



## Notary Position in Statement of Decision on the Amendment of the Basic Budget of the Foundation

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### **Abstract**

This type of research used in this research is normative legal research. By using primary and secondary legal materials, along with tertiary legal materials as supporting materials. According to Article 9 paragraph (2) of Law of the Republic of Indonesia Number 16 of 2001 concerning Foundations (Law 16/2001), the founding deed of a Foundation must be made before a Notary (Notariil) and therefore must be an authentic deed. Deeds of establishment or amendments to the foundation, the articles of association of the foundation must be notarized before a notary public. Considering that the establishment of a foundation has formal requirements, the status of a foundation's legal entity can only be obtained when the deed of establishment is legalized by the Minister of Justice as mentioned in Article 11 paragraph (1). The recognition of the existence of a foundation in a foundation law is motivated by the existence of a legal vacuum and restores the function of the foundation. A foundation is a form of non-profit legal entity in the socio-religious, educational, and related to other social activities. Amendments to the Articles of Association of a Foundation in its establishment are determined by two aspects, First, the aspect of the decision and the aspect of legality.

**Keywords:** *Budget; Notary Position; Statement*

### **Introduction**

Notary is a public official who is authorized to make authentic deeds and has other powers as referred to in Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary (Law 30/2004), as amended by Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments On Law Number 30 of 2004 concerning the Position of Notary Public (Law 2/2014) or based on other laws. That is the definition of a notary as stated in Article 1 number 1 of Law 2/2014.

Notary status, that in making each deed must be clear, correct, complete, and in accordance with Law 30/2004. In making the deed of establishment of the foundation and its amendments, the notary must also understand the laws and government regulations that apply to the foundation and must also be responsible for the deed he makes because there must be sanctions that will be imposed if the deed is not in accordance with the applicable regulations, however In practice, there are also Notaries whose deeds

aren't in accordance with Law 30/2004 and the Notary's Code of Ethics without being afraid of the sanctions they will receive because it causes one of the parties to feel aggrieved.(1)

According to Article 9 paragraph (2) of Law of the Republic of Indonesia Number 16 of 2001 concerning Foundations (Law 16/2001), the founding deed of a Foundation must be made before a Notary (Notariil) and therefore must be an authentic deed. Deeds of establishment or amendments to the foundation, the articles of association of the foundation must be notarized before a notary public.(2)

Considering that the establishment of a foundation has formal requirements, the status of a foundation's legal entity can only be obtained when the deed of establishment is legalized by the Minister of Justice as mentioned in Article 11 paragraph (1). The recognition of the existence of a foundation in a foundation law is motivated by the existence of a legal vacuum and restores the function of the foundation.(3)

For foundations that existed before the existence of Law 16/2001, Article 71 of Law of the Republic of Indonesia Number 28 of 2004 (Law 28/2004) is applicable, which is a transitional provision, stating that when this Law comes into effect, foundations that have been registered with District Courts and announced in the Supplement to the State Gazette of the Republic of Indonesia or those that have been registered at the District Court and have permission to carry out activities from related agencies, are still recognized as legal entities no later than 3 (three) years from the date this Law comes into effect.(4)v By looking at several regulations related to foundations as non-profit organizations, it is necessary to have further regulations related to the position of a notary in the deed of a statement at a meeting, especially a study of amendments to the Foundation's Articles of Association.(5)

If you look at the deed of establishment of changes to the Foundation based on the Foundation's Articles of Association, there may be interference from a Notary in the founding of changes to the Foundation, but if you participate in a meeting decision or policy in a change in the Foundation's Articles of Association, then the Notary does not need to interfere in it, by therefore, the notary only makes deeds and provides legal counseling regarding the making of the deed of agreement in a change to the foundation's education based on the Foundation's Articles of Association.

### ***Research Method***

This type of research used in this research is normative legal research. By using primary and secondary legal materials, along with tertiary legal materials as supporting materials.(6)

### ***Discussion***

#### **Arrangement of a Foundation as a Non-Profit Organization Based on the Foundation Law**

Decision Number 124 K / Sip / 1973 dated 27 June 1973, only answers the question of the status of a foundation legal entity as long as mentioned above, but doesn't guarantee legal certainty and order and restores the function of the foundation as a legal institution in order to achieve certain goals in the social sector. religion and humanity.(7) After the issuance of Law 16/2001, since then, the status of determining legal entities for foundations and guarantees of legal certainty and order, as well as affirming the function of foundations as legal institutions in order to achieve certain goals in the social, religious, and humanity began to be felt by society. So, the character of a foundation legal entity with a social and non-profit objective is clearly different from a corporate legal entity or other business entity whose

activities are for the purpose of seeking as much profit as possible, such as Limited Liability Companies and others.(8)

### **Arrangement of Amendments to the Articles of Association in Establishing a Foundation**

The Articles of Association are part of the contents of the founding deed of the Foundation, the Articles of Association itself must be in accordance with the basic rules of the Foundation which must be obeyed by the supervisors, administrators and supervisors, which the Articles of Association are valid after the Foundation deed is approved by the Minister of Law and Human Rights.(9) Especially regarding amendments to the Articles of Association of a Foundation which require the approval of the Minister of Law and Human Rights, all provisions relating to the ratification of the Foundation *mutatis mutandis* also apply to requests for amendments to the Articles of Association.

Furthermore, the Foundation Law also stipulates that changes to the Articles of Association of a Foundation cannot be made when the Foundation is declared bankrupt unless with the approval of the curator. In the Government Regulation of the Republic of Indonesia Number 63 of 2008 concerning Implementation of the Foundation Law, there are two (2) procedures, namely: First, the procedures for submitting applications for ratification of the deed of establishment and approval of deeds of amendment to the Articles of Association are contained in Article 15, Article 16 and Article 17. Second, the procedures for notifying changes to the Articles of Association and changes to Foundation data are contained in Article 18 and Article 19.(10)

With the existence of Law 28/2004, it appears that the government(11) wants to accommodate the need for regulation of this Foundation issue. The principles that want to be realized in the provisions of Law 28/2004 are the independence of the foundation as a legal entity, openness of all activities carried out by the foundation, and accountability to the public regarding what the foundation has done, as well as the principle of non-profit which is a fundamental principle for a foundation.

This can be seen from several provisions in the law. In connection with the sound of Article 11 Paragraph (1), it means that since the foundation was established, the foundation has automatically met the conditions for the establishment of the foundation which are stipulated in a deed. So, to find out about the amendments to the Foundation Deed, it can be understood the meaning of the provisions in Article 14 Paragraph (1), it is stated that the founding deed of the Foundation contains the Articles of Association and other information deemed necessary. In this connection, the meaning of Article 14 Paragraph (1) is that changes to the deed of establishment of a Foundation must also change the provisions in the Articles of Association of the Foundation.(12)

### **Notary Position in the Deed of Statement on Meeting Resolutions on Amendments to the Foundation's Articles of Association.**

The scope of changes to the founding deed of the Foundation can be seen and understood what is included in the Articles of Association. However, it must pay attention to the provisions in Article 17, which is not justified in changing the aims and objectives. In full it is stated, "The Articles of Association can be changed except for the aims and objectives of the Foundation".

With the ratification of a foundation as a legal entity, the actions of organs such as administrators, supervisors and supervisors, in carrying out their duties to manage a foundation, must be responsible for all their actions based on accountability like a legal entity. It is necessary to distinguish between foundations whose assets are from the state or that manage state aid funds or public funds and foundations that are private in nature with sources of wealth from personal assets and their routine financial sources from donations from companies owned privately by the founders.(13) Thus, the amendment to the articles

of association of a foundation really depends on whether the foundation has the status of a legal entity or not, if not then it is obligatory to make adjustments to Law 28/2004, if it has the status as law, then if there is a change in the name and management, then it must be make amendments to the foundation's articles of association.(14)

The authority is only regarding a certain “*onderdeel*” (part) of the authority.(15) This implies that the authority of the Notary on amendments to the founding of the Foundation's Articles of Association is only limited to making the deed of agreement and on legal counseling of the deed of change of foundation establishment, so that it's not involved directly in the deed of statement in a decision meeting with the management and apparatus of the Foundation in determining amendments to the Articles of Association of the Foundation.

### **Conclusion**

A foundation is a form of non-profit legal entity in the socio-religious, educational, and related to other social activities. Amendments to the Articles of Association of a Foundation in its establishment are determined by two aspects, First, the aspect of the decision and the aspect of legality. The aspect of the decision requires that the internal organs of the Foundation be more effective in managing the amendments to the Articles of Association of the Foundation through Joint Decision Meetings of the Foundation Organs. Second, the legality aspect is the notary's authority in drawing up deeds of amendment to foundation establishment based on the foundation's articles of association.

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