



The Use of Third Party Services in the Protection of Foundation Funds in Indonesia

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Article Info

Article history:

Received 28 October 2023

Received in revised form 19 November 2023

Accepted 7 December 2023

Keywords:

Foundation

Law

Protection

Abstract

The foundation is a legal entity engaged in the social, humanitarian and religious fields. The Foundation has no members. Judging from its purpose, the foundation is not looking for profit. Foundations have an independent position as a result of having assets that are separate from the personal wealth of the founders and administrators, and have their own goals that are different or separate from the personal goals of the founders or administrators. In the article 7 of the Law states that foundations can participate in various forms of business that are prospective, provided that all participation is at most 25% (twenty five percent) of the total value of the foundation's assets. In practice, there have been irregularities in the management of funds and the misuse of foundations. This paper will examine how to manage foundation funds so that there are no irregularities in the foundation's legal entity. In the management of foundation activities, it can be made in the form of written activities before carrying out social activities for the foundation.

Introduction

In Article 1 of the 2016 Foundation Law, the definition of a Foundation is a legal entity consisting of assets that are separated and intended to achieve certain goals in the fields of Social, Religious, and Humanitarian, which do not have members (Wulandari, 2016). The Foundation has assets, which are separate assets without anyone owning them, which assets are given a specific purpose, and in carrying out these objectives a Management is held. A business with such characteristics is a form of business that is a legal entity. The characteristics of the Foundation as a Legal Entity, have similarities with the characteristics of legal entities, namely mainly having their own assets which are separate from the assets of the Founders, have a specific purpose (it's just that if the Foundation is formed for idiil purposes, while other legal entities are for profit), the existence of their own interests and regular organization. According to Article 8 of Law No. 16 of 2001, in addition to the activities of the business entity, it must not conflict with Public Order, Decency, and / or applicable laws and regulations (Brahmantya, 2020).

Article 9 of Law No. 16/2001 stipulates that the Foundation is established by one or more people by separating part of the founder's assets, as initial wealth. the establishment is carried out by notarial deed and in Indonesian (Uemenina, 2022). this is intended to facilitate proof to third parties that a Foundation has been established, with the stated existence of separate assets which are the assets of the Foundation and the making of the foundation's Articles of Association. Separated wealth for the establishment of the Foundation can be in the form of various types of objects. For foundations established by Indonesians, the amount of initial wealth derived from the separation of personal assets is at least IDR 10,000,000 (ten million rupiah), while for Foundations established by foreigners, or foreigners with Indonesians, at least IDR 10,000,000 (one hundred million rupiah). The foundation law has also allowed for

foundations to establish business entities in accordance with the provision that the participation of the foundation's wealth is at most 25% (twenty-five percent) of the entire wealth of the foundation. With the enactment of Law No. 28 of 2004, the understanding of the Foundation becomes clearer, that the Foundation has its own assets, the assets are separated from the assets of the founder, the assets are intended to achieve goals in the social, religious and humanitarian fields; and does not have members (J. Salim, 2017).

Law No. 28 of 2004 regulates a lot about the wealth of the Foundation, but there is no single provision in Law No. 28 of 2004 that limits the types of assets that can be owned by the Foundation (SIBARANI, 2022). This means that there is no prohibition for the Foundation to have various types of wealth. The Foundation can have wealth in the form of movable and immovable objects, or wealth in the form of objects as referred to in the Indonesian Civil Code. The author argues that the Foundation is something that is needed by the community. This opinion comes out if it is associated with the purpose of establishing the foundation. It departs from the phenomenon of society that occurs in its environment. Indeed, an ideal life is a life that is fulfilled, fulfilled, balanced, no discrimination, even mutual respect for each other (Sanjaya, 2016).

In the case of wealth contained in the foundation, it also applies in terms of service recipients. Foundation service recipients are those who are not Trustees, Management, Supervisors, Employees, or other parties who have an interest in the Foundation cannot receive Foundation services (H. S. Salim, 2021). The Foundation's assets, both available as the initial assets of the Foundation and assets obtained from donations in the form of grants, bequests and the Foundation's own business, are placed separately from the assets of the founders of the Foundation concerned. The separation of the Foundation's assets from the assets of the Founders of the Foundation shows the independence of the Foundation in organizing the Foundation's business. Rochmat Soemitro argues that the Foundation's assets are separated from the assets of its Founders. The notarial deed contains the Articles of Association of the Foundation, in the Articles of Association are provisions that bind the Foundation and its management and about the people who benefit from the Foundation's assets (Suryadi & Sood, 2020).

The existence of separate foundation wealth is expressly stated in Article 1 number 1 of Law No.28 of 2004 which states that the Foundation is a legal entity consisting of wealth. The wealth of the Foundation comes from a number of assets separated in the form of money or goods. In addition, the wealth of the foundation can be obtained from donations or assistance that is not binding, waqaf, grants, bequests; and other acquisitions that are not contrary to the Articles of Association of the foundation and / or applicable laws and regulations (Siahaan et al., 2020).

In its development, foundations are often misinterpreted as something that can be made into profits based on profit alone. In fact, the foundation should not be intended in the sense of taking profits intended for the management (Tarigan, 2017). However, in reality there are still many cases, especially in Indonesia regarding the use of foundation money, especially embezzlement committed by foundation administrators. For example, the case of the ACT Foundation (Aksi Cepat Tanggap), whose foundation has been closed due to the use of funds intended for personal interests. Funding issues often result in conflict within the foundation itself. In principle, every transaction with other parties that creates rights and obligations for the foundation must be included in the annual report. In many cases in Indonesia, foundations are often misused as a form of company intended for profit. For example, in the case of ACT (Aksi Cepat Tanggap), whose account has been closed because it was intended for the joint benefit of the Foundation's members. There are many other cases that occur under the pretext of embezzlement of funds intended for the personal interests of its members. Problems like this

often occur in the Articles of Association of newly formed or long-established foundations (Aziz & Zuhro, 2018). To minimize this, it is necessary to protect the Foundation internally and externally to take the function of protection for the purpose of the foundation itself. The use of Foundation funds for personal interests can be prevented from the beginning if done in accordance with the provisions of Law Number 16 of 2001 which was amended in the provisions of Year 28 of 2004. Based on Article 16 of the 2001 Law, the wealth of the Foundation is prohibited from being transferred or transferred to personal purposes. This is certainly in accordance with the main purpose of the Foundation itself, namely for Social, Humanitarian and Religious purposes. To overcome this, the author tries to find a way to find the right solution to protect Foundation members from funds that can be misused. Based on the description in the background, the problem formulations in this paper are; (1) Whether the Foundation can use third party services in managing its finances?; (2) What forms of activities must be carried out by the Foundation in managing and distributing its finances?

Methods

Approach Method

The research approach is the whole way or activity in one study that starts from formulating the problem until making a conclusion. there are two kinds of research approaches, quantitative approach and qualitative approach. quantitative approach means that the information or data is presented in the form of numbers while the qualitative approach is information or data presented in the form of statements. qualitative approach is an approach that is also called an investigative approach because usually researchers collect data by meeting face to face and interacting with people at the research site.

The approach method used in writing this journal is a qualitative method. A qualitative research approach is an approach that emphasizes more on the aspect of in-depth understanding of a problem rather than looking at problems for generalization research. This research method uses an in-depth analysis technique, which examines the problem on a case-by-case basis because qualitative methodology believes that the nature of one problem will be different from the nature and other problems. The purpose of this qualitative research approach is not a generalization but an in-depth understanding of a problem. Qualitative research functions to provide substantive categories and qualitative research hypotheses.

Data Collection Types and Techniques

The qualitative data collection technique used is using the observation method. Observation is a technique used to collect research data through observation, and sensing. The researcher then makes a report based on what is seen, heard, and felt during the observation. Observation is carried out to get a more real and detailed picture of an event or event. Researchers can observe certain communities to understand their habits or ways of working. observation can be in the form of participatory, unstructured, and group observation.

Data Analysis Method

The data analysis method that will be used in writing this journal is descriptive explanatory.

Results and Discussion

The Foundation may not share its wealth or income with its founders or management, even though the Foundation in carrying out business activities to support the achievement of its goals and objectives by establishing business entities and / or participating in a business entity that aims to make a profit. The Foundation may not distribute the results of business activities to the Trustees, Management and Supervisors as referred to in Article 3 of Law No.28 of 2004.

In addition to being prohibited from distributing, Foundation assets in the form of money, goods and other assets obtained by the Foundation, are also prohibited from being transferred or distributed directly or indirectly to the Trustees, Management, Supervisors, Employees or other parties who have an interest in the Foundation in accordance with Article 5 of Law No.28 of 2004. Exceptions to these provisions are the receipt of salaries, wages or honorariums, which are only allowed to the Foundation Management, not the founders of the Foundation and not affiliated with the Founders, Trustees, and Supervisors; and carry out the management of the Foundation directly and fully. The amount of initial wealth of the Foundation established by Indonesians, which comes from the separation of the founder's personal assets, is at least IDR10,000,000 (ten million rupiah).

The foundation has a regular organization, but the foundation does not have members. The foundation has organs consisting of Trustees, Management and Supervisors. According to the prevalence of the Foundation does not have members, only has a board and may get a group of people who benefit because they are given assistance or donations, for example for scholarship purposes that are given compensation every month. The Foundation does not have a fixed income, but partly depends on donations from other parties. For Foundation administrators who carry out daily organizational duties, it is only natural to give them a salary or honorarium. For this reason, the Foundation needs to be led by reliable and willing personnel with sacrifices, because their energy does not receive excessive financial rewards.

Reliable personnel who are expected to manage the Foundation towards a future that is in accordance with its goals, namely idiil goals or social goals. As the organizer of the Foundation, the Foundation management has the authority; (1) The management is authorized to foster the Foundation in accordance with the restrictions specified in the Articles of Association; (2) The Foundation Management is not authorized to bind the Foundation's assets, make purchases, make debts, bind the Foundation as a debtor partner, unless this is possible in the Articles of Association; (3) The management represents the Foundation in and out of court, unless the Law determines otherwise; (4) Restrictions on the authority of the Management that do not arise due to the Act cannot be imposed by third parties or against other parties.

In the beginning, the Foundation only had a Management and Supervisor, which in this case was from the prosecutor's office that provided supervision. The supervisor of the implementation of the Foundation whose power can submit an application to the court for the dissolution of the Foundation, if the Articles of Association are contrary to the provisions that the Founders cannot be given money payments, if the Foundation's finances are no longer sufficient to realize its goals, and money cannot be collected in a short period of time with one of the legal ways, if the Foundation's goals have been achieved or no longer achieved. In the next development, the Foundation has organs consisting of Trustees, Management, and Supervisors as referred to in Article 2 of Law No. 28 of 2004.

The Trustees have authority that is not given to the Management or Supervisors by the Law or the Articles of Association. As a Foundation Trustee, has the authority to include; (1) Resolutions regarding amendments to the Articles of Association; (2) Appointment and dismissal of Management members and Supervisory members; (3) Determination of the foundation's general policy based on the Foundation's Articles of Association; (4) Ratification of the work program and annual budget draft of the Foundation; (5) Determination of decisions regarding the merger or dissolution of the Foundation (see Article 28 paragraph (1) and paragraph (2) of Law No. 28 of 2004).

Parties appointed as Trustees are individuals as Founders of the Foundation and / or those who based on the decision of the meeting of the members of the Trustees are considered to have

high dedication to achieve the goals and objectives of the Foundation as referred to in Article 28 paragraph 93) of Law. No. 28 Year 2004. What if for some reason the Foundation does not have a supervisor? At the latest within 30 (thirty) days from the date of vacancy, the members of the management and supervisory members must hold a joint meeting to appoint a supervisor in accordance with what is referred to in Article 28 paragraph (4) of Law. No. 28 paragraph (4) of Law. No. 28 Year 2004.

Another organ of the Foundation is the Management, which is tasked with carrying out the management of the Foundation as referred to in Article 31 paragraph (1) of Law. No.28 Year 2004. The Management organizes the Foundation Management, representing the foundation as a legal entity in acting according to the law. Therefore, the Foundation Management must be an individual who is capable of carrying out legal acts in accordance with what is referred to in Article 31 paragraph (2) of Law No.28 of 2004 (Primayoga, 2022).

The Foundation Management is appointed by the Trustees, therefore the Foundation Management may not concurrently serve as Trustees or supervisors as referred to in Article 31 paragraph (3) and article 32 paragraph (3) of Law No.28 of 2004. The management is appointed for a term of office of 5 (five) years and afterwards can be reappointed for 1 (one) term of office as referred to in Article 32 paragraph (1) of Law No.28 of 2004. The composition of the management consists of at least; (1) A Chairperson; (2) A Secretary; (3) A Treasurer.

The original supervisor was the prosecutor's office, then in the next development, the supervisor is a Foundation Organ whose task is to supervise and advise the Management in carrying out the Foundation's activities, because there is no further explanation regarding the party appointed as the Foundation Supervisor, then those who act as Foundation Supervisors are no longer Government agencies, but all people can be appointed as Supervisors, provided that those appointed as Supervisors are capable of legal acts. Supervisors have their authority, duties and responsibilities regulated in the Articles of Association. Supervisors may not concurrently serve as Trustees or Administrators as referred to in Article 40 of Law No.28 of 2004.

Article 7 paragraph (2) of the Foundation Law limits the amount of the Foundation to become capital for business activities. Capital that can be used for business is a maximum of 25% of the total value of the Foundation's assets. For example, a Foundation has a wealth value of 10 billion. Thus, the wealth that can be used for business is 2.5 billion. The amount of IDR 2.5 billion can be used to establish a PT or buy shares in a PT. illustration, the foundation established a PT with an authorized capital of IDR 2 billion, then included capital (bought shares) in another PT of IDR 500 million. This is allowed because 25% of the value of assets is legal according to the law. Basically, the Foundation is not intended to make a profit, but the Foundation may form a business entity based on 25% of the total capital. Thus, business activities may be carried out by not taking as much as 75% of the capital devoted to Social activities. In many cases that occur in Indonesia, often the funds obtained from the Foundation are used for personal purposes. To minimize this, the author argues and wants to share a solution with the Foundation Organ, that the Foundation can use third party services such as banks to store funds. Foundations and banks can collect funds into a joint account of the foundation to be stored and locked within a certain time. In addition, the Foundation can work with a legal consultant chosen by the Foundation so that if you want to disburse something, it must be accompanied by the approval of the chosen legal consultant. Basically, using this method seems inefficient and stretches the activity time. However, this aims for transparency of physical activities (Nanda & Darwanis, 2016). The Foundation can also make proposals for certain activities so that they are intended in organized activities. Locking or sequestering funds

and working with legal consultants is one solution that can be done to protect funds and foundation activities that will be carried out.

The activity that can be carried out by the Foundation is to create a business entity worth 25% of its capital. This business activity is intended for non-profit and solely for the benefit of the purpose of establishing the Foundation itself. In the establishment of a business entity obtained from capital, the foundation should make a profit and can help the Foundation Organ. Foundations in Indonesia often run business and commercial ventures in all aspects and manifestations, where this occurs due to differences in arguments between the first party who argues that there is no prohibition for foundations to carry out business activities so that foundations can do business in order to increase economic activities and open employment opportunities (Fadhli & Sahir, 2020). The other party argues that although there are no rules prohibiting foundations from conducting business activities. However, in essence, the purpose of the foundation is not profit oriented, but social-oriented (Kristianti, 2021).

In the case of the maintenance of Foundation funds, the foundation organ must first make an activity proposal and issue new activities based on the initial plan for making the activity. For example, in the case of the distribution of basic necessities for a certain area, the maintenance of abandoned children, and the construction of houses intended for the poor. In the proposal that is made, it must include how much budget is spent on these activities. The intended budget must be detailed and clear, meaning that it is used for any purpose. This detailed activity is made as detailed as possible to avoid misuse of funds.

Conclusion

Basically, the Foundation can cooperate with banks in managing its finances with a lock money system based on an agreement that has been established between the Foundation Organ and the Bank. This aims to minimize the misuse of funds contained in the Foundation's Articles of Association. Then this also aims for transparency activities in the management of the Foundation. The principles of transparency and accountability in the management of the foundation are needed to ensure that the Foundation Organ carries out its duties solely to achieve the objectives of the Foundation, and not other objectives and also in realizing good governance in the management of the foundation. besides that, the application of good governance in the management of the foundation is an examination of the foundation to ensure that the foundation organs do not violate the law and are negligent in carrying out their duties. In carrying out its activities, the Foundation can make proposals in advance with the aim of more organized activities. In addition, the Foundation can also create subsidiaries created from 25% of the appropriate capital in the articles of association. Improvements are needed to Law No. 16 of 2001 both regarding the Organ, especially the Trustees, as well as clear witness arrangements for violations or neglect of the Foundation's obligations. this is a consequence of applying the principles of transparency and accountability needed to prevent abuse of Foundation institutions. In the management of a company formed from 25% of the capital, do not forget the provisions that the establishment of a Foundation Legal Entity is only intended for social interests. it is generally understood that the Foundation is a Legal Entity whose activities are not oriented towards making a profit (non-profit). on the other hand, business entities are for profit. There seems to be a contradiction between the above provisions and Article 1 Point 1 of Law No. 16 Year 2001 which determines that the purpose of the foundation is in the field of Social, Religious and Humanitarian.

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