

ANALYSIS PROBLEMATIC OF NON-FORMAL EDUCATION INSTITUTIONS IN THE FORM OF ASSOCIATION LEGAL ENTITIES WHICH DESIGNS OF THE DEED ESTABLISHMENT ARE MADE BY A NOTARY

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ABSTRACT

Non-formal educational institutions are a form of public awareness in terms of education. Education itself has been regulated and is a right that must be obtained by the people, As stipulated in Article 31, Paragraph 1 of the 1945 Constitution. The function of non-formal education is as a complement, an addition, and a substitute. To be able to carry out its activities in the field of non-formal education, non-formal educational institutions must establish themselves as legal entities. The non-formal education institution itself is carried out with an authentic deed made by an authorized official, in this case a notary. In practice, many non-formal educational institutions have established themselves as legal entities in the form of associations compared to the legal entity forms commonly used in formal institutions. The form chosen by non-formal educational institutions is an association with a legal entity. The main problem is the widespread formation of association legal entities to accommodate the activities of non-formal educational institutions because at that time non-formal educational institutions in the form of legal entities could obtain operational assistance in the form of funds from the government to support their activities without a specific legal entity that must be used by educational institutions. This is what encourages actors or activists of non-formal educational institutions in droves to ask a Notary to make a deed of establishment of an association legal entity, especially regulations regarding partnership legal entities in the Indonesian legal system are limited which causes public opinion to use non-profit legal entities engaged in sectors social, religious, and humanitarian. This is not appropriate because the association itself is used to accommodate people or actors, while foundations are used to accommodate the activities of the perpetrators. Legal entities in the form of limited liability company itself can be used to accommodate the activities of non-formal educational institutions if the establishment of the institution aims to seek profit. With the successful establishment of non-formal educational institutions with legal entities, associations ultimately lead to prolonged problems.

Keywords: Authentic Deed; Legal Entity; Non-Formal Educational Institution; Establishment; Notary.

INTRODUCTION

According to Article 1 (1) of the Republic of Indonesia Act No. 20 of 2003 on the National Education System, education is to create a learning environment and process that allows students to actively develop their religious and spiritual potential. It is a conscious and systematic effort. Strength, self-discipline, personality, intellect, noble personality, and the skills that oneself, society, nation, and nation need. The existence of non-formal educational institutions is a form of public awareness in terms of education. Education itself has been regulated and is a right that must be obtained by the people, as stated in Article 3, paragraph 1 of the Constitution of the Republic of Indonesia, 1945, all citizen has the same and right to education.

In order to work in the field of non-formal education, non-formal educational institutions need to establish their legal entity status. The establishment of an non-educational institution itself is based on a notary in the form of a legal person's incorporation, and officers authorized in the preparation of a notary, especially the legal person's incorporation certificate, are legal. According to the notary. Regarding the position of Article 15, Paragraph 1 of the Republic of Indonesia No. 2 in 2014 regarding the amendment of the law of the Republic of Indonesia in 2004 regarding the position of the notary public, the notary public shall provide all acts, agreements and provisions made by law. Is specified and / or indicated by interested parties in a notarized document. Notaries play a very important role in crossroads, especially in the field of civil law, as they exist as civil servants with the authority to set certificates and other authority. (HS, 2015).

Notaries are an extension of government, in which case the state gives the notaries confidence to carry out the duties or obligations of some states, especially in the field of civil law. (Faeq, 2020). Indonesian notaries have existed from the colonial era to the present (Tan, 2020). An authentic deed according to Article 1868 of the Civil Code is a deed in the form prescribed by law, issued and in the presence of a state official authorized for that purpose at the place where the musical instrument was issued. It will be issued at. (R. Subekti, 1985). According to Wawan Setiawan, there are elements of an authentic deed, including:

- a. The form of the deed must be prescribed by law, meaning that it cannot be determined by legislation under the law;
- b. Made by and before a public official;
- c. The deed is made by or before a public official in his/her area of office (Santoso, 2016).

In practice, many non-formal educational institutions have established themselves as legal entities in the form of associations compared to the forms of legal entities commonly used in formal institutions. The association was originally founded by a group of people based on the same idealism to realize certain common goals and objectives in the sectors social, religious, and humanitarian including hobbies, and did not dole returns to founders (Gaol, 2020). There are several considerations for choosing an association legal entity, namely lower costs, faster and easier ratification processes and the important need to have a SK (Decree) Issued by the Ministry of Justice and Human Rights to enable them to carry out their activities.

The main problem is the widespread formation of association legal entities to accommodate the activities of non-formal educational institutions because at that time non-formal educational institutions in the form of legal entities could obtain operational assistance in the form of funds from the government to support their activities without a specific legal entity that must be used by

educational institutions. This is what encourages actors or activists of non-formal educational institutions in droves to ask a Notary to make a deed of formation of a legal entity association, as an extension of the government to carry out the law, especially in the field of civil law. problems related to the establishment of association legal entities to accommodate non-formal educational institutions, especially previously related to association legal entities in the limited Indonesian legal system that generate public opinion using any non-profit legal entity that is engaged in sectors social, religious, and humanitarian. Over time, in relation to legal entities, associations, legal associations, cannot be used to accommodate non-formal educational institutions in carrying out their activities, then it is recommended to conduct new establishments using other legal entities. Nevertheless, until now there are still many non-formal educational institutions that are still in the form of association legal entities which cause ongoing problems. The purpose of this study is to provide understanding and information to the public, especially the public or business actors engaged in non-formal education related to the appropriate form of legal entity to accommodate non-formal educational institutions that are expected by the community and or business actors to play an active role in the formation of a business entity that is right in Indonesia.

RESEARCH METHOD

The writing used is library research or library method, so it is called normative legal writing. According to Peter Mahmud regarding normative Investigation, normative legal investigation is the process of finding the rule of law, legal principles, and the jurisprudence to answer related legal issues. (Mahmud, 2008). Normative research relies on written studies or sources from secondary data and legal materials such as legislation, court decisions, legal theory, literature, legal journals, and legal documents. The methods used in this study are normative and legal. That is, legal research conducted through the study of library materials or secondary data as the basis of the study, in accordance with the regulations associated with the issues discussed. (Soerjono Soekanto, 2006). Applicable laws regarding legal entities in Indonesia and the proper use of these legal entities to accommodate the activities of non-formal educational institutions which designs of the deed establishment are made by a Notary.

RESEARCH RESULT

Business entities in Indonesia consist of 2 forms, namely those that are not legal entities and those that are legal entities. Business entities that are not legal entities are divided into individual business entities and partnerships. Individuals include Trading Businesses (UD) while partnership business entities include Maatschaap, Firms, Limited Liability Companies (Commanditaire Vennootschap). Then, business entities that are legal entities can be divided into legal entities that aim to be profit-oriented, including Limited Liability Companies and Cooperatives and non-profit legal entities which include Foundations and Associations. According to Subekti, a legal entity is an entity or association that can have rights and act like a human being, and has its own wealth, can be sued or sued before a judge (Ali, 2014).

The national education system in Indonesia consists of 3 parts, namely formal education, non-formal education and non-formal education. According to the Law of the Republic of Indonesia No. 20 of 2003 On the National Education System, Article 1, Paragraph (11), formal education is a structured and multi-level educational path that includes basic education, lower secondary education and higher education. According to the Republic of Indonesia Law No. 20 of 2003 On the National Education System, Article 1, Paragraph (13), informal education is the path of family and environmental education. According to the Law of the Republic of Indonesia No. 20 of 2003 On the National Education System, Article 1, Paragraph (12), non-formal education is an educational path outside of formal education which can be exempted in the following ways: structured and multi-level formula and that is exclusively for citizens, those who need education and services that replace, supplement and/or supplement formal education to support lifelong learning. As explained above, the existence of non-formal educational institutions here is the community's awareness of the importance of education. In addition to this, nonformal educational institutions are a tangible form of the 1945 Constitution of the Republic of Indonesia where everyone has the right to education.

The function of non-formal education according to Sudjana in his book suggests that non-formal education functions: Complement school education, non-formal education presents a set of fixed curriculum needed in accordance with regional and community situations

Supplement (additional), non-formal education provides educational opportunities for those who have completed formal education but in different places and times

Substitution for school education, non-formal education can replace the function of schools, especially in areas that have not been reached by the school education program (Sudjana, 2004).

The forms of non-formal educational institutions scattered in Indonesia are divided into several types, such as:

- a. Course and Training Institute (LKP)
- b. Study Group
- c. Playgroup
- d. Community Learning Activity Center (PKBM)
- e. Taklim Council
- f. Early Childhood Education (PAUD)
- g. Smart House
- h. Joint Study Center
- i. Tutoring Institute

As a public official who is involved in making authentic deeds, a Notary has the duty and authority to make a deed of establishment of a legal entity and is registered online through the Legal Entity Administration System (SAHB) so that it is registered and registered with the Directorate General of Legal Administration of the Ministry and Human Rights. Republic of Indonesia, so that business actors in non-formal educational institutions who come to a notary to make a deed of establishment and register the non-formal educational institution as a legal institution to get BOP (Education Operational Assistance) for non-formal educational institutions flock to the Notary to make deed of establishment of a legal entity in the form of an association legal entity

which at any time the assistance can be disbursed for non-formal educational institutions that are already legal entities. In practice, many business actors in the field of non-formal education who face a notary choose as a legal entity association to accommodate the activities of educational institutions to form themselves as legal entities of associations. This is based on several considerations such as lower costs, the most important of which has been getting a SK (Decree) by the Ministry of Law and Human Rights. Furthermore, at that time, the process of ratifying legal entities in associations that accommodated non-formal institutions was very easy and there were no verification requirements from the verifier of the Ministry of Law and Human Rights, in the sense that every submission for ratification electronically by a Notary was immediately received and a decision letter could be printed. Minister (SK Kemenkumham). Verifiers are personnel who are responsible for examining, approving or submitting applications for issuance, violation, and revocation of certificates submitted by the owner (or prospective electronic owner issued by the Electronic Certificate Center (BSrE).

Since the implementation of verification by verifiers, many applications for the establishment of legal entities of associations, especially to accommodate non-formal educational institutions, have been rejected, due to the reason that the aims and objectives are deemed to contain profits that are not in accordance with the basic principles of non-profit social organizations. A formal institution that wants to establish itself as a legal entity, to establish itself as a foundation legal entity against a non-profit nature, but if it is a non-formal educational institution that intends to seek profit in its activities, it is better to establish itself as a legal entity of a Limited Liability Company (PT).

According to Article 1 of the Regulations of the Republic of Indonesia Code and Human Rights No. 6 of 2014 on the ratification of legal entities, an association is a legal entity that is a collection of persons formed to achieve common goals, goals and objectives in the social, religious and humanitarian fields and do not share interests for its members. According to Article 1, Paragraph (1) of the Law of the Republic of Indonesia No. 28 of 2004 Amendment of Law No. 16 of 2001 on Organizations, an organization is a legal entity consisting of separate assets and aimed at achieving certain objectives, in social, religious and humanitarian fields, which has no members. Although both have same goals to go, associations are used to accommodate the perpetrators or activists, while foundations are used to accommodate the activities and activities of the perpetrators.

Unlike foundation legal entities which are regulated by Indonesian Law System, in practice so far the making of association legal entity deeds, notaries still refer to the provisions of *Staatsblad* Number 1870 Number 64 concerning Legal Entity Associations (Rina, 2016). Previously there was a discourse on the form of educational legal entities specifically regulated which consisted of Government Education Legal Entities (BHPP), Regional Government Education Legal Entities (BHPPD), and Community Education Legal Entities (BHPPM) as stipulated in the Law on Educational Legal Entities. However, with the annulment of the BHP (Educational Legal Body) Law by the Constitutional Court (MK) it is intended to strengthen the diversity of educational institutions. This means that the educational unit must be in the form of a legal entity. However, it should not be limited to certain legal entities. There are three things that make a group of people reject the law. First, its presence is considered to eliminate the existence of the foundation which has been contributing to the development of national education. Second, efforts to homogenize educational legal entities are feared to eliminate the uniqueness of education administration, especially those managed by certain community groups. Third, the presence of the BHP Law is considered to have made the cost of education expensive, especially in state universities (PTN) (Wahid, 2010).

In the process of establishing legal entities, associations of non-formal educational institutions, Notaries also experience problems, such as because association legal entities still do not have their own statutory regulations, which causes there to be no standard form or structure of a deed compared to other legal entities. In the format of the Association deed used by a notary, it actually comes from the articles of association that are common in other legal entities. In addition, with the successful establishment of non-formal educational institutions in the form of association legal entities, it creates public perception that non-formal educational institutions to carry out their activities can use association legal entities to accommodate them, this makes Notaries have to socialize and provide an understanding that association legal entities are not suitable for accommodate non-formal educational institutions and are directed to establish themselves as other legal entities. Non-formal educational institutions that have been and are still in the form of association legal entities cause various problems in an Indonesian legal system, such as in order to provide non-formal education, non-formal educational institutions must apply for operational permits to the Education Office while the local Education Office refuses if These non-formal educational institutions are accommodated by association legal entities, where the local Education Office recommends the establishment of non-formal educational institutions in the form of foundation legal entities to accommodate their activities if they intend to be non-profit while non-formal educational institutions that intend to seek profit in carrying out their activities are accommodated by Limited Liability Company (PT) legal entity.

CONCLUSION

Actually, a legal entity association can be used to accommodate non-formal educational institutions, as long as the association is legalized by a notary deed. However, since the implementation of verification by verifiers with increasing understanding regarding association legal entities, many applications for the establishment of association legal entities, especially to accommodate non-formal educational institutions, have been rejected, due to the reason that the aims and objectives are considered to contain profits that are in accordance with the basic principles of non-profit community organizations with the existence of a non-profit organization. Based on this fact, the Notary recommends that non-formal educational institutions wishing to establish themselves as legal entities should establish themselves as legal entities for non-profit organizations, but if non-formal educational institutions intend to seek profit in their activities, they should establish themselves as legal entities. Limited Liability Company (PT). The need for detailed regulation related to association legal entities by making a statutory regulation that regulates the use or existence of association legal entities that can be used to accommodate anything, standard deed structures, etc. have laws and regulations in the form of laws that regulate in full and in detail, because association legal entities still do not have their own laws and regulations which cause there is no standard form or structure of a deed compared to other legal entities.

The use of association legal entities to accommodate non-formal educational institutions where the aims and objectives are deemed not in accordance with the basic principles of association social organization by the verifier cause various problems for non-formal educational institutions that have already established themselves as association legal entities. With the success of

the establishment of non-formal educational institutions in the form of association legal entities, previously it caused problems that made the public perception that non-formal educational institutions to carry out their activities could use association legal entities to accommodate them, this made the Notary have to socialize and provide an understanding that the association's legal entity is not appropriate to accommodate non-formal educational institutions and are directed to establish themselves as other legal entities. Non-formal educational institutions that have been and are still in the form of association legal entities cause various problems in an Indonesian legal system, such as in order to provide non-formal education, non-formal educational institutions must apply for operational permits to the Education Office while the local Education Office refuses if these non-formal educational institutions are accommodated by association legal entities, where the local Education Office recommends the establishment of non-formal educational institutions in the form of foundation legal entities to accommodate their activities if they intend to be non-profit while non-formal educational institutions that intend to seek profit in carrying out their activities are accommodated by legal entity Limited Liability Company (PT).

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