

ABSTRAK

Sebelum undang-undang tentang yayasan diberlakukan, terdapat ketidakpastian mengenai pengertian dan bentuk yayasan, maupun batasan yang tegas terhadap maksud, tujuan, dan kegiatan yayasan. Akibatnya yayasan cenderung disalahgunakan sebagai wadah berkedok sosial untuk memperkaya pihak-pihak tertentu. Diberlakukannya UU Yayasan memberi jawaban atas dibutuhkannya payung hukum mengenai pendirian, pengelolaan, dan pengawasan yayasan yang tadinya belum memiliki kepastian hukum. Namun UU Yayasan belum menekankan secara khusus batasan antara perbedaan yayasan keagamaan dengan yayasan pada umumnya. Padahal yayasan keagamaan khususnya yayasan Islam memiliki karakter berbeda dibandingkan dengan yayasan yang hanya bersifat sosial dan kemanusiaan, sebagai contoh fungsi yayasan sebagai instrumen syiar keagamaan, penyelenggara pendidikan diniyah, berperan sebagai lembaga amil zakat, dan lain sebagainya. Atas sebab itu timbul pertanyaan mengenai bagaimana peran UU Yayasan dalam mengakomodir pendirian yayasan keagamaan khususnya yayasan Islam. Penelitian ini berlatar belakang dari adanya pemikiran terhadap perlunya UU Yayasan memberi batasan yang tegas antara yayasan keagamaan dengan yayasan sosial dan yayasan kemanusiaan. Sehingga pokok permasalahan dalam penelitian ini yaitu mengenai apakah UU Yayasan sudah dapat mengakomodir pendirian yayasan keagamaan, dan bagaimana bentuk yayasan keagamaan yang sesuai dengan hukum Islam. Untuk menjawab permasalahan tersebut, penulisan tesis ini menggunakan metode penelitian eksplanatoris yakni menggambarkan dan menjelaskan tentang proses pendirian yayasan keagamaan khususnya yayasan Islam untuk menjadi badan hukum, penelitian evaluatif yakni memberi penilaian atas peranan UU Yayasan dalam mengakomodir pendirian Yayasan Keagamaan khususnya terhadap Yayasan Islam, serta penelitian analitis yakni analisis terhadap pendirian yayasan keagamaan yang sesuai dengan kaidah Islam dan perundang-undangan yang berlaku. Perolehan data dalam penelitian ini adalah berdasarkan studi dokumen, wawancara, dan penelitian lapangan. Berdasarkan hasil penelitian tersebut diketahui bahwa UU Yayasan belum sepenuhnya mengakomodir pendirian yayasan keagamaan khususnya yayasan Islam, oleh karena UU Yayasan belum memandang yayasan keagamaan sebagai yayasan yang berbeda dengan yayasan pada umumnya, sehingga pendirian yayasan Islam tidak dituntut untuk sesuai dengan kaidah hukum Islam. Atas sebab ini maka hal-hal yang belum diakomodir UU Yayasan tersebut harus ditutupi dengan pengetahuan tentang keagamaan dan permohonan izin operasional dari Departemen Agama. Selain itu diketahui pula bahwa yayasan keagamaan yang sesuai dengan hukum Islam adalah yayasan keagamaan yang dilandasi akhlak, akidah, dan syariat, sehingga pendirian yayasan keagamaan yang sesuai dengan Hukum Islam berarti yayasan keagamaan didirikan dengan memenuhi kaidah normatif dan yuridis dalam syariat Islam.

Kata kunci :

Yayasan, Badan Hukum Yayasan, Yayasan Keagamaan, Hukum Islam.

ABSTRACT

Before the establishment of Foundation Act there was uncertainty in the meaning and form of foundations, as well as strict limits on the purposes, objectives, and activities of the foundation. Hence foundations tend to be misused under "social" guise to enrich certain parties. The implementation of Foundation Act has provided answers to the necessity for the legislation on foundations establishment, management, and supervision which previously hadn't complied to the need of legal certainty. On the other hand, Foundation Act doesn't emphasize the boundary between the difference of religious foundation with the foundation in general. Whereas religious foundations in particularly Islamic foundations, have different characters compared to foundations based on merely social and humanitarian purpose, as examples their establishment purpose for the benefit of missionary endeavor, to conduct diniyah education program, to conduct a role as the formal institution of zakat, et cetera. These factors have raised questions on the extent of Foundation Act to be able to facilitate the establishment of religious foundations, in particularly Islamic foundations. This research background was incited by the thought of how important it is to emphasize the boundary between religious foundation and social or humanitarian foundations. Hence the main issues in this research are about whether Foundation Act has been able to accommodate the establishment of religious foundations, and how to establish Islamic foundation that is in accordance with the rules of Islam. Research methods used to answer these issues were explanatory research to describe and explain the process of religious foundations establishment in particularly Islamic foundations to become legal entities, evaluative research to assess the role of Foundation Act in accommodating the establishment of Religious Foundations in particularly Islamic foundations, and analytical research to analyze the establishment of religious foundations that comply with Islamic rules and Indonesian regulations. This research obtained informations by document studies, interviews and field research. The research results noted that Foundation Act hasn't entirely accommodated the religious foundations establishment in particularly Islamic foundations, since Foundation Act hasn't noticed the difference between religious foundations and foundations in general, thus compliance with the rules of Islamic law is not a requisite in Islamic foundation establishment. What haven't been accommodated by Foundation Law shall be covered by religious knowledge and activity license approval from the Ministry of Religious Affairs. Also note that the religious foundation that complies with Islamic law is a foundation based on religious morals, faith, and the Shari'a, thus establishment of religious foundations that in accordance with Islamic law means that the establishment has met the normative and juridical rules in Islamic Law.

Keywords :

Foundation, Board of Legal Foundation, Religious Foundation, Islamic Law.