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## IMPOSITION OF INCOME TAX ON TIKTOKERS' ENDORSMENT INCOME BASED ON INDONESIA TAX REGULATION IN 2023

Moody Rizqy Syailendra✉<sup>1</sup>, Indah Siti Aprilia<sup>1</sup>, Luo Yuan Yuan<sup>2</sup>

<sup>1</sup>Universitas Tarumanagara, Indonesia

<sup>2</sup>South West University of Political Science and Law, China

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### Abstract

*The virtual world has provided various benefits and new opportunities in various aspects of human life. One of these opportunities is through social media. With the expansion of social media platforms, a considerable number of individuals are reshaping their careers to become content creators. Beyond just seeking pleasure, TikTok has given its users a ton of options to earn a living. Creative industry players get enormous opportunities to earn income from TikTok through the various content they create. Tax responsibilities have emerged for TikTokers because of the increase in persons switching occupations to become TikTokers and reaping benefits from TikTok in Indonesia. This research employs a normative juridical approach, encompassing both statutory and factual approaches. The objective of this research is to know the imposition of income tax on TikTokers' endorsement income based on Indonesia tax regulation. From the findings of this study, several conclusions can be drawn. Firstly, the imposition of income tax on TikTokers adheres to a self-assessment system. This entails that the calculation processes, up to the reporting stage, are directly undertaken by the taxpayer, in accordance with pertinent laws and regulations. TikTokers fulfill their obligations by appraising and promoting products they genuinely appreciate. In return, TikTokers receive compensation for the review videos they conceive and share. This remuneration constitutes their income or profit. TikTokers could be subject to the provisions outlined in Article 21 of the UUPPh (General Provisions and Procedures of Taxation Law) when computing their Income Tax. This provision is applicable to artistic practitioners, those operating without representation, as well as freelancers and private employees. TikTokers are encouraged to consult a tax professional or the Direktorat Jenderal Pajak (Directorate General of Taxes). As a recommendation, the government, via the Directorate General of Taxes, could organize outreach programs and information sessions for TikTokers, elucidating matters concerning income tax and its computation.*

**Keywords:** TikTok, Income, and Tax.

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## Introduction

Technological advancements have given rise to a novel realm known as the virtual or digital world. Leveraging this technology, individuals can access diverse resources without the constraints of space, time, or atmosphere. The virtual world has ushered in an array of advantages and novel prospects across various facets of human existence. Among these prospects is the realm of social media. In the contemporary era, human existence is significantly intertwined with the utilization of social media. Presently, individuals find it indispensable to engage with social media platforms, which have evolved into effortless and concise modes of communication such as sending short messages (Whatsapp, Line, Facebook Messenger, etc.), sharing pictures and videos of daily life (Instagram, Facebook,

YouTube, TikTok, etc.), to conducting business activities through social media platforms such as Instagram and TikTok.

As a result of the development of social media platforms, currently many people are turning their profession into content creators, such as YouTubers for content creators on YouTube, Selebgram for content creators on Instagram, and TikToker for content creators on TikTok. This professional transition occurs most often for people in the millennial age category. Millennials perceive social media as more than just a means of seeking entertainment or sharing moments; they view it as a potentially lucrative avenue for generating income. Over the past few years, there has been a notable shift towards individuals pursuing careers as YouTubers. However, in recent times, content creators have increasingly migrated to the TikTok platform, which has gained significant popularity and garnered a following among people of TikTok various age categories. TikTokers can be defined as people or groups who make short videos based on their fields and then upload them via the TikTok social media. TikTokers are divided into individual TikTok accounts and TikTok agency (organization) accounts. TikTok social media is not only a means of sharing information but also a means of earning income, therefore TikTokers are now a profession that is in great demand by various parties (Jusikusuma & Wijaya, 2022).

Currently, TikTok stands as one of the rapidly evolving social media platforms, witnessing a remarkable surge in popularity with a staggering 672 million downloads recorded in 2022. This exceptional achievement positions TikTok as the leading platform in terms of downloads, surpassing even the likes of Facebook and Instagram (P, 2022). TikTok has provided enormous opportunities for its users, apart from just looking for entertainment, up to making a living. Creative industry players get enormous opportunities to earn income from TikTok through the various content they create. TikTok is a very supportive and friendly social media platform for content creators. Through TikTok, businessmen can work with TikTokers (creative content creators) to promote their products. On the other hand, TikTokers get paid through the promotional content they create.

Fundamentally, endorsements are executed by endorsers and can be categorized into two primary types: Typical Person Endorsers and Celebrity Endorsers. The former comprises non-celebrity individuals who engage in promotional activities. On the other hand, Celebrity Endorsers encompass renowned figures who partake in promotions and often embody a notable public persona associated with allure or aspiration (Natalia, 2013). So now it's no longer stranger to hearing celebrity endorsers (Falya & Dirkareshza, 2021), Celebrity endorsers in TikTok are busy called 'celebtok', which is a designation for those who are trusted to provide promotions for products sold online through TikTok accounts. The influencer profession is currently a new phenomenon because it is valued very promising with quite fantastic income (Nazulfa et al., 2021).

Some of the most popular TikTok content creators with the highest income, including Ria Ricis with ±300 million followers who are able to generate income of up to Rp. 131,000,000, - from partners/affiliates. Apart from Ria Ricis, there is also Meicy Villia with ±21,000,000 followers and is able to generate income of up to Rp. 149,520,000, - from partners/affiliates on TikTok. These TikTokers earn their income through endorsements, collaborations with brands/industries, as well as gifts from their viewers. Based on this, the income of TikTokers has prospered due to the emergence of diverse new professions resulting from technological advancements. Consequently, the income earned by TikTokers holds the potential to be subjected to income tax. The substantial nature of this income potential warrants consideration by the government, particularly the Directorate General of Taxes, to encourage content creators' participation in contributing to the state's tax revenue (Gunawan & Sari, 2023).

Apart from endorsements, many people use the Tik Tok application for creativity or to provide information about something. Through the videos and songs/songs that are displayed in this application, it is easier for information to be conveyed and can provide stimulation for those who see it, imitate/pass it on. The significant count of Indonesian individuals, particularly those from Yogyakarta, who extensively utilize the internet, presents a promising market segment for businesses to promote their products/services through social media, particularly TikTok (Dewa & Safitri, 2021). Therefore TikTok is very close to people's lives.

In connection with the rise of people who have switched professions to become TikTokers and benefit/income from TikTok in Indonesia, tax obligations have also arisen for these TikTokers. This obligation is regulated in the 1945 Constitution Article 23A. According to the article, every citizen who has a fixed income is obliged to contribute to the country's development through the payment of income tax. According to Mardiasmo, "Income Tax is a tax imposed on individuals, companies or other legal entities on income earned" (Mardiasmo, 2018). In addition, income tax is a tax on any additional economic capabilities obtained from taxpayers (Wirawan, 2013). One of the regulations regarding income tax is Law Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax (UUPPh). This law regulates the relationship with a taxable object called a Taxpayer.

Regarding the rise of people who are switching professions to become TikTokers in Indonesia, the government can actually benefit from increasing taxation from state revenues through Personal Income Tax (Pph) for TikToker content creators. But of course the government must have basic rules when collecting taxes from these TikTokers (Mansury, 2003). The issue lies in the fact that TikTokers' income sources have not been subject to taxation by employers or income sources. Conversely, the UUPPh stipulates that the taxable entity encompasses additional net assets originating from untaxed income. Consequently, there is a necessity for the government to levy taxes on TikTokers who accrue income or profits from TikTok. Presently, regulations concerning income tax

pertaining to TikTokers or content creators at large have not been explicitly established. Regarding the research topic, there are several previous studies that were used as references by the author, including in the writings of Christian Gunawan et al entitled "Implementation of Digital Tax Of Content Creator On TikTok Social Media" (Gunawan & Sari, 2023). In this study it was explained how the tax on digital content is applied, but the focus of the research was on the knowledge of various parties such as digital content creators, the TikTok agency regarding imposing taxes on TikTokers. In this study, it was concluded that most of the content creators on TikTok do not know about the obligation to pay taxes. Then there is also an article written by Teta Dirgantara Jusikusuma et al entitled, "*Pajak Penghasilan atas TikTokers*" (Jusikusuma & Wijaya, 2022), and article written by Kevin Hoo Kurniawan at all entitled, "*Pelaksanaan Pengenaan Pajak terhadap TikToker Serta Hambatannya di Indonesia*" (Kurniawan & Melanie, 2022) both articles explained about income tax on TikTokers, the difference with the article that authors made is, in this article the author will discuss more in regarding the TikTok monetization process which is the most important thing for TikTokers to receive income. The primary objectives of composing this article are as follows: to discern the monetization process within the TikTok application, to determine whether being a TikToker qualifies as a profession subject to income tax, and to ascertain the stipulations concerning income tax applicable to the TikToker profession. The central aim of this study is to comprehend the application of income tax on endorsement earnings by TikTokers, guided by the regulations of Indonesia's tax framework.

## **Research Problems**

TikTok Drawing from the elucidation provided by the author, several problem formulations have been articulated. One such formulation is: How is the calculation and imposition of income tax on TikTok content creators in Indonesia executed according to the prevailing Tax Regulations?

## **Research Methods**

Legal research is a scientific activity, which is based on certain methods, systematics, and ideas that aim to study one or several specific legal phenomena by analyzing them (Marzuki, 2017).

### **1. Approach Method**

In accordance with the title and issues to be discussed in this study and to provide useful results, this research was conducted using normative juridical research (normative legal research method). The normative juridical research method is library law research which is carried out by examining library materials or mere secondary data.

Normative juridical research is a legal research approach that is carried out by examining library materials or secondary data as the main research

material. Normative juridical research methods also refer to legal norms contained in laws and regulations, court decisions, and norms that apply and are binding on society as well as regarding customs that apply in society. This research focuses on the legal research method of literature in studying the subject matter, normative juridical research is research that includes: (1) research on legal principles; (2) research on legal systematics; (3) research on the level of vertical and horizontal synchronization. The secondary data includes official documents, books, and research results in the form of reports, diaries, and others.

## 2. Research Spesification

The specification of the research used is analytical descriptive. The analytical descriptive method is a study that is intended to answer the imposition and calculation of income tax on TikTok.

## 3. Types and Sources of Data

To solve legal issues and at the same time provide a prescription regarding what should be done, research sources are needed (Marzuki, 2017). The data needed in writing this research was obtained by conducting library research through secondary data sources. Secondary data consists of:

- a. Primary legal materials, namely binding legal materials in the form of statutory regulations, consist of:
  - 1) Regulation of the Director General of Taxes No. PER-17/PJ/2015 concerning Norms for the Calculation of Net Income
  - 2) Law no. 36 of 2008 concerning Income Tax
- b. Secondary legal materials, namely materials that are closely related to primary legal materials, and help explain primary legal materials. Secondary legal materials include writings or opinions of experts, books, articles, journals, magazines, newspapers, and so on relating to the problems in this study.
- c. Non-legal legal materials, namely materials that provide instructions, information, and explanations of primary legal materials and secondary legal materials, including dictionaries and encyclopedias.
- d. Electronic Library, With an electronic library, the author also collects and conducts research on literature and related sources through Internet media.

## 4. Data Acquisition Technique

For data acquisition, the authors collect data through document study, which is a way to obtain data directly which is theoretical. How to obtain it

by reading, and studying books, literature, articles, and written regulations related to income tax.

#### 5. Data Analysis Technique

The data analysis method used is the normative juridical analysis method. This method of data analysis is carried out as a way to conclude from the research results collected without using a mathematical formula, by describing the existing data which are directly related to the problems discussed.

## Discussion

### **TikToker as a Profession that Earns Income**

People who create content on the TikTok application are known as TikTokers. TikTokers create content that contains various information in the form of short videos, which are then uploaded/uploaded on TikTok. The uploaded videos can be accessed by all TikTok users around the world. The reputation of a TikToker can be seen through the number of followers. The more followers, the greater the reputation of the TikTokers. Then there are more opportunities to cooperate with various other parties.

In carrying out their profession, there are several ways that TikTokers do to get income. The first way is through endorsements (Wreta, 2022) . The term "endorsement" originates from the English word "endorse," which signifies giving support to a candidate or proposal. In essence, endorsement can be understood as a form of backing or approval. Endorsements entail collaborations established between a brand or business and a specific artist or influencer, typically for the purpose of promotion. Meanwhile, Musdalifa in the journal *Effects of Selebgram/TikTokers Promotion on Consumer Purchase Interest in the Digital Age* explains endorsement as asking for support from people who have many followers on social media such as Instagram to introduce products to the public or the public (Musdalifah, 2022). Recommendations are usually from brands and shops that offer products to artists and influencers, who are required to take photos and videos and provide reviews of the products they receive. The review will be published on social media and considered as a testimonial. Endorsement on TikTok is a form of influencer marketing where brands collaborate with popular TikTok creators to promote their products or campaigns to the influencer's audience. The process commences with brands identifying influencers whose style and follower base resonate with their target audience and brand identity. Subsequent negotiations define the extent of the endorsement, compensation terms, and any particular prerequisites. Upon cementing the partnership, both the brand and influencer collaborate to produce compelling and genuine branded content. The influencer seamlessly integrates the brand's product or service into their videos, ensuring transparency by incorporating disclosure hashtags such as #ad or #sponsored. The content is then shared on the influencer's TikTok account, reaching their dedicated followers. Brands closely track the campaign's performance employing a range of metrics. TikTok's

viral nature and the influencer's ability to create relatable content contribute to the effectiveness of these endorsements. Successful TikTok endorsements can significantly enhance brand awareness, drive sales, and foster positive brand associations among the influencer's followers.

The next way for TikTokers to make money is to make videos as attractive as possible that can bring in viewers. With a large number of viewers, videos uploaded by TikTokers have the opportunity to be included in the FYP (For Your Page) criteria. When many people watch the video, the opportunity to monetize the TikTok account is even greater. There are three main criteria that will determine whether content enters FYP or not, namely user interaction, information in videos, and account preferences. In addition, TikTokers can do Live with certain targets and bonus prizes from viewers (*sawer*). The last way is to collaborate with other parties in creating video content. Generally, estimated revenue on TikTok starts from IDR 1,000,000 to IDR 100,000,000 per video (Telkomsel, 2022). In comparison, the income of TikTokers abroad, such as America and China, can reach \$ 1000 – \$ 30,000 or the equivalent of Rp. 14 million to Rp. 422 million per month. But then, every account has different estimated income. This is because each account has different data and content characteristics. Revenue is also heavily influenced by the number of followers and the reputation of the account owner. Accounts owned by artists or famous people have greater earning potential because they will attract more viewers.

The amount of income for TikTokers in Indonesia varies greatly. The nominal amount obtained can be affected by location, appearance, and cooperation agreements between content creators and sponsors. For example, the popular TikToker Sandy Saputra with the account @sandy.ss, the income reached \$ 1395 to \$ 3488 or the equivalent of IDR 19.6 million to IDR 49 million. But in general, the types of TikTokers' income are divided into 2 types, namely, first, income per post which is calculated based on the number of impressions or clicks per content. For example, a product promotional video through TikTok is able to get 100,000 views per post, so the income can reach \$ 1000 or the equivalent of 14 million rupiah. The second type of income is the accumulated amount of income per post plus other income in 1 month.

The nominal income per month usually varies according to the number of followers. For accounts with a large number of followers (more than 1 million), the income you get will also be high. Meanwhile, for accounts that have less than 100,000 followers, it will usually be difficult to make money. Then there are three income classifications on TikTok (Ayu, 2022). First, the classification of beginner TikTokers, which are accounts with a small number of followers. According to the 2022 exchange rate, the beginner TikTokers income is from \$ 100 to \$ 700 per month. This figure is equivalent to IDR 1,455,000 to IDR 10,183,950.

Second, the TikToker classification with followers of 1,000 accounts. The estimated income for a TikTok account with 1,000 followers is from \$1,370 – \$2,500. Or the equivalent of IDR 20,000 to IDR 30,000 per month. The number of followers really affects the amount

of income. Especially if the number of impressions is not stable. It is usually quite difficult for an account to generate substantial income. The third classification is a TikTok account that has a minimum of 10,000 followers, which can generate hundreds of thousands of dollars a month. For example, the TikTok account owned by @tryn283 has 11K followers. His monthly income is \$6,890 – \$10,330. This income range can be an illustration of the amount of income for accounts with 10 thousand followers. However, it could be lower or higher.

The "For You Page" (FYP) on TikTok is a fundamental feature of the platform and plays a crucial role in users' content discovery and engagement experience. When you open the TikTok app, you are immediately directed to the FYP, which is a personalized feed of videos curated by TikTok's sophisticated and constantly evolving algorithm. The FYP operates on a content recommendation system that aims to show users videos that align with their interests, preferences, and behavior on the platform. After setting up a TikTok account, the algorithm initiates by suggesting popular and trending videos, offering users an initial point of engagement. As users interact with content—such as liking videos, following creators, and scrolling through their feed—the algorithm accumulates valuable data to gain a deeper insight into their preferences. TikTok's algorithm compiles a diverse array of data points to construct a comprehensive user profile. It takes into consideration factors like the most engaged-with video types, followed accounts, used hashtags, written captions, and favored music. This thorough data collection empowers the algorithm to analyze the attributes of videos that strongly resonate with a specific user. Content ranking is a crucial aspect of how the FYP works. The algorithm assesses the likelihood that a user will engage with a video based on their past interactions and preferences. Videos that the algorithm predicts will receive higher engagement from a particular user are given priority in their FYP. This personalized ranking ensures that users are more likely to see content that they find interesting, entertaining, or valuable. However, TikTok also recognizes the importance of providing diverse content to its users. While the FYP is personalized, the algorithm incorporates a variety of videos to prevent users' feeds from becoming too narrow and to expose them to different perspectives and topics.

One of the most intriguing aspects of TikTok's algorithm is its ability to propel videos to viral status quickly.

If a video garners substantial traction, indicated by a high number of likes, comments, and shares within a brief span, the algorithm might enhance its visibility by displaying it to a wider audience. This capability for swift virality has significantly fueled the platform's rapid expansion and the proliferation of numerous viral challenges and trends. Importantly, it should be recognized that TikTok's algorithm is consistently evolving and adapting based on user behaviors. The platform regularly updates its recommendation system to enhance user satisfaction and increase engagement. As a



result, users' FYP experiences are not static but may change over time as the algorithm refines its understanding of individual preferences and trends.

In summary, TikTok's For You Page is a product of a sophisticated algorithm that leverages user data to deliver personalized content recommendations. By analyzing user interactions, preferences, and behavior, TikTok's algorithm aims to present users with a captivating, diverse, and engaging feed of videos, making the platform an addictive and popular destination for content consumption and creation.

### **Income Tax in Indonesia, in Relation to the TikToker Profession**

Income tax in Indonesia is a crucial component of the country's revenue system, and it applies to both individuals and businesses (Ditjen Pajak, 2022). Indonesia adheres to a self-assessment system in implementing its tax imposition, this self-assessment system must be supported by the good faith of the taxpayer to be honest and open about the administration of bookkeeping as stipulated in statutory provisions (Lie et al., 2022).

The Indonesian tax system is based on a progressive tax structure, where higher-income earners are subject to higher tax rates. The income tax rates for individual taxpayers are divided into several brackets, with the tax rate increasing as income levels rise. As of 2021, the income tax rates for individuals are as follows:

1. Up to IDR 50 million: 5%
2. Over IDR 50 million up to IDR 250 million: 15%
3. Over IDR 250 million up to IDR 500 million: 25%
4. Over IDR 500 million up to IDR 1 billion: 30%
5. Over IDR 1 billion: 35%

Individual taxpayers may also be eligible for certain deductions, allowances, and tax credits, which can help reduce their taxable income and overall tax liability. These deductions may include expenses related to health, education, housing, and other specific items.

For businesses, the corporate income tax rate in Indonesia is generally a flat rate of 25% of the company's annual net income. However, there may be different tax rates for specific industries or sectors, and some businesses may be eligible for certain tax incentives or exemptions. The Indonesian tax year runs from 1 January to 31 December, and individual taxpayers are required to file their annual tax returns by the end of March of the following year. Businesses must also comply with regular tax reporting and payment obligations throughout the year.

The Indonesian Tax Office, known as Direktorat Jenderal Pajak (DJP), is the government agency responsible for administering and enforcing tax laws in Indonesia. The DJP provides guidance, regulations, and resources to help taxpayers understand and fulfill their tax obligations. Individuals and businesses in Indonesia need to maintain accurate and organized financial records to facilitate tax compliance and reporting. Seeking advice from qualified tax professionals or consultants can also be beneficial in navigating the

complexities of the Indonesian tax system and ensuring compliance with tax laws. As tax regulations and rates may change over time, taxpayers must refer to official sources such as the Indonesian Tax Office (DJP) or consult with tax experts for the most up-to-date and accurate information on income tax in Indonesia (Limited, 2022).

TikTok influencers or content creators in Indonesia, like in many other countries, can be subject to income taxes if they earn a significant income from their activities on the platform (CPA, 2021). Income tax regulations in Indonesia apply to any individual or entity that receives taxable income, regardless of the source of that income, including earnings from online platforms like TikTok. According to the Indonesian Income Tax Law, individual taxpayers may be subject to income tax if their annual gross income exceeds a certain threshold. As of my last update, the threshold for taxable income was set at IDR 60 million per year (approximately USD 4,100). If a TikToker's income from sponsored content, advertisements, or other revenue sources on TikTok exceeds this threshold, they would be required to report their earnings and pay income tax on it (Walker, 2023). TikTok influencers or content creators should keep proper records of their income and expenses related to their activities on the platform to accurately determine their taxable income. Expenses incurred for producing content, equipment, and other relevant costs may be deducted to arrive at the taxable income.

### **TikTok Monetization System**

TikTok is one of the fastest-growing and most phenomenal social media platforms at the moment. People of all ages use this platform to find entertainment and relaxation. TikTok is widely used because the content offered is relaxed and entertaining. However, apart from entertaining TikTok, it is also widely used as a place to seek income and profit. This can be seen through the large number of people who have switched professions to become TikTokers with quite promising incomes.

TikTok has become a breadwinner because of the monetization system adopted by it. Monetization is an effort, in which content creators earn money from the content they upload on various social media platforms, one of the most popular of which is YouTube and which is currently very popular, TikTok. The rise of the profession to become TikTokers is none other than because content creators can not only channel their hobbies or preferences in creating content, but the content they create, and upload can be used as a source of income that can meet their daily needs. To be able to monetize on a TikTok account, users must first reach 1000 followers. The income that can be generated through TikTok is very diverse and is largely determined by the content of the content and the number of followers of that account. TikTokers who have medium followers can earn an income of USD 200 to USD 5000 or around Rp. 3,000,000, - up to Rp. 75,000,000, -. However, TikTokers who have a large number of followers and viewers can earn around USD 1,000 – USD 30,000 or around Rp. 15,000,000, - up to Rp. 450,000,000. Of course, this is very promising and attracts the public's interest in switching professions to become a TikTokers in droves (Hirose, 2023).

Making a living on TikTok has become a viable option for some creators due to the platform's immense popularity and its potential for reaching a vast audience. Many individuals have leveraged TikTok's unique features, algorithm-driven content discovery, and the ability to go viral to build a substantial following and monetize their content. TikTok's algorithm, known for its accuracy in recommending content, plays a crucial role in helping creators gain visibility. When a video gains traction, it can quickly reach a large audience, even if the creator has a relatively small follower base. This potential for virality has encouraged people to invest time and effort into producing engaging and shareable content.

Moreover, the platform's diverse user base provides an opportunity for creators to cater to specific niches or demographics. This diversity allows for the creation of content that resonates with specific groups, leading to loyal followings and a dedicated audience. TikTok also offers several ways for creators to make money from their content. Some of the common methods include:

1. **Brand Partnerships and Influencer Marketing:** As creators amass a substantial following, they become attractive to brands looking to reach their target audience. Influencers can collaborate with brands for sponsored content or promotional campaigns, earning income from these partnerships.
2. **TikTok Creator Fund:** The TikTok Creator Fund allows eligible creators to earn money based on the performance of their videos. Creators receive a share of the advertising revenue generated by their content, incentivizing them to consistently produce engaging videos.
3. **Live streaming and Virtual Gifts:** Creators can host live streams on TikTok and receive virtual gifts from their viewers. These gifts can be converted into real money, providing an additional revenue stream for popular creators.
4. **Selling Merchandise:** Some TikTok creators create and sell their merchandise to their followers, capitalizing on their brand and audience loyalty.
5. **Cross-promotion:** Successful TikTok creators often use their platform to promote their other social media channels or ventures, expanding their reach and monetization opportunities.
6. **Several real-life examples demonstrate the potential for TikTok creators to earn a living through the platform.** For instance, Drea Okeke (@dreaokeke), a TikTok creator who shares cooking videos, has been able to turn her passion for food into a full-time career, earning income from sponsored content and brand partnerships. Additionally, Riyaz Aly (@riyaz.14), an Indian TikTok star, has amassed millions of followers and leveraged his popularity to gain brand collaborations and build a successful career.

While TikTok has enabled many creators to make a living from their content, it's important to note that success on the platform often requires consistent effort, creativity, and the ability to adapt to the ever-changing trends and interests of the audience. Furthermore, there are several types of TikTok monetization, including (Firstmedia, 2022):

Creator Marketplace. This is a feature where a content creator can promote himself so that he has the opportunity to get endorsements from companies for the products they sell. One of the conditions that must be met is that the TikTok account used must be changed to a business account with a minimum of 1000 followers. Next is the TikTok Shop. This feature assists users to sell and buy products from TikTok (Market Place). Every customer who is going to buy a product does not need to open another marketplace application (Tokopedia, Shopee, etc.) to make a transaction, just on TikTok. To use this feature, the seller displays information about the items being sold and completes information about store details. The next form of monetization is Live Streaming. Through this feature, TikTokers can broadcast their activities live and can be watched by their followers. Finally, the form of monetization that can be used is the Gifts feature. This feature is in the form of prizes that can be given to TikTokers who are live streaming. Each prize given can be cashed, apart from that each prize has a different amount of money.

To be able to calculate their income, TikTokers uses an application known as Exolyt (Zakawali, 2022). Exolyt is a site that provides statistical, analytical and calculator tools to calculate the estimated income of a TikToker. The data provided by this site includes data on content production, engagement, and the number of followers. The main feature of Exolyt is to calculate estimated income from a TikTok account. Even though the data provided is estimated, this can be used as a reference for TikTokers in making collaborations and partnerships, as well as relating to tax calculations.

Exolyt is an analytics and influencer marketing platform designed for TikTok, providing comprehensive insights and data analysis for creators, influencers, and marketers. The platform functions by collecting and processing data from TikTok profiles and videos. Users can input their TikTok account handle to access data about their followers, video views, and engagement metrics. Additionally, Exolyt offers detailed performance metrics for each video, including likes, comments, shares, and engagement rate. Audience insights provide information on the demographics of a TikTok account's followers, helping users understand their audience better. The platform also provides users with the capability to examine competitor profiles, enabling them to gauge their performance and stay up-to-date with trending hashtags and challenges. For marketers, Exolyt offers influencer discovery, aiding in the identification of relevant influencers based on niche, audience demographics, and engagement metrics. Additionally, the platform facilitates real-time tracking of influencer marketing campaigns, allowing marketers to oversee reach, engagement, and ROI. Exolyt's data-driven approach empowers TikTok users to refine their content strategy, effectively engage their audience, and make well-informed decisions in an ever-evolving social media landscape. Nevertheless, users must responsibly utilize the data and adhere to TikTok's terms of service and data usage policies.

### **Imposition of Income Tax on the TikToker Profession in Indonesia**

Tax is a compulsory financial contribution levied by governments on individuals, businesses, and other entities to generate revenue for funding public services and

government activities (Investopedia, 2021). It plays a pivotal role in bolstering various public initiatives, spanning from infrastructure development, education, healthcare, to social welfare programs. Different tax types are in place, encompassing income tax, corporate tax, value-added tax (VAT), property tax, excise tax, and inheritance tax, each targeting distinct facets of economic activity. Income tax is usually levied at progressive rates, contingent on income levels, whereas corporate tax is imposed on business profits. VAT and GST stand as consumption taxes enforced at each stage of the supply chain. Property tax hinges on the assessed value of real estate properties. Excise taxes target specific goods and services, and inheritance tax is levied on inherited assets. These taxes provide governments with the necessary resources to fund essential public services and programs that benefit society as a whole (Internal Revenue Service, 2020).

Taxes are contributions given by the people to the state based on law (can be forced) by not receiving reciprocal services that can be directly received and used. Taxes in Indonesia vary and have different characteristics based on their classification. One type of tax known in Indonesia is Income Tax (PPh). PPh is a tax or levy that is addressed to someone who already has a steady income. Every individual who has met the stipulated criteria for tax payment is designated as a Taxpayer (WP). According to Article 4 of the UUPPh, income encompasses any augmented economic capacity acquired or received by a Taxpayer, whether within or outside Indonesia, which can be utilized for consumption or to enhance the wealth of the respective Taxpayer, under any denomination or manifestation. Furthermore, based on Article 4 UUPH, there are various classifications of income with each of its elements. The first element is the economic capacity of the taxpayer. This can be interpreted as everything that a person gets from the income he receives. Income here can be interpreted as fixed and additional income received by the WP within one year (from the beginning of the year to the end of the year counted). The second element is that the income is received by the Taxpayer concerned. This means all income received by someone who has received income that is more than Non-Taxable Income (PTKP). The last element is that the income comes from within, as well as outside Indonesia.

Regarding the TikTokers profession, this profession is actually a new profession that exists as a result of changing times and developments in information and communication technology. One of the duties of TikTokers in carrying out their profession is to conduct reviews and promote products that have been endorsed by them. TikTokers then get rewarded for the review videos he has made and uploaded. This is then what is income or profit for TikTokers. So, based on Article 4 UUPPh, the compensation received by TikTokers after he helped promote the product is included in the economic element in that Article and is an object of Income Tax.

### **Calculation of Income Tax for the TikToker Profession in Indonesia**

In terms of tax collection, Indonesia itself adheres to a self-assessment system. According to this system, it is the taxpayers who calculate, calculate and report

independently their respective tax reports according to UUPPh. This mechanism requires that the amount of tax paid to the state be fully submitted to the Taxpayer through the Notification Letter (SPT) document submitted to the Taxpayer through various media; postal, online, or other media.

Even though the self-assessment system is in place, implementing it might pose challenges for TikTokers and content creators. This arises due to the uncertainty surrounding their earned income, which tends to vary. To effectively implement this system, it necessitates a strong sense of integrity and transparency on the part of TikTokers and content creators during reporting. For self-employed or freelance TikTokers, the regulations outlined in Article 21 of the UUPPh are applicable. This particular provision pertains to artistic professionals, individuals lacking agency representation, as well as freelancers and private employees. Furthermore, the imposition of income tax on TikTokers can refer to the Director General of Taxes Regulation No. PER-17/PJ/2015 concerning Norms for Calculation of Net Income. The profession of TikTokers or content creators is included in the 50% classification of art workers. This is because TikTokers create and upload content or artwork in the form of images, photos or videos that are uploaded to their respective TikTok accounts. The 50% arts worker sector is based on the classification of casual workers which is not determined rigidly in the tax withholding regulations. In terms of calculating it, TikToker does it by bookkeeping, so the method of calculation is the result of gross income minus operational costs incurred in creating content. Where these costs are categorized as costs incurred in supporting professional operations. The calculation results are then adjusted to the contents of Article 17 UUPPh in order to get the amount of net income (Supadmi, 2009).

As previously explained, the income of a TikTokers can be estimated through the Exolyt site. The data submitted usually consists of the lowest to the highest estimate of the income of a TikTokers within one year. So, based on these estimates, the midpoint of TikTokers' annual income can be taken as the basis for calculating their income tax.

## **Conclusion**

Based on the explanation provided by the writer, several conclusions can be derived. Firstly, the imposition of income tax on the TikToker profession follows a self-assessment system, whereby the calculation processes up to reporting are conducted directly by the taxpayer in accordance with the relevant laws and regulations. In the pursuit of their profession, TikTokers engage in the evaluation and endorsement of products. Subsequently, TikTokers receive compensation for the review videos they create and share. This is then what is income or profit for TikTokers. Based on Article 4 UUPPh, the compensation received by TikTokers after he helped promote the product is included in the economic element in that article and is an object of income tax. Furthermore, the calculation of imposing income tax on the TikToker profession can use the Director General of Taxes Regulation No. PER-17/PJ/2015 concerning Norms for Calculation of Net

Income. This is based on the TikTokers profession, where TikTokers create and upload content or works of art in the form of images, photos or videos that are uploaded to their respective TikTok accounts.

Second, the suggestion based on the research that has been carried out, the authors suggest: First, the Government through the Directorate General of Taxes can conduct outreach and hearings to TikTokers regarding income tax and how it is calculated. Second, the government persistently strives to enhance services for taxpayers, aiming to ensure that individuals feel secure and at ease while handling all aspects concerning income tax within their community. As a final suggestion, TikTokers in Indonesia are advised to seek guidance from a tax professional or directly engage with the Direktorat Jenderal Pajak (DJP) to access the latest information on income tax regulations and their corresponding tax responsibilities.

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## ANALYZING FORMULATION OF CRIMINAL PROVISIONS IN LAW NUMBER 12 OF 2012 CONCERNING HIGHER EDUCATION

Ade Adhari<sup>1</sup>, Imelda Martinelli<sup>1</sup>, Indah Siti Aprilia<sup>1</sup>, Leony Sondang Suryani<sup>2</sup>

<sup>1</sup>Universitas Tarumanagara

<sup>2</sup>SHAPE-SEA, Mahidol University Thailand

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### Abstract

The policy on criminal determination legislation outlined in Law No. 12 of 2012 concerning Higher Education constitutes a crucial element within the spectrum of crime prevention measures within the higher education. This policy aims to offer clear guidance to law enforcement authorities during the application and execution stages of criminal proceedings by establishing comprehensive sentencing regulations. Nonetheless, it has come to light that the criminal provisions delineated the law represent an incomplete toolkit when addressing criminal activities within the higher education. *This research employs a normative juridical approach supplemented by statutory approaches. Based on this research, it can be concluded that this can be seen from the many juridical problems in the law, including the absence of juridical qualifications, corporate criminal responsibility issues, and so on. Consequently, a necessary course of action involves future revisions aimed at overhauling the existing criminal provisions articulated in the framework of the Higher Education Law.*

**Keywords:** Criminal Law Policy; Formulation; Juridical Issues

### Abstrak

*Kebijakan legislasi penetapan pidana dalam UU No. 12 Tahun 2012 tentang Pendidikan Tinggi adalah sebagian tahapan penanggulangan kejahatan di bidang pendidikan tinggi yang diharapkan mampu memberikan arah terang bagi aparat penegak hukum pada tahap aplikasi dan eksekusi pidana dengan menyediakan aturan pidanaan yang utuh. Namun ternyata, ketentuan pidana dalam UU tersebut hanyalah sebagai incomplete or partial set of tools dalam rangka menanggulangi tindak pidana di bidang pendidikan tinggi. Penelitian ini menggunakan metode penelitian yuridis normatif dengan pendekatan perundang-undangan. Berdasarkan penelitian ini, dapat disimpulkan bahwa masalah yuridis dalam UU tersebut antara lain tidak adanya kualifikasi yuridis, masalah pertanggungjawaban pidana korporasi dan lain sebagainya. Untuk itu kedepan perlu pembaharuan melalui revisi terhadap kebijakan formulasi ketentuan pidana yang ada saat ini dalam UU Pendidikan Tinggi.*

**Kata kunci:** Kebijakan Hukum Pidana; Formulasi; Masalah Yuridis

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### Introduction

The provision outlined in Law No. 12 of 2012 concerning Higher Education (hereinafter abbreviated as the Higher Education Law) (JDIH BPK, n.d.) emphasizes in its explanatory section that "Higher Education, functioning as an institution for Higher Education Research and Community Service, must have autonomy in managing its own institution". What is essential is the cultivation of an environment where academic freedom, academic discourse, and scientific independence thrive in tandem with the advancement of Science and Technology in Higher Education. Thus Higher Education can develop an academic culture for

the Academic Community which functions as an authoritative scientific community and is able to carry out interactions that elevate the dignity of the Indonesian nation on the global stage. As a vanguard in nurturing the nation's intellectual growth, Higher Education takes the lead in the cultivation of Science and Technology, ultimately propelling societal welfare and ensuring social justice for all Indonesian citizens. The provision set forth by the Higher Education Law on August 10, 2012, underscores the necessity of aligning higher education practices with the formulated (administrative) norms within the law. As part of the effort to ensure adherence to administrative norms within the higher education domain, the government introduced provisions encompassing both administrative and criminal sanctions. The inclusion of criminal provisions within administrative laws, as evident in the Higher Education Law, signifies the emergence of what can be termed "*criminal administrative law*". The formulation of criminal law in the Higher Education Law is certainly in line with the general purpose of criminal law to protect society, by prohibiting acts that cause or threaten the public interest, in this case what happens on campus.

Related to this, Barda Nawawi Arief in his book entitled "Kapita Selekta Criminal Law", can be said that "*administrative criminal law is essentially an embodiment of criminal law policy as a means to enforce/implement administrative law*". So, it is a form of "functionalization/operationalization/instrumentalization of criminal law in the field of administrative law" (Nawawi Arief, 2010). Thus the criminal provisions in the Law on Higher Education are only criminal law as auxiliary law (*hulprecht*) for State Administrative Law. Criminal as a means to maintain that the norms of administrative law in the field of higher education are adhered to (Halim Koentjoro, 2004).

The functionalization or operationalization of criminal law policies in the field of higher education, in this case, goes through several stages as stated by M. Cherif Bassiouni, The Stages of Criminal Law Enforcement Policy go through the following stages (Nawawi Arief, 2012):

1. The formulation stage (legislative process);
2. Application stage (judicial/judicial process); And
3. Execution stage (administrative process).

Besides Bassiouni, Masaki Hamano for the same purpose also stated the scope of jurisdiction in criminal law enforcement policies:

1. Legislative jurisdiction or jurisdiction to define;
2. Judicial jurisdiction or jurisdiction to adjudicate; And
3. Executive jurisdiction or jurisdiction to enforce;

The insights shared by M. Cherif Bassiouni and Masaki Hamano offer an understanding that the Criminal Provisions outlined in the Higher Education Law constitute merely a component of the formulation stage (referred to as the stage of criminal determination) or legislative jurisdiction in the endeavor to address criminal offenses within the higher education domain. Furthermore, it becomes apparent that policy formulation or sentencing constitutes just one facet within the broader spectrum of stages entailed in the functionalization of criminal law. Regarding criminal punishment, Barda Nawawi Arief stated (Arief & Muladi, 1984):

“As one part of the eyes of overcoming criminal disturbances to achieve the welfare of the community, the stage of determining our frugal punishment must actually be a careful planning stage regarding what policy actions should be taken in terms of punishment in the event of a violation of the law. In other words, this stage must be the stage of strategic planning in the field of punishment which is expected to provide guidance on the next stage, namely the stage of the application of punishment and the stage of implementation of the sentence.”

The criminal imposition policy in the Higher Education Law is thus a strategic planning stage in the framework of overcoming criminal acts in the higher education sector. Hence, the criminal provisions within the Higher Education Law need meticulous preparation to ensure their capacity to offer clear guidance to law enforcement authorities during the phases of delivering and executing sentences. Within the framework of formulating the sentencing policy, it becomes imperative to eliminate any potential juridical issues. This necessitates the construction of a policy formulation that aligns seamlessly with the prevailing penal system. This endeavor draws from the established criminal law system, acknowledging its current state (Nawawi Arief, 2012):

1. Criminal provisions in special laws (including in this case the Law on Higher Education, pen.) outside the Criminal Code are a sub-system of criminal law;
2. As a subsystem, the Special Law is bound by the general provisions/rules contained in Chapters I to VIII (Article 1 to Article 85) Book I of the Criminal Code, as long as the Special Law does not make other provisions that deviate (see Article 103). This means the attachment of the Special Law to the general rules is not absolute. Special laws may make "other provisions" that deviate;
3. General provisions/rules in Chapter IX Book I of the Criminal Code (Articles 86 to 102) only apply to the Criminal Code, not to specific laws outside the Criminal Code (see Article 103).

This research aims to explore the criminal imposition policy in Law no. 12 of 2012 relating to tertiary institutions and the formulation of punishment in the law

in the future. The novelty is to get the most appropriate sentencing formulation that can be applied to universities through Law no. 12 of 2012

### Research Problems

Firstly, this research aims to delve into the Criminal Determination Legislation Policy outlined in Law No. 12 of 2012 concerning higher education. Secondly, drawing on the insights gleaned from Law No. 12 of 2012, what recommendations can be proposed to formulate criminal determination policies for forthcoming higher education laws?

### Research Methods

This article was compiled from the results of normative juridical research using a statutory approach. The normative juridical research method involves library law research conducted by scrutinizing library materials or secondary data. This research was undertaken to procure materials encompassing theories, concepts, legal principles, and regulations pertinent to the subject matter. The research commences with an inventory of legal materials, followed by their classification in alignment with the problem formulation. The main legal material used is Code of Criminal Law, and Law Number 12 of 2012.

In the analysis section, the first thing to do is review how criminal determination legislation policy in law no. 12 of 2012 concerning higher education. The next analysis makes some formulation about Criminal determination legislation policies in the future higher education law.

### Discussion

#### **The Criminal Determination Legislation Policy outlined in Law No. 12 of 2012 concerning Higher Education**

Barda Nawawi Arief, stated that a 'juridical issue' (in policy formulation) is a matter of formulation 'in view of the formulation policy it should be' (according to the criminal law system/criminal system currently in effect) (Nawawi Arief, 2012). Thus, in simple terms, it can be said that the study will explore whether the criminal provisions of the law have been prepared as they should be in accordance with the current penal system.

Referring to the theory, criminal law policy is the entirety of the regulations that determine what actions are prohibited and included in criminal acts, as well as how the sanctions are imposed on the perpetrators to overcome crime. In theory, many of the doctrines raised by experts are related to the notion of criminal law policy (Nawawi Arief, 2008).

Prof. Sudarto gives the meaning of "Penal Policy" as quoted by Barda Nawawi Arief namely:

1. Efforts to realize good regulations in accordance with the circumstances and situation at a time
2. Policies from the state through authorized bodies to establish the requested regulations which are expected to be used to express what is contained in society and to achieve what is aspired to (Sudarto, 1981).

The formulation policy in the Higher Education Law is contained in the chapter on criminal provisions which only contains 1 (one) article, which is in full in the quote below:

CHAPTER IX  
CRIMINAL PROVISIONS

Article 93

“Individuals, organizations or Higher Education providers who violate Article 28 paragraph (6) or paragraph (7), Article 42 paragraph (4), Article 43 paragraph (3), Article 44 paragraph (4), Article 60 paragraph (2), and Article 90 paragraph (4) shall be subject to imprisonment for a maximum of 10 (ten) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).”

The provisions above basically only regulate offenses whose elements are:

1. Legal subject
  - a. Individual;
  - b. Organization;
  - c. Higher education organizers
2. Forbidden acts
  - a. Individuals, organizations, or Higher Education providers “who are unlawfully prohibited from granting academic degrees, vocational degrees, or professional degrees” (Article 28 paragraph (6));
  - b. Individuals “without rights are prohibited from using academic degrees, vocational degrees, and/or professional titles” (Article 28 paragraph (7));
  - c. Individuals, organizations, or Higher Education administrators “who are unlawfully prohibited from awarding diplomas” (Article 42 paragraph (4));
  - d. Individuals, organizations, or Higher Education providers “who are unlawfully prohibited from giving professional certificates (Article 43 paragraph (3));
  - e. Individuals, organizations, or Higher Education providers “who are unlawful are prohibited from providing competency certificates” (Article 44 paragraph (4));
  - f. PTS is established by the community by forming an administrative body with a non-profit legal entity and is required to obtain a permit from the Minister (Article 60 paragraph (2));
  - g. Higher education institutions of other countries as referred to in paragraph (1) must: a. obtain government permits; b. non-profit principle;

c. cooperate with Indonesian Universities with permission from the Government, and d. prioritize lecturers and educational staff who are Indonesian citizens (Article 90 paragraph (4)).

### 3. Criminal threats

“maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).”

Examining the criminal provisions within the Higher Education Law, which solely govern the delineation of offenses as presented in Article 93, reveals a spectrum of juridical issues. This indicates that the policy formulation has not been developed in congruence with the existing penal system as it should be. The juridical issues are identified by looking from the point of view of the 3 main issues in criminal law, namely criminal acts, criminal liability, and crime:

#### 1. Criminal Acts (There is no delict qualification)

The practice within national legislation exhibits indications of certain laws that explicitly outline the qualification of offenses as either 'crimes' or 'violations,' while others do not. In cases where laws do not specify qualifications for offenses using the terms 'crimes' or 'violations,' such as the Law on Higher Education, it gives rise to a juridical concern. (However, this does not eliminate the possibility that laws specifying these qualifications might also confront juridical issues; for instance, due to the inclusion of specific minimum criminal provisions without accompanying rules for penalties or implementation.). The juridical problem here is the inability to use the general rules in Book I of the Criminal Code because the qualification of a delict as a 'crime' or 'violation' is a juridical qualification or a qualification made by the legislators that contains juridical consequences as well. It is said so because in the Criminal Code, the distinction of offenses into crimes (Book II) and violations (Book III) contains juridical consequences of the application of different general principles, where there are general rules for crimes and there are also general rules for violations. So if the Law on Higher Education in this case, does not distinguish whether the offense is a 'crime' or a 'violation' the juridical consequences have no basis for being able to apply general rules in the Criminal Code, for example in the case of probation, assistance, expiration of criminal prosecution, and expiration of criminal prosecution.

#### 2. Criminal Liability/Mistakes

##### a. Unclear juridical boundaries regarding legal subjects

Article 93 clearly states that the legal subject is an individual; Higher education organizations or administrators. Thus there is an expansion of the subject of criminal law which is not only human but also 'organizations' or 'organizers of higher education'. In other words, there is a broadening of the subject in the form of a corporation, although the term used is an

organization or provider of higher education. But unfortunately, it is not followed by giving juridical restrictions from:

1) Organization

It is not regulated what is meant by an organization as a subject in Article 93 of the Law on Higher Education. In the Law, various articles use the word organization, including Organization (Article 28 paragraph (3), (4), (6)); Student Organization (Article 14 paragraph (2), Article 77); Professional Organizations (Article 17 paragraph (2), 24 paragraph (2), 25 paragraph (2), Article 36, etc.); Higher Education Organizing Organization (Article 60);

2) Higher education organizers

There is not a single article that provides limitations regarding higher education providers as referred to in Article 93.

b. Corporate Criminal Liability Issues

The provisions of Article 93 of the Higher Education Law expand the subject of criminal law in the form of Corporations. Even though the juridical term used is the Higher Education Organization or Provider. But unfortunately not accompanied by criminal responsibility.

As we all know, the general punishment rules in the Criminal Code are person-oriented (natural person), not aimed at "corporations" or in the Higher Education Law the term Higher Education Organizations or Organizers is used. Hence, it becomes imperative to establish distinct sentencing regulations that extend beyond the mere acknowledgment that corporations can engage in criminal acts, as stipulated in Article 93. The editorial aspects of the criminal law lack precise sentencing guidelines concerning the entities that can be held liable, the circumstances under which corporations or management can be held accountable, criteria for exempting corporations from prosecution or charges, and similar considerations.

3. Criminal

The Higher Education Law in the provisions of Article 93 explicitly stipulates that sanctions that can be imposed on corporations (organizations or higher education providers) are imprisonment for a maximum of 10 (ten) years and/or a fine of up to Rp. 1,000,000,000.00 (one billion rupiah). It becomes a juridical problem because the law does not stipulate special provisions regarding special rules related to the implementation of fines for corporations (not their management), for example in cases where fines cannot be fulfilled by corporations.

The formulation of Article 30 of the Criminal Code essentially governs the substitution of imprisonment for a fine (KPD), which can be implemented when the offender is unable to pay the imposed fine. The alternative penalty takes the

form of imprisonment, lasting at least 1 (one) day and at most 6 (six) months, or 8 (eight) months if aggravating factors are present. Naturally, the imposition of KPD is not applicable to corporations that are unable to satisfy the fines imposed upon them. As basically it is a necessity that special laws outside the Criminal Code regulate corporations as subjects of criminal law, so the whole system of criminal sanctions must be regulated in its entirety. In the case of fines, it is not enough just to include the amount of the penalty, other matters need to be regulated so that the fines can operate properly. For example, such as a. The grace period when the fine must be paid, b. Things that can guarantee the fulfillment of fines, c. Compensation punishment if the fine is not able to be paid, d. And so forth.

### **Formulate Criminal Determination Policies for Forthcoming Higher Education Laws**

In the policy of formulating criminal provisions in the Higher Education Law in the future, the following matters need to be considered:

#### **1. Problem Formulation of Criminal Acts (Juridical Qualification)**

In future formulation policies on criminal provisions of the Higher Education Law, consideration should be given to stipulating explicitly whether the offenses in the law qualify as crimes or violations. This juridical qualification is a must because bearing in mind that the general rules of Book I Chapters I-VIII of the Criminal Code can be applied to offenses in the Higher Education Law if there is a determination of an offense to be a crime or violation. According to Barda Nawawi Arief, the determination of the juridical qualifications functions:

- a. To bridge the enactment of the general rules of the Criminal Code against criminal acts in the Special Law (in this case the Law on Higher Education, pen.);
- b. Contains the function of harmonization of system unity.

#### **2. Issues of Criminal Liability (Corporate Criminal Liability)**

It is better to use the term "Corporate" not "organization or organizer of higher education" as found in Article 93 of the Law on Higher Education. The reason is based on what was stated by Rudi Prasetyo as quoted by Muladi and Dwidja Priyatno, "the word corporation is a term commonly used by criminal law experts to refer to what is commonly referred to in other fields of law, particularly in the field of civil law, as a legal entity, or what is called *rechtsperson* in Dutch, or what is called legal entities or corporation in English". Further continued by Muladi and Dwidja Priyatno, regarding the use of the term "corporation", it should be used consistently. So far, the use of the term "corporation" has been used in



various ways and is not uniform. So for the future (bold, pen), in carrying out legislative policies the term "corporation" should be used (Priyatno Muladi, 2012).

After reading and understanding the weaknesses in the corporate criminal liability regulations in the current Higher Education Law, in the future in formulating criminal law policies it is best to pay attention to what was conveyed by Barda Nawawi Arief, which will be presented below:

"The general criminal provisions in the Criminal Code are oriented towards 'people' (natural persons), not aimed at corporations (legal persons or legal entities, pen.). Therefore, if special laws (including the Law on Higher Education, pen.) state that the subject of a criminal act is a corporation, then it should also be accompanied by special provisions on punishment for corporations, which may include:

- a. assertion of corporations as the subject of a crime;
- b. Determination of criminal sanctions/actions for corporations (crimes that can be imposed include financial, structural and stigmatising sanctions, etc);
- c. Identification of accountable parties.;
- d. Establishment of circumstances for holding corporations/management accountable.;
- e. Formulation of distinct punishment regulations for corporations (including specialized conditional criminal regulations).;
- f. Definition of factors warranting the discontinuation of prosecution or the removal of criminal penalties for corporations.

### 3. Criminal Matters

#### a. Types of Criminal Sanctions for Corporations

Article 93 of the Higher Education Law states that for legal subjects 'individuals, organizations or providers of higher education' the available sanctions are in the form of 'a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)'. Thus the sanction that can be imposed on Corporations (organizations or providers of higher education) is only a fine because it is impossible to be sentenced to imprisonment.

Furthermore, Cristina de Maglie, (Professor of Criminal Law, University of Pavia and Fellow of the Institute for Legal Research, University of California, Berkeley) (de Maglie, 2011) as quoted by Barda Nawawi Arief, divided the pattern of sanctions for corporations into 3 (three) types: (1) Financial Sanctions (fine); (2) Structural Sanctions (restrictions on business

activities, dissolution of the corporation), (3) Stigmatising Sanctions (announcement of judge decisions, corporate reprimands).

that to complement the criminal law policy regarding the types of sanctions that can be imposed on corporations, on this occasion a comparative study of various foreign Criminal Codes will be described to complement it in considering future policies.

Such as Criminal Codes Lativa section 70 Types of Coercive Measures Applicable to a Legal Person, Section 70. Conditions for the Application of Coercive Measures to a Legal Person. Criminal Code Moldova Republic Article 63 Categories of Punishments Applicable to Legal Entities. Criminal code Prancis Article 131-37 Penalties for felonies and misdemeanors incurred by legal persons. Article 131-39 Where a statute so provides against a legal person, a felony or misdemeanour may be punished by one or more of the following penalties. Article 131-40 The penalties incurred by legal persons for petty offenses Article 131-42, Article 131-43.

The description of the comparative study above also intends to provide information enrichment that the types of sanctions that can be imposed on corporations are not only in the form of fines, as emphasized in various Special Laws outside the Criminal Code, including in this case the Law on Higher Education. So that it should be considered in criminal law policies in the future. Of course, the types of criminal sanctions that will be introduced in the Higher Education Law must be accompanied by provisions on how to implement them or the rules needed so that these crimes can operate properly.

b. There is a need for sanctions in the form of actions; currently, there are only principal punishments in the form of imprisonment or fines.

Based on the basic idea of the Double Track System, the Double Track System is both, namely criminal sanctions and action sanctions. The Double Track System does not fully use either of the two types of sanctions. This two-track system places the two types of sanctions in an equal position. The emphasis on equality of criminal sanctions and action sanctions within the framework of the Double Track System is related to the fact that the element of reproach/suffering (through criminal sanctions) and the element of coaching (through action sanctions) are equally important. **H.L.A. Hart** stated that from the point of view of the basic idea of the Double Track System, equality in the status of criminal sanctions and action sanctions is very useful in maximizing the use of both types of sanctions appropriately and proportionally. This is because an integral and balanced sanction policy

(criminal sanctions and actions), in addition to avoiding the application of fragmentary sanctions (which emphasize criminal sanctions), also guarantees the integration of an individual sanction system and a functional sanction system.

c. Create a whole fine criminal system as a whole

High fines for corporations will be meaningless if they are not accompanied by regulations for the implementation of fines/substitute punishments. Because the provisions in the Criminal Code Article 30 cannot be applied to corporations because these provisions only apply to humans, "it is impossible for corporations to be subject to alternative imprisonment in the form of imprisonment in lieu of fines (KPD) for a maximum of 6 months at least 1 day or a maximum of 8 months if there is weight.

By not regulating how the fine is carried out, it will affect whether or not the fine is threatened. For this reason, to end the analysis of fines in the Higher Education Law, it is appropriate to end by presenting the view of Barda Nawawi Arief, "A comprehensive system of criminal sanctions must also include policies that can be expected to guarantee the implementation of these criminal sanctions".

In Indonesia, the role of law in development serves as a mechanism for community revitalization. This premise is founded on the belief that the attainment of peace within development is a vital and indispensable pursuit (Lubis, 2021). To deal with educational crimes that are rife at this time, a policy formulation is needed, namely criminal policies as a response to educational crimes. Criminal policy is a rational and organized effort of a society to prevent, deal with, and react to crime (Dewi, 2020).

So that the best alternative is the penal provisions in the upcoming Higher Education Law containing provisions regarding the implementation of fines and alternative penalties that can be implemented if fines cannot be fulfilled and other rules that support the implementation of fines more effectively.

Furthermore, legislative policy should not only increase the number of fines, because this is not a guarantee for the effectiveness of fines. The legislative policy should make a policy as a whole for the criminal fine system itself, not just determining the amount of criminal sanctions. A comprehensive system of criminal sanctions must also include policies that are expected to guarantee the implementation of these criminal sanctions. In establishing legislative policies relating to the implementation of fines, it is necessary to consider matters including:

- a. A framework for determining the fine amount;;
- b. Timeframe for the fine payment;
- c. Coercive measures designed to ensure fine payment in cases where the offender fails to meet the stipulated deadline;
- d. Application of fines in unique circumstances (e.g., involving minors or dependents);
- e. Guidelines or criteria for imposing fines.

## Conclusion

The conclusions that can be conveyed are:

1. Policy formulation in the Law on Higher Education has not been prepared properly according to the current penal system. This is indicated by the many juridical problems contained therein. These juridical issues include: No qualifications for offenses, Unclear juridical boundaries regarding legal subjects, absence of Corporate Criminal Liability rules, absence of criminal fines and intact regulations for corporations.
2. In the policy for formulating criminal provisions in the Higher Education Law in the future, it is necessary to consider the following matters: Granting Juridical Qualification, special punishment rules for corporations as a whole are made including: the term used is corporation, affirming corporation as the subject of a crime; determining criminal sanctions/actions for corporations (crimes that can be imposed include financial, structure and stigmatising sanctions, penalties); determination of who can be held accountable; determining when the corporation/management can be held accountable; determination of special punishment rules for corporations (among other things, special conditional criminal rules for corporations); determining the reasons for abolishing prosecution or abolishing crimes for corporations). Beside that, it is necessary to formulate more varied types of criminal sanctions for corporations followed by all the rules that enable the punishment to be carried out effectively, and there is a need for sanctions in the form of action, so far there are only sanctions in the form of principal punishment in the form of imprisonment or fines.

## Suggestion

A suggestion for legislators, before embarking on the formulation of policies regarding criminal provisions in future iterations of the Higher Education Law, is to recognize that policy formulation constitutes a strategic planning phase within the framework of addressing criminal activities within higher education. Therefore, the formulation stage must encompass comprehensive sentencing guidelines to ensure clear direction for law enforcement officials during the stages of application and execution. The Special Law outside the Criminal Code (Higher

Education Law) is only part of the overall punishment system. As part of the entire penal system, the criminal provisions of the Higher Education Law are systemically bound to the general rules of Book I of the Criminal Code Chapters I to Chapter VIII as long as it does not set rules that deviate. If the Higher Education Law wants to contain rules that deviate from the Criminal Code, special rules should be made and if you want to apply the general rules in Chapters I to Chapter VIII of Book I of the Criminal Code against criminal acts regulated in the Higher Education Law, it is by stipulating the qualification of the offense as a crime or violation.

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