

# Juridical Position of the Legal Entity Endowment of the Jaga Garaga Institution

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\*<sup>1</sup>Nugraha Pratama Hasan, <sup>2</sup>Hirsannudin, <sup>3</sup>Lalu Wira Pria Suhartana

<sup>1,2,3</sup>Master of Notary Program, Faculty of Law, Mataram University

**Abstract:** This thesis analyzes the endowment of a legal entity of the Jaga Garaga Foundation. This type of research is normative research. After the analysis was conducted, the researcher obtained the Establishment Deed of the Jaga Garaga Foundation Number 30 dated November 4, 2010, documents of meeting decision statement, meeting minutes, and deed of meeting decision statement number 82 and number 67, all of these documents in the form of copies. The results show that if a foundation is endowed, transferred, and given, it is considered legally null and void against all provisions and literature contained in the Foundation Law. The problem arises when a legal violation occurs within the foundation's articles of association, whose provisions do not comply with foundation laws, then the unlawful act becomes binding on the parties who commit it. Therefore, it is necessary to have an understanding of the foundation's organs and Notaries in taking steps when designing, deciding, and establishing articles of association within the foundation. It is necessary to pay attention to the clauses and literature of a legal act within the articles of association before it is enforced and determined as valid and absolute.

**Keywords:** Endowment, Jaga Garaga Foundation, Notary.

## 1 | INTRODUCTION

In Indonesia, legal subjects are divided into two categories: Individuals (Pessoa) and Legal Entities (Rechtspersoon). Legal entities in Indonesia are further divided into two types: profit-oriented legal entities and non-profit/social legal entities. The forms of profit-oriented legal entities include Limited Liability Companies (PT) and Cooperatives, while the form of non-profit legal entities is Foundations. This is following the provisions of Article 1 number 1 of Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations, which defines Foundations as legal entities consisting of separated assets intended to achieve specific social, religious, and humanitarian purposes without members.

### \*Corresponding Author

Nugraha Pratama Hasan, Master of Notary Program, Faculty of Law, Mataram University  
Email: [ogiknugraha@gmail.com](mailto:ogiknugraha@gmail.com)

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Before the enactment of Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations, regulations regarding foundations could be found in the civil law statutes in articles 365, 899, 900, 1680, 1852, and 1954. However, the Civil Code does not provide a detailed and clear definition of foundations. As for foundations, Article 5 paragraph (1) of Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations explains that:

*"The assets of the foundation, whether in the form of money, goods, or other assets obtained by the foundation under this law, are prohibited from being transferred or distributed directly or indirectly, whether in the form of salary, wages, honorariums, or other forms that can be valued in money, to the founders, managers, and supervisors."*

Article 2 of Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations regulates the organs of foundations, consisting of Founders, Managers, and Supervisors. In addition to having management organs, foundations include provisions regarding:

- a. Name and domicile;
- b. Purpose and objectives as well as activities to achieve those objectives;
- c. Duration of establishment;
- d. Initial amount of assets separated from wealth;
- e. Methods of obtaining and using wealth;
- f. Procedures for the appointment, dismissal, and replacement of members of the Founders, Managers, and Supervisors;
- g. Rights and obligations of members of the Founders, Managers, and Supervisors;
- h. Procedures for organizing foundation organ meetings;
- i. Provisions regarding amendments to the articles of association;
- j. Merger and dissolution of the foundation;
- k. Use of remaining assets after liquidation or distribution of foundation assets after dissolution.

In the implementation of foundations, a Notary is needed to regulate the legal aspects contained in the Jaga Garaga Foundation.

The Notary is regulated in Article 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notarial Duties, which defines the Notary as a public official authorized to create authentic deeds and has other authorities as provided for in this law or based on other laws.

According to Article 1 paragraph (7) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notarial Duties, the definition of a Notarial Deed is an authentic deed made by or before a Notary according to the forms and procedures stipulated in this Law. The legal privilege granted to a Notarial Deed is the power of perfect evidence. Therefore, a Notary should have full responsibility for a deed that they have issued, and a Notary can also function as a legal expert in civil law providing legal consultations to any individuals intending to take legal actions.

However, in practice, some Notaries fail to provide legal advice and consultation to clients or individuals seeking the services of a Notary. This can have fatal consequences for legal actions taken by individuals in the field of civil law. The role of the community is necessary; if errors occur, the community must be willing to report them to the authorities. Because active community involvement can supervise the actions of a public official who commits a legal violation. For example, in a case involving one of the Foundations in one of the districts in East Java, where the author believes there was a legal violation in the making of the Decision Meeting Statement Deed of the Jaga Garaga Foundation by one of the Notaries in one of the districts in East Java.

Initially, the Jaga Garaga Foundation held a member meeting on May 8, 2014, during an extraordinary member meeting, it was decided that a change in the foundation's management had occurred. In the minutes of the extraordinary member meeting prepared by Notary AJ, it was stated that Mr. NS handed over the leadership of the foundation to Mr. TH, and it was recorded in deed number 67 of 2014 which stated that the Jaga Garaga Foundation had been endowed to Mr. TH.

According to Article 1666 of the Civil Code, a donation is an agreement by which a donor transfers movable or immovable property gratuitously without the possibility of reclaiming it, for the benefit of the recipient. The elements of a donation agreement include the presence of a donor and a recipient, the donor transferring property to the recipient, the transfer being gratuitous, and the transfer being irrevocable. In principle, donations are permissible under Indonesian formal law, but if a foundation becomes the object of a donation, then there is a legal violation from a juridical perspective.

The problem arises: why was there no mention of a change in the foundation's management in Deed Number 67 of 2014? Because it is clear in the minutes of the extraordinary member meeting that a change in the foundation's management was agreed upon, therefore the author is interested in investigating this issue.

## 2 | RESEARCH METHOD

According to Soerjono Soekanto, there are two types of legal research based on the purpose of the legal research: normative legal research and sociological or empirical legal research.

This research uses normative legal research. Normative legal research conceives law as norms or rules that serve as standards of human behavior deemed appropriate. The sources of normative legal research are only secondary data, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. All three legal materials are in written form (literature). This research is guided by Law Number 28 of 2004 concerning Foundations and other applicable regulations, as well as existing literature. The types of data used in preparing this research are:

Legal materials that are binding regulations and consist of:

- Legislation related to Legal Entities Foundations:
- Law Number 16 of 2001 (Foundation Law).
- Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 (Foundation Law).
- Government Regulation Number 63 of 2008 concerning the Implementation of the Foundation Law.
- Legislation related to Endowments;
- Civil Code Article 1666, 1667, 1668, 1686, and 1688.
- Compilation of Islamic Law Article 171 letter g.
- Law Number 5 of 1960 concerning Basic Agrarian Principles.
- Government Regulation Number 24 of 1997 concerning Land Registration.

Secondary legal materials, such as literature in the form of books or other scholarly writings that provide explanations regarding primary legal materials, include scholarly works by scholars and papers/reasoning materials, as well as articles related to the research material.

Tertiary legal materials include legal dictionaries, encyclopedias, and other materials that provide guidance or explanations of primary and secondary legal materials.

To examine the issues in this study, the following approaches are used:

- Statutory Approach: This approach involves examining all statutes and regulations related to the legal issue being discussed.
- Conceptual Approach: This approach is based on views and doctrines developed in legal science.
- Sociological Approach: This approach examines and observes how a law or regulation is implemented or enforced in society.

In normative legal research, legal material collection techniques are conducted through literature studies or document studies of legal materials, including primary, secondary, and tertiary legal materials, to deepen the discussion and completeness of data in this research.

The data obtained from the research results are then analyzed using a qualitative method that emphasizes deductive and inductive reasoning processes and the dynamics of relationships among observed phenomena using scientific logic. Qualitative analysis involves understanding and sorting the collected legal materials, aligning them with the issues raised, and systematically presenting them from general to specific to obtain a logical overview and answer to the research problem. This research is also conducted based on the discipline of law while considering the facts in the field. The data obtained are then analyzed to draw conclusions based on the formulated problems.

### 3 | DISCUSSION

#### 1. Validity of the Endowment of the Jaga Garaga Foundation

##### A. Facts and Legal Events of the Endowment of the Jaga Garaga Foundation

Based on the analysis and review of documents related to the endowment of the Legal Entity Jaga Garaga Foundation, the researcher obtained **the Establishment Deed of the Jaga Garaga Foundation Number 30 dated November 4, 2010**, while the transfer through endowment/donation can be identified from copies of documents **containing the resolution of the Jaga Garaga Foundation endowment meeting, Minutes of the Extraordinary Meeting of the Jaga Garaga Foundation, copies of meeting minutes, Decision Meeting Statement Deed Number 82 (Appointment of "New" Foundation Organs), and Decision Meeting Statement Deed Number 67 (Granting Authority to "New" Foundation Organs for Full Operation and Management of the Foundation)**.

##### B. Establishment of the Jaga Garaga Foundation

As stated in the establishment deed of the Jaga Garaga Foundation with Notary Deed BB Number 30 and legally established on November 4, 2010 (hereinafter referred to as the Foundation Establishment Deed), it received approval as stated in the Decree of the Ministry of Law and Human Rights of the Republic of Indonesia.

##### C. Process/Chronology of the Endowment of the Jaga Garaga Foundation

Recorded in a Statement Letter dated May 8, 2014 (four years after the Establishment Deed of the Jaga Garaga Foundation was issued and had been/being implemented for the foundation), there was an agreement from all organs of the Jaga Garaga Foundation "old foundation organs," namely to transfer the management of Jaga Garaga College of Economics (the Jaga Garaga Foundation only has one type of activity) through an endowment to Mr. Dr. TH. (hereinafter referred to as the "other party"), the other party has full authority to carry out the organization and management of the Jaga Garaga Foundation, the other party as the endowment recipient then appoints and appoints "new" foundation organs. The results of the extraordinary meeting were then incorporated into Notarial Deed AJ Number 82 dated June 27, 2014, Based on the above endowment acceptance, the other party, in this case, Dr. TH, then held a meeting on July 01, 2014, with the agenda of selecting and appointing "New" Foundation Organs

of the Jaga Garaga Foundation. Furthermore, the appointment of "New" Foundation Organs of the Jaga Garaga Foundation was documented in Notarial Deed AJ Number 67 dated August 29, 2014.

#### **D. Reviewing the Endowment Status in the Legal Entity of the Jaga Garaga Foundation**

Considering the requirements that have been fulfilled and completed by the obligations of the Jaga Garaga Foundation in the organization and management of Jaga Garaga College of Economics, the provisions of Article 1320 of the Civil Code regarding the agreement of asset endowment owned by the Jaga Garaga Foundation are substantially valid and legally binding. However, because the formal requirements have not been met with an endowment deed.

#### **E. Validity Status of the Endowment of the Legal Entity Jaga Garaga Foundation (Void Ab Initio)**

Based on the entire series of descriptions above, the author argues that all Deeds and according to the contents of the minutes of the Extraordinary Meeting of the Jaga Garaga Foundation conducted by the "old" Foundation organs contain legal acts that violate juridical provisions, especially the principle of agreement. It has been mentioned previously that this legal violation is due to the failure to fulfill the principle of agreement. An agreement through the endowment transfer of the Jaga Garaga Foundation has been agreed upon. The first element of an agreement is the presence of consent, which is the expression of the will of several individuals (*duorum vel plurium in idem placitum consensus*). This means that an agreement can only arise through the cooperation of two or more individuals or an agreement is "built" by the actions of several individuals. Therefore, the agreement is classified as a multiple legal act. Thus, a violation arises, and a claim for breach of contract can be filed, as there is a contractual relationship between the party causing the loss and the party suffering the loss. If there is no contractual relationship between the party causing the loss and the party suffering the loss, a tort claim may be filed. The legal issue that arises is when there is a contractual relationship between the parties and a breach occurs.

#### **F. Notarial Deed Number 82 and Notarial Deed Number 67 Categorized as Void Ab Initio**

In the case of the creation of deeds regarding the transfer of the Jaga Garaga Foundation, namely Deed Number 82 and Deed Number 67, the researcher found legal violations by the notary. This legal violation is related to both the formal process of numbering the deeds and the substantial aspect of the legal events contained in both deeds. Formally, the numbering of the deeds appears to be out of sequence according to the time of their creation, with number 82 preceding number 67. Substantially, what is stated in deeds 82 and 67, which are deeds of decision meeting statements and the basis for the transfer of the Jaga Garaga Foundation, contains elements of illegal acts with the use of the term "endowment." Furthermore, the phrase "given authority to form, appoint founders" constitutes negligence that can have fatal consequences. It should be noted again that the position and status of Dr. TH are not as the founders of the foundation because the founders as referred to are the founders listed in the foundation's establishment deed and have separated personal property to be used as the initial wealth of the foundation.

##### **Deed Number 82**

This deed contains a Statement of Decision of the Jaga Garaga Foundation Meeting and is made based on information provided by the presenter. From a formal aspect, the presenter acted in his capacity as the Chairman of the Foundation's Board and attorney at the Extraordinary Meeting of the Jaga Garaga Foundation on May 8, 2014, thus authorized to represent the Jaga Garaga Foundation. However, substantively, the extraordinary meeting made decisions that contradict statutory regulations, namely the decision to transfer the legal entity of the foundation by endowment. First, the "Old" Organs of the Jaga Garaga Foundation do not have the authority to carry out the endowment transfer of the foundation. In the context of an agreement, this means that it does not meet the capacity requirement to make an agreement. In carrying out legal actions, a person is required to meet the competence

requirement, so that the legal acts performed by them can be legally accountable. This means that if a person or legal entity becomes incompetent for some reason, their legal acts cannot be accounted for or are not valid. The incompetence referred to can occur because a person is not of legal age, insane or has lost memory, or acts without or outside their authority. A legal entity or a legal entity manager can also act beyond the provisions of the articles of association of a legal entity. Second, the Jaga Garaga Foundation legal entity is not an object that can be the subject of an endowment transfer agreement. In the context of an agreement, this means that it does not meet the valid cause requirement. What is meant by being contrary to a valid cause regarding an object of the agreement is not in accordance with applicable legal regulations or contrary to public order and the moral aspects prevailing in society.

The extraordinary meeting decision on the endowment of the legal entity of the foundation, which is substantially void ab initio, renders Deed Number 82, which is made based on that meeting decision, also void ab initio.

#### Deed Number 67

This deed contains a Statement of Decision of the Jaga Garaga Foundation Meeting and is made based on information provided by the presenter. From a formal aspect, the presenter acted in his capacity as the Chairman of the "New" Foundation Board based on the Minutes of the Jaga Garaga Foundation Meeting on July 01, 2014, thus representing the Jaga Garaga Foundation. Considering that the transfer of the Jaga Garaga Foundation is legally void as mentioned earlier, then the Board of Directors and all "New" organs of the Jaga Garaga Foundation appointed at the meeting on July 01, 2014, based on the mandate in the Jaga Garaga Foundation endowment meeting on May 08, 2014, do not have legality. This means that the presenter does not have the capacity or authority to act for and on behalf of the Jaga Garaga Foundation to record the Statement of Decision of the Jaga Garaga Foundation Meeting on July 01, 2014.

## 2. The Forms of Notary Responsibility for their Notarial Deeds

### A. Forms of Notary Responsibility for their Notarial Deeds

Notaries are required to be professional in carrying out their duties. They must have sharp thinking and be able to provide accurate analysis of every legal and social event that arises. Professionalism will cultivate the courage to take appropriate action. The courage referred to here is the courage to perform legal acts by applicable laws and regulations. Notaries can firmly reject the creation of deeds that contradict the law, morals, ethics, and public interests.

It is only fitting that a notary understands a legal concept in carrying out their duties and responsibilities as a notary. The position of a notary as a form of representation of the state in the realm of civil law, having undergone special education in the field of civil law, is considered to have understood and is capable of applying theories of civil law correctly and accurately. The goal is to provide legal certainty for parties in need of legal assistance from the notary.

A notary will always be considered knowledgeable about a law, which makes the notary profession highly esteemed in society. Essentially, a notary must provide guidance or legal advice to the parties who will create the notarial deed. If this advice is accepted and approved by the parties and then incorporated into the deed, it must be assessed as statements or declarations of the parties themselves. This is intended to ensure that the parties understand that the statements to be included in a deed comply with legal regulations.

In Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions, it is stipulated in Article 37 paragraph (2) that "A notary who violates the provisions referred to in paragraph (1) may be subject to sanctions in the form of:

- a. Oral warning;
- b. Written warning;
- c. Temporary dismissal;
- d. Dismissal dishonorably; or
- e. Dismissal dishonorably."

In essence, a notary is still obliged to control and be responsible for all deeds that are their products, even though in their position Deeds Number 82 and Number 67 are deeds of the parties. The control referred to in this case is a limitation on justifying the legal purposes contained in the Notary Law as the outline of the notary's domain.

### **B. Criminal Sanctions for Transferring and Distributing Foundation Wealth**

Criminal sanctions for acts of receiving distribution or transfer of foundation wealth are intended in Article 70 Paragraph (1) and (2) of Law Number 16 of 2001 concerning Foundations as amended by Law Number 28 of 2004 which states, "Every member of the foundation organ who violates the provisions referred to in Article 5, shall be punished with imprisonment for a maximum of 5 (five) years." Therefore, it is necessary to prevent the wealth of the foundation from being transferred, donated, and distributed if it is outside all the provisions contained in the Laws and Regulations as well as all activities that have been stipulated in the articles of association based on Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations.

A contract or agreement must meet the requirements for a valid agreement, namely consensus, competence, certain objects, and a legal cause, as stipulated in Article 1320 of the Civil Code. By meeting these four requirements, an agreement becomes valid and legally binding on the parties who make it.

Wherein within a donation process in a foundation legal entity, it becomes fatal and has legal issues. However, in validating this endowment, there needs to be a deed from an official authorized to validate the deed, namely a notary.

According to Article 10 Paragraph (1) of Law Number 16 of 2001, the founders who establish a foundation, appear before a notary, with the possibility that the founders appoint an attorney to appear before a notary. For this research, evidence of a notarial deed in a donation process from the foundation legal entity is used because to obtain validation as the legal status of the foundation legal entity, there needs to be a legal process through a notary and for the creation of a deed that will subsequently form the legality of the decision of the Minister of Law and Human Rights concerning the validation of the foundation legal entity.

Authentic deed, this authentic deed is one of the written evidences in a form determined by law, made by or in the presence of an official or public servant authorized to do so at the place where the deed is made, as stipulated in Articles 1867 and 1868 of the Civil Code. Observing the provisions of Article 15 Paragraph (1) of Law Number 30 of 2004 concerning Notary Positions (UUJN).

### **C. The Responsibilities and Duties of a Notary**

The ethics of the notarial profession concern issues related to the attitudes of notaries based on values and morals towards fellow notaries, society, and the State. Guided by the principle of service that respects the dignity of humanity in general and the dignity of the notary in particular, the characteristics of the notarial profession are:

- Honesty, independence, impartiality, and accountability.
- Prioritizing dedication to the interests of society and the State.

- Not being influenced by personal gain.
- Rationality, meaning adherence to objective truth.
- Functional specificity, namely expertise in the field of notarial affairs.
- Solidarity among colleagues to maintain the quality and dignity of the profession.

Based on the spirit of the notarial code of ethics and possessing the characteristics of the notarial profession, the duties of a notary can be divided into:

#### General Duties

- The notary always carries out their duties to the highest standard with trustworthiness, honesty, diligence, independence, and impartiality.
- The notary, in performing their duties, should not be influenced by personal gain.
- The notary does not boast about themselves and does not receive remuneration for the work they undertake.
- The notary only provides information or opinions that can be proven to be true.
- The notary endeavors to be a pillar of society in their field of expertise.

#### Notary's duties towards clients

- The notary must sincerely and sincerely act towards clients and utilize all their knowledge. If they do not (fully) understand a specific legal area in the preparation of a deed, they are obliged to consult with other colleagues who have expertise in the relevant matter.
- The notary must keep confidential everything they know about the client's issues because of the trust placed in them, even after the client's death.

Therefore, if a notary is found guilty of intending to authenticate a notarial deed in the case of the donation of a foundation legal entity, the notary may be subject to sanctions for their negligence in committing the unlawful act. However, this is subject to the decision and consideration of the court first.

The sanctions that a notary may face include administrative sanctions such as verbal reprimands, written reprimands, postponement of rank, demotion, honorable dismissal, and dishonorable dismissal. There are also criminal sanctions, such as violations related to the use of income forms and the remaining proceeds of activities that are not reinvested in the educational legal entity, as stipulated in Article 37 paragraph (6) of the Education Legal Entity Law, within a maximum of 4 (four) years, the criminal sanction may be imprisonment for up to five years and may be accompanied by a fine of up to Rp500,000,000.00.

If a notary commits a violation or error in carrying out their duties and authority, the deed made by or before them may result in being null and void, cancellable, having only the evidential power of private deeds, and may cause the notary to be liable for damages. Legal steps if a notary suffers harm;

#### **- Reporting to the Regional Supervisory Board**

A notary suspected of violating the code of ethics or the duties of a notary as regulated in the Notary Law may be reported to the Regional Supervisory Board for examination and proceedings.

#### **- Civil Lawsuit**

If a notary is suspected of violating civil provisions, namely if the act causes harm, the notary may be sued in the District Court based on Article 1365 of the Civil Code regarding unlawful acts.

#### **- Criminal Report**

When a notary is suspected of violating criminal law, they may be reported to the police. Although this is not specifically regulated in the Notary Law and its amendments, the imposition of criminal sanctions

is carried out based on provisions stipulated in laws and regulations containing criminal sanctions such as the Criminal Code.

Thus, the facts indicate a tendency for society to establish foundations to seek refuge behind the legal status of a foundation, which is not only used as a platform for developing social, religious, and humanitarian activities but also sometimes aims to enrich the founders, administrators, and supervisors.

In line with this trend, various problems arise, including issues related to foundation activities that do not align with the stated purposes and goals in the budget, disputes between administrators and founders or other parties, and allegations that the foundation is used to harbor wealth obtained unlawfully from the founders or other parties. These issues cannot be resolved legally until there is positive law regarding foundations as the juridical basis for their resolution.

The purpose of the law is to provide correct understanding to the public about foundations, ensure legal certainty and order, and restore the function of foundations as legal institutions to achieve specific goals in the social, religious, and humanitarian fields. This is a general explanation of Law Number 16 of 2001.

#### 4 | CONCLUSION

Based on the findings and discussions of this research, the following conclusions can be drawn:

1. Yayasan Jaga Garaga was transferred by way of donation, and its establishment obtained approval from the Ministry of Law and Human Rights. Regarding the transfer of Yayasan Jaga Garaga by way of donation, it is categorized as a legal act that does not comply with legal provisions, thus rendering the donation of Yayasan Jaga Garaga null and void.

The appointment of all "New" organs of Yayasan Jaga Garaga to "Other Parties" inherently lacks absolute legal validity because it does not conform to juridical regulations (Yayasan Law).

2. Deed Number 82 and Number 67 are products of the notary, and their legal consequences are the responsibility of the notary. It is only appropriate for a notary, in carrying out their duties and responsibilities as a public official authorized to create authentic deeds, to be burdened with responsibility for their actions. This responsibility manifests as a willingness to fulfill the obligations of a notary, wherein they are responsible for the substantive truth and formal correctness of the notarial deeds they create. The notary is not only responsible for the formal aspect of authentic deeds as regulated by laws and regulations but also liable for negligence and errors in the content of deeds made before them. This is a form of material responsibility of the notary, which can be outlined as follows:

- Administrative responsibility of the notary.
- Notarial responsibility in civil law, where the juridical construction used in the civil responsibility for the substantive truth of deeds made is the construction of unlawful acts.
- Notarial criminal responsibility, relates to criminal provisions not regulated in the Notary Law if the notary commits criminal acts that violate the law.

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## B. Tesis

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