

PERTANGGUNGJAWABAN NOTARIS DALAM PELAKSANAAN PEMBUATAN AKTA PENDIRIAN YAYASAN

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INTISARI

Penelitian ini bertujuan untuk mengetahui dan menganalisis pertanggungjawaban Notaris atas kekeliruan akta pendirian yayasan yang dibuatnya dan status Badan Hukum Yayasan yang telah mendapat Surat Keputusan Pengesahan dari Menteri Hukum dan Hak Asasi Manusia tetapi terdapat kekeliruan dalam Akta pendiriannya serta implikasi dari perbuatan-perbuatan hukum yayasan tersebut terhadap pihak ketiga.

Jenis penelitian ini menggunakan penelitian normatif yang didukung dengan wawancara kepada narasumber. Sifat penelitian yang dilakukan adalah deskriptif. Teknik dan alat pengumpulan data menggunakan teknik kepustakaan atau teknik dokumentasi yang diperkuat dengan wawancara *semi structured* kepada narasumber. Analisis data dilakukan dengan menggunakan metode kualitatif. Hasil analisis data disajikan secara deskriptif. Penarikan kesimpulan menggunakan metode induktif.

Berdasarkan hasil penelitian ini dapat diketahui bahwa: (1) Pertanggungjawaban Notaris atas kekeliruan dalam akta pendirian yayasan yang dibuatnya adalah Notaris bertanggungjawab secara Kode Etik Notaris karena tidak menjalankan ketentuan Pasal 15 ayat (2) huruf e UUJN untuk memberikan penyuluhan hukum yang tepat sehubungan dengan pembuatan akta pendirian yayasan serta Notaris bertanggungjawab secara perdata, pihak yang merasa dirugikan dapat menuntut penggantian biaya, ganti rugi, dan bunga berdasarkan Pasal 1365 KUHPperdata. (2) Status Badan Hukum Yayasan yang telah mendapat Surat Keputusan Pengesahan dari Menteri Hukum dan Hak Asasi Manusia tetapi terdapat kekeliruan dalam Akta pendiriannya tetap dianggap sah sebagai badan hukum berdasarkan asas *Praduga Rechtmatig*. (3) Implikasi perbuatan-perbuatan hukum yayasan terhadap pihak ketiga dianggap tetap sah selama tidak ada pembatalan terhadap SK Yayasan tidak dibatalkan oleh Pengadilan. Organ yayasan bertanggung jawab penuh secara pribadi dan tanggung renteng terhadap kerugian yayasan atau terhadap pihak ketiga apabila organ yayasan tersebut terbukti di pengadilan tidak menjalankan tugas sesuai dengan Anggaran Dasar Yayasan.

Kata Kunci: Notaris, Pertanggungjawaban Notaris, Akta pendirian yayasan

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THE NOTARY RESPONSIBILITY IN THE IMPLEMENTATION OF THE DEED OF INCORPORATION OF FOUNDATION

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ABSTRACT

This study aims to find out and analyze the responsibility of the Notary for the mistakes of the founding deed he made and the status of the Foundation Legal Entity that has received an Approval Decree from the Minister of Law and Human Rights but there are errors in the Deed of Establishment and the implications of the foundation's legal actions against third party.

This type of research uses normative research which is supported by interviews with resource persons. The nature of the research is descriptive. Data collection techniques and tools use library techniques or documentation techniques which are reinforced by semi structured interviews with resource persons. Data analysis was performed using qualitative methods. The results of data analysis are presented descriptively. Drawing conclusions using inductive methods.

Based on the results of this study, it can be seen that: (1) Notary responsibility for errors in the implementation of the deed of incorporation of foundation he made is a Notary responsible for the Notary Ethical Code for not implementing the provisions of Article 15 paragraph (2) letter e Notary Act to provide appropriate legal counseling in connection with the deed of incorporation of foundation and notary are responsible for civilly to the Court by those who feel disadvantaged to demand reimbursement, compensation, and interest based on Article 1365 of the Civil Law. (2) Status of Legal Entity Foundation that has received an Approval Decree from the Ministry of Justice and Human Rights but there is a negligence in the deed of establishment still considered legal as a legal entity based on the principle of *Rechtmatig Presumption*. (3) The foundation's legal actions against third parties are considered to be valid as long as there is no cancellation Fiduciary duty of the Foundation's Decree not canceled by the Court. The organ of the foundation is fully responsible personally and jointly for the loss of the foundation or the third party if the founding organ is proven in the court not to carry out duties in accordance with the Articles of Association of the Foundation.

Keywords: Notary, Notary Accountability, The Deed of Incorporation of Foundation

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