

Abstrak

Pertanggungjawaban pidana dalam bidang yayasan masih berfokus pada individu, sementara keterlibatan badan hukum sebagai subjek pidana belum dioptimalkan, khususnya dalam konteks yayasan pendidikan yang melakukan fraud melalui perjanjian nominee atas aset pertanahan. Praktik perjanjian nominee ini kerap digunakan untuk mengakali keterbatasan legal yayasan dalam memiliki hak atas tanah, dengan melibatkan pihak ketiga sebagai pemilik formal, meskipun substansi penguasaan tetap berada pada yayasan atau organ di baliknya. Padahal, yayasan secara hukum bersifat nirlaba dan ditujukan untuk kemanfaatan masyarakat, bukan sebagai alat penguasaan pribadi atau komersial.

Penelitian ini menganalisis pertanggungjawaban pidana terhadap organ yayasan yang melakukan fraud tersebut, serta mengeksplorasi opsi pembubaran yayasan berdasarkan UU Yayasan dan KUHP 2023 sebagai skema pertanggungjawaban pidana korporasi. Dengan pendekatan yuridis normatif dan studi kasus, dianalisis bahwa fraud semacam ini mencerminkan ketimpangan relasi dan penyalahgunaan wewenang, sebagaimana dijelaskan melalui teori keadilan transaksi (Peter Benson) dan *convenience theory* (Petter Gottschalk). Temuan menunjukkan bahwa pembubaran yayasan dapat menjadi instrumen pemulihan aset ke masyarakat, sekaligus penegakan hukum pidana korporasi berbasis keadilan sosial. Oleh karena itu, dibutuhkan rekonstruksi penerapan hukum pidana korporasi terhadap yayasan, termasuk penguatan posisi negara sebagai pengelola hasil kejahatan agar tidak dinikmati oleh pelaku.

Kata kunci: Yayasan pendidikan, fraud, nominee, pertanggungjawaban pidana, pembubaran yayasan, KUHP 2023, keadilan transaksi.

Abstract

Criminal liability in the foundation sector remains predominantly focused on individuals, while the role of legal entities as subjects of criminal law has not been fully optimized—particularly in cases involving educational foundations committing fraud through nominee agreements over land assets. These nominee arrangements are often used to circumvent legal restrictions on foundation land ownership, placing legal title under a third party while control remains with the foundation or its insiders. This practice contradicts the legal nature of foundations, which are designed to be non-profit and oriented toward public benefit, not private enrichment or commercial activity.

This study examines the criminal liability of foundation organs engaged in such fraudulent practices and explores the dissolution of foundations under the Foundation Law and Indonesia's 2023 Penal Code as a mechanism of corporate criminal accountability. Utilizing a normative legal method and case studies, the research is grounded in Peter Benson's transactional justice theory—emphasizing fairness through equality of parties in contractual relationships—and Petter Gottschalk's convenience theory of fraud, which highlights the role of motivation, opportunity, and rationalization within weak governance structures. Findings indicate that dissolving a foundation can serve both as a punitive and restorative tool, enabling the return of illicit gains to society through state-appointed management. Thus, there is an urgent need to reconstruct the application of corporate criminal law to foundations, including recognition of beneficial ownership and the alignment of dissolution mechanisms with principles of social justice.

Keywords: educational foundations, fraud, nominee agreements, criminal liability, foundation dissolution, Indonesian Penal Code 2023, transactional justice.