

Legal protection of foundation organs in connection with changes to the foundation with the same name

Proteção legal dos órgãos da fundação em conexão com mudanças na fundação com o mesmo nome

Protección jurídica de los órganos de la fundación en relación con los cambios en la fundación con el mismo nombre

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Abstract

This study was conducted to examine the problems of the Foundation's dispute in connection with the amendment to the articles of association that use the same name, as well as to examine the legal protections for the Foundation's organs with legal standing. The research method employed was normative legal. The goal of this method is to evaluate the benefits of legislation for legal subjects, rights and obligations, legal events, legal relations, and legal objects. The data was collected in the form of literary data by collecting primary legal materials such as laws and court decisions, as well as secondary legal materials such as books, journals, and documents. The qualitative data analysis technique was used to provide an assessment of the implementation of Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations in terms of the legal protection of Foundation organs. According to the study's findings, changes to the articles of association made by a foundation organ with legal standing will provide legal protection and certainty. A notary who makes a deed of amendment to the articles of association of the foundation inaccurately results in the deed being canceled.

Keywords: Foundation; Notary deed; Foundation dispute.

Resumo

Este estudo foi realizado para analisar os problemas do litígio da Fundação em relação à alteração dos estatutos que utilizam o mesmo nome, bem como para analisar as proteções legais para os órgãos da Fundação com legitimidade. O método de pesquisa empregado foi o normativo jurídico. O objetivo desse método é avaliar os benefícios da legislação para sujeitos jurídicos, direitos e obrigações, eventos jurídicos, relações jurídicas e objetos jurídicos. Os dados foram coletados na forma de dados literários por meio da coleta de materiais jurídicos primários, como leis e decisões judiciais, bem como materiais jurídicos secundários, como livros, periódicos e documentos. A técnica de análise de dados qualitativos foi utilizada para avaliar a implementação da Lei n.º 28 de 2004 relativa às alterações à Lei n.º 16 de 2001 relativa às Fundações no que respeita à proteção jurídica dos órgãos da Fundação. De acordo com as conclusões do estudo, as alterações aos estatutos efetuadas por um órgão fundante com legitimidade processual proporcionarão proteção e segurança jurídica. Um notário que lavra uma escritura de alteração dos estatutos da fundação resulta incorretamente na anulação da escritura.

Palavras-chave: Fundação; Escritura pública; Disputa de fundação.

Resumen

Este estudio se realizó para examinar los problemas de la disputa de la Fundación en relación con la modificación de los estatutos sociales que usan el mismo nombre, así como para examinar las protecciones legales para los órganos de la Fundación con personalidad jurídica. El método de investigación empleado fue legal normativo. El objetivo de este método es evaluar los beneficios de la legislación para sujetos jurídicos, derechos y obligaciones, hechos jurídicos, relaciones jurídicas y objetos jurídicos. Los datos se recopilaron en forma de datos literarios mediante la recopilación de materiales legales primarios, como leyes y decisiones judiciales, así como materiales legales secundarios, como

libros, revistas y documentos. Se utilizó la técnica de análisis de datos cualitativos para evaluar la implementación de la Ley N° 28 de 2004 sobre Modificaciones a la Ley N° 16 de 2001 sobre Fundaciones en cuanto a la protección jurídica de los órganos fundacionales. De acuerdo con los hallazgos del estudio, la modificación de los estatutos por parte de un órgano fundacional con personalidad jurídica otorgará protección y seguridad jurídica. Un notario que hace una escritura de modificación de los estatutos de la fundación inexactamente da como resultado la cancelación de la escritura.

Palabras clave: Fundación; Acta notarial; Conflicto de fundación.

1. Introduction

The Foundation has existed since the days of the Dutch East Indies government, which was known as “*stichting*.” No regulation confirms whether a Foundation is a legal entity/corporation or not. The result of a legal foundation is that it has its wealth, distinct from the wealth of its founders. Meanwhile, foundations that are not legal entities have a mix of wealth that includes both the foundation’s wealth and the wealth of its founders.

Although no law expressly states that foundations are legal entities, foundations are recognized in social life for their existence in society. Foundations can take legal action as long as the legal action is consistent with the Foundation’s aims and objectives, as stated in the Articles of Association. If the Foundation performs a legal act that is beyond its capabilities (*ultra vires*), the legal action is null and void by law.

The Foundation’s existence prior to the enactment of the Foundation Law caused a number of controversies. Foundations that primarily seek to benefit the community frequently deviate from the aims and objectives outlined in their Articles of Association. The company’s original mission was social and humanitarian, but it was redirected to prioritize the founders’ interests. Furthermore, several foundations operate as business entities with the goal of profit. The Foundation’s original purpose became blurred, misguided, and almost out of control as its function was changed to become a business entity. Foundations are used to run businesses and commercial ventures in all of their forms. Without this clear regulation, foundations in Indonesia are rapidly developing and growing, unaccompanied by adequate regulations and institutions for the Foundation itself, so that each interested party interprets the meaning of the Foundation independently based on their needs and goals.

Following the enactment of Law Number 16 of 2001 concerning Foundations as amended by Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations (hereinafter referred to as Law on Foundations), Article 1 (paragraph) 1 states that “Foundation is a legal entity consisting of separated assets and is intended to achieve particular goals in the Social, Religious, and Humanitarian fields, which has no members.” The Foundation consists of the following organs: Founder, Administrator, and Supervisors. These three organs must be included in the Articles of Association of the Foundation or the Deed of Establishment of the Foundation. The names and identities as well as the composition of the Foundation’s organs are also referred to as Foundation data. Indeed, Foundation data is not included in the Foundation’s Articles of Association and the Foundation’s Articles of Association because it is placed in the closing article¹.

The Foundation Law has compelled the relevant parties to reconsider the legal entity of the Foundation. Understanding that is no longer in accordance with applicable laws and regulations may expose the perpetrators to legal liability. Legal risks, for example, can be material, financial, or immaterial. Material risks can be evaluated or measured. Meanwhile, immaterial risks, such as legal risks, are frequently immeasurable, limitless, and unpredictable. Legal risks in various activities continue to go unnoticed. We all know that legal risks are frequently erratic and not limited in type, target, time, and/or magnitude.²

¹ Henricus Subekti et al, 2013, *Yayasan, Solusi dengan berlakunya PP No. 2 Tahun 2013* (Yogyakarta: Cakrawala Media.), p.18

² Hidayah, (2013) *Pertanggungjawaban Organ Yayasan Atas Pailitnya Yayasan Menurut Undang-Undang Nomor 16 Tahun 2001 Jo Undang-Undang Nomor 28 Tahun 2004 Tentang Yayasan*. Transparency, Jurnal Hukum Ekonomi, June. p. 2

Foundations that were established before the enactment of the Foundation Law are still recognized as legal entities and must adjust the Foundation's Articles of Association with the Law until the deadline on August 6, 2007. However, following the enactment of Law number 28 of 2004 concerning Amendments to Law No. Law number 16 of 2001 concerning Foundations, adjustments to the Articles of Association are carried out until the deadline of October 6, 2008, As a result, Foundations that were established before the enactment of the Law on Foundations and have adjusted their Articles of Association before October 6, 2008, are declared to have the authority to act.

To overcome the issue of Foundations being late in adjusting the Articles of Association, the government then issued Government Regulation number 2 of 2013 concerning Amendments to Government Regulation number 63 of 2008 concerning Implementation of the Law on Foundations, with reference to the provisions of Article 37 a and Article 15 a of the Government Regulation number 2 of 2013 concerning Amendments to Government Regulation number 63 of 2008 concerning the Implementation of the Law on Foundations.

The authority of a Notary in making each deed is regulated in Law No. 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning Notary Position, Article 15 paragraph (1), "A Notary Public shall be authorized to draw up an authentic deed on all actions, agreements, and decisions required by the laws and legislation and/or the relevant parties to contain in an authentic deed, guarantee the certain date of drawing up of deed, keep deed, give tenor, copy and excerpt of the deed, as long as the drawing up of the deed is not assigned or excepted to another official or person stipulated by the law".

According to Article 16 paragraph (1) letter a, Law number 2 of 2014 concerning amendments to Law number 30 of 2004 concerning Notary Position, "In carrying out his position, a Notary is obliged to: act trustworthy, honest, thorough, independent and impartial, and safeguard the interests of the parties involved in making the deed."

A notarial deed is a legal evidence that a judge will use to decide a case. If the Notary is not careful when making the deed of the amendment and/or adjustment of the Foundation's Articles of Association, the parties are not protected, and the deed may be null and void and/or canceled.

Although the Foundation Law and Government Regulations have been enacted, society shows that there are still many Foundation disputes. The deed of the amendment and/or deed of adjustment to the foundation's articles of association, which are made before a Notary, are frequently the source of foundation disputes.

Such is the case with the Tritunggal University Surabaya Foundation Trustees, where the Organizing Body for Private Higher Education at Tritunggal University Surabaya is a Foundation with a social purpose in the field of education. This dispute arose when a party with no legal standing sought to amend the Foundation's articles of association by appearing before Notary X. Meanwhile, another administrator who did not have legal standing because they had resigned from the board of directors also changed the articles of association by appearing before Notary Y using nearly the same Foundation name. Legal standing is the authority to act to carry out a legal act. Legal acts can result in legal consequences in the form of rights and obligations. If it is discovered that a person carrying out a legal act lacks full authority over the legal object of the legal action, the person is said to lack legal standing for the legal act committed.³

2. Methodology

This study employed normative legal or doctrinal research, which is defined as research that provides a systematic explanation of the rules governing certain legal categories, analyzes the relationship between rules, explains areas of difficulty, and possibly predicts future developments.⁴ Legal research that refers to existing literature studies or primary data is referred to

³ Mulyoto, (2016) *Legal Standing* (Yogyakarta: Cakrawala Media), p. 5

⁴ Peter Mahmud Marzuki, (2011) *Penelitian Hukum*, (Jakarta: Kencana, Vol. 7.) p. 147

as judicial legal research. Meanwhile, normative research refers to legal research that seeks normative knowledge about the relationship between one regulation and another, as well as its application in practice.

3. Results and Discussion

The discussion section includes a description of the research findings or the results of theoretical/conceptual studies for review manuscripts.

A. Foundations Before the Enactment of the Foundation Law

As mentioned in the introduction, the Foundation existed prior to the enactment of Law number 16 of 2001, which went into effect on August 6, 2002, with the amendment, namely Law number 28 of 2004 concerning Foundations. There was no statutory regulation that clearly stated this at the time.

In the Civil Code (BW), several articles mention the names/terms of charitable institutions/foundations, including those related to guardianship and the ability to enjoy the benefits of a will, but there are no further regulations regarding charitable institutions or foundations. In the Civil Code, the definition of a charitable institution and a foundation is equated. This can be seen in the provisions of Article 331a paragraph (4c) which states “If a charitable association, foundation or institution otherwise than voluntarily or upon its own request has been appointed guardian, from the time that it declares its acceptance of the guardianship.”

Article 3654 of the Civil Code states “ In all instances, in which the judge appoints a guardian, the guardianship may be assigned to a legal entity being a charitable association, foundation or institution established in Indonesia, the statutes, establishment documents or regulations, of which stipulate care for minors for the duration.”⁵

Because no law explicitly states the existence of Foundations, their existence at the time was based on expert opinion (doctrine) and jurisprudence. As a result, there are no provisions that explicitly govern it. Therefore, at the time, the Foundation could be established freely, which meant that the deed of establishment could be based on a notary deed or a private deed.

According to current practice, after the administrators sign the foundation deed (which can be done through a notary if made with a notarial deed), the deed is registered at the Registrar’s Office of the District Court where the foundation is domiciled. The existence of a Foundation can be made known to the general public (principle of publicity). As a result, a Foundation established prior to the Foundation Law is legally recognized as a legal entity.

The absence of laws and regulations governing foundations makes it difficult to solve problems, both internal and external. Internal issues, for example, a foundation that began with a social purpose may change its purpose and objective to seek profit, resulting in disagreements among the foundation’s management over the foundation’s assets. As a result, the Foundation’s management will seek positions to expel other management in order to gain control of the Foundation and its assets. External problems, for example, exist between the Foundation and other parties who have legal relations.

B. Foundations After the Enactment of the Foundation Law

Article 71 paragraph (1) of Law number 28 of 2004 concerning amendments to Law number 16 of 2001 concerning Foundations, states that: At the time when this Law comes into force, Any Foundation is:⁶

- a. already registered with District Court and published in Supplement to the Bulletin Gazette of the Republic of Indonesia; or

⁵Article 365 of the Indonesian Civil Code

⁶Article 71 paragraph (1) of Law number 28 of 2004 concerning amendments to Law number 16 of 2001 concerning Foundations

- b. already registered with District Court and having a permit to perform activities from the relevant institutions; remains to be recognized as a legal entity provided that not later than 3(three) years commencing from the effectiveness of this Law, the Foundation is obligated to adjust their Articles of Association to this Law

Foundations that wish to maintain their existence are obliged to make adjustments to their articles of incorporation in accordance with the Foundation Law by October 6, 2008. The foundation must report/notify the Minister after modifying their articles of association.

The adjustment refers to changes to the articles of association that affect all articles, whereas amendments to the articles of association are changes to the articles of association that only affect certain articles.⁵ If these obligations have been met, the Foundation's legal entity status remains intact. Even though it is not based on Ministerial ratification, but on the provisions of Article 71 paragraph (1) and paragraph (3) of the Foundation Law, it will still be registered as a legal entity Foundation at the Ministry of Law and Human Rights of the Republic of Indonesia. As proof of registration, the Minister issues a Notification Letter to the Foundation.

C. Legal Standing of Foundation Management Established Before the Foundation Law

Foundations that were established before the enactment of the Foundation Law, which is included as Foundations that are recognized as legal entities and have not adapted to the Foundation Law are guided by the issuance of Government Regulation number 2 of 2013 concerning amendments to Government Regulation number 63 of 2008 concerning the implementation of the Law regarding the Foundation⁷, with the provision that it must make the Complete Plenary Minutes of the Foundation Administrators and must be complete, in the sense of:

- a. If an administrator dies, the death must be stated and supported by a Death Certificate.
- b. If a manager resigns, a letter of resignation must be provided.

All of the remaining administrators must be present to hold a meeting to make changes and/or adjustments to the foundation's articles of association with the Foundation Law. The legal ramifications of making a deed of amendment to the foundation's articles of association by Foundation management who lacks legal standing are management dualism, and the legal action taken is a criminal act for inserting false information into the authentic deed.

D. Notary

A notary is a legal position established by the state. A person with a legal academic degree cannot become a Notary unless appointed by the Minister.⁸ Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position (hereinafter referred to as the Notary Position Law) provides an understanding of Notary, which reads as follows:⁹

"Notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this Law or based on other Laws."

⁷Government Regulation number 2 of 2013 concerning amendments to Government Regulation number 63 of 2008 concerning the implementation of the Law on Foundations

⁸ Hartanti Sulihandari et al, (2013) *Prinsip-Prinsip Dasar Profesi Notaris Berdasarkan Peraturan perundang-Undangan Terbaru*, (Jakarta: Dunia Cerdas), p.75

⁹ Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position.

Article 2 of Law Number 30 of 2004 concerning Notary Position states that a Notary is appointed and dismissed by the Minister. Furthermore, Article 3 of Law Number 2 of 2014 the Amendment of the UUJN explains that to be appointed as a Notary, a person must meet the following requirements:

- a. Indonesian citizens;
- b. Fear God Almighty;
- c. Aged at least 27 (twenty seven) years;
- d. physically and mentally healthy;
- e. Holds a law degree and a bachelor's degree in notary;
- f. Has undergone an internship or has actually worked as a Notary's employee for 24 (twenty four) consecutive months at a Notary's office on his own initiative or on the recommendation of a Notary Organization after graduating from a notary degree; and
- g. Not having the status of a civil servant, state official, advocate, or not holding other positions which are prohibited by law from concurrently holding the position of a Notary.

A notary is a state-appointed official who represents the general power of the state in providing civil law legal services to the public in order to create certainty, order, and legal protection.

A notary is a general position with the following characteristics:¹⁰

- a. As a Title. The Notary Position Law is a unification in the field of Notary Position regulation, which means that the Notary Position Law is the only legal rule in the form of a law that governs Notary Position in Indonesia and that all matters relating to Notaries in Indonesia must refer to the Notary Position Law. The position of Notary is a State-created institution. Placing a Notary as a Position is a field of work or task that is purposefully created by the rule of law for specific purposes and functions (certain authorities) and is long-term in nature.
- b. Individual Notary. Every position's authority must be limited by a legal rule in order for the position to function properly and not conflict with the authority of other positions. Therefore, if an official (Notary) acts outside of his or her authority, it is considered a violation of authority.

The authority in Article 15 paragraph (3) of the UUJN will be determined later based on other laws that will be enacted later (*ius constituendum*). In relation to this authority, if the Notary acts outside the specified authority, the product or Notary deed is not legally binding or cannot be implemented (non-executable). As a result, parties or those who feel treated unfairly by the Notary's actions outside of his or her authority may sue the Notary in civil court. Notaries can be retired by the government/state without receiving a government pension.¹¹

Notaries are public officials (*Openbare Ambtenaren*) who are entrusted with the task of performing authentic deeds for the benefit of the community. The authority of a Notary as stated in Article 15 paragraph (1) of Law Number 2 of 2014 concerning Notary Position, that a Notary has the authority to make an authentic deed, as long as the authority does not fall under the authority of another official or other person, is related to the granting of qualifications of a Notary as a public official.

Because the term Public Official is a translation of the term *Openbare Ambtenaren*, which means an official with duties related to the public interest, it is appropriate to define *Openbare Ambtenaren* as a Public Official. *Openbare*

¹⁰Bachrudin, (2021) *Hukum Kenotariatan*. (Thema Publishing. Yogyakarta). p. 20-30

¹¹*Ibid*. p. 43

Amtbtenaren, which translates as Public Official, is defined as an official who is entrusted with the task of making an authentic deed that serves the public interest, and such qualifications are granted to a Notary.

E. Notary Authority

In running their authority, notaries are bound by provisions that must be obeyed, as stated in Article 15 paragraphs (1), (2), and (3) of Law Number 2 of 2014 concerning Notary Position, which includes:

- a. The notary has the authority to make an authentic deed regarding all actions, agreements, and stipulations required by laws and regulations and or desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, storing the deed, providing grosse, copies, and quotations of the deed, all of this as long as the making of the deed is not also assigned or excluded to other officials or other people specified by law.
- b. In addition to the authority mentioned in paragraph (1), a Notary may also:
 - 1) Register the letter under the hand in a special book to validate the signature and determine the certainty of the date.
 - 2) Register a letter under the hand in a special book.
 - 3) Make a handwritten copy of the original containing the description as written and described in the letter in question.
 - 4) Check the photocopy's compatibility with the original letter.
 - 5) Provide legal advice in connection with the creation of the deed.
 - 6) Create a land deed or;
 - 7) Create an auction minutes deed.
- c. In addition to the authority as referred to in paragraphs (1) and (2), a Notary has other authority as regulated in the laws and regulations.

The authority granted by Article 15 paragraph (1) of Law Number 2 of 2014 concerning Notary Position aims to ensure in an authentic deed of:

- a. Legal Action (*rechts handeling*);
- b. Real Action (*feitelijke handeling*);
- c. Agreement (*verbinten*);
- d. Stipulation.

The notary only records or pours into the deed a legal action carried out by the parties/appearers. The notary only checks what happened, what he/she saw and experienced from the parties/appearances, and then adjusts the formal requirements for making an authentic deed and pours it into the deed. Notaries are not required to investigate the authenticity of the authentic deed's material contents. This necessitates the Notary to remain neutral and impartial, as well as provide some form of legal advice to clients who seek legal advice from the Notary in question.

A notary has duties related to his position and authority that must be followed in accordance with the Notary Position Regulations and the Notary Code of Ethics. A Notary's job is to determine the legal relationship between the parties in writing

and in a specific format so that it is an authentic deed. In a legal proceeding, he is an excellent document creator.¹² As stated in Article 1868 of the Indonesian Civil Code, the primary function of a Notary is to create authentic deeds.

F. Notary Responsibilities

Notary responsibilities are explicitly stated in Article 65 of Law Number 2 of 2014 concerning Amendments to Law number 30 of 2004 concerning Notary Position, which states that Notaries, Substitute Notaries, and Temporary Notary Officials are responsible for every Deed made even though The Notary Protocol has been submitted or transferred to the depositary of the Notary Protocol.

In carrying out their duties, notaries both in terms of authority and obligations must be responsible, indicating that:

- a. Notaries must make the deed properly and correctly, which means that the deed must fulfill the legal will and request of the interested party due to his or her position.
- b. Notaries are required to produce a quality deed, which means that the deed is true to the rule of law and the will of the interested party, rather than being made up. The notary must explain to anyone who is interested in the truth of the contents and procedures of the deed he signed.
- c. It has a positive effect, which means that everyone will agree that the notary deed is perfect evidence.

The notary bears both material and formal responsibility for the act he or she performed. The notary is responsible for the validity of the authentic deed he or she created, and if it is discovered that there is a legal defect that causes the deed to lose its authenticity and harms the interested party, the notary can be sued for reimbursement of costs, compensation, and interest. Meanwhile, in terms of material responsibility for the deed made before the Notary, it should be emphasized that the Notary's authority to make an authentic deed does not imply that the Notary can freely make an authentic deed without the parties requesting the deed. The material truth of the related deed is divided into four points by the Notary, including:

- a. The Notary's civil liability for the material truth of the deed he performed; The juridical construction used in civil liability for the material truth of the Notary's deed is the construction of an unlawful act.
- b. The Notary's criminal responsibility for the material truth in the deed he or she performed; Although criminal provisions are not regulated in the UUJN, the Notary's responsibility is criminally imposed if the Notary commits a criminal act. UUJN only governs sanctions for violations committed by Notaries against UUJN; these sanctions can take the form of a deed made by a Notary who lacks authentic power or only has power as an underhand deed. The Notary may face sanctions ranging from a warning to dishonorable dismissal.
- c. The Notary's responsibilities are stated in Article 65 of the UUJN and state that the Notary is responsible for every deed he makes, even if the Notary protocol has been submitted or transferred to the Notary's protocol keeper
- d. The Notary's responsibilities in carrying out his or her duties in accordance with the Notary's code of ethics

Notary sanctions for violating the provisions stated in the Notary Position Law are internal sanctions, namely sanctions against the Notary in carrying out his duties and positions for failing to carry out a series of orderly actions for the implementation of the Notary's duties and work positions that must be carried out for the Notary's own benefit. Sanctions against a Notary in the form of temporary dismissal from his position follow the imposition of an oral and written warning.

¹² Notary Position Regulations

A notary must be cautious when preparing a deed to ensure that there are no errors or legal defects. Because a Notary's deed must be accountable to the public and cannot avoid the judge's judgment. According to Article 16 paragraph (1) letter a of the Notary Position Law, a Notary is required to act honestly, thoroughly, independently, and impartially in carrying out their duties, as well as to protect the interests of the parties involved in legal proceedings. The provisions of the preceding article demonstrate a Notary's obligation to act carefully in the sense of being careful and thorough in carrying out his duties. To protect the interests of the parties involved in legal proceedings, the Notary must follow proper procedures during the deed-making process so that no party is harmed by the deed.

Notaries are accountable for what is witnessed, which includes what is seen, heard, and done by the Notary as a public official in the performance of his duties. The notary must guarantee the deed he executed, including the truth/certainty of the deed's date, the truth of the signatures contained in the deed, the identity of the people present (*comparanten*), and the location where the deed was executed. Furthermore, the truth of the statements or documents is only certain between the parties. The notary is not liable if the appearer provides incorrect information or documents.

G. Legal Consequences in Making a Deed Not Based on the Law in force at the time the Deed was made.

To achieve legal justice, law enforcement and justice must use the right line of thought with evidence and evidence, and the content of the law must be determined by ethical beliefs, and whether or not a case is fair. The notary is limited to ensuring that the appearer is correct in saying so, but the notary may not be able to guarantee that what the appearer says or states is true (already based on the applicable legal provisions) unless the notary in question understands or is familiar with the regulations governing concrete cases similar to the one to be made.

Deed executed by or before a Notary in violation of or contrary to the provisions of the applicable Law or Government Regulation. A deed like this can be divided into:

- a. The Notary Deed in connection with the Foundation is null and void
- b. The Notary Deed in connection with the foundation can be requested for cancellation

Notary deed that is null and void and can be canceled; in practice, both must be formally submitted to the Court for decision. As a result, the Notary Deed has no evidentiary value and does not bind anyone or any party. The party who feels wronged by the issuance of the Notary deed has the authority to apply to the Court for the cancellation of the Notary deed. Such amendments to the Foundation's Articles of Association force interested parties to go through the court's demands, which takes a long time, a lot of money, energy, and thought. To cancel the ratification or approval of the Notary Deed, the Minister of Law and Human Rights of the Republic of Indonesia will rely on or seek refuge in the Court's Decision that cancels the Notary Deed or declares that the Notary Deed has no legal force (has no evidentiary power).

Another legal consequence that directly affects the Founder or the Administrators of the Foundation is a fairly large loss because the Foundation's assets may be lost. This is because the Foundation's deed, which should have been made before a Notary, was not carried out carefully and in accordance with the provisions of the applicable laws.

There will be no multiple interpretations if the Notary, in making the adjustment deed in relation to the Foundation, has implemented the provisions applicable to the Foundation. Furthermore, in the former position of the Foundation, there will be no dualism in the name of the Foundation and the management of the Foundation.

A Notary Deed that is not made in accordance with the provisions of the Law on Foundations may be declared to be devoid of evidentiary power. The petitioner is the party who is harmed by submitting an application to the chairman of the local District Court, at the Foundation's domicile, for revocation or cancellation. Notaries can be sued for compensation, interest, and fees if the Foundation's management is harmed, resulting in the loss of the Foundation's assets that actually

belong to the Foundation. The Notary is then reported to the Regional Supervisory Council of the Indonesian Notary Association, the Regional Supervisory Council of the Indonesian Notary Association, and the Honorary Council of the Indonesian Notary Association for violating Article 16 paragraph (2) letter an of the Notary Position Act for failing to be careful in making the deed and making a deed that is not based on applicable legal provisions

4. Conclusion

Foundations that were established prior to the issuance of the Foundation Law are required to amend their articles of association to comply with the Foundation Law. Furthermore, the foundation must report to or notify the Minister of Law and Human Rights of the Republic of Indonesia in order to maintain the status of a legal entity. The Plenary Meeting of the Management, which has legal standing in the Foundation, must be used to amend the articles of association.

Changes or adjustments made by Foundation administrators who lack legal standing by using the same or nearly the same name as the existing Foundation name will result in the name of the Foundation being rejected. According to Article 4 paragraph (1) letter of Government Regulation number 63 of 2008, “The use of a Foundation’s name is rejected if: it is the same as the name of another Foundation that has previously been registered in the Register of Foundations.”

Article 16 paragraph (1) letter an of the Notary Position Law states: “In carrying out his position, a Notary is obliged to: act trustworthy, honest, thorough, independent and impartial, and safeguard the interests of the parties involved in making the deed.” This is necessary in order to provide legal protection for Foundation Management who have legal standing. This includes changes to the articles of association of a Foundation with the same or nearly identical name as an existing Foundation.

Amendments and or adjustments to the articles of association based on the Foundation Law, as well as a Notary making a deed based on the Notary Position Law, will be able to provide the public with a correct understanding of Foundations, as well as guarantee legal certainty and order for Foundation organs

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