



ANALYSIS OF THE LEGAL STATUS OF FOUNDATIONS AS LEGAL ENTITIES IN INDONESIA BASED ON LAW NUMBER 28 OF 2004*

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Abstract:

This study examines the legal status of foundations, the legal implications of foundation management exceeding its authority or failing to fulfill its duties, and the obstacles to enforcing the law against foundations that deviate from their obligations. The background of this study is based on the importance of foundations as non-profit legal entities in social, religious, and humanitarian activities. However, there are often deviations in management that are detrimental to the community and undermine the foundation's goals. The study employs a qualitative method, combining a literature-based approach with a normative legal approach. Data were obtained from a comprehensive literature study, encompassing legal literature, scientific journals, laws and regulations, as well as the opinions of legal experts. Law No. 28 of 2004 was analysed in a normative legal manner, focusing on the legal status of foundations and their legal implications. The study's results indicate that Law No. 28 of 2004 provides legal protection for foundation assets, ensuring that they are used exclusively for social, religious, and humanitarian purposes. However, foundation management can be held personally liable if they abuse their authority or are negligent in their duties. The study also identified obstacles to enforcing the law against foundations that deviate, including weak government supervision, unclear authority between agencies, and a complex bureaucracy. This study emphasises the importance of strengthening effective regulation and oversight so that foundations can carry out their functions by the objectives of their establishment, providing legal certainty and optimal protection for both the community and the foundation itself.

Keywords: Foundation; Legal Entity; Legal Status

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A. INTRODUCTION

Foundations serve as essential legal bodies within Indonesia's social, religious, and educational sectors. In the social domain, foundations enhance community welfare by establishing hospitals, orphanages, and diverse programs designed to elevate the quality of life. In the realm of religion, foundations facilitate endeavors such as the erection of places of worship and the orchestration of religious events, thereby reinforcing the spiritual and moral values of the community. In the education sector, foundations make significant contributions to establishing and managing educational institutions, including madrasahs and schools, and offer scholarships to disadvantaged students, thereby facilitating equitable access to quality education. Research conducted by Ariyani and Noviyanti (2021) indicates that foundations are integral to all facets of educational delivery, encompassing human resource management, curriculum development, and facility provision. The proactive involvement of foundations in these three domains has a substantial impact on social development and the enhancement of community welfare.¹

Law Number 28 of 2004, amending Law Number 16 of 2001 on Foundations, provides the legal framework that delineates the status of foundations as legal entities in Indonesia. Before this legislation, the creation and administration of foundations often led to legal ambiguity due to the absence of definitive and organised procedures. This issue impacts the fragile legal status of foundations, particularly in terms of legal accountability and asset management.

Law No. 28 of 2004 implemented significant modifications that enhanced the legal standing of foundations. Foundations are recognised as legal bodies upon ratifying their deed of creation by the Minister of Law and Human Rights. This ensures legal certainty concerning the status of foundations as authorised legal entities. This statute outlines the organisational structure of foundations, comprising patrons, administrators, and supervisors, along with their respective roles and responsibilities. This seeks to enhance accountability and openness in foundation management.² Furthermore, Law No. 28 of 2004 prohibits

¹ Ariyani, D., & Noviyanti, D. (2021). Peran Yayasan Dalam Peningkatan Mutu Pendidikan Madrasah Ibtidaiyah di Cilacap. *Jurnal Penelitian Agama*, 22(2), 239–259. <https://doi.org/10.24090/jpa.v22i2.2021.pp239-259>

² Murniati, S. (2019). Kedudukan Hukum Yayasan Berdasarkan Undang-Undang Nomor 28 Tahun 2004. *Jurnal Hukum dan Keadilan*, 5(1), 45-58.

foundations from generating profits for their administrators or other entities. They must allocate their assets for social, religious, and humanitarian objectives in alignment with their founding intent and purpose. This rule affirms the role of foundations as nonprofit legal entities and prohibits the misappropriation of assets for personal gain.³

Implementing Law No. 28 of 2004 has fortified and clarified the legal status of foundations in Indonesia. This legislation ensures that foundations are administered professionally and adhere to sound governance principles, enabling them to fulfill their ideal role in social development and community welfare. This facilitates the attainment of foundational objectives in education, social matters, and religion.⁴

Foundations in Indonesia play a crucial role in the social, educational, and humanitarian sectors. Nonetheless, in administering these entities, numerous foundations encounter various legal challenges that may hinder their attainment of their organisational objectives. These issues frequently occur due to insufficient internal and external oversight, as well as foundation administrators' inadequate understanding of the law.

A prevalent issue is the improper utilisation of foundation assets. Instances exist where foundation assets are utilised for the personal benefit of administrators or other entities, contrary to the foundation's intended purpose. This misuse often occurs due to foundation managers' limited understanding of the constraints on asset utilisation in compliance with legal requirements, combined with inadequate oversight from regulatory bodies. This condition unequivocally contravenes the non-profit principle that foundations must adhere to in executing their activities.

A frequent issue is the restriction on the foundation's business operations. According to Law No. 28 of 2004, foundations may form or engage in commercial enterprises with a capital participation limit of up to 25% of the foundation's total assets. Numerous foundations engage in business activities directly or surpass the established restrictions. This conflicts with legal

³ Putra, A. (2020). Implementasi UU Yayasan dalam Pengelolaan Aset Yayasan di Indonesia. *Jurnal Hukum Bisnis*, 8(3), 127-139.

⁴ Yusuf, H., & Maulana, R. (2021). Peran UU No. 28 Tahun 2004 dalam Meningkatkan Transparansi Yayasan. *Jurnal Ilmiah Hukum*, 10(2), 75-88.

stipulations and may hide the foundation's primary objective as a non-profit entity.⁵

The absence of openness and accountability in foundation management constitutes a significant issue. Numerous foundations fail to implement the ideal of transparency in financial management and operational activities, engendering distrust among the public and contributors. Insufficient oversight and inaccuracies in financial reporting may lead to legal issues regarding the accountability of foundation administrators.⁶ Furthermore, instances of overlapping roles within the foundation's organisational structure frequently arise. Members of the foundation's advisory, administrative, or supervisory bodies sometimes hold simultaneous roles in corporate organisations established by the foundation, a practice that is legally prohibited. This practice may create a conflict of interest in the foundation's management and adversely affect the parties involved.⁷ Another problem is the ownership of assets in personal names. In some cases, foundation assets, such as land and buildings, are registered in the individual names of the foundation's administrators or founders. This practice creates an unclear legal status for these assets and has the potential to lead to future legal disputes.⁸

The issues above indicate that enhancing foundation governance and oversight is crucial for the competent and accountable management of their operations in compliance with existing legal standards. Enhancing legal awareness among foundation managers is essential to prevent asset misuse and other legal infractions that could harm the broader society.

This research is of paramount importance due to the significant role of foundations in Indonesia's social, educational, and religious sectors. Foundations, being non-profit legal entities, include distinct qualities that differentiate them from other legal entities, including limited liability companies and cooperatives. Foundations operate to conduct social activities without

⁵ Murniati, S. (2019). Kedudukan Hukum Yayasan Berdasarkan Undang-Undang Nomor 28 Tahun 2004. *Jurnal Hukum dan Keadilan*, 5(1), 45-58.

⁶ Yusuf, H., & Maulana, R. (2021). Peran UU No. 28 Tahun 2004 dalam Meningkatkan Transparansi Yayasan. *Jurnal Ilmiah Hukum*, 10(2), 75-88.

⁷ Murniati, S. (2019). Kedudukan Hukum Yayasan Berdasarkan Undang-Undang Nomor 28 Tahun 2004. *Jurnal Hukum dan Keadilan*, 5(1), 45-58.

⁸ Sari, D. (2019). Penggunaan Aset Yayasan oleh Pengurus dan Permasalahannya. *E-Jurnal UNISDA*, 4(1), 67-79.

financial motives; thus, their regulation under Law Number 28 of 2004, which amends Law Number 16 of 2001, is crucial to ensure compliance with anticipated legal and ethical standards.⁹

This research is vital due to several legal issues in foundation management practices. Issues include asset misappropriation, operational constraints, insufficient transparency and accountability, and redundant roles within the foundation's organisational structure.¹⁰ This issue has led to numerous foundations failing to perform their tasks effectively and straying from their intended goal. This underscores the necessity of comprehensive research on the legal position of foundations to deliver effective solutions for implementing Law No. 28 of 2004 and to enhance future foundation administration. This research is crucial for identifying legal deficiencies in foundation regulations and offering recommendations to policymakers to develop more comprehensive regulations. This research aims to enhance oversight and accountability in foundation management, while promoting greater openness in the execution of social activities.¹¹ Therefore, this research is relevant not only to academics and legal practitioners, but also to foundation administrators, the general public, and the government, in understanding and effectively implementing existing legal provisions.

This study is notably innovative as it offers a more thorough examination of the legal position of foundations in Indonesia, particularly following the amendments to Law No. 28 of 2004. This study will focus on the practical application of Law No. 28 of 2004, taking into account the new provisions that modify the existing legal framework for foundations, despite numerous prior studies examining foundations and related regulations. This study critically examines the impact of regulatory changes on foundation management, with a particular focus on openness, accountability, and oversight.

This study also introduces the legal issues frequently encountered in foundation management practices. The discussion will delve into asset misappropriation, position redundancy, and constraints on foundational

⁹ Sari, D. (2019). Penggunaan Aset Yayasan oleh Pengurus dan Permasalahannya. E-Jurnal UNISDA, 4(1), 67-79

¹⁰ Murniati, S. (2019). Kedudukan Hukum Yayasan Berdasarkan Undang-Undang Nomor 28 Tahun 2004. Jurnal Hukum dan Keadilan, 5(1), 45-58.

¹¹ Putra, A. (2020). Implementasi UU Yayasan dalam Pengelolaan Aset Yayasan di Indonesia. Jurnal Hukum Bisnis, 8(3), 127-139.

business operations to investigate underlying causes and provide remedies grounded in current regulations. This study examines the disparity between legal provisions and foundation management practices that have been inadequately addressed in legal literature.¹²

This study aims to make a novel contribution by shedding light on the legal status of foundations within the Indonesian context, which is often perceived as lacking transparency. To contribute to the ongoing legal discussion on foundations, this study will elaborate on the legal status of foundations as outlined in Law No. 28 of 2004 and propose steps to enhance the enforcement of laws, thereby improving the accountability of foundations.¹³

From the background above, several questions can be formulated as the focus of discussion, namely: What is the legal position of foundations according to Law No. 28 of 2004? What are the legal implications if the foundation's management exceeds its authority or fails to fulfill its duties? What are the obstacles to law enforcement against foundations that deviate?

B. METHODS

This study employs a qualitative research methodology utilising a literature review and a legal analysis. This method was selected due to the study's focus on normative examination of legal laws concerning the status of foundations in Indonesia. The literature approach (library research) emphasises aggregating secondary material from many pertinent sources, including statutes, regulations, books, scientific journals, academic articles, and legal publications. The objective is to understand the legal principles governing the status of foundations and to identify the legal issues that arise in their administration. This technique enables the study to delineate diverse legal interpretations emerging in academic literature and offer a comprehensive analysis.¹⁴

The statutory approach systematically and structurally examines Law No. 28 of 2004, which amends Law No. 16 of 2001 regarding foundations. This

¹² Yusuf, H., & Maulana, R. (2021). Peran UU No. 28 Tahun 2004 dalam Meningkatkan Transparansi Yayasan. *Jurnal Ilmiah Hukum*, 10(2), 75-88.

¹³ Putra, A. (2020). Implementasi UU Yayasan dalam Pengelolaan Aset Yayasan di Indonesia. *Jurnal Hukum Bisnis*, 8(3), 127-139.

¹⁴ Nurhayati, S., & Hidayat, R. (2021). Pendekatan Normatif dalam Penelitian Hukum: Suatu Kajian Teoretis. *Jurnal Hukum dan Keadilan*, 7(2), 120-130.

approach analyses the legal stipulations within the statutes regulating foundations, encompassing elements related to their establishment, administration, operational activities, oversight, and accountability mechanisms. This study's legal analysis involved identifying relevant legislative laws, assessing their practical application, and critiquing provisions deemed ineffectual in governing foundations.¹⁵ This study employs qualitative methodologies, complemented by a literary and legal framework, to provide a comprehensive analysis of foundations' legal positions and identify the legal issues that arise in their management practices. The findings of this analysis are expected to enhance legal theory and provide policymakers with feedback for refining foundational rules in Indonesia.¹⁶

C. RESULTS AND DISCUSSION

1. Legal Status of Foundations as Legal Entities Based on Law No. 28 of 2004

Foundations in Indonesia possess a distinct legal status as private legal entities involved in social, religious, and humanitarian activities. Law No. 28 of 2004, which amends Law No. 16 of 2001 on Foundations, emphasises the legal status of foundations as entities possessing distinct rights and obligations, independent of their founders, managers, and supervisors. This indicates that foundations, as legal bodies, possess distinct assets separate from the personal assets of their management and founders.¹⁷

Law No. 28 of 2004 ensures legal certainty concerning the status of foundations as legal entities, as they are constituted by a notarial deed and sanctioned by the Minister of Law and Human Rights. Foundations can perform legal activities as legal entities, which include entering into contracts, possessing property, and assuming legal responsibilities. This amendment to the law further delineates the constraints on foundations' business activities, permitting them to own or participate in a business entity only up to 25% of the foundation's total assets, thereby ensuring the foundation's primary emphasis remains on social

¹⁵ Sari, D. (2019). Penggunaan Aset Yayasan oleh Pengurus dan Permasalahannya. E-Jurnal UNISDA, 4(1), 67-79.

¹⁶ Rahman, A., & Hasan, H. (2020). Pendekatan Statuta dalam Analisis Hukum Yayasan di Indonesia. Jurnal Ilmu Hukum Indonesia, 5(3), 145-158.

¹⁷ Mulyadi, A. (2019). Kedudukan Hukum Yayasan di Indonesia Berdasarkan UU No. 28 Tahun 2004. Jurnal Hukum dan Pembangunan, 49(2), 153-170.

and non-commercial objectives.¹⁸ Law No. 28 of 2004 enhances transparency and accountability in the management of foundations. Foundations must prepare yearly reports detailing their operations and finances, subject to audit by authorities. This aims to prevent the misappropriation of foundation funds and ensure prudent management in line with its founding purposes.¹⁹

The legal position of foundations under Law No. 28 of 2004 establishes a more definitive and robust legal framework for governing their management and activities. This is expected to enhance public confidence and the effectiveness of foundations in implementing social, religious, and humanitarian initiatives in Indonesia.

2. The Nature of Foundations as Non-Profit Legal Entities

Foundations in the Indonesian legal system are non-profit legal entities that have social, religious, and humanitarian goals. The nature of foundations as non-profit legal entities is emphasised in Law No. 28 of 2004, which concerns Amendments to Law No. 16 of 2001 regarding Foundations. This law states that foundations are not permitted to distribute profits to founders, administrators, supervisors, or other parties. Therefore, the foundation's assets must be utilised entirely to achieve the purpose for which the foundation was established.²⁰

As a non-profit legal entity, a foundation has distinct characteristics that set it apart from other legal entities, such as limited liability companies or cooperatives. First, a foundation is established by a notarial deed authorised by the Minister of Law and Human Rights, making it a legitimate and separate legal entity from its founders, administrators, and supervisors. Second, a foundation has assets that are separate from the personal assets of its founders, which means that the founders cannot reclaim assets that have been transferred to the foundation.²¹

¹⁸ Rahman, S., & Putri, D. (2020). Implementasi UU No. 28 Tahun 2004 dalam Pengelolaan Yayasan di Indonesia. *Jurnal Hukum Bisnis Indonesia*, 12(3), 45-58.

¹⁹ Santoso, B. (2021). Transparansi dan Akuntabilitas dalam Pengelolaan Yayasan Berdasarkan UU No. 28 Tahun 2004. *Jurnal Ilmu Hukum Indonesia*, 7(1), 34-47.

²⁰ Santoso, B. (2018). Kedudukan Yayasan sebagai Badan Hukum Nirlaba dalam Hukum Indonesia. *Jurnal Hukum Indonesia*, 6(2), 101-115.

²¹ Setiawan, H. (2019). Karakteristik Yayasan sebagai Badan Hukum Nirlaba di Indonesia. *Jurnal Hukum dan Keadilan*, 7(1), 63-75.

The primary objective of the foundation is to undertake social, religious, and humanitarian activities sustainably, without any financial gain orientation. However, to support the sustainability of its operational activities, the foundation is permitted to establish a business entity or participate in business activities, provided that its capital participation in the business entity does not exceed 25% of the total assets of the foundation. This provision is intended to keep the foundation focused on its social objectives and prevent it from becoming a business entity.²²

The nature of the foundation as a non-profit legal entity is also reflected in the transparency and accountability obligations required by Law No. 28 of 2004. Foundations are required to prepare annual reports that include financial statements and a summary of activities carried out. This aims to ensure that the foundation fulfills its social responsibilities effectively and remains true to the purpose for which it was established.²³

With these strict regulations, foundations can play a crucial role in Indonesia's social development by making significant contributions in the fields of education, health, humanitarian efforts, and religion. The essence of being a non-profit legal entity ensures that foundations prioritise public interests over personal or group interests.

3. Legality of Establishing a Foundation and the Approval Process

The establishment of foundations in Indonesia is strictly regulated by Law No. 28 of 2004, which amends Law No. 16 of 2001 concerning Foundations. In this regulation, a foundation is defined as a legal entity that has assets expressly set aside and allocated for social, religious, or humanitarian purposes. The legality of establishing a foundation is a crucial aspect, ensuring that the foundation can be recognised as a legitimate legal entity with independent legal rights and obligations.²⁴

The process of establishing a foundation begins with the preparation of a deed of establishment by a notary in Indonesia, which must contain at least the

²² Rahman, S., & Putri, D. (2020). Implementasi UU No. 28 Tahun 2004 dalam Pengelolaan Yayasan di Indonesia. *Jurnal Hukum Bisnis Indonesia*, 12(3), 45-58.

²³ Susanto, A. (2021). Transparansi dan Akuntabilitas dalam Pengelolaan Yayasan Berdasarkan UU No. 28 Tahun 2004. *Jurnal Ilmu Hukum Indonesia*, 7(1), 34-47.

²⁴ Utama, I. (2018). Kedudukan Hukum Yayasan Sebagai Badan Hukum Menurut UU No. 28 Tahun 2004. *Jurnal Hukum Indonesia*, 6(2), 101-115.

following information: the name and domicile of the foundation, its purpose and objectives, and the permitted business activities. This deed of establishment must also include the composition of the foundation's management, consisting of patrons, administrators, and supervisors, as required by law.²⁵

After the deed of establishment is made, the next step is to submit a ratification to the Minister of Law and Human Rights. This ratification is carried out through the electronic legal entity administration system. If all requirements are met, the Minister of Law and Human Rights will issue a decree ratifying the foundation as a legal entity. With this ratification, the foundation gains the status of a legitimate legal entity. It can act as a separate legal subject, possessing distinct legal rights and obligations that are independent of those of its founders and managers.²⁶

Law No. 28 of 2004 also stipulates that changes to the articles of association of a foundation must be made through a notarial deed and obtain approval from the Minister of Law and Human Rights if they relate to changes in the foundation's name, objectives, or business activities. This aims to ensure that the foundation continues to fulfill its social purpose and remains true to the purpose for which it was established.²⁷

This strict approval and supervision process is designed to ensure the accountability and legality of the foundation in carrying out social activities. With clear legal regulations, it is hoped that the foundation can operate transparently and responsibly in implementing its programs for the benefit of the community.

4. Rights and Obligations of Foundations as Legal Entities

As a legal entity recognised under Law No. 28 of 2004, which amends Law No. 16 of 2001 concerning Foundations, foundations have rights and obligations inherent in their legal status. These provisions aim to ensure that foundations carry out their social functions responsibly and transparently, under the intent and purpose for which they were established. In addition, as a legitimate legal entity, foundations have several rights that enable them to carry out social, religious, and humanitarian goals effectively. One of the primary rights held by foundations is the authority to manage and develop their assets.

²⁵ Setiawan, H. (2019). Karakteristik Yayasan sebagai Badan Hukum Nirlaba di Indonesia. *Jurnal Hukum dan Keadilan*, 7(1), 63-75.

²⁶ Rahman, S., & Putri, D. (2020). Implementasi UU No. 28 Tahun 2004 dalam Pengelolaan Yayasan di Indonesia. *Jurnal Hukum Bisnis Indonesia*, 12(3), 45-58.

²⁷ Susanto, A. (2021). Transparansi dan Akuntabilitas dalam Pengelolaan Yayasan Berdasarkan UU No. 28 Tahun 2004. *Jurnal Ilmu Hukum Indonesia*, 7(1), 34-47.

In this case, foundations have full rights to manage their assets independently, without interference from other parties, to ensure that these assets are used for the benefit of the organisation, not for personal gain. Assets owned by foundations are considered separate assets, meaning that the assets cannot be distributed to the foundation's patrons, administrators, or supervisors.²⁸

Additionally, foundations are permitted to engage in limited business activities. Although foundations generally function as non-profit organisations, Law No. 28 of 2004 provides flexibility for foundations to establish a business entity or participate in a business entity. However, there are strict limitations regarding capital participation in these business activities, which may not exceed 25% of the foundation's total assets. This limitation aims to keep the foundation focused on its social goals and prevent it from becoming a business entity that overlooks the interests of the community.²⁹ Additionally, the foundation has the right to receive legitimate donations and grants, which may include contributions from individuals or other organisations. These donations must be managed with complete transparency and used for the purpose for which the foundation was established. In practice, donations received must be channeled for social or humanitarian purposes, and the foundation is required to ensure that its management does not conflict with applicable regulations. Thus, these rights enable the foundation to operate efficiently, fulfill its objectives, and ensure that the trust of the public and donors is maintained.

As a recognised legal entity, the foundation also has several obligations that must be fulfilled to ensure its operations continue to align with the established social, religious, and humanitarian objectives. One of the primary obligations that the foundation must fulfill is maintaining transparent and accountable management. In this case, the foundation is required to apply the principles of good governance, including preparing an annual report that includes financial statements and operational activity reports. These reports must be submitted to the supervisor for further review, to ensure that the foundation's activities are conducted under the established regulations and objectives. This is crucial for maintaining public and donor trust in the foundation.³⁰

²⁸ Rahman, S., & Putri, D. (2020). Implementasi UU No. 28 Tahun 2004 dalam Pengelolaan Yayasan di Indonesia. *Jurnal Hukum Bisnis Indonesia*, 12(3), 45-58.

²⁹ Setiawan, H. (2019). Karakteristik Yayasan sebagai Badan Hukum Nirlaba di Indonesia. *Jurnal Hukum dan Keadilan*, 7(1), 63-75.

³⁰ Utama, I. (2018). Kedudukan Hukum Yayasan Sebagai Badan Hukum Menurut UU No. 28 Tahun 2004. *Jurnal Hukum Indonesia*, 6(2), 101-115.

Additionally, the foundation should also utilize its assets for social purposes. All assets owned by the foundation must be utilized to achieve its social, religious, and humanitarian objectives, as outlined in its purpose of establishment. These assets may not be used for the personal interests of management or other parties that are not related to the foundation's objectives. In other words, the foundation must ensure that every allocation and use of its assets is directed towards fulfilling the social mission that has been set from the beginning.³¹

Another obligation that is no less important is to comply with legal provisions. Foundations must abide by all provisions contained in Law No. 28 of 2004 and other applicable laws and regulations, including tax and administrative obligations. Compliance with these legal provisions is the basis for ensuring that foundations operate legally and do not violate rules that could harm the public or other parties.³² By fulfilling these obligations, the foundation can function effectively and maintain its integrity as a legitimate legal entity. The rights and obligations of the foundation, as outlined in Law No. 28 of 2004, provide a robust legal framework that ensures the foundation can effectively carry out its mission while upholding the principles of transparency and accountability. This is important so that the foundation can play an active role in supporting community welfare.

5. The Foundation's Rights in Carrying Out Social and Business Activities to Support the Foundation's Objectives

The rights of foundations to carry out social and business activities in support of the foundation's objectives are regulated in Law No. 28 of 2004, which provides a clear legal framework for the operational activities of foundations in Indonesia. One of the primary rights held by foundations is the authority to manage and develop their assets. Foundations can utilise their assets to achieve social, religious, and humanitarian objectives outlined in the foundation's charter of establishment. This includes the right to manage funds received, whether from donations, grants, or business activities carried out. With this right, foundations

³¹ Setiawan, H. (2019). Karakteristik Yayasan sebagai Badan Hukum Nirlaba di Indonesia. *Jurnal Hukum dan Keadilan*, 7(1), 63-75.

³² Susanto, A. (2021). Transparansi dan Akuntabilitas dalam Pengelolaan Yayasan Berdasarkan UU No. 28 Tahun 2004. *Jurnal Ilmu Hukum Indonesia*, 7(1), 34-47.

can ensure that all of their assets are used effectively to advance more significant goals without neglecting the principles of transparency and accountability.³³

Additionally, foundations are permitted to engage in limited business activities that support their social objectives. Law No. 28 of 2004 permits foundations to establish a business entity or participate in an existing business entity, subject to certain limitations. Capital participation in the business entity is limited to a maximum of 25% of the foundation's total assets. This aims to ensure that the foundation remains focused on its social goals, while the business activities carried out do not divert focus from the foundation's social mission.³⁴

Thus, the foundation has the right to operate a business as a means to raise funds or strengthen the resources required for social activities. Additionally, the foundation has the right to receive grants and donations from the community or other organisations, provided that these donations are used under the purpose for which the foundation was established. This enables the foundation to secure the necessary financial support to carry out its social mission effectively. With these rights, the foundation has the flexibility to operate independently and efficiently in achieving its goals.

6. Obligations of Foundations in Asset Management and Activity Reporting

The foundation's obligation to manage assets and report its activities is crucial to ensure that the foundation operates per the social, religious, and humanitarian objectives outlined in the deed of establishment. Based on Law No. 28 of 2004, foundations are required to manage their assets in a transparent and accountable manner, with the principles of good governance. Assets owned by the foundation, which are distinct from the personal assets of its management, must be used for purposes consistent with the foundation's mission, not for individual interests. In this case, the foundation must ensure that asset management is carried out responsibly, avoiding potential misuse that could harm the foundation and the community.³⁵

In addition to asset management, foundations are also required to prepare activity and financial reports that reflect transparency and accountability

³³ Rahman, A., & Putri, S. (2020). Pengelolaan Aset Yayasan dan Tantangan dalam Implementasi UU Yayasan di Indonesia. *Jurnal Hukum Bisnis*, 18(2), 102-115.

³⁴ Setiawan, R. (2019). Yayasan Sebagai Badan Hukum di Indonesia: Analisis Terhadap UU No. 28 Tahun 2004. *Jurnal Hukum Pembangunan*, 30(4), 421-434.

³⁵ Rahman, A., & Putri, S. (2020). Pengelolaan Aset Yayasan dan Tantangan dalam Implementasi UU Yayasan di Indonesia. *Jurnal Hukum Bisnis*, 18(2), 102-115.

in their operations. Foundations are required to prepare annual reports that include both financial reports and a summary of operational activities. This report must be submitted to the foundation's supervisor to ensure that the foundation's management complies with applicable regulations and that the foundation's objectives are being achieved. This obligation aims to provide a clear picture of the use of funds received, both from donations and the foundation's business results, and to ensure that there are no irregularities in the use of these funds. Additionally, the report serves as a means to maintain public and donor trust in the foundation.³⁶

This obligation also includes compliance with taxation and other administrative provisions. The foundation must comply with applicable tax regulations and fulfill its administrative obligations by the laws and regulations of Indonesia. This is crucial to maintain the legal status of the foundation, ensuring it remains compliant with the law and avoids potential legal issues in the future.³⁷

7. Authority and Responsibility of Foundation Management

According to Law No. 28 of 2004 concerning Foundations, the management has significant authority and responsibility in overseeing the foundation. The management of the foundation is responsible for overseeing all organisational activities aimed at achieving the goals outlined in the deed of establishment. The management's authority encompasses managing the foundation's assets, formulating policies, and overseeing the foundation's operational activities in accordance with the agreed-upon social, religious, and humanitarian objectives. In exercising its authority, the foundation's management is required to ensure that every decision taken is in line with the applicable principles of accountability and transparency.³⁸ In addition to authority, the foundation's management also bears a significant responsibility. The primary responsibility of management is to ensure that the foundation operates in accordance with applicable laws and conducts its activities in a lawful manner, consistent with its establishment. They must ensure that all foundation assets are used for agreed social and humanitarian activities, not for the personal

³⁶ Setiawan, R. (2019). Yayasan Sebagai Badan Hukum di Indonesia: Analisis Terhadap UU No. 28 Tahun 2004. *Jurnal Hukum Pembangunan*, 30(4), 421-434.

³⁷ Susanto, A. (2021). Transparansi dan Akuntabilitas Yayasan dalam Pengelolaan Sumber Dana. *Jurnal Administrasi Negara*, 23(1), 56-68.

³⁸ Rahman, A., & Putri, S. (2020). Kewenangan dan Tanggung Jawab Pengurus Yayasan dalam Perspektif Hukum Indonesia. *Jurnal Hukum Bisnis*, 18(2), 125-137.

interests of the management or other parties.³⁹ This responsibility also includes the obligation to carry out adequate internal supervision and prepare transparent annual reports on the foundation's activities and finances.

In particular, management must ensure that there is no conflict of interest within the foundation's management and is committed to reporting all activities and finances of the foundation to its supervising authority. If management fails to carry out their duties properly, they can be held legally responsible, including in cases of asset misuse or non-compliance with applicable regulations.⁴⁰ Therefore, the management must exercise its authority with full responsibility to ensure the sustainability and integrity of the foundation.

8. Legal Implications If Foundation Management Exceeds Their Authority or Negligent In Their Duties

The legal implications for foundation administrators who exceed their authority or fail to fulfill their duties are very significant. Law No. 28 of 2004 stipulates that foundation administrators have a fundamental responsibility to manage the organisation from the foundation's inception and in accordance with applicable legal provisions. If administrators exceed their authority or are negligent in their duties, various legal consequences can occur, both in the civil and criminal realms.⁴¹

One of the most apparent legal implications is civil liability, whereby administrators can be held liable for losses incurred due to abuse of authority or negligence in carrying out their duties. For example, if administrators use foundation assets for personal gain or make decisions that are detrimental to the foundation, they may be held liable for the resulting losses.⁴²

Managers who are negligent in fulfilling their obligations, such as failing to prepare transparent financial or activity reports, may be subject to administrative sanctions, including warnings or even the revocation of the manager's rights to perform their functions if serious violations are found.⁴³

³⁹ Setiawan, R. (2019). Pengelolaan Yayasan: Tanggung Jawab Pengurus dalam Implementasi UU No. 28 Tahun 2004. *Jurnal Hukum Pembangunan*, 30(4), 451-463.

⁴⁰ Susanto, A. (2021). Pengawasan dan Tanggung Jawab Pengurus Yayasan dalam Sistem Hukum Indonesia. *Jurnal Administrasi Negara*, 23(1), 71-82.

⁴¹ Setiawan, R. (2019). Pengelolaan Yayasan: Tanggung Jawab Pengurus dalam Implementasi UU No. 28 Tahun 2004. *Jurnal Hukum Pembangunan*, 30(4), 451-463.

⁴² Rahman, A., & Putri, S. (2020). Kewenangan dan Tanggung Jawab Pengurus Yayasan dalam Perspektif Hukum Indonesia. *Jurnal Hukum Bisnis*, 18(2), 125-137.

⁴³ Susanto, A. (2021). Pengawasan dan Tanggung Jawab Pengurus Yayasan dalam Sistem Hukum Indonesia. *Jurnal Administrasi Negara*, 23(1), 71-82.

Administrators may also face criminal sanctions if they are proven to have committed criminal acts, such as fraud or corruption, that are detrimental to the foundation or other parties associated with it.

Foundation administrators must exercise great care in carrying out their duties and not exceed the authority granted, as the consequences can be detrimental to the foundation itself and lead to serious legal problems. Therefore, adequate internal supervision and the application of the principle of accountability are crucial in preventing law violations by administrators.

9. Obstacles to Law Enforcement Against Deviant Foundations

Obstacles to law enforcement against foundations that deviate are often quite complex problems. Although Law No. 28 of 2004 has provided a clear legal basis for the management and supervision of foundations, in practice, several obstacles hinder the effectiveness of law enforcement against foundations that commit deviations. One of the main obstacles is the lack of adequate supervision from the authorities. Supervision of foundations, particularly those involved in the social, educational, and religious sectors, is often limited to annual reports or financial statements that are not always transparent. This allows foundations to avoid responsibility and manage assets or activities that are not in line with the original purpose of establishing the foundation.⁴⁴ Weak internal controls and a lack of external monitoring often result in irregularities, such as the misappropriation of assets or non-compliance with legal requirements, going undetected.

Slow law enforcement is also a barrier to overcoming deviations committed by foundations. The lengthy legal process, coupled with the overlapping authorities of different agencies, often renders legal action against foundations that violate the rules less effective.⁴⁵ Settlement of disputes involving foundations is also frequently hampered by complicated administrative processes and ambiguity regarding who is legally responsible. These constraints underscore the importance of reform, particularly in terms of stricter and more efficient supervision and law enforcement. Additionally, it is crucial to enhance legal awareness among foundation administrators regarding their obligations and responsibilities.

⁴⁴ Setiawan, R. (2019). *Pengelolaan Yayasan: Tanggung Jawab Pengurus dalam Implementasi UU No. 28 Tahun 2004*. *Jurnal Hukum Pembangunan*, 30(4), 451-463.

⁴⁵ Rahman, A., & Putri, S. (2020). *Kewenangan dan Tanggung Jawab Pengurus Yayasan dalam Perspektif Hukum Indonesia*. *Jurnal Hukum Bisnis*, 18(2), 125-137.

D. CONCLUSION

From the discussion above, several conclusions can be drawn as follows:

First: Law No. 28 of 2004, concerning Amendments to Law No. 16 of 2001 concerning Foundations, stipulates that foundations are legal entities with separate assets, allocated for social, religious, and humanitarian purposes. As a non-profit legal entity, foundations are not allowed to distribute profits to administrators, trustees, or supervisors. The legal status of foundations in Indonesia grants administrators the authority to manage and develop the foundation's assets, enabling them to achieve the objectives of its establishment independently and sustainably. In its implementation, foundations can also engage in limited business activities, subject to a maximum limit of 25% of the foundation's total assets, to support its social objectives.

Second: If the foundation's management acts beyond its authority or is negligent in carrying out its duties, then the management can be held personally responsible for the losses incurred. This includes the management's obligation to compensate the foundation for losses incurred due to actions that are not by the provisions of the law or the foundation's articles of association. In the context of criminal law, abuse of authority that is detrimental to the foundation can also be subject to criminal sanctions under applicable laws and regulations. Thus, this regulation aims to protect the foundation's assets and ensure that management acts under the mandate established for the foundation.

Third: Law enforcement against deviant foundations still faces various obstacles, including weak supervision, lack of transparency in asset management, and complex bureaucracy in the process of ratifying and supervising foundations. Additionally, limited supervisory resources and unclear division of authority between agencies also contribute to slow and ineffective law enforcement. This increases the risk of misuse of foundation assets and harms the community that should benefit from foundation activities.

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