

# Typology of Strengthening Foundations as Successor to Old Foundations Post Regime Law on Foundations

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## Abstract

*After the Law on Foundations was formed, every Foundation that existed before the enactment of the Law was obliged to adjust its Articles of Association with the provisions of the Law on Foundations. If not, there will be legal consequences for foundations that have not made adjustments, or in other words, the foundation will be legally weak and will also have an impact on the assets/wealth of the foundation. The purpose of this study is to find out the legal implications for new foundations that do not comply with the Foundation Law, as well as find out the typology of strengthening foundations to adjust the condition of their assets by the Foundation Law. With the sociological juridical method, it can be concluded that for foundations that do not adjust their statutes by the Law on foundations, especially related to assets, the foundation will have difficulty managing the ownership of its assets, especially for immovable objects. Then there are two typologies of strengthening to adjust the conditions of the AR Foundation by the Foundation Law, namely from the legality side of law and audit reports. Legal legality emphasizes that achieving accountability and transparency can be carried out through non-litigation efforts which include controlling assets, increasing the capacity of Foundation organs, strengthening supervision, and mediation as well as litigation efforts in the form of court suits. While the typology of strengthening in terms of financial reports, foundations need to have routine reporting standards to report their activities and funding to the Foundation Trustees by financial accounting standards.*

**Keywords:** Foundation; Strengthening; Typology.

## Abstrak

Pasca Undang – Undang tentang Yayasan terbentuk, setiap Yayasan yang lahir/ ada sebelum UU Yayasan wajib untuk menyesuaikan Anggaran Dasarnya dengan ketentuan UU Yayasan. Jika tidak maka akan ada implikasi hukum terhadap Yayasan yang belum melakukan penyesuaian, atau dengan kata lain Yayasan tersebut lemah secara hukum yang turut berdampak (salah satunya) terhadap asset/kekayaan Yayasan. Penyesuaian yang diwajibkan semata-mata bertujuan untuk memberikan penguatan pada sebuah Yayasan yang masih eksis hingga saat ini. Sedangkan penguatan itu sendiri memiliki karakter tertentu yang pada umumnya akan terakumulasi dan muncul sebagai bentuk kesan maupun citra yang diberikan siapa saja terhadap eksistensi Yayasan. Beranjak dari latar belakang yuridis demikian maka penelitian ini menjadikan Yayasan “AR” sebagai objek penelitian, karena berdasarkan observasi peneliti menemukan adanya problem status asset/ kekayaan Yayasan yang disebabkan oleh kurang optimalnya pengelolaan aset yang harus mengacu kepada UU Yayasan. Problem yang demikian menempatkan posisi Yayasan “AR” lemah secara hukum terhadap kepemilikan asetnya, sehingga melalui penelitian ini diharapkan dapat memberikan gambaran objektif mengenai faktor penyebab problem tersebut, dan memberikan solusi mengenai langkah apa saja yang diperlukan untuk memperkuat Yayasan “AR”. Terlebih

bahwa Penyesuaian asset/ kekayaan memiliki keterkaitan dengan terbentuknya sebuah klasifikasi penguatan atau yang sering digunakan dengan istilah tipologi penguatan. Guna menjawab permasalahan tersebut, peneliti mengangkat dua buah permasalahan, pertama apa implikasi hukum terhadap Yayasan baru yang tidak menyesuaikan diri dengan UU Yayasan, khususnya terkait asset Lembaga, dan kedua bagaimana tipologi penguatan untuk menyesuaikan kondisi Yayasan baru saat ini dengan ketentuan UU Yayasan.

**Kata kunci:** Penguatan; Tipologi; Yayasan.



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## A. INTRODUCTION

The existence of foundations that have been known since the Dutch East Indies era shows that the existence of foundations to carry out social activities is only based on habits in society with the main goal in the social field without any goal to gain profit, so that foundations that were already established at that time had privileges, especially for managing taxation and licensing<sup>1</sup>. This is because no one regulates the existence of a Foundation Institution. The legal consequence of not having stipulated the provisions of the foundation in Indonesian positive law is that the establishment of a foundation can be carried out freely, either through an authentic or notarial deed<sup>2</sup>. As regulated in article 1868 of the *Burgelijk Wetboek*, what is meant by this notary deed is a deed whose form is regulated by law and made by or before a public official<sup>3</sup>. After the deed of establishment is completely signed, it is then registered at the court clerk's office where the foundation is known by the wider community.

After Law Number 16 of 2001 concerning Foundations in conjunction with Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations was formed, every Foundation that existed before the Foundation Law is obliged to adjust its Articles of Association with the provisions of the Foundation Law. If not, there will be legal implications for foundations that have not made adjustments, or in other words, the foundation is legally weak, which will also have an impact on (one of them) the assets/wealth of the foundation. This is a result of the various forms and procedures for establishing foundations because, before the enactment of Law Number 16 of 2001 concerning foundations, regulations regarding foundations in Indonesia were based on customs that developed in society and based on the jurisprudence of the Supreme Court. The mandatory adjustments are solely aimed at reinforcing a Foundation that still exists today. While reinforcement itself has a certain character which will generally accumulate and appear

<sup>1</sup> Bahmid, "Analisis Hukum Penyesuaian Anggaran Dasar Yayasan Dan Kedudukan Organ Yayasan" 20, no. 1 (2019): 37–42.

<sup>2</sup> Guillaume Rocheteau et al., "Gradual Bargaining in Decentralized Asset Markets," *Review of Economic Dynamics* 42 (October 1, 2021): 72–109, <https://doi.org/10.1016/J.RED.2020.10.008>; Christine Große, "A Review of the Foundations of Systems, Infrastructure and Governance," *Safety Science* 160 (April 1, 2023): 106060, <https://doi.org/10.1016/J.SSCI.2023.106060>.

<sup>3</sup> Kukuh Dwi Kurniawan et al., "The Role of Indonesian Notary in the Transfer of Stock Through the Waqf Mechanism After the Covid-19 Pandemic," *KnE Social Sciences* 2022, no. 5 (2022): 479–91, <https://doi.org/10.18502/kss.v7i15.12120>.

as a form of impression or image that anyone gives to the existence of the Foundation. This situation is often the cause of foundations not being optimal in managing and utilizing their assets due to the lack of understanding of the management in adjusting to the Foundation Law.

The following is a chronology of the AR Foundation's legal issues as illustrated in the chart below:

**Chart 1. Position Case**



According to the data obtained, several factors are causing the AR Foundation not to immediately adapt to the Foundation Law, particularly related to Institutional wealth/assets, namely:

1. Foundation assets are still in the name of an individual Nadzir/not a legal entity Foundation, this happened because at the time the Foundation was founded, there were no arrangements regarding Foundation registration;
2. When the Foundation had made adjustments to the establishment of the Foundation into a legal entity in 2015 and received approval from the Ministry of Law and Human Rights, the ownership of the Foundation's assets had not yet been changed to become the property of Nadzir Legal Entity.
3. Foundation assets in the form of:

**Table 1. AR Foundation Asset List**

No	Asset	Status	Ownership	allotment
1.	Asset 1	Waqf Land	Individual Nadzir	Rent for occupancy

2.	Asset 2	Waqf Land	Individual Nadzir	Rent for business premises
3.	Asset 4	Waqf Land	Nadzir Legal Entity	Utilized for places of worship (mosques)
4.	Asset 5	Indigenous Land	Mosque	
5.	Asset 6	Eigendom	Not yet recorded	
6.	Asset 7	Indigenous Land	Mosque	Used for Business

Since the establishment of the "AR" Foundation in 1977, the wealth or assets owned by the "AR" Foundation have been obtained from various sources, be it through grants, donations, endowments, or other sources. Approximately 7 (seven) assets have been included in the list of assets of the Foundation's articles of association. However, because when the "AR" Foundation was established, there were no specific arrangements regarding the Foundation Law, the assets owned at that time were still registered through the individual Nadzir. This can be seen from the active involvement of various parties who participate in managing the assets of the Foundation, even though some of these parties are not the management or structure of the Foundation<sup>4</sup>. Even though the initial goal of managing assets is for the prosperity of the Foundation, management carried out by various parties can be the initial trigger for conflict.

The dualism of managing the Foundation's assets which had been carried out for several years began to cause conflict when the mosque manager, who also acted as takmir, established a new Foundation unilaterally one year after the "AR" Foundation received legal entity approval from the Ministry of Law and Human Rights. The emergence of a de facto "new" Foundation to control the management of "AR" Foundation assets resulted in the management of the "AR" Foundation itself being legally weak, even though legally the mosque is one of the assets of the "AR" Foundation. In addition, it becomes difficult when the management of the "AR" Foundation does not know what strategic steps need to be taken to solve this internal problem.

Based on this juridical background, this research makes the Jombang "AR" Foundation the object of research, because based on observations made by researchers, it has been found that there is a problem with the status of assets/wealth of the Foundation caused by the lack of optimal management of assets which must refer to the Waqf Law. Such a problem places the position of the "AR" Foundation legally weak in terms of asset ownership, so through this research, it is hoped that it can provide an objective picture of the factors causing the problem, and provide solutions regarding what steps are needed to strengthen the "AR" Foundation.

Several previous writings became the author's references in this paper. First, a scientific article entitled "Asset Management and Foundation Ownership in terms of the Foundation Law (a study at the Gajah Putih Takengon Foundation, Central Aceh District)" by Pianamon Yudistira and T. Hafisyah which provides references to Foundation Management in terms of

<sup>4</sup> Robi Krisna, "Tinjauan Hukum Pendirian Yayasan Sebagai Badan Hukum Ditinjau Dari Undang-Undang Nomor 28 Tahun 2004," *Jurnal Sosial Dan Ekonomi* 2, no. 1 (2021): 41–47.

asset management <sup>5</sup> and "Analysis of the status of foundations that are late in adjusting their statutes to comply with the provisions of the foundation law" by Sjaifurrachman which provides references to the legal implications for foundations that do not conform their statutes with the provisions of the foundation law <sup>6</sup>.

Moreover, the adjustment of assets/wealth is related to the formation of a strengthening classification or what is often used with the term reinforcement typology. The purpose of this study is to find out the legal implications for new foundations that do not conform to the Law on Foundations, especially related to institutional assets and to analyze how the typology of strengthening foundations adapts to the condition of assets owned by the Law on Foundations.

## **B. METHOD**

This research is qualitative research using the legal research method, namely the Juridical-Sociological research method which is carried out by describing and comparing various findings from primary and secondary data, then analyzed quantitatively to formulate research conclusions. Data collection techniques, including interviews/interviews, namely data collection techniques from documents or archives to obtain data from the studies that the author examined. This research is also supported by field research (Field Research), namely, to answer the problems that exist in the subject matter, primary data is needed, in the form of data obtained directly from respondents such as information from the Foundation's management. The research location was carried out at the "AR" Foundation, Jombang Regency, East Java, while the population was the total number of individuals who were determined to be the data source <sup>7</sup>. The population in this study consisted of the Foundation, namely the Trustees, supervisors, and administrators of the "AR" Foundation, the community, and elements of the government. The purposive sampling method was used for sampling respondents, as well as informants who were considered to represent the entire population, referred to in this study <sup>8</sup>. This research is organized into three parts, namely the introduction which includes the background to the emergence of legal issues including the position case which briefly describes the chronology of the AR Foundation case from before the publication of the Foundation Law until finally the Foundation Law was passed, research methods, and writing systematics. The second part is about the discussion that explains and analyzes the typology of strengthening the AR Foundation, especially towards Institutional assets. Then, the third part is closing which includes conclusions and suggestions.

## **C. RESULT AND DISCUSSIONS**

### **1. Legal Implications For New Foundations That Do Not Comply With The Foundation Law, Particularly About Institutional Assets**

#### **a. Foundation Obligations to Comply with Foundation Laws**

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<sup>5</sup> Pianamon Yulistira and T Hafliyah, "Pengelolaan Aset Dan Kepemilikan Yayasan Ditinjau Dari Undang-Undang Yayasan (Suatu Penelitian Di Yayasan Gajah Putih Takengon Kabupaten Aceh Tengah)" 5, no. 1 (2021): 65–71.

<sup>6</sup> Sjaifurrachman, "Analisis Terhadap Status Yayasan Yang Terlambat Menyesuaikan Anggaran Dasarnya Dengan Ketentuan Undang-Undang Yayasan," n.d., 90–98.

<sup>7</sup> Rusdi Pohan, *Metodologi Penelitian Hukum*, ed. Lanarka Publisher (Yogyakarta, 2007).

<sup>8</sup> Burhan Ashofa, *Metode Penelitian Hukum* (Jakarta: PT Rineka Cipta, 2010).



The provisions contained in article 1 number 1 of the Law on Foundations state that a foundation is a legal entity that consists of separate assets and is intended to achieve specific goals in the religious, social, and humanitarian fields. As a legal entity, foundations have the same rights and obligations as humans, such as paying taxes, entering into agreements, including managing their assets. Even though it is a fact, a legal entity consists of a group of people who have specific goals and who also carry out all activities and carry out the obligations of a legal entity.

In connection with the status of a foundation which is a legal entity as a result of the promulgation of the Law on Foundations, in which assets are separated from those of its management, this means that foundations have their assets. So to be called a Foundation, a mechanism or process is needed to get approval from the government. To obtain government approval, in this case the Minister of Law and Human Rights, is carried out by submitting an application to a Notary through a deed of establishment and registering the Foundation in the Online Public Service system belonging to the Directorate General of General Legal Administration, Ministry of Law and Human Rights of the Republic of Indonesia.

Due to the coercive and regulatory nature of the Law, the enactment of the Foundation Law is not only applied to foundations that are about to be established but also applies to foundations that existed even before the foundation law was passed. However, what should be noted is that foundations that have been established are still recognized as long as the foundation makes adjustments so that the foundation's rights that have been obtained previously do not just disappear. Article 71 paragraph (1) amendments to the Law on Foundations state that foundation adjustments are limited to foundations that have been registered with the District Court and announced through the Supplement to the Republic of Indonesia State Gazette or that the foundation has permission to carry out activities from the relevant agency.<sup>9</sup> So that foundations that comply with the provisions of Article 71 paragraph (1) are still recognized as legal entities with the condition that within a period of 3 (three) years since the Law on Foundations is enacted and comes into force, it is obligatory to adjust its Articles of Association with the Law on Foundations.

#### b. Adjustment of the Old Foundation according to the Foundation Law

In contrast to foundations that have been registered with the District Court, foundations that have never been registered with the district court but carried out activities as foundations before the law was passed, are required to make adjustments to the articles of association and must be notified to the Minister of Law and Human Rights within one year of The Foundation Act is passed. The conditions for obtaining an acknowledgment prove that acknowledgment as a legal entity is not obtained by itself/automatically, but requires a stage that has been regulated in laws and regulations.

More specific provisions governing adjustments to foundations are Regulation of the Minister of Law and Human Rights No. 2 of 2016 concerning Procedures for Submitting Applications for Legal Entity Authorization and Approval for Amendments to the Articles

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<sup>9</sup> Faiza Ulfa, Winanto Wiryomartani, and Siti Hajati Hoesin, "Peralihan Aset Yayasan Oleh Organ Pengurus Yang Dibentuk Secara Melawan Hukum (Studi Putusan Pengadilan Negeri Bengkalis Nomor 28/Pdt.G/2017/PN.BLS)," *Universitas Indonesia* 4, no. 1 (2017): 724–32.

of Association and Submission of Notifications for Amendments to the Articles of Association and Changes to Foundations. The regulation explains that changes to the articles of association are stated in a notarial deed and submitted for approval from the Minister. Then the application for approval of the amendment to the articles of association is submitted to the Minister within a maximum period of 60 (sixty) days from the date of amending the articles of association in a notarial deed.

An application for approval of changes to the foundation's articles of association is submitted by the applicant through the Legal Entity Administration System (hereinafter referred to as SABH) by filling out a form in a special format and accompanied by supporting documents. Changes to the articles of association that must be included in a notarial deed include a change in the name of the Foundation and a change in the activities of the Foundation. As for changes in the Trustees, changes or reappointments of management and/or supervisors, as well as changes in the complete address of the changes, it is sufficient to notify the applicant to the Minister. The meaning of "approval" in the regulation of the minister of law and human rights number 2 of 2016 implies that a change in the name and activities of the Foundation is an important matter and for that control is needed from the Minister because a change in name or activity will certainly have an impact on the original purpose of the Foundation so that the Minister will assess whether the request for a change will be rejected or not. accepted.

c. Legal Consequences of not making adjustments to the Foundation

The content regulated in Article 71 of the Foundation Change Law explicitly explains that foundations that do not adjust their statutes within the timeframe stipulated in the Foundation Law have legal implications, namely that foundations cannot use the word foundation in front of their name so that they can be dissolved based on a court decision at the request of the Attorney. or interested parties. Logical consequence When a foundation no longer uses the word "foundation" in front of its name, it will indirectly make it difficult for the foundation to manage the ownership of its assets, especially those that are immovable objects, namely land. By not recognizing the foundation as a legal entity, legally speaking, a foundation that does not adjust its articles of association is no longer possible to be recognized as a legal entity. Foundations that do not have legality are of course legally not entitled to own their wealth apart from their management. Therefore the responsibility for third parties cannot be borne by the Foundation but will be shouldered jointly by all Foundation management.

Not only is it prohibited to use the word "Foundation" at the beginning of the name, but Foundations that have not made adjustments and have not notified the Minister by the provisions of article 39 government regulations concerning the Implementation of the Foundation Law must also settle their assets through the liquidation process <sup>10</sup>.

Management of Foundation assets by administrators should be carried out based on good faith and full responsibility, meaning that each administrator must manage the Foundation honestly to achieve the goals of the Foundation. As the party who is fully responsible for the management of the Foundation, the management of the Foundation has

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<sup>10</sup> Sjaifurrachman, "Analisis Terhadap Status Yayasan Yang Terlambat Menyesuaikan Anggaran Dasarnya Dengan Ketentuan Undang-Undang Yayasan."

limited authority in actions that result in burdening the assets or transferring the assets of the Foundation. So that in the case of carrying out any legal action, the principle of transparency is required by determining that each of these actions requires prior approval from the supervisor or Trustee whose purpose is to guarantee the wealth of the Foundation. The form of consent can be realized in written form <sup>11</sup>.

Regarding the principle of transparency, the reference in measuring the honesty of management in carrying out their duties is through the Law and the Articles of Association. As the main instrument of the Foundation, the articles of association play a role in assessing whether the board has carried out management in good faith or not and in preventing losses arising from the Foundation. Meanwhile, acts of good faith are not only demands of the articles of association, but also demands of the law. Actions outside the limits of the authority of the Foundation's organs in the articles of association can be used as a judge's parameter in assessing the good faith of the management in carrying out Foundation activities.

Even though the Foundation has a supervisory organ in its management, the lack of transparency can potentially lead to acts of exploitation that lead to misuse of the Foundation's assets, either through personal intentions or in collusion with other organs. <sup>12</sup>. The transparency activities of the Foundation that must be carried out include two things, namely, conducting an annual report and making an announcement in the Supplement to the State Gazette.

As a consequence of the Foundation as a legal entity, the obligation to register in the Supplement to the State Gazette is used as a means of public or public access to find out any information owned by a Foundation <sup>13</sup>.

## **2. Typology of Strengthening to Adapt The Current Condition of The New AR Foundation to The Provisions of The Foundation Law, Especially In Terms Of Wealth/Assets Owned**

### **a. Typology of Strengthening in terms of Legal Legality**

First, the identity of the Foundation as a Legal Entity. As with Limited Liability Companies and Cooperatives, Foundations are included in the category of Private Legal Entities. The classification of a legal entity is categorized as a private legal entity due to the way it was founded, and not who founded the legal entity. Even though a legal entity was established by the government, in this case, a public institution or even having a source of funds from the state, this does not change the status of a foundation as a private legal entity, so the foundation has no public authority at all, only limited to the scope of civil law. As a legal entity, the Foundation performs legal actions within the scope of civil

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<sup>11</sup> Y. Sogar Simamora, "Karakteristik, Pengelolaan, Dan Pemeriksaan Badan Hukum Yayasan Di Indonesia" 5, no. April (2016): 175–86.

<sup>12</sup> Zuhriati Khalid and Rina Melati Sitompul, "Akibat Hukum Dan Alternatif Bagi Yayasan Yang Belum Melakukan Penyesuaian Pasca Keluarnya Uu No. 28 Tahun 2004 Tentang Yayasan," *Law Jurnal* 1, no. 1 (2020): 43–49, <https://doi.org/10.46576/lj.v1i1.787>.

<sup>13</sup> Norita Citra Yulianti, "Studi Penerapan PSAK 45 Yayasan Panti Asuhan Yabappenatim Jember," n.d., 58–73.



law<sup>14</sup>. Furthermore, regarding the establishment, the official foundation becomes a legal entity when it gets approval from the Minister. So that all legal actions, and legal relations that existed before obtaining approval from the Minister, will result in the organs of the Foundation being personally responsible. This is also explained in the provisions of article 13 of Law no. 28 of 2004 in conjunction with Law no. 16 of 2001 concerning Foundations that legal actions on behalf of Foundations carried out by management before obtaining legal entity status are the responsibility of the management jointly.

The conception of the responsibility of the management of the Foundation in question is a necessity to carry out what is required, while legal responsibility in the context of civil law is interpreted broadly, namely not only for actions that are against the law in the criminal law but also actions that are contrary to the law. others, and even against unwritten legal provisions<sup>15</sup>. In the provisions of Article 1365 of the *Burgelijk Wetboek*, an unlawful act is defined as the act of someone who causes harm to another party on purpose, without fault, or legal action due to negligence. However, when compared with the theory of legal entities, not all actions of the Foundation's organs can be accounted for. If the organs of the Foundation act to carry out the demands of the tasks that have been given and it turns out to be against the law, then because the act originates from a legal entity, it means that the legal entity must be held responsible<sup>16</sup>.

The internal rule guidelines used by the Foundation and its organs are the articles of association. The Articles of Association of the Foundation are important to determine the legitimacy of the Foundation before it is legalized as a legal entity. The Articles of Association of the Foundation contain at least the name, place of domicile, purpose, period of establishment, and amount of wealth, up to the use of said wealth. For this reason, the foundation's trustees, supervisors, and administrators must comply with the articles of association<sup>17</sup>. As is well known, even though the Foundation is a legal entity (*recht person*) whose rights and obligations are equated with natural persons, in fulfilling their wishes, the Foundation requires an intermediary through organs such as humans. In the provisions of the Foundation Law, some organs must support the activities of a foundation, namely the Trustees, supervisors, and administrators. Article 28 explains that what is meant by a Trustee is an organ of the Foundation that has authority and is not entrusted to either supervisors or administrators. Then the management duties of the Foundation are owned by the management organs. In contrast to the management or the Trustees, the supervisor's

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<sup>14</sup> Habib Ahmed, "Islamic Law, Investors' Rights and Corporate Finance," *Journal of Corporate Law Studies* 12, no. 2 (2012): 367–92, <https://doi.org/10.5235/jcls.12.2.367>.

<sup>15</sup> T Musahiddinsyah, Sanusi, and Teuku Ahmad Yani, "Pengelolaan Yayasan Menurut Asas Keterbukaan Dan Akuntabilitas (Studi Pada Yayasan Kemanusiaan Di Aceh)," *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 1 (2020): 127, <https://doi.org/10.29303/ius.v8i1.681>.

<sup>16</sup> Sindy Riani Putri Nurhasanah and Ulil Afwa, "Pertanggungjawaban Hukum Direksi Induk Terhadap Risiko Bisnis Anak Perusahaan Pada Holding Company BUMN," *Indonesia Law Reform Journal* 1, no. 3 (2021): 303–17, <https://doi.org/10.22219/ilrej.v1i3.18335>.

<sup>17</sup> Desi Handayani, "Analisis Yuridis Tentang Pendirian Yayasan Pendidikan Setelah Berlakunya Undang-Undang Nomor 28 Tahun 2004 Tentang Perubahan Atas Undang-Undang Nomor 16 Tahun 2001 Tentang Yayasan," *Al-Idarah: Jurnal Kependidikan Islam* 8, no. 1 (2018): 169, <https://doi.org/10.24042/alidarah.v8i1.3087>.

duties as an organ of the Foundation are more to the task of supervising and giving advice to the management in carrying out Foundation activities.

Second, related to the legality of assets that are separated from the assets of the founders. The phrase "separated" implies the willingness, willingness, and voluntarism of the Founders of the Foundation to separate the assets of a Foundation and the assets of a Foundation. The separated assets are owned by legal entities. For this reason, no one owns the assets belonging to the Foundation<sup>18</sup>. Several types of objects can become Foundation assets, movable objects, or immovable objects (namely land and buildings). Because the activities of the Foundation are oriented toward the religious, social and humanitarian fields, of course, it will become a separate problem when the purpose of the Foundation is used to seek profit. However, it cannot be denied that in carrying out its activities, the Foundation needs funding that does not only come from its initial wealth. If the activities of the Foundation only depend on the initial capital for the establishment, then achieving the goals of the Foundation will not be easy<sup>19</sup>.

Operational funds used for the benefit of the Foundation's development can be fulfilled through several business activities owned by the Foundation itself. So that the income generated from the activities of the Foundation will be allocated and at the same time owned by the Foundation. While the obligation to make payments to other parties is because of the basis of the agreement, then it will be an obligation for the Foundation. The principle of agreement in Islam is intended to help and fulfill human needs<sup>20</sup>. All activities that have rights and obligations need to be included in the annual report on the activities of the Foundation, and all transactions are recorded in the books. So it is not permissible if the foundation's assets are transferred to the administrators, trustees, or supervisors of the foundation. Included in the inclusion of ownership names in assets owned by the Foundation.

Third, related to the legality of de facto asset management of the Foundation. Management of the rights to foundation assets must pay attention to the provisions stipulated in the Law on Foundations. In principle, the management up to the transfer of rights to the assets of the Foundation is carried out with the approval of the Trustees of the Foundation. If otherwise stipulated, then these provisions need to be explicitly stated in the articles of association of the Foundation, namely regarding who is authorized to represent the Foundation and how the form of approval from the Trustees is<sup>21</sup>. In addition to the importance of de facto asset management, the assets in question must be assets that have been registered in the articles of association and it must be stated how these assets were acquired.

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<sup>18</sup> Simamora, "Karakteristik, Pengelolaan, Dan Pemeriksaan Badan Hukum Yayasan Di Indonesia."

<sup>19</sup> Grace Samboside, "Kajian Hukum Yayasan Sebagai Badan Hukum Privat Menurut Uu No 28 Tahun 2004," *Journal of Chemical Information and Modeling* 53, no. 9 (2008): 287.

<sup>20</sup> Alfitri, "Expanding a Formal Role For Islamic Law in the Indonesian Legal System: The Case of Mu'amalat" 202 (2006).

<sup>21</sup> Mustofa Mustofa, "Kedudukan Aset Dari Yayasan Yang Belum Disesuaikan Pasca Terbitnya Undang-Undang Nomor 28 Tentang Perubahan Atas Undang-Undang Nomor 16 Tahun 2001 Tentang Yayasan" 1, no. 2 (2004): 138-48.

In terms of managing the foundation's assets, the implementation is carried out by the management as one of the organs of the foundation which has the responsibility to realize the achievement of accountability and transparency.<sup>22</sup> The basis is the provisions of article 35 of the Foundation Law which states that the management of the Foundation is fully responsible for the management, interests, and objectives of the Foundation and has the right to represent the Foundation both in and out of court. In its management, the board of directors must carry out its duties in good faith and with full responsibility. Meanwhile, all provisions governing the appointment and dismissal of executors of activities will be regulated in the Articles of Association. On the other hand, when the management's actions without the authority of the Foundation cause harm to third parties, the management is responsible personally or jointly with other administrators. The form of legal responsibility is the implication of an error or negligence that causes loss. So that the act is categorized as an unlawful act.

Based on the results of observations and interviews conducted by researchers with the management of the "AR" Foundation, it was found that there was an abuse of authority by parties outside the foundation's founding structure to lease Foundation assets to third parties. The authority to manage the Foundation's assets that have been contained in the articles of association is of course given to the Foundation's structure, be it the Trustees, supervisors, or Foundation administrators.

As for the legal steps that can be taken by the "AR" Foundation on this legal issue of asset management:

**Table 2.** The flow of Legal Issues Resolution of AR Foundation Asset Management

<b>Non Litigation</b>	1. Asset Management	An inventory of the assets of the AR Foundation is needed in order to control the sources of wealth owned. Regarding assets in the form of land and buildings, it is necessary to ensure that the ownership of the assets written on the certificate belongs to the Foundation. If the assets come from waqf, then the individual Nadzir who has died needs to be replaced so that the management of the Foundation's assets can be maximized.
	2. Foundation Organ Capacity Building	Even though the assets of the AR Foundation are separate from the organs of the Foundation, as organs that carry out the management of the Foundation, the organs of the Foundation need to attend training or socialization on matters relating to the management of the Foundation as well as the management of the assets they own. This needs to be done in terms of improving the quality of management, founders, and even foundation

<sup>22</sup> Yudistira and Hafliyah, "Pengelolaan Aset Dan Kepemilikan Yayasan Ditinjau Dari Undang-Undang Yayasan (Suatu Penelitian Di Yayasan Gajah Putih Takengon Kabupaten Aceh Tengah)."

		supervisors as bearers of the mandate and responsibility for managing the foundation so that it continues to exist.
	3. Supervision Strengthening	One of the organs that has an important role in asset management is the supervisor. Determination of supervisors who control the field of supervision is important so that supervision can be carried out objectively.
	4. Mediation	After internal strengthening is carried out, what needs to be done next is to seek mediation with parties outside the organs of the Foundation who have established a new Foundation to manage the Foundation's assets unilaterally. The contents of the agreement can be in the form of a merger or acquisition of the AR foundation for a new foundation so that there is no dualism in asset management.
<b>Litigation</b>	Court Lawsuit	When non-litigation efforts have indeed been attempted but are deadlocked, the last effort that can be taken is to sue in court with the contents of the lawsuit dissolving the establishment of a new foundation that appears to control the assets owned by the AR Foundation..

b. Typology of Strengthening from the Audit Report side

Foundations are non-profit institutions that were established not for profit, in the sense that they were not solely to increase the wealth of the founders, but were established with specific objectives in the religious, social, and humanitarian fields.<sup>23</sup> This is in line with the Law on Foundations which stipulates that the wealth of a foundation as a legal entity is separate from the wealth of the founder and is intended to achieve social, humanitarian, and religious goals.<sup>24</sup>

The "AR" Foundation is a foundation established by the founders and engaged in social and religious fields. In the management of the Foundation, funding comes from donors/community and for this reason, the Foundation needs accounting as a tool to present financial information to interested internal and external parties. Regarding foundation assets, the foundation is required to manage assets, prepare financial reports, and have internal controls and a budget. With the help of experts, the Foundation is expected to be able to create a good information system so that its financial management is more optimally organized. The intended information system is to record, classify,

<sup>23</sup> Varun Gauri, "Customary Law and Economic Outcomes in Indonesia," *Hague Journal on the Rule of Law* 2, no. 1 (2010): 75–94, <https://doi.org/10.1017/S1876404510100049>.

<sup>24</sup> Rahmadhani Sri Riszky, "Jurnal Hukum Dan Kemasyarakatan Al-Hikmah Vol. 3, No. 3, September 2022 781" 3, no. 3 (2022): 781–88.

summarize, report, and store data in every transaction which is then presented in a record for monitoring up to policy making for the Foundation itself.

Strengthening from the financial side or what is more commonly referred to as an internal audit is an examination carried out by the company's internal audit section which includes the company's accounting records, and financial reports on all activities and activities of the company. Internal audit emerged as a way to mitigate increased risks due to the accelerating pace of development in the business world or economic turbulence conditions, where dynamic and unpredictable changes occur due to the development of the globalization era so that traditional and informal sources of information are no longer able to meet the needs of company management who are responsible for things that are not directly observed.

As needed by the Foundation, the auditor can prepare a clear and complete audit plan regarding documented work procedures and instructions. So that the Foundation has the competence to produce audit reports correctly and impartially, especially in developing and maintaining the effectiveness of the internal control system, guaranteeing the implementation of risk management, and ensuring the creation of corporate governance<sup>25</sup>

The provisions governing the obligation of foundations to prepare an annual report and announce it to the public, both containing all the activities of its asset management funds, are contained in articles 48 to 52 of the Law on Foundations. It is stated that the management is required to compile records containing rights and obligations as well as other matters related to business activities including financial documents, to be kept for the administrative purposes of the Foundation. Furthermore, a summary of the Foundation's annual routine report is announced on the notice board of the Foundation's office and announced in an Indonesian language daily newspaper. In addition to obligations in publicity, the financial statements that have been prepared must be audited by a public accountant and the results of the audit reports are submitted to the Foundation's supervisor<sup>26</sup>.

The purpose of preparing the financial statements of the Foundation which is classified as a non-profit organization is to provide information about the types of transactions, total assets, liabilities, and mechanisms for the Foundation to obtain and spend cash. Recording of financial statements is also carried out to find out the factors that change the value of assets through events and other situations<sup>27</sup>.

Guidelines for financial reporting for non-profit organizations can refer to the Statement of Financial Accounting Standards (PSAK) No. 45 which was passed on April 2011, PSAK 45 is a form of renewal of the previous PSAK which was stipulated on December 23, 1997. Because the AR Foundation has adapted itself to the Foundation Law and received approval in 2015, it is mandatory for the AR Foundation to routinely report

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<sup>25</sup> Sispi Rismayanti, "Pengaruh Independensi Dan Kualitas Internal Audit Terhadap Pendeteksian Kecurangan ( Study Kasus Di Yayasan Pendidikan Internal Audit )" (Sekolah Tinggi Ilmu Ekonomi Indonesia Jakarta, 2018).

<sup>26</sup> Nimrot Siahaan et al., "Subjek Hukum Dalam Pendirian Yayasan Menurut Undang-Undang Nomor 28 Tahun 2004 Atas Perubahan Undang-Undang Nomor 16 Tahun 2001 Tentang Yayasan," *Jurnal Ilmiah Advokasi* 8, no. 1 (2020): 1–10, <https://doi.org/10.36987/jiad.v8i1.1593>.

<sup>27</sup> Hastoni, Bambang Pamungkas, and Sobar Mustikawati, "Analisis Penerapan PSAK 45 (Revisi 2011) Terhadap Penyusunan Laporan Keuangan Entitas Nirlaba," 2015.



its activities and funding to the Trustees of the Foundation by financial accounting standards.

As far as the researcher's observations regarding the transparency of the AR Foundation's reports since the foundation was founded and then obtained legal entity approval from the Ministry of Law and Human Rights, there has not been a specific standard used in the preparation of financial reports that shows the absorption of funds based on the activities carried out. The obstacles that became the inhibiting factor for the preparation of the report were because internally there was no competent party to be responsible for presenting the Foundation's report.

Standard financial reports concerning PSAK 45 consist of statements of financial position, activity reports, cash flow reports, and notes to financial statements. In the statement of financial position, foundations need to include a list of assets that are a source of income, whether sourced from donations, grants, endowments, contributions, or other income and include obligations such as debts or obligations to pay the foundation and include equity which is understood as the difference between assets and liabilities. Then the financial activity report of the Foundation contains a list of activities carried out not only in routine but also in planning or tentative activities. Meanwhile, the cash flow statement contains cash movements during a period which includes increases, decreases, losses, purchases, payments, or activities related to cash movements and foundation balances. Related matters that are also important are the notes to the financial statements, this section is inseparable from the three types of reports previously described. The purpose of providing this note is to provide information deemed necessary for report users to know.

#### **D. CONCLUSION**

The content contained in article 71 of the Law on Amendments to the Foundation Law explicitly explains that foundations that do not adjust their articles of association within the timeframe stipulated in the Foundation Law have legal implications, namely for new foundations that do not conform to the Foundation Law within the time frame stipulated in The law states that a foundation cannot use the word "foundation" in front of its name and can later be dissolved based on a court decision at the request of the attorney or interested party. Particularly about assets, foundations that do not make adjustments will find it difficult to manage the ownership of their assets, especially those that are immovable objects. There are several typologies of strengthening to adapt the conditions of the AR Foundation by the Foundation Law, especially those that are closely related to the wealth/assets owned. Typology is the strengthening typology from the legality side and the reinforcement typology from the financial statement side. The typology of strengthening in terms of legal legality emphasizes that achieving accountability and transparency can be carried out through non-litigation efforts which include controlling assets, increasing the capacity of Foundation organs, strengthening supervision, and mediation as well as litigation efforts in the form of court suits. While the typology of strengthening in terms of financial reports, foundations need to have routine reporting standards to report their activities and funding activities to the Trustees of the Foundation by financial accounting standards.

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