

## **Dualism of Foundation Governance and Its Legal Implications: A Legal Analysis of Court Decision No. 6/Pdt.G/2025/PN Agm on Civil Wrongdoing**

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**Abstract**

Disputes over foundation governance in Indonesia are frequently resolved through formal administrative approaches, often overlooking the substantive legitimacy of founders and internal procedures. This study analyzes judicial reasoning in Court Decision No. 6/Pdt.G/2025/PN Agm, specifically regarding the validity of management and its alignment with the principle of legality. Utilizing normative legal methods, including statutory, conceptual, and case approaches, this research examines court decisions, legislation, and academic literature. The findings suggest that the court prioritizes administrative aspects over statutory requirements, including founders' meetings and articles of association. This leads to non-normative reasoning, including the pragmatic assumption that "whoever produces the document first prevails." Additionally, the absence of notary involvement in examining amended deeds resulted in formal defects, as notarial deeds cannot be legally assessed without the presence of the drafter. The study concludes that foundation dispute resolution must strike a balance between formal and substantive legality, while ensuring a comprehensive examination of notarial deeds. This research contributes to the discourse by highlighting the need for harmonized judicial practice and evaluating the procedural role of notaries in cases involving dual governance.

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**Keywords**

Organizational Dispute; Civil Wrongdoing; Substantive Legality; Notarial Deed; Judicial Decision; Dual Leadership Conflict

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### **1. INTRODUCTION**

A foundation (*Yayasan*) represents a distinctive form of nonprofit legal entity within the Indonesian legal system. Juridically, a foundation is defined as a legal body established through the permanent separation of assets that are allocated exclusively for social, religious, and humanitarian purposes (Law Number 16 of 2001 Concerning Foundations, 2001). Unlike corporations or associations, a foundation does not have members, meaning that its continuity and legitimacy are not determined by collective ownership but by strict adherence to the intent of its founders and the lawful operation of its governing



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organs. (Brody, 2016b). This structural uniqueness renders foundations particularly vulnerable to internal governance disputes when authority is exercised without a proper legal basis.

The legal governance of foundations in Indonesia is comprehensively regulated under Law Number 16 of 2001 concerning Foundations, as amended by Law Number 28 of 2004. (Law Number 28 of 2004 on the Amendment of Law Number 16 of 2001 Concerning Foundations, n.d.). This statutory framework mandates asset separation, compulsory registration with the Ministry of Law and Human Rights, and the establishment of a tripartite governance structure consisting of the Board of Trustees, the Management Board, and the Supervisory Board.

These legal requirements are intended to ensure accountability, transparency, and legal certainty in foundation governance(Hall, 2014). Given that foundations often manage activities in vital public sectors, such as education, social welfare, religion, and healthcare, the law imposes heightened standards of responsibility in the management of foundation assets. (Hansmann, 1980)

Despite the existence of a robust legal framework, empirical evidence suggests that foundations often encounter internal conflicts that escalate into legal disputes. One of the most recurring and complex issues is leadership dualism, a condition in which more than one party simultaneously claims to be the lawful management of an organization. Such disputes typically arise from contested interpretations of authority, ambiguous provisions in the articles of association, or actions that deviate from the original intent of the founders (Brody, 2016b). Leadership dualism not only disrupts organizational stability but also generates legal uncertainty for third parties interacting with the foundation.

This problem has been exacerbated by the increasing reliance on administrative formalism in legal governance. In Indonesia, the electronic legal administration system (*Sistem Administrasi Badan Hukum* or SABH/AHU) functions as the primary mechanism for registering changes in foundation management. While administratively efficient, this system tends to prioritize formal documentation and chronological submission, potentially privileging procedural speed over substantive legality.

Administrative law scholars have long warned that legal legitimacy cannot be reduced to mere formal compliance with registration requirements without examining the underlying authority and procedural validity of the legal act (Brody, 2016a). Excessive reliance on administrative formalism risks transforming legality into a purely technical matter, one that is detached from substantive justice.

Within this context, Court Decision Number 6/Pdt.G/2025/PN Agm constitutes a significant object of legal analysis. The decision illustrates a judicial tendency to prioritize administrative documentation over a substantive examination of internal governance authority. Judicial reasoning that emphasizes documentary completeness without scrutinizing compliance with the foundation's articles of association raises concerns regarding the erosion of foundational principles of foundation law. As

Posner argues, judicial pragmatism must remain grounded in legal reasoning to prevent decisions that inadvertently legitimize unlawful acts. (Posner, 2008)

From a legal-theoretical perspective, this tension can be examined through Hans Kelsen's theory of normative hierarchy, which posits that legal validity derives from conformity with higher legal norms (Kelsen, 1967). Applied to foundation governance, this theory implies that management changes must comply not only with administrative procedures but also with statutory law and the foundation's articles of association. Accordingly, administrative registration alone cannot cure defects arising from unlawful authority or procedural violations. (Brody, 2016a)

Gustav Radbruch's theory of legal values further reinforces this position by emphasizing that law must strike a balance between legal certainty, justice, and utility. Radbruch contends that excessive formalism may undermine justice when legal procedures are manipulated to legitimize substantively unlawful acts [9]. In foundation disputes, strict reliance on administrative legality risks disregarding historically legitimate governing organs, particularly the founders or trustees, thereby contradicting the ethical foundations of foundation law. (Krygier, 2016)

Another crucial dimension of foundation governance disputes concerns the role of notarial deeds. In civil law systems, notaries act as public officials authorized to produce authentic deeds with full evidentiary value. A notarial deed is not merely an administrative document, but a legal instrument reflecting verified intent, authority, and procedural compliance (Van Apeldoorn, 2017). Consequently, when the validity of a deed is contested, judicial scrutiny of the notary's role becomes essential. Failure to examine the notarial process risks leaving unresolved questions regarding the legality of the underlying governance changes. (Harding, 2014)

This concern aligns with the legal maxim *fraus omnia corrumpit*, which holds that fraud or bad faith invalidates all legal consequences arising from a legal act. A management change based on unlawful authority or defective procedures cannot acquire legitimacy solely through administrative registration (DeMott, 2018). Therefore, courts must assess not only the existence of formal documents but also the substantive legality of the acts they purport to represent.

Based on these considerations, this research critically examines Court Decision Number 6/Pdt.G/2025/PN Agm to evaluate whether judicial reasoning in foundation governance disputes adheres to the principles of legality, justice, and institutional integrity, or whether it reflects an overreliance on administrative formalism that undermines substantive legal protection. (Samuel, 2014)

## 2. METHOD

This study applies a normative legal research method, which views law as a system of binding written norms. (Terry Hutchinson and Nigel Duncan, 2012) The method is selected because the primary object—District Court Decision Number 6/Pdt.G/2025/PN Agm—must be examined through legal reasoning and doctrinal interpretation rather than empirical observation or field data. (Mark Van Hoecke, 2011) Thus, the research is focused on evaluating applicable norms, legal theories, and established principles related to foundation governance and notarial accountability. (Peter Mahmud Marzuki, 2019)

Three analytical approaches are employed. The first is the statutory approach, used to examine the regulatory framework governing foundations, notarial authority, civil unlawful acts, and administrative procedures under the AHU system. (Paul Craig and Gráinne de Búrca, 2018) The second approach is conceptual, intended to clarify key legal concepts, including the substantive legitimacy of foundation founders, the formal and substantive dimensions of organizational legality, the evidentiary authority of notarial deeds, and the civil accountability of notaries. (Geoffrey Samuel, 2020)

The third is the case approach. This approach is relevant because the decision under study exhibits an unusual legal reasoning pattern, particularly in prioritizing administrative registration speed ("whoever files first becomes the legitimate management") and excluding the notary as a party, despite the disputed document being a notarial deed. (Richard Posner, 2018) These characteristics make the case uniquely suitable for doctrinal and analytical critique. (Thomas Reed, 2021a)

The research relies on primary legal materials (statutes, the examined court decision, and the Civil Code), secondary sources (scholarly writings, journals, and legal commentaries), and tertiary sources (legal dictionaries and reference works). (H. L. A. Hart, 2012)

The collected legal materials are analyzed using a descriptive-analytical method, followed by interpretive reasoning utilizing systematic, historical, teleological, and grammatical interpretation techniques. (Neil Andrews, 2018a) This analytical structure ensures that the judge's reasoning is examined not only textually but also normatively and doctrinally. (Brian Z. Tamanaha, 2019a) Through this methodological framework, the research aims to determine whether the judicial reasoning aligns with the legal framework and whether deviations or inconsistencies affect the legal certainty and doctrinal integrity of the decision. (Mark Elliott, 2018)

### 3. FINDINGS AND DISCUSSION

### **3.1. Research Findings**

This study finds that the judicial reasoning applied in District Court Decision Number 6/Pdt.G/2025/PN Agm demonstrates a strong tendency toward administrative formalism in determining the legitimacy of foundation governance. (Mark Van Hoecke, 2020) The panel of judges relied predominantly on the chronology of administrative registration within the Legal Entity Administration System (AHU/SABH) to identify the lawful management of the foundation. (Andrew Bellamy, 2020b) As a consequence, the party that successfully submitted changes to the foundation's management structure first was implicitly recognized as the legitimate governing authority.

This reasoning reflects a pragmatic but legally problematic assumption that administrative priority equates to legal legitimacy. (Brian Z. Tamanaha, 2019a) Such an assumption is not explicitly recognized under Indonesian foundation law. The Foundation Law (Law No. 16 of 2001, as amended by Law No. 28 of 2004) establishes that the legitimacy of foundation management derives from internal organizational authority, particularly decisions made by the supervisory board, which is the highest organ of the foundation. Administrative registration functions merely as a declarative mechanism, not as a constitutive source of authority. (Jan de Vries, 2017c)

The court's emphasis on administrative precedence indicates a shift away from substantive legality toward procedural efficiency. (Paul Craig, 2018) This shift becomes especially evident when examining the absence of judicial scrutiny concerning whether the internal requirements for management changes had been fulfilled, including quorum requirements, voting procedures, and compliance with the foundation's Articles of Association and Bylaws. The decision does not provide adequate reasoning addressing whether a valid supervisory board resolution existed prior to notarization and administrative submission. (Thomas Reed, 2021b)

Another significant finding concerns the evidentiary treatment of the notarial deed used as the basis for recognizing the disputed management structure. The deed, which purported to reflect amendments to the foundation's governance, was treated by the court as self-validating documentary evidence. However, the notary responsible for drafting and authenticating the deed was not examined during the proceedings (Matthew Harding, 2020a). This omission runs contrary to the legal doctrine governing authentic deeds, which requires comprehensive verification when the authenticity or legality of a deed is contested. (Deborah DeMott, 2018)

Under Indonesian civil procedural law and the Law on Notarial Offices, an authentic deed holds perfect evidentiary value only to the extent that its formal and material requirements are satisfied. When such requirements are disputed, judicial examination must include the notary as the public official responsible for ensuring procedural correctness, verifying authority, and ensuring the lawful

expression of the parties' intent. The absence of such examination weakens the court's ability to assess whether the deed genuinely reflects a lawful organizational decision.

These findings collectively demonstrate that the court's reasoning prioritized the availability of documents and administrative completion over normative legal evaluation. This approach risks transforming the AHU registration system from an administrative facilitation mechanism into a de facto determinant of legal authority, thereby undermining the foundational principles of legality and autonomy of internal governance.

### **3.2. Discussion**

The judicial reasoning identified in Decision Number 6/Pdt.G/2025/PN Agm reveals a fundamental tension between administrative legality and substantive legality within Indonesian foundation governance. (Evelyn Brody, 2019) Substantive legality requires that managerial authority be derived from lawful internal processes established by statutory provisions and organizational constitutive documents. Administrative legality, on the other hand, concerns compliance with procedural registration requirements. The problem arises when courts elevate the latter above the former.

Articles 28, 29, and 33 of the Foundation Law clearly stipulate that changes to the management of a foundation must originate from a valid decision of the supervisory board. (Jan de Vries, 2017b) This internal authorization serves as the legal foundation upon which notarization and administrative registration may proceed. (Andrew Bellamy, 2020a) By treating administrative registration as the primary determinant of legitimacy, the court effectively inverted the legal sequence mandated by law. (Paul Craig, 2018)

This inversion creates several doctrinal risks. First, it weakens legal certainty for foundation stakeholders by allowing authority to be established through procedural speed rather than lawful mandate. (Brian Z. Tamanaha, 2019a) Second, it opens the possibility of abuse of administrative systems, where parties acting in bad faith may bypass internal governance mechanisms to secure formal recognition. Third, it erodes the normative hierarchy of legal authority emphasized in Hans Kelsen's theory, where validity must flow from higher legal norms. (Matthew Harding, 2020b)

From the perspective of evidentiary law, the court's handling of the disputed notarial deed also raises serious concerns. An authentic deed is not merely an administrative document but a legal instrument endowed with public authority. (Rebecca Lee, 2022) As such, its validity cannot be assessed in isolation from the notary who created it. (Martin Krygier, 2018) The failure to examine the notary compromises the court's ability to determine whether the deed was executed in compliance with legal formalities, including verification of authority and consent. (Hans Kelsen, 2002)

The omission further contravenes the principle of due process. A comprehensive judicial examination requires that all legally relevant actors be allowed to clarify contested facts. (J. H. A. van Apeldoorn, 1958) Excluding the notary from the proceedings reduces the judicial inquiry to a surface-level document review, rather than a substantive evaluation of legality. (Neil Andrews, 2018b)

To illustrate the broader implications of the court's reasoning, the following table summarizes the relationship between violated legal principles, judicial practices, and resulting legal consequences:

<b>Table: Legal Principle Violations in Foundation Governance Adjudication</b>			
<b>No.</b>	<b>Violated Legal Principle</b>	<b>Judicial Practice Observed</b>	<b>Legal Consequences</b>
1.	Principle of Legality and Substantive Authority	Recognition of management based on administrative registration priority	Undermining internal governance, increased dispute potential
2.	Doctrine of Authentic Notarial Evidence	Failure to examine the notary responsible for the disputed deed	Evidentiary weakness, risk of invalid legal determination
3.	Due Process of Law	Limited judicial inquiry into internal authorization	Procedural injustice, erosion of trust in the judiciary

Beyond its immediate impact, the decision contributes to broader uncertainty in the field of foundation governance jurisprudence. It signals a judicial tendency to favor administrative outcomes over normative compliance, potentially shaping future disputes in a similar direction.

From a policy perspective, this situation necessitates a recalibration of judicial approaches. Courts must reaffirm the primacy of substantive legality by rigorously examining internal governance procedures and ensuring notarial accountability. Regulatory authorities should also enhance the AHU system with safeguards that prevent unilateral administrative actions from substituting lawful authority.

In summary, the findings and discussion highlight the need for a harmonized legal approach that strikes a balance between administrative efficiency and substantive legal legitimacy. Only through such integration can foundation governance disputes be resolved in a manner that upholds legal certainty, justice, and the rule of law.

### **3.3. Comparative Judicial Reasoning in Foundation Governance Disputes**

A deeper understanding of Decision Number 6/Pdt.G/2025/PN Agm requires situating it within the broader landscape of judicial practice in foundation governance disputes. Indonesian courts have demonstrated divergent approaches in assessing leadership conflicts within foundations, particularly when administrative registration conflicts with internal organizational legitimacy. This divergence highlights an unresolved interpretative tension within the judiciary regarding the proper hierarchy between administrative compliance and substantive legality. (Mark Van Hoecke, 2020)

In several judicial decisions, courts have emphasized that legitimacy in foundation governance must originate from internal authority structures, namely the supervisory or founding organs stipulated in the Articles of Association. In these decisions, administrative registration is treated as a subsequent procedural step that records, rather than creates, lawful authority. (Jan de Vries, 2017a) Judges adopting this approach often conduct a detailed examination of meeting minutes, internal resolutions, quorum requirements, and the continuity of founders' intent before recognizing any management changes.

However, Decision Number 6/Pdt.G/2025/PN Agm reflects an alternative judicial tendency. The court placed decisive weight on the existence and timing of administrative documentation submitted to the AHU system. By doing so, the court minimized the relevance of whether the internal governance procedures preceding the notarization had been lawfully conducted. This approach reduces judicial scrutiny to a documentary comparison rather than a substantive legal assessment. (Brian Z. Tamanaha, 2019b)

The absence of a consistent judicial standard produces legal uncertainty for foundation stakeholders. Foundations are entrusted with public-interest objectives and often manage significant social assets. When legitimacy can be established through procedural speed rather than lawful authority, the integrity of foundation governance is compromised. Moreover, inconsistent judicial reasoning encourages strategic behavior by parties seeking to legitimize authority through administrative maneuvering rather than through compliance with internal governance norms.

This inconsistency also undermines the educative and normative function of judicial decisions. Courts are expected not only to resolve disputes but also to reaffirm legal principles that guide future conduct. When judicial reasoning fluctuates between substantive and administrative models, legal actors lack clear guidance, thereby increasing the likelihood of recurring disputes in foundation governance. (Hans Kelsen, 2002)

### **3.4. Notarial Accountability as an Essential Element of Substantive Legality**

The role of the notary constitutes a central pillar in ensuring substantive legality within foundation governance. Notaries act as public officials endowed with the authority to create authentic deeds that serve as instruments of legal certainty and preventive legal protection. (Evelyn Brody, 2019) In the context of foundation disputes, the notary's responsibility extends beyond mere documentation to verifying authority, consent, and procedural compliance.

The failure to examine the notary in Decision Number 6/Pdt.G/2025/PN Agm represents a significant procedural omission. When a notarial deed becomes the core evidence in a dispute concerning managerial legitimacy, judicial examination must encompass the process by which the deed was created. (Article 1 Paragraph (1) of Law Number 16 of 2001 Concerning Foundations, 2001) Without testimony from the notary, the court is unable to determine whether the deed reflects a lawful organizational decision or merely a formalized expression of unilateral claims.

From a doctrinal standpoint, notarial accountability operates on multiple levels. Civil liability may arise where negligence or misconduct contributes to unlawful governance changes. (Article 1 Paragraph (1) of Law Number 16 of 2001 Concerning Foundations, 2001) Administrative sanctions may be imposed for violations of statutory duties, while ethical accountability governs compliance with professional standards and codes of conduct. Judicial reluctance to engage with these accountability mechanisms weakens the preventive function of notarial law.

Furthermore, excluding the notary from judicial examination diminishes the evidentiary value traditionally attributed to authentic deeds. The strength of an authentic deed lies not solely in its formal appearance, but in the legal process underpinning its creation. When courts accept deeds without scrutinizing their procedural foundations, the distinction between authentic and private documents becomes blurred. This erosion of evidentiary hierarchy threatens the reliability of notarial institutions as guardians of legal certainty.

### **3.5. Systemic Consequences of Administrative Formalism in AHU-Based Governance**

The judicial approach observed in Decision Number 6/Pdt.G/2025/PN Agm also exposes systemic consequences arising from excessive reliance on administrative formalism. The AHU/SABH system was designed to facilitate transparency and efficiency in the administration of legal entities. Nevertheless, its architecture prioritizes formal completeness rather than substantive validation of internal authority.

When courts elevate AHU registration to a decisive legal determinant, the system inadvertently assumes a constitutive function that exceeds its regulatory mandate. This transformation risks distorting the legal framework governing foundations by allowing administrative outcomes to supersede the normative requirements established by law. As a result, substantive governance

principles become vulnerable to circumvention through procedural compliance alone.

This condition has far-reaching implications. It incentivizes opportunistic behavior, where parties may exploit administrative systems to legitimize authority without lawful mandate. It also burdens courts with disputes rooted in procedural manipulation rather than genuine legal disagreement. Over time, continued judicial endorsement of administrative formalism threatens to normalize the displacement of internal governance mechanisms.

Accordingly, judicial recalibration is necessary. Courts must function as gatekeepers, ensuring that administrative records are assessed through the lens of substantive legality. Only by reasserting the primacy of lawful authority, internal governance procedures, and notarial accountability can courts preserve the integrity of foundation governance and uphold the rule of law.

### **3.6. Practical Implications and Policy Recommendations**

The implications of this research extend across multiple stakeholders involved in foundation governance, judicial decision-making, and regulatory administration in Indonesia. From a judicial standpoint, the analysis highlights the need for a more comprehensive evaluative method when determining the legitimacy of changes in foundation leadership. Courts should assess whether internal governance processes were followed, whether authority was exercised legitimately, and whether amendments align with the founders' original intent rather than relying primarily on administrative timelines or documentary submissions.

Regarding notarial practice, the research reinforces that notaries function not merely as document processors but as legal authorities entrusted with safeguarding procedural integrity in legally binding actions. Their mandatory participation in disputes involving authentic deeds should therefore be codified more explicitly, ensuring that judicial processes maintain legal verifiability and evidentiary sufficiency. Stronger ethical oversight and supervision mechanisms may also be necessary to prevent misuse of notarial authority, particularly in cases involving unilateral restructuring of organizational control.

The Ministry of Law and Human Rights also plays a central role in strengthening governance safeguards. The electronic system for legal administration (AHU/SABH), while designed to facilitate accessibility and efficiency, remains vulnerable to procedural misuse because validation is predominantly formal rather than substantive. Policy reform should consider implementing layered verification mechanisms—particularly in cases where multiple parties claim managerial authority.

For foundation leaders and administrators, the findings underscore the crucial importance of maintaining rigorous internal governance records, including properly documented resolutions, meeting minutes, and legal authorizations. Without such documentation, foundations become vulnerable to disputes, administrative interference, and potential loss of institutional integrity.

Based on these implications, this research recommends that future dispute resolution models incorporate substantive legal validation, procedural compliance, and accountability of notarial participation. Improving regulatory policy and judicial interpretation is essential to ensure that foundation governance disputes are resolved in accordance with the rule of law, historical legitimacy, and statutory integrity.

#### **4. CONCLUSION**

Based on the findings and judicial analysis of the District Court Decision Number 6/Pdt.G/2025/PN Agm, this study concludes the following points. First, The judicial reasoning in the decision tends to prioritize formal administrative aspects—specifically the pragmatic assumption that "whoever produces the document first prevails"—rather than the substantive legality requirements mandated by the Foundation Law and the organization's Articles of Association. This approach overlooks the necessity of a resolution from the Supervisory Board, as the foundation's highest organ, for a valid management change.

Second, the court failed to apply the Doctrine of Authentic Notarial Evidence comprehensively. By not involving the notary who drafted the amendment deed, the court obstructed the examination of the deed's procedural validity and authenticity, resulting in procedural defects in the judicial reasoning. Third, this ruling highlights the tension between administrative formalism, driven by electronic recording systems (AHU/SABH), and substantive organizational legitimacy. This phenomenon risks undermining the founders' authority and establishing a flawed legal precedent for similar disputes involving foundation governance. And fourth, future foundation dispute resolution requires a balanced evaluative model. This model must integrate administrative compliance with the examination of substantive legality, including adherence to internal procedures and notarial accountability, to ensure better legal certainty and justice.

The unique contribution (novelty) of this research lies in its comprehensive analysis, which integrates judicial reasoning, electronic legal administration systems (ELAS), and notarial liability within the context of foundation governance disputes, thereby filling the gap in studies focused on the normative shift from substantive founder legitimacy to digital administrative legitimacy.

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