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Higher Education Law: No One Gets Left Behind

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Overview

One of the most important factors that contribute to the development of a country is ensuring a sustainable supply of high quality human resources. In order to achieve that goal, it is vital that citizens are provided with fair opportunities to acquire skills and knowledge at a higher education institution.

Many Indonesians perceive that work experience supersedes formal education (*pengalaman kerja lebih penting dari pendidikan*) and that a degree is just a formality. However, it should be noted that this perception is false. While work experience is acquired throughout life, an individual can only receive formal education at a higher education institution.

The fact is, formal education is a necessary foundation of any sector, including financial sector. For example, in 2009, Sri Mulyani, Minister of Finance, successfully steered Indonesia from the effects of EU and US economic turmoil by applying her skills and knowledge acquired from her extensive education, which includes a Doctorate Degree. Essentially, the story would be very different if she held only a high school diploma. In short, education is vital to Indonesia's development and economic sustainability.

The importance of education in Indonesia is emphasized under Article 28C (1) and 31 (1) of 1945 Constitution, which state that every Indonesian citizen has a right to education. Not only that, 1945 Constitution states that 20% of State and Regional Budgets must be allocated for education. This means that every level of education, from elementary schools to higher education institutions, must be funded by the State.

Almost a month after the House of Representatives ("DPR") passed the Bill on Higher Education on 13 July 2012, the President signed it on 10 August 2012. It was later registered as [Law No. 12 of 2012](#) ("Law"), which is an implementation of Article 31 of the 1945 Constitution. Article 31 stipulates

Bahasa Indonesia

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that every citizen has the right to education and that the Government is responsible for organizing a national education system.

The main purpose of the Law is to regulate Indonesian universities, academies, and polytechnic institutes ("Higher Education Institutions").

Recently, there has been an absence of a regulatory framework on Higher Education Institutions due to the Constitutional Court (Mahkamah Konstitusi - "MK") decision that revoked Law No. 9 of 2009 on Educational Legal Entities (*Badan Hukum Pendidikan* - "BHP Law"). The Law aims to remedy this issue.

The reason for revocation of the BHP Law was that under it, higher education institutions were considered to be too commercialized and not in line with the 1945 Constitution. To not repeat the mistake of the BHP Law this time, the Government and DPR put in more care and effort when drafting the Law.

Purpose

This edition of Indonesian Law Digest ("ILD") will limit itself to the discussion of the Law. For this purpose, it will analyze and elaborate key provisions of the Law, including criticisms, and will include the following sections:

1. The principle and objective of the Law
2. Types of higher education
3. Legal forms of higher education institutions
4. Source of funding
5. Foreign universities

Principles and Objectives

Article 6 of the Law stipulates the principles that set the bases for higher education institutions in Indonesia. For example, a higher education institution must adhere to principles of democracy, fairness, non-discrimination, and human rights (Art. 6 (b)).

The democracy principle can be applied in a number of ways. An example of this is an election of a Rector or Dean, which requires that every stakeholder must be accounted for when conducting elections. This principle must also be applied in the election of members of the student board, where every student has a right to vote.

The principle of fairness and non-discrimination has a practical application. That is, every Indonesian citizen has

the same opportunity to enjoy high education, regardless of race, religion, or affiliation.

The application of the human rights principle refers to the elimination of a mandatory campus orientation program for freshmen. Note that campus orientation in Indonesia, recognized as *Orientasi Pengenalan Kampus* - Ospek, involves bullying by senior students, which is similar to hazing.

Freshmen often endure military or boot camp style of verbal and physical abuse, which is interpreted as a violation of human rights. Consequently, under the human rights principle, higher education institutions are required to eliminate human rights violations during orientation week.

Another principle that is of importance is the commitment to economically marginalized society. Under the Law, higher education institutions are required to accommodate the underprivileged in order to create the same opportunities to enjoy higher education (Art. 6 (i)).

This provision is reaffirmed by Article 73 (5), which states that student admission must be based on academic selection and that it must not be commercialized. The issue of commercialization is indeed important, since it is the very reason why MK revoked the BHP Law.

Types of Higher Education

There are three types of higher education institutions under the Law: academic institutions, vocational training schools, and professional schools. Each institution has its own objectives and specialization. For example, academic institutions (*pendidikan akademik*) concentrate on mastering and development of academic disciplines (Art. 15 (1)). Academic institutions include undergraduate (*sarjana*) and postgraduate (*pascasarjana*) programs. In Indonesia, higher education institutions are known as *Universitas*, *Sekolah Tinggi* and *Institut*.

Meanwhile, vocational training (*pendidikan vokasi*) is a diploma program, established to provide students with skills and knowledge of a specific applied discipline (Art. 16 (1)). Vocational training institutions offer three-year applied science diploma programs in fields of accounting, engineering, nursing, tourism, and so forth. The objective of vocational training is to produce employees that are ready for work upon graduation.

It is important to note that under Article 16 (2) of the Law, the Government can now establish masters and doctorate programs for vocational training institutions. These programs are known as *magister terapan* and *doktor terapan*. This concept is interesting, because until recently, vocational training institutions could only offer diplomas. This provision will allow lecturers in polytechnic schools and other diploma programs to pursue higher academic degrees, thus boosting the prestige of the higher education institution.

The last type of higher education institution is the professional school. These types of institutions provide students with the needed expertise and certification to become professionals (Art. 17). Types of professions in Indonesia that require certification from a professional school include:

1. Lawyer/advocate, must pass the Special Profession Education for Advocate or *Pendidikan Khusus Profesi Advokat*- "PKPA";
2. Pharmacist, must pass the Pharmacist Professional Program or *Pendidikan Profesi Apoteker*;
3. Accountant, must pass the Accounting Professional Program or *Pendidikan Profesi Akuntansi*;
4. Nurse, must pass the Nurse Professional Program or *Pendidikan Profesi Keperawatan*.

These professional schools may be organized by higher education institutions in cooperation with related ministries and governmental institutions. Higher education institutions can also cooperate with professional organizations such as Indonesia Advocates Association or Peradi for lawyers/advocates; Indonesia Pharmacist Association or ISFI for pharmacists; Indonesia Accountant Association or IAI for accountants; and Indonesia National Nurse Association or PPNI for nurses.

It should be noted that prior to the enactment of [Law No. 30 of 2004](#) on Notary Profession ("Notary Law"), notaries were only required to receive their education in a professional school. Since Notary Law was passed in 2004, in order to become a notary, an individual must also complete a Master of Notary Degree.

Legal Forms of Higher Education Institutions

There is a variety of types of higher education institutions. The establishment of a certain type of an institution depends on its objectives. The Law stipulates six legal types of higher

education institutions. This includes university, institute, college (*sekolah tinggi*), polytechnic, academy, and community college (Art. 59).

University

University is an academic type of a higher education institution that offers a wide range of academic programs (Art. 59 (2)). For example, [Universitas Indonesia](#) and [Universitas Padjadjaran](#) have many faculties, ranging from natural sciences, social sciences, engineering, and so forth.

Institute

Institute is a higher education institution that offers specific vocational or academic programs (Art. 59 (3)). One of the recognized institutes in Indonesia is [Institut Teknologi Bandung](#), which provides engineering programs, such as electrical engineering, civil engineering, urban planning, architecture, and so forth.

College

College or *sekolah tinggi* is a higher education institution that offers certain types of vocational training or academic programs (Art. 59 (4)). An example of a this form of higher education institution is [Sekolah Tinggi Akuntansi Negara](#) ("STAN"), which is organized by the Ministry of Finance and is dedicated to accounting.

Polytechnic

Polytechnic institutions are similar to institutes and offer specific academic or vocational programs in specific disciplines (Art. 59 (5)). Note that a polytechnic is a dedicated vocational training institution and it offers its graduates diploma degrees, applied bachelor degrees (*sarjana terapan*), applied master degrees (*magister terapan*), and applied doctoral degrees (*doktor terapan*). Examples of this type of institution are the [Politeknik Negeri Jakarta](#) and [Politeknik Negeri Bandung](#).

Academy

Academy, pursuant to Article 59 (6), is a higher education institution that offers academic programs or vocational schools in a single area of expertise and is similar to college or *sekolah tinggi*. The difference between an academy and a college is that academies are determined as vocational schools. Therefore, similar to polytechnic, they offer diplomas, applied bachelor degrees (*sarjana terapan*), applied master degrees (*magister terapan*), and applied doctoral degrees (*doktor terapan*). Examples of academy are the [Military Academy](#) (run by Indonesia National Army)

and the [Immigration Academy](#) (run by Ministry of Law and Human Rights).

Community College

The last form of higher education institution is the community college, which offers a one to two years vocational training, acknowledged in Indonesia as *Diploma Satu* - "D1" and *Diploma Dua* - "D2". Community college will emphasize the strength of a local region economy. The best example is Solo, which is a batik-producing city. It can establish a community college that will teach how to produce, distribute, and establish a batik production business. This type of a higher education institution has not yet been established in Indonesia.

Funding

The Law emphasizes the Government's responsibility to fund higher education institutions from the State Budget (Art. 83 (1)). This responsibility is mandatory, regardless of whether universities, academies, and institutes are autonomous from the Government or not (Arts. 63-65). The Law also urges regional governments to allocate funds for higher education institutions in their regional budgets, though this obligation is not mandatory for regions (Art. 83 (2)).

This provision is considered important as it re-emphasizes the Government's responsibility to fund education, as mandated by the Fourth Amendment to the 1945 Constitution. When BHP Law was still in force, state-funded higher education institutions received a legal entity status, thus relieving the Government from the obligation to fund those higher education institutions.

Under BHP Law, higher education institutions were required to seek funding from other sources, which included funding from research grants, tuition fees, and donations. The effect of BHP Law was that many higher education institutions became too commercialized. Consequently, Constitutional Court revoked BHP Law for that very reason. The Constitutional Court viewed that the government is still responsible for education, and such responsibility is not limited to setting the national curriculum, but must also include funding of higher education institutions.

Foreign universities

It is important to note that the Law also allows establishment of foreign higher education institutions in Indonesia (Art. 90 (1)). The following are the requirements of establishing a

foreign higher education institution: secure a permit from the Government, base its institution activities on non-profit principles, establish cooperation with Indonesian higher education institutions, and prioritize employment of Indonesian lecturers and education workers (Art. 90 (4)).

Muhammad Nuh, Minister of Education and Culture, said that Indonesia cannot remain closed to foreign education institutions, but it also cannot be too open. That is why the Law regulates foreign higher education institutions. The Minister asserted that foreign higher education institutions cannot establish their premises wherever they wish. They are only allowed to offer certain subjects and programs, specifically the programs that require high investment. Nuh said that his ministry will issue a ministerial regulation for foreign universities, which will stipulate where they may set up their establishments and the programs that they may offer in Indonesia.

Transitional Rules

Article 98 states that implementing regulations of the Law must be issued within two years of it coming into force and that a government regulation on funding mechanism of higher education will be issued within a year of it coming into force. This means that a minister regulation of each key provision (academic programs, vocational schools, professional schools, foreign higher institution, etc.) must be issued as of 10 August 2013 at the latest. Meanwhile, government regulation on funding mechanism must be issued no later than on 10 August 2014.

Sanctions

The Law further stipulates administrative sanctions for higher education institutions that violate its provisions. The imposed sanctions include a written warning, funding suspension, suspension of teaching activities, and permit revocation (Art. 92 (2)). For example, if a Rector of a university fails to protect the academic freedom as stipulated under Article 8 (3) of the Law, the Government may suspend funding or revoke the license of his/her university.

In addition to administrative sanctions, the Law also imposes criminal sanctions in form of imprisonment (ten years at most) and fines (IDR 1 billion at most). An example of a violation is if a person, organization, or a higher education institution unlawfully issues an unauthorized academic decree, vocational degree, or a professional degree (Art. 28 (6)), the authority (police and prosecutor)

has the right to declare it as a criminal action.

Criticism

Even though the Law attempts to solve important issues such as higher education institutions commercialization, the Law is still being criticized. For example, education activists argue that the Law has no legal basis for its issuance, despite the fact that it recites articles of the 1945 Constitution. Activists assert that the 1945 Constitution does not mandate the issuance of a law regarding higher education. Instead, they contend that it merely mandates the issuance of a law on national education system, which has been stipulated under [Law No. 20 of 2003](#) on National Education System (*Sistem Pendidikan Nasional* - "Sisdiknas Law").

The establishment of foreign higher education institutions is also being criticized. The National Commission for Education said that foreign institutions will not instill Indonesian cultural values, including religion and Indonesian ideology-Pancasila (Five principles).

CONCLUSION

The efforts from the Government and the House to pass the Law must be applauded because the Law contains many important provisions that may lead to a positive impact for the development of higher education in Indonesia. However, the Government must be consistent in implementing the provisions of the Law, particularly the mandatory obligation to fund higher education institution.

The Law also provides a financial aid mechanism to students who are financially underprivileged. This mechanism allows universities to sustain its high standards, which derive from high tuition fees, while still providing education opportunities to smart, but financially unable students. 