulators and the public work together in changing the institutional aspects of the conduct in the extractive sector. If the institutional aspect is left

⁸ State capture corruption has been defined by Kaufmann and Vicente (2005) as a type of systemic political corruption in which private interests significantly influence a state's decision-making processes to their own advantage through unobvious channels, that may not be illegal. Read more:

http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/Legal_Corruption.pdf

⁹ This list has been extracted from the Energy Sector Coordination and Supervision (Korsup) by KPK, in the 2016 Report. The initiative has been one of intervention done by KPK on improving the governance in extractive industries. See more: https://acch.kpk.go.id/id/component/bdthemes_shortcode/?view=download&id=6a1bd86d6e702452659a4f3151365f

untreated, then the lack of transparency would hamper economic growth (Sumanjeet, 2015). To overcome this, an effective system should be designed based on the rationality of the agents involved within it (Pradipto *et al.*, 2011).

One of the strategies in encouraging institutional evolution is the transparency by each party involved. Public discussions on how to manage and direct natural resources management are more effective when information on the management of natural resources is disclosed to the public. By knowing who owns what, it is possible for the government and public to monitor how business in the extractive industries is conducted. Particular attention has now been initiated globally by the Extractive Industries Transparency Initiative (EITI), focusing on the transparency and accountability along the value chain of the extractive industries.

Indonesia has been officially accepted by the EITI as a candidate country on October 2010. The participation of Indonesian government as an EITI member implies that the GoI is committed to disclosure information of accountable tax, royalties and fees received from oil, gas and mining industries. Transparency is not limited on the GoI's involvement in the extractive industries. The companies that operate in the extractive industries also have to comply with several standards of transparency. One of these standards include the transparency of the beneficial ownership, as noted in the EITI Requirements 2.5. In promoting the transparency of the BO, by January 1st, 2017, the GoI are required to publish a roadmap on the national action plan. This report provides the design of a road map for the national action plan 2017-2019.

B. The Impetus of Beneficial Owner Transparency

The transparency of the BO plays a crucial role to reduce the use of corporations as a vehicle to conduct law infringements. In the absence of the transparency of the BO, there are at least four potential problems which may emerge:

1. Loss of the state revenue. As revealed in the Panama Papers and also the Offshore Leaks for instance, the complex structure of ownership of a corporate is one of the main method to conduct tax evasion and tax avoidance. Business owners may manipulate the amount of due tax they have to pay by splitting their ownership into several entities, creating a smaller income threshold thus putting these entities into lower tax bracket. This manipulation also occurs by exploiting tax treaties among states, so that business owners pay less than they are obliged in their tax residence. As

a result the state revenue will be suboptimum which hinder the government to develop the economy as a whole. A report by FATF (2012) pointed out that resource-rich countries tend to underperform in revenue collection. The transparency of the BO of corporate entities will allow regulators to ensure that every business owner fulfill their obligations to appropriately pay taxes and other type of state revenues.

2. Corruption and poor governance. Aforementioned descriptions show how the extractive industries in Indonesia are prone to corruption. A high level of corruption has a positive correlation to high money laundering activities. The FATF report notes that there is strong correlation between poor governance (of which corruption is one aspect) and a high level of dependence on exports from extractive industries¹⁰. In fact, high oil revenues also often associated with poor governance, lack of economic and social development, and lack of respect for basic human rights and poverty¹¹. Corruption would not only lead into loss of the state revenue, in the worst case of state-captured corruption, it would also lead into inefficient policies, poor governance, and promote kleptocratic culture among government officers both in the central and local government.
3. Money Laundering. Money laundering activities are designed to manipulate the information related to source of fund, more precisely to turn illegally obtained asset into something that appears legitimate. Illegal activities within the extractive industries, in particular, are facilitators of money laundering activities. In oil trading for example, money laundering process went allowed through trade mispricing (Almounsor, 2005). Through the complex ownership structure, it is difficult for law enforcers to identify who is the ultimate owner of an asset. The proneness of the extractive industries to illicit financial flows was driven by five factors¹³, as follows:
 - a. The extractive industries are more likely to be under high-level discretionary political control due to massive account on fiscal revenues, which translates to bigger political power.
 - b. There are no clear lines to separate the interest among government, shareholder and private sector in the extractive sectors.
 - c. Competition is often limited due to fewer checks and balances.

¹⁰ FATF REPORT: Specific Risk Factors in Laundering the Proceeds of Corruption, June 2012

¹¹ Shah, Anwar. Corruption in Oil and Gas and the Extractive Industries Transparency Initiative (EITI), March 2013

¹³ Gilles, A. (2010). Fueling Transparency and Accountability in The Natural Resources and Energy Markets. Paper presented at 14th International Anti-Corruption Conference, Bangkok, 10-13 November

- d. The complexity of technical and financial process. In developing countries, it is common that oil companies conduct the tax payment calculation themselves, leaving room for manipulation.
- e. Countries that rely on extractive sectors tend to be more integrated into global economy but through limited and complex value chain, further opening potentials to transnational crime.

The transparency of the BO of companies within this complex value chain would allow law enforcers and regulators to conduct enhanced monitoring, better identify suspicious activities and develop anticipative measures.

- 4. Hidden monopolies and less competitive market. When the true owners of business entities are unknown, public also does not know on who are the ones that control companies and create business decision in the extractive industries. While market appears to be competitive with the presence of multiple companies, in fact there might be only few people who actually control them. Obscurity of the beneficial ownership information allows business owners effectively play a role as hidden monopolist, by ultimately owning and controlling multiple companies under different legal names or other business entities. By nature, monopolists are exploitative and tend to produce goods and service below the socially optimum level. Knowing the information of the beneficial ownership of the ultimate controller of a company will allow regulators to identify anti-competition practices as well as applying countermeasures, ultimately to ensure business activities are in favor of overall public welfare. For investors, a competitive and transparent market has a lower transaction costs, thus the economy is ought to run more efficiently. Ultimately, it would increase confidence on doing business or investing in a country.

There are several other activities which may be hampered by the lack of the transparency of the BO. Merger and acquisition may be harmful if the companies involved belong to several people beneficial owners and the authority does not have capability to trace the information of the beneficial owners of the companies. Good and services provision using tender or auction may not be efficient after all if the participant companies may collude as they are controlled by the same owners.

C. Beneficial Ownership Regime in Indonesia

The concept of beneficial ownership originally belongs to the common law system. Indonesia follows civil law which only recognize the legal ownership as the system does not recognize the distinction between legal and beneficial ownerships. This does not necessarily mean, however, that beneficial ownership concept is not implemented in Indonesia, as several regulators has already embraced this concept into their regulatory frameworks. For instance, regulations in financial markets, and banking sectors have already required the disclosure of beneficial ownership within their policies. For example, Bank Indonesia (BI) in BI Regulation No. 14/27/PBI/2012 regulated the requirements for banks to request beneficial ownership information of an account holder, as well as requirement to have customer due diligence (CDD) procedures. Indonesian Financial Services Authority (OJK) also applies the disclosure of the BO information in its regulation in POJK 22/POJK.04/2014, regarding to know your customer (KYC) principles in the capital markets. The beneficial owner definition used in Indonesian tax treaty model is slightly different than definitions adopted by BI and OJK. As mentioned in Directorate General of Taxation regulations number PER-62/PJ/2009, the BO refers to a person who receives an income not as an agent, a nominee, or a conduit company.

Although the adoption of the BO disclosure has been initiated in several regulators, however this strategy has not been mainstreamed through out Indonesia regulations. Pradiptyo *et al.*, (2016) argued that along with the limited implementation of the BO disclosure, there are issues including the appropriate definition of beneficial ownership, information collection, inter-institutional collaboration, lack of check and balances, database integration and difficulties related to accessing the BO information, are the complexities of developing a database of the BO in Indonesia. Vital registries such as law administration system, which contains information related to establishment and ownership of corporate entities, maintained by Ministry of Law and Human Rights (Kemenkumham) still does not incorporate the disclosure of beneficial ownership as well. In a broad sense, the implementation of the BO is still partially conducted among regulatory institutions in Indonesia.

Various types of legal entities in Indonesian law are also prone to the practice of beneficial ownership obscurity (Pradiptyo *et al.*, 2016). To mention few, this includes fiduciary guarantee, corporate acquisition actions, public foundation, operational cooperation arrangements, cooperatives, limited liability partnerships and paper companies. Mostly, these

practices involve the ‘under the counter’ agreements that are not necessarily recorded by any of the national registries, which includes transfer of *de facto* ownership or exercise of control. Given the definition of beneficial ownership, it is hard to identify the BO when aforementioned agreements are not observable by the law enforcers.

In the mining industries, in particular, the implementation of the BO disclosure is apparently still nonexistent. Currently, there is no regulation that explicitly requires companies in the extractive industries to disclose who their beneficial owners are. Act No 4/2009 on mining of minerals and coal only requires companies to mention the board of directors and shareholders (legal owners) during the process of issuing contracts and licenses. Oil and gas mining regulations (PP No. 35/2004) also only mentions the definition and requirement of disclosure of affiliation as a company which is controlling or being controlled by other company. The disclosure of the natural person BO is still not yet mentioned in those regulations.

The beneficial ownership transparency in Indonesia is still partially implemented among regulators. Regulators in the capital market and banking sector have already push banks and financial services companies to conduct CDD and EDD¹⁴ principles, but this is not yet required by other regulators. Due to the partial implementation, it is worth considering that one of the solution to enhance transparency in beneficial ownership among regulators is by database integration, even though this may require further study and feasibility analysis.

Although the beneficial ownership transparency is not yet mainstreamed in Indonesian regulations, efforts on mainstreaming of the disclosure of the BO have been made by several institutions. Center of Financial Transactions Reporting and Analysis (PPATK) attempts to establish disclosure of beneficial ownership principles by proposing a draft on Presidential Regulation. This draft contains the proposed definition of beneficial ownership, which includes ownership and/or voting rights threshold, beneficiary threshold, and rights to exert control and/or appointing board of directors¹⁵. KPK also had made cooperation along with OECD on developing analysis on Indonesian condition of beneficial

¹⁴ EDD: Enhanced version of CDD. In Bank Indonesia Regulations No. 14/27/PBI/2012, banks are obliged to conduct EDD whenever the beneficial owner of an account is identified as a politically exposed person.

¹⁵ This definition closely resembles the concept of ‘person with significant control’, which is first mentioned in The Small Business, Enterprise and Employment Act 2015 of the British Government. More specifically, PSC is defined as a natural person who either: 1) owns more than 25% of company’s shares, 2) holds more than 25% of the company’s voting rights, 3) holds the right to appoint or remove the majority of directors, 4) has the right to, or actually exercises significant influence or control, and/or 5) holds the right to exercise or actually exercises significant control over a trust or company that meets one of the first 4 conditions.

ownership¹⁶. This regulatory draft may stand as supplement on further development of national mainstreamed definition of the beneficial owners.

Indonesia joins several international initiatives regarding transparency of beneficial ownership. Along with the EITI, Indonesia has also ratified and complied into FATF recommendation and G20 high-level principles on beneficial ownership transparency. The main important aspects that are covered including the definition of beneficial owner, politically exposed person (PEP), application of risk-based approach, ease of access to BO information, data timeliness, accuracy and assurance, record keeping, and institutional as well as legal framework to support the BO transparency. Participation in these international cooperations imply that Indonesia has to comply with the aforementioned standards.

D. The Beneficial Ownership Transparency and the National Agenda

Establishing the transparency of beneficial ownership is related highly with Indonesian national development agenda. These connections can be observed in the National Medium-term Development Plan (RPJMN) 2015-2020. Some of the GoI top development agendas covered improvement of governance, specifically on increasing public participation in the policymaking process. The objective of this program is overarching with the EITI objective in promoting transparency, particularly in the extractive industries, in order to raise public discussion and participation on natural resource management of the nation.

The RPJMN also gave priority to programs of prevention and eradication of corruption, in order to improve the government presence in promoting corruption-free national law system. State-captured corruption should be eradicated in order to establish a clean and effective government. This type of corruption could be prevented by identifying the links between politically exposed person and the ownership of companies and other legal entities. This may be achieved through the transparency of the beneficial ownership.

Increasing the state revenue has been one of the main national agenda during Joko Widodo's presidential regime. The recent tax amnesty¹⁷ program is one of the breakthrough effort by the Ministry of Finance to attract offshore assets that are owned by Indonesian tax residents, offering low fines for convictions made. Additional attentions are also put in non-

¹⁶ The report was elaborated in Pradipto et al (2016): *Analysis of Beneficial Ownership Regime in Indonesia*. Komisi Pemberantasan Korupsi.

¹⁷ This regulation has been enacted in Act No. 11 Year 2016.

tax revenue especially in oil and gas sector, which contributes 89% of non-tax revenue from natural resources. The GoI deploys several strategies such as project monitoring, increasing oil lifting, improving oil and gas value chain, optimization of value chain, utilization and pricing regulation¹⁸. By correctly identifies the beneficial ownership of companies in the extractive industries, the GoI has the potential to refine policies on extractive industries, prevent anti-competition practices, reduce tax evasion and/or avoidance activities, ultimately leads into improvement in fiscal capacity and social welfare as a whole.

The transparency of the BO and the obligation of the PEP to report their assets are useful instruments to prevent state-captured corruption in the future, as well as preventing money laundering activities. The GoI has also put further efforts on corruption eradication by establishing national strategies of corruption eradication (Stranas-PPK), where beneficial ownership transparency is also mentioned.

As a part of the national agenda, money laundering activities are regulated already in Act No. 8 Year 2010. Currently, there are ongoing discussions to propose the principles of disclosure of beneficial ownership information within national law, initiated by Center of Financial Transactions Reporting and Analysis (PPATK).

E. The EITI 2016 Standards on Beneficial Ownership

The EITI promotes a global standard for transparency in the extractive industries, including oil, gas, mineral and coal along all process in their value chain. As the objective of this initiative, the EITI promotes transparency to increase the strength of the government and company system, as well as promoting public debates on the management of the natural resources. By engaging in the debates, public have more chance to participate in determining the future strategies on how a country should manage its extractive industries and how companies should conduct their operation in a more sustainable manner.

One of the main aspect that requires transparency is the disclosure of the BO of each company that engages in the extractive industries. As the EITI describes, the people who ultimately own the company and all rights to extract oil, gas and minerals is often obscured within chains of unaccountable corporate entities²⁵. Hazy ownership structures are potential to corruption and money laundering activities. In the extractive industries, both corruption and money laundering activities lead into misallocation of resources. As an attempt to prevent state-captured corruption, the EITI also emphasizes the importance of the

¹⁸ <http://economy.okezone.com/read/2016/07/13/20/1437391/5-strategi-tingkatkan-pendapatan-negara-dari-sektor-migas>

²⁵ EITI Overview on Beneficial Ownership: Revealing Who Stands Behind The Companies. See more: <https://eiti.org/node/6>

transparency of the PEP²⁶. It is imperative for the countries to identify the PEPs who hold ownership rights in the extractive industries.

Currently, the EITI has 51 implementing countries worldwide including Indonesia, and has disclosed around USD 2.1 trillion of the revenues in the extractive industries. To date, all participating countries are expected to comply with the 2016 standards. Among the eight standards, the second standard emphasizes on the legal and the institutional framework of the transparency initiative (the EITI requirements 2.5). The important points of this standard consists of:

- 1) Recommendation that a country maintain a publicly available register of beneficial owners of business that involved in extractive industry.
- 2) Requirement on EITI reports to document the government policy and multi-stakeholder group discussion on disclosure of beneficial ownership. This also includes establishment of national roadmap of BO disclosure, by 1 January 2017.
- 3) As of 1 January 2020, it is required that EITI member countries to request and companies to disclose the information of their beneficial owners.
- 4) Information about the identity of beneficial owners should include name of BO, nationality, country of residence and identifying politically exposed person (PEP).
- 5) Defining the approach of assuring BO information accuracy.
- 6) Definition of beneficial ownership as shown in the EITI standard is the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity. This definition has to be agreed among the multi-stakeholder group, and aligned with international norms and national laws.
- 7) Along with beneficial owners, legal owners should be mentioned in EITI reports as well.

Point 2 of standard 2.5 will be the nearest milestone yet to be achieved, which is the establishment of beneficial ownership roadmap in 1 January 2017. This roadmap needs to contain²⁷:

- a) Plan and activities for how government will ensure companies to disclose the identity of their beneficial owners.

²⁶ The term politically exposed person (PEP) has been coined by FATF (2013) as an individual who is or has been entrusted with a prominent public function.

²⁷ For more details, go to EITI website: <https://eiti.org/GN22#Requirements-bo>

- b) Actions needed to ensure that the information includes the name of BO, nationality and the country of residence.
- c) The steps that the multi-stakeholder group will take to consider and agree.
- d) Any actions needed to inform multi-stakeholder group's discussion and decision over the aspects related to transparency of beneficial ownership.
- e) Milestones and deadlines.

More specifically, the EITI also stressed the importance of review on national laws whether it includes the definition of beneficial owners, explore international definition and actions to reach an agreement on this beneficial owner definition. The emphasis on definition comes with a strong reason observed during the implementation of the EITI BO pilot projects (lessons from Liberia), where the key challenge in obtaining meaningful beneficial ownership data is due to the lack of appropriate beneficial owner.

Particularly, Indonesia has received comments regarding to the implementation of beneficial ownership on 2014 EITI report. It was noted that:

Indonesia's latest EITI Report provides names of those with direct participating interest in oil, gas and mining companies but notes that "it is not yet discerned whether this ownership also translates into beneficial ownership." The report concludes that beneficial ownership information is understandably difficult to acquire given that corporate ownership is commonly set in complex layers, and recommends that as a start EITI Indonesia should agree on an appropriate definition of beneficial ownership.

From this statement, it is clear that Indonesian system still does not distinguish legal and beneficial ownership. Apart from the lack of beneficial ownership definition, the difficulty of obtaining beneficial ownership information may also arise from the lack of information assurance mechanism, lack of public or third-party control and data management.

F. The Transparency of the Beneficial Ownership Roadmap

F.1. Objective of the Roadmap of the Beneficial Ownership Transparency

The road map of the disclosure of the BO are constructed as the main agenda guideline to undertake necessary actions on establishing beneficial ownership transparency in Indonesia. More specifically, this roadmap has these following objectives:

- a) To describe the general conditions of Indonesian beneficial ownership transparency regime.

- b) To identify the connections of transparency of beneficial ownership and Indonesian national agenda.
- c) To propose the actions required to be undertaken in establishing transparency of the beneficial ownership in extractive industries.
- d) To define the associated timeframes and outcomes for each agenda in establishing transparency of the beneficial ownership in the extractive industries.

The roadmap of the beneficial ownership disclosure has been developed as a set of actions to be undertaken to accomplish beneficial ownership transparency, particularly in extractive industries. In fact, the disclosure of the beneficial ownership has been one of the policy direction in Indonesia, as it has been incorporated in several policies, including the national strategy of corruption prevention and eradication (Stranas-PPK). Other regulators such as financial markets and banking sector (OJK) and Bank Indonesia have already implemented the beneficial ownership transparency in their regulations.

F.2. The Action Plan of the Roadmap of the BO Transparency

The action plan of implementing beneficial ownership transparency in Indonesia is divided into three major strategies; the first stage would focus on development of appropriate beneficial ownership definition based on Indonesian context and measurable outcomes. Second stage would be processes on developing institutional and regulatory framework of beneficial ownership transparency. The Final stage would be the implementation of designed process.



Figure 1: A Roadmap of the BO Transparency

F.2.1. Stage 1: 2017: Defining Beneficial Owners in Indonesian Context

As the lesson learned from the BO pilot projects, the first necessary condition to be accomplished before implementing beneficial ownership transparency regime is to have a contextual, clear and appropriate definition of the beneficial owner. The definition, as the EITI suggests, should be tailor made and align with other international standard as well. It is important for the beneficial ownership definition to parallel with international standards, not only due to Indonesian participation in conventions, but also considering the nature of extractive industries in developing countries that is usually cross-border operation. This includes the definition of BO, level of disclosure and ownership threshold.

The definition of BO in Indonesian context should be developed through specific study, which may consist of exploring international standards and currently implemented definitions in domestic law. It is expected that such study will bring sound basis for the general definition of beneficial owner in Indonesia, to be later discussed among multi-stakeholder group. Included in this process is the discussion on what kind of reporting obligations should a PEP have. As a part of the national agenda, it would be ideal that this definition shall be adopted in a higher level of regulations. Lastly, it also should cover the ‘under the counter’ ownership and arrangements as a mechanism to overcome the complexity that may arises due to numerous unregistered and/or informal agreements among parties.

The MSG also should raise discussions on development of measurable outcomes of the disclosure of the BO. Outcomes are the events, occurrences, or changes in conditions, behavior, or attitudes that indicate progress toward a project’s goals²⁸. Measurable outcomes are important as an objective indicator of the success of beneficial ownership transparency regime in Indonesia. In order to develop a good measurable outcome, discussions should include the objective and expected results of beneficial ownership transparency. In this case, one example of measurable outcome would be the detection rate of the beneficial ownership information among companies that operate in the extractive industries. Measurable outcomes, as well as beneficial ownership definition, should be defined as early as possible to allow measurement of baseline condition before the implementation of beneficial ownership transparency regime. Further, this baseline data would allow a more objective impact evaluation in the future.

²⁸ https://www.cdfa.ca.gov/Specialty_Crop_Competitiveness_Grants/pdfs/Developing_Measure_Outcomes.pdf (accessed on 19 December 2016, 20.19)

After the national definition of beneficial owner and measurable outcomes have been established, next step is to consider the issues in data collecting by exploring current practices in Indonesia and other alternatives in foreign countries. It is expected that the analysis would answer the question of what kind of approach is more suitable in Indonesian context, potentially by evaluating the risk associated with each legal forms of corporate entities, international standards and national existing regulations. Analysis and discussion would also include mechanism on how to assure the data accuracy and how often should the beneficial ownership data be updated, in the most effective and efficient manner.

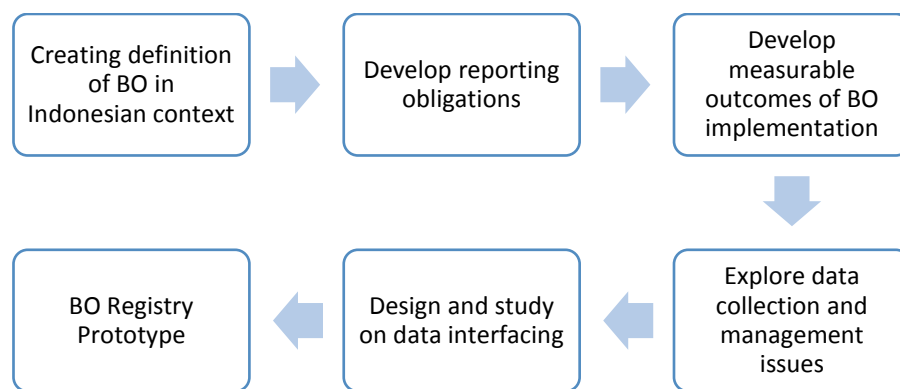


Figure 2: general strategies in stage 1

As a start, a prototype of beneficial ownership registry could be started by interfacing available databases among regulatory institutions, as a potential platform of future BO database. This database would be shared among regulators, along with further study related on refining this prototype database. Along with study, discussions among regulators are important to prospect the future possible hindrance and ensure the practicability of proposed method.

At the end of this stage, it is expected that the working group achieve following outcomes:

- a) National definition of beneficial ownership
- b) Measurable outcomes of beneficial ownership transparency
- c) Tailor-made concept of PEP and its obligations
- d) Clarity on information level of beneficial ownership that will be disclosed
- e) General framework of BO transparency (database design, data assurance, data collection, timeliness)

F.2.2. Stage 2: 2017: Developing Institutional and Regulatory Framework of Beneficial Ownership Transparency

In the common resources management, there are eight principles to be considered in order to develop a strong institutional and regulatory framework²⁹, namely i) well-defined actors, rights and responsibilities, ii) contextual rules, iii) democratic principles by law enforcement, iv) participation of all parties on rulemaking, v) compliance monitoring system, vi) gradual sanctioning, vii) conflict resolution mechanism and viii) nested tiers in multi-layer resource management. All of these principles are becoming the basis of building strong institutional and regulatory framework in Indonesia.

The next step after defining the appropriate definition of beneficial ownership is to incorporate the concept into institutional and regulatory framework. Both of these aspects are intertwined to each other; where institutional framework defines the rule of the game, rights and responsibilities of each party, and the regulatory framework provides with legal standing on allowing such system to operate. To achieve this, the GoI plans to conduct discussions on settling the system based on studies and reviews over the current institutional and regulatory aspect among regulators. Several options on institutional framework would be, but not limited to, introduction of new governing body on beneficial ownership and integration of the existing registries.

The discussion should point out who-does-what in the framework, as well as elements that may be improved, including potential enhancement of law products and/or elimination of non-supporting regulations. When required, there is a potential to establish new regulation(s). Along with system building, discussions are also needed to harmonize existing regulations among the regulators to prevent coordination failure, promote cooperation and reduce the possibility of conflict of interests. This step also includes the activities required to socialize the beneficial ownership transparency regime, including the definition of beneficial owner, thresholds, joint venture disclosures, reporting obligations for PEPs, and system of sanctions as well as conflict resolution among all relevant stakeholders. In addition, the development of database interfacing process that is started at stage 1 would be further maintained. It requires to be noted that database interfacing is a continual process, which should be conducted in

²⁹ Based on the book written by nobel laureate Elinor Ostrom (1990): *Governing the Commons*

stages, where database complexity grows as more and more registries are elaborated in the process.

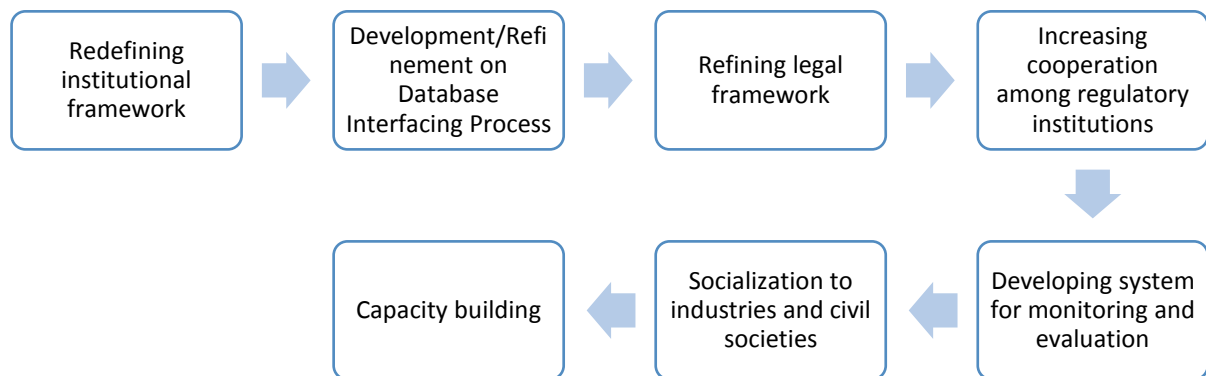


Figure 3: Overview of stage 2 strategy

In the next step, a system of monitoring and evaluation should be discussed and established. Monitoring is an important activity to identify complexities and prospects of conducting the initiative in the field. In this stage, a set of recommendations may be proposed to improve the implementation of the initiative in the future. Evaluation, on the other hand, analyzes why objectives were or were not achieved, analyzes specific casual contributions of activities to results, explores unintended outcomes, highlights significant accomplishments or program potential and offers recommendations for improvement³⁰.

It is beneficial for multi-stakeholder group, where it could help improving program implementation for regulators, to have a platform to demonstrate progress for companies and opportunity for civil society to involve in decision making process. Ideally, evaluations should be done objectively based on measurable outcomes that is developed in the first stage and conducted by a third party as an independent administrator. Practices in the EITI Indonesia where evaluation reports are arranged by an independent administrator, that was appointed through bidding mechanism, could be put as a reference of the best practices.

At the end of stage 2, it is expected that the working group achieve following outcomes:

- a) Creation of institutional framework on BO transparency
- b) Harmonized law products that promotes BO transparency
- c) Harmonized law products that encourage interinstitutional cooperation and information sharing

³⁰ Muyuka, N. (2015). Project Monitoring and Evaluation and Its Importance. <https://www.linkedin.com/pulse/project-monitoring-evaluation-its-importance-nandwa-muyuka>

- d) Robust monitoring and evaluation system
- e) Understanding of all stakeholders (regulators, business actors, civil society) on the upcoming implementation of BO transparency.

F.2.3. Stage 3: 2019: Implementation of Transparency of Beneficial Ownership in Extractive Industries

By the time that institutional and regulatory framework are ready, the implementation of the disclosure of the BO may commence. This includes the establishment of beneficial ownership database, mainstreaming of interfaced database among regulatory institutions, periodic data collection, law enforcement, sanction and conflict resolution process and data assurance mechanism based on the agreement upon institutional and regulatory framework in step 2. The available integrated database platform that has been initiated since step 1 should be already practically implementable in a wider scope. Not only does the implementation of sanctions, an effective system of BO transparency regime should also promotes rewards and incentives for compliance. Creating incentives that result from transparency compliance has been proven effective on increasing corporate transparency³¹. To inspect the best incentive scheme for Indonesian companies in extractive industries, discussions among regulators are planned to be done in 2019.

The disclosure of the beneficial ownership essentially governs a naturally dynamic business sector, that requires constant periodical evaluation to improve adaptability of the institutional and regulatory framework. Constant monitoring is expected to be done by the MSG, in order to ensure that each responsible parties are doing their part well. Lastly, the MSG should plan periodical evaluation on the system. Again, it is necessary to maintain the objectiveness of this evaluation process by appointing third party assessors.

³¹ The example of success incentive on promoting corporate transparency can be traced back to Brazilian multi-tier market, known as 'Novo Mercado' introduced in December 2000. This involves multiple classification of companies based on their level of transparency and corporate governance. It has been proven effective on improving overall level of corporate governance of listed companies and market performance: increasing level on follow up offerings from only 1.5 billion USD in 2004 into 16.6 billion USD in just three years.

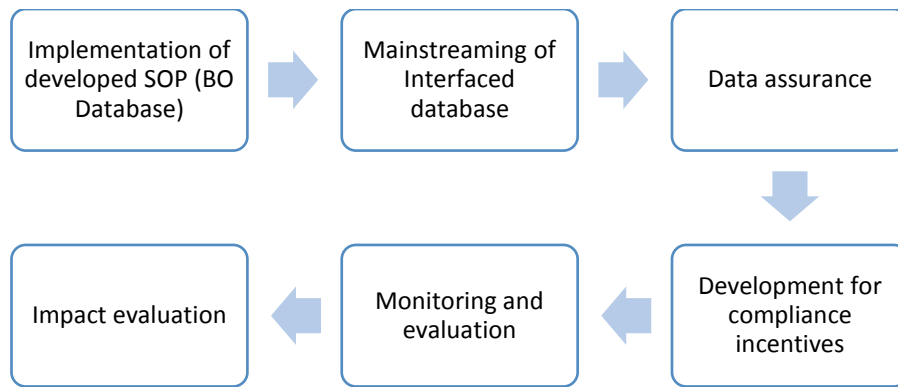


Figure 4: Overview of stage 3 strategy

At the end of stage 3, it is expected that the working group achieve following outcomes:

- a) Mainstreamed implementation of BO database based on developed regulatory and institutional framework
- b) Data assurance activities based on developed mechanism
- c) Incentive system for companies based on objective, measurable outcomes
- d) Routine monitoring and evaluation on BO transparency program
- e) Increase in disclosure of accurate BO information by companies

Further, each planned actions would have its own respective outcome. This is available in more details in the upcoming table.

Table 1: Indonesian Beneficial Ownership Roadmap

No.	Roadmap Recommendation	Objectives	Activities	Responsibles	Outcomes	Timeframe/Deadlines
2017 Strategy Stage I - Defining Beneficial Owners in Indonesian Context						
1	Consider links between BO and national reform priorities	To define the connection between BO framework and national reform priorities	Discussion among stakeholders on national priorities on BO transparency	Bappenas, Kemenko Ekon, KSP		2016-2017
2		To develop objective measurable outcomes of implementation of beneficial ownership transparency	Discussion among stakeholders on the objective of beneficial ownership transparency	Bappenas, Kemenko Ekon, KSP	Measurable outcomes of beneficial ownership transparency	2017
3	Beneficial ownership definition	To define the appropriate BO and PEP concept for Indonesian context	Analysis on appropriate BO concept for Indonesian context: Definition, threshold, level of ownership	KPK, PPATK, Bappenas, DJP, OJK, BI, Kemenkumham, KSP	Tailor-made definition of beneficial owner for Indonesian context	2017
4			Discussion among relevant stakeholders on the definition of BO	Kemenko Ekon		2017
5	Reporting obligations for Politically Exposed Persons	To explore possible links between PEP and BO	Discussion among regulatory institutions on obligations of PEP	Kemenkumham	A policy framework that defines the obligations of PEP	2017
6	Level of detail to be disclosed	To identify natural persons that is required to disclose BO	Analysis on risk assessment of legal person in Indonesia	KPK, PPATK, Bappenas, DJP, OJK, BI, Kemenkumham	Clear types of information that is required to be disclosed, aligned with beneficial owner definition	2017
7			Consultations of levels of detail to be disclosed	All relevant stakeholders		2017

No .	Roadmap Recommendation	Objectives	Activities	Responsibles	Outcomes	Timeframe/Deadlines
8	Data collection, Data timeliness, Data accessibility	To identify the most effective and efficient way on BO data management	Analysis on options of data collection mechanisms, assurances and timeliness	KPK, PPATK, Bappenas, DJP, OJK, BI, Kemenkumham	A working framework that elaborates data collection mechanism, data assurance, data timeliness	2017
9		To have a prospective model of BO registries	Design and feasibility study of data interfacing among registries	KSP, Kemenkeu		2017
10		To ensure data collections, assurance and timeliness	Consultation of the method of data collection, assurance and timeliness	KPK, PPATK, Bappenas, DJP, OJK, BI, Kemenkumham		2017
2018 Strategy Stage II - Developing Institutional and Regulatory Framework of Beneficial Ownership Transparency						
11	Consider the institutional framework for BO disclosure	To define the institutional framework of BO registry	Review on strength and weakness each register on regulatory institutions	KSP, Kemenkeu	Clear institutional framework of BO information management system, including: a) clear division of responsibilities, b) clear procedures of BO data collection, c) mutual agreement on the model of BO registry, d) standards on security clearance, public access, e) standards on data verification and assurance, f) clear data collection period	2018
12			Development/Refinement of data interfacing among registries	KSP, Kemenkeu		2018
13			Discussion among regulatory enforcement	KPK, PPATK, Bappenas, DJP, OJK, BI, Kemenkumham		2018

No .	Roadmap Recommendation	Objectives	Activities	Responsibles	Outcomes	Timeframe/Deadlines
14			Study and discussion to define the responsibilities of BO data collection, assurance, transparency, security clearance, public access and timeliness	KPK, PPATK, Bappenas, DJP, OJK, BI, Kemenkumham		2018
15		To identify regulations that in support and/or hampering BO implementation	Review on existing respective regulatory body law products to identify gaps between regulations and international standards	KPK, PPATK, Bappenas, DJP, OJK, BI, Kemenkumham	Each regulator identified the regulations/law products that requires amendments/enhancement	2018
16		To promote cooperation among regulatory institutions on implementing BO roadmap	Discussion on potential harmonization of regulations among regulatory institutions	KPK, PPATK, Bappenas, DJP, OJK, BI, Kemenkumham	Legal frameworks for each regulators should allow cooperation and coordination, i.e data exchange	2018
17		To improve legal framework for BO transparency	Consultation among relevant stakeholders to take possible measures in improving legal framework for BO transparency	Bappenas	Legal frameworks for each regulators should allow the implementation of previously developed BO information management system	2018
18		To have a robust monitoring and evaluation mechanism based on measurable outcomes	Discussion on monitoring and evaluation mechanism among regulators and stakeholders	All relevant stakeholders	A system of monitoring and evaluation of beneficial ownership roadmap implementation	2018

No .	Roadmap Recommendation	Objectives	Activities	Responsibles	Outcomes	Timeframe/Deadlines
19		To promote the BO transparency policy among industries	Socialization of BO transparency regime: data submission, public registry, sanctions and conflict resolution mechanism	All relevant stakeholders	Good understanding of newly developed beneficial ownership transparency regime by all stakeholders	2018
20	Capacity building needs	To provide capacity building activities	Knowledge sharing activities (e.g. Civil Society, Business Sectors, Journalists, Academicians)	NGOs	a) Regulatory institutions are capable of implementing BO information management systems, b) Companies are able to provide accurate information of their beneficial owners, c) Civil societies are able to access and initiate discussions based on disclosure and transparency of BO	2017-2020
2019 Strategy - Implementation of Transparency of Beneficial Ownership in Extractive Industries						
21	Implementation of public registry of BO information	To implement the BO registry	Start database implementation process (mainstreaming of interfaced database, database infrastructure, maintenance)	All relevant stakeholders	All processes within BO information management system are started widely among regulatory institutions, based on previously agreed legal and institutional framework	2019
22			Start periodic data collection process based on developed SOP	All relevant stakeholders		2019
23			Start the implementation of sanctions and conflict resolution, if any	All relevant stakeholders		2019

No .	Roadmap Recommendation	Objectives	Activities	Responsibles	Outcomes	Timeframe/Deadlines
24	Assuring the accuracy of the data	To assure the accuracy of the data	Start data assurance process	All relevant stakeholders	Companies provide accurate informations and assurance system is capable to maintain this transparency	2019
25		To provide rewards as incentives on complying companies	Discussion on incentives for complying industries	All relevant stakeholders	An objective incentive system to encourage company to be more transparent, especially on disclosing their beneficial owner information	2019
26	Monitoring and Evaluation	To monitor the implementation of BO Roadmap	Conduct periodic meeting on progress of BO roadmap implementation	MSG	Improvement of BO system based on evaluation	End of each Year
27		To evaluate the impact of implementation of beneficial ownership transparency	Conduct impact evaluation study	MSG through independent administrator	Increased BO transparency among business, based on objective indicators	End of 2019

Notes on beneficial ownership transparency roadmap:

- 1) The term ‘analysis’ in activity may refer to scientific study or review. For example, definition of beneficial ownership should be developed based on study upon law and economics aspect, as Indonesian civil law does not distinct the concept of legal and beneficial ownership.
- 2) Responsible of each action is assigned based on the discussion among institutions. All actions are expected to be funded by state budget, via each institutions annual budget. This does not necessarily mean, however, that GoI closes all opportunity of other sources of funding assistance.
- 3) In the responsible column, the list of ‘all relevant stakeholders’ are due to discussion results along actions in the roadmap.
- 4) Capacity buildings are conducted along the time of implementation of beneficial ownership roadmap due to conditional nature of this requirement.

G. Critical Success Factors

The accomplishment of strategies and actions in this roadmap is due to several critical success factors³². These critical success factors include, but not limited to:

- 1) Political commitments. Currently, Indonesian government has put beneficial ownership transparency as one of its national agenda. The implementation of beneficial ownership transparency in the roadmap, however, are scheduled during the political year of 2019 (the election year) which may result in various changes in national priorities and policy directions. Possibilities are open that beneficial ownership transparency might become less of national concern, or in a more optimistic way, even more prioritized. Either way, changes of strategies, approaches and amount of support (for instance, financial or capacity building) may happen.
- 2) Cooperation among the MSG and regulatory bodies. Lack of regulatory framework and institutional ego has lingered as main crucial drivers of reluctance among regulatory bodies to coordinate and cooperate with others. Another lesson learned from Indonesian institutional aspect shows that lack of trust on each other among regulators has hampered

³² The idea of CSFs was first presented by D. Ronald Daniel in the 1960s. It was then built on and popularized a decade later by John F. Rockart, of MIT's Sloan School of Management, and has since been used extensively to help businesses implement their strategies and projects. In the context of business management, Rockart defined CSFs as: "The limited number of areas in which results, if they are satisfactory, will ensure successful competitive performance for the organization. They are the few key areas where things must go right for the business to flourish. If results in these areas are not adequate, the organization's efforts for the period will be less than desired." Read more: https://www.mindtools.com/pages/article/newLDR_80.htm

coordinative and cooperative behavior. During the implementation of every action in this roadmap, trust among regulators is necessary, since most of strategies involve multiple ministries and bodies. Discussions should be aimed on achieving the best common goals and outcome by putting institutional psyche aside.

- 3) Regulatory design. To develop an effective regulation, the incentive compatibility aspect plays an important role especially in the situation where one party does not necessarily know perfectly what other agent knows (Hurwicz, 1973). Lesson learned from many regulations in Indonesia is that incentive system created by the regulatory design does not necessarily promote intended agent behavior, in fact several regulations have been proven counterintuitively enhance unintended actions. It is necessary for regulators to carefully develop a regulation with having business owner's behavior in mind, prospective on how would they respond in such regulatory environment. Ultimately, incentives created in the regulation should be aimed ultimately on promoting transparency of beneficial ownership.
- 4) International trends in beneficial ownership transparency. Since extractive industries in Indonesia are run within transnational value chain, achieving transparency along this value chain would require international collaborative efforts. Currently, regulatory bodies such as PPATK has involved in several international cooperation that allows exchange of information. Although the information exchanged does not necessarily consists of beneficial ownership information, additional data would help investigator on connecting dots. Maintaining this cooperation should provide Indonesian regulators with exchange of information that would improve the effectiveness of law enforcement and BO transparency regime.
- 5) Legal framework on data protection and information sharing. The basis of transparency of beneficial ownership relies inseparably with data sharing and data protection legal framework. National law not only should promote transparency among public institutions and companies (as proposed in the BO transparency roadmap), but also provides legal protection toward parties that are required to disclose any of their information. It should not become a concern for companies or institutions to refuse on opening their data when adequate protections are mandated by law, including protection from privacy threat. So far, Indonesia only has a law related on public information openness (Act No. 14 Year 2008) which scope is still very limited on public bodies and does not yet mention data protection. This may hamper further open data initiatives, not only on the beneficial

ownership transparency issues and database integration, but also on good governance that relies on institutional transparency and accountability.

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