**Uncovering the Misuse of Foundation Funds: Learning from the Management of Education Foundations in West Java**

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**ABSTRACT:** The foundation, as a non-profit legal entity, plays a vital role in supporting social, religious, and humanitarian activities in Indonesia. However, the practice of misuse of funds by foundation administrators is still rampant, indicating weak supervision and law enforcement despite regulatory changes through Law No. 28 of 2004. This study aims to analyze the impact of regulatory changes on transparency, accountability, and separation of foundation assets, as well as identify obstacles in its implementation. The formulation of the problem focuses on the effect of regulatory changes and obstacles in law enforcement on the misuse of foundation funds. This study uses a qualitative approach with a case study method on an educational foundation in West Java. The research findings show that there are still discrepancies between asset management practices and legal and accounting principles, such as violations of the *Substance Over Form* principle, manipulation of financial statements, and inappropriate asset disposal. In conclusion, although regulations have been updated, weak supervision and ineffective sanctions make the practice of misuse of funds continue to occur. The research recommends strengthening the independent audit system and transparency of financial reporting, as well as the need for a strict separation between the wealth of the foundation and the personal wealth of the founder or board to maintain the integrity and social purpose of the foundation.

**Keywords:** *Misuse; Foundation Funds; Accountability; Substance Over Form; Supervision; Independent Audit.*

1. **BACKGROUND**

Foundations in Indonesia play an essential role in supporting various social, religious, and humanitarian activities. (Nugraha & Fakhrana, 2023) As a non-profit legal entity, a foundation is responsible for managing its wealth to achieve goals that benefit society. However, in recent years, the misuse of foundation funds by its management has become one of the significant legal issues. This issue can undermine the integrity and decrease public trust in these institutions.

Misuse of foundation funds is a significant problem in Indonesia despite the existence of regulations governing its management. Inadequate legal sanctions are an essential factor in such misuse. In this regard, the change of regulation from Law No. 1 Year 2001 on Foundation to Law No. 28 Year 2004 is fundamental to analyze. This change emphasizes the separation of powers between the board and the foundation, as well as strengthening transparency and accountability. However, despite these regulations, there are still many cases of abuse that are not revealed or not prosecuted.

Another problem that emerged was the discrepancy in recording the foundation's assets, for example, in the case of land transfer to the foundation that was not recorded in the financial statements. Founders or owners of foundations who believe that the land still belongs to them because there has been no settlement or reciprocity from the foundation indicate a discrepancy between the practices carried out and the applicable legal and accounting principles. By law, land that has been transferred to the foundation should belong to the foundation and should be recorded in the financial statements. This mismatch violates the Substance-over-form principle in accounting, which emphasizes that transactions should be recorded based on economic substance, not just their legal form. (Jellum, 2024)

Violation of the Substance Over Form principle in accounting can have a significant impact. This affects the legal, financial, and reputation of the foundation and its board. (Poggiolini, 2022) This principle requires foundations to record transactions based on economic substance, i.e., how the transaction impacts the purpose of the foundation, not just from a formal or legal perspective. In the case of a foundation, if an asset such as land has been transferred to the foundation, legally, the land already belongs to the foundation and should be recorded as an asset in the foundation's financial statements. This mismatch between practice and legal principles can lead to serious legal violations and violate the provisions in Law No. 28 Year 2004 that require the separation of the foundation's wealth from the founder's personal wealth.

Another impact is the manipulation of financial statements. Not recording the assets hides the actual financial condition, creates an inaccurate picture, and harms parties who rely on the financial statements, such as donors, trustees, or institutions that require transparency. It also increases the risk of misuse of assets, as unrecorded land can be misused for the personal benefit of the founder or other parties, contrary to the social purpose of the foundation. Violation of this principle can bring more severe legal consequences, such as involvement in the criminal offense of money laundering (TPPU) if the land is used to hide assets derived from illegal or criminal sources.

For example, in 2022, PPATK reported embezzlement of foundation funds worth more than IDR 17 trillion, with more than 1,200 cases revealed. (Sopiah, n.d.) This case highlights the importance of stronger supervision and law enforcement. The modus operandi used by foundation administrators includes misuse of donated funds for personal interests, fictitious financial records, and transfer of foundation assets to related parties of the administrators. This case shows the weak supervision and law enforcement of foundations in Indonesia, which causes the misuse of funds not to be detected early.

In addition, PPATK also reported suspicious transactions identified in 2022 with a total value of IDR 18,388 trillion. (Mediatama, 2023) These transactions involved the banking sector, fintech, insurance, and other financial institutions. Some of these suspicious transactions are also related to the embezzlement of foundation funds and money laundering conducted through foundations. Money laundering and terrorism financing crimes often involve foundations being used as conduits for illicit funds. Some religious foundations, which receive international donations, are allegedly used to fund terrorist groups, showing how vulnerable foundation management is to abuse.

Another prominent example is the case of the alleged misappropriation of funds involving the Aksi Cepat Tanggap (ACT) Foundation, which came to public attention in 2022. (Kompas, 2022) The case came to light after reports of misappropriation of funds for personal use by foundation administrators. The investigation led to the revocation of ACT Foundation's operational license by the Ministry of Social Affairs, demonstrating how weak oversight systems can enable misuse of funds in large foundations with national and international reach.

The cases of embezzlement of foundation funds reaching Rp17 trillion, suspicious transactions revealed by PPATK, as well as the case of ACT, have worsened public trust in foundations in Indonesia and created obstacles in implementing social programs that should benefit the community, such as assistance for orphans or people experiencing poverty. This confirms that despite the existing regulations in Law No. 28 Year 2004, law enforcement against foundations still faces many challenges, both in terms of supervision, transparency, and sanctions that do not provide a deterrent effect.

Article 5 of Law No. 16/2001 on Foundations clearly regulates the prohibition of the transfer of foundation assets to parties who have personal interests, such as administrators, trustees, or other related parties. In this case, the transfer of foundation assets for individual interests or certain groups is strictly prohibited because it is contrary to the non-profit principle of the foundation. It aims to keep the wealth of the foundation fully utilized to achieve social, humanitarian, or religious purposes, not for personal interests. Therefore, any practice that involves the transfer of the foundation's wealth to related parties without fulfilling the legal provisions will violate the principle.

As a follow-up, Article 70 of Law No. 16 Year 2001 provides strict legal sanctions for administrators or related parties who violate the prohibition, with a maximum imprisonment of five years and the obligation to return the foundation's assets that have been misused. These sanctions aim to provide a deterrent effect, ensure transparency and accountability, and prevent foundation management that is not in accordance with the purpose of the foundation.

The Substance Over Form principle in accounting refers to the concept where the economic substance of a transaction or event is more important than its legal or formal form. (Wibisono, 2024) In the context of foundations, this means that although a transaction or event may appear to be legally valid if the transaction does not reflect the true economic purpose or is not in accordance with the purpose of the foundation, then the transaction can be considered as a violation of the basic principles of foundation management.

In the case of misuse of funds at the ACT Foundation, if the foundation's management uses funds for personal purposes or activities that are not in accordance with the foundation's social objectives, although formally the transaction may be recorded correctly in the financial statements, the substance of the transaction is contrary to the foundation's goals. (Kapojos et al., 2022) The use of funds for the personal interests of the foundation's management, although administratively legal, violates the economic substance that should be used to support social or humanitarian activities. Therefore, the use of funds is not in accordance with the principle of Substance Over Form because it is contrary to the objectives that should be achieved by the foundation. (Siregar et al., 2015)

This principle also underlines the importance of separation between the wealth of the foundation and the personal wealth of its management. If the foundation's funds are used for individual interests or not in accordance with the intended purpose, even though it is recognized in the form of a correct financial statement, this is still considered as misappropriation, as it substantially does not achieve the foundation's social purpose.

The objective of this research is to profile the foundation engaged in education in a city in West Java. This foundation's primary focus is on providing quality and affordable education for the local community. The foundation was established and funded by one family, which has now been passed on to the heirs of the founder through the mechanism of changing the personnel of the foundation structure. The establishment of the foundation was before the existence of the Foundation Law and has been adjusted after the fact of Law No. 1 of 2001 and Law No. 28 of 2004, so that until now, the adjustment process both in substance and formal legal still leaves problems, one of which is an indication that the management of foundation assets, including funds and assets owned, has not been fully transparent and accountable.

This study aims to analyze the impact of regulatory changes regarding the management of foundations in Indonesia, especially the transition from Law No. 1 Year 2001 to Law No. 28 Year 2004, on transparency, accountability, and separation of foundation assets. This research also focuses on evaluating how these regulatory changes affect the supervision of foundations and their impact on the potential misuse of foundation funds by their administrators. In addition, this study aims to identify obstacles in the implementation of transparent and accountable financial management obligations and provide recommendations regarding corrective measures to improve supervision and prevent misuse of funds.

The formulation of the problem in this research is to describe the impact of regulatory changes from Law No. 1 Year 2001 to Law No. 28 Year 2004 on transparency, accountability, and separation of foundation assets in Indonesia, as well as the obstacles faced in law enforcement against misuse of foundation funds.

1. **METHODS**

This research method uses a qualitative approach with a case study method, which focuses on the management of a foundation in the field of education in West Java. Data is collected through field observations and analysis of foundation documents, including financial statements, articles of association, and audit reports. The researcher will directly observe the foundation's management practices, focusing on the transparency of economic reports, the separation of the foundation's wealth from the board's personal wealth, and the application of accountability principles in accordance with legal provisions.

A data analysis approach will be conducted through in-depth interviews with foundation administrators, external auditors, and other related parties to explore the problems faced by foundations in wealth management further. The collected data will be analyzed to provide an overview of the existing issues and identify legal solutions that can be applied to improve transparency and prevent misuse of foundation funds while still complying with applicable regulations.

1. **RESULT** **AND DISCUSSION**

**Adjustment of Foundation Articles of Association and Sanctions**

Law No. 28 Year 2004 provides a clear deadline for existing foundations to make adjustments and provides quite severe legal sanctions for foundations that fail to comply with the provisions, namely loss of legal entity status and dissolution of the foundation. This shows how important it is for foundations to ensure that they operate in accordance with the latest regulations for the sake of organizational sustainability and smooth operations.

If a foundation is dissolved by law because it does not update its articles of association in accordance with the provisions in Law No. 28 of 2004 concerning Foundations, then the foundation will lose its legal entity status and must undergo a liquidation or dissolution process regulated by law. (Sebayang, 2022) Article 71 paragraph (4) of Law No. 28 of 2004 states that foundations that do not adjust their articles of association within the specified time of three years after this law comes into force can no longer use the name "Foundation" and can be dissolved through a court decision at the request of the Prosecutor's Office or an interested party.

If the foundation does not adjust its articles of association within the period specified by Law No. 28 Year 2004, which is three years since this law came into force, then the foundation can automatically no longer use the name "Foundation" and can be dissolved by law. However, in practice, the dissolution of this foundation does not necessarily occur automatically without any further legal action. (Miarsa, 2021)

In the provisions of Article 71 paragraph (4) of Law No. 28 Year 2004, it is explained that the dissolution of a foundation that does not update its articles of association must be done through a court decision, and the submission of this dissolution can be submitted by the Attorney or an interested party. The Prosecutor's Office as the authorized institution in this case, has a role as a supervisor of legal compliance of foundations, while interested parties can include donors, beneficiaries, or other parties who are harmed by foundations that are not in accordance with applicable regulations.

However, if the AGO or the interested party does not apply for the dissolution of the foundation, the foundation still exists from an administrative perspective and can still operate, but can no longer use the name "Foundation". However, the foundation loses its legal entity status and cannot carry out legal activities that require legal recognition. For example, the foundation cannot use the name "Yayasan" in any activities or transactions involving third parties, nor can it access legal rights such as managing a bank account in the foundation's name or receiving donations required for registered foundations.

In this case, foundation administrators can still be responsible for the management of the foundation's assets, but they are at risk of personal liability in the event of misuse or management of assets that are not in accordance with applicable provisions, especially if the foundation fails to fulfill legal obligations. If no legal action is filed to dissolve the foundation, then foundations that fail to update the articles of association remain at risk of facing legal liability for unauthorized management of foundation funds and assets. (Sebayang, 2022)

Thus, although the foundation can still exist administratively, its legal status is invalid and its management remains under strict supervision, which could lead to legal problems if it is not immediately adjusted to the provisions in Law No. 28 Year 2004. (Rino, 2024) Therefore, even if there is no request for dissolution, the foundation remains in an insecure legal position and risks facing further sanctions.

The dissolution of a foundation by law means that the foundation is no longer recognized as a legal entity, and thus, all legal activities carried out by the foundation no longer have a strong legal basis. (Niasari et al., 2021) One of the main impacts of the dissolution of a foundation is related to the management and distribution of the foundation's assets owned by the foundation.

According to Article 68 of Law No. 28 Year 2004, if a foundation is dissolved either due to non-renewal of its articles of association or other reasons, the remaining assets from the liquidation of the foundation must be handed over to another foundation with a similar purpose or to the state. This procedure ensures that the remaining assets of the foundation are used for purposes that are in line with the foundation's founding intentions, namely social, religious, or humanitarian purposes. If the remaining assets cannot be handed over to another foundation that has a similar purpose, then the assets must be handed over to the state, and the use of the assets must be in accordance with the activities of the dissolved foundation. (Fianny, n.d.)

However, this liquidation process can be complicated if the foundation does not update its articles of association in accordance with the provisions of the new Law No. 28 Year 2004. The late adjustment of the articles of association will cause legal uncertainty on the status of the foundation, which may lead to difficulties in processing the existing wealth, such as problems in the distribution of assets or the use of such wealth. In addition, board members or parties responsible for the foundation could be exposed to personal liability if they do not fulfill legal obligations related to the management of the foundation's assets (Article 36 of PP No. 63 Year 2008).

If the foundation is late in adjusting its articles of association to the new Law No. 28 Year 2004 and is eventually dissolved, then the responsibility for the assets of the foundation will be jointly and severally accounted for by the foundation's management. Article 36 paragraph (3) of Government Regulation No. 63 Year 2008 explains that the foundation management responsible for a foundation that has not obtained legal entity status after the specified time limit will bear personal responsibility for all legal acts performed by the foundation. This means that if the foundation fails to adjust its articles of association and does not renew its legal entity status, the foundation's board can be held liable for losses arising from the management of the foundation's late adjusted assets.

The failure of the foundation to adjust its articles of association in accordance with the provisions in Law No. 28 of 2004 eventually dissolved the assets of the foundation, which must be processed in the form of liquidation by following the procedures stipulated in the law. Foundation administrators who fail to fulfill these legal obligations will be faced with legal liability, both civilly and criminally, related to the management of the foundation's wealth. (Brahmantya, 2021) Therefore, it is important for foundations to immediately adjust their articles of association to avoid adverse legal consequences.

**Impact of Dissolution of Foundation by Law**

The transfer of wealth in Article 68 of Law No. 28 Year 2004 regulates that the wealth owned by a foundation that is dissolved or can no longer operate must be handed over to another foundation with the same purpose or to the state. If the old foundation has not fulfilled the existing provisions and is finally dissolved, the old foundation management cannot simply transfer the wealth to the new foundation without a legal procedure.

If the management of the old foundation wants to transfer the wealth of the old foundation to the new foundation, some steps that must be followed are:

Liquidation Procedure of the Old Foundation: First of all, all assets and liabilities of the old foundation must be settled first, and the liquidation proceeds must be used in accordance with the purpose of the foundation. This includes distributing the wealth to other foundations that have similar objectives or to the state if there is no eligible foundation.

Wealth Transfer Documentation: If the new foundation wishes to receive assets from the old foundation, then there must be clear and legal documents regarding the transfer of assets. This includes an official statement from the administrators of the old foundation and the new foundation stating that the assets will be used for purposes that are in accordance with the founding intentions of the foundation and that the transfer is made in accordance with applicable legal provisions.

Preparation of the Articles of Association of the New Foundation: The newly established foundation must have articles of association that are adjusted to Law No. 28 Year 2004 and fulfill all applicable legal provisions. If the new foundation receives assets from the old foundation, then there must be proof that the assets received are used in accordance with legitimate social and humanitarian purposes, not for personal interests.

A new problem is in the old foundation. There is no separation of wealth between the founder's personal wealth and the wealth of the foundation; this will add complexity to the management and transfer of wealth. Usually, wealth separation is fundamental to ensure that the wealth of the foundation is not mixed with the personal wealth of the founder or its management. Without a clear separation of wealth, the management of the foundation may risk a conflict of interest or even misuse of funds. (Farudin & Setiawan, 2025)

If the new foundation does not recognize the term separation of wealth from the founder or owner of the foundation, this means that the new foundation is likely to experience uncertainty regarding the status of the wealth obtained and the possibility of future legal conflicts, especially regarding accountability and transparency of management. (Khairunnisa et al., 2024) For example, if the wealth obtained from the old foundation is not clearly separated, then there can be questions about whether the wealth belongs to the new foundation or the personal property of the founder or its management.

Overall, the establishment of a new foundation after the old foundation is unable to continue its operations because it does not meet the provisions of Law No. 28 Year 2004 requires a careful legal process. The wealth of the old foundation must be treated in accordance with the applicable legal rules, and the transfer of such wealth must be done in a legal manner, with clear documentation and in accordance with the purpose of the foundation. If the new foundation does not recognize the term separation of wealth, then there will be potential legal issues and conflicts of interest that can harm the foundation in the future.

In this context, the Old Foundation: Foundations that are established using the founder's property and do not update their articles of association in accordance with the provisions of Law No. 28 Year 2004 are therefore considered dissolved by law. This means that the foundation loses its legal entity status and can no longer operate in accordance with the new law. In this case, the old foundation board will face the risk of personal liability if they do not complete the management of the old foundation's wealth. (Mulyati & Heriyanti, 2024) New Foundation: A foundation established in accordance with the provisions of Law No. 28 Year 2004 for social, religious, or humanitarian purposes. This new foundation is required to separate the founder's personal wealth from the wealth of the foundation, in accordance with the stricter separation provisions in the new Law No. 28 Year 2004. In the event that the new foundation receives assets from the old foundation, then the assets received must be recognized as the assets of the new foundation, not the personal assets of the founder.

The old foundation hands over the wealth to the new foundation, and then the new foundation must be established first with the separation of wealth between the founder's personal wealth and the wealth of the foundation. This means that the assets separated for the new foundation must belong to the new foundation and not the personal property of the founder of the old foundation. The wealth of the old foundation can be transferred to the new foundation through a legal process, but the new foundation cannot directly take over the status and wealth of the old foundation as the founder's personal property. (Riyandani & Pujiyono, 2016)

The assets separated from the founder's personal wealth become the property of the new foundation. This process must be done in accordance with the provisions of Article 6 and Article 7 of Law No. 28 Year 2004, which requires the separation of the founder's personal wealth from the wealth of the foundation.

Although the new foundation may receive wealth from the old foundation, both are separate legal entities with different structures and management. The establishment of a new foundation requires the foundation to comply with stricter provisions on wealth segregation, transparency, and accountability in accordance with Law No. 28 Year 2004. (Pemayun & Dewi, 2024) Therefore, the new foundation is a separate legal entity, even though it receives wealth from the old foundation that has been dissolved.

The new foundation receives wealth from the old foundation, so the wealth must be treated as the wealth of the new foundation and cannot be retained as the personal wealth of the founders or administrators of the old foundation. A clear separation of wealth must be made, and all these transactions must be recorded correctly in the new foundation's financial statements. (Nafisah, 2018) If not done properly, then there are potential legal issues related to accountability and transparency that can lead to legal liability for the new foundation's management.

**Disposal of Wealth Owned by Foundation Founders**

The assets separated from the founder's personal wealth become the property of the new foundation, and the transfer of the old foundation's wealth must be done with legal procedures. (Suryamah & Lita, 2021) If not done properly, this can lead to legal issues related to asset management and accountability, which can harm the new foundation and its management.

If the old foundation does not record some assets, such as land, that are already in the name of the foundation in its financial statements, even though the asset should already belong to the foundation, then this indicates a problem in recording and transparency of the foundation's asset management. In the context of Law No. 28 Year 2004, land assets under the name of the foundation must be clearly recorded as part of the foundation's assets in the financial statements and must be treated as assets belonging to the foundation. (G. Putri et al., 2024) However, if the land assets are not recorded, there will be potential legal issues that need to be resolved first before they can be transferred or used by the new foundation. (Sucipto & Winarsih, 2022)

The unrecorded land assets in the financial statements of the old foundation can be caused by several factors, such as the negligence of the old foundation management in preparing financial statements in accordance with applicable Financial Accounting Standards or even the potential misuse of assets by the old foundation management. Article 5 of Law No. 28 Year 2004 emphasizes that all assets owned by the foundation must be separated from the personal wealth of the founder or board and must be clearly recorded in the foundation's financial statements.

If the land assets are supposed to be part of the foundation's wealth, then this problem must be fixed immediately, both by the old and new foundation administrators. Unrecorded land assets can cause problems in the transfer of assets to the new foundation because the new foundation will have difficulty in proving the ownership of these assets if there is no clear record.

When the old foundation is dissolved, and the land assets are handed over to the new foundation, legal procedures must be followed to hand over the assets. The new foundation must ensure that the land assets are clearly recorded in its financial statements and recognized as the property of the new foundation, not the personal property of the founders or administrators of the old foundation. If there is no housekeeping related to the recording or recognition of such assets, the new foundation risks facing legal issues, especially related to the ownership status of the assets and legal liability.

If, in the handover process, there is no settlement related to land assets and the new foundation then makes a statement of debt to the founder of the old foundation (which in this case is the heirs of the founder of the old foundation), then this indicates the transfer of liabilities from the old foundation to the new foundation. This statement of debt suggests that the new foundation recognizes that the assets of the old foundation have not been fully segregated or settled administratively, so there needs to be payment or settlement of liabilities related to assets that have not been recorded or settled.

However, this can lead to several problems, such as:

Conflict of Interest: As the administrators of the new foundation are the heirs of the founders of the old foundation, there is a potential conflict of interest in the management and transfer of assets. As heirs, they may have personal interests that can influence decisions made regarding the old foundation's assets, including wealth segregation.

Legal Liability: According to Article 68 of Law No. 28 Year 2004, if the old foundation is dissolved and there is no clear management of the foundation's assets, the old foundation's management (including the heirs who are also the management of the new foundation) can be held personally liable for the foundation's assets that have not been separated. If there is misuse or discrepancy in the management of the wealth, the management can be held personally liable, both civilly and criminally.

Unauthorized Recording: If the new foundation considers the land assets as part of the old foundation's wealth and makes a declaration of indebtedness, then this can cause problems in terms of transparency of wealth management. Without a clear and valid record, the asset transfer process can be considered invalid or not in accordance with applicable regulations so that the new foundation can face legal problems regarding the validity of the assets.

The impact on the wealth of the new foundation originating from the old foundation must be clearly separated in the financial statements of the new foundation. If the new foundation receives land assets from the old foundation, then the management of these assets must be in accordance with the principle of separation of wealth between the foundation and the founder and must be reported openly and accountably. If a declaration of debt is made as part of the transfer of wealth, then this must also be clearly recorded in the financial statements of the new foundation, and the debt obligation must be repaid or settled in a legal manner and in accordance with applicable regulations.

If the old foundation did not record the land assets in its financial statements and then dissolved itself without a clear disposition of the assets, the new foundation that received the assets from the old foundation must resolve the issue carefully. (Prasetyo, 2023) The new foundation must ensure that the land assets received are clearly recorded in its financial statements and separated from the personal wealth of the founders or administrators. In addition, the debt statement made by the new foundation must be clearly accounted for in order to separate the liabilities and assets between the old foundation and the new foundation. If there is no legal settlement, the new foundation risks facing legal liability related to the management and transfer of assets.

The declaration of debt made by the new foundation must be clearly accounted for so that the process of separating liabilities and assets between the old foundation and the new foundation is carried out transparently and legally. This is important because, in situations where the new foundation receives assets from the old foundation, especially if there are assets that have not been clearly recorded or separated, there is a potential for misuse of assets or discrepancies in management. The statement of indebtedness indicates that the new foundation recognizes the existence of unsettled liabilities from the old foundation, which may relate to the segregation of wealth or other liabilities arising from improper management. (Rudhi Prasetya, 2024) Therefore, it is essential for the new foundation to properly document and prove the validity of this statement of indebtedness in the financial statements of the new foundation, as well as ensure that the wealth transfer process is carried out in accordance with the principles of transparency and accountability. Thus, the old foundation's liabilities related to debts can be clearly separated from the wealth received by the new foundation so that there is no confusion or potential legal problems in the future related to the use or management of these assets.

The declaration of debt made by the new foundation to the old foundation can be legally valid if it fulfills the correct procedures and is done with transparency. This is important to ensure that the management of the new foundation remains in accordance with applicable legal provisions, especially in terms of the separation of wealth between the founder and the foundation. The new foundation must clearly record and document this debt statement in the financial statements, with due regard to compliance with applicable accounting standards. (Kirowati et al., 2021) If there is no clear separation of wealth between the founder's personal wealth and the wealth of the foundation, or if the management procedures are not transparent, then the debt statement can be considered invalid and potentially unlawful.

In cases where the new foundation is established by the heirs of the founder of the old foundation, the risk of conflict of interest becomes very large. The board of the new foundation, who are also the heirs, may face a dilemma in making decisions that may affect their personal interests. For example, decisions related to debt or asset management could be more favorable for the founder's family than for the foundation itself, which is undoubtedly against the principles of transparency and accountability. Therefore, it is essential for the new foundation to ensure that all decisions are still prioritized in the interests of the foundation and its legitimate objectives.

To avoid potential abuse, the new foundation should conduct an independent audit to ensure that all transactions, including the declaration of debts, are conducted legally and in accordance with the principles of accountability. In addition, a clear separation between the founder's personal wealth and the wealth of the foundation must be enforced. All transactions and decisions involving the management of assets or debts must be made with the foundation's social objectives in mind and not for personal gain. Transparency in financial reports is necessary to ensure that there is no potential conflict of interest that could harm the foundation or third parties involved.

If this declaration of debt is not done in a legal manner, or if conflicts of interest are not appropriately managed, the new foundation risks facing legal sanctions, both civil and criminal. Foundation administrators involved in non-transparent management or misuse of funds can be held personally liable. In addition, aggrieved parties, such as donors or beneficiaries, can file a civil lawsuit to seek damages or cancellation of transactions deemed unauthorized, which could ultimately damage the reputation and sustainability of the foundation itself.

Overall, while the inclusion of debt in the transfer of the old foundation's assets to the new foundation can be legal, it must be done with great care. The new foundation must ensure that all decisions are made with transparency and avoid potential conflicts of interest. Proper management will ensure that the new foundation operates legally transparently and remains compliant with existing legal principles, keeping the foundation's social purpose alive.

**Family Foundations: Between Personal Interest and Substance Over Form**

A foundation is legally a legal entity that has social, religious, or humanitarian purposes and is not intended for personal or family interests. Nonetheless, in practice, there are some situations where foundations can be managed in a family manner, but it is essential to consider the legal aspects governing the separation of wealth, transparency, and accountability in the management of the foundation. (M. P. D. S. Putri & Wibowo, 2024)

Legally, in Law No. 28 of 2004 concerning Foundations, foundations are not known as family foundations or private foundations. Foundations are recognized as legal entities that have social, religious, or humanitarian purposes and must separate the wealth of the foundation from the personal wealth of its founders or administrators. (Dewi, 2022) Although there are some foundations that are managed by families or established by individuals, foundations are still regulated by law to ensure that the wealth of the foundation is used for legitimate purposes and not for the personal or family interests of the founders.

However, in management practice, sometimes the board or founders of the foundation who come from one family manage the foundation in a way that can be called a family foundation. This happens when the family controls the foundation and puts their personal wealth (both money and land assets) into the foundation. In this case, although the foundation is controlled by the family, legally, the foundation must still operate with the principles of transparency, accountability, and separation of wealth between personal wealth and foundation wealth.

If one of the founders of the foundation puts personal wealth, such as money or land assets, into the foundation, then this should be clearly recorded in the foundation's financial statements and recorded as the foundation's wealth. According to Article 5 of Law No. 28 Year 2004, a foundation must have separate wealth from the personal wealth of its founders or administrators. Therefore, even if someone puts their personal wealth into the foundation, the wealth should be treated as the property of the foundation and should not be mixed with individual wealth.

However, if, in the course of time, the founder's personal wealth is included without clear procedures or there is a mixing of personal wealth with the foundation, this can become a legal issue, especially related to the transparency of the management and accountability of the foundation.

Although foundations are not known as family foundations in law, in reality, the management of foundations is often carried out by families, especially if the founders are from one family. In this case, the foundation's board, consisting of family members, plays the role of managing the foundation's wealth and running the foundation's activities in accordance with the predetermined objectives. However, the separation of wealth must still be done clearly, and the wealth owned by the foundation must not be used for the personal interests of family members.

The wealth of the foundation cannot be inherited by the founder's heirs. Article 68 of Law No. 28 Year 2004 stipulates that the wealth of a dissolved foundation must be handed over to another foundation that has a similar purpose or to the state. Thus, if the founders of the foundation put their personal wealth into the foundation, the wealth remains the property of the foundation and cannot be passed on to the founder's heirs as personal wealth.

If the founder of the foundation who put personal wealth into the foundation has died, the wealth put into the foundation remains the property of the foundation and must be used for the purpose of the foundation, not for the personal benefit of the heirs. Even if the foundation is managed by the family, the wealth of the foundation cannot be considered as part of the estate that can be passed on to the founder's heirs.

If the founder's heirs wish to continue the management of the foundation after the founder's death, they can be involved in the management of the foundation, but such management must still follow the applicable legal rules and not change the nature of the wealth owned by the foundation, which must remain separate from their personal wealth.

Legally, foundations are not known as family foundations or private foundations. Although the foundation can be managed by the founder's family, there must still be a clear separation between personal wealth and foundation wealth, and the foundation must operate for social, religious, or humanitarian purposes. The wealth of the foundation put in by the founder must be treated as the property of the foundation and cannot be inherited by the founder's heirs. The wealth of the foundation that has been incorporated by the founder remains the property of the foundation and must be used for the purpose of the foundation, not for the personal benefit of the founder or his heirs.

Family foundations and the management of foundation wealth incorporated by the personal founder into the foundation can be analyzed using the legal principle of "substance over form". This principle emphasizes that the substance or essence of a transaction or legal event should be considered more than its formal or procedural form. (Jordi, 2024) In the context of foundations, this principle is very relevant because it requires the separation of wealth between the foundation and the personal wealth of its founders or administrators, even though the transaction or management of such wealth is carried out in a formal or administratively legal manner.

In accordance with the principle of substance over form, although the founders of the foundation may have put their personal wealth into the foundation in the form of money or land assets, what matters is the nature of the transaction, i.e., whether the wealth actually belongs to the foundation and is used for the purpose of the foundation, not for the personal interests of the founders.

If the founders put their personal wealth into the foundation without making a clear separation between individual wealth and the wealth of the foundation, then although administratively the assets are recorded in the foundation's financial statements, substantially, it does not comply with the principle of wealth separation required in Law No. 28 Year 2004. (Togatorop & Wulan, 2024) This means that the foundation does not fulfill the principle of substance over form because substantially, the personal wealth of the founders is still mixed with the wealth of the foundation.

The foundation is managed by the founding family, and the assets put into the foundation are not clearly separated from the family's personal wealth; hence, substantially, the foundation functions more as an extension of the family's personal interests rather than as a non-profit legal entity focused on social or humanitarian purposes.

Substance over form here reminds us that although a foundation may comply with legal procedures to become a legal entity, in substance, its management may violate the basic principles of the foundation, which should prioritize the interests of society or social purposes, not the personal interests of the board or founders. (Stevani et al., 2024)

In the process of transferring wealth from the old foundation to the new foundation, a debt statement is made to recognize the debt obligations of the old foundation; this needs to be seen in the context of substance over form. Formally, the new foundation can make a debt statement and receive wealth from the old foundation, but substantially, this transfer of debt and assets must be done in a way that is in accordance with the principle of the foundation itself, which is for social, religious, or humanitarian purposes, not for the personal interests of the founder or family.

If the declaration of debt is only used to transfer personal wealth or enrich the foundation's management, then this is not in accordance with the substance of the foundation as a legal entity organized for non-profit purposes. As a result, although the declaration of indebtedness is procedurally valid, substantively, it can be viewed as an abuse of the foundation and can lead to legal problems.

The principle of substance over form requires that the wealth owned by the foundation must be used in accordance with the purpose of the foundation, which focuses on social, religious, or humanitarian interests. If there is a misuse of the foundation's funds, for example, by incorporating the personal wealth of the founders or their heirs into the foundation without legal procedures, then it is against the substance of the foundation's purpose itself.

This principle reminds us that the purpose of the foundation should be the primary focus, and any wealth management should be done with full accountability and transparency, not for personal interests. Therefore, although the foundation may fulfill the applicable administrative procedures, if the management of wealth and the purpose of the foundation are not in accordance with the substance of the regulations governing it, then the foundation can be categorized as not in accordance with the applicable legal principles.

In the case of the family foundation in question, although administratively, the foundation fulfills the existing procedures, the principle of substance over form demands that the wealth of the foundation is clearly separated from the personal wealth of the founder and used for the purpose of the foundation, not for individual interests. If there is a transfer of assets or declaration of debt that is not in accordance with the legitimate purpose of the foundation, this may be considered substantively invalid even though it fulfills the administrative procedures. Therefore, in order to maintain the sustainability and legitimacy of the foundation, the management and separation of wealth must be done with transparency and accountability and in accordance with the social purpose of the foundation.

**Unauthorized Profits in the Segregation of Foundation Wealth**

In the context of the separation of the wealth of the foundation and its founder, as described in the position case above, the use of an independent audit to ensure the separation of wealth is essential. In this case, the standard price used as a unit of value for the asset object is the value at the time the asset was first incorporated into the foundation because, at that time, there was no clear separation or unit of value price at the present or current time.

This principle aims to avoid a situation where the founder or his heirs obtain profits from the foundation, which may not be in accordance with the social purpose of the foundation itself. For example, if an asset such as land is transferred to the foundation but there is no precise valuation of the value of the asset, the founder or his heirs may claim the asset back or benefit from its management. Therefore, by using the value at the time the asset was first entered as the standard price, the foundation can avoid potential abuse by interested parties.

This promotes the principle of substance over form in accounting, which emphasizes the importance of the economic substance of a transaction, not just its legal or formal form. In the case of a foundation, this means that while the asset may have been legally recorded in the name of the foundation, the substance of the transfer should reflect that the asset is being used in accordance with the foundation's purpose (social, humanitarian, or religious), not for the personal benefit of the founder or his heirs.

As such, an independent audit aims to ensure that the assets put into the foundation remain clearly separated from the founder's personal wealth and that the recorded value truly reflects the purpose of the foundation without giving unauthorized benefits to the founder or his heirs. It also aims to create transparency and accountability in the management of the foundation, as well as prevent any manipulation or diversion of assets to the detriment of the foundation's social purpose. (Jenniviera et al., 2024)

During the audit process, if it is found that the calculation of the foundation's assets uses current price units (for example, current market prices), this can have a significant impact on the transparency and clarity of the foundation's management. In this case, the current price is used to measure the value of assets that have previously been incorporated into the foundation, which could create the potential for abuse or deviation from the actual purpose of the foundation.

The impact of using the current unit price is detailed as follows:

Potential Advantage to Founder or Heirs: The use of current prices, especially if the market value of the asset has increased since it was first transferred to the foundation, could give an unauthorized advantage to the founder or his heirs. For example, if land that was transferred to the foundation at a lower price but is recalculated at a higher current market price, the founder or heirs who have a claim on the asset could benefit financially from the difference in price. This is clearly against the foundation's non-profit principle, which should focus on using wealth for social and humanitarian purposes.

Misuse of Foundation Assets: One of the objectives of a foundation is to ensure that the assets it holds are used solely to achieve social, humanitarian or religious purposes. If current prices are used as the basis for calculating the value of assets, this could lead to manipulation of the value of assets or diversion of the foundation's wealth for the personal benefit of the founder or related parties. As such, the use of current market prices can be misleading and detrimental to the purpose of the foundation, as it shifts the focus of the foundation from social purposes to personal gain.

Violates the Substance Over Form Principle: The use of unit price currently contradicts the substance over form principle in accounting. This principle requires foundations to record transactions based on their economic substance, not just based on their legal form. For example, although legally, the asset may have been transferred to the foundation, economically, if the price used does not match the value at the time of the first transfer (for example, the price at the time the asset was incorporated), then the transaction does not reflect the true nature of the transfer. As a result, the foundation could be deemed not to have complied with the applicable accounting principles, and this could have serious legal repercussions.

Legal Implications: If it is found that the asset price is calculated with the current price unit, the foundation management can be subject to legal sanctions because it is considered to transfer wealth for personal or specific group interests, which is contrary to the provisions of Law No. 28 of 2004 concerning Foundations. Article 5 of this law stipulates that the wealth of a foundation must be separated from the personal wealth of its founders or administrators and must not be used for unauthorized purposes. If misuse is found, the foundation's management may be subject to criminal sanctions, including imprisonment or the obligation to return the foundation's misused wealth.

The use of current market prices to value the foundation's assets risks giving unauthorized profits to the founder or heirs, which is fundamentally contrary to the foundation's purpose of acting as a non-profit and for social interests. It can also be considered as a form of misuse of foundation funds, which can damage the integrity and reputation of the foundation. Therefore, it is essential to ensure that the calculation of the value of assets in the foundation uses a value that is appropriate to the time when the asset was first entered, to ensure that there is no potential for unauthorized gains and to comply with the principles of transparency and accountability that must be maintained in the management of the foundation.

1. **CONCLUSION**

Misuse of foundation funds is a crucial issue in Indonesia, given the critical role of foundations in social, religious and humanitarian activities. Although there are regulations governing the management of foundations, there are still many cases that show weak supervision and law enforcement. The unrecorded or misappropriated transfer of foundation assets, as well as the mismatch of asset recording, indicate a violation of accounting principles, such as the Substance Over Form principle.

The importance of regulatory changes from Law No. 1/2001 to Law No. 28/2004 should be applied to address foundation transparency and accountability issues. Stricter law enforcement, as well as the implementation of annual audits and independent oversight institutions, will help improve foundation management and prevent abuse. In this context, the sanctions stipulated by Law No. 16/2001 and Law No. 28/2004 are necessary to provide a deterrent effect and encourage foundation administrators to act in accordance with the non-profit principle.

The foundation needs to ensure that its wealth is clearly separated from the personal wealth of founders and administrators. The use of independent audits and transparent documentation will help improve the management of the foundation, as well as minimize the potential for conflicts of interest or misuse of funds. Thus, the foundation can function in accordance with the social and humanitarian goals that have been set without being disturbed by abuses that damage the reputation and credibility of the foundation.

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