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Legal Responsibility for Violations in the Appointment of Foundation Management (A Study of Decision No.454/Pdt.G/2022/Pn.Mdn)

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Abstract: A foundation is a legal entity that has a management structure to oversee its activities. Serving as an organ of the foundation's legal body is not easy; every action taken by the management must be based on the Foundation's Articles of Association/House Rules and must not exceed the authority granted, in accordance with the provisions of the foundation law. Therefore, if there are multiple decisions regarding the appointment and management of the foundation, they must comply with the applicable regulations, raising concerns if there is more than one decision with different issuances. This research aims to understand the Position and Legal Responsibility of Foundation Managers, the Procedure for the Appointment and Ratification of Foundation Managers Based on Foundation Law, and the validity of the Decision Letter Regarding the Appointment and Ratification of the Foundation's Management Body Based on Decision Number 454/Pdt.G/2022/PN.Mdn. This study employs a normative legal approach, using secondary data (through literature study) and primary, secondary, and tertiary legal materials. Furthermore, the data is analyzed qualitatively from a legal perspective. The results of this research indicate that the procedures for the appointment and dismissal of foundation administrators in Indonesia are regulated by the foundation's Articles of Association (AD) and Bylaws (ART), as well as applicable legal provisions, particularly in Law Number 16 of 2001 concerning Foundations and its amendments in Law Number 28 of 2004. If the party issuing the decision does so in violation of these regulations, it can be considered an unlawful act and is liable for damages resulting from such actions.

Keyword: Accountability, Management, Foundation

INTRODUCTION

Foundations are born out of the community's desire to have a platform or institution that is social, religious, and humanitarian in nature and purpose. With the establishment of a foundation, that goal can be achieved and realized within an institution that has been recognized in society. The initial purpose and function of every foundation are almost the same, as they pertain to social fields. However, there are differences in the implementation of activities and varying interests; some focus on social issues, religion, culture, science,

education, and humanitarian efforts, in accordance with the specific goals of each foundation. A foundation is a legal entity that consists of separated assets designated to achieve specific goals in the fields of social, religious, and humanitarian work, which does not have members (Indra & Haryati, 2020).

As a legal entity, a foundation is granted the rights and authority to conduct its activities independently, using its own assets, which are separate and distinct from the wealth of its founders. All actions of the foundation, for and on behalf of the foundation, are carried out by the foundation's management. A foundation is a legal entity with the following criteria:

- a. Consists of a group of people;
- b. Can engage in legal acts with third parties;
- c. Has its own assets;
- d. Has management;
- e. Has aims and objectives;
- f. Has legal standing;
- g. Has rights and obligations; and
- h. Can be sued in court. (Arie Kusumastuti Maria Suhardiadi, 2003, h20)

The Supreme Court has considered the position of a foundation as a legal entity, in Supreme Court Decision No. 124 K/Sip/1973, which upheld the judgment of the lower court as follows:

- a. That the Pension Fund Foundation H.M.B. was established in Jakarta under the name "Stichting Pensiun fonds H.M.B. Indonesie" and aims to ensure the financial security of its members.
- b. That its members are employees of NV.H.M.B., in Dutch Naamloze Vennootschap (Limited Liability Company).
- c. That the foundation has its own management separate from NV.H.M.B., where the chairman and treasurer are elected by the board of NV.H.M.B.
- d. That the management of the foundation represents the foundation in and out of court.
- e. That the foundation has its own assets, including donated property from NV.H.M.B. (akta hibah).
- f. That thus the foundation is a legal entity. (Putri Septia, Rohaini, Dianne Eka Rusnawati. 2017, h 74-75)

Through this Supreme Court ruling, the position of foundations as legal entities has gained legal certainty in Indonesia. Foundations obtain legal entity status after their establishment deed is approved by the Minister of Justice and Human Rights, or by the Head of the Regional Office of the Department of Justice and Human Rights on behalf of the Minister of Justice and Human Rights (now referred to as the Minister of Law and Human Rights). Furthermore, there is Law No. 28 of 2004 concerning Amendments to Law No. 16 of 2001 on Foundations, which specifically regulates foundations in Indonesia. It is clear that this provides legal certainty, so its implementation must comply with the applicable legal provisions. (Simamora, 2012)

The Foundation Law also regulates the distribution of authority among each of these organs. The Pembina, as the highest-ranking official, has responsibilities that are more inclined towards decision-making related to all matters concerning the foundation, such as decisions regarding amendments to the Articles of Association, the appointment and dismissal of members of the Management and Supervisory Boards, the establishment of general policies, work programs, the draft annual budget, as well as decisions regarding the merger or dissolution of the foundation. The management is fully responsible for the administration of the foundation to achieve its interests and objectives, including handling administrative matters and has the right to represent the foundation both in and out of court. (Irwansyah, 2016).

Article 2 of Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 on Foundations (Foundation Law) stipulates that the management of a foundation can be recognized as the organ of the foundation, which consists of the Board of Trustees, the Board of Management, and the Supervisory Board. The management is the organ of the legal entity of the Foundation that has the duty to carry out the administration of the legal entity of the Foundation itself, as stated in Article 31 paragraph (1) of the Foundation Law, which is appointed by the supervisor based on the decision of the supervisory meeting for a period of 5 (five) years. (Purwadi, 2022). Holding a position as an executive organ of a legal entity foundation is not easy; every action taken by the executive organ must be based on the Foundation's Articles of Association/Bylaws and must not exceed the authority that has been granted. The dangers that may arise from the actions of the foundation's organs that do not align with what is stated in the Articles of Association are serious, as it is clearly outlined in Article 70 paragraph (1) of Law Number 16 of 2001 in conjunction with Law Number 28 of 2004, which explains that, "Each member of the legal entity's foundation organ who violates and does not comply with the provisions as referred to in Article 5 shall be punished with imprisonment for a maximum of 5 (five) years." Therefore, in carrying out its activities, it must adhere to the applicable regulations. (Efnelir et al., 2024)

One example of a case related to the appointment of foundation administrators by the foundation's organ can be found in Case Number No.454/Pdt.G/2022/Pn.Mdn, which involves the Al-Jamijatul Waslijah Charity and Social Foundation based in Medan, located at Jalan Kapten Muslim No. 226, Helvetia Timur Village, Medan Helvetia District, Medan City. This case is referred to as the Plaintiff in the counterclaim/Defendant in the counterclaim against the Central Management of Al Jami'iyatul Washliyah as the counterclaim defendant, Zulhadi Angkat, S.T., M.Si as the Defendant II/Counterclaim Plaintiff, Irwan Maharaja as the Defendant III in the counterclaim, Lahmuddin Berutu as the Defendant IV in the counterclaim, the Regional Management of Al Jam'iyatul Washliyah North Sumatra as the additional Defendant I in the counterclaim, and the Regional Management of Al Jam'iyatul Washliyah Medan City as the Defendant II in the counterclaim.

The essence of the problem in this case is the action of appointing a new management for the Orphanage Management Board, which is one of the efforts of the Plaintiff Foundation, without the approval of the Plaintiff. The Plaintiff has the right and authority to manage and/or appoint the management/executors of the activities of the Orphanage and the mentioned Educational Institution. However, the Defendant-I suddenly acted without the knowledge and consent of the Plaintiff and without conducting a review of the Orphanage location. The Education Institution has issued Decree No. Kep-051/PB-AW/XXII/XII/2021 dated December 6, 2021, regarding the Appointment and Ratification of the Management Board of the Al Washliyah Orphanage in Gedung Johor Medan for the 2021-2025 period; that the Decree No. Kep-051/PB-AW/XXII/XII/2021 dated December 6, 2021, issued by the Defendant-I, has appointed Defendant-II as the Chairperson, Defendant-III as the Secretary, and Defendant-IV as the Treasurer of the Management Board of the Al Washliyah Education and Orphanage in Gedung Johor Medan for the 2021-2025 period;

Meanwhile, the appellant has already appointed a new management for the 2021-2026 period based on the Decree from the Al-Djamijatul Washlijah Charity and Social Foundation as stated in Decree Number: 002/PA/YASAW/SK/XII/2021 dated December 2021, thus until the end of this management process, no new management appointments may occur other than this, and new management appointments based on Article 32 of the Republic of Indonesia Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations state that new management appointments can only be made by the supervisor.

Based on this background, this research is important to conduct because when the foundation's organs face issues related to management or governance, whether internal problems among the foundation's organs or otherwise, concrete accountability is required,

and it is necessary to always refer to the provisions set forth in the regulations and positive legal regulations of Indonesia. Therefore, this research will discuss the Position and Legal Responsibility of Foundation Managers, the Procedure for the Appointment and Ratification of Foundation Managers Based on the Foundation Law, and the Legality of the Decree on the Appointment and Ratification of the Foundation's Management Body Based on Decision Number 454/Pdt.G/2022/PN.Mdn.

METHOD

The research in this writing uses a Normative Legal Methodology. Normative legal research, also known as normative juridical research, involves exploring legal principles, analyzing legal systems, examining the level of legal synchronization, studying legal history, and comparing laws. (Ali, 2009). The research method used is a normative legal approach, which involves examining and understanding the existing legal realities or phenomena and then relating them to the applicable laws and regulations. The research specification used is descriptive-analytical, with the research stages focusing on literature studies using secondary data in the form of primary legal materials (Laws, Government Regulations, etc.), secondary legal materials (Books, legal articles, etc.), and tertiary materials (related court decisions, legal doctrines, etc.). The data obtained will be analyzed qualitatively from a legal perspective, which means analyzing data that contains legal issues and phenomena systematically through interpretation and legal interpretation. This research focuses on a deep understanding of the procedures for the appointment and validation of foundation management, as well as the validity of the decree regarding the Appointment and Validation of the Foundation Management Body based on Decision Number 454/Pdt.G/2022/PN.Mdn.

RESULTS AND DISCUSSION

The Position and Legal Responsibilities of Foundation Managers

The responsibilities of the management in an organization are very significant. The board of the foundation, when carrying out its duties and functions, must be based on good faith. Good faith, along with confidence and a sense of responsibility, are two attitudes that cannot be separated when carrying out duties or work as an organizational manager of a foundation. Good faith or honesty, filled with confidence, is extremely important in all fields of work, as these two attitudes can minimize potential abuses that may occur in the future and help avoid criminal activities. A sense of responsibility is not sufficient if it is not accompanied by honesty.

In any field of work, problems are bound to arise at some point and must be resolved as quickly as possible. Solving these issues requires both precision and speed, which is when a person's sense of responsibility begins to show (Gatot Supramono, 2008, p. 93-94). The responsibility of the governing body of a foundation in managing the foundation must be based on the principles of: a) Fiduciary Duty; b) Duty of Skill and Care; and c) Statutory Duty.

Article 35 of the Foundation Law provides the following explanations:

1. Each governing organ of the legal entity of the Foundation has greater responsibility for the operational activities of the legal entity of the Foundation and has the authority to represent the Foundation, both in and out of court;
2. For the interests of the goals and functions of the legal entity of the Foundation, the governing organ must have a sense of responsibility and be based on good faith;
3. In paragraph (2), the governing organ may appoint and dismiss the execution of activities of the legal entity of the Foundation in order to achieve the aims and objectives intended by the Foundation;
4. The Foundation's Articles of Association also regulate the procedures for the appointment and dismissal of the execution of activities of the legal entity of the Foundation; and

5. If the governing organ of the Foundation does not carry out its duties and functions in accordance with the Foundation's Articles of Association, then that governing organ is responsible for any losses incurred by the Foundation or with third parties. (Febryana et al., 2023)

Referring to Article 2 of Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 on Foundations (Law 28/2004), it can be noted that there are several organs of the foundation, including:

1. Supervisory Board

The Supervisory Board is the organ of the foundation that has authority not delegated to the management or the supervisory board by this law or the articles of association (Article 28 paragraph (1) Law 28/2004).

2. Management

Management is the organ of the foundation that carries out the administration of the foundation. An individual who is capable of carrying out legal actions can be appointed as a manager (Article 31 paragraph (1) and (2) of Law 28/2004).

3. Supervisor

The supervisor is an organ of the foundation tasked with overseeing and providing advice to the management in carrying out the foundation's activities. The foundation must have at least one supervisor whose authority, duties, and responsibilities are regulated in the articles of association. An individual who is capable of performing legal acts can be appointed as a supervisor (Article 40 paragraphs (1), (2), and (3) of Law 28/2004).

Scope of Authority of Foundation Organ:

1. Supervisory Board

(Article 28 paragraph (2) Law 28/2004) Decisions regarding amendments to the articles of association. Appointment and dismissal of board members and supervisory members. Establishment of general policies of the foundation based on the foundation's articles of association. Approval of work programs and drafts of the foundation's annual budget. Determination of decisions regarding the merger or dissolution of the foundation.

2. Management

The management is not authorized to represent the foundation if (Article 36 paragraph (1), (2), and Article 37 paragraph (1) of Law 28/2004): A case arises in court between the foundation and the relevant management member. Board members have interests that conflict with the interests of the foundation. Binding the foundation as a guarantor of debt. Diverting the foundation's wealth except with the approval of the trustee; and encumbering the foundation's wealth for the benefit of other parties.

3. Supervisor

The supervisor can temporarily dismiss a board member by stating the reasons. The temporary suspension must last no longer than 7 days from the date of the temporary suspension and must be reported in writing to the supervisor (Article 43 paragraphs (1) and (2) of Law 28/2004).

Prohibition of Dual Positions in Foundations, the rules regarding this prohibition include (Law 28/2004):

1. The supervisor may not concurrently serve as a member of the management and/or a member of the supervisory board (Article 29 of Law 28/2004).
2. The management may not concurrently serve as a supervisor or a supervisor (Article 31 paragraph (3) of Law 28/2004).
3. The supervisory board may not concurrently serve as a supervisor or management (Article 40 paragraph (4) of Law 28/2004).

So, it can be concluded that within the Foundation, the organs play a crucial role in carrying out the Foundation's operations, and they have the responsibility to perform the tasks and functions of the Foundation as stipulated in the Foundation's Articles of Association,

which state that the Articles of Association are the binding positive law that requires the Foundation's organs to comply with the provisions outlined therein. In carrying out its functions, duties, and authorities, it must act in good faith, with a sense of responsibility, and be accountable for the activities of the foundation. (Pemayun & Laksmi Dewi, 2024).

Procedures for the Appointment and Ratification of Foundation Managers Based on the Foundation Law

Based on Article 1 paragraph (1) of Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 on Foundations, the definition of a foundation is a legal entity that consists of separated assets intended to achieve specific goals in the fields of social, religious, and humanitarian purposes that does not have members. Although this legal entity in the form of a foundation does not recognize the term foundation members, the foundation is required to have an organ and/or management. So, what is the mechanism for the appointment of foundation administrators, The board is the organ of the foundation that carries out the management of the foundation. No, the ones who can be appointed as administrators are individuals who are capable of taking action. (Fauzi & Sumiyati, 2021)

Generally, the management of a foundation consists of a chairman, a secretary, and a treasurer. The management of the foundation is appointed by the foundation's supervisor. This is as regulated in Article 32 paragraph (1) of the Foundation Law, which states that the Foundation's Management is appointed by the Supervisory Board based on the decision of the Supervisory Board meeting for a period of 5 (five) years and may be reappointed. The provisions regarding the procedures for the appointment of foundation administrators are outlined in the Articles of Association of the foundation registered with the Ministry of Law and Human Rights. In the event of a change in administration, the foundation's supervisors are required to provide written notification to the Ministry of Law and Human Rights. (Alhaq Santoso et al., 2023)

The procedures for the appointment and dismissal of foundation management in Indonesia are regulated by the Articles of Association (AD) and the Bylaws (ART) of the foundation, as well as applicable legal provisions, particularly in Law Number 16 of 2001 concerning Foundations and its amendments in Law Number 28 of 2004. Here is the general procedure that is usually followed:

Appointment of Foundation Management

1. Preparation and Planning
 - a. Identify Needs: Determine the foundation's need for new management, including the necessary qualifications and responsibilities.
 - b. Candidate Search: Conduct a candidate search that meets the criteria through various sources, such as internal recommendations, open announcements, or recruitment agencies.
2. Selection Process
 - a. Initial Assessment: Conduct an initial assessment of candidates based on qualifications, experience, and reputation.
 - b. Interview and Competency Test: Conduct interviews and competency tests to assess the candidate's abilities and suitability for the foundation's needs.
3. Appointment by the Supervisory Board
 - a. Supervisory Board Meeting: Hold a meeting of the Supervisory Board to discuss and decide on the appointment of new management. The Supervisory Board has the authority to appoint management in accordance with the foundation's Articles of Association.
 - b. Creation of the Appointment Decree: Once approved, create the Decree of Appointment (SK) for the new management, signed by the Supervisor.

4. Notification and Confirmation
 - a. Notification to the Ministry of Law and Human Rights: Submit a notification of the appointment of new management to the Ministry of Law and Human Rights (Kemenkumham) for registration in the state administration.
 - b. Confirmation: After verification, Kemenkumham will confirm the appointment of the new management.
5. Internal Socialization
 - a. Internal Announcement: Inform the entire foundation members and related parties about the appointment of new management.
 - b. Organizational Structure Adjustment: Make adjustments to the organizational structure in accordance with the appointment of new management. (Zaini & Septia, 2022)

Resignation of Foundation Manager

1. Reasons for Dismissal
 - a. Term Expiration: The management is dismissed after their term ends in accordance with the organization's bylaws.
 - b. Voluntary Resignation: The management resigns at their own request.
 - c. Violation or Incompetence: The management is dismissed due to violations of the foundation's rules, inadequate performance, or inability to carry out their duties.
2. Termination Process
 - a. Supervisory Meeting: Hold a Supervisory Meeting to discuss and decide on the termination of the management. The Supervisory Board has the authority to dismiss the management in accordance with the foundation's Articles of Association.
 - b. Preparation of the Termination Decree: Once approved, create a Decree of Termination signed by the Supervisor.
3. Notification and Confirmation
 - a. Notification to the Ministry of Law and Human Rights: Submit a notification of the dismissal of the management to the Ministry of Law and Human Rights for recording in the state administration.
 - b. Confirmation: After verification, the Ministry of Law and Human Rights will confirm the dismissal of the management.
4. International Socialization
 - a. Internal Announcement: Inform the entire foundation members and relevant parties about the dismissal of the management.
 - b. Organizational Structure Adjustment: Make adjustments to the organizational structure in accordance with the dismissal of the management.

Formal Appointment and Dismissal of Management

To ensure that the process of appointing and dismissing management runs in accordance with applicable regulations, the foundation must follow these steps:

- a. Supervisory Meeting: All decisions related to the appointment and dismissal of management must be discussed and approved in the Supervisory Meeting.
- b. Creation and Ratification of Decree: The decree for the appointment or dismissal of management must be officially created and ratified by the Supervisory Board.
- c. Notification to the Ministry of Law and Human Rights: Any changes in management must be notified and ratified by the Ministry of Law and Human Rights for official recording.
- d. Document Storage: All documents related to the appointment and dismissal of management must be well stored as the foundation's archives.

By following this procedure, the foundation can ensure that the appointment and dismissal of management are carried out transparently and in accordance with applicable legal provisions. However, the procedures for the appointment and dismissal of foundation

management may vary depending on the regulations of the respective foundation. Therefore, it is important to understand and follow the regulations established by the foundation.

The validity of the Decree on the Appointment and Ratification of the Board of Trustees of the Foundation Based on Decision Number 454/Pdt.G/2022/PN.Mdn

That from the decision Number 454/Pdt.G/2022/PN/Mdn provides information that the management of the Gedung Johor Orphanage for the period 2021–2026 was appointed by the Plaintiff based on the Decree from the Plaintiff, namely the Al-Djamijatul Washlijah Charity and Social Foundation as stated in Decree Number: 002/PA/YAS-AW/SK/XII/2021 dated December 2021, where the management of the orphanage is as follows:

Chairperson	: H.ANHAR MANIK, S.Pd
Secretary	: dr. Hj. MARDIAH HAYATI
Treasurer and Administration	: ZAKARIA CIBRO
Deputy Treasurer	: MUTHIA AMALIA LUBIS
Logistics and Security	: LAHMUDDIN BERUTU. (Tergugat IV).

Meanwhile, around December 2021, the Plaintiff received information that Defendant I, namely the Central Management of Al Jamiyatul Waliyah, had issued Decree Number: Kep-05/PB-AW/XXII/XII/2021 concerning the Appointment and Ratification of the Management Body of the Al Wasliyah Orphanage in Gedung Johor Medan for the Period 2021-2025, dated December 6, 2021, coinciding with the date of 1 Jumadil Ula 1443 H.

In fact, since its establishment, the Plaintiff has had no connection with the Defendant II.c. The Central Management of Al Jam'iyatul Wasliyah, along with Defendant II.c. The Regional Management of Al Jam'iyatul Wasliyah North Sumatra, and Defendant III.c. The Local Management of Al Jam'iyatul Wasliyah Medan City, or any other mass organization, either administratively or operationally; in other words, the Plaintiff i.c. The Al-Djamijatul Washlijah Charity and Social Foundation stands alone.

Whereas the issuance of Decree Number: Kep-05/PB- AW/XXII/XII/2021 concerning the Appointment and Ratification of the Management Board of the Al Wasliyah Orphanage, Johor Medan Building for the 2021-2025 Period, dated 06 December 2021 M, coincides with 01 Jumadil Ula 1443 is not in accordance with the mechanism for Appointing the Orphanage Management Board which is one of the Plaintiff Foundation's businesses because:

1. All businesses and activities of the Orphanage and Educational Institution mentioned above were established in the name of the Plaintiff and the funds to establish them were also obtained from the Plaintiff's financial resources and were not given or came from Defendant Co-Defendant I and Co-Defendant II, so it is appropriate and in accordance with the provisions the law if the Plaintiff has the right to regulate and appoint administrators or implementers of the activities of the Foundation which manages the Orphanage and Educational Institution as regulated in the Plaintiff's ART above; then it is appropriate and in accordance with legal provisions if the Plaintiff has the right to regulate and appoint administrators or implementers of the activities of the Foundation which manages the Orphanage and Educational Institution as regulated in the Plaintiff's ART above;
2. Article 34 of Law Number 16 of 2001 concerning Foundations as amended by Law Number 28 of 2004 states that in the event that the appointment, dismissal and replacement of Management is carried out not in accordance with the provisions of the Articles of Association, at the request of interested parties or at the request of the Prosecutor's request in the case of representing the public interest, the Court may cancel the appointment, dismissal or replacement no later than 30 (thirty) days from the date the request for cancellation is submitted; whereas in Article 10 Paragraph (4) point seven of the Plaintiff's Bylaws (ART) dated 16 May 2014 it is stated that: "The management has the authority to appoint and dismiss the implementers of the Foundation's activities based

- on the decision of the management meeting, either because their term of office/term has expired or because there are problems and or because there is a need for the Foundation. So the Decree Number: Kep-05/PB-AW/XXII/XII/2021 concerning the Appointment and Ratification of the Management Board of the Al Wasliyah Orphanage, Johor Medan Building for the 2021-2025 Period dated 06 December 2021 is contrary to Article 34 of the Foundation Law and Article 10 paragraph 4 of the household budget
3. Article 10 of the Deed of Establishment and Articles of Association of the Al Djमितुल Washliyah Medan Charitable and Social Foundation mentioned above, does not regulate or give a mandate to the Executive Board of Al Djमितुल Washliyah in casu Defendant I Kompensi to form the composition of the Management of the Al Djमितुल Washliyah Medan Charitable and Social Foundation other than give a mandate to request information relating to the Al Djमितुल Washliyah Charity and Social Foundation Gedung Johor Medan aquo;
 4. Article 14 Paragraph (1) Law Number 16 of 2001 concerning Foundations As amended by Law Number 28 of 2004, it is stated that legally related to appointment, dismissal and replacement The Foundation Management must comply with the provisions of the Foundation's Articles of Association in casu as a condition for establishing the Foundation, this also refutes the argument that Defendant I Kompensi as the parent organization of Al Djमितुल Washliyah has the right or authority to appoint the Management of the Al Djमितुल Washliyah Medan Charity and Social Foundation, which is deemed to be contradictory. with the Deed of Establishment and Articles of Association of the Al Djमितुल Washliyah Medan Charitable and Social Foundation based on the provisions of Article 10 of the Foundation's Articles of Association, it cannot refute the arguments of the Compensation Plaintiff/Condemnation Defendant;

Apart from the above, researchers also looked at the positions of the parties who could be associated with unlawful acts, namely:

From this decision I can see that:

1. Defendant-I has issued Decree No.Kep-051/PB-AW/XXII/XII/2021 dated 6 December 2021 concerning the Appointment and Ratification of the Management Board of Al Washliyah Orphanage, Gedung Johor Medan for the 2021-2025 Period, even though the Defendant -I am not the owner and do not have authority over the Al Washliyah Orphanage, Gedung Johor, Medan City and do not have the right and authority to appoint management or implementers of management activities of the Orphanage and/or Educational Institution in question, which can be qualified as an unlawful act (onrecht matigedaad);
2. Defendant II who requested that he be appointed by Defendant I even though he should have known that Defendant I had no right/authority to issue DECISION LETTER Number: Kep-05/PB-AW/XXII/XII/2021 concerning the Appointment and Ratification of the Al Orphanage Management Board Wasliyah Gedung Johor Medan Period 2021-2025 Dated 06 December 2021 AD coinciding with 01 Jumadil Ula 1443H, is an unlawful act (onrechtmatigedaad);
3. Defendant-III who is alleged to have accepted the appointment and declared himself as Secretary of the Management of the Orphanage and Educational Institution located on Jl. Karya Jaya No. 267, Ex. Johor Building, District. Medan Johor, Medan City and is alleged to have carried out a number of actions related to the management of the Orphanage and Educational Institution, even though Defendant-III is alleged to have known for certain that the Orphanage and Educational Institution in question belonged to the Plaintiff so that only the Plaintiff has the right to appoint administrators or implementers of activities management of Orphanages and Educational Institutions can be qualified as an unlawful act (onrecht matigedaad);

4. Defendant-IV is alleged to have accepted the appointment and declared himself as Treasurer of the Management of the Orphanage and Educational Institution located on Jl. Karya Jaya No. 267, Ex. Johor Building, District. Medan Johor, Medan City and is alleged to have carried out a number of actions related to the management of the Orphanage and Educational Institution, even though Defendant-IV allegedly knew for certain that the Orphanage and Educational Institution in question belonged to the Plaintiff so that only the Plaintiff had the right to appoint administrators or implementers of management activities. These orphanages and educational institutions can be qualified as acts against the law (onrecht matigedaad);

It can be concluded that all the efforts and activities of the Orphanage and Educational Institution mentioned above were established and registered by the Plaintiff, and therefore the Plaintiff has the right and authority to manage and/or appoint administrators/executors of the management activities of the aforementioned Orphanage and Educational Institution. Thus, it can be said that this unlawful act or onrechtmatige daad must meet the elements of Article 1365 of the Civil Code, namely:

1. The existence of an unlawful act, which is an act that contradicts legal obligations, the subjective rights of others, morality, or propriety.
2. The existence of fault, which is the intention or negligence of the perpetrator of the act.
3. The possibility of loss, which includes any form of material or immaterial loss suffered by the victim.
4. The existence of a cause-and-effect relationship, which is the connection between the act, the fault, and the loss.

The issuance of Decree Number: Kep-05/PB-AW/XXII/XII/2021 can be said to constitute an unlawful act as it meets the elements of Article 1365 of the Civil Code. Therefore, Defendant I, the Convention, Defendant II, the Convention/Counterclaim Plaintiff, Defendant III, the Convention, and Defendant IV, the Convention, have committed unlawful acts under civil law, which include actions that violate the law, actions that contradict the rights of others, and actions that result in harm to other parties. Those who commit unlawful acts must compensate the harmed parties for their losses. (Indah Sari.2020)

CONCLUSION

From our first discussion, we can conclude that the responsibilities of the management in an organization are indeed substantial. The board of the foundation, when carrying out its duties and functions, must be based on good faith. Thus, in carrying out its activities, it must comply with the legal provisions stipulated in Article 35 of the Foundation Law, which explains that each governing organ of the legal entity of the Foundation has greater responsibility for the operational activities of the Foundation and has the authority to represent the Foundation, both in and out of court. Referring to Article 2 of Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 on Foundations, it can be noted that there are several organs of the foundation, namely the board of trustees, management, and supervisory board, and the limitations of the authority of these organs are regulated in Article 28 paragraph 2, Article 36 paragraphs 1 and 2, Article 37 paragraph 1, and Article 43 paragraphs 1 and 2 of Law Number 28 of 2004 on Foundations.

From the discussion, we can conclude that generally, the management of a foundation consists of a chairman, a secretary, and a treasurer. The management of the foundation is appointed by the foundation's Supervisory Board. This is as stipulated in Article 32 paragraph (1) of the Foundation Law, which states that the Foundation's management is appointed by the Supervisory Board based on the decision of the Supervisory Board meeting for a period of 5 (five) years and may be reappointed. The provisions regarding the procedure for appointing the management of the foundation are outlined in the Articles of Association of the foundation registered with the Ministry of Law and Human Rights. In the event of a

change in management, the Supervisory Board of the foundation is required to provide written notification to the Ministry of Law and Human Rights. The procedures for the appointment and dismissal of foundation management in Indonesia are regulated by the Articles of Association (AD) and the Bylaws (ART) of the foundation, as well as applicable legal provisions, particularly in Law Number 16 of 2001 concerning Foundations and its amendments in Law Number 28 of 2004.

From our discussion, we can conclude that Defendant I does not have the rights and authority over the Orphanage and Educational Institution located at Jl. Karya Jaya No.267, Kel. Gedung Johor, Kec. Medan Johor, Kota Medan. Therefore, Decree No. Kep-051/PB-AW/XXII/XII/2021 dated December 6, 2021, issued by Defendant I is invalid and has no legal force. We kindly request the Panel of Judges of the Medan District Court, which is examining and adjudicating this case, to declare that all actions taken and/or all documents issued by and/or Defendant II, Defendant III, and Defendant IV in their capacity as the Management Board based on Decree No. Kep-051/PB-AW/XXII/XII/2021 dated December 6, 2021, are invalid and have no legal force. Furthermore, the actions of Defendant I, Defendant II (Counterclaim Plaintiff), Defendant III (Counterclaim), and Defendant IV (Counterclaim) are unlawful acts.

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