

Legal Protection for Doctors in Legal Disputes in Hospitals From The Perspective of Employment Agreements

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Abstract: In health care, doctors have a vital role in diagnosing, treating and curing patients. However, legal disputes involving doctors, both with patients and hospitals, are often complex and require an in-depth understanding of existing legal protections particularly in malpractice liability. Legal protection for doctors is often hampered by regulatory discrepancies, especially regarding legal liability in medical disputes in hospitals. The employment agreement between doctors and hospitals is an important element that affects legal protection, as it includes the rights and obligations of both parties as well as dispute resolution mechanisms. This research aims to analyze the form of legal protection provided to doctors in cases of legal disputes in hospitals, especially in the context of employment agreements. The method used in this research is a qualitative method, which allows researchers to explore and understand the phenomena that occur in more depth. Data was collected through in-depth interviews, document studies and participant observation. The results show that legal protection for doctors is strongly influenced by the provisions in the employment agreement between doctors and hospitals. The conclusion of this study is the need to strengthen the legal aspects of the employment agreement to ensure that doctors get adequate protection in the face of legal disputes. Thus, these findings can be used to improve laws relating to the legal protection of doctors, then increase legal certainty and protect doctors from potential legal problems.

Keywords: Legal Protection, Doctors, Legal Disputes, Hospitals

INTRODUCTION

Health services are services that can entered in category transactions, this is in accordance with article 4 (2) (a) Trade Law Number 7 of 2014. In the

784



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governance of hospital operations, the owner called as a governing body, the function of the governing body in the hospital is to protect and take care of the hospital's mission structure institutions and community needs. The governing body/owner as supervisor, has absolute duty and responsibility for managing hospital assets and setting policies, such as the responsibility of a legal advisor to his patient or the responsibility of a doctor to his patient¹. According to Don Griffin, there are four responsibilities associated with the owner of the screening service or hospital. First, formal and legal responsibility for control service inspection and provide confidence in the hospital working properly. Second, supervising the hospital's fiscal-related duties. Third, appoint and dismiss medical staff. Fourth, appointed hospital director.

In the rules minister health number 631/MENKES/SK/IV/2005 concerning internal regulatory guidelines for medical staff, doctors in categorize into permanent doctors, organic doctors, part-time doctors, visiting doctors, consultant specialist doctors, teaching staff, emergency unit general practitioners, and intensive care unit general practitioners². The division of types of doctors in this regulation does not reflect the status of doctors who practice health services in hospitals, which is subject to worker status according to Law Number 13 of 2003 on Employment, the Employment Law. differentiate his employees in two category, namely workers for a certain time and workers for an indefinite time³.

It is very difficult if the legal status of the doctor practice in the hospital subdued by Law number 13 of 2003 concerning employment (hereinafter abbreviated Law 13/2003). For doctors who are not permanent hospital doctors, they are not necessarily defined as doctors who work at the hospital for a certain time. Because, Law number 13 of 2003 only divides work for a certain time into 2 (two) types, namely working for a certain time and working upon completion of certain work, as mentioned in article 56 paragraph (2) of Law number 13 of 2003. The status of practicing doctors in hospitals who are not permanent doctors into

¹ Riza, Teddy Yantaria, Imas Rosidawati, and Dadang Kusnadi. "Analisis Narasi Kebijakan Organ Governing-Body Rumah Sakit Sebagai Badan Layanan Umum Daerah." *Management Studies and Entrepreneurship Journal (MSEJ)* 5, no. 1 (2024): 3098-3107.

² Keputusan Menteri Kesehatan Republik Indonesia No. 631/Menkes/SK/IV/2005.

³ Undang-Undang Nomo 13 Tahun 2003 tentang ketenaga kerjaan pasal 56 ayat 1.



the workforce for a certain period of time according to Law number 13 of 2003 is also difficult for hospital corporations and can weaken their business. hospital. Because the Law has limited the employment relationship for a certain time to the period and type of work, permanent work is not the object of the worker for a certain time. Jobs for a certain time only limited 2 (two) years and can be extended only 1 (one) time for 1 (one) year⁴. Construction which is impossible to get enforced in hospital business activities because doctors' jobs are permanent. Apart from that, efforts to limit the work period to 2 (two) years and extend the work period to 1 (one) year could be detrimental to the hospital as a business entity that relies on a trust.

Unclear legal position of doctors in hospitals constructed The legal regulations in Indonesia can create legal problems for the enforcement of Article 46 of the Hospital Law, especially for parties who are liable to be sued. Article 45 of the Hospital Law essentially regulates the concept of vicarious liability. Problems arise when there is no synergy between the Hospital Law, Burgerlijk Wetboek (BW), the Medical Practice Law, and the existing paradigm. arranged in the medical council. Hospital Law arrange transfer of liability from health workers at the hospital to the hospital as a legal entity⁵. On the other hand, the Medical Practice Law regulates that medical practice is carried out only done in the form of an agreement between the doctor and the patient⁶. This too strengthened by the guidelines in the medical council in terms of doctors who practice in hospitals, there is a contractual bond for medical care in the hospital between the doctor and the patient.

Absence synergy increasingly arises when the Civil Code also regulates medical care contracts in Indonesia, Book III (three) (Burgerlijk Wetboek) has not been arrange medical treatment contract as a special agreement in Nieuw Burgerlijk Wetboek (N.B.W) even though the Civil Code has not arrange, fixed medical care contract recognized in Indonesia, but there is no explicit recognition of hospitals as legal entities as providers of medical services as in the Netherlands

⁴ Undang-Undang Nomo 13 Tahun 2003 tentang ketenaga kerjaan pasal 56 ayat 2.

⁵ Undang-Undang Nomor 44 tahun 2009 tentang Rumah Sakit Pasal 46.

⁶ Undang-Undang Nomor 29 tahun 2004 tentang Praktek Kedokteran Pasal 39.



and Austria⁷. This can affect construction rights and obligations contained in upholding the principle of patient autonomy in Indonesia. Moreover, in legal developments in courts in Indonesia, hospitals have begun to be required to take legal responsibility in cases of violations of patient autonomy, as occurred in the lawsuit by Pitra Azmirla and Damitra Almira⁸. Implementation of article 46 of the Hospital Law has also become difficult enforced when the government itself gives recognition to doctors who are not in an employment relationship to be able to practice in hospitals, such as partner doctors. Doctors who do not have the status of working in a hospital essentially tend to have the same status as independent contractor doctors. Doctors like this act for themselves and make the hospital a place practice Therefore, Article 46 of the Hospital Law clearly cannot enforced for doctors in hospitals who act as independent contractors. So such doctors are responsible for themselves and cannot transfer this responsibility to the hospital.

In the Netherlands, according to Nieuw Burgerlijk Wetboek (N.B.W), the accountability system for the provision of medical services can be differentiated between legal entity forms and individual. Distinction This is important to determine the parties who must be held accountable if there is a violation of civil rights. In the Netherlands, the concept of medical liability is regulated, namely central liability, Article 7: 462 Nieuw Burgerlijk Wetboek (N.B.W), this type of liability applies to hospitals used by doctors as places to treat patients. Central setting liability is a solution for doctors who enter into their own contracts with patients and doctors position themselves as legal subjects who act as providers of medical services (independent contractors) and doctors can access the facilities at the hospital. According to Article 7:462 Nieuw Burgerlijk Wetboek (N.B.W), the law considers that hospitals are jointly liable for failure to implement medical care contracts if the hospital as a legal entity is involved in the contract. Article 7

⁷ Pujiyono, Eko. "Kedudukan Korporasi Rumah Sakit dalam Tanggung Gugat Kelalaian." *Jurnal Hukum Dan Etika Kesehatan* (2021): 177-185.

⁸ Ummah, Mawaddatul. "Tanggungjawab petugas pelayanan kesehatan atas kesalahan diagnosis pada pelayanan kesehatan rumah sakit terhadap pasien (analisis Putusan Mahkamah Agung Nomor 515 PK/Pdt/2011)." Bachelor's thesis, Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2016.



: 463 Nieuw Burgerlijk Wetboek (N.B.W). provides an opportunity for both doctors (non-workers) and hospitals to determine liability limits or exceptions to anticipate legal consequences. caused by the executor of the medical care contract regarding the implementation of the central liability.

In the Netherlands, the phenomenon of the position of specialist doctors in hospitals is not like specialist doctors in other countries. Hospitals in the Netherlands do not always designate specialist doctors as permanent employees of the hospital legal entity who have the status of an employment relationship. These specialist doctors formally work on their own behalf and work on contracts that are essentially for and within the hospital. Liability to doctors also depends on the doctor's position in medical care. In the Netherlands, liability to doctors is divided into two forms, namely liability based on breach of contract or liability based on unlawful acts. Both of these responsibilities depend on the position of the doctor in the medical care relationship. When a doctor works in a hospital, the hospital is liable on the basis of breach of contract, while the doctor is liable on the basis of an unlawful act for an error committed. did it. For doctors working in hospitals on the basis of admittance contract, doctors and hospitals remain responsible sue for actions carried out at the hospital with one exception.

That is my view regarding the 7 year old boy who allegedly underwent tonsillectomy at the Kartika Husada Hospital in Bekasi and was diagnosed with brain stem death. The victim's parents reported alleged medical malpractice at the hospital. One of the cases of legal disputes in Bekasi, the researcher gives an example, namely the case of brain stem death after tonsillectomy at Kartika Husada Jatiasih Hospital, Bekasi City, where the doctor participated in the examination and reported it by the patient, therefore the doctor need protection when working in a hospital and/or necessary protected by the hospital. So the work agreement between the hospital and the doctor must be formulated correctly in the future.

In relation to the medical profession, there have been many reports in the national mass media regarding allegations of medical malpractice by doctors. In fact, from 2006 to 2012, there were 182 cases of alleged medical negligence. For example, in 2010 in Manado, there was a case involving Dr. Dewa Ayu Sasiary, Dr. Hendry Simanjuntak, and Dr. Hendry Siagian who were prosecuted for

788



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alleged malpractice.⁹ The number of malpractice cases raises questions about the extent to which employment agreements can provide effective legal protection for doctors in the face of medical malpractice disputes in hospitals. Given the current era of globalization, the health profession is getting a lot of attention from the public due to its complex nature and service to the community. However, professional ethics that were previously able to maintain the image of health workers now seem to be fading. Therefore, support is needed from legislation that is more binding for health workers and strengthens the rights of patients and their families as users of health services.

The employment contract between the doctor and the hospital is the legal basis for protecting the doctor's rights. The employment contract must contain clear details regarding duties, responsibilities, work schedule, salary, and various other aspects related to the employment relationship. If a dispute occurs between a doctor and a hospital, the rights agreed in the employment contract are important criteria for justice and legal protection for doctors¹⁰. Legal termination of the employment relationship If there is a legal dispute that results in the end of the employment relationship, then legal protection for the doctor must be taken into account when terminating the employment relationship. The employment contract must contain provisions regarding the legal reasons for termination of the employment relationship, procedures that must be followed, and the doctor's rights after work termination. If the termination of employment is not in accordance with the contract or is illegal, the doctor can sue for compensation or restoration of the violated rights¹¹.

Discrimination and Violations of the Law Doctors have the right to protection from discrimination in the workplace and other violations of the law.

⁹ Salindeho, Theresa Almarani. "Perlindungan Hukum Terhadap Dokter Atas Kelalaian Dalam Melaksanakan Tugas Yang Berkaitan Dengan Profesi." *Lex Privatum* 12, no. 3 (2023).

¹⁰ Mahayani, Brigita Mirna, Rihantoro Bayu Aji, and Joko Ismono. "Perlindungan Hukum Ketenagakerjaan Bagi Dokter Dalam Hubungan Kerja Dengan Rumah Sakit." *Law and Humanity* 1, no. 2 (2023): 130-152.

¹¹ Tarigan, Julianos. "Analisis Hukum Terhadap Perusahaan Yang Melakukan Pemutusan Hubungan Kerja Secara Sepihak Terhadap Pekerja Tanpa Memberikan Hak-Hak Pekerja Yang Diatur Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja (Studi Putusan Nomor 286/Pdt. Sus. Phi/2021/Pn. Mdn)." (2022).



If a doctor experiences discrimination based on gender, religion, race, or other legally protected factors, the doctor can file a lawsuit against the hospital. Doctors can also seek legal protection through employment contracts if their basic rights, such as the rights to privacy, security, and fair treatment, are violated.

Dispute resolution: Employment contracts usually include dispute resolution mechanisms, such as mediation or arbitration, that allow disputes between doctors and hospitals to be resolved without going to court. This mechanism provides a faster and more efficient alternative for resolving legal disputes. Doctors must understand the dispute resolution provisions contained in their employment contracts and utilize them appropriately.

RESEARCH METHODS

The research method used is a qualitative method. Qualitative method is a research method that focuses on in-depth exploration of social phenomena, behavior, or individual experiences in a particular context. In this method, researchers emphasize subjective understanding, meaning, and interpretation from the perspective of participants, rather than quantitative or statistical measurements¹². The data collection technique uses documentation technique, which is a method used to collect information through existing materials in the form of written documents, photos, videos, or other forms of archives relevant to the research topic¹³. Once obtained, the data was analyzed using the triangulation method, which is a technique used in data analysis to increase the validity and reliability of research results by combining several sources, techniques, or perspectives. In qualitative research, triangulation is often used to ensure that the data obtained is truly accurate and unbiased. The main principle is to compare

¹² Firmansyah, Muhammad, Masrun Masrun, and I Dewa Ketut Yudha S. "Esensi Perbedaan Metode Kualitatif Dan Kuantitatif". *Elastisitas : Jurnal Ekonomi Pembangunan* 3, no. 2 (September 16, 2021): 156-159.

¹³ Ardiansyah, Risnita, and M. Syahrani Jailani. "Teknik Pengumpulan Data Dan Instrumen Penelitian Ilmiah Pendidikan Pada Pendekatan Kualitatif Dan Kuantitatif". *IHSAN : Jurnal Pendidikan Islam* 1, no. 2 (July 1, 2023): 1-9.



data from various points of view to obtain a deeper and more comprehensive understanding of the phenomenon under study¹⁴.

THEORETICAL BASIS

Legal Protection Theory

Basically, the theory of legal protection is a theory about providing services to the community, Roskow Pound said that law is a tool of social engineering (Law as a tool of social engineering), human interests are demands protected and fulfilled by people in the legal field. Roskow Pound classifies human interests protected legally into 3 (three) types¹⁵:

(1) Public interest

The public interest is an interest that relates to the welfare and security of society as a whole. The public interest includes aspects such as public order, environmental protection, national security, and the rights of the wider community. The law aims to protect this public interest by ensuring that the actions of individuals or groups do not harm society as a whole.

(2) Community interests (Social interest)

These interests relate to social norms, cultural values and rules that are necessary to maintain order and harmony in society. Law serves to maintain balance in society by protecting social norms that are considered essential for collective survival, such as justice, order, and social ethics.

(3) Individual Interests (Private Interest)

Personal interests are interests relating to the personal rights and needs of each individual, such as the right to liberty, property, privacy, and the right not to be discriminated against. The law protects individual interests by ensuring that personal rights are respected and guarded against infringement by others or by the state.

¹⁴ Susanto, Dedi, Risnita, and M. Syahran Jailani. "Teknik Pemeriksaan Keabsahan Data Dalam Penelitian Ilmiah". *QOSIM : Jurnal Pendidikan, Sosial & Humaniora* 1, no. 1 (July 1, 2023): 53–61.

¹⁵ Sundari, Nata, Fasya Zahra Luthfiah, and Windi Rahmawati. "Peran Hukum Sebagai Alat Rekayasa Masyarakat Menurut Roscoe Pound." *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 2, no. 01 (2024).



Legal Certainty Theory

Law as the authority for the quality of justice, according to Radbruch, law is a barometer of whether a legal system is fair or not, therefore the quality of justice is also the foundation of law becoming law, therefore, justice has a normative and constitutive character of law¹⁶. So normative is useful as a basis for transcendental requirements so that the foundation of every classy positive law, in order to become the foundation of legal meaning and become a criterion for legal form. positive, then it is with justice that positive law is guided. Even though it is constitutive, therefore balance forms the absolute principle for law as law, without justice or balance, a regulation will not be able to form law.

Agency Theory

According to Jensen and Meckling (1976), agency theory is a concept that describes the contractual relationship between parties called principals and agents. This agency theory focuses on the dynamics of a relationship in which one party (the principal) entrusts another party (the agent) with the task of acting in the principal's interest. The principal sets goals and authorizes the agent to make decisions that are deemed best to achieve those goals. If the principal and the agent have the same interests and goals, then the agent will work hard to ensure that all the principal's instructions are followed and the goals are achieved¹⁷.

Agency theory focuses on two main problems that can arise in the relationship between principals and agents. The first problem is the appearance of a mismatch between the objectives of the principal and the agent, as well as the difficulty for the principal to verify whether the agent has done his job correctly. The second problem is the difference in attitude towards risk, where the principal and agent may have different views regarding the risks faced. This mismatch of interests can lead to agency problems, where the agent may act in a way that benefits himself, even though it is detrimental to the principal. To overcome this

¹⁶ Tanya, Bernard L., Yoan N. Simanjuntak, dan Markus Y. Hage. *Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi*. Yogyakarta, Genta Publishing, 2019.

¹⁷ Hamdani, Mailani. "Good corporate governance (GCG) dalam perspektif agency theory." *Semnas Fekon 2016* (2016): 279-283.



problem, high agency costs are required. Agency costs are costs incurred by the principal to monitor and ensure that the agent acts in accordance with the rules and interests of the principal, in order to prevent agency problems from occurring¹⁸.

Contract Law

Contract law is an agreement between two or more parties that creates an obligation to do or not do a certain action. In the Civil Code, contracts shape the behavior that binds the parties involved. Contract law includes legal rules governing the implementation of agreements or agreements. One of the main characteristics of this system is the existence of a legal relationship between the parties that includes rights (achievements) and obligations (contraprestations) that are exchanged between one party and another¹⁹.

The Civil Code provides flexibility for individuals or parties involved in a contract. They have full freedom to decide whether or not to enter into an agreement, with whom they wish to enter into an agreement, as well as determine the details of the content, manner of execution, and terms of the agreement. In addition, parties can also choose whether their agreement will be memorialized in writing or only done orally, according to their needs and mutual agreement²⁰.

In contract law, each party involved has a responsibility to fulfill what they have agreed upon. If one party does not fulfill its obligations in accordance with the agreement, it is called a default. This is a condition where there is non-compliance with the agreement that can lead to legal consequences, such as a claim for damages or cancellation of the contract²¹.

¹⁸ Arwani, Agus, M. Nur Ramadhan, and Venny Restiara. "Kepemilikan manajerial dalam agency theory." (2020).

¹⁹ Lie, C., Clarosa, V., Yonatan, Y. A., & Hadiati, M. (2023). Pengenalan Hukum Kontrak dalam Hukum Perdata Indonesia. *Jurnal Kewarganegaraan*, 7(1), 918-924.

²⁰ Pasal 1338 ayat (1) KUHPerdata.

²¹ Asnawi, Muhammad Natsir. "Perlindungan Hukum Kontrak Dalam Perspektif Hukum Kontrak Kontemporer." *Masalah-Masalah Hukum* 46, no. 1 (2018): 55-68.



The Law of Wrongful Acts

A tort in civil law is defined as any act that causes harm, so that the victim has the right to sue the person who committed the act. The loss can be material, such as damage from a car accident, or immaterial, such as anxiety or health problems. From this explanation, the elements of civil tort include the existence of an unlawful act, fault, a causal relationship between the act and the loss, and the loss suffered²². At first, tort was only considered as an act that violated the law. However, after 1919, its meaning was expanded. The 1919 decision of the High Court in *Lindenbaum v. Cohen* expanded the definition of tort, which was no longer limited to violations of the law. A tort now includes acts or omissions that: a) Violate another person's subjective rights (rights prescribed by law); b) Conflict with a legal obligation that the perpetrator must fulfill (obligations prescribed by law); or c) Conflict with norms of decency or with standards of propriety, care, and prudence that a person should have in social interactions with others or with the property of others²³

RESEARCH METHODS

The approach used in this research uses a conceptual approach. This research is descriptive and analytical in nature and aims to provide an overview of protection for doctors who work in hospitals with a focus on work agreements. Data analysis method that uses qualitative methods to draw conclusions from research findings. The data obtained is arranged logically, systematically and empirically without using numbers²⁴. This research was conducted in two stages: library research which aims to obtain secondary data as the main data source including:

- (1) The key legal document is Law Number 17 of 2023 concerning Health.

²² Sari, Indah. "Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata." *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2021).

²³ Asnawi, Muhammad Natsir. "Perlindungan Hukum Kontrak Dalam Perspektif Hukum Kontrak Kontemporer." *Masalah-Masalah Hukum* 46, no. 1 (2018): 55-68.

²⁴ Kusumastuti, Adhi, and Ahmad Mustamil Khoiron. *Metode penelitian kualitatif*. Lembaga Pendidikan Sukarno Pressindo (LPSP), 2019.



- (2) Secondary legal sources include works, books, periodicals, research results, articles related to research.
- (3) Tertiary legal sources, namely materials that can provide instructions and explanations for primary and secondary legal sources.

Research location visited to obtain the materials that is required Private hospital that is Amanda Hospital Cikarang and Dewi Sri Hospital Karawang

RESULT AND DISCUSSION

Hospital Legal Protection for Doctors in Legal Disputes from the Perspective of Employment Agreements

Dewi Sri Hospital is a private hospital located in Karawang Regency, and Dewi Sri Hospital is under the auspices of the Limited Liability Company (PT) Dewi Sri Piranti Syifa Persada. The long history of the establishment of the Dewi Sri Karawang Hospital began in 1978 established by one of the Doctors who graduated from one of the well-known Universities in Indonesia, in 1973, which started as a General Practitioner in 1978. That researchers need to explain that the legal entity of Dewi Sri Hospital is a limited liability company, and Dewi Sri Hospital itself is under the auspices of PT (limited liability company), so that the hospital has the authority to enter into or carry out collaborations in the field of law or other subjects, in including doctors, health workers, or other service users, and Dewi Sri Hospital can called category The hospital's sole purpose of providing services is only for profit and researchers need to explain based on this.

Hospitals established by limited companies are owned by the company and legally operated by its head office. There are two legal forms of hospitals in Indonesia. One of them is a hospital that was established in the form of a public interest institution as a technical implementing body, while the two hospitals are private business entities, and Dewi Sri Hospital itself is a private hospital, which seeks profit. Hospitals as legal entities can also collaborate. Whereas based on the results of an interview with one of the doctors and the management of Dewi Sri Hospital, there are still no clear rules for legal protection at Dewi Sri Hospital, among them Dewi Sri Hospital still uses third parties or insurance to protect its doctors Work permanent or non-permanent doctors at Dewi Sri Hospital, the



difference is only in the work agreement system, among other things the difference is in the payment.

Though insurance can be said As a public provider but not quite right, Dewi Sri Hospital places insurance as legal protection for doctors who work at the hospital, in other words, insurance is a protection mechanism against economic risks that may arise in the future. The insured pays premiums to the insurance company, and if an unexpected event occurs as regulated in the insurance policy, the insurance company will issue a refund. due to hospital error the could cause new problems. In general, legal protection is an effort to guarantee and respect human rights and freedoms so that everyone can live and develop in a safe, orderly and peaceful atmosphere. In a broad sense, legal protection can be interpreted as all efforts made by the state, public administrators, and/or other people to enforce the law and achieve justice in order to protect human rights and freedoms²⁵.

It is clear that Dewi Sri Hospital made a mistake in implementing legal protection for doctors and did not reach the right target, legal protection could be seen of the doctor's relationship status with the hospital in the work agreement. Legal relationship between doctors and hospitals. In this modern era, hospitals are not just health facilities, but also corporations that provide health services to local communities. Hospitals have an organizational structure that aims to provide medical services to medical service users. Apart from that, the hospital also has high-tech and capital-intensive medical equipment to support patient care. In addition to allowing hospitals to provide doctors, nurses, and personnel other than providing medical services to patients, there are also regulations related to hospitals that allow hospitals to be recognized as legal entities and gain profits from the commercialization of medical services. This means that the field of health services and the provision of health services has entered the era of industrialization of commercial services²⁶.

²⁵ Maruapey, M. Husein. "Penegakan hukum dan Perlindungan negara." *Jurnal Ilmu Politik dan Komunikasi* 7, no. 1 (2017).

²⁶ Pujiyono, Eko. "Kedudukan Korporasi Rumah Sakit dalam Tanggung Gugat Kelalaian." *Jurnal Hukum Dan Etika Kesehatan* (2021): 177-185.



Therefore, healthcare becomes a commercial good and is subject to market values that develop between service providers and those who need them. So with these new problems, researchers are of the opinion that there must be legal protection for doctors who work in ideal hospitals based on perspective work agreement, so there must be one. The working relationship between doctors and hospitals is regulated in a company agreement which contains the rights and obligations of both parties. Ideally, this company agreement includes clauses that provide maximum legal protection to doctors, such as:

- (1) **Disclaimer** This provision releases doctors from legal responsibility for medical negligence as long as the doctor operates in accordance with professional standards and hospital protocols. This means that if a doctor carries out a medical procedure in accordance with professional standards and hospital protocols and the patient still suffers harm, then the doctor cannot sue the loss. For example, doctors perform surgical procedures according to professional standards and hospital protocols. However, there are complications after surgery. Doctors cannot be sued for these complications because they work according to professional standards and hospital procedures.
- (2) **Legal Assistance Clause** This clause requires the hospital to provide legal assistance, if the doctor is sued by a patient or other party related to the hospital's work. This legal support can be in the form of funding for lawyers, legal assistance in court, etc. Example: A patient files a lawsuit because a doctor is accused of medical malpractice. Hospitals are obliged to provide legal support to doctors, including funding lawyers and legal assistance in court.
- (3) **Professional liability insurance clause** This clause requires hospitals to provide professional liability insurance to physicians. It's insurance accountability a profession that provides compensation if a patient experiences loss due to a doctor's medical negligence. Example: A doctor makes a medical error that results in his patient becoming permanently disabled. The patient filed a lawsuit against the doctor and hospital to ask for compensation for the losses he suffered. Insurance accountability professionals cover patient damage.
- (4) **Patient Confidentiality Clause** This clause requires doctors to maintain patient confidentiality. This means that doctors cannot share patient information with third parties without the patient's consent. Example: Doctors must not tell other people about their patient's illness without the patient's consent.



Dispute Resolution Clause Clause it provides a mechanism for resolving disputes between doctors and hospitals. This dispute resolution mechanism can be in the form of mediation, arbitration, or litigation. Example: If a business dispute arises between a doctor and a hospital, the dispute must be resolved first through mediation. If mediation is unsuccessful, the dispute can be resolved through arbitration or court. In addition to the provisions above, hospitals can also provide additional legal protection to doctors in the following ways: 1. Providing legal training to doctors regarding their rights and responsibilities. 2. Develop standard operating procedures (SOP) that is clear and structured to minimize the risk of medical negligence. 3. Building a mutually supportive work culture between doctors and hospital management. By providing maximum legal protection to doctors, hospitals can increase doctors' trust in the hospital and increase their motivation to provide the best service to their patients.

The hospital's obligation to protect doctors of the 2023 Health Law requires hospitals to protect doctors and other health workers from acts of violence, threats of violence and harassment in carrying out their duties. Hospitals must provide adequate facilities and infrastructure to provide health services, including appropriate personal protective equipment (PPE) for doctors and other health workers²⁷. Hospitals are obliged to facilitate the resolution of disputes between doctors and patients through mediation and other means. Hospitals' obligation to protect doctors: of the 2023 Health Law requires hospitals to protect doctors and other health workers from acts of violence, threats of violence and harassment in carrying out their duties. Hospitals are obliged to facilitate the resolution of disputes between doctors and patients through mediation and other means²⁸.

Trade is a series of activities related to the exchange of goods and services within and across national borders with the aim of transferring rights to goods and services to obtain rewards or compensation. So that the legal relationship between hospitals and doctors or other medical personnel must have clear

²⁷ Undang-Undang Nomor 17 tahun 2023 tentang kesehatan Pasal 193..

²⁸ *Ibid.*



regulations or a clear legal umbrella to ensure legal certainty and justice²⁹. That it is clear that Dewi Sri Hospital must comply with the law Employment Which arranged in Some regulations include:

Law Number 13 of 2003 concerning employment which is the parent rule or regulation or reference for employment in Indonesia.

As for the existing regulations in Indonesia, there are several work agreements arranged based on Law Number 13 of 2003 concerning employment and government regulation Number 35 of 2021 concerning work agreements, namely work agreements including those in Indonesia:

- a. Fixed-term employment agreements are created for a specific period of time or to complete a specific task. Period is a maximum of 5 years and can be extended twice for a maximum total of 10 years. If Fixed-time work agreement is not extended or the employment relationship ends before the end of the validity period, the employer is obliged to pay severance pay and/or compensation money.
- b. Agreement work Time is not certain, Designed to be unlimited, meaning there is no time limit. Employee work is stable because there are no restrictions on working hours. Employers are obliged to pay severance pay and/or compensation in the event of termination of employment.
- c. Part-time work agreement, working hours are less than 7 hours per day or 35 hours per week and are designed for a certain or unlimited period of time. Employers are obliged to provide rights and obligations according to working hours.

That researchers explain the difference between workers and professional workers, workers are individuals who are able to do work for produce goods or services, and expertise has basic skills that can studied in a short time through training or work experience, education does not always require higher education, however degree or or certificate training possible is required, for example factory workers, drivers or farm workers. Cashiers, and their income, usually receive wages based on working hours or a relatively standard monthly salary. The regulations are not bound by a code of ethics and/or professional standards certain.

²⁹ Undang-Undang Nomor 7 tahun 2014 tentang Perdagangan Pasal 4 ayat (2).



Professionals are individuals who have special skills and knowledge in a particular field obtained through higher education, training, and experience work, and his skills also have a high level of expertise that takes a long time to do studied and sharpened, and his education also requires higher education and professional certification³⁰. for example or examples are Doctors, Lawyers, Accountants, Architects, Engineers. Usually receive a higher salary or wages than regular workers, and the income system can vary (salary, bonuses, incentives). The regulations are also bound by mandatory codes of ethics and professional standards obeyed.

So the doctor can't do that categorized as workers, doctors are professionals whose rules have a code of ethics and professional standards, therefore researchers are interested in the existence of these problems and how they are protected. Before discussing the status of doctors working in hospitals, they must be able to differentiate between workers and professionals. In general or can is said that doctors are included in the professional workforce, and this greatly complicates the work space for doctors or the status of doctors working in hospitals who must follow the relevant Law Regulation Number 13 of 2003 Employment, including the fact that doctors are not permanent, so there is a problem with what a doctor is employee or my professional staff as researcher interested in researching this problem.

Based on Indonesian regulations. Doctors in Indonesia have the right to legal protection in carrying out their profession. These protections are important to ensure that physicians can work safely without fear of lawsuits. Legal Basis for Doctor Protection Various legal regulations that provide legal protection for doctors in Indonesia include.

Law no. 17 of 2023 concerning health.

Health Law Number 17 of 2023 (Health Law) provides several legal protections for doctors in carrying out their profession. These protections are important to ensure that physicians can work safely without fear of lawsuits. The

³⁰ Hasibuan, Abdurrozzaq. "Etika Profesi-Profesionalisme Kerja." (2017).



basis for legal protection is reflected in the rights and obligations of doctors, namely³¹:

- a. Get legal protection as long as you carry out your duties in accordance with professional standards, professional service standards, standard operational procedures and professional ethics, as well as patient health needs.
- b. Obtain complete and correct information from patients or their families.
- c. Receive appropriate salaries/wages, service benefits and performance allowances in accordance with statutory provisions.
- d. Get protection for safety, occupational health and security.
- e. It is. Obtain health insurance and employment guarantees in accordance with statutory provisions.
- f. Get protection against treatment that is not in accordance with human dignity, morals, decency and socio-cultural values.
- g. Receive awards in accordance with statutory provisions.
- h. Get the opportunity to develop yourself through developing competencies, knowledge and skills career in the field his profession.
- i. Rejecting the wishes of patients or other parties that conflict with professional standards. That the researcher explained several hospital obligations³²:

Protect and provide legal assistance to all hospital officers in carrying out their duties and.

Based on Law Number 17 of 2023, the legal umbrella relates to the legal protection of health workers namely, health professionals, practitioners and health service providers have the right to obtain legal protection if they carry out their duties in accordance with professional standards, professional service standards, standard operating procedures and codes of ethics³³. Meanwhile, insurance is a financial services business organized by insurance companies, both life insurance companies and accident insurance companies, to collect funds from the public through collecting premiums, contributions and operational income.

³¹ Undang-Undang Nomor 17 tahun 2023 tentang kesehatan Pasal 273.

³² *Ibid.*, Pasal 198.

³³ *Ibid.*, Pasal 273.



Any loss, damage, costs incurred, loss of profit, or legal action against third parties that may be borne by the insured or policy holder due to the occurrence of an uncertain event, the life or death of a person, or the occurrence of an uncertain situation. incident. To indemnify the insured against liability³⁴.

That most hospitals in Indonesia feel that it is sufficient if they have legal protection insurance, such as Dewi Sri Hospital itself, which has followed suit insurance even though insurance cannot be obtained categorize Legal Protection, insurance is a company that manages or collects funds from the Insured. A work agreement between the doctor and the hospital must be the basis or mandatory obligation done by hospitals and doctors in order to create legal protection for quality doctors if at any time there is a legal dispute in the hospital, there must be clauses and authority or responsibilities between the hospital and doctors in detail, including:

- (1) The Doctor's authority or rights are contained in the Employment Agreement.
- (2) The doctor's responsibilities are contained in the employment agreement.
- (3) Handling legal disputes

The central role of a work agreement is very important because the work agreement must be transparent or firm so that it is useful in countermeasures the occurrence of legal disputes between doctors and hospitals, in solution lighter and wiser, an effective agreement will produce legal certainty for both parties between the doctor and the hospital so that the rights of doctors who work in the hospital are protected³⁵.

An Employment Agreement is a very important tool for Doctors or Health Workers to protect Doctors' rights so as to create a light and wise resolution of legal disputes. Doctors must be able to understand the Doctor's authority or rights contained in the Employment Agreement, and Doctors must have great courage if there is an agreement that hit. Doctors are usually expected to work in accordance with professional standards set by medical institutions or relevant

³⁴ Undang-Undang Nomor 40 Tahun 2014 tentang Perasuransian.

³⁵ Maya, Felicia, Budi Sarwo, and Daniel Budi Wibowo. "Juridical Study of the Work Relations Between Doctors and Hospitals in the Implementation of Health Services." *Soepra Jurnal Hukum Kesehatan* 9, no. 1 (2023): 116-136.



health authorities. If physicians act in accordance with these standards and follow applicable procedures, they will have better legal protection in the litigation process. If a doctor is proven to be negligent in providing health services or does not meet the expected standards, the doctor can take legal action. However, in some jurisdictions, physicians may be covered by professional liability insurance or laws that set time limits and the damages a patient can claim.

A hospital's legal protection for doctors is very important, in Indonesia itself there is already legal protection for doctors arranged but how is it implemented, is it in accordance with existing regulations or according to the doctor's expectations. If we discuss hospital legal protection for doctors, it is closely related to a legal protection clause/agreement in an ideal work agreement between a hospital and a doctor. Therefore, you must understand what a Legal Protection clause/agreement is. A clause or agreement is a provision in an agreement that the goal to protect the rights and interests of the agreement makers, thereby giving rise to a legal relationship, namely the existence of rights and obligations³⁶. So that Legal protection for contract makers, namely hospitals and doctors, has their rights protected. This clause can also regulate various things, among them Limitation of liability, This clause can limit a party's liability for losses that may arise from the performance of the contract. Dispute resolution, Clause this can determine how disputes that may arise between the parties will be resolved, for example through mediation, arbitration, court, etc. Because of law: Clause This can determine the legal consequences of a contract.

Legal protection clauses are included in various types of contracts, such as sales contracts, rental agreements, and cooperation agreements. The existence of this clause is very important to maintain legal certainty and minimize the risk of disputes between the parties. So the researcher made observations at Dewi Sri Karawang Hospital, with one of the Health Workers and Management of Dewi Sri Karawang Hospital, how the work agreement was applied At Dewi Sri Karawang Hospital, basically the hospital has made a work agreement regarding legal protection for doctors who work at Dewi Sri Karawang Hospital, but the

³⁶ Miru, Ahmadi, and Sakka Pati. *Hukum Perjanjian: penjelasan makna pasal-pasal perjanjian bernama dalam KUH Perdata (BW)*. Sinar Grafika, 2020.



Dewi Sri Karawang Hospital has not regulated further Specific regarding the existence of a Legal Protection clause from Dewi Sri Hospital for permanent doctors and visiting doctors who work at Dewi Sri Hospital Karawang, that at Dewi Sri Hospital Karawang only applies professional insurance which is different, in the agreement among them namely in terms of payment, researchers need to explain that insurance. According the Commercial Code, insurance or compensation is a contract where the insurance company promises to compensate the insured for loss, damage or lost profits in exchange for a premium³⁷. This can be caused by uncertain events. So it is clear that there are errors and inaccurate legal certainty made by Rumah Sakit Dewi Sri against the Employment Contract during this time.

From the researcher's point of view, there are unclear and inaccurate concepts made by Dewi Sri Karawang Hospital, regarding the Hospital work agreement. It is clear and clear that Law Number 17 of 2023 states that hospitals obliged protect and provide legal assistance for all hospital staff in performing their duties. And there are several phenomenon between whether a doctor is a worker or a professional, so that with this problem, researchers are of the view that there is still no legal certainty regarding the status of doctors who are not permanent doctors.

Because the status of doctors who work in hospitals is ambiguous, Law Number 13 of 2003 only divides work into two, namely working for a certain period of time, so we define doctors as doctors who work in hospitals for a certain period of time. certain period of time. Regarding the completion of certain work as referred to in Article 56 Paragraph 2 of Law Number 13 of 2003. According to Law Number 13 of 2003, the status of hospital doctors who do not work permanently for a certain period of time is a weakness for hospitals and companies. Because, this law makes the employment relationship permanent for a certain period of time. Types of activities that have a time limit. The fixed term of employment is not limited to a certain period, but is limited to two years and can be extended once a year. According to Article 56 Paragraph 4 of Law Number 13 of 2003, the position of a doctor is permanent, so there are no regulations that

³⁷ Kitab Undang-Undang Hukum Dagang pasal 246.
804



apply to hospital business activities. There are also moves to limit the term of employment to two years and extend it to one year, which would have a negative impact on hospitals. The unclear legal status of doctors in hospitals, as regulated in Indonesian laws and regulations, can give rise to new problems

Formulation of an ideal employment agreement for doctors with local hospitals Perspective Work agreement?

Work contract formulation is the process of preparing a work contract which aims to create a written agreement between the hospital and the doctor regarding the rights and obligations of both parties. The ideal employment contract must be clear, complete and in accordance with applicable laws and regulations³⁸. In the context of employment agreements, doctors and hospitals have a contractual relationship in which doctors provide medical services to hospital patients in exchange for compensation and benefits. This relationship is governed by the terms and conditions stated in the employment agreement, which must be based on applicable laws and regulations. Employer Relations or Hospitals act as employers, responsible for providing salaries, benefits, and a safe work environment to physicians. Doctors, as a profession working in hospitals, are obliged to fulfill their professional duties and comply with hospital policies and procedures³⁹. A worker is a person who works directly or indirectly for wages or other benefits and has an employment relationship with the employer⁴⁰.

Legal disputes or medical disputes in the world of health are disputes that arise between two or more parties related to legal events that occur within the

³⁸ Cahyanto, Andri. "Perjanjian Kerja Waktu Tertentu dalam Hukum Ketenagakerjaan." *Jurnal Indonesia Sosial Sains* 2, no. 02 (2021): 183-196.

³⁹ Ibrahim, Dimas Noor. "Tanggung Jawab Hukum Rumah Sakit Terhadap Dokter Dalam Perjanjian Medis Di Indonesia (Studi: Rumah Sakit Siaga Raya)." *Jurnal Ilmiah Publika* 10, no. 2 (2022): 275-288.

⁴⁰ Undang-Undang Nomor 13 Tahun 2003 tentang ketenaga kerjaan Pasal 1 angka 5.



medical scope. These disputes can involve medical personnel, patients, doctors, hospitals and other related parties⁴¹. The causes of medical disputes arise⁴²:

(1) Dissatisfaction to medical services this arises caused several factors, namely:

- (a) The results of diagnosis or treatment do not meet expectations.
- (b) Lack of information and explanations from medical staff.
- (c) Indifferent or unprofessional attitude of medical staff.
- (d) Medical negligence that causes harm to patients.

(2) Disagreement Regarding medical costs:

Patients may be harmed by medical claims that are deemed unreasonable or inconsistent with the original contract.

(3) Violation of patient rights:

Patients have certain rights in receiving health services, such as the right to complete information, the right to refuse treatment, and the right to privacy. Violations of these rights may give rise to disputes.

(4) Medical Malpractice:

Medical malpractice can occur due to various factors, including negligence, carelessness, or lack of knowledge or skill on the part of medical professionals. Medical errors that harm patients can result in lawsuits. Types of medical disputes⁴³.

- (a) Civil Disputes These disputes relate to violations of the rights and obligations between patients and health service providers. Civil disputes can be resolved through negotiation, mediation, arbitration or court.
- (b) Criminal Dispute This dispute relates to alleged criminal acts committed by health workers, including medical negligence which resulted in the death of the patient and falsification of medical documents. Criminal disputes are resolved through the criminal court process.

⁴¹ Yusuf, Hudi, And Raimundus Uhe Hurint. "Pelanggaran Hukum Dalam Pelayanan Kesehatan Yang Dapat Menimbulkan Sengketa Medik." *Jurnal Intelek Dan Cendekiawan Nusantara* 1, No. 2 (2024): 2354-2363.

⁴² Sinaga, Niru Anita. "Penyelesaian sengketa medis di indonesia." *Jurnal Ilmiah Hukum Dirgantara* 11, no. 2 (2021).

⁴³ *Ibid.*



- (c) Administrative Disputes: These disputes relate to violations of medical laws and regulations. Administrative disputes can be resolved through mediation or state administrative courts.

That the researcher has made observations at the Dewi Sri Karawang Hospital, conducted questions and answers with the Health Workers and Management who stated that the status of working doctors is only based on the work relationship between permanent doctors and non-permanent doctors. So with new problems related to visiting doctors or non-permanent doctors who work in hospitals, there are basically two doctors in hospitals category namely doctors in a working relationship, and visiting doctors or partner doctors.

So with these problems there is no legal certainty for doctors in work relationships, or visiting doctors. When a legal dispute occurs. Employment contracts between doctors and hospitals must be fair, balanced, consistent with applicable laws and regulations, and provide maximum legal protection to doctors. When developing the ideal physician-hospital collective bargaining agreement, the following elements must be present:

- (a) Identity of the parties, name of the doctor, medical practice license number (SIP), address of the doctor, name of the hospital, name of the hospital manager/person in charge, address of the hospital.
- (b) Work agreement agreement.
- (c) Doctor's Status and Duties, Room/ Area Where the Doctor Works Doctor's Working Hours, Wages and Benefits.
- (d) Basic salary, structural allowances, functional allowances, other allowances (eg attendance allowance, meal allowance, overtime allowance), salary increase system.
- (e) Doctors' Rights and Obligations Doctors' Rights: Receive salary and allowances in accordance with the work agreement Receive holidays and leave in accordance with applicable laws and regulations Get training and personal development Get legal protection Duties Receive awards for performance.
- (f) Doctor's responsibilities: Carry out work as best as possible, in accordance with professional standards and medical ethical codes Maintain patient confidentiality Maintain positive relationships with patients, patient



- families and co-workers Maintain a clean and healthy work environment
Be prepared with the latest knowledge and skills.
- (g) Hospital Rights and Obligations Hospital Rights: Obtain medical services from professional and qualified doctors, require doctors to carry out their duties in accordance with the collective agreement with doctors who violate the collective agreement or doctors who are affected.
 - (h) Hospital obligations: Payment of doctors' salaries and allowances on time Providing leave and holidays to doctors in accordance with applicable laws and regulations Providing training and self-development to doctors Protecting doctors from unfair lawsuits Rewarding doctors' achievements.
 - (i) Termination of Employment (PHK) Permissible Reasons for Dismissal, Rights of Dismissed Doctors Obligations of Dismissed Hospitals Dispute Resolution.
 - (j) Dispute Resolution Mechanism Dispute Resolution Forum Other Regulations Health and Work National Safety Regulations Work Discipline Regulations Confidentiality Regulations Health Insurance Regulations Professional Liability Insurance Regulations Other provisions deemed necessary.

In addition to the elements above, an ideal employment contract between a doctor and a hospital must also include the following elements: Written in clear and easy to understand language Signed by both parties Duplicates are made Properly maintained by both parties

Through an ideal work agreement, doctors and hospitals can establish mutually beneficial cooperation and provide the best medical services to patients. From an employment contract or employment agreement perspective, it is important to create an optimal collective bargaining agreement between physicians and hospitals. This agreement must balance the rights and obligations of the parties and comply with applicable laws and regulations. According to the Employment Law Number, a worker is a person who works directly or indirectly for wages or other benefits and has an employment relationship with the employer⁴⁴. physicians meet this workforce definition, whether they work in hospitals, clinics, or independent practices. They work to earn wages or other

⁴⁴ Undang-Undang nomor 13 Tahun 2003 tentang Ketenagakerjaan Pasal 1 angka 5.
808



compensation, such as salaries, honorariums, and practice fees, as well as establishing working relationships with employers, such as hospitals, clinics, or patients.

Apart from that, doctors are also classified as a profession based on Minister of Manpower Regulation Number 14 of 2013 concerning Classification and Procedures for Filling Vacancies. Doctors as professionals have special duties and rights regulated in statutory regulations, including the obligation of doctors to have proof of competence, comply with the Professional Code of Ethics, and provide high quality medical services. The right to receive fair wages or other compensation, occupational safety and health, and opportunities for personal development. Therefore, it is clear that doctors fall into the category of workers.

Doctors can be classified into workers and professions. As an employee in an employment relationship, a doctor is bound by an employment relationship with an employer, for example a hospital, clinic or patient. This employment relationship is subject to applicable employment law regulations. Compensation Received: Doctors receive salaries, honorariums, or fees for their work. Working hours and duties. Doctors have the following working hours and duties. Examining patients, providing diagnoses, and carrying out medical procedures. Doctors have two sides, workers and professionals. These two aspects are interconnected and cannot be separated. Doctors must carry out their duties by complying with professional ethics and applicable work regulations.

Employment contracts can be viewed from various points of view, including, Legal Perspective. Employment contracts are agreements between employers and employees which give rise to rights and obligations for both parties. Employment contracts are subject to labor law and must be in writing. Business Perspective: Employment contracts are a tool to regulate the relationship between employers and workers. The right employment contract helps employers achieve business goals and increase employee productivity. Employee Perspective: Employment contracts are a tool to protect employee rights. A good employment contract guarantees that employees receive adequate wages and benefits, adequate leave and holidays, and a safe and comfortable work environment. The importance of understanding the employment contract perspective Understanding the employment contract perspective is important if:



Employer: To help us conclude a fair and mutually beneficial employment contract. So with these problems there is no legal certainty for doctors who are not permanent doctors, or visiting doctors. When a legal dispute occurs.

CONCLUSION

Legal protection for doctors during the legal dispute process can be provided through standard work contracts and various other initiatives carried out by hospitals. An employment contract that is standard and uniform throughout Indonesia and ideally must be clear and complete, comply with legal requirements, be fair and balanced, and be easy to understand. An ideal corporate agreement will help improve harmonious working relationships, provide doctors with a sense of security and peace of mind, and increase their professionalism. That the work agreement at Dewi Sri Karawang Hospital does not yet protect the doctors who work because the legal protection is only in the form of insurance. Researchers draw the conclusion that the protection at the hospital does not guarantee certainty of legal protection for doctors.

An ideal employment contract is the key to creating a mutually beneficial working relationship between doctors and hospitals. The drafting of the employment contract must take into account, especially the professional development clause. Include a confidentiality clause. When considering a non-competition agreement, the parties can develop a fair and balanced employment agreement to promote a harmonious and professional working relationship

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