

**JURIDICAL REVIEW OF THE SALE AND PURCHASE OF FOUNDATION ASSETS REVIEWED  
FROM LAW NUMBER 16 OF 2001 J.O LAW NUMBER 28 OF 2004 CONCERNING FOUNDA  
TIONS**

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**Abstract**

A foundation is a legal entity that consists of separated assets and is intended to achieve specific goals in the social, religious, and humanitarian fields, which have no members. With the promulgation of the Law of the Republic of Indonesia on Foundations Number 16 of 2001 on August 6, 2001 which came into effect on August 6, 2002, it is hoped that efforts to r

Realize legal certainty about Foundations in Indonesia can be realized. One of the foundation's wealth is sourced from Waqaf which is explained in Law No. 41 of 2004 concerning Waqaf states that property that has been waqf is prohibited from being used as collateral, confiscated, granted, sold, inherited; Exchangeable; or transferred in the form of other transfer of rights. So in this study, the author tries to explain how the foundation is switched by buying and selling assets as happened at the IPHI Pedan Special Hospital. This descriptive research uses a normative legal research method that prioritizes secondary data and descriptive analysis. The results of this study show an explanation of the Buying and Selling of Foundation Assets in Review of Law No. 16 of 2001 Jo Law No. 28 of 2004 concerning Foundations.

**Keywords:** Foundation, Assets, Wealth

## INTRODUCTION

In the community, in carrying out social activities, business entities are used, be it in the fields of education, religion, hospitals, and other social bodies which are usually called foundations or stichting. The community has the view that foundations engaged in this field have social goals that are made for the benefit of the community (N. Adnan, 1989:20). A foundation is a legal entity formed with the aim of humanitarian, social, and religious interests (Chatamarassjid, 2000). Its existence is based on legal principles enshrined in the law, ensuring that the foundation operates transparently, responsibly, and in accordance with the goals that have been set. Law Number 16 of 2001 jo. Law Number 28 of 2004 concerning Foundations (Foundation Law) is the main reference in regulating the existence and management of

f foundations. This law affirms that all wealth and assets owned by the foundation belong to the foundation itself, not to its administrators. This is an important point in maintaining integrity and preventing the misuse of foundation wealth for personal interests.

According to Setiawan (1992:201), people tend to choose the form of foundation because the process of establishment is relatively simple, does not require special approval from the government, and the general perception that foundations are not subject to tax. This perception, although not entirely correct, is a driving factor for the community to choose the form of the foundation in carrying out humanitarian social activities. Activities commonly carried out by the foundation include providing compensation to orphans, providing health services for the community, especially for those suffering from diseases, providing scholarships for children from underprivileged families, as well as assistance to victims of natural disasters and various other forms of hardship. Thus, the foundation plays an important role in providing support and assistance to people in need, becoming a forum for social care and solidarity.

But in practice, foundations are often misused to avoid taxes, house wealth, and most dangerously, to protect the family business. The establishment of a foundation with the aim of avoiding taxes can be done by moving assets to the foundation, thereby reducing the tax burden that must be borne by the asset owner. In addition, the foundation can also be used to safely accommodate wealth and avoid legal supervision. The most worrying is the use

of foundations as a tool to protect family businesses, by transferring business assets to foundations and controlling them through the foundation structure, thus avoiding legal liability and tax liabilities that should be borne by business owners. These practices are detrimental to the state and society, as they reduce tax revenues and hinder transparency in asset management.

In Indonesia, there are various types of foundations, ranging from the fields of education, social, religious and health. However, it is undeniable that there are still many disputes regarding the foundation's wealth assets. For example, what happened to the Rsis Yarsis Foundation, the Batanghari Sembilan South Sumatra Foundation, the Surakarta Islamic Education Council (Ympi) Foundation, the Assalam Islamic Boarding School, the Sinarmas Education Foundation and so on.

In the field of health, hospitals have an important role in providing medical services for the community. Law No. 44 of 2009 concerning Hospitals defines a hospital as a health service institution that provides individual health services in a complete manner, including inpatient, outpatient, and emergency. Governments and organizations that provide health services, including hospitals, have a responsibility to ensure that development goals in the medical field are optimally achieved. One of the hospitals, namely the IPHI Pedan Special Surgical Hospital (RSKB) from the Pedan Hajj Jamaah Foundation (YJH), Klaten, is expected to overcome various health problems faced by the people of Klaten and its surroundings. However

er, as a result of the problem of RSKB debt which is quite complicated at the bank, which has not been paid in installments for a long time, as well as internal problems, affects the quality of service from the hospital. So that as a final settlement, YJH conducted an auction to settle the debt.

Based on these problems, this study aims to find out further how the explanation of the Purchase and Sale of Foundation Assets is reviewed from Law No. 16 of 2001 Jo Law No. 28 of 2004 concerning Foundations.

### **METHODS/IDEAS**

The analytical narrative research method is used in this study, which is a method that uses a literature study approach (book questionnaire) and uses a way of deciphering, evaluating, and mentioning primary and secondary data that is consistent with the discussion of the research object.

### **RESULTS AND DISCUSSION**

In the foundation law, there is a definition of a foundation that is described as a legal entity with a focus on social aspects that distinguish it from other bodies. Foundations have characteristics that distinguish them from other social bodies.

In this problem, the assets that were transferred were the Special Hospital of the IPH I Pedan Agency by the PKU Muhammadiyah Delanggu Hospital. This happened because

they were entangled in banking problems that could not be resolved. As the final settlement, it is by auction, with the commitment of amar ma'ruf nahi mungkar who is obliged to help in overcoming banking problems.

Foundations as legal entities have an equal position with human beings in the law, so foundations have rights and obligations that are separate from individuals or other parties. As an independent subject of law, foundations have the ability to own wealth, make transactions, sue, and be sued in court. This means that foundations can act legally like individuals in carrying out activities and managing their assets. A legal entity of a foundation is born from a legal act called the establishment of a foundation. This establishment process involves separating a certain amount of wealth from the foundation's founders to achieve certain goals in the social, religious, and humanitarian fields. The wealth belongs to the foundation as a legal entity, no longer belongs to the individual or founder of the foundation. In order to carry out activities and achieve the goals that have been set, foundations need an organized organizational structure. According to Article 2 of Law No. 16 of 2001 jo. Law No. 28 of 2004 concerning Foundations, foundations have organs consisting of trustees, administrators, and supervisors. The trustees are responsible for the ratification of the foundation's deed of establishment, while the administrators are in charge of carrying out the foundation's day-to-day activities and managing the foundation's assets. The supervisor acts as a supervisor of the foundation's activities and management.

t to ensure that all foundation activities are carried out in accordance with applicable regulations. The foundation management does not have authority in several matters as stated in Article 37 paragraph 1 of the foundation law:

- a. Binding the Foundation as a Debt Guarantor. In this case, the foundation management is not allowed to abuse its power by binding the foundation as a guarantor of the debt without clear consent. With the aim of protecting the finances and sustainability of the foundation from being entangled in financial responsibilities that should not be.
- b. Transfer of Foundation Assets without Trustee Approval. The Board of Trustees is not authorized to transfer the foundation's assets to other parties without the approval of the Trustees. This approval is required as a step to supervise and control the management of wealth in a transparent manner and in accordance with the foundation's objectives.
- c. Encumbering the Foundation's Wealth for the Benefit of Other Parties. The Trustees are not allowed to burden the foundation's wealth for the benefit of others without their valid consent. This is intended so that the management of the foundation's wealth is carried out responsibly and does not harm the sustainability of the foundation itself.

The foundation's wealth is used to achieve the purpose and objectives of the foundation, which usually comes from a certain amount of wealth that has been separated in the form of money or goods. In addition to donations or non-binding assistance, the foundation's wealth can be obtained through various other means, as in article 26:

- a. non-binding donations or assistance;
- b. waqf;
- c. grant;
- d. testamentary grants; and
- e. other acquisitions that do not contradict the Foundation's Articles of Association and /or applicable laws and regulations.

As for paragraph 2, it is stated that in the case of Foundation wealth derived from waqf, the provisions of the waqf law apply, while in Law No. 41 of 2004 concerning Waqf it is stated that property that has been waqf is prohibited to:

- a. used as collateral;
- b. Seized;
- c. granted;
- d. Sold;
- e. Inherited;
- f. Exchangeable; or

g. transferred in the form of other rights transfer.

These prohibitions aim to protect the sustainability and original purpose of the waqf property that has been waqf. If later if a violation of Article 40 occurs, it can be subject to a maximum prison sentence of 5 (five) years and/or a maximum fine of Rp500 million (Article 67 paragraph 1 of the Waqf Law). However, there are exceptions regulated in Article 40 of the Waqf Law. This exception allows the exchange of waqf property if the property is used for the public interest in accordance with the general spatial plan (RUTR) that has been determined. The exchange of waqf property must be carried out based on the provisions of applicable laws and regulations and must not be contrary to sharia principles. The process of exchanging waqf property can only be carried out after obtaining written permission from the Minister, which must be accompanied by the approval of the Indonesian Waqf Board. This shows the importance of supervision and approval from the authorities in changing the status of waqf property. In addition, in the exchange process, waqf property that has been changed in status must be exchanged for other property that has benefits and exchange rates at least the same as the original waqf property. This aims to ensure that the value and benefits of waqf property are maintained and do not decrease when the exchange is carried out. With this provision, it is hoped that the exchange of waqf property for the public interest can be carried out transparently, in accordance with the applicable legal and shari

a provisions, and still pay attention to the sustainability and initial purpose of the waqf property that has been waqfed.

The purpose of establishing a social foundation is not intended to make a profit. Article 5 paragraph (1) of Law Number 16 of 2001 jo. Law Number 28 of 2004 concerning Foundations (Foundation Law) emphasizes the rules that prohibit the transfer or distribution of foundation assets in the form of money, goods, or other wealth obtained by foundations. This prohibition applies either directly or indirectly, in any form that can be valued in money, such as salaries, wages, or honorariums, to the foundation's trustees, administrators, and supervisors. This provision aims to ensure that the foundation's wealth is used appropriately and in accordance with the foundation's social, religious, or humanitarian objectives. The ban is aimed at preventing the misuse of the foundation's wealth in order to maintain the integrity and true purpose of the foundation.

Meanwhile, Article 5 paragraph (2) of the Foundation Law provides an exception to the prohibition by allowing foundation administrators to receive salaries, wages, or honorariums, as long as they meet certain conditions. This exception can be stipulated in the Foundation's Articles of Association with the following provisions:

- a. The board of trustees is not the founder of the foundation and has no affiliation with the founders, trustees, and trustees.

- b. The management carries out the management of the foundation directly and fully, showing active involvement in the management of the foundation.

This exemption is given to provide flexibility in the management of the foundation and allow administrators who meet these requirements to receive reimbursement for the work and responsibilities undertaken. This can also be considered as an incentive for individuals who are willing to be directly and actively involved in running the foundation's management.

Based on this regulation, the management of RSKB IPHI Pedan by PKU Muhammadiyah Delanggu Hospital does not violate Law No. 16 of 2001 Jo Law No. 28 of 2004 concerning Foundations, because both have the same goal to advance the welfare of the community in the health sector. In the transfer of the management of the foundation by way of buying and selling, this is the right solution, because it not only solves the financial problems of RSKB IPHI Pedan which is in debt and threatened to be auctioned by the bank, but also provides legal certainty and benefits for YJH Pedan through the ownership of certificates used as collateral in the sales agreement. This process also does not violate the Law on foundations or contains criminal elements, because the proceeds of sales worth Rp 12,500,000,000 are fully used for foundation purposes, such as paying off debts to banks, paying outstanding employee salaries, and paying off drug debts. Thus, all these funds are used transparently and resp

onsibly without any misappropriation. Based on this, the transfer process of IPHI Pedan Hospital does not contradict Article 5 and Article 70 of Law No. 28 of 2004 concerning Foundations, so that this transfer process is legal and legal.

## CLOSING

Based on Law No. 16 of 2001 and Law No. 28 of 2004 concerning Foundations selling Foundation assets is allowed with the approval of the Trustees. However, assets derived from waqaf are excluded. In the event of the sale of the Trustees, the Board of Trustees and Supervisors shall not receive profits in the process of selling the Foundation's assets, either directly or indirectly. In the case of taking over the management of RSKB IPHI Pedan by PKU Muhammadiyah Delanggu Hospital, if you look at Law No. 16 of 2001 Jo Law No. 28 of 2004 concerning Foundations, it is considered not to violate, because both have the same goal to advance the welfare of the community in the health sector. In the transfer of the management of the foundation by way of buying and selling, this is the right solution, because it not only solves the financial problems of RSKB IPHI Pedan which is in debt and threatened to be auctioned by the bank, but also provides legal certainty and benefits for YJH Pedan through the ownership of certificates used as collateral in the sales agreement.

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