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## Country Note for Indonesia Current as of August 2004

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### **I. Summary**

#### **A. Types of Organizations**

Indonesia uses a civil law system inherited from the Dutch colonial administration. It has two primary forms of not-for-profit, nongovernmental organizations (NPOs):

- foundations, and
- associations.

Most Indonesian NPOs are foundations.<sup>[1]</sup>

The Indonesian legal system is somewhat complex because it is the convergence of two distinct systems—namely, Dutch-inherited laws and Indonesia's modern law.<sup>[2]</sup>

A number of Dutch colonial laws continue to apply today, as Clause II

of the Transitional Provision of the 1945 Constitution states:

“All existing state institutions continue to function and regulations remain valid as long as no new ones are established in conformity with this Constitution.”

Since independence, there has been a general trend toward replacing outdated Dutch laws with those enacted by the Indonesian legislative body. Yet many Dutch laws remain in place. Therefore, this Note will discuss some Dutch-inherited laws that still regulate NPOs in Indonesia.

The most recent law governing NPOs is Law No. 16 of 2001 on Foundations, which took effect in August 2002. Even before the law took effect, it provoked strong criticisms from various elements of society.<sup>[3]</sup> Various NPOs set up a coalition to advocate for amendments during deliberations in Parliament.

Due to the strong criticisms and the flaws discovered after its enactment, plans were made to amend Law No. 16 of 2001 even before it took effect. The Minister of Justice initially expected the revisions to be passed before the law took effect; however, this failed. The team appointed to prepare the revisions recently completed the draft, which has been submitted to the Parliament. The draft revision is scheduled to be tabled in the Parliament in the 2<sup>nd</sup> session of the parliamentary year 2003-2004 (October 27<sup>th</sup> – December 19<sup>th</sup> 2003).<sup>[4]</sup>

Because the majority of NPOs in Indonesia use the foundation as their legal status, most of this Note addresses Law No. 16 of 2001. This law, as the most recent law concerning NPOs, was designed to “control” foundations.

## **B. Tax laws**

Indonesian NPOs are generally subject to income tax, though donations, grants, and government assistance are exempted. Tax deduction for charitable contributions is currently available only for *Zakat* (Islamic obligated charitable giving).

Indonesia subjects the sale of most goods and services to a Value Added Tax (VAT), with some exemptions pertinent to NPOs.

Certain goods pertinent to NPOs are exempt from customs duties.

## **II. Applicable Laws**

The prevailing constitution of Indonesia is the 1945 Constitution XE “the 1945 Constitution”, which was enacted a day after the proclamation of independence. There were also the Constitutions of 1949 and of 1950. However, the 1945 Constitution was reenacted in

1959 and has been in effect since then.<sup>[5]</sup> It was amended only after the fall of Suharto's administration, in October 1999, August 2000, November 2001, and August 2002.

The second amendment to the 1945 Constitution guarantees the freedom of association and freedom of expression in Article 28<sup>[6]</sup> and Article 28E section (3).<sup>[7]</sup> The Constitution also, however, states that those rights can be limited for "satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society" (Article 28J section (2)).<sup>[8]</sup>

The following is a list of laws and regulations significantly affecting NPOs in Indonesia.

No	Title	Enactment
1	Indonesian Civil Code (Article 1653) <sup>[9]</sup>	August 18 <sup>th</sup> 1945 (originally Dutch civil code; continued to apply under Clause II of the Transitional Provision of the 1945 Constitution)
2	Law No. 16 of 2001 on Foundations ( <i>Yayasan</i> )	August 6 <sup>th</sup> 2001
3	Law No. 8 of 1985 on Social Organizations ( <i>Organisasi Kemasyarakatan</i> )	June 17 <sup>th</sup> 1985
4	Staatsblad 1870-64 (State Gazette) on Associations with Legal Person Status.	March 28 <sup>th</sup> 1870
5	Law No. 17 of 2000 on Third Amendment of Income Tax Law 1984	August 2 <sup>nd</sup> 2000
6	Law No. 16 of 2000 on Amendment of General Rule of Taxation Procedure	August 2 <sup>nd</sup> 2000
7	Law No. 18 of 2000 on Second Amendment of Value Added Tax 1984	August 2 <sup>nd</sup> 2000
8	Government Regulation No. 18 of 1986 on the Implementation of Law No. 8 of 1985 regarding Social Organizations	April 4 <sup>th</sup> 1986
9	Ministry of Internal Affairs Regulation No. 5 of 1986 on the Scope and Notification Procedure to the Government and the Sign and Logo of the Social Organizations.	October 1 <sup>st</sup> 1986
10	Instruction from the Minister of Internal Affairs No. 8 of 1990 on Non-Governmental Organization Supervision	March 19 <sup>th</sup> 1990

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### III. Relevant Legal Forms

#### A. Foundation (*Yayasan*)

As mentioned above, Law No. 16 of 2001 on Foundations came into effect on the 6<sup>th</sup> of August 2002. Before the law was enacted, the foundation in Indonesia was regulated vaguely by the Dutch Inherited Civil Code ("*Burgerlijk Wetboek*" in Dutch, "*Kitab Undang Undang Hukum*" *Perdata* in Indonesian) as a type of charity organization that may act as a guardian in family law matters. In practice, customs and Supreme Court precedents were dominant.<sup>[10]</sup>

The draft Law on Foundations itself has existed since 1976, but it was not tabled by the Parliament until 2000. In 2000 the International Monetary Fund (IMF) included deliberation of the Law on Foundations in a Letter of Intent.<sup>[11]</sup> The IMF's intention was to audit those foundations incorporated by the military and by government agencies that received state funds.

As the foundation is the most common legal entity used by NPOs in Indonesia, the impact of the Law on Foundations goes beyond military/government foundations to encompass most NPOs. The need for foundations to be accountable is well accepted, but the law gives the government significant power to control foundations. Many NPO activists refuse to obey the law. With very limited public participation, the law is now ineffective and is scheduled for revision.<sup>[12]</sup>

In the Law No. 16 of 2001, a foundation is defined as a non-membership legal entity, established based on the separation of assets, and intended as a vehicle for attaining certain purposes in the social, religious, or humanitarian fields.<sup>[13]</sup> It should be highlighted that the broad term "social" in this definition might cause a problem in practice, because it is applicable to any not-for-profit activity. Consequently, there is no overall rule that a foundation must provide a public benefit, as opposed to serving only its stakeholders. It all depends on the foundation's statutory purposes.

The law stipulates that the organizational structure of a foundation consists of three organs: the Governing Board (*Pembina*), Supervisory Board (*Pengawas*), and Executive Board (*Pengurus*). The Governing Board delegates some functions, powers, and duties to the other organs. The aims of this scheme are to create a good-governance mechanism within the organization and to avoid internal conflict in the foundation.<sup>[14]</sup>

#### B. Associations (*Perkumpulan*)

There are two types of associations in Indonesia, namely incorporated

associations and ordinary associations. The different between the two is status as a legal entity. The former can act as a legal entity; the latter cannot.

Incorporated associations in Indonesia are based on the *Staatsblad* 1870-64 (Dutch Colonial State Gazette) on Associations with Legal Person Status. An incorporated association is a legal entity as well as a membership-based NPO.

According to the State Gazette, the status of a legal entity shall be obtained by an association upon the approval of the Minister of Justice. The approval is granted after receiving and examining the Articles of Association containing the statutory purposes.

As with the foundation, there is no clear position on whether an association is a public-benefit organization or a member-benefit one. However, the Draft Bill of Association Law states that an association is a membership-based legal entity, intended as a vehicle for attaining certain purposes in the social, religious, or humanitarian fields.<sup>[15]</sup>

Due to the lack of information, especially because the form of the regulation for incorporated associations is an old state gazette, many NPO activists, lawyers, and the public notary officers place greater emphasis on the foundation as the vehicle for incorporating not-for-profit organizations.<sup>[16]</sup>

As for the ordinary association, *Staatsblad* 1870-64 acknowledges the existence of a non-legal entity association (article 8 and 9). The ordinary association is commonly known by various titles such as *Perhimpunan*, *Ikatan*, and *Paguyuban*. An ordinary association is prohibited from conducting civil action as a legal entity, and any action taken will be considered the action of an individual member of the association. Even though such associations are not considered legal entities, they are still regulated by Article 1663-1664 of the Indonesian Civil Code.<sup>[17]</sup>

At present, there are initiatives from various parties, including the government, NGOs, and scholars, to draft a new law concerning associations.<sup>[18]</sup> However, as of the date of this report, the Parliament has not put it on the schedule.

Apart from the foundation and the association, there are also organizations that operate under specific laws, such as Educational Legal Entity (*Badan Hukum Pendidikan*).<sup>[19]</sup> Most religious entities use the foundation or the incorporated association form. Cooperatives and political parties are regulated by separate laws specifically for those organizations.<sup>[20]</sup>

#### IV. Specific Questions Regarding Local Law

## **A. Inurement**

### **1. Foundation**

A foundation's assets (cash, goods or other types of assets) must not be transferred or distributed directly or indirectly among the members of the Governing Board, Supervisory Board, or Executive Board, the foundation's employees, or any other parties having an interest in the foundation.<sup>[21]</sup> Article 3 section (2) Law on Foundations clearly states that a foundation must not divide the income of its commercial enterprises among the members of Governing Board, Supervisory Board, or Executive Board.

Moreover, the elucidation of the law states that this provision is in accordance with the objectives of a foundation being charitable, religious, or humanitarian in nature, so that a person who becomes a member of the Governing Board, Supervisory Board, or Executive Board must be a volunteer who does not receive a salary, wage, or honorarium. However, the foundation should pay all costs and expenditures incurred by its organs in conducting foundation activities.

The Executive Board is also prohibited from "self-dealing" transactions.<sup>[22]</sup> It may not enter into agreements with any organization affiliated with the foundation, the members of the Governing Board, Supervisory Board, or Executive Board of the foundation, or a person who is employed by the foundation. However, the law states that the prohibition does not apply in a situation where the agreement seeks to help the foundation attain its objectives.

### **2. Association**

Nothing restricts a member of an association from receiving a direct or indirect benefit from the NPO.

## **B. Proprietary Interest**

### **1. Foundation**

According to Law on Foundations, the Governing Board, Supervisory Board, and the Executive Board are all prohibited from receiving a direct or indirect benefit from the foundation. No party is allowed to receive a proprietary interest in the assets or income of a foundation. No party (including founders and donors) is allowed to revoke a contribution and receive property back.

### **2. Association**

*Staatsblad* 1870-64 does not regulate who can receive a proprietary interest in the assets or income of an association. However, members are allowed to receive their contributions back from remaining assets after the liquidation process is

completed.<sup>[23]</sup>

## **C. Dissolution**

### **1. Foundation**

Remaining assets after liquidation shall be given to other foundations that share the same objectives, or to the state for advancing the objectives of the foundation.<sup>[24]</sup>

### **2. Association**

As a membership-based organization, an association is governed substantially by the agreement among the members. An association can be voluntarily dissolved if it reaches its expiration date, accomplishes its objectives, or its members agree to dissolve it (as long as doing so is not prohibited by law). Under Article 7 of *Staatsblad* 1870-64, assets remaining after the liquidation process can be owned by the members or divided based on the members' contributions.

An association can be involuntarily dissolved if the Ministry of Justice revokes its legal entity status for a violation against public order. A District Attorney can also file a case in the civil court seeking to revoke an association's legal entity status if the association violates its statutory purposes. The judge hearing the case also settles the association's assets. Members of the association are allowed to receive their contributions back from remaining assets only after the State Receiver (*Balai Harta Peninggalan*) completes the liquidation process.

## **D. Activities**

### **1. General Activities**

In general, there is no restriction on the purpose or activities that NPO may conduct. For a foundation or an association, the main rule is that its purposes and activities must be in the not-for-profit field and not contrary to the law. Some aspects of state control that restrict the NPO's purposes or activities will be discussed under "Control of Organization," below.

Status as a legal entity depends on fulfilling the requirements to become a foundation or an incorporated association. Once the Ministry of Justice has stated that a foundation or an incorporated association has successfully fulfilled the requirements, the organization has the rights and responsibilities of a legal entity.

### **2. Public Benefit Activities**

As discussed above, a foundation is intended as a vehicle for



attaining certain purposes in the social, religious, or humanitarian fields. An association is likewise designed for such noncommercial activities. However, there is no direct benefit, neither from state nor from the public, of having such public benefit/charitable status.

### **3. Economic activities**

A foundation can engage in commercial activities to support the attainment of its objectives through:

- a. setting up commercial enterprises (*badan usaha*); and/or
- b. participating as a shareholder in other commercial enterprises.

If the foundation sets up its own commercial enterprise, the activities of the enterprise must relate to the foundation's statutory purposes. These activities are defined broadly, including the fields of human rights, art, sport, consumer protection, education, environment, health, and the pursuit of knowledge.<sup>[25]</sup>

Apart from setting up its own commercial enterprises, a foundation may participate as a shareholder in other (unrelated) commercial enterprises that are deemed to be prospective, provided that such shareholding does not exceed 25 percent of the total value of the foundation's assets.<sup>[26]</sup>

In order to maintain good corporate governance, no member of the governing, supervisory, or executive board of the foundation can simultaneously serve as a manager, supervisor, member of the Board of Directors, or member of the Board of Commissioners of the commercial enterprise.

Dividends received by the foundation from investment in its commercial enterprise are not subject to income tax.

Associations are not clearly restricted from engaging in commercial activities.

### **4. Political Activities**

Nothing in Indonesian law restricts an NPO from participating in the political process by lobbying officials, endorsing or opposing candidates, or otherwise.

### **5. Discrimination**

Law No. 20 of 2003 concerning the National Education System regulates in Article 11 section (1) that Government or Local Government has to give service and facilitation to establish excellent quality of education for every citizen without any

discrimination.

The anti-discriminative regulation also applies to nongovernmental educational institutions. ("Principles on Conducting Education" (*Prinsip Penyelenggaraan Pendidikan*), Article 4 section (1), Law No.20 of 2003).

With regard to the racial and ethnic discrimination, the Constitution guarantees the freedom from discriminative treatment based on any grounds whatsoever in Article 28I section (2).<sup>[27]</sup>

## 6. Control of Organization

No law bars a third party from forming or controlling an NPO. Foreign parties and for-profit entities are allowed to form NPOs in Indonesia, though it is not easy for overseas entities to do so in practice. The Law on Foundations states that foreign parties may form a foundation under requirements and procedures to be set forth in a government regulation. Thus far, however, no government regulation has been ratified for that particular provision. If an Indonesian NPO were established by a for-profit entity or by an American grantor charity, the situation would have to be disclosed in the equivalency determination affidavit.<sup>[28]</sup>

## V. Tax Laws

### A. Tax Exemptions

NPOs are generally subject to income tax. Under Article 2 section (1) (b) Law No. 17 of 2000 on Income Tax, a legal entity, including a foundation or association, is subject to income tax. The following are exempted from income tax:

- 1) donations,
- 2) grants (including foreign grants), and
- 3) government assistance (whether financial or technical).<sup>[29]</sup>

### B. Deductibility of Charitable Contributions

Tax deduction for contributions is currently available only for *Zakat* (Islamic obligated charitable giving).<sup>[30]</sup> Article 14 Law No. 38 of 1999 concerning *Zakat* Management states that *zakat* paid to a state-formed *zakat* management body (*Badan/Lembaga Amil Zakat*) will be deducted from the income

tax (*laba/pendapatan sisa kena pajak*).

### **C. Value Added Tax:**

Indonesia imposes a Value Added Tax (VAT). The applicable rates are 10 percent on most goods and services, and between 10 and 50 percent for goods and services covered by the Luxury Sales Tax. Certain goods and services are exempt from VAT, including basic food supplies such as rice, salt, corn, and the like; and medical, social (public benefit), religious, education, and art services.

With regard to foreign grants, the grantee must submit an application to the Director General of Tax in the Ministry of Finance. However, this procedure is conducted on an *ad hoc* basis, and NPOs are often not familiar with it.<sup>[31]</sup> Grants related to government projects are clearly exempted from VAT under Article 2 Government Regulation No. 42 of 1995.

Every legal entity, including an NPO, conducting business activities producing taxable income above a certain threshold is called a Taxable Entrepreneur, and must require payment of VAT from its buyers/clients. These thresholds are quite high, so most NPOs in Indonesia are not considered Taxable Entrepreneurs. The thresholds are generally between 180 and 360 million rupiah, depending on the nature of the activities conducted by the NPO.

### **D. Customs Duties**

Certain items are exempted from customs duties on import under Article 25 section (1) Law No. 10 1995 on Customs Duties. Those items include the following: goods belonging to a registered International Institution and its officers on duty in Indonesia, except for those holding Indonesian passports; science books, upon recommendation of the relevant Ministry/Department; grants for religious, charity, social, or cultural activities; goods for museums, zoos, or other public places; goods for scientific research and development; and goods for the use of disabled people.

To receive such exemptions, the importer must submit a proposal to the Minister of Finance through the Director of Customs and Duties. Details of the import goods, Gift Certificate/Letter of Donation, and recommendation letter from the related Ministry must be attached. If the proposal is approved, the Director of Customs and Duties in the name of the Minister of Finance will issue a decree for the exemption.  
[32]

### **E. Other Taxes**

Since there is no systematic tax-incentive scheme for NPOs in Indonesia, the NPO is mostly treated in the same manner as a business enterprise. NPOs are subject to Land and Building Tax, Stamp Duty, and Real Property Acquisition Fee.

#### **F. Double Tax Treaties**

A double taxation treaty exists between the United States and Indonesia, but it does not specifically address the deductibility of contributions to NGOs. (<http://www.irs.gov/pub/irs-trty/indo.pdf>)

### **VI. Knowledgeable Contacts**

- Eryanto Nugroho, PSHK (Pusat Studi Hukum dan Kebijakan Indonesia) or Centre for Indonesian Law & Policy Studies, [www.pshk.org](http://www.pshk.org): [ery@pshk.org](mailto:ery@pshk.org)
- Bivitri Susanti, PSHK: [bibip@pshk.org](mailto:bibip@pshk.org)

### **Appendix: Foreign Organizations and Grants**

#### **A. Registration**

The Law on Foundations permits:

- 1) foreign citizens together with Indonesians or otherwise to establish a foundation under Indonesian law,<sup>[33]</sup> and
- 2) foreign foundations, i.e. foundations establish under foreign laws, to operate in Indonesian territory, provided that their activities do not prejudice the interest of society and the state.<sup>[34]</sup> The Law on Foundations delegates a government regulation to further address this issue.

The government has been preparing such a regulation for some time, and a draft was released for discussion in August 2002. But because the Law on Foundations is being revised, completion of the regulation was put on hold.

The draft government regulation provides detailed requirements and procedures for foreign foundations to open a branch or a representative office in Indonesia (note that it does not distinguish a branch from a representative office, such as that of the business sector). The draft regulation requires the foundation management (presumably the principal or designated management of the Indonesian branch) to submit a written application to the Ministry of Justice together with a notarial deed stipulating the opening of the branch.<sup>[35]</sup>

The application should contain:

- 1) name of the foundation,
- 2) principal's domicile,
- 3) country or origin and head office,
- 4) name of the managers/directors,
- 5) objectives and purposes, and
- 6) details of activities that the branch will carry out.

The Minister must then coordinate with agencies relevant to the branch's activities and obtain recommendations from them within 30 days, otherwise they are deemed to consent. Within 30 days of date of recommendation, the Ministry of Justice should decide whether to approve or reject the application. Rejection must specify the justification.<sup>[36]</sup>

## B. Foreign Grants

There is no specific rule setting forth the process by which domestic NPOs can receive foreign grants. In most cases, the process is under the authority of the Secretary of State. In the 1950s, most foreign donors would sign a Memorandum of Understanding with the Ministry of External Affairs. During Suharto's government, a foreign donor also had to sign another Memorandum of Understanding with the Ministry related to the activities. At the present time, the Secretary of State through the Overseas Technical Cooperation Bureau makes efforts to coordinate the process. However, each donor has its own procedure that differs from others'.

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- [1] Philanthropy in Indonesia is increasing in quantity and quality. The number of NPOs has increased rapidly: 3,255 in 1985, 8,720 in 1990, and 13,400 in 2000. Interview with Dr. Kastorius Sinaga, quoted from *Info Bisnis Magazine*, Edition. 96/Year VI/September 2001, at 20.
- [2] Before the first appearance of Dutch traders in the late 16th century and early 17th century, indigenous kingdoms prevailed and applied a system of *adat* (customary) law. Dutch presence and subsequent colonization during the next 350 years until the end of World War II left a legacy of Dutch colonial law. See Dr. Benny S. Tabalujan, "The Indonesian Legal System," [www.indobizlaw.com/forms/IDLegalOverview.pdf](http://www.indobizlaw.com/forms/IDLegalOverview.pdf) <November 1<sup>st</sup> 2003>.
- [3] The main criticisms focus on restrictions of remuneration for organization managers. In addition, NGOs protested the government's influence over foundations' internal affairs. Indonesian NGOs have revealed startling inadequacies in the new legislation. There is also tension over the appropriate level of state control over foundations.
- [4] Hukumonline's E-alerts, "DPR to Deliberate Revisions to Law on Foundations" ([www.hukumonline.com](http://www.hukumonline.com), May 5<sup>th</sup> 2003).
- [5] The 1945 Constitution was never amended during Suharto's government because the regime wanted to take advantage of its vagueness.
- [6] Article 28 states: "The freedom to associate and to assemble, to express written and oral opinions, etc., shall be regulated by law."

[7] Article 28E (3): "Every person shall have the right to the freedom to associate, to assemble and to express opinions."

[8] Article 28J (2): "In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society."

[9] Article 1653 of Chapter 9 of the Third Book of the Civil Code is generally regarded as the source of Indonesia's non-profit legal forms – the foundation and association.

[10] Some of the Supreme Court precedents regarding Foundations in Indonesia:

1. Decision of *Hoogerechtshof*, 1884
2. Supreme Court Decision on Case "Yayasan Sukapura" No. 152K/Sip/1969 on November 26<sup>th</sup> 1969
3. Supreme Court Decision on Case "Yayasan Dana Pensiun HBM" No. 124/Sip/1973 on June 27<sup>th</sup> 1973.

[11] Letter of Intent, January 20<sup>th</sup> 2000, Memorandum of Economic and Financial Policies Medium-Term Strategy and Policies for 1999/2000 and 2000, Section IV-Structural Reform, Article 32. See [www.imf.org](http://www.imf.org)

[12] As described above, the main criticisms concern restrictions of NPO managers' remuneration, along with the government's influence over foundations' internal affairs. The revisions allow foundation managers to receive salaries if they work full time. The draft, however, reaffirms restrictions on foundations engaging in businesses. The draft also shortens the transitional period for existing foundations. Most other revisions seek to rectify some drafting errors or inconsistencies.

It is interesting to note that the draft does not include new provisions authorizing the State Audit Board (*Badan Pemeriksa Keuangan*, or BPK) to audit foundations that are incorporated by the military/government agencies or receive state funds, as stated in 2003 Letter of Intent.

[13] Article 1 section (1) Law on Foundations.

[14] The law clearly requires every foundation to publish the abridged version of its annual report on an announcement board in its office. Furthermore, foundations which have received donations from state, overseas parties, or third parties totaling 500 million rupiah or more, or which possess assets other than endowed assets of over 20 billion rupiah, must be audited by a public accountant and have their annual report summaries published in an Indonesian-language daily newspaper. See Article 52 Foundation Law (Law No. 16/2001).

[15] The word "*Perkumpulan*" (Association) is "*Vereniging*" in Dutch and "*Verein*" in German which means as an opposite of *maatschap* or *vennootschap* (company or corporation). See Chidir Ali, *Badan Hukum*, (Bandung: Alumni, 1999), at 119.

[16] PSHK found that some NPOs are actually membership-based organizations, but they were told by the public notary to use foundation as their legal status and were not informed that a foundation is not a membership-based organization. Note also that there are other reasons for many NPOs, especially those that focus on advocacy, to choose the foundation form, which minimizes state intervention.

[17] Article 1663: *"All other corporate bodies shall continue their existence until they are specifically dissolved in accordance with their rulings, agreements and regulations, or until the purpose or the object of the corporate body ceases to exist."*

Article 1664: *"If the statutes of the corporate body or its rulings, regulations and agreements do not include any rules on member's rights, these rights shall be personal, not to pass on to their heirs."*

[18] Currently there is a team conducting regular meetings in the Department of Justice preparing for the draft.

[19] Article 53 Law on National Education System (Law No. 20 of 2003). However, the article delegates further ruling to a specific law, which has not been drafted.

[20] PT Resource Management and Development Consultant (REMDEC Corporation) has taken an interesting form. The REMDEC Corporation is actually an NPO in nature, but these NPO activists preferred a profit-oriented legal entity for their organization. The organization provides facilitation and consultation in capacity-building for civil society organization. All the shareholders have so far agreed not to distribute the dividends but to reinvest them in the activities instead.

[21] Article 5 Law on Foundations.

[22] Article 38 Law on Foundations.

[23] Article 7 *Staatsblad* 1870-64.

[24] Article 68 Law on Foundations. Note that decisions related to the dissolution, including determining the destination for assets upon dissolution, are made by the Governing Board.

[25] See Elucidation of Article 8, Law on Foundations.

[26] Article 7 (2) Law on Foundations.

[27] Article 28I (2): *"Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment"*.

[28] With regard to state control over NPOs, the Ministry of Internal Affairs and the Ministry of Social Affairs are the agencies responsible for NPOs in Indonesia. Using Law No. 8 of 1985 on Social Organizations (*Organisasi Kemasyarakatan* or *Ormas*) and Law No. 6 of 1974 on Social Welfare, these two ministries seek supervisory authority over all NPOs in Indonesia.

The Law on Social Organizations is intended to cover all organizations established by Indonesian citizens voluntarily on the basis of similarity of activity, profession, function, or religion. Article 1 Law on Social Organizations. The law has a broad scope of purposes, including public benefit and member interests. This type of organization is designed to advance the interests of the society in a political manner. The Suharto's New Order regime called it "Single Pot" (*Wadah Tunggal*). The idea was to set one form of organization for all types of interests (whether activity, profession, function, or religion), so that it would be easier for the regime to control them.

Given that its background is more political than legal, the Law on Social Organizations



(Law No. 8 of 1985) includes strong controlling aspects. The government may dissolve a social organization that conducts any activities disturbing the security and order, receives donations from foreign institutions without the government's consent, or provides assistance to foreign institutions that may harm the nation. Article 13 Law on Social Organizations. Therefore, although the Ministry of Internal Affairs insists that this law addresses all organizations, only a few NPOs have admitted that their organizations are social organizations. Most NPOs prefer the foundation or the association as their legal status.

The National Legislation Program (*Program Legislasi Nasional-Prolegnas*) 2001 included a plan to revise the Law on Social Organizations. An initiative has been taken by the Ministry of Internal Affairs to revise this law.

[29] Article 4 Law No. 17/2000 on Income Tax.

[30] There are three types of sources of Islamic Philanthropy, namely *Zakat* (Islamic Obligated Charitable Giving), *Infaq* and *Sodaqoh* (Voluntary giving), and *Waqaf*

[31] KRD Japan Inc, a Japanese NPO, was forced to pay the VAT tax by the Customs and Duties Authorities in Surabaya (*Direktorat Jenderal Bea dan Cukai Surabaya*) for importing 3.700 units of computers. KRD's General Manager admitted that they did not prepare for the cost, since they considered this import a grant that therefore would be tax-exempt. See *KOMPAS Cyber Media*, October 2<sup>nd</sup> 2002.

[32] There is no specific provision about the abuse of this exemption through resale, but a general provision states that whoever violates these exemption regulations and causes losses to the country's income will be fined in the amount of 100 percent of the duty. Article 25 (4) Law on Customs and Duties.

[33] Article 9 (5) Law on Foundations.

[34] Article 69 (1) Law on Foundations.

[35] Article 25 (1) Draft Government Regulation.

[36] Article 26 Draft Government Regulation.

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