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FOUNDATION LEGALIZATION PROCESS TO THE KEMENKUMHAM BASED ON LAW NO. 28 OF 2004 CONCERNING AMENDMENTS TO LAW NO. 16 OF 2001 CONCERNING FOUNDATIONS (CASE STUDY ON THE NURUL HASAN SHODIQ FOUNDATION)

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ABSTRACT

Many Al-Qur'an Education Parks in Indonesia have been running, but quite a lot still do not have a strong legal entity by registering the legal entity of the Foundation with the Ministry of Law and Human Rights, as is the case at TPQ Nurul Hasan in Balapulung village, Tegal Kanupaten, which has existed since 1993. During his TPQ education, Nurul Hasan only relied on personal funds. This research is the Nurul Hasan Shodiq Foundation registering the Foundation's legal entity with the Ministry of Law and Human Rights in accordance with the regulations of Law no. 28 of 2004. This research is a type of qualitative research with a normative juridical approach method. This research is descriptive in nature and aims to describe and analyze systematically, factually and accurately the facts and relationships of existing phenomena. data collection techniques in the form of library research according to the research theme. The law imposes obligations on educational foundations that are legal entities and have been registered as a process for establishing educational foundations because there are no facts about the establishment of educational foundations which have the impact of not receiving School Operational Assistance Funds and other assistance to the government. Therefore, steps or conditions are needed so that it can fulfill the establishment of a foundation in the education sector. Legality has been completed in the legal deed and the decree of the Ministry of Law and Human Rights regarding the establishment of the Nurul Hasan Shodiq Foundation. It is hoped that it can realize Qur'an education at TPQ Nurul Hasan that is advanced and provides prosperity by improving the quality of education.

Keywords : Legality, Foundation, Education, TPQ

INTRODUCTION

According to CST Kansil, bodies or associations are made legal subjects who have legal rights and actions. This body is called a legal entity (*recthspersoon*), so there are individuals created by law.²⁵The foundation has been inaugurated in order to obtain the foundation as the maker of the Deed of Establishment of the Foundation as a Notary to obtain approval carried out by the Regional Office of the Ministry of Justice and Human Rights by attaching several documents. The growth of foundation legal entities in Indonesia is quite widespread in Indonesian society today. The legal entity of the foundation was formed with the satisfaction of the community because they wanted to make the place have a purpose.²⁶

The legal entity of the Foundation is used by the Indonesian people for implementation including education. Foundations are the main institutions that function as an embodiment of concern for work programs and social activities in the management of both individuals and the general public. UU no. 28 of 2004 concerning amendments to Law no. 16 of 2001.

²⁵ C.S.T. Kansil, *Pengantar Ilmu Hukum Dan Tata Hukum Indonesia*, Jakarta : Balai Pustaka, 1989, hlm. 216

²⁶ Irma F. 2022. *Hukum Yayasan Pendidikan (Prinsip Transparansi Pengelolaan Kegiatan Usaha Yayasan Menurut Undang-Undang Nomor 16 Tahun 2001 jo. Undang-Undang Nomor 28 Tahun 2004)*. Sleman: Deepublish. Hlm. 4.

The Al-Qur'an Education Park in Indonesia has been running a lot but still does not have a Foundation legal entity registration with the Ministry of Law and Human Rights, sAs is the case at TPQ Nurul Hasan in Balapulang village, Tegal Kanupaten, it has been established since 1993. During its education, TPQ Nurul Hasan only relied on the founder's personal funds, so it was still very limited in carrying out its educational activities.

As time went by, there was a change in new management which was then continued by the descendants of TPQ founder Nurul Hasan. In 2022, TPQ Nurul Hasan registered itself as a foundation legal entity with the Ministry of Law and Human Rights with the name "Yayasan Nurul Hasan Shodiq" which was created before a Notary official with the aim that the process of carrying out educational activities at TPQ Nurul Hasan had the legality of the foundation in the form of a notarial deed and a Decree from the Republic of Indonesia Ministry of Law and Human Rights.²⁷Not only that, TPQ Nurul Hasan hopes to have registered himself atKEMENKUMHAM in carrying out education so that it can improve the quality of education. Therefore, the author conducted research with the title "Foundation Legalization Process to the Ministry of Law and Human Rights Based on Law no. 28 of 2004 concerning Amendments to Law no. 16 of 2001 concerning Foundations (Case Study of the Nurul Hasan Shodiq Foundation)".

FromIn this research, the author examines whether the Nurul Hasan Shodiq Foundation in registering legal entities is in accordance with the regulations of Law no. 28 of 2004 with the aim that this research can be useful for the Indonesian people so that they don't take the wrong steps in the process of registering a Foundation legal entity with the Ministry of Law and Human Rights by referring to the legal journal "Judicial Analysis of the Establishment of Educational Foundations After the Entry of Law Number 28 of 2004 concerning Amendments to Laws Law Number 16 of 2001 concerning Foundations" (Handayani D, Haryani E, Anggie IAP. 2018).

RESEARCH METHODS

This research is qualitative research with a normative juridical approach, namely using legal principles, statutory regulations and doctrine so that it can answer various problems in the research. This research is descriptive analytical, namely describing it systematically and accurately according to the facts and phenomena of the research. This research technique uses library research that is relevant to the research theme. The research sources consist of two, namely First, primary law which consists of laws, official records, statutory regulations and judge's decisions. Second, secondary law includes books, theses, articles, journals, theses and dissertations that are in accordance with the research theme.

RESULTS AND DISCUSSION

The Foundation is a legal entity with its existence in the legal traffic of the Indonesian state and has received recognition from the Indonesian people. Foundations are called stichting which in English terms, foundations that exist in social life in Indonesia are known as institutions with business activities in the social, religious and humanitarian fields that have been developed in Indonesia. The existence of the Foundation is currently based on the customs and Jurisprudence of the Supreme Court, including in the Supreme Court Decision on June 27 1973 Number 124 K/Sip/1973 confirming that the Foundation is a legal entity²⁸. Foundations are regulated by Law Number 16 of 2001, which has been amended to become Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations. A

²⁷ Darajat PP, Jannah UM, Abidin Z. (2021). *Penguatan Simpul Desa Khaira Ummah Dalam Perintisan Yayasan Pendidikan Di Desa Pagak Kabupaten Malang*, Jurnal Pengabdian Kepada Masyarakat Radisi Volume 1 No. 3 Desember 2021, Hal : 188 s/d 196

²⁸ Rosmi D. *Pelaksanaan Undang-Undang Yayasan Dalam Kontroversial di Indonesia*, Rangkuman Karya Tulis Ilmiah di Bidang Hukum, Perpustakaan dan Layanan Informasi Biro Hukum dan Humas Badan Urusan Administrasi Mahkamah Agung Republik Indonesia, 2014, Hlm. 278.

foundation is a legal entity consisting of certain objectives in the social, religious and humanitarian fields, which does not have members.²⁹

Foundations are legal subjects or legal entities that are independent and have no dependence on the existence of Foundation managers. So the Foundation is not the owner but the manager. Foundation organs have full responsibility for managing assets in order to achieve the Foundation's goals. According to Mulyono, a legal expert provides a definition of a foundation as a legal entity with separate assets to achieve the desired goals, such as in the social, religious and humanitarian fields, and does not have members.³⁰

Legal entities as legal subjects for parties receiving rights and obligations. Legal entities have a term called *rechtspersoon*. Foundations have various forms, namely educational foundations. Educational foundations are obtained from the publication of legislation that requires educational foundations to have a legal entity and a process for establishing the educational foundation itself. This is because there is no deed of establishment, which has an impact on obtaining School Operational Assistance such as from the government, resulting in obtaining various steps or conditions that meet the requirements for establishing a foundation. Foundation Law Number 28 of 2004 provides a definition of a foundation as a legal entity that has a role in the social, religious and humanitarian fields in accordance with formal requirements. The main changes to the Law are:³¹

No.	BEFORE UU no. 16 of 2001	AFTER UU no. 28 of 2004
1.	Establishing a foundation does not require government approval	Establishing a foundation requires approval from the government
2.	There has been no approval from the minister judiciary	There is approval from the minister of justice
3.	Foundation organs are allowed to hold concurrent positions	Foundation organs are not permitted concurrent position
4.	There is no limit to the term of service of foundation organs	There is a limit to the working life of the organ foundation
5.	Foundation names are allowed to be the same	Foundation names are not allowed to be the same
6.	Foundations cannot be bankrupted	Foundations can go bankrupt

²⁹ Pasal 1 ayat (1) Undang-undang No. 28 Tahun 2004 Tentang Perubahan Atas UU No. 16 Tahun 2001 Tentang Yayasan

³⁰ Mulyono. *Yayasan Kajian Hukum Di Dalam Praktek*, Cakrawala Media, Yagyakarta: 2017, Hlm. 1.

³¹ Handayani D, Haryani E, Anggie IAP. (2018). *Analisis Yuridis Tentang Pendirian Yayasan Pendidikan Setelah Berlakunya Undang-Undang Nomor 28 Tahun 2004 Tentang Perubahan Atas Undang-Undang Nomor 16 Tahun 2001 Tentang Yayasan*. Al-Idarah: Jurnal Kependidikan Islam, 8(1).

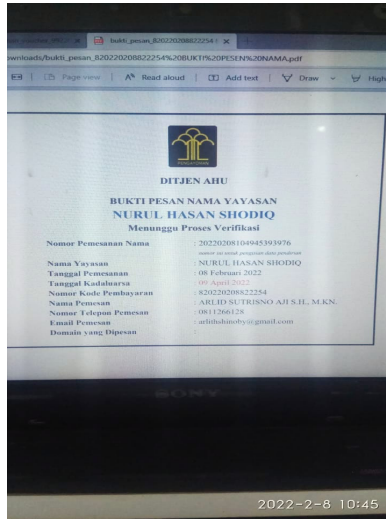


Figure 1. Order the Name of the Nurul Hasan Shodiq Foundation with a Notarial Deed to the Ministry of Law and Human Rights on 02-08-2022

The process of registering the Foundation's notarial deed with the KEMENKUMHAM is the initial step in determining the name of the Foundation as a legal foundation entity at the KEMENKUMHAM. Based on the explanation in paragraph (1), the notarial deed uses Indonesian.³²This is in accordance with PP no. 63 of 2008 in article 1 that the Foundation must have a name identity. Meanwhile, article 2 explains that the name of a registered foundation may not use the name of another foundation.



Figure 2. Process of processing notarial deeds for the Nurul Hasan Shodiq Foundation

The foundation obtains status as a legal entity after the deed of establishment. This is in

³² Pasal 9 ayat (2) UU No. 16 Tahun 2001 Tentang Yayasan

accordance with Article 9 paragraph (2), obtain approval from the Minister.³³ UU no. 28 of 2004 concerning Foundations in Article 11 paragraph (1) provide the power to obtain legal entity status because it is mandatory for a foundation deed of establishment to be made and then legalized by the Ministry of Law and Human Rights and made by a notary. Has a validation function so as to obtain the validity of the position as a legal entity that has eligibility for conflicts in accordance with regulations, foundations in the field of education as the most important requirement in registering as a notary and has been legalized by the Ministry of Law and Human Rights.



Figure 3. Attachment to Ratification of the Establishment of the Nurul Hasan Shodiq Foundation Legal Entity

After waiting for the registration of the foundation deed with a notary official to be registered with the Ministry of Law and Human Rights on February 8 2022, the Nurul Hasan Shodiq Foundation has been officially registered with the Ministry of Law and Human Rights by separating initial assets of Rp. 10,000,000 Rupiah. After registering to establish a foundation in accordance with Law no. 28 of 2004 in paragraph (2), explains that "foundation management is carried out by reappointing the term of office. This is in line with paragraph (1), relating to the articles of association so that management and inspection of the foundation can be carried out so that it can achieve its objectives according to established procedures.

Law no. 16 of 2001 consists of three types, namely supervisors, administrators and supervisors. The supervisor is a body that has authority because it is not delegated by the management and supervisors by law. Manager The aim of the foundation management is to manage the foundation and supervise the management in carrying out activities while at the foundation. In Law no. 16 of 2001, the management of educational foundations does not provide confirmation or regulations during their term of office. Changes to the law have a positive impact because they have a term of office of 5 years and can be replaced when their term of office is complete. This minimizes the power of the position so that it remains extended in obtaining permits in developing foundations and results during internal selection of foundations.

³³ Pasal 11 ayat (1) UU No. 28 Tahun 2004 Tentang Perubahan Atas UU No. 16 Tahun 2001 Tentang Yayasan

CONCLUSION

Community Understanding and Knowledge as administrators of educational institutions such as at TPQ Nurul Hasan, Balapulung Village, still do not fully understand the formation/establishment of a Foundation. UU no. 28 of 2004 concerning Amendments to Law no. 16 of 2001 concerning Foundations provides a statement that foundations are legal entities in accordance with procedures and mechanisms. The obligation of every foundation is to register and adjust budget funds so that it gets approval from the Ministry of Law and Human Rights. There is a legal entity and is responsible to the public. There was a good change in management at TPQ Nurul Hasan with awareness of the importance of registering the legal entity of the Foundation so that it has legality and is highlighted by the Government in order to advance the world of education in Indonesia, especially in Balapulung Village, Tegal Regency. However, there are consequences, namely that there is a deed made, where the establishment is in accordance with the budget and provisions of the Foundation Law. It needs to be understood that every educational organizing unit. Legality can be resolved in a notarial deed and a KEMENKUMHAM decision letter regarding the establishment of the Nurul Hasan Shodiq Foundation. It is hoped that legality can realize Qur'an education at TPQ Nurul Hasan in improving welfare regarding the quality of education and the good name of Balapulung Village, Tegal Regency.

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8. UU No. 28 Tahun 2004 Tentang Perubahan Atas UU No. 16 Tahun 2001 Tentang Yayasan
9. PP No. 63 Tahun 2008 Tentang Pelaksanaan UU Yayasan