

Indonesia

Current as of November 2010

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I. Summary

A. Types of Organizations

Indonesia has two primary forms of non-for-profit, nongovernmental organizations (NPOs):

- foundations, and
- associations.

Most Indonesian NPOs are foundations. [1]

The Indonesian legal system is somewhat complex because it is the convergence of two distinct systems: namely, laws inherited from the period of Dutch colonization and Indonesia's modern law. Since independence, there has been a general trend toward replacing outdated Dutch laws with laws enacted by the Indonesian legislative body. Yet many Dutch laws remain in place. Associations, for example, are still governed by a Dutch law enacted in 1870.

Foundations, by contrast, are governed by Indonesian statutes. Law No. 16 of 2001 on Foundations was subjected to strong criticism even before it took effect in August 2002, and it was ultimately amended in October 2004 by Law No. 28 of 2004.

Because most NPOs in Indonesia are foundations, this Note is focused on the laws governing Foundations, i.e., Law No. 16 of 2001 and Law No. 28 of 2004.

This Note will not discuss several other forms of NPOs, including cooperatives and political parties (regulated by separate laws); organizations that operate under specific laws, such as the Educational Legal Entity (*Badan Hukum Pendidikan*; Article 53 Law No. 20 of 2003 on National Education System) [2]; societal organizations (Law No. 8 of 1985 on Societal Organizations) [3]; and NPOs structured as for-profit entities.

B. Tax Laws

Indonesian NPOs are generally subject to income tax. Exemptions are extended to income that an NPO uses to provide scholarship funds and income (*siswa lebih*) of an NPO engaged in education, research, and development, provided that the funds are re-invested in the NPO's work.

Tax deductions for charitable contributions are available for natural disasters, research and development activities, development of the social infrastructure, education facilities, and sport.

Indonesia subjects the sale of most goods and services to a Value Added Tax (VAT), with some exemptions pertinent to NPOs. Certain relevant goods are exempt from customs duties as well.

II. Applicable Laws

The prevailing Constitution of Indonesia is 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. It was then amended after the fall of Suharto's administration (1966-1998) in October 1999, August 2000, November 2001 and August 2002.

The second amendment to the [1945 Constitution](#) guarantees the freedom of association (Article 28) and freedom of expression (Article 28E section (3)). In October 2005, the Indonesian parliament ratified the International Covenant on Civil and Political Rights (ICCPR) by enacting Law No. 12 of 2005 regarding the Ratification of ICCPR.

- Indonesian Civil Code (Article 1653), August 18, 1945 (originally Dutch civil code; continued to apply under Clause II of the Transitional Provision of the 1945 Constitution). [4]
- Law No. 12 of 2005 regarding the Ratification of the International Covenant on Civil and Political Rights (ICCPR), October 28, 2005.
- [Law No. 16 of 2001 on Foundations](#) (*Yayasan*), August 6, 2001.
- Law No. 28 of 2004 regarding the Amendment to Law No. 16 of 2001 on Foundations, October 6, 2004.
- [Law No. 8 of 1985 on Societal Organizations](#) (*Organisasi Kemasyarakatan*), June 17, 1985.
- Staatsblad (State Gazette) 1870-64 on Associations with Legal Person Status, March 28, 1870.
- Law No. 36 of 2008 on the Fourth Amendment of Income Tax Law 1984, August 2, 2008.
- Law No. 28 of 2007 on the Third Amendment of Law No. 6 of 1983 of General Rule of Taxation Procedure, July 17, 2007.
- Law No. 18 of 2000 on the Second Amendment of Value Added Tax 1984, August 2, 2000.
- Law No. 17 of 2006 regarding the Amendment to Law No. 10 of 1995 on Customs, November 15, 2006.
- Law No. 39 of 2007 regarding the Amendment to Law No. 11 of 1995 on Duties, August 15, 2007.
- Law No. 11 of 2009 on Social Welfare (*Kesejahteraan Sosial*), January 16, 2009.
- Government Regulation No. 63 of 2008 on the Implementation of Law on Foundations, September 23, 2008.
- Government Regulation No. 18 of 1986 on the Implementation of Law No. 8 of 1985 regarding Societal Organizations, April 4, 1986.
- 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 Societal Organizations, October 1, 1986.
- Instruction from the Minister of Internal Affairs No. 8 of 1990 on Non-Governmental Organizations Supervision, March 19, 1990.
- Ministry of Internal Affairs Regulation No. 38 of 2008 on the Obtainment and Granting Societal Organizations Donations From and To Foreign Entities, August 15, 2008.
- Ministry of Internal Affairs Regulation No. 15 of 2009 on Guidelines on Cooperation between the Ministry of Internal Affairs and Foreign Non-Governmental Organizations, March 4, 2009.

III. Relevant Legal Forms

A. General Legal Forms

Foundation (*Yayasan*)

[Law No. 16 of 2001 on Foundations](#) came into effect in August 2002 and was amended by Law No. 28 of 2004, which came into effect in October 2004. [5]

Under 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 ([Article 1 section \(1\) Law on Foundations \(2001\)](#)). 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 depends on the foundation’s statutory purposes.

The law stipulates that the organizational structure of a foundation must consist of three organs: the Governing Board (*Badan Pembina*), Supervisory Board (*Badan Pengawas*), and Executive Board (*Badan Pengurus*). The Governing Board delegates some functions, powers, and duties to the other organs. [6]

Associations (*Perkumpulan*)

There are two types of associations in Indonesia: (i) incorporated associations, which possess legal personality; and (2) ordinary associations, which do not. Both are membership-based organizations. Associations can be public-benefit organizations or mutual-benefit ones.

Incorporated associations in Indonesia are based on the *Staatsblad* 1870-64 (Dutch Colonial State Gazette) on Associations with Legal Person Status. [7] Individuals wishing to create an incorporated association submit the Articles of Association containing the statutory purposes to the Minister of Law and Human Rights. Approval by the Minister confers legal personality.

As for the ordinary association, *Staatsblad* 1870-64 acknowledges the existence of an association without legal personality (Articles 8 and 9). The ordinary association is commonly known by various titles in Indonesian language such as *Perhimpunan*, *Ikatan*, and *Paguyuban*. An ordinary association is prohibited from conducting activities as a legal entity; 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 Articles 1663 and 1664 of the Indonesian Civil Code. [8]

At present, there are initiatives from various parties, including the government, NGOs, and scholars, to draft a new law concerning associations. However, as of the date of this Note's update, the Parliament has not put it on the schedule. [9]

B. Public Benefit Status

Foundations may be public-benefit organizations, although, as noted above, "social" foundations might operate to benefit only their stakeholders, which would be inconsistent with public benefit status. Associations can be public-benefit or mutual-benefit organizations.

Public benefit status does not entail any tax or other benefits.

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 ([Article 5 Law on Foundations \(2001\)](#)). A foundation must not divide the income of its commercial enterprises among the members of the Governing Board, Supervisory Board, or Executive Board ([Article 3 Law on Foundations \(2001\)](#)).

Moreover, the Elucidation section of the law [10] states that members of the Governing Board, Supervisory Board, or Executive Board must be volunteers who do not receive salary, wage, or honorarium (beyond reimbursement for expenses). Law No. 28 of 2004 introduces an exception to this prohibition: members of the Executive Board can be compensated if they: (i) work directly and full-time for the foundation, (ii) are not the founders of the foundation, and (iii) are not affiliated with the founders, the Governing Board, or the Supervisory Board.

The Executive Board is also prohibited from entering into "self-dealing" transactions ([Article 38 Law on Foundations \(2001\)](#)). 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 an employee of the foundation. However, the prohibition is not applicable when the agreement seeks to help the foundation to attain its objectives.

2. Association

There is no law restricting a member from receiving a direct or indirect benefit from an association.

B. Proprietary Interest

1. Foundation

The Governing Board, Supervisory Board, and Executive Board are all prohibited from receiving a direct or indirect benefit from a 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 proprietary interests in the assets or income of associations. However, members are allowed to receive their contributions back from remaining assets after the association's liquidation (Article 7 *Staatsblad* 1870-64).

C. Dissolution

1. Foundation

Law No. 16 of 2001 stipulates that the remaining assets after liquidation shall be given to other foundations that share the same objectives, as selected by the Governing Board ([Article 68](#)). Law No. 28 of 2004 adds that the remaining assets can also be given to other legal entities pursuing the same objectives, provided the laws regulating those legal entities allow such transfers. If neither of these is applicable, then the remaining assets shall be given to the State and used in accordance with the activities of the foundation.

2. Association

As a membership-based organization, an association is governed substantially by the agreement among its 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 liquidation can be owned by the members or divided based on their contributions.

An association can be involuntarily dissolved if the Ministry of Law and Human Rights revokes its legal entity status for a violation against public order. If an association violates its statutory purposes, a District Attorney can file a case in civil court seeking to revoke the association's legal entity status. 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 after the State Receiver (*Balai Harta Peninggalan*) completes the liquidation process.

D. Activities

1. General Activities

In general, a foundation or an association can undertake any lawful, not-for-profit activities. A foundation or an incorporated association becomes a legal entity, with all the attendant rights and responsibilities, upon the approval of the Ministry of Law and Human Rights.

2. Public Benefit Activities

Both foundations and associations may undertake public benefit activities but are not required to do so.

3. Economic Activities

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

- setting up commercial enterprises (*badan usaha*); and/or
- participating as a shareholder in 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 (see [Elucidation of Article 8, Law on Foundations \(2001\)](#)).

Apart from setting up its own commercial enterprise, 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 ([Article 7 \(2\) Law on Foundations \(2001\)](#)). Dividends received by the foundation from investment in its commercial enterprise are not subject to income tax.

The revision of the Law on Foundations in 2004 provides a more explicit provision prohibiting foundations in Indonesia from directly conducting any business activities (Elucidation of Article 3(1) Law on Foundation (2004)).

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 any commercial enterprise that a foundation establishes or in which it invests.

The law does not clearly restrict associations from engaging in commercial activities.

E. Political Activities

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

F. Discrimination

The [1945 Constitution](#) provides a legal basis for anti-discrimination, especially Article 28, which provides that 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. This is further regulated by Law No. 12 of 2005 regarding the Ratification of the International Covenant on Civil and Political Rights (ICCPR).

Further, Law No. 20 of 2003 concerning the National Education System, in Article 11 section (1), requires the government to help provide an excellent education for every citizen without any discrimination. The anti-discrimination regulation also applies to nongovernmental educational institutions (“Principles on Conducting Education” (*Prinsip Penyelenggaraan Pendidikan*), Article 4 section (1), Law No. 20 of 2003).

G. 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](#) permits foreign citizens together with Indonesians or otherwise to establish a foundation under Indonesian law, and foreign foundations, i.e. foundations established under foreign laws, to operate in Indonesian territory; these foundations must be operated in partnership with an Indonesian foundation and are limited to the pursuit of social, religious or humanitarian objectives. The Law and relevant regulations outline a set of rules regarding foundations established by foreign individuals or entities. [11]

Such foundations must have a minimum of one Indonesian member on the executive board and that member must serve as the NPO’s chair, secretary or treasurer (Article 12 of Government Regulation 63/2008). In addition, all members of the executive board must be residents of Indonesia. Members of the executive board, governing board and supervisory board who are not Indonesian citizens must have work and temporary residence permits (KITAS or *Kartu Izin Tinggal Sementara*) (Article 13 of Government Regulation 63/2008).

There is also a special registration procedure for foreign NGOs. Foreign NGOs must register with the Ministry of Internal Affairs as outlined in a letter sent by the Ministry of Foreign Affairs to embassies and foreign NGOs in January 2008. [12]

In addition, there is a special regulation for foreign NGOs that cooperate with the Ministry of Internal Affairs. Ministry of Internal Affairs Regulation No. 15 of 2009 requires a foreign NGO wishing to cooperate with the Ministry of Internal Affairs, including at the regional government level, [13] to: (1) have approval from the Indonesian government; (2) get an appointment letter from the Ministry of Foreign Affairs to cooperate with the Ministry of Internal Affairs; (3) have a representative office in Indonesia; (4) have a legitimate source of funding; (5) be listed as an NGO in its home country; (6) get approval from its headquarters in the appointment of its representative officer in Indonesia; and (7) obtain a recommendation letter from the embassy of its home country.

There are, however, no other provisions regarding the organization’s control. It is, therefore, possible that an Indonesian NPO be controlled by a for-profit entity or by an American grantor charity (which requires that the charity specifically so provide in the affidavit).

With regard to state control over NPOs, the Ministry of Internal Affairs and the Ministry of Social Affairs are responsible for NPOs in Indonesia (Law No. 8 of 1985 on Societal

Organizations (*Organisasi Kemasyarakatan* or *Ormas*) and Law No. 11 of 2009 on Social Welfare. These two ministries exercise supervisory authority over all NPOs in Indonesia.

Law No. 11 of 2009 on Social Welfare, which was enacted in January 2009 and replaces the old law from 1974, requires institutions, including NPOs, dealing with social welfare to be registered with the Ministry of Social Affairs. Foreign NPOs working in this area are also required to obtain permits and report their activities in advance to the Minister of Social Affairs and the appropriate district head. Violations of these provisions are subject to administrative sanctions such as a written warning, a temporary cessation of activities, permit revocation, and/or administrative fine/penalty.

V. Tax Laws

A. Tax Exemptions

NPOs are generally subject to income tax on the same basis as other legal entities (Article 2 section (1) (b) Law No. 36 of 2008 on Income Tax).

Donations, including religious-based donations and grants are not taxed provided that there is no business or ownership relationship between the parties. In addition, the following types of income are tax exempt: (i) income that an NPO uses to provide scholarship funds and (ii) income (*sisa lebih*) of an NPO working in the area of education, or research and development that is re-invested in its work as per the timing requirements of the income tax law (Article 4 section (3) Law No. 36 of 2008 on Income Tax).

B. Deductibility of Charitable Contributions

Individual and corporate taxpayers may deduct charitable contributions for natural disasters, research and development activities, development of social infrastructure, education facilities, and sport (Article 6 section (1) Law No. 36 of 2008 on Income Tax). [14] There is no limit on the amount of the deduction. The tax law stipulates that recipients of such contributions shall further be regulated by a Government Regulation; however, the relevant Government Regulation has not been issued.

C. Value Added Tax

Indonesia imposes a Value Added Tax (VAT). The applicable rates are ten percent on most goods and services and between ten and fifty 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.

Foreign grants to private NPOs are exempt from VAT upon the approval of the Director General of Tax in the Ministry of Finance. However, this procedure is conducted on an ad-hoc basis, and

NPOs often are unfamiliar with it. Grants related to government projects are clearly exempt from VAT (Article 2 Government Regulation No. 42 of 1995).

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

D. Customs Duties

Certain items are exempted from customs duties on imports under Article 25 section (1) Law No. 17 of 2006 on Customs and Article 9 section (1) Law No. 39 of 2007 on Duties. Those items include the following: goods belonging to a registered international institution and its officers on duty in Indonesia based on reciprocity principle; science books; grants for religious, charity, social, or cultural activities and for the purpose of natural disaster relief; goods for museums, zoos and other similar public places as well as nature conservation; goods for scientific research and development; goods for the use of disabled people; and goods for social purposes.

To receive such an exemption, the importer must submit a proposal to the Minister of Finance through the Director of Customs and Duties. The proposal must include details of the imported goods, a gift certificate or letter of donation, and a recommendation letter from the related Ministry. 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. [15]

E. Other Taxes

NPOs are subject to Land and Building Taxes, Stamp Duty, and Real Property Acquisition Fees.

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

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Appendix: Foreign Grants

No specific rule sets forth the process by which domestic NPOs can receive foreign grants. At present, the Secretary of State through the Overseas Technical Cooperation Bureau tries to coordinate the process. However, procedures vary widely from one donation to another.

Under the [Law on Societal Organizations](#), the government may dissolve a societal organization for, among other reasons, receiving donations from a foreign institution without the government's consent (Article 13 Law No. 8 of 1985). In addition, Ministry of Internal Affairs Regulation No. 38 of 2008 on the Obtainment and Granting Societal Organizations Donations From and To Foreign Entities and Government Regulation No. 18 of 1986 on the Implementation of Law on Societal Organizations provide detailed approval and reporting procedures for societal organizations seeking to receive or provide donations to/from foreign entities. The regulations should only apply to societal organizations and not foundations and associations, although the Ministry of Internal Affairs continues to insist that all organizations are "societal organizations" subject to this set of regulations.

Footnotes