

CHAPTER I

INTRODUCTION

A. Background

Health is an important aspect of human life. Similarly, health is needed by human as the basic need of life. The 1945 Indonesian Constitution Article 28H Sub-article (1) rules:

Every person shall have the right to live in welfare both physically and spiritually, have a place to reside, and receive a proper and healthy environment, as well as receive medical care.

Based on the Article 28H, health is the rights of citizen. Indonesian citizens have a right to get healthy environment and receive medical care in order to fulfill their rights. In other hand, human rights consist of health.

Then, According to The 1945 Indonesian Constitution Article 34 Sub-article (3) states:

The state shall have the obligation to provide sufficient medical and public service facilities.

Furthermore, state obliged to provide the health service and facility for citizen. In order to facilitating service health, government as the executor of regulation in state has to take a role to manage and control the implementation of The 1945 Indonesian Constitution Article 34 Sub-article (3).

Doctor, nurse, midwifery, apothecary and paramedic are the professions in health service. Among them, nurse has role in taking care the patient. In general,

the role of nurse could be seen in the hospitals or in medical clinics. Nurse helps patient to recover his/her health. Pertaining the medical action, the nurse is still under command of doctor because the nurse does not has any competence in order to conduct medical action.

In the further development of nursing field, nurse has a chance to establish their practice or usually called by nursing clinic (or in Bahasa we call it as *praktik perawat*). Nursing clinic could give advantages to both, nurse and patient. Nurse could utilize the clinic for specific and intensive service to the patient. The nurse could record the medical progress of patient and also gives the advice to the patient.

Patient could come to the nursing clinic as an alternative way rather than hospital. The patient may consult about their condition, receive nursing care and advice related to the medical problem his/her faces. This mechanism makes the service of nursing clinic becoming simpler, cheaper and easier to the patient than come to the hospital. On the other hand, the patient should pay more expensive price for receive the nursing service in the hospital.

The competence of nursing practice is extremely different and separated from doctor, apothecary or other practices of health profession. The distribution of competence of health profession is very important to protect the nurse and patient from medical malpractice¹ which will make a bad impact to both parties.

¹The definition of medical malpractice according to medicalmalpractice.com is medical negligence is the act or omission in treatment of a patient by a medical professional, which deviates from the accepted medical standard of care. Related to the standard of practice, nurse who overlaps the competence of other medical officer could be called as violation of administrative medical malpractice. The point of administrative medical malpractice is the violation of competence of

Unfortunately, there are some barriers which make nurse doing the action more than his/her competence as like as mention in regulation. Since the problem of medical human resources, the nurse often conducts the competence of doctor and apothecary. Actually, the action which is made by the nurse without competency is called as an illegal nursing practice.

Illegal nursing practice infringes the administrative law and could be categories as criminal offense. The example of violation of administrative law is when the nurse conducts practice without permission letters, such as:

- a. Registration Letter (*Surat Tanda Registrasi-STR*),²
- b. Letter of working permit (*Surat Izin Kerja-SIK*),³
- c. Letter of nursing clinic permit (*Surat Izin Praktik Perawat-SIPP*)⁴

As mention above, nursing practice is included as a criminal offense in the criminal law discussion. It happened when he/she does an overlapping competence of doctor and apothecary, such as making medical action, diagnosing the patient, giving the anesthesia and medicine without supervision from the doctor.

medical profession. See *Malpraktek dalam Pelayanan Kesehatan* access from isjd.pdii.lipi.go.id on 29 March 2012, at 9.00 pm

² The former official name of Registration Letter (*Surat Tanda Registrasi-STR*) is Nurse Permit Letter (*Surat Izin Perawat-SIP*). Nurse Permit Letter recognized in the Health Minister Decree No. 1239 of 2001. After that, the name of Nurse Permit Letter was be changed by government to Registration Letter. This letter issued by Health Profession Council of Indonesia (*Majelis Tenaga Kesehatan Indonesia-MTKI*). See Article 9 of Health Minister Regulation No. 1796 of 2011.

³ Letter of working permit is the legal evidence for nurse in health care facilities. See Article 1 Sub Article 3 and Article 8 of Health Minister Decree No. 1239 of 2001.

⁴ Letter of nursing clinic permit (*Surat Izin Praktik Perawat-SIPP*) is an administrative letter issued by the local government for nurse who operate nursing clinic. See Article 1 of Health Minister Regulation No. 148 of 2010.

Misran's case for instance, as a nurse, Misran gave a high-doses medicine (*obat label G (gevaarlijk)*) to the patient, and it became a famous case of violation of nursing practice. Misran's action was violated Article 108 Sub-article (1) of Health Act 2009 concerning to the authority of the medical person in giving medicine to patient.⁵ Misran was punished for three months jail and fined 2 million rupiahs by Tenggara State Court.

Misran felt that the punishment was improper for him based on the situation and condition happened at that time. Related to the dissatisfactions he proposed the judicial review of the Article 108 Sub-article (1) of Health Act 2009 to the Constitutional Court of Republic Indonesia.⁶ Hence, the Constitutional Court decide that as long as the location of nursing practice is isolated and inaccessible area or the facility is not complete, nurse may be conduct the action as like as doctor and apothecary.⁷ The case above is one example of nursing practice problem in Indonesia. Since the government could not provide a well health facilities to cover all areas of Indonesia.

According to Article 23 Sub-article (1) of Health Act 2009

Professional medical officer has an authority to conduct health services

Based on the article above, nurse as one of health professionals may provide nursing clinic. In the process of establishment of the nursing clinic, nurse should propose the permit to the government. The nursing clinic permit procedure

⁵ In the section 108 of Health Act 2009 explain that pharmacy practice only could be conducted by medical officer who has authority and expertise in pharmacy.

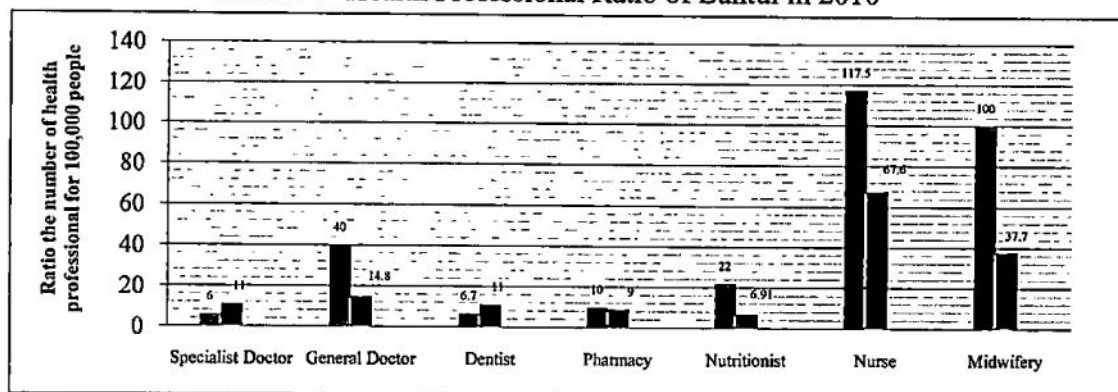
⁶ Constitutional Court granted Misran petition in order to judicial review of article 108 of Health Act 2009. See <http://www.tribunnews.com/2011/06/27/permohonan-mantri-misran-dikabulkan-mk>

⁷ Ibid.

has been stated specifically in the Health Ministry Decree No. 1239 of 2001 on Registration and Nursing Practice, Health Ministry Regulation No. 148 of 2010 on Permit and Implementation of Nursing Practice and Health Ministry Regulation No. 1796 of 2011 about Medical Profession Registration. Based on those regulations, nursing clinic has been protected and managed by the law.

Bantul, as one of five regencies in Yogyakarta Special Province has 506,85 Km² square areas and supported by around 679 nurses until 2010⁸ for serving the total 911.053 people.⁹ The numbers of nurses are very small comparing to the patient in 17 sub-districts, 75 villages and 933 sub-villages of Bantul. According to the Indonesian Health Indicator 2010 (*Indikator Indonesia Sehat 2010*), the number of nurse in Bantul is still less than standard of indicator. It means that number cannot fulfill the minimum necessities.¹⁰ Since the ratio of the nurse of Bantul in 2010 must reach 1070.5 of nurses comparing to populations in the region.¹¹

Picture 1- Health Professional Ratio of Bantul in 2010¹²



⁸ Bappeda Bantul, *Sekilas Tentang Bantul*, 2011, p.31

⁹ "Statistik Daerah Kabupaten Bantul" retrieved from bantulkab.go.id

¹⁰ Bantul Health Bureau, *Profil Kesehatan Kabupaten Bantul Tahun 2011*, 2011, p.31

¹¹ *Ibid.*

¹² *Ibid.*

Based on the data in the picture 1, the number of nurse in Bantul is less than standard. The ideal one is around 1070 nurses for the number of population 911,053 people.

In addition only 6 of 679 nurses open their own clinics.¹³ Most of the nurse works in Hospital and does not want to open the clinic, because the nurse feels difficult to fulfill the requirement of nursing practice permit and avoid having a malpractice problem to the patient.

The opportunity for the medical practice including the nurse to open his/her own clinic in Bantul has been supported by Byelaw No. 4 of 2010 on the Implementation of Permit for Medical Practice (*Penyelenggaraan Perizinan di Bidang Kesehatan*). The byelaw implies about process and mechanism of nursing clinic permit specifically in Bantul. It also confirms that the Government of Bantul has supported the nursing practice permit and protects the competence of nurse as one kind of medical profession which needed by society.

In fact, the number of nurse who establishes the nursing clinic is still low although the regulation has been provided by the government to conducting it. By having the service of nursing clinic, the patient could decrease the budget of health care comparing to the price that has to be paid to the hospital. The nursing clinic one the chance for nurse to help the people while becoming an entrepreneur.

¹³ Bantul Health Bureau, *Register Book of SIPP*, 2011

B. Research Question

1. How is the permit procedure of nursing clinic in Bantul?
2. How is the supervision of nursing clinic in Bantul?

C. Research Objective

The objective of this research is:

- a. To comprehend and examine the procedure of permission of nursing clinic
- b. To know how is supervision of nursing clinic in Bantul .

D. The Advantages of Research

The advantages which could be reached from this research *inter alia*:

1. Theoretical Advantages

Describing the permission procedure of nursing clinic and its supervision in Bantul whether or not is in line with the legislations such as Health Law 2009, Health Minister Regulations No. 1239 of 2001, No. 148 of 2010 and No. 1796 of 2011, and Bantul Byelaw No. 4 of 2010.

2. Practical Advantages

- a. Describing to society the difference between nursing clinic and doctor clinic. The description is very important since common people think that a nurse also could conduct the competence of doctor in medical.
- b. The research would be a media to understand how the procedure of permit of nursing clinic in Bantul is. Hence, the people especially who would like to establish nursing clinic may understand about the right

and obligation. And they also could protect themselves from malpractice.

E. Literature Review

Based on the Black's Law Dictionary, the definition of permission refers to the act of permitting, a license or liberty to do something.¹⁴ Utrech stated the law maker does not prohibits an action, but require some conditions that have to be fulfilled or commonly called as *vergunning*.¹⁵ Fockema Andreae defines permit as an action which is regulated under legislations and it needs special control and supervision. However, the action as mentioned above is not forbidden act.¹⁶

In order to organize health care services, the nurse needs permit and license from the government. The permit has been regulated on Article 23 Sub-article (3) of Health Act year 2009.

Nurse, as like as other profession in health service needs a permit to conduct nursing practice. Moreover, permit should be proven by having a license with the work location specifically. Whether they work in hospital, medical care unit or in their own clinic.

Nurse, who practices in the health care service, should become an assistant to the doctor for giving the medical treatment to the patient. Nurse may conduct a medical treatment such as giving the medicine, infuse and injection under

¹⁴ Campbell Black, Henry, 2004, *Black's Law Dictionary 8th Edition*, Thomson West, p. 1176

¹⁵ *Vergunning* is permit in Dutch. see Sutedi, Adrian, 2010, *Hukum Perizinan dalam Sektor Pelayanan Publik*, Sinar Grafika, p. 170

¹⁶ HR Ridwan, 2006, *Hukum Administrasi Negara*, Jakarta, Rajawali Press, p. 207

supervision of doctor.¹⁷ In this level, the nurse should have Registration Letter¹⁸ and Working Letter to be a staff in the hospital or any health service care.¹⁹ In this practice, nurse has a limitation in conducting medical action.

However, nursing clinic could be established by their self, both individually and in group. There is a limitation of authorities in every profession, including the nurse clinic. The details of limitation of the nurse competence in nursing clinic are regulated in Article 8 of Health Minister Regulation No. 148 of 2010.²⁰ To operate the clinic, nurse needs Nursing Practice Permit Letter as a legal document.

The role of nurse is very important in terms of patient's healing and convalescence process which conducted in the health care service.²¹ Nursing clinic gives the benefit for the society since the patient must not pay to the hospital which has more expensive rate. Commonly, the lack of number of nursing clinic make the patient comes to hospital to reach the service of nurse.

¹⁷ Erna Tri Rasmala R., 2008, *Seluk Beluk Hukum Kesehatan dan Malpraktek*, Laboratorium Hukum UWMY, p. 89

¹⁸ At the beginning, the names of Registration Letter (STR) is Nurse License Letter/Surat Ijin Perawat (SIP)

¹⁹ Article 1 Health Ministry Regulation No. 1239

²⁰ On article 8 of Health Minister Regulation state:

1. Nursing clinic is conducted in the first up to third levels of health service facility.
2. Nursing clinic aims to individual, family, groups and society.
3. Nursing clinic is conducted through the activity:
 - a. Nursing care implementation.
 - b. The implementations of promotion, preventive, rehabilitation and social utilization.
 - c. Complementary nursing action.
4. Nursing care (sub article 3) poin A consist of assessment, nursing diagnose decision, planning, implementation and nursing evaluation.
5. Nursing implementation (sub article 4) consist of the implementation of planning and nursing action.
6. Nursing action consist of nursing procedure, nursing observation, education and health counseling
7. In conjunction of nursing practice, nurse could give over-the-counter drugs

²¹ Sumijatun, 2011, *Membudayakan Etika dalam Praktik Keperawatan*, Salemba Merdeka, p.1

The competence of nurse both in hospital and in individual practice are similar pertaining to the service matter.

Health Minister Decree No. 1239 of 2001 on Registration and Nursing Practice is necessary for nursing practice, both in hospital or individual, in the present day. The authority of nurse is regulated in Article 15:

- a. Conducting nursing care which consist of investigation process, decision, diagnose, treatment plan, nursing action and evaluation;
- b. Those actions in point (a) also included: nurse intervention, nurse observation, education and health counseling;
- c. In conjunction with the nursing care which mentioned in point (a) and (b) should follow the standard of nursing care which is decided by organization of profession;
- d. Medical care could be conducted by nurse as long as the doctor delivers the written request.

Nowadays, the problem happened only a little number of nurse conducted nursing clinic individually, whereas Health Minister has issued the regulation pertaining to the nursing practice. The regulations are Decree of Health Ministry No. 1239 of 2001 on Registration and Nursing Practice, Health Ministry Regulation No. 148 of 2010 on Permit and Implementation of Nursing Practice and Health Ministry Regulation No. 1796 of 2011 about Medical Profession Registration. Those three regulations provide about the registration and permit procedure of nursing clinic. From the explanation above, it can be concluded that the problem of legality of nursing clinic has been managed.

In Bantul, nursing clinic also has been implicitly regulated by Byelaw No. 4 of 2010 concerning to the Implementation of Health Permit. However the byelaw has been prevailed, only 6 from 679 nurses in Bantul who conduct nursing clinic.²²

²² Bantul Health Bureau, *loc.cit*