

DUE TO THE LEGAL UNDERSTANDING OF PRIVATE UNIVERSITIES IN THE SHADOW OF DIFFERENT FOUNDATIONS

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DUE TO THE LEGAL UNDERSTANDING OF PRIVATE UNIVERSITIES IN THE SHADOW OF DIFFERENT FOUNDATIONS (STUDY OF UNIFICATION OF HEALTHY SOLAR AKBID INTO DR SOETOMO UNIVERSITY SURABAYA)

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Abstract

The large number of private universities in Indonesia creates a quality gap. The unification of private universities is a solution to improve the quality of private higher education. One of the successful ones is the Surya Sehat Midwifery Academy Surabaya with Dr Soetomo University Surabaya. However, the unification process still needs to be examined more deeply about the basic considerations for the unification between the two private universities and the legal consequences of the unification. The unification of the Surya Sehat Midwifery Academy with Dr Soetomo University, in the loss of the Surya Sehat Midwifery Academy in the higher education database and merged into Dr Soetomo University into a midwifery study program at the health sciences faculty. which is quite long, namely three years, causing legal uncertainty in the field. This should not need to happen if the government, in this case the Ministry of Education and Culture, applies a Standard Operating Procedure (SOP) for licensing and furthermore to avoid service barriers for alumni of the Surya Sehat Midwifery Academy Surabaya, it is necessary to include alumni data in the health sciences faculty database so that it is physically integrated. as well as virtually.

Keywords:unification, private college, legal understanding

INTRODUCTION

One of the human rights guaranteed by the constitution is the right to obtain education, it is mandated in the 1945 Constitution Article 31 Paragraph 1 as follows: "Every citizen has the right to education". College Harnadi Affandi said that "One of the very important mandates in the 1945 Constitution of the Republic of Indonesia (UUD 1945) both before and after the amendment is the fulfillment of the right to education (HAP). the drafters of the 1945 Constitution in the sessions of BPUPKI and PPKI. The awareness to include education issues in the draft constitution at that time indicated that from the start it had been a serious concern of the founders of this country. Education is considered as the main key in realizing the progress of the nation and state that will be formed at that time.¹

In providing education, especially in higher education, it is not enough to rely on the government alone, therefore there are opportunities for the community to participate in organizing higher education. From there, private universities were born under the auspices of legal entities, foundations and associations. In 2017, based on data from the Ministry of Research, Technology and Higher Education (Ristek Dikti), the number of registered higher education units reached 4,504 units. This figure is dominated by private universities (PTS) which reached 3,136 units. Meanwhile, state universities (PTN) are the least number of units, namely 122 units. The rest are religious colleges and universities under ministries or state institutions with an official system.²

There are universities that are included in the large category both in terms of land, the number of students, the number of study programs, some are moderate but most of them are small universities with many numbers and variations, so it is very difficult to supervise on the quality of the implementation of higher education in other words there is a disparity (gap) in the quality of the implementation of higher education in Indonesia.

From this problem, the government recommends that small universities merge into larger universities or join several smaller universities to become new and larger universities. The unification or merger of universities will reduce the number of universities in Indonesia, thus higher education will be of higher quality under the auspices of a stronger foundation. This issue is emphasized through a regulation issued by the Minister of Research and Higher Education Number 3 of 2018 concerning the merger and unification of private universities. The consideration for the issuance of the regulation is to strengthen private universities and to implement the provisions of Article 16 paragraph (6) of the Regulation of the Minister of Research, Technology and Higher Education Number 100 of 2016 concerning the Establishment, Amendment, Dissolution of State Universities and the Establishment, Amendment, and Revocation of Permits Private College, East Java as the province with the largest population has a consequence of the large number of private universities. Based on data from higher education service institutions (LLDIKTI) in the East Java region, the number of private universities was 325 in 2019. One of these private universities is Dr Soetomo University Surabaya, which received a university unification permit from the Ministry of Research and Higher Education. The unification is the merger of the Surya Sehat Health Academy which is under the auspices of the Ganesya foundation into one with Dr Soetomo University which is under the auspices of the Cendekia Utama educational foundation.

RESEARCH METHODS

This research is included in normative legal research, which is a legal research method that functions to see law as a norm or rule. This research is also called doctrinal research because in addition to dealing with the rules contained in positive law, it also uses the arguments or doctrines produced by previous legal scientists and researchers. Bambang Sunggono, quoting Soetandyo Wignyosubroto, limits normative or doctrinal research including positive law inventory research, discovery of principles and philosophical foundations of positive law and legal discovery in concreto in solving certain legal problems.³

¹ Harnadi Affandi, State Responsibility in Fulfilling the Right to Education According to the 1945 Constitution, POSITUM Law Journal, Faculty of Law, Padjadjaran University Bandung, Vol 1, 2017.

² Gianie et al, Directory of 100. Universities in Indonesia 2017, Kompas Book, Page 10. Jakarta. 2017.

³ Bambang Sunggono. Legal Research Methodology. PT Raja Grafindo Persada. Page 42. Jakarta. 2016.

RESULT AND DISCUSSION

Foundation as a Non-Profit Legal Entity

In order to guarantee legal certainty and order in order for foundations to function in accordance with their aims and objectives based on the principles of openness and accountability to the public, on August 6, 2001, Law Number 16 of 2001 concerning Foundations was enacted which came into force 1 (one) year later as of the date of promulgation is August 6, 2002. Then on October 6, 2004 through the State Gazette of the Republic of Indonesia of 2004, Law Number 28 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations was passed. The rapid change in the Law governing this Foundation shows that the problem of foundations is not simple and this legal entity is indeed needed by the community.

A foundation is a non-governmental entity established as a non-profit corporation or charitable trust, with the primary purpose of making grants to related organizations, institutions or individuals for scientific, educational, cultural, religious, or other charitable purposes. The foundation itself does not have members and the foundation is established by taking into account the formal requirements that have been determined by law.

In Indonesia, foundations are regulated by Law No. 16 of 2001 and Law No. 28 of 2004 concerning amendments to Law No. 16 of 2001 concerning Foundations. To establish a foundation, it is done by notarial deed and has the status of a legal entity, because the foundation is an official legal entity so that it requires approval by the Minister of Justice and Human Rights or an appointed official. With its position as a legal entity, in our legal system, foundations also have a position as legal subjects. In the legal world, legal subjects consist of humans (natuurlijke persoon) and legal entities (rechtspersoon).⁴

Legal subjects are everything that can have rights and obligations according to law or all supporters of rights and obligations according to law. The legal subject is every creature authorized to own, obtain and use the rights and obligations in legal traffic, while the nature of the legal subject is independent, protected or inferior, onbegwaamheid, intermediary.⁵

The foundation as a legal entity which was aspired by Scholten in the past, that the foundation must be a legal entity, was actually heard by the legislators in our country, with the issuance of Law Number 16 of 2001 concerning Amendments to Law Number 28 of 2001. 2004 concerning Foundations (hereinafter referred to as the Foundation Law). Article 1 point 1 of the Foundation Law states that 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 have no members.

Foundation as a Higher Education Organizing Body

The definition of higher education according to PP Number 60 of 1999 concerning Higher Education is an educational unit which is an autonomous and independent region that has the right to manage its institution as a center for the implementation of higher education, scientific research, and community service. The aims and objectives of the granting of autonomy are given in the context of developing science and technology, developing the academic community themselves, as well as being guided by the norms and rules of science itself. In other words, to accelerate the development of knowledge, knowledge and technology. The development of the potential of the academic community requires autonomy for the implementation of effective and quality management services within the Higher Education environment based on the norms and principles of science itself.⁶

The organizers of Higher Education according to the provisions of the Regulation of the Minister of National Education of the Republic of Indonesia Number 32 of 2009 concerning the Mechanism of Establishing Legal Entities, Changes to State-Owned Legal Entities or Higher Education and Recognition of the Implementation of Higher Education as Educational Legal Entities are by the government and the community. Universities organized by the government are called State Universities or PTNs. While universities organized by the community are commonly referred to as private universities or private universities.

According to the provisions of the National Education System Law, universities in Indonesia can be organized in the form of academies (colleges that provide vocational education in one branch or several branches of certain science and technology), Polytechnics (universities that can only provide vocational education, but can be in various scientific groups), High Schools (colleges that can provide

⁴ Cristine and Kansil. Introduction to Indonesian Law, PT Rineka Cipta, page 99, Jakarta, 2011.

⁵ Abitoro Prakoso. Introduction to Legal Studies, LaksBang PRESSindo, Page 155, Surabaya, 2017.

⁶ Serian Wijatno. Higher Education Management Efficiently, Effectively, and Economically. Salemba Four. Page 17. Jakarta. 2009.

37 academic, vocational and professional education in one scientific clump), Institutes (universities that can provide academic, vocational, and professional education in a certain number of science and technology clumps), and Universities (universities). higher education institutions who can provide academic and vocational education as well as professions in various fields of knowledge).

The position of the foundation as the organizer of PTS is very appropriate, because the foundation is a non-profit business entity or does not seek profit. This is in line with the goal of education to educate the nation. Universities were established not to make profit or profit but to produce intellectuals whose duty was to fill the independence of the Indonesian nation.

Private College Merger

Merger comes from the word "mergere" (Latin) which means (1) joining together, uniting, combining (2) causing loss of identity due to being absorbed or swallowed by something. Merger is the merging of two companies into one, where the company that takes or buys all the assets and liabilities of the merged company so that the merging company owns at least 50% of the shares and the merged company stops operating and its shareholders receive cash or shares in new company.⁷

Significant changes in the business environment, such as globalization, deregulation, advances in information and communication technology, and market fragmentation have created very tight competition. Such conditions require companies to always develop strategies in order to survive. Companies' responses to this increased competition vary widely. There are those who choose to focus on resources for certain smaller segments, there are those who stick with what they have been doing so far and some have merged into big companies in the industrial world.

A business combination is the union of two or more separate companies into one economic entity because one company unites with another company or gains control over the assets and operations of another company. The merger strategy is one alternative for the expansion of the business.

There are three types of business combinations, namely: consolidation, mergers and acquisitions. By merging, two or more companies become more likely to support each other's business activities, so that the profits to be obtained are also greater than if the companies run their own businesses. Merger is a legal action taken by one or more companies to merge with another existing company which results in the assets and liabilities of the merging company being transferred by law to the company that accepts the merger. Furthermore, the legal entity status of the merging companies will end by law.

Private universities as corporations in general have the characteristics that exist within the company, but the peculiarity of universities is in the purpose of the merger, namely to improve the quality of higher education. The government urges small private universities to merge with the aim of equalizing quality between universities.

Through the Minister of Research, Technology and Higher Education Regulation Number 3 of 2018 concerning Merger and Unification of Private Universities, the Government encourages mergers between private universities. The government is aware of the difficulty of promoting a balanced quality improvement if there are so many private universities. On the other hand, there are large private universities managed by the Foundation with large funding capabilities, on the other hand there are private universities managed by the Foundation with very small funding capabilities. This will make it very difficult to provide higher education of equal quality. Private Universities Mergers can be grouped into two, namely:

- a. Merger of PTS, is a merger between two or more PTS which are under the auspices of different foundations, then made into one new PTS under the auspices of one Foundation.
- b. Unification of PTS, is the unification of PTS is a merger between two or more PTS by uniting PTS into other PTS and under the auspices of the foundation.

Legal Consequences of the Unification between the Surya Sehat Midwifery Academy in Surabaya and Dr. University. Soetomo Surabaya

The Unification of Surya Sehat Midwifery Academy in Surabaya with Dr. University. Soetomo Surabaya consists of two important legal acts. First, civil law actions in the form of a unification agreement and the second is administrative law actions, namely in the form of state administrative decisions. The two legal actions have different legal consequences. Civil law actions are basically intended to cause legal consequences for both parties, because civil law is private law or regulates

⁷ Retno Ika Sundari. "Performance of Mergers and Acquisitions in Go Public Companies". *Business Review*. Vol 17. No 1. July 2016. Pg 51.

individual interests.⁸While administrative law has legal consequences that are public.⁹So that the decision of the State Administration in the form of a decision to unify the Surya Sehat Midwifery Academy does not only cause legal consequences for both parties to the agreement but has broad consequences for the parties concerned as follows:

a. Legal Consequences for the Surya Sehat Midwifery Academy, Surabaya and Dr. University. Soetomo Surabaya

With the merger agreement and the issuance of the merger permit, legally the Surya Sehat Midwifery Academy no longer exists. The name of the Surya Sehat Midwifery Academy Surabaya cannot be reused, including elements of leadership consisting of the Director, Deputy Director or other leaders who are prohibited from issuing academic letters/documents on behalf of the Surya Sehat Midwifery Academy.

Legal consequences for the University of Dr. Soetomo Surabaya is an increase in study programs carried out in the form of a midwifery study program (DIII). The difference is that if previously midwifery was led by a director, now it is led by a head of study program who is responsible to the dean of the faculty who is then responsible to the chancellor.

b. Legal Consequences for Lecturers and Administrative Employees of the Surya Sehat Midwifery Academy Surabaya

Lecturers and administrative staff are basically workers who work for the Foundation. With the unification, the status of their employees changed, from being an employee of the Ganesya College Foundation who was placed at the Surya Sehat Midwifery Academy in Surabaya, changing their status to being an employee of the Cendekia Utama Education Foundation who was placed at Dr. University. Soetomo Surabaya. Changes in status are also followed by adaptation to various regulations for employees that apply at the University of Dr. Soetomo Surabaya.

In the process of adapting the employees and lecturers of the Ganesya College Foundation, they encountered the following obstacles:

- 1) Some lecturers of the Surya Sehat Midwifery Academy do not have a field of science in accordance with the midwifery study program
- 2) Some of the lecturers of the Surya Sehat Midwifery Academy still have a bachelor's degree (S1) while the regulations at the University of Dr. Soetomo Surabaya requires lecturers to have a minimum education level of Master (S2) in accordance with their field of knowledge.
- 3) Some lecturers of the Surya Sehat Midwifery Academy have concurrent positions or concurrent jobs in other agencies while at Dr. University. Soetomo Surabaya, there is a prohibition to carry out concurrent positions or concurrent jobs in other institutions.

The constraints mentioned above pose a dilemma, on the one hand Dr. University. Soetomo Surabaya is obliged to accept these employees because there has been an agreement not to terminate the employment of lecturers or permanent employees of the Ganesha College Foundation. While on the other hand the lecturers or employees do not meet the qualifications required by Dr. University. Soetomo Surabaya. The solutions taken cannot satisfy all parties, among others, lecturers who do not meet the Master's qualifications (S2) are transferred to be administrative employees, lecturers who do not have a midwifery background are transferred to faculties in accordance with their fields of knowledge, as well as lecturers or staff who are concurrently positions cannot be accommodated at Dr. University. Soetomo Surabaya.

The existence of such obstacles according to the author, this happened because the University of Dr. Soetomo Surabaya was less careful in examining the educational background of the lecturers and employees of the Surya Sehta Surabaya Midwifery Academy. As a result the University of Dr. Soetomo Surabaya is obliged to recruit lecturers in accordance with the field of midwifery. In fact, the initial purpose of unification was for efficiency compared to taking care of a new study program permit.

c. Legal Consequences for Students and Alumni of the Surya Sehat Midwifery Academy Surabaya

In the academic year 2014-2015, 2015-2016, 2016-2017, and 2017-2018, new students from the Surya Sehat Midwifery Academy Surabaya were admitted through the new student admissions system of Dr. University. Soetomo Surabaya. The newly accepted students are registered in the higher education database (PDDikti) on behalf of the Surya Sehat Midwifery Academy, they also have a student card on behalf of the Surya Sehat Midwifery Academy Surabaya. Basically all academic activities carried out by students are administered on behalf of the Surya Sehat Midwifery Academy, Surabaya.

⁸ Cristine and Kansil. Op.Cit. Pg 84.

⁹ Riawan Tjandra. State Administrative Law, Sinar Graphic. Jakarta. 2018. Pg 146.

The issuance of the unification permit in August 2017 had legal consequences for the disappearance of the Surya Sehat Surabaya Midwifery Academy which should automatically result in the change of student status from the Surya Sehat Midwifery Academy to Dr. University students. Soetomo Surabaya. But in reality, this does not happen automatically. This raises anxiety among students, especially for students from the 2014-2015 class who will be attending graduation. To solve this problem, the University of Dr. Soetomo Surabaya carried out a student transfer mechanism and reported to the Higher Education Service Institute (L2Dikti) Region VII East Java.

The unification has legal consequences for the alumni of the Surya Sehat Surabaya Midwifery Academy who need alumni services, including: Legalization of diplomas, Certificate of Diplomacy or other required services. With the end of the Surya Sehat Midwifery Academy, the alumni must receive services from Dr. University. Soetomo Surabaya. The transfer of alumni services caused several obstacles, such as: Incomplete documents and data of alumni of the Surya Sehat Midwifery Academy Surabaya and There were questions from alumni user agencies because of the discrepancy between the name of the University in the diploma and its legalized stamp.

To overcome these obstacles, the University of Dr. Soetomo Surabaya through the Vice Chancellor III for student affairs and alumni conducted an inventory of the alumni of the Surya Sehat Surabaya Midwifery Academy and added an attachment to the Decision Sheet.

CONCLUSION

The unification of universities has legal consequences for parties who have legal relations and related third parties. The legal relationship that occurred in the unification of universities arose because of the merger agreement made by the Ganesya College Foundation as the organizer of the Surya Sehat Midwifery Academy with the Cendekia Utama Education Foundation as the organizer of Dr Soetomo University Surabaya. The agreement for the unification of private universities can be categorized as a legal relationship that is a merger. In the unification of private universities there is no acquisition or purchase of shares from the unified private universities. The private tertiary union agreement aims to improve the quality of education and there are no personal rewards or benefits.

After the unification of private universities gets approval from the Ministry of Education and Culture of the Republic of Indonesia, legal consequences will arise for universities, lecturers, administrative staff, students, and alumni. Two private universities which were originally independent institutions, in the end there is only one institution, Dr Soetomo University, in which there is a Faculty of Health Sciences with a diploma III (DIII) study program. Thus, all lecturers or employees, students and alumni become part of Dr Soetomo University who are obliged to get all the services contained in Dr Soetomo University Surabaya.

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