



MALAY
ENGLISH

PANDUAN AMALAN TERBAIK MENGURUSKAN NPO

UNTUK PENGARAH / PEMEGANG AMANAH /
PEMEGANG JAWATAN

BEST PRACTICE GUIDES ON MANAGING NPO

FOR DIRECTOR / TRUSTEE / OFFICE BEARER

PROGRAM KESEDARAN KHUSUS UNTUK ORGANISASI BUKAN BERORIENTASIKAN KEUNTUNGAN (NPO) DI MALAYSIA OLEH:
AWARENESS PROGRAM SPECIFICALLY FOR NON-PROFIT ORGANIZATION (NPO) IN MALAYSIA BY:



BAHAGIAN HUKUM KONGSI-UNTUNG
JAMINAN PERUSAHAAN



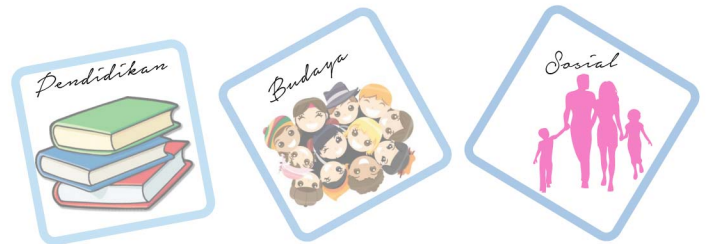
BANK NEGARA MALAYSIA

Panduan Amalan Terbaik Menguruskan NPO Untuk Pengarah / Pemegang Amanah / Pemegang Jawatan

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Kenali NPO



Definisi NPO:

Merujuk kepada individu atau organisasi yang terlibat dalam pengumpulan dan pengagihan dana bagi tujuan seperti kebajikan, agama, budaya, pendidikan, sosial, persaudaraan, atau dalam menjalankan kerja-kerja baik yang lain – Financial Action Task Force (FATF).

Kepelbagaian Entiti NPO di Malaysia

Di Malaysia, NPO boleh diwujudkan di bawah pihak pengawal selia yang berikut sebelum menjalankan aktiviti-aktiviti yang dirancangkan:

- (a) Yayasan Amanah yang diperbadankan di bawah Akta Pemegang Amanah (Pemerbadanan) 1952.
- (b) Syarikat Berhad Menurut Jaminan yang diperbadankan di bawah Akta Syarikat 1965.
- (c) Pertubuhan iaitu entiti yang didaftarkan di bawah Akta Pertubuhan 1966.
- (d) Syarikat Amanah dan Yayasan Labuan yang didaftarkan masing-masing di bawah Akta Amanah Labuan 1996 dan Akta Yayasan Labuan 2010.





Risiko NPO Disalahgunakan

Secara amnya, NPO berisiko untuk disalahgunakan dalam tiga keadaan iaitu:

- Bagi individu yang mengawal urusan harian NPO untuk kepentingan individu, iaitu pengarah/pemegang amanah/pemegang jawatan;
- Bagi tujuan aktiviti pengubahan wang haram; dan
- Bagi tujuan aktiviti pembiayaan keganasan.

Mengapa NPO Terdedah Kepada Risiko Penyalahgunaan?

Secara amnya, NPO adalah berisiko untuk disalahgunakan berdasarkan kepada faktor-faktor seperti berikut:

- Bersifat global, di mana sesebuah NPO **mudah mendapat akses** untuk menjalankan aktiviti atau transaksi di dalam atau di luar negara;
- NPO mendapat **kepercayaan awam**;
- Aktiviti atau transaksi NPO lazimnya **melibatkan wang tunai**;
- Bergantung kepada **aktiviti dan lokasi**, NPO terdedah kepada isu pengubahan wang haram dan pembiayaan keganasan. Selain itu, faktor **sistem perundangan** berkaitan pengubahan wang haram dan pembiayaan keganasan di sesuatu negara juga turut menyumbang kepada risiko tersebut;
- Penyaluran bantuan atau sumbangan melibatkan bilangan **penerima manfaat yang ramai**; dan
- Kelemahan dalam pengurusan organisasi kerana kurang memberi perhatian terhadap sistem kawalan dalaman dan pengurusan risiko kerana beranggapan NPO hanyalah sebuah entiti bukan berorientasikan keuntungan.

Penyalahgunaan NPO di Peringkat Global

- Bagi tempoh November 2001 hingga Mac 2008, terdapat 26 kes di Amerika Syarikat, yang melibatkan pendakwaan terhadap badan amal atau individu di bawah undang-undang berkaitan pembiayaan keganasan. (*Center on Law and Security, NYU School of Law 2008*)
- Badan amal seperti *Benevolence International Foundation, Global Relief Foundation dan Holy Land Foundation for Relief and Development* didapati telah terlibat dalam membiayai pertubuhan-pertubuhan penganas dalam bentuk kebajikan. (*Roth, Greenberg & Wille 2004*)



Amalan Terbaik Pengurusan NPO Untuk Pengarah / Pemegang Amanah / Pemegang Jawatan

Lembaga Pengarah / Pemegang Amanah / Pemegang Jawatan hendaklah:

- Mengamalkan tadbir urus yang baik terutamanya memastikan tiada percanggahan kepentingan antara tugas untuk organisasi dan kepentingan peribadi;
- Mengamalkan pengurusan kewangan yang kukuh dengan memastikan penyata kewangan diaudit dan aktiviti dijalankan selaras dengan objektif organisasi;
- Mengamalkan kawalan dalam dan kewangan yang mantap antaranya melalui penyediaan prosedur penerimaan dan penggunaan dana;
- Menetapkan prosedur pengurusan risiko sebagai salah satu faktor penting dalam tadbir urus yang berkesan;
- Menguruskan dengan baik rekod aktiviti dan transaksi organisasi termasuk maklumat pihak-pihak yang berkaitan seperti penyumbang dan penerima dana;
- Memastikan undang-undang yang mengawalselia NPO sentiasa dipatuhi; dan
- Berusaha untuk mendapat pensijilan antarabangsa yang diperakui seperti **Humanitarian Accountability Partnership** (bagi NPO yang berkenaan).



FAHAMI TANGGUNGJAWAB PENGARAH/PEMEGANG AMANAH/PEMEGANG JAWATAN

Amalan tadbir urus yang baik:

Pengarah / Pemegang Amanah / Pemegang Jawatan hendaklah mengamalkan tadbir urus yang baik dalam pengurusan NPO menurut kehendak undang-undang yang berkaitan, antaranya adalah:-

- Sentiasa melaksanakan tugas sebagai pengarah/pemegang amanah/pemegang jawatan dengan jujur;
- Memastikan objektif penubuhan NPO tersebut dicapai;
- Mengguna dan meningkatkan pengetahuan, kemahiran dan pengalaman untuk menguruskan organisasi;
- Tidak menyalahgunakan NPO untuk kepentingan individu atau diri sendiri; dan
- Memastikan wujudnya sistem laporan secara berkala kepada mana-mana individu atau kumpulan individu yang telah dilantik dan mempunyai kuasa seliaan terhadap sesebuah NPO di bawah piagam organisasi tersebut.



(2)
**MEMASTIKAN
REKOD DAN
DOKUMEN
SOKONGAN
YANG LENGKAP
DISIMPAN.**



Pengurusan kewangan yang kukuh:

Memastikan rekod berkaitan aktiviti NPO disimpan dengan lengkap, termasuklah rekod perakaunan dan lain-lain rekod yang boleh menerangkan aktiviti / transaksi dan kedudukan kewangan organisasi dengan cara:

- Merekodkan setiap transaksi yang berlaku pada kadar yang segera dan munasabah;
- Merekodkan maklumat berkaitan pihak-pihak yang terlibat dengan aktiviti organisasi termasuk maklumat penerima manfaat dan NPO yang bersekutu bagi memudahkan rujukan dan menggalakkan ketelusan; dan
- Menyimpan rekod-rekod tersebut termasuk dokumen-dokumen sokongan dengan selamat atau difikirkan sesuai dan menurut kehendak undang-undang yang berkaitan.

(3)
**MEMASTIKAN
NPO MEMPUNYAI
SISTEM KAWALAN
DALAMAN DAN
PENGURUSAN
RISIKO.**



Memastikan NPO mempunyai sistem kawalan dalaman dan pengurusan risiko:

Pengarah / Pemegang Amanah / Pemegang Jawatan NPO perlu memastikan **sistem kawalan** dalaman disediakan dan dipatuhi bagi melindungi aset dan kepentingan organisasi.

Selain itu juga, mereka juga perlu mewujudkan **pengurusan risiko** di dalam pengurusan organisasi terutamanya memastikan kelangsungan organisasi dan untuk mengelakkan organisasi tersebut daripada terlibat di dalam aktiviti pengubahan wang haram dan pembiayaan keganasan. Antara langkah-langkah pencegahan yang perlu diambil adalah:

- Menggunapakai prinsip "*know your beneficiaries and associated NPOs*", yang bermaksud NPO hendaklah mengambil langkah sewajarnya untuk mengenalpasti dan merekodkan identiti, kelayakan dan kedudukan pihak yang menerima manfaat bagi mengelakkan penyalahgunaan dana oleh penerima berkenaan atau NPO yang bersekutu;
- Mendokumentasi dan melindungi maklumat penting penyumbang/ penderma / penerima manfaat dan NPO yang bersekutu; dan
- Merekodkan setiap transaksi domestik dan antarabangsa secara terperinci untuk memastikan dana digunakan selaras dengan objektif NPO. Rekod-rekod ini mestilah tersedia untuk semakan oleh pihak berkuasa. (FATF 2012)

(4)
**MEMATUHI
KEHENDAK
UNDANG-
UNDANG
YANG
BERKAITAN**



Pematuhan terhadap perundangan khusus yang mengawal selia NPO:

Pengarah / Pemegang Amanah / Pemegang Jawatan perlu memastikan kehendak-kehendak di bawah undang-undang khusus yang mengawal selia NPO tersebut sentiasa dipatuhi.

MAKLUMAT-MAKLUMAT LAIN BERKAITAN PENGUBAHAN WANG HARAM DAN PEMBIAYAAN KEGANASAN



SARANAN FATF:

www.fatf-gafi/recommendation

LAMAN SESAWANG AGENSI PENGAWAL SELIA NPO DI MALAYSIA:

Bahagian Hal Ehwal Undang-Undang, Jabatan Perdana Menteri:
www.bheuu.gov.my

Jabatan Pendaftaran Pertubuhan Malaysia:
www.ros.gov.my

Suruhanjaya Syarikat Malaysia:
www.ssm.com.my

Lembaga Perkhidmatan Kewangan Labuan (Labuan FSA):
www.lfsa.gov.my



Lembaga Pengarah / Pemegang Amanah / Pemegang Jawatan perlu peka terhadap saranan *Financial Action Task Force* (FATF) berhubung langkah-langkah yang perlu diambil bagi melindungi NPO daripada terlibat di dalam aktiviti pengubahan wang haram atau pembiayaan keganasan serta bertindak secara bertanggungjawab sekiranya terdapat keraguan melibatkan isu-isu tersebut. Maklumat berkaitan saranan daripada FATF boleh diperolehi melalui laman sesawang FATF di:

- www.fatf-gafi/recommendation dan
- <http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf>

Untuk maklumat lanjut berhubung lain-lain keperluan di bawah undang-undang khusus yang perlu dipatuhi oleh NPO, sila lawati laman sesawang agensi-agensi pengawal selia yang berkaitan.

Maklumat mengenai *Humanitarian Accountability Partnership* (HAP) boleh diperolehi melalui laman sesawang HAP di www.hapinternational.org.

GLOSARIAM (FATF 2012)

GLOSARI

Penerima Manfaat

Merujuk kepada perseorangan, atau kumpulan yang menerima bantuan kebajikan dan kemanusiaan atau lain-lain bantuan yang termaktub di bawah peruntukan dokumen konstituen sesebuah NPO.

NPO Yang Bersekutu

Termasuk cawangan asing bagi NPO antarabangsa.

FATF

The Financial Action Task Force – adalah sebuah badan bebas antara kerajaan yang menetapkan piawaian, membangun dan mempromosi dasar untuk membanteras pengubahan wang haram, pembiayaan pengganas serta pembiayaan pemajuan dan penghasilan senjata pemusnah besar-besaran.

Best Practice Guides On Managing NPO For Director / Trustee / Office Bearer

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- Other Information Relating To Money Laundering and Terrorism Financing
- General Glossary (FATF 2012)

About NPOs



Definition of NPOs:

Refers to legal person or arrangement or organization that primarily engages in raising or disbursing funds for charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works" - Financial Action Task Force (FATF).

Variety of NPO Entities in Malaysia

In Malaysia, NPOs are established under any of the following regulators before it can carry out planned activities.

- (a) Trust Fund – incorporated under Trustees Act 1952.
- (b) Company Limited by Guarantee – incorporated under Companies Act 1965.
- (c) Organization – registered under Incorporation Act 1966.
- (d) Trust Company and Labuan Foundation – registered under Labuan Trust Act 1966 and Labuan Foundation Act 2010 respectively.





Risk Of NPOs Being Misused

There are multiple ways in which NPOs may be misused:

- For individual who controls daily business operation for personal interests, i.e. director/trust holder/office bearer;
- For money laundering activities; and
- For terrorism financing activities.

Why NPOs Are Exposed To The Risk Of Being Misused?

Generally, NPOs are at risk of being misused due to the following factors:

- Global in nature, NPOs have **easy access** to carry out activities or transactions within and outside the country;
- NPOs gain **public trust**;
- NPO activities and transactions are typically **cash intensive**;
- Depending on **activities and locations**, NPOs are exposed to the risk of money laundering and terrorism financing. In addition, the present **legal system** which relates to money laundering and terrorism financing in specific countries also contributes to the risk;
- Aids or donations usually involves a significant number of **beneficiaries**; and
- Weaknesses in managing the organization due to lack of attention given to the implementation of proper internal control system and risk management due to the general understanding that NPOs is a not for profit oriented entities.



Abuse of NPO at Global Level

- From November 2001 to March 2008, there were 26 cases in United States of America, involving the prosecution of charitable bodies or individuals under laws relating to terrorism financing. (Center on Law and Security, NYU School of Law 2008)
- Charities bodies such as Benevolence International Foundation, Global Relief Foundation dan Holy Land Foundation for Relief and Development were found to be involved in financing terrorism activities by way of charity. (Roth, Greenberg & Wille 2004)

Best Practice In Managing NPOs For Director / Trustee / Office Bearer

Board of Director / Trustee / Office Bearer must :

- Practice good governance to ensure no conflict of interest in discharging their duties to the organization and personal interests;
- Practice sound financial management by ensuring that financial statements are audited and activities carried out are in line with the organization's objectives;
- Have proper internal financial control by having and adhering to the procedures that includes receipts and disbursements of funds;
- Implement risk management procedure as one of the important factor for effective governance;
- Have proper records of the organization's activities and transactions which include information on donors and recipients of funds;
- Ensure that legal requirements governing NPOs are observed; and
- Consider to attain a recognized international accreditation such as the **Humanitarian Accountability Partnership** (for applicable NPOs).



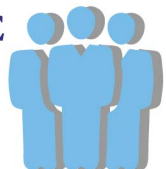
UNDERSTANDING THE RESPONSIBILITY OF DIRECTOR / TRUSTEE / OFFICE BEARER

Good Governance Practices:

Director / Trustee / Office Bearer must practice good governance in the management of NPOs in accordance with relevant laws, including:-

- Constantly performing the duties of the director/trustee/office bearer in an honest manner;
- Ensuring that the objectives of the NPO are achieved;
- Practicing and enhancing knowledge, skills and experience to manage the organization;
- Not abusing the NPO for interests of individuals or themselves; and
- Ensuring there is regular reporting systems to an individual or group of individuals who have been appointed and have power of supervision over the NPO under the charter of the organization.

(1) GOOD GOVERNANCE PRACTICE



(2)
**ENSURING THE
KEEPING OF
RECORDS
AND
SUPPORTING
DOCUMENTS
ARE COMPLETE.**



Efficient financial management:

Ensuring that complete records on activities relating to NPOs are kept, including accounting records and other records that may explain the activities / transactions and financial position of the organization such as:

- Record all transactions in a prompt and reasonable time frame;
- Record information about the parties involved in the organization including information on beneficiaries and associated NPOs for ease of reference and to promote transparency; and
- Keeping of records which includes the supporting documents safely or deem appropriate and in accordance with relevant laws.

(3)
**ENSURING
NPOs HAVE
INTERNAL
CONTROLS
AND RISK
MANAGEMENT
SYSTEM.**



Ensuring that NPOs have a system of internal control and risk management:

Director / Trustee / Office Bearer NPO must ensure that **systems of internal controls** are in place and adhered to in order to protect the assets and interests of the organization.

In addition, they also need to establish **risk management** in organizational management, particularly to ensure the survival of the organization (organization continuity) and to prevent the organization from being involved in money laundering and terrorism financing. Among the preventive measures to be taken are:

- Adopt the principle of "know your beneficiaries and Associated NPOs", which means NPO shall take reasonable steps to identify and record the identity, qualifications and position of the person receiving the benefit in order to avoid misuse of funds by the recipient;
- Documenting and protecting information of important contributors / donors/ Associated NPOs and beneficiaries of the company; and
- Record all domestic and international transactions in detail to ensure that the funds are used in accordance with the objectives of the NPO. These records must be made available for review by the authorities. (FATF 2012)

(4)
**TO COMPLY
WITH
APPLICABLE/
RELATING LAWS**



Compliance with specific legislation regulating the NPO:

Director / Trustee / Office Bearer must ensure that the requirements under specific laws that regulate the NPO are always be observed.

OTHER INFORMATION RELATING TO MONEY LAUNDERING AND TERRORISM FINANCING



FATF RECOMMENDATION:
www.fatf-gafi/recommendation

RELEVANT WEBSITE OF RESPECTIVE NPO REGULATORY AGENCIES IN MALAYSIA:

Legal Affairs Division (BHEUU) Prime Ministers Department:
www.bheuu.gov.my

Registrar of Societies of Malaysia:
www.ros.gov.my

Companies Commission of Malaysia:
www.ssm.com.my

Labuan Financial Services Authority (Labuan FSA):
www.lfsa.gov.my



Board of Director / Trustee / Office Bearer need to be aware of the Financial Action Task Force (FATF) recommendations relating to the measures to be undertaken to protect NPOs from being abused for money laundering or terrorism financing (ML/TF) and to act responsibly in case of suspicious activities relating to ML/TF. Information regarding the FATF recommendations can be obtained via these website:

- www.fatf-gafi/recommendation and
- www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf

For more information on other requirements under other specific laws that must be adhered by the NPO, please visit the relevant website of respective regulatory agencies.

Please refer to the website www.hapinternational.org for detail information about Humanitarian Accountability Partnership (HAP).

GENERAL GLOSSARY (FATF 2012)

GLOSSARY

Beneficiaries

It refers to those natural persons, or groups of natural persons who receive charitable, humanitarian or other types of assistance through the services of the NPO.

Associated NPOs

Includes foreign branches of international NPOs.

FATF

The Financial Action Task Force – is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapon of mass destruction.

PENERBITAN RISALAH INI ADALAH INISIATIF DARIPADA AGENSI-AGENSI BERIKUT:
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