

Transformation of Foundation Law in the Management of Private Higher Education in Indonesia

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Abstract

The government through Law Number 12 of 2012 concerning Higher Education and LLDIKTI regulations seeks to ensure that the governance of higher education runs in a controlled, structured, and in accordance with national goals. However, the implementation of this regulation is often constrained by internal conflicts of the foundation, such as power struggles or asset disputes that have an impact on management instability and a



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decline in the quality of academic services. A study of 71 private universities in Central Java (2017) even showed that good foundation governance was able to increase financial and intellectual capital, but internal conflicts and profit orientation were often serious obstacles. However, this study aims to analyze the impact of internal foundation conflicts on higher education management, education quality, and the achievement of national education goals. Using an empirical legal approach, this research focuses on the role of foundations in managing private higher education institutions in the LLDIKTI Region IX. The analysis is conducted using Good Governance principles involving transparency, accountability, and participation, as well as the theory of Legal Pluralism to understand the relationship between state law and social norms. The findings show that foundations, as nonprofit organizations, face various obstacles due to legal gaps between education providers and implementers. Legal reform is necessary to improve the governance of resources and finances effectively. Legal reforms emphasizing transparency, accountability, and financial sustainability are critical solutions to optimizing the management of private higher education. Governance transformation of foundations is urgently needed for private higher education to sustainably achieve the goals of national education.

KEYWORDS *Legal Entity, Higher Education, Transformation, Foundation*

Introduction

Higher education management requires the crucial involvement of society to support the achievement of national education goals.¹ The national education goals have been emphasized in the Preamble of the 1945 Constitution,² "Article 3 of Law No. 20 of 2003 on the National Education System, which states that education aims to develop the potential of students to become individuals who are faithful and devoted to God Almighty, noble in character, healthy, knowledgeable, skilled, creative, independent, and democratic citizens who are responsible".³ The education

¹ Zain Najwa Nabila Et Al., "The Strategic Role Of Multicultural Education In Forming A Tolerant And Inclusive Generation," *Jiic : Jurnal Intelek Insan Cendikia* 1, no. November 9 (2024): 5246.

² Dewi Permata Sari, "Kurikulum 2013 Pada Pembelajaran Agama Islam" 2, No. 2 (2024): 137.

³ A Haritsah, H., Rohmah, S. N., & Rahim, "Peran Ma'had Al-Zaytun Dalam Implementasi Lagu Indonesia Raya Menurut Undang-Undang Nomor 20 Tahun 2003 Dan Maqashid Syariah," *Causa: Jurnal Hukum Dan Kewarganegaraan*, 7, No. 4 (2024): 2.

goals are difficult to achieve if the involvement of society is considered weak.⁴ Therefore, according to Article 60 paragraph (2) of Law No. 12 of 2012 on Higher Education, it is stated: "Private Higher Education is established by the community by forming a legal entity organizer with a non-profit principle and must obtain ministerial approval".⁵ establishment, alteration, and revocation of higher education institution permits are designed to regulate the governance of higher education from legal, academic, and sanction aspects." Fulfilling the needs of higher education has become key in addressing the challenges of the modern era and the digital transition 4.0, making higher education institutions a main pillar in realizing the nation's aspirations.⁶

Higher education institutions in Indonesia are in the form of universities, higher education schools, polytechnics, academies, and community academies, managed by legal entities such as foundations, associations, and other community groups, in accordance with the provisions of the law.⁷ This study focuses on foundations as legal entities responsible for organizing higher education in a non-profit, accountable manner, with the aim of realizing the mandate of national education.⁸ Based on Article 60 paragraph (2) of Law No. 12 of 2012, a foundation is a non-profit legal entity that must obtain approval from the Minister to establish higher education.⁹ As a social, religious, and humanitarian entity with wealth separated from individual interests and trade, a foundation is expected to address the challenge of educational equality while adhering to

⁴ Wan Enalya And Zahara Tul Husni, "Hadits - Hadits Tentang Metode Pendidikan" 2, No. 2 (2024): 42-55.

⁵ Article 60 Paragraph (2) of Law No. 12 of 2012 on Higher Education.

⁶ Elisari Gulo, "Inovasi IPTEK Dan Mutu Pendidikan Dan Berintegritas," Seminar Nasional Hukum Universitas Negeri Semarang 7, no. 2 (2021): 523.

⁷ Suwardi Suwardi, "Kualitas Publikasi Laporan Keuangan Perguruan Tinggi Swasta Terhadap Kepatuhan Kewajiban Pajak Penghasilan Badan," *Wahana: Jurnal Ekonomi, Manajemen Dan Akuntansi* 24, No. 1 (2021): 12, <Https://Doi.Org/10.35591/Wahana.V1i24.292>.

⁸ Nurdin, "Pro-Kontra Undang-Undang Bhp Dalam Konteks Mutu Pendidikan," *Jurnal Administrasi Pendidikan* 6, No. 1 (2009): 3.

⁹ Juliati Salsabilla Alya Rusli, Abd. Haris Hamid, "Legal Analysis of Higher Education Responsibilities towards Graduates Who Experience" 22, no. 3 (2024): 314.

the principles of responsible higher education management in order to achieve the national goal of producing individuals who are faithful, competent, and of noble character.

In the past few decades, foundations as legal entities have become the primary choice for organizing private higher education institutions (PTS) in Indonesia.¹⁰ The establishment of these foundations is reinforced by regulations such as Law No. 12 of 2012 on Higher Education, Law No. 16 of 2001, and its amendment through Law No. 28 of 2004. Although foundations are established for social, religious, and humanitarian purposes, the management practices of PTS often deviate from the non-profit objectives they should uphold.¹¹ The diploma forgery case handled by the Bone District Attorney's Office, with 13 suspects including the Director of PDAM Bone and several employees who bought diplomas from universities in Makassar, is a clear example of the weakness of higher education governance. This practice reflects a serious deviation from the educational goals that should be based on academic integrity. On the other hand, many private university foundations still use student funds for internal purposes without transparency or proper allocation to improve the quality of education. This condition shows that there is a sharp gap between the ideals of higher education regulations that demand accountability and the reality of practice in the field. Thus, the reform of foundation governance is urgent to close the gap of such irregularities.

Studies show that the performance of foundations greatly affects governance, finances, and the quality of education in private higher education institutions (PTS). Research on 71 PTS in Central Java in 2017 revealed that good foundation management improves the finances and intellectual capital of PTS. However, internal conflicts within the foundation, such as power struggles or shifts in the orientation of successors

¹⁰ Meddy Nurpratama, Agus Yudianto, and Taufansyah Firdaus, "Pengembangan Yayasan Perguruan Tinggi Swasta Membentuk Badan Layanan Kegiatan Usaha," *Jurnal Investasi* 10, no. 1 (2024): 7, <https://doi.org/10.31943/investasi.v10i1.297>.

¹¹ Nani Mulyati and Yuli Heriyanti, "Tanggung Jawab Perdata Organ Yayasan Berdasarkan Undang- Undang Yayasan" 6, no. 4 (2024): 12500.

from non-profit to profit-oriented, often become significant obstacles. In addition, the weak understanding of foundation administrators about the foundation's principles has led to deviations, including the commercialization of education and cases of diploma trading, as occurred in Makassar, in 2023 and the suspect is suspected of article 93 Jo Article 28 paragraph 7 of Law Number 12 of 2012 concerning Higher Education Jo Article 55 paragraph (1) 1 of the Criminal Code. The threat of imprisonment for a maximum of 10 years and/or a maximum fine of Rp 1 billion.

The condition of private higher education institution organizers due to internal organizational conflicts often occurs in the Lembaga Layanan Pendidikan Tinggi Wilayah IX region. As seen in one of the universities in Kotamobagu, North Sulawesi, where two foundations were involved in prolonged conflict, even resorting to legal action to resolve the issue. This conflict disrupted the lectures and affected academic activities, leading to poor execution. Furthermore, another case occurred in a private higher education institution in Makassar, which had to close due to internal conflict involving the creation and sale of diplomas, illustrating a deviation from the foundation's non-profit objectives. The practice of trading diplomas leads to the commercialization of higher education, tarnishes the education sector, and clearly violates the provisions of Article 28 paragraph (7) of Law Number 20 of 2003 concerning the National Education System which emphasizes that diplomas can only be given to students who graduate from educational units, and is contrary to Article 55 of Law Number 12 of 2012 concerning Higher Education which regulates the implementation of quality education, transparent, and accountable. Such cases indicate a shift in the orientation of the foundation from social goals to business goals, which often trigger internal conflicts due to the struggle for power and material gains. This highlights the importance of a proper understanding of the essence of the foundation and the goals of higher education, which should prioritize the values of honesty, humanity, and social welfare.

This phenomenon reflects the fundamental challenges in managing foundations as private university administrators (PTS), which are not only legal, but also financial and managerial. From a legal perspective, many foundations have not adjusted their articles of association with the provisions of the Foundation Law and the Higher Education Law, thus causing uncertainty and potential disputes. From a financial perspective, the practice of using student funds that is not transparent often ignores the priority of improving the quality of education. Meanwhile, from the managerial side, conflicts over authority between foundation organs often hinder strategic decision-making. To answer these challenges, more transparent governance, strengthening regulations, and integrated supervision are needed, where the Ministry of Education, Culture, Research, and Technology, the Ministry of Law and Human Rights, and LLDIKTI must play an active role according to their authority to ensure that foundations continue to comply with non-profit principles and national education goals.

Several scholars have conducted previous research related to foundations as organizers of higher education institutions. Meddy Nurpratama,¹² in his study "Pengembangan Yayasan Perguruan Tinggi Swasta Membentuk Badan Layanan Kegiatan Usaha," emphasizes the importance for higher education foundations to establish business entities to support the foundation's finances. This aims to prevent foundations from fully relying on Student Service Fees (SPP) to finance operations, including paying employees. Rina Murtyaningsih, in her study¹³ "Analisis Penerapan Sistem Manajemen Pendidikan Tinggi Dalam Mewujudkan Good University Governance di Stai Muhammadiyah Blora". reveals that transparency is crucial to ensure that higher education institutions do not become involved in conflicts of interest, as regulated by government regulations.

¹² Nurpratama, Yudianto, And Firdaus, "Pengembangan Yayasan Perguruan Tinggi Swasta Membentuk Badan Layanan Kegiatan Usaha."

¹³ Rina Murtyaningsih, "Analisis Penerapan Sistem Manajemen Pendidikan Tinggi Dalam Mewujudkan Good University Governance di Stai Muhammadiyah Blora," *Journal Pedagogy* 17, No. April (2024): 58.

In a 2018 study by Gergely Kováts, The role of the board in Hungarian public interest foundation universities emerged through a pilot project initiated by the Ministry of Innovation and Technology to convert a number of public universities into private through a process called model change (*modellváltás*). In this process, public foundations are established as the owners and managers of educational institutions, replacing the role of the state, while foundation boards are authorized to determine strategies, budgets, human resource policies, and appoint executive officers. The transformation, which included 21 public higher education institutions or 75% of all public universities in Hungary, resulted in significant changes in university governance and organizational structure. From this experience, Indonesia can learn the importance of empowering foundation boards as a strategic organ that functions not only as a formal supervisor, but also as a policy director, provided that there is a strong public accountability mechanism so that university independence does not shift to purely business interests.¹⁴

Jieyu Ruan also conducted the research "University managers or institutional leaders: An exploration of top-level leadership in Chinese universities" which revealed that in China, institutions of higher learning (HEIs) have governance arrangements in which university leaders and secretaries play key roles.¹⁵ However, their legal role as institutional leaders is not clearly defined in the legal framework.

M. Fuad, in his study "The Legal Status of Private Higher Education Foundation Does Not Adapt Its Articles of Society Based on Foundation Act in Aceh" explained that the foundation must align its articles of association

¹⁴ Gergely Kováts et al., "The Role of Boards in the Universities of the Hungarian Public Interest Foundation," *Studies in Higher Education* 49, no. 2 (2024): 368, <Https://Doi.Org/10.1080/03075079.2023.2234941>.

¹⁵ Jieyu Ruan, Yuzhuo Cai, and Bjørn Stensaker, "University Managers or Institutional Leaders? An Exploration of Top-Level Leadership in Chinese Universities," *Higher Education* 87, no. 3 (2024): 703, <Https://Doi.Org/10.1007/S10734-023-01031-X>.

with applicable regulations to ensure legal certainty for universities.¹⁶ However, in practice, many foundations, especially those that manage private institutions of higher education, have not adjusted their articles of association in accordance with the Foundation Act.

In addition, research by Suyatno on "*Governance of Private Universities in Indonesia*" shows that the effectiveness of private university management is greatly influenced by the integrity of foundation management and the extent to which the principles of transparency, accountability, and participation are applied. Lack of legal understanding and profit orientation often drive deviations, including the practice of commercialization of education¹⁷.

Another study by Altbach and Salmi "*The Road to Academic Excellence: The Making of World-Class Research Universities*" explains that strong university governance, including independence from political intervention and professional financial management, is an essential prerequisite for universities to achieve academic excellence. This emphasizes that the foundation-based governance model must be directed at improving the quality of education, not just financial interests or internal power¹⁸.

This research focuses on the phenomenon in Indonesia, namely the challenges faced by the foundation as the governing body of private universities in the LLDikti IX region, highlighting issues related to the internal conflicts of the foundation and deviations from the non-profit goals that the foundation should uphold. This study aims to explore the impact of internal foundation conflicts on the management of higher education, the quality of education, and its influence on the achievement of national

¹⁶ M Fuad, Sri Walny Rahayu, and Zahratul Idami, "The Legal Status of Private Higher Education Foundations Not Adapting Their Articles of Association Based on the Foundation Law in Aceh" 3, no. 4 (2023): 1044.

¹⁷ Suyatno., "The Governance of Private Universities in Indonesia., " *Journal of Education and Culture* 22, no. 4 (2017): 395, <https://doi.org/DOI: 10.24832/jpnk.v22i4.570>.

¹⁸ Jamil (Eds.) Altbach, Philip G., & Salmi, "The Road to Academic Excellence: The Making of World-Class Research Universities., " Washington, DC: The World Bank., 2011, <https://doi.org/DOI: 10.1596/978-0-8213-8805-1>.

education goals. While previous research has focused on similar issues regarding foundations as providers of higher education, this study will emphasize the local context in Indonesia and its deeper legal and social implications, especially in addressing specific challenges in the LLDikti IX region. Using the concept of Legal Reform, this study aims to adjust the legal structure of foundations to align with the evolving needs of higher education management and regulations, including aspects of transparency, accountability, and financial sustainability.

Methods

This research uses an empirical or sociological legal approach with the aim of observing legal practices in society, especially related to the governance of higher education by foundations. The research location is focused on foundations and private universities in the work area of the Higher Education Service Institution (LLDIKTI) Region IX. The research subjects were limited to foundations that manage accredited private universities and operate in accordance with the provisions of laws and regulations, excluding foundations that are indicated to carry out illegal practices such as diploma trading¹⁹. Research data was obtained through three main techniques, namely: (1) in-depth interviews with foundation administrators, university leaders, and related stakeholders²⁰; (2) direct observation of human resource and financial management practices; and (3) a documentation study on the foundation's internal policies and external regulations that apply within LLDIKTI IX. Furthermore, the data is

¹⁹ Saharuddin et al., "Tayade System Land Rights: The Concept of Unification of Customary Law and Indonesian Positive Law," *IOP Conference Series: Earth and Environmental Science* 1430, no. 1 (2024), <https://doi.org/10.1088/1755-1315/1430/1/012005>.

²⁰ Eril Boli and Muh Nur Hidayat M, "Agrarian Law Reform in Indonesia: Between Legal Certainty and Social Justice," *Indonesian Civil Law Review (ICLR)* 11, no. 1 (2025): 54, <https://ejurnal.mgpublishing.co.id/index.php/iclr/article/view/5/6>.

analyzed qualitatively with an emphasis on the description, interpretation, and relationship between theory and practice²¹

In the theoretical framework, this study uses *the theory of Good Governance* which emphasizes the principles of transparency, accountability, and participation in the governance of educational institutions²². In addition, the theory of *Legal Pluralism* is used to understand the interaction between state law and social norms that develop in society. Through this approach, the research is expected to be able to provide a comprehensive picture of the role of foundations in the implementation of higher education, as well as the challenges and obstacles faced in realizing national education goals. ²³

Results and Discussion

Foundations as Organizers of Private Higher Education in Indonesia

"According to Law No. 16 of 2001 concerning Foundations as amended by Law No. 28 of 2004, 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, and do not have members", and there has been cooperation and commitment to those objectives. As an organization, it fulfills the elements of an organization and, moreover, meets the elements of a non-profit organization. Therefore, if its position is clear, a foundation can be said to be a non-profit legal entity with a social purpose and, by law, can operate as an organization to carry out social

²¹ Irwansyah, "Legal Research on the Choice of Article Writing Methods & Practices" (Yogyakarta: Mirra Buana Media, 2022),: 172.

²² Anisa Aulia Fitri, Zulkarnain Ridlwan, and Rudi Natamiharja, "The Implementation of an Electronic-Based Government System (SPBE) at the Communication, Informatics and Statistics Office of Lampung Province with the Principle of Good Governance," *UNES Law Review* 6, no. 3 (2024): 8412, <https://reviewunes.com/index.php/law/article/view/1749>.

²³ Misran Ramli et al., "State, Custom, and Islamic Law in Aceh: Minor Dispute Resolution in the Perspective of Legal Pluralism," *Samarah* 8, no. 2 (2024): 872, <https://doi.org/10.22373/sjhk.v8i2.15924>.

missions, which in Law Number 16 of 2001 are referred to as social, humanitarian, and religious missions. Culturally (de facto) and legally, foundations have been recognized or legitimized as institutions or legal entities.

The Foundation Law has explained in detail when a foundation is considered a legal entity, even though theoretically, if a legal entity has fulfilled the elements of a legal entity, it can already be considered as a legal entity.²⁴ However, referring to the provisions in Article 11 paragraph (1) above, it is clear that a foundation must first obtain approval to be recognized as a legal entity. If it has not been approved by the relevant Ministry, then the foundation has not yet become a legal entity but is merely an ordinary organization.²⁵ Therefore, the author concludes that Indonesia applies or adheres to the Consensus Theory of Gierke, where a legal entity is not declared as a legal subject until the state attaches to it the legal status of the entity in question. This means the state must legitimize and approve an organization that has not yet become a legal entity to become a legal subject. Similarly, the theory proposed by Frederich Carls von Savigny, known for his Fiction Theory regarding legal entities, states that the subject of law is only humans, while a legal entity is considered a fictitious subject of law, meaning something that does not exist but is brought to life by humans in their imagination. A legal entity is a creation of the state/government in an abstract form to explain something.

Foundations as providers of higher education play a very important role in the education sector in Indonesia, especially in private higher education institutions (PTS).²⁶ As a non-profit legal entity, a foundation is

²⁴ A Rosser, "Higher Education in Indonesia: The Political Economy of Institution-Level Governance," *Journal of Contemporary Asia* 53, no. 1 (2022): 53–78, <https://doi.org/https://doi.org/10.1080/00472336.2021.2010120>.

²⁵ Muhammad Ramaditya, Syahrul Effendi, and Agustian Burda, "Survival and Human Resource Strategies of Private Higher Education in Facing an Era of Change: Insight from Indonesia," *Frontiers in Education* 8, no. March (2023): 1–11, <https://doi.org/10.3389/feduc.2023.1141123>.

²⁶ Mochammad Rozikin et al., "Institutional Capacity as Prevention of Abuse of Power of National Standard Policies for Private Universities in Jakarta," *International Journal*

established to fulfill social, religious, and humanitarian objectives, by separating its assets from personal or commercial interests.²⁷ In accordance with the provisions of Law Number 12 of 2012 concerning Higher Education, the foundation is responsible for organizing quality higher education that is accountable and aligned with the principles of national education.²⁸

Foundation-managed universities in Indonesia not only focus on academic development, but also include transparent and effective financial and organizational management. The Foundation has a strategic role as a fund manager that supports the operations of higher education institutions, starting from the provision of facilities, the payment of educators' salaries, to the fulfillment of other administrative needs. However, in practice, serious challenges often arise, such as internal conflicts that can reduce performance and disrupt the quality of education. The case of the Atma Jaya Makassar Higher Education Foundation (YPTAJM) is a real example, where internal disputes led to a lawsuit at the Makassar District Court (Niaga) with Case Number 14/PdtG/2025/PN/MKS, which has entered its fourth hearing. This phenomenon emphasizes the importance of a deep understanding of the role and function of foundations as providers of higher education so that governance runs according to the principles of transparency and accountability, so that the goals of national education can be achieved optimally.

Legal entities acting as education providers, especially those engaged in social, religious, and humanitarian fields, play a very strategic role in achieving equality and improving the quality of education in Indonesia.

of Criminology and Sociology 10 (2021): 281–92, <https://doi.org/10.6000/1929-4409.2021.10.34>.

²⁷ Furtasan Ali Yusuf, "The Independent Campus Program for Higher Education in Indonesia: The Role of Government Support and the Readiness of Institutions, Lecturers and Students," *Journal of Social Studies Education Research* 12, no. 2 (2021): 280–304.

²⁸ Cipta Pramana et al., "Strategies to Improved Education Quality in Indonesia: A Review," *Turkish Online Journal of Qualitative Inquiry (TOJQI)* 12, no. 3 (2021): 1977–94, <https://www.researchgate.net/publication/353299393>.

Foundations, as nonprofit legal entities, are established with the purpose of managing educational institutions that are not oriented towards financial profit but rather towards the interests of society and human potential development. Foundations are responsible for creating an inclusive, sustainable educational environment that aligns with the social, religious, and humanitarian values prevailing in society.

Education managed by foundations focuses on shaping the character of students who not only master knowledge but also possess strong moral and ethical values.²⁹ This is especially important in higher education, where students are expected not only to be skilled and creative individuals but also responsible citizens with noble character and social awareness. In this context, foundations, as legal entities organizing education, also serve to ensure that every policy taken supports the sustainability and equitable access to education for all levels of society. As entities separate from the interests of individuals or specific groups, foundations are expected to maintain integrity and transparency in managing the educational institutions they lead.

In Indonesia, data shows that there are 142,842 foundations registered under the Ministry of Education, Culture, Research, and Technology (Kemendikbud).³⁰ Of this number, 3,820 private higher education institutions (PTS)³¹ are managed by foundations as legal entities organizing the education. These private higher education institutions include various types of higher education institutions, such as universities, institutes, academies, and polytechnics, operating throughout Indonesia.

²⁹ Dede Naufal Affandi, Syamsul, Hendry, "Higehr Education. Lecturer Perform.Commitmen. Naufal.2022," *Journal of Higher Education Theory and Practice* 23, no. 6 (2023): 1.

³⁰ Teknologi Republik Indonesia. Kementerian Pendidikan, Kebudayaan, Riset, "Data Induk Yayasan.," Portal Data Kemendikbud, 2025, <Https://Data.Kemdikbud.Go.Id/Data-Induk/Yayasan>.

³¹ Data Indonesia, "Perguruan Tinggi Di Indonesia," 2022, <https://dataindonesia.id/pendidikan/detail/ada-4004-perguruan-tinggi-di-indonesia-pada-2022>.

Foundations that manage private higher education institutions function not only as organizations that facilitate education, but also as entities responsible for the administration, finance, and internal policies of these educational institutions.³² With this considerable number, foundations play a key role in expanding access to higher education, especially in areas that do not have state universities.³³ However, behind the success of private universities in expanding access to education, the challenges faced by the foundation as a legal entity managing higher education are not few, ranging from suboptimal financial management, internal conflicts between administrative organs, to deviations from the non-profit principle that is the basis for the establishment of the³⁴ foundation, of these various challenges, internal conflicts can be said to be the most critical problem because they directly have implications for institutional stability, hampered strategic decision-making, and decreased public trust in the credibility of higher education. This situation often extends to financial and managerial aspects, thus disrupting the quality of academic services and the achievement of education standards set by the government. Therefore, strengthening foundation governance by emphasizing transparency, accountability, and legal compliance is key to ensuring that national education goals can be achieved in a quality, equitable, and sustainable manner.³⁵

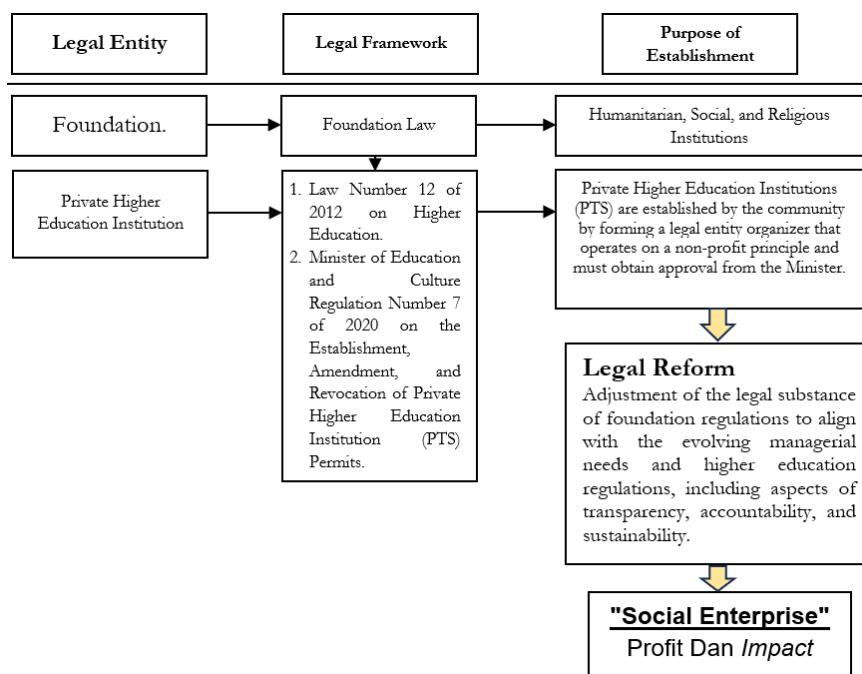
³² Ria Tristya Amalia and Harald F. O. von Korflesch, *Entrepreneurship Education in Indonesian Higher Education: Mapping Literature from the Country's Perspective*, *Entrepreneurship Education*, vol. 4 (Springer Singapore, 2021), <https://doi.org/10.1007/s41959-021-00053-9>.

³³ Jamhari and Saifudin Asrori, "The Making of Salafi-Based Islamic Schools in Indonesia," *Al-Jami'ah* 60, no. 1 (2022): 227-64, <https://doi.org/10.14421/AJIS.2022.601.227-264>.

³⁴ Lita Tyesta Addy Listya Wardhani, Muhammad Dzikirullah H. Noho, and Aga Natalis, "The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems," *Cogent Social Sciences* 8, no. 1 (2022), <https://doi.org/10.1080/23311886.2022.2104710>.

³⁵ Ramdan Fawzi et al., "Management of Zakat Based on Islamic Boarding Schools at Daarul Ilmi Cipeundeuy," *Proceedings of the 4th Social and Humanities Research Symposium (SoRes 2021)* 658, no. SoRes 2021 (2022): 247-51, <https://doi.org/10.2991/assehr.k.220407.049>.

Here is the chart for the management of higher education institutions by foundations.



Legal reform in the context of foundations and universities is a crucial step to adjust the legal substance, institutional structure, and governance to be more responsive to the managerial needs of higher education. Of the various aspects of reform, stricter supervision and financial transparency can be said to be the most urgent need, because financial irregularities and weak internal controls often trigger conflicts and reduce the quality of education services. As the operational complexity of private universities increases, amendments to the Foundation Act are also important to tighten the obligations of nonprofits and clarify public accountability mechanisms. Thus, these adjustments in regulations and governance practices are expected to be able to ensure that the foundation operates in a professional, transparent, and accountable manner, as well as contribute more significantly to improving the quality of education and community welfare.

Legal Reform as a Form of Transformation for Foundations and Private Higher Education

In realizing the ideals of the Indonesian nation as a rule of law state, which upholds the values and social justice for all the people of Indonesia as stated in the 1945 Constitution,³⁶ the foundation as the organizer of education plays an important role in terms of being an institution granted authority by the state in the fields of Humanity, Social, and Religious Affairs as well as education organizers.

The need for the transformation of education management through Legal Reform is crucial due to several issues in the management of higher education caused by legal gaps between the education providers and the implementers. Additionally, the role of the foundation in terms of the authority it holds in organizing higher education is positively influenced by the autonomy in the management and organization of higher education in accordance with the principles of good university governance.

This means that, aside from the foundation as the umbrella organization for higher education, there is also feedback from how the university manages the education process. However, this does not automatically function well due to the conflicts of interest between the education providers and the education implementers, as shown in the research conducted in the IX LLDikti region.³⁷

1. The phenomenon of widespread diploma sales involving certain individuals, aimed at obtaining material gains by undermining the integrity and quality of higher education. The case of diploma forgery handled by the Bone District Attorney, where 13 suspects, including the Director of PDAM Bone and several employees, were involved in the transaction of buying and selling diplomas from universities in

³⁶ Saharuddin Saharuddin et al., "The Assimilation and Integration Rights for Prisoners as Over Capacity Prevention Effort in the Covid-19 Pandemic," *Jurnal Daulat Hukum* 5, no. 3 (2022): 227, <https://doi.org/10.30659/jdh.v5i3.23032>.

³⁷ The results of the research in the IX LLDikti region.

Makassar. This indicates the practice of commercializing education, which damages the credibility of higher education and contradicts educational standards.

2. The suspected shift in the foundation's orientation from initially non-profit to profit-oriented, reflected in the internal conflicts of the foundation managing private higher education institutions. This shift in orientation is related to the management of assets, income, and power struggles that arise due to the next generation of the foundation focusing more on material gain rather than the foundation's social goals. This also creates conflicts that should not occur if the foundation adhered to its social, humanitarian, and religious principles.
3. The purchase of assets using foundation funds but in the name of individual board members or supervisors, rather than in the name of the foundation itself. This action clearly contradicts the applicable law, particularly Article 3, paragraph (2) of Law No. 16 of 2001 on Foundations, which prohibits foundations from distributing the proceeds of business activities to the founders, board members, or supervisors.
4. Some foundations as bodies organizing higher education still apply the profit-oriented principle by using revenue from tuition fees (SPP) for the personal benefit of board members or certain groups within the foundation, which contradicts the non-profit principle of the foundation.
5. Funds obtained from students, such as tuition fees (SPP) or other donations, are not accounted for openly and transparently. Moreover, these funds are sometimes not fully used for operational costs and the development of educational business units that support the foundation's objectives.

6. The practice of charging unreasonable fees, such as for practical work, graduation, and exams, is often implemented by foundations as the organizing bodies without clear explanation or announcement of the use of these funds. This leads to a lack of clarity regarding the allocation and use of funds from the public or students.
7. Foundations as bodies organizing higher education often do not provide clear and transparent accountability regarding the use of funds sourced from the public or students. This creates a lack of trust in the foundation's management and contradicts the principle of transparency that should be applied in the management of higher education.

This case shows a shift in the orientation and goals of foundations that manage private higher education institutions, from social and educational purposes to commercialization focused on material profit, which not only violates the law but also undermines the values and integrity of education.

However, in general, if we look at the distribution of authority between the foundation and private higher education institutions in terms of management rights, it can be seen in the table below:

TABLE 1. Distribution of Authority Between Foundations and Private Higher Education Institutions

Aspect	Foundation	Private Higher Education Institution
Legal Status	Education Provider	Educational Unit Under the Supervision of a Foundation as the Administrator.
Purpose of Establishment	Humanitarian, Social, and Religious Institution	Established by the community by forming a non-profit legal entity and must obtain Ministerial Approval.
Responsibility	Responsible to the foundation's supervisor and the government regarding legality	Responsible to the foundation and the community regarding academic quality.

Financial Authority	Regulates the budget, asset management, and funding sources for PTS.	Uses the budget according to academic operational needs.
Decision Making	Decides on strategic policies such as the establishment, merger, or dissolution of PTS.	Makes operational decisions related to curriculum, student admission, and academic activities.
Human Resource Recruitment	Determines the framework for HR needs such as lecturers and staff through general policies.	Selects, manages, and develops HR according to foundation standards.
Academic Activities	Does not have direct authority over the implementation of academic activities.	Fully responsible for the implementation of education, research, and community service activities.
Relationship with the Government	Manages the legality of establishing PTS and administrative reporting.	Interacts with the Ministry of Education regarding accreditation and academic performance reporting.
Supervision	Carried out by foundation supervisors to ensure financial and asset management in accordance with regulations.	Carried out through accreditation and performance evaluation by external agencies and the foundation.

Sources: Research Findings 2024

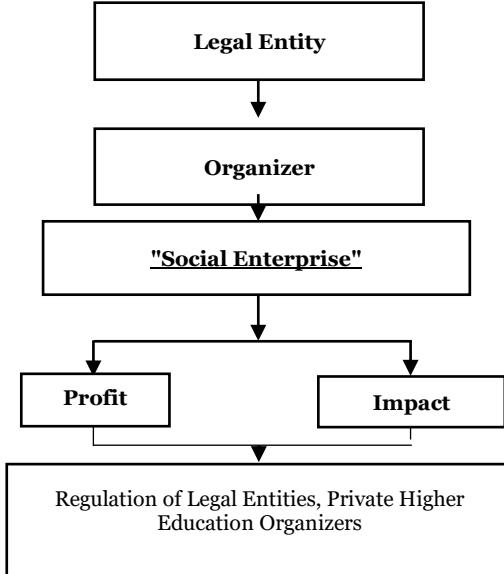
The management of higher education in Indonesia, especially private universities managed by foundations, requires fundamental reform to ensure alignment with the nation's goals, which is to educate the nation's life. So far, supervision of private higher education institutions has generally been focused on the operational oversight of the institutions themselves, carried out by the government through the Directorate General of Higher Education and related agencies. However, supervision of foundations as the legal entities managing higher education institutions has been inadequate.

The Concept of Legal Entity Managing Higher Education Institutions

The concept of a legal entity for higher education management with a "Social Enterprise" approach is a relevant solution in addressing the challenges of higher education management in Indonesia. This approach combines both economic and social objectives, where the foundation as the organizer of higher education not only seeks profit but also focuses on the broader social impact and benefits. However, to date, there is no clear mechanism or regulation that governs this concept within the context of higher education.

The absence of regulations that accommodate this Social Enterprise model is a new solution in the management of foundations and higher education institutions and serves as a way to prevent potential conflicts between social interests and the profits to be achieved. Therefore, a model is needed that can effectively regulate the legal entities managing higher education institutions, ensuring that both financial sustainability and social benefits can be achieved in a balanced manner. The development of this model is crucial to creating a higher education system that is not only efficient but also responsible and positively impactful for society.

Here is the Model for the Development of the Higher Education Legal Entity Concept.



- a. A legal entity in the context of higher education management is a new entity distinct from a foundation, serving as an umbrella organizer to manage higher education with a more dynamic approach. This legal entity is designed to integrate two main complementary objectives: first, to pursue profit to ensure the operational sustainability and development of the institution; second, to fulfill broader social functions, such as providing access to quality education, empowering communities, and contributing to the development of human resources. With this legal entity concept, universities can optimize resource and financial management more efficiently, while still focusing on the fundamental social goal of providing education that benefits society. This creates a balance between economic and social objectives, enabling universities to operate independently and sustainably, while also making a greater positive impact on social life and national progress.
- b. The organizer is an entity or institution responsible for planning, managing, and overseeing the operations of an activity or organization. In the context of higher education, the organizer refers to the party responsible for managing the operations of a higher education institution, which can be a university, legal entity, or other institution entrusted with the responsibility to ensure that educational activities run according to the standards set by regulations and national educational goals.
- c. Social Enterprise is a concept of an organization or business that combines social and economic objectives. As a legal entity organizing higher education, the Social Enterprise approach enables educational institutions to generate profits to support financial sustainability, while still prioritizing social missions such as improving the quality of education, empowering communities, and providing broader access to higher education. This model integrates business activities with positive social impacts, creating a balance between profit and social benefits.

- d. Profit refers to the financial gain obtained from business activities or operations. In the context of higher education management, profit is typically generated from income derived from tuition fees, training programs, or other activities. While the primary goal of higher education institutions is to provide quality education, profit is also necessary to sustain operations, enhance facilities, and develop various programs that support national educational objectives.
- e. Impact refers to the social effects or changes generated by an organization or activity. In the context of higher education, impact encompasses the positive effects on students, communities, and the education sector as a whole. This includes improvements in the quality of education, community empowerment through access to education, skills development, and contributions to social and economic progress.
- f. Regulations for Legal Entities Organizing Higher Education are rules or policies that govern the legal status and operations of higher education institutions, whether they are legal entities or other forms. These regulations cover various aspects, including financial management, accountability, governance, and the administrative and legal requirements that the higher education organizer must comply with.

Conclusion

This research shows that the governance of foundations as a legal entity that organizes private universities still faces a number of fundamental challenges that affect the quality of higher education in Indonesia. Internal conflicts between management organs, weak supervisory mechanisms, and deviations from the non-profit principle are the main findings that hinder the achievement of national education goals. Foundations, which are supposed to function to support academic development and improve the quality of human resources, in practice are often trapped in the struggle for authority and non-transparent financial management. This condition lowers public trust and has the potential to damage the integrity of higher

education institutions. Therefore, legal reforms are needed that emphasize transparency, accountability, and financial sustainability. This reform should be led by the Ministry of Higher Education, Science and Technology together with LLDIKTI, with regulatory support from the Ministry of Law and Human Rights so that the governance of higher education foundations is truly aligned with national goals.,

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DECLARATION OF CONFLICTING INTERESTS

There is no conflict of interest in the publication of this manuscript

FUNDING INFORMATION

None

ACKNOWLEDGMENT

None