



## Transfer of Assets With Share of Foundations to A Limited Company in The Perspective of The Foundation Act and The Limited Company Law

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### ABSTRACT

Foundations that run a profit-seeking business are not prohibited as long as the profit-seeking business is not directly carried out by the Foundation, but by establishing a limited liability company. The problem in this thesis is how the position of foundation assets transferred in the form of shares to Limited Liability Companies is examined from the perspective of the Foundation Law and the Limited Liability Company Law, how the process of transferring Foundation assets in the form of shares to Limited Liability Companies is reviewed from the perspective of the Foundation Law and the Limited Liability Company Law. This type of research is normative juridical, namely research based on law. Data analysis was carried out qualitatively, which is a form of analysis that does not rely on numbers but on sentences. Drawing conclusions in this paper is done using deductive-inductive thinking logic, which is done with the theory used as a starting point for conducting research. The results showed that the position of the foundation's assets was as the initial assets of the foundation. The process of transferring Foundation assets that is not in accordance with Law Number 28 of 2004 concerning Foundations is if the transfer is carried out by the management of the Foundation without the approval of the Foundation's supervisor and the provisions contained in the Foundation's Articles of Association. The transfer of Foundation assets illegally to shares in a Limited Liability Company is null and void, because it is against the Foundation Law, the Limited Liability Company Law and the provisions of Article 1335 of the Civil Code and 57 paragraph (1) letter b of Law No. 40 of 2007 concerning Limited Liability Companies which require the transfer of shares must obtain prior approval from the company's organs.

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### 1. Introduction

A foundation or stichting is a business entity that is used by the community to carry out various social activities such as education, religion, hospitals, and other social agencies. The public has the perception that foundations engaged in education, religion, hospitals, and other social activities have social goals

for the benefit of the community. The development of the business world that is increasingly rapid today, entrepreneurs need a place to be able to take legal actions and make transactions. The most popular business facilities used are limited liability companies (PT), because they have characteristics, characteristics and features that other forms of business entity do not have.<sup>1</sup>

From a juridical perspective, there are 2 (two) forms of business entities, namely entities businesses that are legal entities and business entities that are not legal entities.<sup>2</sup> The company as a legal entity means the company is a legal subject, so that the company can be burdened with rights and obligations just like humans in general.<sup>3</sup> Limited Liability Company is a capital partnership, where the basic capital is divided into shares. As a legal entity, a PT has its own assets which are the assets of an entity which can be registered under its own name. Ownership is held in the form of shares which can be transferred to anyone.<sup>4</sup>

Social activities in Indonesia carried out by the Foundation are thought to emerge from the awareness of the well-off society that separates their wealth to help people who are experiencing distress. The selection of a foundation as a forum for social activities is certainly not without reason. Compared to other forms of legal entities that are only concentrated in the economic and business fields, foundations are considered to have more space to carry out social activities such as education, health and religion which generally have not been handled by other legal entities.<sup>5</sup>

The development of the business world that is increasingly rapid today, entrepreneurs need a place to be able to take legal actions and make transactions. The most popular business facilities used are limited liability companies (PT), because they have characteristics, characteristics and features that other forms of business entity do not have.<sup>6</sup>

As is well known, the position of the board of directors in managing the company is an important and strategic position. The Board of Directors is an organ of a limited liability company that manages the company. This means

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<sup>1</sup> Yitro, Nicky. (2013). Syarat-Syarat Sahnya Pendirian Perseroan Terbatas Di Indonesia. In *Lex Privatum*. (pp. 72).

<sup>2</sup> Indrapradja, Irwan Saleh. (2018). Kajian Yuridis Terhadap Tanggung Jawab Direksi Dan Dewan Komisaris Pada Struktur Organisasi Perseroan Terbatas Yang Bersifat Kolegialitas Menurut Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas. In *Jurnal Ilmiah Magister Ilmu Administrasi (JIMIA)*. (pp. 124).

<sup>3</sup> Kurniawan. (2014). Tanggung jawab pemegang saham perseroan terbatas Menurut hukum positif. In *Mimbar Hukum*. (pp. 71).

<sup>4</sup> Dewi, Sandra. (2019). Karakteristik Perseroan Terbatas Sebagai Badan Hukum. In *Ensiklopedia Of Journal*. (pp. 114).

<sup>5</sup> Sabda, Yoseph Suardi. (2002). Yayasan dan Perbuatan Melanggar Hukum. *Makalah dibawakan oleh Direktur Perdata Kejaksaan Agung pada seminar Good Governance Kejaksaan Agung Republik Indonesia*. (pp. 17).

<sup>6</sup> Isfardiyana, Siti Hapsah. (2015). Tanggung Jawab Direksi Perseroan Terbatas Dalam Pelanggaran Fiduciary Duty. In *Padjajaran Jurnal Ilmu Hukum*. (pp. 169)

that the company's operational activities, including the consequences whether they bring profit or even loss to the company, will largely depend on and be determined by the performance of the board of directors.<sup>7</sup> Owners of capital as shareholders have final control over the management of their funds by the Board of Directors and this is done through the GMS.<sup>8</sup>

The legal basis for the foundation has only existed since 6 August 2001 with the issuance of Law Number 16 of 2001 which has been revised through Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations (Foundation Law) which was then followed by the birth of Government Regulation (PP) Number 63 of 2008 concerning Implementation of the Foundation Law. The principles of this law are transparency and accountability, in which the aims and objectives of the Foundation are for social, religious and humanitarian interests. The positive impact of the Foundation Law can fence off practices that position the wealth of a foundation as the wealth of an individual or its founder or management, and can increase transparency and accountability of financial management and activities of the Foundation by requiring the preparation of an annual report that can be accessed by the public. The establishment of the Foundation Law provides a strong legal basis for the existence of a foundation legal entity.

Based on the Foundation Law, a foundation is a legal entity consisting of assets that are separated and intended to achieve certain goals in the social, religious and humanitarian fields, and do not have members. In order for the establishment of a foundation to meet formal requirements, its legal entity status must be obtained when the deed of establishment is validated by the Minister. A foundation is a legal entity that has a special purpose that is different from other types of legal entities. The striking difference between a foundation and other legal entities is that the purpose of the foundation is not for profit. In simple terms, a legal entity is an organization or association that is established with an authentic deed and is considered a legal subject attached to its rights and obligations.<sup>9</sup>

The foundation obtains the status of a legal entity after the deed of incorporation of the foundation obtains approval from the Minister of Law and Human Rights on behalf of the Minister of Law and Human Rights.<sup>10</sup> A foundation has the status of a legal entity, then the foundation is an independent entity or institution where all legal actions are represented by the supervisor, supervisor and management in accordance with their respective authorities.<sup>11</sup> Based on this, there is no such thing as a foundation owned by

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<sup>7</sup> Raffles. (2020). Tanggung Jawab dan Perlindungan Hukum Direksi Dalam Pengurusan Perseroan Terbatas. In *Undang: Jurnal Hukum*. (pp. 109).

<sup>8</sup> Ardy, Nuzula Syafrial. (2018). Perlindungan Hukum Bagi Pt Terhadap Penggunaan Aset Pt Untuk Kepentingan Pribadi Oleh Pemegang Saham. In *Jurnal Perspektif*. (pp. 36).

<sup>9</sup> Pujiyono. (2014). In *Hukum Perusahaan*. (pp. 40). Pustaka Hanif.

<sup>10</sup> Suhardiadi, Arie Kusumastuti Maria. (2012). *Hukum Yayasan di Indonesia*. (pp. 40). Center Publishing.

<sup>11</sup> Widjaya, Gunawan. (2012). *Yayasan di Indonesia Suatu Panduan Kornprehensif*. (pp. 18). Elex Media Komputindo.

individuals, that those who set up a foundation are only representatives or symbols of the foundation in carrying out legal actions. Thus, the foundation cannot be granted or passed down through the heirs.

Other than those that have been separated by the founders, the foundation's funding sources can also come from non-binding donations, endowments, grants, testament grants, the state, and other proceeds obtained by the foundation without breaking the law. In seeking funds, foundations sometimes establish business entities that are contained in Article 3 paragraph (1) of Law No. 16 of 2001 Jo 28 of 2004 concerning general elaboration foundations which reads "The provisions in this paragraph are intended to confirm that the foundation is not used as a business container. and foundations cannot carry out business activities directly but must go through the business entity it establishes or through other business entities where the foundation includes its assets.<sup>12</sup>

Foundations that run a profit-seeking business are not prohibited as long as the profit-seeking business is not directly carried out by the Foundation, but by establishing a limited liability company, according to the regime of Law No. 40 of 2007 on Limited Liability Companies, with the Foundation taking shares of the company concerned, with the aim of sharing the profits obtained (dividends) the foundation is able to further intensify its social goals.<sup>13</sup>

## **2. Method**

The type of legal research used is juridical normative .. juridical normative research is a study that places norms as the object of research, both legal norms in statutory regulations, legal norms that come from a law.<sup>14</sup> The type of research used is normative juridical, so the approach taken is the statute approach.<sup>15</sup> Data analysis is a process of organizing, sorting, classifying, coding and categorizing it until then organizing it in a form of data management to find themes and working hypotheses that are promoted to substantive theory like legal certainty theory.<sup>16</sup>

## **3. The Position of the Foundation's Assets Transferred in the Form of Shares to a Limited Liability Company Reviewed from the Foundation Law and the Limited Company Law**

The existence of a foundation is a necessity for people who want a forum or institution that is social, religious and humanitarian in nature, some time ago, a foundation is a tool that functionally becomes a means for things or work

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<sup>12</sup> Borahima, Anwar. (2010). *Kedudukan Yayasan DiIndonesia*. (pp. 87). Kencana Prenada Media Group.

<sup>13</sup> Rudhi, Prassetya. (2012). *Yayasan Dalam Teori dan Praktik*. (pp. 77). Sinar Grafika.

<sup>14</sup> Soekanto, Soerjono & Mamudji, Sri. (2005). *Penelitian Hukum Normatif*. (pp. 70). Rajawali Pers.

<sup>15</sup> Ibrahim, Johnny. (2017). *Teori dan Metodologi Penelitian Hukum Normatif*. (pp. 295). Bayumedia Publishing.

<sup>16</sup> Moleong, Lexy J. (2003). *Metodologi Penelitian Kualitatif*. (pp. 103). Remaja Rosdakarya.

with social, cultural and scientific objectives. The essential consideration is that the basic nature of humans as social beings who inevitably must or at least have a desire to pay attention to the fate and social needs of their fellow humans to pay attention to their fate and social needs or in the sense of the word give love and increase the meaning and positive quality of life for others. With the existence of a Foundation, all wishes are realized in an institution that has been recognized and accepted by its existence. Human desire to be social, religious and human is sometimes a manifestation of the spiritual needs of humans themselves. According to Article 1 paragraph (1) of Law Number 28 of 2004 concerning Foundations, it clearly states that, "A foundation is a legal entity consisting of assets that are separated and intended to achieve certain goals in the social, religious and humanitarian fields, which do not have members. " Although this Law does not explicitly state that a Foundation is a non-profit / non-profit legal entity, its social, religious and humanitarian objectives are what make the Foundation a non-profit / non-profit legal entity.

Based on Article 9 paragraph (1) of Law Number 28 of 2004 concerning foundations, foundations are established by one or more persons by separating part of the assets of the founders as initial assets. A foundation consists of separated wealth and that is a logical consequence of the legal form of the foundation as a legal entity. The separated foundation's wealth itself is capital for the foundation's business which comes from the founders' capital as initial capital, and wealth derived from other sources.

Founders of a foundation in establishing a foundation are the same as establishing a PT (Limited Liability Company) legal entity, namely separating personal assets from assets that become the assets of the legal entity they are founded. The matter regarding the separation of assets by the founder has consequences where in the event of a dispute related to the legal entity he founded (bankruptcy), the liability is limited to the assets owned by the legal entity and does not lead to accountability for the assets of the founders personally. This is an indirect consequence where between the founder and the legal entity he founded are 2 (two) different legal subjects, so that both of them also have different rights and obligations, including responsibility for each of their actions.

Foundations to obtain legal entity status must go through a process of approval by the Minister of Law and Human Rights which is now known as SISMINBAKUM (Legal Entity Administration System). SISMINBAKUM is a way of registering a legal entity with an online system which is directly under the Ministry of Law and Human Rights. Because a legal entity registration must go through a notary, each notary in the SISMINBAKUM system must have an ID that has been registered or registered on the official SISMINBAKUM website. Article 11 paragraph (1) of Law Number 28 of 2004 concerning Foundations states that foundations obtain legal entity status after the deed of establishment of the foundation as referred to in Article 9 paragraph (2) of Law Number 28 of 2004 concerning Foundations obtaining approval from the Minister.

This approval by the Minister is very important, apart from obtaining its status as a legal entity, it is also so that the public knows that a foundation has been established in the area where they live. Article 24 paragraph (1) of Law Number 28 of 2004 concerning Foundations states that "The deed of establishment of a Foundation which has been ratified as a legal entity or amendments to the Articles of Association that have been approved must be announced in the Supplement to the State Gazette of the Republic of Indonesia".

The assets of a foundation when it is established must be separated because it is the capital for the foundation's business, which comes from the capital of the founders as initial capital and capital from donors as contributions. The separated assets of the foundation itself are a consequence of the foundation being a legal entity where the assets of a legal entity must be separated from the wealth of the founders and also the wealth of each organ of the legal entity itself. Based on Article 5 paragraph (1) of Law Number 28 Year 2004 concerning Foundations, the Foundation's assets in the form of money, goods or other assets acquired by the foundation under this law are prohibited from being transferred or shared directly or indirectly, either in the form of salaries, wages, or honoraria, or other forms that can be valued in money to supervisors, managers and supervisors.

Seeing the provisions of Article 5 of Law Number 28 Year 2004 concerning foundations, the foundation's assets can actually be transferred (in this case transferred to parties with an interest in the foundation). The transfer of the assets of the Foundation to other parties must not only take into account the formal requirements stipulated in the Foundation Law and the foundation's constitution (for example, must obtain approval from the board of trustees), must also pay attention to the principles and provisions contained in Law No. 28 of 2004 concerning foundations and the articles of association of the foundation.

Then in terms of registration administration, there is no obligation for the foundation to register with a government agency, so that the government cannot supervise every activity carried out by the foundation. In addition, there is no obligation for the foundation to announce it in the State Gazette so that the public does not officially know about the existence of the Foundation. From a financial perspective, there is no obligation for a foundation to announce an annual report by sticking on a foundation announcement board or announced in a newspaper, so that the public cannot know the condition of a foundation. Asset at the time before the issuance of the Law on Foundations, there was no clarity, both in the process of raising funds for the benefit of the foundation and how to use the funds. Furthermore, it is also not clear how the management is accountable for the foundation's finances each year.

The meaning of separating the assets of the founder shows that the founder is not the owner of the foundation because he has separated part of the wealth of the founder from the beginning into the property of the foundation. A

foundation as a legal entity must own its own wealth, because the foundation's assets are used for the benefit of the foundation's goals in the social, religious and humanitarian fields. This should be the concern of the founders of the foundation. Every business entity such as a Limited Liability Company or Cooperative definitely needs something called "capital", while for foundations, the Foundation Law does not use the term capital but wealth. This is because the two legal entities have the position of a business entity or company whose purpose is to make a profit, where the Company and the Cooperative are economic actors.

Wealth of a Foundation that comes from business activities or from donations from third parties, belongs to the Foundation and in accordance with Article 3 Paragraph (2) and Article 5 Paragraph (1) may not be distributed or transferred to the Trustees, Administrators or Supervisors of the Foundation, the aim is to prevent an the foundation should not be misused to seek funds or profit for the organ personnel of the foundation, in addition to protecting the foundation, so that the foundation can still achieve the goals it aspires to. A member of the Board of Directors who works in a legal relationship with a Limited Liability Company (based on the articles of association) is subject to the Limited Liability Company Law, namely Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 19 of 2003 concerning State-Owned Enterprises. Therefore, because employees are not Directors, being employees of a Limited Liability Company for the Trustees, Managers, or Supervisors of the Foundation establishing a Limited Liability Company is not prohibited.

### **3.1. The Process Of Transferring Foundation Assets In The Form Of Shares To A Limited Liability Company Is Reviewed From The Foundation Law And The Limited Company Law**

Based on the provisions of Article 24 paragraph (2) of Law Number 28 of 2004 on Foundations, the deed of establishment of the foundation that has been ratified as a legal entity or changes to the AD has been approved, must be announced in the Supplement to the State Gazette of the Republic of Indonesia by the board. If during the announcement has not been made by the board, then the foundation board is responsible for all losses of the foundation. Chain responsibilities are imposed on each foundation manager without exception. If there are five board members, then the five must share the responsibility, not personal responsibility that depends on the factor of who the perpetrator made the mistake, negligence or violation, then the legal responsibility is only borne to the individual board member who made the mistake. Including liability to third parties (community, state) if there is an annual report document that is incorrect and misleading, as stated in Article 51 of Law Number 28 of 2004 on the Foundation, then the board and supervisors are jointly responsible for the affected parties.

Trustees must be aware that at all times chain responsibility always awaits, even if the mistake, negligence or violation is committed by another board member, even if it occurs outside of his / her area of responsibility and occurs

beyond his or her knowledge or even if the board does not take any part in the event that is, it must still be held liable for the losses incurred. While the principle of personal responsibility depends on the factor of who the perpetrator made the mistake, negligence or violation, the legal responsibility is only borne to the Board who made the mistake. In personal responsibility, other managers are not involved in a chain reaction.<sup>17</sup>

It is the responsibility of foundation management according to Law Number 28 of 2004 concerning Foundations that foundations that were established before the birth of the Foundation Law are obliged to adjust their deed of establishment / AD. However, the deadline for the adjustment of the founding deed of the foundation to date has ended, which is 6 October 2008. This is confirmed in the Elucidation of Article 39 of Government Regulation Number 63 of 2008 concerning the Implementation of Law Number 28 of 2004 with a deadline of 6 October 2008. The party responsible for changing the deed of establishment / AD of the foundation is the management. This is confirmed in Article 16 paragraph (1), Article 18 paragraph (1), Article 19 paragraph (1), Article 37 paragraph (1) Government Regulation Number 63 of 2008. Approval for amendments to AD or amendments shall be submitted to the Minister (Kemenkumham) by management of the foundation or its proxies through the notary who made the foundation deed. Foundations that have not adjusted their deed of establishment according to the provisions of Article 71 paragraph (1) letter b of Law Number 28 of 2004 concerning Foundations are still recognized as legal entities, until no later than 5 (five) years since the entry into force of the Foundation Law, are obliged to adjust AD. However, this provision was ignored by the foundations that had not adjusted themselves so that many of these foundations should now be liquidated.

The development of foundations at this time is very fast, most people prefer to establish foundations with the aim of making a profit, for example establishing hospitals, schools and so on, many of which deviate from the original purpose of a foundation, and this in practice cannot be avoided. Law Number 28 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations has provided clarity regarding foundations, but there are still some matters that have not been regulated. The issuance of Government Regulation Number 63 of 2008 helps foundations that have not been adjusted, as a result of the non-implementation of these provisions, some of these foundations are officially dissolved, some are not allowed, using the word Foundation in front of questions and liquidation, which means for foundations institutionally, it no longer exists, even though the foundation is still carrying out its activities and not infrequently those involving the public interest. However, there are still foundations that have not adjusted their articles of association so that in 2013 Government Regulation Number 2 of 2013 concerning Government Implementation No. 63 of 2008 was made possible to make adjustments for foundations that had not made previous adjustments.

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<sup>17</sup> Harahap, M. Yahya. (2009). *Hukum Perseroan Terbatas*. (pp. 385). Sinar Grafika.



The inward asset transfer process is a transfer process that is prohibited by the Government, where the transfer of foundation assets is not allowed to be transferred to the foundation's organs, while the process of transferring the foundation's assets to the outside is a process of transferring assets allowed by the Government, where the transfer is to a third party. Foundations that wish to transfer the assets of the foundation to a third party but the foundations have not made any adjustments to the Foundation Law, are required to make adjustments before transferring assets to outside parties, taking into account several requirements stipulated by the Foundation Law, to support the aims and objectives The foundation, the management of the foundation agreed to sell the foundation's assets to a third party, as stated in article 37 of the Foundation Law No. 16 of 2001 as amended by Law No. 28 of 2004 concerning Foundations which states that the Management is not authorized to transfer the assets of the Foundation unless with the approval of the Trustees.

### **3.2. Legal Protection Due to the Transfer of Foundation Assets in the Form of Shares in a Limited Company Reviewed from the Foundation Law and the Limited Company Law**

Foundation administrators are based on Article 31 paragraph (1) of the Foundation Law that management is an organ of a Foundation that carries out the management of a Foundation. Based on the provisions of Article 31 paragraph (1) of the Foundation Law, it is intended that a foundation as a legal entity certainly needs humans to drive the activities and operations of the Foundation both inside and outside the court and to have legal relations with other legal subjects, both human (natuurlijk persoon) or other legal entities (rechts persoon) which then the organ of the Foundation which is given the authority to carry out such matters is called the organ of the management. Those who can become organs for the management of the Foundation are people or members of the Foundation who have been appointed by the organ of the foundation.

The transfer of foundation assets should not be possible unless with the approval of the organ of the foundation. Foundation administrators who transfer Foundation assets in the form of shares to Limited Liability Companies. Article 5 paragraph (1) of Law No. 28 of 2004 concerning Amendments to Law No. 16 of 2001 concerning Foundations, which reads: "Foundation assets in the form of money, goods, or other assets obtained by the Foundation under the Law. It is prohibited to transfer or share directly or indirectly, whether in the form of a salary, wage or honorarium, or any other form that can be valued in money to the Trustees, Managers and Supervisors". Law Number 28 of 2004 concerning Foundations affirms that a foundation is a legal entity consisting of assets that are separated and intended to achieve certain goals in the social, religious and humanitarian fields that do not have members. This means that the assets of the Foundation are separate from the assets of the founder. In addition, a foundation is an independent legal subject (legal entity) that depends on the existence of the Foundation's organs. This means that the organ of the Foundation is not the owner of the Foundation but

as the manager of the survival of the Foundation. Foundation organs are fully responsible for the management of wealth to achieve the aims and objectives of the Foundation.

There is something that is contradictory, considering that the management of the Foundation is expected to be more professional, but members of the Foundation's organs are not allowed to be paid a salary or salary. Even though the organ of the Foundation has no small obligations and responsibilities. This condition is contrary to modern professional management. The provision of wages or salaries can be designed to be replaced by the possibility of providing other incentives. However, the existence of this incentive is still interpreted as a form of transfer of assets to the organs of the Foundation, where all forms of transfer are prohibited and the sanctions are quite severe (5 years imprisonment). This is an effort to protect the foundation from acts of transferring the Foundation's assets. If the Foundation has a commercial activity (business), then the income and expenses related to that business activity need to be recorded separately. A foundation can form a separate business entity that manages the business activities of the Foundation. The business activities of a business entity owned by a foundation may include, among others, arts and culture, sports, consumer protection, education, environment, health and science. These commercial activities should be left to people who have the competence and capability to manage them, so that they are not confined by the supervisors, administrators and supervisors of the Foundation.

Article 1 paragraph (1) of Law Number 28 of 2004 on Foundations also states that the foundation is a legal entity that has intentions and goals of a social, religious, and humanitarian nature to provide direction for the foundation to have idiil intentions and goals only. However, Article 3 of Law Number 28 of 2004 on Foundations still provides freedom for foundations to conduct business activities to support the achievement of its purposes and objectives by establishing a business entity, or participate in establishing a business entity, although this is limited to activities must be in accordance with the purpose and the purpose of the foundation.

Legal protection efforts for Foundation assets are specifically regulated in Article 5 of Law Number 28 Year 2004 concerning Foundations, among others, that the management is not authorized to transfer the assets of the Foundation except with the approval of the supervisor, including the transfer of shares in a Limited Liability Company. Based on the author's observations, that in addition to the prohibition against transferring the assets of the Foundation except with the approval of the supervisor, including the transfer of shares in a Limited Liability Company, a foundation is also obliged to carry out good management of the foundation's assets in accordance with the Foundation's wealth management mechanism and if there are allegations of misuse in running the management of a Foundation, then an examination of the Foundation can be carried out. All of this is intended so that the Foundation in carrying out its activities, the Foundation always realizes its objectives as a

form of anticipation that social and humanitarian goals will fade due to the tendency to pursue profit. A foundation must stick to its objectives which are based on ideals in the social, religious and humanitarian fields. The efforts described above are expected to provide legal protection for the assets of the foundation. A foundation as a legal entity established with an ideal objective that operates in the fields of religion, social and humanitarian affairs, not a legal entity that aims to seek profit for foundation organs and foundation instruments.

#### **4. Conclusion**

The position of Foundation assets transferred in the form of shares to Limited Liability Companies, reviewed from the perspective of the Foundation Law, is in essence contrary to the law if it is carried out outside of the aims and objectives of the previously established foundation and without the approval of the supervisor and violates the provisions written in the Foundation Law. Meanwhile, the position of foundation assets that are transferred in the form of shares to a Limited Liability Company reviewed from the perspective of the Limited Liability Company Law is valid if it does not violate the rules stipulated by the Foundation Law in article 7 paragraph (3) and of course it is in accordance with the provisions of the Law. Limited Liability Company itself. The process of transferring Foundation assets in the form of shares to Limited Liability Companies reviewed from the perspective of the Foundation Law is divided into 2 (two) types of processes, namely the process of transferring assets into and the process of transferring assets out. As for what is meant by the process of transferring assets into is a transfer process that is prohibited by the Government, where the transfer of assets of the foundation is not allowed to be transferred to the organs of the foundation. Legal protection due to the transfer of Foundation assets in the form of shares in Limited Liability Companies is reviewed from the perspective of the Foundation Law as regulated in Law of the Republic of Indonesia Number 16 of 2001 concerning Foundations in Article 5 and reaffirmed in Article 7 of the same Law. Legal protection efforts for Foundation assets are specifically regulated in Article 5 of Law Number 28 Year 2004 concerning Foundations, among others, that the management is not authorized to transfer the assets of the Foundation except with the approval of the supervisor, including the transfer of shares in a Limited Liability Company. Based on the author's observations, that in addition to the prohibition against transferring the assets of the Foundation except with the approval of the supervisor, including the transfer of shares in a Limited Liability Company, a foundation is also obliged to carry out good management of the foundation's assets in accordance with the Foundation's wealth management mechanism and if there are allegations of misuse in running the management of a Foundation, then an examination of the Foundation can be carried out.

#### **Acknowledgements**

Should the Board of the Foundation who does not have the status of a legal entity can immediately adjust the Articles of Association in accordance with Law No. 28 of 2004 on Amendments to Law No. 16 of 2001 on the Foundation and submit an application for ratification of its founding deed to the Minister of Law and Human Rights through a Notary who made the founding deed of the Foundation, so that the Foundation can carry out its activities and obtain legal entity status and in dealing with the Foundation based on Articles 15 A and 37 A PP Number 2 of 2013 first Notary to conduct a Legal Audit on all existing evidence in order to obtain continuity and conformity between the facts and the existing data.

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