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Economic Rights Aspects For Higher Education Foundation Organs

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Abstract: This research focuses on the Aspect of Economic Rights for the Organs of Higher Education Foundations. The research method used is Normative Jurisprudential with a legislative approach, theory/concept, cases, related to the implementation of higher education foundations. Then the data used is secondary data in the form of primary and secondary legal materials. The results of this study are that Economic rights for the foundation's organizing organs before the Foundation Law, the regulations were unclear because the existence of foundations in the past was established based on Custom and Jurisprudence. After the enactment of Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations in Article 5 paragraph (1), (2), and (3), which provides economic rights for the Foundation's Management Organ only with certain conditions and in accordance with the foundation's capabilities. The Foundation's Advisory and Supervisory Organs do not receive economic rights from the Foundation, even though they also hold positions and are responsible for carrying out the duties and authorities given based on the Law and the Foundation's Articles of Association. Then the Advisory and Supervisory Organs should receive economic rights as the Management Organs who are given salaries/wages, honorariums and other allowances according to the foundation's capabilities. Economic rights are based on Human Rights, Basic Rights as Citizens Article 28D Paragraph (2) of the 1945 Constitution, and the Theory of Distributive Justice and Aequitas Justice (Property).

Keywords: Economic Rights, Organizing Organs, Higher Education Foundations.

INTRODUCTION

A foundation is a legal entity consisting of assets that are separated and allocated to achieve certain goals in the social, religious and humanitarian fields, which does not have members (Article 1 number 1 of Law Number 16 of 2001 concerning Foundations (abbreviated UUY) which was later amended to Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001, Concerning Foundations (abbreviated UUYPerubahan).

Foundations as legal subjects in the form of legal entities certainly cannot manage themselves, thus requiring the existence of equipment called organs. The organs of the foundation in question are the Trustees, Management and Supervisors who have their respective duties in realizing the social goals of the foundation. Initially, the trustees, management and supervisors

were not given the right to receive direct compensation in the form of salary, wages or fixed honorarium (Article 3 paragraph (2) of the Foundation Law), or in other forms indirectly, which are the transfer of other assets (Article 5 of the Foundation Law). This means that a person who becomes a member of the Trustees, Management and Supervisors of the Foundation must work voluntarily in accordance with the aims and objectives of the Foundation which are social, religious and humanitarian¹.

However, the development of the provisions of Article 3 and Article 5 of Law No. 16 of 2001 was amended with the consideration that Law Number 16 of 2001 Concerning Foundations which came into effect on August 6, 2002, in its development has not accommodated all the needs and legal developments in society and various substances that can give rise to various interpretations, so it is necessary to amend the law (Consideration letter a UUY NO.28 of 2004). The amendment to the foundation law finally provides legal certainty that the foundation's management organs can receive salaries, wages or honorariums, etc. (Article 5 paragraph 2 UUY No.28/2004). Thus, what about the foundation's supervisory and advisory organs who are also actively carrying out their duties, of course they can object because they are treated unfairly in the granting of their economic rights as part of the organizer of the higher education foundation.

Socio-economic rights are rights in the economic sector which are regulated in the 1945 Constitution of the Republic of Indonesia, including the right to obtain employment for every citizen as which is regulated in Article 27 paragraph (2) "Every citizen has the right to work and a decent living for humanity". Then in The Universal Declaration of Human Rights 1948 Article 23 paragraph (2) states that "Everyone, without any distinction, has the right to equal wages for work".

Related to the economic rights of the foundation's advisors, we can see the case of the lawsuit of H. Dahlan Rido, Advisor to the Toyib Salmah Habibie Foundation to the Constitutional Court of the Republic of Indonesia for a judicial review of Article 5 paragraph 1 and 2 of the Amendment to the Law on Foundations and Article 70 of the Foundation Law. The Constitutional Court with its Decision Number 5/PUU-XIII/2015, which rejected the request for a judicial review from the Advisor to the Tayib Salmah Habibie Foundation which intended that his economic rights in the form of salary, wages or honorarium as an advisor to the foundation could be granted². The decision of the Constitutional Court to reject the request is evidence of the existence of socio-economic rights problems for foundation administrators at this time. which needs to be reviewed in order to realize ideal foundation laws in accordance with current developments.

In the organization of the foundation, the role of the organ is very necessary considering that the achievement of the foundation's goals depends on all of its organizers. This can be identified from the practices of the organizers of higher education foundations that deviate from being non-profit legal entities, as according to Suryarama's identification that PTS established by the Foundation is similar to a family business, whose dominant orientation is business-profit³. This opinion is relevant to Budi Untung's opinion that a number of Foundations carry out business activities with a profit orientation⁴. Likewise, Anwar Borahima stated that although in essence this foundation does not aim to pursue profit, because of the many conveniences which is given to the foundation, both in terms of its establishment procedures and its operations, so that many people or legal entities deliberately establish foundations. In fact, the establishment of the foundation is only a cover to obtain conveniences or other facilities, such as to avoid taxes. In other words, many

¹ Gunawan Wijaya, A Comprehensive Guide to Foundations in Indonesia, Jakarta, Gramedia, 2002, p.30

² Constitutional Court of the Republic of Indonesia, Constitutional Court Decision Number 5/PUU-XIII/2015, <https://www.mkri.id>, accessed 1-28-2024.

³ Suryarama, The Role of Foundations in Managing the Education Sector in Private Universities (Journal of Organization and Management, Volume 5 Number 1, March 2009, p. 59.

⁴ Budi Untung, Characteristics of Foundations and Other Legal Entities outside Foundations (A Solution in Untung H.Budi et.al, Foundation Reform in the Perspective of Law and Management, (Yogyakarta: Andi Offset, 2009), pp. 7-8.

foundations conduct hidden businesses under the pretext of to achieve the foundation's goals⁵.

Based on this, the author considers it necessary to examine the economic rights aspects of the organizing organs of higher education foundations and how the ideal arrangements are in accordance with current developments in society and law.

METHODS

This study uses a normative research method through a legislative approach, concepts / theories, cases regarding the Aspect of Economic Rights for the Organs of Higher Education Foundations. The data used are secondary data sourced from legal materials. The data analysis used is descriptive qualitative.

RESULT AND DISCUSSION

Regulation of Economic Rights Aspects for Foundation Organizers. The aspect of economic rights for foundation organizers in Indonesia can be known since the existence of the foundation institution and its organizational structure as well as the type of activities/businesses, before and after the birth of Law No. 16 of 2001 concerning Foundations Supplement to the State Gazette (TLN) 4132, which has been revised by Law No. 28 of 2004 concerning Amendments to Law No. 16 of 2001 concerning Foundations LN No. 115 TLN 4430.

The existence of Foundations in the past, before we had the 2001 Foundation Law, the legal basis was not very clear, because there were no written rules. Foundations that were established at that time used customary law in practice. Likewise, in carrying out their activities, they were based on customary law. However, foundations are required to have legal entity status⁶.

Likewise, what was stated by Anwar Borahima that before the birth of the Foundation Law, there was not a single law that specifically regulated Foundations in Indonesia. In addition, it appears in society that the role of foundations in various sectors, for example the social, education, and religious sectors is very prominent. Therefore, these institutions live and grow based on the customs that live in society. However, this does not mean that in Indonesia the same there are absolutely no provisions governing the Foundation. Sporadically in Several articles of the law mention the existence of a Foundation, such as: Article 365, Article 899, 900, 1680 of the Civil Code, then in Article 6 paragraph (3) and Article 236 Rv, as well as Article 2 paragraph (7) of the Bankruptcy Law (*Faillissement-verordering*)⁷.

Although foundations have been regulated in several provisions in Indonesia at that time, none of these provisions have provided a formulation regarding the definition of a foundation, the status of a foundation and how to establish a foundation. In this regard, **Rido Ali**, based on the understanding of a foundation put forward by **Scholten**, said that a foundation is a legal entity that has the following elements: a) Has its own assets, which come from an act of separation; b) Has its own (specific) goals; c) Has equipment⁸. In relation to the different equipment depending on the activities and nature of the foundation concerned. These equipment are usually listed in the organizational structure of the foundation in the Articles of Association of the Foundation. According to Chatamarrasjid, the organization of the foundation consists of founders, a board of trustees, administrators and sometimes there is a special supervisory body. There are no specific rules governing the organization of this foundation, but what is always there are founders and administrators. This number is also unlimited, so if the number is large, it can be a founding body, and the administrators can consist of Full Administrators and Daily Administrators. Some foundations have a management structure consisting of a Chairperson, Secretary and Treasurer⁹.

⁵ Anwar Borahima, *The Position of Foundations in Indonesia*. Kencana Prenada Group, Jakarta 2010, p.6.

⁶ Gatot Supramono, 2008, *Law of Foundations in Indonesia*, Nineka Cipta, Jakarta, p.2.

⁷ Anwar Borahima, 2010, *Position of Foundations in Indonesia (Existence, Objectives, and Responsibilities of Foundations)*, Kencana Predana Media Group, Jakarta., p.2.

⁸ Gatot Supramono, *Loc.cit*, p. 6.

⁹ Chatamarrasjid, 2000, *Social Objectives of Foundations and Profit-oriented Business Activities*, PT.Citra Aditya Bakti, Bandung, p.189.

The organizational structure of the foundation consisting of a chairperson, secretary, treasurer and members of the management is the main form of the foundation organization. In large foundations

This structure can be equipped with a representative or representatives, or form a Complete Management Board and a Daily Management Board. The Founder or Founders can join in the form of a Founding Board or a Founding Board, or in the form of a Board of Trustees¹⁰. In terms of the relationship with the enormous power/authority of the management, it is necessary to question whether the founders and managers can receive material compensation/benefits from the foundation? According to **Chatamarrasjid**, there are foundations that state in their articles of association that the founders and managers are not given material compensation or benefits from the foundation, **giving the hidden impression** that there are founders/managers who receive contra achievements of the foundation. Furthermore, Chatamarrasjid, that most foundations pay consultants and special committees and professionals for certain services. So whether the foundation administrators are paid or not depends on the time and work contributed. If he can no longer do other work, for example all his time for the foundation, it is appropriate if he gets compensation. But it should be noted that in general the members of the board of trustees are not paid¹¹.

Related to financial management, there are those who provide allowances/salaries/honors to their administrators and members and there are also those who do not, in the case of the Founder also being the Chairperson of the Foundation who manages the foundation in question. With the variation in organizational structures and problems of managing foundation finances and their utilization in order to realize.

The purpose is one of the reasons for saying that the management of foundations is not yet professional, but it cannot be denied that the aspect of economic rights for foundation administrators in the past has existed in the practice of foundation management. Then the question arises, what are the aspects of economic rights for all foundation administrators after the Foundation Law comes into effect? In UUY Number 16 of 2001, the foundation's organizing organs consist of the Trustees, Management and Supervisors (Articles 28, 31, and 30). These three foundation organs have their respective duties and authorities. The Trustees carry out duties and authorities including: a) making decisions regarding changes to the Articles of Association, b) Appointment and dismissal of members of the management and member supervisor; c) Determination policy general Foundation based on Budget Foundation Principles; d) Approval of the Foundation's work program and annual budget plan; e) Determination of decision about merger or dissolution Foundation (Chapter 28 paragraph (2) UUY). Then the Management Organ has the task and authority to carry out management and representation which must be carried out solely to achieve the aims and objectives of the foundation. Management may not double as a supervisor or supervisor (Article 31 paragraph (3) UUY). Apart from the Supervisory and Management Organs, there are also Supervisory Organs which are tasked with carrying out supervision as well giving advice to the management in carrying out the foundation's activities (Article 40 paragraph (1) UUY) The task of supervising and providing advice to the management is by the foundation supervisor in order to achieve the aims and objectives of the foundation.

With the enactment of Law Number 16 of 2001 concerning Foundations, the three foundation organs consisting of the Trustees, Management and Supervisors are not given economic rights in the form of honorariums, wages, salaries, allowances, or even transportation money, in carrying out their duties and authorities. This is based on the provisions of Article 5 of the Foundation Law which states that the wealth of the foundation, whether in the form of money, goods, or other wealth obtained.

Based on this Law, Foundations are prohibited from being transferred or distributed directly or indirectly to Trustees, Administrators, Supervisors, employees or other parties. have an interest

¹⁰ Ibid, p. 192.

¹¹ Chatamarrasjid, 2000, Ibid, pp. 200-201.

in the Foundation. Thus, the foundation organs and all ranks related to the organization of the Foundation do not obtain economic rights, except if the foundation organs in carrying out the foundation's duties have incurred costs or expenses, then the Foundation is obliged to pay them (Article 6 UUY).

These provisions have undergone changes in their development, especially regarding the economic rights of the Foundation Management, based on Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001, concerning Foundations, which in this article is referred to as the Amendment Law. The Amendment Law stipulates in Article 5 paragraphs (1), (2), and (3) as follows:

Article (1) The assets of the Foundation, whether in the form of money, goods or other assets obtained by the Foundation based on this Law, are prohibited from being transferred or distributed directly or indirectly, either in the form of salary, wages or honorariums or other forms that can be valued in money to the Trustees, Management and Supervisors.

Article (2) Exceptions to the provisions referred to in paragraph (1) may be determined in the Foundation's Articles of Association that the Management receives a salary, wages or honorarium, in the case that the Management of the Foundation: a. is not the founder of the Foundation and is not affiliated with the Founder, Supervisor and Supervisor; and b. carries out the management of the Foundation directly and in full. Article (3) Determination of the salary, wages or honorarium, as referred to in paragraph (2), is determined by the Supervisor in accordance with the Foundation's financial capabilities.

Based on the provisions of the Amendment to the UUY, only the Management Organ can obtain economic rights in the organization of the Foundation, the Trustees and Supervisors do not obtain economic rights from the foundation. In fact, the duties and authorities given to the Trustees and Supervisors must be carried out as well as possible, as are the duties and obligations of the Management Organ. However, the Trustees and Supervisors by the Foundation Law do not provide economic rights in the form of honorariums, wages, salaries, allowances, or even transportation money, even though they have carried out their duties and obligations well. This is certainly unfair if someone who is given the obligation to carry out a job or hold a position is not given a contribution for his services. It has become a basic concept in legal science that if there is an obligation, it is always followed by a right, and vice versa if there is a right, there is usually an obligation, unless otherwise determined from the beginning of the appointment of the relevant Foundation Organ.

Ideal Construction of the Regulation of Economic Rights Aspects of Foundation Organizers

If we look back, the existence of foundations that have existed since ancient times, even since Plato, with the aim of activities in the fields of religion, education, and health. As we can see, except for those of a religious nature, foundation activities are based on education and health, today they have changed into commercial functions, compared to social functions. Activities that initially prioritized community service have now changed into profit-based activities. However, the form of business activities in the form of foundations is still used today, although from a practical perspective, the activities under the auspices of the foundation have shifted from social activities to profit-seeking activities¹².

Shifting functions of foundation activities. This has the potential to give rise to demands for economic rights. which is part of human rights human rights related to the workplace and work/position which include, among other things: the right to wages/salary/honorarium or other fair and equal benefits and the right to a decent standard of living.

The demand for economic rights for foundation administrators, such as in terms of receiving wages, salaries, allowances or other forms, which have not previously been received from the foundation, can be seen in the case of the Advisor of the Toyib Salmah Habibie

¹² Gunawan Wijaya, 2002, A Comprehensive Guide to Foundations in Indonesia, PT. Gramedia Jakarta, p.2.

Foundation, Rochmadi Sularso, submitted to the Supreme Court (MA) of the Republic of Indonesia as follows: This was conveyed when the Supreme Court tried the petition of the Patron of the Toyib Salmah Habibie Foundation, Rochmadi Sularsono. He challenged Article 5 of the Foundation Law, which reads:

Paragraph (1) : The Foundation's assets, whether in the form of money, goods or other assets obtained by the Foundation based on this Law, are prohibited from being transferred or distributed - directly or indirectly, either in the form of salary, wages or honorarium, or other forms that can be valued in money to the Trustees, Management and Supervisors.

Verse (2) : Exceptions to the provisions referred to in paragraph (1) may be stipulated in the Foundation's Articles of Association that the Management receives a salary, wages or honorarium, in case Manager Foundation: a. not a founder of the Foundation and not affiliated with the Founders, Supervisors and Trustees; and b. carry out the management of the Foundation directly and fully.

However application This rejected raw "The Constitutional Court has declared that it rejects the application in its entirety," said the chairman of the constitutional panel of judges, Arief Hidayat, in an open session for the public in the main courtroom of the Constitutional Court Building, Jl Medan Merdeka Barat, Jakarta, Tuesday (26/8/2015). The Constitutional Court argued that the purpose of establishing the foundation was for social purposes, not for seeking profit so that the founders and supervisors are not entitled to receive salaries and wages. The Constitutional Court considered that many foundations deviated from the philosophical purpose of establishing the foundation. Although there is no rules that prohibit foundations from carrying out business activities, but on but in essence the goal foundation is *social oriented*, not *profit oriented*. "The founder of the foundation must be truly responsible for the continuity of the foundation which has the aim of carrying out charitable activities and No For aiming commercial," said MK. The administrators are entitled to receive wages/salaries, this is so that the foundation organization can run effectively, professionally and efficiently. Therefore, it is given wages for "So that the foundation's organs that carry out work for the benefit of the foundation must be given wages to cover the costs of carrying out their work," the Constitutional Court ruled in a unanimous voice. round. (asp/nrl)¹³.

The decision of the Constitutional Court (MK) is in the author's opinion that it is unfair because even though the foundation is an activity that is social in nature and purpose, it does not mean that the organizing organ cannot obtain economic rights, but it is appropriate for someone who has been given a job or position and has carried out it with full responsibility to be given an award according to his services as a foundation advisor. Likewise, the foundation's apparatus, namely supervisors who carry out their duties and authorities properly, should also obtain economic rights from the Foundation. Furthermore, it should be noted that the risk for the Advisory organs, Management and supervisors can be sued and held accountable if: 1) Foundation apparatus who commit acts against or contrary to the Articles of Association; 2) Foundation apparatus who are negligent in carrying out their duties; 3) Foundation apparatus who commit acts that are detrimental to the foundation and third parties; 4) Foundation apparatus who commit acts that are detrimental to the state (Article 53 paragraph 1 UUY)¹⁴.

With the heavy risks and responsibilities borne by foundation organs, it is appropriate to be given counter-performance in the form of economic rights. By providing awards in the form of salaries/wages, honorariums, or other allowances, they are treated fairly like the Management who receives salaries/wages, or allowances, etc.

¹³ Constitutional Court of the Republic of Indonesia, Decision of the Constitutional Court Number 5/PUU-XIII/2015, <https://www.mkri.id>, accessed on 28 Jan 2024. 14) Rita ML&J Law Firm, Legal Risks for Trustees, Supervisors, & Administrators of Foundations, Forum Sahabat Publisher, Jakarta, 2009, Page 32.

¹⁴ I Gde Suranaya Pandit, The Concept of Justice in the Perception of Public Administration Bioethics, Journal Public Inspiratio p.15, Available online: <http://www.ejournal.warmadewa.ac.id/index.php/publikinspirasi>. Accessed on July 27, 2024.

Likewise, the Supervisor who has carried out his obligations based on his duties and authority is entitled to receive a contribution in the form of compensation, as a form of justice. According to Aristotles , justice is an action that lies between giving too much and too little can be interpreted as giving something to each person according to what is their right¹⁵. Then Aristotles divided distributive justice and corrective justice, justice distributive , namely justice that gives the same proportion according to its position. This means that this justice is given according to the position of the person, for example: Trustees, Administrators and Supervisors of the Foundation, these three foundation organs have the same position as foundation organs, but what distinguishes them in carrying out their respective roles is that they act as Trustees, Administrators and Supervisors. When these foundation organs carry out their respective roles according to their positions, they are entitled to economic rights in the form of salary/wages, honorariums, or other allowances because of their services in holding positions in the foundation concerned. economic rights in the form of salary/wages, honorariums, or other allowances because of their services in holding positions in the foundation concerned. To emphasize that every person who will be appointed as a foundation organ will receive economic rights, then at the time of appointment their rights and obligations must be stated in the Appointment Decree as the holder of the position. Of course, as a basis for making the SK. Appointment is first regulated in the Foundation's Articles of Association. Thus, all foundation organs receive their rights in the form of their respective economic rights, so that there is no impression that only the organs.

Only the Foundation's administrators receive economic rights. The amount of economic rights is as follows: Each foundation organ is determined based on its activeness in carrying out its duties and authorities. So the value of economic rights in the form of salary/wages, honorarium or position allowances can vary in amount. Thus, the granting of economic rights to foundation organs is adjusted to the role of each organ and the financial capabilities of the foundation so that a sense of justice and smoothness are achieved in realizing the objectives of organizing the foundation.

Its relevance to the granting of economic rights to foundation organizers is a form of *Aequitas* Justice (*fairness*, propriety) does not mean to reduce justice. *Aequitas* only provides corrections as to whether the subject in the situation and circumstances (*omstandigheden*) deserves to receive his rights or obligations. *Aequitas* means to facilitate the imposition of justice and *zakeijke* , general and strict . *Aequitas* is related with Distributive Justitia, the implementation of which needs to take into account the situation and circumstances of the person carrying out the task¹⁶.

What if it turns out that the foundation does not have the ability to provide economic rights for the foundation's organs? One solution is the recruitment of foundation organs that before the foundation organs are appointed, they are first informed about the problem of the position to be held and the consequences are that the advisors, administrators, and supervisors are not given wages, salaries, honorariums, but only other allowances in the form of transportation money when attending foundation meetings. This position is a voluntary position, if the subject/person is willing, then it is processed and a Letter of Appointment Decree (SKP) is made in the available job/position. However, it should be remembered that if this method is used, it is likely that there will be less interest in becoming foundation organizers, because it is human nature to always want a better/prosperous life, almost all activities require money, so that every activity/work must be measured by the existence of money, whether in the form of salary, wages, honorariums, or other allowances that have economic value.

The concept of economic rights related to work and a decent living are basic rights for every citizen as regulated in the 1945 Constitution Article 28 D paragraph (2) - which states:

¹⁵ Andi Abu Ayyub Salach, *A Tour of Legal Contemplation in Law in Book and Law in Action, Towards the Discovery of Law (Rechtsvinding)*, Publisher Yasrif Watanpone, Jakarta, 2006, p. 65.

¹⁶ *Ibid*, p. 66.

"Everyone has the right to work and receive fair and decent compensation and treatment in employment relations." This also applies to foundation organs who are appointed and work in certain positions in the foundation, so that they are entitled to wages/salaries/honorariums or other benefits according to the foundation's capabilities, so that the implementation of the foundation's activities can easily achieve the aims and objectives of its establishment.

CONCLUSION

Economic rights for the foundation's organizing organs before the Foundation Law, the regulations were not clear, this is because the existence of foundations in the past was established and managed based on Custom and Jurisprudence. After the birth of Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations in Article 5 paragraph (1), (2), and (3), which provides economic rights for the Management Organ only with certain conditions and in accordance with the foundation's capabilities. The Foundation's Advisory and Supervisory organs do not receive economic rights from the Foundation, even though they also hold positions and are responsible for working to implement duties and authorities granted based on the Law and the Foundation's Articles of Association.

Although the Foundation is a social enterprise, the Organs of the Advisory and Supervisory Board should receive economic rights as the Management Organs which are given salaries/wages, honorariums and other allowances according to the Foundation's capabilities. These economic rights are based on Human Rights, Basic Rights as Citizens Article 28D Paragraph (2) of the 1945 Constitution, the Theory of Distributive Justice and the Theory of Aequitas Justice (Property).

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