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*by Deicy Natalia Karamoy 5*

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**Submission date:** 06-Apr-2021 10:00AM (UTC+0700)

**Submission ID:** 1551534193

**File name:** gislation\_and\_management\_fund\_for\_Msgue\_in\_Manado,\_Indonesia.pdf (311.69K)

**Word count:** 1351

**Character count:** 11134

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## Legislation and management fund for Mosque in Manado, Indonesia

~ **Deicy Natalia Karamoy** (School of Social Sciences, Islamic Development Studies, University Sains Malaysia; Faculty of Law, University of Sam Ratulangi, Manado, Indonesia)

~ **Abdelnasser Omran** (School of Housing, Building and Planning, University Sains Malaysia)

**Abstract:** *This paper aims to analyze the development of religious institutions as foundations or agencies virtue (Non-profit Organizations), which manage funds mosques and churches under the Act No. 28 of 2004 (Act 28/2004). The problem, though these agencies manage the funds mosques and churches as houses of worship, but still apply some cases broken trust and abuse in care funds. Content analysis will be made based on two data sources. First, it is the secondary data obtained than the Law 28/2004 and reports inscribed. Second is the primary data obtained from fieldwork. Revenue study is expected to back up the bodies of virtue for the management of funds increased more mosques in Manado, Indonesia. Conversely, if the enactment cases of study broken trust and misappropriation of funds in a thin, it acts in accordance with the laws that exist in Indonesia can be taken.*

**Keywords:** foundations, funds, management of funds, mosque and law

### 1. Introduction

Foundation (Foundation) is better understood as a virtue nonprofit entity or for-profit activities. If someone is going to conduct a full of idealism as well as for social

and humanitarian aims, the organizational form chosen is the foundation. Selected social activities primarily related to health, education, religious and social parlors. Container foundation used by its founders to perform

a variety of social activities for the public interest. Historically the Foundation as a forum for social activities has been around since the beginning of history. The Pharaoh, more than 1000 BC, it have separated property for religious purposes. At that time the Foundation was established by donating land and buildings for the temple to worship the god Artemis, the provision of food and beverages for those who need, and animal sacrifice. Plato before his death in 347 BC share of agricultural land than it has, to be donated for students who cannot afford. This is probably the first educational foundation in recorded history. The habit has been established by private foundations or individual's is usually done with certify from notary. Wealth that is separated rather than belonging to the founder or trustee of concerned, the deed is registered in the District Court Clerk's Office local. In Article 7 Armenwet 1854 (no longer valid) the requirement to register to the township within different for the foundations of existing or newly established, with the threat of losing its authority to do such laws. Thus, the position of agency law is obtained together with the establishment of the foundation. In practice the laws and customs can prove that in Indonesia have established a foundation and it was the position of agency law. In fact, foundations were established in the association have recognized legal rights and obligations of its own, as one position in conjunction with the subject of other legislation and based on jurisprudence, then the foundation is considered as a body of law.

Based on this foundation after all this time only in a society governed by custom and jurisprudence of the Supreme Court, the Government of the Republic of Indonesia on August 6, 2001 enacted Act (Act) of the

Republic of Indonesia Number 16 Year 2001 on the Foundation. In its development then was transformed with the Act (the Act) of the Republic of Indonesia Number 28 Year 2004 regarding Amendment Act (Act) of the Republic of Indonesia Number 16 Year 2001 on the Foundation. The law on foundations is intended to provide a correct understanding of the public about the foundation, ensuring certainty and order legislation and restore the function of foundations as institutions legislation in order to achieve certain objectives in social, religious and humanitarian. This law asserts that the foundation is a body of legislation which has the sole purpose is social, religious and humanitarian, was established by considering the formal requirements specified in this law. Law on Foundations has brought significant changes in the regulation of foundations in Indonesia. One is the ratification of the foundation as a mechanism Agency Act. Certificate establishment of the Foundation is done by a notary and obtain the status of law after obtaining approval certificate stance than the Minister of Justice and Human Rights Republic of Indonesia. To obtain approval as an agency of the founders of the law or their proxies request to the Minister through a notary deed that makes the foundation, it is stipulated in Article 11 paragraph (2) Law of the Republic of Indonesia Number 28 Year 2004 concerning Amendment to Law Republic of Indonesia Number 16 Year 2001 on the Foundation.

## 2. Methodology

This research were used a qualitative approach as a research method. Primary data which was used is based on law number 28 Year 2004, the object of research data. While the secondary data was direct observations.

### 3. Status of law foundation in Indonesia Law System

The Foundation is a virtue laws that exist in law in Indonesia has been recognized by the community based on the reality of the positive laws that live and thrive in Indonesian society. However, the rules governing legislation as a foundation primacy agency has been no legislation to date. Tendency for people to choose form the foundation for virtue among other agencies because of reasons:

- 1) Establishment process is simple,
- 2) without requiring ratification rather than government,
- 3) Rather than the public perception that the foundation is not subject to tax (Setiawan, 1992).

Recognition of the foundation as a body is legislation as an independent subject of legislation as much as anyone, theoretically, in fact, only be based, among others: because of separate property, not shared his wealth or his income to the founders or managers, have a particular goal, have an organization that regular, established by notary deed (Tobing, 1996, Pitlo, 1986, Ali, 1987). Such traits are matched with the characteristics of bodies in general law, namely the existence of separate property, the existence of a specific purpose, the existence of its own interests and the organizations that regularly (Pramono, 1947), (Rido. 1977). Under the laws of habit and assumption of law generally accepted in the community, then it can be argued traits foundation as a major portion of the legislation as follows:

1. Foundation of existence as an entity law in Indonesia is not based on legislation applicable regulations,
2. Recognition of the foundation as

the agency law has been no firm legal basis unlike the case with the Limited Liability Company (PT / Sdn Bhd.), Cooperatives and agencies of other legislation,

3. The Foundation was formed by splitting property for the purpose of cloning the founder of nonprofit, for the purpose of religious, social, religious, humanitarian and ideals of others,

4. The Foundation was established by notary deed or by a decree officials concerned with the establishment of foundations,

5. The foundation has no members and is not owned by anyone, but have management or organ to realize the purpose foundations,

6. Foundation, has an independent position, as a consequence of the existence of a separate wealth rather than wealth or cloning founders and managers have their own objectives differed or off rather than the establishment or management approach for cloning purposes,

7. The Foundation is recognized as an agency of the law as much as anyone who that he was recognized as an independent subject of legislation that can assume the rights and obligations of an independent, established by deed and registered at the secretariat office of the local Court,

8. The foundation can be dissolved by the court when goals conflict with the foundation's statute, may be declared bankrupt and liquidated (Sri Rejeki, 1999; Tobing, 1990).

With the issuance of Law no. 16 of 2001 and amended by Law no. 28 of 2004, it can be concluded that the foundation has been recognized as an agency of ordinary legislation, which subjects recognized means independent statute than the position of the subject matter law of the founders or managers.

As the subject of legislation is independent foundations have rights and responsibilities, may be a debtor and creditor, in other words, the foundation can have sex any legislation with a third party. When he became the agency law under the Act since the deed founding the Foundation is made before notary authorized by the Minister of Law and Legislation and Human Rights. For foundations that have been registered in the District Court and have permission to do the activities rather than institutions, is still recognized as a body of laws, with provisions in the period later than 5 (five) years from the entry into force of the new Foundation Law. At least 1 (one) year after the adjustment shall be notified to the Minister. Foundations that do not fit within the Articles of Association 5 (years) may be dissolved by court decision on the request of the Prosecutor or the interested parties.

The foundation of his wealth comes from part of than State aid, foreign aid and / or community contributions are obtained as a result of enactment of legislation required to announce a rule ikhtisar sec-annual reports referred to in Article 52 Paragraph (1) of the Foundation and which includes a wealth during the 10 (ten) years before the Foundation Act was passed. This announcement does not remove the right rather than the authorities to conduct inspection, investigation and prosecution if there are allegations of violations of law.

#### **4. Foundation for Law Layman Courant**

Judging than the way of establishment or formation, the foundation can be divided into two types namely foundation

established by the ruler or government, including State-Owned Enterprises (SOEs) and the Regional-Owned Enterprises (enterprises) and the foundation established by individuals or private. Foundation established by the Government prior to discharge of Law Foundation, there are established only by decree rather than competent authority for that and there is established by notary deed. Initial wealth of the foundation like this can be taken than the wealth of nations "separated" or "released ruler" than the government and rather than cloning their own wealth. Foundation established by private or individual is usually done by notary deed, and according to the new Foundation Law precisely should the notary deed. Separated wealth comes instead of belonging to the founder or trustee concerned. A habit that happen deed is registered at the local District Court Clerk's Office. Often found in community foundation established for the purpose of social, religious, educational and others are established by private parties. With the issuance of the Law Foundation of the existence of the Foundation as portion legislation lay not matter anymore or not be doubted. It was the common law agency that already has a strong juridical basis. According to Law number. 28 of 2004, consisting instead of Foundation Am: Patrons, Trustees and Administrator. When viewed in a Limited Liability Company (PT / Sdn Bhd), the position of the Board of Trustees is the same as the AGM, the Trustees as well as Commissioners and Board of Directors is the same as.

#### **Terms Establishment of Foundation:**

1. Foundation composed of administrators and supervisors of Trustees
2. Foundation established by one or more persons with a separate property part

of stance as the initial wealth.

3. Established of certificate of the foundation is done by a notary and made in the Indonesian language

4. Foundation will be established under the wills

5. Foundation established by foreigners or with strangers, on terms and procedures stipulated by government regulation stance.

6. Foundation to obtain the status of agency law after obtaining the foundation deed endorsement of the minister

7. Foundations should not use the name:

a. has been used legitimately by other foundations

b. contrary to public order and / or morals

c. behalf of the foundation must be preceded the word "foundation"

d. foundation can be established for a specific term or indefinite period stipulated in the articles of association.

Wealth that separated it for the Foundation earmarked for the achievement of certain goals in the social, ideal rights, humanitarian and religious. Thus the foundation is essentially:

(1). The assets are separated,

(2). Property is given the status of legislation,

(3). Its existence to achieve certain goals in the social, humanity and the religious.

Theoretically, the Foundation may be established by one person, two persons or more. The foundation has no members (such shareholder in PT) and the existence destined to achieve certain social, humanitarian and religious are. Therefore all foundation activities should be devoted to achieving that goal. Law Foundation confirmed this by banning results of operations to the Foundation,

as well as criminal threats. The foundation is placed on the juridical status as it should. It was the agency that serves the law of social and religious virtue. He may run business activities, It have many of net income but should not be profit oriented as well as PT. Tray results of operations may exist, but should not be distributed to the organs of the foundation. He may set up business entities, such as PT, but not all Foundation assets are used as working capital. Only two percent of the asset is allowed for that purpose. The Foundation shall make such books and It was to be examined by a public accountant a person. It was for the foundations that have assets of 20 billion or more and can help 500 million upwards. Bookkeeping should be announced and a copy must be submitted to the Minister. This provision is by some considered burdensome.

#### 5. Source of Weakness Management Foundation

The main source of weakness rather than the management of the foundation is the absence of rules governing the foundation. Foundations can be administered freely without any regulations must be observed. The existence of the foundation so far only based on practices that are preserved. The power law rather than practice is certainly very weak. Another result is not guaranteed certainty of legislation considering that one practice is different from other practices. The absence of setting the foundation also that's mean absence of reference that can be used to say that something should or should not. In addition, the absence of provisions regarding transparency of the management of the foundation is often misused by the founders as

well as trustee. In fact, many foundations that raises fund than enough free society rather than an obligation to be auditing. The public does not know whether funds donated to a foundation is really for social purposes or precisely for the interests of others, even to fraud. Another drawback is the foundations are not professionally managed. Founder of the foundation is also caretaker. Role than the supervisor who was appointed to watched activities and financial foundation is not his job seriously, even impressed they made the appointment as a mere formality.

#### 6. Religious Foundation in Manado

Religious Foundation in Manado is very much its existence to accommodate agencies virtues of Islam. The houses included in the category Foundation. Because of this is to establish a house of worship there should be agencies or foundations of virtue that must be responsible for the establishment of houses of worship in Indonesia. Manado airport itself a lot of bodies surrounding the virtues of religious activities such as mosque and church. An example for the religious foundations of Islam, they established schools and junior secondary Madrasah and Charities are also embodies acceptance of Zakat. Infq and Sadaqoh. Mosques in Manado Airport is also included in the category of the Foundation. Consisting than High School (SMA) of Islam as busy as 5 pieces, and Junior High School (SMP) as busy as 9 units. Mosque in Bandar Manado as busy as 157 pieces. (CBS, 2008).

#### 7. Financial Mangement Mosque

Financial Management Guidelines Mosque arrange financing organizations that include the source of funds, budgeting,

financial activities and traffic. The money in and out must be lawful, clear the source, recorded with a neat and reported periodically. Similarly, income and expenditure procedures should be laid out and implemented properly.

The mosque is a agencies / institutions that are economically not aim for profit (profit), even in many cases provide subsidies to people in need. Rightly, the mosque has a productive business (cash machines) that can produce financial benefits that are used to provide subsidies to people in need. Because of its profit, the mosque has the ease in collecting funds in the trust software used to run its business units. One of the funds raised in addition to zakat, infak, and Sadaqah, are endowments which in this case is waqf endowments in cash or in the form of money.

The mosque which is the same whether there is a mosque which has the function of the vertical (*hablum minallah*) and horizontal functions (*hablum dominant unlucky*) as at the time of the Prophet Muhammad. People go to the mosque not only to worship but also get the benefit mahdhah worldly (work, trade, get compensation for the indigent and the poor) so that the mosque is a pillar of the welfare of Muslims. To achieve this required the mosque which has strong financial resources. Instead, the mosque is not just relying on the funds that are giving (*infak*, *shodaqoh*, and others) but also have sources of income derived rather than productive enterprises. In other words, the mosque must have productive business units to make money. Small businesses are productive can be supported by an intermediary institution that existed at the mosque. Intermediary institutions layman can use the funds to run its business units. Intermediation may be done



by nadzir (zizwaf manager). Lay the proper funds to move the business the mosque is a cash waqf waqf cash by definition must be used productively (there is no possibility for the consumer). To run the scheme for cash waqf must be met first its waqf pillars, namely:

1. Al-Wakif, namely those who perform deeds endowments, let in a state of spiritual health and not in urgent situations, or in a depressed state of his soul.

2. Al-Mawquf, namely property, should clear the form or substance and is eternal. It means that the property does not run out of disposable and can be taken advantage for a long period of time.

3. Al-Mawquf 'alaih, namely targets are to receive the results or the benefits of endowments that can be grouped into two: waqf kahiry and dzurry. Waqf endowments that Khairy is no limit wakifnya wakafnya target for a particular party but to the public interest. Waqf endowments that waqif dzurry is limiting target waqf benefits for certain parties, namely the family descendants.

4. Sighah or statements giving endowments, both with lafadz, writing, and gesture.

Cash waqf-based financing schemes require high professionalism in its management. Even though under the management structure / takmir mosque, the position of manager of cash waqf (nadzir) should have the freedom / authority in everyday policy-making. Nadzir have a reciprocal relationship with business units. Nadzir serves as the intermediation of funds, namely public funds and endowments rather than distribute it in the mosque of business units to develop business. Instead of providing benefits to business units, nadzir can hire employees

and sympathize the poor in need. In institutions, financing contained in the above model are:

1. Wakif, is a party providing waqf funds.

2. Al Mawquf alaih, is the party receiving the benefit than the funds diwakafkan.

3. Mosques or madrassas, in which consists instead:

4. Nadzir, is the agency mandated to managed waqf.

5. The business unit, is an institution that was mandated by nadzir to run a lawful and profitable business with existing waqf funds.

6. Institute of guarantor, is a financial institution that guarantees the integrity of the waqf funds.

## 8. Source of funds

Mosque activities require funding not less. Lack of funding may well lead to inhibition of the activities that have been reserved. By that this problem needs to be taken seriously. Several fundraising activities can be done, namely:

a. Donors remain, namely the contribution rather than the congregation or others who periodically provide infaq.

b. Donors are not fixed, namely the contribution rather than the various parties is done by applying, for example to government or government agency, private agencies, donor agencies or sympathizers.

c. Donors are free, namely the contribution that the environment is obtained rather than the congregation itself, or outside parties that are urgent. This is done by providing a Box Charity and fundraising community.

d. Economic enterprises, namely the

funds obtained by activity economic, trade-mark and trade in services.

### 9. Expectances Financial Activities

Financial planning to implement the Work Programmed conducted periodically. This plan includes expenditures and receipts of funds in detail, so the operating costs and fulfillment purposes, can be estimated.

### 10. Budgeting Mechanisms

a. Each of these areas of work outlining the results of the Work Programmed for the annual event Deliberation.

b. Identify the activities and scheduling.

c. Do the costing and funding of each activity.

d. Propose budgets that have been prepared in each field on the Work Meeting of the Board.

e. Perform integration and acceptance with the overall financing of the scale of priorities.

### 11. Budgeting

Through the Working Meeting of the board Ta'mir budget expenditure and income funds according to the activities to be held. Cultivated in the preparation of the budget committee has a clear source of funds to avoid a deficit. Some to consider include:

a. Doing prioritized activities tailored to the needs of funds.

b. Items of expenditure and income are clearly indicated.

c. Tolerate a budget of (+) 10% or more as a safety factor.

d. Total expense each field declared figures.

e. Doing the integration of the entire field in compiling the budget by setting the Work Plan and Budget Management (RKAP).

f. Finance Circulation

#### 11.1. Collection

Fundraiser coordinated by the Executive Ta'mir Field and Equipment Fund which seeks to meet the funding needs for the entire activity. Board to do some fundraising activity, among them a proposal, make charity boxes, activity services and the economy, and so on.

#### 11.2. Income and expenditure

Sector funds already collected funds and equipment provided to the Treasurer subsequent to the Chairman of the unknown. This is done by the Fund Submission Form. By the Treasurer of the fund then entered and stored in a mosque or Ta'mir Financial Cash Bank Account. When stored in the Bank, Bank Syariah should use the General Chairman and Treasurer as signatories or checks or cash collection. For spending funds to consider the suitability of the budget has been set for each field. The field in question applies for funding to the Chairman by filling out Form Request for Advances. If approved, the Treasurer issued according to the requested funds. Similarly, the use of these funds accounted for by the relevant field in the accountability report of activities by attaching the Financial Statements, or accounted for by filling out Form Accountability Advances.

### 11.3. Mosque Fund Supervision

Fundraising activity by Field and Equipment Fund or the management of funds by the Treasurer needs to be controlled. This is done among others through:

a. Proof sheet. Several pieces of evidence that could be used include: receipts, memorandum, declaration, coupons and more.

b. Information Sheet. Information collection and management of funds each month presented by Field and Equipment Fund and the Treasurer.

c. Bulletin boards. Mosque attached financial information on a bulletin board.

d. Routine reports. Field and Equipment Fund Board and the Treasurer submit regular reports on fund management forum General Meeting and Annual Report of the Board. Also delivered in an Accountability Board at the Council Jamat.

e. Forum / watchdog. Some boards or agencies that could perform direct supervision are:

1. General Meeting.
2. Plenary Meeting.
3. Shura Council.
4. Deliberation Jama'ah.

### 11.4. Punishment for Managers

The penalty for the manager will be adjusted according to the laws in force. If this applies to the management of zakat funds it will be seen in accordance with Law No. 38, 1999. As for the Endowments will be governed by Law No. 41 of 2004. Shodaqoh Infaq and regulated in the legislation the mosque itself. If there is someone steward of these funds who do abuse it will be punished according to the sentence rather than the mosque that based on than the Act mentioned above. Only the

mosque committee usually does not take a guess, this caused a problem morality. But if the action will be taken within the domestic court will be punished to the laws of waqf and zakat and laws that go in the Book of Criminal Justice Act (Penal Code).

### 12. Conclusion

This research is an investigation to see the maintenance of reserves than fund mosque funds. According to the law Mosque Foundation in the category referred to in Law No. 28 of 2004. Stooqe crucial foundation for success in dealing Fund and Am Mosque. The source of funds than the mosque is zakat, waqf, infaq, sodaqoh and charity boxes at mosques. In order to avoid things that are not desirable in the care of the mosque should fund need to be equipped with science knowledge management officers, chosen rather than a good-hearted and honest. For the punishment can be taken action against people who do fund namely the diversion of funds was brought to court and be punished in accordance with the Law of the Republic of Indonesia applicable. But generally the mosque did not report abuse to the member case to the authorities because of moral responsibility. This is what makes many of cases broken trust and abuse in the synagogue and his foundation is not much in defending in court.

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