

## **Responsibility Of The Foundation In The Management Of Donations Without An Agreement Made Before A Notary**

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### **Abstract**

*The agreement has the same legal force as the legislation. That is, the agreement is valid and legally binding for the parties. Of the many agreements that arise in society, one of them is the donation agreement. Now donations can be made in the form of online donations. Online fundraising is a mass fundraising activity where people give their money for activities offered by creators. In this study using normative research methods. As a result of the law, the management of donations without an agreement made before a notary does not eliminate legal obligations, this can add potential legal problems such as difficulty of proof, risk of misappropriation of funds, and challenges in carrying out adequate accountability. Therefore, to avoid legal problems and ensure transparency, it is highly recommended that foundations have clear written documentation regarding the purpose and use of donations, both in the form of written agreements and other mechanisms. The rule of law in the management of donations with an agreement made before a notary in the future can provide legal certainty for all three parties (foundations, donors, and recipients of donations). This agreement regulates the detailed use of funds, reporting obligations, as well as the rights and obligations of each party. Thus, the management of donations involving notarial agreements will be more transparent, structured and legally accountable in the event of disputes or discrepancies in the use of funds.*

**Keywords:** *Legal Responsibility, Foundation, Donation, Notary.*

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## **INTRODUCTION**

Etymologically, the term philanthropy comes from the Greek *philein* meaning “love” and *anthropos* meaning “man”. Thus, philanthropy can be interpreted as a form of love for one's neighbor. In a broader sense, philanthropy reflects a collective awareness to care for and help each other, especially in overcoming life's difficulties, in order to improve the social welfare of the community in a sustainable manner. (Akira Dewi Nastiti, 2023) The legal basis for the implementation of philanthropic activities in Indonesia is contained in Law Number 9 of 1961 concerning the collection of money or goods. The collection of money and goods can be carried out by various parties, including individual Indonesian citizens, social institutions such as foundations, community organizations (ormas), NGOs, legal entities, religious institutions, and educational institutions . Although the law provides space for all of these parties to raise funds, in practice the ones that collect the most donations are foundations. This is because the foundation has a stronger organizational structure and legality to carry out social activities in a sustainable and reliable manner in the eyes of the community and government.

Legally, the existence of the foundation as a non-profit institution has been regulated in Law No. 16 of 2001 on Foundations, which was later updated through Law No. 28 of 2004. In this provision, the foundation is authorized to receive and manage donations or donations in the form of money, goods, and services from various parties, whether individuals, legal entities, or international institutions, as long as they are used for Social, Humanitarian, religious, or educational purposes according to the purpose of establishing the foundation. As an institution, agency or entity that is trusted for philanthropic activities in an organized manner with a collection scale that can reach significant, therefore the Foundation is required to have a license

issued by the Ministry of Social Affairs and is subject to all regulations relating to the establishment of donation fund management institutions.

The foundation as a legal entity that will carry out these fund distribution activities will be related to the provisions of the money or goods collection law, the Foundation Law, Government Regulation Number 29 of 1980 on fund collection and regulation of the Minister of Social Affairs number 8 of 2021 on the implementation of money or goods collection. In Article 3 Paragraph (1) of the regulation of the Minister of Social Affairs No. 8 of 2021 on the Organization of collecting money or goods that hold fundraising is an association and Foundation. Article 3 Paragraph (3) stipulates that the operation of pubs as referred to in Paragraphs (1) and (2) must obtain permission from the Minister, governor, or regent/mayor in accordance with the authority. As a legal entity that is given authority over the collection and distribution of funds, the foundation as stipulated in the foundation law will have a legal responsibility for all actions related to the collection and management of funds until it reaches the main purpose of collecting funds.

The foundation was established not for commercial purposes or for profit, but as an institution oriented to helping and improving the welfare of the community. The existence of the foundation becomes a necessity for people who want an institution engaged in social, religious, and humanitarian fields. With the foundation, various activities in this field can be carried out in an organized manner in an institution that has a legal basis and is recognized by the community. (Ali Abdullah, 2004) The status of notaries as public officials allows them to have the authority to draw up authentic deeds, as long as there is no prohibition from other public officials. The role of the notary is very important in forming a sense of security and legal certainty for the community. This security and legal protection can be seen through the original deed which serves as perfect evidence in the judicial process. The evidence is considered perfect because the authentic deed has three types of strength of evidence, namely the strength of external evidence, the strength of formal evidence, and the strength of material evidence. (G.H.S. Lumban Tobing, 1999)

The public needs a notary who is expected to be a figure whose information can be trusted and reliable, his signature and stamp provide guarantees and strong evidence. Notaries are expected to be impartial experts as well as advisors who have no defects (onkreukbaar or unimpeachable), who are disciplined, speak with care, as well as make agreements that can protect in the future. If a lawyer defends the rights of a person when there are difficulties, then the notary must try to prevent such difficulties from occurring. (Tan Thong Kie, 2007) The form of an agreement on the target is not a problem, the agreement under hand or agreement signed before a notary (authentic deed) is a valid agreement, as long as the parties remain committed to performing the rights and obligations that have been written in the agreement or deed. (R. Subekti, 2007)

However, there will be problems if one of the parties to the agreement reneges on the agreement, this has the potential to cause a dispute that can harm many parties. The existence of differences in everyone's interests, identity ambiguity, and denial of achievement can lead to such risks. Conflicts between individuals may arise as a result. (Ira Koesoemawati dan Yunirman Rijan, 2009) Therefore, it is very important for a person to have a letter or document that can protect him from any legal relations. This is because the choice of the original deed is considered the best way to pour and agree on a deal. As a public official, notaries can provide legal guarantees and protection through the creation of original deeds. The deed shows how the rights and obligations between certain subjects of law are fulfilled and implemented. In civil cases, writing is a means of evidence (proof), while in criminal cases, testimony. (R. Subekti, 2007)

In the case of donation raising by Rumah Peduli Kemanusiaan Foundation, Human Rights aspects include the following: 1. Donation recipient rights-Agus Salim as a donation recipient has the right to receive assistance without discrimination as well as the right not to experience

adverse treatment, such as defamation or diversion of funds without consent. 2. Donor rights-donors who have made a donation have the right to transparency and accountability from the foundation regarding the use of their funds, as provided for in the principle of public accountability. 3. Rights of the Foundation Manager-Novi, as the manager of the foundation, also has the legal right to defend itself from allegations of misappropriation of donations if there are differences in interpretation regarding the use of funds that have been collected.

In the agreement, the differences that arise are accommodated and designed within the legal framework, so that they become a bond that binds both parties. In business contracts, the aspects of security and fairness will be handled fairly if the differences between the parties have been managed through a balanced contractual relationship mechanism. (Johanes Ibrahim dan Lindwaty Sewu, 2017) The agreement has the same legal force as the legislation. (Sanusi Bintang dan Dahlan, 2011) That is, the agreement is valid and legally binding for the parties. Of the many agreements that arise in society, one of them is the donation agreement. Now donations can be made in the form of online donations. Online fundraising is a mass fundraising activity where people give their money for activities offered by creators. The point is to get aid funds from the community voluntarily without giving in return in the form of money or goods. With through the internet is a means of raising donations online provided organizations to collect donations from many circles. In Indonesia, online fundraising is regulated by Law No. 9 of 1961 concerning the collection of money and goods and Government Regulation No. 29 of 1980 concerning the implementation of donation collection. Related to this, the author found problems in both regulations that there is no law that regulates specifically about online fundraising.

## RESEARCH METHODS

This study is a normative study that studies the purpose of law, the values of justice, the validity of the rule of law, legal concepts, and legal norms. Normative legal research can also be said as a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. It can also be said that legal research is carried out to produce arguments, theories, or concepts as prescriptions or answers to the problems faced. (Peter M. Marzuki, 2023) Problem approach is a method used in the process of solving a problem to achieve the goals of what will be studied by each researcher. Where the problem approach is used to analyze a legal phenomenon as a solution to problems that arise in a study. Problem approach used in the process of making this research is to use research legislation (statute approach), which can be interpreted as an approach taken in analyzing by reading, reviewing, summarizing the records of legislation related to legal issues to be studied.

## RESULT AND DISCUSSION

In Indonesia, the management of donation funds is regulated through various laws and regulations. Although there is no specific law that only focuses on managing donations, there are rules that regulate various matters related to donations, both for social institutions, community organizations, and institutions that receive funds from donors, including zakat and grants. When designing rules regarding the mandatory reporting of donation funds, attention should be paid to such principles as fairness, benefit, convenience, efficiency and effectiveness. This regulation must be fair to all parties, beneficial to those in need, easy to understand and apply, not burdensome, and effective in increasing transparency and accountability in the use of donated funds. Some of the important points in this rule include the subject and object to be treated, the format and timing of reporting, sanctions and awards, and supervision and coaching mechanisms.

Furthermore, in the context of receiving and managing donations, there is an agreement involving three parties that have close legal relationships and depend on each other, namely the donor as the party who makes the donation or assistance, the donation intermediary represented in this case by Denny Sumargo as an individual or party who plays a role in facilitating and mediating the donation process, and the recipient of the donation represented by Agus Salim as the party who receives the assistance or donation. These three parties undergo a legal relationship that has the purpose of ensuring that the donations given can be properly received and used in accordance with the purposes and objectives that have been mutually agreed upon. In this case, the agreement describes an interaction organized on the basis of voluntary agreement and goodwill between the parties involved that basically aims to alleviate the burden or provide benefits to the recipient of the donation in the absence of direct remuneration from the recipient to the donor.

Agreements formed between the three parties that include donors, intermediaries, and recipients of donations can be categorized as unnamed agreements in the context of Indonesian civil law. This is because, according to the provisions contained in the third book of the Civil Code (Civil Code) agreements that are regulated explicitly and systematically are agreements that have certain names or classifications such as Sale and purchase agreements, exchange agreements, and rental agreements. The third book of the Civil Code serves to regulate the most common and frequent types of agreements in civil law practice in Indonesia so that these types of agreements are regulated in great detail and have clear rules in terms of implementation and fulfillment of the obligations contained in them.

Thus, although this donation agreement does not have a clear regulation in the third book of the Civil Code, it is still recognized as a valid agreement as long as it meets the general provisions of the applicable Indonesian civil law. Therefore, although not named this agreement remains acceptable and valid in legal practice in Indonesia and has a legal basis that can be accounted for in the event of a dispute or violation of the agreement that has been made by the parties involved. The management of a donation without an agreement made before a notary public still has legal repercussions, even if the agreement at the notary public does not exist. Some of the legal consequences that may arise related to the management of donations without a notarial agreement include:

1. No written obligation

Without an agreement made before a Notary, the management of donations between the foundation and the donor does not have specific binding legal force in the form of a formal contract. However, this does not mean that there are no legal obligations in force. The foundation remains obliged to comply with applicable laws in the management of donations, such as foundation regulations, tax laws, and laws governing non-profit organizations.

2. Proof problem

One of the main consequences of not having an agreement before a notary is the potential problem of proof in the event of a dispute between the foundation and the donor. In the event of disagreements regarding the use of donations, without a clear written agreement, it will be more difficult to prove consent or agreement between the two parties. For example, if donors feel that the funds provided are not being used in accordance with the agreed goals, they may find it difficult to sue or hold them legally accountable.

3. Responsibility of the foundation for the use of funds

Even without a Notarial agreement, the foundation still has a legal responsibility to manage and use the donation funds in accordance with the purpose that has been conveyed to the donor. The use of funds that are not in accordance with the promised purpose can have legal consequences, such as lawsuits or reputational damage to the foundation.

4. Misuse of funds and potential claims

Without a binding agreement, there could be a risk of misuse of funds by the management of the foundation. For example, if donation funds are used for purposes that are not in accordance with the vision and mission of the foundation or for personal interests, donors or other parties who feel disadvantaged can file lawsuits against the foundation. Although there is no written agreement, the law still provides that donations must be used for legitimate purposes and in accordance with the social goals of the foundation.

5. Reporting obligations and accountability

In this case, even though there is no binding formal agreement, the foundation still has an obligation to provide clear and transparent financial statements to donors. If the foundation does not provide adequate reporting or does not clearly account for the use of funds, this can lead to legal problems, both from donors and authorities who oversee non-profit organizations.

6. Tax risk

Foundations that manage donations must also comply with applicable tax regulations. Without a notarial agreement, the foundation remains obliged to report the receipt and use of the donation to the tax authorities if any tax obligations apply. If the foundation does not comply with tax rules or does not report donations correctly, legal problems can arise in the form of sanctions or fines.

7. No refund guarantee

There is no guarantee of return and without a Notarial agreement, there is no guarantee that the donation can be returned in case of error or misuse of funds by the foundation. Therefore, donors do not have a sound legal basis to demand a refund if the foundation does not fulfill its obligations or violates existing informal agreements.

8. Violation of good governance principles

If the foundation does not have a clear agreement, either notarized or in any other form, this can be considered a violation of the principles of good governance in the management of the organization, which prioritizes transparency, accountability, and responsibility. Foundations can face reputation issues if Fund Management is deemed not to be up to good and proper standards.

## CONCLUSION

As a result of the law, the management of donations without an agreement made before a notary does not eliminate legal obligations, this can add potential legal problems such as difficulty of proof, risk of misappropriation of funds, and challenges in carrying out adequate accountability. Therefore, to avoid legal problems and ensure transparency, it is highly recommended that foundations have clear written documentation regarding the purpose and use of donations, both in the form of written agreements and other mechanisms. The rule of law in the management of donations with an agreement made before a notary in the future can provide legal certainty for all three parties (foundations, donors, and recipients of donations). This agreement regulates the detailed use of funds, reporting obligations, as well as the rights and obligations of each party. Thus, the management of donations involving notarial agreements will be more transparent, structured and legally accountable in the event of disputes or discrepancies in the use of funds.

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recommended that foundations have clear written documentation regarding the purpose and use of donations, both in the form of written agreements and other mechanisms.

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