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Political Legal Study of Article 21 of Law Number 44 of 2009 Concerning Hospitals in the Perspective of Article 34 paragraph (3) of the 1945 Constitution and Pancasila

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Abstract

The presence of private hospitals as stipulated in Article 21 of the Hospital Law, private hospitals that are managed in the form of a Limited Liability Company or Limited Liability Company has the effect of shifting the aim of the existence of a Hospital which was previously social humanity to a place to seek economic profit which is divided into shares. 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 such as a Limited Liability Company, this has been clearly regulated in Article 34 paragraph (3) of the 1945 Constitution. This then becomes the author's background in writing this study. , entitled "Legal Political Study of Article 21 of Law Number 44 of 2009 concerning Hospitals in the Perspective of Article 34 paragraph (3) of the 1945 Constitution". This study is focused on two main problems, namely; (1) Is a Hospital managed by a legal entity with the aim of profit in the form of a Limited Liability Company or a Company complying with Article 34 paragraph (3) of the 1945 Constitution as the basis for Indonesian Legal Politics? (2) How should legal politics regulate the form of private hospitals in the future? The research method used is normative law which is qualitative in nature, this study concludes that the first is that the presence of a private hospital managed by a limited liability company legal entity is contrary to Article 34 paragraph (3) of the 1945 Constitution and Pancasila as the political basis of national law. And the second is that in the future the form of a private hospital legal entity should not be in the form of a PT, but should be in the form of foundations and associations.

Keywords: *Legal Politics; Private Hospital; Article 3 Paragraph (3) of the 1945 Constitution*

Background of the Problem

The State of Indonesia is a country based on law, so it is appropriate if the law is made supremacy, where all people are expected to obey and obey the law without exception, as stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as called the 1945 Constitution of the Republic of Indonesia). "The State of Indonesia is a State of Law". The objectives of the Unitary State of the Republic of Indonesia can be seen in the IV paragraph of the Preamble to the 1945

Constitution of the Republic of Indonesia. One of them is to promote public welfare. Related to this, there are many aspects that can become parameters for the progress of general welfare. One of them is to promote welfare in the health sector.

Health is a natural thing that is a necessity for all human beings. Humans who need efforts to improve life are not only economic and social, but improvements in health services which are the basic needs of every human being. Another thing that makes health services very important is because every development effort by the government must be based on health insights that are well created and systematic for national development. Health services are the responsibility of the government, one of which is providing hospitals to provide complete health services to every citizen. In essence the formation of the Indonesian state is a noble movement of the founding fathers of the state, and all components of the citizens to bring about prosperity.

Based on the form of management, hospitals are divided into public and private forms. However, the discussion study is a private hospital in the form of a limited liability company (PT), as stipulated in Article 21 of the Hospital Law which reads "Private hospitals as referred to in Article 20 paragraph (1) are managed by legal entities with the aim of making profits. form of a limited liability company or limited liability company. In other facts, it shows that there has been a change in a private hospital in the form of a foundation into a hospital in the form of a PT. As happened in the Pupuk Kaltim hospital, which was previously in the form of a foundation, which changed to a PT, because it was given the opportunity by Article 20 paragraph (4) of Law Number 44 2009 concerning Hospitals. (rspkt.com)

Private hospitals in the form of PT have increased from year to year, this is in Trisnantoro's research showing that over the last 10 years the growth of private hospitals in Indonesia has been greater (2.91% on average per year) and government hospitals (1.25% on average). average per year). In 1998 the number of government hospitals was 589 and private hospitals were 491 with a difference of 98. In line with the rapid development of private hospitals, in 2008 it increased to 653 units and Government Hospitals to 667 units. Thus, the difference is getting smaller, namely 14 pieces. In the last five years, private hospitals in the form of limited liability companies have doubled to 85 hospitals. Increases especially in areas with strong economies. This data illustrates the strong dynamics in the Hospital sector in Indonesia. This dynamic is influenced by the market, there will be variations in service quality. But on the other hand, the authors see that this dynamic is also influenced by the birth of Article 21 and Article 20 paragraph (4) of Law Number 44 of 2009 concerning Hospitals.

Article 21 of the Hospital Law will conflict with the values of altruistic health services. Which requires prioritizing people who are sick in this case the patient. The concept of a Private Hospital in the form of a Limited Liability Company (PT), whose main objective is to seek economic profit, is of course contrary to the philosophical foundation that health is a human right, and one of the elements of welfare and state responsibility that must be realized in accordance with Article 34 paragraph (3).) Constitution of 1945.

According to the author, if we look again at Article 34 paragraph (3) of the 1945 Constitution, it is clear that those responsible for providing hospitals are the central government and regional governments, either in the form of public service agencies or regional public service agencies. Even though Article 7 paragraph (2) of the Hospital Law provides opportunities for the private sector to build hospitals as a form of citizen participation. However, it should not be in the form of a private Limited Liability Company as stated in Article 21 of the Hospital Law, but rather it should be privately regulated, namely in the form of foundations and associations, with social-humanitarian goals, and not seeking economic benefits, especially profits for shareholders, as is the nature and form of the Company. Limited. Because on the other hand.

The aim of a private hospital in the form of a limited liability company seeking economic profit is very different from a hospital in the form of a foundation or association, whose goal is not to seek profit (non-profit) which is not divided into shares, as is the case with hospitals established by Muhammadiyah community organizations and other hospitals, in the form of foundations or associations. Related to hospitals in the form of foundations and associations, which by the decision of the Constitutional Court number: 38/PUU-XI/2013 have been recognized.

Regarding the legal opinion of the Panel of Constitutional judges above, hospitals in the form of associations or foundations which were established before the birth of Law Number 44 of 2009 concerning Hospitals, are still recognized and legally valid. because the Constitutional Court in its opinion, also took a historical and sociological approach that hospitals in the form of associations or foundations existed before the Indonesian state existed, and also helped the government provide health services.

It becomes a problem then, several private or private hospitals refuse patients who take part in the Social Security Administrative Body (BPJS), for example private hospitals that are classified as elite such as Pondok Indah Hospital and Medistra Hospital, as well as Metropolitas Hospital. The reason for his refusal was because private hospitals had very high taxes. Other private hospitals such as Mitra Keluarga Hospital have the problem that they have limited patient beds because their occupancy rate is around 70%. In addition to the problem of private hospitals rejecting BPJS as a central government program, which aims to prosper and humanity, there was also the problem of a private hospital, namely the Pirngadi Hospital in Medan, which refused a patient because the patient had AlDS HIV. The reason for the refusal was because the hospital had to sterilize the operating room, as well as all medical equipment used for the patient, had to be replaced and the hospital did not want to lose out on this medical procedure. (Transformationnews.com)

The assumption of this research departs from the provisions of Article 21 of Law Number 44 of 2009 concerning Hospitals, which reads "Private Hospitals as referred to in Article 20 paragraph (1) are managed by legal entities with the aim of profit in the form of a Limited Liability Company or Persero". So the presence of private hospitals is contrary to Article 34 paragraph (3) of the 1945 Constitution because the government has transferred most of the constitutional responsibility for providing health service facilities, in this case hospitals, to the private sector in the form of limited liability companies.

In this study, the authors are interested in questioning and revealing why the legislators then included the norms contained in Article 21 of Law Number 44 of 2009. If one looks at it, the legal concept of a Limited Liability Company is a business concept, whose main goal is to seek economic profit, and not to carry out social-humanitarian functions as the doctor's oath and the 2nd precepts of Pancasila are the state philosophy as well as article 34 paragraph (3) of the 1945 Constitution. So the problem discussed in this paper

Formulation of the problem

1. Are the legal policies for hospitals managed by legal entities in the form of limited liability companies or corporations in accordance with Article 34 paragraph (3) of the 1945 Constitution as the basis for Indonesian legal politics?
2. How should legal politics regulate the form of private hospitals in the future?

Research methods

This research was conducted by 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 rules or norms which are standards for human behavior that are considered appropriate. The normative legal method in this study aims to analyze the legal norms of Article 21 of the Hospital Law whether it is in accordance with Article 34 paragraph (3) of the 1945 Law and Pancasila

Discussion

1. Legal Politics of Private Hospitals in the Form of PT

Pancasila is very important in the formulation of legislation, so according to Maria Farida Indarti, it is positively a "guide star" that provides guidance and guidance in all activities giving content to every framework that limits the space for the contents of the legislation. 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. This is because in the formulation of the draft hospital law, 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.

a. Reviewing the Foundations of Private Hospitals in the form of PTs in the Perspective of Article 34 Paragraph (3) of the 1945 Constitution

According to the author of the meeting minutes of the draft Hospital Law, members of the DPR RI look like representatives of the owners of private hospital capital in the form of PT, because none of the DPR-RI members discussed and carried out philosophical trials related to the status of private hospitals in the form of PT. As regulated in Article 21 of Law Number 44 of 2009 concerning Hospitals with Article 34 Paragraph (3) of the 1945 Constitution, so that non-legal powers and interests greatly influence the formation of this law.

A product of the law is responsive or not certain. The basic standard is the 1945 Constitution. This means that all legal products that are made into legal politics must be based on and in accordance with the legal politics contained in the articles contained in the 1945 Constitution. Article 21 of the Hospital Law is wrong. an unresponsive legal product, because it is not in accordance with the mandate contained in Article 34 paragraph (3) of the 1945 Constitution. 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 closely at this article, health services, especially hospitals, cannot be fully transferred to private companies in the form of PTs, because PTs tend to be individualistic, liberalistic and will avoid state intervention.

The domination of political configuration, compared to the law as stated above, this was also the author's finding in the meeting of the minutes of the Hospital Bill, where regarding the discussion of Article 21 of the Hospital Law, not a single member of the DPR-RI specifically discussed private hospitals in the form of private universities, with Article 34 Paragraph (3) of the 1945 Constitution both from a philosophical, sociological and legal aspect, and does not also discuss Pancasila as the legal ideals of the state in formulating the Hospital Law.

b. Formulation of Article 21 of Law Number 44 of 2009 Concerning Hospitals by Legislators

In this case the authors found that there was substantially a failure in legal politics, where in Law Number 44 of 2009 concerning Hospitals, the legislators, in this case the president and the DPR, had deliberately positioned the hospital as an independent institution that was detached from the law. Number

36 of 2009 concerning Health (Health Law). This can be seen where the Health Law was not included in the Hospital Act considerations.

It is important that the Hospital Law includes the Health Law in the preamble, because both of them have a constitutional relationship with Article 28H paragraph (1) of the 1945 Constitution and Article 34 avat (3) of the 1945 Constitution. The Health Law in general is a reference for all aspects of health regulation, be it the source human resources such as doctors, pharmacists, nurses, midwives, medical records and others. Apart from that, it also includes regulations related to technology and policies in the health sector, such as regulations at the minister of health level and decrees of the minister of health. In addition to the constitutional aspects above, in the health sector, it is these promotive, preventive, curative and rehabilitation service efforts that require that the Hospital Act be regulated not to be independent and also not to move away from Law Number 36 of 2009 concerning Health.

The cause of the birth of a private hospital in the form of PT was influenced by the orientation of the hospital, which was previously a social institution, turning into a socio-economic institution. The need for operational improvement and the quality of hospital services requires large funding. If we look back at the minutes of the meeting on the hospital bill, it is clear that none of the factions of DPR-RI members questioned the presence of private hospitals in the form of PT in the Hospital Law, nor did anyone propose that private hospitals be managed in the form of PT. foundations and associations.

Next, there is confusion in the formation of legal norms as contained in Article 20 paragraph (2) of the Hospital Law, which reads "Public hospitals as referred to in paragraph (1) can be managed by the Government, Regional Governments and Legal Entities that are non-profit" . The location of the mess is where non-profit legal entities, which in this case are just foundations and associations, are included in the management of public hospitals, whereas if we look again at the provisions of Law Number 16 of 2000 concerning Foundations jo. Law Number 28 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations and Regulation of the Minister of Law and Human Rights Number 3 of 2016 Procedures for Submitting Applications for Legal Entity Authorization and Approval of Amendments to the Association's Articles of Association, never mentions Foundations and Associations as public legal entities.

It is increasingly seen that hospitals in the form of foundations and associations are deliberately not accommodated in the Hospital Law. Hospitals should be in the form of foundations and associations, separate articles are made in the Hospital Law, so that they are not combined in Article 20 paragraph (2) of the Hospital Law, which has an impact on the ambiguity and weakness of the position of hospitals in the form of foundations and associations.

In line with the above, according to Arief Tajali, there is no legal certainty that regulates the opportunities for private public hospitals (foundations and associations) to obtain tax incentives. As a result of the uncertainty of the meaning of the term "manage" in articles 20 and 21 of the Hospital Law, meanwhile according to Article 7 of the Hospital Law, it requires that a hospital that is established by the private sector must be in the form of a legal entity. The uncertainty of the management term causes uncertainty about the form of the hospital's legal entity in the form of a non-profit legal entity and uncertainty in determining the owner of the hospital as a non-profit legal entity, which will ultimately lead to uncertainty as to who tax incentives will be given.

2. Rebuilding Private Hospitals in Accordance with Indonesian Legal Political Foundations

In Indonesian legal politics, there are 3 (three) main arrangements that serve as the basis for political law and legislation in Indonesia specifically in the field of hospital health services, namely as follows:

1) In the order of the political struggle in the DPR in making laws it must be based on the Pancasila principles, as a form of strengthening democracy which has an impact on justice, certainty and the benefit of law;
2) In the economic and social order in hospital health services, legal politics must be formed in accordance with the 2nd and 5th precepts of the Pancasila, the aim of which is to prevent legal products from being intervened by investors with a spirit of liberalism and capitalism;
3) Pancasila and the 1945 Constitution must become the basis and benchmark for the Government and the DPR-RI in making special laws in the field of health services, so that Pancasila and the 1945 Constitution do not only become formal symbols.
4) In addition to Pancasila and the 1945 Constitution, specifically legal politics, in the field of hospital health services, including all components of human resources (doctors, midwives, pharmacists and nurses and other health workers) must be rooted in and inspired by the professional oath and professional ethical values.
5) Private hospitals in the form of foundations and associations must embody the values of Pancasila and Article 34 paragraph (3) of the 1945 Constitution in providing hospital health services.

From all the arguments, there are several important things that the author wants to convey in this writing as novelty, which in the future will be useful for the development and strengthening of the role of hospitals according to the mandate of Article 34 paragraph (3) of the 1945 Constitution and Pancasila as the basis of national legal politics.

According to the author, there has been a clear ideological problem that Pancasila does not recognize the existence of liberal-capitalism. Because Pancasila in the context of ideology does not adhere to individualism as adhered to in the form of a limited liability company, in this case private hospitals are in the form of PT which is regulated in Article 21 of the Hospital Law. Even though Pancasila is an ideology, Pancasila does not close itself to various good things for the sake of prosperity. In its true position, the ideology of Pancasila continues to recognize citizen participation to promote, fight for both individual rights and collective rights to develop society, nation and country as stipulated in Article 28C paragraph (2) of the 1945 Constitution.

The next ideological conflict is that the hospital is in the form of a PT, the goal is only to seek economic profit, the profit is distributed to shareholders, who behind it have an individual soul and want to eliminate intervention to strengthen hospital business activities. This became the main point of ideological conflict, because PT management and shareholders only thought of seeking economic benefits, without thinking about the social-human aspects which are the basic values of health services in hospitals. Therefore, only hospitals in the form of foundations and associations are in accordance with the political foundation of national law, because they have a social-human spirit and any profits are not divided into shares and are not allocated to management. Each of these advantages

It is very important in the future to make a new hospital law, the aim of which is to clarify the position and management of hospitals in the form of foundations and associations. Where later, it is clearly regulated and included in a separate article, so that it is not like now which is contained in article 20 paragraph (2) of Law No. 44 of 2009 concerning Hospitals. In the formulation of legal norms, not only government and regional government hospitals cannot be converted into PT-shaped hospitals, but hospitals in the form of foundations and associations also cannot be converted into PT-shaped hospitals, where currently Article 20 Paragraph (4) of the Law The hospital has opened up capitalism's opportunities for non-profit hospitals, it is very important to regulate,

In addition to Pancasila and Article 34 paragraph (3) of the 1945 Constitution which must be used as a legal philosophical and political basis in drafting the hospital law. It should be noted that the drafting of laws related to health services cannot only focus on hospital laws, but also requires juridical integration.

The intention is in drafting hospital laws in the future must be integrated with health laws, laws governing taxation, foundation laws, regulations related to associations. This aims to strengthen the position of hospitals in the form of foundations and associations in accordance with Article 34 paragraph (3) of the 1945 Constitution and Pancasila as national legal politics.

a. Foundations and Associations as Future Solutions for Private Hospitals

Unlike the case with foundations and associations, for example hospitals founded by Muhammadiyah associations / associations engaged in the humanitarian and social fields. Assessed in accordance with the values contained in the Doctor's Oath and Doctor's Code of Ethics, besides that foundations and associations are also in accordance with Pancasila values as the 2nd and 5th precepts. Private hospitals in the form of foundations and associations are legal entities that in their activities continue to seek economic profit, but these economic benefits are not shared in the form of shares and are not given to shareholders as is the case with P'T. Economic profits generated by private hospitals in the form of foundations and associations, are fully for the needs of hospital management to fulfill social-humanitarian activities,

The results of the author's research suggest that when referring to the meaning of the foundation, several things can be seen which provide confirmation that the Foundation is not intended for commercial purposes, including stating that there are separated assets, the purpose of the Foundation concerns the social, religious and humanitarian fields, and The foundation has no members. In the Foundation it is also not known that there is no distribution of profits to anyone including the founder, even the assets that have been set aside cannot be withdrawn, including if the Foundation disbands, then the remaining assets of the Foundation from liquidation will not return to the founders and cannot also be distributed to the supervisors. administrators and supervisors.

The main purpose of the prohibition on profit sharing is to emphasize and show that people who carry out activities within the Foundation are not intended to seek profit to then be shared as is the case with companies (PT). Foundations and associations such as Muhammadiyah are important elements of the Indonesian state, which have concrete evidence and major contributions to non-profit (social-humanitarian) hospital health services, so that it can be taken as a red thread that only foundations and associations are in accordance with Pancasila and Article 34. paragraph (3) of the 1945 Constitution as a legal ideal and legal political basis for making the Hospital Law, specifically private hospitals in the future (ius constituendum).

The presence of private hospitals in the form of foundations and associations does not conflict with Article 34 paragraph (3) of the 1945 Constitution. According to the author, there are 3 (three) reasons that make foundations and associations in line with the legal politics of Pancasila and Article 34 paragraph (3) of the 1945 Constitution, namely :

1) philosophical: the establishment of foundations and associations aims to serve social, religious and humanitarian causes, this is in accordance with the 2nd and 5th precepts of the Pancasila. In addition, private hospitals in the form of foundations and associations can make doctors and all health workers comply with the rules of the doctor's/profession oath and doctor's/profession ethics, so that they are far from immoral and unethical actions, as an example of the case of pharmaceutical company gratuities against doctors;
2) sociological: the participation of private hospitals in the form of foundations and associations is urgently needed, due to the large number of people who need access to hospital health services, while on the other hand there is still limited hospital infrastructure provided by the government, thus requiring community participation;
3) juridical: the participation of foundations and associations in the field of health services, especially hospitals, in accordance with Article 28C paragraph (2) of the 1945 Constitution, which stipulates

that "everyone has the right to advance himself in fighting for his rights collectively to develop his community, nation and country.

According to the author, changes to the Hospital Law need to be encouraged, either by carrying out a judicial review of Article 21 of the Hospital Law which is not in accordance with Article 34 paragraph (3) of the 1945 Constitution, or also by making a new Hospital Law and making new formulations, including:

a) it is necessary to include the Health Law, the Social Security Law and the BPJS Law in the Preamble to the Hospital Law;
b) The values of Pancasila, Human Rights and Welfare must be included in the Preamble to the new Hospital Law;
c) In the new Hospital Law, it is important to clarify and strengthen the position of association foundations as part of private hospitals by means that foundation and association hospitals cannot be transferred to private hospitals in the form of PT or Persero, besides that it is important for the government to make tax regulations that reduce tax burden for private hospitals in the form of foundations and associations;
d) when the government has limitations in building hospitals in frontier, outermost and remote areas, then this responsibility must be transferred to private hospitals in the form of foundations and associations;
e) There needs to be restrictions by the government as the regulator and operator for hospitals in the form of PT.

Conclusion

1. A private hospital in the form of a PT or a corporation is inappropriate and contradictory to Article 34 paragraph (3) of the 1945 Constitution and Pancasila as the political foundation of national law. In essence, the state has the responsibility to provide health services, including the construction of hospitals. Although on the other hand, currently the state has not been able to fulfill the mandate of Article 34 paragraph (3) of the 1945 Constitution. Hospital health service facilities are a form of the presence of the State, to fulfill general welfare which has the meaning of just, civilized humanity, and social justice for all people. Indonesia. Hospital health services, which are included in the social and cultural economy (ECOSOB), require the active role and responsibility of the state to provide access to health. So it's totally irrelevant.

2. In the future, the form of a private hospital legal entity should not be in the form of a PT, but must be in the form of foundations and associations. Due to foundations and associations, their assets are separated and intended to achieve certain goals in the social, religious and humanitarian fields, and do not distribute profits to their members or to shareholders as is the case with private hospitals in the form of PT. In addition, private hospitals in the form of foundations and associations are closely related to the 2nd and 5th precepts of the Pancasila which are the ideological foundations of Indonesian national legal politics. In principle, foundations and associations continue to make private hospitals a social-humanitarian forum which is related to altruism and the Doctor's Oath. in principle.

Suggestion

1. In the future for the President and the DPRI-RI, Pancasila is not only used as a mere symbol in making laws, specifically laws and regulations that regulate health services. Pancasila and Article 34 paragraph (3) of the 1945 Constitution must be used as the political legal basis for the Act in making the Hospital

Law. The aim is that the legal product still has operational theoretical and normative philosophical values.

2. The President and the DPRI-RI in the future make a new Hospital Law in which Article 21 of the Hospital Law which reads "Private hospitals as referred to in Article 20 paragraph (1) are managed by legal entities with the aim of profit in the form of Limited Liability Companies or Persero" with the phrase "Private hospitals as referred to in Article 20 paragraph (1) are managed by foundation legal entities and/or associations with social and humanitarian purposes". Apart from that, it is also necessary to create legal norms which emphasize that private hospitals of foundations and associations cannot be converted into private hospitals in the form of a limited liability company. The change in the phrase aims to produce a legal product that is aspirational, responsive and in accordance with Pancasila as the basis for national legal politics.

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