

# FOUNDATION

(Law No. 16/2001 dated August 6, 2001)

BY THE GRACE OF GOD ALMIGHTY  
THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

- a. that foundations in Indonesia have so far been established on the basis of custom in the society because legislation regulating foundations has not been existent yet;
- b. that foundations have grown rapidly in Indonesia with various activities, goals and objectives;
- c. that based on the considerations as meant in letters a and b, as well as in order to guarantee legal certainty and order for ensuring foundations to function in accordance with the goals and objectives on the basis of principles of transparency and accountability to the public, it is necessary to enact a law on foundation.

In view of:

Article 5 paragraph (1) and Article 20 paragraph (2) of the Constitution of 1945 as already amended by the Second Amendment to the Constitution of 1945;

With the approval of  
THE HOUSE OF REPRESENTATIVES OF  
THE REPUBLIC OF INDONESIA

D E C I D E S :

To stipulate  
THE LAW ON FOUNDATION.

## CHAPTER I GENERAL PROVISION

### Article 1

Referred to in this law as:

1. Foundations are statutory bodies consisting of assets separated, and allocated to achieve certain objectives in social, religious and humanitarian fields, which has no member.
2. Court is the State Court whose jurisdiction covers domiciles of foundations.
3. Prosecutor Office is the Public Prosecutor Office whose jurisdiction covers domiciles of foundations.
4. Public accountants are accountants securing licenses to undertake jobs as public accountants.
5. Day is working day.
6. Minister is the Minister of Justice and Human Rights.

### Article 2

Every foundation has organs consisting of patrons, executives and supervisors.

### Article 3

- (1) A foundation can undertake business activities to support the achievement of its goals and objectives by means of establishing business entities and/or participating in a business entity.
- (2) Every foundation is not allowed to distributed proceeds of business activities to patrons, executives and supervisors.

### Article 4

Every foundation must have a domicile in the territory of the Republic of Indonesia determined in its article of incorporation.

### Article 5

Assets of a foundation being in the form of both money, goods and other assets which are obtained by the foundation on the basis of this law are prohibited from being transferred or distributed directly and indirectly to patrons, executives and supervisors, employees or other parties having interests in the relevant foundation.

### Article 6

Every foundation is obliged to pay all costs or expenses spent by elements of the foundation in the framework of executing tasks of the foundation.

### Article 7

- (1) A foundation can set business entities whose activities are in accordance with goals and objectives of the foundation.
- (2) A foundation can invest in various business entities having bright prospects with the provision that the total investments are 25% (twenty five percent) of the total value of assets of the foundation at the maximum.
- (3) Patrons, executives and supervisors of a foundation are prohibited from holding double positions as members of boards of executive directors or executives and members of Boards of Directors or Supervisors of the business entities as meant in paragraphs (1) and (2).

### Article 8

Business activities of the business entities as meant in Article 7 paragraph (1) must be in accordance with goals and objectives of the foundation and do not contravene public order, decency and/or laws in force.

## CHAPTER II ESTABLISHMENT

### Article 9

- (1) A foundation can be established by one person or more by means of setting aside part of assets of its founder/ founders, as an initial asset.

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## CHAPTER II ESTABLISHMENT

### Article 9

- (1) A foundation can be established by one person or more by means of setting aside part of assets of its founder/founders, as an initial asset.

- (2) The establishment of the foundation as meant in paragraph (1) is done by a notarial deed and the deed is made out in the Indonesian language.
- (3) A foundation can be set up on the basis of a testament letter.
- (4) The cost of making out of the notarial deed as meant in paragraph (2) is stipulated by a government regulation.
- (5) In the case of the foundation as meant in paragraph (1) being established by foreigners or in cooperation with foreigners, requirements and procedures for the establishment of the foundation are stipulated by a government regulation.

#### Article 10

- (1) In making out the notarial deed of a foundation, founders can be represented by other people on the basis of power of attorney.
- (2) In the case of a foundation being established on the basis of a testament letter, the testament recipient acts to represent the grantor of the testament.
- (3) In the case of the testament letter as meant in paragraph (2) being not implemented, based on a request from interested parties, the Court can order heirs or recipients of the relevant testament to implement the testament.

#### Article 11

- (1) Foundations securing status of statutory bodies after the deed of incorporation of foundations as meant in Article 9 obtain endorsement from the Minister.
- (2) The authority of the Minister to endorse the deed of incorporation of foundations as statutory bodies is executed by Heads of Regional Offices of the Ministry of Justice and Human Rights on behalf of the Minister, whose working areas cover domiciles of the relevant foundations.
- (3) In granting the endorsement, Heads of Regional Offices of the Ministry of Justice and Human Rights as meant in paragraph (2) can ask considerations from institutions concerned.

#### Article 12

- (1) The endorsement of the deed of incorporation as meant in Article 11 paragraph (1) is filed by founders or their proxies by submitting written applications to the Minister.
- (2) The endorsement as meant in paragraph (1) is granted not later than 30 (thirty) days as from the date of receipt of complete applications.
- (3) In the case of the considerations as meant in Article 11 paragraph (3) being needed, the endorsement is given or not given in a period of:
  - a. not later than 14 (fourteen) days as from the date of receipt of answers of the requests for considerations from institutions concerned; or
  - b. after 30 (thirty) days, starting from the date when answers of requests for considerations to institutions concerned are not accepted.

#### Article 13

- (1) In the case of applications for the endorsement as meant in Article 12 paragraph (1) is rejected, the Minister must notify the rejection of the endorsement in writing to the relevant applicants along with their reasons.
- (2) The reasons for the rejection as meant in paragraph (1) are that the submitted applications are not in accordance with provisions in this law and/or its technical directives.

#### Article 14

- (1) An deed of incorporation contains article of association and other information deemed necessary.
- (2) The article of association at least contains:
  - a. name and domicile;
  - b. goals and objectives as well as activities to achieve the goals and objectives;
  - c. period of establishment;
  - d. the total of initial assets separated from personal assets of founders in the form of money or things;
  - e. method of acquisition and use of assets;
  - f. procedures for the appointment, relief and replacement of patrons, executives and supervisors;
  - g. rights and obligations of patrons, executives and supervisors;
  - h. procedures for organizing meeting of foundation elements;
  - i. provisions on the amendment to the article of association;
  - j. merger and dissolution of the foundation;
  - k. the use of assets being the remainder of liquidation or distribution of assets of the foundation after the dissolution.
- (3) The other information as meant in paragraph (1) contains at least names, addresses, jobs, place and date of birth, as well as citizenship of founders, patrons, executives and supervisors.
- (3) The minimum of initial assets separated from personal assets of the founders as meant in paragraph (2) letter d is stipulated by a government regulation.

#### Article 15

- (1) A foundation is not allowed to use names:
  - a. already used legitimately by other foundations; or
  - b. contravening public order and/or decency.
- (2) The name of foundation must be preceded by word "Foundation".
- (3) In the case of assets of the foundation coming from *wakaf* (property donated for religious/community use), the word "*wakaf*" can be supplemented after the word "Foundation".
- (4) Provisions on the use of name of foundation are further stipulated by a government regulation.

#### Article 16

- (1) A foundation can be established for a specified or unspecified period stipulated in the article of association.

- (2) In the case of the foundation being set up for a specified period, executives can submit applications for the extension of period of the establishment to the Minister not later than one year before the expiration of period of establishment of the foundation.

CHAPTER III  
CHANGE IN ARTICLE OF ASSOCIATION

Article 17

The article of association is changeable, except goals and objectives of the foundation.

Article 18

- (1) Any change in the article of association only can be done on the basis of a decision of patron meeting.
- (2) The patron meeting as meant in paragraph (1) only can be done if 2/3 (two thirds) of the total patrons are present.
- (3) The change in the article of association as meant in paragraph (1) is done by a notarial deed and it is made in the Indonesian language.

Article 19

- (1) The decision of the patron meeting as meant in Article 18 paragraph (1) is stipulated on the basis of deliberation to achieve consensus.
- (2) In the case of the decision of the meeting on the basis of deliberation to achieve consensus as meant in paragraph (1) failing to achieve, the decision is stipulated on the basis of approval of at least 2/3 (two thirds) of the total members who are present.

Article 20

- (1) In the case of the quorum as meant in Article 19 paragraph (2) failing to achieve, the second patron meeting can be organized fastest 3 (three) days as from the date of execution of the first patron meeting.
- (2) The second patron meeting as meant in paragraph (1) is legitimate if (1/2) a half of the total patrons are present.
- (3) Any decision of the second patron meeting is legitimate if it is made on the basis of the approval of majority votes of the total patrons who are present.

Article 21

- (1) Any change in the article of association covering name and activities of a foundation must secure approval of the Minister.
- (2) Any change in the article of association with regard to other matters is sufficient to notify to the Minister.

Article 22

The provisions as meant in Articles 11 and 12 are also effective *mutatis mutandis* for applications for the change in the article of association, the granting of approval or the rejection of the article of association.

Article 23

The change in the article of association cannot be done when a foundation is declared bankrupt, unless curator approves.

CHAPTER IV  
ANNOUNCEMENT

Article 24

- (1) The article of association of a foundation already endorsed as a statutory body or the change in the article of association already approved must be announced in Supplement to Statute Book of the Republic of Indonesia.
- (2) An application for the announcement as meant in paragraph (1) is submitted by executives of the foundation or their proxies to the State-owned Printing Company of the Republic of Indonesia not later than 30 (thirty) days as from the date of endorsement of deed of incorporation of the foundation or the date of approval of change in the article of association.

Article 25

As long as the announcement as meant in Article 24 is not yet done, executives of the foundation share responsibility for all losses of the foundation.

CHAPTER V

ASSETS

Article 26

- (1) Assets of a foundation come from assets separated in the form of money or goods.
- (2) In addition to the assets as meant in paragraph (1), assets of the foundation can be obtained from:
  - a. donations or assistance which is not binding;
  - b. *wakaf* (property donated for religious/community use);
  - c. grants;
  - d. testament grants; and
  - e. other sources not contravening the article of association of the foundation and/or laws in force.
- (3) In the case of assets of a foundation coming from *wakaf*, provisions of law on *wakaf* apply.
- (3) The assets of the foundation as meant in paragraphs (1) and (2) are used for achieving goals and objectives of the foundation.

Article 27

- (1) In certain cases, the state can give assistance to foundations.
- (2) Provisions on requirements and procedures for the state assistance as meant in paragraph (1) are further stipulated by a government regulation.

CHAPTER IV  
ORGANS OF FOUNDATION

Part One

Patron

Article 28 . . . . .

## Article 28

- (1) Patron is an organ of a foundation having authority which is not delegated to executives or supervisors by this law or the article of association.
- (2) The authority as meant in paragraph (1) covers:
  - a. decision on the change in the article of association;
  - b. appointment and relief of executives and supervisors;
  - c. stipulation of general policies of a foundation on the basis of the article of association of the foundation;
  - d. endorsement of working programs and draft annual budget of a foundation.
  - e. stipulation of decision on the merger or dissolution of a foundation.
- (3) Who can be appointed as the patrons as meant in paragraph (1) are individuals as founders of a foundation and/or those who are according to a decision of the patron meeting are considered having high dedication to achieve goals and objectives.
- (4) In the case of a foundation having no patron because of whatever reasons, not later than 30 (thirty) days as from the date of vacancy, executives and supervisors are obliged to convene a joint meeting to appoint patrons by observing the provision as meant in paragraph (3).
- (5) Any decision of the meeting as meant in paragraphs (3) and (3) is legitimate if it is done in accordance with provisions on the quorum of attendance and the quorum of decision for the change in the article of association according to the provisions in this law and/or the article of association.

## Article 29

Patrons are not allowed to hold double positions as executives and/or supervisors.

## Article 30

- (1) Patrons convene a meeting at least once in one year.
- (2) At the annual meeting, patrons evaluate assets, rights and obligations of the foundation in the past year as the basis of consideration for projecting progresses of the foundation in the next year.

## Part Two

## Executive

## Article 31

- (1) Executive is an organ of foundation executing the governing activities of the foundation.
- (2) Who can be appointed as executives are individuals capable of executing legal actions.
- (3) Executives are not allowed to hold double positions as patrons or supervisors.

## Article 32

- (1) Executives of a foundation are appointed by patrons on the basis of a decision of the patron meeting for a period of 5 (five) years and can be reappointed for another term.

- (2) The composition of executives at least consists of:
  - a. a chairman;
  - b. a secretary; and
  - c. a treasurer.
- (3) In the case of the executives as meant in paragraph (2) committing actions that patrons consider harmful to the foundation when they execute their tasks, based on a decision of the patron meeting, the executives can be relieved before their tenure ends.
- (4) Provisions on the composition and procedures for the appointment and relief, and replacement of executives are stipulated in the article of association.

## Article 33

- (1) In the case of the replacement of executives of a foundation, patrons are obliged to convey notification in writing to the Minister and institutions concerned.
- (2) The notification as meant in paragraph (1) must be conveyed not later than 30 (thirty) days as from the date of replacement of executives of the foundation.

## Article 34

In the case of the appointment, relief and replacement of executives being not in accordance with provisions in the article of association, based on an application from the relevant executives or a request of the Public Prosecutor Office in this case representing the public interest, the Court can nullify the appointment, relief or replacement not later than 30 (thirty) days as from the date of submission of the application for the annulment.

## Article 35

- (1) Executives of a foundation are fully responsible for the governing activities in interests and for objectives of the foundation and have a right to represent the foundations inside and outside the court.
- (2) Every executive must execute tasks with good intention, in a full sense of responsibility in interests and for objectives of the foundation.
- (3) In executing the tasks as meant in paragraph (2), executives can appoint and relieve executors of foundation activities.
- (4) Provisions on the requirements and procedures for the appointment and relief of executors of foundation activities are regulated in the article of association of the foundation.
- (5) Every executive holds full responsibility personally, in the case of the relevant person is not according to provisions of the article of association in executing his/her tasks, which inflicts a loss on the foundation or the third party.

## Article 36

- (1) Executives are not authorized to represent a foundation, in the case of:
  - a. the .....

- a. the occurrence of a case in the court between the foundation and the relevant executives; or
  - b. the relevant executives having interests which contravene interests of the foundation.
- (2) In the case of the occurrence of the conditions as meant in paragraph (1), who are rightful to represent the foundation are stipulated in the article of association.

#### Article 37

- (1) Executives are not authorized:
- a. to bind the foundation as a debt guarantor;
  - b. to transfer assets of the foundation, unless patrons approve;
  - c. to burden assets of the foundation for interests of other parties.
- (2) The article of association can restrict the authority of executives in undertaking legal actions for and on behalf of the foundation.

#### Article 38

- (1) Executives are prohibited from making any agreement with organizations affiliated to the foundation, patrons, executives and/or supervisors of the foundation or someone working with the foundation.
- (2) The prohibition as meant in paragraph (1) is not effective in the case of the agreement being beneficial for the achievement of goals and objectives of the foundation.

#### Article 39

- (1) In the case of the bankruptcy occurring due to mistakes or negligence of executives and assets of the foundation being not sufficient to cover the loss arising from the bankruptcy, every executive share responsibility for the loss.
- (2) Executives who can prove that the bankruptcy does not result from their mistakes or negligence do not share responsibility for the loss as meant in paragraph (1).
- (3) Executives declared guilty for governing a foundation that inflicts a loss on the foundation, the public and state on the basis of a decision of the court, cannot be appointed as executives of whatever foundations for a period of 5 (five) years, starting from the date when the decision secures permanent legal power.

### Part Three

#### Supervisor

#### Article 40

- (1) Supervisor is an organ of a foundation having the task of supervising and giving advice to executives in undertaking activities of a foundation.
- (2) A foundation has at least one supervisor whose authority, tasks and responsibility are regulated in the article of association.

- (3) Who can be appointed as supervisors are individuals capable of undertaking legal actions.
- (4) Supervisors are not allowed to hold double positions as patrons and executives.

#### Article 41

- (1) A supervisor of a foundation is appointed and can be relieved any time on the basis of a decision of the patron meeting.
- (2) In the case of the appointment, relief and replacement of supervisors being not in accordance with provisions in the article of association, based on an application from the relevant executives or a request of the Public Prosecutor Office in this case representing the public interest, the Court can nullify the appointment, relief or replacement.

#### Article 42

Supervisors must have good intention and a full sense of responsibility in executing their tasks in interests of their foundations.

#### Article 43

- (1) Supervisors can relieve provisionally executives by mentioning reasons.
- (2) The provisional relief as meant in paragraph (1) must be reported in writing to patrons not later than 7 (seven) days as from the date of the provisional relief.
- (3) In the period of 7 (seven) days as from the date of receipt of the report, patrons are obliged to summon the relevant executives to be given opportunity for defending themselves.
- (4) Not later than 7 (seven) days as from the date of the self-defense as meant in paragraph (3), patrons are obliged:
- a. to revoke the decision on the provisional relief; or
  - b. to relieve the relevant executives.
- (5) In the case of patrons not executing the provisions as meant in paragraphs (3) and (4), the provisional relief is declared null and void legally.

#### Article 44

- (1) Supervisors of a foundation are appointed by patrons on the basis of a decision of the patron meeting for a period of 5 (five) years and can be reappointed for another term of tenure.
- (2) Provisions on the composition, procedures for the appointment, relief and replacement of supervisors are regulated in the article of association.

#### Article 45

- (1) In the case of the replacement of supervisors of a foundation, patrons are obliged to convey notification in writing to the Minister and institutions concerned.
- (2) The notification as meant in paragraph (1) must be conveyed not later than 30 (thirty) days as from the date of replacement of supervisors of the foundation.

#### Article 46

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In the case of the appointment, relief and replacement of executives being not in accordance with provisions in the article of association, based on an application from the relevant supervisor or a request of the Public Prosecutor Office in this case representing the public interest, the Court can nullify the appointment, relief or replacement.

## Article 47

- (1) In the case of the bankruptcy occurring due to mistakes or negligence of supervisors and assets of the foundation being not sufficient to cover the loss arising from the bankruptcy, every supervisor shares responsibility for the loss.
- (2) Supervisors who can prove that the bankruptcy does not result from their mistakes or negligence do not share responsibility for the loss.
- (3) Every supervisor declared guilty for supervising a foundation that inflicts a loss on the foundation, the public and/or state on the basis of a decision of the court, cannot be appointed as supervisor of whatever foundations for a period of 5 (five) years, starting from the date when the decision secures permanent legal power.

CHAPTER VII  
ANNUAL REPORT

## Article 48

- (1) Executives are obliged to make and keep records or writings containing information on rights and obligation as well as other matters connected with business activities of their foundations.
- (2) In addition to the obligation as meant in paragraph (1), executives are obliged to make and keep financial documents of their foundations in the form of evidence of bookkeeping and supporting data on financial administration.

## Article 49

- (1) Not later than 5 (five) months as from the date of closure of the accounting year of a foundation, executives are obliged to prepare annual reports in writing which contain at least:
  - a. report on conditions and activities of their foundations in the past accounting year as well as results already achieved;
  - b. financial report consisting of report on financial position at the end of the period, report on activities, report on cash flow and records of financial report.
- (2) In the case of a foundation making a transaction with other party that cause rights and obligations to the foundation, the transaction must be mentioned in the annual report.

## Article 50

- (1) The report as meant in Article 49 is signed by executives and supervisors in accordance with provisions in the article of association.

- (2) In the case of executives or supervisors not signing the report as meant in paragraph (1), the relevant executives or supervisors must mention their reasons in writing.
- (3) The report as meant in paragraph (1) is approved by the patron meeting.

## Article 51

In the case of documents on the annual report being untrue and misleading, executives and supervisors share responsibility for the inflicted parties.

## Article 52

- (1) Summary of the annual report of a foundation is announced in a billboard in the foundation office.
- (2) The summary of the annual report as meant in paragraph (1) must be announced in an Indonesian-language daily newspaper, in the case of the foundation:
  - a. receiving state assistance, overseas assistance or other parties amounting to Rp 500,000,000.00 (five hundred million rupiahs) or more; or
  - b. having assets outside *wakaf* amounting to Rp 20,000,000,000.00 (twenty billion rupiahs) or more.
- (3) The foundation as meant in paragraph (2) must be audited by a public accountant.
- (4) Results of audit of financial report of the foundation as meant in paragraph (3) are conveyed to patrons of the relevant foundation with a copy made available to the Minister and institutions concerned.
- (5) The model of the summary of financial report as meant in paragraph (1) is formulated in accordance with the financial accountancy standards in force.

CHAPTER III  
INVESTIGATION INTO FOUNDATION

## Article 55

- (1) Investigation into a foundation to obtain data or information can be done, in the case of organs of the foundation being suspected:
  - a. to commit actions violating the law or contravening the article of association;
  - b. to be negligent in executing their tasks;
  - c. to commit actions inflicting a loss on the foundation, or the third party; or
  - d. to commit actions inflicting a loss on the state.
- (2) The investigation as meant in paragraph (1) letters a, b and c can only be done on the basis of a stipulation of the court upon a written request of the interested third party along with its reasons.
- (3) The investigation as meant in paragraph (1) letter d can be done on the basis of a stipulation of the court upon a request of the Prosecutor Office representing the public interest in this case.

Article 54 (To be continued ...)

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# FOUNDATION

(Law No. 16/2001 dated August 6, 2001)

[ Continued from Business News No. 6664 - 6665 pages 24A - 29A ]

## Article 54

- (1) The Court can reject or approve the application for the investigation as meant in Article 53 paragraph (2).
- (2) In the case of the Court ruling in favor of the application for investigation into the foundation, the Court issues a stipulation for the investigation and appoint at least 3 (three) experts as auditors to carry out the investigation.
- (3) Patrons, executives and supervisors as well as executors of activities or employees of the foundation can not be appointed to become the auditors as meant in paragraph (2).

## Article 55

- (1) Auditors are authorized to examine all documents and assets of the foundation in interests of the investigation.
- (2) Patrons, executives and supervisors as well as executors of activities and employees of the foundation are obliged to give information needed for the implementation of the investigation.
- (3) Auditors are prohibited from announcing or notifying results of their investigation to other parties.

## Article 56

- (1) Auditors are obliged to convey a report on results of the investigation already executed to the Chairman of the Court where the foundation is domiciled not later than 30 (thirty) days as from the date of completion of the investigation.
- (2) The Chairman of the Court gives a copy of the report on the results of the investigation as meant in paragraph (1) to applicant or the public prosecutor office and the relevant foundation.

## CHAPTER IX MERGER

### Article 57

- (1) Legal action being the merger of foundations can be done by merging one or more foundations with another foundation and causes the merging foundation to dissolve.
- (2) The merger of the foundations as meant in paragraph (1) can be done by observing:
  - a. inability of foundations to undertake business activities without the support of other foundations;
  - b. foundations accepting the merger and merging their businesses of the same kind; or
  - c. the merging foundations have never committed actions contravening their articles of association, public order and decency.

- (3) Proposal for the merger of foundations can be conveyed by executives to patrons.
- (4) The merger of foundations only can be done on the basis of a decision of the patron meeting attended by at least 3/4 (three fourth) of the total patron members and approved by at least 3/4 (three fourth) of the total patron members that are present.

## Article 58

- (1) Executives of the respective foundations that will merge and accept the merger formulates proposals for the merger plan.
- (2) The proposals for the merger plan as meant in paragraph (1) are contained in draft deeds of merger by executives of foundations that will merge and accept the merger.

## Article 59

Executives of the foundation resulting from the merger are obliged to announce results of the merger in an Indonesian-language daily newspaper not later than 30 (thirty) days as from the date of completion of the merger.

## Article 60

- (1) The draft deed of the merger of foundations and draft amendment to articles of association of foundations accepting the merger must be conveyed to the Minister to secure approval.
- (2) The approval as meant in paragraph (1) is granted not later than 60 (sixty) days as from the date of receipt of the application.
- (3) In the case of the application being rejected, the rejection must be notified to the applicant in writing along with its reasons in the period as meant in paragraph (3).

## Article 61

Provisions on procedures for the merger of foundations are further stipulated by a government regulation.

## CHAPTER X DISSOLUTION

### Article 62

- A foundation dissolves because of:
- a. the expiration of the period stipulated in its article of association;
  - b. the accomplishment or failure to achieve the objectives of the foundation stipulated in its article of association;

c. a decision . . . . .



a decision of the Court already securing permanent legal power on the basis of the following reasons:

- 1) the foundation violates public order and decency;
- 2) the foundation is unable to repay its debts after being declared bankrupt; or
- 3) assets of the foundation are not sufficient to settle its debts after the bankrupt declaration is revoked.

Article 63

- (1) In the case of a foundation dissolving because of the reasons as meant in Article 62 letters a and b, patrons appoint liquidators to settle assets of the foundation.
- (2) In the case of no liquidator being appointed, executives act as liquidators.
- (3) In the case of a foundation dissolving, the foundation cannot take legal action, except to settle its assets in the liquidation process.
- (4) In the case of a foundation being in the course of the liquidation process, all outgoing letters are attached by phrase "in liquidation" behind the name of the foundation.

Article 64

- (1) If a foundation dissolves because a decision of the Court, the Courts also appoint liquidators.
- (2) If a foundation dissolves because of bankruptcy, laws in force in the bankruptcy field apply.
- (3) Provisions on the appointment, assignment, provisional relief, relief of authority, obligations, tasks and responsibility as well as supervision over executives also apply to liquidators.

Article 65

Liquidators or curators appointed to settle assets of a foundation which dissolves or is dissolved are obliged to announce the dissolution and the liquidation of the foundation in an Indonesian language daily newspaper not later than 5 (five) days as from the date of the appointment.

Article 66

Liquidators or curators are obliged to announce results of the liquidation in an Indonesian language daily newspaper not later than 30 (thirty) days as from the date of termination of the liquidation process.

Article 67

- (1) Liquidators or curators are obliged to report the dissolution of the foundation to patrons not later than 7 (seven) days as from the date of expiration of the liquidation process.
- (2) In the case of the report on the dissolution of the foundation as meant in paragraph (1) and the announcement of results of the liquidation as meant in Article being not made, the dissolution of the foundation is not effective for the third party.

Article 68

- (1) The remaining assets resulting from the liquidation are given to another foundation having the same goals and objectives as the dissolving foundation.
- (2) If the remainder of assets resulting from the liquidation is not given up to the other foundation having the same goals and objectives as meant in paragraph (1), the remaining assets are given up to the state and they are used in accordance with the goals and objectives of the foundation.

CHAPTER XI  
FOREIGN FOUNDATION

Article 69

- (1) Foreign foundations which are not Indonesian statutory bodies can undertake their activities in the territory of the Republic of Indonesia, unless the activities of the foundations harm the Indonesian people, nation and country.
- (2) Provisions on requirements and procedures for the foundations as meant in paragraph (1) are regulated by a government regulation.

CHAPTER XII

CRIMINAL PROVISION

Article 70

- (1) Every member of foundation organs violating the provision as meant in Article 5 is sentenced to imprisonment of 5 (five) years.
- (2) In addition to the imprisonment, the member as meant in paragraph (1) is also subjected to additional sentence in the form of the obligation to return money, goods or assets of the foundation which are transferred or shared.

CHAPTER XIII

TRANSITIONAL PROVISION

Article 71

- (1) When this law comes into force, foundations already:
  - a. registered at the Public Court and announced in Supplement to Statute Book of the Republic of Indonesia; or
  - b. registered at the Public Court and having licenses to undertake activities from institutions concerned; are still recognized as statutory bodies, with the provision that not later than 5 (five) years as from the date of enforcement of this law, the foundations must adjust their articles of association to the provisions in this law.
- (2) The foundations as meant in paragraph (1) must be notified to the Minister not later than one year after the realization of the adjustment.

(3) Foundations

(3) Foundations failing to adjust their articles of association in the period as meant in paragraph (1) can be dissolved on the basis of a decision of the court upon a request from the prosecutor office or interesting parties.

CHAPTER XIV  
CONCLUSION  
Article 72

(1) Foundations whose assets partly originate from state assistance, overseas assistance and/or public donations, which are obtained as a result of the enforcement of a law are obliged to announce summaries of the annual reports as meant in Article 52 paragraph (1) that cover their assets for 10 (ten) years before the promulgation of this law.

(2) The announcement of the summaries of annual reports as meant in paragraph (1) does not abolish the right of parties obliged to examine, investigate and sue in the case of the occurrence of legal violations.

Article 73

This law starts to be effective one year as from the date of promulgation.

For public cognizance, this law shall be promulgated by placing it in Statute Book of the Republic of Indonesia.

Ratified in Jakarta  
On August 6, 2001

THE PRESIDENT OF THE REPUBLIC OF INDONESIA  
sgd

MEGAWATI SOEKARNOPUTRI

Promulgated in Jakarta  
On August 6, 2001

THE SECRETARY OF STATE  
sgd

MUHAMMAD MAFTUH BASYUNI

STATUTE BOOK OF  
THE REPUBLIC OF INDONESIA OF 2001 NO. 112

ELUCIDATION  
O N  
LAW NO. 16/2001  
CONCERNING FOUNDATION

GENERAL

The establishment of foundations in Indonesia has been based on custom in the society and jurisprudences of the Supreme Court because no law regulates the matter. The fact shows that people tend to set up foundations

to take shelter behind statutory bodies of foundations, which are used as a means to not only develop social, religious, humanitarian activities but also to enrich founders, executives and supervisors. In line with the trend, the condition also results in problems connected with activities of foundations which are not in accordance with goals and objectives mentioned in articles of association, disputes between executives and founders or other parties and allegations that foundations are used to accommodate wealth of founders or other parties which is obtained by means violating law. The problems cannot be settled legally because there is no a positive law on foundations as the judicial basis for the settlement of the problems.

This law is intended to provide true understanding about foundation for the public, to guarantee legal certainty and orderliness, as well as to reposition the function of foundations as a legal instrument in the framework of achieving certain objectives in social, religious and humanitarian fields. This law affirms that foundation is a statutory body having social, religious and humanitarian goals and objectives, established by observing formal requirements which are stipulated in this law.

A foundation is established by a notarial deed and secures the status of a statutory body after the deed of establishment obtains endorsement from the Minister of Justice and Human Rights or the appointed officials. The provision aims at arranging properly the administration of endorsement of a foundation as a statutory body to prevent the establishment of a foundation without the procedures stipulated in this law.

In the framework of providing service and facilities for the public, applications for the establishment of foundations can be submitted to Heads of Regional Offices of the Ministry of Justice and Human Rights overseeing domiciles of the respective foundations. In addition, foundations already securing endorsement must be announced in Statute Book of the Republic of Indonesia. This provision is also intended to ensure that the registration of foundations by a model of application of proper law administration can prevent foundations from committing practices of legal actions harmful to the society.

In order to realize the mechanism of the public supervision over foundations allegedly committing actions which contravene law, article of association or inflicting losses on the public interest, this law regulates the possibilities of investigation into foundations, which is executed by experts on the basis of a stipulation of the Court upon a written request from the interesting third party or the prosecutor office representing the public interest in this case.

As statutory . . . . .

As statutory bodies having social, religious and humanitarian goals and objectives, foundations have organs consisting of patrons, executives and supervisors. The firm separation between functions, authority and tasks of the respective organs as well as the regulation of relationship between the three organs of the foundations are intended to avoid the possibilities of internal conflicts of foundations which can inflict losses on not only the foundations but also other parties.

Assets and activities of foundations are fully managed by executives. Therefore, executives are obliged to make out annual reports on financial conditions and developments of activities of foundations, which are conveyed to patrons. Subsequently, foundations acquiring their assets from state assistance, overseas assistance or other parties or having assets at the amount stipulated in this law, the assets must be audited by public accountants and their annual reports must be announced in an Indonesian language daily newspaper. The provision is in the framework of application of principles of transparency and accountability to the public.

This law also regulates the possibilities of merger and dissolution of foundations because of either initiatives of foundation organs themselves or a decision of the court and the opportunity for foreign foundations to undertake activities in the territory of the Republic of Indonesia as long as they do not inflict losses on the Indonesian people, nation and country.

#### ARTICLE BY ARTICLE

Articles 1 and 2

Sufficiently clear

Article 3

Paragraph (1)

Sufficiently clear

Paragraph (2)

The provision in this paragraph is in accordance with social, religious and humanitarian goals and objectives of foundations so that someone being patron, executive and supervisor of a foundation must work voluntarily without receiving salary, wage or fixed honorarium.

Article 4

In the case of name of village or treated such that being mentioned in the domicile of a foundation, names of district, regency, city and provinces must also be mentioned.

Article 5 up to article 7

Sufficiently clear

Article 8

Business activities of a business entity in the form of a foundation have wide coverage, including human rights, art, sports, consumer protection, education, environment, health and science.

Article 9

Paragraph (1)

Referred to "people" are individuals or statutory bodies.

Paragraph (2) up to paragraph (5)

Sufficiently clear

Article 10

Paragraph (1)

Sufficiently clear

Paragraph (2)

In the case of the presence of testament letter containing message to establish a foundation, the matter is considered as an obligation aimed at those appointed in the testament document as recipients of testament, to execute the testament.

Paragraph (3)

Sufficiently clear

Article 11 up to Article 13

Sufficiently clear

Article 14

Paragraph (1)

Sufficiently clear

Paragraph (2)

Letter a up to letter c

Sufficiently clear

Letter d

"Things" means tangible and intangible goods which are valuable by money.

Letter e up to letter k

Sufficiently clear

Paragraphs (3) and (4)

Sufficiently clear

Article 15 up to article 23

Sufficiently clear

Article 24

Paragraph (1)

Sufficiently clear

Paragraph (2)

Applications for the announcement in Statute Book of the Republic of Indonesia can be submitted directly or sent through registered mail.

Paragraph (3)

The amount of the announcement cost is calculated in accordance with the value of assets of a foundation.

Article 25

Paragraph (1)

Sufficiently clear

Paragraph (2)

Paragraph (2)

Letter a

"Donations or assistance not binding" are voluntary donations or assistance received by a foundation, from both the country, public, and other parties not contravening laws in force.

Letter b

"Wakaf" means wakaf from people or statutory bodies.

Letter c

"Grant" means a grant from people or statutory bodies.

Letter d

The amount of grant given up to a foundation may not contravene provisions of the inheritance law.

Letter e

Other sources are, amongst others, dividends, interest on savings in banks, rental fees of buildings or earnings from results of businesses of foundations.

Paragraph (3)

Assets originating from wakaf exclude from bankrupt assets.

Paragraph (4)

Sufficiently clear

Article 27

Paragraph (1)

State assistance to foundations are given in accordance with the soul of the provision in Article 34 of the Constitution of 1945.

Paragraph (2)

Sufficiently clear

Article 28

Paragraphs (1) and (2)

Sufficiently clear

Paragraph (3)

The provision in this paragraph is meant that founders of foundations do not automatically become patrons. Patrons can be nominated by executives or supervisors.

Paragraphs (4) and (5)

Sufficiently clear

Articles 29 and 30

Sufficiently clear

Article 31

Paragraphs (1) and (2)

Sufficiently clear

Paragraph (3)

Prohibition from holding double positions is intended to avoid the possible overlapping of authority,

tasks, and responsibility between patrons, executives and supervisors that can inflict losses on interest of foundations or other parties.

Article 32 up to article 34

Sufficiently clear

Article 35

Paragraphs (1) and (2)

Sufficiently clear

Paragraph (3)

"Executors of activities" are day-to-day executives of foundations that execute daily activities of foundations

Paragraphs (4) and (5)

Sufficiently clear

Article 36

Sufficiently clear

Article 37

Paragraph (1)

Sufficiently clear

Paragraph (2)

If executives undertake legal actions for and on behalf of foundations, article of association can restrict the authority by stipulating that prior approval from patrons and/or supervisors are needed for certain legal actions, e.g. to guarantee assets of foundations to build schools or hospitals.

Articles 38 and 39

Sufficiently clear

Article 40

Paragraph (1) up to paragraph (3)

Sufficiently clear

Paragraph (4)

Look at elucidation on Article 31 paragraph (3)

Article 41 up to article 48

Sufficiently clear

Article 49

Paragraph (1)

Sufficiently clear

Paragraph (2)

The provision in this paragraph requires foundations to report in details transactions made by foundations and other parties. This reflects the principles of transparency and accountability to the public which must be done by foundations properly.

## Article 50

## Paragraph (1)

The report must be signed by all executives and supervisors because the report constitutes a form of accountability of executives and supervisors in executing their tasks.

In the case of executives or supervisors not signing the report, their reasons and causes must be explained in writing so that patron meeting can use them as consideration.

## Paragraph (2)

Sufficiently clear

## Paragraph (3)

The endorsement of a report by the patron meeting means the granting of settlement and relinquishment of responsibility to executives and supervisors for the relevant accounting year.

## Article 51

"Inflicted parties" are the relevant foundations, communities and/or state.

## Article 52

## Paragraph (1)

The installation of summary of annual report of a foundation at announcement board is done such a way so that the public can read it.

## Paragraph (2)

The provision in this paragraph is meant that assistance received by a foundation or foundation having assets at certain amount can be ascertained by the public in accordance with the principles of transparency and accountability.

## Paragraph (3) up to paragraph (5)

Sufficiently clear

## Article 53

Sufficiently clear

## Article 54

## Paragraph (1)

Sufficiently clear

## Paragraph (2)

"Experts" are those having expertise in accordance with subjects to be examined.

## Paragraph (3)

Sufficiently clear

## Article 55 up to article 62

Sufficiently clear

## Article 63

## Paragraph (1)

The provision in this paragraph explains that assets of dissolved foundations must be settled (liquidated). As a result of the dissolution, the foundations remain existent up to the moment liquidators are freed from the responsibility.

## Paragraph (2) up to paragraph (4)

Sufficiently clear

## Article 64

## Paragraph (1)

Sufficiently clear

## Paragraph (2)

In the case of the dissolution of a foundation being based on a decision of the court, the liquidator is appointed by the court and the curator is only appointed if the foundation is declared bankrupt.

## Paragraph (3)

Sufficiently clear

## Article 65 up to article 70

Sufficiently clear

## Article 71

## Paragraphs (1) and (2)

Sufficiently clear

## Paragraph (3)

"Interesting parties" are parties having direct interests in the foundations.

## Articles 72 and 73

Sufficiently clear

SUPPLEMENT TO STATUTE BOOK OF  
THE REPUBLIC OF INDONESIA NO. 4132

====(AL)====



THE AMENDMENT TO LAW NO. 16/2001 ON FOUNDATION  
(Law No. 28/2004 dated October 6, 2004)

BY GRACE OF GOD THE ALMIGHTY

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

- a. that Law No. 16/2001 on foundation comes into force as from August 6, 2002 but in developments, the law has not accommodated all legal need and developments in the society as well as substances can cause misinterpretation so that the law needs amendment;
- b. that the amendment aims at better guaranteeing legal certainty and order as well as providing right understanding for the society with regard to foundation;
- c. that based on the considerations as meant in letters a and b, it is necessary to enact a law on the amendment to Law No. 16/2001 on foundation;

In view of:

1. Article 5 paragraph (1) and Article 20 of the Constitution of 1945;

Business News 7155-7156/29-12-2004

2. Law .....

2. Law No. 16/2001 (BN No. 6661 pages 24A - 29A and so on) on foundation (Statute Book of 2001 No. 112, Supplement to Statute Book No. 4132);

With collective approval of  
THE HOUSE OF REPRESENTATIVES OF  
THE REPUBLIC OF INDONESIA

AND

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

DECIDES:

To stipulate:

THE LAW ON THE AMENDMENT TO LAW NO. 16/2001  
CONCERNING FOUNDATION

Article I

Several provisions, general elucidation and elucidation on articles in Law No. 16/2001 on foundation (Statute Book of 2001 No. 112, Supplement to Statute Book No. 4132) are amended as follows:

1. Substance of the provision in Article 3 remains unchanged but the elucidation on the provision is amended so the formulation of elucidation on Article 3 is as mentioned in elucidation on article by article point 1 of this law.
2. The provision in Article 5 is amended so as to read as follows:

"Article 5

(1) The assets of a foundation in the form of money, goods and other wealth obtained by the foundation on the basis of this law cannot be transferred or shared directly or indirectly in the form of salary, wage and honorarium or other forms which can be valued by money to patron, executives and supervisors.

(2) The exception from the provision as meant in paragraph (1) can be stipulated in memorandum of association of the foundation that executives receive salary, wage or honorarium in the case of the foundation executives:

- a. being not founder of the foundation and being not affiliated to the founder, patron and supervisor; and

b. executing governing affairs of the foundation directly and fully.

(3) The salary, wage or honorarium as meant in paragraph (2) is stipulated by the patron in accordance the capability of the foundation.

3. The provision in Article 11 is amended so as to read as follows:

"Article 11

(1) A foundation obtains status of statutory body after the deed of establishment of the foundation as meant in Article 9 paragraph (2) secures ratification from the minister.

(2) In order to secure the ratification as meant in paragraph (1), the founder or his/her proxy submits application to the Minister through notary making the deed of establishment of the foundation.

(3) The notary as meant in paragraph (1) is obliged to convey application for ratification to the minister not later than 10 (ten) days as from the date when the deed of establishment is signed.

(4) In giving the ratification of the deed of establishment of foundation as meant in paragraph (1), the minister also can ask consideration from institution concerned not later than 7 (seven) days as from the date of receipt of complete application.

(5) The institution concerned as meant in paragraph (4) is obliged to convey answer not later than 14 (fourteen) days as from the date of receipt of request for consideration.

(6) The application for ratification of the deed of establishment of foundation is subjected to a cost with the amount stipulated in a government regulation."

4. The provision in Article 12 is amended so as to read as follows:

"Article 12

(1) The application for ratification as meant in Article 11 paragraph (2) is submitted in writing to the minister.

(2) The . . . . .

- (2) The ratification of the application as meant in paragraph (1) is given or denied not later than 30 (thirty) days as from the date of receipt of complete application.
- (3) In the case of the consideration as meant in Article 11 paragraph (4) being needed, the ratification is given or denied not later than 14 (fourteen) days as from the date of receipt of answer to request for consideration from the institution concerned.
- (4) In the case of the answer to the request for consideration being not received, the ratification is given or denied not later than 30 (thirty) days as from the date of conveyance of request for consideration to the institution concerned."
5. A new article is inserted between Article 13 and Article 14 to become Article 13A reading as follows:
- "Article 13A
- Legal actions taken by executives on behalf of a foundation before the foundation secures status of statutory body becomes responsibility of the foundation collectively.
6. The provision in Article 24 is amended so as to read as follows:
- "Article 24
- (1) The deed of establishment of foundation already ratified as statutory body or amendment to the memorandum of association already approved or notified must be announced in Supplement to State Gazette of the Republic of Indonesia.
- (2) The announcement as meant in paragraph (1) is done by the minister not later than 14 (fourteen) days as from the date of ratification of the deed of establishment of the foundation or the approval or receipt of amendment to the memorandum of association by the minister.
- (3) Procedures for announcement are implemented in accordance with the provisions of the law in force.
- (4) The announcement as meant in paragraph (1) is subjected to a cost with the amount stipulated by a government regulation."
7. Article 25 is abolished.
8. The provision in Article 32 is amended so as to read as follows:
- "Article 32
- (1) Executives of a foundation are appointed by patron on the basis of a decision of the patron board meeting for a period of 5 (five) years and can be re-appointed.
- (2) Executives of a foundation can be re-appointed after the first tenure ends for the term of office as meant in paragraph (1) and stipulated in memorandum of association.
- (3) The governing board consist of at least:
- a. a chairperson;
  - b. a secretary; and
  - c. a treasurer.
- (4) In the case of the executives as meant in paragraph (1) during their tenure commit action that the patron considers affecting the foundation, the executives can be dismissed before their tenure ends on the basis of a decision of the patron board meeting.
- (5) Further provisions on composition, procedures for appointment, relief and replacement of executives are regulated in memorandum of association."
9. The provision in Article 33 is amended so as to read as follows:
- "Article 33
- (1) In the case of executives being replaced, the replacing executives convey notification in writing to the minister.
- (2) The notification as meant in paragraph (1) must be conveyed not later than 30 (thirty) days as from the date of replacement of executives of the foundation."
10. The provision in Article 34 is amended so as to read as follows:
- "Article 34
- (1) Executives of foundation can be dismissed any time on the basis of a decision of the patron board meeting.
- (2) In the case of the appointment, relief and replacement of executives not according to the provisions



in memorandum of association, based on application of the interested parties or request from the prosecutor office in the event representing public interests, the court can nullify the appointment, relief or replacement not later than 30 (thirty) days as from the date of submission of application for nullification."

11. The provision in Article 38 is amended so as to read as follows:

"Article 38

- (1) A foundation is prohibited from making agreement with organizations affiliated to the foundation, patron, executive and/or supervisor of the foundation or someone working with the foundation.
- (2) The prohibition as meant in paragraph (1) does not apply in the case of the agreement being beneficial to the accomplishment of goals and objectives of the foundation."

12. Article 41 is abolished.

13. The provision in Article 44 is amended so as to read as follows:

"Article 44

- (1) Supervisors of foundation are appointed by a decision of patron board meeting for a period of 5 (five) years and can be re-appointed.
- (2) The supervisors of foundation can be re-appointed after the first tenure ends for the position as meant in paragraph (1), stipulated in memorandum of association.
- (3) Further provisions on composition, procedures for appointment, relief and replacement of supervisors are regulated in memorandum of association."

14. The provision in Article 45 is amended so as to read as follows:

"Article 45

- (1) In the case of supervisors being replaced, the replacing executives convey notification in writing to the minister.
- (2) The notification as meant in paragraph (1) must be conveyed not later than 30 (thirty) days as from

the date of replacement of supervisors of the foundation."

15. The provision in Article 46 is amended so as to read as follows:

"Article 46

- (1) Supervisors of foundation can be dismissed any time on the basis of a decision of the patron board meeting.
- (2) In the case of the appointment, relief and replacement of executives not according to the provisions in memorandum of association, based on application of the interested parties or request from the prosecutor office in the event representing public interests, the court can nullify the appointment, relief or replacement not later than 30 (thirty) days as from the date of submission of application for nullification."

16. The provision in Article 52 is amended so as to read as follows:

"Article 52

- (1) Summary of annual report of the foundation is announced in billboard in the foundation office.
- (2) Summary of financial statement inseparable from the summary of annual report as meant in paragraph (1) must be announced in Indonesian-language daily newspaper in the case of the foundation:
  - a. obtaining state assistance, overseas assistance and/or other parties amounting to Rp 500,000,000.00 (five hundred thousand million rupiahs) or more in one accounting year; or
  - b. having assets other than donated property amounting to Rp 20,000,000,000.00 (twenty billion rupiahs) or more.
- (3) The financial statement of the foundation as meant in paragraph (2) must be audited by public accountant.
- (4) Results of audit of the financial statement of foundation as meant in paragraph (3) is conveyed to patron of the foundation and a copy is made available to the minister and institutions concerned.

(5) The financial statement is formulated in accordance the Financial Accountancy Standards in force."

17. The provision in Article 58 is amended so as to read as follows:

"Article 58

- (1) Executives of the respective foundations, which will merge and receive merger formulate proposals of merger plan.
- (2) The proposals of merger plan as meant in paragraph (1) are mentioned in draft deed of merger by executives of the foundations, which will merge and receive merger.
- (3) Draft deed of merger must secure approval from patrons of the respective foundations.
- (4) The draft deed of merger as meant in paragraph (3) is mentioned in deed of merger made before notary in the Indonesian language."

18. The provision in Article 60 is amended so as to read as follows:

"Article 60

- (1) If the merger of foundations is followed by amendment to Memorandum of Association needing approval of the minister, the deed of amendment to memorandum of association of the foundation must be conveyed to the minister to secure approval by enclosing deed of merger.
- (2) The approval as meant in paragraph (1) is given not later than 60 (sixty) days as from the date of receipt of the application.
- (3) In the case of the application being rejected, the rejection must be notified to the applicant in writing along with the reasons in the period as meant in paragraph (2).
- (4) In the case of the approval or rejection being not given in the period as meant in paragraph (2), the amendment to memorandum of understanding is deemed approved and the minister is obliged to issue a decision on the approval."

19. The provision in Article 68 is amended so as to read as follows:

"Article 68

- (1) The remaining assets resulting from liquidation are given up to other foundation having similarity of activities to the dissolved foundation.
- (2) The remaining assets resulting from the liquidation as meant in paragraph (1) can be given up to other statutory body having similarity of activities to the dissolved foundation, if the matter is regulated by law on the statutory body.
- (3) If the remaining assets resulting from liquidation are not given up to other foundation or statutory body as meant in paragraphs (1) and (2), the assets are given up the state and they are used in accordance with activities of the dissolved foundation."

20. The provision in Article 21 is amended so as to read as follows:

"Article 71

- (1) Upon the enforcement of this law, foundations:
  - a. which have been registered at the District Court and announced in Supplement to State Gazette of the Republic of Indonesia; or
  - b. which have been registered at the District Court and had license to undertake activities from institutions concerned;
 

continue to be recognized as statutory bodies with the provision that the foundations are obliged to adjust their memorandum of association to the provisions in this law not later than 3 (three) years as from the date of enforcement of this law.
- (2) Foundations already established and failing to meeting the provision as meant in paragraph (1) can secure status of statutory bodies by means of adjusting their memorandum of association to the provisions in this law and submit applications to the minister not later than one year after the enforcement of this law.
- (3) The foundations as meant in paragraph (1) must be notified to the minister not later than one year after the realization of the adjustment.
- (4) Foundations not adjusting their memorandum of association in the period as meant in paragraph (1) and the foundations as meant in paragraph (2) cannot use word "foundation" in front of their

names and can be dissolved on the basis of a court decision based on application from prosecutor office or interesting parties."

21. The provision in Article 72 is amended so as to read as follows:

"Article 72

(1) Foundations whose assets partly come from state assistance, overseas assistance and/or public donations obtained as a result of the enforcement of a regulation must announce the matters in the summary of financial statement as meant in Article 52 paragraph (2) which covers their assets for 10 (ten) years before this law is promulgated.

(2) The announcement of the summary of financial statement as meant in paragraph (1) does not abolish rights of the authorized parties to investigate, inquire and sue in the case of legal violation being allegedly committed.

22. Two articles are supplemented between Article 72 and Article 73 to become Article 72A and Article 72B reading as follows:

"Article 72A

With the enforcement of this law, the provisions on memorandum of association as meant in Article 71 paragraphs (1) and (2) not yet adjusted to the provisions in this law remain effective as long as they do not contravene this law.

Article 72B

With the enforcement of this law, applications for ratification of deeds of establishment of foundations, application for amending memorandum of association of foundations and notification of adjustment to memorandum of association of foundations already received by the minister are processed on the basis of this law and its technical directives."

23. General elucidation on the third paragraph, phrase "or the appointed officials" between phrase "the Minister of Justice and Human Rights" and phrase "The said provisions" are abolished.

24. General elucidation on the fourth paragraph, phrase "can be submitted to Heads of Regional Offices of the Ministry of Justice and Human Rights overseeing domiciles of foundations" between phrase "applications for establishment of foundations" and phrase "apart

from that" is replaced by phrase "submitted to the minister through notary making deed of establishment of the said foundations."

25. General elucidation on the seventh paragraph, phrase "Foundations whose assets come from state," between phrase "Subsequently, to" and phrase "overseas assistance or other parties" is amended to become phrase "Foundations obtaining assistance from the state" and phrase "annual report must be announced" between phrase "by public accountants" and phrase "Indonesian-language daily newspaper" is amended to become phrase "their financial statements must be announced."

Article II

The law comes into force one year as from the date of promulgation.

For public cognizance, the law shall be promulgated by placing it in Statute Book of the Republic of Indonesia.

Ratified in Jakarta

On October 6, 2004

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

Sgd

MEGAWATI SOEKARNOPUTRI

Promulgated in Jakarta

On October 6, 2004

THE STATE SECRETARY OF  
THE REPUBLIC OF INDONESIA

Sgd

BAMBANG KESOWO

STATUTE BOOK OF  
THE REPUBLIC OF INDONESIA YEAR 2001 NO. 115

ELUCIDATION  
ON

LAW NO. 28/2004

CONCERNING

THE AMENDMENT TO LAW NO. 16/2001  
ON FOUNDATION

1. GENERAL

Law No. 16/2001 on foundation, which was promulgated on August 6, 2001 has not accommodated all legal need and developments in the society since the date of enforcement, August 6, 2002.

In addition, substances of the law on foundation in the society still contain various interpretations thus being potential to cause legal uncertainty and disorder. The amendment to Law No. 16/2001 on foundation aims at guaranteeing legal certainty and order as well as providing proper understanding for the people with regard to foundation so as to be able to return the function of foundation as legal instrument in the framework of achieving certain objectives in the social, religious and humanitarian fields.

Apart from that, given that the role of foundation in society can create people's welfare, the improvement of Law No. 16/2001 on foundation also aims at enabling the foundation to function in a bid to achieve its goals and objectives in the social, religious and humanitarian fields on the basis of the principles of transparency and accountability.

## II. ARTICLE BY ARTICLE

### Article I

#### Point 1

### Article 3

#### Paragraph (1)

The provision in this paragraph aims at affirming that a foundation is not used as business instrument and foundation cannot undertake business activities directly but through business entity established or other business entity wherein the foundation invests its assets.

#### Paragraph (2)

Sufficiently clear

#### Point 2

### Article 5

#### Paragraph (1)

The provision in this paragraph aims at affirming that assets of a foundation, including outcomes of business activities of the foundation, constitute assets of the foundation fully used for achieving goals and objectives of the foundation so that someone becomes member of patron, executive and supervisor of the foundation work voluntarily without receiving salary, wage or honorarium.

#### Paragraph (2)

#### Letter a

"Affiliated" means familial relation because of marriage or generation as far as the third degree horizontally and vertically.

#### Letter b

"Directly and fully" means executing tasks governing board in accordance with the provisions working day and hour of the foundation, not part time

#### Paragraph (3)

Sufficiently clear

#### Point 3

### Article 11

#### Paragraph (1)

Sufficiently clear

#### Paragraph (2)

The provision that applications for ratification statutory body of foundation through notary aims at facilitating service for the public in the submission of applications for ratification of deed of establishment of foundation in region.

#### Paragraph (3) up to paragraph (6)

Sufficiently clear

#### Point 4

### Article 12

Sufficiently clear

#### Point 5

### Article 13A

Sufficiently clear

#### Point 6

### Article 24

Sufficiently clear

#### Point 7

Sufficiently clear

#### Point 8

### Article 32

#### Paragraph (1)

Sufficiently clear

#### Paragraph (2)

Based on this provision, how many times the five year period can executives be re-appointed is mentioned in memorandum of association of the foundation

#### Paragraph (3) up to paragraph (5)

Sufficiently clear

Point 9  
Article 33  
Sufficiently clear

Point 10  
Article 34  
Sufficiently clear

Point 11  
Article 38  
Sufficiently clear

Point 12  
Sufficiently clear

Point 13  
Article 44  
Paragraph (1)  
Sufficiently clear

Paragraph (2)  
Based on this provision, how many times the five-year period can executives be re-appointed is mentioned in memorandum of association of the foundation.

Paragraph (3)  
Sufficiently clear

Point 14  
Article 45  
Sufficiently clear

Point 15  
Article 46  
Sufficiently clear

Point 16  
Article 52  
Paragraph (1)  
Affixing of summary of financial statement of the foundation to billboard is placed in such a way so as to be readable by the people.

Paragraph (2)  
The provision in this paragraph aims at enabling the public to ascertain assistance received by the foundation or foundation having assets in certain amount in accordance with the principles of transparency and accountability.

Paragraph (3) up to paragraph (5)  
Sufficiently clear

Point 17  
Article 58  
Sufficiently clear

Point 18  
Article 60  
Sufficiently clear

Point 19  
Article 68  
Sufficiently clear

Point 20  
Article 71  
Paragraph (1)

The three-year period as meant in this provision aims at opening opportunity for the foundation to determine whether it will continue the existence of the foundation or not. If continued, the foundation must adjust its memorandum of association to this law in the said period.

Paragraphs (2) and (3)  
Sufficiently clear

Paragraph (4)  
"Interesting parties" mean parties having interests directly in the foundation.

Point 21  
Article 72  
Sufficiently clear

Point 22  
Article 72A  
Sufficiently clear

Article 72B  
Sufficiently clear

Point 23 up to point 25  
Sufficiently clear

Article I  
Sufficiently clear

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