

Changes in the Composition of Foundation's Organs Without Supervisory Board Meetings and the Foundation's Articles of Association

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<i>Article Info</i>	<i>Abstract</i>
<i>Received:</i> <i>Revised:</i> <i>Accepted:</i> Keywords: <i>Foundation organs, legal consequences of dismissal, legal protection</i>	<i>Changes to the composition of the foundation's organs should be based on a meeting of the supervisors or determined otherwise based on the foundation's articles of association. This is to provide certainty for foundations to carry out legal actions, both internally and externally. However, in practice there are also changes in the composition of organs that are not in accordance with the regulations in Article 28 in conjunction with Article 32 in conjunction with Article 44 of Law Number 28 of 2024, an amendment to Law Number 16 of 2001 concerning Foundations, hereinafter referred to as the Foundation Law. This of course can trigger development due to legal flaws as found in the case of the Banjarmasin High Court Decision Number 83/PDT/2022/PT BJM, the dispute in the a quo decision was triggered by changes to the foundation's organs which resulted in a meeting which may not have decided. cessation of foundation organs. Therefore, the aim of this research is to analyze the results of legal changes to foundation organs that are not based on supervisory meetings or based on the provisions of the foundation's articles of association. As well as, analyzing legal protection for administrators who are dismissed from their positions based on meetings that do not have the right to make dismissal decisions. This doctrinal legal research collects secondary data through literature study, which is then analyzed qualitatively. From the results of the analysis, it can be explained that the legal consequences of changes to the foundation's organs that do not comply with the provisions as found in the case of the a quo decision are that the legal consequences of changes to the composition of the foundation's organs that are not based on a meeting of supervisors or provisions in the Articles of Association are invalid and null and void by law. because changes to the composition of the foundation's organs are part of changes to the articles of association regulated in article 18 of the Foundation Law. As for legal protection for administrators who are dismissed from their positions based on meetings where decisions are not appropriate, preventive legal</i>

protection is carried out in the realm of administrative, civil and criminal law which gives rise to The obligation to pay compensation by the Defendant to the Plaintiff as the injured party and dispute resolution arise from the existence of repressive legal protection through the courts.

I. Introduction

Changes in the composition of a foundation's organs generally can only be made if they are based on the Supervisory Board Meeting, as this board is the authorized organ to change the composition of the foundation's organs. In practice, there are changes in the composition of the foundation's organs that are not implemented in accordance with the applicable legal provisions. This situation raises issues related to the legal consequences of changes in foundation organs that are not in compliance with the applicable legal provisions, as these changes are decided in meetings that are not authorized to dismiss the administrators of the foundation's organs. Additionally, there are concerns about legal protection for administrators who are dismissed from their positions based on meetings that should not have the authority to make such decisions.

A foundation, as a legal entity, has organs that affect the operation of the foundation's activities. The organs of a foundation are regulated in Article 2 of Law No. 28 of 2004, an amendment to Law No. 16 of 2001 on Foundations (hereinafter referred to as the Foundation Law), which are the Supervisory Board, the Management, and the Board of Trustees. In practice, the appointment or dismissal of foundation organs often deviates from the legal provisions in the Foundation Law. One example of this can be seen in research conducted by Siti Aisyah in her study titled "Statement of Meeting Resolutions Regarding the Dismissal of the Chairperson of the AM Foundation in a Legally Defective Supervisory Board Meeting Based on Decision No. 643/PDT.P/2019/PN.DPS." In this case, there was a legal issue concerning changes in the foundation's organs, leading to the changes being declared null and void. However, the Supervisory Board Meeting in question was properly conducted, but formal legal requirements were not met, thus causing legal problems.¹

In its development, a foundation may need to make certain changes, one of which involves changes in the appointment of supervisors, administrators, or trustees of the foundation. The Foundation Law regulates this matter in Article 28(3), Article 32(1), and Article 41(1) of the Foundation Law. According to these provisions, supervisors are appointed based on a resolution of the Supervisory Board Meeting, as are administrators and trustees.²

Each organ in a foundation has its respective duties and responsibilities. In a foundation, the Supervisory Board is the highest organ, with duties including appointing and dismissing administrators and amending the foundation's articles of

¹ Siti Aisyah, Pernyataan Keputusan Rapat Atas Pemberhentian Ketua Yayasan Am Pada Rapat Pembina Yang Cacat Hukum Berdasarkan Putusan Nomor 643/PDT.P/2019/PN.DPS, Indonesian Notary 4, No. 2 (2022), hlm. 994-1012.

² Fajar Rachmad Dwi Miarsa dan Cholilla Adhaningrum Hazir, Rechtsvacuum Atas Pengaturan Kekuasaan Pembina Yayasan, Jurnal Muara Ilmu Sosial, Humaniora, dan Seni 5, No. 2 (2021), hlm. 381.

association.³ The administrators are responsible for managing the foundation's assets, carrying out administrative duties, representing the foundation, and announcing the foundation's articles of incorporation and any changes to it. The trustees are responsible for overseeing the foundation and preparing annual reports.⁴

When amendments are made to a foundation's articles of association, one common agenda is the appointment and dismissal of members of the Management and the Board of Trustees.⁵ The Foundation Law stipulates in Article 28(2) that the Supervisory Board has the authority to appoint and dismiss members of the Management and Trustees. However, the appointment of members of the Supervisory Board itself must be decided in a Supervisory Board Meeting.

A case related to the appointment of foundation organs that did not follow the rules also occurred in the Banjarmasin High Court Decision No. 83/PDT/2022/PT BJM, which began with the Banjarmasin District Court Decision No. 42/Pdt.G/2022/PN Bjm. In this case, a foundation was established with one (1) Supervisory Board member, four (4) administrators, and one (1) trustee. In 2020, the Plaintiff, who was the sole supervisory board member, was dismissed through a letter signed by the foundation's Deputy Chairperson. Subsequently, the foundation held a Management Meeting to appoint new members of the foundation's organs, which caused harm not only to the Plaintiff but also to the foundation itself.

The ruling of the Banjarmasin District Court No. 42/Pdt.G/2022/PN Bjm partially granted the Plaintiff's lawsuit, declaring that the foundation's articles of incorporation were valid and legally binding, that the Plaintiff committed unlawful acts, and that the letter of dismissal of the Plaintiff as a Supervisory Board member was legally defective and not legally binding, and therefore should be annulled. The Plaintiff's dignity and all their authority as a Supervisory Board member of the foundation were to be reinstated. The letter of appointment of the Defendant as a member of the foundation's management was declared legally defective and without legal force, and therefore had to be annulled. The ruling of the Banjarmasin High Court No. 83/PDT/2022/PT BJM upheld the decision of the Banjarmasin District Court No. 42/Pdt.G/2022/PN Bjm.

This dispute involved several parties, namely the Plaintiff (the dismissed individual),

³ Amirtha Virdailla dan Fully Handayani Ridwan, Pembatalan Akta Pernyataan Keputusan Rapat Akibat Pelaksanaan Rapat Pembina Yayasan Yang Undangannya Tidak Sesuai Dengan Mata Acara Rapat (STUDI PUTUSAN PENGADILAN NEGERI BANDUNG NOMOR 389/PDT.G/2019/PN.BDG), Indonesian Notary Vol. 4/No. 1, 2022, hlm.128-129.

⁴ Eldo Fransixco Dumanauw, Kewajiban dan Tanggung Jawab Organ Yayasan Menurut Undang-Undang Nomor 28 Tahun 2004 Tentang Yayasan. Lex Et Societatis Vol. VII/No. 9, September, 2019, hlm. 1.

⁵ Zelika Annisa Putri, et al, Analisis Yuridis Kewenangan Pembina Memberhentikan Pengurus Dan Pengawas Sewaktu-Waktu (Studi Putusan Nomor: 238/PDT/2022/PT SBY), Jurnal Hukum dan Kemasyarakatan Al-Hikmah Vol. 4, No. 4, Desember 2023, hlm. 954.

the Defendant (the individual responsible for the dismissal), and third parties, including the newly appointed foundation organ members and those with collaborative relationships with the foundation. Among the aforementioned parties, it was the Plaintiff, as the Supervisory Board member, who had the authority to appoint and dismiss administrators, whereas the Defendant did not have such authority. As for the third parties appointed to the foundation's organs, they were not entitled to carry out management duties, as their appointments were not lawfully conducted. To provide a comprehensive explanation of the main issue, several research questions are formulated as follows: 1. What are the legal consequences of changes in the composition of the Supervisory Board, Management, and Trustees of a foundation that are not decided through a meeting, as per the applicable legal provisions? 2. What legal protection is available for a Supervisory Board member who is dismissed from their position based on a meeting that was not authorized to make such a dismissal decision?

2. Research Method

In this study, the data collected through a literature review is secondary in nature, consisting of legal materials such as Law No. 28 of 2004, an amendment to Law No. 16 of 2001 on Foundations, as the primary legal material, and various references in the form of books and journal articles as secondary legal materials. The data is then analyzed qualitatively through the interpretation of categorized data to answer the two research questions.

3. Results and Discussion

Legal Consequences of Changes in the Composition of the Supervisory Board, Management, and Trustees in a Foundation

The provisions of Article 28(3) of the Foundation Law, as previously mentioned, explain that the members of the Supervisory Board who can be appointed are individuals who are either founders or those deemed by a decision of the Supervisory Board Meeting to have high dedication to the foundation. According to Achmad Ali, legal consequences arise from actions taken by legal subjects.⁶ The Kamus Besar Bahasa Indonesia (Indonesian Language Dictionary) defines legal consequences as "consequences that arise due to legal events."

A foundation called Yayasan RAA was established by HUA based on the Deed of Establishment No. 146, dated October 27, 2014, which was drawn up before Notary LK. The foundation operates in the fields of social and religious activities. In the Deed of Establishment, the composition of the Supervisory Board, Management, and Trustees of the foundation is as follows: Mrs. H as Supervisory Board member; Mr. HUA as the Chairperson; Mrs. RL as the Deputy Chairperson; Mr. HS and Mr. RH as

⁶ Achmad Ali, *Menguak Takbir Hukum*, (Ghalia Indonesia: Bogor, 2008), hlm. 192.

Secretary and Treasurer, respectively; and Mrs. S as Trustee.

In October 2020, the Plaintiff received a dismissal letter signed by Mrs. RL, who acted as Deputy Chairperson of the foundation's Management. Subsequently, on October 27, 2020, a Management Meeting was held to formalize the dismissal. Mrs. H, as the Plaintiff in Decision No. 83/PDT/2022/PT BJM, felt aggrieved because the Management did not have the authority to alter or dismiss the Supervisory Board member from their position.

Each legal action mentioned in Decision No. 83/PDT/2022/PT BJM has its own legal consequences. The legal consequences discussed in this research are divided into the following:

1. Plaintiff

The Plaintiff is entitled to seek responsibility for the harm caused by the foundation's Management's actions in dismissing her. As the legitimate Supervisory Board member according to the Deed of Establishment No. 146, dated October 27, 2014, the Plaintiff's dismissal was based on a letter from the Management. However, because the requirements for changes in foundation organs were not met, the dismissal letter is deemed invalid. As a result, the Plaintiff remains in her position according to the foundation's articles of association, in accordance with Articles 34(2) and 41(2) of the Foundation Law.

2. Newly Appointed Foundation Organs

On October 27, 2020, a Management Meeting was held, attended by Mrs. RL. The meeting resulted in the appointment of a new composition for the foundation's organs: Mr. H as Supervisory Board member, Mrs. RL as Chairperson, Mrs. RM as Deputy Chairperson, Mrs. R as Secretary I, Mrs. W as Secretary II, Mrs. S as Treasurer, and Mr. HY as Trustee. If the decision to appoint the new foundation organs had been based on the applicable legal provisions, these individuals would have the right to manage the foundation. However, since the appointments and the results of the meeting were not in accordance with the legal provisions, which required a Supervisory Board Meeting, the newly appointed composition of the foundation organs cannot be legally enforced, rendering the decisions made by the parties invalid.

3. Foundation

The legal consequence of changing the composition of the foundation's organs without a Supervisory Board Meeting is that the change is invalid and void by law. As a result, the foundation reverts to its previous state, maintaining its original composition of foundation organs before the changes were implemented.

4. Third Parties

If third parties are involved in the foundation, the legally valid composition of the foundation's organs is the one stated in the Deed of Establishment. Since the Management, according to Article 31(1) of the Foundation Law, is

responsible for managing the foundation, any legal or other actions taken in connection with the newly appointed foundation organs are legally flawed.

5. Notary

The notary, in this case, is responsible for drafting the Deed of Amendment if changes are made in accordance with legal provisions. However, since the decision in this case did not involve a Deed of Amendment prepared by a notary, there is no need for a court ruling to declare that the notarial Deed of Amendment is invalid and void by law. Therefore, there are no legal consequences for the notary in this case. Nevertheless, a notary must understand that changes to the composition of the foundation's organs can only be made after a resolution from the Supervisory Board Meeting.

The changes to the composition of foundation organs are regulated in Article 28(2)(b) of the Foundation Law, which governs the appointment and dismissal of members of the Management and Trustees, and Article 28(3) of the Foundation Law, which governs the appointment of Supervisory Board members. Changes to the composition of foundation organs are considered amendments to the Articles of Association. According to Article 18(1) of the Foundation Law, amendments to the Articles of Association can only be made based on a resolution of the Supervisory Board Meeting. The quorum for such a meeting requires the presence of at least two-thirds (2/3) of the Supervisory Board members (Article 18(2) of the Foundation Law). The quorum for approval also requires at least two-thirds (2/3) of the Supervisory Board members present (Article 19(2) of the Foundation Law). If the quorum is not met, a second Supervisory Board Meeting may be held no sooner than three days after the first meeting, with a quorum of one-half (1/2) of the Supervisory Board members. Decisions at this meeting are based on a majority vote of the Supervisory Board members present (Article 20 of the Foundation Law). Changes to the composition of the foundation's organs need only be reported to the Minister (Article 21(2) of the Foundation Law). Provisions regarding changes to the composition of foundation organs may also be included in the Articles of Association, but they must still adhere to the requirements of Article 18 of the Foundation Law, which mandates that amendments to the Articles of Association are based on the resolution of the Supervisory Board Meeting.

Legal Protection for Supervisory Board Members Dismissed from Their Position

Implementation of legal protection Philipus M. Hadjon explains that there are two types of legal protection: preventive legal protection and repressive legal protection. Preventive legal protection aims to prevent disputes from arising. It is established through laws that become positive regulations of the state, ensuring that preventive legal protection is grounded in the freedom of action, and the government must exercise caution in making decisions.⁷

⁷ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, (Surabaya : PT. Bina Ilmu, 1987),

In contrast, repressive legal protection functions to resolve disputes. It focuses on the enforcement of the law in relation to the disputes that occur between the parties involved. The key institution responsible for providing repressive legal protection is the judiciary, especially the general courts.⁸

Preventive legal protection is closely related to the laws and regulations governing foundations, as stipulated in Law No. 28 of 2024, an amendment to Law No. 16 of 2001 concerning Foundations. This law not only sets out the requirements but also anticipates potential issues or disputes that may arise from violations of these requirements. Administratively, the Foundation Law explicitly provides for preventive legal protection in Article 34(2), which states that the appointment and dismissal of administrators must be carried out in accordance with the Articles of Association. Similarly, Article 41(2) regulates the appointment and dismissal of trustees, which must also comply with the Articles of Association. These requirements must be fulfilled, and as part of preventive legal protection, if these conditions are violated, the court may annul the dismissal or appointment.

In this case, the Plaintiff, who was a Supervisory Board member, was abruptly dismissed by the Defendant acting as the Foundation's Management, who then appointed a new Supervisory Board member. The Foundation Law provides preventive legal protection explicitly in Article 28(5), which stipulates that the appointment or dismissal of a Supervisory Board member can only be made in accordance with Article 28(3) or (4), or at the very least, in accordance with the Articles of Association. The Defendant's actions violated the authority of the Foundation's Management, and administratively, such replacement of foundation organs should be considered legally invalid.

The need for additional legal measures to strengthen preventive legal protection arises, specifically in the field of civil law. The dispute between the Plaintiff, as the Supervisory Board member, and the Defendant, as the Management, who caused harm to the Plaintiff, is governed by Article 1365 of the Indonesian Civil Code (hereinafter referred to as KUHPerdara). Article 1365 of the Civil Code regulates unlawful acts, which include the following elements:⁹

1. Action

The action referred to in Article 1365 includes both active and passive elements. An active element refers to the violation of a law, while a passive element refers to the failure to fulfill legal obligations.¹⁰ In this case, the

hlm 39.

⁸ Ibid.

⁹ Rosa Agustina, et al, Hukum perikatan (Law of obligations), (Denpasar: Pustaka Larasan, 2012), hlm. 7.

¹⁰ Putri Niasari dan Sanusi, Dahlan, Unsur Perbuatan Melawan Hukum Dalam Kasus Pembuatan Akta Pendirian Yayasan Oleh Notaris (Studi Putusan Pengadilan Tinggi Aceh Nomor: 95/Pdt/2019. Pt. Bna), *Diversi Jurnal Hukum* 7, No. 2 (2021), hlm. 201.

action involves the Defendant, as the Management, making the decision to dismiss the Plaintiff as the Supervisory Board member.

2. The Action is Unlawful

An unlawful action is defined as an act that violates legal norms, morals, decency, and religion, or that infringes upon the rights of others.¹¹ The unlawful action in this case directly contradicts the provisions of the Foundation Law, specifically Article 28(3), which concerns the appointment of a Supervisory Board member.

3. Fault

Fault refers to an intentional or negligent act. The fault in this decision is intentional, as the Defendant knowingly made a decision that had legal consequences for the Supervisory Board member and other parties involved.

4. Damage

As explained by Purwahid Patrick, damage can be material or immaterial. Material damage refers to actual losses, while immaterial damage affects the psychological state of the victim.¹² In this case, several parties suffered damage, including the Plaintiff, who sought compensation for material damages amounting to Rp 8,000,000 (eight million rupiah) and immaterial damages amounting to Rp 1,000,000,000 (one billion rupiah). The foundation also suffered damages, as did third parties who were affected by the dispute.

5. Causal Link Between the Action and the Damage

The causal link between the action and the damage can be observed from the invalidity of the Plaintiff's dismissal as a Supervisory Board member under the Foundation Law, which led to damages suffered by the foundation due to the invalid replacement of the foundation's organs. Third parties were also harmed, as their cooperation with the foundation, represented by the management, became legally invalid.

Based on these elements of unlawful acts, it is evident that the Defendant committed an unlawful act as regulated in Article 1365 of the Civil Code. Since all the elements of the unlawful act are satisfied, the Defendant, as the party causing the harm, must compensate the affected parties, as noted by J. Satrio.

Hoffman and Drion further explain that compensation for unlawful acts can take various forms, such as monetary compensation, restoration to the original condition before the unlawful act occurred (*herstel in natura*, *restitutio in integrum*), reimbursement of necessary expenses to return to the original

¹¹ H. Chandra, Unsur Perbuatan Melawan Hukum Dalam Praktik Peradilan Sebuah Studi Kasus, Jurnal Kewarganegaraan 7, No. 1 (2023), hlm. 1037.

¹² Olga A. Pangkreggo dan Roy V. Karamoy, Kajian Terhadap Tanggung Gugat Karena Wanprestasi Dan Perbuatan Melawan Hukum Berdasarkan Kitab Undang-Undang Hukum Perdata, Lex Privatum 10, No. 1 (2022), hlm. 245

condition, or compensation for the suffering caused by the unlawful act.¹³ In this case, the most appropriate form of compensation is restoration to the original condition, which would involve reinstating the Plaintiff's rights as a Supervisory Board member in the foundation.

Additional preventive legal protection can also be found in criminal law, as contained in the Indonesian Criminal Code (hereinafter referred to as KUHP). The application of criminal law serves as a means to punish parties who violate the law, particularly as regulated in the Criminal Code. Criminal law operates under the principle of *ultimum remedium*, meaning it is the last resort for law enforcement and should not be used if other legal measures are available to resolve the dispute. In this case, criminal law was not directly applied, as there were already two other legal frameworks in place to address the issue, thus avoiding the need for criminal proceedings.

The enforcement of legal remedies and compensation does not occur automatically and cannot be determined unilaterally. A clear determination that one party has committed an unlawful act must be made before there can be any obligation to provide compensation to the injured party. Therefore, a competent authority is required to make such a determination, and in this case, that authority is the court. The court, in the context of a legal dispute, provides repressive legal protection to ensure that justice is served to all parties involved.

In establishing repressive legal protection, the court must consider two types of jurisdiction¹⁴:

1. Absolute jurisdiction

Absolute jurisdiction refers to the authority of the four branches of judicial power under the Supreme Court: the General Courts, Religious Courts, Administrative Courts, and Military Courts.

2. Relative jurisdiction

Relative jurisdiction concerns the territorial authority of a court to adjudicate a case, based on the domicile of the defendant.

For a case to be properly adjudicated, both types of jurisdiction must align with the specific court's authority over the case in question.

The alignment of preventive and repressive legal protection ensures justice for all parties. In this case, the defendant's violations of the law trigger the need for legal protection to safeguard the aggrieved parties. The appropriate court, by exercising its jurisdiction in accordance with the available evidence, ensures

¹³ Y. Sari Murti Widiyastuti, *Asas-Asas Pertanggungjawaban Perdata*, (Yogyakarta: Cahaya Atma Pustaka, 2020), hlm. 47.

¹⁴ Basuki Kurniawan, H. Rohmad Agus Sholihin, Ahmad Hasan Basri, Pratik Pengalaman Beracara Pidana (Beberapa Pedoman Beracara Bersidang Pidana di Peradilan Indonesia), (Jawa Timur: Klik Media, 2021), hlm. 47.

that the case is properly adjudicated.

4. Conclusion

The conclusions of this study are as follows:

- a. The legal consequences of changes in the composition of Trustees, Management, and Supervisors in a foundation that are not decided through meetings as required by law are that both the provisions of the Foundation Law and related laws, as well as the Foundation's Articles of Association, state that amendments to the articles of association can only be made through decisions of the trustees' meeting. Therefore, changes made outside of these provisions are invalid and null and void by law. Amendments to the Articles of Association of a foundation are regulated in Articles 17-23 of the Foundation Law. These amendments fall under the authority of the Trustees and can only be implemented through decisions made at the Trustees' meeting. Thus, any changes outside of these provisions are not recognized.
- b. Legal protection for Trustees who are dismissed from their positions by a meeting that does not have the authority to decide on the dismissal is provided in two ways: First, preventive legal protection, which is a legal safeguard primarily carried out by the government through the creation of laws to prevent disputes from arising; Second, repressive legal protection, which is provided by the courts to resolve disputes and ensure justice for all parties involved.

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