

## Notary's responsibility for the deed of amendment to foundation's articles of association that does not meet the founder's quorum

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### Abstract

Legally, Articles 18 and 20 of Law Number 16 of 2001 concerning Foundations, as amended by Law Number 28 of 2004, explicitly require that any changes to a Foundation's Articles of Association (AD) be decided through a valid Board of Trustees Meeting, with a minimum quorum of 2/3 of the total number of members present. However, in practice, notaries frequently draw up deeds of amendments to a Foundation's AD without meeting the 2/3 quorum requirement, leading to legal uncertainty and internal disputes. Therefore, this article discusses the role of a notary in drafting deeds of amendments to a Foundation's AD and examines the legal consequences of deeds drawn up without a quorum of trustees.

**Keywords:** Notary responsibilities, foundation articles of association, founders' quorum, deeds void by law

### Introduction

A notary is a public official authorized to issue authentic deeds as stipulated in Law Number 2 of 2014 concerning the Position of Notary, often referred to as the UUJN. As a public official, a notary is tasked with serving the public.<sup>[1]</sup> In carrying out their duties, a notary is required to act honestly, trustworthy, carefully, impartially, independently, and always safeguard the interests of the parties. This is stipulated in Article 16 (1) of the UUJN. This is important because government-appointed notaries serve the state by serving the public's needs in the form of authentic deeds.<sup>[2]</sup> One of the notaries' important powers, which is also a public need, is drafting deeds of amendment to a foundation's Articles of Association (AD).

A foundation is a legal entity with unique characteristics compared to other forms of legal entity, such as limited liability companies or cooperatives. According to Law Number 16 of 2001 concerning Foundations, as amended by Law Number 28 of 2004 (hereinafter referred to as the Foundation Law), foundations are established for social, religious, and humanitarian purposes, without a profit-sharing orientation. Thus, the non-profit nature is the main characteristic of a foundation, distinguishing it from a profit-based business entity. The main principles underlying the foundation are the principle of legal certainty, the principle of openness, and the principle of accountability.<sup>[3]</sup> The main principles underlying a foundation are legal certainty, openness, and accountability.<sup>[4]</sup> The principle of legal certainty requires that each foundation organ have a clear legal basis in accordance with the AD and statutory regulations.<sup>[5]</sup> The principle of openness emphasizes the importance of transparency in foundation management, particularly in administrative and financial matters. Meanwhile, the principle of accountability emphasizes that foundation organs must be accountable for their actions, both to other organs within the foundation and to the public, in accordance with the foundation's social mission.

The function of a foundation in society is not limited to organizing social, educational, or religious activities, but

also as an instrument for channeling community participation in social and humanitarian fields.<sup>[6]</sup> Structurally, a foundation has three main organs: the Trustees, the Management, and the Supervisors.<sup>[7]</sup> These three organs have different functions, but they complement and limit each other. The Trustees are the foundation's highest organ, holding strategic authority, including amending the AD and appointing and dismissing administrators and supervisors. The Management is responsible for running the foundation's day-to-day operations in accordance with the foundation's vision and mission, including managing assets and implementing work programs. Meanwhile, the Supervisory Board has a control and oversight function over the foundation's management to ensure it remains in accordance with the AD and applicable legal provisions.

The presence of these three organs demonstrates the existence of a check and balance mechanism in foundation governance.<sup>[8]</sup> The Supervisory Board, as the holder of supreme authority, cannot act arbitrarily, as every strategic decision must consider the interests of the foundation as a whole. Likewise, the management board cannot act beyond its authority, as its presence is constantly monitored by the Supervisory Board and can be dismissed by the Supervisory Board if it commits a violation. The Supervisory Board itself cannot take over the functions of the management board but only ensures that management is carried out according to regulations. Thus, the existence of these three organs is intended to maintain balance, prevent abuse of authority, and ensure that the foundation remains oriented towards its non-profit goals as mandated by law.

Foundations as legal entities are regulated by the Foundation Law, which defines them as legal entities without members that pursue social, religious, or humanitarian objectives. Article 14 of the Foundation Law explicitly stipulates that a Foundation's AD must contain provisions regarding the name, purpose, assets, and procedures for amending the AD. Specifically, amendments to a Foundation's AD are only valid if approved at a board

meeting with a quorum of at least 2/3 present, unless the Foundation's AD stipulates otherwise.<sup>[9]</sup>

In practice, several cases have been found where Notaries have drawn up deeds of amendment to a Foundation's AD without first verifying the completeness and conformity of the documents with the foundation's AD.<sup>[10]</sup> An example of this case, cited by Tribun Palu.com, is the case of the Alkhairaat Foundation in Palu. The Chairman of the Foundation's Board of Trustees, identified as ABS, unilaterally changed the structure of the board of trustees without involving the other four members. Notary F then issued Deed Number 001 to replace Deed Number 008. This action clearly violates the Foundation Law because it did not meet the quorum requirement of a 2/3 board meeting. This issue eventually escalated to legal proceedings and was registered in civil case No. 150/Pdt.G/2024/PN Pal at the Palu District Court.

Another case involved Foundation A, the governing body of a private university in Aceh Besar Regency. The plaintiffs, through their attorneys, filed a written lawsuit on March 19, 2025, which was registered electronically with the Jantho District Court clerk's office on April 8, 2025, under Register No. 11/Pdt.G/2025/PN Jth. The founder and patron of Foundation A, identified as RB, unilaterally changed the board of directors without involving the other members. These changes were outlined in Deed No. 03 of 2010, drawn up before a notary public with the initials SAM in Jakarta, and subsequently re-registered in Deed No. 02 of 2025 by a notary public with the initials HM in Bekasi. The procedural inconsistencies in the changes to the foundation's AD triggered a civil lawsuit to the Jantho District Court for the cancellation of the two deeds.

Another case study cited by Dialeksis.com, an online media outlet in Aceh. The case that will be the primary focus of this research is the MIM Foundation, a foundation engaged in education. The MIM Foundation is located in a district/city in Aceh Province. The meeting to amend the Foundation's AD, outlined in Deed Number 4, was attended by only two of the four authorized trustees, thus failing to meet the 2/3 quorum requirement stipulated in the Foundation Law. Despite this, Notary A still drafted the amendment deed, which was both formally and materially legally flawed. This situation has implications for legal uncertainty and opens the door to disputes between foundation organs. Therefore, the MIM Foundation case is highly relevant for further study, as it highlights fundamental issues regarding the notary's responsibility in drafting amendments to the Foundation's AD.

This research specifically focuses on the notary's accountability in drafting amendments to the Foundation's AD that fail to meet the quorum requirement for trustees as stipulated in the Foundation's AD/Bylaws. This study focuses on Foundation "A" and analyzes the forms of administrative and civil liability that may be imposed.

This topic is interesting to research considering that various real cases and previous research findings show that there are still weaknesses in the practice of making deeds of change to the Foundation's AD, particularly regarding the quorum requirements for supervisory meetings and compliance with statutory provisions.

## Research Methods

This research uses a normative juridical method to obtain a comprehensive analysis of notary accountability in drafting

deeds of amendments to a Foundation's AD.<sup>[11]</sup> This method was chosen because it allows researchers to examine not only the legal norms applicable in the UUJN and the Foundation Law, but also their implementation in practice.<sup>[12]</sup>

With this approach, the research can assess the extent to which notaries have exercised their authority and responsibilities in accordance with legal provisions, particularly in ensuring the quorum requirements for trustees are met when amending a Foundation's AD. Furthermore, this method is also relevant for identifying gaps between legal norms governing notary responsibilities and actual practice in the field, including factors that encourage or hinder notary compliance in carrying out their duties.

This research also focuses on examining primary, secondary, and tertiary legal materials to obtain a comprehensive picture of the normative aspects of notary accountability. Primary legal materials are those with authoritative binding force, including statutory regulations (such as Law No. 30 of 2004, the Foundation Law, and the Civil and Criminal Codes), final and binding court decisions, and ratified international treaties or agreements. Secondary legal materials provide explanations, commentary, or analysis of primary legal materials, including legal textbooks, scholarly articles in legal journals, seminar papers, theses, dissertations, and commentaries by experts (doctrinaires) such as Habib Adjie and Hans Kelsen. Tertiary legal materials are supporting materials that serve as tools for locating and understanding primary and secondary legal materials. These include legal dictionaries such as Black's Law Dictionary, legal encyclopedias, regulatory indexes, glossaries, and various trusted online sources such as legal databases or official websites of state institutions.

In addition to these three types of legal materials, this study also utilized interviews with informants as non-legal material or supporting data.

The findings obtained from the normative study were then analyzed with reference to four main legal theories,<sup>[13]</sup> namely the theory of legal responsibility, the theory of the validity of deeds, the theory of imposing legal sanctions and the types of sanctions that can be imposed, and the theory of legal supervision. The legal materials that have been obtained will be processed and analyzed qualitatively, namely by analyzing, interpreting and drawing conclusions.

## Result and Discussion

### General Overview of the Position and Responsibilities of Notaries in Drafting Deeds of Amendments to Foundation Articles of Association

#### 1. The Position of Notaries in Amendments to Foundation Articles of Association

Notaries occupy a central and fundamental position as public officials with exclusive authority to provide authentic legal form to amendments to a Foundation's AD. The existence of a foundation as a philosophically and juridically recognized legal entity requires a systematic separation of assets and organization, and the role of notaries is crucial in ensuring that their deeds serve as the basis for legally valid establishment and amendments.<sup>[14]</sup> The recognition of foundations as independent legal entities separate from their founders, as affirmed in Supreme Court Decision No. 124K/Sip/1973<sup>[15]</sup>, requires notaries to act as

gatekeepers, ensuring compliance with foundation governance from the outset.<sup>[15]</sup>

The position of notaries has been further emphasized following the unification of foundation regulations through the Foundation Law. Within this legal framework, notaries serve not only as recorders but also as guarantors of legal certainty at every stage of amendments to a Foundation's AD. Notaries have the position to carry out preventive supervision, ensuring that any changes that occur have gone through the process of approval by the Minister of Law and Human Rights, so that the status of the AD, which was originally a private agreement, changes into a binding public legal document.

As a public official who prepares authentic deeds, a notary has a professional obligation to provide complete evidentiary power, both externally, formally, and materially.<sup>[16]</sup> In a deed of amendment to the AD, which is classified as a *partij* deed, the notary does rely on the statements of the parties, but the notary has the authority to ensure that these statements do not violate applicable legal provisions (the aspect of formal truth). Thus, the notary holds the authority to guarantee that the amendment to the AD is carried out legally.

The notary's position in this process is often the primary benchmark in judicial practice. As seen in District Court Decision No. 25/PDT.G/2017/PN Pya, a notarial deed that has received approval becomes a legitimate document that rebuts lawsuits against the old document. However, this position also becomes very vulnerable when the notary is negligent, as in Banda Aceh High Court Decision No. 08/PDT/2019<sup>[10]</sup>/PT BNA, which declared the deed of amendment null and void due to materially flawed supporting documents. This demonstrates that a notary's position as a public official is not absolute if it is not accompanied by thorough document examination.

The empirical context in this study, particularly in the case of Foundation A with case register No. 11/Pdt.G/2025/PN Jth, demonstrates the vulnerability of the notary's position. When the notary unilaterally recorded changes in management in an authentic deed without involving the authorized foundation organs, the notary was deemed to have violated the principle of collegiality. The notary's position here should be an instrument to prevent material defects, but in practice, it has become a tool to legitimize a legally flawed process.

A similar point was confirmed in the case of the MIM Foundation, as reported by the media outlet *Dialeksis*.<sup>[17]</sup> Notary A, who nevertheless drafted Deed Number 4 based on a meeting that did not meet the minimum quorum of 2/3 of the board of trustees as stipulated in Article 10 of the Foundation Law, neglected his position as a legality examiner.<sup>[18]</sup> As a result, a legal paradox arose in which a deed formally drafted by an authorized official was materially flawed due to its invalid basis. In this case, the notary failed to carry out his function as a gatekeeper.

The role of notaries in various foundation disputes, as outlined in Surabaya High Court Decision No. 492/PDT/2020/PT SBY, demonstrates that notaries can be held liable as co-defendants. Notary liability is multidimensional, encompassing civil, criminal, and administrative matters. This demonstrates that in amending the AD, the notary's position is not merely complementary but also assumes the legal risk for the deeds they authenticate.

Overall, it can be concluded that the notary's position in amending a foundation's AD is dualistic. On the one hand, they are officials who provide legal legitimacy through authenticated deeds, but on the other, they are legal subjects fully responsible for the integrity of the process. If a notary fails to perform their due diligence obligations, they not only fail to fulfill their role as an official guaranteeing legal certainty but also entangle themselves in complex legal disputes.

## 2. Notary Responsibilities in Amendments to a Foundation's Articles of Association

As a public official, a notary is not only tasked with documenting the wishes of the parties in an authentic deed, but also bears legal responsibility to ensure that the formalized legal act does not conflict with laws and regulations or the AD of the legal entity concerned. Article 16 (1) of the UUJN expressly requires notaries to act diligently and safeguard the interests of the parties. This obligation implies that notaries must conduct substantive verification, particularly when the deed involves changes to the foundation's organizational structure.

In amendments to a foundation's AD, the board of trustees meeting is the primary source of legitimacy. Therefore, meeting the board of trustees' quorum is not merely an administrative formality, but an essential requirement for the validity of the decision. If a notary continues to draft a deed of amendment based on a meeting that does not meet the quorum, the notary has disregarded the principle of prudence and created the possibility of a materially flawed deed.

Melvina Aldhia Assyauqi *et al.* emphasized that a supervisory meeting without a quorum would render the minutes of the meeting null and void, thereby invalidating the Deed of Statement of Meeting Decisions made based on the meeting. Furthermore, Melvina stated that a notary can be held civilly liable under Article 1365 of the Civil Code if their negligence results in losses, because in this position the notary is no longer neutral, but has contributed to the emergence of unlawful acts.<sup>[19]</sup>

Rahmadhani Sri Riszky expands this construction of responsibility by positioning the notarial deed as the foundation for issuing a Decree of the Minister of Law and Human Rights. If the deed is defective, the Ministerial Decree derived from it also loses its legal basis. In such circumstances, the notary cannot hide behind the pretext that the ratification was carried out by the Minister, because the material defects in the deed remain inherent and are the primary cause of administrative cancellation.<sup>[20]</sup>

This view is reinforced by Yulius Chandra, who stated that the cancellation of a foundation amendment deed results in the foundation returning to its last valid AD (*status quo ante*) and nullifying all changes to its organs stemming from the deed. This consequence demonstrates that a single defective deed can undermine the entire structure of a foundation, placing the notary's role at a critical juncture in maintaining the foundation's legal stability.<sup>[21]</sup>

This construction is clearly evident in the case of the Modern Islamic Madrasah Foundation (MIM) Langsa. Deed of Amendment No. 04 was drawn up based on the advisory meeting on January 6, 2025, which, in fact, did not meet the quorum, was held without adequate notice, and was conducted when the number of advisors was still full. The meeting mechanism even deviated from the Foundation's

AD. Nevertheless, the notary still documented the meeting's results in a deed of amendment, which then served as the basis for changes to the advisory and management structure and was submitted to the Ministry of Law and Human Rights.

This deed became the starting point for the foundation's internal conflict, followed by an examination by the Notary Supervisory Board, and ultimately a dispute at the Banda Aceh District Court and the Banda Aceh State Administrative Court. This series of events demonstrates that notarial deeds are not merely administrative products, but rather instruments that create new legal realities. When these instruments emerge from flawed processes, the impact is systemic.

If Deed of Amendment No. 04 is declared legally flawed, not only will the amendment to the AD be invalidated, but all subsequent decisions stemming from it (including the appointment of additional advisors, the appointment of management, and foundation policies) also lose legitimacy. In this context, the notary occupies a central causal position, as without the deed, the series of legal consequences would not have occurred.

Therefore, the notary's responsibility cannot be reduced to a mere ethical or administrative violation. Negligence in ensuring a quorum of advisors fulfills the elements of an unlawful act if it results in losses and opens the door to civil liability. The notary is no longer merely a "collaborator" but a key actor in the formation of the foundation's illegitimate structure. It can be affirmed that the notary is the gatekeeper of the legality of changes to the Foundation's AD. Ignoring fundamental requirements such as a quorum of trustees means allowing the creation of a flawed deed that has the potential to undermine the foundation's internal order and create disputes across legal regimes. Therefore, the principle of prudence is not an option, but an absolute obligation to prevent systemic damage stemming from a single deed that has lost its legal legitimacy from the outset.

A quorum for the board of trustees in amending a foundation's AD is a fundamental legal requirement, not merely a procedural formality. The quorum requirement serves as a tool for controlling the foundation's internal power and guaranteeing the legitimacy of decisions by its highest governing body. Violation of this requirement creates material defects in the board of trustees meeting, which then spread to the deed of amendment to the AD drawn up based on that meeting. The deed resulting from such a process is not legally binding and implies the foundation's reversion to the most recent valid AD (status quo ante).

Material defects in the deed of amendment do not stop at the foundation's internal civil law but extend to the realm of state administration. Approval by the Minister of Law and Human Rights does not eliminate the substantial defects inherent in the deed, as such administrative decisions are entirely dependent on the validity of the submitted notarial deed. Therefore, a Ministerial Decree cannot be considered absolute legitimacy. When the underlying deed is flawed, the administrative approval is vulnerable to revocation, and all decisions of the foundation's organs derived from it lose their legal basis. The principle of derivative invalidity is relevant because a single violation in the early stages of amending the AD can have a domino effect, delegitimizing the foundation's organizational structure, policies, and even legal relationships with third parties.

In this context, the notary occupies a central causal position. Notaries are not merely recorders of the parties' wishes, but also gatekeepers of the legality of amendments to the foundation's AD. A notary's failure to ensure a quorum for the board of trustees is not only an ethical or administrative violation, but can also be classified as an unlawful act if it results in losses. The case of the Langsa Modern Islamic Madrasah Foundation (MIM) concretely demonstrates how a deed of amendment drawn up based on a flawed meeting can become the starting point for internal conflicts, notarial oversight examinations, and even civil and administrative disputes. This confirms that a deed that lacks legal legitimacy from the outset has the potential to undermine the entire foundation system. Therefore, the principle of notarial prudence must be understood as an absolute obligation, as failure to implement it can lead to systemic damage that goes beyond the mere cancellation of a single deed.

#### **a. Practitioners' Views on Notary Responsibilities**

The results of interviews with notaries provide important nuances regarding the limits and scope of a notary's responsibility when a deed of amendment to the AD is declared legally flawed. All sources agreed that a notary cannot automatically be held accountable, but rather must first examine the inherent elements of error. In this regard, Ika Susilawati stated that a notary is "not automatically" responsible, but "must first examine whether there is only an element of negligence." According to her, "usually only a verbal warning is sufficient. However, if the notary already knows the quorum of advisors is not met, so he fabricates and makes false statements in the deed he has drawn up, this can certainly be a criminal matter. However, all of this usually goes through an examination process by the Notary Supervisory Board."<sup>[22]</sup> This statement emphasizes the gradation of responsibility based on the level of error (*culpa vs. dolus*).

Muhammad Nur stated that "accountability arises depending on the type of violation. The potential for liability arises in three legal areas: civil liability, which can take the form of compensation; criminal liability, which can involve imprisonment; and administrative/ethical liability, which can involve verbal or written warnings or revocation of a practice license. Essentially, a notary can be held accountable for a legally flawed deed."<sup>[23]</sup>

Siti Rahmah provides a crucial perspective regarding the division of responsibility between the notary and the parties. She stated, "If the deed was made solely due to the notary's negligence, then the notary can automatically be held accountable. However, if the deed is made solely due to the notary's negligence, the notary is not automatically liable. However, if the fault is purely due to the parties' negligence, such as false statements from the parties, the notary is not automatically liable. Therefore, the defect must be examined first. If the liability is civil, criminal, or administrative, the fault must also be examined. If it is simply a violation of the code of ethics, then administrative liability can be imposed. If there is a loss to the parties, then civil liability is imposed. And if there is forgery, then criminal liability is imposed."<sup>[24]</sup>

Siti Rahmah's statement is highly relevant to the MIM Langsa Foundation case. If a notary is proven to have been negligent in verifying meeting documents without any involvement in fabrication or forgery, their liability is likely

to be administrative. However, if the notary knew the meeting was invalid but still prepared the deed with false information, criminal liability may be considered.

### **b. Identification of the Injured Party**

Regarding the parties potentially harmed by a defective deed, the sources offered consistent views. Ika Susilawati stated that "other advisors who are not present may be disadvantaged because their rights are being disregarded, which could lead to a lawsuit to annul the deed from the absent advisors. Furthermore, even the notary who prepared the deed could also be disadvantaged, for example, they could be sued civilly by other advisors because the amendment to the deed did not comply with the quorum of the advisors."<sup>[25]</sup>

Muhammad Nur stated that "the parties potentially harmed by the validity of the amendment to the deed are the foundation's organs themselves. The type of harm they could experience is the loss of authority in managing the foundation. If the deed is legally flawed, it will impact the legal status of the foundation's deed, and the deed could be declared null and void."<sup>[26]</sup>

Siti Rahmah also stated that "members or administrators of the foundation who are directly affected by legally flawed amendments may lose their rights within the foundation."<sup>[27]</sup> This interview finding reinforces the previous analysis that quorum violations not only harm the advisors who are not included, but also have the potential to cause losses for the notary himself if sued in a civil lawsuit.

### **Conclusion**

The notary's position in drafting a deed of amendment to a Foundation's AD is as a public official authorized to draft authentic deeds based on Article 15 (1) letter a of the UUN. However, this authority is balanced by an imperative due diligence obligation. Notaries cannot be positioned as passive recorders of the parties' wishes, but are obliged to verify the validity of the board of trustees' meeting, including verifying the fulfillment of the minimum quorum requirement of 2/3 as stipulated in Article 10 (1) of the Foundation Law. If a notary neglects this obligation, they may be named a co-defendant in a foundation dispute and held legally accountable.

A deed of amendment to a Foundation's AD drawn up without a quorum for the board of trustees is legally null and void (*nietig van rechtswege*) due to a violation of the mandatory provisions of Article 10 (1) of the Foundation Law. This nullity applies retroactively (*ex tunc*), so the deed is deemed never to have existed, the changes to the foundation's organizational structure are invalid, and the foundation must revert to the last valid AD (*status quo ante*). The principle of derivative invalidity asserts that defects in the deed extend to all decisions of the foundation's organs derived from it, and the Minister of Law's approval cannot erase material defects in the deed.

### **Suggestions and Recommendations**

Notaries are expected to always uphold the principle of prudence by carefully checking the quorum requirements for a board of trustees meeting before drafting a deed of amendment to a Foundation's AD. If the quorum is not met, the notary is obliged to refuse to draft the deed or provide legal counsel to the client regarding the legal consequences. Meanwhile, the community and Foundation Organs are

expected to increase legal awareness regarding the importance of valid procedures for changing the AD, holding advisory meetings by fulfilling quorum requirements, and proactively reporting suspected notarial violations to the Notary Supervisory Board.

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