

Preventing Terrorists' Misuse of Charitable Foundations: A Situational Crime Prevention Approach

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Abstract—This paper emphasizes the necessity of a strategy to prevent the misuse of charitable foundations for terrorist financing. Our preliminary assessment focuses on cases involving the misuse of charitable funds and charitable foundations around the globe. Following an introduction to the situational crime prevention approach, we then discuss the legal framework of such foundations and highlight their weaknesses that can be utilized by terrorists, in order to prevent their misuse for terrorist financing. We use one case study to explore whether aligning a situational crime prevention approach with the prevailing laws and regulations to counter-terrorist financing can prevent the misuse of charitable foundations. Our findings identify loopholes that can be misused by terrorists, because the current strategy still depends on the effectiveness of law enforcement and financial intelligence to detect and investigate terrorist financing. We suggest the use of a situational crime prevention approach to minimize the risk of terrorists' misuse of charitable foundations, through consistent government intervention and the involvement of community liability. This paper is a study of the practicalities involved in countering terrorist financing from preventative perspectives and will be of interest to those involved in counter-terrorist policy-making, investigations, and technologies that can prevent terrorist financing.

Keywords—*crime prevention, foundation, terrorist financing*

I. INTRODUCTION

Normark & Ranstorp (2015) reminded us in their writings that charitable contributions form as an integral part of Muslim solidarity and also serve as a core pillar of the Muslim faith. Unfortunately, charities and humanitarian aid organizations have recently confronted terrorist financing issues, as they are being abused by terrorist groups for fund-raising purposes. Donations often come from individuals and societies which do not know the ultimate destination of their contributions.

Since the tragedy of 9/11, the complexity of the crisis in Syria, and the massive need for humanitarian aid, detecting terrorist financing has become extremely sensitive and difficult. In light of the conflict situation, some well known international aid agencies such as the United Nations, the International Committee of the Red Cross, as well as many other international non-governmental organizations (NGOs) have long been absent from Syria. Their unavailability has been replaced by hundreds of local groups in the region,

most of which are active inside the country (Normark & Ranstorp, 2015).

Normark & Ranstorp (2015); Nainggolan (2017); and Shillito (2015) all describe the Islamic State of Iraq and the Levant (ISIL/IS)'s territory as perilous, highly dangerous, and negotiated. ISIL has operated under the principle that any aid distribution must serve its cause, as it has searched for the consolidation of states and the total control of almost 4 million people living under "Caliphate" rule. One of their principles permits a limited number of aid agencies who operate under strict ISIL surveillance, with aid distributed by the IS Committee of Relief which prohibits any international staff in the region. The Financial Action Task Force ("FATF") in their 2014 report found that NPOs (non-profit organizations) are most at risk of being "those engaged in 'service' activities which are operating in close proximity to an active terrorist threat" which "send funds to counterpart or 'correspondent' NPOs located in or close to where terrorists operate" (FATF, 2014). Grantspace.org provides a general definition of foundations as a legal category of NPO, which typically either donate funds and support to other organizations or funds its own charitable purposes through donations.

Normark & Ranstorp (2015) provided some examples of terrorists' misuse of humanitarian NPOs. For example, in the United Kingdom there have been multiple cases of connections between terrorists and charities. In one of these cases, three men were convicted of terrorism offenses because they fraudulently posed as volunteers for Muslim Aid, one of the largest British Muslim NGOs, collecting up to £14,000 from the public. In France, authorities charged two individuals for collecting €60,000–100,000 for terrorists in Syria and Iraq with the charity named Pearl of Hope. Their social media accounts provided pictures that indicated they were diverting funds to terrorists. Some of the most important donations to ISIL are sadaqa (voluntary donations) from Arab donors in the Gulf countries. These private funders come from Saudi Arabia, Qatar, Kuwait, United Arab Emirates, and the donations fund ISIL in Afghanistan and most importantly, Indonesia. These donations are from very wealthy benefactors as well as private citizens, mostly of whom are from the rising middle-class.

We are highlighting this situation as a serious problem, and as such, terrorist misuse of funds is one of the greatest risks facing the Indonesian charitable sector nowadays,

which seriously undermines public confidence in providing humanitarian aid. If we take a look at the recent regional risk assessment of NPOs and terrorist financing published by the Indonesian Financial Transactions Report and Analysis Center (PPATK), the Australian Transaction Report and Analysis Centre (AUSTRAC), and Bank Negara Malaysia (2017), alongside the national risk assessment issued by PPATK (2016), they clearly state that charitable foundations are one of the corporate forms vulnerable to financial abuse due to their high risk of exposure to the crime of money laundering and terrorist financing.

Tofangsaz (2015) divided the sources of terrorist financing into two, i.e., legal sources, illegal sources, or both. As described in Fig. 1 above, illegal sources derive from criminal activities including arms trafficking, extortion, credit card fraud, robbery, kidnap for ransom, and drug trafficking. Meanwhile, legal sources of terrorist funding have considerable support from and through charities (FATF, 2008 in Tofangsaz, 2015). Terrorists do not possess a monopoly on any particular source or method (Gilmour, et al., 2017). In many cases, as demonstrated in the case study below, terrorist financing utilizes a licit entity and actors to finance terrorist activities.

One of the local charitable foundations being listed as terrorist group under the DTTOT (List of Suspected Terrorist Organizations and Individuals as decided by the Central Jakarta District Court) is the yayasan Al Haramain Foundation Indonesia (“AHFI”), which was also part of the global network of the Al Haramain Foundation (“AHF”), based in Saudi Arabia. The United States Department of the Treasury made an official announcement (U.S. Department of Treasury, 2004) which stated that in the year 2002, the money purportedly donated by AHF for humanitarian purposes to NPOs in Indonesia was diverted for weapons procurement for the needs of terrorists linked with Jamaah Islamiyah (“JI”), with the full knowledge of AHFI. Using a variety of means, AHF has provided financial support to Al-Qaeda operatives in Indonesia, and also to JI, an affiliate of Al-Qaeda. AHF was one of the primary sources of funding for Al-Qaeda network activities in the Southeast Asia region, with funding and financial support channeled to AHF’s national branch in Indonesia, the AHFI.

Another example is related to the bombing in Thamrin, Jakarta, back in 2016. One charitable foundation, the

Yayasan Infak Dakwah Center (“YIDC”) was clearly mentioned in the police investigation report as a funnel for terrorist funding via charitable donations, especially to the Anshor Daulah Batam group (a pro-ISIL local group), located in Batam Island. Such funding was used to finance jihadists’ struggles and their families’ needs since the year 2014 up to the year 2016. These two foundations, AHFI and YIDC, are solid proof that legal entities established under the law as charitable foundations, and thus able to receive donations, humanitarian aid, and sadaqa, were being misused by terrorist groups to support their political purposes.

This paper has adopted a situational crime prevention (“SCP”) approach to eliminating the misuse of charitable foundations for terrorist financing. The AHFI case has been selected and introduced to support the use of a SCP approach. The data collection was conducted through interviews with several sources, observation, library research, and documentation research. A qualitative normative analysis was conducted using a naturalistic generalization technique, which describes the context of the case and its application to other cases.

Schmid (2012) said the meaning of the prevention of terrorism in this context by borrowing and adapting a definition from crime prevention is:

“the anticipation, recognition and appraisal of the risk of an attack or atrocity and the initiation of some action to remove or at least reduce its impact.”

Beebe & Rao (2005) said SCP theory was firstly introduced by Ronald V. Clarke in 1980. The situational approach to crime prevention is defined as a systematic manipulation of the immediate environment through opportunity-reduction interventions that make particular categories of crime more difficult and risky, or less rewarding (Clarke, 1997).

Furthermore, SCP principles have effectively accommodated the evolution of crime engendered by newfound opportunities associated with information technology, such as cybercrime and identity theft. Given the successful record of SCP, it is not surprising that researchers have begun to investigate its versatility by extending SCP principles to counter-terrorism (Clarke & Newman, 2006).

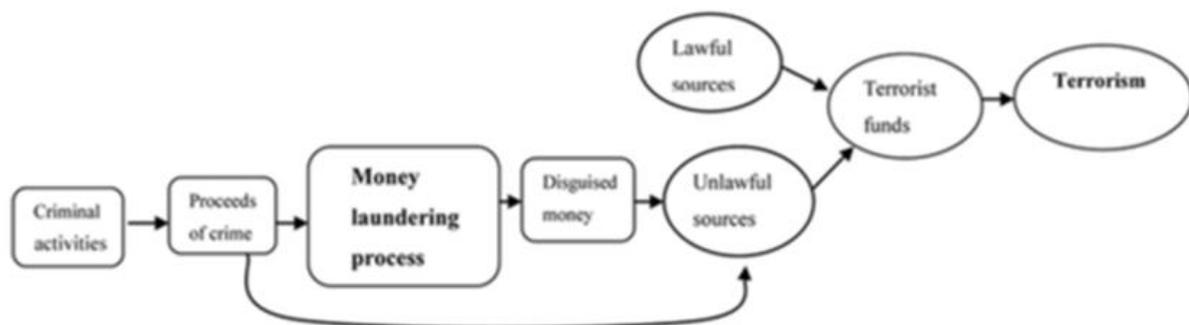


Fig. 1. How Terrorist Financing can be Processed (Tofangsaz, 2015, p.121)

Schmid (2012) stated that enormous resources have been spent on the prevention of terrorist acts since the wake-up call of the 9/11 tragedy. The scope of terrorism prevention measures has also become very broad, especially in developed countries. It ranges from early intervention, such as the prevention of radicalization and recruitment of vulnerable youth, to prevention by pre-empting terrorist plots that are already in the making. It includes the prevention and the obstruction of terrorist financing, the prevention of cross-border movements of known or suspected terrorists, the prevention of weapons and explosives acquisition (incl. chemical, biological, radiological and nuclear precursors) by terrorists, and the protection of critical national infrastructures.

The importance of situational strategies for preventing terrorist acts was emphasized by Clarke and Newman (2006) who underscored the need to understand “how” rather than “why” terrorist events occur. Opportunities become the theoretical centerpiece here because they determine terrorists’ choice of targets and weapons, along with the appropriate tools and societal conditions that facilitate their operations (Clarke & Newman, 2006). For example, an accessible arms market and the ease of procuring false documents makes it easier for terrorists to reach and successfully attack a target. In this article, we suggest that the accessibility of charitable foundations makes them vulnerable to exploitation by terrorists.

II. DISCUSSION

A. *The Proactive and Preventative Effort*

To prevent the misuse of charitable foundations by terrorists a detailed understanding of the legislative policy governing such foundations is required, and also a preventative legal approach against terrorist financing.

Jazuli (2016) mentioned that counter-terrorism relies on a “conventional criminal law” approach based on the principles of “*mens rea*” and “*actus reus*”; an evil deed must be proven, in addition to its intentions, as well as its enactment and consequences. The paradigm of reactive law enforcement means that law enforcement is conducted after an offense has been committed and affected the victim and society. This paradigm makes it difficult for the state to protect its citizens from terrorism.

For this reason, efforts and strategies that are oriented to prevention using proactive law enforcement are needed. Much effort must be made to prevent the radicalization that leads to terrorism without having to wait for actions and their consequences. Legal means to prevent radicalization and terrorism include both formal criminal and material criminal laws. Material criminal law applies to the provisions of Chapter III and Chapter IV of Law Number 15 Year 2003 on the Eradication of Criminal Acts of Terrorism, which was amended by Law Number 5 Year 2018 dated 22 June 2018 as the Amendment to Law Number 5 Year 2003 (“**Terrorism Law**”). Meanwhile, formal criminal law refers to Criminal Procedural Law, as well as Chapter II and Chapter V of Terrorism Law.

According to the material criminal law stated in the Terrorism Law cited above, there should be no obstacles to the investigation and dismantling of international terrorist organizations and movements within the territory of

Indonesia, as regulated in Article 16 and Article 43 of the law. The success of the Indonesian police since the enactment of the Terrorism Law proves that the legal basis for the eradication of terrorism is adequate. However, the prevention of terrorism as recognized in the Principle and Guideline Concerning Human Rights and Terrorism and extended by the Special Rapporteur on Terrorism and Human Rights from the UN Human Rights Promotion and Protection Subcommittee, has been thwarted by an imbalance of policies and strategies against international terrorism. This disparity is due to the fact that law enforcement eradication strategies have been significantly more successful than prevention strategies (Fenton & Price, 2014).

A counter-terrorist strategy must combine law enforcement and prevention which should be conducted simultaneously using a “proactive law enforcement” approach, without ignoring the principle of the rule of law and legality. International terrorism is an organized crime, so the government and the nation of Indonesia must increase their awareness and work together to maintain the unity of the Republic of Indonesia. The eradication of terrorism in Indonesia is not merely a matter of law and law enforcement, but is also a social, cultural, and economic issue that is closely related to the problem of national resilience. Therefore, counter-terrorism policies and preventative measures should be aimed at maintaining a balance between the obligation to protect the sovereignty of the state, the rights of victims and witnesses, as well as the rights of suspects/defendants.

Law Number 9 of 2013 on the Prevention and Eradication of Terrorism Financing (“**CTF Law**”) is one of the state's efforts to protect citizens and their sovereignty from acts of terrorism, by preventing the financing of terrorism. Indonesia's efforts to criminalize terrorist financing are also based on the ratification of the 1999 International Convention for the Suppression of the Financing of Terrorism, to synchronize elements within the convention with the relevant domestic law. Before this international law was enacted, Indonesia had long since arranged its own counter-terrorism law, but it was deemed insufficient to prevent the international flow of funds for terrorist activities.

The CTF Law approach pursues the flow of funds (follow the money) to prevent terrorists from committing acts of terror. This shifting approach to eradicating terrorism is due to discoveries made during the investigation of terrorism itself, one of which has been the huge sources of funds coming from unknown accounts or sent by parties suspected to be financiers of the main terrorists. The strategy aims to target the flow of funding and sources of terrorists’ funds (follow the money). This approach supports a proactive law enforcement strategy that takes preventative action earlier. Besides the CTF Law, the government has also enacted other strong regulations, i.e., (i) the President Regulation Number 13 Year 2018 dated 5 March 2018 regarding the Implementation of the Principles in Knowing Beneficial Owners of Corporate to Prevent and Eradicate Money Laundering and Terrorism Financing; and (ii) the Presidential Regulation Number 18 Year 2017 dated 23 February 2017 regarding the Mechanism of Receiving and Funding of Donation by Mass Organization to prevent Terrorism Financing (“**PR 18/2017**”). Under PR 18/2017,

every organization that intends to receive or provide funding is obligated to firstly conduct a preliminary identification as either the receiver or the financier. This is like a “know your customer” or due-diligence requirement, and this requirement is being closely supervised by the Minister of Home Affairs together with PPAK.

We agree that the above provisions on early identification in PR 18/2017 comprise a very basic preventative measure against the misuse of organizations, including charitable foundations. However, the basic idea behind SCP is to reduce opportunities thus making it harder for perpetrators to get what they want, by increasing the risk of being caught, by reducing the potential rewards involved and, if possible, inducing guilt or shame. Based on principles of SCP, Tore Bjørge, Professor at the Norwegian Police University College, has developed a comprehensive model for the prevention of terrorist crimes, where three important elements that are relevant to this article, namely: (i) *Deterrence* through the threat of punishment or reprisals; (ii) *Protecting vulnerable targets* by making terrorist attacks more difficult and more risky; and (iii) *Reducing the root causes and motivations* that lead people to get involved in terrorism (Bjørge in Schmid, 2012).

We suggest that SCP can be applied and plays a big role in this issue because two main points are crucial in shaping SCP measures. These are: (i) create conditions and an environment for charitable foundations which make terrorism related activities much more difficult, and (ii) obstruct any potential offender or co-offender by increasing the risk of being identified or arrested. We also suggest that applying SCP theory to preventing the misuse of charitable foundations will reduce the potential rewards for terrorist(s) or their benefactors, by denying them opportunities for success.

B. Understanding Foundations

To understand the foundation entity and how its loopholes are being used by terrorists, we need to first touch on the current laws and policies which are relevant to foundations. Under Law Number 16 of 2001, amended by the Law Number 28 of 2004 (“Foundation Law”), a Foundation is defined as a legal entity consisting of assets which are intended to achieve certain objectives in the field of social, religious, and humanitarian services. Such a definition differentiates the basic characteristics of a Foundation, which is collection of assets used to achieve its social objectives.

Wisudawan (2016) mentioned that the structure of the Foundation in general consists of a Chairman, a Secretary, and a Treasurer able to administer the Foundation and capable of performing legal acts, which requires legal competencies as referred to in Article 1320 Civil Code. They should not be a Supervisor or a Council (Article 31). In addition to the Council (*pembina*), a Foundation also has a very important organ that governs all administrative activities, i.e., the Management Board (*pengurus*).

There are four main duties that must be executed by the management in accordance with the mandate stipulated by the Foundation Law in Article 35 paragraph (1), paragraph (3), Article 58 paragraph (1) and Article 63 paragraph (2): 1. Be fully responsible for the stewardship of the achievement of the Foundation's interests and objectives. 2. To appoint

and dismiss the executor of daily activities of the Foundation. 3. Prepare proposed merger plan if there will be a merger. 4. Settle the wealth of the Foundation if the Foundation is disbanded due to the provisions of the Articles of Association. Some of the other management obligations include: (i) carrying out the task in good faith and with full responsibility for the Foundation's interests and objectives; (ii) create and keep records containing information about rights and obligations, as well as other matters relating to the Foundation, (iii) prepare a written annual report on: (a) the circumstances and activities during the past year and the results achieved, (b) the financial position at the end of the period, activities, cash flows and notes of financial statements (Article 49 paragraph 1), (c) rights and obligations of the Foundation resulting from transactions with other parties (Article 49 paragraph 2); and (iv) create and retain the financial documents of the Foundation in the form of bookkeeping evidence and other financial administration data.

In reality, Foundations have now grown like mushrooms with various activities, intentions, and goals. Thus, in order to apply SCP theory, we have to formulate the proper functioning of a Foundation according to its purpose and objectives. This must be based on the principle of openness and accountability to the community when establishing the Foundation itself. In addition, it is also important to ensure community understanding of the purpose and function of the Foundation as a legal entity to ensure it achieves its goals.

The Foundation is represented by the Management Board who are the authority responsible for its operations, although the aims and objectives of the Foundation are defined by stakeholders outside the foundation. This is because the Foundation is not the property of the founder nor the Management Board but is intended to serve a group of people who administer benefits accrued from donations. On the other hand, the survival of the Foundation depends on funds. Assets that are ring-fenced by the founders as initial seed capital are often very small in comparison to the social goals to be achieved, so this capital is not always sufficient to finance the operations of the Foundation. Financially, the Foundation's life will depend on donor contributions, funding from other agencies, as well as government facilities. The amount of grant money acquired can create opportunities for misuse. The role of the Board is vital, because the Foundation as a legal entity requires the Board to act for, and on behalf of, the Foundation, including managing the Foundation's assets to achieve the Foundation's founding objectives.

During the New Order era, the dependence of the Foundation on the funds and the goodwill of the Board were justified to underscore the purpose of the Foundation. A number of Foundations established by certain authorities often use government facilities, in the form of monopolies, waivers/exemptions, and excessive preference in the delivery of orders or work. The provision of various facilities is supported by government policy and legislation, so it seems legal. Foundations have become a means to penetrate the government bureaucracy and overcome the strict technical supervision that often hampers business activities. The lack of bureaucracy and supervision allows Foundations to raise more funds than private companies and even large corporations. Vatikiotis, in Susmayanti (2008) proposed that, ultimately, the facilities received by Foundations are aimed

at benefiting the Foundation's Management Board, which are also usually close to the government. However, the impact of the provision of these facilities undermine taxation, state income, and fairness, thus eroding existing and developing business or trade systems regulations.

The enactment of Law Number 16 of 2001 not only had a positive impact on legal certainty, but in short time, the various forms of Foundations. It also ensnared non-governmental organizations (NGOs), non-political organizations, small charitable foundations under religious flags, as well as educational foundations. Then on October 6, 2004, the government of Megawati Soekarnoputri promulgated the Law of the Republic of Indonesia Number 28 of 2004 as Amendment to Law Number 16 of 2001 regarding Foundations, which comprised the new Foundation Law. The government then enacted regulations under the Foundation Law, as stipulated under: (i) the Government Regulation Number 2 of 2013 regarding the amendment to the government regulation Number 68 of 2008 regarding the Implementation of Foundation Law; and (ii) the Minister of Law's Regulation Number 2 of 2016 dated 25 January 2016 regarding the Changes related to Foundation's Information (jointly, the "**Foundation Laws**").

Nonetheless, the weaknesses of Foundations can still be detected, as they are:

- 1) Oftenly managed unprofessionally. For example, the founder of a Foundation can also become its caretaker. Then the role of the supervisor appointed to oversee the activities and finance of the Foundation may not carry out their work seriously, and their appointment may be conducted as a mere formality. Cases of the misappropriation of funds are still common, for example *zakat* funds are diverted by internal parties from the organization who manage the *zakat*. Such deviations are exemplified such as misuse of funds, manipulation of funding channels, improper sorting mechanisms, and embezzlement of funds. The number of cases of misconduct show the poor governance of Foundations in Indonesia. Therefore, improvements in governance are indispensable. Good governance will foster community trust in a Foundation (Mukhlisin 2015 in Rini, 2016). One of the principles of good governance is accountability, which must be improved and to reduce scandals and violations of the law (Keating, 2003).
- 2) NPOs such as Foundations have various weaknesses regarding accountability due to their lack of public information (Fikri et al., 2010 in Rini, 2016). Disclosure ensures accountability and transparency (Saunah et al, 2014 in Rini, 2016). The management of wealth and the implementation of the Foundation's activities is carried out entirely by the Management Board. The Management Board is obliged to make an annual report to submit to the Council which includes details of the Foundation's financial situation and the development of the Foundation's activities. Supervisors are in charge of guiding and giving advice to the Management Board running Foundation activities. The Management Board and

supervisor of the Foundation are required to be prudent when performing their respective duties. This principle is already stipulated under Foundation Law. This takes the form of anticipatory efforts of the Foundation if the Board and supervisors made mistakes and neglect to perform their duties.

- 3) An audit or examination of the Foundation can be conducted, in accordance with the provisions of Article 53 Paragraph (1), if there are several organs of the Foundation performing acts such as:
 - a. Committing illegal acts;
 - b. Negligence in performing duties;
 - c. Conducting actions that harm the Foundation;
 - d. Performing an act that harms the State.

The purpose of an audit is to obtain the truth about the existence of alleged deviations as intended in Article 53 Paragraph (1) above. However, there are still opportunities for deviations or violations of restrictions. This is due to the absence of severe sanctions against Foundations that violate these restrictions, and also demonstrates a weakness of the current Foundation Law.

C. *Foundations and Terrorism: AHFI*

We introduce a case study of AHFI, which involves five people who were involved in the misuse of the Foundation. AHF was the headquarters of the global network of AHF branches, including AHFI as its Indonesia branch. If we are talking about AHF, then we need to talk about Al-Qaeda too. As said by Abuza (2003), Al-Qaeda's financial network is very sophisticated and complex dating back to the late 1980s to early 1990s. Al-Qaeda's financial backbone was built on charitable foundations, NGOs, mosques, fund-raisers, websites that helped finance the mujahidin, and the network extended to all corners of the Muslim world. After 2003, terrorist movements in Indonesia began to evolve, especially JI. Network evolution is also accompanied by changes in funding patterns. In some of its actions, the JI network in Indonesia was using local or self-funding involving networks in Palembang, Central Sulawesi, Maluku, and other funds obtained from local sources. They obtained funding mainly through:

- a. Donations: i.e., donations collected from followers in a region collected by coordinators, and donations from individuals or organizations or institutions that were provided directly through either the financial system or in cash; and
- b. Building local businesses whose profits were used to fund terrorist activities.

In their research, Gilmour et al. (2017) stated that the terrorist financing process involves three stages, namely: raising funds, transferring funds, and management/utilization of funds. In the latter case, funds are not only used to finance acts of terrorism but also to support other activities, such as daily living expenses, travel, training, propaganda through online media, organizational livelihood costs, and to compensate family members left behind by terrorists.

The AHFI became a source of funds for jihad and Islamic activities (Bhakti, 2018), and was successfully misused by terrorists for obtaining funds. Such activities undertake to

defend Islam and aim to pressure the State to enforce Islamic Shari'ah. The public did not expect that donated funds would be diverted by terrorists to realize a bombing plan or other terrorist act. In the region of Southeast Asia, there are four important Saudi-backed charity organizations that are involved in funding JI: the Islamic International Relief Organization (IIRO), AHF through its Indonesian branch—AHFI, the Medical Emergency Relief Charity (MERC), and the World Assembly of Muslim Youth (Abuza, 2003; and Pacini, et al., 2004).

AHFI was founded around 1998 and has offices in Duren Sawit. The organization's activities are not transparent whereas AHF is more active in the spread of da'i to various regions, building *pesantren* and mosques. One result was the construction of Al-Khoir Mosque in Duren Sawit. Through Al Haramain's aid, the mosque construction committee obtained US \$ 16,000 from Saudi Arabian donors in 2001. Although most donations to Islamic charities go to legitimate social work, albeit to win political support for projects such as mosque construction, charities, and NGOs, a significant amount of money is diverted to terrorist and paramilitary activities (Abuza, 2003).

Another local charitable organization related to AHFI is the Committee for Crisis Response (KOMPAK). KOMPAK was established in August 1998 to provide humanitarian assistance to victims of inter-ethnic conflicts that occurred in Maluku in 1998. One of KOMPAK's leaders is Aris Munandar, an alumni of the Afghanistan mujahidin force in the late 1980s, who actively raises funds not only from the community in Solo, Central Java, but also from funding agencies in the Middle East. In addition to Aris Munandar, another alleged JI related figure is Agus Dwikarna. Agus has served as the chairman of KOMPAK in South Sulawesi and is a local representative of AHFI in Makassar, South Sulawesi. Agus Dwikarna was the main channel of funds from Al-Qaeda to Indonesia. Agus Dwikarna was traced as having multiple bank accounts too, which were frozen in 2002.

Based on the above descriptions and research by Abuza (2003) there were five people involved in the relationship between AHF and JI who were responsible for the misuse of AHFI, namely: (i) Sheikh Bandar, head of Al Haramain's headquarter in Saudi Arabia; (ii) Omar Al Faruq, the key backer of Agus Dwikarna; (iii) Ahmed al-Moudi, head of AHFI; (iv) Agus Dwikarna, an official from AHFI's branch in Makassar; and (v) Aris Munandar, the right hand man of Abu Bakar Ba'asyir, and an AHFI official.

Abuza and other researchers have made a long-list of case studies of terrorist financing yet there are few research studies that stress a practical yet functional approach to applying SCP theory. As Clarke (1997) said, when SCP becomes better known, scholars from a wider range of disciplines may be drawn into discussions about modifying the settings where crimes occur. It is perhaps the case that current criminal policy concepts have less relevance today in a world that is shaped principally by economic forces. New concepts, including SCP, are required to adjust to these social changes. During this disruptive era, digital finance has further influenced terrorist financing practices, while suspicious transaction reports can raise awareness in the appropriate investigation, one-off payments such as those via *PayPal* or any other payment method fail to raise sufficient suspicion to create a suspicious transaction report.

Due to the above situation, we apply SCP by demonstrating that a continuous government intervention would help prevent the misuse of Foundations. As Lutz & Lutz (2004) explained, terrorist groups continue to spread terrorism because firstly, the counter-terrorism techniques used to solve the problem of domestic terrorism have not performed well; secondly, the environment and issues motivating terrorist groups have not been resolved; and thirdly, it appears that the use of violent means by terrorist groups is still working. We urge the government to develop a suitable environment for Foundation entities to implement blockchain technology. So far, the government has issued the Bank Indonesia Regulation Number 19/12/PBI/2017 Regarding Financial Technology dated 30 November 2017 ("PBI 19/2017"). We argue that charitable foundations should be subject to this regulation only if the government has a willingness to encourage Foundations to use blockchain technology (as regulated under Article 3 paragraph (1)) within its donation mechanism, and/or through implementing other regulations. By applying this regulation, we also anticipate minimizing the risk of the misuse of virtual currency and/or bitcoins for any transactions through a Foundation entity. This prohibition has been stipulated under Article 8 paragraph (2) of PBI 19/2017.

From a technological point of view (G20, 2017) blockchain is a revolutionary technology that distributes information as well as rights, responsibilities, and trust to multiple participants in a shared network. On the financing and transparency side, data is updated automatically and synchronously on all ledgers of all nodes of the blockchain, which results in a fundamentally transparent and open ledger system. Transparency is entrenched into distributed ledger technology and is a key attribute of blockchain which makes it highly valuable. Conventionally, access to information is traditionally compartmentalized or fragmented with a detrimental effect on users of such information.

However, countries face significant challenges when implementing measures designed to ensure the timely and accurate availability of beneficial ownership information. Many of these challenges can be traced back to a lack of political will or inadequate legislative and/or institutional frameworks, and especially the local culture. In order to meet international and domestic anti-money laundering regulations, and combat the financing of terrorism, financial institutions and other designated entities must firstly conduct due-diligence processes to verify ownership in accordance with Article 7 of PBI 19/2017.

The transparency, immutability, and security offered by blockchain technology makes it ideal for use in record-keeping, particularly to track the ownership of assets. The potential for blockchain technology to increase transparency has already been demonstrated within NPO sector, such as Ant Financial, an affiliate of Alibaba Group owned by Jack Ma. They used blockchain to record transactions and manage the accountability of philanthropic organizations in an effort to reduce the opacity of existing arrangements and their potential for misuse and/or abuse. The Foundation also used blockchain technology to record donations made by the more than 400 million users of Alipay, the online payments and investment service, also owned by Alibaba. In addition, blockchain networks instill greater confidence in stakeholders and ease access to funding. By utilizing

blockchain technology in this disruptive era, donors are able to track transaction histories and gain a clearer understanding of where their funds go and how they are being used.

D. Understanding Liability

This article has asked whether we are currently prepared to prevent the misuse of Foundations? From a normative perspective, the regulations are already there but need more support. From the current Foundation Law perspective, the Foundation organ that is vulnerable to committing unlawful acts is the Management Board, and so if the Board does not perform its duties properly then criminal sanctions and civil sanctions certainly need to be imposed.

The criminal liability for the Management Board is stipulated in Article 35 paragraph (1) and paragraph (2) of Foundation Law namely: Paragraph (1) The Management of the Foundation is fully responsible for the entire management and entitled to represent the foundation both inside and outside the court. (5) Every member of the management is personally liable if the person in performing his/her duties is not in accordance with the provisions of the Articles of Association, resulting in the loss of the foundation or a third party.

The Trustees of the Foundation may also be subject to legal liability, because in accordance with the mandate of Foundation Law it is clearly stated that supervisors must have good intentions when conducting their duties and provide sound and objective advice on the management of the Foundation, as stipulated in Article 47 of Foundation Law. Similarly, the Council can also be held accountable if it does not direct the foundation in accordance with the intentions and purpose of the foundation in accordance with the Articles of Association. The form of legal liability can lead to criminal sanctions/imprisonment, fines, or administrative sanctions.

If the Board and Supervisor are not well-intentioned, the principle of legal liability that can also be imposed are fiduciary principles which include:

- a. The Conflict Rule that the supervisor/supervisors may not perform the duties for their interests or the interests of others prior to the approval of the Foundation.
- b. The Profit Rule that the Management Board/supervisor does not use their position to gain profits either for personal gain or for the benefit of a third party without the approval of the foundation.
- c. The Misappropriation Rule stipulates that the caretaker/supervisor is prohibited from using or misusing any property of the Foundation for personal or third party interests.

Moreover, any supervisor who is found guilty of negligent supervision of the Foundation and of causing damage to the Foundation, the public and/or the State on the basis of a binding Court verdict, within 5 (five) years cannot be appointed as the Supervisor of any Foundation. This is in line with models of corporate criminal liability. According to (Priyatno 2017, 49) there are three models of corporate criminal liability:

- a. Corporate management as the doer and thus they are liable,

- b. Corporation as the doer and the Management Board become liable,
- c. Corporation as the doer who is also liable.

Thus, corporations cannot escape liability for mistakes made by their Management Boards. Deliberations must be regarded as the intentions of the corporation itself. Since corporate actions are always manifested through human actions, then the delegation of accountability for human actions is considered as corporate action, only if such act is viewed by public as the actions of the corporation (Priyatno 2017, 70).

To avoid the misuse of Foundations, it is crucial that every organ within the Foundation not only observe Foundation Laws, but also to their Articles of Association, have good faith in their actions, as well as implement transparency and accountability principles to avoid unlawful actions that entail criminal liability.

To enforce the above, we apply the SCP approach to demonstrate the importance of community liability surrounding the Foundation. Garoupa, Klick & Parisi (2005) said preventing terrorist acts requires deterring those individuals who would otherwise commit such acts. Our understanding of terrorist organizations and networks suggests that anti-terrorism policy must focus on punishment of the terrorist group, as well as the individual terrorist. Notice that we focus on two distinct aspects. We consider the most obvious case of the liability of active supporters of terrorism, but also the less obvious case of the liability of those who benefit indirectly from terrorism, or are passive supporters of terrorism; that is, those who are in a position to deter terrorism and fail to do so. We agree with Fagan & Meares (2008), who used the example of big city communities in the U.S. post 9/11, and said that in many communities, punishment has become normative; thus losing its contingent value that lends credibility to its claims of fairness and proportionality. As the social and cultural distance between the punishers and the punished continues to widen, respect for the legitimacy of punishment will suffer.

Liability can be imposed on the wrongdoer's i.e., the Foundation's surroundings, not because it benefits from the terrorist acts, but because the surroundings should monitor and prevent terrorist acts more effectively. Stipulating the financial liability of the Foundation and the social environment that provides support could help prevent terrorist actions. In certain settings, this community liability might prove more effective than the individual criminal liability of those directly involved in terrorist activity. Applying by analogy the results of corporate criminal liability side by side with an SCP approach, we suggest that a socially optimal criminal sanctioning policy should entail the financial liability of surrounding groups and families that provide support, or others that could have prevented terrorist actions, over criminal liability (and jail sentences) for those individuals directly involved in terrorist activity.

III. CONCLUSION

This paper has suggested that an SCP approach to understanding the loopholes that exist within Indonesian charitable foundations which could finance terrorism can be minimized. We recognize that the importance of implementing regulating laws, but it takes more than just sophisticated laws and regulations to combat this issue.

Loopholes that can be misused by terrorists remain because the current strategy still depends on the effectiveness of law enforcement and financial intelligence to detect and investigate terrorist financing. We suggest the use of an SCP approach to minimize risk through consistent government intervention and the involvement of community liability. A socially optimal criminal sanctioning policy would entail the financial liability of surrounding groups and families that provide support, or others that could have prevented terrorist actions, over criminal liability (and jail sentences) for those individuals directly involved in terrorist activity. The social environment could support prevention by treating it as community liability. This liability should be treated as a social infrastructure that monitors Foundations and could impose social and criminal sanctions against any action that involves terrorist financing.

Terrorist financing has recently adopted the “path of least resistance” which terrorists can easily tiptoe without raising suspicion. We do not want charitable foundations to be continuously misused and become terrorists’ favorite funding source.

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