JURIDICAL REVIEW AGAINST DEED OF AMENDMENT OF ARTICLES OF ASSOCIATION FOUNDATION BASED ON LAW NUMBER 28 YEAR 2004 ABOUT FOUNDATION

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Abstract: The Foundation's arrangements have undergone a very dynamic development from time to time. In Indonesia, the foundation is a social activity body consisting of individuals, the general public as well as indigenous peoples, which is the accumulation of mutual care for each other. Basically the Foundation has different goals and interests, some are engaged in social, religious, cultural, educational and even in the field of humanity in accordance with the objectives of each Foundation. While the initial goal of each foundation is almost the same that involves the social field.

With the issuance of Law Number 28 Year 2004 regarding Foundation, the government and the law makers intend to reopen the possibility of the old foundation that has not adjusted its articles of association with the Change of Foundation Act (Foundation which can no longer use the word "Foundation" in its name) adjustment of the articles of association to certain conditions. Thus, the foundation that was no longer able to make adjustments to the articles of association due to the lapse of the adjustment period is now again able to make adjustments.

Keywords: act, foundation, deed

I. INTRODUCTION

1.1 Background

The foundation is known as a non-profit corporation, which has separated a property from one's private property, which is then used for a social and religious purpose, and its management is left to a governing body to be properly managed and responsible. To be said as a legal entity a foundation must meet the elements, namely: ¹ "Having own property derived from an act of separation, has its own purpose (certain), and has equipment."

A legal body that contains social elements in each activity, and is very synonymous with economic elements in accordance with the needs of society, making the foundation into a form

¹ Gatot Supramono, 2008, Hukum Yayasan di Indonesia, Rineka Cipta, Jakarta, p. 2
of strategic business and rapidly growing in the community. Also triggered also because the establishment of an easy process because there is no rules governing. The government finally issued a law stipulating the foundation on 6 August 2001 after 56 years of independent Indonesia, namely Law Number 16 Year 2001 on foundations, State Gazette no. 112 Year 2001 Supplement to the State Gazette of 4132 (hereinafter referred to as the Foundation Law) which came into effect 1 (one) year after the date of promulgation on August 6, 2002. Then 4 (four) years later the Law revised in several chapters with the passing of Law No. 28/2004 on Amendment to Law No. 16 of 2001 concerning LN Foundation No. 115 TLN 4430 (hereinafter: Change of Foundation Act).

After the issuance of the Foundation Law, then automatically determining the status of legal entities foundations that have been established prior to the Foundation Law must follow the provisions contained in the Law on the Foundation. The Foundation Law states that the foundation obtains the status of a legal entity after the deed of establishment has been approved by the Minister (Article 11 paragraph (1)). The Foundation Law also determines that the foundation of the foundation is conducted by notarial deed and made in the Indonesian language (Article 9 paragraph (2)).

The old foundation with the status of a legal entity is stipulated in Article 71 Paragraph (1) and Paragraph (3) of the Law on Foundations. Article 71 paragraph (1) states: At the time when this Law comes into force, the Foundation has been registered in the District Court and announced in the Supplement of the State Gazette of the Republic of Indonesia; or registered in the District Court and have permission to engage in activities of the relevant authorities; shall remain recognized as a legal entity, provided that within a period of no later than 3 (three) years from the date when this Law comes into force, the Foundation shall adjust its Articles of Association to the provisions of this Law.

With the issuance of Law Number 28 Year 2004 regarding the Foundation which came into force since January 2, 2013, which is an amendment to Government Regulation Number 63 Year 2008 there is a fundamental change in relation to the position of Foundation which is no longer able to use the word Foundation in front its name. The foundation which was previously based on the Foundation Law and Government Regulation No. 63 of 2008 has been unable to be adjusted its articles of association with the Foundation Law, with the issuance of Law Number 28 Year 2004 on Foundation again possible to adjust its articles of association.

Furthermore, based on the provisions of Article 71 Paragraph (2) Amendment to the Foundation Law, foundations established before the Foundation Law and do not meet the requirements as referred to in Article 71 paragraph (1) Amendment to the Foundation Law shall be obliged to adjust the articles of association by the Foundation Law within 1 year to obtain status as a legal entity, and in Article 71 (4) The amendment of the Foundation Law provides that a foundation that does not adjust its articles of association within the period referred to in paragraph (1) and the Foundation as referred to in paragraph (2) the word "Foundation" in its name and may be dissolved by a court decision on the request of the Prosecutor or other interested parties.

The general objectives to be achieved by writing this thesis are:

a. To be able to know the structure of the foundation long after the enactment of Law Number 28 Year 2004 regarding Foundation to the old foundation that is not incorporated under the provisions of the Foundation Law.
b. As one of the requirements for completing the Graduate Program in Master Program of Graduate Notary of Mataram University.

1.2 Theoretical Framework

1.2.1 Theory of the State of Law

Before stepping on the theories and other principles, the authors include the concept of the State of Law in this thesis as a foundation; where in the concept of this legal state "State" is the main object of discussion. "As Jimly Asshiddiqie puts it in his book, that the state is still the center of attention and object of study that coincides with the development of human knowledge."2 Indonesia is a State that embraces the concept of the State of law in a material sense, with the other term the welfare state (welfare state). As Muchsan views that states that: Indonesia is a country that embraces the concept of a lawful State in a material sense, with the other term the welfare state.

As Muchsan views that states that the State of Indonesia is a welfare state. This can be seen from one of the precepts of Pancasila as the foundation of the state philosophy, the fifth precept which reads "Social Justice for all Indonesian people". From the sound of the fifth precept can be concluded that the purpose of the Indonesian state is to provide prosperity for its citizens. In addition, in the fourth of the opening of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) states that one of the objectives of the formation of the Republic of Indonesia is to promote the general welfare.3

Therefore, Moh. Kusnardi and Bintan R. Saragih stated that legality in the legal sense in all its forms as the characteristic of the state of the law is that any action either from the authorities or from the people should be justified by law.4

1.2.2 The Theory of Normal Law Level (Hierarchy)

In relation to the hierarchy of legal norms, Hans Kelsen, a philosopher of law, puts his theory on the level of the legal norm (Stuffen theorie), in which he argues that: the legal norms are tiered and multilayered in a hierarchy of order lower norms are applicable, sourced, and based on higher norms, higher norms apply, are sourced and based on more sophisticated norms, and so on until a norm cannot be traced further and is hypothetical and fictitious i.e., the basic norm (Grundnorm).5

Grundnorm is the basis of all power and is the legality of Positive Law. Hans Kelsen also argues: Of Grundnorm which is a norm that is still abstract, formed a more concrete arrangement of norms, then from this second arrangement made an arrangement concretized in the Constitution; more concretized again in the Law, from the Law to the government regulations.

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2 Jimly Asshidiqie, 2006, Pengantar Ilmu Hukum Tata Negara, Jilid 1, Konstitusi Press bekerjasama dengan PT. Syaamil Cipta Media, Jakarta, p. 11.
3 Muchsan, 1982, Pengantar Hukum Administrasi Negara, Liberty, Yogyakarta, p. 70
5 Maria Farida Indarti Suprapto, 1998, Ilmu Perundang-undangan, dasardasar pembentukannya, Kanisius, Yogyakarta, p. 25
and so on. And finally in judgment the norms are individualized (used for a particular relationship and can be used).\(^6\)

Jimly Asshiddiqie argues that: Stufen theorie Hans Kelsen and its development which states that norms are tiered and multilayered so that the norms under it should not conflict with the norms above it, applied in the 1945 Constitution. The application of Stufen theorie Hans Kelsen is State institutions that exercise judicial authority in Indonesia, in this case the Constitutional Court and the Supreme Court, are authorized by the 1945 Constitution to examine legislation. Testing the legislation is commonly referred to as the term "judicial review".

Objects tested in the judicial review are not only about legal products in the form of law, but also legislation.\(^7\)

\(1.2.3\) The Theory of Law

The consequences of a law are the consequences of an action taken to obtain an effect desired by the perpetrator and which is governed by law. The action he undertakes is a legal action that is the action taken to obtain something due to the desired law.\(^8\)

More clearly that the legal consequences are\(^9\) all consequences resulting from any legal act perpetrated by a legal subject against a judicial object or other consequences caused by certain events by the law concerned have been determined or deemed to be the result of law. For that it is clear that the impact will affect the occurrence of conflicts of interest, especially on the internal foundation, in the sense that does not create doubts (multi-interpretation) and logical into a system of norms with other norms so feared occur Conflict the norms resulting from uncertainty rules may be in the form of norm contestation, norm reduction or norm distortion as set forth in Law Number 28 Year 2004 regarding Foundation with its implementation in the field.

II. RESEARCH METHODS

2.1 Types of research

The research of scientific paper in the form of this thesis, type of normative legal research (normative juridical),\(^10\) namely research that aims to examine the principles of law, legal systematic, legal synchronization, legal history and comparative law.

2.2 Type of Approach

Peter Mahmud Marzuki states that in legal research required an approach model. With this approach, the author will get information from various aspects of the issue (problematic problem) that is being sought the answer. Various approaches that can be used in writing are: 1) Approach Act (Statute AUUroach); 2) Conceptual Approach (Analitical Conceptual AUUroach).

III. RESULT AND DISCUSSION

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\(^6\) C.S.T Kansil dan Christine S.T. Kansil, 2011, Pengantar Ilmu Hukum Indonesia, Rineka Cipta, Jakarta, p. 380
\(^7\) Jimly Asshiddiqie, 2005, Model-model Pengujian Konstitusional diberbagai Negara, Konstitusi Pers, Jakarta, p. 4
\(^8\) R. Soeroso, Pengantar Ilmu Hukum, Sinar Grafika, Jakarta, 2001., p. 21
3.1 Adjustment Process of Amendment of Deed of Foundation Based on Law Number 28 Year 2004 regarding Foundation

3.1.1 Adjustment of Amendment of Deed of Foundation

People are always growing dynamically from time to time in various activities. The social interaction between community members has created a legal relationship. In this context the existence of law is very significant to regulate the legal relationships created in society, although sometimes the law tends to be left behind by the development of society. This phenomenon can be seen in the legal setting of the foundation.

In the long period of time after the independence of the Republic of Indonesia, the foundation of the foundation in Indonesia is based only on the customs in society and the jurisprudence of the Supreme Court, because there is no law governing it. The foundation has been better understood as a non-profit social organization or not seeking profit in its activities, if someone or some people will do activities full of idealism and social and humanitarian aims, usually the organization chosen is the foundation.

Selected social activities are primarily concerned with the areas of health, education and social institutions. Foundation is used by its founders to perform various social activities for the public interest.

Before the birth of Law No. 16 of 2001 on Foundation, the position of the Foundation as a Legal Body (rechtspersoon) has been recognized, and applied as a legal entity, but the status of the foundation as a Legal Entity is still considered weak, because it is subject to the rules derived from customs in society or jurisprudence.

At that time the community established a foundation with the intention to take refuge behind the Legal Entity status of the Foundation, which is not only used as a forum for developing social, religious, humanitarian activities, but also occasionally aimed at enriching the Founders, Managers and Supervisors. In terms of the role of foundations in the social, educational and religious sectors are very prominent, but there is no single law that specifically regulates the foundation.

With this legal uncertainty the foundation is often used to accommodate the wealth of the founders or other parties, even the foundation is a place to enrich the foundation's managers. The foundation is no longer a non-profit, but the foundation is used for business and commercial endeavours with all aspects of its manifestations.

In order to ensure legal certainty and order for the foundation to function in accordance with its aims and objectives based on the principle of transparency and accountability to the community, on August 6, 2001, Law No. 16 of 2001 on the Foundation which became effective on August 6, 2002. Then on October 6, 2004 through the State Gazette of the Republic of Indonesia Year 2004 the enactment of Law Number 28 Year 2004 amendment to Law Number 16 Year 2001 regarding Foundation.

The founding of foundations and everything related to the scope of motion of the foundation in Indonesia for a long time is based only on customary law or jurisprudence although there may be little additional or adjustments to the needs. In the absence of special rules governing the foundation in Indonesia, there is also no provision that regulates the founding requirements of the foundation, nor is there any provision explaining that the foundation should be established by notarial deed.
Based on customary law and legal assumptions generally accepted in the community, the characteristics of the foundation as a legal entity can be expressed as follows:  

a. The existence of the foundation as a legal entity in Indonesia has not been based on the prevailing laws and regulations; 

b. The recognition of the foundation as a legal entity has no clear juridical basis unlike PT, Cooperatives and other legal entities; 

c. The foundation is formed by separating the founders' personal wealth for nonprofit purposes, for religious, social, religious and other ideological religious purposes; 

d. The Foundation shall be established by notarial deed or by a decree of the official concerned with the founding of the foundation; 

e. The foundation does not meet members and is not owned by anyone, but has an organizer or organ to realize the purpose of the foundation; 

f. The foundation has an independent position, as a result of the separate property and personal wealth of its founder or management and has its own separate or separated objectives and personal goals of the founder or management; 

g. The foundation is recognized as a legal entity just as a person, as an independent legal subject who can have independent rights and obligations, established by deed and registered with the local District Court Office; and 

h. The Foundation may be dissolved by the Court if the purpose of the foundation is contrary to law, may be liquidated and may be declared bankrupt. 

After the enactment of Law of the Republic of Indonesia Number 28 Year 2004 on the Amendment of Law of the Republic of Indonesia Number 16 Year 2001 about the foundation then all things and understanding of the new foundation is clear. 

Foundation in Article 1 of Law Number 16 Year 2001 regarding Foundation, namely: "Foundation is a legal entity consisting of wealth separated and destined to achieve certain goals in the field of religious and humanity who have no members". Based on the Foundation's understanding, the Foundation is given clear boundaries and it is hoped that the community can understand the form and purpose of the founding of the Foundation. So there is no misperception about the Foundation and the purpose of the Foundation. The motion is limited in the social, religious and humanitarian fields so it is not used as a vehicle for profit. 

Amendment to Law Number 16 Year 2001 regarding Foundation with Act Number. 28 of 2004 is intended to further ensure legal certainty and order, and provide a correct understanding to the community regarding the Foundation, so as to restore the function of the Foundation as a legal institution in order to achieve certain goals in the social, religious and humanitarian fields. 

In addition, since the role of Foundation in society can create the welfare of the community, the revision of Law Number 16 Year 2001 on Foundation is also intended to enable the Foundation to function in an effort to achieve its goals and objectives in the social, religious and humanitarian fields based on the principles of openness and accountability. 

The rapid amendment of the Law governing the Foundation shows that the foundation's problems are not simple and these legal entities are indeed needed by the community. Law

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11 Budi Untung, Reformasi Yayasan dalam Perpekpektif Manajemen, Sinar Grafika, Jakarta, 2002, p. 4
Number 28 Year 2004 does not replace Law No. 16 of 2001. This change is only to change some of its articles only. This law is intended to provide people with a correct understanding of the foundation, ensure legal certainty and order and restore the function of the foundation as a legal institution in order to achieve certain goals in the social, religious and humanitarian fields based on the principle of openness and accountability.

This law affirms that the foundation is a legal entity having a social, religious and humanitarian purpose and objective, established by taking into account the formal requirements set forth in this law and is expected to be a strong legal basis for governing foundation life.

The foundation as a legal entity must necessarily have an independent nature, not dependent on other person or legal entity, but only as the sole self that is the foundation, so that when it has been established by a person or legal entity, then his wealth will be the foundation's wealth and irrevocable, or distributed to founders or foundation organs.

The existence of the foundation is a necessity for the community, who want a container or institution that is social and religious, and aims and aims social, religious, and humanitarian. With the foundation, then all social, religious, and humanitarian desires, it is manifested in an institution that is recognized and accepted existence.

In Article 9 paragraph (1) of Law Number 16 Year 2001 regarding the Foundation mentioned, the foundation can be established by one or more persons by separating the property of its founder, as initial wealth. The person referred to in this article is an individual and a legal entity. Means that the foundation can only be established by an individual only or may be a legal entity only. The meaning of separating the wealth of its founders shows that the founder is not the foundation owner because it has from the beginning originally separated some of the founders' founders into the foundation's foundation.

In addition, the foundation may also be established based on a will, Article 9 paragraph (3). The recipient of the will is acting on behalf of the testator. Establishment of a foundation based on a will is mandatory, because if it is not exercised, then the interested party may hold accountable to, the heirs or receive the wills concerned. (Article 10 paragraph (3))

The founding of the foundation is conducted by notarial deed and made in Indonesian language, it is already determined firmly in Article 9 paragraph (2) of Law Number 16 Year 2001, so that the notarial deed is an absolute requirement which must be fulfilled by fulfilling all notary provisions in making deeds, both readings, time, territory of notary authority and signature.

3.1.2 Legal Status of Foundation

The formulation of Article 11 paragraph (1) of the Foundation Law reinforces that the foundation to obtain the status of legal entity must make a deed of establishment of a foundation approved by the Minister of Law and Human Rights made by a notary. The function of validation is intended for the validity of the existence of legal entity so that the legal entity has the feasibility of how far or not contrary to the provisions of existing legislation, especially foundations.

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This formulation of course brings the consequence that as a legal entity; the foundation has the characteristics and ability to act as a legal subject.\(^\text{13}\)

The change in Article 11 paragraph 1 of the Law of the Foundation Number 28 Year 2004 which reads:

"The Foundation obtains the status of a legal entity after the founding foundation as referred to in Article 9 paragraph (2), obtains approval from the Minister."

The amendment of Article 11 Paragraph (1) of the Foundation Law has erased the authority of the Regional Office (Kanwil) in giving approval to a foundation legal entity and affirming that the authority to legalize a foundation as a legal entity is in the hands of the Minister of Law and Human Rights. In addition, it is stated that a Notary must submit an application to become a legal entity. This is probably due in the past many foundations are with Deliberately did not apply to be a legal entity. This means that the ratification of this deed of establishment is the only document that determines when the status of the foundation becomes a legal entity.

3.1.3 Process of Amendment of Deed of Foundation Based on Law Number 28 Year 2004 About Foundation

Article 11 Paragraph (1) of the Foundation Law states that the Foundation obtains the status of a legal entity after the founding deed of the Foundation as referred to in Article 9 paragraph (2) obtains approval from the Minister. In relation to the sounding of Article 11 Paragraph (1), it means that since the foundation of the Foundation, the Foundation has automatically fulfilled the terms of the foundation's foundation which is filed in a deed. Thus, to know the amendment of the Deed of the Foundation, it is understood that the provisions of Article 14 Paragraph (1), it is mentioned that the founding deed of the Foundation contains the Articles of Association and other information as necessary. Accordingly, the meaning of Article 14 Paragraph (1) is the amendment of the founding deed of the Foundation, shall also change the provisions of the Foundation's Articles of Association. In the Foundation Law regulates the amendment of the founding deed of the Foundation prior to the life of the Foundation Law, where the deed of establishment must be in accordance with the provisions of the Foundation Law without exception.

In the provisions of Article 37 Paragraph (4) of the Foundation Law it is stated that the Notice of amendment to the Articles of Association of the Foundation shall be accompanied by:

a. Copy of the deed of amendment to the Foundation's Articles of Association;
b. Supplement to the State Gazette of the Republic of Indonesia containing the deed of establishment of the foundation or the proof of registration of the deed of establishment in the district court and the permission to conduct the activities of the relevant agencies;
c. Photocopy of Taxpayer Identification Number that has been legalized by a notary;
d. Statement of place of residence accompanied by complete address of Foundation which signed by the board of Foundation and known by lurah or head of local village;

\(^\text{13}\) Widjaja Gunawan, Suatu Panduan Komprehensif Yayasan di Indonesia, First edition. (Jakarta:PT. Elex Media Komputindo, 2002., p. 22
Based on the above provisions, several matters which must be attached to the amendment of the deed of the Foundation to create a public oversight mechanism for the Foundation suspected of committing acts contrary to the law, the Articles of Association or harm the public interest, the Foundation Law provides for the inspection of the Foundation is performed by an expert based on the court's determination of a written request of an interested third party or at the request of the prosecutor in terms of representing the public interest.

With the filing of the Foundation documents in accordance with the applicable provisions as mentioned in Article 37 Paragraph (4) above, it can facilitate the Court in conducting examination of the Foundation. More details of the provisions in Article 53 of the Foundation Law are:

a. Inspection of the Foundation to obtain data or information may be made in the event that there is a presumption that the Foundation's organs:
   1) Committing an act unlawfully or contrary to the Articles of Association;
   2) neglect in performing its duties;
   3) Conduct actions that harm the Foundation or any third party; or
   4) Conduct actions that harm the State.

b. The inspection as referred to in paragraphs (1) a, b, and c can only be done based on the Court's determination of an interested third party written request with a reason.

c. The examination as referred to in paragraph (1) letter d may be made based on the Court's determination at the request of the Public Prosecutor Office in terms of representing the public interest.

As explained earlier that the Foundation was originally guided by customary law has no legal basis, because with the existence of this Foundation Law, it is obligatory for every Foundation to submit and comply with all the provisions of the Foundation Law. One that needs to be emphasized is in the case of the change of the deed of the Foundation; it must be adjusted to the provisions of its Articles of Association. So that with the Foundation will be easier to be examined for all activities of the Foundation. Including if the Foundation is doing legal action, negligent, doing actions that harm the community (third party), and harm the state. In the examination of the Foundation must pass the decision of the Chairman of the Court at the request of the local Prosecutor's Office.

The Court may also grant and refuse upon request to the Foundation for review as provided for in Article 54 of the Foundation Law as follows:

a. The Court may reject or grant the request for inspection as referred to in Article 53 paragraph (2).

b. In the event that the Court grants a request for examination of the Foundation, the Court issues the determination of the examination and appoints at least 3 (three) experts as examiners for examination.

c. Trustees, Managers and Supervisors and executors of activities or employees of the Foundation can not be appointed as inspectors as referred to in paragraph (2).

Elucidation of Article 54 Paragraph (2) is meant by experts is those who have expertise in accordance with the issues to be examined. For example, if there is an unlawful act against the board of the Foundation, then the Prosecutor shall have the right to conduct such examination.
Then the result of the examination by the Public Prosecutor shall be submitted to the local Chief Justice of whether or not there has been an act against the law. Article 56 of the Foundation Law states that:

a. The Examiner must submit a report on the result of examination that has been made to the Chief Justice in the place of position of the Foundation no later than 30 (thirty) days from the date of inspection is done.

b. The President of the Court shall provide copies of the inspection report as referred to in paragraph (1) to the applicant or the attorney and the foundation concerned.

Based on several provisions concerning the inspection of the foundation mentioned above, it can be analyzed that the change of foundation deed of the Foundation which must be adjusted to the provisions of the Foundation Law brings legal consequences to the Foundation on all activities or activities of the Foundation so as to facilitate the relevant institutions such as the Court and the Attorney in doing the raiding to the Foundation.

In addition, in the process of amendment of the deed of the foundation referred to in Law Number 28 Year 2004 regarding the Foundation, among others:

a. **Scope of Changes of Deed of Foundation**

    The scope of the change of deed of incorporation of foundation can be seen and understood what is stated in the Articles of Association. However, it should pay attention to the provisions in Article 17 that is not justified to change the intent and purpose. More is mentioned, "Articles of Association may be changed except the purposes and objectives of the Foundation".

    Change name and place of residence. The name is very important for the Foundation by using the word "Foundation" in front of its name. Similar to humans, it cannot be separated from a name to know its identity, so by that name it will be easily known who that human being is. Once there is a Foundation if it does not have a name it will be difficult to tell the difference. In addition, civilians also recognize the legal subject of an agency or organization that is considered to act as a human being. In naming the Foundation is basically free with any name such as person's name, flower name, crop name, and others. Nonetheless, the freedom of naming the Foundation, by law, is limited to Article 15 Paragraph (1) of the Foundation Law, First, has been legally used by other Foundations; and Second, contrary to public order and / or decency.

    Change of establishment period. If you want to change the time period until when the foundation of the Foundation, only provided by law two alternatives. It is stipulated in Article 16 Paragraph (1) of the Foundation Law i.e. for a certain period and for an indefinite period. If the time specified, it is clearly mentioned in the deed or in the change of deed of establishment of the Foundation for example 10 (ten) years. By mentioning that particular time, then after the time, the Foundation must disband. However, in Paragraph (2) there shall also be a time of renewal if the founder wishes. Regarding an unspecified period of time, the Foundation can stand all the time even though it has changed its organs. Changes should not be made when the Foundation will go bankrupt. The reasons are contrary to the purpose of the provisions of Article 1 Number (1) of Law Number 37 Year 2004 concerning Bankruptcy. The change of deed must be based on the meeting of the coach. This is because the council meeting has the authority mandated by Article 28 Paragraph (2) Sub-Paragraph a of the Foundation Law that the meeting is the highest organ position in the Foundation.

    Changes that must be approved by the Minister. It is related to Article 21 Paragraph (1) that is concerning the name and activities of the Foundation must be approved by the Minister.
This is because the Foundation's name and activities are very administrative. Changes only sufficiently notified to the Minister. It is about Article 21 Paragraph (2), in which the changes other than those of Article 17 and Article 21 Paragraph (1) of the Foundation Law.

The aims and objectives of the Foundation should not be altered except those mentioned above which social, religious, and humanitarian are. Indeed there is mentioned as an exception that is in the provisions of Article 14 Paragraph (1) if necessary. However, it is constrained by the sound of Article 17 whereas in amending the deeds and the Articles of Association of the Foundation, it is prohibited by the Foundation Law to amend the Foundation's purposes and objectives. The objectives allowed by the Foundation Law are solely for social, religious, and humanitarian purposes.

b. Terms of Amendment of Deed of Foundation

Foundations are established by taking into account the formal requirements of the Foundation Law. If the application for legalization of the legal entity of the Foundation is filed by the Notary to the Minister of Justice and Human Rights of the Republic of Indonesia (Minister of Justice and Human Rights) by enclosing the terms:

1) A copy of the deed of establishment stamped foundation;
2) Photocopy of Taxpayer Identification Number (NPWP) on behalf of Yayasan that has been legalized by Notary;
3) Photocopy of certificate of domicile of the Foundation issued by the village chief or local village head and legalized by a notary;
4) Proof of payment of Non-Tax State Revenue;
5) Proof of payment;

As with the terms of the application for approval of the Foundation, so also the requirements that must be fulfilled if in case of change of deed of establishment of Foundation. In Article 21 Paragraph (1) of the Foundation Law, a request for approval of the deed of amendment of the Foundation. The application for approval of the amendment of AD Foundation is filed by Notary to the Minister of Law and Human Rights by enclosing the following requirements:

1) A copy of the Notarial Deed which contains amendments to the stamp duty-affiliated AD;
2) Photocopy of NPWP on behalf of Foundation which has been legalized by a notary;
3) Photocopy of certificate of domicile of the Foundation issued by the Head of Village or Village Head and legalized by a notary;
4) Proof of payment of PNBP; and
5) Proof of payment of announcement in Supplement State Gazette (TBN).

In the case of notification of Article 21 Paragraph (2), the petition filed by Notary to the Minister of Law and Human Rights by enclosing the terms:

1) A copy of notarial deed which contains amendment of articles of association of stamp duty Foundation;
2) Photocopy of NPWP on behalf of Fondation that has been legalized by Notary;
3) Photocopy of certificate of domicile of the Foundation issued by the village chief or local village head and legalized by a notary;
4) Proof of payment of PNBP;
5) Proof of payment announcement in TBN.

In the case of notification pursuant to Article 71 Paragraph (2) of the Foundation Law, a petition filed by a Notary to the Minister of Law of RI by enclosing the terms:
1) A copy of Notarial deed which contains amendments to the stamp duty-filled AD;
2) Evidence of the Foundation’s registration to the District Court and the activity or operational permit from the relevant agency;
3) Proof of registration of the Foundation to the District Court and Supplement to State Gazette (TBN);
4) All documents relating to the Foundation;
5) Photocopy of NPWP on behalf of a legalized notary Foundation;
6) Photocopy of certificate of domicile of the Foundation issued by the village chief or local village head and legalized by a Notary;
7) Proof of PNBP payment;
8) Proof of payment announcement in TBN.

As mentioned above, the AD may be subject to change except on the intent and purpose of the Foundation. Alteration of AD Foundation can be done through decision of meeting of coach that attended by 2/3 member of coach. The change is made by notarial deed and must be made in the Indonesian language.

The advisory meeting to decide on the amendment of the Army shall be made by consensus for consensus as mentioned in the provisions of Article 19 Paragraph (1). At the time of deliberation there are stages in making decisions. If the first meeting did not produce a decision, then a second meeting was held. This second meeting is done at least 3 (three) days since the first meeting. The second meeting is valid if it is attended by more than 50% of the members of the coach. Decisions are made by majority vote of the number of members present.

c. Procedure of Changing Deed of Foundation

The procedures for the amendment of the founding deed of the Foundation must take into account the formal provisions in the Foundation Law. That is Article 18 Paragraph (1), must be done first through the meeting of the supervisor. At the meeting should be at least attended 2/3 of the number of members of the builder. To amend the deed of establishment of the Foundation must be done by Notary and made in Indonesian language.

If the agreement in the meeting of the coach has been unanimous, then further to submit the change of deed to the Minister of Law and Human Rights is a Notary. Following the approval of the Minister of Law and Human Rights, in accordance with the provisions of Article 24 Paragraph (1), that on the deed of incorporation of the Foundation which has been ratified as a legal entity or amendment of the Articles of Association approved, shall be announced in the Republic's Additional State Gazette Indonesia.
(1) shall be submitted by the Board of Directors or their proxies to the State Printing Office of the Republic of Indonesia within no later than 30 (thirty) days as of the date of the deed of incorporation of the approved Foundation or the amendment of the approved Agreement. Thus, the petition for the announcement in the Supplementary State Gazette (TBN) of the Republic of Indonesia may be submitted directly or sent by registered mail.

According to Mr. Marhumi as the board of the Foundation, said that the procedure for the amendment of the deed of the Foundation can be done through the following steps:
1) The founder or his proxy shall apply for amendment of AD to the Minister by sending a request for amendment of the Army;
2) The amendment of the Armed Forces is then approved by the Minister or appointed official. Approval of such amendment shall be done no later than 30 (thirty) days after receipt of the application. If the application for the amendment of AD is rejected, it must be notified in writing to the founder of the Foundation.

With the enactment of Law Number 16 of 2001 which has been amended by Law. 28 of 2004 on the Foundation brought significant changes to the existence of the Foundation as a legal entity in Indonesia. The affirmation of the foundation as a legal entity and procedure for establishing and obtaining legal entity status is clearly stipulated in the Law of the Foundation.

3.2 Legal Result of Amendment of Deed of Foundation based on Law Number 28 Year 2004 regarding Foundation

The Law of the Foundation Number 28 of 2004 affirms that the foundation is a legal entity having social, religious, and humanitarian purposes and objectives established by taking into account the formal requirements set forth in this law and is expected to become a strong legal basis for governing the life of the foundation.

The issuance of the Law on the Foundation is Law Number 28 Year 2004, foundations that have been established before the issuance of the Foundation Law and its Amendment, which then the foundation is considered 'dead' or its existence is not recognized because it is no longer legal entity and cannot use the word "Foundation" in front of its name because it does not perform the requirements as determined by Article 71 of the Foundation Law, can be re-enacted.

The foundations can make adjustments to the articles of association and apply for approval to the Minister of Law and Human Rights so that the foundation can acquire the status of a legal entity or 'live' again. The Foundation may request the Notary to be made a deed of amendment to the articles of association and then when the deed is completed, through the Notary the foundation may apply for approval to the Minister. With the deed, the foundation can re-engage its business activities. However, Law Number 28 Year 2004 regarding the Foundation adds the conditions that must be fulfilled to apply for ratification to the Minister, namely to attach the documents as mentioned in Article 15A of the Government Regulation.

Therefore, in the Law Number 28 Year 2004 regarding the Foundation clearly states that for the foundation in front of his name cannot use the word "foundation" anymore, can make changes to the articles of association to be able to re-use the word foundation with the condition

14 Wawancara dengan Bapak Marhumi selaku pengurus Yayasan Pondok Pesantren Darussalam Bremi_Gerung; Kabupaten Lombok Barat, (Tanggal 5 Maret 2018)
for 5 (five) consecutive year still runs its foundation activities in accordance with the articles of association and has never been dissolved. It is therefore quite clear that Law Number 28 Year 2004 regarding the Foundation states that a foundation that has not been able to use the word "foundation" in its name in accordance with the Ordinance of the Foundation and its amendments, may re-use the word "foundation" under the terms set out in The Act.

In hierarchy, the Government Regulation cannot revise the existing laws and regulations. Based on the theory of the level of norms and the principle of preference, if there is a conflict between laws and regulations that are not equal, then the lower regulations are ruled out.

Based on Law Number 28 Year 2004 regarding the Foundation, the Notary, at the request of the parties, makes a deed of change of foundation that has been 'dead' or cannot use the word "foundation" in its name, which the foundation has actually been considered dead since 2008 by the Foundation Law, and the Act may be applied for cancellation to the District Court.

Law Number 28 of 2004 concerning the Foundation cannot revise what is stipulated in Article 71 of the Amendment of the Foundation Law. If the government wishes to provide convenience to the community whose foundation is 'dead' or can no longer use the word "foundation" because it runs out of time to make adjustments to the articles of association and requests the Minister's approval to obtain the status of legal entity, it is better that the Law of the Foundation be amended, in particular Article 71 which regulates the period of time to make adjustments and apply for approval.

The conflict between Law Number 28 Year 2004 regarding Foundation and the Foundation Law will have legal consequences to the deed of amendment of articles of association made before a Notary by a foundation who can no longer use the word "foundation" in its name. The legal consequences of creating a deed of foundation based on Law Number 28 Year 2004 regarding Foundation for foundations that have been 'dead' is that the foundation still cannot obtain the status of legal entity and the deed can be canceled.

In accordance with the theory of legal entities, especially in the theory of wealth and aims aimed at the theory of property owned by a person because of his position, a foundation must be incorporated because in accordance with its elements, a foundation is a body that has a stand-alone wealth, has a board, serve certain interests and their property is legitimate to be organized. Thus a foundation must be a legal entity. If a foundation loses its legal entity status by not adjusting the articles of association in accordance with the provisions of the Foundation Law, the foundation can no longer be referred to as a foundation.

Based on one part of the Good Governance General Principles, namely the Legal Certainty principle, a rule is created and enacted with the aim of arranging a matter to be clear and logical. Clearly in the sense that there is no doubt (multi interpretation) and logical in the sense of becoming a system of norms with other norms so as not to clash or cause conflict of norms.

The Principle of Legal Certainty requires respect for the rights one has acquired by a government decision. Thus, in order to achieve legal certainty, any decisions that have been issued by the government cannot be revoked unless it can be proven otherwise in court. In maintaining legal certainty, the government shall not issue rules of conduct that are not regulated by law or are contrary to law. In accordance with the principle of legal certainty, in the event of a conflict between the implementing rule and the law, the court must state that the rule is null and
void or otherwise never existed so that the consequences arising from such regulation shall be restored to normal.

A legal certainty is essential, in accordance with Article 28D Paragraphs (1) of the 1945 Constitution of the Third Amendment, namely: "Everyone is entitled to the recognition, guarantee of protection, and fair legal certainty, and equal treatment of law before the law. An amendment of the articles of association made before a Notary which is based on the new rules, namely Law Number 28 Year 2004 concerning the Foundation, which in fact the rule is contrary to the law above it, for the sake of the legal certainty of the court must cancel the deed. The amendment of the articles of association is invalid because it is based on a rule of legislation that should be abrogated because it is in conflict with higher-ranking rules.

Thus, with the conflict of norms between Law Number 28 Year 2004 regarding Foundation and the Foundation Law, besides causing the lack of legal certainty for the community regarding the period of adjustment of the foundation's articles of association, also resulted in a deed made under Law Number 28 of 2004 on the Foundation may be applied for cancellation to the District Court, which means that it has no legal force because the deed is legally flawed, and since the decision of cancellation of the deed by the judge, then the validity of the cancellation is valid since the legal action/agreement is canceled.

IV. CONCLUSION

Based on the result of the discussion on the problems in this thesis, the following conclusions can be put forward:

1. As regulated in Law Number 28 Year 2004 regarding the Foundation that the procedure for the amendment of the founding deed of the Foundation must take into account the formal provisions in the Foundation Law. That is Article 18 Paragraph (1), must be done first through the meeting of the supervisor. At the meeting should be at least attended 2/3 of the number of members of the builder. To amend the deed of establishment of the Foundation must be done by Notary and made in Indonesian language. Then if the agreement in the meeting of the coach has been unanimous, then further to convey the change of deed to the Minister of Law and Human Rights are a Notary. Following the approval of the Minister of Law and Human Rights, in accordance with the provisions of Article 24 Paragraph (1), that on the deed of incorporation of the Foundation which has been ratified as a legal entity or amendment of the Articles of Association approved, shall be announced in the Republic's Additional State Gazette Indonesia.

2. The legal consequences of the deed of amendment of the articles of association established under Law Number 28 of 2004 concerning the Foundation by an old foundation not incorporated in accordance with the provisions of the Foundation Law are deemed to be amended due to Law Number 28 Year 2004 regarding The Foundation has arranged so that all provisions stipulated in the old foundation law are deemed no longer valid.
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