

The Potential Misuse of Foundation Annual Reports in Money Laundering Crimes

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Keywords:

Annual Report,
Foundation, Money
Laundering

Abstract

Money laundering (TPPU) methods are becoming more sophisticated, including the misuse of foundations to channel illicit funds. A notable case occurred in 2022 involving alleged money laundering by the Aksi Cepat Tanggap Foundation, alongside PPATK's discovery of suspicious transactions in 176 other philanthropic foundations. This research analyzes the role of foundations' annual reports in such schemes and proposes regulatory improvements. Using a normative juridical method with statutory, conceptual, and comparative approaches, it draws from secondary literature. Foundations are legally required to submit annual reports detailing financial and operational activities. However, two major vulnerabilities are identified: the absence of standardized reporting guidelines and a lack of penalties for non-compliance. These gaps can facilitate money laundering through means such as anonymous donations, atypical transactions, inflated asset valuations, or fund misappropriation. To mitigate these risks, the study recommends developing clear and uniform reporting standards grounded in the principles of know your donor, know your beneficiary, and know your partner. Additionally, enforcement of administrative sanctions for failing to submit reports in line with regulations is crucial to strengthen oversight and transparency in the philanthropic sector.

Submitted: 31 August 2024

Accepted: 24 June 2025

Published: 27 June 2025

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To cite this article: Odilla, I. F., Aldevando, D. P., & Rohmah, A. S. 2025. *The Potential Misuse of Foundation Annual Reports in Money Laundering Crimes*. *AML/CFT Journal: The Journal of Anti Money Laundering and Countering the Financing of Terrorism* 3(2):225-248, <https://doi.org/10.59593/amlcft.2025.v3i2.237>

Introduction

The modus operandi of Money Laundering (TPPU) has become increasingly diverse over time. The patterns generally involve the flow of funds from upstream to downstream through various activities aimed at disguising the origins of the money to make it appear as if it came from legitimate sources.¹ These methods are carried out through various sectors, including banking, insurance, capital markets, and even institutions outside the formal financial system, such as foundations. A recent example is the alleged money laundering case involving the

¹ Idi Amin, "Penerapan Sanksi terhadap Tindak Pidana Pencucian Uang," *Jurnal Hukum JATISWARA* 34, no. 1 (2019): 88, <https://doi.org/10.29303/jtsw.v34i1.185>.

management of the Aksi Cepat Tanggap (ACT) Foundation in 2022.² According to Kompas, the Head of the Financial Transaction Reports and Analysis Center (PPATK), Ivan Yustiavandana, revealed that there were suspicions of misappropriated donation funds involving 176 philanthropic foundations, including ACT.³ The misuse of foundations as a means of committing criminal offenses has long been a concern, as reflected in the general explanation of Law of the Republic of Indonesia Number 16 of 2001 concerning Foundations. Many individuals tend to establish foundations not solely to develop social, religious, and humanitarian activities, but also to take shelter under the legal status of a foundation for personal enrichment by founders, managers, or supervisors.⁴ This concern arises because foundations are often suspected of deviating from their articles of association and being used to accommodate assets obtained from unlawful conduct by the founders or other related parties.⁵

In efforts to prevent the misuse of foundations as a vehicle for money laundering, the principle of "*know your principles*" plays a vital role.⁶ This principle can be broken down into three aspects. First, *know your donor*, which means that charitable organizations must identify and verify the sources of funds they receive, such as grants or cash donations.⁷ Foundation managers must be able to identify and verify the authenticity of significant contributions. Second, *know your beneficiary*, which underscores the importance of knowing who receives benefits from the foundation, to ensure alignment with the foundation's goals and legal provisions.⁸ Finally, *know your partner*, which requires foundation administrators to conduct thorough due diligence on their partner organizations to ensure they are appropriate, trustworthy, and do not pose a risk to the foundation's funds, reputation, or beneficiaries.⁹

The Annual Report of a Foundation is a key instrument in implementing the know your principles approach, as it includes both financial and activity reports that must be publicly disclosed.¹⁰ These reports are to be published by the foundation's board through a notice board at the foundation's office to ensure public access.¹¹ If the foundation receives a minimum of IDR 500,000,000 in funding from the state, foreign sources, or other parties, or holds assets—excluding waqf property—valued at IDR 20,000,000,000 or more, its financial statements must be audited by a Public Accountant and submitted to the Board of Supervisors and the Ministry of Law and Human Rights.¹² Additionally, the audited financial report must be published in an

² Rahel Narda Chaterine and Icha Rastika, "PPATK: Ada 176 Yayasan Filantropis Selain ACT yang Diduga Selewengkan Donasi," *Kompas*, August 4, 2022, <https://nasional.kompas.com/read/2022/08/04/13294891/ppatk-ada-176-yayasan-filantropis-selain-act-yang-diduga-selewengkan-donasi>.

³ Meira Astri, "Yayasan sebagai Badan Hukum dan Pertanggung Jawabannya" (Master's thesis, Surabaya, Universitas Airlangga, 2002), 23, <http://lib.unair.ac.id>.

⁴ *Penjelasan umum Undang-Undang Republik Indonesia Nomor 28 Tahun 2004 Tentang Perubahan atas Undang-Undang Nomor 16 Tahun 2001 Tentang Yayasan* (Jakarta: Lembaran Negara Republik Indonesia Tahun 2004 Nomor 115, 2004).

⁵ *Undang-Undang Republik Indonesia Nomor 28 Tahun 2004 Tentang Perubahan atas Undang-Undang Nomor 16 Tahun 2001 Tentang Yayasan*.

⁶ Endrico Viero and Gandjar Laksmana Bonaparta, "Penyalahgunaan Organisasi Nirlaba sebagai Sarana Pencucian Uang dan Pendanaan Terorisme," *Legal Spirit* 9, no. 1 (2025): 119, <https://doi.org/10.31328/lsv9i1.5701>.

⁷ Charity Commission for England and Wales, *Chapter 2: Due Diligence, Monitoring and Verifying the End Use of Charitable Funds* (UK: Government UK, 2016), 16.

⁸ Charity Commission for England and Wales, 23.

⁹ Charity Commission for England and Wales, 31.

¹⁰ *Pasal 49 ayat (1) Undang-Undang Republik Indonesia Nomor 16 Tahun 2001 Tentang Yayasan* (Jakarta: Lembaran Negara Republik Indonesia Tahun 2001 Nomor 112, 2001).

¹¹ *Pasal 49 ayat (1) Undang-Undang Republik Indonesia Nomor 16 Tahun 2001 Tentang Yayasan*.

¹² *Pasal 52 ayat (2) dan (3) Undang-Undang Republik Indonesia Nomor 28 Tahun 2004 Tentang Perubahan Atas Undang-Undang Nomor 16 Tahun 2001 Tentang Yayasan*.

Indonesian-language daily newspaper. These provisions are intended to promote operational transparency and allow for public and governmental oversight.

However, the implementation of Annual Report requirements faces several critical issues. First, the absence of detailed guidelines for preparing Annual Reports has resulted in inconsistencies in format, content, and depth of information disclosed. Article 49 paragraph (1) of Law Number 16 of 2001 on Foundations merely stipulates in general terms that the Annual Report must include an activity report and a financial report, without specifying the level of detail required. As a result, there is a wide variation in the content and format of reports among foundations, as they are largely shaped by internal policies. This lack of reporting standards creates a broad space for interpretation, which in turn can be exploited by certain actors to conceal important information about the foundation's operations and finances. This situation aligns with the warning issued by Tuti Wahyuningsih, Deputy for Strategy and Cooperation at PPATK, who emphasized that organizations receiving donations must remain vigilant regarding the source of funds. If such funds originate from or are linked to money laundering, the recipient organization may be implicated as a passive perpetrator of TPPU.¹³ Second, the absence of clear sanctions for failing to submit an Annual Report is another significant problem.¹⁴ This legal gap provides room for non-compliance by irresponsible parties. The issue is further compounded by the fact that foundations are not classified as reporting entities under Indonesia's anti-money laundering system, and thus are not required to report to PPATK. Consequently, PPATK does not have the direct authority to supervise or investigate foundations.

Meanwhile, in the absence of clear information regarding the flow of transactions, proving money laundering (TPPU) cases becomes extremely difficult, as the core of such investigations lies in tracing the movement of money—commonly known as the *follow the money approach*. This method prioritizes tracking the flow of funds to identify the nature of the assets, their location, and the beneficiaries of the proceeds of crime.¹⁵ Furthermore, *follow the money* investigations allow authorities to determine under whose name the money is held and to identify individuals or institutions that may have facilitated the laundering process.¹⁶ If these issues are not promptly addressed, the Annual Report of Foundations could become a loophole exploited by money laundering actors. The absence of the *know your donor*, *know your beneficiary*, and *know your partner* principles makes achieving transparency difficult. Several potential illicit practices may arise, including anonymous donations or mystery donors, unusual transactions, overvaluation of donated assets, and misuse of funds. Therefore, strengthening the standards for preparing Annual Reports and enforcing the obligation to submit them is an urgent step to prevent foundations from becoming a vehicle for TPPU.

A study by Viero and Bonaparta (2025) reveals that the unique characteristics of nonprofit organizations make them vulnerable to money laundering and terrorism financing practices.¹⁷ The risks they face include strategic, financial, and compliance aspects, which are often exacerbated by weaknesses in strategic planning, ineffective financial management, and inadequate compliance practices. Preventive efforts can be undertaken through the implementation of good governance and robust financial management, including internal

¹³ Anisa Sopiah, "Terima Dana Sosial Miliaran, Awas Jadi Sarang Pencucian Uang!," *CNBC Indonesia*, March 17, 2023, <https://www.cnbcindonesia.com/news/20230317162422-4-422672/terima-dana-sosial-miliaran-awas-jadi-sarang-pencucian-uang>.

¹⁴ Viero and Bonaparta, "Penyalahgunaan Organisasi Nirlaba sebagai Sarana Pencucian Uang dan Pendanaan Terorisme," 116.

¹⁵ Muhammad Yusuf and Edi M. Yunus, *Ikhtisar Ketentuan Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang* (Jakarta: The Indonesia Netherlands National Legal Reform Program (NLRP), 2011), 97.

¹⁶ Yusuf and Yunus, 97.

¹⁷ Viero and Bonaparta, "Penyalahgunaan Organisasi Nirlaba Sebagai Sarana Pencucian Uang dan Pendanaan Terorisme," 121.

controls, risk management procedures, and due diligence on parties involved in funding. Similarly, Sitorus, Nasution, and Windha (2023) observed that perpetrators of money laundering are increasingly shifting to non-bank sectors—such as non-bank financial institutions (NBFIs) and foundations—as a result of heightened oversight in the banking sector.¹⁸ Foundations, as nonprofit legal entities with social, humanitarian, and religious aims, are becoming prime targets. Therefore, the implementation of accountability and transparency principles in foundation management—such as the mandatory annual reporting by foundation organs—is a critical measure to prevent the practice of money laundering.

The study by Sirait and Yusuf (2023) identifies four key risk factors in the operation of foundations as potential vehicles for money laundering: anonymous donations, overvaluation of donated assets, misuse of funds, and other unusual transactions.¹⁹ Similar findings were also presented by Puannandini et al. (2023), who emphasized the importance of implementing strict due diligence procedures to mitigate these risks.²⁰ Both studies highlight that the existing regulatory framework governing foundations in Indonesia remains limited and prone to exploitation. Therefore, they suggest the need for a comparative study of foundation regulations in other countries to strengthen Indonesia's national legal framework. This research offers novelty by conducting a detailed analysis of the reporting mechanisms within foundation governance, particularly focusing on the Annual Report, which has the potential to be misused for money laundering purposes. The analysis is based on the *Know Your Principles* framework, consisting of *know your donor*, *know your beneficiary*, and *know your partner*. The aim of this study is to examine the obligations for submitting foundation annual reports, assess the potential for their misuse in money laundering schemes, and formulate an ideal regulatory direction to prevent such misuse.

This research employs a normative juridical method by examining applicable positive law. The approaches used include the statute approach, conceptual approach, and comparative approach. The type of data utilized in this legal study is secondary data, obtained through a literature review consisting of primary and secondary legal materials. Primary legal materials include laws, implementing regulations, and other official documents. The legislative instruments examined in this study include Law No. 28 of 2004 concerning Amendments to Law No. 16 of 2001 on Foundations, Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering, and Presidential Regulation No. 18 of 2017 on Procedures for Receiving and Giving Donations by Civil Society Organizations in the Prevention of Terrorism Financing. Additionally, secondary legal materials are derived from jurisprudence, legal journals, scholarly opinions, and relevant legal cases. All primary and secondary materials were collected and analyzed systematically to answer the research questions. The results of this study aim to provide policy recommendations that can enhance oversight and regulation of foundations and prevent the misuse of Annual Reports in money laundering schemes. Therefore, this research is considered urgent, as its findings can significantly contribute to improving anti-money laundering efforts through the regulation of foundations.

¹⁸ Dwi Cesaria Sitorus, Bismar Nasution, and Windha Windha, “Prinsip Akuntabilitas dan Transparansi Yayasan dalam Rangka Mencegah Praktik Pencucian Uang (Money Laundering),” *Transparency Journal of Economic Law* 1, no. 1 (2013): 7.

¹⁹ Ningrum Natasya Sirait, Liza Hafidzah, and Yusuf Rangkuti, “Organisasi Non-Profit Sebagai Media Tindak Pidana Pencucian Uang,” *AML/CFT Journal: The Journal of Anti Money Laundering and Countering the Financing Terrorism* 1, no. 2 (2023): 132–45.

²⁰ Dewi Asri Puanandini, Mohamad Fajar Alamyah, and Aliefiyar Muchamad Syabani, “Organisasi Non-Profit (Yayasan) sebagai Media Tindak Pidana Pencucian Uang,” *Public Sphere: Jurnal Sosial Politik, Pemerintahan dan Hukum* 2, no. 3 (2023): 42–48, <https://doi.org/10.59818/jps.v3i3.1049>.

Results and Discussion

Obligation to Submit the Foundation's Annual Report

A foundation is a legal entity without members, consisting of separated assets designated to achieve purposes in the social, religious, and humanitarian fields.²¹ As a legal entity, a foundation must meet formal legal requirements to operate, as it is recognized as a legal subject that possesses rights and obligations, owns distinct assets, and has the capacity to sue and be sued. The establishment of a foundation must be formalized through a notarial deed²², approved by the Minister of Law and Human Rights upon the application submitted by the notary who drafts the deed of establishment.²³ Once approved, the deed of establishment must be published in the Supplement to the State Gazette of the Republic of Indonesia²⁴ After receiving legal status, the foundation is authorized to conduct formal activities such as opening bank accounts, entering into partnerships with third parties, and obtaining operational licenses.

In conducting its activities, a foundation may receive assets obtained from non-binding donations or contributions, endowments (wakaf), grants, testamentary grants, and other acquisitions that are not in conflict with the foundation's Articles of Association and/or prevailing laws and regulations.²⁵ The amount of funds received by a foundation has implications for two key aspects: the disclosure obligations of the Annual Report and the designated recipients of that report, as follows:

- a. If the foundation receives financial assistance from the state, foreign entities, and/or other third parties totaling less than IDR 500,000,000 (five hundred million rupiah) in a fiscal year, or if it possesses assets (excluding waqf) worth less than IDR 20,000,000,000 (twenty billion rupiah), then the foundation's Annual Report must be made available by posting it on the announcement board at the foundation's office.²⁶ In this case, the report is not required to be submitted to the Minister or other relevant government agencies. However, if the foundation receives assistance from third-party partners, there is a possibility that those partners may also request access to the Annual Report as part of the partnership arrangement.
- b. If the foundation receives financial assistance from the state, foreign entities, and/or other third parties totaling at least IDR 500,000,000 (five hundred million rupiah) in a fiscal year, or if it possesses assets (excluding waqf) worth at least IDR 20,000,000,000 (twenty billion rupiah), then the Annual Report must be published in a national daily newspaper in the Indonesian language.²⁷ The report must also be submitted to the foundation's Board of Supervisors, the Minister of Law and Human Rights, and other relevant agencies.

The contents of the Annual Report include a detailed account of activities carried out during the previous fiscal year along with the outcomes achieved,²⁸ and financial statements consisting of a statement of financial position at the end of the period, a statement of activities, a cash flow statement, and accompanying notes to the financial statements.²⁹ In certain cases, the contents may be determined or supplemented based on the requirements of cooperating

²¹ *Pasal 1 Undang-Undang Republik Indonesia Nomor 16 Tahun 2001 Tentang Yayasan.*

²² *Undang-Undang Republik Indonesia Nomor 16 Tahun 2001 Tentang Yayasan, Article 9(2).*

²³ *Undang-Undang Republik Indonesia Nomor 28 Tahun 2004 Tentang Perubahan atas Undang-Undang Nomor 16 Tahun 2001 Tentang Yayasan, Article 11.*

²⁴ *Undang-Undang Republik Indonesia Nomor 28 Tahun 2004 Tentang Perubahan atas Undang-Undang Nomor 16 Tahun 2001 Tentang Yayasan, Article 24.*

²⁵ *Undang-Undang Republik Indonesia Nomor 16 Tahun 2001 Tentang Yayasan, Article 26.*

²⁶ *Undang-Undang Republik Indonesia Nomor 28 Tahun 2004 Tentang Perubahan atas Undang-Undang Nomor 16 Tahun 2001 Tentang Yayasan, Article 52(1).*

²⁷ *Undang-Undang Republik Indonesia Nomor 28 Tahun 2004 Tentang Perubahan atas Undang-Undang Nomor 16 Tahun 2001 Tentang Yayasan, Article 52(2).*

²⁸ *Undang-Undang Republik Indonesia Nomor 16 Tahun 2001 Tentang Yayasan, Article 49(1)(a).*

²⁹ *Undang-Undang Republik Indonesia Nomor 16 Tahun 2001 Tentang Yayasan, Article 49(1)(b).*

partner organizations.³⁰ This flexibility arises particularly when the foundation receives funding from non-governmental organizations or third-party partners, based on cooperation agreements or memoranda of understanding (MoUs), which may include specific technical guidelines on standardized reporting formats.³¹

The preparation of the Annual Report is carried out by the organs of the foundation.³² The procedures for compiling the Annual Report are undertaken by the Board of Management (Pengurus), which is responsible for documenting the foundation's programs and activities. This documentation includes notes or narratives detailing the rights and obligations related to the foundation's operational undertakings. These notes are then compiled along with the foundation's financial documents, such as bookkeeping records and supporting administrative financial data, by the finance division of the Board, which also serves as the treasurer. The completed draft of the Annual Report is subsequently reviewed by the Chair of the Board and submitted to the Board of Supervisors (Pembina) for ratification through a formal supervisory meeting.³³

Foundations receiving government assistance are subject to specific reporting obligations as stipulated under Article 24 of Government Regulation No. 63 of 2008 concerning the Implementation of the Law on Foundations. Government assistance refers to aid provided by the state to foundations established by Indonesian nationals and implemented by central or regional governments. Such assistance originates from the State Budget (APBN) for the central government or the Regional Budget (APBD) for local governments.³⁴ It may take the form of funds, services, or other benefits convertible to monetary value, and is delivered either as grants or through other mechanisms. The reporting obligation related to government assistance includes the submission of an Annual Report containing activity and financial reports, once per year, to the relevant minister or head of the granting institution. The Annual Report must be prepared by the foundation's Board of Management no later than five (5) months after the close of the foundation's fiscal year. The activity report must include, at a minimum, an overview of the foundation's status and activities during the previous fiscal year and the results achieved.³⁵ The financial report must contain, at a minimum, the statement of financial position at the end of the period, the statement of activities, the cash flow statement, and explanatory notes to the financial statements.³⁶ The final versions of both the activity and financial reports must be signed by the Board of Management and the Supervisory Board, in accordance with the foundation's Articles of Association, and then ratified by the Board of Supervisors through a formal meeting.

The obligation to submit the Foundation's Annual Report is not limited to the Minister or the head of the institution providing state assistance, but also extends to third parties acting as donors. The foundation's sources of funds may also originate from donations or contributions provided by such third parties, which can include individuals, organizations, business entities, or other legal persons. These third parties are generally external collaborators or partners of the foundation who operate outside the foundation's internal structure. This type of collaboration

³⁰ Interview with a representative of the Victory Plus Foundation, Yogyakarta, conducted on May 21, 2025, at 1:30 PM (WIB). [Unpublished, confidential document]

³¹ Interview with a representative of the Victory Plus Foundation, Yogyakarta, conducted on May 21, 2025, at 1:30 PM (WIB). [Unpublished, confidential document]

³² *Undang-Undang Republik Indonesia Nomor 16 Tahun 2001 Tentang Yayasan*, Chapter VI on Foundation Organs, Articles 28–47.

³³ *Undang-Undang Republik Indonesia Nomor 16 Tahun 2001 Tentang Yayasan*, Article 50(3).

³⁴ Peraturan Pemerintah Republik Indonesia, *Peraturan Pemerintah Republik Indonesia Nomor 63 Tahun 2008 Tentang Pelaksanaan Undang-Undang Tentang Yayasan* (Jakarta, 2008), Article 20, <http://peraturan.bpk.go.id/Details/4879/pp-no-63-tahun-2008>.

³⁵ *Undang-Undang Republik Indonesia Nomor 16 Tahun 2001 Tentang Yayasan*, Article 49(1).

³⁶ *Undang-Undang Republik Indonesia Nomor 16 Tahun 2001 Tentang Yayasan*, Article 49(2).

is usually based on either temporary or long-term agreements that establish legal obligations between both parties. For example, in a partnership between Foundation A and Institution B, program implementation and activity reporting are typically confined to their contractual relationship. However, the Annual Report submitted to the third party does not follow a uniform standard of content unless such content requirements are explicitly defined within the cooperation agreement itself. This is due to the fact that the Foundation Law only mandates that the Annual Report be compiled and made publicly available via a notice board at the foundation's office, without providing detailed guidelines on its contents. Furthermore, Article 24 of Government Regulation No. 63 of 2008 stipulates annual reporting obligations only for assistance originating from state budget sources.

Despite the legal requirement to submit reports, there is currently no standardized or detailed format for compiling Annual Reports for foundations—whether their assets derive from state assistance or third-party contributions. This lack of uniformity is evident in a review of three different Annual Reports from 2023: the Save the Children Indonesia Foundation Annual Report³⁷ the Indonesian Children's Cancer Care Foundation (YKAKI) Annual Report,³⁸ and the Victory Plus Yogyakarta Foundation Annual Report.³⁹ These three foundations exhibit significant variation in the structure and content of their Annual Reports, Table 1 illustrates that each foundation adopts a different approach in presenting key elements in its annual report. Save the Children Indonesia is the only organization that includes nearly all relevant components, namely sources of program funding, beneficiaries, donor information, accountability reporting to the government, and the foundation's revenue sources. Although it does not explicitly mention third-party partners, the scope of information provided reflects a fairly comprehensive level of transparency and accountability. The Indonesian Cancer Children's Foundation (Yayasan Kasih Anak Kanker Indonesia) focuses more on administrative reporting and program benefits. This is evident in the disclosure of beneficiary information, accountability to the government, and the foundation's sources of income. However, it does not provide specific details about donors, allocation of program funds, or third-party partnerships, making the report appear less comprehensive in disclosing operational processes and supporting actors. Victory Plus Foundation Yogyakarta places more emphasis on program implementation and external collaboration. This is demonstrated by the inclusion of information on sources of funding, beneficiaries, and third-party partners. However, the foundation does not disclose accountability to the government, donor information, or a complete overview of revenue sources. The absence of these elements could weaken public oversight of the institution's financial integrity and sustainability. From a regulatory perspective, the obligation to prepare an annual report is outlined in Article 52 of Law Number 16 of 2001 on Foundations, as amended by Law Number 28 of 2004, which stipulates that the board must prepare an annual report containing at least an activity report and a financial report. Furthermore, Article 27 of Government Regulation Number 63 of 2008 emphasizes the requirement for foundations receiving state assistance to submit their reports to relevant government agencies. However, these regulations do not provide detailed guidance on the structure of annual reports for foundations receiving support from non-governmental entities such as individuals, institutions, corporations, or other legal entities. In this context, variations in the reporting elements across different foundations can be interpreted as the result of administrative autonomy and internal accountability practices specific to each non-

³⁷ Yayasan Save the Children, "Laporan Tahunan 2023 Yayasan Save the Children Indonesia," Save the Children Indonesia, last modified September 26, 2024, <https://savethechildren.or.id/dokumen/laporan-tahunan-2023-yayasan-save-the-children-indonesia>.

³⁸ Yayasan Kasih Anak kanker Indonesia, "Laporan Keuangan - YKAKI," Ykaki.org, last modified October 16, 2021, <https://ykaki.org/en/laporan-keuangan/>.

³⁹ Interview with a board member of the Victory Plus Foundation, Yogyakarta, conducted on May 21, 2025, at 1:30 PM (WIB). [Confidential and unpublished document].

governmental partner. Each foundation adjusts its reporting structure according to its operational needs, program characteristics, and funding sources. For example, one foundation's inclusion of third-party partnerships may reflect strategic collaborations undertaken to achieve its mission, while another may emphasize financial flows and program benefits in its reporting.

Table 1. Foundation Annual Report Outputs.

| | Save the Children Indonesia Foundation | Indonesian Children's Cancer Care Foundation | Victory Plus Yogyakarta Foundation |
|---|---|---|---------------------------------------|
| Beneficiaries ³⁹ | ✓ | ✓ | ✗ |
| Reporting Accountability to the Government ⁴⁰ | ✓ | ✓ | ✗ |
| Other Parties ⁴¹ | ✗ | ✗ | ✓ |
| Source of Activity Funding ⁴² | ✓ | ✗ | ✓ |
| Donor Information ⁴³ | ✓ | ✗ | ✗ |
| Source of Foundation Income ⁴⁴ | ✓ | ✓ | ✗ |

There are three key actors with significant roles in the preparation and disclosure of a foundation's annual report. First, donors, who provide wealth, funds, or other forms of material contributions that serve as the primary sources of the foundation's financing. Second, beneficiaries, who directly receive the impacts of the foundation's programs, in line with the foundation's objectives as set out in its Articles of Association. Third, partners, who are external entities—either governmental or non-governmental—that establish cooperative relationships with the foundation to support its goals through legally binding agreements or based on statutory provisions. These three actors play essential legal roles that entail consequences such as the need for transparency, accountability, and reporting obligations from the foundation to its stakeholders. Therefore, their involvement determines the extent to which a foundation fulfills public accountability principles through the timely and informative preparation and dissemination of its annual report.

Potential Misuse of Foundation Annual Reports in Money Laundering (TPPU)

One of the critical components in the implementation of the Anti-Money Laundering and Counter-Terrorism Financing (AML/CFT) regime is the identification of vulnerabilities.

⁴⁰ Beneficiaries are individuals, groups, or communities who directly receive the benefits of the programs or activities conducted by the foundation in accordance with its founding purposes in the fields of social, religious, and humanitarian work.

⁴¹ Accountability reporting to the government refers to the submission of periodic reports containing comprehensive information on the implementation of activities, budget utilization, and achievements during the fiscal year, delivered to the relevant government authority as a form of accountability for the foundation's duties and responsibilities.

⁴² External partners refer to individuals, business entities, institutions, or other legal entities not part of the internal foundation structure, which engage in formal partnerships based on agreements for either temporary or long-term collaboration.

⁴³ Activity funding sources are financial inflows specifically allocated to finance operational or programmatic activities planned for a given period, originating from the foundation's annual budget, program grants, or donations designated for specific activities.

⁴⁴ Donor information includes all data and details related to the identity, amount, type, purpose, and utilization of donations or assistance provided to the foundation by individuals, institutions, or legal entities in the form of funds, goods, and/or services.

⁴⁵ Foundation income sources consist of all forms of asset inflows owned by the foundation, whether derived from founder contributions, donations from external parties, grants, revenue from non-direct business activities, or investments. All such income is utilized to support the sustainability and overall social objectives of the foundation and is recorded as the foundation's assets.

Vulnerability refers to elements that can be exploited by threat actors or factors indicating weaknesses within the anti-money laundering system.⁴⁶ This concept is systematically addressed through the National Risk Assessment (NRA).⁴⁷ The National Risk Assessment (NRA), as a practical manifestation of the AML/CFT framework, aims to provide a comprehensive understanding of money laundering risks by focusing on the identification and evaluation of those risks. This process is conducted in accordance with Recommendation 1 of the Financial Action Task Force (FATF),⁴⁸ which provides guidance for countries to identify and assess the risks of money laundering and terrorist financing, enabling the development of a stronger and more effective system to confront potential threats.

Foundations, as non-profit organizations (NPOs) operating in the philanthropic sector, are classified among entities with a high vulnerability level. Their voluntary nature and distinct operational structures make them susceptible to misuse by individuals seeking personal gain. The Charity Commission for England and Wales, an independent government body responsible for registering and overseeing charities in the UK, has highlighted that the unique characteristics of charitable organizations—such as high public trust and a social mission focus—can attract criminal actors engaging in fraud, theft, and money laundering.⁴⁹

Between 2016 and 2021, the Indonesian National Police, the Attorney General's Office, and the Corruption Eradication Commission (KPK) handled multiple money laundering cases involving corporate entities.⁵⁰ Foundations ranked third in terms of high-risk corporate entities for money laundering based on self-assessments conducted by law enforcement agencies, industry sectors, and supervisory and regulatory bodies.⁵¹ One of the key strategies to prevent the misuse of foundations as channels for money laundering is the application of the principles of "know your donor", "know your beneficiary", and "know your partner" during due diligence processes.⁵² The "know your donor" principle requires NPOs to understand, at least generally, the sources of funds they receive—whether in the form of grants, cash donations, or other contributions.⁵³ Foundation administrators must evaluate the potential risks associated with accepting particular donations and ensure that funds from donors, whether individuals or institutions, are appropriate and legitimate. They must also confirm that the donations are not derived from illegal sources and that any conditions attached to the donations are acceptable and align with the foundation's mission. NPOs should document the identity of significant donors while maintaining donor confidentiality. The "know your beneficiary" and "know your partner" principles mean that NPOs must take reasonable steps to verify the identities, credentials, and reputations of both beneficiaries and partner organizations with whom they collaborate.

⁴⁶ Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), *Penilaian Risiko Indonesia terhadap Tindak Pidana Pencucian Uang Tahun 2021* (Jakarta: Pusat Pelaporan dan Analisis Transaksi Keuangan(PPATK), 2021), 10.

⁴⁷ Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), 4.

⁴⁸ The Financial Action Task Force (FATF), through Recommendation 1, requires each country to conduct an assessment to identify, assess, and understand money laundering risks, in order to develop and implement a risk-based Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) regime. [in Indonesian]

⁴⁹ Charity Commission for England and Wales, *Chapter 2: Due Diligence, Monitoring and Verifying the End Use of Charitable Funds*, 14.

⁵⁰ Sirait, Hafidzah, and Rangkuti, "Organisasi Non-Profit Sebagai Media Tindak Pidana Pencucian Uang," 138.

⁵¹ Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), *Penilaian Risiko Indonesia Terhadap Tindak Pidana Pencucian Uang Tahun 2021*, 157.

⁵² Viero and Bonaparta, "Penyalahgunaan Organisasi Nirlaba sebagai Sarana Pencucian Uang dan Pendanaan Terorisme."

⁵³ Charity Commission for England and Wales, *Chapter 2: Due Diligence, Monitoring and Verifying the End Use of Charitable Funds*, 16.

The implementation of the principles of “*know your donor*,” “*know your beneficiary*,” and “*know your partner*” aligns with the Financial Action Task Force (FATF) Recommendation 8 on Combating the Abuse of Non-Profit Organisations.⁵⁴ This recommendation specifically outlines measures to prevent the misuse of non-profit organizations (NPOs) for the purpose of terrorism financing (TF). These measures include: maintaining information on the activities of the NPO and the persons who own, control, or direct those activities; publishing annual financial statements; establishing internal control mechanisms to ensure that received funds are recorded and used in accordance with the stated purposes of the NPO; and applying the principles of “*know your beneficiary*” and “*know your partner*.” Although Recommendation 8 does not explicitly target money laundering (TPPU), the recommended measures are nonetheless relevant for preventing the misuse of foundations for laundering purposes. This is because the core aim of the recommendation is to enhance transparency and accountability in financial flows within NPOs, which in turn can help prevent the diversion of funds for illicit purposes.

When these three principles are adopted as part of a foundation’s governance framework, the transparency and legitimacy of financial flows can be ensured—thereby reducing the risk of the foundation being used as a conduit for money laundering. Opaque financial flows hinder the application of the “follow the money” approach, which is fundamental to tracing the movement of illicit funds. This method involves tracking the flow of money from its criminal origins through a series of layers that make the funds appear legitimate,⁵⁵ ultimately revealing the perpetrators, the nature of the offense, and the location and amount of concealed or laundered assets.⁵⁶ In addition, the follow-the-money strategy helps deter criminal motivation by disrupting the accumulation of illicit wealth, which often empowers repeat offenses.⁵⁷ Because it focuses on covert assets, this method also minimizes resistance from perpetrators, making it highly effective in exposing money laundering schemes.⁵⁸

A key instrument to support the implementation of the principles of “*know your donor*,” “*know your beneficiary*,” and “*know your partner*” is the Foundation’s Annual Report. This report includes essential information about the foundation’s governance, including its activities and financial management. However, several regulatory shortcomings hinder the fulfillment of these principles. First, there is no standardized format or content requirement for Foundation Annual Reports. As previously explained, among the three examined reports—those of Save the Children Indonesia Foundation, Indonesian Cancer Children’s Care Foundation (YKAKI), and Victory Plus Foundation Yogyakarta—there were notable inconsistencies, particularly regarding the sources and allocation of funds. Some reports omitted detailed disclosure of fund origins, while others lacked transparency in explaining how the funds were distributed.

The second issue concerns the absence of sanctions for failing to publish the Foundation’s Annual Report on the public notice board.⁵⁹ The lack of sanctions diminishes the effectiveness of the law, as the absence of clear legal consequences for violations may encourage negligence or non-compliance. Sanctions are a fundamental instrument to ensure legal effectiveness by

⁵⁴ Financial Action Task Force, *Combating the Abuse of Non-Profit Organizations (Recommendation 8)* (Financial Intelligence Authority, 2015), 20.

⁵⁵ Yosep Martua Ganda Pangaribuan, Sandro Marihot Marpaung, and Reza Ferdiansyah, “Efektivitas Pembuktian Mengenai TPPU Ditinjau Dari UU No. 8 Tahun 2010 Tentang TPPU,” *UNES Law Review* 6, no. 2 (2023): 6229, <https://doi.org/10.31933/unesrev.v6i2.1451>.

⁵⁶ Indra Waspada Yuda, Hambali Thalib, and Kamri Ahmad, “Penegakan Hukum Tindak Pidana Pencucian Uang yang Berasal dari Tindak Pidana Narkotika,” *Journal of Lex Generalis (JLG)* 1, no. 2 (2020): 235, <https://doi.org/10.52103/jlg.v1i2.108>.

⁵⁷ Yusuf and Yunus, *Ikhtisar Ketentuan Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang*, 97.

⁵⁸ Yusuf and Yunus, 97.

⁵⁹ *Undang-Undang Republik Indonesia Nomor 28 Tahun 2004 Tentang Perubahan atas Undang-Undang Nomor 16 Tahun 2001 Tentang Yayasan, Article 52(1) and (2)*.

establishing negative consequences, namely punishment.⁶⁰ Although in practice it is not always easy to ensure that a law will be effective even when sanctions are in place, at the very least, the existence of such sanctions creates a deterrent effect—discouraging individuals from violating legal norms due to fear of prosecution or punishment.⁶¹ This is consistent with John Austin’s theory, which holds that law is a command from the sovereign backed by the threat of sanctions in case of non-compliance.⁶² Without sanctions, legal norms lose their binding force, and individuals no longer feel legally obligated to obey. Therefore, sanctions serve as a preventive tool that encourages legal compliance. In the context of the Annual Report requirement for foundations, the absence of sanctions can lead to the neglect of reporting obligations by certain individuals. This weakens oversight over foundation activities and opens opportunities for misuse or deviation from applicable legal provisions. Moreover, this status quo is exacerbated by the fact that foundations are not designated as reporting entities in money laundering (TPPU) cases, and thus are not legally required to report to the Indonesian Financial Transaction Reports and Analysis Center (PPATK).⁶³ This regulatory gap creates vulnerabilities in the supervisory mechanism, which can be exploited to obscure the origin of funds or suspicious financial activities within a foundation.

For instance, consider Foundation X that receives large donations from several individuals. In its Annual Report, these donations are merely recorded in general terms as contributions for educational projects, with no disclosure of donor identities. If it is later discovered that these donors were involved in criminal activity, law enforcement authorities would face difficulties tracing the financial records. This is due to the lack of detailed information in the report—or possibly due to the complete absence of such a report because of the lack of sanctions. As a result, tracing the financial trail using the “follow the money” approach becomes extremely difficult due to a lack of transparency in fund flows. Such circumstances hinder efforts to uncover the perpetrators of money laundering and to clarify financial trails that may have been disguised or concealed. When a foundation is used as a vehicle for money laundering, it risks becoming a passive perpetrator.⁶⁴ Under Indonesian law, money laundering offenses are divided into two categories.⁶⁵ Each of these forms is regulated under the relevant articles of the Money Laundering Law (UU TPPU) and Law No. 1 of 2023 on the Criminal Code, which amended Articles 2(1), 3, 4, and 5(1)–(2) of the Money Laundering Law. The two forms of money laundering include:

⁶⁰ John Kenedi, *Kebijakan Hukum Pidana* (Yogyakarta: Pustaka Pelajar, 2017), 23.

⁶¹ Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum* (Jakarta: Raja Grafindo Persada, 2011), 59.

⁶² Rajib Hassan, “Law Is a Command of the Sovereign Backed by Sanction: Austinian Command Theory of Law - Revisited,” *International Journal of Law Management & Humanities* 6, no. 1 (2023): 2108.

⁶³ *Undang-Undang Republik Indonesia Nomor 8 Tahun 2010 Tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang* (Jakarta: Lembaran Negara Republik Indonesia Tahun 2010 Nomor 122, 2010), Article 17(1).

⁶⁴ Article 6(1) of *Law of the Republic of Indonesia Number 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes [Undang-Undang Tindak Pidana Pencucian Uang / UU TPPU]* opens the possibility for foundations to be held criminally liable. This provision states that if a money laundering offense is committed by a corporation, criminal penalties may be imposed on the corporation and/or its controlling personnel. According to Article 1 point 9 of the same law, a corporation includes any organized group of persons and/or assets, whether incorporated or not. Meanwhile, Article 1 point 1 of *Law of the Republic of Indonesia Number 16 of 2001 on Foundations* defines a foundation as a legal entity established for social, religious, and humanitarian purposes. Therefore, as a legal entity that qualifies as a corporation, a foundation may be held criminally liable if proven to have committed a money laundering offense. [in Indonesian].

⁶⁵ Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), *Riset Tipologi Tahun 2021 Berdasarkan Putusan Pengadilan Pencucian Uang Tahun 2020* (Jakarta: Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), 2021), 8.

1. Active Money Laundering (TPPU)

Active money laundering is regulated under Article 3 and Article 4 of the Anti-Money Laundering Law (UU TPPU). In addition, it is also stipulated in Article 607(1)(a) and (b) of Law No. 1 of 2023 on the New Indonesian Criminal Code. This type is referred to as “active” money laundering due to the existence of deliberate actions taken to conceal or disguise the assets derived from criminal activity.

2. Passive Money Laundering (TPPU)

Passive money laundering is provided for in Article 5(1) of the UU TPPU, and also regulated under Article 607(1)(c) of Law No. 1 of 2023. It is referred to as “passive” because it does not involve any active efforts to conceal or disguise assets derived from criminal acts.

Money laundering essentially consists of a series of acts (*actus reus*) committed in relation to the proceeds of crime, with the intent to conceal or disguise the origin of those illicit assets.⁶⁶ The elements of “concealing” and “disguising” carry distinct meanings. *Concealing* refers to efforts made to ensure that others are unaware of the origin of the assets—for example, by failing to disclose the source of funds to financial service providers.⁶⁷ In contrast, *disguising* involves mixing illicit funds with legitimate ones so that the illicit origin is masked and appears to stem from lawful activities, or converting illicit funds into another currency or financial instrument to obscure their origin.⁶⁸

Meanwhile, the Annual Report of a Foundation, which serves as a primary instrument for recording the inflow and outflow of funds, is inherently vulnerable to misuse by perpetrators of money laundering. As previously discussed, this vulnerability stems from the absence of uniform and detailed guidelines for the preparation of the Annual Report, as well as the possibility that foundations may fail to submit the report altogether. In fact, the Annual Report should contain clear and transparent information on financial transactions and their management, in order to prevent misuse. However, in practice, money laundering actors may exploit this reporting mechanism to conceal financial flows, thereby hindering law enforcement authorities from tracing illicit funds.

Efforts to better understand how perpetrators may exploit the Annual Report of a Foundation to conceal or disguise proceeds of crime can be identified through two main methods:

1) Concealing or Disguising Proceeds of Crime through Transactions

In proving money laundering cases under Article 3, which focuses on the element of “transactions,” the emphasis is placed on the objective factual circumstances of the transactional acts.⁶⁹ This means that the transaction conducted by the perpetrator must be supported by legal facts that demonstrate it was executed with the intent to conceal or disguise the origin of the funds.⁷⁰ In simple terms, concealing or disguising based on a transaction does not necessarily involve falsifying information, but rather structuring the transaction in such a way that it misleads others. Therefore, in the context of a Foundation’s Annual Report, there may be no direct falsification of data. Instead, the perpetrator may exploit legal loopholes in the lax regulation of Annual Report preparation—especially regarding completeness and transparency.

⁶⁶ Muh Afdal Yanuar, *Tindak Pidana Pencucian Uang dan Perampasan Aset* (Malang: Setara Press, 2021), 6.

⁶⁷ Consideration of the panel of judges in proving the element of “with the purpose of concealing and disguising the origin of property” in: *Putusan Pengadilan Negeri Jakarta Pusat Nomor 84/Pid.Sus/TPK/2013/PN.Jkt.Pst* (Jakarta: Pengadilan Negeri Jakarta Pusat, 2013), 438.

⁶⁸ *Putusan Pengadilan Negeri Jakarta Pusat Nomor 84/Pid.Sus/TPK/2013/PN.Jkt.Pst*, 438–39.

⁶⁹ Yanuar, *Tindak Pidana Pencucian Uang dan Perampasan Aset*, 138.

⁷⁰ Yanuar, 138.

Possible modus operandi in misusing a Foundation's Annual Report to conceal or disguise illicit financial flows through transactional means include:

a) Anonymous donations/mystery donor

His method does not involve data manipulation per se, but rather omits recording the source of the donation, as contributions may be made anonymously. This is done to obscure the origin of the funds. Furthermore, donors or beneficial owners may provide inadequate or suspicious information—. ⁷¹ examples include trusts or shell companies that refuse to disclose the real beneficial owner. ⁷² Donations, whether in cash or other forms, are often channeled through third parties who maintain the secrecy of the donor's identity, thereby assisting in the laundering or disguising of proceeds from criminal activity. ⁷³

As an illustration, X is a Foundation board member and also a perpetrator of a corruption crime. In an effort to evade suspicion, X places part of the illicit proceeds into the Foundation in the form of anonymous and periodic donations, effectively obscuring the origin of the funds. In the Foundation's Annual Report, the transactions are recorded merely as general contributions, without identifying the donor. By leveraging their control over the Foundation, X uses the organization as a money laundering vehicle. As a result, the Foundation's activities may appear to serve the public interest, while in fact serving X's personal gain. Later, X can recover the funds through other means, which will be further discussed in the following sections.

In this case, money laundering occurs when X deposits part of the illicit proceeds into the Foundation anonymously with the intent to conceal or disguise the origin of the funds. If X eventually obtains profit from the Foundation's activities, such profits will appear to be legitimate income derived from the Foundation, thereby masking the fact that X's wealth originated from a criminal offense.

b) Other Unusual Transactions

This situation arises when, for example, corporate donations are made through personal accounts or when a donor provides a large contribution that does not align with their known profile or income level. ⁷⁴ The risk of misuse tends to increase when a Foundation's governance structure and financial controls are weak. ⁷⁵ As a result, some Foundations may apply poor financial administration practices and neglect due diligence checks on both the donor organizations and beneficiaries, failing to ensure that the donated funds are legitimate and legally sourced. ⁷⁶

For instance, the Harapan Foundation receives a large donation from a donor named X, who claims to be a successful entrepreneur. X regularly donates significant sums of money to the Foundation. In response, the Foundation merely records these donations in its Annual Report without verifying the origin of the funds or conducting a background check on X. Later, it is revealed that X was involved in criminal activity. However, this becomes difficult to detect because Harapan Foundation neither prepared nor submitted an Annual Report. In the absence

⁷¹ Sirait, Hafidzah, and Rangkuti, "Organisasi Non-Profit sebagai Media Tindak Pidana Pencucian Uang," 140.

⁷² Sirait, Hafidzah, and Rangkuti, 140.

⁷³ Charanjit Singh and Wangwei Lin, "Can Artificial Intelligence, RegTech and CharityTech Provide Effective Solutions for Anti-Money Laundering and Counter-Terror Financing Initiatives in Charitable Fundraising," *Journal of Money Laundering Control* 24, no. 3 (2020): 464–82, <https://doi.org/10.1108/JMLC-09-2020-0100>.

⁷⁴ Sirait, Hafidzah, and Rangkuti, "Organisasi Non-Profit Sebagai Media Tindak Pidana Pencucian Uang," 141.

⁷⁵ Sirait, Hafidzah, and Rangkuti, 141.

⁷⁶ Sirait, Hafidzah, and Rangkuti, 141.

of a clear and accurate Annual Report, the origin of the funds and the identity of X become difficult to trace.

In this context, money laundering (TPPU) occurs when the Harapan Foundation receives funds from X. The Foundation may be categorized as a passive perpetrator, having accepted proceeds of crime from X. This is because the Foundation should have had reason to suspect X's profile—namely, that as a new entrepreneur, his earnings were not consistent with the substantial donations made.

2) Concealing or Disguising the Proceeds of Crime Based on Information Surrounding the Transaction

Perpetrators of crimes may not only focus on the transactions themselves, but also on the information surrounding those transactions.⁷⁷ For instance, legally valid documents or official records—such as a foundation's Annual Report—can be exploited to conceal or disguise the illicit origin of wealth. The perpetrator may make the transaction appear as though it originates from a legitimate source by providing inaccurate or misleading information in the report,⁷⁸ which in fact does not reflect the actual transaction.⁷⁹ This can be simplified using a formula that involves a *medium* and a *method*.⁸⁰

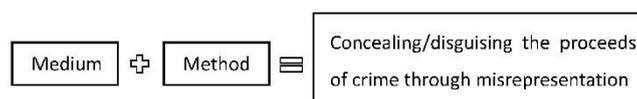


Figure 1. Transaction formula based on media and method.

The medium refers to a legally valid official record, while the method refers to the act of recording false or misleading information in that medium that does not correspond with the actual transaction. This approach demonstrates that efforts to conceal or disguise the proceeds of crime do not always rely on layers of transactions detectable by financial systems.⁸¹ This differs from the previous discussion, which focused on concealment or disguise through the transactions themselves.⁸² There are at least two *modus operandi* for the misuse of a foundation's Annual Report that perpetrators might employ to conceal illicit financial flows based on the information surrounding the transaction:

a) Overvaluation of donated assets

One mode of abuse that may occur is the overvaluation of donated assets. Perpetrators involved in criminal activities may donate assets such as property or artwork and artificially inflate the value of those assets.⁸³

For example, X, who is involved in a criminal offense, seeks to conceal the proceeds of their crime. To achieve this, X donates several paintings to a foundation. Although the actual market value of the paintings is only IDR 100,000,000 (one hundred million rupiah), X arranges for the foundation to record them at a value of IDR 800,000,000 (eight hundred million rupiah). Consequently, in the foundation's Annual Report, the paintings are recorded at the inflated value of IDR 800,000,000.

In such a case, money laundering (ML) begins when the paintings are transferred to the foundation and recorded at a value far exceeding their true market worth. The recording of these

⁷⁷ Yanuar, *Tindak Pidana Pencucian Uang Dan Perampasan Aset*, 151.

⁷⁸ Yanuar, 151.

⁷⁹ Yanuar, 151.

⁸⁰ Yanuar, 151.

⁸¹ Yanuar, 151.

⁸² Yanuar, 151.

⁸³ Sirait, Hafidzah, and Rangkuti, "Organisasi Non-Profit sebagai Media Tindak Pidana Pencucian Uang," 40.

paintings in the foundation's Annual Report—a legally recognized official document—serves as the medium through which the transaction is masked, beginning from the point at which ownership is transferred from X. The act of concealing or disguising the illicit origin of the funds is thus achieved by misleading parties who review the foundation's Annual Report into believing that the transaction value is legitimate, when in fact it is not.

Naturally, the illustration above depends heavily on the specifics of each case and how the scheme of asset overvaluation is ultimately implemented. Nevertheless, the example clearly demonstrates the potential loophole for exploiting the foundation's Annual Report.

b) Misuse of Fund

The management of foundation funds is fundamentally regulated under the Foundation Law, which mandates that all business activities and asset management must align with the foundation's stated purposes.⁸⁴ However, there remains potential for the misuse of foundation funds, such as using foundation assets for personal gain or manipulating financial transactions to make them appear legitimate and in line with the foundation's objectives.

For illustration, consider Y, who obtains a loan of IDR 1,000,000,000 (one billion rupiah) from Melati Bank. The loan is formally applied for under the name of the foundation. However, once the funds are disbursed into the foundation's account, the money is transferred to Y's personal account and subsequently used for Y's personal interests. Despite this, the foundation's Annual Report records the funds as a loan taken and used for the foundation's purposes. This creates the impression that the transaction is legitimate and in line with the foundation's objectives. As a result, the otherwise prohibited transaction is concealed behind the information presented in the Annual Report.

In this context, money laundering (ML) occurs when the funds are transferred from the foundation's account to Y's personal account. Although the transaction is recorded as being for the foundation's use, in reality, the funds are used for Y's private benefit. Through this method, Y fulfills the elements of "concealing" or "disguising" the proceeds of a criminal offense.

When a foundation fails to implement the principles of *know your donor*, *know your beneficiary*, and *know your partner* in the preparation of its Annual Report, the effectiveness of anti-money laundering (AML) measures is significantly undermined. On the contrary, such omission may create opportunities for the misuse of the foundation's Annual Report as a tool for money laundering. The Annual Report plays a crucial role in tracing the flow of funds or assets within the foundation, serving as a key instrument for law enforcement to uncover money laundering schemes using the *follow the money* method. Therefore, it is essential to reassess the regulatory framework, particularly with regard to the imposition of sanctions and the strengthening of oversight mechanisms, to ensure that the Annual Report accurately reflects the foundation's actual financial condition.

The Ideal Regulatory Direction for Annual Report Compliance in Foundations

The limited incorporation of *know your principles* within the current regulatory framework governing the Annual Reports of foundations presents a significant vulnerability that may facilitate the misuse of foundations as vehicles for money laundering. In order to adopt *know your principles*—namely *know your donor*, *know your beneficiary*, and *know your partner*—strategic measures must be taken through regulatory strengthening. In this regard, legislative drafters may draw upon developments in *know your principles* frameworks as adopted in international conventions, comparative foreign legal systems, and national legal instruments.

⁸⁴ Undang-Undang Republik Indonesia Nomor 28 Tahun 2004 Tentang Perubahan atas Undang-Undang Nomor 16 Tahun 2001 Tentang Yayasan, Articles 8 and 26(4).

In its development, there are international references and several countries that have incorporated the principles of *know your donor*, *know your beneficiary*, and *know your partner* into the regulatory frameworks governing foundations. One such example is the international non-profit organization, *Association Internationale des Écoles Supérieures d'Éducation Physique* (AIESEP), which has established *know your donor* guidelines encompassing the following elements:

1. *Verification Process*

A process aimed at ensuring the legitimacy of donors, including, but not limited to, identity verification, financial background checks, and compliance with anti-money laundering regulations.

2. *Ethical Considerations*

Donations must not be accepted from individuals or entities involved in illegal activities, human rights violations, or any actions that conflict with the organization's commitment to ethical conduct.

3. *Anonymous Donations*

While donor privacy is respected, the organization is required to inquire into the origin of the donation to ensure alignment with the organization's values and ethical standards.

4. *Due diligence*

A comprehensive review conducted to assess the ethical standing and moral integrity of the donor and/or any affiliated entities.

5. *Right to refuse*

The organization reserves the right to reject donations that are deemed to pose a threat to its mission, values, or institutional integrity

In Scotland, charitable organizations must comply with Section 7(4) of the *Charities and Trustee Investment (Scotland) Act 2005*, which prohibits the disbursement of funds for non-charitable purposes. Additionally, the "right to refuse" principle has been adopted in Scotland, as well as in England and Wales, based on the premise that donated funds must be used for legitimate purposes and not be misused for financial crimes, terrorism, or other criminal objectives. In this regard, the *Charity Commission for England and Wales*, in its guidance document entitled *Compliance Toolkit: Protecting Charities from Harm*, emphasizes three key measures to prevent non-profit organizations (NPOs) from becoming involved in criminal activities. First, due diligence, which includes the application of the principles of *know your donor*, *know your beneficiary*, and *know your partner*. These principles are intended to ensure awareness of the source of funds, how such funds will be used, and who is involved in the process. Second, monitoring, which involves ensuring that charitable organizations are properly accountable for their funds through audits and documented financial allocations such as receipts and invoices. Third, a risk-based approach, which requires charities to implement internal and financial controls, maintain comprehensive records of incoming and outgoing funds, conduct thorough due diligence, monitoring and verification, and take reasonable and appropriate action when facing high-risk scenarios.

In the Philippines, reporting requirements for foundations are governed by the *Securities and Exchange Commission (SEC) Memorandum Circular No. 8, Series of 2006*. Under this regulation, foundations are required to submit a sworn statement detailing the sources, amounts, and uses of funds, as well as information on planned, ongoing, and completed programs.⁸⁵ The declaration must include the names, addresses, and nationalities of donors; sources of income; fund allocations for specific projects; and details about beneficiaries and project locations. Additionally, the SEC conducts annual audits of foundations, either through direct inspections or documentary audits, with a focus on high-risk cases. Foundations that fail to comply with

⁸⁵ Security and Exchange Commission (SEC), "Memorandum Circular No. 8 Series of 2006," 2006, Section 4, <https://www.penc.com.ph/wp-content/uploads/2022/03/SEC-MC-08-2006.pdf>.

the annual reporting requirement may face penalties starting at PHP 10,000. The SEC may also revoke the registration of a foundation, following notification and hearing, if the foundation fails to submit the required documents for two consecutive years.⁸⁶

At present, there is no specific international standard that regulates NPO financial reporting for Anti-Money Laundering (AML) risk assessment. However, the International Financial Reporting Standards (IFRS) is currently developing a more uniform and comprehensive framework for non-profit financial reporting through the International Financial Reporting for Non-Profit Organisations (IFR4NPO) initiative. This project is led by institutions such as the Chartered Institute of Public Finance and Accountancy (CIPFA) and Humentum,⁸⁷ and aims to establish a globally accepted set of accounting standards for NPOs. The initiative promotes and facilitates the implementation of such standards to enhance transparency, accountability, and economic efficiency by identifying opportunities and risks.⁸⁸ These developments in international standards underscore the need for a more serious and structured approach in the regulation of foundations.

In Indonesia, Presidential Regulation No. 18 of 2017 on Procedures for Receiving and Giving Donations by Community Organizations in the Prevention of Terrorism Financing (Perpres 18/2017) has incorporated *know your principles*, which include *know your donor*, *know your beneficiary*, and *know your partner*. This regulation also applies to foundations as part of non-profit community organizations. It establishes a supervisory function carried out by the Minister in coordination with the Financial Transaction Reports and Analysis Center (PPATK). This supervision takes two forms: requesting reports from organizations regarding the receipt and disbursement of donations, and requesting clarification or explanation regarding such transactions.⁸⁹

The implementation of *know your donor*, *know your beneficiary*, and *know your partner* in Perpres 18/2017 is reflected in the obligation to identify donors and the purpose of the donation. Organizations are required to identify donors whose donations amount to at least IDR 5,000,000 (five million rupiah), as well as donations originating from or intended for parties who are nationals or residents of countries that do not adequately implement international conventions and standards on anti-money laundering and counter-terrorism financing (AML/CFT).⁹⁰ Moreover, organizations must refuse to accept donations from individuals or entities that fall into these categories and who are unwilling to provide identifying information.⁹¹ In line with this, the Financial Action Task Force (FATF) mandates that countries must identify non-profit organizations (NPOs) and assess their terrorism financing risks in a focused, proportionate, and risk-based manner.⁹² The goal is to protect NPOs from

⁸⁶ Security and Exchange Commission (SEC), Section 9.

⁸⁷ Ardil Yılmaz Kaya, "Financial Health of Npos: A Study on Nonprofit Financial Wellbeing and Accounting Process" (Master's Thesis, İstanbul, Türk-Alman Üniversitesi Sosyal Bilimler Enstitüsü, 2022), 12.

⁸⁸ International Financial Reporting for Non-Profit Organizations (IFR4NPO), 203.

⁸⁹ *Peraturan Presiden Republik Indonesia Nomor 18 Tahun 2017 Tentang Tata Cara Penerimaan Dan Pemberian Sumbangan oleh Organisasi Kemasyarakatan dalam Pencegahan Tindak pidana Pendanaan Terorisme [Presidential Regulation of the republic of Indonesia Number 18 of 2017 on Procedures for Receiving and Giving Donations by Community Organizations in the Prevention of Terrorism Financing]* (Jakarta: Lembaran Negara Republik Indonesia Tahun 2017 Nomor 31, 2017), Article 16.

⁹⁰ Article 3(1) In conjunction with Article 3(2) of *presidential regulation of the republic of Indonesia number 18 of 2017 on procedures for receiving and giving donations by community organizations in the prevention of terrorism financing*. [in Indonesian].

⁹¹ Article 5 of *Presidential regulation of the republic of Indonesia number 18 of 2017 on procedures for receiving and giving donations by community organizations in the prevention of terrorism financing*. [in Indonesian].

⁹² Financial Action Task Force on Money Laundering, *No.8 International Standards on Combating Money Laundering and The Financing of Terrorism & Proliferation* (The Financial Action Task Force on Money Laundering (FATF) Recommendations, 2025).

being misused for terrorism financing without hindering their legitimate charitable activities. In this regard, countries are encouraged to allocate greater resources and attention to NPOs that are at higher risk of such misuse. However, a similar provision has not yet been explicitly stipulated in the Indonesian Anti-Money Laundering Law.

The current legal framework leaves room for the misuse of foundations as a vehicle for money laundering (TPPU). In this context, vulnerabilities persist in the regulation of foundations' annual reporting. This condition reflects a well-known legal maxim often echoed in legal discourse: "*Het Recht Hink Achter De Feiten Aan*", which means "*the law limps behind the facts.*" While society evolves dynamically and interactions become increasingly complex, the law often struggles to keep pace with the rapid changes in social realities. Many events and facts shift drastically in response to contemporary developments, yet legal norms frequently fail to address these emerging challenges. In light of this, the state must establish a legal framework that is responsive to the evolving needs of society. At its core, the law is an institution designed to guide humanity toward a just, prosperous, and meaningful life.⁹³ Therefore, the legal system must be present and proactive in responding to the increasingly complex and diverse modes of criminal conduct, including the growing incidence of money laundering cases that exploit foundations as instruments for concealing illicit assets.

Various regulatory frameworks, both from foreign jurisdictions and national provisions, should serve as important references for lawmakers in designing risk assessment rules for foundations to prevent money laundering (TPPU). The risk-based approach is particularly relevant in this context, given the potential misuse of foundations for illicit purposes. It is essential to ensure that non-profit organizations (NPOs), which are inherently intended to serve social and religious objectives, do not become instruments for perpetrators of money laundering. Therefore, a concrete regulatory strategy must be established to prevent the abuse of foundations for TPPU by setting out an ideal direction for the implementation of annual reporting obligations.

The first step in preventing the misuse of foundations as a vehicle for money laundering is to revise the existing regulations governing the standards for preparing annual foundation reports. This revision must incorporate the application of the principles of *know your donor*, *know your beneficiary*, and *know your partner*. Embedding these principles within the regulatory framework would not only strengthen the internal oversight mechanisms of foundations but also contribute significantly to deterring the involvement of NPOs in organized criminal networks, including money laundering schemes.

One form of implementing the aforementioned principles is by adopting the accounting standards set out in the Indonesian Financial Accounting Standards (PSAK) No. 45 concerning financial reporting for non-profit entities, as issued by the Indonesian Institute of Accountants. This standard is specifically designed to provide information on liquidity, financial flexibility, the ability to meet obligations, and the need for external funding of non-profit organizations. Financial reports for non-profit organizations include the Statement of Financial Position, Statement of Activities, Statement of Cash Flows, and Notes to the Financial Statements.⁹⁴ The Statement of Financial Position must at least present classifications of assets and liabilities as well as net asset classifications—restricted or unrestricted. The Statement of Activities should include changes in net asset groups, classifications of revenues, expenses, gains, and losses, gross amounts of revenues and expenses (unless otherwise stipulated by other applicable accounting standards), and information on services rendered. However, to date, there is no binding legislation in Indonesia that mandates the implementation of PSAK No. 45. The adoption of this standard could serve as an effective preventive mechanism against potential fund misuse or suspicious activities linked to money laundering practices (TPPU), as sound

⁹³ Satjipto Rahardjo, *Menggagas Hukum Progresif Indonesia* (Yogyakarta: Pustaka Pelajar, 2006), 3–4.

⁹⁴ Ikatan Akuntan Indonesia (IAI), *Standar Akuntansi Keuangan* (Jakarta: Salemba Empat, 2021), 45.

financial accountability makes it significantly more difficult to disguise illicit funds within NPO operations.

The standard frameworks developed by the International Financial Reporting for Non-Profit Organisations (IFR4NPO), as well as practices in Scotland, England, and the Philippines, may serve as references in formulating risk-based policy for foundations in Indonesia. In this context, to incorporate the principles of *know your donor*, *know your beneficiary*, and *know your partner* into the reporting standards of annual foundation reports, such reports should, at minimum, disclose donor identities, donation amounts, the purpose of funds received, and detailed records of programs or targets achieved. The enforcement of stricter regulations aligned with these standards would enhance financial reporting transparency and accountability, while simultaneously reducing the risk of foundations being misused as instruments for money laundering.

Foundations are established solely for religious, social, humanitarian, and other idealistic purposes. Their assets derive from segregated wealth, including voluntary donations or contributions received from the state, society, or other parties, provided such donations do not conflict with existing legal provisions.⁹⁵ In practice, it is not uncommon for donors to prefer anonymity in order to preserve privacy or for personal reasons. However, this may pose a problem if the donor is involved in money laundering. Although many donors contribute without seeking publicity, it remains crucial for foundations to uphold transparency in financial management.

The prohibition of receiving anonymous donations in a Foundation's Annual Report is essential to prevent the potential misuse of foundations as a vehicle for money laundering (TPPU). This measure serves as a key strategy to ensure that, in the event of suspected money laundering, the investigation process using the *follow the money* method can be conducted more effectively. As part of its implementation, the foundation must play an active role in verifying that donations align with the donor's profile. If the foundation identifies any indications of money laundering or suspicious donations, it must take immediate and appropriate action. Such indications may include suspicious transactions as defined under the Anti-Money Laundering Law, such as transactions that do not match the user's profile, are suspected of being structured to avoid reporting, or involve assets suspected to originate from criminal activities.⁹⁶ One of the concrete actions that can be taken is to return the donated funds from suspicious parties in order to prevent potential misuse and to uphold the integrity of the foundation.

The disclosure of donor identities to the public may be limited, as foundations—being nonprofit organizations (NPOs)—receive donations on a voluntary basis and are required to respect donor privacy. Furthermore, any disclosure of identity must comply with personal data protection regulations as stipulated in Law of the Republic of Indonesia Number 27 of 2022 on Personal Data Protection. Therefore, while foundations are not necessarily obligated to publicly disclose donor identities, comprehensive donor identification is still necessary to prevent potential misuse of funds, such as money laundering, and to preserve the integrity of the foundation.

The second step is the regulation of sanctions for foundations that fail to prepare their Annual Reports in accordance with applicable provisions. The imposition of sanctions essentially arises in response to public concerns and societal needs regarding violations or criminal acts.⁹⁷ Sanctions are reactive in nature and are meant to impose consequences on

⁹⁵ Article 26(1) in conjunction with Article 26(2)(a) of *Law of the Republic of Indonesia Number 16 of 2001 on Foundations*. [in Indonesian].

⁹⁶ Article 1 point 5 of *Law of the Republic of Indonesia Number 8 of 2010 on the Prevention and Eradication of Money Laundering*. [in Indonesian]

⁹⁷ Titis Anindyajati, Irfan Nur Rachman, and Anak Agung Dian Onita, "Konstitusionalitas Norma Sanksi Pidana Sebagai Ultimum Remedium dalam Pembentukan Perundang-Undangan," *Jurnal Konstitusi* 12, no. 4 (2015): 872–92, <https://doi.org/10.31078/jk12410>.

offenders, not only to serve as a deterrent but also to provide an opportunity for correction and behavioral change.⁹⁸

According to Sudikno Mertokusumo, law, which functions to protect human interests, must take into account three fundamental elements in its application: legal certainty (*Rechtssicherheit*), utility (*Zweckmässigkeit*), and justice (*Gerechtigkeit*).⁹⁹ Law exists to achieve human welfare and happiness; thus, it is always in a state of becoming, or “*law in the making*.”¹⁰⁰ The absence of sanctions for the obligation to submit a foundation's Annual Report is inconsistent with these three elements, as law without sanctions fails to provide certainty and becomes merely a set of unenforceable rules. Without sanctions, the obligation to report annually will not be effective in achieving its intended utility. Sanctions are essential to uphold the rule of law and to ensure that foundations—established for religious, social, humanitarian, and other ideal purposes—fulfill their intended functions. Moreover, through the imposition of sanctions, the law can be effectively enforced, enabling the realization of its beneficial purpose. In this regard, the law must be flexible and adaptive in regulating society fairly while addressing the dynamic needs and interests of the public.

Based on the above considerations, it is essential to regulate sanctions for foundations that fail to comply with the obligation to submit Annual Reports in accordance with applicable provisions. Essentially, administrative law grants governmental authorities the power to impose sanctions in the event of violations of administrative legal norms.¹⁰¹ Therefore, the obligation to submit a foundation's Annual Report falls within the scope of administrative law, and non-compliance should result in administrative sanctions. Sanctions in administrative law serve as legal instruments of public authority to deter violations and to prevent others from engaging in unlawful conduct.¹⁰² These sanctions are necessary to ensure adherence to legal provisions.¹⁰³ Types of administrative sanctions include *bestuursdwang* (administrative coercion), the withdrawal of favorable decisions, the imposition of administrative fines, and *dwangsom* (penalty payments imposed by the government).¹⁰⁴ In this context, violations of the Annual Report obligation may be subject to administrative fines, taking into account the severity of the offense, such as submitting inaccurate reports or failing to submit them altogether. However, if a foundation fails to submit its Annual Report with the intent to conceal or disguise the proceeds of a criminal offense, criminal sanctions under relevant laws may be applied. Therefore, the imposition of sanctions on non-compliance with the Annual Report obligation is crucial to prevent the misuse of foundations as a vehicle for money laundering.

Conclusion

The *modus operandi* of money laundering has become increasingly diverse, as evidenced by the growing use of foundations (Yayasan) as vehicles for money laundering (TPPU). Foundations are responsible for managing the assets they receive by preparing and submitting

⁹⁸ Ruben Achmad, “Hakekat Keberadaan Sanksi Pidana dan Pemidanaan dalam Sistem Hukum Pidana,” *Legalitas: Jurnal Hukum* 5, no. 2 (2017): 89–90, <https://doi.org/10.33087/legalitas.v5i2.98>.

⁹⁹ Sudikno Mertokusumo and A. Pitlo, *Bab-Bab Tentang Penemuan Hukum*, Bandung: PT (Yogyakarta: Citra Aditya Bakti, 1993), 160.

¹⁰⁰ Satjipto Rahardjo, “Hukum Progresif: Hukum yang Membebaskan,” *Jurnal Hukum Progresif* 1, no. 1 (2011): 16, <https://doi.org/10.14710/hp.1.1.1-24>.

¹⁰¹ Sri Nur Hari Susanto, “Karakter Yuridis Sanksi Hukum Administrasi: Suatu Pendekatan Komparasi,” *Administrative Law and Governance Journal* 2, no. 1 (2019): 126, <https://doi.org/10.14710/alj.v2i1.126-142>.

¹⁰² Wicipto Setiadi, “Sanksi Administratif sebagai Salah Satu Instrumen Penegakan Hukum dalam Peraturan Perundang-Undangan,” *Jurnal Legislasi Indonesia* 6, no. 4 (2009): 606–7.

¹⁰³ Ghufuran Syahputera Walla, Hendrik Salmon, and Julista Mustamu, “Kajian terhadap Pengaturan Sanksi Denda Administratif dalam Peraturan Daerah Tentang Pembatasan Sosial Berskala Besar,” *TATOHI: Jurnal Ilmu Hukum* 1, no. 9 (2021): 965, <https://doi.org/10.47268/tatohi.v1i9.815>.

¹⁰⁴ Yonnawati Yonnawati, “Penegakan Hukum Sanksi Administrasi Terhadap Pelanggaran Perizinan,” *Jurnal Hukum Malahayati* 3, no. 1 (2022): 94, <https://doi.org/10.33024/jhm.v3i1.7132>.

an Annual Report. Although the obligation to submit an Annual Report is stipulated by law, there are currently no detailed standards governing its preparation. As a result, there is inconsistency in the form, content, output, and recipients of foundations' Annual Reports. Moreover, there are no sanctions for failure to publish or report the Annual Report, creating a legal gap that allows foundations to conceal or disguise illicit financial flows related to money laundering. Several potential schemes include anonymous donations or mystery donors, unusual transactions, overvaluation of donated assets, and misuse of funds. The absence of transparent information regarding transaction flows makes it extremely difficult to prove money laundering cases, as the core of the investigative process lies in tracing the movement of funds—commonly known as the *follow the money* approach. To address this issue, regulatory strengthening is required to prevent the misuse of Annual Reports by foundations. First, lawmakers must establish a standardized format for the Annual Report, which should at a minimum include the identity of donors, donation amounts, the intended use of received funds, and details of programs or targets achieved. Additionally, anonymous donations should be prohibited, while still adhering to the applicable provisions on personal data protection in terms of public disclosure. This reflects the implementation of the “*know your principles*” framework, which includes *know your donor*, *know your beneficiary*, and *know your partner*. Second, administrative sanctions should be imposed on foundations that fail to prepare Annual Reports in accordance with the applicable requirements, taking into account the scale and severity of the violations. Through these measures, the risk of foundations being misused as vehicles for money laundering can be minimized, and the foundational purposes of these organizations can be effectively realized.

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