

## The Limitations of the Non-Profit Concept in the Foundation Law

Nur Rahmad Muntaha<sup>1)</sup> & Nynda Fatmawati Octarina<sup>2)</sup>

<sup>1)</sup> Faculty of Law, Universitas Narotama Surabaya, Indonesia, E-mail: [nurrahmadmuntaha@gmail.com](mailto:nurrahmadmuntaha@gmail.com)

<sup>2)</sup> Faculty of Law, Universitas Narotama Surabaya, Indonesia, E-mail: [ninda.fatmawati@narotama.ac.id](mailto:ninda.fatmawati@narotama.ac.id)

**Abstract.** *This study examines the concept of non-profit in the Foundation Law and its implications for foundations' obligations to implement minimum wages for their employees. Although foundations are oriented towards social goals without seeking profit, they still employ workers who are entitled to employment protection. Dependence on unstable funding sources, such as donations and grants, often poses a challenge in fulfilling these obligations. Using a qualitative method based on normative analysis, this study examines regulations, court decisions, and legal doctrine to determine whether foundations are required to pay minimum wages. The results of the study show that despite their financial limitations, foundations are still required to comply with employment provisions because there are no exceptions in the regulations. Therefore, flexible policies, such as subsidies or incentives, are needed to maintain a balance between the sustainability of foundations and the fulfillment of workers' rights according to legal provisions.*

**Keywords:** *Employment; Foundation; Non-Profit.*

### 1. Introduction

A foundation is a legal entity that aims to carry out social activities without seeking profit, as regulated in Law No. 28 of 2004 which amended Law No. 16 of 2001 concerning Foundations. As a non-profit entity, a foundation is established to provide benefits in the social, educational, religious, or humanitarian fields without being oriented towards commercial aspects in its operations. This raises questions about the extent to which foundations are required to comply with applicable employment provisions for other business entities, especially regarding the obligation to pay minimum wages to their workforce. In practice, foundations often face financial constraints that impact their ability to meet wage provisions in accordance with standards set by regulations. Unlike companies that profit from their business activities and have flexibility in wage policies, foundations generally rely on unstable funding sources, such as public donations, grants from various institutions, or assistance from third parties, both domestic and foreign. This instability and fluctuation in funding often makes it difficult for foundations to ensure wage payments in accordance with statutory provisions, especially if the number of workers employed is quite large and operational burdens are increasing (Trimaya, 2014).

In such conditions, many foundations have to face a dilemma between continuing to carry out their social mission and at the same time fulfilling their legal obligations. Not infrequently, foundations are forced to make difficult decisions, such as reducing the number of employees in

order to adjust expenses to the available financial capacity, or even adjusting the salary structure to a certain priority scale in order to continue operating sustainably. Some foundations also try to find other alternatives, such as optimizing the role of volunteers to reduce the burden of salaries or seeking a more sustainable funding scheme in order to better fulfill employment obligations. However, the reality faced by foundations in the context of employment remains a complex challenge, especially in ensuring that workers who have devoted themselves to the foundation continue to receive their rights properly without sacrificing the sustainability of the social programs that have been designed. Therefore, a more comprehensive approach is needed in formulating policies related to foundations, so that a balance can be created between compliance with employment regulations and the sustainability of foundation operations in carrying out their noble goals amidst limited resources (Fadlail, 2018).

According to Indonesian labor regulations, every worker has the right to receive a decent wage in accordance with the standards set by the government. This provision aims to guarantee the welfare of workers and provide legal protection for those working in various sectors, including in non-profit institutions such as foundations. However, as socially oriented and non-profit entities, foundations often operate with limited resources and are highly dependent on donations, grants, or assistance from third parties (Adelia Stevani et al., 2024). This dependence on external funding sources can make it difficult for foundations to consistently ensure the welfare of their workers, especially in terms of paying minimum wages in accordance with legal provisions. Foundations with financial constraints often face a dilemma between maintaining operational stability and fulfilling employment obligations, which can be a major challenge for the sustainability of the social programs being run (Konstruksi Hukum, 2024).

In some situations, foundations can provide compensation in other forms, such as certain facilities, training to improve workers' skills, or non-financial incentives that aim to offset the limitations in meeting the minimum wage. This form of compensation can include providing housing for workers in social-based foundations, daily meals, access to educational programs, or other benefits that are not in the form of cash but still provide benefits to workers. However, this raises a legal and ethical dilemma regarding whether foundations can be exempted from the obligation to pay the minimum wage or must still follow employment regulations like other business entities. From a legal perspective, the Employment Law emphasizes that every worker has the right to a decent wage without any special exceptions for foundations. On the other hand, ethically and practically, requiring foundations to always pay the minimum wage without considering their financial limitations can have a negative impact on the sustainability of the foundation's operations (Kholiq, 2016).

If foundations are required to pay minimum wages without any flexibility or exceptions, many small foundations could potentially experience financial difficulties, even being threatened with inability to survive. This could have an impact on reducing the number of foundations that are able to operate effectively, thus hampering the social activities they carry out and reducing the benefits provided to the community. Therefore, further study is needed to understand the limitations of the non-profit concept in foundation law and how labor regulations can be applied proportionally in the context of foundations. This research is important to explore the possibility of exceptions or alternative schemes in fulfilling wage obligations, as well as the role of the government in formulating more adaptive policies to support the sustainability of foundations without ignoring the rights of workers involved in them.

This study examines the application of the non-profit concept in foundations and whether the minimum wage provisions still apply to their workers. The analysis is conducted by reviewing various legal aspects, including laws and regulations on foundations and employment, legal doctrines related to the non-profit concept, and relevant court decisions in wage cases in foundations. This approach aims to provide a comprehensive understanding of the legal status of foundations in terms of employment and how employment regulations can be interpreted in the context of non-profit institutions. By comparing regulations and policies in various jurisdictions, this study is expected to provide insight into the legal approaches that can be applied in Indonesia, either through special exceptions for foundations, alternative wage schemes, or government support to maintain the continuity of foundation operations without ignoring workers' rights.

This study also explores the legal implications for foundations that do not fulfill wage obligations in accordance with applicable provisions, including potential sanctions, impacts on the legal status of foundations, and consequences for the workforce employed. Thus, this study aims to provide a clearer understanding of the legal status of foundations in terms of employment and to offer policy recommendations to balance legal compliance with the sustainability of foundation operations in carrying out their social missions.

## **2. Research Methods**

This study uses a qualitative method with a normative legal approach, namely examining relevant laws and regulations, legal doctrines, and court decisions to examine the foundation's obligations in implementing minimum wage provisions for its employees. This approach aims to understand how the law regulates the status of foundations as non-profit entities and the extent to which employment provisions, especially those related to wages, apply to foundations that are not profit-oriented. The analysis is carried out by examining the relationship between existing legal norms, interpretations in court decisions, and the views of academics and legal practitioners regarding this issue.

The data sources used include primary and secondary legal sources. Primary legal sources include related laws, such as the Foundation Law and the Employment Law, as well as derivative regulations governing minimum wages and employment. In addition, court decisions related to employment disputes in foundations are the main study materials to understand the interpretation of the law by the courts. Meanwhile, secondary legal sources include law journals, books, scientific articles, and expert opinions on aspects of foundation and employment law, which are used to enrich the analysis and provide academic perspectives on the application of employment regulations in the non-profit organization environment.

In addition, this study compares practices in several other countries in dealing with similar issues in order to gain a broader understanding of policies that can be applied in Indonesia. With a comprehensive approach, this study is expected to contribute to the development of more flexible policies in regulating employment relations in foundations without ignoring workers' rights.

### 3. Results and discussion

#### 3.1. The Concept of Non-Profit in the Foundation Law

Based on Article 1 paragraph (1) of Law No. 16 of 2001, a foundation is a legal entity that has its own assets and aims to carry out social, religious, and humanitarian activities. As a non-profit institution, a foundation is not formed to seek profit like a commercial business entity that is profit-oriented. The source of funding for the foundation comes from donations, endowments, grants, testamentary grants, or other legitimate sources that do not conflict with the foundation's articles of association or laws and regulations. This funding can be obtained from individuals, organizations, or government agencies and is fully allocated to support the foundation's operations and program implementation in accordance with the purpose of its establishment. Therefore, the financial management of the foundation must be carried out with transparency and accountability to ensure that all funds received are used entirely for social interests, not for the personal gain of parties in the foundation's organizational structure.

In order to maintain the non-profit principle, laws and regulations strictly prohibit the distribution of foundation assets to trustees, administrators, or supervisors, except in the form of reasonable compensation for the work they do (Article 5 of Law No. 16 of 2001 concerning Foundations, as amended by Law No. 28 of 2004). The provision of this compensation must be based on the principles of propriety and fairness and must not lead to the misuse of foundation assets for the benefit of certain individuals or groups. This limitation aims to ensure that the foundation continues to operate in accordance with its social mission and does not become a means of seeking personal gain for certain parties.

Although foundations are not business entities that aim to generate profits, in practice, foundations still require good financial management in order to carry out various activities and provide benefits to the community. Foundations also require competent workers to handle administration, social programs, and other operational activities. This poses its own challenges, especially in managing human resources and fulfilling employment obligations. With funding sourced from donations or grants that are not always stable, foundations often face difficulties in meeting wage standards that apply to other business entities. Therefore, even though foundations are not profit-oriented, further study is still needed regarding the legal implications of non-profit status on their obligations in terms of employment, including fulfilling minimum wages for their employees.

Although foundations have the status of non-profit entities, the Foundation Law does not explicitly exempt foundations from the labor obligations that apply to other business entities. Thus, foundations remain subject to labor regulations that govern the rights and obligations between employers and employees, including aspects of wages, social security, and labor protection. In practice, foundations employ workers to support the operation and implementation of their programs, whether in the social, religious, educational, or humanitarian fields. Workers employed by foundations cover a variety of positions, from administrative staff, teachers, medical staff, to social workers who play a role in implementing programs in the field. The existence of this workforce is an important element in achieving the goals of the foundation, so that the labor aspect in the foundation cannot be ignored.

However, the obligation of foundations to pay workers' wages, especially in meeting the minimum wage standards as stipulated in the Manpower Law, is still a matter of debate. Some foundations face challenges in meeting wage requirements due to their dependence on funding sources that are not fixed and are often insufficient to cover all operational costs, including employee salaries. Unlike commercial entities that earn income from the sale of products or services, foundations generally rely on grants, donations, or assistance from various parties, including individuals, private institutions, and the government. This fluctuating nature of funding can cause foundations to have difficulty in allocating budgets to meet wage obligations in accordance with applicable laws.

Some foundations may offer alternative forms of compensation to their workers, such as housing, meals, health benefits, or skills training as a form of appreciation for their contributions. However, it is still a legal debate whether such forms of compensation can replace the obligation to pay minimum wages. In some cases, foundations that are unable to pay wages according to labor standards are forced to reduce the number of workers, limit the scope of their programs, or even stop operating. Therefore, there needs to be a more in-depth study of whether foundations should receive special treatment in terms of labor and flexible policies that can be implemented to balance the fulfillment of workers' rights and the sustainability of the foundation's operations as a non-profit institution.

Based on Article 90 of Law No. 13 of 2003 concerning Manpower, employment law in Indonesia generally stipulates that every worker has the right to a decent wage, including the minimum wage set by the government. This provision aims to protect the welfare of workers and ensure that they obtain a decent living in accordance with applicable living standards. The minimum wage is determined based on various factors, such as economic growth, inflation rate, and decent living needs, and applies universally without distinguishing the type of employer legal entity. The absence of a specific exception for foundations in employment regulations has given rise to legal debate over whether foundations should be treated the same as commercial business entities in terms of wages, considering that foundations have different characteristics from profit-oriented companies.

If foundations are required to pay minimum wages like commercial businesses, there is a potential for negative impacts on the sustainability of foundation operations, especially for small foundations that have limited funds. Unlike companies that can adjust their financial strategies to meet their labor obligations, foundations rely on uncertain external funding sources. Funding sources such as donations, grants, and assistance are often unpredictable in amount and can be affected by various factors, such as economic conditions, changes in donor policies, or competition with other foundations for funding. This uncertainty makes it difficult for foundations to plan long-term budgets, including in meeting employee wage obligations.

Under conditions of limited funds, foundations that are required to pay minimum wages may face a dilemma between maintaining the number of employees at the risk of not being able to meet wage standards, or reducing the workforce in order to adjust the budget to the applicable legal provisions. Both of these choices have complex consequences: if the foundation continues to employ all its workers at below-standard wages, it may face legal consequences, including worker lawsuits or sanctions from the government. On the other hand, if the foundation must

reduce the number of employees, its capacity to run social programs will also be reduced, which in turn can have an impact on the beneficiary community.

Therefore, further analysis is needed regarding the limitations of the non-profit concept in the Foundation Law and the possibility of legal justification for foundations to receive different treatment in the employment aspect, especially in the obligation to pay minimum wages to their employees. Alternative policies such as subsidy-based wage schemes, incentives for foundations that comply with wage standards, or special exceptions under certain conditions may be worthy solutions to consider. Thus, employment regulations not only protect workers' rights, but also provide space for foundations to carry out their missions sustainably without being burdened by obligations that are difficult to fulfill due to the non-profit nature inherent in the entity.

### **3.2. Obligations of the Foundation in Minimum Wage Provisions**

In labor law, Article 88 Paragraph 1 of Law No. 13 of 2003 stipulates that every worker has the right to receive a decent income to meet their living needs. This right is a form of labor protection provided by the state to ensure the welfare of workers and their families. The article also explains that the government is responsible for designing wage policies to protect workers, including by setting a minimum wage that must be adhered to by all employers. This minimum wage is determined based on various factors, such as economic growth, inflation, and the standard of decent living in a region.

Furthermore, Government Regulation Number 36 of 2021 concerning Wages emphasizes that the minimum wage provisions apply to all sectors without exception, both for commercial companies and non-profit organizations such as foundations engaged in social, religious, or humanitarian fields. This regulation shows that the non-profit status of a legal entity does not exempt it from the obligation to pay the minimum wage in accordance with applicable provisions.

In practice, many foundations employ volunteers or implement compensation systems that are different from formal wage schemes, such as providing accommodation, food, health benefits, or training. However, Article 90 of Law No. 13 of 2003 states that such forms of non-financial compensation cannot replace the obligation to pay minimum wages in cash. Thus, foundations remain bound by the same wage regulations as other business entities.

Although the obligation to pay wages is the same, foundations have fundamental differences compared to commercial companies in terms of operations and funding sources. Companies generally have stable income from their business profits, while foundations rely on funds from donations, grants, or assistance from various parties such as the government, philanthropic institutions, and individuals who care about certain social goals. The uncertain funding characteristics make the financial condition of foundations often fluctuating and difficult to predict.

Faced with limited funding, foundations must strategize how to run their social programs while meeting their labor obligations. Some foundations may choose to reduce the number of employees to reduce operating costs, while others seek sustainable funding sources, such as through social enterprises or partnerships with the private sector or government.

This challenge highlights the need for more flexible policies in the application of minimum wages for foundations. If regulations do not provide relaxation, small foundations risk experiencing financial difficulties that can lead to the termination of operations or a decline in the quality of the social services they provide. Therefore, a legal approach that takes into account the special characteristics of foundations as non-profit institutions is urgently needed to maintain the balance between protecting workers' rights and the sustainability of the foundation's social mission.

In some cases, foundations offer alternative forms of compensation to their workers, such as housing, food, health benefits, or skills training, in an effort to improve their welfare. However, there is still debate about whether these forms of compensation can be counted towards fulfilling wage obligations. By law, the minimum wage must be given in cash and cannot be replaced with other benefits. If this regulation is strictly implemented, foundations must still pay their workers according to the minimum wage set by the government, without taking into account the non-financial facilities provided.

Since there is no specific exception in the applicable regulations, foundations must adjust their operations to continue to meet wage obligations. Some foundations try to overcome this by relying on volunteers or implementing a project-based incentive system that is dependent on the funding received. However, this approach also has limitations because not all work in a foundation can be done by volunteers, especially administrative or technical work, which requires special skills.

### **3.3. Court Decisions and Legal Interpretation**

Several court decisions have confirmed that foundations remain obligated to pay minimum wages, despite their non-profit status. This principle has been upheld in cases before the Industrial Relations Court (PHI) and the Supreme Court, where the panel of judges rejected arguments that limited funds or a non-profit nature could be used as an excuse to pay wages below the minimum standard.

One important decision that confirms this is the Supreme Court Decision Number 401 K/Pdt.Sus-PHI/2018. In the decision, the panel of judges emphasized that the foundation's status as a non-profit legal entity does not eliminate its obligation to fulfill employment rights, including payment of minimum wages to workers. The court emphasized that every legitimate employment relationship must be subject to employment regulations, without exception based on the form of the employer's legal entity. This decision sets a precedent that strengthens that foundations cannot avoid the obligation to pay minimum wages simply because they are not commercial entities.

In various labor disputes involving educators and administrative staff in foundation-run schools, the courts tend to interpret the minimum wage as a fundamental right that must be provided by all employers, including foundation-based educational institutions. The panel of judges emphasized that labor law aims to protect workers' rights, including the right to receive a decent wage in accordance with standards set by the government.

In addition, based on Law No. 13 of 2003 Article 1 Paragraph 30, foundations are still required to find solutions to meet wage standards, even though they face financial constraints. In several employment cases involving foundations, judges have suggested that foundations carry out operational efficiency, seek additional funding sources, or adjust work schemes to ensure that workers' rights are still met. Thus, the foundation's status as a non-profit entity does not provide a legal loophole to avoid wage obligations.

Overall, even though foundations have social goals and often rely on unstable funding sources, they still have to comply with labor regulations. Therefore, good financial planning is essential so that foundations can meet minimum wage obligations while carrying out their social mission optimally.

#### **4. Conclusion**

The non-profit concept in the Foundation Law does not eliminate the obligations of foundations in terms of employment, so they must still guarantee the rights of their workers in accordance with applicable regulations. Although foundations are formed for social, religious, and humanitarian purposes without the aim of seeking profit, they still have a role as employers who must comply with minimum wage provisions like other legal entities. Court decisions also show that judicial institutions tend to support workers' rights to receive minimum wages, even though foundations are non-profit and have limited resources. Therefore, clearer guidelines are needed from the government regarding the application of minimum wage provisions for foundations so that there is no legal uncertainty that could affect the sustainability of their operations. In addition, foundations need to develop good financial strategies, such as seeking alternative funding sources and managing budgets more efficiently, so that they can continue to meet employment obligations without sacrificing the social programs they run. A balance is needed between protecting labor rights and the sustainability of foundations as social institutions. Therefore, the regulations that are enforced must not only guarantee the welfare of workers, but also consider the financial capacity of the foundation in carrying out its social mission. The government can develop support mechanisms, such as incentives or certain assistance schemes for foundations that have difficulty in meeting wage standards. In this way, foundations can continue to carry out their roles optimally without ignoring the rights of the workers they employ.

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