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JURIDIC ANALYSIS OF THE PRINCIPLES OF NON-PROFIT IN THE ESTABLISHMENT OF BUSINESS ENTITY BY THE FOUNDATION

Haris Mustofa Muhammad*, Nur Widhiyanti Hanif, Reka Dewantara

Faculty of Law, University of Brawijaya, Malang, Indonesia

*E-mail: mohammadharismustofa@gmail.com

ABSTRACT

As a non-profit legal entity, the foundation can take legal action following the vision and mission in the articles of association, as long as the action is stated in the aims and objectives of the foundation. The purpose of establishing a Foundation legal entity is to assist or improve the safety of a large number of people, not to seek profit. Foundations were recognized as legal entities in Indonesia prior to the enactment of the Foundation Law, through customary and jurisprudential norms. The research uses normative methods to compile the results of activities in achieving goals. The establishment of a foundation business entity is to help organizations achieve social, religious, and humanitarian goals and objectives. As a result, everyone who wants to join the organ of the foundation is required to work without pay in terms of compensation or salary. In essence, Law No. 28 of 2004 concerning Foundations regulates the establishment of foundations for charitable purposes or without the motive of seeking finance, as stated in "Article 1 number 1 concerning the definition of foundations, that the purpose of foundations is in the social, religious and humanitarian fields. This principle is also seen in Article 3 paragraph (2), which states that foundations may not distribute the results of business activities to the Trustees, Management and Supervisors. According to the Foundation Law, the primary operations of foundational entities include services for human rights, arts, sports, consumer protection, education, environment, health, and science. The foundation must develop breakthroughs to obtain capital income to achieve these goals and objectives. Foundations should find ways to give value to their environment and start in the field of business entities or businesses so that this activity can become a significant source of income for foundations that are no longer dependent on donations.

KEY WORDS

Foundation, non-profit, business entity, indonesia, social field, legal action.

Positive economic activities must support the economic development of a nation. Therefore the regulation of economic policy and other conditions involved must be regulated appropriately. The independence that the Indonesian people have passed has been more than half an era. It must optimally move the wheels of the country's economy, where many provisions have been made and arranged in great detail. However, unfortunately, the citizens' explanations are lacking in this matter. We can observe various problems that arise—intertwined in the field because the community's efforts are a means of pioneering the economy itself.

A Legal Entity is the material of a man-made regulation that is sourced from the Law, given the status as a supporter of the rights and obligations of every human being. For the provisions of chapter 1653 of the Civil Code, the existence of legal institutions in Indonesia is classified into three groups, namely:

1. State institutions, government institutions, autonomous regions, BUMN, and BUMD are examples of legal entities established by the government (State Authority);
2. Church associations, mosque congregations and religious groups are examples of legal entities recognized by the government (State Authority);
3. Foundations, Cooperatives, and PT are examples of legal entities created for certain purposes that do not conflict with law or morality.

LITERATURE REVIEW

Law Number 16 of 2001 contained in Article 1 number 1 regulates foundations which reads, "Foundations are legal organizations consisting of assets that are separated and created to serve certain purposes in social, religious, and humanitarian elements that do not have people." With the introduction of the Foundation Law, the concession mechanism, which announces the certainty of the establishment of an institution that only attains legal entity status after obtaining permission from the state, is used to create a foundation. It will be easy to monitor using this method. Non-profit foundations whose activities focus on social, religious or educational fields are involved in various non-commercial activities.

According to Law Number 16 of 2001, Article 1 number 13 plus Law Number 28 of 2004, which regulates foundations, foundations are legal entities consisting of separated assets and are intended to fulfil specific purposes (hence the Law on Foundations). (Mulhadi, 2010)

Trustees, Management, and Supervisors are the three most significant foundation organs in terms of structural implementation. For the Foundation to function, these three organs must exist and cannot work concurrently in one place at once. "Law Number 16 of 2001, which regulates Foundations, is revoked and replaced by Law Number 28 of 2004, which contains many regulations governing the powers of Foundation Organs, such as Trustees, Management, and Supervisors. The Articles of Association must clearly describe the strengths of the Foundation Organs in terms of their rights and responsibilities.

A foundation can carry out legal proceedings as a legal entity as long as the legal action remains as stated in the articles of its organization with the aims and objectives of the function of the legal entity of the foundation. If the foundation takes an ultra vires legal action that exceeds the limit of its power, the lawsuit is null and void (*null and void; nietig*). (Mulhadi, 2010).

So with that, the people's will arises to establish a social, religious, and humanitarian Foundation. With the existence of the Foundation, all the community's aspirations can be achieved in an agency that is recognized and has its presence to do good, not looking for profit. The Foundation's activities, such as social and humanitarian activities, are thought to arise from the understanding of various community backgrounds who can give up their wealth to help people experiencing difficulties. In contrast to other legal, institutional structures that concentrate exclusively on commercial and corporate elements, the Foundation is considered to prefer a space of action to coordinate social activities such as education, health, and religion. The Foundation has a unique position that is very important to achieving the country's development vision, purpose, and goals, namely social balance for all Indonesian people (Supramono & Cipta, 1973)

METHODS OF RESEARCH

The research uses normative methods to compile the results of activities in achieving goals. Normative arguments are designed to define that legitimate framework. Moreover, such arguments are not merely expressions of personal preference but are evaluative assertions and moral demands we are entitled to make of each other. Moral and political theory provide resources to help lawyers make evaluative assertions about human values that the legal system should respect. At the same time, lawyers possess substantial expertise in analysing, shaping, and defending normative claims and the methods used by lawyers should be of interest to moral and political theorists. The establishment of a foundation business entity is to help organizations achieve social, religious, and humanitarian goals and objectives.

RESULTS AND DISCUSSION

The results of the study show the real conditions regarding the rules of law and social events that exist in society. The results of the research are based on the development of

business entities owned by the Foundation in Indonesia. Using the results of this study as a guide, the Foundation can share information about businesses owned by the Foundation that aren't for profit. The principle of non-profit or non-profit oriented is an institution that aims not to seek profit or profit. A profit can be established if capital is desired to get more results than that capital. For non-profit or non-profit purposes, the existing money is not processed for profit but for activities that are useful for the community.

The non-profit sector, represented by non-governmental organizations, also needs financing for its activities. NGO income can consist of own income and external income. NGOs are no exception, which uses both sources cumulatively and therefore does not depend on only one type of income.(DEMIN, ALEXANDER V., 2016)

Of course, as a not-for-profit entity, it does not lead to the line of business. This does not include profiteering as long as the proceeds are not used for the needs of the Foundation's organs or allocated to its management. However, the income must be used for the Foundation as much as possible, such as social activities and capital to create and develop the Foundation. The laws and regulations on foundations have been drafted so that foundations can then grow and fulfil their goals, which are primarily social, religious, and humanitarian. However, many foundations that are regulated do not develop as they should. As a result, these foundations, from time to time, do not grow. Moreover, they experience setbacks.

Nonprofit organizations are an important sector of the US economy. The number of nonprofit organizations has tripled over the past 30 years, from just over 300,000 in 1967 to nearly 1 million in 1998. Between 1980 and 1990, paid employment in the nonprofit sector grew by 41 per cent, more than two times the national employment. Growth rate. In 1990, the total income of nonprofit organizations exceeded 10 per cent of the gross national product. Nonprofit organizations play a significant role in health, education, social services, and the arts. They are also a prominent feature in many other countries. (Brickley et al., 2011)

According to Article 3 paragraph (1) of Law Number 16 of 2001, which regulates Foundations, foundations can carry out business activities to help achieve the goals and objectives by forming a business organization or participating in an organization. According to the meaning of the words in this article, a foundation is not a business facility. Still, it must use a business entity formed by a foundation or other business entity where the foundation invests in carrying out business activities.

The ratification of Law No. 16/2001, revised by Regulation No. 28/2004 on Foundations, is a ray of hope for Indonesian foundations that have been operating without a solid legal basis for a long time. For lawful purposes, "a foundation is defined as a legal entity consisting of autonomous assets to achieve specific social and humanitarian goals without the participation of members, as stated in Article 1 of Law No. 28 of 2004, which amends Law No. 16 of 2001. (Dewi, 2013)

This foundation was founded to improve welfare and help other people's lives, not just for profit. Before introducing the Foundation Law, Indonesian customs and law recognized foundations as legal entities. At that time, the foundation was established and operated according to customary law in all its activities. (*Chatarramasyadi*, n.d.)

As stated in Article 3 of the Foundation Law, foundations can carry out commercial operations to earn profits, such as:

1. By forming a business enterprise and/or participating in one, the foundation can engage in commercial operations to help them achieve its goals and objectives;
2. Trustees, Management and Supervisors of the Foundation are not allowed to get the results of their commercial activities."

Based on the description above, establishing a foundation business entity is to assist in the achievement of social, religious and humanitarian goals and objectives. It forces the foundation's organs to function voluntarily without getting a set salary, compensation, or fees. The provisions in paragraph (2) above further emphasize that the economic activities of the foundation are for the benefit of the foundation, not to seek the primary purpose of the foundation's organs.

The regulations regarding the Foundation Law are also explained in articles 7 and 8:

1. Article 7 (1) Foundations may establish a business entity whose activities are by the aims and objectives of the foundation; (2) "Foundations may make investments in various prospective forms of business provided that the total participation is a maximum of 25% (twenty five percent) of the total assets of the Foundation; (3) Members of the Trustees, Management and Supervisors of Foundations are prohibited from concurrently serving as Members of the Board of Directors or Management and Members of the Board of Commissioners or Supervisors of the business entity as referred to in paragraphs (1) and (2)."
2. Article 8 "Business activities of a business entity as referred to in Article 7 paragraph (1) must be in accordance with the aims and objectives of the Foundation and do not conflict with public order, morality, and/or the prevailing laws and regulations."

By the Law on Foundations, the commercial activities of foundation institutions include services for human rights, arts, sports, consumer protection, education, environment, health, and science. The provisions in the previous paragraphs, in this case, state that the foundation can carry out commercial activities, or rather, can carry out business activities that generate profits, even though profit is not the goal. A foundation can make money by participating in or starting a new company, depending on the circumstances, under the provisions of the Foundation Act.

Arnaboldi and Lapsley (2004) studied the adoption of activity-based costing in non-profit health care institutions. However, a government mandate does not require activity-based costing. This not-for-profit organization has chosen to adopt activity-based costing. This study demonstrates how techniques for "rational management," such as activity-based costing, have been "adopted," not for use, but for this not-for-profit institution to present itself as up-to-date and modern for its external controls (Bernd Helmig, 2004).

There are many types of business entities that can be found in Indonesia today. The majority of these business models are remnants of the past, such as those made by the Dutch government. "Maatschap (Civil Partnership), Vennootschap Onder Firm (VOF) or the firm abbreviated as Fa, Limited Partnership (Commanditaire Vennootschap) or abbreviated CV, Limited Liability Company (PT), and Trading Company (PD) are among them. (Kurniawan, 2014).

The following characteristics can be used to distinguish between a business entity that is a legal entity and one that is not a legal entity (Sembiring, 2004):

- a. There is wealth between the business entity and the owner of the business entity which is different from the wealth between the business entity and the owner of the business entity;
- b. There are goals set for corporate entities;
- c. Business entities have their own reasons to ensure the company can continue to run.

Triuwono (2000:157) describes "non-profit organizations as one of the main goals of non-profit organizations, or non-profit organizations, is to support a policy or solve important problems in a country. This shows that there is a difference between a for-profit organization and a not-for-profit organization." Profit maximization is the primary goal of profit companies, while social factors are more important for non-profit organizations. "A non-profit organization is an organization founded with the primary purpose of providing services to the community. Non-profit organizations include hospitals, mosques, farmer groups, churches, non-governmental organizations (NGOs), public clinics, and etc. (Widhiyaningrat, 2015)

According to utilitarianism, the purpose of the legislation is to benefit as many people as possible. Happiness is described as a benefit in this context; therefore, whether a rule is good or harmful is determined by whether it brings happiness to people. Therefore, every preparation of legal goods (laws and regulations) must always pay attention to the purpose of the law, which is to provide the maximum benefit to the community. (Ansori, 2006)

According to the flow mentioned above, the purpose of law is to provide the maximum benefit and welfare to the population, based on a social philosophy that shows that every citizen has the right to seek happiness, and the law is one of the means to achieve it. (Darji Darmodihardjo, 2011).

It is clear that Law Number 28 of 2004 relating to Foundations explicitly states that foundations can be established for non-profit or non-profit purposes, as indicated in Article 1 number 1 concerning the definition of foundations, that the purpose of foundations is in the social, religious and humanitarian fields. Article 3 paragraph (2) reaffirms this idea by stating that a foundation may not hand over its commercial operating profits to its Trustees, Management, or Supervisors for personal gain. As a result, the three organs of the Foundation are prohibited from taking advantage of the Foundation's institution because the Foundation is not a business entity whose purpose is to make a profit from its activities.

Based on Article 3 paragraph (1) of Law Number 16 of 2001, which regulates Foundations, Foundations can conduct business activities by forming a corporate organization. as it says in the affirmation: "The establishment of a business enterprise or participation in a commercial entity can help the foundation achieve its aims and objectives." Members of the board of directors, management or supervisors of a foundation may not also serve on the board of commissioners or supervisors of a commercial company established by a foundation.

As a legal entity, the foundation was re-established as a philosophical institution to pursue social, humanitarian, and religious goals while also providing accurate information to the public and enforcing rules to ensure public safety and welfare. This is stated in the preamble to the explanation of the Foundation Law.

It has been the common goal of many existing non-profit organizations to realize fair data sharing, collaborative data governance, and open and transparent data through (i) application of data governance concepts to optimization of customer relationship management and call centres, (ii) use of technology as a medium of communication between non-profit organizations and clients, which can be the general public, health clinics, insurance companies, and policyholders (Chen-Shu Wang, 2019).

Panggabean said that there are 3 guiding components in the management of the following Foundation (HP.Panggabean, 2002):

1. In the managerial aspect, namely, the Foundation can grow and develop to achieve its goals and objectives if the Foundation's organs can manage the Foundation properly according to the vision and mission and the AD/ART of its formation;
2. Financial aspects, namely the foundation's finances and assets, will be better protected if the foundation's financial management, accounting, and internal control systems are improved;
3. Aspects of Taxation, namely, to decide whether a foundation is a taxpayer and can be subject to income tax, we must first understand the concept of a taxpayer. Due to a mistake in acting that the foundation is exempt from paying taxes because it was established solely to advance the interests of society, religion, or humanity as a whole.

Of course, the foundation will not be able to grow and develop without sufficient funds. It is difficult for a foundation to rely solely on the person giving the money to provide a certain amount of funds. Funders to foundations are becoming more critical of their contributions. The donation recipient must know precisely how the donation will be used and how it will benefit. Especially considering the current COVID-19 pandemic, which has resulted in many workers being laid off, and businesses being closed due to social distancing required by PPKM (Enforcement of Community Activity Restrictions) in many regions in Indonesia.

Caricative function and commercial function are two broad categories in which function is the foundation:

1. Connotative functions are non-profit functions, "such as foundations engaged in social, religious, and humanitarian fields, are examples of non-profit functions. Foundations like these rely on community support for funding to keep their operations running smoothly, and they often expect sympathy from their supporters. Therefore, it can be assumed that the running of the Foundation depends on the smoothness of the aid funds obtained from donors. Social concepts and boundaries are not explicitly stated in the Foundation Law. The conclusion is that because a group is more than the sum of its members, what is beneficial to the individual is not always suitable for

the whole group. Consequently, it is essential to analyze how doing something for the welfare of the population or the larger society can be perceived. Economists often use this phrase to describe things like the social benefits of a project, which can be understood as some benefit aimed at society (Diana Conyers, 1994);

2. The commercial function is as a side-by-side antithesis of the previous connotative action, namely pursuing financial benefits for the FoundationFoundation, sometimes the material gains obtained are far more significant than the initial wealth set aside to form the FoundationFoundation, and this can lead to abuse of power on the part of the foundation manager.

To survive, the foundation must produce new breakthroughs to obtain funds to pursue its goals and objectives. Foundations must be proactive in providing added value to the community and the business world so that these activities can become a source of funding for foundations, which no longer rely solely on temporary public generosity (HP.Panggabean, 2002).

The leading roles of organs in not-for-profit organizations include: Setting the direction and strategy of the organization (strategic).Monitoring the actions and performance of executive directors, organizational assets and programs (monitoring).Ensuring that an organization has adequate human and financial resources.represent the organization's interests in society and advance the organization's reputation (resource acquisition/network/services) (BoardSource, 2010; Zahra & Pearce, 1989. (Kristina Jaskyte, 2017).

With the enactment of this Foundation Law, some hospitals that were previously in the form of foundations have changed their business forms into Limited Liability Companies (PT), based on the provisions of Article 20 paragraph (1) of the Law of the Republic of Indonesia Number 40 of 2009 concerning Hospitals. However, until now, no standard regulates the establishment of private educational institutions other than continuing to refer to foundations as legal entities.

Article 3 paragraph (1) of the Foundation Law states that a foundation can establish and/or manage a commercial company in order to assist in the achievement of organizational goals and objectives. "Foundations can combine business companies whose commercial operations are in accordance with the goals and objectives of the Foundation," reads Article 7 paragraph (1).

The Sustenance Framework consists of six interrelated steps – “Foundation”, “Pillars”, “Radar”, “Control”, “Sharing”, and “Review” that assist small businesses with step-by-step guidance to strengthen their sustainability. In essence, if the sustainability of small businesses can be improved, it can generate additional socio-economic value generated in economies around the world, enabling the reduction of unemployment, the spread of wealth, and the alleviation of poverty.(Juan-Pierré Bruwer, 2021)

Many people in Indonesia start a limited liability company, and Indonesians or Indonesian businesses usually find it. In Article 11 of the Foundation Law, the Minister ratifies the foundation deed. As a result, the foundation is now a legal organization officially recognized under the law. Article 7 and Article 8 of the Foundation Law stipulate requirements that must be followed by foundations wishing to participate as shareholders in a Limited Liability Company.

It is as important for non-profit organizations to undertake strategic management as for-profit organizations. There are three reasons, namely.

1. The presence of non-profit and non-profit organizations benefits the social structure;
2. There are usually many people in the world who work for not-for-profit organizations and for-profit businesses for long periods;
3. In both for-profit and not-for-profit businesses, there are structured and organized ways to do their work (Muallief Umar, 2021).

Establishing a business entity means making sales to make a profit. The foundation shows a business entity with the intention that the business entity can seek gain. However, the foundation does not manage or control the commercial entity directly. The economic

operations of the foundation must be by the goals and objectives of the foundation, and they must not endanger public order, morality, or other applicable laws and regulations under Article 8 of the Foundation Law.

The assets or assets of the foundation come from the business results or profits of the foundation's establishment. Therefore, Foundations are prohibited from notifying the results of their commercial operations supervisors, management and supervisors based on Article 3 paragraph (2). This is to prevent members of the organs of the foundation from taking advantage of the opportunity to take advantage of the company's income for personal gain. Furthermore, Article 5 paragraph (1) prohibits the transfer of Foundation assets, which states that "Foundation assets, whether in the form of money, goods, or other assets obtained by Foundations based on the Foundation Law, are prohibited from being transferred or distributed directly in the form of salaries, wages, or other forms that can be valued in money to supervisors, administrators, and supervisors."

CONCLUSION

By Law Number 16 of 2001 concerning Foundations, as amended by Law Number 28 of 2004, Foundations may combine economic business entities for-profit purposes. Foundations are not used as a business platform, and they cannot do business on their own; they have to go through the corporate entity they created or any other business entity in which Foundation assets are included. A foundation is a non-profit organization without a profit motive, but a non-profit organization without a profit motive does not automatically become a foundation. Therefore, the Foundation is an organization with a non-profit purpose. So the purpose of the Foundation is to play a significant role in obtaining profits that can be used as a driving force to achieve the goals of establishing the Foundation.

The foundation must create breakthroughs to generate funds to meet its goals and objectives if it is to exist. Foundations must be proactive in adding value to society and the corporate sector so that these activities can become a source of funding for the foundation, which is no longer dependent on the generosity of benefactors. Even though laws have been passed to control the foundation, many problems occur in practice from the foundation's inception to the foundation's completion. This implies that the constitution does not offer sufficient ease and answers to the difficulties. As a result, the existing Foundation Law had to be changed.

SUGGESTIONS

Foundations as social institutions should not be associated with companies or business entities because doing so would violate the foundation's original purpose, namely for social, religious, and humanitarian purposes. Can run a business but must be separated from the organs of the foundation, both founders or members of it. All management in a new business must be based on the laws in force in Indonesia.

Any foundation seeking personal or commercial gain by carrying out foundation activities should be immediately investigated so that it can be ascertained whether the foundation is seeking personal gain or not. If true, there is evidence that the foundation has committed acts that are not in accordance with its aims and objectives and violate public order and laws and regulations so that immediate dissolution or liquidation is carried out.

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