

## CHAPTER I

### INTRODUCTION

#### A. Background

Alternative medical clinic is one of the treatment sites which is easily found and it has spread everywhere. The clinic not only offers services such as medical treatment, but also non-medical activities, meanwhile the activities performed in the clinic as an alternative treatment and healing. Additionally, it's a place to recover for some diseases. Basically the spread of the clinic itself aims to optimize health services because not all people get the services of the hospital, it is still not considered because of its spread Hospital located in small towns. Here the role of the clinic was very helpful.

The clinic is a health care facility which organizes personal health services by providing basic medical care, held by more than one type of health personnel and headed by a medic that is a general practitioner, specialist, or general dentist or dental specialist.<sup>1</sup>

National Health System will optimally function if it is supported by community empowerment. Society, including the private sector, is not only a health development goal but also as an organizer and a perpetrator of health development. Therefore, community empowerment is very important because people are able to and willing to play role agents of

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

health development. In an effort to increase community empowerment it includes a healthy environment by the community itself. Community development efforts will basically succeed as when people's basic needs are met. Community empowerment and health efforts are the focus of health development. (NHS form and manner Implementation of health development MoH RI 2009).<sup>2</sup>

National Health System (NHS) mentioned that, the participation of clinic for the health development is mainly urgent in this globalization era, to attract foreign investors and workers from all sectors as well. Therefore, it is expected that through the existence of the Association of Indonesian Clinic (ASKLIN) as the organization of the clinics can help them for competing in globalization.

The statements above causes some questions. The first question is about whether the public know that those institutions are different or not. The second question is whether the treatment those ones often are similar or not. Although hospitals and clinics are often interchangeably used these two facilities are actually different. In addition, in deeper discussion, clinic as a private institution has increased significantly in the development of health. Alternative clinic is growing rapidly not only as a medium for getting medical treatment as a place which provide beauty services such as skin care, dental care, beauty care, and many more.

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<sup>2</sup><http://asklin.org/1014/klinik-masa-depan> accessed on November 29, 2013 22:56 p.m

Hospital and clinics actually have similar principles in providing the health service. However, recently, clinics are coming with different image by offering more services. They are not only serving the customers with their medical healing products but also non-medical ones. It's a very interesting phenomenon to be studied further when it comes to legal status of alternative clinics.

Speaking about the development of clinics, there is interesting topic to be discussed more. It's about two types of clinic based on the region. They are "pratama" clinic and "utama" clinic. Both of them have different qualifications, the differences such as:

1. The medical services at the "pratama" clinic are only basic medical services while at the main clinic the services covers basic medical ones and specialists;
2. Leaders at "pratama" clinic are a doctor or a dentist while at the main clinic, it's led by a specialist;
3. Services at the main clinic include in patient services, while at the "pratama" clinic, inpatient is allowed by doing some administrative procedures; and
4. The Medical personnel in the "pratama" clinic is at least two doctors or dentists, while the main clinic requires a specialist for each service type.

Talking about standardization, the clinics which meet the requirements will be set as a legal institution.<sup>3</sup>

A significant problem related to establishment of clinics appear. Whether or not the clinic have the same vision and mission in serving the customers like use. Actually, should start to be questionable, through the rules about it has been stated in Ministry of Health Number 28 of 2011 about Clinic. The rules seems not quite supporting to control license and requirement of clinic establishment. The establishment of Hospital has been regulated in constitution. Law No. 44 of 2009 on Hospital chapter two it is stated there that hospitals are established depending on Pancasila and values. The values are human values, ethics and professionalism, benefits, fairness, equality and anti-discrimination, equality, protection and safety of patients, as well as having social function.<sup>4</sup>

In accordance to the law and constitution, clinic supposes to have similar principle as an institution providing health services. Alternative medical clinics have similar permit structure, qualification with general hospital. Nowadays, clinic come with different image. They more likely appear as a beauty care clinic rather than as a place of healing, this phenomenon is triggered by principles of business profit. Patients to the clinics not to heal their illness. The clinics become a place where patients

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<sup>3</sup>sumber: <http://www.luwuraya.net/2013/03/klinik-kesehatan/> di accessed on September 15, 2014 at 6.17 a.m.

<sup>4</sup>Undang-Undang Republik Indonesia Nomor: 44 Tahun 2009 Tentang Rumah Sakit, Biro Hukum Departemen Sosial RI Tahun 1997

who are not suffering serious illness come such as skin care and beauty care. Moreover, the medical clinic, serve the customers with some actions that are sometimes through non-medical even supernatural treatment. From the examples, it can be seen that clinics are not really aiming to become a clinical medical aspects of healing anymore, they offer treatments or practices that are sometimes beyond the logic. This friction of clinic function becomes interesting objects to be studied because by conducting this research there an another case that can be studied in this research is about the legal status of alternative medical clinic. Whether licensing, similar structure and qualification for establishing a business entity such as a hospital is also a requirement for the establishment of alternative medical clinic such as legal basis of license available for establishing general hospital. Then general Hospital license is a license granted to a business entity to establish and maintain a hospital after fulfilling the requirements, they are:

1. Law no 36 of 2014 on Health Workers
2. The Minister of Health Circular No. 725 / Menkes / E / VI / 2004 on Private Health Care Efforts in the Field of Medical ;
3. Regulation of Sleman Regency No. 16 of 2004 on the Operation Permit Medical Support Facilities (Sleman)

Those laws and regulations concern on rules and the basic permissions that must be met in order to obtain building permits to the General Hospital, while it

has been known to discuss the establishment of an Alternative Medical Clinic conducting a non-medical practice which law applies for establishing the clinic. This is what makes the research is interesting to study and to explore further as well.

### **B. Research Question**

Based on the background above, this study examines two cases, they are:

1. What is the institutional legality status of alternative medical clinic?
2. How is the implementation of the establishment of alternative medical clinic?

### **C. Objectives Research**

1. Knowing the institutional legality status of alternative medical clinic and studying any necessary licensing requirements for establishing an alternative clinic.
2. Understanding application of alternative medical clinic establishment based on the valid requirements and licenses.

### **D. The Benefit of Research**

This study is expected to contribute towards scientific aspect and practical aspect, they are:

1. In the scientific aspect, this study is expected to contribute the literatureof the clinic development clinic which has a definite status,

especially in the prevailing law in Indonesia. So, there will be clearer legal status for institutional health clinics through this study.

2. In the practical aspect, this study is expected to provide practical understanding for writers, especially for the community and the founder of a medical clinic in term of the management and the prerequisites needed as well as the valid mechanisms on the license of alternative medical clinic establishment.

## 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 HealthService(primary)

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

<sup>14</sup>Ateng Syafrudin, 1997, *Pengurusan Perizinan*, Pusat pendidikan dan Pelatihan ST Alosius, 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 are 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/I/ 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

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<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 penayakit 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.

## CHAPTER III

### RESEARCH METHODE

#### A. Types of Research

This type of research is a normative legal (library) and empirical (field) research.<sup>40</sup> It means that the author conducted research or extracting data through library for the discussion of discourses related to legal regulations as well as conducted on-field observation and interviews to the respondents.

#### B. Legal Materials

This study uses these legal materials:

- a. Primary legal material, that is any various law related to the institutional of alternative medical clinic. Such as:
  - 1) Law on Health no 36 of 2009
  - 2) The Health Ministry Regulation no 28 of 2011
  - 3) The Health Ministry Regulation no 71 of 2013
- b. Secondary legal material, the study went through books, journals, researches related to the institutional of alternative medical clinic.

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<sup>40</sup>Mukti Fajar and Yulianto Achmad, 2010, *Dualisme Penelitian Hukum Normatif dan Empiris*, Pustaka Pelajar, Yogyakarta, p. 34 and 47.

### **C. Location and Respondents of Research**

The research location was the clinics and hospitals around Yogyakarta such as: Natasha, Adem-Panas clinic alternative and Syaifullah Tabib. It is expected that the differences existing between them will be revealed.

People who often seek treatment or use the services of clinics or hospitals were involved as the respondents .

### **D. Population and Sampling Method**

Interview was used to decide the population and sample associated with the relevant parties in the establishment of a medical clinic. They are namely:

- a. The Chief of Medical Officer of Yogyakarta.
- b. The owner or legal of corporation of Alternative Medical Clinic in Yogyakarta.

### **E. Informants and Sources**

Indicators of the study sample are as follows;

- a. Medical experts on their view of the clinics and hospitals development that theyboth can be compared.
- b. The owners or managers of alternative medical clinics.

- c. Agencies of integrated license services, city authority of Yogyakarta.

## **F. Research Method and Data Collection**

In this study the researcher divided the data into two types:

### **1. Primary Data**

Primary data were collected by direct interview to the informants based on the interview guidelines which had been prepared.

### **2. Secondary Data**

Secondary data were obtained through literary study such as literature, scientific journals and the valid legislation relating to the studied issue.

## **G. Data Analysis Method**

Qualitative data analysis was done descriptively. The data related to the issue being studied was taken to be described descriptively, qualitatively, and comprehensively by illustrating the real condition related to the valid aspects of the law.

In a normative legal research, the material processing is in the form of events to hold systematization of written materials. In this case the material processing was done by selecting secondary data or

the law material then classifying them based on classification of the materials and ordering systematically as well as logically the result of the study. It means that there is a relationship and relevance between the social reality and the law material to obtain an overview of the research results.<sup>41</sup>

## **H. Thesis Framework**

In the first chapter, the author explains the background of the thesis. This chapter explains how the status and licensing of alternative medical clinics are viewed in the perspective of Indonesian law.

In Chapter II, the author explains the definition of the institutional legal status and alternative medical clinic in the Indonesia's law perspective. In addition, this chapter also clarifies that license of a health clinic and the prerequisites which must be met by an institution in order to obtain a status and license for a health clinic. The study of alternative medical treatment is also described in this chapter.

In Chapter III, the authors describes the research methods used for conducting this study. This chapter consists of several sub-topics, namely; type of research, site of the study, legal materials, research methods, and also the systematic paper.

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<sup>41</sup>Lexy J. Moleong, 2013, *Metodologi Penelitian Kualitatif*, PT. Remaja Rosdakarya, Bandung, p. 5.

In Chapter IV, the author presents a discussion of the position of the clinic in Indonesia as well as the differences comparing to hospitals in terms of licensing, establishment and data requirements and procedures associated with this study. Hence, the legal status of the institutional of an alternative medical clinic will be clearer. The author also uses the basic research based on Indonesia's laws references.

In Chapter V, the author presents the conclusions obtained from the research result, which is based on observation and field research as well as library research. The author also gives some advices based on what the researcher expects.

## **CHAPTER IV**

### **DISCUSSION**

#### **A. Corporate Legal Status of Medical Clinic**

##### **1. Alternative Clinic**

Alternative medicine is a substitute treatment of the modern treatment. As we know today that it's the result of the development of science (scientific nature). In the 19th century since modern medicine evolved with the discoveries of bacteria and found a microscope, researchers began to conclude that the disease has no obvious reason to look for a cure.

Modern treatment of many adopted people as base treatment of disease through the process of diagnosis and assisted equipment (microscopes, x-rays, surgical tools, etc) is aimed to detect the cause of the disease before being given the medicine or cured.

A Popular traditional treatment distinguished the assumption of illness cause into two. First, the disease or illness is cause by evil spirits which is believed have possessed a person. Second, the disease is caused by the imbalance energy (yin and

yang) in the body. Hence, traditional medicine, mystic, magic and devine healing are involved here.<sup>42</sup>

In addition to relying on doctors and hospitals, today the number of the people often going to traditional medical centers is numerous in remote villages and towns. House of traditional medicine is commonly cure various diseases in a scientific way such as using herbal and traditional medicine, some others cure various diseases by in common way. To establish such business entity, it requires a permit or a license. Batara accupunture and Adem Panas clinic are categorized into such traditional medical center. Both clinic are unique since they use unusua equipment for treatment.

Local Regulations in each area underlie the establishment of such business. Sanctions are also applied to those who do not have license or operating permit. The sanction is closing the business.<sup>43</sup>

When viewed from the side of the basic licensing laws that exist in the establishment of an alternative clinic is seen from the respective local regulations. So if an institution wants to be a public health service such as an alternative medicine clinic, the rule of health Law No. 36 of 2009, Health Ministry 28, 2011, the

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<sup>42</sup>[http://www.yabina.org/TanyaJawab/07/Nop\\_07.html](http://www.yabina.org/TanyaJawab/07/Nop_07.html) accessed on january 22, 2015 at 11.23 am

<sup>43</sup><http://www.pustakadunia.com/artikel-pustaka-umum/pembuatan-izin-pengobatan-tradisional-2/> accessed on january 22, 2015 at 12.00 pm



Health Minister Regulation No. 71 of 2013 and the regulations of the local district are applied

Examples of such Adem Panas clinic in Sleman, the permit and operate a licensing, which must meet the legal basis, such as:

### **1) Corporate Form**

The Health Minister Regulation 28 of 2011 admits 2 forms of health clinic, namely “Utama” and “Pratama”. In fact, alternative health clinic doesn’t belong to both forms because it is not set in the provision. However, if the alternative health clinic is owned or supervised by a medical representative called doctor, this clinic will meet the regulation of Ministry of Health mentioned above. Then, if an alternative clinic doesn’t have a doctor as a supervisor or is not owned by a doctor, this clinic doesn’t possess clinical status.

In fact if the case to the health department actually the provision and regulation are not obviously regulated. Therefore an alternative clinic trying to be a legally admitted, it is still difficult. The form of alternative clinic is still on debate because the element of alternative clinic also can not meet the formulation of existing regulation. Eventhough an alternative clinic is usually assumed as a traditional clinic.

Based on the explanation above the corporate form of this corporation is “Perseorangan” (Personal Corporation). Personal companies is also called as Individual Company. It is a business entity that is owned by a single person. Individuals can make individual business entities without permission and any particular procedure. Everyone is free to make personal business without restrictions for building it. In general, individual small-cap company, limite the type and quantity of production. It has the manpower / labor a little and use simple technology of production equipment. Individual company can in form of Trading Company / Service (Supermarket, Consultants Bureau) and Industrial Company. Examples of individual companies such as grocery stores, hawkers, and so forth.

In brief, according to Indonesia positive law, there is no certain legal basis for an alternative medical clinic. The draft is still on progress but with the analogy, the writer may conclude regarding to the characteristic and the activity that exist on this corporation. Usually corporation on this characteristic using the form of trading company. Trading company is a private company carried out by a businessman. Trading companies can administred by one person or more, self-owned capital. Trading company is not specifically

regulated in a separate law, but practically it is accepted as entrepreneurs.

It is an evidence that the government also seeks to acknowledge the existence of this type of business. This can be seen with the issuance of Decree of the Minister of Industry and Trade No. 23 / MPP / Kep / 1/1998 on business institutes of Commerce. In Act 1 paragraph (3) states:<sup>44</sup>

*"Trade Organization is an agency / entity that can form individual or business entity ..."*

There is no standard procedure to be gone through in establishment. It is a general practice in the establishment of a trading company created by notarial deed.

Mostly, Alternative Medical Clinic is run by the owner and the workers are still from the family member of the owner or sometimes just recruit people that he know. The property of company and private property of the owner are not distinguished separately. Because it is a personal corporation. The Organization of the corporation is well managed but alternative medical clinic mostly is not. Moreover if it refer to the liability of corporation, as personal

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<sup>44</sup>Decree of the Minister of Industry and Trade No. 23 / MPP / Kep / 1/1998 on business institutes of Commerce

corporation it is on the hand of the owner. Therefore the corporate form of alternative medical clinic may be concluded as a Personal Corporation. Pursuant to Article 4 paragraph (1) letter C, Internal Minister Regulation No. 36 of 2007, the Personal Corporation not required to have a business license (SIUP).

## **2) Method and Facility**

The Ministry of Health Regulation No. 71 of 2013 concerns about health care to national health insurance. This regulation contains health protection for participants to obtain health care benefits and protection to meet basic health needs given to each person. In addition to Article 1, it is also described also the existing health facilities. This rule can be based on an alternative clinic and also a prerequisite if the facility is in the alternative clinics meet, such as “pratama” clinics and “utama” or general clinic obviously the institution or facility has met the prerequisites prescribed for a medical nature.

Not all Clinics is not all using the alternative medical methods as a way of handling the patient but also things like the traditional method can be used. Even non-medical method

is sometimes irrational can be used. When discussing about the traditional method of actually existing rules governing that Law No. 36 of 2009 Article 59 and 60 where it says "every traditional medical service use tools and technology must obtain permission from the health institutions".

It means that any existing traditional methods should be licensed. Therefore, so that there is oversight on the health institution. Traditional treatment method has been a form the formation of a factor beyond health legislation in which medical methods can be nurtured and monitored. Consequently, that the health law No. 36 of 2009 became one of the basis laws to protect the status of the alternative clinic.

### **3) Customer Protection**

Referring to health Law No. 36 of 2009 is in Article 56, there is no compensation or liability to the patient if there is a malpractice of a medical process, however the article does not mention that consumer protection is the protection applied also in traditional medication. Further more when seen further in Article 60 explained that government oversight and guidance traditional treatment clinic oversees and guides to responsible for all processes and traditional methods they are using.

These laws are not strong enough because until now there are no specific rules which clearly set it so as it can be seen, patients rarely get protection from the alternative medication. The impact of alternative medication clinic status is doubtful.

The legal basis that definitely can be used is Article 1365 Civil Code. In order to be subject to Article 1365 of the Civil Code on tort, law - legislation and jurisprudence requires that the perpetrator must be an element of fault (schuldelement) in carrying out such actions. Therefore, liable without fault (strict liability) excluding liability under the 1365 Civil Code article.

## **2. Fitness and Health Clinic (Aesthetic)**

Health and wellness clinic is a clinic that is more oriented to the optimization of recovery to the gym or even health care. The legal basis underlying the establishment of institutions such as the clinic's is Law No. 36 of 2009 on article 53 it contains about healing and recovery and health improvement.

Natasha is one form of skin care clinic, which orientation or purpose of the clinic are the treatment, recovery and optimization of skin health. This kind of clinic actually does not have much problem. Skin care clinic is a clinic owned or supervised by a

physician, it means when the Ministry of Health referred to the regulation No. 28 of 2011 regarding the clinic.

"Clinic is a health care facility that provides personal health services that provide basic medical care and / or specialist, held by more than one type of health personnel and led by a medical staff that general practitioners, specialists, or general dentist or dental specialist"<sup>45</sup>

the form of this clinic is clear that the clinic can be a primary or pratama clinic. The clinic status then will be depended on whether the leader of clinic is doctor or a specialist.

### 1) Corporate Form

Refer to The Health Minister Regulation no 28 of 2011

sec 1:

"Clinic is a health care facility that provides personal health services that provide basic medical care and / or specialist, held by more than one type of health personnel and led by a medical staff that general practitioners, specialists, or general dentist or dental specialist"<sup>46</sup>

From the statement of above, it can be concluded that the fitness and health clinics can be include into one of the clinics. Fitness and health clinics such as Natasha even held or led by a dermatologist. It shows means that if the terms of the structure of the institution itself, led by a doctor then forms or clinical

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<sup>45</sup>Pasal 1 Permenkes no 028/2011

status can be attributed to the clinic. Because of It, clinical skin care is not as problematic when referenced in the rule.

Based on the theoretical analysis above Theoretically enterprises can be divided into two groups, namely:

1. A business entity that is not a legal entity (non legal entity).
2. Enterprises that are legal entities (Legal Entity)

At first glance it seems the two entities above there is no difference. However, it is viewed from the perspective of company law, there is no substantive difference, namely the issue of responsibility.

There is also classification into three groups, namely:

1. Personal company
2. Enterprise partnership is not a legal entity
3. Company alliance of legal entities.

From those point the writer tried to conclude that clinic actually may be established by personal but the access for become legal entity is open. That's because aesthetic clinic like this already gets the legal basis and certain regulation. Mostly aesthetic clinic will be lead by a doctor and the worker are hired recruit with special requirement to fulfill that's why clinic aesthetic has better management. They has various division to manage the organization. For the example, the person that incharge on the medical false and the liability is on



the owner of clinic. But the Standard Operational Procedure is formulated by Medical team and approve by Health Department.

Clinic aesthetic such as natasha has property separation between private properties and company properties. It will make the company more safety than the personal company because the arranging of budget is get well preparation. From those reason so the writter may conclude that clinic Natasha skin care as the one of aesthetic clinics belongs to Limited trading company (PT).

## **2) Method and Facility**

Facilities and methods of clinical skin care are actually not much different from other health services such as hospitals. The Health Minister Regulation 71 of 2013 and Act No. 36 of 2009 on health has been set up facilities and methods used, not much different from the hospitals, fitness centers, and health. They clinics also use medical methods with facilities in accordance with the standards of public services.

Even medical supplies as provided for in Article 36 of Law No. 36 of 2009 health has been supplied by the government.<sup>47</sup> By doing so the government has a role in

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<sup>47</sup>Article 36 of Health Law no 36 of 2009

supervising and guiding in accordance with the law. The Fitness and health clinic itself has facilities in the restoration and improvement for health as stipulated by Law No. 36 of 2009 health:

**Article 63**

"(3) Control, treatment, and / or maintenance can be performed based on the science of medicine and nursing or other means that can be accounted for the benefit and security."

**3) Customers Protection**

Consumer protection is also basically governed by Law No. 36 of 2009 on Health, as follows:

**Article 56**

"(1) Everyone has the right to accept or reject any or all forms of help that would be given to him after receiving information about the actions and understand it fully.

(2) The right to accept or reject as referred to in paragraph (1) shall not apply to:

- a. disease patients whose disease can be quickly spread to the wider community;
- b. state of a person who is unconscious; or
- c. severe mental disorders.

(3) The provisions concerning the right to accept or reject referred to in paragraph (1) shall be in accordance with the provisions of the legislation."

Thus the protection of consumers in the fitness and health clinic there is a problem because in terms of structure, medical

personnel, and also the establishment not much different from its health services such thing Hospital.

The next regulation that may regulate about the customer protection is Act No. 8 of 1999 on Consumer Protection. In Article 1 paragraph 1 mentioned Consumer Protection Act, consumers are any people on the goods and / or services available in the community, both for the benefit of themselves, their families, other people and other living beings and not for sale. Meanwhile, business agent is any individual or entity, whether a legal entity and is not a legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either individually or jointly by agreement for business activities in various fields of economics (Article 1 paragraph 3).

From the above discussion, we can conclude that the perpetrators of traditional medicine, which provide traditional medicine, can be considered as businesses. While the patient, who received the traditional treatment services, can be categorized as a consumer. Thus, the Consumer Protection Act can be applied in the relationship between patient and actors of traditional medicine. So with that legislation governing the protection of consumers in the "healer" is Act No. 8 of 1999 on Consumer Protection.

### 3. “Tabib” (Healer)

Tabib or physician is kind of meician who are very popular in the most in demand in Indonesia. Now, the practice of shamanism like this would be labeled with alternative medicine by society. Actually, not all alternative medicine is synonymous with shamanism, low cost, easy, and the results are promised to be in short time. High public interest on non-medical treatment is addressed for those who are able to make blind eye people able to see or make deaf people able to listen clearly will be obtained. Similarly, with a risk or as a consequence of this type of process the risk can be physical damage or misguided beliefs.

Many ways and media are utilized in alternative medicine. Most by using the power, energy prana, meditation, move the animal to the human disease, channeling energy "positive", incantations and spells spells, tattoo, heirloom, traditional herbal medicine, and massage. Even, some of them are using dhikr-dhikr, acupuncture and many more.

In general we can be categorize this treatment into 4 types:

1. The medical and scientific Characteristically pure.
2. Form ruqyah syar'i.
3. The original occult.

#### 4. Modifications

Point number 4 which is a modification is a combination between medical and ruqyah syar'i, or between the medical and the occult, or ruqyah and occult.<sup>48</sup>

##### 1) Corporate Form

Indonesia does have a religious way of treatment and forms of health care, "Physician" is one of them, in view of the institution's own physician it can be seen from some point of view, that it is positive law in our country, the legal basis of the physician's own does not exist. The rule is in Law 36 of 2009 Article 59 which is about the traditional treatment including alternative medicine. So that when they use the name of a "physician" as a health institution it is obviously not having legal basis. In contrast, if "physician" names the institution as institute alternative clinic will have a legal basis as set out in Article 59 of Law No. 36 2009 health.

##### Article 59

"(1) By way of treatment, health care traditionally divided into:

- a. traditional health care uses skills; and
- b. traditional health care use herb.

(2) traditional health services referred in paragraph (1) guided and supervised by the Government to can be accounted for benefits and safety and not contrary to the norm

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<sup>48</sup>Abdul, <http://www.thibbun.com/thibbun-nabawi/rahasia-dukun-tabib.html> accessed on january, 29 2015 at 11.00 am

religion.

(3) Further provisions on procedures and types traditional health care as intended in paragraph (1) is regulated by the Government.”

Based on the article above and also the explanation of corporate form of thabib, the writer conclude that thabib is the corporation that move in the field of traditional aspect. There is still no regulation about getting the corporate form of thabib it self. Mostly thabib has asociation that becomes an “umbrella” to protect, register, and socialize them to society. With this reason, the form of thabib may be concluded as Enterprise partnership with non-legal entity but because the association is passive and everything would be handle in the hand of owner, Thabib is catagoried into as Personal Corporation. Legal basis that regarding to this issue is Internal Minister Regulation No 36 of 2007 Act 4 (1) and (2) about the exception of Company License (SIUP) for some legal entity.

Thabib still may not become legal entity because there’s no regulation that regulates particulary about traditional legal status. Therefore, the form of this corporation is still on Personal Corporation. Obviously, it because every risk and mistake are still handled by the owner, eventhough they join the association but the position of association is passive and

can not become a person incharge. It's because there is still no regulation about the association which may incharge on that.

## 2) Method and Facility

When it refers into the rules in other countries, there are two goods examples, the first example is Middle east countries. Most of the middle east countries that use the Koran and Hadith form the basis of state law or Second, China country which does possess skills in the field of health. In the Mid east countries, for example, there is hadith that the legal basis for "ALH-thabib" or physician. Alh-thabib in the country must be a man who uses the method in accordance with Islamic law, there is not all of the alternative clinics got testimony but only the use of the method in accordance with Islamic Shari'a.

Example:

Prophet sallallaahu 'alayhi wa Salam said:

"Healing is situated on three things: drinking honey, sharti knife and touch the fire cupping (kay). Indeed I forbid my ummah (Cure) with kay.

"(Bukhari) the Prophet sallallaahu 'alayhi wa Salam said:

Surely the most appropriate course of treatment for you is hijamah (bruise) and fashdu (venesection). "(Bukhari - Muslim)"<sup>49</sup>

The purpose of the hadith above is that the achievement of objectives in a certain way is not a true testament to the way that has been pursued. However, the truth is what is in accordance with the law, and apostasy is what Shari'a prohibit. So, it can be concluded that there are recognized alternative clinics which are in accordance with the legal basis but still limited to the use of Islamic law as a method of curing.

Physician Generally categorized into 4 types:

1. The medical and scientific Characteristically pure.
2. Form ruqyah syar'i.
3. The original occult.
4. Modifications

With so after categorized so then obviously it can be said that the Health Act No. 36 of 2009 and Act No. 71 of 2013 only would be no legal basis for category 1 and 2, For the treatment of a scientific nature clearly in accordance with the health sciences, it has been set in the enactment health Law No. 36 of

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<sup>49</sup> <http://herbadantumbuhan.blogspot.com/2011/06/terapi-al-hijamah-bekam-satu-sunat.html>  
 accesed on April 29 at 10.32 pm



2009 Article 30-55 of the scientific standards of health facilities. number to 2 of ruqyah syar'i can be categorized in traditional medicine into article 59 of Law No. 36 of 2009. As follows:

*Article 59*

"(1) By way of treatment, health care traditionally divided into:

- a. traditional health care uses skills; and
- b. traditional health care use herb.

(2) traditional health services referred in paragraph (1) guided and supervised by the Government to can be accounted for benefits and safety and not contrary to the norm religion.

(3) Further provisions on procedures and types traditional health care as intended in paragraph (1) is regulated by the Government."

So when being seen in paragraph 2 on the benefits and safety, it physicians who use Islamic Shari'a compliant method are included in the Act.

As for number 3 and 4 somewhat unruly, because there is no rule for governing "physician" who is engaged in occult or modification. Thus it can be concluded that the "physician" can be a legitimate alternative clinic and there is a legal basis for it depending on the method and the facilities provided to the patient.

### **3) Customers Protection**

Law no 36 of 2009 about health does not regulate in detail about the consumer protection there is no rule for institutions

that use different treatment which shall in health sciences or health skills. Either the act that can be applied in the relationship between patient and traditional healers.

In article 58 of the Health Act, mentioned,

"Everyone is entitled to claim damages against a person, health workers, and / or healthcare providers who incur losses as a result of errors or omissions in the health services received."

In other hand, because mostly thabib is only in the form of a personal corporation that the regulation about this issue is article 1365 civil code. It could be legal basis for them to protect themselves for the mistake of the therapist or the treatment that make loss for the patient. So, if the customers feel that the health services provided by traditional healers hurt them, they can file a claim for compensation to the court.<sup>50</sup>

## **B. Establishment procedure of Alternative Medical Clinic**

Establishment of an alternative clinic in Indonesia itself can actually be said that it has been not set completely. This is because the shape of alternative clinic itself is rapidly expanding with new methods that are not regulated by law or regulation from health minister. Alternative clinics usually stand with the basic legal and regulatory

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<sup>50</sup><http://www.hukumonline.com/klinik/detail/cl1663/perlindungan-pasien-pada-praktek-pengobatan-tradisional> accessed on january.30 2015 at 07.20 pm

references from existing health minister although it is still lacking in accommodating the needs in monitoring and data collection of the alternative clinic.

Health Act No. 36 of 2009 verse 60 which describes the traditional treatment is not necessarily cover all alternatives clinical services. Traditional sense here is only interpreted as an attempt of non-medical health care with alternative means, the of media usually used are acupuncture, cupping, and the art of Chinese medicine are essentially different from medical treatment. However, what would be happen if the alternative treatment uses media that are unreasonable beyond reason or non-sense like supernatural, shaman, even prayer.

So with this empirical study, it is expected that this study can provide some pictures done by some alternative clinics in setting up a clinic. Here are the results of the study:

### **1. Alternative Clinic**

Licensing the establishment of an alternative clinic is different from hospitals and other institutions. Local regulation of Sleman No. 8 of 2008 is the regulation concerning Levy Health Care Facility Operating Licence and Certification of Health which deserves to be met by the institution before getting a status. Requirements are based on local regulation No. 8 of 2008:

1. Application letter signed on stamp Rp 6,000.

2. Copy of ID card valid undertaking.
3. Copy of Articles of Enterprises / Foundation.
4. Photocopy of TIN.
5. Copy of the IMB and HO.
6. Copy IPPT (if the land will have an impact on spatial planning).
7. Recommendations of working experience in the field of health by his superiors (if the applicant is an individual).
8. Picture situation / site plan.
9. Responsibility as a general practitioner which should be equipped with a photo copy of ID card, a copy of diploma, a copy of the Assignment, and a copy of Permit Practice.
10. Responsibility to get a license from the boss to work for civil servants and members of the TNI / police.

it can be said that if those requirements have been accomplished, the status of the establishment of an Alternative Clinic will be determined and set up.

Empirical research in observing the establishment of an alternative clinic was conducted in a clinic located in western ringroad road, Dongkelan, Bantul, Yogyakarta. That those need to be operated or under surgery such as appendicitis, prostate, tumor, cancer, and many more. This interview was conducted with the assistant of the

clinic owner named Yudi. Batara clinic is an alternative medicine clinic using acupuncture technic as a treatment.

The establishment of alternative clinic has various permits required, such as: health department permit, UPL and UKL, and permit interference / HO. However, there is no more explanation about the process to be followed in the establishment of the medical clinic. The procedure is as follows:

- a. Make Application / proposal to the Department of Health
- b. Studied and received files
- c. Conduct field tests
- d. Permission denied or accepted

Clinics are held by individuals, the requirement also do not fully follow the procedures that should be held in the establishment of the clinic. such as:

- a. Site Plan.
- b. Organizational Structure.
- c. List of labor.
- d. Letter of Recommendation clinic.

Some of the aforementioned documents can not be displayed by this clinic. Only a few clinics that can show letter and the required, those letters that should be given are:

- a. Letter from the Association of Traditional Medicine Herb Indonesia (ASPETRI).
- b. Acupuncture Certificate.
- c. Certificate of Food and Drug Monitoring Agency (BPOM).

From the description above it can be said that the establishment of this clinic is different from the process of the establishment of procedures that it should be. Even his clinic does not appear to permit interference / HO. One of the requirements in the use of clinical status is the supervision of a physician or specialist, but in traditional medicine clinic, there is no such thing as described above. Then, workers are Labor which is taken from schools of acupuncture.

The following statement explains that the existing procedures in each region in the purpose of regulations provide prerequisite in establishing the clinic which is much different from the practice. Clinics with minimal supervision can be established, so consequently the protection of patients who use the services get minimal protection.

## **2. Clinic of healthness and Fitness Care (Aesthetic)**

The legal basis of own establishment is Ministry of Health Regulation No. 028 / Menkes / Per / I / 2011 on Clinical and District Regulation of each region. The establishment must obtain operating

permits and business place for the institutions established in accordance with the Health Act No. 36 of 2009.

### **Article 35**

"(1) The local authorities can determine the number and type of health care facilities and licensing operating in their area. "

"(2) Determination of the number and types of health care facilities as referred to in paragraph 1 shall be conducted by the local government and consider:

- a. an area;
- b. health needs;
- c. the amount and distribution of the population;
- d. patterns of disease;
- e. utilization;
- f. social functions; and
- g. ability in using technology. "

*"(1) Pemerintah daerah dapat menentukan jumlah dan jenis fasilitas pelayanan kesehatan serta pemberian izin beroperasi di daerahnya."*

*"(2) Penentuan jumlah dan jenis fasilitas pelayanan kesehatan sebagaimana dimaksud pada ayat 1 dilakukan oleh pemerintah daerah dan mempertimbangkan:*

- a. luas wilayah;*
- b. kebutuhan kesehatan;*
- c. jumlah dan persebaran penduduk;*
- d. pola penyakit;*
- e. pemanfaatannya;*
- f. fungsi sosial; dan*
- g. kemampuan dalam memanfaatkan teknologi."*

There will not be many problems in the establishment and structure of health and wellness clinic because they fit and use medical methods. The purpose of this establishment has been set up and in accordance with article 62 of Law 36 of

2009 on health promotion and disease prevention. So the establishment and structure of fitness and health clinics is still in line with the Act of health itself. As a prerequisite for establishing the clinic itself are:

1. Letter of application
2. Letter of recommendation from the Department of Health  
First
3. A statement of ability to comply with the rules and regulations applicable in the field of health
4. Fc. deed of notary
5. Fc. evidence of legal title to land / land certificate
6. Fc. disturbance permit (HO)
7. The structure of the organization
8. List of medical, paramedical and non-medical
9. paramedical data of personnel:
10. Original list of medical inventory, medical and non-medical support
11. UKL / UPL.

Prerequisites are in accordance with applicable government regulations in each county or area respectively. If there requirement



not met, then clearly the clinic can be called a legally flawed because it does not conform to the existing legal basis.<sup>51</sup>

Clinic examined in this category is Natasha skin care clinics, as an aesthetic clinic. The clinic is in line with existing requirements in *PERMENKES* No. 9 of 2014, According to Arif as legal companies, stated *"When referenced from PERMENKES No. 28 of 2011 is Her impression still looks gray because of aesthetic clinics still not clear his position, but with the latest PERMENKES No. 9 of 2014 it was more obvious aesthetic clinic status as mentioned in the PERMENKES"*. The process of establishment of alternative clinic together with the establishment of clinics in general, such as:

- a. Complete identity of the applicant;
- b. Copy / photocopy of incorporation or entity, except for individual ownership;
- c. copy / photocopy of a valid certificate of land, another proof of ownership certified by a notary, or evidence of a contract for a period of at least 5 (five) years;
- d. SPPL documents for outpatient clinic, or UKL-UPL for inpatient clinic in accordance with laws and regulations; and
- e. Clinical profile to be established covering the organization, location, building, infrastructure, energy, equipment, pharmacy, laboratory, as well as the services provided;

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<sup>51</sup>Article 62 health law no 36 of 2009

f. Other requirements in accordance with local regulations. The above process is a basic process that needs to be done by the founder of the clinic or clinic aesthetic beauty and fitness.

for own license is such permission HO, SPPL, letter from the local Health Department. Nevertheless, in his own establishment is PERMENKES still dealing with the Mayor to Jogja Regulation and legislation in each region, so that the process of each clinic is in each different area.

The Regulation above is the procedure to establish the clinic in Yogyakarta. Basically, aesthetic clinic is a clinic that has a legal basis so the establishment itself is not too problematic because it has a definite process.

### **3. Tabib**

Still the same as the requirements for establishing another alternative treatment centers "physician" would typically use status as an alternative clinic to get a legal status that is stronger than the name of "physician". Establishment and the actual structure is described in more detail in the local area of regulations in the area so if the establishment at Sleman then as follows:

Requirements based on local regulation No. 8 of 2008:

1. Application letter signed on stamp Rp 6,000.
2. Copy of ID card valid undertaking.

3. Copy of Articles of Enterprises / Foundation.
4. Photocopy of TIN.
5. Copy of the IMB and HO.
6. Copy IPPT (if the land will have an impact on spatial planning)
7. Recommendations of working experience in the field of health by his superiors (if the applicant is an individual).
8. Picture situation / plan.
9. Responsibility is a general practitioner should be equipped with a photo copy of ID card, a copy of diploma, a copy of the Assignment, and a copy of Permit Practice.
10. Responsible must have a license from the boss to work for civil servants and members of the TNI / police.

The structure of "physician" is not clearly defined. If it is considered as an alternative clinic at least it is supervised by a physician or health care professional as a form of supervision and guidance. In another way, the supervision of the government, therefore Indonesia's health ministry has acknowledged fact not to permit the operation but status recognition is given to the data collection for institutions like "thabib" which is not clear or not even exist.

The physician or "Tabib" or alternative healing media, is different from alternative clinics and fitness and health clinics. Based

on the research conducted in one of the physicians in the area jl. Bantul-Jogja, named Tabib Saifullah is one of the physicians who treat all kinds of diseases. The methods used in the treatment in this saifullah physician is metaphysical and supernatural.

Workers and assistances are those have hired used is the one who has a lineage that has advantages because of the method used is metaphysics. The process of establishment Saifullah physician treatment is as follows:

- a. Make Application
- b. Permit the establishment of the country to the Prosecutor's Office
- c. Permit the establishment of the High Prosecutor's Office
- d. Letter of Recommendation from the Local Health Center
- e. ASPETRI
- f. Stewardship Disturbance Permit / HO

The procedure above is a process that is performed by a physician establishment Saifullah in the establishment of the corporation. Register and letters owned by the hall is fairly complete treatment can be shown, following the letter held:

- a. Letter of Recommendation local health center
- b. Agency for Food and Drug Administration
- c. Deed of establishment of the Notary and Attorney
- d. Letter of Recommendation ASPETRI

e. Disturbance Permit / HO

Documents and several papers on the basis of the establishment of clinics should be prepared. Even, fixed alternative medicine as a physician is not directly observed and accepted. There is no permission directly from the Department of Health. Additionally, and there is no supervision from a doctor or a specialist for the procedures in handling the patients.

To make the differences and status of those institutions clear, the writer will provide a table to explain the contain of discussion chapter.

Table 1.1  
Differences of Legal Status

No	Description	Alternative Medical Clinic	Clinic Fitness and Healthy	Thabib
1	Legal Corporate Form	If this corporate refer to The health ministry no 28 of 2011 the requirement of clinic is not fulfill because there's no supervise by doctor, but if this refer to law of Health no 36 of 2009 it may register on health department as traditional clinic. Corporate form personal company. (Adem Panas dan Batara Clinic)	On the health Ministry no 28 of 2011 actually the position of clinic aesthetic is still blind or unclear because in this regulation only regulate two kind of clinic namely: "pratama and utama" but right now it already regulate on Health Ministry no 9 of 2014 about aesthetic clinic Corporate form of aesthetic clinic could be personal company or Limited	The character of thabib actually close with alternative medical clinic, it has same way with aternative medical clinic for getting the legal corporate form for getting recognition of regional government and health department. Corporate form is Personal Corporation/Company..

			Trade Company but on this issues (Natasha) is Limited Trading Company	
2	Facility and Methode	Facility of all clinic has to be proper with what the regulation said (The health ministry 28 of 2011, 71 of 2013 and law of health no 36 of 2009) in short, facility and methode has to be fulfill some principle such as safety, comfort, and hygiene. But in fact alternative medical clinic may not meet the requirement such as site plan mostly they dont have it and moreover the tool and methode not register and recognize yet.	Facility and methode of clinic fitness and healthy actually not has seroius problem, in clinic aesthetic lie this the supervisor mostly are doctor and also the owner, so the facility of course inline with what medical treatment need, such as the room, tool, and the worker. The methode usually use medical treatment means that clinic aesthetic met the requirement and doesn't have serious problem in their corporate especially on facility and methode	Facility and Methode in treatment place as like as thabib is minimum, which means that because mostly thabib only use their own home for practice so they dont have any facility that require by health department and rules. The methode of thabib also various and out from medical treatment therefore the regulation that exist now still could not accomodate what they need.
3	Licensing and Permit	Licensing and Permit of alternative medical clinic are supposed to be based on Health Law no 36 of 2009, Eventhough until now there is no specific regulation regulate about alternative medical clinic, but in regulation no 36 of 2009 it regulate about traditional clinic and so far the regulation that close	Aesthetic Clinic or fitness and healthy clinic already has the legal basis for get the license and permit. The clinic like aesthetic clinic in the past still confusing because the establishment and license refer to the health ministry no 28 of 2011 it doesn't regulate yet about this kind of clinic, but nowday the legal basis of	Most of thabib in Indonesia they don't have license and permit and this is made a new problem in the field of health, the problem is not only on the owner of clinic but also the regulation that not provide well for regulate the clinic as like as thabib. Most of them is satisfied only join ASPETRI ( <i>Association Pengobatan Tradisional Ramuan</i> )

		with alternative medical clinic is only that regulation.	clinic change into the new one the health ministry no 9 of 2014. Because It clearly explain the position of clinic and how to get license and permit.	<i>Indonesia</i> ”).
4	Consumer Protection	In the Alternative Medical Clinic ,Consumer protection are still weak. because there is no regulation that talk about the protection of costumer regarding on alternative medical service. This become the problem if the patient get loss because of that activity, unless if the customer want to ask the protection the regulation that may overlap is Act No. 8 of 1999 on Consumer Protection. But it rarely happen. The legal basis that could be use 1365 Civil Code	In aesthetic clinic the consumer protection already regulate on health law no 36 of 2009. There is no serious problem on this cases because all protection already put it on that regulation. Because the form of this institution is Limited Trading Company (LTD/PT) so the customer may ask the protection refer to the regulation that may overlap is Act No. 8 of 1999 on Consumer Protection.	Thabib is less of cunsomer protection the cause is almost similar with alternative medical clinic. The regulation that regulate about consumer protection of thabib is nothing, that’s why the patient that come to the thabib they already prepare for all risk, because the basis is based on moral value. The legal basis that could be use 1365 Civil Code

## **CHAPTER V**

### **CONCLUSION**

#### **A. CONCLUSION**

1. The author finally conclude that the legal status of alternative medical clinic in indonesia is Personal Company. However it is because of unclear regulation or legal basis of the procedure to establish alternative medical clinic. In Indonesia there are many kinds and forms of alternative clinics. Methods and means used are various, however it is not followed with the legal developments or regulation that should be useful as a place of protection and licensing that established clinics in guaranteed safety and provide protection to the patient. Institutional status alternative clinic in Indonesia can be said is still much to be desired, the appropriate legal basis for the various clinical forms, it still felt not explain the institutional status.
  
2. Clinic as most minimal health care license because the agency status is still individual. Alternative clinics and physicians can be established without permission from the relevant agencies. In other hand aesthetic clinic that already get the regulation of the establishment procedure should be with the permission and fulfill the licensing. Even the health department has a form for registration of alternative medical clinic because the regulation is not specific enough so most of the owners do not care with it and they still run the corporate without license and permission from the health department.



**B. SUGGESTION**

Some suggestions that I could give, are:

1. Making clear laws and regulation that can accommodate alternative clinics or provide restrictions on the types of clinics or clinics alternatives.
2. Performing a closer scrutiny to alternative clinics that are not in accordance with the legislation or even do not have operational permission. So the government can ensure to patients who visited the clinics alternative.
3. The people or client who use the treatment of alternative medical clinic has to be aware and choose the right place of alternative medical clinic. The right place means the clinic with legal permit, license, and valid as alternative medical clinic. The purpose with that action is the owner would be aware about legality of their corporate and give safety to the client.