

## CHAPTER II

### LITERATUR REVIEW

#### A. Forms of Civil Institution

Based on specific legislation, a business entity is required in the case of a legal entity running the business activities such as banks, hospitals, and providers of formal education unit. In addition, if there is foreign equity participation in the corporate, then the entity is required to form a legal entity that is a Limited Liability Company. Therefore, when the development of business entity will conduct business the aforementioned / or there is a participation of foreign capital in a business entity, then the corporate is required to form a legal entity.

To find the right business entity for the corporation, the characteristics for some good business entity which is a legal entity or not a legal entity are going to be discussed.

#### 1. Corporate legal entity

The main characteristic of a legal person is that there is a separation between the wealth of the owners with the wealth of business entities, so the owners are only responsible for the extent of their assets. Enterprises in the form of legal entity consist of:

a. Company Limited ("PT")

Having minimum provision of authorized capital, in Law 40/2007 minimum authorized capital of PT is 50,000,000 (fifty million dollars). At least 25% of the authorized capital has been deposited into the PT; Shareholders are only responsible for the extent of their shares; Under certain legislation required that a business entity PT.

b. Foundation

Engaged in social, religious, and humanitarian who do not have a member; and Wealth Foundation founder foundation separated by wealth.

c. Cooperative

It is consisting of individuals or legal entities with the bases cooperative activities based on the principle of cooperation as well as people's economic movement based on family principles. The nature of cooperative membership is voluntary that there is no compulsion to become members of the cooperative. It means, there are no exceptions to be members in the cooperative.<sup>5</sup>

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<sup>5</sup><http://www.hukumonline.com/klinik/detail/lt4f51947253585/jenis-jenis-badan-usaha-dan-karakteristiknya> accessed on March 9, 2015 at 6.17 a.m.

## 2. Corporate not Legal Entity

With the business entity that is not a legal entity, in the form of business entity there is no separation between the wealth of business entities with the wealth of the owners. The business entity is not a legal entity consisting of:

### a. Civil Partnership

It is an agreement in which two or more persons bind themselves to put something in communion with the intent to divide the resulting benefit; The allies are personally responsible for the Civil Alliance.

### b. Firm

It is a company that was established to undertake a joint venture under the name; The members are jointly and severally liable to the firm.

### c. *Kommanditgesellschaft* ("CV")

It consists of Pesero Active and Passive Pesero / limited partnership. Active Pesero is responsible to personal property while a passive shareholder is only responsible for the capital that had been deposited into the CV.

If the corporate will be "changed" with other business entities, the corporate will be dissolved and licenses owned by business entity will be revoked. Furthermore, enterprises will be established in accordance with the characteristics desired and vision.<sup>6</sup>

### **B. Institutional Legal Status of Medical Institution**

Institutional legal status is very important recognition to be possessed by an institution standing in a certain area. The status also represents an endorsement of an institution itself so that as long as an institution has got the status and recognition, there will be no more doubt in any conducted activities and processes.

A clinic (or outpatient clinic or ambulatory care clinic) is a health care facility specialized for outpatients. The clinic can be operated, managed and financed privately or publically, and typically including primary health care of populations needs in local communities, in contrast to larger hospitals which offer specialized treatments and admit inpatients for staying overnight. Some clinics are operated in-house by employers, government organizations or hospitals and some clinical services whose the workers are taken from private enterprises specialized in providing health services.

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<sup>6</sup><http://www.legalakses.com/bentuk-bentuk-badan-usaha/> accessed on March 9, 2015 at 9.17 a.m.

This case provides the basis of a problem. That is a clinic held by a private company is going to be a principled clinic as a social institution or has other status just like business institution and so on. Social institutions are actions, expectations, attitudes, and cultural equipments which have eternal attitude and they are aimed to meet the needs of society. Institutions have a function of existing regularity and integration in the society.<sup>7</sup>

According to Hermien Hadiati, that "hospitals, in the common sense are a company which in its juridical form is usually provided with an institution as a foundation or association so that they have a complete responsibility in the law traffic."<sup>8</sup>

Based on the explanation, social institutions have characteristics. They have goals. They can be used in a relatively long period of time, written or unwritten, drawn from the values and customs prevailing in the society. They have infrastructure such as buildings and certain emblems. In the social institutions, it will be found cultural elements and structural elements in the form of norms and social roles. Social institutions can be regarded as a custom in the common life which has systematic sanctions and they are formed by public authority. Thus, if the clinic is considered as one of social institutions such as hospital then

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<sup>7</sup>Waluya, B. 2009. *Sosiologi 3 : Menyelami Fenomena Sosial di Masyarakat untuk Departemen Pendidikan Nasional*, Jakarta. p. 146.

<sup>8</sup>Hermien Hadiati, 1998, *Hukum kedokteran (Studi tentang Hubungan Hukum dalam mana Dokter sebagai Salah Satu Pihak)*, Bandung, Citra Aditya Bakti, p. 107.

it is questionable, whether or not the clinic recently meets and does not violate the characteristics which have been described previously.<sup>9</sup>

The law itself has a very broad sense. When it is about law, it cannot be separated from some cases like penalties, certainty, punishment, rules, statutes, power and so forth. Its efforts to regulate, its best adaptation for individuals to community: trying to find the best balance between giving power, freedom, and territory to individuals and protecting the public's individual freedom that the interactions among individuals will be maintained well. Then, they live in harmony in order to avoid any conflicts.<sup>10</sup>

Referring to Law No 44 in 2009 of the Hospital, clinic has actually met some provisions related to the principles and objectives in article 2 and tasks in article 3. In addition, related to its function to provide a health service, it has also met the elements of the other article about providing health services which is clearly written in the Law 44 in 2009 Article 10 about hospital buildings which duties are intended to provide health care. Therefore, clinic basically has similar elements in reference to the law of the Hospital.<sup>11</sup>

In Law No 36 in 2009 on health cases, it has been set in Article 30 about health care facilities. This article clearly states that health care

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<sup>9</sup>Waluya, B. Op.Cit., p. 150

<sup>10</sup>Sudikno. 2005, Mengenal Hukum Suatu Pengantar, Penerbit Liberty, Yogyakarta

<sup>11</sup>Undang-Undang Republik Indonesia Nomor: 44 Tahun 2009 Tentang Rumah Sakit, Biro Hukum Departemen Sosial RI Tahun 1997

is held by the government, local government, and the private sector. It is explained. In chapter 31 that access and duties of health care workers include their various spreads. Therefore, the number of clinic is actually similar to the law of health legislation which provides access and expansion of the area so that health services can be established. Clinic can also be supposed to other articles of the health legislation such as: article 32, article 34, and article 40 on the Law of Health.<sup>12</sup>

Clinical has fulfilled the criteria indeed but whether is it true that the current clinic does not think about profit? Most of them have potential as a franchise business. It is beyond one's view that the clinic is a place which provides a health facility as one of social institutions. It is so far known, such alternative medical clinics with non-medical work causes the business-corporated-clinics to have an unfixed status. In order to get deeper understanding, it can be studied by correlating clinics to recent laws to get a clear legal institutional status.<sup>13</sup>

Institutional is derived from the word 'institution' meaning the rules of an organization or a group to assist its members in order to interact each other to achieve the expected goals. In addition, institution can also be interpreted as a rule in a social group which is strongly influenced by social, political and economic factors. Institutional is a relationship and order among members of a society attached in a

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<sup>12</sup>Undang-Undang Nomor 36 tahun 2009 Tentang Kesehatan.

<sup>13</sup>Husein. 2003 Studi Kelayakan Bisnis, Teknik Menganalisis Kelayakan Rencana Bisnis secara Komprehensif, edisi 2 PT Gramedia Pustaka Utama Jakarta.

network or organization, which can determine a relationship among people or organizations determined by the limiting and binding factors such as norms and code of ethics or formal and non-formal rules to cooperate in order to achieve the expected goals. According to Bulkis, institutional means a set of rules governing the people's behavior to achieve their life expectations. An institutional contains a group of people who cooperate in some specific divisions to achieve the expected goals.

One of some important issues for institutionalis institution is as the foundation for building of social behavior, norms of behavior which has become a root in people's lives and has been accepted in order to achieve certain goals, rules with enforcement, rules in the community which provide a forum for coordination and cooperation supported by rights and obligations. Those rights and obligations are as well as behavior of its members, code of conduct, contracts, markets, property rights, organization, and incentives. Local institution and its activiting area are divided into three categories, they are:

- a. Public Sector Category (local administration and local governments),
- b. Voluntary Sector Category (membership organizations and cooperatives),



- c. Private Organizations (service organizations and private businesses).<sup>14</sup>

### C. The Form of Health Service in Indonesia

Indonesia basically has all kinds of types and forms of public health services. Public health service, in principle, gives priority to treatment and preventive health services. Promotional services are the endeavor to improve the public health to get better direction again and the preventive action the community not getting sick to avoid of a disease.

Public health services only give treatment to the patients who are sick but the more important thing is to prevent ( the efforts ) and the improvement of preventive promotif ( health ). So, it is not just a "Puskesmas, or "Balkesmas" but also in other forms it is the right to health care, and prevention of the disease or indirectly affected to increase the health. The levels of health care service are:<sup>15</sup>

#### 1. The First level of Health Service(primary)

It is a service that gives priority to have the character of basic services and it is conducted together with these following residents:

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<sup>14</sup> Ateng Syafrudin, 1997, *Pengurusan Perizinan*, Pusat pendidikan dan Pelatihan ST Aloysius, Bandung. p. 56

<sup>15</sup> Putu aryaramahdhan, <https://mhs.blog.ui.ac.id/putu01/2011/12/27/bentuk-bentuk-pelayanan-kesehatan/> accessed on December 22, 2014 at 22.10

a. Doctor (Medical)

b. "*Perawat Mantri*" (paramedic)

Primary health care or public health service is health care which give first. It is a place that people come to first when they need public health problems or accidents. Primary health care is substantially shown to the people who mostly live in rural areas, as well as low income earners in urban areas. The nature of health care outpatient (Ambulatory Services). It is required to light a sick society and healthy communities to improve their health or health promotion. For example: "Puskesmas", Mobile clinic, and the clinic.

## 2. The Second Level of Health Service (Secondary)

Secondary health services are services that are more specialized and sometimes even a subspecialty services, but those are still limited. Secondary and tertiary health care (secondary and tertiary health care), is a hospital, where communities require further treatment (referral). In Indonesia, there are various levels of hospitals, ranging from hospitals type D to Class A. Hospital medical services are performed by:

a. Specialist Doctor

b. Limited subspecialty Doctors

The nature of health care or ambulatory care service road (inpatient services) is needed for groups of people who require inpatient care and it can not be handled by the primary health care. Example: Hospital Hospital type C and type D.

### 3. The third level of health services (tertiary)

Tertiary health care is a priority service over subspecialty services as well as extensive subspecialty. Health services performed by:

- a. Subspecialist Doctor
- b. Doctors subspecialty area/broad

The nature of health care can be a service road or inpatient care (rehabilitation), for a community of groups or patients who are not covered by secondary healthcare. For example: Hospital type A and type B. Hospitals

The whole description above refers to the health minister regulation number 340 / Menkes / Per / III / 2010 regarding the classification Hospital.<sup>16</sup>

Based on the opinion of Hodgetts and Casio, the type of health care in general can be divided into two:

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<sup>16</sup>Endang Wahyati Yustina, 2012 *Mengenal Hukum Rumah Sakit, cetakan pertama, Bandung: Keni Media*, p. 66

1. Medical Care

Health services are included in to the group of medical services characterized in a way that can be their own organization (solo practice) or together in one organization. The ultimate goal is to cure the disease and to restore health. The target is especially individuals and families.

2. Community Health Service

Health services are included in to the group of public health (public health service) which is marked with the general way of organizing together in an organization. The main objective is to maintain and improve health and prevent disease, as well as the target for groups and communities.

License (licensing), accreditation, and certification forms of a common approach in the regulation of health care quality. License is the process of giving legal consent by the competent institutions which are usually government to individuals or organizations to run a practice or service activities to the public. Licensing both licensing of health facilities and health professionals are regulated in legislation mechanisms (laws) in order to prevent the abuse of duty or function.

Certification is the assessment to any person or organization which has defined qualification. This activity is carried out by the agency that has the authority to pass judgment. As PPGD certificate and gels for Nurses, ATLS and ACLS for Doctors, ISO 9000 certificate for an organization that meets the standards in quality management. Accreditation is a formal process that is carried out by competent authorities and it is recognized to make an assessment of an organization is in compliance with established standards. As KARS institutions (Commission on Accreditation of Hospitals), JCI (Joint Commission International) and JCAHO in America, Achs in Australia.

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In Law No. 44 of 2009 on the Hospital, it is stated that the Hospital is required to conduct periodic accreditation at least three years. It can be carried out by independent institutions both from within and outside the country. In addition, forms of health care on the application of Law No. 36 of 2009 concerning on health. Law No 36 of 2009 is about the basics of health and various facilities and kinds of basic health institution. With the law, the forms and status of health care is in accordance with the applicable legal basis.

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<sup>17</sup><http://www.konsultanrumahsakit.com/home/index.php?page=detail&cat=2&id=272> accessed on January 21,2015 at 13.21

#### **D. The Form of Health Care Institutions**

Establishing a Health Services requires a process and procedures in accordance with the provisions of the permit. These requirements should be fulfilled by any employers or prospective founders of health care institutions.

Hospitals, clinics, and health centers are a form of health care that is most widely existed in society. Therefore, to determine more clearly the status of the alternative medicine clinic, here is a prerequisite of the health care institutions:

##### **1. Hospital**

Hospital is a health care institution which provides health care professionals and services by doctors, nurses, and other health professionals. Law No. 44 of 2009 is the legal basis for establishment of governing and hospitals.<sup>18</sup>

a. Application for permits of the establishment and operation of the Hospital. The complete petition of permanent license, is presented below:

- 1) Checklist to establish the Hospital
- 2) Recommendations of Province Health Office
- 3) BAP Hospital of PHO

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<sup>18</sup>Ibid, Endah wahyati, p. 49-51

- 4) A statement of the owner of the hospital that could comply with the rules and regulations applicable in the field of health.
- 5) organization Structure of Hospital
- 6) List of medical workforce, non-medical paramedics.
- 7) Data for Personnel Director RS:
  - a) Diploma Doctors
  - b) Letter of Assignment
  - c) Permit Practice (SIP)
  - d) Letter of appointment as Director by the owner of the hospital.
  - e) Statement of no objection as Director and responsible for the RS (Original sealed)
- 8) Personnel Data Doctors:
  - a) Diploma Doctors
  - b) Letter of Assignment
  - c) Practice Permit (SIP)
  - d) Letter of appointment as Labor Doctors at the hospital by the owner (for full time staff)
  - e) permit from direct supervisor for full-time workers.
- 9) Personnel Data paramedics attached diploma
- 10) The results of the examination for drinking water (last 6 months)

11) List of medical inventory, medical and non-medical support

12) List of medical service rates.

13) Map Planning:

a) Plan Situation

b) Building Plan (1: 100)

c) Layout Grid

d) Water and Waste Plan

b) Feasibility Study and Master Plan

c) FC Deed of Establishment of Legal Entity Applicant

d) FC land certificate / letter of appointment of use

e) Location Permit from the local government

f) FC Building Permit (IMB)

g) Establishment of Hospital Checklist

h) Nuisance Act Permit (HO) / UPL-UKL

i) Statement of subject to regulations

j) Recommendation of PERSI

Completion period is 30 working days from receipt of the request and scheduled in OPT, Validity Period:<sup>19</sup>

a. Temporary Permit : 6 month

b. Fixed Permit : 5 year

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<sup>19</sup>ibid



## 2. Clinic

Clinic is a health care facility that provides personal health services for basic medical care and / or specialist, and it is held by more than one type of health personnel and led by a medic. The legal basis for establishment of this clinic is The Health Minister Regulation No. 28 of 2011, establishing and organizing clinics must obtain permission from the local government district / city after getting a recommendation from the district health department / city. The license application is submitted by attaching the clinic:<sup>20</sup>

- a. Letter of recommendation from the local health department;
- b. Copy / photocopy of establishing businesses except for individual ownership;
- c. Complete identity of the applicant;
- d. The certificate of approval of the location of the local government;
- e. Proof of ownership or land use or permit the use of the building for the implementation of activities for personal property or a contract for a minimum of 5 (five) years for those who rent the building for the implementation of activities;

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<sup>20</sup>Permenkes RI No 028/Menkes/Per/II/ 2011 tentang Klinik

- f. Documents Environmental Management Effort (UKL) and Environmental Monitoring (UPL);
- g. Clinic profile to be established including organizational structure management, health personnel, facilities, and equipment and services provided;
- h. Other administrative requirements in accordance with the provisions of the legislation.

Clinics permission will be granted for a period of 5 (five) years and may be extended to apply for an extension of six (6) months prior to the expiration of the permit. Local government district / city within three (3) months of receipt of the application must be set to accept or reject the application for a license or license renewal application. Application that does not qualify will be rejected by the local government district / city usually the will give the reason for disapproval in a written form.

### 3. *Puskesmas*

*"Puskesmas"* is a technical unit health in districts or cities that take responsibility to organize health development in a work area. It is stated in Health Minister Decree No. 75 of 2014 on the Policy Association of Community Health Centers. With the publication of the Decree of the Minister of Health on the Basic Policy Community Health Center, it is expected that all parties concerned can follow up a

policy that is consistent in order to optimize the role of community of health centers.

## TERMS

### Article 9

- (1) PHC should be established in each district.
- (2) In certain circumstances, at 1 (one) districts may be established more of 1 (one) PHC.
- (3) Certain conditions referred to in paragraph (2) shall be determined based on the consideration of the needs of the service, the number of people and accessibility.
- (4) The establishment of health centers must meet the requirements of the location, building, infrastructure, medical equipment, energy, pharmaceutical and laboratory.

### Article 10

- (1) The place for establishment of health centers must meet the following requirements:
  - a. geography;
  - b. accessibility to transportation;
  - c. contours of the land;
  - d. parking facilities;
  - e. security facilities;
  - f. availability of public utilities;
  - g. management of environmental health; and
  - h. other conditions.
- (2) In addition to the requirements referred to in paragraph (1), the establishment of health centers should concern on the technical provisions of a country house building.
- (3) Further provisions concerning the location referred in paragraph (1) are listed in the Annex which is an integral part of this regulation.

### Article 11

- (1) Buildings shall meet the requirements of the Health Center including:
  - a. administrative requirements, occupational health and safety requirements, as well as the technical requirements of the building in accordance with the provisions of the legislation;
  - b. separate with permanent and other buildings; and

c. provides the functionality, safety, comfort, safety and health protection and ease in providing services for all people including those with special needs, children and the elderly.

(2) Further provisions on listed buildings in Annex which is an integral part of Regulation This minister.

#### Article 12

(1) In addition to the health center as referred to in Article 11, each health center should have home office building Tenaga Kesehatan.

(2) The building houses offices Health Workers as referred to in paragraph (1) is established by considering the accessibility of health professionals in providing services.

#### Article 13

(1) health center must have at least a functioning infrastructure consisting of:

- a. "penghawaan" systems (ventilation);
- b. lighting systems;
- c. sanitation systems;
- d. electrical systems;
- e. communications systems;
- f. medical gas systems;
- g. lightning protection system;
- h. fire protection systems;
- i. noise control system;
- j. vertical transportation systems for buildings more than 1 (one) floor;
- k. Mobile clinic vehicle; and
- l. ambulance vehicles.

(2) Further provisions on the infrastructure referred to in paragraph (1) are listed in the Annex which is an integral part of this regulation.

#### Article 14

Buildings and infrastructure referred to in Article 11 through Article 13 should be maintained, maintenance, and inspection periodically to remain worthy function.

#### Article 15

(1) medical equipment at the health center must meet the following requirements:

- a. quality standards, safety;
- b. has marketing authorization in accordance with laws and regulations; and

c. periodical checks and test done by the institution and authorized testers.

(2) Further provisions regarding the equipment listed in the Annex which is an integral part of this regulation.

#### Article 16

(1) Human resources Health Center consists of Medicals and non-medical personnel.

(2) Type and number of health personnel and non-medical personnel referred to in paragraph (1) shall be calculated based on the analysis of the workload, taking into account the number of hosted services, the number of inhabitants and their distribution, characteristics of the working area, spacious work areas, the availability of health care facility level another first in the work area, and the division of labor time.

(3) Type of Health Workers as referred to in paragraph (2) at least consist of:

- a. physician or primary care physician;
- b. dentist;
- c. nurses;
- d. midwives;
- e. community health workers;
- f. environmental health personnel;
- g. medical laboratory technologists;
- h. nutritional power; and
- i. pharmacy personnel.

(4) Power non-health as referred to in paragraph (2) must be able to support the administration, financial administration, information systems, and other operational activities at the health center.

(5) Further provisions on the type and minimum number of health personnel and non-medical personnel referred to in paragraph (2) are listed in the Annex which is an integral part of this regulation.<sup>21</sup>

#### E. Organs in Health Care Insitutions

In the Medical Practice Act is meant by "Officer" of health care is a doctor, dentist or other health professionals who provide direct care to patients. Meanwhile, according to Government Regulation no

<sup>21</sup>Permenkes Nomor 75 tahun 2014 Tentang *Kebijakan Dasar Pusat Kesehatan Masyarakat*.

36/2014, the officers referred to in relation to health workers are doctors, dentists, nurses, midwives, and medical aspect. [2] Health workers set out in Article 2 paragraph (2) into (8) of Government Regulation No. 36/2014 of the Health Workers consist of:

1. Medical Personnel

Medical personnels are medical experts whose main function is to provide medical treatment to patients with the best possible quality using the procedures and techniques based on medical science, code of ethics, and accountability. Health Ministry Regulation 262 / 1979 appoints that medical personnel should be graduated from the Faculty of Medicine or Dentistry and specialist which provides services and medical support. <sup>22</sup>While the Government Regulation No.36 / 2014, Medical Personnel includes health workers. Based on the Indonesian Government Regulation No. 36 / 2014 concerning the health personnel, what is meant by medical personnel is doctors and dentists. Medical personnels are those who have profession in the medical field, namely physicians, physician (doctor fisit), or dentist (dentist).

Of the few that sense, it can be concluded that medical personnel are all people who are devoted to the

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<sup>22</sup>Puskesmasprimarycare, <https://puskesmasprimaryhealthcare.wordpress.com/2011/10/11/pengertian-dan-fungsi-puskesmas/> accessed on January 22,2015 at 19.22

health sector and have the knowledge and skills through education in the health field that requires a certain kind of authority to conduct health efforts.

## 2. Nursing Personnel

Based on the Ministry of Health No. 1239 - 2001 of Registration and Practice Nurse, Nurse otherwise is someone who has graduated from a nursing program either in Indonesia or abroad, in accordance with the provisions. So the regulations may mean that a nurse and has the function as well as role as a nurse, when he or she can prove that she has completed the education of nurses - both at home and abroad - to prove through a diploma or graduation certificates. So that nurses does not have skill on hereditary, but through education of nurses.

Nurse is derived from Latin language which means that Nutrix treat or maintain. A nurse's role is caring for or maintaining, assisting, and protecting a person who get illness, accidents, and aging. Professional Nurse is a nurse who is responsible and competent in providing nursing services independently and / or in collaboration with other health professionals, according to the authorities.<sup>23</sup>

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<sup>23</sup>ibid

### 3. Pharmacy Personnel

Pharmacy acts including pharmaceutical quality control, security, procurement, storage, and distribution or drug delivery, drug management, services on prescription drugs, drug information services, as well as drug development, drug material, and traditional medicine.

Pharmacists do the jobs based on scientific values, justice, humanity, balance and protection, as well as the safety of the patient or community related to Pharmaceutical Products that meet the standards and requirements of safety, quality, and usefulness. Pharmacy is supported by pharmacists, pharmaceutical analyst and assistant pharmacists.

### 4. Community Health Personnel

Community Health Workers are one of health workers in the health sector who have knowledge management related to public health. Judging from the educational curriculum of the Faculty of Public Health, the competence of public health includes:

- a. Ability to analyze and synthesis of public health issues and attempt to resolve the issue.



- b. Knowledge and skills in preparing, managing, and evaluating public health programs.
- c. Knowledge and Skill in preparing a research proposal, health management, and carry it out properly

Community health personnel (Public Health) is useful in addressing public health issues based on environment, including putting through various creations in an effort to improve public health.

#### 5. Nutritionist

Nutritionist or dietitian is a medical professional who specializes in dietetics. She should apply the study of nutrition and the use of a special diet to prevent and treat disease. Regulation of the Minister of Health No. 26 of 2013 on the Implementation of Employment and Labor Practice Nutrition said that the power of nutrition as one of the types of health personnel, fully authorized to perform functional activities in the field of nutrition services, food and dietetic both in the public, private, or hospital.

According to Minister of Health of the Republic of Indonesia No. 374 / Menkes / SK / III / 2007, said that the nutritionist is someone who has attended and completed the

academic education in the field of nutrition according to the rules, duties, responsibilities, and full authorities to perform functional activities in the field of nutrition services, food and dietetic either in the public, private, or hospital.

#### 6. Therapist

Medical therapy is a form of health care that aims to restore or optimize the ability of a person after experiencing health problems that result in a decrease of physical abilities. It is mentioned in Government Regulation No. 36/2014 About Medicals Article 2.f.

Physical therapist consists of Physiotherapists, Occupational Therapists and "Terapi Wicara". "Terapi" (in Greek: *θεραπεία*), or treatment, is the remediation of the problem, usually following a diagnosis. In the medical field, the word is synonymous with the word therapy treatment. Among psychologists, this word refers to psychotherapy.<sup>24</sup>

#### 7. "Tenaga Keteknisian Medis"

"Tenaga Keteknisian Medis" is an educated medical electro in engineering medical electro who have tasks, responsibilities, authority and rights from the competent

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<sup>24</sup>ibid

authority to perform service activities of medical electro technique, based on the recommendations of the engineering profession or accreditation organization medical electro. Medical electro service techniques include planning, implementation, and participate in the procurement / receipt, evaluation and utilization of medical equipment and medical equipment operating guidance.<sup>25</sup>

Medical devices are (Act No.23 about health): Instruments, apparatus, machines, implants containing no drug used to prevent, diagnose, cure and alleviate disease, care for the patients and restore human health and or to form structures and improve body function. The Job covers Radiographers, radiotherapist, dental technicians, engineers elektromedis, health analysts, refractionist optical dispensers, othotik prosthetics, medical technicians and recorder transfusion.

Tabib in the medical world the term physician is rarely used because the sense of his the term used is more familiar in Chinese language which means people who work traditionally treat the sick or in an alternative way, like a shaman or chinese medicine experts.

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<sup>25</sup>ibid

The organs in health care institutions found in hospitals, clinics, and health centers are as follows:

a. Hospital's Organ

Organizational Structure Hospital is regulated in Article 33 paragraph (2) of the Act Hospital No. 44 of 2009 which stipulates that at least Hospital Organization (minimum requirements) consists of:<sup>26</sup>

1. Head or Director of the Hospital
2. Elements of Medical Services
3. Elements of Nursing
4. Medical Support Element
5. Medical Committee
6. Internal Inspection Unit
7. Public Administration and Finance

b. Clinic's Organ

Organs of the Clinic can be seen from Health Ministry No 28 of 2011 that the organizational structure which consist of:

1. Head Clinic (Doctors / specialist)
2. The head of the Medical
3. The head of the non-medical

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<sup>26</sup>Ibid, endang wahyati, p.69

c. Organ of "Puskesmas"

Policy Primary Health Center (Health Ministerial Decree 128 / Menkes / SK / II / 2004), set the pattern PHC organizational structure as follows:<sup>27</sup>

1. Head Health Center is a scholar in the field of health education curriculum including public health.
2. The structure depends on the type of activities and workload. Administrative Unit is responsible for assisting the Head of Puskesmas in managing: Data and information, planning and assessment, Finance, and Public and staffing.

#### F. Functions of the Institutional Legal Status

Prof. Rahmat Ali states *"A set of norms or rules which are arranged in a system, determining what is allowed and what is forhuman to do as citizens in a social life, which comes from the community itself and from other sources, whose existence is admitted by the highest authority in the community, and it is actually applied by members of the community (holistically) in their life and if the norms are violated then there will be an external sanction given by the supreme authority."*<sup>28</sup>

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<sup>27</sup>ibid

<sup>28</sup>ibid.

It is getting clear that by the presence of a clear legal status by an institution like a clinic, then except the clinic or the institution become having the Legal Certainty and Legal Procedure to conduct the activities. Moreover, consumers or patients who use the services of the clinics or other institutions will feel more secure because of the Legal Procedure which has been determined by a particular institution in accordance with the legal status of each institution. The protection given by legal status is not only applicable for the consumer but it provides protection for the institution itself as well.

The protection given to the agency has been clearly stated in accordance with the laws related to established institutions. Some laws underlying establishment of institutions like clinics are:

- a. Law No. 36 of 2009 on Health.
- b. Law no 36 of 2014 on Health Workers
- c. Law No. 12 of 2008 Local Government.
- d. The Minister of Health Circular No. 725 / Menkes / E / VI / 2004 on Private Health Care Efforts in the Field of Medical ;
- e. Director General of Community Health Decision No. : 664 / Community Health / DJ / V / 1987 on The Implementation Guidelines of Private Health efforts in The Sector of Primary Medical Care.

The regulations become the basis of establishment. It is also provide protection for consumers as well as the established institution, such as a brand of item having a regulation that it should register its Intellectual Right to get a trade mark and obtain its Authority and the Private and Market Rights.

Authority Right means that an intellectual property right is a right, and as a right of property or assets such as intangible objects, while the Private and Market Right is an intellectual right, as an individual property rights, private and individuals.<sup>29</sup> A similar concept is also applied to the legal status of an institution in order to obtain its rights and obligations as a legal law subject.

### **G. Comparison of Hospital and Clinics**

Hospitals can be a private or public sector where the patient is allowed to get medical treatment. On the other hand, a clinic is a health care center or a place where a doctor analyzes the patient, determines the drugs and instructs on how to use the drugs. So, hospitals and clinics are two words which are totally different.

A hospital can be a private or public sector. This is a health care organization, providing patients with medical care by skilled staff and

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<sup>29</sup>Sujatmiko A, 'Tinjauan Filosofis Perlindungan Hak Atas Merek', *Media Hukum*, XVII (Desember, 2011).

sophisticated equipment. The word 'hospital' derives from a Latin word which is 'hospes' or 'hospitalis', meaning 'friendly'. Most hospitals are managed by professional doctors, surgeons and nurses. This is a 24 hour medical center where the patient are welcomed to receive treatment for any diseases. Two types of patient who can be treated at a hospital are outpatient and inpatient. Outpatients are those who do not stay overnight and inpatients are those who are allowed to stay overnight or a few days, weeks even months.

There are some doctors to cure patients in the hospital. A well-known type of hospital is the general hospital, which has been set up to deal with various problems. There are several departments in a hospital managed by a particular staff member. Department is primarily known as a 'ward'.

On the other hand, a clinic is a place where outpatients obtain medical treatment, medical check up or some advices from medical workers about their health. The word 'clinic' is derived from the Greek word 'Klinein', meaning 'slope, lean or lie down'. Outpatient means people who go to a clinic for diagnosis, treatment, or therapy and then they leave and do not stay overnight. That is a type of department hospital where a doctor visits to talk to some patients about their specific health problems. Patients discuss their problems with the doctor and the doctor may prescribe their drugs. A clinic usually works for about 4-5 hours a day.



A clinic may also have public or private functions, handled and financed, and it typical can include principle needs mainly public health needs. A Clinic is often associated with general medical practice which is run by one or several general practitioners. Some clinics are operated in-house by employers or government organizations as well.<sup>30</sup>

#### H. Alternative Medical Clinic

The clinic is a facility that provides health services as one of the social institutions. For more explanation, It can be studied by correlating the clinic with several related laws to obtain a clear legal status. Law No 44 of 2009 of the Hospital states that Clinic has actually met some of the provisions relating to the principles and objectives in article two and duties in chapter three, in addition regarding to its function to provide a health service it has also met the other articles about the provision of health services which is written clearly in Law No 44 of 2009 Article 10. It is about a hospital building which content associated with buildings intends to be able to provide health service. Therefore a clinic basically has similar elements when it is referred to the law of the Hospital.

The clinic is a health care facility which provides personal health services and basic and / or specialist medical care. It is usually held by

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<sup>30</sup>Luwidi, <http://www.luwuraya.net/2013/03/klinik-kesehatan/>) accessed on September 15 , 2014 at 6.17 a.m

more than one type of health personnels and headed by a medical worker such as either a general practitioner, a specialist, a general dentist or a dental specialist.<sup>31</sup>

Primary Clinic (klinik Pratama) is a clinic which provides a basic medical service. Main Clinic (Klinik Utama) is a clinic which conducts a specialist medical care or basic and specialist medical services. The nature of the health services could be an outpatient, one day care, an inpatient and / or a home care. In organizing the health service, Clinic has characteristics of promotive, preventive, curative (healing), and rehabilitation (recovery).<sup>32</sup>

The form of the health services is referred to Regulation of the Minister of Health of the Republic of Indonesia No. 028 / Menkes / Per / 1/2011. It is implemented in the form of outpatient, one day care, inpatient and / or home care. Clinics which provide 24 (twenty four) hour health services should provide physicians and other health professionals as needed any time in the place. Article 1 (1), states that a clinic is a health care facility which provides personal health services and provides a basic and / or specialist medical care held by more than one type of medical workers and headed by a medic.<sup>33</sup>

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<sup>31</sup>Pasal 1 Permenkes no 028/2011.

<sup>32</sup>Zainal abidin, [http://zainal-a--fkm10.web.unair.ac.id/artikel\\_detail-35770-Kesehatan-Pengertian%20Sehat.html](http://zainal-a--fkm10.web.unair.ac.id/artikel_detail-35770-Kesehatan-Pengertian%20Sehat.html), accessed on September 13, 2014, pukul 7.44am.

<sup>33</sup>Peraturan Menteri Kesehatan Republik Indonesia Nomor 028/MENKES/PER/1/2011 tentang Klinik

The term of alternative medical refers to a variety of treatments which are usually not classified as a part of the tradition of "Western medical". For the treatment of back pain, "siroprakasi" (chiropractic) treatment is probably the most common one of alternative medical treatment. Alternative treatments can also include some treatments such as herbal medical, biofeedback, cupping, "gurah", homeopathy and acupuncture, which all of them are not classified as standard practice in the system of Western medical. Alternative medical, which is known as complementary, integrative or holistic medical, can also refer to any non-drug medical treatments. The philosophy of alternative medical usually emphasizes on the promotion of health, healing and prevention through self-awareness of mind and body, as well as exercise, nutrition, and other forms of self-care.<sup>34</sup>

A simple understanding of the alternative medicine can also be considered as another way of treatment. The treatment is done beyond methods of medical science. This method is innumerable starting from using the materials/goods to mystical or supernatural treatment. Consequently, many considerations to claim status to a clinic, especially alternative medical are necessary, because if it is assessed by comparing the elements of the existing law, it seems very ambiguous. It is caused by the unclear function of the clinic itself and the role played by the clinic itself.

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<sup>34</sup>Ateng Syafrudin, Op.Cit., p. 112.

According to the World Health Organization (WHO), health is a safe condition, physically, mentally, and socially, and not merely the absence of disease or disability. Based on those three definitions above it can be concluded that health is physical, mental, and social condition which are free from any diseases so that one can perform activities optimally. (Faculty of Medical University of North Sumatra). According to the Health Law No. 23 of 1992, health is a safe condition of body, soul, and social which allows everyone to have a productive life, socially and economically.<sup>35</sup>

Therefore, there are actually many considerations to label status to a clinic, especially clinics which are engaged in health care because if it is assessed by comparing the elements of the existing law, it seems still very ambiguous. It is caused by the abstract function of the clinic and the roles played by the clinic itself.

### **I. Medical Liability System**

Hospital is an organization providing public services. It has responsibility to give services of public health. The responsibility of public hospitals is organizing health care quality in an affordable price based on the principles of safety, thoroughness, non-discriminatory, participatory and provides protection for the public as users of health

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<sup>35</sup>Law of Health 23 of 1992

care services (health receivers), also for health care providers (health receiver) in order to reach high health status.<sup>36</sup>

Health as a public service is a human right in the health sector that must be respected and upheld by all health care providers all stakeholders such as by the government, private institution, groups and individuals. Human right is contained in Article 28 paragraph (1) of the 1945 Constitution which says that every person has right to be healthy and in Article 4 of Law No.3 / 2009 on health which says that health is the right of everyone.

The responsibility of public hospitals as providers of public services is stipulated in Article 15 of Law No. 25 of 2009, concerning public service that is set on the goal of public services, among others:

- a) Establishment of clear boundaries and relationships of rights, responsibilities, duties and authorities of all parties related to the public service.
- b) The realization of a viable service delivery system in accordance with the general principles of good corporate governance and good corporation
- c) Fulfillment of public service in accordance with legislation
- d) The protection and legal certainty for the community in the provision of public services

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<sup>36</sup>Dr.dr. Ampera., <http://drampera.blogspot.com/2011/04/tanggung-jawab-pelayanan-publik-rumah.html> accessed on Januari 23,2015 at 7.30 pm

In addition, in relation to the responsibility of the hospital setting, it is explained in Law No.25 / 2009, also subject to the provisions of Article 46 of Law No. 44 of 2009, that hospitals are legally responsible for all losses incurred on omissions by health workers in hospitals. Hospital legal responsibility in the implementation of health care to patients can be seen from the aspect of professional ethics, administrative law, civil law and criminal law.

The legal basis for hospital accountability in the implementation of health care to patients is the legal relationship between the hospital as health care providers and patients as health service users. The legal relationship born for a commitment or agreement on health care, which is commonly called therapeutic agreement.

Relationship-patient hospital law is a civil relationship that emphasizes the implementation of the rights and obligations for each party on a reciprocal basis. The hospital is obliged to fulfill the rights of patients and vice versa patients are obliged to fulfill the rights hospital. The failure of either party to fulfill the rights of others, whether for breach of contract or negligence will result in a lawsuit or civil actions in the form of compensation for losses suffered by the patient.

Although the liability of the hospital to the patient's law in the implementation of health care is born from civil law relations, in the implementation of the health services, it also has implications for administrative law and criminal law.

Implications of administrative law in the legal relationship-patient hospital is concerned on policy or the provisions of health care administration as a requirement that must be met within the framework of the implementation of quality health services. Policies or laws that regulate the procedures for the administration of health services are viable and appropriate in accordance with the standards of hospital services, operational standards and professional standards. Violations of the policy or administrative law provisions may result in legal sanctions which may include revocation administration business or revocation status of a legal entity for the hospital. Additionally, in that condition the doctors and other health professionals can get either oral or written reprimand, revocation of his license to practice, periodic salary delays or higher level of promotion.

Implications of criminal law legal relationship hospital- patients in health service delivery is the unlawful act committed by the hospital that meets elements of criminal acts as stipulated in the provisions of the criminal. Criminal acts against the patient's hospital may be errors or omissions by doctors or other health professionals who cause damage on the victim's body where the error or omission is intentional. This criminal act will bear criminal responsibility in the form of fines and revocation of licenses of hospital operations.<sup>37</sup>

Standard of Medical Care, quality improvement efforts can be implemented through clinical governance. It is because simply Clinical

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<sup>37</sup>ibid

Governance which is a way (system) of efforts to ensure and improve the quality of service is systematically and efficiently within the hospital organization. So quality improvement is strongly associated with standard input, process and outcome of the preparation of clinical quality indicators. It in consequence a standard outcome is essential. In the hospital organization in accordance with the Code of Medical Staff Organization and Medical Committee, each group of medical staff shall arrange medical care quality indicators. With the establishment of quality indicators of medical services is expected each group of medical staffs monitor through data collection, data processing and analysis of achievement and then perform corrective action.

Efforts to improve the quality of medical services can not be separated from efforts to standardize medical services. Therefore, medical services in hospitals are required to have a standard of medical care which needs to be followed up with standard operating procedures without a difficult standard to measure the quality of service. In Indonesia, the medical service standards are issued by the Department of Health has formulate in April yr 1992, and by decree of the Minister of Health of the Republic of Indonesia 436 / Menkes / SK / VI / 1993.

These medical service standards are formulated by the Indonesian Doctors Association, as one of enforcement efforts to increase hospital management by utilizing the utilization of all available resources in the hospital Case Study: Policy Standards of Medical Care and DRG DVM.



Wiku Adisasmito, MSc, PhD. in order to achieve optimal results, it may contain disease management alone, according profession compose. Which consists of:<sup>38</sup>

1. type of disease,
2. diagnosis enforcement,
3. long hospitalization,
4. which required investigation,
5. treatment given

Standards of medical care professions subsequently compiled by the hospital will be developed by taking into account standard operating procedure of the standard based on the medical service. The implementation of the standard medical audit. Setting standards and procedures is done by peer-group (group of related medical staff) or the local profesi bond. Preparation of the same pattern designed for all professions that provide inputs consisting of:<sup>39</sup>

1. Name of disease / diagnosis, indicating the disease or be divided into groups according to interests, if necessary, by definition, based on the revised ICD IX;
2. Criteria for the diagnosis, especially clinical and time (for laboratory data included a specific value);

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<sup>38</sup>Ikatan Dokter Indonesia, Dirjen Yan medik, Standar pelayanan medik, DepKes RI, cetakan ketiga 1996

<sup>39</sup>ibid

3. Differential Diagnosis, a maximum of 3 (three);
4. Investigations;
5. Consultation, referral to relevant specialists outside the field or by a general practitioner refers described first place;
6. Care Hospital, need / no;
7. therapy, pharmacological, non-pharmacological, surgical and non-surgical;
8. Standard RS, RS minimal class that handles;
9. Complications, complications may occur;
10. Informed consent;
11. Standard power;
12. Duration of treatment, especially for penyakit without complications;
13. The recovery period;
14. outputs, information recovery / complications / death at the time of discharge;
15. Pathology anatomy, surgical specialty;
16. Autopsy / minutes of meetings, in cases of death. In drafting the consensus that standard no 8 (standard RS) and No. 11 (standard power) should not always be mentioned that implementing medical services is not limited, as long as the implementation meets the established procedure for make medical operation not limited as long as it fulfills the procedure.