



Juridical Analysis of Merger and Dissolution of Foundations and Legal
Consequences Arising Based on Law Number 16 of 2001 jo. Law Number 28 of
2004 Concerning Foundations
(Case Study of the Merger of Sangkareang Mataram-NTB Foundation)

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Abstract

This study aims to analyze and identify the arrangements related to the merger and dissolution of foundations based on Law no. 16 of 2001 jo. UU no. 28 of 2004 concerning Foundations and regarding the classification and mechanism for the merger and dissolution carried out by the “Indonesian Education Business Foundation” against the “Sangkareang Mataram Foundation” whether they are in accordance with the applicable laws and regulations. This research is a type of normative legal research using statutory approaches, conceptual approaches, and case approaches. The results of this study indicate that the regulatory framework regarding the limited merger and dissolution of foundations is regulated in the provisions of Article 57 to Article 68 of Law no. 16 of 2001 jo. UU no. 28 of 2004 concerning Foundations, then technically regulated further in PP No. 63 of 2008 concerning the Implementation of the Law on Foundations, which substantively regarding mergers requires the preparation of a draft deed of merger and drafting of a deed of amendment to the articles of association and the announcement of the merger of foundations as well as based on Notary Deed Number 05 entitled “Deed of Acquisition” dated 07 April 2022 , with Notarial Deed Number 06 entitled “Deed of Statement of Decision of the Sangkareang Mataram Foundation Trustees” dated 07 April 2022, made by Notary Weny Ayu Haryono SH., M.Kn. It can be seen clearly from juridical analysis that the process or mechanism for legal actions/actions carried out by the Indonesian Education Enterprises Foundation against/to the Sangkareang Mataram Foundation is not a mechanism for merging and dissolving foundations as regulated in a limited manner in Law Number 16 of 2001 jo. Law Number 28 of 2004 concerning Foundations, but legal actions by the Indonesian Education Enterprises Foundation against/to the Sangkareang Mataram Foundation should be the process or mechanism of takeover as stipulated partially in Article 37 paragraph (1) letter (b).

Keywords: *Merger; Dissolution; Foundations*

Introduction

The establishment of a foundation in Indonesia, prior to the existence of Law Number 16 of 2001 concerning Foundations and has been amended by Law Number 28 of 2004 concerning Foundations is only based on the habits that live in society and the jurisprudence of the Supreme Court. The easy process of establishing a foundation encourages people to set up foundations in carrying out their activities. Therefore, foundations develop in society without clear rules, many foundations are misused and deviate from their original purpose, namely in the social and humanitarian field. The legal status as a legal entity is still often questioned by many parties, because the existence of a foundation as a legal subject does not yet have firm and strong legal force.

At that time, there was a tendency for the public to choose the form of a foundation, partly because of the simple establishment process, without approval from the government, because there was a perception from the public that foundations were not legal subjects. Then, in the Decision of the Supreme Court of the Republic of Indonesia dated 27 June 1973 Number 124K/Sip/1973 it was argued that foundations are legal entities. However, the procedures that must be met by foundation managers to obtain legal entity status are still not clearly regulated in laws and regulations; the existence of foundation institutions is only based on the customs, doctrine and jurisprudence of the Supreme Court. This shows that although it is not stated explicitly, foundations in Indonesia have also been recognized as legal entities.¹

So far, several applicable laws and regulations only mention knowing foundations without explaining or regulating the meaning of foundations, as set forth in Article 365, Article 899, Article 900, and Article 1680 of the Civil Code. These articles do not provide any understanding of what a foundation is.

So that the authentic understanding of a foundation does not deviate, the government issued Law Number 16 of 2001 concerning Foundations as the meaning of foundations has been regulated in Article 1 number (1) of Law Number 16 of 2001 which states that:

“A foundation is a legal entity consisting of separate assets to achieve certain goals in the social, religious and humanitarian fields that have no members.”

After the issuance of Law Number 16 of 2001 jo. Law Number 28 of 2004 concerning Foundations, the determination of the legal entity status of a foundation must follow the provisions contained in the law. The law states that foundations obtain legal entity status after the deed of establishment obtains approval from the Minister of Law and Human Rights.

With these provisions it can be seen that foundations become legal entities because of laws or based on laws not based on an open system, namely based on custom, doctrine and jurisprudence as before. The initial capital is in the form of the founder's wealth which is separated from other personal assets. Has a specific goal which is the concretization of religious, social and human values, does not have members.²

A foundation as a legal entity has independent rights and obligations, which are separate from the rights and obligations of the person or entity that founded the foundation, as well as the management and other organs of the foundation.

With the enactment of the Foundation Law, a clear legal entity status for foundations is obtained after a foundation deed is issued which is then ratified by the Minister of Law and Human Rights.

¹ Yahya Zein, Status Hukum Yayasan, <http://yahyazein.blokspot.com/2011/02/Status-hukum-yayasan.html>, accessed 29 June 2022.

² Chatamarrasjid Ais, *Badan Hukum Yayasan Edisi Revisi*, PT Citra Aditya Bakti, Bandung, 2006, p. 2.

The conditions for establishing a foundation are as follows:

- 1) Founded by one or more people;
- 2) There is wealth that is separated from the wealth of its founder;
- 3) Done with a notarial deed and made in the Indonesian language;
- 4) Must obtain approval from the Minister of Law and Human Rights;
- 5) Announced in Supplement to the State Gazette of the Republic of Indonesia;
- 6) May not use a name that has been legally used by another foundation or is contrary to public order and/or decency; And
- 7) The name of the foundation must be preceded by the word "Foundation".

These provisions are intended so that administrative arrangements for the validation of a foundation as a legal entity can be carried out properly in order to prevent the establishment of foundations without going through the procedures specified in this law.

Law Number 16 of 2001 jo. Law Number 28 of 2004 concerning Foundations, apart from being regulatory, is also coercive. This law does not only apply to foundations established after the Law on Foundations came into force, but also applies to foundations that existed before the Law on Foundations came into force.

If you pay close attention to the sound in the transitional provisions of Article 71 paragraph (1) of Law Number 28 of 2004, since the enactment of the law two different recognitions for foundations will appear. There are foundations that are recognized as legal entities, while on the other hand there are also foundations that are not recognized as legal entities. This creates juridical consequences for foundations that existed before the enactment of the Foundation Law.

For foundations that were established before the enactment of the new Foundation Law, and have been registered at the district court, they are still recognized as legal entities. The legal basis for a foundation that obtains such recognition is recognition and respect for the legal rights of a foundation, so that it is in accordance with applicable law that the rights of a person previously obtained cannot be abolished without reasons justified by law. Registrations that have been carried out by foundations before the enactment of Law Number 28 of 2004 in Article 71 paragraph (1) concerning Foundations are only limited to foundations that:

- a. It has been registered at the district court and announced in the Supplement to the State Gazette of the Republic of Indonesia.
- b. Has been registered at the district court and has permission to carry out activities from the relevant agency.

With this registration, the foundation is still automatically recognized as a legal entity as long as it is preceded by fulfilling all the requirements that are required to be carried out according to Law Number 28 of 2004. The condition is that foundations must adjust their Articles of Association with the provisions of Law Number 16 of 2001 jo. Law Number 28 of 2004 concerning Foundations with the provision that no later than 3 (three) years since the entry into force of this law, adjustments have been made.

As for foundations that have never been registered or registered at the District Court, they can obtain legal entity status by adjusting their Articles of Association and are required to submit an application to the Minister within a period of no later than 1 (one) year after Law Number 28 of 2004 concerning Foundations comes into effect. . If within this time limit the founder of the foundation fails to adjust his Articles of Association with the said Foundation Law, then the foundation cannot be recognized as a foundation and the application for approval is rejected by the Minister of Law and Human Rights.

The management of the foundation is also required to notify the Minister of Law and Human Rights regarding changes and adjustments to their Articles of Association. The sanction given to foundations that do not adjust their Articles of Association is that the foundation can be dissolved based on a court decision at the request of the attorney or other interested parties.

In its operations, it turns out that each foundation is given space to be able to merge with one or more foundations that have the same aims and objectives, where these provisions are imperative and limitative regulated in Article 57 of Law Number 16 of 2001 concerning Foundations, which states “The act of Legal mergers of foundations can be carried out by merging 1 (one) or more foundations with other foundations, causing the merging foundations to disband.” Then it is also emphasized in Article 1 number 2 of Government Regulation Number 63 of 2008 concerning the Implementation of the Law on Foundations (hereinafter referred to as “PP Foundation”), that “Merger is a legal act carried out by one Foundation or more to merge with another Foundation result in the transfer by law of all assets and liabilities of the merging Foundation to the receiving Foundation and the merging Foundation is dissolved by law without the need for liquidation.”

In connection with the merger of a foundation, as set forth in Article 57 paragraphs (2), (3), and (4) of Law Number 16 of 2001 concerning Foundations, several considerations are required, which include:

- 1) The amalgamation of foundations as referred to in paragraph (1) can be carried out by taking into account:
 - a. the inability of the Foundation to carry out business activities without the support of other Foundations;
 - b. Foundations that receive mergers and those that join have similar activities; or
 - c. Foundations that have merged themselves have never committed an act that is contrary to their Articles of Association, public order and decency.
- 2) Proposals for the merger of foundations can be submitted by the Management to the Trustees.
- 3) Incorporation of Foundations can only be carried out based on the decision of the Trustees’ meeting which is attended by at least 3/4 (three-fourths) of the number of Trustees and approved by at least 3/4 (three-fourths) of the number of Trustees present.

Foundations as legal entities in practice or activities will certainly give rise to a legal relationship, whether between founders, organs, third parties or related communities. However, these legal actions are limited in terms of the Foundation’s assets in the form of money, goods or other assets obtained by the Foundation are prohibited from being transferred or distributed directly or indirectly, whether in the form of salaries, wages or honoraria, or other forms that can be assessed. With money to coaches, administrators and supervisors according to the mandate in Article 5 of Law Number 16 of 2001 jo. Law Number 28 of 2004 concerning Foundations.

However, in the provisions of Article 37 paragraph (1) letter b which can be partially concluded it states that “the Management is not authorized to transfer the assets of the Foundation except with the approval of the Trustees”. So that in this case based on the provisions of the article it can be interpreted that legally the management as part of the organs of the foundation can transfer the assets of the foundation, but this article does not provide a clear and clear explanation/definition of the wealth in question, whether the assets of the foundation limited to movable wealth/objects or immovable property/objects (fixed), moreover there is no explanation whether all of the wealth can be transferred or only part of it.

Unlike the case with a legal entity in the form of a Company (PT) whose dominant orientation is only profit-oriented, where in Law Number 40 of 2007 concerning Limited Liability Companies

(abbreviated as PT Law) which recognizes the term Merger or Merger, Acquisition or Acquisition, and Consolidation or Consolidation. Meanwhile, the Law on Foundations only recognizes the term Merger between two or more foundations with the consequence that the merging foundation will disband.

The narrowing of the space for legal action against foundations and the existence of habitual (blurred) norms regulated in the Foundation Law can thus have its own juridical consequences. One of the real events related to the merger of a foundation is the Indonesian Education Enterprises Foundation which operates in the field of Education and manages an Educational Institution named “Janamarga Mataram High School”, which is domiciled in the City of Mataram, NTB. Where the Indonesian Education Business Foundation, merged into one other foundation, namely the “Sangkareang Mataram Foundation” based in the City of Mataram-NTB, which is engaged in Education, Social and Community Affairs.

However, it is a separate question, based on documents related to the legality or status of the Indonesian Education Enterprises Foundation, namely Deed No. 52 which was made before Abdurahim, Bachelor of Laws, Provisional Deputy Notary, dated June 21, 1986, then through the Decree of the Chairperson of the Mataram District Court No. 03/PN.MTR/II-SK/UP/1982 dated 03 March 1982 jo. Decree of the Head of the Mataram District Court in Ampenan, dated April 6, 1966. Where is the fact that the Indonesian Education Business Foundation until the Merger of the Mataram Sangkareang Foundation was carried out which had obtained Decree of the Minister of Law and Human Rights No. AHU-0000666.AH.01.05 of 2022 is still in the form of a foundation that is not a legal entity because the Indonesian Education Enterprises Foundation should have been a foundation that was established and formed before the arrival of Law Number 16 of 2001 jo. Law Number 28 of 2004 concerning Foundations does not adjust its Articles of Association.

So that with the circumstances or events as above, it can be said whether it is true that the Indonesian Education Business Foundation and the Sangkareang Mataram Foundation have legally taken legal action, namely the merger as the juridical nomenclature stipulates in Article 57 of the Foundation Law and/or is it just an initiation process to save assets/wealth from the Indonesian Education Business Foundation which was partially merged with the acquisition or takeover concept as in the juridical nomenclature in the Limited Liability Company Law which provides room for merger through the acquisition concept.

The process of merging between the Indonesian Education Business Foundation and the Sangkareang Mataram Foundation has a separate juridical nuance, considering the imperative and limitative provisions in Article 57 of Law Number 16 of 2001 jo. Law Number 28 of 2004 concerning Foundations only regulates the mechanism for merging foundations that have legal entities and/or whose Articles of Association are in accordance with the mandate after the enactment of the Foundation Law.

Based on the description of the background above, the author wants to explore further related to the arrangements for the merger and dissolution of foundations based on Law no. 16 of 2001 jo. UU no. 28 of 2004 concerning Foundations as well as regarding the classification and mechanism for the merger and dissolution carried out by the “Indonesian Education Enterprises Foundation” for the “Sangkareang Mataram Foundation” whether it is in accordance with applicable laws and regulations, it is considered very important and very interesting to conduct research.

Research Methods

The research method used is a normative juridical research method, namely a research method using existing legal principles as what is written in laws and regulations or as rules and norms which are

standards of human behavior that are considered appropriate.³ This research is analytical descriptive in nature which describes the applicable laws and regulations, associated with legal theories in implementation practices related to the problems studied.⁴ The technique of collecting legal materials is by means of theoretical literature studies, namely by finding and retrieving material from libraries and the internet. Analyzing legal material using a qualitative juridical method, namely by exploring the meaning behind the reality or legal material obtained and researched is a complete research object.⁵

Results and Discussion

1. Arrangements for the Merger and Dissolution of Foundations Based on Law no. 16 of 2001 jo. UU no. 28 of 2004 concerning Foundations

The purpose of merging foundations is essentially solely because the foundations that want to join or that is merging with other foundations are no longer able to carry out their business activities without the support of other foundations. Several basic considerations in carrying out a merger are based on Article 57 paragraph (2) of Law no. 16 of 2001 concerning Foundations namely:

The amalgamation of foundations as referred to in paragraph (1) can be carried out by taking into account:

- a. The inability of the Foundation to carry out business activities without the support of other Foundations;
- b. Foundations that receive mergers and those that join have similar activities; or
- c. Foundations that have merged themselves have never committed an act that is contrary to their Articles of Association, public order and decency.

Based on Article 57 paragraph (2) letter b of Law no. 16 of 2001 concerning Foundations, for foundations that merge or merge themselves with other foundations or receive the merger, their activities must be of the same type. For example, a merging educational foundation and an educational foundation receiving a merger must be engaged in similar activities. Thus the merger of foundations permitted by the Law on Foundations, by borrowing the term used by Munir Fuady,⁶ can be categorized as a horizontal merger. This provision means that educational foundations can only combine themselves with educational foundations, health foundations with health foundations, and consumer protection foundations with consumer protection foundations.

The merger of foundations is carried out because the foundations that want to join are no longer able to carry out their business activities without the support of other foundations, so it is hoped that the merger will gain strength in carrying out efforts to achieve the aims and objectives of the foundations that are merging themselves. If a foundation joins with a foundation whose activities are not of the same type then of course the aims and objectives of establishing the foundation will never be achieved. For example, it is impossible for a foundation engaged in education to join a foundation engaged in the health sector because both have different aims and objectives.

Based on article 57 paragraph (3) and paragraph (4) of Law no. 16 of 2001 concerning Foundations, the merger of foundations is carried out based on a proposal for the merger of foundations submitted by the management to the supervisor. Merging of foundations can only be carried out if the proposed merger of foundations is approved by the supervisor based on a decision of the meeting of the

³ Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Rajawali Pers, Jakarta, 2019, p. 118.

⁴ Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, 1990, p. 97-98.

⁵ Sri Mamudji, *Metode Penelitian dan Penulisan Hukum*, Badan Penerbit Fakultas Hukum Indonesia, Jakarta, 2005, p. 10.

⁶ Munir Fuady, *Hukum Tentang Merger*, Citra Aditya Bakti, Bandung, 1999, p. 85.

supervisors. The approval of the supervisor is required in the case of a foundation merger, because in a foundation merger there is a transfer of assets belonging to the foundation that will merge to the foundation that accepts the merger. Thus, it can be said that the legal act of merging a foundation is an act of carrying out ownership work (*daden van beschiking or daden van eigendom*).⁷

In the framework of the merger of foundations, the management of the foundation held an initial meeting for the merger of the foundations to discuss, among other things, the reasons for the foundations merging themselves, characteristics, principles, basis, goals, ideology, interests, relationships between foundation institutions, initial capital, transfer and ownership foundation assets and so on. The management of each foundation that will merge and the one receiving the merger shall formulate the proposed plan for the merger of the foundations. Then, the proposed merger plan for the foundation is set forth in the draft deed of merger.⁸

Each foundation administrator who will merge and accept the merger submits the draft deed of foundation merger to the respective foundation supervisors for approval. The supervisor meeting in making a decision to approve or reject the proposed merger of foundations must be attended by at least $\frac{3}{4}$ (three-fourths) of the total number of supervisor members. The decision of the supervisor meeting is determined based on deliberation to reach a consensus. If a meeting decision based on deliberation to reach a consensus is not reached, then the decision is determined based on the approval of at least $\frac{3}{4}$ (three-fourths) of the number of supervisor members present.

The draft deed of merger is discussed by each of the trustees of the foundations that will merge and will accept the merger at a meeting of the supervisors in accordance with the provisions regarding the quorum and procedures for legal decision-making. If in each meeting the foundation supervisors reject the merger of the foundations, then the merger of the foundations will not occur. If each foundation supervisor agrees with the merger of the foundations, each foundation supervisor meets to hold a meeting to discuss the merger of the foundations. If an agreement is reached at the supervisor's meeting, the foundation supervisor issues a decision regarding the merger of the foundation.

After obtaining approval from the supervisors of each foundation to carry out a merger of foundations, the management of the foundations that are merging themselves and those that will accept the merger jointly writes down the draft deed of merger in the deed of merger drawn up before a Notary in accordance with the applicable provisions. The deed of amalgamation of the foundations is signed by each foundation's board of directors, witnesses and a notary.

2. Making the Draft Deed of Amendment to the Articles of Association

Merger of foundations can result in changes to the articles of association for the foundation receiving the merger. Amendments to the articles of association as a result of a foundation merger must first obtain approval from the Trustees of the foundation accepting the merger. The foundation supervisor's approval of changes to the articles of association is based on the results of the supervisor's meeting.

A meeting of the trustees of a foundation that accepts a merger in the context of changing the basic budget can only be held if it is attended by at least $\frac{2}{3}$ (two thirds) of the total number of supervisors. The decision of the supervisor meeting is determined based on deliberation to reach a consensus. If a meeting decision based on deliberation to reach a consensus is not reached, the decision is

⁷ Rudhi Prasetya, *Kedudukan Mandiri Perseroan Terbatas Disertai dengan Ulasan Menurut Undang-Undang Nomor 1 Tahun 1995*, Third editions, Citra Aditya Bakti, Bandung, 2001, p. 198.

⁸ Arie Kusumastuti, *Hukum Yayasan di Indonesia Berdasarkan Undang-Undang Nomor 16 Tahun 2001 tentang Yayasan*, Second edition, PT Abadi, Jakarta, 2002, p. 134.

determined based on the approval of at least 2/3 (two thirds) of the total number of supervisor members present.

If the number in the quorum is not fulfilled by 2/3 (two thirds) of the supervisor members present, the supervisor meeting cannot be held. For this reason, a second supervisory meeting is held at the earliest 3 (three) days from the date of the first supervisory meeting. The second supervisory meeting is valid if attended by more than ½ (one-half) of the total number of advisory members. The decision of the second supervisory meeting is stipulated based on the approval of the most votes of the number of supervisor members present.

Amendments to the articles of association are made by means of a notarial deed and are made in the Indonesian language. Changes to the articles of association which include the name and activities of the foundation must obtain approval from the Minister of Justice and Human Rights. It is sufficient to notify the Minister of Law and Human Rights of any amendments to the articles of association regarding other matters.

Based on Article 22 of Law no. 16 of 2001 concerning Foundations, for requests for amendments to the articles of association, approval and rejection of amendments to the articles of association, the provisions contained in Article 11 of the Law on Foundations and Article 12 of the Law on Foundations apply *mutatis mutandis* (according to the applicable procedures). The flow of approval for the merger of foundations followed by amendments to the articles of association is as follows:⁹

First, the administrators of the foundation or their proxies through a notary submit a letter of amendment to the foundation's articles of association to the Minister of Law and Human Rights through a notary who makes the deed of amendment to the articles of association. The notary submits the letter of amendment to the foundation's articles of association to the acceptance counter by attaching:

- a. A copy of the deed of amalgamation of the foundation and the original stamped deed of amendment to the articles of association.
- b. Photocopy of domicile certificate from the Lurah or Village Head which has been legalized by a notary.
- c. Photocopy of Taxpayer Identification Number (NPWP) which has been legalized by a notary.

The reception counter clerk receives an application for amendment of the foundation's articles of association from a notary and then the application is scheduled and given a control number. After the request for amendment to the foundation's articles of association has received a control number, the request is forwarded to the Head of the Documentation Section.

Second, the Head of the Documentation Section receives requests for amendments to the foundation's articles of association from the admissions officer and schedules the request. After the request for amendment to the foundation's articles of association is scheduled, the Head of the Documentation Section checks the name of the foundation. The purpose of checking the name of the foundation is so that there are no similarities in the names of all foundation names that are entered into the Ministry of Law and Human Rights of the Republic of Indonesia. If it turns out that the name of the foundation submitted by the management of the foundation or their proxy through a notary has already been used for the name of another foundation, then the applicant is required to change or add the name of the foundation, so that the name of the foundation proposed by the management of the foundation or their proxy through a notary becomes different from the name of the foundation that has been submitted. There is. After checking the name of the foundation, the application for changes to the foundation's articles of association is then forwarded to the Section Head of the Social Legal Entity.

⁹ Directorate General of General Legal Administration, Ministry of Law and Human Rights of the Republic of Indonesia, <https://ahu.go.id>, accessed on 26 December 2022.

Third, the Section Head of the Social Legal Entity receives a request for amendment to the foundation's articles of association from the Head of the Documentation Section, and then the Section Head of the Social Legal Entity schedules a request for amendment to the foundation's articles of association to be distributed to the proofreader.

Fourth, the correcting officer receives a request for an amendment to the foundation's articles of association from the Head of the Social Legal Entity Section, and then the correcting officer examines the request. The object of research from the proofreader is the completeness of the application which includes:

- a. Letter of application from the management or their proxies submitted through a notary addressed to the Minister of Law and Human Rights of the Republic of Indonesia;
- b. A copy of the deed of amalgamation of the foundation and the original stamped deed of amendment to the articles of association;
- c. Photocopy of domicile certificate from the Lurah or Village Head which has been legalized by a notary;
- d. Photocopy of Taxpayer Identification Number (NPWP) which has been legalized by a notary;
- e. The name and domicile of the Foundation, the purpose of this inspection is so that there are no similarities in the name of the Foundation. If the name of the Foundation has already been used for another Foundation name, then the name of the Foundation cannot be reused;
- f. Purpose and objectives of the Foundation, based on Article 1 of the Law on Foundations, the aims and objectives of the Foundation are specific in the Social, Religious and Humanitarian fields. In this case the applicant may choose the intent and purpose, it can be an alternative of only one or two types, or cumulative, namely all three at once;
- g. Foundation Activities, the activities here are the activities of the Foundation which are the elaboration or crystallization of the aims and objectives of the Foundation mentioned above;
- h. Foundation assets, based on Article 1 of the Law on Foundations, foundations are legal entities consisting of separated assets and intended to achieve certain goals in the social, religious and humanitarian fields, which do not have members, so that in a foundation there must be separated assets. This wealth can be in the form of money or goods. Examination of wealth here also includes how to acquire and use wealth;
- i. Examination of foundation organs consisting of Trustees, Management and Supervisors which includes procedures for appointing and dismissing foundation organs, rights and obligations of foundation organs, and procedures for holding foundation organ meetings;
- j. Provisions regarding amendments to the articles of association;
- k. Merger and change of foundations; And
- l. Use of the remaining assets from the liquidation or distribution of the Foundation's assets after dissolution. After an examination by the corrector, the request for amendment to the foundation's articles of association is submitted back to the Section Head of the social legal entity. The work of the proofreader can be in the form of a draft letter of refusal if there are errors or deficiencies in the application for amendments to the foundation's articles of association and can also be in the form of a draft decision letter if there are no more errors or deficiencies.

Fifth, the Section Head of the Social Legal Entity examines and re-examines the application that has been corrected by the proofreader. If there is an error or deficiency in the request for amendment to the articles of association, the Section Head of the Social Legal Entity will provide a note, in which the draft of the request for amendment to the articles of association will be corrected again by the proofreader, whether the application is a draft letter of rejection or in the form of a draft decision letter. If there are no more errors then it will be forwarded to the Head of Sub Directorate of Legal Entities.

Sixth, the Head of the Sub Directorate of Legal Entities examines and re-examines the draft application for amendments to the foundation's articles of association that have been initiated by the

Section Head of the Social Legal Entities. If there are errors or deficiencies in the concept of requesting changes to the foundation's articles of association, the Head of the Sub Directorate of Legal Entities can provide a note, and corrections will be made to the concept of requesting changes to the foundation's articles of association by the Section Head of the Social Legal Entities. If there are no more mistakes, then the draft request for amendment to the foundation's articles of association is then given to the Head of the Documentation Section.

Seventh, the Head of the Documentation Section receives the draft application for amending the foundation's articles of association from the Head of the Sub Directorate of Legal Entities and then the Head of the Documentation Section types the draft of the application, whether it is a draft application that becomes a rejection letter or a draft application that becomes a decision letter. For a draft application that becomes a decision letter, the number and date of the decision letter are immediately obtained, while for a draft application that becomes a rejection letter, the number and date of the rejection letter are not obtained. The number and date of the letter will be given after the rejection letter is signed by the Civil Director. After typing is complete, a re-check is held again so that there are no errors and if there is an error it can be corrected immediately by the Head of the Documentation Section. After being double-checked by the Head of the Documentation Section and there are no errors, the application is scheduled and then submitted to the Director of Civil Affairs.

Eighth, the Civil Director receives the decree and rejection letter which has been typed by the Head of the Documentation Section and then the Civil Director re-examines the decision letter and rejection letter for an amendment to the articles of association. If there is an error in the decision letter or rejection letter, the Civil Director will provide a note and then the decision letter or rejection letter will be corrected by the Head of the Documentation Section according to the notes from the Civil Director. If there are no more errors, the Civil Director will initial the decision letter. And then the decree will be forwarded to the Director General of General Legal Administration to be signed. While the rejection letter will be signed by the Civil Director and then submitted to the Civil Administration Sub-Section.

Ninth, the Director General of Public Legal Administration will receive a decision letter and then review it. If there is an error, the Director General of General Law Administration will provide a note, and then the Director of Civil Affairs will correct the decision letter in accordance with the existing records. If there are no more errors, the Director General of General Legal Administration will sign the decision letter. After signing the decree, it will be submitted to the Civil Administration Subdivision.

Tenth, the Civil Administration Subdivision receives a decision letter that has been signed by the Director General of General Legal Administration and is scheduled for, and then the decision letter is handed over to the applicant directly or sent to the applicant by official letter. While the rejection letter that has been signed by the Civil Director will be given the number and date of the letter. Then the rejection letter is scheduled and handed over to the applicant directly or sent to the applicant by official letter.

3. Announcement of Foundation Merger and Dissolution

The management of the foundation resulting from the merger must announce it in an Indonesian language daily newspaper no later than 30 (thirty days) from the date the merger was completed. The purpose of announcing this is so that the parties and the public will know that the joining foundation will be abolished and so that no party will be harmed. The legal entity status that is used when a merger has taken place is the legal entity status of the foundation receiving the merger because with the announcement of the merger of the foundations, the status of the legal entity that is merging becomes abolished or disbanded from the date of the announcement of the merger of the foundation.

With this announcement, the assistance provided by the community is not misdirected so that the assistance provided by the community can be received by the foundation resulting from the merger to be

used in accordance with the aims and objectives of the merging of foundations. The wealth of the foundation resulting from the merger of foundations in a certain amount can be known by the public in accordance with the principles of transparency and accountability.

4. Mechanism of the Merger and Dissolution of the Indonesian Education Business Foundation against the Sangkareang Mataram Foundation

Based on Notarial Deed Number 05 entitled “Acquisition Deed” dated April 7 2022, made by Notary Weny Ayu Haryono SH.,M.Kn. namely a Notary domiciled in Mataram City, West Nusa Tenggara Province (NTB), while the Indonesian Education Business Foundation which operates in the field of Education and manages an Educational Institution named “SMA Janamarga Mataram” with the first Deed “Number 87 dated June 29, 1959” then last amended with Deed “Number 52 dated 21 June 1986” represented by Doktorandus Haji Lalu Azhar as the Trustee in his interest/need to join the Sangkareang Mataram Foundation.

Then, the Sangkareang Mataram Foundation which operates in the field of Education, Social and Community Affairs has its address at Jalan Tawak-Tawak Number 01, East Mataram Village, Mataram District, Mataram City-NTB with the first Deed “Number 21 dated 10 November 1999” and has experienced several the number of times amended and the last with the Deed “Number 06 dated 06 November 2019” represented by Lalu Riza as Chairman of the Management in his interests/needs as the Surviving Foundation.

In their respective positions between the Indonesian Education Enterprises Foundation as the merger and the Mataram Sangkareang Foundation as the recipient of the merger, the Notary Deed Number 05 stated in Article 2 which negates that the Mataram Sangkareang Foundation has agreed with the Indonesian Education Enterprises Foundation and the Mataram Sangkareang Foundation is willing to take the transfer of management of the “Janamarga Mataram High School” educational institution which so far has been managed by the Indonesian Education Enterprises Foundation, then on the other hand, the Indonesian Education Enterprises Foundation is willing to hand over the management of the educational institution to the Sangkareang Mataram Foundation.

Then, Article 3 of the Notary Deed stipulates that Doktorandus Haji Lalu Azhar as the Trustee of the Indonesian Education Business Foundation will hand over all movable and immovable property to the Sangkareang Mataram Foundation along with all documents related to the legality of licensing management of the Janamarga Mataram High School Educational Institution and the Foundation Sangkareang Mataram will continue the operation and sustainability of the Educational Institution.

Furthermore, Article 4 stipulates that all matters relating to the rights and obligations of the Indonesian Education Enterprises Foundation with the takeover of the management of the Mataram Janamarga High School Educational Institution will be transferred to the Mataram Sangkareang Foundation.

Based on Article 57 paragraphs (1) and (2) of Law Number 16 of 2001 on Foundations, the legal act of merging foundations can be carried out by merging 1 (one) or more foundations with other foundations, and causing the merging foundations to disband. The merger of the Foundation can be done by taking into account:

- a. The inability of the Foundation to carry out business activities without the support of other Foundations;
- b. Foundations that received the merger and those who joined had similar activities; or
- c. Foundations that have merged themselves have never committed an act that is contrary to their Articles of Association, public order, and decency.

Proposals for the merger of the Foundation can be submitted by the Management to the Trustees. Foundation amalgamation can only be carried out based on the decision of the Trustees meeting which is attended by at least 3/4 (three quarters) of the number of Trustees and approved by at least 3/4 (three quarters) of the number of Trustees present.¹⁰

Furthermore, in Article 58 of Law Number 16 of 2001 on Foundations, the Management of each Foundation which will merge and which will accept the merger shall formulate a proposed merger plan. The proposed merger plan is set forth in the draft deed of merger by the Management of the Foundation which will merge and which will accept the merger. The draft deed of merger must obtain approval from the Trustees of each Foundation. The draft of the merger deed is stated in the deed of merger drawn up before a notary in the Indonesian language. The Management of the Foundation resulting from the merger must announce the results of the merger in an Indonesian language daily newspaper no later than 30 (thirty) days from the date the merger was completed.

Article 59 of Law Number 16 of 2001 Foundations, states that the Management of the Foundations resulting from the merger must announce the results of the merger in daily newspapers in the Indonesian language no later than 30 (thirty) days from the date the merger was completed.

Then in Article 60 of the Law on Foundations, in the event that the merger of a foundation is followed by an amendment to the Articles of Association which requires the approval of the Minister, the deed of amendment to the Articles of Association of the Foundation must be submitted to the Minister for approval accompanied by a deed of merger. Such approval shall be given within a period of no later than 60 (sixty) days from the date the application is received. In the event that the application is rejected, the refusal must be notified to the applicant in writing along with the reasons within the period mentioned above. In the event that approval or rejection is not given within the period referred to in paragraph (2), then the amendment to the Articles of Association is considered approved and the Minister is obliged to issue an approval decision.

Regarding the juridical nomenclature regarding the limitative merger of a foundation regulated by Law Number 16 of 2001 concerning Foundations with partial inclusion regulated in Articles 57 to Article 60, and when correlated with the process of merging between the Indonesian Education Business Foundation against/to the Mataram Sangkareang Foundation as its juridical legitimacy is in the Notary Deed entitled "Acquisition Deed" Number 05, in fact it is not a matter that becomes the domain/instrument of merger as stipulated in the Foundation Law.

Moreover, Government Regulation Number 63 of 2008 concerning the Implementation of the Law on Foundations (PP Foundation) also regulates further procedures and procedures for merging a foundation, which can be seen in the provisions of Article 27 which states that:

- 1) Merger of Foundations is carried out by preparing a proposed Merger plan by the Management of each Foundation.
- 2) The proposed Merger plan as referred to in paragraph (1) contains at least:
 - a. information regarding the Name of the Foundation and the domicile of the Foundation that will carry out the Merger;
 - b. an explanation from each Foundation regarding the reasons for the Merger;
 - c. summary of the financial statements of the Foundation that will carry out the Merger;
 - d. information regarding the main activities of the Foundation and changes during the current financial year;
 - e. details of problems that have arisen during the current financial year;

¹⁰ Article 57 paragraph (3) and (4), Law Number 16 of 2001 concerning Foundations.

- f. how to resolve the status of daily executors, activity executors, and Foundation employees who will join;
- g. estimated timeframe for implementing the Merger;
- h. information regarding the names of members of the Trustees, Managers, and Supervisors; And
- i. draft amendment to the Articles of Association of the Foundation that accepts the Merger, if any.

Then in Article 28 the Government Regulation stipulates that “the plan for the merger of foundations is the material for preparing the draft deed of Merger by the Management of the Foundation which will carry out the Merger, and the draft deed of merger must obtain approval from the Trustees of each Foundation, and the draft deed of merger must be stated in the deed Merger made before a notary, in the Indonesian language.

Furthermore, Article 30 of the Government Regulation also states that “in the case of a Foundation Merger followed by an amendment to the Articles of Association, the deed of amendment to the Articles of Association shall be drawn up by the Management of the Foundation which accepts the Merger and must obtain approval from the Trustees who accept the Merger.”

Juridically, by looking at the data or facts, the process or mechanism for merging by the Indonesian Education Enterprises Foundation against/to the Sangkareang Mataram Foundation, according to the Notary Deed drawn up and agreed upon by the two foundations, is not a procedural or mechanism for merging a foundation as regulated in a limited way. In the Foundation Act. However, the mechanism process carried out or carried out by the Indonesian Education Enterprises Foundation against/to the Sangkareang Mataram Foundation is only a process of initiation/rescue of positions or assets (assets and liabilities) of the Indonesian Education Enterprises Foundation which indirectly use or carry out legal actions by way of expropriation, especially the Indonesian Education Business Foundation, which until now has not adjusted its Articles of Association.

The Indonesian Education Business Foundation as a foundation that existed and was formed and had been operating dozens of years before the existence or birth of the Law on Foundations, where this fact can be seen from the deed first drawn up by Notary Hendrix Alexander Malada, Number 87 dated June 29, 1956. Therefore, the Indonesian Educational Enterprise Foundation should be able and obliged to adjust its Articles of Association so that the legality of the status of a Legal Entity can always be attached to every position and operational activity.

The fact of non-compliance by the Indonesian Education Enterprises Foundation to adjust its Articles of Association or participate in carrying out as stipulated in the Foundation Law can be seen from the deed of amendment to the Articles of Association for the last time, namely by Deed Number 52 dated 21 June 1986 made by Notary Abdurahim, Bachelor of Law (Deputy Notary Temporary) and appointed by Decree of the Chairman of the Mataram District Court No.03/PN.Mtr/II-SK/UP/1982 jo. Decree of the Head of the Mataram District Court dated April 6, 1966.

It can be analyzed juridically both in terms of formal and material mechanisms for a process or mechanism carried out by the Indonesian Education Enterprises Foundation against/to the Sangkareang Mataram Foundation with the Notary Deed Number 05 entitled “Deed of Acquisition of Acquisition”, it should not be a process or mechanism for merging foundations stipulated in Article 57 to Article 60 of Law Number 16 of 2001 concerning Foundations, but the process or mechanism is a process of taking over by the Sangkareang Mataram Foundation of the Indonesian Education Enterprises Foundation, which is proven by the calcifications/indicators of compliance with the procedures for merging foundations which is not fulfilled or is not used as a legal basis as well as with a Notary Deed made with the title or head of the deed is “Deed of Expropriation”.

Furthermore, that Doktorandus HAJI LALU AZHAR, who was originally the Trustee of the Indonesian Education Enterprises Foundation in his statement in the “Deed of Acquisition” has changed and also acts as the only Trustee in the “Deed of Statement of Decision of the Trustees of the Sangkareang Mataram Foundation” made in the Deed Notary (Authentic Deed) by Notary WENY AYU HARYONO, SH., MKn. dated 07 April 2022, where the Deed describes/explains that Doktorandus HAJI LALU AZHAR has decided and approved the takeover of the management of the Mataram Janamarga High School Educational Institution which was previously managed by the Indonesian Education Enterprises Foundation as stipulated in the Deed of Takeover Agreement Number 05 dated 07 April 2022. And then also changed the activities of the Sangkareang Mataram Foundation which were originally in the social field only managing Education with the Educational Institution “West Nusa Tenggara University in Mataram” changed to in the social field which included managing the Educational Institution “Janamarga Mataram High School”, holding schools or vocational education, holding training, skills courses, work shop workshops, technical guidance, and other similar activities to improve skills in the fields of science, art and technology.

In the case of the transfer or acquisition of assets/management of the assets and liabilities of a foundation, it is indirectly regulated and given exceptions to this matter, where in the provisions of Article 37 Law Number 16 of 2001 concerning Foundations states:

- 1) The administrator is not authorized:
 - a. bind the Foundation as guarantor of the debt;
 - b. transfer the assets of the Foundation except with the approval of the Trustees; And
 - c. burden the assets of the Foundation for the benefit of other parties.
- 2) The Articles of Association may limit the authority of the Management in carrying out legal actions for and on behalf of the Foundation.

Regarding the norms of Article 37 of the Foundation Law above, it indicates or means that basically the assets or assets of a foundation can actually be transferred/sold to other parties as long as they comply with the provisions of Article 37 paragraph (1) letter (b) of the Foundation Law, namely with the exception or requirement that Managers must first obtain approval from the Trustees.¹¹

Basically, foundation assets or assets can be sold by management to other parties as long as there is approval from the supervisor, but it is also necessary to look at the status or source of the Foundation’s assets/wealth, whether it is wealth originating from waqf or not and if it comes from waqf, then the foundation’s assets/wealth cannot be sold.¹²

There should be 2 (two) types of transfer of foundation assets, namely:¹³

- 1) The process of transferring assets into.
- 2) The process of transferring assets to the outside.

The process of transferring assets inside is a transfer process that is prohibited by the Government, where the transfer of foundation assets is not allowed to be transferred to organs of the

¹¹ Hukum Online, *Dapatkah Pengurus Mengalihkan Kekayaan Yayasan*, <https://www.hukumonline.com/klinik/detail/ulasan>, accessed on 10 January 2023.

¹² *Ibid*, <https://www.hukumonline.com/klinik/detail/ulasan>, accessed on 10 January 2023.

¹³ Anwar Borahima, *Kedudukan Yayasan di Indonesia*, Kecana Prenada Group, Jakarta, 2010, P. 72.

foundation, while the process of transferring foundation assets to outside is a process of transferring assets that are allowed by the Government, where the transfer is to a third party.¹⁴

Foundations that wish to transfer foundation assets to third parties but these foundations have not made adjustments to the Law on Foundations must first make adjustments before transferring assets to outsiders, taking into account several requirements stipulated by the Law on Foundations, to support the intent and the purpose of the Foundation, according to what is stated in article 37 of Law Number 16 of 2001 concerning Foundations as amended by Law Number 28 of 2004 concerning Foundations which states that the Management is not authorized to transfer Foundation assets except with the approval of the Trustee.

Regarding foundations that do not adapt themselves, with the issuance of Government Regulation Number 63 of 2008 concerning the Implementation of the Foundation Law, in fact this regulation has not been able to completely resolve the problems faced by foundations that were born before the Foundation Law because until the time before the issuance of the Regulation Government Regulation Number 2 of 2013 concerning Amendments to Government Regulation Number 63 of 2008 concerning Implementation of the Law on Foundations, there are still many foundations that were born before the Foundation Law which continue to carry out their activities, but institutionally these foundations no longer exist. For not carrying out adjustments and reporting to the Minister as required by the Law or Government Regulation Number 63 of 2008.

Furthermore, it is explained regarding the transfer/acquisition of foundation assets in Article 7 paragraph (2) of Law Number 16 of 2001 which reads that foundations can carry out participation in various forms of business that are prospective in nature provided that all such participation is a maximum of 25% (twenty five percent) of the entire value of the Foundation's assets.

In addition to these regulations, other terms and conditions relating to this matter must pay further attention to the provisions contained in the Articles of Association, for example who is authorized to represent the management and what form of approval is given by the Trustees. The process of transferring the rights to foundation assets must pay attention to the provisions stipulated in Law Number 16 of 2001 as amended by Law Number 28 of 2004. In principle, based on the provisions stipulated in the Law on Foundations, the transfer of rights to foundation assets is carried out by the Foundation Management with the approval of the Trustees of the Foundation. . Other terms and conditions relating to this matter must pay further attention to the provisions contained in the Foundation's Articles of Association, for example who is authorized to represent the Management and what form of approval is given by the Trustees.¹⁵

Transferring the assets of the foundation is intended to transfer or sell the assets of the foundation to other foundations and this will cause the foundation to reduce or run out of assets. The restrictions on the transfer of foundation assets are not absolute, as long as the transfer has the approval of the Trustees. For example, if the foundation's office building is always flooded during the rainy season, it needs an adequate, safe and comfortable place. So, after getting a new place, the old building needs to be sold. This sale requires the approval of the Trustee. Actually the approval of the Trustees is needed because it is an internal control only, so that the management does not commit arbitrary acts.¹⁶

The transfer of foundation assets to other parties, apart from having to pay attention to the formality requirements stipulated in the Foundation Law and Foundation Articles of Association, for

¹⁴ *Ibid*, p. 77.

¹⁵ Prassetya Rudhi, *Yayasan Dalam Teori dan Praktik*, Sinar Grafika, Jakarta, 2012, p. 117.

¹⁶ Gatot Supramono, *Hukum Yayasan di Indonesia*, Rineka Cipta, Jakarta, 2008, p. 97.

example, having to obtain approval from the Board of Trustees, must also pay attention to the principles and provisions contained in the Foundation Law. as well as the Articles of Association.¹⁷

The main principles and provisions that must be considered are the principles contained in Article 26 paragraph (4) of the Foundation Law, which states “The assets of the Foundation as referred to in paragraph (1) and paragraph (2) are used to achieve the goals and objectives of the Foundation.” Taking into account the provisions stipulated in Article 26 paragraph (4) of the Foundation Law, the transfer of Foundation assets to other parties may only be made if the transfer is carried out with the aim of achieving the aims and objectives of the Foundation. Seeing the principles stated in Article 26 paragraph (4) of the Foundation Law, foundation assets may not be donated to other parties, unless the grant is made in order to achieve the goals and objectives of the foundation.¹⁸

From a juridical standpoint, regarding the mechanism for merging and dissolving as well as transferring/taking over institutions and/or foundation assets there are no clear boundaries or benchmarks, so that in implementation or actualization in the field there will be ambiguity or unclearness in implementation and operationality. from an institutional foundation. Such a statement is very relevant due to the fact that a Government Regulation has not been made or enacted as an Implementing Regulation regarding the procedures for the process or mechanism for merging a foundation as mandated/ set forth in Article 61 of Law Number 16 of 2001 concerning Foundations which states “Provisions regarding procedures for the amalgamation of foundations is further regulated by government regulation”.

Furthermore, specifically regarding foundations that do not adjust their statutes or foundations that were born and formed before the existence of Law no. 16 of 2001 concerning Foundations and amendments to Law no. 28 of 2004 concerning Foundations, but wishing or planning to merge with other foundations that are legal entities (foundations born and formed after the existence of the Foundation Law) are clearly not regulated by the Foundation Law and there is a void in legal norms, so there is no legal rule or Such a norm in the Law on Foundations has consequences for legal uncertainty and concretely has a direct impact on the Indonesian Education Business Foundation which merged itself with the Sangkareang Mataram Foundation.

Based on what is aspired to or which is the goal of the law itself, namely a legal certainty, as Gustav Radbruch stated, the order of people’s lives is closely related to certainty in law. Legal certainty is a normative fit. Therefore, legal certainty refers to the implementation of the order of life which in practice is clear, orderly, consistent and consistent and cannot be influenced by subjective circumstances in people’s lives.

With this legal certainty, it will certainly guarantee a person or a legal entity to carry out behavior in accordance with the applicable legal provisions, in this case, namely the Indonesian Education Business Foundation which is legally not a legal entity but carries out a legal action “takeover” which is definitely regulated in the The Foundation Law, on the other hand, without legal certainty, a person does not have standard provisions in carrying out behavior, in this case the absence or absence of norms in the Foundation Law which regulates whether a legal entity (foundation) that is not a legal entity can merge into a legal entity. (foundation) other legal entities.

¹⁷ Amiroel Oemara Syarief, *Sanksi Hukum Terhadap Yayasan Apabila Tidak Melaksanakan Perubahan Akta Pendirian Setelah Keluarnya Undang Undang Nomor 28 Tahun 2004 Sebagai Perubahan Atas Undang Undang Nomor 16 Tahun 2001 Tentang Yayasan*, Fakultas Hukum Unand, Padang, 2015, p. 78.

¹⁸ Susanto, *Reformasi Yayasan: Perspektif Hukum Dan Manajemen*, Andi, Yogyakarta, 2018, p. 48.

Conclusions

The regulatory framework for merging and dissolving foundations is limitedly and imperatively stipulated in the foundation's main rules, namely Law Number 16 of 2001 jo. Law Number 28 of 2004 concerning Foundations, then technically regulated further in Government Regulation Number 63 of 2008 concerning Implementation of the Law concerning Foundations, as well as Regulation of the Minister of Law and Human Rights Number 18 of 2017 concerning Procedures for Submitting Applications for Mergers And Notification of the End of Foundation Legal Entity Status, which substantively regarding mergers requires the preparation of a draft deed of merger and draft deed of amendment to the articles of association and announcement of the merger of the foundations. Then regarding the dissolution there is a classification regarding the dissolution of the foundation and the existence of consequences or legal consequences for the assets and liabilities (assets/wealth) of the foundation for the dissolution.

Based on Notarial Deed Number 05 entitled "Deed of Acquisition" dated April 7 2022, with Notarial Deed Number 06 entitled "Deed of Statement of Decision of the Trustees of the Sangkareang Mataram Foundation" dated April 7 2022, made by Notary Weny Ayu Haryono SH., M. Kn. It can be seen clearly from juridical analysis that the process or mechanism for legal actions/actions carried out by the Indonesian Education Enterprises Foundation against/to the Sangkareang Mataram Foundation is not a mechanism for merging and dissolving foundations as regulated in a limited manner in Law Number 16 of 2001 jo. Law Number 28 of 2004 concerning Foundations, but legal actions by the Indonesian Education Enterprises Foundation against/to the Sangkareang Mataram Foundation should be the process or mechanism of takeover as stipulated partially in Article 37 paragraph (1) letter (b).

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