

Juridic Implications of Government Policy in Law on the Implementation of Higher Education Foundations

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Abstract

This study focuses on the implications of government policies in legislation on the implementation of higher education. This research method is normative with a concept/theory approach, legislation, and cases. The data used is secondary data in the form of primary and secondary legal materials. The results of the study indicate that government policies in the legislation on foundations and higher education have implications for the establishment of foundations which were previously based on custom and jurisprudence, and were then required to conform to the law on foundations. On the management side, foundation organs consisting of coaches, administrators and supervisors are required to comply with the applicable foundation and higher education laws and regulations. by maximizing the performance of the elements of the foundation's organs and the existing higher education leaders according to their respective duties and functions and responsibilities to realize the social goals of the foundation. Foundation organs are prohibited from holding concurrent positions within the foundation and in the administration of higher education. In the appointment of foundation organs, it is forbidden to be affiliated between the coaches, administrators and supervisors. Supervision of foundations is carried out by internal supervisors appointed by the foundation, and external supervisors from the government, namely from relevant agencies and the community. Deviations in the organization of foundations and higher education institutions may be subject to criminal, civil and administrative sanctions according to the type and level of violation of the organ concerned.

Keywords

Implications; juridical;
government policies; legislation;
foundations; higher education



I. Introduction

In the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia), one of the goals of the state is to educate the nation's life through efforts to promote education. This state obligation is emphasized in the articles of the 1945 Constitution of the Republic of Indonesia. The essence of the provisions of the rights of citizens in the field of education which is the constitutional obligation of the state (government) to implement it. This shows that education as a basic need of every human being and its implementation is directed at philosophical values such as religious values and civility which implicitly emphasizes the principle of state responsibility. In addition, the spirit of the content of Article 31 paragraph (4) of the 1945 Constitution of the Republic of Indonesia as a form of the state's basic obligation to provide education by determining the minimum budget for education and state finances shows that the implementation of education is socially oriented or does not become an economic and social burden for citizens.

The constitutionality provisions in the field of education and the spirit of the Law on Higher Education raise legal, social and economic problems at the normative and practical level in relation to the existence of foundations that organize Private Higher Education (PTS) as their business. Foundations as social bodies are given a juridical space to together with the government organize higher education which is constitutionally a basic obligation of the state. This is stipulated in Article 60 of the Higher Education Law. The statutory provisions have provided space for the community to participate in educating the nation through efforts to advance higher education. In the field of business, foundations that provide higher education are normatively bound by legal provisions governing aspects of higher education administration, but on the other hand, the existence of legal entities refers to legal provisions that specifically regulate foundations, namely Law Number 16 of 2001 concerning Foundations (State Gazette of the Republic of Indonesia of 2001 Number 112, Supplement to the State Gazette of the Republic of Indonesia Number 4132) as amended by Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations (State Gazette of the Republic of Indonesia of 2004 Number 115 ,

Legal, social and economic problems at the normative and practical levels are related to the existence of foundations that organize Private Higher Education (PTS) as their business, among others, seen in the management of higher education foundations and deviating from the essence of its philanthropic founding philosophy. This problem arose or occurred before and since the enactment of the 2001 Foundation Law (Law Number 16 of 2001 concerning Foundations). Suryarama, who stated that: There are many reasons why the foundation deviates from the philosophical goals of its founding. First, it is difficult to define what is meant by social activity. Is education included in the definition of social activity? In fact, many educational institutions are after profit, it is often said that to get a good education one has to pay dearly... Second, another cause of deviation comes from the laws and regulations. In various regulations^{sp}In the legislation, it can be found provisions that require the implementation of a activities carried out by the foundation. For example in the education sector, private universities must be managed by foundations. Third, the Foundation is used as a Limited Liability Company to seek profits, either directly or indirectly.

In connection with this, there have been many legal cases that have occurred recently, for example: the case of one dispute between the two Chancellors for the case of the Veterans University of the Republic of Indonesia in Makassar and the case of Pepabri University in Makassar. Another case is the dispute over the ownership of the Trisakti University Jakarta, the case of the Djadajat Maritime Academy (AMD) Jakarta with the Djadajat Shipping Education Foundation (YPPD) 1963. The same case in the crisis over the Bondowoso Gotong Royong Education Foundation as the organizer of the Bondowoso University in East Java, The Bosowa Foundation Case Takes Over 45 Makassar University.

These cases still occur even though the government has issued various policies in the form of legislation, the essence of which is how to manage ideal foundations and higher education, supervision and sanctions if there are violations in their management. Therefore, the researcher considers it necessary to re-examine how government policies are in the order of statutory norms towards the implementation of higher education foundations and the legal implications if there are deviations in their management.

II. Research Method

This research using normative legal research methods, through legislation, conceptual/theoretic approaches, and cases regarding foundations that provide higher education. The data used is secondary data sourced from legal materials. The data analysis used is descriptive qualitative.

III. Result and Discussion

3.1 Government Policy in Establishing Foundations

Government policies set out in legislation can also be called government legal policies, which Edwards and Sharkansky refer to as government public policies. According to Edwards and Sharkansky that public policy can be clearly defined in legislation or in the form of speeches by government officials or also in the form of programs and actions taken by the government. This means that the government's public policies are carried out at certain times in order to meet the needs of the community in certain fields, such as the field of organizing higher education foundations which includes the establishment and management of them.

Prior to the existence of positive law, in this case the law on foundations, the foundation institution already existed and its existence was recognized in the traffic of legal customs in Indonesia, including in jurisprudential decisions. To understand whether a foundation is a legal entity or not, we look at Paul Scholten's opinion, a foundation is a legal entity, which was born from a unilateral statement by appointment, how the wealth is managed and used. The statement must contain the separation of a property for a specific purpose.

According to AB. Susanto, et al. that the Foundation has been recognized as a private legal entity, which means it is recognized as an independent legal subject regardless of the legal subjects of the founders or administrators. As an independent legal subject, it means that the foundation can bear the rights and obligations to carry out any legal relationship with third parties. When to become a legal entity according to UUY, it is since the deed of establishment made before a notary and ratified by the Minister of Law and Human Rights Legislation of the Republic of Indonesia.

Affirmation of the existence of foundations after the enactment of the Foundation Law can be seen in Article 71 Paragraph (1) of the UUY that when this Law comes into force, Foundations that: a). have been registered in the District Court and announced in the Supplement to the State Gazette of the Republic of Indonesia; or b). has been registered with the District Court and has a permit to carry out activities from the relevant agency; continue to be recognized as a legal entity with the provision that within a period of no later than 3 (three) years as from the enactment of this Law, the Foundation is obliged to adjust its Articles of Association with the provisions of this Law. Then Article 71 Paragraphs (2) and (3) UUY that Foundations that have been established and do not meet the provisions as referred to in Paragraph (1),

The foundation as referred to in paragraph (1) must be notified to the Minister no later than 1 (one) year after the adjustment is made. Article 71 Paragraph (4) Foundations that do not adjust their Articles of Association within the period as stipulated in paragraph (1) and Foundations as referred to in paragraph (2) cannot use the word "Foundation" in front of their name and may be dissolved based on a court decision at the request of the Prosecutor's Office. or interested parties.

Recognition of the existence of the foundation is intended for foundations that existed before the Foundation Law. Foundations to be established are regulated through Government Regulation Number 63 of 2008, which has been amended by Government Regulation Number 2 of 2013 concerning Amendments to Government Regulation Number 63 concerning Implementation of the Foundation Law. The procedure for establishing a foundation according to the foundation laws and regulations in Indonesia, basically there are 3 stages in the establishment process, as follows:

a. Establishment Stage

The establishment of a foundation can be carried out by one or more people (people here can mean individuals or legal entities) by separating some of the initial assets. The basic process of establishing this foundation can be in the form of an agreement between the founders of the foundation that carries out social, religious, and humanitarian activities or can be based on a will.

The establishment process itself is carried out by notarial deed and made in Indonesian. Except for the establishment of foundations by foreigners or together with foreigners, it will be further regulated by Government Regulation. This has been regulated in Chapter.V. Government Regulation Number 63 of 2008 concerning the Implementation of Law on Foundations (PP Foundation), as amended by Government Regulation Number 2 of 2013 concerning Amendments to Government Regulation Number 63 of 2008 concerning Implementation of Law on Foundations (PP Foundation for Change). To establish a foundation by an Indonesian, where the initial capital comes from the separation of the founder's personal assets, at least Rp. 10 million and what is meant by value is if the assets separated are not in rupiah, the value of the assets is equal to Rp. 10 million. If the establishment of a foundation is based on a will, it must be done with an open will. and implemented as described in Article 9 PP Foundation, as follows:

1. The establishment of the foundation is directly contained in the relevant will by including the provisions of the articles of association of the foundation to be established; or
2. If the establishment of a foundation is based on a will, it must be done with an open will.
3. The establishment of the foundation is directly contained in the relevant will by including the provisions of the articles of association of the foundation to be established; or
4. The establishment of the foundation is carried out by the executor of the will as instructed in the will in accordance with the provisions of this Government Regulation Act.
5. Legal entity status for a new foundation arises after the deed of establishment of the foundation.

b. Validation Stage

The legal entity status for a foundation only arises after the foundation deed has been approved by the Minister of Law and Human Rights. The legal entity status for a new foundation arises after the foundation's deed of establishment has been approved by the founder or his proxies submit an application for approval to the Minister of Law and Human Rights within a period of 10 (ten) days from the date the foundation's deed of establishment was signed. within a period of no later than 30 (thirty) days from the date of receipt of a complete application. If the application for ratification is rejected, the refusal of the Minister of Law and Human Rights must be notified in writing along with the reasons

to the applicant. The reason for the refusal is that the application submitted is not in accordance with the provisions of this law and/or its implementing regulations. Legal actions carried out by the management on behalf of the foundation before the foundation obtains the status of a legal entity are the responsibility of the management jointly and severally.

c. Announcement Stage

The deed of establishment of the foundation which has been legalized as a legal entity must be announced in the Supplement to the State Gazette of the Republic of Indonesia. The announcement is made by the Minister of Law and Human Rights within a period of no later than 14 (fourteen) days as from the deed of establishment of the foundation is ratified. Announcements are subject to a fee determined by a Government Regulation. After the three stages of the process are carried out (establishment, ratification, and announcement), the foundation has been legally established as a legal entity.

3.2. Government Policy in the Management of Higher Education Foundations

Advances in science and technology, economic and political stability are some of the aspects that become indicators of the level of development and progress of a nation. To achieve these two things, the state must strive for the development of education at various levels, namely: primary level, secondary level, and tertiary level. The realization is the privatization of higher education institutions by reducing state subsidies or even increasing the cost of education.

Education is a necessity in human life which is the realization of educational activities, efforts or good deeds that are systematically planned to achieve goals. These efforts and activities lead to businesses that affect the accountability of education, the quality of "output" and education providers. Specifically for the organizers, they must be legal entities and have social goals. If this can be realized, it will show human integrity who is always devoted to God Almighty and has noble character. This means that educational institutions with their own systems, education managers have their own rules, so that those who experience direct influence are users of educational services. This must be directed to be in line with the essence of the purpose of Law no.

The purpose of both is synergy and brings social benefit, and is combined as a process of realizing the ideals of the Indonesian people. The development of foundations that manage higher education which actually brings in large profits is increasingly in demand by managers and/or founders of foundations, so that the structure and mechanism of administration must be truly proportionate. The above description directs the understanding that the provision of education is part of the activities of the foundation, so the need for continuity of work. Likewise, the dynamic development of the organization of education by foundations must be directed in a structured manner.

The management of higher education foundations must be directed based on the social objectives of the foundation, with an indication that the structure of the education administration is in accordance with the provisions of the applicable legislation. Even between the structure of education administration and the structure of the foundation must be adjusted based on the relevant functions and objectives. Foundation organs are prohibited from holding concurrent positions both within the scope of fellow foundation organs and with organs in the administration of higher education. In Foundation Organs, Trustees may not hold concurrent positions as members of the Management and/or Supervisory members (Article 29 of the Foundation Law), Foundation Managers may not concurrently serve as Trustees or Foundation Supervisors (Article 31 paragraph (3) of the

Foundation Law), and Foundation Supervisors may not concurrently as Trustees or Foundation Management (Article 40 paragraph 4 of the Foundation Law).

In the Dikti Circular, it is emphasized as follows: a). Trustees/management/supervisors of the foundation are prohibited from concurrently serving as leaders/lecturers/staff of the tertiary institution they organize; b). Trustees/managers/supervisors of the foundation who nominate themselves as the head of the higher education institution they are organizing, are obliged to resign from the organ of the foundation; c) Trustees/management/supervisors of foundations who hold concurrent positions as leaders/lecturers/staff of higher education institutions that they organize should immediately adjust as of the stipulation of this circular letter. In connection with this, the organization of education must emphasize the responsibility of the foundation and the service mechanism for financial matters, management and the orientation of the foundation's performance will facilitate the achievement of its goals and objectives.

3.3. Government Policy in Supervision of Higher Education Foundations

To realize the management of an agency will be good, if there are checks and balances in the management of the agency. Thus, power is not in one hand arbitrarily, but there is a need for supervision/control carried out by the supervisor. Supervision on the organization of higher education foundations can be internal to the foundation and or external to the foundation. In terms of internal supervision of the foundation, the builder shall appoint a supervisory organ in charge of supervising and providing advice to the management of the foundation in carrying out the activities of the foundation (Article 40 paragraph (1) of the Foundation Law). in higher education foundations in its implementation there is internal supervision and external supervision.

Internal supervision is carried out by a supervisory organ appointed by the foundation supervisor on duty as regulated in Article 40 of the Foundation Law. While the external supervisors are: first, the Government in this case the agency related to the implementation of higher education foundations, this means the Ministry of Law and Human Rights in terms of legal entities, and the Ministry of National Education related to its educational business activities. Second, the public on the basis of the foundation's obligation to publish the foundation's annual wealth report to be known by the public. Third, the Court at the request of third parties, the public and the Prosecutor's Office in the case that the foundation is detrimental to the state. If in the organization of a higher education foundation there is a violation according to the applicable laws and regulations, an examination will be carried out on the foundation.

In the foundation law, it is known that there is an institution for examining foundations, whose function is to reveal the occurrence of deviant events/deeds committed by the organs of the foundation. In this regard, there are several things that need to be considered in carrying out the inspection as follows:

a. Reason for Foundation Examination

In the provisions of Article 53 paragraph (1) there are several reasons to conduct an examination of the foundation, if there is an allegation that the organ of the foundation has committed an act, in the form of: 1) Committing an act against the law or contrary to the articles of association. 2) Negligent in carrying out their duties. 3) Performing actions that are detrimental to the foundation or third parties, or 4) Performing actions that are detrimental to the state.

The condition that must be met in order to be able to carry out an examination of a foundation is that there must be a strong suspicion that the organ of the foundation has

violated one of the reasons mentioned above. As for those who commit irregularities, generally the organs of the foundation are supervisors, administrators, and supervisors, while foundation employees such as people who work in the administration and errands are not included in the organs of the foundation.

Regarding deviant acts on the grounds of committing unlawful acts or contrary to the articles of association of the foundation as referred to in Article 5 paragraph (1) of the Foundation Law letter a above, that which is meant by unlawful acts cannot be separated from the provisions of Article 1365 of the Civil Code, because This article is the legal basis.

In Article 1365 of the Civil Code, an unlawful act is given the understanding, every act that violates the law, which brings harm to another person, obliges the person who because of his fault in issuing the loss to compensate for the loss. Based on these provisions, there are elements to qualify as unlawful acts, namely violations of the law, errors, losses, and causality between cause and effect.

The definition of unlawful acts is very broad, not only acts that include violations of legal regulations, but since the issuance of the Hoge Raad decision in the Netherlands on January 31, 1919, the definition of unlawful acts includes acts that are contrary to norms. - Norms of decency, appropriateness, and decency that apply in the social life of the community.

Supervision of foundation legal entities by the Ministry of Law and Human Rights through supervision of foundation establishment whether or not its activities are in accordance with the aims and objectives of its initial establishment, then supervision of the foundation's business field, namely higher education, supervision by the Ministry of National Education, Culture, Research and Technology and all staff both at the center and in the regions, such as through the Coordination Office for Private Higher Education (Kopertis) which is currently called the Higher Education Service Institute (LLDikti) in their respective regions. Although external supervisors have been active in supervising, there are still various irregularities in the organization of foundations and universities, such as the case of the Makassar Timur Indonesia Foundation which was bankrupted by the decision of the Commercial Court in case Number 4/Pdt/-sus/-pkpu/2021/PN Niaga Makassar over the name of the East Indonesia Foundation was declared bankrupt with all the legal consequences. The bankruptcy of the foundation that affected the University of East Indonesia must be carried out by the New Manager.

b. Foundation Examination Procedure

The existence of alleged irregularities within the foundation does not necessarily mean that interested parties can easily conduct an inspection of the foundation. The provisions of Article 53 paragraph (2) and paragraph (3) of the Foundation Law require that an examination of a foundation be carried out based on a court order. With such a procedure, it appears that there is court intervention in the field of supervision, the purpose of which is to protect the foundation from arbitrary acts by third parties.

The court that has the authority to issue the decision is the district court, because the application case is a general civil case, which is included in the absolute competence of the general court. The application for examination of the foundation is submitted to the district court in the jurisdiction where the foundation is domiciled. As for who can submit the application to the court, in principle it is a third party. Third parties are parties outside the foundation.

In the Foundation Law, it specifies the party submitting the application, namely by distinguishing between an interested third party and the prosecutor's office, even though

the prosecutor's office is actually a third party. Applications for examination with allegations as referred to in letters a, b and c of Article 53 Paragraph (2) of the Foundation Law are submitted by a third party, while applications for examination with allegations that a foundation organ has committed an act detrimental to the State shall be submitted by the public prosecutor's office in his capacity to represent the public interest. From this, it can be seen that the difference lies between the third party and the attorney whose position is the same as the applicant. Prosecutors apply to represent the public interest, while third parties only represent their personal interests. Then the application is required by Article 53 Paragraph (2) of the Foundation Law in writing, which means it must be with a letter of application, this is to facilitate court administration. In the case of this application, the third party or prosecutor is referred to as the applicant and the foundation party is referred to as the respondent.

The application letter after being registered with the court clerk, will be heard by a judge in a trial that is open to the public. In the trial the applicant has the right to prove the arguments of his application, on the other hand, the respondent also has the opportunity to prove the arguments of his refutation. In general, in the trial of civil cases, the evidence submitted is in the form of letter evidence and witnesses. The judge will make a decision in the form of a determination, after considering the evidence and the facts revealed at the trial. Not all applications will be decided to be granted by the court, because it really depends on the results of the evidence. If the applicant can prove his arguments his application will be granted, otherwise if he cannot prove, the applicant's application will be rejected. One of the things that must be considered by the judge in making a decision on this application case is that if the application the applicant is granted then in the decision must appoint an expert person as the examiner of the foundation. The provisions of Article 53 Paragraph (2) of the Foundation Law which states that in the event that the court grants the request for examination of the foundation, the court issues a determination for examination and appoints a maximum of 3 (three) experts as examiners to conduct the examination.

The determination of a judge who grants the application but does not appoint an expert (examiner), then the determination is meaningless, because the examination of the foundation is carried out by people who are not experts, the results will be in vain. The judge in determining the appointment of the expert is not caused solely by the judge because of his position (*ex officio*), but because of the law that determines so. So the appointment of experts must be requested by the applicant in his application letter, and convey to the court about people who can be considered as examiners. Then the court judge examines the proposed person and considers whether he really has the expertise as an examiner.

3.4. Policy in Foundation Sanction System.

The results of the foundation's supervision activities will be followed up with an examination of the tertiary institution as a foundation's business. If there is sufficient evidence of alleged violations of the applicable laws and regulations, it will be resolved fairly, beneficially and with legal certainty. This means that it is necessary to apply sanctions as a characteristic of a law. According to Jan Rimmelink that in addition to criminal sanctions, there are still civil sanctions, disciplinary sanctions (*tuchtsanctie*) contained in the disciplinary law (*tuchrecht*), and administrative sanctions known as *bestuursstrafrecht* (criminal law of state administration) which have specific origins from government relations - inhabitant.

Likewise, government policies are made in the form of laws and regulations such as Law No. 16 of 2001 concerning Foundations, which has been amended by Law No. 28 of 2004 concerning amendments to Law No. 16 of 2001 concerning Foundations. with all its implementing regulations and Law No. 20 of 2003 concerning the National Education System, Law no. 12 of 2012 concerning Higher Education with all its implementing regulations. These laws and regulations all have sanctions if they are violated, in the form of criminal, civil and administrative sanctions. In connection with this, there are several forms of law violations and sanctions in the organization of higher education foundations, as follows:

a. Violation of the law by the Foundation Organ.

The foundation law regulates several things that are prohibited in the organization of educational foundations, such as the prohibition to hold concurrent positions for foundation organs (coaches, administrators and supervisors) as regulated in Article 29, 31 paragraph 3, 40 paragraph 4 of the Foundation Law, prohibition on distributing foundation wealth from the proceeds of the foundation. the business of the foundation to the builder, supervisor, administrator (except with conditions) is regulated in Article 3 paragraph 2 of the Foundation Law, prohibiting the transfer or distribution of foundation assets (Article 5 of the Foundation Law).

The application of criminal sanctions in the event of a violation of the provisions of Article 5 of the Foundation Law, which is punishable by a maximum imprisonment of 5 (five) years (Article 70 paragraph 1 UUY). In addition to the basic punishment, additional penalties are added in the form of an obligation to return money or goods or assets transferred or distributed by the relevant foundation organ (Article 70 paragraph 2 UUY). The return of money or goods to the foundation is the civil responsibility of the management for harming the foundation (civil sanctions).

Regarding the prohibition of concurrent positions if violated there are no sanctions, even though the sanctions are needed so that the coaches, administrators or supervisors do not carry out concurrent positions that can harm the foundation. If a foundation organ holds concurrent positions in the foundation, at least an administrative sanction is given, meaning dismissal from one of his positions or dismissal from all positions he holds in the foundation, even more firmly if there are criminal sanctions regulated in the Foundation Law and confirmed in the Foundation's Articles of Association.

Then the application of civil sanctions, if bankruptcy occurs due to the error or negligence of the Management and the assets of the Foundation are not sufficient to cover the losses due to the bankruptcy, then each member of the management is jointly and severally responsible for the loss (Article 39 paragraph 1 UUY), except if the foundation management can prove that it is not their fault or negligence then they are not responsible for the loss as referred to in paragraph 1 (Article 39 paragraph 2 UUY).

b. Violation of Law by Higher Education Institutions

As it is known that Higher Education Institutions are activities or businesses of foundations. Higher Education is led by a Rector (University / Institute), Chair (High School) and Director (Academy), who are also responsible for its management. higher education institutions not to violate the law on the management of the higher education system.

There are several provisions in the law if violated, it will be subject to sanctions in the form of administrative sanctions and criminal sanctions. The two sanctions can be described as follows:

1). Administrative Sanctions.

Administrative sanctions are intended to be contained in Article 92 of the Company Law which stipulates that universities that violate the provisions as stipulated in Article 92 paragraph 1 may be subject to administrative sanctions, in the form of: a) written warning; b) temporary suspension of tuition assistance from the government; c) Temporary suspension of educational implementation activities; d) Termination of construction; and/or e) Revocation of license (Article 92 paragraph 2 UUPT).

The provisions that may be subject to administrative sanctions as stated in Article 92 paragraph 1 of the Higher Education Law include the following:

1. The implementation of academic freedom, freedom of academic pulpit, and scientific autonomy in Higher Education is the personal responsibility of the Academic Civitas, which must be protected and facilitated by the leadership of the Higher Education (Article 8 paragraph 3 UUPT).
2. Undergraduate programs are required to have lecturers with minimum academic qualifications from master's degree programs or equivalent (Article 18 paragraph 3 UUPT).
3. The master's program must have lecturers who are academically qualified graduates of the doctoral program or its equivalent (Article 19 paragraph 3 UUPT).
4. The doctoral program must have lecturers who are academically qualified graduates of the doctoral program or the equivalent (Article 20 paragraph 3 UUPT).
5. The diploma program as referred to in paragraph (3) is required to have Lecturers with minimum academic qualifications graduates from a master's program or equivalent (Article 21 paragraph 4 UUPT).
6. The applied master's program is required to have lecturers who are academically qualified graduates of a doctoral program or its equivalent (Article 22 paragraph 3 of the Company Law).

2). Criminal sanctions

Criminal sanctions are intended to be contained in Article 93 of the Higher Education Law which states that individuals, organizations, or higher education providers who violate the provisions referred to in Article 93 are sentenced to a maximum imprisonment of 10 (ten) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

The provisions referred to in the 93 UUPT that can be punished are as follows:

- a. The provisions in Article 28 are in the form of:
 1. Individuals, organizations, or higher education providers without rights are prohibited from awarding academic degrees, vocational degrees, or professional degrees (Article 28 paragraph 6 of the Company Law).
 2. Individuals without rights are prohibited from using academic degrees, vocational degrees, and/or professional degrees (Article 28 paragraph 7 of the Company Law).
- b. Individuals, organizations, or higher education providers without rights are prohibited from giving diplomas (Article 42 paragraph 4 UUPT).
- c. Individuals, organizations, or higher education providers without rights are prohibited from providing professional certificates (Article 43 paragraph 3 of the Company Law).
- d. Individuals, organizations, or higher education providers without rights are prohibited from providing competency certificates (Article 44 paragraph 4 UUPT).

- e. PTS are established by the community by forming an organizing body with a non-profit principle and must obtain a permit from the Minister (Article 60 paragraph 2 of the Company Law).
- f. The provision in Article 90 paragraph 4 states that the Higher Education institution of another state as referred to in paragraph (1) is obliged to: a) Obtain a Government permit; b) Non-profit principle; c) Cooperating with Indonesian Universities with the permission of the Government; d) Prioritizing lecturers and education personnel of Indonesian citizens.

IV. Conclusion

Government policies in the Foundation and Higher Education Legislation have implications for the establishment, management, supervision and sanctions of foundations. The establishment of a foundation which was previously based on custom and jurisprudence, whose position as a legal entity is still often questioned, however, after the issuance of the Foundation Law, its status as a legal entity was firmly recognized with provisions conforming to the provisions of the Foundation Law.

On the management side, foundation organs consisting of supervisors, administrators and supervisors, as well as leaders of higher education institutions as business managers of foundations are required to comply with applicable foundation and higher education laws and regulations, by maximizing their performance according to their respective duties and functions and responsibilities to realize the social goals of the foundation. Foundation organs are prohibited from holding concurrent positions within the foundation and in the administration of higher education. In the appointment of foundation organs, it is prohibited to be affiliated with the supervisor, management and supervisor.

Supervision of foundations is carried out by internal supervisors appointed by the foundation, and external supervisors from the government, namely from relevant agencies and the community. Deviations in the organization of foundations and higher education institutions may be subject to criminal, civil and administrative sanctions according to the type and level of the respective violation.

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