

Reconstruction Of The Concept Of A Foundation As A Non Profit Oriented Legal Entity

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Submission

2023-Des-15

Review

2024-Jan-18

Accepted

2024-Feb-23

Publish

2024-Apr-11

Abstrak

This research is to find alternative solutions to the many cases of abuse of legal entities in the form of foundations in Indonesia. Foundations as non-profit oriented legal entities have so far been misused to carry out money laundering and other criminal acts, even though the purpose of the Foundation is aimed at social, religious and educational activities. This research is a normative juridical research based on the approach to the laws and regulations in force in Indonesia. This research utilizes primary data sources and secondary data sources. The secondary data comprises primary legal materials and secondary legal materials, which are then analyzed and presented qualitatively. The research results show that the law governing foundations in Indonesia currently, namely Law number 28 of 2004 as an amendment to Law Number 16 of 2001. The last amendment to the Foundation Law was made in 2004, so it has been quite a long time and it is time for changes to be made by reconstructing the current Foundation Law to better guarantee legal certainty for foundations in Indonesia. Based on the discussion above, several provisions need to be strengthened to address the potential misuse of foundations for money laundering activities. Additionally, from a structural perspective, there is a need for reinforcing oversight mechanisms and intensifying public education efforts.

Keywords: Foundation; legal entity; money laundering.

How to Cite: Haris Subesar" Reconstruction Of The Concept Of A Foundation As A Non Profit Oriented Legal Entity" *Jurnal Ilmiah Dunia Hukum*, 8 no. 2 (2024): 17-32. DOI : 10.35973/jidh.xxxxxx

1. Introduction

Along with developments in the field of information technology, economic activities in various countries, including Indonesia, are experiencing changes in several ways of carrying out economic transactions in order to meet life's needs. Likewise, the forms of business carried out and the tools used to support the progress of economic efforts are also changing.

The establishment of a legal business entity is one of the means that is commonly used by the public to carry out businesses or activities in order to achieve the main objectives of their business. On the one hand, the Indonesian Government also continues to try to keep pace with the progress of the business world in line with advances in information technology by issuing several supporting regulations which can serve as guidelines for the public in carrying out business activities.

In Indonesia, there are currently several types of business entities that are legal entities that are valid and official and have a clear legal basis with the issuance of several laws and regulations by the Government of the Republic of Indonesia. These legal entities include, among others, Limited Liability Companies (PT), Cooperatives, Foundations and other legal entities. Foundations are different legal entities, where in general business entities have economic goals or seek profit, but this is not the case with foundations which have not-for-profit goals.¹

Legal entities in the form of foundations, in Indonesia currently still apply the provisions of Law number 28 of 2004 which is an amendment to Law Number 16 of 2001 concerning Foundations. These changes are intended to further ensure legal certainty and order, as well as provide the public with a correct understanding of the Foundation, so that it can restore the Foundation's function as a legal institution in order to achieve certain goals in the social, religious and humanitarian fields.²

Even though the Foundation Law has been conceptualized in such a way, there are still parties who try to abuse the Foundation to carry out irresponsible actions. Before the enactment of the Foundation Law, many criminal cases had occurred where foundations were used as a medium for committing criminal acts, including corruption or embezzlement. Likewise, in the era after the enactment of the Foundation Law, criminal cases involving foundations still frequently occurred. Several criminal cases involving the Foundation include:

- 1) Case of embezzlement by the management of the Aksi Cepat Tunjangan Foundation.³
- 2) The case of GNPF chairman Bachtiar Nasir, on suspicion of misappropriating funds for Islamic defense actions in Turkey which resulted in him being named a suspect.⁴

¹ Ida Bagus Bayu Brahmantya, "Pengaturan Kekayaan Yayasan Ditinjau Dari Pasal 6 Undang-Undang Nomor 16 Tahun 2001 Tentang Yayasan," *Kerta Dyatmika* 21, no. 2 (2023), <https://doi.org/10.46650/kd.21.2.1441.48-57>.

² Robi Krisna, "Tinjauan Hukum Pendirian Yayasan Sebagai Badan Hukum Ditinjau Dari Undang-Undang Nomor 28 Tahun 2004," *Jurnal Sosial Dan Ekonomi* 2, no. 1 (2021).

³ Sabrina Asril Irfan Kamil, "Aliran Dana Boeing Milik Korban Kecelakaan Lion Air Digelapkan Bos ACT Untuk Bayar THR Sampai Koperasi 212," *Kompas.com*, 2002, <https://nasional.kompas.com/read/2022/11/15/16260021/aliran-dana-boeing-milik-korban-kecelakaan-lion-air-digelapkan-bos-act-untuk>.

⁴ Rolando, "Bachtiar Nasir Jadi Tersangka Di Kasus 2017, Ini Penjelasan Polisi," *Detiknews*, 2019, <https://news.detik.com/berita/d-4539324/bachtiar-nasir-jadi-tersangka-di-kasus-2017-ini-penjelasan-polisi>.

- 3) The case of naming BI Governor Burhanuddin Abdullah as a suspect in the flow of funds to the DPR stems from irregularities in funds from the Indonesian Banking Development Foundation (YPPI).⁵
- 4) Case of alleged misuse of the Foundation by the al Zaitun Foundation (Panji Gumilang);

There are still many other cases, even the Financial Transaction Reports and Analysis Center (PPATK) recorded that the total funds received from cases of embezzlement of foundation funds from 2013 to 2022 reached IDR 1.7 trillion.⁶ The results of the PPATK findings above, some of which have taken action, but according to researchers this is far from the real conditions that exist in society. With so many foundations and so many violations, only a small number of them have been prosecuted and this has not yet made the perpetrators give up. PPATK only reports transactions with large numbers, even though there are many other cases with different patterns, where deposits or collections of funds are small or small but from thousands of depositors the total results are very large but are not detected or monitored.

Currently, it is suspected that many foundations are being used to carry out money laundering crimes, this can be seen from the cases described above. Several foundations collect donations from donors but it is suspected that irregularities have occurred or that the use of the donated funds is not in accordance with the foundation's objectives. Thus, it is necessary to study and examine the existing Foundation regulations, including implementing regulations and supervision of foundations.

In fact, in article 5 paragraph 1 of Law No. 28 of 2004 concerning Amendments to Law No. 16 of 2001 concerning Foundations, it is stated that: Foundation assets, whether in the form of money, goods or other assets obtained by the Foundation based on this Law, are prohibited from being transferred or distributed directly or indirectly, whether in the form of salary, wages or honorarium, or other forms that can be valued in money to the Trustees, Management and Supervisor.

To ensure the originality of the research conducted in this study, the researcher has inventoried and reviewed similar studies previously undertaken by other

⁵ detikFinance, "Inilah Kronologi Temuan Penyimpangan Dana YPPI," Detik.com, 2008, <https://finance.detik.com/moneter/d-887119/inilah-kronologi-temuan-penyimpangan-dana-yppi>.

⁶ Anisa Sopiah, "Terungkap! Ada Penggelapan Dana Yayasan Di RI, Capai Rp1,7 T," CNBC Indonesia, 2022, <https://www.cnbcindonesia.com/news/20221228164439-4-400948/terungkap-ada-penggelapan-dana-yayasan-di-ri-capai-rp17-t>.

authors. For instance, Dwi Cesaria Sitorus conducted a study titled "Principles of Accountability and Transparency of Foundations in Preventing Money Laundering Practices." This research focused more on the application of principles, whereas the current study emphasizes the elaboration of cases and the necessity to reconstruct existing provisions within the current Foundations Law.

The second study by Imaliya Resti, titled "Utilization of Foundations as Modus Operandi in Money Laundering Crimes (Case Study of Verdict Number: 152/Pid.B/2011/Pn.Kpg and Verdict Number: 1260/Pid.B/2012/Pn.Jkt.Pst)," focuses on case studies, examining money laundering issues that have been adjudicated by court decisions. This study differs as it aims to identify factors and solutions for the phenomenon of foundations being used as vehicles for money laundering practices.

The third study by Ningrum Natasya Sirait, titled "Non-Profit Organizations (NPOs) as Media for Money Laundering Crimes," shares similarities in highlighting the weak regulations governing foundations, making them susceptible to money laundering. However, the previous research suggests a comparative study with other countries' regulations on foundations, whereas the current study stresses the need for regulatory changes based on the research findings.

Based on what has been described in the Background section, in the research that will be carried out, problem identification is limited to the following problems, How is the legal regulation of foundations developing in Indonesia? And How is the reconstruction of the concept of a foundation as a non-profit oriented legal entity in Indonesia?

2. Research Method

This research is normative juridical in nature, where the author conducted doctrinal research on regulations related to foundations that apply in Indonesia. It can also be said to be research carried out by examining library materials or secondary data.⁷ This research utilizes primary and secondary data. Primary data are collected directly from the field by the researcher, while secondary data consist of primary legal materials, secondary legal materials, and tertiary legal materials. Data collection techniques include literature review, which is then analyzed and presented qualitatively.

⁷ Nurul Qamar and Farah Syah Rezah, *Metode Penelitian Hukum: Doktrinal Dan Non-Doktrinal*, CV. Social Politic Genius (SIGn), 2020.

3. Research Results and Discussion

This writing uses Lawrence M. Friedman's theory of legal certainty, where he believes that there are 3 (three) elements related to law, namely structure, substance and legal culture.⁸ In relation to structure, this is a framework that provides comprehensive protection for a legal system. The structure consists of elements of judicial institutions, statutory regulations and procedures that are used as a reference by law enforcers. Friedman argued as follows: *"The structure of a legal system consists of elements of this kind : the number and size of courts; their jurisdiction (that is, what kind of cases they hear, and how and why); and modes of appeal from one court to another. Structure also means how the legislature is organized, how many members sit on the Federal Trade Commission, what a president can (legally) do or not do, what procedures the department's policies follow, and so on. Structure, in a way, is a kind of cross section of the legal system - a kind of still photograph, which freezes the action"*.⁹

Substance is what is produced by the structure, this can be in the form of legislation, decisions or policies. Substance is the rules, norms, order and behavior of a society in a system created by the authorities. Friedman's opinion is related to substance, as follows: *"Another aspect of the legal system is its substance. By this is meant the actual rules, norms, and behavior patterns of people within the system; Substance also means the "product" that people within the legal system manufacture - the decisions they turn out, the new rules they contrive"*¹⁰

Meanwhile, legal culture is a community's behavioral attitude, the community's attitude towards a legal rule. This is related to the beliefs, values, ideas and expectations of a society towards the law. People's views on law vary greatly, because they are influenced by sub-cultures such as ethnicity, gender, education, beliefs and environment. Regarding legal culture, Friedman argues: *"The stress here is on living law, not just the rules in law books. And this brings us the third component of a legal system, which is, in some ways, the least obvious : the legal culture. By this we mean people's attitudes toward law and the legal system - their beliefs, values, ideas, and expectations. In other words, it is that part of the general culture which concerns the legal system. These ideas and opinions are, in a sense, what*

⁸ Mustafa 'Afifi Ab. Halim and Shabrina Zata Amni, "Legal System in the Perspectives of H.L.A Hart and Lawrence M. Friedman," *Peradaban Journal of Law and Society* 2, no. 1 (2023), <https://doi.org/10.59001/pjls.v2i1.83>.

⁹ Lawrence M. Friedman and Grant M. Hayden, *American Law: An Introduction*, American Law: An Introduction, 2017, <https://doi.org/10.1093/acprof:oso/9780190460587.001.0001>.

¹⁰ Friedman and Hayden.

sets the legal process going; The legal culture, in other words, is the climate of social thought and social forces which determine how law is used, avoided, or abused.”¹¹

According to Friedman, the three components of law are that the structure is like a machine, while the substance is what is produced by the machine itself, while the legal culture is whoever uses the machine.

Based on Friedman's theory, it becomes a reference in the writing carried out. The extent to which legal provisions in Indonesia relate to Foundations and other related regulations. What are the 3 (elements) of law and structure that currently exist in Indonesia to enforce the goals of the Foundation, including those related to the parties who carry out enforcement or supervision of the Foundation. How the existing legal substance can be said to fulfill legal certainty or justice and what the substance of a Foundation in Indonesia should ideally be. Then finally, how is the legal culture in Indonesia related to foundations, especially the actors and parties involved with foundations.

The number of foundation legal entities in Indonesia is currently increasing and they are engaged in various activities. A foundation is a legal entity consisting of separated assets and intended to achieve certain goals in the social, religious and humanitarian fields, which does not have members. In the second principle of Pancasila, it is stated that Just and Civilized Humanity. Pancasila as the ground norm or basic norm for the Indonesian nation is the foundation of the constitution and the regulations that are hierarchically subordinate to it. Pancasila is the source of all sources of state law.¹² Likewise with the legal dogmatics regarding foundations that currently apply in Indonesia. The Foundation law currently applies in Indonesia, both positive law and the reality that occurs in society, whether it meets the concept of just and civilized humanity and how The law regarding existing foundations should fulfill the concept of just and civilized humanity.

3.1. Substance of Foundation Law in Indonesia

In society, there are many acts that should be suspected of violating existing laws or norms by carrying out activities through mechanisms or using foundations as a medium. If we return to the Foundation Law, which aims for social, religious and educational activities, there are many irregularities in

¹¹ Friedman and Hayden.

¹² Vina Rohmatul Ummah, “Politik Hukum Pembentukan Undang-Undang Nomor 13 Tahun 2022 Tentang Perubahan Kedua Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan,” *Staatsrecht: Jurnal Hukum Kenegaraan Dan Politik Islam* 2, no. 2 (2022), <https://doi.org/10.14421/staatsrecht.v2i2.2813>.

society where funds that are supposed to be for social purposes are targeted at people who cannot afford it, such as orphans or the poor, but it is suspected that it is actually enjoyed by unscrupulous individuals. certain. In this way, the sense of social justice for those who are entitled to receive social assistance is actually taken away by these individuals and does not reach the right target. Because Pancasila is a way of life, it functions as a frame of reference both for organizing personal life and in interactions between humans in society and the natural surroundings.¹³

Looking back at the positive law governing foundations, it can be seen that the first Foundation Law was Law No. 16 of 2001 concerning Foundations, then amended by Law No. 28 of 2004 concerning Amendments to Law No. 16 of 2001 concerning Foundations. The last amendment to the Foundation Law was made in 2004, so it has been quite a long time and it is time for changes to be made by reconstructing the current Foundation Law to better guarantee legal certainty.

In this article, the author has selected only a few articles which, according to the author, are time to be changed and adapted to the times and developments in information technology.

Most foundations receive their funds from donations from certain parties, whether individuals, legal entities or the government. Because the funds are obtained from the public, there are mandatory provisions related to the Foundation's financial reports, including:¹⁴

- (1) An overview of the Foundation's annual report is announced on the notice board at the Foundation office.
- (2) The financial report summary which is part of the annual report summary as intended in paragraph (1), must be published in an Indonesian language daily newspaper for Foundations that:
 - a. obtain state aid, foreign aid, and/or other parties amounting to Rp. 500,000,000.00 (five hundred million rupiah) or more, in 1 (one) financial year; or

¹³ Kaelan, "Filsafat Bahasa Semiotika Dan Hermeneutika, Yogyakarta," in *Paradigma*, 2009.

¹⁴ Dewi Sukma Kristianti, "Menelisik Yayasan Di Indonesia: Sebagai Lembaga Yang Memiliki Fungsi Dan Tujuan Sosial Semata?," *Jurnal Paradigma Hukum Pembangunan* 6, no. 1 (2021), <https://doi.org/10.25170/paradigma.v6i1.2506>.

- b. have assets outside waqf assets amounting to IDR 20,000,000,000.00 (twenty billion rupiah) or more.
- (3) The Foundation's financial reports as referred to in paragraph (2), must be audited by a Public Accountant.
- (4) The results of the audit of the Foundation's financial report as referred to in paragraph (3), are submitted to the Foundation Trustee concerned and copied to the Minister and related agencies.

According to the author, the regulations in article 52 are very loose and too easy to exploit loopholes by parties who intend to use the Foundation as a medium for enriching themselves or laundering money. The nominal limit of IDR 500,000,000 (five hundred million rupiah) can be circumvented by receiving financial assistance minus just one thousand rupiah, which is already free from the obligations of article 52 so that is a loophole that can be exploited.

The obligation to audit foundation financial reports as intended in Article 52 paragraph 3 of the Foundation Law is certainly very burdensome for foundations. To carry out an audit, a public accountant will certainly receive an honorarium and a public accountant's honorarium is certainly not cheap. With the costs of paying a public accountant, the Foundation will certainly think twice. So the Foundation's management will choose to get around the provisions of article 52, including usually by dividing the nominal value of IDR 500,000,000 (Five hundred million rupiah) among more than one foundation, so that the obligations stipulated in Article 52 will fail. Currently there are no restrictions on the number of foundations established, so that one person can establish dozens of foundations or even hundreds of foundations. This is not prohibited.

3.2. Conflict of interest provisions.

In the current provisions of the Foundation Law, the author does not see any sanctions for foundations where there is a conflict of interest between the founders, administrators and supervisors. There are many foundations whose founders, administrators and supervisors are still part of the same family, where they jointly manage a foundation. Compare this with the provisions in force at the Financial Services Authority, conflicts of interest are specifically regulated with separate regulations, even including transactions involving conflicts of interest. Even though the domain of the foundation and the OJK is different, what is implemented at the OJK is good as a comparison. In a

Foundation there are Trustees, Supervisors and Management where according to the latest theory, the position of the three organs is not in a tier (untergeordnet), but their position is equal (neben). Each with their own duties and authorities which cannot be interfered with by one another.¹⁵ However, in practice, most of the organs in the Foundation are only complementary, while the dominant one is usually only one organ that handles all the Foundation's organs.

3.3. Sanctions in the Foundation Law

In Article 5 of the Foundation Law, it is stated that Foundation Wealth, whether in the form of money, goods or other assets obtained by the Foundation based on this Law, is prohibited from being transferred or distributed directly or indirectly to Trustees, Management, Supervisors, employees or other parties who have an interest in the Foundation. However, proving this is certainly not easy, because foundation audits are basically regulated in the provisions of Article 53, namely:¹⁶

- (1) An examination of the Foundation to obtain data or information can be carried out if there is a suspicion that the Foundation's organs:
 - a. commit acts against the law or contrary to the Articles of Association;
 - b. negligent in carrying out his duties;
 - c. commit acts that are detrimental to the Foundation or third parties; or
 - d. commit acts that are detrimental to the State.
- (2) The examination as intended in paragraph (1) letters a, b, and c can only be carried out based on a Court determination based on a written request from an interested third party accompanied by reasons.
- (3) The examination as intended in paragraph (1) letter d can be carried out based on a Court determination at the request of the Prosecutor's Office in terms of representing the public interest.

The provisions of article 53 certainly make the Foundation appear to have legal immunity. Requiring a court order at the request of a prosecutor representing the public interest is certainly inefficient and too bureaucratic.

¹⁵ Zulfi Diane Zaini and Putri Septia, "Pertanggungjawaban Pengurus Dalam Pengelolaan Badan Hukum Yayasan Di Indonesia," *Justice Voice* 1, no. 1 (2022), <https://doi.org/10.37893/jv.v1i1.65>.

¹⁶ . Kasiani, "Hukum Badan Usaha Yang Dapat Didirikan Oleh Yayasan Untuk Mewujudkan Kemudahan Iklim Berusaha Di Indonesia," *Jurnal Supremasi*, 2021, <https://doi.org/10.35457/supremasi.v1i1i1.1382>.

In the Foundation Law, sanctions are regulated in Article 70 (1). Every member of a Foundation organ who violates the provisions as intended in Article 5, shall be punished with a maximum imprisonment of 5 (five) years. (2) Apart from imprisonment, members of foundation organs as intended in paragraph (1) are also subject to additional punishment in the form of the obligation to return money, goods or foundation assets that are transferred or distributed. Apart from what is specifically regulated, the Criminal Code has also been regulated, as can also be linked to sanctions regulated in the Corruption Law or others. But there needs to be more sanctions that are specifically regulated in the Foundation Law, because conditions in society today have changed greatly in terms of dynamics and technological advances compared to the last time the Foundation Law was amended (2004).

3.4. Supervision of Foundations

The Foundation Law regulates supervision, even internally in the Foundation's articles of association there is also a separate organ called the Supervisor, however there are still many loopholes that can be exploited by certain individuals to carry out actions that benefit themselves or commit crimes by taking advantage of the Foundation. Foundation assets, whether in the form of money, goods or other assets obtained by the Foundation based on this Law, are prohibited from being transferred or distributed directly or indirectly to Trustees, Management, Supervisors, employees or other parties who have an interest in the Foundation. On the one hand, there are also supervisors who are outside the Foundation itself (external).

Because the initial intention was for social donations, of course people didn't care and didn't realize that they had become victims of fraud. In fact, if you add up the total value of losses to society, it is very large, which of course will also cause losses for the state in the end. So the Foundation's objectives as stated in the Foundation's Articles of Association are far from the target. Regarding the receipt of funds by foundations, Yetty Komalasari Dewi explained that there is no obligation for foundations to prove whether the source of the donated funds they receive is legally valid or not.¹⁷ then the state must be present to provide protection to the legal entity of the Foundation, including in this case the community who with good intentions set up a Foundation to be utilized with the ideal concept of a Foundation. What protection is provided by the state for

¹⁷ Hukumonline, "Simak Penjelasan Ahli Hukum Berikut Agar Yayasan Tak Melanggar Hukum," Hukum Online, 2017, <https://www.hukumonline.com/berita/a/simak-penjelasan-ahli-hukum-berikut-agar-yayasan-tak-melanggar-hukum-lt58cd54a420d0e/>.

foundations so that they are not misused for money laundering crimes? According to Philipus M. Hadjon, legal protection is an effort to protect the rights of certain parties in accordance with their obligations.¹⁸ The parties in a Foundation include the founders, administrators and the general public who are Foundation donors. What's more, what needs to be protected are the poor, orphans and other poor people who are the targets for carrying out the social goals of a Foundation.

The government is currently only concerned about crimes against foundations whose funding uses state money or funds collected for illegal activities such as terrorist activities, corruption cases involving foundations, but there is still very little action against violations committed against foundations that actually "collect public funds" but used that is not in accordance with the foundation's business objectives. Even though the value is likely to be much greater than embezzlement of funds originating from the state or funds for terrorists. The problem with this Foundation is basically like an iceberg, only the surface is visible.

Supervision of the Foundation is currently too lax. Even when compared with other forms of Legal Entity whose supervision is under the Financial Services Authority (OJK), where supervision is quite strict and carried out by Special Institutions and the obligations that must be fulfilled by Business Actors are such, there is still a lot of fraud or abuse occurring. Moreover, the current supervision carried out on the Foundation is very open to committing crimes.

In terms of state losses due to misuse of foundations, these include the loss of tax revenues which should have been input into taxes, but with the crimes committed by the perpetrators where they did not pay taxes by avoiding them in such a way, for this the state should of course be suspected of experiencing tax losses. When viewed from the perspective of money laundering criminal regulations, the author suspects that the funds collected in the billions of rupiah were used for other investments outside of the foundation's activities, generally used to create new businesses such as in the fields of trade, property and culinary as well as other businesses.

The perpetrators generally collect massive funds in certain ways using information technology facilities, but it is suspected that this is just a cover. The funds collected each month are estimated to reach billions of rupiah. This amount is just one foundation's gain, who knows how many billions or trillions

¹⁸ Philipus M. Hadjon, "Perlindungan Hukum Bagi Rakyat Di Indonesia," *Bina Ilmu*, 1987.

it would earn if the same method was used by dozens of foundations or even hundreds of foundations in Indonesia.

Regarding the rights and obligations and legal risks for foundations, H.P. Panggabean believes that it seems necessary for all owners to understand that the characteristics of a foundation legal entity are:¹⁹

1. The legal entity of the foundation has no owner.
2. If there are administrators who take advantage of the foundation's assets, then they have committed a foundation crime (see Article 5 in conjunction with Article 70 of the Foundation Law). This is in accordance with the application of the fiduciary profit rule principle)
3. Foundation administrators often do not make regulations regarding the mechanism for replacing foundation organs.

Because the foundation has no owner, many individuals use and abuse the Foundation as their medium to commit crimes such as money laundering. From there, the state must be present and provide protection and supervision from the actions of parties who abuse the foundation.

The results of collecting funds from the community with the intention of "doing charity" for orphans or the poor, in essence hoping to receive a reward or as a form of worship, but it is suspected that many of them were misused by members of the Foundation. Even though the rules are very clear that anyone who deliberately:

- a. *placing assets which he knows or reasonably suspects are the proceeds of a criminal act with a Financial Services Provider, either in his own name or in the name of another party;*
- b. *transfer assets which he knows or reasonably suspects to be the result of a criminal act from one Financial Services Provider to another Financial Services Provider, either in his own name or in the name of another party;*
- c. *pay or spend assets which he knows or reasonably suspects are the proceeds of a criminal act, whether the act is in his own name or in the name of another party;*

¹⁹ Mustofa Mustofa, "Kedudukan Aset Dari Yayasan Yang Belum Disesuaikan Pasca Terbitnya Undang-Undang Nomor 28 Tahun 2004 Tentang Perubahan Atas Undang-Undang Nomor 16 Tahun 2001 Tetang Yayasan," *JURNAL USM LAW REVIEW* 2, no. 1 (2019), <https://doi.org/10.26623/julr.v2i1.2263>.

- d. *donate or donate assets that he knows or reasonably suspects are the proceeds of a criminal act, either in his own name or in the name of another party;*
- e. *entrust assets which he knows or reasonably suspects to be the proceeds of a criminal act, either in his own name or in the name of another party;*
- f. *take assets abroad that he knows or reasonably suspects are the proceeds of a criminal act;*
- g. *exchange assets that he knows or reasonably suspects are the proceeds of a criminal act for currency or other securities; or*
- h. *concealing or disguising the origin of assets which he knows or reasonably suspects are the proceeds of a criminal act, shall be punished for the crime of money laundering with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 5,000. 000,000.00 (five billion rupiah) and a maximum of IDR 15,000,000,000.00 (fifteen billion rupiah).²⁰*

On the basis of the above matters, it is urgent to reconstruct the Foundation Law to anticipate the very widespread misuse of money laundering. In terms of monitoring the Foundation, it is necessary to establish a special institution whose task is to supervise the Foundation and have the duties and authority granted by law, one of which is to take action against parties who violate the Foundation.

3.5. Legal Culture related to Foundations

As a nation that tends to be permissive in certain matters, the public is expected to be wiser in making donations or contributions to foundations in society. Because not all foundations in society actually carry out their business in accordance with the provisions of the foundation's articles of association and laws, many are just a cover for committing crimes.

The modes of crime committed are also increasingly diverse by utilizing information technology facilities. In several cases, crimes were committed by raising funds by foundations, where criminals used foundations as a cover by taking advantage of advances in information technology, the same as the media used in raising funds in the trading sector. Fundraising by foundations uses certain applications to spam the public based on the contact data they have. Of

²⁰ Ansori and Gatot Subroto, "Peran Ppatk Dalam Mencegah Dan Memberantas Tindak Pidana Pencucian Uang," *Unira Law Journal* 1, no. 1 (2022).

the thousands or even millions of data sent by spam, it is logical that some will contact and believe in making donations to the accounts sent. The intention of people who make donations is because they want to do social charity, they do not realize that there are individuals who use this for crimes. Of the funds collected in one month that can amount to billions of rupiah for one foundation, you can imagine how much funds are collected from so many "foundations" that commit similar crimes.

In general, if you receive a proposal or request for a donation in the name of religion or social causes, of course some people will be moved to make a donation in the hope of getting a reward, especially as some methods involve indoctrinating potential donors with religious postulates that the reward will be heaven. The dilemma turns out to be Some of these donations were misused, so that the reward intention did not reach the target. People need to be wise in making donations or contributions, they must check and recheck whether the Foundation they are donating to is truly in line with the Foundation's objectives or just a facade.

On the one hand, law enforcers, agencies authorized to supervise the Foundation must not remain silent. Crimes using the Foundation are increasingly widespread, the hard work and professional work of the law enforcement department in charge of the Foundation must be further improved in order for the Foundation to return to its noble function as a non-profit oriented legal entity.

Based on the discussion above, several provisions need to be strengthened to address the potential misuse of foundations for money laundering activities. Additionally, from a structural perspective, there is a need for reinforcing oversight mechanisms and intensifying public education efforts.

4. Closing

4.1. Conclusions

In substance, the current Foundation Law contains several articles that are too loose and too easy to be circumvented by parties who intend to abuse the Foundation, therefore the Foundation Law needs to be reconstructed in several articles so that it will better guarantee legal certainty. Structurally, there is a need for a special institution that oversees the existence of the Foundation so that it is more orderly, apart from that, there is also a need to increase guidance to the community and various elements of government so that the legal culture of the Foundation is in line with the spirit of Pancasila in order to create legal certainty for the Foundation in Indonesia.

4.2. Suggestions

Untuk pemerintah dan masyarakat, perlu dilakukan revisi Undang-Undang Yayasan untuk memperketat pengawasan dan sanksi, membentuk lembaga pengawas khusus, serta meningkatkan edukasi dan pembinaan agar budaya hukum yayasan sejalan dengan semangat Pancasila demi menciptakan kepastian hukum yang lebih baik.

REFERENCES

- Ab. Halim, Mustafa 'Afifi, and Shabrina Zata Amni. "Legal System in the Perspectives of H.L.A Hart and Lawrence M. Friedman." *Peradaban Journal of Law and Society* 2, no. 1 (2023). <https://doi.org/10.59001/pjls.v2i1.83>.
- Anisa Sopiah. "Terungkap! Ada Penggelapan Dana Yayasan Di RI, Capai Rp1,7 T." *CNBC Indonesia*, 2022. <https://www.cnbcindonesia.com/news/20221228164439-4-400948/terungkap-ada-penggelapan-dana-yayasan-di-ri-capai-rp17-t>.
- Ansori, and Gatot Subroto. "Peran Ppatk Dalam Mencegah Dan Memberantas Tindak Pidana Pencucian Uang." *Unira Law Journal* 1, no. 1 (2022).
- detikFinance. "Inilah Kronologi Temuan Penyimpangan Dana YPPI." *Detik.com*, 2008. <https://finance.detik.com/moneter/d-887119/inilah-kronologi-temuan-penyimpangan-dana-yppi>.
- Friedman, Lawrence M., and Grant M. Hayden. *American Law: An Introduction*. *American Law: An Introduction*, 2017. <https://doi.org/10.1093/acprof:oso/9780190460587.001.0001>.
- Hukumonline. "Simak Penjelasan Ahli Hukum Berikut Agar Yayasan Tak Melanggar Hukum." *Hukum Online*, 2017. <https://www.hukumonline.com/berita/a/simak-penjelasan-ahli-hukum-berikut-agar-yayasan-tak-melanggar-hukum-lt58cd54a420d0e/>.
- Ida Bagus Bayu Brahmantya. "PENGATURAN KEKAYAAN YAYASAN DITINJAU DARI PASAL 6 UNDANG-UNDANG NOMOR 16 TAHUN 2001 TENTANG YAYASAN." *Kerta Dyatmika* 21, no. 2 (2023). <https://doi.org/10.46650/kd.21.2.1441.48-57>.
- Irfan Kamil, Sabrina Asril. "Aliran Dana Boeing Milik Korban Kecelakaan Lion Air Digelapkan Bos ACT Untuk Bayar THR Sampai Koperasi 212." *Kompas.com*, 2002. <https://nasional.kompas.com/read/2022/11/15/16260021/aliran-dana-boeing-milik-korban-kecelakaan-lion-air-digelapkan-bos-act-untuk>.
- Kaelan. "Filsafat Bahasa Semiotika Dan Hermeneutika, Yogyakarta." In *Paradigma*, 2009.
- Kasiani, . "Hukum Badan Usaha Yang Dapat Didirikan Oleh Yayasan Untuk Mewujudkan Kemudahan Iklim Berusaha Di Indonesia." *Jurnal Supremasi*, 2021. <https://doi.org/10.35457/supremasi.v1i1.1382>.

- Kristianti, Dewi Sukma. "MENELISIK YAYASAN DI INDONESIA: SEBAGAI LEMBAGA YANG MEMILIKI FUNGSI DAN TUJUAN SOSIAL SEMATA?" *Jurnal Paradigma Hukum Pembangunan* 6, no. 1 (2021). <https://doi.org/10.25170/paradigma.v6i1.2506>.
- Mustofa, Mustofa. "Kedudukan Aset Dari Yayasan Yang Belum Disesuaikan Pasca Terbitnya Undang-Undang Nomor 28 Tahun 2004 Tentang Perubahan Atas Undang-Undang Nomor 16 Tahun 2001 Tetang Yayasan." *JURNAL USM LAW REVIEW* 2, no. 1 (2019). <https://doi.org/10.26623/julr.v2i1.2263>.
- Philipus M. Hadjon. "Perlindungan Hukum Bagi Rakyat Di Indonesia." *Bina Ilmu*, 1987.
- Qamar, Nurul, and Farah Syah Rezah. *Metode Penelitian Hukum: Doktrinal Dan Non-Doktrinal*. CV. Social Politic Genius (SIGn), 2020.
- Robi Krisna. "Tinjauan Hukum Pendirian Yayasan Sebagai Badan Hukum Ditinjau Dari Undang-Undang Nomor 28 Tahun 2004." *Jurnal Sosial Dan Ekonomi* 2, no. 1 (2021).
- Rolando. "Bachtiar Nasir Jadi Tersangka Di Kasus 2017, Ini Penjelasan Polisi"." Detiknews, 2019. <https://news.detik.com/berita/d-4539324/bachtiar-nasir-jadi-tersangka-di-kasus-2017-ini-penjelasan-polisi>.
- Ummah, Vina Rohmatul. "Politik Hukum Pembentukan Undang-Undang Nomor 13 Tahun 2022 Tentang Perubahan Kedua Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan." *Staatsrecht: Jurnal Hukum Kenegaraan Dan Politik Islam* 2, no. 2 (2022). <https://doi.org/10.14421/staatsrecht.v2i2.2813>.
- Zaini, Zulfi Diane, and Putri Septia. "Pertanggungjawaban Pengurus Dalam Pengelolaan Badan Hukum Yayasan Di Indonesia." *Justice Voice* 1, no. 1 (2022). <https://doi.org/10.37893/jv.v1i1.65>.