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LEGAL DUE TO THE FOUNDATIONS ASSETS TRANSFER BEFORE MAKING ADJUSTMENTS TO THE ARTICLES OF ASSOCIATION

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Abstract: The existence of foundations before the enactment of Government Regulation of the Republic of Indonesia Number 2 of 2013 concerning Amendments to Government Regulation of the Republic of Indonesia Number 63 of 2008 concerning the Implementation of the Law on Foundations has not been uniform regarding governancecits stance. Foundation establishment is still based on custom, doctrine and jurisprudence. For foundations that do not have the status of a legal entity, they can obtainlegal entity status by adjusting its articles of association by submitting an application to the Minister of Law and Human Rights no later than 1 (one) year from the date Law Number 28 of 2004 concerning Foundations came into effect. Foundations that were established before the enactment of Government Regulation Number 2 of 2013 and have not adjusted their articles of association may not transfer foundation assets.In this study, the type of normative juridical research uses a statutory approach, a comparative approach and a conceptual approach. The results of the study show that: first, the position of foundation assets before the enactment of Government Regulation Number 2 of 2013 is based on custom, jurisprudence and doctrine. While the position of foundation assets after the enactment of Government Regulation Number 2 of 2013 tercantum in Article 9 Paragraph (1) of the Law on Foundations which states that as initial assets the founder of the foundation is required to separate his assets and then hand them over to the foundation. Second, the legal consequences of transferring Foundation assets before making adjustments to the articles of association based on Government Regulation of the Republic of Indonesia Number 2 of 2013 refers to the provisions of article 71 paragraph (4) of the Law on Foundations, which states that a Foundation that does not adjust its Articles of Association cannot use the word " Foundation" in front of the name because legally, the status of a legal entity is not recognized formally, the consequence is that the transfer of foundation assets that is carried out becomes null and void (neitig van rechtswege) and is not recognized as a transfer of foundation assetsin a mannerlegal.

Keywords: Legal Consequences, Transfer, Foundation Assets, Articles of Association

1. Introduction

The birth of the Foundation as a social institution in the midst of society began with the desire of the community to have a forum or institution that has goals in the social, religious and humanitarian fields. With the Foundation as a social institution, it is hoped that this goal can be achieved and realized in an institution that has received recognition from the community. The social activities carried out by the Foundation aim to raise public awareness and concern by separating their assets or wealth with the aim of helping people who experience difficulties with social needs. The community background prefers foundations over other legal entities that only focus on the economic sector and business activities,[1]

Subekti stated that the Foundation is a legal entity under the leadership of a governing body with certain social and legal objectives.[2] According to A. Pitlo, the establishment of a foundation must have a legitimate basis of will accompanied by the aims and objectives of establishing a foundation. The legal act must meet three material requirements, namely the existence of a separation of assets, purpose, and organization and one formal requirement is a letter.[3] Community development in various activities is quite dynamic from time to time, one of which is marked by the existence of social interaction between members of the community which gives rise to legal relations. It is in this context that the existence of law is significant in regulating legal relations that are created in society, even though there are some legal substances that tend to be left behind by the development of society. This can be seen in the legal arrangements regarding foundations. The establishment of foundations in Indonesia prior to the existence of the Law governing foundations was carried out based on custom in society and the jurisprudence of the Supreme Court.

In the Supreme Court Decision No. 124 K/Sip/1973, dated 27 June 1973 concerning the Position of a Foundation as a Legal Entity, which justifies the judexfactie decision, as follows:[4]

a. Whereas the HMB Pension Fund Foundation was founded in Jakarta under the name "Sticching Pensiunfonds HMB Indonesie" which aims to guarantee the finances of its members.
b. That the members are employees of NV.HMB In Dutch Naamloze Vennootschap (Limited Liability Company).
c. That the Foundation has its own management apart from NV.HMB where the chairman and treasurer are selected by the directors of NV.HMB
d. That the management of the Foundation represents the Foundation both inside and outside the court.
e. That the Foundation has its own assets, including property grants from NV.HMB (Grant Deed).
f. Whereas thus the Foundation is a legal entity.

Based on the decision of the Supreme Court, the position of the Foundation as a legal entity has legal certainty in Indonesia where previously the legal entity status of the Foundation did not have legal certainty whether the Foundation was classified as a legal entity or not. Even with the Supreme Court decision no. 124 K/Sip/1973, however, the technical matters regarding obtaining the status of a legal entity are not clearly regulated so that it is only based on the customary doctrine and jurisprudence of the Supreme Court, causing inconsistency in terms of the functions and objectives of the foundation itself.

State Gazette Number 115 Supplement to State Gazette 4430 (hereinafter referred to as the Amendment to the Foundation Law) on October 6, 2004 which came into effect

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[1] Suyud Margono, *Badan Hukum Yayasan*, (Bandung: Pustaka Rika Cipta, 2015), hlm. 10
[2] Subekti, *Kamus Hukum*, (Jakarta: Pradya Paramita, 2008), hlm. 156
[3] A Pitlo quoted from Chidir Ali, Legal Entity, (Bandung: Alumni, 1991), p. 87
[4] Habib Adjie and Muhammad Hafidh, *Yayasan*, (Bandung: PT. Citra Aditya Bakti, 2016). Hlm. 39

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one year after the promulgation, namely purwada on October 6, 2005. This change occurred because in its development it was felt that it had not accommodated all legal needs and developments in society, and there are several substances that can lead to various interpretations. So it is necessary to make changes to the law with the intention of ensuring greater legal certainty and order, as well as providing proper understanding to the public regarding foundations. This change occurred because in its development it was felt that it had not accommodated all the needs and legal developments in society, and there were several substances that could lead to various interpretations. So it is necessary to make changes to the law with the intention of ensuring greater legal certainty and order, as well as providing proper understanding to the public regarding foundations. This change occurred because in its development it was felt that it had not accommodated all the needs and legal developments in society, and there were several substances that could lead to various interpretations. So it is necessary to make changes to the law with the intention of ensuring greater legal certainty and order, as well as providing proper understanding to the public regarding foundations.

Several years after the enactment of the Law on Foundations, the government issued Government Regulation of the Republic of Indonesia Number 63 of 2008 concerning Foundations which had been amended by issuing Government Regulation of the Republic of Indonesia Number 2 of 2013 concerning Amendments to Government Regulation of the Republic of Indonesia Number 63 of 2008 concerning Implementation of the Law Invite About Foundation. The existence of the Government Regulation of the Republic of Indonesia Number 2 of 2013 concerning Amendments to the Government Regulation of the Republic of Indonesia Number 63 of 2008 concerning the Implementation of the Law on Foundations has a function in providing the possibility for foundations that previously no longer exist as institutionally possible to re-adjust their articles of association to the Law. -Invite Foundation.[5]

Based on Article 71 Paragraph (1) of the Law on Foundations which reads: "At the time this Law came into force, Foundations that had been registered at the District Court and announced in the Supplement to the State Gazette of the Republic of Indonesia; or registered at the District Court and having permission to carry out activities in the relevant agency is still recognized as a legal entity, provided that within a period of no later than 3 (three) years from the date this Law comes into force, the foundation is obliged to adjust its articles of association with the provisions of the Law Invite this." Pursuant to Article 71 Paragraph (1), Foundations that have been registered at the Court and have been announced in the Supplement to the State Gazette, and have a permit from the relevant agency will still be recognized as a legal entity with the provision that the Foundation is required to make adjustments by amending the articles of association and afterwards notifying the Minister in accordance with the period determined by the Law on Foundations. For foundations that do not make adjustments to their articles of association, the foundation will be dissolved based on a court decision at the request of the attorney or other interested parties.

With the existence of the Law on Foundations, officially the status of a legal entity and all technical matters regarding Foundations before the Law on Foundations came

[5] Henrikus Subekti, Mulyono, Yayasan Solusi dengan Berlakunya PP No. 2 Tahun 2013, (Yogyakarta: Cakrawala Media, 2013), hlm. 6

into existence, must comply with the provisions of the Law on Foundations that are already in force. Foundations in obtaining legal entity status after the establishment deed of the Foundation obtain approval from the Minister of Justice and Human Rights, or the Head of the Department of Justice and Human Rights on behalf of the Minister of Justice and Human Rights (now called the Minister of Law and Human Rights).[6]The establishment of a foundation must be carried out by means of a notarial deed, in the Indonesian language and obtaining the status of a legal entity after the deed of establishment has been approved by the Minister of Law and Human Rights of the Republic of Indonesia. This provision aims to properly organize the administration of the validation of a foundation as a legal entity to prevent the establishment of a foundation without going through the procedures or provisions of the law.[7]In addition to the ratification which has received approval from the authorized Minister announced in the State Gazette of the Republic of Indonesia. The purpose of this provision is that Foundation registration can be implemented with a good legal administration system so as to prevent legal actions from being carried out by the Foundation.[8]

In practice, many foundations have not made adjustments as stipulated in the applicable laws and regulations. The existence of discrepancies in the field as a result of this has resulted in the emergence of problems, namely the existence of many foundations acting on behalf of social, religious and humanitarian activities but in practice being misused for the purpose of seeking profit so that this is contrary to the principles of the law. Based on the description above, this phenomenon is interesting to study, so the authors formulate the problem regarding how the position of foundation assets before and after the enactment of the Government Regulation of the Republic of Indonesia Number 2 of 2013 concerning Amendments to Government Regulation of the Republic of Indonesia Number 63 of 2008 concerning Implementation of the Law on Foundations.

2. Method

This research uses a type of normative juridical research which is carried out by examining various formal legal rules such as laws, regulations, and literature that contains theoretical concepts which are then connected to the problems that will be discussed in this thesis. The approaches used in this study are statutory approaches, comparative approaches, and conceptual approaches. The statutory approach is carried out by examining all laws and regulations that are related to the legal issues being handled. The laws and regulations used in this study include Law Number 16 of 2001 concerning Foundations; Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations; Government Regulation Number 63 of 2008 concerning the Implementation of the Law on Foundations; and Government Regulation Number 2 of 2013 concerning Amendments to Government Regulation Number 63 of 2008 concerning Implementation of the Law on Foundations. Comparative approach or comparison is research that uses techniques to compare an object with other objects.

[6] L. Boedi Wahyuno dan Suyud Margono, *Yayasan Antara Fungsi Kariatif Atau Konersil*, (Jakarta: CV. Novindo Pustaka Mandiri, 2001), hlm. 8

[7] Chatamarrasjid, Undang-Undang Yayasan No. 16 Tahun 2001 dan Transparansi Kegiatan Usaha Yayasan, Cet. 2, (Jakarta: PT. Pradnya Paramita, 2005), hlm.9

[8] I*bid*., hlm. 11.

The comparative approach in this study is to compare the position of foundation assets before and after the enactment of Government Regulation Number 2 of 2013 concerning Amendments to Government Regulation Number 63 of 2008 concerning Implementation of the Law on Foundations. While the conceptual approach is carried out when the writer departs from the views and doctrines that have developed in the science of law, the researcher will find ideas that give rise to legal notions, legal concepts, and legal principles relevant to the issue at hand. faced.

3. Position of Foundation Assets Before and After the Enactment of Government Regulation of the Republic of Indonesia Number 2 of 2013 concerning Amendments to Government Regulation of the Republic of Indonesia Number 63 of 2008 concerning Implementation of the Law on Foundations

(1) Position of Foundation Assets Prior to the Enactment of Government Regulation of the Republic of Indonesia Number 2 of 2013 concerning Amendments to Government Regulation of the Republic of Indonesia Number 63 of 2008 concerning Implementation of the Law on Foundations.

Legislation does not regulate Foundation legal entities at all. Only in several laws is it called Foundation, such as articles 899, 900, 1680 and Article 365 of the Civil Code, then in Article 6 paragraph 3 and Article 236 Rv. In these articles there is no formulation of the Foundation. A legal expert named Scholten said "A foundation is a legal entity, which was born by a unilateral statement. The statement must contain the separation of a property for a specific purpose, with an indication of how the wealth is managed and used.[9]

Foundation is a legal entity, which is born by a unilateral statement, the statement must contain the separation of a property for a specific purpose, with a designation, how the wealth is managed and used. This separate property is necessary to pursue the achievement of goals and is the source of all legal relations. Even though foundations have not been regulated in a law, legal practice in force in Indonesia, foundations are always established with a notarial deed as a condition for the formation of a foundation. The deed of establishment contains the articles of association which contain:

a. Separated wealth;
b. Name and domicile of the Foundation;
c. Objective;
d. The form and composition of the management and the procedures for replacing members of the management;
e. Method of dissolution;
f. How to use the remaining assets of a disbanded Foundation.

Separation of foundation assets is an absolute requirement that must be owned by the Foundation, these assets are obtained from members or acts of separation carried out by someone for a certain purpose. The existence of these assets is intended as a tool to achieve goals and is the goal and source of all legal relations. Prior to the issuance of the 2001 Foundation Law, the legal basis for foundations was not very clear, because

[9] Ali Rido, *Badan Hukum dan Kedudukan Badan Hukum Perseroan, Perkumpulan, Koperasi, Yayasan, Wakaf,* Cet. IV (Bandung: PT Alumni, 1986) hlm. 112

there were no written regulations.[10]This closed nature is felt among the public because the public in general cannot know about the organizational structure of a foundation.

Outsiders don't know what the organs of the foundation are. Then, in terms of registration administration, there is no obligation for foundations to register with a government agency, so that the government cannot supervise every activity carried out by foundations. In addition, there is no obligation for foundations to publish in the State Gazette so that the public does not officially know about the existence of a foundation.

From a financial point of view, there is no obligation for foundations to announce annual reports by sticking them on the foundation's bulletin board or by announcing them in newspapers, so that the public cannot know the condition of a foundation. Before the issuance of the Law on Foundations, there was no clarity regarding foundation assets, both in the process of seeking funds for the benefit of foundations and how to use these funds. Furthermore, it is not clear how the management is responsible for the foundation's finances each year. The lack of clarity on the organizational structure and the problem of managing the foundation's finances is one of the reasons for saying that the management of the foundation has not been professional or traditional. The foundation was created with a legal act, namely by separating assets for purposes that do not expect profit (altruistische doel) and establishing an organization (along with the management), by means of which the objectives can really be realized with these tools.

In connection with the problems that often arise, for the sake of legal certainty, it is deemed necessary for foundations to be regulated by positive law.

The meaning of separating the founder's assets shows that the founder is not the owner of the foundation because from the beginning he separated part of the founder's wealth into the property of the foundation. Foundations as legal entities must have their own assets, because the foundation's assets are used for the benefit of the foundation's goals in the social, religious and humanitarian fields. This should be the concern of the founders of the foundation. The founder of the foundation is not the owner of the foundation, when establishing the foundation the founder has already separated his assets, to be used as the initial wealth of the foundation. Therefore, the person who will set up the foundation must have sufficient wealth, and this wealth must be separated. By separating these assets and then setting up a foundation, the assets have shifted to become the property of the foundation. This is a reason to argue that the foundation belongs to the community. With the lack of clarity on the organizational structure and the problems with managing the foundation's finances, this is one of the reasons to say that the management of the foundation has not been professional or traditional.[11]

Position of foundation assets beforebThe enactment of Government Regulation of the Republic of Indonesia Number 2 of 2013 concerning Amendments to Government Regulation of the Republic of Indonesia Number 63 of 2008 concerning Implementation of the Law on Foundations based on custom and jurisprudence includes the separation of assets in foundation assets. As for what is meant by the separation of wealth is to release some wealth (goods) from the ownership of the person who founded the Foundation, so that it becomes the property of the Foundation itself. This separation of assets creates legal relations between the foundation and the outside world, while the

[10] Gatot Supramono, *Hukum Yayasan di Indonesia*, (Jakarta: Rineka Cipta, 2008), hlm. 2

[11]Rudhi Prasetya, Yayasan dalam Teori dan Praktik, (Jakarta: Sinar Grafika, 2014), hlm. 6.

right to exist for a foundation depends on the existence of that legal relationship. Even though these assets come from members' income, they are separate from the members' personal assets. The personal actions of its members have no implications for the separate assets. On the other hand, the actions of a legal entity represented by its management do not bind the assets of its members. Based on custom and jurisprudence,parathe management does not register and announce the deed of establishment in the State Gazette, nor is approval from the Minister of Justice as a preventive action required.Meanwhile, according to the doctrinal view, there is already a separation of assets in foundation assets and the establishment of the foundation is carried out by means of a notary deed and the announcement of the deed of establishment of the foundation or its amendments in the Supplement to the State Gazette.

So it can be concluded thatposition of foundation assets before the enactment of Government Regulation of the Republic of Indonesia Number 2 of 2013 concerning Amendments to Government Regulation of the Republic of Indonesia Number 63 of 2008 concerning Implementation of the Law concerning Foundations based on custom, jurisprudence, and doctrine.Separation of foundation assets as an absolute condition that must be owned by the Foundation, these assets are obtained from members or acts of separation carried out by someone for a certain purpose. Prior to the issuance of the Legislation on Foundations, there was no clarity regarding foundation assets, both in the process of seeking funds for the benefit of foundations and how to use these funds.

Foundations that were established before the issuance of the Government Regulation concerning Foundations but have complied with the provisions of Article 15 A of Government Regulation Number 2 of 2013, if the foundation is going to transfer foundation assets to a third party, then the Foundation must carry out several procedures set byGovernment Regulation of the Republic of Indonesia Number 2 of 2013 concerning Amendments to Government Regulation of the Republic of Indonesia Number 63 of 2008 concerning Implementation of the Law on Foundationsto adjust the articles of association by making a deed of establishment and minutes of surrender of assets if the assets come from other foundations that have been dissolved.

(2) Position of Foundation Assets After the Entry into force of Government Regulation of the Republic of Indonesia Number 2 of 2013 concerning Amendments to Government Regulation of the Republic of Indonesia Number 63 of 2008 concerning Implementation of the Law on Foundations

a. Foundation Asset Wealth

Every business entity such as a Limited Liability Company or Cooperative definitely requires something called "capital", while for foundations, the Law on foundations does not use the term capital but rather "Wealth".This is because the two legal entities have the position of a business entity or company whose goal is to make a profit, where the Company and Cooperatives are economic actors. For foundations, their position is not as a company, and their goal is not to achieve as much profit as possible. Foundations in their activities tend to be social actors.[12]In the beginning, the foundation did have assets which were generally referred to as capital, but because of their different positions and

[12]Gatot Supramono, 2008, Op.Cit. hlm.6

roles, it is not appropriate to give the term capital, but it is more appropriate to use the term wealth even though the meaning is the same.

The initial assets of the Foundation were used to finance activities such as purchasing land, constructing buildings, purchasing vehicles, furniture or office stationery, installing electricity, water and so on. This is supported by Article 26 paragraph (1) which states that the wealth of Article 9 paragraph (1) states that as the initial wealth of a foundation, the founder of the foundation is required to separate his assets and then hand them over to the foundation. The provisions of the foundation come from a number of separate assets in the form of money and goods. The Law on Foundations clearly distinguishes between money and goods. In fact, money itself is included in the type of goods, because in the Civil Code in general there are two types of goods, namely movable goods and immovable goods.

b. Other Sources of Acquisition of Wealth

In addition to the foundation's wealth that comes from the separation of the founder's wealth, the foundation can also obtain wealth from other sources. Based on Article 26 paragraph (2) of the Law on foundations, sources of income come from: non-binding donations or assistance, endowments, bequest grants, and other income that does not conflict with the articles of association or applicable laws and regulations.[13]

1) Donations are not binding

Non-binding donations are donations or voluntary assistance received by foundations, either from the State, the community or from other parties as long as the assistance does not conflict with applicable laws and regulations. Due to the existence of provisions that may not bind foundations, any party that wishes to provide assistance to foundations may not bind themselves to the foundation, and vice versa, foundations may not bind themselves to aid providers.

2) Waqf

Waqf is a legal act of waqf to separate or surrender part of his property to be used forever or for a certain period of time according to his interests for the benefit of worship or general welfare according to sharia. The waqf assets can come from a person or legal entity, in the manner stipulated in Law No. 41 concerning Waqf, namely by making a waqf pledge in front of the Waqf Pledge Making Officer. After taking the oath, the wakif carries out the delivery of goods which can be in the form of movable or immovable goods to the Nadzir. If the foundation is the beneficiary of waqf assets, then the foundation has the position of nadzir. The foundation will receive the waqf assets as foundation assets, to be managed and used in achieving the aims and objectives of the Foundation.

3) Grant

A grant according to Article 1666 Paragraph (1) of the Civil Code is an agreement whereby the grantor, during his lifetime, is free of charge during his lifetime and cannot be withdrawn. The grant in question is not an obligatoire or reciprocal agreement such as a sale and purchase agreement, leasing, exchange but rather a unilateral agreement. A grant is an agreement for the delivery of goods made by the grantor to the recipient of the grant, and only the grantor has a promise. The condition that must be met for the grant to be valid is that the agreement is made with a notarial deed, because the notarial deed has perfect evidentiary power, its contents are believed to be true.

[13] Ibid., hlm. 68.

4) Will Grant

The provisions of Article 957 of the Civil Code stipulate that a will grant is a special testament whereby the person who bequeaths to one or more persons gives some of his goods of a certain type, such as all movable or immovable objects or gives usufructuary rights over all or part of his inheritance. . Grants of wills can be shown not only to individuals (Article 957 of the Civil Code), but also to an institution (Article 878 of the Civil Code).

5) Other Earnings

In the Elucidation of Article 26 paragraph (2) letter e of the Law on Foundations, it is stated that other gains are intended, for example dividends, interest on bank savings, building rent, or income from the proceeds of foundation operations.

The foundation's assets in the form of money or goods and other assets obtained by the foundation are prohibited from being transferred or distributed either directly or indirectly to organs, employees or other parties who have an interest in the foundation. The prohibition of direct transfer of foundation assets to foundation organs is due to the fact that the initial purpose of establishing a foundation is social in nature. As long as a foundation obtains business results from the foundation's activities carried out and the results of these efforts are intended for the development of the foundation itself and not for the personal interests of the founders, this is still permissible.

Foundation assets originating from business activities or from donations from third parties, belong to the Foundation and in accordance with Article 3 Paragraph (2) and Article 5 Paragraph (1) may not be distributed or transferred to Trustees, Managers or Supervisors of the Foundation, the aim is to prevent a Foundations should not be misused to seek funds or profits for the personnel of the foundation's organs, in addition to protecting the foundation, so that the foundation can still achieve the goals it aspires to. Such a method is an open way that managing wealth does not depend on the will of the Trustees, Management or Trustees of the Foundation. Each organ of the foundation can see and openly and can control the management of the foundation's assets.

4. Legal Consequences of Transferring Foundation Assets Before Making Adjustments to the Articles of Association Based on Government Regulation of the Republic of Indonesia Number 2 of 2013 concerning Amendments to Republic of Indonesia Regulation Number 63 of 2008 concerning Implementation of Laws concerning Foundations

The transfer of foundation assets must comply with the applicable provisions in Law No. 16 of 2001 as amended by Law No. 28 of 2004 concerning Foundations. Article 37 paragraph (1) letter b states that the Management is not authorized to transfer Foundation assets except with the approval of the Trustees, and encumbers Foundation assets for the benefit of other parties. Furthermore, it is explained regarding the transfer of foundation assets in Article 7 paragraph (2) of Law No.16/2001 which reads that foundations can make investments in various forms of business that are prospective in nature provided that all such participation is a maximum of 25% (twenty five percent) of the total the value of the Foundation's assets.

The process of transferring assets of the Foundation is divided into 2 (two) types, namely the process of transferring assets in and the process of transferring assets out.

The process of transferring assets inside is the process of transferring assets that are prohibited by the government, where the transfer of Foundation assets may not be transferred to the Foundation's organs, while the process of transferring Foundation assets to the outside is the process of transferring Foundation assets which are permitted by the government, where the transfer is to a third party. Transfer of foundation assets to outsiders can be carried out based on legal actions in the form of buying and selling, exchanges, grants, participation in company capital, grants by will, auctions, endowments and other acts of transfer of rights. The party that transfers the assets of the foundation is a person who is legally competent and has the authority to transfer the assets of the foundation. In addition, for foundations that have not adjusted the Articles of Association in accordance with Law Number 28 of 2004 by the time the adjustment deadline has expired, if they are going to transfer their wealth to another foundation, the foundation must first be dissolved and liquidate its assets, then the remaining assets resulting from the liquidation are handed over to other foundations which has the same aims and objectives as the foundation that transfers its wealth. These things are the conditions and procedures for the transfer of the foundation's assets to be legal. then the remaining wealth from the liquidation proceeds is handed over to another foundation that has the same aims and objectives as the foundation that transferred its wealth. These things are the conditions and procedures for the transfer of the foundation's assets to be legal. then the remaining wealth from the liquidation proceeds is handed over to another foundation that has the same aims and objectives as the foundation that transferred its wealth. These things are the conditions and procedures for the transfer of the foundation's assets to be legal.

In addition to these regulations, other terms and conditions relating to this matter must pay further attention to the provisions contained in the Articles of Association, for example who is authorized to represent the management and what form of approval is given by the Trustees. The process of transferring the rights to foundation assets must pay attention to the provisions stipulated in Law Number 16 of 2001 as amended by Law Number 28 of 2004 (Foundation Law). In principle, based on the provisions stipulated in the Law on Foundations, the transfer of rights to Foundation assets is carried out by the Foundation Management with the approval of the Foundation Trustees. Other terms and conditions relating to this matter must pay further attention to the provisions contained in the Articles of Association of the Foundation,In article 5 of Law Number 16 of 2001 concerning Foundations as amended into Law Number 28 of 2004 that "Foundation assets in the form of money, goods or other assets obtained by Foundations based on the Law are prohibited from being transferred or distributed directly or indirectly. directly to the Trustees, Managers, Supervisors, employees, or other parties who have an interest in the Foundation". These provisions were later amended based on Law no. 28 of 2004, so that the provisions of article 5 hereinafter read:

(1) The assets of the foundation, whether in the form of money, goods or other assets that are obtained by the Foundation based on this Law, are prohibited from being transferred or distributed directly or indirectly, whether in the form of salaries, wages or honoraria, or other forms that can be valued in money to the Trustees. , Managers and Supervisors.

(2) Exceptions to the provisions referred to in paragraph (1), it can be stipulated in the Foundation's Articles of Association that the Management receives a salary, wages or honorarium, in the event that the Foundation's management:

a. not the founder of the Foundation and not affiliated with the Founder, Trustees, and Supervisors; And
b. carry out the management of the Foundation directly and fully.

(1)Determination regarding salary, wages, or honorarium as referred to in paragraph (2), is determined by the Trustee in accordance with the ability of the Foundation's assets. By looking at the provisions of Article 5 of the Foundation Law, foundation assets in any form are prohibited from being transferred to the Trustees, Managers and Trustees of the Foundation. By looking at the wording of Article 5 of the Foundation Law, there is a change in it, where the prohibition on transferring Foundation assets which was originally included as prohibited was transferring Foundation assets to other parties who have an interest in the Foundation, then this prohibition has been removed. In the absence of provisions regarding the prohibition of transferring Foundation assets to other parties (especially other parties who have an interest in the Foundation), it means that Foundation assets may be transferred to other parties.

The transfer of foundation assets to other parties, apart from having to pay attention to the formality requirements stipulated in the Foundation Law and Foundation Articles of Association, for example, having to obtain approval from the Board of Trustees, must also pay attention to the principles and provisions contained in the Foundation Law. as well as the Articles of Association.

Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 2 of 2016 concerning procedures for filing applications for legalization of legal entities and approval of changes to the articles of association as well as submitting notifications of changes to the articles of association and changes to foundation data, contains 3 (three) regulated sections, namely:

1. Procedure for filing an application for legalization of a foundation legal entity;
2. Procedure for approval of changes to the foundation's articles of association;
3. Procedure for submitting notification of changes to Foundation data.

There are several types of foundations in terms of when the foundation was founded:

1. New foundation establishment (first time);
2. Foundations that were established based on Law number 16 of 2001 concerning Foundations, but the legalization as a legal entity has not been / has not been taken care of, now the foundation will be handled / ratified as a legal entity;
3. Foundations that were established before the enactment of Law Number 16 of 2001 concerning Foundations, and have complied with the provisions of article 15 A of Government Regulation number 2 of 2013, now these foundations will be processed/completed for validation as legal entities;
4. Foundations that were established before the enactment of Law number 16 of 2001 concerning Foundations, and have complied with the provisions of article 37A of Government Regulation number 2 of 2013, now these foundations will be processed/completed for validation as legal entities;

5. Foundations that were established before or after the enactment of Law number 16 of 2001 concerning Foundations and will not be adjusted to their articles of association in accordance with laws and regulations on foundations but wish to be dissolved;
6. Foundations established not by legal subjects (for example by local government, military/TNI/police.

The research discussed in this thesis is a foundation that was established before it came into forceGovernment Regulation of the Republic of Indonesia Number 2 of 2013 concerning Amendments to Government Regulation of the Republic of Indonesia Number 63 of 2008 concerning Implementation of the Law on Foundations, and has complied with the provisions of article 15 A of Government Regulation number 2 of 2013, now the foundation will be processed/completed for validation as a legal entity.

1. Then a deed of establishment (new) must be made before the Notary, namely:

a. Those who founded the first foundation;
b. If the founder is no longer there, it can be done by an organ that is authorized in the articles of association of the foundation concerned;
c. If point (B) also does not exist, then the party with an interest in the foundation is to submit a stipulation to the District Court, so that they are allowed to follow up on it for the sake of and for the benefit of the foundation.

2. It is mandatory to order names again, so that the name of the foundation is entered into the foundation database at the Ministry of Law and Human Rights of the Republic of Indonesia.

3. If the name has been used by another foundation, then the refusal of the name (from the monitor screen) is printed as proof that the name of the foundation has been used by the foundation which will be given to the appearers, and the appearer must sign/stamp the printout, and ask to make a statement to create/apply for a new foundation name.

4. That the letter referred to in number (3) must be described in the premiss of the deed concerned.

5. Requirements that must be completed in accordance with Article 13 paragraph (1)-(7) of the ministerial regulation mentioned above, namely:

a. Filling in the establishment form as referred to in Article 11 Paragraph (3) is also accompanied by supporting documents submitted electronically.
b. The supporting documents as referred to in paragraph (1) are in the form of an electronic statement letter from the applicant regarding documents for foundation establishment which are complete.
c. In addition to submitting the documents referred to in paragraph (2), the applicant must also upload the deed of establishment of the foundation.
d. Documents for the establishment of the Foundation as referred to in paragraph (2) are kept by the Notary, which include:

1) Copy of deed of establishment of the Foundation;

2) Statement of domicile accompanied by the full address of the Foundation signed by the Foundation Management and known by the local Lurah/Village Head or by another name;

3) Proof of deposit or bank statement on behalf of the Foundation or a written statement from the founder containing information on the value of assets separated as initial assets to establish the foundation;

4) The founder's statement regarding the validity of the initial assets;

5) Evidence of depositing the cost of approval for the use of the name, validation and announcement of the foundation;

6) A statement letter is not currently in a management dispute or in a court case; And

7) A letter of intent from the founder to obtain a tax identification number card and a report on receiving annual tax returns.

6. In the case of an application for validation of the deed of establishment of a Foundation whose initial wealth came from the Foundation which is no longer able to use the word "Foundation" in front of its name, the application for validation in addition to attaching the documents referred to in Paragraph (1) must also attach:

a. A copy of the deed of establishment of the Foundation which in the Premise of the deed states the origins of the establishment of the Foundation including the wealth of the Foundation concerned;
b. Report on the activities of the Foundation for at least the last 5 (five) consecutive years signed by the Management of the Foundation and known by the relevant agencies;
c. A statement from the Foundation Management that the Foundation has never been dissolved voluntarily or based on a court decision;
d. Photocopy of Foundation Taxpayer Tax Number which has been legalized by a Notary;
e. Statement of domicile accompanied by the complete address of the Foundation signed by the Foundation Management and known by the local Lurah or Village Head;
f. A written statement from the Management of the Foundation containing information on the value of assets at the time of adjustment of the Articles of Association;
g. Management statement regarding the legitimacy of the Foundation's assets; And
h. Evidence of depositing fees for the approval and announcement of the foundation.

nothing else that is intended is to transfer or sell the assets of the foundation. Transferring wealth will cause the foundation to reduce or run out of wealth, which will result in the goals and objectives of the foundation not being achieved. The restrictions on the transfer of foundation assets are not absolute, as long as the transfer has the approval of the Trustees. For example, if the foundation's office building is always flooded during the rainy season, it needs an adequate, safe and comfortable place. So, after getting a new place, the old building needs to be sold. This sale requires the approval of the Trustee. Actually the approval of the Trustees is needed because it is an internal control only, so that the management does not commit arbitrary acts. so that it will result in the aims and objectives of the foundation not being achieved. The restrictions on the transfer of foundation assets are not absolute, as long as the transfer has the approval of the Trustees. For example, if the foundation's office building is always flooded during the rainy season, it needs an adequate, safe and comfortable place. So, after getting a new place, the old building needs to be sold. This sale requires the approval of the Trustee.

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For foundations that were established before the issuance of the Foundation Law but have fulfilled the Separation of foundation assets is an absolute requirement that must be owned by the Foundation, these assets are obtained from members or acts of separation carried out by someone for a certain purpose. The existence of these assets is intended as a tool to achieve goals and is the goal and source of all legal relations. Prior to the issuance of the 2001 Foundation Law, the legal basis for foundations was not very clear, because there were no written regulations.[15]This closed nature is felt among the public because the public in general cannot know about the organizational structure of a foundation. Outsiders don't know what the organs of the foundation are. Then, in terms of registration administration, there is no obligation for foundations to register with a government agency, so that the government cannot supervise every activity carried out by foundations. In addition, there is no obligation for foundations to announce in the State Gazette so that the public does not officially know about the existence of a foundation, fulfilling the provisions of Article 15 A of Government Regulation Number 2 of 2013, if the foundation will transfer foundation assets to a third party,

In the event that the establishment of a foundation does not meet the establishment requirements as stipulated in the Foundation Law, authorization will not be granted. For example, it is included in a foundation that existed before the entry into force of the Law on Foundations, which until the time limit given by the Law on Foundations to adjust its articles of association has been exceeded and does not adjust even if the foundation continues to carry out its activities with all the legal consequences.

Related to the description above, the establishment of a foundation that does not obtain approval in accordance with the law on foundations, the status of a legal entity is not recognized, so it is not permissible to use the word "Foundation" in all its activities. As a result of the law, the management of the foundation cannot take any legal action on behalf of the foundation, including transferring the assets of the foundation, because legally the foundation is considered dissolved due to the law, and the transfer of assets is null and void (neitig van rechtswege) and becomes personal responsibility " administrator". As stated above in Article 71 paragraph (4) of the Law on Foundations Number 28 of 2004 concerning amendments to Law Number 16 of 2001 concerning

[14]Gatot Supramono, 2008, Op.Cit, p. 97

[15]Gatot Supramono, 2008, Op.Cit, p. 2

Foundations, it is stated that: "Foundations that do not adjust their Articles of Association within the period as stipulated in paragraph (1) ,

Likewise for foundations that are still recognized as legal entities and have made adjustments but have not reported to the Minister, these foundations will receive the consequences as stipulated in Article 39 of Government Regulation Number 63 of 2008, namely not being able to use the word "Foundation" in front of their name and must liquidate in accordance with the provisions referred to in article 68 of the Law on Foundations Number 28 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations, it is stated that:

(1) The remaining assets resulting from the liquidation will be handed over to other foundations that have the same activities as the disbanded foundation.

(2) The remaining assets from the liquidation proceeds as referred to in paragraph (1) may be handed over to another legal entity that has the same activities as the disbanded Foundation, if this is regulated in the Law regarding said body and law.

(3) In the event that the remaining assets resulting from the liquidation are not transferred to other foundations or to other legal entities as referred to in paragraph (1) and paragraph (2), these assets are handed over to the state and their use is carried out in accordance with the activities of the dissolved foundation.

5. Conclusion

The position of foundation assets before the enactment of Government Regulation Number 2 of 2013 concerning Amendments to Government Regulation Number 63 of 2008 concerning the Implementation of the Law on Foundations is based on custom, jurisprudence and doctrine, meaning that the separation of foundation assets (assets) is carried out based on custom, jurisprudence and doctrine because there is no law obliging foundation administrators to register and publish the foundation deed in the State Gazette, including regarding the separation of foundation assets. While the position of foundation assets after the enactment of Government Regulation of the Republic of Indonesia Number 2 of 2013 concerning Amendments to Government Regulation of the Republic of Indonesia Number 63 of 2008 concerning Implementation of the Law concerning Foundations,

Meanwhile, the legal consequences of transferring Foundation assets prior to making adjustments to the articles of association based on Article 71 paragraph (4) of Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations states that "Foundations that do not adjust their Articles of Association within the time as stipulated in paragraph (1), and in paragraph (2), cannot use the word "Foundation" in front of its name and can be dissolved based on a Court decision at the request of the Attorney General's Office or interested parties." As a result of the law, the management of the foundation cannot take any legal action on behalf of the foundation, including transferring the assets of the foundation, because legally the foundation is considered dissolved because of the law,

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Conflict of Interest Statement: The author(s) declares that the research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest.