

The Essence and Function of Criminal Sanctions in Higher Education as a Crime Prevention

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Abstract

Crime on higher education has increasingly become an area of public concern. However, as it turns out in practice, law enforcement of criminal offenses in education tends to be weak so as to provide space for the emergence of new crimes in education. The type of research is normative and empirical research. Results of the research shows that the essence of regulation for criminal offenses in education, especially higher education is regulated in Higher Education Law. In this law, there is a formulation of criminal offenses that is regulated in the crime related to diploma, professional and competence certificates, criminal offenses related to academic degree, vocation degree and professional title, and also related to establishment of higher education and criminal conduct related to higher education by other state agencies. Law enforcement on criminal offenses in the field of higher education is measured by the effectiveness of law enforcement in the field of higher education which is influenced by several factors such as law, law enforcement officers, community, facilities and infrastructure, culture and supervision.

Keywords: Crime, Crime Prevention, Criminal Law, Higher Education

1. Introduction

Science and technology is always evolving and progressing in accordance with the development of era and also human thinking. Especially, the way digital technology development.¹ The quality of life of the nation can increase if supported by an advanced educational system. With an advanced education system, it allows us to think critically, creatively, and productively. In the Preamble of the 1945 Constitution of the State of the Republic of Indonesia mandates that the state is required to realize an intelligent society.²

Education and quality of life are two variables with strong interdependence relation in achieving human life goals. Generally, the quality of life is highly determined by the quality of education. As a decisive factor, the existence of education today is no longer considered a complement to human needs alone, but has been positioned as a fundamental instrument with an urgency level almost equal to the three basic human needs of food, clothing and housing.³

Given the important role of education for the progress of a country, the responsibility for the implementation of quality education is essentially not only a matter of state, but also the responsibility of all parties as a component of development. The responsibility of the state for the implementation of quality education for every citizen explicitly regulated in Article 28C paragraph (1) of the 1945 Constitution of the Republic of Indonesia regulates that everyone has the right to develop themselves through the fulfillment of their basic needs and entitled to education and benefit from science and technology, art and culture, in order to improve the quality of life and for people' welfare.

According to Act No. 20 of 2003 about National Education System, education is defined as a conscious and planned effort to create an atmosphere of learning and learning process so that learners develop their potential to have spiritual power of religion, self-control, personality, intelligence, noble character, and skill, society, nation and state. In relation to criminal provisions in the Education Acts, it is stipulated from Article 67 to 71.

One level of formal education is higher education. Higher Education is the level of education after secondary

¹ Vanessa H.W, Dylan, P.O., Griffin, H., Harrington, J.R. (2016). University Policies and Programs for Crime Prevention and Awareness: An Examination of Online Reports and Resources. *Criminal Justice Review*, Vol 41, Issue 2, pp. 140 - 158

² Paragraph 4, The 1945 Constitution of the Republic of *Indonesia*

³ Fisher, B. S., May, D. (2009). College students' crime-related fears on campus are fear-provoking cues gendered? *Journal of Contemporary Criminal Justice*, 25, 300-321

education that includes diploma programs, scholars, master, specialists, and doctoral held by universities. University is a highest formal education institution that conducts teaching, research, and community service. Universities are educational units that conduct higher education. The forms of higher education include universities, institutes, high schools, polytechnics, academy and community academy. The issue of education is not only in the socio-economic realm but also within the realm of law. The issue of education in the legal realm can be any form of educational deviation that has certain juridical impact. The phenomenon of deviation in education can be classified as an administrative violation or as a crime.

Violations that occur in education are very heterogeneous in nature and it conducted directly or indirectly, transparent or not. Violations that occur in education is conducted by institutional and personal, all of which damage the image of education. For example, as in the case of District Court Verdict in Medan No. 629/Pid.B/2007/PN.MDN dated 27 June 2007, the case stated that the defendant (HM) has committed a crime using a diploma, competency certificate, academic degree obtained from educational units that do not meet the requirements of an honorary degree of DR (HC) and an academic degree (S.Sos).

The similar problem happened in the case of forgery of the diploma; Andalas University successfully uncovered the case of forgery of diploma on behalf of LA. This is based on reports from Non-Governmental Organizations *Investigation Corruption Transparent Independent* (ICTI) - NGO of DPP KEPRI, Tanjungpinang, Kepulauan Riau. Alleged forgery of diploma by ICTI submitted to the Rector of Andalas University on 17 October 2013 immediately followed up by academic of Andalas University. For false diploma is stated that LA has been using S1 diploma in one of department at Andalas University in 2009. The result of tracing and checking the data that LA was never registered as student of Andalas University, the number of the diploma is incorrect and the book number is incorrect, the date of graduation is incorrect, and some other data is incorrect.¹

Not until it recently was launched by the news on 15 July 2016 that there are thousands of lecturers did not pass the certification for plagiarism. According to the Ministry of Research, Technology and High Education Ali Ghufron Mukti stated that there are 2.000 lecturers who did not pass the certification due to administrative obstacles. They do not make self-ability analysis according to reality. On average, they copying and paste from other lecturers. Though the self-ability analysis contains a description of self-experience as a lecturer and contained in the article which then assessed by assessor internal as much as 24 items.²

Starting from many cases that occurred in education that has been described above, the tendency of criminal in the form of law is considered not effective anymore in combating criminal acts in the field of education. Law enforcement of criminal offenses in education tends to be weak so as to provide space for the emergence of new crimes in education. Therefore, the authors intend to examine more deeply related to the problem of criminal acts in the field of education especially in the scope of higher education in order to provide solutions to crime prevention and various violations that occur and find an ideal sanction system in the prevention of criminal acts in the field of higher education.

2. Method of Research

The type of research is normative and empirical research.³ The use of both models because the authors conducted a review of norms related to criminal provisions in the field of higher education. Likewise with the facts directly related to law enforcement includes rules and find an ideal concept related to criminal issues in the field of higher education.

The location of research is focused on 3 (three) big cities in Indonesia, namely Makassar, Jakarta and Surabaya. The determination of location is expected to represent the entire territory of Indonesia. Then, the data obtained in this research is described in accordance with the problems studied in descriptive qualitative. The primary- and secondary legal materials that have been collected are inventoried, processed and studied in depth so as to obtain a description of the legal issues studied.

3. The Essence of Crime Offense Arrangement in the Field of Higher Education

Education has a very important role in improving the human resources. In addition, it can also create a superior and competitive generation in an effort to face the challenges that will occur in the future. It takes a commitment to build self-reliance and empowerment that can sustain the future of education in order to achieve educational

¹ Source: <http://www.unand.ac.id/id/berita/universitas/2558-pemalsuan-ijazah-unand> accessed on 10 September 2015.

² Source: <http://www.beritasatu.com/pencarian/?keyword=ribuan+dosen+tidak+lulus+sertifikasi+karena+plagiat> accessed on Sunday, 17 July 2016 at 13.00 WITA.

³ Marzuki, P.M. (2005). *Penelitian Hukum*, Jakarta, Kencana, hlm.35. Compared to Fajar, M.N.D., Achmad, Y. (2015). *Dualisme Penelitian Hukum Normatif & Empiris*, Yogyakarta, Pustaka Pelajar, Page. 44.

idealism.

Quoted on the *Dictionary of Education*,¹ education is a process of person for developing attitude-ability and other forms of behavior in a society in which he/she lives, a social process whereby people are exposed to selected and controlled environmental influences (especially from schools), so he gain or experience the development of optimal social and individual abilities. This formal education level consists of basic education, secondary education and higher education. Higher education is the level of education after secondary education that includes diploma education programs, scholars, master, specialists, and doctoral held by universities.

In this context, according to Halim, A.R.,² that simply, criminal offense in education is criminal acts committed in education. In outline, the educational crime can be defined as an attitude of action undertaken in the field of education and the various relations in it, crime or offense with all its purposes.³ The point is that the attitude of the act is clearly already a deviation of tangible form. Consequently, no matter what the purpose and the reason; misconduct is cannot be justified or tolerated.

Crime in the field of education is a crime that occurs in the field of education, it not only cause a real loss in the implementation of education itself, but also to the parties involved in the field, especially students so as to disrupt the achievement of the goal of education itself. The criminal acts that occurred in the field of higher education can be classified as follows:

a. Crime related to Academic, Vocational, and Professional Degrees

These crimes include the falsification of a degree of academic, vocational and professional. It usually followed by the occurrence of other criminal acts of fraud. Degree is a term given to graduates of academic education, vocational education, professional education and specialist education.⁴ According to Wikipedia that academic degree is a degree awarded to a graduate of academic education in a particular field of study from a college. An academic degree is sometimes referred to in Dutch as title (from latin *titulus*). An academic degree consists of bachelor, master and doctor.⁵

An academic degree and professional designation used by the entitled to receive is an academic degree and/or the highest level of professional title owned by the rightful. Academic degrees and professional designations are only used or imprinted on official documents relating to academic and occupational activities.

Normatively, the requirement of academic degree and professional designation is given after completing all obligations and/or duties charged in following a course of study for academic- and professional education in accordance with applicable provisions. They have completed administrative and financial obligations with regard to the courses followed in accordance with applicable regulations. They have graduated from a college that conducts academic and/or professional education.⁶

The honorary doctoral degree may be awarded to someone who has contributed to science, technology, culture, society and/or humanity. The requirement for a candidate for honorary doctoral degree is to have an academic degree of at least bachelor degree, a tremendous merit in the development of a discipline of science, technology, culture, society and/or humanity. While, the requirements of universities that can provide honorary doctorates are universities and institutes who have the authority to organize the Doctoral Education Program in accordance with the applicable provisions. Granting an honorary doctorate degree may be proposed by the faculty senate and confirmed by an authorized university senate/institute. The award of a honorary doctoral is carried out in accordance with the applicable procedures at the university/institute which is authorized. The award of honorary doctorate is reported by the Rector to the Minister with complete consideration of the work or service concerned. Honorary doctorate degree abbreviated as DR. (H.C.) is placed in front of the name of the recipient of title to the title and is only used or imprinted on official documents relating to academic and occupational activities.⁷

¹ Ihsan, F. (2003). *Dasar-Dasar Kependidikan*, Jakarta, Rineka Cipta, Page 4.

² Halim, R. (1985). *Tindak Pidana Pendidikan (Suatu Tinjauan Filosofis-Edukatif)*. First edition. page. 105.

³ Danil, E., & Kurniawan, I. (2017). Optimizing Confiscation of Assets in Accelerating the Eradication of Corruption. *Hasanuddin Law Review*, 3(1), 67-76.

⁴ Article 1 number 1 the Ministerial Regulation of Research, Technology and Higher Education of the Republic of Indonesia No. 63 of 2016 on Title and Procedure of Title Writing in the Higher Education.

⁵ Source: http://id.m.wikipedia.org/wiki/Gelar_akademik accessed on 5 July 2017.

⁶ Article 13 on the Ministerial Decision of National Education RI No.178/U/2001 on Title and Graduates of Higher Education.

⁷ Article 14 – 17 on the Ministerial Decision of National Education RI No.178/U/2001 on Title and Graduates of Higher Education.

b. Crime Related to Diploma, Professional and Competence Certificates

Falsification of diplomas beside as self-deception and institutions that use in the long term is to destroy the spirit of a fair fight that is needed by the nation that pursuing its lag likes Indonesia. The diploma has academic sacred where the eligible people are entitled and allowed to receive and use it.

In the Regulation of the Ministry of Education and Culture of the Republic of Indonesia No.81 of 2014, the meaning of diploma is a document of recognition of learning achievement and/or completion of a higher education level after passing the exam held by universities. Furthermore, in Article 42 Paragraph (1) of Act No. 12 of 2012 on Higher Education states that diplomas are granted to academic and vocational education graduates in recognition of the learning achievements and/or completion of an accredited course organized by a university. This diploma should be issued by a college that contains study program and degrees that are eligible for higher education graduates.

While, the certificate of competence is an acknowledgment of competence on the achievement of graduates in accordance with expertise in the branch of science and/or have achievements outside the study program. This certificate of competency is published by a college in cooperation with an accredited professional organization, training institution or certification body for graduates who pass the competency test. This certificate of competence may be used as a condition for obtaining a particular job¹. The certificates of competencies are awarded by education providers and training institutions to learners and citizens in recognition of the competence to perform certain work after passing a competency test held by an accredited educational unit or certification body.²

c. Crime Related to the Establishment of Higher Education

The implementation of education is the implementation of components of the educational system on the unit or educational program on the department, level and type of education so that the educational process can take place in accordance with the goals of national education. The education unit is a group of educational services that organizes education on formal education department in every level and type of education.

This college is divided into 2 (two) namely State College, abbreviated as PTN and Private Colleges, abbreviated as PTS. State colleges hereinafter abbreviated as PTN are colleges established and/or organized by the government while private colleges abbreviated to PTS are colleges established and/or organized by the community.

The criminal offense as discussed in this article relates to the establishment of higher education either PTN or PTS. The establishment of PTN is the establishment of colleges, institutes, high schools, polytechnics, academy and community academy by the government while the establishment of PTS is the establishment of colleges, institutes, high schools, polytechnics, academy and community academy by a non-profit-based legal body. The organizing body is a non-profit foundation, association or other legal entity in accordance with the provisions of legislation.

d. Crime Related to the Implementation of Higher Education by Other State Institutions

In this crime, its legal subjects are individuals, organizations and providers of higher education. What is prohibited in this article is the legal subject as mentioned above implement the higher education whereby other state institutions higher education are not licensed by the government, profit-principled and not cooperating with Indonesian colleges under government permission and do not prioritize lecturers and education personnel who are Indonesian citizens.

Colleges of other state institutions may hold higher education in the territory of the unitary state of the Republic of Indonesia in accordance with the provisions of legislation. Where other state institutions have to be accredited and/or recognized in their country. The government in this case determines the regions, types, and study programs that can be held by other state institutions. The establishment of colleges of other state institutions shall support the national interest.

In the legislation of Directorate General of Higher Education, it is possible for colleges to cooperate in domestic and overseas cooperation. Domestic cooperation is an agreement between ministers or initiating units within the ministry of research, technology and higher education with ministries/agencies, local governments and/or legal entities. While, overseas cooperation is an agreement between ministers or initiating units within the ministry of

¹ Article 44 paragraph (1), (2) and (3) Act No. 12 of 2012 on Higher Education.

² Article 61 paragraph (3) Act No. 20 of 2003 on National Education System.

research, technology and higher education on behalf of the government of the Republic of Indonesia with the government and/or other state legal entities.¹

Observing substance and program aspects are conducted by reviewing the content of the text of cooperation which includes: objectives, scope, form, implementation, financing, period, the linkage of cooperation with the program that supports the ministry policy and other matters deemed necessary. While, observing legal aspects are conducted by reviewing the content of the domestic cooperation text against the application of legal principles and the format of cooperation texts. The result of the study becomes the discussion material of overseas cooperation with partners/other countries. The results of discussion of overseas cooperation schemes with partners/other parties in the form of the final manuscript of overseas cooperation. The final draft of overseas cooperation receives the signing from the Bureau of Cooperation and Public Communication and partners/other state parties.

4. The Effectiveness of Law Enforcement in the Field of Higher Education

Discussing about the effectiveness of law enforcement is also discussed about the validity of the law. Law validity means that the legal norms are binding, that one must act in accordance with those required by legal norms, that one should abide by and apply the legal norms. The effectiveness of law means that people actually act in accordance with the legal norms as they should do that the norms are actually applied and obeyed.

The effectiveness of law enforcement is closely related to the effectiveness of the law. In order for the law to be effective it is necessary for law enforcement officers to sanction it. A sanction can be actualized to the community in the form of compliance with the condition indicating the existence of an indicator that the law is effective. The success of law enforcement is determined by several factors that influence the implementation of law enforcement on criminal offenses in the field of higher education.

a. Factor of Legal Instrument

Legal factor is a key of law enforcement as a consequence of the form of constitutional state which is embraced by the Indonesian nation. Concerned laws are not only influenced on the normative provisions issued by the authorities but also the legal principles underlying those normative provisions. In order for the law to have a positive impact in the sense that the law reaches its objectives, it should not be separated from its principles and objectives.

In this case, legal factor refers to the standard rules as a rule that is generally used by the public, in this context, the rule is termed with the substance of law that serves to coordinate and control all regulations that may and should not be conducted and follow-up the various deviations that also arranged therein as a common pattern of law. This normative pattern should be viewed as an essential element of an integrated structure. The law is served to resolve conflicts that arise in the communities.²

In this discussion, the legal factors refer to Act No. 12 of 2012 on Higher Education. In the preceding explanation, it is described that in Article 93 of the law on higher education there are 4 (four) types of criminal offenses which are regulated, those are diploma-related crime, professional certificate and competence certificate, criminal offense related to academic degree, vocational title and professional title, crime related to establishment of higher education and crime related to the holding of higher education by other state institutions.

The formulation of article in this criminal provision still raises the interpretation of the use of the phrase “*without rights*” as in the formulation of Article 28 paragraph (6) of the legislation of Directorate General of Higher Education stating that individuals, organizations or higher education providers without rights are prohibited from awarding academic degrees, vocational or professional titles. This phrase *without right* still raises the interpretation, for example the higher education provider in this case the rector when giving the title/degree or diploma to the students is the rightful person. Hence, ought to the phrase *without rights* is not used and replaced with the phrase “*does not meet procedures as prescribed by law.*”

b. Factor of Law Enforcement

It concerns the parties that establish and implement the law. Law enforcement sections are law enforcement officers capable of providing legal certainty, fairness and legal benefits proportionally. The law enforcement

¹ Article 1 the Ministerial Regulation of Research, Technology and Higher Education of the Republic of Indonesia No. 4 of 2017 On The Guidelines of Cooperation in the Ministry of Research, Technology and Higher Education.

² Rahim, A. (2017). *Reformulasi Tindak Pidana Bagi Anak Sebagai Pengedar Narotika Dalam Mewujudkan Tujuan Pemidanaan Anak*. (Dissertation). Makassar, Graduate School, Hasanuddin University, Page 260.

apparatus is also meant law enforcement agencies and personnel while law enforcement officers in the narrow sense begin with the police, prosecutors, judiciary, legal counsel and prison officers. Each apparatus is given authority in performing their respective duties which include the activities of receiving reports, investigation, prosecution, verification, verdict and sanction and re-establishment of the convicted person.

To determine whether the performance of written law is effective or not is law enforcement officers. In this relation, needed apparatus is reliable so that the apparatus can do their job well. Reliability in relation here includes professional skills and has a good mentality. Issues affecting the effectiveness of written law in terms of apparatus will depend on the following:

1. To what extent are the officers bound by existing regulations
2. To what extent is the duty is permitted to give wisdom.
3. What kind of example should an officer give to the community
4. To what extent is the degree of synchronization of assignments assigned to officers so as to provide strict limits on their authority.¹

In this case, factor of law enforcement are the police who are tasked to conduct investigations of alleged existence of criminal acts in the field of higher education. The success or failure of law enforcement is determined by the professionalism and mentality of law enforcement officers. This professionalism is required by the law enforcement apparatus in order to conducts its duties and obligations in accordance with applicable codes of ethics. In investigating a criminal act does not distinguish the subject of the law that performs and performs its duties free from outside influences or interventions. In addition to professionalism, the development of a good mentality is also required in law enforcement efforts by law enforcement officers, if mentality of law enforcement officers well then the implementation of the law would be good otherwise if the mentality of law enforcement officers will also adversely affect the implementation of law enforcement.

Penetration of criminal law in the realm of higher education for some circles is still regarded as something excessive.² It is said that because criminal law and education have different nature and approach in overcoming a violation. Criminal law is hard and firm because it is equipped with criminal sanction in its application while education is soft because it emphasizes cognitive, psychomotor and affective approach integrally in its development.

Seeing the acceleration of the development of society today, basically the function of criminal law is wider, it means that criminal law can be functioned or involved in overcoming various forms of deviation that occur in every aspect of community life, including deviation on the aspect of higher education. Criminal law is part of the legal system or system of norms compared to other public laws, the criminal law has its own uniqueness that is the existence of criminal sanctions as a negative sanction applied to violations and crimes.

Criminal sanctions that are assertive and hard and identical with suffering is often a consideration for not using criminal law in order to protect private and public interests that contain the values of coaching in it, including the interests of education. Basically, the existence of criminal law contains double function which is to protect the interest which is held by the rules of private law as well as public law. Special sanctions inherent in criminal law are merely a means of protecting both interests.

As one means of protection, criminal law does not necessarily be used simply to cope with any form of deviations. In this case, the criminal law is *ultimum remedium* while the criminal sanction is *the last resort*. This means that to minimize the side effects of criminal law, then it is used as the last means among all other legal means. If other legal means fail, the criminal law can be applied. Efforts to overcome criminal acts of "*criminal politics*" have a wide implementation dimension including the application of criminal law, the prevention, overcoming and paying attention to the welfare of the community is also included, in that effort the mitigation aspect can be divided into 2 (two) namely: penal path (criminal law) and non-penal path (outside of criminal law).

Prevention crime through the penal path is more focused on the nature of repressive (retaliation/action) it means that it is implemented after the criminal act, while the non-penal path is more emphasis on the nature of preventive; it means that effort is done before the crime. Penal policies include what actions should be criminalized and what sanctions should be used or imposed on the offender. Police penal policies include disclosure and case resolution (from the inquiry stage to the investigation). The statistics on the number of cases related to criminal offenses in the field of higher education as registered by police as follows:

¹ *Ibid*, Page 82.

² Salim, A., Muhadar., Aswanto., Muchtar, S. (2015). Harmonization Of Inter-Institutional Authority In Eradicate Corruption. International Journal of Scientific & Technology Research, 4 (8): 32-36

Table 1. Data of crime in the field of higher education in the Police, 2012-2017

No.	Reporting Year	Amount
1.	2012	2
2.	2013	2
3.	2014	-
4.	2015	3
5.	2016	2

Source: Primary data, 2017 (edited)

Based on the table above shows that cases related to criminal offenses in the field of higher education that admitted to the police still low, it is seen from the number of cases. The types of criminal offense that enter the investigation stage in the above table are the alleged criminal acts of diploma forgery and alleged use of false degrees. The number of cases admitted to the police relating to criminal offenses in the field of higher education can be showed as follows: in 2012 there were 2 cases, one case from the South Sulawesi Regional Police and 1 case from the East Java Regional Police, the type of case was alleged false diploma. While, in 2013 there are 2 cases, 1 case from East Java Police and 1 case from Metro Jaya Regional Police. Types of cases that admitted to the East Java Regional Police are alleged false diplomas while the Metro Jaya Regional Police types of cases that admitted to the police is alleged expenditure of diploma certificate deeds issued by the Dean of the Faculty of Teacher and Education of UKI.

According to Mr. Muh. Kadarislam, K., SH, S.Ik., M.Si, the handling of criminal offense of higher education especially in South Sulawesi is done based on the existence of community report in advance, still the low number of cases caused by ignorance of society itself and also most who become perpetrators of criminal acts in the field of higher education especially the crime of diploma forgery is the community itself so they are reluctant to report if the community later find out that the diploma used is a false diploma.¹

Meanwhile, according to Mr. AKBP Sutarmo, S.H. something that must be addressed in the handling of criminal offense in the field of higher education is the regulation where reality regulatory stakeholders are less assertive in the implementation of the handling of allegations of false diplomas that occur in the community other than that still lack of government socialization about false diploma so that the impact on the lack of knowledge of the community where the original and false diplomas. The need further coordination between the directorate general of higher education as the stakeholder of the law and the police as last law enforcers.²

In the investigation of criminal offenses in the field of higher education, that often become an inhibiting factor of law enforcement is the law enforcement in this case the police are waiting for the arrival of reports from the public related to the crime in the field of higher education. Furthermore, it was also mentioned that the importance of coordination between the police and the ministry related to the disclosure of criminal acts in the field of higher education.

In interview with Muh. Kadarislam, K., S.H., S.Ik., M.Si said that one factor that inhibit law enforcement is the lack of participation from the community in helping the police to prevent and overcome the crime. Often these people become perpetrators as well as victims in criminal acts, especially criminal acts in the field of higher education. In overcoming criminal offenses in the field of higher education needed strong cooperation between law enforcement officers and community participation.

c. Factor of Facilities and Infrastructure

It shows the availability of facilities in the form of facilities and infrastructure for the implementing officers in performing their duties. The concerning facilities and infrastructure is the infrastructure or facilities used as a tool to achieve legal effectiveness. In relation to the facilities and infrastructures said as the term of facility, Soekanto³ predicts the standards of the effectiveness of certain elements of the infrastructure, which the infrastructure must clearly be a part that contributes to the smoothness of the apparatus' duties in their place or work location.

Also, law enforcement of criminal offenses in the field of higher education requires the support of facilities and infrastructure that support the performance of law enforcement officers. One of the supporting facilities in overcoming the crime of false diploma, the government has made a system called *Sistem Verifikasi Ijazah Secara*

¹ Kasubdit IV Sumdaling, DIT RESKRIMSUS POLDA Sulsel, Interview on 26 January 2017 at 10.30 WITA.

² Kasubdit III Sumdaling Ditrekrimsus Polda Metro Jaya, Interview on 01 March 2017 at 10.00 WIB.

³ Soekanto, S. (1983). Faktor-Faktor Yang Mempengaruhi Penegakan Hukum, Jakarta: PT Raja Grafindo Persada.

Online (SIVIL), the system is expected to verify the diploma used by the community whether registered or not in *Pusat Pangkalan Data Pendidikan Tinggi* (PDPT). In addition to overcoming the crime of plagiarism in colleges, there is software called *turnitin*. This software is used to detect a plagiarism or plagiarism action against a scientific works that authenticity must be tested. This application is used to prevent the occurrence of plagiarisms of scientific works that can be used by the public to obtain a diploma. If it is proven that the scientific work used to obtain the diploma is the result of plagiarism then the person is not entitled to obtain a diploma or an academic degree.

d. Factor of Community

The fourth factor is community in which the law environment is applicable or applied. Law enforcement comes from the community and aims to achieve peace within the community. The community has certain opinions about the law. Several elements of effectiveness measures that depend on the condition of the community are: a) The causing factors in which the community not to obey the rules despite good regulations; b) The causing factors in which the community not to obey the rules even though the regulations have been good and the officers have been very authoritative; and c) The causing factors of the community not to obey the rules even though officer or authoritative officer and facility is sufficient.

The elements above provide an understanding that community discipline and compliance depend on internal motivation. This internalization exists in each individual who becomes the smallest element of the social community. Therefore, the most appropriate approach in this disciplinary relationship is motivation that is instilled individually. In this case, the degree of legal compliance of the community becomes one of the parameters on whether law is effective or not while the compliance of community can be motivated by various causes, both caused by internal and external conditions.

Internal conditions arise because there are certain motivations both positive and negative. Positive motivation can arise because there is a positive stimulus that causes a person to move to do something positively, while the negative motivation can arise because negative stimulus such as unfair treatment or so on.

External motivation related to some kind of external pressure that requires or encourages the communities to obey the law. In the general level, the obligation of communities to obey the law is due to sanctions or punishments that give a sense of fear or discomfort so that it prefers to obey the law rather than committing an offense which in turn can trouble them. This motivation is usually temporary. The importance of community in supporting the success of law enforcement cannot be separated from law enforcement in the field of higher education. In this case, the community is subject of law which regulated in the law of higher education that is learners, lecturers, education staff and community in general.

The importance of community participation to support the success of the development of higher education cannot be separated from the knowledge of the community itself for the existence of this law especially in the criminal offense as regulated in the higher education Acts. The need for adequate socialization of the existence of this law of higher education so that people know their duties and responsibilities in support of the achievement of national education goals. This is in line with Atmasasmita¹ opinion that the inhibiting factors the effectiveness of law enforcement is not only in mental attitude of the law enforcement apparatus (judges, prosecutors, police and legal counsel) but also in legal socialization.

e. Factor of Culture

Culture is as a result of work, inventiveness and sense based on human initiative in the social life. Actually, this factor is united with the factor of community and it deliberately distinguished because in this discussion we explores the system of values that become the core of spiritual or non-material culture. This is distinguished because as a system (or a sub system of a social system) then the law includes structure, substance and culture.

The structure includes the place or form of the system in which the formal legal institutions, the law between the institutions, their rights and obligations and so on. Basically, law culture (system) includes the values underlying the prevailing laws, the values which are abstract conceptions of what is considered good and bad. These values are typically pairs of values that reflect the two extreme states that must be uniform.

Given the harmony of values with local culture, it is expected that a mutual relationship between custom law and positive law in Indonesia will be established, so that the provisions in the written articles may reflect the values on which the customary law is based so that the laws can be applied effective. Then it is also expected the

¹ Atmasasmita, R. (2001). *Reformasi Hukum, Hak Asasi Manusia & Penegakan Hukum*, Bandung, Mandar Maju, Page 55.

harmony between the two values will put the law in place.

Factor of culture in law enforcement of criminal offenses in the field of higher education cannot be separated from the legal awareness of compliance of the community itself. The need to build a high level of legal awareness not only on compliance where the community is afraid to the law because of the sanctions of the law but need to increase the legal awareness on the level of internalization of the law-abiding society because it is in accordance with the values adopted. This increase of legal awareness is important because based on the search of author that there is still a culture of people who want something instant.

In the current era, the culture of society is increasingly pragmatic; it is evident from the number of people who want to get a degree or diploma without going through lecture process that has been regulated by law. This is often a inhibiting factor of law enforcement in the field of higher education, due to the fear of the community to report the person involved in the sale of a diploma or degree that is inconsistent with the procedure already determined by law. This fear is due to the fact that they are involved as an actor requiring a diploma and as a victim because the diploma used is not an official diploma. Hence, it is important to build a culture of society who is afraid to use a diploma without going through proper procedures. This is in line with the internalization of law that is internalization in which the communities are obedient to the law because it is in accordance with the intrinsic value held by the community.

f. Factor of Supervision

The last factor that author adding in relation to the law enforcement in the field of higher education is supervision. This factor is important as a form of checking on the implementation of higher education conducted by universities/colleges. Sujamto,¹ formulates the definition of supervision as any effort or activity to know and assess the actual reality of the task or activity whether suitable or not. While, Marbun describes the purpose of supervision as follows; *first*, to prevent the emergence of any form of task deviation that has been outlined (preventive measure) and take action or repairing the deviations (repressive measure).² Supervision is a core factor for evaluation and performs corrective action in achieving the planned outcome or predetermined plans.

In legal term, supervision is an assessment of the validity of a government action that has legal consequences. The authority to exercise supervision of wise governmental action or not becomes the authority of the government. The purpose of supervision is government in conducts its actions must pay attention to legal norms in order to provide legal protection for the communities, which consists of administrative measure and administrative courts.

Internal supervision on the implementation of higher education is conducted by Kemenristekdikti, Kopertis and also internal supervisory unit that is in every university or college. External supervision is carried out by the community to supervise the implementation of higher education. Also, in the higher education acts are established a higher education services institution. This institution is a government working unit in the region that serves to help improve the quality of higher education. Still many phenomena of false diplomas in the community prove a lack of control over the implementation of higher education. We need a comprehensive supervision both internal and internal to the implementation of higher education for the realization of the ideals of national education.

5. Conclusion

The essence of regulation for criminal offenses in education, especially higher education is regulated in Act No. 12 of 2012 on Higher Education. In this law, there is a formulation of criminal offenses that is regulated in the crime related to diploma, professional and competence certificates, criminal offenses related to academic degree, vocation degree and professional title, and also related to establishment of higher education and criminal conduct related to higher education by other state agencies. Law enforcement on criminal offenses in the field of higher education is measured by the effectiveness of law enforcement in the field of higher education which is influenced by several factors such as law, law enforcement officers, community, facilities and infrastructure, culture and supervision.

As a recommendation, it is necessary to revise Act No. 12 of 2012 on Higher Education especially related to the regulation of criminal provisions either the formulation of article or type of sanctions or the period of criminal sanction imposed on criminal offenses in the field of higher education. In addition, it is necessary to optimize the higher education service institution at provincial level to assist the supervision function of the ministries of

¹ Sujamto. (1986). *Beberapa Pengertian di Bidang Pengawasan*, Jakarta: Ghalia Indonesia, page 61.

² Marbun, S.F. (2001). *Peradilan Administrasi Negara dan Upaya Administratif di Indonesia*. Yogyakarta: Liberty. page 61

research, technology and higher education towards the implementation of higher education so that the implementation in harmony with the national education goals.

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