Indonesia

Expert: Bivitri Susanti
Institutional Affiliation: Indonesia Jentera School of Law
With contributions from staff at the Indiana University Lilly Family School of Philanthropy

QUICK FACTS

Legal forms of philanthropic organizations included in the law: Association, Foundation

Five main social issues addressed by these organizations: Higher Education, Primary and High School Education, Basic Needs, Religion, Other: Natural Disaster Response

Average time established by law to register a philanthropic organization: 0-30 days

The actual registration time at the Ministry of Law and Human Rights is now roughly seven days. However, there could be more days needed for the notaries as well as for the system at the Ministry to check the name of the foundation/association.

Average cost for registering a philanthropic organization: US $300

The actual costs for obtaining a legal entity status at the Ministry of Law and Human Rights are only IDR 680,000 (US $60) for a foundation and IDR 250,000 (US $23) for an association, but prior to registration, the organization needs to be established by a notarial deed. The cost for notarial deed is uncertain, depending on the region (notaries are assigned by the government per region) and on the scale of the organization. The cost recorded here is an estimate.

Organizations that do not wish to have legal entity status register their organizations at the local government offices. The cost varies in different regencies/cities, but usually the cost is less than US $50.

Government levels primarily regulating the incorporation of philanthropic organizations: Central Government, Local Government

Indonesia is a unitary state. The central government enforces all laws and regulations regarding POs. However, Law on Societal Organizations (No. 17 of 2013) indicates that the local government does registration for POs (with and without legal entity status). In addition, there are permits on operations such as domicile letter and registration issued by local government.
Phlanthropic Environment Scores:

<table>
<thead>
<tr>
<th>Year</th>
<th>Ease of Operating</th>
<th>Tax Incentives</th>
<th>Cross-Border Flows</th>
<th>Political Environment</th>
<th>Socio-Cultural Environment</th>
<th>OVERALL SCORE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>3.3</td>
<td>2.8</td>
<td>2.8</td>
<td>3.0</td>
<td>4.0</td>
<td>3.17</td>
</tr>
</tbody>
</table>
I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.

Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 3.0

Freedom of organization is guaranteed in Indonesia’s Constitution (Articles 28 and 28E), and other relevant laws including the Law on Human Rights (Law No. 39 of 1999) and the Ratification of International Covenant on Civil and Political Rights (Law No. 12 of 2005). Generally the key legal forms (legal entity) of POs are foundations and associations.

Registration to obtain legal entity status is conducted by the Ministry of Law and Human Rights and it is conducted in a professional way. There are general guidelines in terms of the cost and time frame of registration. The Ministry accepts applications through an online registration system. There are criticisms regarding various technicalities of the website, but the online system makes it more transparent and accountable. Prior to registration, however, the organization has to be established by a Notarial Deed. The time and cost for notary varies. The Notary will conduct the procedures at the Ministry as part of their services.

In 2013, the government issued the Law on Societal Organizations (No. 17 of 2013) requiring all organizations to register. This change imposed measures for registration and control that opened loopholes for the central as well as local governments to impose restrictions. Field research conducted by the Coalition for Freedom of Association shows that, in a number of regions, the local government strictly requires any forms of organizations, including those without legal entities, to register, to submit reports, and be monitored strictly.

The Law on Societal Organizations also makes it difficult for foreign organizations and foreign persons to establish an Indonesian PO. It is possible on paper, but the procedures are complicated.

Question 2: To what extent are POs free to operate without excessive government interference?

Score: 4.0

The Law on Foundations (Law No. 16 of 2001), sets the basic organizational structures for foundations. The government does not have the right to interfere with the internal governance process of any philanthropic organization. The Law on Foundations (Law No. 16 of 2001), stipulates that the organization structure must consist of three organs: a governing board, a supervisory board, an executive board. This requirement is not rigorous and the organizational structure for other forms of organizations (associations and non-legal entity PO) are not regulated. The Law on Societal Organizations only requires that the executives of such organizations be selected through a process of consensus and deliberation and it should consist of a minimum of three persons: a chair person, a secretary and a treasurer.
The Indonesian laws and regulations in general do not restrict the activities of philanthropic organizations. The organizations are free to use all forms of communications including internet and social media. The law also allows freedom to POs in terms of their internal and external communications. The 2013 Law on Mass Organizations require all civic and religious nongovernmental organizations (NGOs) to register and submit regular reviews of their activities (Freedom House Report 2017). There are also laws that can be used to restrict the activities of organizations, especially if the organizations are engaged in political propaganda against the state principles. In addition, the Law on Societal Organizations (No. 17 of 2013), allows the local government as well as the Directorate General of the National Unity and Politics of the Ministry of Home Affairs to mandate additional reports and paperwork from organizations and also to impose sanctions if the organizations are seen as obstructing national security and public order. The Freedom House (2017) reports that “some human rights groups are subject to government monitoring and interference, and activists working on a variety of sensitive issues remain targets for human rights abuses.”

**Question 3: To what extent is there government discretion in shutting down POs?**

Score: 3.0

Generally, the organization’s governing body is able to voluntarily terminate its activities; however, the process requires reporting, including on the assets.

The Law on Societal Organizations provides a detailed set of rules on the dissolution of societal organizations. Societal organizations of all types can be dissolved if they violate Articles 21 or 59 of the Law on Societal Organizations, which make organizations subject to certain obligations and prohibitions, respectively.

Any societal organization that violates the terms in Articles 21 or 50 will first be given written notice. If the organization continues its unlawful activities, the government will freeze its funding (if it receives funding from the government) and/or ban its activities. In the case of national level organizations, the government has to consult with the Supreme Court prior to putting a ban on any organization’s activities or to freeze its funding. The Supreme Court must give its opinion within 14 days. If 14 days elapse without an opinion from the Supreme Court, the government can impose a temporary freezing sanction, without the opinion of the Supreme Court. In the case of a provincial-level or local-level organization, the government must consult with the local House of Representatives, the head of the local attorney office, and the head of the local police. The temporary ban can be imposed for a maximum of six months. If the organization continues to violate after the maximum timeframe for the temporary ban, the organization can be dissolved involuntarily (Council on Foundations, 2016).
II. Domestic Tax and Fiscal Issues

The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.

**Question 4: To what extent is the tax system favorable to making charitable donations?**

Score: 2.5

Tax deductions are recognized only for a limited number of activities, namely: national disaster management; research and development; education facilities, including education related to sports, art, and culture; sports activities; and the development of public facilities (termed “social infrastructure” in the law), including religious buildings, cultural centers, and health clinics. According to the Law on Income tax (No. 36 of 2008, Article 6, Section 1) individuals and corporations may receive tax deductions for charitable contributions for natural disasters, research and development activities, and the development of social infrastructure, education facilities, and sports. The amount of a donation that can be deducted from gross income in a year may not be more than 5 percent of the net income of the previous year, and the contributions must not be provided for parties that have conflicts of interest according to tax law. In reality, however, these policies are difficult to use due to unclear information on their specifics.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

Score: 3.0

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

Donations, including religion-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 a PO uses to provide scholarship funds; and (ii) income of a PO 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 (Law No. 36 of 2008). These provisions are regulated in detail by the Minister of Finance Regulation (Law No. 80 of 2009) and the General Directorate of Taxation Regulation (Law No. 44 of 2009). These technical regulations provide that the tax exemption is applicable for income generated by POs that is reinvested in the form of facilities for education and/or research and development that are open to the public within four years after the income is generated. However, these policies are difficult to use due to unclear information on their specifics.
III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.

Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?

Score: 2.5

For any kind of societal organizations, the cross-border transactions are governed by the Ministry of Home Affairs' Regulations (No. 38) on the Receipt and Giving of Social Organizations Aid from and to Foreign Parties. To be eligible to send cross-border donations, an organization must be registered with the Ministry of Home Affairs Office or other government agencies. The organizations are also required to submit detailed description of the activities the cross-border donations will support to the Ministry of Home Affairs. There are some restrictions on the kinds of activities that can be supported and aid can only be sent to recipients in countries that maintain diplomatic relations with Indonesia.

Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

Score: 3.0

There is no specific regulation related to receiving cross-border donations. Cross-border donations are usually treated as imported goods and certain items are exempted from import duties (Law No. 17 on Customs Article 25 Section1). Cross-border donations such as grants or goods for religious activity, charity, social or cultural activities and for the purpose of natural disasters relief are all exempted from import duties. Further, donations or goods for scientific research and development, museums, nature conservation or similar public benefit purposes are also exempted from import duties. In order to receive such exemptions, the organization or importer must follow the official procedures to obtain the decree of the exemption from the Ministry of Finance. The process is time consuming and burdensome as it involves submitting the proposal to relevant authorities (Ministry of Finance through the Director of Customs and Duties) with detailed records of donations and reports. This involves bureaucratic hassles.

Receiving donations are usually easier when there are connections to high ranking public officials or when donations are made to support emergency situations such as during the 2004 Aceh Tsunami when Indonesia received large cross-border donations.
IV. Political and Governance Environment

The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.

Question 8: To what extent is the political and governance environment favorable for philanthropy?

Score: 3.0

Collaboration between government and the philanthropic sector takes place occasionally depending on the political situation, as well as the interests of officials and philanthropists. The government does not share a common perception about philanthropy and sees philanthropy only as an alternative source of funding for projects.

Question 9: To what extent are public policies and practices favorable for philanthropy?

Score: 3.0

Because the government does not share a common perception about philanthropy and sees philanthropy mainly as the alternative source of funding for projects, the government does not provide adequate policies to promote the philanthropic sector. Donors are sometimes pressed by government to support certain causes. Additionally, “new laws have not only enabled POs to become legal entities but also demand from them more rigor, transparency and accountability. This legal environment has expanded the scope of nonprofit organizations.” (Suryaningati et al., 2003, cited by Osili and Okten, 2015, p. 390).

V. Socio-Cultural Environment

Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?

Score: 4.0

There is a strong tradition of sharing and donating due to the religious as well as traditional values in the Indonesian society. Indonesia is a Muslim country where the Islamic giving practices of Zakat (almmsgiving), sedekah (donation, giving) and waqf (religious endowment) are practiced very commonly and are the main channels of philanthropic giving (Fauzia, 2008). Zakat is a religious tax that requires individuals to contribute at least 2.5 percent of annual net savings, based on their income.

Indonesia was ranked 50 out of 153 countries in the World Giving Index report for 2010, with 45 percent of the population donating to charity. Gallup’s 2016 Global Civic Engagement Index reports that Indonesia is the second middle-income country (after Myanmar) at the top of the list of countries most likely to donate money to charity, and seventh in the global Civic Engagement Index.
Nowadays, many Indonesians are more critical about NGOs doing activities closely related to politics; social causes, including natural disaster response, are still the main reasons for many Indonesians to make donations.

VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

Current state of the philanthropic sector

The potential for growth is large because there is a strong tradition of giving in Indonesia. However, the government is yet to see the importance of this sector, so the policies needed for philanthropy to flourish are not present. The sector needs to advocate for this. There are many initiatives conducted by the sectors and there are collaborations between the private sector, the NGOs, and philanthropists; among them are collaborations to advance the UN Sustainable Development Goals. This could bring many positive developments in this sector in the future.

Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- Filantropi Indonesia (a collaboration of private sector, NGOs, and philanthropists) is becoming more active in promoting the philanthropic sector in Indonesia. There are many advocacy activities and public discussions on these issues that started back in 2014; and
- Discourse on tax reforms in the end of 2016 opened up discussion on tax policies on philanthropy.

Future development trends in the philanthropic landscape

Philanthropy in Indonesia will develop over time. Family philanthropy is getting stronger, through the foundation of family conglomerates.

From the NGO Sector, the push to create a better legal environment for philanthropy activities is getting stronger as many foreign donors (such as the US) actually reduced their fund support due to international aid policies that do not consider Indonesia as high priority due to positive changes in development levels. However, the current government exhibits a tendency to create stricter regulations to the freedom of organizations. For example, the government decision to change the Law on Societal Organizations in order to speed up the dismissal process of Hizbut Tahrir Indonesia, a branch of the worldwide-known Islamist organization. Although the decision is popular because the organization has been conducting hate speech and spreading the idea of Islamism replacing the Constitution, the government’s decision to use a short cut to dismiss the organization is against the principle of freedom of association. There are also additional administrative burdens for foreign organizations to operate in Indonesia and for domestic NGOs to conduct their activities.

“Philanthropy” as charity work may increase in the future, but this will occur in an environment of political and administrative constraints that shrinks the civil space for the operation of NGOs.
The involvement of millennials in philanthropy has also been part of the conversation in the last few years. The website SDG funders reports the emerging millennial generation of philanthropists and their increasing use of technology-based platforms for philanthropy. Ubuntu Foundation, Kitabisa.com, Filantropi Indonesia, and other emerging crowdfunding websites have been created recently to address social problems.

Three key recommendations to improve the environment for philanthropy

- Revoke Law No. 17 of 2014 on Societal Organizations to remove barriers on philanthropy activities and freedom of organizations;

- Introduce a Law on Associations to provide legal framework for POs; and

- Introduce a set of tax policies for philanthropy activities, with clear implementation regulations.