

Legal Consequences and the Role of Notaries on the Deed of Establishment of the Foundation Pre and After the Enactment of the Foundation Law (Case Study of Deed of Establishment of Christian College Service Provider Foundation No.17 of 1991 and Deed of Establishment of Christian College Service Provider Foundation No. 2 of 2011)

Timotius Eric Haryanto

Notaris Yudha Setyagraha Tediato, S.H., M.M., M.Kn.

Abstract

The case study in this legal research is Yayasan Penyelenggara Pelayanan Perguruan Kristen (YPPPK) which exist two Deed of Establishment, namely in 1991 and in 2011. The purpose of this legal research is to determine the legal consequences of the deed of establishment and the role of public notary before and after the enactment of the foundation law on YPPPK's Deed of Establishment in 1991 and 2011. The research method is normative with a statutory, case, and conceptual approach. The data used are secondary data obtained from research literature including primary, secondary and tertiary legal sources. The results of the research is that YPPPK should be liquidated or made a Deed of Meeting Resolution contain statement regarding the resemblance of YPPPK 2011 and 1991, because when the Foundation adjusted their Articles of Association towards the Law on Foundation, the Notary did not conducted their role properly which is making a deed in accordance to Government Regulation No. 2 of 2013 after the establishment of Law on Foundation.

Keywords: Foundation; Deed of Establishment.

Abstrak

Studi kasus dalam penelitian hukum ini adalah Yayasan Penyelenggara Pelayanan Perguruan Kristen (YPPPK) yang terdapat dua Akta Pendirian yaitu pada tahun 1991 dan tahun 2011. Tujuan dari penelitian hukum ini adalah untuk mengetahui akibat hukum dari akta pendirian serta peranan notaris sebelum dan sesudah berlakunya undang-undang yayasan pada Akta Pendirian YPPPK tahun 1991 dan 2011. Metode penelitian yang digunakan dalam penelitian hukum ini adalah normatif dengan pendekatan pendekatan perundang undangan dan kasus. Data yang digunakan dalam penelitian hukum ini adalah data sekunder yang diperoleh dari penelitian kepustakaan yang meliputi sumber hukum primer, sekunder dan tersier. Hasil penelitian dalam penulisan hukum ini adalah YPPPK seharusnya dilikuidasi atau membuat akta keputusan rapat yang berisi pernyataan bahwa YPPPK 2011 dan 1991 adalah yayasan yang sama, karena pada saat penyesuaian Anggaran Dasar Yayasan terhadap Undang – Undang Yayasan, notaris tidak melaksanakan perannya yaitu membuat akta sesuai dengan ketentuan Pasal 37 A Peraturan Pemerintah No. 2 Tahun 2013 pasca adanya Undang – Undang Yayasan.

Kata kunci: Yayasan; Akta Pendirian.

Copyright©2023 Authentica. All rights reserved.

Introduction

Foundation is a legal entity consisting of assets that are separated and intended to achieve certain goals in the social, religious, and humanitarian fields, which no members. This can be done without approval from the government or the Ministry of Law and Human Rights, especially when people interpret that foundations are not tax subjects. After the deed of establishment is made, the notary is obliged to provide a written application regarding the legalization of the

foundation's legal entity to the Ministry of Law and Human Rights. The deed of establishment contains the articles of association of the foundation and other information deemed necessary (Ismawan, 2007).

The deed of establishment of the foundation that has been legalized or amendments to the articles of association that have been approved or notified must be announced in the Supplement to the State Gazette of the Republic of Indonesia, not only regarding the status of legal entities that require it, but also amendments to the Articles of Association that have been approved by the Ministry of Law and Human Rights. Man. In the concept of accountability, there is a difference between a foundation that is a legal entity and a foundation that is not a legal entity (Musahiddinsyah, 2020).

In addition to the deed of establishment of the foundation, the foundation can also be dissolved or dissolved for violating the provisions of the foundation regulations contained in Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations in Article 62 and Article 63. The author finds cases on the deed of establishment of the Christian Education Service Provider Foundation (YPPPK) domiciled in Purwokerto where there are two deeds of the establishment of the foundation. YPPPK was first formed in 1991 by Notary TT through the deed of minutes of meeting No. 16. In 2001, the Foundation Law was issued which stipulates that the foundation deed must be readjusted to the Foundation Law, including regulating the obligation of foundations to register foundations with the Ministry of Law and Human Rights.

In that case, YPPPK was negligent in registering the foundation with the Ministry of Law and Human Rights and had to be disbanded. In 2011, the new YPPPK deed of establishment was reissued without the dissolution of the first YPPPK deed of establishment. Until then YPPPK continues to carry out its activities without knowing the existence of the two foundation deeds.

Notaries as public officials are required to fulfill their responsibilities for the deed they have made. The notary is also obliged to be responsible if the deed he made can cause a dispute both at the time the deed was made and at a later date, as was the case with the YPPPK establishment deed. Errors contained in the deed can occur because of a notary error or the error of the parties who appear before the notary. Misinformation provided by the parties greatly affects the formation of the deed after the deed is made and in the future, such as providing incorrect documents or providing incorrect information beyond the knowledge of the notary. A notary is also obliged by law to always evaluate if there is a new law or if there is a change to a law, as contained in the law on the foundation.

The author wants to research the consequences of the existence of two foundation deeds with the same name and how the role of a notary in this case. This research is expected to provide insight to the reader regarding the establishment of a foundation and the role of a notary in making a foundation deed.

Research Problems

1. What are the legal consequences of the deed of establishment of the foundation before and after the enactment of the foundation law on the YPPPK Deed of Establishment in 1991 and 2011?
2. What is the role of the notary before and after the enactment of the Foundation Law on the Deed of Establishment of the 2011 Christian Education Service Provider Foundation (YPPPK)?

Research Method

The legal research method used by the author is normative research methods, normative legal research methods are legal research conducted by examining library materials or secondary data (Mamudji, 2003). The data analysis used in this legal research is a qualitative technique. The specification of the legal research used by the author is prescriptive analytical research, which is intended to provide an argument for the results of the research that has been done in carrying out this legal writing, the authors use secondary legal material sources, secondary legal materials sources are legal materials that strengthen and support primary legal materials and provide explanations of primary legal materials so that they can be analyzed and understood more deeply (Soekanto, 1984) with data obtained through library materials in the form of regulations, official documents, and literature related to the issues raised.

Discussion

Legal Consequences of the Deed of Establishment of the Foundation Pre and Post Enactment of the Law on Foundation against YPPPK's Deed of Establishment in 1991 and 2011.

Foundations are only considered legal entities. Before the issuance of the Foundation Law, foundations were established only based on existing habits in society, expert opinion, and the jurisprudence of the Supreme Court. As a legal entity, foundations must meet the requirements of legal subjects, legal subjects should fulfill several things, among others (Syawie, 2014):

- a. Association of people;
- b. Can perform legal actions and legal relationships;
- c. Own wealth;
- d. Have an administrator;
- e. Have a purpose and purpose;
- f. Have legal standing;

Prior to the issuance of the law regarding foundations, the establishment of foundations was equated with the establishment of other legal entities such as Limited Liability Companies (PT), State Companies (PN), government agencies, and so on. In the effort to establish a foundation, there is a tendency that exists in a society that foundations are only used as a tool to obtain legal entity status, there are times when foundations are also used to enrich themselves both for the founders, administrators, and supervisors of the foundation, which is not in line with this. With the aims and objectives stated in the articles of association of the foundation, on the other hand, there is also an allegation that the foundation is used to accommodate wealth originating from the founder or other parties in an unlawful manner (Adi, 2020). The purpose of establishing the foundation itself is social, religious, and humanitarian activities, in which the assets of the foundation are managed by the management in carrying out their duties based on the trust given by the builder/founder (fiduciary duty doctrine), for the benefit of the foundation as a whole and not for the personal interests of the foundation organs, must be in accordance with the aims and objectives foundation (Hudayanti, 2017).

The Foundation Law was issued in 2001, that is, Law no. 16 of 2001 concerning Foundations, Article 1 paragraph (1) of Law Number 16 of 2001 expressly states that foundations are legal entities intended to achieve certain goals in the field of social, religious, and humanitarian. The three goals of this foundation can be categorized

as the foundation's field of motion, such as in the fields of social welfare, education, culture, health, and other fields that do not conflict with the law (Supriono, 2015).

Subsequently, there were changes in 2004 through Law no. 28 of 2004, several changes were inserted in the amendment, one of which was regarding the procedure for establishing a foundation which consisted of several stages, that are, establishment, approval from the Ministry of Law, and Human Rights, and announcement in the Supplement to the State Gazette of the Republic of Indonesia. The Foundation will become legally established as a legal entity once the process has been completed. In addition, the government also issued Government Regulation no. 63 of 2008 jo. Government Regulation No. 2 of 2013 concerning the Implementation of the Foundation Law, one of which regulates the adjustment of foundations established before the Foundation Law and after the Foundation Law. The Government Regulation also regulates the legal consequences that can be caused if the foundation does not make adjustments to the Law of Foundation.

A. Legal Consequences of the YPPPK Deed of Establishment in 1991

The author summarizes several criteria whereby a foundation that was established before the existence of the law on foundations, must fulfill several elements that must be contained in the deed of establishment. The following is a description of the criteria summarized by the author:

1. Have an association/association of people

When the 1991 YPPPK deed was drawn up, three people were present to appear before the RD Notary, they are Mr. WIDJOYO HADIPRANOTO, Mr. GAYUS GUNAWAN, and Mr. Doktorandus. SUDYATMIKO, the three presenters are representatives of prospective members of the YPPPK in 1991 whose deed of the establishment will be made by the notary of the RD. After the YPPPK was formed in 1991, in article 16 there is a complete structure of the entire supervisory, management, and supervisory body. The appointment was based on information from the presenters, which was well received by each concerned. Based on this, it can be said that one of the requirements for a foundation as a legal entity, that are having an association/association of people has been fulfilled.

2. Have the Foundation's Purpose and Goals

Based on article 5 of the YPPPK Deed of Establishment in 1991, this Foundation aims to form a complete Indonesian human being who is faithful, intelligent, skilled, virtuous, and full of dedication to God, country, and nation, within the Indonesian community and the world community. Based on this, it can be said that one of the requirements for a foundation as a legal entity is to have a purpose and a goal that has been fulfilled.

The participation of the foundation in the field of education here is the participation of the private sector to achieve the national goals set out in the 1945 Constitution to participate in the intellectual life of the nation. The participation of the private sector is carried out independently by each foundation as a form of government responsibility to provide opportunities for the private sector to participate in efforts to educate the nation's life through education so that it is easier for the community to receive a proper education (Purwadi, 2012).

3. Owning your property or wealth

Based on article 7 of the YPPPK Deed of Establishment in 1991, it is explained that the property and assets of the foundation consist of:

- a. Initial capital (initial assets) of Rp. 250,000 (two hundred and fifty thousand rupiahs)
- b. Wealth in the form of a grant from the Christian College Organizer Association (YPPPK) Purwokerto
- c. Donations from parents
- d. Donations and assistance from the community, congregations, and Christian institutions
- e. Government Assistance
- f. Inheritance and grant
- g. Assistance - other assistance that is not binding and does not conflict with the articles of association and by-laws of this foundation.

Based on this, it can be said that one of the requirements for a foundation as a legal entity, that is Owning Assets or own property, has been fulfilled. Foundations need funds to carry out activities, but if the funds are solely sourced from the foundation's initial wealth, the purpose of establishing the foundation will be difficult to achieve, so if the foundation receives assistance or donations then it also belongs to the foundation (Simamora, 2012).

4. Have rights and obligations

Based on articles 10-13 of the YPPPK Establishment Deed of 1991, it is explained that the rights and obligations of the foundation are carried out by the management body with the assistance of the supervisory body and the supervisory body. Based on this, it can be said that one of the requirements for a foundation as a legal entity is to have rights and obligations.

5. Have the right to sue and be sued in court

The right to sue the YPPPK Deed of Establishment in 1991 is represented to the board of the foundation, as stated in Article 10 paragraph 1, which reads as follows:

The governing body represents this foundation, both inside and outside the court, and therefore has the right to carry out all management actions and ownership actions that can bind this foundation to other parties and conversely bind other parties to this foundation.

The right to be sued is stated in article 14 of the YPPPK Deed of Establishment in 1991, whereas in article 14 paragraph 3 it is stated that this foundation can be dissolved because it is ordered by the authorities, what is meant by the authorities is the court. The court issued a fixed decision to dissolve a foundation, most of the foundations that were decided to dissolve by the court were usually because the foundation had debts and could not pay them off, and was ultimately declared bankrupt. Based on the explanation above, the right to be sued is channeled through the court by outsiders or parties who feel aggrieved by the actions of the foundation with the final result of a court decision. Based on this, it can be said that one of the requirements for a foundation as a legal entity, that is having the right to sue and be sued, has been fulfilled.

6. Has a position and management

The place, position, and management of the foundation, is contained in Article 1 and Article 8 of the YPPPK Deed of Establishment in 1991. On this basis, it can be said that one of the requirements for a foundation is a legal entity. The law is that it has a domicile and the management has fulfilled the YPPPK

Establishment Deed of 1991 which is recorded as being in accordance with the elements of the rules for establishing a legal entity and can be said to be legal subjects so that there are no errors and legal consequences that can be imposed on the YPPPK Establishment Deed of 1991.

B. Legal Consequences for YPPPK's Deed of Establishment in 2011

The legal consequences for foundations that do not make adjustments to the articles of association are regulated in Article 71 paragraph (4) of Law no. 28 of 2004 concerning Foundations. Based on the provisions in the article, what is meant by "Foundation" are:

1. It has been registered at the District Court and announced in the Supplement to the State Gazette of the Republic of Indonesia; or
2. Has been registered at the District Court and has a permit to carry out activities from the relevant agency;

This article explains that a foundation that does not make adjustments to its articles of association within the period stipulated by the law, which is no later than three years from the enactment of the law, cannot use the word "foundation" in front of its name, before making adjustments to the articles of association of the foundation requesting adjustment of the articles of association. Foundations must be submitted to the Minister of Law and Human Rights within a period of no later than one year from the enactment of the Foundation Law. The foundation can be dissolved based on a court decision on the application submitted by the prosecutor or the party concerned if it does not make adjustments to the Foundation Law. The deadline for adjusting the articles of association of the foundation is 2011 so if the foundation does not and/or has not adjusted its articles of association, then:

1. The legal entity status of the foundation will fail which will result in liability that may arise and joint responsibility by all founding members and the board of directors of the foundation.
2. A foundation that still uses the word "Foundation" in front of its name can be categorized as an unlawful act. The legal consequences and any losses that may arise will be the joint responsibility of the founding members and administrators of the foundation.
3. The foundation can be dissolved if there is a request for dissolution based on a court decision on the application submitted by the prosecutor or parties who have an interest. If there is a court decision regarding the dissolution of the foundation, all founding members and administrators of the foundation will be jointly and severally responsible.

After making adjustments to the Foundation Law, the foundation is also required to report to the Minister of Law and Human Rights within one year from the date of adjustment to the foundation's articles of association. Within one year, if the foundation does not report to the Minister of Law and Human Rights that the foundation has adjusted its articles of association, then based on article 39 of Government Regulation no. 63 of 2008 concerning the Implementation of the Foundation Law, the foundation can no longer use the word "Foundation" in front of its name and is obliged to liquidate its assets.

The adjustment of the foundation's articles of association with the Foundation Law is not fully carried out by all foundations that have been established before the issuance of the Foundation Law. Considering the consequences of the Foundation Law, currently, there are still foundations that

have not made adjustments, even after the issuance of PP No. 63 of 2008. For foundations that have not made adjustments according to the legislation, they are not authorized and have the right to use the word Foundation in front of the name of their organization, and all provisions of the legal consequences of liability are transferred personally to the founding and management bodies who are responsible for the foundation (Zuhriati & Rina, 2020).

One example of a foundation that does not make adjustments in accordance with the Foundation Law is YPPPK. YPPPK is a foundation that was established before the issuance of the Foundation Law so YPPPK is obliged to make adjustments to the articles of association. YPPPK made adjustments to its articles of association in 2002 but it was not registered with the Minister of Law and Human Rights. Based on Government Regulation no. 63 of 2008 concerning the Implementation of the Foundation Law, adjustments to the articles of association that are not registered with the Minister of Law and Human Rights may result in the obligation to liquidate the foundation's assets, and the word "foundation" can no longer be used in front of the foundation's name. In practice, YPPPK continues to carry out its activities without liquidating its wealth and continues to use the word "Foundation" in front of the foundation's name. In 2011, there was also a deed of establishment of a foundation with the same name as YPPPK where the articles of association were in accordance with the Foundation Law without any liquidation of YPPPK which was established in 1991. The legal consequences that could occur in the YPPPK case based on the facts, there are two:

1. YPPPK's legal entity status may be invalidated,
2. Can't use the word "foundation" in front of his name, can be dissolved if there is an application followed by a court decision, and is obliged to carry out the liquidation.

Several alternatives can be taken by YPPPK to avoid the consequences mentioned above, as follows:

1. Adjusting the Articles of Association in accordance with the provisions of the Foundation Law.

The adjustment of the articles of association in accordance with the provisions contained in the Foundation Law has been carried out by YPPPK. The adjustment has been stated in the deed made in 2002, YPPPK made adjustments to the Articles of Association of the Foundation through the Deed of Minutes of Meeting No.16 made by a notary TT, where the deed contains the requirements contained in the provisions of Article 37 paragraph 2 of the 2004 foundation law which includes the following:

- a. Financial reports made by the management or founder;
 - b. Annual report audit in accordance with statutory provisions.
 - c. Submission of names of Trustees, Management, and Supervisors to be submitted for adjustment in the articles of association.
2. Forming a New Foundation through the process of merging with the Old Foundation to improve the management of the foundation in accordance with the provisions of Article 14 of the Foundation Law no. 16 of 2001:
 - a. Name and place of domicile;
 - b. The aims and objectives and activities to achieve these aims and objectives;
 - c. Term of establishment;
 - d. The amount of initial wealth separated from the founder's wealth in the form of money or objects;

- e. Ways of acquiring and using wealth;
- f. Procedures for the appointment, dismissal, and replacement of members of the board of directors, management, and supervisors;
- g. The rights and obligations of the members of the board of directors, management, and supervisors;
- h. Procedures for holding meetings of foundation organs;
- i. Provisions regarding amendments to the articles of association;
- j. Merger and dissolution of foundations; and
- k. The use of the remaining assets of the liquidation or distribution of the assets of the foundation after the dissolution.

Furthermore, the old foundation must be dissolved and the assets that have been liquidated transferred to the newly formed new foundation.

3. Merging the Foundation with Other Foundations

The requirements refer to Article 27 PP No. 63 of 2008 in conjunction with PP No. 2 of 2013 concerning the Implementation of the Law on Foundations. The Merger of Foundations is carried out by means of the preparation of a proposed Merger plan by the Management of each Foundation. The proposed Merger plan as referred to in paragraph (1) shall contain at least:

- a. Information regarding the Name of the Foundation and the domicile of the Foundation that will carry out the Merger;
- b. An explanation from each Foundation regarding the reasons for the Merger;
- c. Summary of financial statements of the Foundation that will carry out the Merger;
- d. Information regarding the main activities of the Foundation and changes during the current financial year;
- e. Details of problems that arise during the current financial year;
- f. How to settle the status of daily implementers, activity implementers, and Foundation employees who will merge;
- g. The estimated time period for the implementation of the Merger;
- h. Information regarding the names of the members of the Trustees, Management, and Supervisors; and
- i. Draft amendment to the Articles of Association of the Foundation accepting the Merger, if any.

4. Dissolving the Foundation

If the Foundation wishes to disband, it must meet the following requirements for dissolution:

- a. Trustees appoint liquidators to settle the assets of the Foundation;
- b. If a liquidator is not appointed, the Management acts as a liquidator;
- c. The remaining assets resulting from the liquidation are handed over to another Foundation which has the same aims and objectives as the disbanded Foundation;
- d. If the remaining liquidation proceeds are not handed over to another Foundation which has the same purpose and objective, the remaining assets; and
- e. The liquidator or curator within a period of no later than 30 (thirty) days from the date the liquidation process ends, must announce the results of the liquidation in a daily newspaper in the Indonesian language.

The Role of Notaries After the Enactment of the Foundation Law on the YPPPK Establishment Deeds in 1991 and 2011

A. YPPPK Tahun 1991 dan Tahun 2011

In 1991, YPPPK was established based on Deed No. 17 dated December 6, 1991, with the name YPPPK domiciled in Purwokerto. In 2002, YPPPK made adjustments to the Foundation's Articles of Association through the Deed of Minutes of Meeting No.16 made by a notary TT. This amendment to the Articles of Association was made to adjust the provisions of Article 71 paragraph 1 letter (b) of Law no. 16 of 2001 concerning Foundations where it is stated that there is a time limit for adjusting the Articles of Association of the Foundation, which is for 5 years to adjust the Articles of Association in accordance with the provisions of Law No. 16 of 2001.

In addition to making adjustments to the Articles of Association, YPPPK also registered the adjustments to the foundation's deed of establishment with the Purwokerto District Court. After making adjustments to the Articles of Association and registering adjustments to the Deed of Establishment of Foundations, Law 16 of 2001 concerning Foundations also requires foundations to notify the Minister. Although there are already laws and regulations regarding foundations, YPPPK and the notary TT have failed to notify the Minister of Law and Human Rights within 1 (one) year.

The Christian Education Service Organizing Foundation (YPPPK) 1991 was still carrying out its activities as usual without disbanding or liquidating. The management & builder of the foundation is still active in carrying out the activities of the foundation and carrying out their duties and responsibilities in accordance with the duties and authorities outlined in the deed.

In 2011, the second YPPPK Deed of Establishment was issued with Deed No. 2 July 7, 2011, made by Notary TT. The second YPPPK Deed of Establishment has the same foundation name as the first foundation deed, namely YPPPK. In 2011, the YPPPK management body made a joint decision in which the decision was made consciously by all members within YPPPK, and there was also the appointment of members on each foundation's board of directors for later deed by Notary TT when Notary TT made the deed. However, the members of the foundation did not know that the deed made was not a deed of change of management but a deed of establishment. Notary TT also did not provide an explanation as well as a copy of the deed to the members and administrators of the foundation so that the members of the foundation at that time did not know that there was an error in the making of the deed. Because it was not known that there was an error in the making of the foundation deed, YPPPK's activities continued and in carrying out the foundation's activities, the second deed of establishment was used as the basis for YPPPK for its daily activities.

In 2011, the YPPPK management period had ended and it was necessary to make an extension or change of the new board of the foundation, but in fact what was issued was the second YPPPK Deed of Establishment, not the deed of change of foundation management. In 2019, the management and supervisors of YPPPK Purwokerto became aware of the existence of a Deed of Establishment with the same name, which was established in 2011. The YPPPK management knew of the existence of the 2011 deed of the establishment when they were going to apply for credit for foundation development activities so the credit process was hampered

because of legal uncertainty regarding the ownership of the foundation assets that will be used as collateral.

B. The Role of the Notary Pre-Enactment of the Foundation Law on the YPPPK Establishment Deed in 1991

G.H.S Lumban Tobing said that the Deed made by the Notary will only be authentic, if the Notary has the authority which includes 4 (four) things (Tobing, 1999):

1. The notary must be authorized as far as the deed is made. A notary is a public official who can make a deed assigned to him based on the legislation. The notary's authority has been exercised because the RD notary has made a deed assigned to him, namely the YPPPK Establishment Deed of 1991, besides the notary's authority to make an authentic deed is regulated in Article 15 paragraph (1) of the Notary Position Act, which means that the RD notary has made an authentic deed. Authentic in the form of the YPPPK Deed of Establishment in 1991.
2. The notary must be authorized as long as it concerns the person for whom the deed was made. Notaries are not allowed to make deeds for themselves, their wives/husbands, or people who have family relations with a Notary either because of marriage or blood relations in a straight line downwards and/or upwards without any degree limitation, as well as in with the third-degree line, as well as being a party to oneself, forgive in a position or through an intermediary of power. The purpose and objective of this provision are to prevent the occurrence of impartial actions and abuse of office. Notary RD exercised the authority of a notary to make the Establishment of YPPPK in 1991, where the appearers who were present at the time of making the deed had nothing to do with the notary RD
3. The notary has the authority as long as it concerns the area or domicile of the notary where the deed was made. A notary has a domicile in the area/city. The notary's area of office covers the entire province from his place of domicile. Deeds made outside his office are invalid. Notary RD exercised the authority of a notary to establish the YPPPK Establishment in 1991, which at the time of making the deed was the working area and the domicile of the notary RD was in Banyumas Regency. YPPPK's domicile in 1991 was both in the Banyumas district.
4. The notary has the authority as far as the time of making the deed. A notary may not make a deed as long as he is on leave or is dismissed from his position, as well as a notary may not make a deed before he assumes his position.

At the time of making the deed, notary RD was still actively serving as a notary as evidenced by the Decree of the Minister of Justice of the Republic of Indonesia No, Y.A 7/16/15 dated October 2, 1975.

As explained above, the RD Notary does not violate a single thing that makes the deed legally invalid, furthermore, the RD Notary's role must be readjusted to the situation where the foundation has no regulation. The authority and role of the RD Notary can also be further reviewed in the Notary Position Act, in this case, the RD Notary is obliged to ensure several things as follows:

1. Ensure that the establishment of YPPPK in 1991 is in accordance with its objectives that are social, religious, and humanitarian.
2. Ensure that the documents brought by the appearers are complete in terms of making the foundation deed.

3. Ensure that in making the deed of establishment there are no objections.
4. Notary RD does not need to be responsible for finding the name of the foundation that is allowed to be used as the name of the foundation

The deed of establishment of YPPPK in 1991 is essentially correct because it is in accordance with the foundation's objectives contained in the law, as well as the RD notary who has carried out his duties well and acted as a notary. The documents needed for the deed of establishment of the foundation are complete from the beginning of the deed to the end of the deed, besides that, there are no parties who object to the establishment of the 1991 YPPPK deed. Notary RD has also made a deed of establishment of YPPPK in accordance with Article 65 of the Law on Notary Positions where in that article, the notary is required to be responsible for every deed he makes. Based on Article 16 paragraph (1) d of the Notary Position Act, a notary can issue a copy of the deed based on the minutes of the deed made, in this case, the RD notary has issued a copy of the YPPPK establishment deed based on the minutes of deed number 17 dated December 6, 1991.

C. The Role of the Notary After the Enforcement of the Foundation Law on the Deed of Establishment of the Christian Education Service Provider Foundation (YPPPK) in 2011

Government Regulation Number 2 of 2013 concerning the implementation of the Foundation Law aims to regulate Foundations that have not made adjustments to their Articles of Association to be able to stand and have legal status and legal entities. Foundations that have been established before the issuance of the Foundation Law, are required to make adjustments to the deed of establishment and articles of association of the foundation with other laws and regulations related to the foundation (Subekti & Mulyoto, 2012). Based on Government Regulation no. 2 of 2013 concerning the implementation of the Foundation Law, in which two ways can be done based on Article 15 A or Article 37 A to determine the legal status of the foundation. Article 15A, Article 15A, is intended for old Foundations whose Deeds of Establishment are not registered in the District Court and are not announced in the Supplement to the State Gazette of the Republic of Indonesia (TBNRI), while adjustments based on Article 37A are aimed at Foundations that have been recognized as legal entities. Referring to the YPPPK case, the Foundation Adjustment Deed used is article 37 A, because YPPPK has been registered in the District Court and has been recognized as a legal entity. Based on Article 37A, the Notary's role is to ask the previous and existing foundation administrators to hold a plenary meeting that is fully attended by the foundation's management, this confirms that the foundation's management was still there when the adjustment was still alive and did not resign. The plenary meeting session has the aim of forming foundation data, anyone who is still in the position of coach, administrator, and supervisor, can assist a notary in making minutes.

Article 15 paragraph (2) letter e regulates the Law on Notary Positions, it is stated that a notary has the authority to provide legal counseling in connection with the making of a deed. This means that notaries in practice are obliged to provide legal counseling to their clients regarding the deed to be made by him and the applicable law.

When making changes to the articles of association, the notary is obliged to understand and provide counseling to his client regarding the deed he made

and the contents of the deed, but in practice according to Rachmapurnami, Delia Azizah, in her journal namely *Juridical Review of Adjustment of Foundations Established Before Law Number 16 of 2001*, many problems were found regarding the adjustment of the foundation's articles of association by a notary, for example, the notary only made a deed of establishment of a new foundation without making a deed of adjustment of the foundation and did not include the assets of the old foundation. Then legal consequences can arise that can harm the parties who have an interest. The legal consequences that can be caused by making the wrong deed can have fatal consequences for the deed, the appeared or the client, as well as the notary himself. , 2018)

In making adjustments to the foundation's articles of association, the YPPPK deed should have been made with the title *Statement of Meeting Resolutions*. The title of the deed used if it is carried out based on Article 15 A is "*Deed of Establishment of a New Foundation*" even though it is not new at all, the foundation still sets aside the wealth of the old foundation which was established before the Foundation Law was introduced which will be included as initial wealth at the time of budget adjustment. Foundation base. Meanwhile, the adjustment of the articles of association of the foundation is carried out based on Article 37 A with the title of the deed "*Statement of Meeting Resolutions (PKR)*" or minutes of the meeting regarding the management of the foundation is made.

When the Notary made the *Deed of Adjustment of the Foundation* which was established before the issuance of the Foundation Law, it was found that many deeds are made that are not appropriate and violated the law. This can happen because many Notaries still do not understand well the deed they made, especially regarding the foundation after the issuance of the Foundation Law. Many mistakes made by notaries are made in the case of adjusting the articles of association with the Foundation Law, one of which is in the YPPPK case (Rachmapurnami, 2021). After the implementation of the Foundation Law, several things must be done by foundations that were established before the Foundation Law, namely registering the Foundation with the Ministry of Law and Human Rights to obtain a Decree from the Ministry of Law and Human Rights and/or conducting liquidation first. In addition, liquidation needs to be carried out if the foundation has a deed of establishment with the same name and the same domicile as the previous foundation. While the Notary plays an important role in making the foundation deed starting from checking the entirety before making the deed until the completion of the foundation deed so that mistakes do not occur both at that time and in the future.

Conclusion

Based on the problems raised by the author, it can be concluded as follows:

1. The legal consequences of the deed of establishment of the foundation before and after the enactment of the foundation law on the YPPPK Deed of Establishment

The establishment of YPPPK's deed of establishment in 1991 was in accordance with the Civil Code without any attempts to violate the law to establish the foundation. Before the issuance of the Law on foundations the word "foundation" was only found in the jurisprudence of the Supreme Court, as well as the opinions of experts. The regulation regarding the deed of establishment of

the foundation is only harmonized to establish the foundation that are social, religious, and humanitarian.

In 2001 and 2004 the Foundation Law was enacted, namely Law no. 16 of 2001 and Law no. 28 of 2004. Based on article 15 of the Foundation Law, one of the important points that must be considered is that foundations are prohibited from being established with the same name as existing foundations. The second YPPPK deed of establishment in 2011 violated the article, whereby the foundation referred to in these two deeds of establishment is the same foundation, the only difference between the two foundations is that the establishment in 1991 was registered with the District Court while the deed was registered with the District Court. The establishment in 2011 was registered with the Ministry of Law and Human Rights and has obtained a Decree from the Ministry of Law and Human Rights.

The legal consequence for the YPPPK deed of establishment is that YPPPK needs to liquidate or make a statement that the two foundations and YPPPK are the same foundation and are made in the form of a notarial deed. In this case, YPPPK chose to make a deed stating that the two foundations with the same name, namely YPPPK, were the same foundation and had the same aims and objectives.

2. The Role of Notaries After the Enactment of the Foundation Law on the YPPPK Establishment Deed in 2011

The role of a notary after the existence of a foundation related to the making of the deed is regulated in Articles 15 and 37A of Government Regulation No. 2 of 2013. Article 15A and Article 37A regulate the adjustment of the articles of association of foundations established before the foundation law, which is the deed of establishment of YPPPK in 2011 should use Article 37A because before the establishment of "YPPPK" in 2011 a foundation with the name "YPPPK" was first established in 1991 and has been registered with the District Court.

Article 37A Government Regulation no. 2 of 2013, regulates the role of a notary to ask the previous and existing foundation management to hold a plenary meeting which was attended by the full board of the foundation. In addition, in Article 15 paragraph (2) letter e concerning the Law on Notary Positions, it is stated that a notary has the authority to provide legal counseling in connection with the making of a deed. This means that notaries in practice are obliged to provide legal counseling to their clients regarding the deed to be made by him and the applicable law. The notary's role in the YPPPK case has been carried out well by the Notary, but the Notary neglects to check the existence of the foundation that has existed previously so it is not in accordance with Article 37A of Government Regulation no. 2 of 2013.

Suggestions

Based on the problems raised by the author, namely regarding the case of two foundation deeds with the same foundation name, the author can provide suggestions, namely that the Notary is obliged to check first before making the foundation deed. One of the checks carried out by a notary is regarding the name of the foundation to be used. The notary is obliged to check whether the name that will be used as the name of the foundation by the parties has been used by other foundations and has been registered and obtained a Decree from the Ministry of Law and Human Rights, for the foundation management or the appearers, in the process

must ensure that the notary has carried out his obligations in making the deed. The management of the foundation as the person in charge of the foundation must also be more critical if the deed made by a notary turns out to be a deed of establishment which causes two deeds of establishment with the same foundation name.

References

- Ismawan & Indra. (2007). *Harta dan Yayasan*. Bandung: PT. Pressindo.
- Handayani, D. (2018). "Analisis Yuridis Tentang Pendirian Yayasan Pendidikan Setelah Berlakunya Undang-Undang No.28 Tahun 2004 Tentang Perubahan Atas Undang-Undang No.16 Tahun 2001 tentang Yayasan". *Jurnal Kependidikan Islam*. 08. (1). 5-12.
- Hudayanti, N. (2017). "Distribusi Aset Dan Kekayaan Yayasan: Perspektif Perundang-Undangan. *Al-Daulah Jurnal Hukum Pidana dan Ketatanegaraan*. 06. (2).206-218.
- Mulyoto & Subekti. (2012). *Yayasan Solusi Dengan Berlakunya PP No. 2 Tahun 2013*. Yogyakarta: Cakrawala Media.
- Musahiddinsyah, T. (2020). "Menurut Asas Keterbukaan dan Akuntabilitas (Studi Pada Yayasan Kemanusiaan Di Aceh)". *Jurnal IUS Kajian Hukum dan Keadilan*. 08. (1).128-139.
- Purwadi, D. (2012). "Model Yayasan Pendidikan Dalam Perspektif Perlindungan Hukum Terhadap Peserta Didik (Studi Kasus Pada Yayasan Perguruan Tinggi di Surakarta)". *Jurisprudence*. 01. (1). 10-24.
- Rachmapurnami, D.A. (2021). "Tinjauan Yuridis Penyesuaian Yayasan Yang Didirikan Sebelum Undang - Undang Nomor 16 Tahun 2001". *Officium Notarium*. 1. (2).360-369.
- Siahaan, N, Toni, Anjar, A, Panggi & Adi, N. (2020). "Subyek Hukum Dalam Pendirian Yayasan menurut Undang-Undang No.28 Tahun 2004 Atas Perubahan Undang-Undang No.16 Tahun 2001 tentang Yayasan". *Jurnal Ilmiah Advokasi*. 08. (1).1-10.
- Simamora, Y.S. (2012). "Karakteristik, Pengelolaan Dan Pemeriksaan Badan hukum Yayasan Di Indonesia". *Jurnal Rechtsvinding Media Pembinaan Hukum Nasional*. 01. (2).175-186.
- Soekanto, S & Mamudji, S. (2003). *Penelitian Hukum Normatif : Suatu Tinjauan Singkat*. Jakarta: PT Raja Grafindo Persada.
- Soekanto, S. (1984). *Pengantar Penelitian Hukum*. Depok: UI Press.
- Supriyono, F. (2015). "Implementasi Undang-Undang Yayasan Dalam Mencapai Maksud Dan Tujuan Yayasan". *Jurnal Ilmiah Hukum Legal Opinion*. 03. (01).25-32.