

**JURIDICAL STUDY OF LEASING OF HOSPITAL FOUNDATION ASSETS TO HOSPITALS IN THE FORM OF A LIMITED LIABILITY COMPANY**

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**ABSTRACT:** Law number 28 of 2004 amendments to law number 16 of 2001 concerning foundations, in article 5 paragraph (1) explains that the assets of foundations are stopped or distributed directly or indirectly. In fact, there is a hospital from a foundation which, due to being pressured by the need to improve hospital management, the foundation which manages the hospital business unit forms a pt to manage the hospital business unit. This research discusses the role of a notary in the process of transferring assets from a hospital foundation to a hospital in the form of a limited liability company and what is the mechanism for the process of transferring assets from a hospital foundation to a hospital in the form of a limited liability company and what are the responsibilities of legal organ foundations in an effort to transfer the assets of a hospital foundation hospital to a hospital in the form of a limited liability company. This research is a normative juridical research with an approach based on the main legal material by examining the theories, concepts, legal principles and laws and regulations related to research. The results of the analysis are presented qualitatively. Data in the field was taken through interviews with the foundation and notary who made the lease deed. The results of this study are the role of the notary in the transfer of assets, namely the role of the notary as the maker of the land lease agreement owned by pt husada to khoirunissa hospital. The mechanism for the process of transferring assets from a hospital foundation to a hospital in the form of a pt is through a lease agreement. PT. Husada leases its assets in the form of land and is leased by the khoirunisa foundation on which a foundation hospital is built called rsia umi barokah.

Keywords: *Asset transfer, Foundation, Limited liability company, Notary.*

## **INTRODUCTION**

Legal entities such as Limited Liability Companies, Foundations are legal subjects, which in their daily activities limited companies are run by directors, in this case the main director or director, while Foundations are run by Management. The two legal entities are established by a group of people by setting aside part of their assets for a specific purpose, and the assets set aside to establish the legal entity must be separate and may not be used as joint assets with each other's personal assets. Assets that are separated from personal assets and legal entity assets must be made and included in a notarial deed in the said law. By separating personal assets from the legal entity's assets with the aim that there is no misappropriation of the legal entity's property. In addition, legal entities also have separate responsibilities for their debts.

obligations, so that the founders or owners are not partly responsible for the company's debts and personal assets.<sup>1</sup>

Legal entities in the form of foundations, before the formation of the Law on Foundations, foundations were only based on custom and jurisprudence. In addition to jurisprudence, legal experts express their opinion regarding the legal entity status of foundations by providing limitations that generally describe a foundation as a legal entity. That is, the foundation is a unit, has the authority to carry out legal actions, has no members, has separate assets, has social goals, has an organization that manages the assets of the foundation to achieve the goals and activities of the foundation and has a foundation deed as a formal requirement. . A foundation is an organization or legal entity whose goals are social, religious and humanitarian. After the formation of the Law on Foundations, the establishment must pay attention to the formal requirements stipulated by Law Number 28 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations. The establishment of the foundation itself is carried out with the articles of association of the Foundation and the articles of association are subsequently notarized by notarial deed and then registered with the Ministry of Law and Human Rights to obtain status as a legal entity.

The change or transition from the Foundation Hospital to PT does not necessarily only take into account the profits that will be obtained later, but the transfer of assets and wealth and the responsibilities of the management are the main things that must also be taken into account. This does not mean that hospitals are prohibited from being formed as a foundation. Because what is prohibited is only the transfer of wealth to the board unless the board is not the founder and is not affiliated with the founder, coach and supervisor.

Private hospitals in the form of foundations often face a dilemma between running a business that has a social function and a commercial function. The Law on Limited Liability Companies contains articles that more clearly regulate institutions as corporations so as to increase efficiency and reduce the risk of internal conflicts. Moreover, because the benefits that will be obtained are expected to be able to offer various forms of better health services, increasingly sophisticated and adequate medical devices, skilled and friendly health workers and improved management systems that are more professional. And in the end you will get a hospital that is advanced but still has a social side in serving the wider community.<sup>2</sup>

Meanwhile, the Law on Foundations and the Law governing associations have not yet regulated institutional governance. As a result, hospitals in the form of foundations or associations cannot strengthen hospital governance. So that what is called an efficient, competitive, and aggressive organizational culture seems less well organized in non-profit hospitals in the form of foundations and associations.

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<sup>1</sup> Subekti, 2002, *Fundamentals of Civil Law, Print X*, Jakarta, Intermasa, page. 55.

<sup>2</sup> M.J Widijatmoko. 2017. *Transfer of Asset Ownership From Foundations to Limited Liability Companies*, Book 1. Jakarta: Bintang Mandiri, page. 38.

After the promulgation of Law Number 44 of 2009 concerning Hospitals it stipulates that all hospital business activities must be under the auspices of associations and foundations that have aims and objectives as well as activities in the field of hospitalization by obtaining rehabilitation permits and operational permits. The aims and objectives and activities of the Hospital established by this Foundation must be stated in the Statutes and Bylaws of the Foundation and it will be necessary to obtain a recommendation for an extension of the operating license for the Hospital.

Meanwhile, according to Article 21 of Law Number 44 of 2009 concerning Hospitals, namely for private Hospitals managed by legal entities with the aim of profit in the form of Limited Liability Companies or Persero. In Article 20 paragraph (2) it is emphasized that legal entities that manage Public Hospitals, are non-profit legal entities whose remaining results are not distributed to owners, but are used to improve services, namely, among others, foundations, associations, and public companies.

In a case study in Boyolali City, Central Java Province, there is a hospital called RSU Umi Barokah, Umi Barokah Hospital is part of the Khoirunisa Foundation. Due to being pressured by the need to improve the management of private hospitals, the Khoirunnisa Foundation formed PT. Senuk Jaya Husada to manage its Hospital business unit. Hospital activities are the embodiment of the activities of the Foundation or Limited Liability Company, the Hospital is not a legal entity but the legal entity is a Foundation or Limited Liability Company that establishes the Hospital. Thus, the existing Hospital Directors are only executors of the activities of the management of the Foundation or Limited Liability Company (PT).

In this regard, the Khoirunnisa Foundation will not be dissolved. Instead, the Khoirunnisa Foundation established PT. Senuk Jaya Husada with the Hospital business unit where the Khoirunnisa Foundation in transferring the Foundation's assets to PT. Senuk Jaya Husada is carried out by means of a lease agreement deed made by a Notary.

In the above description it can be seen that there is a problem with the existence of a Hospital as a Foundation activity unit then its assets are transferred to a Limited Liability Company (PT) which has a commercial business in the hospital sector, whereas according to the Foundation Law it is explained that Foundation assets are prohibited from being transferred if the Foundation is no longer addressed to social or non-profit interests.

In connection with the background above, the author wants to know and conduct research and put it in the form of a thesis entitled, "Juridical Study of Leasing of Hospital Foundation Assets to Hospitals in the Form of a Limited Liability Company".

## **PROBLEM**

Based on the background of the problems above, the formulation of the problem in this study is:

1. What is the role of a Notary in the process of transferring the assets of a Hospital Foundation to a Hospital in the form of a Limited Liability Company.
2. What is the mechanism for the process of transferring Hospital Foundation assets to Hospitals in the form of a Limited Liability Company.
3. What are the legal responsibilities of foundation organs in efforts to transfer Hospital Foundation assets to Hospitals in the form of a Limited Liability Company.

## **RESEARCH METHOD**

The approach method used in this research is normative juridical. The normative juridical approach is an approach that is carried out based on the main legal material by examining the theories, concepts, legal principles and laws and regulations related to this research. This approach is also known as the library approach, namely by studying books, laws and regulations and other documents related to this research.

This research is based on normative law science which also conducted an interview process with the directors of the hospital that carried out the transfer of the assets of the Khoirunisa Foundation.

## **RESEARCH RESULTS AND DISCUSSION**

### **The role of the Notary in the process of transferring the assets of the Hospital Foundation to the Hospital in the form of a Limited Liability Company**

The form of transfer of ownership rights to land and or buildings is sales, exchanges, agreements to transfer rights, release of rights, transfer of rights, auctions, grants or other means other than the government for the implementation of physical or material development including development for the public interest or facilities that do not require special requirements. In UUPA No. 5 of 1960 stipulates the legal basis for the transfer (transfer) of land rights, namely in articles (20), (28), (35), and (43). Article (20) paragraph 2, namely property rights can be transferred and transferred to other parties. Article (28) paragraph 3, namely the right to cultivate can be transferred and transferred to another party. Article (35) paragraph 3, namely building use rights can be transferred and transferred to other parties the position of a notary is a position of trust. The law has given authority to notaries who are so large to make authentic evidence, therefore the provisions in the Notary Office Law are so strict and full of sanctions, both administrative sanctions and criminal sanctions without reducing the possibility of imposing temporary suspension of sanctions up to dismissal stage.<sup>3</sup> Notary is not authorized to make deeds for the benefit of everyone. In Article 20 paragraph 1 of the Notary's Office Regulations, for example, it is stipulated that a notary is not allowed to draw

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<sup>3</sup> Pertiwi, E, 2018, *Notary Responsibilities Due to Making Nominee Deeds Containing Unlawful Acts by the Parties*, IUS Journal of Law and Justice Studies, 6(2), 245-258, Page 252, Doi: <http://dx.doi.org/10.29303/ius.V.6.2>, page. 559

up a deed, where the notary himself, his wife, blood relatives or relatives of the notary are in a straight line without degree restrictions and in a sideways line up to the third degree, either personally or legally, become a party. The purpose and objective of this provision is to prevent partiality and abuse of office.

The role of a Notary is reflected in the authority he has, which according to Ateng Syafrudin, authority is defined as the same as official power that is derived or granted by law, which contains an authority (*recths bevoegdheidheden*).<sup>4</sup>The authority of a Notary is regulated by Law Number 2 of 2014 concerning the Office of a Notary, and a Notary in carrying out his duties can lead to responsibility, because a Notary is an official who is deliberately appointed by the State and is given some of the State's authority in the field of civil law and or evidence with products in the form of authentic deed whose proving power is perfectly qualified. As has been explained, it is known that a Notary is a public official, therefore a Notary certainly has a role to serve the public. The intended service is related to making authentic deeds which is a form of authority from a Notary As stated in Article 15 of Law Number 02 of 2014 Amendments to the Law on Notary Positions, it stipulates "Notaries are authorized to make authentic deeds regarding all actions, agreements and stipulations that are required by laws and regulations and/or that are desired by interested parties to be stated in authentic deed, guarantee the certainty of the date of making the deed, save the deed, provide grosse, copies and quotations of the deed, all as long as the making of the deed is not also assigned or excluded to other officials or other people determined by law. Regarding the case, the Khoirunnisa Foundation was not disbanded. Instead, the Khoirunnisa Foundation established PT. Senuk Jaya Husada with the Hospital business unit where the Khoirunnisa Foundation in transferring the Foundation's assets to PT. Senuk Jaya Husada is carried out by means of a lease agreement deed made by a Notary. From the descriptions and interviews with the informants above, it can be concluded that the role of the Notary in transferring the assets is that the Notary plays the role of making the lease agreement on the land owned by PT Senuk Jaya Husada to Khoirunnisa Hospital.

### **Mechanism for the process of transferring Hospital Foundation assets to Hospitals in the form of a Limited Liability Company**

We find the definition of foundation in the Law on Foundations. The Act explains that a foundation is a legal entity that is social in nature. Foundations are not the same as other social bodies. In society there are various forms of social bodies, for example non-governmental organizations (NGOs), mass organizations (Ormas), and associations. All of these social bodies are not classified as foundations because foundations have their own characteristics. Characteristics of the foundation can be identified from the Foundation Act. Article 1 paragraph 1 of the Law on Foundations says about foundations as follows:

"Foundation is a legal entity consisting of assets that are separated and designated to achieve certain goals in the social, religious and humanitarian fields that do not have members"

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<sup>4</sup> Sufriadi, S, 2017, Position Responsibilities and Personal Responsibilities in Administration in Indonesia, *Juridical Journal*, 1(1), 57-72, page 60. Doi: <http://dx.doi.org/10.35586/VIII>, page.141

By having no members, it means that the foundation is not owned by anyone. This is different from a limited liability company (PT). Limited liability companies are owned by the shareholders; Cooperatives are owned by their members, as are other associations. Foundations as independent legal entities can be run as legal subjects by their management, supervisors and supervisors in accordance with their authority to realize the aims, objectives and activities of the foundation for the benefit of society.<sup>5</sup>

From the results of interviews with the Umi Barokah Hospital, its history began in 1992 in the form of the Umi Barokah Maternity Hospital with a capacity of 10 beds and obtained permission from the Boyolali District Health Office, then on June 19, 1994 the status changed to a Mother and Child Hospital with direct permission from the Ministry of Health of the Republic of Indonesia, then in 2004 its status was from a Mother and Child Hospital, changed to a Hospital from the Khoirunisa Foundation, so that it became a General Hospital, then on June 1 2019 from the Khoirunisa Foundation it changed to PT Senuk Jaya. The reason for the change from a foundation to a limited liability company was because it was suggested that the licensing process be transferred to a limited liability company. For the transition procedure starting from making the deed first, the foundation remains and is not dissolved. Then established a new PT, namely PT. Senuk Jaya with a deed from a Notary. For delegation from the Khoirunisa Foundation there is also a deed for leases regarding equipment, buildings, building leases, and so on. In February 2020, all appointment deeds, such as the appointment of directors and others, have been completed. In the transition process, because the Khoirunisa Foundation was not disbanded and formed a new PT, namely PT Senuk Jaya Husada, the PT holders were already born and listed in the deed of establishment of PT. regarding the assets of the foundation turning into PT assets with a lease deed. The organizational structure of the Foundation is different from the organizational structure of the PT, the Foundation has its own organizational structure, and within the PT it also has its own organizational structure. The obstacles faced in the process of transitioning from a foundation to a PT are as follows:

1. Long process, in this case it takes a long time
2. Assets must have a lease deed and so on
3. The people for the management of the Foundation and the management of the PT must also be different

The impact of the transition from the Foundation to PT is that the licensing process has become easier. On April 2 of 2018 PT Senuk Jaya Husada was established, then on February 15 2019 there was a budget change, because the director of Umi Barokah Hospital could not serve as chairman of PT Senuk Jaya Husada. Until now the Khoirunisa Foundation has not been disbanded and is still standing, because its future plans will be directed at the socio-religious sector.<sup>6</sup>

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<sup>5</sup> Habib Adjie & Muhammad Hafidh, 2016, *Foundation*, Bandung, PT Citra Aditya Bakti, page. 22

<sup>6</sup> Chatamarrasjid Ais, 2007, *The Problem of Liability of Foundation Legal Entities in terms of Conducting Unlawful / Cheating Acts*, PT. Citra Aditya Bakti, Bandung, page 45.

According to Notary Anita as the Notary who assisted in making the lease agreement between PT Senuk Jaya and the Khoirunisa Foundation, he explained that the initial transfer of hospital assets belonging to the Khoirunisa Foundation was when people made a hospital directed to the hospital in the form of a foundation, then the Khoirunisa Foundation was established. When the administration has started to be orderly, assets in the foundation will definitely become public assets, while those assets are private property, and the land on which the hospital is built is privately owned land, for example if it wants to be processed into the property of the foundation it must be donated.<sup>7</sup> But in fact the land is privately owned and not owned by a foundation, so a PT (Limited Liability Company) was created.<sup>8</sup> Because the purpose of PT. is business, and PT ownership can be passed on to their heirs. However, if the Foundation is socially owned, and the purpose of the Foundation is for social purposes. So the new hospital belongs to a limited liability company, and the Khoirunisa Foundation hospital is considered to be rented out to a private person, because the Mother and Child Hospital of Umi Barokah stands on a privately owned certificate, so its status is a lease. Because if the land certificate is in the name of Umi Barokah Hospital, it means that the rights must be relinquished first by the individual. If the individual's right to the land has been released, then the individual is not entitled to the land again. So that PT Husada's assets are in the form of a hospital in the form of a PT and added to the land leased to the Umi Barokah Hospital Foundation.

After the Umi Barokah hospital, management shifted to PT, it became more developed due to the business capability factor and the law that underlies it. And also the Law on PT has articles that regulate corporate institutions in more detail so as to increase efficiency and reduce the risk of conflict.

Meanwhile, various articles in the Law on Foundations and even more so in the Law governing associations do not yet have depth in regulating institutional governance. As a result, hospitals that are in the form of foundations or associations do not get what is referred to as external pressure to strengthen governance. As a result, so-called efficient, competitive, and aggressive organizational cultures are seen to be lacking in non-profile hospitals in the form of foundations and associations.

### **Responsibilities of legal organs in the transfer of Hospital Foundation assets to Hospitals in the form of a Limited Liability Company**

Authorities and obligations of foundation organs the following are the obligations of foundation organs:

#### 1) Builder

The position of the supervisor is regulated in Article 28 paragraph (1) of the Foundation Law which reads that the Trustee is an organ of the Foundation that has authority which is not entrusted to management or supervisors by this law or the articles of association.<sup>9</sup>

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<sup>7</sup> Mulyoto, 2017, *the Hospital Foundation became PT Hospital*, Cakrawala, Yogyakarta, page.56

<sup>8</sup> G.H.S. Lumbun Tobing, 1996, *Notary Position Regulations*, Jakarta, Erlangga, page. 73.

<sup>9</sup> Soegondo Notodisoerjo, 1993, *Notary Law in Indonesia An Explanation*, Jakarta: PT. Raja Grafindo Persada, page. 46.

The supervisor's authority includes:

- a. Decisions regarding amendments to the articles of association.
- b. Appointment and dismissal of members of the management and supervisors.
- c. Determination of the foundation's general policy based on the foundation's articles of association.
- d. Approval of the foundation's work program and annual budget draft.
- e. Determination of decisions regarding the merger and dissolution of foundations

Furthermore, the builder is obliged to:

1. Hold a meeting at least once a year to exercise its authority.
2. Evaluate assets, obligations and responsibilities, and last year's income of the foundation as a basis for consideration for the approval of the budget for the coming year.
3. Ratify the annual report submitted by the management and supervisors.

Administrator

The management is the organ that carries out the management of the foundation. Manager's authority includes:

- Carry out the management of the foundation.
- Representing the foundation, both inside and outside the court.
- Together with the supervisory members appoint a member of the supervisor if the foundation no longer has a member of the supervisor.
- Announce deed of establishment of foundation or amendment thereto in Supplement to State Gazette.
- Apply for an extension of the establishment period if the foundation is established for a certain period of time.
- Sign the annual report together with the supervisor.
- Propose to the supervisor about the need for a merger.
- Act as liquidator if no liquidator is appointed.

Overseer

Supervisors have the following powers:

- Supervise and provide advice to management in carrying out foundation activities.
- Temporarily dismiss members of the board.
- Signing the annual report together with the management.

## CONCLUSION

1. The role of the Notary in transferring the assets is that the Notary acts as the maker of the lease agreement on the land owned by PT Senuk Jaya Husada to the Khoirunissa Foundation.
2. The lease agreement between PT Senuk Jaya and the Khoirunisa Foundation explains that the initial creation of the hospital assets owned by the Khoirunisa Foundation was that when



people made a hospital were directed to the hospital in the form of a foundation, the Khoirunisa Foundation was established. When the administrative order has started, assets in the foundation will definitely become public assets, while these assets are private property, and the land on which the hospital is built is privately owned land, for example if you want it to be processed into the property of a foundation it must be donated. However, in reality the land is privately owned and not owned by a foundation, so a PT (Limited Liability Company) was created.

4. The pattern of foundation accountability is vertical and horizontal. Vertical accountability is accountability for managing funds to a higher authority, as the responsibility of the foundation to the Trustees. Responsibility of Foundation Organs: Every person in the organs of a foundation is not responsible for the legal actions of the foundation that he does, unless it is proven that because of his negligence the act caused harm to the foundation or a third party.

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## Constitution

- Regulation of the *Minister of Health Number 56 of 2014 concerning Hospital Classification and Licensing*
- Law Number 28 of 2004 *concerning Amendments to Law Number 16 of 2001 concerning Foundations*
- Law Number 40 of 2007 *Concerning Limited Liability Companies*
- Law No. 44 of 2009, *Concerning Hospital*