

Legal Analysis of Foundation Dualism on Darussalam University Asset Ownership in Ambon, Indonesia

Naufal S. Ramadhan*

Collage, Jenderal Soedirman University, Grendeng-Purwokerto, Indonesia

**e-mail: Naufalsajidramadhan@gmail.com*

Sulistiyandari

Jenderal Soedirman University, Grendeng-Purwokerto, Indonesia

Rahadi W. Bintoro

Jenderal Soedirman University, Grendeng-Purwokerto, Indonesia

Abstract

Law Number 12 of 2012 concerning Higher Education Article 60, paragraph 3 states that the community establishes private universities by showing an organizing body with a non-profit principle, namely the Foundation. Based on the description above, the Foundation is one of the social, legal entities that can be a forum for private universities. Usually, the ownership of a university asset is only owned by one Foundation. However, in the decision of the Supreme Court of the Republic of Indonesia, number 2860K/PDT/2016, the parties involved in the decision are the Darussalam Maluku Foundation as the plaintiff and the Darussalam Maluku Education Foundation as the defendant. The Darussalam Maluku Foundation sued the Pendidikan Darussalam Maluku Foundation. After all, the Yayasan Darussalam Maluku Foundation felt aggrieved because the Pendidikan Darussalam Maluku Foundation had unilaterally claimed and controlled the assets of Darussalam University of Ambon campus 2, which then led to the Foundation's dualism over the ownership of Darussalam University of Ambon assets. This study analyzes the legal consequences of the Foundation's duality on the Foundation and the university. The research method is normative, using secondary data from library research, including primary, secondary, and tertiary legal sources. So dualism legal consequences of the Foundation are the Foundation's dissolution and the Foundation's merger. Meanwhile, the legal implications of the Foundation's dualism on universities are related to higher education institutions' accreditation and operational permits and the staffing status of lecturers and experts. However, they will tell the university's right to issue diplomas for students who have completed their education.

Keywords: dualism; foundation; legal consequences; Indonesia.

Правовий аналіз фундаментального дуалізму в Даруссаламському університеті щодо права власності на активи в Амбоні, Індонезія

Науфал Саджид Рамадан*

Коледж, Університет імені генерала Судірмана,

Гренденг-Пурвокетто, Індонезія

*e-mail: Naufalsajidramadhan@gmail.com

Сулістандарі

Університет імені генерала Судірмана,

Гренденг-Пурвокетто, Індонезія

Рахаді Васі Бінторо

Університет імені генерала Судірмана,

Гренденг-Пурвокетто, Індонезія

Анотація

Законом Індонезії «Про вищу освіту» № 12 від 2012 р. частиною 3 статті 60 передбачено, що при заснуванні громадою приватного університету вказується засновник, який має неприбутковий статус, а саме – Фонд. Отже, відповідно до чинного законодавства Фонд є громадською організацією, яка може бути засновником приватних університетів. Зазвичай право власності на активи університету належить тільки Фонду. Однак у 2016 р. Верховний суд Республіки Індонезія розглядав справу № 2860K/PDT/2016, сторонами якої були Darussalam Maluku Foundation (позивач) і Darussalam Maluku Educational Foundation (відповідач), які внаслідок неузгодженості дій Міністерства юстиції та прав людини Індонезії й приватних нотаріусів одночасно мали статус засновників Darussalam Ambon University, претендуючи на управління його кампусами та іншими активами. У запропонованому дослідженні проаналізовано правові наслідки подвійності Фонду для діяльності університету. З цією метою застосовано нормативний метод дослідження з використанням вторинних даних літературних джерел, законів, підзаконних актів та судової практики. Зроблено висновок про те, що вирішення проблеми дуалізму фондів може бути їх злиття або ліквідація, при цьому проаналізовано й наслідки для окремих аспектів діяльності університетів, пов'язаних з акредитацією закладів вищої освіти, дозволами на експлуатацію, штатним статусом викладачів та експертів і правом університетів видавати дипломи про вищу освіту.

Ключові слова: дуалізм; заснування; правові наслідки; Індонезія.

Introduction

The enactment of Law Number 16 of 2001 concerning Foundations is a breakthrough for foundations operating in Indonesia. This law has at least become a legal umbrella for people who deal with foundations, such as founders,

supervisors, supervisors, and members of the public in general. In 2004 this Law on Foundations was amended by Law No. 28 of 2004 [1], referred to as the Foundation Law. Foundations are expressly stated in the formulation of Article 1 point 1 of the Law on Foundations as legal entities, provided that the status of the legal entity of the Foundation is only obtained after the Foundation's establishment deed is approved by the Minister of Justice. In daily traffic, the Foundation is treated as a legal entity [2]. The development of the world of education, especially universities, is currently swift, considering that one of the goals of the Indonesian State is to educate the nation's life. Under the provisions of the legislation, a university must have the status of a legal entity. Article 16 of the Law on Higher Education Institutions states that universities can be formed by legal entities such as foundations. Foundation is a legal entity that has social, religious, and humanitarian purposes and objectives. Foundation or Stichting (Netherlands), a legal entity that carries out activities in the social field. Another understanding [3] is that a foundation is a legal entity under the leadership of a management body with particular legal and social objectives. Another purpose of establishing a foundation is for social education, so its action is voluntary to donate part of its wealth. This Foundation can be seen in schools, higher education, or universities.

Several years ago, there was a case of dualism in the management of the Foundation against the ownership of a university, the control of the Foundation did not necessarily carry out the activities and management of the university. However, the two managements had to pay attention to the legal umbrella of the university because it would have legal consequences for the ownership of the university's assets, as it turned out. In the decision of Supreme Court number 2860 K/PDT/2016 and the decision of Supreme Court Number 3100 K/PDT/2017.

In the decision of the Supreme Court number 3100 K.PDT/2017, in the lawsuit between the Darussalam Maluku Education Foundation, referred to as the Maluku Darussalam Education Foundation, and the Darussalam Foundation, the lawsuit states that the defendant (Darussalam Foundation) has appointed the new Darussalam Ambon University rector with using letterhead. On behalf of the Darussalam Foundation, is against the law, stating that the Darussalam Foundation, according to the Deed of Establishment Number 01 of 2008, is a Foundation that has been dissolved and therefore has no power, and claims that Darussalam University Ambon belongs to the Maluku Darussalam Education Foundation. Then the Darussalam Foundation did not attend the trial for some reason, and the Ambon District Court judge granted the lawsuit with a verstek decision which was also defended in the cassation decision by the Supreme

Court judge, thus declaring the Maluku Darussalam Education Foundation as the winning trial.

In contrast to the decision of Supreme Court Number 2860 K/PDT/2016, in the lawsuit between the Darussalam Maluku Foundation, referred to as the Darussalam Maluku Foundation, and the Darussalam Maluku Education Foundation, the lawsuit states that the Defendant (Maluku Darussalam Education Foundation) has controlled the assets of Darussalam University Ambon. Is an unlawful act, saying that the Plaintiff (Darussalam Maluku Foundation) is the legal manager of the property of the University of Darussalam Ambon and ordering the defendant (Darussalam Education Maluku foundation) to hand over the management of the assets of the University of Darussalam Ambon. In this case, the Ambon District Court judge granted the claim, defended in a cassation decision by the Supreme Court judge, thus stating that the Maluku Darussalam Foundation was the winning party.

The cases in Supreme Court Decision Number 2860 K/PDT/2016 and Supreme Court Decision Number 3100 K/PDT/2017 are cases that fight over the assets of Darussalam University Ambon. The Darussalam Maluku Foundation and the Maluku Darussalam Education Foundation, based on the two supreme court decisions above, are legally and binding. The foundations have the right to manage the assets of Darussalam University Ambon. The Darussalam Maluku Foundation controls the Wara and Masohi campuses and several other assets, while the Darussalam Maluku Education Foundation controls the campuses. Tulehu and several other assets. Under the prevailing norms, ownership of a university's assets is usually only owned by one Foundation. Of course, it will have legal consequences for some parties.

Regarding legal consequences, Soeroso [4] defines them as the result of an action taken to obtain a result desired by the perpetrator and regulated by law. This action is called legal action. So, in other words, legal consequences are the consequences of a legal action. Supreme Court's decision number 2860 K/PDT/2016, which states that the Darussalam Maluku Foundation is the legal manager of Darussalam University Ambon, and the Supreme Court's decision number 3100 K/PDT/2017, which states the Darussalam Maluku Education Foundation as the legal administrator of Darussalam University, Ambon Is disharmony. Therefore, the author is interested in discussing the legal consequences of the dualism of the Foundation's management on the ownership of university assets in Ambon.

The formulation of the problem that is the subject of discussion is first, how is the validity of the deed of transfer of management Number 21 of 2012 based

on the decision of the Supreme Court of the Republic of Indonesia Number 2860K/PDT/2016. Second, what are the legal consequences of the Foundation's dualism over ownership of university assets in Ambon based on the decision of the Supreme Court of the Republic of Indonesia Number 2860K/PDT/2016?

Materials and Methods

This research will be structured using normative juridical analysis [5]. Namely, research focused on examining the application of rules or norms in positive law. The method used in this research is a statutory approach, an analytical approach, and a conceptual approach [6]. The data needed to be used in this research is by using secondary data. Primary legal materials include the Civil Code, Law Number 28 of 2004 concerning amendments to Law Number 16 of 2001 regarding Foundations, Government Regulation Number 2 of 2013 regarding Amendments to Government Regulation Number 63 of 2008 concerning the Implementation of the Law on Foundations. Then the secondary legal materials include libraries in law, research results in the field of law, scientific articles, journals, and the internet. Researchers use the library data collection method to collect many books, documents, rules and regulations, scientific works, and other pieces of literature. The legal materials obtained will be analyzed qualitatively.

Results and Discussion

The Validity of the Deed of Transfer of Management Number 21 of 2012

The beginning of the occurrence of dualism, as it turns out in this case, the author tries to explain the initial chronology of the establishment of the Darussalam Foundation in full first. In 1981, Major General TNI Hasan Slamet, who then served as the Governor of Maluku and several Malukan Muslim figures, established a foundation named Darussalam Foundation with Notary Deed No. A formal Education Institution was established, later developing into the University of Darussalam Ambon. The management of the Darussalam Foundation as stated in the deed of establishment No. 15 dated April 8, 1981. In 2001, the issuance of Indonesian's Foundations law number 16 2001. In 2001, foundations were required to adjust the association's article with an adjustment period of 5 years. The regulation is for foundations that have been established before Foundation Law. Furthermore, in 2004 Law no. 16 of 2001 changed several articles to become Law no. 28 of 2004. This amendment law gives an adjustment period of 3 years until 2009.

In January 2006, Drs. M. Abdullah adjusted his articles of association by the Act's mandate, namely the Law on Foundations no. 16 of 2001 on the amendment to Law no. 28 of 2004 so that the Deed of Adjustment of the Darussalam

Foundation No. 01 of 2008. Deed of Adjustment No. 01 of 2008, only proposed to the Ministry of Law and Human Rights in 2010 with Letter no. 002/Not.YYS/RE/2009 dated May 25, 2010, so the decision issued by the Ministry of Law and Human Rights was to reject the adjustment to the articles of the association because the time limit for the adjustment had passed. It was suggested to “establish a new foundation with the same name unrelated to the Darussalam Foundation foundation.” This is stated in the Letter of the Ministry of Law and Human Rights No. AHU.2-AH.01.014445 dated June 11, 2010, signed by the Director of Civil Service on behalf of the Director General of General Legal Administration.

They were following up on the Letter of the Ministry of Law and Human Rights No. AHU.2-AH.01.014445, Mr. Dr. Ir. M. Saleh has established a new foundation that is not tied to another, namely the Maluku Darussalam Foundation, with a Notarial Deed. 31 of 2011, dated May 30, 2011. Members of the management of the Darussalam Foundation Maluku Foundation Notary Deed No. 31 of 2011, accommodate all members who have worked in the Darussalam Maluku Foundation starting from the Darussalam Foundation Notary Deed No. 15 of 1981 to the Darussalam Foundation of the Amendment Deed No. 01 of 2008, this is to maintain togetherness and continuity, and is responsible for carrying out tasks the duties of the Foundation by the objectives of the Foundation. The management has been approved by the Ministry of Law and Human Rights under Number AHU.5635.AH.01.04 of 2011, dated August 19, 2011, and registered at the Ambon District Court on March 4, 2012, under Number 188/2012. discuss various issues, including preparations to carry out the transfer of affairs in managing all movable, immovable, and financial assets owned by the Darussalam Foundation, notarial deed no. 15 of 1981 until the Notary Deed No. 01 of 2008, then an internal meeting was held between the management of the Maluku Darussalam Foundation. 31 of 2011 and the Management of Darussalam Foundation Notary Deed No. 15 of 1981, to hand over all assets and operating permits (Transfer of Management), the formal education of the Darussalam Foundation to the Maluku Darussalam Foundation, which was formalized by notarial deed no. 21 on May 4, 2012.

In 2014, Dr. Ir. Ibrahim Ohorella was with Dra. Hj. Amy Hanny Latuconsina Soulissa and her group have established a new foundation called the Darussalam Maluku Education Foundation Notary Deed number 12, dated March 6, 2014, deed of establishment of the Maluku Darussalam Education Foundation number 12 of 2014, drawn up before a notary initials HT to establish the Maluku Darussalam Foundation feels that the assets of the Darussalam University of Ambon have been divided between the Darussalam Maluku Foundation and

the newly born Darussalam Maluku Education Foundation. Then the Maluku Darussalam Education Foundation unilaterally claimed that all the assets of the Maluku Darussalam Foundation, including the Darussalam University Ambon, belonged to the Maluku Darussalam Education Foundation.

The birth of the Darussalam Maluku Education Foundation which later controlled the assets of the Darussalam University of Ambon made the Darussalam Maluku Foundation hold a meeting of supervisors and management with the aim of suing the Maluku Darussalam Education Foundation on the grounds, 1) That on the basis of the Deed of Establishment of the Maluku Darussalam Education Foundation Number 12 dated March 6 2014 made before a notary with the initials HT who has been approved by the Ministry of Law and Human Rights , The Maluku Darussalam Education Foundation has mastered the management of the Foundation's assets including the management of Darussalam University Ambon, 2) That the actions of a Notary with the initials HT who issued the Deed of Establishment of the Maluku Darussalam Education Foundation Number 12 dated March 6, 2014 without first confirming to The Darussalam Maluku Foundation as the right to manage the assets of the Darussalam University of Ambon and has ignored the existing documents related to the Darussalam Maluku Foundation as a precautionary principle as a Notary official, the Notary with the initials HT has made negligence in carrying out his duties and authorities as a Notary official. Has harmed the Maluku Darussalam Foundation. 3) That legally Ministry of law and human rights should not issue a letter of Ratification of the Deed of Establishment of the Darussalam Maluku Education Foundation because the assets of the University of Darussalam Ambon from the Darussalam Foundation have been transferred to the Darussalam Maluku Foundation, which by law based on Deed of Transfer of Asset Management number 21 dated May 4, 2012, and should also Ministry of Law and Human Rights no validate Deed Change because the Deed of Amendment refers to the Notary Deed Number: 01, 2008 dated October 6, 2008, which has been rejected by Ministry of Law and Human Rights itself, By therefore by juridical deed Ministry of Law and Human Rights very harmful Maluku Darussalam Foundation who have previously obtained approval from the Ministry of Law and Human Rights, so that the Darussalam Maluku Foundation has not been able to manage the above The management of the Foundation's assets, including not being able to manage the University of Darussalam Ambon. Thus, the Ministry of Law and Human Rights is legally proven to have committed an unlawful act.

Based on these reasons, the Darussalam Maluku Foundation sued the Maluku Darussalam Education Foundation, as evident in the Ambon District Court

decision number 11/Pdt.G/2015/Pn. Amb in which there are several things that become the petitum (lawsuit) of the Maluku Darussalam Foundation, including 1) Declaring Legal and Binding the Deed of Establishment of the Maluku Darussalam Foundation Number 31 of 2011 dated May 30, 2011, Jo Letter of Approval from the Ministry of Law and Indonesian Human Rights Number: AHU.5635.AH.01.04 Year 2011 dated August 19, 2011. 2) Declare the Darussalam Maluku Foundation as the legal manager of the assets of the University of Darussalam Ambon. 3) To declare the deed of establishment of the Darussalam Maluku Education Foundation Number 12 of 2014 in conjunction with the Decree Number: AHU.07444.50.10.2014 dated October 10, 2014, on behalf of the Maluku Darussalam Education Foundation to be invalid and non-binding. 4) Punish and order the Darussalam Maluku Education Foundation to hand over the management of all Darussalam University of Ambon assets to the Darussalam Maluku Foundation.

Ministry of law and human rights Letter No. AHU.2-AH.01.014445 recommends Mr. Dr. Ir. M. Saleh establish a new foundation not tied to another foundation called the Maluku Darussalam Foundation with Notarial Deed. 31 of 2011, dated May 30, 2011. Member of the management of the Darussalam Foundation Maluku Foundation Notary Deed No. 31 of 2011, accommodate all members who have worked in the Darussalam Maluku Foundation starting from the Darussalam Foundation Notary Deed No. 15 of 1981 to the Darussalam Foundation of the Amendment Deed No. 01 of 2008, this is to maintain togetherness and continuity, and is responsible for carrying out tasks the duties of the Foundation in accordance with the objectives of the Foundation. The management has been approved by the Ministry of Law and Human Rights under Number AHU.5635.AH.01.04 of 2011, dated August 19, 2011, and registered at the Ambon District Court on March 4, 2012, under Number 188/2012. based on Article 52 and Article 28 Paragraph 2, According to Indonesian Foundation Law, the Foundation also adheres to the principles of good governance in the form of transparency/openness and accountability, which can be seen in the vulnerability of the Foundation regarding the annual report and financial statements by the announcement of the information to the public so that it can be known [7]. In order to apply the principle of transparency to the financial statements of the Foundation so that it can continue the activities the Foundation, the parties agreed to transfer the ownership and management of the assets of the University of Darussalam Ambon from the Darussalam Foundation to the Darussalam Maluku Foundation which was formalized in the Deed of Transfer of Management number 21 of 2012.

According to the author's analysis, the Darussalam Foundation, whose approval was rejected by the Ministry of Law and Human Rights, has legal consequences for the legal entity status of the Foundation itself. One thing to be able to say is that a foundation is a legal entity, a process or mechanism for ratification by the government is needed, in this case, the Minister of Law and Human Rights. After the Minister approves, the Foundation officially becomes a legal entity [8]. Based on the description, the deed of adjustment of Darussalam Foundation number 1 of 2008 has been rejected by the Ministry of Law and Human Rights, and this is stated in the Ministry of Law and Human Rights Letter No. AHU.2-AH.01.014445 dated June 11, 2010, according to the author's analysis, the Darussalam Foundation does not have approval from the Ministry of Law and Human Rights, so the Darussalam Foundation is a foundation that is not recognized as a legal entity.

In the deed of management of the assets of the University of Darussalam Ambon number 21 of 2012, two parties mutually agreed, namely the Darussalam Foundation as the provider of ownership rights and management permits for the University of Darussalam Ambon and the Darussalam Foundation as the party receiving the ownership and management permits for the assets of the University of Darussalam Ambon. The agreement is contained in a notarial deed made by a Husain Tuasikal notary. The deed made by a notary must refer to the agreement, one of the conditions for the validity of the agreement, namely the fulfillment of subjective conditions contained in Article 1320 of the Criminal Code because it relates to the subject of the deal, personal requirements include the ability to act according to the law (capacity) that the parties wish to carry out the contract are persons deemed authorized by statute to conclude agreements. What is regulated in Article 1330 of the Civil Code stipulates that every person is capable of entering into an engagement. Based on this, the legal subject of an agreement must meet the elements of the ability to act according to the law. Legal subjects are everything that has rights and obligations in legal traffic. Included in the definition of legal subjects are humans (*natuurlijke persoon*) and legal entities (*rechtspersoon*) [9]. Article 1 UUY states that a foundation is a legal entity consisting of separated assets intended to achieve specific social, religious, and humanitarian goals, which have no members. The birth of the Foundation as a legal entity is official when the deed of establishment of the Foundation is approved [10]. The author analyzes that the Darussalam Foundation is incapable of transferring the assets of the University of Darussalam Ambon because of the ability to act according to the law for the Foundation when the Foundation has been approved as a legal entity by the Ministry of Law and Human Rights.

The position of the Darussalam Foundation as a legal subject in the deed of adjustment of the Darussalam Foundation number 21 of 2012 in which the Darussalam Foundation is not recognized as a legal entity in carrying out legal actions to transfer the assets of the University of Darussalam Ambon, does not meet the qualifications as an appeared who comes to a notary because the legal subject of an agreement must have the ability to carry out legal actions. The author analyzes that the Darussalam Foundation does not fulfill the element of skill in acting because it does not get approval as a legal entity from the Ministry of Law and Human Rights. Based on the author's research, the deed of transfer of management number 21 of 2012 does not meet the subjective element of a competency agreement as a valid requirement of an agreement based on Article 1320 because the Darussalam Foundation as a party to the deed did not get ratification as a legal entity from the Ministry of Law and Human Rights so that the Darussalam Foundation is not a legal subject. Therefore, the legal consequences if the subjective element is not fulfilled, that is, it can be canceled, or a cancellation is requested. If action cancellation is not carried out, the contract still exists and must be carried out as a legitimate contract.

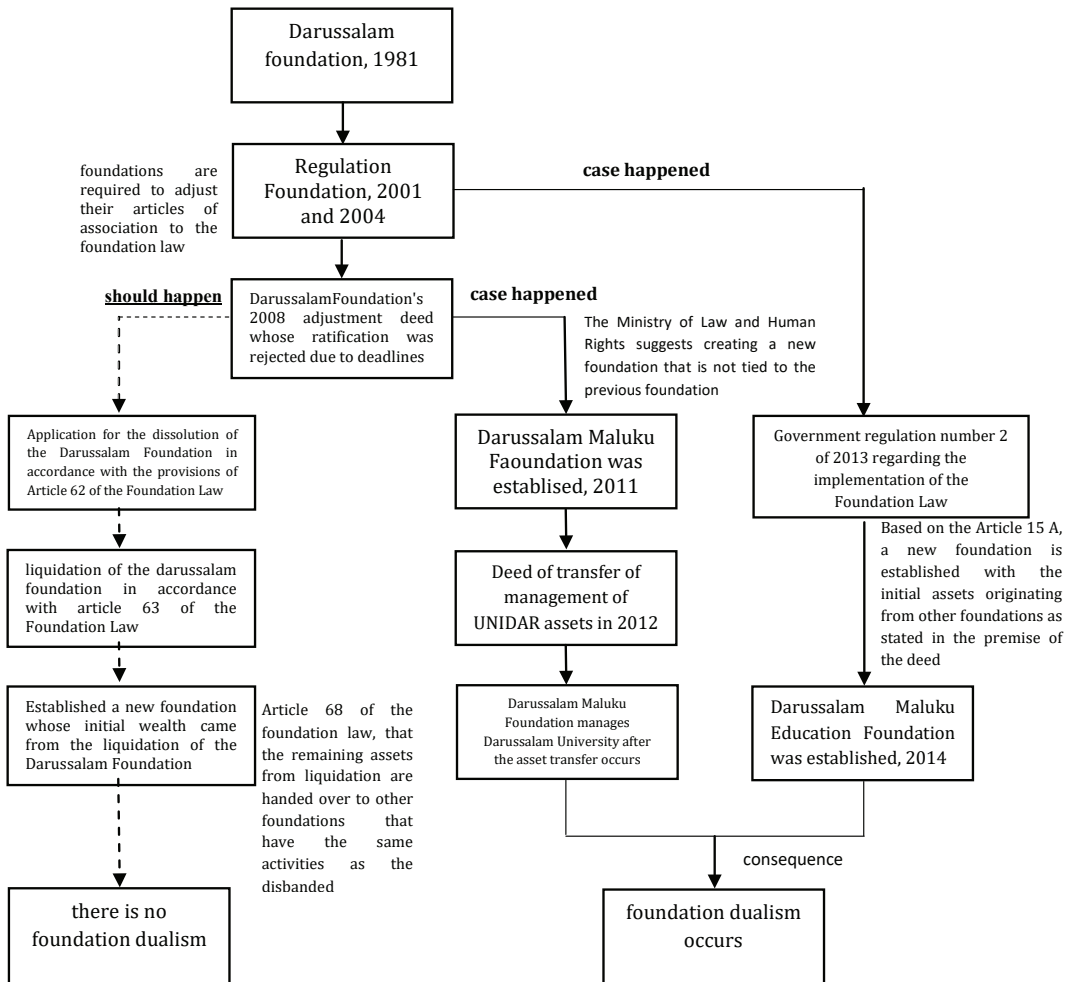
Legal Consequences of Foundation Dualism on Asset Ownership at Darussalam University, Ambon.

Foundations before the enactment of Law on Foundations Number 28 of 2004, dated October 6, 2004, concerning amendments to Law Number 16 of 2001 on Foundations, can be divided into two, namely foundations that are still recognized as legal entities and foundations that are not recognized as legal entities. Foundations that are still recognized as legal entities. Foundations must adjust their Articles of Association against the Foundation Law until October 6, 2008. If after making adjustments to the Articles of Association on time, they must immediately report/notify the adjustment to the Minister no later than one year after the adjustment or no later than October 6, 2009 (Article 71 paragraph 3 of Law Number 28 of 2004 concerning Foundations) [11].

Foundations that are still recognized as legal entities in the case of making a foundation adjustment deed are by using Article 37 A of Government Regulation Number 2 of 2013 concerning Amendments to Government Regulation Number 63 of 2008 concerning Implementation of the Law on Foundations having the following characteristics: a) When established with a Notary Deed, it has been registered in the District Court where the date and registration number must be visible because it will later become physical data which is then attached to the deed protocol or the minutes of the deed and there must be an

operational permit from the relevant agency. b) The deed does not have to use the premise to adjust. c) When the Foundation is established, how much is the wealth, and after adjusting the wealth to how much and must be based on the assessment of the Public Accountant. d) Never been dissolved or dissolved. e) When the Deed is submitted to the Minister of Law & Human Rights, there is no Decree of the Minister for approval, only a reply letter from the Minister that the Minister has received the adjustment to the notification from the Notary. The value of the reply letter from the Minister that the notification has been received from the Notary is the same value as the Decree of the Minister's ratification.

Discussion scheme



Foundations that are not recognized as legal entities because they do not meet the requirements provided by the law have legal consequences. This Foundation still has the opportunity to adjust its Articles of Association against the Foundation Law no later than one year after the enactment of the Foundation Law, which is given a chance until October 6, 2006 [10]. For such a foundation, the making of an adjustment deed is based on an agreement between all existing founders and administrators of the Foundation, and the will is stated in a new Deed of Establishment with the premise stating the origin of the Foundation and this change must be requested for approval from the Minister.

Foundations that are not recognized as legal entities in the case of making a foundation adjustment deed are by using Article 15 A of Government Regulation Number 2 of 2013 concerning Amendments to Government Regulation Number 63 of 2008 concerning Implementation of the Foundation Law having the following characteristics: a) Deed of founder not registered in the local District Court. b) There is no operational permit from the relevant agency in its field of activity. c) Foundations, when established with a Notary Deed, were not registered in the District Court and did not obtain an operational permit from the relevant agency. d) When making the deed of adjustment, it must use the premise that the Foundation established is a new Foundation which is a continuation of the change. It is indeed a continuation or change of the old Foundation which was established by which Notary, on what date, and with what number. e) Article 5 (wealth article), in this case, a property is set aside by this founder, a former manager, with a minimum nominal value of Rp. 10,000,000.00 (ten million rupiahs), then it is also mentioned and added to the old assets according to the assessment of the Public Accountant so that the assets are assets that were set aside at the time of establishment and added to the assets of the old Foundation. Thus, it cannot be accused of controlling the old Foundation's assets because it was included in the Deed of Adjustment. f) There is no operational permit from the relevant agency in accordance with its field of activity, against Foundations that are not recognized as legal entities based on Article 15 A of Government Regulation Number 2 of 2013 by way of establishing a new Foundation which contains the premise of the deed and the origin of the Foundation including the assets of the Foundation. This new Foundation requires ratification from the Minister to obtain its legal entity status.⁸ The adjustment of the Articles of Association based on Article 15 involves a decree of ratification as a legal entity and the Minister.

The Darussalam Foundation is not recognized as a legal entity, resulting in unclear legal subjects. The Darussalam Foundation wishes to transfer assets to the Darussalam Maluku Foundation, but the deed of management transfer

number 21 of 2012 is inappropriate. The Darussalam Foundation should be dissolved first. Following the provisions of Article 28 paragraph (2) letter e of the Foundation Law 98, the Trustees have the authority to dissolve the Foundation. The command to disband is granted in the event that the Foundation's term of association has expired according to the Foundation's Articles of Association or because the Foundation's objectives set out in the Articles of Association have been achieved or not achieved as it turns out in article 64 paragraph 1 UUY which states that in the case of a foundation disbanding because of a court decision. Based on this, the authors interpret that the Darussalam Foundation, which is not recognized as a legal entity, should be able to be dissolved based on a court decision so that it can appoint a liquidator to settle the assets and assets of the Darussalam Foundation, especially with regard to the University of Darussalam Ambon. Especially in the case of foundations that provide formal education, such as private universities, as well as for the benefit of students, lecturers, and others related to the world of education, a Foundation that has the fate described above, which must be dissolved and liquidated and can no longer use the name of the Foundation, must be saved. Through the remaining proceeds from the liquidation of the disbanded Foundation must be handed over to another foundation that has the same goals and objectives as the disbanded Foundation [12].

The period between the Foundation disbanding and until the liquidator has completed the settlement is called the "Liquidation Period". According to Article 63 paragraph (3) of Law Number 16 of 2001, during that period, the Foundation could no longer carry out legal actions, except in order to settle the assets of the Foundation [13] and during that time according to Article 63 paragraph (4) In all outgoing letters, the phrase "in liquidation" must be included behind the name of the Foundation. In order for the public to know that the Foundation is in liquidation, the liquidator must announce it in the newspapers.

Darussalam Foundation, which has not notified the Minister under the provisions as referred to in Article 71 paragraph 3 of the Foundation Law, does not use the word "Foundation" in front of its name as referred to in Article 71 paragraph (4) of the Foundation Law and must liquidate its assets and submit the remaining liquidation proceeds by the provision as referred to in Article 68 of the foundation law, that the remaining assets resulting from the liquidation may be transferred to another legal entity that has the same activities as the disbanded Foundation if this is regulated in the law regarding the legal entity. Based on these provisions, in order to continue the activities of the Darussalam Foundation by its aims and objectives, it is possible to establish a new foundation and the old Foundation to be dissolved for liquidation and the new Foundation

will later receive the remaining assets, including the activities carried out by the dissolved Foundation.

Conclusions

A Darussalam Foundation not recognized as a legal entity has legal consequences for a foundation that cannot use the word foundation in front of its name. The transfer method for assets of a foundation not recognized as a legal entity is to apply for dissolution by the provisions of Articles 71 and 62 of the Law. Therefore, the Foundation will be liquidated by the provisions of Article 63 of the Foundation Law. The proceeds of liquidation assets will be given to other foundations with the same aims and objectives or handed over to the State, and the assets will be used by the aims and objectives of the dissolved Foundation. Continue the activities of the Darussalam foundation by its aims and purposes. It is possible to establish a new foundation and the old Foundation to be dissolved for liquidation. The new Foundation will later receive the remaining assets resulting from the liquidation, including the activities carried out by the dissolved Foundation.

Recommendations

Legal consequences are consequences obtained by legal actions. The dualism of the Foundation is a serious problem that the parties must face. The author criticizes that the origin of dualism is rooted in the lack of synergy between a notary and the Ministry of law and human rights. The author hopes that the Ministry of Law and Human Rights and notaries will be more effective in implementing Article 62 in the Indonesian regulation of foundations concerning the dissolution of foundations and Article 63 in the Indonesian rule of foundations regarding the liquidation of foundations so that the Ministry of Law and Human Rights and notaries can provide advice and direct foundations that are no longer able to use the word foundation in front of their names to dissolve their foundations first in order to transfer assets. In accordance with the procedures determined by Indonesian regulation of foundations, the case of the dualism of the Foundation against a university asset, as in this thesis, will not be repeated in the future.

References

- [1] Rido, A. (2004). *Legal Entity and Legal Entity Position of Company, Association, Cooperative, Foundation, Waqaf*. Bandung: Alumni.
- [2] Suhardiadi, A.K.M. (2002). *Foundation Law in Indonesia. Based on the Law of the Republic of Indonesia. Number 16 of 2001 concerning Foundations*. Jakarta: Eternal.
- [3] Subekti. (2005). *Legal Dictionary*. Jakarta: Pradya Paramita.
- [4] Soeroso. (2011). *Introduction to Law*. Jakarta: Sinar Graphic.

- [5] Soerjono Soekanto dan Sri Mamudji. (2007). *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*. Jakarta: Rajagrafindo Persada.
- [6] Hajar, M. (2015). *Model-Model Pendekatan Dalam Penelitian Hukum dan Figh*. Pekanbaru.
- [7] Riyandani, Bidri, D., Pujiyono. (2016). The position of the Foundation after the enactment of Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations. *Journal of Private Law*, 4(2), 152-160.
- [8] Simatupang, Taufik H. (2013). The legality of Legal Subjects of Foundations as Legal Entities. *Scientific Journal of Legal Policy*, 7(1), 1-12.
- [9] Tutik. Quarterly Point. (2008). *Civil Law in the National Legal System*. Jakarta: Prenada Media Group.
- [10] Siahaan, Nimrot. Toni. Anjar, Agus. Adi, Panggi Nur. (2020). Legal Subjects in Establishing Foundations According to Law Number 28 of 2004 on Amendments to Law Number 16 of 2001 concerning Foundations. *Scientific Journal "Advocacy"*, 8(1), 1-10.
- [11] Murjiyanto, R. (2011). *Foundation Legal Entity (Aspects of Establishment and Responsibility)*. Yogyakarta: Liberty.
- [12] Anisa, N. (2017). Juridical Analysis of Foundations Not Adjusting Their Articles of Association. *Legal Horizon Journal*, 8(1), 86-95.
- [13] Affandi, N. (2019). Use of Foundation Assets Handed Over to the State Due to Court Decisions. *Journal of Justitia Hukum*, 3(1), 135-151. <http://dx.doi.org/10.30651/justitia.v3i1.2714>.

Naufal S. Ramadhan

Master of Notary, Faculty of Law, Collage, Faculty of Law
Jenderal Soedirman University, Grendeng-Purwokerto, Indonesia
e-mail: Naufalsajidramadhan@gmail.com
ORCID 0000-0002-5675-2514

Sulistyandari

Lecturer, Faculty of law
Jenderal Soedirman University, Grendeng-Purwokerto, Indonesia
e-mail: sulistyandari265@yahoo.co.id
ORCID 0000-0002-7756-9954

Rahadi W. Bintoro

Lecturer, Faculty of law
Jenderal Soedirman University, Grendeng-Purwokerto, Indonesia
e-mail: Rahadi.bintoro@unsoed.ac.id
ORCID 0000-0003-1079-3342

Науфал Саджид Рамадан

магістр нотаріату, юридичний факультет, коледж, юридичний факультет
Університет імені генерала Судірманана, Гренденг-Пурвокетто, Індонезія
e-mail: Naufalsajidramadhan@gmail.com
ORCID 0000-0002-5675-2514

Сулістандарі

викладач, юридичний факультет

Університет імені генерала Судірмана, Гренденг-Пурвокетто, Індонезія

e-mail: sulistyandari265@yahoo.co.id

ORCID 0000-0002-7756-9954

Рахаді Васі Бінторо

викладач, юридичний факультет

Університет імені генерала Судірмана, Гренденг-Пурвокетто, Індонезія

e-mail: rahadi.bintoro@unsoed.ac.id

ORCID 0000-0003-1079-3342

Suggested Citation: Ramadhan, N.S., Sulistyandari, & Bintoro, R.W. (2022). Legal Analysis of Foundation Dualism on Darussalam University Asset Ownership in Ambon, Indonesia. *Problems of legality*, 159, 160-175. <https://doi.org/10.21564/2414-990X.159.267275>.

Статтю подано / Submitted: 18.11.2022

Прорецензовано / Revised: 01.12.2022

Схвалено до друку / Accepted: 07.12.2022

Опубліковано / Published: 25.12.2022