

# 3. Advantages and Disadvantages on Having Privat Hospitals in the Form of Non-Profit Institution (Foundation): A Critical Review of Constitutional Court's Judicial Review Against the Act Number 44/2009

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**Advantages and Disadvantages on Having Privat Hospitals in the Form of Non-Profit Institution (Foundation): A Critical Review of Constitutional Court's Judicial Review Against the Act Number 44/2009 on Hospital Affairs**

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**Abstract**

A hospital was a social organization. The World Health Organization (WHO) affirmed that a hospital was an integral part of a social and health organization that served to provide comprehensive services, curative and preventive measures to the community. The Act Number 44 of 2009 on Hospital stated that a hospital is a health service institution organizing personal health services in a plenary that provided inpatient, outpatient and emergency services. A hospital, as a matter of fact, had experienced shifting functions in health services. It was no longer held solely as a humanitarian institution, because the organization of the hospital had been heavily influenced by social, economic, technological aspects, especially in the field of medicine. Therefore, legislations on hospital affairs accommodated alternatives on the hospital organization. There could be a public legal entity and private one as well that could organize a hospital. It could be in the form of a foundation, an associations or a limited company. This research used socio-legal approach related with private hospital organizations in Indonesia. The research specification was descriptive-analytical by applying qualitative analysis. The results of the study found that there were no private hospitals in Indonesia that are held in legal status since the legal entity status was still attached to the organizer or its founder. The legal body of the hospital was still in its organizer or owner. This condition led to legal uncertainty in hospital liability in facing legal cases.

**Keywords:** hospital, private hospital, advantages and disadvantages.

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**I. INTRODUCTION**

A hospital is a health care institution providing patient treatment with specialized medical and nursing staff and medical equipment. It is generally known as an institution conducting very noble jobs since its activities deal with caring for the sick (patient) and to provide hopes for better and healthy life. Hospitals are usually funded by the public sector, health organisations (for profit or nonprofit), charities, including direct charitable donations. Historically, hospitals were often founded and funded by religious orders, or by charitable individuals and leaders.

Currently, hospitals are largely staffed by professional physicians, surgeons, nurses, and allied health practitioners, whereas in the past, this work was usually performed by the members of founding religious orders or by volunteers. There were various Catholic religious orders or congregations, such as the Carolus Borromeus, OSF, that still focus on hospital ministry until today. Besides, there are also Islamic community organizations running hospital, such as Muhammadiyah and Nadlathul Ulama. So are some Christian or Protestant denominations, such as YAKKUM (Christian foundation for general health) organized by Lutherans, Baptist (Calvinists), etc.

In accordance with the original meaning of the word, hospitals were originally "places of hospitality", meaning that the activities at the places were close to the values of humanity, solidarity,

and even charity. Therefore, it could be understood that some religious organizations were interested to organize hospitals as a manifestation and implementation of their teachings.

As mentioned above, a hospital is then established as a means of humanitarian services performing its service solely for social purpose of humanity in accordance with religious instruction. In Indonesia the hospital organizers are mostly handled by religious institutions and intended to help the underprivileged. This means that the doctrine of charitable community is then obviously known. A hospital is a charity institution which is full of social, humanitarian, Godly values and not for profit. Therefore, from legal point of view, its responsibility is based on the doctrine of charitable immunity meaning that a hospital cannot be sued if it conducts a mistake that causes harm to the patient. A hospital seems "immune to law".

This condition is due to its humanitarian duties so that a hospital could not be burdened with legal responsibility. In another sense, because it conducts selfless services in providing favors for the sick people or, in other words, its activities were solely based on the sense of humanity, it is then not possible to respond by suing a hospital for its noble duties [1].

The development of health service provided by hospitals has experienced shifting functions. Anthony Giddens as quoted by Soedarmono says that "health services in Indonesia has shifted from public goods into private goods so that the fulfillment of patient satisfaction is increasingly complex and all hospitals compete to attract patients"[2] Kartono Mohamad argues that organization of a hospital in modern era is not as simple as it used to be. The need to manage a hospital with business principles is no longer inevitable. Hospitalization requires a large capital, especially with the increasing number of new technologies that must be provided. Significant energy is also a basic requirement requiring more professional organization and the availability of skilled technical personnel to handle increasingly sophisticated tools. Besides, the changing demands of the hospital's service users in the form of comfort and convenience in health services should be seriously considered. All requires a large investment that should be obtained from other sources such as banks and of course with its interests following.

Such a need is highly increasing as a result of the income (material) increase of the middle and upper classes within the society. This is becoming a business arena for health service providers and it then spurs the capital owners to capture the business opportunity. It is done by organizing a complete hospital meaning it does not provide service forms only for health status but for other purposes such as beauty or good looking physical appearance.

Another factor is the development and advancement of technology in the field of medical affairs. This requires adjustments and procurements of both high-tech software and hardware facilities in the hospital organization. Therefore, verily high skill in management of modern technology and generally require huge fund support are necessary.

In addition, there are also stakeholders' interests in its efforts to increase their investment. As a consequence, this factor requires health-care providers should meet technology-intensive, capital-intensive and labor-intensive infrastructure. This fact has brought a shift to the previous hospital's missions. Instead of being service provider for humanity values, a hospital has changed into a business unit. The services are then based on the calculation of costs and benefit beside capital acquisition. This also affects the orientation of a hospital; from an institution emphasizing providing humanitarian services into an institution of profit seeker. The fact arising as a consequence of the reality described above is a shift in the relationship pattern of the provider and receiver; it is no longer paternalistic but has turned into a contractual relationship based on business interests or cost-benefit principles.[3]

The Government through the regulation of the Minister of Health Nr. 340 of 2010 classified the ownership of hospitals into two, namely:

- (1). Public hospitals: hospitals organized and managed by government, regional governments, and nonprofit legal entities
- (2). Private hospitals: hospitals organized and managed by legal entities in the forms of limited companies and these are obviously profit seeking institutions.

Based on the classification above, it can be seen that to organize a private hospital is legally possible. This means that the Government allows any citizen having big capital to open and run a hospital as a business entity and a profit seeker.

The shifting of hospital's function and role will eventually be closely related to the hospital's legal form. Hospital's function shifting from humanitarian activities to business activities will have implications in the form of hospital's legal entities. In line with this, the Act Nr. 44 of 2009 on Hospital stipulates that a hospital is possible to be a public legal entity that is a hospital administered by the Government or non-profit hospital or in the form of private legal entity that is private hospital. Therefore, the Act on Hospital allows the existence of hospitals that could be organized by various forms of legal entities

Based on this explanation it could be distinguished the differences between hospital's legal entity and other legal business entities. The main function of a hospital is to serve the public interests related to the most basic human livelihood namely health. Therefore, a hospital is burdened with the obligation to perform social functions. If a hospital needs to get fund resources for its services the funds obtained should be returned in the form of services and not to foster profits in the field of wealth law. This is to distinguish a hospital from other business entities. Based on the above description it is interesting to conduct a study on how a hospital's legal entity as mentioned in the Act Nr. 44 of 2009 on Hospital and its implementation in Indonesia.

## II. 2. PROBLEMS

- a. What is the legal provision of hospital legal entity pursuant to the Act Nr. 44 of 2009 on Hospital?
- b. What is the legal entity of a private hospital in Indonesia at the present time?

## III. 3. THEORETICAL FRAMEWORK

In the field of law a legal entity and association can be legal subjects that have rights and perform legal acts just like human beings. These entities may possess their own property, participate in legal traffic by the management of their officers, may sue and to be sued in courts. The entity as well as the association is called a legal entity or *rechtspersoon* which means a person (*persoon*) created by the law.[4] Based on the description above there is a form of law (*rechtsfiguur*) that is a legal entity (*rechtspersoon*) that has legal rights and obligations and can enter into legal relations.

Sri Soedewi Masjchoen argues that a legal entity is a collection of people who together aim to establish an entity, namely:

- a. tangible set,
- b. separated assets
- c. for a particular purpose it is known as a foundation [5].

Based on the above understandings, in a modern law, an entity, association, or a legal engagement can be supporters of rights and obligations, if they meet five elements of the following requirements:[6]

- a. the existence of assets separated from the wealth of other legal subjects;
- b. elements of certain ideal destinations that are not contrary to the existing legislations;
- c. self-interest in legal traffic;
- d. the personnel of the organization are well organized according to the prevailing legislations and its own internal regulations;
- e. registered as a legal entity in accordance with prevailing legislations

The forms of legal entities can be found in many books. Chidir Ali distinguishes public legal entities and civil legal entities (private legal entities). He describes as follows:

- a. public legal entities that are divided into two kinds, namely:
  - 1) legal entity having territoriality
  - 2) legal entity that does not have territoriality
- b. (private) legal entity

In civil or private entity the important factor is the legal body that occurs or is established on individual's will. Meanwhile, a public legal entity can establish a civil institution, for example the State of the Republic of Indonesia establishes foundations, limited companies and others. Autonomous regions may even establish regional banks.

Kinds of civil law entities can be divided as follows:



- a. association (*vereniging*) as regulated by Article 1653 of the Civil Code, as well as Stb. 1870-64 and Stb. 1939-570
- b. limited company as regulated in the Act Nr. 40 of 2007
- c. cooperatives as regulated by the Act Nr. 25 of 1992;
- d. foundations regulated by the Act Nr. 24 of 2004.

The purpose of a legal entity can be seen from the type of the legal entity itself. For example, a public legal entity aims at public services sphere and not to seek profit (nonprofit), while private legal entity aims to seek profits. Although acting as a profit seeker, a private legal entity is also burdened by social functions that have objectives like the nonprofit one, such as legal entities in the forms of a foundation or an association.

Some conditions of a business unit or an enterprise to become a legal entity, public legal entity or private legal entity, are as follows:

- a. having registered statutes and bylaws approved by Minister of Law and Human Rights
- b. having separate wealth.
- c. having specific purpose that does not violate the existing legislations.
- d. having an organization.

To discuss the legal entity of a hospital, it is necessary to state in advance the meaning of hospital. According to Meijer a hospital is:

*"Het ziekenhuis is een onderneming met een eigen karakter: het is gericht op medisch onderzoek en medische behandeling van opgenomen patiënten. Het ziekenhuis is geen onderneming in de zin van eenbedrijfsdat is gericht op het maken van winst of enigvermogensrechtelijke voordeel"*[7]

Based on the definition above it can be explained the differences between a hospital as legal entity and other business entities. The main function of a hospital is to serve the public interests related to the most basic human livelihood namely health. A hospital, therefore, is burdened by the obligation to perform social functions. If a hospital needs to get fund resources for its services the fund obtained should be returned in the form of services and not to foster profits in the field of wealth. This is one of the hospital's characteristics that distinguish from business entities.

In its development hospitals as organizations are now divided into several types, namely:

- a. according to the ownership; government hospital and private hospital
- b. according to the philosophy adopted; nonprofit hospital (hospital that does not seek profit) and profit hospital (hospital seeking profit)
- c. according to the service type; general hospital and specialty hospital
- d. according to the location; central hospital and regional hospital.[6]

Article 1 point 1 defines a hospital as "a health service institution that gives full range of personal health services and provides inpatient, outpatient and emergency care services". Article 20 of the Hospital Act further regulates that category or type of hospitals is based on its management which can be divided into: "public hospital and private hospital".

The detailed explanation of the categorial differences between a public hospital and a private hospital are as follows:

- (1). based on the management: hospitals can be divided into public hospitals and private hospitals.
- (2). public hospitals, as referred in paragraph (1), may be managed by the government, local governments and non-profit legal entities.
- (3). public hospitals run by the government and regional governments should be organized on the basis of the management of the public service board or the regional public service board in accordance with the provisions of the legislations.
- (4). public hospitals run by the government and regional government, as referred in paragraph (2), cannot be transferred to private hospitals.

Article 21 of the Hospital Act regulates the operation of private hospitals. It is stated in the Act that a private hospital, as referred in Article 20, is managed by a legal entity having an objective of profit seeking and in the form of limited company or *persero*..

#### IV. RESEARCH METHODS

This research used a socio-legal approach, meaning that the approach used law (legislations) as the major or main tool for the analysis and used social factors as the supportings or minor. Besides, this research had analytical-descriptive specification because the research's objective was to get a description about legal provisions of hospital as a legal entity related to the management of private hospitals in Indonesia.

The data gathering was conducted through field studies in order to obtain primary data and to have literature studies to obtain secondary data. The research sites were Jakarta, Yogyakarta, Semarang City or Municipality, Ungaran (the Capital of Semarang District) and Kendal. The research used purposive sampling technique because of the samples were quite homogenous so that it did not need a lot of samples because they had been representative for the whole population. Eight (8) hospitals of 3 (three) categories were chosen as the samples, namely:

1. hospitals organized by foundations; Pantirapih Hospital (Yogyakarta); Tlogorejo Hospital (Semarang); Sultan Agung Islamic Hospital (Semarang); Sint Carolus Hospital (Jakarta).
2. hospitals organized by associations: Pantiwilasa Hospital (Semarang), Islamic Hospital (Kendal).
3. hospitals organized by limited companies: Ken Saras Hospital (Ungaran–Semarang District) and Columbia Asia Hospital (Semarang)

The data gathered were then qualitatively analyzed. Since the data could not be calculated (uncalculable), monographic or in the form of tangible cases, they therefore could not be arranged into a structured classification in which the research object could not be fully studied.

#### V. RESULT AND DISCUSSION

##### **Legal provisions of the implementation of hospital legal entity according to the Act Number 44 of 2009 on Hospital.**

The results of the research showed that provisions on hospital's legal entities were formulated in several articles, among others: Article 7 of the Hospital Act states that to establish a hospital there are some requirements that should be fulfilled, namely:

- (1) the hospital should meet the requirements of location, building, infrastructure, human resources, pharmaceutical and equipments;
- (2) the hospital could be established by government, local governments, or private;
- (3) the hospitals established by the government and local governments as referred in paragraph (2) should be in the form of a technical implementation unit of an institution assigned in health sector, certain institution or local technical institute with the management of the public service board or local public service board in accordance with the provisions of the legislations.
- (4) a private establishing a hospital as referred in paragraph (2) should be in the form of a legal entity and its business activities should only operate in the field of hospital.

The aforementioned provisions governed the very basic physical and non physical requirements, namely the location, building, infrastructure, equipment, personnel and pharmaceutical. None of these requirements should be ignored. The provisions on these requirements also governed any legal subject that was allowed to establish a hospital, both the government and the public (private). Further, it also regulates about the form of hospital's organizer agency, that is technical implementation unit (UPT) or certain institution. If the organizer was the government the UPT was restricted to only institutions that were in charge of health or to certain institutions stipulated in government's regulations.

The picture below shows a discussion shows a seminar discussing efforts of seeking an appropriate form of a hospital's legal entity post judicial review issued by Constitutional Court.

Figure 1. Seminar Discussion



These provisions could be interpreted that the establishment of a government's hospital (especially regional hospital) should be based on the provisions stipulated by the Government Regulation number 2 of 2007 about Regional Apparatus. Meanwhile, if the organizer is a private agency there should be a legal entity conducting business activities in the field of hospital.

Furthermore, Article 2 of the Hospital Act regulates category or type of hospitals based on their management which could be divided into public hospitals and private hospitals. The detail regulations are as follows:

- 1) based on the management, hospitals can be divided into public hospitals and private hospitals.
- 2) public hospitals as referred in paragraph (1) will possibly be managed by the government, regional governments, and nonprofit legal entities.
- 3) public hospitals run by the government and regional governments should be organized on the basis of the management of the public service board or regional public service board in accordance with the provisions of the legislations.
- 4) public hospitals run by the government and regional governments as referred in paragraph (2) cannot be transferred into private hospitals.

Article 21 of the Hospital Act specifically regulates about the operation of private hospitals. It is stated that a private hospital having profit oriented as referred in Article 20 is administered by a legal entity in the form of a limited company.

One important thing to be mentioned in relation with the provisions of Article 20 and Article 21 of the Hospital Act is obvious stipulation of hospital's status as a legal entity. This indeed is a regulatory reform on hospital. A government hospital is called a public hospital and its legal entity is a public legal entity operated by public service management (BLU) and regional public service management (BLUD). It is necessary to give a special analysis that BLU should be understood not as a form of legal entity because BLU actually only pointed the pattern of financial management.

For a private hospital its legal entity form should be in the form of a limited company or *persero*. This is a must that should be done by any private agency who intends to build a hospital. This could be interpreted that a private hospital, previously could be incorporated by a foundation, should be changed into a limited company while hospitals held by State-Owned Enterprises (SOEs), should be in the form of *persero*.

A slightly confusing provision is about hospital organization conducted by the public that, in certain cases, can be categorized as public hospitals as defined in the explanation of Article 20 paragraph (2) saying:



"In this paragraph the meaning of non-profit legal entity is a legal entity whose residual business proceeds is not distributed to the owners, but is used for the improvement of services, among others foundation, society and public company."

Based on the provisions described above it can be interpreted that a private hospital can be categorized as a public hospital if it is nonprofit oriented. Its legal entity organizer can take the form of a foundation and an association.

18 The Constitutional Court recently issued a decree of Constitutional Court's Judicial Review on the provisions of Article 7 of the Hospital Act so that at this time a private hospital can juridically take the form of foundation, association and limited company. This judicial review obliges that a private hospital should have a legal entity, including a limited company. Therefore the this judicial review provides opportunity to a private hospital to seek profits. This will bring a consequence for religious values based hospitals that formerly brought noble jobs, namely those dealing with humanitarian and charity values.

The decree of the Constitutional Court above is factually in accordance with the demand of the present situation (social, political, and economical), meaning that it is almost impossible to run a hospital without adequately big fund rising. However, when the hospital, especially the private ones, convert into limited companies, they are still obliged to run their social functions. The hospitals should remain providing services for the poor and the underprivileged.

The form of limited company also brings another consequence for the private hospitals, namely they should have their own legal responsibility because of their status as legal entity. In other words, such hospitals are obliged to stand under the limited company laws. Since it is a company a private hospital taking the form of a limited company can possibly bankrupt and it will bring serious problems for not only the hospital itself but also the patients and the hospital's employees. It will disturb the society's basic rights on health that should be protected by the State. In this case the State should then interfere and take part in overcoming this problem.

The special characteristics of a hospital as business unit, namely conducting business functions and social functions as well, bring implications of the limited company form of a private hospital. Here are the implications:

1. A hospital should be a legal entity but referred to the Article 33 paragraph (2) of Hospital Act, a hospital organization should minimally consists of Head of hospital, medical service elements, nursing elements, medical supporting elements, medical committee, internal examination unit, and general and financing administration will be contrary to the provisions of Article 75 to 121 of Limited Company Act having organizational structure as follows: stakeholder general meeting (RUPS) as the highest organizational organ, directors (the enterprise executives) and the controllers.
2. The enactment of Presidential Regulation Nr. 77 of 2015 on Hospital Organization underlies that a hospital organization has its own characteristics so that the hospital taking form of a limited company will not be merely under the Act Nr. 40 of 2007 on Limited Company.

### **The legal entity forms organized by private hospitals in Indonesia**

The results of the research dealing with the legal entity forms organized by private hospitals can be described as follows:

#### **1. Hospitals organized by foundations.**

##### **a. Telogorejo Hospital Semarang**

Telogorejo Hospital originated from a Chinese polyclinic named *Poliklinik Gang Gambiran* which was established on December 1, 1925. On November 16, 1928 it turned into the Polyclinic of Lang TjhwanTiong Hoa Ie Wan. The word of "Ie Wan" here means hospital while Lang Tjhwan could be interpreted as Semarang. Lang TjhwanTiong Hoa Ie Wan could then be interpreted as Tiong Hoa Hospital in Semarang. Along with the times the polyclinic was changed into an emergency hospital named Chung Cheng I Yuan Hospital which was managed by a foundation named *Yayasan Kesehatan Telogorejo* (Telogorejo Health Foundation). On 25 November 1951 the emergency hospital changed its name into Telogorejo Hospital and the change of the name was inaugurated by the Commander of Diponegoro Division and the Mayor



of Semarang by taking place at Jl. KH. Achmad Dahlan Semarang. At that time Telogorejo Hospital could reach status of B category hospital. Telogorejo Hospital Semarang was organized by a foundation named *Yayasan Kesehatan Telogorejo*.

Seeing the history and the present status of the hospital, it can be concluded that legal entity form of the hospital is, therefore, not in the hand of the hospital itself but its in the hand the foundation, namely *Yayasan Kesehatan Telogorejo* (Telogorejo Health Foundation). This foundation is legally act as the organizer of the hospital so that it can make legal actions to other parties beside the hospital itself. The foundation as a legal entity then brings a consequence that it became a legal subject so it has rights and obligations. Telogorejo Health Foundation, therefore, can make agreements that could be accountable in front of the law. On the other hand, Telogorejo Hospital Semarang is only an entity providing health services only. It cannot act as a legal subject, meaning it cannot make any legal relations with other parties.

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**b. Sultan Agung Islamic Hospital of Semarang**

**Sultan Agung Islamic Hospital** is a teaching hospital. It is organized by a foundation named Yayasan Badan Wakaf (Waqf Board Foundation) of Semarang. The existence of the hospital located at Kaligawe Street nr. 4, Semarang, is together with an Islamic uiniversity running some other non-medical faculties. On August 17, 1971, the core of the hospital was erected under the name of Health Center.

**Figure 2** Sultan Agung Islamic Hospital



On July 16, 2014, Sultan Agung Islamic Hospital was declared as a completely accredited hospital by Hospital Accreditation Committee (KARS). Although it has grown to be a big hospital, Sultan Agung Islamic Hospital remains as a religious values based hospital with clear missions, namely to organize health care in the spirit of loving Allah and human beings, to organize education for building *khaira ummah* generation and to build Islamic civilization towards prosperous society blessed by Allah.

**c. Panti Rapih Hospital of Yogyakarta**

Panti Rapih Hospital is a Catholic values based hospital located at Cik Di Tiro Street number 30 Yogyakarta. Its location is at the down town and very close to the campus of Gadjah Mada University, the oldest and biggest university in Indonesia. The history of Panti Rapih Hospital could not be separated from the history of the presence and development of Catholic church in Yogyakarta. In 1914 good news of God's Kingdom (gospel) began to be introduced to Yogyakarta citizens. The first teaching of Catholic faith was conducted at R.P. Himawidjaja's house (father of Mgr A. Djajasepoetro, SJ). The missionaries together with the students of Xaverius College Muntilan who had high passionate spirit were able to make Yogyakarta

attractive to be the God's field. In 1917 *Standaart* School was established as the first Catholic educational institution of Yogyakarta. Other Catholic institutions then grew and developed at Yogyakarta, not only in the field of education but also in the field of health services. In 1921 the missionaries together with the administrators of the Yogyakarta churches sought help from sisters of Carolus Borromeus congregation located at Maastricht, the Netherlands, to administer a hospital. The starting point of the establishment of the hospital was the foundation of *Onder de Bogen* or *Onder de Bogen Stichting* (Dutch) by the administrators of the Yogyakarta churches on February 22, 1927. The hospital construction was finally completed in mid-August 1929 and on 24 August 1929 Mgr. A.P.F van Velse, SJ was pleased to bless the buildings. On 14 September 1929 the hospital was officially opened by Sri Sultan Hamengku Buwono VIII under the name of *Onder de Bogen* Hospital. The hospital provided health services and it formerly served only Dutch officials and thanks to the struggle of Sisters of Carolus Borromeus the service was then directed to the poor too. On its journey to further extend the service coverage to small communities, especially in rural areas, Panti Rapih Hospital of Yogyakarta opened branches in the form of Maternity Hospital and Medical Center at Pakem and Kalasan. Specially for the poor who really needed services, the hospital opened PUSPITA ward. The name of PUSPITA stood for *Pusat Spiritualitas* or Center of Spirituality. Until now Panti Rapih Hospital is organized by sisters of Carolus Borromeus Congregation that means that the legal entity of the hospital organizer is a foundation that posited as a legal subject so that those having the rights and obligations is the association. Therefore, the foundation can make any agreement and that can be accountable before the law. Panti Rapih Hospital of Yogyakarta is an entity providing health services only.



The logo of Panti Rapih Hospital was created by Rev. YB Manguwidjaja, a Catholic priest that was verily enthusiastic to spread out God's good news in many field, including in the field of health. Seeing the logo, it is clear that the hospital remains to be a Catholic values based hospital. Picture of white dove represents "Holy Spirit", part of Trinity and the letters of "Abdi Dharma" means "servants who are ready to serve"

## 2. Hospitals organized by the associations:

### a. Panti Wilasa Hospital dr. Cipto, Semarang

Pelkesi was a forum of Christian fellowship and institutions moving in the field of health services and education throughout Indonesia in efforts of realizing the ideals and duties of ecclesiastical vocations. The formation of Pelkesi was intended to invite churches in Indonesia to develop holistic health services covering physical, social, economic and spiritual aspects beside to facilitate the development of cooperation among Christian service agencies in the health sector. The Christian service in the field of health is holistic health service that is health service based on the thinking pattern looking at a human being as a whole, in the aspects of physical, mental, spiritual and social. Healthy state is a unity of perfect states of physical, mental, spiritual and productive social life, not just free from diseases. These efforts required a comprehensive and integrated approach, including preventive, promotive, curative, educative and rehabilitative efforts. These efforts should be affordable, accessible and available. In the field of health services Christian institutions and fellowship are called to be a tool and a channel of His love in the life of society, nation and state and take part in development for the realization of justice and prosperity which is evenly distributed in the Unitary State of Republic of Indonesia (NKRI) based on Pancasila. Panti Wilasa Hospital is currently being organized by YAKKUM based at Solo.

YAKKUM itself is a Christian foundation for public health performing healing ministry established by the Synod of Javanese Christian Churches (GKJ) and Indonesian Christian Church (GKI) of Central Java on February 1, 1950. In its development the GKJ region South Sumatra became independent of GKSBS which later became the supporting church of Yakkum. This means of ecclesiastical service is a continuation of the Christian Hospital Foundations of Central Java (JRSK), initiated by the *Zending Dutch Gereformeerde* Churches which started its mission in Indonesia in 1899.

As a legal entity Pelkesi and its alliance brings the partnership to be a legal subject so that they have rights and obligations. The alliance itself then can make agreements that can be accountable before the law while Panti Wiloso Hospital dr. Cipto Semarang is an institution providing health services only.

**b. Islamic Hospital of Kendal**

The establishment of Islamic Hospital of Kendal was inspired by the establishment of Islamic Hospital Foundation (YARSI) which consisted of 6 elements of community organizations (Ormas), including Muhammadiyah. In its historical journey the hospital experienced vacuum and it made the Regent of Kendal attempt to revive YARSI by inviting the 6 Islamic organizations who were the members of YARSI of the area around Kendal District to offer YARSI management. At the meeting only Muhammadiyah was willing to continue the establishment of the hospital on condition that it should be certified and fully managed by Muhammadiyah. All the community organizations agreed that the hospital would be fully managed by the Local Leadership of Muhammadiyah of Kendal. At that time (1993) there was an initial process of building Muhammadiyah Islamic Hospital (RSI) of Kendal supported by all Muhammadiyah members of Kendal. The Muhammadiyah Hospital of Kendal then began to operate on January 15, 1996. At the present time Muhammadiyah Islamic Hospital of Kendal is held under the auspices of the Central Leadership of Muhammadiyah. The Director of Muhammadiyah Islamic Hospital in its implementation was responsible to the Head of Muhammadiyah through Branch Manager of Muhammadiyah of Kendal. Therefore, it could be concluded that the legal entity of the hospital organizer is an association.

Based on the description above it can be seen that Muhammadiyah Islamic Hospital (RSI) of Kendal is an entity established and managed by Muhammadiyah association of Kendal Region having the aims of providing health services to the community. RSI Muhammadiyah of Kendal is therefore not a legal entity while the legal entity is Muhammadiyah association of Kendal so that the legal subject is Muhammadiyah association of Kendal.

**c. Sint Carolus Hospital of Jakarta.**

Similar to Panti Rapih Hospital of Yogyakarta, Sint Carolus or St. Carolus Hospital located at Salemba Street of Central Jakarta is also a Catholic values based hospital. It is one of general hospitals in the capital of the Republic of Indonesia. The hospital was founded by St. Carolus association (4). *Carolus Vereeniging*) as a social entity managing hospitals. On 13 January 1919 the hospital was officially blessed by the Vicar Apostolic of Batavia, namely Mgr. ES Luypen SJ. When it was firstly opened to the public the hospital had only 40 beds capacity. In the Japanese occupation period the doctors and hospital's employees were arrested and the whole hospital could go on operating. However, because of the persistence of Bishop Soegijapranata SJ and Bishop Willekens SJ in facing the Japanese authorities, although they were in exile, the hospital finally could operate again. It was temporarily handed over to the nuns of Carolus Borromeus congregation (4). In 1980 the name of the hospital was changed to St. Carolus Health Service (abbreviated as PK (4) Carolus or PKSC) to illustrate the increasing concern and orientation towards improving public health. PK St. Carolus had received full accreditation from the Ministry of Health of the Republic of Indonesia in the areas of management administration, medical services, emergency services, nursing services, and medical records in 1997. Carolus Hospital located on Jl. Salemba Raya 41 was a nonprofit private hospital belonging to the St. Carolus association under the Jakarta archdiocese. This hospital was one of B-typed hospitals having 386 beds capacity. The Public Health Centers located in 5 areas of Jakarta Special



Province (DKI), namely at Paseban, Tanjung Priok, Klender, Cijantung and Cengkareng, are health service institutions providing direct services to all social levels of society in a plenary and integrated manner.

Based on the data described above, St. Carolus Hospital of Jakarta is a health care business entity belonging to the Association of Nuns of Carolus Borromeus Charity Congregation. Therefore, the association as a legal entity has rights to make agreements or other legal acts and that can be accountable before the law in relation with health services.

### 3. *Hospitals organized by Limited Companies (PT):*

#### a. **Ken Saras Hospital of Ungaran, Semarang District**

The establishment of Ken Saras Hospital was much motivated by the strong impulse of humanity, compassion, deep empathy on the suffering of others who needed immediate treatment (help). In mid 2007 the owner of PT. Ken Tanzah Makmur then built Ken Saras Hospital located in the southern area of Semarang City, precisely on Soekamo-Hatta Street Km. 29, Bergas sub-district of Ungaran, Semarang District. In 2010 the hospital began to operate though the whole construction had not finished yet. The establishment of Ken Saras Hospital was also one of the forms of contribution to wider community through the use/application of modern technology and services according to the society's demands that were continuously increased to give good quality services.

Ken Saras Hospital, therefore, is only a form of health service business entities organized by PT. Ken Tanzah Makmur. In this case PT. Ken Tanzah Makmur is the legal entity and acts as a legal subject having rights and obligations and can make agreements and that can be accountable before the law in relation with the implementation of health services.

#### b. **Columbia Asia Hospital of Semarang.**

Columbia Asia Hospital of Semarang located at Siliwangi street number 143 Semarang started its activities on June 1, 2014. The hospital has 106 beds and several inpatient wing options, namely deluxe rooms (2 beds), ICU, HDU (High Dependency Unit) and NICU (Neonatal Intensive Care Unit). The data above shows that Columbia Asia Hospital of Semarang is only a business entity carrying out health service activities that is established and organized by PT. Bellevina Sarana Medika so that, in this case, the legal entity is PT. Bellevina Sarana Medika located at Jakarta.

Based on the results of the research it can be concluded that the organization of private hospitals in Indonesia, in general, took forms of foundations and other legal entities that are social, namely associations. However, some of them have already converted into limited company (PT) form. The private hospitals in the form of foundations and associations were philosophically managed not to gain profit (nonprofit hospitals). The characteristics and missions of nonprofit hospitals that became the objects of the research are as follows:

1. Hospitals are managed in a nonprofit manner since the benefits gained were used to develop the services.
2. hospitals are excluded (get incentives) in the case of tax payment.
3. profit that was shared to individuals running the hospitals.

Based on the results of the research it can be seen that all hospitals of the research objects have actually not got incorporated law because the legal entities are in the hands of the organizers. This means that a hospital organized by a foundation, the legal entity is the foundation while the hospital organized by an association the legal entity is in the hand of the association. Similarly, the hospital organized by a limited company (PT) the legal entity is the PT itself.

Thus, even though the Hospital Act had been effective since 2011 there are no hospitals in Indonesia whose efforts to provide health services as a business entity have a legal entity status. Nevertheless, the organization of health by hospitals to note is the care and health standards for the patients.



Between hospitals having legal entity status and others that did not have legal entity the differences can be seen in the field of services, meaning in their nursing and care standards. In relation with health service standard by hospitals either having legal entity status or not the standard should not be distinguished. Health service standard should be the same based on the type of illness suffered by the patients. The care standard for the patients conducted by the hospitals having legal entity and those that do not have it are not allowed to distinguish. This is closely related to each hospital's ability and its establishment objectives.

## VI. CLOSING

### Conclusion

Not every form of business is a legal entity. The legal entity covers a limited company (PT), foundation, cooperative, State-Owned Enterprises (SOEs) and other business entities whose statutes were registered and authorized by the Minister of Law and Human Rights and published in the Supplementary State Gazette. Trading company, trade business; *firma* and CV are not legal entities since their statutes are not authorized by the Minister but they are adequately registered to the Regional District Court Office. If a business is in the form of a legal entity it will be able to legally act by itself, to make agreements or engage in other legal acts, prosecute and being prosecuted in the court. Besides, it has also rights to separate own property from personal property of the founders and its shareholders so that the form of business is merely a business area for its founders. If there is a lawsuit from the third party the owners/ founders should be responsible.

The judicial review of the Constitutional Court is indeed in accordance with the demand of the present situation (social, political, and economical), meaning that it is almost impossible to run a hospital without adequately big fund rising. However, when the hospital, especially the private ones, convert into limited companies, they are still obliged to run social functions. The hospitals should remain providing services for the poor and the underprivileged. The form of limited company also brings another consequence for the private hospitals, namely they should have their own legal responsibility because of their status as legal entity. In other words, such hospitals are obliged to stand supervision of limited company laws. Since it is a company a private hospital taking the form of a limited company can possibly bankrupt and it will bring serious problems for not only the hospital itself but also the patients and the hospital's employees. It will disturb the society's basic rights on health that should be protected by the State. In this case the State should interfere and take part in overcoming this problem.

A hospital should be a legal entity but referred to the Article 33 paragraph (2) of Hospital Act, a hospital organization should minimally consist of Head of hospital, medical service elements, nursing elements, medical supporting elements, medical committee, internal examination unit, and general and financing administration will be contrary to the provisions of Article 75 to 121 of Limited Company Act having organizational structure as follows: stakeholder general meeting (RUPS) as the highest organizational organ, directors (the enterprise executives) and the controllers. The enactment of Presidential Regulation Nr. 77 of 2015 on Hospital Organization underlies that a hospital organization has its own characteristics so that the hospital taking form of a limited company will not be merely under the Act Nr. 40 of 2007 on Limited Company.

### Suggestions

*First*, For a private hospital it is necessary to have its own legal entity because it faces more complex and risky activities in the field of health affairs. This is actually obliged by the legislation so that it will be able to provide legal protection to its stakeholders (managers, doctors, nurses, employees, and of course the patients).

*Second*, The Government is suggested to make a special legislation regulating the form of legal entity of a private hospital having profit orientation. Since there is a clash of interests between a hospital as a unit of business and other usual business unit though both are in the forms of limited companies there should be extra regulations for hospital in running its business. In other words, it is impossible to handle the hospital's problems merely based on the Act Nr. 40 of 2007 on Limited

Company. *Third*, It is necessary to clarify the hospital's role in order to obtain correct understanding about hospital's legal entity.

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