

Non-Profit Organisations (NPOs) As Media for Money Laundering Crimes

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Abstract

Non-Profit Organisations (NPOs) as known as Foundation received attention when there was suspicion of money laundering. Several cases that has become the highlight is the Aksi Cepat Tanggap Foundation (ACT) and Yayasan Keadilan Untuk Semua Foundation (YKUS). In its development, the Foundation has been used as a medium for money laundering due to weak regulations on the organization of the Foundation. This study aims to find out how the law regulates Foundation, maps risk factors and preventive measures against Foundation as a medium for money laundering crimes. The research is normative using statutory and conceptual approaches. The results showed that Foundation are regulated through laws and government regulations, there are four risk factors for running Foundation as a medium for money laundering, namely anonymous donations/mysterious donors, overvaluation of donation assets, misuse of funds, and other unusual transactions. Likewise, the importance of applying proper due diligence procedures as an effort to prevent money laundering in accepting foundation donations. The conclusion is that money laundering threatens the integrity and stability of the system and financial institutions, including Foundation. Regulations for Foundation in Indonesia are still limited, not yet comprehensive and highly vulnerable to money laundering, so further research is needed to compare laws and regulations in other countries related Foundation.

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Introduction

In general, an effective Anti-Money Laundering and Counter-Terrorism Financing (AML/CFT) system is critical for recognizing terrorist financing, and most initially focused on terrorist financing measures have become integrated throughout the FATF Recommendations, which are set out in Section C of the FATF Recommendations. These include Recommendation 5 (criminalization of terrorist funding), Recommendation 6 (targeted financial sanctions connected to terrorism and terrorist financing), and Recommendation 8 (measures to prevent non-profit organizations/NPOs from being misused). Due to the variety of legal structures that non-profit organizations (NPOs) may adopt depending on the jurisdiction, the FATF has produced an operational definition of non-profit organizations (NPOs). Instead of just being

non-profit, this classification method is based on an organization's behaviors and characteristics that make it vulnerable to terrorist financing exploitation. A NPO is defined as a legal person, arrangement, or organization that primarily raises or distributes funds for philanthropic, religious, cultural, educational, social, or fraternal reasons, or for other sorts of "good actions" for the purposes of this Recommendation. Terrorist groups use non-profit organizations to: (1) masquerade as legitimate entities; (2) exploit legitimate entities as conduits for terrorist financing, including evading asset freezing measures; or (3) conceal or obscure the clandestine diversion of funds intended for legitimate but diverted for terrorist purposes.¹ According to Article 1 of Law No. 16 of 2001 on Foundations, Non-Profit Organizations (NPOs) in Indonesia may refer to Foundations.

In Indonesia, foundations with a charitable aim are rapidly growing. The advancement of technology and knowledge, as well as the availability of many digital platforms, make it simple for everyone to contribute to the Foundation by making donations. According to Article 1 of Law Number 16 of 2001 on Foundations, a Foundation is a legal body consisting of independent assets and intended to fulfill specified aims in the social, religious, and humanitarian spheres, and it does not have members.²

According to Hayati Soeroredjo, Foundation must be social, religious and humanitarian as well as idealistic and definitely not allowed to conflict with laws and regulations, public order and/or decency.³ Rochmat Soemitro, stated that the Foundation is a legal entity that is usually engaged in the social sector. Establishment of the foundation is not aimed at making a profit, but to carry out social activities.⁴

According to the facts, individuals tend to form foundations with the purpose of safeguarding the legal position of the foundation, rather than simply using it as a forum for expanding social, religious, and humanitarian activities. Sometimes the Foundation seeks to enhance the Foundation's organs, notably the Trustees, Managers, and Supervisors. In keeping with this tendency, a number of issues concerning the Foundation's management arose. These include activities that are not in accordance with the purposes stated in the Articles of Association, disputes between the Management and the Founder or other parties, misappropriation of aid funds, or allegations that the Foundation was used to accommodate the flow of funds obtained by breaking the law from the founders or other parties.⁵

Foundation are often indicated as being involved in terrorism financing crimes, for example the Abdurahman bin Auf (ABA) Foundation which is based in Lampung. The ABA Foundation is affiliated with terrorism activities based on Ruling Number 307/Pid.Sus/2020/PN.Jkt.Tim and registered in the List of Suspected Terrorists and Terrorist Organizations based on the Letter of the Indonesian National Police Number DTTOT/P-10f/15/III/RES.6.1./2022.⁶ Terrorists need to access money and property (assets) to organize as a group, buy weapons, training, accommodation and travel activities so they can coordinate, plan and carry out terrorist attacks. The terrorist group utilizes the Foundation as a legitimate funding medium to generate income. Specifically, it is an offense for the Foundation to provide funds to banned individuals and/or organizations suspected of being terrorists.⁷

¹ FATF (2012-2023), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, February 2023. www.fatf-gafi.org/recommendations.html

² Pasal 1 Undang-Undang Nomor 16 Tahun 2001 tentang Yayasan

³ Nasional, B. P. H., & RI, K. H. D. H. bphn. go. id.

⁴ P. A. Cahyono, (2006). *Tinjauan Hukum Terhadap Sistem Pengesahan Yayasan Di Indonesia (Doctoral dissertation, Program Pascasarjana Universitas Diponegoro)*.

⁵ Penjelasan Undang-Undang Nomor 16 Tahun 2001 tentang Yayasan

⁶ <https://news.detik.com/berita/d-6076299/salurkan-kotak-amal-ke-organisasi-teroris-ketua-yayasan-ini-dibui-5-tahun> dan <https://www.ppatk.go.id/backend/assets/uploads/20220405142638.pdf> diakses pada tanggal 13 April 2023.

⁷ Singh, Charanjit, and Wangwei Lin. "Can artificial intelligence, RegTech and CharityTech provide effective solutions for anti-money laundering and counter-terror financing initiatives in charitable fundraising." *Journal of Money Laundering Control* 24.3 (2021): hal. 464-482.

According to the records of the Financial Transaction Reports and Analysis Center (PPATK) it was found that there were at least 176 (one hundred and seventy six) philanthropic institutions that misused public donations, as was done by the Aksi Cepat Tanggap Foundation (ACT). Previously, in the case of the Aksi Cepat Tanggap Foundation (ACT), 4 (four) members of the ACT Foundation had been named as suspects in misappropriating aid funds and money laundering.⁸

The use of Foundation legal organizations in the area of money laundering crimes can take the form of grants and the transfer of money from the profits of crimes such as corruption, bribery, fraud, banking, capital markets, narcotics trade, and other crimes. Money laundering offences include any assets suspected of stemming from criminal profits that are hidden or disguised. Money laundering is not a stand-alone crime since the assets that are put, transferred, or transferred through integration are derived through the crime, implying that it was preceded by another crime (predicate crime).⁹ According to Barda Nawawi Arif, predicate crime or predicate offense are offenses that produce criminal proceeds or proceeds of crime which are then laundered.¹⁰

The thing to highlight when talking about Foundation as a medium for money laundering crimes is the origin of the assets acquired by the foundation. Because referring to Article 26 of Law Number 16 of 2001 concerning Foundation, it is not explicitly explained regarding the wealth donated to the Foundation, it must be detailed regarding the source. Responding to this, Yunus Husein, ex-Head of the Financial Transaction Reports and Analysis Center (PPATK), was stated that it is important for the Foundation's management to note that the donations received did not come from criminal acts and were not intended for money laundering.¹¹

Furthermore, the Foundation's absence as one of the Reporting Parties listed in Article 17 of Law Number 8 of 2010 about the Prevention and Eradication of Money Laundering Crimes means that Foundation organs are not required to make reports to PPATK.¹² Despite the fact that Law Number 16 of 2001 concerning Foundation states that the Board of Foundation is required to provide an annual report, one of which includes a financial transaction report. However, there is no consequence that regulates if the Foundation's administration does not carry out these commitments; this becomes a distinct issue. Examining questionable financial activities from the Foundation has become a headache for PPATK.

Public participation is also urgently needed in efforts to find indications of money laundering practices within a foundation legal entity. Suspicious activities that are found or known to the public can be an early indication of a crime. However, the permissive attitude towards crime in society becomes a clash in efforts to eradicate crime itself. At least this is motivated by the culture of poverty that lives in society. According to Portes, the concept of a culture of poverty seeks to show a situation in which a society has become entangled in a social environment characterized by apathy, fatalism, and a lack of aspiration and exclusive concern associated with passing satisfaction and often justifying criminal behavior.¹³

⁸<https://nasional.tempo.co/read/1619128/ppatk-temukan-176-yayasan-filantropi-mirip-act-yang-selewengkan-uang-sumbangan> diakses pada tanggal 01 April 2023

⁹ Adrian Sutendi, *Tindak Pidana Pencucian Uang*, Ctk. Pertama (Bandung: Citra Aditya Bakti, 2008), hal.182

¹⁰ Oci Senjaya, S. H. (2016). Suatu Tinjauan Yuridis Terhadap Alat Bukti Dalam Penanggulangan Tindak Pidana Pencucian Uang. *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum*, 1(1), hal. 79-92.

¹¹ Nee, "Simak Penjelasan Ahli Hukum Berikut Agar Yayasan Tak Langgar Hukum", diakses pada tanggal 01 April 2023 pada laman <https://www.hukumonline.com/berita/baca/lt58cd54a420d0e/simak-penjelasan-ahli-hukum-berikut-agar-yayasan-tak-melanggar-hukum/>

¹² Pasal 17 Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang

¹³ N. Palikhah, (2016). Konsep Kemiskinan Kultural. *Alhadharah: Jurnal Ilmu Dakwah*, 15(30), hal. 1-17

This attitude of justifying criminal behavior is reflected in the low level of community participation in preventing and eradicating crime in the vicinity.¹⁴ Evidenced by the lack of public reports related to criminal acts around it, for example narcotics trafficking crimes.¹⁵

As well as the case with the existence of Foundation in people's lives. Foundation founders and Foundation organizers are often considered the most meritorious philanthropists or benefactors. There were violations committed by the Foundation and the indications were felt by the community, but the community was reluctant to report them to the authorities due to a culture that had developed in the community. The accumulation of incompetence and the pressure to fulfill needs causes people to no longer be able to compromise about whether the actions they are taking are wrong or not. This is certainly an obstacle or challenge for related institutions in eradicating criminal acts that develop in society.

Based on the description of the background above, the focus of this paper is directed to a discussion of how the existence and development of legal arrangements for Foundation in Indonesia, what are the risk factors for operating Foundation as a medium for money laundering crimes and how to prevent money laundering practices against Foundation. This research aims to identify key areas of foundation risk as a high risk profile for ML/TF. This is urgent because foundations as NPOs has a great trust from the public to share their money for charitable activities. This is used by irresponsible parties to abuse foundations as a medium for money laundering crimes and terrorism financing because of the good image of the foundation.

Method

To explore the issues, normative research was performed, which depends on secondary data obtained through library research. Primary and secondary legal materials are referred to as secondary data. 1) Law No. 16 of 2001 on Foundation, as amended by Law No. 28 of 2004 on Amendments to Law No. 16 of 2001 on Foundation; 2) Law No. 8 of 2010 on Prevention and Combating of Money Laundering Crimes; and 3) Presidential Regulation No. 13 of 2018 on Application of the Principle of Recognizing Beneficial Owners of Corporate interests in the Context of Prevention and Suppression of Money Laundering Crimes. 4) Financial Services Jurisdiction Regulation Number 12/POJK.01/2017 Concerning Anti-Money Laundering and Counter-Terrorism Financing Initiatives in the Finance Sector, as amended by Wealth Management Authority Regulation Number 23/POJK.01/2019 Concerning Amendments to Financial Services Authority Regulation Number 12/POJK.01/2017 Considering Anti-Money Laundering and Counter-Terrorism Financing Systems in the Financial Sector, as revised by Financial Services Authority Regulation Meanwhile, all pertinent literature was integrated into the secondary legal material for this study. This research takes a legislative as well as a conceptual approach.¹⁶

This research relates to the positive link between legal concerns and the rule of law, while the conceptual method is utilized to build an ideal legal concept as the result of fixing legal difficulties discovered.

Results and Discussion

¹⁴ Sudarmanto, E., Sari, D. C., Nurmiati, N., Susanti, S. S., Syafrizal, S., Yendrianof, D., ... & Purba, B. (2020). *Pendidikan Anti Korupsi: Berani Jujur*. Yayasan Kita Menulis.

¹⁵ Z. Putra, (2016). Pertanggung Jawaban Pidana Terhadap Penyidik Under Cover Buy Atau Perdagangan Terselubung Narkotika (UU No. 35 Tahun 2009) Di Wilayah Hukum Kalimantan Barat. *Jurnal Hukum Prodi Ilmu Hukum Fakultas Hukum Untan (Jurnal Mahasiswa S1 Fakultas Hukum) Universitas Tanjungpura*, 5(2).

¹⁶ Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, (Jakarta: Rajawali Pers, 2001) hal. 14 dengan Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2007) hal. 96. (The statute approach is a research that prioritizes legal materials in the form of statutory regulations as a basic reference material in conducting research. The conceptual approach is a type of approach in legal research that provides an analysis point of view of problem solving in research law seen from the aspect of the legal concepts behind it, or even seen from the values contained in the normalization of a regulation in relation to the concepts used).

The Existence and Development of Foundation Legal Arrangements in Indonesia

The existence of Foundation in Indonesia as organizations and legal entities engaged in social activities is very much needed. This is also in line with the provisions in the 1945 Constitution of the Republic of Indonesia which in several articles regulate this need, including Article 27, Article 31 and Article 34 of the 1945 Constitution of the Republic of Indonesia which shows that the Government and society need the existence of social organizations.

Before the enactment of Law Number 16 of 2001 concerning Foundation, it can be said that the legal basis that applies to Foundation is customary law which arises by itself in society which occurs out of necessity. There are no written regulations regarding Foundation either in the Civil Code, the Trade Code or in other regulations.¹⁷

Foundations have been recognized as private legal entities since the implementation of Law Number 16 of 2001 concerning Foundations, which implies that they are regarded as autonomous legal subjects independently of the position of legal subjects of the founders or their administration.¹⁸ As a result, for foundations founded before to 2001 or before the law's implementation, the firm of a foundation must be confirmed by the Ministry of Justice and Human Rights. This is, of course, an order from Article 11 paragraph (1) of Law Number 16 of 2001 regulating Foundations, which says that a Foundation acquires the status of a legal body when the Foundation's founding deed is approved by the Minister.¹⁹ Until now, the foundations in Indonesia have been governed by Law Number 16 of 2001 concerning Foundation, as amended by Law Number 28 of concerning the national Amendments to Law Number 16 of 2001 regarding Foundation, Government Regulation Number 63 of prepared by the ministry Implementation of the Foundation Law, and Government Regulation Number 3 of 2013 regarding Amendments to Government Regulation Number 63 of 2008 concerning Successful execution of the Foundation Law.

The differences between Foundation before and after the enactment of Law Number 16 of 2001 concerning Foundation can be seen in the table 1.²⁰

Table 1. Differences in Foundation Regulations Prior and After Implementation of Foundation Law

No	Before	After
1	Foundation establishment does not need approval from the government	Foundation establishment requires approval from the government (Article 9 paragraph (2))
2	Foundation organs are allowed to hold concurrent positions	Foundation organs are not allowed to hold concurrent positions (Article 7 paragraph (3), Article 29, Article 31 paragraph (3), Article 40 paragraph (4))
3	There has been no approval from the Minister of Justice	There is approval from the Minister of Justice (Article 11 paragraph (1), (2) and (3))
4	Foundation names are allowed to be the same	Foundation names are not allowed to be the same (Article 15 paragraph (1))
5	There is no limit to the working period of foundation organs	There is limit to the working period of foundation organs (Article 32)

¹⁷ Anisa, N. (2017). Analisis Yuridis Terhadap Yayasan yang Tidak Menyesuaikan Anggaran Dasarnya. *Jurnal Cakrawala Hukum*, 8(1), hal. 86-95.

¹⁸ *Ibid.*

¹⁹ Pasal 11 ayat (1) Undang-Undang Nomor 16 Tahun 2001 tentang Yayasan

²⁰ Undang-Undang Nomor 16 Tahun 2001 tentang Yayasan

With the issuance of Law Number 16 of 2001 concerning Foundation, there are several principles that wish to be realized in the implementation of Foundation, which include:²¹

1. Foundation independence as a legal entity (Article 1 paragraph 1)

A foundation is a legal body with no members that consists of independent assets to fulfill certain purposes in the social, religious, and humanitarian spheres. This means that the assets of the Foundation are separate from the founders' personal wealth. Moreover, the Foundation is an independent judicial subject (legal body) that is not dependent on the Foundation's organs' existence. This implies that the Foundation's organ is not the Foundation's owner, but just the management team in charge of the Foundation's operations. In order to achieve the Foundation's aims and objectives, Foundation organs are fully accountable for the Foundation's administration.

2. Transparency of all activities conducted by the Foundation (Article 52)

Article 52 paragraph (1) to paragraph (4) of the Foundation Law regulates the obligation to publish a summary of the annual report on a bulletin board at the Foundation's office, in an Indonesian language daily newspaper and a copy of the report to the Minister. This is intended as an effort to apply the principle of openness to the public regarding what has been done by the Foundation.

3. Principle of Accountability (Article 49)

Article 49 of the Foundation Law regulates the obligation to make an annual report as a form of foundation accountability to donors, third parties and the public. This is a form of implementing the principle of accountability in the management of Foundation.

4. Principles of non-profit Foundation, as a non-profit legal entity

The principles as mentioned above serve as a reference for the organs of the Foundation in managing the Foundation to achieve the purposes and objectives of the Foundation. However, along with its development, it was found that several Foundation were misused by the organs of the foundation itself and other parties. For example, the money laundering crime case involving Keadilan Untuk Semua Foundation (KUS) in 2019.²² In addition, the practice of misappropriating Foundation aid funds by the Aksi Cepat Tanggap Foundation (ACT) in 2022 was carried out in the form of paying the Foundation's organ salaries in an amount large amount, as well as channeling funds to a number of companies affiliated with the Foundation's organs.²³

Risk Factors for Establishing a Foundation Legal Entity as Media For Money Laundering Crimes

Domestic risk assessment of money laundering crimes will yield various major hazards based on the kind of predicate crime, perpetrator profile, industrial sector, geographical location, and money laundering typology. Risk identification yields outcomes based on risks, vulnerabilities, and repercussions, both present and hypothetical.²⁴

Legal subjects include persons or businesses, according to Law Number 8 of 2010 about

²¹ Nasional, B. P. H., & RI, K. H. D. H. bphn. go. id , (Kompodium Hukum Yayasan, 2012)

²² https://www.ppatk.go.id/siaran_pers/read/967/yayasan-sebagai-media-tindak-pidana-pencucian-uang.html diakses pada 01 April 2023

²³ <https://nasional.tempo.co/read/1619128/ppatk-temukan-176-yayasan-filantropi-mirip-act-yang-selewengkan-uang-sumbangan> diakses pada tanggal 01 April 2023

²⁴ Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK). (2021). *Penilaian Risiko Indonesia Terhadap Tindak Pidana Pencucian Uang Tahun 2021*. hal. 153-170

(Referring to FATF guidelines (2013): Threats are people or groups of people, objects or activities that have the potential to cause harm/danger. Vulnerabilities are things that can be exploited or support threats or can be called factors which illustrates the weakness of the money laundering system In this study, vulnerability can be identified based on the vulnerability of the reporting parties and law enforcement officials. criminal acts and the eradication of money laundering by law enforcers. Consequences are the consequences or losses arising from money laundering crimes on institutions, the economy and society more broadly)

the Prevention and Eradication of Money Laundering Crimes (AML Law).²⁵ According to the findings of the analysis of ML risk variables based on the perpetrator's profile, corporations and people are high risk groups for domestic ML. A company is defined under the AML Law as a group of individuals and/or assets that are organized, both as legal entities and as non-legal entities.²⁶ Corporate actors are frequently utilized as a conduit for money laundering. This criterion makes it difficult to incorporate a company since it has not been followed by proper verification and oversight processes from the government.²⁷

Aside from that, there is the ease of employing a virtual office, which is often only utilized to meet the corporation's entire domicile. The identity of corporations is typically misused for opening accounts that will be carried out by efforts to mine or trade-based money laundering (TBML) with the goal of making transactions originating from the proceeds of crime reasonable, and the use of accounts in the name of corporations is typically used to avoid reporting.²⁸

Several money laundering cases were handled by the Corruption Eradication Commission (KPK), the Indonesian National Police, and the Indonesian Attorney General's Office between 2016 and 2021, including money laundering criminals in the form of corporations. Furthermore, based on the findings of an independent evaluation (self-assessment) of the risk of ML in Corporations or Business Entities conducted by law enforcement authorities, the industrial sector, and supervisory and regulatory agencies. According to the results of the ML risk assessment based on the type of legal entity, Foundation is ranked third in the high risk ML category.²⁹ As contained in the Figure 1.

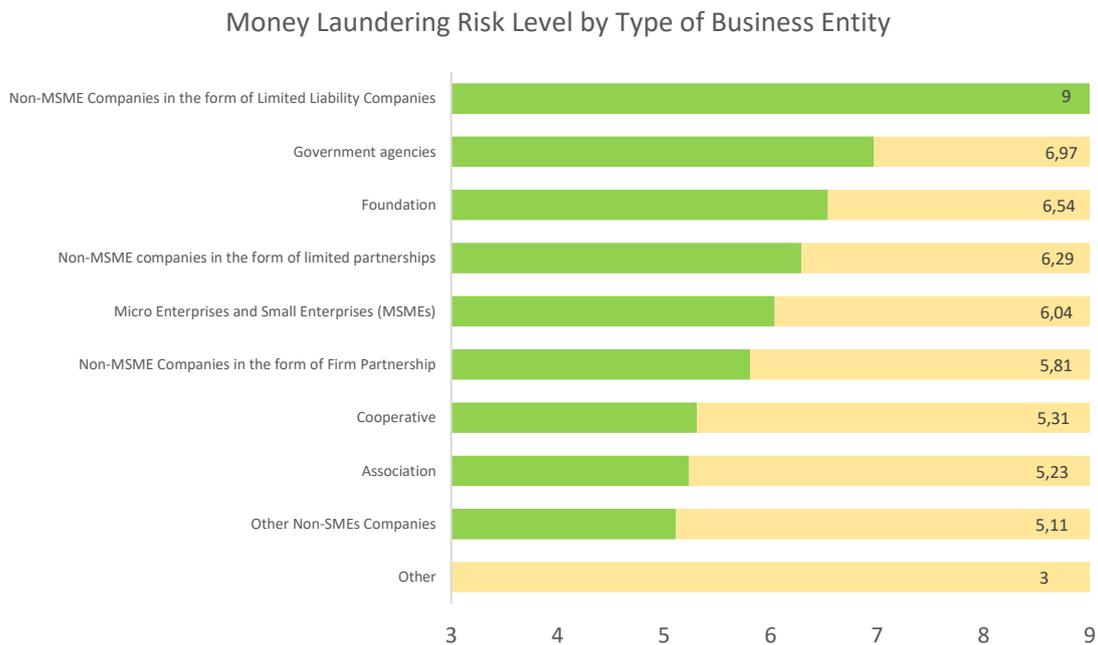


Figure 1. Money Laundering Risk Level by Type of Business Entity

²⁵ Pasal 1 Angka 9 Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang

²⁶ Pasal 1 Angka 10 Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

In Law Number 16 of 2001 concerning Foundation, there are 3 (three) foundation organs are regulated, namely the Trustees, Managers and Supervisors. These three organs have the responsibility and authority in managing the Foundation so that the Foundation's goals are achieved in accordance with the aims and objectives of its establishment.³⁰ The reality in field practice shows that there are irregularities in management, conflicts between administrators or misuse of foundation institutions. This deviation and misuse can be seen from the existence of Foundation that are used as media for money laundering crimes.

Based on Black's Law Dictionary, Money Laundering is "the act of transferring illegally obtained money through legitimate people or accounts so that its original source cannot be traced".³¹

Meanwhile, under Indonesian legal legislation, money laundering is broadly defined and classified into three types of crime. This refers to the laws and regulations that apply in Indonesia, specifically Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes and Law No. 1 of 2023 concerning the Indonesian Criminal Code, which amends the provisions in Articles 2 paragraph (1), 3, 4, and 5 paragraph (1) and (2) of the AML Law. Money laundering offenses are classified into three types:³²

1. Active money laundering crime is defined as individuals who places, transfer of funds, gets to spend, needs to pay, subsidies, deposit accounts, takes abroad, modifications form, transactions with currency or securities, or takes both these actions on assets that he knows or fairly suspects are stolen property as defined in Article 607 paragraph (2) with the intent of camouflaging or disguising the origin of assets with the intent of concealing or obscuring the origin of assets, shall be punished for money laundering with a maximum imprisonment of 15 (fifteen) years and a maximum fine of category VII
2. Anybody who obscures or camouflages the origin, reference location, classification, handover of rights, or actual assets that he knows or fairly suspects are proceeds, as referred to in Article 607 paragraph (2), shall be sentenced for the crime of money laundering with a highest imprisonment of 15 (fifteen) years and fines of category VI.
3. Everyone who receives or controls the placing, exchange, sale, donation, storage, trade, or use of assets that he understands or fairly thinks are the proceeds of crime, as defined in Article 607 paragraph (2), faces a maximum term of 5 (five) years in prison and a category VI fine. It is the same as money laundering. Reporting Parties who comply with their reporting obligations under this Act, on the other hand, are exempt.

Based on the three forms of money laundering, it is possible for the Foundation to be entangled in these three forms. This is based on a number of things that are risk factors for the organization of Foundation to be placed as a medium for money laundering crimes, which include:³³

1. Anonymous donations/mystery donors

The utilization of anonymous donations is a widespread way of money laundering within the Foundation. Money launderers can make anonymous gifts to the Foundation in order to conceal the source of their income. It might also be because contributors or recipients supply insufficient or questionable information. The donor or beneficiary is a trust or shell corporation that refuses to reveal more information about the underlying beneficial owner or beneficiary. However, gifts, whether in cash or otherwise, typically made through a third party and with the

³⁰ Undang-Undang Nomor 16 Tahun 2001 tentang Yayasan

³¹ Pribadi, I. (2021). Implementation Of Non Conviction Based Assets Against Money Laundering And Money Changing Crimes In Indonesia. *JIL: Journal of Indonesian Law*, 2(2), 162-177.

³² Pasal 607 sampai dengan Pasal 608 Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana

³³ *Protecting Your Charity: Against Money Laundering And Terrorist Financing*, May 2015, Published by the Office of the Commissioner of Charities

giver's name concealed, are used to reduce or obscure the proceeds of crime.³⁴

2. Overvaluation of donated assets

Money launderers can donate assets, such as property or works of art, to Foundation and artificially increase the value of assets. This allows them to claim tax deductions or larger foundation contributions, while also disguising the origin of their funds. It can also be done by transferring large amounts of funds but done repeatedly with small amounts in an apparent effort to avoid identification or reporting requirements or foreign exchange transactions carried out on behalf of donors or beneficiaries.

3. Misuse of Fund

Foundation assets are regulated in article 5 in conjunction with Article 26 paragraph 1 in conjunction with Article 26 paragraph 2 of Law Number 16 of 2001 concerning Foundation. Law Number 16 of 2001 concerning Foundation, namely wealth that can be obtained from:³⁵

1. Non-binding donations or assistance;
2. Waqf;
3. Grants;
4. Will grant; And
5. Other income that does not conflict with the Foundation's articles of association and/or applicable laws and regulations (dividends, bank savings interest, building rent or income from the Foundation's business)

The Foundation misuses funds by placing the Foundation's assets obtained for the purpose of personal enrichment or manipulating the foundation's financial transactions so that it appears as if the money is being used for legitimate purposes. This is indicated by activities that are inconsistent with the operational needs of the Foundation. Goods or services purchased by the foundation are not in accordance with operational needs or payment for goods or services is made by check/means of payment which are not withdrawn from the foundation's account.

4. Other Unusual Transactions

This occurs when a donation from a company is made using a personal account or the donor makes a large contribution that appears to be disproportionate to the donor's known background or income. The risk of such abuse may increase when the foundation's governance structures and financial controls are weak. As a result, some Foundation have weak financial administration practices and neglect due diligence checks of donor and beneficiary organizations to ensure the source and use of donated funds is lawful.

The following rules contain foundation arrangements in the AML/CFT regime: The requirements for beneficial owners are governed by Presidential Regulation No. 13 of 2018 on the Application of the Principle of Recognizing Beneficial Owners of Corporations in the Context of the Prevention and Eradication of Money Laundering and Terrorism Financing Crimes. As a result, it is anticipated that Beneficial Owners of a business would be recognized under Presidential Regulation Number 13 of 2018. Beneficial Owner legislation applies to the following organizations: limited liability companies (PT), foundations, associations, cooperatives, limited partners (CV), firm partnerships (FA), and other businesses. The Foundation has been identified as one of the targets of this rule.

Furthermore, Financial Services Authority Regulation Number 12/POJK.01/2017 Concerning Implementation of Anti-Money Laundering and Counter-Terrorism Financing Programs in the Financial Services Sector, as amended by Financial Services Authority Regulation No. 23/POJK.01/2019 Addressing Amendments to Financial Authority Regulation No. 12/POJK.01/2017 Regarding Anti-Money Laundering and Counter-Terrorism Finance Programmes in the Finance Sector, as Amended (PJK). PJK is required to establish AML/CFT programs in the financial services industry, including actions to identify, analyze, and

³⁴ Singh, Charanjit, and Wangwei Lin. *loc.cit.*,

³⁵ Pasal 26 ayat (1) dan (2) Undang-Undang Nomor 16 Tahun 2001 tentang Yayasan

comprehend the risks of AML/CFT connected to consumers. PJK is obligated to categorize clients depending on their level of AML/CFT risk. This is done when PJK want to have a business relationship with a potential customer. When PJK wants to establish a commercial connection with a potential customer, this is done. PJK may identify prospective clients in order to learn about their profiles and validate their information and accompanying documentation. Prospective corporate customers in the form of foundations must provide supporting evidence in the form of: 1) foundation activity permits; 2) a description of the foundation's activities; 3) the structure and names of the foundation's management; and 4) documents proving the identity of members of the management or power of attorney of members of the management authorized to represent the foundation in dealings with Financial Service Providers (PJK). These rules further emphasize that there is a possibility for foundations to be used as a medium AML/CFT, in consequence special regulations need to be regulated.

Application of the Principles of Transparency and Accountability Through the Due Diligence Procedure as an Effort to Prevent Money Laundering Crimes in Foundation Operations

The urgency of transparency and accountability is needed to ensure that the organs of the Foundation perform their duties solely to achieve the goals of the Foundation, and not for other purposes. As part of the pillars of good governance, transparency and accountability need to be implemented not only by public organs, but also private organs.³⁶ Even though the Foundation is a private organ, there are demands by stakeholders so that the Foundation's assets are not used for other purposes by the organs of the Foundation other than the purposes as stated in the articles of association.

Even though there are supervisors within the organs of the Foundation, the lack of transparency has the potential to result in the irresponsible use of the Foundation's assets. It is not impossible that there is a conspiracy by the three organs that is detrimental to the Foundation. Transparency and accountability thus also function as a means of public control over the performance carried out by the organs of the Foundation and at the same time protect the assets of the Foundation from being misused.

Transparency in the management of Foundation includes at least two things, namely: an announcement in the Additional State Gazette (TBN) on the Articles of Association, and the announcement of an annual report as mandated by Article 52 of the Law on Foundation.³⁷ The first is the consequence of the Foundation as a legal entity. With an announcement in the TBN, the public can access information on a foundation. Whereas with regard to the announcement of the annual report, the public or the public can obtain information related to the condition and activities of the Foundation, as well as financial reports consisting of a report on financial position at the end of the period, activity reports, cash flow reports, and notes to financial statements as stated in Article 49 Foundation Law.³⁸

Likewise, if the Foundation enters into transactions with other parties that create rights and obligations for the Foundation, these transactions must also be included in the annual report. However, even though the annual report is mandatory, there are no legal sanctions for neglecting this obligation. The sanctions regulated are only related to the prohibition on the transfer of Foundation assets, namely the threat of five years in prison.³⁹ Meanwhile, violations or neglect of other obligations, including the obligation to make and announce annual reports, we do not find legal sanctions either in Law No. 16 of 2001 and Law No. 28 of 2004. Annual reports as the application of the principles of transparency and accountability are very important

³⁶ Simamora, Y. S. (2012). Karakteristik, pengelolaan dan pemeriksaan badan hukum yayasan di Indonesia. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 1(2), hal. 175-186.

³⁷ Pasal 52 Undang-Undang Nomor 16 Tahun 2001 tentang Yayasan

³⁸ Pasal 49 Undang-Undang Nomor 16 Tahun 2001 tentang Yayasan

³⁹ Pasal 70 Undang-Undang Nomor 16 Tahun 2001 tentang Yayasan

to prevent misuse of foundation institutions.

The principles of transparency and accountability can also be implemented through a due diligence procedure. Foundation must carry out due diligence procedures on people and companies that have a relationship with the foundation. The relationship referred to in terms of sources of foundation assets as stated in the Foundation Law. Due diligence procedures are very important to reduce financial crimes.⁴⁰ The components of the due diligence procedure referred to are the Legal Due Diligence (LDD) and the Financial Due Diligence (FDD).

LDD and FDD in the management area of the Foundation aim to obtain an overview or information on legal aspects regarding people/companies as foundation donors, certain assets, certain financial transactions and certain legal relationships. So that the Foundation has sufficient information about donors, beneficiaries, workers, volunteers, related organizations, and foundation partners. The results of the due diligence procedure can be used as material for consideration by the Foundation. A risk-based strategy implies that the greater the hazard, the greater the number of due diligence procedures required.⁴¹

Since 2007, the TPPU Committee has been developing the National Strategy for the Prevention and Eradication of Money Laundering Crimes (STRANAS TPPU). In order to broaden Indonesia's efforts in the prevention and eradication of money laundering offenses. The National Strategy for TPPU (2007-2011) outlines strategic initiatives, one of which is the creation of a Single Identification Number (SIN) for all Indonesian residents in order to promote crime prevention and eradication.⁴² This was responded by the launch of the e-KTP program by the Indonesian Ministry of Home Affairs in 2009. The application of the SIN concept is an important variable when conducting LDD and FDD.

The concept of an integrated Single Identification Number (SIN) has begun to be implemented, as evidenced by the issuance of Law Number 7 of 2021 concerning Harmonization of Tax Regulations and PMK Number 112/PMK.03/2022 concerning NPWP for Individual Taxpayers, Corporate Taxpayers, and Government Institution Taxpayers.⁴³ It is stated in article 2 paragraph (1a) that the Taxpayer Identification Number for individual Taxpayers who are residents of Indonesia uses the National Identity Number (NIK).⁴⁴ PPAATK hopes that the integration of NIK into NPWP can help reduce the shadow economy and money laundering crimes.⁴⁵

Regarding violations that occur in the management of Foundation, Law Number 16 of 2001 concerning Foundation provides an advancement for the protection and legal certainty of Foundation by making it possible to carry out investigations of Foundation where there are allegations of actions by certain organs of the foundation. The provision of protection and legal certainty by carrying out audits of the foundation is provided for Foundation that have become legal entities. This is based on the premise that Foundation that are not yet a legal entity cannot be held accountable for the actions taken by the founders of the foundation, but accountability is held to the founders of the Foundation themselves. As for the allegation of the actions of the Foundation's organs which resulted in the examination of the Foundation as stated in Article 53 paragraph 2 of the Foundation Law, among others:⁴⁶

1. Commit acts against the law or contrary to the articles of association;
2. Negligent in carrying out his duties;

⁴⁰ Johannes, E. P. (2019). Customer Due Diligence Dalam Mencegah Tindak Pidana Pencucian Uang Melalui Lembaga Perbankan. *Law Review*, 19(1), hal. 77-97.

⁴¹ Singh, Charanjit, and Wangwei Lin. *loc.cit.*,

⁴² Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK). (2021). *Penilaian Risiko Indonesia Terhadap Tindak Pidana Pencucian Uang Tahun 2021*. hal. 36-37

⁴³<https://www.djkn.kemenkeu.go.id/artikel/baca/15420/NIK-sebagai-NPWP-dan-potensi-sinergi-DJP-DJKN.html> (diakses pada 13 April 2023)

⁴⁴ Pasal 2 ayat (1a) Undang-Undang Nomor 7 Tahun 2021 tentang Harmonisasi Peraturan Perpajakan

⁴⁵ *Op.cit.*

⁴⁶ Pasal 53 ayat (2) Undang-Undang Nomor 16 Tahun 2001 tentang Yayasan

3. Doing acts that harm the Foundation or third parties;
4. Committing acts that are detrimental to the state

In order to create a mechanism for public oversight of Foundation that are suspected of having committed acts contrary to the law, the statutes or detrimental to public interest, this law regulates the possibility of examining Foundation. Examination as referred to can be carried out only with a court order on the basis of existence:⁴⁷

1. A written application of interested third parties accompanied by reasons (article 53 paragraph 2 of Law Number 16 of 2001 concerning Foundation); or
2. At the request of the Attorney in terms of representing the public interest (article 53 paragraph 3 of Law Number 16 of 2001 concerning Foundation);

Conclusion

Money laundering is a serious global problem that threatens the integrity and stability of financial systems and institutions, including foundation legal entities. The research concludes, first, that Foundation are highly vulnerable to money laundering due to non-profit oriented challenges and weak regulatory frameworks. Second, the risk factors for running a foundation as a medium for money laundering can be seen from anonymous donations/mysterious donors, overvaluation of donated assets, misuse of funds, and others unusual transactions. Third, efforts to prevent money laundering practices through the implementation of a due diligence procedure that includes financial due diligence and legal due diligence. This is done to identify and filter donors, as well as monitor and report suspicious activity to the relevant authorities. The research recommendations are as follows, first, amending the law on Foundation. Even though this is not an easy task to execute and requires long process, however, for now that is the best option. The substance needed to be added definitely related to supervision, sanctions and key areas of risk for foundation. Second, mitigating the risk of misuse of Foundation and money laundering offenses requires a joint commitment between Foundation, law enforcement officials and stakeholders to try to report any preliminary judgments found on money laundering offenses to Foundation. As well as encourage public participation to oversight implementation for information transparency as donors for donor profile-based risk assessment. Third, encouraging the Government to apply the Single Identification Number (SIN) concept which is integrated with all relevant institutions to assist prevent money laundering practices in the Foundation.

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Law Number 7 of 2021 concerning Harmonization of Tax Regulations

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Financial Services Authority Regulation Number 12/POJK.01/2017 Concerning Implementation of Anti-Money Laundering and Counter-Terrorism Financing Programs in the Financial Services Sector

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