

Critical Review of Private Limited Liability Hospitals in the Perspective of Article 34 Paragraph (3) of the 1945 Constitution

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ABSTRACT

Fulfillment of health one of which is the provision of hospitals which is the responsibility of the government, which cannot be transferred to the private sector like a Limited Liability Company. This has been clearly regulated in Article 34 paragraph (3) of the 1945 Constitution. This then became the background and also became the main focus of the study entitled "Critical Review of Limited Liability Company Private Hospitals in Perspective of Article 34 Paragraph (3) of the 1945 Constitution". This study focuses on the main problem, namely whether private limited liability companies comply with Article 34 paragraph (3) of the 1945 Constitution. The research method used is normative law which is qualitative in nature to analyze data and statutory regulations and Pancasila as the political basis of Indonesian health law, this study used focused interviews with informants. In this study it was concluded that the presence of a private limited liability company hospital is contradictory and not in accordance with Article 34 paragraph (3) of the 1945 Constitution and Pancasila

INTRODUCTION

Wellbeing could be a characteristic thing that's a need for all human creatures. People who require endeavors to move forward life are not as it were economic and social, but enhancements in wellbeing administrations which are the fundamental needs of each human being. In substance the arrangement of the Indonesian state could be a respectable development of the establishing fathers of the state, and all components of the citizens to bring almost thriving. Whole wellbeing administrations are a shape of the country's victory in making each citizen affluent (Buamona, 2015:2)

Courses of action related to state obligation in giving wellbeing offices are contained in Article 34 passage (3) of the 1945 Structure which peruses "The state is dependable for the arrangement of appropriate wellbeing offices and open benefit offices". Concurring to the creators of Article 34 section (3) of the 1945 Structure at that point became the protected premise for healing centers as wellbeing administrations as stipulated in Law Number 44 of 2009 concerning Hospitals (Hospital Law).

Within the introduction to Law Number 36 of 2009 Concerning Wellbeing (Wellbeing Law) it is expressed that wellbeing could be a human right, and one of the components of well-being that must be realized in agreement with the standards of the Indonesian individuals as stipulated in the Pancasila and the 1945 Structure. to preserve and progress the most noteworthy degree of open wellbeing carried out based on non-discriminatory, participatory and sustainable standards in the system of shaping Indonesian human assets, as well as expanding the nation's resilience and competitiveness for national improvement (Thought of Law No. 36 of 2009).

Based on the shape of administration, healing centers are separated into open and private shapes. Be that as it may, the center of the discussion is private clinics within the frame of restricted risk companies (PT), as stipulated in Article 21 of the Healing center Law, which peruses "Private clinics as alluded to in Article 20 passage (1) are overseen by legal substances with the point of benefit within the frame of Restricted Risk Company or Persero".

In other actualities, it shows that there has been a alter in a private hospital within the frame of a establishment into a private healing center within the frame of a PT, as was the case with the Pupuk Kaltim Healing center, which was already within the shape of a establishment, turning into a PT, since it was given the opportunity by Article 20 section (4) of the Law Number 44 of 2009 concerning Clinics (<https://www.rspkt.com/bontang/history-sekilas-rs-pupuk-kaltim>).

Private healing centers in the shape of PT have expanded from year to year, usually in Trisnantoro's investigate appearing that over the final 10 a long time the development of private healing centers (RS) in Indonesia has been more noteworthy (2.91% on normal per year) than government clinics (1.25% on normal per year). In 1998, the number of Government Clinics (589) was more than Private Healing centers (491) with a difference of 98. In line with the fast advancement of private clinics, in 2008 the number of private healing centers expanded to 653 and government healing centers to 667. In this way, the difference is getting littler, to be specific 14 pieces. Within the final five a long

time, private clinics within the frame of constrained obligation companies have multiplied to 85 healing centers. Increases especially in ranges with solid economies. Establishment healing centers experienced growth between 1998 and 2002. After that, the number of establishment healing centers did not increment essentially. Affiliation Clinic slightly increased in 2001. For 10 years there has been a move in shape (Movement) of Private Clinics. There are 26 Establishment Clinics turned into PT. In differentiate, as it were 5 (Five) PT Healing centers turned into Establishment Healing centers. Most of the Hospitals that migrate are found in big cities. This information outlines the solid dynamics in the Healing center segment in Indonesia. This energetic is influenced by the expansive advertise control in Indonesia. As a sector that is affected by the advertise, there will be varieties in benefit quality (Trisnantoro, 2009:1). Be that as it may, on the other hand, the creators see that this energetic is additionally affected by the birth of Article 21 and Article 20 section (4) of Law Number 44 of 2009 concerning Healing centers.

The case of Debora's baby is a case that has been widely discussed by the public in Indonesia. Where in this case, Mitra Keluarga Hospital (PT Ragam Sehat Multifita) asked Debora's parents to pay a down payment from the hospital. In fact, there is no need to make a down payment because Debora has a BPJS Kesehatan card. In this regard, Health Minister Nila Djuwita Farid Moeloek imposed administrative sanctions on Mitra Keluarga Kalideres Hospital in relation to the death of baby Debora. This decision is the result of an investigation by the Ministry of Health as contained in the official letter of the Minister of Health of the Republic of Indonesia Number UM.0105/Menkes/395/2017 dated 13 September 2017 (https://nasional.kompas.com/read/2017/09/13/_15313261/case-bayi-debora-menkes-subject-written-sanctions-for-rs-partners-family?page=all).

The enactment of Law Number 44 of 2009 Concerning Hospitals is a response from the state that must be appreciated on the other hand, but on the other hand it also has an impact on hospitals as health services that must enter freely into the free market which tends to be capitalist. Article 21 of the Hospital Law is a manifestation of the free fall of hospitals from socio-humanitarian beginnings to mere economic benefits (PT), whose implementation private hospitals will turn into industries and business commodities, so that it is certain that the public (patients) become objects of economic profit.

Domination and political intervention in every formulation of laws in the DPR-RI, this can be seen in the formulation of Law Number 44 of 2009 concerning Hospitals, specifically Article 21 concerning arrangements for private hospitals in the form of Limited Liability Companies or Persero. This domination and intervention usually comes from certain groups who have power in economic terms, with the aim of facilitating all business or investment interests. According to Suparman Marzuki, in a transitional state, the owners of capital certainly have an interest in being part of the social changes that are being designed, and have an interest in gaining profits in utilizing and pressing political and legal interests that will be made (Marzuki, 2011: 152).

From the problems of private hospitals in the form of limited liability companies (PT) above, in essence they refuse patients. With this, it can be seen that private hospitals in the form of PT, on the other hand, do not prioritize the humanitarian aspect and the medical needs of the community, in this case the patient. Supposedly, a private hospital in the form of a limited liability company (PT) may not refuse patients under any circumstances and for any reason. Even though PT private hospitals aim to seek economic profit. Because on the other hand, the essence of the hospital is not solely for economic gain, but also has the main function of being humanitarian to the community, which is inseparable from Article 34 paragraph (3) of the 1945 Constitution as the political basis for health law. The formulation of the problem raised in this paper is whether a hospital managed by a legal entity with the aim of profit in the form of a Limited Liability Company or a Company is in accordance with Article 34 paragraph (3) of the 1945 Constitution as the political basis for health law?

LITERATURE REVIEWS

Critical Review of Private Limited Liability Hospitals in the Perspective of Article 34 Paragraph (3) of the 1945 Constitution

The basis of the Indonesian state has been regulated in the 1945 Constitution, which regulates all the life needs of the Indonesian people starting from law, economy, education and health. Regarding the responsibility of the state in providing health facilities, in this case hospitals, it has also been regulated in Article 34 paragraph (3) of the 1945 Constitution which reads "The state is responsible for the provision of proper health service facilities and public service facilities".

If you look at the process of formulating Article 21 of the Hospital Law, there is an empirical tendency (*Das sein*) to be more influenced by politics and strong capitalist forces. Because in the formulation of the hospital bill, both the Government (Executive) and the DPR-RI (Legislative), did not review constitutionally the position of private hospitals in the form of a Limited Liability Company with Article 34 paragraph (3) of the 1945 Constitution. It is known that the position of Article 34 paragraph (3) of the 1945 Constitution is the constitutional basis in formulating regulations related to health services. So according to the author, Article 34 paragraph (3) of the 1945 Constitution was only used as a sweetener by the legislators in formulating the Hospital Law.

In Lord Acton's view, overall improvement efforts involve changes to *the content of the law*, *the structure of the law*, and *the culture of the law*. The problem is, in Indonesia the changes that have been made are purely new to *the content of the law*, such as by making lots of laws and regulations to address community problems, and even that often happens based on serious reading, on the people's need for laws. laws and regulations and not formulated in a participatory manner. *The structure of the law* is still inhabited by officials who have problems and play an active role in a series of deviant legal decisions or practices. Moreover, *the culture of the law*, the culture of bribes and bribes is far more prominent than the professionalism of law enforcement officials (Satya, 2013: 249).

In reality, after the reformation of the Indonesian state carried out reforms in various fields including the field of law, the facts (*das sein*) were not always based on sources of values and facts but based on political agreements and based on group interests. In addition, the basis for drafting laws and regulations is determined by factors outside the Indonesian legal system, in the sense of a transnational or even global interest. This is in line with Berger's analysis in *The Capitalist Revolution* , that in the global era of capitalism which is rooted in liberalism, it will transform society one by one into an international system that determines the economic fate of most of the world's nations and indirectly determines the fate of social, political, economic and also law (Berger, 1988:45).

Berger's view is reinforced by Francis Fukuyama in *The End of History and The Last Man* (1991), who tells that liberalism with its democratic face has influenced and controlled almost most of the countries in the world. As for capitalism, although it is controversial throughout the world, it also remains the main basis for the policies of state rulers in most parts of the world (Kaelan, 2013: 643).

Health services as a state responsibility, constitutionally have a relationship with Article 28H paragraph (1) of the 1945 Constitution which reads "everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to get a good and healthy environment and has the right to obtain health services". From the wording of the article, it contains an order to the state to realize human rights in the field of health services. On the other hand, Article 28H of the 1945 Constitution also requires the government to be actively involved. When the government opened the opportunity for private hospitals in the form of PTs, apart from being actors in the capitalization of health services, the government had also violated the legal ideals contained in Article 34 paragraph (3) of the 1945 Constitution, as the political foundation of Indonesian health law.

A. Hamid S. Attamimi argues that the importance of a constitution or the 1945 Constitution is as a guide and boundary provider, as well as about how state power should be exercised (S. Attamimi, 1990: 215). This is in line with the development of health service facilities, namely hospitals as stated in Article 34 paragraph (3) of the 1945 Constitution, only later in practice the formulation of the law on sacred hospitals in the DPR-RI, both the executive and legislative branches allow the establishment of private hospitals in the form of Limited Liability Company (PT). Even though it has been clear in Article 34 paragraph (3) of the 1945 Constitution, the state has the responsibility for the provision of health service facilities, meaning that if it takes a constitutional normative approach. So private hospitals in the form of private universities as stipulated in Article 21 of the Hospital Law are not allowed because they conflict with Article 34 paragraph (3) of the 1945 Constitution as the political basis for national health law.

As Philippe Nonet and Philip Selznik have theorized about the relationship between the level of state development and the type of legal product. There are two types of legal products born from different levels of development of national integration in each country, namely the type of oppressive law (conservative) and the type of autonomous law (Philippe Nonet, 1978: 41). Such theorization, perhaps, has a common thread with the reality of legal politics in Indonesia because the

goal of developing the economy must be paid in cash with national stability, so that order and security can be created. Thus, there is a logical reason to put the law in a non-central position. It is possible that an Arbi Sanit, once said that the legal structure and legal functions in Indonesia develop not parallel: the legal structure develops linearly, while the implementation of legal functions tends to be weak continuously (Mahfud, 1999).

The participatory process requires two things. *First*, the DPR positions itself as the formal political force of society, and does not play itself as a drafter of laws, let alone a monopoly on the birth process up to the evaluation of statutory products. The participatory process according to Habermas requires extending the debate of politicians in parliament to civil society. Political decision-making is not only for state apparatus and people's representatives, but also for all citizens to participate in joint discourse. Sovereignty of the people is not a frozen substance in the association of people's representatives, but also exists in various citizen forums, non-governmental organizations, social movements (Hariman, 2001: 46).

The conception of a participatory process above, of course, requires further steps to clarify procedures and institutional processes that can ensure that participation can be carried out. These efforts require at least the following: (1) oblige the state to publish the product design of the legislation to be made, and provide opportunities for strategic community groups to participate; (2) the availability of a systematic, free and easily accessible information and documentation system; (3) there is a guarantee of open and effective procedures and forums for the public to be involved effectively; (4) the availability of procedures that guarantees the public submitting initiatives to draft laws (RUU); (5) there are clear arrangements regarding basic documents that must be made available and freely accessible to the public, such as among other things: drafts of bills, minutes of discussion and notes (Rival, 2003: 118).

Observing the political configuration that divides responsive and conservative legal products, the author can provide an answer that Article 21 of the Hospital Law is not a responsive legal product. This is because the government (executive) and the legislature ignore Pancasila and Article 34 paragraph (3) of the 1945 Constitution as a political forum for national health law. The birth of Article 21 of the Hospital Law which was dominated by the Government (executive), and without being criticized by the DPR-RI from a philosophical-constitutional aspect, so that Article 21 of the Hospital Law can be said to be a product of conservative law, which brought the hospital as a form of far-reaching health services. from a social and human perspective.

It is the position of the 1945 Constitution as the basic law that provides a *legal consequence*, that any material regulated in the laws and regulations that are under it, may not conflict with the materials contained in the 1945 Constitution. This is related to one of the functions of the constitution in a country as a *politico-legal document*, namely a political and legal document of a country that functions as a tool to shape the political system and legal system of a country. The explanation of the meaning and function of the constitution above, provides an understanding to the public that the 1945 Constitution determines the outline,

direction, content, and form of law that will be enforced in Indonesia (Imam Syaukani, 2013: 87).

Overview of the legal building of PT according to Munir Fuady where in this case Law Number 40 of 2007 concerning Limited Liability Companies (UU PT), tries to find a form of Limited Liability Company that is in accordance with the Pancasila philosophy and economic democracy in accordance with the 1945 Constitution. this is repeatedly mentioned, both in the preamble of the Company Law (remembering and weighing section), as well as in the explanatory memory. However, if one looks at the material and the way of regulation contained in the Limited Liability Company Law, it is actually not apparent that there is such a peculiarity. But the PT Law in principle regulates the ins and outs of a Limited Liability Company in no different from what is done in other countries that do not have Pancasila and the 1945 Constitution. This is, of course, reasonable considering that the Limited Liability Company (PT) issue is a universal problem. especially if we look at it from the perspective of a multinational Limited Liability Company. Even if there is an article trying to describe what is often called Indonesian personality, the effect is not substantial. So it's just a mere lip sweetening lipstick. For example, the provisions in Article 74 paragraph (1) of the Company Law which recommends that a General Meeting of Shareholders (GMS) must be sought through deliberation cannot be reached, then a new *vote* may be made (Fuady, 1995:2).

According to Sugeng Pujileksono, the implementation of the concept of a welfare state in Indonesia is a state system that seeks to reduce the gap between rich and poor through various efforts to provide welfare services for its citizens. There are 3 (three) principles that underlie and characterize the welfare state system, namely: *First* , the production branch which is important for the livelihood of the people at large is controlled by the state. *Second* , private businesses outside the branches of production which concern the livelihood of many people are allowed, but the state makes arrangements so that there is no monopoly and oligopoly that will distort the market, or other forms that are detrimental to people's welfare. *Third* , the state is directly involved in the welfare of its people, such as directly providing various forms of health and education services (Sugeng, 2016:69).

METHODOLOGY

This research was conducted with the type of normative legal research. Normative legal research is also called doctrinal legal research. In this type of research, law is conceptualized as what is written in laws and regulations or law is conceptualized as a rule or norm which is a standard of human behavior that is considered appropriate (Asikin, 2012: 118).

Approach using the existing norms in the law with a conceptual approach. The conceptual approach is an approach by understanding the concepts, views or doctrines that develop in the science of law (Syamsudin, 2007: 58). The normative legal method in this study aims as a critical review of private limited liability companies in the perspective of Article 34 paragraph (3) of the 1945 Constitution.

RESEARCH RESULTS

Critical Review of Private Limited Liability Hospitals in the Perspective of Article 34 Paragraph (3) of the 1945 Constitution

The premise of the Indonesian state has been controlled within the 1945 Structure, which controls all the life needs of the Indonesian individuals beginning from law, economy, instruction and wellbeing. With respect to the duty of the state in giving wellbeing offices, in this case healing centers, it has too been directed in Article 34 passage (3) of the 1945 Structure which peruses "The state is mindful for the arrangement of legitimate wellbeing benefit offices and open benefit offices".

If you see at the method of formulating Article 21 of the Healing center Law, there's an experimental inclination (*Das sein*) to be more affected by legislative issues and solid capitalist powers. Since within the detailing of the healing center charge, both the Government (Executive) and the DPR-RI (Authoritative), did not audit naturally the position of private healing centers within the frame of a Restricted Risk Company with Article 34 section (3) of the 1945 Structure. It is known that the position of Article 34 passage (3) of the 1945 Structure is the protected premise in defining directions related to wellbeing administrations. So agreeing to the creator, Article 34 passage (3) of the 1945 Structure was as it were utilized as a sweetener by the lawmakers in defining the Clinic Law.

In Master Acton's view, overall change endeavors include changes to the substance of the law , the structure of the law , and the culture of the law . The issue is, in Indonesia the changes that have been made are simply unused to the substance of the law , such as by making parts of laws and controls to address community issues, and indeed that regularly happens based on genuine perusing, on the people's need for laws. laws and controls and not defined in a participatory way. The structure of the law is still occupied by authorities who have issues and play an dynamic role in a arrangement of freak lawful choices or hones. Additionally, the culture of the law , the culture of bribes and bribes is far more conspicuous than the polished skill of law authorization authorities (Satya, 2013:249).

In reality, after the reconstruction of the Indonesian state carried out changes in different areas counting the field of law, the realities (*Das sein*) were not continuously based on sources of values and truths but based on political understandings and based on gather interface. In expansion, the premise for drafting laws and controls is decided by factors outside the Indonesian lawful framework, within the sense of a transnational or even worldwide intrigued. Usually in line with Berger's investigation within *The Capitalist Revolution* , that within the worldwide time of capitalism which is established in radicalism, it'll change society one by one into an universal system that decides the financial destiny of most of the world's nations and in a roundabout way decides the destiny of social, political, financial and moreover law (Berger, 1988:45).

Berger's view is reinforced by Francis Fukuyama in *The End of History and The Last Man* (1991), who tells that liberalism with its democratic face has influenced and controlled almost most of the countries in the world. As for capitalism, although it is controversial throughout the world, it also remains the

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considering that the Limited Liability Company (PT) issue is a universal problem. especially if we look at it from the perspective of a multinational Limited Liability Company. Even if there is an article trying to describe what is often called Indonesian personality, the effect is not substantial. So it's just a mere lip sweetening lipstick. For example, the provisions in Article 74 paragraph (1) of the Company Law which recommends that a General Meeting of Shareholders (GMS) must be sought through deliberation cannot be reached, then a new *vote* may be made (Fuady, 1995:2).

According to Sugeng Pujileksono, the implementation of the concept of a welfare state in Indonesia is a state system that seeks to reduce the gap between rich and poor through various efforts to provide welfare services for its citizens. There are 3 (three) principles that underlie and characterize the welfare state system, namely: *First* , the production branch which is important for the livelihood of the people at large is controlled by the state. *Second* , private businesses outside the branches of production which concern the livelihood of many people are allowed, but the state makes arrangements so that there is no monopoly and oligopoly that will distort the market, or other forms that are detrimental to people's welfare. *Third* , the state is directly involved in the welfare of its people, such as directly providing various forms of health and education services (Sugeng, 2016:69).

DISCUSSION

Private Hospital According to the Perspective of Article 34 Paragraph (3) of the 1945 Constitution

According to Max Weber, law cannot be separated from interests and influences, including political interests and influences. This is the emergence of the thesis that law is influenced by interests, both material interests and ideal interests and in his opinion, law is also strongly influenced by the way of thinking of social classes and influential groups including political parties (Agung, Asep, 2002: 22).

If you look back at the provisions of Article 6 of Law 44 of 2009 concerning Hospitals, which in a normative perspective it is clear that the government's responsibility in providing hospitals. As for Article 6 of Law 44 of 2009 concerning Hospitals (Considerations, Law No.44 of 2009), namely:

Paragraph (1) the government and local government are responsible for:

- a. Provide Hospitals based on community needs;
- b. Guarantee the financing of health services in hospitals for the poor, or people who can not afford according to the provisions of the laws and regulations;
- c. Fostering and supervising the operation of the Hospital;
- d. Provide protection to the Hospital so that it can provide health services in a professional manner and is responsible for providing protection to the public who use Hospital services in accordance with the provisions of laws and regulations;
- e. Mobilize community participation in the establishment of Hospitals in accordance with the types of services needed by the community;

- f. Provide health information needed by the community;
- g. Guarantee the financing of emergency services at the Hospital due to disasters and extraordinary events;
- h. Provide the human resources needed; And
- i. Regulate the distribution and distribution of high-tech and high-value medical devices.

Paragraph (2) The responsibility as referred to in paragraph (1) is carried out based on authority in accordance with the provisions of the laws and regulations.

It became even more complicated, when 2 (two) weeks later Law Number 44 of 2009 concerning Hospitals was enacted which in its preamble did not contain and mention Law Number 36 of 2009 concerning Health at all. Intentionally or not, this positions the hospital as an independent institution that is not part of the health system. Not a single word or sentence was found that stated that hospitals are an integral part of the National Health System (SKN). Realizing it or not, of course it makes it more difficult for the public to understand the position of hospitals in this country in accordance with the mandate of Article 34 paragraph (3) of the 1945 Constitution (Edi, Chalik, 2016: 194)

For a moment it is necessary to reflect on what Weber once put forward, that law which is rational and always formalized (read: legislation), does guarantee predictability, calculus and stability. However, in relation to the fulfillment of legal values, it can be seen that formal legal forms and ideas that offer freedom of contract, at the same time benefit the domestic class (Sudjito, 2012: 43).

It seems that the opinion of Karl Marx is also correct, who argues that the causality relationship in social life, in dialectical processes is always full of conflict, namely the conflict of the interests of the "upper class" and the interests of the "lower class". In a legal-political constellation, where the "upper class" dominates and hegemony the "lower class", then many laws and regulations are produced with a tendency to be held in the hands of the "upper class", and it is they who are able to utilize laws for their own interests. If you are honest and observant about Indonesia's legal reform, it is clear that there is a lot of truth to Marx's opinion. How many demonstrations, clashes, and legal disputes both qualitatively and quantitatively continue to increase. In short, only those who are rich and/or powerful have the right to talk about law (Sudjito, 2012:43).

In Sudjito's observation, besides being dominated by individualistic, liberalistic and capitalistic values, Indonesian legal reform is also heavily influenced by political factors. One of the contributing factors is that legal officials in Indonesia are high-ranking political party officials. Commitment in making, implementing and enforcing laws is in the interests of their party. The process of legal reform became laden with "political infidelity". It needs to be underlined, Mahfud MD's statement that in political affairs, politicians actually know that it is wrong, and contrary to human rights, but it is still being carried out. Legal products like this are often referred to as ideological defects (Sudjito, 2009:13).

Law-making is never autonomous and sterile, but is full of group interests, or potential forces within a country, who want their interests to be legalized or protected in laws. The law according to Schuyt, as quoted by Duverger, is "*een neerlag van politieke machtsverhoudingen*" (a sediment from the exchange between political forces in society) (Satjipto, 2004: 127). Or in the view of Karl Marx referred to as "representation of capitalist forces" (Peters, 1988:141-200).

The failure of the legislature in creating responsive and participatory legal products will also result in the loss of the philosophical meaning of the legal ideals of Pancasila which are the source of the roots of Indonesian cultural life. The methodology in the formation of laws and regulations determines whether a regulation can achieve its goals in the best possible way, namely that the community feels comfortable and prosperous or it actually creates conflict in the midst of society. For this reason, assistance from legal sociology, legal psychology, legal anthropology, legal culture and planning science is needed. Especially in today's life, legal institutions as a system must show existence as a means of social change, not an autonomous and closed system of social life (Nugroho, 2013: 135).

Concurring to the creator, the frame of a law item is responsive or questionable, the essential standard is the 1945 Structure. This implies that all lawful items that are made, the legitimate legislative issues must be based on and in agreement with the lawful legislative issues contained within the articles contained within the 1945 Structure. Article 21 The Healing center Law is an inert legitimate item, since it does not comply with the command contained in Article 34 passage (3) of the 1945 Structure. Article 34 passage (3) of the 1945 Structure peruses "The state is capable for the arrangement of wellbeing benefit offices and open benefit offices. commendable". In case you see closely at this article, wellbeing administrations, particularly healing centers, cannot be completely exchanged to private companies within the frame of PTs, since PTs tend to be individualistic, liberalistic and will maintain a strategic distance from state mediation, so that they are not in agreement with the lawful standards of Pancasila as the premise of lawful legislative issues.

If we look back at the Preamble of 1945, it is clear that the purpose of the formation of the Indonesian state was not to seek economic benefits, as was the case with a PT whose establishment consisted of a capital partnership, was established based on an agreement and carried out business activities with an authorized capital which was entirely divided into shares. If corporations are given more room for maneuver by law, then the state (President and DPR-RI) has deliberately violated Pancasila and the 1945 Constitution as the basic constitution and standard in forming statutory regulations. On the other hand, Satjipto Raharjo's opinion is also true that the political subsystem turns out to have a greater concentration of energy than law, which results when law has to deal with politics, then law is in a weaker position (Satjipto, 2009: 103).

Ayn Rand in *Capitalism* (1970) mentions three basic assumptions of capitalism, namely: (a) individual freedom, (b) self-interest (*selfishness*), and (c) free market. According to Rand, individual freedom is the mainstay of capitalism, because with the recognition of these natural rights individuals are

free to think, work and produce for their survival. In turn, institutional recognition of individual rights allows individuals to fulfill their self-interests. According to Rand, humans live primarily for themselves, not for the welfare of others. Rand balked at collectivism, altruism, mysticism. Rand's free basic concept is its social application and epistemological outlook which is naturally mechanistic. Influenced by Smith's idea of *the invisible hand*, free markets are seen by Rand as a process that is always evolving and always demands the best or the most rational (Robert, 1988).

If you examine Ayn Rand's opinion with its capitalist assumptions, then it is certain that a limited liability company hospital is contrary to Article 34 paragraph (3) of the 1945 Constitution which implicitly implies the government's responsibility for the welfare of the people and altruism which is the soul in the health sector, especially the construction of hospitals as a health services. According to the author, liberalization in politics, especially in Indonesia, where the current direction of development policies tends to be liberalism, so that it also has an impact on the health sector as stated in Article 21 of the Hospital Law.

One characteristic of the process of liberalization in the economic sector is the decision of the central and regional governments to privatize public service assets, including in Indonesia the privatization of the health sector. Modernization theory sees European society as an example for the development of developing countries in Asia and Africa. The second theory, namely liberal theory, uses the logic of liberalism pioneered by Adam Smith as the main reference for viewing development. The dependency theory is primarily a dilator behind Marxist thinking which sees the global economy as exploitative towards developing countries and suggests that these countries try to meet their own needs so as to reduce dependence on the global economy (Dumilah, 2009: 115).

The presence of privatization has an impact on consumers depending on each type of health service. Hospitals will undergo a new gradation or stratification, where hospitals for the upper class segment (Elite or luxury) will grow which have not been handled by government hospitals. This situation *parallels* housing and settlements made by the private sector or *real estate*. In other words, private hospitals especially for the upper class will grow rapidly and they tend to avoid settlements/consumers from the lower class where the profit yield is small. Meanwhile, these luxury hospitals also tend to increase the number of consumers/patients, because they really think about *return on investment*, especially medical equipment that is sophisticated and expensive. In this case, several dishonorable practices occurred, such as forcing patients to undergo unnecessary tests (in order to repay sophisticated and expensive equipment) or "pingpong" patients (Iwan Sujatmiko, 2010: 60).

Privatization of hospitals also has an impact on the privatization of the pharmaceutical industry which has an impact on the lower classes of society. In hospitals, differentiation of services can be done with VIP, 1, 2 and 3 class services. However, for drugs, differentiation like this is more difficult, so that the lower class is forced to buy drugs that are more or less the same (Expensive) as those for the upper class. Without government intervention, exploitation in the drug market would even have occurred safely, because medicine is an urgent

basic need. So far, generic drug policies are expected to prevent patient exploitation by drug manufacturers (Azwar, 1991:65).

The high cost of treatment in a private hospital in the form of a PT is influenced by the nature of a limited liability company that has entered the body of the hospital. Simply put, when a hospital has become a PT, health service efforts, be it promotive, preventive, curative or rehabilitative, become the object of seeking economic benefits, which then returns to the owners of capital in the form of shares.

If we look back at Article 21 of the Hospital Law, it is not only a door for liberalism-capitalism to enter hospitals, but previously it was a social-humanitarian forum. But more than that, it has presented social classes in gaining access to health services, and this has the potential for discrimination in health services, so that there is also the potential for national disintegration. In addition, private hospitals in the form of PTs, are part of a liberal economic policy, which makes the community (patients) as objects of economic gain, thereby having a negative impact on society (patients), because elements of health workers and hospitals will be far from action social-humanitarian-based medicine in health services.

Agreeing to the creator, changes to the Clinic Law got to be empowered, either by carrying out a legal review of Article 21 of the Healing center Law which isn't in agreement with Article 34 section (3) of the 1945 Structure, or moreover by making a unused Clinic Law and making unused details, counting:

- a) It is vital to include the Wellbeing Law, the Social Security Law and the BPJS Law within the Introduction to the Hospital Law;
- b) The values of Pancasila, Human Rights and Welfare must be included within the Introduction to the modern Clinic Law;
- c) Within the unused Clinic Law, it is imperative to clarify and fortify the position of establishments and affiliations as portion of private clinics by implies that establishment and association clinics cannot be exchanged to private clinics within the frame of PT or Persero, other than that it is imperative for the Government to create charge directions that are diminishing the charge burden for private clinics within the frame of establishments and affiliations;
- d) When the government has restrictions in building clinics in wilderness, furthest and inaccessible ranges, at that point this obligation must be exchanged to private clinics within the frame of establishments and associations;
- e) There needs to be limitations by the government as the controller and operator for clinics within the frame of PT.

In the opinion of the author above, the aim is to restore the function of the hospital as a social-humane forum and also to strengthen legal politics in the field of health services in Indonesia. In essence, the form of community participation in providing hospital health service facilities in assisting the government, should not change the hospital from its original form as a social-human institution into an industrial container that only prioritizes economic benefits.

CONCLUSIONS AND RECOMMENDATIONS

A private healing center within the shape of a PT is conflicting with and opposite to Article 34 passage (3) of the 1945 Structure and Pancasila as the political establishment of the national wellbeing law. In substance, the state has the obligation to supply wellbeing administrations, counting the development of healing centers. In spite of the fact that on the other hand, as of now the state has not been able to fulfill the command of Article 34 section (3) of the 1945 Structure. Healing center wellbeing benefit offices are a frame of nearness of the state to fulfill common welfare which has fair civilized humankind and social equity for all Indonesian individuals. . Appropriately, Pancasila and Article 34 section (3) of the 1945 Structure ought to be utilized as the political premise for national wellbeing law in making the Clinic Law. The objective is that the legitimate item still has operational hypothetical and standardizing philosophical values.

ADVANCED RESEARCH

Hopefully the next research will be better.

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