

Private Higher Education in Vietnam and Recent Policy Development

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Abstract: Vietnam higher education is experiencing the period of rapid development and growth due to two main reasons: the need of highly skilled workforce for one of the fastest developing economies on the planet and because it was “discovered” that higher education in itself can be a very lucrative business, especially for private institutions. Those two reasons are frequently conflicting with each other: while the first reason drives quality and accountability, the second reason is driven by quantity and opaque practices. Many not-for-profit universities are still operating like businesses or privately owned companies where profit is the main target. In the paper, the authors discuss how those issues are addressed by the policy-makers in Vietnam, and in particular, how higher education policies have been dealing with such important topics as university governance, decision making, accountability, profits and quality. The higher education policies in Vietnam change frequently but they are still far from being perfect; however, they are improving, and hopefully they will soon be compatible with the world’s best practices.

Keywords: Private higher education, Vietnam, educational policy.

1. Introduction

Global economy demands skilled labor workforce while existing public institutions and scarce state funding in Vietnam have proved quite inadequate to prepare the workforce that would help develop country economy effectively and efficiently. So, after pausing period between 1975 and 1993 and due to the shift of the central planning economy to socialist-oriented market one, non-public higher education in Vietnam has begun emerging

impressively¹. The market economy has stimulated the development of multiple non-public higher education institutions (HEI) during the last two decades. Non-public HEIs have contributed significantly to the increase of higher education access, from 2% to 25% of higher education enrollments in the relevant aged group (WB, 2012). However, experts agree that non-public HEIs have not achieved their full potential due to certain legal constraints and inadequate policy development. This article will focus on policies developed

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¹ This article does not discuss private higher education in Vietnam before 1975.

between 2010 and 2015 as the previous period has been well described in a number of articles (Hayden and Khanh Dao 2012, Ly Pham and Minh Dam 2014).

2. The context of the non-public sector of higher education in Vietnam

First, it is important to understand non public sector of higher education in Vietnam in a global context. The authors believe that higher education is increasingly viewed by universities as a service, and by the students/parents as an investment. HEIs of the world employ millions of people and are the largest contributors to progress and innovation. Higher education is also a public good with substantial benefits to society. At the same time, higher education gives excellent return on investment: students with advanced degree (bachelor's or higher) make at least a million dollars more during their lifetime than students with high school diploma.² Vietnam is not much different from other countries now in this regard; however during the times of central planning economy, education was mainly viewed as a public service and the state was the only provider.

Second, non-public higher education in Vietnam has emerged as a part of a private sector of the country economy, and was eventually recognized as a private business sector. However, in Vietnam, education is still linked to the governing ideology and therefore private higher education policies have been developing slowly compared to other private sectors of the economy.

The conflict between central planning socialist-oriented economy model has made the transforming of the state-controlled public HEIs into multiple ownership system quite problematic. This article will focus on just one aspect of that conversion - private HEI's policies.

² <http://www.payscale.com/college-salary-report/degrees-and-majors-lifetime-earnings>

3. Historical review of the non-public sector policy in higher education in Vietnam

Alongside with the Doi Moi policies in economy starting in 1986, the concept of private higher education has been gradually accepted. In the beginning, the system consisted of public institutions only then semi-public ones emerged, later – people-founded HEIs, and finally – private schools similar to the for-profit ones in the West. Non-public HEIs currently teach nearly 40,000 students nationwide (14% of the total)³ and account for 19% of the total number of HEIs.

The government has made decision to simplify the structure by limiting it to two major types of schools – public and private. The semi-public and people-founded HEIs were required to be converted into private ones. This can be seen as a movement towards “marketization” of the higher education sector; the highest points of it were two regulations: the Decision 61/2009/QĐ-TTg and the Decision 63/2011/QĐ-TTg (in short, Decision 61 and 63), in which private school operation is compared to businesses; and the decision-making or superpower belongs to the Shareholders Grand Meeting.

However, the business model applied to private HEIs revealed shortcomings and raised public concerns with the quality of education. Therefore the Vietnamese policy makers have made significant effort to improve legal conditions for private HEIs and move from purely business model for universities to the model that better serves students, faculty and society. The two recent important policy documents are the Decree 141/NĐ-CP dated 24.10. 2013 “Guidelines on HE Law Implementation” (in short, Decree 141), and the Decision 70/QĐ-TTg dated 10.12. 2014 “Regulations on Organizing and Operation of

³ Semi-public institutions are hybrid organization with public ownership of fixed assets and largely private funding and management.

the University” (in short, University ROO 2014), which went into effect on 30.01.2015.

4. For-profit and not-for-profit institutions

An issue that still remains unclear in Vietnam is the distinction between for profit and not-for-profit private schools. In general, as long as there are no shareholders and profit sharing, and the school is governed by the Board of Trustees or elected body, it can be considered a not-for-profit institution. In some other countries, both for-profit and not-for-profit institutions enjoy tax benefits in certain forms; thus they are indirectly supported by the state budget.

However, by 2014 in Vietnam there had not been any legal distinction between for-profit and not-for-profit schools. It was not until 2014 that the official definition for not-for-profit HEIs was provided for the first time in Vietnam by the Decree 141. In 2012, Higher Education Law, Section 3, Article 12 states that the government direction is “to implement socialization of the education (meaning “to increase public participation in financial support of education such as providing land, tax exemptions, loans, professional development ...to encourage the development of not-for profit schools including foreign owned ones” (...)). The same Law states that, “taking advantage of education service to make profit is prohibited”.

Based on the above Law one can assume that for-profit schools are prohibited in Vietnam; however, it is not. Most developed countries are cautious about for-profit education and are closely monitoring it. Its usefulness, although somewhat limited only recently has been reluctantly recognized by the academics and the general public.

The legal documents of Vietnam are far from reality or at best very vague. The Regulation for Private University Operations issued by the Decision 61, and then the Decision 63 treat private HEIs exactly as

privately owned companies. These documents are in conflict with the HE law. Until issuing the Decree 141, there was no place for not-for-profits HEIs in Vietnam. All non-public private HEIs were defined as for-profits by default. It is also worth mentioning that, the semi-public and people-founded models, which are basically not-for-profits, were forced to transform into fully private (for-profit) ones, by the Circular 20/2010/BGDĐT dated 16.07.2010 and Circular 45/TT-BGDĐT dated 17.12.2014 (in short: Circulars 20 and 45).

Therefore, it can be safely concluded that between 2009-2014, all the private schools operated exactly as businesses. There were no rules for not-for-profit HEIs, let alone supervision of schools’ operations to ensure that not-for-profit rules are followed. Under such circumstances, there are a number of for-profit schools pretending to operate as the not-for-profit HEIs. It is noted that, distinction between for-profit and not-for-profit HEIs is also a sensitive issue in other countries as many not-for-profit schools operate the same as for-profit schools (Daniel Levy, 2010).

Unlike some societies in the West Vietnam does not have a long history of private investment in HEIs, neither the tradition of giving to the universities. Investors are reluctant to use substantial financial resources for school infrastructure and take risk without a guarantee of quick return. In addition, general public in Vietnam is very critical of “doing business” in the field of education and suspicious of higher education quality as a service provided by non-public institutions. Uncertainty brings confusion not only to the public but to the government as well; as a consequence, the higher education policies were conflicting with each other, which resulted in constraints to the development of the private HEIs.

Therefore, the Decree 141 meant significant progress when for the first time the basic and specific issues of not-for-profit HEIs were addressed in a legal document. In theory, it was an important landmark of a policy development,

because it resolved the long standing question on not-for-profit institutions, fixed the conflicts between the HE Law and the clarifying documents, and created a legal framework for the development of not-for-profit HEIs. This model is expected to benefit students, society, and move Vietnam HEIs closer to the developed educational systems.

However, right after the Decree 141 was issued, it caused serious conflict and tension in some private schools, Hoa Sen University (HSU) being one of them. HSU declared it was a not-for-profit institution when it was transformed from a semi-public school in 2007. However, the legal documents of the last two decades (until the Decree 141 was issued) claimed that there was no space for not-for-profit HEIs, and whether HSU wanted or not, it was operating exactly like a business enterprise, or for-profit school. This is reflected clearly in HSU University Charter (in the first edition 2007 and in the revised edition in 2011 as well), especially when describing the relation between the school and its shareholders. Under universal understanding of HEIs' status, as long as there are shareholders who own the school and get the profit, it is a for-profit institution. Thus, the school's statement on its not-for-profit status is in conflict with its Charter and its operation. In addition, the university leaders are also owners of the companies that have business partnership with the school⁴. Since its transformation into a fully private school, HSU has kept delivering unheard of in Vietnam profits to its shareholders⁵.

While the several reasons of the conflict caused by the Decree 141 will be analyzed in the next sections, it should be noted that the problems occurring in Hoa Sen, Hung Vuong, Saigon Tech, etc. have not happened in other schools established as for-profit entities from

the very beginning, such as Nguyen Tat Thanh University or FPT, Tan Tao University, or family-owned schools with very few number of shareholders in which owners usually are also administrators, such as Duy Tan, or Binh Duong. For schools established as for-profit enterprises the clear ownership goes with clear regulations that help reduce major disputes.

Hung Vuong and Hoa Sen University were transformed from the semi-public and people-founded schools. The most disputed issues there were real estate and assets generated during the school's operation. How the assets are used or divided depends on the ownership and administration mechanism of the school. The disputes taking place in many private universities are between the top administrators and the shareholders, who are legally the co-owners of the school. The administrators take control of the school by delegating all decision-making power to themselves. This became a source of a conflict between administrators and the owners, especially about the financial decisions. The top administrators believed that all success was achieved thanks to their efforts. It is true that school success is impossible without strong leadership; however, HEIs are complex organizations, and success cannot be attributed to a single component. That is why to avoid the case when school administration focuses solely on profits the Decision 63 required that 25% of the profits is reinvested into school.

In many private HEIs, the owners avoid the above conflicts by merging the Board of Governance and the Board of Directors to become a supreme non-supervised school governing body. Such structure might avoid internal power conflict but does not benefit the school as an academic organization, because it does not ensure accountability and does not encourage multiple stakeholders' participation in decision-making process.

In other words, the governance structure of private HEIs in Vietnam contains potential conflicts and policy makers should take action. University ROO 2014 is seen as a first real

⁴ See: <http://giaoduc.net.vn/Ban-doc/He-lo-hang-loat-sai-pham-nghiem-trong-cua-Hieu-truong-Dai-hoc-Hoa-Sen-post148122.gd>

⁵ See: <http://epress.vn/truong-dai-hoc-hoa-sen-phi-loi-nhuan-hay-sieu-loi-nhuan/2015012707093281p0c129.htm>

effort to improve school governance and thus school operation.

5. New development in the state policy towards private HEIs' governance

Half of the text in University ROO 2014 is for private HEIs, and two thirds of that is for the not-for-profit ones. It shows the government's great concerns about this matter and its willingness to address the problems of private sector. The most important improvements and key features are the following:

(1) The decision-making mechanism has changed. Decision 63 (issued in 2009) defined that the Grand Meeting of the Shareholders was a supreme authority of the school, including the authority to elect the Board of Governors. In ROO 2014, the Grand Meeting of the Shareholders is no longer the superpower that controls the school or makes the decisions for the whole Board of Governors, but its charge is only to elect the shareholders' representatives to the Board. The HE Law, Article 17 requires the Board of Governors of the private HEI to include a) shareholders' representatives; b) rector; c) local government representative, d) party cell representative and e) faculty representatives.

In other words, there are at least four other non-shareholders who are members of the Board of Governors. The purpose is to reduce the authority of the shareholders over the school's decisions. The University ROO allows the Rector, the representatives of the Party Cell, and faculty members' participation in decision-making at the same level as the shareholders. The University ROO of 2014 also provides the school with the right to define its own composition of Board of Governors and the number of Board members following the above guidance.

The significant contribution of the University ROO of 2014 is the distinction between for-profit and not-for-profit HEIs's

governance structures: there is no Grand Meeting of the Shareholders at not-for-profit school, but the Grand Meeting of the School. However, Grand Meeting of the School is different from the Grand Meeting of the Shareholders in term of its function and authority. It is not a decision-making body. Section 2, Article 33 of the University ROO states that, the Grand Meeting of the School takes responsibility of electing of the Supervisory Board (not the Board of Governors); and providing recommendations to the Board of Governors (note that this is RECOMMENDATION, not decision-making). In other words, Grand Meeting of the School has significantly less authority compared to Grand Meeting of Shareholders and has practically no role in decision-making). The supreme power belongs to the Board of Governors, as stated in Section 1, Article 29: "Board of Governors is the highest decision-making body of the school" (University ROO of 2014).

What is the composition of the governing body and how is it established in not-for-profit HEIs? University ROO of 2014 requires that the capital contributors account for not more than 20% of the total number of the governing board. The remaining members include the Rector as an ex-officio member and other members by default (Party cell, labor union, faculty representatives), etc. The composition of the board (beyond the ex-officio and default members) defined by the school on its own, and it must have this regulation open for the public.

It implies that in not-for-profit HEIs, the voice of the capital contributors is relatively weak. Even in for-profits schools, there always are ex-officio members (who might be concurrently shareholders or not) supposed to decrease the decision-making power of the shareholders. By law, 25 percent out of the generated profits must be reinvested into the school in the form of "collective undivided property" holding by an appointed representative. At a glance, this regulation seems reasonable, aiming at balancing the

power of profit seeking investors, which might lead to commercialization of education and be harmful to society and education. The mission is to protect academic standards and public good. The policy makers made it possible by increasing the participation of other stakeholders in the decision-making body of the school. However, in reality such policy caused serious tensions as the investors feel that the more profit the school generates, the faster they lose the control over the school governance.

In this regard, the University ROO of 2014 is significantly different from previous legal documents - those ones that treat private HEI exactly like a private company.

This new regulation also creates an unexpected side effect. The risk of losing control will certainly discourage the investors. However, higher education market is still promising, there are investors who still want to explore the opportunities. Being aware of unstable policy environment and the risk of losing power, they might act with short-term vision aiming at obtaining their return on investment (ROI) as quickly as possible, by holding executive positions at school. Being the owners and administrators simultaneously, they create unlimited power over school, which certainly can be seen as a threat towards school's quality and integrity. Such situation is harmful to educational cause and does not ensure school's accountability.

(2) The issue of accountability has been revisited. Among 24 thousand words of the University ROO of 2014, there are only 109 words about the school accountability: "Social responsibilities of the universities are to report to the public and be accountable to the state authorities and other stakeholders about the school performance and follow legal regulations. Universities must commit to the state regulations and take responsibility in achieving the declared commitments. They should not let any individuals/organisations use university name and facilities to act against the law and the University ROO" (Section 3, Article 5).

The above statement requires a HEI to be accountable not only to its constituents but to external stakeholders as well. However, it emphasized the school's responsibility to comply with state requirements while letting alone the accountability to the general public or to the stakeholders in terms of quality assurance and finance.

On an equally more important note, the existing institutional governance structure provides vague requirements for holding senior executives accountable, especially at not-for-profit institutions. A noteworthy point is that the University ROO does not restrict the possibility of holding two positions concurrently in the private HEIs: the Chairman of the Board of Governors and the Rector. This situation when one becomes "the judge in one's own case" does not benefit the school. The Board of Governors should be separated from the executives because its most important function besides making strategic decisions is to supervise the Rector. Combining two roles will destroy the purpose of checks and balances and make accountability nearly impossible.

Both University ROO of 2014 and 2009 Decision 61 describe a unit named "Supervisory Committee" (*Ban Kiem soat*) which is supposed to increase the accountability of the Board of Governors and the Board of Directors. Both documents provide the Supervisory Committee with the authority to check the legitimacy of school policies and quality of school performance including the activities of the Board of Governors and the Board of Directors, as well as the accuracy of the annual financial report. The Committee must report its work to the Grand Meeting of the Shareholders. However, in reality, most of members of the committee are employees who report to the Board of Directors and Board of Governors therefore it is psychologically difficult for them to supervise their supervisors.

The question of accountability of the Board of Governors and the Board of Directors (especially when they are combined into one) for the not-for-profit HEIs is, how one can

ensure the independence of the Supervisory Committee. For the public HEIs, at least university leaders must be held accountable to the state authorities. For the for-profit schools, they must be accountable to the shareholders. For the not-for-profit schools, the authority of the Grand Meeting of the School is weak; thus, the authority of school administration remains practically unchallenged. At the same time, private not-for-profit schools operate using the original endowment and students' tuition, but capital contributors have minor role in decision-making, as by the law they account for no more than 20 percent of the total number of the Board of Governors. Students, who pay tuition are not mentioned at all, let alone participate in decision-making. However, good news is that the law still opens possibilities for students' participation in the Board of Governors depending on the Institutional Regulations on Organisation and Performing of each school.

(3) *The issue of ownership and assets has been revised.* Up to date, all legal documents consider the ownership of the private HEIs to be nearly similar to the privately owned businesses: The assets coming from capital contributions of individual owners belong to them; the profits generated during the school operation are considered collective and up to 75%, could be divided among shareholders; and the assets coming from donations, given by the state, or transferred from the previous stage of people-founded model, are considered an undivided collective property.

Comparing the Decision 61 in 2009, the Decision 63 in 2011 and the consecutive documents on HE Law in 2012, Decree 141 and University ROO of 2014, we can see the evolutionary trend that is increasingly limiting the power and ability of the investors to continuously collect profits, and favor reinvesting into school instead.

While the Decision 61 did not require using profits for reinvestment into school development, the Decision 63 stated that at least 25% of the profits should be reinvested. This requirement was repeated in HE Law

(Section 3, Article 66) and University ROO of 2014 (Article 51). It defined a cap to the revenue that had been generated in the school operations and that the owners could share. Section 4, Article 66, HE Law sets the rule for this: "The assets generated during the school operation and the assets coming from donations and endowment to the private HEIs is an undivided collective property which must be managed thoughtfully to increase its value". Decision 63 sets a detailed regulation that those assets are divided into shares. These shares are held by a representative who was elected by shareholders, faculty members and school staff. The interest on those shares is added to the undivided collective property. The elected representative cannot sell the shares and has equal rights with other shareholders. However, the above guidances are not repeated in Decree 141 and University ROO of 2014, therefore it is unclear how the university undivided property is managed and by whom. The most recent law delegates the Board of Governors of the private universities to define how to manage this collective undivided property following the instructions of the HE Law.

One new development in private HEI policies is the acknowledgement of the not-for-profit schools and defining its ownership as a "collective ownership of the school by community" (Section 1, Article 29, University ROO of 2014). However, the above term refers to a collective ownership by administrators, faculty and staff; and in fact it is still a private-owned entity which is not consistent with the true nature of a not-for-profit school.

It is important to mention that, in spite of the fact that the definition of "not-for-profit" HEIs proposed by the Decree 141 can be seen as a big step forward in policy development of Vietnam, we must say that this definition is not fully comparable to the universal understanding of the term "not for profit". By Vietnamese law, not-for-profit HEIs have no shareholders, but profits are divided among investors although it must not exceed the state bond interest. The

investor is named “ a capital contributor”, but the label itself does not change the nature.

There are conflicts even within the same document. The Decree 141 identifies three conditions of the not-for-profit status, among them there are two financial conditions: (a) Individual/organisations that contribute the capital do not receive profits or receive profits but no more than state bond interest rates; (b) The balance between the generated income and school's expenditures must be seen as undivided collective property. It is obvious that the latter condition is in conflict with the previous one: if all the profits made are undivided property, how can school divide profits to the capital contributors?

6. Conclusion and preliminary recommendations

The above text just adds to the heated discussion of policy-making in private higher education. The discussion means that further development of private sector in higher education is inevitable in the context of knowledge economy and scarce public resources. Much more comprehensive and sophisticated policy is needed to make private HEIs in Vietnam achieve their full potential.

Looking two decades back to the policy development in the field of private higher education, we can see the evolution starting by the cautious approach of the people-founded and semi-public models, moving first into a business joint-stock company model, and now being adjusted in a way that is more balanced between the public good and private benefit models. A recent significant progress means the recognition for the need of legal base for the not-for-profit schools. In spite of eliminating some confusion, the newly developed policies have still a long way to go to bring clarity to the definition of private for-profit and not-for-profit schools.

What needs to be done is to build an accurate understanding of difference between

for-profit and not-for-profit institutions. This is the responsibility of the academics and university leaders as well as legal experts and government officials. The public's low regard of the for-profit sector in higher education (which is pretty much similar in most former Soviet countries) is based on a long existing stereotype and lack of integrity at some private institutions. If we consider higher education as a service, profit making should be acceptable. There is nothing wrong if a for-profit school provides quality education at a price that students are willing to pay. Education should satisfy people's need for development; give people access to gainful employment and better life, and it does not matter which type of school delivers such education. However, if profit is the only driver of school's existence and school is nothing more than diploma mill, then such school should be dealt with by the market and by the government. To separate quality institutions from the fake ones, Vietnam needs an independent system of quality assessment and accreditation of higher education in addition to accountability and transparency.

Current higher education policies do not help to bring transparency and accountability. They are not meant to assist public in making good decisions regarding higher education; instead, the existing policies are confusing the general public and do not support the private HEIs establishing long term vision, which is needed for ensuring good services.

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