Beneficiary Ownership in Financial Services Sector Conglomerates in Indonesia

Tri Murti Lubis¹, Ningrum Natasya Sirait², Zulkarnain Sitompul³ and Mahmul Siregar⁴

Abstract

This research aims to explore the implications of beneficiary ownership in financial services sector conglomerates in Indonesia on financial system stability. Because financial services sector conglomerates can obscure the true beneficiaries within the conglomerate in Indonesia. This can pose risks to the financial system. If one financial institution within the conglomerate fails, it can have cascading effects on other institutions within the conglomerate. This can lead to systemic crises, which can harm the overall economy. Therefore, the problem lies in how to uncover the true beneficiaries within a financial services sector conglomerate in Indonesia. This is a normative legal research, prescriptive in nature, employing a legislative and legal comparison approach. Secondary data used includes legislation such as the Limited Liability Company Law, Banking Law, Financial Sector Development and Strengthening Law, as well as the Financial Services Authority Regulation on Financial Conglomerates. Additionally, international journals and legal dictionaries are used as references, supported by empirical data in the form of interviews with the Financial Services Authority. Data is analyzed qualitatively, with conclusions drawn using deductive-inductive reasoning. An individual or legal entity as a primary entity that can control changes in the Articles of Association, Share Ownership Structure, replacement of directors, board of commissioners, control the company’s finances, but the individual/legal entity is not listed in the company’s articles, then can be categorized as a beneficial owner of a limited liability company. Similarly, in a financial services sector conglomerate existing in Indonesia, it can be proven by finding out who controls the conglomerate.

Keywords: Beneficiary, Conglomerates, Financial, Ownership, Services

INTRODUCTION

The conglomerate in the financial services sector has become a phenomenon that increasingly dominates the global economic structure. In Indonesia, the presence of these conglomerates plays a significant role in driving the economy, but also poses several challenges that need to be carefully addressed. One aspect that has garnered attention is the concept of beneficial ownership in the context of conglomerates in the financial services sector. Beneficial ownership refers to individuals or entities that have direct or indirect interests in a business entity but may not be officially registered as legal owners in the company's documents. In the context of conglomerates in the financial services sector in Indonesia, identifying beneficial ownership is crucial given the potential impact on financial system stability (Rezza, 2019).

The concentration pattern of wealth in Indonesia is increasing. This is evidenced by the growth rate of the wealth of the 40 richest individuals in Indonesia, which is 4 times faster than the national economic growth (Agustiyanti in CNNIndonesia.com., accessed 27/02/2024). Based on data from Forbes, the wealth of the 40 richest individuals in Indonesia in 2022 reached USD 180 billion, up from USD 162 billion in 2021, an 11% increase from the previous year. Meanwhile, national economic growth in 2022 reached 5.3%, and 3.7% in 2021 (CNNIndonesia.com, accessed 27/02/2024).

Knowing who controls or has interests in conglomerates in the financial services sector is an important step in understanding the internal dynamics of companies, assessing the potential for systemic risk, and designing appropriate policies to ensure the continuity and stability of the financial sector.

As for the obligation to disclose who the actual beneficiaries are of a limited company, as well as of a Financial Services Sector Conglomerate, this disclosure obligation is made in the form of a corporate charter report. In

¹ Doctoral Program in Legal Science, Faculty of Law, Universitas Sumatera Utara, Medan, Indonesia; E-mail: trimurti@usu.ac.id
² Faculty of Law, Universitas Sumatera Utara, Indonesia
³ Faculty of Law, Universitas Indonesia, Indonesia
⁴ Faculty of Law, Universitas Sumatera Utara, Indonesia
practice in the international financial field, in corporate charter reports, there are several types of financial conglomerate models, including: German Model (Universal Banking); British Model (Bank Parent with Non-Bank Subsidiaries); United States Model (Financial Holding Company Structure); dan Other Model of Financial Conglomeration (Sukma & Putra, 2022).

The paper “The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It” by Emile van der Does de Willebois et.al., (2011) discusses how corrupt individuals use legal structures to hide stolen assets and provides recommendations on steps that can be taken to address the problem. This paper focuses on the concept of beneficial ownership in the context of conglomerates in the financial services sector in Indonesia. This paper explores the implications of beneficial ownership in financial conglomerates for financial system stability, highlighting the importance of identifying beneficial ownership to prevent systemic risks and designing appropriate policies in the financial sector.

This journal article aims to further explore the concept of beneficial ownership in the context of conglomerates in the financial services sector in Indonesia. The issue raised is how to disclose the beneficial ownership in a financial services sector conglomerate in Indonesia. Analysis will be conducted on the implications and challenges associated with identifying beneficial ownership, and recommendations will be provided on steps that can be taken to address the issue.

RESEARCH METHOD


In addition, international journals and legal dictionaries are also used as references, supported by empirical data in the form of interview results with the Financial Services Authority. The data is analyzed qualitatively, with conclusions drawn using deductive-inductive reasoning. This data is collected through library research techniques with documentary study as the data collection tool. Qualitative data analysis, using deductive-inductive reasoning, is conducted to conclude (Yusuf, 2017: 19).

RESULTS AND DISCUSSION

Beneficial Ownership Concept

The concept of Beneficial Ownership (BO) in the history of international law was first used in 1966 in the Protocol to the Double Taxation Convention (DTC) between the UK and the United States. In this protocol, provisions were made regarding the beneficial owner, agent, and nominee subject to tax rules in the UK, but for beneficiaries other than agents and nominees, tax treaty rules applied. The term “beneficial ownership” was first introduced in the UK (Willebois et.al., 2011: 18-19).

The term “Beneficial Ownership” originates from the common law legal system. There are two forms of property ownership: legal and beneficial. Legal ownership refers to when ownership can be transferred, recorded, or registered in the name of a specific party. The explanation of beneficial ownership describes the type of ownership of a party entitled to use and benefit from the property even though they do not have legal ownership. In the International Tax Glossary, a nominee and agent are defined as parties that control assets for others who are the beneficial owners of those assets.

According to Vogel, as quoted by Rachmanto Surahmat in his book Taxation Anthology, 2007, “beneficial ownership is defined as those who have the right to determine whether capital or wealth should be utilized for others, or determine how the proceeds from that capital or wealth are utilized.” Herman LJ’s opinion is that
"Beneficial Ownership is ownership that is not only legally registered as an owner but also has the right to make decisions regarding something it controls" (Syakur, 2022).

The definition of Beneficial Ownership in Black's Law Dictionary 8th Edition is:

“1) A beneficiary's interest in trust property. — Also termed equitable ownership. [Cases: Trusts 139. C.J.S. Trover and Conversion § 251]; 2) A corporate shareholder’s power to buy or sell the shares, though the shareholder is not registered on the corporation’s books as the owner (Black, 2004: 3504).”

The doctrine of beneficial ownership focuses on where the beneficial owner must have rights to income derived from rights such as equity, debt, and intellectual property, first appearing in the Protocol to the Agreement between the UK and the United States in 1966 (Hagman, 2017: 16).

Beneficial Ownership Criteria

Based on the definitions and opinions of legal experts mentioned above, it can be concluded that Beneficial Ownership is: First, as a party who has the right to enjoy wealth and proceeds arising from that wealth; Second, able to freely use the wealth they control; Third, having control; and fourth, bearing the risk of the wealth they control, without the need for legal recognition. Investors have countless ways to conceal their true identities, such as in the level of direct shareholders, the use of nominee shareholders, among others, and chains of corporate vehicles or equity derivatives that will obscure investor identities (Fadhila, 2021).

Criteria that can be categorized as Beneficial Ownership based on the description above include:

1. “A party who has the right to enjoy wealth and proceeds arising from that wealth;
2. Able to freely use the wealth they control;
3. Having control; and
4. Bearing the risk of the wealth they control without the need for legal recognition” (Kusrini & Prihandono, 2018).

Relationship Between Beneficial Owners in A Financial Conglomerate

The relationship between beneficial owners in a financial conglomerate is crucial because beneficial owners are entities or individuals who are directly or indirectly affected by the activities and decisions made by financial institutions within the conglomerate (Sutrisno, 2019: 283-293). This relationship encompasses several aspects, including:

Financial Interconnection

Beneficial owners often have financial interconnections with financial institutions within the conglomerate, whether as investors, customers, insurance policyholders, or other parties with financial interests in the institution (Utami, Puspitasari, & Nursjanti, 2022).

Impact Of Business Decisions

Business decisions made by financial institutions within the conglomerate can directly impact beneficial owners, such as investment management, financial product offerings, or other financial services (Ziolo, Filipiak, Cheba, 2019).

Systemic Risks

The failure of one financial institution within the conglomerate can have systemic implications, affecting all beneficial owners and even the overall economy. Therefore, the relationship between beneficial owners and financial institutions within the conglomerate has significant implications for financial system stability (Barajas, Beck, Belhaj, & Naceur, 2020; Kusuma & Asmoro, 2020).
By understanding this relationship, regulators and policymakers can design effective supervisory frameworks to ensure that the interests of beneficial owners are protected and systemic risks are minimized in the context of financial conglomerates in the financial services sector (Abdelaziz, Hichem, & Wafa, 2012: 496-504).

Comparison of Laws Regarding Beneficial Ownership in The United States, Germany, the United Kingdom, and Indonesia

Beneficial ownership (BO) has become a significant focus in efforts to enhance transparency and address asset misuse, including money laundering and terrorism financing. In legal terms, BO refers to individuals or entities who own or control an asset, even though legal ownership may be held by others.

**United States**

In the United States, there is no comprehensive federal BO law. Several states have their own BO regulations, such as Delaware and New York. The US Treasury Department requires financial institutions to identify their customers' BO, including holding company BO, for anti-money laundering (AML) and counter-terrorism financing (CFT) purposes. The Dodd-Frank Wall Street Reform and Consumer Protection Act mandates publicly traded companies to disclose information about their BO to the Securities and Exchange Commission (SEC) (Brown, 2011: 101-177).

The Beneficial Ownership Transparency Act (BOTA) requires companies incorporated in Delaware to disclose information about their BO to the Financial Crimes Enforcement Network (FinCEN). The Corporate Transparency Act (CTA) requires companies incorporated in the US to disclose information about their BO to FinCEN. Although there is no comprehensive federal BO law in the US, there are several arrangements requiring holding companies to disclose information about their BO. These arrangements aim to enhance transparency and prevent asset misuse, such as money laundering and terrorism financing.

**Germany**

Germany has comprehensive BO laws, requiring companies to disclose their BO to government authorities. BO information is stored in a public register accessible to the public. The laws include: First, The German Money Laundering Act (Geldwäschegesetz - GwG) requires holding companies to disclose information about their BO to government authorities. This information includes the BO's name, address, and date of establishment. Second, The Transparenzregistergesetz (TransRegG) is a law requiring holding companies to register their BO in a public register. This register is accessible to anyone. Third, The Act on the Implementation of the Fourth EU Anti-Money Laundering Directive (4AMLD-Umsetzungsgesetz) strengthens BO rules in Germany by introducing new requirements for BO identity verification and providing broader access to authorities for BO information.

Germany has comprehensive BO rules requiring holding companies to disclose information about their BO. These arrangements aim to enhance transparency and prevent asset misuse, such as money laundering and terrorism financing.

**United Kingdom**

In the UK, financial sector oversight is conducted by several agencies, such as the Bank of England, the Financial Conduct Authority (FCA), and the Prudential Regulation Authority (PRA) (Yokoi-Arai, 2012: 6-18). Similar to the United States, oversight roles are divided in the UK. The OJK in Indonesia has broader and autonomous authority in regulating the entire financial services sector (House of Commons Treasury Committee, 2021: 5-6).

The Companies Act 2006 requires holding companies to disclose information about their BO to the Companies House. This information includes the BO's name, address, and date of establishment. The People with Significant Control (PSC) Register is a public list containing information about UK company BOs. This list is accessible to anyone. Although BO information is not available to the public, authorities and law enforcement agencies can access it.
The Money Laundering, Terrorist Financing, and Transfer of Funds (Information on the Payer) Regulations 2017 require holding companies to conduct due diligence on their BOs for AML and CFT purposes. The Economic Crime (Transparency and Enforcement) Act 2022 strengthens BO rules in the UK by introducing new requirements for BO identity verification and providing broader access to authorities for BO information.

The UK has comprehensive BO rules requiring holding companies to disclose information about their BO. These arrangements aim to enhance transparency and prevent asset misuse, such as money laundering and terrorism financing.

Indonesia

Indonesia still does not have comprehensive BO laws. The Financial Services Authority (OJK) requires financial institutions to identify their customers' BO only for reporting and recording purposes (Novariza, 2021; Syafitri, 2023; Kusumaningsih, 2023).

For a clearer comparison of Beneficial Ownership regulations in the United States, Germany, the United Kingdom, and Indonesia, please refer to the table below:

<table>
<thead>
<tr>
<th>Country</th>
<th>Regulation on Beneficial Ownership</th>
</tr>
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<tbody>
<tr>
<td>United States</td>
<td>No comprehensive federal BO law. Some states have their own BO regulations. The U.S. Treasury Department requires financial institutions to identify their customers' BO for AML and CFT purposes. The Dodd-Frank Act mandates public companies to disclose their BO information to the SEC. The BOTA and CTA impose disclosure requirements on companies incorporated in Delaware and the U.S., respectively, to FinCEN.</td>
</tr>
<tr>
<td>Germany</td>
<td>Comprehensive BO law requires companies to disclose their BO to government authorities. BO information is kept in a public register accessible to everyone. Laws include the German Money Laundering Act (GwG), Transparenzregistergesetz (TransRegG), and the Act on the Implementation of the Fourth EU Anti-Money Laundering Directive (4AMLD-Umsetzungsgesetz).</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Companies Act 2006 mandates holding companies to disclose their BO to Companies House. The People with Significant Control (PSC) Register contains BO information and is accessible to the public, authorities, and law enforcement agencies. Regulations like the Money Laundering, Terrorist Financing, and Transfer of Funds (Information on the Payer) Regulations 2017 and the Economic Crime (Transparency and Enforcement) Act 2022 strengthen BO rules.</td>
</tr>
<tr>
<td>Indonesia</td>
<td>No comprehensive BO law. The Financial Services Authority (OJK) requires financial institutions to identify their customers' BO only for reporting and recording purposes.</td>
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The table provides a general overview of BO regulations in several countries. Indonesia, up to this point, has yet to consider the importance of regulating Beneficial Ownership (BO). This is because BO regulations can enhance transparency and prevent asset misuse, but they also pose challenges regarding information accuracy and privacy protection. Additionally, BO plays a crucial role in preventing various financial crimes, such as money laundering and terrorism financing, and enhancing the integrity of the financial system (IFAC/CPA, 2020: 3).

Obligation To Disclose Beneficial Ownership of a Limited Liability Company

The obligation to disclose Beneficial Ownership in Indonesia was initially regulated in the context of taxation through the Circular Letter (SE) of the Director General of Taxes No. SE-04/PJ.34/2005 regarding the guidelines for the Implementation of Beneficial Ownership as stipulated in the Double Taxation Avoidance Agreement (P3B) between Indonesia and other countries. This principle was later adopted in Law No. 36 of 2008 concerning Income Tax (PPh).
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The aforementioned Circular Letter from the Director General of Taxes has been revised three times in 2008, 2009, and 2010. Based on the latest Circular Letter, namely Circular Letter (SE) of the Director General of Taxes No. SE-25/PJ/2010, Beneficial Ownership is defined as the actual owner of income in the form of dividends, interest, funds, or royalties, whether Individual Taxpayers or Corporate Taxpayers, who are fully entitled to directly enjoy the benefits of such income.

In addition to taxation, several regulations in Indonesia have defined Beneficial Ownership, such as those issued by Bank Indonesia (BI) and the Financial Services Authority (OJK) regarding banking, and by the Ministry of Law and Human Rights of the Republic of Indonesia regarding corporate registration and organizations. Each regulation issued by these state bodies/institutions has different scopes according to the interests of the issuing party (Waliyunisa & Imaniyati, 2020; Brown, 2005).

The obligation to report or inform who the Beneficial Ownership of a Limited Liability Company (PT) is only applicable in the financial services sector (Rahmayati, 2022). This financial services sector is related to the capital market, insurance, and banking (Firdaus, 2023). This reporting obligation can be seen in various regulations, including:

1. Law No. 8 of 1995 concerning the Capital Market;
2. Chairman of Bapepam-LK Decree No. KEP-48/PM/1997 concerning Securities Accounts at Custodians;
3. Law No. 15 of 2002 concerning the Crime of Money Laundering as amended by Law No. 25 of 2003;
4. Regulation of the Head of PPATK No. PER-12/1.02.1/PPATK/09/11 concerning Procedures for Reporting Transactions for Other Reporting Institutions;
5. Regulation of the Head of PPATK No. PER-11/1.02/PPATK/06/2013 as amended by No. PER-04/1.02/PPATK/03/2014 concerning Identification of Suspicious Financial Transactions for Financial Service Companies (PJks);
7. OJK Regulation No. 27/POJK.03/2015 as amended by POJK No. 25/POJK.03/2016 concerning Banking Business Activities in the Form of Deposits with Management (Trust);
8. Presidential Regulation (Perpres) No. 99 of 2016 concerning the Carriage of Cash and/or Other Payment Instruments into or out of the Customs Area of Indonesia;
9. Regulation of the Head of PPATK No. 10 of 2017 concerning the Application of the Principle of Knowing Customers for Lawyers;
10. Ministry of Finance Regulation No. 70/PMK.03/2017 concerning Technical Instructions Regarding Access to Financial Information for Taxation Purposes;
11. Regulation of the Head of PPATK No. 7 of 2017 concerning the Application of the Principle of Knowing Customers for Providers of Goods and/or Other Services;
12. Bank Indonesia Regulation (PBI) No. 19/10/PBI/2017 concerning the Application of AML-CFT for Payment System Service Providers other than Banks and Foreign Exchange Business Activities other than Banks;
13. Regulation of the Head of PPATK No. 6 of 2017 concerning the Application of the Principle of Knowing Customers for Financial Planners;
14. Regulation of the Minister of Cooperatives and SMEs No. 06/PER/M.KUKM/V/2017 concerning the Application of the Principle of Knowing Customers (PMPJ) for Cooperatives Engaged in Savings and Loan Activities;
15. Regulation of the Head of PPATK No. 6 of 2017 concerning the Application of the Principle of Knowing Customers for Financial Planners;

16. Regulation of the Head of PPATK No. 7 of 2017 concerning the Application of the Principle of Knowing Customers for Providers of Goods and/or Other Services;

17. Regulation of the Head of PPATK No. 10 of 2017 concerning the Application of the Principle of Knowing Customers for Lawyers;

18. OJK Regulation No. 12/POJK.01/2017 concerning the Application of the APU-PPT Program - For Financial Service Companies;

19. Regulation of the Head of Bappebti No. 8 of 2017 concerning the Application of the APU PPT Program for Futures Brokerage;

20. Ministry of Finance Regulation No. 55/PMK.01/2017 concerning PMPJ for Accountants and Public Accountants as amended by Ministry of Finance Regulation No. 155/PMK.01/2017;


22. Regulation of the Head of PPATK No. 17 of 2017 concerning the Application of the Principle of Knowing Customers for Post Providers;

23. Ministry of Finance Regulation No. 156/PMK.06/2017 concerning PMPJ for Auction Houses;

24. Regulation of the Minister of Law and Human Rights No. 9 of 2017 concerning PMPJ for Notaries;


For example, firstly, Presidential Regulation No. 13 of 2018 concerning the Application of the Principle of Identifying Beneficial Owners of Corporations in the Context of Prevention and Eradication of Money Laundering Crimes, Terrorism Financing Crimes, regulates the definition of beneficial ownership, the duties and authorities of parties in implementing beneficial ownership disclosure, and the development of beneficial ownership data and information systems. The existence of this Presidential Regulation is believed to accelerate the implementation of beneficial ownership disclosure in Indonesia.

Secondly, OJK Regulation No. 45/POJK.03/2020 concerning Financial Conglomerates. OJK, as the state institution overseeing the financial services sector in Indonesia, requires "main entities" to prepare and have a corporate charter or agreement between the main entity and member financial services institutions of the financial conglomerate. This corporate charter includes the basis of preparation, the structure of the financial conglomerate, and the duties and responsibilities of the directors of the main entity. This corporate charter must be submitted to OJK for the first time on December 31, 2020. If a group of financial services institutions has assets worth more than Rp. 100 trillion on June 30, 2021, then the corporate charter document must be submitted to OJK no later than August 15, 2021. This corporate charter serves as a form of supervision conducted by OJK over the holding company of the financial services sector (financial conglomerate) in Indonesia.

**Obligation To Disclose Beneficial Ownership of a Financial Services Conglomerate**

Beneficial ownership (BO) has become a key focus in global financial regulation to prevent asset misuse, including money laundering and terrorism financing. In the context of financial services conglomerates, where entities may have interests in various companies or financial institutions, the obligation to disclose BO becomes increasingly crucial.
Disclosing BO in financial services conglomerates is a pivotal step in enhancing transparency and accountability. By knowing who truly controls or has interests in the conglomerate, supervisory authorities, and other stakeholders can monitor potential conflicts of interest, questionable business practices, and financial risks that may arise.

The obligation to disclose BO is also part of a strategy to prevent financial crimes. By understanding the true ownership structure within financial services conglomerates, authorities can be more effective in identifying and addressing potential money laundering, terrorism financing, and other illegal financial activities.

Clear regulations and robust law enforcement regarding the obligation to disclose BO in financial services conglomerates are crucial. Without strong regulations and effective law enforcement, the risks of asset misuse and financial crimes can remain high. Because financial services conglomerates often have cross-border operations, international collaboration on BO regulations becomes increasingly important. Inter-country cooperation can help ensure that transparency standards and BO disclosure obligations are consistently applied across regions.

The obligation to disclose BO in financial services conglomerates is a critical step in enhancing transparency, preventing financial crimes, and ensuring compliance with financial regulations. Strong regulations, rigorous law enforcement, and international collaboration are key to maintaining the integrity and stability of the global financial sector.

**Mechanism Of Disclosing Beneficial Ownership in Financial Services Conglomerates in Indonesia**

An individual a legal entity, or a main entity acting as the beneficial owner of a Limited Liability Company (LLC) does not have to be listed, either in the Articles of Association or in the Company's Organizational Structure legally (Pratama, 2020). Because, beneficial ownership, is:

1. A party entitled to enjoy wealth and the proceeds arising from that wealth;
2. Able to freely use the wealth it controls;
3. Has control; and
4. Bears the risk of the wealth it controls, without the need for legal recognition.

Someone who can control changes in the Articles of Association, Ownership Structure, change of directors, change of commissioners, control the company's finances but is not listed in the company documents is CORRECTLY categorized as the Beneficial Owner of a Limited Liability Company (LLC). If there is a Beneficial Owner of a Limited Liability Company (LLC) instructing the board of directors and the board of commissioners to commit a criminal act (Ibrahim, 2023; Syach, 2021), those who can be held accountable for criminal liability are as follows:

1. The board of directors is the party responsible for the management and administration of the company on a day-to-day basis;
2. The board of commissioners is the party responsible for supervising the company managed and managed by the board of directors on a day-to-day basis;
3. The Limited Liability Company itself is a legal entity operated by the Board of Directors and Board of Commissioners as its artificial person. Because, the corporation is an inanimate object, it cannot move without someone moving it. This person is referred to as the Board of Directors and/or the Board of Commissioners;
4. The Beneficial Owner of the Limited Liability Company (LLC), provided that it can be proven:
   a. Forms of ownership actions, such as changing the company's organizational structure, changing the articles of association, using the company's assets, and so on;
   b. Methods of proving it, among others:
1) By tapping conversations between the beneficiary owner and the company's management (Board of Directors and/or Board of Commissioners);

2) Proving financial transactions from the company to the beneficiary ownership;

3) Proving transactions made by the company subject to conflicts of interest that benefit the beneficiary ownership; and so forth.

CONCLUSION

The obligation to disclose BO in financial services conglomerates is a crucial step in enhancing transparency, preventing financial crimes, and ensuring compliance with financial regulations. Strong regulations, rigorous law enforcement, and international collaboration are key to maintaining the integrity and stability of the global financial sector. Indonesia can develop specific regulations governing the disclosure obligations of BO in financial services conglomerates. These regulations should include clear requirements on what constitutes BO, as well as effective reporting and monitoring procedures.

REFERENCES


Beneficiary Ownership in Financial Services Sector Conglomerates in Indonesia


