

Juridical Analysis of Deeds of Old Foundation Deeds which are not Registered in the Deed of Establishment of the New Foundation

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Abstract. Foundations that were established before the Foundation Law must adjust their articles of association, otherwise the foundation may not use the word "Foundation" in front of its name or the foundation may be dissolved. The Riyadlul Jinan Foundation was founded in 1993. From 2008 to 2015 the Riyadlul Jinan Foundation was not a legal entity. It was only on October 30 2015 that the Riyadlul Jinan foundation was re-established using assets from the 1993 foundation, without carrying out a liquidation process first. The main problem of this thesis is what the provisions are for transferring assets from a foundation that is no longer a legal entity according to the foundation law, how to establish a new foundation, and what are the legal consequences of the Riyadlul Jinan foundation deed which does not comply with the applicable provisions. The research method used is sociological juridical, meaning that this research refers to identifying and conceptualizing law as a social institution that is real and functional in real life. The legal consequences of the deed of establishment of the Riyadlul Jinan foundation which was made not in accordance with applicable legal provisions, the Notarial deed is null and void and the Notary who made the deed may be subject to administrative sanctions or civil sanctions.

Keywords: Deeds; Foundation; Notary.

1. Introduction

Since its inception, in the western legal concept, a foundation has been a legal entity intended to operate in the philanthropic sector, namely non-profit activities in the social and humanitarian fields. Basically, the philosophical

purpose of establishing a foundation is understood as a legal entity that is commercial or not seeking profit (non-profit or non-profit).¹

The position of a notary is very strategic, the establishment of a foundation that uses the services of a Notary to obtain legal entity status after the deed of establishment has received approval from the Minister of Law and Human Rights of the Republic of Indonesia or an appointed official. This provision is intended to ensure that administrative data collection for the ratification of a foundation as a legal entity can be carried out properly so that no more foundations will be found that have been established without going through procedures in accordance with the provisions of the foundation law currently in effect.

The community is starting to feel certainty and legal order in running the foundation. Based on the provisions in the Foundation Law, there are 2 types of legal status for foundations that were established before the enactment of the Foundation Law, namely:

1. Old foundations (foundations that were established before the publication of the Foundation Law) which have legal entity status;
2. Old foundations (foundations that were established before the publication of the Foundation Law) that do not yet have legal entity status.

The foundation mentioned above basically still recognizes a foundation that was established before this Foundation Law was issued as long as the foundation has been registered with the District Court and announced in the supplement to the State Gazette of the Republic of Indonesia or has been registered with the District Court and has permission to carry out activities from the relevant agency. with a period for adjusting the articles of association no later than 3 years from the date the foundation law comes into force.

Old foundations that do not yet have the status of a legal entity that do not make adjustments as specified cannot use the word foundation in front of their name and can be dissolved. That foundations that have lost their legal entity status, and can no longer have the word "foundation" in front of their name, can transfer the foundation's assets to another foundation of the same type and have the same purpose by dissolving the foundation first.

There are still many foundations in Indonesia that were established before the Foundation Law came into effect but have not made adjustments to the

¹Fendi Suproyono, "Implementation of the Foundation Law in Achieving Foundation Aims and Objectives" Legal Science Journal Legal Opinion. Vol, 3 (2015).

foundation's articles of association. As is the case with the RJ Foundation in Cirebon Regency, West Java. The RJ Foundation was created before Notary IW, a Notary in Cirebon City based on the Decree of the Minister of Justice of the Republic of Indonesia YA 7/2/3 dated January 10 1993. Initially, this foundation used the description of Islamic education in front of it because this foundation operates in the education sector.

When this is not implemented, then he has violated legal obligations as regulated in the Foundation Law, so that violating these legal obligations can be categorized as an unlawful act.

2. Research Methods

The research method used is sociological juridical, meaning that this research refers to identifying and conceptualizing law as a social institution that is real and functional in real life. provisions regarding the transfer of assets of foundations that are not legal entities are not regulated in detail. Research is an activity aimed at finding out the ins and outs of something. A research method is a method that explains how research works, which includes research materials, tools, research paths, variables and data to be provided and analyzed.

Meanwhile, the research specifications in writing this thesis are in the form of analytical descriptive research. Based on the typology, this research uses analytical descriptive research. Descriptive research is used in this research to describe a situation regarding the transfer of assets from a foundation that is no longer a legal entity, re-establishing a foundation with the same name, aims and objectives as a foundation that is no longer a legal entity, as well as providing a description of the research results with complete data and as detailed as possible. Observing, describing and reconstructing an object using legal parameters as a standard for drawing conclusions about the object in relation to the law.

3. Results and Discussion

3.1. Legal Analysis of Notary Actions in Dealing with Old Foundation Deeds That Are Not Registered with New Foundation Deeds

Every Foundation, whether established before or after the Foundation Law came into effect, must comply with the applicable regulatory provisions. Such as adjusting the Foundation's articles of association, otherwise the Foundation can be dissolved. If a foundation is no longer a legal entity, the foundation must liquidate the foundation's assets and if there is any remaining liquidation, it is given in accordance with the provisions of Article 68 of the Foundation Law.

Foundation Law Number 28 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations came into force on 6 October 2005, the period for adjusting the articles of association, namely 3 years, then ends on 6 October 2008. Article 71 Paragraphs (2) and (3) The Foundation implementing law states that adjustments to the articles of association must be reported to the Minister no later than 1 year after the adjustment. The final period for adjustments is 6 October 2008, and the period for reporting the results of adjustments ends on 6 October 2009. Thus, based on the provisions of Article 71 of the Foundation Law, it is amended as stated in Law of the Republic of Indonesia Number 28 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations, reads as follows:²

1. When this Law comes into force, Foundations that:
 - a. Has been registered at the District Court and announced in the Supplement to the State Gazette of the Republic of Indonesia; or
 - b. Has been registered with the District Court and has permission to carry out activities from the relevant agency; but is recognized as a legal entity provided that within a period of no later than 3 years from the date this Law comes into force, the Foundation is obliged to adjust its articles of association to the provisions of this Law.
2. Foundations that have been established and do not comply with the provisions as intended in Paragraph (1), can obtain legal entity status by adjusting their articles of association to the provisions of the Law, and submitting an application to the Minister within a period of no later than 1 year from the date of the Law. this is starting to take effect.
3. Foundations as intended in Paragraph (1), must be notified to the Minister no later than 1 year after the adjustment is implemented.
4. Foundations that do not adjust their articles of association within the time period as intended in Paragraph (1) and Foundations as intended in Paragraph (2), cannot use the word "Foundation" in front of their name and can be dissolved based on a Court decision at the request of the Prosecutor's Office or interested parties.

The liquidator or curator appointed to settle assets that have been disbanded or dissolved, no later than 5 days from the date of appointment, is obliged to

²Indonesia, Foundation Law. Law No.28 of 2004, concerning amendments to Law No.16 of 2001, LN No.115 of 2004, TLN No.4430, Ps.71.

announce the dissolution of the Foundation and the liquidation process in an Indonesian language daily newspaper. Then, within a period of 30 days from the date the liquidation process ends, the liquidator or curator is obliged to announce the results of the liquidation in an Indonesian language daily newspaper. The liquidator or curator within no later than 7 days from the date the liquidation process ends, is obliged to report the issue of dissolution of the Foundation to the Foundation's board of trustees. Reports on the dissolution of the Foundation and announcement of liquidation results are not made, so the dissolution of the Foundation does not apply to third parties.

The regulations regarding when the dissolution of the Foundation takes effect are the same as the dissolution of a PT based on PT Law No.40/2007. To then submit the dissolution to SABH. The dissolution of the PT is effective from the moment the report regarding the dissolution of the PT by the liquidator is received by the Minister of Law and Human Rights of the Republic of Indonesia.

If after the liquidation process it turns out that there are still assets remaining, then based on Article 68 of Law Number 28 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations, which reads as follows:³

1. The remaining assets resulting from the liquidation were handed over to other foundations that had similar activities to the disbanded foundation.
2. The remaining assets resulting from liquidation as referred to in Paragraph (1), can be handed over to another legal entity that has similar activities to the disbanded Foundation, if this is regulated in the Law regarding that legal entity.
3. In the event that the remaining assets resulting from liquidation are not handed over to another Foundation or to another legal entity as intended in Paragraph (1) and Paragraph (2), the assets are handed over to the State and their use is carried out in accordance with the activities of the disbanded Foundation.

Foundations that are no longer legal entities but carry out their activities as usual. In order to cover all activities of a Foundation that is no longer a legal entity, the Foundation must make adjustments to its articles of association or establish a new Foundation. The aim of this re-establishment is so that the Foundation can return to life in carrying out activities in the eyes of the law, using the same Foundation name as the previous Foundation. First, the founder of the Foundation orders the name from a Notary, then the Notary checks and

³Indonesia, Foundation Law. Law No.28 of 2004, concerning Amendments to Law No.16 of 2001, Ps. 68.

notifies the Minister of Law and Human Rights of the Republic of Indonesia, whether the name of the Foundation ordered is already used by another Foundation or not.

As we know, in Indonesia in general there are many foundations, both operating in the educational, social and religious sectors. Under conditions like this, it is not impossible that there will be similarities in the names of the Foundations. In order to prevent the same names in foundations, Article 15 of the Foundation Law reads as follows:⁴

1. Foundations may not use names that:
 - a. Has been used legally by another Foundation; or
 - b. Contrary to public order and/or morality
2. The name of the Foundation must be preceded by the word "Foundation"
3. In the event that the Foundation's assets come from waqf, the word "waqf" can be added after the word "Foundation".
4. Provisions regarding the use of the name of the Foundation are further regulated by Government Regulation.

In the process of establishing a foundation, the first step that must be taken is to have a prospective name. The name is then checked through a Notary with the Ministry of Law and Human Rights of the Republic of Indonesia. To apply for a name check, the Notary must first pay the PNPB fee for name check and submit a name check request letter to the Ministry of Law and Human Rights. The application letter must include a plan for the location of the Foundation.

Because the process of checking and ratifying the Foundation at that time was still in manual form (unlike PT which already has an electronic system), to check the name the prospective founder had to wait 1 month to get certainty whether the name could be used or not. Because the process is quite long, it is best for prospective founders to prepare several names as backup. While waiting for approval to use the name, the Ministry of Law and Human Rights will send a reply letter to the Notary concerned which essentially states whether the name can or cannot be used. If accepted, the Minister ratifies the deed of establishment of the Foundation.⁵After the name is approved, the founder can sign the deed of establishment at the Notary. As soon as the deed of

⁴Indonesia, Foundation Law, Law no. 16 of 2001, Ps. 15.

⁵Gatot Supramono, Foundation Law in Indonesia, (Jakarta: Rineka Cipta, 2008), p. 41.

establishment is signed, the Notary will process the validation of the Foundation within a maximum of one month from the approval of the use of the name from the Ministry of Law and Human Rights and 10 days from the date of the deed of establishment. Because if the validation process is not carried out within 1 month of approval for the use of the name, then the name order will be invalidated and the name can be used by another foundation.

Then, if there is a solution for transferring assets from the old foundation to a new foundation using the same name, the deed of establishment of the foundation must be made in the form of a party deed (*partij*) and only after the foundation has obtained legal entity status, the articles of association come into effect and all decisions are made by the supervisor, management or The appointment of supervisors is carried out at a meeting so that the deed is an official report (*relaas*), unless the decision is taken without holding a meeting if the Foundation's articles of association regulate this. The deed contains the Foundation's articles of association, which will later become a reference in managing the Foundation, containing provisions that are binding, especially for the administrators and also related parties or those who benefit from the existence of the Foundation.⁶

Because old foundations which have not adjusted their articles of association to the Foundation Law are no longer able to adjust their articles of association, in practice many new foundations have been established using the same name, aims and objectives as the old foundations. This is done so that the new Foundation can "replace" the old Foundation. The problem is how to establish the new Foundation so that the new Foundation can "replace" the old Foundation without any obstacles and avoid problems that arise in the future. In this regard, according to this, the method that will be taken in establishing a new foundation must be differentiated between old foundations that have legal entity status and foundations that do not yet have legal entity status.

For old foundations which have become a legal entity, guided by the provisions regulated in the Foundation Law and its implementing regulations as mentioned above which have the status of a legal entity, of course the transfer of rights and obligations is carried out by dissolving the old Foundation (liquidation). then all rights and obligations (remaining liquidation proceeds) are transferred to the new Foundation (after the new Foundation obtains legal entity status).

⁶Herlien Budiono, Basic Techniques for Making Notarial Deeds, (Bandung: Citra Aditya Bahkti, 2014),. Pg 182.

The mechanism for establishing a new Foundation originating from a disbanded Foundation is as follows:⁷

1. Former supervisors, supervisors and administrators (as well as former founders, if there are still any) of the Foundation come before a Notary to establish a new Foundation with the same aims and objectives as well as the same name and domicile as the disbanded Foundation.

2. Complete the Foundation until it obtains status as a legal entity.

3. The former supervisors, supervisors and administrators of the Foundation came before a Notary to make a deed of minutes:

a. Determine the assets of the Foundation in liquidation to be donated to the new Foundation.

b. Settlement of Foundation debts in liquidation to creditors.

c. Form a liquidation team.

d. Determine the liquidation team's honorarium.

4. The Liquidator Team faces the Notary again to make the deed:

a. Transferring/handing over permits for the provision of formal education (along with teaching staff or educational staff as well as students) also (and non-formal) to the Foundation which is already a legal entity.

b. Transfer/hand over assets (movable and immovable) to the Foundation which is already a legal entity.

c. Transfer of debtors (debts) of the disbanded Foundation, to the (new) Foundation.

d. If the plot of land is registered (certified) or not, then this is done by granting a deed from the land deed making official (PPAT).

3.2. Legal consequences arising from the existence of a product in the form of a new foundation deed for the old foundation

⁷Habib Adjie, *Interweaving Thoughts About Notary Affairs (Collection of Writings)*, Cet. 1, p. 94.

Re-establishing a foundation that is no longer a legal entity is actually the same as establishing a new foundation, such as fulfilling the provisions of Foundation Law Number 16 of 2001 as amended by Law Number 28 of 2004 concerning Foundations. However, the Foundation must first carry out a liquidation process before a deed of establishment of a new Foundation is drawn up. So that the deed of establishment of the Foundation is valid and no provisions of the Law are not complied with or ignored. The notary who makes the deed of establishment of the Foundation must be thorough and precise regarding the establishment of the Foundation using the assets of a Foundation that is no longer a legal entity, so that the deed made becomes an authentic deed. If it is not appropriate, the deed can be null and void and the Notary who made it can be subject to civil sanctions or administrative sanctions.

- a. Analysis of the RJ Foundation deed using the old Foundation assets
- b. Notary's error in the deed of establishment of the RJ Foundation
- c. The legal consequences of making a deed in connection with the establishment of a foundation are not based on the legal provisions in force at the time the deed was made
- d. Conflict between the Foundation Law and Government Regulation Number 2 of 2013, amendment to Government Regulation Number 63 of 2008 concerning the implementation of the Law on Foundations.

4. Conclusion

Based on the results of research on the problems in this thesis, it can be concluded as follows: 1) Legal analysis of the notary's actions in dealing with the deed of the old foundation which was not registered with the new foundation, the provisions for transferring assets from the assets of a Foundation which is no longer a legal entity, are not regulated in detail and in detail in the Foundation Law, both in Law Number 16 of 2001 as well as by the amended law, namely Law Number 28 of 2004 concerning Foundations. The provisions in the Foundation Law only regulate the procedures for the liquidation process of the assets of a Foundation that is no longer a legal entity and the procedures for giving the remaining liquidation to the Foundation or a legal entity operating in the same field, or even given to the State. 2) The legal consequences that arise from the existence of a product in the form of a new foundation deed for an old foundation. The process of re-establishing a foundation that is no longer a legal entity with the same name, aims and objectives, is actually the same as establishing a new foundation. However, you must carry out a liquidation process first to clear up the assets of the Foundation which is no longer a legal

entity. After carrying out the liquidation process, the establishment of a new Foundation can be carried out by establishing it with a Notarial deed in accordance with Article 9 Paragraph (2) and the procedures for its establishment are regulated in Article 12 and Article 13 of the Foundation Law. After that, it must obtain approval from the Ministry of Law and Human Rights of the Republic of Indonesia in accordance with Article 11 of the Foundation Law. The founder authorizes the Notary to order the same Foundation name as the previous Foundation from the Ministry of Law and Human Rights. If the proposed name of the Foundation is rejected, the Foundation can reapply for the use of another name or the name of the Foundation can be added with the name of the village/kelurahan, fund or name of the district or city or another name can be added as a distinguishing feature with the same name as the name of the registered Foundation. In the case of this thesis, the RJ Foundation uses the same name as a foundation which was no longer a legal entity, but in front of the name RJ Foundation, the words Islamic education are not included.

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Indonesia, Foundation Law, Law no. 16 of 2001, Ps. 15