



Deconstructing the Legal Fiction of 'Non-Employees' in Employment Relationships in Indonesia's Non-Profit Sector

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ABSTRACT: The phenomenon of employment relations in the non-profit sector, particularly within foundations as legal entities, presents a paradox between social orientation and the fulfillment of labor rights. In practice, many foundations use the term “non-worker” or “volunteer” to avoid the obligation to provide minimum wages as stipulated in Article 88C of Law Number 6 of 2023 concerning the Enactment of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law. This practice reflects a consciously constructed legal fiction formed through the normative gap between Law Number 13 of 2003 on Manpower and Law Number 16 of 2001 on Foundations as amended by Law Number 28 of 2004. This research aims to deconstruct the juridical strategies that enable the avoidance of minimum wage obligations in the non-profit sector and to assess the substantive justice of the prevailing legal system. The study employs a normative legal method with three approaches: statutory, conceptual, and deconstructive. Analysis was conducted on 27 Industrial Relations Court (PHI) decisions from 2020–2024 to trace the application patterns of the “non-worker” legal fiction. The results show that the legal fiction serves as a legal mechanism that normalizes the exclusion of non-profit workers from minimum wage protection. Through a deconstructive reading of legal texts and court decisions, it was found that the formalistic rationality of labor law fails to recognize the substantive employment relationships within social institutions. Therefore, this study recommends redefining the terminology of “worker” and “employer” in labor law and formulating special regulations on employment relations in the non-profit sector to realize social justice and the substantive protection of wage rights.

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1. INTRODUCTION

Employment relationships in the nonprofit sector are one of the most problematic areas in Indonesia's modern labor law system (Farianto, 2021) (Farianto, 2021; Hanifah, 2020). Various jurisdictions, social, philanthropic, and religious institutions often position themselves as non-commercial entities oriented towards public service. However, in global practice, non-profit institutions often employ workers under employment relationships that are not fully recognized by the formal labor law system (Bambang Firtianto, 2025). This phenomenon creates a paradox between the social orientation of institutions and the fulfillment of workers' rights.

In the Indonesian context, foundations are recognized as legal entities that carry out social, religious, and humanitarian activities as stipulated in Law Number 16 of 2001 concerning Foundations, which was amended by Law Number 28 of 2004 (Siahaan et al., 2020). However, many foundations also manage economic activities that generate income, such as schools, hospitals, training institutions, and shelters. These activities factually involve elements of work, wages, and orders as referred to in Article 1 point 15 of Law Number 13 of 2003 concerning Manpower. Thus, substantively, there is an employment relationship that should be subject to labor norms.

Social reality shows that many non-profit organizations refuse to recognize their workers as "employees" in the legal sense of labor law. They use terms such as social volunteers, foundation employees, or service cadres to emphasize the social orientation of the institution and avoid the obligation to pay the minimum wage as stipulated in Article 88 C paragraph 1 of Law Number 6 of 2023 concerning Job Creation.

In general, the establishment of minimum wages aims to achieve a decent standard of living. However, in practice, wage-related issues are often complex (Aprilsesa et al., 2023). Workers in the non-profit sector often work without written employment agreements, and more than half receive compensation below the provincial minimum wage. This indicates the existence of systemic

wage exclusion legitimized by legal language and social morality. The term "non-profit" is often used as a moral justification to avoid economic responsibility, even though many foundations earn surpluses from public service activities such as education and health.

This gap is also reflected in several Industrial Relations Court (PHI) decisions. For example, in Jakarta PHI Decision Number 234/Pdt.Sus-PHI/2022/PN.Jkt.Pst, a foundation teacher's lawsuit regarding minimum wage and severance pay was rejected because the employment relationship was deemed to be "social in nature." A similar ruling was also found in Bandung Industrial Relations Court Decision Number 89/Pdt.Sus-PHI/2021/PN.Bdg, in which a nurse was not recognized as a permanent employee even though she had worked for more than five years. This pattern of legal reasoning shows that social relationships are often placed above economic relationships, thereby legally negating the protection of wage rights for workers in the non-profit sector.

The above phenomenon shows how the law can function not as a means of substantive justice, but as a mechanism for justifying structural inequality. In the context of legal theory, this condition reflects what Lon L. Fuller refers to as legal fiction: a statement that is known to be untrue but is recognized by the law for a specific purpose (Prabantarikso, 2024). The legal fiction of "non-workers" was created to maintain the moral image of social institutions, even though exploitative labor relations continue to exist. This legal practice reveals a binary opposition in legal texts between "workers and volunteers," "commercial and non-profit," and "economic and moral." This hierarchy of meaning places social activities as a dominant presence and relegates economic relations to a position of absence, thereby normalizing the exclusion of non-profit labor in the name of social values.

The absence of norms in the Foundation Law exacerbates this situation. Article 5 paragraph (1) of Law Number 16 of 2001 only states that foundations can carry out business activities to support their social objectives, without specifying the legal status of the workers employed. This normative loophole provides the basis for the legal legitimacy of practices that avoid labor obligations. This study discusses the legal deconstruction of minimum wage avoidance practices through an analysis of 27 Industrial Relations Court (PHI) decisions from 2020 to 2024 and assesses the substantive justice of Indonesia's labor law system for workers in social institutions.

This approach has not been widely used, because most previous studies only discussed the institutional aspects of foundations or worker protection without examining the underlying epistemological dimensions of the law (Anindya & Damayanti, 2024) (Yudi & Surbakti, 2020). Thus, this study not only raises technical issues of employment relationships, but also examines the ideological dimensions of law: how legal language and categories are used to justify social inequality. Within the framework of John Rawls' theory of social justice, this practice contradicts the difference principle, which asserts that inequality can only be justified if it benefits the least fortunate (Arianto et al., 2025). Therefore, a conceptual reconstruction of the definitions of "worker" and "employer" in the Indonesian legal system is crucial to ensure fair protection for all forms of work, including in the nonprofit sector.

II. METHOD

The research methodology was designed to ensure that the analysis had a strong scientific basis and could be verified academically. The approach used was normative legal research because the focus of this research was on positive legal texts, jurisprudence, and legal theory, rather than empirical field data. The normative approach in this research was not conventional. This research combines it with a deconstructive legal approach to read the law reflectively and critically. Thus, this research positions the law as a text in motion, a text that is always open to interpretation and rereading in accordance with the social context and values of justice.

There are three main approaches used in this study: (1) Legislative Approach: This approach is used to analyze the coherence and contradictions between regulations, particularly between Law No. 13 of 2003 in conjunction with Law No. 6 of 2023 (Cipta Kerja) and Law No. 16 of 2001 in conjunction with Law No. 28 of 2004 (Foundations). The analysis also covers Government Regulation No. 36 of 2021 and Government Regulation No. 51 of 2023 concerning Wages, in order to find normative gaps and regulatory disharmony related to worker protection in the non-profit sector; (2) Conceptual Approach: This approach aims to explore the legal meaning of the terms "worker," "employer," and "volunteer" both in Indonesian positive law and in international standards; (3) Deconstructive Approach: This approach is used to trace the hidden meaning in legal texts and court decisions. Through re-reading legal language, the deconstructive approach reveals the ideology hidden behind the seemingly neutral norms of the rule of law and uncovers alternative meanings of the law that are more socially just.

The types and sources of legal materials used in this study consist of three categories, namely primary, secondary, and tertiary legal materials. Primary legal materials include national legislation such as laws, government regulations, and ministerial regulations, as well as relevant Industrial Relations Court (PHI) decisions. Secondary legal materials include academic literature and articles from relevant national legal journals. Tertiary legal materials include legal dictionaries, legal encyclopedias, and official reports from national and international institutions.

The selection and analysis of Industrial Relations Court (PHI) decisions in this study was conducted by selecting 27 decisions from the 2020–2024 period available in the Supreme Court Decision Directory. The selection was made using purposive sampling based

on three main criteria, namely cases involving legal entities such as foundations or non-profit organizations, the existence of a major issue regarding employment status or worker recognition, and decisions that are final and binding (inkracht) or have precedential value.

Each decision is analyzed through three stages, namely identification of the ratio decidendi (the main legal reasoning used by the judge), classification of the form of legal fiction that arises (structural, relational, or functional), and deconstructive analysis of the language and legal logic used in the panel of judges' considerations. The data analysis technique is carried out qualitatively by applying three layers of reading. First, legal synchronization analysis, which compares the substance of labor regulations and foundation regulations to find disharmony and normative gaps that open up space for the formation of legal fictions. Second, deconstructive analysis of legal texts, which involves rereading legal norms and court decisions to uncover the meanings hidden behind formalistic rationality, while also identifying the power relations that influence the construction of the law.

III. RESULTS AND DISCUSSION

General Patterns of Industrial Relations Court (PHI) Decisions on Workers in the Non-Profit Sector

Table 1: 27 PHI Decisions Related to Employment Relations in the Non-Profit Sector (2020–2024)

No	Decision Number & Year	PHI Court	Type of Institution	Core Ratio Decidendi (Main Legal Reasoning of the Judge)
1	77/Pdt.Sus-PHI/2020/PN.Mdn	Medan	Foundation Hospital	A foundation is not a business entity; it does not meet the elements of an "entrepreneur"; the relationship is considered social.
2	122/Pdt.Sus-PHI/2020/PN.Jkt.Pst	Central Jakarta	Foundation School	Teachers are considered social volunteers; the employment relationship is one of service, not commercial.
3	45/Pdt.Sus-PHI/2020/PN.Sby	Surabaya	Orphanage	Orphanage caregivers are not considered employees because there is no written employment contract.
4	66/Pdt.Sus-PHI/2020/PN.Bdg	Bandung	House of Worship	The Council considers spiritual activities to be unrelated to industrial relations.
5	109/Pdt.Sus-PHI/2021/PN.Smg	Semarang	Foundation Hospital	The judge dismissed the lawsuit; the institution does not seek profit, so it is not subject to the Labor Law.
6	89/Pdt.Sus-PHI/2021/PN.Bdg	Bandung	Private Foundation School	Wages are considered honoraria for services rendered; there is no formal employment relationship.
7	134/Pdt.Sus-PHI/2021/PN.Mks	Makassar	Social Institution	Workers are considered volunteers; severance pay claims are rejected.
8	175/Pdt.Sus-PHI/2021/PN.Dps	Denpasar	Education Foundation	The foundation is socially oriented; the teacher-student relationship is moral, not economic.
9	221/Pdt.Sus-PHI/2021/PN.Jkt.Pst	Central Jakarta	Health Foundation	Administrative employees are considered non-workers because the institution is a non-profit organization.
10	12/Pdt.Sus-PHI/2022/PN.Sby	Surabaya	Orphanage	The judge ruled that the plaintiff received incentives, not wages; there was no industrial relationship.
11	74/Pdt.Sus-PHI/2022/PN.Bdg	Bandung	Foundation Hospital	The judge ruled that the plaintiff received incentives, not wages; there was no industrial relationship.
12	105/Pdt.Sus-PHI/2023/PN.Mks	Makassar	Foundation School	Teachers are subject to the Education Law, not the Labor Law.
13	37/Pdt.Sus-PHI/2023/PN.Smg	Semarang	Social Service Institution	The employment relationship is partially recognized; workers are entitled to proportional compensation.

14	91/Pdt.Sus-PHI/2023/PN.Smg	Semarang	Foundation School	The employment relationship is recognized because the elements of work, wages, and orders are fulfilled.
15	234/Pdt.Sus-PHI/2022/PN.Jkt.Pst	Central Jakarta	Education Foundation	The lawsuit was dismissed; the teacher's relationship was considered social service.
16	51/Pdt.Sus-PHI/2022/PN.Plg	Palembang	Hospital	The Council ruled that social activities do not constitute "business"; wages are not a normative right.
17	32/Pdt.Sus-PHI/2022/PN.Mdn	Medan	Health Foundation	The judge recognized the factual employment relationship but did not award full severance pay.
18	147/Pdt.Sus-PHI/2022/PN.Sby	Surabaya	Educational Institution	Wages were considered voluntary; there was no permanent employment relationship.
19	118/Pdt.Sus-PHI/2023/PN.Jkt.Pst	Central Jakarta	Social Foundation	The judge ruled that the institution's activities were not economic in nature; the lawsuit was dismissed.
20	159/Pdt.Sus-PHI/2023/PN.Bdg	Bandung	Foundation Hospital	The employment relationship was rejected because there was no written agreement and the orientation was non-profit.
21	175/Pdt.Sus-PHI/2023/PN.Mks	Makassar	Social Foundation	The lawsuit was partially granted; workers were recognized as entitled to moral compensation.
22	88/Pdt.Sus-PHI/2023/PN.Dps	Denpasar	Catholic School	The judge dismissed the lawsuit on the grounds that religious services do not constitute an employment relationship.
23	102/Pdt.Sus-PHI/2023/PN.Sby	Surabaya	Social Foundation	An employment relationship was recognized because there was regular pay; social fiction was deemed irrelevant.
24	119/Pdt.Sus-PHI/2023/PN.Smg	Semarang	Hospital	The judge dismissed the lawsuit; social orientation became the basis for the exception to the Labor Law.
25	83/Pdt.Sus-PHI/2024/PN.Jkt.Pst	Central Jakarta	Social Institution	The employment relationship is recognized; the court ruled that the institution's orientation does not negate the industrial relationship.
26	97/Pdt.Sus-PHI/2024/PN.Mdn	Medan	Education Foundation	The lawsuit was partially granted; the court ruled that teachers are entitled to minimum wage.
27	115/Pdt.Sus-PHI/2024/PN.Bdg	Bandung	Foundation Hospital	The judge concluded that a factual employment relationship existed; the foundation is obligated to comply with the Labor Law.

Source: Directory of Decisions of the Supreme Court of the Republic of Indonesia, compiled by the author.

Based on the results of 27 Industrial Relations Court (PHI) decisions analyzed, a relatively consistent argumentative trend was found: the majority of judges refused to recognize the existence of an employment relationship between workers and legal entities in the form of foundations. Of the total cases, 22 decisions (81.5%) rejected the workers' claims on the grounds that the defendant institutions were not profit-oriented, while 5 decisions (18.5%) recognized the existence of an employment relationship and granted some normative rights such as severance pay or minimum wage. Most of the judges' considerations centered on the interpretation of Article 1 point 15 and Article 1 point 6 of Law Number 13 of 2003 concerning Manpower, which implicitly associates the term "employer" with profit-oriented business activities.

In the Bandung Industrial Relations Court Decision No. 89/Pdt.Sus-PHI/2021/PN.Bdg, for example, the panel stated that hospitals managed by foundations cannot be equated with companies, because all surpluses are reused for social activities. This argument reflects a formalistic interpretation of the business element without considering the reality of actual working relationships. A similar phenomenon can be seen in Central Jakarta Industrial Relations Court No. 234/Pdt.Sus-PHI/2022/PN.Jkt.Pst, where a lawsuit filed by a foundation teacher was rejected on the grounds that the relationship was social and based on service. In contrast, Semarang Industrial Relations Court No. 91/Pdt.Sus-PHI/2023/PN.Smg took a different approach by emphasizing that an employment relationship still exists if there are elements of wages and orders, without questioning the orientation of the institution. This difference shows that there's no uniformity in the legal logic between judges, which is rooted in different understandings of the concepts of "business" and "non-profit" in the labor law system.

The Construction of the Legal Fiction of "Non-Worker" in Industrial Relations Court Jurisprudence

An analysis of the ratio decidendi of 27 decisions shows that the legal fiction of "not an employee" is constructed through three main forms: (1) structural fiction; (2) relational fiction; and (3) functional fiction. This fiction arises when judges base their considerations on the formal legal structure of non-profit foundations. A frequently used argument is that because foundations are not business entities, there is no industrial relationship. For example, PHI Medan No. 77/Pdt.Sus-PHI/2020/PN.Mdn rejected a lawsuit filed by a foundation nurse on the grounds that "foundations are not business entities." In this fiction, the legal structure is used as a basis for justifying the negation of factual employment relationships. Relational fiction occurs when employment relationships are interpreted as a form of "social service" based on moral or religious motivations. In Surabaya Industrial Relations Court No. 12/Pdt.Sus-PHI/2022/PN.Sby, the panel referred to orphanage workers as "social volunteers who are driven by a calling." This view obscures the economic dimension of the employment relationship, even though labor law is oriented towards protecting the work performed, not the intentions of the perpetrator.

Furthermore, functional fiction appears when the function of non-profit institutions is considered as *lex specialis* that supersedes the applicability of general labor laws. For example, in PHI Makassar No. 105/Pdt.Sus-PHI/2023/PN.Mks, the panel emphasized that foundation teachers are subject to education regulations, not labor laws. This approach demonstrates functional dislocation, the transfer of labor protection norms to another legal regime that is weaker in terms of wages and social security. These three forms of fiction show how the legal system reproduces structural inequality through mechanisms that appear legal and moral. In other words, injustice is presented not through violations of the law, but precisely through the application of the law itself.

Deconstructive Analysis of Language and Legal Rationality

A deconstructive approach is used to trace how legal texts and judicial considerations form a hierarchy of meanings that excludes nonprofit sector workers from the sphere of legal protection. Based on textual analysis, three main binary oppositions are found in PHI jurisprudence, as follows:

Binary Opposition	Dominant Meaning (<i>Presence</i>)	Marginalized Meaning (<i>Absence</i>)	Legal Implications
Employer / Foundation	Entrepreneur = economic entity	Foundation = social entity	Employment relationship terminated
Workers / Volunteers	Volunteer = moral service	Worker = wage relationship	Wages are not mandatory
Profit / Non-profit	Profit = business activities	Non-profit = charitable activities	Wage norms do not apply

Within Jacques Derrida's framework, this binary opposition is not neutral; it creates a structure of meaning that maintains the dominance of one side over the other. The legal language in the PHI ruling unconsciously places "social" as a noble presence and "economic" as a profane absence. As a result, substantive justice, which should favor workers, is displaced by the formal morality of social institutions. The terms "dedication" and "social calling" often function as euphemisms that erase workers' economic rights. In Fuller's context, this phenomenon shows that legal fiction has lost its awareness as fiction and has turned into an oppressive normative truth.

Normative Inequality

In John Rawls' perspective, inequality legitimized by the legal fiction of "non-workers" cannot be justified. Based on the difference principle, Rawls asserts that social inequality is only valid if it benefits the least fortunate. However, research shows that nonprofit sector workers are actually the most disadvantaged group. They do not receive minimum wage protection, social security, or severance pay, even though they work the same hours and have the same responsibilities as workers in the commercial sector. Within the framework of fair equality of opportunity, labor laws should guarantee equal access to economic rights without

discrimination based on the legal form of the employer. The absence of explicit norms in the Foundation Law indicates that the legal system still has blind spots regarding structural inequality. Therefore, from a Rawlsian perspective, the current legal structure fails to fulfill the principles of distributive justice and procedural fairness.

The theoretical synthesis in this study shows that the legal fiction of "non-workers" in the nonprofit sector is the result of the interaction of three main dimensions, namely the structural, discursive, and normative dimensions. The structural dimension, as described by Lon L. Fuller, describes how legal fiction is formed through formal legal mechanisms that often obscure the actual social reality. In this context, the law functions as a system that appears rational and orderly, but in fact has the potential to ignore the factual conditions of workers in the field.

Furthermore, the discursive dimension, rooted in the thinking of Jacques Derrida, shows that this legal fiction is maintained through legal language that creates a hierarchy of meaning between "workers" and "non-workers." Rather than being neutral, legal language plays a role in shaping and maintaining power relations that legitimize social inequality in labor practices. Meanwhile, the normative dimension, based on John Rawls' theory of justice, highlights that the legal fiction of "non-workers" fails to fulfill the principle of social justice because it ignores the basic rights of workers to obtain adequate protection. Therefore, Indonesian labor law cannot be said to be ideologically neutral; it operates within a discourse that subtly normalizes inequality. Through a deconstructive approach, a rereading of legal language opens up space for a re-legal construction that favors workers. This reconstruction aims to uphold laws that are more reflective of social reality and in line with the ideals of social justice as mandated by Pancasila.

Patterns of Reconstruction

Through a deconstructive approach and normative evaluation, there are three forms of reconstruction of legal meaning that are more equitable, reflective, and oriented towards worker protection. First, a reinterpretation of the term "employer" as defined in Article 1(6) of the Manpower Act is necessary. The term "employer" should be understood as any party that employs other people in exchange for wages, regardless of the orientation of the institution, whether commercial or non-profit. This interpretation is in line with the teleological interpretation of labor law, which focuses on the goal of protecting workers, rather than on the institutional form of the employer.

The concept of social volunteers needs to be recontextualized in order to clearly distinguish between voluntary work (unpaid and temporary work) and underpaid labor (low-paid work performed on social grounds). Only purely voluntary work that is not oriented towards remuneration can be exempted from the legal regime of labor law. This distinction is important to prevent the practice of disguising employment relationships, which results in workers losing their normative rights. Integrating the principle of social justice into foundation law is a crucial step in strengthening legal protection for workers in the non-profit sector. Explicit norms need to be added to the Foundation Law to guarantee the rights of foundation workers, particularly in relation to minimum wages and social security. This effort is in line with the mandate of Article 33 paragraph (4) and the Preamble of the 1945 Constitution, which emphasizes the importance of realizing social justice for all Indonesian people.

IV. CONCLUSION

Based on the results of jurisprudential analysis and theoretical readings described above, it can be concluded that labor relations issues in the nonprofit sector are not only caused by a lack of norms, but also by the way the law produces meaning about work and justice. Indonesian labor law still operates within a paradigm of legal formalism that distinguishes workers based on institutional orientation rather than the substance of the employment relationship. This study shows that the legal fiction of "non-workers" in employment relationships in the nonprofit sector is the result of a systemic construction that is formed and reproduced through legal structures, legal language, and judicial rationality. Based on an analysis of 27 Industrial Relations Court (PHI) decisions from 2020 to 2024, the majority of judges still use formalistic logic that associates the element of "employer" with the profit orientation of the institution.

This study produced two main sets of recommendations, namely normative recommendations and conceptual recommendations, aimed at strengthening legal protection for workers in foundations or non-profit organizations. First, the Foundation Law needs to be revised by adding explicit norms that regulate the status and legal protection of permanent foundation workers. The proposed formulation is: "Foundations that employ others in exchange for wages must comply with the provisions of laws and regulations in the field of employment." This provision will close the legal loophole that has allowed the avoidance of minimum wage and social security obligations.

Second, a functional interpretation of the term "employer" needs to be carried out by the Supreme Court and the Ministry of Manpower by establishing interpretative guidelines that the term "employer" in Article 1 point 6 of the Manpower Act covers any party that employs other people for remuneration, regardless of profit orientation. Third, the integration of the principle of social justice in wage regulations is important by revising Government Regulation No. 36 of 2021 and Government Regulation No. 51 of 2023 to include workers in non-profit organizations. The revision is expected to create an adaptive wage mechanism based on the

organization's capabilities, without removing workers' rights to a decent wage.

In addition, minimum wage protection in the social sector can be strengthened through the issuance of a Joint Regulation between the Ministry of Manpower and the Ministry of Social Affairs to guarantee the rights of social institution workers to a minimum wage with a gradual mechanism in accordance with the institution's capabilities. The government also needs to conduct compliance audits of foundations with labor laws, especially for large non-profit institutions such as hospitals, schools, and social institutions, to ensure that workers' normative rights are fulfilled. Furthermore, the development of a national database of non-profit workers is needed to map the number, type, and legal status of workers as a basis for evidence-based policy making.

Conceptual recommendations, in the form of reformulating the concept of social volunteers, need to be made to clearly distinguish between voluntary work (unpaid and temporary work) and disguised employment (covert employment relationships). Furthermore, the judicial paradigm of industrial relations judges must be updated through judicial refresher courses based on critical legal theory so that industrial relations judges are able to interpret the law substantively and reflectively, not just formalistically. Finally, strengthening the perspective of justice in legal research is important to encourage academics to shift from a dogmatic approach to a reflective-critical one. The deconstructive approach and Rawlsian thinking as applied in this study can be used as a model to assess legal justice in a more humane and contextual manner.

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