

LEGAL STATUS OF FOUNDATION PROPERTY CONSIDERED AS AN INHERITANCE BY THE FOUNDER'S FAMILY

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Abstract

A foundation is a legal entity consisting of separated assets and allocated to achieve certain objectives in the social, religious and humanitarian fields, which does not have members. The existence of foundations in Indonesia as legal entities engaged in social activities is very necessary. This is also related to the provisions of the 1945 Constitution of the Republic of Indonesia which in several articles regulates these needs, including Article 27, Article 31 and Article 34 of the 1945 Constitution of the Republic of Indonesia shows that the government and society need the existence of social organizations. This study uses a normative juridical legal research method, aimed at examining legal principles, legal systematics, legal synchronization, legal history and comparison, descriptive analytical research, that research is included in the scope of research that describes, examines and explains precisely and analyzes applicable laws and regulations related to legal theory. The research source uses library data (library research), namely research conducted by citing sources from books, legislation and other regulations that have a relationship with the problem aspect. The results of this study are that there is no authority of the founding family over the foundation they established, so there is no right to obtain the results from the management of the foundation in the form of inheritance or other forms except for the separation of assets between the foundation's assets and personal assets, so the distribution of inheritance from the foundation's assets that are not separated is prohibited. In the event that the will as intended to establish the Foundation is not executed, then at the request of the interested party, the Court can order the heirs or recipients of the will concerned to execute the will. This provision accommodates a person's wishes before dying to establish a Foundation, and is stated in a will.

Keywords: *Foundation, Law, Assets, Wealth, Founders and Heirs*

INTRODUCTION

Civil law in Indonesia divides legal subjects into two: humans and legal entities. Humans are one of the legal subjects, *natuurlijk persoon*, who have rights and obligations under the law. Other legal subjects besides humans are those equated with humans, namely legal entities (*rechtspersoon*), which also support legal rights and obligations. (Mertokusumo, 1979, p. 88). In his history, Suhardiadi stated that the foundation as a law has been accepted in a jurisprudence in 1882, Hoge Rad is of the opinion that the highest judicial legal body in the Netherlands is of the opinion that the foundation as a legal entity is valid according to law and therefore can be established. The establishment of Hoge Rad was followed by Hooggerichtshof in the Dutch East Indies (now Indonesia) in its decision from 1884. The establishment of Hoge Rad in the Netherlands was confirmed by the enactment of Wet op Stichting Stb. Number 327 of 1956, where in 1976, the law was codified into the second book of Burgerlijk Wetboek (BW) which regulates matters of legal entities (the second book, title five, articles 285 to 305 BW) (Suhardiadi, 2002, p. 125). In addition, the jurisprudence in Indonesia in the decision of the Supreme Court of the Republic of Indonesia dated June 27, 1973 No. 124 K/Sip/1973 in its consideration that the foundation's management in representing the foundation in and outside the court, and the foundation has its own assets including donated assets, the Supreme Court decided that the foundation is a legal entity. If the Foundation can be said to be a legal entity, it means that the Foundation is a legal subject.

Foundations are legal subjects because they fulfill the following requirements:

1. A foundation is an association of people
2. The Foundation can carry out legal acts in legal relations
3. The foundation has its own assets
4. The foundation has a board of directors

5. Foundations have goals and objectives
6. Foundations have legal standing
7. Foundations have rights and obligations
8. Foundations can be sued and sued in court (Decision of the Supreme Court of the Republic of Indonesia dated June 27, 1973 No. 124 K/Sip/1973).

The existence of foundations in Indonesia, as legal entities engaged in social activities, is essential. This is also related to the provisions of the 1945 Constitution of the Republic of Indonesia, which regulates this need in several articles. Articles 27, 31, and 34 of the 1945 Constitution demonstrate that both the government and society need social organizations. However, foundations that have an important role in the life of society, are social and humanitarian in nature, are not immune from disputes that occur on the part of the Foundation managers or legal entities, so that a Law was born that regulates the Foundation, namely Law Number 16 of 2001 concerning foundations, effective from August 16, 2002. Furthermore, Law Number 28 of 2004 concerning amendments to Law Number 16 of 2001 concerning foundations. Law Number 16 of 2001 concerning Foundations which was later revised to Law Number 28 of 2004, on the one hand has provided legal certainty and a legal basis for foundations in Indonesia, but on the other hand also raises several questions. Despite some of its shortcomings, this law is a legal basis that provides legal certainty in establishing foundations that have developed, long before this law was enacted (Hafidh, 2016, p. 45).

The reason for the enactment of this law is also based on societal customs and Supreme Court jurisprudence, as no law yet regulates it. The facts demonstrate a tendency for people to establish foundations with the intention of taking cover behind their legal status, which is not only used as a vehicle for developing social, religious, and humanitarian activities, but also to enrich the founders, administrators, and supervisors.

It can be said that before the enactment of Law Number 28 of 2004 concerning amendments to Law Number 16 of 2001 concerning foundations, there were no clear regulations regarding foundations, even though in the Civil Code there are several articles that mention foundations, namely in the following articles:

Article 365: In all cases, if a judge must appoint a guardian, then the guardianship may be ordered to a legal entity association domiciled in Indonesia, to a foundation or charitable institution domiciled here, which according to its articles of association, deed of establishment or regulations undertakes to care for minor children for a long time.

Article 899: By observing the provisions in Article 2 of this Law, in order to be able to enjoy something from a will, a person must have existed when the testator dies.

Article 900: Any gift made by will for the benefit of charities, religious institutions, churches or hospitals shall have no effect, except that the administrators of such bodies, by the President or by an authority appointed by the President, have been empowered to receive it.

Article 1680: Grants to public institutions or religious institutions have no effect, other than the President or authorities appointed by him have given the authority to the administrators of these institutions to accept these gifts. (Civil Code).

The above provisions mention the existence of foundations, but they do not regulate them in detail, including their definition, establishment, intent, and purpose. This could impact their existence. Foundations are not simply established as non-profit entities, but instead evolve to meet the interests of their founders.

Because of the situation that occurs in the management of foundations, there are no specific legal provisions that specifically regulate foundations, especially before the enactment of Law Number 18 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations, it is hoped that these provisions will minimize problems related to the management of foundations as legal entities.

Law Number 18 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations. (hereinafter referred to as the Foundation Law) states that:

"A foundation is a legal entity consisting of separated assets and allocated to achieve certain goals in the social, religious and humanitarian fields, which does not have members." (Law Number 28 of 2004)

If we examine the contents of the law above, we can see that a foundation is a non-profit legal entity. However, its social, religious, and humanitarian goals are what make it a nonprofit legal entity. Because these goals cannot be considered personal assets, personal assets must be strictly separated as stipulated.

In principle, a foundation does not have members, meaning it is not owned by anyone. This differs, for example, from limited liability companies (PT) and cooperatives. Limited liability companies are owned by their shareholders, while cooperatives are owned by their members, as are other associations. Therefore, a foundation, as an independent legal entity, can be made a legal subject by its administrators, supervisors, and advisors, within

their respective authorities, to realize the foundation's aims, objectives, and activities for the benefit of the community.(Chatamarassjid, 2006, p. 120). In general, a foundation is established by one or several people by separating their assets for ideal/social purposes. In other words, this foundation must be for the benefit of a community group outside the foundation that is felt to need assistance in accordance with the contents of several articles in the 1945 Constitution of the Republic of Indonesia (UD NRI), such as Article 27 Paragraphs (1) and (2), Articles 31 and 34.

The Foundation Law explicitly states that the founders and/or foundation organs who have separated their assets as the initial assets of the foundation no longer have power over those assets for themselves. Because the assets obtained by the foundation have become the property of the foundation as a legal entity, including other foundation acquisitions obtained by the foundation, whether in the form of donations or non-binding assistance, endowments, grants, testamentary grants, or other acquisitions, may not be transferred or given, even owned personally as an inheritance by the founder of the foundation.(Suyud, 2015, pp. 14 - 15).

However, in reality, many people use foundations as a place to seek profits and even take back control of the foundation's initial assets, even though the Foundation Law has been emphasized that the foundation's initial assets can no longer be controlled by the founder of the foundation and are fully handed over to the foundation's management, however, this is not fully accepted by the heirs, as evidenced by many heirs suing a foundation for immovable assets such as buildings, land and houses to be controlled personally. Thus, in practice, it is still found that until now, foundations whose assets/wealth are then transferred or traded without fulfilling the elements mentioned in the law or other regulations, for example, there is a transfer of foundation assets/wealth by means of buying and selling (valued in money).(Rudi, 2012, p. 47).

This problem arises because until now there are still many foundation organs that are in dispute with each other to fight for positions within the foundation organs, with the intention of controlling and owning the foundation's assets, many heirs of a deceased member of the foundation organ feel they have the right and authority to replace the deceased with the hope of being able to own assets within the foundation.

Often, the founders of foundations and their heirs misunderstand the problem and feel they have the right to obtain profits and own the foundation, which ultimately leads to conflicts within the foundation. The Foundation Law also gives the impression of adhering to the doctrine of duty of skill and care, as is the case with Limited Liability Companies. The application of this doctrine is not easy, due to the difficulty in implementing the standard of duty of skill and care that must be possessed by foundation organs.(Simamora, 2012).

Based on the above background, many founders still use foundations as a means of profit-seeking and claim the foundation's assets as inheritance for the founder and their heirs. The numerous conveniences afforded to foundations, both in terms of founding procedures and operations, have led many individuals and organizations to deliberately establish foundations.

Thus, the author has the initiative to conduct further research with the title **LEGAL STATUS OF FOUNDATION PROPERTY CONSIDERED AS AN INHERITANCE BY THE FOUNDER'S FAMILY**. The formulation of the problem proposed in this research is as follows: 1) What is the legal status of foundation assets considered as inheritance by the founding family? 2) What is the legal power of a will from the perspective of foundation law?

LITERATURE REVIEW

1. Foundation

According to CST Kansil, a foundation is a legal entity. The legal basis for a foundation is a form of property that is owned by the will of the owner to achieve a specific goal. The foundation's management is also appointed by the founder. The founder can establish regulations to fill vacancies in the management. As a legal entity, it can participate in social interactions, meaning it can be bought and sold, rented, and so on, while having assets separate from the assets of those who manage the foundation.(Kansil, 2002, p. 36). A foundation is a legal entity under the leadership of a board of directors with social and legal objectives.(R. Subekti, 1998, p. 40).

2. Law

According to Satjipto Rahardjo, law plays a role in social life as a structure that gives shape to human goals that move humans to act, law is not just a set of rules alone but also views law as a certain structure.(Rahardjo, 1991, p. 263).

3. Legal entity

According to E. Utrecht, a legal entity (recht persoon) is an entity that according to the law has the power (authority) to support rights, furthermore it is explained that a legal entity is every supporter of rights that is not in

the form of a soul or more precisely is not a human being. A legal entity as a social phenomenon is a real phenomenon, is a true fact, in legal relations even though it does not have the form of a human being or an object made of iron, wood, etc., what is important for the law is that the legal entity has assets (*vermogen*) that are completely separate from the rights and obligations of its members. (Ali, 1997, p. 37).

RESEARCH METHODS

1. Methods Used

The method used in this research is normative juridical law, aimed at examining legal principles, legal systematics, legal synchronization, legal history, and comparative law. Normative juridical research is the identification and conceptualization of law as a norm in the form of legal regulations, especially regarding foundations and foundation assets, which are considered inheritance by the founding family. The juridical approach in this research is an approach from the perspective of statutory regulations and legal norms in accordance with the existing problems. (Soerjono Soekanto and Sri Mamudji, 2011, p. 90).

2. Data type

This research is descriptive and analytical, meaning it falls within the scope of research that accurately describes, examines, and explains, as well as analyzes, applicable laws and regulations in relation to legal theory. The type of research used is secondary data obtained from library research, including primary, secondary, and tertiary legal materials. (Soerjono, 2012, p. 133).

3. Data source

Research sources use library data (library research), namely research conducted by citing sources from books, legislation and other regulations that are related to the problem aspects. (Ibid, p. 133). In this research, binding legal materials were used because they were issued by the government and authorized parties, namely: the 1945 Constitution of the Republic of Indonesia, the Civil Code (KUHPerdata) and Law Number 18 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations.

RESULTS AND DISCUSSION

Ownership of Foundation Assets Considered to Be the Assets of the Heirs of the Foundation Founder

After the enactment of Law Number 16 of 2001 in conjunction with Law Number 28 of 2004 concerning Foundations, a foundation can be established in accordance with the procedures stipulated by law, where there are three processes that need to be considered in establishing a foundation, namely: (1) the process of establishing a foundation; (2) the process of ratifying the foundation deed; and (3) the process of announcing the foundation as a legal entity. (Law of the Republic of Indonesia Number 16 of 2001 concerning Foundations., 2001).

Essentially, a foundation is a legal entity consisting of separated assets allocated to achieve specific social, religious, or humanitarian goals. It does not have members. This means that the fundamental character of a foundation is the accumulation of assets to achieve social goals. This differs from an association, as its foundation is formed by individuals coming together to achieve a social goal.

Article 1 number (1) of Law Number 28 of 2004 concerning Foundations explains that foundations can obtain a legal entity after the foundation's deed of establishment as referred to in Article 9 paragraph (2) and obtaining approval from the Minister. Therefore, according to Ali Ridho, foundations, although legal subjects, are not living creatures like humans, but are legal entities. Foundations lose their power of thought and will, therefore foundations cannot carry out legal acts themselves. (Ali R. , 2001, p. 88).

The management of the foundation's assets is carried out entirely by the board of directors, who are required to prepare an annual report to the Trustees regarding the financial condition and development of the foundation's activities. The supervisors are tasked with supervising and providing advice to the Board of Directors in carrying out the foundation's activities. The foundation's board of directors and supervisors are required to employ skills/expertise and exercise prudence in carrying out their respective duties, as stipulated in the Foundation Law.

A There are several factors that cause the heirs of the founder of the foundation to have the intention of regaining control of the ownership of the foundation's assets, including:

- 1) Ketihis knowledge of the rules for establishing a foundation legal entity.
- 2) A The heirs consider the foundation's assets to be the inheritance of their parents (founders).
- 3) A heirs equate a foundation with a Limited Liability Company (PT), where if the share owner dies, the heirs as heirs are entitled to the shares that have been given to the PT.

The purpose of this Foundation Law is to provide a separation between the role of a foundation and the role of a business entity that is established, in this case the foundation as a shareholder in a business entity due to the maximum capital participation of 25% of the foundation's assets, so that there is no conflict of interest and overlapping interests, especially if problems arise if there is a prohibition on the foundation's organs. The wealth of the foundation, apart from originating from assets that are separated from the separation of the founder's assets, also comes from donations or non-binding assistance, endowments, grants, bequests, and other acquisitions that do not conflict with the foundation's articles of association and/or applicable laws and regulations (article 26 of the Foundation Law), the foundation's assets can only be used to achieve the aims and objectives of the foundation (Hafsari, 2022).

For founders, foundation organs and heirs of the founders of the foundation, if they take the foundation's assets in an unlawful manner, the provisions of the Foundation Law apply, which stipulates:

- 1) Any member of the Foundation's organs who violates the provisions as referred to in Article 5 shall be subject to a maximum prison sentence of 5 (five) years.
- 2) In addition to imprisonment, members of the foundation's organs as referred to in paragraph (1) are also subject to additional penalties in the form of an obligation to return money, goods or assets that have been transferred or distributed. (Supramono, 2008, p. 320).

These provisions are intended to protect foundations from the transfer of their assets, whether to the founder or their heirs. If a foundation has commercial (business) activities, the income and expenses related to those business activities must be recorded separately. Foundations can even establish separate business entities to manage their business activities. Business activities of foundation-owned businesses can include, among other things, arts and culture, sports, consumer protection, education, the environment, health, and science.

Segregated assets are a consequence of a foundation's role as a legal entity, where the assets of a legal entity must be separated from the assets of its founders and other foundation organs. In other words, the assets of a foundation are not the assets of the founders, their heirs, or the assets of any foundation organ. Consequently, the founders and their heirs will not receive any benefit from the assets of the foundation or the proceeds of the foundation's business activities. (Rudi, 2012, p. 47).

Legal Status of Foundation Assets Considered as Inheritance by the Founding Family

Law Number 18 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations in Chapter II Establishment, Article 9 Paragraph (1) stipulates that a Foundation is established by one or more persons by separating some of the assets of the founder's family, as initial assets. Foundations have a striking difference with Limited Liability Companies (PT) and other legal entities in terms of capital investment. In Foundations, capital is obtained from the founder's assets which are separated from other assets belonging to the founder, so the consequence of the separated assets is that the founder does not have rights to the assets. In addition to the separated assets of the founder, the foundation's business capital also comes from donations or non-binding assistance, endowments, grants, wills and other acquisitions. Therefore, the foundation is not obliged to return the assistance and can use the assistance according to the wishes of the party providing the assistance. This often causes misunderstandings by the founder of the Foundation and including his heirs, who feel they continue to own the foundation and feel they have the right to receive profits, resulting in conflicts within the foundation. (Law Number 28 of 2004).

In line with the explanation of the Foundation Law, Article 9 paragraph (1) of Law Number 16 of 2001 in conjunction with Law Number 28 concerning Foundations stipulates that the transfer of the founder's assets can become the initial assets of a foundation. This transfer can be in the form of money and goods and will become the assets of the foundation separate from the founder or owner to achieve the foundation's objectives. This condition is a material requirement of a foundation. Thus, it is clear that since its establishment, the assets of the foundation are assets that are separate from the personal assets of its founder.

However, on the other hand, the founder of a foundation as the founder is not free from conditions related to the existence of family, both children and descendants as well as blood relatives or relatives. Likewise, upon death, the founder of the foundation is not free from the situation of inheriting the property he owned during his lifetime. These circumstances are prone to problems related to the separation of the founder's personal assets from the assets that have been separated into the assets of the foundation established during his lifetime, in relation to the inheritance of the founder's descendants. Therefore, it is best to pay attention to several things in accordance with the provisions of the laws and regulations in force in Indonesia, from the foundation's establishment, so that potential problems in the future can be minimized. (Zein, 2006). In the absence of the founding family's authority

over the foundation that they established, they also do not have the right to obtain results from the management of the foundation in the form of inheritance or other forms. This is in accordance with the opinion of legal expert NH Bregstein, who stated that a foundation is a legal entity that is established by a legal act, which does not aim to distribute wealth and/or income to the founder or the founding family and the rulers within the foundation, or to other people, except insofar as the latter is in accordance with the idealistic objectives of the foundation. (Suyud, 2015, p. 14). However, Law Number 18 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations provides an opportunity for founders or founders' families who wish to participate in the management of the foundation they have established, by taking part in becoming a member of the board of trustees, as regulated in Article 28 paragraph (3) which states that those who can be appointed as members of the Board of Trustees as referred to in paragraph (1) are individuals as founders of the foundation and/or those who, based on the decision of the Board of Trustees meeting, are deemed to have high dedication to achieving the aims and objectives of the foundation. With this regulation, a founder and the founder's family can be involved and have authority in the management of the foundation they have established, if they wish to sit on the Board of Trustees of the foundation, although this is not an obligation to do so, meaning that a founder can simply establish a foundation and then not interfere in the foundation. (Syawie, 1993, p. 40).

The Power of a Will by the Founding Family in Foundation Law

The Civil Code, in Chapter XIII Wills, Section 1 General Provisions Article 875 defines a will or testament, as a deed containing a person's statement about what he wants to happen after he dies, which can be revoked by him. The Big Indonesian Dictionary defines a will as the last message delivered by a person who is about to die (usually regarding wealth and so on). (Civil Code)

There are no provisions regarding wills specifically related to Foundations in the Civil Code, however Law Number 18 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations regulates this in Chapter II Establishment, Article 9 and Article 10, all of which relate to the establishment of foundations, and in Chapter V Assets, Article 26, which regulates bequests as one of the sources of Foundation wealth.

Article 9 paragraph (3) stipulates that a Foundation may be established based on a will, and Article 10 paragraph (2) stipulates that in the case of the establishment of a Foundation based on a will, the recipient of the will acts on behalf of the testator. And Article 10 paragraph (3), in the case of a will as intended to establish a Foundation not being executed, then at the request of the interested party, the Court may order the heirs or recipients of the will concerned to execute the will. This provision accommodates a person's wishes before death to establish a Foundation, and is stated in a will. Because the person has died, his wishes to establish a Foundation are executed by the recipients of the will, and to guarantee the execution of the wishes of the deceased person to establish a Foundation, the Court is authorized to intervene by ordering the recipients of the will to execute the will because the existence of a will containing a message to establish the Foundation is considered an obligation addressed to those appointed in the will as recipients of the will, to execute the will.

Furthermore, Law Number 18 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations, Article 26 paragraph (2) letter d regulates testamentary grants as one of the sources of wealth of the Foundation, which in the explanation of the article is regulated, the amount must not be in conflict with inheritance provisions. This regulation is necessary to prevent violations of the inheritance rights of the heirs of a deceased person, who previously made a will to give part of his wealth as a gift to a foundation. (Septia, 2017, pp. 65 - 70).

There are no other provisions regarding wills in the Republic of Indonesia Law Number 16 of 2001 concerning Foundations, thus it can be ascertained that it is not possible to carry out the management of a Foundation based on procedures based on the existence of a will.

One example of a misconception about wills in this foundation can be seen in the Civil Lawsuit Decision Number 642/Pdt.G/2016/PN.Jkt.Pst, where in the lawsuit, the descendants of the founder of a foundation sued the foundation for adjusting the Foundation's Articles of Association to comply with the provisions of Law Number 18 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations, and also the management of the Foundation was considered not in accordance with the procedures outlined in the will that was made by the founder of the foundation. In fact, adjusting the Articles of Association to the Law on Foundations is an obligation of Foundations that were established before the Law on Foundations was enacted, and the procedures for managing the Foundation after the enactment of the Law on Foundations must follow the provisions of the Law and cannot be subject to the will of the founder. Likewise, in this case, several parties, on behalf of the descendants of the founder of the Foundation, requested rights in the form of material as a portion for the founder's heirs originating from the results of the Foundation's management. In the consideration section of the decision on the case, the Judge

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explained that regarding foundations, a will is only recognized as a will to establish a foundation in the form of a message from someone to establish a foundation, while to manage a foundation cannot follow the will but must comply with the Foundation Law, this court decision was strengthened by Decision Number 234 / PDT / 2019 / PT.DKI, at the appeal stage and Decision Number 567 K / PDT / 2021 in conjunction with No. 642 / Pdt.G / PN.Jkt.Pst, at the Cassation stage which confirmed the first level decision (District Court). Misunderstanding of wills related to Foundations, as in the example case above, has a significant impact on the management of the Foundation, because it creates internal conflicts which certainly hinder the management of the Foundation in general (642/Pdt.G/2016/PN.Jkt.Pst., 2016).

CLOSING

Conclusion

1. Based on Law Number 18 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations in Chapter II Establishment, Article 9 Paragraph (1) regulates that a Foundation is established by one or more persons by separating some of the assets of the founder's family, as initial assets, in the Foundation, obtaining capital from the founder's assets which are separated from other assets belonging to the founder, then the consequence of the separated assets is that the founder does not have rights to the assets. In line with the explanation of the Foundation Law, Article 9 paragraph (1) of Law Number 16 of 2001 in conjunction with Law Number 28 concerning Foundations regulates that the transfer of the founder's assets can become the initial assets of a foundation. The transfer can be in the form of money and goods and will become the assets of the foundation separated from the founder or owner to achieve the foundation's objectives. This situation is a material requirement of a foundation. Thus it is clear that since its establishment, the assets of the foundation are assets that are separated from the personal assets of the founder. In the absence of the founding family's authority over the foundation that they established, they also do not have the right to obtain results from the management of the foundation in the form of inheritance or other forms. This is in accordance with the opinion of legal expert NH Bregstein, who stated that a foundation is a legal entity that is established by a legal act, which does not aim to distribute wealth and/or income to the founder or the founding family and the rulers within the foundation, or to other people, except insofar as the latter is in accordance with the idealistic objectives of the foundation.
2. Based on Law Number 18 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations, Article 9 paragraph (3) stipulates that a Foundation can be established based on a will, and Article 10 paragraph (2) stipulates that in the case of the establishment of a Foundation based on a will, the recipient of the will acts as a representative of the testator. And Article 10 paragraph (3), in the case of a will as intended to establish a Foundation is not executed, then at the request of the interested party, the Court can order the heirs or recipients of the will concerned to execute the will. This provision accommodates a person's wishes before death to establish a Foundation, and is stated in a will. Because the person has died, his wish to establish a Foundation is carried out by the recipient of the will, and to guarantee the implementation of the wishes of the deceased person to establish a Foundation, the Court is given the authority to intervene by ordering the recipient of the will to carry out the will because the existence of a will containing a message to establish the Foundation is considered an obligation directed at those appointed in the will as recipients of the will, to carry out the will.

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