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The Validity of Amendments to the Foundation's Association Charter without the Presence of the Supervisory Board

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Abstract

Law Number 16, 2001 on the Foundations, as amended by Law Number 28, 2004, regulates that amendments to the foundation's articles of association can only be made by the trustees thru a legitimate trustee meeting and must comply with applicable legal provisions. However, in practice, changes to the articles of association are often made without complying with the provisions as stipulated in the Foundation Law, which can lead to legal issues and uncertainty regarding the validity of the changes to the articles of association and the legal actions of the foundation. This research uses a normative juridical method, with the approaches employed being the statutory approach,

the conceptual approach, and the case approach. This research is based on secondary data as the main data and primary data as supporting data. Data is analyzed descriptively and qualitatively using legal interpretation. The purpose of this research is to explain the legal strength of the board meeting in amending the foundation's articles of association according to the Foundation Law. The research results show that the board meeting is the main determining factor for the validity of changes to the foundation's articles of association, where the Foundation Law explicitly grants the authority to amend the articles of association only to the board.

Keywords: Validity, Charter, Foundation

Introduction

One of the most well-known and rapidly growing forms of legal entities in Indonesia is the foundation. Foundations have been known in Indonesia since the Dutch East Indies government era, with the term "Stichting" ^[1]. Foundations are established with the purpose of managing separate assets for certain social interests and not for profit ^[2]. Foundations obtain formal legitimacy thru Law Number 16 of 2001 concerning Foundations, which was later amended by Law Number 28 of 2004 (hereinafter referred to as the Foundation Law).

As a legal entity, a foundation has organs that function to run the organization's operations in accordance with the foundation's aims and objectives. In Article 2 of the Foundation Law, it is stated that the organs of the foundation consist of the board of trustees, the board of directors, and the board of supervisors ^[3]. These three organs have different functions but are interconnected as a unified system in carrying out the foundation's aims and objectives. Among the three organs, the board of trustees holds the highest position because it has strategic authority in determining the direction of the foundation's policies. One of the most crucial authorities is to approve amendments to the foundation's articles of association. The articles of association can be referred to as the "internal constitution" of the foundation, which contains fundamental provisions related to the name, purpose, assets, membership of organs, and mechanisms for important decision-making within the organization ^[4].

Every amendment to the foundation's articles of association must go thru a board meeting, the results of which are then recorded in a notarial deed and submitted to the Ministry of Law. However, in practice, legal issues often arise regarding the validity of the amendments to the foundation's articles of association. Many amendments to the articles of association are made without fulfilling the formal and material requirements set by law, such as the failure to meet the quorum for the board meeting, the presence of unauthorized board members, or even the involvement of external parties who do not have the authority. This condition can certainly lead to various legal consequences, including dualism in management, nullification of notarial deeds, and rejection of ratification by the Ministry of Law, all of which stem from issues regarding the legality of the actions of the legal entity's organs.

Some concrete examples of deviations in the amendment of the foundation's articles of association are the Gresik District Court Decision No.92/Pdt.G/2022/PN.Gsk. Second, the Jakarta Administrative Court Decision No.173/G/2025/PTUN. Jkt. Third, the Denpasar District Court Decision No.643/Pdt.P/2019/PN.Dps. These cases show the same pattern of problems, namely formal and material defects in the implementation of the board meeting, which result in the invalidity of the amendment to the articles of association.

Research Method

This research uses the normative juridical research method, which is legal research conducted by examining library materials or secondary data [5]. The approaches used are the statutory approach, the conceptual approach, and the case approach. The sources of legal materials used in this research are secondary data thru document studies to obtain data taken from library materials. Data collection was carried out thru library research activities. Additionally, to support the legal materials obtained thru library research, this study was also conducted with field research. Data analysis in this research uses qualitative data analysis.

Results and Discussions

Amendments to the articles of association are a fundamental legal act because they touch upon the existence and identity of the legal entity. The articles of association not only serve as internal guidelines but also as the basis for the foundation's legitimacy in conducting legal relations with parties and the state. Therefore, amendments to the foundation's articles of association must be carried out thru a legitimate and legally accountable mechanism [6]. Within the framework of foundation law in Indonesia, amendments to the articles of association are not left to the absolute discretion of the foundation's organs, but are instead limited by legal provisions that regulate who is authorized and how the amendments must be made. This limitation is intended to ensure that amendments to the articles of association truly reflect the will of the foundation as a legal entity, and to prevent the abuse of power by certain organs. In this context, the board meeting occupies a very decisive position because amendments to the articles of association can only be made thru the board meeting.

The board of trustees occupies a central position in the organizational structure of the foundation because the trustees are the highest organ of the foundation, granted strategic authority by law. The position of the board of trustees as the highest organ is affirmed in Article 2 of the Foundation Law, which states that "the organs of the foundation consist of the board of trustees, the board of management, and the board of supervisors." In this construction, the board of trustees is placed as the organ with the most fundamental authority in determining the direction of the foundation's policies. The authority of the board of trustees in amending the foundation's articles of association is explicitly regulated in Article 28 paragraph (1) letter a of the Foundation Law, as mentioned in the provision that the board of trustees has the authority, one of which is the decision to amend the articles of association. This provision shows that the law directly grants the authority to amend the articles of association to the board of trustees, without allowing any other organ to take over or replace that authority. Thus, the authority of the trustee in

amending the articles of association is attributive, meaning their authority is directly derived from the law.

If viewed from the legal construction of a legal entity, the will of the legal entity does not stand alone, but is manifested thru its organs. Otto von Gierke stated that a legal entity is not merely a fictitious entity without real existence, but rather an entity with legal personality or *verbandspersönlichkeit* that can express its will thru the organs within that entity. A foundation, as a legal entity, has a will that is manifested in the actions and decisions taken by its legitimate organs. The will of the legal entity is expressed by these organs, which function similarly to how humans express their will in legal actions. Therefore, the decisions made by these organs, such as amendments to the foundation's articles of association, are valid and binding decisions because they are manifestations of the legal entity's will itself.

In the context of amendments to the articles of association, the will is formed thru a decision made by the board of trustees. Article 18, paragraph (1) of the Foundation Law states that "Amendments to the articles of association can only be carried out based on the decision of the board of trustees meeting." This provision emphasizes that the authority of the trustees cannot be exercised individually or unilaterally, but must be realized thru a collective mechanism in the board of trustees meeting forum [7]. Based on this, the board meeting is the only legally recognized means to exercise the authority of the board in amending the articles of association, and the board meeting not only functions as a forum for deliberation but also as a means of forming the legal will of the foundation. Referring to the theory of authority, a legal action is only valid if carried out by a legal subject who possesses authority granted by legal norms and executed according to the specified procedures. If the authority is exercised by an unauthorized party or carried out in a manner that deviates from the mechanism stipulated by law, then the action contains a defect of authority (*onbevoegdheid*) [8]. In the context of foundations, amendments to the articles of association that are not decided by the board thru a board meeting, as referred to in Article 18 of the Foundation Law, from the outset contain a defect of authority and cannot be regarded as a valid action of the foundation.

Thus, the board meeting cannot merely be understood as an administrative forum, but rather as a legal instrument that determines the validity of changes to the foundation's articles of association. The affirmation of the authority of the board of trustees thru Article 18 and Article 28 of the Foundation Law indicates that the lawmakers place the board of trustees' meeting as the guardian of the legitimacy of changes to the foundation's articles of association. This placement also serves as a mechanism for preventive legal protection to prevent the abuse of authority and maintain legal certainty in the administration of the foundation [9]. The validity of the board meeting is the main requirement for the legality of changes to the foundation's articles of association. The board meeting can only be deemed valid if it is conducted by legally recognized board members, meets the quorum requirements as stipulated in the law and the foundation's articles of association, and is carried out in accordance with the applicable procedures for calling and making decisions. These provisions are intended to ensure that the decisions made are the result of the collective will of

the board, not the unilateral will or the result of domination by certain parties^[10].

If the board meeting is held without the presence of legitimate board members or without meeting the quorum requirements, then the meeting cannot be considered a legitimate board meeting. Decisions resulting from such a meeting do not reflect the will of the foundation as a legal entity, but rather the will of individuals or groups who lack the legitimacy to act on behalf of the foundation. In such conditions, the amendments to the articles of association lose their legal basis from the outset. The position of the board meeting as the determinant of the validity of the amendment to the articles of association is also closely related to the creation of the notarial deed. The deed of amendment to the articles of association is essentially a written embodiment of the foundation's will that has been formed in the board meeting. The notary does not form that will, but rather puts it into the form of an authentic deed based on the information and documents provided by the parties^[11].

Therefore, if the board meeting that serves as the basis for the deed is declared invalid, the amendment deed to the articles of association relies on a flawed legal will, thereby losing its legal legitimacy. Thus, it can be asserted that the board meeting has a constitutive function in the amendment of the foundation's articles of association. The validity of the amendment to the articles of association is not determined solely by administrative formalities, but rather by the legitimacy of the board meeting as the forum for forming the foundation's will. The legitimacy of the board meeting as the basis for amending the foundation's articles of association is not only determined by normative provisions as found in the Foundation Law, but is also reflected in the judges' considerations when resolving internal foundation disputes^[12]. In judicial practice, the board meeting often becomes the focal point of disputes because it is from this forum that amendments to the articles of association and changes to the structure of the foundation's organs obtain their legal legitimacy. Therefore, an analysis of court decisions becomes important to understand how the provisions regarding the board of trustees' meetings are concretely applied.

In the Gresik District Court Decision Number 92/Pdt.G/2022/PN.Gsk, the panel of judges determined that the extraordinary board meeting used as the basis for the amendment of the foundation's articles of association did not meet legal requirements. The meeting was held without the presence of all legitimate trustees and did not meet the quorum requirements as stipulated in the foundation's articles of association. In addition, the board meeting involved parties who are not board members, and therefore, they do not have the legal authority to participate in decision-making. Based on those considerations, the court declared that the board meeting was invalid and could not be used as the basis for amending the foundation's articles of association.

The judge's considerations in the ruling indicate that the court did not only view the board meeting from a formal perspective but also from a substantive one. The judge does not merely look at whether the meeting was held and a notarial deed was made, but also assesses whether the meeting was truly conducted by the authorized parties and in accordance with the provisions of the law and the foundation's articles of association. This approach

emphasizes that the decisions of a legal entity are only valid if they originate from the actions of legitimate and authorized organs. This approach aligns with the principle that the will of a legal entity can only arise from the actions of legitimate and authorized organs. A similar approach is also seen in the Denpasar District Court Decision Number 643/Pdt.P/2019/PN.Dps. In this case, the board meeting that served as the basis for the decision-making was only attended by one board member, thus failing to meet the quorum requirements outlined in the foundation's articles of association. The court emphasized that a board meeting that does not meet the quorum cannot be considered a valid board meeting, as it does not reflect the collective will of the board members as the highest organ of the foundation. Thus, the decisions resulting from that meeting are deemed to have no legal force.

The assessment of the validity of the board of trustees' meeting also arises in the context of state administrative disputes, as seen in the Jakarta State Administrative Court Decision Number 173/G/2025/PTUN.Jkt. In that case, the amendment to the foundation's articles of association, which served as the basis for the issuance of the Minister of Law's decision, was based on a board meeting that did not meet the quorum requirements. The panel of judges assessed that because the board meeting was not conducted legally, the resulting amendment to the articles of association lacked legal legitimacy to serve as the basis for issuing an administrative decision. The PTUN ruling shows that the validity of the board meeting not only affects the internal relations of the foundation but also determines the legality of state administrative actions. In this context, the board meeting serves as a link between the internal will of the foundation and legal recognition by the state. If the board meeting is invalid, then the internal will of the foundation does not obtain legal legitimacy to produce further legal consequences. Based on the results of the interview with the judge, it was emphasized that the validity of the amendment to the foundation's articles of association is highly determined by the fulfillment of formal requirements in the conduct of the board meeting. The judge stated that in accordance with the provisions of the Foundation Law, amendments to the articles of association can only be made thru a board meeting attended by the board members and meeting the quorum requirement of at least 2/3 (two-thirds) of the total number of board members. Without the fulfillment of this quorum, the board meeting cannot be considered legally valid^[13].

Furthermore, it is explained that the failure to meet the quorum in principle renders the amendment of the articles of association invalid. However, there is an exception in practice if the absent trustees still provide written approval, which is then recorded in a notarial deed. In such conditions, the substance of the approval is still considered to exist, so it can be regarded as a form of fulfilling the will of the governing body^[14]. This view shows that although the formal aspect of physical presence in the board meeting is very important, under certain conditions, the law still allows for the proof of the board's intent thru other mechanisms as long as it can be legally justified. From the three decisions, a similar pattern is observed, namely that the court considers the board meeting as the main factor in assessing the validity of the changes to the foundation's articles of association. The judge assesses whether the authorized board members were involved, whether the meeting was

conducted according to procedure, and whether the decision was made collectively. This approach aims to rectify the unlawful actions of the foundation's organ and restore legal certainty.

Thus, judicial practice reinforces that a board meeting that does not comply with legal provisions cannot produce a valid amendment to the articles of association, even if it has been documented in a notarial deed or submitted for administrative approval. The court's assessment simultaneously reaffirms the position of the board meeting as the primary determinant of the validity of the foundation's articles of association amendments. The legal strength of the board of trustees' meeting is the main determining factor for the validity or invalidity of the amendment to the foundation's articles of association. The Foundation Law explicitly grants the authority to amend the articles of association solely to the board of trustees, whose implementation must be carried out thru the mechanism of a board of trustees meeting as a collective forum for the formation of the foundation's will.

Conclusion

To sum up, the legal authority of the board of trustees' meeting is the primary determinant for the legitimacy of amendments to the foundation's articles of association. The Foundation Law specifically confers the authority to alter the articles of organization only on the board of trustees, which must execute it through a board meeting as the collective platform for expressing the foundation's desire. Amendments to the foundation's articles of association executed without compliance with the board meeting provisions outlined in the Foundation Law, especially if they lack quorum or do not include legitimate trustees, render the amendments null and void by law due to non-fulfillment of the essential validity criteria for legal acts. Consequently, these revisions are deemed never to have existed from the outset, rendering any legal acts predicated upon them, including alterations to the foundation's management, devoid of legal effect, while safeguarding the interests of third parties acting in good faith.

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