

## RINGKASAN

NAUFAL SAJID RAMADHAN, Program Studi Magister Kenotariatan, Fakultas Hukum, Universitas Jenderal Soedirman, Analisis Hukum Dualisme Yayasan terhadap Kepemilikan Aset Universitas Darussalam Ambon (Studi Putusan Mahkamah Agung Nomor 2860 K/Pdt/2016), Komisi Pembimbing, Ketua: Dr. Sulistyandari, S.H., M.Hum., dan Anggota : Dr. Rahadi Wasi Bintoro, S.H., M.H.

Yayasan merupakan badan hukum yang terdiri atas kekayaan yang dipisahkan dan diperuntukkan untuk mencapai tujuan tertentu di bidang sosial, keagamaan, dan kemanusiaan, yang tidak mempunyai anggota. Kekayaan yayasan tidak dapat dialihkan dan dibagikan kepada organ yayasan, namun dalam prakteknya aset kekayaan yayasan menjadi obyek sengketa antara Yayasan Darussalam Maluku (YDM) dengan Yayasan Pendidikan Darussalam Maluku (YPDM) sehingga menimbulkan dualisme yayasan terhadap kepemilikan aset Universitas dalam putusan Mahkamah Agung Nomor 2860K/PDT/2016

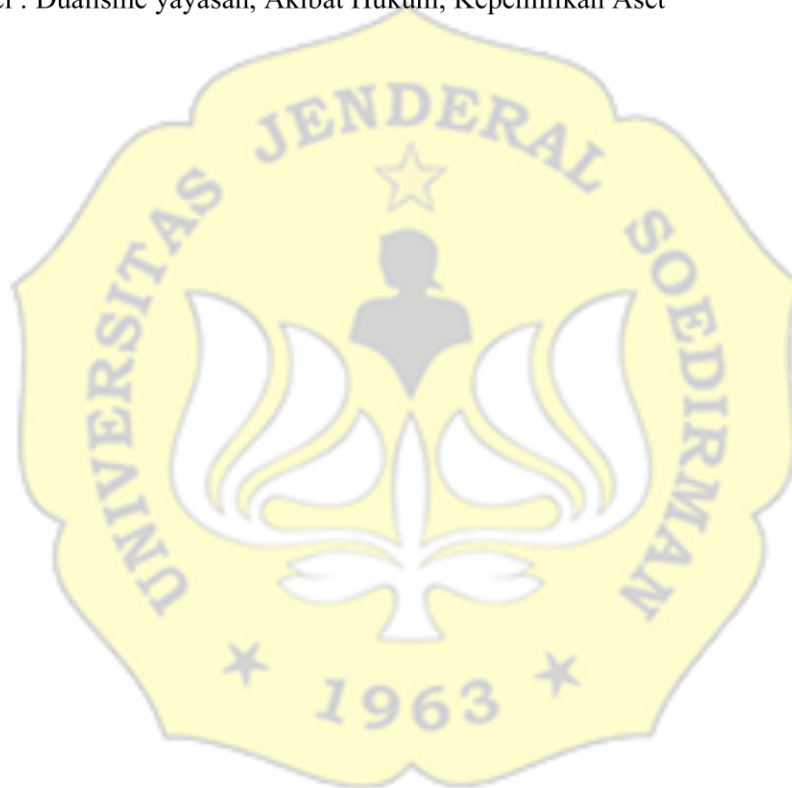
Tujuan penelitian ini adalah menganalisis dan mengkaji pertimbangan hukum hakim terhadap keabsahan akta pendirian Yayasan Pendidikan Darussalam Maluku dalam Putusan Mahkamah Agung Nomor 2860 K/PDT/2016 dan menganalisis akibat hukum terhadap dualisme kepengurusan yayasan atas kepemilikan aset Universitas Darussalam Ambon.

Metode Penelitian ini menggunakan metode yuridis normatif dengan spesifikasi penelitian yang dipergunakan adalah bersifat preskriptif. Penulisan menggunakan data primer dan data sekunder. Metode Pengumpulan Bahan Hukum dengan menggunakan studi kepustakaan dengan metode penyajian data disajikan dalam bentuk teks naratif deskripsi. Analisis Data dianalisis secara normatif kualitatif.

Hasil Penelitian tesis ini bahwa Hakim Pengadilan Tinggi telah mengesampingkan Pasal 15 A Peraturan Pemerintah Nomor 2 tahun 2014 yang berbunyi yayasan yang tidak diakui sebagai badan hukum tetap dapat menyesuaikan anggaran dasarnya dengan menyebutkan asal usul kekayaan yayasan dari yayasan lain dalam premise aktanya maka pertimbangan hukum Hakim Pengadilan Tinggi Ambon dalam putusannya tersebut telah salah mempertimbangkan dengan menyatakan bahwa Akta Pendirian Yayasan YPDM Nomor 12 tanggal 6 Maret 2014 yang dibuat di hadapan Notaris Husain Tuasikal S.H, M.Kn tidak mempunyai kekuatan hukum mengikat karena menurut Hakim Pengadilan Tinggi Akta tersebut bertentangan dengan ketentuan Pasal 71 Undang Undang Nomor 28 Tahun 2004 tentang Yayasan. Dilain sisi, Hakim Mahkamah Agung kurang tepat dalam menganalisa Pasal 15 A Peraturan Pemerintah Nomor 2 Tahun 2013 terutama terkait dengan permohonan pengesahan yang melampirkan pernyataan pengurus yayasan mengenai keabsahan kekayaan yayasan. Dalam rangka penyesuaian yayasan terdapat aspek prosedural dan substansi yang tidak terpenuhi pada Akta Notaris Nomor 12 Tahun 2014 dan permohonan surat keputusan Nomor : AHU.07444.50.10.2014 Yayasan Pendidikan Darussalam Maluku karena notaris tidak melakukan proses verifikasi lebih lanjut terhadap keabsahan kekayaan Yayasan Pendidikan Darussalam Maluku yang sebelumnya telah digunakan oleh Yayasan Darussalam Maluku. Berdasarkan uraian tersebut, Akta Notaris Nomor 12 Tahun 2014 dalam permohonan pengesahan kepada kemenkumham terdapat cacat meteril sehingga menimbulkan kepastian hukum yang tidak jelas terhadap kepemilikan aset Universitas Darussalam Ambon. Hasil penelitian kedua Aset kekayaan Yayasan Darussalam Maluku Akta Notaris Nomor 31 tahun 2011 berasal dari peralihan kekayaan Yayasan Darussalam sebagaimana tertuang dalam Akta Alih kelola Nomor 21 tahun 2012, sedangkan Aset kekayaan Yayasan Pendidikan Darussalam Maluku tertera pada premise Akta Notaris Nomor 31 tahun 2014 sesuai ketentuan pasal 15 A Peraturan Pemerintah Nomor 2 Tahun 2013 yang berbunyi bagi yayasan yang tidak diakui sebagai

badan hukum tetap dapat menyesuaikan anggaran dasarnya dengan cara mendirikan yayasan baru yang memuat premise akta dan asal usul kekayaan yayasan. Kedua Peristiwa hukum tersebut menimbulkan kepastian hukum yang tidak jelas terhadap kepemilikan aset Universitas Darussalam Ambon. Universitas Darussalam Ambon yang sebelumnya dalam pengelolaan Yayasan Darussalam kemudian menjadi obyek sengketa antara Yayasan Darussalam Maluku dengan Yayasan Pendidikan Maluku menimbulkan dualisme yayasan terhadap kepemilikan aset Universitas Darussalam Ambon. Yayasan Darussalam yang tidak diakui sebagai badan hukum berakibat hukum pada yayasan yang tidak dapat menggunakan kata yayasan didepan namanya dapat dibubarkan berdasarkan putusan pengadilan atas permohonan kejaksaan atau pihak yang berkepentingan sesuai ketentuan dalam pasal 71 UUY.

Kata Kunci : Dualisme yayasan, Akibat Hukum, Kepemilikan Aset



## SUMMARY

*NAUFAL SAJID RAMADHAN, Master of Notary Study Program, Faculty of Law, Jenderal Soedirman University, Analysis of Foundation Dualism Law on Asset Ownership at Darussalam University, ambon (Study of Supreme Court Decision Number 2860 K/Pdt/2016), Advisory Commission, Chairman: Dr. Sulistyandari, S.H., M.Hum., and Members : Dr. Rahadi Wasi Bintoro, S.H., M.H.*

*Foundations are legal entities consisting of separate assets and intended to achieve certain goals in the social, religious and humanitarian fields, which do not have members. Foundation assets cannot be transferred and distributed to foundation organs, but in practice foundation assets are the object of dispute between the Darussalam Maluku Foundation (YDM) and the Darussalam Maluku Education Foundation (YPDM) resulting in dualism of the foundation towards ownership of University assets in the Supreme Court decision Number 2860K/ PDT/2016*

*The purpose of this study was to analyze and examine the legal considerations of judges regarding the validity of the founding deed of the Darussalam Maluku Education Foundation in the Supreme Court Decision Number 2860 K/PDT/2016 and analyze the legal consequences of dualism in the management of the foundation for ownership of assets at Universitas Darussalam Ambon. This research uses a normative juridical method with the research specifications used are prescriptive. Writing uses primary data and secondary data. . Legal Material Collection Method using literature study with data presentation method presented in the form of descriptive narrative text. Analysis The data were analyzed in a qualitative normative manner.*

*This research method uses a normative juridical method with the research specifications used are prescriptive in nature. Writing using primary data and secondary data. Methods for collecting legal materials using literature studies with the method of presenting data presented in the form of descriptive narrative text. Analysis Data were analyzed normatively qualitatively.*

*The research results of this thesis show that the High Court Judge has ruled out Article 15 A of Government Regulation Number 2 of 2014 which reads that foundations that are not recognized as legal entities can still adjust their articles of association by mentioning the origins of the foundation's wealth from other foundations in the premise of the deed, so the legal considerations of the Court Judge Ambon High Court in its decision has wrongly considered by stating that the Deed of Establishment of the YPDM Foundation Number 12 dated 6 March 2014 made before Notary Husain Tuasikal S.H, M.Kn does not have binding legal force because according to the High Court Judge the deed is contrary to the provisions of Article 71 Law Number 28 of 2004 concerning Foundations. On the other hand, the Supreme Court judges were not quite right in analyzing Article 15 A of Government Regulation Number 2 of 2013, especially in relation to the application for validation which attached a statement from the foundation management regarding the legitimacy of the foundation's assets. In the context of adjusting the foundation, there are procedural and substantive aspects that are not fulfilled in the Notary Deed Number 12 of 2014 and the application for decision letter Number: AHU.07444.50.10.2014 Yayasan Pendidikan Darussalam Maluku because the notary did not carry out a further verification process of the legitimacy of the assets of the Maluku Darussalam Education Foundation which previously used by the Darussalam Maluku Foundation. Based on this description, the Notarial Deed Number 12 of 2014 in the application for approval to the Ministry of Law and Human Rights contained material defects that gave rise to unclear legal certainty regarding the ownership of assets at Universitas Darussalam Ambon. The results of the second study The assets of the Darussalam Maluku Foundation Notarial Deed Number 31 of 2011 came from the transfer of assets of the Darussalam Foundation as stated in the Transfer of Management Deed Number 21 of 2012, while the assets of the Maluku Darussalam Education Foundation are listed on the premise of the Notary Deed Number 31 of 2014 in accordance with the provisions of the article 15 A Government Regulation Number 2 of 2013 which reads that foundations that are not recognized as legal entities can still adjust their articles of association by establishing a new foundation which contains the premise of the deed and the origin of the foundation's assets. The two legal incidents gave rise to unclear legal certainty regarding the ownership of assets at Universitas Darussalam Ambon. Darussalam Ambon University, which was previously under the management of the Darussalam Foundation, later became the object of a dispute between the Maluku Darussalam Foundation and the Maluku Education Foundation, giving*

*rise to the dualism of the foundation in terms of ownership of the assets of Darussalam Ambon University. Darussalam foundations that are not recognized as legal entities have legal consequences for foundations that cannot use the word foundation in front of their names. They can be dissolved based on a court decision at the request of the prosecutor or interested parties in accordance with the provisions of Article 71 UUY.*

*Keywords: foundational dualism, Legal Consequences, asset ownership*

