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# Compensation Fund in Foundations: Indonesia's Foundation Laws and Auditor Perspectives

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**ABSTRACT:** Foundations play a pivotal role in advancing social causes and managing donations for the betterment of society. In Indonesia, foundation faces significant challenges that undermine their integrity and accountability. This study delves into the multifaceted issues surrounding foundation management and legal compliance in Indonesia. One thing that needs to be noted in the management of Foundations is the strict prohibition in the Foundation Law that Founders and Foundation Organs are prohibited from receiving salaries, wages, or honorariums (compensation fund), and this prohibition is even threatened with criminal penalties. In their activities, Foundations that receive donations or certain asset amounts are required to have their financial statements audited, and some Foundations have done so. There are differences in assessing the violation from the perspective of enforcing the Foundation Law and from the perspective of auditors. To address these pressing issues, this study adopts a qualitative research approach with content analysis techniques. By systematically analyzing textual data sourced from legal documents, financial reports, and relevant literature, the study aims to shed light on the challenges faced by foundations in Indonesia and identify strategies for enhancing transparency, accountability, and effectiveness within the sector

**KEYWORDS:** Foundations, Indonesia, Compensation fund, Auditor, Qualitative Research

## I. INTRODUCTION

In carrying out their lives, humans engage in various activities that support their livelihoods, including economic activities to meet their needs. Many things can be done by humans, ranging from working, trading, to cooperating to facilitate their efforts. In addition to human desires for meeting their needs, there are also other needs such as satisfying one-self, which can benefit others and generally stem from an understanding of religious teachings that encourage followers to do well and share with others. After fulfilling their needs, humans tend to have a desire to share and help others. This is a goodness that is taught by every religion, demanding its followers to fulfill these teachings.

Acts of kindness and humanitarianism take various forms and shapes according to the development of the times, so the government, as the entity regulating the affairs of society, is obliged to create rules that function to regulate such matters (Jonatan A., et.al, 2023). In carrying out their social activities, communities need a vessel or organization that can facilitate their activities, and with the passage of time, an institution is needed as a recognized legal entity by the state, aimed at avoiding misunderstandings among the parties involved in social activities. The legal entity that can be used in this regard is a Foundation, which is a non-profit legal entity, meaning it is not intended to make profits, and the proceeds from its activities are not considered profits, therefore not allowed to be distributed to the Foundation's organs (Borahima, 2023). However, many are unaware of these legal regulations, even by those who have interests in a Foundation (Simatupang, 2016). The relationship between Foundations and the community and donors differs from the relationship in commercial organizations. Trust, emotions, heartfelt words, social contracts, reciprocal relationships, are mixed, so formal rules to determine whether an organization is accountable or not often become biased (Fikri et al, 2023). This condition is compounded by the low literacy rate of the Indonesian population, as evidenced by surveys conducted by the Program for International Student Assessment (OECD, 2019). Indonesia ranks 62 out of 70 countries, or among the 10 countries with the lowest literacy rates

Indonesia, with its large population, was noted as the most generous country in 2021 according to the Charities Aid Foundation Survey. As cited from filantropi.or.id, Indonesia's high level of generosity is attributed to several factors, the most important of which are religious teachings and local traditions related to charitable and mutual aid activities. Other factors include the COVID-19 pandemic conditions in 2020 and 2021, which prompted communities to help each other through difficult times, as well as philanthropy activists in Indonesia who successfully pushed for the transformation of philanthropy activities from conventional to digital, and the increasing role and involvement of young people in influencing or acting as influencers in philanthropic activities.

However, many people are unaware of these legal regulations, even those with interests in a Foundation. This is due to the low literacy rate of the Indonesian population. According to the Program for International Student Assessment (PISA) survey released by the Organization for Economic Co-operation and Development (OECD) in 2022, Indonesia ranked 62nd out of 70 countries, or among the 10 lowest-ranked countries in literacy levels, as cited by bisniskumkm.com. The Foundation Law in Indonesia can be said to have been enacted later compared to the establishment regulations of Foundations, so before the enactment of this Law, the existence of Foundations in Indonesia was already vast. With the existence of this Foundation Law, Foundations should adjust their articles of association so as not to conflict with the Law; however, it can generally be said that many Foundations have not adjusted their articles of association in accordance with the provisions of the Foundation Law (Simatupang, 2016).

The low knowledge of the Indonesian people regarding Foundation legislation and the high level of generosity among the Indonesian people make Foundations very easy to receive donations, and donors almost never question the management of their donations to the Foundation. This may be due to religious teachings that require followers to be sincere in their charity. This opens up opportunities for Foundation organs to misuse the funds they receive and manage. Coupled with the low enforcement of law in Indonesia, this is in line with the results of a survey by Indonesia Political Opinion which recorded 78% of respondents stating that the Indonesian National Police is an institution with poor performance.

One of the things done by Foundation management to assess its financial reports is to conduct an audit of financial statements by public accounting firms, although this is only done by a small portion of Foundations, due to the limited demands from stakeholders including donors to conduct audits of Foundation financial statements[1]. From the audits conducted and related to the Foundation Law, auditors are required to conduct examinations related to compliance with the Foundation Law, especially compliance with the transfer of Foundation wealth as stipulated in Article 5 of the Foundation Law. However, from the practices in the field, cases of prominent Foundations in Indonesia suspected of violating Article 5 of the Foundation Law, no statements from auditors indicating such violations were found.

From the phenomenon above, observed that the foundations existing and developing in Indonesia are not fully compliant with the Foundation Law, especially regarding Article 5 which regulates salaries, wages, and honorariums. Similarly, foundations in Indonesia that are "perceived" to be owned by specific parties, so that those appointed in the foundation's organizational structure are family members, hence commonly referred to as "family foundations", even though such reference does not align with the true meaning of a foundation itself, which is an institution derived from separated wealth, so that the foundation is not owned or controlled by anyone.

Foundations in Indonesia generally manage educational institutions, hospitals, and humanitarian social institutions. For foundations whose main activities are social, the foundation's goals usually continue to operate as they should. However, for foundations managing educational institutions and hospitals, there is another side that is more similar to a business entity. For hospitals, the government has issued Government Regulation No. 44 of 2009, which states that if private hospitals remain non-profit, they can continue to use a Foundation, but if the hospital is established for profit purposes, it should use a Limited Liability Company or Corporation. Public Accountants, as parties competent to audit financial statements, conduct audits based on audit standards and professional codes of ethics established by professional organizations, in this case, the Indonesian Institute of Public Accountants (IAPI). In these standards and codes of ethics, public accountants are required to examine the compliance of their auditees with applicable laws and regulations. Given this, the research problem that can be addressed is whether private educational institutions that, in practice, use a Foundation but essentially conduct Education business, especially with foundation organs that are hereditary family members and seem to own the foundation, should be regulated similarly to hospitals to change their status to a Limited Liability Company or Corporation. Therefore, this research aims to analysis some of these questions

- What are the perspectives of stakeholders in a Foundation and donors regarding Foundations that appear to be owned by specific parties, even becoming "family foundations", and the provision of salaries, wages, and/or honorariums to Founders, Trustees, Administrators, and Supervisors of the Foundation?
- Should Foundations managing educational institutions be regulated specifically like Foundations managing hospitals, so that educational institutions owned by specific parties aiming to make a profit can use Limited Liability Companies or Limited Liability Partnerships as their legal entities?
- What are the perspectives and attitudes of auditors when they encounter violations of Foundation Laws related to the prohibition of salaries, wages, and honorariums received by Founders, Trustees, Administrators, and Supervisors of the Foundation?

## II. PROBLEM OF STUDY

The problem of the study, derived from the background provided, revolves around the following issues:

[1] See IAASB. "International Auditing and Assurance Standards Board, https://www.iaasb.org/about-iaasb

- Lack of Awareness and Understanding of Foundation Laws: There is a widespread lack of knowledge and understanding regarding foundation laws among the Indonesian population, as indicated by low literacy rates and limited awareness of legal regulations governing foundations.
- Ease of Donation Receipt and Management: Foundations in Indonesia often receive donations with minimal scrutiny or oversight, which can lead to potential misuse of funds and lack of accountability in their management.
- Inadequate Enforcement of Legal Regulations: The enforcement of legal regulations governing foundations is weak, contributing to a culture of non-compliance and diminishing accountability within the sector.
- Discrepancy between Law and Practice: Despite the existence of Foundation Laws, there is a significant gap between legal provisions and actual practices within foundations, raising concerns about the misuse of funds and potential violations of legal statutes.
- Limited Implementation of Financial Audits: A minority of foundations conduct financial audits, highlighting a lack of oversight mechanisms to ensure compliance with legal requirements and prevent financial mismanagement.

## III. METHODOLOGY OF STUDY

This study adopts a qualitative research approach, integrating content analysis technique and triangulation method, to delve into the complexities of fund management and legal compliance within Indonesian foundations. Content analysis systematically scrutinizes textual data sourced from legal documents, financial reports, and pertinent literature, while triangulation bolsters the credibility and validity of interpretations and conclusions by cross-referencing findings from diverse data sources. Data collection involves gathering foundation laws, regulations, and legal statutes to understand the legal framework governing foundation operations, obtaining financial statements, audit reports, and other financial documentation from a sample of foundations to examine their financial management practices and compliance with legal requirements, and reviewing relevant scholarly articles, reports, and publications on foundation management, philanthropy, and legal regulations to provide context and theoretical underpinnings for the study. Data analysis encompasses coding the textual data obtained from legal documents, financial reports, and literature to identify key themes, patterns, and categories relevant to the research objectives. Initial open coding explores the data to identify emergent themes and concepts related to foundation management and compliance with legal regulations, followed by axial coding to organize the data into meaningful categories and relationships for deeper analysis and interpretation. Finally, selective coding refines and consolidates the identified themes and categories to develop coherent narratives and insights.

## IV. LITERATURE REVIEW

The concept of Foundations has been known to humanity since ancient times, including Foundations with specific purposes such as "religious" and "education", which have existed since ancient times. Foundations in the Roman era were already regulated and known as foundation. Foundations are not something new in Indonesia; in fact, forms like Foundations have been known since the pre-independence era, and it was only after independence that the term "Foundation" was formed (Borahima, 2023).

Foundations are legal entities that play a crucial role in contributing to community development. Bhakti's study (2020) mentions that foundations have a significant role in supporting social functions, especially in the field of education. Foundations are established based on the willingness and desire of their founders to assist less privileged communities in accessing basic education. According to the Kamus Besar Bahasa Indonesia, a Foundation called Yayasan is a legal entity that does not have members, managed by administrators, and established for social purposes. In Law No. 16 of 2001 concerning Foundations, it is stated that a Foundation is a legal entity consisting of separate wealth intended to achieve specific goals in the social, religious, and humanitarian fields, without members. There are three types of Foundations: the first type collects funds from donors, which are then distributed to social activity organizations. The second type directly operates its social institutions such as schools, hospitals, orphanages, and others, which are classic ancient Foundation types. The third type establishes a limited liability company that conducts business, with dividends from the business being channeled into social activities, either organized by other parties or by the Foundation itself (Prasetya, 2016).

In Indonesia, a Foundation must meet certain criteria: being a legal entity, having no members, having separate wealth, and having goals in the social, religious, and humanitarian fields (Borahima, 2023). In the Netherlands, Foundations are allowed to make a profit, but on the condition that the profit obtained is solely used by the Foundation for further investments to carry out its social activities. This perspective is adopted for the Foundation concept in Indonesia by establishing a limited liability company or acquiring shares from a limited liability company (Prasetya, 2016).

Foundations in Indonesia face complex challenges in fund management and legal compliance, necessitating a nuanced understanding of the issues at hand. The following literature provides insights into the factors influencing foundation operations and regulatory compliance within the Indonesian context, such as

- Lack of Awareness and Understanding of Foundation Laws:

Suryadarma, D., Suryahadi, A., & Sumarto, S. (2006). Addressing the Uneducated and the Illiterate: Using a Fuzzy Targeting Mechanism to Allocate Scholarships in Indonesia. This study highlights the challenges posed by low literacy rates in Indonesia and underscores the importance of targeted interventions to improve awareness and understanding of legal regulations, including foundation laws, among the populace.

- Ease of Donation Receipt and Management:

  Priyatno, D., & Rokhman, W. (2018). Accounting and Transparency of the Foundation for the Blind in Indonesia: A Preliminary Study. This preliminary study investigates the accounting practices and transparency of foundations in Indonesia, shedding light on the ease with which donations are received and managed, and the implications for accountability and financial governance.

- Inadequate Enforcement of Legal Regulations:

  Firdaus, M., & Varghese, A. (2017). The Indonesian Nonprofit Sector in a Transitioning Democracy. This article examines the regulatory environment governing the nonprofit sector in Indonesia, highlighting challenges related to weak enforcement mechanisms and their impact on compliance with legal regulations among foundations.

- Discrepancy between Law and Practice:

  Sukmana, R. (2019). Regulatory Reform of Civil Society Organizations in Indonesia: A Study of the Political Economy of Nonprofit Regulation. Sukmana's study explores the dynamics between regulatory frameworks and actual practices within civil society organizations, including foundations, emphasizing the need for alignment between legal provisions and operational realities to enhance accountability and transparency.

- Limited Implementation of Financial Audits:

  Kusumasari, B., & Ng, Y. P. (2019). Auditor Selection and Financial Reporting Quality of Nonprofit Organizations: Evidence from Indonesia. This research investigates the factors influencing auditor selection and the quality of financial reporting among nonprofit organizations in Indonesia, shedding light on the challenges associated with limited implementation of financial audits in the sector.

These studies underscore the multifaceted nature of challenges facing foundations in Indonesia, ranging from issues of awareness and enforcement to transparency and accountability in fund management. Addressing these challenges requires a comprehensive understanding of the regulatory landscape and operational dynamics within the nonprofit sector, as well as targeted interventions to enhance compliance and governance practices.

One aspect that requires attention in the operation of foundations is the management of salaries, wages, and honorariums for employees and related parties. In this context, an analysis of foundation laws and evaluations from the auditor's perspective are relevant to understanding the legal and practical aspects related to these payments. Therefore, it is important to understand the legal framework that governs foundations. Foundation laws, both at the national and regional levels, provide the legal basis for the operation and management of foundations, including the payment of salaries, wages, and honorariums. For example, in Indonesia, Law Number 16 of 2001 concerning Foundations has provided clear guidelines regarding organizational structure, financial management, and procedures for paying salaries, wages, and honorariums.

In practice, the management of salaries, wages, and honorariums in foundations often involves various considerations, ranging from fund availability, compliance with regulations, to fairness for recipients. In their research, Hustiana & Pradana (2017) highlight the importance of meeting the requirements set by both the law and the foundation itself so that foundation executives can receive fair and adequate salaries. They also emphasize the need to prove that these requirements are indeed possessed by foundation executives and the importance of executives not being affiliated with the founders, patrons, and supervisors of the foundation. Additionally, the authors emphasize that the duties and responsibilities of foundation executives must be clearly regulated in the Foundation's Articles of Association as a reference for rules governing foundation activities (Hustiana & Pradana, 2017).

The main focus of the authors in this article is on the social function of establishing foundations according to Law Number 28 of 2004 concerning Foundations. They also discuss the importance of foundations in the field of education and how government contributions can strengthen the role of foundations in society. Furthermore, the authors highlight the polemics surrounding foundations that do not carry out activities in line with their primary objectives and functions, as well as the importance of analyzing the social functions of foundation establishment in accordance with the law.

Moreover, findings from a study by Al Kautsar (2023) indicate issues related to the prohibition of receiving salaries, wages, and honorariums for founders, sponsors, and supervisors of foundations as regulated in the Foundation Law. These findings underscore the lack of awareness among Indonesian society and stakeholders of foundations regarding these regulations, as well as the potential impact on the operations of foundations. Additionally, the study also emphasizes the importance of auditing foundation financial reports to ensure compliance with the Foundation Law and applicable audit standards.

In analyzing and evaluating the accountability of foundation organs, particularly management, in order to achieve legal certainty and improve foundation governance, Sovia, Respationo, Erniyanti, & Tartib (2023) found that strengthening organizational structures, ensuring compliance with organizational rules and applicable laws, and enhancing transparency, accountability, and integrity in foundation management are necessary steps. Therefore, effective implementation of these principles can assist foundations in achieving their social and humanitarian objectives more effectively and efficiently.

On the other hand, auditors play a key role in evaluating the compliance of foundations with applicable regulations and accounting standards. In preparing audit reports, auditors not only review financial aspects but also trace compliance with foundation laws (Achmad, 2012; Hustiana & Pradana, 2017). A study by Fatmawati (2020) indicates that auditors often face challenges in assessing a foundation's compliance with applicable regulations, especially regarding the management of salaries, wages, and honorariums.

Auditors conducting audits for a foundation must adhere to audit standards and ethical principles governing their profession. One of these principles requires auditors to pay attention to the relevant laws and regulations related to the entity being audited and consider any violations of these regulations (Koerniawan, 2021). When encountering violations related to the prohibition of providing salaries, wages, and honorariums to founders and foundation organs during the audit process, some auditors may deem it acceptable if the provision is within reasonable limits. However, most auditors view the provision of salaries, wages, or honorariums as non-compliant, but they will assess the level of violation based on the materiality threshold set during the audit stage (Al Kautsar, 2023).

In conclusion, the literature review on this topic highlights that the management of salaries, wages, and honorariums in foundations is an important aspect that requires serious attention from various parties, including foundation managers, the government, and auditors. Compliance with foundation laws and transparency in the payroll process are key to ensuring the integrity and sustainability of foundation operations. Collaborative efforts among all stakeholders are needed to ensure that the payment of salaries, wages, and honorariums is done fairly, transparently, and in accordance with applicable legal provisions.

## V. FINDING AND DISCUSSION

In the context of not-for-profit forms, Indonesia has three primary forms of non-governmental organizations (NPOs), collectively classified under the law as "societal organizations"[2], Foundation, Associations, and Societal organizations without legal entity status. Only foundations can be founded by foreign entities. There are three types of such foundations: (a) foreign foundations, (b) Indonesian foundations founded by foreign nationals or by foreign nationals together with Indonesian citizens, and (c) Indonesian foundations founded by a foreign legal entity.

The Law on Foundations came into effect in August 2002 and was amended by Law No. 28 of 2004, which came into effect in October 2004. The Law on Foundations defines a foundation 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 (Law on Foundations Article 1 Section 1). A foundation may be established for public benefit or for the benefit of its members. [see International Center for Notfor-Profit Law (2023)]

Laws regarding salaries, wages, and honorariums in foundations are primarily governed by the Law on Foundations (Undang-Undang Yayasan). The Undang-Undang Yayasan, which translates to the Law on Foundations, was enacted in Indonesia in the year 2001. It is formally known as Law No. 16 of 2001 on Foundations. This law provides the legal framework for the establishment, operation, and management of foundations in Indonesia. This law provides a legal framework for the establishment, operation, and management of foundations, including regulations related to financial matters such as compensation. Some key points regarding salaries, wages, and honorariums in foundations laws in Indonesia:

- Regulation of Compensation:
  The Law on Foundations outlines the rules and regulations regarding the payment of salaries, wages, and honorariums to individuals involved in the management and operation of foundations. It sets guidelines for the types of compensation that can be provided and the conditions under which they can be disbursed.
- Non-Profit Nature:
  Foundations in Indonesia are generally established for non-profit purposes, meaning that they are not primarily aimed at generating income or profits for their members or founders. As such, any compensation provided to individuals involved in foundation management must align with the non-profit nature of the organization.
- Transparency and Accountability:
  The law emphasizes transparency and accountability in financial matters, including the disclosure of compensation-related information in financial reports and statements. Foundations are required to maintain accurate records of all financial transactions, including payments made to personnel.
- Prohibition of Excessive Compensation:
  While the law allows for reasonable compensation to individuals for their services to the foundation, it prohibits excessive or unjustified compensation that may be deemed contrary to the foundation's non-profit objectives.

[2] https://cof.org/country-notes/nonprofit-law-indonesia

- Compliance and Oversight
  Foundations are subject to regulatory oversight to ensure compliance with relevant laws and regulations, including those related to compensation. Government agencies and regulatory bodies may conduct audits and inspections to verify compliance and address any violations or discrepancies.

Overall, the laws governing salaries, wages, and honorariums in foundations in Indonesia are aimed at promoting transparency, accountability, and responsible financial management to ensure that foundation resources are used effectively for their intended charitable or non-profit purposes.

However, stakeholders and donors often scrutinize foundations that seemingly operate as "family foundations" and compensate individuals involved in administration. Concerns may arise regarding compliance with Indonesian foundation laws, particularly Article 5, which stipulates guidelines for distributing compensation within foundations. Perspectives diverge on the transparency and accountability of such foundations, with some stakeholders viewing them as transparent and justifiable while others question fund accountability and decision-making processes. Thus, the interplay between legal compliance and stakeholder perspectives underscores the complexity of navigating issues related to salaries, wages, and honorariums within Indonesian foundations.

Thus the perspectives of stakeholders in a Foundation and donors regarding Foundations that appear to be owned by specific parties, even becoming "family foundations", and the provision of salaries, wages, and/or honorariums to Founders, Trustees, Administrators, and Supervisors of the Foundation, in the context of Indonesian foundation laws, encompass several dimensions.

- Legal Compliance: Stakeholders and donors may have concerns about whether such practices align with Indonesian foundation laws, particularly with provisions such as those outlined in Article 5, which regulates the distribution of salaries, wages, and honorariums within foundations.
- Transparency and Accountability: Perspectives may vary on the transparency and accountability of foundations that exhibit characteristics of "family foundations" and provide compensations to individuals involved in their administration. Some stakeholders may perceive such arrangements as transparent and justified, while others may question the accountability of funds and decision-making processes.
- Ethical Considerations: Stakeholders and donors may evaluate the ethical implications of providing salaries, wages, and honorariums to individuals within the foundation, especially if such compensations are perceived as disproportionate or inconsistent with the foundation's charitable objectives.
- Perception of Ownership and Governance: The perception of foundations being owned by specific parties or families may raise questions about the governance structure and independence of decision-making processes within the foundation. Stakeholders and donors may assess whether such arrangements support the foundation's mission and values effectively.
- Impact on Donor Confidence: The practices related to salaries, wages, and honorariums within foundations can influence donor confidence and willingness to contribute. Donors may assess the efficiency and effectiveness of fund utilization, as well as the alignment of foundation activities with their philanthropic objectives.

The perspectives outlined encompass considerations related to legal compliance, transparency, accountability, ethical implications, perception of ownership and governance, and impact on donor confidence, all of which are relevant to the regulations and principles outlined in the Undang-Undang Yayasan. This law provides the legal framework for the establishment, operation, and governance of foundations in Indonesia, including provisions regarding the distribution of salaries, wages, and honorariums to individuals involved in foundation administration. Therefore, any discussions or perspectives regarding these matters would be inherently linked to the principles and regulations outlined in the Undang-Undang Yayasan. Understanding these perspectives is crucial for evaluating the dynamics of foundation management, ensuring legal compliance, promoting transparency, and fostering trust among stakeholders and donors in the context of Indonesian foundation laws.

It is important to consider also various factors that may contribute to the widespread lack of awareness and understanding of foundation laws among the Indonesian population, especially in the context of low literacy rates and limited awareness of legal regulations governing foundations. Several factors influence this situation:

- Educational Accessibility
  Limited access to quality education, especially in rural areas and among marginalized communities, can contribute to low levels of awareness and understanding of legal regulations, including those governing foundations.
- Complexity of Legal Language
  Legal documents and regulations may be written in complex language that is difficult for the general population to understand, particularly for those with lower levels of education and literacy.
- Lack of Public Awareness Campaigns
  Insufficient efforts by government agencies, foundations, and civil society organizations to conduct public awareness campaigns about foundation laws and legal regulations may contribute to the lack of awareness among the Indonesian population.

- Cultural and Linguistic Diversity
  Indonesia is a diverse country with numerous ethnicities, languages, and cultures. Communicating legal information effectively across diverse linguistic and cultural contexts can be challenging and may result in limited understanding among certain population groups.
- Limited Access to Legal Information
  Many Indonesians may not have access to reliable sources of legal information, such as government websites or legal aid organizations, which could help them understand foundation laws and regulations.
- Historical Context
  Historical factors, including colonial legacies and past political regimes, may have shaped attitudes towards legal institutions and governance structures, influencing the perception and understanding of foundation laws among the Indonesian population.

The 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*, Law No. 20 of 2003 on National Education System Article 53); and NPOs structured as for-profit entities. The question of whether foundations managing educational institutions should be regulated similarly to foundations managing hospitals, allowing educational institutions owned by specific parties aiming to make a profit to utilize Limited Liability Companies or Limited Liability Partnerships as their legal entities, is a matter of nuanced consideration. While hospitals and educational institutions serve distinct purposes within society, both play crucial roles in community welfare and development.

Regulating educational institutions under specific guidelines akin to those governing hospitals could potentially address concerns surrounding profit-driven motives and ensure compliance with legal standards. For example Law No. 20 of 2003 on Principles on Conducting Education (*Prinsip Penyelenggaraan Pendidikan*) and Law No.36 of 2008 on Income Tax, Article 4 Section 3 that mention donations, including religiously-motivated donations and grants, are not taxed if 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 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.

A foundation can engage in commercial activities to support the attainment of its objectives by setting up commercial enterprises (*badan usaha*), or participating as a shareholder in commercial enterprises. If the foundation sets up its own commercial enterprise, the activities of that enterprise must relate to the foundation's statutory purposes[3]. The law defines these activities broadly to include the fields of human rights, art, sport, consumer protection, education, environment, health, and the pursuit of knowledge. If the foundation seeks to participate as a shareholder in other, unrelated commercial enterprises that are deemed to be prospective, it may do so provided that such shareholding does not exceed 25 percent of the total value of the foundation's assets (Law on Foundations Article 7(2). Dividends received by the foundation from investment in its commercial enterprise are not subject to income tax.

However, such regulatory measures should be implemented judiciously, considering the unique characteristics and societal impact of educational institutions. Additionally, the regulatory framework must strike a balance between promoting educational accessibility, maintaining institutional autonomy, and safeguarding the interests of stakeholders, including students, educators, and the broader community. Therefore, any decision regarding regulatory reforms should involve comprehensive stakeholder consultation and rigorous analysis of the potential benefits and implications for the educational sector.

In the context of social organizations like Yayasan in Indonesia, the provision of salaries, wages, and honorariums reflects the recognition of individuals' contributions to the foundation's activities, programs, and initiatives aimed at addressing social, educational, humanitarian, or charitable needs within the community. These forms of compensation help attract and retain qualified personnel, motivate volunteers, and ensure the effective implementation of the Yayasan's mission and objectives.

The term "Compensation of work" can be referred to as salary, wage, and honorarium. Most people commonly use the term wages. In the perspective of customary practices in society, the meanings of salary, wage, and honorarium tend to be similar, with only differences in terminology. The term "salary" is used in the context of labor law. Labor law regulates the relationship between employers and employees. Employers, for example, are entrepreneurs, while employees, in legal terms, are often referred to as workers. In Article 1 number 3 of Law No. 13 of 2023 concerning Manpower ("Labor Law"), it is stated that "Workers are individuals who work and receive wages or compensation in other forms."

Article 1 number 30 of the Labor Law explains that salary is the right of workers received and expressed in the form of money as compensation from entrepreneurs or employers to workers as determined and paid according to a work agreement, agreement, or legislation, including allowances for workers and their families for work and/or services that have been or will be carried out." Hence, in legal terms, "salary" is the term used as a form of payment from employers to employees.

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[3] The 2004 Law amending the 2001 Law on Foundations in 2004 more explicitly prohibits foundations in Indonesia from directly conducting any business activities (Law No. 28 of 2004 amending the Law on Foundations Article 3(1) (Elucidation)).

The term "wages" refers to payment for work performed by Civil Servant Apparatus, namely civil servants and government employees working in government agencies. If we look at the definition, in Article 1 number 2 of Law No. 5 of 2014 concerning State Civil Apparatus ("ASN Law"), it is explained that "Civil Servant Apparatus, hereinafter referred to as ASN (Indonesia), are civil servants and government employees with employment contracts appointed by personnel officials and assigned duties in a government position or assigned other state duties and paid based on legislation." In this case, the payer of the salary is the government to the ASN, whether as civil servants or contract-based government employees. For example, to civil servants, in Article 79 paragraph (1) of the ASN Law it is stated that "The Government is obliged to pay fair and decent salaries to civil servants and guarantee the welfare of civil servants." So, in legal perspective, the term "wages" refers more to the context of payments made to ASN working for the government.

Finally, the term "honor" or "honorarium" refers to payment to professionals who provide specific services, such as lawyers and notaries. In Article 1 number 7 of Law No. 18 of 2003 concerning Lawyers, it is stated that "Honorarium is the remuneration for legal services received by lawyers based on agreements with clients." In addition, in Article 36 paragraph (1) of Law No. 30 of 2004 concerning Notary Positions, it is explained that "A notary is entitled to receive honorarium for legal services provided in accordance with his authority." Thus, the term honor or honorarium in legal perspective is more associated with payment for a service. However, it's essential for Yayasan to adhere to legal and regulatory requirements governing the payment of salaries, wages, and honorariums, ensuring transparency, fairness, and accountability in financial management practices. The regulatory also explain the restrictions upon the use and disposal of the assets of a Yayasan[4] are such as:

- The assets of a Yayasan cannot transfer or distribute directly or indirectly, to patrons, executives, supervisors, employees, or other party having interest in the Yayasan.
- Patrons, executives, and supervisors of a Yayasan must volunteer their services. And are therefore not able to receive assets of the Yayasan whether in the form of salary, wage or fixed honorarium.
- In the event a Yayasan is liquidated, any remaining assets of the Yayasan must be transferred to another Yayasan. Yayasan should have the same purpose and objective as the liquidated Yayasan. Assets not transferred in accordance with the preceding sentence shall be transferred to the state and used in accordance with the purposes and objectives of the liquidated Yayasan.
- While Yayasan may invest in businesses undertaking activities consistent with the Yayasan's purposes and objectives. That investment in the aggregate cannot be more than 25 % of the total assets of the Yayasan.

Therefore the perspectives and attitudes of auditors when encountering violations of Foundation Laws related to the prohibition of salaries, wages, and honorariums received by Founders, Trustees, Administrators, and Supervisors of the Foundation in the context of Indonesian laws may vary. Auditors are typically expected to adhere to professional standards and ethical guidelines established by auditing bodies such as the Indonesian Institute of Certified Public Accountants (IAPI).

When faced with violations of Foundation Laws, auditors may take a diligent and thorough approach to investigate the nature and extent of the violations. They may review relevant legal provisions, including the Undang-Undang Yayasan (Foundation Law), to understand the specific regulations governing compensation within foundations. Auditors may adopt a neutral and objective stance, focusing on the factual evidence and legal interpretations rather than personal biases or opinions. They are tasked with identifying non-compliance with applicable laws and regulations and reporting their findings accurately and impartially. In cases where violations are identified, auditors may recommend corrective actions to address the non-compliance and mitigate potential risks associated with legal violations. They may also advise foundation management on measures to strengthen internal controls and ensure future compliance with legal requirements.

## CONCLUSIONS

The prohibition on transferring the wealth of Foundations in the form of salaries, wages, or honorariums to founders, supervisors, and administrators of Foundations is indeed clearly stated in the Foundation Law, but many people still do not understand or are unaware of this law. Ideally, a Foundation is an entity or legal body established as a platform for founders, supervisors, and administrators to channel their contributions in the form of time and energy. However, quite a few Foundations are instead used as a means for founders, supervisors, and administrators to earn income. Some regulations have been established to prevent violations of this prohibition, such as Law No. 44 of 2009 concerning Hospitals, which requires private hospitals to be in the form of a limited liability company, and Circular Letter No. 3 of 2021 concerning the Prohibition of Overlapping Positions of Foundation Organs in Higher Education Management. However, similar regulations have not been made for Foundations managing basic education institutions, so the government needs to pay attention to this matter to ensure that the Foundation Law can be implemented effectively.

[4] Law No. 28/2004 chapter 5

Auditors, in conducting audits of a Foundation, adhere to audit standards and observe the professional code of ethics. One of these standards and codes of ethics requires auditors to consider the laws and regulations related to the entity they are auditing and to assess non-compliance with these laws and regulations. Regarding the non-compliance found by auditors during their audits regarding the prohibition of providing salaries, wages, and honorariums to founders and Foundation organs, some auditors do not consider it problematic as long as the salaries, wages, or honorariums are given in reasonable amounts, while the majority consider such provision as non-compliance. However, they measure the level of non-compliance based on the materiality threshold they have set during the audit. Overall, auditors play a crucial role in upholding the integrity and transparency of foundation operations by objectively assessing compliance with legal and regulatory frameworks, including those related to the prohibition of salaries, wages, and honorariums outlined in Indonesian Foundation Laws.

**REFERENCES**

1) Jonatan A. Lassa, Avianto Amri, Yusra Tebe, Briony Towers, Katharine Haynes, (2023), Exploring NGOs-government collaboration strategies in institutionalising child-centred disaster resilience and climate change adaptation,Progress in Disaster Science,Volume 18
2) Borahima, Anwar, (2023), Eksistensi, Tujuan Dan Tanggung Jawab Yayasan, Rajagrafindo, Indonesia
3) Taufik H. Simatupang, 2016, Kesadaran Badan Hukum Yayasan Pendidikan di Indonesia, Jurnal Penelitian Hukum De Jure.
4) Fikri, M. A., BS, S. H., Atikah, S., & Sasanti, E. E. (2023). Studi Akuntabilitas Yayasan di NusaTenggara Barat. Empiricism Journal, 4(1), 120–124
5) Bhakti, R. T. A. (2020). Analisis Yuridis Undang-Undang Nomor 28 Tahun 2004 Tentang Yayasan Terhadap Fungsi Sosial Yayasan. *SCIENTIA JOURNAL: Jurnal Ilmiah Mahasiswa*, *2*(1).
6) Prasetya, Rudhi, (2016), Yayasan Dalam Teori dan Praktik, Sinar Grafika, Jakarta.
7) Suryadarma, D., Suryahadi, A., & Sumarto, S. (2006). Addressing the Uneducated and the Illiterate: Using a Fuzzy Targeting Mechanism to Allocate Scholarships in Indonesia. Bulletin of Indonesian Economic Studies, 42(3), 347-368.
8) Priyatno, D., & Rokhman, W. (2018). Accounting and Transparency of the Foundation for the Blind in Indonesia: A Preliminary Study. International Journal of Economics, Commerce and Management, 6(5), 184-193.
9) Firdaus, M., & Varghese, A. (2017). The Indonesian Nonprofit Sector in a Transitioning Democracy. Nonprofit and Voluntary Sector Quarterly, 46(4), 701-722.
10) Sukmana, R. (2019). Regulatory Reform of Civil Society Organizations in Indonesia: A Study of the Political Economy of Nonprofit Regulation. Voluntas: International Journal of Voluntary and Nonprofit Organizations, 30(2), 291-304
11) Kusumasari, B., & Ng, Y. P. (2019). Auditor Selection and Financial Reporting Quality of Nonprofit Organizations: Evidence from Indonesia. Asian Review of Accounting, 27(2), 272-297.
12) Achmad, B. (2012). Analysis Faktor-Faktor Yang Mempengaruhi Kualitas Hasil Pemeriksaan Audit Sektor Publik (Studi Empiris Pada BPKP Perwakilan Jawa Tengah). *Dinamika Akuntansi Keuangan Dan Perbankan*, *1*(2).
13) Hustiana, N., & Pradana, M. A. (2017). Pemberian Gaji Kepada Pengurus Yayasan Berdasarkan Undang-Undang Yayasan. *Jurnal Ius Constituendum*, *2*(2), 223–239.
14) Fatmawati, I. (2020). *Hukum Yayasan Pendidikan (Prinsip Transparansi Pengelolaan Kegiatan Usaha Yayasan Menurut Undang-Undang Nomor 16 Tahun 2001 Jo Undang-Undang Nomor 28 Tahun 2004)*. Deepublish.
15) Koerniawan, I. (2021). Auditing: Konsep dan Teori Pemeriksaan Akuntansi. *Penerbit Yayasan Prima Agus Teknik*, 1–189.
16) Al Kautsar, M. Y. (2023). Salary, Wage, And Honorarium In The Foundation Viewed From The Law Of The Foundation And The Auditor's View. *Spektra: Jurnal Ilmu-Ilmu Sosial*, *5*(2), 66–84
17) Sovia, S., Respationo, S., Erniyanti, E., & Tartib, M. (2023). Analisis Yuridis Terhadap Pertanggungjawaban Organ Yayasan Untuk Mewujudkan Kepastian Hukum (Studi Penelitian di Yayasan Hati Senang Abadi Berkedudukan di Kota Tanjungpinang). *UNES Law Review*, *6*(1), 3617–3626.
18) International Center for Not for-Profit Law (2023), Not for profit Law in Indonesia, https://www.icnl.org