



Juridical Analysis of the Legal Status of the Foundation and the Consequences of Organ Vacancies in the Foundation

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Abstract

This study aims to conduct a juridical review of the legal status of foundations and the consequences arising from the vacancy of organs in foundations in Indonesia. The focus of this research is to understand the legal framework governing foundations, identify the legal consequences that occur when there is a vacancy of organs in a foundation, and provide recommendations to improve and increase legal protection for foundations in situations of vacancies in organs. This study uses normative legal research methods by analyzing the laws and regulations governing foundations and non-profit organizations in Indonesia. In addition, this research also involves the views of relevant legal experts in cases of organ vacancies in foundations.

Keywords: *Foundations; Foundation Organs; Foundation Organ Vacancies*

Introduction

In Indonesia, the Foundation is an institution whose main function is to act as a form of social care for the community, because its work programs and activities are at least engaged in the social and humanitarian fields. The foundation as an institution is managed or consists of individuals or groups of the general public as well as collegial communities, which have the same vision and accumulation of mutual care for each other in a forum to carry out social care missions. In Indonesia, it has long been known that there are several forms of foundations, all of which in practice are recognized as legal subjects. These well-known foundations are subject to European law as stipulated in the Civil Code, and some are subject to other laws, for example: waqf institutions in Islamic law.

A foundation is a legal entity that is different from other legal entities such as associations or limited liability companies, in that foundations do not have members or Persero. Unrecognized members

of the foundation are closely related to the goals and social functions of the foundation.¹ the characteristics of foundations are very different from other legal entities such as corporations, associations, cooperatives, and endowments. The difference between foundations can be seen from their aims and objectives, foundations are legal entities that carry out non-profit social activities, in which there is a separation of the assets of the foundation and its founders.

The term foundation was originally used from various translations of the term "stichting" in Dutch and "foundation" in English.² Long before Indonesia's independence, foundation institutions had long been known in Indonesia since the Dutch East Indies era and were widely known in society,³ so these foundation institutions were familiar to the general public in Indonesia. from the customs in society, so that any non-profit activities that are institutionalized will use a foundation-form institution.

Law Number 28 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations is the legal basis for foundations. According to Article 1 point 1 of the Foundation Law Number 16 of 2001, a foundation is a legal entity consisting of separate assets to achieve certain goals in the social, religious and humanitarian fields, which has no members. With the provisions of Article 1 of this Law on Foundations, the status of a foundation's legal entity, which was originally obtained from an open system of determining a legal entity (Het Open Systeem Van Rechtspersonen), is now based on a closed system (De Gesloten Systeem Van Rechtspersonen). This means that now foundations become legal entities because of laws or based on laws, not based on an open system, which is based on custom, doctrine and jurisprudence.

Usually, a legal entity has a wide range of members, generally a legal entity is held to bring together other people or legal entities to become members of that body. Unlike other legal entities, foundations are not known to have members, as explained in Article 1 paragraph 1 of the Foundation Law above, that foundation legal entities do not know the names of members. The persons acting for and on behalf of the legal entity of the Foundation are then referred to as organs of the Foundation.⁴ Article 2 of the Law on Foundations states that foundations have organs consisting of coaches, administrators and supervisors.

Trustees are foundation organs that have authority that is not delegated to administrators or supervisors by Law Number 28 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations, and also by the articles of association. The management is the organ of the foundation that carries out the management of the foundation inside and outside the court. The supervisor is an organ of the foundation whose job is to supervise and provide advice to the management in carrying out the activities of the foundation. Based on the brief explanation above, we can see that the foundation, which is an agency, is very dependent on the organs of the foundation, which are human representatives, in running the foundation to carry out legal actions in order to achieve the aims and objectives of the foundation. Foundation organs that have different duties and authorities have a relationship that cannot be separated from one another.

Article 28 paragraph 4 of the Law on Foundations states that in the event that a foundation for whatever reason no longer has a Trustee, within 30 (thirty) days from the vacancy, the management and supervisors are required to hold a joint meeting to appoint a new Trustee. The author tries to make an analogy of the vacancy of the Trustees that occurs as a result of death or other causes. Whereas in the

¹ Riana Susmayanti, Ketidak Berpihakan Regulasi Terhadap Penyelenggaraan Pendidikan Oleh Yayasan Pendidikan Tinggi Swasta, Jurnal Konstitusi, Volume 1, Fakultas Hukum Unibraw, Malang, 2008, hlm 107

² Chatamarassjid, "Tujuan sosial yayasan dan kegiatan usaha bertujuan laba", (bandung: Citra Aditya Bhakti, 2000), hlm. 5.

³ Suyud Margono, "Badan Hukum Yayasan, Dinamika Praktek, Efektivitas & Regulasi di Indonesia," Pustaka reka cipta, 2015, Hal 28

⁴ Anwar Borahima, "Kedudukan Yayasan Di Indonesia Eksistensi, Tujuan Dan Tanggung Jawab Yayasan", Jakarta: Kencana, 2010. Hlm. 200.

Law on Foundations, the management organs and supervisory organs have a term of office based on the Foundation Law which can expire in 5 (five) years and can be reappointed for 1 (one) term of office. Foundations with organ defects will greatly impact the public interest or for a group of people outside the foundation who need social, religious and humanitarian benefits.⁵

Based on the problems above, the authors assess that there are potential problems that could arise in the future. What if the vacancy of the Board of Trustees is due to death, for example the Trustee of a foundation dies before the appointment of the new supervisory organs and management organs of the foundation begins and the foundation only has one Trustee, the death of the supervisory organs occurs when the old management and supervisory organs term of office has ended. whereas in the Law on Foundations those who have the authority to appoint administrators and supervisors are the organs of the Trustees.

The vacancy of the organ of Trustees in Article 28 paragraph 4 of the Foundation Law, administrators and supervisors are required to hold a joint meeting to appoint a new Trustee. The problem then is what is the legal status of the foundation and the legal consequences for the foundation of the vacancy of the foundation? Meanwhile, the Law on Foundations does not clearly regulate the vacancy of organs as a whole. The research method used in this study is a normative legal research method.

Results and Discussion

1. Legal Status of Foundations Having Empty Organs

In the association of law in Indonesia, it is known that in addition to government institutions (staats instellingen), there are also institutions established by private parties which are commonly called foundations and there are also foundations established by public legal entities. Foundations can be divided into two types, namely those controlled by public law and those controlled by civil law . Example: foundations controlled by public law such as: General Civil Servant Pension Fund (Algemeen Burgerlijk Pensioenfonds), State Savings Bank. While foundations controlled by civil law) such as foundations to provide allowances (scholarships) to students, charitable foundations, foundations in the field of religion, education and so on.

The establishment of a foundation in civil law occurs with a letter of recognition (acte) between the founders or with a letter of grant/will drawn up in front of a notary. In these letters it is determined: the aims/objectives, name, composition and board of directors, as well as the wealth that embodies the foundation. In short for a foundation as a legal entity it is required to have:

1. designation of a specific purpose,
2. designation of an organization, and
3. there must be a separation of assets (provisions of Article 1 paragraph 1 of the Foundation Law).

A foundation is defined as a legal entity consisting of assets that are separated and intended to achieve certain goals in the social, religious and humanitarian fields that do not have members. With the promulgation of Law no. 28 of 2004, the meaning of the Foundation becomes clearer, that the Foundation:

- a) Have their own assets,

⁵ Riana Susmayanti, Ketidak Berpihakan Regulasi Terhadap Penyelenggaraan Pendidikan Oleh Yayasan Pendidikan Tinggi Swasta, jurnal konstitusi, Volume 1, Fakultas Hukum Unibraw, Malang, 2008, hlm 107

- b) Assets are separated from the assets of the Founder,
- c) Assets are intended to achieve goals in the social, religious and humanitarian fields; and D. does not have members (See Article 1 point 1 Law No. 28 of 2004).

In Law Number 16 of 2001 in conjunction with Law Number 28 of 2004 concerning Foundations, the requirements for the establishment of a foundation have been clearly stated and the provisions for the deed of foundations obtaining legal entity status, namely:

Article 9 paragraph 1 of the Foundation Law Number 16 of 2001

- 1. A foundation is established by 1 (one) person or more by separating some of the founder's assets as initial wealth.

All sources of wealth obtained by the foundation can only be used to achieve the goals and objectives of the foundation. Further arrangements regarding foundation assets can be found in the Government Regulation of the Republic of Indonesia Number 63 of 2008 concerning the Implementation of the Law on Foundations.

Article 6 PP Number 63 of 2008

- 1. Total initial assets of Foundations established by Indonesians, originating from the division of the founder's personal assets, are at least IDR 10,000,000.00 (ten million rupiah).
- 2. Total initial assets of a Foundation founded by Foreigners or Foreigners with Indonesians, originating from the separation of the personal assets of the founders, are at least IDR 100,000,000.00 (one hundred million rupiahs).

In Article 7 PP 63 of 2008 then clarifies that the Separation of assets as referred to in Article 6 must be accompanied by a statement from the founder regarding the legitimacy of the separated assets and evidence that is part of the Foundation's financial documents.

The requirement to establish a foundation is that it must be done with a Notary Deed and drawn up in the Indonesian language. The establishment of the Foundation is carried out by means of a Notary Deed and made in Indonesian. This is expressly stated in Article 9 Paragraph 2 of the Foundation Law, so that this notarized deed is made. become an absolute requirement that must be fulfilled by fulfilling all the provisions of the notary in making the deed, both reading, time, area of authority of the notary and signing. Even though those who set up the foundation are foreigners, the deed of establishment is still in Indonesian and not in English or any other foreign language. Therefore it can be said that without a notarial deed, the establishment of a foundation would never have existed.⁶

The requirement to establish a foundation is to obtain Ministerial Approval. Foundations obtain legal entity status after the deed of establishment of the foundation is approved by the Minister of Justice and Human Rights or by the Head of the Regional Office of the Ministry of Justice and Human Rights on behalf of the Minister of Justice and Human Rights.⁷

Article 11 of Law on Foundations Number 16 of 2001

- 1) Foundations obtain legal entity status after the foundation deed as referred to in Article 9 paragraph (2) obtains approval from the Minister.

⁶ Suyud Margono, op.,cit. hal 62

⁷ Catamarasjid, op.,cit. hlm 3

- 2) The authority of the Minister to authorize the deed of establishment of a foundation as a legal entity is exercised by the Head of the Regional Office of the Ministry of Justice and Human Rights on behalf of the Minister, whose working area includes the domicile of the foundation.
- 3) In giving approval, the Head of the Regional Office of the Ministry of Justice and Human Rights as referred to in paragraph (2) may request consideration from the relevant agency.

The Law on Foundations Number 28 of 2004 amends the provisions in Article 11 of the Law on Foundations Number 16 of 2001 as follows:

Article 11 of Law on Foundations Number 28 of 2004

- 1) Foundations obtain legal entity status after the foundation deed as referred to in Article 9 paragraph (2) obtains approval from the Minister.
- 2) To obtain approval as referred to in paragraph (1), the founder or his proxy submits an application to the Minister through a Notary who draws up the foundation deed.
- 3) The notary as referred to in paragraph (2) is required to submit a request for approval to the Minister within a period of no later than 10 (ten) days from the date the foundation establishment is signed.
- 4) In granting the approval of the deed of establishment of the Foundation as referred to in paragraph (1), the Minister may request consideration from the relevant agency within a period of no later than 7 (seven) days from the date the complete application is received.
- 5) Relevant agencies as referred to in paragraph (4), are required to submit answers within a period of no later than 14 (fourteen) days from the date the request for consideration is received.
- 6) Applications for approval of foundation deed are subject to a fee, the amount of which is stipulated in a government regulation.

Prior to the enactment of the law on foundations, foundations that did not receive approval for the establishment deed of the foundation meant that the foundation did not yet have the status of a legal entity. After the law on foundations goes into effect, the deed of establishment of a foundation made before a notary must be approved by the ministry of law and human rights to obtain legal entity status.⁸ ratification of the deed of establishment is a legal obligation for the founder of the foundation. If the foundation deed is not registered with the Ministry of Law and Human Rights, then the foundation cannot be called a legal object, because the ratification of a foundation deed is an absolute requirement for a foundation to obtain legal entity status.

It is clear that the amendment to Article 11 above has removed the authority of the Kanwil to authorize a foundation legal entity and emphasizes that the authority to legalize a foundation as a legal entity rests with the Minister of Justice and Human Rights. In addition, it is stated that the notary must submit an application to become the legal entity. This may be due to the fact that in the past many foundations deliberately did not apply to become legal entities.

Foundations that have obtained the status of legal entities, then the deed of establishment which has been ratified by the Minister of Law and Human Rights must be announced in the supplement to the State Gazette of the Republic of Indonesia. Foundations as legal entities (rechpersonen) can enter into legal relations with other parties and create rights and obligations for the parties who do so. The legal act is made with a human intermediary as the representative.⁹

⁸ Suyud Margono, op.,cit. hlm.63

⁹ Fred BG Tumbuan, "*Mencermati Yayasan Sebagaimana Dimaksud UU Yayasan*", makalah, Jakarta: Fakultas Hukum Unika Atmajaya, 20 Agustus 2002, hal. 7

The parties can represent the foundation in carrying out activities to achieve the aims and objectives of the foundation, known as organs consisting of Trustees, Management and Supervisors. The authority and obligations of foundation organs stem from the foundation's dependence on these organs, bearing in mind that foundations cannot function without organs, and the fact that foundations are the cause for the existence (*raison d'être*) of organs, because if there is no foundation, then there are also no organs.¹⁰

Between the foundation and each organ there is a fiduciary relationship or relationship of trust that creates fiduciary duties for that organ. In managing the foundation, the organs of the foundation have different authorities and obligations for each organ.¹¹

A. Builder

The Trustees are the organs of the Foundation that have the highest authority in the form of authority which is not delegated to Management or Supervisors by this Law or the Articles of Association. The supervisor's authority includes:¹²

1. Decisions regarding amendments to the Articles of Association;
2. Appointment and dismissal of members of the Management and Supervisory members;
3. Determination of general policies of the Foundation based on the Articles of Association of the Foundation;
4. Approval of the foundation's work program and annual budget draft; And
5. Determination of decisions regarding the merger or dissolution of the Foundation (Article 28)

With this authority, it is known that the supervisor can only act internally, in accordance with this authority, especially matters of a general policy nature which are the basis for foundation activities and which must be carried out by the management in carrying out the management of the foundation. Trustees cannot act on behalf of the foundation. Members of the Trustees may not concurrently serve as members of the Board of Trustees and/or members of the Supervisory Board (Article 29).¹³ Furthermore, the provisions of Articles 31 to 39 regulate the Board of Trustees of the foundation.

B. Manager

It is stated that the Management is an organ of the Foundation that carries out the management of the Foundation which is fully responsible for the management of the Foundation for the interests and objectives of the Foundation and has the right to represent the Foundation both inside and outside the Court. Every Board of Management carries out their duties in good faith, and is full of responsibility for the interests and objectives of the Foundation. In carrying out their duties, the Management can appoint and dismiss the executors of the Foundation's activities. Provisions regarding the terms and procedures for the appointment and dismissal of the executors of the Foundation's activities are regulated in the Foundation's Articles of Association. Each Board of Management takes full personal responsibility if the person concerned in carrying out their duties does not comply with the provisions of the Articles of Association, which results in losses to the Foundation or third parties.¹⁴

¹⁰ Eldo Francisco Dumanauw, *“Kewajiban dan Tanggung Jawab Organ Yayasan Menurut Undang-Undang Nomor 28 Tahun 2004 Tentang Yayasan”*, Lex Et Societatis, Volume VII, Nomor 9, 2009. Hlm 24

¹¹ Rudhi Prasetya, *“Yayasan dalam Teori dan Praktik”*, Sinar Grafika, Jakarta 2013, hlm 21

¹² Sunarmi, *“Legal Standing Yayasan Sebagai Badan Hukum”*, Talenta, Volume 1, Issue 1 Universitas Sumatera Utara, 2018, hlm 266

¹³ Murjianto hal 30

¹⁴ Eldo Fransixco Dumanauw, op.,cit.

The board of directors of the foundation can be dismissed at any time based on the decision of the meeting of the supervisors. There are two reasons why the board of directors quit, namely: they stopped because their term of office ended. This means that the board of directors is appointed by the Trustees based on the decisions of the Board of Trustees meeting for a period of five years and can be reappointed after their term ends, or the Board of Directors stops due to being dismissed. That is, when traveling on assignment and with his term of office not yet ending, he quits. This can happen if the board of trustees is judged by the Board of Trustees to be unable to carry out their duties and/or the board while carrying out certain tasks is considered detrimental to the foundation.

C. Overseer

In a Foundation there is at least 1 (one) supervisor whose duties and responsibilities are regulated in the Articles of Association. If a person has been appointed as a supervisor, then the supervisor concerned may not double as a supervisor or administrator. In carrying out their duties, Supervisors must in good faith and with full responsibility carry out their duties for the activities of the Foundation.¹⁵

The supervisor is an organ within the foundation that is given the task of carrying out supervision and giving advice to the management in carrying out foundation activities. The definition of Supervisor for the Foundation is explained in Article 40 of Law Number 16 of 2001 concerning Foundations, in Paragraph 1 it is determined that the Supervisor is an organ of the Foundation tasked with supervising and advising the Management in carrying out Foundation activities, but in practice the Foundation does not only provide advice and carry out Oversight only, Supervisors have responsibility for the failure of the management to carry out work programs or activities of the Foundation.

The responsibilities of the Supervisor of the Foundation are not only related to management affairs but administratively where the Supervisor formally knows and gives written approval for the actions of the Foundation Legal Entity carried out by the Management, so that directly or indirectly the Foundation Supervisor should know the activities of the Foundation, so that if the Foundation is suspected of committing an act against the law which is detrimental to interested parties, so not only are the Management responsible, Supervisors are also responsible not only regarding professional liabilities including the personal wealth of Managers and Supervisors.

Supervisors are appointed by the Trustees based on the decisions of the Trustees meeting for a period of five years and can be reappointed after their term ends, which is determined by the articles of association of the foundation. This provision is the same as the provisions regarding the term of office of the board of directors. This is desired so that there is a timeliness and there is no imbalance because usually the board and supervisor are also appointed and stop for a relatively similar period of time.¹⁶

State law allows a legal entity to carry out legal activities with other legal subjects. An organization or institution contains rules of the game in the Articles of Association (AD) which regulate including the division of tasks and responsibilities of the management elements. AD is the highest legal basis or constitution in a legal entity, where AD is generally then spelled out in the Bylaws (ART). In a good organization, a code of ethics is also provided for the management and members. Bylaws, ART and codes of ethics are important for organizations to deal with various internal problems so that such problems do not become problems and do not last long for the age of the organization.¹⁷

Legal entities (*rechtspersoon*) are divided into two forms, namely, public legal entities and private legal entities. A public legal entity is a legal entity established under public law or which concerns the

¹⁵ Suyud Margono. *Op.,cit.* hlm. 91

¹⁶ Adib Bahari, *op.,cit.* hlm. 10

¹⁷ Suyud Margono, *op.,cit.* hlm.45

interests of the public, the people or the state. Legal entities of this type are generally state agencies and have territorial powers or are authorized institutions established by the State or the Government based on applicable laws and run functionally by the executive or government or management bodies assigned the task for that purpose. Example: Public legal entity is Bank Indonesia which was established based on law.¹⁸

Foundations which are legal entities by Law Number 16 of 2001 require organs to be able to carry out foundation activities. Foundations as legal entities in this law provisions regarding foundation organs are regulated in Article 2 of the foundation law. If analyzed from the Theory of Organs from Otto Van Gierke (1841-1921). He said that "a legal entity is a real reality, just as the natural personality traits of humans exist in legal associations.

According to this theory, a legal entity is the same as a human being, becoming a true embodiment in the association of law, namely 'eine lieblich geistige Lebenseinheit', namely a body which forms its will through the intermediary of the organs or organs of the body, for example its members or management. Like a human who utters his will through his mouth or through his hands if the will is written on paper.¹⁹

So according to this theory a legal entity is not something abstract (fictional) but a legal entity is the embodiment of the image of a new human being who can really get along in legal associations who can form their own desires through the intermediary of the organs or tools available to them.²⁰

In a foundation, the existence of organs is something that absolutely must exist in a foundation. The question then is what is the status of a legal entity in a foundation if there is a vacancy in the organ for any reason?

Before answering the above questions, the author will first explain the terms and procedures for the dissolution of a foundation. The foundation disbands because the period specified in the articles of association ends, the goals have been or are no longer possible to achieve, or because a court decision has permanent legal force.

The appointed liquidator or curator will settle the assets of the dissolved or disbanded Foundation. The remaining assets resulting from the liquidation are handed over to other foundations that have the same aims and objectives. If not, the remaining wealth is handed over to the state and its use is adjusted to the aims and objectives of the Foundation.

Article 63 of Law on Foundations Number 16 of 2001

1. In the event that the Foundation is dissolved due to the reasons referred to in Article 62 letter a and letter b, the Trustees appoint a liquidator to settle the assets of the Foundation.
2. In the event that a liquidator is not appointed, the Management acts as a liquidator.
3. In the event that the Foundation is dissolved, the Foundation cannot take legal action, except to settle its assets in the liquidation process.
4. In the event that the Foundation is in the process of being liquidated, for all outgoing letters, the phrase "in liquidation" shall be included behind the name of the Foundation.

¹⁸ *Ibid*, hlm.46

¹⁹ Agus Budiarto. *"Seri Hukum Perusahaan: Kedudukan Hukum dan Tanggung Jawab Pendiri Perseroan Terbatas"*. Jakarta: Ghalia Indonesia.2002. hlm 28

²⁰ Riduan Syahrani, *"Seluk Beluk dan Asas-asas Hukum Perdata"*. Bandung: Alumni.1985.hlm 55.

The provisions in Article 63 paragraph (1) emphasize that the assets of a foundation that is dissolved must be settled (liquidation). With this dissolution, the existence of the Foundation will still exist until the liquidator is released from responsibility.

Article 64 of the Foundation Law Number 16 of 2001

1. In the event that a foundation is dissolved due to a court decision, the court also appoints a liquidator.
2. In the event of a Foundation dissolving due to bankruptcy, laws and regulations in the field of bankruptcy shall apply.
3. Provisions regarding the appointment, appointment, temporary dismissal, dismissal, powers, obligations, duties and responsibilities, as well as supervision of the management, also apply to liquidators.

In the event that a foundation is dissolved based on a court decision, the appointment of a liquidator is determined by the court, while the appointment of a curator is only if the foundation is declared bankrupt.

Article 65 of Law on Foundations Number 16 of 2001

The liquidator or curator appointed to settle the assets of a dissolved or disbanded Foundation, no later than 5 (five) days from the date of appointment, must announce the dissolution of the Foundation and its liquidation process in an Indonesian language daily newspaper.

Article 66 of Law on Foundations Number 16 of 2001

The liquidator or curator within a period of no later than 30 (thirty) days from the date the liquidation process ends, must announce the results of the liquidation in an Indonesian language daily newspaper.

Article 67 of Law on Foundations Number 16 of 2001

1. The liquidator or curator within a period of no later than 7 (seven) days from the date the liquidation process ends must report the dissolution of the Foundation to the Trustees.
2. In the event that the report regarding the dissolution of the Foundation as referred to in paragraph (1) and the announcement of the results of the liquidation as referred to in Article 66 are not carried out, the dissolution of the Foundation does not apply to third parties.

Article 68 of the Foundation Law Number 16 of 2001

1. The remaining assets resulting from the liquidation are handed over to other foundations that have the same aims and objectives as the disbanded foundation
2. In the event that the remaining liquidation proceeds are not handed over to other foundations that have the same aims and objectives as referred to in paragraph (1), the remaining assets are handed over to the state and their use is carried out in accordance with the aims and objectives of the said foundation.

The provisions of Article 68 of the Law on Foundations Number 16 of 2001 are amended so that they read as follows:

Article 68 of Law on Foundations Number 28 of 2004

1. The remaining assets resulting from the liquidation are handed over to other foundations that have the same activities as the disbanded foundation.
2. The remaining assets from the liquidation proceeds as referred to in paragraph (1) may be handed over to another legal entity that has the same activities as the dissolved Foundation, if this is regulated in the law regarding said legal entity.
3. In the event that the remaining assets resulting from liquidation are not handed over to other foundations or to other legal entities as referred to in paragraph (1) and paragraph (2), the wealth is handed over to the state and its use is carried out in accordance with the activities of the dissolved foundation.

From the problems raised by the author above, based on the problem that questions the status of a foundation's legal entity if the foundation experiences a vacancy of organs, the author believes that foundations which experience vacancies of organs do not automatically lose their legal entity status. Article 62 of the law on foundations regarding the dissolution of foundations which states that foundations are dissolved because:

- a. The time period specified in the articles of association ends
- b. The goals of the foundation set out in the articles of association have been achieved or not achieved
- c. Court decisions that have permanent legal force based on the following reasons:
 - 1) The foundation violates public order and decency;
 - 2) Unable to pay their debts after being declared bankrupt; or
 - 3) The assets of the foundation are not sufficient to pay off debts after the bankruptcy declaration is revoked.

In the explanation above about the reasons for the dissolution of a foundation, there is no mention of the dissolution of a foundation as a result of an organ vacancy, but the legal entity foundation is based on the theory of legal entity, in this case the organ theory of Otto Von Gierke (1841-1921). According to von Gierke, a legal entity is like a human being, being a true embodiment in the association of law, namely 'eine leiblich geistige lebenseinheit', the legal entity becomes a 'verband personlichkeit', that is, an entity which forms its will with the intermediary of tools or organs. These organs, for example, its members or administrators are like humans who say their will through their mouths or through their hands if the will is written down on paper.

Even though a foundation legal entity is an embodiment of a new human being and can act like a human being, a foundation as a legal entity cannot operate without an organ to run it. The consequence of the foundation having lost this organ is that the legal entity of the foundation cannot carry out its will but still has the status of a legal entity.

Conclusion

Based on the problem that questions the status of a foundation's legal entity if a foundation experiences a vacancy of organs, the author is of the opinion that a foundation that experiences a vacancy of organs does not automatically lose its legal entity status. foundation. There is no mention of the reason for the dissolution of a foundation regarding the dissolution of a foundation as a result of an organ vacancy. So a foundation legal entity as a legal entity cannot operate without an organ to run it. The consequence of the foundation having lost this organ is that the legal entity of the foundation cannot carry out its will but still has the status of a legal entity.

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