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A Legal Framework for the Governance of Pesantren-Owned Enterprises in Indonesia: Integrating Pesantren Values with Corporate Governance Principles

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ABSTRACT

Pesantren increasingly conduct business through Pesantren-Owned Enterprises (POEs) to support educational, religious, and community-empowerment functions. However, the legal basis for POEs remains fragmented, while specific guidance is contained in a ministerial decision that does not establish integrated governance standards. This study examines the legal construction of POEs as business actors, evaluates the adequacy and regulatory status of their existing legal basis, and formulates a legal framework for their governance. This article conceptualises POEs as hybrid business actors operating through existing forms of business organisation. It connects business-form selection with governance design, evaluates the adequacy of the current regulatory basis, and translates pesantren values into operational governance mechanisms. This study employs normative legal research using statutory, conceptual, and analytical approaches. The existing regulatory framework supports pesantren economic development but remains fragmented and lacks integrated, form-neutral governance standards. Different forms of business organisation entail distinct consequences for ownership or membership, asset arrangements, management authority, and liability. The study proposes four interrelated governance components and recommends the adoption of a government regulation implementing the Pesantren Law to establish proportionate minimum standards for POEs.

INTRODUCTION

Pesantren occupy a distinctive position in Indonesia's educational, religious, and social landscape. As community-based Islamic institutions, they combine intellectual formation with the cultivation of faith, piety, and moral character. This institutional role reflects Indonesia's constitutional commitment under Article 31(3) of the 1945 Constitution, which requires the government to establish and administer a national education system that strengthens faith, piety, and noble character while advancing the intellectual life of the nation. Pesantren therefore contribute to the national education system by producing graduates who are expected to possess both intellectual competence and religious and ethical integrity.

Pesantren have become an inseparable part of the development of education in Indonesia, and their existence predates Indonesian independence. Their origins as traditional educational institutions may be traced to the historical spread of Islam by the nine Islamic saints known as Walisongo.¹ Through their pesantren, Walisongo played an important role in spreading Islam, and their influence on religious development and Islamic education continues to this day.²

As religious educational institutions, pesantren possess distinctive characteristics that distinguish them from other educational institutions. Their religious values are derived from the Qur'an and the Sunnah.³ These values serve as the foundation for the implementation of pesantren functions, including Islamic education, da'wah, community empowerment, and related educational activities.⁴ Pesantren are also generally led by highly respected figures who serve as role models, commonly referred to as kiai or ustad.⁵ As leaders, kiai manage the organisation of pesantren and, as educators, provide teaching, knowledge, and exemplary conduct to their students.⁶

Beyond their educational functions, pesantren played a significant role in resisting colonialism and supporting the struggle for Indonesian independence. Socio-political resistance against colonial rule was frequently led by kiai, religious scholars, hajjis, or Qur'anic teachers, while many pesantren mobilised their members against the colonial authorities.⁷ One of the most prominent events was the issuance of the Jihad Resolution by pesantren students and scholars from various regions of Indonesia, which called upon Muslims to defend the homeland and the independence of the Unitary State of the Republic of Indonesia.⁸ After independence, pesantren remained significant in education and national development, and pesantren education became a primary and rational educational choice for certain communities.⁹ Pesantren have also produced national leaders, including the fourth

¹ Choirur Rois, et al., "The History of Pesantren: An Overview of Civilizational Discourse and the Religious Moderation Among Santri," *PROGRESIVA: Jurnal Pemikiran dan Pendidikan Islam* 12, no. 1 (2023): 147–160, <https://doi.org/10.22219/progresiva.v12i01.24473>.

² Siti Ulfatun Hasanah, et al., "History of The Establishment Islamic Boarding Schools in Indonesia," *Pesantren Reviews* 1, no. 1 (2023): 12–17, <https://doi.org/10.58330/pr.v1i1.101>.

³ Ali Wafa and Mohammad Wardi, "Pendidikan Pesantren dan Perubahan Nilai Religius," *Kabilah* 3, no. 2 (2018): 189–201, <https://doi.org/10.35127/kabillah.v3i2.81>.

⁴ Salmi Wati and Suriani, "Pesantren: The Origins and Institutional Growth," in *Proceedings of the 1st EAI Bukittinggi International Conference on Education, BICED 2019* (Bukittinggi: EAI Innovating Research, 2019), 1–10.

⁵ Agus Susilo and Ratna Wulansari, "Sejarah Pesantren sebagai Lembaga Pendidikan Islam di Indonesia," *Tamaddun: Jurnal Kebudayaan dan Sastra Islam* 20, no. 2 (2020): 83–96, <https://doi.org/10.19109/tamaddun.v20i2.6676>.

⁶ Samiya, "Peran Kepemimpinan Kyai dalam Pembinaan Kedisiplinan Santri di Pondok Nurusbayan Singkawang," *Lentera: Jurnal Kajian dan Riset Pendidikan Islam* 1, no. 1 (2023): 1–9.

⁷ Ahmad Royani, "Pesantren dalam Bingkai Sejarah Perjuangan Kemerdekaan Indonesia," *Jurnal Islam Nusantara* 2, no. 1 (2018): 121–129.

⁸ A. Fauzi, "Transkulturasi Social Capital Pesantren sebagai Paradigma Pendidikan Islam Moderat," in *25th Annual Conference For Muslim Scholars, Strengthening The Moderate Vision of Indonesia Islam* (Surabaya: Koperatais Wilayah IV Surabaya, 2018).

⁹ Imas Isti Patimah, "Model Pesantren Modern: Pilihan Rasional Keluarga bagi Pendidikan Anak di Era Globalisasi," *Sosioglobal : Jurnal Pemikiran dan Penelitian Sosiologi* 5, no. 2 (2021): 89–110, <https://doi.org/10.24198/jsg.v5i2.27039>.

President of the Republic of Indonesia, Abdurrahman Wahid (Gus Dur), a descendant of K.H. Hasyim Asy'ari, a highly respected scholar and one of the founders of Nahdlatul Ulama.¹⁰

Given the important role of pesantren in achieving constitutional educational objectives, supporting the struggle for independence, and contributing to national development, Law No. 18 of 2019 concerning Pesantren (the Pesantren Law) was enacted. The Law aims to ensure that pesantren can properly perform their educational, da'wah, and community-empowerment functions. Through the Pesantren Law, pesantren education is expressly recognised as part of the national education system.

The term pesantren under the Pesantren Law has a broad scope, encompassing Islamic boarding schools, dayah, surau, meunasah, and other designations for Islamic educational institutions. Under this Law, pesantren are community-based institutions established by individuals, foundations, Islamic community organisations, and/or communities. They instil faith and piety in Allah SWT, promote noble character, and uphold the teachings of Islam rahmatan lil 'alamin, as reflected in humility, tolerance, balance, moderation, and other noble values of the Indonesian nation through education, Islamic preaching, exemplary conduct, and community empowerment within the framework of the Unitary State of the Republic of Indonesia.

The organisation of pesantren is based on several principles, including independence. This principle requires pesantren to optimise their available resources in carrying out their functions. Pesantren independence encompasses various dimensions, including economic independence. The growing emphasis on economic empowerment places pesantren at the intersection of their educational, religious, and community-based missions and organised commercial activity. Accordingly, the development of Pesantren-Owned Enterprises (POEs) is expected to increase pesantren income, strengthen their economic independence, improve the skills and entrepreneurial capacity of santri, increase household income within pesantren communities, and establish economic networks involving alumni and other community members.

Further provisions concerning POEs are contained in Decree of the Minister of Religious Affairs No. 786 of 2022 concerning the Guidelines for the Development of Pesantren-Owned Enterprises (the POE Development Guidelines). The Guidelines contain general policies and norms, as well as stages of POE development, including socialisation, mapping and classification, mentoring, monitoring, evaluation, reporting, and further development. They serve as a reference for stakeholders in developing POEs as part of the pesantren economic-independence programme. Although the Pesantren Law provides the statutory basis for community and economic

¹⁰ Saefur Rochmat, "Abdurrahman Wahid dan Modernisasi Pendidikan Pesantren," *Istoria Jurnal Pendidikan dan Sejarah* 14, no. 1 (2018): 1–10, <https://doi.org/10.21831/istoria.v14i1.19397>.

empowerment, the specific framework for POE development is contained in a ministerial decision rather than in a generally applicable implementing regulation. This raises questions concerning the adequacy of the regulatory instrument and its capacity to establish integrated governance standards across different forms and sectors of business activity.

One aspect addressed in the POE Development Guidelines concerns the management of business entities. Under the Guidelines, POEs are organised on the basis of the general principles governing pesantren under the Pesantren Law: divinity, nationality, independence, empowerment, public benefit, multiculturalism, professionalism, accountability, sustainability, and legal certainty. Their management must also be adjusted to the form of business organisation through which the business operates. However, the Guidelines do not establish POEs as a distinct legal form or confer legal personality upon them. Instead, POEs may operate through existing forms of business organisation, comprising both legal-entity and non-legal-entity business forms, each of which entails different consequences for ownership or membership, asset status and arrangements, management authority, organisational accountability, and legal liability. This regulatory structure means that POE governance cannot be treated merely as an extension of internal pesantren administration, it must also satisfy the legal requirements applicable to business actors. As business actors, POEs conduct organised and continuing commercial activities, manage capital and business assets, enter into contractual relationships, employ workers, and interact with consumers and other market participants. The central problem is therefore not the absence of governance regulation, but the fragmentation of rules governing pesantren institutions, POEs, and the forms of business organisation through which their businesses operate.

Corporate governance principles, commonly discussed in Indonesia under the concept of Good Corporate Governance (GCG), provide standards and practices intended to ensure that business entities are managed effectively, responsibly, transparently, and sustainably. International scholarship characterises organisations that combine social purposes with market-based activities as hybrid organisations, whose governance must reconcile financial sustainability with the preservation of their institutional mission.¹¹ Such organisations often face accountability to multiple stakeholders, tensions between social and commercial objectives, and the risk of mission drift.¹² Governance is therefore central to navigating competing institutional logics and translating organisational values

¹¹ Bob Doherty, Helen Haugh, and Fergus Lyon, "Social Enterprises as Hybrid Organizations: A Review and Research Agenda," *International Journal of Management Reviews* 16, no. 4 (October 1, 2014): 417–36, <https://doi.org/10.1111/ijmr.12028>.

¹² Alnoor Ebrahim, Julie Battilana, and Johanna Mair, "The Governance of Social Enterprises: Mission Drift and Accountability Challenges in Hybrid Organizations," *Research in Organizational Behavior* 34 (2014): 81–100, <https://doi.org/10.1016/j.riob.2014.09.001>.

into decision-making structures and practices.¹³ Recent research further demonstrates that governing boards in hybrid organisations may struggle to operationalise and measure social impact alongside financial performance.¹⁴ These insights are relevant to POEs because their activities involve business assets, financial resources, employees, contracts, consumers, and other stakeholders, while remaining institutionally connected to the educational, religious, and social missions of pesantren.

The implementation of corporate governance principles in business entities can strengthen organisational performance, support employee welfare, and prevent fraud or other conduct that harms business entities and third parties.¹⁵ It can also assist business entities in pursuing short- and long-term objectives and maintaining competitiveness and sustainability.¹⁶ For POEs, however, the relevant question is not merely whether corporate governance principles should be adopted, but how they should be adapted to the form of business organisation and institutional purpose of each enterprise and integrated with pesantren values.

Existing studies generally discuss the application of corporate governance principles to pesantren as educational or nonprofit institutions and consider these principles important for maintaining institutional performance and sustainability.¹⁷ Other studies suggest that corporate governance may support pesantren growth and competitiveness.¹⁸ This literature provides a useful foundation but tends to treat pesantren and POEs as the same governance object, despite their different legal and organisational functions. Pesantren principally perform educational, religious, and community-empowerment functions, whereas POEs conduct organised business activities through particular form of business organisation. Although international scholarship on hybrid organisations explains the governance tensions arising from the combination of social and commercial objectives, these insights have not been sufficiently applied to the specific legal and institutional context of pesantren-owned businesses in Indonesia. Consequently, the legal construction of POEs as business actors, the governance implications of their selected business forms, the adequacy of the regulatory instrument governing POE development, and the operational integration of pesantren values with corporate governance principles remain insufficiently examined.

¹³ Johanna Mair, Judith Mayer, and Eva Lutz, "Navigating Institutional Plurality: Organizational Governance in Hybrid Organizations," *Organization Studies* 36, no. 6 (2015): 713–39, <https://doi.org/https://doi.org/10.1177/0170840615580007>.

¹⁴ Anup Banerjee, Martin Carlsson-Wall, and Mattias Nordqvist, "Hybrid Board Governance: Exploring the Challenges in Implementing Social Impact Measurements," *The British Accounting Review* 56, no. 5 (2024): 101359, <https://doi.org/https://doi.org/10.1016/j.bar.2024.101359>.

¹⁵ Devi Pertiwi Ananda Putri and Sri Trisnaningsih, "Pentingnya Perusahaan dalam Menerapkan Prinsip Good Corporate Governance," *Sibatik Journal* 2, no. 11 (2023): 3453–3458, <https://doi.org/10.54443/sibatik.v2i11.1473>.

¹⁶ Nadya Nurul Sabrina, "Penerapan Prinsip Good Corporate Governance pada Perusahaan," *Jurnal Ekonomi Bisnis, Manajemen, dan Akuntansi (JEBMA)* 1, no. 2 (2021): 90–96, <https://doi.org/10.47709/jebma.v1i2.982>.

¹⁷ Hendrayuda Suwarno, "Penerapan Prinsip Good Corporate Governance di Pondok," *Qualitative Research of Business and Social Sciences* 1, no. 2 (2024): 87–100, <https://doi.org/10.31316/qrobss.v1i2.6687>.

¹⁸ Renny Oktafia and Abdul Basith, "Implementasi Good Corporate Governance pada Pondok Pesantren sebagai Upaya Peningkatan Daya Saing," *Jurnal Ekonomi Islam* 8, no. 1 (2017): 71–86.

This study addresses this gap by examining the legal construction of POEs as business actors, evaluating the adequacy and regulatory status of the framework governing POE development and the forms of business organisation through which POEs operate, and formulating a legal framework for the governance of POEs that integrates pesantren values with corporate governance principles. The study focuses on aligning existing forms of business organisation with appropriate asset arrangements and liability allocation, professional management, transparency and accountability, stakeholder participation, sustainability, and protection of the institutional mission of pesantren. It also evaluates the need for a more appropriate implementing regulation to establish nationally applicable and proportionate minimum governance standards for POEs. Its contribution lies in translating the governance challenges identified in international scholarship on hybrid organisations into a prescriptive legal and regulatory framework tailored to the regulatory and institutional characteristics of POEs in Indonesia.

METHODS

This study employs normative legal research using statutory, conceptual, and analytical approaches. The statutory approach examines the Indonesian legal framework governing pesantren, forms of business organisation, and POEs, including the hierarchy, legal status, and regulatory scope of the instruments governing POE development. The conceptual approach clarifies the legal and governance concepts relevant to POEs, particularly corporate governance principles, pesantren values, forms of business organisation, and hybrid organisations. The analytical approach evaluates and synthesises legal norms, doctrines, and governance principles to identify regulatory fragmentation, legal uncertainties, inadequacies in the existing regulatory basis, and governance challenges affecting POEs. These approaches are used to formulate a prescriptive legal framework for the governance of POEs that accommodates the institutional characteristics of pesantren while promoting professional, accountable, and sustainable business management and providing a basis for proportionate regulatory reform.

DISCUSSION

The Evolution of Pesantren Functions: From Religious Education to Economic Empowerment

The term pesantren is generally derived from santri with the prefix pe- and the suffix -an, denoting a place where santri live and study.¹⁹ It is often used together with pondok, derived from the Arabic funduq, meaning a dormitory or lodging place.²⁰ Other accounts associate pesantren with

¹⁹ Riskal Fitri and Syarifuddin Ondeng, "Pesantren di Indonesia: Lembaga Pembentukan Karakter," *Al Urwatul Wutsqa: Kajian Pendidikan Islam* 2, no. 1 (2022): 42–54.

²⁰ Zamakhsyari Dhofier, *Tradisi Pesantren Studi Tentang Pandangan Hidup Kyai* (Jakarta: LP3ES, 2011).

a place for educating morally good and socially useful individuals.²¹ These linguistic origins reflect the traditional character of pesantren as residential and community-based institutions in which religious learning, personal formation, and everyday life are integrated.

Pesantren have developed from traditional centres of Islamic learning into major institutions within Indonesia's national education landscape. For many communities, they are no longer merely alternatives to general schooling but preferred educational institutions because they combine religious formation, general knowledge, and character development.^{22 23} This development has not displaced their religious identity. Rather, it has expanded the institutional functions through which pesantren contribute to education and broader social development.^{24 25}

The Pesantren Law provides formal legal recognition of this institutional development. It situates pesantren within the national education system and recognises three interrelated functions: education, da'wah, and community empowerment. The Pesantren Law therefore does more than acknowledge pesantren as religious schools. It establishes a legal basis for their contribution to social development while preserving their traditions and institutional particularities. Presidential Regulation No. 82 of 2021 concerning Funding for the Implementation of Pesantren further provides a framework for public support, including support for strengthening pesantren independence.

The educational function remains the institutional foundation of pesantren. Article 3 of the Pesantren Law directs pesantren to form individuals who understand and practise religious teachings, possess knowledge and independence, demonstrate moderate religious attitudes, and contribute to an empowered society. Pesantren education accordingly combines the transmission of religious knowledge with the cultivation of faith, piety, character, and practical capacities.^{26 27 28} Education within pesantren is therefore not limited to the transfer of knowledge but also involves the internalisation of values and the provision of exemplary conduct.

The da'wah function extends this educational mission to the wider community. It requires

²¹ Wahjoetomo, *Perguruan Tinggi Pesantren* (Jakarta: Gema Insani Press, 1997).

²² Adi Fajar Nugraha, "Pesantren D\di Bogor Jadi Pilihan Utama Mengenyam Pendidikan," RRI, 2024, <https://www.rri.co.id/daerah/1063393/pesantren-di-bogor-jadi-pilihan-utama-mengenyam-pendidikan>. (11/2/2025).

²³ Kakanwil Jatim, "Kakanwil : Pesantren Jadi Pilihan Utama Masyarakat," Kemenag, 2024, <https://jatim.kemenag.go.id/berita/501984/kakanwil--pesantren-jadi-pilihan-utama-masyarakat>. (11/2/2025).

²⁴ Kemenag, "Kemenag Sebut Pesantren Bertambah 11 Ribu Sejak UU Pesantren Disahkan," AntaraNews, 2024, <https://www.antaranews.com/berita/4294515/kemenag-sebut-pesantren-bertambah-11-ribu-sejak-uu-pesantren-disahkan>. (25/2/2025).

²⁵ Sindo, "Ini Sebaran Pondok Pesantren di Indonesia, Tertarik Jadi Santri?," SindoNews, 2023, <https://edukasi.sindonews.com/read/1155865/212/ini-sebaran-pondok-pesantren-di-indonesia-tertarik-jadi-santri-1689800851>. (25/2/2025).

²⁶ Adnan Mahdi, "Sejarah dan Peran Pesantren dalam Pendidikan di Indonesia," *Islamic Review : Jurnal Riset dan Kajian Keislaman* 2, no. 1 (2013): 1–20, <https://doi.org/10.35878/islamicreview.v2i1.29>.

²⁷ Fauziah, "Pesantren sebagai Lembaga Pendidikan yang Efektif," *DINAMIKA : Jurnal Kajian Pendidikan dan Keislaman* 2, no. 1 (2017): 27–51, <https://doi.org/10.32764/dinamika.v2i1.129>.

²⁸ Irfan Mujahidin, "Peran Pondok Pesantren sebagai Lembaga Pengembangan Dakwah," *Jurnal Komunikasi dan Penyiaran Islam* 1, no. 1 (2021): 31–44, <https://doi.org/10.54150/syiar.v1i1.33>.

pesantren to promote Islam rahmatan lil 'alamin through teaching and exemplary practices characterised by humility, tolerance, balance, moderation, and respect for Indonesia's national values. Pesantren consequently serve as organised institutions for religious communication and the development of moderate Islamic values in a multicultural society.^{29 30} This function reinforces the public character of pesantren and demonstrates that their institutional mission cannot be reduced to the private interests of their founders or managers.

The community-empowerment function provides the principal legal bridge between the educational and religious missions of pesantren and their involvement in economic activities. Under the Pesantren Law, community empowerment may include vocational training, strengthening the economic capacity of pesantren and surrounding communities, establishing cooperatives, financial institutions, and micro, small, and medium enterprises, assisting the marketing of community products, providing financial-management guidance, and developing industrial technology. In practice, many pesantren also provide entrepreneurship education and socioeconomic programmes for santri and surrounding communities.^{31 32} Pesantren may therefore function as business incubators and community economic hubs without losing their primary character as educational and religious institutions.

The legal recognition of community empowerment is significant because it places economic activity within the institutional functions of pesantren rather than treating it as an unrelated commercial undertaking. Nevertheless, this does not mean that pesantren themselves automatically become business entities. It means that organised economic activities may be developed to support their institutional missions, provided that such activities are conducted through appropriate legal and organisational arrangements.

This expansion is supported by values that have long shaped pesantren life, including independence, simplicity, sincerity, professionalism, accountability, and public benefit.³³ Independence does not imply institutional isolation or the rejection of public and private support. Rather, it requires pesantren to optimise their resources and develop sufficient organisational and economic capacity to carry out their functions without excessive dependence on external assistance.

²⁹ Elis Teti Rusmiati, et al., "Penguatan Moderasi Beragama di Pesantren untuk Mencegah Tumbuhnya Radikalisme," *Jurnal Abdi Moestopo* 5, no. 2 (2022): 203–13, <https://doi.org/10.32509/abdimoestopo.v5i2.2162>.

³⁰ Hariya Toni, "Pesantren sebagai Potensi Pengembangan Dakwah Islam," *Jurnal Dakwah dan Komunikasi* 1, no. 1 (2016): 97–110, <https://doi.org/10.29240/jdk.v1i1.80>.

³¹ Imam Syafe'i, "Pondok Pesantren: Lembaga Pendidikan Pembentukan Karakter," *Al-Tadzkiyyah: Jurnal Pendidikan Islam* 8, no. 1 (2017): 1–13, <https://doi.org/10.24042/atjpi.v8i1.2097>.

³² Arivatu Nimati Rahmatika and Buyung Abimanyu, "Peran Pondok Pesantren dalam Pemberdayaan Ekonomi Sosial di Jombang Masa Pandemi," *At Tauzi': Jurnal Ekonomi Islam* 22, no. 2 (2021): 1–12.

³³ Ngainun Naim, "Rekonstruksi Nilai-Nilai Pesantren: Ikhtiar Membangun Kesadaran Pluralisme dalam Era Multikultural," *Edukasi: Jurnal Penelitian Pendidikan Agama dan Keagamaan* 7, no. 2 (2017): 14–32, <https://doi.org/10.32729/edukasi.v7i2.195>.

Decree of the Minister of Religious Affairs No. 1252 of 2021 concerning the Roadmap for Pesantren Independence accordingly seeks to strengthen entrepreneurship, sustainable business units, community economic empowerment, and the supporting role of the Ministry of Religious Affairs.³⁴

Economic independence has become increasingly important because the educational, da'wah, and community-empowerment functions of pesantren require sustainable resources. Pesantren possess economic potential through santri, alumni networks, surrounding communities, and assets and social funds managed in accordance with their respective legal purposes, including zakat and waqf.³⁵ The use of such funds for productive activities must remain subject to the specific legal requirements governing zakat and waqf and should not be treated as unrestricted business capital. The development of POEs is intended to organise this potential into productive activities that support pesantren functions while generating broader benefits for their communities. In 2024, the Ministry of Religious Affairs reported that 3,600 pesantren had received business-incubation assistance and 432 had established business entities.³⁶ These figures demonstrate increasing policy support, while also indicating that formally organised business development remains limited in comparison with the total number of pesantren in Indonesia.

The Daarut Tauhiid Pesantren in Bandung illustrates how economic activity may be integrated with the institutional mission of a pesantren. Daarut Tauhiid developed from an entrepreneurship-oriented Islamic study group into a foundation conducting educational, da'wah, and economic activities.³⁷ Its pesantren cooperative, formally established in 1994, supports these activities through sharia-based and professionally managed business operations.³⁸ Its vision of promoting economic independence and mutual prosperity, together with missions relating to professional business management, community economic empowerment, human-resource development, and partnerships with micro, small, and medium enterprises, demonstrates that pesantren economic activities can simultaneously pursue commercial viability and community-oriented objectives.³⁹

The Daarut Tauhiid example nevertheless also illustrates an important legal distinction. The institutional mission and values of a pesantren do not by themselves determine the form of business organisation, ownership or membership structure, management authority, or liability of the business

³⁴ Oma Aprida, et al., "Strategi Perencanaan Mewujudkan Kemandirian Pondok Pesantren Al - Munawwaroh Kepahiang," *Jurnal Literasiologi* 11, no. 2 (2024): 1–12, <https://doi.org/10.47783/literasiologi.v11i2.690>.

³⁵ Muhamad Masrur and Agus Arwani, "Pengembangan Kemandirian Ekonomi Pondok Pesantren," *Jurnal Ilmiah Ekonomi Islam* 8, no. 3 (2022): 2755–2764, <https://doi.org/10.29040/jiei.v8i3.6001>.

³⁶ Kemenag, "Pesantren Jadi Kekuatan Baru Ekonomi Bangsa," kemenag.go.id, 2024, <https://kemenag.go.id/nasional/lahirkan-432-badan-usaha-kemenag-optimistis-kemandirian-pesantren-jadi-kekuatan-baru-ekonomi-bangsa-MxzLQ>. (17/3/2025).

³⁷ Daruttauhid, "Profil Daarut Tauhiid," [daruttauhid.org](https://www.daruttauhid.org), 2025, <https://www.daruttauhid.org/profil-daarut-tauhiid-2/>. (17/3/2025).

³⁸ Kopontrendt, "Kopontren Daarut Tauhid," Darut Tauhid, 2025, <https://www.kopontrendt.co.id/>. (17/3/2025).

³⁹ Kopontrendt. Ibid.

entity through which its commercial activities are conducted. The expansion of pesantren functions into economic empowerment therefore creates a need to distinguish pesantren as educational, religious, and community-based institutions from POEs as business actors operating through particular forms of business organisation. This distinction provides the basis for examining the legal status, business forms, and governance challenges of POEs.

Pesantren-Owned Enterprises as Business Actors: Business Forms and Governance Challenges

POEs are not established by the Pesantren Law as a distinct legal form. The Pesantren Law provides the statutory basis for pesantren community and economic empowerment, while the specific regulatory guidance for POEs is contained in Decree of the Minister of Religious Affairs No. 786 of 2022 concerning the Guidelines for the Development of Pesantren-Owned Enterprises (the POE Development Guidelines). The Guidelines define a POE broadly as a business entity owned and managed by a pesantren and/or operated in cooperation with one. They therefore give POEs a functional designation rather than autonomous legal status. The term identifies the relationship between a business activity and a pesantren but does not itself create legal personality, determine ownership or membership, establish the status and segregation of assets, allocate authority, or limit liability. These consequences depend on the business form selected and the agreements governing the relationship among the pesantren, its organising body, investors, managers, and other parties. Moreover, because the specific guidance is contained in a ministerial decision, its regulatory status and capacity to establish generally applicable, cross-sectoral governance standards require further evaluation.

This functional status also reflects the hybrid character of POEs. They use market activities and business organisation to support educational, religious, and social objectives. International scholarship describes organisations that combine social missions with market mechanisms as hybrid organisations, which must balance financial and mission-related performance while remaining accountable to multiple stakeholders.^{40 41} This framework is relevant to POEs because their governance lies at the intersection of pesantren values and authority structures, on the one hand, and commercial law, professional management, and market discipline, on the other.

Under the POE Development Guidelines, POEs may operate through legal-entity business forms, particularly limited liability companies and cooperatives, or through non-legal-entity business forms, such as *commanditaire vennootschappen* (CVs) and firm partnerships. The appropriate form should not be determined solely by a general preference for incorporation. It should reflect the

⁴⁰ Ebrahim, Battilana and Mair, "The Governance of Social Enterprises: Mission Drift and Accountability Challenges in Hybrid Organizations."

⁴¹ Doherty, Haugh, and Lyon, "Social Enterprises as Hybrid Organizations: A Review and Research Agenda."

identity of the founders, shareholders or members, the source and legal status of capital, the scale and risks of the business, the need for external investment, stakeholder participation, and the intended allocation of business benefits.

A limited liability company provides separate legal personality, a separate legal patrimony, limited shareholder liability, and a formal governance structure consisting of the general meeting of shareholders, directors, and commissioners. It may therefore be suitable for capital-intensive or higher-risk activities, substantial contractual relationships, professional management, or external investment. Where shares are held by a foundation, Islamic community organisation, or individuals associated with the pesantren, the arrangement must comply with the law governing the relevant holder and must prevent the company from being treated as the personal enterprise of a kiai, founder, or family when it is represented as serving the pesantren.

A cooperative follows a different model based on membership, democratic participation, and member benefit. It may correspond with values of mutual assistance, deliberation, and community empowerment, but it cannot simply be treated as property owned by a pesantren. A primary cooperative is formed by individual members, whereas a secondary cooperative is formed by cooperative legal entities. A pesantren cooperative may therefore be established by eligible individuals within the pesantren community, such as teachers, employees, or alumni. Its status as a POE depends on a clearly regulated relationship of cooperation and mission alignment, while its governance must continue to respect member sovereignty and cooperative law.⁴²

CVs and firm partnerships offer simpler structures are not separate legal entities and therefore do not provide the same patrimonial separation and liability protection as limited liability companies or cooperatives. They may be practical for small or early-stage businesses, but their business assets are allocated and administered without creating a fully separate legal patrimony. In a CV, general partners may bear personal responsibility for the obligations of the business, while in a firm partnership, the partners may be jointly and severally liable. Their use therefore requires particular caution where the business relies on pesantren facilities, funds, reputation, donations, or community contributions.

The availability of several business forms creates a governance problem because the POE Development Guidelines require compliance with the law applicable to the selected form but do not establish comprehensive minimum standards governing the relationship between a pesantren and its enterprise. Company, cooperative, partnership, foundation, and pesantren laws regulate different institutional objects. Compliance with one regime does not necessarily ensure accountability to the pesantren community or protect its institutional mission.

⁴² Komite Nasional Kebijakan Governansi, *Pedoman Umum Governansi Koperasi Indonesia* (Jakarta: KNKG, 2022).

Several issues remain insufficiently regulated. The Guidelines do not clearly distinguish ownership, control, management, and cooperation, even though a business may be designated as a POE without being legally owned by the pesantren. They also provide limited guidance on determining the legal status, contribution, use, administration, and recording of pesantren and business assets, particularly where facilities, donations, waqf-related resources, or assets belonging to a foundation or individual founder are used commercially. For legal-entity business forms, these arrangements must respect the separate patrimony of the entity. For non-legal-entity business forms, contractual and administrative segregation does not provide equivalent protection from personal liability. The authority of kiai, foundation organs, shareholders or members, and professional managers is likewise not clearly coordinated. Related-party transactions, conflicts of interest, reporting to pesantren stakeholders, and the measurement of contributions to education, da'wah, and community empowerment also remain inadequately addressed.

These gaps do not necessarily justify creating POEs as a distinct legal form modelled on Village-Owned Enterprises. Pesantren have diverse founders, organising bodies, asset regimes, and business scales, whereas Village-Owned Enterprises are linked to a defined public-community institution and a specific statutory framework. A new legal form could duplicate existing company and cooperative structures without resolving the underlying governance issues. A more proportionate approach is to retain the existing choice of legal forms while establishing a common governance baseline for enterprises using the POE designation.

Such a baseline should regulate the relationship between the enterprise and the pesantren, including asset status, contribution, use, administration, and recording, protection of the pesantren name and reputation, allocation of business returns, accountability to institutional stakeholders, conflict-of-interest safeguards, and preservation of educational, religious, and community missions. The selected business form would continue to determine legal personality, corporate organs, membership or shareholding, capital, representation, asset status, and liability.

The allocation of POE income also requires clear institutional arrangements. Although business returns are intended to support educational, da'wah, and community-empowerment functions, sustainable operations require retained earnings, working capital, risk reserves, and investment. Governance documents should therefore distinguish distributable benefits from funds necessary for business continuity and identify the organ authorised to approve their allocation. Economic independence cannot be achieved if business resources are withdrawn without preserving the enterprise's capacity to operate and grow.

Given that the current specific guidance is contained in a ministerial decision, these minimum governance standards would be more appropriately established through a government regulation

implementing the Pesantren Law. Such a regulation could provide a generally applicable and cross-sectoral framework governing the institutional relationship between pesantren and the business entities through which POEs operate. The establishment, internal organs, capital structure, representation, and liability of each enterprise would remain governed by the legislation applicable to its selected business form, while ministerial regulations could provide more detailed technical guidance.

Integrating Pesantren Values with Corporate Governance Principles: A Legal Framework for the Governance of POEs

The POE Development Guidelines base the organisation of POEs on ten principles derived from the Pesantren Law: divinity, nationality, independence, empowerment, public benefit, multiculturalism, professionalism, accountability, sustainability, and legal certainty. These principles express the ethical and institutional purposes of pesantren but do not by themselves constitute a complete governance system for business entities. Principles such as divinity and public benefit primarily determine the enterprise's ethical orientation, whereas professionalism, accountability, sustainability, and legal certainty are more directly related to governance. Operational mechanisms are therefore needed to translate these principles into authority structures, decision-making procedures, disclosure obligations, internal controls, and accountability arrangements.

Corporate governance provides a framework for this translation. It concerns the structures and processes through which an enterprise is directed, supervised, and held accountable, as well as the ethical and social dimensions of its conduct.⁴³ Its purpose is not limited to protecting shareholders or maximising financial returns but also includes balancing economic objectives, stakeholder interests, social responsibility, and long-term value creation.⁴⁴ These functions are particularly relevant to POEs because their legitimacy depends on both commercial viability and fidelity to the educational, religious, and social missions of pesantren.

The Indonesian governance framework has developed beyond the traditional principles of transparency, accountability, responsibility, independence, and fairness (TARIF).⁴⁵ ⁴⁶ The 2021 Indonesian General Guidelines for Corporate Governance identify ethical conduct, accountability, transparency, and sustainability as foundational pillars while retaining substantive concerns relating

⁴³ Clarke Thomas, *Theories of Corporate Governance: The Philosophical Foundations of Corporate Governance* (London: Routledge, 2004).

⁴⁴ Robert A. G. Monks and Nell Minow, *Corporate Governance* (Chichester: John Wiley & Sons, 2011).

⁴⁵ Komite Nasional Kebijakan Governansi, *Pedoman Umum Good Corporate Governance Indonesia* (Jakarta: Komite Nasional Kebijakan Governance, 2006).

⁴⁶ Joni Emirzon, *Prinsip-Prinsip Good Corporate Governance Paradigma Baru Dalam Praktik Bisnis Indonesia* (Yogyakarta: Genta Press, 2007).

to responsibility, independence, fair treatment, stakeholder protection, risk management, and conflicts of interest.⁴⁷ At the international level, the 2023 G20/OECD Principles address an effective governance framework, shareholder rights and equitable treatment, disclosure and transparency, board responsibilities, and sustainability and resilience.⁴⁸ These frameworks should not be applied mechanically to POEs but adapted proportionately to their business form, size, complexity, and risks.

Proportionality is important because imposing the governance architecture of a listed company on a small pesantren shop or agricultural business would be inappropriate. Conversely, small scale should not justify the absence of basic controls where an enterprise manages community resources, employs workers, enters contracts, or uses the institutional identity of a pesantren. A proportionate framework should therefore establish minimum standards applicable to all POEs and additional requirements triggered by factors such as business form, business scale, indebtedness, external investment, number of employees, or operational risk.

The hybrid character of POEs also requires governance mechanisms capable of balancing different institutional logics. Research on hybrid organisations demonstrates that weak accountability may lead to mission drift, particularly when commercial priorities displace social purposes.^{49 50} In POEs, mission drift may arise when revenue generation becomes detached from education, da'wah, community empowerment, or pesantren ethics. The opposite risk may also occur when religious or personal authority overrides commercial discipline, resulting in weak record keeping, unprofessional appointments, or unsustainable use of business resources. Governance must therefore protect both the institutional mission and the commercial viability of the enterprise.

Pesantren values and corporate governance principles should not be presented merely as parallel lists. Some principles overlap, while others perform complementary functions. Divinity and religious values provide the ethical basis for honest and responsible conduct. Independence supports professional decision-making free from improper intervention. Professionalism and accountability require competence, clear authority, and performance evaluation. Empowerment, public benefit, and multiculturalism broaden the interests that must be considered. Sustainability requires the enterprise to preserve both its financial capacity and its contribution to pesantren functions, while legal certainty requires compliance with the selected business form and its applicable legal regime and clear documentation of the relationship between the enterprise and the pesantren.

⁴⁷ Komite Nasional Kebijakan Governansi, *Pedoman Umum Governansi Korporat Indonesia 2021* (Jakarta: KNKG, 2021).

⁴⁸ OECD, *G20/OECD Principles of Corporate Governance 2023* (Paris: OECD Publisher, 2023).

⁴⁹ Ebrahim, Battilana, and Mair, "The Governance of Social Enterprises: Mission Drift and Accountability Challenges in Hybrid Organizations."

⁵⁰ Mair, Mayer, and Lutz, "Navigating Institutional Plurality: Organizational Governance in Hybrid Organizations."

Table 1.
Integration of Pesantren Values and Corporate Governance Principles in POE Governance

Pesantren values/principles	Corporate governance principle	Operational implications for POEs
Divinity and ethical values	Ethical conduct and responsibility	Code of conduct; legal and ethical compliance; anti-fraud controls; prohibition of misuse of institutional assets.
Accountability and the obligation to convey truthful information	Transparency and accountability	Periodic financial and activity reports; disclosure of ownership, governance, material risks, and use of business benefits.
Independence	Objective and independent decision-making	Professional management; separation of strategic, supervisory, and operational roles; conflict-of-interest safeguards.
Professionalism	Competence and accountability	Merit-based appointments; clear authority; standard operating procedures; budgets, performance indicators, and evaluation.
Empowerment, public benefit, and multiculturalism	Fairness and stakeholder participation	Equitable treatment; community benefit; accessible consultation and complaint mechanisms; non-discrimination.
Legal certainty	Responsibility and compliance	Appropriate business form; valid licences and contracts; documented asset use; compliance monitoring and risk control.
Sustainability	Sustainability, resilience, and mission protection	Working-capital and reserve policies; risk management; protection of pesantren assets, reputation, and institutional mission.

Source: Authors' analysis.

Building on the preceding analysis and the operational implications summarised in Table 1, the proposed legal framework consolidates these governance requirements into four interrelated components. First, business-form alignment, asset arrangements, and liability allocation require the parties to determine the enterprise's business form, ownership or membership structure, capital sources, authorised representatives, and liability regime. Where a POE operates through a legal-entity business form, its assets constitute a separate legal patrimony from those of the pesantren, shareholders, members, founders, and managers. Where it operates through a non-legal-entity business form, the contribution, use, administration, and recording of business assets should be clearly documented, while recognising that these arrangements do not provide the same patrimonial separation or liability protection. The selected form should reflect the scale and risks of the activity rather than merely administrative convenience. Constitutional documents and cooperation agreements should clarify the enterprise's relationship with the pesantren, the use of its name and assets, and the purposes for which business benefits may be allocated. POEs should also maintain separate bank accounts, accounting records, contracts, and evidence of asset ownership or lawful use. The commercial use of pesantren land, buildings, equipment, intellectual property, or funds should be based on documented legal arrangements.

Second, authority, oversight, and professional management should be clearly allocated accordance with the selected business form. The governance structure should prevent strategic, supervisory, and operational powers from being concentrated in the same person. Kiai and pesantren leaders may define the institution's values and long-term mission, while day-to-day business decisions should be entrusted to competent managers. Appointments should be based on competence rather than solely on religious status, family relationships, or seniority. Material transactions, borrowing, related-party dealings, and asset transfers should be approved by the appropriate organ and properly documented. Performance should be evaluated using both financial indicators and mission-related indicators, including contributions to education, santri development, community empowerment, and institutional sustainability.

Third, transparency, ethical conduct, and stakeholder accountability should extend beyond formal compliance with the law applicable to the selected business form. POEs should prepare financial statements and activity reports appropriate to their scale and disclose sufficient information regarding their ownership or membership, governance structure, use of business benefits, related-party transactions, and material risks. Ethical standards should prohibit fraud, misuse of institutional assets, undisclosed personal benefits, and discriminatory treatment. Decision-makers should disclose personal, family, or affiliated interests and refrain from participating where their objectivity is compromised. Relevant stakeholders including santri, teachers, employees, alumni, surrounding communities, consumers, donors, and business partners should have appropriate access to information and complaint or consultation mechanisms.

Fourth, sustainability and mission protection should be incorporated into strategy, risk management, and the allocation of business returns. POEs should maintain adequate working capital and reserves and avoid expansion that jeopardises essential pesantren assets or reputation. At the same time, they should periodically assess whether their activities continue to support educational, da'wah, and community-empowerment objectives. This dual assessment prevents commercial success from displacing the institutional mission while also preventing mission-oriented expenditure from undermining business continuity.

Accordingly, the legal framework proposed in this study combines the legal requirements applicable to the selected business form with proportionate minimum POE-specific standards organised into the four interrelated components described above. These standards concern business-form alignment, asset arrangements, and liability allocation; authority, oversight, and professional management; transparency, ethical conduct, and stakeholder accountability; and sustainability and mission protection. Pesantren values determine the ethical and institutional orientation of the enterprise, while corporate governance principles translate that orientation into operational

structures, procedures, and standards of conduct.

CONCLUSION

Pesantren have expanded beyond their traditional educational and da'wah functions to become important institutions of community and economic empowerment. This development has encouraged the use of POEs to strengthen pesantren independence and support their educational, religious, and social missions. POEs, however, do not constitute a distinct legal form under Indonesian law. They operate through existing forms of business organisation, including limited liability companies, cooperatives, CVs, and firm partnerships, each of which entails different consequences for ownership or membership, asset status and arrangements, management authority, and liability.

The existing regulatory framework supports pesantren economic development but remains fragmented. The Pesantren Law provides the statutory basis for community and economic empowerment, while the specific guidance for POEs is contained in a ministerial decision. The framework does not yet provide integrated, form-neutral standards governing the relationship between pesantren and the business entities through which their commercial activities are conducted. Pesantren values provide an essential ethical and institutional foundation, but they must be translated into operational governance mechanisms.

This study therefore proposes a legal framework for the governance of POEs consisting of four interrelated components: business-form alignment, asset arrangements, and liability allocation; authority, oversight, and professional management; transparency, ethical conduct, and stakeholder accountability; and sustainability and mission protection. A government regulation implementing the Pesantren Law should establish proportionate minimum POE-specific standards based on the business form, scale, complexity, and risks of each enterprise, while technical matters may be further regulated through ministerial regulations. This framework can strengthen legal certainty, professional accountability, and business sustainability while preserving the educational, religious, and community-oriented missions of pesantren.

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