



## Legal Status of Foundation Management Who Was Appointed Illegally

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### ABSTRACT

The results obtained are presented descriptively. 1.) Judging from the lawsuit argued by the plaintiff, it is clear that the formal requirements, as well as the material requirements, are *fundamentum petendi* or the basis of the basic lawsuit, which contains the factual basis and legal basis based on the facts that occurred and also the legal basis of the foundation bylaws and also and *petitum* with respect to what should then be requested. 2) Based on facts and legal considerations, the judge then stated that the Defendant had committed an unlawful act by ratifying the meeting of the Board of Trustees of the Budi Luhur Makassar Social Foundation and issuing a decision on the meeting of the Board of Trustees of the Makassar Budi Noble Social Foundation, Decree No.: 05/BPYSBLM.XII / XII/2017, dated December 27, 2017 regarding the Establishment and Acceptance of Members of the Independent Board of Trustees of the Budi Luhur Social Foundation Makassar, the panel of judges then took a decision that all of them have been declared invalid according to law, therefore all petitions from the Plaintiffs can be granted entirely. As well as in all forms of considerations which are then explained, all considerations have been briefly compiled regarding the facts and circumstances along with the evidence obtained from the examination at the trial which is the basis for making decisions and also all parts of the plaintiff's petition have been considered, and the judge has also analyzed Juridically against the decision, all aspects involve all the facts proven in the trial so that the judge can draw conclusions about whether it is proven or not and whether or not the plaintiff's demands are granted in the verdict..

**Keywords:** *Lawsuit; Unlawful Acts, Foundation*

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### I. Background

The 1945 Constitution of the Republic of Indonesia to be precise in article 1 paragraph (3) is an acknowledgment that confirms Indonesia as a country based on law, that from every act of obedience society must remain based on all forms of restrictions in the form of rules. As the embodiment of positive legal norms that apply in society. Rules in the law which are all forms of explanation of all actions that can or may not be carried out by society, then the presence of these restrictions so that later there will be no deprivation of all individual rights.

However, in reality there are still some people who commit acts that violate rights and harm other individuals or commit acts that are against the law, such as in the civil domain..

With the existence of civil law and civil procedural law, the public feels there is legal certainty that everyone can defend their civil rights to the best of their ability, and anyone who violates civil law which causes harm to other people can be prosecuted through the courts. With civil procedural law it is hoped that order and legal certainty will be created in society. The duties and authorities of the judiciary in the civil field are to receive, examine, adjudicate and resolve disputes between the litigants. The nature of civil procedural law is formal law, namely the law regarding the process of resolving disputes through courts, and is binding on all parties and cannot be deviated, so that civil procedural law has a public nature. (Fakhriah, 2011).

In civil cases, cases submitted to court are generally in the field of default and unlawful acts. To find out what is meant by Unlawful Acts (*Onrechtmatigedaad*), (Pahlevi et al., 2021)

In the case of filing a lawsuit for an unlawful act, the next element that must be proven is the fulfillment of the said act contained in the provisions of Article 1365 of the Civil Code (KUHPerdata). Unlawful acts are regulated in Article 1365 of the Civil Code in the form of:

*"Every act that violates the law and causes harm to other people, obliges the person who caused the loss because of his mistake to compensate for the loss."*

The elements of an unlawful act are as follows: (KOMARIYAH, 2021)

1. there is an unlawful act;
2. there is an error;
3. there is a causal relationship between the loss and the action;
4. there is a loss

A claim for rights must have sufficient legal interest and this is the main requirement for the claim for rights to be accepted by the court (point d'interet, point d'action). The court will grant the claim if, after the evidentiary process, the court is of the opinion that the claim has been proven and is based on the existence of a right. (Sunarto, 2014)

In decision Number 7/Pdt.G/2018/PN Mks which is one of the forms of unlawful acts, in this case Ir. Arwan Tjahjadi, Hairiyanto, and Alexander Yaury, hereinafter referred to as plaintiff I, plaintiff II and plaintiff III, against phie benni, and yusuf.s.hianto, who were later called defendant i and defendant ii.

Based on the deed of establishment no. 2 dated 4 January 2011 jo. Statement and agreement letter dated 12 January 2011 legislation no.:1087/I/2011. January 12, 2011 by notary frederik Taka waron, S.H. Plaintiffs I and II are members of the board of trustees of the Makassar Noble Social Foundation.

Every foundation is required to have a deed of establishment and the deed is ratified by the Minister of Law and Human Rights, then it is announced in the Republic of Indonesia State Gazette (Article 24 of the Foundation Law). With this announcement, the public is considered to have known every time a new foundation was established. By submitting an application for approval to the Minister and announcing it in the State Gazette. These actions are an attitude of openness from a foundation, because its constitution is known by the government and its existence is recognized by the State and society. (Supramono, 2008)

The Foundation's objectives are in the social, religious and humanitarian fields, these activities include activities in the fields of education, arts, human rights, sports, consumer protection, environment, health and science. (Kasiani, 2021)

Each foundation is stipulated by the Law on foundations, it is obligatory to have equipment in the form of coaches, administrators, and supervisors. Then each equipment, can have more than one member. To fill or appoint members of the organs of the foundation, it doesn't have to be personnel from within the foundation, but can be filled by people from outside the foundation (Article 28 Paragraph (3), Article 31 Paragraph (2), Article 40 Paragraph (3) of the Law Foundation). Law No. 28 of 2004 Amendments to Law Number 16 of 2001 Concerning Foundations Provisions of Article 28 paragraph (1) and paragraph (2) UUY (Uemenina, 2022) if one pays attention it can be concluded that the founder of the foundation is the organ that holds the highest authority in the foundation. Trustees have authority which by law or articles of association is not delegated to administrators or supervisors. The supervisor's authority includes:

1. Decisions regarding amendments to the articles of association.
2. Appointment and dismissal of members of the management and supervisors.
3. Determination of the foundation's general policy based on the foundation's articles of association.
4. Approval of the foundation's annual work program and budget plan.
5. Determination of decisions regarding the merger and dissolution of foundations.
6. Hold a meeting at least once a year to exercise its authority.
7. Evaluate the wealth, obligations, responsibilities and income of the foundation last year as a basis for consideration for the approval of the upcoming annual budget.
8. Ratify the annual report submitted by management and supervisors

Whereas currently the Parties have signed the Deed of Establishment (Articles of Association) of the "Social Foundation of Budi Luhur Makassar" for the Composition of the Trustees stated in the deed of establishment of the Budi Luhur Makassar Social Foundation are the Trustees from a long period of management and/or who are running from Budi Luhur Social Foundation as regulated in the Bylaws of the Budi Luhur Social Foundation Makassar No.: 08/DP-YSBLM.VI/VI/2017, June 19 2017.

In this case, Defendant I was suspected of using his authority unlawfully in carrying out the Board of Trustees Meeting on 12 December 2017 with the Agenda "Formation of Independent Advisory Board Members of the Budi Luhur Makassar Social Foundation and Acceptance of Individual Advisory Board Members from Community Elements, as well as Declared that Defendant I and Defendant II had committed an unlawful act by issuing/publishing Decision Letter No.: 05/BP-YSBLM.XII/XII/2017, December 27 2017 concerning the Formation and Acceptance of Members of the Independent Board of Trustees of the Budi Luhur Social Foundation Makassar; ”

From these actions, Defendants I and II with these actions violated what had been stipulated in the articles of association of the Budi Luhur Makassar Social Foundation and had made the plaintiffs feel disadvantaged.

In this case the panel of judges has subsequently declared in favor of the plaintiffs' lawsuit in its entirety, declared Defendant I to have committed an unlawful act by ratifying the meeting of the Board of Trustees of the Budi Luhur Makassar Social Foundation on 12 December 2017 and issued a decision on the meeting of the Board of Trustees of the Budi Mulia Makassar Social Foundation on 12 December 2017, and declared that Defendant I and Defendant II had committed an unlawful act by issuing/publishing Decree No.: 05/BP-YSBLM.XII/XII/2017, December 27 2017 concerning the Formation and Acceptance of Members of the Independent Board of Trustees of the Budi Social Foundation Great Makassar.

#### **Research question**

1. What is the argument for the lawsuit against the law of the management of the foundation (study of decision Number 7/Pdt.G/2018/PN Mks)?
2. What are the judges' considerations in decision Number 7/Pdt.G/2018/PN Mks??

#### **Objective of the research**

1. It is hoped that this paper can provide benefits as a contribution of thought for the development of science, especially to find out the unlawful acts of the foundation's management (study of decision Number 7/Pdt.G/2018/PN Mks).
2. It is hoped that this research will contribute ideas to be used as material for further research in the future

#### **Research Method**

The normative juridical approach was utilised throughout this investigation. The method known as normative juridical is built on top of already established legal precedents. Following the treatment of these legal documents as primary data, several research on various theories, conceptions, or legal principles are carried out and related to the concerns brought up in this study.(ASMAH, 2022)

Analysis, namely the data obtained from the research results that are compiled and analyzed qualitatively, then the data is further described descriptively in order to obtain a description. Furthermore, the data from the research results are developed based on the theories relevant to the research (Rahman & Danil, 2020)

## **II. RESEARCH RESULTS AND DISCUSSION**

### **A. Argumentation of Lawsuit Against the Law of Foundation Management (Study of Decision Number 7/Pdt.G/2018/PN Mks).**

A lawsuit is a lawsuit filed by the plaintiff against the defendant through the court. Lawsuits in civil procedural law generally consist of two or more parties, namely between the plaintiff and the defendant, in which case the lawsuit generally occurs because the defendant has violated the rights and obligations that are detrimental to the plaintiff. The lawsuit generally occurs after the defendant violates the rights and obligations that harm the plaintiff does not want to voluntarily fulfill the rights and obligations requested by the plaintiff, so a dispute will arise between the plaintiff and the defendant. Disputes are faced by the parties if they cannot be resolved amicably outside the court, generally the case is resolved by the parties through a court trial to obtain justice.

Then in order to be able to file a lawsuit on the basis of an unlawful act, one must also pay attention to the things that underlie the occurrence of the unlawful act. First of all, the plaintiff must have rights, which can be property rights, usufructuary rights, building use rights, enjoyment rights, and other rights. The rights which should have been freely used by the plaintiff had been violated by the defendant, either intentionally or unintentionally, causing harm to the plaintiff (Articles 1365 and 1366 of the Civil Code). (Sophhar, 2010)

A lawsuit filed by the plaintiff which can then be accepted by the court must have a strong reason, in which the reason must fulfill the existence of a violation of rights and harm the plaintiff. If the lawsuit submitted by the plaintiff to the court does not have a strong reason about the occurrence of the incident, then the lawsuit in court will result in being declared not granted by the judge examining the case. (Sarwono, 2011). Two theories regarding the formulation of *posita* lawsuit according to Yahya Harahap: (Harahap, 2017)

1. *First*, it is called the substantiating theory which teaches that the argument for a lawsuit is not enough only to formulate the legal event that forms the basis of the claim, but also must explain the facts that preceded the legal event that caused the legal event to arise.
2. *Second*, the theory of individualization (individualizing theory) which explains that the legal events or occurrences put forward in a lawsuit must clearly show the legal relationship (*rechtsverhouding*) that forms the basis of the lawsuit. However, it is not necessary to state the basis and history of the legal relationship, because this can be submitted later in the trial court examination process.

Based on the observations and experience of judicial practice, the two theories above are combined, not separated in a rigid and narrow manner. Merging the two theories in the formulation of a lawsuit is to avoid the formulation of vague or obscure libel argumentation.

In the technique of drafting a lawsuit, one must really pay attention to the existence of the requirements for the lawsuit in the form of formal requirements and material requirements in accordance with Article 8 number (3) Rv (Reglement of de Rechtsvordering). If a lawsuit contains defects, both formal and material, then the lawsuit will be rejected or unacceptable. Yahya Harahap further explained that the important matters formulated in the lawsuit were as follows: (Harahap, 2017)

Formal requirements: the lawsuit is registered at the District Court in accordance with relative authority, given a date, signed by the plaintiff or his attorney, and the parties' identities.

Material requirements: the basis for the lawsuit or the basis for the claim (*fundamentum petendi*), and the claim (*petitum*) of the plaintiff which will be decided by the judge based on the lawsuit or the basis for the claim.

In exercising civil rights and obligations, where a person who feels his rights have been harmed by another party, the concrete arguments regarding the existence of a legal relationship which is the basis and reasons for the claim or better known as *fundamentum petendi*, consist of two parts, namely a part which describes the events concerning the case or events and a part which describes the law, which contains a description of the existence of rights or legal relations which form the juridical basis of the claim. (Harahap, 2017)

Thus, in a lawsuit *posita* it is necessary to contain the facts that preceded the legal event and an explanation of the legal event that clearly shows the legal relationship. Answering your question in more detail regarding the matters contained in the lawsuit *posita*, the lawsuit *posita* which is considered complete fulfills two elements: (Harahap, 2017)

1) Legal Basis (*Rechtelijke Grond*)

Contains confirmation or explanation regarding the legal relationship between:

- a) The plaintiff with the disputed material and or object, and
- b) Between the plaintiff and the defendant in relation to the material or object of the dispute

2) Basic facts (*Feitelijke Grond*)

facts or events that are directly related to or around the legal relationship that occurs between the plaintiff and the material or object of the case or with the defendant or an explanation of facts that are directly related to the legal basis or legal relationship that the plaintiff argues

From the several provisions above, we will then break down how to form the argument for the lawsuit in the decision case number 7/Pdt.G/2018/PN Mks. We can see in the plaintiff's lawsuit, stating that in the provisions will be members of the Board of Trustees who have a philosophical, legal basis, and historically it has been set aside by the Defendants.

The position of the Foundation as a legal entity (*rechtspersoon*) has been recognized for a long time in society, even long before Indonesia's independence. But during that time, the foundation's status as a legal entity was still weak, because it was subject to rules originating from the customs in society. (Goddess, 2022)

Whereas Defendant I had used his authority unlawfully in carrying out the Board of Trustees Meeting on the Agenda "Formation of Independent Trustees Board Members of the Budi Luhur Makassar Social Foundation and Acceptance of Individual Advisory Board Members from Community Elements" at the meeting the Board of Trustees was only attended by 7 (seven) members, and then Defendant I continued to carry out and declare the meeting valid and fulfilled the quorum provisions. This action clearly contradicts the provisions of Article 11 Paragraph (1) Letter (a) Deed of Establishment No.: 02, dated 04 January 2011 jo. Article 19 Paragraph (6) of the Bylaws dated 19 June 2017 which determines that a meeting is valid if it is attended by at least 2/3 (two thirds) of the total members, which is in line with Article 18 paragraph (2) HIR, which states that the number of The entire Board of Trustees has 12 (twelve) members, meaning that the meeting must be attended by at least 8 (eight) members out of the total members. However, Defendant I, who later served as chairman of the meeting at that time, did not consider the disagreement of Plaintiff I, taking into account the legal, historical, vision and mission aspects of the establishment of the Budi Luhur Makassar Social Foundation as material for consideration in deciding whether or not the Board Meeting was held. This has also violated Article 8 Paragraphs (1), (2), and (3) of the Bylaws which stipulate that only Chairmen of the Associations/Foundations that establish the Budi Luhur Makassar Social Foundation can become Members of the Board of Trustees.

1. The Board of Trustees of the Foundation consists of 12 (twelve) members of the Board of Trustees, each of whom is the Chairman of the 12 (twelve) Foundations or Associations that establish Foundations (YSBLM): · SaptaMulia Social Foundation; · Social Budi Dharma Foundation; · Amal Sejahtera Foundation; · Aman Makmur Foundation; · Social Service Charity Foundation; · Makassar Hainan Association; Tunas Lestari

Foundation; · South Prosperous Foundation; · Adi Dharma Foundation; Guang Zhao Social Society; Kwan Kong Temple Foundation; Social Services Foundation

2. The Chairpersons of the 12 (twelve) Foundations or Associations that founded the Foundation (YSBLM), totaling 12 (twelve) people automatically become members of the Foundation Trustees Council (YSBLM) and each has the right to nominate and/or be nominated as chairman or deputy chairman or secretary of the YSBLM Advisory Council;

3. Those who can become Members of the Foundation Advisory Board (YSBLM) are the Chairpersons of the Foundations or Associations who are members of the 12 (twelve) Foundations or Representative Associations that have established Foundations (YSBLM) as referred to in Article 8 Paragraph (1) above.

From this matter legally the Social Budi Luhur Makassar Foundation cannot be formed by another member of the Board of Trustees with the name of an Independent Member of the Board of Trustees, or accept someone as a Member of the Board of Trustees who can be seen *de jure* not representing the Founding Association/Foundation. That the actions of the Defendants clearly violated the Bylaws and also deviated from the legal, philosophical and historical basis, clearly set a precedent that voting/majority voting could also be carried out to expel the Founding Association/Foundation from its position as Member of the Board of Trustees of the Social Foundation Budi LuhurMakasar

Furthermore, regarding the procedure for making decisions in the Board of Trustees Meeting at the Budi Luhur Makassar Social Foundation, it is explained in Article 11 Paragraph (2) and (3) of the Deed of Establishment No.: 02, January 4, 2011 jo. Article 19 Paragraph (7) of the Household Deed, where there must first be a deliberation for consensus which if it is not reached then a vote will be made, but also later, seeing that the defendant has also deviated from the said provision, because he directly chaired the Board of Trustees meeting to make a decision decisions by voting, because in the Board of Trustees Meeting there has never been an act of deliberation for consensus, *mutatis mutandis* may not also do voting because in view of voting actions can only be carried out if deliberation for consensus has been carried out first

However, in view of these several things, the defendants have committed acts against the law by issuing Decree No.: 05/BP-YSBLM.XII/XII/2017, which has determined:

1. Form YSBLM Independent Advisory Board Members
2. Received 9 (nine) members of the YSBLM Independent Board of Trustees from the Chinese Community;
3. Members of the YSBLM Independent Advisory Board are included in the membership structure for Period VIII 2017 – 2022

Based on the reasons and legal basis, the Plaintiffs then asked the panel of judges to order:

1. Accept and grant the Plaintiffs' lawsuit in its entirety,
2. Declare that Defendant I committed an unlawful act by ratifying the Board of Trustees of the Budi Luhur Makassar Social Foundation Board Meeting on December 12 2017, and issuing a Decision of the Board of Trustees Meeting of the Budi Luhur Makassar Social Foundation on December 12 2017,
3. Declared that Defendant I and Defendant II had committed an unlawful act by issuing/publishing Decree No.: 05/BP-YSBLM.XII/XII/2017, December 27 2017 concerning the Establishment and Acceptance of Members of the Independent Board of Trustees of the Budi Luhur Social Foundation Makassar,
4. Declare invalid and null and void:
  - a. Meeting of the Board of Trustees of the Budi Luhur Makassar Social Foundation on 12 December 2017.
  - b. Decision of the Board of Trustees of the Budi Luhur Makassar Social Foundation Meeting on December 12, 2017;
5. Declared invalid and null and void Decree of the Board of Trustees of the Budi Luhur Makassar Social Foundation No.: 05/BP-YSBLM.XII/XII/2017, December 27, 2017.
6. Declare that the members of the Board of Trustees of the Budi Luhur Makassar Social Foundation consist of 12 (twelve) Members of the Board of Trustees, each of whom is the Chairman of the 12 (twelve) Foundations or Associations that established the Budi Luhur Makassar Social Foundation, namely:

- SaptaMulia Social Foundation;
- Social Budi Dharma Foundation;
- Amal Sejahtera Foundation;
- Aman Makmur Foundation;
- Social Service Charity Foundation;
- Makassar Hainan Association;
- Tunas Lestari Foundation;
- South Prosperous Foundation;
- Adi Dharma Foundation;
- Guang Zhao Social Society; Rep
- Kwan Kong Temple Foundation;

· Social Services Foundation.

Then, judging from the claim argued by the plaintiff, there are clear formal requirements, as well as material requirements, the fundamental or basic basis for the lawsuit, which contains the basic facts and legal basis based on the facts that happened and also on the legal basis of the bylaws foundation. and also and petitum in relation to what should then be requested.

**B. The judge's consideration in the decision Number 7/Pdt.G/2018/PN Mks**

The judge in giving a decision wins a truth, examines a verbal in court, a written record in the form of documents made by the maker and used as evidence in court. (Niasari et al., 2021) Basically in a judge's consideration which is also one of the important aspects in an embodiment of the value of a judge's decision which cannot be separated from aspects of justice (*ex aequo et bono*), in a judge's decision there is also a value of legal certainty, and it also contains benefits for the parties concerned so that the judge's considerations must be addressed carefully, properly and carefully.

The judge's decision is closely related to how the judge expresses his opinion or considerations based on the facts and evidence at trial and the judge's belief in a case. Therefore, the judge has a central role in making a court decision. In the court's decision there must be considerations regarding the aggravating and mitigating matters of the decision, these considerations are used as an excuse by the judge in making his decision, whether in the form of other sentencing decisions and so on. (Nurhafifah & Rahmiati, 2015)

In addition, in essence the judge's consideration should also contain the following matters:

- a. Main issues and things that are recognized or arguments that are not denied
- b. There is a juridical analysis of the decision in all aspects concerning all the facts or things that were proven in the trial
- c. The existence of all parts of the plaintiff's petitum must be considered or tried one by one so that the judge can draw conclusions about whether or not the claim is proven and can be granted in the verdict..

Provisions regarding the judge's considerations are regulated in Article 197 paragraph (1) letter d of the Criminal Procedure Code which states: "Considerations are compiled briefly regarding facts and circumstances along with the means of evidence obtained from examinations at trial which are the basis for determining the guilt of the accused".

In making a decision, the judge must have a basis of consideration based on belief and supported by the existence of valid evidence so that the decision handed down by the judge truly fulfills the sense of justice in the community. The judge in making a decision must consider many things, both those related to the case being examined, the level of actions and mistakes committed by the perpetrator, the interests of the victim, his family and a sense of justice. (Afandi, 2018)

In the Civil decision No.7/Pdt.G/2018/PN.Mks, Ir. ArwanTjahjadi, Hairiyanto, and Alexander Yaury, hereinafter referred to as plaintiff I, plaintiff II and plaintiff III, against phie benni, and yusuf.s.hianto, who were later called defendant i and defendant ii.

By the Defendant it was alleged that he used his authority in an unlawful manner in carrying out the Board of Trustees Meeting on 12 December 2017 with the Agenda "Establishment of Independent Advisory Council Members of the Budi Luhur Makassar Social Foundation and Acceptance of Individual Supervisory Board Members from Community Elements, as well as Declaring Defendant I and Defendant II has committed an unlawful act by issuing/issuing Decree No.: 05/BP-YSBLM.XII/XII/2017

In this case the panel of judges then declared in favor of the Plaintiffs' lawsuit in its entirety, declared Defendant I to have committed an unlawful act by ratifying the meeting of the Board of Trustees of the Budi Luhur Makassar Social Foundation. As well as by issuing/issuing Decree No.: 05/BP-YSBLM.XII/XII/2017.

In his decision the judge then explained in his considerations the intent and purpose of the Plaintiff's lawsuit which in essence was that the dispute between the two parties regarding the legal actions taken by the Defendants related to everything that was later claimed by the applicant in the form of the intent and purpose of the plaintiff's lawsuit, which in essence was as mentioned above, that the dispute between the two parties was regarding the legal actions committed by the defendants relating to the unlawful acts committed by the defendants.

Seeing that Defendant had used his authority in a way against the law at the implementation of the Board of Trustees Meeting with the Agenda "Establishment of Independent Advisory Board Members of the Budi Luhur Makassar Social Foundation and Acceptance of Individual Advisory Board Members from Community Elements",

The defendant continued to hold the meeting and declared the meeting valid, even though the Board of Trustees meeting was only attended by 7 (seven) members, this action clearly contradicted the provisions of Article 11 Paragraph (1) Letter (a) Deed of Establishment No.02, January 4, 2011 jo. Article 19 Paragraph (6) of the Bylaws dated 19 June 2017 which determines that a meeting is valid if it is attended by at least 2/3 (two thirds) of the total members, where it is clear that the meeting must be attended by at least 8 (eight) members of

the total a total of 12 (twelve) members. Article 11 paragraph (1) of the Establishment Deed of the Budi Luhur Makassar Foundation states that the Trustees' Meeting is valid and has the right to make binding decisions if;

- a. Attended by at least 2/3 (two thirds) of the number of members of the Trustees
- b. In the event that the quorum as referred to in paragraph (1) letter a is not reached, a summons for a meeting of the Trustees may be held
- c. Summons as referred to in paragraph (1) letter b, must be made no later than 7 (seven) days before the meeting is held without taking into account the date of the summons and the meeting.
- d. The second Advisory Meeting is held no sooner than 10 (ten) days and no later than 21 (twenty one) as of the First Advisory Meeting;
- e. The Second Advisory Meeting is valid and has the right to make binding decisions, if attended by more than ½ (one half) of the members of the Advisory Committee.

Based on the facts revealed in the trial, the Defendants denied that the Meeting was initially attended by 8 (eight) members of the Board of Trustees including Plaintiff I, Mr. Ir. ArwanTjahjadi but after conveying his views and opinions regarding the agenda of the Meeting which essentially rejected the plan to form Independent Advisory Board Members, Plaintiff I declared to walk out/leave the meeting and the meeting was continued by 7 (seven) members out of 12 (twelve) people members of the Board of Trustees based on the attendance list. However, in accordance with Article 11 paragraph (1) letter (a) of the Establishment Deed of the Budi Luhur Makassar Foundation, in the event that the quorum as referred to in paragraph (1) letter (a) is not reached, then a second summons for the Trustees meeting can be held.

Regarding the procedure for making decisions in the Board of Trustees Meeting at the Social Foundation Budi Luhur Makassar, it is clearly stated in Article 11 Paragraph (2) and (3) of the Deed of Establishment No.: 02, dated 04 January 2011 jo. Article 19 Paragraph (7) of the Household Deed, which requires prioritizing deliberation to reach a consensus which if it cannot be reached then voting is carried out, but the Defendant immediately chaired the Board of Trustees Meeting to make decisions through voting, therefore because at the Board of Trustees Meeting on December 12 2017 there was never deliberation for consensus is carried out, *mutatis mutandis* cannot also be voted on because based on the Deed of Establishment and the Deed of Households, voting actions can only be carried out if the deliberation for consensus has been carried out but fails, the action clearly violates the existing provisions.

the judge then considered that the Defendants should have, then made a second summons to hold a second supervisory meeting, but here the Defendants continued to hold a meeting which was only attended by 7 meeting participants, and did not make a second summons. that apart from not taking the actions mentioned above, the actions of Defendant I who held a meeting attended by 7 (seven) members, should have been followed up by a second supervisory meeting, because this was contrary to the provisions of Article 11 Paragraph (1) Letter (a) Deed of Establishment No. : 02, dated January 4, 2011 jo. Article 19 Paragraph (6) of the Bylaws which stipulates that a meeting is valid if it has been attended by at least 2/3 (two thirds) of the total members, which means that the meeting must be attended by at least 8 (eight) members out of a total of 12 (twelve) ) members, and also in Article 19 Paragraph (7) of the Household Deed, which requires deliberation and consensus to be prioritized.

In view of the Vision and Mission of the establishment of the Foundation which is in the social field, since its formation in 1952 all members of the Organizing Body/Guardian were determined to only come from representatives of the Founding Association/Foundation as contained in the Deed of Establishment and Deed of Amendment to the Statutes, so that then prevent the interests of other personal, economic, and political interests that conflict with the social and humanitarian goals of the HoaKiao Kong Tiong Hwee Foundation i.c. Budi Luhur Social Foundation i.c. Makassar Budi Luhur Social Foundation. The decision of the Board of Trustees meeting also contradicts the Letter of Statement and Agreement on Legalization No.: 1087/L/I/2011, dated 12 January 2011 by Notary Frederik Taka Waron, S.H., jo. Article 8 Paragraph (3) of the Bylaws dated 19 June 2017 which determines that only the Chairpersons of the Associations/Foundations that can become Members of the Board of Trustees can become Makassar Social Foundations.

Based on these facts and legal considerations, the judge then stated that the Defendant had committed an unlawful act by authorizing the meeting of the Board of Trustees of the Budi Luhur Social Foundation Makassar and issuing a decision on the meeting of the Board of Trustees of the Budi Luhur Social Foundation Makassar, Decree No.: 05/BPYSBLM.XII / XII/2017, December 27 2017 regarding the Establishment and Acceptance of Members of the Independent Board of Trustees of the Budi Luhur Makassar Social Foundation, the panel of judges then made a decision that everything had been declared illegal according to law, therefore all petitions from the Plaintiffs can be granted entirely. With legal certainty for foundation institutions, it will indirectly provide legal protection both to the parties as founders, as well as to management who are bound by legal relations with the foundation (Suryadi&Sood, 2020)

Seeing all the considerations of the judges that all forms of considerations which are then explained, all Considerations have been compiled in a nutshell regarding the facts and circumstances along with the evidence obtained from the examination at trial which became the basis for making decisions and also all parts of the

plaintiff's petition have been considered, as well the judge has legally analyzed the decision on all aspects regarding all the facts proven in the trial so that the judge can draw conclusions about whether or not it is proven and whether or not the plaintiff's demands in the verdict can be granted or not.

### **III. Conclusion and suggestion**

#### **A. Conclusion**

1. Judging from the lawsuit argued by the plaintiff, there are clear formal requirements, as well as material requirements, the fundamental fundamentum petens or basis for the basic lawsuit, which contains the basic facts and legal basis based on the facts that happened and also on the legal basis of the household budget foundation and also and the petition in relation to what was then supposed to be requested

2. On the facts and legal considerations, the judge then stated that the Defendant had committed an unlawful act by authorizing the meeting of the Board of Trustees of the Budi Luhur Social Foundation Makassar and issuing a Decree of the meeting of the Board of Trustees of the Budi Mulia Makassar Social Foundation, Decree No.: 05/BPYSBLM.XII / XII/2017, December 27 2017 regarding the Establishment and Acceptance of Members of the Independent Board of Trustees of the Budi Luhur Makassar Social Foundation, the panel of judges then made a decision that everything had been declared illegal according to law, therefore all petitions from the Plaintiffs can be granted entirely. As well as in all forms of consideration which are then explained, all Considerations have been compiled briefly regarding the facts and circumstances along with the means of evidence obtained from the examination at trial which became the basis for making decisions and also all parts of the plaintiff's petition have been considered, and also the judge has analyzed juridically regarding the decision in all aspects concerning all the facts proven in the trial so that the judge can draw conclusions about whether or not it is proven and whether or not the plaintiff's demands can be granted in the verdict.

#### **B. Suggestion**

The author then has several suggestions which can then be considered by the judicial system in making all forms of law enforcement in court even better

1. Preferably in the plaintiff's lawsuit stating that the defendant has committed a legal action, the fundamentalumpetensi clearly explains the basis of the juridical connection with the form of real facts which are then presented in court.

2. Good for the management of the Foundation or those who later plays an important role in it, not necessarily in making decisions, in making a decision, especially for those that are closely related to the future of the foundation must pay close attention to how from a juridical perspective that has existed and was agreed beforehand, and how the state of the forum or in a decision-making session.

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**LEGISLATION**

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

Kitab Undang-Undang Hukum Perdata

Undang-Undang No. 28 tahun 2004 tentang Perubahan atas Undang-Undang Nomor 16 Tahun 2001 tentang Yayasan.

Kitab Undang-Undang Hukum Acara