



## Foundation Management's Liability for the Criminal Action of Foundation Funds Abusing Justice for All (YKUS)

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<http://dx.doi.org/10.18415/ijmmu.v8i5.2672>

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### **Abstract**

This type of research used in this research is normative analysis legal research. By using primary and secondary legal materials, along with tertiary legal materials as supporting materials. Foundations are regulated in Law Number 16 of 2001 concerning Foundations (Law No. 16-2001) and amendments to Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations (Law No. 28-2004). Then followed up with Government Regulation Number 63 of 2008 and Government Regulation Number 2 of 2013 concerning Amendments to Government Regulation Number 63 of 2008 concerning Implementation of the Law on Foundations (PP No.2-2013), and Regulation of the Minister of Law and Human Rights Number 5 of 2014 concerning Ratification of Foundation Legal Entities (PMH No. 5-2014). A person who establishes a foundation must have clear aims and objectives, namely one of which is for social, religious and humanitarian purposes. It's undeniable that Article 3 paragraph (1) of Law no. 16-2001 that a foundation can carry out business activities to support the achievement of its goals and objectives by establishing a business entity and/or participating in a business entity. YKUS is a form of organization that operates in the social, religious and humanitarian fields. This is the basis for the AD/ART of YKUS to carry out activities that support humanity in the dynamics of national development. When YKUS funds as an institutional form must be used constitutionally for the benefit of the foundation and the institution, then there is direct supervision by supervisors, administrators and supervisors in anticipating Foundation funds where abuse of power may occur.

**Keywords:** *Liability; Management; Criminal Action*

### **Introduction**

Foundations are regulated in Law Number 16 of 2001 concerning Foundations (Law No. 16-2001) and amendments to Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations (Law No. 28-2004). Then followed up with Government Regulation Number 63 of 2008 and Government Regulation Number 2 of 2013 concerning Amendments to Government Regulation Number 63 of 2008 concerning Implementation of the Law on Foundations (PP No.2-2013), and Regulation of the Minister of Law and Human Rights Number 5 of 2014 concerning Ratification of Foundation Legal Entities (PMH No. 5-2014). A person who establishes a foundation must have clear

aims and objectives, namely one of which is for social, religious and humanitarian purposes. It's undeniable that Article 3 paragraph (1) of Law no. 16-2001 that a foundation can carry out business activities to support the achievement of its goals and objectives by establishing a business entity and/or participating in a business entity.(1)

Referring to the researcher's legal substance, YKUS is an Indonesian company with Registration Number 26/1448/AD, issued by the Notary IDS, issued in Depok City, in 2015. With the Chairman of AA, secretary T, treasurer S and supervisor, MH. What if the organ of the foundation itself misuses funds and misuses funds?

YKUS was founded in 2014, with the aim of raising money for religious, social and social interests. In a foundation, according to the Foundation Law, there are organs and assets of the foundation. In accordance with the Foundation Law, all management of the assets of this foundation must have the permission of the Foundation Organ, it cannot stand alone. In fact, the Chairperson of the Justice Foundation for All, with the initials AA, gave a power of attorney to BN to open a bank account in the name of the foundation to collect money from the public. There is money collected from the public, the other organs don't know. The power of attorney to open a bank account in the name of this foundation is - *bypassed* directly by the General Chairman. Therefore, the General Chairperson was made a suspect under suspicion of Articles 372, 374 of the Criminal Code (KUHP) and Law no. 16-2001. This is a legal fact that occurs when utilizing personal gain from a form of organization of a Foundation that has been formed and established under the applicable Foundation Law.(2)

The management of foundations as private legal entities, and management by foundation organs rests on the principles of openness and accountability in relation to efforts to prevent the abuse of foundation institutions. The principles of openness and accountability in realizing *good governance* in foundation management are needed to ensure that foundation organs carry out their duties solely to achieve the goals of the foundation.(3)

## **Research Method**

This type of research used in this research is normative analysis legal research. By using primary and secondary legal materials, along with tertiary legal materials as supporting materials.(4)

## **Discussion**

### **The Root of the Problem of Misappropriation of YKUS Funds**

The case began in 2016, YKUS, "raising funds" for social action, AA (as Chairman) gave a Power of Attorney to the Chairperson of the National Movement for Fatwa Guards of the Indonesian Ulema Council (GNPF-MUI), BN to open an account in the name of the foundation, to raise money from society. At that time, funds of approximately Rp. 2.139 billion were collected and made into two accounts. The first account is used as a reservoir for public funds, and the second account (in the name of the foundation) is used to transfer funds, but without the knowledge of the foundation organs. Then, the funds of Rp. 2.139 billion were taken by M at the National Bank of Indonesia (BNI) Syariah. Because there are rules if the withdraw of funds is more than IDR 1 billion, it must be taken at the bank where the account was opened. This is where MH collaborates with IA, a former employee of BNI Syariah, to "simplify" the process of disbursing funds. Then IA hands over the money to M. Here M's task is only to pay for all of N.

Head of the Public Information Division of the National Police Public Relations Division Kombes Pol. MS said that I was subject to multiple articles. Islahudin allegedly violated Law Number 7 of 1992 concerning Banking. "IA should also be suspected of violating Article 55 of the Criminal Code, in terms of helping out. This is the basis for investigators to determine IA as a suspect, "said M. This determination is considered as the first step to uncover the facts and ensnare other suspects.

According to him, the funds stored in the YKUS account could be accounted for. This is because the funds were allocated for consumption, demonstration participants, and injured victims during the 411 and 212 actions. B also said that the funds were used for the installation of billboards, banners and donations worth Rp. 500 million for Aceh, Rp. 200. million for victims in Sumbawa. So that the funds are taken and channeled back again for the people B also said that the remaining funds collected were still in the same account. In the summons numbered: S.Pgl / 212 / v / Res2.3 / 2019 Dit Tipideksus, BN was summoned in the capacity as a suspect on May 8, 2019. The police suspect that B committed the Banking Crime which was charged under Article 70 in *conjunction (juncto)* with Article 5 paragraph (1) Law Number 16 Year 2001 regarding Foundations as amended by Law Number 28 Year 2004 or Article 374 KUHP in *conjunction (juncto)* with Article 372 KUHP or Article 378 KUHP in *conjunction (juncto)* with Article 55 paragraph (1) KUHP or Article 56 KUHP or Article 49 paragraph (2) letter b Law Number 10 of 1998 concerning Banking or Article 63 paragraph (2) of Law Number 21 of 2008 concerning Sharia Banking and Article 3 and Article 5 and Article 6 of Law Number 8 of 2010 concerning Prevention and Eradication of ML.(5)

### ***The Foundation's Management's Liability for the Crime of Fraud of YKUS Funds***

The perspective of legal responsibility is a necessity for someone to carry out what has been obliged to him.(6) Legal responsibility in civil law is in the form of a person's responsibility for acts that are against the law. Acts against the law have a wider scope than criminal acts. Based on Article 1365 of the Civil Code, an act of violating the law is an act committed by a person who due to his fault has caused harm to another person.(7)

The organization of YKUS is carried out by a foundation organ consisting of managers, supervisors and supervisors. Article 35 of the Foundation Law provides that (1) Foundation administrators are fully responsible for the management of the Foundation for the interests and objectives of the Foundation and have the right to represent the Foundation both inside and outside the Court.(8) (2) Each Management shall carry out their duties in good faith and with full responsibility for the interests and objectives of the Foundation.(9) (3) In carrying out the tasks referred to in paragraph (2), Managers may appoint and terminate executors of Foundation activities. (4) Provisions regarding the terms and procedures for appointing and dismissing executors of Foundation activities are regulated in the Foundation's Articles of Association. (5) Each Management is fully responsible personally if the person concerned in carrying out his/her duties doesn't comply with the provisions of the Articles of Association, resulting in losses to the foundation and third parties.(10)

In the perspective of YKUS, which obtains funds through public assistance, state institutions and foreign institutions, the foundation has the obligation to make annual reports and other matters related to program implementation.(11)

Departing from the foregoing, according to the researcher, YKUS supervisors can be liable in the event that the annual report made and signed by the supervisor turns out to be incorrect, then based on article 52 of Law Number 16 of 2001 concerning foundations for supervisors and administrators jointly and severally responsible for the aggrieved party. At the level of a civil context, mistakes made by the management of the foundation for not implementing the provisions of the Articles of Association and

statutory provisions, including not applying the principles of accountability and openness, then gave birth to legal responsibility. This legal responsibility then has implications for the emergence of acts against the law as a juridical consequence of mistakes.

### **Conclusion**

YKUS is a form of organization that operates in the social, religious and humanitarian fields. This is the basis for the AD/ART of YKUS to carry out activities that support humanity in the dynamics of national development. When YKUS funds as an institutional form must be used constitutionally for the benefit of the foundation and the institution, then there is direct supervision by supervisors, administrators and supervisors in anticipating Foundation funds where abuse of power may occur.

### **References**

1. AL Hakim D, Sulistiyono A. TINJAUAN YURIDIS TERHADAP YAYASAN YANG BELUM MENYESUAIKAN ANGGARAN DASAR BERDASARKAN UNDANG-UNDANG NOMOR 28 TAHUN 2004 TENTANG PERUBAHAN ATAS UNDANG-UNDANG NOMOR 16 TAHUN 2001 TENTANG YAYASAN. *J Priv Law*. 2019; 7(2).
2. Moegni D. *Perbuatan Melawan Hukum : Tanggung Gugat (Aansprakelijkheid) Untuk Kerugian, Yang Disebabkan Karena Perbuatan Melawan Hukum*. Jakarta: Pradnya Paramita; 1979.
3. Ais C. *Tujuan Sosial Yayasan dan Kegiatan Usaha Bertujuan Laba*. Bandung: Citra Aditya Bakti; 2000.
4. Mardijono HA. *Kajian Yuridis Mengenai Tanggung Jawab Sosial Dan Lingkungan Terhadap Undang-Undang No. 40 Tahun 2007*. *J Ilmu Huku*,. 2014; (40).
5. Widodo DI. *Penegakan Hukum Terhadap Anggota Kepolisian Yang Menyalahgunakan Narkotika Dan Psikotropika*. *J Huk Magnum Opus*. 2018; I(1):1–10.
6. Wibisana W. *PERSPEKTIF POLITIK HUKUM DAN TEORI HUKUM PEMBANGUNAN TERHADAP TANGGUNG JAWAB SOSIAL DAN LINGKUNGAN PERSEROAN TERBATAS*. *J Komun Huk*. 2018; 4(1).
7. Binsneyder M, Rosando AF. *AKIBAT HUKUM PENGALIHAN HAK TANGGUNGAN TANPA SEPENGETAHUAN KREDITUR DALAM TINJAUAN ASAS KESEIMBANGAN DAN ITIKAD BAIK DALAM PUTUSAN PENGADILAN*. *J Huk Bisnis Bonum Commune*. 2020;
8. Raissa A, Sukendar AYS, Michael T. *MENUMBUHKEMBANGKAN SIKAP KRITIS DAN TOLERANSI SISWA MELALUI PENINGKATAN PENGETAHUAN SISWA TENTANG ILMU NEGARA*. *JMM (Jurnal Masy Mandiri)*. 2018;
9. Astria Yuli Satyarini Sukendar, Amanda Raissa, Tomy Michael. *Authority of the Indonesian Broadcasting Commission (KPI) Against Youtube and Netflix According to Law Number 32 of 2002 Regarding Broadcasting*. *Tech Soc Sci J*. 2020;8.
10. Aswaratika L, Anugerah DP. *KEDUDUKAN YAYASAN YANG BELUM DISESUAIKAN DENGAN UNDANG-UNDANG YAYASAN SETELAH JANGKA WAKTU BERAKHIR*. *Notaire*.

2018;1(1).

11. Wulandari S. PERTANGGUNGJAWABAN ORGAN YAYASAN TERHADAP KERUGIAN BIDANG PENDIDIKAN DI INDONESIA. *Perspektif*. 2016; 21(1).

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