

LAW OF THE REPUBLIC OF INDONESIA
NUMBER 28 OF 2004
ON
AMENDMENT TO LAW
NUMBER 16 OF 2001
ON
FOUNDATIONS

BY THE BLESSINGS OF ALMIGHTY GOD

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

- Considering :
- a. that Law Number 16 of 2001 on Foundations came into force on 6 August 2002, however the Law still fails to accommodate all legal requirements and developments in the public and some substances may result in various interpretations, therefore it is necessary to amend the Law;
 - b. that the amendment is intended to better ensure legal certainty and order, as well as to provide true understanding of Foundations to the public;
 - c. that based on the considerations as referred to in the point a and point b, it is necessary to establish Law on Amendment to Law Number 16 of 2001 on Foundations;
- Observing :
1. Article 5 section (1) and Article 20 of the 1945 Constitution of the Republic of Indonesia;
 2. Law Number 16 of 2001 on Foundations (State Gazette of the Republic of Indonesia of 2001 Number 112, Supplement to the State Gazette Number 4132);

With the Joint Approval of
THE HOUSE OF REPRESENTATIVES
and
THE PRESIDENT OF THE REPUBLIC OF INDONESIA

HAS DECIDED:

To enact : LAW ON AMENDMENT TO LAW NUMBER 16 OF 2001 ON
FOUNDATIONS.

Article I

Several provisions, the general elucidation, and the elucidation of articles in Law Number 16 of 2001 on Foundations (State Gazette of the Republic of Indonesia of 2001 Number 112, Supplement to the State Gazette Number 4132), are amended as follows:

1. The substance of provisions of Article 3 remains and its elucidation is amended so that the elucidation of Article 3 is as provided in the Elucidation of Article by Article point 1.
2. The provisions of Article 5 are amended so as to read as follows:

"Article 5

- (1) Assets of a Foundation either in the form of money, goods, or other properties procured by the Foundation under this Law are prohibited to be transferred or distributed directly or indirectly, either in the form of salary, wage, or honorarium, or in other forms that may be valued as money to the Governing, Executive and Supervisory Boards.
- (2) Exception to the provisions referred to in the section (1) may be determined in the Foundation's Articles of Association that the Executive Board receives salary, wage, or honorarium, in the event that the Foundation's Executive Board:

- a. is not the founders of the Foundation and affiliated to the Founders, Governing, and Supervisory Boards; and
 - b. manages the Foundation directly and fully.
- (3) The salary, wage, or honorarium as referred to in the section (2) are determined by the Governing Board in accordance with the capability of the Foundation's assets.
3. The provisions of Article 11 are amended so as to read as follows:

"Article 11

- (1) The Foundation receives a legal entity status after ratification of deed of establishment of the Foundations as referred to in the Article 9 section (2) by the Minister.
- (2) To obtain the ratification as referred to in the section (1), the founders or proxies files the request for ratification to the Minister through Notary Public making the Foundation's deed of establishment.
- (3) The Notary Public as referred to in the section (2), is obligated to submit the request for ratification to the Minister within not later than 10 (ten) days commencing from the date of the signing of the Foundation's deed of establishment.
- (4) In ratifying the Foundation's deed of establishment as referred to in the section (1), the Minister may request for consideration from the relevant institutions not later than 7 (seven) days commencing from the date of the complete receipt of the request.
- (5) The relevant institutions as referred to in the section (4), are obligated to submit responses not later than 14 (fourteen) days commencing from the date of the receipt of the request for consideration.
- (6) The request for ratification of the Foundation's deed of establishment is subjected to fee as issued in Government Regulation.

4. The provisions of Article 12 are amended, so as to read as follows:

"Article 12

- (1) The request for ratification as referred to in the Article 11 section (2), is submitted in writing to the Minister.
- (2) Ratification of the request as referred to in the section (1) is be granted or denied not later than 30 (thirty) days commencing from the date of the complete receipt of the request.
- (3) In the event of requiring the consideration as referred to in the Article 11 section (4), the ratification is granted or denied not later 4 than 14 (fourteen) days as of date of receipt of responses to the request for consideration from the relevant institutions.
- (4) In the event of failure to receive the responses to the request for consideration, ratification shall be granted or denied not later than 30 (thirty) days commencing from the date of the submission of the request for consideration to the relevant institutions".

5. Between Article 13 and Article 14, 1 (one) article, namely Article 13A is inserted so as to read as follows:

"Article 13A

The Executive Board is jointly responsible for any legal action taken by the the Executive Board on behalf of the Foundation before the Foundation receives a legal entity status."

6. The provisions of Article 24 are amended so as to read as follows:

"Article 24

- (1) Foundation's deed of establishment already ratified to be a legal entity or amendment to Articles of Association already approved or notified is obligated to be announced in Supplement to the State Bulletin of the Republic of Indonesia.

- (2) The announcement as referred to in section (1) is made by the Minister not later than 14 (fourteen) days commencing from the date of ratification of the Foundation's deed of establishment or approval or receipt of amendment to the Articles of Association by the Minister.
- (3) Procedures for announcement are made in accordance with the provisions of laws and regulations.
- (4) The announcement as referred to in section (1) is subjected to fee as determined in Government Regulation."

7. Article 25 is deleted.

8. Article 32 is amended so as to henceforth read as follows:

"Article 32

- (1) The Foundation's Executive Board is appointed by the the Governing Board based on resolutions of meeting of the Governing Board for 5 (five) years and may be reappointed.
- (2) The Foundation's Executive Board may be reappointed after the end of the first term of position as referred to in the section (1), as determined in the Articles of Association.
- (3) Composition of the the Governing Board is at least:
 - a. a chairman;
 - b. a secretary; and
 - c. a treasurer.
- (4) In the event of the Executive Board as referred to in the section (1) takes any action considered to harm the Foundation during implementing their tasks, based on the resolutions of the meeting of the Governing Board, the Executive Board may be dismissed before the expiry of the term of Executive Board.
- (5) further provisions concerning composition, procedures for appointment, dismissal, and replacement of the Executive Board are regulated in the Articles of Association."

9. The provisions of Article 33 are amended so as to read as follows:

"Article 33

- (1) In the event of replacement of the, the replacing Executive Board submits the notice in writing to the Minister.
- (2) The notice as referred to in the section (1) is obligated to be submitted not later than 30 (thirty) days commencing from the replacement of the Foundation's Executive Board."

10. The provisions of Article 24 are amended so as to read as follows:

"Article 34

- (1) The Foundation's Executive Board may at any time be dismissed based on resolutions of the meeting of the Governing Board.
- (2) In the event that the appointment, dismissal, and replacement of the Executive Board fail to comply with the Articles of Association, at the request of the relevant person or at the request of the Attorney in the event of representing the public interest, the Court may annul the appointment, dismissal, or replacement not later than 30 (thirty) days commencing from the date of the submission of request for annulment."

11. The provisions of Article 38 are amended so as to read as follows:

"Article 38

- (1) The Foundation is prohibited to enter into an agreement with any organization affiliated to the the Foundation, the Governing Board, the Executive Board, and/or the Supervisory Board, or anyone working to the Foundation.

- (2) The prohibition as referred to in the section (1) does not apply in the event that the agreement benefits to the attainment of the Foundations' aims and objectives."

12. Article 41 is deleted.

13. Article 44 is amended so as to read as follows:

"Article 44

- (1) The Foundation's Supervisory Board is appointed by the the Governing Board based on resolutions of the meeting of the Governing Board for 5 (five) years and may be reappointed.
- (2) The Foundation's Supervisory Board is reappointed after after the end of the first term of position as referred to in the section (1), as determined in the Articles of Association.
- (3) Further provisions concerning composition, procedures for appointing, dismissing, and replacing the Supervisory Board are regulated in the Articles of Association."

14. The provisions of Article 45 are amended so as to read as follows:

"Article 45

- (1) In the event of replacement of the Supervisory Board, the Executive Board submits the notice in writing to the Minister.
- (2) The notice as referred to in the section (1) is submitted not later than 30 (thirty) days commencing from the date of the replacement of the Foundation's Supervisory Board."

15. The provisions of Article 46 are amended so as to read as follows:

"Article 46

- (1) The Foundation's Supervisory Board may at any time be dismissed based on resolutions of the meeting of the Governing Board.
- (2) In event that the appointment, dismissal and replacement of the Supervisory Board fails to comply with the Articles of Association, at the request of the relevant person or at the request of the attorney in event of representing the public interest, the Court can annul the appointment, dismissal, or replacement of the Supervisory Board not later than 30 (thirty) days commencing from the date of the submission of the request for annulment."

16. The provisions of Article 52 are amended so as to read as follows:

"Article 52

- (1) A summary of annual reports of a Foundation is attached to the announcement board at Foundation's office.
- (2) The summary of financial statements being a part of summary of annual reports as referred to in the section (1) is obligated to be announced in Indonesian daily newspaper for a Foundation which:
 - a. receives State's aid, foreign aid and/or other parties' aid amounting to Rp. 500,000,000.00 (five hundred million rupiah) or more, in 1(one) fiscal year; or
 - b. has assets outside the religious donation amounting to Rp.20,000,000,000.00 (twenty billion rupiah) or more.
- (3) The financial statements as referred to in the section (2) are audited by the Public Accountant.
- (4) The audit result of financial statements as referred to in the section (3), is submitted to the Foundation's relevant Governing Board and carbon copy to the Minister and the relevant institutions.

- (5) The financial statements are prepared in accordance with the applicable Financial Accounting Standard."

17. The provisions of Article 58 are amended so as to read as follows:

"Article 58

- (1) The Executive Board of the respective Foundations to amalgamate and to accept amalgamation prepares amalgamation plan proposal.
- (2) The amalgamation plan proposal as referred to in the section (1), is contained in a draft of deed of amalgamation by the Executive Board of the respective Foundations to amalgamate and to accept amalgamation.
- (3) The draft of deed of amalgamation is approved by the Governing Board of the respective Foundations.
- (4) The draft of deed of amalgamation as referred to in the section (3) is contained in a deed of amalgamation made before Notary Public in Indonesian."

18. The Article 60 is amended so as to read as follows:

"Article 60

- (1) In the event that the amalgamation followed with amendment to the Foundation's Articles of Association requires the Minister's approval, the deed of amendment to the Foundation's Articles of Association enclosed with the deed of amalgamation is obligated to be submitted to the Minister for approval with the deed of amalgamation attached.
- (2) The approval as referred to in the section (1) is given not later than 60 (sixty) days commencing from the date of the receipt of the request.
- (3) In the event of denial of the request, the denial must be notified to the requester in writing enclosed with reasons within the term referred to in the section (2).

- (4) In event of the failure to approve or deny within the term as referred to in the section (2), the amendment to the Articles of Association is considered approved and the Minister is obligated to issue decree on approval."

19. The provisions of Article 68 are amended so as to read as follows:

"Article 68

- (1) The assets of the remaining liquidation proceeds are submitted to another Foundation with the same activities as the dissolved Foundation.
- (2) The assets of the remaining liquidation proceeds as referred to in the section (1) may be submitted to another legal entity with the same activities as the dissolved Foundation, if it is governed in the Law regarding the legal entity.
- (3) In the event of the failure to submit the assets of the remaining liquidation proceeds to another Foundation or legal entity as referred to in the sections (1) and (2), the assets are submitted to the State and the application is made in accordance with the activities of the dissolved Foundation."

20. The provisions of Article 71 are amended so as to read as follows:

"Article 71

- (1) At the time when this Law comes into force, Any Foundation is:
 - a. already registered with District Court and published in Supplement to the Bulletin Gazette of the Republic of Indonesia; or
 - b. already registered with District Court and having permit to perform activities from the relevant institutions;

remains to be recognized as a legal entity provided that not later than 3(three) years commencing from the effectiveness of this Law, the Foundation is obligated to adjust their Articles of Association to this Law.

- (2) Any Foundation has already incorporated and not fulfilling the provision as referred to in the section (1) may obtain a legal entity status by adjusting their Articles of Association to this Law and submit a request to the Minister within not later than 1 (one) year commencing from the date of the effectiveness of this Law.
- (3) The Foundation as referred to in the section (1) is obligated to be notified to the Minister not later than 1 (one) year after adjustment.
- (4) Any Foundation which does not adjust the Articles of Association within the term referred to in the section (1) and the Foundation as referred to in the section (2), may not use the words "Foundation" before its name and may be dissolved based on court's judgment at the request from the Attorney or the relevant parties."

21. The provisions of Article 72 are amended so as to read as follows:

"Article 72

- (1) The part of Foundation's assets of which originates from the State's aid, foreign aid, and/or public contribution in consequence of effectiveness of a rule of law is obligated to publish the summary of financial statements as referred to in the Article 52 section (2) on its assets for 10 (ten) years before the promulgation of this Law.
- (2) The Announcement of the summary of annual reports as referred to in the section (1) does not exempt the rights of the competent party from inspecting, investigating, and suing in case of alleged violation of law."

22. Between Article 72 and Article 73, 2 (two) articles, namely Article 72A and Article 72B are inserted so as to read as follows:

"Article 72A

At the time when this Law comes into force, the provisions of the Foundation's Articles of Association as referred to in the Article 71 section (1) and section (2) not yet adjusted to this Law remain effective to the extent not contrary to this Law.

Article 72B

At the time when this Law comes into force, the request for ratification of Foundation's deed of incorporation, the request for amendment to Foundation's Articles of Association, and the notice of adjustment of Foundation's Articles of Association already received by the Minister are processed under this Law and the implementing regulation."

23. The General Elucidation in Paragraph Three, phrase "or the appointed official", between phrase "the Minister of Justice and Human Rights" and phrase "the provision" are deleted.
24. The General Elucidation in Paragraph Four, phrase "may be submitted to the Head of Regional Office of the Ministry of Justice and Human Rights having jurisdiction over the Foundation's domicile" between phrase "the request for Foundation incorporation" and phrase "In addition", are replaced to phrase "submitted to the Minister through Notary Public making deed of establishment of the Foundation."
25. The General Elucidation in Paragraph Seven, phrase "Foundation of which the assets originates from the State," between phrase "Further, to" and phrase "foreign aid or other party's aid," are replaced to phrase "Foundation procuring the State's aid," and phrase "their annual reports are obligated to be announced" between a phrase " by a public accountant and" phrase "in Indonesian daily newspapers", are replaced to phrase "their financial statements are obligated to be published" .

Article II

This Law comes into force for 1 (one) year commencing from its promulgation.

In order that every person may know hereof, it is ordered to promulgate this Law by its placement in the State Gazette of the Republic of Indonesia.

Enacted in Jakarta
on 6 October 2004

THE PRESIDENT OF THE
REPUBLIC OF INDONESIA,

Signed

MEGAWATI SOEKARNOPUTRI

Promulgated in Jakarta
on 6 October 2004

THE STATE SECRETARY OF THE REPUBLIC OF INDONESIA,

Signed

BAMBANG KESOWO

STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF 2004 NUMBER 115

Jakarta, 16 September 2016

Has been translated as an Official Translation
on behalf of Minister of Law and Human Rights
of the Republic of Indonesia

DIRECTOR GENERAL OF LEGISLATION,



WIDODO EKATJAHJANA

ELUCIDATION OF
LAW OF THE REPUBLIC OF INDONESIA
NUMBER 28 OF 2004
ON
AMENDMENT TO LAW NUMBER 16 OF 2001
ON FOUNDATIONS

I. GENERAL

Law Number 16 of 2001 on Foundations promulgated on 6 August 2001 apparently fails to accommodate all legal requirements and developments in the public as of the effectiveness on 6 August 2002.

In addition, several substances of Law on Foundations still have various interpretations that can result in legal uncertainty and disorder.

Amendment to law Number 16 of 2001 on Foundations is intended for legal certainty and order and to provide true understanding of Foundations to the public in order to return function of Foundations as a legal institution to attain certain purposes in social, religious, and humanitarian activities.

In addition, considering the roles of Foundations in the community in creating public welfare, the revision of Law Number 16 of 2001 on Foundations is also intended to make Foundations remain able to attain their aims and objectives in social, religious, and humanitarian activities based on transparency and accountability principles.

II. ARTICLE BY ARTICLE

Article I

Point 1

Article 3

Section (1)

The provision of this section is intended to clarify that Foundations are not used for running business and performing any business activity directly but through a legal entity they established or through another legal entity where the Foundations place their assets.

Section (2)

Sufficiently clear.

Point 2

Article 5

Section (1)

The provision in this section is intended to clarify that the Foundation's assets, including proceeds of business activities of Foundations, are assets of the Foundations fully used for attaining the aims and objectives of the Foundation, so a person as a member of the Governing Board, the Executive Board, and the Supervisory Board of the Foundation works voluntarily without receiving any salary, wage, or honorarium.

Section (2)

Point a

The term "affiliated" means family relationship due to marriage or descent until the third degree, horizontally or vertically.

Point b

The term "directly and fully" means that carrying the management tasks in accordance with business days and hours of Foundations is not part time work.

Section (3)

Sufficiently clear.

Point 3

Article 11

Section (1)

Sufficiently clear.

Section (2)

The provision that request for ratification of a legal entity of Foundations by Notary Public is intended to facilitate the public

service in filing request for ratification of deed of establishment of Foundations in regions.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Section (6)

Sufficiently clear.

Point 4

Article 12

Sufficiently clear.

Point 5

Article 13A

Sufficiently clear.

Point 6

Article 24

Sufficiently clear.

Point 7

Sufficiently clear.

Point 8

Article 32

Section (1)

Sufficiently clear.

Section (2)

The Executive Board requires 5 (five) years for reappointment as provided in Articles of Association of Foundations several times.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Point 9

Article 33

Sufficiently clear.

Point 10

Article 34

Sufficiently clear.

Point 11

Article 38

Sufficiently clear.

Point 12

Sufficiently clear.

Point 13

Article 44

Section (1)

Sufficiently clear.

Section (2)

The Supervisory Board requires 5 (five) years for reappointment as provided in Articles of Association of Foundations several times.

Section (3)

Sufficiently clear.

Point 14

Article 45

Sufficiently clear.

Point 15

Article 46

Sufficiently clear.

Item 16

Article 52

Section (1)

The attachment of summary of financial statement of Foundations to the announcement board is placed in such a way for easy reading by the public.

Section (2)

The Provision in this section is intended that any aid received by Foundations or those with the assets at a certain amount is known by the public in accordance with transparency and accountability principles.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Point 17

Article 58

Sufficiently clear.

Point 18

Article 60

Sufficiently clear..

Point 19

Article 68

Sufficiently clear.

Point 20

Article 71

Section (1)

Within 3 (three) years in this provisionshall beintended to give opportunity to Foundations to determine whether or not continue their existence.Incase of continuity, the Foundations shall withinthe term adjust their articles of association to this Law.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear

Section (4)

The term "the relevant parties" means the parties having direct interests in Foundations.

Point 21

Article 72

Sufficiently clear.

Point 22

Article 72A

Sufficiently clear.

Article 72B

Sufficiently clear.

Point 23

Sufficiently clear.

Point 24

Sufficiently clear.

Point 25

Sufficiently clear.

Article II

Sufficiently clear.