



Supervision of Non-Profit Organizations (NPO) On Potential Criminal Acts of Money Laundering and Terrorist Financing

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Abstract

The biggest challenge for NPOs is how the purpose of the NPO, to serve the community, can be run by legal corridors and not be used as a medium for money laundering for criminals or terrorism funding. Supervision of NPOs has a very important purpose in the context of preventing terrorism financing and also in the context of preventing money laundering. Therefore, the identification of donor recipients or beneficiaries for NPOs needs to be analyzed by looking at the existing regulatory framework, and whether the regulatory framework can effectively prevent money laundering and terrorism financing. This paper aims to discuss the supervision mechanism of NPOs in mitigating money laundering and terrorism financing, as well as the liability of NPOs if used as a medium for Money Laundering or Terrorist Financing. The research in this paper is Normative Research with Explanatory Descriptive Research Typology. The data analysis technique that the author uses is data analysis with a qualitative approach. Based on the research conducted by the author, it can be concluded that to prevent NPO funding from being misused for money laundering or terrorist financing, by way of supervision of the transaction flow of Mass Organizations as customers by the financial service provider through the identification



and verification of donors and recipients or beneficial owner of NPO, and by the risk-based supervision of NPOs conducted by the Ministry that has authority to allow the establishment of NPOs through educating, monitoring and evaluation.

A. Introduction

Mass organizations or Non-Governmental Organizations (NGOs), often referred to as Non-Profit Organizations (NPOs), have a significant role as the foundation of democracy that strengthens civil society and fights for the rights of citizens in the order of the nation and state. These NPOs are entities established by individuals or groups voluntarily, to support the public interest without the intention of financial gain. They are legally recognized and work independently of the government, or at least not under the direct influence of the government. Although in some cases they receive funding from the government, membership may not be governmental. The types of organizations include social foundations, religious organizations, youth organizations, and professional organizations.¹ In principle, these NPOs are entities originating from the community itself, which have the main objective of fighting for the rights of citizens as an alternative in the development process. All forms of community activities in the form of individuals or organizations, must be subject to the noble values of Pancasila. The vision and mission of the organization, which in this context is a mass organization, must be in line with the noble values of Pancasila and the ideals of the state to create a just and prosperous society. Therefore, this NPO must be used as a forum in the process of building the character of the Indonesian nation based on Pancasila.² So do not let the formation of the NPO be used as a medium for criminal acts, be it corruption, money laundering, or terrorism financing.

A Non-Profit Organization (NPO) is a form of manifestation of an organization founded based on ideas and similar goals even without adequate financial support. In national law, NPOs are regulated in Law Number 16 of 2017 concerning Mass Organizations (Law on Mass Organizations). Based on Article 1 of the Law on Mass Organizations, what is called a Mass Organization is an organization founded and formed by the community voluntarily based on the same aspirations, desires, needs, interests, activities, and goals to participate in development to achieve the goals of the Unitary State of the Republic of Indonesia based on Pancasila.³ Based on their form, mass organizations can be legal entities or non-legal entities based on Article 10 Law on Mass Organization, Legal entity mass organizations can take the form of associations or foundations based on Article 11 paragraph 1 Law on Mass Organization.⁴

In some cases, terrorists and their groups have used NPOs as a medium to collect, store, and distribute funds for the interests of terrorism.⁵ An example of this is the arrest of three suspected terrorists from the Jamaah Islamiyah group, Farid Ahmad Okbah, Ahmad Zain An Najah and Anung Al Hamat, in Bekasi, on November 16, 2021 by Densus 88 Antiterror. The three of them are part of the Baitul Mal Zakat Abdurrahman Bin Auf (BM-ABA) which is a formation of Jamaah Islamiyah (JI) which is part of the Abdurrahman Bin Auf Foundation. Likewise, in the case of money laundering, Aksi Cepat Tanggap (ACT) is an NPO philanthropic organization that misuses public donations, some ACT Foundation officials are suspected of

¹ Ari Ganjar Herdiansah, "Peran organisasi masyarakat (Ormas) dan lembaga swadaya masyarakat (LSM) dalam menopang pembangunan di Indonesia," *Sosioglobal: Jurnal Pemikiran dan Penelitian Sosiologi* 1, no. 1 (2016): 50.

² Imam Sholihah, "Menyoal Organisasi Kemasyarakatan (Ormas) Anti-Pancasila," *Jurnal RechtsVinding Online* 21 (2016): 4

³ Muhammad Reza Winata, "Politik Hukum dan Konstitusionalitas Kewenangan Pembubaran Organisasi Kemasyarakatan Berbadan Hukum oleh Pemerintah," *Jurnal Penelitian Hukum De Jure* 18, no. 4 (2018): 450

⁴ Rusli Safrudin, "Penanggulangan Terorisme di Indonesia Melalui Penanganan Pendanaan Terorisme: Studi Kasus Al-Jamaah Al-Islamiyah (JI)," *Jurnal Pertahanan dan Bela Negara* 3, no. 1 (2013): 126.

⁵ <https://tirto.id/polisi-galang-dana-jadi-napas-darah-kelompok-jamaah-islamiyah-glGR>, 25 November 2021, Read the full article "Polisi: Galang Dana Jadi Napas & Darah Kelompok Jamaah Islamiyah", <https://tirto.id/glGR>.

misappropriating aid funds to money laundering.⁶ Therefore, an adequate supervision and regulation mechanism is needed for the activities of this NPO so that it is not misused by certain parties for money laundering and terrorism funding activities.⁷

Based on its activities, NPOs, to obtain sufficient funds, require assistance or contributions/donations from their members, usually called membership-based associations, or from the beneficiary community, which is usually in the form of foundations. Due to this dependence on funds (because most NPOs do not run businesses to obtain funds to fulfill their operational activities), quite a few NPOs hope for donations or funding assistance from third parties, even though quite a few of these donors have hidden interests through the NPO. In the case of NPOs related to terrorism, generally, these NPOs are misused by internal elements to divert funds that have been legally obtained from the wider community to other parties or groups affiliated with terrorism networks.⁸

The ability of NPOs to collect funds from the public at large has been proven to have made a big contribution to the lives of NPOs in all parts of the world. The Financial Action Task Force (FATF) is well aware that if they are not supervised and regulated properly, NPOs can become very vulnerable to becoming a place for money laundering, but furthermore, it is very enabling to support the financing of terrorism. Realizing this, the FATF has issued recommendation No. 8 and Immediate Outcome No. 10, which is essentially aimed at ensuring that the NPO sector is not used for money laundering and/or terrorist financing. FATF's considerations are not without basis considering that in recent decades there have been several NPOs that have been designated as terrorist entities or organizations by the UN Security Council because they were proven to be involved in or assisting in terrorist financing activities. In the FATF report regarding the Risk of Terrorist Abuse in NPOs, the essence of high-risk NPOs is NPOs that:⁹ 1. Providing financial support to terrorist entities; 2. Providing material support to terrorist entities; 3. Providing financial, material, or logistical support to terrorist entities; 4. Operate in areas where there is an active terrorist threat; 5. Carrying out incorrect NPO operational and governance activities; 6. Supporting the recruitment of terrorist members; 7. They are involved in other criminal acts.

Based on evaluations from the Asia/Pacific Group on Money Laundering (APG), Indonesia has generally demonstrated a good understanding of the risks of Terrorist Financing Crimes for the NPO sector and, to some extent, has implemented measures to address identified risks including through Presidential Regulation No. 18 of 2017 concerning Procedures for Receiving and Giving Donations by Mass Organizations in Preventing Criminal Acts of Terrorism Financing.¹⁰ Although these measures may increase transparency for NPO financial activities, they are not targeted at NPOs that are at higher risk for terrorist financing abuse. And, while the competent authorities monitor the misuse of NPOs by terrorists based on risk, the

⁶ N. N. Sirait and L. H. Y. Rangkuti, Non-Profit Organisations (NPOs) As Media for Money Laundering Crimes. *AML/CFT Journal: The Journal Of Anti Money Laundering And Countering The Financing Of Terrorism* 1, no. 2 (2023): 134

⁷ Alda Satrya, Bastianto Nugroho, and Supolo Supolo. "Tindak Pidana Pencucian Uang Terhadap Perjudian Online." *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 2 (2022): 295.

⁸ PPATK, *Regional Risk Assessment of NPOs on Terrorism Financing 2017*, Jakarta: PPATK, (2017), p. 8.

⁹ Financial Action Task Force, *Report Risk of Terrorist Abuse in Non-Profit Organizations*, Paris: FATF/OECD, (2014), p. 68 - 73.

¹⁰ Presidential Regulation No. 18 of 2017 stipulates in Article 3 that Mass Organizations can identify donors in terms of: a. The contribution given is at least IDR 5,000,000.00 (five million rupiah) or the equivalent value; b. Contributions that will be received come from donors who are citizens or domiciled in countries that are declared inadequate in implementing international conventions and standards in the field of preventing and eradicating money laundering crimes and terrorist financing crimes; or c. The donations that will be received are intended to be given to Donation Recipients in countries that are declared inadequate in implementing international conventions and standards in the field of preventing and eradicating money laundering crimes and Terrorism Financing Crimes

competent authorities take only limited action against NPOs identified by Indonesia as having ties to terrorist groups, such as the UN-registered Hillal Amar Society Indonesia (HASI).¹¹

HASI was listed as a terrorist entity by the UN Security Council on 13 March 2015 under paragraphs 2 and 4 of resolution 2161 (2014) due to its association with Al-Qaida due to its participation in the financing, planning, facilitation, preparation, or actions in connection with, on behalf of or for supports, recruits for and acts for Jeamaah Islamiah (JI) groups (QDe.092).¹² Even though HASI's activities are not directly related to terrorism, the act of providing support and assistance to terrorist groups has shown that HASI is a high-risk NPO. In contrast to HASI, JI has also been designated as a terrorist entity or organization by the UN Security Council because it has been proven to have provided support for a series of terror attacks in several regions in Indonesia. Although by definition JI is not an NPO or recognized mass organization following the definition of mass organization in Law no. 17 of 2013 as amended by Law no. 16 of 2017 concerning Mass Organizations, however, because in its activities JI has a wide following, it is necessary to take firm action to prohibit this group or entity from carrying out wider activities.

The principle of identifying NPO profiles is also implicitly regulated in Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations, that based on Article 52, Foundations are obliged to state in the summary of the annual report on the notice board at the foundation office. If a foundation receives foreign aid amounting to IDR 500 million or more, in one accounting year, the foundation concerned must also publish a summary of its report in an Indonesian language newspaper, meaning that the foundation here must identify the donor because of the obligation to make it public.¹³ However, on the contrary, The Law on Mass Organizations does not regulate the mechanism for monitoring funds received by a Mass Organization. The Law on Mass Organizations does not provide audit authority for the government to audit mass organizations. Meanwhile, supervision is carried out internally and externally from the community and government as intended in Article 53 paragraph 3 of the Law on Mass Organizations. External supervision is carried out by the community, government, or regional government.¹⁴

Supervision of NPOs has very intersecting objectives, both in the context of preventing terrorist financing and can also be carried out in the context of preventing money laundering. Identifying the donor also identifies the beneficial owner if this NPO is used as a money laundering medium. Other than that, beneficial ownership regulation as stipulated in Presidential Regulation No. 13 of 2018 concerning the Application of the Principle of Benefits from Corporations in the Context of Preventing and Eradicating Crimes of Money Laundering and Terrorist Financing Crimes also mentioned that NPO as part of it. What is meant by a corporation is an organized group of people and/or assets, whether they are legal entities or non-legal entities. Referred to in Article 2 paragraph (2) includes foundation and associations. Therefore, the identification of donor recipients or beneficiaries for NPOs needs to be analyzed by looking at the existing regulatory framework, and whether the regulatory framework can effectively prevent money laundering and terrorism financing.

Based on this background, this paper aims to discuss the supervision mechanism of NPOs in mitigating terrorism financing and money laundering, as well as the liability of NPOs if used as a medium for Money Laundering or Terrorist Financing. This research is normative

¹¹ Asia/Pacific Group on Money Laundering, "Anti-Money Laundering and Counter-Terrorist Financing Measures Indonesia." Third Round Mutual Evaluation Report, APG: Sydney, (2018), p. 8.

¹² Un.org, "Jemaah Islamiyah," 3 March 2021, Available Online https://www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list/summaries/entity/jemaah-islamiyah.

¹³ Soni Gunawan Somali, "Pengelolaan Yayasan Menurut Undang-Undang No. 28 Tahun 2004 Tentang Yayasan." *SOSIOHUMANITAS* 20, no. 1 (2018): 43.

¹⁴ Deicy N. Karamoy, "Pengawasan Terhadap Organisasi Kemasyarakatan yang Didirikan Oleh Warga Negara Asing." *Lex Et Societatis* 8, no. 3 (2020): 111.

legal research with an exploratory descriptive research typology. The approach that the author takes in this legal research refers to the review of laws and regulations governing Money Laundering and Terrorist Financing and conducts a review of the issues discussed. The research data are collected and analyzed from various primary legal materials, secondary legal materials, and tertiary legal materials available. Data collection is carried out by literature study of books, articles, journals, research results, and other laws and regulations. Data analysis is carried out descriptively and qualitatively in discussing the formulation of research problems.¹⁵

B. Discussion

1. NPO Supervision Mechanism in the Prevention of Money Laundering and Terrorist Financing

Freedom of expression is a fundamental right of life that is guaranteed and protected by the state. The implementation of freedom of expression can take the form of writings, books, discussions, or press relations, where all citizens can legally express their views, thus expressing various governmental, legal, political, and other matters. Often used in social media stories for Things, whether in the form of criticism of public policies, opinions issued by the government or other state bodies, or public policies that regulate government processes.¹⁶ Article 28 letter E and Letter F of the 1945 Constitution guarantee the public's right to hold opinions, express thoughts, and associate. The form is to establish an organization, be it in the form of a Non-Governmental Organization, Foundation, or association regulated in the Law on Mass Organizations. NPOs in the anti-money laundering and anti-financing of terrorism regime fall under the category of Corporations. A corporation is defined as an organized collection of people and/or wealth, both legal and non-legal entities.¹⁷ The status of a legal entity needs to be formally established through registration at a government agency as part of the oversight mechanism. This involves registration of legal entities, registration or permission to operate activities, and standardization and accreditation to improve quality. Registration of legal entities should be done through the legal administration system of the Ministry of Law and Human Rights, while registration or operational licenses of activities are related to the ministry that has jurisdiction over the field of activity. For example, educational activities must be licensed by the Ministry of Education and Culture, religious activities by the Ministry of Religious Affairs, and social activities by the Ministry of Social Affairs. Registration arrangements at the Ministry of Home Affairs are only required for foreign organizations operating in Indonesia or organizations of foreign nationals that must be supervised by the ministry in charge of foreign supervision affairs.¹⁸

In line with this, the United Nations (UN) is calling on countries to implement effective laws against terrorist financing and investigate potential perpetrators. Critics argue that terrorist financing laws are too broad, and although countries have criminalized it, few have been able to effectively prosecute those involved.¹⁹ This approach also involves banks and other financial institutions in the fight against terrorist financing.²⁰ They are required to provide reports to the financial intelligence unit (PPATK), to assist their investigations. Based on FATF Recommendation 8 related to NPOs, also states that countries should assess the adequacy of

¹⁵ Soerjono Sukanto, *Pengantar Penelitian Hukum*, Universitas Indonesia Press, Jakarta, (1986): 69.

¹⁶ Latipah Nasution, "Hak Kebebasan Berpendapat dan Berekreasi dalam Ruang Publik di Era Digital," *Buletin Hukum dan Keadilan: Adalah*, Volume 4, no. 3, (2020): 38.

¹⁷ Law No. 31 of 1999 concerning Corruption Crimes, Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes, Law No. 9 of 2013 concerning Prevention and Eradication of Terrorism Financing Crimes

¹⁸ Catur Wibowo Budi Santoso and Herman Harefa, "Urgensi pengawasan organisasi kemasyarakatan oleh pemerintah." *Jurnal Bina Praja: Journal of Home Affairs Governance* 7, no. 1 (2015): 5.

¹⁹ Jessica Davis, Understanding the Effects and Impacts of Counter-Terrorist Financing Policy and Practice. *Terrorism and Political Violence* 36, no 1 (2024): 1–17. <https://doi.org/10.1080/09546553.2022.2083507>

²⁰ Ibid.

laws and regulations regarding business entities that can be misused for terrorist financing.²¹ Given that non-profit organizations are highly vulnerable to abuse by terrorist organizations, the State must ensure and conceal or disguise the illegal transfer of funds intended for legitimate purposes for the benefit of terrorist organizations.²² In addition, these NPOs also play an important role in the world economy and the economic and social systems of many countries. Their efforts complement the activities of the government sector and the business sector in providing essential services that are highly desirable. However, with the international campaign against terrorist financing showing that terrorists and their organizations use the NPO sector to raise and transfer funds, provide logistical support, and encourage terrorist recruitment, this is a concern. Within this framework, FATF recognizes the potential risks associated with NPOs being exploited by terrorist groups or money launderers through tactics such as posing as charities, using NPOs as conduits for terrorist financing, or diverting funds originally intended for legitimate purposes into money laundering and supporting terrorist activities.²³

National authorities are therefore obliged to monitor NPOs' compliance with the requirements of Recommendation 8, including the application of risk-based measures to NPOs. Authorities should also have the ability to impose effective, proportionate, and non-coercive sanctions for violations committed by NPOs or individuals acting on their behalf. Following the interpretation of Recommendation 8, various anti-money laundering and countering the financing of terrorism measures may be applied to NPOs, including licensing or registration requirements, collection of information on the purpose and identity of owners, control of funds, issuance of annual financial statements, implementation of adequate controls for accountability of funds, and verification of the identity, credentials, and reputation of NPO beneficiaries and partners. NPOs may also be required to keep detailed records of domestic and international transactions and provide them to the authorities.

To identify donors and recipients, the international framework encourages beneficiary transparency as protection against corporate abuse for illegal purposes in the United Nations Convention Against Corruption (UNCAC) and FATF Standard: "*UNCAC Art 12: Private Sector c. Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities*", and "*FATF: Recommendation 24-25, Jurisdictions must ensure there is adequate, accurate, and up-to-date information on the basic and beneficial ownership of legal persons (legal arrangements rec 25) formed in that jurisdiction, and that such information can be provided to a competent authority in a timely manner*". In identifying the beneficiaries of the NPO, preventive measures must be applied by financial institutions or Reporting Parties in Anti-Money Laundering and Countering the Financing of Terrorism, Professions, and Virtual Asset Service Providers, by conducting customer due diligence (CDD),²⁴ to explore beneficiary information on service users who are legal entities as mentioned in recommendation 10 of the FATF.

According to the World Giving Index (WGI) report released by Charities Aid Foundation (CAF) Indonesia is in first place with a score of 69%, up from a score of 59% in the last annual index published in 2018.²⁵ Indonesia is the most generous country in the world, with a ratio of 8 out of 10 Indonesians who are generous with indicators of helping strangers,

²¹ FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*. (2012-2022): 22.

²² M. Arief Amrullah, "The Countermeasure Of Criminal Act Of Terrorism Financing Through Money Laundering." *Pattimura Law Journal* 6, no. 2 (2022): 64.

²³ Georgios Pavlidis, "The dark side of anti-money laundering: Mitigating the unintended consequences of FATF standards." *Journal of Economic Criminology* 2 (2023): 100040.

²⁴ M. Garde, Z. Manatta, and E. Pineda. *Building Effective Beneficial Ownership Frameworks: A Joint Global Forum and IDB Toolkit*, IADB: Inter-American Development Bank. United States of America. (2021): 9.

²⁵ CAF World Giving Index 2021, p. 7, <https://www.cafonline.org/about-us/publications/2021-publications/caf-world-giving-index-2021>

donating/charity, and becoming volunteers. This makes NPOs in the form of very large foundations have the potential to obtain enormous wealth from benefactors who donate, grant, endow, and so on from their assets to the foundation. At the global level, according to reports on the effectiveness and compliance of countries with FATF standards, more than 50 percent or 30 countries out of 59 countries that have been evaluated by the FATF Mutual Evaluation state that international terrorist groups are the highest threat to a country. Furthermore, as many as 33.3 percent or 20 countries identified domestic terrorism groups, the activities of foreign terrorist fighters, and abuse of NPOs as serious threats.²⁶

The biggest challenge for NPOs, in this case, foundations or associations as corporations, is how the purpose of the corporation, namely to serve the community,²⁷ can run following legal corridors and not be used as a medium for money laundering in the form of legal vehicles²⁸ for criminals or terrorism financing. Criminals will usually use legal practitioners as gatekeepers and shell companies established to obscure the identity of beneficial owners or as a medium for crime.²⁹ In Indonesia, donation-based crowdfunding is rooted in donations and is subject to Law No. 9/1961 on the Collection of Money and Goods and Government Regulation No. 29/1980 on the Implementation of the Collection of Donations. Both Law No. 9/1961 and Government Regulation No. 29/1980 do not explicitly mention the form of business entities or organizations that are allowed to carry out activities to collect donations of money or goods on an ongoing basis. Both regulations only refer to them as mass organizations.³⁰

However, with the enactment of Law No. 17 of 2013 (Ormas Law), the problems mentioned above are addressed by providing certainty on the form of mass organizations, namely associations or foundations, placing mass organizations as subjects so that mass organizations are more independent, empowered and contribute positively to nation building, one of the State's policies to curb social organizations that have been deemed not to comply with Indonesian law, especially those related to their rights and freedoms in association, assembly, and expression. When charities are involved in the criminal justice process, it is because they use their status as fund shelters for the wealthy in terms of tax evasion, laundering money for organizations that are considered terrorist organizations by the government, or defrauding donors.³¹

The law places restrictions on NPOs, Article 59 paragraph 3 of the Mass Organization Law prohibits Mass Organizations from receiving from or giving to any party donations in any form that is contrary to the provisions of statutory regulations; and/or raising funds for political parties. The sanctions that can be applied based on the mass organization law are administrative as stated in Article 60 of the mass organization law. The Mass Organizations Law provides restrictions regarding the right to associate and assemble, which must be in line with the Siracusa Principles contained in the International Covenant on Civil and Political Rights (hereinafter referred to as ICCPR), a principle that explains that restrictions on rights may not

²⁶ PPATK, *Updated Risk Assessment of Community Organizations Being Abused as a Means of Terrorism Funding in 2022*, Jakarta: PPATK, (2022): 5.

²⁷ Frank René López, "Corporate Social Responsibility in a Global Economy After September 11: Profits, Freedom, and Human Rights." *Mercer L. Rev.* 55 (2003): 739.

²⁸ Andres Knobel, "Beneficial Ownership Verification: Ensuring the Truthfulness and Accuracy of Registered Ownership Information," SSRN Electronic Journal. (2019): 17.

²⁹ Carmina Franchesca S Del Mundo, "How countries seek to strengthen anti-money laundering laws in response to the Panama papers, and the ethical implications of incentivizing whistleblowers," *Nw. J. Int'l L. & Bus.* 40 (2019): 90 – 91.

³⁰ Iswi Hariyani and Cita Yustisia Serfiyani. "Perlindungan Hukum Sistem Donation Based Crowdfunding Pada Pendanaan Industri Kreatif Di Indonesia (The Legal Protection Of The Donation-Based Crowdfunding System On The Creative Industry In Indonesia)." *Jurnal Legislasi Indonesia* 12, no. 4 (2018): 9.

³¹ Miles Howe and Paul Sylvestre. "International Cash Conduits and Real Estate Empires: A Case Study in Canadian Philanthropic Crime." *Journal of White Collar and Corporate Crime* (2022): 2.

be carried out if they endanger the essence.³² Of these rights as referring to the provisions of Article 28 of the 1945 Constitution,³³ then after the enactment of Law Number 16 of 2017 concerning the Stipulation of Government Regulations in place of Law Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Mass Organizations Becomes Law (hereinafter referred to as Law 16/2017). The provisions of Article 61 paragraph (1) and paragraph (3) of Government Regulation in place of law Mass Organizations emphasize that the Government has the authority to impose administrative sanctions in the form of revoking a registered certificate or revoking the legal entity status of a social organization without going through a judicial decision.³⁴

Organizations in the form of associations have the potential to be used as a medium for criminals, the characteristics of member-based associations are attractive to corruptors from politicians to make their voting base through grants, donors, and so on. What needs to be prevented is if the grants and donors come from the proceeds of a criminal offense. In case No. 67/Pid.Sus-TPK/2016/PN.Bdg, Ojang Sohandi, former Regent of Subang, was charged with corruption and Money Laundering. Ojang Sohandi made donations from the proceeds of his corruption to the Subang Regency Pemuda Pancasila (PP) organization in the amount of Rp.360,000,000 (three hundred million rupiahs) and to the Laskar Merah Putih (LMP) in the amount of Rp.326,000,000 (three hundred twenty-six million rupiahs).³⁵ To protect associations from receiving donations from the proceeds of crime that can result in them becoming passive perpetrators of money laundering, associations as NPOs need to know the donor and conduct a risk assessment on this matter. not to be used as a medium for money laundering let alone become a passive perpetrator of money laundering.

In the case of terrorism financing, NPOs also have the potential to be misused, usually in the form of a foundation, where the foundation is used to obtain funds which are then channeled into terrorism financing.³⁶ One example is the Hillal Amar Society Indonesia (HASI) Foundation,³⁷ which is listed as a terrorist entity by the UN Security Council following paragraphs 2 and 4 of resolution 2161 (2014) for participating in the financing, planning, facilitating, preparing, or acting in connection with, on behalf of or to support, recruiting for and acting for the Al-Qaida-affiliated Jamaah Islamiah group (QDe.092).³⁸ many more foundations are misused for terrorism funding, including the LAZ ABA foundation, Syam Organizer, GHASIBU, and others.³⁹

In the acquisition of funds, as stated in Law No.16 of 2001 as amended through Law No.28 of 2004 concerning Foundations (Foundation Law) Article 26 states that in addition to the Foundation's wealth comes from many assets separated in the form of money or goods, the Foundation can also obtain wealth from 1.) Grant; 2.) Wasiat; 3.) Non-binding donations or assistance; 4.) Waqf; Other acquisitions that are not contrary to the articles of association of the Foundation and/or applicable laws and regulations. Even based on Article 7 paragraphs (1) and (2) of the Foundation Law, foundations can establish business entities whose activities are under the aims and objectives of the foundation. Although foundations are not profit-oriented,

³² Victor Imanuel W. Nalle, "Asas Contrarius Actus Pada Perppu Ormas: Kritik Dalam Perspektif Hukum Administrasi Negara dan Hak Asasi Manusia," *Padjadjaran Jurnal Ilmu Hukum* 4, no.2 (2017), P. 257.

³³ Fuad Hasan, "Kemungkinan Atas Digunakannya Hasil Analisis PPATK sebagai Alat Bukti pada Penanganan Perkara Pencucian Uang," *AML/CFT Journal: The Journal of Anti Money Laundering and Countering The Financing of Terrorism* 1, no. 1 (2022): 61.

³⁴ Article 61 paragraph (1) and paragraph (3) Government Regulation in place of Law Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Mass Organizations

³⁵ Putusan Nomor 67/Pid.Sus-TPK/2016/PN.Bdg. P. 137 - 142

³⁶ S. Bricknell, "Misuse of the non-profit sector for money laundering and terrorism financing. Trends and Issues in Crime and Criminal Justice" [Electronic Resource], (424), [1]–6.

³⁷ APG, Anti-money laundering and counter-terrorist financing measures - Indonesia, Third Round Mutual Evaluation Report, APG, Sydney, (2018), P. 8.

³⁸ https://www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list/summaries/entity/jamaah-islamiyah

³⁹ Daftar Terduga Teroris dan Organisasi Teroris Nomor: DTTOT/P-10d/3/I/RES.6.1./2022

based on this provision it does not close the opportunity for foundations to move in the business sector. This means that NPOs in the form of foundations have enormous potential to obtain funds, so these funds must be used by objectives that do not violate statutory provisions. Foundations are not profit-oriented because there are other interests in foundations, namely for third parties, in this case, the general public as stakeholders and the interests of the state.⁴⁰ That is why, organizations engaged in religious, social, and humanitarian fields should not be concerned with collective interests but rather prioritize public interests above all individual and/or group interests.⁴¹

The misuse of wealth from foundations is not only about funding terrorism, but also about the potential for money laundering. The Directorate of Special Economic Crimes at the Criminal Investigation Unit of the National Police charged the suspects in the alleged misappropriation of funds from the Aksi Cepat Tanggap (ACT) Foundation with money laundering, including Ahyudin (A) as the former president and founder of ACT, Ibnu Khajar (IK) as the current president of ACT. Then Hariyana Hermain (HH) as the supervisor of the ACT Foundation in 2019 and is currently a member of ACT's board of trustees, and Novariadi Imam Akbari (NIA) as the former Secretary and currently the Chairman of ACT's Board of Trustees for assets worth IDR 34 billion.⁴² The money was supposed to be used as a relief fund for victims of the Lion Air Boeing JT-610 plane crash. The National Police Criminal Investigation Unit (Bareskrim) stated that ACT allegedly misused funds from Boeing for the heirs of the victims of the Lion Air plane crash.

Then how to prevent the NPO funding from being misused for money laundering or terrorist financing, a comprehensive mechanism is needed to handle it. The supervision mechanism for NPOs can be divided into supervising the transaction flow of NPOs as customers by the Reporting Party and supervision by the Regulatory Agency. The implementation of the Anti-Money Laundering and Countering the Financing of Terrorism AML/CFT program is an obligation for all parties, especially for banks as financial services companies. Given the increasingly widespread practice of money laundering including the misuse of accounts to accommodate terrorism funding, a commitment from all parties is needed to support the implementation of the AML/CFT program. supervision of the transaction flow is carried out by the financial services sector, based on Article 2 POJK No. 23 /POJK.01/2019 concerning Amendments to the Financial Services Authority Regulation No. 12/POJK.01/2017 concerning the Implementation of Anti-Money Laundering and Countering the Financing of Terrorism Programs in the Financial Services Sector (POJK AML/CFT). FSIs are required to identify, assess, and understand the risks of money laundering and/or terrorism financing related to customers, countries, geographical areas, products, services, transactions, or distribution networks. Article 27 of the AML/CFT POJK requires Financial Service Providers to understand the profile, purpose, and objectives of business relationships, and transactions carried out by Customers and Beneficial Owners through identification and verification, including Financial Service Providers, must conduct Customer Due Diligence (CDD) on beneficial owners, ensure that prospective customers, customers, or Walk in Customers who open business relationships or conduct transactions act for themselves or the benefit of the beneficial owners if acting for the benefit of the beneficial owners, CDD must be carried out on the beneficial owners, and if the beneficial owners are classified as a Politically Exposed Person (PEP), the EDD procedure is applied. As well as being able to identify and verify the

⁴⁰ Gunawan Widjaja dan Yeremia Ardi Pratama, *Risiko Hukum & Bisnis Perusahaan Tanpa CSR, Seri Pemahaman Perseroan Terbatas*, Jakarta: PT. Percetakan Penebar Swadaya, (2008), 47.

⁴¹ Yusuf Wibisono, *Membedah Konsep & Aplikasi CSR*, Gresik: Fascho Publishing, (2007), 5-6

⁴² SINDOnews.com pada Jum'at, 23 September 2022-20:08 WIB oleh Puteranegara Batubara dengan judul "Bareskrim Polri Jerat Tersangka Kasus ACT dengan TPPU". Untuk selengkapnya kunjungi: <https://nasional.sindonews.com/read/893533/13/bareskrim-polri-jerat-tersangka-kasus-act-dengan-tppu-1663938557>

identity of natural persons (if any) who control the Corporation or legal arrangements through other forms as stated in Article 28 POJK AML/CFT.

In carrying out verification of the involvement of the NPO itself and the foundation/management (beneficial owner) involved in terrorism activities, verification has been carried out so far only based on DTTOT data that is always updated. The DTTOT list is prepared by the head office of each bank respondent. Beneficial owner identification aims to determine the final controller of transactions conducted through a legal entity or based on an agreement. Beneficial owner data fulfillment is done with a special beneficial owner form where the information included is as complete as the customer. If the management is a customer of the bank itself, then the Customer Information File (CIF) will be connected to the CIF of the Foundation/related organization. If the administrator does not have an independent bank account, a CIF beneficial owner will be created without an account and linked to the CIF of the related Foundation/organization. All CIFs are directly connected to the DTTOT database for screening. If a customer-beneficial owner is found in the DTTOT database, it will be blocked. However, if the beneficial owner is not a customer, then the beneficial owner will be reported as a suspicious financial transaction report on behalf of the Foundation/organization.⁴³ However, if only based on DTTOT, the implementation of prevention and eradication of NPO abuse will not be effective, this is because parties suspected of being involved in terrorism financing use individuals or foundations that are not listed in DTTOT. In general, the beneficial owner of banks only relies on the data contained in the deed of establishment, other licensing documents, and customer forms. This still has weaknesses in obtaining actual beneficial owner information.⁴⁴

The second is the risk-based supervision of NPOs conducted by the Ministry of Home Affairs and Ministry of Law and Human Rights administratively, which can be done by ensuring the aims and objectives as well as the activities that will be carried out by the NPO concerned. Other forms of supervision can be carried out by the Government through external supervision of NPO entities. External supervision can also be conducted by the community, Government, and/or Local Government. The supervision of foreign mass organizations is carried out by the Foreign Mass Organization Licensing Team (TPOA) which consists of 9 (nine) members representing Ministries/Institutions with the Ministry of Foreign Affairs as the Coordinator. In addition, TPOA members have vertical agencies in the regions such as the Ministry of Home Affairs, TNI, and Polri. In addition, the Ministry of Foreign Affairs also has Indonesian representatives abroad for coordination and supervision of foreign mass organizations in the country of origin. One of TPOA's tasks is to monitor and evaluate the implementation of written agreements (MSP) between foreign mass organizations and partner ministries/agencies. Based on the provisions of law number 17 of 2013 concerning Mass Organizations, Government Regulation number 59 of 2016 concerning Mass Organizations established by Foreign Citizens, and the 2021 Minister of Foreign Affairs Decree on TPOA Technical Guidelines. The implementation of monitoring and evaluation is carried out to monitor the implementation of MSP, assess the benefits of cooperation for the community, and become a reference for the extension or termination of the principle permit and operational permit of the foreign mass organization. The implementation of MSP is carried out by taking into account the principles of participatory, objective, and avoiding conflicts of interest. According to the type, MSP is conducted at the end of the cooperation period, MSP for special purposes and periodic monitoring and evaluation.

If there is an indication of a legal organization taking actions that have the potential to threaten the integrity of the Unitary State of the Republic of Indonesia, preventive action can

⁴³ Tim Riset PPATK, Laporan Riset Pengkinian Indikator Transaksi Keuangan Mencurigakan Penyalahgunaan Organisasi Kemasyarakatan dalam Pendanaan Terorisme Untuk Industri Perbankan, P. 34.

⁴⁴ Ibid.

be taken in the form of blocking access (stopping or temporarily closing) online access services for Foundations and Associations to the Legal Entity Administration System (SABH), on the recommendation of the National Integrated Team for Monitoring Mass Organizations (under the coordination of the Ministry of Home Affairs). Blocking access to SABH is carried out to protect the legal interests of the parties, in the event of a dispute, law enforcement, and secure data recording in the context of organizing a valid list of legal entities.

2. Liability of NPOs if used as a medium for Money Laundering or Terrorist Financing

Globalization, along with its benefits, drives the rapid growth of the global economy. This allows multinational companies to participate. Money laundering can be committed by a corporation, not just by an individual. Indonesia is one of the most developed countries in the world. Developing countries mean countries that focus their economic growth on the private sector, which is mostly owned by corporations. Therefore, there is a close relationship between money laundering and corporations.⁴⁵ As discussed in the previous discussion this NPO is said to be a corporation in the form of a Foundation or association, its involvement in a criminal act involving it as a medium of crime must be held responsible.

To be criminally responsible, you must fulfill the requirements of malicious behavior (*actus reus*) and malicious intent (*mens rea*) so that the combination of the two is what makes a subject responsible in criminal law (culpable subject).⁴⁶ According to Moeljatno, *actus reus* can be equated with a criminal act.⁴⁷ Moeljatno explained that the meaning of a criminal act is "an act that is prohibited by a rule of law, which prohibition is accompanied by threats (sanctions) in the form of certain penalties, for anyone who violates the prohibition."⁴⁸ Criminal liability cannot exist without starting with a criminal act. In the concept of Indonesian criminal law, *mens rea* can be linked to the concept of guilt (*schuld*) because they both discuss the psychological element or what is called the subjective element of the perpetrator when committing a criminal act. Van Bemmelen and van Hattum explain the relationship between error and responsibility as: "The broadest definition of error includes all elements for which a person is held responsible according to criminal law, including all complex psychological matters in the form of criminal acts and perpetrators."⁴⁹ A subject cannot be burdened with criminal liability if there is no element of fault (*schuld*) in him which is based on the ability to be responsible, intentional (*dolus*), or negligence (*culpa*), and the basis for eliminating the subject's criminal liability. To be able to impose criminal responsibility on a subject, it is not enough that a criminal act has been committed, there must also be an element of guilt or a reprehensible mental attitude related to the act committed.⁵⁰

In its development, there have been exceptions to the principle of no crime without fault, such as in strict criminal liability.⁵¹ or vicarious criminal liability⁵². Strict criminal liability is the criminal liability that does not require proof of fault from the party who committed the criminal act.⁵³ Corporations can also be ensnared without requiring an inner attitude,⁵⁴ two main

⁴⁵ Puput Pratiwi Wulandari, "Implikasi Pidana Tambahan Terhadap Korporasi Dalam Tindak Pidana Pencucian Uang," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 4, no. 4 (2020): 151.

⁴⁶ Chairul Huda, *No Crime Without Fault' To 'No Criminal Accountability Without Fault'*, First Edition, 4th Printing, (Jakarta: Kencana Prenada Media Group: 2011), 6.

⁴⁷ Moeljatno, *Principles of Criminal Law*, Fifth Printing, (Jakarta: PT. Rineka Cipta, 1993), P. 57.

⁴⁸ *Ibid.* P. 54.

⁴⁹ Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana*, (Yogyakarta: Cahaya Atma Pustaka, 2014), P. 124.

⁵⁰ Indah Sari, "Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata." *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2021). P. 58.

⁵¹ Robin Antony Duff, *Answering for Crime: Responsibility and Liability in the Criminal Law*, (Oxford: Hart Publishing, 2007), P. 230.

⁵² Muladi dan Dwidja Priyatno, *Pertanggungjawaban Pidana Korporasi*, Edisi Ketiga, Cetakan ke-5, (Jakarta: Prenadamedia Group, 2015), P. 122-123.

⁵³ Robin Antony Duff, *op. cit.*, P. 252.

⁵⁴ Daniel R Fischel and Alan O. Sykes, "Corporate Crime." *Journal of Legal Studies* 25, no. 2 (1996), P. 319-350.

teachings form the basis for justifying the imposition of criminal liability on corporations. These teachings are the doctrine of strict liability and the doctrine of vicarious liability. The following are the basis for implementing strict liability, including:⁵⁵ (a) This act does not apply generally to all types of criminal acts, but is very limited and certain, especially regarding anti-social crimes or those which endanger society; (b) The act is truly unlawful and is in direct conflict with the prudence required by law and propriety; (c) This act is strictly prohibited by law because it is categorized as an activity or activity that has the potential to pose a danger to public health, safety and morals; and (d) The act or activity as a whole was carried out without taking very reasonable precautions. Regarding vicarious liability, 2 (two) principles must be fulfilled in applying the concept of vicarious liability, namely:⁵⁶ a). There is a Delegation Principle. This principle is related to permitting someone to manage a business. The permit holder does not directly run the business, but he or she gives full trust or delegates to someone to manage the company. b). that the employee's actions are the employer's actions, in this principle it can be compared to the word sales as *actus reus*.⁵⁷ When the seller delivers goods to the buyer, they must be in good condition. Even though the person selling is the worker or employee, the person responsible for the goods being sold is the owner.

The Supreme Court then issued Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Corporate Crime Cases (Supreme Court Regulation). This Supreme Court Regulation seeks to separate the discovery of the *actus reus* and *mens rea* of the corporation. Provisions regarding the fulfillment of *actus reus* are stated in Article 3 of Supreme Court Regulation, explaining that a criminal act is committed by a corporation if: it is committed by a person based on an employment relationship, or based on another relationship, either individually or collectively acting for and on behalf of the corporation within or outside the corporate environment. This criterion is the same as that in the corporate criminal responsibility model 2 by excluding the element of corporate interests and adding the element of acting inside or outside the corporate environment.⁵⁸ Seeing that a corporation is an independent subject that is independent of the particular behavior of the humans within it. This can be seen from Article 4 (2) Supreme Court Regulation which states that elements of corporate error can be seen from:

- a) The corporation obtains profits or benefits from the criminal act, or the criminal act is committed for the benefit of the corporation;
- b) Corporations allow criminal acts to occur;
- c) The corporation does not take the necessary steps to prevent criminal acts, the corporation does not prevent wider impacts, or the corporation does not ensure compliance with applicable legal provisions to avoid criminal acts occurring.⁵⁹

Then in Article 1 paragraph (1), Supreme Court Regulation explains that what is meant by a Corporation is an organized collection of people and/or assets, whether they are legal entities or non-legal entities. The definition of a corporation in the Supreme Court Regulation is formulated in a broad sense and this understanding is still in line with the definition of a corporation in Anti Money Laundering Law, and Law No. 9 of 2013 concerning Prevention and Eradication of Terrorism Financing Crimes (Counter-Terrorist Financing Law).⁶⁰ Law No.

⁵⁵ Amrani Hanafi and Mahrus Ali, *Sistem Pertanggungjawaban Pidana (Perkembangan dan Penerapan)*, Rajawali Press, Jakarta, (2015), P. 128

⁵⁶ Grace Yurico Bawole, "Legal Analysis of Forms of Criminal Liability Based on the Concepts of Strict Liability and Vicarious Liability." *Lex Et Societatis* 6, no. 8 (2018). Pg. 20

⁵⁷ Abdurrahman Alhakim and Eko Soponyono. "Kebijakan Pertanggungjawaban Pidana Korporasi Terhadap Pemberantasan Tindak Pidana Korupsi." *Jurnal Pembangunan Hukum Indonesia* 1, no. 3 (2019), P. 328.

⁵⁸ Dissertation from Mulyati, N. Corporations as Legal Subjects and Criminal Liability in Indonesian Criminal Law. P. 258

⁵⁹ Indonesia, Decree of the Chief Justice of the Supreme Court concerning Procedures for Handling Corporate Crime Cases. Supreme Court Chairman's Decree No. 13 of 2016, Article 4

⁶⁰ Perma is intended to fill legal gaps, especially criminal procedural law in handling criminal cases with corporate actors and/or management and can be used as a guide for law enforcers in handling criminal cases with corporate actors and/or management

1 of 2023 concerning the Criminal Code regulates more clearly regarding Corporations as Subjects of Criminal Acts, in Article 45 paragraph (1) of the Criminal Code it is stated *expressis verbis* that Corporations are the subject of Criminal Acts. Likewise, Article 45 paragraph (2) lists the types of corporations as referred to in paragraph (1), including NPOs (foundations or associations).

Corporate Liability based on Article 46 of the Criminal Code states that criminal acts by corporations are criminal acts committed by management who have a functional position in the organizational structure of the corporation or people based on employment or other relationships who act for and on behalf of the corporation or act in the interests of the corporation. within the scope of the business or activities of the Corporation, either individually or jointly. Then the explanation of Article 46 specifies that what is meant by "functional position" is that the person has the authority to represent, make decisions, and exercise supervision over the Corporation, including having the position of a person who orders, participates in carrying out, mobilizes other people to carry out actions. Crime, or assisting in a crime. and what is meant by "other relationships", for example, temporary work contracts. Criminal acts by corporations can be committed by those who give orders, control holders, or beneficial owners of the corporation who are outside the organizational structure, but who can control the corporation as stated in Article 47. Based on this, it is not only limited that criminal acts can be committed by people who have only functional positions within the corporate structure but also beneficiary owners who are people who have authority and participate in deciding corporate policies. They do not exist in the organizational structure but have a large influence on the course of corporate operations and cannot be considered corporate behavior.

In line with that, NPOs as a corporation as described in the Anti-Money Laundering Law and Counter-Terrorist Financing Law. The *Mens Rea* of NPOs as the corporation can be noticed by the existence of the actions of the NPO's controlling personnel. The actions of the corporate controlling personnel are a benchmark for law enforcement when holding the NPO liable, where the actions of the NPO controlling personnel have goals and objectives that will be achieved for the NPO. If we look at the definition of corporate control personnel, it is anyone who has the power or authority to determine corporate policy or has the authority to carry out corporate policy without having to obtain authorization from their superiors.⁶¹

The Anti Money Laundering Law is formulated in Article 6 paragraph (2) of the Anti Money Laundering Law which states that a criminal offense can be imposed on a corporation if the crime of money laundering is: a. Carried out or ordered by corporate control personnel; b. Carried out to fulfill the aims and objectives of the corporation; c. Carried out under the duties and functions of the perpetrator or giver of the order; and d. Done to provide benefits to the corporation. The implementation criteria are that these four elements must be met to charge a corporation as a perpetrator of a money laundering crime. PT Beringin Bangun Utama's decision is a pioneer in handling corporate liability cases for the crime of money laundering. The responsibility of corporations as perpetrators of terror funding is regulated in Article 8 paragraph (2) of the Counter-Terrorist Financing Law, with alternative implementation criteria, namely a. Carried out or ordered by corporate control personnel; b. Carried out to fulfill the aims and objectives of the corporation; c. Carried out under the duties and functions of the perpetrator or giver of the order; or d. They are done to provide benefits to the corporation.

Criminal liability for corporations is easier to apply in terror financing cases because the fulfillment of the elements of the article is an alternative, and the tools in Counter-Terrorist Financing Law make it easier for law enforcers to handle terror funding cases more

so that effectiveness and optimization of case handling can be realized. criminal offenses with corporate perpetrators and/or management as stated in Article 2

⁶¹ Article 1 paragraph (14) Law of the Republic of Indonesia Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering

systematically, Counter-Terrorist Financing Law has tools for blocking and handling assets.⁶² Apart from that, the Counter-Terrorist Financing Law can immediately block people or corporations listed on the list of DTTOT.⁶³ So handling the assets of mass organizations as corporations that finance terrorism does not require a long process, unlike holding mass organizations accountable through the courts.

Apart from criminal sanctions in imposing penalties on corporations, administrative sanctions can also be applied. Administrative sanctions against corporations are in the form of warnings, written warnings, restrictions on business relations activities, fines determined to pay a certain amount of money, temporary suspension of part of the corporation's operations or all means of production, freezing of the corporation, cancellation of approval and cancellation of registration, while criminal sanctions against corporations are in the form of additional criminal sanctions. Overall, the capability of supervisory and regulatory institutions has the authority to impose sanctions on mass organizations. The imposition of administrative sanctions consists of written warnings, termination of activities, and/or revocation of registered certificates or revocation of legal entity status. What is meant by the imposition of administrative sanctions in the form of revocation of registered certificates and revocation of legal entity status are sanctions that are direct and immediately implementable by the Minister of Home Affairs or the Minister of Law and Human Rights against mass organizations whose principles and activities threaten the sovereignty of the Unitary State of the Republic of Indonesia based on Pancasila and 1945 Law, so the Government has the authority to revoke it.⁶⁴

Apart from the criminal responsibility of mass organizations as perpetrators of criminal acts of money laundering and terrorism financing, based on Law No. 16 of 2017 concerning Mass Organizations, criminal provisions have been regulated, as regulated in Article 82A. Apart from money laundering and terrorist financing, criminal sanctions can be imposed on every person who is a member and/or administrator of a mass organization who intentionally and directly or indirectly violates the provisions as intended in Article 59 paragraph 3 letters c and letter d, subject to a minimum prison sentence of 6 (six) months and a maximum of 1 (one) year, namely if: a. carry out acts of hostility against ethnicity, religion, race or class, b. committing abuse, blasphemy, or defamation of religions practiced in Indonesia; c. committing acts of violence, disturbing public peace and order, or damaging public facilities and social facilities; and/or d. carry out activities that are the duties and authorities of law enforcement under the provisions of statutory regulations. Violating the provisions of Article 59 paragraph 3 letters a and b and paragraph 4 is punishable by life imprisonment or imprisonment for a minimum of 5 years and a maximum of 20 years, if a. using the name, symbol, flag, or symbol of an organization which is substantially or completely similar to the name, symbol, flag or symbol of an organization of a separatist movement or prohibited organization; b. carry out separatist activities that threaten the sovereignty of the Unitary State of the Republic of Indonesia; and/or c. embrace, develop, as well. spreading teachings or understandings that are contrary to Pancasila.

C. Conclusion

The international framework encourages transparency of beneficiaries as a safeguard against NPO abuse for illegal purposes such as money laundering and terrorist financing. States that countries should assess the adequacy of laws and regulations regarding business entities that could be misused for terrorist financing. NPOs as mentioned in the Mass Organizations Law are prohibited from receiving from or giving to any party donations in any form that is

⁶² Articles 22 to Article 26 of Law No. 9 of 2013 concerning the Prevention and Eradication of Terrorism Financing Crimes

⁶³ Article 28 of Law No. 9 of 2013 concerning the Prevention and Eradication of Terrorism Financing Crimes

⁶⁴ Explanation of Article 61 paragraph (3) Perpu no. 2 of 2017 concerning Amendments to Law no. 17 of 2013 concerning Community Organizations

contrary to the provisions of laws and regulations. To prevent NPO funding from being misused for money laundering or terrorist financing, a comprehensive mechanism is needed to handle it, by way of supervision of the transaction flow of Mass Organizations as customers by the financial service provider through the identification and verification of donors and recipients or beneficial owner of NPO, and by the risk-based supervision of NPOs conducted by the Ministry that has authority to allow the establishment of NPOs through educating, monitoring and evaluation.

In the case of money laundering or terrorism financing, it uses NPOs as a medium for concealing or disguising the proceeds of criminal acts in money laundering or uses NPOs in obtaining donors for terrorism financing. The Mens Rea of NPOs as the corporation can be noticed by the existence of the actions of the NPO's controlling personnel. The actions of the corporate controlling personnel are a benchmark for law enforcement when holding the NPO liable, where the actions of the NPO controlling personnel have goals and objectives that will be achieved for the NPO.

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