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## Authority and Procedures for Determination of The Foundation Managers

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### Abstract

The purpose of this study is to find out who is authorized and how the procedure of determination the foundation managers. The method used in this research is the method of normative legal research with statute approach, conceptual approach and case approach. Sources of legal material are legislation, and cases faced by the DJ foundation. How to collect legal materials is to use the card system. The result of the research is the authority to determination the foundation managers by the foundation trustees and the procedures of determination the foundation managers begins with the supervision conducted by the supervisor of the foundation, followed by the temporary dismissal, then proceed with clarification meeting from the managers of foundation, which can lead to the determination of the foundation managers.

**Keywords:** Foundation; Authority; Foundation Managers

### I. INTRODUCTION

The law and judicial system are assumed to be unambiguous and reliable so that the decisions are foreseeable to everyone who has legal expertise (Niinimäki, 2018). Laws by themselves cannot change the costs and benefits associated with any given actions people might take (Mailath, Morris, & Postlewaite, 2017). Transparency laws are designed to hold governments accountable by providing the public with access to public records and meetings (Kelly, 2018).

While responding to the incentives or information offered by an authority may be rational, it is likely that people will respond differently to the same actions, depending on whether those actions were taken by an (government) authority or by an individual (Silverman, Slemrod, & Uler, 2014). Name authority control is one of the foundations on which authority data is organized (Shi & Jia, 2018). In most practical applications, it will be a challenge to issue the attribute keys to all the users with a single authority (Li et al., 2018).

As a legal entity having a social, religious, and humanitarian intent and purpose, the Foundation has an organ consisting of Trustees, Managers and Supervisors<sup>1</sup>. The unequivocal separation of the functions, authorities, and duties of each of the organs and the arrangement of relations between the three organs of the Foundation is intended to avoid possible internal conflicts of the Foundation which can harm not only the interests of the Foundation but also other parties<sup>2</sup>.

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The management of wealth and the implementation of the activities of the Foundation is fully undertaken by the Managers<sup>3</sup>. Therefore, the Managers is obliged to make an annual report submitted to the coach regarding the financial condition and the development of the Foundation's activities<sup>4</sup>. Furthermore, to the Foundation whose property is derived from the State, foreign aid or any other party, or has the amount of wealth specified in this Act, its property shall be audited by a public accountant and its annual report shall be published in an Indonesian language newspaper<sup>5</sup>. This provision in the framework of applying the principle of openness and accountability to the community<sup>6</sup>.

The legal issues in this research are: LI1: Who is authorized to determination the foundation Managers? and LI2: How is the procedure for determination the foundation Managers?

## II. METHOD

The research method used in this research is normative law research method with statute approach, conceptual approach and case approach<sup>7</sup>. Sources of legal materials used are legislation and cases that occurred in Bali<sup>8</sup>. The legislation used is the foundation law and the foundation's articles of association<sup>9</sup>. The case used is the case of DJ Foundation which is located in Denpasar Bali<sup>10</sup>.

## III. RESULT AND DISCUSSION

The Chairman of the DJ Foundation since performing its duties from 2013 to 2017 has never written a written financial liability report submitted to the DJ Foundation Trustees<sup>11</sup>. The actions of the Chairman of the DJ Foundation are contradictory and violate the Articles of Association of DJ Foundation Article 16 paragraph (2) and the Law of the Foundation Article 35 paragraph (2), Article 49 paragraph (1) and paragraph (2), Article 50, article 52<sup>12</sup>.

DJ Foundation Fostering Meeting, discussed about the Revenue and Expenditure Budget Plan (REBP) of 2017/2018, where in the REBP there are plans for the cost of building New Building SMA and DJ University with an investment of Rp.72.000.000.000<sup>13</sup>. The results of the Managers meeting decided to postpone the planned construction of New Building SMA and DJ University with an investment of Rp.72.000.000.000<sup>14</sup>.

The Chairman of the Managers does not pay attention to and ignores the result of the meeting's decision and still runs the work program based on the RAPBY which has not been approved by the meeting<sup>15</sup>. The actions of the Chairman of the Managers are contradictory and violate the Articles of Association of the DJ Foundation Article 16 paragraph (2), Article 16 paragraph (8) and Article 39 paragraph (2), Article 49 paragraph (1) and paragraph (2), Article 50 in conjunction with Article 52<sup>16</sup>.

There is some news in the media about the construction of New Building SMA and DJ University

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that has not been licensed by the authorized Officer, the Trustees does not know in detail the construction of New Building SMA and DJ University<sup>17</sup>. The actions of the Chairman of the Managers are contradictory and violate the Articles of Association of DJ Foundation Article 16 paragraph (2) paragraph (8) and Article 39 paragraph (2), Article 49 paragraph (1) and paragraph (2), Article 50, and Article 52<sup>18</sup>.

Trustees of the DJ Foundation ordered Supervisors of DJ Foundation to supervise the execution of duties of the Chairman of the DJ Foundation. Supervisor of DJ Foundation performs supervisory duties by sending letters to the Chairman of the DJ Foundation: 1) Letter No: 01 / YD / SUPERVISORY / I / 2018, dated 05 January 2018, regarding Supervision of Financial Statements; 2) Letter No: 02 / YD / SUPERVISORY / I / 2018, dated January 22, 2018, regarding the Supervision of Financial Statements; and 3) Letter No: 03 / YD / SUPERVISORY / II / 2018, dated February 17, 2018, regarding the Supervision of Financial Statements<sup>19</sup>.

The Chairman of the DJ Foundation responded to a letter from the DJ Foundation Supervisor, but the response letter did not answer and provided information in accordance with the Supervisor's Questions and Requests and did not provide the Financial Statement. The actions of the Chairman of the Managers are contradictory and violate the Articles of Association of DJ Foundation Article 16 paragraph (3) paragraph (8) and the Law of the Foundation Article 35 paragraph (2), Article 49 paragraph (1) and paragraph (2), Article 50, and Article 52<sup>20</sup>.

Supervisor YD held a Supervisory Meeting on March 3, 2018 and the Supervisory Board's Decree recommended the DJ Central Managers Management to be temporarily dismissed, for violating the DJ Foundation's Articles of Association and the Foundation Act. Supervisors of the DJ Foundation sent a Letter of Recommendation for Temporary Dismissal of the Chairman of the DJ Foundation, the DJ Foundation's Secretary, and the DJ Foundation's Treasurer to the DJ Foundation's on March 7, 2018<sup>21</sup>.

Trustees of DJ Foundation held a DJ Foundation discussion meeting to discuss the report from the DJ Foundation supervisor, regarding the provisional discharge recommendation of the management<sup>22</sup>.

The DJ Foundation and the result of the Meeting to issue the Decision Letter of Temporary Discharge of the Chairman of the DJ Foundation the Secretary of the DJ Foundation and the Treasurer of the DJ Foundation<sup>23</sup>.

The Trustees sent a summons to the Chairman of the DJ Foundation Secretary of the DJ Foundation and the Treasurer of the DJ Foundation to attend the DJ Foundation's Managers of Trustees' Meeting on March 12, 2018, to provide information and self-defense with regard to letters of dismissal. Trustees held a board of Trustees Meeting on March 12, 2018, the Chairman and Treasurer of the DJ Foundation were absent while the DJ Foundation Secretary was present at the DJ Foundation's meeting, but the Chairman and the Management Treasurer sent a message through the DJ Foundation Trustees N. Dym. The DJ Foundation Trustees meeting for one week<sup>24</sup>.

The Trustees decided to dismiss the Chairman of the Managers, the Executive Secretary, and the Management Treasurer by issuing the Decision Letter of the Chairman of the DJ Foundation, the Secretary of the DJ Foundation and the Treasurer of the DJ Foundation and issuing the Appointment

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Letter of the Chairman of the DJ Foundation, the Secretary of the DJ Foundation and the Treasurer The new DJ Foundation<sup>25</sup>.

### ***Authority of Determination of The Foundation***

In addition to the Foundation Managers, there are also other foundation organs of Foundation and Foundation Supervisor. It is regulated in Article 2 and Chapter VI on Organ Foundation from Article 28 through Article 47 of Law Number 16 Year 2001 regarding Foundation which has been amended by Law Number 28 Year 2004<sup>26</sup>.

The Trustees is an organ of the Foundation which has authority not authorized to the Management or Supervisor by this Law or the Articles of Association (Article 28 paragraph (1) of the Foundation Law). The authority as referred to in Article 28 paragraph (1) letter b is defined as among others: "the appointment and dismissal of members of the Board and members of the Supervisor"; and letter d is determined: "Approval of the work program and the Foundation's annual budget plan"<sup>27</sup>.

Based on the formulation of Article 32 Paragraph 3 and Article 28 Paragraph (1) Sub-Paragraph b of Law Number 16 Year 2001 concerning Foundation that has been amended by Law Number 28 Year 2004, the Authority to dismiss the Board of Trustees is the Trustees of the Foundation through the Foundation's Trustees' Meeting<sup>28</sup>.

So the steps taken by the Trustees in the meeting of the Trustees by deciding to dismiss the Chairman of the Managers, the Executive Secretary, and the Management Treasurer, by issuing the Decision Letter of the Chairman of the DJ Foundation, the Secretary of the DJ Foundation and the Treasurer of the DJ Foundation and issuing a Letter of Appointment of the Chairman of the DJ Foundation, The Managers of DJ Foundation and the new DJ Foundation Treasurer is a step that is in accordance with the Foundation's DJ Foundation and Articles of Association<sup>29</sup>.

### ***Procedures for Determining The Foundation Managers***

Article 43 Paragraph (1) of Law Number 16 Year 2001 regarding Foundation which has been amended by Law Number 28 Year 2004 stipulates: "Supervisor may temporarily suspend members of the Board by mentioning the reason"<sup>30</sup>.

Supervisor of DJ Foundation performs supervisory duties by sending letters to the Chairman of the DJ Foundation<sup>31</sup>: 1) Letter No: 01 / YD / SUPERVISORY / I / 2018, dated 05 January 2018, regarding Supervision of Financial Statements; 2) Letter No: 02 / YD / SUPERVISORY / I / 2018, dated January 22, 2018, regarding the Supervision of Financial Statements; and 3) Letter No: 03 / YD / SUPERVISORY / II / 2018, dated February 17, 2018, regarding the Supervision of Financial Statements<sup>32</sup>.

The Chairman of the DJ Foundation responded to a letter from the DJ Foundation Supervisor, but the response letter did not answer and provided information in accordance with the DJ Foundation's Questions and Requests and did not provide the Financial Statement. The actions of the Chairman of the DJ Foundation are contradictory and violate the Articles of Association of DJ Foundation Article 16 paragraph (3) paragraph (8) and the Law of the Foundation Article 35 paragraph (2), Article 49

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paragraph (1) and paragraph (2), Article 50, and Article 52<sup>33</sup>.

Supervisors of the DJ Foundation held a Supervisory Meeting on March 3, 2018 and the Supervisory Board's Decree recommended the DJ Central Board Management to be temporarily dismissed, for violating the DJ Foundation's Articles of Association and the Foundation Act<sup>34</sup>.

Article 43 paragraph (2) determines: "The temporary dismissal as referred to in paragraph (1) no later than 7 (seven) days from the date of suspension shall be reported in writing to the Trustees ". Supervisors of the DJ Foundation sent a Letter of Recommendation for Temporary Dismissal of the Chairman of the DJ Foundation, the Secretary of the DJ Foundation, and the Treasurer of the DJ Foundation to the Trustees of the DJ Foundation on 7 March 2018<sup>35</sup>.

Article 43 paragraph (3) determines: "Within 7 (seven) days from the date of the report of receipt, the Trustees shall invite the member of the Managers concerned to be given an opportunity to defend himself". The DJ Foundation's foundation on March 8, 2018 has called on members of the DJ Foundation to attend the DJ Foundation's Trust Meetings held on March 12, 2018 to be given an opportunity to defend themselves. At the time of the DJ

Foundation Trust Meetings were held which attended 2/3 members of the DJ Foundation and the Secretary of the DJ Foundation Chairman of the Management and Treasurer of the Foundation DJ Foundation did not meet the call but entrust the message to members of the Trustees DJ Foundation named dr. Nym. D<sup>36</sup>.

Article 43 paragraph (4) determines: "Within a maximum period of 7 (seven) days from the date of self-defense referred to in paragraph (3), the Trustees shall: revoke the decision of temporary dismissal; or dismiss the members of the Managers concerned ". Because the Chairman of the Managers and the Treasurer of the DJ Foundation did not exercise his right to defend himself and the DJ Foundation Secretary resigned, the DJ Foundation decided to dismiss the Chairman, Secretary and Treasurer of the DJ Foundation by issuing the Decision Letter of the Chairman of the DJ Foundation, DJ Foundation and Treasurer of DJ Foundation and issued the Decree of Appointment of the Chairman of DJ Foundation, Deputy Chairman of DJ Foundation, DJ Foundation Secretary of Management and Treasurer of new DJ Foundation<sup>37</sup>.

Article 43 paragraph (5) determines: "If the Trustees does not implement the provisions referred to in paragraph (3) and paragraph (4), such suspension is null and void." Because the Trustees of the DJ Foundation have implemented the procedure of determination the DJ Foundation Managers according to the formulation of Article 43 of the Foundation Law, the DJ Foundation's Trust Decision is valid<sup>38</sup>

#### **IV.CONCLUSION**

Who has the authority to dismiss the Foundation Managers is the Trustees of the Foundation through the Foundation's Trustees' Meeting. The procedure for dismissing the Foundation Management may be done by first supervising the performance of the Foundation Management conducted by the Foundation Supervisor. If the results of supervision from the Foundation Supervisor on the performance of the Foundation Managers found the existence of the violation either the violation of the Foundation Law or the violation of the Foundation's Articles of Association, the Foundation Supervisor may temporarily dismiss the Foundation Management. The temporary discharge of the Board of Directors of the Foundation should be immediately reported to the Foundation Trustees and the Trustees of the Foundation should immediately call the Foundation Managers to provide an explanation or defense in the Foundation's Trustees' Meeting held for it. In the Foundation's Founder Meeting, the decision of the

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Termination of the Foundation may be decided or to revoke the temporary dismissal of the board of Trustees. If this procedure is not exercised by the Trustees then such Dismissal shall be null and void.

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