



## Transparency in Ensuring Governance and Accountability of Non-Profit Institutions: Lessons from Malaysia and India

Tria Sasangka Putra<sup>1\*</sup>, Bahrullah Akbar<sup>2</sup>, Suwarno<sup>3</sup>, Renny Friska<sup>4</sup>,  
Dhanuskodi Rengasamy<sup>5</sup>, Momin Noorjahan<sup>6</sup>

<sup>1</sup> Universitas Islam Sultan Agung, Semarang, Indonesia

<sup>2</sup> Institut Pemerintahan Dalam Negeri, Sumedang, Indonesia

<sup>3</sup> Institut Bisnis dan Informatika Kesatuan, Bogor, Indonesia

<sup>4</sup> Universitas Airlangga, Surabaya, Indonesia

<sup>5</sup> Curtin University Malaysia, Sarawak, Malaysia

<sup>6</sup> Jamia Millia Islamia, New Delhi, India

\*Corresponding author: [tria.putra@gmail.com](mailto:tria.putra@gmail.com)

**Abstract.** This research examines the transparency and governance aspects of foundations in Indonesia as nonprofit organizations, and compares them with foundation regulations in several countries to gain insight into their legal structures, obligations, and social responsibilities. The study addresses three key questions: first, how foundations are structured within Indonesia's legal framework, focusing on governance; and second, a comparative analysis of how Malaysia and India regulate foundations, their responsibilities, and operational frameworks. The research also evaluates how foundations can improve their societal contributions while ensuring transparency and accountability. Using a qualitative approach with a normative and comparative design, the study analyzes Indonesia's regulatory framework under Law No. 28/2004 and compares it with international practices to identify best practices. The findings reveal that Indonesian foundations must uphold transparency and accountability, including the obligation to produce annual reports that are auditable and subject to strict oversight to prevent fund misuse. The conclusion highlights that while regulations differ across countries, all emphasize the importance of transparency and accountability to ensure foundations operate effectively and contribute positively to society. Adhering to these principles is essential for the sustainability of foundations and enhancing their social impact.

**Keywords:** Non-Profit Organizations (NPO); Transparency; Accountability; Social Impact; Civil Liability.



**Abstrak.** Penelitian ini mengkaji aspek transparansi dan tata kelola yayasan di Indonesia sebagai organisasi nonprofit, serta membandingkannya dengan peraturan yayasan di beberapa negara untuk memahami struktur hukum, kewajiban, dan tanggung jawab sosial mereka. Penelitian ini mengangkat tiga pertanyaan utama: pertama, bagaimana yayasan disusun dalam kerangka hukum Indonesia, dengan fokus pada tata kelola; dan kedua, analisis perbandingan mengenai bagaimana Malaysia dan India mengatur yayasan, tanggung jawab mereka, dan kerangka operasionalnya. Penelitian ini juga mengevaluasi bagaimana yayasan dapat meningkatkan kontribusi sosial mereka sambil memastikan transparansi dan akuntabilitas. Menggunakan pendekatan kualitatif dengan desain normatif dan komparatif, penelitian ini menganalisis kerangka regulasi Indonesia berdasarkan Undang-Undang No. 28/2004 dan membandingkannya dengan praktik internasional untuk mengidentifikasi praktik terbaik. Temuan penelitian menunjukkan bahwa yayasan di Indonesia harus mematuhi prinsip transparansi dan akuntabilitas, termasuk kewajiban untuk menghasilkan laporan tabunan yang dapat diaudit dan tunduk pada pengawasan ketat untuk mencegah penyalahgunaan dana. Kesimpulannya menyoroti bahwa meskipun regulasi berbeda di setiap negara, semua menekankan pentingnya transparansi dan akuntabilitas untuk memastikan yayasan beroperasi secara efektif dan memberikan dampak sosial yang positif. Mematuhi prinsip-prinsip ini sangat penting untuk keberlanjutan yayasan dan meningkatkan dampak sosial mereka.

**Kata kunci:** Organisasi Nirlaba; Transparansi; Akuntabilitas; Dampak Sosial; Tanggung Jawab Perdata.

## 1. Introduction

Foundations operate in various sectors, including education, religion, and social or humanitarian activities. They are playing increasingly prominent sociopolitical roles, and their evolving significance is now widely recognized in academic, policy, and practice contexts.<sup>1</sup> The establishment of foundations also reflects the public's desire to have an institution that serves social, religious, and humanitarian purposes.<sup>2</sup> Therefore, it is important to create foundations that can run their activities in a way that provides benefits and welfare to the wider community. These organizations are typically established with the intention of making a positive impact on society, and their activities are meant to contribute to the greater good. A foundation is a legal entity established to achieve specific goals in the social, religious, and humanitarian fields.<sup>3</sup>

The existence of foundations in Indonesia is not something new. Foundations in Indonesia have been recognized in articles such as Article 900, Article 1680, Article 1852, and Article 1854 of the Civil Code (hereinafter referred to as the Civil Code). According to Musahiddinsyah et al., there are different terms used to refer to foundations since the Dutch colonial era, such as “*stichting*,” “*stichngen*,” “*gesticnen*”.<sup>4</sup> The term foundation can be found in Article 365 and Article 899 of the Civil Code, as well as in the term “*armenrichten*” (charitable organization). Before the enactment of Law Number 16 of 2001 on Foundations, which was amended by Law Number 28 of 2004 (hereinafter referred to as the Foundation Law), there was no specific law regulating foundations in Indonesia. Foundations were only sporadically regulated in various laws and regulations.

To achieve the goals of a foundation, an organization is required. Law Number 28 of 2004 on Foundations regulates the organs of a foundation, namely: the board

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<sup>1</sup> Tobias Jung, Jenny Harrow, and Diana Leat, “Mapping philanthropic foundations’ characteristics: Towards an international integrative framework of foundation types,” *Nonprofit and Voluntary Sector Quarterly* 47, no. 5 (2018): 897.

<sup>2</sup> Adriana Khairunnisa et al., “Analisis Pertanggungjawaban Hukum Pengurus Yayasan Dalam Kasus Penyalahgunaan Dana: Studi Kasus Yayasan Aksi Cepat Tanggap,” *Binamulia Hukum* 13, no. 2 (2024): 408.

<sup>3</sup> Hana Febrianti Pertiwi, Nyulistiowati Suryanti, and Ema Rahmawati, “Penerapan Prinsip Keterbukaan dan Akuntabilitas Menurut Good Corporate Governance Dalam Pertanggungjawaban Organ Pada Pengelolaan Yayasan,” *Binamulia Hukum* 12, no. 2 (2023): 383.

<sup>4</sup> T. Musahiddinsyah, Sanusi Sanusi, and Teuku Ahmad Yani, “Pengelolaan Yayasan Menurut Asas Keterbukaan Dan Akuntabilitas (Studi Pada Yayasan Kemanusiaan di Aceh),” *Jurnal IUS Kajian Hukum dan Keadilan* 8, no. 1 (2020): 129. See also, Anita Zulfiani and Nabila Alinka Wibowo, “The Precautionary Principle of Running Foundation Activities in the Perspective of the Foundation Law and the National Criminal Code,” *Jurnal Ius Constituendum* 9, no. 2 (2024): 289.

of trustees, the board of directors, and the supervisory board.<sup>5</sup> These three organs oversee the foundation's management to ensure its objectives align with its founding purpose. Their governance is based on the principle of working solely to achieve the foundation's social goals, with civil liability arising from their actions.<sup>6</sup> The board of trustees makes key decisions and can be held accountable for violations. The board of directors manages the foundation and is liable for non-compliance or harm, while the supervisory board oversees and ensures proper implementation of programs, with all actions subject to civil liability.<sup>7</sup> Actions within their authority bind the legal entity, but if negligence causes harm, the legal entity remains bound, and the foundation's organs are personally liable. If actions exceed their authority, the organs are personally responsible and may face legal action.

In academic literature, foundations play a key role in the still-nascent field of nonprofit studies, which requires a common intellectual foundation. From a social perspective, these studies aim to promote inclusivity and pool knowledge, aligning with the goals of stakeholders in the sector, including its citizens, funders, and academics.<sup>8</sup> Similarly, nonprofit organizations face the challenge of balancing stakeholder demands, particularly between client needs and funding agency requirements.<sup>9</sup> A study found that common corporate governance practices—such as independent boards, chief executive officer oversight, and transparency—improve the alignment of donor contributions with a charity's mission.<sup>10</sup> While many studies have examined the relationship between governance practices and the social impact of foundations in the philanthropic and nonprofit sectors

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<sup>5</sup> A. Zulkarnain, "Responsibility of Foundation Organs as a Result of Unlawful Acts in The Organization of Higher Education Foundations," *Journal of Law, Politic and Humanities* 4, no. 4 (2024): 581. See also, Mohammad Isrok and Radhityas Kharisma Nuryasinta, "Typology of Strengthening Foundations as Successor to Old Foundations Post Regime Law on Foundations," *Indonesia Law Reform Journal* 3, no. 1 (2023): 29.

<sup>6</sup> Nani Mulyati and Yuli Heriyanti, "Tanggung Jawab Perdata Organ Yayasan Berdasarkan Undang-Undang Yayasan," *UNES Law Review* 6, no. 4 (2024): 12503. See also, Zulkarnain, "Responsibility of Foundation Organs as a Result of Unlawful," 589.

<sup>7</sup> Musahiddinsyah, Sanusi, and Yani, "Pengelolaan Yayasan Menurut Asas Keterbukaan Dan Akuntabilitas," 131; Mulyati and Heriyanti, "Tanggung Jawab Perdata Organ Yayasan," 12512.

<sup>8</sup> Beth Gazley, "The systematic literature review: Advantages and applications in nonprofit scholarship," *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 33, no. 6 (2022): 1259. See also, David O. Renz, William A. Brown, and Fredrik O. Andersson, "The evolution of nonprofit governance research: Reflections, insights, and next steps," *Nonprofit and Voluntary Sector Quarterly* 52, no. (2023): 245S.

<sup>9</sup> Kelly LeRoux, "Managing stakeholder demands: Balancing responsiveness to clients and funding agents in nonprofit social service organizations," *Administration & Society* 41, no. 2 (2009): 159.

<sup>10</sup> Dane P. Blevins, Roberto Ragozzino, and Rory Eckardt, "Corporate governance and performance in nonprofit organizations," *Strategic Organization* 20, no. 2 (2022): 297.

internationally,<sup>11</sup> research on this topic in Indonesia is limited.<sup>12</sup> Most existing studies in Indonesia have concentrated on the role of non-governmental organizations (NGOs), which, despite sharing similar social objectives, are often regarded as more tactical and strategic in addressing societal challenges.<sup>13</sup>

To address these concerns, this research focuses on three key questions. The first examines how foundations are structured within the Indonesian legal framework, specifically analyzing their legal frameworks and governance. The second question delves into a comparative analysis of foundation regulations in several countries such as India and Malaysia, evaluating how legal systems in different regions manage foundations, their responsibilities, and operational

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<sup>11</sup> Malin Arvidson and Fergus Lyon, "Social impact measurement and non-profit organisations: Compliance, resistance, and promotion," *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 25 (2014): 873. See also, Clemens Striebing, "Professionalization and voluntary transparency practices in nonprofit organizations," *Nonprofit Management and Leadership* 28, no. 1 (2017): 65; Cristina Ortega-Rodríguez et al., "Nonprofit good governance mechanisms: A systematic literature review," *Nonprofit Management and Leadership* 34, no. 4 (2024): 935; Caitlin McMullin and Paloma Raggo, "Leadership and governance in times of crisis: A balancing act for nonprofit boards," *Nonprofit and Voluntary Sector Quarterly* 49, no. 6 (2020): 1185; Chris Cornforth, "Nonprofit governance research: Limitations of the focus on boards and suggestions for new directions," *Nonprofit and voluntary sector quarterly* 41, no. 6 (2012): 1119; Erica E. Harris and Daniel Neely, "Determinants and consequences of nonprofit transparency," *Journal of Accounting, Auditing & Finance* 36, no. 1 (2021): 199.

<sup>12</sup> Pablo De Andrés-Alonso, Valentín Azofra-Palenzuela, and M. Elena Romero-Merino, "Beyond the disciplinary role of governance: How boards add value to Spanish foundations," *British Journal of Management* 21, no. 1 (2010): 111. See also, Lore Wellens and Marc Jegers, "Effective governance in nonprofit organizations: A literature based multiple stakeholder approach," *European Management Journal* 32, no. 2 (2014): 227; Cristina Ortega-Rodríguez, Ana Licerán-Gutiérrez, and Antonio Luis Moreno-Albarracín, "Transparency as a key element in accountability in non-profit organizations: A systematic literature review," *Sustainability* 12, no. 14 (2020): 5834.

<sup>13</sup> Yance Arizona, Muki Trenggono Wicaksono, and Jacqueline Vel, "The Role of Indigeneity NGOs in the Legal Recognition of Adat Communities and Customary Forests in Indonesia," *Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 489. See also, Kazuhiro Harada et al., "The Role of NGOs in Recognition and Sustainable Maintenance of Customary Forests within Indigenous Communities: The Case of Kerinci, Indonesia," *Land Use Policy* 113 (2022): 105865; Adriaan Bedner and Ward Berenschot, "Legal Mobilisation and Civil Society: On the Use and Usefulness of Strategic Litigation in Southeast Asia," In *Routledge Handbook of Civil and Uncivil Society in Southeast Asia*, 81–97. London: Routledge, 2023, 201; Farwiza Farhan and Paul Hoebink, "Can Campaigns Save Forests? Critical Reflections from the Tripa Campaign, Aceh, Indonesia," *Forest Policy and Economics* 105 (2019): 21; Jayne Curnow, "Legal Support Structures and the Realisation of Muslim Women's Rights in Indonesia," *Asian Studies Review* 39, no. 2 (2015): 217; Andrew Rosser, and Jayne Curnow, "Legal Mobilisation and Justice: Insights from the Constitutional Court Case on International Standard Schools in Indonesia," *Asia Pacific Journal of Anthropology* 15, no. 4 (2014): 313; Loes Willemijn Van Rooijen, "Pioneering in Marginal Fields: Jatropha for Carbon Credits and Restoring Degraded Land in Eastern Indonesia," *Sustainability* (Switzerland) 6, no. 4 (2014): 2227; Beth. E. Rivin, "Convention on the Rights of the Child: Promoting Human Rights in Islamic Day Schools in Indonesia," *Medicine and Law* 30, no. 3 (2011): 334.

frameworks. Lastly, the research assesses how foundations can enhance their societal contributions while ensuring transparency and accountability.

## 2. Research Methods

This study uses a qualitative research design with a normative and comparative approach. The purpose of this study is to understand how foundations are regulated within the Indonesian legal framework, especially in relation to their transparency, governance and social roles in society. This study also aims to conduct a comparative analysis of foundation regulations in several countries in Asia and Europe, in order to evaluate how legal systems in various regions manage foundations, their responsibilities, and the existing operational framework.

The normative approach is used to analyze the legal basis governing foundations in Indonesia, by referring to Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations, as well as other related regulations. Comparative analysis is applied to compare foundation arrangements in several countries, including comparisons between civil law and common law systems in Asia and Europe.

The data sources used in this study are divided into two categories. Primary data sources include laws and regulations, especially relevant laws, such as the Foundation Law applicable in Indonesia. Secondary data sources include books, literature, scientific articles, journals, and other references needed to analyze the legal concepts and regulations of foundations in various countries. Data analysis is carried out descriptively by mapping the applicable regulations, the legal structure governing foundations, and the challenges and opportunities faced by foundations in carrying out their social responsibilities.

## 3. Results and Discussion

### 3.1. Legal Frameworks and Governance of Non-Profit Institutions

Historically, foundations are among the oldest social institutions, with their origins tracing back thousands of years. Particularly notable during the 1980s and 1990s, philanthropy flourished on both national and international levels. By the early 21st century, the number of foundations had surged, holding greater assets across more countries than ever before.<sup>14</sup> Additionally, new forms of philanthropy

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<sup>14</sup> In the United States, over 60,000 foundations collectively possessed assets amounting to \$476 billion, while in Canada, 1,700 foundations had assets totaling CAN\$11 billion. Europe witnessed a foundation boom, with the majority of its estimated 100,000 foundations established in the final two decades of the 20th century. For instance, the ten largest German foundations alone

emerged, including donor-advised funds, donor-designated funds, and e-philanthropy, which refers to the use of the internet for donations. These innovations further energized philanthropy both domestically and globally. Even though endowment values saw a decline in 2001, they have generally remained at historically high levels in most developed economies.

International human rights treaties recognize the freedom of association, applicable to both voluntary organizations and foundations, with restrictions limited to protecting public order and safety, and safeguarding the rights and interests of others.<sup>15</sup> According to Van der Ploeg, these freedoms and limitations serve as a basis to assess the legal requirements for establishing and supervising foundations, including on foundation establishment, the accountability of directors or trustees, and the regulatory authority of the government, judiciary, and other stakeholders.<sup>16</sup>

In Indonesia, a foundation is commonly defined as a legal entity with specific objectives in the fields of social, religious, and humanitarian work. In carrying out its functions, a foundation has three main organs: the Board of Trustees, the Board of Management, and the Supervisory Board. The Board of Trustees is responsible for evaluating and improving the foundation, including holding annual meetings (Article 30 of Law No. 16 of 2001). The Board of Management is responsible for managing the activities and finances of the foundation, while the Supervisory Board's duty is to oversee and advise the management to ensure the foundation does not incur losses.<sup>17</sup>

The Board of Management holds full responsibility for the foundation,<sup>18</sup> including financial and activity management, and is required to prepare an annual report containing information about the foundation's rights and obligations. The Board of Management must also adhere to the principles of accountability and transparency to ensure the foundation is properly managed.<sup>19</sup> Legal sanctions may be imposed if the management fails to fulfill these obligations, both in civil and criminal contexts, particularly if the foundation violates the rights of third parties or applicable laws. Additionally, the Board of Trustees holds significant authority,

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had assets totaling about \$20 billion. See to more discussion in Helmut K. Anheier, *Nonprofit organizations: Theory, management, policy*, (London: Routledge, 2014): 305.

<sup>15</sup> Helmut K. Anheier and Amber Hawkes, "Accountability in a globalising world: international non-governmental organisations and foundations," *Leadership in sozialen Organisationen* 12, no.2 (2009): 195.

<sup>16</sup> Tymen J. Van der Ploeg, "A comparative legal analysis of foundations: Aspects of supervision and transparency," In *Private Funds, Public Purpose: Philanthropic Foundations in International Perspective*, pp. 55-78. Boston, MA: Springer US, 1999, 68.

<sup>17</sup> Khairunnisa et al., "Analisis Pertanggungjawaban Hukum Pengurus Yayasan," 416.

<sup>18</sup> Eldo Fransixco Dumanauw, "Kewajiban Dan Tanggung Jawab Organ Yayasan Menurut Undang-Undang Nomor 28 Tahun 2004 Tentang Yayasan," *Lex Et Societatis* 7, no. 9 (2019): 432.

<sup>19</sup> Mulyati and Heriyanti, "Tanggung Jawab Perdata Organ Yayasan," 12514.

including appointing the Board of Management and the Supervisory Board, as well as amending the foundation's articles of association.<sup>20</sup> The Board of Trustees has veto power and can make decisions related to the foundation's general policies, though this may potentially lead to injustice in the absence of check-and-balance mechanisms. Foundations that receive funding from the government or abroad, or those with assets exceeding Rp500 million, are required to prepare an annual report that can be audited by a public accountant. The Board of Management is also obliged to publish this annual report if the foundation holds significant assets.

Legal responsibility may arise if a foundation or any of its organs engages in unlawful acts, such as failing to fulfill obligations in the Articles of Association or violating the principles of accountability and transparency.<sup>21</sup> The foundation's organs that breach these obligations may be subject to sanctions, including compensation for damages or revocation of its legal entity status.<sup>22</sup> This legal responsibility also applies if the foundation is involved in unlawful acts that harm third parties, such as embezzlement or criminal acts of corruption.<sup>23</sup> The fiduciary principle also applies in the management of the foundation, where the board members and supervisors are prohibited from using their positions for personal interests or the interests of others. Furthermore, an examination of the foundation may be conducted if there is suspicion of abuse of power or legal violations, which may be reported by third parties to the court. This underscores the importance of managing a foundation with good faith, accountability, and transparency.<sup>24</sup> If these principles are not adhered to, the foundation and its governing organs may be held legally accountable, both criminally and civilly, with consequences that could result in harm to the foundation and third parties.<sup>25</sup>

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<sup>20</sup> Anheier and Hawkes, "Accountability in a globalising world," 110.

<sup>21</sup> Murni, and Abdul Gani, "Tanggung Jawab Hukum Kepada Pengurus Yayasan Terhadap Failednya Suatu Yayasan," *Jurnal Pionir* 6, no. 1 (2020), 291.

<sup>22</sup> Zelika Annisa Putri et al., "Analisis Yuridis Kewenangan Pembina Memberhentikan Pengurus Dan Pengawas Yayasan Sewaktu-Waktu (Studi Putusan Nomor: 238/PDT/2022/PT SBY)," *Jurnal Hukum Al-Hikmah: Media Komunikasi dan Informasi Hukum dan Masyarakat* 4, no. 4 (2023): 976.

<sup>23</sup> Nia Putriyana and Shintiya Dwi Puspita, "Tanggungjawab hukum Dalam Konteks Perbuatan Melawan Hukum Terhadap Tindak Pidana Korupsi," *Arena Hukum* 7, no. 3 (2016): 437; Taufik H. Simatupang, "Legalitas Subjek Hukum Yayasan Sebagai Badan Hukum (Kedudukan Yayasan yang Terbentuk Sebelum Lahirnya UU 28 tahun 2004 tentang Perubahan UU Nomor 16 tahun 2001 tentang Yayasan)," *Jurnal Ilmiah Kebijakan Hukum* 7, no. 1 (2013): 21.

<sup>24</sup> Khairunnisa et al., "Analisis Pertanggungjawaban Hukum Pengurus Yayasan," 412.

<sup>25</sup> Aqila Alhaq Santoso, Aam Suryamah, and Deviana Yuanitasari, "Tanggung Jawab Hukum Organ Yayasan terhadap Praktik Penyalahgunaan Fungsi dan Tujuan Yayasan Ditinjau Dari Undang-Undang Nomor 28 Tahun 2004 Tentang Perubahan Atas Undang-Undang Nomor 16 Tahun 2001 Tentang Yayasan," *Comserva: Jurnal Penelitian dan Pengabdian Masyarakat* 3, no. 08 (2023): 3259.

In relation to civil responsibility, the civil liability of a foundation is an important aspect of civil law that concerns the foundation's obligation to compensate for damages caused by unlawful acts committed by the foundation's organs.<sup>26</sup> A foundation is a legal entity with assets designated to achieve specific, lawful, and non-profit objectives. As such, it can be held liable for unlawful actions by its governing bodies that harm others. Effective governance, including transparency and accountability, is vital for maintaining legitimacy and trust with stakeholders, especially given the reliance on both public and private funding. Moreno-Albarracín et al. emphasize the importance of transparency indicators, validating their weight through expert input and revealing differing views between public authorities and experts on their significance.<sup>27</sup> Similarly, Cooley finds variability in online accountability and governance disclosures among nonprofits, with many failing to fully utilize digital platforms for stakeholder engagement and transparency.<sup>28</sup> A study on Portuguese private social solidarity institutions found many lack websites or have low transparency, increasing pressure for greater openness about activities and social impact due to reliance on diverse funding sources.<sup>29</sup> Their research suggests that transparency practices in nonprofits require revision to better leverage platforms to align with stakeholder expectations and enhance accountability.

### **3.2. Foundation Regulations and Governance in Malaysia and India**

In common law countries, foundations typically function as trusts, which are not legal organizations themselves but rather relationships between property and trustees. Countries such as the United Kingdom and Australia follow this basic legal definition and leave the development of foundation law to case law.<sup>30</sup> The United States is an exception, having established a specific but negative legal definition in 1969. Under this definition, a foundation is an entity exempt from taxation under section 501(c)(3) of the Internal Revenue Code, distinct from public charities and other exempt organizations. In contrast, civil law countries such as Germany, Austria, and the Netherlands view foundations as legal entities with endowments, distinguishing them from other nonprofit entities such as member-

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<sup>26</sup> Zulkarnain, "Responsibility of Foundation Organs As a Result of Unlawful," 587.

<sup>27</sup> Antonio Luis Moreno-Albarracín et al., "Transparency indicators to improve accountability for non-profit organizations: A Spanish case study," *Technological and Economic Development of Economy* 27, no. 3 (2021): 765.

<sup>28</sup> Asya Cooley, "Toward greater legitimacy: Online accountability practices of Ukrainian nonprofits," *Administrative Sciences* 14, no. 1 (2023): 4.

<sup>29</sup> Augusta Ferreira et al., "Can Online Transparency Improve Accountability? The Case of Portuguese Private Social Solidarity Institutions," *Sustainability* 14, no. 3 (2022): 1632.

<sup>30</sup> Tymen J. Van der Ploeg, "Supervisory powers relating to foundations: A comparative analysis of foundation law," *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 6, no. 3 (1995): 259.

based voluntary associations. Legal definitions in civil law countries are often broad, with the German and Austrian Civil Codes, for example, not providing an explicit definition but instead outlining three main characteristics for foundations: a specific purpose or purposes, an asset base appropriate to achieve those purposes, and an organizational structure for carrying out activities. Similarly, the Dutch legal definition describes foundations as organizations without members, whose purpose is to achieve the purposes stated in their charter by utilizing property allocated for those purposes.<sup>31</sup>

In Japan, foundations are known as *zaidan bojin* and their regulations are set out in the Japanese Civil Code and regulations relating to non-profit organizations.<sup>32</sup> Establishing a foundation in Japan requires government approval and must be established for a legitimate purpose, such as a social or humanitarian activity. Foundations in Japan are supervised by government agencies and must comply with laws governing non-profit organizations. The establishment of a foundation must be reported to the Ministry of Justice and other relevant agencies. Foundations in Japan must have a social purpose and not be for personal gain, and must have a clear budget and operational plan that is oriented towards the public interest. The organizational structure of a foundation in Japan usually involves a Board of Directors who are responsible for the management of the foundation and are often required to have transparent financial reports.

In India, foundations are regulated by the Indian Trusts Act, 1882 for trusts and other statutes such as the Societies Registration Act, 1860 for societies or foundations. Foundations in India are generally established for charitable, social or religious purposes and must be registered with the relevant authority. Foundations registered in India must ensure transparency in the management of funds and report their activities and financial statements to the relevant authorities. Foundations in India often have a Board of Directors who are responsible for the management and supervision of the activities of the foundation. The Indian Trusts Act, 1882 is the law that governs private trusts and trustees in India. It defines a trust and who can act as a trustee. In 2015, the Indian Trusts Amendment Bill amended several provisions of the act, removing restrictions on the investment of

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<sup>31</sup> Annisa Rahma Rafidah, and Azzahra Nurrachma, "Perbandingan Hukum Perdata Tentang Orang dan Badan Hukum di Indonesia, Amerika dan Inggris," *Media Hukum Indonesia (MHI)* 2, no. 3 (2024): 121.

<sup>32</sup> Ogawa Akihiro, "The new prominence of the civil sector in Japan," In *Routledge Handbook of Japanese Culture and Society*, pp. 186-197, (London: Routledge, 2011) 193.

Tadashi Yamamoto, *On the history of the nonprofit sector in Japan*, (Oxford Road: Manchester University Press, 1998), 43.

monetary assets by trustees in certain investments, but also giving the government powers to monitor and scrutinize such investments.<sup>33</sup>

The Indian Trusts Act, 1882 is a law in India relating to trusts and private trustees. The Act defines what constitutes a trust and who can legally be its trustee and provides definitions for them. Section 3 of the Indian Trusts Act of 1882 defines a trust as an obligation tied to property ownership, created for the benefit of another or both the owner and another. It also outlines terms such as trust instrument, notice, and trust property. Section 10 outlines trustee eligibility, stating that anyone capable of holding property can be a trustee, but must be able to contract if discretion is required. Section 11 requires a trustee to fulfill the trust's purpose, follow the creator's directions, and avoid actions that are illegal, impractical, or harmful to the beneficiaries. Section 14 prohibits a trustee from claiming trust property for themselves or assisting others in doing so if it conflicts with the beneficiary's interests.

The Indian Trusts Amendment Bill 2015 amended several sections of the Act, one of which was to remove restrictions on investment of monetary assets by a trustee in certain investments, although it allowed the government to scrutinize the trust's investments. Section 20 outlines that when trust property consists of money that cannot be immediately applied, the trustee must invest it in specific government-backed securities, bonds, or debentures. The trustee may also invest in railway companies or municipal securities, subject to certain conditions, and may invest in a first mortgage of immovable property if certain conditions are met. Additionally, Section 20A permits trustees to invest in securities that may be redeemable, provided they follow specified guidelines for redemption prices.

In Malaysia, foundations are regulated by the Societies Act 1966 (Act No. 13 of 1966) in its current form (1 January 2006), which was revised in 1987 (Act 335, effective 19 October 1987), which provide the legal framework for the establishment and management of foundations.<sup>34</sup> Foundations can be established by individuals, organisations or institutions with legitimate purposes, such as social, educational, humanitarian or cultural. The establishment of a foundation requires registration with the Pendaftar Pertubuhan under the Ministry of Home Affairs. Foundations in Malaysia are supervised by the Pendaftar Pertubuhan to ensure that they operate in accordance with the purposes set out in their articles of incorporation, including the obligation to report their activities and financial statements periodically. Foundations must have a non-profit objective and ensure

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<sup>33</sup> Stelios Tofaris, "Trust Law Goes East: The Transplantation of Trust Law in India and Beyond," *The Journal of Legal History* 36, no. 3 (2015): 321.

<sup>34</sup> Z. Ali and H. Hassan, "Regulating Charitable Organisations in Malaysia: Challenges and Recommendations," *Pertanika Journal of Social Sciences & Humanities* 12, no.4 (2017): 121.

that their assets and resources are used for legitimate purposes.<sup>35</sup> The organizational structure of foundations in Malaysia involves a Board of Trustees which is responsible for managing the foundation's activities, and the foundation must maintain transparency in financial management with annual audits and financial reports submitted to the authorities.

The Societies Act 1966, revised in 1987 (Act 335), governs the registration, regulation, and dissolution of societies in Malaysia.<sup>36</sup> It covers a wide range of provisions applicable to societies in general, as well as specific provisions for political parties and mutual benefit societies. The Act outlines the process for registering societies, the powers of the Registrar, and the conditions for canceling or suspending societies. For example, Section 5 grants the Minister the power to declare a society unlawful if it is deemed to be engaging in activities harmful to public order or national security.

The Act also sets out requirements for the governance, management, and dissolution of societies, including penalties for operating unlawful societies or engaging in fraudulent activities, as seen in Section 42, which imposes penalties on office-bearers of unlawful societies.<sup>37</sup> In regulating societies, the Act includes provisions that require societies to operate in accordance with their constitution. For instance, Section 9A disqualifies certain individuals from serving as office-bearers, advisers, or employees of a registered society, ensuring that societies are run by qualified individuals.<sup>38</sup> Additionally, Section 13A gives the Registrar the power to take corrective actions, such as issuing provisional orders for dissolution or suspension, ensuring that societies comply with the law. The Act also maintains transparency in operations, such as through Section 27, which mandates the Registrar's authority to inspect society records and ensure proper governance, while Section 54A penalizes the provision of false information during these inspections.

Provisions related to the use of society insignia, symbols, and emblems are also regulated. For example, Section 50 prohibits the unauthorized use of a society's flags, symbols, or badges, while Section 53 imposes penalties for the misuse of a society's funds or property. Further, Section 64 empowers the Registrar to conduct searches and seizures in special cases, ensuring that the society's activities are

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<sup>35</sup> Franky Sedau, "Database Systems at Registry of Societies (ROS) Malaysia, Sarawak," PhD diss., University Technology MARA Sarawak, 2012, 132.

<sup>36</sup> Ahmad Zamri Bin Osman, "Accountability Through Reporting: The Case of Foundations in Malaysia," *Asia-Pacific Management Accounting Journal* 17, no. 2 (2022): 145.

<sup>37</sup> Nur Aina Abdulah and Norhoneydatie Abdul Manap, "Perlembagaan Ngo Islam Di Malaysia: Analisis Terhadap Keperluan Pembentukan Garis Panduan," *Journal of Contemporary Islamic Law* 8, no. 2 (2023): 49.

<sup>38</sup> Mazlan Che Soh et al., "Kebolehlaksanaan Penubuhan Suruhanjaya Pendaftaran Pertubuhan Malaysia di Malaysia: Dapatan Dari Analisis Kualitatif," *Journal of Public Security and Safety* 15, no. 1 (2023): 27.

closely monitored and controlled. Additional sections address specific rules for political parties and mutual benefit societies, including membership restrictions and the rights of members. The Act further details penalties for violations, such as Section 53A, which imposes penalties for using a certificate of registration after it has been canceled. The Act is periodically updated, with the most recent amendments incorporated as of 1 January 2006, ensuring its relevance and effectiveness in regulating societies.

### **3.3. Transparency as a Key Element in Strengthening Foundations' Social Impact**

Foundations in Indonesia need to pay attention to the principles of transparency, accountability and responsible management in carrying out their activities.<sup>39</sup> In Indonesia, the regulation of foundations is regulated in several laws and regulations, such as Law on Foundations No. 16 of 2001, which was later updated by Law No. 28 of 2004 concerning amendments to the Law on Foundations, as well as provisions contained in the Civil Code (KUHPerdata) concerning the management of foundation assets.<sup>40</sup> These regulations provide a clear legal basis for foundations to operate legally and in an organized manner, with the aim of creating legal certainty and ensuring that the foundation's social objectives can be achieved efficiently and appropriately.<sup>41</sup>

The main points that foundations in Indonesia need to pay attention to in order to improve their social role, as well as to ensure optimal civil responsibility, include maintaining transparency and accountability in all aspects of foundation operations. As a non-profit organization that manages funds from various sources, foundations have an obligation to provide honest and open reports on the sources

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<sup>39</sup> Dumanauw, "Kewajiban Dan Tanggung Jawab Organ Yayasan Menurut Undang-Undang Nomor 28," 430; Zulkarnain, A. "Responsibility of Foundation Organs As a Result of Unlawful," 585.

<sup>40</sup> Cut Mira Sucia, Ramlan Ramlan, and Surya Perdana, "Transfer of Assets with Share of Foundations to A Limited Company in The Perspective of The Foundation Act and The Limited Company Law," *Veteran Law Review* 4, no. 1 (2021): 71; Sardjana Orba Manullang, "Penerapan Pranata Trusts Dalam Pengelolaan Yayasan (Suatu Terobosan Equity Dalam Hukum Harta Kekayaan Indonesia)," *Jurnal Ilmu Hukum the Juris* 3, no. 1 (2019): 25.

<sup>41</sup> Agus Supriyanto, Hari Purwadi, and Mulyoto Mulyoto, "Legal protection of foundation organs in connection with changes to the foundation with the same name," *Research, Society and Development* 11, no. 10 (2022): e437111033007; Grace EA. Sambodeside, "Kajian Hukum Yayasan Sebagai Badan Hukum Private Menurut Undang-Undang Nomor 28 Tahun 2004 Tentang Yayasan," *Lex Privatum* 6, no. 2 (2018): 35; Joke Punuhsingon et al., "Kajian Hukum Keberadaan Organ Pengawas dalam Mencegah Penyalahgunaan Fungsi dan Tujuan Yayasan," *Paulus Law Journal* 5, no. 1 (2023): 53.

and use of these funds.<sup>42</sup> Therefore, foundations in Indonesia are required to prepare annual reports that include activities and financial reports. The report must be transparent and auditable by authorized parties (e.g. public accountants), so that it can be openly accounted for to the public and donors. This is considering the importance of managing funds and assets for social or humanitarian purposes in the right way.

In many countries, including Indonesia, foundations that have large assets or that receive funds from external sources or the government must be under supervision and audit by the relevant authorities, and provide transparent financial reports.<sup>43</sup> This supervision serves to ensure that existing funds are used appropriately according to the foundation's objectives, as well as preventing potential misuse or corruption. In addition, this strict supervision also involves periodic reporting that must be made to the competent authorities, such as the Ministry of Law and Human Rights, to ensure that the foundation operates in accordance with applicable regulations.

With legal provisions requiring transparent financial reporting and strict supervision, foundations in Indonesia can avoid potential legal and ethical issues, and maintain public trust. In doing so, foundations not only fulfill their legal obligations, but they can also increase their efficiency and effectiveness in achieving their goals, and strengthen their contribution to society. This transparency and accountability will create a better environment for the growth and sustainability of foundations, and support the success of their social programs.

In relation to legal responsibility, every foundation administrator in Indonesia is legally responsible for the foundation's activities,<sup>44</sup> both in administrative and legal aspects. According to Article 36 of Law No. 28 of 2004 on Foundations, foundation administrators are personally liable if they violate the provisions of the foundation's articles of association or if they act outside the authority granted. If there is a violation committed by the foundation or its administrators, either in the form of negligence or errors in carrying out their duties, the foundation and its administrators can be subject to legal sanctions, either in the form of civil such as compensation (Article 39) or criminal, related to violations of state law or criminal acts such as misappropriation of funds or embezzlement that harms third parties.

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<sup>42</sup> Sovia et al., "Analisis Yuridis Terhadap Pertanggungjawaban Organ Yayasan Untuk Mewujudkan Kepastian Hukum (Studi Penelitian di Yayasan Hati Senang Abadi Berkedudukan di Kota Tanjungpinang)," *Unes Law Review* 6, no. 1 (2023): 3617.

<sup>43</sup> Nurul Hidayanti, "Distribusi aset dan kekayaan yayasan: Perspektif perundang-undangan," *Al Daulah: Jurnal Hukum Pidana dan Ketatanegaraan* 6, no. 2 (2017): 211.

<sup>44</sup> Hernindyo Reinan Mahastoro and Albertus Sentot Sudarwanto, "Pertanggungjawaban Hukum Pengurus Yayasan Terhadap Rumah Sakit yang Dikelola oleh Yayasan Berdasarkan Undang-Undang Nomor 44 Tahun 2009 Tentang Rumah Sakit," *Jurnal Hukum dan Pembangunan Ekonomi* 7, no. 2 (2019): 214. See also, Zulkarnain, "Responsibility of Foundation Organs As a Result of Unlawful," 583.

Article 40 states that administrators can also be held accountable if the foundation is involved in illegal activities, including misuse of funds provided by donors or other parties.<sup>45</sup>

In addition, in relation to the social objectives of foundations, the Foundation Law emphasizes the importance of establishing foundations with legitimate objectives and not for commercial purposes. Article 1 Paragraph (3) of the Foundation Law No. 28 of 2004 stipulates that foundations are established with social, religious or humanitarian objectives, and foundation activities cannot be used for personal interests or the benefit of members or administrators of the foundation.<sup>46</sup> These objectives must be clearly stated in the foundation's articles of association and all foundation activities must focus on achieving these objectives, as stated in Article 3. Foundations that abuse these objectives and operate for commercial purposes may be subject to administrative or legal sanctions, including dissolution of the foundation.

The lesson to be learned from this regulation is that foundations in Indonesia, as in other countries, must operate with strong principles of transparency, accountability, and professional management. In addition, foundations must also ensure that every activity and decision taken is in accordance with the purpose of their establishment so that there is no abuse of authority or violation of the law that can harm the community or the foundation itself. The application of these principles will strengthen the sustainability of foundations and ensure that foundations can contribute positively to society in accordance with legitimate and transparent purposes.<sup>47</sup>

In general, this shows that foundations are basically established with an idealistic purpose that aims to create a positive social impact, but there is no legal prohibition against them engaging in business activities to support their goals. However, this flexibility can create opportunities for abuse, as some individuals can exploit the foundation's name and non-profit status for personal gain, rather than prioritizing the social and humanitarian mission that is the foundation's original purpose.<sup>48</sup> In this context, balancing the pursuit of social impact with the need to comply with legal requirements is an ongoing challenge for foundations. While foundations may engage in business activities to support their nonprofit objectives,

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<sup>45</sup> Rania Syifa Suradiradja and Neni Sri Imaniyati, "Tanggung Jawab Pengurus Yayasan Aksi Cepat Tanggap (ACT) terhadap Penyalahgunaan Dana Ditinjau dari KUHPerdara dan Undang-Undang Nomor 28 Tahun 2004 Tentang Yayasan," In *Bandung Conference Series: Law Studies*, 3, no. 2. (2023): 213; Yuli Heriyanti and Zainul Daulay, "Badan Hukum Yayasan di Indonesia: Suatu Kajian dalam Perspektif the Doctrine of Charitable Immunity," *Unes Law Review* 6, no. 4 (2024): 12539.

<sup>46</sup> Khairunnisa et al., "Analisis Pertanggungjawaban Hukum Pengurus Yayasan," 409.

<sup>47</sup> Musahiddinsyah, Sanusi, and Yani, "Pengelolaan Yayasan Menurut Asas Keterbukaan Dan Akuntabilitas," 127.

<sup>48</sup> Pertiwi, Suryanti, and Rahmawati, "Penerapan Prinsip Keterbukaan dan Akuntabilitas," 387.

they must ensure that such activities do not conflict with their legal obligations or undermine their primary mission. Thus, careful examination of how foundations can operate within these legal constraints while maximizing their social impact is essential. This potential civil lawsuit highlights the need for clear regulation and strong oversight to ensure that the focus remains on achieving meaningful social impact while maintaining accountability and transparency in foundation operations.<sup>49</sup>

This is supported by previous findings, stating that transparency is essential in ensuring accountability to stakeholders, with voluntary information disclosure being a common practice despite the absence of specific legislation governing transparency in the nonprofit sector.<sup>50</sup> Governance in nonprofit organizations, particularly through the role of the board and the involvement of stakeholders, is a critical aspect of organizational effectiveness, with board composition, trustee engagement, and knowledge diversity play a significant role in enhancing the of non-profit organizations.<sup>51</sup> Effective governance also requires balancing the often conflicting interests of multiple stakeholders, as nonprofits must align these diverse expectations to improve their perceived effectiveness and long-term sustainability.<sup>52</sup> Therefore, enhancing governance practices by fostering board engagement, managing stakeholder relationships, and promoting transparency is key to improving the impact and credibility of nonprofit organizations.

#### 4. Conclusion

Foundations in Indonesia and other countries function as legal entities that have social, religious, or humanitarian objectives, with management that requires the principles of transparency, accountability, and responsible management. In

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<sup>49</sup> Muhammad Rizqullah Dany Putranto, Nabila Aulia Rizki, and Naufandiary Bachtiar Ramzy, "Kebijakan Hukum Pendirian Yayasan Oleh Warga Negara Asing di Indonesia," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 4, no. 3 (2024): 211; Fendi Supriono, "Implementasi Undang-Undang Yayasan Dalam Mencapai Maksud Dan Tujuan Yayasan," *Jurnal Ilmu Hukum Legal Opinion* 1, no. 3 (2015): 54; Lalu Irwan Suryadi and Muhammad Sood, "Penyesuaian dan Perubahan akta anggaran dasar yayasan," *Jatishwara* 35, no. 2 (2020): 48. Zaini and Septia, "Pertanggungjawaban Pengurus Dalam Pengelolaan Badan Hukum Yayasan," 40; Ardy Oktavian and Suwono Suwono, "Foundation Status of Legal Entity That has not Registered in The System Under Administration as Regulation of Minister of Justice and Human Rights No. 5 of 2014 Concerning the Ratification of Legal Entity," *Jurnal Akta* 5, no. 3 (2018): 836.

<sup>50</sup> Ortega-Rodríguez, Licerán-Gutiérrez, and Moreno-Albarracín, "Transparency as a key element in accountability in non-profit organizations," 5836.

<sup>51</sup> De Andrés-Alonso, Azofra-Palenzuela, and Romero-Merino, "Beyond the disciplinary role of governance," 111.

<sup>52</sup> Wellens and Jegers, "Effective governance in nonprofit organizations," 233.

Indonesia, foundations are regulated by Law No. 16 of 2001 on Foundations, which was later amended by Law No. 28 of 2004, as well as the Civil Code which regulates the management of foundation assets and activities. In terms of Transparency and Accountability, foundations are required to prepare annual reports that include activities and financial reports that can be audited by the authorities, ensuring that funds are used according to their intended purpose and in compliance with legal provisions. Failure to fulfill this obligation can result in legal sanctions, both civil and criminal.

In terms of management responsibility, foundation managers are personally liable for violations committed in their capacity. Article 36 of the Foundation Law No. 28 of 2004 stipulates that managers can be subject to sanctions if they violate the articles of association or act outside their authority. In addition, in terms of supervision, foundations that receive external funds or have large assets must be under strict supervision by relevant authorities, such as the Ministry of Law and Human Rights, to prevent misuse and ensure that the use of funds is in accordance with the foundation's objectives. This supervision is very important to maintain the sustainability of social programs and strengthen the foundation's contribution to society.

Internationally, while there are variations in foundation arrangements, such as in civil law and common law countries in Europe and Asia, all countries emphasize the importance of transparency, accountability and responsible management. By strengthening these principles, foundations can maintain public trust, operate efficiently and deliver positive social impact, thereby ensuring the sustainability and success of their social objectives.

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