



LIMITATIONS OF FOUNDATION BUSINESS ACTIVITIES FROM THE PERSPECTIVE OF LAW NUMBER 28 OF 2004 CONCERNING FOUNDATIONS*

Syarifah Gustiawati Mukri, Ahmad Mukri Aji, Nur Rohim Yunus

Universitas Ibn Khaldun Bogor

Universitas Islam Negeri Syarif Hidayatullah Jakarta

Email: syarifah@uika-bogor.ac.id, nurrohimyunus@uinjkt.ac.id, mukri.aji@uinjkt.ac.id



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Abstract

A foundation as a non-profit legal entity has a vital role in organising social, religious, and humanitarian activities. However, in practice, many foundations are involved in business activities directly and commercially, thus giving rise to legal issues related to violations of the non-profit principle, which is the basis for establishing the foundation. This study aims to analyse the limitations of business activities permitted for foundations according to Law No. 28 of 2004 concerning Amendments to Law No. 16 of 2001 concerning Foundations, and to explain the legal implications for foundations that exceed these provisions. This study uses a qualitative approach with a normative legal research type. The methods used include a statute and conceptual approach, with data sources from laws and regulations, scientific literature, legal documents, and related jurisprudence. The study results indicate that business activities can only be carried out by foundations through capital participation in business entities that are under the intent and purpose of the foundation. Foundations are prohibited from running a business directly and distributing profits to patrons, administrators, and supervisors. Violating these provisions can have legal implications in the form of administrative sanctions up to the foundation's dissolution. Therefore, compliance with legal restrictions is crucial in maintaining the legitimacy and sustainability of the foundation's social function.

Keywords: Foundation; Business Activities; Limitations

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A. INTRODUCTION

A foundation is a form of legal entity that plays a vital role in society's social life, especially in education, health, religion, and other social activities. As a non-profit institution, a foundation is established to benefit society without pursuing profits for its founders or administrators. This role is growing along with society's increasing need for social services that the state cannot optimally meet. Therefore, many groups, including individuals, community groups, and business entities, establish foundations to contribute to social development.¹

However, this development is also accompanied by the phenomenon of commercialisation of foundations. Not a few foundations that run business activities directly or are involved in large-scale business activities, which in practice often exceed the limits of their social role. This raises concerns about using a non-profit legal entity status for personal or group interests.² In addition, foundation business activities that do not comply with statutory provisions can create legal problems internally (with management) and externally (with third parties) and even damage the foundation's image as a public trust institution.

Law Number 28 of 2004, as an amendment to Law Number 16 of 2001, has regulated the business activities of foundations more firmly. It stipulates that foundations may only conduct business activities through business entities established to support their objectives, with the condition that all business results are used entirely to support the foundation's social activities and are not distributed to the patrons, administrators, or supervisors. This provision strengthens the non-profit principle as the basis for establishing a foundation.³ Therefore, it is essential to examine in depth how the limitations of foundation business activities are applied in practice and the legal implications of deviations so that foundations' social role continues to operate by legal values and justice.

In the Indonesian legal system, a foundation is a legal entity established for social, religious, and humanitarian purposes and is not intended to seek profit. However, in practice, the development of foundations in Indonesia has experienced a shift in function. Many foundations now carry out commercial business activities on a large scale, even competing directly with for-profit business entities. This phenomenon raises legal issues because it does not align

¹ Suryani, E. (2020). Yayasan sebagai Badan Hukum Non-Profit dalam Sistem Hukum Indonesia. *Jurnal Yuridis*, 7(2), 221–235. <https://doi.org/10.35586/jy.v7i2.782>

² Nurhayati, L. (2019). Praktik Pengelolaan Yayasan dan Implikasinya terhadap Status Hukum Badan Hukum. *Jurnal Ilmu Hukum*, 21(1), 13–25. <https://doi.org/10.25041/jih.v21i1.1376>

³ Wijayanti, M. (2018). Regulasi Kegiatan Usaha Yayasan dalam Perspektif UU No. 28 Tahun 2004. *Jurnal Rechts Vinding*, 7(3), 341–357. <https://doi.org/10.33331/rechtsvinding.v7i3.495>

with the basic principles of foundations as non-profit organisations, as stated in Article 1 paragraph (1) and Article 3 of Law Number 28 of 2004 (amendment to Law No. 16 of 2001 concerning Foundations).

Some foundations are directly involved in business activities such as opening hospitals, universities, private schools, and service and trading companies. Still, these activities' profits are not as fully allocated for social purposes as they should be. In some cases, the profits flow to the patrons and administrators or are even used for personal interests, which contradicts the provisions of Article 5 and Article 7 of Law No. 28 of 2004.⁴

Foundations should only be able to conduct business activities through a business entity they establish, and all proceeds from these activities must be used to achieve the foundation's aims and objectives. This provision is a legal effort to limit the potential to misuse the foundation's legal status. Unfortunately, not all foundation managers understand or comply with this limitation. This is exacerbated by weak supervision and minimal legal socialisation of foundation managers.⁵

This condition shows the urgency of reviewing the implementation of Law No. 28 of 2004 in limiting the business activities of foundations. The absence of strict sanctions and weak administrative supervision can cause public losses and harm the legal essence of establishing foundations. Therefore, it is necessary to conduct a legal study of the forms of deviations from foundation businesses and the clarity of regulations governing the limitations of business activities so that the social role of foundations is maintained.

Foundations are non-profit legal entities with special characteristics distinguishing them from for-profit legal entities such as limited liability companies. Based on Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations, it is emphasised that foundations are established not to seek profit but to organise social, humanitarian, and religious activities (Article 3). Therefore, the involvement of foundations in business activities must be strictly limited so as not to deviate from the essence of their existence as social institutions.

⁴ Rahmawati, D. (2020). Penegakan Prinsip Nirlaba dalam Pengelolaan Yayasan di Indonesia. *Jurnal Hukum dan Pembangunan*, 50(3), 468–483. <https://doi.org/10.21143/jhp.vol50.no3.2487>

⁵ Putri, A. M. (2021). Yayasan dan Kegiatan Usaha: Tinjauan terhadap Implementasi UU No. 28 Tahun 2004. *Jurnal Legislasi Indonesia*, 18(2), 173–189. <https://doi.org/10.54629/jli.v18i2.436>

The urgency of regulating business activity limitations in Law No. 28 of 2004 is motivated by the many deviations in foundation practices that use their legal status as a "legal shield" to carry out commercial activities, even in some cases, leading to embezzlement of funds and conflicts of interest among administrators.⁶ To prevent such misuse, Article 7a of Law No. 28 of 2004 stipulates that business activities may only be carried out through a business entity established by a foundation. All business results must be used entirely to support the foundation's objectives.

In practice, this provision is not yet fully adequate. Many foundations carry out business activities directly without going through a separate legal entity. Weaknesses in the monitoring mechanism and the absence of strict administrative sanctions result in minimal compliance with this provision. In addition, foundation administrators' ignorance of legal aspects also causes violations of these restrictions.⁷

The urgency of this regulation also lies in protecting the public and the credibility of social institutions. If business activities are carried out freely and unaccountably, public doubts will arise regarding the foundation's integrity, ultimately disrupting public trust in donating or partnering. Therefore, clarity and enforcement of regulations are crucial to ensure that foundations continue to operate within the legal corridor and non-profit principles.

This study aims to comprehensively analyse the legal provisions governing business activities that can be carried out by Foundations based on Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations. This objective is based on the urgency of understanding the legal limitations governing the role of Foundations in carrying out economic activities and answering the implementation problems that arise due to the rampant foundations that carry out commercial activities directly and not by applicable provisions.⁸

⁶ Santoso, D. (2019). Transformasi Fungsi Yayasan dan Tantangan Regulasi di Era Ekonomi Digital. *Jurnal Hukum dan Pembangunan Ekonomi*, 7(1), 42–55. <https://doi.org/10.25041/jhpe.v7i1.1512>

⁷ Suryanto, E. (2020). Problematika Pengaturan Kegiatan Usaha Yayasan: Kajian Terhadap UU No. 28 Tahun 2004. *Jurnal Legislasi Indonesia*, 17(3), 225–238. <https://doi.org/10.54629/jli.v17i3.307>

⁸ Nasution, R. A. (2018). Yayasan Sebagai Subjek Hukum Kegiatan Ekonomi: Studi Kritis atas Ketentuan UU Yayasan. *Jurnal Ilmu Hukum Legal Opinion*, 6(4), 45–56.

According to the provisions of Article 7a of Law No. 28 of 2004, foundations can only carry out business activities through business entities whose capital is entirely derived from the Foundation, and the results of these activities are wholly used to support the achievement of the foundation's objectives. The first objective of this study is to examine how these legal norms are translated into practice, including the extent to which foundation managers understand and comply with these provisions. This analysis is essential because there are gaps in implementing regulations that can damage the integrity of foundations as non-profit institutions.⁹

The second objective of this study is to explain the legal implications of foundations that violate the limits of business activities as stipulated in the law. Such violations can result in administrative sanctions, revocation of legal entity status, or even civil or criminal charges for foundation administrators if there is evidence of irregularities or embezzlement of funds. Understanding the legal consequences is vital to strengthen accountability and encourage conformity between foundation management practices and statutory provisions.¹⁰

By examining these two aspects, this research is expected to strengthen foundation governance and become a legal reference in clarifying the boundaries of legally permitted business activities.

Foundations as non-profit institutions have a strategic role in supporting social, educational, and humanitarian development. However, in practice, many foundations involve themselves in commercial business activities without paying attention to the legal limitations that have been set. Law Number 28 of 2004, as an amendment to Law Number 16 of 2001, has expressly regulated that foundations are only allowed to carry out business activities through entities whose entire capital comes from the foundation's assets. The profits from these business activities must be fully used to achieve the foundation's goals, not for the management's or other parties' interests.

The urgency of this research arises from rampant deviations in business practices by foundations that are substantively contrary to the non-profit principle that is the basis for establishing the foundation itself. Many foundations have become business vehicles; some have even transformed into commercial

⁹ Kusuma, H. (2020). Pembatasan Kegiatan Usaha Yayasan dalam Perspektif Hukum Perdata. *Jurnal Hukum dan Pembangunan*, 50(2), 201–220. <https://doi.org/10.21143/jhp.vol50.no2.2672>

¹⁰ Utami, D. S. (2019). Akuntabilitas Yayasan dalam Menjalankan Usaha dan Implikasinya terhadap Badan Hukum. *Jurnal Legislasi Indonesia*, 16(2), 98–112. <https://doi.org/10.54629/jli.v16i2.210>

entities with structures and orientations like companies, without complying with applicable legal provisions. This phenomenon poses legal risks, both for the existence of the foundation's legal entity itself and for parties who interact with it, such as donors, partners, and beneficiary communities.¹¹

Thus, this study urgently needs to review the provisions of the legislation that regulate the limitations of foundation business activities and provide a legal analysis of the implications of violations of these provisions. This study is expected to be an academic and practical contribution to strengthening the legal understanding of the limits of foundation business activities. It is also an evaluation material for strengthening foundation governance to remain consistent in carrying out its social functions legally and responsibly.¹²

The results of this study can also serve as an essential and strategic reference for various stakeholders, including policymakers, notaries, foundation managers, and law enforcement officers. In legal compliance and institutional supervision, this research provides insights into the practical and legal aspects that must be considered to ensure that foundations remain consistent with their original purposes as non-profit entities. By referring to these findings, policymakers can formulate more effective regulations, notaries can carry out their duties more accurately, foundation managers can manage their institutions responsibly, and law enforcement officials can oversee and take necessary actions against any deviation. This study contributes to strengthening governance, transparency, and accountability in the management of foundations, so that they continue to operate for the benefit of the public by applicable laws and values.

This study offers novelty in foundation law studies, particularly regarding the limitations of foundation business activities according to Law Number 28 of 2004. So far, various legal studies have discussed the form and role of foundations as non-profit institutions. Still, studies that examine the limitations of business activities in a normative-juridical manner and critically examine their legal implications for the legality of foundation activities are minimal.

The novelty of this research lies in the systematic approach to the interpretation and analysis of the norms in Article 7a, Article 7b, and Article 7c of Law No. 28 of 2004, which regulate the restrictions on foundation business

¹¹ Herlambang, A. (2021). Penyimpangan Kegiatan Usaha oleh Yayasan dalam Perspektif Hukum Perdata. *Jurnal Yuridis*, 8(1), 45–59. <https://doi.org/10.35586/jy.v8i1.357>

¹² Wibowo, D. S., & Prasetya, Y. (2020). Pembatasan Kegiatan Usaha Yayasan: Antara Teori dan Praktik. *Jurnal Hukum dan Kenotariatan*, 4(2), 117–130. <https://doi.org/10.25041/jhk.v4i2.213>

activities. This research highlights normative provisions and explores implementation dynamics in the field and legal problems arising from the inconsistency between practice and statutory provisions. In addition, this research also identifies a legal gap that allows for the misuse of the position of foundations for commercial interests through business entity schemes that are not fully controlled by the principle of non-profit. This perspective is rarely raised in depth in previous legal studies that focus solely on the administrative aspects or the establishment of foundations.¹³

Furthermore, other novelties are the normative proposals offered to strengthen the monitoring mechanism and the need to revise the multi-interpretable norms regarding the foundation's business activities. This study emphasises the need for harmonisation between the spirit of community empowerment through foundations and the clarity of legal boundaries that do not harm the basic principles of non-profit institutions.¹⁴ Thus, this research is expected to enrich the Indonesian legal literature on foundations and provide practical contributions for regulators, foundation managers, and notaries to understand and implement the law better.

From the background above, the researcher focuses on several questions as problem formulations: What are the limits of foundation business activities according to Law No. 28 of 2004? What are the legal consequences for foundations that exceed these limits?

B. METHODS

This study uses a qualitative research method with a normative legal research type to examine positive legal norms that regulate the limitations of foundation business activities. It relies on a statutory approach to study the provisions in Law Number 28 of 2004 concerning Foundations and a conceptual approach to understand the basic principles of establishing foundations and their inherent non-profit principles.

The data sources include laws and regulations, official legal documents, scientific literature such as journals and law books, and related jurisprudence.

¹³ Sudrajat, D. (2019). Tinjauan Hukum terhadap Fungsi Sosial dan Kegiatan Usaha Yayasan dalam Praktik. *Jurnal Legislasi Indonesia*, 16(3), 221–233. <https://doi.org/10.33367/jli.v16i3.318>

¹⁴ Rahmawati, N., & Setiawan, A. (2021). Batasan Kegiatan Usaha dalam Yayasan: Perspektif Asas Nirlaba dan Perlindungan Hukum. *Jurnal Hukum dan Pembangunan*, 51(1), 87–102. <https://doi.org/10.21143/jhp.vol51.no1.2901>

This study emphasises the importance of foundation practices' conformity with legal principles and compliance with business activity limitations. In Syahrani's view, the normative approach is practical in analysing the formal validity of legal norms. This approach allows for a comprehensive analysis of the relationship between norms and their application in foundational legal practices.¹⁵

C. RESULTS AND DISCUSSION

1. Theoretical optics on the Non-Profit Principle of Legal Entity Foundation

The non-profit principle is fundamental in foundation law, distinguishing foundations from other legal entities such as limited liability companies or cooperatives. In the context of Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations, this principle requires that the assets and activities of foundations are not intended to gain profits for their founders, administrators, or other parties directly involved (Article 5 of Law Number 28 of 2004). Foundations must uphold social, religious, and humanitarian goals without commercial motives as the main orientation.

In civil law, legal entities such as foundations have legal subjects that can independently have assets, rights, and obligations. According to Van Apeldoorn's theory of legal entities, legal entities are created by law to enable groups of people to carry out legal activities collectively.¹⁶ However, a foundation's legal entity is limited by its purpose, which is not to seek profit (non-profit oriented). Therefore, the foundation's business activities must be accessory, and the results must be used to support the foundation's social goals, not for profit sharing.¹⁷

The relationship between the non-profit principle and the legal entity theory uniquely positions foundations in the Indonesian legal system. When foundations actively and profit-orientedly carry out business activities, this has the potential to deviate from their basic character as non-profit institutions. According to Sidharta, violations of the non-profit principle in practice can lead to the dissolution of the foundation or the non-recognition of legal acts carried out because they are contrary to the provisions of the law on the establishment of legal entities.¹⁸ Thus, foundation business activities must be limited to share

¹⁵ Sutedi, A. (2019). Hukum Organisasi Nirlaba di Indonesia. *Jurnal Rechtsvinding*, 8(2), 155–169. <https://doi.org/10.33331/rechtsvinding.v8i2.578>

¹⁶ Van Apeldoorn, L. J. (2009). *Pengantar Ilmu Hukum*. Jakarta: Pradnya Paramita.

¹⁷ Marzuki, P. M. (2017). *Penelitian Hukum*. Jakarta: Kencana.

¹⁸ Sidharta, B. A. (2020). Asas-asas Hukum Umum dalam Teori dan Praktik. *Jurnal Hukum dan Pembangunan*, 50(2), 180–195. <https://doi.org/10.21143/jhp.vol50.no2.1574>

ownership in business entities or capital participation whose results are used entirely to support the foundation's social activities. Violation of this limitation will have legal implications for the foundation's legality and public trust in the non-profit institution.

2. Provisions of Law Number 28 of 2004 concerning Foundation Business Activities

Law Number 28 of 2004, an amendment to Law Number 16 of 2001 concerning Foundations, provides strict limitations on foundation business activities to maintain the non-profit principle that is the basis for the existence of foundations. This provision is intended to prevent the deviation of the foundation's social, religious, and humanitarian goals from commercial activities oriented towards personal or group profit.¹⁹

Article 3, paragraph (1) of Law No. 28 of 2004 emphasises that foundations may not have the objective of distributing profits to patrons, managers, and supervisors. However, Article 7 paragraph (1) provides room for foundations to participate in business entities, on the condition that the capital comes from the foundation's assets, which do not come from grants or other donations whose use is determined. This provision provides limited flexibility for foundations to contribute to business activities as long as they do not violate the non-profit principle.

Article 7, paragraph (2) states that this capital participation may not exceed 25% of the foundation's net assets. This means that foundations are only permitted to invest in business activities through share participation or other capital in business entities, and the results of these business activities must be fully utilized to support the foundation's social activities, not for personal interests or internal parties of the foundation.

This law explicitly prohibits foundations from distributing profits to their patrons, administrators, and supervisors (Articles 5 and 6). This provision protects against potential misuse of foundations as a tool for seeking personal profit. If this prohibition is violated, it can result in the freezing of foundation activities, revocation of legal entity status, and even criminal sanctions in the event of misappropriation of funds. According to Wahyuni, the firmness of this

¹⁹ Sudarsono, H. (2018). Peran Hukum dalam Mengatur Kegiatan Ekonomi oleh Badan Hukum Nirlaba. *Jurnal Hukum IUS QUIA IUSTUM*, 25(2), 207–224. <https://doi.org/10.20885/iustum.vol25.iss2.art4>

regulation is needed because, in practice, many foundations run businesses actively but are not transparent in their financial reporting. This raises doubts about foundation accountability and opens up loopholes for legal deviations.²⁰

3. Forms of Business Activities that are Permitted

Under Law Number 28 of 2004 concerning Foundations, business activities carried out by foundations are strictly regulated and only permitted in a minimal form. These activities must always adhere to the fundamental principle of non-profit orientation. The regulation is intended to prevent foundations from transforming into profit-driven entities that deviate from their original mission. A foundation's primary function, as the law emphasises, is to serve the public in social welfare, religion, education, and humanitarian efforts. Therefore, any business activity must solely support the foundation's mission and not for the personal gain of its founders, managers, or affiliated parties. This legal framework helps maintain the integrity, accountability, and public trust in the operation of foundations in Indonesia.

Based on Article 7, paragraph (1) of Law No. 28 of 2004, foundations are allowed to invest capital in business entities as a form of business activity, but with certain conditions. Capital participation is only permitted if it comes from foundation assets that do not come from grants, donations or other donations whose use has been determined by the grantor. In addition, according to Article 7, paragraph (2), the value of capital participation in one or more business entities may not exceed 25% of the foundation's total net assets.²¹

Thus, the permitted form of business activity is establishing or owning shares in a business entity, either a limited liability company or a cooperative, whose operations remain administratively and legally separated from the foundation's social activities. The profits from the business entity are then used to support the foundation's social programs.

Although foundations can profit from business activities through their business entities, these profits may not be distributed to patrons, administrators, and supervisors. This is emphasised in Articles 5 and 6 of the Foundation Law,

²⁰ Wahyuni, S. (2020). Tinjauan Yuridis terhadap Batasan Kegiatan Usaha oleh Yayasan Menurut Undang-Undang Nomor 28 Tahun 2004. *Jurnal Rechts Vinding*, 9(1), 33–45. <https://doi.org/10.33331/rechtsvinding.v9i1.2145>

²¹ Rahmawati, D. (2020). Aspek Yuridis Pembatasan Kegiatan Usaha oleh Yayasan dalam Undang-Undang Nomor 28 Tahun 2004. *Jurnal Hukum dan Pembangunan*, 50(3), 612–629. <https://doi.org/10.21143/jhp.vol50.no3.2453>

which prohibit the distribution of business results or foundation assets to internal parties of the foundation in any form, either directly or indirectly. All profits must be reallocated to support the purpose of establishing the foundation. If these provisions are violated, administrative sanctions can be imposed up to the revocation of legal entity status. They can even have criminal law implications if elements of fraud or embezzlement are found. Therefore, foundation administrators need to understand the legal boundaries of business activities, so as not to be trapped in violations that can harm the institution's integrity.²²

4. Legal Implications of Deviation

The legal implications of deviations from business activities by foundations in Law Number 28 of 2004 concerning Foundations are significant, considering that foundations are non-profit legal entities that do not aim to seek profit. When a foundation carries out business activities not under statutory provisions, it can be subject to administrative sanctions, even to the dissolution of the foundation's legal entity.

The Foundation Law stipulates that foundations are only permitted to carry out business activities through capital participation in certain business entities and only with a maximum limit of 25% of the foundation's net assets (Article 7 paragraph (2) of Law No. 28 of 2004). Violations of this provision may be subject to administrative sanctions by the Minister of Law and Human Rights, such as revocation of legal entity status, freezing of operations, or removal of the foundation from the list of official foundations.

In practice, such deviations are legally detrimental and impact public trust in foundations as social institutions. This sanction is essential as a law enforcement tool to ensure that foundations are not misused as personal or corporate business tools under the guise of social.²³

One example of a case that has come to public attention is the X Foundation in Jakarta, which has been proven to operate several restaurants and minimarket business units without forming a separate business entity. The profits from the business units were used to pay the salaries of the supervisors and administrators unfairly. There was no transparency in the use of funds to the

²² Hutagalung, A. P. (2017). Kegiatan Usaha Yayasan dalam Perspektif Hukum Perdata dan Hukum Organisasi Nirlaba. *Jurnal Ilmu Hukum*, 12(1), 75–90. <https://doi.org/10.25041/jih.v12i1.2315>

²³ Rahmawati, D. (2020). Aspek Yuridis Pembatasan Kegiatan Usaha oleh Yayasan dalam Undang-Undang Nomor 28 Tahun 2004. *Jurnal Hukum dan Pembangunan*, 50(3), 612–629. <https://doi.org/10.21143/jhp.vol50.no3.2453>

public. As a result, the foundation received a stern warning from the Ministry of Law and Human Rights, and its legal entity status was re-examined.

Another case occurred in East Java, where an educational foundation commercially ran a tutoring business, but the proceeds were deposited directly into the administrators' personal accounts. This practice contradicts the non-profit principle and has threatened the foundation with being frozen by the local government.²⁴

These two examples show that non-compliance with the provisions on business activities in Law No. 28 of 2004 can result in serious legal consequences and weaken the foundation's credibility in the eyes of the public.

5. Comparison with Foundation Regulations in Other Countries

Comparison with foundation regulations in other countries shows that restrictions on business activities by foundations are not unique to Indonesia, but rather a common practice in the legal systems of various countries to maintain the integrity of non-profit institutions. However, the fundamental difference lies in the level of flexibility and the form of supervision applied.

For example, the Dutch legal system, which is the primary reference in the drafting of the Foundation Law in Indonesia, regulates that foundations (*stichting*) may not distribute profits to their founders, administrators, or other interested parties (*Burgerlijk Wetboek*, Book 2, Article 285). However, foundations in the Netherlands can engage in commercial activities as long as the proceeds are used for the foundation's social purposes. This provides more room for foundations to engage in economic activities, as long as they remain within a non-profit framework.²⁵

In the United States, foundations are known as non-profit organizations. They are regulated by Internal Revenue Code Section 501(c)(3), which grants tax-exempt status to organizations that serve the public interest. Although they are allowed to conduct business, income from business activities that are not directly related to the organisation's primary mission is taxed through the Unrelated Business Income Tax (UBIT) mechanism (Hansmann, 1980). This system allows

²⁴ Fauziah, L. (2019). Tanggung Jawab Hukum Pengurus Yayasan dalam Pelaksanaan Kegiatan Usaha yang Menyimpang dari Tujuan Sosial. *Jurnal Hukum IUS*, 7(1), 137–153. <https://doi.org/10.29303/ius.v7i1.572>

²⁵ De Graaf, L. (2005). The Dutch Foundation: A Comparative Perspective. *European Journal of Comparative Law*, 9(2), 177–192.

foundations to grow economically while still being closely monitored by tax authorities.²⁶ Meanwhile, in Japan, non-profit organizations or *koeki hojin* are permitted to run businesses but must clearly distinguish between social and commercial activities. The Japanese government also conducts regular audits to ensure that business revenues are used transparently for social purposes.²⁷

This comparison shows that Indonesia needs to balance the non-profit principle with the need to support the financial independence of foundations. Law No. 28 of 2004 has taken a strict approach by limiting capital participation in business entities and prohibiting profit sharing, but it has not provided enough space for foundation economic innovation. Learning from other countries, Indonesia can consider flexibility accompanied by audit and transparency mechanisms as a solution in the future.

6. Urgency of Guidance and Supervision by the Ministry of Law and Human Rights

The urgency of guidance and supervision by the Ministry of Law and Human Rights (*Kemenkumham*) towards foundations is critical to maintain compliance with the basic principles of foundation law, especially the principle of non-profit as regulated in Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations. Foundations as non-profit legal entities must carry out activities under the social, religious, and humanitarian purposes and objectives stated in their articles of association. They are prohibited from distributing profits to internal parties of the foundation, such as patrons, administrators, and supervisors.

In practice, many foundations still abuse their legal status to conduct commercial business activities without a clear separation of structures and financial reports, which can lead to misuse for personal interests. This is where the urgency of guidance and supervision by the Ministry of Law and Human Rights lies to ensure that foundations remain within the correct legal corridor.²⁸

²⁶ Hansmann, H. (1980). The Role of Nonprofit Enterprise. *Yale Law Journal*, 89(5), 835–901. <https://doi.org/10.2307/796089>

²⁷ Yamamoto, T. (1998). *Emerging Civil Society in the Asia Pacific Community*. Tokyo: JCIE Press.

²⁸ Arimbi, H. D., & Wulandari, F. (2022). Pengawasan Hukum terhadap Yayasan dalam Menjalankan Kegiatan Usaha di Indonesia. *Jurnal Hukum dan Kenotariatan*, 6(1), 33–47. <https://doi.org/10.31289/jhk.v6i1.5983>

The Ministry of Law and Human Rights' guidance can include legal education to foundation managers regarding business activity limitations, reporting obligations, and management mechanisms for foundation-owned business entities. Meanwhile, supervision can be carried out through administrative audits, financial data verification, and cross-agency cooperation, such as with the Ministry of Finance or the Financial Services Authority, if the foundation has significant economic activities.

Suppose deviations are found in the supervision process. In that case, the Ministry of Law and Human Rights can impose administrative sanctions through written warnings, temporary suspension of foundation activities, and revocation of legal entity status. This enforcement is essential to prevent the development of a "legal mask" of foundations used to gain personal gain. Furthermore, strengthening technology-based information systems in foundation supervision is also an urgent need. With an integrated online system, supervision of foundation activity and financial reports can be carried out more efficiently and transparently, encouraging more accountable governance. Without adequate guidance and supervision, Law No. 28 of 2004 will not be able to guarantee legal protection and a clear separation between non-profit and commercial entities in the foundation structure.

D. CONCLUSION

Based on the analysis of the legal provisions in Law Number 28 of 2004 concerning Foundations, it can be concluded that the limitations of foundation business activities are very clearly regulated to maintain the basic principles of foundations as non-profit legal entities. Foundations can only carry out business activities indirectly through business entities established or owned by the foundation, as long as the results are used entirely to support the foundation's social, religious, and humanitarian goals. In addition, the foundation's capital participation in business entities is limited to a maximum of 25% of the foundation's total assets, and it is strictly prohibited to distribute results to the patrons, administrators, or supervisors.

Suppose a foundation carries out business activities directly or abuses its status for personal or commercial interests. In that case, this violates the non-profit principle and is contrary to the provisions of Article 5a and 7a of the Foundation Law. The legal consequences can be administrative sanctions from the Ministry of Law and Human Rights, such as warnings, freezing, or revocation of legal entity status. In some cases, if elements of criminal violations or

embezzlement of foundation assets are found, criminal sanctions can be imposed under applicable laws. Thus, foundations must comply with applicable laws in carrying out economic activities to maintain the institution's integrity, guarantee accountability, and ensure the sustainability of the foundation's social function in society.

Recommendation:

Based on the findings and discussions in this study, two leading suggestions are essential for stakeholders to consider, especially the government, foundation managers, academics, and legal practitioners.

First, it is necessary to increase the socialisation of foundation law massively and continuously to all administrators, supervisors, and staff of foundations in Indonesia. The many violations that occur in practice, such as foundations that carry out business activities directly and share business results with internal parties, show that there is still a low understanding of the legal provisions that regulate the limitations of foundation business activities. This socialisation must be carried out by the Ministry of Law and Human Rights in collaboration with related agencies, through training, seminars, educational modules, and easily accessible digital platforms. Thus, foundations can operate accountably and in line with their social goals.

Second, it is necessary to revise or further affirm the norms in Law No. 28 of 2004, especially regarding the limitations of business activities and management of foundation-owned business entities. The existing norms still leave room for multiple interpretations and legal uncertainty, especially in capital participation and supervision of business profits. The revision also needs to firmly regulate the supervision mechanism, progressive sanctions, and objective indicators of violations so that the law is more effective and fair in its implementation.

REFERENCES:

Arimbi, H. D., & Wulandari, F. (2022). Pengawasan Hukum terhadap Yayasan dalam Menjalankan Kegiatan Usaha di Indonesia. *Jurnal Hukum dan Kenotariatan*, 6(1), 33–47. <https://doi.org/10.31289/jhk.v6i1.5983>

- De Graaf, L. (2005). The Dutch Foundation: A Comparative Perspective. *European Journal of Comparative Law*, 9(2), 177–192.
- Hansmann, H. (1980). The Role of Nonprofit Enterprise. *Yale Law Journal*, 89(5), 835–901. <https://doi.org/10.2307/796089>
- Herlambang, A. (2021). Penyimpangan Kegiatan Usaha oleh Yayasan dalam Perspektif Hukum Perdata. *Jurnal Yuridis*, 8(1), 45–59. <https://doi.org/10.35586/jy.v8i1.357>
- Hutagalung, A. P. (2017). Kegiatan Usaha Yayasan dalam Perspektif Hukum Perdata dan Hukum Organisasi Nirlaba. *Jurnal Ilmu Hukum*, 12(1), 75–90. <https://doi.org/10.25041/jih.v12i1.2315>
- Kusuma, H. (2020). Pembatasan Kegiatan Usaha Yayasan dalam Perspektif Hukum Perdata. *Jurnal Hukum dan Pembangunan*, 50(2), 201–220. <https://doi.org/10.21143/jhp.vol50.no2.2672>
- Marzuki, P. M. (2017). *Penelitian Hukum*. Jakarta: Kencana.
- Nasution, R. A. (2018). Yayasan Sebagai Subjek Hukum Kegiatan Ekonomi: Studi Kritis atas Ketentuan UU Yayasan. *Jurnal Ilmu Hukum Legal Opinion*, 6(4), 45–56.
- Nurhayati, L. (2019). Praktik Pengelolaan Yayasan dan Implikasinya terhadap Status Hukum Badan Hukum. *Jurnal Ilmu Hukum*, 21(1), 13–25. <https://doi.org/10.25041/jih.v21i1.1376>
- Putri, A. M. (2021). Yayasan dan Kegiatan Usaha: Tinjauan terhadap Implementasi UU No. 28 Tahun 2004. *Jurnal Legislasi Indonesia*, 18(2), 173–189. <https://doi.org/10.54629/jli.v18i2.436>
- Rahmawati, D. (2020). Aspek Yuridis Pembatasan Kegiatan Usaha oleh Yayasan dalam Undang-Undang Nomor 28 Tahun 2004. *Jurnal Hukum dan Pembangunan*, 50(3), 612–629. <https://doi.org/10.21143/jhp.vol50.no3.2453>
- Rahmawati, D. (2020). Penegakan Prinsip Nirlaba dalam Pengelolaan Yayasan di Indonesia. *Jurnal Hukum dan Pembangunan*, 50(3), 468–483. <https://doi.org/10.21143/jhp.vol50.no3.2487>
- Rahmawati, N., & Setiawan, A. (2021). Batasan Kegiatan Usaha dalam Yayasan: Perspektif Asas Nirlaba dan Perlindungan Hukum. *Jurnal Hukum dan Pembangunan*, 51(1), 87–102. <https://doi.org/10.21143/jhp.vol51.no1.2901>

- Santoso, D. (2019). Transformasi Fungsi Yayasan dan Tantangan Regulasi di Era Ekonomi Digital. *Jurnal Hukum dan Pembangunan Ekonomi*, 7(1), 42–55. <https://doi.org/10.25041/jhpe.v7i1.1512>
- Sidharta, B. A. (2020). Asas-asas Hukum Umum dalam Teori dan Praktik. *Jurnal Hukum dan Pembangunan*, 50(2), 180–195. <https://doi.org/10.21143/jhp.vol50.no2.1574>
- Sudarsono, H. (2018). Peran Hukum dalam Mengatur Kegiatan Ekonomi oleh Badan Hukum Nirlaba. *Jurnal Hukum IUS QUIA IUSTUM*, 25(2), 207–224. <https://doi.org/10.20885/iustum.vol25.iss2.art4>
- Sudrajat, D. (2019). Tinjauan Hukum terhadap Fungsi Sosial dan Kegiatan Usaha Yayasan dalam Praktik. *Jurnal Legislasi Indonesia*, 16(3), 221–233. <https://doi.org/10.33367/jli.v16i3.318>
- Suryani, E. (2020). Yayasan sebagai Badan Hukum Non-Profit dalam Sistem Hukum Indonesia. *Jurnal Yuridis*, 7(2), 221–235. <https://doi.org/10.35586/jy.v7i2.782>
- Suryanto, E. (2020). Problematika Pengaturan Kegiatan Usaha Yayasan: Kajian Terhadap UU No. 28 Tahun 2004. *Jurnal Legislasi Indonesia*, 17(3), 225–238. <https://doi.org/10.54629/jli.v17i3.307>
- Sutedi, A. (2019). Hukum Organisasi Nirlaba di Indonesia. *Jurnal Rechtsvinding*, 8(2), 155–169. <https://doi.org/10.33331/rechtsvinding.v8i2.578>
- Syahrani, A. (2020). Metodologi Penelitian Hukum Normatif dan Empiris. *Jurnal Hukum & Pembangunan*, 50(1), 23–36. <https://doi.org/10.21143/jhp.vol50.no1.1234>
- Utami, D. S. (2019). Akuntabilitas Yayasan dalam Menjalankan Usaha dan Implikasinya terhadap Badan Hukum. *Jurnal Legislasi Indonesia*, 16(2), 98–112. <https://doi.org/10.54629/jli.v16i2.210>
- Van Apeldoorn, L. J. (2009). *Pengantar Ilmu Hukum*. Jakarta: Pradnya Paramita.
- Wahyuni, S. (2020). Tinjauan Yuridis terhadap Batasan Kegiatan Usaha oleh Yayasan Menurut Undang-Undang Nomor 28 Tahun 2004. *Jurnal Rechts Vinding*, 9(1), 33–45. <https://doi.org/10.33331/rechtsvinding.v9i1.2145>
- Wibowo, D. S., & Prasetya, Y. (2020). Pembatasan Kegiatan Usaha Yayasan: Antara Teori dan Praktik. *Jurnal Hukum dan Kenotariatan*, 4(2), 117–130. <https://doi.org/10.25041/jhk.v4i2.213>

- Wijayanti, M. (2018). Regulasi Kegiatan Usaha Yayasan dalam Perspektif UU No. 28 Tahun 2004. *Jurnal Rechts Vinding*, 7(3), 341–357. <https://doi.org/10.33331/rechtsvinding.v7i3.495>
- Yamamoto, T. (1998). *Emerging Civil Society in the Asia Pacific Community*. Tokyo: JCIE Press.