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The Legal Status of Private Higher Learning Foundation Does Not Adapt Its Articles of Association Based on Foundation Act in Aceh

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Abstract

The implementation of higher education institutions in Indonesia consists of three categories, namely State Universities (PTN), Private Universities (PTS), and Official Universities (PTK). Especially the implementation of private tertiary institutions, where the implementation is given to the community and is not managed by the government. According to the Higher Education Law, private tertiary institutions are tertiary institutions established and/or organized by the public, as stipulated in Article 60 paragraph (2) of Law No. 12 of 2012 concerning Higher Education (Higher Education Act) which reads private tertiary institutions are established by the community by forming an organizing body with a non-profit legal entity

and is required to obtain a permit from the Minister, and Article 60 paragraph (3) of the Higher Education Law states that the organizing body as referred to in paragraph (2) can be in the form of a foundation. According to Article 71 of Law No. 28 of 2004 concerning Foundations, it is determined that foundations that existed before the issuance of the Foundation Law must also adjust their articles of association with the Foundation Act. This is intended so that the implementation of these tertiary institutions obtains guarantees of legal certainty. However, in reality there are still many foundations, especially those that organize higher education (private universities) that have not adjusted their statutes to comply with the foundation law.

Keywords: Legal Status of the Foundation, Private Higher Learning, Foundation Articles of Association

1. Introduction

Higher education is the level of education following upper secondary education and includes diploma, bachelor's, master's, specialist and doctoral programmes. Higher education has the important functions of cultural center, developing science and technology, cultivating high-quality talents, and shaping national morality. This situation is achievable if the higher education institutions are implemented properly and the quality of the higher education institutions is sustained. The "Higher Education Law" No. 12 of 2012 (hereinafter referred to as the "Higher Education Law") stipulates that higher education is a level of school-based education higher than secondary education.

Higher education is an education that leads to a degree for those who, through schooling, have the opportunity to study at the highest level.¹ Based on the form of higher education can take the form of universities, institutes, colleges and academies. Education programs at tertiary institutions consist of Diploma one, Diploma two, Diploma three, Bachelor, Postgraduate, Professional and Doctoral programs.²

The higher education institutions implemented in Indonesia include three categories: (PTN), private universities (PTS) and official universities (PTK). Especially the implementation of private universities, whose implementation is the responsibility of society, not managed by the government. According to the Higher Education Law, a private higher education institution is a higher education institution established and/or held by a community. According to the second paragraph of Article 60 of the Higher Education Law, a private higher education institution is an organization established by a community through a legal person and has a non-profit nature, which must be approved by the Minister, Section 60(3) of the Higher Education Act provides that the organization referred to in Section 2 may take the form of a foundation. Foundation is known as "stichting" in Dutch, meaning "institution", from the word "stichten", meaning "to build" or "to erect".³

¹ Dwi Siswoyo, dkk, 2007, *Ilmu Pendidikan*, PT. Remaja Rosdakarya, Bandung, 2006, hlm. 35

² Taliziduhu, Ndraha, *Pengantar Pengembangan Sumber Daya Manusia*, Rineka Cipta, Jakarta, 1997, hlm 47

³ Borahima Anwar, *Kedudukan Yayasan di Indonesia: Eksistensi, Tujuan dan Tanggungjawab Yayasan*, Kencana, Jakarta, 2010, hlm. 65

A foundation is a legal entity consisting of assets that are separated and intended to achieve certain goals in the social, religious and humanitarian fields that do not have members as stated in Article 1 number 1 of Law Number 16 of 2001 concerning Foundations (hereinafter referred to as the Foundation Law). The existence of foundations in Indonesia has been known for a long time. The recognition of legal entities towards foundations in Indonesia was initially based only on custom and jurisprudence, but it was not known with certainty when a foundation became a legal entity, because there were no provisions governing this beforehand. Although there is no law that explicitly states foundations as legal entities, several Indonesian legal experts are of the opinion that foundations are legal entities. To be able to find out what a foundation is, there are several views of experts, as according to Poerwadarminta in the dictionary, it generally gives the meaning of a foundation, namely an agency established with the intention of running something like a school and so on (as a legal entity with capital, but not having members, and buildings that are especially for a specific purpose such as a hospital, and so on.⁴

According to Achmad Ichsan, foundations do not have members, because foundations occur by separating assets in the form of money or other objects for ideal purposes, namely (social, religious and humanitarian), while the founders can be the government or civilians as grantors, forming a administrators to manage the implementation of that goal.⁵

According to Zainul Bahri, the dictionary generally provides a definition of a foundation as a legal entity established to provide assistance for social purposes.⁶

The birth of the Law on Foundations which was renewed by Law Number 28 of 2004 concerning Foundations (hereinafter referred to as the Law on foundations) is a bright spot for Foundation institutions which have long grown and developed without any formal legal basis governing Indonesia. As the aim of establishing a foundation is to achieve certain goals in the social field, currently many foundations are taking part in the administration of private tertiary institutions.

Based on the Law on Higher Education, a private tertiary institution can be run by a foundation if after obtaining a permit for establishment by the Minister administering government affairs in the field of higher education, in this case the Ministry of Education, Culture, Research and Technology. Of course, before the issuance of the Law on Foundations, many foundations had already organized private tertiary institutions as a form of foundation activity in the social sector. However, the existence of the Foundation Act brings a logical consequence that currently every foundation establishment must refer to the provisions in the Foundation Act, so that the position of the foundation will become clear.

For foundations that existed before the issuance of this Law on Foundations, they must also adjust their articles of association with the Law on Foundations. This is stated in Article 71 of Law No. 28 of 2004 which states:

1. At the entry into force of this Act, the following bases will be established:

- a. Registered with the District Court and published in the Supplementary Gazette of the Government of the Republic of Indonesia, or
- b. Registered with the District Court and entitled to perform the activities of the competent authorities. If a foundation is established within three (three) years from the date of entry into force of this law, it is still considered a legal entity and is obliged to adjust its constitution to comply with the provisions of this law.

2. A foundation which has been established but does not comply with the provisions of subsection (1) may acquire the status of a legal entity in accordance with the provisions of this Act and, no later than one (one) year from the date of entry into force of this Act.

3. A foundation within the meaning of subsection (1) must notify the Minister within one (one) year of the adjustment being implemented.

4. If the Foundation as referred to above does not make adjustments to its articles of association in accordance with what has been determined within the period referred to in paragraph (1) and the Foundation as referred to in paragraph (2), then the foundation based on a court decision can be dissolved and cannot use the word "Foundation" in front of its name.

The implementation of private tertiary institutions in Aceh is dominated by foundations as the organizing bodies, compared to associations or associations and so on. Based on initial data from Region XIII Higher Education Service Institutions (LLDikti) there are 69 (sixty-nine) foundations as private higher education providers and based on the results of preliminary observations found data and information that there are still private higher education organizing foundations which have not yet followed suit. Regulatory recommendations. There are several private universities whose foundations have not adjusted the articles of association, including the Bunga Bangsa Idi Midwifery Academy organized by the Bunga Bangsa Education Foundation, Academic Public Health Medical Nursing organized by the Meulaboh Public Health Medical Nursing Foundation, Banda Aceh Academy of Physiotherapy organized by the Harapan Bangsa Foundation, and the Academy of Radiodiagnostic and Radiotherapy Engineering organized by the Beurata Healthy Foundation.

In fact, there are still foundations that organize tertiary institutions that are late in making adjustments and registering the names of their foundations with the Ministry of Law and Human Rights (Kemenkumham) or even not making adjustments to their articles of association according to the provisions and due to not registering the name of the foundation with the Kemenkumham it could be that the name of the foundation has been registered by another foundation, so that if the foundation still doing the ratification, it is necessary to change the name of the foundation with a name that has not been registered with the Kemenkumham (In this case, because the foundation is in Aceh, registration with the Kemenkumham is carried out through the Regional Office (Kanwil) of the Aceh Kemenkumham).⁷ The change in name resulted in a

⁴ WJS. Poerwadarminta, *Kamus Umum Bahasa Indonesia*, Balai Pustaka, Jakarta, 1986, hlm.1154

⁵ Achmad Ichsan, *Hukum Dagang*, Pradnya Paramitha, Jakarta, 1993, hlm.110

⁶ Zainul Bahri, *Kamus Umum Khusus Bidang Hukum dan Politik*, PT. Angkasa, Bandung, 1996, hlm.367

⁷ Muhammad Isa, Efendi, Suhaimi, *Pelibatan Perancang Peraturan Kanwil Kemenkumham Aceh Dalam*

difference in the name of the foundation listed in the Decree of the Ratification of the Kemenkumham with the decree regarding permits to establish private higher education institutions that had been previously issued, causing problems.

Foundations as private tertiary institutions should have adjusted and re-registered with the Kemenkumham so that the existence of the foundation becomes a legal legal entity. If the foundation as the organizing body for higher education does not adjust and be re-registered with the Kemenkumham, then the administration of the tertiary institution does not guarantee legal certainty. Therefore, further studies are needed on the Juridical Implications of Foundations as Organizing Bodies of Private Universities That Have Not Yet Adjusted the Articles of Association with the Provisions of the Foundation Act in Indonesia.

Based on the background explanation, the problem identification is limited to a number of things, namely as follows: "What is the legal status of the Foundation as the Organizing Body for Private Higher Education which has not yet adjusted the Articles of Association with the Provisions of the Foundation Act No. 16 of 2001 Juncto Law No. 28 of 2004 Concerning Foundations which are still running private universities?"

2. Research Methods

So that the writing discussion in this study is accurate and directed from the analysis process to the data analysis process to problem solving in accordance with scientific criteria that can be scientifically justified, the researcher uses the following method stages:

a. The types and research approaches

This research is legal research that is empirical juridical in nature, namely law as a symptom of society, as a social institution or patterning behavior. This approach is known as empirical legal research or sociological law.⁸ The data in this study were obtained directly from the respondents.

b. Sources and data collection techniques. The data source is the place where the data is obtained. In empirical legal research, the data used are primary data and secondary data. Primary data is data that comes directly from the field, while secondary data is used as a support for primary data.⁹ The secondary data used in this study consisted of primary legal materials, secondary legal materials, and tertiary legal materials.¹⁰

The technique used in collecting data is done in 2 ways, namely: (1) Library Research, is the collection of secondary data in the form of applicable laws and regulations and documents related to the object under study as well as theories and legal principles related to the research material. (2) Field Research, obtained from respondents, which are respondents who provide answers to questions posed by researchers that have

something to do with the problem under study. In addition to respondents, there is also the term informant, namely a person who provides the required data information to the extent that he knows and the researcher cannot direct the answers as desired. Informants are needed in research to obtain qualitative data.¹¹ The data collection tool used in this study was through interviews, which were carried out directly using interview guidelines in a directed and systematic manner which were shown to the respondents.

c. Data analysis, the data analysis used in this research is content analysis. Namely data that is qualitative in nature, after being collected and then analyzed by descriptive-analytical method, which is a method in researching human groups, an object, situations and conditions, and systems of thought. The purpose of this descriptive-analytical research is to contain a description in the form of a systematically factual and accurate description of the facts and the relationship between the phenomena investigated.

3. Result and Discussion

The implementation of Private Higher Education in Aceh Province which is organized by the Foundation is a form of contribution given by the community in an effort to educate the nation's children and increase human resources with superior competitiveness for the future.

From the results of an interview with Mr. Reza Amanda Putra, S.H as a staff at the Region XIII Higher Education Service Institute stated that currently private higher education institutions are dominated by foundations, although there are also private higher education institutions which are organized by other legal entities such as associations or association.

There are currently 86 private higher education institutions in Aceh, hosted by 61 foundations. The legal basis for the implementation of private higher education institutions through foundations is governed by the Higher Education Law No.12 of 2012 (hereinafter referred to as the "Higher Education Law") and the Permendikbud No. 7 of 2020 concerning Establishment, Change, and Dissolution of Universities. State Universities, and Establishment, Amendments, Revocation of Permits for Private Higher Education (hereinafter referred to as Permendikbud PT). According to Article 60 paragraph (2) of the Higher Education Act, it is clarified that private higher education institutions are established by the society through administrative agencies, on the principle of non-profit status, and must be approved by the Minister, Article 60, paragraph 3, and paragraph 2, the organization can take the forms stipulated by laws and regulations such as foundations and associations. Therefore, when establishing a private tertiary institution by a foundation, the foundation must first submit its proposal to the Minister, in this case the Minister of Education, Culture, Research and Technology.

For any foundation wishing to organize a private tertiary education institution, the foundation must first fulfill the legality aspect, that is, each foundation that is established must have received legal entity approval from the Minister of Law and Human Rights, this is according to what is regulated under the Law on Foundations.

Pembentukan Qanun Kabupaten, *Kanun Jurnal Ilmu Hukum*, Vol.22(1), April 2020, p.73-88.

⁸ Ronny Hanitijo Soemitro, *Metode Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, 1990, hlm.34.

⁹ Ishaq, *Metode Penelitian Hukum*, Alfabeta, Bandung, 2017, hlm.71.

¹⁰ Soedjono Soekanto, Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, PT.Raja Grafindo Persada, Jakarta, 1995, hlm.13.

¹¹ Bambang Sunggono, *Metode Penelitian Hukum*, PT.Raja Grafindo Persada, Jakarta, 2011, hlm.118.

The legal problems that occur in higher education institutions are that there are several foundations that have not adjusted the statutes in accordance with the Foundation Law. Usually, these foundations run private tertiary institutions before the enactment of the Law on Foundations, meaning that the issuance of licenses to operate private tertiary institutions long before the Law on Foundations comes into force. Based on the results of tracing data on Higher Education Service Institutions (LLDikti) Region XIII, there are 4 private higher education institutions that have not adjusted their statutes, namely the Bunga Bangsa Idi Education Foundation, the Sihat Beurata Foundation, the Harapan Bangsa Foundation and the Public Health Medical Nursing Foundation.

From the results of an interview with Mr. Usman Abdullah as Chair of the Harapan Bangsa Foundation, he stated that his party had indeed not made any adjustments to the articles of association of his foundation. He stated that the deed of establishment of the Harapan Bangsa Foundation was founded in 1972 and in 1998 his party obtained permission to organize a private higher education institution named Harapan Bangsa Physiotherapy Academy awarded by the Minister of Health of the Republic of Indonesia. At the time of obtaining the PTS permit, there was no regulation stating that each foundation must obtain legal entity approval from the Minister of Law and Human Rights. Then in 2008 there was a policy of transferring PTS guidance from the Minister of Health to the Minister of National Education, his party had carried out the process and had been given permission to transfer coaching in 2008 starting with a request procedure from the foundation.

The Harapan Bangsa Foundation has not made any adjustments to the articles of association due to being late aware of the existence of regulations related to foundations. Accordingly, the Foundation Law has been enforced since 2001, however, due to this ignorance, they only started discussing this matter in 2008. At that time, the Harapan Bangsa Foundation's organs went to the Notary. to submit a file proposing an adjustment to the articles of association of the Harapan Bangsa Foundation, after the Notary had carried out the process it was conveyed to him that the name Harapan Bangsa Foundation had already been registered in the online data of the Ministry of Law and Human Rights, therefore they submitted another request to the Notary by proposing the establishment of a deed new foundation with the name "Yayasan Harapan Bangsa Darussalam". After fulfilling the existing terms and conditions, the Notary has processed the proposed establishment of the deed until the legal entity Harapan Bangsa Darussalam Foundation is ratified to the Ministry of Law and Human Rights.

Then from the results of an interview with Mr. Muhammad Denny as Chair of the Bunga Bangsa Idi Education Foundation, it was conveyed that his party had not made any adjustments to the deed of establishment due to ignorance of this information. The Bunga Bangsa Idi Education Foundation was founded in 2007 and organized a private higher education institution, the Bunga Bangsa Idi Midwifery Academy in 2008, from the information submitted, they had established a new foundation deed in 2010 with a different name, namely the Bunga Bangsa Idi Rayeuk Health Education Foundation. And has obtained legal entity approval from the Minister of Law and Human Rights. The establishment of the new foundation deed was based on certain reasons, one of which was wanting to

change the composition of the foundation's organs, because one of the old foundation's management had committed a violation against the foundation's activity units.

If seen from the description above, it can be conveyed that the Foundation did not make adjustments to the articles of association due to ignorance of regulations, but what became a legal problem from the facts described above was when the Foundation for certain reasons established a new Foundation Deed of Establishment with the name different. This will have an impact on the ownership of foundation assets, particularly with regard to permits to operate private higher education institutions. Because in the decree on operating permits for private tertiary institutions it is clearly stated that the college was organized by the initial foundation when managing the permit, and the problem was when the foundation had not adjusted the articles of association and during the process of adjusting the articles of association returned to using the steps with the deed of establishment of the foundation for certain reasons, giving rise to differences between the foundations mentioned in the decree on operational permits for private universities and foundations that have received legal entity approval.

Based on the results of an interview with Mr. Reza Amanda Putra, S.H as a staff member in the institutional field, it was conveyed that a foundation that has established a new deed by changing the name of the foundation, resulting in a difference between the foundation mentioned in the PTS operational permit decree and a foundation that has received legal entity approval, can resulting in legal consequences for the administration of tertiary institutions. Legally, the foundations mentioned in the Permit Decree and the new foundation that has received legal entity approval are 2 different foundations, meaning that there is a dualism of PTS organizing bodies. It is the duty of the government to review the legality of private higher education institutions. Notwithstanding government regulations, foundations that existed prior to the entry into force of the Foundations Act will continue to be treated as legal entities if the articles of incorporation are amended within three years of the entry into force of the Foundations Act. If this is not done, the Foundation will no longer be recognized as a legal entity, whereby all the tasks of the Foundation will be transferred to the individual and joint responsibility of the institutions of the Foundation for their private assets.¹²

4. Conclusion

The legal problems that occur in higher education institutions are that there are several foundations that have not adjusted the statutes in accordance with the Foundation Law. Usually, these foundations run private tertiary institutions before the enactment of the Law on Foundations, meaning that the issuance of licenses to operate private tertiary institutions long before the Law on Foundations comes into force. Based on the results of tracing data on Higher Education Service Institutions (LLDikti) Region XIII, there are 4 private higher education institutions that have not adjusted their statutes, namely the Bunga Bangsa

¹² Bizlaw.co.id, Inilah Akibat Hukum Bagi Yayasan Yang Tidak Menyesuaikan Anggaran Dasarnya Dengan Undang-Undang Yayasan, <https://bizlaw.co.id/inilah-akibat-hukum-bagi-yayasan-yang-tidak-menyesuaikan-anggaran-dasarnya-dengan-undang-undang-yayasan/>, accessed on 12 July 2023.

Idi Education Foundation, the Sihat Beurata Foundation, the Harapan Bangsa Foundation and the Public Health Medical Nursing Foundation.

If seen from the description above, it can be conveyed that the Foundation did not make adjustments to the articles of association due to ignorance of regulations. This will have an impact on the ownership of foundation assets, particularly with regard to permits to operate private higher education institutions. Because in the decree on operating permits for private tertiary institutions it is clearly stated that the college was organized by the initial foundation when managing the permit, and the problem was when the foundation had not adjusted the articles of association and during the process of adjusting the articles of association returned to using the steps with the deed of establishment of the foundation for certain reasons, giving rise to differences between the foundations mentioned in the decree on operational permits for private universities and foundations that have received legal entity approval.

5. Suggestion

It is hoped that the administrators of foundations or organizers of private tertiary institutions organized by foundations can immediately make adjustments to the articles of association of their foundations in accordance with the law on foundations. This is the result of the promulgation of the Foundation Act, and all foundations, whether existing at the time of the promulgation of the Foundation Act or those existing after the promulgation of the Foundation Act. The status of the foundation should be clarified, and the provisions of the Foundation Act must be referred to when establishing a foundation.

So that the Foundation is not dissolved and can continue to exist and can use the word "Foundation" in front of its name. Thus, the Foundation has legal certainty and legal protection.¹³

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