

## Judicial Analysis of Decision Number 590/Pdt.G/2023/PN Bdg on the Legal Status of Business Unit Managers amid a Legal Vacuum in Foundation Organs

Muhammad Reza Syariffudin Zaki<sup>1\*</sup>, Axel Christian Putra<sup>2</sup>

<sup>1</sup>BINUS University, Jakarta, Indonesia

<sup>2</sup>BINUS University, Jakarta, Indonesia

e-mail: [muhammad.zaki@binus.ac.id](mailto:muhammad.zaki@binus.ac.id)

### ABSTRACT

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The absence of explicit regulatory mechanisms governing transitional governance in foundations experiencing total vacancy of organs (vacuum of management) has created legal uncertainty, particularly concerning the authority of business unit managers operating under foundations. This normative gap becomes increasingly problematic when foundations manage high-value social assets, raising questions about the limits of managerial authority and the legality of actions undertaken without formally legitimate governing organs. This study addresses two main research questions: (1) how Decision Number 590/Pdt.G/2023/PN Bdg is assessed from the perspective of the Indonesian Foundation Law (Law No. 16 of 2001 as amended by Law No. 28 of 2004); and (2) how judicial law-finding (*rechtsvinding*) was conducted to resolve the vacancy of foundation organs and its implications for the legal standing of business unit managers. Employing normative juridical research, this study applies statute, case, and conceptual approaches, supported by qualitative analysis of primary and secondary legal materials as well as contextual interviews. The findings demonstrate that the court adopted a dynamic positivism approach, affirming formal ministerial ratification as the decisive criterion of legal legitimacy while simultaneously applying corporate organ theory to clarify the separation of authority between foundation organs and business unit management. The decision confirms that operational continuity does not confer representative authority and that legal legitimacy must remain grounded in formal structure. Academically, this research contributes to the reconstruction of normative boundaries between foundation organs and business unit managers in situations of organs vacancy, highlighting the need for clearer transitional regulatory mechanisms to strengthen legal certainty and protect the social function of nonprofit foundations.



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### Introduction

Foundation is a non-profit legal entity, it has important goals and roles in carrying out social, religious and humanitarian activities.<sup>1</sup> In order to support this goal, several foundations have established and run business units<sup>2</sup> that aim to maximize funding sources intended as capital for the foundation's operational

<sup>1</sup> Zaini, Z. D., & Septia, P. Pertanggungjawaban Pengurus Dalam Pengelolaan Badan Hukum Yayasan di Indonesia. *Justice Voice*, 1(1), 2022: 35-44.

<sup>2</sup> Firdausi, Z. H. Penyaluran Dana Zakat Melalui Beasiswa di Baitul Maal Muamalat. *Az-Zarqa': Jurnal Hukum Bisnis Islam*, Vol. 10 No. 1, 2018: 56-57.

sustainability without relying solely on donations from donors.<sup>3</sup> Normatively, the existence and governance of foundations are regulated in Law Number 16 of 2001 concerning Foundations as amended by Law Number 28 of 2004. The enactment of Law Number 16 of 2001, which was subsequently amended by Law Number 28 of 2004 concerning Foundations, marked a significant milestone for foundations that had long existed and developed in Indonesia without a formal legal framework governing their establishment and operation. Pursuant to Article 1 of Law Number 28 of 2004 amending Law Number 16 of 2001 on Foundations, a foundation is defined as a legal entity consisting of separated assets allocated to achieve specific objectives in the social, religious, and humanitarian fields, and which has no members.<sup>4</sup> According to Poerwadarminta, foundation is an entity established with the intention of undertaking certain activities, such as operating a school and similar institutions (as a legal entity with capital, but without members); and buildings specifically designated for particular purposes, such as hospitals, and similar institutions.<sup>5</sup> Achmad Ichsan explains that a foundation does not have members because it is established through the separation of certain assets, whether in the form of money or other property, for ideal purposes, namely social, religious, and humanitarian objectives. The founder may be either the Government or a private individual acting as a donor. To ensure the realization of these objectives, a management body is formed to administer and oversee the implementation of the foundation's purposes.<sup>6</sup>

The Law Number 16 of 2001 concerning Foundations as amended by Law Number 28 of 2004 stipulates that foundation organs consist of advisors, administrators, and supervisors as the formal management structure of the legal entity. Company organs play an essential role in ensuring that a company is properly managed and operated because each organ carries distinct functions and authorities.<sup>7</sup> However, the law does not explicitly regulate the transition mechanism in the event of a vacancy in a foundation organ, whether due to the end of the term of office, resignation, or death of the administrator. This vacancy has the potential to give rise to legal vacuum which has an impact on uncertainty of authority, particularly regarding the management of business units under the foundation.<sup>8</sup> These issues become even more complex when a foundation has business units that manage high-value assets. In the absence of such an organ, fundamental questions arise regarding the limits of the business unit's management authority and the legitimacy of actions taken without the legitimacy of a legitimate foundation organ.

The development of law in Indonesia cannot be separated from the cases that occur and court decisions that are the answer to each case handled, as a basis for discovering new laws through the interpretation of judges in court decisions and as jurisprudence that can be used as a source of law to resolve cases that are not regulated in the Law.<sup>9</sup> This is reflected in Decision Number 590/Pdt.G/2023/PN Bdg which involves a dispute between the Kawalujaan Kebonjati Foundation and the Kawaluyaan Foundation, each of which claims to be the legitimate continuation of Jajasan Kawalujaan, which was established in 1946. The dispute began with a vacancy in the management, which was then exploited by certain parties to claim legitimacy over the management of the foundation's assets. The Bandung District Court's decision, which was later upheld by the Bandung High Court and strengthened in the cassation level, demonstrates the role of judges in making legal discoveries to fill the normative vacuum. However, normatively there is still room for discussion regarding the limits of the authority of business unit managers and the legal construction used by judges to address this vacuum.

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<sup>3</sup> Zaman, B. (2022). Strategi Kewirausahaan Yayasan Guna Meningkatkan Sumber Pembiayaan Pendidikan. *Islamic Management: Jurnal Manajemen Pendidikan Islam*, 5(02): 213-230.

<sup>4</sup> Muhammad Reza Syariffudin Zaki. *Pengantar Ilmu Hukum dan Aspek Hukum dalam Ekonomi*, Penerbit Prenadamedia, Jakarta, 2022: 97.

<sup>5</sup> WJS. Poerwadarminta, *Kamus Umum Bahasa Indonesia*, Jakarta: Balai Pustaka, 1986: 1154.

<sup>6</sup> Achmad Ichsan. *Hukum Dagang* (Cet. Ke-5), Jakarta: Pradnya Paramitha, 1993: 110.

<sup>7</sup> Muhammad Reza Syariffudin Zaki, Nilam Shifa Salsabila, Axel Christian Putra, Noreiko Angelina Tjahyad, Mikha Kurniawan, Samuel Seow, *Corporate Organ Governance In Indonesia's Individual Companies: An International Perspective*, Tirtayasa Journal Of International Law, Volume 4 Number 2, December 2025:146-147.

<sup>8</sup> Putri, M. P. D. S., & Wibowo, K. T. *Hukum Yayasan: Teori, Praktik Pendirian, Operasional, dan Pembubaran Yayasan-Jejak Pustaka*. 3.

<sup>9</sup> Hidayat, A. (2013). "Penemuan Hukum Melalui Penafsiran Hakim Dalam Putusan Pengadilan," *Pandecta Research Law Journal*. Vol. 8 Nomor. 2: 161-163.

Academic discourse on foundation law in Indonesia has addressed various aspects of institutional governance and legality. Several studies have highlighted the issue of adjusting the articles of association of foundations established before the enactment of the Foundation Law and the administrative implications of notarial non-compliance.<sup>10</sup> Another study raised the issue of managing foundation business units, particularly in the practice of transferring or leasing assets to limited companies which has the potential to deviate from non-profit principles.<sup>11</sup> In addition, research on the legal responsibilities of foundations following the amendment to the Foundation Law has also been conducted, with a focus on the legal consequences for foundations that have not yet obtained approval or made adjustments in accordance with statutory provisions.<sup>12</sup> In the context of institutional conflict, a study on the dualism of management of university foundations shows that differences in interpretation of the articles of association and weak supervisory functions can give rise to legal uncertainty regarding the management of foundation assets.<sup>13</sup> Meanwhile, a study on the vacancy of foundation organs due to the end of the term of office of the management confirms that the Foundation Law does not yet provide an explicit mechanism to address this condition, so that the foundation loses its legal capacity to act until a new management is formed.<sup>14</sup>

Although this literature makes important contributions to understanding the legality and governance of foundations, most research still analyzes administrative aspects, dual management, or vacancies in organizations separately. There has been no comprehensive study examining the legal standing of business unit administrators in situations of vacancies in foundation organizations and how court decisions function as legal instruments to fill these normative gaps. Thus, there is a significant research gap regarding the need for normative reconstruction regarding the authority relationship between foundation organizations and business unit administrators in situations of vacancies in organizations. Furthermore, no research has systematically analyzed Decision Number 590/Pdt.G/2023/PN Bdg as a normative precedent in establishing the boundaries of authority and legitimacy of legal actions during the transition period of foundation organizations.

Based on these problems, this study raises two main questions: (1) how is the Decision Number 590/Pdt.G/2023/PN Bdg viewed from the perspective of the Foundation Law; and (2) what form of legal discovery is made by the judge in addressing the vacancy of foundation organs and its implications for the position of business unit managers. This study aims to analyze the conformity of the judge's legal considerations with applicable norms and formulate a normative construction regarding the limits of authority of business unit managers in conditions of vacancy of foundation organs. The academic contribution of this study lies in the effort to reconstruct the limits of authority between foundation organs and business unit managers in situations of vacancy of management as part of strengthening the principles of non-profit and legal certainty. Practically, this study is expected to be a reference for policy makers, judges, and legal practitioners in formulating more comprehensive regulations regarding the transition mechanism of foundation organs to prevent abuse of legitimacy in the management of social assets.

## Method

This research uses a normative juridical research method that focuses on examining the legal norms, principles, and doctrines governing foundation governance in Indonesia. Normative juridical research is research that examines library materials or secondary data, which have relevance and include primary and secondary legal materials.<sup>15</sup> This method was chosen because the research aims to assess the compliance of court decisions with statutory provisions and identify gaps in the norms governing foundation organs. Normative legal research

<sup>10</sup> Delia Azizah Rachmapurnami (2021). "Tinjauan Yuridis Penyesuaian Yayasan yang Didirikan Sebelum Undang-Undang Nomor 16 Tahun 2001", *Jurnal Officium Notarium*, Vol. 2 Nomor 1.

<sup>11</sup> Elita Intan Wijayanti, (2022). "Analisis Hukum terhadap Sewa-Menyewa Aset Yayasan Rumah Sakit kepada Rumah Sakit yang Berbentuk Perseroan Terbatas (Studi Kasus PT Senuk Jaya Husada)", *Jurnal Akta Notaris*, Vol. 1 Nomor 1.

<sup>12</sup> Tyas Puspita Sari (2016). "Tanggungjawab Atas Perbuatan Hukum Yang Dilakukan Oleh Yayasan Setelah Berlakunya Undang-Undang Nomor 28 Tahun 2004 Tentang Yayasan", Skripsi Fakultas Hukum Universitas Muhammadiyah Magelang.

<sup>13</sup> Andi Umi Pratiwi (2018). "Kepastian Hukum Penyelenggaraan Yayasan Perguruan Tinggi Akibat Dualisme Kepengurusan", Tesis (Magister Kenotariatan) Universitas Hasanuddin Makassar.

<sup>14</sup> Dian Wahyu (2023). "Akibat Hukum Terjadinya Kekosongan terhadap Organ-Organ Yayasan yang Sudah Habis Masa Kepengurusannya", *Jurnal Multidisiplin Indonesia*, Vol. 2 Nomor 8.

<sup>15</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI-Press, 2015):52.

emphasizes the analysis of legal materials through an interpretive and systematic approach to evaluate the coherence and consistency of the applicable legal framework.

This research applies several approaches. First, the statute approach by examining Law Number 16 of 2001 concerning Foundations as amended by Law Number 28 of 2004, along with its implementing regulations, particularly provisions governing the structure of foundation organs, the authority of administrators, and the principles of managing foundation assets. This approach is used to test whether Decision Number 590/Pdt.G/2023/PN Bdg is in accordance with applicable positive legal norms. Second, the case approach was conducted through an in-depth analysis of Decision Number 590/Pdt.G/2023/PN Bdg along with the decisions at the appeal and cassation levels that confirmed it. This analysis aims to identify the judge's reasoning patterns, the construction of legal findings, as well as the arguments used to overcome the emptiness of foundation organs and determine the legitimacy of the authority of business unit managers. Third, the conceptual approach is used to study legal doctrines and theories related to legal vacuum,<sup>16</sup> legal certainty, legitimacy of authority, and the foundation's non-profit principles. This approach helps build an analytical framework for formulating a normative reconstruction of the authority relations between foundation organs and business unit administrators in the event of a vacant leadership position.

The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations, relevant court decisions, and official documents related to the case being analyzed. Secondary legal materials include legal textbooks, scientific journal articles, previous research results, and expert opinions on foundation governance and legal discovery theory. Tertiary legal materials, in the form of legal dictionaries and legal encyclopedias, are used to clarify conceptual definitions when necessary. The collection of legal materials is conducted through a systematic literature review. In addition, this research is supplemented by interviews with sources directly related to the case being studied to enrich the contextual understanding of the dispute. The data obtained are analyzed qualitatively using descriptive and argumentative analysis techniques. Descriptive analysis is used to objectively explain legal norms and judges' considerations, while argumentative analysis is used to construct legal constructions and provide an evaluation of the gaps in the norms found.

The analysis process is carried out through several stages. First, a legal interpretation of the provisions of the Foundation Law to determine the scope of authority of foundation organs and the limits of authority of business unit managers. Second, identification of gaps or unclear norms related to the management transition mechanism. Third, an evaluation of the judge's considerations in Decision Number 590/Pdt.G/2023/PN Bdg as a form of legal discovery to fill this gap. Fourth, the formulation of a normative reconstruction aimed at clarifying the limits of authority and the transition mechanism of foundation organs to strengthen legal certainty and maintain the principle of non-profit. This research produces a theoretical study compiled through a literature study method, by examining a topic based on the collection of theories from various literature sources such as books and scientific journals. Through this methodological framework, the research aims to produce doctrinal clarity and normative recommendations that can contribute to the renewal of foundation governance regulations in Indonesia.

## Results and Discussion

### Business Unit Manager Position in Foundation Organ Vacancy

The managers of business units under the Foundation are individuals or groups who have the duty and authority to manage business units established under the auspices of the Foundation professionally in accordance with the vision, mission and objectives in order to provide financing for social activities carried out by the Foundation in compliance with applicable laws and regulations.<sup>17</sup> Law Number 16 of 2001, as amended by Law Number 28 of 2004 concerning Foundations, restrictively stipulates that foundation organs consist only of Trustees, Management, and Supervisors. This indicates that business unit administrators are not part of the foundation's organs. Thus, the role of business unit administrators is limited to the management and operational administration of business units established under the foundation and does not have representative authority to act on behalf of the foundation.<sup>18</sup>

<sup>16</sup> Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi* (Surabaya: Kencana, 2005): 133-136.

<sup>17</sup> Lathifah, B., *DESAIN ORGANISASI PESANTREN (Studi kasus Pondok pesantren Darul Huda Mayak Tonatan Ponorogo)*, (Doctoral dissertation, IAIN Ponorogo), 2017: 175-176.

<sup>18</sup> Putri, M. P. D. S., & Wibowo, K. T. *Hukum Yayasan: Teori, Praktik Pendirian, Operasional, dan Pembubaran Yayasan*. Jejak Pustaka, 2024: 24-33.

In the event of a vacancy in a foundation's organs, tension arises between the need for operational continuity and the legitimacy of legal authority. Although business units must continue to operate, the Foundation Law does not regulate a transition mechanism or delegation of authority in the event of a vacancy. This regulatory vacuum creates legal vacuum which has the potential to create ambiguity and conflict of authority.<sup>19</sup> Whereas based on Law Number 16 of 2001 as amended by Law Number 28 of 2004 concerning Foundations, the vacancy of a foundation organ does not automatically expand the authority of the business unit management, where its authority remains limited to the internal operational scope and does not include external legal actions that bind the foundation.<sup>20</sup> Therefore, the absence of a transition mechanism in foundation regulations is a major source of legal uncertainty in practice.

### Decision Case Number 590/Pdt.G/2023/PN Bdg

Case Number 590/Pdt.G/2023/PN Bdg is a lawsuit for unlawful acts (PMH) filed by the Kawalujaan Kebonjati Foundation against the Kawalayaan Foundation regarding claims of continuity and legitimacy of the foundation's management which is rooted in Jajasan Kawalujaan which was founded in 1946. This dispute arose in the context of the vacancy of the foundation's organs which was then exploited by certain parties to claim authority over the management of the foundation's assets, including the Kebonjati Hospital. The main legal issue in this case relates to the validity of the parties' legal standing as a legitimate continuation of the foundation and the legitimacy of the management actions of the business unit in the condition of a vacancy in management.

Interviews with the Plaintiff's attorneys indicate that this dispute is a legal subject legitimacy conflict, not simply an asset dispute. According to the source, the Kawalujaan Kebonjati Foundation has a clear legal basis through its 2011 deed of establishment, which has been approved by the Ministry of Law and Human Rights, and is supported by administratively recorded changes in management.<sup>21</sup> Furthermore, the control and management of Kebonjati Hospital is supported by an official operational permit and a series of previous court decisions that have become legally binding. This fact demonstrates the continuity of a legitimate legal entity on the Plaintiff's part.

The Plaintiff argues that the Defendant's continued operation and claim of authority over the foundation without the approval of a legitimate body constitutes an unlawful act because it exceeds the authority limits stipulated in the Foundation Law. The continued operation of the hospital during the period of the body's vacancy cannot be interpreted as legitimizing representative authority. The body's vacancy only creates a functional need, not an expansion of legal authority.

The Panel of Judges of the Bandung District Court in its decision based its legal considerations on Article 1365 of the Civil Code and the provisions of Law Number 16 of 2001 in conjunction with Law Number 28 of 2004 concerning Foundations. The judges stated that the Kawalujaan Kebonjati Foundation, which was established based on Deed Number 49 of 2011, is the only legitimate continuation of the 1946 Kawalujaan Foundation. On the other hand, the 2006 deed of establishment and amendment of the Kawalayaan Foundation was declared invalid and had no legal force. In its decision, the court declared that the defendant had committed an unlawful act, confirmed the validity of the plaintiff's deed of establishment, and determined that all disputed assets belonged to the Kawalujaan Kebonjati Foundation. The intervention lawsuit filed by a third party was declared inadmissible.

This decision was later upheld by the Bandung High Court through Decision Number 764/PDT/2024/PT BDG, and at the cassation level, the Supreme Court through Decision Number 4887 K/PDT/2025 rejected the cassation petition filed by the applicant. Thus, legally, legal certainty has been created regarding the legitimacy of a legitimate foundation and the limits of authority of parties who do not have a clear legal basis. Normatively, this decision shows that in the event of a foundation organ vacancy, the legitimacy of authority must still be determined based on a formal structure and valid legal ratification. The operational continuity of a business unit cannot be used as a basis for justifying claims of authority without a clear legal basis. This decision also emphasizes the importance of the principle of legal certainty and limitations of authority in foundation governance.

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<sup>19</sup> Mitendra, H. M., Fenomena dalam Kekosongan Hukum. *Jurnal Rechtsvinding*, Vol 1, 2018: 2-3.

<sup>20</sup> *Ibid*.

<sup>21</sup> Ilham Annasrullah (Kuasa Hukum Yayasan Kawalujaan Kebonjati), wawancara oleh penulis, 1 November 2025, Google Meet.

**Decision in Case Number 590/Pdt.G/2023/PN Bdg Reviewed from the Aspect of Law Number 16 of 2001 concerning Foundations as amended by Law Number 28 of 2004**

Case Number 590/Pdt.G/2023/PN Bdg is a civil case regarding Unlawful Acts filed by the Kawalujaan Kebonjati Foundation as the Plaintiff against the Kawalujaan Foundation as the Defendant, with a third party filing an intervention and both claim to be the legitimate continuation of Jajasan Kawalujaan, which was founded in 1946. This dispute stems from differing claims regarding the legal status of the foundation, institutional continuity, and ownership and management of its business unit, Kebonjati Hospital in Bandung. This internal conflict has created disharmony within the foundation's organizational structure and led to a vacancy in its management (vacuum of management). This is because the board of directors has not been renewed after the previous board's term of office expired, they became inactive, or they passed away. This situation has led to uncertainty regarding who has the authority to legally represent the foundation and has legal standing before the law.

The vacancy of the foundation's management resulted in an unclear status of ownership and authority which was exploited by parties who made unilateral claims by appointing their own management which appointed the advisor and several members of the management and in the name of being a continuation of Jajasan Kawalujaan. The deviant act carried out was an action to adjust to Law Number 16 of 2001 concerning Foundations by adjusting through a Notary by issuing a Deed regarding adjustments to Law Number 16 of 2001 concerning Foundations.

In case Number 590/Pdt.G/2023/PN Bdg, the Panel of Judges consistently based its legal considerations on the main legal sources, especially Article 11 paragraph (1) of Law Number 16 of 2001 concerning Foundations by adjusting through a Notary by issuing a Deed concerning adjustments to Law Number 16 of 2001 concerning Foundations which confirms that the status of a legal entity is obtained after the deed of establishment has been approved by the Minister. This article states firmly that the norma quo provide confirmation of the administrative approval of the foundation establishment, namely after the deed of establishment has been approved by the Minister, in this case the one who has the authority, namely the Ministry of Law and Human Rights, this requirement is an absolute requirement that must be fulfilled for the foundation that is established so that it can be legally recognized in the eyes of the law. This absolute requirement must be fulfilled because it has a function in guaranteeing the implementation of the principle of legality in a legal entity where the principle of legality is the most fundamental and absolute principle in the implementation of state administrative law practices based on applicable laws which have implications for the recognition of the legal entity by the state as a legal subject and having legal standing.<sup>22</sup>

In this context, Jajasan Kawalujaan (currently the Kawalujaan Kebonjati Foundation (2011)) which was established in 1946 is an old foundation that should have adjusted to Law Number 16 of 2001 concerning Foundations as amended by Law Number 28 of 2004. However, the facts show that this foundation did not make adjustments until 2011, so that in accordance with Article 71 paragraph 1-4 of Law Number 16 of 2001 concerning Foundations as amended by Law Number 28 of 2004, the old foundation management/organs (not adjusted) no longer have a valid legal basis which implies that they can no longer carry out legal actions in the name of the Foundation, especially if there is a state of vacancy in the management because the old management is no longer valid due to the expired management period, inactive management or there is a legal event where the management in the old management has died.<sup>23</sup> In this regard, the Panel of Judges decided that the Kawalujaan Kebonjati Foundation, which was established in 2011 and has received approval from the Ministry of Law and Human Rights, is the only legitimate continuation of the legal entity, while the establishment of the Kawalujaan Foundation in 2006 does not have legal legitimacy because it was carried out by an unauthorized party in the absence of the previous foundation's organs. This approach reflects the application of the theory of legal positivism, where formal legality is the main benchmark in determining the legitimacy of a legal subject.<sup>24</sup>

<sup>22</sup> Cahyono, P. A. (2006). *Tinjauan Hukum Terhadap Sistem Pengesahan Yayasan Di Indonesia* (Doctoral dissertation, program Pascasarjana Universitas Diponegoro): 29-30.

<sup>23</sup> Hidayah, N., Siregar, R., & WINDHA, W. (2013). *Pertanggungjawaban Organ Yayasan Atas Pailitnya Yayasan Menurut Undang-Undang Nomor 16 Tahun 2001 Jo Undang-Undang Nomor 28 Tahun 2004 Tentang Yayasan*. *Transparency Journal of Economic Law*, 2(2): 3.

<sup>24</sup> Habibi, Moh. Bagus, Siti Partiah, & Mochamad Fauzi. Positivisme dan Pengaruhnya Terhadap Perkembangan Hukum di Indonesia. *Ma'mal: Jurnal Laboratorium Syariah Dan Hukum*, 3(3), 2022: 217-230. <https://doi.org/10.15642/mal.v3i3.135> diakses pada pukul 22.30

In Case Number 590/Pdt.G/2023/PN Bdg, the main issue is the vacancy in the management (vacuum of management) which occurred from 1967 to 2011. Law Number 16 of 2001 concerning Foundations as amended by Law Number 28 of 2004 does not regulate the mechanism when a foundation experiences a condition of vacancy in its management (vacuum of management), so that a legal vacuum occurs which creates uncertainty in the organizational structure, management of assets/wealth owned by the foundation, and also to the business units established under the auspices of the foundation as occurred in case Number 590/Pdt.G/2023/PN Bdg. From this case, it is also seen the weaknesses of Law Number 16 of 2001 concerning Foundations as amended by Law Number 28 of 2004 which is faced to resolve Case Number 590/Pdt.G/2023/PN Bdg where many questions arise that cannot be answered by the law relating to the legal standing to take legal action.<sup>25</sup> Such conditions can result in legal vulnerability and triggers legal uncertainty to be enforced, and ultimately in a case, a case-by-case interpretation must be carried out in resolving the case to produce a decision.<sup>26</sup>

In addition to considering formal legality, the panel of judges also used the principle of the theory of legal entity organs in considering the decision, which emphasizes the role of each foundation organ consisting of the Trustees, Management and Supervisors. In this context, the panel of judges in making the decision by ensuring the cause of the vacancy of the foundation organs that occurred was due to the legal fact that all people who served in the Kawalujaan Kebonjati Foundation organs had all died and regarding the main business unit, namely Kebonjati Hospital in Bandung, the Panel of Judges also considered whether the hospital was established with the same entity and management or different from the Foundation because in the practice of establishing a Hospital in Indonesia, a Hospital can be established by the Foundation itself or with a different establishment but still under the auspices of the foundation or established in the name of a Limited Liability Company, and Kebonjati Hospital in Bandung was established under the auspices of the Kawalujaan Kebonjati Foundation with different management where the foundation management is different from the business unit management. However, in this case the theory of legal entity organs provides consideration regarding the separation of functions and authorities between the foundation management and the hospital management, and in this situation of the vacancy of the foundation organs.

Moreover, in this case there is also a legal fact that the panel of judges decided by considering the benefits of the continued operation of Kebonjati Hospital in Bandung because the foundation as a legal entity whose main function is for social, which is a business unit established under the auspices of the Kawalujaan Kebonjati Foundation (formerly Jajasan Kawalujaan) which serves public health so that the community can continue to obtain vital health services without being disturbed by legal disputes that occur within the foundation. In addition, the panel of judges also considered the legitimate management of the business unit to continue to obtain its rights and can exercise full authority to manage assets and business units legally, thereby minimizing the risk of internal conflicts and disputes in the future. The panel of judges also decided by considering third parties, including patients, employees, and hospital partners, also obtaining legal certainty, which protects their rights from unauthorized legal actions or claims that do not have a formal legal basis. Thus, the consideration of the legal entity's organs ensures that the judge's decision is not only legally valid, but also has an impact on the continuation of the Kawalujaan Kebonjati Foundation and on the Business Unit Management whose business units were established under the auspices of the foundation, which also has an impact on the social function to the community which emphasizes that the interests of the community are an integral part of the judge's considerations.

Decision Number 590/Pdt.G/2023/PN Bdg also demonstrates the collaboration between the application of a combination of positivism and legal entity bodies, where the panel of judges not only upholds written legal norms to determine legitimate foundations and authorized bodies, but also considers the practical benefits and sustainability of the foundation's functions and business units in the decisions made. In practice, judges fill legal gaps which arose due to the emptiness of the foundation's organs by conducting a casuistic interpretation, which resulted in a kind of new legal discovery. This is seen when the judge emphasized that the legitimate foundation administrators have full authority to manage the foundation and business units, so that the structure of the

<sup>25</sup> Madril, O., & Hasinanda, J. (2021). *Perkembangan Kedudukan Hukum (Legal Standing) dalam Pengujian Administratif di Pengadilan Tata Usaha Negara dan Uji Materi di Mahkamah Agung*. Jurnal Hukum & Pembangunan, Vol. 51 No. (4): 952-970.

<sup>26</sup> Hidayat, A. A., Sururi, R. W., Anwari, A. N., Sugiarti, L. D., Ikhsan, F., & Fauzi, R. Penemuan Hukum oleh Hakim di Indonesia: Dasar, Metode, serta Implikasinya terhadap Kepastian dan Keadilan Hukum. *Legalite: Jurnal Perundang Undangan dan Hukum Pidana Islam*, hlm. 10.

foundation's organs becomes clear, the rights of the business unit administrators are protected, and the continuity of asset management and community services can be guaranteed. Thus, the decision is dynamic, because although the legal conclusion emphasizes compliance with written norms, the judge still considers the practical effects for the community, including the continuity of the business unit, namely Kebonjati Hospital in Bandung, which supports the health service program needed by the community and the protection of third-party rights.

With the above explanation regarding the review of the Decision of Case Number 590/Pdt.G/2023/PN Bdg which is reviewed with the aspects contained in Law Number 16 of 2001 concerning Foundations as amended by Law Number 28 of 2004 cannot be a tool as a forum to be the basis for resolving disputes that occur, namely conditions where there is a vacancy in the foundation's organs. Overall, the judge's considerations in his decision are a real example of the implementation of legal positivism dynamically which is expanded through consideration of the theory of legal entity organs, so that the decision is not only administrative and formal legal,<sup>27</sup> but also pays attention to the interests of the responsibilities of organs & business unit managers, social, business unit sustainability, and protection of third-party rights.<sup>28</sup>

### **The Decision in Case Number 590/Pdt.G/2023/PN Bdg Can Provide Legal Certainty for the Position of Business Unit Management in the Event of Vacancies in Foundation Organs**

The Panel of Judges at the Bandung District Court in handling Case Number 590/Pdt.G/2023/PN Bdg is in a legal vacuum position in Law Number 16 of 2001 concerning Foundations as amended by Law Number 28 of 2004, it is required to provide legal certainty for the position of business unit managers because business unit managers in conditions of disputes between the internal management of the foundation who experienced a vacancy in the foundation's management, the business unit managers, namely Kebonjati Hospital in Bandung City, continued to carry out their business activities as a form of implementing social functions to serve public health, with the condition of the vacancy in the foundation's management, management problems arose with unauthorized parties unlawfully claiming unilaterally Jajasan Kawalujaan Kebonjati (1946).

Power vacuum in a legal entity or organization, especially a foundation, has a negative impact on the implementation of the foundation's activities, especially on the management of business units established under the auspices of the foundation. Negative impacts that can occur during a power vacuum is the absence of a party that has legal standing to be authorized to carry out legal acts representing the foundation's legal entity and responsibility for their actions is returned to each party who carries them out and can be categorized as PMH (Unlawful Acts) if the actions are carried out without the activation of new administrators/organs or approval to act from all administrators/organs within the foundation.<sup>29</sup>

In the event of a legal vacuum, The Panel of Judges in the corridor of law enforcement is one of the parties that has the authority to discover new laws (legal finding). The panel of judges cannot reject a case and can create legal norms (judge made law) to form a basis for resolving a dispute or criminal act through a legal discovery mechanism (legal finding), this mechanism is carried out as a form of mandate to judges to become actors in legal development, where this mandate is implicitly regulated in Article 5 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power. The legal findings made must have a clear basis and must be related to/on real legal phenomena that indicate a legal vacuum.<sup>30</sup> In case 590/Pdt.G/2023/PN Bdg, the legal findings made by the Panel of Judges were by applying legal positivism and the theory of legal entities. In the trial of Case 590/Pdt.G/2023/PN Bdg, an expert was involved who provided his opinion in the trial process, namely Dr. Muhammad Reza Syarifuddin Zaki, S.H., M.A., namely providing his opinion regarding the discovery of new laws, namely: "That in case 590 the Foundation Law does not regulate abnormal conditions, namely it does not regulate the transition of foundation organs when there is a condition of an empty organ, therefore the panel of judges in case 590 must make new legal discoveries

<sup>27</sup> W. Friedman., *Teori dan Filsafat Hukum, Telaah Kritis Atas Teori-teori Hukum* (susunan I), diterjemahkan dari buku aslinya "Legal Theory" oleh Mohamad Arifin., Rajawali, Jakarta., 1990: 147.

<sup>28</sup> Sudiyana, S., & Suswoto, S. Jurnal Ilmiah Ilmu Hukum "Kajian Kritis Terhadap Teori Positivisme Hukum Dalam Mencari Keadilan Substantif." *Qistie*, Vol 11 No 1, 2018: 109.

<sup>29</sup> Andi Umi Pratiwi, "Kepastian Hukum Penyelenggaraan Yayasan Perguruan Tinggi Akibat Dualisme Kepengurusan" Tesis Magister Kenotariatan pada Fakultas Hukum Universitas Hasanuddin, Makassar, 2018: 45.

<sup>30</sup> Otje Salman, *Filsafat Hukum Perkembangan dan Dinamika Masalah*, Bandung; PT Refika Aditama, 2012): 61.

to provide legal certainty to both the Foundation and especially to the business unit management of Kebonjati Hospital in Bandung." Apart from referring to written legal norms and mechanisms for discovering new laws (legal finding) conducted by the panel of judges, this decision also considers the real facts that occurred in the field related to the management of the Kawalujaan Kebonjati Foundation business unit, especially Kebonjati Hospital. This hospital according to the latest valid data from the Bandung City Health Office in 2024 served an average of 840 patients per month or around 10,078 (ten thousand seventy-eight) Patients in 12 months/1 year during the period 2023-2024, by employing 313 (three hundred and thirteen) workers consisting of medical staff, nursing staff, midwives and support staff for medical nurses or hospital management support whose lives depend on the legitimate management of the foundation for administrative rights and the income they earn. If the management does not receive legal recognition, the hospital's operations are at risk of being disrupted, including a decrease in the quality of health services and public trust in this social institution. In addition, the management of the foundation's assets, such as hospital facilities and other business unit resources may experience a negative impact, so that the foundation's social function is threatened. Taking these real-world conditions into account, the panel of judges decided to appoint a legitimate administrator to ensure the foundation's business units continue to function optimally, thereby protecting the social and economic interests of the community, as the primary beneficiaries. This decision demonstrates that the judge's application of the law is not merely textual but also contextual, considering the decision's real-world impact on the community and the foundation's continued social function. Based on the explanation above, positivism in this case does not operate rigidly, because the Panel of Judges also considered practical aspects and social benefits, in accordance with the principle of organs, which emphasizes that legal decisions must provide certainty, especially for foundation organs and business unit managers whose actions are felt by the community and related parties.

## Conclusion

The Decision of Case Number 590/Pdt.G/2023/PN Bdg when viewed from the aspect of Law Number 16 of 2001 concerning Foundations as amended by Law Number 28 of 2004 shows that the legitimacy of a foundation's legal entity is expressly determined by the fulfillment of formal requirements in the form of Ministerial approval as a manifestation of the principle of legality. The Panel of Judges applied a legal positivism approach by making Article 11 and Article 71 of the Foundation Law as the main basis in determining the validity of the legal subject, so that the Kawalujaan Kebonjati Foundation (2011) was declared the only legitimate continuation, while the establishment of the Kawaluyaan Foundation (2006) was deemed to have no legal legitimacy. The important findings of this study indicate that the Foundation Law has not regulated a transitional mechanism when there is a total vacancy in the organ, thus giving rise to legal vacuum which has the potential to give rise to legitimacy conflicts. This research's scientific contribution lies in identifying the normative weaknesses of the Foundation Law in addressing the structural abnormality of foundations. However, this research is limited to normative analysis and a single case study, thus precluding cross-jurisdictional comparisons. Therefore, further research is needed to formulate a regulatory reconstruction model regarding the mechanism for filling organs in the event of a total vacancy to strengthen legal certainty in foundation governance in Indonesia.

The legal findings in the Decision of the Bandung District Court Class IA Special Number 590/Pdt.G/2023/PN Bdg regarding the vacancy of the foundation's organs show that the judge did legal finding through a combination of legal positivism and the theory of legal entity organs to close legal loopholes not explicitly regulated in the law. The judge not only upholds formal legality, but also interprets norms casuistically by considering the separation of functions between foundation organs and business unit administrators, as well as the social impact on the sustainability of Kebonjati Hospital as a business unit that carries out social functions. This finding confirms that the vacancy of an organ does not automatically expand the authority of business unit administrators, and that operational needs cannot be used as a basis for representative legitimacy. The contribution of this research is the conceptual development of dynamic legal positivism in the context of foundation legal entities, especially in conditions vacuum of management. A limitation of this research lies in the lack of empirical testing of the long-term impact of the ruling on the governance of similar foundations. Therefore, further research could examine the jurisprudential implications of this ruling and formulate normative guidelines or legislative policies governing the mechanism for appointing interim administrators to prevent a recurrence of legal vacuums in the future.

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### Author Contributions Statement

MR conceived and supervised the research, guided the study design, edited the manuscript, and provided critical revisions. AP contributed to data collection, conducted the research and analysis, processed the data, and drafted the manuscript. All authors have read and approved the final version of the manuscript.

### AI Usage Statement

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### Conflict of Interest

The publication of this paper does not present any conflicts of interest.

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