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Review of the Legal, Administrative and Tax Aspects  
In a Non-profit Organization in Indonesia  
(Azwar Hasan, MPA, Short-Term Consultant, USAID)

I. Background

Pursuant to the instruction in Law Number 22 Year 1999 regarding local government in Indonesia, the local government, especially the City Government and the District Government, are given more authority in the process of taking public decisions in the region. The role of the Head of a Region no longer functions merely as the extended hand of the officials at the central government whom they assign in the region, but is also expected to play the role of Head of the Region who can understand and protect the needs of his region. In the past, the regional legislation was labeled only as a group of people who are passively engaged in politics and whose duty is only to put a stamp on the decisions made by the local executives. The position of the Council at the regional level, for example, under the protection of the new regional autonomy law, has the authority to control the performance of the Head of a Region who must account his acts to the Regional Council as the electoral agency. This is very different from the position of Head of a Region under the previous law, ie. Law Number 5 Year 1994 regarding Local Government, which gives practically no political and strategic authorities both to the Local Council as well as to the Head of a Region. All strategic administrative affairs are handled by the Central Government and it was a very centralistic system. To this Law Number 22 Year 1999 was attached Law Number 25 year 1999, which clearly delegated a major part of the authorities, not only in the field of administrative affairs but also in the financial sector, to the regional government, which in the era of the New Order were held tightly by the central government in Jakarta.

To support the performance of the government in the region at the District, City as well as Provincial levels, Law Number 22 year 1999 (article 115 paragraph 2) provides support to the local government to cooperate independently with and among

the governments in the region. This concrete support is realized in the form of the acknowledgement by six (6) representatives from the associated agencies that were formed by the local government in the structure of members of the Regional Autonomy Consideration Agency (DPOD). This agency has a strategic position in organizing the regional governments in Indonesia. DPOD has the task of providing the President with considerations regarding significant issues in the implementation of the regional autonomy, such as concerning the formation, elimination, consolidation and expansion of an autonomous region. The duty of DPOD is also to provide considerations in terms of the financial balance between the central and the regional governments as well as the ability of the District Region and the City Region to execute a specific authority. See article 115 paragraph (1) of Law Number 22 Year 1999.

In May, 2000, the Government of Indonesia through the Minister of Home Affairs issued Minister of Home Affairs Decree Number 16 Year 2000 regarding the Guidelines for the Formation of the Local Governments Association and the Appointment of the Representative of the Local Governments Association as a DPOD member. By this decision, irrespective of whether they are ready or not, and willing or not, the District Government, City Government and Provincial Government, are required to form an association and to appoint their representative in DPOD within just one month. This decision was issued in May, 2000, and the association was expected to have been formed in the following month, ie. in June of the same year. The Minister of Home Affairs played a very dominant role in the process of the formation of these associations, because this Minister of Home Affairs Decree clearly mentioned that the formation of these associations was facilitated by the then Minister of Home Affairs and Minister for Regional Autonomy. Both the representative of the Local Governments Association and the representative of the Regional Council had their representatives in the structure of DPOD members<sup>2</sup>, however, Minister of Home Affairs Decree Number 16 Year 2000 did not mention anything about a representative from the Regional Council

Association, either from DPRD I or DPRD II, nor their position in DPOD. The clarification in Article 115 paragraph (2) of Law Number 22 Year 1999 mentioned 6 (six) independent representatives as representatives from the region who are elected by DPRD. The composition of the representatives is as follows: 2 representatives from the provincial region, 2 representatives from the district region, and 2 representatives of the city region, with a tenure of 2 years. No mention was made, however, in terms of the number of representatives from the Regional Council<sup>1</sup>.

The formation of a professional Local Governments Association which has a clear mission and vision will, naturally, help the region to expedite the implementation of the regional autonomy in their regions, respectively. The high expectations from these associations are not exaggerated, if we look at the members who are the Heads of a Region. The Heads of a Region who are associated in this organization are expected to be able to develop critical and independent ideas to develop their region. However, viewed from the process of the initial formation of this association which is closely related to the 'facilities' or 'messages' from the central government, the word *independent* in this organization which is non-partisan, is the key word in terms of the role and action of the associations in the years to come. Attempts to form an independent and professional organization in this organization then became a basic need at the initial stages of the process of the formation of the mechanism and also the system in such associations.

- 1 Minister of Home Affairs Decree Number 16 Year 2000, Article 12
- 2 Law Number 22 year 1999, Article 115 paragraph (2)
- 3 Law Number 22 Year 1999, Clarification of Article 115 paragraph (2): Local Governments Association means the organization which is formed by the Local Governments in the framework of the inter-Provincial Governments, inter-District Governments, and/or inter-City Governments, based on the guidelines issued by the Government. The representatives of a region are elected by DPRD from various qualifications, specifically their financial and administrative qualifications, with 6 independent representatives consisting of 2 representatives from the provincial region, 2 representatives from the district region, and 2 representatives of the city region, with a tenure of 2 years.

The involvement of the non-government parties became important to support the formation of a professional and independent organization as a financial support and to support the performance improvement of the association as well as as a party that is able to act as a social control of the performance of this association. Similarly, a review of the various legal aspects in the formation of the association and other supporting organizations play a strategic role to prepare it so that it can provide real contributions to the process of the implementation of the local governments in Indonesia in the years to come. The following article is a general report on the various legal aspects of the various forms and types of non-profit organizations in Indonesia. An analysis of the legal aspects of the non-profit organizations are compiled on the basis of the survey in the field from interviews with resource persons and an analysis of the regulations of the prevailing laws.

## II. Forms of Organizations in Indonesia

In general, viewed from its orientation, an organization is divided into two categories, ie. the profit-oriented organizations and the non-profit oriented organizations or frequently also known as non-profit organizations. For the first category, these organizations take the form of a limited liability company or P.T. The law that regulates the details of this organization is Law Number 1 Year 1995 regarding limited liability companies and Law Number 8 Year 1997 regarding Company Documents. The remainder of the implementing regulations of this profit-oriented organization is sufficiently clear, ie. :

- a. Government Regulation Number 12 Year 1998 regarding Persero Companies (Persero).
- b. Government Regulation Number 26 Year 1998 regarding the Use of the name limited liability company.
- c. Government Regulation Number 27 year 1998 regarding Merger, Consolidation and Acquisition of limited liability companies.

- d. Government Regulation Number 87 Year 1999 regarding Methods and Procedures to Submit and Destroy Company Documents.
- e. Government Regulation Number 88 Year 1999 regarding Methods and Procedures to Transfer Company Documents into Microfilm or other media and their Legalization.
- f. Government Regulation Number 95 year 2000 regarding the Business Development Facilities PERUM Companies.

The non-profit organizations are legally divided into three forms of organization, ie. the mass organizations, foundations, and associations. Each of these three forms of organization have their own characteristics and legal consequences. Unlike the profit-oriented organizations, the regulations that regulate the non-profit organizations are relatively unclear and have various interpretations, thus it might lead to a confusion in the implementation of the relevant organization.

In accordance with the orientation of the organization, the *Local Governments Resource Center* to be formed under USAID will be a non-profit organization, therefore this report focuses the analysis only on the three forms of non-profit organizations<sup>4</sup>.

### III. Forms of Non-Profit Organization in Indonesia

#### *Social Organizations*

- Nearly a majority of the organizations that are formed voluntarily and whose members are volunteers are classified into the mass organization type or frequently abbreviated just as *ormas*<sup>5</sup>. A mass organization may have one or more than one special characteristic, such as based on similar activities, profession, functions, religion and the belief

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<sup>4</sup> See also the attached matrix regarding "ANALYS OF SEVERAL ASPECTS OF FOUNDATIONS, MASS ORGANIZATIONS AND ASSOCIATIONS".

<sup>5</sup> See the clarification of article 1, Law Number 8 Year 1985 regarding Mass Organization

in The One Almighty God. The organizations like Pramuka (the Indonesian Scouts Organization, KORPRI (the Indonesian Civil Service Corps), KNPI (the National Committee for Indonesian Youth), HKTI (the Indonesian Farmers Association), are classified under the term mass organization pursuant to law Number 8 Year 1985.<sup>6</sup>

- Viewed from the regulations of the prevailing laws regarding mass organizations<sup>7</sup>, a majority of the articles only regulate the methods and procedures of the construction, supervision and freezing of a mass organization by the government. Viewed from the history of its formation, the idea that underlines the birth of the regulations of the laws that regulate this mass organization is to supervise the development of the organizations in the society in the era of the new order government, to restrict and supervise the movements of the organizations concerned. Hence, in practice, the form and structure of the non-profit organizations in Indonesia are diverse, each respectively depending on their statutes and by-laws. No clear internal regulation of the non-profit organizations is contained in the regulations of the laws in Indonesia, eg. regarding the management and organization as well as the financial sources of the organization.
- A mass organization has an inclusive membership, it means that anybody is welcome to join a mass organization.
- The general construction of a mass organization is conducted by the Minister of Home Affairs, Governor, Regent/Mayor<sup>8</sup>.

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<sup>6</sup> Ibid., article 8.

<sup>7</sup> Law Number 8 Year 1985, Government Regulation Number 18 Year 1986, and Minister of Home Affairs Regulation Number 5 Year 1985.

<sup>8</sup> Article 15, Government Regulation Number 18 Year 1986 regarding Implementation of Law Number 8 Year 1985.

## Association

- The association which we know in the regulations of the laws prevailing in Indonesia is a legal entity which is formed by an individual(s).<sup>9</sup>
- An association has limited members (exclusive), ie. it consists of individuals who have certain things in common.
- An association has at least a chairman, a secretary and a treasurer.
- An organization that uses the term association which is not formed under the Department of Justice, in spite of the term Association, legally falls under the Mass Organization category and is under the Department of Home Affairs.
- A comparison of the various organizational aspects of the mass organizations, associations and foundations can be seen in the annex regarding "Analysis of Several Aspects of Foundations, Mass Organizations and Associations".

## Foundation

- Foundation means a legal entity whose assets have been set aside and whose purpose is to achieve certain objectives in social, religious and humanity areas, and it has no members.<sup>10</sup>
- Prior to the ratification of Law Number 16 Year 2001 regarding Foundation, an organization which falls under this category is subject to the mass organization law. Thus, as clarified in the discussion about mass organization, even a foundation consists in fact of various forms and structures of organization as the result of the ambiguity of the law. No special pattern that regulates a foundation internally and thoroughly existed prior to the ratification of Law Number 16 Year 2001.
- An organization in the form of a Foundation stipulates pursuant to Law Number 16 explicitly that the organs of an organization are not

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<sup>9</sup> State Gazette dated 28 March 1970, *Rechtspersoonlijkheid van Verenigingen*.

<sup>10</sup> Article 1, Law Number 16 Year 2001 regarding Foundations.



allowed to have a dual status, ie. among the Elder Members, Management and Supervisors. In other non-profit types of organization there is no similar requirement.<sup>11</sup>

- A foundation will, in the future, be allowed to establish a corporation, provided that the equity capital is maximum 25% of the total equity of the foundation. Prior to the birth of this Law Number 16, no such equity capital was required.<sup>12</sup>
- The foundation that has been formed is given a transitional period of 5 (five) years to adjust to the provision in Law Number 16 Year 2001. This law self is effective as of August, 2002. Up to the completion of this study, there has been no implementing regulations of this law.
- The foundation is founded by one or more persons who has/have set aside part of his/their assets as equity capital.<sup>13</sup> A foundation whose founder is a foreigner or is joined by another foreigner as co-founder, is/are required to follow the requirements as well as the method and procedures to establish a foundation under specific provisions which are regulated by a Government Regulation (PP).<sup>14</sup>
- To compare some aspects of an organization and the laws of a foundation with those of other non-profit organizations, see the annex regarding "Review of Several Aspects of a Foundation, Mass Organization and an Association".

#### *Tax Provisions for Foundations and Similar Organizations*

- Pursuant to Article 2 paragraph (1) letter b of Law Number 7 Year 1983, as recently amended by Law Number 10 Year 1994, a foundation or

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<sup>11</sup> *ibid.*, Article 7 paragraph (3)

<sup>12</sup> *ibid.*, paragraph (2). The consequence is that a foundation could establish a Corporation with its operating capital fully owned (100%) by the foundation concerned, as long as such operating capital does not exceed 25% of the total assets of the foundation.

<sup>13</sup> *Ibid.*, Article 9 paragraph (1).

<sup>14</sup> *Ibid.*, Article 9 paragraph (5). No implementing regulation, and no Government Regulation of Law Number 16 Year 2001 regarding Foundations are available.

similar organization is the Subject of Income Tax.<sup>15</sup>

➤ The basic principles in the calculation of a tax exempt which is regarded an expense to a Foundation or a similar Organization are:

- Any income and revenue that expect no counterpretation are exempted from tax.
- Any cost and expense which are not aimed to generate profit for a foundation or a similar organization may be calculated as an expense in the calculation of the net profit.

➤ The method to calculate income, revenue and expense to generate the net profit is influenced by the auditor/tax consultant in its interpretation.

➤ Pursuant to the regulation of the laws that regulate tax for a foundation or a similar organization<sup>16</sup>, an income or revenue which is NO Tax Object covers:

- Aids or contributions
- Grants received by a foundation or a similar organization, to the extent that it has no relevance to the business, work, ownership or operation of the grantor and the grantee;
- Dividends or part of the profit received by a foundation from the equity capital.
- Aids or donations from the government.

➤ Income which constitutes a Tax Object means any income received or obtained by a foundation or a similar organization pursuant to the provision in Article 4 paragraph (1) of Law Number 7 Year 1983, as recently amended by Law Number 10 Year 1994, which covers among others<sup>17</sup>:

- Income received or acquired from an operation, work, activity or service;

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<sup>15</sup> Minister of Finance Circular Number 34/PJ.4/1995 regarding Income Tax Treatment to Foundations or similar Organizations (General Income Tax serial number 15).

<sup>16</sup> Minister of Finance circular Number 34/PJ.4/1995 regarding Income Tax Treatment to a Foundation or similar Organization (General Income Tax serial number 15); Minister of Finance Decree Number 604/KMK.04/1994; SE-39/PJ.4/1995 Extension regarding Income Tax Treatment to a Foundation or similar Organization (General Income Tax serial Number 18).

<sup>17</sup> Ibid. Circular Number 34/PJ.4/1995

- Interest on deposit, bond interest, discounted central bank certificate and other interest;
  - Rent and other compensation relating to the use of property;
  - Profit from the transfer of property, including profit from the transfer of property which originated formerly from aid, donation or grant;
  - Capital gain.
- Pursuant to point 6 of Director General of Tax Circular Number: SE-34/PJ.4/1995, a Foundation or similar organization is only levied Income Tax if there is a surplus balance between the total sum of the gross income which is a tax object and the expense which may be deducted from the gross income.
- To make net profit, the foundation is allowed to deduct: an expense which is directly related to an operation, work, activity or service in order to get, invoice and maintain an income or an expense which is related to the operation of a foundation, is exempted from tax.<sup>18</sup>
- The proceeds from "Zakat" or tithe, Infaq or donation and "Sedekah" or alms (ZIS) are tax exempted. Only those legal entities who distribute ZIS to a registered and government recognized Zakat, Infaq and Sedekah Agency (BAZIS) alone are exempted from tax. A legal entity that distributes its ZIS to a legal non-BAZIS organization can't have the ZIS incurred by it deducted from the tax calculations of the legal entity concerned.<sup>19</sup>

#### IV. Findings

1. The term for a non-profit organization in Indonesia is used inconsistently and it has a double connotation in terms of the existence of the legal foundation of a type of organization, eg.

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<sup>18</sup> Ibid.

<sup>19</sup> Interview with a Tax Consultant.

the term Association or Organization is also known in Law Number 8 Year 1985 regarding mass organization. In reality, in the field, one finds that the term Association is used differently, not under the mass organization category, viewed from its legal basis, but it is classified under the category of an Association which is a legal entity.

2. The term Association is mentioned in the clarification to article 1 and Article 8 of Law Number 8 Year 1985 and thus its legal translation is that an Association and/or Organization is classified under the mass organization category.
3. The mass organization category under Law Number 8 Year 1985 means a non-profit organization the formation and membership of which is based on the voluntarily principle. All non-profit organizations which are no legal entity are classified under this category, including the associations, organizations which are no legal entity, the non-governmental organizations (NGO)<sup>20</sup>, the Indonesian Scouts Organization, Committee, and others. As this mass organization term covers a very wide scope of organization, one finds in the field various types of organization with different forms, compositions and structures, and financial structures of organization.
4. Law Number 8 Year 1985 allows a mass organization or a prospective mass organization to determine its own type of activity and implementation mechanism. A mass organization or prospective mass organization is obliged to compile its own statutes/by-laws<sup>21</sup> and it is not clearly regulated by the internal elements of the mass organization, such as the organs of an organization and its position, source, management and the supervision of the fund of the mass organization.

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<sup>20</sup> The position of NGO is regulated in Minister of Home Affairs Instruction No. 8 Year 1990 regarding construction of Non-Governmental Organizations.

<sup>21</sup> See article 7, Law No. 8 Year 1985

5. There is a gap between the understanding in legal understanding and general understanding (non-expert) in relevance to the term association. The term association is generally interpreted as an organization which consists of various other organizations which have certain similarities that have led them to get together to form a separate organization which is a legal entity. Whereas pursuant to State Gazette 1870<sup>22</sup>, BW (Civil Code) of 22 April 1855 which is still valid to date, association means an organization which is formed by individuals because they have certain characteristics in common and it is not formed by an organization or other legal entity or organization.
6. An association which is a legal entity is required to register in order to obtain its legal status from the Department of Justice. Whereas an association which is no legal entity is constructed by the Department of Home Affairs.
7. No mention is made about the use, meaning or application of the terms institute, study center or center, or institute in the regulations of the laws that regulate non-profit organizations in Indonesia, which covers Law Number 8 Year 1985 along with its implementing regulations, State Gazette 1870 and BW 1855, and Law Number 16 Year 2001. The fact in the field shows that the application of these terms refer more to the orientation of the activities of an organization rather than to the legal status of the organization concerned.
8. The government regulation<sup>23</sup> mentioned that an organization which is allowed to participate in a tender for a government project shall be an official accredited organization. Accreditation in the field of construction is conducted by the Construction Service Development Institute

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<sup>22</sup> (K.B.v. 28 March 1870) S.70-64, *Rechtspersoonlijkheid van Verenigingen*

<sup>23</sup> Presidential Decree No. 18 Year 2000 regarding Implementing Guidelines of the Procurement of Goods/Services of Government Institutions and Joint Decree of the Minister of Finance of the Republic of Indonesia and the Head of the National Development Planning Agency Number: S-42/A/2000 regarding the Implementing Techniques of RI Presidential Decree Number 18 Year 2000.

(LPJK), and the accreditation for other fields is conducted by the Indonesian Chamber of Commerce and Industry (KADIN). Mass organizations are not classified under this category, thus they are not allowed to participate in the tender for government projects. Government projects mean the procurement of goods/services the entire funding or part of the funding of which is charged to the National Budget (APBN) and the Regional Budget (APBD) of a Province and District/City.<sup>24</sup>

## V. Recommendations

1. It is very important to have a clear vision and mission to determine the direction and future objectives of this organization. The organization that is formed should be no superpower organization that intends to cover all problems that encompass the local governments in Indonesia, but rather it shall be an organization that has a clear core competency and a clear direction. Such clear vision and mission will facilitate the organization to determine the stakeholders who should have been involved and sit in this organization, instead of become an organization that merely depletes the fund of USAID aid projects, and are subsequently dissolved.
2. The organization that is formed should be a legal entity and the organization shall not be a mass organization, considering that it could get the source of funding from projects with the budget from the government.
3. A foundation, which tends to be clearer with the existence of Law No. 16 Year 2001, is expected to provide a solid legal foundation to the non-profit organizations in Indonesia in the future. Thus, an organization which takes the form of a foundation could be the foremost alternative in the compilation of this *Local Government Innovation Center*.

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<sup>24</sup> Ibid.

4. The compilation of clear Statutes/By-laws, such as the status and position of its members, ex-officio members, the rights and obligations of the different types of members<sup>25</sup>, and the financial structure and relationship among the organs of the organization, must be clear.
5. To maintain the independence and future life of the organization, it is recommended that the organization that is formed shall have minimal three elements in its organization, ie. :
  - a. The user of the output of the work of this organization, ie. the district government, city government and provincial government. The purpose is to get formal legal and effective support in terms of the output of the to be conducted in the future by this organization. It is often the case that the government takes a distance and has no goodwill to implement the output of the work or the recommendation of the organization or the institution beyond the government self.
  - b. The *brain charging* element or analyst who is critical to the problems of the nation and state, specifically in organizing the government in the region. Under this category we find the senior academics from the university circles or analysts (*public opinion leaders*) who have an authoritative bearing in the eyes of the public. Their presence is the source of new and actual inspirations for the development of the organization.
  - c. The *controllers*, ie. those who are truly independent, viewed from the capacity of the individuals as well as the organization. Under this category we find the NGOs that are non-partisan and are obviously independent. The presence of this supervisory element is expected to be able to maintain the independence of the organization that is established.

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<sup>25</sup> For example the position, rights and obligations of the permanent members, temporary members, and extraordinary members, if any.

6. Those who represent the association in an organization which is facilitated by USAID should preferably be those who have the authority to make decisions in the organization represented by them and/or in a government organization in the region.<sup>26</sup>
7. The organization that is formed should be under directed by a leader who is competent in terms of being a scientist and have previous experience to direct a local government in Indonesia. He should naturally also have an authoritative bearing in the eyes of the stakeholders and the associations that are associated in it.

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<sup>26</sup> Regarding the Position, Duties and Functions of the Regional Apparatus, see Government Regulation No. 84 Year 2000 regarding Guidelines of the Organization of the Regional Apparatus.



## ANNEX

### I. List of the Analysed Regulations of the Laws

- Law Number 22 Year 1999 regarding Local Government
- Law Number 1 Year 1995 regarding Limited Liability Companies and Law Number 8 Year 1997 regarding Company Documents
- Law Number 8 Year 1985 regarding Mass Organizations
- Law Number 16 year 2001 regarding Foundations
- Law Number 7 Year 1983 regarding Income Tax
- Law Number 7 Year 1991 regarding Amendments to Law Number 7 Year 1983
- Law Number 10 Year 1994 regarding Amendments to Law Number 7 Year 1983 as amended by Law Number 7 Year 1991
- State Gazette of 28 March 1870, Rechtspersoonlijkheid van Verenigingen
- Government Regulation Number 18 Year 1986 regarding Implementation of Law Number 8 Year 1985
- Government Regulation Number 84 Year 2000 regarding Guidelines of Regional Apparatus Organizations
- Minister of Finance Decree Number: 604/KMK.04/1994
- Minister of Home Affairs Decree Number 16 Year 2000 regarding Guidelines of the Formation of the Local Governments Association and the Appointment of the Representative of the Local Governments Association as a Member of the Regional Autonomy Consideration Council.
- Minister of Home Affairs Instruction Number 8 Year 1990 regarding Construction of Non-Governmental Organizations
- Presidential Decree Number 18 Year 2000 regarding Implementing Guidelines of the Procurement of Goods/Services of Government Institutions and Joint Decree of the Minister of Finance of the Republic of Indonesia and the Head of the National Development Planning Agency Number: S-42/A/2000 regarding the Implementation Technique of RI Presidential Decree Number 18 Year 2000

- Director General of Tax Circular Number: SE-34/PJ.4/1995 regarding Income Tax Treatment to Foundations or similar Organizations (General Income Tax serial number 15).
- Director General of Tax Circular Number: SE-39/PJ.4/1995 regarding Extension of Income Tax Treatment to Foundations or similar organizations (General Income Tax serial number 18)
- Director General of Tax Circular Number: SE-62/PJ.4/1989 regarding Restitution of Income Tax on Interest on Deposit to a Foundation and to the Pension Fund Foundation.

## II. List of Resource Persons

- Head of the Subdirectorate of Legal Entities and Associations, Department of Justice and Human Rights
- Head of the Subdirectorate of General Civil Affairs, Department of Justice and Human Rights
- Prof. Ratnawati Prasojo, Expert in Organization Law and former Expert Adviser to the Minister of Justice and Human Rights
- Prof. Bhenyain Hussein, Expert in Local Governments from the University of Indonesia
- Indah Suksmaningsih, Chairman of the Indonesian Consumers Institute Foundation (YLKI)
- P. Agung Pambudhi, Executive Director, Committee for Monitoring the Implementation of the Regional Autonomy (KPPOD)
- Ery Chajaridipura, Executive Director, Institute for Local Governance Studies (ILGOS)
- Tony B. Trihartanto, Director of Graduate Program, ILGOS
- Zarfiel Tafal, Executive Director, Indonesian Family Planning Association (PKBI)

## III. Matrix of Analysis of Several Foundations, Mass Organizations and Associations

See separate annex

## IV. Foundations, Mass Organizations and Associations, along with the Regulations of their Laws.

See separate Annex

## Foundations, Mass Organizations and Associations, along with the Regulations of the Laws

Form of Organization	Regulations of the Laws	Contents	Significant Issues
Foundation	<ul style="list-style-type: none"> <li>• Law No. 16 Year 2000</li> </ul>	Regarding Foundations	<ul style="list-style-type: none"> <li>• Valid from August, 2002</li> <li>• Organs of an Organization: Elder Members, Management, Supervisors</li> <li>• The Organs of an Organization may not hold double positions</li> <li>• It may establish a legal entity, provided that the equity capital of the foundation is maximum 25% of the total assets of the foundation</li> <li>• It has no members</li> </ul>
Mass Organization	<ul style="list-style-type: none"> <li>• Regarding Mass Organizations</li> <li>• Government Regulation No. 18 Year 1986 regarding the Implementation of Law No. 8 Year 1985</li> <li>• Minister of Home Affairs Regulation No. 5 Year 1986</li> </ul>	<ul style="list-style-type: none"> <li>• Regarding Mass Organizations</li> <li>• Regarding the Implementation of Law No. 8 Year 1985</li> <li>• Regarding the Scope, Methods and Procedures of sending a Notice to the Government and the Nameboard and</li> </ul>	<ul style="list-style-type: none"> <li>• The main objective of this Law is the Construction (Regulation) of Mass Organizations by the Government</li> <li>• There is no specific regulation regarding the internal affairs of the</li> </ul>

Form of Organization	Regulations of the Laws	Contents	Significant Issues
	<ul style="list-style-type: none"> <li>• Minister of Home Affairs Instruction No. 8 Year 1990</li> <li>• Minister of Home Affairs Decree No. 16 Year 2000</li> </ul>	<ul style="list-style-type: none"> <li>• Symbol of the Mass Organizations</li> <li>• Regarding the Construction of Non-Governmental Organizations</li> <li>• Regarding the Guidelines of the Formation of Local Government Associations and the Appointment of the Representative of the Local Government Association as a member of DPOD</li> </ul>	<ul style="list-style-type: none"> <li>• Mass Organizations and it is left to the Organization concerned to regulate it in its Statutes/ By-laws.</li> <li>• The members are inclusive</li> </ul>
Associations which are legal entities	<ul style="list-style-type: none"> <li>• State Gazette K.B. v. 28 March 1870 and BW 22 April 1855</li> </ul>	Regarding Associations (Rechtspersoonlijkheid van Verenigingen)	<ul style="list-style-type: none"> <li>• An association which is formed by individuals who have the same interest</li> <li>• It is not formed by an organization/ association/ legal entity</li> <li>• The members are exclusive</li> </ul>

# ANALYSIS OF SEVERAL ASPECTS OF FOUNDATIONS, MASS ORGANIZATIONS AND ASSOCIATIONS

No	ASPECTS	FOUNDATIONS	MASS ORGANIZATIONS	LEGAL ASSOCIATIONS
1.	Preliminary Information	<ul style="list-style-type: none"> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• In the clarification of Regulation No. 8, 1985 regarding Social / Mass Organizations (ORMAS), ASSOCIATIONS are classified under the MASS ORGANIZATION category, eg. HKTI</li> </ul>	<ul style="list-style-type: none"> <li>• The associations in Indonesia are divided into:               <ol style="list-style-type: none"> <li>1. Legal entities under the Dept. of Justice</li> <li>2. Non-legal entity associations (mass organizations) under the Dept. of Home Affairs</li> </ol> </li> </ul>
2.	Regulations	<ul style="list-style-type: none"> <li>• Regulation No. 16, 2001, Minister of Finance Circular No. 34/PJ.4/1995 regarding Income Tax Treatment to Foundations or similar (General Income Tax Serial No. 15)</li> </ul>	<ul style="list-style-type: none"> <li>• Law No. 8 Year 1985 regarding Mass Organization</li> </ul>	Legal entity associations are regulated by: <ul style="list-style-type: none"> <li>• State Gazette K.B.v. Maret 28, 1870</li> <li>• BW 22 April 1855</li> </ul>
3.	Government Regulation (PP); Ministerial Regulation; Minister Decree (KEPMEN); and Minister Instruction	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• Government Regulation No. 18 Year 1986 regarding the Implementation of Law No. 8 Year 1985</li> <li>• Minister of Home Affairs Regulation No. 5 Year 1986 regarding Scope, Method &amp; Procedures of a Notice to the Government and the Nameboard and Symbol of the Mass Organizations</li> </ul>	<ul style="list-style-type: none"> <li>• Not available</li> </ul>

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4.	Organs of the Organization	<p><b>ELDER MEMBERS:</b></p> <ul style="list-style-type: none"> <li>• Appoint members of the Management and Supervisors;</li> <li>• Determines the general policy of the foundation based on the Statutes (AoA) of the Foundation;</li> <li>• Authorized to amend the Statutes;</li> <li>• Ratify the Draft of the Annual Budget and Working Program;</li> <li>• Decides to merge or dissolve the Foundation;</li> <li>• <b>NOT ALLOWED</b> to serve concurrently as a member of the Management and/or Supervisors;</li> </ul>	<ul style="list-style-type: none"> <li>• Minister of Home Affairs Decree No. 16 Year 2000 regarding Guidelines of the Formation of the Local Governments Association and the Appointment of the Representative of the Local Governments Association as a DPOD member.</li> <li>• Minister of Home Affairs Instruction No. 8 Year 1990 regarding Construction of Non-Governmental Organizations.</li> </ul> <p><b>Management:</b></p> <ul style="list-style-type: none"> <li>• It consists of the Central Management and the Local Management</li> <li>• The Management may serve concurrently as a member and vice versa</li> <li>• The organs of the organization and the division of the authorities are not clearly regulated among the organs.</li> </ul> <p><b>Members:</b></p> <ul style="list-style-type: none"> <li>• It is open to the public</li> <li>• A member may serve concurrently as management</li> </ul>	<p><b>Members Meeting:</b></p> <ul style="list-style-type: none"> <li>• It is the highest council</li> <li>• It appoints and dismisses the management</li> </ul> <p><b>Management:</b></p> <ul style="list-style-type: none"> <li>• It consists of minimal a Chairman, a Secretary and a Treasurer</li> <li>• It is responsible to the Members Meeting</li> <li>• It may appoint Executives</li> </ul> <p><b>Supervisors:</b></p> <ul style="list-style-type: none"> <li>• Not obliged but may be formed provided that it is regulated in the Statutes/</li> </ul>

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		<p><b>MANAGEMENT:</b></p> <ul style="list-style-type: none"> <li>To carry out its duties, the management may appoint and dismiss the EXECUTIVES of the Foundation;</li> <li>It shall NOT serve concurrently as an Elder Member and a Supervisor;</li> <li>It is appointed and dismissed by the Elder Members Meeting;</li> <li>It may demand the dismissal of an Elder Member, provided that it is regulated in the Statutes/By-laws</li> </ul> <p><b>SUPERVISORS:</b></p> <ul style="list-style-type: none"> <li>They supervise and give the Management advice in terms of the activities of the Foundation;</li> <li>They may dismiss the Management temporarily;</li> <li>They may not serve concurrently as Elder Member and Management;</li> <li>The supervisors are appointed and dismissed by the decision of the Elder Members Meeting;</li> </ul>		By-laws

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5.	Salary/Wages	<ul style="list-style-type: none"> <li>The Elder Members, Management and Supervisors work voluntarily for the foundation. The executives may be remunerated.</li> </ul>	<ul style="list-style-type: none"> <li>Everybody works voluntarily</li> </ul>	<ul style="list-style-type: none"> <li>Voluntary work</li> <li>Executives may be remunerated</li> </ul>
6.	Founding	<ul style="list-style-type: none"> <li>Formed by individuals/one or more persons</li> </ul>	<ul style="list-style-type: none"> <li>Formed by individuals</li> </ul>	<ul style="list-style-type: none"> <li>Formed by individuals/2 or more persons</li> <li>An association which is formed by a Legal Entity falls under the non-legal entity association category and is under the Dept. of Home Affairs</li> </ul>
7.	Ratification and Construction	<ul style="list-style-type: none"> <li>It is ratified by the Regional Office of the Dept. of Justice</li> </ul>	<ul style="list-style-type: none"> <li>Consultation/construction to/by the Minister/LDNP relating to a specific mass organization concerned</li> <li>Approved by the Dept. of Home Affairs (Director General of National Unity and Community Protection, Directorate of Institutions Relationship)</li> <li>It may be dissolved by the central government/Dept. of Home Affairs, the Governor, Regent and Mayor.</li> </ul>	<ul style="list-style-type: none"> <li>It is ratified by the Dept. of Justice</li> </ul>
8.	Account	<ul style="list-style-type: none"> <li>The account is made by the Council of Elder Members</li> </ul>	Unclear	<ul style="list-style-type: none"> <li>All members shall account through the Members Meeting</li> </ul>

Last Report

Local Government Innovation Center Formation, USAID

Azwar Hasan 4/7

USAID Short-Term Consultant



No	ASPECTS	FOUNDATIONS	MASS ORGANIZATIONS	LEGAL ASSOCIATIONS
9.	Assets	<ul style="list-style-type: none"> <li>The proceeds from the business activities may not be divided to the Elder Members, Management and Supervisors</li> <li>A foundation whose assets are acquired from the state, Government aid (domestic and overseas?) or have a certain amount of assets, shall have the summary of its report published in 2 daily Indonesian language newspapers, one of which has national circulation.</li> <li>The foundation shall be audited by a Public Accountant.</li> <li>It is PROHIBITED to transfer or distribute the assets acquired by the foundation to the Elder Members, Management, Supervisors, employees or to other parties concerned.</li> <li>It may establish a corporation on the condition that the equity capital is maximum 25% of the total assets of the foundation (instead of 25% of the total assets of the established corporation)</li> <li>The business activities of the Foundation shall conform with its purposes and objectives.</li> </ul>	<ul style="list-style-type: none"> <li>Member dues</li> <li>Non-binding contributions</li> <li>Other legal operations</li> <li>Overseas financial assistance requires the approval of the central government (Dept. Home Affairs/relevant Ministry). This category includes finance, equipment, staffing, and facilities.</li> </ul>	<ul style="list-style-type: none"> <li>Similar to the provision for mass organizations</li> <li>An association which is a legal entity may get work/service from the state budget</li> <li>It may establish a corporation which operates in a similar field</li> <li>There is no requirement that a percentage of the assets of the association may be invested in the corporation to be formed.</li> </ul>

LEGAL ASSOCIATIONS

MASS ORGANIZATIONS

FOUNDATIONS

ASPECTS

No

10.	<ul style="list-style-type: none"> <li>It may participate in the tender of government projects.</li> <li>It has no members</li> </ul>	<ul style="list-style-type: none"> <li>It has members (inclusive)</li> <li>Tax exempt</li> </ul>		<ul style="list-style-type: none"> <li>It has members (exclusive)</li> <li>The tax provision for Foundations and similar organization applies.</li> </ul>
11.	<p>Membership</p> <p>Tax (see:</p> <ul style="list-style-type: none"> <li>Minister of Finance Circular No. 34/PJ.4/1995 regarding Income Tax Treatment to Foundations and similar Organizations (General Income Tax serial No. 15)</li> <li>Minister of Finance Decree No. 604/KMK.04/1994</li> <li>Circular SE-39/PJ.4/1995 regarding Income Tax Treatment to Foundations or similar Organizations (General Income Tax serial No. 18)</li> </ul>	<ul style="list-style-type: none"> <li>The income or revenues is NO</li> <li>Tax Object:</li> <li>Aid or contribution</li> <li>Grant received by the foundation or by a similar organization, to the extent that it is not related to the business, work, ownership or operation of the grantor and the receiver;</li> <li>Dividend or part of the profit received by the Foundation from the equity capital</li> <li>Government aid or donation</li> </ul> <p>Income of the Foundation which is a tax object:</p> <ul style="list-style-type: none"> <li>Income received or acquired from the operation, work, activity or service;</li> <li>Deposit interest, bond interest, Central Bank certificates discounts and other interests;</li> <li>Rent and other compensation relating to the use of property;</li> <li>Profit from the transfer of property, including profit from</li> </ul>		

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		<p>the transfer of property which originally came from aid, contribution or grant (capital gain):</p> <ul style="list-style-type: none"> <li>• Profit sharing from a joint venture (capital gain)</li> </ul> <p>In order to make net profit, the foundation is allowed to deduct: Expenses which are directly related to the business, work, activity or service provided to get, invoice and maintain income or expenses related to the operation of the foundation</p>		