

Research on the Corporate Governance Structure of Private Universities in Sichuan Province, China

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Abstract

The issue of university governance structure is a complex matter that encompasses education, politics, economics, management, and law. Numerous studies have emphasized that regardless of a university's nature; it should be managed by a legal entity and be considered a legal person organization. The governance structure of universities has been a topic of interest for scholars in Western higher education research. In China, there has been a recent emergence of studies on the governance structure of Chinese universities, which have analyzed the structure from various angles, including theoretical basis, external governance structure, and internal power allocation. Some studies have attempted to create a general Chinese university governance structure model. Therefore, this article aims to provide a new interpretation of the corporate governance structure for private universities from a legal perspective.

Keywords: University Governance Structure, Private Universities, Law.

Introduction

Studying the corporate governance structure of private universities is crucial for improving the quality of higher education. In 2020, the independent enrollment process was canceled, and the "strong foundation" plan was launched in China. This resulted in 10.71 million higher education entrance examination applicants and an admission rate of 88.74%. According to Martin Trow's Higher Education Educational Development theory, China has entered the stage of higher education popularization. Private higher education plays an essential role in this process by training over six million senior talents annually across various majors and levels. This quantitative growth will lead to qualitative changes in the future. Private universities will no longer just supplement public universities, but become a "smart factory" for cultivating high-quality talents for society. The private university's corporate governance structure will play a decisive role in its development. Those that establish scientific and standardized governance structures will seize opportunities with their flexible systems and mechanisms to cultivate more and better talents for society.

Private Universities

Higher education is a more advanced form of education that involves imparting and researching knowledge in a systematic way. It is divided into two categories: academic education and non-academic education, based on the type of certification offered. In higher education, there is a greater differentiation of disciplines, majors, and knowledge, and education becomes more socialized. In addition to nurturing talent, higher education also serves the functions of scientific research, social service, and cultural inheritance. Private colleges and universities, which are organized with non-state funds (although a few may have government participation), are an essential part of the higher education system. These institutions are responsible for training highly specialized talent within a standardized, organized, and systematic adult education system.

Private and public colleges/universities differ in organizers, funding sources, and management systems (Table 1.1).

Table 1.1

The main differences between private universities and public universities :

Types of school	Organizers	Host funding sources	Management system
Public Universities.	Government	Financial allocation	The Principal Responsibility System is implemented under the leadership of the party committee.
Private Universities	Enterprises, social organizations, and individuals can establish schools with government and university support.	Non-governmental finance fee	The Principal Responsibility System operates under the leadership of the board of directors.

As of June 15, 2023, there were a total of 1,275 higher education institutions in China, including 851 public universities and 413 private universities, excluding Sino-foreign cooperative universities. (Source : "The Ministry of Education of the People's Republic of China (MOE of PRC)")

As of June 15, 2023, there are 51 universities in Sichuan Province, including 33 public universities and 18 private universities. (Source : MOE of PRC)

Legal Person System

A legal person is an organization with a legal personality. The concept of a legal person is an important aspect of civil law theory's historical evolution. The system of legal persons originated in the ancient Roman period when "quasi-economic organizations" consciously came together as a body. From the beginning, Roman law recognized that the treasury and local governments provided stable, legal, economic sources, and political support. Government agencies, the Holy See, charitable foundations, and industry associations are all examples of private law rights subjects. Roman law acknowledges that national treasuries, administrative regions, temples, charities, and other groups have the rights of private law subjects. These groups are entitled to independent personalities and can sign contracts as an entity organization with dual responsibilities and benefits in economic affairs. They can carry

out activities involving benefits and benefits, and various economic activities protected by law.

The "Civil Code" of the People's Republic of China was adopted on May 28, 2020, during the Third Session of the 13th National People's Congress. It is effective from January 1, 2021, and consists of 7 volumes and 1,260 articles. The code covers various aspects such as property rights, contracts, personality, marriage and family, torts, and liabilities. Chapter 3 of the Civil Code follows the legal person classification method mentioned in the General Principles of Civil Law. It classifies legal persons into three basic types - profit-making legal persons, non-profit legal persons, and special legal persons. A legal person whose purpose is to obtain and distribute profits is a for-profit legal person. All legal persons should establish authority agencies, executive agencies, and supervisory agencies.

A profit-making legal person cannot use its independent status and limited liability of investors as "system evidence" that harms the interests of creditors. Instead, all the property of a legal person should be used as the basis and qualification to independently bear civil liability. A non-profit legal person is an entity that is not profit-oriented and does not distribute profits to investors or founders. Its existence value is based on serving the public interest. Public institutions, social service agencies, and social groups are some of the main entities that fall under the category of non-profit legal persons. Legal persons of government agencies, rural collective economic organizations, urban and rural cooperative economic organizations, grassroots self-governing organizations, and others are classified as special legal persons. A special legal person is a confirmation of the identity of previously unincorporated organizations. It aims to encourage the performance of such organizations and facilitate the guidance and management of their activities by relevant departments.

Private university legal person

According to the "Higher Education Law of the People's Republic of China," higher education institutions must have legal person status starting from the approval of their establishment. The "Private Education Promotion Law of the People's Republic of China (revised on November 7, 2016)" also states that private schools must meet the legal person conditions to operate. Private colleges and universities are academic education organizations that enjoy civil rights and assume civil obligations in accordance with the law. To establish a private college or university, it is necessary to register as a legal person, obtain legal person qualifications, and bear civil liability with the total assets they own. The state grants property rights to the legal person accordingly, making it independent of the private assets of investors. This allows private universities to adhere to the legal bottom line of public welfare, while also protecting the rights and interests of private capital by the state. In accordance with the Civil Code, the person responsible for engaging in civil activities on behalf of the legal person shall be the legal representative of the legal person, as stipulated by the law or the articles of association of the legal person.

According to the "Private Education Promotion Law of the People's Republic of China," the legal representative of a private school should be their chairman, chair, or principal. The documents related to private schools indicate that for-profit private colleges and universities in China are legal entities that operate with a profit motive and are subject to the enterprise legal person system. Non-profit private colleges and universities are non-profit legal entities,

some of which are managed as public institutions and others managed as social service institutions. The central idea of this article is to use the concept of corporate governance structure of private colleges and universities to highlight their organizational nature and the legal status they deserve.

Corporate Governance Structure

The concept of corporate governance originates from enterprise organization management in the field of economics. It refers to the functions and interests of all parties that have a stake in the operation and management of the enterprise, as well as the relationships that accompany the performance of their functions. When a company obtains legal personality rights, it becomes a legal person. Although it is not a natural person, it needs to have personality characteristics in order to exercise civil capacity and bear legal responsibilities to complete its business and management tasks.

Therefore, the active subjects within the company need to follow a certain organizational structure and system to give the company "life representation" by exercising their functions and playing their roles. The structure of corporate governance involves the allocation and exercise of control rights, supervision and evaluation of the board of directors, managers and employees, and the design and implementation of incentive mechanisms. In accordance with the "Company Law of the People's Republic of China (2018 Amendment)", the corporate governance structure of a company consists of four main actors, namely the general meeting, the board of directors, the board of supervisors, and the manager, along with their distribution of powers and responsibilities. The core of corporate governance structure lies in the separation of ownership and management rights, with equity factors being a consideration for some enterprises. The legal attributes of for-profit higher education institutions are revealed through the rights, capabilities, and responsibilities of legal persons, which involve issues of the balance and distribution of functions, powers, and responsibilities of governance subjects in the governance structure. To achieve effective corporate governance, relevant systems and mechanisms must be established and operated by the governance subject. The independence of the legal person's property and their ability to assume responsibility are the fundamental premises for corporate governance. For-profit private colleges and universities implement a corporate legal person system.

The most significant difference between non-profit and for-profit universities as legal entities is whether they operate for profit or not. Non-profit universities are categorized as public institutions or social service institutions, while for-profit universities follow the legal person system of private institutions. However, in reality, non-profit universities have struggled to establish a legal person system based on public or social service institutions due to issues with funding sources, personnel systems, and management systems. This is different from the organizational framework of for-profit private universities. In the short term, there may not be much difference in the internal organizational structures of for-profit private and non-profit private universities. The differentiation between the two is mainly external and relates to national governance policies. The primary factor that differentiates them is whether they operate for-profit or not.

Private universities have a corporate governance structure that consists of several active institutions and institutional arrangements. These include the board of directors, the president (including the business president), the party committee, the board of supervisors

and the academic committee. The distribution of responsibilities and functions of the governance structure is regulated by a certain operating mechanism.

The board of directors is responsible for making decisions, while the president oversees the administrative body, the party committee and the board of supervisors handle supervision and guarantee body roles (with different emphasis), and the academic committee represents the academic evaluation body.

Public opinion representative bodies such as faculty and staff congresses and labor unions play a minimal role in exerting their corporate governance capabilities in private universities. The operating mechanism and organizational structure of private universities are not in one-to-one correspondence. They can generally be sorted into three aspects: management mechanism (including decision-making management, administrative management, and academic management), supervision mechanism, and guarantee mechanism.

Power

In modern society, power is more commonly utilized in politics, management, and sociology. However, the concept of "power" in education is borrowed. In private universities, power is based on possession of resources. The level and structure of power is determined by the abundance and type of resources, which in turn affects the performance of power functions. In this article, the term "power" mainly refers to the board of directors, principal and administrative agencies, and party committees, board of supervisors, academic committees, and teacher-student organizations. These active institutions and individuals operate the school's affairs through the regulation and allocation of the school's material and spiritual resources, known as "strength".

The rational level of power operation and resource allocation will not only directly affect the development level of organizations and individuals, but also the development level of private universities as a whole, through the release of organizational and individual functions. The focus of this study is the governance structure, with power being the main focus, and the core of thinking is the division and interaction of power.

The governance structure of an organization establishes the subjects of power and how power resources are allocated. Private universities, being an organizational system with both public welfare and market characteristics, are driven by their internal development. From a structural perspective, the division and interaction of power in private colleges and universities is the process of releasing their internal energy and promoting self-development.

This requires breaking away from the initial power form transplanted into public colleges and universities and corporate organizations, and transforming them according to the unique development laws of private colleges and universities. The subject relationship and resource boundaries are then reintegrated, and the optimal allocation of power is completed through deconstruction and construction, providing a strong impetus for the school's development with the best attitude.

Problem Statement

Private universities' corporate governance structure has been the subject of much research, providing numerous theories to guide the development of private higher education practices. Experts and scholars have summarized and analyzed various academic opinions. Governance

is a term borrowed from economics and used in an educational context. Private higher education is considered to have stronger endogenous power and more active self-organization than public higher education. When a maturing organization contemplates its direction and path, it often considers structural reform as a first step. University governance entails managing and interpreting university management activities. It replaces the "severe" thinking of "management" with the harmonious thinking of "governance," turning a single subject into a multilateral subject. The board of directors, board of supervisors, president, and professors are representatives of different interests after the decentralization of power among governance entities.

The corporate governance structure of private universities is the most crucial subject construction content in their development. Mainstream academic views agree that governance structure refers to the placement and organization of active power entities within universities, and the corresponding institutional arrangements made to regulate the relationship between these entities or form a specific mechanism. In private universities, the highest decision-making body is the board of directors, which is specified by national law and conforms to practical rules.

The principal's team, appointed by the board of directors, represents the will of the board and is the core administrative body within private universities. The academic committee is an indispensable and iconic institution in the process of building a modern university system. Professors, representing teachers and groups participating in school governance in the form of organizations, are the most significant features of universities moving towards professionalism and democratization. The board of supervisors is the legal person of universities, responsible for achieving self-checks and balances.

It is a self-regulating supervisory agency, and its position in the main structure and the standardization of its construction can objectively reflect the ability and level of university governance. Improving the corporate governance structure of private universities requires attention to three policy or theoretical tendencies from a strategic perspective. Firstly, "governance" has been elevated to central thinking, and promoting the modernization of the national governance system and capabilities is essential to comprehensively deepening reforms. The construction and operation of internal institutions in private universities must transform from a management model to a governance model to achieve important principles and goals that have far-reaching theoretical and practical significance for China's political construction and socialist modernization.

Secondly, although public management theory and organizational management theory mainly focus on public organizational sectors, their mainstream theories of different periods and schools have positive reference significance for corporate governance in private universities.

Lastly, corporate governance in private universities has become a phenomenon that has attracted great attention from academic and political circles. It is not just a task or thinking, but a class of things that requires careful consideration. Private colleges and universities are complex organizations with various interest groups, spanning a wide range of concerns and possessing a relatively unique nature.

The internal interest groups within private universities include investors, boards of directors, administrative teams, academic groups, supervisory agencies, and students. These groups are associated with many fields, such as education, economy, and people's livelihood, and have the dual attributes of quasi-economic organizations and quasi-public welfare organizations. Private university legal entities must engage in comprehensive thinking from multiple angles and different positions to establish a governance structure with complete subjects, clear powers and responsibilities, and smooth operation.

Limitations

Research conducted so far has yielded valuable results in terms of content, perspective, and research methods, particularly in the areas of board building and the application of stakeholder theory. Scholars and experts have actively explored expanding their thinking, innovating theory, and summarizing experiences, providing many useful insights to promote the reform of the corporate governance structure of private universities and related topics. However, a comprehensive analysis of existing academic results reveals two significant limitations that are difficult to overcome, both in theory and practice.

Firstly, reliance on existing policies makes it challenging to develop new policies. This results in solidifying the system into a thinking framework and tinkering with relevant provisions to make it appear "better." Secondly, researchers' neutral stance is unstable and often prone to taking the side of private university sponsors or government agencies, analyzing issues of rights, responsibilities, and interests from a "scrutinizing" perspective, which can easily turn objective issues into subjectivities.

Literature Review

Private universities are complex social organizations. Profitable private colleges and universities have market planning and operational characteristics, which determine that their governance structure is similar to that of corporate enterprises. In terms of the internal operation of a company, Williamson (1978) introduced the term "corporate structure" and provided his own perspective on it. He categorized the governance structure of a company into three main types: U-shaped (unit structure), H-shaped (holding structure), and M-shaped (headquarters structure). Each structure plays a different role in the process of resource allocation and goal integration. The governance structure plays a crucial role in achieving the goals, concepts, and missions of a university. Shengzu (2009) emphasizes that building the corporate governance structure of private universities is a complex project that encompasses various issues. This includes the relationship between the board of directors and other stakeholders, issues of principal-agent between the board of directors and the executive agencies, internal checks and balances of power, and external public governance. All these factors constitute vital components of the corporate governance structure of private universities and require comprehensive research.

Shoubo and Zhaoqing (2009) believe that the construction of a university governance structure first requires clarifying the scope of stakeholders, then analyzing the demands of stakeholders, and finally fully expressing their interest demands through appropriate methods will produce the logic of constructing a governance structure. According to Tong (2011), university governance consists of three dimensions: concept, structure, and mechanism. These three dimensions work together to ensure the effectiveness of university governance activities. If any of these dimensions are absent, governance functions may fail.

The establishment of concepts through top-down management and the expression of will through bottom-up management are necessary for constructing university governance structures. Furthermore, cultural traditions play a crucial role in board governance, and they are difficult to change, often having a long-term impact on the function and efficiency of university governance. According to Song (2008), the challenge of constructing a scientific governance structure for private universities arises from path dependence on initial property rights, institutional paradigms, and cultural environment. Without a clear and effective roadmap, it is not possible to establish a scientific governance structure. Jianyin (2008) thinks that the most significant aspect of private colleges and universities is their educational public welfare attribute.

Therefore, private colleges and universities should learn the main structure and operating mechanism of non-profit organizations to ensure that their corporate governance structures are inclined towards public welfare. Jianjun (2008) suggests that the principal-agent theory can provide an effective framework for the corporate governance structure of private universities. According to him, it is necessary to define the distribution of rights and responsibilities between principals and agents and establish incentive mechanisms and supervision measures for agents. He has proposed a simple binary model for corporate governance, which involves the board of directors and the president working together within the framework of relevant systems to promote the development of private universities. According to Yinan and Qinyu (2020), for-profit private colleges and universities have both for-profit and public welfare properties, and promoting the construction of their corporate governance structure is not only conducive to the realization of the two properties, but also of great significance to the development of China's socialist education.

According to Xuemin (2020), the current laws regarding the corporate governance structure of for-profit private universities are insufficient. While there are some specific regulations in place, there are many gaps in local areas which have led to differences between regions. Therefore, it is necessary to strengthen the guidance for running schools at a national level. Zhibing and Guang (2019) argue that the corporate governance structure of private universities is essentially a "people" structure, where stakeholders work together to achieve a balance of interests under the leadership of the board of directors.

To achieve effective corporate governance, it is important to pay attention to principles of unity, systematics, and diversity, ensuring that all parties involved are heard and considered. Having a comprehensive qualification system for boards of directors and principals is a crucial aspect of optimizing the corporate governance structure of private universities. This is primarily a content-level matter, rather than a framework-level issue. Jinjuan (2019) believes that "as my country's private education enters the era of classified management, foundation-run schools have gradually become an important choice for the development of non-profit private universities in the new era." Meng (2019) believes that implementing various support policies is crucial to transcend the dilemma of board governance and realize the governance value of the board of directors system. Mills (2007) used Florida universities as a model for research.

He believed that optimizing university governance resulted from a balance of interests among government, universities, and society through regulations and policies. According to Zhongle

(2016), to establish a modern society, universities must have autonomy and exercise it through the rule of law. This allows universities to develop unique characteristics and vitality. Therefore, combining autonomy with the rule of law is essential to the fundamental approach of the university system. According to Hirsch & Weber (2001) the leadership of the school party committee is the fundamental power of the internal governance of universities. It is the leadership core of the school, while the president's powers are responsible for the basic daily management of the university. The academic committee has relatively independent powers, especially in academic matters. The faculty and staff congress has the right to make suggestions and decide on specific matters, as stipulated by law. These powers cannot be replaced or deemed dispensable.

After conducting a comprehensive analysis of academic research, it is evident that there are two limitations that pose difficulties for private universities in improving their corporate governance structure, both in theory and practice. Firstly, their reliance on existing policies makes it challenging to implement new ones. They often follow a set pattern and tend to modify relevant provisions only slightly to make them appear better. Secondly, researchers' neutral stance is often unstable, and they tend to analyze issues from the perspective of private university sponsors or government agencies, which can lead to a subjective outlook on objective matters concerning rights, responsibilities, and interests.

Research Questions

What are the current issues with the corporate governance structure of private colleges and universities?

What are the current problems in the corporate governance structure of China's private universities: the Higher Education Grassroots Committee of the Communist Party of China, the President, the Academic Committee, and the Teaching Congress?

How to solve the problems existing in the corporate governance structures of private universities in China from learning from the corporate governance structures of private universities in the United States and Japan?

What are the prospects of the corporate governance structure of private universities in China, including the Higher Education Grassroots Committee of the Communist Party of China, the President, the Academic Committee, and the Teaching Congress?

Research Objectives

To analyze the current situation and problems with the corporate governance structure of colleges and universities in private.

To summarize the current problems in the corporate governance structure of China's private universities: the Higher Education Grassroots Committee of the Communist Party of China, the President, the Academic Committee, and the Teaching Congress.

To solve the problems existing in the corporate governance structures of private universities in China from learn from the corporate governance structures of private universities in the United States, Japan.

To optimize the corporate governance structure of private universities in China, including the Higher Education Grassroots Committee of the Communist Party of China, the President, the Academic Committee, and the Teaching Congress.

Research Methodology

In order to examine the corporate governance issues that arise in private colleges and universities, we must use educational management as a research foundation, take into account the economic characteristics of these institutions, and analyze the subject matter from multiple perspectives. The research methodology employed in this study primarily involves document research. A large body of literature is utilized to provide the basis for theoretical analysis and research conclusions.

The literature's electronic materials are primarily sourced from various sites including cnki, the Ministry of Education's website, official websites of overseas education administrative departments, and official websites of domestic and foreign private universities. The literature materials consist of Chinese works, foreign language translations, foreign language works, Chinese journals, foreign language journals, dissertations, documents disclosed by the Ministry of Education, and some official domestic and foreign website information.

The Delphi method was used to guide this study, drawing on the extensive professional knowledge and management experience of industry experts and private education organizers and managers. This method overcomes the limitations of traditional expert meetings, allowing for a more objective and professional approach to predicting the framework problems that exist within the corporate governance structure of private universities. The experts' choices and answers to key questions were valuable in inspiring new thoughts and ideas related to the topic.

The method of historical research revolves around the development of China's private education since the early days of reform and opening up. Despite its simple historical context, it is important to review and summarize the evolution process of private higher education over the past 40 years, including its governance model, education legislation, education policies, and administrative regulatory measures. This analysis will help to identify China's successful experiences and shortcomings in corporate governance of private universities. By doing so, it provides a clear direction for future research ideas, problem-solving, and development.

The institute's research activities are carried out using the survey research method, which provides a solid and reliable reference for describing the current situation, identifying the problem's dimensions, investigating its causes, and collecting suggestions for countermeasures. The research in this article uses subjective interviews and questionnaires as its primary forms of research methods.

Data Analysis Plan

The objective of this study is to investigate the research topics of "University Governance Research" and "Legal Person Governance Structure". The research process involves data collection, processing and analysis, using Chinese and English research findings from CNKI and Google Scholar databases as samples. Additionally, current widely-used tools such as

CiteSpace and VOSviewer were employed to compare the keywords of the selected Chinese and English documents.

Data Analysis

There is a lot of potential for the development of private higher education in relevant research on the corporate governance structure of private universities. The theories that guide practice have been summarized and analyzed.

Table 9.1

List of literature searches for research on corporate governance structures in universities

Content	Chinese search content	English search content
Data Sources	CNKI	Google scholar
Search format	SU=(Corporate governance structure + corporate governance structure of universities + secondary corporate governance structure + corporate governance structure of private schools + corporate structure)	TS=(Corporate governance structure + corporate governance structure of universities + secondary corporate governance structure + corporate governance structure of private schools + corporate structure)
Language	Chinese	English
Document type	academic literature	Article
time span	2013-2023	2013-2023
Search Results	2015	3300
Software	CiteSpace	VOSviewer

When it comes to the subject of corporate governance structure in private universities, most scholars tend to focus on economics and public management. However, a few scholars have researched this topic from the perspective of administrative law. In terms of content, most studies concentrate on board building and stakeholder theory. Despite the abundance of academic research on this topic, there are two significant limitations that are difficult to overcome in both theory and practice. Firstly, the over-reliance on existing policies makes it challenging to develop new policies.

The current policies have been solidified into a framework, and any changes are typically tinkered with to make them appear "better." Secondly, the researcher's neutral stance is questionable and can be unstable since they may tend to side with private university sponsors or government agencies, analyzing issues of rights, responsibilities, and interests from a biased perspective that can easily turn objective issues into subjective ones.

Finding and Conclusion

When analyzing a research subject, it's important to consider cognition and elements at three levels: people, systems, and mechanisms. Previous research on the "corporate governance structure of private universities" focused mostly on the "people" level, neglecting the importance of systems and mechanisms. This article argues that private universities are

governed by legal persons and their governance structure is a combination of multiple active subjects, multi-level system design, and multi-dimensional mechanism construction. The active subjects are the most important component of the governance structure and include both physical individuals and institutions, as well as "weakly concrete" institutional tendencies and abstract governance mechanisms.

This study uses governance theory to form a three-dimensional combination of people, systems, and mechanisms to create a grid structure that forms cross-connections and exerts synergistic effects. The goal is to promote the optimization of the corporate governance structure of private universities and facilitate their steady and efficient development.

The sandwich model is at the core of thinking, where structure, power, and resources are packaged together in a mutually dependent and complementary way. The existing research on the "corporate governance structure of private universities" has two main tendencies. One tendency is limited to static analysis of institutional setup, staffing, and system arrangement, while the other tendency neglects the power structure and regards power as a result of staffing.

However, it is important to understand that the change and formation of structure is actually the result of the allocation of power, and behind the effective operation of power is the aggregation and output of resources. Therefore, structure, power, and resources are closely related and can play a guiding role in understanding phenomena and identifying their essence.

Recommendation

This study explores the connection between governance theories, systems, and mechanisms to create an efficient grid structure. By cross-linking these elements, positive effects can be achieved. This will help optimize the corporate governance structure of private universities and promote innovation and local development. The structure's changes and shapes are the result of power allocation, which is driven by the aggregation and output of resources. Therefore, the correspondence between structure, power, and resources serves as a thinking guide to understand the essence of the matter.

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