



## Rebuilding Private Hospital According to Indonesian Health Law Politics

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ARTICLE INFO	ABSTRACT
<p><b>Keywords:</b> Building, Private Hospital, health law politics</p> <p><b>How to cite:</b> Buamona, Hasrul (2021). Rebuilding Private Hospital According To Indonesian Health Law Politics. <i>Veteran Law Review</i>. 4(2). 80 – 93.</p> <p><b>Received:</b> 2021-09-05 <b>Revised:</b> 2021-09-21 <b>Accepted:</b> 2021-10-22</p>	<p>In Article 21 of Law Number 44 of 2009 concerning Hospitals, only private hospitals in the form of PT, do not regulate and even strengthen the position of private hospitals, foundations and associations as a forum for health services in accordance with Pancasila and Article 34 paragraph (3) of the Constitution. 1945 as the legal politics of health services in Indonesia. Therefore, this is the reason for the author to conduct a study with the aim of rebuilding a private hospital in accordance with the character of the Indonesian state which has a social-human spirit. This study focuses on the main problem, namely How should the legal politics of regulating the form of private hospitals in the future. The research method used is normative law or doctrinal methods that are qualitative in nature to analyze data based on norms in laws and regulations that are guided by the precepts of Pancasila as the basis of Indonesian legal politics. The results of this study conclude that in the future the legal entity of a private hospital should not be in the form of a PT, but must be in the form of foundations and associations, because foundations and associations have separate assets and are intended to achieve certain goals in the social and religious fields. The participation of foundations and associations is 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 build his community, nation and state. Finally, private hospitals, foundations and associations are in accordance with Pancasila and Article 34 paragraph (3) of the 1945 Constitution as the legal political basis for health services.</p>

### 1. Introduction

The emergence of various *judicial reviews* of statutory products at the Constitutional Court shows that there have been failures in the process of making laws in Indonesia which were born by the President and the DPR-RI, although it is clear in Article first paragraph number (3) of the 1945 Constitution which reads "The State of Indonesia is a state of law", but it does not mean that the legal products produced by the President and the DPR-RI are in accordance with legal politics. The hospital is one of the most important parts of all components of state life, because the existence of a hospital is one of the benchmarks for the country to have enforced all aspects of welfare, social, legal, human rights and the economy. This is clearly stated in the Preamble of the 1945 Constitution in the fourth paragraph regarding the phrase "general welfare" which has a direct relationship with hospital health

services. In article number 28H paragraph (1) of the 1945 Constitution reads "everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment and have the right to obtain health services". Meanwhile, Article 34 paragraph (3) of the 1945 Constitution stipulates that "the state is responsible for providing adequate health care facilities and public service facilities". If you look at it comprehensively, then the Preamble to the 1945 Constitution, Article 28H paragraph (1) and Article 34 paragraph (3) of the 1945 Constitution, constitutes an inseparable unit of norms in health services including hospitals as the responsibility of the state.

The case of the baby Debora is a case that had a lot of public discussion in Indonesia. Where in this case, Mitra Keluarga Hospital (PT Ragam Sehat Multifita) asked Debora's parents to pay an advance by the hospital. In fact, there is no need for a down payment because Debora has a BPJS Health card. Regarding this matter, the Minister of Health Nila Djuwita Farid Moeloek imposed administrative sanctions for Mitra Keluarga Hospital, Kalideres regarding the death of baby Debora. The decision is the result of an investigation by the Ministry of Health as stated in the official letter of the Minister of Health of the Republic of Indonesia Number UM.0105/Menkes/395/2017 dated September 13, 2017.<sup>1</sup>

From the problem of a private hospital in the form of a limited liability company (PT) above, the point is refusing patients. It can be seen that private hospitals in the form of PT, on the other hand, do not prioritize the human aspect and the medical needs of the community, in this case the patient.

A private hospital in the form of a limited liability company (PT) should not refuse patients under any circumstances and for any reason. Although a private hospital in the form of a PT aims to seek economic benefits. In essence, hospitals do not only have a healing function and are not merely seeking economic benefits, but also have a humanitarian function to the community, which is inseparable from the 2nd (two) Precepts of Pancasila as a philosophical foundation. The enactment of Law Number 44 of 2009 concerning Hospitals is a state response that must be appreciated. But on the other hand, it has an impact where hospitals as altruistic health services must plunge freely into the capitalist free market. Article 21 of Law Number 44 of 2009 concerning Hospitals (Article 21 of the Hospital Law) stipulates that "Private hospitals as referred to in Article 20 paragraph (1) are managed by a legal entity with the aim of profit in the form of a Limited Liability Company or Persero". The presence of Article 21 of the Hospital Law as a manifestation of the free fall of hospitals from social-humane beginnings, turned into profit oriented, in which the implementation of hospitals will turn into industry and business commodities, which impact the community (patients) into objects of economic profit.

So the legal consequence is that a private hospital managed by a legal entity PT legally must also follow Law Number 40 of 2007 concerning Limited

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<sup>1</sup> Look at :<https://nasional.kompas.com/read/2017/09/13/15313261/kasus-bayi-debora-menkes-jatuhi-sanksi-tertulis-untuk-rs-mitra-keluarga?page=all>. Accessed in January 24<sup>th</sup> 2020.

Liability Companies (UU PT). As a result, private hospitals in the form of PT are certain to become corporations in general, whose purpose is to seek economic benefits and not goals in the social-humanitarian field such as foundations and associations.

It is interesting to look at the opinions of Abdul Latif and Hasbi Ali, regarding the importance of knowing the intervention of the business world (business to government), both businesses that have international networks and businesses that only operate in the domestic sphere. Entrepreneurs can intervene with the government in order to facilitate their interests in the formulation of laws. It should be noted that foreign intervention through legislation is detrimental to the country at large, and provides benefits to foreign countries. The aim is to legally strengthen the domination of capitalism in Indonesia.<sup>2</sup>

Another reason is that the Hospital Law does not synergize in legal politics with Law Number 36 of 2009 concerning Health (Health Law). Seen in the preamble which does not include the Health Act as the basis for consideration of the birth of the Hospital Law. It is known that complete health services consisting of primitive, preventive, curative, and rehabilitative are an integral part of the health agenda contained in the Health Law.

According to the author, in addition to being integrated with the Health Law, the Hospital Law should be integrated with Pancasila, and Article 34 paragraph (3) of the 1945 Constitution as the political basis for national health law. This is so that every legal product manufacture in Indonesia, especially in the health sector, must be in accordance with Indonesian legal politics based on Pancasila and the 1945 Constitution. Adheres to the ideology of liberalism and capitalism that is not in accordance with the basic principles of the state.

Regarding integration as above, it is in line with Hans Kelsen<sup>3</sup> that norms are tiered and layered, in a hierarchical arrangement, norms below apply, sourced and based on higher norms, and higher norms apply, are sourced and based on at a higher norm. Related to Kelsen's opinion, the author adds that the purpose of another high norm, especially in the Indonesian legal system, has been contained in the 1st Pancasila principle, namely "Belief in the one and only God".

There are two things that the author found in the minutes of the discussion of the hospital bill, starting from the opinion of the Minister of Health and members of the Indonesian House of Representatives. First, Siti Fadilah Supari as the Minister of Health in her delivery, included Pancasila and Article 34 paragraph (3) and Article 28H paragraph (1) of the 1945 Constitution, as the basis and reason for the birth of the Hospital Law. However, it still lists private hospitals in the form of PT, not foundations or associations, even foundations and associations are not made separate articles in the Hospital Law, but are placed in the Elucidation of Article 20 paragraph (2) of the Hospital Law. Second, members of the DPR-RI from various factions in the minutes of discussing the hospital bill, continue to use Article 34 paragraph (3) of the 1945

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<sup>2</sup> Latif, Abdul and Ali, Hasbi. (2010) Jakaarta Politics Law: Grafika Light, 2010. (pp. 11).

<sup>3</sup> Kelsen,Hans. (tt) General Theory of Law and State. Translated by: Andreas Wedberg.New York: Russell & Russell. (pp. 112).

Constitution as a reference in the development of hospital health services, but do not then question the presence of private hospitals in the form of PT, which is clearly contradictory. With Pancasila and Article 34 paragraph (3) of the 1945 Constitution. In addition, it does not also clarify the position and management of hospitals in the form of foundations and associations, which should be included in the management of private hospitals (private non-profit). However, hospitals in the form of foundations and associations are given the convenience of becoming private hospitals in the form of PT, as stated in Article 20 paragraph (4) of the Hospital Law which reads "Public hospitals managed by the Government and Regional Governments as referred to in paragraph (2) cannot be converted into private hospital".

It is clear that the state has a responsibility for the provision of health care facilities in this case hospitals. From several things that the author got in the minutes of the discussion of the hospital bill, it shows that the President and the DPR-RI which have the responsibility to form laws, prefer to use Pancasila and Article 34 paragraph (3) of the 1945 Constitution only as symbols and mere formalities, and not make Pancasila and the 1945 Constitution the basis for the formation of the Hospital Law, specifically Article 21.

Law has always been conceptualized as a political product. If politicians and the world of politics are good, the legal products will also be good, and vice versa. The role and strategic position of these politicians need to be used to socialize the reinterpretation of Pancasila so that in the future Indonesian law and legal behavior (laws) are inspired and colored by the values of Pancasila, the misinterpretation of Pancasila values needs to be corrected immediately. The fault does not lie with the people or Pancasila, but the fault lies with the subjects of state administrators, which incidentally are politicians. They are expected to be able to become statesmen in the future.<sup>4</sup> Based on the description above, it is necessary to focus on this article to answer the following problems, how should the legal political arrangements for the form of private hospitals in the future be formulated?

## **2. Method**

This article resulted from research conducted in a normative juridical manner. Using secondary data in the form of primary, secondary and tertiary legal materials, as well as a comparative approach to laws and regulations, whose the results are presented analytically prescriptive.

## **3. The Hospital Management in the Form of a Company**

If you look into the 2011 Indonesian Hospital Code of Ethics, it stipulates that "The hospital as a health service facility is a socio-economic unit, which must

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<sup>4</sup> Sudjito.(2012). *Reinterpretation and Socialization of Pancasila Values in a Legal perspective*.Yogyakarta: PSP UGM . (pp. 17)

prioritize humanitarian duties and precede its social function and not seek profit alone".<sup>5</sup>

The definition of a hospital can be found in Article 1 number 1 of the Hospital Law, which reads "Hospital is a health service institution that provides complete individual health services that provide inpatient, outpatient, and emergency services". In addition, if you look at the provisions of Article 2 of the Hospital Law, it reads "Hospitals are organized based on Pancasila and are based on human values, ethics and professionalism, benefits, justice, equality of rights and anti-discrimination, equity, protection and patient safety, and have social functions " .<sup>6</sup>

In Article number 3 of Law Number 36 of 2009 concerning Health there is also a goal of establishing a hospital, which reads "Health development aims to increase awareness, willingness, and ability to live healthy for everyone in order to realize the highest degree of public health, as an investment for the development of socially and economically productive human resources".<sup>7</sup>

Article 3 of Law Number 44 of 2009 concerning Hospitals also regulates the objectives of operating hospitals:

- a) Facilitate public access to health services;
- b) Provide protection for the safety of patients, the community, the hospital environment and human resources in the hospital;
- c) Improve quality and maintain hospital service standards; and
- d) Provide legal certainty to patients, the community, hospital human resources, and hospitals.<sup>8</sup>

If you look back at the provisions of Article 1 point 1 of Law Number 44 of 2009 concerning Hospitals, as explained earlier, if you have regulated the function of the hospital which consists of complete individual health services that provide inpatient, outpatient, and emergency services, and the emergency. In addition, Article 5 of Law Number 44 of 2009 concerning Hospitals also regulates hospital functions, namely:

- a) Implementation of medical treatment and health recovery services in accordance with hospital service standards;
- b) Maintenance and improvement of individual health through complete second and third level health services according to medical needs;
- c) Implementation of education and training of human resources in the context of increasing capacity in the provision of health services; and;
- d) Organizing research and development as well as screening technology in the health sector in the context of improving health services by taking into account the ethics of science in the health sector.<sup>9</sup>

The main function of the hospital, apart from being a means of providing health services or health service facilities, is also carrying out other functions,

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<sup>5</sup> See the ethics code of Indonesian Hospital in 2011.

<sup>6</sup> See laws number 44 in 2009 about Hospital.

<sup>7</sup> See Laws number 36 in 2009 about Healthy

<sup>8</sup> See laws number 44 in 2009 about Hospital

<sup>9</sup> See laws number 44 in 2009 about Hospital



namely as the implementation of administration, research functions, educational functions, and management functions of building facilities maintenance activities. So the operation of the hospital is not only defined as the activities of implementing health services, but also includes other public service activities, such as education, research and even general administrative services and other supporting activities.<sup>10</sup>

Hermin Hadiati stated that the function of the hospital is closely related to the legal entity that administers it. Hermin quotes part of Alan Moritz's opinion, stating that the hospital's functions are. "Besides being an institution whose job it is to serve and care for the sick, the hospital is also a place to provide jobs for professionals. This means that hospitals not only provide legal protection for sufferers who seek health services for recovery, but also legal protection for job seekers consisting of professional bearers."<sup>11</sup>

### 3.1. Limited Liability Company Hospital

The term Limited Liability Company (PT) used today was formerly known as Naamloze Vennootschap (NV). How the origin of the use of the term PT cannot be traced.<sup>12</sup> The term PT has become standard in people's lives and in laws and regulations, for example Law Number 40 of 2007 concerning Limited Liability Companies (UUPT).<sup>13</sup>

The term Limited Liability Company consists of two words, namely "company" and "limited". The Company refers to the "capital" of PT which consists of "sero-sero" or shares. The word limited refers to the liability of shareholders whose extent is only limited to the nominal value of all the shares they own.<sup>14</sup>

The rationale that PT capital consists of holdings or shares can be traced from the provisions of Article 1 point 1 of the Company Law, namely:

Limited Liability Company, hereinafter referred to as a company, is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this law and its implementing regulations.<sup>15</sup>

Meanwhile, the limited liability of shareholders can be seen in Article 3 of the Company Law which regulates:

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<sup>10</sup> Yustina, Wahyuni, Endang. (2012). *Knowing the Laws of Hospital*. Bandung:Keni Media. (pp. 10).

<sup>11</sup> Yustina, Wahyuni Endang. (pp. 20)

<sup>12</sup> Prasetya, Rudhi. (1996) *Limiteted independently liability company*. Bandung: Citra Aditya Bakti. (pp. 25).

<sup>13</sup> Khairandy, Ridwan (2009). *Limited company "Doctrine of Legislation and Jurisprudence"*. Yogyakarta: Total Media. (pp. 1)

<sup>14</sup> H.M.N Purwosujitpto (1982) *The Understanding if Commercial laws in Indonesia*. Jakarta: Djambatan. (pp. 85).

<sup>15</sup> See law number 40 of 2007 on Limited liability. It was quoted by Ridwan Khairandy.

"The shareholders of the company are not personally responsible for the engagements made on behalf of the company and are not responsible for the company's losses exceeding the value of the shares they already have."

According to the laws. People who has their rights and obligation, but right now it is not only the human being who become the laws subjects, but when time pass by, the limited company is also the part of laws subjects that has the rights and obligation as well as human being.

These communities and associations, having their own assets, participating in legal traffic through the intermediary of their management, can be sued and can also sue before a judge. In short, treated fully as a human being. Such a body or association is called a "legal entity" or *rechts-person*, meaning a person created by law. Legal entities, for example: *waqf*, *stichting*, trade associations in the form of limited liability companies or N.V and so on.<sup>16</sup>

According to Erman Rajagukguk, legal entities are also legal subjects, namely bodies that are equated with humans (legal personality). Legal entities as legal subjects have rights and obligations like humans, can sue and be sued and have their own assets. Separate assets from the founders of the legal entity, owners, supervisors and administrators.<sup>17</sup> A limited liability company as a business company has at least 5 (five) structural characteristics, namely: (1) legal personality (legal entity), (2) limited liability (limited liability), (3) transferable shares (shares can be transferred), (4) centralized management, and (5) shared ownership (ownership of shares by investors).<sup>18</sup>

The concept of a company as a legal entity, whose assets are separate from those of its shareholders, is a trait that is considered important for the status of a corporation as a legal entity that distinguishes it from other forms of company. The limited nature of liability, in brief, is a statement of the principle that shareholders are not personally responsible for the company's obligations as a legal entity whose assets are separate from those of the shareholders. The principle of *continuity of existence*<sup>19</sup> emphasizes the separation of corporate wealth from its owner. The legal entity itself is not affected by the death or bankruptcy of a shareholder. Legal entities are also not affected by changes in the company's share ownership structure. As a result, the company's shares are freely traded.<sup>20</sup>

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<sup>16</sup> Subekti. (2008). *The Foundation of Civil Laws*. Jakarta:Intermasa. (pp. 21).

<sup>17</sup> Rajagukguk, Erman. *The details of Economic Laws*. Depok: The Institute of Law and Economic, Faculty of Law University of Indonesia. (pp. 189).

<sup>18</sup> Henry Hansman dan Reiner Kraakman. (2004) "*What is: Corporate Law?*" in Reiner R.Kraakman *et.al, the Anatomy of Corporate Law A Comparative and Functional Approach*. New York:Oxford University Press. Page 1. Quoted from Erman Rajagukguk, *Economics Law's points*, (pp. 190).

<sup>19</sup> The principle of *continuity existence* is a principle which is the company will be exist, even if there is a change of the owner. If the company died or quits and leave the company, it will continue to exist. This principle is one of the distinguishes the form of a cooperative for the form of a business entity. In a civil partnership, including a firm, by leaving it one of the partnerships must be dissolved.

<sup>20</sup> Erik P.M. Vermuelen, *The Evolution of Legal Business Forms in Europa and the United States: Venture Capital, Joint Venture, and Partnership Structures* (Devanter: Kluwer Law International,2002) (pp. 189).

#### 4. Legal Politics of the Future of Private Hospitals in Indonesia

In producing the law, the law should not contain a capitalist-liberal or socialist-communist system. Pancasila as the basic building of legal politics, so that Pancasila and the 1945 Constitution are not only used as mere formal symbols. In essence, in the health aspect, Pancasila also recognizes and protects both individual rights and community rights in the field of health services.

In the view of Maria Farida Indarti, that the Constitution (UUD) creates the main ideas contained in the preamble in its articles. These main ideas include the mystical atmosphere of the 1945 Constitution. These ideas embody the ideals of law which governs the basic law of the state, both written law (UUD) and unwritten law.<sup>21</sup> From Maria's view above, the point is to make Pancasila the basis of legal politics, not only in making Act (UU). However, in a broad scope, namely the legal politics of making the 1945 Constitution, it must be in accordance with Pancasila as the ideals of Indonesian law.

According to Max Weber, law cannot be separated from interests and influences, including political interests and influences. This led to the thesis that law is influenced by interests, both material interests and ideal interests, and according to his opinion, law is also strongly influenced by the way of thinking of social classes and influential groups, including political parties.<sup>22</sup>

In a normative basis, legal politics is very necessary, because legal politics talks about "what should be". What ought to what is. Legal politics is tasked with assessing reality as well as changing it in the right, good and fair direction. Therefore, legal politics requires a normative framework about what is right, what is good and what is just, so that it should be fought for and realized. In addition, on a constitutional basis, legal politics is necessary, because the constitution is a basic law, even though in fact, the constitution can be the target of legal politics, in the sense of giving direction and spirit of ideology. In a modern state, the constitution occupies the highest position, so that it becomes the benchmark for all legal products under it.<sup>23</sup>

Since the beginning of the formulation of the basic philosophy of the state, the founders of this republic have known the importance of the welfare of the people in the life of the state. The dangers of the power of capitalism, have been calculated by the founders, especially Soekarno, by providing facts that developed in various countries. Therefore Soekarno further emphasized:

"Aren't capitalists rampant all over the Western continent? In the event that there is a People's Representative Body. None other than the reason for that was because of the People's Representative Bodies that were held there, just according to Fransche Revolutie's recipe. Nothing but the so-called democracy

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<sup>21</sup> Indarti, Maria Farida (2007). *The Science of Legislation, The Types of Functions and Materials*. Yogyakarta: Kanisius. (pp. 58).

<sup>22</sup> Weber, Max, in Agung and Asep (2001). *HAM, The State of the Crime and Capital Imperialism*. Yogyakarta: Student Library. (pp. 22).

<sup>23</sup> Tanya, Bernard L. (2011). *Political Laws Common interest*. Yogyakarta: Genta Publishing. (pp. 17)



there is only politieke democraie; there is simply no sociale rechtvaardigheid, no social justice, and no Ekonomische democratie at all."<sup>24</sup>

If you look back at 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 non-profit legal entities". In the article, it appears that the executive and legislative have made mistakes in formulating legal norms, because the non-profit legal entities referred to in the explanation of Article 20 paragraph (2) of the Hospital Law are foundations and associations. Legally, whether it is regulated in Article 1 point 1 of Law Number 16 of 2001 concerning Foundations, it is expressly stated that "a foundation is a legal entity". In addition, in Article 1 point 1 PERMENKUMHAM Number 6 of 2014 concerning the Ratification of Association Legal Entities, it expressly states that "associations are legal entities". Meanwhile, it is known that there are differences between public legal entities and private legal entities.

It is wrong when the President (executive) and DPR-RI (legislative) as lawmakers equate and even place foundations and associations as part of public legal entities or public hospitals. Based on Article 1 paragraph (1) and Article 2 *Netherland Burgerlijk Wetboek* (NBW) what is meant by public legal entities are state and province, while Article 3 NBW states that private legal entities are associations, limited liability companies, and foundations.

So it is clear that foundations and associations cannot be equated as public legal entities. Article 20 paragraphs (2) of the Hospital Law also shows that in making the Hospital Law, the President and the DPR-RI did not listen to the opinions of health law experts, resulting in chaos and conflict in the formulation of norms in the Hospital Law.

From Article 20 paragraph (2) of the Hospital Law, it also shows that the presence of Article 21 of the Hospital Law is the intention of the President and the DPR-RI to privatize hospitals into limited liability companies, because they do not include foundations and associations in private hospitals (see Article 21 of Law No. Hospital) but is included in the management of public hospitals in the explanation of Article 20 paragraph (2) of the Hospital Law. As explained in the previous section, non-profit hospitals, namely foundations and associations by legislators, are not included in Article 20 paragraph (4) of the Hospital Law, making it easier for foundation hospitals and associations to transform into hospitals in the form of PT that adheres to the values liberalism-capitalism.

In the legal politics of hospitals in Indonesia, if by the author there are 5 (five) main orders that can be used as the basis for the legal politics of hospital health services, namely as follows:

- 1) In the order of political struggle in the DPR in making laws, it must be based on the principles of Pancasila, as a form of strengthening democracy that has an impact on justice, certainty and the benefit of the law;

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<sup>24</sup> The speech of Soekarno at 1<sup>st</sup> June, in The five Committees, Mutiara, Jakarta.

- 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 Pancasila, the aim is to prevent legal products from being intervened by investors who have the spirit of liberalism and capitalism;
- 3) Pancasila and the 1945 Constitution, must be the basis and benchmark for the Government and the DPR-RI in making products of special laws in the field of health services, so that Pancasila and the 1945 Constitution are not merely formal symbols;
- 4) In addition to Pancasila and the 1945 Constitution, specifically the legal political order, in the field of hospital health services, including all components of human resources (doctors, midwives, pharmacists and nurses as well as other health workers) must be sourced and imbued with professional oaths and values. professional ethical values.
- 5) Private hospitals in the form of foundations and associations must be the embodiment of the values of Pancasila and Article 34 paragraph (3) of the 1945 Constitution in hospital health services.

There are 2 (two) important things that the writer wants to convey in this paper so that in the future it will be useful for the development and strengthening of the role of private hospitals in the form of foundations and associations in accordance with the mandate of Article 34 paragraph (3) of the 1945 Constitution and Pancasila as the basis of national legal politics. *First*, according to the author, there has been a clear ideological problem that Pancasila does not recognize the existence of liberal-capitalism. This is because Pancasila in the context of ideology does not adhere to individualism as adopted in the form of a limited liability company, in this case a private hospital in the form of a PT which is regulated in Article 21 of the Hospital Law. As an ideology, Pancasila does not close itself to various good things for the realization of prosperity. In this position, the Pancasila ideology actually recognizes the participation of citizens to advance, fight for both individual rights and collective rights to build society, nation and state as stipulated in Article 28C paragraph (2) of the 1945 Constitution. *Second*, when Article number 21 of the Hospital Law which allows the existence of a shaped hospital has opened up opportunities for liberalism-capitalism in Indonesian hospitals. It should not be government hospitals and local governments that cannot be converted into private hospitals in the form of PT (see Article 20 paragraph (4) of the Hospital Law). However, private hospitals in the form of foundations and associations that adhere to social-humanism are also not given the opportunity to be converted into limited liability companies. If according to the author, this has entered the area of the Pancasila ideology which not only recognizes individuals, but also recognizes collective rights as foundations and associations that adhere to social-humanitarian principles. If the legislators allow the presence of private hospitals in the form of PT, then private hospitals in the form of foundations and associations must also be strengthened both in terms of legal standing, management so that they cannot be transferred to a limited liability company.

#### **4.1. Foundations and Associations as Forms of Private Hospitals in the Future.**

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

- 1) Philosophical: the establishment of foundations and associations whose purpose is to serve social, religious and humanitarian purposes, this is in accordance with the 2nd and 5th precepts of Pancasila. In addition, private houses in the form of foundations and associations can make doctors and all health workers comply with the rules of the Doctor/Professional Oath and doctor/professional ethics, so that they are far from immoral and unethical actions, such as the example of the case of pharmaceutical company gratification against doctors;
- 2) Sociological: the participation of private hospitals in the form of foundations and associations is very much needed, due to the large number of people who need access to hospital health services, while on the other hand the hospital infrastructure provided by the government is still limited, thus requiring community participation; and
- 3) Juridical: the participation of foundations and associations in the field of health services, especially hospitals, is 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 build his community, nation and the country.

Perhaps from the beginning this Hospital is social and humanitarian institutions, then it is appropriate for the future of legislators of the president and the Representatives of the legislative Assembly in making the Laws, not making a private hospital in the form of a PT, as currently contained in article 21 of the Hospital Laws. Therefore, in the future, the managements of private hospitals, the associations must be chosen as a form of hospital. Even though the decision of the constitutional Court number 38/PUU-XI/ 2013, in the legal considerations it allows the presence of a Hospital in the form of a PT because the government has a shortage of human resources.

Murjiyanto stated that when referring to the definition of the foundation, it can be seen several things, which confirms that the foundation is not intended for commercial purposes, among others stating that there are separated assets, the purpose of the foundation is related to the social, religious and humanitarian fields, and the foundation has no members. The foundation also does not recognize the distribution of profits to anyone including the founders, even the assets that have been set aside cannot be withdrawn, including if the foundation is dissolved, the remaining assets of the foundation from the liquidation proceeds do not return to the founders and cannot also be distributed to supervisors, administrators, and supervisors. The main purpose of the prohibition on profit sharing is to emphasize and show that people who

carry out activities in foundations are not intended to seek profits to be later divided as in the case of companies (PT).<sup>25</sup>

According to the author, the principle of community participation is in accordance with Article 28C paragraph (2) of the 1945 Constitution which reads "everyone has the right to advance himself in fighting for his rights collectively to build his community, nation and state". The phrase "building the community, nation and state" cannot be interpreted freely. This means that appropriate community participation is the participation of the community whose wealth is separated and is intended to achieve certain goals in the social, religious and humanitarian fields, and does not distribute profits to its members or to shareholders, such as foundations and associations. The principle is that every community participation, including building a hospital, must be based on a joint effort on the principle of kinship. Furthermore, all public participation in the development of health services must be in accordance with the national interest and the ideals of national law, as contained in Pancasila and Article 34 paragraph (3) and Article 28H paragraph (1) of the 1945 Constitution.

In addition, the government as the regulator and operator needs to limit the growth of private hospitals in the form of PT, the reason being that the Indonesian state is not an individualist country which ideologically Pancasila does not allow the state to be responsible for all health services, even in the dominance of a capitalist market mechanism.

## 5. Conclusion

In the future, a private hospital legal entity should not take the form of a PT, but must take the form of a foundation and association. 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 Pancasila which are the foundation of Indonesia's national legal political ideology. In principle, foundations and associations continue to make private hospitals a social-humanitarian forum which has a relationship with altruism and the Doctor's Oath. In principle, all public participation in the development of health services must be in accordance with the national interest and the ideals of national law, as contained in Pancasila and Article 34 paragraph (3) of the 1945 Constitution.

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<sup>25</sup> Murjiyanto, R.(2011). *The Foundation of Legal Entity*. Yogyakarta: Liberty. Page 71

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