

## Implementation Role Of Notary Deed Incorporation Of Foundation Making Based On Act No. 28 Of 2004 Regarding The Foundation In The Jepara District

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**Abstract.** The purpose of this study was to: 1) To determine the role of the Implementation of the notary in the deed establishment of the Foundation under Act No. 28 of 2004 on the foundation of Jepara. 2) To know the difficulties and Solutions faced a notary in the deed establishment of the Foundation under Act No. 28 of 2004 on the foundation of Jepara.

Method approach used in this research is a normative juridical approach. Specifications descriptive analytical research. Types and sources of data using secondary data and primary data as well as the use of primary legal materials, secondary law and tertiary legal materials. The collection of data through library research and field study. Qualitative data analysis and deductive.

Based on the results of data analysis concluded that: 1) The role of the notary in the deed establishment of the Foundation under Act No. 28 of 2004 on the foundation of Jepara includes three important things, namely, to explain the terms of the deed establishing the foundation to the founder of the foundation, make certificates of establishment, then submit the ratification to the Minister of Justice and Human Rights. 2) Barriers and Solutions encountered in the manufacturing notary deed of incorporation of the Foundation under Act No. 28 of 2004 on the foundation of Jepara is in the maintenance of the terms of the deed establishing the foundation has not completed such as TIN foundations as well as the identity of the parties is not an e-ID card, the solution is certainly advise coaches / administrators to quickly gather the requirements in the manufacture of its founding act.

**Keywords:** Implementation; Notary Deed; Role of Establishment Foundation

### 1. Introduction

Until now, the people that work to the business world tends to form an association or commonly known as business entities with different objectives. Both aimed for profit, partnership or limited to promote social and religion. The business entity consisting of two (2) forms of business entities that are not business entities are legal entities and business entities are incorporated. Business entities that are not legal entities subdivided into individual business entities which includes the Trade Enterprises (UD) and effort is a partnership that includes *Maatschaap*, Firma, a limited partnership (*Vennootschap Commanditaire*). Business entities are legal entities can be divided into a legal entity that aims to profit-oriented among others, the Company Limited and cooperative and non-profit legal entities aiming (nonprofit) which includes Foundation and the Association.<sup>3</sup>

Indonesia currently only recognize two (2) forms the foundation of social legal entities and associations. Both of these legal entities have in common though, which is engaged in social, but still have differences. The Foundation itself has had Republic

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<sup>3</sup> Herlin Budiono. 2013. *Dasar Teknik Pembuatan Akta Notaris*. PT Citra Aditya Bakti. Bandung. p. v-vi.

Indonesian Act No. 28 Of 2004 on Amendment of Act No. 16 Of 2001 About the Foundation (hereinafter referred to as Law Foundation) as a foundation to be able to establish the Foundation. While the community is still governed by the 1870 Statute No. 64 (hereinafter referred to Stb. 1870-64) and Article 1653-1665 Book of Civil Law (Civil Code). In addition to these regulations, in the Government Gazette 1939 No. 570 jo 717 arranged on Indonesian Society (*Vereniging inlandse*) which initially applies only to Java Madura, then refined by Gazette 1942 No. 13 and No. 14 applies to the entire territory of Indonesia.<sup>4</sup>

The existence of the Foundation institutions we already know much from the Dutch East Indies at that time known as "stitching". At that time, the Foundation used by its founders as a vehicle for social activities.

Notary as public officials, as well as a profession, have an important role, particularly in terms of providing legal certainty traffic amid rampant legal act in an increasingly dynamic society today. Normatively, notary office stipulated in the Law of the Republic of Indonesia Number 2 Of 2014 concerning the Amendment to Act No. 30 of 2004 concerning Notary. According to Article 1 paragraph (1) states:

"Notary is a public official authorized to make an authentic deed and have more authority as referred to in this Act or under any other laws".<sup>5</sup>

Deed authentic made by the notary has the legal power very strong given the deed of authenticity is evidence that perfect, it is not uncommon for legislation requiring legal regulation of certain made in the certificate is authentic, such as the establishment of limited liability companies, cooperatives, warranty deed fiduciary, and so in addition the deed was made at the request of the parties. The positive law in Indonesia has set up a notary office in a special law, the government together with the House of Representatives set of Act No. 30 of 2004 concerning Notary<sup>6</sup>, Which has now been converted into Act No. 2 of 2014 On Notary.

The importance of the role of the notary can also be seen from its capacity to provide legal advice and verification of a treaty, whether an agreement has been made in accordance with the rules of the agreement is correct and does not harm either party or the agreement made with qualified. Conversely, when the duty and authority granted by the State to the notary is not implemented properly and precisely as possible, the errors and abuses committed by notaries can cause disruption of legal certainty and sense of justice.<sup>7</sup>

Based on the description of the background mentioned above, the authors are interested to choose the title "Implementation Role Of Notary Deed Incorporation Of Foundation Making Based On Act No. 28 Of 2004 Regarding The Foundation In The Jepara District".

### Research methods

The method used in this research is the socio-juridical. Namely socio-juridical which is a study of the real state of society or community environment with the intent and

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<sup>4</sup> *Ibid.*, p. 189.

<sup>5</sup> Law of the Republic of Indonesia Number 2 of 2014 concerning the Amendment to Law No. 30 of 2004 concerning Notary.

<sup>6</sup> Abdul Ghofur Anshori. 2009. *Lembaga Kenotariatan Indonesia. Perspektif Hukum dan Etika*. UII Press. Yogyakarta. p. 5.

<sup>7</sup> Sjaifurrahchman dan Habib Adjie. 2011. *Aspek Pertanggungjawaban Notaris Dalam Pembuatan Akta. Cetakan ke-I*. CV. Mandar Maju. Surabaya. p.7.

purpose of finding facts and then identified (problem-identification) and eventually lead to the settlement of problems (problem-solution)<sup>8</sup>. Specifications descriptive analytical research. Types and sources of data using secondary data and primary data as well as the use of primary legal materials, secondary law and tertiary legal materials. The collection of data through library research and field study. Qualitative data analysis and deductive.

## 2. Results And Discussion

### 2.1 Implementation of the notary's role in the establishment of the Foundation deed by virtue of Act No. 28 of 2004 on the foundation of Jepara

In Indonesia, almost all legal entities has had its own legislation. Call it a Limited Liability Company (PT) which is regulated in Act No. 40 Of 2007, Cooperative regulated in Act No. 25 of 1992, and the Foundation are subject to the Law on Foundations. Remaining legal entities Society, which until now has not had its own laws and crustaceans. Association of legal entities are still using Stb. 1870-64 as its legal basis to date.

According to Soerjono Soekanto role is a dynamic aspect of the position (status). If a person is exercising its rights and obligations in accordance with the position that the person to start a role. Notary is a public official authorized to make an authentic deed. The rights and obligations related to the manufacture of a certificate of incorporation Notary Association has set out in Article 15 (1) related to the authority of a Notary UUJN, which reads: "Notary authorized to make the deed authentic of all deeds, agreements and determination required by legislation and / or desired by the stakeholders to be stated in the certificate is authentic, guaranteeing making date deed, saving certificates, giving grosse, copy, and official copies, all of it along a deed that is not also assigned or excluded to other officials or any other person specified by law".

The duties of a notary is a task that should a government task then the work of notaries have legal consequences. Notary weighed portion of state power and delivers on the authentic strength and executorial deed.<sup>9</sup> Relating to duty as an authentic deed, basically the form of a notarial deed containing the deeds and other matters based on the particulars of the parties. Although generally notary must comply with the provisions contained in the legislation applicable in the Civil Code and UUJN.

The role of the notary in the deed establishing the foundation include 3 major ways to explain the terms of the deed establishing the foundation to the founder of the foundation, make establishment certificates, then submit the ratification to the Minister of Justice and Human Rights.

The data required for the manufacture of foundations and Kemenkumham:

- Name Foundation (Asked to Kemenkumham)
- Create an appropriate stamp received the foundation's behalf
- address foundations
- Foundation capital (minimum of Rp. 10 million)

<sup>8</sup> Rooney Hanitijo Soemitro. 2008. *Metode Penelitian Hukumdan Yurimetri*. Ghalia. Jakarta. p. 42.

<sup>9</sup> Herlien Budiono. 2013. *Dasar Teknik Pembuatan Akta Notaris*. Citra Aditya Bakti. Bandung. p.7

- The intent and purpose of the foundation
  - In the field of social
  - In the field of humanitarian
  - religious field
- Establishing the foundation meeting minutes
- foundation organization
- Certificate of domicile
- The certificate of business
- The certificate of capital
- Personal TIN (supervisor)
- TIN Foundation <sup>10</sup>

When these requirements are complete, then the founders together to Notary to sign the deed of establishment. The foundation is already considered established since the signing of the deed of establishment by the founders in the presence of a Notary. But this is not a legitimate foundation be legal entity. For that Notary that will process the legal entity legalization Foundation to the Ministry of Justice and Human Rights.

After the Foundation Deed of Establishment was approved as legal entities by the Ministry of Justice. the Foundation considered a party to legal actions is also legally responsible for what he does. So accountability was attached after the Deed of Establishment of Foundation approved by the Minister.<sup>11</sup>

## **2.2 Barriers and Solutions encountered in the manufacturing notary deed of incorporation of the Foundation under Act No. 28 of 2004 on the foundation of Jepara**

Prior to the law governing the foundation, the foundation is only a tool that is functionally as a means to things or work with social objectives, culture, and science.<sup>12</sup> With the enactment of Law Foundation, the foundation became clearer understanding. Whereas the conditions specified so that the foundations can be treated and to gain status as a legal entity is establishing the foundation as a legal entity must be approved by the Minister of Law and Human Rights.

Foundation and association as a legal entity is "artificial person" (the creation of the law) who can only take legal actions by the hand of man as his deputy. Foundations and societies are very dependent on their representatives in legal actions, hence more foundations and associations can easily perform a legal act of the foundation and association must have an organ. The lack of organs causes the foundation and association can not function and achieve the purposes and objectives of its establishment.

With the publication of the regulations the Minister of Law and Human Rights No. 6 of 2014 concerning the Ratification of Legal Society, the legal services in the field of reservations and ratification of the legal entity name already left the Society of manual or conventional way and have already switched electronically (online system).

<sup>10</sup> Interview with Mr. Notary Zaiunur Rohman, SH. On 2 May 2019

<sup>11</sup> Admin hc, 26 Agustus 2016. "*Bagaimana Cara dan Syarat Mendirikan Yayasan?*". <http://www.hukumcorner.com/bagaimana-cara-dan-syarat-mendirikan-yayasan/>. Accessed on 27 June 2019

<sup>12</sup> Arie Kusumastuti Maria Suhardiadi. *Hukum Yayasan di Indonesia*. Indonesia Legal Center Publishing. PT Abadi. p.11

From the implementation in the process of establishing the foundation deed in Jepara, not get significant barriers only in the process of collecting the terms tend to be the either party of the board or the coach does not immediately collect the tax ID and ID Card such terms or the identity of the parties who have E-ID.

One of the solutions that must be done for the good side of the board or superintendent by the staff or a notary public to always give guidance to the parties who filed or clients to immediately take care of the documents or requirements.

### **3. Closing**

#### **3.1 Conclusion**

Based on the research results can be concluded as follows:

- Implementation of the notary's role in the establishment of the Foundation deed by virtue of Act No. 28 of 2004 on the foundation of Jepara That includes three major ways to explain the terms of the deed establishing the foundation to the founder of the foundation, make certificates of establishment, then submit the ratification to the Minister of Justice and Human Rights.
- Barriers and Solutions encountered in the manufacturing notary deed of incorporation of the Foundation under Act No. 28 of 2004 on the foundation of Jepara, From the pelaksanaan in the process of establishing the foundation deed in Jepara, not get significant barriers only in the process of collecting the terms tend to be the pihak either the board or the coach does not immediately collect requirements. Seta solutions that must be done to give guidance to the parties who filed or clients to immediately take care of the documents or requirements.

#### **3.2 Suggestion**

- To be in the process of establishing the foundation a notary deed must give or explain the terms before the deed and to proceed with the Arrangement Process time  $\pm$  60 Days.
- In order for the client should immediately collect the terms and requirements and if no obstacles should be asked to the notary concerned.

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