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Legal Study on the Establishment of Ibtidaiyah Madrasah (Mi) Ar-Ridho, Tanjung Mulia Village, Kampung Rakyat District, Labuhan Batu Selatan Regency Based on Law No 28 Year 2004 Concerning Amendment to Law Number 16 Year 2001 Concerning Foundations

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#### **Abstract**

This research was conducted to find out about the establishment of Madrasah Ibtidaiyah Ar-ridho, Tanjung Mulia Village, Sub-District of Kampung Rakyat, South Labuhanbatu Regency based on Law No. 28 of 2004 concerning Amendments to Law No. 16 of 2021 concerning Foundations. This research method The research method used by the author is an empirical normative research method, where this research uses the incorporation of normative legal elements and is then supported by adding data from field research. The approach taken by the author is an empirical juridical approach, namely an approach taken by looking at the reality that exists in practice in the field. This approach is also known as a sociological approach which is carried out directly in the field. This research was conducted on Protocol No. 01 Dusun Rantau Kapal Tanjung Mulia Village, Kampung Rakyat District, South Labuhanbatu Regency. This research was reviewed based on compliance with the Regulation of the Minister of Religion of the Republic of Indonesia Number 14 of 2014 concerning the Establishment of Madrasas organized by the Government and Madrasah Penegrian Organized by the Community.

Keywords establishment; foundation; madrasah ibtidaiyah



## I. Introduction

Foundation is a legal entity consisting of assets that are separated and intended to achieve certain goals in the social, religious and humanitarian fields, which has no members. Foundation is also a legal entity that functions to carry out education and learning, this is also contained in Article 51 Paragraph (1) of the Law on the National Education System

The management of early childhood education units, basic education, and secondary education is carried out based on minimum service standards with school/madrasah-based management principles.

As referred to in the National Education Law, the principles in the implementation of the right to education for citizens are the fulfillment of the right to education. However, in practice the Foundation seems to ignore and does not fully fulfill the principles of the right to education contained in the National Education Law. By as if showing that they do not have the burden of responsibility as an educational institution and are more inclined towards a livelihood or source of wealth for Foundation administrators.

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Therefore, the issuance of Law Number 16 of 2001 as amended by Law Number 28 of 2004 concerning Foundations is expected to provide a correct understanding to the community and restore its function as a legal institution in order to achieve certain goals in the social, religious, and social fields Humanity than foundation.

At present, a Foundation is a legal entity consisting of assets that are separated and intended to achieve certain goals in the social, religious and humanitarian fields, which has no members. The law governing foundations is Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations. Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations requires a regulation regarding its implementation, so the Government Regulation of the Republic of Indonesia Number 63 of 2008 concerning Implementation of Law on Foundations is established.

A foundation which is a legal entity has rights and obligations, unlike other business entities, the establishment of a foundation may not be for profit.

Foundations as business entities are only allowed to carry out business activities to support the achievement of its goals and objectives. This is because the foundation is a legal entity that is intended to achieve certain goals in the social, religious, and humanitarian fields. So, a foundation can establish a business entity and/or participate in a business entity, but not for profit but to achieve the purpose of establishing the foundation. With the Foundation Law, a clear legal entity status in a foundation is obtained because of the foundation's deed of establishment, and the requirements for its establishment as contained in Law No. 16 of 2014 are as follows:

- a. Founded by one or more people
- b. There is wealth that is separated from the wealth of its founder.
- c. Done by notarial deed and made in Indonesian
- d. Must obtain approval from the Minister of Law and Human Rights.
- e. Announced in the Supplement to the State Gazette of the Republic of Indonesia
- f. May not use a name that has been used legally by another foundation or is contrary to public order and decency.
- g. The name of the foundation must be preceded by the word "Foundation".

According to Astuti et al (2019) Education is an obligation of every human being that must be pursued to hold responsibilities and try to produce progress in knowledge and experience for the lives of every individual. Education is one of the efforts to improve the ability of human intelligence, thus he is able to improve the quality of his life (Saleh and Mujahiddin, 2020). Education is expected to be able to answer all the challenges of the times and be able to foster national generations, so that people become reliable and of high quality, with strong characteristics, clear identities and able to deal with current and future problems (Azhar, 2018).

Madrasah is a formal education unit under the guidance of the Minister of Religion which organizes general and vocational education with the peculiarities of the Islamic religion which includes Raudhatul Athfal, Madrasah Tsanawiyah, Madrasah Aliyah, and Vocational Madrasah Aliyah.

Madrasah Ibtidaiyah, hereinafter abbreviated as MI, is a formal education unit that organizes general education with the specificity of Islam which consists of 6 (six) levels at the basic education level. Madrasah Ibtidaiyah Ar-ridho was established with the aim of participating in the success of government programs in the field of education and community empowerment as well as compulsory education programs in accordance with Government Regulation Number 47 of 2008 concerning Compulsory Education.

In accordance with what is contained in Article 3 point paragraph 2 of Government Regulation Number 47 of 2008 are:

The implementation of compulsory education in the formal pathway is carried out at least at the basic education level which includes SD, MI, SMP, MTs, and other equivalent forms.

Madrasah Ibtidaiyah Ar-ridho was founded on the grounds that the role of foundations in Indonesian education is very influential in the community in providing education. Concern for the education of the nation's children is a shared responsibility to guarantee the right to education in order to realize and also prosper the ideals of the nation and especially for the local community in the field of education.

In terms of writing this research, of course it has a research purpose, it is intended as a strong foundation in order to achieve the predetermined goals. This research has the following objectives; a) To know and also to clarify how the process of establishing Madrasah Ibtidaiyah (MI) Ar-Ridho, Tanjung Mulia Village, Village People's Village, Labuhan Batu Selatan Regency. b) To Know the Establishment of Madrasah Ibtidaiyah (MI) was established in accordance with Law No. 28 of 2004 concerning foundations.

### II. Research Method

The research method used by the author is an empirical normative research method, where this research uses the incorporation of normative legal elements and is then supported by additional data from field research. The approach taken by the author is an empirical juridical approach, namely an approach taken by looking at the reality that exists in practice in the field. This approach is also known as a sociological approach which is carried out directly in the field. This method concerns the application of normative legal provisions or laws in relation to certain legal events that occur in society. In this case, the author conducted direct research at Madrasah Ibtidaiyah, Tanjung Mulia Village, People's Village, Labuhan Batu Selatan Regency to retrieve the data that the author needed in this paper.

## 2.1 Data Source

This type of research is secondary data consisting of: One, primary legal materials including Law no. 16 of 2001 jo. Law No. 28 of 2004 concerning Foundations; two, secondary legal materials are readings that are relevant to the material being studied; three, tertiary legal materials, namely by using legal dictionaries and Indonesian dictionaries.

# 2.2 Data Collection Technique

The technique used in this study to collect the results of this research data is through library research in the form of taking data from literature or scientific writings related to the Foundation.

#### III. Results and Discussion

3.1 The Process of Establishing a Madrasah Ibtidaiyah in Tanjung Mulia Village, Kampung Rakyat Sub-district, Labuhan Batu Selatan Regency Based on the Regulation of the Minister of Religion of the Republic of Indonesia Number 14 of 2014 concerning the Establishment of Madrasas organized by the Government and Madrasah Penegrian Organized by the Community

Madrasah comes from the root word darrasa, namely learning, while madrasah means a place of study or formal school. According to the layman, madrasas are educational institutions at the primary and secondary levels that teach only Islam, a combination of Islamic religious knowledge and general science, as well as Islamic teachings-based science.

The mosque is a place of worship for Muslims and in its development is also used as a place of learning for Muslims.

At first the education system in the mosque with the madrasa was the same. and from the status of the building, between the mosque and the madrasa are both waqf. The basic difference between madrasa and mosque education lies in the control of the founders. Education in the mosque is free from the control of the founder, while madrasa education is always controlled by the founder.

Madrasah Ibtidaiyah, as stated in PP no 28/1990 article 1 (3) concerning Basic Education that "Elementary Schools and First Level Secondary Schools with Islamic characteristics which are organized by the respective Ministry of Religion are called Madrasah Ibtidaiyah, Madrasah Tsanawiyah". Elementary schools, as stated in PP no 28/1990 article 1 (2) concerning Basic Education that "Elementary Schools are a form of basic education unit that organizes a six-year program". In the Big Indonesian Dictionary (KBBI) madrasah ibtidaiyah means a basic level religious (Islamic) school. Madrasah Ibtidaiyah (MI) has the same meaning as Elementary School (SD), but its management is carried out by the Ministry of Religion and has an Islamic background. Madrasah Ibtidaiyah education is carried out for 6 years, starting from grade 1 to grade 6. Graduates of Madrasah Ibtidaiyah can continue their education to Madrasah Tsanawiyah (MTs) or junior high school (SMP) levels. Indonesia requires all of its population to attend SD/MI for 6 years and SMP/MTs for 3 years.

Ar-Ridho Private Ibtidaiyah Madrasah is one of the basic education levels under the auspices of the Ar-Ridho Foundation, Tanjung Mulia Village. Ar-ridho Foundation itself is an Education Foundation that has been ratified by the MINISTRY OF LAW AND HUMAN RIGHTS OF THE REPUBLIC OF INDONESIA DIRECTORATE GENERAL OF GENERAL LAW ADMINISTRATION based on Decree Number: AHU-4185.AH.01.04. The year 2010.

To establish Madrasah Ibtidaiyah, it is necessary to pay attention to the requirements as regulated in the Legislative Regulations, as stated in the Regulation of the Minister of Religion of the Republic of Indonesia Number 14 of 2014 concerning the Establishment of Madrasas which are organized by the Government and the State of Madrasas organized by the community listed in CHAPTER II is as follows:

#### **Section 2**

a. The establishment of Madrasahs is determined by the Minister after obtaining approval from the Minister in charge of the affairs of the utilization of the state apparatus.

- b. The establishment of Madrasas as referred to in paragraph (1) is based on the following considerations:
  - 1. community needs
  - 2. regional development needs;
  - 3. the need for access to education in the expansion areas, borders between countries, outermost, remote, and isolated; and
  - 4. acceleration of equitable distribution of the quality of madrasa education.

#### Article 3

- a. Madrasa establishments must meet the following requirements:
  - 1. analysis of community needs;
  - 2. recommendation from district/city government and/or provincial government; and
  - 3. plans and stages of development and development of madrasas.
- b. The requirements for the establishment of Madrasas as referred to in paragraph (1) shall be stated in the form of a proposal submitted by the Director General to the Minister.
- c. The plans and stages of development and development of madrasas as referred to in paragraph (1) letter c include, among others, curriculum implementation, number of students, number and qualifications of educators and education staff, educational facilities and infrastructure, education financing plans, learning processes, learning evaluation systems and educational programs, and madrasah organization and management.
- d. The plans and stages of development and development of madrasas as referred to in paragraph (3) are directed at achieving the National Education Standards.
- e. Further provisions regarding the requirements for Madrasah Establishment as referred to in paragraph (1) shall be stipulated by the Director General.

Based on this regulation, the establishment of the Madrasah Ibtidaiyah Ar-ridho in Tanjung Mulia Village is fully in accordance with the contents of the Minister of Religion Regulation No. 14 of 2014 with the GIVING OF LICENSE FOR ESTABLISHMENT / OPERATION OF PRIVATE IBTIDAIYAH MADRASAH AR-RIDHO Based on the Decree of the Minister of Religion of the Republic of Indonesia Number 151 of 2016, Stipulated in Medan On February 15, 2016 Stipulation by the Minister of Religion of the Republic of Indonesia Head of the Regional Office of the Ministry of Religion of North Sumatra Province.

And has been accredited with a "B" rating based on the Decree of the Determination of Accreditation Results BAP-S/M Number 851/BAP-SM/PROVSU/LL/XII/2015 which was legalized by the Head of the Provincial Accreditation Board for Schools/Madrasah of North Sumatra Province.

3.2 The process of establishing Madrasah Ibtidaiyah in Tanjung Mulia Village, Kampung Rakyat Sub-district, Labuhan Batu Selatan Regency based on Law No. 28 of 2004 concerning Amendments to Law No. 16 of 2001 concerning Foundations

Foundation Legal Arrangements in Indonesia According to Law No. 16 Year 2001 jo. Law No. 28 OF 2004 Foundation in Dutch is known as "stichting" and in English "foundation". Stichting means institution or foundation, derived from the word stichten which means to build or establish. Foundation, which expresses the meaning, a foundation is a legal entity that has assets that have been separated from their owners, so that they are

independent with certain aims and objectives that are fair and are managed by a board without members.

The existence of the Ar-ridho Foundation has been going on since 2010 and was founded by H. Usman Hasibuan, even the role of the Ar-ridho Foundation in society has grown very rapidly and has touched various sectors in the field of education. The foundation of the foundation is based on the habits of the people who trust the arridho foundation as a place to gain knowledge at the elementary school or private Islamic Madrasah level. The basis of education is to educate the younger generation so that they will not forget the future and think about it. The basis is a legal entity and has goals in the social field, such as religion and humanity. The base is not established in this way, of course, they must comply with the provisions of the law. The requirements for the establishment of the foundation must be met, the foundation must have a role and function.

In addition, establishing a foundation of course there are several steps to guide the foundation. There are steps in the process of becoming a legal entity for a foundation:

- a. Establishment One or more people form the foundation upon which wealth must be shared. They should be based on agreement to achieve social diversity and humanitarian goals. The process of laying the foundation is first carried out by a notary.
- b. Ratification and holding office for 5 years. The composition of the Foundation's management includes the Secretary General and the Treasurer. A director of a foundation may lose his position if he does something he considers to be training that undermines the foundation. The coach may issue written notice to the relevant agency to remove the manager.
- c. Supervisor of the foundation In addition to the supervisor, there must be someone who is responsible for supervising the implementation of the foundation. The Fund's Supervisory Board is competent in the event of errors or omissions that must advise on the implementation of the Fund's activities. In a foundation, at least one controller is responsible for managing the controls. For people who can become the foundation's auditors, they are the ones who can take legal action. Those in charge of the foundation must have good faith and have a high level of responsibility to fulfill this task. Observers can fire the board if there are compelling reasons for the dismissal.

After the foundation is laid, a unit must be formed in the foundation. As discussed in understanding the foundation that the foundation is not a member. Organic funds, which will then play an active role in management. Basic organs, including:

- 1. Trustees Foundation Trustees are official bodies that may not be permitted for directors or auditors. The person who may be the trustee of the foundation is determined by meeting the founding members of the foundation or who are believed to be highly dedicated. The basics are done right.
- 2. Foundation management In addition to building a foundation, of course there must be a foundation administrator at the foundation. Foundation management is responsible for managing the foundation management. The requirement for a person to be on the foundation's board is that the candidate for foundation management must understand and be able to understand the law. The director of the foundation may not be the auditor or supervisor of the foundation. The board of directors of the foundation is appointed by the head of the foundation established work programs and activities.

In addition to being a key role, there are also roles related to the functioning of foundations, such as non-profit organizations, foundations have a role to play in supporting human welfare. In addition, this foundation functions to provide protection, support and

services in the social, religious and humanitarian fields. Within a foundation, of course, there will be a foundation... then it will play an active role in governing the foundation. The position of the foundation in the midst of society aims to ensure the development of science, so that a person's right to demand education can be contaminated. Bases should also be standardized to achieve quality improvements.

The establishment of the Ar-Ridho Tanjung Mulia Foundation Based on the Deed of Establishment submitted by Notary Lindawaty, SH, M.Kn Number 02/Not/IX/2010 dated 22 September 2010 has been ratified by the Ministry of Law and Human Rights of the Republic of Indonesia Number: AHU-4185. AH.01.04 of 2010. The establishment of the Ar-Ridho Tanjung Mulia Private Islamic Madrasah already has legality.

To view the change rules in the establishment of a foundation legal entity can be seen from the previous and subsequent regulations in Law no. 16 of 2001 and amendments to Law no. 28 of 2004 as follows:

**Table 1.** Changes to Foundation Law Before and After

No.	Before Law No. 16 of 2001	
1.	Establishment of Foundations Does	The establishment of a foundation
	Not Need Approval from the	requires approval from the government.
	Government.	
2.	There is no need for approval from	Need approval from the Minister of Law
	the Minister of Law and Human	and Human Rights,
	Rights.	
3.	Foundation Organ Structures are	Foundation Organ Structures are not
	allowed to Concurrently Position the	allowed Concurrently Foundation
	Foundation	Positions
4.	There is no limit to the working	There is a limit on the working period of
	period of Foundation Organs	Foundation Organs
5.	The name of the foundation is	Foundation name is not allowed to be the
	allowed to be the same	same
6.	Foundation cannot be	Foundation Can Be Bankrupt/Bankrupt
	bankrupt/bankrupt	

The things that must be fulfilled in establishing the Foundation are as follows:

- a) Foundation Establishment Deed from Notary
- b) Certificate of Company Domicile from Kelurahan and Subdistrict
- c) Certificate of Registration/NPWP from the Tax Office
- d) Decree of the Ministry of Law and Human Rights of the Republic of Indonesia
- e) Announcement in the State Gazette of the Republic of Indonesia from the State Printing Corporation of the Republic of Indonesia
- f) Foundation Registration Certificate from the Social Service.

The requirements and documents that must be prepared to establish a foundation include:

- 1) Foundation Name
- 2) Foundation Initial Wealth Amount
- 3) Proof of Capital/Assets as initial wealth of the Foundation
- 4) Photocopy of KTP of the Founders
- 5) Photocopy of KTP of Trustees, Supervisors and Foundation Management
- 6) Photocopy of Personal NPWP specifically for the chairman of the Foundation

- 7) Photocopy of proof of foundation office (in the form of SPPT PBB/Lease Agreement)
- 8) Cover Letter RT/RW according to the domicile of the Foundation
- 9) Other conditions if needed.

If there are no required documents, the founder of the foundation can immediately take care of it. That way, the foundation's work plan can be implemented as soon as possible.

Taking care of the required documents is also very easy and generally free of charge. For example, the following is the procedure for making a Foundation Registration Certificate (TDY), namely:

- a) The foundation submits an application for TDY to the local Social Service;
- b) The Office of Social Affairs receives the application file which is attached with the required attachments;
- c) If the application file is complete and administratively correct, the next step is to submit proof of receipt of documents to the applicant and prepare a schedule for field review and documents to the TU;
- d) If the application file is incomplete and administratively incorrect, it will be returned to the applicant;
- e) Prepare tools and materials used in the field visit review. Submit the applicant's file and field review administration to the Technical Team;
- f) Conduct field surveys, verify and validate data or information provided by the applicant with data or information on field findings, analyze, prepare and sign the Minutes of Field Review (BAPL);
- g) Applicant and BAPL files are submitted to the Technical Team Coordinator;
- h) Receive, examine and decide on the application file, BAPL which has been signed by the technical team.
- i) If it is not technically appropriate, then sign the rejection letter and submit it to the applicant through the administration team along with the reasons for refusal and the application file. If appropriate, then the application and its completeness shall be submitted to the Administration for a draft of the register;
- j) Receiving application documents, BAPL which has been signed by the technical team and approved by the technical team coordinator and prints out the list and affixes initials and submitted to Kasatlak for signature;
- k) Receive, examine and decide on permits that have been initialed by TU and BAPT which have been signed by the coordinator of the technical team and the technical team;
- l) If appropriate, then sign the register, but if there is a shortage of files it will be returned to the TU;
- m)Receive a permit that has been signed by the Head of Sub-district Satlak, give a number, stamp, record, record and archive and submit it to the administration team;
- n) Receive the registration certificate which has been signed or has been numbered or has been stamped by the Head of the Sub-district Satlak, print out the receipt for taking the registration certificate and contact the applicant;
- o) Submit proof of receipt of identity card file or power of attorney and sign proof of receipt of registration and receive Foundation Registration Certificate.

TDY is a legal document that states that the foundation has been registered with the local Social Service or Religious Service.

Furthermore, the foundation management can take care of the Business Identification Number (NIB) through the OSS (Online Single Submission) as the issuer of the Business Licensing. With the NIB, the foundation has a national identity number as an identifier.

#### IV. Conclusion

Based on the results of the research described above, the following conclusions can be drawn:

- 1. To establish Madrasah Ibtidaiah it is necessary to have permission from the minister of law and human rights, this Madrasah Ibtidaiah already has permission from the Ministry of Law and Human Rights and the Ministry of Religion of the Republic of Indonesia.
- 2. Madrasah Ibtidaiah Ar-ridho Tanjung Mulia Village operates in accordance with the regulations of Law No. 28 of 20016 concerning amendments to Law No. 16 of 2001 concerning Foundations.
- 3. The Madrasah Ibrtidaiah Ar-ridho Foundation in Tanjung Mulia Village provides benefits for the surrounding community to get good and quality education in accordance with the existing foundation regulations and are valid to this day.

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